

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 (participating via speaker phone - excused from the meeting at 10:05 p.m.); Councilman R. Carl Mumpower (excused from the meeting at 10:05 p.m.); 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 Newman gave the invocation.

**I. PROCLAMATIONS:**

**A. PROCLAMATION PROCLAIMING SEPTEMBER, 2007, AS "ALCOHOL & DRUG ADDICTION RECOVERY MONTH"**

Mayor Bellamy read the proclamation proclaiming September, 2007, as "Alcohol & Drug Addiction Recovery Month" in the City of Asheville. She presented the proclamation to Mr. Tom Britton who briefed City Council on some activities taking place during the month.

**B. PROCLAMATION PROCLAIMING SEPTEMBER 24-28, 2007, AS "MINORITY ENTERPRISE DEVELOPMENT WEEK"**

Councilman Davis read the proclamation proclaiming September 24-28, 2007, as "Minority Enterprise Development Week" in the City of Asheville. He presented the proclamation to Minority Business Program Coordinator Brenda Mills and Russ Yelton, Director – Asheville-Buncombe Technical Community College's Small Business Center/Business Incubator who briefed City Council on some activities taking place during the week.

**C. PROCLAMATION PROCLAIMING SEPTEMBER, 2007, AS "SAFE A LIFE MONTH"**

Vice-Mayor Jones read the proclamation proclaiming September, 2007, as "Save a Life Month" in the City of Asheville. She presented the proclamation to Fire Chief Greg Grayson who briefed City Council on some activities taking place during the month. At Mayor Bellamy's request, Chief Grayson explained improvements in their facilities and training of their employees.

**II. CONSENT AGENDA:**

**A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON AUGUST 28, 2007, AS AMENDED**

Mayor Bellamy provided City Clerk Lipe with a couple of minor typographical errors and asked that the minutes be amended.

**B. ORDINANCE NO. 3532 - BUDGET AMENDMENT FROM THE N.C. GOVERNOR'S HIGHWAY SAFETY PROGRAM TO FUND THE PURCHASE OF CRASH INVESTIGATION EQUIPMENT**

Summary: The consideration of a budget amendment in the amount of \$5,000 from the North Carolina Governor's Highway Safety Program to fund the purchase of crash investigation equipment.

The Asheville Police Department currently participates in highway safety activities sponsored by the North Carolina Governor's Highway Safety Program. As a result, the Asheville Police Department was selected to receive \$5,000 in highway safety funding to assist them with their highway safety initiatives and motor vehicle crash investigation. This \$5,000 would be in addition to the \$10,000 that the department received for the 2006-07 grant budget year.

This action conforms to the City Council's Strategic Operating Plan under Partnerships to Improve Critical Services and Infrastructure. Goal 2, Objective A: Research and develop strategies for securing significant new recurring revenue sources.

Pro:

- Reimbursement revenue to cover the cost of obtaining a Crash Data Retrieval system to assist investigators with serious crash investigations.

Cons:

- The city will have to send officers to training in order for them to be able to use the equipment proficiently.
- The city will have to bear the cost of maintaining the equipment.
- City staff recommends City Council approve a budget amendment in the amount of \$5,000 from the North Carolina Governor's Highway Safety Program (NC GHSP) so that crash investigation equipment may be purchased.

**ORDINANCE BOOK NO. 23 - PAGE**

**C. 1. RESOLUTION NO. 07-166 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ACCEPT GRANT FUNDS FROM THE N.C. OFFICE OF JUSTICE PROGRAMS TO MAKE TECHNOLOGICAL IMPROVEMENTS IN THE AREA OF POLICE RADIOS FOR THE ASHEVILLE POLICE DEPARTMENT**

Summary: The consideration of a resolution authorizing the City Manager to accept grant funds under the N.C. Office of Justice Programs of the Department of Justice (JAG) and the associated budget amendment in the amount of \$53,641.00.

The City of Asheville has been awarded a grant from the JAG in the amount of \$53,641 which is to be shared with Buncombe County Sheriff's Department. The Asheville Police Department (APD) and the Buncombe County Sheriff's Department have signed a Memorandum of Understanding recognizing APD as the grant funds administering agency. There is no local match and the City of Asheville's portion of the grant is \$37,945. The purpose of the grant program is to make technological improvements in the area of police radios for the Asheville Police Department. This will allow for the purchase of 9 XTS 3000 Motorola portable radios and 33 replacement batteries.

Pros:

- Will allow APD to provide necessary equipment, digital portable radios for patrol officers.
- Will allow officers to connect via radio communications with other agencies through new technology.

Cons:

- The City of Asheville and the Asheville Police Department would be required to maintain the upkeep of the equipment, replacing equipment when needed.
- This action complies with City Council's Strategic Operating Plan: Goal 3: Strong City and County Partnerships. This joint grant allows the City and the County to work together on an improvement initiative.

City staff recommends City Council approve a resolution authorizing the City Manager to accept grant funds under JAG and the associated budget amendment, in the amount of \$53,641.00.

**RESOLUTION BOOK NO. 30 - PAGE**

**C.2. ORDINANCE NO. 3533 - BUDGET AMENDMENT TO ACCEPT GRANT FUNDS FROM THE N.C. DEPT. OF JUSTICE**

Summary: See Consent Agenda "C.1" above.

**ORDINANCE BOOK NO. 23 - PAGE**

**D. RESOLUTION NO. 07-167 - RESOLUTION APPOINTING ELIZABETH JONES TO THE CIVIC CENTER COMMISSION**

Summary: The consideration of a resolution appointing Elizabeth Jones as a member to the Civic Center Commission.

Brian Turner has resigned as a Civic Center Commission member, 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 interviews on August 28, 2007.

On August 28, 2007, 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 his successor has been appointed.

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

#### **E. RESOLUTION NO. 07-168 - RESOLUTION APPOINTING WILLIAM MADISON TO THE AMERICANS WITH DISABILITIES ACT COMPLIANCE COMMITTEE**

Summary: The consideration of a resolution appointing William Madison as a member to the Americans with Disabilities Act Compliance Committee.

The terms of Sherry Fitzpatrick and Mary Robertson (disabled community representatives) 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.

On August 28, 2007, 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.

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

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 Davis moved for the adoption of the Consent Agenda. This motion was seconded by Vice-Mayor Jones and carried unanimously.

### **III. PRESENTATIONS & REPORTS:**

#### **A. METROPOLITAN SEWERAGE DISTRICT BOARD ANNUAL REPORT**

Mr. Steve Aceto, Chairman of the Metropolitan Sewerage District (MSD) Board, introduced Mr. Tom Hartye, General Manager of MSD. Mr. Aceto then explained the different committees each of the Board members serve on, in addition to their attendance to the regular Board meetings. He noted the City representatives (including Mayor Bellamy and Councilman Newman) have attended the Board meetings regularly and their contributions are very much valued.

