

Tuesday – November 10, 2015 - 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.

I. PROCLAMATIONS:

II. CONSENT AGENDA:

- A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON OCTOBER 27, 2015**
- B. RESOLUTION NO. 15-207 - RESOLUTION NAMING FIRE STATION 8 IN MEMORY OF CITY OF ASHEVILLE FIREFIGHTER JIMMIE EDWARD TRENT**

Summary: The consideration of naming Fire Station 8 in memory of former City of Asheville Firefighter Jimmie Edward Trent.

City of Asheville Firefighter Jimmie Edward Trent died November 13, 1975, after suffering a heart attack fighting a fire at the Red Chair Restaurant at 1 North Pack Square. The Asheville Fire Department requests that Firefighter Trent be honored by naming City of Asheville Fire Station 8 in memory of Jimmie Edward Trent. Firefighter Trent's family has requested Fire Station 8 as he was primarily assigned to that station during his career. Fire Station 8 is located at 904 Tunnel Road and serves East Asheville. This will be the second fire station named in memory of a City of Asheville Firefighter who has died in the line of duty. There have been a total of seven line of duty deaths in the City of Asheville Fire Department's history.

Pro:

- Having a City of Asheville owned facility that has been named to honor a public servant who has died in the line of duty is an ultimate recognition of their public service and sacrifice.

Con:

- None have been identified or known at this time.

The purchase of a plaque commemorating the naming would be the associated expense to this consideration and would be paid for out of the existing Fire Department budget.

Staff recommends that the Asheville City Council name Fire Station 8 in memory of Jimmie Edward Trent.

The son of Mr. Trent thanked City Council for this recognition.

RESOLUTION BOOK NO. 37 - PAGE 318

C. ORDINANCE NO. 4460 - BUDGET AMENDMENT FROM THE FEDERAL TRANSIT ADMINISTRATION FRO THE EXISTING JOB ACCESS AND REVERSE COMMUTE PEDESTRIAN SIGNAL GRANT

Summary: The consideration of a budget amendment, in the amount of \$\$47,854, to increase grant funding for the existing Job Access and Reverse Commute (JARC) pedestrian signal grant.

In 2010, the city successfully applied to the French Broad River Metropolitan Planning Organization (MPO) for Federal Transit Administration (FTA) JARC funding to install pedestrian signals at four busy intersections at an anticipated cost of \$124,900: (1) Haywood Road and Louisiana Avenue; (2) Clingman Avenue and Hilliard Avenue; (3) Choctaw Street and McDowell Road; and (4) Biltmore Avenue and Southside/South Charlotte Street.

The project's original plan and cost estimates were based on the traffic engineering and signal work being carried out by the North Carolina Department of Transportation (NCDOT) and/or it's contractors under a reimbursable agreement between NCDOT and the city. Ultimately, that proved impossible, though NCDOT was able to provide signal plans for one of the intersections, Clingman Avenue and Hilliard Avenue. The city then had a contractor install the pedestrian signals at Clingman Avenue and Hilliard Avenue using the JARC funding. The city also proceeded with design for the remaining three signals using the JARC grant, but insufficient funding remained to purchase and install the signals at the three intersections.

On June 23, 2015, Council approved a budget amendment moving \$13,063 from the general fund to the project to supplement the project budget. Additional JARC funding in the amount of \$47,854 was identified to supplement the project budget, and FTA recently approved moving the funds to this project. The funds transferred in June will serve as the required match for the new FTA funds. With the new FTA funding, the total project budget is \$184,837.

The existing and new funding is expected to be enough to install the pedestrian signals at the intersection of Haywood Road and Louisiana Avenue and at the intersection of Choctaw Street and McDowell Road. It is not anticipated that there will be enough funding at this time to install the signals and pedestrian refuges at the last and most expensive intersection on Biltmore Avenue, so other capital funding is being sought for that project.

Pros:

- Allows planned pedestrian safety improvements to continue
- Adds additional federal funding to the city's budget

Cons:

- One intersection will remain to be done

This will bring \$47,854 more in new capital investment to Asheville's pedestrian network. The required 20% grant match will come from amounts already in the project budget. NCDOT will maintain the signals, so there is no increase in ongoing city costs. This grant does not affect the city's regular FTA transit system funding.

With this amendment, the total project budget will be \$184,837. To date, \$84,272 has been spent on the project: \$37,772 to install the pedestrian signals at Clingman and Hilliard Avenues, \$24,000 for a reimbursable agreement with NCDOT to review signal plans and inspect installations, and \$22,500 for three signal designs (signals 1, 3, and 4, above). With this budget amendment, \$100,565 will remain in the project budget.

City staff recommends City Council adopt the budget ordinance amendment to increase grant funding for the existing JARC pedestrian signal grant.

