

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

Councilman Mumpower gave the invocation.

I. PROCLAMATIONS:

A. RECOGNITION

Mayor Bellamy was pleased to recognize and welcome Ms. Alma "Gibbie" Harris as the new Buncombe County Health Director.

II. CONSENT AGENDA:

At the request of Councilman Mumpower, Consent Agenda Item "E" was removed from the Consent Agenda for discussion and/or an individual vote. Mayor Bellamy moved this to the end of New Business.

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

A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON FEBRUARY 24, 2009

B. RESOLUTION NO. 09-46 - RESOLUTION AUTHORIZING A LICENSE AGREEMENT WITH BELL ATLANTIC MOBILE OF ASHEVILLE INC. D/B/A VERIZON WIRELESS, FOR ANTENNAS AND RELATED EQUIPMENT ON CITY-OWNED REAL PROPERTY AT 57 CRESTWOOD DRIVE, ASHEVILLE NC

ORDINANCE NO. 3706 - BUDGET AMENDMENT FOR A LICENSE AGREEMENT WITH BELL ATLANTIC MOBILE OF ASHEVILLE INC. D/B/A VERIZON WIRELESS, FOR ANTENNAS AND RELATED EQUIPMENT ON CITY-OWNED REAL PROPERTY AT 57 CRESTWOOD DRIVE, ASHEVILLE NC

Summary: The consideration of a resolution authorizing the City Manager to execute a License Agreement with Bell Atlantic Mobile of Asheville, Inc. for antennas at 57 Crestwood Drive, Arden, North Carolina; and the associated budget amendment, in the amount of \$56,200 from tower lease revenue.

The City of Asheville owns and operates a telecommunications tower located on property at 57 Crestwood Drive in Arden. The City leases antenna space on the tower and ground space for related equipment.

Bell Atlantic Mobile of Asheville, Inc. with its principal place of business located at One Verizon Way, Mail Stop 4AW100, Basking Ridge, New Jersey 07920, has offered to enter into a license agreement for antenna space and related equipment on the tower. A tower analysis is required by the license agreement to assure that the new installation does not interfere with existing installations and that the tower is structurally able to support the additional installation, to be paid for by Bell Atlantic Mobile of Asheville, Inc. The proposed License Agreement will enable Bell Atlantic to operate nine (9) panel antennas at that site; however, there is a provision, which allows either the Licensor or the Licensee to terminate the agreement upon 180 days notice. The term of the License Agreement will be five (5) years with one renewal period of five (5) years. Bell Atlantic will pay an annual License Fee based on the initial rate of \$30,000 with a 4% increase annually thereafter. Two years of license fees will be collected in advance; the first two months exempted to allow for installation of equipment.

The initial rate was determined by gathering and comparing rate structures used by other municipalities across the state, including the Cary, Hickory, Charlotte and others. Formal findings were reviewed and endorsed by the Council's Planning and Economic Development Committee on August 20, 2008. Results indicate that base fee of \$30,000 per annum represents fair market value for this type of installation.

Please note that due to the close proximity of proposed installation to the adjacent property, City staff has requested Bell Atlantic to perform outreach to the neighboring property owner. The site plan includes a privacy fence installation and additional landscaping, to be installed by Bell Atlantic, to provide an appropriate buffer and address feedback from the neighbor.

The Notice of Intent to enter into a License Agreement with Bell Atlantic Mobile was published on February 27, 2009, in the Asheville Citizen-Times. Ten days have passed since the publication and authorization to execute the License Agreement is being requested.

This action complies with the City Council Strategic Operating Plan in that strategic tower asset management, through the creation of

new license agreements, presents the City with revenue enhancements. These revenue enhancements can help the City's telecommunications operations become more sustainable and fiscally responsible.

Several new tenant leases are anticipated in FY09. A portion of this additional revenue has been planned to underwrite a cost savings plan for the City's own telecommunication operations. Specifically, the City is planning on utilizing an estimated \$80,000 of these new revenue enhancements to re-locate equipment from the Spivey Mountain site (where the City pays \$29,000 per year with a 7% escalation each year) to the White Fawn site (owned by the City). This re-engineering was proposed in the FY09 budget, and once implemented, will promote significant cost savings to the City over time. The budget amendment will appropriate \$56,200 into the re-engineering account.

Pros:

- Enhanced revenue through the license fee income
- Maximized vacant space on existing tower infrastructure
- Underwrites long term cost savings plan for telecommunications

Con:

- None

Fiscal Impact:

- FY09: \$56,200 revenue
- FY09: \$56,200 investment programmed to support re-location of City equipment
- Beyond FY09: Additional revenue stream based on initial rate of \$30,000 per year with 4% escalation per year.
- Beyond FY09: Resulting savings of initial rate of \$29,000 per year with 7% rent escalations.

City staff recommends City Council adopt a (1) resolution authorizing the City Manager to execute the license agreement with Bell Atlantic Mobile of Asheville, Inc. on behalf of the City of Asheville; and (2) budget amendment to be used for cost savings plan for telecommunications.

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ORDINANCE BOOK NO. 25 – PAGE 192

C. MOTION ADOPTING THE 2009-10 BUDGET SCHEDULE

Summary: Staff is seeking City Council's approval of adoption of the Fiscal Year 2009-10 Budget Schedule.

At the February 24, 2009, City Council meeting, staff provided Council with a proposed Fiscal Year 2009-10 Budget Schedule for the time period between February 2009 and June 2009, when the budget is scheduled for adoption. The proposed schedule outlines key dates in the budget process.

Staff recommends that City Council review the proposed Fiscal Year 2009-10 Budget Schedule, make changes as needed, and make a motion adopting the Fiscal Year 2009-10 Budget Schedule.

D. RESOLUTION NO. 09-47 - RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE EASEMENT FOR ELECTRIC UTILITY LINE AT AIRPORT

Summary: The consideration of a resolution authorizing the City Manager to execute two easements for the installation and upgrade of power utility lines across property at the Airport

The land on which the Asheville Regional Airport is located is owned by the City of Asheville. It is leased by the Airport Authority, which has the ability to sublease to individual tenants at the airport. A new facility is being constructed on subleased property at the Airport, and this new facility requires electrical service. In order to draw power from the nearest transmission line, this service line will have to cross Airport property that is not subject to the sublease. This is the subject of the first easement. In connection with this work, the Airport is upgrading existing service to the fuel farm. This is the subject of the second easement.

This installation has been reviewed and approved by the Airport's Development Manager and Director, and the form of the easements has been approved by the Authority's attorney. The Airport Authority will consider the easements at its next meeting, scheduled for March 13. The facility is scheduled to be operational on April 1, and both the Authority and Progress Energy have requested this action.

This action complies with the City's Strategic Operating Plan in that it contributes to the development of a multimodal transportation program, supports sustainable economic development, and contributes to Asheville's role as a regional economic and service center.

The requested action is consistent with the Airport's Master Plan.

Pros:

- Facilitates development of Airport
- Lines will be mostly underground

Con:

- None noted

The fiscal impact would be indirect; increases potential for revenue at Airport.

Adoption of the resolution is recommended

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E. RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A CONTRACT WITH SITE DEVELOPMENT CORPORATION TO CONSTRUCT THE FRENCH BROAD RIVER CORRIDOR CONNECTOR

This item was removed from the Consent Agenda for discussion and/or individual votes. This item was moved to the last item of New Business.

F. MOTION APPROVING THE CONCEPT OF A TOWN HALL MEETING REGARDING ASHEVILLE'S ECONOMIC CLIMATE

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

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.

Councilman Mumpower moved for the adoption of the Consent Agenda. This motion was seconded by Councilman Russell.

Item removed from the Consent Agenda for discussion and/or an individual vote

F. MOTION APPROVING THE CONCEPT OF A TOWN HALL MEETING REGARDING ASHEVILLE'S ECONOMIC CLIMATE

Mayor Bellamy said this is an effort to give our community a sense of Asheville's economic climate. She asked that the Town Hall meeting be held on March 31, 2009; however, one of the speakers (Senator Nesbitt) was unable to attend on that date. At this meeting, she is asking if Council would approve the concept and come back with an alternative date.

Vice-Mayor Davis moved to approve the concept of a Town Hall meeting regarding Asheville's economic climate. This motion was seconded by Councilwoman Cape and carried unanimously.

Continuation of Consent Agenda

Mayor Bellamy said that the City Manager is currently authorized to sign informal construction contracts under \$100,000, service contracts under \$50,000 and professional service contracts under \$50,000 without formal City Council approval. She felt all resolutions should reflect the policy currently in place where the City Manager is authorized to sign the contracts outlined above. All other resolutions should be authorizing the Mayor to sign the contracts. She asked that policy authority be aligned on the resolutions.

At the suggestion of Councilman Mumpower, it was the consensus of Council to ask Mayor Bellamy, Vice-Mayor Davis, Councilman Mumpower, City Manager Jackson and City Attorney Oast to meet in a timely manner to discuss this issue.

The motion made by Councilman Mumpower and seconded by Councilman Russell carried on a 6-1 vote, with Mayor Bellamy voting "no".

III. PRESENTATIONS & REPORTS:

A. MAYOR'S COMMITTEE FOR CITIZENS WITH DISABILITIES REPORT

Ms. Karen Harrington, representing the Asheville Mayor's Committee for Citizens with Disabilities, said that the Asheville Mayor's Committee for Citizens with Disabilities is a committee of persons with disabilities, agencies, business and government representatives. She then explained their mission is to promote and advocate for equal and inclusive opportunities for people with disabilities in all aspects of society and to recognize and cooperate with all people and organizations that contribute to this cause. Their goal is to be an advocacy organization to educate the community for the inclusion of all people: (1) They provide educational services to employers and businesses about local needs surrounding people with disabilities, and have consultation services about accessibility issues according to the Americans with Disabilities Act; (2) They advocate for the inclusion of people with disabilities in all aspects of the community; (3) They promote the employment of people with disabilities; (4) They recognize outstanding efforts of employers who hire people with disabilities; and (5) They participate in community activities to enhance awareness.

Ms. Harrington then updated Council on (1) the Council of Committee and its role in the community; (2) their Awards Banquet and who the recipients were and why they received an award; (3) need to connect the community as a whole with those living with disability; and (4) the need to get past negative connotation with talking about disability. She provided Council with the Committee's brochure and a sheet outlining the reasons to volunteer.

Ms. Harrington thanked the Council for their support and invited them to attend their meetings.

In response to Mayor Bellamy, Ms. Harrington explained a program where private citizens, after training, can issue parking citations to people who park illegally in handicapped spaces. In over two years, they have written over 250 tickets.

Councilman Mumpower noted that near the Grove Arcade some handicapped parkers are taking advantage of the handicapped spaces by parking in them all day long. Mayor Bellamy felt the Parking Enforcement should manage that concern.

On behalf of City Council, Mayor Bellamy thanked Ms. Harrington and the Committee members for their hard work and dedication on this committee.

B. ECONOMIC STIMULUS PACKAGE UPDATE

Assistant to the City Manager Lauren Bradley briefly provided Council with an update that went to the Finance Committee regarding staff work related to the American Reinvestment and Recovery Act (ARRA).

Administrative Update- She reviewed a policy and administrative structure has been developed as a framework for managing ARRA efforts. Staff intends to fill the project manager and grants administrator positions identified in the flow chart with existing personnel through temporary reassignments. Many ARRA funding opportunities allow for a portion of the funds to be used for grants administration; therefore, expenses associated with these positions may be charged to ARRA projects where appropriate and permitted. Staff will maintain detailed records in compliance with federal standards to ensure the highest level of financial accountability when managing these project funds.

Program Updates - This section provides updates on specific funding allocations that have been announced for Asheville as well as any associated grant applications, awards and project implementation.

Community Development

CDBG

HUD has announced that Asheville is designated to receive \$332,942 in ARRA funds through the CDBG program. HUD is requiring grantees to prepare an action plan amendment for the use of these funds and will process the plans in an expedited manner, execute grant agreements, and make the funds available in each grantee's line of credit. Staff is waiting for additional announcements regarding requirements for the action plan amendments, including any changes in beneficiary and other eligibility requirements.

Homeless Prevention Fund

HUD has also announced that Asheville is designated to receive \$509,000 from the Homeless Prevention Fund, which is dedicated to providing financial assistance and services to prevent individuals and families from becoming homeless and help those who are experiencing homelessness to be quickly re-housed and stabilized. Staff is waiting for additional information about the receipt and distribution of these funds.

