

Tuesday – September 16, 2008 - 3:00 p.m.

## Worksession

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

Absent: None

### WATER SYSTEM MASTER PLAN UPDATE

Interim Water Resources Director Robert Griffin said that a Water System Master Plan is typically updated every 5-10 years. The City of Asheville Water Resources Department's Master Plan was last updated in 1995. A Water System Master Plan helps project future area growth and what water system updates will be needed to accommodate that growth.

In June 2007, the Water Resources Department partnered with Jordan, Jones & Goulding (JJG) to update the Water System Master Plan. JJG has completed their study and made the following projections and recommendations:

- Buncombe County Growth – In 2007, Buncombe County population was 243,565. In 2012, 2017 and 2037, the population is projected to be 264,326, 285,088, and 368,135, respectively. The major growth is projected to be in the southern part of Buncombe County.
- Model Development – JJG developed a model to project future needs for treatment plants, pipes, pump stations, and valves. Model Development will also provide GIS integrated water computerized hydraulic model and maps.
- System Evaluation – with future growth projections, the water treatment plant capacity will be needed to be increased around the year 2025.
- Capital Improvement Plan – between now and 2037, JJG projects 14 pipeline installations, one pump station replacement, one new pump station, and additional water treatment plant capacity at a total estimated cost of \$60,449,000. This amount does not include recommended annual costs for pipe replacement due to age or any line extensions that the City accepts from developers.

This project is part of the City Council strategic plan to improve City infrastructure.

#### Pros:

- The Water System Master Plan Update will help ensure that Asheville builds the water infrastructure to accommodate future growth.

#### Cons:

- Failure to update the Water System Master Plan will not prepare the Water Resources Department for future growth.

The Master Plan recommends additional long-term improvements that will need to be planned for and financed through future system revenues.

Mr. Eric Nease, Water Resources Practice Leader with Jordan, Jones & Goulding, reviewed with Council the population projections for Buncombe County; and Buncombe County's projected growth to the year 2037.

He explained that the model development (1) treatment plants, pipes, pumps, and valve locations based on the City's mapping system; (2) updated pressure zone boundaries; (3) actual pump data used to simulate pumps; (4) system controls included in model; and (5) model verified to simulate actual system data.

The system evaluation consisted of (1) total system demand for 2037 is 41 MGD; (2) exceeds current treatment capacity of 37 MGD; (3) additional water treatment capacity needed in 2025 ±; (4) pipes evaluated for velocity; (5) tanks evaluated for ability to drain and re-fill; and (6) pumps evaluated for capacity.

Using a map, he then reviewed the recommended improvements.

He explained the growth capital improvement plan summary as follows: Completed by year 2012 would be (1) 6 pipeline projects - \$4,740,000; and (2) Walnut Cove Pump Replacement - \$292,000. Completed by year 2017 would be (1) 4 pipeline projects - \$5,892,000; and (2) New Mills Gap Pump Station - \$1,556,000. Completed by year 2037 would be (1) 4 pipeline projects - \$10,797,000; and (2) additional water treatment capacity - \$37,172,000. The total cost at 2008 dollars is \$60,449,000. These

costs do not include recommended annual costs for pipe replacement due to age.

Throughout discussion, Mr. Nease, Mr. Griffin and Mr. Ron Thomas responded to various questions/comments from Council, some being, but are not limited to: is the Walnut Cove Pump Station needing to be expanded due to the growth in the area; what kind of models or information was used to obtain the Buncombe County growth projections and where the County will grow; how were other area water systems factored into this model; did the consultants look at how we might be working together with other water systems in our area; is there anyway to cost-share with developers if their development overtaxes our pump station; what is the cost of a pump station; is the completion timeline for the improvements realistic; when water lines are upgraded, do most cities spread the costs out amongst present customers, new customers and developers; in the projected Buncombe County population growth chart, were manufacturing or economic industry numbers factored in; should we dredge the existing lakes; and are some growth patterns more expensive for infrastructure than others.