He explained some of MSD's significant issues: (1) recently completed Facilities Plan for the Sewage Treatment Plant; (2) sewer line rehabilitation; (3) lost industrial customers; and (4) development issues - how they affect the orderly growth of the sewer system.

He then explained their goals: (1) update of their Master Plan for orderly growth of the sewer infrastructure; (2) coordination of the sewer collector system rehab efforts with the City of Asheville Water Department; and (3) reconsider our financial and other incentives for new connections, including the affordable housing incentives.

Mayor Bellamy said that she is proud of the fiduciary responsibility that MSD has shown over their entire organization. In addition, the State has recognized MSD for their work to repair the sewer system, noting that the spillage sewerage numbers are continuously decreasing.

Councilman Newman said that where we put infrastructure has a lot to do with where growth and development occurs. Buncombe County has adopted an updated Land Use Plan that has some regulations to steer growth and development. MSD is talking amongst themselves, as a Board, and with the County about how to best coordinate the County's Land Use Plan with MSD's infrastructure extension policies.

On behalf of City Council, Mayor Bellamy thanked Mr. Aceto and the entire MSD Board for their hard work, and City Council looks forward to their updated Master Plan.

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

##### **A. PUBLIC HEARING TO CONSIDER THE ISSUANCE OF A CONDITIONAL USE PERMIT FOR THE PROJECT KNOWN AS THE ELLINGTON HOTEL, LOCATED ON BILTMORE AVENUE, ASTON STREET AND SOUTH LEXINGTON AVENUE TO INCLUDE 125 HOTEL ROOMS AND 52 RESIDENTIAL CONDOMINIUMS**

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 5:30 p.m.

All Council members disclosed that they have visited the site and 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 Alan Glines 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).

Mr. Glines said that this is the consideration of the issuance of a conditional use permit for the project known as The Ellington Hotel, located on Biltmore Avenue, Aston Street and South Lexington Avenue to include 125 hotel rooms and 52 residential condominiums.

The Ellington Hotel project is located on three streets in the downtown central business district. Biltmore Avenue is at the front of the building and provides the main entrance and address for the project (Attachments to City Exhibit 3 - Location Map, Aerial Map). Aston Street and Lexington Avenue are secondary frontage lines and provide access to garage parking and service functions for the project (Attachments to City Exhibit 3 - Footprint of Ground Floor Level, Landscape Plan). The proposal is for a hotel with 125 rooms and a condominium portion that has 52 residential units. The total project square footage including basement level garage spaces is almost 350,000 square feet that reaches twenty-three stories. Measured from Biltmore Avenue the project will total about 305 feet (the main access level) but will be higher as measured from Lexington Avenue due to the natural fall in topography. The main hotel entrance to the development is provided from Biltmore Avenue through a one-way driveway into the lobby area. Hotel guests will then unload and their car will be parked by valet parking services (Attachments to City Exhibit 3 - Series of Footprint Drawings - Ground Floor Level). The entrance driveway continues to become the alley out to Aston Street (Attachments to City Exhibit 3 - Schematics and Architectural Drawings). This drive provides the access to the parking levels at the back of the site and onto Lexington Avenue for basement (below grade) parking levels. Trash pickup and other housekeeping functions for the project are handled internally in the basement and are accessed from Lexington Avenue. Condominium residents will use the Lexington Avenue driveway for access to the basement parking. The project will provide a café space along Biltmore Avenue at the front of the hotel as well as a pedestrian entrance to the building. Along Aston Street there will be a small retail space fronting on the street and areas for art work. This should provide some activity along the street at this location. The artwork concept is also proposed along S. Lexington Avenue to enliven the space as a better alternative to the basic Unified Development Ordinance (UDO) requirements for windows and doors into the garage level and was reviewed by the Downtown Commission.

The design of the building has been described by the architects as neo-deco style which is based on architectural styles of the 1920's (Attachments to City Exhibit 3 - East, South and North Elevations of Building; View from Lexington Avenue). The building is twenty-three stories and steps inward as the building goes up (Attachments to City Exhibit 3 - Breakout of Uses in Building; North/South Profile of Breakout of Uses in Building). The building is tallest as viewed from Lexington Avenue because of the fall of the topography to this side of the site (Attachments to City Exhibit 3 - Elevation Drawings). As measured from Biltmore Avenue to the top of the roof lighting feature, the building is about 305 feet tall. The height to the main roof area (the parapet wall) is about 273 feet as measured from Biltmore Avenue. The building step-backs are greatest along Biltmore Avenue with a major break in the façade at the ninth story. This floor is a main amenity floor for the hotel and will feature a restaurant, health and fitness area and pool. The floors above this point are the condominium floors. Although this proposed building is taller than all the other structures in downtown, it will be closest in height to the BB&T Building on Pack Square. The proposal was reviewed at several meetings with members of the Downtown Commission who considered the proposal for compliance with the guidelines

setup for the downtown Central Business District. The UDO does not provide a height limit in the Central Business District. The Downtown Commission noted that downtown is punctuated by taller buildings and varied topography which provides the city with an interesting skyline. The project is considered a landmark structure because of its height and addition to the skyline of the city if it is approved. The Downtown Commission provided the observation that by providing the series of step-backs along all of the facades (as shown in the elevations), the building is more attractive with a thinner taller profile. The alternative for a shorter but more monolithic façade was felt to be inferior to the present design. Although the vote was not unanimous in favor of the proposal, the Downtown Commission approved the design.

During the review process, the Downtown Commission was asked to approve several modifications to the requirements in the UDO. These items included a greater setback from Biltmore Avenue (to allow a 30' deep courtyard); approving the concept of art space windows (called vatrines) instead of required windows or openings along Lexington Avenue; and wall lengths in excess of 20' without a change in façade (through window or door relief, etc.). Over several meetings the Downtown Commission asked for some additional design features to improve the project and the following was agreed to by the developer: a new retail space along Aston Street; greater design definition for the west façade near the top of the structure; and a pedestrian entrance from Biltmore Avenue into the café space. The Art Program that is part of the alternative for Lexington Avenue ground level windows will be in collaboration with art partners in the community and with the Grove Park Inn (Attachment to City Exhibit 3 - Art Drawings). There was comment and concern from Downtown Commission members regarding the driveway across Biltmore Avenue because this is a major pedestrian street and is identified on the 'Key Pedestrian Streets' map. This project proposes the first driveway along this block. The Technical Review Committee (TRC) has reviewed the issue and although it is not ideal, feels that it can be managed safely with control; specifically requiring all traffic to use the drive as a 'turn-in' only and not allow exits from the driveway. The Downtown Commission approved the design of the building and the requested modifications at their meeting on July 13, 2007.

