

Tuesday – May 13, 2014- 3:00 p.m.

Budget Worksession

Present: Mayor Esther E. Manheimer (recused at 5:30 p.m. and excused at 8:08 p.m.), Presiding; Vice-Mayor Marc W. Hunt; Councilman Cecil Bothwell; Councilman Jan B. Davis; Councilman Christopher A. Pelly; Councilman Gordon D. Smith; Councilwoman Gwen C. Wisler; City Manager Gary W. Jackson; City Attorney Robin T. Currin; and City Clerk Magdalen Burleson

Absent: None

Capital Improvement Program

Finance Director Barbara Whitehorn said that the City is embarking on a Capital Improvement Program that targets services areas with critical needs and areas with economic development potential. Leveraging the \$.02 of the ad valorem tax dedicated for capital improvement projects and using other funding sources including installment financing, special obligation bonds, pay-as-you-go funding and grants and contributions from other agencies, the City will invest approximately \$132 million in capital improvements over the next five years.

During the 2013-14 budget process, Council approved an increase to the ad valorem tax rate of \$.03. One cent of the increase was to fund ongoing operations, with two cents dedicated to funding capital projects and related debt service.

To ensure that the available funds are used to their highest and best potential, City staff evaluated proposed capital projects against the following criteria: (1) Does the project meet one or more of the strategic goals of City Council? (a) Economic Development; (b) Public Safety; (c) Multi-Modal Transportation; and (d) Affordable Housing; and (2) Is the project critical to ongoing service delivery?

If projects met one or both of these criteria, the cost, timing, staff labor commitment and other determining factors were analyzed to determine when projects should be funded within the plan.

Projects that are “shovel-ready,” (design is complete and contracts are ready to be let to begin construction) are planned for the first two years, with other projects coming in as they are likely to be ready and the responsible departments have capacity to manage them.

Implementing this capital improvement program allows the City of Asheville to fund critical infrastructure needs as well as take advantage of economic development opportunities.

The City of Asheville will be issuing debt as part of the funding for this program. Over the next five years, staff expects to issue approximately \$24 million in special obligation bonds and installment finance approximately \$29 million. The City’s financial advisors have aided staff in developing a model for funding and debt service that accommodates this debt within the existing tax rate. *No increase in tax is recommended as part of this program.*

City staff recommends that Council review the materials provided and give direction for final preparation of the City Manager’s recommended budget. The date for presentation of the City Manager’s recommended budget is May 27, 2014.

She then provided Council with information showing the projects included in the first five-year piece of the plan, and throughout her presentation, she responded to various questions/comments from Council. Projects include RADTIP Transportation Project; Downtown

Recycling & Trash Containers; Eagle/Market Street; Handi Park Demolition; Park St. Bridge; Pack Place Capital Maintenance; Azalea/Lake Craig; and Multimodal Transportation Plan.

She then reviewed some high profile projects over the next 5 years: Azalea Road - \$1,037,588; Charlotte Street - \$3,850,000; Eagle Market Place - \$3,949,500; Finalee Landslide Mitigation - \$550,000; East of the Riverway (RADTIP) - \$22,000,000; East of the Riverway (Five Points Roundabout) - \$700,000; East of the Riverway (Clingman Forest Greenway), - \$1,500,000; East of the Riverway (Town Branch Greenway) - \$2,500,000; East of the Riverway (French Broad River West Greenway) - \$1,000,000; East of the Riverway (Livingston Complete Street) - \$1,500,000; Total cost of East of Riverway - \$29,200,000 (hoping that half of that will be funded through the Tiger VI project); Craven Street - \$5,400,000; Chunn's Cove Bridge Rehabilitation - \$500,000; Hendersonville Road Sidewalks - \$4,125,000; New Leicester Highway Sidewalks - \$3,630,000;

In summary, she said this is a new Capital Improvement Plan. It's a 5-year capital plan with Council adopting a 1-year capital budget as part of the plan.

Upon inquiry of Councilwoman Wisler, Assistant City Manager Cathy Ball explained the ways that money gets committed. City Manager Jackson said that he would provide Council with an analysis of the 2015 Capital budget identifying previously approved and continuation projects.

Public Works Director Greg Shuler responded to Vice-Mayor Hunt regarding the street resurfacing program.

Vice-Mayor Hunt asked that the reference to the I-26 Connector be renamed "I-26 Connector Enhancements" to make sure that it's understood that the City is enhancing improvements above and beyond with the N.C. Dept. of Transportation is doing.

Information Technology Director Jonathan Feldman responded to questions raised by Councilman Bothwell concerning the radio infrastructure improvements.

Assistant City Manager Cathy Ball responded to questions raised by Councilman Smith regarding funds for the Affordable Housing Trust Fund and funds going towards other efforts of affordable housing.

Vice-Mayor Hunt asked that a topic at a future Finance Committee meeting be the review of debt capacity, debt retirement schedules, and bond rating.

There was considerable discussion about the need for neighborhood sidewalks. It was the consensus of Council to shift some funds to neighborhood sidewalks.

Ms. Whitehorn noted that if Council wishes to add more neighborhood projects, staff will have to shift current projects out to further years. She asked for their guidance on which projects Council feels are less critical and can be moved out further.

City Manager Jackson suggested that before Council starts to shift current projects to allow for more neighborhood sidewalks, that he be allowed to work with the Multimodal Transportation Commission to evaluate the five-year Capital Improvement Plan relative to proportion of the sidewalk allocation within the total allocation for transportation capital projects. He noted that this shift would not be reflected in the presentation of the City Manager's recommended budget May 27; however, the adjustments would be reflected prior to public hearing for budget adoption.

Upon inquiry of Councilman Bothwell, City Manager Jackson suggested that Council revisit the Public Art Policy.

The worksession was adjourned at 4:22 p.m.

Tuesday – May 13, 2014- 5:00 p.m.

Regular Meeting

Present: Mayor Esther E. Manheimer, Presiding; Vice-Mayor Marc W. Hunt; Councilman Cecil Bothwell; Councilman Jan B. Davis; Councilman Christopher A. Pelly; Councilman Gordon D. Smith; Councilwoman Gwen C. Wisler; City Manager Gary W. Jackson; City Attorney Robin T. Currin; and City Clerk Magdalen Burleson

Absent: None

PLEDGE OF ALLEGIANCE

Mayor Manheimer led City Council in the Pledge of Allegiance.

ANNOUNCEMENTS

Mayor Manheimer welcomed new City Attorney Robin T. Currin.

Mayor Manheimer also noted that Mr. Caleb Johnson, contestant on American Idol, made a hometown visit to Asheville on Saturday, May 10, 2014.

I. PROCLAMATIONS:

A. PROCLAMATION PROCLAIMING MAY 18-24, 2014, AS "NATIONAL PUBLIC WORKS WEEK"

Mayor Manheimer read the proclamation proclaiming May 18-24, 2014, as "National Public Works Week" in the City of Asheville. She presented the proclamation to Mr. Jeremy Hyatt and Mr. Eric Suhren, representing the Stormwater Division; Mr. Chris Maloney and Mr. Anthony, representing the Sanitation Division; Ms. Lora Morgan and Mr. Brad Hunter, representing the Streets Division; and Mr. John Gavin and Mr. Lee Morrison, representing the Engineering Division.

B. PROCLAMATION PROCLAIMING MAY 21, 2014, AS "PRITCHARD PARK DAY"

Councilman Davis read the proclamation proclaiming May 21, 2014, as "Pritchard Park Day" in the City of Asheville. He presented the proclamation and thanked Ms. Kim MacQueen, Chair of Downtown Asheville Residents Neighborhood, along with many other volunteers, especially acknowledging the work of the late Trina Mullen in making Pritchard Park the wonderful Park it is today.

C. PROCLAMATION PROCLAIMING MAY 24-SEPTEMBER 1, 2014, AS "AMERICAN RED CROSS 100 DAYS OF SUMMER"

Vice-Mayor Hunt read the proclamation proclaiming May 24 - September 1, 2014, as "American Red Cross 100 Days of Summer" in the City of Asheville. He presented the proclamation to Mr. Andrew Jacobs, who thanked Council for their support.

II. CONSENT AGENDA:

Councilman Bothwell suggested removal of Consent Agenda Item "B" since no bids have been received and no action of Council is required.

A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON APRIL 22, 2014, AND THE COMMUNITY MEETING HELD ON APRIL 29, 2014

B. RESOLUTION TO SELL ONE PARCEL OF CITY OWNED PROPERTY LOCATED AT 30 ROCK HILL PLACE

This item was deleted from the Consent Agenda due to no bids being received and no action of Council required. Staff will continue to market the property.

C. RESOLUTION NO. 14-86 - RESOLUTION AUTHORIZING THE SALE AND CONSUMPTION OF MALT BEVERAGES AND/OR UNFORTIFIED WINE AT THE MOUNTAIN SPORTS FESTIVAL FROM MAY 23-25, 2014

RESOLUTION NO. 14-87 - RESOLUTION AUTHORIZING THE SALE AND CONSUMPTION OF MALT BEVERAGES AND/OR UNFORTIFIED WINE AT THE PACK SQUARE PARK CANOPY UNVEILING ON MAY 28, 2014

RESOLUTION NO. 14-88 - RESOLUTION AUTHORIZING THE SALE AND CONSUMPTION OF MALT BEVERAGES AND/OR UNFORTIFIED WINE AT THE 5 WALNUT ANNIVERSARY EVENT ON MAY 29, 2014

Summary: The consideration of resolutions making provisions for the possession and consumption of malt beverages and/or unfortified wine at the Mountain Sports Festival from May 23 – May 25, 2014; the Pack Square Park Canopy Unveiling on May 28, 2014; and the 5 Walnut Anniversary event on May 29, 2014.

- Mountain Sports Festival has requested through the City of Asheville Office of Economic Development that City Council permit them to serve beer and/or unfortified wine at the Mountain Sports Festival and allow for consumption at this event.

The Mountain Sports Festival will be held on Friday, May 23 from 4:00 p.m. – 10:00 p.m., Saturday, May 24 from 10:00 a.m. – 10:00 p.m., and Sunday, May 25, 2014 from 10:00 a.m. – 6:00 p.m. at Carrier Park as per the event area limits referenced on the accompanying site map.

- The Asheville Downtown Association has requested through the City of Asheville Office of Economic Development that City Council permit beer and/or unfortified wine be served to guests at the Pack Square Park Canopy Unveiling and allow for consumption at this event.

The Pack Square Park Canopy Unveiling will be held on Wednesday, May 28, 2014, from 5:30 p.m. – 7:30 p.m. at Pack Square Park, as per the event area limits referenced on the accompanying site map.

- LEAF in Schools & Streets in conjunction with 5 Walnut Wine Bar has requested through the City of Asheville Office of Economic Development that City Council permit the sale of beer and/or unfortified wine at the 5 Walnut Anniversary and allow for consumption at this event.

The 5 Walnut Anniversary event will be held on Thursday, May 29, 2014, from 5:00 p.m. – 10:00 p.m. on Walnut Street between the intersections of Broadway and Carolina Lane, as per the event area limits referenced on the accompanying site map.

Pro:

- Allows fundraising opportunities for Mountain Sports Festival, the Asheville Downtown Association, and LEAF in Schools & Streets

Con:

- Potential for public safety issues

City staff recommends City Council adopt resolutions authorizing the City Manager to approve a resolution making provisions for the possession and consumption of malt beverages and/or unfortified wine at the Mountain Sports Festival, the Pack Square Park canopy unveiling, and 5 Walnut Anniversary event.

RESOLUTION NO. 14-86 - RESOLUTION BOOK NO. 36 - PAGE 165

RESOLUTION NO. 14-87 - RESOLUTION BOOK NO. 36 - PAGE 168

RESOLUTION NO. 14-88 - RESOLUTION BOOK NO. 36 - PAGE 161

D. RESOLUTION NO. 14-89 - RESOLUTION AUTHORIZING THE MAYOR TO ACCEPT THE CONVEYANCE OF PROPERTY UNDER THE CONTROL OF THE N.C. DEPT. OF TRANSPORTATION THAT WILL BECOME THE RIGHT-OF-WAY FOR PINEY MOUNTAIN ROAD AND TO AUTHORIZE THE MAYOR TO CONVEY BACK TO THE N.C. DEPT. OF TRANSPORTATION PROPERTY THAT WAS ERRONEOUSLY CONVEYED TO THE CITY OF ASHEVILLE VIA A QUITCLAIM DEED DATED OCTOBER 13, 2011

Summary: The consideration of a resolution authorizing the Mayor to accept the conveyance of property under the control of the N.C. Dept. of Transportation that will become the right-of-way for Piney Mountain Road, and to authorize the Mayor to convey back to the N.C. Dept. of Transportation property that was erroneously conveyed to the City of Asheville via a quitclaim deed dated October 13, 2011.

City Council approved Resolution No. 01-131 on August 28, 2001, accepting Piney Mountain Road as a city-maintained street subject to approval by the N.C. Dept. of Transportation (NCDOT). The Board of Transportation for the NCDOT approved this action on February 7, 2002.

Typically, when this type of transfer occurs, the receiving party gets the entire street including stormwater infrastructure, signs, pavement markings, and right-of-way. This specific situation is unique because Piney Mountain Road lies within the overall right-of-way along I-240 in the Chunns Cove Road area of East Asheville. Therefore, the City did not receive the actual right-of-way for Piney Mountain Road.

City staff has been working with the NCDOT over the years to obtain the appropriate right-of-way and we thought it was achieved when we received the quitclaim deed dated October 13, 2011. After City staff recorded the deed with the Buncombe County Register of Deeds (Deed Book 4973 Page 371), we discovered that the NCDOT had actually conveyed 40+ acres to the City which included a section of I-240. City staff immediately contacted the NCDOT and for the past two years, both parties have been working together to make the appropriate correction. The agreed upon right-of-way uses the controlled access fence as the western boundary and includes about 14+/- acres.

Pros:

- An appropriate right-of-way will be part of Piney Mountain Road.
- Would eliminate and/or minimize future access connection issues.

Con:

- There are no known cons.

There is no immediate fiscal impact to the City regarding the subject action.

Staff recommends that City Council approve a resolution authorizing the Mayor to accept the conveyance of property under the control of the NCDOT that will become the right-of-way for Piney Mountain Road and authorizing the Mayor to convey back to the NCDOT property that was erroneously conveyed to the City of Asheville via a quitclaim deed dated October 13, 2011.

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E. RESOLUTION NO. 14-90 - RESOLUTION ACCEPTING AN EXTENSION OF OLD HAW CREEK ROAD AS A CITY-MAINTAINED ROAD

Summary: The consideration of a resolution to accept an extension of Old Haw Creek Road as a city-maintained street.

Code of Ordinances sec. 7-15-1(f)(4)a requires that streets dedicated for public use be accepted by resolution of the City Council. The developer submitted a written request via e-mail message on November 5, 2013, asking the City to accept the subject street extension as a city-maintained street.

Old Haw Creek Road Extension from the end of Old Haw Creek Road to its dead-end is a developer-constructed street that has an average width of 20 feet with grass shoulders, a length of 0.05 mile, and a right-of-way width of 45 feet.

Transportation Department staff and Public Works Department staff inspected the subject street and determined that it was constructed according to current standards as indicated in the City of Asheville's Standard Specifications and Details Manual. In addition, the developer verified that the subject street extension was constructed to current City of Asheville standards.

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

Pros:

- The City of Asheville will receive Powell Bill Funds from the N.C. Dept. of Transportation to help maintain the street.
- The street provides access in a residential community.

Con:

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

There will be no initial financial impact to the City, although the responsibility of maintenance will belong to the Public Works Department. The City will receive Powell Bill Funds in the future to help maintain the street.

Staff recommends that City Council accept an extension of Old Haw Creek Road as a city-maintained street.

When Councilwoman Wisler asked why the City does not ask the developer for funds to help future maintenance of the road, Transportation Director Ken Putnam said that would be a policy direction staff would need to receive from Council. The City has the authority to accept streets that have been brought up to the standards in our Asheville Standard & Specifications Manual. Once the City takes it over, it opens up that area for potential development that could then benefit the City in property tax revenue.

City Manager Jackson suggested the Finance Committee review the street acceptance policy, along with a survey of the standard practices throughout the state.

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F. RESOLUTION NO. 14-91 - RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE A CHANGE ORDER FOR A CONTRACT WITH ASHEVILLE STAFFING INC. FOR TEMPORARY SERVICES IN THE CITY'S PARKING GARAGES AND SURFACE PARKING LOTS THROUGH JUNE 30, 2014

Summary: The consideration of a resolution authorizing the City Manager to execute a change order for a contract with Asheville Staffing, Inc for temporary services in the City's parking garages and surface parking lots through June 30, 2014.

The City of Asheville, through the Parking Services Division, currently operates four parking garages and several monthly parking and pay-by-space surface parking lots downtown. Parking Services Division uses a combination of City employees and contract temporary workers to provide service and customer assistance in these facilities and lots. Generally, City employees work during the business day and early evenings while contract temporary services are used for fill-ins, special events, and to extend garage hours during late evenings, weekends, and holidays. Use of temporary workers enhances customer service and allows greater flexibility as needs vary greatly depending on time of year and events booked at the U.S. Cellular Center, outside special events, and other large venues downtown.

Estimating the needs for fill-ins and special event staffing 6 -18 months in advance is at best an educated guess. This current fiscal year has presented Parking Services with pleasant but unexpected staffing challenges in garages and lots. Demand for garage transitory parking has far exceeded expected demand so far this fiscal year. In addition, due to superb scheduling by US Cellular Center staff, special events staffing demand has been stronger than expected as well. These actions translate into higher than projected revenues coming in for the garages; especially in transitory and special event parking where temporary staffing is primarily utilized. And, we still have some large special events scheduled such as the circus and high school graduations that should sell well. The current contract with Asheville Staffing is not to exceed \$89,000 for the current fiscal year. Staff is requesting authorization to execute a change order to make the contract not to exceed \$130,000 for the fiscal year ending June 30, 2014.

Pros:

- Enhances customer service by providing staffing to speed egress from the garages on weekends/holidays and special events.
- Provides safe and convenient facilities for residents' and visitors' parking.
- Using temporary service employees is the most cost effective and flexible manner to augment the Parking Services Division's staffing requirements.
- Allows parking Services to capitalize on extended weekend/nights/holiday hours to bring in additional revenue.

Con:

- Additional \$41,000.00 expenditure.

The necessary funds are already budgeted in the Parking Services' Operating Budget for FY 2013-14.

City staff recommends that City Council adopt a resolution authorizing the City Manager to sign a change order in the contract with Asheville Staffing to increase the contract amount to not exceed \$130,000 for the current fiscal year.