Environment

As approved by City Council, staff submitted four applications to the NCDENR's Drinking Water State Revolving Fund. These projects included an Automated Meter Reading System, Pump Station Meters, Pumping System Installations, and the William DeBruhl Water Treatment Plan Backwash Lagoon. Applications for the Water Quality State Revolving Fund are due by March 24. Staff will provide ongoing updates on the funding status of these projects.

Transportation

Transportation Enhancement Projects

Staff responded to NCDOT's request for "small enhancement" projects (shovel-ready projects under \$100,000) and submitted the letter made available at the last City Council meeting. Staff anticipates an additional call for larger enhancement projects (\$100,000- \$300,000 range) and is developing a list of recommended projects for future City Council consideration.

MPO Urbanized Area Funding

A portion of the state's highway funding is allocated to urbanized areas of over 200,000 in population. As previously reported, the Asheville urbanized area is expected to be allocated approximately \$6 million. It is anticipated that these projects will be selected by the Transportation Advisory Committee of the French Broad River Metropolitan Planning Organization (MPO). It is anticipated that the MPO will call for suggested projects for this funding in the coming weeks. Staff will bring forward a recommended list for City Council consideration prior to submittal.

In order to ensure project expediency for funds that may be awarded for either enhancement projects or larger capital projects, staff plans to issue a Request for Qualifications for design/build teams for sidewalk projects. This step will allow the City of Asheville to pre-qualify firms that may be interested in bidding on specific projects once funding is confirmed, thus accelerating the bid and project implementation process. As in all such requests, the City is not obligated to hire one or any of the firms submitting qualifications, so this step can be done now, before funding decisions are known.

Transit Capital Projects

The FBRMPO is expected to guide project choices for the \$2.5 million in transit funding allocated for urban fixed-route transit systems in

the Asheville urbanized area, which includes Asheville Transit and Apple County Transit in Henderson County. If these funds are allocated to the two systems using the existing state funding formula, Asheville Transit could expect to receive \$2,004,598, and Apple County Transit would receive \$585,841. The FBRMPO has requested the City of Asheville submit a prioritized list of transit capital projects by the end of the week, which staff has compiled and submitted for the Finance Committee's review. The list was prioritized based on system need, citizen benefit, and ability to implement according to ARRA required timeframes.

Public Safety

Edward Byrne Memorial Justice Assistance Grant - \$265,466 is the minimum base allocation. Applications are due in May.

On Friday, March 6, staff presented this information to the Finance Committee and requested their approval of the Transit Capital Improvements Project Proposals, which she outlined, and approval to authorize staff to forward the list to the FBRMPO. ARRA transportation funding is in the form of reimbursable grants requiring no local match. There will not be adverse fiscal impacts to the city if these funds are obtained.

In summary, as of March 10, 2009, the total specific funding allocations that have been announced for Asheville as well as any associated grant applications, awards and project implementation is \$3,607,408.

She also noted the following community announcements, which will be posted on our website with appropriate links. One is the Dept. of Education has just posted some specific information about how funds will be administered through their programs. We will be reaching out to our school systems to make sure that they are receiving information and that they get the support they need in order to move forward with their applications. The other announcement is the National Endowment for the Arts has put up their process for awarding funds. We have several community organizations that can benefit from that process. Those funds are eligible for pass grant recipients and also sub-granting authorities, which we have a couple in the Asheville area.

Ms. Bradley responded to questions from Council to the best of her knowledge regarding the funding allocations.

Councilman Mumpower felt that for Council to participate in these initiatives in any way represents a betrayal of the people we are trying to represent at a time of dire economic difficulty.

IV. PUBLIC HEARINGS:

- A. PUBLIC HEARING TO CONSIDER THE ISSUANCE OF A CONDITIONAL USE PERMIT FOR THE PROJECT IDENTIFIED AS CROWNE PLAZA RESORT AT 1 RESORT DRIVE FOR A MASTER PLAN COMPOSED OF THREE PHASES TOTALING 364,700 SQUARE FEET OF NEW FACILITIES, CONSISTING OF (1) DETAILED APPROVAL OF PHASE I THAT INCLUDES A 61,500 SQUARE FOOT EXPANSION OF THE EXISTING SPORTS CENTER FACILITY WITH A REQUEST FOR MODIFICATION TO REQUIRED SETBACKS; AND (2) CONCEPTUAL APPROVAL OF PHASES II AND III THAT INCLUDE A 123,200 SQUARE FOOT MIXED USE BUILDING AND A 180,000 SQUARE FOOT CONDO/HOTEL BUILDING RESPECTIVELY**

ORDINANCE NO. 3707 - ORDINANCE GRANTING A CONDITIONAL USE PERMIT FOR THE PROJECT IDENTIFIED AS CROWNE PLAZA RESORT AT 1 RESORT DRIVE FOR A MASTER PLAN COMPOSED OF THREE PHASES TOTALING 364,700 SQUARE FEET OF NEW FACILITIES, CONSISTING OF (1) DETAILED APPROVAL OF PHASE I THAT INCLUDES A 61,500 SQUARE FOOT EXPANSION OF THE EXISTING SPORTS CENTER FACILITY WITH A REQUEST FOR MODIFICATION TO REQUIRED SETBACKS; AND (2) CONCEPTUAL APPROVAL OF PHASES II AND III THAT INCLUDE A 123,200 SQUARE FOOT MIXED USE BUILDING AND A 180,000 SQUARE FOOT CONDO/HOTEL BUILDING RESPECTIVELY

City Clerk Burleson administered the oath to anyone who anticipated speaking on this matter.

City Attorney Oast reviewed with Council the conditional use district zoning process. This process is the issuance of a conditional use permit, which is a quasi-judicial site specific act. At this public hearing, all the testimony needs to be sworn.

After hearing no questions about the procedure, Mayor Bellamy opened the public hearing at 5:34 p.m.

All Council members disclosed that they have visited the site and would consider this issue with an open mind on all the matters before them without pre-judgment and that they will make their decision based solely on what is before Council at the hearing.

City Attorney Oast said that as documentary evidence is submitted, he would be noting the entry of that evidence into the record.

City Attorney Oast said that the Authorized Practice Committee of the North Carolina State Bar has issued an advisory opinion that appearing in a representative capacity for a party before a local governmental body in a quasi-judicial proceeding is the practice of law, especially with respect to such aspects of the hearing as examining or cross-examining witnesses, or advocating for legal conclusions or results. This does not prevent persons, including land use professionals, from presenting information or expressing opinions within their knowledge or area of expertise.

Urban Planner Jessica Bernstein submitted into the record City Exhibit 1 (Affidavit of Publication), City Exhibit 2 (Certification of Mailing of Notice to Property Owners); and City Exhibit 3 (Staff Report).

Ms. Bernstein said that this is the consideration of the issuance of a conditional use permit for the project identified as Crowne Plaza Resort at 1 Resort Drive for a Master Plan composed of three phases totaling 364,700 square feet of new facilities, consisting of (1) detailed

approval of Phase I that includes a 61,500 square foot expansion of the existing Sports Center facility with a request for modification to required setbacks; and (2) conceptual approval of Phases II and III that include a 123,200 square foot mixed use building and a 180,000 square foot condo/hotel building respectively (Location and Aerial Maps – Attachments to City Exhibit 3).

She said the applicant is requesting review of site plans for site improvements and new construction at the Crowne Plaza Resort. This project is considered a Level III review pursuant to Section 7-5-9(a) of the Unified Development Ordinance (UDO) which designates review for commercial developments with a gross floor area of more than 100,000 square feet. The existing resort contains approximately 393,000 square feet and the total new construction is proposed at 364,700 square feet over three phases.

The project site consists of a 108.45 acre parcel and a small leased portion of an adjacent parcel located off of Resort Drive (accessed from Patton Avenue/I-240) and is zoned Resort District. Surrounding properties are zoned Resort, Regional Business, RM-8, RS-2, RS-8, CBI, and CBI. This site is currently the location of the Crowne Plaza Resort.

The applicant is requesting review of a three-phase improvement project, with detailed approval of Phase 1 and conceptual approval of Phases 2 & 3 (Master Plan – Attachment to City Exhibit 3):

- Phase 1 (2009) – Sports center expansion, including two surface parking lots, an addition to existing indoor tennis building for a fitness center and staff offices (2-story addition, 33'9", 36,000 square feet), a building for a pool and bathrooms (6,500 square feet), and a separate indoor soccer facility (1-story, 24'2", 19,000 square feet – total 61,500 SF).
- Phase 2 (2011-2013) – Mixed-use office and residential building, four-stories with under-structure parking (123,200 square feet).
- Phase 3 (2011-2014) – Hotel/condo expansion, four-stories with under-structure parking (180,000 square feet).

Phases 2 and 3 will return to the Technical Review Committee (TRC) separately for detailed review.

The entire resort is accessed via Resort Drive, which is private. A driveway will link Resort Drive to the proposed improvements. Access to the southernmost tennis courts and indoor soccer facility are pedestrian-only and cross the Smith Mill Creek. Surface parking lots are proposed as a part of Phase 1 and include 75 parking spaces. Future phases will have parking included under the structure.

Landscaping and open space will be provided according to the City's ordinances.

The project proposes structures that will straddle existing property lines. In the Resort district, there is a 35' front setback and a 15' side setback from the property line. Because of the unique structure placement of the tennis court and soccer facility and the Phase 1 building over the property line (which must be approved by both the Fire Department and Building Safety and may require consultation with the Building Code Council), modifications to setbacks are needed for Phase 1 structures and will need to be approved by City Council (Modification Map - Attachment to City Exhibit 3).

Several of the improvements proposed in this expansion project are on land owned by others. A lease agreement has been submitted with the project application which states in Section 6.2 that the "Lessee shall be permitted to make structural or other modification(s) or improvement(s) to the Premises without prior approval by Lessor." This language has been reviewed by the City attorney who finds no reason to withhold consideration.

This project was approved with conditions by the TRC on February 2, 2009. No members of the community expressed opposition to the project.

The Planning & Zoning Commission reviewed this request on February 19, 2009, and recommended approval of the master development plan and setback modifications by a unanimous vote (5-0). Commissioners recognized that the plans for the I-26 connector were not truly a "con" to this proposal and that until an alternative is definitively identified and funded, proposals such as this one cannot be held hostage. No member of the community expressed opposition to the project.

City Council must take formal action as set forth in Section 7-5-5(e)(3) of the UDO, and must find that all seven standards for approval of conditional uses are met based on the evidence and testimony received at the public hearing or otherwise appearing in the record of this case pursuant to Section 7-16-2(c). Staff's review indicates that all seven standards are met as proposed in the site plan.

1. That the proposed use or development of the land will not materially endanger the public health or safety.

The project will meet State building code requirements and will be reviewed in detail by the TRC to ensure compliance with safety requirements.

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 improvements in Phase 1 are proposed in areas with significant natural features, including the need to reconstruct a bridge over a jurisdictional stream that appears to be within the 100-year floodway and associated grading activities. The applicant will need to coordinate with the City's Engineering Department (as well as the Army Corps of Engineers) to demonstrate compliance with applicable state, local and federal rules and regulations.

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

The parcel(s) containing the Crowne Plaza Resort is quite large (over 108 acres) and the proposed activities are all focused in the

southeast corner of the lot, along the access way into the Resort (far from any adjacent residential neighborhoods). This portion of the lot is in between Sam's Club and the Westgate Shopping Center, both zoned RB. Any increase in development intensity associated with these improvements is complementary to the adjacent uses and zoning and should not injure the value of the abutting property.

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

The parcel(s) containing the Crowne Plaza Resort is quite large (over 108 acres) and the proposed activities are all focused in the southeast corner of the lot. As mentioned in #3, this is an appropriate location for higher density residential, recreational and resort development. The proposed buildings are located far from any single-family or low density development and the uses and development are compatible with the hotel and resort amenities and buildings existing on the site.

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.

This proposal aligns with Smart Growth Land Use Policies in the 2025 Plan by including mixed-use development with hotel, recreational and residential components on a site with existing infrastructure, close to transportation and the downtown (pg. 31). Also, the tourism industry is highlighted in the Plan as needing to concentrate on "creating and marketing 'destination' travel opportunities to attract travelers" (pg. 195). Expanding and enhancing the amenities of this centrally located resort will no doubt have a positive draw to visitors, but many of the improvements are also available as a benefit to the public and the tennis courts will be used by UNC-Asheville.

