

Tuesday – September 16, 2003 - 3:00 p.m.  
 1<sup>st</sup> Floor North Conference Room – City Hall

Worksession

Present: Mayor Charles R. Worley, Presiding; Vice-Mayor Terry M. Bellamy; Councilman Joseph C. Dunn; Councilman James E. Ellis; Councilwoman Diana Hollis Jones; Councilman R. Carl Mumpower; and Councilman Brian L. Peterson; City Attorney Robert W. Oast Jr.; City Manager James L. Westbrook Jr.; and City Clerk Magdalen Burleson

Absent: None

**CONSENT AGENDA:**

**Contract for Glendale Avenue Stormwater Drainage Improvement Project**

Summary: The consideration of a resolution authorizing the City Manager to enter into a contract with Hobson Construction Company Inc. to install drainage located along Glendale Avenue in Asheville, North Carolina.

The City is in need of a contractor to provide stormwater installation services for a drain line along Glendale Avenue between Thompson Street and McArthur Lane. In accordance with N.C. Gen. Stat. sec. 143-131, informal bids for stormwater installation services were solicited and two responses were received. The project was rebid and there were two responses received. The bidders are listed below:

<u>Company</u>	<u>MB Part</u>	<u>Drug Free</u>	<u>Bond</u>	<u>Bid</u>
Hobson Construction Co. Inc.	0	Yes	Yes	\$75,300
Buckeye Construction Co. Inc.	0	Yes	Yes	\$104,034

Funding for this project has already been allocated in the Public Works Department's Stormwater Materials budget.

The Public Works Department staff recommends City Council adopt the resolution authorizing the City Manager to enter into contract with Hobson Construction Company Inc. to install a drain line along Glendale Avenue.

**Agreement with the N. C. Dept. of Transportation for Airport Grant**

Summary: The consideration of a resolution with the N.C. Dept. of Transportation for matching funds for improvements to the Asheville Regional Airport.

The City is required by law to execute certain contracts and agreements for the Airport Authority. This grant agreement is to allow the Authority to receive additional matching funds from the N. C. Dept. of Transportation ("DOT") for the CAT II TDZ Lighting-Runway 34, Raise MITL, Perimeter Security Road-Phase II.

The grant, in the amount of \$33,595, has been approved by DOT based on a total estimated cost of \$671,899.

City staff recommends adoption of the resolution.

**Amend City Council's 2003 Scheduled Meeting Dates as follows: (1) Cancel September 30, 2003, community meeting; (2) reschedule Tuesday, October 7, 2003, worksession to Wednesday, October 8, 2003; and (3) reschedule Tuesday, November 4, 2003, worksession to Wednesday, November 5, 2003**

**Amendment to Civil Penalties Schedule for Unpaid Parking Citations**

Summary: The consideration of an ordinance restricting the number of late penalties for unpaid parking citations to a maximum of three.

A review of the collection of parking citations after the addition of three late penalties indicates a very low collection rate. In addition, collection agencies and the state income tax garnishment system requires a set amount due that is not changing on a monthly basis to use these collection methods. By adoption of this ordinance, the City of Asheville would be in a position to better use the services of collection agencies and/or the state income tax garnishment program to increase

compliance of parking ordinances and collection of amounts due.

Staff requests that City Council approves the ordinance.

Transit Services Director Bruce Black responded to various questions from Council.

Mayor Worley asked that the record show that City Council has received this information and instructs the City Manager to place these items on the next formal City Council agenda.

### **STORMWATER UTILITY FEASIBILITY STUDY**

- Mayor Worley said that this item will be postponed until the October 8, 2003, worksession.

### **TELECOMMUNICATIONS ORDINANCE**

- Public Works Director Mark Combs said that that this is the consideration of a telecommunications ordinance establishing a framework for communications infrastructure franchises and permits in the City limits.

The City needed a uniform way to regulate use, spacing, safety, etc. For example, you can have water, sewer, telephone, power, cable television, fiber optic, and possibly others in the future, in the public rights-of-way. Telecommunication consists of (1) fiber optic cable and other communications infrastructure located in public rights-of-way; (2) overhead (on existing or new poles; (3) underground (new or existing conduits); and (4) all new infrastructure. A telecommunications committee of City staff was formed to address the increasing use of the City's rights-of-way for utilities. The three key tasks for the committee was to: 1) Draft an ordinance; 2) Construct 'universal' franchise agreement; and 3) Convene to review and negotiate proposals.

In many cases, providing broadband cable access along certain routes makes such a system proprietary to the company in that particular area, and as a result companies have been scrambling to install such infrastructure in hopes of monopolizing future customers and access.

In the recent past, several cable companies have approached the City seeking exclusive rights to install fiber optic cable. Without a framework (ordinance) from which to negotiate non-exclusive franchises and permits, staff has been unable to develop long-term, binding legal agreements to benefit the franchise, current and future customers, and the City.

The goal of a telecommunications ordinance is that it will provide framework for (1) non-exclusive franchises; and (2) revocable permits. The ordinance will establish standards for: (1) telecommunications companies and developers and City staff (to base franchise agreement on); and (2) promote orderly development of infrastructure to insure: orderly installation within existing rights-of-way; customer access and services; and City and other government access.

In response to this need, a telecommunications ordinance was drafted which specifies the following sub-parts:

1. **Franchise required:** No telecommunications system can use public rights-or-way in the City without a franchise.
2. **Franchise fees:** As set forth in the (negotiated) franchise.
3. **Service:** Must be installed and in service within 12-months and "...in accordance with the conditions of its certificate of public convenience and necessity."
4. **Construction and technical standards:** Grantee must install and maintain their system consistent with listed laws, ordinances, technical standards/specifications.
5. **Service to the City:** Terms of service to the City at favorable rates.
6. **Transfer of ownership or control:** The City must be notified of any intent to transfer ownership or control and the transferee is required to accept all terms, provisions and amendments.
7. **Franchise renewal:** The City may grant or deny a franchise and Grantee will have no property right in the public rights-of-way if not renewed.
8. **Forfeiture or revocation:** Sets forth seven (7) grounds for revocation (breach of franchise, disposition of system, restoration, abandonment and extended operation).
9. **Terms of renewal:** As negotiated with each Grantee.
10. **Receivership and foreclosures:** 120-day termination clause; termination by judicial action.
11. **Performance Bond:** Required with details of terms and conditions.
12. **Insurance:** Proof of insurance and maintenance of policy required.
13. **Indemnification:** Detailed conditions regarding release, indemnity, hold harmless, claims and broad construction (per N. C. Gen. Stat. sec. 22B-1).

