

Regular Meeting

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

Absent: None

**PLEDGE OF ALLEGIANCE**

Mayor Bellamy led City Council in the Pledge of Allegiance.

**INVOCATION**

Mayor Bellamy gave the invocation.

**I. PROCLAMATIONS:**

**II. CONSENT AGENDA:**

At the request of Councilman Mumpower, Consent Agenda Items “E”, “H” and “I” were removed from the Consent Agenda for discussion and/or an individual vote.

At the request of City Manager Jackson, Consent Agenda Item “F” was removed from the Consent Agenda for a presentation and/or individual vote under New Business.

- A. APPROVAL OF THE MINUTES OF THE FORMAL MEETING HELD ON DECEMBER 9, 2008; AND THE SPECIAL MEETING HELD ON DECEMBER 12, 2008**
- B. RESOLUTION NO. 09-1 - RESOLUTION AUTHORIZING THE MAYOR TO APPLY FOR AND ENTER INTO AN AGREEMENT FOR GRANT FUNDS WITH THE N.C. PARKS AND RECREATION TRUST FUND FOR REIMBURSEMENT OF LAND ACQUISITION FOR THE BEAUCATCHER OVERLOOK PARK PROPERTY**

Summary: The consideration of a resolution authorizing the Mayor to apply for and (if awarded) enter into a grant agreement with the N.C. Parks and Recreation Trust Fund for the purchase of Beaucatcher Overlook Park property.

Funds are available through the North Carolina Department of Environment and Natural Resources, Division of Parks and Recreation in the North Carolina Parks and Recreation Trust Fund (PARTF) to assist with the development of parks, recreational facilities, and greenways. The City of Asheville wishes to submit a grant application for \$500,000. If awarded, grant funds will be used to offset the City's financial commitment of the existing lease-purchase agreement for the Beaucatcher Overlook Park property.

The grant application requires a dollar for dollar cash match valued at \$500,000. The cash match is available through a combination of funds in partnership between the City of Asheville, Trust for Public Land and Buncombe County.

Creating a downtown overlook park is an idea that has been talked about for years in the Asheville area. In 1920, the City of Asheville established the first city plan authored by John Nolan, an early city planner, which identified the infrastructure needs for the growing city. The Nolan plan delineated a circle of parks surrounding Asheville, and major city parks in every neighborhood. The key component of the park system was an expansive overlook park along Beaucatcher Mountain, and open space connecting it to downtown Asheville and the surrounding neighborhoods.

The City's acquisition of the 30 acres of woodland covering the slope of Beaucatcher Mountain is serving as a catalyst to revive the overlook park vision, and is visible from nearly everywhere in downtown Asheville. The site is perfectly situated to be the centerpiece of a new vision for the area around Beaucatcher Mountain including Memorial Stadium, McCormick Field and White Fawn Reservoir.

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

This action complies with the *City Council Strategic Operating Plan Focus Area: Green - Asheville will be the southeastern leader in energy and environmental sustainability while preserving and the city's natural beauty by contributing to developing the greenway master plan process, and pursuing opportunities to preserve open space.*

This action complies with the Downtown Master Plan and the Parks, Recreation, Greenways, and Cultural Arts Master Plan (both pending City Council approval).

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Pro:

- If awarded, the grant will reimburse the City for a portion of payments on Beaucatcher Overlook Park property.

Con:

- The grant application process is competitive and a grant award is not guaranteed.

Award of the grant will reimburse the City of Asheville \$500,000.

City staff recommends City Council to adopt a resolution authorizing the Mayor to apply for and enter into an agreement for grant funds through the North Carolina Parks and Recreation Trust Fund for \$500,000 for reimbursement of land acquisition costs for the Beaucatcher Overlook Park property.

#### **RESOLUTION BOOK NO. 31 – PAGE 395**

#### **C. RESOLUTION NO. 09-2 - RESOLUTION SETTING A PUBLIC HEARING ON FEBRUARY 10, 2009, TO CONSIDER THE PERMANENT CLOSING OF AN UNOPENED ALLEY OFF PATTON AVENUE**

Summary: The consideration of a resolution of intent to close an unnamed alley off of Patton Avenue and request a public hearing for February 10, 2009, regarding this issue.

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

Pursuant to this statute, property owner Western Carolina Rescue Ministries Inc. has requested the City of Asheville to permanently close an unnamed alley off of Patton Avenue.

The Greenway Commission met on Thursday, December 11, 2008, and approved closure of the unopened alley off of Patton Avenue.

Regarding the City Council Strategic Operating Plan, this closure allows maximum land use potential for further development complying with the Asheville City Development Plan, Land Use.

Pros:

- There will be no future compromise of ingress/egress to other property
- The closure would allow for more effective use of the existing adjacent properties.

Con:

- In consideration of the location of the unopened right-of-way, staff can find no potential challenges regarding the closure of the alley.

There will be no fiscal impact related to this closure.

City staff recommends City Council adopt a resolution setting a public hearing for February 10, 2009, to close an unnamed alley off of Patton Avenue.

#### **RESOLUTION BOOK NO. 31 – PAGE 396**

#### **D. RESOLUTION NO. 09-3 - RESOLUTION ACCEPTING COUNTRY MEADOWS DRIVE, BAITY DRIVE, NICHOLAS DRIVE AND BRANDI DRIVE AS CITY MAINTAINED STREETS**

Summary: The consideration of a resolution to accept various developer constructed streets as city-maintained streets in the recently annexed area of the City of Asheville known as Sardis Road area that is described in the Annexation Services Plan dated May 22, 2007.

Ordinance # 7-15-1(f)(4)a requires that streets dedicated for public use by accepted by resolution of the City Council.

Country Meadows Drive from NC 112 to the end of maintenance is a developer constructed street that has an average width of 22 feet, a length of 0.32 mile, and a right-of-way width of 45 feet.

Baity Drive from Country Meadows Drive to the end of maintenance is a developer constructed street that has an average width of 21 feet, a length of 0.09 mile, and a right-of-way width of 45 feet.

Nicholas Drive from Country Meadows Drive to the end of maintenance is a developer constructed street that has an average width of 21 feet, a length of 0.08 mile, and a right-of-way width of 45 feet.

Brandi Drive from Country Meadows Drive to the end of maintenance is a developer constructed street that has an average width

of 21 feet, a length of 0.07 mile, and a right-of-way width of 45 feet.

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

Following City Council's approval of this resolution, the subject streets will be added to the official Powell Bill List.

This action complies with the annexation services plan for the Sardis Road Area that was approved by City Council on May 22, 2007. This action also complies with the City Council 2008-09 Strategic Operating Plan within the Sustainable Focus Area by accepting street infra-structure to help support the healthy growth of the City.

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Pros:

- The City of Asheville will receive Powell Bill Funds from the North Carolina Department of Transportation (NCDOT) to maintain the streets (*Total mileage = 0.56 mile*).
- The streets provide access and connectivity in a residential setting.

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Con:

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

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There will be no initial financial impact to the City, although the responsibility of maintenance will belong to the Public Works Department. The City will receive Powell Bill Funds in the future to help maintain the street. Currently, the Powell Bill Funds equate to \$6,326 per mile compared to the City's maintenance cost of \$18,189 per mile.

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Staff recommends that City Council accept the subject streets as city-maintained streets.

**RESOLUTION BOOK NO. 31 – PAGE 397**

**E. RESOLUTION AUTHORIZING THE CITY MANAGER TO SUBMIT AN APPLICATION TO THE N.C. DEPT. OF COMMERCE FOR RENEWAL OF THE TWO URBAN PROGRESS ZONES WITHIN THE CITY OF ASHEVILLE**

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

**F. RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO AN AGREEMENT WITH THE BUILDING GROUP FOR CLEANING THE VENTILATION HANDLING SYSTEMS**

**BUDGET AMENDMENT TO FUND CONTRACT FOR CLEANING THE VENTILATION HANDLING SYSTEMS**

These items were removed from the Consent Agenda for a presentation and/or an individual vote.

**G. RESOLUTION NO. 09-6 - RESOLUTION AMENDING THE 2009 CITY COUNCIL MEETING SCHEDULE TO DELETE ALL THIRD TUESDAY WORKSESSIONS**

**RESOLUTION BOOK NO. 31 – PAGE 403**

**H. RESOLUTION AUTHORIZING THE CITY MANAGER TO APPLY FOR A FIT COMMUNITY DESIGNATION IN COLLABORATION WITH HEALTHY BUNCOMBE, AND TO SERVE AS THE FISCAL AGENT FOR FIT COMMUNITY GRANT APPLICATION IN THE WEST END/CLINGMAN AVENUE AND THE SOUTH FRENCH BROAD NEIGHBORHOOD ASSOCIATIONS**

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

**I. RESOLUTION AUTHORIZING THE CITY MANAGER TO APPLY FOR AND ENTER INTO A SAFE ROUTES TO SCHOOL GRANT FOR PROPOSED PEDESTRIAN INFRASTRUCTURE IN HAW CREEK**

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

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

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

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

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

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**E. RESOLUTION NO. 09-4 - RESOLUTION AUTHORIZING THE CITY MANAGER TO SUBMIT AN APPLICATION TO THE N.C. DEPT. OF COMMERCE FOR RENEWAL OF THE TWO URBAN PROGRESS ZONES WITHIN THE CITY OF ASHEVILLE**

Summary: The consideration of a resolution authorizing the City Manager to submit an application to the North Carolina Department of Commerce for renewal of the two Urban Progress Zones within the City of Asheville.