The Plan states "the route that the Connector takes and the extent to which I-26 is widened are topics of great controversy in the City of Asheville" with concerns including "impacts on community character, promotion of economic development, loss of businesses and housing, public safety, construction noise and congestion, business access during construction and further inducement of a sprawl development pattern" (pg. 140). Three of the four proposals for the Connector have a serious impact on the viability of this proposal, with Alternative 2 being the only proposal that appears to not have a detrimental effect on the Resort property. Under the City's current preferred alternative (4B), almost all of the land for Phase 1 and a portion of Phase 2 would be taken.

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 site is located just off I-240/Patton Avenue, which places the project in an easily accessible location by car and Asheville transit (rt. 15). The project has been reviewed by the Technical Review Committee and has been found to have adequate access to infrastructure.

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

The subject project has been reviewed by the City Traffic Engineer and the following comments are provided. The proposed project will likely trigger the need for a traffic impact analysis (TIA) at full build-out conditions, including Phase 3 if not sooner; however, the analysis should be delayed until Phase 2 for the following reasons:

- 1. The proposed recreational uses are intended for use by guests of the resort the majority of the time.*
- 2. The indoor soccer complex will be for non-spectator event(s) due to the actual size of the complex (no room provided for spectators should mean no additional vehicle trips).*
- 3. The uncertainty of the final location of the I-26 connector, which will affect the nearby street network and thereby any improvements recommended by a TIA.*

Since the construction of Phase 1 will not increase the number of available rooms (beds), the overall traffic impact should be minimal and the existing street network is sufficient. Phase 1 should not cause undue traffic congestion or create a traffic hazard.

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

Pros:

- The proposal is aligned with City goals relating to economic development (tourism) and sustainability (mix of uses on a parcel with access to transportation options and existing infrastructure).
- Allows for a partnership with UNC-Asheville for use of the recreation facilities.

Cons:

- Three of the four proposed I-26 Connector alternatives seriously impact the viability of this project.
- Impacts to a jurisdictional stream are unavoidable; however, they are within the parameters of normal development practices and will require review, approval and oversight by outside agencies.

Staff recommends approval of the Level 3 phased master development plan and the modifications to setback as requested by the applicant.

Mr. Marvin Mercer, with Mercer Design Group, said that he was present to respond to Council questions.

Mr. Dennis Hulsing, owner, spoke in support of the conditional use permit which will bring additional tourists to Asheville.

Mayor Bellamy closed the public hearing at 5:40 p.m.

There was considerable discussion, initiated by Councilwoman Cape, regarding how Council's support of the N.C. Dept. of Transportation's I-26 Connector Alternate 4-B that Council endorsed would affect this project, since that alternative would seriously impact the viability of this project. It was City Attorney Oast's opinion that Council's vote on a preferred path for the I-26 Connector would not be diminished by their vote on this project. Because the Crowne Resort is in the way of several N.C. Dept. of Transportation's alternatives, and there is no decision on the final plan or acquisition of properties, he was unsure whether that is proper consideration in this decision. In addition, the Council's support of the I-26 Connector Alternate is just an endorsement of a N.C. Dept. of Transportation Plan, not the City's plan.

In response to Councilman Mumpower, Mr. Hulsing explained how they have been working on this project for several years while waiting to hear about the final I-26 Connector Plan. Even though he disagrees with the Alternate 4-B that Council endorsed, he preferred to move forward with this project in order to keep people employed and bring business to Asheville.

Vice-Mayor Davis said that from the Metropolitan Planning Organization's standpoint, the N.C. Dept. of Transportation decision on a final alternate plan could be made in early September.

Councilman Miller felt there is a definite need for these types of structures in the City and its uncertain when the N.C. Dept. of Transportation will be ready to start purchasing land, especially with the prospect of lawsuits being filed.

Councilman Miller moved for the adoption of Ordinance No. 3707, granting a conditional use permit for the project identified as Crowne Plaza Resort at 1 Resort Drive for the proposed 3-phase Master Plan with approval of the proposed setback modifications, 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. 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; (6) Bridge reconstruction may require review by the Army Corps of Engineers; and (7) No building permits shall be issued until a solution is devised concerning resolution of the property line/building code matter. This motion was seconded by Councilman Newman and carried on a 4-3 vote, with Mayor Bellamy, Councilwoman Cape and Councilman Mumpower voting "no."

City Attorney Oast said that due to the vote, this matter will have to come back for a second reading. Mayor Bellamy said it will be placed on the March 24, 2009, agenda.

Mayor Bellamy asked staff to see if they can find out a date when the N.C. Dept. of Transportation expects to have a final decision, prior to Council's consideration on March 24.

In response to Councilman Mumpower, Mayor Bellamy said that if there is going to be reconsideration of a motion, that reconsideration must be made by someone who voted in favor of the motion.

Councilman Newman felt we should not freeze development and hold hostage all property owners in the different alternate areas until a decision is made.

ORDINANCE BOOK NO. 25 – PAGE 194

B. PUBLIC HEARING TO CONSIDER AMENDMENTS TO THE UNIFIED DEVELOPMENT ORDINANCE TO RESPOND TO THE CURRENT ECONOMIC CLIMATE

ORDINANCE NO. 3708 - ORDINANCE AMENDING THE UNIFIED DEVELOPMENT ORDINANCE TO RESPOND TO THE CURRENT ECONOMIC CLIMATE (GUARANTEEING PERFORMANCE)

ORDINANCE NO. 3709 - ORDINANCE AMENDING THE UNIFIED DEVELOPMENT ORDINANCE TO RESPOND TO THE CURRENT ECONOMIC CLIMATE (PERMIT VALIDITY)

ORDINANCE NO. 3710 - ORDINANCE AMENDING THE UNIFIED DEVELOPMENT ORDINANCE TO RESPOND TO THE CURRENT ECONOMIC CLIMATE (ALTERNATIVE LANDSCAPING COMPLIANCE IN DISPLAY AREAS)

ORDINANCE NO. 3711- ORDINANCE AMENDING THE UNIFIED DEVELOPMENT ORDINANCE TO RESPOND TO THE CURRENT ECONOMIC CLIMATE (APPROPRIATE ACCESS TO HIGHWAY BUSINESS ZONED PARCELS)

ORDINANCE NO. 3712 - ORDINANCE AMENDING THE UNIFIED DEVELOPMENT ORDINANCE TO RESPOND TO THE CURRENT ECONOMIC CLIMATE (PARKING REDUCTION FOR SELF-STORAGE FACILITIES)

ORDINANCE NO. 3713 - ORDINANCE AMENDING THE UNIFIED DEVELOPMENT ORDINANCE TO RESPOND TO THE CURRENT ECONOMIC CLIMATE (ELIMINATE ACCESSORY STRUCTURE BUFFER)

ORDINANCE NO. 3714 - ORDINANCE AMENDING THE UNIFIED DEVELOPMENT ORDINANCE TO RESPOND TO THE CURRENT ECONOMIC CLIMATE (GREATER SIGNAGE FOR LARGE NEW DEVELOPMENTS)

ORDINANCE NO. 3715 - ORDINANCE AMENDING THE UNIFIED DEVELOPMENT ORDINANCE TO RESPOND TO THE CURRENT ECONOMIC CLIMATE (GREATER FLEXIBILITY FOR TEMPORARY SIGNS)

Mayor Bellamy opened the public hearing at 5:57 p.m.

Urban Planner Jessica Bernstein said that this is the consideration of eight amendments to the Unified Development Ordinance (UDO) for the purposes of responding to the current economic climate to assist businesses and development proposals to open and operate more easily, while still meeting the technical UDO standards along with City adopted goals. This public hearing was advertised on February 27 and March 6, 2009.

Planning & Development staff began to see impacts on local development emerging throughout the fall, and started to consider how regulations could be adjusted to provide relief. Several proposals were under already consideration when participants at the City Manager's Development Forum held on December 5, 2008, were asked for their ideas on what other changes would be helpful. At the Forum, similar concern was expressed over the national economic climate and additional suggestions were made to staff. Staff discussed how minor changes to the UDO would be able to provide some relief to development proposals facing difficulty with willingness of banks and financial institutions to provide bonds or loans, the increased cost of construction operations, materials and general delays, all resulting in a decrease in revenue overall. The staff suggestions led to other ideas from the group which has led to a consolidated package of amendments designed to assist those facing difficulty completing projects and/or keeping existing projects viable.

Staff is proposing eight (8) separate code changes as a response to the Forum discussion, meetings with stakeholders and brainstorming among City staff. Although the eight (8) changes are loosely grouped together for purposes of this report as serving as a response to the current economic climate, they are distinct in their directives and will therefore be described separately below. Each item will require a separate vote.

The first two (2) changes relate to timelines and the process for projects from approval to occupancy. The last six (6) are intended to balance some economic relief to both business owners and homeowners. All eight (8) proposals in this report have been carefully considered to balance providing some relief to the currently affected development community with maintaining the intent of the UDO and development review process. While providing relief was the main objective, it should be noted that the proposed changes do result in some consequences.

The changes included in this report should be seen as a starting point. Staff continues to meet with property owners and members of the business community to develop additional potential UDO changes.

1. Issue: Provide an alternate method of guaranteeing performance if bonds are not available.

Current: For major subdivisions and development projects wherein the installation of public infrastructure (streets, waterlines, etc.) is part of the development, the City can issue plat approval or a certificate of occupancy for structures in the development prior to completion of the infrastructure, provided that a bond or other financial instrument is in place to guarantee payment of the cost of the infrastructure if the developer is unable to complete the project. In other cases, the City can issue temporary certificates of occupancy as for a building, and allow such peripheral requirements as landscaping, to be installed later. This also requires a financial guarantee. These temporary arrangements are authorized in State law, which provides that in no case may a certificate of occupancy or other approval issue for structures that do not otherwise satisfy building, fire, and safety code requirements.

Proposal: Because banks and other financial institutions have been unable or reluctant to issue bonds in recent months, the City should consider allowing alternative means of providing this flexibility, while ensuring that required improvements are made. One method of doing this is a "Delayed Compliance Agreement," whereby a developer agrees to complete required installations within a certain time. However, instead of a financial guarantee, the developer waives defenses to legal actions to enforce the agreement, and agrees to pay attorneys fees. The City should be careful to use such agreements only in extraordinary circumstances, only for certain types of improvements, and only where it can be demonstrated that a bond is not available even though that developer was willing to pay for it, and was otherwise qualified for it.

Relevant Code Sections: 7-5-8(a)(4) and 7-15-1(g)(4): Major Subdivisions; 7-11-3(f)(1): Landscaping; 7-5-19: Certificate of Occupancy

Pros:

- Allows for an alternative method to ensure completion of site improvements in the event that a bond or traditional guarantees are not available.
- Allows for an alternative that may be better suited to address unique circumstances or needs.
- Allows resources to be focused on more pressing needs.
- Provides a negotiated time frame within which to work.

Cons:

- Removes the third-party financial element and places a greater burden on the City to recover costs in the event a developer cannot complete project.

In response to Councilman Newman, Ms. Bernstein and City Attorney Oast explained the City's risk, how this would be used for only non-safety improvements, how the developer would have to submit verification from a financial institution of why there is a problem, how criteria is being developed to evaluate which projects could be considered for this alternate method, and what options the City has if required improvements are not made.

2. Issue: Extend zoning permit approvals and terms of permit validity

Current: In August 2007, Council approved an increase in the validity of Conditional Use Permits from one year to two years. Currently, the UDO states that all Conditional Use Permits, Conditional Zonings and Level 3 project zoning approvals shall be valid for two years from the date of approval by City Council. Failure to initiate construction or otherwise begin the permitted use within this time shall render the approval void. The Planning & Development Director may grant a single extension of up to six months upon submittal by the applicant of sufficient justification for the extension. Level 1 and 2 projects have zoning approval valid for one year from the date of approval with the same parameters of validity and extension.

Proposal: Due to the cumulative effect of the economic climate from availability of funding sources and the overall market downturn, the City should consider allowing the approving body to grant an additional extension up to one year beyond the two years approval validity and six-month extensions already allowed for Conditional Use Permits and Level 3 projects. The six-month extension granted by the Planning & Development Director should be included for Conditional Zoning approvals. Additionally, the circumstance which begins this term of permit validity for all projects (those mentioned above as well as Level 1 and 2s) should be changed from "failure to initiate construction" to "failure to obtain zoning permit" since no project activity may occur prior to issuance of the zoning permit.

In order to safeguard against the possibility of degradation on the site during the time of permit extension, conditions can be added to the initial approval or extension approval to address site maintenance issues such as graffiti removal, trash pick-up, mowing and security.

