

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

Councilman Mumpower gave the invocation.

I. PROCLAMATIONS:

A. PROCLAMATION PROCLAIMING AUGUST 28, 2007, AS "WAKEFIELD ELLISON DAY"

Mayor Bellamy read the proclamation proclaiming August 28, 2007, as "Wakefield Ellison Day" in the City of Asheville. She explained that Wakefield had an outstanding performance at the state basketball competition and was selected by the USA Junior Nationals basketball program to compete in the "International Sports Festival" in Columbus, Ohio. In addition, Wakefield, a junior at Asheville High School, was the only player from Western North Carolina on the roster. He helped lead the Carolinas team to the championship in the US Junior Nationals basketball tournament by scoring 19 points to help the Carolinas beat California Blue 63-49. She proudly presented the proclamation to Mr. Ellison.

II. CONSENT AGENDA:

Mayor Bellamy said that various Council members have requested that Consent Agenda Items "B," "D," "E," "F," and "G" be removed from the Consent Agenda for individual votes.

A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON AUGUST 21, 2007

B. RESOLUTION AUTHORIZING THE CITY MANAGER TO APPLY FOR A GRANT FROM THE U.S. DEPT. OF HOMELAND SECURITY FOR THE STAFFING OF THREE FIREFIGHTERS THROUGH THE STAFFING FOR ADEQUATE FIRE AND EMERGENCY RESPONSE

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

C. ORDINANCE NO. 3528 - BUDGET AMENDMENT FOR A DEPUTY CITY CLERK POSITION

Summary: The consideration of a budget amendment in the amount of \$46,000 to be funded with an appropriation from fund balance for a Deputy City Clerk position.

The purpose of this report is to propose enhancements to the City Clerk's office to provide improved support for Boards and Commissions activities, records management and other administrative duties. These improvements would be accomplished through the addition of a full-time Deputy City Clerk.

Asheville City Council has expressed an interest in improving the city's management of Boards and Commissions activities, records management and other administrative responsibilities that support citizen interaction with the city's elected board. In addition, with the recent addition of three formal meetings per month, the amount of agenda coordination required from week to week has increased.

In the past, support for Deputy City Clerk responsibilities was provided by a position that also served as the city manager's administrative assistant as well as the receptionist for the second floor. As the organization has grown, the ability of this position to meet these demands has diminished. At the same time, the city's ability to proactively manage the Boards and Commissions program along with other City Council initiatives has received less support.

City Clerk's Office Responsibilities: The breakdown below shows how responsibilities could be divided between the City Clerk and a Deputy City Clerk.

Deputy City Clerk

- Boards and Commissions Program Manager
 - Develop new board member orientation for all volunteers
 - Coordinate an annual board member luncheon retreat with City Council
 - Create a Boards and Commissions database of all current members and candidates
 - Improve the Talent Scout and application process
 - Place board membership and minutes on Web site
- Records and Contract Management
 - Coordinating public information and document requests
 - Indexing minutes, ordinances & resolutions
 - Sealing, routing and filing city contracts
 - Fixed asset reports
 - Post resolutions and ordinances on Web site
- Ceremonial Arrangements for City Council Meetings
 - Coordinating Proclamations and Pledge of Allegiance arrangements
 - Communicating with Council members regarding invocation
- Preparation for City Council Meetings
 - Preparing agenda notebooks for Mayor, City Manager, Assistant City Manager & Vice-Mayor
 - Preparing City Council Chamber, kitchen area and catering for meetings
- General City Council Support
 - Coordinate City Council travel and meeting arrangements
 - Arrange recurring meetings between Mayor and Council members
 - Log, track and respond to customer and citizen requests
 - Meeting minutes
 - Coordinate City Council retreats
- Serve as back up for City Clerk during absences

City Clerk

- Coordinate City Council Agendas
 - Work with the Mayor to schedule items and prepare the monthly report and 8-week agenda
 - Coordinate staff reports and supporting documents with the City Manager and operational staff
 - Log all Council members agenda item request
 - Prepare letter to Council members when agenda items are scheduled
 - Prepare weekly agenda packages and place on Web site
 - Post meeting minutes and action agendas on Web site
 - Attend City Council meetings
 - Administer Oaths of Office
 - Set-up Council laptops
- Public Meeting Notification
 - Post media notice for all City Council public meetings
 - Post media notice for all City Council travel
- Organize archives and history files for seventh floor storage
- Recording Documents
 - Prepare and record documents at the Register of Deeds Office
- Records & Retention Schedule
 - Work with the NC Dept. of Cultural Resources on any updates to the schedule
- Prepare and submit the Secretary of State gender appointments for Boards and Commissions
- Prepare and monitor the City Clerk's budget
- Ordinances to be codified
 - Coordinate periodic revisions to the City Code of Ordinances

- Distribute to departments new codified pages
- Legal Notices
 - Prepare legal notices for public hearings
 - Prepare notices for staff to post for public hearings

Professional Services Contract: It is the City Clerk's recommendation that City Council continue its contract for professional services for meeting minutes through August 2008. This time period would allow the City Clerk's Office the opportunity to gradually absorb the responsibility of taking minutes at City Council meetings.

Staff recommends City Council approve a budget amendment in the amount of \$46,000 to be funded with an appropriation from fund balance for a Deputy City Clerk position.

ORDINANCE BOOK NO. 23 - PAGE

D. RESOLUTION AUTHORIZING THE MAYOR TO CONVEY AIR SPACE ADJACENT TO 82 PATTON AVENUE FOR THE PURPOSE OF ERECTING A PERMANENT BUILDING OR STRUCTURE

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

E. RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO AN AGREEMENT CREATING A 401 (A) RETIREMENT PLAN FOR FIREFIGHTERS OF THE ASHEVILLE FIRE AND RESCUE DEPARTMENT

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

F. RESOLUTION AUTHORIZING THE ASHEVILLE REGIONAL AIRPORT AUTHORITY TO PROVIDE A LEASE TERM TO ENCORE FBO ACQUISITIONS, LLC, THAT EXTENDS BEYOND THE TERM OUTLINED IN THE CITY OF ASHEVILLE AND ASHEVILLE REGIONAL AIRPORT AUTHORITY LEASE AGREEMENT

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

G. RESOLUTION MAKING PROVISIONS FOR THE POSSESSION AND CONSUMPTION OF MALT BEVERAGES AND/OR UNFORTIFIED WINE AT THE BIG BROTHERS/BIG SISTERS 25TH ANNIVERSARY CONCERT

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 Vice-Mayor Jones and carried unanimously.

ITEMS REMOVED FROM THE CONSENT AGENDA FOR INDIVIDUAL VOTES

B. RESOLUTION NO. 07-162- RESOLUTION AUTHORIZING THE CITY MANAGER TO APPLY FOR A GRANT FROM THE U.S. DEPT. OF HOMELAND SECURITY FOR THE STAFFING OF THREE FIREFIGHTERS THROUGH THE STAFFING FOR ADEQUATE FIRE AND EMERGENCY RESPONSE

Summary: The consideration of a resolution authorizing the City Manager to apply for a grant from the US Department of Homeland Security for staffing for three firefighters through the Staffing For Adequate Fire and Emergency Response (SAFER).

In order to improve emergency services delivery for the citizens of Asheville, we present the consideration of a grant application for a five-year Federal SAFER (Staffing for Adequate Fire and Emergency Response) grant which would fund 90% of the cost of three firefighters in Fiscal Year (FY) 2007-08. This percentage would decrease each year for four years with the City assuming 100% of the cost in FY 2011-12.

An analysis indicates that to improve our services, our current firefighter staffing can be enhanced. In order to determine staffing needs analysis, we consider several different measurements including industry, insurance, regulatory, accreditation and benchmarking standards, or best practices.

1. Industry standard - The City of Asheville currently operates 15 emergency response units. Approximately half of our units

operate with three firefighters on duty. The remaining half operates with four firefighters on duty. Due to increased efficiency and safety, the national staffing and deployment industry standard calls for a minimum of four firefighters on all response companies.

2. Insurance standard - Under the most recent review, the Asheville Fire and Rescue Department (AFR) qualified as an ISO class 3 department, earning a department total of 78.58%. This 2006 review provided a 9% improvement over the 1993 review. However, the overall weakest area in this most recent review was available staffing, for which we earned only 53.9% of the available staffing points. The city's ISO rating directly affects property insurance rates for city residents and businesses.
3. Regulatory standard – Federal labor laws require us to assemble certain numbers of firefighters on emergency scenes before making interior fire attacks on structures. Currently, all but one of our single company response stations has four firefighters on duty.
4. Accreditation standard - Asheville meets the minimum standard of cover in order to be recognized as an accredited agency. However, Asheville's standard of cover is weaker in comparison to all other accredited departments in North Carolina. This coverage deficiency is partially due to our mountainous topography. In addition, we are also often delayed in placing a full complement of necessary personnel on fire scenes because half our companies operate with three firefighters.
5. Benchmarking/Best Practices – We continually assess our staffing through the UNC School of Government benchmarking project for North Carolina. That benchmarking report reflects that we have more fires per 1,000 population of any other rated NC city and we have the second worst percentage of full response within 8 minutes, which is a time critical in both fire and medical emergencies.

In order to address our staffing needs, we have several options available to us. These include, but are not limited to:

1. Annual operating budget requests
2. Grant funding requests
3. Requests through annexation plans

In 2006, Asheville City Council authorized application and accepted a SAFER grant for three firefighters. These three additional firefighters allows for one engine company to operate with four firefighters rather than three. This federal program has worked very well for Asheville thus far, as well as scores of other North Carolina cities to improve firefighter staffing while minimizing input of local general fund tax dollars.

We again have an opportunity to apply for SAFER grant funds. We propose to again apply for grant funding for three additional firefighters through the SAFER act grant for FY 2007-2008. If awarded, Council will need to accept the grant award at a later date.

Currently, Engine 2, located on South French Broad Avenue, operates as a three person response company. Station 2 is our only single company station operating with three firefighters on duty. Obtaining these three additional firefighters would enable us to advance to having four firefighters on duty. Engine 2 is our fourth busiest company in the city, answering over 1,700 emergency calls annually in their immediate first due district.

Improving the staffing of Engine 2 would enhance emergency services delivery to the areas served by Engine 2 including the areas in and around Mission Hospital, the river district area, AHA properties and south downtown.

Maintaining our accredited agency status requires that we continually measure all of the time components of an emergency response from 911 call to mitigation of the emergency. These times include processing the 911 call, turn-out time, travel time, and set-up time once on scene. One additional firefighter on a fire engine reduces that company's set-up time as follows:

- Set-up time for fires is reduced by 48%
- Set-up time for rescues is reduced by 73%
- Set-up time for medical emergencies is reduced by 55%
- Our fire suppression capabilities will also increase. One additional firefighter on each company increases that company's capability by 67%.

The SAFER grant would allow the City to hire three firefighters in FY2007-08 by awarding 90% funding with a 10% City contribution. A January 1, 2008 start date is assumed for these three firefighters. The annualized five year grant breakdown is

provided in the following table.

