

Tuesday – November 25, 2008 - 5:00 p.m.

## Regular Meeting

Present: Mayor Terry M. Bellamy, Presiding; Vice-Mayor Jan B. Davis; Councilwoman Robin L. Cape; Councilwoman Diana Hollis Jones; Councilman R. Carl Mumpower (left meeting at 7:58 p.m.); Councilman Brownie W. Newman; Councilman William A. Russell Jr.; City Manager Gary W. Jackson; City Attorney Robert W. Oast Jr.; and City Clerk Magdalen Burleson

Absent: None

### PLEDGE OF ALLEGIANCE

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Mayor Bellamy led City Council in the Pledge of Allegiance.

### INVOCATION

Councilman Mumpower gave the invocation.

### I. PROCLAMATIONS:

#### **A. RESOLUTION NO. 08-228 – RESOLUTION OF APPRECIATION TO HOLLY JONES**

Mayor Bellamy read the resolution thanking Councilwoman Jones for her service to Asheville and presented her with the resolution, a plaque, her name plates and a City pen.

Resolution No. 08-228 was adopted by acclamation.

Councilwoman Jones thanked her family, individual members of Council, Mayor Bellamy, City staff and the citizens of Asheville for allowing her to serve the City of Asheville.

#### **RESOLUTION BOOK NO. 31 - PAGE 373**

#### **B. PROCLAMATION PROCLAIMING NOVEMBER, 2008, AT “NATIONAL ADOPTION MONTH”**

Mayor Bellamy read the proclamation proclaiming November, 2008, as "National Adoption Month" in the City of Asheville. She presented the proclamation to Ms. Dahlene Morse, Director of Bethany International Adoptions, and Alisha Davis, Community Based Services Supervisor from the Buncombe County Department of Social Services, who briefed City Council on activities that took place and will be taking place during the month.

### II. CONSENT AGENDA:

At the request of Councilman Mumpower, Consent Agenda Item “D” was removed from the Consent Agenda for discussion and/or individual vote.

#### **A. APPROVAL OF THE MINUTES OF THE FORMAL MEETING HELD ON NOVEMBER 11, 2008; THE SPECIAL MEETING HELD ON NOVEMBER 14, 2008; AND THE WORKSESSION HELD ON NOVEMBER 18, 2008**

#### **B. RESOLUTION NO. 08-229 – RESOLUTION ADOPTING THE 2009 CITY COUNCIL MEETING SCHEDULE**

Upon inquiry of Councilman Newman, City Attorney Oast said that City Council can amend their regular meeting schedule at anytime.

#### **RESOLUTION BOOK NO. 31 – PAGE 374**

#### **C. RESOLUTION NO. 08-230 – RESOLUTION APPOINTING A MEMBER TO THE RIVER DISTRICT DESIGN REVIEW COMMITTEE**

Summary: Mr. Richard Hall no longer serves as a member of the RiverLink Board of Directors, thus creating a vacancy

until September 1, 2010.

Mr. Rod Baird, 33 Grovewood Road, Asheville, N.C., be and is hereby appointed to the River District Design Review Committee, as one of the two members from the RiverLink Board of Directors, to serve the unexpired term of Mr. Hall, term to expire September 1, 2010, or until he is no longer a member of the RiverLink Board of Directors or until his successor has been appointed, whichever occurs first.

**RESOLUTION BOOK NO. 31 – 375**

**D. ORDINANCE NO. 3661 – BUDGET AMENDMENT FROM THE ENVIRONMENTAL PROTECTION AGENCY TO RECEIVE AND ADMINISTER FUNDS FOR THE RIVER DISTRICT BROWNFIELDS GRANT AWARDS**

This item was removed from the consent agenda for discussion and/or an individual vote.

**E. RESOLUTION NO. 08-231 – RESOLUTION AMENDING THE 2008 CITY COUNCIL MEETING SCHEDULE TO (1) ADD A FORMAL MEETING ON DECEMBER 2, 2008; AND (2) ADD A SPECIAL MEETING ON DECEMBER 12, 2008**

**RESOLUTION BOOK NO. 31 – PAGE 376**

**F. RESOLUTION NO. 08-232 – RESOLUTION AFFIRMING THE CITY OF ASHEVILLE'S SUPPORT AND PARTNERSHIP WITH THE 2010 CENSUS**

**RESOLUTION BOOK NO. 31 – PAGE 377**

**G. ORDINANCE NO. 3663 – BUDGET AMENDMENT FROM LEASE PURCHASE PROCEEDS TO PURCHASE TWO REPLACEMENT FIRE TRUCKS**

**RESOLUTION NO. 08-233 – RESOLUTION WAIVING THE FORMAL BID REQUIREMENTS AND AWARD THE BID FOR TWO FIRE TRUCKS USING THE "PIGGY BACK" PROVISION FROM THE AWARD OF BID FROM THE TOWN OF KERNERSVILLE, N.C.**

Summary: The consideration of a resolution authorizing the City Manager to waive the formal bid requirements and award the bid for two fire trucks in accordance with North Carolina General Statutes using the "piggy back" provision from the award of bid from the Town of Kenersville, N.C., from March 4, 2008, and approving the associated budget amendment in the amount of \$192,756.

In order to reduce costs and maintain current emergency response operations, the Asheville Fire and Rescue Department needs to replace two front line fire trucks. In order to make the most efficient purchase possible, staff recommends that City Council waive formal bidding procedures in accordance with North Carolina General Statutes to purchase two fire trucks from a bid awarded by the Town of Kenersville, North Carolina. In addition, appropriate budget revision is needed to issue the purchase order. This is an improvement business plan decision for AFR and city government.

The Fiscal Year (FY) 2008-09 budget included \$1,100,000 for replacement of one fire truck. Another fire truck was projected to be included in the FY 2009-10 budget as a replacement. Currently, two front line trucks in the fire and rescue fleet are in high need of replacement and costing city government more money than necessary to operate. Newer apparatus is costing us an average of \$.815 per mile to operate and emitting very low (2007 regulatory standard) emissions. The two fire trucks that we need to replace are costing us an average of \$3.91 per mile and are both over 16 years old, not being very environmentally responsible.

Due to the increasing cost of steel, fire apparatus costs have escalated over the past year. Staff has determined that we can most cost effectively meet our need for replacing two fire trucks by using the "piggy back" provisions of the North Carolina General Statutes.

Staff recommends purchasing two (2) fire trucks now and not including a replacement truck in the FY 2009-10 budget, given the economic situation and budget challenges that we are facing. Fulfilling this request now will reduce the requests for the FY 2009-10 Capital Improvement Plan by \$800,000.

The Town of Kenersville, North Carolina, bid a truck that will meet our immediate operational needs. Kenersville awarded their purchase order on March 10, 2008. State statutes allow us to "piggy back" that bid. By doing so, we avoid two cost

increases that have occurred since that date. On two fire trucks, these cost increases for the same trucks would cost our tax payers an additional \$95,399.99. We also could receive the trucks in July, 2009 as opposed to November, 2009 by using the "piggy back" approach.

North Carolina General Statutes require that an advertisement be made of Council's intent to utilize the "piggy back" option and waive the formal bidding process. That ad properly posted November 12, 2008, through November 24, 2008.

In order for the purchase to be made, an additional appropriation of \$192,756.00 is necessary in the FY 2008-09 budget. This funding will come from lease-purchase proceeds, so the total cost of the fire truck will be spread out over 5 to 7 years. Annual operating savings in per mile costs are projected to exceed \$60,000 with the replacement of these two trucks (\$.815 per mile versus \$3.91).

This request ties in with the City Council Strategic Operating Plan in the following methods: (1) **SAFE**: It is necessary to have safe, reliable fire trucks to operate in order to provide critical public safety services to our citizens; (2) **GREEN**: The replacement fire trucks will meet 2007 or greater emissions standards and be much more environmentally responsible; and (3) **SUSTAINABLE**: City government will save money on purchasing these fire trucks and save money in operating these new units in day to day operations.

Council's Public Safety Committee reviewed this request on November 11, 2008, at their regularly scheduled meeting and voted to recommend approving the request to the full City Council on November 25, 2008.

Pros:

- This action saves our taxpayers money
- We save significant money on the initial purchase of the fire trucks
- We avoid the price increases that have affected the fire apparatus industry over the last year, saving \$95,399.99 for the same equipment
- We are able to place these units into service quickly and begin reducing operating costs
- We are able to save money on the per mile cost to operate the fire trucks
- We dramatically reduce the vehicle emissions by replacing 16 year old trucks
- We provide our firefighters safer, more efficient trucks
- Also, we will not slate any fire truck replacement for FY 09-10 in order to help more effectively manage that upcoming budget, reducing CIP requests by \$800,000

Cons:

- There will be a slight increase in debt service costs in FY 09-10
- We will delay a ladder truck replacement until FY 2010-11

There will need to be an appropriation of \$192,756 in this year in order to make the purchase. Staff anticipates that based on the expected delivery date of the trucks, no debt service payment will be required in the FY 2008-09 budget. If there are any cost of debt issuance costs in FY 2008-09, they will be absorbed within the existing debt service budget. A full debt service payment will be included in the FY 2009-10 budget.