Relevant Code Sections: 7-5-5(j): CUP/Level 3; 7-7-8(c.)(9): CZ; 7-5-9(c.)(9): Level 1; 7-5-9(b)(9): Level 2

Pros:

- Allows the development community additional time to complete financial and property transactions without having to return through the review process because of permit expiration.
- Can be applied to existing as well as future projects.
- Changing "failure to initiate construction" to "failure to obtain zoning permit" provides a more definable method to track permit validity.
- Places authorization on the approving body and not staff (could be viewed as a con).

Cons:

- Has limited application - although zoning rights would be vested, this would not protect against changes to Engineering standards or Building Safety codes that may be amended during that time of extension.
- Community priorities may change/evolve over a 3 ½ year period and this amendment could facilitate a project that no longer reflects technical standards or adopted goals.

In response to Councilman Newman, Ms. Bernstein said that this applies to new projects but could also be retroactively placed on some projects if they contact the City and request an extension with sufficient justification for the extension.

3. Issue: Businesses that rely on large outdoor display areas feel adversely impacted by landscaping requirements in parking fields/display areas. The cost and location of the plantings cause financial hardship in a time of declining sales and revenues

Current: All businesses that include large outdoor display areas (including car dealerships or rental businesses) are required to comply with all landscape code standards, including property line buffer, street buffer, street trees, parking lot landscaping, building impact landscaping and screening. An alternative is currently offered which allows reduction in size of the required landscape islands, reduction in number of interior plantings and alternatives for tree spacing if the development includes specific design features aimed at reducing the impervious parking field and improving water runoff amount and quality. Several of the alternatives are offered to any type of development; however the waiver for tree spacing is available only to those who use their parking field as a display area.

Proposal: Because of the significant amount of impervious surface associated with automobile dealerships and the subsequent issues with stormwater runoff and water quality, staff does not feel that a complete elimination of parking lot landscaping is advisable. However, the alternative option for tree spacing and interior plantings can be altered to allow for a 50% reduction of parking lot landscaping materials provided that the planting areas are either concentrated towards the perimeter of the lot or grouped in one large central area and that they are designed so that stormwater runoff is captured through bio-swales and/or constructed wetlands.

Relevant Code Sections: 7-11-3(e)(3)

Pros:

- Reduces some financial burden on these businesses.
- More appropriately accommodates the unique nature of these outdoor display areas.
- Allows for a reduction in some of the interior parking lot landscaping, but does so in an alternative that incorporates stormwater runoff best management practices while maintaining parking field interior plantings.
- By consolidating islands, arguably, improves the growing conditions of the plantings.

Cons:

- Eliminating interior planting creates a larger impervious surface which can increase stormwater control and quality issues, especially on a site where gasoline, oil, soap and other potential groundwater contaminants are regularly utilized.

- Reduces other benefits from interior plantings such as moderating surface temperatures and improvements to air quality.
- Bioswales, rain gardens, constructed wetlands and other BMPs require regular maintenance to be effective.
- Increasing concessions to only one group of business owners may result in feelings of disparate regulation from other developers who would also appreciate less restrictive landscaping.

Items regarding landscaping were discussed with the Tree Commission at their meeting on January 26, 2009. The Commission was not supportive of the proposal in #3 to further reduce the number of interior plantings required for businesses using their parking fields as display areas. While they acknowledge the reasoning behind the request they do not feel the reduction aligns with that body's goals and objectives regarding improving the visual and environmental quality of Asheville.

Mayor Bellamy said that proposal states that "Because of the significant amount of impervious surface associated with automobile dealerships ..." and wondered this is amendment is open to all businesses or just automobile dealerships. Ms. Bernstein said that this relates specifically to businesses whose parking area doubles as a display area. Primarily we think of automobile dealerships first, but it would also be large scale rental, boat rental, etc. – those businesses who use the parking field as display. It would not apply to a business with a large parking lot – it would have to double as a display area.

In response to Mayor Bellamy, Ms. Bernstein that this amendment does not change anything to the property line buffer that is required between different zoning districts.

At Mayor Bellamy's suggestion, Ms. Bernstein said that she would be happy to clarify the language that this does not change anything to the property line buffer that is required between different zoning districts.

In response to Councilman Newman, Vice-Mayor Davis further explained the Tree Commission's lack of support for this amendment.

Councilman Newman supported the Tree Commission's guidance on this matter.

Mayor Bellamy asked for a friendly amendment clarifying the language that this amendment relates specifically to all businesses whose parking area doubles as a display area. Councilman Mumpower and Councilman Russell accepted the friendly amendment.

4. **Issue: Development in the Highway Business District (HB) may be restricted due to the minimum lot frontage requirement**

Current: In the HB zoning district, it is stated that there shall be no minimum lot *size* or *width* standards, however, the minimum lot *frontage* shall be 100 lineal feet. For through and corner lots, the minimum street frontage shall be required along the property line abutting the larger thoroughfare.

Proposal: There are a number of areas zoned HB where additional development would be possible however the creation of new lots is currently prohibited without sufficient lot frontage. Section 7-11-2(k) of the UDO provides standards for safe access and states that lots or parcels used for non-residential purposes are not required to abut a public street if an easement or right-of-way is established with a minimum width of 30' connects the lot to a public street. The City should consider exempting HB-zoned lots for non-residential development from the minimum lot frontage requirement, provided they can comply with the access standards.

Relevant Code Sections: 7-8-16(f)(4)

Pros:

- Removes a barrier to creating new lots for non-residential development while maintaining safe and adequate access to those sites.

Cons:

- None noted.

5. **Issue: Number of parking spaces required for self-storage facilities is excessive for the use**

Current: Self-storage facilities are required to have a *minimum* of one parking space for each 10 storage units plus one space per two employees on the shift of greatest employment and a *maximum* of 1 space for each 5 storage units plus one space per two employees on the shift of greatest employment.

Proposal: Owners of these types of facilities have indicated that the current code requirements far exceed the number of spaces that are generally needed by customers, even during busy hours. Staff has researched methods used by other communities and has found some validity in this issue. The City should consider amending the requirements to be based on the office square footage (a minimum of four parking spaces per 1,000 square feet of office space and a maximum of eight parking spaces per 1,000 square feet of office space). The fire department has requested a minimum aisle width of 24 feet.

Relevant Code Sections: 7-11-2(c.)

Pros:

- Requiring fewer parking spaces results in less impervious parking surface on the site.
- Specifying a 24 foot drive aisle satisfies Fire Department access needs.
- Allows for more efficient use of property and could result in more storage units per acre.

Cons:

- None noted.

6. Issue: Buffer required around accessory structures in residential zones is excessive considering there are no buffering requirements for the principal structure

Current: Accessory structures are considered as a use by right, subject to special requirements in all residential districts. Provided that the homeowner can meet setback and lot size requirements (as well as design and placement standards), an accessory structure can be constructed. The code requires that all accessory structures with a footprint of more than 600 square feet shall be buffered from the adjacent residential development. This buffer requirement was enacted at a time when there was no size limit to accessory structures.

Proposal: Homeowners have indicated that if their proposal for an accessory structure complies with all standards in the UDO, including location, size and height, the additional requirement to install a landscaped buffer is an undue financial burden – especially when the much larger principal structure on the lot is not required to be buffered. Also, the code reference describing the buffer is obsolete and refers to a section that no longer exists. In considering the homeowner's request, the City has determined that the requirement can be eliminated.

Relevant Code Sections: 7-16-1(c.)(2)e.

Pros:

- Removes an obsolete code reference.
- Allows homeowners to maximize personal usage of their lots while complying with setback and other standards.
- Provides a small financial relief to homeowners and homebuilders.

Cons:

- Results in the loss of some tree cover currently required in these residential districts.
- Accessory structures are permitted to be placed closer to property lines than primary structures – this could result in an unbuffered structure in close proximity to a home on an adjacent lot.

At Mayor Bellamy's suggestion, Ms. Bernstein said that she would be happy to clarify the language that this does not change anything to the property line buffer that is required between different zoning districts.

7. Issue: Allow for greater signage advertising new multi-family, commercial or mixed-use developments

Current Procedure: Real estate signs advertising the sale, lease or rental of property is currently exempt from permitting. However, while these types of signs are not required to obtain permits from the City, they are held to certain restrictions relating to size, number of signs, illumination and duration of use.

Proposal: Allow larger banner-style signs to be displayed for a limited time period when a new building is preparing to come on-line. Banner will be used for real estate purposes and will advertise the availability of the new units.

Relevant Code Sections: 7-13-4(a)

Pros:

- Provides a cost effective advertising and announcement opportunity for projects seeking to bring multiple units on-line at one time.
- Utilizes the features of the building itself to communicate availability – does not clutter roadways.

Cons:

- Providing this opportunity to only one form of real estate may result in feelings of disparate regulation from other property owners or developers of smaller or older projects desiring larger signage as well.
- Most tall projects will be downtown where signage is typically more restrictive.

In response to Mayor Bellamy, Ms. Bernstein explained what qualifies as a banner and what the standards are that regulate this type of banner.

In response to Mayor Bellamy, Ms. Bernstein that that they will be researching additional economic condition ordinances and would be happy to research the issue of people who have signage related to their business on a vehicle giving them more flexibility as to where and how long they can park the vehicle.

In response to Councilman Miller, Assistant Planning & Development Director Shannon Tuch said that since these signs shall only be displayed for no more than 120 days, they felt that would not be enough time for an all-weather material to become tattered.

In response to Mayor Bellamy, Ms. Bernstein said that these ordinances will also apply to property in the extraterritorial jurisdiction areas.

8. Issue: Allow businesses to display temporary signs for shorter periods more frequently in a year

Current Procedure: Temporary signs are currently allowed in all nonresidential zoning districts and may be displayed twice a year for a period of 30 days for each sign. Permits are required and the size and location of the sign is restricted.

Proposal: Allow business owners to display temporary signs more often but for shorter time periods, such as for a series of holiday sales throughout one year. Proposal is to limit all businesses to 60 days of temporary signage that may be divided into a maximum of six separate ten day occurrences, not to exceed 60 days in total.

Relevant Code Sections: 7-13-4(a)(8)(b)

Pros:

- **Allows for more flexibility with temporary signage to meet smaller needs throughout the year.**

Cons:

- The City's current permitting & tracking software does not allow for the automatic tracking of short term permits. Information will have to be entered into two separate systems in order to track of permit durations and frequency.
- Enforcement will be more difficult given current resources and will likely result in proliferation of unpermitted signs.

The Planning & Zoning Commission reviewed the entire proposal as included in this report and attachment and recommended approval of all eight amendments by a unanimous vote (5-0). One member expressed concerns that extending the time period for permit validity (item #2) would result in more time for a site to remain vacant and possibly be subject to degradation which could have safety implications and could cause adverse impact to the surrounding neighborhood or other potential redevelopment in that area. Conditions can be added to an initial approval or any permit extension that would guarantee site maintenance during an extended period of dormancy. Wording clarification was also provided by Commissioners for item #3.

City staff recommends approval of the code amendments as proposed.

Mayor Bellamy closed the public hearing at 6:05 p.m.

In response to Mayor Bellamy, Ms. Bernstein said that all these changes are permanent changes to the UDO.

Mayor Bellamy said that members of Council have been previously furnished with copies of the ordinances and they would not be read.

Councilman Mumpower moved for the adoption of Ordinance No. 3708 (guaranteeing performance). This motion was seconded by Vice-Mayor Davis and carried unanimously.

ORDINANCE BOOK NO. 25 - PAGE

Councilman Mumpower moved for the adoption of Ordinance No. 3709 (permit validity). This motion was seconded by Councilman Russell and carried unanimously.

ORDINANCE BOOK NO. 25 - PAGE

Councilman Mumpower moved for the adoption of Ordinance No. 3710 (alternative landscaping compliance in display areas), as amended. This motion was seconded by Councilman Russell and carried on a 5-2 vote, with Councilwoman Cape and Councilman Newman voting "no."

ORDINANCE BOOK NO. 25 - PAGE

Councilman Mumpower moved for the adoption of Ordinance No. 3711 (appropriate access to Highway Business zoned parcels). This motion was seconded by Councilman Newman and carried unanimously.

ORDINANCE BOOK NO. 25 - PAGE

Councilman Mumpower moved for the adoption of Ordinance No. 3712 (parking reduction for self-storage facilities). This motion was seconded by Councilwoman Cape and carried unanimously.

ORDINANCE BOOK NO. 25 - PAGE

Councilman Newman moved for the adoption of Ordinance No. 3713 (eliminate accessory structure buffer). This motion was seconded by Councilman Miller and carried unanimously.