Fiscal Year	Percent Match (Federal/City)	Annualized Salary Cost (City)	*Operating Cost (City)
FY2007-08	90/10	\$10,598	\$10,000
FY2008-09	80/20	\$22,893	\$600
FY2009-10	50/50	\$61,811	\$600
FY2010-11	30/70	\$95,516	\$600
FY2011-12	0/100	\$144,192	\$600

*Operating costs include protective clothing, gear, and radios in the first year, and training and other expenses in years thereafter. These costs will be absorbed in the department's budget.

Our city continues to grow and so does our emergency call volume. Over the past 9 years, emergency calls have increased 32%.

In an effort to immediately improve levels of emergency service delivery within the City of Asheville, while postponing the full cost of this effort for five years, staff is recommending the Fire & Rescue Department be allowed to apply for the competitive SAFER grant.

Pros:

- Allows City to hire three firefighters at one time while not absorbing the full cost for five years.
- Funding for the SAFER program has already been allocated. If Asheville does not apply, the grant funds will go to other cities that do apply.
- Council will have the opportunity to accept the grant at a later date, should it be awarded, based upon Asheville's merit in the competitive grant program.

Con:

- The City must absorb 100% of the cost of the three firefighters for the full fiscal year FY2011-12.

City staff recommends City Council approve a resolution authorizing the City Manager to apply for a grant from the US Department of Homeland Security for staffing for three firefighters through the Staffing For Adequate Fire and Emergency Response (SAFER).

Councilman Mumpower said that at a time of unprecedented national debt we should not be taking money from the US Dept. of Homeland Security. He felt if we need three more firefighters, then we should pay for it ourselves.

Mayor Bellamy said that this year the president of the chiefs of police organization spoke before a congressional committee. One of the things that he stated was that the police and fire personnel are the first line of defense in homeland security and that is why she will support the motion.

Councilman Freeborn moved for the adoption of Resolution No. 07-162. This motion was seconded by Councilwoman Cape and carried on a 6-1 vote, with Councilman Mumpower voting "no."

RESOLUTION BOOK NO. 30 - PAGE

D. RESOLUTION NO. 07-163 - RESOLUTION AUTHORIZING THE MAYOR TO CONVEY AIR SPACE ADJACENT TO 82 PATTON AVENUE FOR THE PURPOSE OF ERECTING A PERMANENT BUILDING OR STRUCTURE

Summary: The consideration of a resolution authorizing the Mayor to convey air space adjacent to 82 Patton Avenue, for the purpose of erecting a permanent building or structure.

On August 14, 2007, City Council adopted Resolution No. 07-153, terminating the upset bid process for the sale of air rights adjacent to 82 Patton Avenue and directing staff to commence a new process under the condition that a sale of air rights adjacent to 82 Patton Avenue is conditioned for the purpose of erecting a permanent building or structure.

On August 15, 2007, a qualifying offer was received in the amount of \$5,000 from Urban Capital, LLC., for the purchase of air rights conditioned on the intent to construct permanent balconies in the said air space. Pursuant to N.C. Gen. Stat. sec. 160A-269, the City Clerk advertised for upset bids regarding the offer to purchase air rights for the purpose of constructing a permanent

building or structure in City owned property adjacent to 82 Patton Avenue; (PIN 9649.18-30-3015) for the sum of \$5,000. The notice ran in the Asheville Citizen-Times on August 17, 2007. No qualifying upset bids were received in response to said advertisement.

Pursuant to Council's request, the Tree Commission has reviewed the proposed balcony construction and has approved the site plan, with no negative impact to the urban tree design.

Approval of the resolution will authorize the sale of the property to Urban Capital, LLC for the amount of \$5,000.

Pros:

1. The sale will be at fair market value.
2. It will facilitate an increase in the tax base.
3. It will accommodate the connectivity of public and private space for a more robust downtown environment.

Con: There is no negative impact.

Economic Development staff recommends City Council approve a resolution authorizing the Mayor to convey air space adjacent to 82 Patton Avenue, for the purpose of erecting a permanent building or structure.

In response to Councilman Newman, Economic Development Director Sam Powers said that staff understood Council's direction that in the future base bids cover administrative time. In this case, however, that was not done. But, the bid amount was \$5,000 (\$2,000 more than the formula) and he felt the bid would cover the administrative time.

Councilwoman Cape moved for the adoption of Resolution No. 07-163. This motion was seconded by Councilman Mumpower and carried on a 6-1 vote, with Mayor Bellamy voting "no."

RESOLUTION BOOK NO. 30 - PAGE

E. RESOLUTION NO. 07-164- RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO AN AGREEMENT CREATING A 401 (A) RETIREMENT PLAN FOR FIREFIGHTERS OF THE ASHEVILLE FIRE AND RESCUE DEPARTMENT

Summary: The consideration of a resolution authorizing the City Manager to enter into an agreement creating a 401(a) retirement plan for firefighters of the Asheville Fire and Rescue Department.

During the budget process, Council approved the creation of a 401(a) plan for Firefighters with a 2% City match. This resolution officially creates this plan and is necessary in order to set up the plan with International City Manager Association. Our goal is to have the plan in place by October 1, 2007.

Staff recommends City Council approve a resolution authorizing the City Manager to enter into an agreement creating a 401(a) retirement plan for firefighters of the Asheville Fire and Rescue Department.

Councilman Mumpower felt that this is a well-intended effort to address the fairness issue with our firefighters retirement fund. They do not participate, by choice, in social security and thus their retirement is not equitable with other employees of the City. He agrees that there is a fairness equation. He does not believe that this solution represents the final outcome to that lack of fairness. The firefighters have said this is just a foot in the door and it will create a further adversarial relationship with Council and it alienates the firefighters from other city employees because we are creating a unique system that takes them further away from social security instead of encouraging them to move toward it. It was his contention that we look for a way to compensate them for electing to participate in social security by providing them with a pay increase, in partial form, that helps compensate them and get them over that initial apprehensive.

Councilman Newman, Chairman of the Revenue and Finance Committee, worked with the firefighters on this proposal, which they brought forward to address this long-standing issue. He did think they should participate in social security as well but the firefighters have voted on that and that is not going to happen. He felt this is a positive step forward.

Councilman Newman moved for the adoption of Resolution No. 07-164. This motion was seconded by Councilman Freeborn and carried on a 6-1 vote, with Councilman Mumpower voting "no."

RESOLUTION BOOK NO. 30 - PAGE

F. RESOLUTION AUTHORIZING THE ASHEVILLE REGIONAL AIRPORT AUTHORITY TO PROVIDE A LEASE TERM TO ENCORE FBO ACQUISITIONS, LLC, THAT EXTENDS BEYOND THE TERM OUTLINED IN THE CITY OF ASHEVILLE AND ASHEVILLE REGIONAL AIRPORT AUTHORITY LEASE AGREEMENT

Summary: The consideration of a resolution authorizing the Asheville Regional Airport Authority to provide a lease term to Encore FBO Acquisitions, LLC that extends beyond the term outlined in the City of Asheville and Asheville Regional Airport Authority Lease Agreement.

The Asheville Regional Airport Authority requests authority to enter into a lease with Encore FBO Acquisitions, LLC that extends beyond the airport's current lease term with the City.

The Airport Authority Board unanimously approved (7-0) a new business venture with Encore FBO Acquisitions, LLC. Encore is a provider of aviation related services, including aircraft fueling, maintenance, hangar storage, etc. Encore will make an initial investment of \$3.5 million and future investments of \$4.5 million.

The lease term for this development project includes a 30 year base term, with the potential for an additional 10 years. The potential term of 40 years will exceed the Authority's lease term with the City for the Airport, which runs through 2018, with an option of an additional 25 years. In light of these terms, the Authority is requesting approval to enter into a lease with Encore that extends beyond the Airport's current lease with the City.

Staff, including City Attorney Bob Oast and Economic Development Director Sam Powers, reviewed this request. Based on discussions with the City's legal staff and the Airport Authority's attorney, City staff is comfortable proceeding with approval of this request.

Staff recommends City Council approve a resolution authorizing Asheville Regional Airport Authority's request to enter into a lease a 30 year base lease, with an optional 10 years, with Encore FBO Acquisitions, LLC.

Ms. Patsy Brison, attorney representing Asheville Jet Inc., d/b/a Million Air, presented Council with a letter dated August 10, 2007, to Mayor Bellamy from Mark Dumas, attorney representing Asheville Jet Inc. Ms. Brison reviewed the letter explaining that Asheville Jet has operated the Million Air Fixed Base Operator (FBO) at the Airport for over a decade. Encore would be the second FBO at the Airport. In general, Asheville Jet does not have an issue with having as many FBO's as the Airport can sustain, but they are concerned about the terms of the Encore lease because the lease would harm the Airport, the City and Asheville Jet. She explained the following concerns of the lease (1) does not fiscally benefit the Airport or the City; (2) was not approved with sufficient evaluation or openness; (3) will jeopardize the availability of federal funds; and (4) may result in civil and administrative litigation. In summary, she asked that Council vote to deny the Encore lease and ask the Airport Authority to re-consider approval of the lease, or in the alternative, to continue this matter until the City's counsel has an opportunity to examine the contents of the letter from Mr. Dumas and to a letter she will be providing to the City in the very near future.

Mr. David Edwards, Airport Authority Director, responded to each of the concerns raised by Ms. Brison reminding Council that the Airport Authority has thoroughly reviewed this lease and voted unanimously to request Council's approval. He stated that he is waiting for a written confirmation from an Federal Aviation Administration (FAA) representative in Atlanta who (through a voice mail message) said that they have reviewed the proposed Encore lease and based on their evaluation, they had no issues with what the Airport is proposing and they did not feel the Airport is in violation of any federal regulations. He said that until they receive the letter from the FAA they would not execute the lease with Encore. He pointed out that their request is specifically related to the term since the term extends beyond the Airport's current lease with the City. In addition, he said that if the Airport Authority has property that is available for lease and they have a party that is willing to lease it and provide aviation services, they do not have a choice, by federal regulations, but to negotiate an agreement in good faith that meets all the requirements of the compliance regulations.

Throughout discussion, Mr. Edwards responded to various questions/comments from Council, some being, but are not limited to: is the Airport Authority open to re-negotiating the terms of the Million Air lease; how will the lease support the Airport and the City regarding revenue; how many FBO's do airports Asheville's size have; how long is the Asheville Jet lease; what has been done regarding sufficient openness; is there any urgency in approving the lease; and explain the \$3 Million infrastructure the Airport Authority has built for Asheville Jet.

In response to Mayor Bellamy, Chief Financial Officer Ben Durant said that the City does not receive any revenue funds from the Airport. He said that the Airport has the right to negotiate sub-leases as long as they are doing it in a manner that does not inhibit the Airport's ability to be an airport. We have to rely on their expertise and opinions in these matters. He said staff looked at the lease, noting that we are not aviation experts, and didn't see anything against that philosophy. In addition, staff was advised that the Airport received assurances that the FAA looked into the matter and didn't see any violations. City staff felt that it

was within the purview of the Airport Authority to make that decision.

When Mayor Bellamy asked if the City should wait until the FAA sends written confirmation stating that they have no concerns with the lease agreement, City Attorney Oast said it would be up to Council whether to delay action on this matter until the letter is received.

There was a brief discussion about negotiations making the Airport Authority an independent authority. Mayor Bellamy briefly explained that the policy direction by Council to move forward with discussions on an independent Airport Authority has not changed, but that Henderson County has asked for additional time to consider their options. The City's current lease with the Airport Authority expires in 2018, and she is not willing to delay any action until those negotiations are finalized.

