

Regular Meeting

Present: Mayor Terry M. Bellamy, Presiding; Vice-Mayor Jan B. Davis; Councilwoman Robin L. Cape; Councilwoman Diana Hollis Jones; Councilman R. Carl Mumpower; Councilman Brownie W. Newman; Councilman William A. Russell Jr.; City Manager Gary W. Jackson; City Attorney Robert W. Oast Jr.; and City Clerk Magdalen Burleson

Absent: None

**PLEDGE OF ALLEGIANCE**

Mayor Bellamy led City Council in the Pledge of Allegiance.

**INVOCATION**

Vice-Mayor Davis gave the invocation.

**I. PROCLAMATIONS:**

**ANNOUNCEMENT**

Mayor Bellamy said that Asheville was visited by a delegation from Iowa to look at the success we have had with the Asheville Project. The Governor was scheduled to attend; however, due to the enormous amount of flooding they are experiencing, he could not be here. She did ask the community to pray for the individuals who are impacted by the flooding, as well as those individuals who are affected by the fires in North Carolina.

**II. CONSENT AGENDA:**

At the request of Councilman Mumpower, Consent Agenda Items "E," "F," "G," and "H" were removed from the Consent Agenda for discussion and/or individual votes.

At the request of Mayor Bellamy, Consent Agenda Item "D" was removed from the Consent Agenda for discussion and/or an individual vote.

**A. APPROVAL OF THE MINUTES OF THE FORMAL MEETINGS HELD ON MAY 13, 2008, AND MAY 27, 2008**

Summary: The following paragraph of the minutes of the May 13, 2008, meeting was amended to read as follows: "Councilwoman Cape was pleased to see the several ideas put forth by the Public Works Department to manage waste and possibly reduce the cost of the City's tipping fees at the landfill. She offered, and it was the consensus of Council to accept that offer, to contact the Waste Reduction Partners at the Land-of-Sky to see if they would be interested in helping the City look at this issue in a comprehensive manner to evaluate if any changes could be made that would address the waste stream."

**B. RESOLUTION NO. 08-117 - RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE DOCUMENTS TO SELL PROPERTY LOCATED OFF HAZZARD STREET TO JOHN PETTY JR.**

Summary: The consideration of a resolution authorizing the Mayor to convey land off Hazzard Street to John L. Petty Jr., in the amount of \$2,600.

On April 22, 2008, City Council authorized advertising for upset bids pursuant to a bid from John L. Petty, Jr. for land off Hazzard Street in the amount of \$2,600. The advertisement was published on April 29, 2008, and no upset bids were received.

The land off Hazzard Street is one of three (3) parcels donated to the City in 2001, by Sidney and Mary Schochet and Dale and Irwin Plisco. The parcels were remnants from Department of Transportation takings in connection with the construction of South Charlotte Street. The subject parcel is a rectangular shaped fragment lot comprising 0.03 acre±. It is zoned RS8, and it is not suitable to build on without additional land combination. The bid from John Petty is in the amount of \$2,600 and is higher than the tax appraised value of the property. Mr. Petty proposes to acquire the subject parcel for assemblage with the vacant property he owns next door.

The Parks, Recreation and Cultural Arts Department has verified that this parcel does not lie within an existing or proposed

greenway trail according to the Greenway Master Plan and therefore is not an advantageous property to be held for use by the City of Asheville.

Regarding the Strategic Operation Plan, being that the parcel by itself is unsuitable for any type of redevelopment, selling the parcel for assemblage will help to promote infill growth in an existing neighborhood corridor.

Pros:

- The sale will be at fair market value as established by the upset bid process.
- It will return property not needed for public use to the tax rolls.
- It will transfer responsibility for maintenance to the private sector.

Con:

- There is no negative impact.

Regarding the fiscal impact, the proceeds from the sale of this parcel will benefit the General Fund via the Parks, Recreation and Cultural Arts Department.

Economic Development staff recommends adoption of the resolution which will authorize conveyance of the property in conclusion of the sale by upset bid.

#### **RESOLUTION BOOK NO. 31 – PAGE 190**

#### **C. RESOLUTION NO. 08-118 - RESOLUTION ACCEPTING WEST POINTE DRIVE, IN THE SARDIS ROAD AREA, AS A CITY-MAINTAINED STREET**

Summary: The consideration of a resolution to accept West Pointe Drive as a city-maintained street in the recently annexed Sardis Road area of the City of Asheville.

Section 7-15-1 (e) (4) (a) of the Code of Ordinances requires that streets dedicated for public uses be accepted by resolution of the City Council.

West Pointe Drive is a developer-constructed streets that has an average width of 22 feet and a length of 0.27 miles

Transportation and Engineering Department staff and Public Works Department staff have inspected this street and recommends their change of ownership from privately- maintained streets to city-maintained streets.

Following City Council's approval of this resolution and approval, West Pointe Drive will be added to the official Powell Bill List.

West Pointe Drive is one of the streets listed in the Plan of Services for the 2007 Annexations Sardis Road Area that the City would take over for maintenance.

Pros:

- The City of Asheville will receive Powell Bill Funds from the North Carolina Department of Transportation (NCDOT) to maintain the streets.
- Homes constructed on this roadway increase the tax base in the City.

Con:

- Powell Bill Funds will probably not cover 100% of the total cost to maintain the streets.

- There will be no initial financial impact to the City, although the responsibility of maintenance will belong to Public Works. The City will receive Powell Bill funds in the future to maintain the street.

- Staff recommends that City Council accept West Pointe Drive as a city-maintained street.

#### **RESOLUTION BOOK NO. 31 – PAGE 191**

#### **D. RESOLUTION MAKING PROVISIONS FOR THE POSSESSION AND CONSUMPTION OF MALT BEVERAGES AND/OR UNFORTIFIED WINE AT THE URBAN TRAIL BLOCK PARTY ON JUNE 14, JULY 12, AUGUST 9**

**AND SEPTEMBER 13, 2008**

This item was removed from the Consent Agenda for discussion and/or an individual vote.

**E. RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A PROFESSIONAL SERVICES CONTRACT WITH HDR ENGINEERING INC. OF THE CAROLINAS FOR THE DEVELOPMENT OF THE TRANSIT MASTER PLAN**

This item was removed from the Consent Agenda for discussion and/or an individual vote.

**F. RESOLUTION AUTHORIZING THE CITY MANAGER TO SIGN A CONTRACT WITH BROWN AND CALDWELL FOR THE LOWER ROSS CREEK WATERSHED STORMWATER ENGINEERING ANALYSIS –PHASE I**

This item was removed from the Consent Agenda for discussion and/or an individual vote.

**G. RESOLUTION AUTHORIZING EXECUTION OF A \$5 MILLION INSTALLMENT PURCHASE FINANCING CONTRACT FOR SIX FIRE TRUCKS, TWO SANITATION TRUCKS AND TECHNOLOGY ASSOCIATED WITH THE REPLACEMENT OF THE CITY'S ENTERPRISE-WIDE INFORMATION SYSTEM**

This item was removed from the Consent Agenda for discussion and/or an individual vote.

**H. BUDGET AMENDMENT TO SUPPORT THE PURCHASE FINANCING CONTRACT FOR SIX FIRE TRUCKS, TWO SANITATION TRUCKS AND TECHNOLOGY ASSOCIATED WITH THE REPLACEMENT OF THE CITY'S ENTERPRISE-WIDE INFORMATION SYSTEM**

This item was removed from the Consent Agenda for discussion and/or an individual vote.

**ORDINANCE BOOK NO. 24 - PAGE**

Mayor Bellamy said that members of Council have been previously furnished with a copy of the resolutions and ordinances on the Consent Agenda and they would not be read.

Councilwoman Jones moved for the adoption of the Consent Agenda. This motion was seconded by Vice-Mayor Davis and carried unanimously.

**ITEMS REMOVED FROM THE CONSENT AGENDA FOR INDIVIDUAL VOTES**

**D. RESOLUTION NO. 08-119 - RESOLUTION MAKING PROVISIONS FOR THE POSSESSION AND CONSUMPTION OF MALT BEVERAGES AND/OR UNFORTIFIED WINE AT THE URBAN TRAIL BLOCK PARTY ON JUNE 14, JULY 12, AUGUST 9 AND SEPTEMBER 13, 2008**

Summary: The consideration of a resolution making provisions for the possession and consumption of malt beverages and/or unfortified wine at the Urban Trail Block Party.

The organization responsible for the Urban Trail Block Party, Diversity is Our Trademark, is requesting through the Asheville Parks, Recreation & Cultural Arts Department that City Council permit them to serve beer and/or unfortified wine at their events and allow for consumption at these events.

The Urban Trail Block Party will be held on Saturday, June 14, 2008, Saturday, July 12, 2008, Saturday, August 9, 2008, and Saturday, September 13, 2008, from 4:00 PM – 9:00 PM within the boundaries of Eagle Street between the intersections of Biltmore Avenue & Market Streets.

This action does not tie-in with the Strategic Operating Plan nor does it comply with any of the adopted City plans.

Pro:

- Allows fundraising opportunities for charity

Con:

- Potential for public safety issues

Overtime pay for Asheville Police Department officers will be the fiscal impact.

City staff recommends City Council adopt a resolution authorizing the City Manager to approve a resolution making provisions for the possession and consumption of malt beverages and/or unfortified wine at the Urban Trail Block Party events.

Councilman Newman moved for the adoption of Resolution No. 08-119. This motion was seconded by Councilwoman Jones and carried on a 6-1 vote, with Mayor Bellamy voting "no."

#### **RESOLUTION BOOK NO. 31 – PAGE 193**

#### **E. RESOLUTION NO. 08-120 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A PROFESSIONAL SERVICES CONTRACT WITH HDR ENGINEERING INC. OF THE CAROLINAS FOR THE DEVELOPMENT OF THE TRANSIT MASTER PLAN**

Summary: The consideration of a resolution authorizing the City Manager to enter into a Professional Services contract with HDR Engineering, Inc. of the Carolinas for the development of the Transit Master Plan.

The City of Asheville is interested in analyzing existing transit services, assessing current and future needs, determining future equipment and operational requirements, and determining how existing bus transit services can be streamlined to provide improved service levels through the development of a Transit Master Plan.

The Transit Division, Transportation and Engineering Department, issued a Request for Proposals for the Transit Master Plan on February 29 2008. The RFP closed on March 31 2008; nine proposals were received from the following firms:

- Martin/Alexiou/Bryson, PLLC
- KFH Group, Inc.
- Wilbur Smith Associates
- Perteet, Inc.
- McDonald Transit Associates, Inc
- Renaissance Planning Group
- HDR Engineering, Inc. of the Carolinas
- TMD-Transportation Management & Design, Inc.
- Connetics Transportation Group

The evaluation committee recommended HDR Engineering, Inc. of the Carolinas as the firm to provide services for the development of the City of Asheville Transit Master Plan (TMP).