ORDINANCE BOOK NO. 30 - PAGE 171

D. RESOLUTION NO. 15-208 - RESOLUTION AUTHORIZING THE CITY MANAGER TO SELL CITY PROPERTY LOCATED AT 600 SKYLOFT DRIVE - UNIT A-201, TO AUBREY RAY

Summary: The consideration of a resolution directing the City Manager to sell City property located at 600 N. Skyloft Drive, Unit A-201 to Aubrey Ray for \$140,000.

In 2008, the City established a deferred Housing Trust Fund Loan on property at 600 N. Skyloft Drive, Unit A-201 (PIN 9648-68-1640-C201) in the amount of \$30,000. In July 2014, the City of Asheville purchased this condominium at a foreclosure auction in order to resell it and protect the City's original investment. The City's total purchase price at auction was \$100,438.00. Thereafter, the Housing and Community Development Committee approved marketing this property to City Employees with affordable housing restrictions placed on the deed, specifically: potential buyers could not earn over 100% of median household income; the Skyloft condo must be their primary residence; and the affordability restrictions would apply to any resale. There was little interest in the property from City employees and the marketing was extended to all county employees and then to all government employees. As of October 31, 2015, the City has paid out \$4,730 in bills to include an unpaid property tax bill, utility bills and condominium owner fees. Including the original Housing Trust Fund loan, the City has invested a total of \$135,168 in this property. The unit was advertised for sale at \$140,000. This price would allow the City to break even if the sale included buyers' agent fees and some closing costs and still maintain affordability for income eligible buyers. In October of 2015, the marketing effort was extended to the general public and Aubrey Ray submitted a qualifying application.

North Carolina General Statute 153A-163 authorizes a city that acquires a property by foreclosure in order to secure a debt due to the city, to sell said property by private sale for not less than the amount of its bid. According to NCGS 160A-267 (private sale procedure) the City Council can authorize the appropriate City official to dispose of property by private sale at a negotiated price. The resolution provides authorization for the City Manager to sell the property at 600 N. Skyloft Drive, Unit A-201 to Aubrey Ray for \$140,000, subject to income eligibility, permanent deed restrictions concerning long-term affordability of the unit, and a requirement that the unit must be the primary residence of the owner. If the following resolution is adopted, a public notice summarizing the resolution will be published and the transaction will not take place until at least 10 days after publication.

Pros:

- Sale of an affordable unit to an income eligible buyer.
- Deed restrictions will preserve the property as permanently affordable.
- Private sale will recoup funds spent by the Housing Trust Fund to further affordable housing goals.

Con:

- None

Because this property is associated with the Housing Trust Fund Loan Program, the financial proceeds are to benefit that program as managed by the Economic and Community Development Department.

City staff recommends City Council adopt a resolution directing the City Manager to sell the property located at 600 N. Skyloft Drive, Unit A- 201A to Aubrey Ray for \$140,000, subject to income eligibility, permanent deed restrictions concerning long-term affordability of the unit, and a requirement that the unit must be the primary residence of the owner.

RESOLUTION BOOK NO. 37 - PAGE 319

E. RESOLUTION NO. 15-209 - RESOLUTION SETTING A PUBLIC HEARING ON DECEMBER 8, 2015, TO PERMANENTLY CLOSE AN UNNAMED ALLEY OFF JARRETT ROAD

Summary: The consideration of a resolution of intent to permanently close an unnamed alley off of Jarrett Street and setting a public hearing on December 8, 2015.

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

Pursuant to this statute, adjoining property owners, T.S. Investments, LLC, owners Thomas and Catherine Durham, owners of parcel 9638-25-1024, and Ira Bernstein, parcel 9638-25-0070, and David Chambers, parcel 9638-25-1177, have requested the City of Asheville to permanently close the unnamed alley off of Jarrett St. A copy of this resolution of intent shall be sent by registered or certified mail to all property owners abutting the unnamed alley, not joining in the petition to close.

The Multimodal Transportation Commission met on October 28, 2015, and approved the closure.

Pros:

- There will be no future compromise of ingress/egress to other property
- The closure would allow for more efficient use of the existing adjacent properties
- Meets Council's goals to promote sustainable high density infill growth that makes efficient use of existing resources

Con:

- None

There will be no fiscal impact related to this closure.

City staff recommends City Council adopt the resolution of intent to permanently close an unnamed alley off of Jarrett Street and set a public hearing on December 8, 2015.

RESOLUTION BOOK NO. 37 - PAGE 320

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. This motion was seconded by Councilman Pelly and carried unanimously.

III. PRESENTATIONS & REPORTS:

IV. PUBLIC HEARINGS:

- A. PUBLIC HEARING TO CONSIDER CONDITIONAL ZONING ON PROPERTY LOCATED AT 39 ELM STREET FROM COMMUNITY BUSINESS II DISTRICT TO COMMUNITY BUSINESS II DISTRICT/CONDITIONAL ZONING, WITH CONDITIONS TO BUILDING SIZE, IMPERVIOUS AREA AND SETBACK, FOR THE CONSTRUCTION OF A 5-STORY HOTEL WITH PARKING**

On October 20, 2015, a letter was received from Mr. Craig D. Justus, attorney representing the applicant, asking that their conditional zoning request be withdrawn.