Councilman Davis moved to approve the resolution authorizing the Asheville Regional Airport Authority to provide a lease term to Encore FBO Acquisitions, LLC that extends beyond the term outlined in the City of Asheville and Asheville Regional Airport Authority Lease Agreement. This motion was seconded by Councilman Freeborn.

Councilman Newman said that Asheville and Buncombe County have talked about regional issues for some time and he is supportive of those initiatives. He felt we can't defer making decisions until those type decisions are made.

Mayor Bellamy said that she will not abnegate her responsibilities based upon future negotiations. As a Council member and Mayor she still has to vote on issues as they come forward, understanding that discussions will continue. It's important to realize that there are a lot of good ideas being discussed all the time. For example, the Parks & Recreation Department is in conversations with various entities over partnerships. She didn't want to stop staffing in that Department because that partnership may or may not occur. Also, she is not going to stop upgrading our water system just because she's not sure how the lawsuit will end. What is important to her is while we have it in our hands, that we be good stewards over it. Until 2018 the Airport exists in its current form and after 2018 we can sign another lease or say we want to bring it in house and run it as a department. She doesn't look at this as a decision that will impact today, but for the future.

Councilman Mumpower said he would not support the resolution before the independent airport authority issue is resolved. He saw no urgency in approving the lease.

Councilwoman Cape said that her issues are around fairness and whether or not there are legal concerns with the FAA. She wanted all our tenants to be treated fairly and hoped that the Airport Authority will work to that end to accomplish that.

The Vice-President of Million Air explained that all they want is to be treated fairly. They invested \$5 Million for a 14 year lease, whereas the Encore lease is for 30 years (with an unheard of potential for 40 years) with a \$4.5 Million investment on different financial terms. They do not take advantage of being the only FBO at the Airport. Regarding the hangars the Airport built for Million Air, the Airport is getting a better return on their investment, through Million Air's payments to them, than they would be having the money invested. The Airport will be spending \$2.5 Million to fill in land for Encore and there is no return on that money spent. They have \$5 Million invested and now the Airport Authority has agreed to allow Encore to put a trailer on the cement and get two fuel trucks and start competing against Million Air. He questioned how can they compete fairly with them when their overhead is 20 times that. He alleged that the Encore group was never heard of until five days before the Airport Authority voted. He urged Council to vote against the lease.

Councilman Freeborn, Chair of the Airport Authority, said that the Airport Authority has talked to Million Air about renegotiating their lease and extending the terms, but they were not interested in that. He explained the public comment process, noting that in 2006 the Airport Authority talked about their long-term goals and a second FBO was one of those goals. A Million Air representative was at that meeting and could have given input, but didn't. He said they have had various conversations with tenants of Million Air about their satisfaction with the facilities. The Airport has had to make accommodations for new facilities because of the dissatisfaction and the unwillingness by Million Air to work with those tenants. He can understand, having the terms and conditions that Million Air has on their lease, of them not wanting to invest some of those dollars, but when the Airport Authority offers to renegotiate those terms, they were told "no thank you." Personally that doesn't show their interest in the long-term viability of the Airport. Since starting the conversation about another FBO, he has talked to many general aviation users of our Airport and they are excited about having another FBO. While they are not extremely dissatisfied with Million Air (some are really satisfied), they want that competition and that choice at the Airport. Part of the Airport Authority's mission is to offer choices at the Airport. And to say that Encore was presented at the last minute is untrue.

Councilman Davis acknowledged that we must rely on the Airport Authority to be our experts, however, a 40-year lease is extremely long and he would prefer that our Chief Financial Officer review the terms of the lease. Therefore, he withdrew his motion.

When Councilman Mumpower asked what complexities would arise if Council delayed the matter for 30 days, Mr. Edwards said that potentially the Authority could lose the deal as they have been negotiating with Encore for a long time. He corrected a statement made by saying that this is a 30 year base lease for \$3.5 Million investment initially. In order to get an additional 10 years and an option, they would have to invest another \$4.5 Million on top of the \$3.5 Million. That results in an \$8 Million investment. He said that the Airport Authority is willing to talk to Million Air about renegotiating their lease, but personally he felt to let a tenant try to dictate the terms of a lease of another tenant is inappropriate.

Vice-Mayor Jones moved to approve the resolution authorizing the Asheville Regional Airport Authority to provide a lease term to Encore FBO Acquisitions, LLC that extends beyond the term outlined in the City of Asheville and Asheville Regional Airport Authority Lease Agreement, contingent upon written documented approval by the FAA. This motion was seconded by Councilman Freeborn. This motion failed on a 3-4 vote, with Vice-Mayor Jones, Councilman Freeborn and Councilman Newman voting "yes" and Mayor Bellamy, Councilwoman Cape, Councilman Davis and Councilman Mumpower voting "no."

Mayor Bellamy explained that she voted against the motion as she would like to delay action on this for two weeks in order to have the written documentation in hand from the FAA and allow our Chief Financial Officer to review the lease.

Councilman Newman moved to delay action on this matter for 30 days. This motion was seconded by Vice-Mayor Jones and carried on a 6-1 vote, with Councilman Freeborn voting "no."

Mayor Bellamy asked that when the matter comes back before Council that the letter from the FAA be presented.

Mayor Bellamy said that Council has talked about how to handle the Airport beyond 2018 when our lease is up and the independent Airport Authority. For clarification, Council did receive an update on the independent Airport Authority when we talked about the Water Agreement. When working with other elected officials, there is a process. They have to work with their board and see where they are on issues, so to talk about an issue without having the whole picture is not good, in her opinion. She is looking forward to continuing dialogue. As a matter of fact, she talked to the Chairman of Henderson County at the River Raft Race and set up another meeting just to talk about where Henderson County is going, their involvement in the Airport Authority, and if they would like to continue that initiative. Her main purpose of supporting the idea of an independent Airport Authority is to be more inclusive - to allow Henderson County to come to the table as a full fledged voting member of that body. And if they have other desires at this time, not to pursue that, she can't change that. It's important to her to give them an opportunity to see where they are going and what they want to accomplish. If Council needs a more formal update on where we are, she is willing to get that scheduled as soon as possible. But her goal is not to stop progress at the Airport. So, she asked Councilman Freeborn, Chair of the Airport Authority, to convey to the Airport Authority on her behalf that her delay in the decision was not a not vote of confidence of the Authority, but more of making sure we have the FAA letter in hand, opposed to a voice-mail, and in consideration for other Council members and staff to have time to look at the issue.

RESOLUTION BOOK NO. 30 - PAGE

G. RESOLUTION NO. 07-165 - RESOLUTION MAKING PROVISIONS FOR THE POSSESSION AND CONSUMPTION OF MALT BEVERAGES AND/OR UNFORTIFIED WINE AT THE BIG BROTHERS BIG SISTERS 25TH ANNIVERSARY CONCERT

Summary: The consideration of a resolution making provisions for the possession and consumption of malt beverages and/or unfortified wine at the Big Brothers Big Sisters 25th Anniversary Concert (a fundraiser and education event for Big Brothers Big Sisters) on September 15, 2007.

Big Brothers Big Sisters has requested through the Asheville Parks and Recreation Department that City Council permit them to serve beer and/or unfortified wine at their event and allow for consumption at this event. The Big Brothers Big Sisters 25th Anniversary Concert will be held on Saturday, September 15, 2007, from 12:00 p.m. - 10:00 p.m. at Martin Luther King Jr. Park.

Pros:

- Allows fundraising opportunities for charity
- Generates economic impact for the community
- Provides additional quality cultural programming and diversity

Con:

- Potential for public safety issues

The Asheville Parks and Recreation Department recommends City Council approve a resolution making provisions for the

possession and consumption of malt beverages and/or unfortified wine at the Big Brothers Big Sisters 25th Anniversary Concert on September 15, 2007.

Councilman Newman moved for the adoption of Resolution No. 07-165. This motion was seconded by Councilman Freeborn and carried on a 6-1 vote, with Mayor Bellamy voting "no."

RESOLUTION BOOK NO. 30 - PAGE

III. PRESENTATIONS & REPORTS:

IV. PUBLIC HEARINGS:

A. PUBLIC HEARING TO CONSIDER THE ISSUANCE OF A CONDITIONAL USE PERMIT FOR THE PROJECT KNOWN AS ZONA LOFTS LOCATED AT 150 COXE AVENUE FOR THE PROPOSED MIXED-USE DEVELOPMENT TO INCLUDE RETAIL SPACE AND 161 RESIDENTIAL UNITS

ORDINANCE NO. 3529 - ORDINANCE GRANTING A CONDITIONAL USE PERMIT FOR THE PROJECT KNOWN AS ZONA LOFTS LOCATED AT 150 COXE AVENUE FOR THE PROPOSED MIXED-USE DEVELOPMENT TO INCLUDE RETAIL SPACE AND 161 RESIDENTIAL UNITS

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

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

After hearing no questions about the procedure, Mayor Bellamy opened the public hearing at 6:25 p.m.

Councilwoman Cape and Councilman Newman disclosed that they talked to the developer and architect but noted they would consider this issue with an open mind on all the matters before them without pre-judgment and that they will make their decision based solely on what is before Council at the hearing.

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

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

Ms. Bernstein said that this is the consideration of the issuance of a conditional use permit for the project known as Zona Lofts located at 150 Coxe Avenue for the proposed mixed-use development to include retail space and 161 residential units (Attachments to City Exhibit 3 - Location Map and Aerial Map).

The applicant is requesting review of site plans for a proposed residential condominium building with commercial/retail space on the first story. Pursuant to section 7-5-9(a) of the Unified Development Ordinance (UDO), any residential development of more than 50 units and any mixed-use structure with more than 45,000 square feet located within a half-mile of the Central Business District (CBD) shall be considered as a Level III project and a Conditional Use.

The project area is a 16,089 square foot (0.369 acre) lot located at 150 Coxe Avenue in the Central Business District (Attachments to City Exhibit 3 - Rendering of Proposed Building and Site Plan). The parcel is bounded by Banks Avenue to the north, Coxe Avenue to the west, an existing 3-story structure to the south (Chrysler Building) and Collier Alley to the east. The applicant is proposing a 15-story structure with one below-grade level. There will be 161 residential units throughout 13 stories and a retail shop on the first level. Most of the units range in size from 463 square feet to 969 square feet, with the upper level and penthouse units providing a larger living space. The total gross floor area for the structure is 207,661 square feet and an overall building height of 179.5 feet.

While parking is not a requirement of the CBD, the applicant is proposing 54 parking spaces throughout three parking levels, along with the associated handicapped (4) and bicycle spaces (7). It should be noted that this amount of parking does not satisfy the parking needs of the entire building. Parking will be accessed through two entries, one on Coxe Avenue and one on Banks Avenue. The applicant has appropriately included retail use on the ground level and placed the primary pedestrian entrance on Coxe Avenue, which is designated a key pedestrian street. Street trees are proposed along Coxe and Banks Avenues, along with creating the 10' sidewalks required in the CBD, enhanced with "bump-outs" at corners and curb cuts.

The proposal includes a number of "green" features, including rainwater collection for flushing toilets, a wine turbine, solar hot water, low VOC paint, Energy Star appliances and low flow plumbing features. The goal of these features is to create a situation with 50% less energy consumption than other multi-family projects in the area.

