

Tuesday – July 10, 2007 - 5:00 p.m.

Regular Meeting

Present: Mayor Terry M. Bellamy, Presiding; Vice-Mayor Diana Hollis Jones; Councilwoman Robin L. Cape; Councilman Jan B. Davis; Councilman Bryan E. Freeborn; Councilman R. Carl Mumpower; Councilman Brownie W. Newman; City Manager Gary W. Jackson; City Attorney Robert W. Oast Jr.; and City Clerk Keisha Lipe

Absent: None

**PLEDGE OF ALLEGIANCE**

Mayor Bellamy led City Council in the Pledge of Allegiance.

**INVOCATION**

Mayor Bellamy gave the invocation.

**I. PROCLAMATIONS:**

**A. RECOGNITION OF ASHEVILLE'S SISTER CITY VALLADOLID, MEXICO**

Mayor Bellamy acknowledged the new Asheville Sister City of Valladolid, Mexico. President of the Asheville Sister Cities Charles Worley and former President of the Asheville Sister Cities Carroll Hughes spoke about the importance of Sister Cities and gave thanks to City Council for their support. Mayor Bellamy accepted their certificate of friendship and presented them with a token of friendship as well.

**B. BOARDWALKS OVER THE WETLANDS AT CARRIER PARK**

Mr. Bob Shepherd, Chairman of RiverLink Inc., presented City Council with a check in the amount of \$39,000, for the boardwalks over the wetlands at Carrier Park.

On behalf of City Council, Mayor Bellamy thanked RiverLink for their donations.

**II. CONSENT AGENDA:**

Councilman Mumpower requested that Consent Agenda Item "G" be removed from the Consent Agenda for an individual vote.

**A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON JUNE 19, 2007, AND THE REGULAR MEETING HELD ON JUNE 26, 2007**

**B. RESOLUTION NO. 07-130- RESOLUTION REAPPOINTING MARK WILSON AND SANDRA BRADBURY AS MEMBERS TO THE URTV INC. BOARD OF DIRECTORS**

Summary: On June 19, 2007, it was the consensus of City Council to reappoint Mark Wilson and Sandra Bradbury to each serve an additional two-year term as members to the URTV Inc. Board of Directors, terms to expire June 30, 2009, or until their successors have been appointed.

**RESOLUTION BOOK NO. 30 - PAGE**

**C. RESOLUTION NO. 07-131 - RESOLUTION REAPPOINTING JOHN BROADBOOKS TO THE ASHEVILLE AREA CIVIC CENTER COMMISSION**

Summary: On June 19, 2007, it was the consensus of City Council to reappoint John Broadbooks to serve an additional three-year term as a member of the Civic Center Commission, term to expire June 30, 2010, or until his successor is appointed.

**RESOLUTION BOOK NO. 30 - PAGE**

**D. RESOLUTION NO. 07-132- RESOLUTION REAPPOINTING MARSHA SHORTELL, TODD WILLIAMS AND**

## SUSANNE JONES AS MEMBERS TO THE ASHEVILLE-BUNCOMBE HISTORIC RESOURCES COMMISSION

Summary: On June 19, 2007, it was the consensus of City Council to reappoint Marsha Shortell, Todd Williams and Susanne Jones to each serve an additional three-year term, terms to expire July 1, 2010, or until their successors have been appointed.

### RESOLUTION BOOK NO. 30 - PAGE

#### E. RESOLUTION NO. 07-133 - RESOLUTION REAPPOINTING LEE MCELRATH AS AN ALTERNATE MEMBER TO THE BOARD OF ADJUSTMENT

Summary: On January 16, 2007, it was the consensus of City Council to reappoint Lee McElrath, as an Alternate member, to serve an additional three year term, term to expire January 21, 2010, or until his successor has been appointed.

### RESOLUTION BOOK NO. 30 - PAGE

#### F. ORDINANCE NO. 3500 - BUDGET AMENDMENT TO TRANSFER FUNDS AND REIMBURSE PALACE SPORTS FOR INSTALLING NEW SEATING AT MCCORMICK FIELD

Summary: The consideration of a budget amendment, in the amount of \$35,000, for capital improvements at McCormick Field.

In Fiscal Year 2006/07, the Parks and Recreation Department received \$35,000 from Palace Sports (owners of the Asheville Tourists) as part of their yearly contract with the City of Asheville. Since this payment was not budgeted for, consequently, it went directly into fund balance. This budget amendment would allow those funds to be transferred into the McCormick Field budget to reimburse Palace Sports for new seating, per a letter dated December 7, 2006.

#### Pros:

- Provide funds to meet contractual obligations.

#### Cons:

- None

The Parks and Recreation Department recommends City Council to approve the budget amendment, in the amount of \$35,000, to increase the McCormick Field budget to cover capital expenditures to fulfill yearly contractual obligations.

### ORDINANCE BOOK NO. 23 - PAGE

#### G. RESOLUTION AUTHORIZING THE CITY MANAGER TO SIGN AN AGREEMENT WITH THE ASHEVILLE HUMANE SOCIETY FOR ANIMAL SHELTER SERVICES WITHIN THE CORPORATE LIMITS OF THE CITY OF ASHEVILLE

This item was removed from the Consent Agenda for an individual vote.

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

Councilman Freeborn moved for the adoption of the Consent Agenda. This motion was seconded by Councilman Davis and carried unanimously.

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

#### G. RESOLUTION NO. 07-134- RESOLUTION AUTHORIZING THE CITY MANAGER TO SIGN AN AGREEMENT WITH THE ASHEVILLE HUMANE SOCIETY FOR ANIMAL SHELTER SERVICES WITHIN THE CORPORATE LIMITS OF THE CITY OF ASHEVILLE

Summary: The consideration of a resolution authorizing the City Manager to sign an agreement with the Asheville Humane Society for animal shelter services within the corporate limits of the City.

For the past few years, Buncombe County has required the City to pay for animal shelter services through the Asheville Humane Society, who has contracted with the County to run the animal shelter. On June 19, 2007, the City approved the budget for Fiscal Year 2007-2008 and in that budget approved \$121,000.00 to pay for shelter services. The City and the Humane Society need to enter into an agreement for the shelter services for the term of July 1, 2007, through June 30, 2008.

Pro:

- The City will not have to pay for the construction and operation of its own animal shelter to take care of its animal sheltering needs and the Humane Society will be responsible for the care of all animals brought to the shelter.

Con:

- The City has to pay out of its general fund for shelter services where Buncombe County provides the same services to all other non-incorporated county residents at no additional cost except through county taxes.

City staff recommends City Council approve a resolution authorizing the City Manager to sign an agreement with the Asheville Humane Society for animal shelter services within the corporate limits of the City.

Councilman Mumpower said that Buncombe County has historically provided animal control services to all County residents (which include City residents) and for the County to take away that service, without a compensating variable, is double taxation.

Mayor Bellamy said that the City briefly talked with the County about our dissatisfaction and County representatives said that they have stepped away from providing those services to all municipalities in Buncombe County.

In response to Councilwoman Cape, City Attorney Oast said that a county is authorized, but not required, to provide animal shelter services to a city.

In response to Mayor Bellamy, Assistant City Manager Jeff Richardson said that if the City doesn't authorize this agreement with Buncombe County, the City would either have to contract with someone else to provide those services or build their own animal shelter for animals that are captured within the City.

Vice-Mayor Jones moved for the adoption of Resolution No. 07-134. This motion was seconded by Councilman Newman and carried on a 5-2 vote, with Mayor Bellamy and Councilman Mumpower voting "no."

**RESOLUTION BOOK NO. 23 - PAGE**

**III. PRESENTATIONS & REPORTS:**

**A. COMMUNITY FORUM ON HOMELESSNESS SUMMARY REPORT**

Assistant to the City Manager Lauren Bradley said that the purpose of this report is to provide a summary and analysis of community input collected on the issue of homelessness in Asheville. Feedback was collected at a community forum hosted by Asheville City Council on May 29, 2007. The City also collected written comments from the public after the forum. In addition, staff has collected data from an observational survey conducted in Pritchard Park the week of June 25. Based on this information, the following report includes staff recommendations for the Pritchard Park Committee as well as areas for further analysis or consideration.

Community input revealed concerns about three areas into which the following analysis is divided: the maintenance and aesthetics of Pritchard Park, homelessness, and downtown social issues.

Student MPA Intern Nick Dula from the UNC-Chapel Hill and Student MPA Intern Josh Hallingse from Appalachian State University summarized the following information:

**Pritchard Park**

Three common themes related to Pritchard Park surfaced from the community input: park maintenance, park operations/programming and park design/amenities. Analysis for each area is included below.

**A. Pritchard Park Maintenance**

The City has started implementing measures to address deferred maintenance in Pritchard Park followed by steps to maintain it at appropriate levels. The City has started or completed maintenance items including replacing mulch, repairing the

ornamental fountains, pressure washing concrete areas, cleaning or replacing damaged infrastructure, repairing trash receptacles and installing cigarette urns. The balance of this work will be complete no later than mid-July. The park will be pressure washed again after Bele Chere. A City crew will empty trash receptacles, remove litter, rake mulch and take care of routine maintenance items every morning, seven days a week. Crews will conduct inspections on the park's fountains, pumps and electrical once per week.

## **B. Park Operations and Programming**

The most common community suggestion for Pritchard Park operations was an "adopt-a-park" or "park ambassador" program. Park ambassador programs have been used as a way to monitor and manage activities in high use parks while also adding enhanced coordination of park programming during peak hours. The City of Asheville has similar services at other facilities like Azalea Park, Carrier Park, Memorial Stadium, ball fields, etc. Staff recommends additional staff analysis into this suggestion if City Council is interested in exploring a "park ambassador" for Pritchard Park.

## **C. Pritchard Park Design Considerations**

Design modifications that may improve the existing park entail policy decisions that are worthy of additional public input and City Council consideration. Staff has developed the following list of suggested considerations for Pritchard Park improvements:

### Landscape

- Add more plant material for density
- Plant different palette of plant material
- Plant materials with more mature sizes
- Add more boulders to keep public from fountains
- Add low metal barrier to perimeter flower beds

### Fence

- Install ornamental fence to prohibit access to plants

### Pathway

- Replace walkway with concrete/aggregate rock

### Benches, trash receptacles and bike rack

- Add brick pads to area underneath all of above

### Cigarette urns

- Purchase urns for placement in the park

### Regulatory Signs

- Purchase signs for placement in the park

### Irrigation

- Install irrigation system to maintain landscaping

It is staff's recommendation that the role of the Pritchard Park Committee be to review and refine the proposed design modifications by working with staff from the Parks and Recreation Department. Once the committee develops a proposal for design considerations, it would be tasked with hosting community input sessions on proposed design modifications. After the plan is modified to reflect community input, it would be presented to City Council for consideration. Staff will develop a revised committee charter and timeline if Council supports this role for the committee.

**Pritchard Park Observational Survey** - The purpose of the Pritchard Park Observational Survey was visit the park on regular intervals throughout the day to record any patterns of usage or park conditions.

The observational survey was conducted over the course of four days. The survey entailed 1-2 person(s) going to the park to record how many people are in the park along with notes about other activity (i.e., park cleanliness, park uses, police presence, park maintenance, etc.).

At the beginning of each observation, staff noted four key observations: date, time, weather, and park occupancy. Each site visit lasted between 15-30 minutes and typically occurred at the following times: 8 a.m., 10 a.m., noon, 3 p.m. and one observation in

the evening, generally around 7 p.m.