Councilwoman Jones cautioned using this Buncombe County projection model in the future because it was based on a county that didn't have zoning opposed to using a land use plan of where we would like to drive our infrastructure and growth.

In response to Vice-Mayor Davis about discussions with the surrounding communities, Mayor Bellamy said the Land-of-Sky Regional Council is working on a comprehensive water study taking into consideration all the municipalities and the unincorporated areas. Recently the Mayors in Buncombe County met to discuss the same issues about water. She asked the City Manager to provide Council members with information previously provided to the Mayors in Buncombe County. Woodfin is able to grow because of the supplemental water they receive from the City of Asheville. She has asked City Manager Jackson to look at Woodfin's system, which is not run by the Town of Woodfin, about their capital improvement plan and how they will grow.

In response to Mayor Bellamy about staff's recommendation, Mr. Griffin recommended Council modify the Water Master Plan with these updated recommendations, understanding it is a 30-year plan and situations can change.

Mayor Bellamy requested staff research best practices on funding going forward. She suggested staff look at the Metropolitan Sewerage District model on how they deal with impact fees and developments tapping into the sewerage system. We may be able to duplicate some of their successes. She also suggested staff look at other cities around the state that have had to deal with infrastructure upgrades, so the City would not have to bear the full cost of upgrading the pump stations. She also asked we begin some deliberate conversations with the Woodfin Water System and how and where they are going to grow. She looked forward to the City's participation with the Land-of-Sky Regional Council's comprehensive water study and how we can work together regionally.

## **FUEL CONSUMPTION UPDATE**

- Assistant City Manager Jeff Richardson said that the purpose of this report is to update Council on fuel supply and its impact on service delivery.

Recent Hurricanes Ike and Gustav have temporarily interrupted some gasoline supplies to the pipelines that serve North Carolina. As a result of these interruptions, North Carolina is experiencing high gas prices and gas shortages. Staff is currently working to promote the Asheville Transit System during this time as a way to conserve fuel, avoid high gas prices, and avoid gas shortages. Staff is proactively reviewing the City-wide fuel conservation plan on a department-by-department level and making any necessary modifications in the event that the plan needs to be implemented. The conservation plan is designed to provide distinct levels of fuel consumption reduction which, if implemented at higher reduction levels, can impact City services.

As of Friday, September 12, 2008, market conditions and City supply quantities were 26,000 gallons of diesel and 14,000 gallons of unleaded fuel. Fuel conservation measures have been emphasized to City employees. On a department-by-department level review, the City-wide fuel conservation plan is being reviewed for any imperative modification. The Public Information Officer will alert citizens through press releases and website that all City services are continuing as normal.

As of Monday, September 15, 2008, market conditions and City supply quantities were 22,000 gallons of diesel and 17,000 gallons of unleaded fuel. By the end of the day, the City Manager called for implementation of the first phase of the accelerated fuel conservation operational plan for City government. The first phase of the plan will not interrupt police, fire and rescue, and transit services. Fuel conservation measures will be taken in order to make the most efficient use of City supplies. City employees will consolidate services where possible and delay some maintenance functions.

As of midday Tuesday, September 16, 2008, market conditions and City supply quantities were 20,000 gallons of diesel and 16,000 gallons of unleaded fuel.

Conservation measures of Level 1 include (1) no disruption of core City services; (2) delay non-essential travel when

possible; and (3) consolidate services were possible. Conservation measures of Level 2 include (1) no disruption of police, fire and rescue, and transit services; and (2) non public-safety related services will be reduced (a) inspectors carpooling to work sites; (b) planning field inspections are delayed; (c) suspension of street cleaning and tree crew work; (d) yard waste, bulky items and white goods collection will be suspended; and (e) parks center programs. Conservation measures of Level 3 include is to reduce services in order to fully focus on public safety and health as well as transportation.

Our goal is to promote the Asheville Transit as a way to conserve fuel and avoid high gas prices and shortages. Media outreach includes (1) press release on September 15, 2008 to all outlets; (2) contacted television highlighting public transit; (3) newspaper op-ed submitted; (4) radio and public service announcements; (5) website – Asheville Transit is featured; (6) website – all current service information posted; and (7) City Channel – all transit and other information current.