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G. RESOLUTION NO. 14-92 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A CONTRACT WITH THE NORTH CAROLINA HUMAN RELATIONS COUNCIL FOR A FAIR HOUSING OUTREACH PROGRAM

ORDINANCE NO. 4307 - BUDGET AMENDMENT FOR A FAIR HOUSING OUTREACH PROGRAM

Summary: The consideration of a resolution to accept a fair housing outreach grant and a budget amendment, in the amount of \$25,000, from the North Carolina Human Relations Commission.

The North Carolina Human Relations Commission (NCHRC) requested support last fall for an application they were making to HUD for a grant to support fair housing outreach in selected regions across North Carolina. Their application was successful. NCHRC has asked the City to directly join in the "Partnering to Develop a Comprehensive Fair Housing Outreach, Recruitment and Investigative Program, and has made available a \$25,000 sub-grant of HUD funds to the City of Asheville to support this effort.

The Community Development Division has recruited the Asheville Buncombe Human Relations Council and the Land of Sky Regional Council to perform the outreach activities, which will include 10 fair housing events in Asheville and Buncombe County over the next year, and the distribution of fair housing marketing materials.

NCHRC sought this grant because of their concern that the low incidence of fair housing complaints here and in other areas of the State is due to a lack of understanding about fair housing protection. Our efforts here will primarily focus on outreach to human service providers and others who provide referral and assistance to persons in our community. Outreach materials will be published in English, Spanish and Russian.

Pro:

- Persons throughout the City and County will be informed of the protection offered to them through fair housing laws.

Con:

- None.

Program funding is entirely from the US Department of Housing and Urban Development, through the State of North Carolina. Existing community development division staff will administer the program. No general funds are requested to support this program.

Staff recommends accepting \$25,000 from the North Carolina Human Relations Commission to support a Fair Housing Outreach program by adoption of the resolution and budget amendment.

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ORDINANCE BOOK NO. 29 - PAGE 64**

H. RESOLUTION NO. 14-93 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A CONSTRUCTION AGREEMENT WITH THE

**N.C. DEPT. OF TRANSPORTATION FOR IMPROVEMENTS ON NC 81
SWANNANOA RIVER ROAD AT ITS INTERSECTION WITH GASHES CREEK
ROAD (AZALEA ROAD)**

Summary: The consideration of a resolution authorizing the City Manager to sign a construction agreement with the North Carolina Department of Transportation (NCDOT) approving a project for making improvements on NC 81 (Swannanoa River Road) at its intersection with Gashes Creek Road (Azalea Road) in Asheville.

The North Carolina Department of Transportation (NCDOT) plans to make improvements including sidewalk, curb and gutter, and widening for a left-turn lane at the intersection of NC 81 (Swannanoa River Road) and Gashes Creek Road (Azalea Road) in Asheville. The project, which is identified as WBS Element # 3613.3.11, will be constructed during the Summer and Fall of 2014. The NCDOT will prepare the environmental and/or planning documents, obtain applicable environmental permits, prepare the project plans and specifications, relocate and adjust all conflicting utilities, and construct or cause the project to be constructed including the administration of the construction contract.

All work will be performed within the existing right-of-way if possible. In the event any additional right-of-way or construction easements are required, the City will acquire them at no cost to the NCDOT. As a partner with the NCDOT, the City is currently securing appropriate construction easements (At this time, we do not anticipate any fiscal impact in the securing of the construction easements).

Once the project is completed, the City will be responsible to maintain the newly constructed sidewalk.

The subject agreement is a companion agreement to one that was approved by City Council on May 14, 2013 via Resolution # 13-102 which includes a payment from the City of Asheville of \$75,000 that will be applied to the construction phase of the project (the project includes a traffic signal at the intersection).

Pros:

- A much needed left-turn lane will be provided.
- The NCDOT is funding and constructing the project.

Con:

- The City will be responsible to maintain the sidewalk.

There is no immediate fiscal impact to the City regarding the subject agreement.

Staff recommends that City Council approve a resolution authorizing the City Manager to sign a construction agreement with the North Carolina Department of Transportation (NCDOT) approving a project for making improvements on NC 81 (Swannanoa River Road) at its intersection with Gashes Creek Road (Azalea Road) in Asheville.

RESOLUTION BOOK NO. 36 - PAGE 180

I. RESOLUTION NO. 14-94 - RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE THE EXCHANGE OF CITY-OWNED REAL PROPERTY ALONG BROADWAY AND CATAWBA FOR AN IMPROVED GREENWAY EASEMENT OWNED BY THE UNC-ASHEVILLE FOUNDATION INC.

Summary: The consideration of a resolution authorizing the exchange of City-owned real property along Broadway and Catawba for an improved greenway easement owned by the UNC-Asheville Foundation, Inc. also located off of Broadway Street.

The City of Asheville and the University of North Carolina - Asheville Foundation, Inc. entered into a Memorandum of Understanding (MOU) on December 13, 2013, concerning the development of a greenway section of the Reed Creek Greenway corridor at 525 Broadway Street. The MOU outlined the partnership and cost-sharing goals relative to the Greenway, and also acknowledged the intent to resolve property ownership and long-term maintenance of the greenway.

Accordingly, the City of Asheville and the UNC-Asheville Foundation have negotiated an exchange of real property based on the terms outlined below. Pursuant to N. C. G. S. 160A-271 a notice was duly published in the Asheville Citizen-Times on April 11, 2014, describing the exchange of properties.

The property at 525 Broadway Street is owned by the UNC Asheville Foundation and measures in total approximately 8.8 acres (PIN 9649-05-1813-00000 and PIN 9649-05-5513-00000). At this location, the Reed Creek Greenway has been designed to follow the creek that runs through this property, and connect to existing sections of greenway at Catawba Street and on the other side of Broadway at WT Weaver Boulevard. UNC Asheville has now commenced construction of the greenway, with estimated completion sometime this summer. The final product will yield a 10 foot asphalt multi-use path that extends approximately 1100 feet from Catawba to the corner of the property at Broadway. Including maintenance areas, the proposed easement would encompass approximately 1.65 acres, including the path, benches, signage, trash receptacles and storm water retention ponds. The City will acquire this area as a greenway easement once all the greenway improvements are completed. With the acceptance of this easement, the City accepts responsibility for long-term infrastructure and ground maintenance of this area.

In exchange for this greenway easement, the UNC-Asheville Foundation requests that the City convey two parcels of real property at the same location (PINs 9649-05-6562-00000 and 9649-05-4826-00000) measuring a total of 0.58 acres. One parcel is configured as a long narrow strip along the frontage of Broadway Street and the other parcel contains a 0.27 acre corner at Broadway and Catawba. The City intended to use these parcels for the Reed Creek Greenway, hence the unique configuration of the parcels. Since the UNC Asheville Foundation is offering to situate the greenway in a more ideal location (proximity to the Creek and shielded from Broadway traffic), City staff recommends City Council to convey these two parcels in consideration. Being that the total value of the greenway improvements exceed the market value of the two City parcels, this exchange is considered full and fair.

Pro:

- Assemblage of land necessary for the implementation of the Reed Creek Greenway.

Con:

- Increased maintenance, repair and operating costs for this section of Reed Creek Greenway.

The land exchange requires no additional compensation in that the exchange is of equivalent value, thus implying no short-term fiscal impact. Long-term fiscal impact includes increased maintenance costs year over year and future replacement costs of infrastructure.

City staff recommends City Council adopt a resolution authorizing the exchange of real property interests at 525 Broadway Street with the UNC-Asheville Foundation, Inc.

Vice-Mayor Hunt spoke in support of the good partnership with the UNC-Asheville.

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J. RESOLUTION NO. 14-95 - RESOLUTION UPDATING THE ASHEVILLE

STANDARD SPECIFICATIONS AND DETAILS MANUAL

Summary: The consideration of a resolution updating the Standard Specifications and Details Manual.

An effort to update the Standard Specifications and Details Manual has been ongoing since 2009. A Focus Group was established that included staff from the various City Departments and local engineering firms to review and make suggestions regarding the appropriate revisions. This group met five times during the months of April and May 2009. Other stakeholder groups, including the Bicycle and Pedestrian Task Force, provided written comments.

The Standard Specifications and Details Manual was approved by City Council on May 20, 1997 via Resolution #97-68 with an effective date of May 27, 1997 to coincide with the effective date of the Unified Development Ordinance (UDO). Since 1997, three major revisions have been approved. The first revision which included changes that were developed from application and practice was approved by City Council on March 28, 2000 via Resolution # 00-61. The second revision which included fire protection water supply requirements was approved on June 12, 2001 via Resolution # 01-84. The third revision which included a new lighting section was approved on March 28, 2002 via Resolution # 02-98. The purpose of the manual is to provide design guidelines and technical specifications for construction activities related to streets, sidewalks, water systems, storm drainage, parking lots, and pavement structure. It outlines the minimum construction standards which would be allowed within the City limits and the extraterritorial zoning jurisdiction (no longer valid) and it is applicable on both public and private property.

The Engineering Department (now Division) is the primary Department (Division) responsible for enforcement of the standards through the Construction Inspectors. The City Engineer is responsible for any requested variance or deviation from the standards unless otherwise noted. One example is waiving the sidewalk requirement (City Council is the only authority that can grant a sidewalk waiver).

Copies of the manual, which are bound in 3-ring binders, are available to the public at a one-time cost of \$25. Updates are available at no cost. Staff does not anticipate having to provide copies of the updated manual in 3-ring binders because it will be available in pdf format.

Pros:

- Continues to provide minimum design and construction standards, guidelines, and specifications.
- Includes guidelines and specifications for complete streets principles.
- The development community provided input through the local engineering firms.

Con:

- There are no known negative impacts.

There is no known fiscal impact associated with this action.

City staff recommends that City Council approve a resolution updating the Standard Specifications and Details Manual.

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- K. RESOLUTION NO. 14-96 - RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE A CONTRACT WITH CHERRY BEKAERT & HOLLAND FOR AUDITING SERVICES FOR FISCAL YEAR 2013-14**

Summary: The consideration of a resolution authorizing the Mayor to execute a contract with Cherry Bekaert & Holland (hereinafter referred to as Cherry Bekaert) for auditing services for fiscal year 2013 - 2014.

North Carolina General Statute 159-34 requires that local governments have their accounts audited each fiscal year and submit a copy of the audit to the Local Government Commission. In response to the aforementioned general statute, staff recommends retaining the services of Cherry Bekaert to conduct the audit of the city's accounts for the fiscal year ending June 30, 2014. The proposed fee for fiscal year 2013-2014 audit and financial statement preparation is \$85,000.

As part of the engagement, Cherry Bekaert will provide a document required by the Auditing Standards Board that provides a framework for the auditor's communication with the Mayor and City Council and identifies some specific matters to be communicated. Pursuant to the Auditing Standards Board requirement, Cherry Bekaert will communicate timely and directly with the Mayor and City Council on matters related to the financial statement audit that are, in the auditor's professional judgment, significant and relevant to the responsibilities of those charged with governance in overseeing the financial reporting process. Additionally, Cherry Bekaert will provide an audit schedule with milestones and timetables in an effort to improve audit planning and ensure that the audit report is delivered timely to the Local Government Commission.

Pro:

- Contracting with Cherry Bekaert aligns with City Council's financial policy, and will help ensure the timely and successful completion of the annual audit.

Con:

- None noted.

A fee of \$85,000 has been proposed for the audit and is included in the Finance Department's portion of the annual operating budget.

City staff recommends adoption of the resolution authorizing the Mayor to execute a contract with Cherry Bekaert & Holland in the amount of \$85,000 for auditing services for fiscal year 2013-2014.

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L. RESOLUTION NO. 14-97 - RESOLUTION ADOPTING A RIGHT-OF-WAY ACQUISITION POLICY

Summary: The consideration of a resolution adopting a Right-of-Way Acquisition Policy to ensure consistency and documentation when acquiring right-of-way and/or easements for infrastructure improvements.

The City of Asheville is committed to infrastructure improvements including sidewalk installation, roadway improvements, and water and storm water infrastructure upgrades. In some cases, additional right-of-ways or easements are needed to make these improvements.

Many times staff is successful in obtaining easements through negotiations with the property owner. In some cases the property owners will donate the property at no cost to the City. Other times, the City will pay an assessed value for the property depending on the nature of the need (temporary or permanent). In a few cases it can become very difficult to negotiate with a

property owner and other measures such as eminent domain are necessary to complete the project.

The purpose of the policy is to provide consistency and documentation in the process in the event that eminent domain is necessary. The Metropolitan Sewerage District utilizes a similar policy to acquire easements for sewer installation and rehabilitation.

Staff presented the policy to the Planning and Economic Development Committee in April. That committee recommended the policy be reviewed by the full body of City Council.

Pros:

- Establishes a standard policy and procedure for acquisition of right-of-way for infrastructure improvements.
- Allows for fair compensation to property owners for land the citizens need to make infrastructure improvements.
- Consistent with the policy the Metropolitan Sewerage District uses to acquire easements.

Cons:

- None

Staff requests approval of the Right-of-Way Acquisition Policy for the purpose of acquiring right-of-ways and easements for infrastructure improvements.

RESOLUTION BOOK NO. 36 - PAGE 185

M. RESOLUTION NO. 14-98 - RESOLUTION AUTHORIZING THE CITY MANAGER TO CONVEY 0.764 ACRES OF REAL PROPERTY AND OTHER ASSOCIATED PROPERTY RIGHTS LOCATED AT THE ASHEVILLE REGIONAL AIRPORT TO THE N.C. DEPT. OF TRANSPORTATION

RESOLUTION NO. 14-99 - RESOLUTION DIRECTING THE CITY CLERK TO ADVERTISE FOR UPSET BIDS FOR DISPOSITION OF A 0.483 ACRE REMNANT PROPERTY GENERALLY LOCATED AT THE ASHEVILLE REGIONAL AIRPORT TO YOUNGBLOOD OIL COMPANY INC.

Summary: The consideration of a resolution authorizing the City Manager to convey 0.764 acres of real property and other associated property rights located at the Asheville Regional Airport to N.C. Dept. of Transportation (NCDOT) for right-of-way purposes; and the consideration of a resolution directing the City Clerk to advertise for upset bids for disposition a 0.483 acre remnant property at the same general location to Youngblood Oil Company, Inc.

The City of Asheville holds title to the real property at the Asheville Regional Airport, and leases that property to the Asheville Regional Airport Authority (Airport). The Airport property is included in the Airport Layout Plan (ALP), which is approved by the FAA. In order for property included in ALP to be conveyed, the City of Asheville must execute the deeds of conveyance as grantor, and the FAA—in consultation with the Airport—must “release” the property from the ALP. Because the property was acquired with FAA financial assistance, and has been held for use by the Airport, the conditions of the FAA release include that the proceeds of sale be reimbursed to the FAA and to the City in the same proportion as the initial contribution to the purchase price. The City’s portion of those proceeds must be used at the Airport. The release typically requires the deed of conveyance to include restrictions to ensure that the use of the property will not interfere with airport operations.

The North Carolina Department of Transportation (NCDOT) has plans to improve New Airport Road in front of the Asheville Airport. NCDOT has plans to re-route the existing Interstate interchange to a diverging diamond configuration in order to improve vehicular safety and traffic flow on and off Exit 40. Overall, the project provides much needed traffic improvements for this section of New Airport Road. This NCDOT project, known as Project# I-5501, is currently in the Right-of-way acquisition phase and is set to begin construction this summer. At this time, NCDOT has requested to purchase right-of-way and associated property rights at the Asheville Regional Airport, as follows.

Property Right	Area	Value
Permanent Right-of-way (fee simple)	0.764 acres	\$570,000
Temporary Construction Easement	2.023 acres	\$110,000
Permanent Utility & Drainage Easement	0.233 acres	\$130,000
Dual Use Easement	0.045 acres	-
Personal property (signs, street lights, fencing, landscaping)	-	\$245,000
Residual damages to property	-	\$110,000

The total offer is \$1,165,000 for the real property needs of NCDOT. This value is based on an independent MAI fair market appraisal. The Airport is amenable to the transaction and will seek the required approval and release from the FAA for this conveyance. The applicable law, NCGS 160A-274, authorizes the City to convey the property to a governmental entity (in this case, the DOT) upon such terms as it “deems wise,” and there are no special procedures, other than Council approval.

This NCDOT property need has resulted in a property remnant on the east side of New Airport Road at Airport Park Road. This property remnant measures 0.483 acres, and after installation of the planned improvements by NCDOT, the property will no longer be usable by the Asheville Airport. As such, the adjacent land owner, Youngblood Oil Company, Inc., has come forward with an offer to purchase the property remnant. This offer is in the amount of \$420,000 and is considered fair market value based on the NCDOT appraisal. In order to sell this property to Youngblood, a private party, the City is required to use one of several competitive procedures specified in the statute. In this case, staff recommends the process set out in NCGS 160A-269, negotiated offer and upset bid, which is the process usually employed by the City. The Youngblood offer is treated as an opening offer, and Council indicates its intent to accept. That offer is advertised, and is subject to an “upset bid” for a period of 10 days. If City Council approves the resolution, the City Clerk will be directed to publish an advertisement for upset bids for a period of 10 days, in which any interested party may upset the current bid of \$420,000. The statutes require that a qualifying bid must increase the current offer by 10% of the first \$1,000 and 5% of the remainder (i.e. \$441,095 or higher.) Since the current bid from Youngblood represents fair market value, the resolution provides that if no qualifying, competing bid is received, then City Council agrees to convey this parcel to Youngblood Oil Company, Inc. for \$420,000.

Pros:

- The sale of property will support NCDOT’s plans to retrofit an existing interchange and promote traffic efficiency and safety.
- Private sale will convert public land into taxable real property.

Cons:

- None noted.

All financial proceeds associated with the real property disposition are subject to FAA regulations governing the allocation of these proceeds; specifically, proceeds of sale must be

delivered to FAA as a reimbursement for the initial acquisition of said property and/or must be utilized for airport purposes.

Economic Development staff recommends adoption of the resolution to convey real property at the Asheville Regional Airport to NCDOT, and further recommends the adoption of the resolution directing the City Clerk to advertise for upset bids for the remnant property at New Airport Road and Airport Park Road.

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RESOLUTION NO. 14-99 - RESOLUTION BOOK NO. 36 - PAGE 193

N. ORDINANCE NO. 4308 - BUDGET AMENDMENT TO BUDGET INSURANCE RECOVERY FUNDS FOR THE PURCHASE OF FIRE DEPARTMENT EQUIPMENT

Summary: The consideration of a budget amendment in the General Fund in the amount of \$80,500 from insurance recovery funds to purchase equipment for the Fire Department.

On December 14, 2013, a City of Asheville fire engine (1996 KME) was involved in an accident that resulted in the fire engine being totaled. As a result of the accident, the City will receive \$80,500 in insurance recovery funding to settle the property damage claim. The fire engine that was totaled in the accident was set to be replaced by a new engine that was already on order and will arrive in June. For this reason, the Fire Department is not recommending that another fire engine be purchased at this time. Instead, the department is proposing to utilize the insurance recovery funding to equip a fire apparatus for Station 1 that will be deployed during the day. This daytime fire engine will provide full credit as a reserve apparatus, which will allow the Fire Department to reduce its heavy apparatus fleet by one vehicle, which will save significantly on future apparatus replacement cost.