The project cost will be \$89,245 and 10% contingency for unforeseen expenses the consultant may incurred during the development of the contract.

The main objectives of the Transit Master Plan are as follows:

1. Analyze existing transit services and develop data to support planning and executive decisions.
2. Streamline existing transit services to attract new ridership from residents and tourist while maintaining the level of service currently enjoyed by our core ridership group.
3. Identify the potential to improve transit operations, increasing frequencies and redefining the routes according to the demand.
4. Analyze and recommend present and future route structure.
5. Identify transfer facilities that better position the implementation of future transit improvements.
6. Identify funding opportunities.

The Transit Master Plan will analyze the transit system as a whole, and will provide recommendations in the short, medium, and long term scenarios (5, 8 -10 and 15 years respectively).

We have continued to update the Transit Commission on the status of this project. They approved the master plan steering committee and are supportive of our efforts to move forward on this project.

This project is in alignment with the Strategic Plan adopted by City Council in that the Transit Master Plan will support the areas of environmental sustainability, promoting emission reductions through transit and identifying a sustainable funding structure

for transit.

The project complies with the City Development Plan – 2025, Transportation Goals and Strategies, as follows: Goal VI: Develop a transit system that is capable of meeting the needs of all residents of and visitors to the region. Goal X: Develop a comprehensive set of implementation strategies intended to reduce local vehicle miles traveled in accordance with the State of North Carolina transportation policies.

Pros:

- The development of the transit master plan will provide the tools to reshape the transit system accordingly to current ridership and development.
- The TMP will identify future opportunities for growing in a planned and organized way.
- The TMP will make recommendations related to technology, transit facilities and funding opportunities.

Cons:

- None.

The project cost will be \$89,245 and 10% contingency for unforeseen expenses during the development of the master plan.

City staff recommends City Council adopt a resolution authorizing the City Manager to enter into a professional services agreement with HDR Engineering, Inc. of the Carolinas for the development of the City of Asheville Transit Master Plan.

Mr. Mike Fryar urged City Council to vote against this agreement in that other studies have not been followed.

Councilman Mumpower felt that at a time we are about to implement a new managerial structure for the Transit System, the timing of this study is less than ideal. He also felt that our studies for the most part offer a duplication of effort and investment of our limited dollars with marginal return.

Councilwoman Cape wanted to make sure that we are not doing this study in isolation of the other plans, e.g., pedestrian plan and bike plan, because we want to make sure that we are getting a multi-modal comprehensive transportation picture. She felt that transit is an opportunity in our community to create the kind of infrastructure that will drive the infill development and understanding that is important.

In response to Vice-Mayor Davis, Director of Transportation and Engineering Cathy Ball said that the money for this agreement is budgeted in this fiscal year. They will be trying to create a system and develop it into a real option for people to be able to use. Through the Federal Transit Administration we can't expand the system or make huge changes to it until we do have a completed study. The overall hope is that it will save the City a lot of money. We hope the consultant will bring us ideas that have been used in other places to save money and reduce our operational costs as well as bring us opportunities for other funding options. She felt this is a great opportunity for the City.

Councilwoman Jones said this is an opportunity to find cost efficiencies and improve our revenue base through attracting new ridership. She asked staff to include the Tourism Development Authority in the conversation of how the tourism industry interfaces with our transit system.

Councilman Newman spoke in support of the agreement and felt it was money well invested. He said this has been an identified need for a long time for good reason.

Ms. Ball responded to various questions from Council, some being, but are not limited to: what was the transit budget two years ago vs. today; has staff sought input from the bus drivers and the current management as to ways to improve our routes; do we have the in-house capability of performing this study and if so, why are we not utilizing that experience; and how much is the transit budget impacted by the federal change in legislation.

Mayor Bellamy said that she would like the consultant to look at the following, in that she has received several requests: Sunday service; extend services out Leicester Highway to the Land-of-Sky Regional Council; and request to service Eliada Homes, Wind Ridge and the senior development on Compton Drive.

At the request of Mayor Bellamy, City Manager Jackson said that at the June 17, 2008, worksession, City staff will have detailed information for Council regarding the transit budget - prior years and what is being proposed this year.

Councilwoman Cape moved for the adoption of Resolution No. 08-120. This motion was seconded by Councilwoman

Jones and carried on a 6-1 vote, with Councilman Mumpower voting “no.”

## RESOLUTION BOOK NO. 31 – PAGE 196

### F. RESOLUTION NO. 08-121 - RESOLUTION AUTHORIZING THE CITY MANAGER TO SIGN A CONTRACT WITH BROWN AND CALDWELL FOR THE LOWER ROSS CREEK WATERSHED STORMWATER ENGINEERING ANALYSIS –PHASE I

Summary: The consideration of a resolution authorizing the City Manager to sign a contract with Brown and Caldwell for the Lower Ross Creek Watershed Stormwater Engineering Analysis – Phase 1 surveying in the amount of \$110,000 with a 15% contingency (\$16,500).

In December 2004, City Council adopted a Stormwater Utility. As part of the budget, City Council endorsed a program for the expenditure of the funds. Of the approximate \$2 million of expected revenue, \$200,000 per year was programmed to prepare stormwater engineering analysis for watersheds.

Staff prepared a Request for Qualifications in the summer of 2006. Ten proposals were received. Based on qualifications, staff along with citizen input selected Brown and Caldwell to perform this work.

The total cost to complete the entire Ross Creek Watershed was \$400,000. At that time, we only had \$200,000 available to perform the work. We decided to complete the study for the upper portion of the watershed. That study has been completed. We are now moving forward with the study for Lower Ross Creek.

We have funds in Fiscal Year 2008 Stormwater Utility Budget to complete the first phase of the study which includes the survey work. We will proceed with the engineering analysis after the first phase is complete.

Ross Creek is listed on the State 303 D list as an impaired stream. This means that this stream has been identified as having poor water quality.

Staff has developed a question and answer format to help Council and the public understand the components of a Stormwater Engineering Analysis.

What is a Stormwater Engineering Analysis? A stormwater plan is a detailed engineering study that evaluates the stormwater drainage system in a watershed. In order to complete the study, the consultant must prepare an inventory of the drainage system. A hydraulic model is developed to analysis the capacity of the system. The model will indicate which pipes, ditches and/or streams need repair and in what priority. The study also evaluates water quality concerns such as stream bank erosion, hazardous materials, etc.

What are the goals of a Stormwater Engineering Analysis? The goals of completing this study include the following:

- ✓ Developing a capital improvement program that evaluates upstream and downstream impacts of improvements;
- ✓ Prioritizing the storm drainage needs within the watershed;
- ✓ Developing a hydraulic model that can be used to determine improvements that need to be made as part of new development; and,
- ✓ Assisting in the justification for grant monies.

What are the deliverables of a Stormwater Engineering Analysis? The deliverables of this study include:

1. Detailed GIS Inventory of the Storm Drainage System in the watershed;
2. Hydraulic Model of the Watershed;
3. Capital Improvement Program of water quality and water quantity needs; and,
4. Detailed cost estimates for the improvements.

How do we prioritize what Watersheds get done in what order? Watersheds are prioritized based on flooding, funding opportunities, opportunity to impact development and water quality concerns.

Staff acknowledges that the cost of these studies is a significant investment. However, this information allows us to make better decisions in the future. Specifically, it provides a factual and analytical basis for prioritizing capital investments. Implementing projects based on engineering data will allow us to reduce the threat to property and lives.

This action complies with the City Council Strategic Operating Plan in the area of sustainability in that it helps to develop a long-term plan to address the City's aging infrastructure.

This action is the first step in completing the Lower Ross Creek Stormwater Master Plan.

Pros:

- Completing the engineering analysis will allow us to make better decisions on how to prioritize capital improvement projects.
- Data from this study will allow the development community to determine the impact of their development on upstream and downstream property owners.
- The City will have a detailed inventory of the storm drainage system.

Con:

- The cost associated with completing the work is significant. The engineering analysis must be completed by engineers that specialize in hydrology and hydraulics.

The cost of this project including the contingency is budgeted in the Fiscal Year 2008 Stormwater Budget.

City staff recommends City Council authorize the City Manager to sign a contract with Brown and Caldwell for the Lower Ross Creek Watershed Stormwater Engineering Analysis – Phase 1 surveying in the amount of \$110,000 with a 15% contingency (\$16,500).

Councilman Mumpower raised the question of continued investment and planning over activity, execution and action.

Councilwoman Jones moved for the adoption of Resolution No. 08-121. This motion was seconded by Councilwoman Cape and carried on a 5-2 vote, with Councilman Mumpower and Councilman Russell voting "no."

#### **RESOLUTION BOOK NO. 31 – PAGE 197**

#### **G. RESOLUTION NO. 08-122 - RESOLUTION AUTHORIZING EXECUTION OF A \$5 MILLION INSTALLMENT PURCHASE FINANCING CONTRACT FOR SIX FIRE TRUCKS, TWO SANITATION TRUCKS AND TECHNOLOGY ASSOCIATED WITH THE REPLACEMENT OF THE CITY'S ENTERPRISE-WIDE INFORMATION SYSTEM**

Summary: The consideration of a resolution authorizing execution of a \$5.0 million installment purchase financing contract for six fire trucks, two sanitation trucks and technology associated with the replacement of the city's enterprise-wide information system; and a budget amendment, in the amount of \$660,600, to support the contract.

The current Capital Improvement Program (CIP) includes \$3.0 million previously appropriated by City Council to finance the acquisition of six fire trucks and two large sanitation vehicles. The CIP also includes an estimate of \$1.3 million to replace the enterprise-wide information system. As the City's needs analysis proceeded over a course of many months and the resulting RFP was provided to vendors, bids that were inclusive of our total system requirements ranged from \$1.83 million to \$3.14 million. Consequently, staff recommends increasing the information system replacement budget by \$660,600, bringing it to a total of \$2.0 million. Approval of the budget amendment will help us acquire a system that meets the city's basic technology needs. A breakdown of the items to be financed is provided as an attachment.

To finance the acquisition of the aforementioned \$5.0 million vehicle and technology package, the Finance Department sought proposals from 10 local and regional banks. Seven proposals were received, the best of which was submitted by Regions Bank at a bank qualified interest rate of 2.49% per annum for a term of 4 years and 11 months.

The proposed resolution and budget amendment authorizes an installment purchase contract between the City of Asheville and Regions Bank for fire trucks, other large vehicles and an enterprise-wide information system; it also provides for other matters related to closing the loan with the bank. Upon approval of this resolution and budget amendment, staff will begin the process for closing the loan with the Regions bank. We anticipate the closing to take place between June 15 and June 20.

Pros:

- The resolution executes plans already approved in current CIP.
- The budget amendment provides for basic technology needs.

Cons:

- None noted.

