

Tuesday – July 22, 2008 - 5:00 p.m.

## 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 Magdalen Burleson

Absent: None

## PLEDGE OF ALLEGIANCE

-  
Ms. Rikki Walker, recipient of the Make A Wish Foundation, led City Council in the Pledge of Allegiance and briefly explained her experience in the program. Ms. Caroline Harrison, representing the Make A Wish Foundation, thanked Mayor Bellamy for proclaiming Friday, July 18, 2008, as "Make A Wish Day."

## INVOCATION

Councilman Russell gave the invocation.

## I. PROCLAMATIONS:

## II. CONSENT AGENDA:

At the request of Councilman Mumpower Consent Agenda Items "K", "P" and "Q" were removed from the Consent Agenda for discussion and/or individual votes.

At the request of Mayor Bellamy, Consent Agenda Item "L" was removed from the Consent Agenda for discussion and/or an individual vote.

- A. APPROVAL OF THE MINUTES OF THE FORMAL MEETING HELD ON JUNE 24, 2008, AND THE WORKSESSION HELD ON JULY 15, 2008**
- B. RESOLUTION NO. 08-146 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A CONTRACT WITH R & W INCORPORATED TO SUPPLY AND CONSTRUCT A NEW HVAC SYSTEM FOR THE BURTON STREET RECREATION CENTER**

Summary: The consideration of a resolution authorizing the City Manager to enter into a contract with R & W Incorporated to supply and construct a new HVAC System for the Burton Street Recreation Center for an amount not to exceed \$111,655.00.

The Parks, Recreation and Cultural Arts Department obtained approval for the creation of a budget amendment in the amount of \$215,000 in October of 2007. This budget amendment consisted of a \$60,000 appropriation from the Fiscal Year 2007-2008 general capital improvement budget and an additional \$155,000 from a Community Development Block Grant (CDGB).

These funds were needed to renovate the Burton Street Recreation Center. Renovations included new energy efficient doors and windows, a new handicap access ramp, new flooring, new kitchen and bathroom fixtures and a new HVAC System for this community recreation facility.

This action complies with the City Council Strategic Operating Plan in that it supports and enhances basic city services. It is part of the park development program to make facility improvements. It is also a Green focus area by making an energy efficient capital improvement decision and supporting energy efficient funding for facilities and operations.

### Pros:

- Provide funds to supply and construct a new HVAC System at the Burton Street Recreation Center.
- Fulfill commitment to the Burton Street neighborhood to make improvements to the facility.
- Reduce energy consumption.

### Con:

- An additional HVAC System to maintain.

Funding provided by budget amendment of \$215,000 in October of 2007.

City staff recommends City Council adopt a resolution authorizing the City Manager to enter into a contract with R & W Incorporated to supply and construct a new HVAC System for the Burton Street Recreation Center for an amount not to exceed \$111,655.00.

**RESOLUTION BOOK NO. 31 – PAGE 244**

**C. RESOLUTION NO. 08-147 - RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE A 5-YEAR SERVICE AGREEMENT WITH MCQUAY FACTORY SERVICE FOR MAINTENANCE AND REPAIR OF THE CIVIC CENTER CHILLER**

Summary: The consideration of a resolution authorizing the City Manager to enter into a 5 year service agreement, in the amount of \$100,000, with McQuay Factory Service for maintenance and repair of the Civic Center chiller.

The Civic Center Chiller has been under a lease and maintenance agreement for the past ten years with ePlus. The agreement expires at the end of July. After financial analysis, it was determined by staff to purchase the chiller and enter into an agreement directly with McQuay Factory Service. This company has maintained the chiller during the past ten years as a subcontractor.

The Civic Center Commission unanimously passed a resolution supporting staff's recommendation to purchase the chiller and contract directly for the Chiller's maintenance.

Pros:

- Purchase of chiller and direct maintenance agreement saves \$15,000 over 5 years
- Experts that have maintained chiller for 10 years will continue in that capacity

Con:

- None identified

The fiscal impact would be \$15,000 saving over 5 year period

City staff recommends City Council adopt a resolution authorizing the City Manager to enter into a 5 year service agreement, in the amount of \$100,000, with McQuay Factory Service for maintenance and repair of the Civic Center chiller.