B. PUBLIC HEARING TO CONSIDER CONDITIONAL ZONING FOR PROPERTY LOCATED AT 852 (9999) HENDERSONVILLE ROAD FROM HIGHWAY BUSINESS DISTRICT AND OFFICE DISTRICT TO HIGHWAY BUSINESS DISTRICT/CONDITIONAL ZONING FOR THE CONSTRUCTION OF A SELF-STORAGE FACILITY, WITH CONDITIONS MODIFYING REQUIREMENTS FOR THE LOCATION OF STREET TREES, REDUCING PARKING COUNTS, AND REDUCING BUILDING SETBACKS

Urban Planner Vaidila Satvika said that this is the consideration of an ordinance to conditionally zone property located on 852 (9999) Hendersonville Road from Highway Business District and Office District to Highway Business/Conditional Zoning for the construction of a 3-story, 89,700 square foot self-storage facility on 1.89 acres, with conditions modifying requirements for the location of street trees, reducing parking counts and reducing building setbacks. This public hearing was advertised on October 3 and 9, 2015.

The subject site measures 1.89 acres, is currently vacant and includes two parcels, which would be reassembled into one parcel. The property is currently split zoned between the HB (approximately 0.75 acres) and Office (approximately 1.1 acres) zoning districts. The project site is located within the Shiloh neighborhood.

The applicant is seeking to construct a three-story, 89,700 square-foot self-storage facility. The proposed use is not permitted in the Office zoning district; therefore, the applicant is requesting a conditional zoning designation to HB-CZ. The building would include 700 storage units staffed by two employees in an 812 square-foot office located on the second floor. The building footprint would measure 29,900 square feet.

Access to the property is proposed from both Forest Street and Cornell Street with two driveways on Forest Street and one on Cornell Street. There is no ingress/egress proposed from Hendersonville Road.

Nineteen parking spaces will be provided, which has been determined to be appropriate for the proposed use.

A new sidewalk is proposed for both Forest and Cornell Streets. There is a northbound bus stop (S3) located on Hendersonville Road at Forest Street.

The site is required to comply with the provision of street trees, street buffer, parking lot landscaping, building impact, and open space. In total, 67 trees and 148 shrubs are required for the site. The project meets the 15% of lot area for required open space by providing three separate open space areas totaling 0.28 acre. In addition the developer has agreed to add a 30-foot property line buffer to mitigate the impacts of the development to the Office and residential zoning along the east side of the development.

There is a stand of four older pine trees at the northeastern part of the parcel that appear to be in healthy condition and located in the area that is designated on the plan to be open space. Staff is requesting that the applicant retain these trees.

There would be two bio-retention swales provided, one on the north and one on the south part of the property.

Conditions Modifying Development Standards:

1. Street trees. The City's Unified Development Ordinance (UDO) requires that street trees

be placed within 20 feet from the edge of pavement. In this case there is an existing sewer line and associated sewer buffer that precludes tree placement within 20 feet. Street trees along Hendersonville Road will be allowed to be placed no further than 30 feet from edge of pavement.

2. Front setback. The required setback for buildings in the HB zoning district is 35 feet, unless located in a pedestrian-oriented environment, which allows for a reduction to only a five foot setback. Staff encouraged the applicant to reduce the front setback in order to allow for more room on the eastern part of the property to include the planted buffer between the subject site and the residential uses immediate to the east. The front setback was reduced to approximately 25 feet on the site plan.
3. Parking shall be reduced to 19 spaces, consistent with staff interpretation of parking standards for indoor self-storage, as stated below in the compatibility analysis.

As per UDO Section 7-7-8.(d), a conditional zoning application shall be reviewed by the City's Technical Review Committee (TRC), and the Planning and Zoning Commission shall hold a public hearing to review the application and make a recommendation to City Council for approval or denial.

This project was reviewed by the City's Technical Review Committee (TRC) on July 7, 2015. The Planning and Zoning Commission reviewed the proposal and voted unanimously to deny approval on August 5, 2015. City Council is the final approval body for this proposal. If the project is approved by City Council, it then returns to TRC for final zoning approval.

Pursuant to UDO Section 7-7-8.(c), it is strongly recommended that the applicant meet with representatives of the surrounding property owners and of the surrounding neighborhood to discuss the proposed development.

It is staff's understanding that representatives from the project development team met with the Shiloh Community Association on September 14, 2015 to discuss the project. The project development team may discuss the outcome of that meeting at the City Council public hearing.

The parcel is split with approximately 40% of the area (0.75 acres) located within HB and 60% (1.1 acres) within Office. HB allows for self-storage, as well as single-tenant buildings that total a maximum of 100,000 square feet, whereas the Office zoning district does not permit self-storage facilities and allows a maximum 8,000 square foot building. The proposed facility would be located approximately evenly split between HB and Office, thereby allowing approximately 45,000 square feet in each zoning district.

