

Tuesday – July 15, 2008 - 3:00 p.m.

Worksession

Present: Mayor Terry M. Bellamy, Presiding; Vice-Mayor Jan B. Davis; Councilwoman Robin L. Cape (arrived in meeting at 4:39 p.m.) Councilwoman Diana Hollis Jones; Councilman R. Carl Mumpower; Councilman William A. Russell Jr.; City Manager Gary W. Jackson; City Attorney Robert W. Oast Jr.; and City Clerk Magdalen Burleson

Absent: Councilman Brownie W. Newman

CONTINUATION OF A PUBLIC HEARING TO CONSIDER ADOPTION OF THE MASTER PLAN AND REZONING FOR THE PROJECT IDENTIFIED AS HORIZONS, LOCATED AT 136, 176 AND 180 MERRIMON AVENUE AND 17 AND 23 ELOISE STREET FROM HIGHWAY BUSINESS DISTRICT, COMMUNITY BUSINESS I DISTRICT AND RS-8 RESIDENTIAL SINGLE-FAMILY HIGH DENSITY DISTRICT TO URBAN VILLAGE DISTRICT

Mayor Bellamy explained that this public hearing (which was originally scheduled on January 15, 2008) was continued to this date. The following letter dated July 3, 2008, was received from Mr. Marty Kocot, PE, from Land Design: "The ownership group (Foster Shriner, Chris Peterson, and Cam Pace) representing the proposed "Horizons" Urban Village project on Merrimon Avenue have asked me to formally make request for a three month extension on the Urban Village rezoning currently in progress. This request has become necessary due to the recent economic conditions. The ownership group is currently exhausting opportunities to secure financing and/or additional partners to help with the project economics."

When Mayor Bellamy asked for public comments, no one spoke.

Councilwoman Jones moved to continue the public hearing to October 28, 2008, to consider adoption of the Master Plan and rezoning for the project identified as Horizons, located at 136, 176 and 180 Merrimon Avenue and 17 and 23 Eloise Street from Highway Business District, Community Business I District and RS-8 Residential Single-Family High Density District to Urban Village District for a mixed use development. This motion was seconded by Vice-Mayor Davis and carried unanimously.

WORKSESSION MEETING TIME

Mayor Bellamy initiated discussion regarding the change of the worksession time from 5:00 p.m. to 3:00 p.m. She said we have been starting worksessions for the last few months at 3:00 p.m. and was following up to see if that time was satisfactory to Council members.

Councilwoman Jones felt this item should be revised when all of Council is present.

Upon inquiry of Councilman Mumpower, City Manager Jackson said that worksessions in general are helpful and productive for staff. He said that staff at worksessions largely consist of executive staff that are on salary. In general, the 3:00 p.m. worksession time is convenient for staff, but they would be happy to adjust their schedules per Council's direction.

Mayor Bellamy asked that this time be calendared for discussion in 60-90 days and until such time as a change is made, the worksessions will remain at 3:00 p.m.

PACK SQUARE CONSERVANCY UPDATE

Ms. Carol King, Chair of the Pack Square Conservancy, updated Council on the cost estimates for Pack Square Park from 2004-2008. In 2004, based on the final design, the Conservancy's new project managers from Hanscomb, Faithful & Gould carry out a detailed cost estimate for the park and determine that it will cost approximately \$10.5 Million to build. Early in 2005, lead landscape architect Fred Bonci presents the 100% design development drawings to the Conservancy's Board of Trustees. The plans are approved. Based on the final design development drawings, and material cost increases over the preceding year, project managers from Hanscomb, Faithful & Gould boost the construction estimates to \$12.5 Million. Material costs continue to escalate over the course of 2005 and in November, the project managers raise the construction estimate to \$15.1 Million. The Conservancy makes several modifications in the park to control costs. The water feature in mid-park is simplified and made much smaller, the planned pavers for Spruce Street are eliminated, and plans are developed for the street to be paved with concrete. In 2006, the costs for construction materials continue to escalate. Two primary causes are hurricane relief on the Gulf Coast and massive construction projects abroad, particularly in China. In 2007, the Conservancy becomes increasingly concerned about cost estimates for the park and decides to hire an independent professional estimator to determine what costs will be based on new material prices. After a month-long study, the estimator sets the cost estimate for the park improvements phase at \$8.1 Million, including factors for inflation and cost escalation. The Board approves a new project construction budget of \$20,002,864. In September of

2007, the Conservancy puts the all-encompassing park improvements contract out to bid. The winning bid, from Valley Crest Landscape Development, is \$7,254,700, which is slightly under the 2007 estimate for that phase of construction. Material costs continue to rise, with the added burden of skyrocketing gasoline prices. The Conservancy revisits the plan for the park pavilion and makes several material modifications to reduce the cost of the building. The Board of Trustees approves a pavilion budget of not more than \$2.4 Million. In July, the Conservancy begins construction on the Pack Square Park with assurance that its 2007 cost estimates, including contingencies, will cover construction of the park improvements. She then highlighted the Pack Square Park timelines from 1999 to present.