**RESOLUTION BOOK NO. 31 – PAGE 245**

**D. RESOLUTION NO. 08-148 – RESOLUTION AUTHORIZING THE MAYOR TO EXCHANGE REAL PROPERTY LOCATED ON HUNT HILL PLACE FOR PROPERTY LOCATED ON ARDMION PARK ROAD PLUS ADDITIONAL MONETARY CONSIDERATION**

Summary: The consideration of a resolution authorizing the exchange of real property located on Hunt Hill Place for property located on Ardmion Park Road plus additional monetary consideration.

The City of Asheville and Satchel's Development, Inc. have negotiated an exchange of real property at Hunt Hill Place for property on Ardmion Park Road along with additional monetary consideration. Pursuant to N. C. G. S. 160A-271 a notice was duly published in the Asheville Citizen-Times on June 27, 2008, describing the exchange of properties on the following terms:

"The City-owned property on Hunt Hill Place is 1.0592 acres +/- in size and is a portion of tax PINs 9648.07-57-5714 and 9648.11.57-5224. The area is zoned Institutional and is mostly vacant land. This area is a portion of the larger Mountainside Park. The appraised value, as appraised by Underdown Ball & Associates, LLC, equals \$130,300.

The property to be exchanged on Ardmion Park Road is an 0.854 +/- acre parcel zoned RM 8 and is a portion of tax PIN 9648.07-57-9853. This property is mostly wooded with steep to rolling grades and has road frontage on Ardmion Park Road. The appraised value as appraised by Underdown Ball & Associates, LLC, equals \$120, 900. To provide that the exchange is full and fair, monetary compensation will be provided along with the exchange in the amount of \$9,400 in cash, paid by the property owner, Satchel's Development, Inc."

Approval of the resolution will authorize the exchange of the properties as provided in N. C. G. S. 160A-271.

This action complies with the Strategic Operating Plan in that it promotes sound land management per the Parks and Recreation Master Plan.

Pros:

- The exchange will be a fair exchange of property for property plus consideration.
- Additional pedestrian access to the Mountainside Park will be gained from Ardmion Park Road.

Con:

- There is no negative impact.

The proceeds from the sale of this parcel will benefit the General Fund via the Parks, Recreation and Cultural Arts Department.

City staff recommends City Council adopt a resolution authorizing the exchange of real property located on Hunt Hill Place for property located on Ardmion Park Road and additional consideration.

Mayor Bellamy said that she did not support this item originally due to the number of affordable units planned even with a density bonus and a land exchange. However, the developer has increased the number of affordable units dramatically and she would therefore support this action.

#### **RESOLUTION BOOK NO. 31 – PAGE 246**

##### **E. RESOLUTION NO. 08-149 - RESOLUTION GRANTING AN EXTENSION FOR A TERM ON THE ALCOHOLIC BEVERAGE CONTROL BOARD**

Summary: The term of Barbara Field, as a member of the Asheville Alcoholic Beverage Control Board, expired on November 13, 2007.

As the Board moves forward with the development of architectural plans for new stores on Tunnel Road, Leicester Highway and US 74A in the Reynolds area and as they continue their program of remodeling existing locations, Ms. Field's training as an architect will continue to prove useful.

Ms. Barbara Field, 33 Haywood Street, Asheville, N.C., be and she is hereby granted an extension of her term until April 1, 2009, or until her successor has been appointed.

#### **RESOLUTION BOOK NO. 31 – PAGE 247**

##### **F. RESOLUTION NO. 08-150 - RESOLUTION AUTHORIZING THE MAYOR TO SIGN A SISTER CITY AGREEMENT WITH OSOGOBO, NIGERIA**