Regarding the fiscal impact, the additional \$600,000 needed for technology is offset by \$600,000 in additional installment purchase proceeds. The actual fiscal impact to the city is the additional debt service costs associated with \$600,000, estimated at approximately \$134,000 annually. This additional cost, however, has been absorbed due to lower than anticipated interest rates.

City staff recommends City Council adopt the resolution and budget amendment authorizing the City Manager to execute an installment purchase contract and closing process with Regions Bank for the acquisition of vehicles and technology.

Information Technology Director Jonathan Feldman responded to various questions from Councilman Mumpower, some being, but are not limited to: why should the City spend \$2 Million on an information system; what are the benefits of the new information system; how will the new information system save the City money; how often does the system need to be replaced and why; what will we get as a return on our investment; and will any staff be associated with this.

When Mayor Bellamy asked if this would have any impact on public safety, Mr. Feldman said that it will take the officers less time to complete paperwork, less redundancy and more time spent on the work they are supposed to do.

In response to Mayor Bellamy, City Manager Jackson said that we did reach out to the Town of Weaverville regarding this installment purchase financing contract for the fire trucks.

Councilman Mumpower moved for the adoption of Resolution No. 08-122. This motion was seconded by Vice-Mayor Davis and carried unanimously.

#### **RESOLUTION BOOK NO. 31 – PAGE 198**

#### **H. ORDINANCE NO. 3626 - BUDGET AMENDMENT TO SUPPORT THE PURCHASE FINANCING CONTRACT FOR SIX FIRE TRUCKS, TWO SANITATION TRUCKS AND TECHNOLOGY ASSOCIATED WITH THE REPLACEMENT OF THE CITY'S ENTERPRISE-WIDE INFORMATION SYSTEM**

Summary: See Consent Agenda Item "G" above.

Councilwoman Cape moved for the adoption of Ordinance No. 3626. This motion was seconded by Councilwoman Jones and carried unanimously.

#### **ORDINANCE BOOK NO. 24 - PAGE**

### **III. PRESENTATIONS & REPORTS:**

#### **IV. PUBLIC HEARINGS:**

##### **A. PUBLIC HEARING TO CONSIDER THE ADOPTION OF THE 2008-09 ANNUAL OPERATING BUDGET**

Mayor Bellamy opened the public hearing at 5:40 p.m.

Budget Director Tony McDowell said that this is a public hearing to consider the adoption of the 2008-09 Annual Operating Budget. This public hearing was advertised on May 30 and June 6, 2008.

The Fiscal 2008-09 Annual Operating Budget was presented to City Council on May 13, 2008. In accordance with the North Carolina Local Government Budget and Fiscal Control Act, a summary of the Budget along with a notice of the Public Hearing was published on May 30, 2008, and June 6, 2008. Adoption of the Budget Ordinance is scheduled for June 24, 2008, at the regularly scheduled City Council meeting.

The Fiscal Year 2008-09 Annual Operating Budget is balanced with an Ad Valorem tax rate of \$0.42 per \$100 of assessed value. All essential City services are continued in the Proposed Budget.

A copy of the Budget is available for public inspection in the City Clerk's office. In accordance with the North Carolina Local Government Budget and Fiscal Control Act, the Budget may be changed by City Council in any way before adoption. It may also be changed by budget amendment after adoption with the only exception being the Ad Valorem Tax rate, which can not be changed once adopted.



Staff recommends City Council conduct the public hearing on the City of Asheville Fiscal Year 2008-09 Annual Operating budget and include public input in considerations on the Budget.

Ms. Linda Giltz, representing the Greenway Commission, felt that the proposed budget falls short of representing the kind of significant progress and the development of greenways, parks and open spaces that the community and the citizens desire. She explained why they are concerned about the multi-year trend of under-investing in capital projects/assets. Regarding greenways, parks and open spaces, they appreciated Council's commitment to Reed Creek Greenway, Overlook Park and the Haw Creek Park acquisition. Beyond those, there is only a very modest commitment to greenway projects. There is a need for more commitment to greenways and other bicycling and walking facilities. The current commitment doesn't seem sufficient to adequately address the needs for sidewalks in the community. She urged Council to continue with the research and planning for a general obligation bond referendum to provide significant funding to greenways and parks needs.

Mr. Joe Minicozzi, representing the Asheville Design Center, reviewed with Council drawings of a redesign of Patton Avenue connecting downtown to the River (20 acres between Hillcrest and downtown). He said the drawings cost \$6,000 that they raised privately and he asked for a partnership of the Asheville Design Center with the City to see what they can do together. He will also be meeting with the County Commissioners. He said these 20 acres of land will be added back to our tax base.

Rev. Christopher Chiaromonte felt Council should not add anything else to the budget.

Mr. David Robinson, President of the Each One Reach One Youth Coalition, Mr. Quentin Miller and Mr. Bennie Lake explained the Each One Reach One mentoring program and urged Council to allocate funding for this program

Pastor Spencer Hardaway, representing the Interdenominational Ministries Alliance, explained their community summer day camp for children and asked for Council's financial support to that program.

At 6:10 p.m., Mayor Bellamy closed the public hearing.

Upon inquiry of Councilman Newman, City Manager Jackson said that staff will be providing Council (per Council's direction on May 27) with information at the June 17 worksession on proposals that address gangs and/or job opportunities for young people, along with funding resources to support these initiatives.

Councilman Mumpower was concerned about side-stepping the budgetary process to fund the youth programs presented tonight, but would try to find ways to help in other ways.

In response to Councilwoman Cape, Councilwoman Jones said that on May 27 she was very specific in her support to revisit specific proposals already received either through the Housing & Community Development Committee or through the Outside Agency Committee requests that address the gang issues.

Mayor Bellamy noted that the Each One Reach One program was reviewed by the Housing and Community Development Committee, but due to limited resources was not funded. She noted there is a precedent set for amending the budget for programs.

Councilman Newman noted that Pastor Hardaway's proposal was submitted, but it was received after recommendations for allocations were already made.

Councilwoman Cape would like for the City to offer some guidance on how we can help prepare individuals to get into the next budget cycle.

Councilwoman Jones said that the YWCA has available spaces (at no cost) in a program for 9th and 10th graders that runs five days a week this summer. The groups of youth that the summer day camp is trying to reach is exactly who they want to serve. She hoped Pastor Hardaway would refer some youth to this program.

Mayor Bellamy said that on June 17, 2008, there will be an additional budget review, with adoption of the 2008-09 annual operating budget scheduled for June 24, 2008.

**B. PUBLIC HEARING REGARDING THE CITY'S INTENT TO WITHDRAW FROM A GRANT AGREEMENT WITH THE N.C. DEPT. OF ENVIRONMENT AND NATURAL RESOURCES LAND, WATER AND CONSERVATION FUND FOR CONSTRUCTION AT THE LAKE AREA AT AZALEA PARK**

**RESOLUTION NO. 08-123 - RESOLUTION AUTHORIZING THE CITY MANAGER TO COMPLETE THE CITY OF ASHEVILLE'S WITHDRAWAL FROM A GRANT AGREEMENT FOR REIMBURSEMENT OF UP TO \$91,423 WITH THE LAND, WATER AND CONSERVATION FUND FOR CONSTRUCTION AT THE LAKE AREA AT AZALEA PARK, MANAGED BY N.C. DEPT. OF ENVIRONMENT AND NATURAL RESOURCES**

Mayor Bellamy opened the public hearing at 6:25 p.m.

Parks & Recreation Director Roderick Simmons said that this is the consideration to authorize the City Manager to complete the City of Asheville's withdrawal from a grant agreement for reimbursement of up to \$91,423 with the Land, Water, and Conservation Fund for construction at the lake area at Azalea Park, managed by North Carolina Department of Environment and Natural Resources (DENR). This public hearing was advertised on May 30 and June 6, 2008.

The City of Asheville informed DENR of its intent to withdraw from the Land, Water, and Conservation Fund contract for Azalea Park LWCF #37-010201/DENR #PO7082 for \$91,423. A public hearing is required to satisfy the requirements for withdrawal from the agreement. Upon completion of the public hearing, authorization to withdraw from the agreement may be completed by City Council. To date, no LWCF reimbursement payments have been requested or received by the City of Asheville for this project.

The original cost estimate for the LWCF project was \$182,846 for a trail and wildlife interpretive area at lake, a river overlook, and a picnic shelter. Since the acceptance of the grant, no other funds have been budgeted to support the project. Additionally, the City of Asheville's capital priorities in the Parks, Recreation and Cultural Arts Department have changed and this project and the additional capital budget to support it is not a priority at this time nor will it be for a few more years.

The City is also in the process of developing a new Parks, Recreation and Cultural Arts Department master plan which will set the pace for capital projects for the next few years. The recommendations from the master plan will determine how the build out of Azalea Park fits into the overall vision.

The Azalea Park Land and Water Conservation Fund construction ties in with the Strategic Operating Plan by addressing the Growth, Development & Land Use Priority area; supporting multi-modal programs and the Natural and Built Environment Priority; develop programs to protect key environmental features.

This action complies with the Azalea Park Master Plan by recognizing cost constraints related to the project.

Pros:

- Withdrawal from the agreement will save the City a minimum of \$91,423 to satisfy the required matching funds needed to receive the LWCF grant.
- Withdrawal from the agreement allows the City of Asheville to save construction costs related to the project that would otherwise be required by the Land and Water Conservation Fund to bring the project to a close.
- The City of Asheville will not incur maintenance costs for the proposed lake, trail, and picnic shelter.
- Withdrawing from the agreement allows the City of Asheville to focus on capital projects as recommended in the pending park master plan.

Con:

- Withdrawal from the agreement may negatively impact the City of Asheville's ability to secure Land and Water Conservation Fund grant agreements in the near term.

Regarding the fiscal impact, if the City of Asheville withdraws from the agreement, there will be no fiscal impact to the City of Asheville's budget. If the City of Asheville does not withdraw from the agreement, a minimum of \$91,423 will need to be budgeted to meet the original cost estimate for the project and satisfy the matching requirement of the agreement.

City staff recommends City Council adopt a resolution authorizing the City Manager to withdraw from the North Carolina Department of Environment and Natural Resources Land, Water, and Conservation Fund contract for Azalea Park LWCF #37-010201/DENR #PO7082 for \$91,423.

Mayor Bellamy closed the public hearing at 6:27 p.m.

In response to Vice-Mayor Davis, Mr. Simmons explained the different parts of Azalea Park and this will not have any impact on the private funds raised.

Mayor Bellamy noted that this is the second grant we are returning this year. She questioned how that will affect our future regarding grants. In response, Mr. Simmons said this is a federal grant and because we can show a clear plan on why we couldn't

proceed, he didn't think it would have a negative impact on us for future grants.

Mayor Bellamy said that members of Council have previously received a copy of the resolution and it would not be read.

Councilman Mumpower moved for the adoption of Resolution No. 08-123. This motion was seconded by Councilman Russell and carried unanimously.