In July of 2006 the NC General Assembly passed legislation (House Bill 2170) that created a new business tax credit program, replacing the William S. Lee credits, which were repealed for business activities that occurred on or after January 1, 2007. The newer program is called Urban Progress Zones.

On July 24, 2007, Asheville City Council passed a resolution authorizing the City Manager to submit an application for state designation of Urban Progress Zones. The application was successful and two zones have been designated. Renewal of the designation, including an adopting resolution by City Council, is required annually.

Under the Urban Progress Zone program, businesses that add new jobs or invest in business property, and operate under specific NAICS codes, are eligible for state tax credits. To be eligible, the business must also:

- pay an average weekly wage for all full-time employees equal to or greater than 110% of the state average weekly wage,
- provide health insurance for full-time employees and pay 50% of premiums,
- have no significant environmental violations in the last five years,
- have no outstanding citations under OSHA and no serious violations within the last three years, and
- have no overdue taxes.

Regarding the Strategic Operating Plan, the Urban Progress Zone designation is compliant with the 2008-2009 Strategic Plan as the program:

- Supports efforts to hold the line on taxes and find areas for tax and fee relief
- Supports diversified job growth and small business development
- Supports a stronger river redevelopment partnership, (Zone 2 includes river district)

Pros:

- This action will allow us to provide incentives for business growth and investment within distressed Asheville communities.
- Eligible businesses are allowed to file for the tax credits as part of their NC corporate income tax, NC corporate franchise tax, or -in the case of insurance companies- the state premiums tax. No separate application process to redeem the credits is required.
- The Asheville-Buncombe Economic Development Committee has endorsed Urban Progress Zones.

Con:

- Must reapply or renew each year.

Urban Progress Zones do not require city investment beyond identification of eligible zones and application. Credits are applied only to state taxes.

City staff recommends City Council approve a resolution authorizing the City Manager to submit an application to the North Carolina Department of Commerce for renewal of two existing Urban Progress Zones within the City of Asheville.

Economic Development Director Sam Powers responded to Councilman Mumpower's question of what the zones are and what the productive value is of these initiatives.

Councilman Mumpower felt that with the state's budget deficit he sees no reason to ask for these special type arrangements, especially with such a broad and vague area.

In response to Vice-Mayor Davis, Mr. Powers said businesses have the opportunity to take credits as part of their state corporate income tax. He does receive approximately 15-20 calls a year from businesses asking us to help them verify that they are in the Urban Progress Zone. He felt this is a program that businesses in Asheville are taking advantage of.

Vice-Mayor Davis said that the zones are areas that have some difficulties with businesses originating and being sustainable. The zones include fairly large properties with small businesses and a lot of poor neighborhoods and he would support the zones.

Mayor Bellamy said that any person who does not have access to a computer but who would like to have the materials that are in front of City Council, should contact City Clerk Maggie Burleson at 259-5601.

Councilwoman Cape moved for the adoption of Resolution No. 09-4. This motion was seconded by Councilman Newman and carried on a 6-1 vote, with Councilman Mumpower voting "no."

**H. RESOLUTION NO. 09-7 - RESOLUTION AUTHORIZING THE CITY MANAGER TO APPLY FOR A FIT COMMUNITY DESIGNATION IN COLLABORATION WITH HEALTHY BUNCOMBE, AND TO SERVE AS THE FISCAL AGENT FOR FIT COMMUNITY GRANT APPLICATION IN THE WEST END/CLINGMAN AVENUE AND THE SOUTH FRENCH BROAD NEIGHBORHOOD ASSOCIATIONS**

Summary: The consideration of a resolution authorizing the City Manager to apply for a Fit Community Designation in collaboration with Healthy Buncombe, and to serve as the fiscal agent for Fit Community grant application in the West End/Clingman Avenue and the South French Broad Neighborhood Associations.

The City of Asheville received a three-year Fit Community Designation in 2006 in partnership with Healthy Buncombe, a local coalition to program and promote both local and state initiatives to support healthy lifestyles in the Fit Together initiative. The Fit Community designation recognizes North Carolina municipalities that have exhibited a commitment to supporting healthy life styles in the areas of physical activity, healthy eating and youth tobacco use prevention. Fit Community is a program of Fit Together, an initiative of the North Carolina Health and Wellness Trust Fund. The City is now coming into the third year of the designation and wishes to reapply for a second three-year designation in collaboration with Healthy Buncombe.

The West End/Clingman Avenue and the South French Broad Neighborhood Associations wish to make a pre-application to be considered for the full application process for a \$60,000 Fit Community grant application for programs at Aston Park. If invited to the next phase of the grant application, the City of Asheville will serve as the applicant and fiscal agent. If awarded the grant, the City will then serve as a pass through for grant funds and fiscal agent on behalf of the neighborhood associations.

This action does not comply with the City Council Strategic Operating Plan.

Pros:

- Fit Community designation sets the stage for community agencies to pursue future Fit Community grants
- Supports the West End/Clingman Avenue and the South French Broad Neighborhood Associations efforts to pursue a Fit Community grant for programs at Aston Park.

Con:

- None

With regard to the City Council Strategic Operating Plan, this grant will add playground equipment to the new playground that was just installed, and to develop programs in the park to entice the community to use Aston Park.

There is no fiscal impact on the receipt of the Fit Community Designation. In the event a Fit Community grant is awarded, the City will serve as the fiscal agent.

City staff recommends City Council adopt a resolution authorizing the City Manager to apply for the Fit Community Designation in collaboration with Healthy Buncombe, and to support the West End/Clingman Avenue and the South French Broad Neighborhood Associations efforts to pursue a Fit Community grant for programs at Aston Park.

Councilman Mumpower said that this money is coming out of the state budget with billions of dollars in deficits. He felt the help we need from the state is in our court system. Even though this is a good project, it's not necessary.

In response to Mayor Bellamy, Parks & Recreation Director Roderick Simmons said that the funding does not come from the state, but from a tobacco settlement.

Councilwoman Cape moved for the adoption of Resolution No. 09-7. This motion was seconded by Councilman Miller and carried on a 6-1 vote, with Councilman Mumpower voting "no."

**I. RESOLUTION NO. 09-8 - RESOLUTION AUTHORIZING THE CITY MANAGER TO APPLY FOR AND ENTER INTO A SAFE ROUTES TO SCHOOL GRANT FOR PROPOSED PEDESTRIAN INFRASTRUCTURE IN HAW CREEK**

Summary: The consideration of a resolution of support and administration for a Safe Routes to School grant application for proposed pedestrian infrastructure in Haw Creek, and authorization to accept the grant if awarded.

Safe Routes to School (SRTS) is a federally-funded grant reimbursement program providing an opportunity for communities to improve conditions for bicycling and walking to school. According to the SRTS program requirements the City Council must adopt a resolution of support and administration prior to submission of the grant application.

Evergreen Charter School is proposing a sidewalk along one side of Bell Road, which would connect New Haw Creek Road to the existing sidewalk at Ozark Springs Lane. This would allow their students a safer walking route from the Happy Valley area and from a

proposed Asheville Transit System stop to the school. Evergreen has existing internal pedestrian pathways that allow connection to the sidewalk and is willing to continue to improve that on-site network with parent and community volunteers.

Regarding the Strategic Operating Plan, this application is the first step to obtaining Safe Routes to School grant funding, which fulfills a safety focus area element: "Support the Safe Routes to School program by implementing one school this year."

Pros:

- Allows up to \$300,000 in additional pedestrian infrastructure investment with outside funds
- Extends existing sidewalk to a logical terminus
- Contributes to pedestrian safety
- Encourages active children
- Brings a share of already allocated federal funds to Asheville
- Requires no local matching funds.

Cons:

- The grant may not cover the entire project, so other funding would have to be sought
- The city will be responsible for project management and grant administration

The engineer's estimate for the project is \$357,840. The grant limit is \$300,000, leaving a gap of \$57,840. The engineer's estimate includes \$25,000 for contract administration, which would be done by city staff, leaving a cash gap of almost \$23,000, which would have to be funded from other sources, by use of other in-house resources, or by modifications to the design.