Summary: The Asheville City Council supports the Asheville Sister Cities Program, administered by Asheville Sister Cities International, which encourages cultural exchanges, strengthens friendships and goodwill between nations, and increases the collaboration for the mutual benefit of both cities. The addition of Osogbo, Osun, Nigeria as a new Sister City will expand the opportunities available to the people of City of Asheville to experience Nigerian culture, and offer the people of Osogbo the opportunity to exchange with citizens in Asheville, creating benefits for both communities. Asheville Sister Cities representatives will travel to Osogbo, Osun, Nigeria in August 2008 to meet with head governmental officials to sign official documentation designating Osogbo, Osun, Nigeria and Asheville, North Carolina as Sister Cities under the auspices of Sister Cities International. The Asheville City Council supports the recognition of Osogbo, Osun, Nigeria, as an official Sister City of the City of Asheville, North Carolina in order to promote and encourage cross-cultural exchange through the goodwill practices of Asheville Sister Cities International. The Asheville City Council officially recognizes Osogbo, Osun, Nigeria as a Sister City of the City of Asheville and hereby authorizes the Mayor to enter into the Sister City Agreement with Osogbo, Osun, Nigeria.

#### **RESOLUTION BOOK NO. 31 – PAGE 248**

##### **G. RESOLUTION NO. 08-151 - RESOLUTION OF INTENT TO CLOSE AN UNOPENED PORTION OF PEACE STREET AND SETTING A PUBLIC HEARING ON AUGUST 26, 2008**

Summary: The consideration of a resolution of intent to close an unopened portion of Peace Street and request a public hearing for August 26, 2008, regarding this issue.

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

Pursuant to this statute, the adjoining property owners have requested the City of Asheville permanently close an unopened portion of Peace Street.

This closure allows maximum land use potential for further development complying with the Asheville City Development Plan, Land Use.

Pros:

- There will be no future compromise of ingress/egress to other property
- The closure would allow for more efficient use of the adjacent residential properties for residential development

Con:

- The Greenway Commission at their meeting of June 10, 2008, recommended the unopened portion of Peace Street be retained as future opportunities for greenways, or other bike, pedestrian or vehicular connections.

There will be no fiscal impact related to this closure.

City staff recommends City Council adopt a resolution setting a public hearing for August 26, 2008, to close an unopened portion of Peace Street.

#### **RESOLUTION BOOK NO. 31 – PAGE 249**

##### **H. RESOLUTION NO. 08-152 - RESOLUTION APPOINTING MEMBERS TO THE RECREATION BOARD**

Summary: The terms of Scott Barnwell, Geoffrey Ferland and Jim Drummond, as members on the Recreation Board, expired on June 30, 2008.

On July 15, 2008, it was the consensus of Council to reappoint Mr. Scott Barnwell, Mr. Geoffrey Ferland and appoint Mr. Lonnie Burton to each serve a three-year term respectively, terms to expire June 30, 2011, or until their successors have been appointed.

#### **RESOLUTION BOOK NO. 31 – PAGE 250**

##### **I. RESOLUTION NO. 08-153 - RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE A CONTRACT WITH DIXON HUGHES, PLLC, FOR AUDITING SERVICES FOR FISCAL YEAR 2007-08**

Summary: The consideration of a resolution authorizing the Mayor to execute a contract with Dixon Hughes PLLC, Certified Public Accountants and Advisors, for auditing services for Fiscal Year 2007-2008.

NC General Statute sec. 159-34 requires that local governments of North Carolina have their accounts audited each fiscal year and submit a copy of the audit to the Local Government Commission.

Based on our review of a proposal submitted by Dixon Hughes, staff recommends retaining their services for Fiscal Year 2007-2008. We have previously worked with Dixon Hughes and they have consistently provided a thorough and high quality audit for the City.

Pro:

- Allows us to meet NC General Statute sec. 159-34.

Con:

- None noted.

The base fee has been proposed at \$98,900.00 and is appropriated in the budget of the Accounting Division of the Finance Department.

City staff recommends adoption of the resolution authorizing the Mayor to execute a contract with Dixon Hughes PLLC, Certified Public Accountants and Advisors, for auditing services for Fiscal Year 2007-2008.

**RESOLUTION BOOK NO. 31 – PAGE 251**

**J. RESOLUTION NO. 08-154 - RESOLUTION ACCEPTING HUNTINGTON CHASE DRIVE AS A CITY-MAINTAINED STREET**

Summary: The consideration of a resolution to accept Huntington Chase Drive as a city-maintained street as outlined in the 2002 Annexation Services Plan for the Huntington Chase Area.

Section 7-15-1 (e) (4) (a) of the Code of Ordinances requires that streets dedicated for public uses be accepted by resolution of the City Council.

