

Tuesday – June 24, 2008 - 5:00 p.m.

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; City Manager Gary W. Jackson; City Attorney Robert W. Oast Jr.; and City Clerk Magdalen Burleson

Absent: Councilman William A. Russell Jr.

**PLEDGE OF ALLEGIANCE**

Mayor Bellamy led City Council in the Pledge of Allegiance.

**INVOCATION**

Councilwoman Jones gave the invocation.

**I. PROCLAMATIONS:**

**A. RECOGNITION OF CITIZEN'S ACADEMY GRADUATES**

Mayor Bellamy said that the City of Asheville's Citizens Academy emphasizes the importance of community involvement to City government. Citizens Academy is a 10-week program that engages and educates residents about City departments while providing a constructive forum for community feedback and input. The 2008 Academy was a tremendous success in meeting the goals of: (1) informing and educating the public on City services, operations and management; (2) engaging citizens in the government process by emphasizing the connection between City government, citizens and quality of life; and (3) encouraging participants to take an active role of leadership by understanding and gaining knowledge within their neighborhoods, workplaces and the City as a whole.

Mayor Bellamy then recognized the following 2008 Citizen Academy graduates: Abbie Emison, Adam Pittman, Bee Christensen, Brenda Macauley, Bruce Koloseike, Donna Bateman, Dorothy Waller, Georgia Shannon, Gina Braxton, Janiece Meek, Jen Bowen, Jennifer Poore, Jodi Shell, John Parrish, Juma Jackson, Karen Etheredge, Kendra Turner, Larry Gant, Lawrence Waller, Leon Escude, Lucy Oliver, Mark Diem, Mountain Xpress Staff, Robert Zieber, Sharon Wadsworth, Tim Flora, Tom Roberson, Tony Cooper and Vicki Escude.

Mr. Lawrence Waller, 2008 Citizen Academy graduate, thanked City staff and the Council for this wonderful opportunity to participate in this program.

**II. CONSENT AGENDA:**

At the request of Councilman Mumpower, Consent Agenda Items "C", "D", "H", "I" and "P" were removed from the Consent Agenda for discussion and/or individual votes.

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

At the request of Vice-Mayor Davis, Consent Agenda Item "O" was removed from the Consent Agenda for discussion and/or an individual vote.

**A. APPROVAL OF THE MINUTES OF THE FORMAL MEETING HELD ON JUNE 10, 2008; AND THE WORKSESSION HELD ON JUNE 17, 2008**

**B. ORDINANCE NO. 3629 - BUDGET AMENDMENT FROM BUNCOMBE COUNTY AND APPALACHIAN SUSTAINABLE AGRICULTURE PROJECT TO ASSIST WITH CONSTRUCTION OF UTILITY IMPROVEMENTS TO THE PARKING LOT AREA OF THE PUBLIC WORKS BUILDING LOCATED ON S. CHARLOTTE STREET FOR THE CITY MARKET**

Summary: The consideration of a budget amendment to accept \$19,000 in funds from Buncombe County and Appalachian Sustainable Agriculture Project (ASAP) to assist with construction of utility improvements to the Parking Lot area of the Public Works Building located on S. Charlotte Street in the City of Asheville.

The City has worked with ASAP and Buncombe County to develop and implement a new City Market which is located at the Parking Lot of the Public Works Building on S. Charlotte Street. The City Market opened in April and is exceeding initial estimates for utilization and revenues. As part of the project, minor utility improvements are being made to allow for public water and electricity to the site. These improvements will benefit the city and will allow for increased product offerings by vendors as well as increase safety and cleanup ability for the market.

The City has received quotes for the utility improvements totaling \$27,000.

This action complies with the City Council's Strategic Operating Plan in that the improvements support implementation of a downtown farmers market.

Pros:

- Provides utility service which will allow vendors to increase offerings.
- Provide potable water for vendors and visitors to the Market.
- Provide water to assist with site clean up.
- Provide utilities the City can utilize for other activities.

Con:

- Construction will cause some minor disruption of the site.

The Office of Economic Development has allocated existing funds for the project and no budget amendment is required for the City. A budget amendment is required to accept funding from Buncombe County and ASAP.

City staff recommends City Council authorize a budget amendment to accept \$19,000 in funds from Buncombe County and Appalachian Sustainable Agriculture Project to assist with construction of utility improvements to the Parking Lot area of the Public Works Building located on S. Charlotte Street in the City of Asheville.

**ORDINANCE BOOK NO. 24 – PAGE**

**C. RESOLUTION AUTHORIZING THE CITY MANAGER TO SIGN A TEMPORARY SERVICES AGREEMENT BETWEEN THE CITY OF ASHEVILLE AND FORSYTH INITIATIVE FOR RESIDENTIAL SELF-HELP TREATMENT INC. FOR TEMPORARY WORKERS**

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

**D. BUDGET AMENDMENT TO REPLACE A FIRE ENGINE THAT WAS INVOLVED IN A COLLISION**

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

**E. RESOLUTION NO. 08-130 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO AN AGREEMENT WITH THE ASHEVILLE HUMANE SOCIETY FOR ANIMAL SHELTER SERVICES FOR ANIMALS WITHIN TERRITORIAL LIMITS OF THE CITY OF ASHEVILLE**

Summary: The consideration of a resolution authorizing the City Manager to enter into an agreement with the Asheville Humane Society for animal shelter services for animals within territorial limits of the City of Asheville.

For the past few years, Buncombe County has required the City to pay for animal shelter services through the Asheville Humane Society who has contracted with the County to run the animal shelter. The Asheville Humane Society has told City Staff that the cost for animal shelter to the City for FY 2008-2009 will be \$127,050.00. This is a five percent increase from the cost of service last year. This cost is included in the Asheville Police Department's budget. The City and the Humane Society need to enter into an agreement for the shelter services for the term of July 1, 2008, through June 30, 2009.

The City of Asheville continuing its animal shelter contract through the Asheville Humane Society ties directly back through the City Council's Strategic Operating Plan, specifically the focus area of safe by actively enforcing animal control laws.

Pro:

- The City will not have to pay for the construction and operation of its own animal shelter to take care of its animal sheltering needs and the Humane Society will be responsible for the care of all animals brought to the shelter.

Cons:

- The City has to pay out of its general fund for shelter services where Buncombe County provides the same services to all other non-incorporated county residents at no additional cost except through county taxes.

The fiscal impact of this action is an increase of 5% from last year's shelter contract from \$121,000 to \$127,050.00.

City staff recommends City Council adopt a resolution authorizing the City Manager to enter into a contract with the Asheville Humane Society for animal shelter services for the term of July 1, 2008 through June 30, 2009.

**RESOLUTION BOOK NO. 31 – PAGE 211**

**F. ORDINANCE NO. 3631 - ORDINANCE ENACTING A POSTED SPEED LIMIT ON SABIAN COURT, SAVANNAH WOODS COURT AND WARREN HAYNES DRIVE TO 25 MILES PER HOUR**

Summary: The consideration of an ordinance to enact a posted speed limit on Sabian Court, Savannah Woods Court, and Warren Haynes Drive.

Sabian Court, Savannah Woods Court, and Warren Haynes Drive have been identified for speed concerns by residents, City Boards and Commissions, City Council, the Asheville Police Department, Transportation Services Division staff, and/or other City staff. The Transportation Services Division staff has conducted a field review along these streets to assess existing conditions including street geometry and conditions and/or speed studies. The Asheville Police Department supports the recommendation.

## 25 Miles Per Hour

Sabian Court is a residential street with an average pavement width of 25 feet, a total length of 0.04 mile, and on-street parking. The daily traffic volumes are estimated to be less than 50 vehicles per day. Currently, Sabian Court does not have a posted speed limit which means that the statutory speed limit of 35 mph is in effect.

1. Sabian Court, from Warren Haynes Drive to its dead-end, a distance of 0.04 mile from Warren Haynes Drive.

Savannah Woods Court is a residential street with an average pavement width of 25 feet, a total length of 0.10 mile, and on-street parking. The daily traffic volumes are estimated to be less than 50 vehicles per day. Currently, Savannah Woods Court does not have a posted speed limit which means that the statutory speed limit of 35 mph is in effect.

2. Savannah Woods Court, from a point 0.05 mile west of Warren Haynes Drive to a point 0.05 mile east of Warren Haynes Drive.

Warren Haynes Drive is a residential street with an average pavement width of 25 feet, a total length of 0.42 mile, several access points, and on-street parking. The daily traffic volumes are less than 250 vehicles per day and the 85<sup>th</sup> percentile speed is 37.6 mph. Currently, Warren Haynes Drive does not have a posted speed limit which means that the statutory speed limit of 35 mph is in effect.

3. Warren Haynes Drive, from SR 3412 (Sand Hill Road) to Savannah Woods Court.

Although not directly referenced in the Asheville City Development Plan 2025, it can reasonably be argued that establishing speed limits along city-maintained streets can positively affect the quality of life for its citizens. The following quote listed in A Pattern Language (Christopher Alexander, et al; 1977) illustrates the importance of speed control: "Nobody wants fast traffic going by their homes." (Page 119, The Asheville City Development Plan 2025).

Regarding the fiscal impact, the total estimated installation cost to the City is about \$200.

The Transportation & Engineering Department requests that City Council approve the ordinance enacting posted speed limits along Sabian Court, Savannah Woods Court, and Warren Haynes Drive.

### **ORDINANCE BOOK NO. 24 – PAGE**

#### **G. RESOLUTION NO. 08-131 - RESOLUTION ACCEPTING HERITAGE DRIVE (EXTENSION), ASHWOOD DRIVE, ASHWOOD LANE, HEATHBROOK CIRCLE (EXTENSION) AND GLENWOOD CIRCLE AS CITY-MAINTAINED STREETS AS OUTLINED IN THE 2004 ANNEXATION SERVICES PLAN**

Summary: The consideration of a resolution to accept Heritage Drive (Extension), Ashwood Drive, Ashwood Lane, Heathbrook Circle (Extension), and Glenwood Circle as city-maintained streets as outlined in the 2004 Annexation Services Plan for the Heritage Business Park Area, the Enka Park Area, the Ashwood Area, the Heathbrook Area, and the Sweeten Creek Road Area.

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.

Heritage Drive (Extension) is a developer-constructed street that has an average width of 20 feet and a length of 0.01 mile.

Ashwood Drive is a developer-constructed street that has an average width of 17 feet and a length of 0.39 mile.

Ashwood Lane is a developer-constructed street that has an average width of 16 feet and a length of 0.08 mile.

Heathbrook Circle (Extension) is a developer-constructed street that has an average width of 21 feet and a length of 0.14 mile.

Glenwood Circle is a developer-constructed street that has an average width of 14 feet and a length of 0.04 mile (*does **not** include the cul-de-sac section at the end of the street*).

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

Heritage Drive (Extension), Ashwood Drive, Ashwood Lane, Heathbrook Circle (Extension), and Glenwood Circle are streets listed in the 2004 Annexation Services Plan that the City would take over for maintenance.

Following City Council's approval of this resolution, Heritage Drive (Extension), Ashwood Drive, Ashwood Lane, Heathbrook Circle (Extension), and Glenwood Circle will be added to the official City Maintained Street Inventory (Powell Bill List).

Pros:

- The City of Asheville will receive Powell Bill Funds from the North Carolina Department of Transportation (NCDOT) to help fund the maintenance of the streets except for Glenwood Circle.
- Homes constructed along the subject streets increase the tax base for the City.

Cons:

- Powell Bill Funds will not cover 100% of the total cost to maintain the streets.
- Glenwood Circle is not eligible for Powell Bill Funds because its pavement width is less than 16 feet.

There should be no initial financial impact to the City, although the responsibility of maintenance will belong to the Public Works Department. The City will receive Powell Bill Funds in the future to help maintain the streets. Currently, the Powell Bill Funds equate to \$1,886 per mile compared to the City's maintenance cost of \$8,200 per mile.

Staff recommends that City Council accept Heritage Drive (Extension), Ashwood Drive, Ashwood Lane, Heathbrook Circle (Extension), and Glenwood Circle as city-maintained streets.

**RESOLUTION BOOK NO. 31 – PAGE 212**

**H. RESOLUTION AUTHORIZING THE ACCEPTANCE OF PROPERTY DONATION FROM PROGRESS ENERGY CORP OF APPROXIMATELY 4.5 ACRES OF PROPERTY ON LYMAN STREET AND RIVER ROAD**

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

**I. RESOLUTION APPOINTING MAGDALEN BURLESON AS CITY CLERK OF THE CITY OF ASHEVILLE**

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

**J. RESOLUTION AUTHORIZING THE POSSESSION AND CONSUMPTION OF MALT BEVERAGES AND/OR UNFORTIFIED WINE AT THE JULY 4, 2008, CELEBRATION AND THE BELE CHERE FESTIVAL ON JULY 25 AND 26, 2008**

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

**K. RESOLUTION NO. 08-136 - RESOLUTION APPOINTING A MEMBER TO THE ASHEVILLE REGIONAL AIRPORT AUTHORITY**

Summary: The term of Councilman Brownie Newman, as a member of the Asheville Regional Airport Authority, expires on June 30, 2008.

At the June 17, 2008, worksession, it was the consensus of Council to reappoint Councilman Newman to serve a 4-year term, term to expire June 30, 2012, or until his service on City Council ends.

**RESOLUTION BOOK NO. 31 – PAGE 231**

**L. RESOLUTION NO. 08-137 - RESOLUTION APPOINTING MEMBERS TO THE CIVIC CENTER COMMISSION**

Summary: The terms Max Alexander, W.L. Lack and Elizabeth Jones, as members of the Civic Center Commission, expire on June 30, 2008.

At the June 17, 2008, worksession, it was the consensus of Council to (1) reappoint Mr. Lack and Ms. Jones to each serve an additional 3-year term respectively, terms to expire June 30, 2011, or until their successors have been appointed; and (2) appoint Mr. John West to serve a three-year term, term to expire June 30, 2011, or until his successor has been appointed.