The project was reviewed by the TRC. This review was a preliminary look at the project so that the general feasibility of the project could be considered. If the project is approved by the Asheville City Council, the project will be reviewed in more detail by the TRC and is called a 'final TRC review.' The comments from TRC members were mostly standard review comments but there were some questions that will be reviewed in more detail following: location of staging for the project; the exit along Aston Street; location of the construction cranes; lane closures and other construction details; sidewalk improvements; and movement of traffic. Construction staging is important to consider so that the construction can be safely accommodated and that the community understands the construction impacts. The developer has negotiated with a property owner along S. Lexington Avenue for staging and parking during construction. The exit along Aston Street will have to operate in a way that does not disrupt the current use of the alley for access to several Biltmore Avenue properties. There was also concern expressed that the existing alley and the proposed driveway will essentially be side by side creating a wide driveway opening across the sidewalk. The construction crane comment concerns the safe operation of the crane to limit crossing the public right of way areas with the overhead crane. Lane closures are a similar concern for downtown construction projects; since construction can last for several years, lane closure requests are reviewed at least conceptually so that impacts can be planned ahead of time. Sidewalk connections also have to be managed throughout the process to minimize disruptions in connectivity. The sidewalk comment for Aston Street and Lexington Avenue concern new proposed sidewalks where staff would like to see that the sidewalks widened to ten feet as is recommended for the Central Business District. The developer noted concern about lack of space along the street and the required loss of on-street parking there. Staff noted that space for the wider sidewalks could come from the property side and not from just the right of way. Opportunities to improve sidewalk infrastructure are rare and come about with major changes like this, a new construction project. A traffic impact study has been completed for the project and has been reviewed by the traffic engineer. Minor changes have been recommended to the plan but the initial study of the results did seem to satisfy most concerns for safety and movement. Staff will continue to work with the developers to work through these remaining issues and they will be resolved at the time of final TRC review of the project.

Staging for the property will occur at 86 South Lexington Avenue (City Exhibit 4 - Map Showing the Staging Areas). The properties are identified as 9648.06-49-2289 and 9648.06-49-2291. The properties currently have one story warehouse buildings on them; the owner is Parcheggio AVL LLC and is leased by Public Interest Projects. The empty warehouse structures will be removed from the site under a separate permit process. Unlike projects outside the Central Business District, staging for projects may not occur on the same site as the development proposal because in many cases the building occupies the entire site. In these situations, staging must occur on another location. In order to provide this information earlier in the process the property is identified in the materials considered by City Council. The staging area parcels will be cleared of the structures and the site will be rough graded and graveled. Storage of material shipments related to the construction and parking for workers will be provided on the site for the duration of the construction period which may be up to three years. Aside from standard requirements such as proper driveway design and sight triangle requirements, this site will not be improved to meet other UDO requirements for permanent facilities such as sidewalks, paving and parking lot and street landscaping. The hotel development will provide a shuttle between the Grove Park Inn and the Ellington so that guests at both locations can easily move between the two venues. The benefit to the downtown area is that car trips will be reduced and guests will have easy access to the downtown shops and restaurants. Employee parking for the Ellington will be provided through a private contract off-site.

The project has created a unique program to channel funds to create affordable housing in the downtown area. The developers of the project are working with the Community Foundation of Western North Carolina to manage the program. The way the program works is that at the initial sale of each condo unit, 1.25 % of the selling price will go to an affordable housing fund created by the Community Foundation. At a point in the future if the hotel is sold, it will generate a similar percent to the fund. After the initial sale for a period until 2080, when any unit or the hotel transfers again, a half of a percent of the selling price will go into the affordable housing fund. The Community Foundation will administer the program as a loan fund and is asked to focus on housing within a half mile of the downtown area. It is expected that the loan funds can be leveraged with other funds to expand the reach of the program.

He summarized the concerns he has heard: care of buildings to the north during the demolition and construction; Biltmore Avenue sidewalk remaining open during construction; loss of revenue during construction; maintenance of access to buildings during construction and access for deliveries; dissemination of information to the neighborhood during the duration of the construction; growth and traffic along Macon Avenue and Charlotte Street resulting from people from the Ellington going to the Grove Park Inn (not using the shuttle); request that shuttle be a condition for approval and allowing the shuttle to be used by not just guests of the Grove Park Inn or the Ellington, but by the general public; height; limitation of parking facilities; limitation of employee parking; and curb cut along Biltmore Avenue.

Section 7-16-2(c) of the UDO states that the Asheville City Council shall not approve the conditional use permit and site plan unless it make the following findings , based on evidence and testimony received at the public hearing or appearing in the record of the case. Staff has evaluated the seven findings save for additional evidence that may be presented during the public hearing for the project.

1. **That the proposed use or development of the land will not materially endanger the public health or safety.**

The plan has been reviewed by the TRC and has been found to be compliant with safety requirements per the review of the conceptual master plan. If the project is approved the plans will be submitted for final TRC and for building permits and meet building safety requirements, traffic review standards and fire 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.**

This site is an infill location on one of the oldest streets in Asheville. The most unique feature of the site is that there are three street frontages which must be addressed through the design. The project follows the grade of the site with the most prominent façade along Biltmore Avenue and site service and housekeeping functions happening along Lexington Avenue and Aston Street. The proposed project will maintain streetscapes along Biltmore Avenue aside from the new driveway cut. Along Lexington Avenue and Aston Street the streetscape should be better defined through this project.

3. **That the proposed use or development of the land will not substantially injure the value of adjoining or abutting property.**

The proposal represents a major investment in the downtown area and recognizes that downtown is a major asset in the community. The project should be a major destination that will add to the value of adjoining properties and the street as a whole. The proposal will bring hotel guests into the heart of the City as well as new residents. The project is expected to provide a boost to the downtown community which will not injure the value of adjoining property.

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.**

Downtown Asheville is the part of the city with the greatest diversity with regard to style and heights of buildings. Structures in the immediate vicinity of the Ellington proposal are between two and three stories tall. The BB&T Building is closest in height to the Ellington and is a short distance to Pack Square. The light feature at the top of the Ellington will be about 300 feet above Biltmore Avenue. The main section of the building will be about 273 feet. The height of the BB&T Building at the main parapet is between 210 and 220 feet (excluding the mechanical penthouse). The parcel for the Ellington sits below the location of the BB&T Building by 26 feet. The topography assists in reducing the overall scale of the Ellington. The Downtown Design guidelines recognize the variety in heights in downtown and recommend architectural elements at the lower levels to reduce the scale of taller buildings. The Ellington has a series of step backs on each façade that moderates the height and provides interest to the building. The Downtown Commission reviewed and approved the design at their July 13, 2007, meeting. The project was recognized as a landmark building proposal.

Biltmore Avenue is identified on the Key Pedestrian Streets map. The curb cut along Biltmore Avenue is the only driveway on this block. Concern has been expressed that the driveway is out of character with this aspect of the neighborhood. Except for this issue, the project appears to be in harmony, scale bulk, coverage, density and character of the downtown area.

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 comprehensive plan recognizes downtown Asheville as an opportunity for development and investment. Special emphasis is given to infill locations in the Center City Plan where density is appropriate and where the infrastructure and context support the development. The smart growth policies support density infill development. City adopted plans have supported the reinvestment in the downtown area as a way to ensure the growth, sustainability, and vitality of the community.

