

Tuesday – October 21, 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: Councilwoman Robin L. Cape

## FUEL UPDATE

- Assistant City Manager Jeff Richardson updated City Council on the fuel status. He said that our gas stations are almost to full capacity and internally, we are continuing the exercise Level I conservation efforts. At Mayor Bellamy's request, City Manager Jackson said that we would provide information on our website regarding the ridership numbers on our buses for the different routes.

## HEALTH OF DOWNTOWN PRESENTATION

- Vice-Mayor Davis, member of the Asheville Downtown Commission (ADC) suggested that Mr. Kelly Miller, Executive Director of the Buncombe County Tourism Development Authority (BCTDA), address Council with the following points from a tourism perspective on issues that are currently affecting or could affect our vital tourism industry.

Mr. Miller said that some of these items made their way to them via phone calls, e-mails, and letters from visitors, residents, and Chamber members, representing consistent themes. Others, such as a master lighting plan similar to Quebec City, are suggestions by Chamber staff that would enhance the Central Business District experience for both residents and visitors.

He presented the following points, which were also presented to the Asheville Downtown Commission:

1. Overall cleanliness: Graffiti, filth, litter, and weeds growing from sidewalks and vacant lots are getting worse. Vacant store fronts remain untidy long after tenants have relocated or closed.
2. Panhandling: This seems to be increasing and is more aggressive, which translates into the perception that downtown is becoming increasingly unsafe.
3. Towing: We have got to collectively get our arms around the towing situation. The installation of the BCTDA funded wayfinding project will help direct traffic to public lots, so this should offer some relief. Still, we receive a fair number of letters from both extremely upset visitors and residents whose autos have been towed. The Chamber is ready to roll up its collective sleeves with other groups to come up with deployable solutions and welcome your input.
4. New construction and visitation coordination: An integrated staging plan that considers visitation patterns (both residents and tourists) with new downtown construction and/or infrastructure improvements could greatly mitigate the impact of these improvements. Encouraging dialog on the front end with all affected parties before work begins or is approved could pay huge economic dividends.
5. Lighting: Asheville needs a lighting master plan like Quebec City. There are streets, nooks and alleys in the Central Business District (CBD) that are fairly dim. Visitors and residents feel safer with better lighting. This might be a great way to save energy if newer technology is considered, as well.
6. Retain longer store hours: More consistent and longer retail hours in downtown have been suggested by visitors to downtown.
7. Downtown tenant mix: Visitors continue to offer positive comments about downtown's authentic tenant mix. Preserving unique downtown shopping and dining experiences aligns with Asheville's brand promise of enrichment. Greenville, South Carolina, targets key businesses that could improve the downtown experience and recruits them into its urban fabric. Is this something the Asheville Downtown Association might want to pursue?
8. Customer service: It's all of our jobs to make sure that we are informed brand ambassadors, going the extra mile to ensure our guests (and residents) feel welcomed, not just in downtown Asheville, but in Buncombe County and western North Carolina. The Asheville Conventions Visitors Bureau (CVB) has an online program designed to achieve this goal and it is being rolled out to area businesses.

He said that downtown Asheville, as a stand-alone destination brand, is at a very critical crossroad. A vibrant, clean, safe, graffiti-free downtown offers enormous strategic advantages for business recruitment, positive visitor experiences, and improved quality of life for residents. It is reassuring to know that you and City staff are working on several of these issues as we speak and for that, we thank you. We welcome the opportunity to assist where we can to develop sustainable solutions that deliver Asheville's brand promise for years to come.

Vice-Mayor Davis said that the City has put resources in to address some of these issues but there are other tasks ahead. He noted there is a tremendous amount of litter, weeds, panhandling and prostitution in our west gateway area into the City. He was concerned about the bad impression being given for people entering the City from this area. He suggested the placement of more trash receptacles along that western gateway area would at least be a start.

Councilwoman Jones was sympathetic to the concerns and recognized how tourism is a part of our economy; however, this is a huge financial impact on the City. She suggested perhaps we could find a cost-sharing formula with the TDA to address some of these concerns.

Mr. Miller said that on any given day there is only about 6-7% of visitors on our streets. He agreed that this isn't so much of a visitor problem but a community problem. He would be willing to work staff and a variety of stakeholders to see how we can address these problems without going to just industry and asking to cost-share.

Mr. Vic Howard, President and CEO of Western Carolina Rescue Ministries (WCRM), dispelled some myths about the homeless and briefed the Council on some statistics from their shelters. He said that some of the clients from the WCRM have worked with Councilman Mumpower on his very successful Top A Stop program. In addition, they are considering a graffiti removal program as follows: (1) the money received by WCRM will go back into the community to help the poor and homeless; (2) they will hire from the people they serve; (3) they will recapture and recycle the waste water from the pressure washing; (4) they will use biodegradable removable products; (5) they recognize that the quicker you remove graffiti, the more it discourages the tagger or artist; and (6) they also recognize that the quicker you catch and remove graffiti, the easier it comes off. He also noted that last year they had less than 1 Police Department call a week to their shelter.

Mayor Bellamy was pleased that the WCRM is willing to be a partner with the City and that they are working to hold the people who use their services accountable. Some people who cause problems in the City are not going to the WCRM shelter. She also noted that the WCRM is working with Buncombe County to provide wet shelter beds. She said the WCRM has men who take ownership and discourage misbehavior and she hoped to see this accountability throughout all our homeless service providers.