The ridership numbers remain strong over the past two weeks. Arterial route ridership is up on Merrimon Avenue, Hendersonville Road and Tunnel Road. Additional analysis is underway.

The next steps include (1) monitoring; (2) fuel supply management; (3) conservation; and (4) public relations.

This report is for information purposes only as the City is currently remaining in Level 1.

In response to Councilwoman Jones, Mr. Richardson said that he would provide Council with a comparison of ridership before the hurricanes and after.

In response to Councilwoman Jones, Mr. Richardson said that the City will have conversations with the Transit Management Company to make sure they are sensitive to the stressful conditions of the bus drivers as ridership increases.

Mayor Bellamy hoped that if the City must proceed to Level 2 conservation measures, that parks center programs be reduced last as the centers provide affordable after-school care. She again lobbied for buses to run on Sundays.

#### **UPDATE ON STATUS OF PROPOSED PARKING GARAGE AT 51 BILTMORE AVENUE**

Director of Transportation and Engineering Cathy Ball said that the purpose of this report is to update City Council on the terms of the proposed parking garage on Biltmore Avenue. Staff recommends consideration of these terms and approval at the October 14, 2008, City Council Meeting.

The City of Asheville provides public parking in Downtown Asheville as an economic development incentive for merchants, restaurants, retailers and offices. The City currently operates a parking system that consists of three parking garages, several surface parking lots and on-street parking. A parking study prepared by Kimley-Horn and Associates this year evaluated the demand for parking versus the supply in the Central Business District. The study determined that the area know as the Biltmore Avenue had a current peak deficit of parking in the amount of 622 spaces and a normal demand of 476 parking spaces. The proposed location of the garage is a surface parking lot with approximately one hundred parking spaces.

The project is a mixed-use building that includes: an Aloft Hotel; sub-leased retail spaces along Biltmore Avenue; a City owned parking garage (437 spaces); and a component that will be a second phase for an area along Biltmore Avenue and Lexington Avenue to include housing units. The second phase portion of the project will come back through the review process including the Downtown Commission. This site is identified in the City Development Plan 2025: Center City Plan as both a potential parking garage site and as a possible location for a catalytic development because of its important location and size. Catalytic developments are projects that because of their size, location or programming have the potential to stimulate additional investment or provide missing uses that are critical to maximizing downtown vitality.

The initial concept for the building was nine levels above grade on the Biltmore Avenue site and four levels under ground. The Downtown Development Commission was concerned about the height of the building, parking spaces fronting on Biltmore Avenue and the lack of retail space on Biltmore Avenue. The design team moved the lobby to the second level and created a balcony an expanded the footprint of the building to the Hot Dog King site. At the last meeting a subcommittee of the Downtown Planning Commission, they were pleased with these changes.

The current proposed parking garage will have 437 spaces on seven levels. The garage has access points from three streets: one-way in from Biltmore Avenue and Aston Street, and two-way movement at Lexington Avenue. Several garage levels are below grade with the design taking advantage of the natural terrain across the site to eventually meet Aston Street and Biltmore Avenue at grade. The retail spaces and hotel use cover and top the garage along Biltmore Avenue. Along Aston Street the garage fronts directly at the street and provides a driveway into the garage. Public restrooms are provided in the garage with direct access from Aston. Because of the presence of the garage on the sidewalk edge, a space for public art will be provided to

soften the façade and create pedestrian interest.

In summary of the current parking proposal is (1) public (a) 437 parking spaces; (b) public restrooms; and (c) City owns and operates parking garage; and (2) private (no public funds will be spent on private development) (a) 145 hotel rooms; (b) ground floor retail on Biltmore Avenue; and (c) future workforce housing liner on Lexington Avenue.