Ms. King showed and explained pictures of (1) the Roger McGuire Green with water feature, performance stage and entry court; (2) the Reuter Terrace with pavilion and observation point; and (3) a viewscape of the named features in Pack Square Park.

Mr. Charles Russell, CPA, reviewed the Conservancy's accountant's review report and financial statements for the year ended December 31, 2007; budget vs. actual figures at December 31, 2007; Conservancy's balance sheet as of March 31, 2008; budget vs. actual figures as of March 31, 2008; and profit and loss from January – March, 2008.

Ms. King then reviewed the Conservancy's fundraising effort. She said the Conservancy needs to raise close to \$5 Million to complete construction of the Pack Square Park and another \$1.5 Million to complete initial funding for the endowment. Ms. Cary Owen and Mr. Larry McDevitt are working to obtain a number of lead and major gifts by the end of 2008 and in 2009 the Conservancy will carry out a public phase of the campaign. She noted that two important naming opportunities remain in the park for gifts of at least \$500,000. She reviewed a chart showing 6% (\$300,000) of gifts in kind; 10% (\$500,000) for the public phase; 24% (\$1.2 Million) for the major gift phase; and 60% (\$3 Million) of the lead gift phase, for a total of \$5 Million. Ms. King then briefly reviewed the fundraising report as of July 7, 2008.

Ms. King then reviewed the timeline for the Park. She said that completion of the park is scheduled for September 2009. Construction in Pack Square is part of the park improvements phase and is expected to begin by August 18 and should be completed by the end of March 2009, weather permitting. Once it is complete and the work approved, Pack Square will be turned over to the City. The pavilion will be built under a separate contract. The contractor, Beverly-Grant Inc., has requested a building permit and construction should begin in late summer or early fall of 2008. The pavilion is expected to take 10 months to build and completion is expected in June or July of 2009. She then reviewed some specifics on the pavilion.

Ms. King then reviewed various communications including City Council representation and City staff participation.

Mr. Kelly Miller, member of the Pack Square Conservancy, outlined the ongoing communication efforts and the importance of City participation at all levels.

Ms. King and Mr. Miller responded to various questions/comments from Councilman Davis, some being, but are not limited to: how large is the endowment and is it largely for capital improvements; will there be an advisory committee with major stakeholders to answer questions, such as long-term maintenance, operations, programming, security, etc.; how will the programming of the Park take place; and is there an opportunity for Buncombe County to contribute to programming for the Park.

Mayor Bellamy duly noted Councilman Mumpower's personal request that when packets of information are provided to Council, that they be delivered to Council through the normal courier fashion, even if the information is provided on-line.

Upon inquiry of Councilman Mumpower regarding delays, Ms. King said some of the biggest hurdles were (1) the Conservancy developing alternative designs if a private developer were to build on a piece of land in the center of the Park for a mixed-use building; (2) the N.C. Dept. of Transportation contract; and (3) fundraising was inhibited by the controversy related by the Parkside Condominiums.

When Councilman Mumpower asked what Council and the citizens can do to help the Conservancy's efforts, Ms. King replied (1) emotional support; (2) a financial contribution; and (3) for Council to do the best they can with the Parkside Condominium project.

Councilwoman Jones noted that, as seen by this presentation, the Conservancy has a clean bill of financial health.

Mayor Bellamy thanked the Conservancy for agreeing to send their minutes (and quarterly financial reports) to the City Clerk for distribution to the City Council. She was also pleased that Ms. King and City Manager Jackson have worked out a management agreement about how the construction will move forward.

On behalf of Council, Mayor Bellamy thanked the Conservancy for their hard work on this big project, especially since change in Asheville is never easy. She feels the public, in general, is satisfied with the direction of the Park. She did note that it

would be difficult this year for any financial support. She was pleased with the increased communication between the City and the Conservancy and also noted the Conservancy's willingness to work with the Parade Committee.