14. Liquidated damages: Detailed conditions regarding liquidated damages, negotiated penalties, unavoidable delay and procedures.

In conclusion, the ordinance will establish standards for orderly use of rights-of-way as approved by Council. The franchise agreements will be based on an ordinance and staff will review all proposals, make recommendations to Council, and oversee ordinance compliance.

City staff recommends Council adopt a telecommunications ordinance, which will provide for non-exclusive franchises and revocable permits for telecommunications services established within the City of Asheville.

City Attorney Oast noted that he would add a provision in the ordinance that statewide utilities would not be regulated by this ordinance.

Upon inquiry of Councilman Mumpower, City Attorney Oast explained that this ordinance was crafted by using models from several different North Carolina cities.

Upon inquiry of Vice-Mayor Bellamy about making sure that companies adhere to the same rules as the City does in performing work on our streets, City Attorney Oast said that this ordinance establishes baseline standards for franchises and parameters can be included in the individual franchises.

City Attorney Oast answered various other questions from Council, some being, but are not limited to, is this ordinance over-excessive; do we have the authority to require lines be placed underground; and does the City has any leverage in asking companies to extend their lines in other areas.

Mayor Worley asked that the record show that City Council has received this information and instructs the City Manager to place this item on the next formal City Council agenda.

#### **PRE-TOWING NOTICE**

City Attorney Oast said that this is the consideration of an ordinance to require posting of "pre-towing" notices on private lots before owners can tow unauthorized vehicles with a civil penalty imposed for violation.

The City has received numerous complaints from people, usually visitors to Asheville, whose cars have been towed from private parking lots. The problem arises primarily in downtown and in Biltmore Village, both high tourist traffic areas, when cars are parked in private parking lots after normal business hours. The lots are not conspicuously posted with signs restricting parking (if at all), and are not chained off or barricaded, and people mistakenly assume that the lots are available for after hours parking. When the owners of towed vehicles go to retrieve their cars, they have complained that they are gouged on the price, forced to pay in cash, and otherwise treated rudely. This is a practice known as predatory towing, and many victims have promised never to return to Asheville and to warn their friends away, too.

The City's ability to regulate towing is limited, but other cities with similar problems have obtained special legislation to allow them to enact certain regulations. In 2001, the cities of Greenville and Chapel Hill obtained legislation to allow them to adopt an ordinance to require private property owners who tow vehicles from their lots to post a "pre-towing notice" on their lots before towing, and to assess a penalty if the ordinance is violated. In 2003, with the help of our local delegation, the City of Asheville was added to this legislation.

The ordinance is drawn from ordinances in Greenville and Chapel Hill. It requires the owners of lots who tow unauthorized vehicles to post these lots, and prescribes the size, height, location and required content of the sign. The act made unlawful by the ordinance is the towing of a vehicle, not the failure to post the sign, and the civil penalty for violation is \$100 for the first violation, \$200 for a second violation within 12 months, and \$300 for a third or subsequent violation within 12 months.

City Attorney Oast said that a suggestion received is that there be a registry of lots that have been posted.

City Attorney Oast responded to various questions from Council, some being, but are not limited to: how will the ordinance be enforced; can other areas of the City, other than downtown and Biltmore Village, be included in the ordinance as needed; what would be the next step in enforcement of these types of violations; if towing prices change, will the signs need to change and who would pay for those changes; is the type of the sign large enough for people to read; where will the signs be posted; and who will be enforcing the ordinance.

After discussion, City Attorney Oast said that he would amend the ordinance to include language on the sign that makes it clear the times the lot is subject to towing and also add the cost of the tow on the sign.

It was the consensus of City Council to have the ordinance be effective 60 days after adoption.

Councilwoman Jones suggested that in the future it might be appropriate to earmark any monies accumulated as a result of this ordinance towards the visitor's center or similar place. She explained that many times visitors are usually the ones who get towed and state they will not return to Asheville.

Upon inquiry of Vice-Bellamy, City Attorney Oast said that he would have to investigate whether the City could require the posting of these signs.

Mayor Worley asked that the record show that City Council has received this information and instructs the City Manager to place this item on the next formal City Council agenda.

At 4:15 p.m., Mayor Worley announced the remainder of this worksession will take place in the Council Chamber on the Second Floor of the City Hall Building.

**RESOLUTION NO. 03-158 -RESOLUTION AUTHORIZING THE CITY TO ENTER INTO AN OPTION TO CONVEY CERTAIN CITY-OWNED PROPERTY IN THE CENTRAL BUSINESS DISTRICT PURSUANT TO A DOWNTOWN DEVELOPMENT AGREEMENT TO THE GROVE PARK INN FOR A MIXED USE DEVELOPMENT PROJECT**

Mayor Worley said that the public hearing on this matter was held on August 19, 2003, and September 2, 2003, and then continued until this date.

Councilman Ellis moved to waive the rules and take formal action at this meeting. This motion was seconded by Councilman Dunn and carried unanimously.

Planning & Development Director Scott Shuford said that at the meeting of September 2, 2003, City Council requested some additional information concerning the Grove Park Inn (GPI) project. He noted that he submitted information to Council on the following: comparable sales used in the appraisal, primary exterior shell/balconies, Haywood Street Parking Garage property costs and appraised values, perpetuity of park space; scarce resources/limited asset question; and 2001 traffic study costs.