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 has been reviewed by the TRC and no items of concern were noted from this development. The project is appropriately located with respect to transportation and other infrastructure.

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

The traffic impact study has been submitted for this development. The City Traffic Engineer provided comments to revise a few areas of the report. In general the items are minor in nature. Based on the number of driveways designed for this project (three), there will be unavoidable conflict with pedestrians in the area of this project. The main issue of concern expressed by the public has been the driveway cut along Biltmore Avenue which is noted as a key pedestrian street in the comprehensive plan and in the UDO. Although driveways are not forbidden on these streets they should be limited or other alternatives considered. The design of the driveways for the project will have to meet technical safety standards so as to avoid traffic congestion or create a traffic hazard.

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

This Level III project was recommended for approval by a 7-0 vote by the Planning and Zoning Commission. About 12 people spoke at the Planning & Zoning Commission meeting - most were not opposed to the development.

Pros:

- The proposal will be one of the largest investments in the downtown area
- The downtown area is appropriate for high density mixed-use projects
- The proposal reinforces the downtown as the center of the community and region
- The proposal is likely to be a tourist draw all its own like the Grove Park Inn is today

Cons:

- The project will be seen from many vantage points across the city (a potential plus)
- The proposal brings the main traffic entrance across the sidewalk on Biltmore Avenue
- Construction projects create impacts on neighbors that can be difficult to mitigate during the course of the construction
- If sidewalk modification is approved, project will result in sub-standard sidewalk widths.

The Planning and Zoning Commission voted to recommend approval of the Ellington Hotel by a vote of 7-0 during the August 1, 2007, meeting. In addition, they recommended the developer provide an ombudsman person to manage community comments, manage the schedule for nearby neighbors, and also provide an interface for people affected by the development during the construction phase of the project. Staff concurs with that recommendation.

Mr. Mike Webster, representing the Beck Group, spoke in support of the Ellington. He said this is a great location and they have great sponsorship with very experienced team members. This development offers unique things, both social and community benefits, e.g., workforce housing, arts program, sustainable design, and positive economic impact.

Mr. Gary Kerner, President of 3 Architecture and principle designer for the project, (Applicant Exhibit 1) explained how

important the architectural design is for the Ellington. In detail, he explained the neo-deco style of the building, along with the floor and conceptual plans of the Ellington, noting that all parking is below grade. He explained how a boutique hotel is all about arrival and experience. The way people arrive is a key to the success of the property itself. Regarding height, the developer surveyed the finished floor elevation of their building and the finished floor elevation of the BB&T Building - to the top of the BB&T penthouse to the top of the Ellington penthouse, is a 38.10 foot difference.

Mr. Tom Abbott, Chief Financial Officer at the Grove Park Inn, spoke about the estimated 10-year economic impact that the project will produce from a hotel standpoint. He also explained how the hotel will operate in comparison to the Grove Park Inn. It is their intention to find a shuttle that utilizes compressed natural gas. He reiterated Mr. Glines comments regarding workforce housing, noting that one of their obligations is to place the workforce housing within one-half mile of the Central Business District.

Mr. Webster spoke about the Arts Program in which they have been working with the Asheville Art Museum. The objectives include: to enhance the street experience, to further build the Asheville reputation as an arts community, link to local arts, and support local artists - all funded by the Ellington.

Mr. Webster said that even though there is no current LEED certification process for hotels, the Ellington will follow the US Green Building Council's suggestions and recommendations for new construction. Regarding sustainability, the project will: (1) comply with the Green Plan for Hotels - N.C. Division of Pollution Prevention and Environmental Assistance (waste reduction, recycling, energy and water conservation); (2) follow the US Green Building Council standards for new construction; and (3) participate in NC Green Power. He noted that they are proposing to address the 35 sustainable design items outlined in the City's staff report.

Mr. Webster said that regarding the traffic analysis, he said that (1) there is no adverse affect on study area; (2) acceptable levels of service expected at nearby intersections; (3) no right turn tapers or physical improvements necessary; (4) minor timing changes at traffic signals; and (5) left turn off Biltmore should not impact intersection at Aston Street.

Finally, Mr. Webster addressed the UDO conditional standards as follows: (1) no danger to public health or safety (TRC review); (2) compatible with site features (site re-use); (3) will not injure value of adjacent property (a boost); (4) in harmony with scale, density of downtown (setbacks, massing); (5) confirm with Smart Growth Policy (density infill); (6) location supported by Central Business District infrastructure (utilities); and (7) no undue traffic congestion or hazard. He urged Council to support the conditional use permit for this project.

The following individuals spoke in opposition of the conditional use permit for the Ellington for several reasons and concerns, some being, but are not limited to: project benefits only the elite and gated community segments; parking mayhem; building will not contribute anything to help the uniqueness of Asheville; building will tower over everything around it since most of the area buildings are three stories high; construction will impede traffic on Biltmore Avenue; construction will result in loss of revenue for local businesses; project is good, but not for Asheville; as the project will have a significant traffic impact on the Grove Park/Sunset Mountain neighborhood because the Ellington guests will have the opportunity to enjoy the full Grove Park Inn's amenities, the shuttle should be a condition of the conditional use permit; building qualifies as a sky-scraper; egress into the building will cause cars to stack up on Biltmore Avenue; pedestrian safety across driveway cut on Biltmore Avenue; does the Fire Department have training to rescue people from a sky-scraper; building is a vertical gated community; stress of the buildings in the neighborhood; traffic study is narrow in scope - it should include development projects already underway in the Central Business District and the Grove Park neighborhoods; the height issue should be determined first and then consider the development; what happens if the Grove Park Inn and the Ellington ties are severed; three years of construction mayhem - debris, dust, noise and heavy equipment in downtown Asheville; what happens if the developer takes more time to complete the project; small businesses will be taxed off Biltmore Avenue; the scale of the building should be consistent with what we have today; the developer should be required to have a shadow analysis; Asheville already has a good variety of buildings and this building will not weave into the fabric of our City; there are other ways to be creative to get affordable housing dollars; Asheville is already an arts destination; small businesses may not survive during the construction phase; how often will the shuttle run and how much will the shuttle deter traffic in the Grove Park/Sunset Mountain neighborhood; developer lacks green building knowledge; density and infill is too much; need for a short-term moratorium on all downtown projects until a Downtown Master Plan is in place; need for affordable housing downtown; jobs are extremely low end and way below living wage jobs; there is nothing affordable at all in the development; and this development increases the split of wealthy class and the servers:

Mr. Jesse Junior  
Ms. Arwen deLyon  
Mr. Fred English, Asheville resident  
Mr. Tim Peck  
Ms. Grace Curry, Grove Park/Sunset Mountain Neighborhood Association President