Pros:

- Provides funding for Fire Department equipment purchase that will allow for operation of a daytime fire engine that will improve operational effectiveness.
- Reduces Fire fleet by one engine, which will save approximately \$550,000 in future apparatus replacement cost.

Con:

- None.

The insurance recovery funds will be received in the City's Property & Liability Fund and then be transferred to the City's General Fund, where the equipment purchase will be made.

City staff recommends City Council adopt the budget amendment in the General Fund in the amount of \$80,500 from insurance recovery funds to purchase equipment for the Fire Department.

ORDINANCE BOOK NO. 29 - PAGE 66

O. RESOLUTION NO. 14-100 - RESOLUTION DIRECTING STAFF TO PREPARE A REPORT FOR THE CREATION OF A MUNICIPAL SERVICE DISTRICT FOR THE SOUTH SLOPE AND CANCELLING THE PUBLIC HEARING ORIGINALLY SET FOR MAY 27, 2014

RESOLUTION NO. 14-101 - RESOLUTION DIRECTING STAFF TO PREPARE A REPORT FOR THE CREATION OF A MUNICIPAL SERVICE DISTRICT FOR THE RIVER ARTS DISTRICT AND CANCELLING THE PUBLIC HEARING ORIGINALLY SET FOR MAY 27, 2014

RESOLUTION NO. 14-102 - RESOLUTION DIRECTING STAFF TO PREPARE A REPORT FOR THE CREATION OF A MUNICIPAL SERVICE DISTRICT FOR NORTH CHARLOTTE STREET AND CANCELLING THE PUBLIC HEARING ORIGINALLY SET FOR MAY 27, 2014

Summary: The consideration of amending three resolutions previously adopted by City Council on April 22, 2014, by cancelling the public hearing dates of May 27, 2014, but retaining the direction to staff to create reports detailing a proposed municipal service district for the South Slope, River Arts District and north Charlotte Street.

On April 22, 2014, City Council adopted Resolution Nos. 14-76, 14-77 and 14-78 directing City staff to create reports detailing a proposed municipal service district for the South Slope, River Arts District and north Charlotte Street. At that time, the public hearing dates were set for May 27, 2014.

Providing adequate notice to all real property owners required that the City request records from the county and state. Due to the length of time needed to process those requests, it was determined that the public hearing should be held at a later date.

Additionally, recent information received by the City's bond counsel indicated that the proposed municipal service districts need not be formally accepted at this time due to the schedule for issuing Special Obligation Bonds, which will not occur until Fiscal Year 2016. Therefore, public hearings to establish the proposed municipal districts will be rescheduled at a later date.

City staff recommends amending three resolutions previously adopted by City Council on April 22, 2014, by cancelling the public hearing dates of May 27, 2014, but retaining the direction to staff to create reports detailing a proposed municipal service district for the South Slope, River Arts District and north Charlotte Street.

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RESOLUTION NO. 14-101- RESOLUTION BOOK NO. 36 - PAGE 196
RESOLUTION NO. 14-102- RESOLUTION BOOK NO. 36 - PAGE 198**

P. RESOLUTION NO. 14-103 RESOLUTION AUTHORIZING THE CITY MANAGER TO CONVEY 125 JACOB HOLM WAY TO BUNCOMBE COUNTY

Summary: The consideration of a resolution authorizing the City Manager to convey 2.43 acres of real property located at 125 Jacob Holm Way to Buncombe County.

The City of Asheville owns approximately 2.43 acres of real property located at 125 Jacob Holm Way (PIN 9617-72-4466) outside of the western boundary of Asheville City limits off of Sand Hill Road. The City purchased this property for \$243,000 in 2008 for a new fire station to serve Biltmore Lake. City Council reviewed the initial acquisition of this parcel in closed session on September 19, 2006. The City acquired this parcel from Fletcher Partners through commercial real estate broker Bob Lewis, who was also part owner of Fletcher Partners. The Closed session minutes reflect that the list price for the property was based on the unit price of \$100,000 per acre for a total price of \$243,000. Per the purchase contract, the Seller was also responsible for site grading to prepare for a fire station foundation and parking.

In that Biltmore Lake was not annexed into City limits, a fire station in this location is no longer needed. As such, the property is considered surplus and available for sale. At this time, Buncombe County has requested to purchase the property at fair market value. The County intends to assemble this parcel into a neighboring tract of land that was purchased for the new

Enka District Intermediate School. A recent MAI appraisal states that the parcel is valued at \$195,000.

Pros:

- The sale of this property is at fair market value.
- This property will be used for a new Enka Intermediate School by Buncombe County

Con:

- The parcel was purchased during a period of inflated real property values and the current offer from the County is \$48,000 less than what was paid for the property.

The sale of this property will benefit the General Fund and will be designated for future economic and community development projects.

Economic Development staff recommends adoption of the resolution to convey 2.43 acres of real property at 125 Jacob Holm Way to Buncombe County.

RESOLUTION BOOK NO. 36 - PAGE 200

Q. RESOLUTION NO. 14-104 - RESOLUTION AUTHORIZING THE CITY MANAGER TO APPLY FOR A JOB ACCESS AND REVERSE COMMUTE GRANT TO FUND PART OF THE COST OF PROVIDING SUNDAY SERVICE

Summary: The consideration of a resolution authorizing the City Manager to apply for a Job Access and Reverse Commute (JARC) grant to fund part of the cost of providing Sunday service.

The French Broad Metropolitan Planning Organization has released a call for projects for the JARC program which is part of Section 5307 of the new MAP 21 transportation bill. This program is available to transit agencies, non-profits or for profit agencies for transit capital and operating projects. The MPO Board has authorized the use of 10% of Section 5307 for projects that fulfill JARC goals.

JARC is a formula grant program oriented to provide job access in the urbanized area. The formula is based on the number of eligible low-income and welfare recipients in these areas.

The job access refers to projects relating to the development and maintenance of transportation services designed to transport welfare recipients and eligible low-income individuals to and from jobs and activities related to their employment.

The reverse commute refers to a public transportation project designed to transport residents of urbanized areas and other than urbanized areas to suburban employment opportunities.

To be eligible, the program requires an intensive planning process and the development of a Coordinated Public Transportation and Human Services Transportation Plan or CTP-HSTP based on community participation. The CTP-HSTP was developed in conjunction with the French Broad Metropolitan Planning Organization, Buncombe, Henderson and Haywood Counties, human services agencies, public and private transportation providers, the North Carolina Department of Transportation and the general public to assess current transportation needs, identify gaps and to set goals. The plan was approved on March 29, 2012, by the French Broad River MPO's Board, which includes elected representatives from each of the eighteen local governments which make up the MPO. Project will be selected in a competitive process.

Sunday service has been identified in the CTP-HSTP and in the City's Transit Master Plan as one of the priorities for citizens that need access to jobs seven days a week or during the weekend.

The City's Fiscal Year 2015 proposed budget currently includes funding to begin limited Sunday service on January 1, 2015. The full annual cost of providing this service will be \$321,000. Operating expenses are an eligible activity under the JARC program and the City will apply for 50% of the total annual cost or \$160,500 to pay for Sunday service.

Pro:

- JARC could subsidize Sunday service for a maximum of \$160,500.

Con:

- The City has to contribute 50% of the cost, or \$160,500.

The project cost is \$321,000; the City will contribute 50% of the cost or \$160,500, and if awarded, FTA will pay for the remaining 50%.

City staff recommends that City Council approve a resolution authorizing the City Manager to apply for a Job Access and Reverse Commute (JARC) grant to fund part of the cost of providing Sunday service.

RESOLUTION BOOK NO. 36 - PAGE 201

R. RESOLUTION NO. 14-105 - RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE A CONTRACT WITH ROGERS GROUP INC. FOR THE ASPHALT PAVING IMPROVEMENTS PROJECT - FISCAL YEAR 2014

Summary: The consideration of a resolution authorizing the City Manager to execute on behalf of the City of Asheville a contract in the amount of \$1,121,330.25 plus a contingency of 43% (\$478,669.75) with Rogers Group, Inc. of Nashville, TN, for the project known as Asphalt Paving Improvements – Fiscal Year 2014, City of Asheville Project # ENG-13-14-006.

A list of warranted streets was put together to be addressed by this contract. The project was advertised on March 18, 2014, and due to an insufficient number of bids, advertised again on April 11, 2014. Bids were opened on April 21, 2014, with Rogers Group, Inc. of Nashville, TN, being the lowest responsible bidder with a bid of \$1,121,330.25. This unit price contract bid presents the City with a great value and the potential for adding more streets to this year's paving project based on our budget of \$1,600,000.00. The City did its due diligence in establishing that this was a responsible bid. A 43% contingency (\$478,669.75) has been added to allow payment for any unforeseen costs that typically arise during construction and to do additional street resurfacing. The work produced from this contract would fix a number of roads that are in drastic need of repair.

Pros:

- Will repair approximately 5.44 miles of roadways within the Asheville City limits.
- Extremely competitive prices maximize resources.

Cons:

- The project will cost the City approximately \$1,121,330.25.
- Project management and contract administration will consume staff time.

The total budget for this project, including contingency, is \$1.6 million, and included as part of the FY 2013-14 Public Works Departmental budget.

City staff recommends City Council adopt the resolution awarding the contract to Rogers Group, Inc. and authorizing the City Manager to execute on behalf of the City of Asheville a contract in the amount of \$1,121,330.25 plus a contingency of 43% (\$478,669.75) with Rogers Group, Inc. for the project known as Asphalt Paving Improvements – Fiscal Year 2014, City of Asheville Project # ENG-13-14-006.

RESOLUTION BOOK NO. 36 - PAGE 202

S. RESOLUTION NO. 14-106 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A CONTRACT WITH ARMEN CONSTRUCTION LLC FOR THE NORTH LOUISIANA AVENUE SIDEWALK IMPROVEMENTS PROJECT - PHASE 4

ORDINANCE NO. 4309 - BUDGET AMENDMENT FOR THE NORTH LOUISIANA AVENUE SIDEWALK IMPROVEMENTS PROJECT - PHASE 4

Summary: The consideration of a resolution authorizing the City Manager to execute a contract with Armen Construction, LLC for the amount of \$126,820 and any change order within the project budget for the project known as North Louisiana Avenue Sidewalk Improvements, Phase 4, City of Asheville Project #E1014; and the associated budget amendment, in the amount of \$25,000, from savings in other sidewalk projects to fund costs that exceeded the original budget.

This project will build a much needed sidewalk along North Louisiana Avenue and provide connectivity from the Skyview Community to Patton Ave. Pedestrians currently must walk on the side of the road, in a ditch, or in the street itself. The scope of work includes sidewalk, curb and gutter, drainage, retaining walls, wheelchair ramps, driveways, and utility relocation. The project is funded in part with U.S. Department of Urban Development Community Development Block Grant (CDBG).

The N. Louisiana Sidewalk Improvements – Phase 4 project was advertised April 11, 2014, - April 28, 2014. The bids were opened informally Monday April 28, 2014, and the following two bids were received:

- Patton Construction Group, Inc. of Asheville, NC in the amount of \$156,640
- Armen Construction, LLC of Charlotte, NC in the amount of \$126,820

Pros:

- Improves pedestrian safety.
- Funded by a Federal grant, with minimal City General Fund contribution.
- Encourages walking, thereby reducing carbon emissions.

Cons:

- Project management and contract administration will consume staff time.

The project budget will be \$142,000. CDBG will provide \$117,000 (previously budgeted), and \$25,000 will be allocated from savings in other sidewalk projects. .

City staff recommends the City Council adopt the budget amendment in the amount of \$25,000; and the resolution awarding the contract to Armen Construction, LLC and authorizing the City Manager to execute contract and any change order within the budgeted amount.

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ORDINANCE BOOK NO. 29 - PAGE 68**

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

Mayor Manheimer 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 Bothwell moved for the adoption of the Consent Agenda, with the deletion of Consent Agenda B, since no bids have been received and no action from Council is required. This motion was seconded by Councilwoman Wisler and carried unanimously.

III. PRESENTATIONS & REPORTS:

A. ANNUAL STATE OF AIRPORT

Mr. Lew Bleiweis, Director of the Greater Asheville Regional Airport, reviewed their 2013 Annual Report.

In response to Mayor Manheimer, Mr. Bleiweis responded to the Airport's exciting re-use of coal ash for fill for the runway.

IV. PUBLIC HEARINGS:

A. PUBLIC HEARING TO CONSIDER AN APPEAL OF THE PLANNING & ZONING COMMISSION'S DECISION TO APPROVE A LEVEL II SITE PLAN FOR THE CAMBRIA SUITES HOTEL PROJECT LOCATED AT 15 PAGE AVENUE, FOR A 12-STORY HOTEL WITH GROUND LEVEL COMMERCIAL SPACES

At Mayor Manheimer's request, Councilman Smith moved to recuse Mayor Manheimer from participating, due to a conflict of interest. This motion was seconded by Councilman Davis and carried unanimously. Mayor Manheimer handed over the gavel to Vice-Mayor Hunt and left the meeting room.

Vice-Mayor Hunt said that pursuant to Section 7-5-9.1 (b) (11) "appeals of decisions of the Asheville Planning & Zoning Commission regarding developments requiring Level II site plan approval in the Central Business District shall be heard by the Asheville City Council. Further appeals shall be made to Buncombe County Superior Court in accordance with subsection (a) (12)." The Planning & Zoning Commission voted 5-0 to approve the Cambria Suites Hotel Level II site plan. Thereafter, an appeal was filed to Council by Gary Davis, pursuant to Section 7-5-9.1 (b) (11).

City Attorney Currin reviewed with Council the appeal process, which will be using quasi-judicial procedures. It is important to note that in a quasi-judicial proceeding, Council protects the due process rights of the parties. There are several components of a quasi-judicial hearing as follows: (1) all testimony will be sworn; (2) any decision reached by City Council must be supported by findings of fact and conclusions of law and those findings and conclusions must be based on competent material and substantial evidence in the record; (3) this is a Level II site plan appeal under Section 7-8-18 (f) of the Code of Ordinances, and those are the only standards in front of Council in this appeal; and (4) if documentary evidence is presented to Council, please give your opponent a copy so they have an opportunity to review it. She then explained the order of the presentations, noting that all of the witnesses can be cross-examined. Council can, at anytime, ask questions of the staff or any of the witnesses. Regarding time limits, the parties will not be restricted to any time limits; however, any individual from the public who would like to speak will be limited to 3 minutes each.

City Attorney Currin asked if any member of Council has had any conversations or any involvement in the case that would prevent them from listening to the evidence tonight and giving an unbiased decision. Councilman Davis disclosed that he was a member of the Downtown Commission when the design review of Cambria Suites Hotel was discussed; however, he would consider this issue with an open mind on all the matters before the Council without pre-judgment and that he will make his decision based solely on what is before Council at the hearing. In addition, Vice-Mayor Hunt disclosed that he attended the Downtown Commission meeting when the design review of Cambria Suites Hotel was discussed; however, he too would consider this issue with an open mind on all the matters before the Council without pre-judgment and that he will make his decision based solely on what is before Council at the hearing.

City Attorney Currin said that as documentary evidence is submitted, City Clerk Burluson would be noting the entry of that evidence into the record.

After hearing no questions about the procedure, Vice-Mayor Hunt opened the public hearing at 5:48 p.m.

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

Urban Planner Alan Glines said that this is the consideration of an appeal (pursuant to Section 7-5-9.1(b)(11) of the Asheville Unified Development Ordinance (UDO) of Planning and Zoning Commission's decision to approve a Level II Site Plan for the Cambria Suites Hotel project located at 15 Page Avenue, for a twelve-story hotel with ground level commercial spaces (City Exhibit 1 - Staff Report, which has been provided to City Council and both parties). This public hearing was advertised on May 2 and 9, 2014 (City Exhibit 2 - Affidavit; City Exhibit 3 - Certificate of Notice).

Using various maps and plans (City Exhibit 4), Mr. Glines then reviewed his following staff report (City Exhibit 1; City Exhibit 5 - Record of Proceedings):

"Site Conditions: The project site consists of one parcel .46 acre (20,031 square feet) with frontage on Battery Park Avenue and primary access along Page Avenue. There is a city-maintained alley at the rear of the property which provides access through this site to neighboring properties. An existing structure will be demolished – a two-story retail building that once housed Kosta's and Subway with a total square footage of 28,000 square feet according to Buncombe County tax records. The structure is not a contributing structure in the downtown national register district.

"The proposal is a twelve-story hotel with ground level commercial spaces with the hotel tower located on the north side of the structure. Plans show a building height of 115 feet to the highest occupied floor (and 136 feet to the top of the tallest architectural element) with a gross floor area of 120,000 square feet (just over 112,000 s.f. conditioned space). Floors two and three will be parking floors within the larger base of the structure, and the basement level will also be used for parking. Total parking will include 151 spaces made up of 147 regular spaces, one van space, and three accessible spaces. As specified in the UDO, the parking levels in a parking structure are not counted in the overall square footage of the building.

"The hotel will have 136 hotel room suites, an amenity floor with a restaurant (with outdoor seating) and meeting space (on the fourth level), and about, 3,400 square feet of commercial space on the ground level that will include a restaurant. The outdoor terrace at the fourth level will total 4,000 square feet.

"Primary vehicular and pedestrian access to the site is planned for the main entrance at the western side of the hotel building where there will be a drop-off area for guests under the main structure. The commercial spaces have frontage along Page Avenue with a separate

pedestrian entrance. (Mr. Glines explained the floor plans and elevations, using various drawings in City Exhibit 4).

"The Downtown Master Plan (DTMP) was initiated in 2008 and adopted by City Council on May 12, 2009. The consultant team very early on identified a number of key components that the plan would address including how to manage and encourage new development while maintaining community character which includes views into and out of the downtown area, vistas from the street and between buildings, and encouraging variety in taller structures. The project plans make references to these issues in the following ways:

- Community Vision- protect landmark buildings and views to and from our downtown setting
- Shape building form to promote quality of place excerpts-
 - Encourage variety in height, massing and character to respect context, animate the skyline, preserve valued views and offer development options
 - D. Step upper floors back above a defined streetwall for daylight and pedestrian scale
 - E. Keep taller buildings slender to preserve view corridors and daylight between them.

"These goals apply to all properties in the Central Business District and are dependent on their exact location in downtown and the scale of development proposed now or in the future. They have been incorporated into the UDO for the most part and were in a few cases adjusted through the review and adoption process. This project site is located towards the north end of the traditional downtown core.