The retail and hotel uses occupy the frontage areas along Biltmore Avenue and above the street level along Aston Street. The building is seven stories along Biltmore Avenue and measures about 95 feet to the top of the roof structure. Ground level retail space along Biltmore Avenue will total about 4,800 square feet which will likely be subdivided and leased depending on demand. The hotel use occupies the second floor and above as measured from Biltmore Avenue and has 145 guest rooms. A balcony space for the hotel is located on the second level of the building and will serve to activate the street. A hotel amenity floor is provided at the top of the garage level.

Phase Two areas of this project are made up of: a larger space lining the garage along Lexington Avenue and a smaller space adjacent to the retail spaces on Biltmore Avenue. King James, LLC will hold these properties and will develop plans for them at a later date.

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The cost associated with building a parking garage includes property acquisition, design and hard construction. A stand alone parking garage would be \$17,000 to \$20,000 per space. A multi-use parking garage would be \$25,000 to \$30,000 per space.

When Public Interest Projects (PIP), the owner of the property at 51 Biltmore Avenue, approached the City with a public/private partnership, they did not want to sell the property but rather lease this property. Following the financial analysis, the City determined that it was a better financial decision to purchase the property rather than lease. Pubic Interest Projects has agreed to sell at a price of \$3,110,000.

During the course of the last year, the Hot Dog King property adjacent to 51 Biltmore Avenue became available for sale. Our parking consultant, Kimley Horn Associates, evaluated the potential to expand the footprint of the garage to the Hot Dog King property. Preliminary cost estimates indicate that the City would save \$5,200 per parking space or \$2,272,400. PIP has a contract for the Hot Dog King property in the amount of \$1,450,000. The total project savings as a result of purchasing the Hot Dog King property is approximately \$800,000.

Kimley Horn has developed an opinion of probable cost for the parking garage on the expanded footprint of \$1,800 for design and \$26,200 for hard construction. The total estimated cost for design and hard construction of the 437 car parking garage is estimated at \$12,236,000.

In efforts to facilitate a good urban design of the project to include mixed-uses, there are a number of easements and air-rights required for the project. The project is such that it fits together like a three dimensional puzzle. The lowest level of the parking garage fronts under the hotel on Biltmore Avenue, requiring a cross-easement. Some of the hotel will be constructed over the parking garage, requiring air-rights. PIP will retain air-rights over the parking garage on the Hot Dog King property for future residential development.

The terms of the partnership is proposed for sixty years. McKibbon Hotel Group, MHG, has requested a maximum of 35 monthly reserved parking spaces on the Biltmore Avenue level. They have requested an additional 115 evening/weekend parking spaces. The rate for these spaces would be market rate plus a premium rate associated with financing of the dedicated spaces which is estimated at an additional \$39 per month.

MHG and PIP have requested that the \$39 per month be waived. Staff would agree with this provided that the construction cost (hard construction) budget is reduced \$3,000 per parking space. This would result in a total saving to the City of \$1,311,000. MHG may be able to reduce the construction cost by building the hotel and parking garage at the same time. Additionally, the private sector has been able to construct project at a lower cost than the public.

PIP has agreed to sell a portion of the property at 51 Biltmore Avenue and the Hot Dog King Property for \$4.56 million dollars. This sell would include all cross easements and air-rights necessary to build the project as currently designed. Additionally, the City would have the right of first option for the property owned by PIP at 85 South Lexington Avenue, adjacent to the site.

PIP has requested a maximum of 50 monthly parking spaces. The City proposes to lease these spaces for the same terms as indicated above for MHG. PIP has requested to be included in waiving the additional taxable rate if the project is constructed at a \$3,000 cost per space to the City.

In summary of the terms of PIP, the purchase price is \$4,560,000 for land and first right offer (approximately \$1 Million in savings over land use) (a) 51 Biltmore Avenue garage site; (b) Hot Dog King garage site; (c) air rights for parking deck under frontage on Biltmore Avenue; and (d) PIP retains air rights over garage on Hot Dog King land. Regarding the frontage (a) construction staging on Lexington Avenue; and (b) first right of offer to expand deck over 85 South Lexington Avenue. The maximum of 50 monthly parking spaces (1) 60 years; (2) \$101 market + taxable rate (taxable rate estimated at \$39 per space per month); and (3) \$140 per month per parking space.