Mr. Bob Malkin, representing Asheville Citizen Voices (Neighborhood Exhibit 4)  
Mr. Jake Quinn, resident on Sunset Drive  
Ms. Elaine Lite  
A resident on Macon Avenue  
Ms. Julie Brant, member of the Asheville Downtown Commission  
Owner of Cold River Gallery  
A resident of Asheville  
Rev. Christopher Chiaromonte

The following individuals spoke in support of the conditional use permit for the Ellington for several reasons, some being, but are not limited to: small shops in downtown rely on people to come downtown to buy goods; the dollars generated from this project can be constructively used to build affordable housing, build infrastructure and build the kinds of transportation programs we want to see; if we want to save our mountains and countryside we need to encourage dense downtown development; this is a well-defined, aesthetically stimulating infill project on this side of downtown; project follows the Five-Year Vision Plan developed by AdvantageWest Economic Development Group; estimated job creation and additions to tax base are impressive; honoring the late architect Douglas Ellington and establishing the Community Housing Fund demonstrates the civic leadership and creativity of the Grove Park Inn; project will bring people downtown year-round; the building is original, independent and attractive, with multi-purposes; downtown density is good for all of downtown; link to the Grove Park Inn is beneficial; development makes a significant investment in the Art Program, has a housing component and green commitments - all of which are not required by the UDO; the Grove Park Inn has been a part of this community for 100 years and has been associated with three major landmark projects in this area; this is a tall infill development which does not displace a single business in downtown Asheville; if we can't build tall buildings in downtown Asheville, where can we build them; this will make our downtown businesses richer and stronger; supports the downtown as a center of arts and culture in this region; provides tax revenue necessary for the City and County to achieve it's goals; provides 100 good middle class and lower-middle class jobs; it supports affordable housing within one-half mile of the downtown; development will contribute to the walk ability of downtown; and the building is smart:

Mr. Chuck Tessier  
Mr. John Rogers, Architect  
Mr. Dale Carroll, President and CEO of AdvantageWest Economic Development Group  
(Neighborhood Exhibit 2)  
Ms. Tracy Adler, owner of Café on the Square  
Ms. Pam Myers, Executive Director of the Asheville Art Museum  
Mr. Fred Martin, Vice-President of the Mast General Store (noted concerns below)  
Mr. Dwight Buckner, President of the Asheville Downtown Association  
Mr. Pat Whalen, Chairman of the Asheville Downtown Commission  
A downtown business owner  
Mr. David Craig Starkey, Director of the Asheville Lyric Opera

Ms. Charlotte Goedsche, President of the Elisha Mitchell Audubon Society, explained how Asheville is a location for thousands of migrating forest songbirds and it's estimated between 100 Million and 1 Billion birds die from collisions with buildings in the United States each year. First, most songbirds migrate at night and they can be disoriented by lights on high-rises. She suggested the lighting at the top of the building be turned off by 11:00 p.m. during migration which in our area the spring migration takes place throughout April and May, while the fall migration extends from August to the end of October. Secondly, window glass is another significant cause of bird collisions. She suggested patterns be etched into the glass on the west and east sides of the penthouse or the application of a commercially available film to the glass (Neighborhood Exhibit 1).

Ms. Tracy Gualano, representing the Junior League of Asheville, stated they were neither for nor against the Ellington project. She presented Council with a list of concerns regarding their property at 29 Biltmore Avenue (Neighborhood Exhibit 3). They had several structural concerns - possible damage to their property during demolition and/or construction; monetary concerns - huge loss in customers (store revenue) during demolition and construction; parking/access concerns; operational concerns; safety concerns of their employees, volunteers and customers; and general questions (1) how long will each stage of construction be and can they have access to a written timeline; (2) with how much frequency will neighboring property owners be communicated with regarding construction schedules and engineering reports; and (3) will there be someone on site making sure surrounding structures are not compromised.

Mr. Fred Martin, Vice-President and one of the principal owners of the Mast General Store, said that they do support the development. However, he has two concerns: (1) access to their store by patrons or for their deliveries even after build-out; and (2) parking. He felt the City should focus some of the generated revenues towards additional public and private parking, noting that the Mast Store will be losing 25 of their current staff parking places with the build-out. He offered to make the Mast General Store available in the processes of this project in the form of an advisory committee member or a part of a regularly scheduled business

update group.

After rebuttal, Mayor Bellamy closed the public hearing at 8:11 p.m.

In response to Councilman Mumpower, City Traffic Engineer Ken Putnam explained the methodology and accepted practice used in traffic studies, along with how they established the actual study area. In summary, Biltmore Avenue carries 12,000 vehicles a day. This project would only add approximately 10% more traffic on the road system. In the afternoon peak, which was the highest peak (between 5-6 p.m.), traffic volumes are 1,000 an hour and this project will add about 100 vehicles. Around Park Square and I-240, most traffic will be coming straight down Biltmore Avenue and turn right into the building.

When Councilman Mumpower asked about the height of the building, Mr. Kerner said that the building is a significant building. However, his professional view as an architect is that the neighborhood is the entire Central Business District. The Ellington has a striking difference between the buildings adjacent to it, but its relationship is the Central Business District itself.

Upon inquiry of Councilman Newman, Mr. Webster said that based on the tax records, the BB&T Building is 188,000 square feet. Mr. Webster said that even though the Ellington is almost twice the square footage as the BB&T building, a large portion of that square footage is below street level and at the base of the building.

Councilman Newman questioned the green building aspects of the development. Mr. Webster said that they are proposing to address 35 sustainable design items (all LEED items) outlined in the City's staff report, however, the LEED certification is not a condition of the conditional use permit. He said that his firm has over 80 LEED professionals and pointed out that LEED certification is a nice standard, but those sustainable design items can be achieved without the actual certification (which requires you to go through a subjective review). The 35 items are the minimum but there are opportunities to do more. He said they would be willing to have the 35 sustainable design items be a condition of the conditional use permit as it would be a more predictable process.

After Mr. Webster responded to Councilman Newman regarding their participation in the NC Green Power program, Councilman Newman stated that he would be interested in hearing more details on that in the future.

In response to Councilman Newman, Mr. Glines said that the City has control over the land closures and they are reviewed as a TRC item, with input from the City's Traffic Engineer, Building Safety Department and Fire Department.

In response to Councilman Newman, Mr. Webster said that if you are a residential owner, you can use the valet service. However, the way the building is set up, they have separate elevator banks that serve different levels of the buildings. Elevator banks in the condo section go directly to the garage. All that traffic enters and exits off Lexington Avenue. We do have ample valet space in the building, not only by stacking the number of cars in the entryway, but we also have a holding area on that same level for a number of cars.

When Councilman Newman asked for more details on the shuttle service, Mr. Abbot said that they plan for continuous service 16 hours a day with two compressed natural gas vehicles, and they would not be averse to adding that as a condition of the conditional use permit.

When Councilman Newman asked if they had considered the concerns of the Elisha Mitchell Audubon Society, Mr. Webster said that they had not, but they would be willing to consider the light management aspect.