ORDINANCE BOOK NO. 25 - PAGE

Councilman Newman moved for the adoption of Ordinance No. 3714 (greater signage for large new developments). This motion was seconded by Councilman Russell and carried unanimously.

ORDINANCE BOOK NO. 25 - PAGE

Councilman Russell moved for the adoption of Ordinance No. 3715 (greater flexibility for temporary signs). This motion was seconded by Councilman Miller and carried unanimously.

ORDINANCE BOOK NO. 25 - PAGE

V. UNFINISHED BUSINESS:

A. DISCUSSION REGARDING CONSTRUCTION EASEMENT TO ALLOW FOR A PERMANENT ROAD IMPROVEMENT ON PUBLIC LAND (PACK SQUARE PARK)

Assistant Planning & Development Director Shannon Tuch said that this is the consideration of a request for a construction easement to allow for a permanent road improvement on public land (Pack Square Park).

On July 7, 2008, the Asheville Technical Review Committee (TRC) reviewed and approved the Level II Parkside Condominium project, finding no technical insufficiencies. The proposed development plan included a variety of site features including a new road to be constructed on the north side of the building located between the building and the southern edge of the Pack Square Park. Because this proposed road (identified as "Court Plaza") crossed into property owned Buncombe County and the City of Asheville as tenants in common, the project approval was conditioned to require a construction easement from both the City and County in order to construct this permanent road improvement; no permits may be issued until these easements are obtained.

On July 9, 2008, the City Manager's office received a request from SWAG Holdings, Black Dog Realty LLC, and Parkside Condominiums LLC for the necessary construction easement.

In the fall of 2007, a lawsuit was filed in Buncombe County Superior Court by the heirs of George Pack claiming, in essence, that part of the property on which the Parkside project was to be built (acquired by the applicant from Buncombe County) had been given to the County by George Pack subject to a restriction limiting its use to public purposes, and that the proposed condominium use was in violation of that restriction. During the time between the City's receipt of the request for the construction easement and the City Council meeting at which the request was to be considered, the Court ruled in favor of the Pack heirs, a ruling that clearly affected whether the Parkside project, as it had been approved, could be built. This development caused the construction easement request to be withdrawn until a later date when the potential impact of this decision could be more fully evaluated. The Superior Court's decision has been appealed. Argument and decision dates are difficult to estimate but are not expected before this fall.

In an effort to have all unresolved issues addressed in the event of a favorable outcome, the original construction easement request has been revived and resubmitted by Stewart Coleman, on behalf of Parkside LLC, under a new letter dated January 28, 2009.

The general layout and design of the road is reflected in one of three Pack Square Park Master Plans that were reviewed and approved concurrently by the Asheville City Council in 2004. Staff reports and meeting minutes reflect the need for three separate Master Plans due to the uncertainty over the potential development of two publicly owned sites that bordered the Park (commonly referred to as Site A and Site B) as well as the privately owned property commonly known as the Hayes & Hopson building. Should the Hayes & Hopson building remain in its current state, construction of Court Plaza as proposed would not be possible and alternatives would need to be considered. Since the road had been included in a previously adopted Master Plan for the park, staff determined that the Parkside Condominium project was in compliance with previous approvals for the Park and would not require any additional approvals other than a design review by the Pack Square Conservancy (PSC). Under the Pack Square Guidelines, all improvements in the park required a mandatory review with mandatory compliance; however, this would be limited to design considerations only and would not include an option to disapprove the road entirely. Should the Council and, at a later date, the Buncombe County Commissioners approve the easement for the road, it would then go before the PSC for design review as the next step.

It is important to note that Court Plaza is technically necessary for the current design of the Parkside Condominium project as it provides the necessary fire apparatus staging area which, per state fire code, requires a minimum width of 26 feet. Both Marjorie Street and Spruce Street could be widened to accommodate this width but would necessitate design changes that could result in further encroachment into the Park. As stated by the developer during the July 15th City Council meeting – should the construction easement be denied, their stated preference would be to leave the design of the building as proposed and widen Marjorie St. to accommodate the fire apparatus staging. If the form/size of the building is not changed, this would result in the condo building moving approximately 15 feet closer to the park, further eclipsing the view of City Hall; this amount would be increased by 7 feet if on-street parking was retained. A change of this magnitude would require re-review by both the Downtown Commission and the TRC. Of course, other design options could be explored including; reducing the footprint of the building, widening Marjorie in the direction of City owned property (employee parking lot) or providing other staging surfaces in the park.

This easement for the road is separate and distinct from the "no-build" easement that will be required from Buncombe County (which owns the property adjacent to the east of the site) in order to allow for the Parkside building to have window and door penetrations on the east elevation, as the current plans reflect.

This report is informational only and compliance with the Strategic Operating Plan is not relevant.

Pros:

- Improves vehicular traffic flow in front of the Courthouse and City Hall.
- New road provides access and staging for the park (although PSC has expressed some concern over the development that the road would serve).
- Helps to prevent further encroachment towards the park (eclipsing view of City Hall) as a result of a potential building redesign or new layout.
- Complies with one of three approved park Master Plans.

Cons:

- Directs vehicular traffic along edge of park (one way).
- Potential for deliveries to occur on the side of the building facing the park.
- Does not comply with two of the three park Master Plans.

Approving this request will result in a private investment into public infrastructure that will require public maintenance over time. Other impacts may be more difficult to identify.

She said that should this approval be granted, staff would recommend that Council condition it specific to this plan. In the event that the courts rule in favor of the Pack heirs on this appeal, then we would want to reconsider the construction easement for the road or any other options.

Since the proposed road minimally complies with (one of) the approved Master Plans and other technical standards required for the extension of public infrastructure, it potentially conflicts with park use. Staff recommends that the Council take the time necessary to carefully consider the pros and cons along with other citizen and stakeholder concerns in deciding whether such easement should be granted and/or conditioned to mitigate any potential concerns. Should it be determined that additional information or analysis is necessary, staff would recommend the Council continue this item to allow for new information to be presented and considered.

Vice-Mayor Davis didn't think there was going to be a lot more information forthcoming and favored making a decision. He personally would have a difficult time approving the project without the road because the building would further encroach into the view corridor of the City Hall, and it would be expensive to widen Marjorie Street and reduce the size of the City employee's parking lot.

In response to Vice-Mayor Davis, Ms. Tuch said that both of those options are to maintain a certain product. There is always the option to scale down a product or re-design it with lesser units, or to provide for some other kind of staging area other than a road on the Park. She said that she hasn't discussed a different staging area in any detail with the developer. She understood that the developer's preference would be to have the road over a staging area than bringing everything to the side or rear of the building. She would also be concerned that an alternative staging area might have a different design aesthetic and that would have to be approved by the Park and may be difficult to achieve a uniform appearance. Whereas, the road was clearly contemplated in at least one of the three plans that were approved.

Councilwoman Cape felt we heard clearly from the community that the sale of public land for infrastructure is not what our community supports. She could not support this construction easement and felt that anything can be re-designed.

In response to Councilman Russell, Ms. Tuch said that the traffic and traffic flow was considered by the Technical Review Committee. The City's Traffic Engineer said that having a road would improve the traffic flow in the area.

Councilman Russell noted that the Park is currently surrounded by roads on three sides. He felt if a road was allowed, it would keep the building out of the view corridor and create more open space.

In response to Councilman Mumpower, using an illustration, Ms. Tuch showed where the existing magnolia tree is located.

In response to Councilman Mumpower, Ms. Tuch said that the City was not a party to any decisions related to this development plan.

Councilman Mumpower expressed concern that the City was not a part of this development plan, even though it is in our front door, is now being asked to provide a rescue opportunity for the project to move forward. He would be willing to keep the lines of dialogue open, but could not support any intrusion on the public properties.

In response to Councilman Newman, Ms. Tuch said that if the plan is modified with another configuration, that plan would represent significant changes to the proposal and would have to be submitted as a new project.

Councilman Newman felt the City is being told to take approve this road or they will do something worse. As a separate issue, he would support directing the City Manager to craft an ordinance that future proposed developments that are directly contiguous to Pack Square Park be reviewed and approved by the Asheville City Council. He felt that if the courts do say that this project is not allowed or if there are new plans submitted by this developer or others, Council will have some oversight of those projects.

Councilman Miller gave some important context to this matter. He said that the three plans that were submitted were predicated on Site A and Site B maybe happening and then a plan was submitted with those sites being a part of the deal. When those two projects fell by the wayside, the Pack Square Conservancy designer was directed to go forward with the plan that is now being constructed. That was the plan that was submitted to the N.C. Dept. of Transportation and that was the plan that received approval. That plan did not have a road. When the Conservancy talked about Site B the intent was to have that building farther south.

In response to Councilman Miller about the road potentially conflicting with Park use, Ms. Tuch said that while a road could serve the Park, it would effectively route vehicular traffic around the edge of the Park thus creating the potential of vehicular/pedestrian conflict.

Councilman Miller supported asking the developer come back to Council after we hear from the court. Another crucial point is the protection of the view corridor and exactly where would the building be located. He questioned if something can be done to the Hayes & Hopson Building on a buy-out and get this other piece of land back so we can have something there that is a little bit more in line with what the intent of the 6.5 acres of Park space.

In response to Councilman Mumpower, Mr. Stewart Coleman, developer, said that they have made a presentation to Council that fully addressed most of these issues. It is not his intent to intimidate anyone into choosing one design over another design. He will be gifting land

back to the City as private land and he is not taking land from the City. He intends on giving the access for this road. He explained the many benefits of the road, some being, that it would improve vehicular flow in front of the Courthouse and City Hall and eliminate the "bottle-neck" that the present cul-de-sac generates; and the new road would provide access and staging for the Park and provide access for early morning deliveries to occur on the side of the building facing the Park. He felt moving the building north is an atrocity as it will affect the view corridor to the point of where it's against everything they have tried to work towards in this design. They followed the Pack Square Conservancy guidelines. There is very little they have not given up to build the best product for the City, the County and the Park. He said they have spent an enormous amount of money in the design levels to meet the fiber of what is presently in the area.

Mayor Bellamy suggested that in all fairness to this Council, since we had no part in the decisions made previously, that Mr. Coleman present this request to the Buncombe County Commissioners first for their consideration of approval of the easement for the road.

Councilman Mumpower moved to (1) table (postpone) this item pending a decision from the Court of Appeals and pending Buncombe County's decision on the construction easement request; and (2) request further deliberation between the developer and City staff to see if there are additional points of resolution. This motion was seconded by Councilman Miller.

The following individuals spoke in favor of Councilman Mumpower's motion to table action on this easement request:

Ms. Dixie Deerman
Mr. Steve Rasmussen
Mr. Coleman Smith
Ms. Clare Hanrahan

Mr. Coleman reviewed with Council the proposed Parkside Condominium project at 80 Court Plaza. He showed the proposed landscaping design, proposed Court Plaza streetscape, the existing view from the Vance Memorial per guidelines (showing the Hayes & Hopson building), a view of the revised building (view from Vance Memorial per guidelines), and several renderings of the Pack Square Park with a copy of the front page of the AT&T Yellow Pages of July 2008, noting many of the documents show a road. He said that they are trying to construct a building that is compatible with the fabric of the neighborhood. He questioned what the Park will do with the property south of the sidewalk if the road is not put in. He noted that the Conservancy Chairman had initially agreed to not only put it in, but to pay for it. Now that there are budget issues, they have asked him to pay for that.

Mr. Guy Clerici, Chair of the Pack Square Conservancy, emphasized that three proposals were approved by Council, one of which did include the road. Construction drawings, from which the Park is being built, do not include that roadway. It is the Conservancy's position that once they have all the facts in front of them and the litigation resolved, that we should come together and determine what the best use for this property is for Asheville. He supported Council's motion to table.

The motion made by Councilman Mumpower and seconded by Councilman Miller carried unanimously.

City Attorney Oast said that if the Court's decision is overturned and Buncombe County approves the construction easement, he felt that Council will be expected to act on the request in a fairly quick timeframe. Mayor Bellamy agreed that Council will consider on that matter expeditiously.

Councilman Newman moved to direct the City Manager to craft an ordinance that future proposed developments that are directly contiguous to Pack Square Park be reviewed and approved by the Asheville City Council. This motion was seconded by Councilwoman Cape.

Mr. Mike Fryar spoke against the motion.

Mr. Steve Rasmussen supported the motion and suggested it be incorporated into the Downtown Master Plan.

Councilman Miller suggested staff try to find a way to include the Pack Square Conservancy in the review process.