City staff recommends City Council adopt the resolution, which expresses support for the grant application, ability to administer a Safe Routes to School grant, and authorizes the City Manager to accept the grant if awarded.

Councilman Mumpower feels that it's irresponsible for the City to participate in any efforts from the state or federal governments with their terrific deficits.

Councilwoman Cape moved for the adoption of Resolution No. 09-8. This motion was seconded by Councilman Newman and carried on a 6-1 vote, with Councilman Mumpower voting "no."

**RESOLUTION BOOK NO. 31 – PAGE 405**

**III. PRESENTATIONS & REPORTS:**

**A. AT&T GRANT FOR THE UNC-ASHEVILLE MATH TUTORING CERTIFICATION PROGRAM**

Mr. LaVoy Spooner, WNC Regional Director for External Affairs for AT&T, announced that AT&T has awarded a grant of \$25,000 to UNC-Asheville to be used to develop a Math Tutor Certification Program. He was pleased that this Council values public education and fully supports the efforts that may improve the academic performance and ultimately the graduation rate of the students in our community. AT&T shares this same commitment to education and creative solutions that will reduce the drop-out rate of secondary school students. He thanked Mayor Bellamy for the key role she played in bringing their attention to this funding opportunity to support the University's Math Tutor Certification Program. This program will train tutors who will work with low performing and/or low income students to improve their math skills and performance which should contribute to an improved overall academic success for those students. The program will create a cadre of math tutors skilled in educational practices, knowledgeable of school policies and familiar with the North Carolina standard curriculum. He then presented the check to UNC-Asheville Chancellor Anne Ponder.

On behalf of the UNC-Asheville, Chancellor Ponder thanked AT&T for the gift. She also thanked City Council for making this opportunity available to UNC-Asheville in order to receive this investment in education public. She explained UNC-Asheville's strategic plan and she felt this is a shining example of the University taking on its public responsibility. She felt this will enhance educational opportunities in Asheville where they are needed most.

Mayor Bellamy thanked Chancellor Ponder for partnering with the City to bridge the gap between Asheville and UNC-Asheville. To the math wizards, she appreciated them reaching out to the community to fill a gap when the Asheville-Buncombe Education Coalition closed their doors.

She also thanked Mr. Spooner and AT&T in recognizing the Charter School Teacher of the Year as well as Teacher of the Year for Asheville City Schools.

**B. STATE OF THE AIRPORT UPDATE**

Mr. David Edwards, Director of the Asheville Regional Airport, introduced Mr. Dave Hillier, Chairman of the Asheville Regional Airport Authority, and presented Council with the following state of the Asheville Regional Airport Authority. He provided Council with an Airport overview regarding the Fiscal Year 2008 traffic statistics, land, major uses; runway information, and passenger traffic growth, which from Fiscal Year 2003's 219,584 passengers to Fiscal Year's 2008 282,538 passengers

Regarding air service, he explained they have 26 daily non-stop flights to the following hub cities: Atlanta, Charlotte, Cincinnati, Detroit, Houston, Newark and Minneapolis/St. Paul. These flights are on 4 commercial air carriers – Continental (12%), Delta (40%), US Airways (35%) and Northwest (13%). New non-stop service opportunities include Boston, Chicago, Ft. Lauderdale/Miami, Tampa, and Washington, D.C.

Regarding community benefits, he explained that based on a 2007 economic impact study by Tom Tveidt, Director of Research for the EDC of Asheville-Buncombe County, the Airport provides the following total direct, indirect and induced impact for jobs of 2,410; for annual economic impact of \$205,124,969; and for annual payroll of \$61,625,669. It is estimated that each additional daily flight of a 50 seat passenger jet generates approximately \$9,125,000 in annual economic impact.

He then reviewed the Airport's (1) revenue and expenses for Fiscal Year 2003 through 2008; net income for Fiscal Year 2003 through 2008; and the current budget for Fiscal Year 2008-09.

He briefed Council on the Airport Art Program; and discussed the following developments in the Airport: terminal complex development; terminal project – ticket counter; terminal project – baggage make-up; terminal project – baggage claim; new access control/security system; regional boarding ramps; upgraded airside concessions; guest service center; new terminal advertising program; new rental car maintenance facility; new corporate hangar; and new fixed base operator facility. He explained the 2008-09 Capital Improvement Programs of Runway Rehabilitation including lighting and shoulders – design; ARFF equipment purchase; pre-conditioned air project; aircraft lavatory cart facility and building automation – for a total cost of \$1,694,104

Upcoming development projects include (1) rehabilitation of runway 16/34 (\$7.5 Million); (2) rehabilitation of public parking (\$3.0 Million); (3) reconstruction of General Aviation roadway infrastructure (\$2.75 Million); and (4) installation of a Virtual Security Perimeter Control System (one of four airports nationwide selected by the Transportation Security Administration for a grant to fund the project). Proposed stimulus projects include (1) construction of the Westside parallel taxiway system (\$36.75 Million); and (2) expansion of the General Aviation roadway system (\$5.75 Million).

The Airport is working with Carolina Mountain Land Conservancy to submit a grant to place approximately 28 acres of Airport property located directly on the French Broad River into a permanent conservation easement status. City Council was originally briefed on this item on March 27, 2007. The application deadline is February 1, 2009. A conservation easement would allow for bike and walking trails that would connect to much of what has been discussed as a part of the Urban Trail down along the French Broad River. The final easement documents will be reviewed by the Airport Authority and brought back to City Council for their review and approval. This is a great opportunity to give back to the community. At this point Council is not committing to do anything, but they would like to know that they have Council's support in at least submitting the application.

He was pleased to invite City Council to the terminal improvement unveiling/ribbon cutting on February 26, 2009.

Councilman Mumpower questioned why we would want to restrict any Airport property when we don't have a clear sense of the future. Mr. Edwards explained the advantages of having a conservation easement. He said that the Airport can show good faith from an environmental standpoint to protect and give back to the community. This particular property is located right on the French Broad River (in the floodway) and commercially it is not developable. The conservation easement is all on the Airport property and it can be used for the benefit of walking and biking trails, etc. in an area not identified for any use.

In response to Councilman Miller, Mr. Edwards talked about increasing the size of our regional jets and which non-stop opportunities he would like to see happen.

Councilman Newman, member on the Airport Authority, explained that the decision by the Airport for a conservation easement is not significant, but when you look at a connected system of greenways all the way along the French Broad River, it is quite significant. The neighboring properties are also very interested in placing some of their property in a conservation easement as well for this endeavor.

On behalf of City Council, Mayor Bellamy thanked Mr. Edwards and Mr. Hillier for their work at the Airport.

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

##### **A. ORDINANCE NO. 3685 - ORDINANCE AMENDING THE UNIFIED DEVELOPMENT ORDINANCE REGARDING ANIMAL CEMETERIES AND ANIMAL CREMATORIES**

Mayor Bellamy said that this public hearing was held on December 2, 2008, and continued to this date in order to give staff the opportunity to research some questions raised by City Council.

Urban Planner Julia Cogburn said that this is the consideration of amendments to the Unified Development Ordinance (UDO) concerning animal cemeteries and animal crematories.

The Planning and Development Department recently received an inquiry about the development of a pet cemetery and crematory. Presently, the UDO contains no reference to animal cemeteries or crematories. As a result, such uses would be allowed only in the River District, where all uses are permitted unless specifically prohibited. Staff feels that the ordinance should address such uses specifically, and, therefore, proposes the following amendment to the UDO to establish fair and reasonable standards for such uses in the

City of Asheville's zoning jurisdiction. In drafting this ordinance, staff conducted research on animal cemetery and crematory operations and regulations and also looked at ordinances from other communities. The proposed ordinance changes:

- Establish definitions for "animal cemeteries" and "animal crematories."
- Allow animal cemeteries as a Use by Right Subject to Special Requirements in the CBI, CBII, Institutional, HB, RB, River, CBD, CI, and Industrial Districts. These are the same districts that allow cemeteries for humans with one exception. Human cemeteries are allowed in all residential districts. The special requirements would require that the cemetery be operated by a business entity, that arrangements (such as contracts and trust accounts) be in place to ensure perpetual care and appropriate closure procedures, and that no internment occur within ten (10) feet of a property line or within a required setback, whichever is greater.
- Allow animal crematories as a Use by Right Subject to Special Requirements in the Institutional, HB, RB, and River Districts. The conditions would address emissions, other potential nuisances, and buffering, and would require that the use be accessory to an animal cemetery, veterinary clinic, or animal shelter.
- Allow animal crematories as a Use by Right Subject to Special Requirements in the CI and other Industrial Districts. The conditions would address compliance with applicable state and federal regulations.