**RESOLUTION BOOK NO. 31 – PAGE 232**

**M. RESOLUTION NO. 08-138 - RESOLUTION APPOINTING MEMBERS TO THE CRIME STOPPERS BOARD OF DIRECTORS**

Summary: The terms of Councilman Carl Mumpower, Bill McGuire and William Price, as members on the Crime-Stoppers Board of Directors, expire on June 30, 2008.

The Crime Stoppers Board of Directors amended their by-laws to include two members appointed by the City Council.

At the June 17, 2008, worksession, it was the consensus of Council appoint Mr. David Herbert and Ms, Michele McClure to serve three-year terms respectively, terms to expire June 30, 2011, or until their successors have been appointed.

**RESOLUTION BOOK NO. 31 – PAGE 233**

**N. RESOLUTION NO. 08-139 - RESOLUTION APPOINTING MEMBERS TO THE ASHEVILLE-BUNCOMBE HISTORIC RESOURCES COMMISSION**

Summary: The terms of Diane Duermit and John Cram, as members on the Asheville-Buncombe Historic Resources Commission, expire on July 1, 2008.

At the June 17, 2008, worksession, it was the consensus of Council to (1) reappoint Diane Duermit to serve an additional three-year term, term to expire July 1, 2011, or until her successor has been appointed; and (2) appoint Hillary Gerstenberger to serve a three-year term, term to expire July 1, 2011, or until her successor has been appointed.

**RESOLUTION BOOK NO. 31 – PAGE 234**

**O. RESOLUTION APPOINTING A MEMBER TO THE RECREATION BOARD**

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

**P. BUDGET AMENDMENT FOR CLAIMS SETTLEMENT FOR THOMPSON/BROWN VS. CITY OF ASHEVILLE**

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

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**

**C. RESOLUTION NO. 08-129 - RESOLUTION AUTHORIZING THE CITY MANAGER TO SIGN A TEMPORARY SERVICES AGREEMENT BETWEEN THE CITY OF ASHEVILLE AND FORSYTH INITIATIVE FOR RESIDENTIAL SELF-HELP TREATMENT INC. FOR TEMPORARY WORKERS**

Summary: The consideration of a resolution authorizing the City Manager to sign a Temporary Services Agreement between the City of Asheville and Forsyth Initiative For Residential Self-Help Treatment, Inc. (F.I.R.S.T.) for temporary workers.

The City of Asheville requires temporary workers throughout the budget year for seasonal workloads in the Public Works Department (Sanitation and Street Divisions), and the Civic Center. This agreement is a collective contract for all City Departments.

F.I.R.S.T. is a non-profit organization that provides counseling to individuals and provides these individuals with opportunities to learn new skills through job placements with various organizations. The City of Asheville has utilized F.I.R.S.T staff for the past five years with excellent results.

Benefits to contracting with FIRST, Inc. include reduced costs in recruiting, hiring, and benefits for full-time workers. There is also a savings realized in management costs. The City is guaranteed all FIRST personnel requested enabling operations to be fully productive at all times.

This action complies with the City Council Strategic Operating Plan in that City infrastructure can be maintained and improved in a timely, consistent manner without the need of additional full-time staff.

Pros:

- Reduced costs in recruiting, hiring and benefits for full-time workers
- Management savings
- Utilizing personnel only on days when you need them and in various departments; therefore, eliminating the duplication of work crews

Con:

- None noted.

Contract amount for Streets, Sanitation and Civic Center - \$212,000

City staff recommends City Council adopt a resolution authorizing the City Manager to sign a Temporary Services Agreement with the City of Asheville and Forsyth Initiative For Residential Self-Help Treatment, Inc. for temporary workers.

Mayor Bellamy felt the F.I.R.S.T. program is great but she felt there were even better programs in our local community that could benefit from this type of collaboration with the City. She would support the motion but asked staff to look at how the program might be expanded next year to reach others in the community who need this type of support.

In response to Councilman Mumpower, Public Works Director Mark Combs said that he has not reached out to any other service providers in that (1) we have had a good experience with F.I.R.S.T.; (2) they carrying worker's compensation and other blanket items that makes it very easy to call them and request more workers; (3) per worker cost of \$8.50 an hour; and (4) it's a good program in terms of rehabilitation.

Councilman Mumpower moved for the adoption of Resolution No. 08-129. This motion was seconded by Councilwoman Cape and carried unanimously.

#### **RESOLUTION BOOK NO. 31 – PAGE 210**

#### **D. ORDINANCE NO. 3630- BUDGET AMENDMENT TO REPLACE A FIRE ENGINE THAT WAS INVOLVED IN A COLLISION**

Summary: The consideration of a budget amendment in the amount of \$500,000 to replace a fire engine that was involved in a collision.

Fire Engine 10, a 2002 model truck, was damaged in a collision on April 5, 2008. The truck was deemed not able to be repaired and was totaled by the city's insurance provider. The insurance company has now provided \$240,055 for insured damages. A similar replacement truck will cost \$500,000. In order to fund this \$500,000 expense, an appropriation from fund balance in the amount of \$259,945 is necessary to cover the difference between the purchase price and the reimbursement amount received from the insurance provider.

This action complies with the City Council Strategic Operating Plan in that fund balance exists to be used for this type situation.

Pros:

- No personnel were seriously injured in the collision. All personnel were properly belted.
- This incident was the first serious collision of AFR apparatus in over 20 years.



Cons:

- Fund balance will be lowered by \$259,945.

\$259,945 will be appropriated from fund balance in order to make the replacement purchase. Based on staff's most recent year-end fund balance projections for FY 2007-08, this action will reduce available fund balance from 19.3% to 19.0%.

City staff recommends City Council adopt a budget amendment in the amount of \$500,000 in order to purchase a replacement fire engine.

Councilman Mumpower moved for the adoption of Ordinance No. 3630. This motion was seconded by Vice-Mayor Davis and carried unanimously.

#### **ORDINANCE BOOK NO. 24 – PAGE**

#### **H. RESOLUTION NO. 08-132 - RESOLUTION AUTHORIZING THE ACCEPTANCE OF PROPERTY DONATION FROM PROGRESS ENERGY CORP OF APPROXIMATELY 4.5 ACRES OF PROPERTY ON LYMAN STREET AND RIVER ROAD**

Summary: The consideration of a resolution accepting donation of real property (4 acres – Riverside Drive) from Progress Energy.

Last January, following some preliminary negotiations at the staff level, City Council authorized the City to enter into an agreement with Carolina Power & Light Company d/b/a Progress Energy (herein "PEC") for the donation by PEC to the City of 4 acres of property along Riverside Drive, between the railroad tracks on the east and the French Broad River on the west, running under the RiverLink Bridge, and includes the Jean Webb Park, currently designated as a County park.

The property was previously used as a gas manufacturing plant, and was the subject of an extensive environmental remediation process in 2004 and 2005. Pursuant to State law, PEC may make the property available for use for park and recreation purposes, subject to certain conditions and restrictions on its use. The details of the proposal are set out in the Staff Report from January 22, 2008. That report also has a map showing the location of the property. Of particular importance are the restrictions on the use of the property, which are summarized in the Staff Report.

As stated in the January Staff Report, the purpose of the Agreement was to indicate the City's willingness to accept the donation (with the restrictions and conditions), and to give the City some time to perform "due diligence" investigation of the environmental information, the title, and other matters, in order to determine if there were conditions that prevents the City's proposed use of the property, or impediments to the title that could not be cured. The Agreement was for 90 days, or until May 6. Due to the volume of material to review, and complexity of work, the time for completion of this work was extended by agreement to June 15. The title and environmental work have now been completed.

- A. Environmental work. The environmental report explains how the review was conducted, including all of the documents reviewed, and contains the following conclusion:

Based on the thorough evaluation of the Main Site and the East Site and the Remedial Action Plan that was developed and implemented, the property of the former MGP is suitable for development of a park and recreational area by the City of Asheville. The institutional controls in the form of land restrictions are adequate to protect visitors and workers to developed areas.

- B. Title work. The information of record on the title to this property has been thoroughly searched. Although some minor issues were identified, it is anticipated that we will be able to resolve those issues sufficiently to obtain title insurance without exception (other than standard exceptions). Even if we cannot obtain coverage for all of the property, the possibility that an adverse claim will be made is remote.
- C. Park use / restrictions. The restrictions on the use of the property are summarized in the January Staff Report and will not be repeated here. They have been reviewed with the Parks and Recreation staff. The staff does not view the restrictions as interfering with the planned use of the area for a park facility.
- D. Other issues. There is currently in effect a license agreement between PEC and Buncombe County, dating from 1988, to allow the County to operate Jean Webb Park, which is included in the area to be donated to the City. Since last year, when the City began maintaining the property under agreement with PEC, we have also been maintaining Jean Webb Park under informal agreement with the County. In connection with the donation of the property to the City, the County has verbally agreed that it will terminate the license agreement and turn the area over to the City.

Due diligence and closing expenses could come to \$20,000, \$15,000 of which has already been budgeted. Development of the park and maintenance will be programmed into the budget for the Parks Department. At this time, no major capital improvements are planned.

Pros:

- Adds a key link to the City's parks and greenway system
- Activates a previously unused tract of land in a reviving area of the City
- Low acquisition cost
- Limited liability

Cons:

- Remote potential for future environmental issues to arise
- Limited uses

Staff request adoption of a resolution accepting donation of property from Progress Energy Company.

Councilman Mumpower noted that his concerns regarding this action have been satisfactorily responded to by City Attorney Oast.

Councilman Mumpower moved for the adoption of Resolution No. 08-132. This motion was seconded by Councilwoman Cape and carried unanimously.

**RESOLUTION BOOK NO. 31 – PAGE 218**

**I. RESOLUTION NO. 08-133 - RESOLUTION APPOINTING MAGDALEN BURLESON AS CITY CLERK OF THE CITY OF ASHEVILLE**

Councilman Mumpower moved for the adoption of Resolution No. 08-133. This motion was seconded by Councilwoman Cape and carried unanimously.

**RESOLUTION BOOK NO. 31 – PAGE 220**

**J. RESOLUTION NO. 08-134 - RESOLUTION AUTHORIZING THE POSSESSION AND CONSUMPTION OF MALT BEVERAGES AND/OR UNFORTIFIED WINE AT THE JULY 4, 2008, CELEBRATION**

**RESOLUTION NO. 08-135 - RESOLUTION AUTHORIZING THE POSSESSION AND CONSUMPTION OF MALT BEVERAGES AND/OR UNFORTIFIED WINE AT THE BELE CHERE FESTIVAL ON JULY 25 AND 26, 2008**

Summary: The consideration of resolutions making provisions for the possession and consumption of malt beverages and/or unfortified wine at the July 4<sup>th</sup> Celebration and the 2008 Bele Chere Festival.

**July 4<sup>th</sup> Celebration**

The Benevolent Patriotic Order of the Does has requested through the Asheville Parks, Recreation & Cultural Arts Department that City Council permit them to serve beer and/or unfortified wine at the Ingle's July 4<sup>th</sup> Celebration and allow for consumption at this event.

The Ingle's July 4<sup>th</sup> Celebration will be held on Friday, July 4, 2008, from 1:00 PM – 10:00 PM within the boundaries of Pack Square Park including Court Plaza, Market Street between S. Pack Square and College Street and proceeding eastward to Davidson, as per the event area limits referenced on the accompanying site map.

**Bele Chere Festival**

The following organizations: Scapegoat Theatre Collective, Wild South, Run Amok Productions, PBL at AB Tech, Benevolent Patriotic Order of the Does, Asheville Ski Club, Asheville Area Paralegal Association, Cataloochee Ski Patrol and The Mediation Center have requested through the Asheville Parks, Recreation & Cultural Arts Department that City Council permit them to serve beer and/or unfortified wine at the 2008 Bele Chere Festival and allow for consumption at this event.

The 2008 Bele Chere Festival's Main Festival Area will be open on Friday, July 25, 2008 from 12:00 PM – 11:00 PM, Saturday, July 26, 2008 from 10:00 AM – 11:00 PM and Sunday, July 27, 2008 from 12:00 PM – 6:00 PM.

The 2008 Bele Chere Festival's Ticketed Event Area will be open on Friday, July 25, 2008 from 7:00 PM – 11:00 PM and Saturday, July 26, 2008 from 7:00 PM – 11:00 PM.

The sale of malt beverages and/or unfortified wine would end at 10:30 p.m. in all instances; however, the possession of open containers of malt beverages and/or unfortified wine or consumption of malt beverages and/or unfortified wine would only be allowed during the periods as follows in the 2008 Bele Chere:

- a. Main Festival Area
  1. Friday, July 25, 2008, from 12:00 Noon to 11 p.m.
  2. Saturday, July 26, 2008, from 10:00 a.m. to 11 p.m.
- b. Ticketed Event Area
  1. Friday, July 25, 2008 from 6:00 p.m. to 11 p.m.
  2. Saturday, July 26, 2008 from 6:00 p.m. to 11 p.m.

There will be no sales and/or consumption of malt beverages and/or unfortified wine permitted on Sunday July 27, 2008

These actions do 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

Regarding fiscal impact, there will be overtime pay for Asheville Police Department officers.

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 July 4<sup>th</sup> Celebration and the 2008 Bele Chere Festival.

Councilman Newman moved for the adoption of Resolution No. 08-134. This motion was seconded by Councilwoman Jones and carried on a 5-1 vote, with Mayor Bellamy voting “no.”

Councilman Newman moved for the adoption of Resolution No. 08-135. This motion was seconded by Councilwoman Jones and carried on a 5-1 vote, with Mayor Bellamy voting “no.”

**RESOLUTION NO. 80-134 – RESOLUTION BOOK NO. 31 – PAGE 211**  
**RESOLUTION NO. 08-135 – RESOLUTION BOOK NO. 31 – PAGE 224**

**O. RESOLUTION APPOINTING A MEMBER TO THE RECREATION BOARD**

Vice-Mayor Davis, Chair of the Boards & Commissions Committee, said that we closed the application deadline prematurely and recommended that these vacancies continue to be advertised so that Council will have the opportunity to interview more candidates. It was the consensus of Council to support Vice-Mayor Davis’ recommendation.