As described in the purpose section of the Office zoning district in the UDO, the intent of this district is to reserve areas for development of small scale office uses adjacent to residential uses. This district may serve as a transition between residential and commercial areas.

As per UDO Section 7-7-8.(d)(5), City Council's consideration of a conditional zoning application may consider any relevant information in its deliberations, and consideration shall be given to adopted land use plans, small area plans, other land use policy documents, and to the surrounding land uses. Further, UDO Section 7-7-8.(a) states that additional standards and regulations may be attached to a proposed development to ensure compatibility with surrounding uses and with applicable adopted plans.

Staff's compatibility analysis is as follows:

1. Building size and scale: Staff believes the combination of the size and scale of the encroachment of the facility into the Office zoning district and the building's higher-impact use would result in a project that is incompatible with the adjacent residential neighborhood. New structures in the Office zoning district shall not exceed 8,000 square

feet for multiple story buildings, with a maximum footprint of 4,000 square feet. With approximately 45,000 square feet proposed to encroach into the Office zoning district, the proposal would result in five times the permitted gross floor area in this district.

Context, areas zoned HB along Hendersonville Road do not project an equal distance into the residential districts; the HB district contains jagged lines that move in and out. In some areas, the HB district encroaches further into the residential neighborhood. As a result of this type of commercial encroachment into the adjacent residential neighborhoods, the [Shiloh Community Plan 2025](#) (adopted by City Council in September 2010) recommends that along Hendersonville Road the City allow "no additional commercial incursion (to) occur in the community.". The proposed project would further encroach Highway Business activity into an Office zoning district and into the adjacent residential neighborhood. This is contradictory to the purpose of the Office zoning district, which was placed between Highway Business zoning and Residential zoning to soften the scale of development and to mitigate negative commercial impacts. The proposed 89,000 square foot building adjacent to residential uses appears to be unreasonable at this location. If approved, staff recommends that the proposed building be scaled back.

It should be noted that the existing parcel zoned HB would allow for the proposed building and the applicant has acknowledged that some version of this proposal could be viable by using only the existing HB part of the parcel.

2. **Parking:** According to the UDO, there needs to be one parking space per 10 storage units, plus one space per two employees, plus one space per 250 square feet of office, which totals 75 spaces. This rule is useful for smaller storage facilities but would be excessive for the proposed 700 unit storage facility.

UDO Sec 7-11-2 (c)(1) states that for uses not covered in the table of off-street parking requirements, the appropriate number may be selected from the American Planning Association (APA) Advisory Service Report Number 432. In this case a self-storage facility is covered in the UDO but it is not appropriate because it is not consistent with the data for how large self-storage facilities operate. The APA Service Report recommendation, however, is not helpful because its examples range from one space per 10 storage units to one space per 100 storage units. Staff recommends using the Institute for Transportation Engineer's (ITE's) Parking Generation manual instead, which reviews peak demand from similarly-scaled self-storage facilities and is therefore more applicable. The applicant is requesting to use ITE's Average Peak Parking Demand (1.39 vehicles per 100 spaces), which totals to 15 spaces for this project. Staff recommends ITE's conservative standards, which would require 19 spaces.

3. **Materials:** The material choices for the building are visually simplistic and would create the effect of a blank wall, especially as seen from the east and north where metal siding is proposed for the majority of the exterior. Except for the Hendersonville Road elevation, the majority of the structure is windowless and although there are no design guidelines for this district, the project could use architectural detail to improve the compatibility with surrounding buildings and residences, and to soften this building's impacts on the neighborhood.
4. **Self-storage development activity:** Staff is currently reviewing proposals for two other similar indoor self-storage facilities that are located on parcels where this use is permitted as-of-right, without changes to zoning. The proposed self-storage facility at the subject location is the only such self-storage project to date that would require a conditional zoning approval.

The proposed project does not comply with the Comprehensive Plan because it (Goal 1, Strategy 4) does not provide a mix of uses at underdeveloped commercial nodes where public facilities exist; (Goal 1, Strategy 11) fails to provide a mix of uses along a key transit node; and (Goal 1, Strategy 14) it does not support the enhancement and strengthening of existing neighborhoods, in this case by proposing a large-scale self-storage facility adjacent to an existing residential neighborhood. Although the Comprehensive Plan calls for “appropriately-scaled non-residential uses (to) be allowed in appropriate locations”, staff believes the current proposed project is not appropriately scaled.

The proposed project does not align with Focus Area 3: High Quality of Life; Goal 4: Continue to develop City Council communications and partnerships with citizens, community leaders, the media and elected officials; Action Item: Evaluate and implement best practices to improve effective community engagement. The currently proposed site plan is inconsistent with the Shiloh Community Plan 2025, which states that “it is strongly felt that commercial incursion should be prevented in the Shiloh community”.

Based on the above findings and the analysis provided in the report and as stated in the recommendation below, staff finds this request to be unreasonable.