Regarding the "loss" of open space, Mr. Shuford said that they have taken the new survey and calculated the open space for the existing situation at 10,160 square feet. For the proposed situation, the amount of open space is 9,225 square feet assuming the scenario in which the GPI project is built to the maximum footprint allowed in the option agreement. There is a "loss" of open space of less than 1,000 square feet, which is more than made up from a park design standpoint through its consolidation into a single open area, rather than in two areas, one of which is functionally a landscaped median between four streets.

Mr. Shuford said that we have received an updated appraisal indicating a fair market value of \$702,000 that reflects the passage of time from the first survey and the slight increase in area from the previous survey. It represents an estimated value of \$37.50/square foot. This new figure will be added to the option agreement.

He then reviewed the following timeline of public information/participation. He said this timeline lists key dates for public information and participation. It does not include worksession updates on the Renaissance project status.

- January 2000 – Council receives extensive briefing about Pack Square Renaissance project and approves \$7,500 to be allocated for the study. Buncombe County later approves a similar amount.
- May 2000 – The Pack Square Conservancy (PSC) holds a three-day design charrette that results in the original design showing two building sites.
- Summer 2000 – The City and County reviewed and approved the original design for the Pack Square Renaissance project.
- February 2001 – Council approves informational signage to be erected in Pack Square and City County Plaza concerning the Renaissance project. This signage illustrates the two building sites.
- August 14, 2001 – Agreement for Renaissance project executed by City, County and PSC.
- October 2001 – Additional multi-day charrette held by PSC.
- March 2003 – Grove Park Inn (GPI) development agreement approved by City Council.

- July 2003 – PSC holds day-long series of focus groups and public involvement/presentation on the design guidelines for the Renaissance project.
- August 19, 2003 – City Council discusses GPI option agreement; approves Pack Square design guidelines.
- September 2, 2003 – City Council discusses GPI option agreement.
- September 16, 2003 – City Council to discuss and vote on GPI option agreement.
- Summer 2004 – City Council to decide whether to sell the site to the GPI (assuming the option agreement is executed).

Mr. Shuford said that the proposed building will be the fifth tallest structure on the square, trailing the Buncombe County Courthouse, City Hall, BB&T Building and the Jackson Building.

City Attorney Bob Oast said that based on Council comments at the September 2, 2003, continuation of the public hearing on this matter, he has incorporated some revisions into the proposed Option with the Grove Park Inn (GPI) for the sale and development of the property located in the area bounded and traversed by College Street, Market Street, and Patton Avenue.

The revisions clarify or otherwise address issues raised by Council and others as to the specificity of the dimensional limitations on the proposed development. They also further clarify the Pack Square Conservancy's (PSC) role in reviewing the design of the building, and more clearly provide that the conditions to be incorporated into the deed specify maximum dimensions that may be reduced, but not exceeded, by PSC or any agency having control over the development of the Subject Property.

He has also noted in Paragraph 6 of the proposed Option the existence of the PSC Agreement, as well as the issues raised with respect to the Redevelopment Plan and the possibility of a partial interest by Buncombe County in a portion of the Subject Property. These issues will be more fully investigated during the option period, and addressed as necessary.

He then reviewed the applicable changes to paragraphs 4 and 6 below:

4. Building Design: Other Matters. GPI and the City further agree to the following in connection with the conveyance of the Subject Property and the development thereof by GPI:
  - a. GPI shall comply in all respects with the terms and provisions of the Downtown Development Agreement with respect to the development of the Subject Property, and the terms and provisions of said Agreement are incorporated herein.
  - b. GPI shall comply with the terms and provisions of the PSC Agreement as to the development of the Subject Property, and nothing in this Contract or the Development Agreement may be construed to abrogate or limit the applicability of the PSC Agreement to development of the Subject Property.
  - c. The following provisions shall apply to the development of the Subject Property, and shall be incorporated into the deed from the City to GPI such that they shall run with the land and be binding in perpetuity on GPI and any of its successors or assigns, and shall survive the termination of the PSC Agreement or any other arrangement that governs the development of the Subject Property. Said provisions shall be absolute limitations on the development of the Subject Property, such that no design approved for the development of the Subject Property, nor any design guidelines applicable to the Subject Property, nor any amendment or variance thereof, may permit the height, building footprint, or view corridor limitations established herein to be exceeded; provided, however, that any design approved for the development of the Subject Property may require a reduction in any of the height or building footprint limitations specified herein. As used herein, "primary exterior façade" means the exterior of the building, and includes any permanently attached features and appurtenances, such as balconies and stairs, but does not include any temporary attachments, such as awnings and flagpoles.
    - (1) Height
      - (a) The height of the primary exterior facade of the building shall not exceed the height of the north facade of the Jackson Building, as measured from the sidewalk to the lower edge of the tile roof of the penthouse structure on top of the Jackson Building, which dimension is 130 feet.
      - (b) The height of the building to be constructed by GPI shall be measured from the lowest point of its south facade, or 2215 feet above mean sea level, whichever is lowest.