Councilman Mumpower noted that there are now about 55 Top A Stops in Asheville and thanked the WCRM for their part in that effort. He suggested the City establish a reward program for graffiti vandals. The City needs to send a clear message that these people are not artists, but vandals. He felt the City should be a role model in removing graffiti off public property quickly. He also suggested a task force made up of approximately six stakeholders that has a sunset date of 30-60 days to address a specific issue. Regarding towing, he felt our goal is to provide a balance between enforcement and fairness. He urged the merchants with parking lots to contact their predatory towing service and let them know their fees represent extortion. He felt that a task force might be able to address the towing issue as well.

Mayor Bellamy was supportive of a task force as well. We are now picking up trash seven days a week, opposed to the 3-4 days. She felt we need to provide the task force with the cost of more trash receptacles downtown along with information on where they are needed. Regarding Pritchard Park, we have refurbished it, added programming and a park ranger. We now also have restrooms downtown. She wondered if the park ranger should be a sworn police officer because there is a noticeable difference between a ranger vs. a police officer. Regarding panhandling, she would like to meet with the magistrates (similar to a previous meeting with the judges) to actually get some accountability through maybe some community service. Regarding towing, perhaps the letters on the signs need to be even larger. Perhaps for the lots that aren't open on the weekends and are not leasing them out to others, maybe we can request they put a chain across the parking lot. We do have a lot of development in our downtown area and she felt we could better coordinate our infrastructure improvements with that development so as not to adversely affect our downtown merchants. The lighting issues could be a topic for the task force. She noted that City Council has invested a lot of money in seeing some steps move forward to make downtown better but there must be some kind of accountability on the users, tenants and the homeless population.

Councilman Mumpower said he wasn't suggesting one task force, but at least two committees to tackle these issues. He also spoke against using a sworn police officer as a site specific babysitter. He felt Council needs to tell the City Manager what we want to see accomplished.

Councilwoman Jones noted that we did have a Downtown Social Issues Task Force that brought Council some creative solutions, most of which didn't work for us. There was also an Asheville Cleanliness Task Force. In terms of cleanliness, we don't really need a task force – just a plan on how to get some money or how to get some volunteers. We know the answers for some of these issues, but just need the money to invest in them.

Vice-Mayor Davis said that we have implemented parts of the Downtown Social Issues Task Force's recommendations after the fact. The City has grown since then. He explained how we need help with the court system to discourage misbehavior. Regarding Pritchard Park, people feel that the park ranger does make a positive difference in the Park and the use of the Park by the general public has gone up a great deal. He felt we need to continue that effort. He felt we will also need to review the programming at Pritchard Park at the appropriate time. He supported efforts to make people feel safe downtown.

Mayor Bellamy suggested Council look at a one capital investment of some type of cleanliness tool to be able to pressure-wash the sidewalks on a regular basis. She recalled that the 2006-07 Cleanliness Task Force was collaboration between the Chamber of Commerce and City of Asheville. It would be great to have a regular schedule of clean-ups. Some immediate items to address might be the need for additional trash cans, cleaning the weeds out of the sidewalks, and pressure-washing the sidewalks. We can also work with the N.C. Dept. of Transportation and find out when they will clean up their roadways into the City.

Councilman Mumpower felt that in Charleston, South Carolina, it's very rare that you are approached by panhandlers or see people misbehaving in that environment. They have found an equation that works for them and we are basically operating under the same laws. His idea of a Task Force is that we create some urgency around it and suggest they be specifically devoted to a single mission, with the outcome of solutions that are cost efficient, legal, creative and that they have accountability. He would be curious to find out where the professional panhandlers are living and if there are ways for us to create some accountabilities for those people. He also suggested we create an expectation in this community that if you come to Asheville and are seeking assistance, there is an expectation that you behavior yourself.

It was the consensus of Council to instruct the City Manager to work on the Task Force concept with Mr. Miller's involvement, if he is agreeable.

Mr. Miller felt we can get our arms around overall cleanliness in a quick way. There is a huge movement around the country about urban gardening. He wondered if there was a way to utilize some of the WCRM clients to train them to work with local businesses to do some beautification. Regarding lighting, the Tourism Product Development fund grant cycle is about ready to begin and they will be closing those applications in January. He would be willing to work with City staff on that and if there is a capital project that fits within the guidelines, that might be something to put forth. They did fund \$1.5 Million for the Wayfinding Program which will help tremendously on the towing problem.

Mayor Bellamy looked forward to the conversations with the BCTDA at the scheduled meeting soon. She also felt Mr. Howard would be open to discussing how his clients can work with the BDTDA. She also noted that Pat Carver from First Citizens might be a good partner on some endeavors.

#### **PROPOSED REVISIONS TO THE CIVIL SERVICE LAW**

Mayor Bellamy said that Council received information earlier this year that there had been legislation drafted and submitted to our legislators for consideration that had to deal with the Civil Service Board. She and Vice-Mayor Davis met with some members of the Civil Service Board on September 19, 2008, after which time she said she would schedule a City Council worksession to discuss the issues as they relate to legislation only and then discuss the next steps.

She presented Council with the following "proposed Civil Service changes for 2008 (to be placed within or amend current language)."