#### Park Patterns Observed During Survey:

**Park Usage** - Prior to 8 a.m., the park is unused and empty. Between 8-8:30 a.m., the park experiences an influx of an average of 14 individuals. Throughout the course of the day, the number of people in the park steadily increases with peak usage in the afternoon and evening hours. The number of people in the park during peak hours ranges between 30-40 individuals. Of the four days, Friday experienced the most park usage, with the greatest number of park users on Friday evening.



There are two main sections of the park that experience the most amount of use: the upper wall adjacent to College St. and the chessboard area located at the corner of Patton Ave. and Haywood St. Most individuals took advantage of the shady areas provided at these two locations.

Most individuals who patron the park typically stay for extended periods of time (1 hour+). Most of the regular users of the park were adult men with few women and children seen on a daily basis.

The Friday night drum circle draws the largest crowd and the most diversity.

**Park Cleanliness** - Litter was a significant issue noted on all occasions, particularly cigarette butts. Large items such as aluminum cans or newspapers were for the most part absent. Vegetation (shrubs, trees, flowers) was well groomed, and the water features were operating as designed. One of the two water fountains was out of service. An employee from Parks and Recreation Department was observed providing maintenance services during two site visits.

**Public Safety** - A police presence was observed during 8 out of the 16 visits, or 50% of the time. Several social issues and ordinance violations were observed, particularly sleeping on park benches, panhandling, public urination, intoxicated and disruptive behavior and swearing.

**Other Notes** - Observers were stopped by tourists to ask for direction on several occasions.

#### **Conclusions:**

- People tend to gather on the walls in the shaded sections of the park.
- The permanent board games seem to be a big draw to the park.
- Most individuals use the park for extended amounts of time. Very few simply use the park for 30 minutes or less.
- Cigarette butts and small pieces of paper constitute the largest share of litter.
- Police patrols were observed.
- Unpaved walking portions of the park seem to create lots of dust.
- A fairly large number of citizens in wheelchairs use the park on a regular basis.
- Many people walk through the park to get to another destination.

#### Summary of Recommendations for Pritchard Park:

- Develop a plan and funding options for staff presence and enhanced programming in Pritchard Park, including an option for an ambassador or monitor during peak usage hours.
- Re-engage the Pritchard Park Committee to evaluate long-term Pritchard Park design modifications with community input

and staff recommendations.

- Continue target law enforcement efforts in the Pritchard Park area with an emphasis on panhandling, trespassing, intoxicated and disruptive behavior and other related violations.

### Homelessness

Three common themes also emerged in the area of homelessness: improving access to existing support services, medical and mental health care and affordable housing. The most common suggestions related to support services dealt with increasing access to daytime services and enhancing coordination among existing service providers. Access to affordable housing options was also cited as a barrier to ending homelessness.

Currently, the City of Asheville supports efforts to end chronic homelessness through the Asheville-Buncombe Homeless Initiative, which is the community collaboration implementing the 10 Year Plan to End Chronic Homelessness. The major focus of the effort is the end of chronic homelessness through the Housing First model, which seeks to place individuals in permanent, supportive housing. In Fiscal Year 2006-07, Asheville contributed \$30,000 from Community Development Block Grant (CDBG) to support this effort, and the same allocation has been budgeted for Fiscal Year 2007-08. In addition, the City Council approved a \$20,000 allocation to Homeward Bound/A-HOPE Day Center through this year's Outside Agency process.

Based on the community's input, staff recommends Council schedule a specific review of the city's efforts targeted at addressing homelessness. Staff would present information about the structure of the Homeless Initiative and the 10 Year Plan to End Chronic Homelessness, staffing and resources dedicated to the program and related performance measures.

The executive summary of the May 29, 2007, Community Forum on Homelessness is as follows:

On Tuesday, May 29, 2007, the City of Asheville held a community forum on homelessness at the First Presbyterian Church of Asheville. The assembly opened with a presentation on the history of Pritchard Park by city staff member Alan Glines followed by an update on the 10 Year Plan to End Homelessness by coordinator Amy Sawyer.

Citizens then broke into six small focus groups to reach consensus on two key questions:

- 1) What support services are needed in our community to help people who experience homelessness or are at risk of becoming homeless?
- 2) What type of community programming would you like to see in Pritchard Park?

Each focus group recorded its input and presented their overall findings in a wrap-up assembly. After the forum, the City continued to receive written comments from the public until June 11, 2007. The following is a summary of the information collected at the forum as well as the complete input from every focus group and subsequent written comments.

The following categorizes the top three answers from every focus group according to each question.

**Question 1:** Answers to the first question generally fell into one of three categories: increasing/enhancing existing support services, improving access to medical and mental health care, and increasing the stock of or access to affordable housing.

- **Increasing/enhancing existing support services:** All five groups included an item that related to increasing or improving existing services. These responses included increasing the availability of services, ensuring stable funding for programs and enhancing coordination among existing service providers. Specific recommendations for more day facilities, including public restrooms and laundry facilities, were also included. Some responses focused on procedures at shelters (i.e., allowing families to stay together as opposed to separating men and women) and increasing access to case managers that could help connect housing and support services for clients.
- **Improving access to medical and mental health care:** Four out of five groups included a recommendation related to medical care, mental health services and/or substance abuse treatment. The recommendations all addressed either the affordability, access to or quality of these services. Improving mental health services with an emphasis on adequate public funding for such services was the most common response.
- **Increasing the stock of and/or access to affordable housing:** Three out of five groups included the need for more affordable housing or enhanced access to affordable housing options. The Griffin Apartments were cited as a successful model.

**Question 2:** Answers to the have also been divided into three broad categories of recommendations: park maintenance and operations, park programming, and park amenities.

- **Park maintenance and operations:** Most answers to the second question dealt with park maintenance and operations. Four out of five groups included a recommendation to implement an “adopt-a-park” or “park ambassador” program. The purposes cited for these programs included improved park maintenance, planning, information sharing and public safety. Other items included better park maintenance and cleaning through improvements like paved walkways.
- **Park programming:** Three out of five groups addressed park programming with an emphasis on diverse and welcoming events. Specific programming recommendations include art shows, markets, movies, etc.
- **Park design and amenities:** Three out of five groups included the need for access to public restrooms and water fountains at the park.

As of June 11, 2007, the City of Asheville had received 15 written comments. The most common themes of the correspondence are listed below:

- **Using ordinances, rules or guidelines to prohibit certain activities in Pritchard Park:** Nine citizens recommended that the city should prohibit certain activities or behaviors in the park. Out of the suggested prohibited activities, public feeding and other “social services” were the most common. Others included littering, foul language, sleeping on benches, and drunk and disorderly conduct. Enforcement of these ordinances was also commonly emphasized in these responses.
- **Increasing park programming:** Six citizens advocated for increased programming of small events in the park including art shows, acoustic music, community lectures, movies and informational kiosks.
- **Making the park welcoming for all citizens:** Four citizens indicated the park was not welcoming to residents, visitors, and surrounding businesses.
- **Improving park maintenance:** Three citizens recommended enhanced park maintenance including sanitation services, pressure washing and landscaping.
- **Increased capacity for daytime homeless support services:** Three citizens recommended increasing the availability of daytime support services for the homeless. Two citizens included A-HOPE as a model for daytime services that needed to be expanded or replicated.

#### Summary of Recommendations on Homelessness:

- Schedule City Council review of the structure, staffing, programs and performance measures of the Asheville-Buncombe Homeless Initiative and the 10 Year Plan to End Chronic Homelessness.
- Conduct inter-city visit to Chattanooga, Tennessee, to review homeless service campus model (proposed date of July 17, 2007).

#### **Downtown Social Issues**

During the public input process, a number of downtown social issues were included with feedback on Pritchard Park and homelessness. Among the most commonly cited were public drunkenness, feeding in Pritchard Park, disruptive behavior in the park and litter. Through staff contact with the Asheville Area Chamber of Commerce/Tourism Development Authority, concerns about downtown panhandling have also been raised.

From July 1, 2006, to June 15, 2007, Asheville police officers made 3 felony arrests, 39 misdemeanor arrests, and 2 traffic arrests at Pritchard Park. Additionally, officers issued 113 citations for misdemeanor offenses (i.e., panhandling, trespassing, intoxicated and disruptive behavior, possession of marijuana, etc.), 12 traffic citations, and 2 infraction citations (i.e., parking citations) in the park.

In addition to the district officers assigned to Pritchard Park area, police presence in the downtown business district is supplemented by downtown augment. A permanent assignment in the augment schedule is the Pritchard Park area. Officers have a presence in the Pritchard Park area on a daily basis from noon until 11 p.m. This area also includes the businesses along Haywood Street, College Street and Patton Avenue near Pritchard Park. Officers patrol the area on foot and are responsible for

making contact with business owners as well as patrolling Pritchard Park.

With these resources, officers are in Pritchard Park or at close proximity to the Pritchard Park at least once an hour everyday.

In March 2007, City Council received a report from the Downtown Commission outlining a review of the Downtown Social Issues Task Force recommendations. Several items that received Council direction in March are moving forward, including a pilot program for graffiti removal and the Spare Change for Real Change initiative. Other recommendations are in the process of additional staff analysis, including options for developing a Nuisance Court and a community service program directed at downtown cleaning. Staff recommends Council schedule a review of these programs in August for additional consideration and direction.

Summary of Recommendations on Downtown Social Issues:

- Schedule City Council review of staff research and recommendations on developing a Nuisance Court and community service program directed at downtown cleaning.
- Update on the Spare Change for Real Change initiative and graffiti removal pilot program.

Councilwoman Cape supported re-engaging the Pritchard Park Committee, with their role restricted to park programming and evaluating long-term Pritchard Park design modifications with community input. She felt that the Committee will look at creative ways to engage the Park actively so that there are eyes on the Park.

Councilman Newman supported the overall direction of re-engaging the Pritchard Park Committee. He also supported having Pritchard Park being open for different types of uses, as long as people are engaging in activities that don't harm other people in general. He hoped to keep the programming as open as possible. While we want our parks to be places where everyone has an opportunity to be there, we also expect a level of responsibility from everyone who is there. He asked the City Attorney and law enforcement personnel what our options are for holding people accountable for appropriate behavior in our parks.

Councilman Mumpower was against spending any money to alter our parks until we get control of the misbehaviors that are going on there. Our police can hand out citations all day long and nothing comes of it. Until we come up with some kind of accountability, there is no incentive to do the proper thing.

Councilwoman Cape said that we need to alter the misbehavior and replace it with the kind of behavior that we do want, e.g., neighborhood watches, eyes on the parks, and best practices from other communities. She finds that where citizens engage with their parks, the misbehaviors are pushed out.

Mayor Bellamy said that she and Councilman Davis meet with some services providers about these issues which are interconnected. Regarding Pritchard Park, they confirmed that the issue we are dealing with is vagrancy, not homelessness. They all said that we have to have consistent enforcement of our laws in Pritchard Park in order to address those concerns, e.g., no panhandling, no defecation or urination in our parks, etc. She agrees that having eyes in the parks is a good deterrent but our police must be consistent in enforcement our laws. She cited that 20% of the vagrants are using 80% of the resources and that's why it's critical that we address this issue. The Downtown Social Issues Task Force, however, should not be the only ones shouldered with coming up with solutions on how to address these problems. We must work together with law enforcement and the service providers. She is supportive of looking at the programming at Pritchard Park, but doesn't think re-design is necessary if we do more law enforcement and work with the service providers. We committed to a 10-Year Plan to End Chronic Homelessness but we are not contributing any City funds to make that happen. We are, however, using Community Development Block Grant money to help with a position through the Affordable Housing Coalition. In addition, the City has used HOME funds to assist in permanent housing in the Griffin Apartments and Woodfin Apartments. She asked staff to come back to Council and truly address the issue of chronic homelessness as well as homelessness for families who may need shelter on a temporary basis. The inter-city visit is scheduled to review some models. Regarding social issues, if Mr. Dwight Buckner didn't work for years on the Spare Change for Real Change Program, we wouldn't have it. So, in order for us to make things happen, we've got to put some money in it and follow through. She supported the role of the Pritchard Park Committee to look at programming and hoped that the issues of homelessness and downtown social issues will come back to Council for specific policy direction.