On December 13, 2008, Asheville City Council first reviewed this proposed wording amendment and suggested three changes. The staff has revised the ordinance to address the following concerns:

- The definition of "animal cemeteries" should clearly indicate that these regulations do not apply to the private burial of family pets on private property.
- Change draft to delete allowance for animal cemeteries in residential districts.
- The requirements for animal cemeteries should include something that would require perpetual care.

This ordinance supports the *Asheville City Development Plan 2025* goal of reviewing and modifying development regulations to be responsive to technological and social changes and economic development in the community.

This ordinance was recommended for approval by a 6-0 vote of the Asheville Planning and Zoning Commission at their meeting on November 5, 2008. No one spoke on the matter.

Pros:

- Adds language to address uses not presently referenced in the UDO.
- Adds fair and reasonable standards for the establishment of animal cemeteries and crematories.

Con:

- Objections may be raised to allowing animal cemeteries and crematories in the City of Asheville.

City staff and the Asheville Planning and Zoning Commission recommend that City Council adopt the ordinance.

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

After Mayor Bellamy asked for public comment and received none, Councilman Mumpower moved for the adoption of Ordinance No. 3685. This motion was seconded by Vice-Mayor Davis and carried unanimously.

#### **ORDINANCE BOOK NO. 25 – PAGE**

#### **B. PUBLIC HEARING TO CONSIDER CONDITIONAL ZONING REQUEST FOR THE PROJECT IDENTIFIED AS WEST CHESTNUT STREET APARTMENT BUILDING, LOCATED AT 132 WEST CHESTNUT STREET, FROM RM-8 RESIDENTIAL MULTI-FAMILY MEDIUM DENSITY DISTRICT TO RM-16 RESIDENTIAL MULTI-FAMILY HIGH DENSITY DISTRICT/CONDITIONAL ZONING, WITH AN EXCEPTIONAL DEVELOPMENT DENSITY BONUS, FOR THE DEVELOPMENT OF A 13-UNIT APARTMENT BUILDINGS**

#### **ORDINANCE NO. 3686 - ORDINANCE TO CONDITIONALLY ZONE THE PROJECT IDENTIFIED AS WEST CHESTNUT STREET APARTMENT BUILDING, LOCATED AT 132 WEST CHESTNUT STREET, FROM RM-8 RESIDENTIAL MULTI-FAMILY MEDIUM DENSITY DISTRICT TO RM-16 RESIDENTIAL MULTI-FAMILY HIGH DENSITY DISTRICT/CONDITIONAL ZONING, WITH AN EXCEPTIONAL DEVELOPMENT DENSITY BONUS, FOR THE DEVELOPMENT OF A 13-UNIT APARTMENT BUILDINGS**

Mayor Bellamy opened the public hearing at 5:50 p.m.

Urban Planner Jessica Bernstein said that this is the consideration of an ordinance to conditionally zone the project identified as West Chestnut Street Apartment Building, located at 132 West Chestnut Street from RM-8 Residential Multi-Family Medium Density District to RM-16 Residential Multi-Family High Density District/Conditional Zoning, with an exceptional development density bonus, for the development of a 13-unit apartment building. This public hearing was advertised on January 2 and 9, 2009.

City Attorney Oast said that a valid protest petition has been filed, thus requiring a three-fourths vote of City Council to approve



the rezoning of the property.

Ms. Bernstein said that the applicant is requesting a Conditional Zoning from RM-8 (Residential Multi-family Medium Density District) to RM-16 (Residential Multi-family High Density District) with a density bonus pursuant to Section 7-16-2(b)(17) of the Unified Development Ordinance (UDO) to construct a 13-unit multi-family building.

The site consists of one parcel located at 132 West Chestnut Street, currently undeveloped and 0.37 acres in size (according to Buncombe County Tax Assessment). The parcel and surrounding area is zoned RM-8 and is in the Montford Historic District. The site formerly held a 12-unit apartment building that was destroyed by fire more than 10 years ago.

The applicant is proposing to construct a multi-family building with a total of 13 units with 20 parking spaces. Underlying zoning allows for three (3) units on the site and the RM-16 conditional zoning would allow for six (6) units. The density bonus, which requires 20% of the units to be offered at affordable rates, provides a 200% increase over base density – resulting in 13 units (3 affordable).

The structure is proposed at three (3) stories – 31'4" and the 13 units range in size from 760 to 1513 square feet. The design and materials have been approved by the Historic Resources Commission (HRC) as well as site standard modifications as listed below. The applicant is proposing to pay a fee-in-lieu for a portion of the required open space (fee-in-lieu money is directed into a fund dedicated to the acquisition of park space and greenways).

Access to the site is proposed from an existing alley, located immediately west of the parcel. The alley would be improved by the applicant to a width of eight feet. A total of 20 parking spaces are provided – seven spaces are enclosed under the building and the 13 remaining surface spaces are located to the rear (10) and west side (3) of the structure. A five and a half foot (5.5') sidewalk exists along West Chestnut Street and will remain.

The parcel is within the Montford Historic District and was required to undergo design review by the Historic Resources Commission (HRC). Pursuant to Section 7-11-7, the HRC is allowed to flex certain development standards and the following items were modified on September 10, 2008, at a formal hearing:

- Setback reductions (front from 15' to 10', east side from 39' to 15' 6", west side from 39' to 9'6")
- Parking encroachment into rear and west setback

The proposal was reviewed by the Technical Review Committee (TRC) on November 17, 2008, and was approved with the conditions. No members of the public spoke regarding this project.

The Planning & Zoning Commission approved the project by a unanimous vote of 6-0 on December 3, 2008. One member of the public spoke in opposition to the project because of on-street parking congestion on the block due to the high number of multi-family uses in the area and the potential for this proposal to add to the number of cars parked along West Chestnut. Staff explained that the provision in Section 7-11-2(c)(4) of the UDO which states that residential projects within one mile north of the CBD shall not be required to provide off-street parking if on-street parking is permitted on that street and there is transit to serve the project does apply in this situation. Although that provision means that the applicant is not required to provide any off-street parking at all, they have included 20 spaces which should result in the majority of residents parking off-street.

*Exceptional Development* - Incorporation of exceptional development practices into the site design allows for a project to seek alteration standards for density (to justify the 200% density bonus). For this project, the applicant has indicated they are providing:

- high quality building design (design and materials have been approved by the HRC);
- enhanced landscaping through the use of additional and/or larger plants (property line buffers included on two sides adjacent to SF uses – east and south – although not required by code);
- environmentally sensitive design that preserves existing vegetation and enhances other environmental features of the property beyond what is typically required (two mature trees being preserved at southern end of site & supplemental property line buffers);
- minimizing the number of access points by using existing curb cuts; and
- designating 20% of the units as affordable according to City standards.

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.**

The proposed project 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 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 and development of the land is compatible with the natural features and topography of the site. Although most of the existing vegetation will be removed, the site is not heavily vegetated to begin with. Also, the proposed landscaping is beyond what code requires and will offer additional screening from single-family properties to the east and south. Other site landscaping is fitting and compatible with the residential neighborhood. There are no significant topographic features on the site.

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

The development is not expected to injure the value of adjoining or abutting properties, especially given many of the exceptional development standards being incorporated into the design.

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

This area is zoned RM-8 which is intended for a mix of single-family and multi-family development and does allow for development standard bonuses. The proposal for this 13-unit apartment building and site design has been designed to comply with the guidelines of the Montford Historic District and was not found to be incompatible with the scale, bulk, coverage and character of the area. While it is a large structure, there is an established pattern of larger and medium-sized single-family homes and apartments intermingled with smaller homes in the Montford area (see Exhibit C map). Also the site design is similar to the previous layout with the former apartment building which was destroyed by fire over a decade ago.

The base zoning (RM-8) would allow only 3 units; this request incorporates a conditional zoning up to RM-16, which would allow 6.4 units. By incorporating exceptional development standards and affordable housing, the applicant is requesting a 200% density bonus, resulting in 13 units total (see above section detailing exceptional development). Staff does not believe that the additional units create an incompatible situation as it relates to surrounding density or character because of the careful design consideration provided by the HRC. One-third of the parking spaces are enclosed beneath the building and any impact from the rear parking area should be mitigated by the landscaping plan and fencing along the east and rear property boundaries.

**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 *Asheville City Development Plan 2025* proposes a Smart Growth development pattern by encouraging higher density residential infill projects (pg. 31) and incentives for the construction of affordable housing (pg. 50). One way to accomplish this goal is to apply existing zoning tools to incentivize higher density residential infill development. This project utilizes the "Exceptional Development Standards" with altered site specifics and a 200% density bonus from incorporating 20% of the units as affordable.

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

This proposed development is located near major road facilities, interstate connections and along a City bus route (#11). In addition, basic infrastructure appears adequate and preliminary review by other service providers has not revealed any problems for future service to the development.

