

Regular Meeting

Present: Mayor Terry M. Bellamy, Presiding; Vice-Mayor Jan B. Davis; Councilwoman Robin L. Cape; Councilwoman Diana Hollis Jones; Councilman R. Carl Mumpower; Councilman Brownie W. Newman; Councilman William A. Russell Jr.; 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**

The Reverend Robert Blackburn from Central United Methodist Church gave the invocation.

**I. PROCLAMATIONS:**

**II. CONSENT AGENDA:**

At the request of Councilman Mumpower, Consent Agenda Items "C", "G" and "H" were removed from the Consent Agenda for individual votes.

At the request of Mayor Bellamy, Consent Agenda Item "B" was removed from the Consent Agenda for an individual vote.

- A. APPROVAL OF THE MINUTES OF THE FORMAL MEETINGS HELD ON NOVEMBER 20, 2007; NOVEMBER 27, 2007; AND THE ORGANIZATIONAL MEETING HELD ON DECEMBER 11, 2007**
- B. RESOLUTION AUTHORIZING THE MAYOR TO CONVEY AIR SPACE ADJACENT TO 150 COXE AVENUE TO ZONA LOFTS, LLC, FOR THE PURPOSE OF ERECTING A PERMANENT BUILDING OR STRUCTURE**

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

- C. BUDGET AMENDMENT FOR THE ANNUAL ALLOCATION FROM THE STATE OF NORTH CAROLINA DEPT. OF ENVIRONMENT AND NATURAL RESOURCES FOR THE WNC NATURE CENTER**

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

- D. RESOLUTION NO. 08-02 - RESOLUTION AMENDING THE CONSOLIDATED ACTION PLAN FOR THE COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM FOR AN INCREASE TO ON TRACK FINANCIAL EDUCATION & COUNSELING**

Summary: The consideration of a resolution to amend the Consolidated Action Plan for the Community Development Block Grant (CDBG) Program for a \$3,500 increase to On Track Financial Education & Counseling.

Consumer Credit Counseling Services of WNC d/b/a On Track Financial Education & Counseling (On Track) has requested an increase in its CDBG grant in order to help cover the cost of its Volunteer Income Tax Assistance (VITA) program in 2008.

In 2007, On Track used a \$50,000 grant from the U.S. Dept. of Health and Human Services to expand local VITA efforts by 87%, helping 2,140 low-income taxpayers to complete returns and bringing in \$1,600,000 in tax refunds, including over \$585,000 in Earned Income and Child Tax Credits. The agency's application to DHHS for 2008 funding was not successful; only 10 DHHS grants were awarded nationwide. On Track is now seeking funds from other sources to maintain its VITA program and has requested additional CDBG funds. Its current \$30,000 CDBG grant is being used for its financial counseling and homebuyer education programs.

CDBG funding for public service programs such as On Track's is capped, by statute, at 15% of the sum of this year's CDBG entitlement grant plus last year's program income. The Housing and Community Development Committee has recommended adding \$3,500, the maximum still available under the cap, to On Track's CDBG grant for 2007-08, bringing the total

to \$33,500.

The change is not considered "substantial" and no public hearing is required.

Sufficient CDBG funds are available in contingency

Pros:

- Supports a successful program that enables low-income working families to access tax refunds to which they are entitled.
- Helps families avoid both the cost of professional tax preparation and expensive "refund anticipation loans", which are heavily promoted by tax-preparers.
- Brings additional federal funds into the local economy.

Con:

- Completely exhausts the City's capacity to assist any more public services with CDBG funds in FY2007-08.

Staff recommends City Council approve a resolution to amend the Consolidated Action Plan for the Community Development Block Grant Program for a \$3,500 increase to On Track Financial Education & Counseling.

Councilwoman Jones said that when the public receives their W-2 forms, they should contact On Track Financial Education & Counseling instead of some quick loan companies because On Track is a good program that can help without the high costs associated with other loan programs.

Note: In that there was an error in not removing this item from the Consent Agenda for an individual vote, Councilman Mumpower felt that the way the current tax structure is set up, he would not have been supportive of this action.

**RESOLUTION BOOK NO. 31 - PAGE**

**E. RESOLUTION NO. 08-03- RESOLUTION AUTHORIZING OAKCREST PLACE IN THE DEAVERVIEW ROAD/BEAR CREEK ROAD AREA OF WEST ASHEVILLE TO BECOME A PUBLICLY-MAINTAINED STREET**

Summary: The consideration of a resolution authorizing Oakcrest Place in the Deaverview Road/Bear Creek Road area of West Asheville to become a publicly-maintained street.

Section 7-15-1(e)(4) a requires that streets dedicated for public use by accepted by resolution of the City Council. The developer submitted a written request via e-mail on September 25, 2007, asking the City to accept Oakcrest Place as a publicly-maintained street.

Oakcrest Place is a developer-constructed street that has an average width of 20 feet and a length of 0.24 mile. Transportation and Engineering Department staff and Public Works Department staff inspected this street and determined that it was constructed according to current standards as indicated in the City of Asheville's Standard Specifications and Details Manual.

Following City Council's approval of this resolution, Oakcrest Place will be added to the official Powell Bill List.

Pros:

- The City of Asheville will receive Powell Bill Funds from the N.C. Dept. of Transportation to maintain the street.
- The street provides connectivity in a residential community.
- The City of Asheville will be able to provide services to the citizens that live along the subject street.

Con:

- Powell Bill Funds will probably not cover 100% of the total cost to maintain the street.

Staff recommends that City Council approve a resolution authorizing Oakcrest Place in the Deaverview Road/Bear Creek Road Area of West Asheville to become a publicly-maintained street.

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**F. RESOLUTION NO. 08-04 - RESOLUTION AUTHORIZING THE CITY MANAGER TO APPLY FOR A GRANT FROM THE PRE-DISASTER MITIGATION GRANT PROGRAM FOR PROCUREMENT AND INSTALLATION OF TWO TELECOMMUNICATION MICROWAVE LINKS FOR THE CITY OF ASHEVILLE 800 MHZ RADIO SYSTEM**

Summary: The consideration of a resolution authorizing the City Manager to apply for a grant in the amount of \$484,000 from the Pre-Disaster Mitigation (PDM) grant program administered by the Federal Emergency Management Agency for procurement and installation of two telecommunications microwave links for the City of Asheville (COA) 800 MHz radio system.

The City of Asheville Fire and Rescue Department has identified potential grant funding through FEMA for the procurement and installation of two telecommunications microwave links. These links would establish redundant connectivity for two of the three radio communications towers utilized by the COA. This redundancy would enable the continued use of the COA 800 MHz radio system in the event that existing connectivity was severed.

Pros:

- Grant would provide for an infrastructure upgrade to the COA Communications System providing redundant connectivity with the system prime site.
- Grant would supplement a large portion of a future Capital Improvement Plan line item.
- At the present time, redundant connectivity exists at only one of three sites.
- The redundant infrastructure will provide an additional margin of safety during emergency operations ensuring continued and reliable communications.
- Grant would benefit all COA departments using the COA 800 MHz radio system.

Cons:

- The City's matching funds are 25% (\$121,000) of the total grant.
- We will incur full maintenance costs of the equipment which is estimated to be from 10-20% of the initial capital expenditure.

City staff recommends City Council approve a resolution authorizing the City Manager to apply for a grant in the amount of \$484,000 from PDM grant program administered by the Federal Emergency Management Agency for procurement and installation of two telecommunications microwave links for the COA 800 MHz radio system.

**RESOLUTION BOOK NO. 31 - PAGE**

**G. RESOLUTION AUTHORIZING THE CITY MANAGER TO ACCEPT GRANT FUNDS UNDER THE N.C. GOVERNOR'S HIGHWAY SAFETY PROGRAM TO ASSIST THE ASHEVILLE POLICE DEPARTMENT WITH THE PURCHASE OF TRAFFIC ENFORCEMENT AND INVESTIGATIVE EQUIPMENT**

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

**H. BUDGET AMENDMENT FOR THE N.C. GOVERNOR'S HIGHWAY SAFETY PROGRAM FOR THE ASHEVILLE POLICE DEPARTMENT**

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.

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

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

**B. RESOLUTION NO. 08-01 - RESOLUTION AUTHORIZING THE MAYOR TO CONVEY AIR SPACE ADJACENT TO 150 COXE AVENUE TO ZONA LOFTS, LLC, 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 150 Coxe Avenue to Zona Lofts, LLC for the purpose of erecting a permanent building or structure.

On October 25, 2007, a qualifying bid was received from Zona Lofts LLC in the amount of \$1,872.36 for the purchase of 398 square feet of air space for the purpose of constructing permanent architectural features to a proposed building at 150 Coxe Avenue. Pursuant to N. C. General Statute sec. 160-269, the City Council of the City of Asheville adopted Resolution No. 07-212 directing the City Clerk to advertise for upset bids in regard to airspace at 150 Coxe Avenue. The notice ran in the Asheville Citizen Times on December 14, 2007. No qualifying upset bids were received in response to said advertisement.

Based on previous Council direction in regard to the sale of air rights, a fee structure has been created by staff to reflect real property transactions such as these. This fee structure will be reviewed by the Revenue and Finance Committee and upon approval, will proceed to implementation for future projects during the next budget cycle beginning July 1, 2008.

Approval of the resolution will authorize the sale of the property to Zona Lofts, LLC for the amount of \$1,872.36.

Pros:

1. The sale will be at fair market value.
2. The architectural details will provide a more visually interesting façade on the building.
3. The rounded overhangs serve as a green feature to provide sun shade to reduce cooling needs.

Con: There is no negative impact.

- Economic Development staff recommends City Council approve a resolution authorizing the Mayor to convey air space adjacent to 150 Coxe Avenue to Zona Lofts, LLC for the purpose of erecting a permanent building or structure.

Mayor Bellamy was not supportive of selling air space over sidewalks.

Councilman Newman moved for the adoption of Resolution No. 08-01. This motion was seconded by Councilman Mumpower and carried on a 6-1 vote, with Mayor Bellamy voting "no."

**RESOLUTION BOOK NO. 31 - PAGE**

**C. ORDINANCE NO. 3566 - BUDGET AMENDMENT FOR THE ANNUAL ALLOCATION FROM THE STATE OF NORTH CAROLINA DEPT. OF ENVIRONMENT AND NATURAL RESOURCES FOR THE WNC NATURE CENTER**

Summary: The consideration of a budget amendment, in the amount of \$112,879, for the annual allocation from the State of North Carolina Department of Environment and Natural Resources through the Grassroots Science Museums Collaborative.