#### **RESOLUTION BOOK NO. 31 – PAGE 200**

#### **C. PUBLIC HEARING TO CONSIDER THE ISSUANCE OF A CONDITIONAL USE PERMIT FOR THE PROJECT IDENTIFIED AS THE BUNCOMBE COUNTY HUMAN SERVICES ADDITION AND PARKING GARAGE LOCATED AT 40 COXE AVENUE**

#### **ORDINANCE NO. 3627 - ORDINANCE GRANTING A CONDITIONAL USE PERMIT FOR THE PROJECT IDENTIFIED AS THE BUNCOMBE COUNTY HUMAN SERVICES ADDITION AND PARKING GARAGE LOCATED AT 40 COXE AVENUE**

City Clerk Burleson administered the oath to anyone who anticipated speaking on this matter.

City Attorney Oast reviewed with Council the conditional use district zoning process. This process is the issuance of a conditional use permit, which is a quasi-judicial site specific act. At this public hearing, all the testimony needs to be sworn.

After hearing no questions about the procedure, Mayor Bellamy opened the public hearing at 6:31 p.m.

All Council members disclosed that they have visited the site and would consider this issue with an open mind on all the matters before them without pre-judgment and that they will make their decision based solely on what is before Council at the hearing.

City Attorney Oast said that the Authorized Practice Committee of the North Carolina State Bar has issued an advisory opinion that appearing in a representative capacity for a party before a local governmental body in a quasi-judicial proceeding is the practice of law, especially with respect to such aspects of the hearing as examining or cross-examining witnesses, or advocating for legal conclusions or results. This does not prevent persons, including land use professionals, from presenting information or expressing opinions within their knowledge or area of expertise.

City Attorney Oast said that as documentary evidence is submitted, he would be noting the entry of that evidence into the record.

Urban Planner Alan Glines submitted into the record City Exhibit 1 (Affidavit of Publication), City Exhibit 2 (Certification of Mailing of Notice to Property Owners); and City Exhibit 3 (Staff Report).

Mr. Glines said that this is the consideration of the issuance of a conditional use permit for the project identified as the Buncombe County Human Services addition and parking garage located at 40 Coxe Avenue, for a 48,000 sq. ft. addition to the existing building and a new 240,000 sq. ft. parking deck (Attachments to City Exhibit 3 - Location Map and Aerial Map).

He said that the *Asheville City Development Plan 2025* notes the need for structured parking in a variety of locations in the downtown area. Parking structures are encouraged because of their efficient use of land and improvement over surface parking lots. Garage structures can be less disruptive to the pedestrian environment than the same number of parking spaces provided on surface lots fronting on City streets. The Comprehensive plan and encourages parking structures to be wrapped in retail or office uses to activate and enhance the pedestrian environment at the sidewalk level. Buncombe County is locating the garage internal to the block with the Human Services addition providing a 'liner' building to shield the scale of the garage structure from Coxe Avenue. The *Comprehensive Parking Study* completed in 2008 notes that ample existing and additional parking spaces in this west-central area of downtown support the other parts of downtown to the north and east which have parking deficits based on use and demand.

City Council has recently adopted the following four goals: *sustainable, affordable, green and safe*. The office expansion and parking garage is sustainable because it is mixed-use, reinforces the downtown area as the center of government services, and counters sprawl. The project is green because it is situated across from the Asheville Transit Center and because it is located in the pedestrian friendly downtown environment. The above-ground garage will allow natural ventilation and natural lighting and the office building will be LEED certified. The goal of affordability may not directly apply here but affordable public parking may provide economic development support to local commercial and office uses. The project promotes safety because of the specific open design of the garage and the glass stair towers which make it transparent and visible. Safety of the surrounding downtown area is enhanced because the public garage creates energy and activity and supports the goal of a safer 24-hour downtown

environment.

The Buncombe County Human Services Addition and Parking Garage is located at 40Coxe Avenue in the Central Business District (CBD). The site is the location of the existing 3 story 70,000 square foot Human Services building and a surface parking lot (Attachments to City Exhibit 3 - Views and Landscape Plan). The proposal includes expansion of the Human Services building and a new public parking garage (City Exhibit 4).

Human Services Expansion:

- The new wing of the Human Services Building will total 48,000 square feet
- The front façade will be on Coxe Avenue.
- The building is a contemporary design with five stories
- The main lobby and waiting area will have direct access from Coxe Avenue
- The plaza space next to the building provides access to the garage stair tower

Parking Garage:

- A new garage with 240,000 square feet and 650 spaces will be located behind the office wing.
- The garage is screened from view from Aston Street and Coxe Avenue in compliance with the UDO.
- Vehicular access will be from Sears Alley (also known as Second Street as noted on the plans)
- The parking garage is eight levels tall and will be 91 feet to the top of the stair tower as measured from Coxe Avenue and 76 feet to the same point measured at Buncombe Street at the rear of the site reflecting the natural change in grade
- The garage structure is framed with a contemporary open mesh material that will help finish the garage but still make it open to the air and light to reduce operating costs.

The area sidewalks will be improved to the CBD standard of ten feet along Coxe Avenue and will be improved along Sears Alley and Buncombe Street to 8 feet wide. Street trees will be provided along Coxe Avenue by the new addition and along Sears and Buncombe Streets as required by the Unified Development Ordinance (UDO). Along Aston Street and the area of Coxe Avenue along the existing building, the existing sidewalk is six feet wide and because it is too narrow for trees, staff is requesting that tree bulb-outs be provided as a substitute. Aston Street has existing on-street parking and the tree bulb-out spaces could be added in a "bookend" fashion. Even with the bulb-outs there will be a need for a modification from the UDO requirement for street trees from City Council because the specific number of trees (one per 40 feet) will not be met. Staff recommends approval of the modification request recognizing that existing infrastructure and on-street parking spaces makes compliance difficult.

The Downtown Commission reviewed the Buncombe County proposal at their May 9, 2008, meeting and after much discussion approved the design with two conditions. The commission felt that the expansion was a needed service and that the parking garage would benefit the downtown community. The commission felt that the clean and modern design is appropriate considering the nature of the use but recommended that the entrance to the garage and the stair tower be enhanced with lighting to promote the use especially at night. Staff recommended that additional seating be provided for the plaza waiting area because it would be a benefit to the office and garage users and pedestrians using the area. The Downtown Commission also commented that the way-finding signage should be consistent to how other garages will be signed in the downtown area. The Downtown Commission approved the plan with the two following conditions: (1) That additional color be added through various lighting options such as LED lighting to the garage façade and stair tower primarily along Coxe Avenue to maintain an eclectic and vital downtown; and (2) Additional benches be added to the plaza area to increase available public places downtown. Based on comments from the Downtown Commission, the garage plans were revised to have heightened lighting around the main entrance areas, stairs and perimeter edges to promote way-finding and safety. In addition several benches have been added to the plan for the plaza area that City Council is now considering.

The equipment used to operate the garage will be compatible with the equipment recently selected by the City of Asheville which could offer long-term operating efficiencies for both Buncombe County and the City of Asheville. The office building will be LEED certified; and the parking garage with its open design will rely on natural ventilation and natural lighting during daytime hours. In addition, LED lighting will be used for the garage which is more energy efficient than incandescent lighting sources. Solar shades will be used along the south side of the office building and efficient Low E glass will be used through out the building.

This project is a conditional use permit (CUP) because it is a governmental use located in the CBD and not because of the scale of the garage. In early 2008, City Council approved a wording amendment to the definition of gross floor area that excludes floor area in parking structures/ decks from the definition of gross floor area since they provide a public benefit and support needed infrastructure. In addition to the seven standards used to evaluate CUP projects, three additional standards are used to review governmental uses in the Central Business District and follow the seven findings.

Section 7-16-2(c) of the UDO states that Asheville City Council shall not approve the conditional use application and site

plan unless and until it makes the following findings, based on the evidence and testimony received at the public hearing or otherwise appearing in the record of the case:

- 1. That the proposed use or development of the land will not materially endanger the public health or safety.**  
The structures will be designed and reviewed to meet state building codes. The use is an expansion of needed community services and should promote public health and safety.
- 2. That the proposed use or development of the land is reasonably compatible with significant natural or topographic features on the site and within the immediate vicinity of the site given the proposed site design and any mitigation techniques or measures proposed by the applicant.**  
The proposal is located on an infill site in the center of the CBD and is an expansion of an existing use. The office expansion is located directly along Coxe Avenue noted as a key pedestrian street in the adopted 2025 plan. The orientation of the office use in front of the garage structure at the rear is consistent with UDO requirements. The moderate height of the garage should not over shadow the church buildings or other structures located in the vicinity of the parcel.
- 3. That the proposed use or development of the land will not substantially injure the value of adjoining or abutting property.**  
The proposal is an expansion of the existing Human Services Building and the use is a crucial service for the community. The parking garage with its public parking is expected to add value to the surrounding area by supporting nearby businesses and will be a benefit to downtown visitors during the daytime and after hours while promoting a safe 24-hour downtown area.
- 4. That the proposed use or development of the land will be in harmony with the scale, bulk, coverage, density, and character of the area or neighborhood in which it is located.**  
Parking garages are considered by some to be an unfortunate necessity in the downtown area. This design however, will place the Human Services building at the front of the parcel along Coxe Avenue with the main part of the garage located at the rear. The entrance to the garage will be well marked for easy way-finding with signage consistent with the community way-finding program. The structures: five stories for the office use and eight levels for the garage, will not overwhelm the surrounding uses and will be in harmony with the scale, bulk, coverage, density and character of the surrounding area.
- 5. That the proposed use or development of the land will generally conform to the comprehensive plan, smart growth policies, sustainable economic development strategic plan and other official plans adopted by the City.**  
The need for additional structured parking has been identified and discussed for some time in the downtown area. Buncombe County will make the parking garage available for public use in the form of day/ visitor parking, monthly pass-holders and evening parking. The Center City plan notes that parking garages use the land more efficiently than surface lots and are less disruptive of the pedestrian environment when they are wrapped with a habitable space. The current proposal is designed with the Human Services Building expansion along Coxe Avenue; a key pedestrian street. The design of the garage structure using transparent screening material with an open-walled plan of suitable scale to avoid overwhelming nearby structures is recommended in the comprehensive plan. The *Comprehensive Parking Study* notes that existing and proposed parking spaces in this area of downtown support other areas of downtown to the north and east which have a deficit of parking spaces available.
- 6. That the proposed use is appropriately located with respect to transportation facilities, water supply, fire and police protection, waste disposal, and similar facilities.**  
The proposal is located in the downtown Central Business District in an area that has adequate utility infrastructure and proper access to fire and police protection as well as other services normal for a commercial building and public garage.
- 7. That the proposed use will not cause undue traffic congestion or create a traffic hazard.**  
A traffic impact study was prepared, reviewed, and approved for the subject project because the anticipated traffic should exceed 100 vehicles per hour during the morning and afternoon commuting peak hours. It should be noted that the traffic impact study was prepared based on a parking deck with 850 spaces but the actual size has now been reduced to 650 spaces. Since the anticipated traffic for the reduced size will be less, a revised traffic impact study was not required. The area of influence included eight nearby intersections and it was determined that the proposed project should not place an undue burden on the surrounding street network. In order to facilitate traffic flow in the immediate area, Buncombe Street and Sears Alley should be converted from one-way operation to two-way operation. This change would eliminate 20 existing parallel on-street parking spaces; however, public parking spaces in the new parking deck would offset the loss. Other suggested mitigation improvements included in the traffic impact study will be considered as the project moves forward and will be implemented if the need arises.