- (c) No part of the primary exterior facade of any side of the building may exceed the height of the south facade.
  - (d) A penthouse structure may project above the primary exterior facade of the building, provided said structure is set back from the primary exterior facade on all sides, does not exceed 24 feet in height, and does not cover more than 40% of the horizontal roof structure on which it is situated.
  - (e) In no case may any part of the building structure exceed 154 feet in height, or 2369 feet above mean sea level, nor may any projections, such as antennae or mechanical equipment, exceed this limitation.
  - (f) The limitations on the height and size of the penthouse structure shall apply even if the height of the primary exterior facade of the building does not exceed 130 feet.
  - (g) The limitations prescribed herein may not be exceeded for any reason.
- (2) Building footprint. The exterior dimensions of the primary exterior shell of the building shall not exceed 158.00 feet wide, measured in a westerly direction from the point of intersection of the southern line of the sidewalk on the south side of College Street, extended, with the western line of the sidewalk on the west side of Spruce Street, extended, parallel to College Street (approximately east-west), by 60 feet deep, measured in a southerly direction perpendicular from the southern line of the sidewalk on the south side of College Street (approximately north-south). These dimensions are based on the current configuration of the streets in the area. To the extent that implementation of the approved plans for the Pack Square / City-County Plaza area requires or permits alterations in these dimensions while remaining consistent with the other design limitations specified herein, including the PSC design guidelines, this agreement may be amended to require or permit different horizontal dimensions, provided that no such amendment may limit the horizontal area created by the primary exterior shell of the building, measured on the outside, to less than 9450 square feet without GPI's consent.
- (3) Preservation of view corridor. No part of the primary exterior shell of the building may intrude into the Vance Monument view corridor, which is the northwest corner of the Buncombe County Courthouse and the southwest corner of the Asheville City Building, as seen from a point measured five feet above the base and two feet east of the eastern face of the Vance Monument.
- (4) Sidewalks. The building shall provide for sidewalks along its north, east, and west sides. The north side or College Street sidewalk shall be preserved or replaced in its current location and width. The east or Spruce Street sidewalk and the west or Market Street sidewalk shall be preserved, replaced or constructed at their current widths or otherwise to City standards, and may be relocated in accordance with the PSC plan.
- (5) Underground parking. The parking facility for the building, if located on the Subject Property, may extend outside the building footprint, but not beyond the lines of the Subject Property; provided, that any part of any parking facility that extends south beyond the southern face of the constructed building must be completely below ground level, and the area above said parking facility shall be developed in accordance with the approved plan for the Pack Square / City-County Plaza Area, as developed by PSC and approved by the City. If approved by PSC, mechanical appurtenances such as air vents and utility equipment serving the parking facility may project above ground.
- (6) Other design issues. Service facilities, such as refuse dumpsters, electrical and other utility connections, shall be located within the building or placed underground.
- d. To the extent feasible, the City and GPI will coordinate with each other and with PSC as to the location, relocation, or reconstruction of any utilities, infrastructure, public amenity, or public area in the vicinity of the Subject Property to the end that the area of City-County Plaza and Pack Square that is disturbed by GPI's project will be restored in a manner consistent with the City's plans for the area, as developed and adopted pursuant to the PSC Agreement.
- e. The City will cooperate with GPI and provide reasonable assistance in connection with the development of the Subject Property with respect to such matters as temporary and permanent road closings and other permits and approvals necessary or desired by GPI for the project, provided that nothing shall require the City to

exercise any discretionary function in a particular way.

- f. The City shall retain appropriate easements to ensure that the part of the Subject Property south of the southern exterior facade of the building is used for public park purposes, and may assign or transfer said easements to a third party whose purposes include conservation of park land or green space.

(6) Title to the Property.

a. At the Closing, the City shall deliver to GPI, or its successor or assign, a special warranty deed which shall be in a form acceptable to GPI, conveying to GPI a good, indefeasible, fee simple, marketable title to the Subject Property, its appurtenances and improvements (as set out in Schedule B), and any personal property agreed to be conveyed (as set out in Schedule C), said title to be insurable both as to fee and marketability at regular rates, without exception except as to those matters specifically enumerated in this subparagraph, or such as GPI may waive. Said policy shall provide full coverage against mechanics' or materialmens' liens, have full survey coverage, and shall contain such other special endorsements as GPI may reasonably require.

The Subject Property, its appurtenances, improvements and personalty, shall be conveyed by the City to GPI free and clear of all liens, encumbrances, claims, rights-of-way, easements, leases, restrictions and restrictive covenants except only:

- (i) public utility easements, of record in customary form to serve the Subject Property; and
- (ii) zoning ordinances of the City of Asheville; and
- (iii) the PSC Agreement and design guidelines developed and adopted pursuant to said Agreement.
- (iv) such other restrictions and/or easements as set forth in this option.

If in the opinion of GPI's counsel, the City's title fails to meet the requirements of this subparagraph, then any such deficiency shall be specified in particularity in writing to the City and the City shall have until Closing, or at GPI's option a reasonable time thereafter, to cure such deficiency at its sole cost and expense. If the City fails to cure such defect(s) within the permitted time, in addition to GPI's remedies as set forth in paragraph 16 below, GPI shall have the option of taking title "as is" and consummating the Closing or, in the alternative, of terminating this Contract and receiving an immediate refund of its earnest money and any interest accrued thereon.

b. The following specific matters have been identified as potential impediments to the City's ability to convey the Subject Property:

- (i) restrictions, covenants or conditions contained in or arising through the deed for the Subject Property from the Housing Authority of the City of Asheville to the City, recorded in Deed Book 1118 at Page 239 of the Buncombe County Registry, the Contract for Sale of Land for Redevelopment by a Public Body, recorded in Deed Book 1117 at Page 463 of the Buncombe County Registry, and the Urban Renewal Plan approved by the City of Asheville by resolution adopted on August 2, 1962, and any amendments or revisions thereto, to the extent that any of said restrictions, covenants or conditions survive the dates set forth in said documents (December 1, 1987 and December 31, 1987) for the termination thereof.
- (ii) the possibility that Buncombe County may have a partial interest in a portion of the Subject Property.

During the option period specified herein, the parties will investigate these matters and, if the same are found to be deficiencies in the City's title or impediments to the City's ability to convey clear title, then as to (i) above, GPI shall have the option of taking title "as is" and consummating the closing or, in the alternative, terminating this Option and receiving an immediate refund of earnest money and any interest accrued thereon; as to (ii) above, GPI shall have the option of taking title to so much of the Subject Property with respect to which the City can convey clear title together with the City's interest in any remainder not wholly owned by the City, or taking title to so much of the Subject Property with respect to which the City can convey clear title, or terminating this Option and receiving an immediate refund of its earnest money and any interest accrued thereon.

Mr. W. Louis Bissette Jr., attorney representing the Grove Park Inn, said that the changes outlined by City Attorney Oast

are satisfactory to the Grove Park Inn.