In summary of the terms of McKibbon Hotel Group (MHG), (1) MHG constructs garage/City takes possession after CO issues; (2) maximum of 35 monthly 24/7 spaces (a) 60 years; and (b) \$101 market + taxable rate; and (3) maximum 115 evening/weekend spaces (a) 60 years; and (b) \$60 market + taxable rate. If MHG saves the City \$3,000 per space from probably construction costs, City waives the taxable rate. (PIP has requested to participate in this savings.) She then explained how this would work.

This project is consistent with the current recommendations of the Downtown Master Plan, City Council's Downtown Parking Plan, Council's Strategic Goals and the 2025 Plan. The Downtown Commission has reviewed the project informally three times and will have a formal recommendation on September 12, 2008. The Technical Review Committee of the City of Asheville will review the project at its September 15, 2008 meeting.

### Next Steps

- This project is scheduled for the Planning and Zoning Commission Meeting on October 1, 2008. Staff has requested this item be reviewed at City Council's formal meeting on October 14, 2008. Staff will request the following approvals at that meeting:

- Conditional zoning;
- Downtown development agreement;
- Parking agreement;
- Land purchase agreement;
- Cross easement/air rights agreement;
- Reimbursement resolution; and,
- Construction management agreement.

The project would move into the final design stages after the October meeting. Construction would be expected to being in the Summer/Fall of 2009.

Considerations of adopting a resolution authorizing the City Manager to execute this contract are as follows:

#### Pros:

- According to the findings of the downtown parking study, this area has a deficit of public parking. This parking garage would address this need.
- Project should allow the development of workforce housing more feasibly due to reduced capital requirements for constructing private parking which in turn supports lower priced housing units.
- Capitalize on relationship with mixed use developer who is willing to partner with the City and make private property available for public use.
- Offer the opportunity to leverage public parking as an economic development tool.
- Offers community benefits such as additional jobs and tax base for the City created by the mixed use elements.
- Public parking helps sustain existing investments and future growth of retail and office uses in the area.
- Public parking is critical for downtown office job expansion.

#### Cons:

- Public-private partnerships tend to be complicated and require additional coordination between the City and the private sector than traditional stand-alone projects.
- Specific performance guarantees must be made by the City to third parties. Corresponding grantees are required of the developer to the City regarding the quality and sustainability of the mixed use components.
- The cost of the land is higher than the appraised value. Originally the owner did not want to sell the property but rather lease the property to the City for sixty years. After the City determined that it was a better financial decision for the City to purchase the property, the owner agreed to sell but with the restriction that they recoup the capital gains taxes.

The pro forma for this project indicates that the annual operating deficit for the first year to be approximately \$650,000. This amount will be reduced every year until the debt service (loan) is paid. After the debt service is paid, the revenues for the

parking garage will exceed the expenditures. All of the operating deficit will be paid from the parking enterprise fund.

Staff recommends consideration of these terms and approval at the October 14, 2008, City Council meeting.

Mr. Pat Whalen, President of PIP, spoke in support of all the things this partnership will accomplish.

Mr. Wes Townsend looked forward to working on this kind of project downtown.

Throughout discussion, Mr. Whalen and Ms. Ball responded to various questions/comments from Council, some being, but are not limited to: who assumes the cost of the extra foundation on the Hot Dog King property in order for PIP to retain air-rights over the parking garage for future residential development; are there any points of vulnerability on this project in terms of the economy; and what is the tentative timeframe to begin construction if approved by Council.

There was a brief discussion regarding predatory towing from the existing parking lot. Mr. Whalen felt that once more monthly parking is made available downtown, non-consensual towing will decrease. He said that he would be happy to work with the City to find a solution to predatory towing.

### **EMPLOYER OF CHOICE PROGRESS REPORT**

Human Resources Director Lisa Roth said that regarding the labor force, (1) the U.S. workforce is aging; (2) in the next 5 to 15 years, 76 million baby boomers will be replaced by only 66 million new employees; and (3) thirty percent of City employees are eligible to retire in the next five years.