Councilman Mumpower could not support the motion in that he felt we are close to creating a policy to address a specific project.

Vice-Mayor Davis hoped that this can be incorporated into the Downtown Master Plan but liked the motion in principle.

Councilman Newman was supportive of the Downtown Master Plan; however, his motion is not about one person, but one place – the town square of Asheville. At present the Council has no oversight to determine the future of our town square and this motion would give us the oversight authority.

Councilwoman Cape felt that anyone who buys land in the City's "living room" should realize there will be an engagement of the public process. We do have an obligation to protect our community.

Upon inquiry of Councilman Miller about placing restrictions on property that the City and County owns, City Attorney Oast said that if staff is directed to look into drafting an ordinance, that is something they will research, but just as a general notion he believed that Council could adopt zoning regulations that would apply to properties that are not necessarily owned by the City.

Mayor Bellamy noted that the motion as proposed would impact the Pavilion, the Art Museum Expansion and all the development that is occurring. She suggested the motion be clarified for staff to look at some options that dovetail with the Downtown Master Plan and the Pack Square Conservancy. She does think the view corridor is important. Part of the issue that Council pushed with County Detention Center was we didn't want it to impact the view corridor of City Hall. As the motion stands, it just doesn't impact the Parkside development.

She suggested staff bring back some recommendations for Council to consider.

Councilman Newman agreed that he is not asking for a particular policy outcome, but that there be some options given to Council for some meaningful oversight of the future plans that are proposed for this area.

In response to Councilwoman Cape, Mr. Clerici said that attached to the City/ County/Conservancy agreement is a map of where the Conservancy has design review. Unfortunately outside the map is mostly the buildings.

Councilman Newman clarified his motion that the City Manager be instructed to provide some options (with input from the Conservancy Board) to allow future proposed developments that are directly contiguous to Pack Square Park be reviewed and approved by the Asheville City Council.

In response to Councilwoman Cape's comments regarding a timeline, Planning & Development Director Judy Daniel said that if the motion passes, staff will be happy to come back with some options. This would be about the same timeline as the Downtown Master Plan and so this might be something they make in their recommendations on the Plan – perhaps an addendum to the Plan. That will be coming to Council in the next 1-½ months.

The clarified motion made by Councilman Newman and seconded by Councilman Miller carried on a 6-1 vote, with Councilman Russell voting "no."

At 7:33 p.m., Mayor Bellamy announced a 20-minute recess.

B. BUDGET PLANNING

Staff Reports

Chief Financial Officer Ben Durant said that the following is information City Council requested from staff on several items that were discussed at the February 24, 2009, Quarterly Report/Budget Worksession. Provided below are answers to questions that were raised by Council.

1. Provide information on transfer from General Fund Balance to the Health Care Fund.

Beginning in Fiscal year 2008, the City began accounting for its self-funded Health Care and Worker's Compensation programs in a new insurance fund, separate from the City's General Fund. Accounting for these programs was formerly done in the General Fund. Segregating these funds from the General Fund was done to enhance the City's financial management and reporting capacity for its self-funded insurance programs.

The impact of the preceding change is reflected in the financial summary statements from the City's previous two audits. The Audit and Financial Statement Summary produced by Dixon Hughes for FY 2007 shows that in that year, total fund balance for the General Fund was \$41.61 million, which included reserves for Health Care and Worker's Compensation. The Audit and Financial Statement Summary for FY 2008 shows the 2007 total fund balance amount restated to \$34.64 million to reflect the transfer of approximately \$3.47 million in Health Care reserves and \$3.51 million in Worker's Compensation (Risk Management) reserves to the new internal service fund.

It is important to note that even when Health Care and Worker's Compensation reserves were included in the total General Fund balance, they were unavailable for appropriation as they were reserved for their intended use. Thus, their removal from the General Fund had no impact on our "available" fund balance.

2. What has fund balance been spent on in recent fiscal years?

Available fund balance peaked in FY 2005-06 at \$23.79 million or 31.0% of General Fund expenses. At that time, Council made the policy decision to begin appropriating a portion of fund balance to address high priority capital and operating needs that were one-time in nature. Highlights include:

- October 2006, Council appropriated \$1.0 million in fund balance, along with \$1.5 million in revenue from property and sales taxes that were coming in over budget, to fund \$2.5 million in capital projects, including the Civic Center arena roof and the Haw Creek and Patton Avenue sidewalk projects.
- With adoption of the FY 2007-08 budget, Council authorized the appropriation of \$3.7 million in fund balance for capital improvement projects and \$500,000 to fund one-time operating costs, such as the Downtown Master Plan update, the Parks & Greenways Master Plan Update, and the Comprehensive Affordable Housing Plan. Funded capital improvement projects included the Hominy Creek greenway, repairs at Fire Station 6, and replacement of the City Hall chiller, as well as additional vehicle and equipment replacement.
- Other major mid-year fund balance appropriations since FY 2005-06 include: 1) \$575,000 for the City's initial payment for the Overlook Park/Beaucatcher Mountain property; 2) \$353,000 for the demolition of Tunnel Road property; and 3) \$259,000 to fund the City's share of the cost of replacing a wrecked fire truck.

3. Show how various levels of fund balance appropriation would impact the City's financial position in FY 2009-10.

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At the February 24 budget worksession, staff estimated that fund balance would end the current fiscal year at \$17.68 million or 19.7% of General Fund expenditures. Staff also indicated that under current budget assumptions, \$1.0 million would be appropriated from fund balance in next fiscal year's budget. Appropriating \$1.0 million in fund balance for next year's budget would lower available fund balance to \$16.68 million of 18.2% of estimated FY 2009-10 expenditures. The table below shows three additional scenarios for fund balance usage ranging from \$2.0 million up to \$4.0 million. However, staff would caution against the use of additional fund balance to pay for ongoing budget expenses since such a practice creates an automatic budget gap that has to be filled in the subsequent budget year.

2009-10 Fund Balance Usage	2009-10 Est. Year End Avail. Fund Balance	Fund Balance %
1,000,000*	16,684,273	18.2%
2,000,000	15,684,273	17.1%
3,000,000	14,684,273	16.0%
4,000,000	13,684,273	15.0%

* Current proposed fund balance usage

4. Provide a list of current year encumbrances in the General Fund.

An encumbrance is created whenever the City enters into a contract with an outside vendor for supplies, professional services, etc. Typically, the City will encumber the full amount of a contract at the outset of a project, then the vendor is paid from that encumbrance as services are provided. Often, contracts are not completed and fully paid out by the end of the fiscal year; therefore the remaining balances on those contracts (encumbrances) are carried over to the next fiscal year. The "savings" generated from not having completed those contracts in the year that the funds were actually budgeted temporarily inflates general fund balance. This additional fund balance, however is not available for general use; instead, it is required to be held in reserve and re-appropriated in the subsequent fiscal year specifically to cover the eventual completion of the encumbered contracts that we carried over from the previous year.

As noted during the presentation of the Quarterly Financial Report, there was a total of \$1,443,395 in General Fund encumbrances carried over from FY 2007-08 into FY 2008-09. Thus, approximately \$1.4 of the \$19.67 million beginning fund balance that was reported in the Quarterly Financial Report was actually fund balance that was held in reserve and restricted for use in covering the carry-over encumbrances from the prior-year. This amount was re-appropriated in FY 2008-09 to cover the prior year carry-overs and thus included in the fund balance usage that staff presented at the February 24th Council worksession.

An example of a carry-over encumbrance transaction is the \$170,000 contract that the City entered into with Goody Clancy & Associates for the update to the Downtown Master Plan. The full amount of the contract (\$170,000) was encumbered in FY 2007-08, however only \$20,000 was actually paid out in FY 2007-08. As a result, the remaining encumbrance of \$150,000 was carried over to FY 2008-09. Financial reporting standards require that the City reserve a portion of its fund balance to cover outstanding encumbrances since they are pending obligations of the City. We report the amount of fund balance reserved for encumbrances in the City's Comprehensive Financial Report (CAFR) and in each of our Quarterly Financial Reports to Council. He presented Council with all the General Fund encumbrances that rolled over from FY 2007-08 to FY 2008-09.

5. Provide different revenue scenarios to show the impact on the General Fund budget.

Property taxes and sales taxes together make up approximately 70% of the General Fund revenue budget. Staff is currently projecting that the property tax base (exclusive of annexation) will grow by 2.0% in FY 2009-10. Because of the recession, staff has projected a growth rate for the property tax base that is less than the 10-year average growth rate of 3.3% and less than 4.2% growth that occurred in the current fiscal year. The chart below shows how property tax revenue would increase or decrease compared to the current 2.0% estimate for growth values ranging from 1.5% to 4.0%. As the chart indicates, every 0.5% change in the estimate results in an impact of approximately \$217,000. Finance staff will be meeting with the Buncombe County Tax Assessor in the next few weeks to review property tax estimates for FY 2009-10:

Tax Base Growth	Property Tax Revenue	Change Vs. Current Estimate
1.5%	44,190,233	(217,686)
2.0%*	44,407,919	0
2.5%	44,625,604	217,685
3.0%	44,843,290	435,371
3.5%	45,060,976	653,057
4.0%	45,278,662	870,743

* Current estimate

Sales tax revenue through the first six months of the current fiscal year is down 3.1% compared to the prior fiscal year. Staff is currently projecting that this same trend will continue through the remaining six months of the fiscal year and as a result, the city will end the year with a **\$1.5 million** shortfall in sales tax revenue.

In projecting sales tax revenue for next year, staff started with an adjusted sales tax base that is reduced by \$1.5 million, reflecting the current year shortfall. Staff is then estimating that the adjusted sales tax base will remain flat (or experience no growth) in the upcoming fiscal year. This assumption was a major contributing factor to the initial \$5.6 million budget gap that was projected for FY 09-10, prior to the identification of specific budget balancing strategies.

Sales tax revenue is highly sensitive to economic conditions, especially unemployment. As a result, there is the possibility that sales tax revenue could decline even further. Staff has prepared sales tax scenarios that show the impact on current revenue estimates for sales tax declines if the annual decline ranges from 4% to 7%. As the chart indicates, every 1.0% decline in the estimate results in a reduction to the base of approximately \$165,000.

Projected Annual Decline	Additional Reduction to Base
4.0%	(164,735)
5.0%	(329,471)
6.0%	(494,206)
7.0%	(658,941)

* Current estimate

6. Review cost recovery estimates and staff recommendations for fees & charges.

Fees & charges will be reviewed initially by the Finance Committee and recommendations made to the full Council in late March.

7. Review revenue estimates and level of subsidy for the Transit Fund.

Asheville Transit has requested additional expenditures in the amount of \$415,000 mostly due to increases in cost for intercity routes (Black Mountain and Weaverville) which are offset by increased revenues to support these routes. The transit fund will have some operational savings recommended by the Management Company that include several initiatives listed below for a total savings of approximately **\$150,000**.

- o Workers comp – First Transit found a different policy: \$25,680
- o Overtime: reduced from 13.81% to 7.67%, representing around \$80,000
- o Drug and alcohol policy, Printing and Telephone: \$5,000
- o Reengineering: \$ 40,000

Asheville Transit will be receiving an additional \$484,000 from the Federal government to be used for operations.

The FY 09 subsidy from the general fund was approximately \$1.5 million. The anticipated subsidy from the general fund for FY 10 is \$900,000, reflecting the combined impact of operational savings and increased federal assistance.

8. Review fund status and level of allocation for the Housing Trust Fund (HTF).

There has been no new HTF fund activity since the Council meeting on February 24, 2009, during which time Council was last updated. The current available balance is \$18,600.39.

MHO has refinanced its loan from the Housing Trust Fund for the Crowell Park project through another lender. As such, an early pay-off of \$480,000 will be paid to the City in one lump sum sometime in April. MHO is currently making \$3,500 monthly principal payments, so the principal balance will decrease proportionately upon receipt of the regularly scheduled payments for March and April. \$170,000 of this projected payoff was allocated by Council to the Westmore project; therefore the net revenue to the fund will be roughly \$310,000.

9. Review the details of re-engineering/streamlining efforts and compensation options, including four-day work weeks and reducing 401K allocations.

He provided council with a chart showing the details of the City's re-engineering/streamlining efforts, as well as a list of various compensation options.

At Mayor Bellamy's request, it was the consensus of Council to prepare a formal response to reports that Asheville has the 2nd highest tax burden in the State.

In response to Mayor Bellamy, Mr. Durant reviewed what the Fund Balance has been spent on in recent fiscal years.

There was a short discussion, initiated by Councilman Mumpower, about the use of Fund Balance.