City staff recommends City Council adopt a resolution authorizing the City Manager to waive the formal bid requirements and award the bid for two fire trucks in accordance with North Carolina General Statutes using the "piggy back" provision from the award of bid from the Town of Kernersville, NC from March 4, 2008 and approving the associated budget amendment in the amount of \$192,756.

**ORDINANCE BOOK NO. 25 – PAGE  
RESOLUTION BOOK NO. 31 – PAGE 378**

**H. RESOLUTION NO. 08-234 – RESOLUTION APPOINTING MEMBERS TO THE ALCOHOLIC BEVERAGE CONTROL BOARD**

Mr. Charles R. Worley, 102 Carter Cove Road, Asheville, N.C., be and he is hereby reappointed as a member of the Alcoholic Beverage Control Board, to serve an additional three-year term, term to expire November 13, 2011, or until his successor has been appointed.

Mr. Charles R. Worley, 102 Carter Cove Road, Asheville, N.C., be and he is hereby appointed as Chairman of the Alcoholic Beverage Control Board until his term expires on November 13, 2011, or until City Council appoints a replacement.

Mr. Jim Ellis, 3 Sunset Lane, Asheville, N.C., be and he is hereby appointed as a member of the Alcoholic Beverage Control Board, to serve a three-year term, term to expire November 13, 2011, or until his successor has been appointed.

### **RESOLUTION BOOK NO. 31 – PAGE 379**

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

Mayor Bellamy asked for public comments on any item on the Consent Agenda, but received none.

Councilwoman Cape moved for the adoption of the Consent Agenda. This motion was seconded by Councilwoman Jones and carried unanimously.

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

#### **D. ORDINANCE NO. 3661 – BUDGET AMENDMENT FROM THE ENVIRONMENTAL PROTECTION AGENCY TO RECEIVE AND ADMINISTER FUNDS FOR THE RIVER DISTRICT BROWNFIELDS GRANT AWARDS**

Summary: The consideration of a budget amendment, in the amount of \$400,000, from Environmental Protection Agency (EPA), to receive and administer funds for the River District Brownfields grant awards.

On August 14, 2007, Asheville City Council authorized Land of Sky Regional Council (LOSRC) to submit two Brownfields Assessment grant applications to EPA on behalf of the City of Asheville. On April 10, 2008, the City of Asheville was recognized as the recipient of \$400,000 in assessment and cleanup funds for hazardous materials sites and petroleum contaminated sites in Asheville's River District. On May 27, 2008, City Council approved a resolution authorizing the City Manager to execute a contract with LOSRC to administer the program funds. Contract runs between July 1<sup>st</sup> 2008 and ends September 30, 2011. On October 23, 2008, a kick off stakeholder meeting was held at AB-Tech Ferguson Auditorium

The approval of this budget amendment would be in accordance with Council's adopted Fiscal Year 2008-09 Strategic Operating Plan.

Pros:

- City promotes sustainable infill development
- City promotes safety of citizens through potential clean up of hazardous materials in the River District
- City will expand its toolbox of incentives for sustainable development without having to redirect current or direct substantial new resources.
- No new city staff required to administer this three year grant program.

Con:

- Staff has not identified any cons.

The approval of this budget amendment would not negatively impact the City's budget, as the grant award is to be used for all administration/operational costs as well as Environmental Assessment costs.

Staff recommends Council approve the budget amendment, in the amount of \$400,000, from Environmental Protection Agency (EPA), to receive and administer funds for the River District Brownfields grant awards.

Councilman Mumpower expressed concern about the City continuing to receive borrowed money under the current circumstances.

Vice-Mayor Davis moved for the adoption of Ordinance No. 3661. This motion was seconded by Councilman Russell and carried on a 6-1 vote, with Councilman Mumpower voting "no."

### **ORDINANCE BOOK NO. 25 – PAGE**

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

#### **A. LISTENING TO OUR TEENS – A PROJECT OF THE ASHEVILLE CITY SCHOOLS FOUNDATION**

Ms. Kate Pett, Co-Director of the Asheville City Schools Foundation, and Ms. Jillian Buckley, VISTA volunteer and project coordinator, said that this project is being funded with the generous support of the Community Foundation of Western North Carolina and The Beatty Foundation.

She explained the project as follows: "We will gather in-depth information about how we can engage and support our young teens, ages 11-14 years old, through 150 interviews with students, families and service providers. We will compile the interview data, and use it to plan for enhanced programs and services that better support the success of our young teens. We will leverage existing resources, and seek new funding sources to implement the plan in the next five years."

These outcomes will be evidence of the success of this project:

- In-depth information collected from a representative sampling (150 individuals) of Asheville teens, families, and service providers
- 5-Year plan for reshaping services and programs in our community for teens
- Improved afterschool and summer programming within two years

Phase I Summary (June, 2008 – October, 2008):

Completed: The formation of a steering committee that is representative of the community and stakeholder groups. The creation of a student interview script by the questions committee. The recruitment of volunteer listeners. A training of over forty volunteers with instruction on how to engage interviewees. Sixty student interviews conducted at Asheville Middle School and Randolph Learning Center.

Phase II (November, 2008 – April, 2009):

- Interviews will be held with families, service providers and student focus groups
- Interviews will be transcribed
- Data will be organized and synthesized

Phase III (May, 2009 – August, 2009):

- Create goals and strategies to reshape programs to respond to collected data
- Prioritize programs and services and develop a five-year plan of implementation
- Advocate for the implementation of the plan by creating new partnerships, seeking additional funding, and leveraging existing resources
- Present findings to community in multiple formats, including presentation of student voices through student-designed presentation

She said why listen? Because (1) increase in crime committed by youth ages 11-14 after school and in the summer; (2) gap in service often identified between the end of school and when parents come home; (3) a need to inform development and enhancement of programs; (4) a previous listening project contributed to the development of academic programs that address the achievement gap; (5) in Winchester, VA, a Listening Project led new youth organizations, nonviolence programs, and effective citizen police programs; and (6) in Pittsburgh, PA, a Listening Project mobilized hundreds of youth and people of color to speak out, register and vote.

She explained the Listening Project process as (1) project development and initial funds secured from the Community Foundation of WNC and the Beatty Foundation; (2) form a steering committee; (3) train listeners; (4) listen to students, families and service providers; (5) create a resource directory of existing after school and summer programs; and (6) plan for change and implement enhanced services over five years.

LTOT organizational goals include (1) learn more about the types of programs, in school and out, that are critical for student success; (2) learn in which ways families want to be engaged to support the success of their students, and barriers to participation; (3) prioritize programs and services and develop a five-year plan of implementing priorities; and (4) work together as a partnership to implement priorities identified by the Listening Project.

Proposed outcomes include (1) in-depth information about the needs, concerns and aspirations impacting youth teens and their families in Asheville today; (2) information about specific factors, programs, experiences in our community that enhance the chances of youth teen success; (3) a document that outlines recommendations for going forward based on real information and proposes community-wide initiatives to serve young people in Asheville; and (4) successful programs and services that respond to

the needs of 11-14 year olds in Asheville.

City Council can (1) conduct a family interview; (2) participate in the strategic planning process; and (3) ensure that youth programs funded by the City of Asheville are responsive to the needs of teens and their families.

On behalf of City Council, Mayor Bellamy thanked Ms. Pett and Ms. Buckley for bringing Council's attention to this program.

In response to Mayor Bellamy, Ms. Pett said that if someone would like to participate in this process, they can contact the Asheville City Schools Foundation.

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

##### **A. PUBLIC HEARING TO CONSIDER THE CONDITIONAL ZONING OF THE PROJECT IDENTIFIED AS THE ALTAMONT AT RIVERBEND VILLAGE, LOCATED AT 152 BLEACHERY BOULEVARD, FROM URBAN VILLAGE DISTRICT TO RM-16 RESIDENTIAL MULTI-FAMILY HIGH DENSITY DISTRICT/CONDITIONAL ZONING FOR THE DEVELOPMENT OF A 261 UNIT APARTMENT COMPLEX AND CLUBHOUSE; AND A REQUEST FOR MODIFICATIONS TO HEIGHT AND SETBACK STANDARDS**

##### **ORDINANCE NO. 3663 – ORDINANCE CONDITIONALLY ZONING THE PROJECT IDENTIFIED AS THE ALTAMONT AT RIVERBEND VILLAGE, LOCATED AT 152 BLEACHERY BOULEVARD, FROM URBAN VILLAGE DISTRICT TO RM-16 RESIDENTIAL MULTI-FAMILY HIGH DENSITY DISTRICT/CONDITIONAL ZONING FOR THE DEVELOPMENT OF A 261 UNIT APARTMENT COMPLEX AND CLUBHOUSE; AND A REQUEST FOR MODIFICATIONS TO HEIGHT AND SETBACK STANDARDS**

Mayor Bellamy opened the public hearing at 5:41 p.m.