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

The proposed project has been reviewed by the City Traffic Engineer and it should not cause undue traffic congestion along the existing street infrastructure because the anticipated traffic at full build-out conditions is expected to be less than 100 vehicles per hour (10 vehicles per hour during the morning peak hour and 25 vehicles per hour during the afternoon peak hour during a typical weekday).

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

Pros:

- The project offers affordable housing units, aligning with City Council's goals.
- The proposed development and design as approved by the Historic Resources Commission will complement the existing residential fabric of the neighborhood.
- Higher density infill development furthers the goals and objective of the comprehensive plan.

Con:

- The project exceeds the density allowance under the current RM-8 zoning district unless the Conditional Zoning and density bonus is approved.

Based on the above findings and that the project appears to comply as Exceptional Development with affordable housing, staff recommends approval of the conditional zoning and approval of the density bonus as requested by the applicant.

Mr. Chris Cole, representing the development team, was present to answer questions.

Ms. Daisy Johanson, property owner at 124 W. Chestnut Street, did not support the conditional zoning request.

Ms. Cecilia Johnson, property owner of 127 and 131 W. Chestnut Street, showed Council pictures which illustrated her concerns of traffic and parking problems in the area. She said that if this project is allowed to be built, there would be 34 apartment units on this one block.

Mayor Bellamy closed the public hearing at 5:58 p.m.

City Attorney Oast explained the protest petition standard which is governed by the state statutes.

In response to Mayor Bellamy, Ms. Bernstein confirmed that this would be a net gain of one apartment unit from what was there prior to the fires.

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

Councilman Newman moved for the adoption of Ordinance No. 3686, to conditionally zone the project identified as West Chestnut Street Apartment Building, located at 132 West Chestnut Street from RM-8 Residential Multi-Family Medium Density District to RM-16 Residential Multi-Family High Density District/Conditional Zoning, with approval of the density bonus for incorporation of exceptional development standards and 20% affordable units, for the development of a 13-unit apartment building, subject to the following conditions: (1) The project shall comply with all conditions outlined in the TRC staff report; (2) All site lighting must comply with the City's Lighting Ordinance and be equipped with cut-off fixtures and directed away from adjoining properties and streets. A detailed lighting plan will be required upon submittal of detailed plans to be reviewed by the Technical Review Committee; (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 and as approved by the HRC. Any deviation from these plans may result in reconsideration of the project by the reviewing boards; (5) This project will undergo final review by the TRC prior to issuance of any required permits; and (6) The applicant will work with the City's Community Development staff on coordinating the affordable rental units. The three affordable units must be income qualified (at or below the Housing Trust Fund's Maximum Rent schedule) and a deed restriction must be placed on each affordable rental unit limiting any rental increase to no more than 4% per year for the first 10 years in a form approvable by the City Attorney (or the annual increase in the Consumer Price Index, whichever is greater for the term hereof). An annual rent certification form must be completed on December 31 of each year verifying the current rents of the affordable units throughout the duration of the affordability period. This motion was seconded by Councilman Miller and carried unanimously.

#### **ORDINANCE BOOK NO. 25 – PAGE**

#### **C. PUBLIC HEARING TO CONSIDER THE REZONING OF PROPERTIES LOCATED ON SAND HILL ROAD AND SMOKY PARK HIGHWAY FROM INDUSTRIAL DISTRICT TO COMMERCIAL INDUSTRIAL DISTRICT**

#### **ORDINANCE NO. 3687 - ORDINANCE TO REZONE PROPERTIES LOCATED ON SAND HILL ROAD AND SMOKY PARK HIGHWAY FROM INDUSTRIAL DISTRICT TO COMMERCIAL INDUSTRIAL DISTRICT**

Mayor Bellamy opened the public hearing at 6:04 p.m.

Urban Planner Blake Esselstyn said that this is the consideration of an ordinance to rezone properties located on Sand Hill Road and Smoky Park Highway from Industrial District to Commercial Industrial District. This public hearing was advertised on January 2 and 9, 2009.

Mr. Esselstyn said that the subject area is comprised of six parcels and a portion of a seventh, totaling about 178 acres, including a substantial fraction of the campus formerly occupied by American Enka and BASF operations and now partially used by Colbond, Inc. The entirety of the subject area is currently zoned Industrial. (The excluded portion of the seventh parcel is currently zoned RS-2, and would not be affected.) Though the area has limited direct frontage on Sand Hill Road, it comes near that road at another point and has a long expanse across the railroad tracks from Smokey Park Highway. The applicant, representing three corporations owning the seven parcels, wishes to rezone to property to Commercial Industrial.

The boundaries of the subject parcels have recently been adjusted, with the result that six of the seven parcels straddle the City's corporate limits, and have at least a small portion in the extraterritorial jurisdiction area (ETJ). Staff has discussed with the applicant the preference of the City and Buncombe County for properties to fall within a single jurisdiction, and the applicant has expressed willingness to consider a variety of options, including annexation, to address this concern.

The area within City limits was annexed in 1994 and was initially zoned Heavy Industrial, then zoned Industrial with the adoption of the Unified Development Ordinance (UDO) in 1997. The remaining area came into the ETJ in 2001 and was zoned Industrial at that time.

According to the UDO's Article 8, the purpose of the Industrial District is to "reserve land for existing and future industrial activities and for land uses that support industrial activities. Development standards are established to ensure that land uses located outside the Industrial District are not adversely affected by the negative impacts of industrial uses. Industrial Districts shall be located to capitalize on existing infrastructure where possible, such as transportation facilities and utilities. Supporting land uses are characterized as providing supplies, raw materials, transportation, or storage services to industries or providing services to industrial employees."

The applicant's request for Commercial Industrial zoning stems from a desire to be able to attract a wider range of possible tenants. In recent years, much of this industrial campus has been underutilized and interest in developing or occupying the site with an industrial use has been limited. The Industrial zoning district allows relatively few commercial uses, and does not include general retail sales, general office uses, medical clinics, or residential occupation by non-employees in the list of permitted uses. The applicant would like to offer the land for a mix of uses and proposes one option being a large planned development that could include retail, office, medical, and park space.

The stated purpose of the Commercial Industrial district (also known as CI) is "to provide areas for a wide range of commercial and industrial uses including: light manufacturing, wholesale, warehousing, services, retail sales, offices, and residential uses. The district is established where environmental conditions and urban infrastructure are adequate to support commercial and industrial development." Further, "Assembly, packaging, processing, production and manufacturing" uses are permitted in CI, as in Industrial; the only industrial uses permitted in the Industrial district but not in CI are recycling plants and certain other types of recycling facilities.

While standard rezonings can not be based upon proposed site design options, there are elements which staff feels could be instructive as background information. A major issue at this location is how a large-scale development separated from the current industrial operations would be accessed through the existing relatively narrow connections to Sand Hill Road. The applicant has expressed strong interest in a design which would involve construction of a bridge from Smoky Park Highway over the railroad tracks to provide more direct traffic access to that larger thoroughfare.

Certain areas of the site would have to be redeveloped as brownfields. One section of the subject area, formerly used as a landfill, would have limited potential for construction, but the applicant has been in discussions with Buncombe County regarding possible dedication of that area for public ball fields. (This section is across Hominy Creek from the current Buncombe County Sports Park accessed from Sand Hill School Road.) Stretches along Hominy Creek also have limited development potential, due to flood hazards and deed restrictions, but they have been noted for years for their potential as a greenway corridor in excess of a mile long. The applicant has stated an interest in creating an easement for a greenway, and has had preliminary meetings with staff regarding the process, although nothing has been resolved to date.

While the above options are of great interest, the staff emphasizes that the proposed rezoning should be considered independent of any park element, greenway, or bridge to Smoky Park Highway as there is no agreement to any of these elements at this time. With no binding written commitment of any such future action, and with this matter under consideration as a standard rezoning, neither the Planning and Zoning Commission nor the City Council have the authority to add such elements as a condition for approval of the rezoning. Staff felt an overview of these options that have been discussed could be a helpful means of considering how constraints of the site could be overcome and potentially used to public benefit. It is additionally worth noting that addition of these amenities is not strictly dependent on the rezoning and could occur under the existing zoning as well.

The Comprehensive Plan includes a policy stating that Industrially zoned land should be preserved for industrial uses. This is further emphasized in the Sustainable Economic Development Strategic Plan that identifies a shortage of industrial zoned properties as one of its top priority issues to be addressed in our area. However, there are recent precedents (detailed above), also in the Candler area, for City Council approval of similar zoning changes. Two 30+ acre areas were recently rezoned from Industrial to Residential zoning districts.