Using a chart she explained the percentage change in population by age group for the years 2000-2010.

Regarding competition for labor, (1) finding qualified candidates is becoming more difficult; (2) competing with other government agencies and the private sector for the same talent; and (3) Asheville's cost of living creates recruitment and retention issues.

She then reviewed a cost of living index chart of Asheville, Charlotte, Raleigh and Winston-Salem. The City's lowest wage of \$10.37 per hour with benefits exceeds the \$9.85 per hour with benefits proposed.

She explained how we are bridging the gap with (1) market based pay; (2) health insurance options; (3) flexible work hours; and (4) other benefits. That is working in that (1) the market plan is helping; (2) turnover rate is declining; (3) positive feedback on benefits; and (3) recruitment issues still exist.

Using a chart she showed how the market plan is helping and how the turnover rate is declining.

The old paradigm is "The City pays better than the County but the County has better benefits." She showed a salary comparison of starting pay for a City telecommunicator and auto mechanic vs. a County telecommunicator and auto mechanic. Regarding the benefit comparisons on health insurance comparison – the City budgets approximately \$6,100 per employee vs. the County budgets approximately \$11,000 to \$12,000 per employee. With regard to 401 (k) comparisons, the City provides 5% 401 (k) contribution, whereas the County provides 8% 401 (k) contribution.

She said we need to (1) continue market pay plan until July 2010; (2) classification study underway with completion in July 2009; (3) new compensation structure implementation July 2010; and (4) continuous evaluation of best practices to achieve Employer of Choice goal.

In response to Councilman Russell, Ms. Roth said the City is discussing succession planning.

In response to Councilman Newman, Ms. Roth said that the City is in the third year of the market pay plan.

### **ACCIDENT/COLLISION AVOIDANCE TRAINING FOR YOUNG DRIVERS**

Vice-Mayor Davis said that the Public Safety Committee reviewed the Collision Avoidance Driver Training Program to be offered to high school age drivers.

He said that at the direction of the Public Safety Committee, the Asheville Police Department has evaluated the feasibility of implementing a Collision Avoidance Driver Training Program to be offered to high school age drivers.

Earlier this year, the Asheville Police Department was approached by a citizen who was familiar with a driver training program offered in other areas of the United States for new drivers, in an effort to reduce new driver traffic accidents. Police Department staff member Sgt. Stony Gonce has analyzed several program options in an effort to determine the feasibility and cost associated for offering this type of driver training program.

Pros:

- National statistics show dramatic decreases in new driver traffic crashes for drivers who participate in this type of training.
- Local efforts to emphasize safe driving habits to young drivers can help to save lives.
- This program provides the Police Department community relations outreach opportunities with our youth.

Con:

- Mid-year start-up of an unbudgeted program.

The program cost (\$8,500) is not budgeted in the current fiscal year. Opportunities may exist to obtain private funding assistance from the local insurance industry.

The Public Safety Committee recommends Council consider starting the program either mid-year or at the start of Fiscal Year 2009-10.

- Sgt. Gonce provided Council with a brief overview of the Collision Avoidance Training (CAT) is an advanced defensive driving and vehicle control program. It is a two-day program designed for teenager drivers.

Program objectives include (1) enhance driver awareness; (2) develop skills to anticipate and react appropriately; and (3) develop a foundation of safe driving habits.

The classroom portion, consisting of four hours, covers (1) crashes and driver responsibilities; (2) defensive driving; (3) vehicle safety devices; (4) acceleration/deceleration; (5) vehicle maneuverability; (6) reaction time; and (7) other material. We do want the parents involved in the classroom and driving range portions.

Five basic skills are covered: (1) evasive maneuvers; (2) threshold/emergency braking; (3) forward serpentine cornering; (4) backing; and (5) skid recovery.