Urban Planner Nathan Pennington said that this is the consideration of an ordinance to conditionally zone property identified as The Altamont at Riverbend Village, located at 152 Bleachery Boulevard, Urban Village District to RM-16 Residential Multi-Family High Density District/Conditional Zoning for the development of a 261 unit apartment complex and clubhouse; and a request for modifications to height and setback standards. This public hearing was advertised on November 14 and 21, 2008.

The applicant seeks the conditional zoning of approximately 15.26 acres currently zoned UV, to RM-16 CZ for a multi-family and townhome residential project with 252 new apartment and 9 existing townhome units. The property is located at 152 Bleachery Boulevard adjacent to the PetSmart store within the City's corporate limits.

If the conditional zoning application is approved, the site would have an overall density of 17.1 dwelling units per acre. The maximum net density in the RM-16 zoning district is one dwelling unit per 2,500 square feet or approximately 17.4 dwelling units per acre. The project is proposed to be built in one phase.

The following list provides a breakdown of the proposed development:

- 9 total buildings (6 apartment buildings, 2 existing buildings containing 9 existing townhome units, an office/clubhouse building and accessory structures including a pool/spa and shade structure)
- 3 – 4 story configurations
- Maximum building height of 43 feet (Modification to 40 foot maximum height being sought for buildings 4 and 5 to allow for floor to floor ceiling heights of 9 feet). All other buildings are proposed to meet maximum height regulation of 40 feet.
- 107 – one bedroom units
- 129 – two bedroom units
- 25 – three bedroom units (inclusive of existing 9 townhome units)

The majority of the site has been previously cleared and graded for an Urban Village development. Nine townhome units were nearly completed along the southern perimeter of the property as a result of the previous development plan approval. In addition, road and other utility infrastructure were completed to varying degrees throughout the project site. The applicant is proposing to utilize and build upon these improvements as part of the submitted design. Over thirty (30) percent of the site has been designated as open space and tree save area and these areas have been evenly interspersed throughout the property.

Two access points to the subject property are provided along River Ridge Connector from Bleachery Boulevard. The access point closest to the Ramada Inn will serve as the primary means of ingress and egress while the Bleachery Boulevard cut will serve as an emergency vehicle access point. In its current configuration, River Ridge Connector curves sharply towards the

east in the vicinity of the Ramada Inn hotel. At a future date, the applicant is proposing to re-align this road in lieu of cooperation from the adjacent hotel property owner. This will not only soften a significant curve, but will allow for the re-alignment of buildings 1 and 2 and avoidance of an existing water line and associated easement.

The subject property consists of two lots (main parcel and an adjoining parcel directly behind PetSmart) adjacent to River Ridge Connector and Bleachery Boulevard. If the project is approved a portion of the main parcel will be recombined with the parcel located behind PetSmart and will remain zoned UV. This vacant parcel will be required to be rezoned to CI as a condition of project approval due to the fact that it will be nonconforming the UV lot size requirement.

The applicant is requesting two (2) modifications to the site development standards of the UDO pursuant to Section 7-7-8(c)(6) of the UDO from City Council. The first request is a modification request to the front setback standard. As previously discussed, the applicant is proposing to utilize existing improvements to the site including a portion of the road network, sidewalks and the 9 mostly complete townhome units. While the majority of the site will be developed as multi-family units available for rent, the 9 existing units are proposed to be subdivided and sold as single-family townhome units. The RM-16 zoning district requires a front setback of 15 feet and due to the proximity of the existing road; this will result in a maximum encroachment of up to 6.5 feet by four (4) of the nine (9) units. The second request involves a 3 foot modification to the maximum height of 40 feet to allow for floor to floor ceiling heights of 9 feet. This modification request would accommodate higher interior ceiling heights while having only a minimal impact on the overall height of the structures themselves.

The applicant has agreed to institute the following green building techniques into the construction of the project: "Not only will the project's design and utilized materials reflect the company's commitment to environmentally sensitive methods, but the means by which the project is constructed utilized many environmentally sensitive components. Additionally, the selection of the site itself, an infill site that is a portion of a larger redevelopment of a former industrial site, reflects their commitment to developments that make lesser impacts to the environment, not only in their creation but also in their long-term operation. In the case of this project, future residents will have the benefit of safety and easy pedestrian access to abundant retail amenities as well as immediate access to existing public transit stops. The construction process will include the "green" practices of job-site recycling (the goal is to recycle 75% of three or more types of material) and labeling of storm inlets. The building envelope will be constructed to maximize insulation opportunities by providing open-framed exterior corners and pre-pouring gypcrete. The contractor will give priority to materials that can be purchased locally. Finger-jointed wood studs and millwork will be utilized where structurally acceptable. The project will pursue certification through the Environmental Protection Agency and Department of Energy's Energy Star program. This program will require the use of low-flow plumbing fixtures, and high efficiency HVAC system components including mastic duct connections, rigid duct trunk lines and programmable thermostats. The concept of the project is to provide high quality, infill housing to working individuals and households that have previously been relegated to more distant suburban locations in Asheville. As such, the proposed rents have been conceived to be affordable to workforce housing (with incomes of between 80% and 120% of the median household income as adjusted for household size by the U.S. Dept. of Housing and Urban Development. In fact, on that basis, only the partially-complete town homes will have a rent that exceeds that amount which a workforce household can afford. Additionally, the developer will hold out ten one-bedroom units and ten two-bedroom units, collectively 8% of the new units constructed on the site for lease at the maximum rates prescribed by the Housing Trust Fund.

The subject site is surrounded by retail and multi-family uses to the north and east zoned RIVER and RM-16 respectively, by a hotel to the south zoned RB and I-240 and associated ROW to the west which is not zoned.

The RM-16 residential multi-family high density district was created to permit a full range of high density multi-family housing types along with limited institutional public and commercial uses appropriate within high density residential areas. It is intended that this district be located near employment centers, shopping facilities, roads and other urban infrastructure capable of handling the demand generated by high density residential development.

At their September 15, 2008 meeting the Technical Review Committee (TRC) approved this project subject to the conditions in the staff report. At their October 1, 2008, meeting the Planning and Zoning Commission approved this project subject to the conditions outlined in both the Planning & Zoning Commission and TRC staff reports.

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

- 1. That the proposed use or development of the land will not materially endanger the public health or safety.**  
*This has been reviewed by City staff and appears to meet all public health and safety related requirements. The project must meet the technical standards set forth in the UDO, the Standards and Specifications Manual, the North Carolina Building Code and all other applicable laws and standards that protect the public health and safety.*

2. **That the proposed use or development of the land is reasonably compatible with significant natural or topographic features on the site and within the immediate vicinity of the site given the proposed site design and any mitigation techniques or measures proposed by the applicant.**

*The proposed use is compatible with the surrounding natural features and topography. The project must comply with all City standards in regards to grading and erosion control. Over five acres of the site will be maintained as open space and tree save areas. The proposed project makes use of a site that was previously slated for residential and commercial development but left largely uncompleted.*

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

*Staff does not expect that the proposed use would have anything more than a minimal impact on neighboring property values.*

4. **That the proposed use or development or the land will be in harmony with the scale, bulk, coverage, density, and character of the area or neighborhood in which it is located.**

*The proposed density of 261 dwelling units is consistent with the requirements of the RM-16 zoning district. Further, the current proposal only exceeds the density of the previously approved UV project by 21 units and does not include the commercial element that was initially proposed for the site. Given the proximity of the Ramada Inn Hotel, Wal-Mart shopping center, adjacent apartment complex and available infrastructure in the area staff feels that a multi-family/townhome development of this size and density is appropriate for the area.*

5. **That the proposed use or development of the land will generally conform to the comprehensive plan, smart growth policies, sustainable economic development strategic plan and other official plans adopted by the City.**

*The application of compatible infill growth supports a key goal and objective as described in both The Asheville City Development Plan 2025 and the City Council Goals and Vision Plan). The comprehensive plan identifies affordable housing as one of the most pressing problems facing the City of Asheville. However, the developer has made no specific commitment to include designated affordable units into the project as a whole. The goal of sustainability is achieved by high density, infill development and the reuse of existing infrastructure onsite.*

6. **That the proposed use is appropriately located with respect to transportation facilities, water supply, fire and police protection, waste disposal, and similar facilities.**

*The proposed development is located near transportation facilities and other utilities appear adequate. The initial technical review by other technical agencies and utility providers has not revealed any problems for serving the use.*

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

*The proposed project is anticipated to generate 132 vehicles per hour (26 vph ingress and 106 vph egress) during the morning peak hour and 161 vehicles per hour (105 vph ingress and 56 vph egress) during the afternoon peak hour at full build-out conditions (two years). In addition, the proposed project could generate 1,700 vehicles per day during a typical weekday. Since the anticipated traffic for the subject project is less than the previously approved project which was anticipated to generate 206 vehicles per hour (78 vph ingress and 128 vph egress) during the morning peak hour and 513 vehicles per hour (280 vph ingress and 233 vph egress) during the afternoon peak hour, a revised traffic impact study is not required. It is reasonable to conclude that the subject project would have a minimal impact on the surrounding roadway network including the perimeter intersections.*

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

Pros:

- The proposed development will provide an additional 261 rental units strategically located within proximity to transportation lines, employment centers and services.
- Provides an opportunity for adaptive re-use of an abandoned development site.
- Provides another opportunity to further the City's goal of high density infill development.