1. **Add the following to Section 2:** Former employees of the City shall be eligible to serve as a member of the Civil Service Board provided they have been separated from City employment for a period of not less than ten (10) consecutive years prior to becoming a member of the Commission. No person shall be eligible to serve as a Commission member if such person directly, or indirectly, benefits financially or otherwise from a business or professional relationship with the City, or if such person has an immediate family member or spouse of the immediate family member who directly or indirectly benefits financially or otherwise from a business or professional relationship with the city. No person shall engage or benefit or indirectly benefit from any contractual work or employment with the City for a period of not less than two years following the expiration date of that person's term of office as a member of the Commission."
2. **Add the following at the end of Section 2:** The Commission Secretary shall perform all required ministerial functions and duties for the Commission including, but not limited to, the electronic recording of and the preparation of minutes of all Commission meetings and hearings, the custody of all Commission records and the posting and issuing of meeting notices to the Commission members and to the public in accordance with the North Carolina Public Meeting Laws. To assist the Secretary in performing the functions and duties, all Commission meetings shall be electronically recorded and transcripts, thereof, made available to the Commission members upon request without charge. All other persons shall be entitled to the Commission's recordings and records upon request pursuant to the North Carolina Public Records Act.
3. **Add the following as Section 9 and renumber the Subsequent Sections accordingly:** By a majority vote of its members

present at any of its official meetings, the Commission, is authorized to designate independent counsel of its choice to advise and/or to represent the Commission on such occasions and in such matters as the Commission may, from time to time, deem appropriate and necessary. The City shall be responsible for the payment of such professional legal services as the Commission deems necessary for the conduct of its official functions and duties. In order to avoid the appearance of any possible conflict of interest, the Office of the City Attorney shall serve as legal advisor to and/or as attorney for the Commission only for those matters or proceedings when specifically requested to do so in writing that has been signed by not less than four members of the Commission.

4. **Add the following to the end of Section 2:** Regular meetings of the Commission shall be held at least once every month at a time and place to be determined by the Commission. The deadline for receiving items for the regular monthly Commission's meetings shall be seven (7) days prior to the meeting. Special Commission meetings may be called by the chairman and shall be called upon written request signed by two or more Commission members and submitted to the Commission Secretary not less than seven (7) days prior to the date of requested meeting. The notice for all meetings shall contain a meeting agenda which shall include a section for other business to hear and consider any other matters related to the Commission's function and duties, which may be addressed by any member of the Commission and/or by any person in attendance.
5. **Add these words to the end of what is now Section 10:** Willful or deliberate violation of the Asheville Civil Service Law or Civil Service Rules by any person shall constitute a misdemeanor punishable by fines not to exceed the sum of \$500.00. Any City employee or any City official who threatens or intimidates other employees from exercising their rights under the Civil Service Law or Civil Service Rules shall be subject to discipline by the City, including dismissal of employment with the City.
6. **Add to the end of Section 2:** No uniform employees of the City of Asheville shall be prohibited, directed or discouraged in any manner by a supervisor from wearing his/her uniform while in attendance at any Commission meeting.
7. If any section, subsection, subdivision, sentence, clause or phrase of this act shall for any reason be held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining portion if this act.
8. All laws, rules or clauses in conflict with the provisions of this Act are hereby superseded and/or repealed.
9. These amendments shall become affective upon Ratification."

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Councilman Mumpower, liaison to the Civil Service Board, felt this is not the appropriate forum to tackle this comprehensive undertaking. With us being currently involved in litigation, he didn't feel this was the ideal time for us to initiate this undertaking. It would seem that the model that was used in the past to modify our Civil Service Law would be appropriate today. That model included City staff, legal advisors, members of the Civil Service Board, employee representatives and others that did the brunt work to create a recommendation for the Council.

In response to Councilman Mumpower, City Attorney Oast said the last time the Civil Service Law was amended was in 1999 and when that happened there were employee representatives, management representatives, member of local delegation, and perhaps a member of Council. It was a task force that reviewed and suggested some changes to Civil Service Law. There was a lot of give and take and we went to Raleigh to talk with the legislatures too. The outcome was the result of a lot of negotiations, but the Law is better as a result of it. What they were dealing with was a Law that had last been amended in 1977 and before that 1953. We updated a lot of it and the process went well.

In response to Councilman Mumpower, City Manager Jackson said that Assistant City Manager Richardson prepared a memorandum with the recommendation of establishing a City Council Blue Ribbon Committee Proposal: Study of the Asheville Civil Service Board: Analysis on Performance Measurement and Cost Control. That would be his recommendation in terms of a comprehensive review of the statute.

Mayor Bellamy's goal is that these revisions be negotiated and if that happens we may not need legislative changes. She felt the Civil Service Board was open to negotiations with Council for Board changes and/or legislative changes.

Councilman Mumpower felt the City should wait until the outcome of the legal entanglement regarding the 5<sup>th</sup> member to the Civil Service Board. He spoke strongly against any action today but would support the model for a comprehensive review of the Civil Service Law as recommended by City Manager Jackson. If we move forward with this, he felt it was fair to say our legal representation and management might have some issues where improvements might be made; however, he feels that a committee could target the potential modifications of the ordinance.

Councilman Russell agreed with Councilman Mumpower in supporting the City Manager's recommendation of a comprehensive review of the statute by a City Council Blue Ribbon Committee.

City Manager Jackson said that in order for the City to be an employer of choice, we need to have an open and inclusive process to review the proposed changes. We have no predetermined idea what the next step might be for this organization, but are

open to any ideas brought forward by the employees as well as the Civil Service Board. He said he didn't believe the 9 proposed changes outlined by Mayor Bellamy was a recommendation of the Board, but just of certain members on that Board.