Mayor Bellamy clarified her comments regarding vagrancy issues. She said she does not want the police to just arrest vagrants, but to make sure that we eliminate the illegal activities vagrants are doing, i.e., urination in the park, defecation in the park, littering, panhandling, etc. Those are the types of activities we need to eliminate and we want those activities stopped in Pritchard Park.

In response to Councilman Mumpower, Mayor Bellamy said that Council has been invited to a meeting with local judges to



talk about some options, e.g., alternate sentencing, and the City Attorney is looking into a nuisance court.

Councilman Freeborn believed we should task the Pritchard Park Committee to (1) look at programming; (2) work with service providers and community groups to address vagrancy issues; and (3) ask City staff to come back with a budget amendment to deal with litter and bathroom issues. He suggested we ask the Police Chief to come back with a proposal to put an officer in and around the Pritchard Park during the day and evening. He noted that when a park warden is at a particular park during heavy usage, you can see the crowd behavior is more respectful of the facility.

Councilman Davis recognized the efforts of the service providers. He supported the Pritchard Park Committee's direction be on recommendations for behavior problems and programming needs. He agreed with Mayor Bellamy that the Committee should not have to bear the burden of the Downtown Social Issues Task Force issues, but that City Council should give policy direction.

Vice-Mayor Jones said that this year we allocated significant funds to increase public safety and one of the police beats that will be increased will be in downtown. In terms of cleanliness, we identified significant dollars for downtown cleanliness and we will also have public restrooms downtown soon. She felt we are investing City dollars in the right direction. She did request trash cans in front of the service provider areas on Patton Avenue.

Councilman Davis noted that the County Commissioners are interested in working with the City on this issue as well since they are primarily responsible for social services.

It was the consensus of Council for the Pritchard Park Committee to move forward with programming recommendations only and report those back to Council, after which Council will give policy direction.

## **B. IMMIGRATION**

Councilman Mumpower said that it has been almost a year since Council has approached the issue of illegal immigrants and have essentially done nothing since that time. He reviewed with Council the following power-point presentation:

"Why local action? With the paralysis and perpetual analysis at the federal and state level and their historical avoidance of accountability - it is the only realistic place to start. We must borrow from the civil rights movement of an earlier time - that was mostly accomplished at the local level. Asheville serves as an example.

"Why do we need to do this? The numbers create urgency: One half of the world lives (3 billion people) live on less than \$2.00 a day. The minimum wage in Mexico is \$4.00 a day. What we accomplish with illegal immigration a year (500,000) and legal immigration a year (1,000,000) is going backwards in addressing world poverty. We simply cannot absorb the numbers - we have gone from a nourishing rain to a flood.

"Until the mid-sixties we allowed roughly 200,000 legal aliens per year. This created our strong middle class and the "tremendous" economic strides of the black community by forcing employers to pay competitive wages due to the limits on cheap labor. Since that time, black economic progress has stagnated, the middle class has faded, and the gap between the richest and poorest has exploded. Quite imply the conspiracy by the Democrats (social indulgences) and Republican (artificial wage restraint) has allowed illegal immigration to flourish at the expense of the majority and artificially propped up the corruption of other countries and cultures.

"There are other reasons: (1) public safety - no rules, no ID, and no accountability; (2) illegal aliens represent 25% of federal prisoners, are the primary distributors of illegal drugs in this county, and commit approximately 10 murders in the US per day; (3) at best, they do only 25% of the "unwanted" jobs in this country - just enough to keep wages suppressed; and (4) illegal immigration is a form of cultural terrorism - when people loose faith in the rule of law they stop playing by the rules - that is the foundation for a culture of selfishness and self-destruction.

"An 11 point plan of action is as follows: (1) add a provision in our new living wage ordinance to prohibit our subcontractors from hiring illegal aliens; (2) send a resolution to our state and federal representatives requesting that they begin enforcing existing laws and grant local authorities greater enforcement support and flexibility; (3) request that our City Attorney monitor federal and state legislation affecting local government ability to respond to illegal immigration concerns and make ongoing recommendations on potential initiatives; (4) follow-through on our August 2006 policy discussion on Asheville Police Department participation in 287 (g) of the Immigration and Nationality Act allowing for the appointment of local officers with immigration enforcement powers; (5) establish civil fines for using fake ID's within the City; (6) explore City regulation of day labor agencies by requiring confirmation of citizenship for temporary employment; (7) establish a formal City policy to enforce all existing laws related to illegal immigration at the local level; (8) implement our August 2006 policy discussion on transporting illegal immigrants to

processing centers and reimbursements for such; (9) provide web based information for employers interested in the Federal Basic Pilot Employment Verification Program and IMAGE program; (10) establish an Asheville City policy to participate in these programs; and (11) require citizenship to serve on a city board or commission.

“The United States of America serves the world best by being a “beacon” of liberty, opportunity and responsibility. Destroying our culture and economic foundation through mass illegal migrations is to sacrifice the many at the indulgence of the few.

“I see illegal immigration as one of our culture’s essential issues. I believe we should look beyond what we are not sure we can do - to what we might can do. The state and federal example of complacency and paralysis is a model of disgrace.

“We should not be blinded to the importance of taking local nonpartisan action today.”

Councilman Mumpower understood that Mayor Bellamy’s recommendation is that we conduct a study; however, he would speak to action, not further analysis.

Mayor Bellamy suggested an opportunity to evaluate the issue of legal and illegal immigration and its impact on our community. In an effort to move this issue forward in a comprehensive manner, she suggested we follow the City of Charlotte’s example by forming a “Mayor’s Immigration Study Committee.” Like Charlotte, the purpose of Asheville’s committee would be to analyze the impact of legal and illegal immigration on the county’s quality of life, public safety, and economic opportunities.

Drawing from diverse representation from our community, the Mayor’s Immigration Study Committee would be tasked with creating a final report to serve as an educational tool for guiding City Council’s decision making process. By focusing on key areas impacted by legal and illegal immigration like public safety, economic development, education, and healthcare, the committee would concentrate on immigration’s unique impacts in Asheville. She said the Charlotte’s final report *Immigration: Legal and Illegal* is recognized as a national best practice for analyzing legal and illegal immigration on a local level. She welcomed Council’s input on the committee, how members are appointed and any additional feedback they may have about this initiative. She suggested the Committee not be comprised only of Asheville residents, but County representation and perhaps a representative from Representative Shuler’s office. She hoped to launch the process to appoint committee members after our July 10 discussion. Since Council needs good solid information for policy direction and she felt this Committee can provide that information to Council.

Councilwoman Cape supported Mayor Bellamy’s idea to study these issues locally and to look at what our particular action needs to be. Best practices do come from learning from other people.

Councilwoman Cape moved to support the Mayor in establishing a local immigration study committee similar to the City of Charlotte’s model that utilizes stakeholders with a broad based inclusion of committee members. She liked the idea of studying the issues locally and what their impacts would be locally and regionally. This motion was seconded by Councilman Freeborn with the suggestion of a friendly amendment that the Sheriff of Henderson County be invited to be a member of the committee as he has expressed a desire to take the lead in the 287 (g) program. Councilwoman Cape accepted the friendly amendment.

Rev. Amy Cantrell hoped that Council did not move forward with this plan but to find ways to welcome our sisters and brothers from across the border.

Mr. Bill Lack felt Council should follow the Mecklenburg County model and not the City of Charlotte’s model. He supported Councilman Mumpower’s 11 point plan.

Rev. Christopher Chiaromonte felt Council should not punish illegal immigrants but punish those who are truly breaking the law.

Mr. Mike Butrum urged Council to adopt Councilman Mumpower’s 11 point plan.

Mayor Bellamy felt that the 11 point plan recommended by Councilman Mumpower will be looked at by the Committee. She said this is an opportunity to look at a lot of different options. In addition, she noted that the plan is a Charlotte-Mecklenburg Plan.

Councilman Mumpower had no problem with a study as long as it’s a foundation for action vs. an alternative to action. The Sheriff of Henderson County and his predecessor have been talking about taking action on this issue for 4-5 years and he doesn’t want us to study this issue to death. He questioned if there were any of the 11 points that Council would be interested in moving forward on now. He understood that the 11 points will not close the door to illegal immigration, but they do begin to send a message within the limits of our ability that Asheville is not a sanctuary city and we have concerns about illegal immigration.

Councilman Newman views this issue primarily as an issue that our federal government needs to address. He didn't think it can be addressed adequately at the local level until there is a federal set of policies in place that create a coherent strategy for our country to have a more rationale effective immigration policy. We need to do what is necessary at the local level that we are protecting the public from dangerous criminals, whether they are legal or illegal residents.

Councilman Newman asked Police Chief Hogan if there is anything that City Council can do to give him the tools, to hold people accountable for violating our laws, when officers arrest people who have committed dangerous crimes that threaten the safety of the people in Asheville. Police Chief Hogan responded that where they fall short is in the federal government in terms of the Immigration Customs Enforcement deemed locally inadequate to respond to identified illegal aliens that are arrested. Our challenge can't be addressed by Council or the courts, as it now stands. If the court is more efficient in criminal processing, then it would have a positive impact as it relates to illegal aliens. Our challenge lies at the federal and state level.

Councilman Newman liked the Mayor's suggestion of a committee; however, he was concerned that we are doing a lot of different studies this year for our community. When he thinks about the responsibility that we are actually charged with, and within our purview to actually make a difference on, he questioned if this study would be at the top of the list for him. He is not against the study, but just questioned the resource allocation and limited staff.

When Vice-Mayor Jones called the question, Councilman Mumpower moved to accept the motion to entertain the question. This motion was seconded by Councilman Freeborn and carried unanimously.

The amended motion made by Councilwoman Cape and seconded by Councilman Freeborn to establish a local immigration study committee carried on a 6-1 vote, with Vice-Mayor Jones voting "no."

Councilman Davis moved to follow-through on our August 2006 policy discussion on Asheville Police Department participation in 287 (g) of the Immigration and Nationality Act allowing for the appointment of at least one local officer (and from then on the number of officers would be at the Police Chief's discretion) with immigration enforcement powers. This motion was seconded by Councilman Mumpower with the suggestion of a friendly amendment to also provide web based information for employers interested in the Federal Basic Pilot Employment Verification Program and IMAGE Program. Councilman Davis accepted the friendly amendment.

Ms. Clare Hanrahan asked for clarification of how our police officers are supposed to know who is a vagrant or who is illegal.

Rev. Christopher Chiaromonte urged Council to continue to work with Councilman Mumpower in finding a solution. He felt the solution is not to punish the illegal immigrants or the vagrants, but punish the ones who are corrupt.

Vice-Mayor Jones supported the portion of the motion regarding providing web based information for employers; however, she would not support the participation in 287 (g) of the Immigration and Nationality Act. She felt we did not know what we are doing. She felt it is very clear from civil rights history that change happens because of the federal action.