Con:

- Conditional rezoning will result in the loss of Urban Village zoning and the opportunity for a mixed use development.

Staff recommends approval of the proposed project and Conditional Zoning request subject to the conditions in the TRC staff report, the standard conditions and the following conditions: (1) A deed restriction must be placed on the designated affordable units limiting any rental increase to no more than 4% per year for the first 10 years and that the units are reserved for qualified households in the form approved by the City Attorney; (2) The applicant must make application for both the lot



recombination and rezoning of PIN 9658.19.52.8314 from Urban Village District to Commercial Industrial District before zoning permit issuance; and (3) a plat for the existing townhome units must be submitted for review and approval prior to issuance of any Certificates of Occupancy.

Mr. Chris Eller, representing the developer, explained they will be utilizing an existing abandoned site and bring a workforce housing complex to an area within walking distance of two shopping centers. He explained the need for the two requested modifications. The developer has begun conversations with the owner of the Ramada Inn property regarding the realignment of a road, which will allow them to realign two buildings to salvage the existing infrastructure. They have worked to try to salvage as much of the existing project as possible. He briefly explained the stormwater measures being implemented, supplementing it with best management practices. He felt this will meet the City's goal of high density infill development and urged the Council's approval.

Mr. Russ Davis, President of Terwilliger, Davis and Leadbetter, LLC, (developer), briefed the Council on the history of his company, which develops infill urban multi-family projects. Their mission is to provide housing for workforce families. He recognized that affordable housing and building green is very important in this community. Their project includes both elements. They propose to be certified as an Energy Star project. They will also incorporate, in the products they use and the means by which they construct the project, as many green techniques as they can reasonably include, such as recycling studs, where justified. In addition, they purchase as many products and services as they can locally. They have proposed in their mix 20 units (10 one-bedrooms and 10 two-bedrooms) that they will rent at no higher than the maximum allowed by the Housing Trust Fund.

Mr. Fred English urged Council to support this conditional zoning request.

Mayor Bellamy closed the public hearing at 5:52 p.m.

In response to Councilman Mumpower, Mr. Davis said that when you're an outside developer, you recognize the community's commitment to affordable housing. In addition, his partner is Chairman of the Board for International Habitat for Humanity and they believe that it is part of their responsibility to commit to affordable housing, noting that there was some pressure from the City for this aspect of the project.

Councilwoman Cape encouraged the developer to contact Progress Energy as they are offering new construction incentives.

There was considerable discussion regarding sidewalks. Mr. Eller explained that there are a lot of internal sidewalks, but the street in question is a private drive and not a public street, noting that there is only an approximately 30-foot section on their property.

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

Based on information provided in the staff report and as stated in the staff recommendation, Councilman Mumpower moved for the adoption of Ordinance No. 3663, with the modification from the 15 feet front setback standard for 4 of the existing 9 units and the modification to the 3-foot modification to the maximum height of 40 feet to allow for floor to floor ceiling heights of 9 feet, subject to the following conditions: (1) The project shall comply with all conditions outlined in the TRC staff report; (2) All site lighting must meet City of Asheville lighting standards and utilize cut-off or full-cutoff fixtures in order to avoid any light trespass and offensive glare; (3) All existing vegetation that is to be preserved must be clearly indicated and dimensioned on the site, landscape and grading plans; (4) The building design, construction materials and orientation on site must comply with the conceptual site plan and building elevations presented with this application. Any deviation from these plans may result in reconsideration of the project by the reviewing boards; (5) This project shall undergo final review by the TRC prior to issuance of any required permits; (6) A deed restriction must be placed on the designated affordable units limiting any rental increase to no more than 4% per year for the first 10 years and that the units are reserved for qualified households in the form approved by the City Attorney; (7) The applicant must make application for both the lot recombination and rezoning of PIN 9658.19.52.8314 from Urban Village District to Commercial Industrial District before zoning permit issuance; and (8) a plat for the existing townhome units must be submitted for review and approval prior to issuance of any Certificates of Occupancy. This motion was seconded by Councilman Russell and carried unanimously.

## **ORDINANCE BOOK NO. 25 – PAGE**

### **B. PUBLIC HEARING TO CONSIDER AN AMENDMENT TO THE UNIFIED DEVELOPMENT ORDINANCE TO MODIFY STANDARDS FOR OUTDOOR LIGHTING AND RELOCATE FROM THE STANDARDS AND SPECIFICATIONS MANUAL TO THE UNIFIED DEVELOPMENT ORDINANCE**

**ORDINANCE NO. 3664 – ORDINANCE AMENDING THE UNIFIED DEVELOPMENT ORDINANCE TO MODIFY STANDARDS FOR OUTDOOR LIGHTING AND RELOCATE FROM THE STANDARDS AND SPECIFICATIONS MANUAL TO THE UNIFIED DEVELOPMENT ORDINANCE**

Mayor Bellamy opened the public hearing at 6:08 p.m.

Assistant Planning & Development Director Shannon Tuch said that this is the consideration of an ordinance to modify standards for outdoor lighting and relocate them from the Standards and Specifications Manual to the Unified Development Ordinance. This public hearing was advertised on November 14 and 21, 2008.

-  
In 2007 the City of Asheville was approached by local representatives of the Dark Skies Association interested in examining the city's outdoor lighting standards to reduce light pollution that was becoming increasingly problematic as a result of growth and development. In addition to this concern, staff had also noted that the existing outdoor lighting standards had been problematic and were confusing to apply and difficult to enforce, resulting in a number of complaints of non-compliant or undesirable lighting conditions throughout Asheville. The interest in examining the existing standards grew as awareness of new technology and practices also became apparent. Volunteers from the community were solicited to participate in a focus group that agreed to meet every other week for approximately 3 months examining the standards, section by section, with additional work conducted via e-mail. The members of the focus group included:

Bob Henderson	Progress Energy
Greg Sterken	Progress Energy
Bernie Arghiere	Dark Skies (Citizen, amateur astronomer)
John Chapelle	Dark Skies (Engineer)
Preston Kendall	Ingle's Markets (Real Estate Project Manager)
Rebecca Manning	Lighting Specialist

In addition to these private citizens, the following City staff also participated in the focus group meetings:

Shannon Tuch	Planning & Development
Gary McDaniel	Planning – Code Enforcement
Shannon Morgan	Planning – Code Enforcement
Alan Dunlap	Asheville Police Department
Richard Grant	Public Works
Ronnie Evans	Building Safety

The existing standards were first adopted as part of the *Standards and Specifications Manual* in 1998; a modest update followed in 2002 and has remained unchanged since that time. The standards were organized by category, which is replicated in the proposed draft with some additions including information regarding applicability, prohibitions and new standards for street lighting. The following is a detailed summary of the changes by category:

1. Removed from the *Standards and Specifications Manual* and added to the *Ordinance* where it will be found and referenced easily.
2. (a) Purpose statement – largely unchanged, rephrased slightly and put in a form more consistent with other sections of the Ordinance.
3. (b) Definitions – largely unchanged, minor modifications to reflect common industry definitions with some new definitions added; some illustrations also added.
4. (c) Light Measurement Technique – unchanged except for calibration of light meter is to occur every 2 years (instead of 1 year).
5. (d) Applicability – added new for clarity but does not create new standards; Previously addressed (somewhat) in the separate non-conformities section and in the city's street lighting policy. Adding this section consolidates the information and helps to identify in what circumstance compliance is required; follows the pattern for other site improvements. Staff is also proposing an alternative (Alternative B) that would reduce the instance where these standards are applied.
6. (e) Replacement of existing lighting fixtures – added new and is specific to lighting. This requires the replacement of a singular fixture with one that is compliant, when not part of a larger lighting system.
7. (f) Exemptions – a minor addition to clarify what types of lighting that will not be regulated.
8. (g) Prohibitions – the Ordinance explicitly states that what is not specifically allowed is therefore prohibited so this addition does not result in additional regulation. This section is added to help communicate what to avoid and to assist with enforcement.
9. (h) General Standards – similar to existing but includes the following changes/additions:

- Added language requiring top shields for flood lights
  - Allows horizontal variance if side shielded.
  - Added Dusk-to-dawn lights to regulation (common source of complaints)
  - Specifies that wall pack lights must be **full**-cutoff (believe this was the original intent)
  - Added section regarding what to do when faced with glare as a result of topography
10. (i) Street Lighting – added new. Previously, street lighting was not included in the standards but was addressed through policy. Found that resulted in a lot of diversity and inconsistency. Appropriate to have public lighting follow same standards as private development. Due to existing diversity of lighting, this section retains the most flexibility for cut-off and semi-cutoff fixtures, provided other standards can be met.
  11. (j) Lighting in Parking lots/Outdoor Areas – moderately changed; removed option for semi-cutoff fixtures but clarified when cut-off fixtures could be considered (decorative, less than 18'); established recommended minimum lighting levels but restricted the maximum.
    - Commission to perform duties of the BoA? This has been removed – all variances will be heard by the BoA, not the Planning & Zoning Commission
  12. (k) Lighting for vehicular canopies – unchanged except for requiring full cutoff fixtures when simple “cutoff” fixtures were allowed previously.
    - Introduce policy discussion as to whether an amortization period should be considered for canopies. Staff did not recommend amortization and the Commission did not support this idea. This is not included in the proposed draft.
  13. (l) Lighting for outdoor display areas – unchanged except for requiring full cutoff fixtures when basic cutoff fixtures were allowed previously.
  14. (m) Lighting for Outdoor Sports Fields/Performance Areas – unchanged except added that shall also meet the standards addressing glare as a result of topography (h)7
  15. (n) Covered Parking – unchanged.
  16. (o) Lighting of Buildings & Landscaping – this section has been expanded to address common inquiries.
    - Removed “to the extent practicable” and added, “director may waive if proven impractical”
    - Limit intensity of lights directed upward
    - Limits intensity of lights used to light façade and landscaping
    - Adds shields for skylights
  17. (p) Signs – unchanged except add language to limit brightness if creates a hazard to motorists and remove “to the extent practicable and whenever possible” (lighting fixtures shall be directed downward rather than upward)
  18. (q) Permits – unchanged except added comment that Level III, CZ, and CUP project are evaluated on a case by case basis and could be required to comply to a standard that exceeds the minimums set forth in this ordinance.
  19. (r) Nonconformities – expanded to explain ballast failure = fixture failure and also added amortization for dusk to dawn lights. Alternative B would amend this section some to be more lenient.

She then explained that the most significant changes are summarized as follows:

1. **Standards are moved from the *Standards and Specifications Manual* to the *Unified Development Ordinance*** – Staff initially resisted the idea of moving these standards to the UDO; however, an informal poll of design professional and developers appeared to indicate that the UDO was the more commonly referenced document and the document used to understand what site features would need to be brought into compliance as the result of new development.
2. **Street lighting is added** – Previously, street lighting was exempted from regulation which resulted in some moderate to significant light trespass when non-cutoff fixtures were used. Because the City typically takes over the maintenance and cost associated with all street lighting, it was felt that it would be best to include standards in the ordinance so that developers would use fixtures that addressed trespass and require less energy and maintenance. Note: there are a number of exceptions included in these standards to help address the wide variety of fixtures that are currently in place.
3. **Full cut-off and cut-off fixtures required for parking lot/outdoor areas** – This issue was the most heavily discussed issue amongst both the focus group and the Planning & Zoning Commission. While requiring full cut-off fixtures is not particularly problematic with new construction, to bring a non-compliant parking lot into compliance could result in replacement of the system or the addition of new fixtures. Compliance of an existing system would only be required in cases where other extensive site improvements are also required (expansion/renovation over 50% tax value, etc.). Ultimately, it was the consensus of the group that the benefits (controlling trespass, improving quality of light, improving safety) outweighed the cons (costs, limiting fixture choices). Staff is also providing an alternative where compliance, even when in association with extensive site improvements, would not be required.
4. **Add new standards regulating residential lighting** – Of all lighting related complaints, residential lighting generates the greatest number of the complaints received by code enforcement. Standards requiring replacement of unshielded “dusk-to-

dawn" lights within 5 years was easy to achieve through existing Progress Energy leases; other standards would be enforced on a complaint basis.

Applicability of the standards include (1) all new construction (including single-family); (2) complete replacement of existing systems; (3) all new street lighting; (4) expansions exceeding 50% of the pre-expansion floor area\*; (5) renovations exceeding 50% of the tax value of the building\*; and (5) changes of use to a higher impact\*. \*Indicates applications exempted under Alternative B.

City Council has recently adopted the following four goals: *sustainable, affordable, green* and *safe*, this report's recommendation most appropriately addresses the goal of *sustainability* by creating standards that are both more current and easier to apply and enforce. Additionally, new LED technology is being developed that will be very easily accommodated and encouraged through the proposed standards which will support the goal of encouraging *green* practices. Lastly, the goal of improved *safety* is also addressed through establishing standards that support better quality light with improved coverage and less glare.

The section of the *Asheville City Development Plan 2025* titled "Quality of Life as an Economic Development Incentive" sets forth several goals designed to balance varied interests to maintain a desirable environment to live, work, and play. A few of the strategies listed include:

- Insure that Asheville's urban planning, zoning, and permitting processes, as created and administered by the City, facilitate sustained and positive development.
- The City's future development will balance economic objectives, social goals, and its natural resources to the benefit of present and future generations.
- Continue to use the implementation team process developed by the Sustainable Economic Development Task Force to regularly review and propose changes to key City documents.

The Planning and Zoning Commission received this draft and introduction from staff at their September 3, 2008, meeting. Due to the technical nature of the ordinance, it was recommended that the Commission take the following month to review the information provided in the staff report and draft ordinance and return to the discussion in October. During this intervening month, staff collected a number of photo examples to share with the Commission at the next meeting and also made deliberate efforts to personally reach out to significant stakeholders in the Community and share this information more directly. All feedback and sharing of information was encouraged in the contact; however, only minor clarifying questions were received with no requests for significant changes. Planning staff directly shared the proposed draft and the summary of changes with the following stakeholders:

- Biltmore Farms
- UNCA
- Asheville City Schools
- Buncombe County Schools
- Mission Hospitals
- Crossland Development, Inc.
- McGill Engineering
- Lewis Real Estate

Specific details of a number of standards were discussed at both meetings; however, the items of greatest interest included understanding the pros and cons of requiring full cut-off features (vs. semi-cutoff, cutoff or non-cutoff), and when to require full compliance. The Commission requested one clarification to when full compliance was required but, otherwise supported the staff recommendation to require full cutoff fixtures for parking lots and outdoor display areas in addition to the other standards (vote was 6:0).

In light of some of the discussion from the Commission meetings, in addition to the general economic discussion occurring amongst the development community at large, staff is also proposing an alternative (Alternative B) for the Council's consideration. This alternative would require only new outdoor lighting in association with new construction, along with the complete replacement of any existing systems, to come into compliance. Unlike the proposed draft, it would exempt all existing systems and conditions, even if there is a proposed renovation or expansion that would normally require full site compliance. This alternative has been generated as a result of staff efforts to examine the UDO and existing standards for options that may provide more freedom to existing property owners/developers to pursue improvements to their properties. Additionally, this option would address the challenges that could be experienced when attempting to bring an existing non-conforming system into compliance.

Pros:

- Consolidates information into one document for easy reference.

- Proposed standards reflect current practices and new technologies; encourages new "green" technologies and practices.
- Reduces potential for land use conflict currently being experienced throughout Asheville.
- Improves the night sky environment.

Cons:

- Will create non-conformities in some situations (however, non-conforming sites will be grandfathered).
- May result in the need for additional fixtures.
- Will reduce luminaire options (although a variety of compliant options exist and the number available is increasing as demand increases).

The City will not be exempt from these standards and will need to replace non-compliant fixtures with compliant ones as the older versions reach their life expectancy; however, this is currently the practice of city departments and would not result in any increased costs.

City staff concurs with the Planning and Zoning Commission and recommends the City Council approve the draft ordinance as proposed. Should the Council, as a policy decision, wish to consider an alternative that affords more relief to existing conditions and developed properties, staff would recommend substituting the language outlined in Alternative B.

Mr. Bernie Arghiere, representing Dark Skies, explained their participation in this ordinance and urged Council to approve the proposed ordinance.

Ms. Rebecca Manning, Lighting Specialist, spoke in support of the proposed ordinance. While Progress Energy provides electricity for lighting, they are not in the fixture business. We should explore expanding the inventory of choices to create a better lighting product for the City and the residents.

Mayor Bellamy closed the public hearing at 6:36 p.m.

Vice-Mayor Davis thanked the members of the focus group for their hard work on this fair ordinance.

From the focus group meetings, Councilwoman Cape learned a lot about glare in terms of public safety and how to light smarter and safer.

Ms. Tuch and Mr. Arghiere responded to various questions/comments from Council, some being, but are not limited to: as part of our overall energy efficiency, has the City's facilities and public spaces been reviewed to see if the lighting is serving useful purposes; has the N.C. Dept. of Transportation been involved in this discussion; has the state adopted a model ordinance and if an when that ordinance is adopted, can our ordinance be amended; is the full cut-off the standard in architectural design or are there a wide variety of fixtures; what does the amount of coverage on the ground depend upon; does Alternate B apply to residential as well; what are the costs to the developer or property owner associated with the recommendations; will these recommendations improve the City's enforcement costs; and does this ordinance help the night sky.

In response to Councilman Mumpower, Ms. Tuch explained Alternative B. Staff feels that it may be more challenging to bring a lighting system into compliance when it doesn't presently comply. With Alternative B, we would have more non-compliant systems out there for a longer period of time. We would allow existing non-compliant systems to remain until such time that they are replaced.