Section 7-16-2(d)(13) Provides several additional conditional use findings that government uses located in the CBD must meet:

- **The proposed location for the use or building will not unduly or unreasonably restrict the availability of key land for private development.**

The garage is appropriately located on property already owned by Buncombe County and should allow other private parcels in the CBD to be available for redevelopment with greater intensity because public infrastructure investment in public parking supports private sector growth. The *Comprehensive Parking Study* completed in 2008 noted that this area of downtown is in a central location and has a parking surplus that provides support to other areas of downtown that have a parking deficit based on use and demand.

- **No alternative location for the building or use exists within areas previously developed for government buildings and/ or uses.**

This proposal is a redevelopment site on an existing surface lot and an expansion of a critical community service already located on the site. This conditional finding is written to encourage location of such uses on exactly this kind of site. The placement of the garage will add value and efficiency to government and private sector uses in the area.

- **If a new structure is proposed in the areas covered by the design review guidelines, the ability of the structure's design to comply with the downtown design review guidelines for new construction shall be a factor in the review of the request. New structures in these areas must substantially comply with the design guidelines as determined by the Asheville City Council.**

The design for the garage and the new wing of the Human Services Building was reviewed and approved by the Downtown Commission at their May 9, 2008 meeting. The garage structure will be shielded by the Human Services addition from Coxe Avenue and will provide a utilitarian façade along Buncombe Street and Sears Alley in accordance with requirements found in the UDO. The existing Human Services building and the new addition covers the parking structure from Aston Street and Coxe Avenue. The new Human Services wing at five stories was reviewed for compliance with the Downtown Asheville Design Review Guidelines and the UDO and was found to be compliant. The drawings and elevations and site plan will become part of the regulating documents if the project is approved.

Based on the above findings and the analysis provided in the report, staff finds this request to be reasonable.

This conditional use project was recommended for approval by a unanimous vote by the Downtown Commission. At the Technical Review Committee (TRC) meeting, no one besides the development team spoke regarding the project during the meeting.

Pros:

- A needed community service function is expanding
- Public parking is expanding in the downtown area
- The office building will be LEED certified and the garage will provide certain more efficient elements by design
- The parking garage will be an active 24-hour use which helps with public safety for downtown
- Public restrooms will be provided in the garage
- Transit Center is located across the street for easy access to the expanded human services building

Cons:

- Block is dominated by a single large use which is typical of government uses and does not support a mix of uses
- The City and County are not in a shared-agreement with the garage use and operation which could be more efficient

The Downtown Commission reviewed the project and building design and voted to approve the proposal at their May 9, 2008, meeting with two conditions that were summarized in the staff report. Staff recommends approval of the proposal as presented incorporating those two items with outstanding TRC comments added as conditions of approval.

After rebuttal, Mayor Bellamy closed the public hearing at 6:37 p.m.

Councilwoman Jones thanked the County for meeting one of our biggest downtown needs with the parking garage.

In response to Councilwoman Jones, Assistant County Manager John Creighton said that a parking study performed two years ago showed there was about a 1,100 space need in that area. They tried to negotiate with an adjoining property owner to make the deck larger, but to keep it at the highest level of service, they were limited to the eight stories with 650 parking spaces. He said that at this time they do not have the breakdown of employee parking, monthly rentals, public parking etc.

In response to Councilwoman Jones, Mr. Creighton said that there has been some preliminary discussions about operations with City staff and at this point they are willing to entertain a proposal from the City to operate this deck and the College Street deck.

City Manager Jackson also noted that the City is acquiring compatible software systems with the County for the management of the spaces.

Vice-Mayor Davis was appreciative of not only parking in that area, but public restrooms as well.

Mr. Creighton responded to various questions from Councilman Russell, some being, but are not limited to: will Second Street remain open during construction; will there be alternative ways for people to get in and out of the former First Union parking lot; is Buncombe Street turning into a two-way street; and what is the timing for groundbreaking.

Mayor Bellamy thanked Mr. Creighton for working with City staff in a collaborative nature. We appreciate the County looking at this need and addressing it.

Based on information provided in the staff report, Councilman Mumpower moved to approve the Conditional Use Permit adopting the proposed master plan for the Human Services Addition and Buncombe County Garage with the requested landscape modification and subject to the conditions recommended by City staff and the following conditions: (1) That additional color be added through various lighting options such as LED lighting to the garage façade and stair tower primarily along Coxe Avenue to maintain an eclectic and vital downtown; (2) Additional benches be added to the plaza area to increase available public places downtown; (3) The project shall comply with all conditions outlined in the TRC staff report; (4) The building design, construction materials and orientation on site must comply with the conceptual site plan and building elevations presented with this application. Any deviation from these plans may result in reconsideration of the project by the reviewing boards; and (5) This project will undergo final review by the TRC prior to issuance of any required permits. This motion was seconded by Councilwoman Jones and carried unanimously.

## **ORDINANCE BOOK NO. 24 – PAGE**

### **Closed Session**

At 6:46 p.m., Councilman Newman moved to go into closed session in order to consult with an attorney employed by the City about matters with respect to which the attorney-client privilege between the City and its attorney must be preserved, including litigation involving the following parties: Estate of Mark Wayne Thompson, Jeffrey Lawrence Brown, City of Asheville, Brian Hogan, John Coker, William Cogburn, Curtis Jones, Timothy Splain, Police Chief William Hogan, James Jackson and Estate of John Reynolds. The statutory authorization is contained in N.C. Gen. Stat. sec. 143-311 (a) (3). This motion was seconded by Councilman Newman and carried unanimously

At 7:23 p.m., Vice-Mayor Davis moved to come out of closed session. This motion was seconded by Councilwoman Jones and carried unanimously.

### **V. UNFINISHED BUSINESS:**

### **VI. NEW BUSINESS:**

#### **A. CONSIDERATION OF APPLICATION TO THE FEDERAL RAILROAD ADMINISTRATION FOR INTENT TO FORM RAILROAD QUIET ZONES**

Director of Transportation and Engineering Cathy Ball said that this report outlines a process to develop a railroad quiet zone as proposed by RiverLink.

The Federal Railroad Administration (FRA) regulates establishment of quiet zones through the train horn rule, adopted in 2005 and amended in 2007. A quiet zone must be at least ½ mile long, and each public at-grade crossing must have at least crossing gates and flashing lights. Each private crossing that is accessible to the public must have measures as recommended by a diagnostic review team. Costs of design and installation of additional safety measures required to establish the quiet zone are normally paid by the entity requesting the quiet zone. The North Carolina Department of Transportation (NCDOT) might be able to assist with costs if closing one or more at-grade crossings were a part of the project. If a quiet zone were established at the request of the city, certain liability would transfer from the railroad to the city. There are no quiet zones on Norfolk Southern tracks in North Carolina.

She then reviewed the process for creating a railroad quiet zone.

The first step in this process is to develop a feasibility study. If the feasibility study indicates the conditions are favorable and in compliance with the FRA thresholds, a planning and engineering study is completed. The final step in the process is implementation.

If a quiet zone is implemented the train personnel are still allowed to sound horns in the event of an emergency, in support of roadway workers safety or in case of malfunctions of crossing warning devices.

Regarding the Strategic Operating Plan, the project can support the areas of housing opportunities, sense of place, and growth, development and land use. It can be used to make the area suitable for building affordable housing with federal funds, encourage riverfront redevelopment, and promote infill growth.

The railroad quiet zone is aligned with the Wilma Dykeman Riverway Plan, particularly the following elements: Balance, Health, and Environment.

Pro:

- Supports Council goals and vision

Cons:

- Expensive to implement
- Exposes city to new liability
- Requires ongoing commitment for enforcement and maintenance of signs
- Increases annual at-grade crossing maintenance costs

Regarding the fiscal impact, the process for implementing quiet zones would involve a feasibility analysis phase, a planning and engineering phase and a capital improvement phase. RiverLink proposes a feasibility analysis be undertaken. RiverLink has agreed to pay the \$2,800 to make this happen. This will allow us to determine if a quiet zone is practical in the Riverway. The estimated cost for planning, engineering and capital improvements are \$3-4 million for implementation, approximately \$10,000 in additional annual crossing maintenance payments, and ongoing monitoring and enforcement costs would be incurred after construction. The Council action requested by RiverLink does not commit the City of Asheville to any expense.

City staff requests City Council consider a proposal from RiverLink to perform a feasibility analysis for railroad quiet zones and send a letter of intent to the FRA indicating a desire to evaluate the opportunity to create this zone along the river.

Ms. Karen Cragolin, Director of RiverLink, said that after working with people who are developing (and would like to develop) property along the River she felt that this would be one of the tools to develop the River. She asked Council to take the step of the feasibility study and RiverLink is willing to pay the \$2,800, which will commit the City to nothing. When a federal railroad representative toured the area in February, he felt some of the crossings were so outdated that the railroad would probably spend their own money to upgrade them. The Railroad Quiet Zone won't change the number of trains or change the cargo or change the schedule. It will only make the crossings safer and make us eligible to receive funds and perhaps be a boom to some of the development that would like to occur along the River.

Councilwoman Cape recalled Mayor Bellamy talking with the County and others about forming a River District Commission to look at development along the River. She wondered if this is premature before the Commission can take a holistic view and give input. She would need more information about this requested action.

Mayor Bellamy said the meeting that was held was a preliminary discussion from different stakeholders across the City and County to look at assisting in the efforts that have been going forward for the implementation of the Wilma Dykeman River Plan. She too felt this was premature and wasn't sure if this would be the best tool in the toolbox to develop along the River.

Councilman Russell agreed that additional information was needed as the cons pointed out in the presentation are serious.

Councilman Newman raised questions about the feasibility and its process. Regarding the \$3-4 million to implement, he felt the City had more pressing infrastructure needs in our community, along with the need for sidewalks, recreation centers, etc.

In response to Councilwoman Jones, Ms. Ball said that a study was done in 2005 and they drove to every railroad crossing location. The measures that we have in place at each location meets the minimum requirements. Due to the changes in technology through the years, they could be made safer. Basically the safety bars are old and don't include the newest innovative



ways of handling crossings.