The following individuals spoke in support of the City entering into an option with the GPI for various reasons, some being, but are not limited to: project will provide jobs for area residents, provide more green space, and boost to area economy; project will provide a significant tax base for the City thus lessening the tax burden on City residents and taxpayers; project will spotlight to the world the vibrant City of Asheville that wishes to nurture development, not stifle it; project is the best interests of the entire City of Asheville; you have to have business to create jobs; the Grove Park Inn will pay it's own way; GPI has been a first class citizen and they are no strangers to our community; this will be a positive project for the Eagle Street area; and building will bring in revenues to address shortage of jobs, affordable housing, and even perhaps the renovations needed at the Civic Center:

Mr. Albert Sneed, representing the Council of Independent Business Owners

(submitted Resolution in Support)

Mr. Eugene Ellison, Asheville resident

Mr. Walter Plaue, Buncombe County resident

The following individuals spoke in opposition of the City entering into an option with the GPI for various reasons, some being, but are not limited to: the building will block the view of the mountains; the City should have a vote of all residents on whether to sell the property or not; too much confusion over the height of the building, street reconfigurations, and actual acreage being discussed to be sold; are condominiums the best use on that property; if variances are granted on the project, the public should be given an opportunity to comment on them; poorly communicated facts, misinformation or lack of information on project; need to preserve existing green space; there is no public support of this project; no appropriate reconciliation of property lines and ownership; Pack Square Conservancy is a self-appointed body being given control over public space; project should fit into the Pack Square Conservancy's guidelines rather than adjusting the guidelines for the project; trees on property should be preserved; proposed building is out of proportion and does not fit in with the character of Pack Square; space is not adequate for scale of project; GPI should do a feasibility study first; Downtown Development agreement approved without public comment; downtown Asheville is already revitalized and does not need this project; there will be a loss of parking for people who have business at the Courthouse and City Hall; decision to proceed should be postponed and an inexpensive model should be prepared for the public to view; in the long-run this project may actually harm the beauty of Asheville and what makes Asheville unique; we need to preserve our City central core; there is space outside the City to build tall structures; project height will clog up the energy flow of openness of downtown area; we should ask the Preservation Society to be in charge of protecting Pack Square, not the Conservancy; need to keep our existing park land; there should have been a competitive bidding process; the building will take businesses out of existing office space and leave empty buildings; condominiums with children will require more school buses; condominiums will need more police to patrol area; what is the current vacancy rate on office, condominiums and retail buildings downtown; legal notifications of City Council meetings vs. worksessions lacked due process; and the height of building should be the entire streetscape, not the Jackson Building:

Mr. Fred English, Haw Creek resident

Mr. Brad Burns, Asheville resident

Mr. Bill Hussey Jr., Weaverville resident

Mr. Mike McCreary, Asheville resident

Mr. Barry Summers, Asheville resident (submitted copies of a referendum petition)

Ms. Nelda Holder, President of the League of Women Voters of Asheville-  
Buncombe County (submitted statement)

Ms. Nan Davis, Asheville resident

Ms. Leah Karpen, Asheville resident

Ms. Michelle Dorf, Weaverville resident

Two Asheville residents

Ms. Mary Jo Brezny, Asheville resident

Mr. Brokaw, Asheville resident

Ms. Julie Brandt, Asheville resident

Mr. Wally Bowen, Asheville resident

Mr. Robert Simon, Asheville resident

Ms. Hazel Robinson, Asheville resident

Mr. Bill Wescott, President of the Preservation Society of Asheville & Buncombe Co. Inc.

Mr. Brady Price, Asheville resident

Mr. Bissette addressed many of the comments raised by those who spoke in opposition of the project, stating that there has been a lot of confusion, but most of it has been put out by the opponents of the project. He reiterated that the GPI



wants to build a wonderful building downtown, which will make Asheville proud.

At 6:33 p.m., Mayor Worley closed the public hearing and announced a short break.

Councilman Dunn moved adopt a resolution to authorize the City to enter into an option to convey property pursuant to a downtown development agreement. City Attorney Oast read the following resolution: "Whereas, the City of Asheville in May of 2003 entered into a Downtown Development Agreement with the Grove Park Inn Resort, Inc. (herein "GPI") under N. C. Gen. Stat. sec. 160A-458.3, pursuant to which the City and GPI agreed to negotiate the terms of an option for the sale of certain property in the downtown area to GPI for development of a mixed use building; and, Whereas, a public hearing was held beginning on August 12, 2003, wherein the terms of the proposed conveyance have been disclosed, discussed and revised, and are contained in an option agreement attached hereto as Exhibit "A"; and Whereas, the proposed sale price for the subject property is \$702,000, or \$37.50 per square foot, which is the appraised value based on an appraisal completed in November of 2002, and updated in September, 2003. Now, therefore, be it resolved by the City Council of the City of Asheville that the City enter into an option agreement for the sale by the City of certain property, or a portion thereof, identified in the attached option and pursuant to the terms and provisions set out therein, and that the Mayor be, and he is hereby authorized to execute said agreement, subject to the approval of the City Attorney. This motion was seconded by Councilman Mumpower.

Councilwoman Jones asked if it was possible to briefly explore some type of continuation of a public input process, but not necessarily in this forum, since a motion is on the floor. When Councilman Peterson suggested a motion to table, City Attorney Oast said that it is proper to have a motion introduced and on the floor which sets the table for debate. He said that Council can make a motion to postpone the matter for a certain period of time or indefinitely which would be to table a pending motion.

Councilman Dunn felt that there has been adequate public comment and would not be inclined to support a motion to table.