"Compliance with Central Business District Regulations in the UDO: (Mr. Glines explained the regulations, using the Downtown Master Plan Concepts: Height Zones Map - City Exhibit 4)

"Building Height- The site is located in the intermediate height zone which allows floor heights up to 145 feet. The proposed building will be twelve stories with a final floor height of 115 feet and the total height of the building to the tallest roof element, 136 feet.

"Base middle cap orientation- The design has a distinct base created by the use of cast limestone material for the first four levels of the building. The middle section will have a change of material by use of a red brick colored stucco. The upper two hotel floors and the roof feature will change color and material again using a silver gray stucco surface to create a contemporary cap for the building. The tower portion was revised following discussion with the design review subcommittee of the Downtown Commission to incorporate a contemporary cap. There is a strong architectural element over the entrance to the hotel that continues up to the top of the building made up of lighter finished metal and metallic-finished stucco on upper floors.

"Street Wall Stepback- The intent statement found in 7-8-18 (f) (13) (a) notes that the reduction of the perceived heights of building elements are enacted "to enhance the traditional scale of downtown and ensure adequate air and light at the sidewalk level and neighboring properties, a visual demarcation will be established across the façade of the building at a height that is defined as the *street wall*. Corresponding to this elevation on the façade a *step-back* across the front or side(s) will be provided...." (Mr. Glines reviewed the Traditional Downtown Core Map - City Exhibit 4)

"The project has selected a step-back implementing the side setback option. It incorporates the third and fourth floors as the setback height allowed by the ordinance based on

properties located in the *traditional downtown core*. The side step-back is proposed to be 74 feet measured from Battery Park Avenue which actually exceeds the requirements in the UDO. The UDO stipulates that any series of step-backs need not exceed 10% of the lot area, in this case 2,000 square feet. The developer is proposing almost 4,000 square feet of roof top deck spaces. At the Downtown Commission meeting, the developer explained that he is proposing this larger than required stepback solution because of his interest in preserving the western views for the condominium owners in the neighboring building to the extent that he is able.

"The appeal of this Level II project to the City Council is largely based on concern from an adjacent condominium owner at 21 Battery Park Avenue that the requirement for towers with floor levels above 75 feet were not properly applied, affecting his property."

Mr. Davis raised an objection that Mr. Glines was about to rebut his case and he is not a party to this. He said he is going far beyond to where he went in his recommendation to the Planning & Zoning Commission and he would be happy to cross examine Mr. Glines; however, Mr. Glines should not be trying to rebut his case at this time when he is presenting conditions. City Attorney Currin said that Mr. Glines, as a staff member, is giving a summary of the decision of the Planning & Zoning Commission. Mr. Davis has presented an appeal and Mr. Glines is stating the staff's position. She said that Mr. Davis will have time to cross-examine Mr. Glines and ask him any questions. Vice-Mayor Hunt overruled Mr. Davis' objection.

Mr. Glines continued with the review of his staff report (City Exhibit 1) as follows:

"*Tower Dimensions*- The tower dimensions with floor levels above 75 feet is limited in the ordinance for wall length and floor plate size.

"To avoid large 'slabs' in the tower portions of a development, any horizontal dimension of a tower may not exceed the maximum dimension of 145 feet established for the downtown CBD. The tower width is 140 feet for the primary façade along Page Avenue and 71 feet measured from Battery Park Avenue. The proposal is within the range of allowed widths for the tower portion of the development.

"The floor plates for building towers with floor levels above 75 feet are also limited based on lot size and the particular downtown context. The UDO provided these options under 7-8-18(f.)(13)b(1.) Floor plate limited:

- a. For parcels 20,000 square feet and larger, the gross floor plate area is limited to 40 percent of the lot area;
- b. For parcels smaller than 20,000 square feet, gross floor plate area may not exceed 8,000 square feet.
- c. For parcels greater than 16,000 square feet, the agency or official responsible for project review may consider floor plates up to 50 percent if it is surrounded by substantial permanent public or private open space that allows for views and access to direct sunlight.

"The Cambria Hotel proposal is pursuing a tower floor plate option 'c.' based on 50% of the lot area, which is an option for projects that can demonstrate that they are 'surrounded by substantial public or private open space that allows for views and access to direct sunlight'.

"*Open Space Requirements* - Section 7-2-5 of the UDO defines *open space* as: 'Open space means an area that is intended to provide light and air, and is designed for either environmental, scenic, or recreational purposes. Open space may include, but is not limited to, lawns, decorative planting, walkways, active and passive recreation areas, playgrounds,

fountains, swimming pools, wooded areas, and water courses. Open space shall not be deemed to include driveways, parking lots or other surfaces designed or intended for vehicular travel.'

"Open space in an urban setting is further refined in 7-11-4 of the UDO in which 'Urban Open Space amenities mean public sidewalks significantly in excess of standard sidewalk requirements, streetscape and hardscape areas accessible to the public including sidewalk café areas, areas containing public art and similar amenities.'"

Vice Mayor Hunt asked if it's staff's interpretation that the height limit of the Grove Arcade constitutes a result of open space because of its relative height compared to this property. Mr. Glines responded that it certainly contributes to this area. He said that pre-DTMP we had no height limits and no provisions for any step-backs at all on any downtown property. The DTMP recognized the importance of limiting tower heights to keep them slender but also have a benefit of ensuring views, air and light throughout the downtown from the sidewalk level and from long-term vistas into downtown and vistas out and across the City. The DTMP was intending that towers be limited on each and every parcel so that a big portion of each and every parcel would also be open. It's unique in this case that we have a height limited substantial building a block long that affords views. The open space in the Grove Arcade represents opening and air and light to the sidewalk level too, not just neighboring properties. It does factor into open space, but it doesn't satisfy all of it together.

In response to Vice-Mayor Hunt, Mr. Glines said that the Grove Arcade height limitation is based on some deed restriction.

Councilman Bothwell felt that Mr. Glines is interpreting the DTMP in that way, but there is nothing in our ordinances that says we should to take into consideration the height of adjacent buildings.

Mr. Glines continued with the review of his staff report (City Exhibit 1) as follows:

"Although the Central Business District is exempt from open space requirements as a rule, the provision for the floor plate of the tower to reach 50% of the lot area relies on a finding of being surrounded by substantial permanent public and private open space. It is worth noting that the open space need not be found only on the subject property but also on properties surrounding it. Considering the site plan and the specific context in the downtown area, staff believes that the tower meets this standard based on the following considerations:

- Substantial sidewalk areas surround this property directly adjacent to the site and across the street
- The combination of building step-back(s) which are again noted in 7-8-18(f.)(a.)(2.) are required 'in order to enhance the traditional scale of downtown and ensure adequate air and light at the sidewalk level and neighboring properties, a stepback at the street wall height is required according to the following standards. In no case shall the required step-back(s) decrease the buildable area by more than ten percent." The step-back provided in the proposal is substantial and exceeds the step-back amount (200% of the required amount by ordinance) and ensures that air and light reach the sidewalk level and neighboring properties. This decision was made by the developer to preserve views to the south and west for neighboring properties but which has the added benefit of positively impacting the street and sidewalk by ensuring that the surrounding area is not overwhelmed by tall buildings
- The proposed hotel building has a step-back for the tower from the north side of the property for all floors above the fourth floor which supports the open space standard.

- The Grove Arcade located directly to the west is height protected through the sale of air rights to maintain its existing configuration of four stories which ensures that air and direct sunlight reach the sidewalk and neighboring properties.
- The roof of the podium height of the proposed Cambria Hotel building (at the third and fourth floor levels) provides a restaurant amenity serving as open space for hotel guests and the public.
- The sidewalk adjacent to the project site is the location for an urban trail public art piece known as "Grove's Vision" and will remain at this location in support as an urban open space amenity.
- Café spaces are located along Battery Park Avenue and Page Avenue which provides scenic and active urban open space.
- Street trees, wide pedestrian crossings, wayfinding signage, and benches are a part of the surrounding streetscape, existing and proposed as a part of the new development and are among noted urban open space amenities.
- The 21 Battery Park Avenue building is setback from its western property line (the common property line with the Cambria Hotel project) by 50 feet and this space is used for surface parking and access to underground parking but also includes area for residents' overhanging balconies which ensures that sunlight and air are accessible to this property and neighboring properties and supports the open space standard.
- At the height of the eighth story a deck for hotel guests with rooms adjacent to it is provided in support of the open space standard.
- By definition, the floor plate requirement for the hotel tower above 75' is limited to 50% of the lot area, then the other negative space of the lot in this same area is open and not built upon above this level.

"Thus the open space considered in this situation is both on-site and surrounding the parcel and provides the benefit of assuring access to views and direct sunlight by including areas that provide light and air, for environmental, scenic, and recreational purposes. The open space enhances the experience for pedestrians at the sidewalk level, allows for views between buildings and assures air and light for neighboring properties. This staff interpretation of a correct application of this standard was accepted by the Downtown Commission and the Planning and Zoning Commission.

Shadow Impact limits- As described in 7-8-18(f)(7)(e.) shadows from new construction on large and small public parks or public plazas are limited by the following standard:
 (1.) Shadow impacts on any one point are limited to no more than two hours between the hours of 10:00 a.m. and 2:00 p.m. on the spring or fall equinox at ground level; March 21 or September 21 respectively.

"Concern was raised by the same condominium owner at 21 Battery Park Avenue that the shadow study was not conducted to consider the shadow impacts of the proposed tower on the eastern sidewalk area that is adjacent to the Grove Arcade pursuant to the noted shadow impacts standard. Staff did not initially consider the shadow impact standard because the sidewalk area while providing a vibrant community amenity with outside dining, is neither a park or plaza that is still staff's position. The sidewalks were widened and the current traffic and parking configuration installed when the Grove Arcade was renovated in the late 1990's. however, since the initial submittal was received, shadow studies were conducted for this area by the applicant and show no impact that would be in violation of the noted standard.

"Tower Placement- The tower is placed towards the northern side of the parcel in order to minimize the impacts to neighbors at 21 Battery Park Avenue. The tower was shifted from the actual property line on that side by 10 feet in order for upper story windows to be permitted which also supports the open space standard by allowing access to air and light. The windows are a requirement for the upper stories of buildings in the UDO and the proposed windows comply with the requirement.

"Streetscape- The proposed streetscape follows the pattern established in downtown with concrete sidewalks following the running-bond pattern. The sidewalks exceed minimum standards for downtown. Street trees will be placed in tree grates in a regular pattern along both street frontages. At the Technical Review Committee meeting, the Fire Department noted a requirement for additional clear space in front of the tower along Page Avenue for aerial access needs so some trees will be eliminated from this area. Opportunities for planters are being explored for this location.

"Fenestration and primary pedestrian entrance- This proposal complies with the CBD standards, for both ground level and upper floors. Both frontage streets are key pedestrian streets, so the minimum standard is 70% ground level fenestration (windows, doors and other openings) and is provided at 73% along Battery Park Avenue and 80% along Page Avenue. Upper floors must meet a 20% fenestration standard and all facades meet the requirements for openings. The Battery Park and Page Avenue elevations are proposing 42% and 65% respectively.

"Recent Area Zoning Actions: The Hyatt Place Hotel was approved in the vicinity at Montford Avenue and Haywood Street and construction has begun with clearing on the site.

"As a Level II project, the Cambria Suites project was reviewed by the Technical Review Committee (for technical compliance), the Downtown Commission (mandatory review, voluntary compliance of design standards), and the Planning and Zoning Commission (approval authority for technical compliance).

"The Technical Review Committee (TRC) recommended approval at their January 6, 2014, meeting, with conditions. Subsequent to that the TRC met on March 3 and granted final project approval.

"The Downtown Commission discussed the project at length at their meeting on January 10, 2014. Their comments centered on the following topics which they asked to be shared with the Planning and Zoning Commission:

- Sidewalk connection and crosswalk to the Grove Arcade is important.
- Assuring that a local-made art piece or some other special treatment will be provided for the center space of the parking drop-off area since the plans did not show anything at the time. Since their review, a few items have changed in this area including the fire fighting command room which will now form a 'back drop' for this space between the columns. The architects are working to provide a focal point at this location.
- Some concern about the number and width of the driveway aisles since driveways tend to compromise the pedestrian experience and the UDO trends away from multiple driveways in the CBD. The Traffic Engineer reviewed the plans and did support for the current configuration.
- Appreciation of the effort by FIRC Development to shift the tower portion to the north end of the property to assure some views for neighbors located in 21 Battery Park Condominiums.

- Idea for a garbage compactor and recycling on this site that could be shared by other nearby businesses since there are few locations in downtown well situated for these needed facilities.
- Parking will be available to visitors of the hotel, restaurant and to the retail tenants.
- There was some concern about noise from the amenity floor affecting nearby residents but Mr. Fraga explained that his own hotel guests would also have the same concern.
- Interest in having sufficient signage so that guests do not get lost.
- Some concern about traffic flow along Page Avenue and acknowledgement that this topic is beyond the effects of this particular project.
- Interest in additional windows being provided at the fourth level where the meeting rooms are located to open up the façade for uses that could benefit from natural light.
- Agreement that the building proposed meets the basic development requirements outlined in the UDO.

"The Planning and Zoning Commission reviewed the project and voted 5-0 to recommend approval at their meeting on February 5, 2014. During that review, Mr. Gary Davis, an attorney with a condominium unit in the neighboring property at 21 Battery Park Avenue, raised concerns about the review process for the project from the level of review that the project received and how the project is meeting specific development standards for properties located in the Central Business District. Staff answered questions from the Commission and the Commissioners voted unanimously to recommend approval.

"Subsequently, Mr. Davis filed the appeal on February 25, 2014, of the Level II approval of the Commission to the Council. This is the first appeal of a Level II approval downtown under the standards adopted with the Downtown Master Plan

"The Planning and Zoning Commission voted unanimously to approve the Cambria Suites project at their meeting on February 5, 2014. The Downtown Commission voted to approve the project unanimously at their meeting on January 10, 2014. Staff believes the project meets the requirements of the UDO and the intent of the Downtown Master Plan because the project brings new investment and added vitality to the traditional downtown core and enhances community character."

Councilman Bothwell confirmed sidewalks are public spaces for the purpose of providing open space, but they are not public spaces for the purpose of shadows. Mr. Glines agreed noting that the sidewalks are not public parks or public plazas.

When Mr. Gary Davis asked to be allowed to make an opening statement prior to cross examination of Mr. Glines, Mr. Joe McGuire, attorney representing FIRC, had no objection to Mr. Davis presenting a short opening statement before he asks Mr. Glines questions.

Mr. Davis said that he is an attorney and a witness. He reviewed with Council a PowerPoint and it's going to be in the nature of his opening. Some of it will include evidence that he intends to present as a witness. What he proposed to do, once he finishes his opening, he will enter his exhibits into evidence mentioned in the opening. He will come back up for cross-examination.

Mr. Davis said that he owns an office space in 21 Battery Park on the second floor. He's also a resident of Asheville as of November, 2013. The space is for his law office firm which he practices environmental and land use law. He chose his office location because that is his favorite part of downtown Asheville and largely because of the Grove Arcade. Using Appellant Exhibit 10, he showed the view toward his office. He chose that office space because of the light from the western side of the building that reduces his need for electric lighting for his office and he also chose it because of the location and his appreciation of the historic nature of this area of downtown. He said it has been said many times that this project complies with the Downtown Master Plan and the UDO - it does not. His main issue is that the proposed tower for the Cambria Suites Project covers 25% more of the parcel than it should under the UDO. That is a tremendous bonus for the developer. It also consequently significantly impacts his building and his office. He is not representing everyone in Battery Park, but representing only himself, but there are others who have concerns about light and the blockage of light by this building that unnecessarily violates the UDO. There is a reasonable compromise that complies with the UDO but doesn't pervert the definition of open space. He referred to Appellant Exhibit 11, stating that this is essentially what would happen to his office space and roughly 1/3 to 1/4 of the people on the western side of 21 Battery Park. But his office space will be down in a deep dark hole after this project is completed. He didn't believe this should have been a Level II project and he has reasons which he presented to the Planning & Zoning Commission. They are presented in his appeal. City Attorney Currin has written a letter and he assumed that the letter was part of the record for this hearing.

Mr. McGuire objected in that he felt this issue of which level review is not part of this hearing today. City Attorney Currin agreed. She said she has no problem with Mr. Davis preserving his objection to this proceeding as a Level II, but we are not going to accept evidence as to why it is or is not.

Mr. Davis said he was just preserving his issue.

In response to Vice-Mayor Hunt, City Attorney Currin said that for this purpose there is a Level II site plan and a Level III site plan. There is a certain size level that triggers the Level III review. There are also some other components that make something Level II vs. Level III. Now the determination as to whether something is a Level II vs. a Level III is an interpretation of the zoning ordinance. Zoning staff is charged with an interpretation of the zoning ordinance - not City Council. At the time the applicant came in, there was a determination made that this should be a Level II site plan. If there was an objection at that point, the review board for that is the Board of Adjustment. The City Attorney's Office wrote a letter and informed Mr. Davis of that. She pointed out another problem in treating this as a Level III - City Council cannot say this Level II project should be a Level III project because that would be a conditional zoning request, and the only entity that can request a conditional zoning is the property owner. This property owner has not asked for that. Before Council is an appeal for the Level II project only.

Mr. Davis also raised the issue that the appeal should be heard as a legislative conditional zoning matter and that was taken care of in a letter. He wanted to make sure that letter was part of the record. He said there are no procedures laid out in the UDO for his hearing and we are essentially operating under the direction of the City Attorney as to what procedures should apply.

Mr. Davis said that the issue he raised under the UDO is the floor plate limits for the tower. Using Appellant Exhibit 2 (Section 7-8-18 of the Code of Ordinances), he noted the floor plate is limited in (a) and (b) to either 40% or a maximum of 8,000 square feet. Subsection (c) is the issue Mr. Glines was discussing "for parcels greater than 16,000 square feet, the agency or official responsible for project review may consider floor plates up to 50 percent if it is surrounded by substantial permanent public or private open space that allows for views and access to direct sunlight." Subsection (c) is the crux of his appeal. According to a survey presented to the Planning Department there are two parcels that were combined into one for this project and they

total 19,929 square feet (Appellant Exhibit 9). The last drawing submitted said 20,031 square feet. The drawing also said 10,015 square feet for the tower floor plate.

Mr. Davis presented his exhibits has and will be using in his testimony: Appellant Exhibit 1 (Sec. 7-5-9.1 of the Asheville Code of Ordinances); Appellant Exhibit 2 (Sec. 7-8-18 of the Asheville Code of Ordinances); Appellant Exhibit 3 (definitions of "open space" and "plaza space" found in Sec. 7-2-9 of the Asheville Code of Ordinances); Appellant Exhibit 4 (Sec. 7-11-4 of the Asheville Code of Ordinances); Appellant Exhibit 5 (Cover Page and Plan A1.08 - Floor Plan for Levels 9-12); Appellant Exhibit 6 (Plan A2.01 - Exterior Elevation); Appellant Exhibit 7 (Plan A2.06 - Exterior Perspective); Appellant Exhibit 8 (Survey); Appellant Exhibit 9 (Buncombe County Map of parcel in question including property cards); Appellant Exhibit 10 (Photo of 21 Battery Park - Suite 206) from parking lot); and Appellant Exhibit 11 (Illustrative exhibit showing arrows pointing to his law office).