Councilman Mumpower was concerned with the heavy handed government reaching into everyone's lives. He felt that having staff work on a lighting ordinance is a distraction about what the City should be doing to achieve their core services.

Councilwoman Cape explained that government is not just regulatory. We are creating a framework by which other people have access to the same information.

Vice-Mayor Davis felt having the City's public safety people as part of the focus group was a great resource as they explained the ineffectiveness of lighting in the wrong places.

Councilman Russell said that with his experience of the auto insurance industry, intersections not properly lit can be very dangerous with glare. Even though he does not support over regulation, this is a case where public safety benefits are important.

At Mayor Bellamy's request, Ms. Tuch explained the appeal process said that she would be happy to include language in this ordinance regarding that process.

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

Councilwoman Jones moved for the adoption of Ordinance No. 3664 including the language from Alternative B. This motion was seconded by Councilman Newman and carried on a 6-1 vote, with Councilman Mumpower voting "no."

#### **ORDINANCE BOOK NO. 25 – PAGE**

At 7:01 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 location of the property is 1500 Tunnel Road. The statutory authorization is contained in G.S. 143-318.11(a) (5). This motion was seconded by Vice-Mayor Davis and carried unanimously.

At 7:15 p.m., Councilwoman Jones moved to come out of closed session. This motion was seconded by Councilwoman Cape and carried unanimously.

#### **C. PUBLIC HEARING TO CONSIDER AN AMENDMENT TO THE UNIFIED DEVELOPMENT ORDINANCE TO ADOPT NEW STANDARDS FOR SIGNING TO ALLOW (1) SIGNS ON BUSES; (2) DIGITAL MARQUEES; AND (3) LED SIGNS**

#### **ORDINANCE NO. 3665 – ORDINANCE AMENDING THE UNIFIED DEVELOPMENT ORDINANCE TO ADOPT NEW STANDARDS FOR SIGNING TO ALLOW (1) SIGNS ON BUSES; (2) DIGITAL MARQUEES; AND (3) LED SIGNS**

Mayor Bellamy opened the public hearing at 7:20 p.m.

Assistant Planning & Development Director Shannon Tuch said that this is the consideration of an ordinance to adopt new standards for signing to allow (1) signs on buses; (2) digital marquees; and (3) LED signs. This public hearing was advertised on November 14 and 21, 2008.

It is common practice for municipalities to respond to changes in policies, technology, and development practices by creating new development standards to guide appropriate and sustainable development. Recently, the Planning and Development department was contacted by others outside the department interested in developing new standards for new types of signage. The separate requests are summarized as follows:

1. Expand existing standards for marquee signs to allow Light Emitting Diode (LED) (Asheville Civic Center, Diana Wortham Theater, Asheville Art Museum, etc.). Other standards related to marquee signs remain unchanged.
2. Expand existing standards for changeable copy signs to allow Light Emitting Diode (LED) technology (Sign contractors, various property owners, etc.). Other standards related to changeable copy signs remain unchanged.
3. Clarify standards to allow advertisements on city buses. (Asheville Transit)

While all three requests would all involve changes to the current sign code, the nature of the requests is somewhat different and could be separated and considered individually. In the interest of efficiency, they have been bundled together in this report for a single amendment.

*Digital Marquee.* It is a common industry practice for entertainment venues to utilize a form of changeable copy sign that advertises different acts or events to inform the general public of important dates, shows, times, etc. New digital LED technology has created less labor intensive message changing options that a number of public event facilities have become interested in. At present, Asheville does not have standards regulating digital signs and would have to create such standards in order to allow this new form of signage as well as establish safeguards that would protect the public welfare from hazards or other nuisances. Digital marquee signs located in the Central Business District (CBD) would have to go to the Downtown Commission for review and content would be limited exclusively to advertising current and scheduled events (no advertisements).

*Digital Changeable Copy.* Similar to marquees, digital changeable copy signs would allow for the same LED technology to be used to change messages electronically. Unlike marquee signs, changeable copy signs are not allowed in the CBD or other "Urban" zoning districts and typically provide non-entertainment related information that may be of interest to the general public.

*Advertisements on city buses.* Unlike signs on vehicles, advertisements would be designed to inform the general public of a specific product, service or event while signs on vehicles identify a specific business and is used for business purposes. Recently, the Asheville City Council approved a request from the transit manager to allow advertising on city busses as a

supplemental revenue stream. Before transit staff sold any advertisements, it was recommended that an amendment clarifying the difference between signs and advertisements along with any regulating standards that should be considered be adopted. This amendment is designed to support that recent policy change.

The Planning & Zoning Commission reviewed this report and recommendation at their November 5, 2008, meeting where the amendment was supported and recommended for approval. A significant portion of the discussion addressed the recommendation for the static hold time for the image on a marquee sign. In the interest of being conservative, the Commission recommended a 20 second hold time although there was some discussion over whether this was the most appropriate recommendation with at least two members expressing appreciation for the shorter time frame demonstrated by the Pack Square sign.

The portion of this amendment that addresses digital (LED) marquee signs downtown was also shared with the Downtown Commission (DTC) at their November 14, 2008, meeting. The matter of hold time was the primary issue discussed with the DTC as well where some new benchmarking information was shared with the DTC that the Planning & Zoning Commission had been unaware. Ultimately, the DTC disagreed with the Planning & Zoning Commission and recommended a 6 second hold time in order to effectively display multiple messages without inconveniencing passers-by. In light of the new information and discussion by the two Commissions, staff supports the 6 second hold time which is reflected in this draft ordinance.

City Council has recently adopted the following four goals: *sustainable, affordable, green* and *safe*, this report's recommendation most appropriately addresses the goal of *sustainability* by responding to changes in technology and policy.

Pros (LED signs):

- Accommodates new technology and practices and provides new opportunity for a variety of sign users (not limited to commercial property)
- Proposes safeguards to minimize hazards or nuisances

(Advertisements on buses):

- Supports changes in city policy
- Provides revenue to support transit services

Cons (LED signs):

- Introduces a new aesthetic (could also be viewed as a "Pro")
- Has potential for allowing multiple signs along a single view corridor resulting in a cumulative distraction.

(Advertisements on buses):

- Limits opportunity for this form of revenue to the City of Asheville's Transit Department

Regarding fiscal impact, LED signs – none identified. Signs on city buses - will result in additional revenue to the City's transit department to help offset costs for other transit services.

City staff concurs with the Planning & Zoning Commission and the Downtown Commission and recommends approval of the wording amendment as proposed.

Mr. John Ellis, Director of the Diana Wortham Theatre, spoke in support of this ordinance and supported the 6-second hold time.

Mayor Bellamy closed the public hearing at 7:29 p.m.

Due to the complex motion, it was the consensus of Council to divide the motion and vote on each issue separately.

After a brief discussion initiated by Mayor Bellamy regarding signs on buses, Ms. Tuch explained that this change does not affect any changes to the sign ordinance, other than allowing advertising on City buses. A concern surfaces when a large truck (with advertising) is parked off-site for a long time.

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

Councilwoman Jones moved to amend the Unified Development Ordinance to adopt new standards for signs on buses. This motion was seconded by Vice-Mayor Davis and carried on a 5-2 vote, with Mayor Bellamy and Councilman Mumpower voting "no."

In response to Councilman Newman, City Attorney Oast said that he would investigate whether the sign owners would have a vested right to maintain their signs for a certain length of time.

Councilwoman Jones moved to amend the Unified Development Ordinance to adopt new standards regarding digital marquees. This motion was seconded by Vice-Mayor Davis and carried on a 6-1 vote, with Councilman Mumpower voting "no."

Councilwoman Jones moved to amend the Unified Development Ordinance to adopt new standards regarding LED signs. This motion was seconded by Vice-Mayor Davis and carried on a 6-1 vote, with Councilman Mumpower voting "no."

## **ORDINANCE BOOK NO. 25 – PAGE**

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

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

#### **A. RESOLUTION NO. 08-235 - RESOLUTION AUTHORIZING THE CITY MANAGER TO APPROVE CO-SPONSORED EVENTS FROM JANUARY 1 – JUNE 20, 2009, AND FISCAL YEAR 2009-10**

Superintendent of Cultural Arts Diane Ruggiero said that this is the consideration of a resolution authorizing the City Manager to approve co-sponsor support of various events.

The City of Asheville co-sponsors events that benefit local non-profit organizations and enhance the community with public events, parades, and festivals.

During the recent Request for Proposals process, 32 organizations applied for co-sponsor support for a total of 148 events from January 1, 2009 – June 30, 2010.

Staff has identified six (6) "Anchor Events": Asheville Drum Circle, Asheville Greek Festival, Asheville Holiday Parade, Downtown After 5, Goombay Festival, and Shindig on the Green. Anchor Events are those events that have a significant economic impact on the City, have become traditions within the community, and/or are unique in the experience they provide. Additionally, staff proposes waiver of fees and permit costs for the 26 non-anchor events.