Each year the State of North Carolina allocates and distributes funds to the 25 to 30 member museums, science centers and nature centers in North Carolina for the Grassroots Science Program as supported by North Carolina Senate Bill 1741. The total state funds available in Fiscal Year 2007-08 are \$3,481,340. The Nature Center allocation for the same period is \$112,879.

Funds will be used to enhance the efforts of the Nature Center to improve exhibits, educational programs and collection, special events, staff development and collection to better accomplish the Nature Center's mission to improve public understanding and appreciation of the region's natural history.

The Nature Center transferred to the City of Asheville in 2005. Since then the Nature Center has administered these funds via the Friends of the Nature Center. Earlier this year, the City of Asheville directed the Nature Center that beginning with the Fiscal Year 2007-08 contract period, the allocation would be administered by the City of Asheville.

Pros:

- Provide additional operating funds to support the overall operating cost of the Nature Center.
- Provide funds to enhance special projects and services to Nature Center visitors
- Provide funds to assist in fulfilling standards and maintaining Nature Center accreditation with the Association of Zoos and Aquariums

Cons:

- None

- The Parks and Recreation Department recommends City Council approve a budget amendment, in the amount of \$112,879, for the annual allocation from the State of North Carolina Department of Environment and Natural Resources through the Grassroots Science Museums Collaborative.

Councilman Mumpower felt that the way the current tax structure is set up, he would not be supportive of this action.

Councilwoman Cape moved for the adoption of Ordinance No. 3566. This motion was seconded by Councilwoman Jones and carried on a 6-1 vote, with Councilman Mumpower voting "no."

**ORDINANCE BOOK NO. 24 - PAGE**

**G. RESOLUTION NO. 08-05 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ACCEPT GRANT FUNDS UNDER THE N.C. GOVERNOR'S HIGHWAY SAFETY PROGRAM TO ASSIST THE ASHEVILLE POLICE DEPARTMENT WITH THE PURCHASE OF TRAFFIC ENFORCEMENT AND INVESTIGATIVE EQUIPMENT**

Summary: The consideration of a resolution authorizing the City Manager to accept grant funds under the North Carolina Governor's Highway Safety Program to assist the Asheville Police Department with the purchase of traffic enforcement and investigation equipment; and the associated budget amendment in the amount of \$10,000.00.

The Asheville Police Department currently participates in the North Carolina Governor's Highway Safety Program Highway Safety campaigns. In order to facilitate better participation and efficiency of highway safety initiatives, a regional law enforcement network was created to enhance communication and effectiveness. The Asheville Police Department promotes highway safety statewide by designating a member of the department to serve as the regional liaison for GHSP Region 8 (Western North Carolina).

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.

Pros:

- Reimbursement revenue to cover the cost of obtaining the needed in-car camera system, the digital camera, and to cover the travel expenses incurred as a result of the liaison position.
- No local match of funds required.

Cons:

- Dedicate the man-hours for the officer charged with the liaison duties to accomplish the goals stated in the grant contract.
- The city will have to bear the cost of maintaining the equipment.

City staff recommends City Council approve a resolution authorizing the City Manager to accept grant funds under the North Carolina Governor's Highway Safety Program to assist the Asheville Police Department with the purchase of traffic enforcement and investigation equipment; and the associated budget amendment in the amount of \$10,000.00.

Councilman Mumpower spoke against this matter in that there is little or no opportunity for timely accountable justice, and would speak against the issue due to a procedural and fairness concerns.

Vice-Mayor Davis moved for the adoption of Resolution No. 08-05. This motion was seconded by Councilman Newman and carried on a 6-1 vote, with Councilman Mumpower voting "no."

**RESOLUTION BOOK NO. 31 - PAGE**

**H. ORDINANCE NO. 3567 - BUDGET AMENDMENT FOR THE N.C. GOVERNOR'S HIGHWAY SAFETY PROGRAM FOR THE ASHEVILLE POLICE DEPARTMENT**

Summary: See Consent Agenda "G" above.

Councilwoman Cape moved for the adoption of Ordinance No. 3567. This motion was seconded by Councilwoman Jones and carried on a 6-1 vote, with Councilman Mumpower voting "no."

**ORDINANCE BOOK NO. 24 - PAGE**

**III. PRESENTATIONS & REPORTS:**

**A. PRESENTATION OF THE FISCAL YEAR 2007 COMPREHENSIVE ANNUAL FINANCIAL REPORT**

Chief Financial Officer Ben Durant said that at the conclusion of each fiscal year, an annual audit of the city's financial statements is conducted. The purpose of the audit is to obtain reasonable assurance that basic financial statements are free of material misstatement; to examine evidence supporting the amounts and disclosures in the financial statements; and to assess accounting principles used and the overall presentation of the financial statement.

Mr. Brian Broom, Director of Dixon Hughes, PLLC, summarily reviewed with Council the annual audit. He said that the following is the audit and financial statement summary: "Our report for the 2007 audit expresses an unqualified opinion on the fair

presentation of the basic financial statements in all material respects, in conformity with accounting principles generally accepted in the United States of America. Our report can be found on Page 1 of the Comprehensive Annual Financial Report (CAFR). Our reports on compliance and internal control, in accordance with Government Auditing Standards, OMB Circular A-133, and the State Single Audit Implementation Act, disclosed one material weakness in internal controls over financial reporting and one instance of non-compliance in the administration of federal awards programs. Our compliance reports and a summary of the results can be found on Pages 128-140 of the CAFR. Also, we noted some areas for improvement in the City's accounting function that we have communicated to management in a separate letter dated October 31, 2007." He pointed out to Council two material weaknesses as follows: (1) "erroneous reconciling items on four different versions of the bank reconciliation for the main operating account that later led to the discovery of a duplicate entry recorded to cash in the amount of \$947,042." The effect was that the cash in the Mass Transit Fund was overstated by \$947,042. The cause was improper supervision and review of staff by manager with direct over-sight responsibility. Their recommendation is that the City review its bank reconciliation procedures and make necessary changes to ensure cash balances are properly reconciled each month; and (2) "as noted in the Consolidated Annual Performance and Evaluation Report, 14 projects were listed as being subject to inspection. Of these 14 projects, only 2 met the monitoring requirements specified above." The effect was that the HOME projects could be out of compliance. The cause was recent staff turnover has left the City without sufficient resources to stay current on its inspections. Their recommendation was that the City devote sufficient resources to comply with HOME standards.

Throughout discussion, Mr. Broom responded to various questions/comments from Council, some being, but are not limited to: assurance that the Water Fund is reviewed thoroughly from an accountability stand-point; available Fund Balance and if that percentage is adequate; clarification on the two material weaknesses; what does an "unqualified" opinion mean; is a 99.4% tax collection ratio in Asheville good; are new accounting standards in place because of the Enron issue; and Council getting accountability not only from the annual audit but reviews throughout the year during the quarterly financial reports.

In response to Councilman Newman about the two material weaknesses noted, Mr. Broom felt confident that after discussions with City staff, they seriously considered the comments and implemented changes. A Corrective Action Plan is in place and they are in the process of implementing change. Whether the changes are fully implemented by the end of the Fiscal Year he couldn't say, but at least the controls will be in place.

Finance Director Ben Durant explained that in his opinion the transit weakness was basically a bookkeeping error, which was corrected. There were some employee performance issues that caused that to happen and those have been dealt with. We have also reorganized the Accounting Division into two areas so that we can have a very intense focus on each of those functions.

In response to Mayor Bellamy, City Manager Jackson said that the new procedures will apply to both weaknesses.

Mayor Bellamy asked that as part of the next quarterly report that Council receive an update on how the new procedures are going in both departments regarding the two audit findings. She also requested additional information on the breakdown of fiscal year revenue - basically what the carry-over was from Fiscal Year 2005-06 vs. Fiscal Year 2006-07. She also felt it would also be good to highlight the increase in the other revenues so Council can specifically see where we have grown in all our areas vs. what we had anticipated.

## **B. BELE CHERE REPORT**

Mr. Byron Greiner, Bele Chere Board Chair, reviewed with Council the 2007 Bele Chere Annual Report. This community based celebration consists of 52 downtown merchants, 13 local restaurants, 36 local sponsors, 23 visual artists, 7 local breweries and poster artist John Dietz.

Nearly 300,000 people attended the festival in 2007 resulting in increased community pride, high visibility for the region, and an estimated \$12 million economic impact for Western North Carolina.

The festival reported a profit of \$62,166 on direct expenditures versus revenues; however the festival reported a loss of \$57,834 when including the indirect costs of city staff time for advance festival planning and for work during the festival itself.

Approximately 75 citizens participated in the Bele Chere Community Forum on January 30, 2007, to develop a consensus on two key questions related to the festival. In addition, more than 100 citizens provided their input in writing.

The Bele Chere Board of Directors was charged with reviewing the feedback and making recommendations to City Council for modifying the festival to ensure it represents what citizens want in a community festival. Based on citizen input, the Board developed recommendations related to three key community goals. With City Council's input on policy decisions, the Bele Chere Board of Directors implemented some of the community's suggestions at the 2007 festival.

For 2007 implementation, the community goal to make the festival more local resulted in (1) 36 local entertainers, 50% of total band composition in 2007; (2) 23 local artists, 20% increase over 2006; (3) 6 local breweries participated; and (4) moved stage to N. Lexington and Hiwassee. The community goal to explore funding models to reduce financial burden resulted in expenditures reduced from 2006 to 2007 by \$125,552.

For the 2008 implementation, the community goal to make the festival more local will include (1) local entertainment to be held at 35% of total band composition; (2) expand microbrewery program; and (3) negotiate new talent buyer contract. The

community goal to explore funding models to reduce financial burden will be addressed as the Bele Chere Board and City staff are researching options for contracting with an outside sponsorship agency to attract new partners.

Below is a summary of the Bele Chere Board of Director's recommendations as an outcome of the Bele Chere Community Forum.

#### 1. Food & Beverage Fee Reduction for Western North Carolina Restaurants

A reduced fee of \$500 is already offered for restaurants located in the Asheville city limits that participate in the Taste of Asheville food court. Staff and board members have had difficulty reaching full capacity in this food court. Reduction in food and beverage fees to Western North Carolina restaurants and food vendors represent a potential revenue loss of \$1,300 per booth for a total of \$80,000 if all available booth spaces are sold. Due to low demand from local restaurants, the Bele Chere Board recommends maintaining the current fee structure.