Mr. Sidney Bach, member of the Civil Service Board since October of 2007, said that in 1988 and 1999 attempts were made by the previous City Manager, in concert with the Office of the City Attorney, to abolish the Civil Service Law. That was met with opposition in the state legislature by interested parties. Then another maneuver was orchestrated. He said the state laws say a "Civil Service Board shall have the powers and shall perform the duties specified in this Act and the City Manager shall provide the operational needs of the Civil Service Board in assigning a budget." More importantly, in his view, the state law has been totally stymied from actions of the City staff. The state law says "the Civil Service Board shall make rules for promoting efficiency in the classified civil service and the Council shall act upon such proposed rules and amendments when approved by the majority vote of the Council. The Council may, before approving the rules, amend the rules and amendments." The Civil Service Board's function is to propose to Council Civil Service rules for the efficiency of operating the classified personnel. Then it's up to Council to accept, reject or modify. These rules apply to standardization, classification of positions and employment with the City, grievance hearings, part-time employment, etc. After the failure to abolish Civil Service in 1999, the Civil Service Board adopted rules of procedure on November 13, 2003, and adopted by City Council on January 11, 2005. Those rules are adopted in accordance with the Civil Service Law and shall govern proceedings held before the Board. What City staff has used to justify for abolishing all the rules is at the end of the rules of procedure where it says all other rules and regulations approved by the Asheville City Council as proposed by the Civil Service Board are hereby repealed. The rules start off saying that they only govern the rules before the Board, but City staff uses that language about abolishing all other rules, which means all other procedural rules, to say the City administration, through the Human Resources Department, can come up with new rules. He said the Civil Service Board has held only two meetings this year to perform their statutory duties. The law requires the Board to have meetings every month and only the Secretary can call the regular meeting but she's in Human Resources and she's at the beck and call of the City Manager. So, if the City Manager tells her to do or not do something, she has to listen. Special meetings can be called by the Chair of the Board or by the Secretary. He is trying to make changes to the legislation so they can have regular monthly meetings and do the business of the board. He wants to be fair to the City and the employees. He said they are stymied and broken.

Mr. John Miall, Chair of the Civil Service Board, clarified that there were actually 4 or 5 meetings after he was appointed Chair in November of 2007 that the two employee-elected members did not appear for. There have also been two meetings that the two employee-elected members did attend but they walked out when votes were trying to be held before the Board. The concept that the Board is not trying to perform its duties is not correct. He said that he has no interest at stake here, nor an agenda at play, other than to serve as your appointed Chair to this Board. Whatever actions Council may take, or opt not to take, it is simply his desire to have a system that allows process to govern what we do. Nothing else. He is an amateur student of history. He believes life's best lessons to guide us can be found in where we have been. Stated succinctly, "We have to know where we have been in order to see where we are going." The concept of municipal civil service laws grew out of the 1950's when there was a genuine and real need to remove politics from the business of hiring, promoting, and firing public workers. Over the intervening years the Congress, our legislature and the courts have created such a huge body of law affecting individual rights and means of redress that the original intent of Civil Service has long been negated. We have more rights afforded and guaranteed us under the laws of this nation and state than Civil Service ever intended. Asheville is the only city remaining in the state of North Carolina besides the City of Raleigh with a civil service system for the majority of its employees. Of the other 4 cities so constrained, New Bern's law pertains only to police; Charlotte and Statesville's law pertains only to police and fire personnel; and the City of Wilmington's law pertains only to some police and fire, and not all of them. The present Civil Service Law serves only one genuine need of employees at this time, and that is the grievance procedure added by the legislature in the early 1980's at the request of the City. Over the past 20 years the City has made every good faith effort to live with, support, and at times to do away with the Civil Service Law. The City has worked with its legislative delegations in the past, and without them at times to effect desired changes. Nothing has worked well. Sadly, over the past 50 years the law has been abused for all manner of personal interests and purposes. Promotional testing in the early 1980's resulted in a major scandal when it was found that some employees were paying for copies of answers to promotional tests. In more recent years different administrations have sought strategically to de-emphasize the system and relegate it to virtual obscurity. But, such is the nature of systems created by imperfect humans. None of these misuses have resulted in a better, fairer system of employment. And today, we stand before you to consider yet another of those many changes in the process. He asked the members of City Council to consider the following facts before acting on any designed change to the current system: (1) What is wrong and needs to be fixed? (2) Who are the people here advocating change? Do they represent a cross-section of our community whose interests are clearly linked to better governance and seek change based on best practices and proven models of reform? (3) Are the taxpayers served by these changes? and (4) Do these changes assure the City is served by the best educated, skilled, and capable people in the workforce? In summary, he asked the Council to take a long view of this issue. Were there problems a year ago that were brought to your attention that now require exactly this solution, or is this a solution looking for a problem? If you really want to seriously reexamine this, start with a blank slate and ask yourselves or a task force to create what we really need for the 21<sup>st</sup> century. Odds are the recommendations would not look anything like what either exists today or would become if this proposal is enacted. Don't allow the city to slide backward by fifty years or more. And lastly, he said that in his 30 years of service to this wonderful organization and the people it represents he has never seen better leadership from a City Manager and Human Resource Director than the combination presently serving the City of Asheville. It would seem to him that Council has the requisite expertise and leadership currently on your payroll to deal with this matter and do not need to waste the time hearing from the likes of him or others seeking changes for no apparent reason.

When Councilman Mumpower asked if there has been any pattern of difficulty or failure to uphold processes established in 1999, City Attorney Oast said that he was not aware of any.

Councilman Mumpower felt it was obvious that we have an internal problem in this Board and he feels it's inappropriate for City Council to become involved in that. He again suggested an action committee be formed to fairly review the statute. But, to do that before we get the legal issues resolved regarding appointment of the fifth member and before this Board makes some effort to internally solve this discord and conflict, he believed is premature. In summary, he encouraged (1) improvement in the relationship amongst the Civil Service Board itself; and (2) resolution of the legal concerns; and (2) then proceed with the creation of a committee as recommended by the City Manager. He does not believe there is any demonstrated urgency for action. He also pointed out that the 9 proposed changes are not brought to Council by the majority of the Board and it is not appropriate for Council to engage with the Board on them.

Councilman Newman felt it would be a good idea for stakeholders to meet with a goal of finding common ground. The outcome might be several recommendations, some of which the Board can implement itself, some might have to come to Council and some may have to go to the legislature. His only concern was the proposed appointment of community business leaders in that they are not really stakeholders in this process.