Staff does not recommend the conditional zoning request as currently proposed based upon the intent of Office zoning to buffer residential neighborhoods from larger-scale buildings that are less compatible with neighborhood scale, and due to the project’s inconsistency with the City’s Comprehensive Plan and Shiloh Community Plan 2025. The Planning and Zoning Commission also voted to deny the conditional zoning request.

Mr. W. Louis Bissette, attorney representing the developer, showed the site of the subject property, along with views of the project from different views. He said that most of the units are accessed from inside the building and are climate controlled. The building will look like a nice office building. He said that this is a low impact project and feared what other projects could go into that site by right with the designation of Highway Business District in the front portion. He then showed a picture of the core of the Shiloh community, noting that they are not in the core. He presented a letter from Ms. Hicks (owner of the property directly behind the site) who was not opposed to the project. He also presented letters of support from Colton Mattress and Mission Health.

Mr. Chris Day, representing Civil Design Concepts, explained how they designed the building to look like a 2-story office building, noting one side 2-stories can be seen, and 3-stories can be seen on the other side. Access is with through the current Mission Health Driveway. He then explained the loading and parking areas. He said the project does propose sidewalks along Forest Street, Cornell and Hendersonville Road. They also created a larger landscape buffer than is required in the rear of the property with an additional berm for Ms. Hicks to screen her from the project and traffic on Hendersonville Road. He explained there is no outdoor storage, as it is a fully enclosed self-storage project.

Mr. David Ellison, with the development company, described the operations of this facility. He said the office building is staffed by 2 on-site office managers. The office will be open from 9:30 a.m. - 6:00 p.m. and people can access their units (via a keypad) from 6:00 a.m. - 10:00 p.m. He noted that when they came to the City with their pre-submittal meeting, at that time there were no objections, so they moved forward in good faith. In July they received an e-mail from Planning staff indicating concerns about the size and encroachment into the Shiloh community. They have reached out to the neighborhood on three different occasions and urged Council to approve this conditional zoning.

Mayor Manheimer then opened the public hearing at 5:36 p.m.

The following individuals spoke against the conditional zoning for several reasons, with the major objections surrounding: commercial encroachment into the historic Shiloh community; non-compliance with the Shiloh Community Plan; project will not benefit the Shiloh community as it will not provide jobs and people cannot afford the monthly rent for a unit; additional traffic on Forest Street; and project will not increase noise or traffic in the area:

Ms. Norma Baynes, Liaison to the Shiloh Community Association
Mr. Vinnie Norman McIntosh, member of the Shiloh Community Association
Mr. Charlie Owen, co-owner of the property - presented petition with 28 names
Mr. Walter Taylor, senior member of the development team
Mr. Joe Brummit

The following individuals spoke in support of the conditional zoning for several reasons, some being, but are not limited to: the project will benefit the Shiloh Community; nice building that will be well-maintained and well-landscaped; project will have a low impact on the community; and fear of what might be built on the property if this project is denied:

Ms. Faye Reynolds, Shiloh resident
A Shiloh homeowner
Ms. Phyllis Williams Green, Assistant Secretary for the Shiloh Community Association

At 6:03 p.m. Mayor Manheimer closed the public hearing.

In response to Vice-Mayor Hunt, Mr. Todd Okolichany, Director of Planning & Urban Development, reiterated staff's concerns regarding the size and scale of the project, in that it is out of compliance with the City's Comprehensive Plan and the Shiloh Community Plan. Without a specific site plan layout, staff cannot assess an alternative use; noting that the traffic impact of a retail use would result in more traffic than a self-storage facility. The maximum building height would be 40 feet on a use by right under the Office District zoning.

Councilman Pelly stated that other neighborhoods are encouraged to design neighborhood plans similar to what the Shiloh community developed. Knowing that changes will come, they need to find a vision on how they want to grow and evolve over time. The Shiloh community has that plan and he felt this development violates some of aspects of their plan.

Vice-Mayor Hunt emphasized that a Highway Business District project on that property will be a use by right and will not come before City Council for any conditions. He felt this lot is high in demand and will have a large impact use, opposed to this low impact use.

Councilman Bothwell felt that the same building could be built vertically with the same square footage on the existing Highway Business lot - five stories with one underground. That would be about the same height as the Mission Health building. That would also allow the lot in the rear to soften the impact into the residential area.

Councilman Smith moved to deny the conditional zoning request from Highway Business (HB) and Office to Highway Business Conditional Zone (HB-CZ) for the construction of a three-story, 89,700 square-foot self-storage facility to be located at 852 Hendersonville Road with the requested conditions, and find that the request is not reasonable, is not in the public interest, and is not consistent with the Comprehensive Plan and other adopted plans in the following ways: the proposed plan does not provide a mix of uses along a key transit node where public facilities exist, it does not support the enhancement and strengthening of existing neighborhoods, and it would allow large scale commercial incursion to occur in the adjacent residential community, which is contrary to the recommendations contained in the area's community plan. This motion was seconded by Councilman Bothwell and carried on a 5-2 vote, with Vice-Mayor Hunt and Councilman Davis voting "no."