In response to Councilwoman Cape, Ms. Ball explained why the City would be exposed to new liability with the implementation of quiet zones.

Mr. Gene Robinson, Conductor with Norfolk Southern Railroad, said that it is his personal experience that every time a train collides with a car, the person says the engineer wasn't blowing his horn. He explained that the train horn is the only means of communication that a train crew has for the public. He said it is a federal law that all people will yield the right-of-way to trains at all crossings, but people don't abide by that law. Seventy-two gates were replaced last year.

Mayor Bellamy said that the process being undertaken with the City, County and stakeholders is not defined yet and she didn't want people to think that this is going to happen soon. It is a process which they are trying to build support of the City working with the County and the community.

Vice-Mayor Davis noted that some neighborhoods have legitimate noise concerns; however, regarding this feasibility study, he felt it raises expectations of something happening that the City is not in a position to do. He appreciated the idea being brought forward, but felt the action of looking at Railroad Quiet Zones is premature.

**B. RESOLUTION NO. 08-124 - RESOLUTION OBJECTING TO SALE OF LAND IN THE CITY-COUNTY PLAZA AREA BY BUNCOMBE COUNTY**

City Attorney Oast said this is a resolution objecting to the sale of certain property in the City-County Plaza area. It is not a vote on any particular project or development proposal. Although there has been a proposal submitted, that has been withdrawn and nothing has been received. In the course of discussions surrounding this issue and some previous issues too, it was general knowledge that the City and County have historically cooperated in the operation and management of the area in front of the City Building and Courthouse, known as City-County Plaza. This cooperation has been supported by the following number of different documents, including legislation in 1927, agreements in 1928, and some cross-deeds in 1929 that put the ownership of some of that property into a tenants in common. In the 1960's and 1970's it was also cooperation of the western end of City-County Plaza in the redevelopment of the area. The City and County both had representatives on the Redevelopment Commission who developed a plan and implemented that plan to make the area look like what it did for many years until the current construction project. And then again in 2001 the City and County entered into an agreement with the Pack Square Conservancy regarding the renovation of Pack Square. In 2002 or 2003 there was a proposal to construct a building on College Street, with a conditional use permit, and one of the conditions of that conditional use permit was the County be given some degree of approval authority over the proposal. There is a history of cooperation between the City and the County in the operation and management of that area. The proposed resolution is one where Council recites part of that history but objects to the County selling part of that land, which was covered by many of these agreements, without consulting the City. It is an unfortunate thing that happened, but that is where we are. The proposed resolution expresses Council's objection.

He then read the following substance of the resolution: (1) The City Council objects to the sale by Buncombe County of the Subject Property as described above, and further objects to the conveyance by Buncombe County of any property located in the City-County Plaza / Pack Square Area without consultation with the City; and (2) The City Council respectfully requests that the Board of Commissioners of Buncombe County undertake to re-acquire the Subject Property or otherwise ensure that it remains part of City-County Plaza and open to and available for the use and enjoyment of the public in perpetuity."

Councilman Mumpower moved for the adoption of Resolution No. 08-124. This motion was seconded by Councilman Newman.

Mayor Bellamy stressed that the City of Asheville and this Council had nothing to do with the land being sold. She asked the public to focus their comments on the resolution only as there is no proposal to consider.

Interim Planning & Development Director Shannon Tuch explained that plans were submitted for consideration to be set on the Technical Review Committee agenda. City staff deemed the application incomplete because they did not have all the information they would normally require for such an application. The property owner came in and picked up the plans. At this time we have no application to consider.

Councilman Mumpower noted that the City Council is doing what we have the power to do - pass a resolution objecting to the sale of land by Buncombe County.

The following individuals spoke in support of the resolution objecting to the sale of land in the City-County Plaza area by Buncombe County for various reasons, some being, but are not limited to: the condominiums will take away from the veterans

memorial that will be placed in the plaza area; the Parkside land sale should be rescinded at no additional costs to the public and the public space be reserved for all citizens; the Parkside project came before the Pack Square Conservancy for design review in November of 2007 and at that time the Board voted unanimously, as a result of the height and the view corridor, to deny the project in that it failed to comply with the Design Review Guidelines; suggestion that the City pursue an exchange of land so that the developer would move the building southward; there are many businesses in the area that are affected by the time it is taking to get this matter resolved; request of the Pack Square donors to get some type of conservation easement; request to petition the US Congress for redress of grievance against Buncombe County for the sale of public property to a private person without due process of law; suggestion of an amendment to the Unified Development Ordinance regarding Council review of the delegation of authority to staff on Level I and Level II projects if a development appears to be controversial and that Council reserve the right to make that decision; citizens do not want a condominium project in the park which holds many festivals; the project will obstruct the view of City Hall; project consideration is premature and should wait until the Downtown Master Plan is completed; Council should do what they have to save the park which is one of the most valuable resources the community has; Buncombe County was going to sell that land for development long before the Parkside proposal; update the Memorandum of Understanding with the Pack Square Conservancy regarding post-construction pieces of the park; the loss of a park, trees and public area is a human health issue; suggestion that the City and County jointly consider a zoning designation of "PP" for permanent park land that is never to be sold or developed; after adoption of this resolution, the City should follow-up with the threat of a lawsuit against Buncombe County; the park is a sacred place people gather to celebrate; and City and County should stand firm, along with private people pitching in to help, in buying the property back:

Mr. Fred English, east Asheville resident

A representative from the Buncombe County Chapter of the WNC Alliance

Ms. Carol King, Chair of the Pack Square Conservancy Board of Trustees

Mr. Gene Hampton, founder of NC Citizens for Quality Government - Buncombe County

Mr. Jake Quinn, north Asheville resident

Ms. Rachel Larson, Asheville resident

Ms. Myers, west Asheville resident

Mr. Barry Summers (presented Council with e-mails and materials)

Mr. Kelly Miller, member of the Pack Square Conservancy

Mr. James Sheeler, west Asheville resident

Ms. Clare Hanrahan, Asheville resident

Mr. Dylan Rhew

Ms. Dixie Deerman

Mr. Steve Rasmussen

Rev. Christopher Chiaromonte

Mr. Richard Gerber

Mr. John Cort, architect in Asheville, felt any person who complies with the City's ordinances and has legal title to the land should be entitled to proceed.

Mr. Tom Israel, who is involved with the Parkside project, appreciated everyone's opinion if they are based on fact. To suggest the sale is illegal or strong arm tactics involved are opinions only and not based on fact. He then reviewed with Council the details of the Parkside Project, stating the many benefits to the City, the community and to the park.

Councilman Mumpower said we are trying to uphold a fair, honest process. The resolution proposed states that the City feels it's wrong to use Pack property to support this development.

Councilman Newman felt adoption of the proposed resolution is an appropriate step to take at this time. Most people in this community recognize that this property is part of our town square. There are some allegations that perhaps the transfer of the property was not legally permissible and there is a case being made in the judicial process to that affect. But even aside from that, it was not a sound decision and even if it was legally permissible, we would like to ask the parties involved to reconsider it. There has been so much public concern about the sale of the property itself that until that step is taken to get this piece of property itself back into the public domain it's hard to constructively start looking at other issues that come into play.

Councilwoman Cape would like for Council to look at the park property be put in a conservation easement. She would be open to talking with the County about a parks designation and/or a conservation easement.

Mayor Bellamy said that Chairman Ramsey has made a similar collaborative request and the issue will be brought up after this process.

The motion made by Councilman Mumpower and seconded by Councilman Newman carried unanimously.

**C. RESOLUTION NO. 08-125 - RESOLUTION AUTHORIZING THE CITY MANAGER TO APPROVE AN ADDITIONAL HOUSING TRUST FUND LOAN TO MOUNTAIN HOUSING OPPORTUNITIES FOR THE DEVELOPMENT KNOWN AS THE GLEN ROCK**

At the request of Mayor Bellamy, Councilman Mumpower moved to excuse Mayor Bellamy from participating in this matter due to a conflict of interest. This motion was seconded by Councilman Newman and carried unanimously.

At this time, Mayor Bellamy handed the gavel over to Vice-Mayor Davis who conducted the meeting (Mayor Bellamy left the Chamber).

Community Development Analyst Randy Stallings said that this is the consideration of a resolution authorizing the City Manager to approve an additional Housing Trust Fund (HTF) loan in the amount of \$500,000 to Mountain Housing Opportunities (MHO) for the development known as The Glen Rock.

In January 2007, Council approved a \$500,000 HTF loan to MHO for the development of sixty (60) affordable rental units in its Glen Rock project at 362 Depot Street. MHO has requested an additional \$500,000 to help meet a projected funding gap, which has arisen because of large increases in construction costs and a decreased price for tax credits. The maximum allowable funding under the current guidelines is \$500,000 per project. The request for additional funding, if approved, will represent a total investment by the City of \$1,549,076 (\$1 million HTF and \$549,076 in HOME funds).

If approved, the HTF loan amount per unit would increase from \$8,333 to \$16,667. This is well below the maximum of \$30,000 per unit. The requested loan terms are 2% annual interest payments with principal deferred for 20 years. The current available balance in the Trust Fund is \$561,667. The request was recommended for approval by the Housing and Community Development Committee on May 19, 2008. At the Committee's request, the Mayor's Task Force on Affordable Housing was consulted and has also recommended this departure from normal policy.

This action complies with the Strategic Operating Plan in that the project is supportive of the City's goal of providing safe and decent affordable housing units to the citizens of Asheville.

It also addresses the priorities of the Consolidated Strategic Housing & Community Development Plan by increasing the housing stock, providing affordable rental units, building high quality energy-efficient housing, and coordinating development with transportation and jobs.

Pros:

- Will enable development of 60 rental units which will remain affordable to families below 60% area median income for the full physical life of the buildings.
- MHO has a successful track record developing similar tax credit projects.
- Will be part of a larger mixed-use redevelopment plan on the site which will spur the redevelopment of the River Arts District and the Southside community, where MHO will be developing housing for homeownership
- Leverages almost \$8,000,000 in outside funding

Cons:

- The size of the total loan represents a substantial departure from current policy and creates an unfavorable precedent for making large financial commitments to a single project.
- Could inhibit the Fund's ability to adequately support another tax credit project in 2009 and/or make it harder for small scale developers to gain access to the fund.

Funding for the Housing Trust Fund has been previously appropriated. Annual tax revenue impact is estimated at \$18,000 for the affordable housing and \$42,000 for the entire project.

Staff recommends adoption of a resolution authorizing the City Manager to approve the additional Housing Trust Fund loan for The Glen Rock development in the amount of \$500,000.

Councilman Newman spoke in support of this resolution in that the Housing & Community Development Committee felt it was the most powerful way to encourage the things that the Housing Trust Fund was set up to do - to address the need for housing in the community.

Councilman Mumpower felt this was an attractive project but disagreed using federal money and the dramatic departure from our existing policy. He felt the City should be involved in affordable housing through our policies.