In response to Councilman Newman, City Attorney Oast said that out of the 9 proposed changes outlined above, there are some things that the Board can, by rule, do for itself, e.g., recording of meetings.

Mayor Bellamy said that since there is concern about the make-up of the Blue Ribbon Committee, she suggested the Boards & Commissions Committee look at that issue and bring it back to Council for their consideration.

When Councilman Mumpower asked if the Blue Ribbon Committee was to be established before the legal issue is resolved, City Attorney Oast said that he didn't believe a hearing date for a motion on summary judgment, which is the next procedural step, has been set yet. It would likely be after the end of the year before that is resolved, if resolved with a summary judgment.

Mayor Bellamy suggested a parallel track of the Blue Ribbon Committee and the legal issue.

Vice-Mayor Davis felt was comfortable with the make-up of the Blue Ribbon Committee as proposed by Assistant City Manager Richardson with Human Resources people from the private and public sector. He did find it difficult to have a Board that should be an advocate for the City and its employees institute a lawsuit against us.

When Mayor Bellamy asked if there was consensus of Council for a parallel track of the legal issue proceeding and having the Boards & Commissions Committee look at the make-up of the Blue Ribbon Committee to evaluate the efficiency and effectiveness of the Civil Service, City Attorney Oast said Council must proceed carefully. There is a division on the Board and it's fair to say they don't speak with one voice. The litigation is about the seating a 5<sup>th</sup> member. But the issues they raise here are not related to the lawsuit and he didn't think they would necessarily interfere with each other. If we can get around the internal difficulties on the Board, there is a possibility we can work on these.

Councilman Russell preferred to wait until the lawsuit litigation is resolved before establishing a Blue Ribbon Committee.

Vice-Mayor Davis understands the frustrations of the Board. He too would support waiting until the lawsuit litigation is resolved prior to establishing a Blue Ribbon Committee as suggested by the City Manager.

Mayor Bellamy announced that three members of Council prefer to wait until the lawsuit litigation is concluded prior to establishing a Blue Ribbon Committee is established, and three members of Council prefer a parallel track of the Blue Ribbon Committee and the legal issue. Therefore, it is the consensus of Council to appoint a Blue Ribbon Committee, but the question is when.

Mayor Bellamy requested the current Civil Service Board go through mediation because this is not healthy for our City to have a Board operating like this. If each Board member does not desire to go to mediation, she asked City Attorney Oast what other alternatives are available to Council. City Attorney Oast said that he would investigate what would be required in order for the mediator to take action.

Mayor Bellamy explained that the Civil Service Board potentially will begin to hear grievances impacting the lives of the employees of the City of Asheville. Do we want our employees have to deal with people who won't even talk with each other to have an effective meeting? The bigger issue is the right of our employees to appeal to a body that is ready to deal with their issues, not the issues amongst the Board members.

Councilman Mumpower said that in fairness to the Board, in the past two meetings there has been some efforts on the Board to be more civil and more cooperative. There is reason to believe that either through their own efforts, or through mediation, they can make progress to the point of serving their role more effectively.

Mr. Miall said that speaking for himself, he would be glad to participate in any process that will lead to a better functioning Board. He pointed out that the rules say that the Civil Service Board will make recommendations to the Council about rule changes. These 9 proposed Civil Service changes outlined above leap-frogged right to the Council. Not one of these rules has been brought before the Board for action. What is needed is to follow process.

Mr. Bach said that we are talking about changes in legislation that would make the Board function properly as the statute requires. In the spirit of civility, Mr. Miall and he met and reached an understanding as to what we thought would work to resolve the litigation. Unfortunately Mr. Miall came back to him and said he was sorry, but it has not been approved by Councilman Mumpower and staff.

When Mayor Bellamy asked Mr. Bach if he would be willing to attend mediation, he said he would be happy to participate if a meeting is called.

Ms. Virginia Robinson, member of the Civil Service Board, said that she feels comfortable in moving forward to hear issues and follow through to the best of her judgment. She said that if mediation is needed, that would be fine. She wanted the issues to be looked at fairly and open mindedly, but she didn't feel like that is a factor that will happen.

Councilman Mumpower clarified that he has no authority over the Civil Service Board. He is only the City Council liaison. At no point has he been in any position to tell anyone to do anything, and that includes the Board, the Chair, the staff or City Council.

Mayor Bellamy said that in order to be transparent, had not she been in Raleigh lobbying on transportation, City Council wouldn't have known about this because Council was not engaged at any level. There are some issues about following procedures. This is the first time that City Council as a whole has seen or addressed the wording on these proposed Civil Service changes. Her goal is how do we get past where we are so the Board can work together and have regular monthly meetings. This is not about the Board members, it's about the process and how do we make it a good process for our employees going forward.

At 5:06 p.m., Mayor Bellamy announced a short recess to allow City Attorney Oast to talk with Assistant City Attorney McGlohon who is the attorney who is familiar with the lawsuit, prior to making a decision regarding mediation.

City Attorney Oast said that the status of the litigation is such that we don't know when it will get resolved. He thought it may be about six months, but there is no way to put a particular date on it.

When Mayor Bellamy asked about mediation, City Attorney Oast asked Ms. McGlohon if this matter had been referred for mandatory mediation. It has not been. The only issue that can be mediated in that context is the issue of the litigation, which is the appointment of the fifth member. However, he understands that the Mayor Bellamy is requesting mediation with a facilitator that can help the Board get to a point that they can conduct its business. He will look into that and report back to Council.

Mayor Bellamy said that she will write a letter to Representative Goforth to let him know what Council is doing on this matter. She will include in that letter the date that Council met on the issue and that they will seek mediation for the Civil Service Board. She would also like to point out that the Council will establish a Blue Ribbon Committee to analyze the efficiency and effectiveness of the Civil Service Board but from the discussion today that it is still an outstanding issue.