**P. ORDINANCE NO. 3632 - BUDGET AMENDMENT FOR CLAIMS SETTLEMENT FOR THOMPSON/BROWN VS. CITY OF ASHEVILLE**

Summary: The consideration of a budget amendment, in the amount of \$1, 500,000, to settle the claim of Thompson/Brown vs. City of Asheville.

On December 20, 2005, Asheville Police officers were involved a pursuit of a vehicle that turned the wrong way down an exit ramp from Fairview Road onto I-40 West, colliding with a van traveling west on I-40. The driver of the van died in the collision and his passenger was severely injured. The driver of the vehicle being pursued also died in the collision. The estate of the van driver and the injured passenger have sued the City claiming that the City acted improperly in carrying out the pursuit, and that this was the proximate cause of the accident. The City has denied these allegations. At pretrial mediation, settlement was agreed to, with the insurers for all parties contributing. Because the City’s share of the settlement exceeds the settlement authority of the Asheville Claims Corporation, City Council approval of it was required and the amount requires an adjustment to the budget.

The Asheville Claims Corporation settles claims against the City of Asheville. This action complies with the City Council Strategic Operating Plan – Sustainability, in that fund balance exists to be used for this type situation.

Pros:

- Settlement has been reached with the plaintiff’s.
- This settlement will release the City from future liability.
- City pursuit policies and application of policies have been reviewed and amendments have been proposed.
- Settlement would be made under City’s actual damages administrative policy. Facts and law specific to this case have been reviewed by City Staff and City Council. Payment is not a waiver of governmental immunity.

Con:

- The Liability Claim Fund balance will have a net decrease of \$500,000.

The fiscal impact is that \$1,500,000 will be appropriated from the liability fund balance. The City is self-funded up to \$500,000 per claim for liability claims arising against the City. The Asheville Claims Corporation mitigates and settles all claims for the City of Asheville. The Asheville Claims Corporation purchases a reimbursement policy for any claims that exceed the City's self-funded amount; therefore the net affect to the liability fund balance will be \$500,000 for FY 2007-08. Based on the most recent actuarial recommendation, the fund balance will remain healthy to pay future claims.

The Asheville Claims Corporation requests that the City Council adopt a budget amendment in the amount of \$1,500,000 for claims settlement for Thompson/Brown vs. City of Asheville.

Councilman Mumpower said that even though we are not admitting guilt and providing some support for injured parties, this settlement results in significant loss of dollars to the City and he has trouble funding something that we really don't think we did anything wrong in.

Councilwoman Cape said that the City pays insurance for different reasons and this money is going to the families who are part of our community and who have been victims of a very tragic situation. She felt we are looking at a good risk management decision.

Councilman Newman moved for the adoption of Ordinance No. 3632. This motion was seconded by Councilwoman Cape and carried on a 5-1 vote, with Councilman Mumpower voting "no."

#### **ORDINANCE BOOK NO. 24 – PAGE**

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

#### **A. AFFORDABLE HOUSING TASK FORCE RECOMMENDATIONS**

Ms. Robin Merrell, Senior Housing Attorney at Pisgah Legal Services, reviewed with Council the Affordable Housing Plan. She introduced the members on the Affordable Housing Task Force.

The Task Force started looking at the current state of affordable housing. The City of Asheville affordable housing programs and policies address affordable housing as follows: federal grants, homeless initiative, Housing Trust Fund, Fee Rebate Program and Unified Development Ordinance.

Using a chart, she said many Asheville households are financially unstable. Although the cost of living continues to increase, wages stay the same.

The Task Force then looked at subsidized housing. There is not enough information available to the community about the housing options in Asheville. There are not enough rental assistance vouchers or assisted units. There are not enough efficiency and 1-bedroom assisted units. Many subsidized housing structures are in disrepair and need to be redeveloped.

Another subcommittee of the Task Force looked at benchmarks and best practices. The housing needs of every community are as unique as the people who live there. Housing starts across the nation are low. In Asheville the housing market continues to build and rebuild. Asheville builds up, Asheville builds green, and Asheville builds luxury. Asheville does not build affordable. To address the affordable housing needs in Asheville, the Task Force agreed that the

City should use its existing zoning structure to grant incentives and make construction profitable to developers building “higher” density mixed-use and mixed-income developments.

Common affordable housing best practices not adopted include (1) mandatory inclusionary zoning – The Task Force does not support this strategy; (2) voluntary inclusionary zoning – The Task Force supports this concept, but only if it is incentive-based; (3) form-based zoning – The Task Force supports the concept of expanding the number of allowable uses as long as you can “build it and park it.”; and (4) community land trusts – The Task Force agrees that absolute homeownership is not always the appropriate choice for many households and families, but does not feel that a city-sponsored community land trust is the best solution.

On June 4, 2008, the Task Force unanimously agreed to submit 33 recommendations to the City Council. Their recommendations may be summarized into five categories: (1) Match housing resources to housing needs; (2) Modify codes and programs to increase the affordable housing supply; (3) Implement new initiatives to increase the affordable housing supply; (4) Educate all stakeholders; and (5) Support community initiatives and collaborations that further affordable housing.

To match housing resources to housing needs, we must meet the demand for affordable housing. Community resources include the Housing Trust Fund; state and federal grants; Housing Choice Vouchers; Fee Rebate Program; the Minimum Housing Code; and rental and homeownership counseling programs. Community goals include (1) build 500 affordable housing units a year for the next 25 years. At least 75% of these units should be renter-occupied; and (2) rebuild our existing subsidized housing stock in the form of mixed income developments, but maintain the overall number of subsidized units.

Regarding community initiatives and collaborations, the City of Asheville does not stand alone. Partnerships and collaborations include existing and future employees; housing services agencies; financial service agencies; human services and agencies; real estate agents; developers; Buncombe County; and Housing Authority of the City of Asheville. New initiatives include Earned Income Tax Credit Program; Employer Assisted Housing Collaborative; Support Programs for Financial Stability; and Create and maintain a housing website.

Regarding educating the community – protecting the public interest, (1) the first step is to address the problem of affordable housing through a series of meaningful policy changes complemented with public education and awareness campaigns; and (2) community partnerships to offer a continuum of housing services.

Regarding changes in existing policies in City ordinances – increase the supply of affordable housing (1) allow residential projects under 50 units as a use by right subject to special requirements; (2) allow duplexes, triplexes and quad lexes in single-family districts as a use by right subject to special requirements in all Asheville neighborhoods; (3) allow maximum number of 12-16 units if at least two of the units are cottage duplexes in the Cottage Development Code; (4) allow for more residential and mixed-use structures in urban areas through reduced parking requirements; (5) reserve money paid for City-owned land in the Housing Trust Fund; (6) reserve 20% of the Housing Trust Fund for transitional housing; (7) require that affordable housing built through City programs remain affordable; and (8) require affordable housing built through City programs to be “affordable” based on occupants income and not through a maximum sales price.

Recommendations that will produce the most affordable housing units:

(1) Allowing density bonuses for structures with 20-50 units – Allowing more structures with more units is the most immediate and least expensive to increase the supply of affordable housing in the City of Asheville and will maximize the use of limited available land and infill lots.

(2) Transportation Corridor Overlay District – Applying a Transit Corridor Overlay is a great way to align Asheville’s growth with our community values. To concentrate growth the City can target density bonuses and grant additional incentives to develop affordable housing units as part of a mixed-use or mixed-income development, and stimulate infill development or redevelopment. This overlay district would also allow the City to offer incentives for development that furthers other City goals, such as sustainable development and the use of transit. The Transit Corridor Overlay will encourage development that is (1) on the existing public transit line, (2) close to jobs, (3) sustainable and (4) affordable without disturbing well-established neighborhoods.

(3) Tax Increment Financing (TIF) – TIF is a responsible growth tool that allows the City to encourage development in areas not likely to redevelop on their own without raising taxes. The cost for the City to provide infrastructure and make public improvements is paid for by the increased tax value of the property. Lessons from our neighbors: The Woodfin Town Center Redevelopment Project. After the town uses the increased tax value to fulfill its bond obligation, the 230 acres that were formerly landfill will generate the town an incredible amount of revenue. The project includes over 500 houses units and over 160,000 sq. ft. for commercial use.

(4) Public Bond – (1) By combing multiple public goals into a bond referendum, the City can generate funds and support affordable housing, open space and parks, and infrastructure improvements; and (2) Bonds produce large amounts of revenue. The reason for combining affordable housing with other goals is to increase the likelihood a referendum would be supported by voters, and to encourage mixed-use development.

She said the Task Force recognizes this is the beginning and they are asking Council to create an advisory committee to continue work and evaluate, refine and monitoring implementation. Several Task Force members and other members of the community are willing to serve.

Vice-Mayor Davis thanked the Task Force for their work on this issue, noting that there are a lot of things that have merit, but will take time to implement. He felt that our Housing & Community Development Committee be given the time to work with staff on implementation and further analysis of each recommendation.

Vice-Mayor Davis moved to accept the report. This motion was seconded by Councilwoman Jones.

Councilman Mumpower noted that there are several vacant units in public housing because people don’t feel safe. He questioned how we can manage affordable housing and not have the reduction of crime as a central point, which was not mentioned in the report.

Councilman Newman thanked the Task Force for their work and felt this is a substantive report that will serve us well on how to tackle this important challenge over the coming years. He felt there are a lot of recommendations and it will take time to sort through them to determine how they should be prioritized.

Councilwoman Cape felt the Task Force put in a lot of time and thanked the Task Force for their efforts. She looked forward to the report going back to the Housing & Community Development Committee and being able to vet some of the suggestions and see how they fit in. She felt the Transit Corridor Overlay has huge merits on many levels. She asked Councilman Mumpower to help her understand how she can work with him to get support from the state on our court system.

Mayor Bellamy thanked Council for approving the creation of this Task Force - that says a lot about what we want in our community. She thanked not only the Task Force, but members of the community who were actively engaged in this process. She felt the Task Force looked

beyond their particular interests and focused on the bigger impact of the community. The Task Force completed their charge, which was basically looking at the existing City's policies and procedures, and recommending new policies and procedures that are needed. Even though the Housing & Community Development Committee would like further review of the recommendations, she liked the idea of having an oversight committee, in that it worked well with the 10-Year Plan to End Homelessness and the Pritchard Park Committee. Stakeholders made a commitment to see the plans implemented. If we are going to be a truly affordable community it shouldn't matter who initiates the recommendations. Our community is worthy of having leaders and community members who are willing to work together to understand the greater good for our community.

Councilman Mumpower said that he voted against the motion to spend \$50,000 for a consultant for this process. He didn't believe it was for this Council to design that plan and one would assume on the basis of that investment that we would have a comprehensive plan that would address the core issues that affect affordable housing. He felt crime is a major issue on that equation.

Mayor Bellamy said the Police Chief was instructed to develop a comprehensive plan to address crime in our community which should dovetail into this plan. She felt an addendum to this plan should come from the Police Chief and how his staff can assist with the creation of safe, affordable housing.

The motion made by Vice-Mayor Davis and seconded by Councilwoman Jones to accept the report carried unanimously.

Upon inquiry of Mayor Bellamy, Councilwoman Cape felt she wanted to understand the role of the oversight committee and how it will function in relationship to the Housing & Community Development Committee.

Ms. Merrell said that the Task Force would be open to discussion with Council on what form the oversight committee would take and its official role.

Councilwoman Cape suggested a conversation be held with the Housing & Community Development Committee first before an oversight committee is established.

Vice-Mayor Davis recommended a proposal be prepared by the Task Force and that it be taken to the Housing & Community Development Committee. After that Committee gains consensus, then it can be taken to the Boards & Commissions Committee which will follow-up with a resolution. That resolution can then be brought before the full Council for consideration.

In response to Councilwoman Jones, Ms. Merrell said the Task Force would welcome the City starting to implement what recommendations they feel comfortable with while they work on a proposal for the oversight committee.

Mayor Bellamy noted that the Task Force will prepare a proposal on the oversight committee for the Housing & Community Development Committee.

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

##### **A. PUBLIC HEARING TO CONSIDER AN ORDINANCE TO PERMANENTLY CLOSE A RIGHT-OF-WAY FORMERLY KNOWN AS EAST SCHENCK CRESCENT**

##### **RESOLUTION NO. 08-140 - RESOLUTION TO PERMANENTLY CLOSE A RIGHT-OF-WAY FORMERLY KNOWN AS EAST SCHENCK CRESCENT**



Mayor Bellamy opened the public hearing at 6:18 p.m.

Director of Public Works Mark Combs said that this is the consideration of a resolution to permanently close a right-of-way formerly known as East Schenck Crescent. This public hearing was advertised on May 30, June 6, 13 and 20, 2008.

N.C. Gen. Stat. sec. 160-299 grants cities the authority to permanently close streets and alleys.

Pursuant to this statute, Biltmore Farms Inc. has requested the City of Asheville permanently close a portion of East Schenck Crescent. This closure will allow East Schenck Crescent to be re-aligned for better traffic flow at the intersection with Schenck Parkway.

Public Works Department staff has researched and contacted all agencies and the Greenway Commission and determined this closure will not affect adjoining property owner's means of ingress and egress and will improve traffic flow.

This action complies with the Asheville City Development Plan, Land Use and Transportation, providing interconnectivity of roadways and land use development.

Pro:

- The closure allows the property to be used to its maximum potential by adjacent property owners.

Con:

- In consideration of the location of the portion of East Schenck Crescent, staff can find no potential challenges regarding the closure.

City staff recommends the adoption of the resolution to permanently close a portion of East Schenck Crescent.

Mayor Bellamy closed the public hearing at 6:20 p.m.

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. 08-140. This motion was seconded by Councilwoman Jones and carried unanimously.

#### **RESOLUTION BOOK NO. 31 – PAGE 235**

#### **B. RESOLUTION NO. 08-141 - RESOLUTION TO ACCEPT EAST SCHENCK CRESCENT AS A CITY-MAINTAINED STREET IN THE BILTMORE PARK TOWN SQUARE AREA OF SOUTH ASHEVILLE**

Assistant Director of Transportation and Engineering Ken Putnam said that this is the consideration of a resolution to accept East Schenck Crescent, in the Biltmore Park Town Square area of south Asheville, as a City-maintained street in the Biltmore Park Town Square area of south 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. The developer submitted a written request via e-mail message on April 16, 2008, asking the City to accept East Schenck Crescent as a city-maintained street.