There are 8 hours of driving range exercises (1) shuffle steering/figure 8; (2) evasive maneuvers and controlled braking; (3) forward/reserve serpentine; (4) backing; (5) cornering; and (6) skid recovery. Each student provides his/her own vehicle for the driving exercises.

Extra subject material covered includes (1) safety belt usage; (2) drinking and driving issues; (3) cell phone usage; and (4) general driver distractions.

Regarding fees, (1) training is provided by the National Traffic Safety Academy (NTSA); (2) three year NTSA licensing fee of \$7,600; (4) total annual program cost of \$8,500; and (4) cost of \$105 per student (to cover their course material and program fees).

The Public Safety Committee recommendations are (1) to implement the CAT program; and (2) schedule consideration and a budget amendment or include in the 2009-10 budget.

As discussion occurred surrounding support of the program, Sgt. Gonce responded to various questions/comments, some being, but are not limited to: is this program designed only for teens or can it be modified for adults as well; is there a way to solicit some scholarships; is there a private service in Buncombe County or North Carolina that provides this service; is there a system for selecting young adults if the program is a huge success; is there a way to encourage this program other than asking the teens themselves to enroll, i.e., perhaps a requirement to play sports; are there opportunities to cost-share with other partners, i.e., the YMCA Teen Program, Buncombe County or the insurance industry; does the annual program cost of \$8,500 include the \$7,600 three-year license fee; will after-hour law enforcement driver instructors staff the actual program; how much will the after-hour instructors receive in compensation; what will the \$105 per student pay for; is there a system for selecting young adults; if the program is a huge success, is it anticipated if the program is a real success, that it will become time intensive at some point; is there a way to get the kids not pre-deposed to be safe drivers to get these skills; and is it possible to target youth who have already had accidents be mandated to go through this program.

Councilman Russell sees benefits of this program to the City and to the people in the car. This ties in well with City Council's goal of being a safe city. As far as the costs are concerned, he was looking at this program entirely through his company of State Farm Insurance, without the City being involved. Having police officers involved would have a profound impact on the young drivers. He thinks there are ways to almost eliminate the public cost of this and he will be happy to champion the efforts on behalf of the insurance industry.

It was the consensus of Council to support this program and to ask Vice-Mayor Davis meet with Councilman Russell and the Public Safety Committee regarding funding options and to report back to the full Council.

### **REGULATION OF ACTIVITIES AT TRANSIT CENTER**

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City Attorney Oast said this is the consideration of policy direction for activities at Transit Center said that this is the consideration of policy direction for activities at Transit Center

Last week, an individual attempted to conduct voter registration activities in the City's Transit Center. He was advised that such activities were not allowed in the Transit Center. This matter was brought to Council's attention at your September 9 meeting, and Council requested consideration at the September 16 work session.

One of the issues that has been raised with respect to this matter is that the City has no rule or policy regarding activities in the Transit Center. While the City Council certainly can adopt rules and regulations regarding the use of City facilities, State law and the City's Charter also confer this authority on the City Manager and, through the Manager, to the directors of the various City departments. The Manager's authority is subject to the general direction control of the Council, and other general legal and constitutional limitations.

Accordingly, the responsibility for the operation of the transit facility, as well as other City-operated facilities, is the responsibility of the City Manager and administrative staff. Written rules and policies exist for some but not all City facilities. It is not possible to have a set of rules that address every possible activity, and in some facilities, the conduct of users is monitored by those in charge to ensure that operations are not interfered with.

The central issue here – legal and operational – is whether the City can or should limit or prohibit activities in the Transit Center that are not related to the operation of the facility. Such activities, even if limited to non-commercial activities, could include petition drives, speech making, and distribution of leaflets, to name a few (herein collectively “speech activity”).

The Transit Center has been in operation since 1997. Although the issue of speech activities has not arisen often during this time, the Transit Division advises that such activity historically has not been allowed. On a few occasions in the past, individuals wishing to engage in speech activity have been directed to the sidewalk immediately adjacent to the Center, an alternative that appears to have been satisfactory.