Councilman Freeborn felt that there are a lot of outstanding questions and that it was important that we establish a committee to study how the issues will play out in our community. He felt he didn't have enough information to make an intelligent vote for or against asking the Police Department to participate in 287 (g) of the Immigration and Nationality Act.

Mayor Bellamy said that in the past whenever we have something put forward for Council to consider, we ask staff to go back and do a budget amendment and/or give us more information on the pros and cons. She suggested we instruct the Police Chief to come back on July 24, 2007, with some more information on what he needs and what he is asking for.

Councilman Davis withdrew his motion.

Councilman Davis then moved to provide web based information for employers interested in the Federal Basic Pilot Employment Verification Program and IMAGE Program. This motion was seconded by Councilman Mumpower and carried unanimously.

It was the consensus of Council to instruct the Police Chief to come back on July 24, 2007, with some more information on (1) what he needs; (2) what he is asking for; and (3) documentation about 287 (g) of the Immigration and Nationality Act and how it's applied and how we can direct its application within this community and within the context of this community conversation.

At 6:55 p.m., Mayor Bellamy announced a short break.

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

##### **A. PUBLIC HEARING TO CONSIDER THE VOLUNTARY ANNEXATION OF NON-CONTIGUOUS PROPERTY LOCATED AT 2345 HENDERSONVILLE ROAD**

##### **ORDINANCE NO. 3501 - ORDINANCE TO EXTEND THE CORPORATE LIMITS OF THE CITY OF ASHEVILLE TO INCLUDE 2345 HENDERSONVILLE ROAD**

Mayor Bellamy opened the public hearing at 7:15 p.m.

Urban Planner Julia Cogburn said that this is the consideration of an ordinance to extend the corporate limits of the City of Asheville to include 2345 Hendersonville Road. The public hearing was advertised on June 29, 2007.

Sywall Properties, L.P. has petitioned the City for the annexation of one lot located at 2345 Hendersonville Road (PIN No. 9654.14-23-8209) containing approximately one acre.

The lot is located on the western side of Hendersonville Road in South Buncombe County near the intersection of Hendersonville Road and Glen Bridge Road. The area, while across Hendersonville Road from other properties contiguous to the City of Asheville, is not contiguous to the primary corporate limits of the City and, therefore, is subject to the standards for annexation of noncontiguous areas contained in N.C. Gen. Stat. sec. 160A-58.1. This parcel and petition meet all applicable requirements of the State of North Carolina.

Pursuant to N.C. Gen. Stat. sec. 160A-58.2 a public hearing must be held prior to adopting any ordinance for voluntary annexation. If City Council decides to proceed with this request, it is proposed that the annexation become effective on July 31, 2007.

##### **Pro:**

- .. Provides for the orderly growth of the City and the tax base through the acceptance of areas into the corporate limits where owners desire annexation.

##### **Con:**

- .. Marginal increase in service costs (too small to measure or respond to).

This action complies with the 2025 Plan in that it supports the strategy of promoting voluntary annexation of developing areas and meeting the goal of continued use of the urban development tool of annexation in providing for the orderly growth of the City.

City staff recommends City Council approve an ordinance extending the corporate limits of the City of Asheville by annexing one lot located at 2345 Hendersonville Road.

Mayor Bellamy closed the public hearing at 7:19 p.m.

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

Councilman Freeborn moved for the adoption of Ordinance No. 3501. This motion was seconded by Councilman Mumpower and carried unanimously.

##### **ORDINANCE BOOK NO. 23 - PAGE**

##### **B. PUBLIC HEARING TO CONSIDER REZONING 3 LOTS LOCATED AT SARDIS ROAD - BILTMORE LAKE FROM INDUSTRIAL DISTRICT TO RM-16 RESIDENTIAL MULTI-FAMILY HIGH DENSITY DISTRICT**

##### **ORDINANCE NO. 3502- ORDINANCE TO REZONE 3 LOTS LOCATED AT SARDIS ROAD - BILTMORE LAKE FROM INDUSTRIAL DISTRICT TO RM-16 RESIDENTIAL MULTI-FAMILY HIGH DENSITY DISTRICT**

Mayor Bellamy opened the public hearing at 7:20 p.m.

Urban Planner Blake Esselstyn said that this is the consideration of rezoning three lots located at Sardis Road - Biltmore Lake from Industrial District to RM-16 Residential Multi-Family High Density District. This public hearing was advertised on June

29 and July 6, 2007.

The subject site is comprised of three parcels, totaling about 36 acres, landlocked in an area east of Biltmore Lake, south of Sand Hill Road, west of Sardis Road, and north of the Gaston Mountain development. The entirety of the site is currently zoned Industrial. Though no roads actually touch the site, the closest roads to the site are in Enka Village and the Biltmore Lake development. The applicant, representing Biltmore Farms, Inc. (associated with the latter development), wishes to rezone to property to RM-16.

The site's position at the margin of the extraterritorial jurisdiction area (ETJ) means that some of the adjacent zoning is City jurisdiction, while other nearby zoning is the jurisdiction of Buncombe County. The City of Asheville zoning to the north and east is Industrial, while the remaining adjacent zoning is the County's "R-2" zoning district. The applicant wishes to extend the residentially zoned area in order to expand the Biltmore Lake development towards Sardis Road.

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

Residential uses may be permitted in the Industrial district only as an accessory use, and they must be occupied by employees of the principal use.

The RM-16 district is intended to permit a full range of high density multi-family housing types along with limited institutional, public and commercial uses appropriate within high density residential areas. It is intended that this district be located near employment centers, shopping facilities, roads and other urban infrastructure capable of handling the demand generated by high density residential development.

It is worth noting that, while most parts of Biltmore Lake in City of Asheville jurisdiction are zoned RM-16, the dominant existing development pattern in the area is single-family residential, with a density of 2-4 units per acre. Further, it should be noted that the County's "R-2" zoning district allows a density of up to 12 units per acre.

As is noted in the sections above, the Comprehensive Plan includes a policy stating that Industrially zoned land should be preserved for industrial uses. This is further emphasized in the Sustainable Economic Development Strategic Plan that identifies a shortage of industrial zoned properties as one of its top priority issues to be addressed in our area. However, there are recent precedents (detailed above), also in this Candler area, for City Council approval of such down-zonings. The Dogwood Road site is the example with the most similarities: also more than 30 acres, also seeking residential zoning. The subject of this application, however, does not have the proximity to a road corridor that the Dogwood Road site has.

In addition, in 2005 (after the subject properties were initially zoned in 2001), an area of approximately 125 acres along Sardis Road to the east of the subject properties was rezoned from Community Business II to Commercial Industrial. While the Commercial Industrial zoning district does not permit the exact same range of uses as the Industrial district, the rezoning did establish a large area of land along this corridor available for production, manufacturing, packaging, processing, and assembly uses.

The subject site is bisected by the Progress Energy power transmission lines, as well as a small stream. These features, in addition to the slope at the south end of the site, would present obstacles for a large industrial development, but a residential development comprised of small lots could have more flexibility for working around these features.

Staff has received one communication from Southeastern Container who did not specifically oppose the rezoning but pointed out that his company is located in close proximity to the proposed rezoning area and it operates 24 hours a day, 7 days a week with truck traffic and lighting.

At the June 6, 2007, meeting, the Planning and Zoning Commission voted unanimously to recommend approval for this request.

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

**Pros:**

- Subject site is bordered on more than half its perimeter by residential zoning, and is closer to residential streets than commercial

streets.

- Site features (stream, slope, power lines), would arguably present more challenges for industrial development than for residential.
- Subsequent to this site's initial zoning, 125 acres nearby have been up-zoned to Commercial Industrial.

**Cons:**

- The Comprehensive Plan, as well as the Sustainable Economic Development Strategic Plan, includes a stated policy to preserve Industrially zoned land for industrial uses.
- Uses permitted under the existing zoning have more potential to create and support lasting jobs.

Staff has concerns about rezoning Industrially-zoned land, due to the policies against such action stated in the Comprehensive Plan and other plans. That said, both the Planning and Zoning Commission and City Council have supported similar rezoning in the recent past, and multiple characteristics of this particular site suggest that residential uses could be more suitable than industrial. If the City Council wishes to consider this rezoning independent of the aforementioned policies, staff feels a case can be made for recommending approval.

Mr. Will Buie, representing Biltmore Farms, understood Council has to consider the base zoning and not what is proposed, however, their intention is for single-family residential. He felt the topography of the area is such that it's probably not suitable for industrial development without major grading or impact to the streams and it doesn't really have access to major highways. They spoke to Mr. Sampson with Southeastern Container and have talked about (1) providing a sewer easement; (2) purchase of a corner of the property that will allow them to provide buffer from their facility; and (3) providing some additional disclosure notices to the people who will be purchasing those lots so they would be cognizant of that facility and it's importance to the community.

Rev. Christopher Chiaromonte felt that Council should suspend rezonings. He said that regardless of whether the land is used for industrial or residential, grading will occur. He suggested low cost housing be placed on that property.

At 7:30 p.m., Mayor Bellamy closed the public hearing.

Vice-Mayor Jones recalled Council policy against rezoning industrial land and wondered if that is something that needs to be re-visited.

Mr. Mike Plemmons, representing the Council of Independent Business Owners, said that they haven't taken this rezoning request up as an issue. He did feel that Council should take into consideration the lay of the land.

Mr. Esselstyn noted that Planning staff presented this staff report to Sam Powers, the City's Director of Economic Development, and he had no problem with the rezoning request.

In response to Vice-Mayor Jones, Mr. Esselstyn said that the 125 acres along Sardis Road that were rezoned in 2005 to industrial adds the capacity for manufacturing-type operations in that corridor with better access to transportation facilities.

Councilwoman Cape said that discussions come up all the time of where are we going to have economic development and industrial zoning in the community. In light of the economic development question, she was hesitant to vote without fully understanding what the benefits are. She felt that not all manufacturing is large buildings but a lot are small scaled industry.

Councilman Mumpower felt our policy to retain industrial land is out dated and reflective of a time when we were hemorrhaging large industries and we wanted to preserve land for their comeback. There are very few indications that the probability of a comeback is real. The jobs that are being created in this city are on a much more smaller scale and require much smaller spaces. He felt we may need to reconsider the policy. Since there is some logic for rezoning, he moved to approve Ordinance No. 3502 and finds that the request is reasonable based on information provided in the staff report and as stated in the staff recommendation. This motion was seconded by Councilman Davis.

In response to Councilman Newman, Mr. Esselstyn said that typically when someone requests a rezoning, they try to suggest zoning that is consistent with nearby zoning. Even though the zoning district is RM-16, there are mostly single-family subdivisions.

When Councilman Newman asked if Biltmore Farms would be willing to work with the City on voluntary annexation of this property, Mr. Tom Williamson, Vice-President of Community Development with Biltmore Farms, said that the property will be developed with 37 single-family homes serviced through the existing Biltmore Lake Association. He said they were asked through an e-mail from Ms. Shannon Tuch to consider voluntary annexation. They have done that with other properties, e.g., Biltmore Park at Town Square. In this case they are extending a franchise of the Biltmore Lake community and based on the advice of counsel they cannot, as part of the rezoning action, agree to a voluntary annexation. At this point they are willing to discuss it as it makes

more sense at the earlier conception phase of a project to consider this. He was told that it was considered many years ago for Biltmore Lake and they considered it with Town Square West and reached an accord that was beneficial to everyone. In this case they would be willing to entertain it, but not in association with the rezoning action. If a meeting of the minds can be reached that makes sense relative to this small portion of Biltmore Lake, that's fine, but it is doubtful that that can happen as we have already had it tied into a lot of infrastructure and done significant amount of work at Biltmore Lake.