East Schenck Crescent is a developer-constructed street beginning at Schenck Parkway and ending at Columbine Road that has an average width of 30 to 37 feet and a length of 0.11 mile. The proposed 34 to 41-foot right-of-way is measured from back of curb to back of curb; therefore, the City of Asheville is only responsible to maintain the street including the curb and gutter sections on both sides of the street. The City of Asheville is not responsible to maintain anything outside of the 34 to 41-foot right-of-way including the existing sidewalk along the east side of the street.

Transportation and Engineering Department staff and Public Works Department staff inspected this street and determined that it was constructed according to current standards as indicated in the City of Asheville's Standard Specifications and Details Manual.

Following City Council's approval of this resolution, East Schenck Crescent will be added to the official City Maintained Street Inventory (Powell Bill List).

Pros:

- The City of Asheville will receive Powell Bill Funds from the North Carolina Department of Transportation (NCDOT) to help fund the maintenance of the street.
- Commercial development constructed along the subject street increases the tax base for the City.
- The street provides connectivity between a commercial area and a residential community.

Con:

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

There will be no initial financial impact to the City, although the responsibility of maintenance will belong to the Public Works Department. The City will receive Powell Bill Funds in the future to help maintain the street. Currently, the Powell Bill Funds equate to \$1,886 per mile compared to the City's maintenance cost of \$8,200 per mile.

Staff recommends that City Council accept East Schenck Crescent as a city-maintained street.

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. 08-141. This motion was seconded by Councilwoman Jones and carried unanimously.

**RESOLUTION BOOK NO. 31 – PAGE 237**

- C. PUBLIC HEARING TO CONSIDER CONDITIONAL ZONING FOR THE PROJECT IDENTIFIED AS HUNT HILL, LOCATED AT 54, 56 AND A PORTION OF 55 HUNT HILL PLACE FROM RM-8 RESIDENTIAL MULTI-FAMILY MEDIUM DENSITY DISTRICT AND INSTITUTIONAL DISTRICT TO RM-16 RESIDENTIAL MULTI-FAMILY HIGH DENSITY DISTRICT/ CONDITIONAL ZONING, WITH A DENSITY BONUS, FOR THE DEVELOPMENT OF A 180 UNIT MULTI-FAMILY RESIDENTIAL PROJECT**

**ORDINANCE NO. 3633 - ORDINANCE TO CONDITIONALLY ZONE A PROJECT IDENTIFIED AS HUNT HILL, LOCATED AT 54, 56 AND A PORTION OF 55 HUNT HILL PLACE FROM RM-8 RESIDENTIAL MULTI-FAMILY MEDIUM DENSITY DISTRICT AND INSTITUTIONAL DISTRICT TO RM-16 RESIDENTIAL MULTI-FAMILY HIGH DENSITY DISTRICT/**

**CONDITIONAL ZONING, WITH A DENSITY BONUS, FOR THE  
DEVELOPMENT OF A 180 UNIT MULTI-FAMILY RESIDENTIAL PROJECT**

Mayor Bellamy noted that Public Hearings B and C would be discussed together.

Mayor Bellamy opened the public hearing at 6:21 p.m.

Urban Planner Julia Cogburn said that this is the consideration of an ordinance to conditionally zone a project identified as Hunt Hill, located at 54, 56 and a portion of 55 Hunt Hill Place from RM-8 Residential Multi-Family Medium Density District and Institutional District to RM-16 Residential Multi-Family High Density District/Conditional Zoning, with a density bonus, for the development of a 180 unit multi-family residential project. This public hearing was advertised on June 13 and 20, 2008.

The City of Asheville is a party to the consideration of this rezoning as they are considering a land exchange of City park property (part of Mountainside Park) for some of the developers existing land. The City's property is zoned Institutional and is 1.0592 +/- acres in size. The property to be allocated to the City of Asheville is .85 +/- acres in size. The developer has agreed to pay additional consideration for the acreage difference.

In addition to the conditional zoning request, the applicant is requesting a density bonus of 17.6% (27 units) to result in a project comprised of a total of one-hundred ninety (180) units. Without any rezoning, land exchange, or density bonus, the developer could construct approximately seventy-four (74) units on the property. [NOTE: The plan sheet dealing with steep slope calculations erroneously listed the number of units at 190. The requested number of units is 180].

The developer is also requesting a modification to the required setback on the east side of the property for the easternmost building on the site. The required setback is forty (40) feet. They are requesting a rear setback of twenty (20) feet – a modification of twenty (20) feet. They will still be able to provide the required twenty (20) foot buffer along that rear property line. They are also requesting a height modification of 5 feet 6 inches for Building B. Although this building is the same height as the others, because of the topography of the site and the point of fire access to that building, the modification is necessary. Staff is supportive of both of these modifications.

The subject property, 9.58 acres, is located within the city limits off of Hunt Hill Place and Ardmon Park Road. The current address for these properties is 54, 55, and 56 Hunt Hill Place. The property is primarily the former location of the McCormick Heights Apartments (under demolition). The project site also includes some City of Asheville property. The acreage shown anticipates a land exchange with the City. If the proposed land exchange goes through, the development would receive 1.06 acres of currently unused park property (part of Mountainside Park) and the City would receive .85 acres for future park development along with additional consideration.

The property in question is zoned RM8 and Institutional (the City of Asheville property). To the north properties are zoned RM8, Institutional and RS8 and contain single-family residences and parking for a place of worship. Properties to the east are zoned RS8 and Institutional and are vacant. Properties to the west are zoned Institutional and RM8 and contain a City of Asheville facility and single-family homes. Properties to the south are zoned Institutional and contain a public park.

The applicant, Steve Moberg, is requesting conditional zoning of these 9.58 acres. The request is for conditional zoning to RM16 (Residential Multi-Family High Density District) to allow for the development of a 180-unit residential community. The proposal is for a mix of efficiency, one-, two-, and three-bedroom condominiums to be housed in four buildings. The number of

units per building ranges from 61 in Building A (the westernmost building) to 27 in Building D (the easternmost building). Access to the development will be via existing access points to the property off of Ardmion Park Road and Hunt Hill Place. Access to buildings A and B will be via Hunt Hill Place. Access to Buildings C and D will be via Ardmion Park Road.

A portion of the property (2.19 acres) is in Zone A of the City's Steep Slope Regulations. Under the regulations, the allowable number of units in the Zone A portion if it is rezoned to RM16 is 24 units. The allowable density for the remainder of the project site (if rezoned) is one hundred and twenty-nine (129) units. Therefore, a total density of 153 would be allowed with a rezoning to RM16. The developer is proposing a project of 180 units.

The total proposed density for the project is approximately 18.8 units per acre. This density will necessitate an exceptional development density bonus of 27 additional units (a 17.6% bonus). The developer is proposing that ten percent (10%) of the units in the project be affordable and has begun discussions with the City's Community Development office on the affordable units. The developer has committed to 10 two-bedroom and 8 efficiency affordable units. The developer has also provided a plan with the submittal which outlines the site features, in addition to the provision of affordable housing, that qualify the project as an "exceptional development". These features include: enhanced stormwater management systems through the use of bio-retention stormwater systems; the provision of walking trails and pedestrian amenities; designing a building orientation sensitive to the surrounding neighborhood (limited surface parking and avoiding steepest portions of the property); and, enhanced landscaping in areas where not required. Finally, the developer has committed to meeting NC Healthy Built Home standards in the construction of the project. [ASIDE: The developer has also stated his commitment to work with the City of Asheville on improvements on adjoining parkland depending on the City's parks and recreational needs. The Planning and Zoning Commission had recommended that this commitment be detailed prior to this matter coming to the City Council. The developer has had discussions with Parks and Recreation staff and it is felt at this time that the commitment should be general in nature.]

The applicant is seeking a modification to the setback on the east side of the property for the easternmost (and smallest) building on the site. The required setback is 40 feet. They are requesting a rear setback of 20 feet – a modification of 20 feet. They will still be able to provide the required 20-foot buffer along that rear property line. Staff is supportive of this modification with the provision that the plantings meet the plant material sizes required when grading in the buffer area. They are also requesting a height modification of 5 feet 6 inches for Building B. Although this building is the same height as the others, because of the topography of the site and the point of fire access to that building, the modification is necessary. Staff is supportive of this modification as well.

At a meeting on April 21, 2008, the City of Asheville Technical Review Committee (TRC) reviewed the conditional zoning request and made a positive recommendation (with conditions) that the project be forwarded to the Asheville Planning and Zoning Commission. The developer has resubmitted since that time, addressing the bulk of the conditions.

At a meeting on May 7, 2008, the Planning and Zoning Commission unanimously (5-0) recommended this project to the Asheville City Council with conditions. Only one person spoke on the issue concerned about affordable housing. It was also recommended that details on the price points for the other units be examined by staff and Asheville City Council. The developer has provided information showing that the price points in Building A are approximately \$200 per square foot. This is in contrast to the current average in the 28801 area (this of course, includes downtown, which must be taken into account) is \$377.25.

Section 7-7-8(d)(2) of the Unified Development Ordinance (UDO) states that planning staff shall evaluate conditional zoning applications on the basis of the criteria for conditional use

permits set out in section 7-16-2. Reviewing boards may consider these criteria; however, they are not bound to act based on whether a request meets all seven standards.

1. **That the proposed use or development of the land will not materially endanger the public health or safety.**  
The project, if approved, must meet all the technical standards set forth in the City's Unified Development Ordinance and Standards and Specifications Manual. The developer has been working closely with City staff to ensure compliance.
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 developer is citing the buildings for this project utilizing the areas that were paved or built upon for the previous complex on this site. They are in compliance with the City's steep slope regulations and are placing most parking within the buildings to limit impervious surface.
3. **That the proposed use or development of the land will not substantially injure the value of adjoining or abutting property.**  
The project site abuts institutional facilities and parkland and should provide an appropriate transition to the also adjacent single-family homes. They are proposing buffering and other enhanced landscaping which should improve the site which has little vegetation now. They are working to retain existing vegetation where significant and possible.
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.**  
The proposed project does show a residential development with greater density than found in the surrounding area. However, its proximity to an active recreation facility makes this an appropriate transition to less dense housing in the area. The project site previously served as a 100 unit housing community of seventeen (17) two-story buildings.
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 proposed use supports the 2025 goals and Council vision as follows:
  - a. Supports the goal of pursuing compatible infill development.
  - b. Supports the goal of promoting the use of green building techniques.
  - c. Supports the goal of permitting more intense development and density in areas with appropriate infrastructure.
  - d. Supports the goal of providing affordable housing.
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 use as proposed has two means of access to two portions of the project which makes the traffic less concentrated through the existing neighborhood. Transit access is only a block away on Martin Luther King, Jr. Drive. TRC raised no concerns over the provision of services except that the Water Resources Department is looking into whether any off site improvements will be required to the waterlines in the vicinity of this project. This will be addressed in the required water system extension plan review.

**7. That the proposed use will not cause undue traffic congestion or create a traffic hazard.**

The developer was not required to submit a traffic impact study. The traffic engineer has reviewed the project and all concerns have or are being addressed.

Pros:

- This project supports the City of Asheville's goal of pursuing higher density infill development.
- This project proposes a minimum affordable housing component of ten percent or 18 units.
- The project is designed to meet NC Healthy Built standards.

Cons:

- The project is denser than surrounding residential development.
- Access to the project is via two small single-family residential streets.
- The development will contain 106 units more than would be allowed under the current zoning for the developer's property.

At a meeting on May 7, 2008, the Planning and Zoning Commission unanimously (5-0) recommended this project to the Asheville City Council with conditions. Based on the above findings and the analysis provided in the report, staff finds this request to be reasonable with the modifications requested and with the standard conditions and the conditions as follows: (1) A minimum of 10% of the units for the project will be affordable per the City of Asheville's Community Development Division; (2) Enhanced landscaping will be provided in the form of providing the equivalent of a Type A buffer along the properties where zoning does not require such a buffer; (3) Buffer materials in the setback modification area shall be 50% larger than otherwise required; (4) The project will be designed to meet NC Healthy Built standards; and (5) contingent on the land exchange.

At this time, Real Estate Manager Nikki Gunter explained the land exchange (Public Hearing D).

Mr. Steve Moberg, developer, spoke in support of the project in that it will be an affordable project. There is quite a large workforce in that area that works downtown. They were able to keep the prices low. He explained some of the green and stormwater features in the project. He hoped that Council would approve the land swap. They will work with the Parks & Recreation Department in developing a future park with monetary funds as well as in-kind services. They hoped the project would bring in about a \$40-50 Million tax base to the City when all the units are sold. They worked hard to incorporate 10% of affordable housing in this project, in that he can still maintain keeping the other units affordable.

Mr. Jesse Junior spoke against the project in that Asheville is being over-developed.

Mayor Bellamy closed the public hearing at 6:38 p.m.

Councilwoman Cape felt this Council is charged with helping build a town for people to live and work. She felt this area is in a location of where some of our biggest employers are located (Mission Hospitals, City of Asheville and Buncombe County) and is at a price point where people can live and walk to work. She suggested the potential owners are made aware of the loud speakers when the baseball games begin at McCormick Field.

City Attorney Oast said that if Council approves the resolution directing the City Clerk to publish a notice on the land exchange, Council will be voting on that exchange on July 22. This zoning does not bind Council with respect to the exchange of property.

Councilman Mumpower felt that if people own property, they have a right to develop it. He felt that this is a good project, but due to crime and drug activity we lost what was truly an affordable housing development there because people didn't feel safe living there.