Mr. McGuire objected to Appellant Exhibit 9 because he did not see how it was relevant. Mr. Davis said that he would offer that in cross-examination of Mr. Glines. Mr. McGuire reserved his objection.

City Attorney Currin said Appellant Exhibits 1-8 have been admitted into the records; Appellant Exhibit 9 (not admitted yet due to objection reserved); and Mr. McGuire reserved objection to Appellant Exhibits 10-11 until they see the use.

Mr. Davis said that Appellant Exhibit 10 (Photo of 21 Battery Park Avenue - Suite 206); and Appellant Exhibit 11 (Illustrative exhibit showing arrows pointing to his law office). Mr. McGuire then did not object to Appellant Exhibits 10 and 11. Therefore, Appellant Exhibits 1-8 and 10-11 were admitted into the record.

Using Appellant Exhibit 8, he said the survey shows total area of two parcels of 19,929 square feet. That would be below 20,000 square feet for purpose of the UDO limitation on the tower floor plate and restrict it to 8,000 square feet. Using Appellant Exhibit 5, the plans show a 20,031 square feet parcel area and 10,015 for the tower floor plate. He did not know where the discrepancy is in the parcel area, but if you apply the UDO provision on the floor plate limitation, a little over 8,000 square feet. Using Appellant Exhibit 5, he said the dimensions don't match up with the 10,015 square feet. He entered into the Appellant Exhibit 12 (Plan A2.06 which illustrates the floor plate tower relation to 21 Battery Park Building). Under subsections (a) & (b) under 7-8-18 (f) (13) (b) it's approximately 8,000 square feet. By using subsection (c) that Mr. Glines used, the developer is receiving a 25% greater floor plate for the tower than the limit would be in (a) and (b). The wording in subsection (c) is what this appeal is about - open space. He cited the definition of "open space" in Appellant Exhibit 3. The definition tells you some of what open space means and some of what open space is not. It does not tell you that tops of buildings are open space. He said that open space standards define open space as land. Using Appellant Exhibit 4 (which is Open Space Standards) he referred the Council to where the word "land" is used for open space. No where says tops of buildings can be considered to be open space. There is an explicit statement in Appellant Exhibit 4 that says "In no case shall the following land be used for open space; ... land occupied by streets, drives, parking areas, required landscape buffers or structures other than recreational structures" He said his expert will testify about how open space is typically used in planning and how it was used in Asheville - it's not meant to be the tops of buildings or the air space above buildings. He stressed that Subsection (c) states "... project review may consider floor plates up to 50 percent if it is *surrounded by by substantial permanent* public or private open space that allows for views and access to direct sunlight." No where is there substantial open space that fits the UDO definition. Again, the tops of buildings can't be used as open space, and the air space above buildings can't be used as open space. All Mr. Glines said that the project appears to meet this standard because the Grove Arcade is height protected and the surrounding area has much shorter buildings, including the lower podium height of the amenity level of the hotel at the south end of the project. Using Appellant Exhibit 5, the width is considered to be the street frontage on Page Avenue, and the length is the

other direction. The drawing shows 79.75 feet long and 138 feet wide, which totals 11,005 square feet. That is more than 50% of the parcel area. The developer says 10,015 square feet. He felt the solution is to comply with the 8,000 square foot limit. If the length of the building along Battery Park stays the same, then the width would have to change to be 100 feet (not 140 feet). That would essentially move the tower part of the building back to where there would be no blockage of any light or air for 21 Battery Park and he would not have an objection to the project going higher if it was necessary to maintain the same number of rooms. That is the solution he felt was required by the UDO, or at least a remand to say that you can't apply the open space definition in the manner that it was applied in this case. A reconfigured project would have to come back before Council.

Vice-Mayor Hunt said that the reconfigured project would have to go back to the Planning & Zoning Commission, not City Council. City Attorney Currin said that the developer would have to agree to amend his application and ask City Council to rule on that, or Council has to rule what is before them.

At 7:03 p.m., after was no objection from Mr. Davis or Mr. McGuire, Vice-Mayor Hunt announced a 5-minute recess.

City Attorney Currin reviewed the next order of events. Mr. McGuire will cross-examine Mr. Davis and then Mr. Glines will be cross-examined by Mr. Davis and Mr. McGuire. Mr. Davis' witness will then testify and be subject to cross-examination.

The following is a verbatim transcript of the cross-examination:

"Mr. McGuire - You understand today's review is a non-discretionary technical review of the UDO?

Mr. Davis - No I don't. It's a quasi-judicial hearing concerning the UDO.

Mr. McGuire - But it relates to the technical requirements of meeting the UDO.

Mr. Davis - It relates to discretionary requirements as well that are as part of the UDO.

Mr. McGuire - And questions about views or whatever are not part of what the UDO deals with in this situation.

Mr. Davis - That's not true. It does deal with views.

Mr. McGuire - And you've been in your condo for how long?

Mr. Davis - For approximately 6 months. Your office did the closing.

Mr. McGuire - And as a land use attorney, you understand that no view is guaranteed in an urban environment.

Mr. Davis - No particular view is guaranteed, but views are guaranteed as part of the UDO

Mr. McGuire - Where in the UDO is the view guaranteed?

Mr. Davis - Well it's guaranteed in the provision we have been talking about. For one, dealing with floor plate area.

Mr. McGuire - Does it say guarantee a view? Or does it say view is a consideration?

Mr. Davis - It says to preserve views.

Mr. McGuire - Okay, so it's no guarantee.

Mr. Davis - Not for any particular view.

Mr. McGuire - Right. Do you understand that Mr. Fraga's Haywood Park Hotel views were blocked when your condominium project as put in?

Mr. Davis - Actually it's my understanding that he didn't own it at that time.

Mr. McGuire - But whoever did own it, that's part of being a downtown environment. Someone may build a building that blocks your views. That happened to my office, that happened to Mr. Haywood of the Haywood Park Hotel and now you think is happening with your office.

Mr. Davis - I understand Mr. Fraga bought the Haywood Park Hotel after that happened.

Mr. McGuire - Okay. And were you in any way, like Mr. Glines, involved in writing and revising the UDO?

Mr. Davis - I was not. I wasn't living here.

Mr. McGuire - So anything you know about its meaning is based upon you think should happen in this particular case.

Mr. Davis - No, that's not true. I've read all of the minutes of the City Council pertaining to the adoption of the UDO. I've read the UDO in great deal, so that is not true.

Mr. McGuire - So you're well read on it.

Mr. Davis - And I also have an expert witness who will testify.

Mr. McGuire - And are you aware that Mr. Fraga made substantial changes to this design to accommodate views of some of the residents of 21 Battery Park?

Mr. Davis - I was at a meeting in October of 2013 when Mr. Fraga presented essentially the same project that he is presenting today. And whether there were any changes made before that presentation to the neighborhood as a neighborhood meeting, I don't know.

Mr. McGuire - And if there were a neighborhood meeting, which I think there was months before you came to town, obviously you know nothing about that neighborhood meeting.

Mr. Davis - No, the neighborhood meeting was October 2013 and I was present for that.

Mr. McGuire - And at that point, Mr. Fraga got input from the various residents.

Mr. Davis - And ignored it.

Mr. McGuire - He ignored your input.

Mr. Davis - No, he ignored the input from several people at that meeting including several residents of the west side of 21 Battery Park who complained about their lack of light and their views.

Mr. McGuire - Now, you say that this project may be under 21,000 square feet so that (b) would apply rather than (c)?

Mr. Davis - Under 20,000.

Mr. McGuire - Yes. But you don't have any evidence as to whether it's just under or just over, do you?

Mr. Davis - I have the dimensions that were listed on the plans provided to the City Council.

Mr. McGuire - Before they were revised.

Mr. Davis - I have the revised plans.

Mr. McGuire - Okay. And do you have any evidence to support under the revised plans where it shows it's under 20,000 square feet?

Mr. Davis - I have the survey of the parcels. I don't know how you can get any better than that.

Mr. McGuire - And the revised parcel shows it's not more than 20,000 square feet, correct?

Mr. Davis - I haven't seen a revised survey.

Mr. McGuire - Okay. Now when you talk about open space, all of your comments before Council, up to now, had to do with on top of the Grove Arcade, correct?

Mr. Davis - No.

Mr. McGuire - Did you talk about whether there was open space on any other side of the project?

Mr. Davis - Well there are buildings on every side of the project.

Mr. McGuire - But, can you not have open space between buildings?

Mr. Davis - You can have some open space between buildings, yes.

Mr. McGuire - And in fact the deep dark hole that you're talking about is 50 feet from your project over to the building we are talking about, correct?

Mr. Davis - That is correct, but that is parking space which cannot be used as open space under the UDO.

Mr. McGuire - It does give you air and light.

Mr. Davis - But it's not open space.

Mr. McGuire - Okay, so we want to get technical, that's fair enough.

Mr. Davis - That's what we're here for.

Mr. McGuire - Absolutely and we will get technical, but in terms of your being in a deep dark hole it's 50 feet over that hole.

Mr. Davis - I've seen the shadow studies that were referred to, but not shown to anybody and that deep dark hole is deep and dark all but 2 hours a day.

Mr. McGuire - Now?

Mr. Davis - And with the project.

Mr. McGuire - You've seen that the shadow study shows that the shadow impact requirements have been complied with in this case.

Mr. Davis - Assuming that is a valid study it shows that for the public plaza, which is what I consider the sidewalk along the Grove Arcade a public plaza, that it is only impacted about an hour a day.

Mr. McGuire - So you're not arguing the shadow impact and you have no evidence relating to that today?

Mr. Davis - I don't have any evidence to refute the drawing that I've seen that Mr. Glines apparently reviewed very briefly.

Mr. McGuire - Okay, so that's not an issue for decision today - shadow impacts.

Mr. Davis - It's an issue if your client brings it up.

Mr. McGuire - Okay, but not from your viewpoint?

Mr. Davis - I didn't bring it up.

Mr. McGuire - Okay. Now there is open space. First of all, the definition of open space. The definition in the UDO gives examples. Correct?

Mr. Davis - It gives a definition plus examples.

Mr. McGuire - And the examples are, says the examples are not limited to those examples. Open space is not limited to those examples, correct?

Mr. Davis - It says may include, but is not limited to. Correct.

Mr. McGuire - So you would interpret that as someone who wrote that knew that there might be other examples of open space.

Mr. Davis - Except that the open space is further limited by the definitions and the language in the open space standards.

Mr. McGuire - And you understand generally open space standards may vary from one use to another?

Mr. Davis - They do, yes.

Mr. McGuire - And there's nothing in the open space definition in anyway that excludes including the top of the Grove Arcade.

Mr. Davis - Well, let's be specific. In 7-2-5 there is nothing that even remotely resembles the top of the Grove Arcade. But it doesn't exclude it explicitly. But in 7-11-4 it does.

Mr. McGuire - Now if you had, say the original tower on the Grove Park Inn that was intended by Mr. Grove, do you know who Mr. Grove is?

Mr. Davis - I do. I haven't met Mr. Grove

Mr. McGuire - Of course he's been gone for decades. But, you've seen the design.

Mr. Davis - I have - it's right on the street corner.

Mr. McGuire - And if that had been built so that the Grove Arcade will, how many more ... 8 or 10 Mr. Grove?

Mr. Davis - I don't know.

Mr. McGuire - That would certainly affect the light and air on the other side of the street.

Mr. Davis - But it's a skinny tower.

Mr. McGuire - It's a skinny tower, but the point is that if you had.

Mr. Davis - To a certain extent, yes.

Mr. McGuire - If you had a skinny or fat or any kind of tower over there that took up open space, it would keep air and sunlight from coming down to where the current building is and where your building is.

Mr. Davis - But it would probably comply with the UDO because it's a very small percentage of the lot.

Mr. McGuire - And is there any definition here about how much open space there has to be? That's something that the staff is to fairly interpret?

Mr. Davis - The term is substantial and I think that's for the City Council to interpret?

Mr. McGuire - That's correct. But there is no set percentage or amount of air or otherwise.

Mr. Davis - No, it just says substantial, permanent public or private.

Mr. McGuire - Now, let me ask you a couple of things just about your space, if I may. I think this is working okay if I can show you these photographs so that folks can see them. That shows a little bit of a shadow. But, does "x" mark the spot?

Ms. Currin - Make sure that you speak in the mikes so we can get the recording.

Mr. McGuire - Does this show "x" where your condo is?

Mr. Davis - Yes.

Mr. McGuire - And does this also show that? That is your condo on the other side of those trees.

Mr. Davis - It is obscured by a tree, but yes.

Mr. McGuire - Okay. And you're not complaining about the tree cutting out your air and light, are you?

Mr. Davis - No, in the winter time I have a perfect view of the Grove Arcade.

Mr. McGuire - And is that another photo that shows your condominium behind those trees?

Mr. Davis - Yes.

Mr. McGuire - And is this photograph show "x" where the side of your condominium is?

Mr. Davis - We're in the back of the building or the north side of the building? Yes.

Mr. McGuire - Right. And what does that area look over to, the wall?

Mr. Davis - That looks over to the wall of the Haywood Park Parking Garage.

Mr. McGuire - Okay. And is this a photograph showing "x" at where about the level of that ladder goes up to where your condo is?

Mr. Davis - That's my office window to the right of the "x". Yes.

Mr. McGuire - And is this a fair view - it's actually taken from that ladder - of your view from your condo?

Mr. Davis - With the leaves on the trees, yes.

Mr. McGuire - Okay. And is this the view from your alley window, that is, you look over at a wall?

Mr. Davis - It's better than that, I think.

Mr. McGuire - Okay. But basically it looks over to the wall?

Mr. Davis - It does look at the wall.

Mr. McGuire - Now in considering open space it's also legitimate, is it not, to consider space on sidewalks?

Mr. Davis - The sidewalks that are substantially larger than the requirements.

Mr. McGuire - And that would be true of the sidewalk in front of the Grove Arcade, correct?

Mr. Davis - I don't know.

Mr. McGuire - Well you called it a public plaza?

Mr. Davis - Well, I mean it's one I think is wide at points and not wide at other points.

Mr. McGuire - Well how can it be a public plaza but not big enough to be a walkway for purposes of air and space?

Mr. Davis - If that is, it's not substantial.

Mr. McGuire - Are you being consistent on this Mr. Davis?

Mr. Davis - Of course I am.

Mr. McGuire - You want to say it's a plaza, but it's not open space.

Mr. Davis - I don't know the requirements for sidewalks.

Mr. McGuire - But it's open space and the open space definition specifically includes walkways.

Mr. Davis - That, it does.

Mr. McGuire - So it would include sidewalks.

Mr. Davis - It could include sidewalks if you look at 7-11-4 however, it restricts that to sidewalks that are substantially larger than the requirements.

Mr. McGuire - Ones that might even be called a plaza.

Mr. Davis - Correct.

Mr. McGuire - Okay. And you would have to consider not only the roof of the Grove Arcade but the open space over what you call the plaza between the Grove Arcade and this projected building.

Mr. Davis - I don't understand the question.

Mr. McGuire - Open space whether or not it includes above the Grove Arcade would certainly include the space on the larger than usual, you call, public plaza area between the Grove Arcade and where this building would be.

Mr. Davis - If those sidewalks were wider than the requirements. Substantially wider than the requirements, yes.

Mr. McGuire - Then do you dispute that they are substantially wider with the tables?

Mr. Davis - I don't know. I didn't hear Mr. Glines talk about the requirements, so I don't know.

Mr. McGuire - So you don't take any position on that.

Mr. Davis - I don't.

Mr. McGuire - And there is also open space on the north end going across Battery Park, correct? There are sidewalks over there, on both sides of that street.

Mr. Davis - There is a sidewalk on the east side of Battery - I'm sorry - you talking the north end, or what?

Mr. McGuire - Yes, of the building. Battery Park Avenue.

Mr. Davis - The north end of the building would not be on Battery Park. That's the south end of the building.

Mr. McGuire - It would be across looking over to the ... that have light next to the Grove Arcade's expanded sidewalks.

Mr. Davis - There are sidewalks over there. I don't know how wide they are.

Mr. McGuire - But you know there is dining out on them, correct?

Mr. Davis - There is, yes.

Mr. McGuire - And there is - you can walk in between the dining area and the restaurant so it's wider than a normal sidewalk.

Mr. Davis - Well there's a bump-out for dining.

Mr. McGuire - Okay and that makes it - you would call that a plaza?

Mr. Davis - No.

Mr. McGuire - Okay, ... some of the open space.

Mr. Davis - It's a sidewalk.

Mr. McGuire - Which is open space under the walkway example of open space.

Mr. Davis - Only if it's substantially larger than the requirements.

Mr. McGuire - And you have no idea whether any of these sidewalks where they have alfresco dining and so forth is substantially larger.

Mr. Davis - I don't.

Mr. McGuire - You defer to Mr. Glines on that?

Mr. Davis - I didn't hear him testify to that.

Mr. McGuire - You did hear him testify though that he considered open space to be those sidewalks?

Mr. Davis - I did.

Mr. McGuire - Okay. So we did cover that he thought those sidewalks were open space.

Mr. Davis - And he said he didn't think it was a public plaza either.

Mr. McGuire - One other question about the Grove Arcade top. You're aware that there is an agreement in place with the Historic Preservation Society that allows no further building above where it is now.

Mr. Davis - I have reviewed an easement.

Mr. McGuire - Yes.

Mr. Davis - If that's what you're talking about.

Mr. McGuire - Yes, and that easement says no further building up above the top of the building cap.

Mr. Davis - Unless it was changed. The easement restricts that, but easements can be changed.

Mr. McGuire - But it restricts it permanently, correct.

Mr. Davis - Permanent easements can be changed.

Mr. McGuire - But what we're talking about today is what open space there is today, correct?

Mr. Davis - No, we're talking permanent open space. That's the term used in the UDO.

Mr. McGuire - And, how much open space is there between where this building will be and your balcony?

Mr. Davis - I haven't measured it. And that's not open space under the definition in the UDO because it's parking.

Mr. McGuire - Is it all parking?

Mr. Davis - Yes. There's a ramp for vehicular access, which is also excluded as open space.

Mr. McGuire - So, you want to exclude some air and light because you can technically under the UDO ... open space on the other three sides.

Mr. Davis - No, I'm not trying to exclude anything. The UDO excludes it.

Mr. McGuire - That's all."

City Attorney Currin said that Mr. Glines will be cross-examined by Mr. Davis and Mr. McGuire.