This does not support a specific goal, objective, or action item with City Council Strategic Operating Plan. This does support the current Parks, Recreation and Cultural Arts 2015 Comprehensive Master Plan by making organizations aware of the value of their support from the City and by providing clear criteria for support.

#### **Pros:**

- Generates money for the local economy.
- Provides additional quality cultural programming and diversity.
- Allows fundraising opportunities for charities.
- Expands and enhances special events and festivals in Asheville.

#### **Cons:**

- Events put a strain on City resources such as Police, Fire, Sanitation, Park Maintenance, etc.
- Events contribute to decline on infrastructure and equipment provided to the organizers.

Regarding the fiscal impact, \$93,518 of in-kind goods and services for the six anchor events between January 1, 2009 and June 30, 2010 which is a cost savings of approximately \$217,000 from Fiscal Year 2008/09 plus \$28,482 in waived fees and permit costs. Approval of this program also increases the police overtime allocation for targeted enforcement.

Due to the current economic climate throughout the City of Asheville, staff recommends full support of the six (6) anchor events (Asheville Drum Circle, Asheville Greek Festival, Asheville Holiday Parade, Downtown After 5, Goombay Festival, and Shindig on the Green) for a total of \$93,518 between January 1, 2009 and June 30, 2010.

Staff further recommends waiving permit costs and other fees for the remaining 26 events for a total of \$28,482.00 of waived fees.

Councilwoman Jones moved for the adoption of Resolution No. 08-235 approving full support for six anchor events (Asheville Drum Circle, Asheville Greek Festival, Asheville Holiday Parade, Downtown After 5, Goombay Festival, and Shindig on



the Green) for a total of \$93,518 between January 1, 2009 and June 30, 2010; and approving waiving permit costs and other fees for the remaining 26 events for a total of \$28,482.00 of waived fees. This motion was seconded by Vice-Mayor Davis.

Mayor Bellamy asked for a friendly amendment to take \$1,000 out of the Mayor's travel allowance and that it be applied to Memorial and Veteran Day events. Councilwoman Jones and Vice-Mayor Davis accepted the friendly amendment.

When Mayor Bellamy asked for public comment, she received none.

In response to Councilwoman Cape, Ms. Ruggiero said that by only waiving the permits for the 26 remaining events, we will be saving almost \$50,000 in overtime police support, almost \$20,000 in sanitation, streets and water; and almost \$6,000 in fire and rescue support.

In response to Councilwoman Cape, Ms. Ruggiero explained the use of police officers in our co-sponsored events, noting that a lot of factors are taken into consideration when the Police Department determines the amount of officers that need to be present.

Councilman Mumpower felt that there is an absence of fairness in this selective process. He pointed out that this action is distracting us from resolving public safety issues in the City and that is something that only the City can do.

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

Councilwoman Jones moved for the adoption of Resolution No. 08-235, with the \$1,000 Mayor travel allotment being transferred for Memorial and Veterans Day activities. City Manager Jackson said that a budget amendment may be necessary to achieve this amendment and if so, he would bring it back to Council. This motion was seconded by Vice-Mayor Davis and carried on a 6-1 vote, with Councilman Mumpower voting "no."

#### **RESOLUTION BOOK NO. 31 – PAGE 380**

#### **B. DISCUSSION OF TRANSPORTATION OF NUCLEAR WASTE ON FEDERAL INTERSTATE SYSTEM THROUGH ASHEVILLE**

At 7:58 p.m., Councilman Mumpower requested to be issued due to illness, with the understanding that Council will not vote on this issue at this meeting. Councilwoman Jones moved to excuse Councilman Mumpower. This motion was seconded by Councilman Newman and carried unanimously.

Councilwoman Cape said that this item came before the City Council Planning & Economic Development Committee. She felt this issue is one that the community is interested in and asked that it be brought before the full Council. Essentially, Asheville sits at a central point of transportation of nuclear waste from the northeast, Midwest and middle north to one of the major processing places in South Carolina. We deal with the complexity of the traffic issues through downtown Asheville all the time and there have been some good attempts by communities to have a voice in what is being transported through the community. Even though these things are not coming through our community now at the degree they can and will, this is a good time to get ahead of the issue and state where this community stands. One accident can keep a community out of that area forever and if that happens in the heart of our downtown, it doesn't fit sustainability. As Chair of the Planning & Economic Development Committee, she supports this item.

Mr. Robbie Sweetser, with Common Sense Nuclear Crossroads, provided Council with the following presentation of an ordinance to prohibit the transportation of high level nuclear waste within the City limits.

He introduced that (1) Asheville is an important crossroads for military and industrial shipments of radioactive material; (2) the number of these shipments is likely to increase with completion of I-26; and (3) the ordinance they propose will allow Asheville to have a say in how the non-military part of this traffic develops in the future.

On the road now is (1) low-level enriched uranium products; (2) medical radiological supplies; (3) low-level radioactive waste and probably a variety of military cargoes including plutonium, tritium, and other nuclear weapons; and (4) while there are also of concern from a safety point of view, they do not emit large quantities of radiation, and the ordinance does not apply to them.

We want to prohibit another type of shipment, something we're not dealing with today: (1) substances labeled by the government as spent nuclear fuel and high level nuclear waste; (2) these are up to a million times more radioactive than new

nuclear fuel rods, pure uranium, plutonium, etc.; (3) unshielded exposure to spent fuel or high level waste can be fatal in as little as a few seconds; and (4) thanks to action by the N.C. representative to the Cross-Country Transportation Working Group, we believe that none of this material travels by road or rail through WNC at present.

We need to act because (1) government and corporate interests are pushing construction of new nuclear reactors; (2) but 60,000 tons of spent fuel are sitting at power plant sites – the number is increasing by 2,000 tons per year; (3) before committing to a new round of nuclear plant construction, the financial and utility sectors want to see existing waste move out whether for long-term geologic storage or reprocessing, possibly in South Carolina; (4) the National Academy of Sciences estimates that about 9600 rail and 1100 highway shipments are needed to move the first 70,000 tons to long term storage (a) 18 times more than all prior shipments combined; (5) the Department of Energy (DOE), looking ahead 38 years, predicts a total of 108,500 shipments; (6) if spent fuel is “reprocessed” into new fuel rods, shipments may increase still further because the highly radioactive leftovers, high level waste, will also require long term storage.

Shipping looks like (1) all spent fuel is to be moved in a proposed new cask, the Transportation, Aging, and Disposal (TAD) canister. Prototypes for safety testing aren't expected to be available for a few years; (2) TAD canister specs show a shipping weight of 250,000 pounds; (3) this is a normal weight for heavy rail cars; and (4) on the highway it's a different story. Legal gross weight for a tractor trailer rig is 80,000 pounds. With special permits, much heavier weights are allowable. The TAD canister and a tractor rig built to haul would weigh some 300,000 pounds.

Such shipments should not come through Asheville (1) weather and terrain were the stated reasons why the Cross-Country Transportation Working Group rejected shipping fuel from research reactors through WNC in the late 1990s (a) those transport trucks carry payload casks of only about 25,000 pounds; and (b) that's 10% the weight of a TAD canister; (2) although severe accidents involving hazardous materials are thankfully rare, they do occur; (3) proponents of spent fuel shipments are correct in stating that there have been no radiation-related fatalities in the United States due to transportation mishaps. Prior to Three-Mile Island they also derided the possibility of a meltdown at a United States commercial nuclear reactor; (4) each spent fuel TAD canister could contain more radioactive products than were scattered by the atomic bomb dropped on Hiroshima; (5) in 2003, the state of Nevada projected that a catastrophic release from a TAD-sized canister in an urban area would severely contaminate a 32-square mile area, eventually kill 4,000-28,000 people, and carry a cleanup cost of \$13 Billion; and (6) a tiny fraction of such damage would be devastating to Asheville.

We need to act now because (1) history shows that state wishes are seriously considered in the selection of highway routes for spent fuel. Influence over rail routes is more difficult; and (2) the time to act is now, proactively, before federal and industry plans are set in stone.

Examples of other resolutions and ordinances include Los Angeles, Ventura, Santa Barbara and San Luis Obispo Counties, and the City of Santa Barbara, California; Denver, Colorado; St. Louis and Kirkwood, Missouri; Philadelphia, Bucks County, and Falls Township, Pennsylvania; Mt. Ranier, Takoma Park and Greenbelt, Maryland; Decatur, Georgia; Amherst, Massachusetts; Beacon and East Fishkill, New York; Gary, Indiana; and Anson Counties and the town of Wadesboro, North Carolina.

In summary, pass the ordinance because (1) here's an opportunity to decrease the chance that a new class of dangerous cargo will travel through Asheville; and (2) take a proactive position, inform the state delegation of strong local opposition to these shipments.

Councilwoman Cape moved to adopt an ordinance to prohibit the transportation of high level nuclear waste within the City limit. The core of what economically drives people to Asheville is being clean and green. There has been plenty precedent by the N.C. Dept. of Transportation to listen to what the community wants on their roads. We are saying that through the middle of our downtown is not an appropriate route for taking this kind of waste.