Councilman Mumpower suggested we advise Representative Goforth that after we establish a functional relationship of the existing Civil Service Board and after the lawsuit is resolved that the Blue Ribbon Committee will be appointed to discuss the proposed civil service changes.

In response to Councilman Newman, Mr. Miall said that there is a grievance that has recently been filed that will require the attention of the Civil Service Board. A meeting will be scheduled.

It was the consensus of Council to instruct the City Attorney to provide Council with information on mediation/facilitator for the Board to work together.

Mayor Bellamy said she felt there was enough support for a Blue Ribbon Committee to be established. The outstanding issue is when it would be established (with the Boards & Commissions Committee looking at the make-up of such a Committee) - on a parallel track with the lawsuit or after the lawsuit is resolved.

#### **FEE IN LIEU OF – HOUSING TRUST FUND**

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Community Development Director Vann McNeill said that recent downtown development projects have been submitted to the City that have resulted in project developers voluntarily offering to pay fees in lieu of providing affordable housing units to ensure those projects meet City 2008-09 Strategic Plan goals. The Council's Housing and Community Development (HCD) Committee and the Affordable Housing Working Group are developing recommendations for the use of any such funds received by the City.

On June 24, 2008, City Council received the 2008 Affordable Housing Plan (the Plan) as presented by the Mayor's Affordable Housing Task Force. In support of the Plan, City Council asked the HCD Committee to continue to develop the Plan's recommendations, several of which propose additional policies related to the City's Housing Trust Fund. To assist with this task an informal group of committed former task force members (now named the Affordable Housing Working Group (Working Group)) continues to work with the HCD Committee on recommendations for implementation of the Plan.

In the context of that work, during the September 15, 2008, HCD Committee meeting, committee members discussed the issue of the City accepting fees in lieu of providing affordable housing units from downtown development projects. The loss of affordable housing units when a fee in lieu is accepted was of great concern to the HCD Committee members, and it was felt that any fees offered by these projects should be paid to the City's Housing Trust Fund for the construction of more affordable housing. The HCD Committee requested that the Working Group also consider this issue and discuss options and make recommendations on the City's accepting fees in lieu of providing affordable units by project developers.

The Working Group met on October 7, 2008, and discussed this issue at length. They developed four recommendations for discussion by the HCD Committee at the October 20, 2008, committee meeting in prelude to the Council Worksession discussion on October 21. Those recommendations are provided below.

The Working Group recommendations being evaluated by the HCD Committee are as follows:

1. The City should accept fees in lieu of producing affordable units; however, this was not the Working Group's preferred option. The Working Group's desire was to see each project provide the affordable units within the project itself so as to promote the goal of mixed-income developments throughout the city, including developments proposed for downtown, and all projects requesting Conditional Use Permit and Conditional Zoning designations;
2. All fees accepted from project developers should be placed in the City's existing Housing Trust Fund for the production of affordable units. The Working Group also expressed concern that if the City accepts these fees what implications would that have for future general fund allocations to the Housing Trust Fund? The Working Group does not support a reduction in the annual allocation and fees in lieu should not be viewed as a "substitute" for the annual allocation;
3. Fees in lieu should be used according to the current Housing Trust Fund guidelines to provide loans for the production of affordable units; and
4. The current practice of annually providing seven to ten percent of the funds available in the Housing Trust Fund for program administration should be continued.

Again, the HCD Committee recommendations are being determined on October 20, but the following summarize the staff views on the benefits and concerns related to the recommendations of the Working Group:

#### Benefits:

- Acceptance of a fee in lieu increases the funding available in the Housing Trust Fund for the production of affordable units in the City and ensures these funds follow the program's established guidelines.
- Placing these fees in the Housing Trust Fund is consistent with City's policy and practice, and furthers the affordable housing goals of the City's 2008-09 Strategic Plan, the recommendations of the 2008 Affordable Housing Plan, and the goals and objectives of the City's 2005-10 Consolidated Strategic Plan for Housing and Community Development.
- Placing these fees in the Housing Trust Fund continues the structured, objective approach currently in place and continues this practice for accepting these fees from future development projects.

#### Concerns:

- Accepting a fee in lieu, instead of providing the affordable units within the proposed development, does not further the goal of providing mixed-income housing throughout the City.
- Current and future economic trends would seem to indicate that a consistent fee in lieu revenue stream from projects is unlikely, and these fees should not be seen as a dependable source of revenue for the City's Housing Trust Fund.

Regarding the fiscal impact, potential exists to increase the available Housing Trust Funds for affordable housing projects.

This staff report gives background on the issues surrounding the questions raised by the potential of the City accepting fees in lieu of providing affordable housing units in proposed development. The HCD Committee, the Affordable Housing Working Group, and City staff are presenting the City Council options for how to address this potential. The staff, however, believes that even if they are accepted, this would be only a partial policy.



If the City adopts a formal policy regarding the acceptance of fees in lieu, the important and difficult remaining question will be how to objectively calculate what fees will be contributed by future projects. A preliminary review including research into other communities, has found that there are many ways to arrive at such a fee. If a "fee in lieu use policy" is adopted, the staff recommends work to begin on a formal fee policy through a coordinated approach with the HCD Committee, the City Attorney, the Planning staff, and the Affordable Housing Working Group. The recommendations of that group would be presented to City Council in the near future for their consideration.

The HCD Committee concurs with the Affordable Housing Working Group's recommendations concerning development projects when a developer has voluntarily offered to pay fees in lieu of providing affordable housing units as one available option to demonstrate support for City adopted goals and plans.