If the subject area is rezoned, there would still be three large adjacent areas zoned Industrial, measuring roughly 40, 60, and 84 acres in size, as well as other nearby Industrial zoning on the opposite side of Sand Hill Road. Furthermore, in 2005 an area of approximately 125 acres along Sardis Road ¼ mile southeast of the subject properties was rezoned from Community Business II to Commercial Industrial. Additionally, the CI district proposed in this rezoning does not preclude industrial use (as residential districts do), continuing the option of many types of industrial uses, and adding the potential for many other marketable uses. Although these new options increase the likelihood that the land will be occupied by non-industrial use, they also give more options for development to the property owner. Unfortunately, however, this 350+ acre contiguous industrially zoned site with rail spurs into its interior appears to be a one-of-a-kind situation in the City's jurisdiction, and opening it up for non-industrial development could close the door on a potential employer seeking just such an opportunity.

After recent rezonings of industrially-zoned land were approved despite the City's adopted policy, City Council felt that stakeholders should be consulted about their perspective on the policy given changing views about the future of this region's economy. Director of the Office of Economic Development Sam Powers attended these discussions, and, applying the findings to this case, states that "OED staff feels a case can be made for recommending approval for CI zoning of the referenced property."

Staff has received communications from three members of the public regarding this rezoning. Two nearby residents and one business owner called seeking more information. None expressed any opposition, and one of the residents wished to explicitly indicate her support.

At their December 3, 2008, meeting the Planning and Zoning Commission voted unanimously to recommend approval of the proposed rezoning.

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

-  
Pros:

- Rezoning could encourage development and cleanup of a significant underutilized area.
- Subsequent to this site's initial zoning, 125 acres nearby have been rezoned to Commercial Industrial.

Cons:

- The Comprehensive Plan, as well as the Sustainable Economic Development Strategic Plan, includes a stated policy to preserve Industrially zoned land for industrial uses.
- Site has unique characteristics that no other industrial site in Asheville can offer.

Staff has concerns about rezoning Industrially-zoned land, due to the policies against such action stated in the Comprehensive Plan and other plans. Both the Planning and Zoning Commission and City Council have, however, supported similar rezoning in the recent past, and since 2006 stakeholders have not expressed significant concern about the rezoning of such land to Commercial Industrial. If the City Council wishes to consider this rezoning independent of the existing policies, staff feels a good case can be made for recommending approval.

Mr. Will Buie, representing the owners, gave a brief history of the site, noting that they have been developing Asheville Commerce Park which is an industrial park adjacent to this property. He explained how the site has its challenges, either for an industrial site or any other use. The applicant is going through the brownfields cleanup process now with the N.C. Dept. of Environment & Natural Resources. When BASF sold the property, the deed restricted everything on the upper side of Sand Hill Road so that no residential uses could take place on that property. On another portion of the property there is an old closed out landfill on the site. He explained why economic and environmental factors are reasons why they are not asking for a conditional zoning. One of the driving factors for a rezoning is that they have not been successful in some of the industrial development on the property; however, they believe there is a significant portion of the property that will be industrial. The flexibility that CI provides is important because the overall redevelopment of this property is going to be very costly. Even though this is a straight rezoning, he explained what their intentions are for the property, noting that they have a commitment from the N.C. Dept. of Transportation and Buncombe County to fund \$1 Million towards construction of a road and bridge over the railroad to access the property from US 19-23. He urged the Council for their support of this rezoning request.

City Attorney reminded Council that if the property is rezoned, any use permitted in the Commercial Industrial District will be allowed on the property and no potential plans for the property can be considered in this action.

At 6:17 p.m., Mayor Bellamy closed the public hearing.

When Councilman Mumpower questioned the City's Comprehensive Plan against rezoning industrial land, City Attorney Oast said that the Plan should be treated as a guide, not a command. Councilman Mumpower felt that our continued investment in planning documents is applied with a sense of situational ethics.

In response to Vice-Mayor Davis, City Attorney Oast said the in the Commercial Industrial District, there is no structure size; however, the project would be governed by the Level III conditional use process.

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

Councilwoman Cape moved for the adoption of Ordinance No. 3687. This motion was seconded by Councilman Russell and carried unanimously.

**ORDINANCE BOOK NO. 25 – PAGE**

**D. PUBLIC HEARING TO CONSIDER THE REZONING OF PROPERTY LOCATED ON 1498 SAND HILL ROAD FROM RM-16 RESIDENTIAL MULTI-FAMILY HIGH DENSITY DISTRICT TO INSTITUTIONAL DISTRICT**

At staff's request, Councilman Russell moved to continue this public hearing until January 27, 2009. This motion was seconded by Councilman Mumpower, and after Mayor Bellamy called for public comment, and received none, said motion carried unanimously.

**V. UNFINISHED BUSINESS:**

**VI. NEW BUSINESS:**

**A. MOTION APPROVING THE W.C. REID COMMUNITY CENTER'S CONSTRUCTION PLAN**

Parks & Recreation Director Roderick Simmons said that this is the consideration of a \$2 million plan for the construction of the WC Reid Community Center for Creative Arts.

The City of Asheville is developing construction plan for the WC Reid Community Center, which has served the community first as an elementary school and then as a community center for over 80 years with modest facility improvements to enhance its basic services. For the facility to evolve into a more focused, multi-disciplinary program, the building and grounds require building code, functional and aesthetic improvements.

A plan was developed in 2006 to renovate the Reid Center into a cultural art center. PBC+L Architects was contracted to

develop a plan using extensive community input and focus group sessions with various users of the facility. The final plan was estimated at \$8 million but did not move forward to construction since it proved too costly as fundraising limitations were reassessed. In addition, staff revisited the purpose of the facility in light of community support that indicated its preference for a balance between the cultural arts, recreation activities and flexible programming space.

Staff then explored two options at \$4 million per option: 1) renovate the existing building and 2) tear down existing facility and build new which was also developed by PBC+L. The intent was to measure the pros and cons of the two options to determine which was more feasible including but not limited to the best use of investing the dollars that will support the multiple use of recreation and cultural art programs for the community. The demolition of the current facility and replacing it with a new one seemed to be the best solution.

After input from the Reid Center Advisory Board and the Recreation Advisory Board, it was proposed to develop a \$2 million construction plan which fits within the amount of funds on hand via previous fundraising. In light of the economy in which further fundraising is becoming more challenging and construction costs are escalating rapidly, this budget allows for a building that uses only funds that are already raised.

To help reduce construction cost in demolition and site preparation, and to allow for future development, an alternate site is being considered. Livingston Street Park will fulfill this vision by providing a larger and more level property, and also very visible within the heart of the Reid Center neighborhood creating a dynamic recreation complex that is located along major public transportation routes and closer to adjacent neighborhoods.

Livingston Street Park will accommodate the first phase of construction with space for a future phase. The first phase will focus on the required features that have been promised to the current funding sources including an auditorium, multipurpose class rooms, office space and restrooms. A future phase could eventually accommodate a new gymnasium, more parking and a water feature to replace the deteriorated Walton Street swimming pool. The construction plan details the scope of work, layouts, timeline and costs with commentary for this option.

The Reid Center Advisory Board and the Recreation Advisory Board reviewed the preliminary concept in November 2008, and the construction plan in January 2009. Both boards support the plan.

This action complies with the *City Council Strategic Operating Plan Focus Area Green* by 1) making environmentally efficient capital improvement decisions and supporting energy efficient funding for facilities and operations, and 2) sustainable focus area by developing a long-term plan to address aging infrastructure including facilities and sidewalks.

Pros:

- Enhance the City's ability to provide unique, vital recreation and community services via this first phase of development on a site with more potential
- Investment in a new center will extend its useful life as a community center by an estimated 25 years
- Ability to implement the first phase of the project without additional funding
- The existing center will operate during the construction of the new facility

Cons:

- The work is extensive and costly to develop a new center
- The first phase of the project will not meet a number of programming needs for the community
- The current athletic programs at Livingston Street Park will be relocated to other athletic facilities
- Future construction phase of the center will require increased operating budget to support operations, programming and maintenance over time

The \$2 million new construction option will not require additional capital funds or increased operating costs to operate and maintain the facility at this time, although additional funds will be required to support future phases of the project.

Staff is requesting the City Council approve of the W.C. Reid Community Center \$2 million plan for new construction that will meet current grant obligations and build the new center on the Livingston Street Park site. He said that they will use the money they have to make the design work within the guidelines approved.

Mr. Chad Roberson with PBC+L Architects, reviewed with Council the construction design. He said the first phase of the construction will have dedicated space for a theater, four multi-purpose classroom spaces, and an office which will accommodate the cultural art programming component. A gymnasium and a water feature could eventually be added in a future phase which may accommodate additional programs such as sports, senior programs, after school, visual arts classes, dance classes, aerobics, yoga, board meetings, special events, other seasonal programs and additional parking. Since the existing center will not be closed during construction of a new facility, core services such as the after school program will continue. Tenants such as Partners Unlimited will be permanently relocated with assistance from the City to a location where they can continue to provide services to their core components.