Councilwoman Jones noted that prior to adoption of an ordinance, staff is allowed input.

City Attorney Oast said that if Council is interested in pursuing an ordinance like the one proposed, he asked for the opportunity to do more research on the question. Transportation of nuclear waste is a fairly heavy regulated activity at the federal level. There are at least two acts that apply to it - the Atomic Energy Act and the Hazardous Waste Transportation Act of 1975 which says specifically that it preempts local ordinances if the local ordinance cannot be complied with or if the local ordinance is an obstacle to carrying out the act. There are ways, however, to get the preemption limited as to a local ordinance and that may be something Council is interested in looking into. Since we are talking about the transportation occurring exclusively on federal or state highways, he felt that the State would have some interest in the City's position on this. The cases that he has reviewed, but not fully analyzed, indicate that when localities have adopted ordinances of this nature, they have been invalidated as preempted. At least one court has said that certain exceptional circumstances may allow the U.S. Dept. of Transportation to limit the preemptive effect of the Hazardous Waste Transportation Act of 1975 on local ordinances. That would probably require some

involvement from the State. If it is the desire of Council to express the opposition of transportation of nuclear waste through Asheville, he felt a resolution would be a more appropriate way to express Council's concerns. He can look into these issues if Council desires.

Councilwoman Cape reiterated that since the federal and state governments are interested in what the community wishes, this is a manner for communities to express their wishes. This action raises our voice that we want to take care of our people and stand up for no nuclear waste through the center of our downtown.

The motion made by Councilwoman Cape was seconded by Councilwoman Jones.

Councilman Newman felt that since our country has nuclear energy, we need a plan to determine what is the appropriate way to manage that dangerous waste long-term. When that plan is developed, it needs to be executed. If that plan involves transportation of waste to get it to the safest place to be kept long-term, that is what we need to do. The people who are charged with looking at these matters need to develop the safest transportation routes that are in the best interest of our country as a whole. Even though he doesn't want any of that nuclear waste through Asheville or to endanger anyone, if coming through Asheville is the best way to do it, he thinks that is what should be done.

Councilwoman Cape withdrew her motion to adopt an ordinance to prohibit the transportation of high level nuclear waste within the City limits and instead directed the City Attorney to prepare a resolution expressing Council's opposition of transportation of high level nuclear waste within the City limits and that it be brought back to Council in January of 2009.

City Attorney Oast said that in drafting a resolution there are certain federal laws that he can make reference to that would recognize that as a vehicle for local communities to express concerns about these kinds of things. However, after his further research, he may come back to Council with a report saying this is not something Council can do. But, based on his limited research, a resolution may be the appropriate vehicle to express Council's concerns, and could result in authority to adopt a local ordinance that was not preempted.

Councilman Russell said that no one wants nuclear waste through their community. He agreed with Councilman Newman and hoped for new technology coming out in the next decade that can handle the nuclear waste.

Mayor Bellamy noted that because there is no motion on the floor, no public comment would be taken. At such time as a resolution is brought before Council for action, if the majority of Council directs the City Attorney to prepare that document, public comment will be taken at that time.

When Mayor Bellamy asked if there was a majority of Council's support to direct the City Attorney to prepare a resolution, she did not receive that majority support. Therefore, the action died.

Mayor Bellamy said that she would be happy to meet with Mr. Sweetser and write a letter on his behalf to our state legislators expressing concern of these kind of shipments being transported through our community, so when route are determined, that our voice is heard in terms of the condition and design of the roadways in the western part of the state.

**C. RESOLUTION NO. 08-236 - RESOLUTION STRONGLY OPPOSING THE FORCED TRANSFER OF SECONDARY ROAD PROGRAM FUNDING TO THE PRIMARY ROAD PROGRAM OR ANY OTHER CONSTRUCTION, IMPROVEMENT AND MAINTENANCE TO LOCAL GOVERNMENT**

As a member of the 21<sup>st</sup> Century Transportation Committee, Mayor Bellamy said that they are seeing a lot of different recommendations come forward that would transfer different responsibilities to cities across North Carolina. She felt this issue needed to be brought to Council's attention as soon as possible. It is the possible transfer of 5,000 miles of roadway throughout North Carolina which are currently overseen by the N.C. Dept. of Transportation to municipalities. This will be an additional \$600,000 per year cost to the City of Asheville, with no clear indication of additional funds that would go with this transfer. She asked for Council's support opposing this forced transfer.

Mayor Bellamy then read the resolution as follows: "WHEREAS, the NC General Assembly passed Senate Bill 1513 during the 2007 session; and WHEREAS, HB 1513 allows counties to "Voluntarily" participate in the costs of transportation projects; and WHEREAS, the 21<sup>st</sup> Century Transportation Committee and the Transportation Oversight Committee are considering recommending the diversion of all Secondary Road Program funding to the Primary Road Program; and WHEREAS, diverting Secondary Road Program funding will leave no funding to pave and improve secondary roads; WHEREAS, the City of Asheville has estimated that it will cost an additional \$600,000 per year in local money to maintain these roads; WHEREAS, City Council wishes to actively educate the North Carolina General Assembly about the long term fiscal implications to cities associated with transitioning the maintenance responsibility of secondary roads to municipalities without appropriate funding; WHEREAS, City

Council wishes to partner with other League of Municipalities to support their opposition to this recommendation. Now therefore, be it resolved by the City Council of the City of Asheville that; It strongly opposes the transfer of Secondary Road Program funding to the Primary Road Program or any other program that will reduce funding for secondary road construction, improvement, and maintenance. Be it further resolved that (1) It strongly opposes any efforts by the General Assembly or NCDOT to shift any transportation costs formerly paid by the State to counties; (2) It strongly opposes any efforts by the General Assembly to appropriate directly or indirectly local revenues whether property tax, sales tax, or any other local revenue for State transportation programs or any other State Programs; (3) It strongly urges all municipalities to be fully aware and concerned that any invitation to participate in discussions of transportation needs may lead to an indirect appropriation of local funds; (4) It strongly urges all municipalities to contact the North Carolina League of Municipalities and direct it to oppose any efforts to transfer the funding of any State transportation program to local governments; and (5) That a copy of this resolution be sent to every municipality in the State. Be it finally resolved that copies of this resolution are sent to Buncombe County's representatives in the North Carolina General Assembly."

When Mayor Bellamy asked for public comment, she received none.

Councilman Newman moved for the adoption of Resolution No. 08-236. This motion was seconded by Councilman Russell and carried unanimously.

### **RESOLUTION BOOK NO. 31 – PAGE 383**

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

##### **A. CLAIMS**

The following claims were received by the City of Asheville during the period of November 6-20, 2008: Monica Nolan (Traffic Engineering), Michael Garcia (Sanitation), John Davis (Transit Services), Donna Roberts (Transit Services), Sharon Jones (Transit Services), Kendryl Rogers (Traffic Engineering), Enterprise (Traffic Engineering) and Tracy Jefferson (Police).

These claims have been referred to Asheville Claims Corporation for investigation.

##### **B. LAWSUITS**

The City was served with a Petition on November 12, 2008, which is generally described as follows: Jason Dean Wyatt vs. City of Asheville and Asheville Police Department. This is a special proceedings matter directing the City to release records of a motor vehicle accident on October 27, 2008. The City was not a party in the accident. This matter will be handled in-house.

The City was served with a Complaint on November 13, 2008, which is generally described as follows: City vs. Karl Lynn Halsey Jr. and New Prime, Inc. d/b/a Prime, Inc. This lawsuit involves property damage to the City's digital sign in excess of \$10,000. This matter will be handled in-house.

The City was served with a Complaint on October 20, 2008, which is generally described as follows: KRSA, Inc., vs. Board of Adjustment and the City of Asheville. The nature of the proceeding is a Petition for Writ of Certiorari to reverse decision by the Board of Adjustment denying variance for Petitioner to subdivide real property to create an alternative access subdivision, per the City's subdivision standards. This matter will be handled in-house.

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

In response to Councilman Russell, City Manager Jackson said that Police Chief Hogan is in the process of providing a report to Council on graffiti enforcement efforts on Merrimon Avenue. Mayor Bellamy asked for parents to help by looking around the house for a lot of spray cans that may be used for graffiti.

Mr. Phillip Gray asked to speak on the nuclear waste issue. Mayor Bellamy advised Mr. Gary that when no Council action taken on an item on the printed agenda, public comment is not allowed. In addition, it was not fair to allow him to speak when those who were in attendance during that portion of the meeting left with that understanding. Because there was no public comment allowed during that portion of the meeting and Mr. Gray waited until this informal discussion portion, Councilman Newman moved to waive the rules and allow Mr. Gray to speak. This motion was seconded by Councilwoman Cape, but failed on a 2-4 vote, with Mayor Bellamy, Vice-Mayor Davis, Councilwoman Cape and Councilman Russell voting "no." Mayor Bellamy said that she would be happy to meet with Mr. Gray after the meeting.

#### **IX. ADJOURNMENT:**

Mayor Bellamy adjourned the meeting at 8:53 p.m.

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CITY CLERK

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MAYOR