This is a follow-up to the HCD Committee meeting which members met on October 20, 2008. The four (4) recommendations offered by the Affordable Housing Working Group were reviewed by the Committee. Those recommendations were as follows:

1. The Working Group proposed that all CUP and CZ housing development projects include affordable housing units within those projects; however, when infeasible the City could accept fees in lieu of providing these units;
2. Fees should be placed in the City's Housing Trust Fund (HTF) to produce affordable units; but any fees received in lieu should not be considered a "substitute" for the City's annual allocation to the Housing Trust Fund;
3. Fee use should be consistent with HTF policies and provide loans that produce affordable units; and
4. The current practice of annually providing seven to ten percent of the funds available in the HTF for program administration should be continued.

#### Benefits

- Fees in lieu can increase the Housing Trust Funds available for increasing the affordable housing units in the City.
- Producing these units achieves goals of the City's 2008-09 Strategic Plan, 2005-10 Consolidated Strategic Plan for HUD funds and the 2008 Affordable Housing Plan developed by the Mayor's Affordable Housing Task Force.
- Provides City Council with a framework for accepting fees in lieu that will directly result in the production of affordable housing units.

#### Concerns:

- If the option is used too consistently for projects downtown, it could result in an inordinate concentration of high-end housing there.
- Fees in lieu cannot be viewed as a predictable source of revenue for the HTF given the current state of the economy.

Potential exists to considerably increase the funds available in the Housing Trust Fund for affordable housing projects over time.

The HCD Committee concurs with the Affordable Housing Working Group's four (4) recommendations and proposes that they be considered a partial policy for addressing fees in lieu proposals that may be considered by City Council prior to the completion of a formal policy.

Planning and Development staff recommends the continued development of a complete policy for City Council review, which will require the creation of an objective, fair and equitable fee schedule, along with other administrative recommendations.

Preliminary review of similar policies in other communities indicates there are a variety of ways to establish such a fee structure. Staff will work closely with the HCD Committee, Affordable Housing Working Group and the City Attorney to develop a complete policy for City Council review in the near future.

Councilman Newman, Chair of the HCD Committee, said that the Committee was supportive of the Affordable Housing Working Group's recommendations. At this time there is no requirement for developers to include affordable housing in their developments. But, obviously in our community development goals and all our community development plans point to affordable housing as a very important need in the community. We have many developers who do include affordable housing in their developments. In some developments we see it's not realistic to include affordable housing in their development, but they recognize it's an important need in the community and they initiate other ideas, e.g., The Ellington suggested earmarking a certain percentage of the real estate transactions of the condominiums in The Ellington be directed to a fund to build affordable housing in downtown. If developers are going to make financial contributions to support affordable housing and if they are pointing to that as part of how their project will be contributing towards meeting

the City's community development goals, we believe those funds should be placed into the Affordable Housing Trust Fund. This is an established public process and we know those funds will be accounted for. He asked for Council to support their recommendations as well. This is not a recommendation to make inclusion of affordable housing in future developments. This is only if a developer initiates the idea of affordable housing and if the project is approved, that the funds be allocated to the Affordable Housing Trust Fund.

In response to Councilman Russell, Councilman Newman assumed Council will have this discussion at a formal Council meeting to formally accept the four (4) recommendations offered by the Affordable Housing Working Group.

Councilman Mumpower suggested that the Affordable Housing Working Group's make-up is out of balance and that it's comprised of people who have an affordable housing interest. He would have to speak strongly against this action in that he feels it represents a socialistic agenda to reach into one group's pocket and put it into another group's pocket. He felt the best way to help affordable housing in the City is by good policies, keeping taxes low and keeping the City safe.

Councilman Mumpower felt that developers are faced with a number of regulations and judging the political mindset of Council, which can be arbitrary at time, the developers are often given the impression that if they meet our expectations (bearer of gifts), they can successfully achieve the developmental process. He speaks strongly against those policies.

Councilman Newman reiterated that there is no requirement proposed for developers to include affordable housing components in their projects.

Councilwoman Jones took issue to Councilman Mumpower's comments in that while on City Council she has made a lot of decisions and none of them were arbitrary.

Councilman Russell felt that if developers wish to contribute to affordable housing, it is their will. He would prefer, however, that those developers be able to designate the funds where they want to because there are many charitable organizations that help the community.

Councilman Newman noted that the Affordable Housing Trust Fund is not the only place those funds could be directed. They are simply saying that if the developer thinks that affordable housing is important and they want the funds to go specifically to affordable housing, then they feel it should go to the Affordable Housing Trust Fund. Regarding the composition of the Affordable Housing Trust Fund, there are representatives from the Community Foundation of WNC (which was the recipient from the first significant development where the developer proposed those funds). Those representatives felt the most effective way to use those resources would for them to be invested in the City's Affordable Housing Trust Fund. That is an already established public process that is accountable.

Councilwoman Jones explained that if a developer thinks affordable housing is a strategic goal that they want to contribute to, through the conditional use process, the way that will happen is to increasing the supply of affordable housing via the Housing Trust Fund. She understands that part of the use of the conditional use process is that the developer gets special allowances to help the project, but the trade-off is there are things they have to help the City with as well. It is intended to facilitate a good project and also to facilitate the City's goals.

Upon inquiry of Councilman Mumpower, City Attorney Oast said that this process grew out of the suggestion from The Ellington project. The law does say with regard to conditional use districts that conditions applicable to these districts may be proposed by the petitioner or by the City or its agencies, but only those conditions mutually approved by the City and the petitioner may be incorporated into the zoning regulation permit requirements. There needs to be some nexus between the impact of the project on the housing community and what would be required to mitigate that impact. What Council is trying to do is to derive at a formula to let them know what is needed to address this particular impact.