City Attorney Oast reminded Council that if the property is rezoned to RM-16, it is available for any use allowed in that district.

Mayor Bellamy was supportive of the rezoning because of the topography. She wanted to make sure, however, that people who will be purchasing the lots have full disclosure of the plant located near them and that the facility runs 24 hours a day, 365 days a year with traffic going in and out. She suggested the proposed property owners be given a map to show the location of the plant.

The motion to rezone three lots located at Sardis Road - Biltmore Lake from Industrial District to RM-16 Residential Multi-Family High Density District carried on a 5-2 vote, with Councilwoman Cape and Councilman Freeborn voting "no."

Vice-Mayor Jones requested that for industrial district rezoning changes, the Sustainable Economic Development Advisory Committee review the request. And/or, to have them review our policy about not rezoning industrial land.

City Manager Jackson suggested we consult with various stakeholders, introduce the subject, hold some focus groups involving stakeholders and major property owners, and report back to Council on what we hear from them as well as observations and recommendations we have as staff. We will then seek further direction at that point.

Mayor Bellamy said that during our next quarterly update on the financial status and drug elimination, another component of the update will be our economic development status.

#### **ORDINANCE BOOK NO. 23 - PAGE**

#### **V. UNFINISHED BUSINESS:**

##### **A. CONTINUATION OF PUBLIC HEARING TO CONSIDER AN AMENDMENT TO THE UNIFIED DEVELOPMENT ORDINANCE REGARDING STEEP SLOPE AND RIDGETOP REQUIREMENTS**

##### **ORDINANCE NO. 3503- ORDINANCE AMENDING THE UNIFIED DEVELOPMENT ORDINANCE REGARDING STEEP SLOPE AND RIDGETOP REQUIREMENTS**

Mayor Bellamy said that this public hearing was opened on April 24, 2007, and continued to May 8, 2007, at which time the public hearing was closed. The action was continued to a June 12, 2007, worksession in order for Council to review specific data and until continued to June 19, 2007. On June 19, 2007, the matter was continued until this date.

Interim Planning & Development Director Shannon Tuch said that this is the consideration of an amendment to the Unified Development Ordinance (UDO) to establish new steep slope and ridgetop requirements.

Interim Planning & Development Director Shannon Tuch said that as Council is aware, the hillside and ridgetop development standards have been under consideration for some time and have, very appropriately, received a significant amount of attention given the potential impacts which are not just aesthetic and ecological, but also economic and social.

Because of this, staff has conducted a significant amount of research in order to develop appropriate standards, and has also conducted a great deal of analysis to help evaluate the impacts of establishing a hillside development area. A special presentation with a number of visuals were prepared and presented at Council's worksession on June 12, 2007, and the bulk of this information was directed at establishing an appropriate threshold of where to apply the hillside development standards.

Staff's original recommendation was that it should be applied to all property over 2,220 feet in elevation and those properties with an average natural slope of 15%. Staff had also proposed to include properties with an average natural slope of over 25% regardless of elevations but only in residential districts.

The Planning & Zoning Commission also spent quite a bit of time evaluating these standards and they ultimately settled on a recommendation to apply the hillside development standards only to those properties above 2,500 feet in elevation with an average natural slope of over 25%.

The Planning & Zoning Commission's recommendation significantly reduced the amount of acreage that would be protected under the hillside standards (although the standards that were adopted were more strict). Nevertheless, this recommendation inspired some new analysis and much of that was presented at the June 12 worksession.

Understanding that Council's direction at the June 12 worksession was to develop something of a compromise between our existing standards and the proposed standards that would have less of an impact on the lower elevations that were not as steep. This compromise is outlined below (in a July 10 memo to Council) and includes two components:

1. Apply existing hillside density and grading standards to properties above 2,200 feet that have an average natural slope between 15-24%; and
2. Apply the more rigorous density and grading standards to those properties above 2,200 feet with slopes 25% or greater.

The benefit of this proposal is that it protects the same amount of property that is current protected, but only applies the more strict standard to those more challenging and sensitive properties with slopes over 25%. However, what this standard does not do is balance the development potential so, if adopted, it would reduce the amount of development that could occur in general.

So, in response, staff has more recently examined the second option which is to look at the impact of applying the standards to only those properties over 2,350 feet and 20%. But what this standard achieves is that by redefining the hillside areas, it exempts some of the lower lying areas that are not as steep and these are areas that are currently restricted. This would effectively shift some development potential from more sensitive properties to some less sensitive properties. It would be next to impossible to determine the magic number that would achieve the perfect balance but this would be one option that would, at least, provide more of a balance.

This is just one permutation of options that have already been considered and there are quite a few more that could be considered.

July 10, 2007, memo to Council:

Areas below 2,220 feet in elevation having 25% or greater slope. First, earlier staff recommendations proposed extending slope requirements into areas below the long-standing "hillside" elevation threshold of 2,220 feet when slopes were 25% or greater. This significantly extended the area covered by the regulations but primarily applied to scattered sites of a few acres or smaller in size. Public comment noted that these areas often offered infill development opportunities having been previously passed over for development on adjoining less steep slopes. Given these circumstances, staff suggests that **Council exempt steep slope areas below 2,220 feet in elevation from all requirements proposed for steep slope areas above 2,220 feet except the geotechnical analysis requirements (which would apply once the slope reached 36% or greater or if the area represented a moderate to high risk for landslides).** The development of these areas would otherwise be governed by underlying zoning and general grading requirements.

Areas above 2,220 feet in elevation and having slopes between 15 and 24.9%. Council discussion and public comment has noted that slopes below 25% were less problematic for development than those at or above that slope percentage. Whether areas of such slope represent major opportunities for affordable housing is debatable, but these areas are certainly better suited for development than those having slopes above 25% and are often on lower, less visible sections of mountainsides. Given these circumstances, staff suggests the **Council substantially increase the amount of grading and allowable density in these areas from what was previously recommended, in effect essentially maintaining the current hillside grading and density limits.** The recommended adjustments are illustrated in the following tables. The other proposed requirements, including tree preservation, road corridor design, height, etc. would remain in effect for these areas.

EXISTING GRADE	PERCENT GRADING	
	PRIOR	NEW
15-19%	45%	80%
20-25%	40%	70%



MAXIMUM NUMBER OF UNITS PER ACRE BY EXISTING GRADE										
Existing Grade	RS-2		RS-4		RM-6		RS-8 RM-8		RM-16 +	
	P	N	P	N	P	N	P	N	P	N
15%-19%	1.2	1.7	1.8	3.3	2.7	5.1	3.6	6.8	7.2	13.5
20%-24%	1.0	1.4	1.4	2.9	2.4	4.3	3.2	5.7	5.6	11.1

KEY: P=PRIOR N=NEW

Areas above 2,220 feet in elevation and having slopes 25% or greater. No changes to the proposed ordinance are recommended.

Incentives and Bonus for establishing "Conservation" or "Preservation" areas.

A density bonus of up to 60% is proposed by placing more sensitive portions of a property within a conservation easement; **staff is proposing to slightly amend the applicable section to now read:**

- a. Buildings, parking, and other improvements are clustered on less steep and sensitive areas of the site to reduce the amount of grading and the steeper, more sensitive areas are preserved through a conservation easement that safeguards the property from future development; bonus of up to 60% based on the following table. Less sensitive areas may not exceed a 40% average natural slope and may include previously cleared areas, such as logging roads and pastures, provided such clearing predates January 1, 2007. Clustering in single family residential districts and the RM-6 district may include multi-family construction up to eight units per building if necessary to achieve site preservation objectives. Conservation areas may not be located on individually owned home lots and may remain as privately owned property.

PERCENT OF SITE PRESERVED	DENSITY BONUS
30-40%	30%
>40-50%	40%
>50-60%	50%
>60%	60%

As an example, if you have a 30 acre parcel zoned RS-2 with an average natural slope of 32% the total number of units allowed would be .6 per acre for a total of 18 units. If the developer sets aside the highest and steepest 10 acres then a bonus of 30% would be afforded to allow a total of 23 units. Interestingly, in this scenario the developer must preserve a minimum of 10 acres from grading per the proposed grading standards; however, this can include undisturbed slopes on private lots. If pursuing this bonus, the conservation property would be set aside and all grading would occur in the less sensitive areas. This incentive is likely to result in less disturbance while providing the opportunity for more units in the most appropriate building areas. This incentive may be elevated by increasing the bonus.

Using graphics, Urban Planner Blake Esselstyn explained the latest analysis.

Mayor Bellamy said that she asked staff to do the analysis on 2,350 feet because the 2,200 feet was detrimental to the corridors in south Asheville. We heard from the community that 2,500 feet was way too much. The 2,350 feet was a starting place. With 2,350 feet, we are preserving our hillsides and our topography and that is what she's heard the community say they want to preserve. There are extremes of some saying don't do any regulation and some saying let's put as many limitations as possible for no growth. She feels the 2,350 feet is a way to make sure that we are not hampering the southern part of the City that is a lot lower than the northern part, so we are able to preserve a lot of the ridges in Chunn's Cove and north Asheville. The 20% grade was based upon earlier presentations.

The following individuals expressed their preference on the different options:

- Mr. Charles Hulme, south Asheville resident
- Mr. Mike Butrum, Mountain Council for Accountable Development
- Mr. Joe Bassett, Asheville resident
- Mr. Jay Quinn, resident on Sunset Drive
- Ms. Barber Melton, Haw Creek resident and member of the Coalition of Asheville Neighborhoods
- Ms. Heather Rayburn, Asheville resident
- West Asheville resident
- Mr. Mike Lewis, north Asheville resident
- Rev. Christopher Chiaromonte

At the request of Mayor Bellamy, Ms. Tuch responded to various questions that were raised by individuals.

Mayor Bellamy asked what some developments would look like now (Kenilworth and Beaucatcher Mountain) had they been required to development with some of our new standards, e.g., single-family subdivision requirements, stormwater requirements, landscaping requirements, etc. Ms. Tuch responded that there are a number of measures. She said the hillside development standards designate a protected area - an area where we apply our standards but there are a special set of standards that are designed to accommodate their sensitivity. We have a number of other standards that get reviewed in conjunction. Typically if there are standards in conflict, which we hope there are no standards in conflict when it comes to inter-play between our stormwater ordinance, erosion control ordinance, subdivision ordinance, landscape standards, etc. but if there were a conflict we would go with the most restrictive. Using the Kenilworth project as an example, that property was reviewed as a major subdivision and was approved as a major subdivision. There was no requirement that requires a major subdivision to move forward. There have been a number of changes since then that would now require that a subdivision over 50 lots (which that one was) would have to come before Council for consideration as a conditional use permit as a Level III project. We also have applied our current existing hillside standards to single-family developments. Even if this project gets built, and our hillside development standards are adopted, we can still apply some of those standards to that development. People coming in for the individual single-family home permit will still be subject to some of these hillside development standards in terms of height, light reflectivity and tree preservation. There have been a number of steps taken by the Council that will better safeguard those kinds of developments from occurring in the future.

In response to Mayor Bellamy, City Attorney Oast felt that as long as there is a rational basis for distinction, it may be possible to have two different elevations standards.

Councilwoman Cape wants to close some of our loopholes in our community. She felt we've done that with including single-family homes in our changes. She also felt that the flatness of the land in south Asheville, despite its elevation would encourage development along the transportation corridor and that the new regulations would support that development. She questioned whether or not the recent changes we made to our ordinance would make it strong enough.