Mayor Worley addressed some of the confusion and misconceptions of the project. City Council and City staff only have control over what we disseminate, all of which is available to the public. We can't force other people or the media to print or disseminate information in any certain way. He said this has not been a hasty process. We've heard discussion that this all began with the Pack Square Conservancy (PSC) coming together and having a design charette in May of 2000 where two building sites, including this one, were identified. That resulted in an agreement between City Council and the PSC and the approval by City Council of the Master Plan for the Pack Square area, which included the building sites. We can't control what PSC may have changed on their website, but what was approved was a Master Plan with the building sites on it. The GPI proposal surfaced in the early part of this year and the agreement was put on Council's agenda and made available to the public. When Council discussed and approved the agreement, there was public comment. The public process has been pretty thorough. That agreement called for us to do exactly what we are doing now and that is to move forward to converting that agreement into an option. We have held public hearings for that process. Since the August 12 meeting had a crowded agenda, we continued the public hearing to August 19, then to September 2 and again to now. Our public process has been very thorough. Another misconception is that somehow we are missing the boat by not bidding this project. Instead we are doing it under a downtown development act, which allows us to do a negotiated agreement so long as the purchase price is not less than the appraised value. The reality is that the Downtown Development Act was specifically designed to address projects like this. Projects that have a significant impact on a downtown and gives a city council the opportunity to have extra control over what that project looks like. So, if we decided to do this, that agreement was the way to go. It's true that we did a Request for Proposals (RFP) for the development around the Battery Park Parking Garage, but we only received one response. The reality is that when we do an RFP or a bid process like this where a major project is specifically tailored, you get very few, if any, responses. He said that this is the very type project design this statute was designed for. There is another misconception about the finality of what we are doing if we go forward with the option agreement. It is only an option. The first step was the initial agreement, which allowed the GPI to perform some basic feasibility-type studies. The second step is an option, which gives them a higher level of comfort in terms of going forward with significant expenditures to come up with a design. A design we haven't seen yet. Anything in the paper has been conjecture. The GPI hasn't even hired an architect, to his knowledge. The option agreement gives them until summer of 2004 to complete the design process and then come back to Council. At that time Council will decide whether that design is sufficient and will fit in this area. If that is determined, then we will go forward with the sale of the property. There are misconceptions about George Pack and what he donated to the City of Asheville and the restrictions placed on it. He donated Pack Square. Pack Square stops about the time you get to Market Street. This area we are talking about is not part of Pack Square and is not part of what George Pack donated to the City of Asheville and is not subject to any restrictions that George Pack might have put on it. The PSC hired a consultant with donated money and held three days of charettes where they listened to the public and that is what came out of it. Regarding our need to preserve our history and our heritage, we did not do that with respect to this site. This site was occupied by buildings up to late 1960's or early 1970's. Buildings came all the way down almost to the County

Courthouse. We tore those buildings down a number of years ago. Those are some misconceptions he wanted to take the opportunity to set the record straight. He felt that throughout this, this Council and City staff has tried to be very open and presented accurate and complete information.

Councilman Peterson said that he has talked with Mr. Bisette regarding his concerns regarding the height of the structure. The following three items have been discussed and agreed to by Mr. Bisette: (1) the lower edge of the gargoyles be the top of the main structure; (2) the penthouse structure not exceed the penthouse structure of the Jackson Building in height, and not cover more than 80% of the horizontal roof structure on which it is situated; and (3) any sort of decorative feature can be added to the top of the building with the maximum height of the height of the bell tower on the Jackson Building.

Mr. Bisette said that this is another way the GPI is trying to meet the concerns of the City Council noting that the GPI does agree to the changes to the height outlined by Councilman Peterson. The GPI does prefer a higher building because there is an economic reality in a building like this, particularly where we are restricted to a footprint. The footprint of the building would give the GPI a floor space of about 9,000 square feet, if the PSC guidelines variances can be increased to a 60-foot wide building, compared to the footprint of the Biltmore Building which is 12,500 square feet.

Mr. Troy Hunnicutt, Director of Development for the GPI, said that with the changes outlined by Councilman Peterson, they will lose approximately 9,500 square feet, which is one floor level completely. He said that he would make a good faith effort to make the changes work, which would result in nine stores plus a penthouse, above ground.

Councilman Peterson expressed concern about the front yard space of the building because it would be an intrusion into the view shed and/or feel of the park. He said he has spoken with Mr. Bisette and Mr. Bisette said the GPI does not have plans to build any permanent buildings on that space or use it for commercial space. Councilman Peterson said that although the option does have some language about easements, he would like to be specific that there will not be structures built, other than a 10-15 feet awning and sidewalk café space, and that it will be more like the park structure that the PSC envisions. He feels that this should be part of deed restrictions if we sell the property, just in case the PSC changes its mind in the future.

Mr. Bisette said that the GPI will have landscaping at the entrance to the building and probably some outside tables for maybe a restaurant on the first floor. There are no plans for the construction of any kind of structure in the front yard space of the building. The parking garage will go under that property and the surface will be returned to the state that the PSC wants when it completes its park in the City/County Plaza.

City Attorney Oast said that he would prepare language amending the option by adding a clause to one of the provisions, which basically states that there would be no projections south of the southernmost limit of the building, except canopy projections not to exceed 15 feet, with no other permanent commercial uses beyond that 15 feet. He said that if City Council wants this language in a deed restriction, he would be happy to do that.

Vice-Mayor Bellamy asked how would that language coincide with her request for a conservation easement for not only the front yard part, but the entire corridor to remain green space. City Attorney Oast said that the easement we are retaining would allow for the kind of structure Councilman Peterson is comfortable with and that easement could cover the remaining portion and could be conveyed to a conservation organization.

When Councilman Mumpower asked why the GPI expressed interest in building on this property and not near the Civic Center or on Coxe Avenue, Mr. Bisette said that when they saw the plans for the PSC they saw this as a win/win situation. This could be an investment for the GPI and spur along the development of the park process. People who invest in this type of residence will want a beautiful park.

Upon inquiry of Councilman Mumpower about competitive bidding, City Attorney Oast said that the City wouldn't lose all design control if we entered into a competitive process, but with the downtown development agreement, we retain a higher degree of design control than we would have with the competitive process. In the competitive process we could specify interest in receiving proposals that meet certain requirements. However, he felt that this gives us more front-end flexibility on what that proposal would look like.