The Transit Services Director has identified some operational issues with allowing unrelated activities in the Transit Center. These include:

1. Users of the Center may be distracted and less alert to vehicular traffic, potentially compromising their safety.
2. The Transit Center is an area that frequently sees a high level of pedestrian traffic, when multiple buses are discharging passengers at the same time. The space available for this pedestrian flow is limited, and obstructions to the flow can reduce its efficiency and compromise safety.
3. Activities involving the distribution of leaflets or fliers create the potential for litter in the Transit Center and surrounding area.
4. Activities that involve subject matter that is controversial or offensive to some may create an uncomfortable environment for users and Transit employees, who are essentially a captive audience.

The Transit Center is a use-specific facility that has not historically been used for activities such as voter registration or petition drives. It is not a traditional public forum in the same way that parks and sidewalks are. There is space available directly adjacent to the Transit Center where these activities can occur, and historically have occurred. If these activities are allowed within the Transit Center itself, the City may not regulate them on the basis of content (except for “commercial” activities, which is not always an easy distinction to make). Thus, if the Transit Center is made available for voter registration or another similar speech activity, it essentially becomes a public forum and it is extremely difficult to limit its use for other similar activities.



If speech activity is allowed to occur, the fact that the Transit Center is a use-specific facility may permit the City to take appropriate steps to ensure that the use is not interfered with, such as designating space where speech activity can occur. If this is done, however, there may be practical issues associated with monitoring this activity with a limited staff.

The fiscal impact is difficult to assess without knowing the level of activity that will occur if allowed.

A motion to provide policy direction to the City Manager is appropriate. If the direction is to allow speech activity, it is recommended that the Manager be allowed to designate areas where it can occur, and develop other regulations to ensure that such activity does not interfere with the operations of the Transit Center.

After a brief discussion regarding the inability of Council to permit voter registration at the Transit Center and not allow other first amendment rights, it was the consensus of Council to permit speech activity at the Transit Center with the City Manager designating space where that speech activity can occur, so as not to be overbearing to the customers and so the activities do not interfere with the operations of the Transit Center. In addition, Council directed that the activities be monitored and the City Manager report back to Council for further policy guidance, if necessary. City Manager Jackson said that he would work with the Transit Manager and the City Attorney to have something in place in a week, noting that he would make contact with the person who brought this to Council's attention to advise them of Council's guidance.

## **BOARDS/COMMISSIONS**

It was the consensus of Council to interview Brock Moore, Ronald Maynard and Kyle Ross for the east vacancy on the Citizens-Police Advisory Committee.

It was the consensus of Council to re-advertise for a vacancy on the Civic Center Commission. Vice-Mayor Davis said that the Boards & Commissions Committee will give thought to asking for the age of applicants on our Board & Commission Application, for diversity, not only with race and gender, but with maturity.

It was the consensus of Council to reappoint Stephanie Cooper and James Lewis and appoint Dr. Stephen Hulkower to the Police Officers and Firefighters Disability Review Board.

It was the consensus of Council to interview Michael Orford, Bruce Emory and Larry Chapman for a vacancy on the Transit Commission. David Lack will also be a candidate; however, he will not be brought in for an interview.

It was the consensus of Council to re-advertise for a vacancy on the Civil Service Board.

It was the consensus of Council to invite the Transit Commission to a meeting to discuss their desire for restructuring. Vice-Mayor Davis said if a restructuring is recommended by the Transit Commission, he strongly urged that it be with a staff recommendation as well.

## **Other Business**

Mayor Bellamy reminded City Council of the reception on September 23, 2008, in Room 209 of the City Hall Building at 4:15 p.m. The Chamber of Commerce will present a gift of appreciation to the City for its support of the new Chamber Building and Visitor Center through the Advantage Asheville capital campaign. They will give the City three pieces of artwork to be displayed in the lobby area of Room 209. Former Mayors Sitnick and Worley will be invited as they helped launch and support the campaign during their tenures.

## **ADJOURNMENT:**

Mayor Bellamy adjourned the meeting at 5:50 p.m.

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CITY CLERK

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MAYOR