This project provides downtown living at a workforce rate. Price points for the lower units (approximately 100 units) are within \$142–242k; the upper units are within \$299-499k; and the penthouse properties have yet to be designated in terms of size and price.

Balconies, cornices and structural awning as proposed encroach past the property line. These proposed balconies and architectural elements were reviewed by the Downtown Commission; however the air rights process was not specifically discussed. The applicant will be seeking purchase of air rights or entering into an encroachment agreement.

In seeking approval from the Downtown Commission, the applicant met with the Design Review Subcommittee on 5/2/07 and 5/23/07. Rather than seek modifications for inconsistencies with the design and operational standards required in the CBD, the applicant revised the design so as to fully comply with the UDO. Various design recommendations from the subcommittee were taken into account in the redesign however due to the applicant's desire to keep a unique and affordable project, not all recommendations were integrated. Unanimous approval was issued by the Downtown Commission on 6/8/07, subject to the plans and elevations as presented at the review; that price levels are kept at rates as discussed; that green features as presented are all executed and that the pedestrian safety of the driveway entrance on Coxe Avenue is maintained.

At their May 21, 2007, meeting, the Technical Review Committee (TRC) approved this project with the conditions as listed in the staff report. The project received approval (4-0) from the Planning & Zoning Commission on July 12, 2007.

As of the time of this writing, staff has received no communication from adjacent property owners or other citizens concerning the proposed development.

Section 7-16-2(c) of the UDO states that City Council shall not approve the conditional use application and site plan until it make the findings to the seven conditional standards through evidence presented in the staff report and presented as evidence at the public hearing.

1. **That the proposed use or development of the land will not materially endanger the public health or safety.**
The project will meet State building code requirements and will be reviewed in detail by the Technical Review Committee to ensure compliance with safety requirements.
2. **That the proposed use or development of the land is reasonably compatible with significant natural or topographic features on the site and within the immediate vicinity of the site given the proposed site design and any mitigation techniques or measures proposed by the applicant.**
The site is an infill parcel in the south slope area of the Central Business District. The building design responds to the grade changes on the lot through use and access to the building.
3. **That the proposed use or development of the land will not substantially injure the value of adjoining or abutting property.**
The parcel for the proposed building is under-utilized. The new use is expected to act as a catalyst for further redevelopment of under utilized properties in the vicinity of the parcel. The project is expected to enhance the values of adjoining properties.
4. **That the proposed use or development or the land will be in harmony with the scale, bulk, coverage, density, and character of the area or neighborhood in which it is located.**
The proposed project is located in the Central Business District where there is no height, density or maximum building size limitation. Although this will be the tallest structure in the south slope area it is not the tallest structure in the CBD. Also, this area of the downtown is significantly underutilized and is specifically targeted for this type of development, which is seen as catalytic and will spur additional, similar development.
5. **That the proposed use or development of the land will generally conform to the comprehensive plan, smart growth policies, sustainable economic development strategic plan and other official plans adopted by the City.**
The project conforms to the comprehensive plan and smart growth policies as this proposal is for higher density infill redevelopment in an area with existing supportive infrastructure in an underutilized part of the City. The project employs multiple green features for energy conservation that correspond to the City's dedication to environmentally-responsible development and supports the livability and vitality of downtown by offering housing at a workforce rate in close proximity

to public transit and in a walkable urban location.

6. That the proposed use is appropriately located with respect to transportation facilities, water supply, fire and police protection, waste disposal, and similar facilities.

The project is located in the CBD in an area easily accessed for transportation, life and safety facilities and utility infrastructure.

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

The project is not expected to create traffic congestion or a traffic hazard. Parking is contained on-site for the most part and otherwise will utilize on-street parking surrounding the site. Mixed-use areas such as the CBD can reduce traffic concerns by encouraging people to walk more or use public transit.

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

Pros

- This project provides new development in an under-utilized are of the CBD and has the potential to be a “catalyst” for additional growth.
- The majority of the units are identified to be sold at a workforce rate.
- The project integrates a number of green features and environmentally-sensible design practices.

Cons

- Building is significantly taller than any other in the immediate area at this time.
- Parking spaces provided will not satisfy parking needs of entire building.

Staff recommends approval of the project inclusive of the conditions as follows: (1) The project shall comply with all conditions outlined in the TRC staff report; (2) All site lighting must comply with the City’s Lighting Ordinance and be equipped with 90 degree cut-off fixtures and directed away from adjoining properties and streets; (3) All existing vegetation that is to be preserved must be clearly indicated and dimensioned on the site, landscape and grading plans; (4) The building design, construction materials and orientation on site must comply with the conceptual site plan and building elevations presented with this application. Any deviation from these plans may result in reconsideration of the project by the reviewing boards; and (5) This project will undergo final review by the TRC prior to issuance of any required permits.

Mr. Rod Kagy, developer spoke in support of the development.

Mr. Bae-Won Kohn, architect, provided Council with several documents (Applicant Exhibit 1) and briefly received the project summary as follows: (1) address is 150 Coxe Avenue; (2) stories will be 1 basement, 15 above-ground stories; (3) occupancy will consist of residential, mercantile, parking garage; (4) construction type is Type I-A (concrete columns and shear walls with post-tension concrete slab); (5) site is 16,080 square feet - 0.369 acre; (6) building footprint is 14,268 square feet; (7) footprint/site ratio is 88.7%; (8) paving area is 2,433 square feet; (9) paving/site ratio is 15.1%; and (10) gross floor area is 215,349 square feet. He then outlined the many green features: (1) energy efficient shell; (2) rainwater collection; (3) solar domestic hot water system; (4) photovoltaics; (5) wind turbine; (6) energy star appliances; (7) environmentally-friendly materials (a) water-based stained concrete floor; (b) bamboo flooring without adhesive; (c) no VOC paint; (d) earth plaster; (e) high efficiency elevators; and (f) recycled concrete countertop; (8) high efficiency VRV system; and (9) low-flow pumping fixtures. The energy modeling result is (1) average multi-family: 51.3 kBtu/SF/Yr; (2) Zona Lofts: 30.2 kBtu/SF/Yr (60% reduction from average); (3) estimated annual savings of \$135,000/year; and (4) estimated 700 square feet condo electricity bill will be \$31/mo. He reviewed the ground floor plan, the typical residential floor plan and the building height. He urged Council to support the conditional use permit.

After rebuttal, Mayor Bellamy closed the public hearing at 6:38 p.m.

In response to Mayor Bellamy, Mr. Kohn explained that they have submitted their application for air rights for approximately 600 square feet. In addition, this is not module construction.

Mayor Bellamy urged the developer to keep stormwater on their property during construction.

Councilwoman Cape commended them on their many green features and hoped they set a new bar for the rest of the developments.

Councilman Mumpower appreciated the development growing up in order to reduce sprawl.

Councilmen Newman and Freeborn suggested they partner with public transit, including yearly bus passes in the condominium association fees.

Councilman Mumpower moved for the adoption of Ordinance No. 3529, granting a conditional use permit for the project known as Zona Lofts located at 150 Coxe Avenue for the proposed mixed-use development to include retail space and 161 residential units (finding that the request is reasonable based on the information provided in the staff report and as stated in the staff recommendation), subject to the following conditions: (1) The project shall comply with all conditions outlined in the TRC staff report; (2) All site lighting must comply with the City's Lighting Ordinance and be equipped with 90 degree cut-off fixtures and directed away from adjoining properties and streets; (3) All existing vegetation that is to be preserved must be clearly indicated and dimensioned on the site, landscape and grading plans; (4) The building design, construction materials and orientation on site must comply with the conceptual site plan and building elevations presented with this application. Any deviation from these plans may result in reconsideration of the project by the reviewing boards; and (5) This project will undergo final review by the TRC prior to issuance of any required permits. This motion was seconded by Councilwoman Cape and carried unanimously.

ORDINANCE BOOK NO. 23 - PAGE

B. PUBLIC HEARING TO CONSIDER AN AMENDMENT TO THE UNIFIED DEVELOPMENT ORDINANCE INCREASING THE AMOUNT OF TIME A CONDITIONAL USE PERMIT IS VALID

ORDINANCE NO. 3530 - ORDINANCE AMENDING THE UNIFIED DEVELOPMENT ORDINANCE INCREASING THE AMOUNT OF TIME A CONDITIONAL USE PERMIT IS VALID

Mayor Bellamy opened the public hearing at 6:49 p.m.

Technical Review Manager Kim Hamel said that this is the consideration of an ordinance amending the Unified Development Ordinance (UDO) increasing the amount of time a conditional use permit is valid. This public hearing was advertised on August 17 and 24, 2007.

Ms. Hamel said that currently, the UDO states that a Conditional Use Permit (CUP) is only valid for one year from the date of City Council approval with an allowance for one 6 month extension by the Planning and Development Director given that a substantial reason is provided by the developer on why the extension is necessary.

Staff was asked by the Planning and Zoning Commission to draft an amendment to increase the amount of time for which a Conditional Use Permit is valid in order to provide more consistency with other approvals where a conceptual master plan is part of the submittal (Conditional Zoning requests).

A large majority of projects that require a Conditional Use Permit are large in size and scale (i.e. Level III projects and development standard bonus, etc.). The submittal process for these projects requires that only a conceptual master plan be submitted for the initial review by the Technical Review Committee (TRC). Once approved by the TRC, the conceptual master plan moves through the public hearing process (review by Planning and Zoning Commission and City Council). If the project receives approval by City Council, the developer is required to resubmit a final "detailed" set of development plans to be reviewed again by the TRC.

Staff has found that the majority of developments where a six month extension was requested are from projects where a CUP was issued. The requests stem mostly from developers needing additional time to line up financing and complete real estate transactions, which in return affects the time needed to develop "detailed" site plans for the final review by the TRC.

Pros:

- Would be consistent with other project types that require City Council approval involving review of a conceptual master plan. (Conditional Zoning approvals are valid for two years from the date of City Council approval.)
- Would allow the development community additional time to complete financial and property transactions without the need for a six month extension request.
- Allows additional time for the development of "detailed" site plans.
- Would reduce the number of projects that require a second review by City Council to simply renew a CUP that has expired.

Con:

- None identified.

On Wednesday, August 1, 2007, the Asheville Planning and Zoning Commission made a positive recommendation to

approve the amendment as presented (7-0). There was no public input or opposition from the public at the meeting.

Staff recommends City Council approve an ordinance amending Chapter 7 of the Code of Ordinances of the City of Asheville increasing the amount of time a Conditional Use Permit is valid.

Mayor Bellamy closed the public hearing at 6:50 p.m.

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

Vice-Mayor Jones moved for the adoption of Ordinance No. 3530. This motion was seconded by Councilman Mumpower and carried unanimously.

ORDINANCE BOOK NO. 23 - PAGE

V. UNFINISHED BUSINESS:

VI. NEW BUSINESS:

A. ORDINANCE NO. 3531 - ORDINANCE GRANTING A FRANCHISE TO OPERATE A TROLLEY WITHIN THE CITY OF ASHEVILLE

Transit and Parking Services Manager Bruce Black said that this is the consideration of an ordinance granting a franchise to operate a trolley within the City of Asheville.