In response to Councilwoman Cape, Mr. Glines explained that there is not a sidewalk modification required for Lexington Avenue anymore; however, a sidewalk modification is needed on Aston Street (City Exhibit 5). He explained they want to keep on-street parking on Aston Street but the sidewalk will be approximately 7-8 feet (not the required 10 feet).

Councilwoman Cape was very concerned about the driveway cut on Biltmore Avenue and disagreed with the methodology behind creating the numbers for the traffic analysis. She felt the left turn onto Biltmore Avenue will cause traffic congestion. She suggested a pedestrian amenity facing Biltmore Avenue and an entrance on Aston Street for traffic. She could not support the project because of the driveway cut on Biltmore Avenue, in addition to no parking for the 100 employees. The developers have created a private seating area (not a pocket park) along with a driveway in the middle of one of our most vibrant parts of town.

The developer's traffic consultant with Mattern and Craig reiterated the trip generation methodology, noting that the developer is willing to do away with the left turn movement all together. He explained that from a traffic perspective, it's better if you can disburse the traffic.

In response to Councilman Davis, Mr. Webster said that they are happy to work with the Mast General Store, the Junior

League of Asheville and other nearby property owners. He assured Council that the rear or front accesses to the businesses will not be disruptive. There may be an instance where they may bring in a big load of material and an exit or entrance may be blocked for a nominal period of time, but they will work closely with the City to plan those. They would be willing to add that as a condition of the conditional use permit.

When Councilman Davis asked about a performance bond to make sure that the buildings will not be structurally damaged, Mr. Webster said that they have hired a structural engineer that has worked with the Junior League of Asheville's structural engineer. The developer thinks they can manage the construction of the building and the demolition of the building next to theirs without harm to the Junior League building. There are ways to protect and support walls. It is very important for them to maintain safety for the general welfare but also for cost and they do have a lot of experience doing that.

In response to Mayor Bellamy regarding elevation, Mr. Kerner said the high point is on Biltmore Avenue. As it slopes back along Aston Street to Lexington Street you have the parking level which is below grade. Starting on grade on Biltmore Avenue, it is 23 stories of varied floor heights, with our smallest floor heights being the guest rooms of 9 feet, 9 inches; the condominiums are 11 foot, 6 inches; and the penthouse is 13 feet. You would see 23 stories from Biltmore Avenue and 24 stories from Lexington Avenue.

In response to Mayor Bellamy, Mr. Kerner said that their balconies are 100% on their property.

Mayor Bellamy recommended the following conditions be made as part of the conditional use permit: (1) that the developer work with the neighborhood regarding staging of the construction with adequate signage; (2) the 35 sustainable design items be achieved as proposed by the developer; (3) the Arts Program as proposed by the developer; (4) the Affordable Housing Program with the Community Foundation of Western North Carolina as proposed by the developer; (5) use of Lexington Street to deliver building materials in order to keep as much construction traffic off Biltmore Avenue; (6) a detailed stormwater plan in place at the TRC level; (7) a website to keep the neighbors informed of the project as it progresses - and perhaps list street closings; (8) shuttle service be limited to 8:00 a.m. - Midnight with no PA after 10:00 p.m.; (9) the developer provide an ombudsman person to manage community comments, manage the schedule for nearby neighbors, and also provide an interface for people affected by the development during the construction phase of the project; and (10) everything else the developer included in his package.

In response to Mayor Bellamy about the developer willing to give up the left-turn in on Biltmore Avenue, Mr. Webster said they would like to have it but it's not critical. Based on the traffic analysis it appeared to be a non-issue, so we would like to have it, but we would accept a condition of not having it. She suggested a condition of a left-turn restriction be applied during the weekdays only (not applicable on the weekends) and at specific times. Mr. Webster said that would be okay, but the practical enforcement of that would be challenging. He would, however, be willing to that condition.

In response to Mayor Bellamy, Mr. Webster said that construction time will be 24 months.

When Mayor Bellamy asked how many parking spaces would be lost, Mr. Bob Kuykendall with the Beck Group, said that we will lose 2-3 parking spaces on Biltmore Avenue, one on Aston Street and one on Lexington Street (Applicant Exhibit 2).

Mayor Bellamy stressed the need to deal with the location of the construction cranes and staging be addressed up front so the developer and the community know what is expected. Mr. Glines said that it would be easy to add a condition not using Biltmore Avenue for the staging for this project. He explained how the developer has space to place the cranes inside their property. The TRC will review that kind of specific information to limit closings.

Mayor Bellamy felt that as the conditions are listed, the ombudsman will have less calls because the developer and the community know the expectations.

Mayor Bellamy asked who would pay for any timing changes to the traffic signals. The developer's traffic engineer said that any improvements to the traffic infrastructure would be incurred by the developer. Any minor timing plans that would need to be developed would be developed by a professional engineer and the developer would incur that cost. That information would then be turned over to the N.C. Dept. of Transportation for their installation.

In response to Mayor Bellamy regarding underground utilities, Mr. Webster said they are well aware of poles on the Lexington Street side (he's not sure about the other streets), but those will go underground. He was not opposed to that being a condition.

In response to Mayor Bellamy regarding migrating birds, Mr. Webster said that he would be willing to work on a plan of either dimming or cutting off the lights at 11:00 p.m. However, they would not be willing to etch a pattern into the glass on the west and east sides of the penthouse or apply a commercially available film to the glass.

In response to Mayor Bellamy, City Traffic Engineer Putnam said that Lexington Avenue is currently two-way traffic. Mayor Bellamy would be amenable to one-way Lexington Avenue at certain times during construction or limit access, as that has been done successfully with the development of 12 S. Lexington.

When Mayor Bellamy asked if the holiday parade and the Bele Chere festival will be a concern when Biltmore Avenue is blocked off, President and CEO of the Grove Park Inn Craig Madison said that would not be a problem as they will still have access on Lexington Avenue and Aston Street.

Mayor Bellamy asked how the Civic Center was built beside the Basilica without damaging the church. She wondered how large structures are built without destroying the older, smaller buildings. City Manager Jackson felt sure that City Engineer Cathy Ball would tell Council that construction in that area would require extensive geotechnical and monitoring throughout the entire construction process.

Mayor Bellamy said the performance bond question still needs to be explored.

In response to the fire apparatus, Mr. Kuykendall said that they have reviewed with the Fire Department the building and our fire access. They said that the area along Aston Street does give them ample access for the ladder truck. It will be a fully sprinklered building and will be built in accordance with all the high rise codes for fire protection. City Attorney Oast also noted that fire access is an issue addressed at the TRC.

Councilman Freeborn was concerned of approving a project of this magnitude without having the Downtown Master Plan in place.

In response to Vice-Mayor Jones regarding LEED certification, Mr. Webster said that the actual certification adds a lot of cost to the project and it's also subjective. The money is spent in advance and you don't know whether you will get the certification. He will be just as proud of the building advertising the fact that they have a sustainable building, without the LEED certification.