##### Pros:

- Enhanced opportunity for greater participation
- Promote community goodwill

##### Cons:

- Potential revenue loss of \$80,000
- Adequate participation may be an unrealistic goal

#### 2. Arts & Crafts Fee Reduction for West North Carolina Artists

Reduction in fees by \$50 for Western North Carolina artists could result in \$8,000 in lost festival revenue. The fee reduction has the potential to attract art organizations that may not otherwise apply due to financial considerations. In an effort to increase participation to more than the 23 local artists that participated in 2007, the Bele Chere Board recommends offering a \$50 reduction in fees for Western North Carolina artists. The revenue loss could be realized in other existing budget line items such increased vendor revenue from Downtown Merchant fee increase as listed below in recommendation #3.

##### Pros:

- Enhanced opportunity for greater participation
- Promote community goodwill

##### Con:

- Potential revenue loss of \$8,000

#### 3. Downtown Merchants Fee Increase

After researching other festival's fee structures, the Bele Chere Board recommends raising the single booth fee of \$50 for downtown merchants to \$100, if that booth space is located in front of the merchant's store. Additional booth fees for a second space or a space in another area of the festival would be at the local booth rate of \$250.

##### Pros:

- Potential revenue increase ranging from \$2,600 - \$10,400
- Enhanced focus on handmade arts and crafts
- Encourages merchants to showcase permanent storefronts

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##### Cons:

- Negative reaction from downtown merchant community
- Potential reduction in participation

#### 4. Date of Festival

A 2007 festival survey indicated 75.8% of festival-goers preferred the date to remain the last weekend in July. Survey information compiled from festival vendors and sponsors indicated 73% prefer the date to remain the last weekend in July. Reasons indicated for not attending another time of the year include 1) school scheduling conflicts, 2) traditional family vacation destination, and 3) vendor and mobile marketing tour routing conflicts. Additional festival research indicates well-established festivals with a built in audience base are not successful in migrating their audience, therefore resulting in loss of

revenue and ultimately the identity of the festival. The Bele Chere Board recommends keeping the last, full weekend in July as the permanent festival dates.

Pro:

- Potential increase in tourism during shoulder season

Cons:

- Significant loss of attendees, sponsors and vendors
- Significant loss of revenue
- Significant loss of festival identity
- Potential decline and loss of festival

5. Greening of the Festival

At the March 2007 City Council meeting, discussions ensued about creating a more environmentally friendly festival. Preliminary information from Seven Star, Inc. indicates a financial commitment of \$15,000-\$20,000 to begin a successful greening program. Staff and the Bele Chere Board recommend proceeding with a Request for Proposals (RFP) to obtain additional greening proposals from other organizations. The funding for an adequate greening program would need to be considered for the Fiscal Year 2008-09 budget proposal. Staff and board still need to consider if the festival can generate \$20,000 in additional revenue to offset the cost of greening the festival.

Pro:

- Festival becomes more environmentally friendly

Con:

- Significant cost associated with an adequate program

The Bele Chere 2007 Annual Report is for City Council's review and information. The Bele Chere Board of Directors recommends City Council approve the recommendations in the Bele Chere Community Forum Report. The Bele Chere Board structure is for City Council's information.

As Councilman Mumpower felt the Bele Chere Board has done their best to make Bele Chere work, he moved to approve all five recommendations made by the Bele Chere Board. This motion was seconded by Councilman Russell.

Councilwoman Jones felt that even though the Bele Chere Board has brought to Council their expertise and their recommendations for the festival, as an elected official, Council's role is to discuss the specifics and talk about what is best for the City. She then moved to vote on each of the five recommendations separately. This motion was seconded by Councilwoman Cape and carried on a 5-2 vote, with Councilman Mumpower and Councilman Russell voting "no."

Throughout discussion, Mr. Greiner responded to various questions/comments from Council regarding different policy considerations, some being, but are not limited to: was there discussion of reducing the food and beverage fee to only Asheville restaurants or was the discussion solely around restaurants in Western North Carolina; what are the individual financial impacts of each of the five recommendations; request to work with the Sustainable Energy & Environment Committee on greening the festival; how much money is allocated for Bele Chere in terms of staff time and how much staff time is allocated for the other festivals the city co-sponsors; is it clear what Western North Carolina means in terms of fees; request to articulate on the Bele Chere website what the counties are in Western North Carolina which are applicable to the fees;

At the request of Mayor Bellamy, Parks & Recreation Director Roderick Simmons said staff will provide Council with a report on exactly what it is costing the City on each festival we co-sponsor.

When Councilwoman Cape asked if the Western North Carolina region coincided with the AdvantageWest region, Mayor Bellamy thought the Advantage West region was a little larger. Councilwoman Cape suggested and Mayor Bellamy agreed for staff to contact Community Foundation and Handmade in America to work with them in advertising outreach.

Policy Consideration No. 1 for a food & beverage fee reduction for Western North Carolina restaurants was discussed. Councilman Mumpower then moved to concur with the Board recommendation of maintaining the current fee structure. This motion was seconded by Councilman Russell and carried unanimously.

Policy Consideration No. 2 for an arts and craft fee reduction for Western North Carolina artists was discussed. Councilman Mumpower then moved to concur with the Board recommendation of a \$50.00 reduction in fees for Western North



Carolina artists. This motion was seconded by Councilman Russell and carried unanimously.

Policy Consideration No. 3 for a downtown merchants fee increase was discussed. Councilman Newman then moved to not concur with the Board recommendation to increase single booth fees by \$50.00. This motion was seconded by Councilwoman Jones and carried unanimously.

Policy Consideration No. 4 for a change in the date of the festival was discussed. Councilwoman Cape then moved to concur with the Board recommendation to continue the festival on the last, full weekend in July as the permanent festival dates. This motion was seconded by Councilman Mumpower.

Councilman Newman felt that changing the date of the festival is economic in nature. Since Asheville's tourism is going full blast at the end of July he wondered if we might have something close to the Bele Chere economic number that weekend if the Festival were moved to another date. He wondered if polling the sponsors and festival goers (that the Festival current works for) gives an accurate account. Ms. Melissa Porter, Festival Director, responded by saying that in 2005 the City contracted with Western Carolina University to provide the survey.

Mayor Bellamy strongly supported not changing the date of the festival because to change it would be a costly experiment on the back of Asheville taxpayers. If the Tourism Development Authority and/or the Restaurant Association wants to pay for the costs associated with that experiment, then okay.

Councilwoman Cape moved to amend her motion to continue the festival on the last, full weekend in July as the festival dates (deleting the word permanent to leave the door open for future conversation). Councilman Mumpower accepted the amendment. This amended motion carried unanimously.

Policy Consideration No. 5 for greening the festival was discussed. Councilman Mumpower then moved to concur with the Board recommendation to proceed with a RFP to obtain greening proposals. This motion was seconded by Councilman Newman and carried unanimously.

Councilwoman Cape said that there are many things we can do internally to green the festival, i.e., require vendors to supply their own recycling; describe the kind of materials their containers are made out of; use of biodegradable plates, cups and utensils, etc. We could raise the standards with the requirements for participation.

Vice-Mayor Davis appreciated the hard work of the Board and staff on the festival and hoped they continue soliciting public input. He suggested another community forum be held in two years.

Councilwoman Jones noted that staff does a good job in cleaning up after the festival, but wondered if we could use that opportunity to do a more thorough cleaning to keep Asheville clean.

Councilwoman Jones and Councilwoman Cape hoped the Board would work to make local entertainers 40-50% of the total band composition. The festival is a great engine for local musicians to be seen by that many people. After Mr. Greiner explained that booking musicians for Bele Chere is a balancing act in that the Board doesn't want to impede other venues in the City from selling tickets to their events during that weekend. Mayor Bellamy suggested the Board do some market research in the local music scene venues in and around Asheville to make sure there is coordination in our efforts.

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

- A. PUBLIC HEARING TO CONSIDER CONDITIONAL ZONING OF PROPERTY LOCATED AT CHARLOTTE STREET AND CELIA STREET FROM RM-6 RESIDENTIAL MULTI-FAMILY LOW DENSITY DISTRICT AND RS-4 RESIDENTIAL SINGLE-FAMILY MEDIUM DENSITY DISTRICT TO NEIGHBORHOOD BUSINESS DISTRICT/CONDITIONAL ZONING FOR THE USE AS THE PRESERVATION SOCIETY'S OFFICE; AND A REQUEST FOR MODIFICATIONS WITH RESPECT TO SIDEWALKS, LANDSCAPING AND PARKING**

**ORDINANCE NO. 3568 - ORDINANCE TO CONDITIONALLY ZONE PROPERTY LOCATED AT CHARLOTTE STREET AND CELIA STREET FROM RM-6 RESIDENTIAL MULTI-FAMILY LOW DENSITY DISTRICT AND RS-4 RESIDENTIAL SINGLE-FAMILY MEDIUM DENSITY DISTRICT TO NEIGHBORHOOD BUSINESS DISTRICT/CONDITIONAL ZONING FOR THE USE AS THE PRESERVATION SOCIETY'S OFFICE**

Mayor Bellamy opened the public hearing at 6:47 p.m.

Urban Planner Julia Cogburn said that this is the consideration of an ordinance to conditionally zone property located at

Charlotte Street and Celia Street from RM-6 Residential Multi-Family Low Density District and RS-4 Residential Single-Family Medium Density District to Neighborhood Business District/Conditional Zoning for the use as the Preservation Society's Office; and a request for modifications with respect to sidewalks, landscaping and parking. This public hearing was advertised on December 28, 2007, and January 4, 2008.

Ms. Cogburn said that the City of Asheville and the Asheville-Buncombe County Preservation Society have requested the conditional zoning of one parcel at 324 Charlotte Street. The property, containing 3.16 acres, is currently zoned RS-4 (Residential Single-Family Medium Density District) and RM-6 (Residential Multi-Family Low Density District). The site contains an existing historic office building containing approximately 1000 square feet. The rest of the property is an open/passive park space.