Councilman Mumpower pointed out that the valuable piece of property across from the Civic Center for the St. Lawrence Square Parking Garage was handled by the competitive qualification process and only one response was received. City Engineer Cathy Ball stressed that what the City requested was a proposal for qualifications, not a proposal for cost; and the City did not receive anything back on the requests sent out of state. In that project too, we also hope to use the Downtown Development Act in order to finalize the option for the property.

Councilwoman Jones pointed out that we did use a competitive process first and then will use the Downtown Development Act tool.

Vice-Mayor Bellamy felt that as this project progresses, there should be a requirement for the GPI (like any other developer) to meet with the "neighborhood" in order to show them their plans and try to respond to any of their concerns. That meeting could occur in the Stephens-Lee Community Center or the Civic Center.

Mr. Shuford responded to questions from Vice-Mayor Bellamy about how the residential amenities of the building will be met. He summed up by saying anyone interested in a downtown residential environment is going to be drawn by the vitality and activity of the space.

In response to Vice-Mayor Bellamy, Mr. Craig Madison, President and Chief Executive Officer of the Grove Park Inn Resort and Spa, said that the investment in Site A is \$25-30 Million. The available jobs on Site A will be probably less than 50 with the majority of jobs coming from the building on Site B. In response to livable wages, he said the GPI will be the developer and won't necessarily own the businesses in the building, but the GPI currently employs 567 residents of the City of Asheville which is a good precedence.

Upon inquiry of Vice-Mayor Bellamy regarding the vacancy rate, Mr. Madison said the GPI is on their fifth feasibility study. The first study has been reconfirmed that states from pre-sell to construction base we are in a position to sell 62 units within 24-months (this is from an earlier model without the recent restrictions). We have high confidence on the retail space because of the desirable location and we will re-test the market based on the office/condo space just to confirm that there is a true market for that. That will be easy to convert once the shell is being built.

In response to Vice-Mayor Bellamy, Mr. Shuford that this property is part of the National Register of Historic Districts, but not part of any local historic district. The Historic Resources Commission of Asheville and Buncombe County (HRC) would not be directly involved by policy in any review of this area. He did point out that the City has received a letter from Chairman of the HRC offering their services for any design questions that City Council or the developer might have.

Councilman Dunn would have been happy with a competitive bid process on this site but felt confident that a developer wouldn't come to Asheville and invest \$30 Million to build condominiums in downtown Asheville. We are lucky that the GPI wants to invest this money in Asheville,

Upon inquiry of Councilwoman Jones, City Manager Westbrook said that there will be approximately \$150,000 in property taxes from Site A.

Councilman Peterson moved to amend the motion as follows: (1) The height of the primary exterior facade of the building shall not exceed the height of the north facade of the Jackson Building, as measured from the sidewalk to the lower edge of the gargoyles top of the Jackson Building; (2) A penthouse structure may project above the primary exterior facade of the building, provided said structure is set back from the primary exterior facade on all sides, does not exceed the height of the roof of the penthouse structure on the Jackson Building, and does not cover more than 80% of the horizontal roof structure on which it is situated; (3) A decorative fixture would be permitted on top of the new building but it could not exceed the height of the top of the bell tower on the Jackson Building; and (3) Service facilities, such as refuse dumpsters, electrical and other utility connections, shall be located within the building or placed underground; provided that the ground level south facade of the building may include a canopy projection that extends not more than 15 feet from the building and may not be more than 15 feet high with no permanent commercial structure beyond the canopy. This motion was seconded by Vice-Mayor Bellamy.

Upon inquiry of Vice-Mayor Bellamy, City Attorney Oast didn't think the required meeting with the "neighborhood" would be appropriate for inclusion in the option. To the extent that it is one of the next steps in the process, City Council would insist on that being done in some way.

Councilman Dunn asked what the steps would be if the GPI couldn't make this project economically feasible, with the restrictions, but they still want to build a structure. City Attorney Oast said that the GPI wouldn't exercise the option but they could request to renegotiate the option with City Council. That would require another public process.

Mr. Bissette wanted to sure that the 15 foot canopy projection restriction is not talking about landscaping features because there must be an entranceway into the building. He said they will not have any other commercial structures, but there could be a retaining wall or a driveway drop-off. Councilman Peterson said that he was speaking more at either permanent restaurant facility out there or some sort of building that would actually be blocking the view in that 60-feet in front of the building.

Upon inquiry of Councilwoman Jones, Mr. Bisette said that construction period would be about 1.5 years. He said the effect on the economy of a \$30 Million construction project also needs to take into account wages for the people who supply the building materials, plumbers, electricians, etc. There are lot more jobs involved here than what will be here ultimately.

When Councilman Mumpower said he didn't think he could support amending the height of the building by one story if it would have a significant probability of derailing this effort. Mr. Bisette said that Mr. Hunnicutt said that he would try to make this work.

Mr. Shuford reminded Council that the height of the building, even with what is proposed as an alternative, still exceeds the height of the Pack Square Design Guidelines of the PSC, so they will still need to go through the variance process to get the extent of height that is being proposed.

The amendment to the motion made by Councilman Peterson and seconded by Vice-Mayor Bellamy carried on a 6-1 vote, with Councilman Dunn voting "no."

Councilman Peterson stated that City staff is doing City Council a disservice when they fail to report the downsides to a project. For instance on this project, downsides could include the traffic will be worse, we will lose parking, there may be a conflict with residential development in the park, maybe we could get more money than the appraised value, and we will lose some plaza space. There is a lot of public confusion about exactly what is going on, and he didn't think the process was open and inclusive. If staff would tell Council all the upsides and all the downsides of a project, then the elected officials could weigh those out. He felt it would be a better city government. Looking at both the upsides and downsides of this project, he does think it will help develop this part of downtown. He thinks we can make downtown better by having more activity on this side of the downtown. He thinks this will help get something built in the parking lot behind the Renaissance Hotel and will help get something better done in the Eagle-Market Street area. He would rather have new residents buy that great downtown condominium, than have them build on the tops of our mountains or further out in the County. In the final analysis, he thinks this project is smart growth because we are putting people downtown where we have the infrastructure. He did feel that if staff did a better job, then the public would have done a better job of not being so one-sided.