Mayor Bellamy felt the real problem is the other ordinances, e.g., stormwater, erosion, single-family residences, etc. She felt this was a waste of time and has divided our community because the focus should have been on the true issues. She would be willing to make a motion to keep what we have but look at the other ordinances to make sure they are in place to support what we want. We want to preserve green space in Asheville and make sure development happens in a balanced way. The heart of the issue is making sure that our infill development meets the standards of developing in the mountains and making sure it's sensitive to hillsides. She asked the City Manager if we could have an overlap of what we have approved to see if it is how we want it to be on our mountains and then maybe have conversations about conservation.

Councilman Newman felt that we have closed the major loopholes and have added a geotechnical analysis requirement at 36%. He supported keeping the existing hillside rules in place between 2,220 feet and 2,350 feet and then apply new regulations above 2,350 feet with a slope of 15% or higher. I think there is a rationale for a different set of regulations, because it does apply to a number of different areas in the City. We could keep existing regulations there and then focus the more powerful regulations on the areas that people most really would think of them as the steep slopes. The only thing I don't like about that is it keeps more regulations on the books.

Councilman Davis agreed with Councilman Newman, noting that it's complicated with two sets of figures, but it's about the only way it works.

Vice-Mayor Jones felt the higher standards above 2,350 is a good way to go especially since we have tightened up other issues.

Vice-Mayor Jones supported a requirement that houses in the higher elevations be painted (or have materials) to blend in opposed to color being an incentive, especially since a height bonus is given.

Councilwoman Cape would be open to discuss the requiring Light Reflectivity Value of 25 or less on anything above 2,350 feet.

City Attorney Oast said that he has concerns about making it a requirement on what color people could paint their homes and also staff's ability to enforce that. He would have to research other areas to see how they would enforce that requirement.

Councilwoman Cape suggested we move the ordinance forward and then ask the City Attorney to research the

requirement on the materials or painting of homes.

Councilman Mumpower reminded Council that we do not own the land we are talking about regulating. It is owned by a broad mixture of people and it's an investment in their future. We do not have an identifiable safety problem in Asheville. He felt this is taking property rights away from owners to protect mountain views for people who already have what they want.

Ms. Tuch said that staff needs direction on how Council wants to treat the roads. We provided in the staff report some standards for creating new roads and restrictions on the widths of road corridors and cut slopes, etc. Do we want to apply that stricter standard to only those portions of the property above 2,350 feet or do we want to apply it to anything over 2,220.

Councilman Freeborn suggested we postpone taking action on this for two weeks in order for the community to see a clean document and clean charts.

Upon inquiry of Councilman Newman, Ms. Tuch said that an option could be given to property owners if they want to exclude some areas on their property from any development to get a different calculation on the average natural slope. Councilman Newman supported giving property owners this option.

Councilman Newman moved to keep our existing hillside ordinance in place for properties located between 2,220 and 2,350 in elevation and then apply the new proposed steep slope ordinance regulations to properties located above 2,350 with a slope of 15% or higher. This motion was seconded by Councilman Davis.

Councilman Newman requested staff's recommendation as to standards for creating new roads and restrictions on the widths of road corridors. Ms. Tuch recommended a reduced road cross-section and that we apply that to all properties over 2,220 feet. In addition, she recommended that the road corridor restriction would be applied above 2,350 feet. Councilman Newman accepted Ms. Tuch's recommendations into his motion.

Mayor Bellamy could not support the motion. She felt the number one reason this is an issue is enforcement of existing laws. It has been a problem in the past and until we see enforcement of stormwater issues, erosion control, etc., changing this ordinance isn't going to make any difference. She looked forward to the August discussion to see what the changes we have made will look like on the ground and how they affect the overall aesthetics and beauty that we all want to keep in our community. She supported keeping what we have on the books, tightening them up with the other ordinances, but won't support any motion for steep slope changes until greater enforcement of the ordinances that we currently have.

The motion made by Councilman Newman and seconded by Councilman Davis (1) keep our existing hillside ordinance in place for properties located between 2,220 and 2,350 in elevation and then apply the new proposed steep slope ordinance regulations to properties located above 2,350 with a slope of 15% or higher; (2) the reduced road cross-section be applied to all properties over 2,220 feet; and (3) the road corridor restriction would be applied above 2,350 feet) carried on a 5-2 vote, with Mayor Bellamy and Councilman Mumpower voting "no."

At 9:20 p.m., Mayor Bellamy announced a short break.

## **ORDINANCE BOOK NO. 23 - PAGE**

### **VI. NEW BUSINESS:**

#### **A. PARTISAN ELECTION**

Mayor Bellamy said that she has received a request from Councilwoman Cape to pull this item for discussion as to a point of order.

Councilwoman Cape said that on July 2, 2007, Council received a confidential memorandum from our attorney that stated that because of the filing period timing there was nothing that City Council could do to reconsider this motion.

City Attorney Oast said that there is not a lot of guidance on this issue in the statutes or cases. It is his reading of the law that once Council sets the Charter amendment process in motion by using a particular process, then Council has the option of calling for a referendum or not. Once that process has begun, there is no way to change the course. There is the citizen initiated petition and the time for getting that done has not run out. Under the law, if Council wants to put the action to amend the Charter to a referendum, you had to have adopted a resolution to do that at the same time Council adopted the ordinance.

Councilwoman Cape questioned how does it serve the community to bring this issue up? Because of the legal rules of the

charter change there is nothing we can do and we followed every legal process that we were supposed to follow. The democratic wheels are in play that if truly a majority of citizens feel like it was the wrong thing to have done, there is a mechanism within which to engage with that. To go through this when reconsideration would do nothing feels like a waste of time for the community.

Councilman Mumpower believes that there are alternatives and that those alternatives should be deliberated by the governing body. He felt that a referendum is not our only option.

City Attorney Oast said that the process that is specifically provided for in the law is essentially two ways. One is if Council adopts a resolution at the time they adopt the ordinance (which was not done). The other way is a citizen-initiated petition. If this Council decided (by majority vote) to try and subject it to a referendum and directed him to do so, he would have to take the matter to court and see if that could be done. He didn't think that would be a successful effort.

Upon inquiry of Vice-Mayor Jones, City Attorney Oast said that he has spoken with people whose specialty includes elections law at the School of Government and in the Attorney General's Office. One point everyone agreed on is there is not much guidance in this area. In reading the law, they all came to the same basic conclusion that once the process was set in motion, there was not a lot that could be done. If the ordinance that has been adopted stands, if it is not subject to a successful citizen-petition, it remains in place for a period of two years.

Councilman Mumpower requested the opportunity to share his perspective on reconsideration of this issue.

Councilwoman Cape said that we have followed all the rules on public engagement that is required. She wanted to understand Council's rules that when we have a vote on an issue and someone doesn't like the vote that is taken, how does that issue get to come back for another vote in front of the body again.

City Attorney Oast said that any Council member can get something on the agenda. The agenda is established by the Mayor and the City Manager. There is a way, in Council's rules, to prevent reconsideration within a 6-month period, but that requires that a motion on the issue in question had been defeated. In this case, the motion was not defeated. He felt that this item is in order.

City Attorney Oast also noted that there is always the possibility of legislative relief. If Council felt strongly enough about changing the process to subject it to a referendum, Council could apply to the legislature to have that done.

Councilman Mumpower reviewed with Council the following power-point presentation:

"Partisan versus nonpartisan elections - reconsidering a step backwards. Partisan elections are a bad idea, poorly implemented, and regressive in nature. This issue deserves our best efforts towards reconsideration.

"Some quick whys: (1) Asheville is only one of less than a dozen cities out of 500 plus in North Carolina that now have partisan elections - we are on the losing side of this issue; (2) recent petition efforts have demonstrated the unrealistic hurdles for independent/third party candidates; and (3) partisan elections are about division and power - we see the failure of this approach at the state and federal level and do not need to duplicate models of failure - especially without constructive purpose.

"The impact: (1) we realistically eliminate independent and third party candidates from consideration and impair minority candidates; (2) we accelerate community polarization and division without positive compensating benefit; (3) we dramatically restrict the balance, diversity, and creative perspective of the Council; and (4) we further discourage voter enthusiasm.

"In direct challenge to those who supported partisan elections: (1) you have orchestrated an election that directly impacts on two of you who are running for office this cycle; (2) you have created an impossible timeline for obtaining a petition - either for a referendum or a candidate; and (3) you have embraced power politics under the guise of public good - the community, from all political perspectives, notes your true priority.

"What can we do? Recognize that the majority vote started with an error in process - the 90 day requirement to change parties meant it was too late for this election to ever be a fair time to implement this initiative.

"We need a need - let's find a way to (1) either hold a public referendum this coming year; or (2) postpone implementation until the next election cycle; or (3) reverse our course altogether."

"I do not believe it is the principle interest of any political party or this governing body to support any initiative that disenfranchises independent and third party candidates at any level."

Mayor Bellamy said as a point of order, whenever a presentation is made in front of the Asheville City Council the presentation is given to the City Clerk at a certain time and the Mayor reviews the presentation. She has not reviewed this presentation. She asked that Councilman Mumpower keep personal statements out of the presentation.

Councilman Mumpower felt Mayor Bellamy was restricting his ability to speak openly and candidly and that is important to this issue.

Mayor Bellamy asked Councilman Mumpower to adhere to guidelines currently in place. Normally the power-point presentation is the same presentation that is on Council's computer and on the City's web-site. She stressed that anyone making a power-point presentation before Council is supposed to have it to the City Clerk at a certain time.

Councilman Mumpower said that he would be happy to honor that going forward.

Mayor Bellamy felt that Councilman Mumpower's personal belief has nothing to do with the referendum. It is not her desire to censure any Council member, but she felt Councilman Mumpower has over-stepped her ability to defend his making this presentation. She ruled Councilman Mumpower's presentation out of order, since we have a procedure that is not being adhered to.

Councilman Mumpower asked that the written procedure be supplied to him. If shown, he would be happy to adhere to it. There is no intention on his part to violate any procedures.

Mayor Bellamy said that anytime a presentation is requested, the presentation is asked for in advance.

Councilman Mumpower felt that is a subjective policy that Mayor Bellamy begun on her own. It is nothing that he has seen in writing or discussed as a Council before.

Mayor Bellamy ruled the presentation out of order.

Councilman Mumpower said this is no disrespect, but a commitment to seeing this issue through.

Councilman Mumpower continued with his power-point presentation as follows: "I do not believe it is the principle interest of any political party or this governing body to support any initiative that disenfranchises independent and third party candidates at any level. There are many who believe that independents and third parties represent the future of the country and to support any obstacles to seeking office in Asheville, such as the unrealistic petitions now required, violates all standards of fair play that are to be found in our best efforts as a community. He would be ashamed to belong to any governing body, organized party, or personal initiative that intentionally stepped over these boundaries of principle and fairness.

"Which way do we go: Plan A - success for the good folks trying to get the signatures necessary for a public referendum. They are to be commended. Plan B - find a way for this body to get this issue on as a public referendum or otherwise reverse our course. Plan C - For the public to hold the members of this Council who supported partisan politics directly accountable this November so that a new majority may reserve their actions in December."

Mayor Bellamy asked the City Clerk to present in writing the process and procedures that are needed in order for Council agendas to be made. In addition, at the next meeting she wanted all Council's procedures adopted so that we have to have some idea of what is going to be presented at the meeting in order to have a respectful decorum in the Council Chamber. It is not her desire to have unfair debate or to cause more angst or division in this community.

Vice-Mayor Jones and Councilwoman Cape would be open to hear public comment, but there is no recourse for City Council.