The applicants are requesting rezoning to NB (Neighborhood Business) Conditional Zoning in order to utilize the existing small office building on the property for the headquarters office for the Asheville-Buncombe County Preservation Society. The building has been vacant for over ten (10) years and is suffering from deterioration and neglect. The Preservation Society has received approval for a lease agreement from the City and proposes to spend approximately \$100,000 to restore the building. The building will not be altered except to provide for handicapped access, replacement of mechanical and plumbing elements, and general maintenance and repair to both the interior and exterior of the building. No vehicles will be driven over the park property except for construction contractor's trucks which will need access to the back of the building during initial construction.

While it appears that the extent of the renovations would require the site being brought into full compliance, due to the historic nature of the property and the interests of the neighborhood in seeing the park remain undisturbed, staff is recommending modifications to required landscaping, off-street parking, and sidewalk provisions of the Unified Development Ordinance. These modifications, due to the size of the building and the extensive tree canopy surrounding the building, are minor. Parking can be accomplished with on-street parking along Charlotte and shared parking arrangements with the Unitarian Church. The staff is further supportive of these modifications and this approval as this same proposal was previously granted (2001) by the Asheville City Council as a conditional use rezoning. The Preservation Society is returning for rezoning as the approval lapsed due to lack of work and the zoning reverted back to the previous zoning designations. As previously approved, staff will recommend this conditional zoning be limited to office use for a public purpose and that the park area remain in its current configuration. This rezoning will also carry with it the NB requirement that all operations occur between the hours of 7:00 AM and 10:00 PM.

The Asheville Planning and Zoning Commission added the conditions that:

1. Retail sales be limited only to what is produced or sponsored by the Preservation Society.
2. Only attached signage will be allowed and shall be limited to four square feet.
3. No additional lighting is allowed.

The Technical Review Committee (TRC), at their meeting on November 5, 2007, reviewed the conditional zoning request and made a positive recommendation (with conditions) that the project be forwarded to the Planning and Zoning Commission.

The Asheville Planning and Zoning Commission at their meeting on December 5, 2007, unanimously (5-0) recommended approval of this conditional zoning to Asheville City Council. Two people spoke at the meeting one in favor of the proposal and one concerned about parking and rezoning the entire property.

Section 7-7-8(d)(2) of the Unified Development Ordinance (UDO) states that planning staff shall evaluate conditional zoning applications on the basis of the criteria for conditional use permits set out in Section 7-16-2. Reviewing boards may consider these criteria; however, they are not bound to act based on whether a request meets all seven standards.

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

The applicant is seeking the ability to use the building on the property as an office for the Preservation Society of Asheville and Buncombe County. The building is currently vacant and in a deteriorating state. The project, if approved, must meet the technical standards set forth in the City's Unified Development Ordinance and Standards and Specifications Manual. The existing site plan shows compliance with most of the City's development standards except those for which a modification is needed.

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 applicant is requesting modifications so that the site on which the building is located will remain untouched. This includes leaving all vegetation.

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

This property has historically been used as an office in the middle of a predominately residential area although the office has been vacant for over ten years. The proposed use will be very low in impact with no alterations to the existing park or building.

4. That the proposed use or development of the land will be in harmony with the scale, bulk, coverage, density, and character of the area or neighborhood in which it is located.

As stated above, the proposal is for the renovation of an existing structure to allow the structure to be used as it has been used historically. It is a small building in comparison with others in the vicinity. The applicant agrees to limit operational hours to those between 7 AM and 10 PM.

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.

Charlotte Street is shown as an Urban Neighborhood Corridor in the Asheville City Development Plan 2025. Such areas anticipate a mix of residential and compatible business uses. The plan also sets forth as a goal the pursuit of the compatible adaptive reuse of vacant or underutilized structures while assuring that neighborhood compatibility and pedestrian safety goals are met.

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 proposed use is located along Transit Route 5 on a major transportation corridor in the city. The project has received approval from the City's Technical Review Committee concerning issues of water, fire, police protection, etc.

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

The building is less than 1200 square feet in size and will be used for minimal daily office staff and occasional meetings. Traffic generation will be minimal.

**Pros:**

- Renovation for the reuse of an historic office building will restore a building to its original use and bring it out of its dilapidated state.
- The site plan shows no disturbance to the surrounding park land by this adaptive reuse.
- Limitations on use and hours of operation will mitigate any neighborhood disturbance.

**Con:**

- Parking on the street may disturb some residents in the vicinity.

Based on the above findings and the analysis provided in the report, staff and the Asheville Planning and Zoning Commission finds this request to be reasonable. The Commission recommends the approval of this conditional zoning request with the conditions as set forth in the TRC report and with the following added conditions:

- That the applicant will work with the City of Asheville to locate an appropriate on-street parking space in order to provide for handicapped parking and that the building renovation comply with the accessibility code to the maximum extent practicable.
- Hours of operation shall be limited to those between 7 AM and 10 PM.
- The building shall be limited to use as an office serving a public purpose.
- Only attached signage will be allowed and shall be limited to four square feet.
- No additional lighting is allowed.
- Retail sales must be limited only to what is produced or sponsored by the Preservation Society.

She said that there has been a lot of concern about rezoning the entire parcel. Staff feels rezoning the entire property is not necessary, but there is no need to split it up. With conditional zoning, the site plan goes with the rezoning, so there is no way anyone could use any other portion of this property for business purposes, other than the office building. If there is an interest by Council to rezone only a portion of the property, staff would have to have our Engineering Department do a survey of the portion to

be split-zoned. Again, this could be done, however, staff feels it's not necessary.

Mr. Jim Coman, President of the Preservation Society, spoke in support of the conditional zoning request and assured Council they would be a good neighbor.

The following individuals spoke in support of the Preservation Society's use of the Grove Office but in opposition of rezoning the entire parcel for various reasons, some being, but are not limited to: the park may become more vulnerable to development in the future; if the entire parcel is rezoned, request that a condition be made that the park is to remain a park; concern about parking on Celia Place; request for language to be specific about what is produced or sponsored by the Preservation Society; if the entire parcel is rezoned, request for the park to revert to it's original use after it is vacated by the Preservation Society; make it explicit that there will be no new pavement for sidewalks or parking poured on E.W. Grove Park; and be explicit by stating that there will be no change in E.W. Grove Park or conversion of any part of it to some narrower use except for the Preservation Society's rehabilitation and use of the existing structure:

Ms. Grace Curry, President of the Grove Park-Sunset Mountain Neighborhood Association

Ms. Gloria Destolli

Ms. Leah Karpen, resident on Charlotte Street

A resident on Celia Street

Ms. Jane Northway, area resident

Mr. Jake Quinn, resident on Sunset Drive

Mr. Alan Ditmore spoke in support of the rezoning since it a rezoning reduction.

Mayor Bellamy closed the public hearing at 7:06 p.m.

In response to Councilwoman Cape, City Attorney Oast said that the property was given to the City by the Estate of E.W. Grove for park purposes without deed restrictions.

Upon inquiry of Councilwoman Cape, Interim Planning & Zoning Director Shannon Tuch offered clarification of the benefits of conditional zoning - particularly in this case. By applying conditional zoning to the entire area ensures that the uses stated now and that the form of the park stays in that form and it can be enforced by the City of Asheville. Beyond that we have to look to private deed restrictions which are typically enforced privately. This empowers the City of Asheville to enforce the state of that park to remain as it is. By subdividing it, in theory, not that it's practical, we could do that - apply the conditional zoning only to the portion that is directly around the structure. But, there are uses that can occur in parks by right - ancillary, such as parking. If the rest of the property remains in an RS-4 state for a park use, it is possible in the future that someone could come in and install some parking for that park. With the conditional zoning they would not be able to do that. The plan does not show any pavement or parking now.

Councilwoman Cape moved for the adoption of Ordinance No. 3568, to conditionally zone property located at Charlotte Street and Celia Street from RM-6 Residential Multi-Family Low Density District and RS-4 Residential Single-Family Medium Density District to Neighborhood Business District/Conditional Zoning for the use as the Preservation Society's Office, and approval of the modifications with respect to sidewalks, landscaping and parking, subject to the conditions recommended by staff and the Planning & Zoning Commission (finding that the request is reasonable based on information provided in the staff report and as stated in the staff recommendation and with the standards below: (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 Councilman Newman.

Vice-Mayor Davis was concerned about parking on Celia Street. Mr. Coman responded that he has met with the City's Traffic Engineer on this issue and they both agreed that the safest parking is on Charlotte Street north of Macon Avenue. In addition, the Unitarian Church has renewed their agreement to allow the Preservation Society to park in their parking lot when there are no church functions.

Councilman Newman asked if we could include in a provision that other than the single office, it is the intent of City Council that the remainder of the land be preserved as open space in perpetuity. It was the consensus of Council to add that provision in the motion.

In response to Councilman Russell, Mr. Coman said that only one occupant would be in the office primarily Monday-Friday. His full Board however, consists of 18-19 people. At Councilman Russell's request, Mr. Coman said that he would be happy to direct his Board on where to park.

Councilwoman Cape noted that not all traffic parked on roads is a bad thing. She wondered if we could receive some feedback from our Traffic Engineer about the idea of parking by permit on streets in residential areas.

Upon Councilwoman Jones' suggestion of a friendly amendment to the lease about not parking on Celia Street, Mr. Coman said that if an amendment is necessary, they would work on it. City Attorney Oast also noted that they will work with the Preservation Society to address Council's concern.

In response to Mayor Bellamy, Mr. Coman said that the City's Traffic Engineer feels that for a business like this that has no off-street parking there is no requirement for a handicapped space. However, they will have one space designated for the handicapped and parking for everyone else will be on Charlotte Street above Macon Avenue.

In response to Councilman Newman, City Attorney Oast said that he will clarify the condition to make sure that in addition to the Society's sponsored merchandise it be clearly incidental to the principle use.

Ms. Cogburn responded to Councilman Mumpower when wondered if there were other things that we could do to bring that space to life as a park since he felt it is an under-utilized space.

The motion made by Councilwoman Cape and seconded by Councilman Newman (with the provision that other than the single office, the remainder of the land be preserved as open space in perpetuity) carried unanimously.

#### **ORDINANCE BOOK NO. 24 - PAGE**

#### **CLOSED SESSION**

Mayor Bellamy announced that City Council will conduct their closed session during the break. Therefore, at 7:30 p.m., Councilman Mumpower moved to go into closed session for the following reason: (1) To consult with an attorney employed by the City about matters with respect to which the attorney-client privilege between the City and its attorney must be preserved, including litigation involving the following parties: State of North Carolina, County of Buncombe, City of Asheville, Asheville Metals Recycling and VG Enterprises - The statutory authorization is contained in G.S. 143-318.11(a) (3). This motion was seconded by Councilwoman Jones and carried unanimously. Mayor Bellamy announced that Council will reconvene at 8:00 p.m.