Huntington Chase Drive is a developer-constructed street that has an average width of 20 feet and a length of 0.37 mile.

Transportation and Engineering Department staff and Public Works Department staff have inspected this street and recommend its change of ownership from a privately-maintained street to a city-maintained street.

Huntington Chase Drive is a street listed in the 2002 Annexation Services Plan that the City would take over for maintenance.

Following City Council's approval of this resolution, Huntington Chase Drive will be added to the official City Maintained Street Inventory (Powell Bill List).

Pros:

- The City of Asheville will receive Powell Bill Funds from the North Carolina Department of Transportation (NCDOT) to help fund the maintenance of the street.
- Homes constructed along the subject street increase the tax base for the City.

Con:

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

- There should be no initial financial impact to the City, although the responsibility of maintenance will belong to the Public Works Department. The City will receive Powell Bill Funds in the future to help maintain the street. Currently, the Powell Bill Funds equate to \$1,886 per mile compared to the City's maintenance cost of \$8,200 per mile.

- Staff recommends that City Council adopt the resolution to accept Huntington Chase Drive as a city-maintained street with an effective date of July 31, 2008.

**RESOLUTION BOOK NO. 31 – PAGE 252**

**K. BUDGET AMENDMENT TO APPROPRIATE DEPT. OF JUSTICE BULLETPROOF VEST REIMBURSEMENT FUNDS FOR THE PURCHASE OF POLICE PATROL SAFETY EQUIPMENT**

This item was removed from the Consent Agenda for discussion and/or an individual vote.

**L. RESOLUTION MAKING PROVISIONS FOR THE POSSESSION AND CONSUMPTION OF MALT BEVERAGES AND/OR UNFORTIFIED WINE AT THE ROCKIN THE RIVER RAFT RACE ON AUGUST 2, 2008**

This item was removed from the Consent Agenda for discussion and/or an individual vote.

**M. RESOLUTION NO. 08-156 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO AN ENTERPRISE LICENSE AGREEMENT WITH ESRI INC. FOR GEOGRAPHIC INFORMATION SYSTEMS SOFTWARE LICENSING**

Summary: The consideration of a resolution authorizing the City Manager to sign a Enterprise License Agreement with ESRI, Inc. in the amount of \$150,000 over 3 years payable in \$50,000.00 yearly installments for Geographic Information Systems (GIS) software.

The City of Asheville has used ESRI GIS software for 10+ years as a keystone software information system. Many internal processes including asset management, code enforcement, public safety dispatch, stormwater utility billing, infrastructure

maintenance, sanitation service, etc., rely on GIS expertise and software. Citizens also rely on GIS for Internet information portals such as the mapAsheville applications (Development Mapper, Crime Mapper, and Priority Places). City Council also relies on the City's GIS via planning and development decision visualizations.

Annual maintenance payments are required in order to keep software in a reliable and supported state. From Fiscal Year 2002 to Fiscal Year 2008, this critical maintenance increased by 282%. To reduce the risk of further significant increases, staff has negotiated with ESRI the ability to lock in a set maintenance payment for a three year period (renewed yearly). A contracted agreement also means that the City may provide unlimited staff installations of this software.

Specific City Council Strategic Operating Plan priority areas with goals that are supported by GIS technology include Community Building, Critical Services & Infrastructure, Natural & Built Environment, Economic Development, and Growth, Development & Land Use

Pros:

- Increased support of departmental business requirements via greater options for GIS software licensing.
- Ability to install additional software without additional purchases.
- Hold the line on increasing software maintenance costs.

Con:

- If continued funding for future years is not appropriated, some staff will lose ability to utilize some GIS software.

Based on trend analysis, this agreement represents a 3 year savings of \$21,600.

City staff recommends City Council adopt a resolution authorizing the City Manager to sign an Enterprise License Agreement with ESRI, Inc.

**RESOLUTION BOOK NO. 31 – PAGE 256**

**N. RESOLUTION NO. 08-157 - RESOLUTION APPOINTING A MEMBER TO THE WNC REGIONAL AIR QUALITY AGENCY**

Summary: The term of Dean Kahl, as a member on the WNC Regional Air Quality Agency Board, expired on July 1, 2008.