CITIZENS POLICE OVERSIGHT COMMITTEE

Vice-Mayor Davis said that this item was reviewed by Council on January 15, 2008, and briefly reiterated the highlights from the report on the current process for Internal Affairs and other avenues that are in place to ensure the accountability of the Asheville Police Department employees. He said the request arose from citizens in the community who wanted a Police Oversight Committee. The Public Safety Committee met with the existing Citizens-Police Advisory Committee to see how they could offer a better conduit for communication and strengthening in the complaint process. Since the existing members' terms were to expire soon, the outgoing members presented Council with the following insights for Council's consideration before empanelling a new Citizens-Police Advisory Committee. As defined in the resolution establishing said Committee (Resolution No. 94-186), they feel the "Committee (1) has outlived its original purpose; (2) is constrained by a large, unwieldy committee structure resulting in sporadic attendance by a majority of committee members; (3) has become redundant in light of other active and competing committees; and (4) needs a clearly defined purpose if it is to function into the future." They believe that Asheville needs a citizens-police panel and are hopeful that the facilitated planning process under consideration by the Police Department to address community-police relationships will lead to a clearly defined role for a new Citizens-Police Advisory Committee. They wanted to affirm that, if asked, they would be willing to participate in the planning process and to serve the City of Asheville and its Police Department in any other capacity. "Our respect continues to grow for Chief Hogan, his officers and staff, and we will continue to support them. We are proud of our Police Department and applaud their extraordinary efforts and accomplishments." This letter was signed by Tim Flora, Davidson Jones, Ed Taylor and Mary Ann LaMantia. He said that the newly established Committee will strengthen those communications, as we continue on our way to being one of the safest cities.

Police Chief Hogan assured Council that the Asheville Police Department has made great strides in improving the complaint process. He said that complaints are taken very seriously, investigations are thorough and corrective disciplinary action is taken, if necessary. He said that there are multiple avenues for people to go if they so choose in terms of a complaint against the Police Department.

Police Chief Hogan responded to various questions/comments from Council, some being, but are not limited to: is downtown a high crime area due to the concentration of population in the daytime and nighttime; and how has the citizen complaint procedure been revamped to make it more user friendly.

In response to Councilman Mumpower, Vice-Mayor Davis said that the Public Safety Committee will schedule on their agenda again (with adequate notice) a meeting with advocates of a Police Oversight Committee.

Mayor Bellamy felt the Police Department has been transparent on the procedures for anyone who interacts with police officers. She reiterated the following information from the January 15, 2008, report regarding internal investigations: "It is the APD's policy to investigate all reports of employee misconduct, including anonymous complaints. The Office of Professional Standards is responsible for coordinating such investigations. Complaints can be made to the on-duty supervisor 24 hours a day to the Office of Professional Standards during weekday business hours, or via the City's website, where a complaint form is downloadable." Regarding claims of violations of Constitutional Rights, "When a private citizen believes his or her constitutional rights have been violated by a police officer, the citizen has the following resources:

Municipal

1. File a complaint with the APD's Professional Standards Division (Internal Affairs).
2. File a civil claim for money damages with the City's Risk Management Division.

State

1. File complaint with the N.C. Attorney General.
2. Contact a civil attorney and file a lawsuit in state court.

Federal

1. File a complaint with the federal government (<http://www.usccr.gov/filing/flndx.htm>) U.S. Department of Justice or the local office of the Federal Bureau of Investigation (FBI)
2. Contact a civil attorney and file a 42 U.S. 1983 lawsuit in federal court."

Councilman Russell commended the Police Chief on (1) their beat patrol; (2) the downward trend of violent crime in the downtown area; and (3) their efforts in educating people to secure their belongings in the trunk of their cars, especially when parking in public places.

Mayor Bellamy clarified that City Council cannot handle any personnel matters in open session that pertain to employees, except for the City Manager, City Attorney and City Clerk. If anyone has personnel issues with any other staff members, they must contact the City Manager. The public can contact Council; however, they will only direct you in the right direction. If there is a complaint with the City Manager, City Attorney or City Clerk, she requested the public set up a meeting with Council so that the matter can be addressed.

SECTION 287 (G) OF THE IMMIGRATION & NATIONALITY ACT PROGRAM

Police Chief William Hogan said that this is in response to a request for the Asheville Police Department (APD) becoming involved in the Immigration & Nationality Act (ICE) 287-G program.

At City Council request, contact was made with Paige Edenfield, Assistant Field Office Director of ICE / Detention and Removal Office. Ms Edenfield is responsible for implementation and management of 287-G programs and ICE Detention and Removal efforts within North Carolina. Ms. Edenfield was asked about the feasibility of APD entering into a 287-G agreement with ICE and if so, would ICE have to maintain direct supervision over APD Officers. Ms. Edenfield responded that even if APD was interested in entering into a 287-G agreement, that ICE would not authorize it. ICE has learned that the jail module of 287-G is the most efficient way to implement 287-G and that field investigations conducted by municipal law enforcement are not nearly as effective. It is mandatory that an ICE Agent maintain direct supervision over trained 287-G Officers and ICE does not currently have the staff to increase the 287-G program.