At 8:00 p.m., Councilman Newman moved to come out of closed session. This motion was seconded by Councilwoman Cape and carried unanimously.

#### **B. PUBLIC HEARING TO CONSIDER REZONING A PORTION OF PROPERTY LOCATED AT 2360 SWEETEN CREEK ROAD FROM RM-16 RESIDENTIAL MULTI-FAMILY HIGH DENSITY DISTRICT AND RS-2 RESIDENTIAL SINGLE-FAMILY LOW DENSITY DISTRICT TO CI COMMERCIAL INDUSTRIAL DISTRICT**

#### **ORDINANCE NO. 3569 - ORDINANCE TO REZONE A PORTION OF PROPERTY LOCATED AT 2360 SWEETEN CREEK ROAD FROM RM-16 RESIDENTIAL MULTI-FAMILY HIGH DENSITY DISTRICT AND RS-2 RESIDENTIAL SINGLE-FAMILY LOW DENSITY DISTRICT TO CI COMMERCIAL INDUSTRIAL DISTRICT**

Mayor Bellamy opened the public hearing at 8:05 p.m.

Urban Planner Blake Esselstyn said that this is the consideration of an ordinance to rezone a portion of property located at 2360 Sweeten Creek Road from RM-16 Residential Multi-Family High Density District and RS-2 Residential Single-Family Low Density District to CI Commercial Industrial District. This public hearing was advertised on December 28, 2007, and January 4, 2008.

He said that the Givens Estates, Inc., is requesting a rezoning of a 15.2-acre portion of a parcel of land from RS-2 and RM-16 to CI. The parent parcel is a large United Methodist retirement community with a mix of multi-family and single-family residences as well as other amenities for the residents. The owners would like to have flexibility on this edge of the property to provide services such as a clinic or dentistry office, uses which would not be allowed under the current zoning.

Though more restrictive zoning districts would also provide a range of uses including those desired by the applicant, CI

was requested because it matches the zoning on the other side of Sweeten Creek Road. The applicants did not wish to pursue a conditional zoning because they would prefer to leave multiple options open for development and not be restricted to a master plan.

More than half the perimeter of the subject area (to the northwest, north, northeast, east, and southeast) borders on property which is also owned by the applicant. The only area adjacent to the subject area which has a residential zoning designation is part of the Givens Estates property. The bordering areas which are not owned by the Givens Estates are zoned either Industrial or Commercial Industrial.

Construction on the Givens Estates began roughly thirty years ago. Under the zoning that preceded the UDO, the area was zoned OI, or Office-Institutional. Now the retirement community property is zoned a mix of RM16 and RS2. The intent of RM16 is to permit a full range of high density multi-family housing types along with limited institutional, public and commercial uses appropriate within high density residential areas. The intent of RS2 is to establish a low density for single-family dwellings and other compatible uses in recognition of environmental constraints such as, but not limited to, steep slopes, impervious soils, high water tables, and flooding. Accordingly the RS2 district mostly extends over the areas of highest elevation and steep slope on the larger Givens Estates land.

The Commercial Industrial District was established to provide areas for a wide range of commercial and industrial uses. The extent of development that would be possible on this subject area is substantially limited, however, by the terrain. The entire subject area would be subject to steep slope development standards, with roughly one-third of the area at more than 2,350 feet in elevation. Further, the areas along Sweeten Creek Road are among the steepest on the site, so many kinds of typical roadside development would be precluded by the grading limits imposed.

The zoning district that would be drawn with the proposed rezoning would have one side that would not follow a property line, thus making the parent parcel more split-zoned than it already is. The applicant, however, is in the first stage of pursuing a subdivision that would separate the subject area from the parent parcel, as the discrete property boundaries would eliminate the split-zoning and facilitate the application of the steep slope development standards as well as other review of development this site.

Staff recognizes that situating new Commercial Industrial zoning immediately adjacent to residential development in ordinary circumstances might not be advisable. However, two characteristics of this site make this request different: first, development standards (particularly steep slope restrictions) prevent intense development of the site, and second, the owner of the residentially zoned land that could be adversely affected is the applicant itself. It would be contrary to the applicant's own interests to develop the site under the proposed rezoning in a way that is incompatible with the community it oversees.

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

Pros:

- Highly compatible with zoning to south and west.
- Applicant's self-interest serves to protect residential areas from unsuitable use of the site.
- Steep slope standards and other development standards preclude intense development.
- Infrastructure is in place to support non-residential use.

Cons:

- Until subdivision is completed, proposed rezoning would further split-zone an already split-zoned parcel.

Though a first glance at a two-dimensional map might suggest a transitional district might be more appropriate, staff is of the opinion that the topography and neighboring ownership indicate that future development under the proposed CI zoning would benefit the site.

Mr. W. Louis Bissette, Jr., attorney representing the Givens Estates, spoke in support of the rezoning. He said they are proud of what has been accomplished on this property over the past 30 years and hoped to move forward on a subdivision plan for a geriatric and dental clinic on the property.

Mayor Bellamy closed the public hearing at 8:14 p.m.

In response to Councilwoman Cape's questioning related to the property or it's anticipated use of a clinic being non-taxable, Mr. Bissette said that he could not imagine the Givens Estates using this property for anything other than services which would benefit their residents.

Mr. Esselstyn responded to Councilman Newman about the steep slope ordinance as it relates to this property. He noted that the Givens Estates already have the ability to clear a certain percentage of the site now.

Councilman Mumpower said that a large percentage of Asheville is made up of non-profit agencies who don't pay property taxes. He hoped that Council when Council looks at our legislative issues that we ask our legislators to help us address that issue.

Mr. Ken Parton, Director of Givens Estates, said that 1/3 of their residents are below the poverty level, 1/3 are middle income and 1/3 are comfortable. In the State of North Carolina, for non-profit continuing care retirement communities to maintain their non-profit status, they must have 5% benevolent care. Givens Estates does in excess of 5% which is considered on a par of what they would be paying in property taxes. The benevolent care can be in the form of direct care to residents or it can be in the form of community benefit - providing services to the larger community. They do both. He explained that the requirements for admission for those below the poverty level is they have no assets or income. He said that they do not take Section 8 vouchers, however, they do have 202 Section 8 housing on their campus.

After Mayor Bellamy noted that she is no longer employed by Mountain Housing Opportunities (MHO), she clarified that the developments completed by MHO actually pay property taxes. Also, the Habitat for Humanity's houses that they develop also pay property taxes. It is not an across the board blanket statement that all non-profits don't pay property taxes.

Councilwoman Jones moved for the adoption of Ordinance No. 3569, and finds that the request is reasonable based on the information provided in the staff report and as stated in the staff recommendation. This motion was seconded by Councilman Mumpower and carried unanimously.

#### **ORDINANCE BOOK NO. 24 - PAGE**

#### **C. PUBLIC HEARING TO CONSIDER THE INITIAL ZONING OF PORTIONS OF RECENTLY ANNEXED PROPERTIES KNOWN AS 420 AIRPORT ROAD TO HIGHWAY BUSINESS DISTRICT**

#### **ORDINANCE NO. 3570 - ORDINANCE TO INITIALLY ZONE PORTIONS OF RECENTLY ANNEXED PROPERTIES KNOWN AS 420 AIRPORT ROAD TO HIGHWAY BUSINESS DISTRICT**

Mayor Bellamy opened the public hearing at 8:25 p.m.

Urban Planner Julia Cogburn said that this is the consideration of an ordinance to initially zone portions of recently annexed properties known as 420 Airport Road to Highway Business District. This public hearing was advertised on December 28, 2007, and January 4, 2008.

The City of Asheville has recently completed the voluntary annexation (effective October 31, 2007) of a 1.97 acre tract located at 420 Airport Road in South Buncombe County. A restaurant building is close to completion on the property. This parcel was zoned Employment under Limestone Township zoning in Buncombe County.

Other properties in the Airport Road/Rockwood Road area that are within the City's jurisdiction are zoned Highway Business. Staff proposes, at the request of the property owner, the same zoning for this parcel. The Technical Review Committee had no issues with the zoning classification.

At a meeting on November 7, 2007, the Planning and Zoning Commission unanimously recommended this initial zoning to HB to the Asheville City Council. No one spoke concerning this item.

#### **Pro:**

- Zones property recently taken into the City of Asheville in consideration of the surrounding zoning and land use and the City's Comprehensive Plan.

#### **Con:**

- None noted.

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

Mayor Bellamy closed the public hearing at 8:26 p.m.

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

Councilman Russell moved for the adoption of Ordinance No. 3570 and finds that the request is reasonable based on the information provided in the staff report and as stated in the staff recommendation. This motion was seconded by Vice-Mayor Davis and carried unanimously.

## **ORDINANCE BOOK NO. 24 - PAGE**

### **D. PUBLIC HEARING TO CONSIDER AN AMENDMENT TO THE UNIFIED DEVELOPMENT ORDINANCE CLARIFYING STANDARDS REGULATING THE DISPLAY OF FLAGS**

#### **ORDINANCE NO. 3571 - ORDINANCE AMENDING THE UNIFIED DEVELOPMENT ORDINANCE CLARIFYING STANDARDS REGULATING THE DISPLAY OF FLAGS**

Mayor Bellamy opened the public hearing at 8:26 p.m.

Interim Planning & Development Director Shannon Tuch said that this is the consideration of an amendment to the Unified Development Ordinance (UDO) clarifying standards regulating the display of flags. This public hearing was advertised on December 28, 2007, and January 4, 2008.

Events from earlier this year have caused staff and Council to examine the City's current sign code standards in an effort to understand how they may (or may not) affect the display of the American flag. Of particular concern was how to clearly distinguish when the flag is being flown as a patriotic display versus when it is being used as signage to designate or draw attention to a site or particular sale - to use the flag in such a manner would not be accordance with either City code or the federal guidelines set forth in Title 4, Chapter 1 of the US Code.