Asheville Trolley Company LLC, d/b/a Gray Line Trolley Tours of Asheville (herein "ATC") wishes to conduct multiple daily trolley tours of the City of Asheville. Asheville Historic Trolley Company is already currently offering a trolley tour of Asheville under an existing franchise. The original franchise has expired and the company is applying for renewal.

Generally cities franchise certain services which use city roads, rights-of-way, or other city controlled assets in order to exert a measure of control over the particulars of the use to assure the health, safety and welfare of the citizenry. The city is requiring that any tour route be approved by the city traffic engineer such that the operator may not operate or stop where doing so may impede the orderly flow of traffic and create a potentially dangerous situation. Additionally, the comfort of citizens in areas where the tour will go is addressed through the assurances of the operator that the volume of any on-board public address system will not be heard outside the trolley bus. The city is to be indemnified; the vehicles must meet certain minimum standards as will the drivers.

In this case the tour will follow an established route approved by the City's Traffic Engineer. The tour will depart from the Visitor's Center daily every hour on the half hour between the hours of 10:30 a.m. to 3:30 p.m. and operation of the narrated tour is limited to 7:00 a.m. to 8:00 p.m., Sunday through Thursday and between 7:00 a.m. and 12:00 Midnight Friday and Saturday. On City-recognized holidays and days on which City-approved festivals occur in the Central Business District, the operating hours may be extended to 12:00 midnight, regardless of the day of the week.

The hours of operation are not limited to the above for charter operations providing that ATC meets all federal, state and local laws regarding the operation of a chartered vehicle. The franchise fee is one dollar per day of projected operation.

The ordinance is drawn to be as narrowly as possible, applies only to narrated tours, and does not attempt to franchise any other part of the business operation.

Pros:

- Allows the City to control impacts of trolleys on transportation.
- Enhances and promotes the tourist industry
- Exposes tourists to downtown Asheville
- Its history provides competition to other related services

Con: Could impede traffic flow because of continual stops (minimal delay).

Mr. Black said that we did receive a letter from the Chamber of Commerce recommending this franchise.

Staff recommends City Council approve an ordinance granting a franchise to operate a trolley within the City of Asheville.

Mr. Black and Mr. Howard Helmken, applicant, responded to various questions/ comments from Council, some being, but are not limited to: how many trolleys does Asheville currently have; how many trolleys will Asheville Trolley Company operate; how many trolleys can be on our streets and not obstruct traffic flow; do we have the opportunity to limit the number of trolleys on our streets; are chartered buses franchised; how was the \$1 a day franchise fee determined; can the franchise fee be benchmarked against other cities that operate trolleys; how many trolleys are there in Savannah, Georgia; and has this matter been reviewed by the Transit Commission.

In response to Councilman Davis' concerns, Mayor Bellamy suggested that Council consider the issue before Council now because the question of how many trolleys can be on our streets and not obstruct traffic flow is a larger policy direction and should be scheduled for another meeting. She suggested the Transit Commission review the larger issue to investigate whether two franchises in Asheville is enough. Our Traffic Engineer can also determine how many trolleys can operate on our streets without impeding traffic flow, taking care to review the routes to make sure that all routes are not on one street at one time. He can then report back to the Transit Commission who in turn will report back their findings to Council.

Councilman Freeborn moved for the adoption of Ordinance No. 3531. This motion was seconded by Councilman Newman.

In response to Councilman Davis, City Attorney Oast said that the term of this franchise is for one year and if after review of the fee structure, the fee could be renegotiated at that time.

Vice-Mayor Jones explained her concern with the time of the tours, especially at the 7:00 a.m. starting time. Mr. Helmken said that he had no problem with narrowing the hours of the tour from 10:00 a.m. to 8:00 p.m., since their tours will start at 10:00 a.m. and end at 5:00 p.m.

Councilman Mumpower felt that the Transit Commission should have an opportunity to look at this, along with the franchise fee and other franchise terms. He felt that Council should discuss this policy in detail or at least have the Transit Commission look at this first before we move forward.

Councilman Newman said that this is a fairly new idea for Asheville and there is a value for people to park and ride. He felt we can make adjustments as we go forward.

When Mayor Bellamy asked if Mr. Helmken would consider including the block of the YMI Cultural Center in his route, he responded that he would.

Councilman Newman asked for a friendly amendment to narrow the hours of the tour from 10:00 a.m. to 8:00 p.m. Councilman Freeborn accepted the friendly amendment.

Vice-Mayor Jones feels that all the provisions in the lease should be reviewed to see what is fair to the people of Asheville. She hoped that the City's Traffic Engineer really look at the routes of the neighborhoods that are impacted.

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. 3531, narrowing the hours of the tour from 10:00 a.m. to 8:00 p.m. This motion was seconded by Councilman Newman and carried on a 6-1 vote, with Councilman Mumpower voting "no."

ORDINANCE BOOK NO. 23 - PAGE

B. CONSIDERATION OF AN APPOINTMENT TO THE AMERICANS WITH DISABILITIES ACT COMPLIANCE COMMITTEE

Vice-Mayor Jones, Chair of the Boards & Commissions Committee, said that the terms of Sherry Fitzpatrick (disabled community representative) and Mary Robertson (disabled community) expired on August 22, 2007.

On August 21, 2007, City Council instructed the City Clerk to arrange interviews for Walter Randolph and William Madison. The City Clerk was unable to contact Mr. Randolph to arrange an interview time.

It was the consensus of City Council to appoint William Madison (disabled community representative) to serve a three year term, term to expire August 22, 2010, or until his successor has been appointed.

It was also the consensus of City Council to re-advertise for the disabled community representative.

C. CONSIDERATION OF AN APPOINTMENT TO THE CIVIC CENTER COMMISSION

Vice-Mayor Jones, Chair of the Boards & Commissions Committee, said that Brian Turner has resigned from the Civic Center Commission, thus leaving an unexpired term until June 30, 2008.

On August 21, 2007, City Council instructed the City Clerk to arrange interviews for Elizabeth A. Jones, J. Michael Burke and John West. Mr. Burke was interested in appointment but was unable to attend the interview.

After Council spoke highly of the candidates, Elizabeth Jones received 5 votes, J. Michael Burke received no votes and John West received 1 vote (Councilman Mumpower did not make a recommendation). Therefore, it was the consensus of Council to appoint Elizabeth Jones as a member of the Civic Center Commission to serve the unexpired term of Mr. Turner, term to expire June 30, 2008, or until her successor has been appointed.

D. CONSIDERATION OF AN APPOINTMENT TO THE BUNCOMBE COUNTY TOURISM DEVELOPMENT AUTHORITY

Vice-Mayor Jones, Chair of the Boards & Commissions Committee, said that the term of Ron Storto (representing the owner or operator of a hotel, motel or other taxable tourist accommodation with 100 or fewer rental units) expires on August 30, 2007.

On August 21, 2007, City Council instructed the City Clerk to arrange interviews for Mr. Storto and Rupa Russell.

Mayor Bellamy said that Mr. Storto was interested in re-appointment; however, he was not able to attend the interview. Ms. Russell withdrew her application. As a result, Council will need to re-advertise for this position. In the past, when a Council member requests to re-open the process, Council has done so. And since we did have a request, we should honor that request.

Councilman Mumpower asked why Council does not want to just reappoint Mr. Storto. It has been historical policy that if we have a person serving in good fashion, with good attendance, then we reappoint them. He thinks we are insulting our board and commission members by altering the policy and politicizing the process.

Mayor Bellamy said that as of the election of the last Council, that process has changed based upon several past decisions made by Council. And, since it is not in writing, that Council cannot bind a future Council. There has been a request to open this up and Council should honor that request.

At 7:17 p.m., Mayor Bellamy announced a short break.

VII. OTHER BUSINESS:

A. ZONING ORDINANCE WORDING AMENDMENT EFFECTS AND UPDATE

Interim Planning & Development Director Shannon Tuch said that this is a review the significant Unified Development Ordinance (UDO) amendments that have been adopted since fall of 2006. This staff report is intended to summarize the amendments; this information will be supplemented by illustrations of the cumulative effect at the Council meeting.

In the summer of 2006 the City of Asheville hosted a public forum where all citizens and interested parties were invited to participate in a discussion regarding development activity in Asheville. A common comment from the community was interest in revising and updating the UDO. Additionally, on August 22, 2006, Dr. David W. Owens, professor of public Law and Government at UNC Chapel Hill delivered his report recommending UDO amendments to provide greater clarity as to policy intent. As a result of this interest and information, the Planning & Development department began a lengthy and comprehensive initiative to amend certain sections of the UDO. The following information is intended to summarize the result of many of those amendments and is grouped according to common development categories; however, many amendments influence more than one category.

Commercial Development

Some of the more significant code changes that affect commercial development include:

- Landscaping - additional landscaping material is required above prior standards. Buffer requirements have been increased, but buffer categories have been reduced from four to two and buffers are now required based on zoning districts rather than land use. The requirement for a 5 foot planning strip between commercial developments has been eliminated. The new requirements are simpler to use and understand.

- Open space - the threshold for applying open space standards has been reduced. Open space requirements now distinguish between urban and suburban open space. A fee-in-lieu option has been added to provide developers and property owners with more flexibility in site design. Compliance with the city Greenway Master Plan is now mandatory, but development bonuses are established if open space above the base requirement is provided as a result of complying with the Greenway Master Plan.
- Nonconformities - Full site compliance is required once a value threshold for new site construction is reached; previously, only landscape, parking and buffer standards were required to be met, but now buildings must be brought into compliance with setback, height and other standards. (This can be thought of as the "Walgreens" amendment.)
- Driveway and street intersection sight distance - this recent change distinguishes between urban and suburban contexts in driveway design and building placement, as well as explicitly providing the city traffic engineer with the ability to take site conditions into consideration in determining how driveways are designed and buildings are oriented. This amendment addresses sight distance concerns raised with regard to Staples and GreenLife.

Multifamily Development

Some of the more significant code changes that affect multifamily development include:

- Open space - the threshold for applying open space standards has been reduced. Open space requirements now distinguish between urban and suburban open space. A fee-in-lieu option has been added to provide developers and property owners with more flexibility in site design. Compliance with the city Greenway Master Plan is now mandatory, but development bonuses are provided if open space above the base requirement is provided as a result of complying with the Greenway Master Plan.
- Landscaping – additional landscaping is required through a new building impact requirement but is felt to be off-set in some cases by buffers being eliminated between like zoning districts. Building Impact landscaping and required buffers may overlap required stream buffers.
- Development standards bonuses – adopted last year, this amendment allows developments having exceptional design characteristics to receive density and height increases through a conditional use permit process. Projects approved using this process includes: Thoms Estate, Weirbridge, Skylofts, Davenport Subdivision, Sunset Park, and Estelle Park Subdivision.

Single-family Development/Subdivisions

Some of the more significant code changes that affect single-family development/subdivisions include:

- Gated developments - now prohibited.
- Steep slope situations - while the new steep slope and ridgetop requirements apply to all development types, the chief impact will be on single-family development and subdivisions. The new requirements include stronger density and grading standards, a new light reflectivity standard, and height limitations. Additionally, density bonuses are provided when developments concentrate site disturbance on less steep slopes and/or conservation areas are established.
- Four-lot subdivisions - subdivisions of up to four lots may be designed with a reduced access requirement. In effect, a driveway access is allowed instead of a full street to promote additional compatible infill development.
- Cottage developments - new standards have been created to allow dense, small-scale developments consisting of smaller single-family homes.
- Retaining walls - while the new retaining wall requirements apply to all zoning districts and development types, they will most frequently affect subdivisions due to road construction. These new standards will result in improved visual appearance of retaining walls.
- Landscaping – tree save areas covering a minimum of 30% of the total site area are now required. Tree save areas may overlap with open space areas or stream buffers, and may be located on private property.