#### **WORKSESSION MEETING TIME**

- Mayor Bellamy said that Council has been starting their worksessions for the last several months at 3:00 p.m. and was following up to see if that time was satisfactory to Council members.

- After a brief discussion, it was the consensus of the majority of Council to continue the worksessions at 3:00 p.m. on the third Tuesday of the month.

#### **UNIFIED DEVELOPMENT ORDINANCE APPROVAL REQUIREMENTS**

- City Manager Jackson asked for Council direction to allow City staff to look at, in light of the financial market conditions, over the next 60-90 days look at our Unified Development Ordinance (UDO) approval requirements and see if we can agree on some relaxing of those non-public safety requirements (sidewalks, landscaping, etc.) What triggered this was a specific redevelopment project that was trying to bring businesses into the former Square D building and was running into our very strict requirements that even non-public safety improvements needed to be bonded or completed in order to get their permanent Certificate of Occupancy. In

this particular case we resolved that issue by granting a temporary Certificate of Occupancy which they will look at periodically to determine if the market conditions have changed to allow them to get the bonding necessary to commit to do those non-public safety improvements.

It was the consensus of Council to authorize the City Manager to develop proposals for revised standards in the UDO for requirement thresholds, approval extensions, and financial guarantees for non-public safety related development requirements.

### **CONSERVATION EASEMENT IN CITY-COUNTY PLAZA AREA UPDATE**

City Attorney Oast said that at Council's request, he has been exploring ways in which the use of the City's park lands may be limited to park and recreational uses. Prior to 1982, there was some question as to whether a city could change the use of and sell property it acquired for governmental purposes. In 1982, N.C.G.S. 160A-265 was amended to provide for this. There are several methods for restricting the use of park property; the following list does not include them all, but these are the most conventional:

1. **Zoning.** Cities can create zoning classifications specific to park land, which limit the use of the property. However, these regulations may be changed in the same manner as any zoning ordinance.
2. **Conveyance to City with restrictions on use.** Grantors may place restrictions on the use of property conveyed to the City. If this is done, it is important that the instrument of conveyance contain some enforcement language, such as a reversion, to provide a remedy if the restrictions are violated (the absence of such a reversion is an issue in the Parkside case).
3. **Dedication.** This occurs when public facilities are created, usually as part of a development, and offered to the City for the public use and enjoyment. This is how the City obtains streets and sidewalks in new subdivisions, but it can also be done for park property. Acceptance of dedication usually implies some sort of promise by the government that the dedicated property will remain in use for that purpose, barring a change in circumstances that makes the use inappropriate. Dedication can also occur as a result of lay use for a particular purpose (another issue in the Parkside case). The public has some ability to require that dedicated land be used for its dedicated purpose (although this may have been affected by the 1982 law), and certain procedures are required to change the use.
4. **Conservation Easements.** Like private individuals, governments may convey conservation easements to organizations whose mission includes the policing and enforcement of the restrictions thereby created. Cities have the ability to make such conveyances pursuant to N.C.G.S. 160A-266. This process, however, assumes that there is an organization willing to accept the easement, which acceptance carries some responsibility. Most such organizations work with large tracts, and the City has conveyed at least one such easement on the North Fork property. Smaller tracts, like most City parks, are more difficult to "place."

At Council's direction, he could explore any of these methods more fully, and make recommendations applicable to all or some of the City's parks.

Mayor Bellamy said that the Buncombe County Commissioners and the Pack Square Conservancy would like to have a conservation easement on the City-County Plaza as well.

There was a brief discussion about whether the City wanted to restrict the use of park property.

It was the consensus of the majority of Council to instruct the City Attorney to start working with Buncombe County and the Pack Square Conservancy on a conservation easement for the City-County Plaza area only.

### **BOARDS & COMMISSIONS**

It was the consensus of Council to instruct the City Clerk to arrange interviews for Jodi Schell, Arthur Allen and Brian Woods for a vacancy on the Civic Center Commission. Regarding County residents on the Civic Center Commission, Mayor Bellamy said that when the Buncombe County Commissioners agree to support the renovation of the Civic Center, we would be happy to have County representation on the Commission.

Regarding the Civil Service Board, it was the consensus of Council to delay interviews for that vacancy.

It was the consensus of Council to instruct the City Clerk to arrange interviews for Susan Barlow, Russell Pierce, Stephanie Pankiewicz, Justin Fletcher, Ellen Bailey, Brian Etheridge and David Borcharding for a vacancy on the Greenway Commission. It was noted that there will be two additional vacancies on the Greenway Commission on December 31, 2008.

At the request of the Downtown Commission, and the recommendation of the Boards & Commissions Committee, it was the consensus of Council to extend the term of Mr. Pat Whalen on the Downtown Commission until the Downtown Master Plan process is complete or April 1, 2009, whichever occurs earlier.

**CLOSED SESSION**

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At 6:30 p.m., Councilman Mumpower moved to go into closed session for the following reason: (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 statutory authorization is contained in G.S. 143-318.11(a) (5); and to prevent disclosure of information that is privileged and confidential, pursuant to the laws of North Carolina, or not considered a public record within the meaning of Chapter 132 of the General Statutes. The law that makes that information privileged and confidential is N. C. Gen. Stat. sec. 143-318.10 (e). The statutory authorization is contained in G.S. 143-318.11 (a) (1). This motion was seconded by Councilwoman Jones and carried unanimously.

At 6:38 p.m., Councilwoman Jones moved to come out of closed session. This motion was seconded by Councilman Russell and carried unanimously.

**ADJOURNMENT:**

Mayor Bellamy adjourned the meeting at 6:38 p.m.

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CITY CLERK

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MAYOR