On July 12, 2007, staff presented several options for Council consideration but recommended a clarification to City code that stated in order for a flag to be exempt from regulation that it must be flown in accordance with federal guidelines. After a small amount of discussion, Council recommended that staff seek input from the Mayor's Task Force on Veteran Affairs and report back. Staff met with the group on August 28, 2007, where the group discussed the matter at some length and voted unanimously to support staff's recommendation to clarify that American flags flown in accordance with federal guidelines would be exempt from regulation. Those flags not flown in accordance with federal guidelines would be restricted and regulated by the standards set forth in Article XIII regulating signs.

Similarly, on November 7, 2007, the Planning & Zoning Commission reviewed this proposed amendment and also unanimously approved the change (no discussion).

#### Other items of Note:

- Signs have been regulated in the City of Asheville since 1977, including the use of flags as signage.
- The sign code was further modified and adopted as part of the *Unified Development Ordinance* in 1997 and outlines a number of standards required for both permanent and temporary signage set forth in Article XIII.
- Article II defines "sign" as:  
*Sign* means any words, lettering numeral, parts of letters or numerals, figures, phrases, sentences, emblems, devices, designs, trade names, or trademarks by which anything is known, made of any material, except live vegetation, including any surface, fabric or other material background structure designed to carry such devices, as are used to designate or attract attention.
- There are a number of prohibitions listed when it comes to signage, once such prohibition is in regards to flags where Sec. 7-13-3(a)(17) reads:  

(17) Flags, decorative or otherwise, may not be used in conjunction with a commercial promotion or as an advertising device, or as an integral part of a sign regulated under this article. Flags that comply with the provisions set forth in section 7-13-2(c)(3) of this chapter are not subject to this subsection.
- The City's sign code also sets forth a number of exemptions to the sign code; the above referenced Sec. 7-13-2(c)(3) falls under this section and reads:  

(3) Flags, with insignia of any nation, organization of nations, state, county or city, any religious, civic or fraternal organization, or any educational or cultural facility and/or any one corporate flag per lot.



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

Pros:

- Clarifies existing standards.
- Provides objective measures by which enforcement personnel can evaluate use.
- Revision would bring existing City ordinances in closer alignment with federal code.

Con:

- Requires more compliance and oversight from business owners.

Staff recommends City Council approve an ordinance amending Chapter 7 of the Code of Ordinances of the City of Asheville clarifying standards regulating the display of flags.

Mr. Alan Ditmore, Leicester resident, was concerned about singling out the American Flag for special consideration relative to other flags, i.e., the N.C. Flag, Confederate Flag, etc.

Mayor Bellamy closed the public hearing at 8:29 p.m.

Councilman Mumpower felt we should not be involved in the flag business in that it takes staff time, adds another level of bureaucratic overlay on the citizens of Asheville, and we should not be doing the federal government's work.

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

Councilman Newman moved for the adoption of Ordinance No. 3571. This motion was seconded by Councilwoman Jones and carried on a 6-1 vote, with Councilman Mumpower voting "no."

**ORDINANCE BOOK NO. 24 - PAGE**

**E. PUBLIC HEARING TO CONSIDER AN AMENDMENT TO THE UNIFIED DEVELOPMENT ORDINANCE WHICH PROPOSES SEVERAL MINOR CLARIFICATIONS AND CORRECTIONS TO THE ORDINANCE**

**ORDINANCE NO. 3572 - ORDINANCE AMENDING THE UNIFIED DEVELOPMENT ORDINANCE WHICH PROPOSES SEVERAL MINOR CLARIFICATIONS AND CORRECTIONS TO THE ORDINANCE**

Mayor Bellamy opened the public hearing at 8:31 p.m.

Urban Planner Julia Cogburn said that this is the consideration of an amendment to the Unified Development Ordinance (UDO) for the purpose of filling in missing information, correcting mistakes, resolving discrepancies and clarifying the ordinance. This public hearing was advertised on December 28, 2007, and January 4, 2008.

Working with the UDO on a daily basis, the staff of the City of Asheville Planning and Development Department has noted a number of places where the ordinance contains discrepancies, is incomplete, or needs clarification. Staff has compiled a list of these issues and proposes the following amendments to correct some of these situations. This is the first of two or three proposed "housekeeping" amendments that staff is drafting to make the UDO a clearer document for staff and public use. The proposed amendments deal with a variety of issues throughout the ordinance. The following list gives a basic rationale for each of the listed amendments.

- a) Clarifies staff interpretation on treatment of parking structures when calculating gross floor area.
- b) Brings the definition of major subdivision in line with state statutes and eliminates the inclusion of public utility extensions in the definition of major subdivision.
- c) Brings the definition of minor subdivision in line with state statutes and eliminates the inclusion of public utility extensions in the definition of minor subdivision.
- d) Corrects the process description for preliminary plat review.

- e) Same rationale as cited in b) above.
- f) Same rationale as cited in c) above.
- g) Adds a subsection (2) to clarify how staff will review the sufficiency of protest petitions when not in simple ownership forms (e.g., when in homeowner's association or corporate ownership, etc.). Proposed by City Attorney's office.
- h) Minor typographical correction – plural to singular.
- i) Minor typographical correction – cite to incorrect zoning district.
- j) Minor typographical correction – omission of a use in listing of conditional uses in CBD.
- k) Brings the buffering requirements for the Blue Ridge Parkway Overlay District in line with the new landscaping standards.
- l) Deletes a provision that conflicts with another in the UDO concerning setbacks along major thoroughfares.
- m) Deletes a confusing/conflicting provision in the new retaining wall ordinance.
- n) Improvement for safety of sidewalk clearance from sandwich board signage from 4 feet to 6 feet.
- o) Minor typographical correction – omission of listing in use by right subject to special requirements listings.

Pros:

- The UDO will be more easily understood and interpreted by staff and the public.
- The intent of the ordinance will be made clearer and less subject to legal challenge.

Con:

- None identified.

At a meeting on December 5, 2007, the Asheville Planning and Zoning Commission unanimously (5-0) recommended approval of these wording amendments to the Asheville City Council. No one spoke on the matter.

Staff recommends City Council approve an ordinance amending Chapter 7 of the Code of Ordinances to make numerous minor corrections and clarifications.

Mayor Bellamy closed the public hearing at 8:32 p.m.

Councilman Mumpower was conflicted on the UDO modifications and felt we are creating more regulatory overlay. He asked for assurance that these do not contain any substantial changes. Ms. Cogburn assured Council that this is the first of three groupings that staff will bring forward to Council. These are the non-sensitive issues, however, they will go into greater detail on the substantive issues.

In response to Councilwoman Cape, Interim Planning & Development Director Shannon Tuch explained the amendment regarding improvement for safety of sidewalk clearance from sandwich board signage from 4 feet to 6 feet.

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

Councilman Mumpower moved for the adoption of Ordinance No. 3572. This motion was seconded by Councilman Russell and carried unanimously.

**ORDINANCE BOOK NO. 24 - PAGE**

**V. UNFINISHED BUSINESS:**

**A. RESOLUTION NO. 08-06 - RESOLUTION REGARDING PROPOSED INCORPORATION OF THE TOWN OF LEICESTER**

City Attorney Oast said that back in June of 2007, Council heard a presentation from residents of the Leicester area regarding their effort to incorporate. Following that presentation and some discussion by Council, there was a motion made to approve Leicester's incorporation request. That motion failed for lack of a second. Since the June meeting, Leicester representatives have continued to discuss this matter. He has revised the draft ordinance to include language expressing the City's concern regarding urban service delivery, and a proposed charter provision restricting Leicester's ability to annex. Leicester has made two changes since the June meeting as follows: (1) staff is advised that the boundaries for the proposed new town include substantially all of the existing Leicester township, but have been slightly adjusted to exclude a portion of the City's extraterritorial jurisdiction area (ETJ) that is in the Leicester Township; and (2) they have agreed to incorporate into their Charter that the proposed Town of Leicester will not involuntarily annex any area outside its town boundaries. Staff is still concerned about the size of the area of 67 square miles opposed to Asheville's 44 square miles. A lot of it would not qualify for annexation. The services are basically a continuation of what already exists in the County. We understand that two deputies will be added to the Buncombe

County Sheriff's Department and will be paid for from tax money and other funds raised by Leicester. Buncombe County will continue to do the zoning in the area - most of the area is zoned Open Use category and some small parts zoned to more particularized categories. Council needs to consider from a policy standpoint that even though this is not a contiguous annexation to the City of Asheville, it is an incorporation almost right at our doorstep. There are some geographical limitations in the City's area of Leicester Township, but if Leicester is incorporated, Council will essentially be foreclosing any opportunity for the City to grow in that direction. Asheville is already limited regarding growth in some areas like Woodfin and Biltmore Forest. In addition, there is also the potential of a sales tax revenue loss of approximately \$20,000.