- Subdivision requirements - new subdivision requirements will result in more uniform lot configurations and allow existing nonconforming lots under single ownership to be built on separately. Additionally, subdivisions of more than 50 lots are now subject to the Level III conditional use permit process, requiring Council review and approval.

Mixed-use Development

Some of the more significant code changes that affect mixed-use development include:

- MXD zoning district - this proposed zoning district creates the opportunity to consolidate several of the city's new urbanist/form-based zoning districts into a single district. Additionally, the MXD district allows some tailoring of zoning requirements to specific areas, such as Merrimon Avenue.
- Open space standards - adjustments have been made to distinguish between urban and suburban open space requirements, eliminating the prior disincentive for denser development.
- Adaptive Re-Use – the creation of this new overlay district allows for the re-use of character defining residential structures for very low-impact non-residential (and residential) uses through the preservation and maintenance of the structures.
- General adjustments - adjustments have been made to the Urban Village District, among others, to address fenestration and topographic issues identified as specific projects are reviewed.

Natural Resources

Some of the more significant code changes that affect natural resources include:

- Stormwater – led by the city's Engineering Department, this current amendment's proposed regulations will enhance the city's ability to effectively manage the impact of stormwater on the natural environment and infrastructure.
- Steep slope and ridgetop regulations - the new regulations will reduce the impact of development on these sensitive areas from both environmental and viewshed protection perspectives.
- Landscaping - additional landscaping material is required above prior standards. Greater and more specific tree protection standards have been created.
- Open space - the threshold for applying open space standards has been reduced. Open space requirements now distinguish between urban and suburban open space. Compliance with the city Greenway Master Plan is now mandatory, but development bonuses are established if open space above the base requirement is provided as a result of complying with the Greenway Master Plan.

Other

- Enforcement – Enforcement officers have been afforded new levels of protection not previously provided and revisions to the delivery requirements for notices and citations have allowed for increased productivity and reduced delays in achieving compliance. Additionally, fines for certain violations have been raised significantly, providing a more effective deterrent.

Staff is seeking direction from Council on areas for future regulatory and planning focus. The cumulative effect of the significant UDO amendments to date is to clarify Council objectives for natural resources, commercial, residential, and mixed-use development. This accomplishes a major recommendation of the Owens report on how to improve development management. It also triggers a major commitment of staff training, process changes, and community education in order to satisfactorily implement the amendments.

Going forward, there are additional UDO adjustments to be considered. The Owens report recommended regular reviews and updates to achieve closer alignment of the UDO with policy intent. Our work plan for this fall/winter already includes facilitating further review of stormwater regulations, mixed use districts, and possible sign code revisions. Staff will also be involved with downtown master planning and "housekeeping" revisions to the UDO, ultimately, we would like to reach a point of review where the focus of staff UDO efforts is on improving the clarity of the document, including the addition of illustrations and form-based elements.

Out of the 27 amendments in all (20 of which are completed), she feels that this is a very aggressive undertaking and has required a significant amount of time and dedication from the department as well as many others in the community, including

Council.

Since initiatives like these almost always result in some expression of concern from the community because it is a lot to absorb and a lot to keep track of, she explained how the community can learn more, keep track and find out how the issues affect them.

Although all sites are unique, she showed a completely generic piece of property and graphically demonstrated some of the effects of the recent amendments.

The recent initiatives have been very aggressive and to maintain the initiatives require some prioritization. The Planning Department has 31 full-time employees - 22 work in Planning Services and there are 10 planners. Of those 10 planners, only 2 are in management positions involved with major initiatives. Major initiatives require significant amount of time from management positions.

Director of Transportation and Engineering Cathy Ball reviewed with Council a slide which demonstrated some of the planning and management that goes into just one of those major amendments (stormwater and erosion control ordinance), which is only part of one of these major initiatives.

Ms. Tuch continued stating that some major initiatives include, but are not limited to: annexation; development review; small area plans; downtown master plan; code amendments; boards and commissions; enforcement; zoning studies; recruitment and training; communications; river district planning, city-owned properties; committee work, stakeholder meetings.

Future major amendments include (1) consolidated zoning districts; (2) form based code; and (3) lighting sights.

Future moderate amendments include (1) updates to Technical Review Committee rules and regulations; (2) digital billboards; (3) Level III thresholds; and (4) public safety.

Future minor amendments include (1) large retail structures; (2) Urban Village height changes; and (3) general housekeeping.

She said that her preferred definition of planning is "The process of setting goals, developing strategies, and outlining tasks and schedules to accomplish the goals, and making decisions on allocating its resources to pursue this strategy, including its capital and people."

At this time, staff is seeking direction on the priorities of Council for minor and major adjustments to be undertaken in the future.

Mayor Bellamy said that the Planning & Development Department has done a lot over the last year focusing on a lot of the goals of Council based upon our 2006 and 2007 retreats. We have addressed a lot of the concerns we have heard from the community as far as development in our community. In the coming months, it looks like we will see more important issues being addressed. She asked the following items mentioned in Professor David Owens' report be addressed: (1) the sign height limit for attached signs; (2) graphics so people can understand the limitations with those attached signs; (3) more definitive standards for what design elements are required to allow street frontage and setback relief and talk about what areas are permitted to have a setback relief - in the Mixed Use District, some of that definition has been defined for that area, but we don't have it in Community Business I or Community Business II Districts; (4) additional ordinance clarification regarded mandated setbacks for other areas than the Mixed Use District; (5) address in the UDO where the ordinance terminology and common usage of terms may not be clear; and (6) revise the alternative compliance section of the ordinance regarding buffers.

Ms. Tuch said that there has been some interest in revamping our entire sign code and so do we want to take the opportunity to go ahead and examine the whole code, in which case we would move that from a minor initiative to a major initiative. That is the kind of feedback they are requesting.

Mayor Bellamy asked that Council give Ms. Tuch all their proposed UDO amendment requests now and then Ms. Tuch bring them back to Council to prioritize.

Councilwoman Cape explained how her overall interest is understanding what the goals of each of our code zonings are and making sure that within those coded areas we are not in conflict with the goals we are trying to accomplish. She hoped the results would be easily communicated to the public and the people who are interested in developing.

Ms. Tuch said that when she talked about the major initiatives, one of the initiatives that they had really identified internally

with staff was to improve our communications with the public. We have some ideas, but that is one, unfortunately, that has been put on the back burner for awhile, but we have a lot of interest in pursuing.

Councilman Freeborn said that some suggestions that Dr. Owens gave us were (1) to clarify Council's intent on critical issues; (2) provide modifications to the development review process; and (3) establish a regular process for ordinance clarification and improvement. When this Council came into office they held a series of forums and he felt that is something we should establish as a routine policy for going forward. We should periodically (every 2 or 4 years) outline as a community our top three planning and development priorities; establish the goals that we want as a community in reference to those priorities; and then allow staff to work with the focus groups through public outreach and bring back a series of updates to the UDO in relation to those priorities.

Councilman Newman said that in addition to the freestanding signage issue, we should make it clear that the background of a sign does count. In addition, he believes it is important for the City to define its role in a community-wide process for growth and development.

Vice-Mayor Jones wanted to make sure that we are having a conversation with the wayfinding initiative. She felt that might be a major initiative.

Councilman Davis agreed with Vice-Mayor Jones and that our sign ordinance might be in conflict with the wayfinding initiative. He felt we should hold off on making big changes to our sign ordinance at this time.

Councilman Mumpower said that more rules mean more enforcement problems; and more enforcement problems means more staff; and more staff means more taxes. He felt we are in danger of creating an elite, expensive community that is affordable only to the wealthy and the subsidized. He felt we are creating more and more levels of bureaucracy and control.

Mr. Jay Quinn suggested that as Council looks at these issues that they (1) review the delegation of authority by City staff; and (2) consider opportunities for meaningful public comment at key stages of important permitting determinations.

Mr. Joe Minicozzi suggested Council consider zoning amendments at one time a year.

B. PLANNING & DEVELOPMENT PROPOSED DEVELOPMENT POLICIES

Councilman Newman suggested the following proposed land use and community development policies for Asheville.

1. **Closing the loophole on big-box development in the UDO.** Our Unified Development Ordinance contains a cap of 75,000 square on the size of large retail stores. However, it contains a loop-hole that allows already large retail establishments to turn into "mega-big box" facilities of up to 200,000 square feet. He and Councilman Freeborn propose that we close this loop-hole.
2. **The downtown master planning process.** As part of our 2007-2008 budget, City Council approved funding for a new Downtown Master Plan to guide growth and development in our city center. I would like for Council to provide some direction on what are some of the questions we would like to see considered through this process, such as:
 - * What policies would allow Asheville to create more workforce and middle-class housing in downtown?
 - * Should Asheville create height limits in the downtown area for new development?
 - * What policies can help assure that our downtown remains a strong, **locally owned** business district? Specifically, should Asheville consider adopting some type of formula ordinance? For more information on formula ordinances, see <http://www.newrules.org/retail/formula.html>.
 - * What would be an ideal layout for public parks and green spaces in our downtown?
3. **Enforcement of our building code.** He and Councilwoman Cape are interested in how we can encourage new development in Asheville to be as energy efficient as possible. Several people have commented on how the existing state codes are actually quite strong on energy efficiency, if they are properly enforced. We would like to have some discussion about whether we are fully utilizing the green building elements that exist in the existing state code and, if not, what types of resources or training our staff may require to achieve the full benefits of the existing standards.
4. **Local tax incentives for renewable energy.** Legislation pending in the state Legislature will give Asheville the authority to provide local tax incentives for to encourage environmentally sustainable building. Considering the significant energy savings they produce, one of the best technologies available is solar-panels for heating water. If a high percentage of new development in our community incorporate this technology, it will dramatically reduce the need to build additional fossil-fuel

power plants in our region. He and Councilwoman Cape would like to discuss whether Council would give direction to the Sustainable Energy and Environment Advisory Committee to explore policy options for creating effective economic incentives for renewable energy in new developments in Asheville.

5. **Clarify height limits in the urban village zoning district.** Developers are proposing the construction of two thirteen story buildings on the Deal Buick site on Merrimon Ave. While many aspects of the proposed redevelopment of this site are very attractive, these two large buildings are out of character with this area of the city. He supported City Council amending our ordinance to lower the normal threshold for building heights so that developers do not get an unrealistic sense of what will be approved in areas zoned urban village.

He said that if these points are worthy of consideration, he asked if Council would refer these items to the Planning & Zoning Commission to review and come back to us with a recommendation. At that time, Council can then make a final decision on whether to make the amendments.

Councilman Freeborn supported these items be included in the work plan that Interim Director of Planning & Development will bring back to Council.

After a brief discussion about these items being included in the work plan or moving forward now, Mayor Bellamy confirmed that by voting to send these to the Planning & Zoning Commission now, we are asking Planning staff to put everything else aside, because the Commission cannot review these without staff assistance.