On July 15, 2008, it was the consensus of Council to reappoint Dr. Kahl to serve a six-year term, term to expire July 1, 2014, or until his successor has been appointed.

**RESOLUTION BOOK NO. 31 – PAGE 257**

**O. RESOLUTION NO. 08-158 - RESOLUTION APPOINTING MEMBERS FO THE PLANNING & ZONING COMMISSION**

Summary: The terms of Cindy Weeks, C. Jerome Jones and Darryl Hart, as members on the Planning & Zoning Commission, expire on August 14, 2008.

On July 15, 2008, it was the consensus of Council to reappoint Ms. Weeks, Mr. Jones and Mr. Hart to each serve an additional three-year term respectively, terms to expire August 14, 2011, or until their successors have been appointed.

**RESOLUTION BOOK NO. 31 – PAGE 258**

**P. ORDINANCE AUTHORIZING THE ASHEVILLE POLICE DEPARTMENT TO ACCESS THE STATE BUREAU OF INVESTIGATION'S DIVISION OF CRIMINAL INFORMATION NETWORK DATABASE FOR CRIMINAL HISTORY CHECKS FOR PERSONS APPLYING FOR EMPLOYMENT WITH THE CITY OF ASHEVILLE**

**ORDINANCE AUTHORIZING THE ASHEVILLE POLICE DEPARTMENT TO ACCESS THE STATE BUREAU OF INVESTIGATION'S DIVISION OF CRIMINAL INFORMATION NETWORK DATABASE FOR CRIMINAL HISTORY CHECKS FOR USE IN DETERMINING THE SUITABILITY OF AN APPLICANT FOR AN ADULT BUSINESS OR ADULT ENTERTAINER LICENSE**

**ORDINANCE AUTHORIZING THE ASHEVILLE POLICE DEPARTMENT TO ACCESS THE STATE BUREAU OF**

**INVESTIGATION'S DIVISION OF CRIMINAL INFORMATION NETWORK DATABASE FOR CRIMINAL HISTORY CHECKS FOR USE IN MAKING RECOMMENDATIONS ON THE SUITABILITY OF A PERSON OR OF A LOCATION FOR AN ABC PERMIT**

These items were removed from the Consent Agenda for discussion and/or an individual votes.

**Q. UPSET BID RECOMMENDATION FOR THE HOLIDAY INN AT THE AIRPORT PROPERTY**

This item was removed from the Consent Agenda for discussion and/or 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.

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

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

**K. ORDINANCE NO. 3637 - BUDGET AMENDMENT TO APPROPRIATE DEPT. OF JUSTICE BULLETPROOF VEST REIMBURSEMENT FUNDS FOR THE PURCHASE OF POLICE PATROL SAFETY EQUIPMENT**

Summary: The consideration of a budget amendment, in the amount of \$23, 018, to appropriate Department of Justice Bulletproof Vest reimbursement funds for the purchase of police patrol safety equipment.

The Asheville Police Department currently participates in the Department of Justice Bulletproof Vest Reimbursement Program. This program is designed to off-set the tremendous cost involved in purchasing bulletproof vests for police officers. During the current fiscal year, the City of Asheville has collected \$23,018 from the Department of Justice Bulletproof Vest Reimbursement Program. Adding these funds into the Police Patrol Division safety equipment budget line would assist in the purchase of additional vests for Asheville police officers.

This action complies with the City Council Strategic Operating Plan in that it supports efforts to hold the line on taxes and find areas for tax and fee relief.

Pro:

- Reimbursement revenue to cover the rising cost of bulletproof vests for Asheville police officers.

Con:

- None

City staff recommends City Council adopt the budget amendment, in the amount of \$23,018, to appropriate Department of Justice Bulletproof Vest reimbursement funds for the purchase of police patrol safety equipment.

Councilman Mumpower felt that the City should pay for their own vests and not accept the money from the federal government, which has a trillion dollar national debt.

Mayor Bellamy noted that the City did purchase the bulletproof vests, but there was an opportunity for reimbursement of their primary purchase.

Councilwoman Jones moved for the adoption of Ordinance No. 3637. This motion was seconded by Vice-Mayor Davis and carried on a 6-1 vote, with Councilman Mumpower voting "no."