Mr. McGuire wanted to make sure that what has been admitted by Mr. Glines, in terms of his report and his exhibits, is actually in evidence (City Exhibit 1 - Staff Report; City Exhibit 4 - Maps and Plans). Mr. Davis had no objection.

The following is a verbatim transcript of the cross-examination:

"Mr. Davis - Mr. Glines, how long have you been with the City of Asheville as a planner?

Mr. Glines - I've been with the City of Asheville since 1997. I was a park planner coming in.

Mr. Davis - Okay. How long have you been an urban planner?

Mr. Glines - Since, I believe the date was 2001.

Mr. Davis - Okay. Roughly 13 years. In that entire 13 years have you ever approved any open space determination based upon the space above a building?

Mr. Glines - I'm trying to remember if we've had a rooftop deck in the past.

Mr. Davis - Or have you?

Mr. Glines - We've had rooftop decks approved in the past, but in the downtown area we don't require open space, so they didn't have to meet any standard besides that they were ...

Mr. Davis - Anywhere in the City of Asheville have you approved open space which includes area above a building?

Mr. Glines - I'm thinking of some other projects. I'm thinking of the Pioneer building on Broadway. I can't remember all of the features of that plan, but they do have a rooftop open area on the top, and they also have space in front. But I can't ... which combination of space on top and which space constitutes the open space.

Mr. Davis - In other words, you don't know.

Mr. Glines - I can think of examples with the buildings developed in the City of Asheville who have rooftop spaces. Whether or not they had to meet technical standards to meet the open space I can't say right off the top of my head.

Mr. Davis - You understand when a developer counts something as open space they essentially dedicate it that way, right?

Mr. Glines - I don't know that. Yes, okay.

Mr. Davis - Well, I mean it's part of their project from there-on. They have to preserve their open space that they dedicate as part of their approval process. Right?

Mr. Glines - If it's a - yes.

Mr. Davis - And so you would know if you had approved a certain amount of open space that was space above a building.

Mr. Glines - Of the building to meet the open space? I can't recall everything that we reviewed years.

Mr. Davis - Did you receive a document request from me for any documents wherein you approved open space as a space above a building?

Mr. Glines - We have seen that. We have not had time to respond to it. It came last week, late.

Mr. Davis - It came last week, but you haven't found anything yet.

Mr. Glines - I haven't had a chance to look.

Mr. Davis - Okay. Let's go back to the types of things you said count as open space for this project. And before we do that, what do you mean by substantial.

Mr. Glines - A good amount. A good amount.

Mr. Davis - A good amount. Are we talking blocks worth? Are we talking thousands of square feet?

Mr. Glines - I think that in this case, studying this site, that you are probably in the thousands of square feet.

Mr. Davis - If you count the tops of buildings, right?

Mr. Glines - And you typically count the ground as well.

Mr. Davis - Let's go into what you said counting here. The first, let me make sure we're looking at the definitions. It might be easier to go back and do this. Let's look at the open space standards and let's start with that. It says the classes of land, enumerated in the subparagraphs below may be utilized to meet the requirements of this section. You understand that is what your UDO Sec. 7-11-4 (d) says, right?

Mr. Glines - Right. Section 11 said that.

Mr. Davis - Right. And then it goes on to say that in no case shall the following land be used for open space; land occupied by streets, drives, parking areas, required landscape buffers, or structure other than recreational structure.

Mr. Glines - I see that written there, sure.

Mr. Davis - And is that something you are familiar with in your practice?

Mr. Glines - You can find that in 7-11-4 of the open space standards of the UDO.

Correct.

Mr. Davis - And you did not review this when it came to determining what substantial open space was for the proposed FIRC project?

Mr. Glines - We have considered this and reviewed it.

Mr. Davis - And you have a list of bullets in your staff report that you went through with the City Council a few moments ago and the first one was, substantial sidewalk area surround this property directly adjacent to the site and across the street. Now, are these land use for public sidewalks significantly in excess of the standard sidewalk requirements?

Mr. Glines - I believe that they are.

Mr. Davis - Which ones.

Mr. Glines - I believe that, the downtown standard for sidewalks is 10 feet for new construction and proposed and new sidewalks in all cases will be greater than 10 feet. So, I believe, we have a scaled plan, we can study the exact sidewalk in front of the building as proposed. It will be at least 11 feet. So, is one foot substantial? It's 10% more than the requirement?

Mr. Davis - 11 feet for which one are you talking about?

Mr. Glines - For the Cambria Project proposed.

Mr. Davis - The one that's required for the project itself?

Mr. Glines - Yes.

Mr. Davis - And that's not public sidewalk is it?

Mr. Glines - Oh yes.

Mr. Davis - Well it's public in the sense that.

Mr. Glines - Totally public.

Mr. Davis - The public can use it but the developer is being required to provide it as part of the project approval.

Mr. Glines - Correct, but it is a public sidewalk. And then on Battery Park Avenue, again, adjacent to the building, the sidewalks there are quite substantial. They are at least 15 feet today, and when the site is developed and approved, or developed and built. Five feet more in the downtown area - 5 feet over 10 feet, we are thrilled, I can tell you that as a planner, we're

thrilled to have 15 foot sidewalks anywhere in the downtown area. And that's substantial. In the Grove Arcade, if I can.

Mr. Davis - Let me ask you a question about that. Are those sidewalks.

Mr. McGuire - Let him finish his answer.

Mr. Davis - I was going to ask him a question about what he just said, and then he can continue.

Ms. Currin - Let him finish his answer.

Mr. Davis - Okay.

Mr. Glines - I'll be brief and I apologize. Just, in front of the Grove Arcade, that sidewalk is quite substantial. I took a tape measure out there and did measure it. And, it's 18 feet is the standard width in front of the Grove Arcade. 18 feet. And that includes the dining spaces and the wide isle and the street trees and the benches, all in that terrific public space out front. And that's not counting those dining spaces that have to be ... and some of the other spaces that have bigger bulb-outs on the corner or half way up the block there's greater spaces developed for those, for public amenity space. And that was beautiful improvements done by the Grove Arcade when the Grove Arcade was improved. As I said before, it wasn't dedicated as a plaza, but it is valuable open space.

Mr. Davis - You would consider it a plaza, wouldn't you?

Mr. Glines - I, no I don't consider it a plaza because the Grove Arcade is privately managed. It's not something, that from a public standpoint, we have control over. The Grove Arcade Foundation does.

Mr. Davis - We're going to leave that issue aside. The next bullet that you had was the combination of building step-backs which are required under the UDO for this project. That is land occupied by structures other than recreational structures, correct?

Mr. Glines - I think they're recreational structures. I think they're recreational uses.

Mr. Davis - A hotel is a recreational structure?

Mr. Glines - I think the bar and restaurant are. And I think the outdoor plaza is for the enjoyment of patrons who visit the hotel and stay there.

Mr. Davis - Is that what you would consider recreation? Public recreation in this City?

Mr. Glines - It's private recreation.

Mr. Davis - I bet I recreate some in that capacity myself, but that's not what the UDO considers open space, is it?

Mr. Glines - In this consideration I don't think it's limited that. I think that can be counted.

Mr. Davis - Even though 7-11-4 says in no case shall structures other than recreation structures be considered?

Mr. Glines - You're on top of a building. Is there any other use on top of that building? It's for recreational purposes on top. Can you not have a rooftop deck or other facility? What's a balcony? It's part of a - a balcony is part of.

Mr. Davis - Let me. I know you want to argue your point. You were meeting with Mr. McGuire before you came on for cross-examination. Was he giving you pointers about your testimony?

Mr. Glines - He certainly wasn't.

Mr. Davis - Okay, what were you discussing with Mr. McGuire?

Mr. Glines - Ms. Daniel wanted to talk about in urban settings, .. about the witness, who might be a potential witness, but an urban setting is common to use rooftop decks as open space - to meet open space requirements if you have them to meet.

Mr. Davis - Which is prohibited by 7-11-4. Correct?

Mr. Glines - I don't agree with that. I don't agree with what you're interpreting that up there.

Mr. Davis - I'm just reading words.

Ms. Currin - Let's move along. Asked and answered about 10 times.

Mr. Davis - The next bullet point. The Grove Arcade is height protected. That doesn't comply with 7-11-4. The top of the Grove Arcade.

Mr. Glines - But the definition, the basic definition starting in the beginning of the UDO ... open space means an area that is intended to provide air and light. What does that do in that

roof? Because it's not really built upon it will always provide a western view that provides air and light to everybody that's east of it.

Mr. Davis - Except for people east of the Fraga building, right?

Mr. Glines - Not everybody.

Mr. Davis - But looking at 7-11-4, you would agree that it prohibits the use of structures as open space, correct?

Mr. Glines - But if you have a rooftop deck, is that not designed as a recreational space? You don't think it is.

Mr. Davis - Is there a rooftop deck on the Grove Arcade?

Mr. Glines - I don't think so.

Mr. Davis - Now, onto the next one. The roof of the podium height at the proposed Cambria Hotel building at the third and fourth levels provides a restaurant. You say that serves as open space?

Mr. Glines - I do.

Mr. Davis - That's land occupied by structures other than recreational structures, correct?

Mr. Glines - I would say that is designed to be a recreational space.

Mr. Davis - Is that not a commercial space for the benefit of the patrons of the hotel and the people who frequent the restaurant for the profit of FIRC?

Mr. Glines - I don't think that's a restriction on ... open space. It already says it's private or public. It doesn't have to be free.

Mr. Davis - So dining is recreation in your interpretation?

Mr. Glines - It is.

Ms. Currin - Let's move on. You've asked him that many times. Let's keep going.

Mr. Davis - Sidewalks adjacent to the project site is the location for an urban trail public art piece known as "Grove's Vision." You counted that already, right? You counted the sidewalk already?

Mr. Glines - Yes, but that sidewalk also has a public art component which is part of an urban space amenity.

Mr. Davis - Are you going to count it twice?

Mr. Glines - I'm counting it as a feature that adds to the consideration of that area beginning substantially providing urban open space amenities.

Mr. Davis - The term is substantial open space, I believe. So does that add to the open space?

Mr. Glines - I think it's a special corner and I think we don't have it in every corner. And actually it might be in a bulb-out section of the street section.

Mr. Davis - And then you're next bullet is café spaces along Battery Park Avenue and Page Avenue. You counted those already too, right?

Mr. Glines - If they're open space amenities. So we're making a point of how this area, altogether - there's trees, benches, wider sidewalks, pedestrian crosswalks, wayfinding signage, signage put in for the ... all contribute to open space type of designation.

Mr. Davis - You counted it already. Yes or no.

Mr. Glines - I don't know what you're saying - counted, because I'm not coming up with a number. Are you? I'm not coming up with a number.

Mr. Davis - I'm asking you if you have. I mean, I asked you what substantial was. Are you counting that as substantial an area?

Mr. Glines - If it's a meaningful area, absolutely.

Mr. Davis - Does it add to the substantiality of the area, meaning the area - the square footage of open space.

Mr. Glines - It adds to the usefulness of the area.

Mr. Davis - You counted it all ready as square footage then?

Mr. Glines - I didn't count square footage.

Mr. Davis - Okay. Street trees, wide pedestrian crossings, benches, surrounding landscaping - you counted that already right?

Mr. Glines - Counted or considered it? I think it. I think it.

Mr. Davis - It's replicative of the bullet you already had that dealt with the sidewalks.

Mr. Glines - I think it's illustrative of what an urban open space setting should have and that's what our expectation is, which I think is what is provided on the property.

Mr. Davis - It's not adding to the area. You already took that into account.

Mr. Glines - ... additional air - those are air shared spaces for it.

Mr. Davis - The height of the 8th story deck, which is a deck for hotel guests with rooms adjacent to it. You considered that open space too, didn't you?

Mr. Glines - I did.

Mr. Davis - That's land occupied by structures other than recreational structures? Is a hotel a recreational structure?

Mr. Glines - The deck is when it's adjacent to the room. A balcony is when it's adjacent to the room, isn't it?

Mr. Davis - Wouldn't any developer love to have you interpret the UDO this way ...?

Ms. Currin - Please just ask him questions and let's move along.

Mr. Davis - I mean you're setting a precedent here, Mr. Glines. Is this a precedent you think should be set for the City?

Mr. Glines - In the downtown area it's a special environment. The open space is not required to even be on the same site, which is unusual. All over this Section 7-11-4 is expecting it all to be provided on site. In the downtown area, we have special districts where it doesn't have to do that. It can, but it doesn't have to in order to meet the standards. So this is why all the other things are important factors in considering viable useful urban open space in an urban environment. That's the thing we've been trying to create in the downtown area. A viable urban space that has spaces up above and below.

Mr. Davis - Would you like to answer my question please?

Mr. Glines - In the Downtown Master Plan, we talk about vista parks. How do we get more vista parks? This is a goal in the Master Plan. This is kinda how we do it. We're going into the direction of rooftop decks - it's a great thing. It adds to the recreational use.

Mr. Davis - Mr. Glines, you gave this developer a 25% bonus for the open space that you considered to be substantial. Is that a precedent that is being set with this hearing?

Mr. Glines - I think each case.

Ms. Currin - Let me interject. He is not. You're at this hearing to ask this Council to give that bonus. He is not giving the bonus.

Mr. Davis - I withdraw that question. You have another bullet that is your last one that says, by definition the floor plate requirement of the hotel tower above 75 feet is limited to 50% of the lot area under your determination. Then, the other negative space in the same area is open and not built upon above that level. Well, it is built upon, correct? It will be built upon.

Mr. Glines - Not above the level of 75 feet.

Mr. Davis - Okay, but it's not open space because it is land other than recreation structures. I mean, it's not open space but.

Mr. Glines - It's an area of a void, it's a void ...

Mr. Davis - How about building.

Mr. Glines - That supplies what happens with that space - the gap. There's a gap. Mr. Fraga is designing a gap at the podium height. And that gap is open space. It means areas intended to provide light and air. What else would that purpose be for? You can't occupy it but you can enjoy it. It has a lot of scenic quality.

Mr. Davis - It does not meet the definition of open space in the UDO, correct?

Mr. Glines - I believe it could.

Mr. Davis - The entire 50% that is not the tower is now a structure.

Mr. Glines - It's ...

Mr. Davis - Could you let me finish my question?

Mr. Currin - Alright. Let's question and answer and wrap it up because you've asked him the same thing many times. Let's just get it done.

Mr. Davis - I'm getting ... he has presented to you for the first time at this Council meeting. 7-11-4 says that you - in no case shall structures, other than recreational structures be used as open space. This 50% that you're counting again for the FIRC property is a structure other than a recreational structure, correct?

Mr. Glines - It's above areas. It's above areas that will be used in ways that have a recreational component to them. They're for balconies and decks.

Mr. Davis - So, you're going to count that again. You've already counted the balconies and decks.

Mr. Glines - I'm not counting them again.

Mr. Davis - Okay. You've got all these bullet points, but really you're counting the tops of buildings and sidewalks, correct?

Mr. Glines - Yes.

Mr. Davis - And, one thing that I want to clarify too, is the approval from the Planning & Zoning Commission, your staff report and the staff report, I think, for the City Council says that there was a traffic study done for traffic on Battery Park. I'm sorry, on Page Avenue. That traffic study was not in your file. Have you reviewed one?

Mr. Glines - I personally have not reviewed one, and I'll have to look at that note to confirm. To make sure that's ...

Mr. Davis - And one final thing, this,

Mr. Glines - If I might could say that the traffic studies are reviewed by the Transportation Department - the City Engineer.

Mr. Davis - Okay. Now this shadow study that was done that you referred to, you didn't present that today, did you?

Mr. Glines - I did not.

Mr. Davis - And, it only arrived in your office May 6, correct?

Mr. Glines - I don't remember the date, but I could accept that ...

Mr. Davis - And you didn't review it to determine if it was a valid study, did you?

Mr. Glines - I did review it to determine it was a valid study.

Mr. Davis - And how did you do that?

Mr. Glines - I reviewed the incremental images based on point in time information provided ...

Ms. Currin - I think that probably, Mr. McGuire is that going to be presented by your, in your presentation?

Mr. McGuire - Although it really hasn't been made an issue ..

Mr. Davis - I'll withdraw that question, except for. What you're saying is that you just reviewed the images they provided to you, correct?

Mr. Glines - Correct.

Mr. Davis - Okay, that's all I have."

Councilman Bothwell said that according to the presentation heard, the proposed square footage of the tower represent 55% of the surveyed area. Where those numbers on the plans correct? Mr. Glines said they identified early in the staff report that there is a corner parcel that was not originally included in the survey and it wasn't registered by Buncombe County. He said it was his understanding that it was just below 50%.

The following is a verbatim transcript of the cross-examination:

"Mr. McGuire - Mr. Glines, did your answer just explain why there is no question about this project being under subsection (c) rather than (b)?

Mr. Glines - Yes.

Mr. McGuire - Okay. By the way, you said you were a park planner for a number of years?

Mr. Glines - Yes.

Mr. McGuire - On the day when we are celebrating Pritchard Park, who designed Pritchard Park, the current Pritchard Park?

Mr. Glines - I had a lot to do with that.

Mr. McGuire - Okay, thank you. Now, in terms of the open space, you were asked if you considered open space above a building. Have you had any building like the Grove Arcade where there was a permanent easement allowing nothing to be built above that air space?

Mr. Glines - I haven't. I can't think of another example.

Mr. McGuire - And is that important that ... if you could consider open space above a building if the air space is permanently protected?

Mr. Glines - I think it's substantial information and quite an unusual situation.

Mr. McGuire - Now, you've actually, you've talked about giving a bonus to Mr. Fraga. You approached this on behalf of the City?

Mr. Glines - Yes.

Mr. McGuire - And in fact you've added requirements to this project, I believe, having to do with the north, south side, sorry, setback?

Mr. Glines - Yes.

Mr. McGuire - Alright. And you've changed the project because you thought it needed to be done so with the UDO.

Mr. Glines - That's correct.

Mr. McGuire - But now, with those changes that have been made, you say this project fully complies with the UDO.

Mr. Davis - ... question. I think it's beyond cross, it's friendly cross.

Ms. Currin - Well, you asked him a lot of questions about whether it complied with the UDO or whether it didn't, so I think he can follow-up with that. If you want to call him as a witness, I think you can do that as well. But we might as well, I think - do you want to use him as a substantive witness as well?

Mr. McGuire - No. Could you please put that standard up, so we can see it again?

Mr. Glines - The definition?

Mr. McGuire - Okay. Now you've heard Mr. Davis say that within an ordinance or a law the same phrase can mean something different in different places?

Mr. Glines - Right.

Mr. McGuire - Is that true of open space standards?

Mr. Glines - I think so in this case.

Mr. McGuire - And, in fact, this standard is more restrictive because it relates to actually designating something as open space. Is that correct?

Mr. Glines - Correct.

Mr. McGuire - Whereas, the standard of open space for the purposes of this project, it doesn't have to be designated, it just has to be considered?