Mayor Bellamy agreed that we lost truly affordable housing in that neighborhood. She felt that 10% set aside for affordable housing, with a negotiated land swap, was too low. She felt this is an opportunity for a good affordable housing development with more truly affordable housing units. She asked the developer to consider a couple more affordable units as the plan is being developed in that there are working people who were displaced and who would like to come back to that community. She noted that other developers have made 10% of their units affordable and they didn't get anything from the City. She asked the developer for consideration of more than 10% of affordable housing units. She felt this is going to be a good development for our community, but it would be a good way to reach out to the community and neighborhood to have more than 10% affordable units.

In response to Councilman Mumpower, Mayor Bellamy said that there is a precedent for Council to ask for changes, citing the Habitat for Humanity development.

Mr. Moberg said that he would love to add more affordable units; however, in doing so it raises the price of his other units. In this economy today, he still has to maintain his units at a lower price to get sales generated. He said he would do what he could and would report back at the meeting when Council would consider the land exchange.

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

Councilman Newman moved for the adoption of Ordinance No. 3633, to conditionally zone a project identified as Hunt Hill, located at 54, 56 and a portion of 55 Hunt Hill Place from RM-8 Residential Multi-Family Medium Density District and Institutional District to RM-16 Residential Multi-Family High Density District/Conditional Zoning, with a density bonus of 17.5%, a 20% modification to the setback on the east side of the property, and a height modification of 5 feet 6 inches for Building B, subject to the following and standard conditions: (1) A minimum of 10% of the units for the project will be affordable per the City of Asheville's Community Development Division; (2) Enhanced landscaping will be provided in the form of providing the equivalent of a Type A buffer along the properties where zoning does not require such a buffer; (3) Buffer materials in the setback modification area shall be 50% larger than otherwise required; (4) The project will be designed to meet NC Healthy Built standards; (5) contingent on the land exchange; (6) The project shall comply with all conditions outlined in the TRC staff report; (7) All site lighting must comply with the City's Lighting Ordinance and be equipped with cut-off fixtures or full cut-off fixtures and directed away from adjoining properties and streets. A detailed lighting plan will be required upon submittal of detailed plans to be reviewed by the Technical Review Committee; (8) All existing vegetation that is to be preserved must be clearly indicated and dimensioned on the site, landscape and grading plans; (9) 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 (10) 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 on a 5-1 vote, with Mayor Bellamy voting "no."

#### **ORDINANCE BOOK NO. 24 – PAGE**

- D. RESOLUTION NO. 08-142 - RESOLUTION AUTHORIZING THE CITY CLERK TO PUBLISH A NOTICE REGARDING THE INTENT TO AUTHORIZE THE EXCHANGE OF REAL PROPERTY LOCATED ON HUNT HILL PLACE FOR PROPERTY LOCATED ON ARDMION PARK PLUS ADDITIONAL MONETARY CONSIDERATION**

Real Estate Manager Nikki Gunter said that this is the consideration of a resolution to authorize the City Clerk to publish a notice regarding the intent to authorize the exchange of real property located on Hunt Hill Place for property located on Ardmion Park plus additional monetary consideration.

The City of Asheville and Satchel's Development, Inc. have negotiated an exchange of real property at Hunt Hill Place for property on Ardmion Park Road along with additional monetary consideration.

The City-owned property on Hunt Hill Place is 1.0592 acres +/- in size and is a portion of tax PIN 9648.07-57-5714 and a portion of tax PIN 9648-11-57-5224. The area is zoned Institutional and is mostly vacant land. This area is a portion of the larger Mountainside Park. The appraised value, as appraised by Underdown Ball & Associates, LLC, equals \$130,300.

The property to be exchanged on Ardmion Park Road is an 0.854 +/- acre parcel zoned RM 8 and is a portion of tax PIN 9648.07-57-9853. This property is mostly wooded with steep to rolling grades and has road frontage on Ardmion Park Road. The appraised value as appraised by Underdown Ball & Associates, LLC, equals \$120,900. To provide that the exchange is full and fair, monetary compensation will be provided along with the exchange in the amount of \$9,400 in cash, paid by the property owner, Satchel's Development, Inc.

The Phase 1 Environmental Site Assessment of the Ardmion Park parcel has been reviewed by staff and no documented evidence of any environmental incidents on the property was noted. The Parks Advisory Board has reviewed the proposed exchange and found that the exchange is appropriate for the parks and greenways system. Approval of the resolution will initiate the exchange of the properties through the process provided in N.C.G.S. 160A-271.

This action complies with the City Council's Strategic Operating Plan in that it promotes sound land management per the Parks and Recreation Master Plan.

Pros:

- The exchange will be a fair exchange of property for property plus consideration.
- Additional pedestrian access to the Mountainside Park will be gained from Ardmion Park Road.

Con:

- There is no negative impact.

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

City staff recommends City Council adopt a resolution authorizing the City Clerk to publish a notice regarding the intent to authorize the exchange of real property located on Hunt Hill Place for property located on Ardmion Park Road and additional consideration.

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

Councilwoman Cape moved for the adoption of Resolution No. 08-142. This motion was seconded by Councilman Mumpower and carried on a 5-1 vote, with Mayor Bellamy voting "no."

**RESOLUTION BOOK NO. 31 – PAGE 239**

- E. PUBLIC HEARING TO CONSIDER CONDITIONAL ZONING FOR THE PROJECT IDENTIFIED AS SILVERMAN'S MIXED-USE DEVELOPMENT, LOCATED AT 48 SWANNANOA RIVER ROAD FROM RIVER DISTRICT AND**



**INSTITUTIONAL DISTRICT TO URBAN PLACE DISTRICT/CONDITIONAL ZONING, FOR THE DEVELOPMENT OF A MIXED-USE PROJECT**

**ORDINANCE NO. 3634 - ORDINANCE TO CONDITIONALLY ZONE A PROJECT IDENTIFIED AS SILVERMAN'S MIXED-USE DEVELOPMENT, LOCATED AT 48 SWANNANOA RIVER ROAD FROM RIVER DISTRICT AND INSTITUTIONAL DISTRICT TO URBAN PLACE DISTRICT/CONDITIONAL ZONING, FOR THE DEVELOPMENT OF A MIXED-USE PROJECT**

Mayor Bellamy opened the public hearing at 6:51 p.m.

Urban Planner Alan Glines said that this is the consideration of an ordinance to conditionally zone a project identified as Silverman's mixed-use development located at 48 Swannanoa River Road from River District and Institutional District to Urban Place District/Conditional Zoning, for the development of a mixed-use project consisting of 125 residential units, 26,000 square feet of retail/grocery space and 7,500 square feet of storage space for residents, along with a setback modification. This public hearing was advertised on June 13 and 20, 2008.

Mr. Glines said that this project is located at 48 Swannanoa River Road on four parcels totaling 5 acres. The property is zoned River and is subject to flood hazard requirements that govern development in this area. The proposal seeks conditional zoning to Urban Place District along with the project master plan. The plan includes:

- Up to 125 residential units and about 26,000 square feet of commercial space including a grocery store.
- The project is made up of separate buildings forming two wings with residential units along the east and west ends of the property.
- A grocery store planned for the project is a separate structure and forms the center of the development.
- The roof area above the grocery store (totaling around 5,000 square feet) will be used as an outdoor gathering / open space for residents and for an occasional community event.
- The occupied areas of the project (residential and commercial) are elevated out of the 100 year flood hazard area as required by City ordinance. The Urban Place District anticipates this building pattern and encourages pedestrian connectivity from the street through steps and boardwalks which are provided in the project.
- The residential portion of the project will be made up of 54 one-bedroom units, 58 two-bedroom units and 13 three-bedroom units located on the upper floors of the east and west wings.
- Parking for the site is proposed for the ground level area under the buildings and the first elevated level of the structure.
- The height of the buildings will be six stories counting the ground level garage parking. The structures will be within the Urban Place height maximum of 80 feet.
- The project will be seeking Energy Star and Healthy Built for the residential units and will seek LEED certification although it is unclear if the project will be accepted in the program due to its location.
- The buildings will include photo voltaic awnings to 'net meter' and sell energy back to the power company using clean solar technologies and also highly insulated exterior finish panels for energy efficiency.
- The project will support the goals of affordability by providing 10% of the units at an affordable price meeting City of Asheville standards. Most of the other units will be targeted to the workforce housing market. A small number of the units will be higher-end units.

- The site was recently accepted in the NC Brownfields Study Area to identify potential environmental contaminants if any, located on the property. The Land of Sky Regional Council manages that program for the City.

Access to the project will be from Swannanoa River Road and from Caledonia Road. The Technical Review Committee (TRC) members cautioned against making Caledonia Road the only access road for the grocery store deliveries to avoid staging problems in the street and other potential impacts. Cross access east to west through the site was recommended to solve this problem and provide better fire department coverage. The design team revised the plan and project operations to accommodate the request. TRC staff also noted that commercial traffic would be inappropriate along Caledonia Road past the project site but this should not be a problem since the tight street geometries will discourage cut-through traffic. The anticipated traffic from the subject project is estimated to be 126 vehicles per hour during the morning peak hour and 422 vehicles per hour during the afternoon peak hour. Since this traffic exceeds the threshold of 100 vehicles per hour, a traffic impact study was required. The area of influence included analyzing three intersections in the immediate area of the site plus the three proposed access points (*two along NC 81 and one along Caledonia Road*). Due to the location of the site, most of the traffic will use NC 81 (Swannanoa River Road) to access (*ingress and egress movements*) the project when it is completed. Very little, if any, cut-through traffic through the Kenilworth neighborhood should occur.

The traffic impact study determined that the anticipated traffic from the subject project at full build-out should not place an undue burden on the existing street infra-structure. The study did suggest certain mitigation improvements including left and right-turn lanes along NC 81 (Swannanoa River Road), traffic signal timing revisions at the signalized intersection of SR 3214 (Biltmore Avenue) and NC 81 (Swannanoa River Road)/SR 3556 (Meadow Road), two egress lanes along Caledonia Road at its intersection with NC 81 (Swannanoa River Road), and two egress lanes at the two proposed access points along NC 81 (Swannanoa River Road). The proposed interconnectivity that is now being included should minimize the adverse impact of delivery trucks solely using Caledonia Road to gain access to the site by providing options that could be made mandatory.

Although the City of Asheville agrees with the mitigation improvements as indicated in the traffic impact study and the updated technical memorandum dated June 6, 2008, the North Carolina Department of Transportation has the final approval for the mitigation improvements along NC 81 (Swannanoa River Road) since it is a state-maintained street. If cut-through traffic becomes an issue, then other mitigation improvements could be imposed including the prohibition of left turns from the site onto Caledonia Road and converting the proposed access point onto Caledonia Road from two-way operation to one-way (ingress) operation. Trucks are already prohibited from using Caledonia Road to gain access into the Kenilworth neighborhood.

Some Kenilworth residents have shared concerns that additional traffic will be added to neighborhood streets, a trend that they say is already happening at certain times of the day as Swannanoa River Road backs up at certain intersections. As mentioned in the traffic study, signal timing revisions should mitigate this situation.

*The Wilma Dykeman Riverway Master Plan (Dykeman Plan)*, a vision plan document for future redevelopment of the French Broad and Swannanoa Rivers through the City of Asheville was adopted by City Council in July 2004. The *Dykeman Plan* at its core is a multi-modal transportation plan to consolidate access into and through the river areas. Swannanoa River Road and Thompson Street are proposed to become a one-way pair that will require additional bridges crossing the Swannanoa River. Roadway and greenway system improvements are the base of the plan, but there are a number of other important goals: protecting water quality and consideration for the special nature of the floodplain, strengthening a diverse economic base and expanding opportunities for artists and small business development, additional park development, sustainable mixed-use buildings with residential units on upper floors, and regional attractions at

suitable locations. In order to propel implementation of the *Dykeman Plan* goals, the River District Design Review Committee (RDDRC) was instrumental in 2006 to begin discussions to rezone certain River District parcels to Urban Place District. A public meeting was held for property owners to review the plan and to discuss the idea. The property owners were generally supportive of the changes so long as the effort was voluntary in order to allow the natural transition from industrial uses to mixed-use development. All agreed for the need to accommodate new uses while maintaining opportunities for the existing uses, recognizing that the special character of the River District is enhanced by the rich and historic mix of uses. In February 2007, twelve parcels located in the River District including five located across the river from the Silverman site were rezoned to Urban Place District. The Silverman Mixed-use proposal was reviewed by the RDDRC in 2008 for design and layout of the proposal. The RDDRC enthusiastically approved the design and endorsed the proposal noting that this type of project is envisioned in the *Dykeman Plan*.

The development team is seeking a side-street building setback modification because the setback exceeds 15 feet along Caledonia Road. The building provides frontage along Swannanoa River Road and meets the corner at Caledonia Road. As the road curves away into the neighborhood, the building setback expands to 45 feet. In spite of River and Institutional District zoning along portions of Caledonia Road, the residential character of the street is maintained and the primary building orientation along Swannanoa River Road seems justified. The setback modification request should not negatively impact the character of the project. Landscaping and a sidewalk will be added along this side of the building to enhance the pedestrian experience.

At the Planning and Zoning Commission meeting, a resident of Kenilworth raised a concern that she was unaware of the project and was concerned about added noise filtering into Kenilworth and traffic along Caledonia Road. The Planning and Zoning Commission recommended additional contact with Kenilworth residents as the project moves forward. The development team has provided this outreach follow-up:

- Made contact with some neighborhood residents and a neighborhood meeting is planned for Wednesday 6/18/08;
- Included project information in a recent RiverLink supplement in the Asheville Citizen-Times;
- Provided an information board on-site with project contact information;
- Created a website to share information about the project.
- Staff has also shared project information with the Kenilworth Neighborhood Association president.

Section 7-7-8(d)(2) of the Unified Development Ordinance (UDO) states that planning staff shall evaluate conditional zoning applications on the basis of the criteria for conditional use permits set out in section 7-16-2. Reviewing boards may consider these criteria; however, they are not bound to act based on whether a request meets all seven standards.

1. **That the proposed use or development of the land will not materially endanger the public health or safety.**  
The project will meet health and safety requirements of local and state ordinances. The project will be elevated as required by the flood hazard ordinance to protect life and property.
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 site is a former service yard for an industrial supplier and has been graded for this use. The river edge however will be un-developed and remain in a natural state and may

be improved at a future date as a part of greenway and buffer development. The project will be elevated as required by flood hazard ordinances to minimize damage from flooding and prevent water pollution. With these features in place, the current design will be compatible with the significant natural and topographic features of the site.