Finance Committee Recommendations

Councilman Russell, Chair of the Finance Committee, updated Council on their meeting held on March 6, 2009, on the following topics (1) introduction of Management/Financial Model for Energy Efficiency; (2) economic stimulus update; (3) discussion of follow-up items from 2-24-09 Committee meeting (a) Overlook Park contribution; (b) alternative revenue projection scenarios; and (c) review of Re-engineering efforts and compensation options; and 4) establishment of Schedule for Reviewing Fees & Charges. He encouraged Council to communicate any specific items to him or a member of the Finance Committee.

In response to Mayor Bellamy, Mr. Durant said that he would be happy to make available the information regarding the proposed fees

and charges to the entire Council, in addition to the other information presented solely to the Finance Committee.

Councilman Newman (1) did not support raising the recycling fee; and (2) since a salary freeze affects all City employees, he supported encouraging the Finance Committee to look at something we can do for employees who are on the lower end of the income scale since they will be hit the hardest.

Councilman Mumpower supported salary reductions as an alternative to helping limit staff reductions beginning with City Council considering a 10% reduction of their own salary.

Councilwoman Cape felt that a Council salary reduction would prohibit the average person from participating in the process.

VI. NEW BUSINESS:

A. REVIEW THE SERVICE PLAN, FINANCIAL AND LEGAL REQUIREMENTS FOR AIRPORT ROAD AND RIDGEFIELD ANNEXATIONS

Mayor Bellamy said that since Councilman Miller and Councilman Russell have not participated in an annexation process, she felt it would be appropriate to have a report on how we bring in new citizens.

Urban Planner Julia Cogburn said that the purpose of this staff report is to review the service plan, as well as the financial and legal requirements for the Airport Road and Ridgefield Annexations, two annexations that recently became effective. She briefly reviewed the following report.

In April of 2005 the City of Asheville initiated an annexation services plan for four areas contiguous to the current city limits. Those areas were the Ridgefield Business Park Area, Ascot Point Village Area, Long Shoals Road Area and the Airport Road Area.

The process for annexation was initiated on April 12, 2005, with the adoption of a resolution stating the intent of the city to annex the preceding four areas. On April 26, 2005, the Council approved the Plan for Services for the annexation areas that had been prepared by staff. This plan demonstrated how each area proposed for annexation met the statutory qualifications for annexation and further demonstrated the capability of the city to provide urban services to these areas.

In accordance with statutory requirements, information meetings and public hearings on the annexation areas were held in May and June of 2005. On June 28, 2005, Council completed the final step of the annexation process with the adoption of various annexation ordinances. The ordinances established the following effective dates for the annexations:

- September 30, 2005 – Ridgefield Business Park area
- December 31, 2005 – Ascot Point Village, Long Shoals Road & Airport Road

The annexations for Ascot Point Village and Long Shoals Road went into effect as scheduled on the original established effective dates. All required city police, fire, sanitation and other services are currently being provided in those areas.

Owners of property in the Ridgefield Business Park and Airport Road areas, however, initiated a lawsuit challenging the legality of the City's annexation process. The lawsuit delayed the original effective dates of those annexations. Recently the legal challenge against the Ridgefield and Airport Road annexations was resolved in favor of the City, with the Supreme Court denying the property owners petition against annexation. The effective date of these annexations is now March 31, 2009.

Ridgefield and Airport Road - Legal Requirements

With the recent ruling by the Supreme Court, the annexations for the Ridgefield and Airport Road Areas will become effective on March 31, 2009. According to North Carolina General Statutes, cities must commit to providing city services to annexed property on substantially the same basis as those services are provided to the remainder of the city (NCGS §160A-49(f)). The statutes, at NCGS §160A-47(a) further provide that police protection, fire protection, solid waste collection, street maintenance, water and sewer services to an annexed area must be provided at the time of annexation if such services are provided in the annexing municipality. The exception to this requirement is with respect to needed water and sewer improvements. A two year window of time is allotted to make water and sewer construction improvements.

The state statutes provide for varied means of providing the required services. For the Ridgefield and Airport Road area annexations, the approved Plan for Services calls for police and fire protection, solid waste collection and street maintenance to be provided with City of Asheville staff resources.

If the state is maintaining residential streets in the annexation area, the statutes contemplate that these streets will be transferred to city control by agreement with the state Department of Transportation. The Plan for Services for the Ridgefield and Airport Road areas identified five streets to be taken over by the City. Streets meeting City standards will be accepted and maintenance provided in accordance with City policies. -

Another section of the statutes addresses the issue of the transition of areas from rural fire service to municipal service and the impact on the rural fire departments. The statutes require the annexing municipality to make a good faith offer to contract with the rural fire department to continue to provide fire protection within the annexation area for up to five years. It also requires that the city offer employment to any full-time employee of a rural fire department who has lost employment because of the annexation. Lastly, in both voluntary and involuntary annexations, the city must assume responsibility for payment of a proportionate share of the rural department's indebtedness.

As with fire protection, the statutes recognize the need for providing some transitional protection for private solid waste collection firms seriously disadvantaged by annexation. If a solid waste collection firm qualifies, the statute states that the annexing city must either enter into a contract with the firm, allowing it to continue operating within the annexation area for at least two years after the effective date of the

annexation, or reimburse the firm for its "economic loss". To qualify, one of the requirements is that any firm wishing to receive benefits must make a written request for such benefits before the public hearing on the annexation. GDS has made a request for these benefits in the amount of \$30,880, which is included in the Plan for Services.

Ridgefield and Airport Road - Service Plan/Financing Plan

The original service plan for the Ridgefield and Airport Road Service areas was developed over four years ago, prior to the legal challenge against those annexations. As noted earlier, on the effective date of annexation, all residents, businesses and property owners in the annexed areas must receive service on a basis substantially equal to all current parts of the City. The costs to provide these services are determined by each department based on their individual service delivery models. For example, the Police Department determines the number of new officers needed to service an annexed area based on the calls for police service in that area.

Upon the successful resolution of the lawsuit in favor of the City, staff updated the service plan to reflect today's costs and service demands for those areas. The updated plan includes provisions for extending police protection, fire protection, solid waste collection, street maintenance, water distribution and sewer collection. A summary of the updated service and financial plan for Ridgefield and Airport Road is provided below:

REVENUE SUMMARY

AREA	AD VALOREM	STATE UTILITY TAXES	SALES TAX	POWELL BILL	FEES, CHARGES, & PERMITS	TOTAL
Ridgefield Bus. Park	\$327,869	\$44,920	\$128,164	\$3,217	\$103	\$504,273
Airport Road	\$202,760	\$55,760	\$79,259	\$17,972	\$20,096	\$375,847
TOTALS	\$530,629	\$100,680	\$207,423	\$21,189	\$20,199	\$880,120

ANNUALLY RECURRING EXPENDITURES

AREA	(1) Police	(2) Fire	Solid Waste	Recycling	Street Maintenance	Street Lighting	TOTAL
Ridgefield Business Park	\$ 0	\$60,803	\$521	\$ 0	\$0	\$9,992	\$71,316
Airport Road	\$101,435	\$37,656	\$2,084	\$1,070	\$0	\$780	\$143,025
General	\$0	\$117,353	\$0	\$0	\$0	\$0	\$117,353
TOTAL	\$101,435	\$215,812	\$2,605	\$1,070	\$0	\$10,772	\$331,694

Notes:

- (1) The annual costs for police services reflect two additional officers to maintain current police officer to population ratios.
- (2) The annual costs for fire protection are based on the costs for 3 additional personnel and financial impact payments to the rural fire districts (5 year duration).

CAPITAL EXPENDITURES

AREA	Water Lines	Sewer Lines	Solid Waste	Rollout Containers	St Signs	Street Repair	Side-walks	Police	Fire	TOTAL
Ridgefield	\$0	\$0	\$ 0	\$510	\$ 0	\$ 0	\$ 0	\$0	\$0	\$510
Airport Road	\$176,640	\$250,000	\$0	\$2,295	\$ 0	\$ 0	\$ 0	\$0	\$0	\$428,935
TOTAL	\$176,640	\$250,000	\$0	\$2,805	\$0	\$0	\$0	\$0	\$0	\$429,445

After the ruling by the Supreme Court, staff sent out a mailing to all property owners and the residents in the new areas. The mailing welcoming the new citizens and gave them information about who they can contact in the City if they had questions. We will be holding an outreach meeting in each annexation area where department representatives will talk about the services to be provided and respond to questions. In addition, Sanitation has had a separate outreach effort.

In response to Mayor Bellamy, City Manager Jackson said that we are determining where we can use the stimulus dollars and apply those to projects. Our primary emphasis is that we are looking at small shovel ready projects that we can guarantee can be completed so we stay in line to get future funds. Our primary emphasis is not in regional areas, but in projects that can meet the criteria and are on the top of our priority list in terms of infrastructure needs. Any place that we can use those dollars to supplement our budget and get the projects done, we will do that.

B. RESOLUTION NO. 09-49 - RESOLUTION ENCOURAGING THE STATE LEGISLATORS TO PROVIDE ENABLING LEGISLATION TO NORTH CAROLINA MUNICIPALITIES TO PROVIDE AN ENERGY EFFICIENCY FINANCING MODEL

TO PROPERTY OWNERS

MOTION TO DIRECT STAFF TO CREATE A PROPOSAL FOR THE SOUTHEAST ENERGY ALLIANCE GRANT

Councilwoman Cape (working with Councilman Newman) presented the following for Asheville's participation in Southeast Energy Efficiency Alliance grant proposal.

The Southeast Energy Efficiency Alliance (SEEA) is a non-profit organization that promotes energy efficiency for a cleaner environment, a more prosperous economy and a higher quality of life in the Southeastern United States. SEEA is currently promoting a friendly competition among cities in the Southeast centered around which can design the most effective energy efficiency plan for their community. The City that wins the competition, to be selected in June, will receive a grant of \$500,000, which is being donated by a private foundation.

They believe that Asheville is well positioned to participate in this competition and recommend that City Council endorse our participation. Asheville's key strengths that should enable us to compete include:

- A demonstrated commitment to clean energy
 - Created a Sustainable Advisory Committee for Energy and the Environment.
 - Commitment to LEED Gold Certification of municipal buildings.
 - Committed to reduce municipal global warming emissions by 80%, at a rate of 2% per year.
 - City Council established "Green" as a top city priority, specifically including clean energy, in our 2008-2009 Strategic Plan for the Asheville.
 - Dedicated staff.
- Strong partnerships
 - Participation with Progress Energy in the Community Energy Advisory Committee (CEAC) process.
 - Relationship with Warren Wilson College and others for sustainability initiatives.

Participating in the partnership involves the creation of a plan for promoting energy efficiency improvements at the community level, including specific goals, potential financing mechanisms, partnership commitments from businesses and community groups, and an implementation strategy.

They believe that the development of this plan will have benefits regardless of whether Asheville is selected as the winner of the competition. Developing the plan will help Asheville advance our green goals as a City. It will also position Asheville to access the significant resources that will be available through the American Recovery and Investment Act for energy efficiency.

At this time, they requested Council endorsement in principle to move the process forward. A final review of the proposed energy plan will also be reviewed by City Council prior to its submission to SEEA or other agencies. The proposal needs to be submitted to SEEA by May 15. We have requested review of this proposal by SACEE and the Finance Committee at their next meetings. For additional information about SEEA, visit <http://www.seealliance.org/>.

Ms. Maggie Ullman, Energy Coordinator, this is the consideration of providing City staff with direction to apply for the \$500,000 Southeast Energy Alliance (SEEA) grant in concert with a resolution encouraging State Legislators to pass enabling legislation for an energy efficiency financing model.

The intention of this grant is to build regional partnerships to promote energy efficiency, energy conservation, and renewable energy in the community's existing building stock. In order to be successful, this effort will require participation from neighboring local governments, utilities, financial institutions, and public services commissions. A second variable, to support a successful grant application, involves encouraging the state to provide enabling legislation to pursue an energy efficiency financing mechanism. This financing mechanism partners the City of Asheville with property owners who volunteer to have the City of Asheville place a special tax assessment on their property in order finance energy efficiency and renewable energy improvements. This

This action complies with the following areas of the City Council Strategic Operating Plan: (1) Support diversified job growth and small business development; (2) Work with regional partners to create incentives for green building, energy conservation and energy intendance; and (3) Expand community education programs to attract volunteers to initiatives, including climate awareness, water conservation, recycling, storm water and sustainability.