V. UNFINISHED BUSINESS:

A. RESOLUTION NO. 15-210 - RESOLUTION AUTHORIZING THE CITY MANAGER TO SIGN A MEMORANDUM OF UNDERSTANDING WITH THE ECONOMIC DEVELOPMENT COALITION

Mr. Ben Teague, Executive Director of the Asheville-Buncombe Economic Development Coalition (EDC) provided Council with a brief update on the Asheville 5x5 Campaign.

There was considerable discussion, initiated by Councilman Smith and responded to by Mr. Teague, regarding arts and culture not being included in the vision 2020 plan. Mr. Teague summed it up by saying that they spent \$75,000 over 5 years to bring arts and culture together, and that the EDC will continue to meet with arts leaders asking what they want to accomplish. With a number of the topics they brought up, the EDC can help them with research and numbers, but there are a number of items that they can partner more broadly with, i.e., the Chamber of Commerce and other organizations, to accomplish what they want. The EDC still has arts and culture as part of their plan in recognition that it is very important to our community.

Upon inquiry of Councilman Smith, Mr. Teague also responded about how the EDC offers help with downtown homegrown companies to preserve them.

Vice-Mayor Hunt, member of the EDC, spoke in support of the EDC and how the City's investment is extremely valuable in their role. He felt that growing arts and culture deserves funding from the City, feeling that the EDC is not vehicle to fund it with.

Councilman Bothwell agreed the work of the EDC is valuable; however, he felt it often appears that a concerted effort like the Asheville 5x5 Campaign gets credit for things that would have happened otherwise, citing New Belgium and Linamar.

Ms. Kitty Love, Executive Director of the Asheville Arts Council, said that she is looking for a partnership with the EDC, and if they are not the avenue, she hopes that the Chamber will be that avenue to upfit and grow jobs in arts and culture.

Councilman Smith supports bringing more wealth in the community with the new focus on higher wage jobs. He will support the motion with the promise that everyone will come together on the arts and culture piece and be able to examine the numbers to find a strategy for arts and culture.

Mayor Manheimer said that this is funding for the EDC to grow quality jobs in Asheville which means new businesses locating here or the growth of existing businesses. We need to focus on growing higher paying jobs and need to better understand how the arts community impacts our overall economy and how to support them in the context of our total economy.

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

Vice-Mayor Hunt moved for the adoption of Resolution No. 15-210. This motion was seconded by Councilwoman Wisler and carried on a 6-1 vote, with Councilman Bothwell voting "no".

RESOLUTION BOOK NO. 37 - PAGE 321

B. MOUNTAIN HOUSING OPPORTUNITIES EAGLE MARKET PLACE REQUEST

Mr. Wyatt Stevens, attorney for Eagle-Market Place, LLC, gave a brief update on the background of this project and explained in detail why they are now requesting a way to move

forward without asking for additional City funds into the project. He said that in order to secure an additional bank loan to ensure completion of the Eagle-Market Place project, Eagle Market Place LLC requests the following modifications to the City loans: (1) Convert 24-30 of the 62 residential housing units to workforce housing units, affordable to households with incomes at 120% of Area Median Income; (2) Disburse the balance of the Urban Redevelopment Loan (\$2,867,618) at 50% completion (release of funds will follow all inspections and approval of satisfactory percent of completion by the bank and the City of Asheville's appointed representative(s), as well as project architect and structural engineer. Inspections will certify proper structural design and construction as well as all other elements required to certify successful 50% completion.) (3) Of the \$718,000 of committed Section 108 Funds, disburse \$218,000 at or no later than 10 days past the new construction closing date, then \$50,000 by July 26, 2016, and the balance of \$450,000 when the certificate of occupancy is issued; and (4) Modify the interest rate on the Housing Trust Fund Loan from 2% to 0% effective immediately. City Council is requested to authorize City staff to review, revise, approve and sign specific agreements within these authorizations and previous authorizations of City Council. Updated pro formas, updated financial commitments and other due diligence will be provided to City staff for their review and approval prior to construction loan closing.

Councilman Bothwell asked if the Mountain Housing Opportunities (MHO) is successful in recovering more money through the mediation, would it be possible to return the 2% interest on the Housing Trust Fund loan rather than return the 24-30 units from workforce housing units to affordable housing units. Mr. Stevens said that they would be willing to consider that.

Community Development Director Jeff Staudinger responded to Councilwoman Wisler regarding the Section 108 funds. He said that those funds were already pledged to the project and the request is to change the disbursement schedule.

In response to Councilman Smith, Mr. Staudinger said that City Council has waived the interest rate in the Housing Trust Fund for projects that generally serve the lowest income households.

In response to Councilwoman Wisler, Mr. Stevens said that they will sign a change order with the general contractor that will be very specific and they have included \$631,000 contingency. They sincerely hope that they never have to come back in front of Council to complete this project.