**3. That the proposed use or development of the land will not substantially injure the value of adjoining or abutting property.**

The investment in this mixed-use project is expected to improve the values of surrounding properties. The proposal is consistent with the adopted goals and plans for the area to create places for mixed-use commercial and residential development. The site was accepted into the NC Brownfields Study area that will assess the site for any contaminants that may need remediation.

**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.**

This site is located at the edge of the Swannanoa River and the Kenilworth Neighborhood sits on the bluffs and knoll above the river. The project should not create a negative impact or affect the character of Kenilworth because its focus is the Swannanoa River. The City Council adopted *Wilma Dykeman Riverway Master Plan* outlines a new vision for the river area with higher density mixed-use projects at appropriate locations as a way to bring new life, opportunity and energy to the river areas. In consideration of the Dykeman Plan goals, the proposal is in keeping with the harmony, scale, bulk, coverage and density and character of the river 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 comprehensive plan encourages redevelopment of infill sites to support multi-modal transportation, greenways and vertical development with greater residential densities. The Dykeman plan is a vision plan with many goals: redevelopment of infill sites with mixed-use buildings, economic development, transportation improvements, environmental protection, among many more. The Silverman proposal includes many of these goals through the specific features of the project. The proposal will provide residential units with some of the units offered at an affordable rate. In addition the project will seek Energy Star and Healthy Built for the residential portion of the project to contribute to sustainable development goals adopted by the City. The project will conform with the comprehensive plan and meets many goals and policies adopted by the City.

**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 project is located along Swannanoa River Road which is a state highway. The location in the center area of the city means that the public infrastructure is in place to service the development. The project is located close by to commercial and employment centers and recreation areas.

**7. That the proposed use will not cause undue traffic congestion or create a traffic hazard.**

The traffic impact study determined that the anticipated traffic from the proposal at full build-out should not place an undue burden on the existing street infrastructure. Commercial traffic is not permitted to use Caledonia Road into Kenilworth already. The study did suggest certain mitigation improvements including left and right-turn lanes along NC 81 (Swannanoa River Road), two egress lanes on Caledonia Road, traffic signal timing revisions at the signalized intersection at Swannanoa River Road, Biltmore

Avenue and Meadow Road, and the proposed interconnectivity within the project that should minimize the adverse impact of delivery trucks solely using Caledonia Road to gain access to the site. The proposal is not expected to cause undue traffic congestion or create a traffic hazard as reviewed in the report.

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

The River District Design Review Committee reviewed the proposal at the January 23, 2008, meeting and voted to approve the design. The Technical Review Committee reviewed the project at the April 21, 2008, meeting approving the project with conditions. The Planning and Zoning Commission reviewed the proposal at the May 7, 2008, meeting and recommended approval with a 5-0 vote. Several people spoke in support of the project during the public hearing and a resident of the Kenilworth neighborhood expressed concern about noise and additional traffic traveling through Kenilworth.

Pros:

- The project is mixed-use and meets many goals of the Dykeman Plan.
- The project could become a destination place within the river area.
- The project will seek Energy Star and Healthy Built for the residential units.
- Affordable units will be provided in the project meeting City of Asheville guidelines.
- Sufficient infrastructure is in place to support the project.
- The project should act as a catalyst for further redevelopment in the area.
- Mixed-use projects by design are often more sustainable and fight sprawl.
- The site has been accepted into the NC Brownfields Study Area to identify any environmental contaminants.

Cons:

- A historic business is coming to an end in the river district.
- Construction work can temporarily create congestion in the area.
- New vehicle trips will be added to Swannanoa River Road and possibly Caledonia Road.

The Planning and Zoning Commission reviewed the project at their May 7, 2008 meeting and voted to recommend approval with the TRC conditions and the setback modification request as reported by staff. Staff has reviewed the project and supports the plan as presented because it meets goals and plans adopted by the City and because the request is reasonable. The River District Design Review Committee reviewed the proposal and voted to approve the design at their January 23, 2008 meeting.

Mr. Dave Madera, developer, urged Council to support this development, which has a lot of support and the materials he is using is beyond LEED certification. He said they are still working on a lot of sustainability aspects and felt this development will be a model of things that should be done in the future.

Ms. Regina Trantham, representing Mica Village, spoke in support of the development in that he cleaned up a blighted industrial area. She was particularly pleased that part of the concept is a grocery store and it's accessibility to the community.

Mr. Fred English spoke against the project in that the housing market in Asheville has dropped and we have more houses now than people.

Mr. Meek, Kenilworth resident, spoke in support of the development. He felt this is a good use of this property. He suggested Council begin discussions now with the State regarding future traffic on Swannanoa River Road.

Ms. Pattiy Torno, member of the River District Design Review Committee, spoke in support of this development, as it supports the Wilma Dykeman Plan and the vision of our riverways. It also provides workforce housing with 10% affordable housing. She felt this significant development will spur more development in the River District.

At 7:13 p.m., Mayor Bellamy closed the public hearing.

Councilwoman Cape urged people who are building new residential homes to contact Progress Energy regarding an energy efficient rebate.

Mayor Bellamy suggested the developer know that there is an active railroad with horns about 1/4 mile from the development.

In response to Councilman Mumpower, Mr. Madera said that he is asking for Council's support of the concept of a footbridge.

In response to Councilwoman Cape, using a plan, Mr. Madera showed the flow through pattern for loading and unloading the grocery store.

Mayor Bellamy spoke in support of the development and noted that the developer will be including 10% affordable housing units without a request for a density bonus or a land swap. She noted that the City has already received a \$500,000 grant from the State for a traffic analysis on Swannanoa River Road.

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

Councilwoman Cape moved for the adoption of Ordinance No. 3634, to conditionally zone a project identified as Silverman's mixed-use development located at 48 Swannanoa River Road from River District and Institutional District to Urban Place District/Conditional Zoning, for the development of a mixed-use project consisting of 125 residential units, 26,000 square feet of retail/grocery space and 7,500 square feet of storage space for residents, along with a side-street building setback modification, subject to the following conditions: (1) The project shall comply with all conditions outlined in the TRC staff report; (2) All site lighting must comply with the City's Lighting Ordinance; (3) 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 (4) This project will undergo final review by the TRC prior to issuance of any required permits. This motion was seconded by Councilman Mumpower and carried unanimously.

#### **ORDINANCE BOOK NO. 24 – PAGE**

At 7:22 p.m., Councilman Mumpower moved to go into closed session for the following reasons: (1) To establish or to instruct the City's staff or negotiating agents concerning the position to be taken by or on behalf of the City in negotiating the terms of contracts for the acquisition of real property by purchase, option, exchange or lease. The location of the property is on Biltmore Avenue between Aston Street and Hilliard Avenue. The statutory authorization is contained in G.S. 143-318.11(a)(5); and (2) To discuss matters relating to the location or expansion of industries or other businesses in the area served by the City Council, including agreement on a tentative list of economic development incentives that may be offered in negotiations, provided that any action authorizing the payment of economic development incentives will occur in open session. The statutory authority is contained in G.S. 143-318.11(a)(4). This motion was seconded by Councilwoman Jones and carried unanimously.

At 7:55 p.m., Councilwoman Cape moved to come out of closed session. This motion was seconded by Vice-Mayor Davis and carried unanimously.

**F. PUBLIC HEARING TO CONSIDER AN AMENDMENT TO THE CONDITIONAL ZONING ORDINANCE FOR PROPERTY LOCATED AT 1741 HENDERSONVILLE ROAD REGARDING SIGNAGE FOR THE WEIRBRIDGE VILLAGE PROJECT**

**ORDINANCE NO. 3635 - ORDINANCE AMENDING THE CONDITIONAL ZONING ORDINANCE FOR PROPERTY LOCATED AT 1741 HENDERSONVILLE ROAD REGARDING SIGNAGE FOR THE WEIRBRIDGE VILLAGE PROJECT**

At the request of City staff, on May 13, 2008, this public hearing was continued to May 27, 2008. On May 27, 2008, the developer requested the public hearing be continued to this date.

Mayor Bellamy opened the public hearing at 7:56 p.m.

Urban Planner Julia Cogburn said that this is the consideration of an ordinance to amend the conditional zoning ordinance for property located on 1741 Hendersonville Road regarding signage for the Weirbridge Village Project. This public hearing was advertised on May 2 and 9, 2008.

The subject property, 20.66 acres, is located within the city limits, at the corner of Hendersonville Road and Racquet Club Road. The property previously contained a few homes and accessory buildings, which have now been demolished. Surrounding properties are both residential and commercial. To the north is the Racquet Club (a recreational facility) and the Racquet Club Village condominiums. Applebee's restaurant is on the northwestern corner at the intersection of Racquet Club and Hendersonville Roads. Across Hendersonville Road are apartments and commercial properties. To the south, a low density multi-family development (Crowfields Condominiums) abuts the development and to the east another condominium development, South Oaks, is located. The zoning in the area reflects the development; to the north and east, RM16 and HB, and to the south and west, RM6.

The applicant received conditional zoning approval in November of 2006 for the property to be zoned Highway Business Conditional Zoning. The site plan that was approved with the rezoning presented a mixed use development with commercial outparcels to the east (along Hendersonville Road) and 336 residential dwellings located on the middle and western portions of the property.

A number of conditions were placed on the property at the time of the rezoning. One of these conditions concerned the signage for the commercial outparcel portion of the property. The conditions placed on this signage were as follows:

- One development identification sign would be allowed. (The condition did not state size specifications). Commercial subdivision signs are allowed in the UDO to be sixty (60) square feet per face and a maximum eight (8) feet in height with a ten (10) foot minimum setback.
- Each tenant in the commercial portion was allowed one (1) monument identification sign per street frontage. Each of these signs was to be no greater than eight (8) feet in height and fifty (50) square feet per face.
- Each tenant in the commercial portion was to be allowed one (1) attached sign no greater than fifty (50) square feet per face.

Signage for the residential development was not addressed.

The developer of Weirbridge Village has finalized design of the signage for the project and now desires to come to Asheville City Council with a comprehensive sign package as an amendment to the conditional zoning previously approved. Council is authorized, under Section 7-13-10 of the City of Asheville Code of Ordinances, to approve signage plans differing from the standard regulations for "commercial, industrial, or mixed use developments containing five or more acres in size.

The developer desires some flexibility with respect to one of the signs which may be multi-tenant and may be single-tenant. The addition of the possibility of a small multi-tenant development now showing as part of the commercial piece and which was not previously anticipated makes it difficult to compare the submittal with what was previously approved. With that in mind, she showed a table which indicates what was approved by Council, what would be allowed per the ordinance, and what the developer is now requesting for signage. As part of this signage package, the existing off-premise sign for Racquet Club Road will be removed.

Additionally, as part of this conditional zoning amendment, the developer seeks approval of a tower feature at the southern entrance to the project. This tower would be accompanying a sign feature at the same entrance; however, staff does not consider this tower a sign. We would treat this as an accessory structure on the site, which was not approved under the original CZ approval. Council would need to approve this as part of the CZ amendment.

Amendments to Conditional Zoning approvals come directly to the Asheville City Council so this matter has not been previously heard by the Planning and Zoning Commission or the Technical Review Committee.

Pros:

- The proposal sets forth a comprehensive, coordinated sign package for a major development.
- The majority of the signage is in conformance with previously approved restrictions on the development and in most instances is significantly less than what is allowed in the Highway Business District.

Cons:

- Staff feels that the tower feature is out of character for the surrounding area.
- Some may feel that the signage is excessive for the area.

Based on the analysis provided in the report, staff finds part of this request to be reasonable and part to be unreasonable.

Mr. Clay Mooney, representing the developer, spoke about the positive aspects of the development, such as LEED certification, stormwater control and traffic mitigation measures. He then explained their desire to provide a signage package of signs and architectural features that create a unified and complimentary approach to signage that is unlike any other development in south Asheville. Except for a few instances, the signage proposed is smaller and in some cases significantly smaller than what would be allowed for a Highway Business District zoning project. He then showed graphics of the signs, along with site perspectives from the north and south on Hendersonville Road.

Mr. Rusty Pulliam spoke in support of the signage amendment, noting that the tower sign is not taller than any other sign on Hendersonville Road.

Mr. Robert Fitch, resident of Crowfields, spoke in support of the signage package in that the developer has taken into consideration the traditional appearance of the Crowfields entrance.

At 8:18 p.m., Mayor Bellamy closed the public hearing.



When Mayor Bellamy asked if the project would have any shrubs in the street tree strip on Hendersonville Road to minimize the impact of the larger sign, Mr. Mooney said that they are just beginning their landscaping plan. He said it was pretty common to put shrubs in the front and that is probably something they will have.

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

Councilman Mumpower moved for the adoption of Ordinance No. 3635, to (1) approve the sign/feature package requested subject to the following: (a) Sign #1 as Depicted but Reduced in Height to 8' 6"; (b) Sign #2 Allowed as Depicted If Northernmost Property is Multi-Tenant Development;(c) Multi-Tenant Attached Signage – Per the UDO; (d) Single Tenant Commercial Outparcel Freestanding Signs as Depicted as #3 in the Package Submittal with Compliant Setbacks for 2 or 3 Single Tenant Commercial Outparcels; (e) Single-Tenant Attached Signage – One Sign Per Street Frontage (Maximum of Two Signs), 50 Square Feet Per Face; Internally or Externally Illuminated; (f) Signs Numbered 7, 7a and 4 which are internal to the project (not along Racquet Club) are permitted as presented; (g) Residential ID Sign as Depicted as #5 in Package (without the tower) with Compliant Setback; (h) Up to 4 Directional Signs as Depicted Along Racquet Club Road but with only 2 Faces Per Sign and limited to 4 Feet in Height– These Must be Directional in Nature (To Buildings);and (i) That the tower feature not be approved; (2) amend the conditional zoning ordinance for the Weirbridge Village Project in accordance with this package (and any changes); and (3) approve the accessory tower structure depicted in the package. This motion was seconded by Councilman Newman and carried unanimously.