Councilman Newman moved to ask the Planning & Zoning Commission to look at the question of closing the loop-hole on big-box development in the UDO as described above. This motion was seconded by Councilman Freeborn and carried on a 4-3 vote, with Mayor Bellamy, Councilman Davis and Councilman Mumpower voting "no."

Councilman Newman moved to ask the Planning & Zoning Commission to look at the question of re-establishing the height limits in the Urban Village District to their original standard as described above. This motion was seconded by Councilman Freeborn and carried on a 4-3 vote, with Mayor Bellamy, Councilman Davis and Councilman Mumpower voting "no."

Councilman Newman moved to direct the Sustainable Energy and Environment Advisory Committee to (1) look at the legislation that was recently passed that enables Asheville to provide additional incentives for green building and renewable energy; and (2) explore policy options for creating effective economic incentives for renewable energy in new developments in Asheville, as described above. This motion was seconded by Councilwoman Cape and carried unanimously.

Mayor Bellamy explained that she didn't support the two motions because staff has asked Council to give them the UDO amendments they would like to see for scheduling. Then they were going to bring those back to Council for prioritizing. She wished we would have considered that request.

C. RESOLUTION APPROVING TRAFFIC CALMING DEVICES ALONG MAXWELL STREET TO MINIMIZE TRUCK TRAFFIC

City Traffic Engineer Ken Putnam said that this is the consideration of a resolution approving traffic calming devices along Maxwell Street to minimize truck traffic.

Greenlife Grocery is currently served by two loading dock areas, one with a direct access onto Maxwell Street and one with access on-site. Although, the larger trucks that use the on-site loading dock area arrive and leave via US 25 (Merrimon Avenue), they typically use part of Maxwell Street to maneuver into position. In addition, the smaller trucks that access the loading dock area with the direct access onto Maxwell Street typically stage along Maxwell Street to wait their turn to maneuver into the loading dock area. Some of the drivers of these trucks will go ahead and unload before they can maneuver into the actual loading dock area.

A conceptual traffic calming plan has been prepared to minimize truck activity along Maxwell Street. It should be noted that if this plan is approved to move forward to the design and construction stages, it will be crucial to accommodate emergency (*fire and ambulances*) vehicles as well as sanitation vehicles (*private and city*).

The conceptual plan includes four options; specifically, a "*blocking*" option and three "*restricting*" options. These options are further described as follows:

1. The "*blocking*" option is the most restrictive since it would revise the existing access point onto Maxwell Street to serve right turn egress movements only and it would prevent the larger trucks from using Maxwell Street to maneuver into the on-site loading dock. Although the smaller trucks would still be able to use Maxwell Street to gain access to the loading dock area

that has direct access onto Maxwell Street, their movements would be restricted due to the proposed islands. The estimated cost to construct this option with City forces is \$35,000 to \$40,000.

2. Option A, which is one of the “restricting” options, would enable the larger trucks to use Maxwell Street to maneuver into the on-site loading dock but it would prevent these trucks from using Maxwell Street to enter or leave the immediate area. The effect on the smaller trucks trying to access the loading dock area with direct access onto Maxwell Street would be the same as in the “blocking” option. The estimated cost to construct this option with City forces is \$25,000 to \$30,000.
3. Option B, another “restricting” option, is very similar to Option A and it would produce the same results as Option A. It uses a different island treatment on the eastern end of Maxwell Street. The estimated cost to construct this option with City forces is \$25,000 to \$30,000.
4. The third “restricting” option is the least restrictive and it simply uses additional on-street parallel parking to restrict truck traffic. The estimated cost to construct this option with City forces is less than \$1,000.

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Pro:

- Restricts (*minimizes*) truck traffic.

Cons:

- Hinders emergency vehicles.
- Hinders delivery trucks to existing homes.
- Impacts deliveries to Greenlife Grocery (*Does not eliminate deliveries along Maxwell Street*)

In an effort to restrict (minimize) delivery trucks from using Maxwell Street, staff recommends that the City Council approve a resolution to install traffic calming devices along Maxwell Street.

Councilman Freeborn said that Council has spent a great deal of time looking at this issue and it is still creating conflict with adjacent neighbors. While Greenlife is a benefit to the neighborhood, there would be ways that Greenlife could proactively re-design their site to minimize those conflicts. He and Councilman Newman went to great lengths, with City staff, to work with Greenlife to come up with a solution that they thought everyone could support. We have not seen any action taken by Greenlife and therefore he hoped that Council would move forward with one of the traffic calming options. He supported the blocking option.

Councilman Newman said that the re-design idea was not a perfect solution but it would go a long way to take most of the truck traffic off Maxwell Street and it would restore the buffer. He was supportive of that idea. His concern is that some months have gone by and there has not been any action by Greenlife to move those plans forward. Therefore, he thinks that we do need to move forward with one of these traffic calming measures that help protect the neighborhood from the large trucks. However, it remains his hope that we can move forward with the re-design and have a positive outcome for everyone involved. If that re-design can happen, he felt we needed a specific timeline for that to happen.

Mr. John Swann, one of the two owners of Greenlife Grocery of Asheville, said “I want to thank you for the opportunity to comment on the resolution approving traffic calming devices along Maxwell Street. Since our company will likely be adversely affected by any of the proposed traffic restrictions, we have concerns regarding this resolution.

“First, the ‘blocking option’ - where tractor-trailers are physically restricted from using Maxwell Street to turn around and approach our loading dock, I’d like to point out one simple fact and ask one simple question about this option. The fact is that there is no way to turn a tractor-trailer around in our parking lot without executing the three-point turn onto Maxwell Street. So, here is my question for Mr. Putnam, Council, and others who think the solution is simply to block tractor-trailers from Maxwell Street: What is your proposed solution for how to turn a tractor-trailer around and get it back out onto Merrimon Avenue under this option? Has anyone thought through this problem and the traffic disaster this would cause, not only in our parking lot, but at our Merrimon Avenue entrance as well? Traffic in our parking lot is regularly backed up onto Merrimon Avenue as it is. The last thing we need is for this solution to get worse, which it would surely do under this option, while we unload tractor-trailers in our parking lot with a fork lift and the big trucks have to back out onto Merrimon because there is no way to turn them around.

“Furthermore, in past correspondence and at Council meetings we have mentioned the potential issue of interference with interstate commerce if our large trucks, nearly all of which come from out of state, are prevented by the City from getting to our loading dock. We truly don’t want to go there and we hope that Council doesn’t want to either, but we will have to address this issue if the “blocking option” is implemented.

“For these reasons, we have faith that Council will have the wisdom not to vote for the ‘blocking option.’

“So, onto the restrict options. Restrict options ‘A’ and ‘B’ are essentially the same plan, with traffic islands in the middle of Maxwell Street at the intersection of Broadway, and two minor variations in island configurations in Maxwell Street located in the block just to the north of Greenlife, and two “bump-out” islands jutting out into the street along Greenlife border of Maxwell Street.

“Both of these options leave enough room for tractor-trailers to continue to use Maxwell Street to turn around and approach our loading dock. The purpose of Restrict options ‘A’ and ‘B’ is clearly to stop tractor-trailers from approaching or leaving Greenlife via Maxwell Street. Well, in fact, Greenlife has not had a tractor-trailer come up or exit on Maxwell Street for at least a year now, maybe two. Strategically placed and permanently parked vehicles owned by Mr. Reid Thompson quite effectively block a tractor-trailer’s ability to exit via Maxwell Street and the big truck drivers avoid the turn off of Broadway onto Maxwell Street like the plague because it is impossibly tight from either direction, and they have been repeatedly directed by Greenlife management not to use Maxwell Street as an approach or exit route. We have had approximately 1,000 tractor-trailer deliveries to Greenlife during the past year, with none of them using Maxwell Street to approach or leave the store that I know of. So the islands called for in Restrict options ‘A’ and ‘B’ don’t really affect tractor-trailers because they don’t use those parts of the street anyway. And the small delivery trucks, which are no bigger than the garbage or fire trucks that Mr. Putnam has stated, ‘will be crucial to accommodate’, will not be affected by the traffic islands. Could it be that Council is proposing to approve spending \$25,000 to \$30,000 to fix a problem that functionally doesn’t exist?

“Which leaves Option ‘C’. According to Mr. Putnam, under all the options, ‘smaller trucks would still be able to use Maxwell Street to gain access to the loading dock area that has direct access onto Maxwell Street’, yet he also states, as a ‘pro’ for his plan that it ‘restricts (minimizes) truck traffic.’ I submit that it may restrict but it will not minimize truck traffic. If delivery drivers know anything, it is how to drive around things, be they traffic islands or parked cars. They do it every day while moving through our parking lot. And it is their job to deliver their goods to our store. They will get to our loading bay; more parked cars or bump-out islands will just make it a little harder to get there. What these changes will do is increase the risk of traffic accidents along that stretch of Maxwell Street and significantly obstruct the traffic flow entering and exiting our parking lot from Maxwell Street, which is already an issue with our customers and neighbors. Furthermore, it is highly likely that any parking spaces that are created alongside our store will result in another scene like this: a picture I took yesterday of a seemingly abandoned truck that Reid Thompson has kept permanently parked on Maxwell Street for two years now - one of two vehicles that Mr. Thompson keeps permanently parked on the street, in his effort to impose his own ‘traffic calming’ measures on the neighborhood, whether the neighbors like it or not (and from what we hear from the neighbors, they do not like it and would rather see it removed).

“There are also the cons that Mr. Putnam mentions in his proposal: (1) hinders emergency vehicles; and (2) hinders delivery trucks to existing homes.

“And I would add a couple of cons that Mr. Putnam may have missed: (1) hinders traffic flow not just from Greenlife delivery trucks, but for everyone who uses or lives on Maxwell Street; (2) further reduces Maxwell Street parking to allow for the width of the traffic islands; and (3) spends thousands of taxpayer dollars to solve problems that functionally don’t exist.

“I would also like to add that this whole topic may be a moot point in a few months, anyway. You all know that Greenlife owners, City staff and two members of Council have been working for a year now on a plan that would eliminate all tractor-trailer traffic from Maxwell Street by allowing them to turn around and approach our loading dock from within our parking lot, and further, would significantly reduce the amount of small truck traffic on Maxwell Street as well. This plan would also create a larger buffer zone between our loading dock and Maxwell Street - a goal which many in our neighborhood and city agree would be a highly desirable outcome, including ourselves. We presented that preliminary plan to Council at the February 27th meeting.

“Following the general sense of approval from Council for the plan at that meeting, we took the next step of working that plan into the larger expansion plan that we are developing for the property, which involves a substantial addition to the store and more parking. We also began negotiations with the owners of the property, since we do not own it ourselves, which were delayed due to the owners being out of the country on a prolonged vacation at that time. We are a small company, with just my partner and I involved in company planning. This design and negotiation process has taken longer than we or perhaps you would have wished. However, we believe that it is disingenuous to say that ‘Greenlife Grocery has not moved forward with a plan of action’, as is stated in your resolution. By the fact that this resolution is even on the agenda for tonight’s meeting is evidence that some members of Council doubt our sincerity and question the veracity of our efforts to implement the plan. Please be assured that my partner and I are dead serious about implementing the plan, not only because it addresses the Maxwell Street truck and buffer zone issues, but also because Greenlife badly needs the additional loading capacity that the plan provides to better handle the huge volume of business that we are experiencing. The plan is a win-win solution for both the neighborhood and Greenlife, and we support it wholeheartedly.