Mr. Scott Dedman, Executive Director of MHO, explained the broad range in the number of affordable units vs. the workforce units.

Executive Director of Planning & Multimodal Transportation Cathy Ball said that the City Attorney's Office and City Manager's Office has been working on a number of conditions for your consideration should Council choose to approve this modification. She read them as follows:

- A. Prior to disbursement, the following must be approved:
1. Certification from project architect and engineer that the building is at "50% completion" as that term has been defined in EMP's 11-3-15 request to Council.
 2. Copies of all inspection reports from City inspectors reflecting approval of all components of the completed project along with a statement from the City's Development Services Office that all work inspected by the project architect and structural engineer evidencing 50% completion have been inspected by the City and approved.
 3. Certification from General Contractor and/or architect identifying any outstanding or anticipated change orders to complete the project.

4. Confirmation from all contractors (general contractor, architect, engineer) and lenders that all payments due to them at the time, in accordance with the terms of their contracts or loan agreements, are current.

B. Prior to Agreement by City:

5. Evidence that all financing commitments necessary to complete the project have been obtained.
6. EMP's attorney must review any and all contracts between EMP and any other entity regarding the project inclusive of the contract between EMP and the General Contractor, and all banking loans.
7. EMP's attorney must review all design and construction contracts relating to the Project and certify that there is insurance coverage consistent with industry standards.
8. EMP's attorney is to modify the HTF loan documents to represent a 0% interest rate vs. a 2% interest rate, such modification to be retroactive to April 2015 and modify the urban redevelopment loan to reflect the agreed upon changes.
9. The GC must continue to maintain the performance and payment bond currently in effect on the Project.
10. Commitment by EMP that any project cost overages shall be covered by additional non-city financing.
11. With the exception of annual application request for CDBG/Home/HTF monies, upon 50% completion and release of funding, neither MHO nor Eagle Market Street Development Corporation shall request any additional funding from the City for the Project.
12. EMP will use good faith efforts to ensure that HOME units are completed and leased no later than January 2017.
13. To the extent required, EMP will obtain approval from the Buncombe County Board of Commissioners to modify it's agreement with the County to allow for the 24-30 units to be converted to workforce units. EMP will obtain confirmation from the County that the County's funding commitment for the project is still in place.

Councilman Bothwell didn't see where we can afford not to finish this project at this point.

Mr. David Nutter, Board Secretary of Eagle Market Street Development Project, spoke in support of the request and thanked Council for preserving a living block with an African American presence.

Mr. Rich Lee felt that the highest priority in this project was affordable units and hoped that any additional funds received through mediation be used to return the workforce housing to affordable units.

Ms. Dee Williams urged Council to approve the loan modifications and requested space be reserved in the project for African American entrepreneurs.

Mr. Gene Ellison, attorney in Asheville, was grateful to the efforts of MHO to make this project work and thanked the City for standing behind them.

Ms. Joslin Reece wondered if there is something else that can be done without reducing the number of affordable units.

Mr. Dedman explained that when they reformulated their financial plan, they started with the assumption was that they don't come back to the City and ask for more funds. The mix of workforce and affordable housing is a healthy mix, noting that MHO has over 600 apartments in this community which are all deeply affordable. They have never done a mix, but we are willing to borrow approximately \$3 Million of new funds to make the project work so we don't have to come back and ask the City for approximately \$3 Million in new funds. The cash flow required to pay the monthly payments on the new debt will need the higher rents. If they receive funds from arbitration, and within bank underwriting requirements, they would be happy to repay some or all of the \$16,000 a year in interest in Housing Trust Fund because that money would go toward other affordable units. They also will try to build back in affordability.

Councilman Smith said that the intentions of this project went beyond housing. There is 8,000 square feet of commercial space and as important - the preservation of the historic nature of the neighborhood.

Councilwoman Wisler said that she would like to see the Eagle Market Street project go forward. She applauded MHO for continuing to seek recovery of funds through mediation. She also understands that MHO and the general contractor have foregone fees in an attempt to keep this project going. However, she still has some major concerns. First, with funding at 50% level. The City has already contributed \$2.7 Million to this project and additionally guaranteed federal grants of \$440,000. These figures include the purchase of The Block property, consulting fees and monies that went directly to building the project. Now the City is being asked to fund \$2.9 Million and forgive all interest payments. To pay these remaining monies before the project is 100% complete is highly risky. She noted that the County is paying all of its financial commitment only when the project is 100% complete. She understood that MHO has committed not to ask the City for more funds, but it's not clear to her that if the project needs more funds, where those would come from. At 50% completion levels, there will remain a lot of uncertainties. While the funding at 50% completion is risky. She is also uncomfortable with the reduction in affordable housing units. When the City first committed to this project, the cost of each of the 62 deeply affordable units was approximately \$83,000 while the City normally spends less than \$20,000 when we contribute to affordable units. Therefore, we were already spending quite a bit more per unit for the Eagle Market project. That commitment reflected how important and transformational this project is for the City and recognizes the difficulties with the soil conditions and preservation work. As Mr. Stevens pointed out, the original commitment of 62 affordable units was a significant issue in the original negotiations. Today, in order to get financing for this project with its substantially increased costs resulting from the construction problems, the project will reduce its deeply affordable housing units to between 30 and 38 units. With this change in the mix of affordable units, the City will be contributing between \$135-175,000 per unit. That is 7 to 10 times our typical contribution per affordable housing unit. She was not sure this is the best use of taxpayers' money. And given that there is no guarantee that the project can be completed at the original total cost, the City may be asked to spend even more per unit, even though she realized they are committing not to. She would like the City to fulfill its original commitment under the original terms to the Eagle Market Street Project.