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

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

##### **A. ORDINANCE NO. 3636 - ADOPTION OF THE 2008-09 ANNUAL OPERATING BUDGET**

Chief Financial Officer Ben Durant said that this report presents the Fiscal Year 2008/2009 Annual Operating Budget for City Council's consideration before adoption.

The Fiscal Year 2008/2009 Annual Operating Budget was formally 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 and June 6, 2008. City Council conducted a public hearing on the budget on June 10, 2008.

At the June 17, 2008, budget worksession, Council requested that staff provide additional information on the City's investments in public safety over the last three fiscal years, and also provide data on transit ridership. Staff has provided Council with that information. Staff has also provided information detailing the impact of asphalt and concrete price inflation on the City's street resurfacing program over the last eight years.

Regarding the budget adoption, the net proposed operating budget presented to City Council on May 13th was set at **\$135,406,757**, including a General Fund appropriation of **\$88,865,552**. At the June 17, 2008, budget worksession, Council requested that staff make the following additions to the proposed General Fund budget:

- \$10,000 to fund the Each One Reach One program, a summer basketball program for two hundred-fifty youth up to age 21 years, with a year-round mentoring and tutoring component. The objectives of the Each One Reach One program are to improve academic performance and reduce juvenile crime;

- \$50,000 for regional economic development initiatives;
- \$13,092 to fully fund the City Council training allocation proposed by staff at the June 17 worksession.

In summary, the changes endorsed by Council on June 17 left the General Fund budget out of balance by **\$73,092**. To re-balance the General Fund budget, staff is proposing to appropriate revenue from the Huntington Chase annexation area. The legal challenge to this 2002 annexation was recently resolved in the City's favor, and the Huntington Chase area will become part of the City in July 2008. Total revenue from this annexation is estimated at **\$80,000**. Staff will budget this \$80,000 in additional revenue to cover the \$73,092 in costs added to the budget and place the remaining \$6,908 into a contingency account. The net result of these changes increases the operating budget to **\$135,486,757**, and the General Fund appropriation to **\$88,945,552**.

As staff discussed with Council at the June 17 worksession, the proposed changes to the wholesale water rates and fire inspection fees are included for consideration along with the Budget Ordinance.

In summary, the budget themes are (1) no tax rate increase; (2) ongoing support of strategic initiatives that make Asheville affordable, green, safe and sustainable; (3) adequate compensation package; and (4) prudent belt tightening given a slowing economy.

Staff requests that Council review the FY 2008/2009 Annual Operating Budget, including the changes noted above, and make necessary recommendations or adjustments followed by adoption of the Budget Ordinance.

Councilman Mumpower voiced concerns regarding last minute additions to the budget, incremental progress to drug interdiction, reduction in our Fund Balance and the transit budget.

Councilwoman Cape acknowledged that the budget is not perfect, but staff has done a good job. She noted that throughout the budget process Council did not even talk about a tax increase. She noted that there was a 9% public safety increase over the past five years and that is a good commitment to public safety.

Councilman Newman felt this is a responsible budget that addresses some important priorities without a property tax increase on citizens who already pay more than their fair share for infrastructure in our region. Regarding structural challenges the City has from a fiscal standpoint, Council needs tools to address our lacking infrastructure needs. The only tool we have is to raise property taxes. We need new revenue sources or we need an ability for our tax base to grow as the City grows. There are legislative factors that affect our ability to grow like all other cities in the state. Other cities can use voluntary annexation so that as new developments come into the city, the city will grow and the tax base will grow. Now our state legislators are contemplating taking away the only vehicle the City has to grow, which is a City Council initiated annexation. We need to work with our legislators so Asheville can grow as a city when new developments are built, or we will have to neglect our basic infrastructure and basic services or be forced to raise property taxes. We also need to look for ways to talk with the County government about possible efficiencies between our level of government and their level of government.

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

Councilwoman Jones moved for the adoption of Ordinance No. 3636. This motion was seconded by Councilwoman Cape and carried on a 5-1 vote, with Councilman Mumpower voting "no."

**ORDINANCE BOOK NO. 24 - PAGE**

**B. SMALL BUSINESS HEALTH CARE INITIATIVES**

City Attorney Oast said that this is a review of legislation authorizing health insurance pool pilot program

Representative Bruce Goforth, whose district includes Buncombe County, has introduced House Bill 1229. If adopted, the bill will authorize the establishment in Buncombe County of a pilot program for a health care insurance pool. The pool would involve voluntary participation by public and private employers, from Buncombe and the surrounding counties, and would involve each participating employer contributing to a fund. This contribution would be matched with funding from State, federal and private sources, to subsidize private insurance for segments of the WNC population that are underserved by medical care, due to cost and lack of adequate insurance.

The law would also provide a tax credit to small businesses that maintain and contribute to a health insurance program for their employees.

As the governing board for the largest municipality in WNC, and one of the largest employers in the county where the pilot program will be centered, the City Council may wish to take a position on this legislation, or to request more information.

The City's Health Insurance Consultant has reviewed the legislation. The pros and cons identified in his analysis are summarized below.

Pros:

- Potential to reduce the number of uninsured and underinsured individuals in Buncombe County and WNC
- Potential to reduce health care costs for some segments of the population
- Potential for improved wellness programs and health education

Cons:

- Size of pool may have little effect on costs
- Voluntary health insurance pools typically have higher risk participants
- Cost savings from additional government funding might not be sufficient to affect administrative cost
- Possibly redundancy with the already-existing N.C. Health Insurance Risk Pool
- Limited uses

Information on the fiscal impact is not available.

Council should review and consider whether to support the legislation as a policy matter. At Council's direction, staff will draft the appropriate resolution.

Mayor Bellamy said that the Department of Insurance supports this pilot project, however, a health insurance provider does not support the initiative, and therefore, the legislation was withdrawn.

After a brief discussion, Council supported being kept informed of this proposed legislation and looked forward to staff bringing back a report at the appropriate time.

**C. REVIEW AND DISCUSSION OF CITY & COUNTY PROPOSALS FOR DEVELOPMENT ON THE SOUTH SIDE OF CITY-COUNTY PLAZA**

Public Information Officer Laurie Saxton reported on the actions taken by the Buncombe County Commissioners at their meeting on this same date. She said that the County provided to Council a proposed resolution (which was the subject of their meeting) encouraging a land swap between the City of Asheville and Black Dog Realty and Swag Holdings and intent to establish public park. She said the Commissioners heard reports on the history of the parcel on the Parkside project. The Commissioners received an amendment to the resolution extending the time period from 30 days to 60 days for the City to conduct its analysis of the possible land swap. As stated in the resolution, the Commissioners are still exploring the possibility of reacquiring the Parkside property. The County Manager said that an offer has been made to Mr. Coleman and he apparently has not responded yet, but is considering that offer. The County Manager also said that the County is in the process of having the park property appraised and that that appraisal will be complete in the next 3-4 weeks. With all that information the Commissioners unanimously approved the amended resolution.

Councilwoman Cape noted that the County needs 3-4 weeks for an appraisal but they've only given the City 60 days to determine whether or not the City would do a land swap, which is a much more complicated piece of property with infrastructure. In addition, the proposed resolution requests that the City commit to a land swap within that period of time. She felt that was impossible. She felt there needs to be a willingness with the County and Mr. Coleman to enter into discussions. The City has always had the willingness to enter into discussions on that piece of property, but not been given the opportunity to do so. She affirmed the City's resolution that the County reacquire that park land.

When Mayor Bellamy asked what happens after their appraisal is complete, Ms. Saxton believed that was in conjunction with the following portion of their resolution "2. That to help defray the costs associated with relocating any streets, utilities or parking as required by such a land swap, this Board will pay to the City of Asheville an amount equal to the appraised value per square foot of the Black Dog Realty and Swag Holdings properties as they currently exist for the total square footage of land to be added to the southern edge of the City-County Plaza area resulting from any land swap between the City of Asheville and Black Dog Realty and Swag Holdings."

Councilman Mumpower questioned the value of Council deliberating this in a vacuum. He wondered if postponing it would provide the opportunity for additional conversation between Council and staff and their Commission and staff.

Councilman Newman questioned why the County was just now doing an appraisal of the 3,000 sq. ft. of park property they sold to Mr. Coleman. City Attorney Oast responded that the sale was completed in 2006 and he didn't know what information was used to assess the value back then, but it could be in the meantime the price of the property has gone up.

Councilman Newman supported scheduling this item for discussion at our next Council meeting. He believed that development of the building in its current configuration would be a real travesty for the future of Asheville. Personally he would be open to exploring all options for preventing the construction of that building in its current configuration, ranging from any cooperative efforts we can continue to make for the transfer that property back voluntarily to the County. If that does not happen, he would be open to the City taking legal action to challenge the legality of this sale of this public property to a private developer. Citizens in our community have already initiated such a lawsuit and he believed it would say a lot about City government to side with the citizens in Asheville. He isn't saying he would not consider a property exchange, but that would not be his first choice. To enter into a public/private partnership in the present environment would be practically unworkable. Public/private partnerships are always difficult even in the best conditions.

In response to Councilwoman Cape, City Manager Jackson said that he has consistently communicated to Mr. Coleman is that if he has a proposal to the City that the presentation should be made to Council at a Council meeting.

Mayor Bellamy said that there are members of the community that do not want the development to move forward and don't want Council to swap land. She noted that the County has passed a resolution for the City to do a land swap, but they don't own the property. And, an application has been received by City staff that meets the letter of the law and will be reviewed by the City's Technical Review Committee (TRC). There has been no willingness on Mr. Coleman's part to come forward and want to work with the City. She suggested writing a letter to Black Dog Realty and Swag Holdings stating that there is a willingness to talk while still acknowledging the process.

Councilman Mumpower would not be supportive of the City participating in a lawsuit. He feels strongly that we should not side-step the existing development process, which includes the involvement of stakeholders. Personally he was not in favor of an arbitrary land swap that sidesteps the normal development processes. He suggested City staff be instructed to contact Mr. Coleman, within the limits discussed today, and see if there are some points of compromise.

Councilman Mumpower moved to postpone this item until the next formal Council meeting on July 22, 2008, and instruct staff to contact Black Dog Realty and Swag Holdings to see if they would be open to discussions. This motion was seconded by Vice-Mayor Davis.

Vice-Mayor Davis felt engagement with Mr. Coleman is very important. If the matter is postponed to July 22, it will give the staff an opportunity to advise Council what the Technical Review Committee's implications are if the building is built as allowed by our ordinances and also give Council time to consider other possibilities. He would not support joining in a lawsuit.

Mayor Bellamy noted that Council would need to have direct contact with Black Dog Realty and Swag Holdings to see if they would be open to discussions, and not through the County Commissioners.

In response to Councilwoman Cape, Interim Planning & Development Director Shannon Tuch said that the TRC will be meeting on July 7, 2008, to review this project. She said at that meeting, it will be the final public review. Ninety percent of TRC projects are approved with certain conditions. Once the project is approved the designers go back and address the site plan revisions and any other conditions that need to be addressed and re-submit that information to the pertinent staff. We have already identified a number of fairly significant conditions that would have to be addressed before permits could be issued. But essentially it's conditionally approved. Often times the staging can be approved or conceptually approved. Then there are subsequent conversations between the relevant technical staff and the developer and contractor because sometimes that information is not available at the time of the TRC meeting. The City will require a no-build easement for the east side of the building (the side that faces City Hall) and that easement needs to come from Buncombe County. The no-build easement says that they will not build anything within 20 feet in order to allow their windows. Without that easement they would have to build a solid firewall with no windows on the east side of the building. If the building were to have a solid brick firewall on the east side, that would be a significant change and the project would have to start over again and go back to the Downtown Commission.

In response to Councilwoman Cape, City Attorney Oast said that our research indicates that the property to the east of where the proposed project will be built is owned by Buncombe County.

Ms. Tuch said that staff has also identified the need for easements for the permanent improvement of the road that is proposed as part of this application. That easement would have to come from Buncombe County, the City of Asheville and the Pack Square Conservancy. City

Attorney Oast said that the easement decision would essentially be a decision to convey interest in real property and the easement would have to come before Council.

Ms. Tuch said that the TRC would identify these conditions as well as other common site plan conditions that would have to be addressed prior to the release of any approvals. The developer would follow-up with the appropriate staff later and provide the easements and any recorded documents.

When Councilwoman Cape asked about the disruption of City business with regard to staging, Ms. Tuch said that has been discussed for some time. There are a number of ideas and the City has had experience with construction downtown on how to stage appropriately.

Councilwoman Jones was open for discussion and supported asking our staff to talk with Mr. Coleman. She wanted to highlight to the County Commissioners to continue to try to reacquire that land because she feels that is the best way to resolve this.

Councilman Mumpower restated his motion to (1) postpone this item until the July 22, 2008, meeting; (2) instruct City staff to make efforts to meet with Black Dog Realty and Swag Holdings to see if they would be open in exploring possibilities; (3) instruct staff to provide Council a timely update of the TRC process along with the next steps involved in the development process; (4) receive clarification on what the established procedure is for developing property in that area of the City; and (5) encourage Buncombe County to continue their efforts to resolve the issue in a constructive fashion per the previously-adopted Council's resolution. Vice-Mayor Davis agreed with this restated motion.

There was a brief discussion of Council postponing this until their formal meeting on July 22 or their worksession on July 15, given that the TRC will be reviewing the project on July 7.

Councilman Mumpower amended his motion that the item be posted until the July 15, 2008, City Council worksession. Vice-Mayor Davis accepted that amendment.

When Mayor Bellamy asked if there was any way Council could ask for a delay in consideration of this project by the TRC, City Attorney Oast said that to the extent that he has attended TRC meetings, the request for a continuance is at the request of the applicant or staff if there is something significant from the application missing. He would not advise staff to request a continuance unless there is a good reason to do so.

Councilman Newman felt there were significant legal questions about the sale of this public property to a private developer. He requested at the next meeting a closed session to review the legal issues and that we also ask the legal representative for the citizens of Asheville, who have initiated the lawsuit challenging the sale of this public property, in order to hear their legal perspective on this as well.