Councilwoman Cape spoke in support of this action in that this loan will be paid back in 20 years and during that time we will be generating revenue for our community from taxes.

Throughout discussion, Mr. Stallings responded to various questions/comments from Council, some being, but are not limited to: what is the annual appropriation to the Housing Trust Fund and how does the fund grow; how could this loan inhibit the trust fund's ability to support another project in 2009; what percentage of the trust fund goes to Mountain Housing Opportunities; and is the per unit funding to Mountain Housing Opportunities projects less than the average of other projects.

Councilwoman Jones spoke in support of this loan in that a lot of discussion has gone into this recommendation. This department from current policy has also been reviewed by the Mayor's Affordable Housing Task Force and they agreed that this would be an appropriate departure. She said that someone making \$10/hr will be able to rent an apartment in this project and that renting is a launch pad for home ownership. She felt that Asheville has a good track record with the Housing Trust Fund by putting a lot of people in housing.

In response to Councilwoman Cape, Ms. Cindy Weeks, representing Mountain Housing Opportunities, said that this will allow Mountain Housing Opportunities to leverage approximately \$8 Million of other dollars.

Councilman Newman said that everyone in Asheville pays federal taxes. We should not arbitrarily stop accepting any of the federal tax money coming back into our own community because that is unfair to the Asheville citizens.

In response to Councilwoman Jones, Community Development Director Charlotte Caplan said that since the Housing Trust Fund was established in 2001, there has not been a bad debt.

Vice-Mayor Davis said that we have seen Mountain Housing Opportunities take this type of financing to produce a tremendous model and he supported the action.

Vice-Mayor Davis said that members of Council have been previously furnished with a copy of the resolution and it would not be read.

Councilman Newman moved for the adoption of Resolution No. 08-125. This motion was seconded by Councilwoman Jones and carried on a 5-1 vote, with Councilman Mumpower voting "no" (Mayor Bellamy was excused from voting).

#### **RESOLUTION BOOK NO. 31 – PAGE 203**

At 9:28 p.m., Vice-Mayor Davis announced short recess.

At this time, Vice-Mayor Davis returned the gavel to Mayor Bellamy, who continued to preside over the meeting.

#### **D. ORDINANCE NO. 3628 - BUDGET AMENDMENT TO INCREASE THE BUDGET FOR THE HEALTH CARE PROGRAM TO COVER COSTS IN THE CURRENT FISCAL YEAR THAT HAVE EXCEEDED ORIGINAL BUDGET ESTIMATES**

Chief Financial Officer Ben Durant said that this is the consideration of a budget amendment to increase the budget for the Health Care Program by \$1,875,000 to cover costs in the current fiscal year that have exceeded original budget estimates.

As discussed with City Council during the Quarterly Financial Updates, the City has experienced an increase in health care costs in the current fiscal year. This increase is the result of several high dollar claims amounts, as well as overall general inflation in health care costs that has exceeded the growth rates that the City has experienced in prior years. Between 2002 and 2006, the City's health care costs remained essentially flat, even though costs at the national level were increasing significantly. Much of the City's success in controlling costs during this time period was due to its nationally recognized wellness and disease management programs.

With costs remaining flat over this five-year time period, the City was able to build up reserves in the Health Care Program. As of June 30, 2007, the fund balance reserve for the Health Care Program was \$3.47 million. Staff is recommending that Council appropriate \$1.1 million from the Health Care Program's reserves to help cover the costs in the current fiscal year that have exceeded budget. Staff works with a consultant each year to update the recommended reserve levels in the Health Care Program. Based on the most recent assessment, staff believes that this \$1.1 million appropriation from the Health Care Program

reserves will leave more than enough available in reserves to cover claims incurred but not reported, protect us against the volatility of the health care market, and provide a sufficient "rainy day" cushion. It should also be noted that the Health Care Program's fund balance is considered reserved by the City's auditors, and it cannot be used for other general expenses. Therefore, this fund balance appropriation will not affect the year-end unreserved fund balance projection that staff presented in the third Quarter Financial Update.

There are also several health-care related revenues, such as employee contributions and insurance recoveries, that will exceed the original budget estimates in the current fiscal year. Normally these revenues that come in over budget would go to help build reserves, but staff is recommending that Council appropriate this additional revenue, which will total \$775,000, to help fund expenses in the current year. The total budget amendment amount that staff is recommending for Council adoption is \$1,875,000.

Pro:

- Provides an adequate budget to cover projected Fiscal Year 2007-08 expenditures in the Health Care program.

Con:

- None.

Regarding the fiscal impact, this will reduce the Health Care Program reserves from \$3.47 million to \$2.37 million.

City staff recommends City Council approve the budget amendment to appropriate \$1,875,000 to fund expenses in the Health Care Program.

Throughout discussion, Mr. Durant responded to various questions/comments from Council, some being, but are not limited to: are there any other purposes for the health care fund balance; is there an effort to build up the health care fund balance to help support any aspect of our coverage package; what is the model we have been duplicating from Winston-Salem; how does the health care fund balance get funded; what is our projection for the coming year;

In response to Mayor Bellamy's question regarding the City's plan to have 100% participation by employees in the Asheville Project, City Manager Jackson explained that we are continually looking at different disease patterns that would lend itself to the model. At this time we see significant potential in obesity and tobacco use. Mayor Bellamy said that she would look forward to seeing additional information as it moves forward.

Mayor Bellamy said that members of Council have been previously furnished with a copy of the ordinance and it would not be read.

Councilman Russell moved for the adoption of Ordinance No. 3628. This motion was seconded by Vice-Mayor Davis and carried unanimously.

#### **ORDINANCE BOOK NO. 24 – PAGE**

#### **E. RESOLUTION NO. 08-126 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A PROFESSIONAL SERVICE AGREEMENT WITH FIRST TRANSIT INC. TO MANAGE THE OPERATION A OF THE ASHEVILLE TRANSIT SYSTEM**

Director of Transportation and Engineering Cathy Ball said that this is the consideration of a resolution authorizing the City Manager to enter into a professional service agreement with First Transit, Inc. to manage the operation of Asheville Transit System (ATS).

North Carolina law prohibits municipalities from engaging in collective bargaining. Therefore, the City of Asheville must hire a Management Company to operate the transit system. The management company is a party to a 13 (c) Labor Agreement with the Amalgamated Transit Union Local 128 covering all hourly employees. A collective bargaining agreement between ATS's Management Company and the ATU Local 128 is in place until June 30, 2010.

She provided Council with the following background information: (1) legal concerns (a) union; (b) cannot collectively bargain; (c) cannot disenfranchise union; (e) Section 13-C of the Urban Mass Transportation Act of 1964; and (f) Management Company; (2) current contract with Professional Transit Management (PTM) expires June 30, 2008; and PTM – contractor for past six years.

She said the process is (1) law requires that we select the management company through a competitive process; (2) process (a) issue Request for Proposals – September 2007; (b) Received three proposals – October 2007; (i) Professional Transit

Management; (ii) McDonald Transit Associates Inc.; and (iii) First Transit; (c) evaluated proposals – January through March 2008 (Transit Division staff transition); (d) held interviews – April through May 2008; and (e) selected management company – June 2008; (3) evaluation team; (4) followed procurement process outlined in the Request for Proposals; and (5) oversight from legal and purchasing staff.

The current contract with the management company, Professional Transit Management, expired on June 30, 2007, and was extended until June 30, 2008. After this date the City is required to have a new contract in place for management services. The City issued a Request for Proposals for the Management Company in September 2007. The RFP closed on October 12, 2008. Three proposals were received from the following firms:

- Professional Transit Management
- McDonald Transit Associates, Inc.
- First Transit, Inc.

The evaluation committee evaluated and scored the three proposals, and then interviewed and scored all the firms. The evaluation committee has recommended First Transit, Inc. provide management services to the City of Asheville.

The City will enter into a three-year contract with the management company that can be renewed for another two periods of two and one years after agreement between both parties. The project cost will be \$135,200 for the first year with a increase of approximately 4% each year.

The management firm will furnish all management and supervisory services required and necessary for the efficient and economical operation of ATS services under the policies, standards and procedures established by the City of Asheville.

The management firm will provide a resident General Manager and a management support team who shall be responsible for the day to day operations of the ATS transit system and have supervisory experience in the following services:

- General transit operations and policies
- Labor relations, employment, and training
- Routing and scheduling
- OSHA regulations
- Office management
- Risk management, insurance, and claims
- Equipment and facility maintenance
- Stores and purchasing
- Finance and accounting
- Specialized services under the Americans with Disabilities Act
- Private enterprise contract management
- Provision of legal counsel in all legal affairs, suits, pleas, and litigation in which the provider has an interest

The management firm will also provide assistance to City staff with federal regulations, processes and reporting.

The benefits of First Transit include (1) enhanced customer service training and approach; (2) offer additional management training at no additional costs; (3) focus on safety and security; (4) proven track record reducing operational costs; (5) experience with alternative fuel/hybrid vehicles: (a) Lindsborg, Virginia – hybrid vehicles electric/diesel; and (b) Arlington, Virginia, Houston Texas, and Lowell, Massachusetts – CNG; (6) provide customer support staff at no additional costs; (7) compare ATS operation to peer cities through their network in a monthly basis; (8) Corporate Purchasing Agreements; (9) currently operate 240 transit systems in the United States; and (10) eight systems in North Carolina: Carteret County, Cary, Durham, Fayetteville, Greenville, NC State Raleigh, Rocky Mount and Whiteville.

Transition (1) begins July 1, 2008; (2) formal transition plan; (3) current general manager submitted non-compete letter; (4) all employees retain same pay and benefits excluding General Manager; (5) employees start with a clean slate; and (6) prior to July 1 – communication with union and staff (a) formal – with approval from the current management company; and (b) informal – without approval.

Staff has continued to update the Transit Commission on the status of this contract change. Staff has reported to them on the steps in the process and they have been supportive of the process we have used to select the management company.

This project is in alignment with the Strategic Plan adopted by City Council in that the contract with the management company can support the areas of environmental sustainability, promoting emission reductions through more efficient transit operations and use of funds.

The project complies with the City Development Plan – 2025, Transportation Goals and Strategies, as follows: Goal VI: Develop a transit system that is capable of meeting the needs of all residents of and visitors to the region.

Pro:

- The First Transit, Inc. will provide the management services required to keep the transit system functioning properly and efficiently, managing all the aspects related to the operation.

Con:

- None

The project cost will be \$135,200 for the first year with increments of approximately 4% per year.

City staff recommends City Council adopt a resolution authorizing the City Manager to enter into a professional service agreement with First Transit to manage the operation of the Asheville Transit System.

Staff recommendation is to approve the contract with First Transit for transit management.