Ms. Edenfield continued that Henderson County is now the operational hub in Western North Carolina for ICE Detention and Removal. Nine Henderson County Detention Deputies have been trained by ICE to screen individuals entering the Henderson County Detention Center on criminal charges and determine their immigration status. Those that have active deportation orders or other ICE warrants are held and transported to Atlanta for deportation hearings. Ms. Edenfield said that Buncombe County had applied for and been considered for the 287-G Jail Module program, but that Buncombe County did not have the available jail space to qualify for the program. ICE also did not have the available staff to directly supervise a Buncombe County program. Buncombe County will participate in a pilot program that will allow Detention Center staff to access the ICE database and check for ICE deportation orders or criminal warrants on individuals brought to the detention center on other criminal charges. APD has worked recently with the Buncombe County Sheriffs Department and City-County Identification Bureau to implement a program where all individuals entering the Buncombe County Detention Center on criminal charges are fingerprinted and photographed. This was done to eliminate the increasing number of individuals using false names to evade criminal prosecution and to quickly identify fugitives and other wanted persons.

APD continues to participate with ICE in human trafficking cases where individuals are trafficked throughout our region as part of prostitution enterprises or enslaved for other work. APD has received training and has initiated three cases where young women were rescued from prostitution houses and where enslaved workers were rescued from Mexican "coyotes" who were transporting the workers through Asheville. In all these cases, the criminally responsible parties were prosecuted in federal court and imprisoned and / or deported. There have also been cases where APD Interstate Criminal Enforcement Officers have stopped suspected human traffickers and ICE assistance was requested, but unavailable. In these cases, APD Officers document the involved parties, photograph the individuals and vehicles, and send that documentation to ICE for intelligence purposes.

APD also cooperates with ICE in drug trafficking cases through the DEA Task Force. Individuals who are charged and prosecuted as part of federal drug trafficking investigations are imprisoned and then deported for their felony crimes.

In cooperation with the District Attorney's Office, APD has been assisting on Obstruction of Justice and Identity Theft cases where individuals who are in the United States illegally, use false names to evade criminal prosecution. The District Attorney's Office has used a full-time intern to assist in identifying people who continually come through the court system using a number of false names. After resolving the name issue and determining the correct name, an APD Detective then charges the person with Identity Theft, if the name or names used were that of a real person or Obstruction of Justice if the name or names used were not of a real person and used to evade criminal prosecution. Both charges are felonies and result in the person serving time in prison and subsequently being deported. This program has been very effective in reducing the number of Latino individuals using false names to escape criminal prosecution.

APD works cooperatively with ICE on issues of criminal activity, identity theft, and endangerment. At this point in time, ICE is unable to expand its involvement with municipal law enforcement into field investigations due to limited ICE staffing and the emphasis on the successful 287-G Jail Module. With Henderson County being the approved and active 287-G site, APD would not be considered as a 287-G program.

Vice-Mayor Davis said that the Public Safety Committee had some representation from the Latino community. He said there are numerous good legal immigrants in this area and there were people at that meeting advocating that group as well.

Police Chief Hogan responded to various questions/comments from Councilman Mumpower, some being, but are not limited to: what kind of direct supervision is Henderson County receiving; how many primary drug distributors that are illegal aliens has the Police Department connected to the ICE program; if we catch three illegal aliens in drug trafficking, does ICE become involved; what instances does ICE become involved; and does the Police Chief have plans to work more closely with Henderson County with the ICE 287 (g) program.

There was discussion regarding the City's efforts on E-Verify system. Vice-Mayor Davis said that a congressional representative met with Chamber of Commerce members so they could learn more about the E-Verify system. He suspected there will be other opportunities to do educational outreaches and would be open to hear comments on whether this should be done on a municipal government level. Councilman Mumpower felt that since the City has E-Verify information on its website, that that it be made more accessible for the public to access.

There was considerable discussion, initiated by Councilman Mumpower, about what type of verification do we use for our own employees, contractors and subcontractors. He felt we should not use taxpayer dollars to subsidize illegal immigrants in that statistically in North Carolina estimates vary from 40-70% of the people who do not speak English are illegal immigrants. He felt the City should be a model on this issue of immigration.

Mayor Bellamy said that the City should see how we can partner with Congressman Shuler's effort regarding the E-Verify system on the federal level.