Mr. Glines - That's correct.

Mr. McGuire - So, would you apply this more restrictive standard for an open space designation to the project at issue?

Mr. Glines - No.

Mr. McGuire - Okay. And you say that the patio or deck on the side of this project would be used for recreational purposes?

Mr. Glines - I feel that's recreational purposes.

Mr. McGuire - And you feel that dining out is a recreational purpose?

Mr. Glines - I think it is. Especially in downtown Asheville.

Mr. McGuire - And if you put aside, completely put aside the Grove Arcade and the top of that space that is permanently dedicated to be open - if you put that aside, do you still think there is sufficient open space?

Mr. Glines - I think that, yes. And I think that most areas of downtown would love to have the sidewalk configurations and opportunities for the streetscape that we have at the Grove Arcade and surrounding areas. We are working towards that. That's really a model, it's really a model for downtown is to have the wider sidewalks. We're working on it all the time. Every project we get we try to assure that we're getting minimal, but trying to get more. So, I think it's a model for downtown.

Mr. McGuire - And so, taking out the top of the Grove Arcade, which was one of the nine examples of open space - the other eight are sufficient you feel to look at this and make that consideration and approve the project?

Mr. Glines - I do.

Mr. McGuire - Thank you."

When Vice-Mayor Hunt asked if there is any permanency of open space, Mr. Glines said that the City's most permanent open spaces are street rights-of-way. The City has converted pavement to increase sidewalk space. He used the example of Pritchard Park where the sidewalk along College Street was doubled to 17 feet to increase the open space.

Vice-Mayor Hunt clarified that in Section 7-2-5, the open space requirement definition provides guidance of some examples of open space, but it also uses the phrase that "open space may include, but is not limited to." Mr. Glines said that this is in the unique context of downtown. This is helpful from looking at the general expression of open space and the intent in downtown based on reading the Downtown Master Plan. The purpose of all those extra regulations to restrict development in the downtown area to make sure we had plenty of areas that were not built upon above 75 feet. All projects are studied on a case by case basis.

When Councilman Bothwell questioned the square footage again, Mr. Jeff Hunter, architect for the developer, said that the inconsistency of the square footage is because there are some cut-outs from the dimension in the overall plan.

Councilwoman Wisler asked Mr. Glines if when he looks at evaluating substantial open space, was he looking at the definition in Sec. 7-2-5, and not Sec. 7-11-4, and that would be consistent with what you have considered in the past with downtown properties. Mr. Glines replied yes, for downtown projects, Section 7-2-5 is where he would look.

When Councilman Pelly asked if open space needs to be publicly accessible, Mr. Glines said no, that on the sidewalk level, the public could go to the space, that's true. The test says public or private open space. There is the assumption that you could have a private balcony or deck that no one else could use, such as the hotel guests who have a balcony for their own purpose. If someone wanted to go to the restaurant but not spend money they could enjoy the space, and that would be considered open space. The Downtown Master Plan was trying to get at vista parks, and encouraged rooftop vista parks. That Code did not give us a lot of direction on whether it has to be free, but even if you go to the top of the Empire State Building you're paying for it - it's public but there is a fee.

Councilman Bothwell suggested that in the future the word "substantial" be defined.

Mr. Davis asked Mr. Glines "Let's assume this developer is entitled to use the rooftop of the Grove Arcade as open space as you proposed. Let's say the next developer wants to build a tower on the other side of the Grove Arcade, on the western side of it. Can they use the same open space, the same rooftop as open space?" Mr. Glines replied "I think we would study the context of that." Mr. Davis said "Can you answer yes or no." Mr. Glines said "I think it would count. If it were on the west side and they were developing on the west side and they were surrounded on the other side." Mr. Davis said "Using the same open space." Mr. Glines said "The Grove Arcade is useful open space if you're on the west side or east side because the sun is going to reach your building." Mr. Davis said "The north side or the south side. You can totally surround the Grove Arcade with towers using your definition of open space." Mr. Glines said "The north side already has a tower, so I don't think." Mr. Davis said "The south side." Mr. Glines said "The south side has a City building and I don't know if we have any plans for that." Mr. Davis said "Theoretically you could do that under your definition of open space." Mr. Glines said "I think it's surrounded by."

Vice-Mayor Hunt asked Mr. Glines if there was a green, pristine public park on the side of the Grove Arcade, would it be the intent of the ordinance that that would qualify as open space for any buildings that surrounded it. Mr. Glines replied yes.

At 8:08 p.m., Councilman Smith moved to suspend the hearing for a break. This motion was seconded by Vice-Mayor Hunt and carried unanimously.

Closed Session

At 8:08 p.m., Councilwoman Wisler moved to go into closed session for the following reasons: (1) To prevent disclosure of information that is privileged and confidential, pursuant to the laws of North Carolina, or not considered a public record within the meaning of Chapter 132 of the General Statutes. The law that makes the information privileged and confidential is N.C.G.S. 143-318.10(3). The statutory authorization is contained in N. G. S. 143-318.11(a)(1); (2) To consult with an attorney employed by the City about matters with respect to which the attorney-client privilege between the City and its attorney must be preserved, including a lawsuit involving the following parties: Roger S. Aly; City of Asheville. The statutory authorization is contained in G.S. 143-318.11(a)(3); and (3) To establish or to instruct the City's staff or negotiating agents concerning the position to be taken by or on behalf of the City in negotiating the terms of a contract for the acquisition of real property by purchase, option, exchange or lease. The statutory authorization is contained in G.S. 143-318.11(a)(5). This motion was seconded by Councilman Pelly and carried unanimously.

At 8:35 p.m., Councilman Bothwell moved to come out of closed session. This motion was seconded by Councilman Smith and carried unanimously.

At 8:35 p.m., Vice-Mayor Hunt announced that the hearing would proceed.

Mr. Davis said that he has one witness, Mr. Gerald Green, and submitted Mr. Green's resume as Appellant Exhibit 13.

The following is a verbatim transcript of Mr. Green's testimony:

"Mr. Davis - Mr. Green, you state your qualifications please.

Mr. Green - I have a Masters Degree in Planning from the University of Tennessee and I've been fortunate enough to spend the 30 years since I received that degree planning in western North Carolina. I was Planning Director for the City of Brevard in Transylvania County five years. Worked for the City of Asheville 14 years, 5 years as Chief Planner, and for better or for worse, I was the lead author on the UDO. Then I went into private practice for a little over 8 years, with projects by my firm receiving honors of outstanding planning awards from the NCAPA. For the past three years I've been Planning Director for Jackson County, North Carolina.

Mr. Davis - So you're currently serving as Planning Director, is that correct?

Mr. Green - That's correct.

Mr. Davis - Does that include urban planning as well?

Mr. Green - We do the urban planning for the County and the four municipalities in Jackson County.

Mr. Davis - And when you were with the City of Asheville, you would be involved in urban planning?

Mr. Green - Yes.

Mr. Davis - Now, you have testimony that you would like to present that concerns primarily the issue of the UDO requirement for floor plate area?

Mr. Green - Yes. And I'll start by saying it's an honor being back in this room before you. I regret that some of my friends, Lou Bisette I've known for 25 years and have the utmost respect for, Craig Madison, and even my friends and colleagues Alan and Judy. I regret being with a different opinion this time, but I hope this shows that.

Ms. Currin - Let me interrupt for a second. If he's giving an opinion, are you tendering him as an expert witness?

Mr. Davis - I am, yes. And, again not knowing what procedure you wanted to use in court, sometimes in court, in Federal Court, you question the witness about his qualifications and there's no objection if he becomes an expert.

Ms. Currin - Well, what I think we need to do before we get an opinion.

Mr. Green - I'll regret that statement.

Ms. Currin - Is he going to testify and give his expert opinion, or is he going to testify about facts?

Mr. Davis - He's going to give his expert opinion.

Ms. Currin - Okay. What area are you going to qualify him as an expert in?

Mr. Davis - He's an expert in urban planning.

Ms. Currin - Okay, why don't you go ahead and go through that process first so we can know whether he's qualified, so whether we can know he can testify.

Mr. McGuire - We can stipulate that ... is an expert.

Ms. Currin - Alright. It's been stipulated. Are you tendering him as an expert?

Mr. Davis - Who am I tendering him to?

Ms. Currin - The Council.

Mr. Davis - Yes, I am.

Ms. Currin - Okay. Alright. Then he's accepted. Alright. Let's go on.

Mr. Green - Thank you. I'd like to start by clarifying how the UDO works. The definition in Section 7.2.5 of open space, which has been discussed at length here this evening, is used as the opening arena for the discussion of open space. It sets a general standard. Then the standards within 7-11-4 for open space are the more specific standards that apply to the application of those standards and those regulations throughout the City. Now with the incorporation of urban open space, all of 7-11-4 should be looked at as a whole. So the standard you see here do apply. One of the challenges we have in here this evening, is the lack of clarity in some of those standards. The reason that it appears to be a lack of clarity is that some of the people, witnesses, here this evening have taken one section of 7-11-4 and asked you to consider that, without considering all of 7-11-4. Some of the issues that are important to consider as set forth in 7-11-4 include what the open space purpose - it's to meet the recreational needs of residents including, excuse me, improving the aesthetic character of the community, reducing stormwater runoff, and enhancing air quality. Because you think about what is being considered as open space here, remember what those purposes are. Those are in 7-11-4 and dictate the type of properties and areas that should be considered open space. 7-11-4, or 7-11-4 (d) stipulates the types of areas that could be considered for open space. And this applies to all types of open space set forth in 7-11-4. You can't pull one section out from another and not include the entirety. It states that in no case shall the following land be used for open space - land occupied by streets, drives, parking areas, or structures other than recreational structures, and land with a minimum width of less than 24 feet unless part of a greenway system. And that, that again sets some pretty specific standards for open space. That must be considered as you are considering what properties are considered as open space. There is an interesting provision in 7-11-4 that 7-11-4 (f) maintenance that states that the owner or lessee of the property designated as the open space shall be responsible for the maintenance of the open space. We've heard here this evening of a lot of different areas being considered as open space and I would argue in this case that if something is considered open space and there is a requirement for open space to be provided and returned, in this case a bonus, then that land or that area is being designated as open space for the purpose of this project. Who will be responsible for maintaining the area over the Grove Arcade? Are the owners of the Grove Arcade going to be charged with maintaining that for the benefit of the proposed development? Are the sidewalks to be maintained by the taxpayers of Asheville for the benefit of this development? These are questions that come up in considering this. Again, due to the lack of clarity of the standards that have been put into the UDO to deal with urban open space. Some issues with the staff interpretation of open space is considered for this project include a question and a guiding principle, for me, has been that when there is a significant private benefit for a project, increasing the floor plate by 25% is a significant private benefit, there should be a commensurate public benefit to offset that private benefit. I don't know where, I have not been able to find where that public benefit is in this case. Why are we giving them 25% more in the floor plate. I can't answer that question. Is there a public benefit there? And that's just a guiding principle in my terms of this. And the location of open space has not been clearly defined. We've heard that it's the street or sidewalk in front of the Grove Arcade, it's the air space over the Grove Arcade, it's the 50 feet between the 21 Battery Park and the proposed development. For clarity, it would be good to have some type of graphics showing where those open spaces are and how they apply to this

development. Will this open space - once it's identified for this project, and this question was raised by someone else, will it be available for some other project? Can we have the same space used over and over again as open space for other projects. That question was not answered. These are significant questions that now you have to answer as part of this project. The use of public spaces, including sidewalks as open space for the project, has to be based upon a finding that the sidewalk is significantly and excess of the standard sidewalk requirements. There's been an argument here that the wider sidewalks are significantly in excess of the standards. I apologize to the attorneys in the room, but significant, substantial which are two words which have been repeated over and over again here, are fodder for attorneys. And that's what we have - that's what we're having here tonight. A battle among attorneys. Because subjective terms like significant and substantial were used. A guiding principle that another attorney told me while I was working for the City of Asheville was be clear and concise and let the developer know what you want. When you say significant and substantial, that's anyone's interpretation. Depending on who's before you at that time. The use of air space over the proposed building as open space is a question to me and I'm not sure it goes back to this rule here and complies with that or the definition of open space in Section 7-2-5, but there's been enough discussion of that and I won't go into that further other than to raise that question. Counting the street trees, the wider sidewalks relates back to the question of maintenance of those facilities. That the 7-11-4 (f) says that the owner of those have to maintain them as open space for the benefit of this project. Again, is that what you want in this case. I have a big question about the setback of 21 Battery Park - the 50 foot, being used as open space. The standards in 7-11-4 clearly state that the areas used for parking and drives cannot be used as open space. In this case, the interpretation has been made that that is open space because it provides light and air. I think that's quite a leap and if that determination is made, how long before the parking lot at the Asheville Mall is determined to be open space for some development. I think we need clarify and more consistency and more direction with these standards than we have, so that the developer is not faced with these types of challenges and you're not faced with these types of challenges. Counting negative space above 75 feet as open space also fails to meet the purpose of the open space standards. Again, this is the area, the blank or negative space above that 75 foot section of the proposed development. At this hour, I'll try to be quick. I've spent enough long hours in this building so I won't go much further. In summary, in closing I just want to say I think there has been a misinterpretation of the open space standards with regard to this project. The impact on the adjacent properties has not been fully considered with this. The implications for future developments, you're setting a precedent here tonight with your decision. I don't think that the standards are clear enough for you to set that precedent. This project should be put on hold or denied until these inconsistencies, lack of clarity is addressed with better standards in the ordinance that don't conflict with the provisions in the same section of the ordinance. That's all I had.

Mr. Davis - I have a follow-up question on the record. I'm going to refer you, Mr. Green, to you.

Ms. Currin - You might want to talk in the mike.

Mr. Davis - I'm sorry, thank you. Refer you to Exhibit 2, which is 7-8-18 of the UDO, and this particular section deals with the floor plate area that you're familiar with - we've talked about that. And, let me ask, first of all, if (a) or (b) apply of that section, what would the floor plate be restricted to?

Mr. McGuire - Objection. ...

Mr. Davis - As long as you agree to 8,000 square feet.

Ms. Currin - I don't believe anybody's asking to trigger (a) or (b).

Mr. Davis - I know that, but if (a) or (b) applied, what would it be.

Mr. Green - It would be 8,000.

Mr. Davis - And since they used (c) how many square feet are they asking for?

Mr. Green - 50% of the total floor, or land area - 10,500. 10,015.

Mr. Davis - In your opinion, is the tower over 75 feet at the proposed development surrounded by substantial permanent public or private open space that allows for views and access to direct sunlight?

Mr. Green - No.

Mr. Davis - Thank you.

Ms. Currin - Okay, Mr. McGuire.

Mr. McGuire - Mr. Green, you worked with Mr. Glines and Ms. Daniels?

Mr. Green - Yes, I worked for the City with Mr. Glines. And, Ms. Daniels came to the City after..

Mr. McGuire - And they're experts in this as well as you?

Mr. Green - Yes.

Mr. McGuire - There's no question about that. Now you left well before the Master Plan that we're talking about here today got developed?

Mr. Green - That's correct. I attended some of the meetings.

Mr. McGuire - But you didn't have anything to do with writing or revising like Mr. Glines did.

Mr. Green - No, sir.

Mr. McGuire - And in terms of open space, would you think it's fair to say that the difference between open space where you work in Jackson County and in downtown Asheville is.

Mr. Green - Definitely yes.

Mr. McGuire - Now on the floor plate standard again, sorry, is anyone asking that open space be designated in this hearing today? Is that even an issue before the City Council?

Mr. Green - It's an issue because based on that open space provision of open space, the developer is able to exceed what would be the maximum floor plate.

Mr. McGuire - I got that, but in terms of this code about open space standards, nothing is to be designated or not here tonight, is it?

Mr. Green - The requirement is that open space be provided to.

Mr. McGuire - I got that, but nothing is to be designated when it says.

Mr. Green - I would argue that by providing and getting that private benefit that open space is being designated. It's being identified. It's being attached to this project, and in my opinion, that is designating it as open space.

Mr. McGuire - Okay. And, your big complaint is that the standards are not clear.

Mr. Green - They're not clear.

Mr. McGuire - And do you think a developer should wait until - this is the first time this has come before City Council, right?

Mr. Green - Yes.

Mr. McGuire - And, when you look at this standard for open space designation it actually discounts landscape buffers, right?

Mr. Green - That's correct.

Mr. McGuire - Would woods be a landscape buffer?

Mr. Green - Only if they are required as part of the project and they are shown on the plan as the buffer for that.

Mr. McGuire - But the other definition of open space allows wooded areas to be included.

Mr. Green - The one in 7.

Mr. McGuire - Yes, the one where before the Council tonight actually allows wooded areas is .

Mr. Green - Both of these are before the Council tonight. As I stated earlier, that definition 7-2-5 sets the first level of what can be considered. These standards in 7-11-4 further refine that.

Mr. McGuire - So you don't consider the fact that the definition that Mr. Glines considered allows decorative planting and wooded areas, but this open space designation definition excludes landscape buffers.

Mr. Green - There's a difference between the two.

Mr. McGuire - Exactly. That would be all.

Mr. Green - Okay, thank you."

Mr. Davis said that Mr. Green was his last witness.

The following is a verbatim transcript of Ms. Judy Daniels' testimony:

Mr. McGuire - You would please introduce yourself?

Ms. Currin - Could you ask her the questions in the mike? Sorry, I just don't want to have a bad recording.

Mr. McGuire - Could you please introduce yourself?

Ms. Daniels - Yes, I'm the Planning Director for the City of Asheville.

Mr. McGuire - And how long have you been in that position.

Ms. Daniels - 6 years.

Mr. McGuire - And what are your, I'll short-circuit it because Mr. Green acknowledged that you were an expert as well, but what is your background and where have you worked, opposed to Jackson County.

Ms. Daniels - Well, I have been in urban planning for over 30 years. Went to the University of Memphis. I came to the City of Asheville from Montgomery County, Maryland. The last 5 years I was there I was the lead of the planning group for Bethesda, North Bethesda, Chevy Chase area - very urban area of Montgomery County.

Mr. McGuire - Okay, we would ask that Ms. Daniels be designated an expert in land use planning.

Mr. Davis - No objection.

Ms. Currin - Okay, then we'll accept her as an expert.

Mr. McGuire - Thank you. Now, Ms. Daniels, the report that was presented to City Council that each Council person has reviewed, Mr. Glines prepared it, but was it actually from you?

Ms. Daniels - It is officially from the Planning Director, and of course, I review every report, and edit them, and make sure they are correct and sufficient.

Mr. McGuire - And does Mr. Glines report to you?

Ms. Daniels - Yes, yes he does.

Mr. McGuire - And, when he gave you his earlier report and it discussed open space, tell the Council on how you looked at that from your background in urban planning.