Vice-Mayor Jones said that the City has adopted a policy for our buildings to move toward a goal of a certification standard. Perhaps not doing a certification would be okay for this development, but have the height of your aspirations meet the point level on the goals of LEED.

City Attorney Oast said that a new law has been passed state-wide that allows cities to allow for waivers or reductions in building permit fees if buildings are LEED certified.

Vice-Mayor Jones spoke about the City's Housing Trust Fund and she hoped the Community Foundation of Western North Carolina would be open to talk with our community development group about the different facets of affordable housing. Mr. Bob Wagner, representing the Community Foundation of Western North Carolina, said that he has spoken with Community Development Director Charlotte Caplan. They are in the process of looking at best practices and are getting together an advisory group of experts on the issue. They have worked with other developers who are putting some money into a fund for community needs and that is working quite well.

In response to Vice-Mayor Jones, Mr. Steve McManus, from McManus Development, explained in detail the affordable housing program, noting that this will be a revolving loan.

Mayor Bellamy asked if the developer would reduce the height of their building by 36 feet. Mr. Kerner presented Council with an option of taking two stories off the top of the building, resulting in a loss of 23 feet. He showed Council a sketch (Applicant Exhibit 3) which keeps the same integrity of the design. The only other thing they have in height is the 20-foot lighted piece on the very top of the building itself, which he feels is an important piece. Once you start making the building smaller, squatting becomes a component that begins to let the building go in another direction.

Councilman Davis moved to adopt a conditional use permit for the project known as The Ellington Hotel (with the loss of two stories totaling 23 feet), located on Biltmore Avenue, Aston Street and South Lexington Avenue to include 125 hotel rooms and 52 residential condominiums, and find that the request is reasonable based on information provided in the staff report and as stated in the staff recommendation, subject to the conditions recommended by City staff and 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) 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; (4) This project

will undergo final review by the TRC prior to issuance of any required permits; (5) Approval of the sidewalk modification on Aston Street; (6) Rear or front accesses to the businesses not be disruptive (work with the City to plan any instances where they may bring in a big load of material and an exit or entrance may be blocked for a nominal period of time); (7) that the developer work with the neighborhood regarding staging of the construction with adequate signage; (8) the 35 sustainable design items be achieved as proposed by the developer; (9) the Arts Program as proposed by the developer; (10) the Affordable Housing Program with the Community Foundation of Western North Carolina as proposed by the developer; (11) use of Lexington Street to deliver building materials in order to keep as much construction traffic off Biltmore Avenue; (12) a detailed stormwater plan in place at the TRC level; (13) a website to keep the neighbors informed of the project as it progresses - and perhaps list street closings; (14) shuttle service be limited to 8:00 a.m. - Midnight with no PA after 10:00 p.m.; (15) the developer provide an ombudsman person to manage community comments, manage the schedule for nearby neighbors, and also provide an interface for people affected by the development during the construction phase of the project; (16) everything else the developer included in his package; (17) left-turn restriction be applied during the weekdays only (not applicable on the weekends) and at specific times; (18) Biltmore Avenue not used for the staging for this project; (19) any utilities (specifically mentioned were the poles on the Lexington Street) be placed underground; and (20) a plan of either dimming or cutting off the lights at 11:00 p.m. for migrating birds.

Councilman Mumpower was concerned with the quick decision by the developer to cut off 23 feet, we may risk losing something. He seconded the motion with the understanding that we don't modify the architectural plan and that no left hand turns be permitted into the project from Biltmore Avenue.

Councilman Davis withdrew his original motion. He then moved to adopt a conditional use permit for the project known as The Ellington Hotel (project will total about 305 feet - from the main access level), located on Biltmore Avenue, Aston Street and South Lexington Avenue to include 125 hotel rooms and 52 residential condominiums, and find that the request is reasonable based on information provided in the staff report and as stated in the staff recommendation, subject to the conditions recommended by City staff and 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) 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; (4) This project will undergo final review by the TRC prior to issuance of any required permits; (5) Approval of the sidewalk modification on Aston Street; (6) Rear or front accesses to the businesses not be disruptive (work with the City to plan any instances where they may bring in a big load of material and an exit or entrance may be blocked for a nominal period of time); (7) that the developer work with the neighborhood regarding staging of the construction with adequate signage; (8) the 35 sustainable design items be achieved as proposed by the developer; (9) the Arts Program as proposed by the developer; (10) the Affordable Housing Program with the Community Foundation of Western North Carolina as proposed by the developer; (11) use of Lexington Street to deliver building materials in order to keep as much construction traffic off Biltmore Avenue; (12) a detailed stormwater plan in place at the TRC level; (13) a website to keep the neighbors informed of the project as it progresses - and perhaps list street closings; (14) shuttle service be limited to 8:00 a.m. - Midnight with no PA after 10:00 p.m.; (15) the developer provide an ombudsman person to manage community comments, manage the schedule for nearby neighbors, and also provide an interface for people affected by the development during the construction phase of the project; (16) everything else the developer included in his package; (17) no left hand turns be permitted into the project from Biltmore Avenue; (18) Biltmore Avenue not used for the staging for this project; (19) any utilities (specifically mentioned were the poles on the Lexington Street) be placed underground; and (20) a plan of either dimming or cutting off the lights at 11:00 p.m. for migrating birds.

Councilman Newman felt this is fundamentally a good design and has a lot of good green building elements. However, he is concerned about the scale of the building and how it fits into the skyline.

Councilman Mumpower personally believed that (1) Asheville does better to grow tall than grow fat; (2) Atlanta's problem is sprawl and we are not duplicating Atlanta; and (3) this is an extraordinary step into the 21st century and like any extraordinary step it's a little bold and scary.

Councilman Davis felt to hold the BB&T building as the hallmark of our skyline is misplaced.

There was a brief discussion initiated by Councilwoman Cape about postponing this action in order to give the developer an opportunity to review the scale and massing.

In order to give the developer an opportunity to discuss a possible continuance, at 9:54 p.m., Mayor Bellamy announced a 5-minute break.

Mr. W. Louis Bissette Jr., attorney representing the developers, said that if the project is voted down now, it's over. They would be open to tabling the matter for a couple of weeks if you can give them some guidance. They can't cut the project in half

as it won't economically work. They don't want to make it another squatty BB&T Building. They are willing to be as reasonable as they possibly can and work for two weeks to see what they can do to get support for the project. He understood Councilman Newman's concern about scale and mass.

Mayor Bellamy suggested the building be reduced by 36 feet; however, she was happy with a 23-foot reduction, along with all the other conditions.

Councilwoman Cape was not supportive of the driveway cut on Biltmore Avenue. She wished they could offer a design with access on Aston Street. There are things she cares about on this project but if the developer works with people, she will try to compromise.