In response to Councilman Miller, Mr. Roberson said that there is a 5% (approximately \$77,000) contingency, noting that they have been very conservative in estimating the project.

In response to Councilwoman Cape, Mr. Simmons said that the Reid Center is a functional building, but it just does not function

as a recreation community center for community programming.

In response to Councilwoman Cape, Mr. Simmons said that we do have other options for the adult softball programs.

In response to Councilman Russell, Mr. Simmons said that City's portion of this is the \$500,000 Parks and Recreation Trust Fund match, which was from a prior year's Capital Improvement Plan allocation generated through the operating budget.

Councilman Mumpower could not support this action due to our current economy and our budget restrictions. He felt a bigger difference in the community would be to take the \$500,000 and invest it in stopping the drug dealers who actively corrupt the community in various ways.

Mayor Bellamy thanked the Reid Center Advisory Board, the Recreation Board, the Junior League of Asheville, the Janirve Foundation and all others who helped with dollars and volunteer time in this fundraising effort. This addresses the community's need for a good place for their children to play. We must address the Capital Improvement Program and the needs of our community. She hoped we will look for ways to get the gymnasium built. She felt this is a creative way to address long-term needs.

When Mayor Bellamy asked for public comments, none were received.

Councilman Newman moved to approve the WC Reid Community Center \$2 million plan for new construction that will meet current grant obligations and build the new center on the Livingston Street Park site. This motion was seconded by Councilwoman and carried on a 6-1 vote, with Councilman Mumpower voting "no."

## **B. MOTION TO APPROVE LIGHTING PLAN FOR JOHN B. LEWIS SOCCER COMPLEX AT AZALEA PARK**

Parks & Recreation Director Roderick Simmons said that this is the consideration of an Asheville Buncombe Youth Soccer Association (ABYSA) and WNC Soccer Foundation (WNCSF) lighting plan and financing proposal to purchase and install lights on the four fields at the John B. Lewis Soccer complex at Azalea Park, and to fund the remaining balance on the soccer complex construction.

In 1999, WNCSF entered into an agreement with the City of Asheville to help fund and construct the John B. Lewis Soccer Complex at Azalea Park at a cost of \$3.3 million. To date WNCSF, ABYSA and the City have raised all but \$543,135 of construction funding.

When the soccer complex was built, electrical conduits were installed with the intent to add field lights at a later date. ABYSA is now proposing to provide funding for the purchase and installation of the Musco "Structure Green" lighting system for a total of \$510,000.

Musco is a leader in the outdoor field lighting industry in energy efficiency and glare control. The system complies with the City's lighting standards for outdoor sport fields as stated in the Unified Development Ordinance as outlined below.

ÿ The mounting height shall not exceed 80 feet from finished grade

ÿ Fixtures are equipped with a glare control package and aimed so light beams are directed and fall within the primary playing area

ÿ The hours of operation for the lighting system for any game will not exceed one hour after the end of the event.

ABYSA conducted extensive public input to the proposed lights via 1) conducted two public meetings, 2) canvassed the neighbors adjacent to Azalea Park to alert them to the lighting plan and to invite to the public meetings, 3) invited the neighbors who live on Gashes Creek Rd., and in the Viewpoint and Parkway Forest to the public meetings, and 4) consulted with the Blue Ridge Parkway. The majority of public response does not oppose the addition of lights on the field, although most residents sited the need for road improvements to Azalea Road to accommodate the increased traffic and parking that already occurs at Azalea Park.

The ABYSA funding plan for the lights include a grant proposal to the Tourism Product Development Fund (TPDF) in January 2009. The proposal is part of the City's evaluation of potential TPDF proposals that support city projects via the Recreation Advisory Board and the City Council sub-committee.

The Recreation Advisory Board reviewed ABYSA's proposal at its regular meeting on November 10, 2008 and it unanimously recommended the lighting plan assuming it meets all City lighting standards, conducive to public input and programming needs.

At its regular meeting on December 8, 2008, the Recreation Advisory Board reviewed and prioritized the two potential TPDF proposals associated with the Parks, Recreation & Cultural Arts Department. The board unanimously recommended priority one as the John B. Lewis Soccer Complex lights, and priority two as Beaucatcher Overlook Park development.

Staff supports ABYSA's application for a Tourism Product Development Fund grant for the project. However, the proposal contains a funding plan that still needs to be refined and worked out with City staff.

The project complies with the City Council Strategic Operating Plan Focus Area: Green - Asheville will be the southeastern leader in energy and environmental sustainability while preserving and the city's natural beauty by making environmentally efficient capital improvement decisions and support energy efficient funding for facilities and operations.

Pro:

- Expand soccer programming time for youth and adult soccer players, and expand programming time for other adult and youth sports such as football and Lacrosse.

Con:

- Increase the City's soccer complex annual facility maintenance and operating cost by approximately \$10,500 per year due to expanded programming time.
- The addition of lights via the donation accomplishes a master plan recommendation and an identified CIP goal.
- Adding lights will increase the City's soccer complex annual facility maintenance and operating cost by \$10,500 per year.

Staff recommends City Council approve a motion allowing placement of lights on the four fields at the John B. Lewis Soccer Complex at Azalea Park contingent upon ABYSA and WNCSF fund the remaining balance on the soccer complex construction.

Mr. Mike Rottjakob, Executive Director of the Asheville-Buncombe Youth Soccer Association, said that the Western North Carolina Soccer Foundation (1) was established as a 501 (c) (3) in 1994, the WNCSF's sole mission is to support efforts to develop soccer facilities for use by Asheville and Buncombe County area youth and adult soccer players; (2) has a proven track record as a fundraising partner with the City of Asheville in the development of the John B. Lewis Soccer (JBL) Complex; and (3) has produced \$1.2 Million in private fundraising for the construction of the JBL.

For over 25 years, the ABYSA has been dedicated to providing soccer programming to families that is age appropriate and provide in a physically and emotionally safe environment. We current employ 10 fulltime staff, 15 part-time coaches, and utilize over 43,000 volunteer hours in serving 4,400 youth and adult participants through partnerships with the City of Asheville and Buncombe County. We strive to make programming broadly available to the entire community and administer a robust financial aid program to address financial obstacles to participation for families. In 2008, we began an effort to greatly expand our outreach to provide soccer programming in Asheville Housing Authority neighborhoods, free of charge, to address transportation and other barriers. ABYSA is a financially strong 501 (c) (3) not for profit organization with a proven track record as a fundraising partner with the WNCSF and the City.

Regarding the tourism economy, ABYSA hosts state-wide and regional soccer tournaments, and state-wide league play, that brings significant numbers of out of town visitors in Asheville. In 2008, ABYSA hosted 6 weekend tournament events This represents documented use of nearly 5,000 hotel room nights and an economic impact of over \$2 Million as calculated by the Asheville Area Convention and Visitors Bureau. Over 220 North Carolina Youth Soccer Association Classic League games were hosted in Asheville in 2008, bringing 6,600 additional out of town visitors. While unable to count hotel room use for these games, it is significant and many of these visitors shop, eat and pay sales tax in Asheville, even when their visit does not require an overnight stay. Growth in ABYSA programming has provided for incremental increases in hotel room use and economic impact over the last 3 years.

Why field lights? Without lights, the all-weather artificial turf is used at only 50% of its capacity. Current programming fills all available field time and during many months availability does not meet the need. An additional investment of \$500,000 to the \$3.3 Million already invested will increase use by 68% and more than double use during 4 of the busiest soccer programming months. The addition of lights will add capacity for more than 1400 hotel room nights to existing tournaments, and an additional \$575,000 in economic impact each year.

JBL capacity and utilization (1) current utilization, and potential utilization with the addition of lights, can also be expressed in terms of user hours; (2) when a "user hour" unit represents one person playing for one hour. Current programming provides 126,000 user hours of play at JBL. With the addition of lights, 211,000 user hours would be used for programming. This represents 85,000 additional user hours, or hours of exercise if you will, a 68% increase in programming for our vast soccer playing community.

The public input process includes (1) public input was gathered during door to door visits in the immediate neighborhood of the park and during two public meetings with WNCSF, ABYSA and City representation; (2) feedback from these visits and meetings revealed very little concern about the addition of field lighting to the park; and (3) park neighbors did express concern about the need for improvements to Azalea Road and parking on the road during weekends.

Regarding the City of Asheville input, the ABYSA and WNCSF conducted a focus group meeting the City staff representing Finance; Transportation & Engineering; Planning; Public Works; and Parks, Recreation and Cultural Arts to review the proposal and offer comments on key issues. The following concerns were addressed: floodway issues; Azalea Road safety; parking on Azalea Road; lighting standards; and on-going energy, maintenance and park staffing expenses.