Councilman Bothwell moved to approve the loan modifications for Eagle Market Place, LLC, as requested with the conditions read by Ms. Ball outlined above. This motion was seconded by Vice-Mayor Hunt and carried on a 6-1 vote, with Councilwoman Wisler voting "no."

VI. NEW BUSINESS:

A. BOARDS & COMMISSIONS

Regarding the Homeless Initiative Advisory Committee, the following individuals have applied for the vacancy: Eric McDaniel, Charlene Jones, Arthur Myers, Seth Connelly and Dale Davidson. It was the consensus of the Boards & Commissions Committee and City Council to re-advertise for a position and wait for a recommendation from the Homeless Initiative Advisory Committee of a City resident.

RESOLUTION NO. 15-211 - RESOLUTION APPOINTING MEMBERS TO THE ALCOHOLIC BEVERAGE CONTROL BOARD

Vice-Mayor Hunt, Chair of the Boards & Commissions Committee, said that the terms of Edward Hay and Robin Cape as members on the Alcoholic Beverage Control Board, expire on November 13, 2015.

No individual filed for the vacancies.

The Boards & Commission Committee recommended reappointing Edward Hay and Robin Cape.

Councilman Bothwell moved to reappoint Edward Hay and Robin Cape to each serve an additional three-year term respectively, terms to expire November 13, 2018, or until their successor have been appointed. This motion was seconded by Mayor Manheimer and carried unanimously.

RESOLUTION BOOK NO. 37 – PAGE 322

RESOLUTION NO. 15-212 - RESOLUTION APPOINTING A MEMBER TO THE ASHEVILLE-BUNCOMBE HISTORIC RESOURCES COMMISSION

Vice-Mayor Hunt, Chair of the Boards & Commissions Committee, said that Tracey Rizzo has resigned as a member of the Asheville-Buncombe Historic Resources Commission, thus leaving an unexpired term until July 1, 2018.

The following individuals have applied for the vacancy: Craig Cline, Guy Cothran, Leslie Klingner, and Helen Glenn Court.

The Boards & Commission Committee recommended appointing Leslie Klingner.

Councilman Pelly moved to appoint Leslie Klingner to serve as a member of the Asheville-Buncombe Historic Resources Commission to serve the unexpired term of Ms. Rizzo, term to expire July 1, 2018, or until her successor has been appointed. This motion was seconded by Councilman Bothwell and carried unanimously.

RESOLUTION BOOK NO. 37 – PAGE 323

RESOLUTION NO. 15-213 - RESOLUTION APPOINTING A MEMBER TO THE MULTIMODAL TRANSPORTATION COMMISSION

Vice-Mayor Hunt, Chair of the Boards & Commissions Committee, said that the term of Steven Obremski, as an at-large member of the Multimodal Transportation Commission, has resigned, thus leaving an unexpired term until July 1, 2017.

The following individuals have applied for the vacancy: Mike Zukoski, Kelly Prime, Meredith Gregory, Eric Workman, Richard Rozzelle, Edward Keaton, Seth Connelly, Michael Speciale, Devin Clancy and Rich Lee.

The Boards & Commission Committee recommended appointing Rich Lee.

Mayor Manheimer moved to appoint Rich Lee to serve as an at-large member of the Multimodal Transportation Commission, to serve the unexpired term of Mr. Obremski, term to expire July 1, 2017, or until his successor has been appointed. This motion was seconded by Councilwoman Wisler and carried unanimously.

RESOLUTION BOOK NO. 37 - PAGE 324

VII. INFORMAL DISCUSSION AND PUBLIC COMMENT:

At the suggestion of Councilman Smith, it was the consensus of Council to review the downtown development review guidelines as outlined in the Downtown Master Plan referencing "After a pilot period, evaluate the success of these review process changes and amend them as appropriate prior to permanent adoption. A four-year pilot period is recommended to allow sufficient time for economic recovery and significant project proposals to occur, while keeping the timeframe finite." City Manager Jackson said that he will provide Council with a staff analysis, together with some suggested alternatives, for Council's review on December 8, 2015. It was also the consensus that the City Manager report to Council on the small business focus and how to address the national/international chains popping up in downtown.

VIII. ADJOURNMENT:

Mayor Manheimer adjourned the meeting at 8:30 p.m.

CITY CLERK

MAYOR