City Manager Jackson said that we do require employees to verify their citizenship. If the question is whether or not we should require contractors and subcontractors to provide us with a list of employees and we manually go through and verify each and every employee, that would probably need more discussion. What we are doing now, with the guidance of the City Attorney's Office, is that every contractor is required to meet all state and federal laws regarding purchasing, sexual harassment, Americans with Disabilities Act, etc. We would investigate any unusual circumstances brought to our attention, but we do not have the administration in place to go in and audit each and every contract or subcontract and itemize compliance with each and every law of state and federal government. To do that would be a discussion with the Chief Financial Officer regarding the cost of the resources associated with that.

At this time (4:39 p.m.), Councilwoman Cape arrived at the meeting.

At the request of Councilman Mumpower, City Manager Jackson said that he would provide Council with a memorandum in 1-2 weeks on what we currently do to verify conformance with the state and federal laws, how we verify our employment, and how participating in the E-Verify system would impact the City.

Councilman Mumpower asked that this discussion be followed up in another worksession if new information is brought forward from the City Manager's memorandum. In response to Councilwoman Jones, Mayor Bellamy said that if a Council member requests an item be on the agenda, it is placed on an agenda. At Mayor Bellamy's request, City Attorney Oast said that there is a provision in the Council's rules whereby reconsideration of an item can be prevented for up to six months. He read, from Council's rules, "The motion is in order immediately following the defeat of a substantive motion and at no other time. The motion requires, for adoption, a vote equal to two-thirds of the actual membership of the council, excluding the mayor, unless he or she may vote in all cases, and vacant seats." Mayor Bellamy said that unless there is a motion to not place this item back on the agenda for six months, she will honor the request by Councilman Mumpower.

Regarding Councilman Mumpower's request to send a resolution to our state and federal representatives requesting that they begin enforcing existing laws and grant local authorities greater enforcement support and flexibility, Mayor Bellamy said that this was done on the federal level. Councilman Mumpower said that he will bring this back up again when discussion occurs on the state legislative program.

Regarding Councilman Mumpower's request that the City Attorney monitor federal and state legislation affecting local government's ability to respond to illegal immigration concerns and make ongoing recommendations on potential initiatives, City Attorney Oast said that he has provided Council with a partial list of legislative actions he is monitoring.

Regarding Councilman Mumpower's request to explore city regulation of day labor agencies by requiring confirmation of citizenship for temporary employment, City Attorney Oast said that our ability to enforce immigration and naturalization laws without enabling authority from the state and federal government are extremely limited.

VETERANS MEMORIAL AT MEMORIAL STADIUM UPDATE

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Parks & Recreation Director Roderick Simmons said that upon request of the City Council, staff is providing an update on the development of the Veterans Memorial at Memorial Stadium.

Due to a lack of funding for the entire Memorial Stadium renovation project in the fall of 2007, the City Council agreed with and directed staff to proceed with constructing the Veteran's Memorial component of the project which is funded via a Housing and Urban Development grant of \$247,000. The Veteran's Memorial is being designed and implemented within the grant's sum. Any additional elements that enhance this design beyond this basic project are to be designed, funded and implemented through other private fundraising efforts.

The cost of the previous Veteran's Memorial design (as designed within the entire Memorial Stadium project) was in excess of the federal grant funds so the design of the project is being revisited. Site Works Studios designed the original memorial and has been hired to redesign the memorial with Parks, Recreation & Cultural Arts Department staff.

Staff and the consultant have initiated new design work of the Veterans Memorial and preliminary designs are currently being explored as well as associated costs. The alternative design will be brought before the Memorial Stadium Committee that is being newly reformed.

Pending the planning and design process, the project will be constructed by the spring of 2009. He reviewed with Council the design and construction timetable, along with the Veteran's Memorial funding.

City staff is providing an update pertaining to the development of the Veterans Memorial at Memorial Stadium and is not making a recommendation for City Council action.

Mr. Simmons responded to Councilwoman Jones when she hoped that we are not spending more money than we've raised in order to incorporate the new design features.

There was discussion, initiated by Councilman Mumpower, about reconstituting the Memorial Stadium Committee soon. He felt that we need a group in place to raise money in that there is a lot more work that needs to be done. When he was chair of the Committee, they made a commitment not to take City dollars but to raise funds by private donations.

Councilwoman Jones wanted to make sure this was in order with all the other projects that we have. She would love the people who care about this issue to become involved, but doesn't want to send a mixed message that this will trump the master planning process but that it will all be looked at as one.

It was the majority consensus of Council that Councilman Mumpower be Chair of the Memorial Stadium Committee and that he provide the Boards/Commissions Committee a list of potential members. They also asked that he update Council as they move forward.

City Manager Jackson said that he will set up a meeting with Councilman Mumpower and appropriate staff in the Parks & Recreation Department to come up with a plan.