“However, you also know that on April 20th, Mr. Reid Thompson brought a lawsuit against both the City of Asheville and Greenlife. We decided at that time not to move forward with the plan or make any public statements until our lawyers and our insurance company’s lawyers had the chance to review the case and give us their opinion, a process which took several weeks. I advised you on August 10th that one potential outcome from this lawsuit could be that we would have to restore our parking lot entrances at Merrimon and Maxwell Street to the original configuration that existed when we opened the store, making the new plan that we have worked so hard to pull together irrelevant, and any money spent on its development wasted. Consequently, I

also advised you at that time that Greenlife would not move forward on the project until that contingency was addressed by the judicial process. Had Mr. Thompson not brought this lawsuit against Greenlife, we would have been much further down the road to implementing the plan than we are today, and his lawsuit has been the sole cause of the delay.

“That said however, I am announcing tonight that the owners of Greenlife have decided to move ahead with the design, review, re-zoning, and permitting phases of the project. We do this based totally on the good faith that we will not have to reconfigure our parking lot entrances under a court order resulting from the lawsuit. We have, from the beginning, tried our best to be good neighbors to the people who live on Maxwell Street and to the City of Asheville as well. We have tried to make the best out of a difficult delivery configuration, and feel that we generally have managed it well. However, there is obvious room for improvement, and we do not want the considerable progress that has been made to permanently solve the truck delivery and buffer zone issues on Maxwell Street to be wasted. Consequently, we have directed our architect to immediately begin the final design, review, re-zoning and permitting process for the new Greenlife loading dock and truck delivery configuration. We plan on having the formal plan ready for review by the City, along with the request for re-zoning, as soon as the architects can complete their work.

“We ask that Council postpone any action on the resolution to approve traffic calming devices along Maxwell Street and to allow my partner and me to move ahead with the development of the plan to solve the Maxwell Street delivery and buffer zone problems for once and for all. We appreciate that Council wants to be seen as doing something about the Maxwell Street issues, but this resolution is not constructive towards that end and only serves to needlessly waste taxpayer money and further complicate our efforts towards implementing a long-term solution to the Maxwell Street issues.

“Thank you for allowing me the opportunity to comment on this resolution. If you have any questions, I would be glad to try and answer them.” He then presented Council with a copy of the proposed new loading dock configuration dated February 27, 2007.

Rev. Christopher Chiaromonte encouraged Council postpone action on this resolution to see what the judicial system will say.

Mr. Joe Minicozzi, President of the Coalition of Asheville Neighborhoods, said that with the traffic calming measures, one thing that can happen immediately is to give back all the on-street parking on Maxwell Street. That would go a long way to help eliminate the truck traffic on the street without any big expenditure in costs.

A taxpayer in the City of Asheville urged Council to send a bill to Greenlife to has agreed to pay for the damage their delivery trucks have done to the sidewalks.

Upon inquiry of Councilman Newman, Mr. Swann confirmed that he will pay for the damaged sidewalk. City Manager Jackson said that they will follow-up on that.

Councilman Newman supported pursuing the re-design and asked for a timeline when the plans will be filed with the City. Mr. Swann responded that he was unable to give a specific date because he didn't know how long it would take his architect to draw the plan or how extensive the City's application process would be.

Councilwoman Cape personally empathized with Greenlife at this point having a lawsuit stand in their way. She could understand them not wanting to commit to something that can be turned around. She personally felt that that Greenlife and the Staples issues have not moved forward because of the lawsuits filed. She hoped that Greenlife will move forward in an expedient manner to solve the problem. She supported the City returning the on-street parking and asked that the City's Traffic Engineer make sure that is a safe option to utilize.

In response to Councilwoman Cape, City Attorney Oast said that there is a hearing on September 5, 2007, the result of which could be that one of two legal actions pending is dismissed.

In response to Vice-Mayor Jones, Interim Planning & Development Director Shannon Tuch said that for a conditional zoning application, we do allow the submittal of a conceptual plan. Given the information they have already developed with the loading dock configuration, etc., she estimated it would take approximately 60 days or less for them to submit the information to the City.

In response to Councilman Mumpower, City Manager Jackson said that enforcement action is being taken regarding the abandoned vehicle on Maxwell Street.

There was a brief discussion, initiated by Councilman Newman, about restoring the on-street parking on Maxwell Street.

Mr. Putnam said that the City hasn't restored any parking on Maxwell Street, however, he will work closely with Greenlife to determine the approximate nine parking spaces that can be restored as he does advocate on-street parking as a traffic calming method.

It was the majority of Council's consensus to (1) support the restoration of the on-street parking where appropriate, with Mr. Putnam working with Greenlife; (2) encourage Greenlife to proceed with the re-design and submit their conditional zoning application to the City within 45 days; and (3) instruct Planning staff to bring this matter back to Council if the conceptual plans have not been filed within 45 days for further discussion of possible options for traffic calming.

Mayor Bellamy understands the larger picture and how the lawsuit did impact the speed in which Greenlife was moving on this issue. One of the things that is a testament to your location is that you are always busy and that tells me that people in Asheville and Buncombe like that you are in the community. Unfortunately we have had issues on the process and hopefully this will end the issues that we have had. We are working on the Unified Development Ordinance (UDO) and are making a lot of changes. We have shifted a lot of positions. We are working to get to a better place and it sounds like there are some compromises that are being made. We are looking for Greenlife to follow through for the application to be submitted for the reconfiguration of the parking and the property, and staff will continue to work on the UDO to make some changes.

D. STAPLES UPDATE

From staff report: "At City Council's January 12, 2007, meeting, staff provided Council with an update on discussions with Staples regarding site modifications at the Merrimon Avenue store. The update was being made to City Council pursuant to a letter sent to Staples on December 12, 2006, from Mayor Bellamy on behalf of City Council."

On the afternoon of January 12, the City received correspondence from Staples' Vice President of Real Estate Ted Frumkin stating the organization's intent to plant additional landscaping around the store in order to soften the look of the building to the street. In the same letter, Mr. Frumkin explained Staples' intent not to adjust signage around the building.

Since the January 12 update, Mayor Bellamy has requested via City's Office of Economic Development a face-to-face meeting with Staples executives at their corporate headquarters. Staff has contacted Staples for a meeting date via telephone or e-mail seven times between June and August but has been unsuccessful in securing one to date.

In the early spring timeframe, Staples installed additional landscaping around the Merrimon Avenue store as described in Mr. Frumkin's January correspondence. Three months after the initial planting, Staples had to replant Holly trees, bushes, and the Virginia Creeper. Mr. Frumkin e-mailed Mayor Bellamy about the need to replant the landscaping as well as other measures the store has taken to guard against vandalism on June 8, 2007.

Staff is continuing to pursue a meeting date with Staples representatives. A recent response from Mayor Bellamy to Mr. Frumkin conveys an attempt to meet before the August 28 update to City Council."

Mayor Bellamy said that since our last update on Staples in January, she has attempted to contact Staples representatives on numerous occasions to arrange a meeting to discuss their position on the building's signage. As you remember, Staples sent a letter to the City on January 12, 2007, stating that they would add landscaping to their property on Merrimon Avenue but were not willing to consider changes to their signage. In the last several months, staff has also tried to contact Staples on seven separate occasions - and even probably more than that - to schedule a meeting. We have had no response from Staples until today when she was able to connect with Paul Capelli, a representative from Staples' public relations division. She personally called Mr. Capelli since he was quoted in today's Asheville Citizen-Times story that stated Staples was going to meet with her in the coming weeks. She had not been contacted by Staples prior to the story running in the paper and so she wanted to reach them to verify the news. She spoke with Mr. Capelli at 4:45 this afternoon and he stated he would arrange a date for her to meet with Mr. Ted Frumkin, who is the Vice-President of Real Estate for Staples. She told Mr. Capelli she would make herself available for a meeting as soon as September 4. She also proposed several other dates including September 7, 10 and 12. Mr. Capelli said he would confirm a meeting date by the end of this week. Although she is disappointed it has taken this long to arrange a meeting, she is committed to reopening the dialogue with Staples on concerns that have been raised by the community. She will keep City Council informed when a meeting date is confirmed. After that meeting, she will place the item on the agenda to update Council and the public.

Council members voiced their opinion on the statement in which Staples alleges that someone poisoned their landscaping.

In response to Councilwoman Cape, Mayor Bellamy said that in the meeting realistically we can work on two issues - signage and landscaping. She doesn't have any expectation that they will move their building back 15 feet. She did ask the Planning Department, in earlier discussion tonight, to look at the signage issue.

In response to Mayor Bellamy, City Attorney Oast said that in respect to signs there is some statutory authority and case law to allow us to acquire signs be amortized. He will check on the details of that. He explained what amortization means, as it is usually implemented with billboards.

Mr. Joe Minicozzi, President of the Coalition of Asheville Neighborhoods, presented Council with a compromise they recommended regarding Staples. Regarding the community filing lawsuits, he explained how they followed the law. Speaking on Mr. Reid Thompson's behalf he said that he was forced to file a lawsuit because of the statute of limitations. They did try to come before Council to seek a remedy first.

Councilman Freeborn recommended that we use the compromise Mr. Minicozzi presented as the point of discussion with Staples.

Mayor Bellamy discussed with Mr. Minicozzi statements made on the Coalition of Asheville's website along with wording from Professor Owens' report regarding the Staples issues.

Mayor Bellamy hoped that if Staples compromises on the sign and landscaping, she hoped Council would say this is over. The City has adopted 22 UDO amendments in the last year and so Council has not ignored Dr. Owens' report or the community. We are working to make what we believe are some beneficial changes to the community and we will continue that process.

Councilman Newman explained that Council's basic role is to set policies. The Greenlife and Staples projects didn't come before Council for approval and thus, our options were limited.

Ms. Heather Rayburn explained how they tried to work with Staples, however, they had to act within a timeframe. She felt a citizen should not have to file a lawsuit to get the laws enforced. When a city makes a mistake, they should take responsibility and then uphold the principle of accountability. She asked Council issue the notice of violation to Staples if they won't do anything. Let's enforce what we have.

In response to Councilman Mumpower, City Attorney Oast's opinion was that the window of opportunity to issue a notice of violation has closed.

Councilman Davis felt that the Mayor's conversation with Staples may get us to a better place. He wondered if the amortization of the sign might be a good idea. He hoped this will bring us some closure.

E. LAWSUIT

The City received a faxed Complaint on August 22, 2007, which is generally described as follows: Asheville Sports Properties, LLC, vs. City of Asheville. The nature of the proceeding is a complaint for damage to real property caused by a defective storm water drainage system. This matter will be handled by an attorney outside the City Attorney's Office.

VIII. INFORMAL DISCUSSION AND PUBLIC COMMENT:

Rev. Christopher Chiaromonte encouraged Council to expedite the downtown bathrooms.

Ms. Kyle Ross spoke about the need for trust between the Asheville Police Department and the public.

IX. ADJOURNMENT:

Mayor Bellamy adjourned the meeting at 10:17 p.m.

CITY CLERK

MAYOR