Ms. Pat Cochran, representing the proposed Town of Leicester, pointed out that this is the third time a representative has come before Council. Their main reasons for seeking incorporation are (1) to elect people from our community to govern our town; (2) to maintain the unique character of the Leicester area, including enacting their own ordinances to protect their way of life; (3) to build and/or improve community facilities for their town; and (4) to benefit from the money they are not currently receiving because they are unincorporated. The City's staff report states that property tax revenues will bring in \$200,000 to their new town. It fails to reveal the many other sources of revenue the town will use to provide, not only for required services, but also to fund enhancements and improvements for the benefit of Leicester. These sources include sales and use tax; franchise tax; beer and wine tax; as well as grants and other monies. These additional revenues are substantially more than \$200,000. Yet, also according to the staff report, the only financial impact the incorporation of Leicester will have on the City of Asheville is a loss of \$20,000. Less than two decades ago Leicester was a two way road and today the five-lane highway extends more than four miles from Patton Avenue and an additional five miles is slated to be widened within the coming years. The road widening was followed by the commercial development explosion along that corridor and that growth continues further into the Township every day. Currently under construction on Leicester Highway just 10 miles from Patton Avenue is a planned residential community where 103 detached homes will be located on 20 acres. The rapid changes taking in their community provide even more reasons to incorporate. On January 28, 2007, in an article, then Planning & Development Director Scott Shuford said the Leicester area isn't included on planning maps showing locations the City might target for annexation in the future. In the same article, Buncombe County Planner Jim Coman said there is little danger of Leicester being annexed because the area is so rural and lacks water and sewer service which Asheville would have to spend a lot to provide if it took in the area. Mr. Coman said "there is nothing out there that I think Asheville would be interested in at this point - it's not urban enough." The staff report also says that due to significant topographic and service delivery issues, the City of Asheville's annexations in this area have been slower than they have been in the south and west. Since the topography of the township has not changed, nor have there been any major improvements affecting service delivery, those two issues will likely remain as problems for Asheville. If the City of Asheville isn't going to take care of the needs of the citizens of the Leicester Township then the citizens of Leicester must take care of themselves. Incorporation is the instrument by which they can do just that. Interest in forming the Town of Leicester has been strong for many years. More than 2.5 years ago that interest was formalized into a group and the long process of incorporation was begun. All of their actions have been publicized. The group held information public meetings; collected signatures in favor of incorporation; researched population and census data; chose the town services; set the tax rate; wrote the Charter; selected an interim council; developed a budget; published letters of intent; and prepared an application of incorporation that was sent to Raleigh. A small but important part of the lengthy process is to provide Raleigh a resolution from the City of Asheville supporting Leicester's incorporation efforts. More than a year ago, letters advising of the intent to incorporate the Town of Leicester were mailed to municipalities, including Asheville and Woodfin. The letter and the notice published in the Asheville Citizen-Times clearly stated that the area to be included in the Town of Leicester coincides with the boundary lines of the current Leicester Township. No communication of concern about their incorporation effort was received from any municipality, including Asheville and Woodfin. A tiny portion of their proposed town is located within Asheville's ETJ. It has always been and is still their preference to incorporate the entire township, rather than splitting off that small piece. However, to do so would be prohibitive due to the cost of obtaining a survey to adequately describe the amended town boundaries. They do not wish to expand outside these township lines and to that end they are willing to state in their Charter that the Town of Leicester will not involuntarily annex any areas outside its town boundaries. The Committee on Municipal Incorporations in Raleigh will decide whether to give a positive or negative recommendation on their incorporation application to the General Assembly. If their recommendation is favorable, the legislators will vote to approve or disapprove the incorporation of Leicester. By affirmatively approving the resolution tonight, Council will in no way be voting to actually incorporate Leicester. That decision lies in the hands of a Committee on Municipal Incorporation and the General Assembly. They are confident of the success and viability of the Town of Leicester. They ask for Council's support of Leicester's incorporation efforts by voting to approve the resolution tonight.

Mr. Alan Ditmore, Leicester resident, spoke in support of the incorporation efforts by Leicester.

Rev. Christopher Chiaromonte urged Council to support Leicester residents in their incorporation and be good neighbors.

Councilman Mumpower noted that being a city is not easy and even though you will be in charge of your own destiny, when you look at the controls and the demands the State of North Carolina exerts on its cities, there is a long hard road ahead of you. Personally he supported consolidation, but in the interim, he would support Leicester's efforts.

Councilman Mumpower moved to support the resolution regarding proposed incorporation of the Town of Leicester: "(1) The City of Asheville approves the incorporation effort of the Township of Leicester, but expresses the following concern: That the size of the area proposed for incorporation will present practical difficulties in delivering urban services; (2) The proposed Town of Leicester will include in its Charter that it will not involuntarily annex any area outside its town boundaries; and (3) The City Attorney is directed to transmit a certified copy of this resolution to the Commission." This motion was seconded by Councilman Russell.

Councilman Russell had a lot of concerns about future impacts. He worried about Leicester residents and the \$200,000 in revenue and the expenses in developing a government for an area the size of Washington, DC. He questioned a resident living off Leicester Highway four miles up, compared to someone in the outskirts of Leicester who will be paying the same taxes and getting a lot of different benefits. He questioned whether the group who brought this together really polled and talked with the entire community from the borders of Asheville all the way to the border of the northern counties. He has read somewhere that the group that will ultimately approve this has the option of taking this to a referendum. He's not a fan of excess government, but if there is ever an opportunity for something this monumental, that should be heard by the voices of the Leicester residents.

Councilman Newman favored the community of Leicester being incorporated if that is the desire of the community. He's also supportive of the idea of Swannanoa being incorporated if that's their desire. In both cases, his question is what are the logical boundaries of those new towns. The vast majority of the land will never be a part of the City of Asheville. But when you look at that proposal and you look at the other towns in Buncombe County, there is a huge disconnect. The boundaries of the other towns and cities in Buncombe County reflect the natural boundaries of those towns. Before he could vote for more than just the concept for incorporation, he would need to have a conversation about which boundaries make sense. Asheville is a growing community and if we are going to support one another in this effort we need to have some kind of agreement about what areas are logically a part of the future of Leicester and what areas are logically a part of the City of Asheville. Asheville's boundaries are not allowed to expand in areas that truly meet the criteria except through the process of involuntary annexation which most times the City is forced to defend in a lawsuit. He would not support the present motion for Leicester's incorporation to be 68 square miles, but would support a motion that our body endorse incorporation for Leicester if that is what the people there want, but that we then also create some kind of process to enter into a dialogue with the community of Leicester, as well as Swannanoa, to talk about what we see as the future growth of our community, what you see as the natural boundaries of your communities and hopefully we can support one another in developing that future vision for all our communities as a whole.

Councilwoman Cape agreed that there is probably a town of Leicester that wants to be incorporated but she couldn't see 68 square miles as a town.

In response to Councilwoman Cape, City Attorney Oast said that they don't have to meet the same standards as annexation for incorporation. The Town of Mills River is a perfect example of that. It's a rural area that would not qualify for an involuntary annexation, but they were allowed to incorporate.

Councilwoman Cape agreed with the State in giving cities and towns the opportunity to incorporate to oversee people living closely together. Counties were developed to see people living in a larger reach. What Leicester is proposing looks like a duplication of the County's services that are existing, except perhaps the street lighting program. She didn't understand how that large of an area can be seen to be really adding much to the County residents benefit in that area. She is supportive of talking about the incorporation of the Town of Leicester on a much scaled back size that makes more geographic and density sense. We all need to work together for regional land use vision. She would not support the resolution as stated, but would like to continue dialogue about it and to lend Leicester residents support for encouraging their way of life without having to go to these steps.

Vice-Mayor Davis supported Leicester's incorporation on a smaller scale. He would also like to see us work together on what Asheville and Leicester's future holds. He would not support the motion as presented.

Mayor Bellamy, resident off Leicester Highway, acknowledged the area has grown. She noted that a city is a lot of work. She will support the motion. She looks forward to working with Leicester on management issues on how each city can grow. She requested Leicester receive City water and work with Asheville to see the areas where the water lines make sense. As Mayor, she doesn't like other governing bodies to tell her how to do business in the City of Asheville, so it would be very difficult for her to say that to others. If Leicester is incorporated as a town, she looked forward to working with them. Even if they are not incorporated, she would look forward to continued dialogue on how we can work together and grow together as a community. In addition, Council will be discussing a resolution establishing boundaries for use in a proposed annexation agreement with the Town of Woodfin. Asheville will be committing to Woodfin that we won't annex into their area so that is another reason why she will support the resolution regarding Leicester's incorporation.

City Attorney Oast responded to Councilman Newman's question regarding a referendum.

There was a brief discussion initiated by Councilwoman Jones about whether the Commission has the ability to draw the boundaries differently than presented. City Attorney Oast said that there is a process for modifying petitions to delete certain areas on recommendation of the Commission. The majority of the interim governing board would have to agree to that.

In response to Councilwoman Jones, Ms. Cochran said that their agreement with Buncombe County is in addition to what is currently existing, they would have two dedicated deputies for their territory.

Upon inquiry of Councilwoman Jones, City Attorney Oast was not sure how, or if, Asheville Powell Bill funds would be affected.

In response to Councilwoman Cape of the difference between a township and a town, Ms. Cochran said that a township is an unincorporated part of the county and a town is an incorporated municipality.

Councilwoman Cape offered a friendly amendment to add at the end of number (1) The City of Asheville approves the incorporation ... but expresses the following concern: that the size of the area proposed for incorporation will present practical difficulties in delivering urban services and Asheville encourages Leicester to reconsider the size of their boundaries.

Councilman Mumpower, who made the original motion, did not accept the friendly amendment in that it is not Asheville's decision on whether Leicester incorporates or not, it's Raleigh's decision.

Vice-Mayor Davis' concern is what Leicester's incorporation does for the City he represents. We need to at least have the opportunity to see what develops near our perimeter to become a part of Asheville. If there was some reasonable conversation about the size of the township, he felt he could support an incorporation.

Councilman Newman said that whether the motion passes or not, he hoped that we could develop a process to have some representatives from Council to sit down with representatives from Leicester to talk further about incorporation and future growth.

The motion made by Councilman Mumpower and seconded by Councilman Russell failed on a 3-4 vote, with Mayor Bellamy, Councilman Mumpower and Councilman Russell voting "yes" and Vice-Mayor Davis, Councilwoman Cape, Councilwoman Jones and Councilman Newman voting "no."

Councilwoman Jones moved to support the resolution regarding proposed incorporation of the Town of Leicester: "(1) The City of Asheville approves an incorporation effort of the Township of Leicester, but expresses the following concern: That the size of the area proposed for incorporation will present practical difficulties in delivering urban services and requests continued dialogue regarding boundaries that are mutually beneficial to both entities; (2) The proposed Town of Leicester will include in its Charter that it will not involuntarily annex any area outside its town boundaries; and (3) The City Attorney is directed to transmit a certified copy of this resolution to the Commission." This motion was seconded by Councilman Mumpower.

At Ms. Cochran's request, Councilman Newman said that we would be happy to meet soon especially since Asheville has growth issues before the legislators as well.

Mayor Bellamy thanked Leicester representatives for meeting with her and highlighting where they wanted to go. She looked forward to continuing that dialogue on how Leicester will deliver services and about how they want to grow. She thanked them for their commitment to continue to come to Council and appreciated Ms. Cochran fielding the questions in the manner in which she did.

The motion made by Councilwoman Jones and seconded by Councilman Mumpower carried unanimously.

## **RESOLUTION BOOK NO. 31 - PAGE**

### **B. ASHEVILLE MERCHANTS HOLIDAY PARADE**

Mayor Bellamy said that on November 27, 2007, the City received a proposal from the Asheville Merchants Corporation requesting the City of Asheville to take over the management of the Holiday Parade. As a result, Council directed staff to research and prepare a report on how other cities operate and manage holiday parades.

Most parades are operated by non-profit community organizations, such as a merchants association or a local civic organization, and do so with support in the form of allocated staffing costs for police, fire and logistics from its local municipal government. Of the parades researched, those operated directly by a municipal government are most often small in size with the exception of the City of Durham, North Carolina. Many parades operate via partnerships with two or more community groups, a

volunteer parade committee and a municipal government.