**ORDINANCE BOOK NO. 25 – PAGE 1**

**L. RESOLUTION NO. 08-155 - RESOLUTION MAKING PROVISIONS FOR THE POSSESSION AND CONSUMPTION OF MALT BEVERAGES AND/OR UNFORTIFIED WINE AT THE ROCKIN THE RIVER RAFT RACE ON AUGUST 2, 2008**

Summary: The consideration of a resolution making provisions for the possession and consumption of malt beverages and/or unfortified wine at the Rockin the River Raft Race on August 2, 2008.

Riverlink, Inc. has requested, through the City of Asheville Parks, Recreation & Cultural Arts Department, that City Council permit them to serve beer and/or unfortified wine at the Rockin the River Raft Race and allow for consumption at this event.

The Rockin the River Raft Race will be held on Saturday, August 2, 2008, from 9:00 a.m. – 6:00 p.m. within the boundaries of French Broad River Park, as per the event area limits referenced on the accompanying site map.

This action does not tie-in with the Strategic Operating Plan, nor does this action does not comply with any of the adopted City plans.

Pro:

- Allows fundraising opportunities for charity

Con:

- Potential for public safety issues

The fiscal impact would be for overtime pay for Ashville Police Department officers.

City staff recommends City Council adopt a resolution authorizing the City Manager to approve a resolution making provisions for the possession and consumption of malt beverages and/or unfortified wine at the Rockin the River Raft Race.

Councilman Russell moved for the adoption of Resolution No. 08-155. This motion was seconded by Councilwoman Jones and carried on a 6-1 vote, with Mayor Bellamy voting "no."

Councilman Mumpower suggested hearing Mayor Bellamy's thoughts on voting against these alcohol at event resolutions at another time.

#### **RESOLUTION BOOK NO. 31 – PAGE 253**

**P. ORDINANCE NO. 3638 - ORDINANCE AUTHORIZING THE ASHEVILLE POLICE DEPARTMENT TO ACCESS THE STATE BUREAU OF INVESTIGATION'S DIVISION OF CRIMINAL INFORMATION NETWORK DATABASE FOR CRIMINAL HISTORY CHECKS FOR PERSONS APPLYING FOR EMPLOYMENT WITH THE CITY OF ASHEVILLE**

**ORDINANCE NO. 3639 - ORDINANCE AUTHORIZING THE ASHEVILLE POLICE DEPARTMENT TO ACCESS THE STATE BUREAU OF INVESTIGATION'S DIVISION OF CRIMINAL INFORMATION NETWORK DATABASE FOR CRIMINAL HISTORY CHECKS FOR USE IN DETERMINING THE SUITABILITY OF AN APPLICANT FOR AN ADULT BUSINESS OR ADULT ENTERTAINER LICENSE**

**ORDINANCE NO. 3640 - ORDINANCE AUTHORIZING THE ASHEVILLE POLICE DEPARTMENT TO ACCESS THE STATE BUREAU OF INVESTIGATION'S DIVISION OF CRIMINAL INFORMATION NETWORK DATABASE FOR CRIMINAL HISTORY CHECKS FOR USE IN MAKING RECOMMENDATIONS ON THE SUITABILITY OF A PERSON OR OF A LOCATION FOR AN ABC PERMIT**

Summary: This is the consideration of adoption of ordinances authorizing Asheville Police Department to access the State Bureau of Investigation's Division of Criminal Information Network (DCI) database for criminal history checks involving applicants for employment, persons applying for adult business and adult entertainer licenses, and persons applying for alcohol permits with the City.

Pursuant to City Code Sec. 2-187, the City shall conduct a criminal background check for all final candidates for City employment. Pursuant to City Code Chapter 9, Article IV, the City of Asheville through the Asheville Police Department is required to conduct a criminal background investigation for any person wishing to obtain an adult business license or an adult entertainer license. Pursuant to N.C.G.S. § 18B-904(f), the Chief of Police on behalf of the City is required to report to the ABC Commission whether an applicant and/or location is suitable for possessing an Alcohol Permit. Currently, the City is doing limited criminal history checks through City/County Bureau of Investigation. However, the City/County database only deals with crimes adjudicated by the State of North Carolina.