Musco's "Structure Green" lighting system is the industry leader in energy efficiency, light spill and glare reduction. It is the most environmentally friendly product on the market and is endorsed by the National Park Service.

The lighting plan for JBL field lighting project addresses three components: (1) resolves the outstanding fundraising balance for the soccer complex construction of \$543,135; (2) describes a funding plan to support the addition of lights only after the funding has been secured and requires no City financing for the project; and (3) addresses issues of long term maintenance of the lighting system, utility costs, and costs associated with increased park staffing.

He then reviewed the finance plan. Regarding the outstanding fundraising balance (1) ABYSA will assume responsibility for \$400,000 of the \$543,135 outstanding fundraising balance by increasing its annual contribution through the WNCSF by \$40,000 each year



for ten years; (2) the remaining \$143,135 will be secured through the sale of sponsorship; and (3) the field lighting project will add incentive and re-vitalize fundraising for the construction of JBL.

Regarding the lighting system finance (1) construction and installation of lights will begin only after ABYSA and WNCSF have secured funding for the entire project. The City will not be asked to assume any financing; (2) ABYSA has set aside some cash reserves to kick off the fundraising campaign; and (3) the project is a strong match for Buncombe County Tourism Development Fund investment goals

Regarding operations cost (1) Musco's "Structure Green" lighting system comes with a 25-year warranty that covers re-lamping after 5,000 hours of use and is included in the purchase and installation price; (2) ABYSA will pay for the electricity it consumes for use of the lights; and (3) the addition of field lights, and the resulting increase in park maintenance and staffing expense, is estimated to be \$10,500 per year.

The proposal summary is (1) there is a compelling need for field lighting at the John B. Lewis Soccer Complex and a great benefit to be realized by our large soccer playing community and the local tourism industry; (2) care has been taken to involve as many stakeholders as possible in the development of our proposal; and (3) our plan provides a finance strategy that allows for enhancement of a great city resource at little cost to taxpayers.

In response to Councilman Miller's potential conflict of interest regarding Tourism Product Development fund, City Attorney Oast said that Tourism Product Development Fund does provide financing for this, as the City does, but he did not feel that is a disqualifying conflict. It is his opinion that there is no conflict of interest for Councilman Miller.

In response to Councilman Mumpower, Mr. Rottjakob assured Council that he has worked with the budget office and has clearly outlined the individual roles regarding funding.

When Vice-Mayor Davis expressed concerns over Azalea Road, City Manager Jackson said that it is a top priority for road projects when we have discretionary funds. Since we are not able to fund the road improvements ourselves in this economic climate, it will be the first thing the Public Works Director and the Parks & Recreation Director will recommend when capital funds are allocated from the general fund budget for roads.

In response to Councilwoman Cape, Mr. Simmons said that this does comply with the City's new lighting standards.

Mayor Bellamy thanked the WNC Soccer Foundation for their commitment to this project. She also thanked the 6<sup>th</sup> grade class at Carolina Day School for keeping an eye on this project.

When Mayor Bellamy asked for any public comment and none was received, Councilman Mumpower moved to approve placement of lights on the four fields at the John B. Lewis Soccer Complex at Azalea Park contingent upon ABYSA and WNCSF fund the remaining balance on the soccer complex construction. This motion was seconded by Councilman Russell and carried unanimously.

## **C. ITEM F FROM THE CONSENT AGENDA**

### **RESOLUTION NO. 09-5 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO AN AGREEMENT WITH THE BUILDING GROUP FOR CLEANING THE VENTILATION HANDLING SYSTEMS**

### **ORDINANCE NO. 3684 - BUDGET AMENDMENT TO FUND CONTRACT FOR CLEANING THE VENTILATION HANDLING SYSTEMS**

Summary: The consideration of a resolution authorizing the City Manager to enter into a contract with The Building Group to complete cleaning and sanitizing of the City Hall ventilation system floors 1 – 6, including the basement; and a budget amendment in the amount of \$119,013 to fund the contract.

In September 2008 the City began a process of analyzing air quality and maintenance of the air handling system at City Hall. During this time, the Risk Management Division was notified of several employee complaints regarding air quality and mold issues in City Hall. An OSHA complaint was subsequently filed with the State of North Carolina. At that point, staff contacted a certified consultant (Art Martin & Associates) to evaluate the condition of the ventilation systems in City Hall. The results of the consultant's evaluation showed that the City Hall air handling systems did contain air contaminants, but that the contaminants were not airborne and findings did validate that employees are not at risk. Additionally, comparisons of the indoor air samplings do not exceed contaminate levels found in outdoor air samplings. The consultant recommended that the air handling system be cleaned and sanitized to remediate the existing mold growth and prevent future airborne contamination in regard to floors 1 – 6, including the basement.

With growing awareness of the negative impacts of indoor air pollution, the City is dedicated to addressing the cleanliness of City Hall's ventilation system. With Council approval, the City will begin a process of cleaning the ventilation and air handling system later this month. The cleaning process will take place on weekends which will limit employee access to the building at these times.

Remediation for floors 7 and 8 are more extensive and will require identifying and correcting water access points. This process requires the expertise of a building engineer, which will develop protocol for repointing bricks and window replacement. Once the water

infiltration has been identified and corrected, remediation of floors 7 and 8 can begin. The engineering evaluation process is scheduled to begin in Spring of 2009. Depending on the engineering report, it is projected that remediation for floor 7 and 8 will begin Summer 2009.

This action complies with the City of Asheville's strategic plan in that it supports a sustainable city government through a strong commitment to infrastructure maintenance by ensuring that our buildings support a sustainable healthy and safe work environment.

Pros:

- Avoid OSHA fines.
- Reduce possible health hazard risk related to mold and air contaminants.

Cons:

- Continuing contamination of the air handling system and the air quality at City Hall.
- Increased complaints from employees and OSHA.
- Requires use of fund balance.

The total amount of the contract is \$119,012.83. Funding for this unanticipated expense was not included in the Fiscal Year 2008-09 budget; therefore an appropriation from fund balance is required. It is estimated that at the end of Fiscal Year 2008-09, available fund balance will equal 19.4% of General Fund expenses.

City staff recommends City Council adopt a resolution authorizing the City Manager to enter into contract with The Building Group to clean the air handling system at City Hall floors 1 – 6, and basement, and a budget amendment in the amount of \$119,013 to fund the contract.

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

Ms. Coulter responded to various questions/comments from Council, some being, but are not limited to: since mold spores common to most ventilation systems, why are we making this investment in City Hall; will there be an on-going maintenance plan; explanation of the OSHA fines; any idea of what percentage of the larger structures in Asheville have ventilation systems with the same mold spores; are mold spores common;

Councilman Mumpower could not support these actions until there is a more scientific basis for taking action.

In response to Councilman Newman, Ms. Coulter said that we have looked informally at our other buildings. City Hall is being addressed now due to the tremendous number of employees and citizens in the building on a regular day to day basis.

Councilwoman Cape moved for the adoption of Resolution No. 09-5. This motion was seconded by Councilman Miller and carried on a 6-1 vote, with Councilman Mumpower voting no.

#### **RESOLUTION BOOK NO. 31 – PAGE 402**

Councilwoman Cape moved for the adoption of Ordinance No. 3684. This motion was seconded by Councilman Newman and carried on a 6-1 vote, with Councilman Mumpower voting "no."

#### **ORDINANCE BOOK NO. 25 - PAGE**

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

#### **A. CLAIMS**

The following claims were received by the City of Asheville during the period of December 5-18, 2008: Patricia Macrae (Parks & Recreation), Pam Wild (Water), AT&T (Water), Charter Communications – 4 claims (Water), and Dean Gowan (Water).

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

#### **B. LAWSUIT**

The following Complaint was received by the City of Asheville on December 23, 2008: Larry Roland v. City of Asheville. The nature of the proceeding is a complaint for personal injury from fall at the golf course. This matter will be handled by an attorney outside of the City Attorney's Office.

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

Mayor Bellamy praised staff, volunteers and members of the community for the Burton Street Center Grand Re-opening event on Monday, January 12, 2009.

Mr. Gene Hampton spoke about the need for quality education in Asheville, North Carolina.

Mr. Brian Festa proposed a new curriculum to be integrated in our public education systems to address long term needs, e.g., teacher training and teaching teachers how to teach, integration of arts and music education. Per Mr. Festa's request, Mayor Bellamy said that City Manager Jackson would meet with him after the meeting regarding his request for information on the School Board's budget.

**IX. ADJOURNMENT:**

Mayor Bellamy adjourned the meeting at 7:27 p.m.

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CITY CLERK

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MAYOR