Councilman Ellis recalled when there was a building on that site and it was torn down and he felt that putting another structure on the property is important. He remembered in 1974 when the Civic Center opened, two new hotels were built in Asheville, and the Asheville Mall opened. Downtown Asheville was basically dead then with most buildings being vacant. The transformation in downtown Asheville has been amazing and he attributed that to the hundreds of small retailers that have taken a chance in Asheville. He believes that the people living in downtown Asheville is what has made the difference. He felt Asheville is unique because there are many eyes on the park and that is what this project will be doing.

Councilman Dunn said that a common thread heard was from people who do not want Asheville to change. That is not the way life is. Change, by it's sheer nature, scares people. He couldn't understand when people said there was erosion of public trust because they listened to everyone, even people who don't pay City taxes. He felt the process was a little quick, but it was a good opportunity presented to the City. He does want to preserve Asheville's history but we need to think of the future also. This is a giant step for the future of Asheville and he thinks it's a good step.

Councilman Mumpower felt the cloud of misinformation about this project is largely manmade and regrettably by some of the organized bodies represented here. Contrary to much of the testimony, this has been an open process and there has been plenty of opportunity for public input. This is a city, not a forest. The City is created by entrepreneurial initiatives and this project helps sustain that trend. Major human endeavors and activities are rarely smooth and error-free. We have a representative form of government and we have the honor of listening, researching and deciding on these matters. As he weighs out the pros and cons, he believes this project is clearly in the best interests of the citizens of Asheville.

Councilwoman Jones said a few years back the Asheville City Council was put in an awkward place of receiving a gift of land, which was the Asheville Speedway. While she was somewhat sympathetic to Council's predicament, she was primarily very discouraged that so many Asheville residents felt it was a backroom deal. While many of the individuals differ in name at this point, the same feeling is pervading Asheville. She believes they have good reasons to question the process and how business is being done. Her different perception is not a misperception. She does think the process has been hasty and the public involvement has been less than adequate. She has questions about the development agreement. She does not blame the GPI for the problems in this process and in fact, Craig Madison was the most open person to her questions. She sees the problems in the process falling squarely on City Council. In March when we talked

about the opportunity for discussion about the development agreement, the public did not have a copy of the agreement. They could have called City Hall and requested a copy, but even this Council got a copy of it at the last minute. To hold that date up as an ideal time for public involvement is really not right. To mention all the dates that the PSC talked about a park does not have anything to do with our public process is not adequate for what we are talking about. The first public hearing we scheduled had people who sat for hours and then the hearing got rescheduled. We don't know whether those people were able to come back to the rescheduled hearing or not. True public process has been lacking. She thinks we have done a bit better near the end. She thanked City staff for the Frequently Asked Questions on the City's website. She felt it was excellent and it began a process. And she thinks we have done better with public comment. When she first heard about the proposal in February she listened with great enthusiasm and felt it was right to begin an exploratory phase. She assumed it would be a dialogue and a dialogue with the public. As the GPI was testing the soil, she assumed we would also be hearing from the people. When a slide was shown early in the development agreement stage, it showed the time for the GPI to do their due diligence, time for the PSC to look at the design guidelines, and time for City staff to do their part. The public had no time period on that slide. She feels we continue to dismiss the public's concern by labeling people as misinformed or resistant to change. She sees it differently. Here is the ultimately inconsistency for me. If we, as a Council, have so much authority in the fact that these buildings have been in the plan all along, then who would have dreamed that a developer would not have come through. The City has a vision for development, as it did with the St. Lawrence Square. We saw those buildings, we want them to be there and we go out with a RFP. Why we didn't consider, as a body, that alternative for this project. She thinks we should have. Her concerns continue to be heightened, but she feels a little bit better after tonight, about the variances. The ink wasn't even dry on the design guidelines when we started a discussion about variances. Why didn't we put out stakes showing the public where the property being discussed would be? Why wasn't a very simple, non-expensive public model to inform the public about the scale and the height of the building shown? Her preference would have been to have another 45-60 days to inform the public and give the developer some time to think about this reduction of one floor and to clear up some of this confusion. Finally, she believes that this juncture is really more important than the sale because at this point we are giving a developer a clear signal to spend \$25 Million. Now is the time we need to ask all the questions and consider the public's concerns. She would not be supporting the option.

Mayor Worley supported moving forward with the option. He felt this will bring more residential units downtown; allow more eyes on the park; bring more density downtown; prevent sprawl; and promote more walkability, less driving and less pollution. It will bring pedestrian traffic east of Pack Square and east of the City Hall. The street reconfiguration will be different in that it will be pedestrian friendly and create an invitation to College Street. It will facilitate further development, like the Performing Arts Facility that has been proposed for the grounds of the Renaissance Hotel, and other economic development along College Street. It creates more opportunities as you pull more people in that direction. The building itself will attract more development. He is not unmindful of the property tax revenue that this will generate and that the second phase may generate. In terms of the design, he thinks the guidelines are in place to make certain that whatever design comes out will be compatible with Asheville's history and it will spur the development of the rest of the park. Councils have few opportunities to make monumental decisions and he thinks this is a monumental decision that will have a lasting impact on Asheville. It's easy for us to look back and recognize those wonderful monumental decisions of the past, like the Battery Park Hotel, the Grove Arcade, City Hall the Buncombe County Courthouse and others. Probably none of those decisions took place without some controversy of their own and yet we look backwards and appreciate them. We don't think about the controversy that accompanied them when they took place. It's much harder for us to look forward and recognize what will be those monumental decisions in the future that we make today. It is wonderful that we have a local developer and the GPI has been a tremendous economic impact to this entire community.

The amended motion carried on a 6-1 vote, with Councilwoman Jones voting "no."

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**ADJOURNMENT:**

Mayor Worley adjourned the meeting at 8:43 p.m.

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CITY CLERK

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MAYOR