- **REVIEW AND DISCUSSION OF CITY & COUNTY PROPOSALS FOR DEVELOPMENT ON THE SOUTH SIDE OF CITY-COUNTY PLAZA**

- Mr. Stewart Coleman, representing S.B. Coleman Construction Co., LLC, requested the City grant a temporary construction easement for the construction and/or continuation of Court Plaza – a new street in front of Parkside Condominiums. He showed Council a basic footprint of their plan. He showed the property lines for the property and the new building footprint. He said that Marjorie Street is 14-feet wide. The new Court Plaza would allow the street to continue through in front of the City Hall and preferably exit out onto South Spruce Street. The sidewalks along South Spruce Street and Marjorie Street will be widened. He said the drawing he provided to Council was the drawing from the design architects for the Park. He received it from Buncombe County Manager Greene and Buncombe County Attorney Frue. He said that he attempted to find the drawing in the City's archives but was unable to find it. He was told by Mr. Frue that this was the only drawing that the City Council and County Commissioners ever reviewed, and it was provided to Council by the Pack Square Conservancy. He said it was presented to the Council members on March 23, 2004, and in this original drawing it clearly shows a street. The design architects for the Park recommended the street be implemented even though they did recognize that they did not own the property that the street crossed. When they started designing their building, they took this drawing and implemented their design features into their architectural design to design the building that they are trying to place on this piece of real estate. If they are allowed to use this particular street, it will allow a clear view corridor of the City Hall Building from the Vance Monument (stepping their building back from the north property line of the Park 25-29 feet). The Downtown Commission requested that this street be put in place when they, at one time, reviewed the project and requested retail on the first floor of the building. They agreed it would be very difficult to have retail on

the first floor that did not front on a street. The City's Traffic Engineer recommended that the street be one-way traveling west only. He also recommended a loading area so as not to block the street during early morning deliveries. The Fire Department recommended the street for a fire apparatus staging platform in accordance with Appendix D of the Asheville Fire Code. He quoted a statement from the Fire Marshal in the Technical Review Committee's Staff Report as follows: "This required fire lane can be provided on other building sides so its location is up to the designer." He said they have only one option if the street is not approved and that option is to use Marjorie Street as the fire apparatus staging platform and in order to make Marjorie Street qualify, they will be forced to move their building 15 feet north, on their property. That has a tremendous affect on the view corridor in doing so. He said the new street would service the building, the Courthouse, the City Hall and relive the bottleneck presently in existence with the cul-de-sac. They would ultimately give the new street back to the City for their maintenance. The Park has streets surrounding the entire Park and they feel that a review of this nature should be considered.

Mayor Bellamy said that at the last time they had a formal meeting, Council voted to have the City Manager speak with Mr. Coleman to talk about some options for consideration by City Council. Mr. Coleman then requested to speak to Council regarding the options. Since we have heard those options, City Attorney Oast has suggested Council go into closed session before Council asks questions or have a discussion about what was presented.

At 5:16 p.m., Councilwoman Jones moved to go into closed session for the following reasons: (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: City of Asheville; State of North Carolina; Buncombe County; Louise Pack Metcalf; Barbara Pack Holcombe; Michael Lawrence; and Black Dog Realty, LLC. The statutory authorization is contained in N.C.G.S. 143-311(a)(3); and (2) To establish or to instruct the City's staff or negotiating agents concerning the position to be taken by or on behalf of the City in negotiating the terms of contracts for the acquisition of real property by purchase, option, exchange or lease. The location of the property is on Eagle Street. The statutory authorization is contained in G.S. 143-318.11(a)(5). This motion was seconded by Councilman Mumpower and carried unanimously.

At 6:07 p.m., Councilwoman Jones moved to come out of closed session. This motion was seconded by Councilman Russell and carried unanimously.

Mayor Bellamy said that at Council's last formal meeting City Council adopted a resolution asking the City Manager speak with Mr. Coleman about this issue. Mr. Coleman asked that he or his representative have an opportunity to come before Council. Tonight we allowed that to happen and she thanked Mr. Coleman for presenting the alternatives he is seeking as a resolution. She said that this is a worksession where Council gathers information and hears from the staff on issues. City Council would like to reaffirm the resolution previously adopted as City Council strongly believes that Buncombe County should reacquire the public property that they chose to sell. It is the City Council's position that Buncombe County do that. We stand beside our resolution. She did offer as the next step that if there are other alternatives, that include a land swap that we can get behind, we would like that to be a public process – not a long drawn out public process. We want to be open to that, but we do feel like Buncombe County should be the significant driver in this seat and we want to be supportive of Buncombe County re-acquiring the property.