In response to Councilwoman Jones, City Attorney Oast felt that if a no-build easement is required, it was his opinion that it would require a vote of the County Commissioners.

The restated and amended motion made by Councilman Mumpower and seconded by Vice-Mayor Davis carried on a 5-1 vote, with Councilwoman Jones voting "no."

## **VI. NEW BUSINESS:**

- A. RESOLUTION NO. 08-143 - RESOLUTION TO INCREASE THE RENT AND PRICE LIMITS USED TO DEFINE "AFFORDABLE HOUSING" FOR THE PURPOSE OF THE HOUSING TRUST FUND AND FEE REBATE PROGRAMS**

Community Development Director Charlotte Caplan said that this is the consideration of a resolution to increase the rent and price limits used to define “affordable housing” for the purpose of the Housing Trust Fund and Fee Rebate Programs.

The existing maximum sales prices and rents for the Housing Trust Fund (HTF) and Fee Rebate programs were approved by Council in October, 2006. Since then:

- Area median income has increased about 4%
- Construction costs have increased by at least 10%
- Sales prices of existing homes have increased by about 20%
- Rents for existing units have increased by approximately 7% and rents for newer (1-5 year old) units by 11%
- No new HTF applications received for homeownership development in last 12 months
- Use of the fee rebate program has declined sharply

Developers have expressed concern to staff that they can no longer build homes to meet the current limits. Even Habitat for Humanity now prices its homes over the current limits and can no longer take advantage of the fee rebate program.

The Housing & Community Development Committee discussed this issue at their May 19 meeting. They were aware that the Mayor’s Affordable Housing Task Force would shortly recommend eliminating the sales price cap altogether, while keeping income caps and rent caps. They decided that, even if that recommendation is eventually accepted, it is desirable to update existing price and rent limits now in order to maintain the usefulness of the programs in the short term.

Proposed Rent Limits: Ms. Caplan reviewed information which sets out recommended maximum rents for developments seeking Housing Trust Fund loans in 2008-09. There are two sets of rents, one based on affordability for a household at 75% of area median income and a lower set of rents which are affordable to a family at 60% of area median income. The lower rents apply only to developers seeking the most favorable loan terms.

Rent limits are not needed for the Fee Rebate program. To avoid administrative complexity, rebates for rental units are contingent on the units being assisted by another local, state, or federal program that requires continued affordability, such as the Housing Trust Fund or the HOME program.

Proposed Price Limits: Ms. Caplan then reviewed information which sets out recommended increases averaging about 6% in the sales price limits for both programs. These include a restored differential for 4-bedroom homes because Habitat for Humanity is building significant numbers of these homes and the prices are inevitably higher.

Regarding the City Council Strategic Operating Plan, Council has recently adopted the following four goals: *sustainable, affordable, green and safe*. This report’s recommendations address the sustainability of the City’s affordable housing programs by ensuring that key parameters are updated in line with economic trends.

The changes are consistent with the City’s Strategic Housing and Community Development Plan for 2005-10.

Pro:

- Increased price and rent limits will restore the programs’ availability to developers and encourage development of additional affordable units.

Con:

- Sales prices and rents at or near the new limits will be less affordable in relation to median income.

There will be no impact on the Housing Trust Fund, which has a fixed appropriation. Fee Rebates are an expense to the general fund which depends on developers' usage of the program. Total costs peaked at \$57,000 in Fiscal Year 2005 but have since declined to \$31,000 in Fiscal Year 2007 and only \$4,000 in the first half of FY 08. The recommended changes will tend to reverse this decline.

City staff recommends City Council adopt a resolution to increase the rent and price limits used to define "affordable housing" for the purpose of the Housing Trust Fund and Fee Rebate Programs.

Councilman Newman said that the City does a lot of things to support affordable housing in the City, but the really most basic way that we can provide an incentive for affordable housing that would apply to everyone is to provide some form of basic reduction in the fees you have to pay to the City when you build affordable housing.

Councilman Mumpower personally felt the City should not be involved in the business of subsidizing some people's housing with taxes that are paid largely by other people's houses who afford or otherwise produce their housing opportunities. He felt that \$125,000 for a one-bedroom apartment is not affordable. He felt that is an artificial figure used as a trigger for subsidies and did not believe it was realistic to meet the needs of the people that we want to help.

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. 08-143. This motion was seconded by Councilwoman Jones and carried on a 5-1 vote, with Councilman Mumpower voting "no."

## **RESOLUTION BOOK NO. 31 – PAGE 240**

### **B. RESOLUTION INCREASING THE CITY MANAGER'S AUTHORITY TO SIGN CERTAIN CONTRACTS ON BEHALF OF THE CITY OF ASHEVILLE**

Assistant City Attorney Curt Euler said that this is the consideration of a resolution increasing the City Manager's authority to sign certain contracts on behalf of the City of Asheville.

The City of Asheville deals with thousands of contracts on a yearly basis. In an effort to streamline the process for better customer service for vendors and between City Departments, City staff, through a Legacy of Excellence (LX) Team, has proposed numerous revisions to the City's internal contracting process. One of the main recommendations was to increase the City Manager's authority in terms of dollar thresholds to sign contracts on behalf of the City. Currently, the City Manager is authorized to sign informal construction contracts under \$100,000.00, service contracts under \$50,000.00 and professional service contracts under \$50,000.00 without formal City Council approval. In order to reduce the time needed to execute a contract, the LX Team is recommending that the City Manager have authority to sign all contracts under \$100,000.00 without formal City Council approval.

This resolution meets the one of the City Council's Strategic Goals by strengthening efforts to create measurable goals, accountabilities and outcomes for the City's contracting process.

Pros:



- Reduce the number of contracts brought before City Council.
- Reduce the amount of time it takes for the execution of a contract \$50,000.00 and over.

Con:

- Less Council oversight on service and professional service contracts between \$50,000.00 and \$100,000.00.

City staff recommends City Council adopt a resolution increasing the City Manager's authority to sign service and professional service contracts and purchase equipment and apparatus without City Council approval from under \$50,000.00 to under \$100,000.00.

When Councilman Mumpower asked about how often staff feels obtaining Council approval is a delay, Mr. Euler said that occasionally an item takes 2-3 weeks to be considered by Council, sometimes due to the fact that staff doesn't get the information to the Clerk as quickly as they should have.

Councilman Mumpower didn't think this is a big problem. He felt that Council should be given the opportunity to discuss a \$100,000 expenditure. It's not that he mistrusts the City Manager, but it has not been demonstrated that there is a problem obtaining Council approval. He could not support the action.

Mayor Bellamy noted that as soon as an item is requested to be on the consent agenda through either herself or the Clerk, it is added immediately.

Councilwoman Jones moved to adopt a resolution increasing the City Manager's authority to sign certain contracts on behalf of the City of Asheville. This motion was seconded by Councilman Newman.

Councilman Newman said that Council has a full awareness of all contracts as they receive a report of contracts of any size that are signed by the City Manager.

In response to Councilwoman Cape, City Manager Jackson said that he expedites contracts when they are given to him. The challenge is that he needs to support the term who was asked to find ways to streamline the process, make our business more efficient, and be a better partner to our business community. This was their recommendation.

After a short discussion, Councilwoman Jones pointed out that the expenditures are already budgeted and some discussed during the budget process. This would eliminate the need to discuss the expenditures twice.

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

The motion made by Councilwoman Jones and seconded by Councilman Newman failed on a 3-3 vote, with Councilwoman Cape, Councilwoman Jones and Councilman Newman voting "yes" and Mayor Bellamy, Vice-Mayor Davis and Councilman Mumpower voting "no."

**C. RESOLUTION NO. 08-144 - RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE AN AGREEMENT WITH THE BUNCOMBE COUNTY GANG PREVENTION TASK FORCE AND OTHER LOCAL SERVICE AGENCIES FOR THE DEVELOPMENT OF A COMMUNITY GANG PREVENTION COALITION**

Mayor Bellamy said that this is the consideration of a resolution authorizing the Mayor to execute an agreement with the Buncombe County Gang Prevention Task Force and other local service agencies for the development of a Community Gang Prevention Coalition.

Mayor Bellamy said that earlier this year the Gang Task Force renamed itself to RICH Task Force, which means Reaching, Inspiring, Character and Hope. It's an opportunity for service providers and community members to come together to talk about how they address teens and youth. One of the first things they have done is identify several of the services that are serving our youth and most of them are under the age of 13. Because we use City staff to help notify the attendees of the meetings and take minutes, it's imperative that we get that support from Council to move forward as a Coalition supported by City Council.

In response to Councilman Mumpower, Mayor Bellamy said they are working with the Juvenile Control Prevention Counseling in looking at the legislation that has been approved by the Senate that requires every county to have a Gang Task Force to look at gang issues. There is conversation being had on how we work together to meet the State's mandates as well as our community needs.

When Mayor Bellamy opened the floor up for public comment, none was received.

In response to Councilwoman Cape about how a Task Force is established, Mayor Bellamy said the task forces she has worked with have been through invitations by the Mayor. She said the Task Force is county-wide and includes Buncombe County school system, Asheville City school system, several service providers, pastors in the community, community members who have a commitment to want to see something addressed, etc. She also said that the Asheville Police Department has been sending representatives to the meetings as well. The Task Force has said that they would do what they could to support the Police Department as well.

When Councilwoman Cape asked if there was a budget that goes along with the Task Force, Mayor Bellamy said a budget is not being asked for at this time. The City's role in the Coalition would be to maintain the invitation list, ensure proper public notification of meetings and provide meeting space.

Mayor Bellamy noted that at Vice-Mayor Davis' recommendation, a member of the Affordable Housing Task Force was added to the Community Gang Prevention Coalition.

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

Councilman Mumpower moved for the adoption of Resolution No. 08-144. This motion was seconded by Councilman Newman and carried unanimously.

## **RESOLUTION BOOK NO. 31 – PAGE 242**

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

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

#### **A. Transit System Discussion**

Mr. Mike Fryar voiced concerns about the transit system. He presented Council with the following information while explaining his concerns: (1) Ms. Pam Stewart's letter of resignation dated June 16, 2008; (2) letter dated March 15, 2008, from Mr. Lonnie Blair to then Director of the Transit Services Department Bruce Black; (3) letter dated March 27, 2007, from Mr. Lonnie Blair; (4) copy of Leon Alder's resume (General Manager for First Transit); (5) copy of Transit Services budget; (6) chart of night ridership and cost for UNC-Asheville; and (7) chart of salaried employees at the transit center, showing number of years of service. In summary, the existing employees have no trust or respect for the City as City staff did not even consult with the current

General Manager (Lonnie Blair), who has 36 years of service to the Asheville Transit, when discussing a change of management company.

In response to Councilman Mumpower, City Attorney Oast said that some issues are between the management company coming in and current transit employees and other issues are personnel in nature and involve City employees.

Mayor Bellamy said there are some working conditions we can talk about, such as hours of operation, partnerships and their effectiveness, and the Transit Department as a whole. She cited an instance where Council asked that the number of employees in a City office be changed, so there is precedent for Council to talk about that.

Councilman Mumpower requested a worksession agenda on this matter. He asked (1) for additional conversation about the City's arrangement with UNC-Asheville and the budgetary realities of that relationship; (2) for clarification, in terms of dollars and percentage of time, on the number of staff in the transit system, whether it be part-time association or full-time; (3) for information on the current staffing pressures and what those pressures consist of; and (2) if there are any contractual concerns.

Mayor Bellamy said that an issue is scheduled on August 19 regarding salary trends and she felt we could expand that conversation to include this discussion.

Councilman Mumpower requested a brief staff summation of his requests at staff's earliest convenience, but prior to the August 19 worksession.

City Manager Jackson said that there are policy issues and then there are complaints of impropriety, dishonesty, etc. He takes the later as very important and gives it a high sense of urgency. In the case of complaints of dishonesty, he met directly with Ms. Stewart (after she had submitted her letter of resignation) and invited her to provide information that would allow him to investigate those complaints. He would do that with any complaint about any department or any operation. He is 24/7 when it comes to complaints of customer service or any issues of integrity or inappropriate behavior by City employees. That does not wait for items to be considered by this Council. That is his commitment to integrity and responsiveness. Those are matters of urgency. Matters of the UNC-Asheville's relationship, budget staffing, ridership, etc., will be gathered by the Director of Transportation and Engineering and her staff at the earliest possible time. That information will be in a staff report given to the City Clerk so that the Mayor can schedule it at the earliest convenience.

Councilwoman Cape felt it would be beneficial to let the Transit Master Plan bring forward solid information.

Vice-Mayor Davis hoped that we are listening to what the employees have to say and give their comments consideration.

Mayor Bellamy thanked the bus drivers for their efforts during the fare free program. She acknowledged that it put a lot of pressure on staff and the entire transit system. Noting that the transit employees are not directly City employees, Council does want them to be heard. The new management company should send someone to listen to the employees concerns. She personally would like Mr. Blair to continue in that position and it appears like the transit system staff would like some advocacy done on their behalf with regard to that. She supported a budget amendment to acquire fare boxes for our buses. She also felt that with transit moving to a multi-modal system, it should be a stand alone department.

In response to Mayor Bellamy, City Attorney Oast said that with a transit management company, Council's ability to negotiate over working conditions is limited. There are certain negotiations the City can work on with the management company, but not direct negotiations with

their employees. Per the Mayor's request, he will research, for the August 19 worksession, what would have to happen to have the management employees become City employees.

**B. Blue Ridge Rollergirls**

Ms. Jennifer Possick spoke to Council about the success of the Blue Ridge Rollergirls and urged Council's support.

**C. Parkside Project**

Mr. Dwight Buckner supported a land swap with Mr. Coleman which would save our 750 year old magnolia tree; work better for a performing arts center; honor the City's commitment to the Pack Square Conservancy; and the public would be getting their original park back.

**IX. ADJOURNMENT:**

Mayor Bellamy adjourned the meeting at 10:37 p.m.

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CITY CLERK

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MAYOR