Mayor Bellamy said that even though Council changed the procedures as far as requesting items on the agenda, City Attorney Oast said that Mayor Bellamy was not out of order for putting this item on the agenda. He said the City Council rules say that the agenda is set by the Mayor and the City Manager and any Council member can request that something be placed on the agenda. He felt it was appropriate to establish reasonable time limits on public comments.

Upon inquiry of Councilman Freeborn, City Attorney Oast did not believe that even if Council voted in favor of Plan A, Plan B or Plan C outlined above by Councilman Mumpower, that Council could reverse course, hold a referendum or postpone the partisan election.

Councilman Mumpower moved that the issue of partisan elections be placed on the primary or the November ballot for

consideration by the voters. This motion was seconded by Councilman Davis.

Mayor Bellamy read into the record a portion of Resolution No. 04-78 adopted by City Council on April 13, 2004: "Rule 7 - Public Address to the Council. (e) Persons addressing the Council are expected to observe the decorum of the Chamber, to be respectful of the Council and the public, to refrain from the use of profanity or foul language, to refrain from personal attacks and commentary on candidates for political office, and to refrain from making disclosures prohibited by the Personnel Privacy Act with respect to any City employee. (f) The mayor shall be authorized to allow additional comments and time for comments as he or she may deem appropriate for the orderly conduct of business. (g) Pursuant to Rule 9(b), the mayor may rule out of order any comments made under this part of the agenda if such comments are unruly or repetitive of information previously received by council on the same subject at the meeting then in session or at previous meetings. The mayor may also rule out of order any comments made during this part of the agenda that are rude, inappropriate, or intended to harass any person or group of people, and is authorized to take reasonable and appropriate measures to ensure compliance with these rules."

The following individuals voiced their opinion on partisan vs. nonpartisan elections, mostly as it relates to a public referendum:

Rev. Christopher Chiaromonte  
Ms. Leesa Kulba  
Mr. Mike Lewis  
Mr. Charlie Hulme  
Mr. Jay Quinn  
Ms. Christy Fryar  
Mr. Carlyle  
Mr. Matt Mattan  
Mr. Gilian Kearns  
Mr. Dick Cosgrove  
Mr. Tom Braine  
Mr. Bernard Carmen, Chairman of the Libertarian Party of North Carolina

Councilman Newman said that this question has been talked about every time he runs for office and at public forums. He believes that a candidate's political philosophy, the values and the priorities that they bring to that office has a huge bearing in the way that they view the important issues facing the community. The voters have a right to know that information. He believes that political parties should be included rather than excluded from local office. He supported making this change to the City's charter over a year ago. When you exclude political parties from any elections, the elections, rather than turning around ideas and issues and a sense of direction that you might want to go in as a community, tend to revolve around simple name recognition. Name recognition is easily purchased by candidates who are wealthy or well-connected. He felt the political parties do play a very active role in the political process in Asheville which is the way it should be. He thinks that non-partisan elections in Asheville is a lie and it is more honest to be forthright about the realities of the way the electoral process works. It is his opinion that our system is broken and it artificially manipulates the outcome of the election. It's true that independent and unaffiliated candidates are required to get over 2,000 signatures on a petition, which major parties are not. However, the independent or unaffiliated candidates who get the required signatures, get their names automatically on the general election ballot. Candidates from the two major parties have to compete in a primary election in order to have a chance for their name to appear on the general election ballot, at considerable time, energy and expense. He said there are cities across the country where they solve most of the important political questions facing their communities through a referendum process. That is not how Asheville typically answers the important questions facing our community. We elect City Council to wrestle with the tough, complex issues. Non-partisan elections sounds great, but to those of us who have been through the election process and who serve on this Council and has the experience of the realities of the political dynamics of this community, it is very different. Based on that experience, he believes partisan elections are the best choice for our community.

Councilwoman Cape explained why she felt that partisan elections are the right way to go.

Councilman Mumpower said that we have philosophical differences which is much different than political differences. Party affiliation does not tell voters anything. Not having a referendum disengages the public and disengages their enthusiasm for participating. He thinks this is about power and control. Diversity matters and we should not silent voices who disagree with us. He cited N.C. Gen. Stat. sec. 160A-102 ... "The council may, but shall not be required to unless a referendum petition is received pursuant to G.S. 160A-103, make any ordinance adopted pursuant to this section effective only if approved by a vote of the people, and may by resolution adopted at the same time call a special election for the purpose of submitting the ordinance for a vote. The date fixed for the special election shall be not more than 90 days after adoption of the ordinance." He hoped to be able to find a way to make the referendum work. He asked the City Attorney if that statute provides us any opportunity to reverse what he believes is an ill conceived course.

Before Mayor Bellamy called the question, since there has been over 20 minutes of comments, she asked if any other member of Council who has not spoken wished to speak.

Councilman Freeborn felt that partisan elections make sense. He didn't think it really mattered whether the election are partisan or non-partisan but the fact is that independent or unaffiliated candidates have never made it past the primaries. Now they do have a process to get on the ballot. This is not a perfect system, but this creates some level of clarity. He noted that 90% of the people on their way to vote and who pass by a candidate ask the candidate what their party affiliation is. People want to know.

Vice-Mayor Jones explained that in any decision there are public goods that you weight out. The public goods that she weighed out in this decision had to do with transparency, minority, access to the ballot and voter turnout. Back in 2002 she began talking about partisan elections, with it coming back up again in 2006 and again in 2007. She agreed with Councilman Freeborn that when people go to the polls, they want to know what your party affiliation is.

Mayor Bellamy said that she was supportive of the motion.

In response to Councilman Mumpower, City Attorney Oast said that after reviewing the statute cited by Councilman Mumpower, his opinion has not changed. If Council was going to call for a referendum, that had to be done at the time the ordinance was adopted.

The motion made by Councilman Mumpower and seconded by Councilman Davis that the issue of partisan elections be placed on the primary ballot for consideration by the voters failed on a 3-4 vote, with Mayor Bellamy, Councilman Davis and Councilman Mumpower voting "yes" and Vice-Mayor Jones, Councilwoman Cape, Councilman Freeborn and Councilman Newman voting "no."

In order to dispel any notion that she is creating rules without Council adoption, Mayor Bellamy said that these rules will be made available on line. She read the following rules that were adopted by the Asheville City Council on June 13, 1995: "The city clerk shall prepare the agenda for each meeting as directed by the mayor and the city manager. Any council member may have an item placed on the agenda so long as the request is timely and is consistent with the notice requirements of Rule 2, if applicable. A copy of all proposed ordinances shall be attached to the agenda. An agenda package shall be prepared that includes, for each item of business placed on the agenda, as much background information on the subject as is available and feasible to reproduce. Each council member shall receive a copy of the agenda and the agenda package and they shall be available for public inspection and distribution or copying when they are distributed to the council members." Another section from Council's Rules reads: "(n) To prevent reconsideration for Six Months - The motion is in order immediately following the defeat of a substantive motion and at no other time. The motion requires for adoption a vote equal to two-thirds of the actual membership of the council, excluding the mayor, unless he or she may vote in all cases, and vacant seats. If adopted, the restriction imposed by the motion remains in effect for six months or until the next organizational meeting of the council, whichever occurs first." Another section of Council's Rules reads "20. Renewal of Motion - A motion that is defeated may be renewed at any later meeting unless a motion to prevent reconsideration has been adopted or unless reconsideration is prohibited for a specified period of time by some other provision of law such as the provisions of the zoning ordinance prohibiting reconsideration of a rezoning request for a period of one year following a denial." Regarding documentation "Any documentation material that is to be used in a public hearing or public comment period shall be furnished in advance to the City Clerk in electronic format or 15 copies thereof." Council did not receive the power-point either way. "This rule may be waived for good cause." She did not waive the rule for good cause. Also on our printed agenda that anyone can receive at the meeting, and on-line, it reads "Electronic presentations are limited to agenda items with presentation materials provide prior to the meeting by City staff, applicants, or organized opposition."

Councilman Mumpower said that this was not a repeat vote. He specifically asked the City Attorney if a referendum was a new issue and the City Attorney said it was.

Mayor Bellamy just wanted to point out that placing the item on the agenda was not out of order.

## **B. DIRECTION FOR SIGN CODE REGULATIONS OF AMERICAN FLAGS**

Interim Planning & Development Director Shannon Tuch said that this is the consideration of an amendment to the Unified Development Ordinance (UDO) to remove or amend existing standards set forth in Article XIII that regulate the use of flags in conjunction with commercial sales or advertising.

While on a routine inspection, City code enforcement officers noted the TNT Fireworks vendor located at the Riverbend Wal-Mart shopping center as having established a temporary tent structure for the purpose of selling fireworks for the Fourth of

July celebration. It was also noted that a great number of vinyl banners serving as temporary signage had been installed without any temporary sign permits, included with these banners were three American flags posted on each peak of the tent. An identical condition also existed at a second tent site located on Patton Ave.

City staff worked with the business owner on permitting the temporary signs without penalty; however, when asked to remove the American flags off the roof of the tent the business owner was uncooperative. Support information for the enforcement officer's request is as follows:

- Signs have been regulated in the City of Asheville since 1977, including the use of flags as signage.
- The sign code was further modified and adopted as part of the *Unified Development Ordinance* in 1997 and outlines a number of standards required for both permanent and temporary signage set forth in Article XIII.
- Article II defines "sign" as:  
*Sign* means any words, lettering numeral, parts of letters or numerals, figures, phrases, sentences, emblems, devices, designs, trade names, or trademarks by which anything is known, made of any material, except live vegetation, including any surface, fabric or other material background structure designed to carry such devices, as are used to designate or attract attention.
- There are a number of prohibitions listed when it comes to signage, once such prohibition is on roof signs where Sec. 7-13-3(a)(4) reads:  
*Roof signs.* Roof signs are prohibited; provided, however, signs on the surfaces of a mansard roof and on parapets shall not be hereby prohibited provided the signs do not extend higher than the height restriction for on-premises freestanding signs in the zoning district in which the sign is located and provided that the sign does not extend above the mansard roof or parapet to which they are attached.
- Another prohibition set forth in the same section reads:  
(17) Flags, decorative or otherwise, may not be used in conjunction with a commercial promotion or as an advertising device, or as an integral part of a sign regulated under this article. Flags that comply with the provisions set forth in section 7-13-2(c)(3) of this chapter are not subject to this subsection.
- The City's sign code also sets forth a number of exemptions to the sign code; the above referenced Sec. 7-13-2(c)(3) falls under this section and reads:  
(3) Flags, with insignia of any nation, organization of nations, state, county or city, any religious, civic or fraternal organization, or any educational or cultural facility and/or any one corporate flag per lot.

Based on this information, the American flag is clearly exempt from regulation unless "used in conjunction with a commercial promotion or as an advertising device" as noted in #17 above. It has been this department's understanding that the arrangement of these standards is to ensure that all citizens and business owners enjoy the right to fly the flag but not to the extent that it becomes exploited for commercial gain. It should also be noted that our local standard mirrors the federal standard set forth in Title 4, Chapter 1 which reads, "The flag should never be used for advertising purposes whatsoever."