Vice-Mayor Jones would appreciate the developer look at reducing the scale of the building, but she does understand the complexities of that. And, she suggested the developer be clearer on the LEED points, not necessarily the certification.

With that guidance, Mr. Bisette requested Council table the issue until October 16, 2007 (as recommended by the Mayor due to prior agenda commitments). Therefore, Councilman Mumpower moved to table this matter until October 16, 2007. This motion was seconded by Councilman Davis and carried unanimously.

City Attorney Oast said that because this is a quasi-judicial action, Council is still not allowed to talk to the public or developers regarding this matter between now and the meeting on October 16, 2007. He stressed that no one has committed to any of the conditions until the final vote is taken.

Mayor Bellamy said that technically the developer has gone through all the steps as far as TRC, the Planning & Zoning Commission, and the Downtown Commission. However, with the conditional use process City Council can disavow all that and make their own conditions. Council does have the right to be able to ask for tweaks, changes, etc. to the project.

At this time (10:05 p.m.), Councilwoman Cape moved to excuse Councilman Mumpower and Councilman Freeborn from the meeting. This motion was seconded by Councilman Newman and carried unanimously.

**B. PUBLIC HEARING TO CONSIDER A RESOLUTION TO PERMANENTLY CLOSE AN UNOPENED PORTION OF TRADE STREET**

**RESOLUTION NO. 07-169 - RESOLUTION TO PERMANENTLY CLOSE AN UNOPENED PORTION OF TRADE STREET**

Mayor Bellamy opened the public hearing at 10:06 p.m.

Assistant Public Works Director Richard Grant said that this is the consideration of a resolution to permanently close an unopened portion of Trade Street. This public hearing was advertised on August 12, 19, 26 and September 7, 2007.

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

Pursuant to this statute, Phillip C. Price, on behalf of the adjoining property owners, has requested the City of Asheville permanently close an unopened portion of Trade Street.

Public Works Department staff has researched and contacted all agencies and determined easements are required for The Metropolitan Sewage District and the City of Asheville Water Department.

Pro: The closure allows the property to be used to its maximum potential by adjacent property owners.

Con: The Engineering Department is opposed to the closing of Trade Street for the following reasons: (1) The Trade Street right-of-way is important for long term transportation connectivity; and (2) A future road would provide some relief of traffic congestion at the intersection of Hendersonville Road and Long Shoals Road/Miller Road by providing access to Long Shoals Road via Trade Street and Lance Lane.

City staff recommends against adoption of the resolution to permanently close.

Ms. Patsy Brison, attorney representing a number of property owners, explained how this street has been in existence since 1887 and not used. All adjoining property owners signed the petition to close except for one, and that person is dead and the property is being foreclosed upon due to nonpayment of taxes. There are at least 11 property owners and this portion is

essentially their back yards. She showed pictures of the current property on this portion of Trade Street. She said the property owners on both sides have been maintaining the area for years and they want to continue to do that. She said there are two roads that parallel Trade Street that are state maintained and the City doesn't need any other connectivity. She felt the best use of the land is the current use, which is grass with grown trees. They have no problem about reserving the easements.

Mr. Robert Ponder, member of Skyland Baptist Church, said that they have been maintaining this property and it's a separation between houses and their property. They have constructed a park that runs adjacent to this portion of Trade Street. If the street were opened, it would be a danger to our children.

Mayor Bellamy closed the public hearing at 10:16 p.m.

When Councilwoman Cape asked if the Greenway Commission has reviewed this closing as has been requested in the past for road closings, Mr. Grant said that he did not receive a reply from the Parks & Recreation Department.

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

Vice-Mayor Jones moved for the adoption of Resolution No. 07-169. This motion was seconded by Councilman Davis and carried on a 4-1 vote, with Councilwoman Cape voting "no."

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

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

#### **A. UPDATE ON RECOMMENDATION FOR A TEXT AMENDMENT REGULATING THE DISPLAY OF THE AMERICAN FLAG**

Intern Planning & Development Director Shannon Tuch said that in response to some enforcement action regarding the use of flags as signage, staff was asked to prepare some information regarding the City's sign code along with some possible options that could be considered to help clarify when or how American flags would be exempt from sign restrictions.

This information was presented at the Council's July 10, 2007, meeting where it was reviewed. At that time City Council suggested that staff share the same report and recommendations with the Mayor's Task Force on Veterans Affairs to garner additional feedback and possibly explore other options.

On August 28, 2007, staff met with the Task Force where the matter was discussed in some detail and, ultimately, the Task Force members unanimously voted to support staff's recommendation to amend the sign code to clarify that in order for an American flag to be exempt from sign regulations that it must be flown in accordance with the federal standards and guidelines set forth in Title 4, Chapter 1 of the United States Code.

The Task Force also recommended the addition of some definitions to help clarify and staff felt this was very appropriate.

If adopted, this amendment would establish clear standards (federal standards) by which questionable situations could be evaluated.

Lastly, although not part of the recommendation, the Task Force did also support the staff's efforts to educate and not penalize those who may not be following the federal standards in the hopes that a new awareness would inspire new practices.

Staff is seeking direction from Council as to whether this amendment should be brought before the Planning & Zoning Commission for consideration.

Vice-Mayor Jones moved that the Planning & Zoning Commission review this amendment. This motion was seconded by Councilwoman Cape and carried unanimously.

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

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

#### **Claims**

The following claims were received by the City of Asheville during the period of August 10 - 30, 2007: Frances Summers

(Parks & Recreation), Sherron Love (Parks & Recreation), Enterprise Leasing (Water), Charter Communications (Water), Daniel Thomas (Sanitation), Deborah Hellman (Sanitation), Mary Rasmussen (Fire), Walter Pittman (Police) and Danise Hauser (Water). These claims have been referred to Asheville Claims Corporation for investigation.

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

Rev. Christopher Chiaromonte spoke about the eroding of civil rights and liberty. In response, Mayor Bellamy read into the record Section 33 of City Council's Rules and Regulations regarding signs in the Council Chamber as follows (noting that this was adopted prior to the seated Council): "Signs, banners, placards and related items shall not be displayed in the city council chamber during city council meetings. Provided, however, that this provision shall not limit the use of such visual aids during a presentation made in the due course of business."

**Closed Session**

At 10:31 p.m., Councilwoman Cape moved to go into closed session for the following reason: to consider the qualifications, competence, performance, character, fitness, conditions of appointment of an individual public officer or employee. The statutory authorization is contained in G.S. 143-318.11 (a) (3); and to prevent the disclosure of information that is confidential pursuant to G.S. 160A-168, the Personnel Privacy Act. The statutory authorization is contained in G.S. 143-318.11 (a) (2). This motion was seconded by Councilman Davis and carried unanimously.

At 11:20 p.m., Councilman Davis moved to come out of closed session. This motion was seconded by Councilman Newman and carried unanimously.

**IX. ADJOURNMENT:**

Mayor Bellamy adjourned the meeting at 11:20 p.m.

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CITY CLERK

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MAYOR