BOARDS & COMMISSIONS

It was the consensus of Council to instruct the City Clerk to prepare the proper paperwork to reappoint Dr. Dean Kahl to the WNC Regional Air Quality Agency. In addition, it was the consensus of Council to explore the possibility of shortening the existing 6-year terms, which would require legislative action.

It was the consensus of Council to (1) readvertise the east vacancy on the Citizens-Police Advisory Committee; (2) appoint Charlie Hume (south); (3) appoint Bob Smith (Central); and (4) interview Ada Volkmer and Angelica Reza Wind for the north vacancy.

There was a brief discussion regarding the next steps regarding the vacancy on the Civil Service Board. It was implied that there would be no appointment made to the vacant seat at this time. Councilman Mumpower said it was anticipated that the litigation would have been resolved in a timelier manner; however, he felt Council should honor their commitment for Council to meet with staff, the Civil Service Board and representatives from both sides of the equation to have further discussion. City Attorney Oast noted that the reason the litigation is moving slowly is due to the judicial terms and the motion could be heard within the next 10 days. He would notify Council with a hearing date tomorrow. It was the consensus of the majority of Council to postpone any meetings regarding this issue until they get a report from City Attorney Oast.

It was the consensus of Council to ask the Film Commission staff liaison make a recommendation to the Boards & Commissions Committee regarding the future of the Commission and that no interviews or appointments take place until such time

as the report is given consideration.

It was the consensus of Council to (1) readvertise vacancies on the Recreation Board; (2) reappoint Scott Barnwell and Geoffrey Ferland; (3) appoint Lonnie Gilliam; (4) interview Wanda Hawthorne; and (5) proceed with the interviews of Betty Young and Davidson Jones.

It was the consensus of Council to instruct the City Clerk to prepare the proper paperwork to reappoint Cindy Weeks, Darryl Hart and Jerome Jones to the Planning & Zoning Commission.

It was the consensus of Council to interview Gregory Sills and Terry Meek for the vacancy on the River District Design Review Committee.

OTHER ITEMS

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There was a brief discussion of Councilman Mumpower's request that the City Manager provide him information on how much money the City has spent in Fiscal Year 2007-08 on planning, studies and consulting costs. City Manager Jackson explained that he would be happy to provide that information to Councilman Mumpower; however, he requested Council's consent due to the amount of staff resources it will take to make sure the report is accurate. Mayor Bellamy felt that this request has come about because of a report (which was misquoted by the reporter) which ran recently in the newspaper about the City prioritizing its streets. She emphasized that the Council has been investing in basic City services. When Councilman Mumpower questioned what recourse he had to obtain this information if the majority of Council does not support his request, City Attorney Oast said that anyone can review the Council minutes. City Manager Jackson also noted that he could make a request for available documents and the City would honor that request; however, the document he is requesting does not exist. Councilwoman Cape clarified that when people make a document request, it is not a document request that staff has to fabricate – it's a request for existing documents. Mayor Bellamy also suggested a review of the Minority Business Report which covers all contracts. Councilman Russell supported Councilman Mumpower's request regarding consulting costs.

RESOLUTION NO. 08-154 – RESOLUTION OPPOSING THE PROPOSED STATE OF NORTH CAROLINA HOUSE BILL 2499, DROUGHT/WATER MANAGEMENT RECOMMENDATIONS

City Attorney Oast said that there has been some legislation proposed (House Bill 2499) that essentially would allow the State, in some emergency situations or low water situations to assume some regulatory authority over our own management of the water system. Our Director of Water Resources Director has recommended Council oppose the bill as drafted.

Mayor Bellamy said that this item was scheduled for Council consideration on July 22, 2008, formal meeting but is before Council today because a vote on this is imminent.

Water Resources Director David Hanks reviewed the staff report he had prepared to report to Council on July 22 as follows: "This bill as proposed is a wide ranging bill that would take away local control of our most valuable natural resource – water. Lawmakers have proposed the following: (1) Water systems in exceptional drought to reduce water use by 20% and those in extreme drought by 10%; (2) Give the governor emergency powers to force systems with extra water to share it; (3) Provide powers for cities and counties to limit the use of wells for watering lawns and plants, as long as they have the same rules for residents on public water; and (4) State shall develop guidelines for water rate structures, including rates that support water conservation.

"Asheville has two pristine lakes that contain over 6.5 billion gallons of water that is surrounded by a 22,000 acre protected watershed as well as a state-of-the-art ozone water treatment plant that can draw water from both the Mills River and the French Broad River.