Mr. Mike Fryar felt that City staff is not knowledgeable about transit issues and urged Council to keep Mr. Lonnie Blair (who is General Manager of Professional Transit Management) as General Manager

Councilwoman Cape felt that the City has an obligation to contract in the most equitable and fair manner. She is supportive of staff's recommendation which will give us the opportunity to take a fresh look at the transit system.

In response to Councilman Mumpower, Ms. Ball said that the following letter dated March 27, 2007, from Mr. Blair (which she understands is not uncommon) to the President of Professional Transit Management reads: "Thank you for selecting me to continue serving as Professional Transit Management's (PTM's) General Manager candidate for Asheville Transit. I am committed to serving Asheville Transit as a PTM employee only. I am not knowingly or willingly included in any other company's proposal for this project, nor will I agree to be included. I look forward to continuing to work with PTM and Asheville Transit in this role."

Vice-Mayor Davis noted that Mr. Blair has done a great job as General Manager and he hoped the new management company would give consideration to Mr. Blair's experience and knowledge.

Ms. Ball said that she spoke with First Transit and since City staff felt Mr. Blair is such a good resource and an outstanding person in the community, they indicated that Mr. Blair could potentially help in some kind of transitional role up to a month. She said the City does recognize Mr. Blair's commitment to his organization, through the management company, and his willingness to work with the City.

Councilman Russell hoped the management company would consistently look for ways to be more cost effective and efficient.

Mayor Bellamy said that members of Council have been previously furnished with a copy of the resolution and it would not be read.

Councilman Newman moved for the adoption of Resolution No. 08-126. This motion was seconded by Councilwoman Jones and carried unanimously.

## **RESOLUTION BOOK NO. 31 – PAGE 204**

### **VII. OTHER BUSINESS:**

#### **A. REPORT ON SOFA EXPRESS SNIPE SIGNS**

City Attorney Oast said that in February of this year, City planning staff received information that the business known as Sofa Express was in bankruptcy and would be conducting a sale to liquidate its assets. This sale was to be conducted at Sofa Express' regional retail outlets, including its South Tunnel Road location.

Sofa Express sought to advertise this sale by way of an extensive sign campaign. When asked by the Planning staff about their proposed temporary sign package, which appeared not to comply with our sign code, Sofa Express representatives asserted that the sale was being conducted under orders from the federal bankruptcy court, and that the order pre-empted local sign codes. At this time, it appeared that the advertising was to be confined to the store premises. A copy of the order was produced; and, on its face, the order appeared to pre-empt local codes.

Sofa Express was a national or large regional operation with multiple locations. They were represented in the bankruptcy proceeding by a law firm from New York City; law firms from Atlanta and Tennessee were also involved. The New York attorney for Sofa Express was contacted with respect to the snipe signs, and was provided with a copy of the ordinance. He asserted that the bankruptcy court's order pre-empted the City's codes and directed our attention to certain provisions of the order, including the following (emphasis added):

4. The Debtor and the Agent be, and they hereby are, authorized to take such actions necessary and appropriate to implement the Agreement and to conduct the Sales without the necessity of a further order of this Court as provided by the Agreement, including, but not limited to, advertising the Sale through the posting of signs (including the use of exterior banners in non-enclosed malls), use of sign walkers and street signage, in accordance with the Agreement and as otherwise provided in the sale guidelines attached to the Agency Agreement (the "Sale Guidelines"), which Sale Guidelines are hereby approved in the form attached hereto; provided that written agreements between the Agent and any landlord or overlandlord of the Closing Locations (collectively, the "Landlords") modifying the terms of the Sale Guidelines at applicable locations shall govern the conduct of the Sale at such store locations.

8. The provisions of this Order shall be self-executing notwithstanding any restrictions in the Agreement (other than the need for the Debtor's prior consent) on the Agent's ability to conduct the Sale in compliance with applicable laws or Closing Location leases. This Order authorizes the Debtor and the Agent to consummate the Agreement and to conduct the Sale at the Closing Locations, including, without limitation, conducting and advertising of the Sale in accordance with the Agreement, the Sale Guidelines and this Order; and no further approval, license or permits of any governmental authority shall be required; provided, however, that the Debtor and/or the Agent continue to be bound by and comply with state and local public health and safety laws ("Safety Laws"), and tax, labor, employment, environmental, and consumer protection laws, including consumer laws regulating deceptive practices and false advertising (collectively, "General Laws"), to the extent applicable.

9. If any parties or persons, including but not limited to Landlords, subtenants, utility companies, governmental agencies (except to the extent provided otherwise in this Order), sheriffs, marshals or other public officers, creditors and all those acting for or on their behalf, believe that cause exists to: (a) prohibit the Agent from advertising the Sale, to the extent same is consistent with the Agreement; (b) in any way interfere with or otherwise impede the conduct of the Sale or other liquidation or auction sales at the Closing Locations or corporate headquarters or the use or maintenance of the Merchandise and FF&E thereat; or (c) institute any action or proceeding in any court or other administrative body having as its objective the obtaining of an order or judgment against the Debtor, the Agent or a Landlord which might in any way directly or indirectly obstruct or otherwise interfere with or adversely affect the conduct of the Sale or other liquidation sales at the Closing Locations or corporate headquarters and/or seek to recover damages for breach(es) of covenants or provisions in any lease or sublease based upon any relief authorized herein, this Court shall retain exclusive jurisdiction to resolve such dispute, and such parties or persons shall take no action against the Debtor, the Agent, the Landlord or the Sale until this Court has resolved such dispute. This Court shall hear the request of such persons or parties with respect to any such disputes on an expedited basis, as may be appropriate under the circumstances.

Upon close review of the order and the law, we concluded that the order did not pre-empted local regulations, especially safety-related codes like the snipe sign ordinance. Accordingly, code enforcement officials were authorized to remove Sofa Express snipe signs. Sofa Express, however, was placing the signs out on Friday afternoon, and collecting them on Sunday – during hours when code enforcement officers are not typically on duty – so enforcement by removal of the signs was problematic.

Other means of enforcement were available, including fines and injunctive relief. Because Sofa Express was in bankruptcy and essentially already unable to pay its debts, fining them would likely not have been an effective deterrent. The possibility of obtaining an injunction was considered. However, this likely would have involved entering an appearance in the Nashville



bankruptcy court, and the employment of outside counsel admitted to practice in that court. It would also have required proceedings in Superior Court here. Further, the time required to obtain an injunction could have exceeded the duration of the sale.

Despite the timing and logistical issues associated with removing the signs, City staff – working 4-5 weekend days – removed over 250 signs. On at least one weekend, State Department of Transportation workers also removed some signs. Toward the end of the bankruptcy sale, notices of violation were issued to Sofa Express, and the sale concluded thereafter.

The snipe sign ordinance empowered the staff to remove the signs, without the time involved in following the usual pre-enforcement notice process. In that sense, the ordinance was effective. Recommendations for more effective enforcement include: (1) if we learn of a pending court-ordered bankruptcy sale, make the bankruptcy court and the parties aware of the requirements of our ordinances, and the reasons for those requirements, as early in the process as possible, so as to affect the structure of the order; (2) arrange for “on call” weekend sign code enforcement. Experience has shown that many temporary sign violations occur on the weekends anyhow, and having someone available to investigate possible violations and enforce the Code when warranted may be helpful.

In response to Vice-Mayor Davis, City Attorney Oast said it may be worth exploring the depth we go to in enforcing our snipe signs, e.g., signs for charitable organizations, Bingo games, Boy Scouts spaghetti dinner, etc.

Mayor Bellamy suggested reviewing some best practices for instances like this so that we can fine individuals and recoup some of the staff costs in removing the signs.

Councilman Mumpower was interested in the “on call” weekend sign code enforcement because if we have an ordinance, we need to enforce it.

**B. RESOLUTION NO. 08-127 - RESOLUTION MAKING PROVISIONS FOR THE POSSESSION AND CONSUMPTION OF MALT BEVERAGES AND/OR UNFORTIFIED WINE AT THE PURPLE BALL SPONSORED BY THE ASHEVILLE ARTS COUNCIL ON JUNE 14, 2008**

Vice-Mayor Jones said that the Asheville Arts Council has contacted him to ask for Council's approval of a resolution making provisions for the possession and consumption of malt beverages and/or unfortified wine at the Purple Ball sponsored by the Asheville Arts Council on June 14, 2008, from 5:00 p.m. - 1:00 a.m., on Sunday, June 15, 2008, within the Pack Square Green Area located northwest of the intersection of Market Street and South Pack Square.

Vice-Mayor Davis moved for the adoption of Resolution No. 08-127. This motion was seconded by Councilman Newman and carried on a 6-1 vote, with Mayor Bellamy voting “no.”

**RESOLUTION BOOK NO. 31 - PAGE 205**

**C. LAWSUIT**

On June 6, 2008, the City received the following Complaint: County of Buncombe vs. ASHW I, LLC d/b/a Days Inn East Owner; William M. Hodges, Jack H. Ward, Mobasher A. Soofi and Saba Kim Soofi, Beneficiaries; Charles M. Cushing Jr., Trustee; City of Asheville, Judgment Creditor; Otis Eugene Keaton and Lewanna V. Keaton, Judgment Creditors; PSNC Energy, Judgment Creditor; Internal Revenue Service, federal tax lien. The nature of the proceeding is tax foreclosure proceedings for unpaid real estate taxes.

**VIII. INFORMAL DISCUSSION AND PUBLIC COMMENT:**

Rev. Christopher Chiaromonte spoke about the homeless issue in Asheville and questioned why the Pritchard Park water drinking fountain only on during the Bele Chere Festival. Mayor Bellamy asked the City Manager to investigate the condition and operation of the water fountain at Pritchard Park.

Mr. Gillian Kerns thanked City Council for what they have done for the homeless in the community and praised City Manager Jackson for the helpful and respectful staff in his office.

Mr. Jake Quinn hoped that the Grove Park neighborhood will be patient while the traffic calming measures are being installed in their community.

Mayor Bellamy thanked City staff and the Mayor's Task Force on Veterans Affairs for the wonderful Memorial Day

Celebration.

Mayor Bellamy noted that North Carolina Commissioner of Labor Cherrie Berrie recognized the Public Works Department staff for their work in accomplishing some training in leadership.

Mayor Bellamy also noted that the Asheville Fire Department has been recognized by the Optimists Club.

Mayor Bellamy urged the community to attend the next Downtown Master Plan meeting on June 12, 2008, at 6:00 p.m. in the Civic Center Banquet Hall.

Mayor Bellamy noted some good news, recognizing Councilwoman Cape's son who graduated from Asheville High School, Vice-Mayor Davis' niece who graduated from Hendersonville High School, Councilman Russell's son who graduated from a 4-year old pre-school program, and Councilwoman Jones' daughter who will be a 1st grader. She was also proud that her cousin graduated from T.C. Roberson and her son is going to kindergarten

**IX. ADJOURNMENT:**

Mayor Bellamy adjourned the meeting at 10:32 p.m.

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CITY CLERK

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MAYOR