The challenge for enforcement staff is to determine whether a flag is being "used in conjunction with a commercial promotion or as an advertising device"; in other words, is it a sign or is it a display of patriotism? Determining this can prove to be very difficult and, as a result, staff typically looks to the following guidelines to help them evaluate each situation:

- 1) Is the flag in a position of great prominence or of an excessive, non-standard size so as to "designate or attract attention" per the definition of *Sign* outlined in Article II; is it visible from a public right-of-way?
- 2) Does the appearance of the flag coincide with an advertised sale and/or product?
- 3) Is the flag being flown respectfully and in accordance with federal standards outlined in Title 4, Chapter 1? These standards include:
  - The flag is flown from sunrise to sunset or is properly illuminated at night
  - The flag is removed in inclement weather or is made of an all weather material
  - The flag is not made of a temporary or easily discarded material such as paper or plastic
  - The flag should always be upright and never touch anything beneath it

In the case of the TNT Fireworks site, the flags were:

- 1) Determined to be in a position of prominence (located on the peak of the roof) and were visible from public rights-



of-way;

- 2) Appeared in conjunction with a commercial sale - Fourth of July fireworks; and
- 3) Were not being flown in accordance with federal standards – they were left out at all hours without illumination, they were not taken down during inclement weather, and were not maintained at all times in an upright position.

As a result, enforcement officers made the determination that the flags were being used as a “sign” and not a patriotic display and issued the business owner of TNT Fireworks a Notice of Violation (NOV) for having a rooftop sign. Enforcement staff offered the option of removing the flags from the roof and posting them on the ground but the owner refused, stating they did not want to pay a boom truck to come remove the flags.

It is important to note that no violation was issued for flying the flag “in conjunction with a commercial promotion or as an advertising device”; this was due to the Planning department's recent initiative to adopt a policy of education rather than penalty and instead of citing business owners, officers have been asked to take the opportunity to inform and educate business owners as to the proper method of displaying the flag and not to issue any NOV's (particularly around holidays). This practice has received some criticism from various citizens for non-enforcement of the City's standard and allowing for the exploitation of the American flag for commercial profit. No other violations related to flags or rooftop signs were issued to any other business located within the City of Asheville's jurisdiction during this same time period.

The events of this enforcement action and the media coverage it received has inspired interest in the City of Asheville initiating a change in the zoning ordinance that affect the regulation of signs and the use of flags as signs. There are several options that could be considered:

#### Option 1

Delete section 7-13-3(a)(17) that prohibits the use of flags in conjunction with a commercial promotion or as an advertising device; maintain existing exemption for American flags.

#### Pros:

- Allows for a much more liberal application of flags, decorative or otherwise, to be used in conjunction with commercial advertising.
- Exempts businesses from local enforcement actions (although still potentially subject to federal enforcement).

#### Cons:

- Opens up opportunity for excessive use of flags without local law to control.
- Contrary to Federal standards (with respect to the American flag).

#### Option 2

Delete section 7-13-3(a)(17); maintain existing exemption for American flags; and amend sign code to allow all flags non-exempt flags as an allowable form of signage and include in sign permit applications.

#### Pro:

- Regulates and limits the use of flags as signage.

#### Cons:

- Sign face of flags would have to be included in the total allowance for commercial signs, resulting in less sign area for traditional signs.
- In some cases, this could be contrary to Federal standards.
- Still requires the exercise of judgment from enforcement officers to determine whether flag is a patriotic display vs. a sign.

#### Option 3

Amend Section 7-13-2(c)(3) to clarify that in order to be considered exempt, American flags shall be displayed in accordance with the federal standards set forth in Title 4, Chapter 1 of the U.S. Code. This can be done in conjunction with a change to the sign application form and process that informs business owners of these requirements.

#### Pros:

- Fully informs applicants of their right to display the flag and how to do so according to Federal standards.
- Provides information at time of permitting, reduces the need for after-the-fact enforcement.
- Eliminates the need for enforcement officers to use judgment in determining when a flag is being used as a sign.

Con:

- Maintains the prohibition on using the American flag for commercial advertising purposes (supports Federal standard).

Staff recommends Option 3 and that Council request a wording amendment to be brought before the Planning & Zoning Commission for consideration.

Ms. Tuch responded to Mr. Dick Cosgrove when he asked if this issue was complaint driven or if it was discovered from a routine enforcement patrol.

Councilwoman Cape spoke in support of Option 3 for the respectful treatment of our flag.

Councilman Mumpower felt this is another example of the complexities of trying to control too many variables. It's interesting that we find such strong local enthusiasm for going after a federal issue on flags but with illegal immigration we try to run in a different direction.

In response to Councilman Mumpower, City Attorney Oast said that someone can burn a flag if it doesn't violate Fire Code regulations. Councilman Mumpower felt that if someone can legally burn a flag in the United States then the City of Asheville has no business in trying to regulate what people can do with the flag.

Councilman Freeborn said that according to the United States Code, burning a flag is the only proper way to dispose of the flag. Unfortunately people take that to extremes and burn it as a protest to our government. He would be supportive of Option 3; however, he agreed with Councilman Mumpower that this is a federal issue and is not appropriate for Asheville to be weighing in.

Councilman Newman supported Option 3, however, he felt we should get the opinion from the WNC Veterans Association on which option they would like.

Mayor Bellamy said that we have the Mayor's Task Force on Veterans Affairs and would be happy to send this to them for input and recommendation.

Mayor Bellamy said that she has received a lot of phone calls about this issue and apologized to the Veterans because it wasn't that we were regulating any flag, it was the nature in which TNT Fireworks chose to have the flag displayed. The federal government has adopted regulations on how the flag is to be flown and respected and the flags at TNT Fireworks did not adhere to any of those regulations. Unfortunately the pictures that were shown did not do an accurate job of depicting the flags.

It was the consensus of Council to send this issue to the Mayor's Task Force on Veterans Affairs for their input and recommendation with a request that it come back to Council within 40-45 days.

**C. RESOLUTION NO. 07-135- RESOLUTION APPOINTING AN ALTERNATE MEMBER TO THE BOARD OF ADJUSTMENT**

Vice-Mayor Jones, Chair of the Boards & Commissions Committee, said that this is the consideration of appointing Alternate members to the Board of Adjustment.

The term of Michael Anders, as an Alternate member on the Board of Adjustment, expired on January 21, 2007.

On June 19, 2007, City Council instructed the City Clerk to arrange interviews for: Eric Zetterholm, Carolyn Burton and Kristy Carter.

After Council spoke highly of the candidates, Eric Zetterholm received 0 votes, Carolyn Burton received 1 vote and Kristy Carter received 6 votes. Therefore, Kristy Carter was appointed as an Alternate member of the Board of Adjustment, term to expire January 21, 2010, or until her successor has been appointed.

Vice-Mayor Jones asked that the City Clerk include a paragraph in the letters to the candidates not chosen that Council was really impressed with their interviews and they will definitely keep their names on file for consideration to other service to the City.

**RESOLUTION BOOK NO. 30 – PAGE**

**D. RESOLUTION NO. 07-136- APPOINTING A MEMBER TO THE GREENWAY COMMISSION**

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

Paula Robbins has resigned as a member of the Greenway Commission, thus leaving an unexpired term until December 31, 2007.

On June 19, 2007, City Council instructed the City Clerk to arrange interviews for Thomas Mesk and Christopher Gilbert. Mr. Mesk was interested in being appointed, however, was unable to come in at the interview time.

Thomas Mesk received no votes and Christopher Gilbert received 7 votes. Therefore, Christopher Gilbert was appointed as a member of the Greenway Commission to serve the unexpired term of Ms. Robbins, term to expire December 31, or until his successor has been appointed.

#### **RESOLUTION BOOK NO. 30 – PAGE**

#### **E. RESOLUTION NO. 07-137- RESOLUTION APPROVING A \$250,000 HOUSING TRUST FUND LOAN TO MOUNTAIN HOUSING OPPORTUNITIES AND \$160,000 HOUSING TRUST FUND LOAN TO JCS INVESTMENTS FOR AFFORDABLE HOUSING DEVELOPMENT**

At the request of Mayor Bellamy, Councilman Mumpower moved to excuse Mayor Bellamy from participating in this matter due to a conflict of interest. This motion was seconded by Councilman Davis and carried unanimously.

At this time, Mayor Bellamy turned over the gavel to Vice-Mayor Jones to conduct the meeting.

Community Development Director Charlotte Caplan said that this is the consideration of a resolution approving \$410,000 in Housing Trust Fund (HTF) loans for affordable housing development.

The following two Housing Trust Fund (HTF) applications were evaluated by the HTF review panel and recommended for approval by the Housing and Community Development Committee at the May 14 meeting. Currently over \$865,000 is available in the Housing Trust Fund.

##### **1. Mountain Housing Opportunities, Clingman Avenue Lofts, \$250,000**

This condominium development will consist of 21 one- and two-bedroom units, 9 of which will meet the HTF affordability requirements. Mountain Housing Opportunities has an excellent track record developing quality affordable housing. The project will meet *SystemVision* energy efficiency standards. The affordable units will carry a minimum affordability period of ten years and will be sold to households with income below 80% AMI as a result of the HOME funds also invested in the development.

##### **2. JCS Investments, Bostic Place Phase II, \$160,000**

Phase II will consist of 4 three-bedroom homes. The developer has much experience with modular development and a very strong financial capacity. The developer has informed staff that he now plans to ensure energy efficiency by participating in the *Energy Star* program.

#### Pros:

- Assists with the development of 13 units of affordable housing in Asheville
- Increases the City tax base by at least \$2.5 million
- Energy efficient construction

#### Con:

- None

The Housing and Community Development (HCD) Committee reviewed the proposals on May 14, 2007. The HCD Committee recommends City Council approve a resolution approving \$410,000 in Housing Trust Fund (HTF) loans for affordable housing development. With the following terms: two year construction loans at 2% interest; may be passed to eligible buyers (i.e. those with income less than 80% of area median) as soft second mortgages.

Mr. Joe Bassett spoke in support of these Housing Trust Fund loans. He suggested that in the future Council look at longer periods of time for these homes to remain affordable, possibly even requiring perpetual affordability.

Ms. Caplan responded to various questions from Councilman Mumpower, some being, but not limited to: what is the square footage costs based on land values; how long are the soft second mortgages; how is the interest rate calculated; what happens if people default on their first mortgage; and how many soft loans have we done soft second mortgages.

Upon inquiry of Councilwoman Cape, Ms. Caplan said that to date we have had no losses at all due to foreclosures.

Councilman Mumpower felt this doesn't hold the accountability that he personally would feel comfortable with regarding the amount of dollars we are talking about.

Councilman Newman spoke in support of these two good projects. They also demonstrate how our affordable housing, low interest loan fund continues to be a very effective tool in encouraging both for-profit and non-profit builders in our community to create affordable housing as part of their infill developments that they would not otherwise be able to do. He agreed with the need for long-term affordability and that is something that the Housing & Community Development Committee is trying to figure out ways to do that.

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

Councilman Freeborn moved for the adoption of Resolution No. 07-137. This motion was seconded by Councilwoman Cape and carried on a 5-1 vote, with Councilman Mumpower voting "no."

### **RESOLUTION BOOK NO. 30 - PAGE**

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

Councilwoman Cape (1) announced that there is a group of people who are talking about Ashe Village which will be an interesting project in our community next summer, which conversation will be around sustainability, green building and community engagement; and (2) commended the Sister Cities project for their role in the trip to Saumur, France, and would like for Council to consider expanding the City's role that we play in that organization.

The City received a Complaint on June 27, 2007, which is generally described as follows: Kelvin Benjamin and Wendy Benjamin vs. the City of Asheville. The complaint is for personal injury sustained from a fall into a manhole. This matter will be handled in-house.

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

#### **IX. ADJOURNMENT:**

Vice-Mayor Jones adjourned the meeting at 11:52 p.m.

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CITY CLERK

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MAYOR