"The City of Asheville has taken many positive steps to ensure that water is available to residents in the City of Asheville, and in Buncombe and Henderson Counties. Below is a list of some of the progressive steps that have been taken:

- Spent approximately \$1 million on creating a Drought Model and updating our Emergency Action (Flood) Plan. The Drought Plan uses historic data, the forecast of rainfall for the next 10 weeks, and the level of our lakes to determine when conservation measures should take place. During last year's drought, we found that the information the drought model provided us was very accurate.
- The Asheville City Council approved \$40 million of revenue bond projects which is being used to upgrade some old problematic water lines, provide back-up generator power when power is lost, and other water capital investments include upgrades to North Fork and Bee Tree Water Treatment Plants.

- Implemented an Asset Management Program which provides us with a computerized replacement and refurbishment model to identify funding needs of the water system, life cycle cost and business case evaluations for new projects.
- The City of Asheville Water Resources Department became the first certified water utility in the State of North Carolina and the first in the entire nation to be totally (all divisions of department) certified and registered under ISO 14001. This is an Environmental Management System that helps us systematically manage and improve every aspect of our environmental performance.
- The City of Asheville is a regional team player in the water arena. We are the sole source water provider for Biltmore Forest, and provide water to Black Mountain, Woodfin, and Hendersonville. We also have connection to the Town of Weaverville and have emergency help agreements with area water utilities. When requested, Asheville has never refused to provide water or repair assistance to our neighbors.

“The City Council Strategic Operating Plan and Water Master Plan actions are not applicable.

Pro:

- Comprehensive and regional water planning is desired for the entire State and Western North Carolina region.

Cons:

- This bill if adopted will take away the ability of local policy makers and utilities to make decisions concerning their communities, including various drought stages and water rates.
- The bill refers to various actions that will require additional staffing to implement and ensure compliance, especially during designated drought events.

“There is no immediate fiscal impact but future impacts could be tremendous if water rates, including drought surcharges are set by another policy board and not at the local level.

“Staff recommends that the City of Asheville oppose any legislation that would take away the local authority to manage local water conditions by approving the attached resolution. Asheville has done a superior job managing its water resources. We know what is occurring within our system, and our governing board and professional staff should be the ones making decisions and being held accountable for this most important natural resource.”

He said that this version of the bill did take out some of the concerns or moved items to a “study” status. The two areas that may come back on the municipalities are (1) gives the governor emergency powers to force systems with extra water to share it; and (2) State shall develop guidelines for water rate structures, including rates that support water conservation. The main area of contention was the private well monitoring and that was one of the items that was moved to a study status.

Mayor Bellamy highlighted that Asheville has spent money on drought management and flood management for our water system to ensure that we are doing the best practices possible for our water system; and to have the state supersede us is disappointing by them using an across the board measure that might not be the best for our community for drought management.

Councilman Mumpower moved to waive the rules and take formal action on this item at this meeting. This motion was seconded by Councilwoman Cape and carried unanimously.

Councilwoman Jones felt it was too bad that our legislative delegation did not put in some kind of exemption in the bill that really recognizes the best practices that some communities are doing and the systems that have been proactive. If the bill does not pass, maybe this is something that can be explored. City Attorney Oast felt that idea is certain worth conversation, if possible.

When Mayor Bellamy asked for public comment, no one spoke.

After Mayor Bellamy read the resolution, Councilman Mumpower moved for the adoption of Resolution No. 08-145. This motion was seconded by Vice-Mayor Davis.

Councilwoman Cape asked for a friendly amendment to the third paragraph in the resolution to read as follows: “City staff has recommended the City of Asheville oppose this bill and encourage local and State legislators to allow local policy makers to make decisions that affect their local communities concerning drought conditions and water rate guidelines with those communities who have exhibited best practice management with their systems (underlining to denote change).” Councilman Mumpower and Vice-Mayor Davis did not accept the amendment in that the State does not pay for the water, they don’t pay for the system, they don’t have any responsibility for the system but they just want some control over our system.

The motion made by Councilman Mumpower and seconded by Vice-Mayor Davis carried on a 5-1 vote, with Councilwoman Jones voting "no."

In that Councilwoman Jones wishes the vote to be unanimous, she asked her vote be changed to support the resolution.

Therefore, the motion made by Councilman Mumpower and seconded by Vice-Mayor Davis carried unanimously.

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SENIOR OPPORTUNITY CENTER, REID CENTER AND MUNICIPAL GOLF COURSE

Mayor Bellamy stated that the City of Asheville is not closing the Senior Opportunity Center on Grove Street; is not closing the Reid Center; and is not selling the Municipal Golf Course.

ADJOURNMENT

Mayor Bellamy adjourned the meeting at 7:09 p.m.

CITY CLERK

MAYOR