Pros:

- Demonstrates City leadership state wide by pursuing legislation that enables all municipalities to pursue energy efficiency financing.
- Funds if awarded to the City may be leveraged to gain access to competitive federal stimulus dollars.

Cons:

- Requires significant staff time to prepare proposal
- Requires significant stakeholder buy in with associated letters of support before the grant is awarded

There is no fiscal impact associated with preparing the proposal and requesting enabling legislation.

City staff recommends City Council encourage the State Legislators to provide enabling legislation. Furthermore, staff recommends City Council direct staff to create a proposal for the Southeast Energy Alliance grant opportunity. In order for City Council to provide policy direction regarding a formal application, the grant proposal will be completed and available for City Council to review. On April 28, 2009, a formal resolution will come before City Council requesting authorization to submit an application to the Southeast Energy Alliance.

Councilwoman Cape said that Progress Energy instituted the Community Energy Advisory Council about 18 months ago and brainstormed about how we can work together. They have asked that each organization look at what they can do to participate. When this grant came along, she spoke with Mr. Robert Sipes at Progress Energy and said that they are supportive of this grant.

Councilman Newman said that on the financing legislation there are a lot of creative ideas being developed on a community level. If this legislation passes, it will be for all cities in North Carolina and noted that the actual participation is 100% voluntary. From our research, the model can be structured in a manner that is revenue neutral to the property owners who participates by agreeing to a special assessment on the property. Based on programs in other utilities, the property owner's utility bills will be reduced. This is also revenue neutral to the cities that sponsor these bills, including the cost of administration and staffing of a program. This should not be a financial burden on the City, the participating property owner or even property owners who do not participate in the program. This proposal was presented to the Finance Committee and they supported adopting the resolution requesting our state legislators to provide enabling legislation to North Carolina municipalities to provide an energy efficiency financing model to property owners.

When Councilman Newman asked if there would be a conflict of interest for him since he is employed by FLS Energy, it was City Attorney Oast's opinion that participation in this vote did not disqualify him from voting. If, however, the proposal is implemented, that would require a different consideration and it would also depend on the particular case.

There was considerable discussion regarding the financing model, throughout which City Attorney Oast and Ms. Ullman responded to various questions/comments.

The following individuals spoke against the proposal and asking our state legislators to provide for this energy efficiency financing model for property owners:

Mr. Sidney Bach
Mr. Gene Hampton
Mr. Mike Fryar

Councilwoman Cape explained how this model does several good things and they are asking to legislators to approve this so we can research into how this can help our community.

Councilman Russell moved adopt Resolution No. 09-49 and to direct staff to create a proposal for the Southeast Energy Alliance grant opportunity. This motion was seconded by Councilman Miller and carried on a 5-2 vote, with Vice-Mayor Davis and Councilman Mumpower voting "no."

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C. RESOLUTION NO. 09-50- RESOLUTION APPOINTING MEMBERS TO THE HOMELESS INITIATIVE ADVISORY COMMITTEE

Vice-Mayor Davis said that on November 11, 2008, City Council adopted Resolution No. 08-227 establishing the Homeless Initiative Advisory Committee (HIAC).

At the HIAC meeting on February 10, 2009, the HIAC recommended City Council appoint Gerald Hixson, Gordon Smith and Stephen Bolden.

At the February 10, 2009, City Council meeting, it was the consensus of Council to interview Gerald Hixson, Gordon Smith, Stephen Bolden, Crystal Williams and Wanda Lanier. Ms. Williams was unable to attend the interview.

After Council spoke highly of the candidates, Gerald Hixson received 4 votes, Gordon Smith received 3 votes, Stephen Bolden received 7 votes and Wanda Lanier received 7 votes. Therefore, Wanda Lanier was appointed to the HIAC to serve a three-year term, term to expire November 1, 2011; Stephen Bolden was appointed to the HIAC to serve a three-year term, term to expire November 1, 2011; and Gerald Hixson was appointed to the HIAC to serve a two-year term, term to expire November 1, 2010. All terms are until their successors have been appointed.

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D. RESOLUTION NO. 09-51 - RESOLUTION APPOINTING A MEMBER TO THE HUB COMMUNITY ECONOMIC DEVELOPMENT ALLIANCE

Vice-Mayor Davis, Chair of the Boards & Commissions Committee, said that this is the consideration of appointing a member to the HUB Community Economic Development Alliance.

Ms. Joyce Dorr has resigned from the HUB Community Economic Development Alliance, thus leaving an unexpired term until August 22, 2009.

At the February 10, 2009, City Council meeting, it was the consensus of Council to interview Tabatha Hamlin, Vanessa Penix, Daniel Collins and Richard Stiles. Ms. Penix was unable to attend the re-scheduled interview time.

After Council spoke highly of the candidates, Tabatha Hamlin received no votes, Daniel Collins received 2 votes, and Richard Stiles received 5 votes. Therefore, Richard Stiles was appointed to the HUB Community Economic Development Alliance to serve the unexpired

term of Ms. Dorr, term to expire August 22, 2009, and then to serve a full three-year term, term to expire August 22, 2012, or until his successor has been appointed.

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E. RESOLUTION NO. 09-52 - RESOLUTION APPOINTING A CHAIR TO THE CIVIL SERVICE BOARD

Vice-Mayor Davis said that this is the consideration of a resolution reappointing John Miall as Chair to the Civil Service Board.

John Miall currently serves as Chairman of the Civil Service Board. The Civil Service Law for the City of Asheville, Section 2, Chapter 303 of the 1999 Session Laws of the North Carolina General Assembly provides that the Chair of the Civil Service Board shall be appointed annually by the City Council.

Current members of the Civil Service Board include: Chairman John Miall; Sidney Bach, Virginia Robinson, Marvin Rosen and Sharon West (who has resigned effective April 1, 2009).

At the February 24, 2009, meeting, it was the consensus of Council to interview Mr. Miall.

Councilman Mumpower moved to reappoint Mr. Miall as Chair to the Civil Service Board effective March 10, 2009, or until his successor is duly and annually appointed by the City Council, as provided by law. This motion was seconded by Councilwoman Cape and carried on a 6-1 vote, with Mayor Bellamy voting "no."

Mr. Sidney Bach thanked City Council for reappointing Mr. Miall, which reappointment he concurred with. He also addressed the Blue Ribbon Commission's scope of determining, through its analysis, the effectiveness of the Civil Service Law and to offer advice on future policy direction. He asked Council to reconsider the scope and ask for the Commission to do an overall objective study.

In response to Mayor Bellamy, City Manager Jackson said that Assistant City Manager Jeff Richardson brought to Council the suggestion for a Blue Ribbon Commission and on Council's direction, the Commission was formulated. He said that City Clerk Burleson would provide those minutes to Council.

Vice-Mayor Davis felt that the Commission has been meeting and the Council will be less than honorable not to hear about their study results.

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F. BOARDS & COMMISSIONS

It was the consensus of Council to interview Wilfred Lack and Albert Anderson for a vacancy on the Alcoholic Beverage Control Board.

It was the consensus of Council to interview Bridgette Odom, Davidson Jones and Beatrice Brown for a vacancy on the Civil Service Board.

Due to the lack of interest in the City's Census Complete Count Committee, it was the consensus of Council to instruct City Clerk Burleson to contact the Census' representative and ask her what her expectations are for the City committee if there is good representation on the overall County Committee by City leaders. He noted that the City does have a representative on the overall County Committee.

It was the consensus of Council to ask the Downtown Commission what their needs are and their recommendations for the vacancy on the Downtown Commission.

It was the consensus of Council to interview Sarah Sparboe Thornburg, Peggy Dalman and Honor Moor for a vacancy on the School Board.

It was the consensus of Council to re-advertise vacancy on the URTV Inc. Board of Directors.

ITEM REMOVED FROM THE CONSENT AGENDA FOR DISCUSSION AND/OR AN INDIVIDUAL VOTE

E. RESOLUTION NO. 09-48 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A CONTRACT WITH SITE DEVELOPMENT CORPORATION TO CONSTRUCT THE FRENCH BROAD RIVER CORRIDOR CONNECTOR

Summary: The consideration of a resolution authorizing the City Manager to enter into a contract with Site Development Corporation to construct the French Broad River Corridor Connector for an amount not to exceed \$90,000.

As part of the French Broad River Greenway, the City of Asheville is preparing to construct the French Broad River Corridor Connector, an approximately 700-linear foot sidewalk connection between Carrier Park and Amboy Road Park in front of the former site of the Edaco salvage yard on Amboy Road.

The City issued a formal bid request for construction of this section of greenway and received a bid from Site Development Corporation from Cliffside, NC who was selected as the lowest, responsible bidder at a base bid of \$81,015. Staff is including a contingency budget of \$8,985 or approximately 11% due to unforeseen costs that may arise from construction.

Eighty percent or \$72,000 of the total contract will be funded by a North Carolina Department of Transportation Federal Transportation Enhancement Reimbursement Grant. The remaining \$18,000 has been allocated by City Council via the Fiscal Year 2001/02 capital budget.

This action complies with City Council's Strategic Plan (1) in the Green Focus Area in that it advances the promotion of emission-reducing transportation options including greenways, bike paths, and sidewalks; and (2) in the Safe Focus Area in that it advances public safety and infrastructure investments that support children's health and safety. It also complies with the Asheville City Development Plan 2025 in that it implements the adopted Greenway Master Plan. In addition, it complies with the Greenway Master Plan and the 2009 Parks, Recreation, Cultural Arts, and Greenways Master Plan in that it provides a linkage for an existing greenway identified in the Master Plan.

The Greenway Commission voted to support the project during its regular meeting on February 12, 2009. The Greenway Commission has received regular updates on the status of the project since it began in 2001.

Pros:

- Provides a vital link between two sections of the French Broad River Greenway and will increase pedestrian safety
- 80% of construction costs is funded through a grant from the State of North Carolina
- The contract amount is within the project budget

Con:

- The additional greenway mileage will require maintenance resources

Funds are currently funded in the City's capital budget.

Staff recommends City Council adopt a resolution authorizing the City Manager to enter into a contract with Site Development Corporation to construct the French Broad River Corridor Connector for an amount not to exceed \$90,000.

Councilman Mumpower said that he could not support any actions by Council until the City of Asheville can confirm the people we hire use legal employees.

After Mayor Bellamy asked for public comment and received none, Councilwoman Cape moved for the adoption of Resolution No. 09-48. This motion was seconded by Vice-Mayor Davis and carried on a 6-1 vote, with Councilman Mumpower voting "no."

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VII. OTHER BUSINESS:

Lawsuits

The City served a Complaint on February 27, 2009, which is generally described as follows: City vs. Edwin F. Pinner and Mona L. Pinner. This lawsuit involves a violation of the City's solid waste ordinance and failure to pay civil penalties imposed for violation of the ordinance. This matter will be handled in-house.

The City served a Complaint on February 27, 2009, which is generally described as follows: City vs. Fakhoury Real Estate Investments. This lawsuit involves a violation of the City's solid waste ordinance and failure to pay civil penalties imposed for violation of the ordinance. This matter will be handled in-house.

The City received a Complaint in Federal Court on March 3, 2009, which is generally described as follows: Troy Steven Wyatt v. City of Asheville, Gary Jackson, William Hogan, Officer Bridges, and Officer Martinez. This is a lawsuit brought in federal court pursuant to 42 USC 1983 for violation of civil rights due to alleged use of excessive force during drug arrests. As this case involves multiple defendants, this matter will be handled by separate counsel.

The City served a Complaint on March 4, 2009, which is generally described as follows: City vs. Suzayne Reeves. This lawsuit involves a violation of the City's solid waste ordinance and failure to pay civil penalties imposed for violation of the ordinance. This matter will be handled in-house.

VIII. INFORMAL DISCUSSION AND PUBLIC COMMENT:

Mr. Mike Fryar commented about fareboxes on City buses and whether City Council was advised about a County resident who served on the Transit Commission (but is now a City employee). Mayor Bellamy asked City Manager Jackson to update Council on the fareboxes and noted that Council did not discuss personnel issues.

Mr. Brian Festa spoke to Council about quality education.

Mr. Gene Hampton requested Council (1) adopted a resolution to end the war in Iraq; (2) adopt a resolution defining "real marriage" as a union of two souls with a single thought; and (3) consider the following when appointing a new School Board member (a) requirements for a quality public education system; (b) characteristics of a quality school; and (c) crucial criteria for the key characteristics.

IX. ADJOURNMENT:

Mayor Bellamy adjourned the meeting at 9:38 p.m.

CITY CLERK

MAYOR