Ms. Daniels - Well, both from my background and from my knowledge of the Downtown Master Plan, which was adopted while I was here and I worked with Alan on adopting the standards that came before the Council, in my background and knowledge before coming here, the common definition of open space in an urban setting is pertaining to the light and air and not own property not designated as public or private - it's all geared around creating light and air in an urban setting. An example might be the Grove Arcade with the air rights, I mean that have been sold, the whole concept of transferring development rights off of buildings, is to protect light and air for urban dwellers. And, it can be considered by any normal definition in perpetuity. New York City pioneered this for that particular purpose.

Mr. McGuire - So you've had experience in looking at whether the top of a building could be considered as open space?

Ms. Daniels - That is commonly done in an urban setting. We approved numerous buildings in Bethesda and Chevy Chase with that type of designation.

Mr. McGuire - And, is my assumption correct, Bethesda is more urban at this point than Asheville is?

Ms. Daniels - Quite.

Mr. McGuire - So it's been ahead of us in terms of looking at open space.

Ms. Daniels - Yes, I think it's worth knowing that the consultants who worked with us on the Master Plan are from Boston. They are used to working in an urban setting. Asheville wanted an urban oriented Master Plan. You need to have this broader definition of open space in order to build an urban environment. You can't build a city and not have built environments that provide light and air, not just trees and grass. We've got to have the trees and grass - that's good too. But this stepping back buildings, all the elements that are in the UDO now that relate to this are - it first says you are not required to have open space, but if you go up and you're stepping back and you meet this floor plate, then you need to be surrounded by things that provide light and air to the urban residents and visitors, but they are not designated in the sense of being land.

Mr. McGuire - So, would you say that this definition is how Council should be guided or not?

Ms. Daniels - Our estimation is that it's not the guideline. Our first line is in the UDO where we have the definition that - such as, but not limited to, and we have the light and air knowledge and then we go to the section related to the downtown Central Business District and Alan went through the list that pertain to that. There is no hard and fast standard. It would be rather hard to do that, and that is not a common practice.

Mr. McGuire - So the open space that Mr. Glines considered has the not limited to.

Ms. Daniels - Yes.

Mr. McGuire - This open space definition for designation is very restrictive.

Ms. Daniels - It's more of a suburban standard.

Mr. McGuire - And is the issue of designating open space before us in anyway tonight?

Ms. Daniels - Well, to me we have fulfilled the requirement of the UDO in addressing, in our staff report, how the step-back tower and the open areas provide the light and air required in the UDO. And recreational spaces.

Mr. McGuire - Now, what of any correlation is there between requiring or having that available to be considered by the Planning Department, with having a setback or a step-back requirement?

Ms. Daniels - The building is step-back in order to increase the light and air around it. The recreational facilities provided, again, open up - or within that urban designation of open space that can be public or private. The public can access it and as we were pointing out - perhaps you can just sit up there, or perhaps you need to order a glass of iced tea or something. But it is accessible for the public. More than that, it provides those recreational opportunities collectively that are part of an urban environment.

Mr. McGuire - So you would find this passive recreation within the definition of open space?

Ms. Daniels - Yes.

Mr. McGuire - And.

Ms. Daniels - And that's not a swimming pool, I think that's just a pond so it's not going to be active.

Mr. McGuire - Right, but it's very fair to consider all of these levels as open space.

Ms. Daniels - Correct, yes.

Mr. McGuire - And, you heard Mr. Glines say that even if you didn't count the top of the Grove Arcade, which you think is open space, but if you didn't count that the other open space spaces, and we had 8 other including the sidewalks and the step-backs, would you consider all of those the valid ...

Ms. Daniels - I would. I consider the Grove Arcade to be icing on the cake. Again, the height of a building would not - the fact that it's a two story building would not count. That it is a building with it's air rights sold, does make it an important thing to consider.

Mr. McGuire - And is that something you've seen in city urban planning?

Ms. Daniels - Yes. That's why people sell air rights to create permanent light and air-type open space. Sometimes they may have a deck on top. Sometimes they may not.

Mr. McGuire - That would be all the questions."

The following is the verbatim testimony of cross-examination of Ms. Daniels:

"Mr. Davis - Let's keep this up for just a minute. Ms. Daniels, you said that you get your definition of open space from your experience in Maryland or other large cities, right?

Ms. Daniels - No, I got it from the UDO.

Mr. Davis - Well, they have a different definition of open space in some of those cities, correct?

Ms. Daniels - I was going by our definition of open space and I was going by what is in the UDO that was added to it with the Downtown Master Plan, and I was collectively looking at it in terms of how open space is interpreted in urban environments.

Mr. Davis - But the definition you're pointing out does not specifically allow for open space to be built upon land, does it?

Ms. Daniels - It's ... What we went with, which is our standard is a collective - the combination of the definition of open space in the definition section applied in the CBD which

talks about stepping back from the floor plate and going up and then you have to be surrounded by the open areas - I don't have that in front of me - Excuse me. Okay, Central Business District is exempt from open space requirements. The provision before a plate of the tower to reach 50% relies on a finding of being surrounded by substantial permanent public and private open space. Public and private open space can be a number of things as noted in the open space requirements of Section 7-2-5 which is an area intended to provide light and air. It may include, but not limited to, etc.

Mr. Davis - My question is, no where in there does it mention the space above a built environment.

Ms. Daniels - I don't think that is at issue.

Mr. Davis - Well, Mr. Glines has counted several spaces above buildings as open space.

Ms. Daniels - I think we are counting open spaces as areas that provide light and air and that include, are not limited to these things and what we are including is that sort of space, sidewalk space, the light and air provided by the transfer of the air rights above the Grove Arcade, the collective list that Mr. Glines had in his report.

Mr. Davis - So you would agree with all of his bullets they add to open space.

Ms. Daniels - I agree with all of his bullets in his report.

Mr. Davis - And, as high as you want to go. I mean you can go hundreds of feet in the air and consider that substantial open space.

Ms. Daniels - In this case, for this building, this is what we considered open space.

Mr. Davis - Parking area as open space?

Ms. Daniels - That is clearly not something we need to include. We had a list of what we did include that is pertinent to this project.

Mr. Davis - And you would read out of existence the definition of open space or the further refinements to the definition in Section 7-11-4.

Ms. Daniels - I think 7-11-4 relates more to suburban settings. We have a definition that says open space is an area intended to provide light and air. It may include, but it's not limited to, then we have the guidance in the CBD standards, which says that open space - let's see - surrounded by substantial permanent public and private open space. We consider that open space. It's accessible to the public. We considered the sidewalks accessible to the public. They are providing light and air and recreational opportunities, passive in nature, sitting and enjoying, and for the surrounding buildings having light and air - access to them - that is an urban standard.

Mr. Davis - I understand that is how you are considering it. But it's not reflected in the UDO.

Ms. Daniels - It's not the way you interpret the UDO.

Mr. Davis - It's not written in the UDO.

Ms. Daniels - It's not the way you interpret. The zoning law is subject to interpretation, as I think you said.

Mr. Davis - We understand that, but there is nothing in the UDO that says you can use the area above a building for open space.

Ms. Daniels - There's nothing in the way that you interpret the UDO. We interpret it differently.

Mr. Davis - Okay. I think ultimately the City Council should ...

Ms. Daniels - Absolutely.

Mr. Davis - Just a final thing in terms of a question I asked Mr. Glines. Since you've been at the City of Asheville, you have never used the area above a building for open space.

Ms. Daniels - The City of Asheville has not had many buildings built until recently. We've been in a recession.

Mr. Davis - Is the answer yes or no.

Ms. Daniels - I am not familiar with every building that's been built in the City. This is the first tall building that has been approved since this UDO, this Master Plan has been adopted. I cannot answer to the past.

Mr. Davis - Any use of the work open space.

Ms. Daniels - We would have to do more research and I am told that the only received this request a week or so ago and we haven't had time to fulfill your request.

Mr. Davis - I'm asking you as the person who approves all the planning reports that come out of your office.

Ms. Daniels - I have been approving planning reports for 6 years and in my experience that I have been here, there haven't been any proposed.

Mr. Davis - There's been no proposed open space one way or the other?

Ms. Daniels - There's been no - that I recall, and you are asking me to recall a body of work or Mr. Glines to recall an extensive body of work on the floor without having the opportunity to do our research.

Mr. Davis - Well, I'm not asking you to do anything, other than answer my question.

Ms. Daniels - You're asking us to recall information we have not had time to research.

Mr. Davis - Okay. But as you stand here today, you are not aware of any.

Ms. Currin - She's answered. She doesn't have the opportunity - She doesn't know on the top of her head I think is her answer.

Ms. Daniels - Correct.

Mr. Davis - Okay, thank you very much."

Mr. McGuire said that he had no further witnesses. He did say that he had the architect here and he felt the issues have been narrowed down to the open space question. But if there are any other questions, other than relate to that, which he felt has been covered adequately, the architects are here and are available to answer questions.

Mr. Mark Mucci, with Minds Eye Architecture in Charlotte North Carolina and architect for the project, spoke in support of the project.

When Councilman Pelly asked if Mr. Mucci has used this a way of fulfilling open space requirements in other cities, Mr. Mucci has not personally used it, but he does have a Masters Degree in Architecture and did extensive studies in urban design and know that it is a common practice in urban environments.

In response to Councilman Davis, Mr. Mucci reiterated that the inconsistency of the square footage is because there are some cut-outs from the dimension in the overall floor plate and confirmed that we are dealing with 50% floor plate.

The following is a verbatim transcript of the cross-examination of Mr. Mucci:

Mr. Davis - I'm sorry, I missed your name, sir.

Mr. Mucci - Mark Mucci.

Mr. Davis - Mr. Mucci, you just testified that this was subject to the 50% floor plate requirement for the limitation of the floor plate area, is that right?

Mr. Mucci - Yes, as approved by.

Mr. Davis - And that's only because of the open space. That's only if substantial open space is provided that you get to that 50%, correct?

Mr. Mucci - That's my understanding.

Mr. Davis - And if it weren't for that substantial open space, which we are asking the Council to make a finding on tonight, it would be restricted to 8,000 square feet, right?

Mr. Mucci - I believe that's correct.

Mr. Davis - And that's the bonus that we've been talking about. Your clients getting an extra 2,000 square feet of floor plate area as the result of providing, in a way we've discussed all night, substantial open space, right?

Mr. Mucci - On individual floors, that's correct.

Mr. Davis - Above 75 feet. The tower.

Mr. Mucci - That's correct.

Mr. Davis - Now, it is feasible to reduce the width of the tower from it's current width of 140 feet to 100 feet, correct?

Mr. Mucci - Yes.

Mr. Davis - And you could go higher than you are currently being allowed to go at 132 feet, correct?

Mr. Mucci - That's not economically feasible though. The structure system that we're using is limited to 8 floors above the podium. And if we increase the height of the building, we would increase the cost of the structure to the point where Mr. Fraga would not want to build it.

Mr. Davis - Under the UDO, you would be permitted to go higher than 132 feet.

Mr. Mucci - That's correct.

Mr. Davis - And approximately how high?

Mr. Mucci - We probably, we could get two more stories, I believe.

Mr. Davis - And how many rooms would you sacrifice if you moved the 140 feet width to the 100 feet width?

Mr. McGuire - ...

Ms. Currin - I agree, you are asking him direct examination.

Mr. Davis - I'll withdraw it. That's all I have."

When City Attorney Currin asked if any members from the public would like to speak, no one spoke.

Mr. Davis and Mr. McGuire were fine to rest.

Vice-Mayor Hunt closed the public hearing at 9:20 p.m.

City Attorney Currin said that the issue before City Council is whether or not to reverse the decision of the Planning & Zoning Commission to approve the Level II site plan. We've heard a lot of things, we know it's zeroed in on the one provision of the UDO, which is whether or not there is an increase in the floor plate that is allowed because the parcel is surrounded by substantial public or private open space that allows for views and access to direct sunlight.

Vice-Mayor Hunt confirmed that this is about Council's interpretation of the UDO as published. City Attorney Currin said that question before Council is did the Planning & Zoning Commission, when they approved this and they applied Section 7-8-18, did they do the right thing. And in doing that, you are going to look at the arguments that have been put before the Council and apply the UDO as written. As Council does that, there are terms and provisions which one side may say means something and the other side may say it means something else. You need to ascertain what the intent of the UDO was. Council has some discretion to do that. When you say substantial open space, Council will have to make that call, based on what they heard.

Councilman Davis said he was very involved in the Downtown Master Plan. The Downtown Master Plan changed a lot of the UDO. If the Downtown Master Plan was not adopted, this project would have come to City Council for review. The intent in the Central Business District, and especially in the core, is to build density and offer good projects. He felt open space is for the purpose of air and light and in an urban environment you're not going to have the opportunity to build pocket parks, as you build hotels. He felt that designated open space is what is around it, e.g., wider sidewalks. This is the kind of project we are looking to design. He felt it was logical how the Planning & Zoning approved the project.

Councilman Davis moved to uphold the decision of the Planning & Zoning Commission. This motion was seconded by Councilman Pelly.

Councilman Bothwell felt that we may need to revisit the Downtown Master Plan to see if there are places we need to adjust. He was uncomfortable with the Master Plan raising the threshold of Level III projects. At it reads, it seem to him that if there is substantial open space, the planner may permit up to 50%. That puts an awful lot on the planner, and that may be a decision Mr. Glines shouldn't be burdened with. He felt that's really a policy choice. Personally

he didn't think that it's substantial, but as the UDO is written, he would have to support the motion.

City Attorney Currin said that Council has to independently determine whether it's substantial. Councilman Bothwell felt the definition is not clear enough to say whether it is or it's not. But under the written language, he didn't think that he could say that this is not substantial.

Councilman Smith said that Council adopted the Downtown Master Plan in an effort to create more clarity and predictability. Even the best laid plans have grey areas that are being revealed through this process. He would also support revisiting the Plan. Above all, open space being about light and air in our urban environment, in our downtown core, and making it livable in that sense to where we don't end up shadowing all our streets, I think that was the intention behind it. He would be supportive of the motion.

Councilman Pelly agreed there is some ambiguity built into defining open space, but hearing all the evidence, he felt that this project has met the standards.

City Attorney Currin said that the law requires that Council adopt written findings of fact and conclusions of law. She would draft that document and it will come back to Council at their May 27 meeting for approval. Any appeal time would be 30 days after adoption of that document.

The motion made by Councilman Davis to uphold the decision of the Planning & Zoning Commission, and seconded by Councilman Pelly carried unanimously.

At 9:35 p.m., Councilman Smith moved to excuse Mayor Manheimer from the remainder of the meeting. This motion was seconded by Councilwoman Wisler and carried unanimously.

V. UNFINISHED BUSINESS:

VI. NEW BUSINESS:

A. RESOLUTION NO. 14-107 - RESOLUTION ADOPTING THE CITY COUNCIL 2014-15 STRATEGIC OPERATING PLAN

City Manager Jackson said that this is the consideration of a resolution adopting City Council's Strategic Operating Plan for Fiscal Year 2014-2015.

At the February 7-8, 2014, Council Retreat, Asheville City Council discussed and prioritized focus areas for the coming year. During the retreat, it was noted that presenting goals in a way that highlights the interconnected nature of Council's strategic goals would be ideal. The 2014-2015 strategic focus areas are broken into three broad categories that relate to economic systems, social systems and environmental systems.

The focus areas are:

Economic Growth & Sustainability - Seek to ensure a sustainable financial future for Asheville by promoting an environment where citizens and businesses want to live, work and invest.

Affordability & Economic Mobility - Seek to ensure a sustainable future for Asheville through a standard of living that is affordable and attainable for people of all incomes, life stages and abilities.

High Quality of Life - Seek to ensure a sustainable future for Asheville by promoting a safe environment where basic needs are met and all people can enjoy a high quality of life.

City Manager will produce a comprehensive quarterly report and Committee Chairs will produce updates on policy initiatives designed to further achievement of strategic goals for Economic Growth and Sustainability, Affordability and Economic Mobility, and High Quality of Life.

Pros:

- Provides Council and City staff with an overall direction and goals of the organization.
- Provides Council and City staff with a measure of success.

Con:

- None.

The Strategic Operating Plan will provide direction for Council and the Executive Management Team throughout the budgeting process.

City staff recommends that City Council adopt the resolution adopting Council's Strategic Operating Plan.

When Vice-Mayor Hunt asked for public comments, none were received.

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

Councilman Bothwell moved for the adoption of Resolution No. 14-107. This motion was seconded by Councilman Davis and carried unanimously.

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B. BOARDS & COMMISSIONS

Regarding the Community Relations Council (CRC), it was the consensus of City Council to continue the vacancy for an additional month (pursuant to the request of the CRC).

RESOLUTION NO. 14-108 – RESOLUTION APPOINTING A MEMBER TO THE DOWNTOWN COMMISSION

Vice-Mayor Hunt, Chair of the Boards & Commissions Committee, said that this is the consideration of appointing a member to the Downtown Commission.

Mr. Matt Sprouse has resigned from the Downtown Commission, thus leaving an unexpired term until December 31, 2015.

The following individuals applied for the vacancy: Keaton Edwards, Pamela Winkler, and Ryan Israel.

It was the consensus of the Boards & Commissions Committee to appoint Pamela Winkler, who was recommended by the Downtown Commission.

After speaking about the qualifications of all candidates, Councilman Davis moved to appoint Pamela Winkler to serve the unexpired term of Mr. Sprouse, term to expire December 31, 2015, or until her successor has been appointed. This motion was seconded by Councilman Bothwell and carried unanimously.

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VII. INFORMAL DISCUSSION AND PUBLIC COMMENT:

Mr. Timothy Sadler commented about (1) if City taxpayer money was used for the parade for Caleb Johnson on Haywood Road; (2) need for maintenance of the restrooms at the Transit Center; and (3) Up-to-date calendar on the City's website of boards & commissions.

Mr. Todd Stimson, Ms. Kerry Trammel, and Ms. Ariel Stimson urged City Council to educate the public about medical use of cannabis for cancer patients. They also felt there is a bad stigma attached to requests for medical use of cannabis. In addition, they asked for Council to support House Bill 941 which is to require the Legislative Research Commission to study issues related to the medical use of cannabis. Councilman Smith and Councilman Bothwell felt asking the Council to support having this move to the Research Commission is a reasonable request. Vice-Mayor Hunt said that entire Council will consider this when they discuss what they will advocate at the legislative level.

Ms. Jeanie Rosenthal provided a number of documents to Council "to better understand the Partner Property Management handling of the smoking problem in the supposedly non-smoking The Griffin apartment building." She asked council to work to ensure a local management company be hired to make the apartments truly smoke-free and healthier.

Mr. Gilian Kearns was concerned about the dangers of pedestrians on Haywood Road.

Councilwoman Wisler encouraged the public to find ways to "Strive Not To Drive."

VIII. ADJOURNMENT:

Vice-Mayor Hunt adjourned the meeting at 10:13 p.m.

CITY CLERK

MAYOR