Mayor Bellamy said that this month Council will be reviewing the co-sponsorship list for the year and even though we do not know who will run the Asheville Holiday Parade she asked that we still commit to co-sponsor that event as we have done for many years. This way, as the Asheville Merchants Corporation approaches groups to take over the management of the Holiday Parade, they will have a commitment from the City being a co-sponsor to the Parade.

Vice-Mayor Davis moved to commit to co-sponsor the Asheville Holiday Parade as we have done in the past. This motion was seconded by Councilwoman Jones and carried unanimously.

## **VI. NEW BUSINESS:**

### **A. RESOLUTION NO. 08-07- RESOLUTION ESTABLISHING BOUNDARIES FOR USE IN A PROPOSED ANNEXATION AGREEMENT WITH THE TOWN OF WOODFIN AND SETTING A PUBLIC HEARING**

City Attorney Oast said that this is the consideration of a resolution establishing boundaries for use in a proposed annexation agreement with the Town of Woodfin, and setting a public hearing on January 22, 2008.

Annexation agreements between municipalities are authorized in the N. C. General Statutes. Asheville and Woodfin share a boundary, and annexation in this area has recently been a subject of interest to both.

By letter dated November 5, 2007, Asheville Mayor Bellamy proposed to Mayor VeHaun of Woodfin a process for formalizing an annexation agreement that has been under discussion among officials of the two municipalities since last year.

In the absence of a response, Asheville City staff have prepared a proposed map and a drafted proposed agreement. Copies of these documents have been sent to Woodfin town officials. Woodfin's attorney and their Town Manager have each received a copy of this information and he was advised that Woodfin has their retreat later this month and he believed they would take this matter up then. They are not prepared at this time to move forward with an agreement. As Council knows, the recent voluntary annexation of the property belonging to Mr. Chris Peterson in the Richmond Hill area is on what would have been Asheville's side of the line. He does think that Asheville can still move forward with this agreement, just recognizing that that particular annexation cannot be undone and is now part of the Town of Woodfin.

Annexation agreements require adoption of an ordinance by the municipalities that are parties to the agreement, following a public hearing. Although the public hearings can be combined, there is no requirement that these actions occur simultaneously or in any particular sequence. The purpose of this presentation is to seek Council's guidance as to the proposed boundary, and if desired, to set a date for the public hearing that the City of Asheville is required to hold.

The Agreement as proposed is pretty basic, and provides in essence that neither party may annex (by any means) into the territory designated as the future growth area for the other. This does not mean that Asheville or Woodfin are going to annex within those areas, only that the other party may not. This also does not make it easier for either municipality to annex; the statutory requirements that an area must meet to qualify for annexation continue to apply.

This would not affect the legislative boundary adjustment pending in the General Assembly and awaiting action in 2008, which affects the shared boundary and unincorporated area in the vicinity of UNC-A.

#### Pros:

- Establishes a boundary delineating the potential future growth areas for both municipalities
- Allows citizens in unincorporated areas to make informed decisions
- Reduces potential for competition over certain "annexable" areas

#### Con:

- Establishes one more procedural step for completing annexation

If Council desires to proceed with Asheville's part of the Annexation Agreement process, adoption of the resolution is recommended.

Councilman Mumpower said that he talked with Mayor VeHaun and he said that the map was not attached to the information sent to him. City Attorney Oast noted that that was just brought to his attention today and he would be happy to provide Mayor VeHaun with that map.

Councilman Mumpower felt that this matter should be delayed until more operational attention should be given to this matter on either a staff to staff level or a Mayor to Mayor level before we actually commit to an annexation agreement.

Urban Planner Blake Esselstyn responded to questions from Councilwoman Cape regarding how the boundary lines were drawn. She said that this resolution represents the last time she met with Mayor VeHaun.

Mayor Bellamy said that she has been working on this for almost two years and the Town of Woodfin has said that we have been stonewalling. She would be happy to continue to talk, but this is important since we have been talking about growing Asheville. We finally get an agreement with a Town who is annexing, growing and land-locking us to the north, so we need to be at the table and get an agreement.

Councilwoman Jones moved to adopt Resolution No. 08-07 and set the public hearing for January 22, 2008. This motion was seconded by Councilman Newman.

Because the Town of Woodfin has annexed Mr. Peterson's property (at Mr. Peterson's request), even though discussion was occurring about this annexation agreement, Councilwoman Cape hoped Woodfin would work with Asheville on a healthy partnership. Mayor Bellamy said that she would relay that message.

Councilman Russell asked for a friendly amendment for the resolution to read that Council approves proceeding with Asheville's part of the annexation agreement process. That sounds more like we are putting the ball in their court in an official way that will open up the doors for communication. Councilwoman Jones and Councilman Newman each accepted the amendment.

Councilwoman Jones moved to adopt Resolution No. 08-07, as amended, and set the public hearing for January 22, 2008. This motion was seconded by Councilman Newman and carried unanimously.

## **RESOLUTION BOOK NO. 31 - PAGE**

### **B. RICHMOND HILL PROPERTY**

Mayor Bellamy said that the items regarding the Richmond Hill property have been removed from the agenda.

## **VII. OTHER BUSINESS:**

### **A. CLAIMS**

The following claims were received by the City of Asheville during the period of November 2-29, 2007: PSNC Energy (Water), DeLund Walker (Water), Darrell James Rice (Transit), Jonathan Stephenson (Water) and Steve Bhandari (Sanitation).

The following claims were received by the City of Asheville during the period of November 30-December 20, 2007: Nimala Bishop (Fire), Betty Sams (Transit Services), PSNC Energy (Water), Tamara Parker (Police), Jasmin Development (Water), AT&T (Water), Carol Fisher (Fire), Buncombe County (Transit Services) and Troy B. Wyatt (Police).

These claims have been referred to Asheville Claims Corporation for investigation.

### **B. LAWSUIT**

The City received a Complaint on December 11, 2007, from Bonny Wardlaw. The nature of the Complaint is to declare that Mr. Wardlaw is a validly elected member of the Asheville Civil Service Board, and that City Council not appoint a fifth member to the Board. This matter will be handled in-house.

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

Ms. Lisa Bain Landis invited City Council to participate in a World Record Community Pot Luck Dinner on May 4, 2008. She would be advising Council on the event location. Mayor Bellamy suggested Ms. Landis meet with City Manager Jackson on how to obtain City support and participation.

Rev. Christopher Chiaromonte spoke about using dramatic tools to give messages.

### **Board/Commission Vacancies**

Vice-Mayor Davis announced the following vacancies on Asheville's boards and commissions: Alcoholic Beverage Control Board; Board of Adjustment; Citizens/Police Advisory Committee; Civic Center Commission; Community Relations Council; Sustainable Energy & Environment Committee; Fair Housing Commission; Film Commission; Firemen's Relief Fund; Greenway Commission; Metropolitan Sewerage District Board; Public Art Board; Transit Commission and Tree Commission. He said this is a great opportunity to be a part of government and urged citizens to get an application on line from the City's website or to call the City Clerk's Office.

When Mayor Bellamy asked if the application deadline of January 10, 2008, could be extended due to the holidays, it was the consensus of Council to have City Clerk Lipe meet with Vice-Mayor Davis, Chair of the Boards/Commissions Committee, to obtain a new deadline.

Councilwoman Cape said that the Sustainable Energy & Environment Committee is recently established with staggered terms. She hoped the ones given one-year terms would be given the opportunity to serve another term. Vice-Mayor Davis said he felt sure that the Boards/Commissions Committee would recommend their reappointment to serve a full three-year term.

### **Effort to Incorporate Leicester**

When Councilman Newman asked if we should have an ad hoc committee of Council to meet with representatives of Leicester, it was Mayor Bellamy's understanding that all members of Council wanted to be present at the meeting. Mayor Bellamy said that City Clerk Lipe would verify that all members of Council could be available at the agreed upon meeting date and time.

Councilman Mumpower said he didn't feel the need to be a part of the discussion with Leicester representatives. He would support an ad hoc Council committee.

Vice-Mayor Davis felt that there is an opportunity to talk, he would be supportive of an ad hoc committee and he wouldn't need to be a part of it. He wasn't prepared to support the motion tonight without some opportunity for them to hear what City Council had to say about it.

Councilwoman Jones suggested this matter be reviewed by the City Council Planning & Economic Development (PED) Committee at their February meeting (because the Committee meets tomorrow and it would be short notice to Leicester's representatives).

Mayor Bellamy said the City Council PED Committee doesn't include all the members of Council who had concerns and wanted to discuss the matter.

Vice-Mayor Davis said that since the PED Committee is a public meeting, any member of Council who is interested could attend the meeting.

Councilman Newman felt it would be much more efficient to have a subcommittee of Council and he would be supportive of the PED Committee review.

Mayor Bellamy said that earlier in the meeting when this issue was discussed, she felt there was a desire for more interactive discussion between the present Council and their interim Council. In her opinion, she thinks they are expecting their interim Council will meet with the entire Council to discuss the issue sooner rather than later. The approved motion requested continued dialogue regarding boundaries that are mutually beneficial to both entities. She felt that we represented the entire Council would meet with them and we would talk about growth boundaries and how we grow. She felt an ad hoc committee would represent something different to that group and she would not feel comfortable with that.

Councilwoman Cape felt this illustrates the need for worksessions because there are issues that come up that Council needs additional information on. She was pleased that the issue of worksessions will be discussed at the City Council's retreat.

Councilman Newman moved that Mayor Bellamy appoint an ad hoc committee to continue the dialogue about the incorporation of Leicester and related growth management issues. This motion was seconded by Councilman Mumpower and carried on a 6-1 vote, with Mayor Bellamy voting "no."

Mayor Bellamy didn't support the motion in that she felt we represented that the entire Council would meet with the organizers of the Leicester incorporation effort.

Vice-Mayor Davis suggested we use the PED Committee meeting in February as the forum of that dialogue. He reiterated that the PED Committee is a public meeting and encouraged any member of Council who is interested in the matter to attend the



meeting.

Councilman Mumpower noted that timing is an issue and suggested the PED Committee convene a special meeting. It was the consensus of the majority of Council for the PED Committee to convene a special meeting to discuss this matter.

**IX. ADJOURNMENT:**

Mayor Bellamy adjourned the meeting at 10:40 p.m.

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CITY CLERK

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MAYOR