The Asheville Police Department has access to the State Bureau of Investigation's DCI database which contains criminal background information for the entire country. The State of North Carolina has strict requirements for using this criminal database



for non-criminal employment and licensing. In order to access the state database, City Council must pass an ordinance requiring the criminal history checks and the consequences for failing the criminal background check. City staff has presented the proposed ordinances to the SBI and the SBI has approved said ordinances.

Pros:

- The City will be able to access the DCI network to conduct criminal history checks on applicants for non-sworn employment with the City, adult business licenses, adult entertainer licenses, and alcohol permits.

Cons:

- None

City staff recommends City Council adopt the ordinances authorizing the APD to conduct criminal history checks for employment with the City, adult business and entertainment licenses and alcohol permits.

Police Chief Bill Hogan responded to various questions from Councilman Mumpower regarding the City's ability to use this resource in their efforts to address illegal immigration.

Councilman Mumpower moved for the adoption of Ordinance No. 3638, requesting feedback on how quickly the Police Chief, Sheriff and Judicial System are able to get an consistent pattern of checking the fingerprints of the parade of people who don't have identification but are brought into our jail for DUI's or other misbehaviors. This motion was seconded by Councilman Newman and carried unanimously.

#### **ORDINANCE NO. 3638 - ORDINANCE BOOK NO. 25 – PAGE 3**

Councilman Mumpower moved for the adoption of Ordinance No. 3639, requesting feedback on how quickly the Police Chief, Sheriff and Judicial System are able to get an consistent pattern of checking the fingerprints of the parade of people who don't have identification but are brought into our jail for DUI's or other misbehaviors. This motion was seconded by Councilman Newman and carried unanimously.

#### **ORDINANCE NO. 3639 - ORDINANCE BOOK NO. 25 – PAGE 5**

Councilman Mumpower moved for the adoption of Ordinance No. 3640, requesting feedback on how quickly the Police Chief, Sheriff and Judicial System are able to get an consistent pattern of checking the fingerprints of the parade of people who don't have identification but are brought into our jail for DUI's or other misbehaviors. This motion was seconded by Councilman Newman and carried unanimously.

#### **ORDINANCE NO. 3640 - ORDINANCE BOOK NO. 25 – PAGE 7**

#### **Q. UPSET BID RECOMMENDATION FOR THE HOLIDAY INN AT THE AIRPORT PROPERTY**

Economic Development Director Sam Powers said that this is the consideration of an offer by W&K Hotels, LLC to purchase the 10.37 acres of land owned by the City of Asheville located at 550 Airport Road.

The City owns approximately 10.37 acres of land at the intersection of Airport Road and Interstate 26. In the 1980's the City entered into a 60 year ground lease and a hotel, currently operating as a Holiday Inn (HI), was constructed on the site. The ground lease has approximately 36 years remaining. The City currently receives an annual revenue stream from the lessee of approximately \$130,000, and the lease has gradual revenue escalation clauses. The current owner of the HI has made an offer to purchase the land for \$2,450,000. A letter was received from David E. Matney, III, attorney for W&K Hotels, LLC, on June 11, 2008. The hotel owner has indicated he has interest in developing the site to a higher intensity to include a possible upscale hotel addition and conference center, retail and office space, and structured parking. The hotel owner has indicated that in order for him to invest in his new facilities, his ownership interest in the property must change. In addition to an offer to purchase, the hotel owner has also indicated that he is willing to modify the terms of the lease to a new period of 99 years. A team of city staff, including the Chief Financial Officer, City Attorney, Real Estate Manager, and Economic Development Director have been assessing the prospect of disposition of the property. City staff had an appraisal done on the site in 2006. The owners of the HI had an appraisal done in 2007. There are major differences in the value conclusions of the two appraisals. The City's CFO has provided a memo to Council explaining the City's analysis of the value of the property.

Airport Road has seen tremendous growth as a retail and hospitality corridor in the last two years. Staff has reviewed the land appraisals on which the \$2,450,000 offer is based, and staff has concluded that the offer does not reflect the value of the land to the City or to the Lessee. The offer tendered is based upon a sale in the open market. The value of the property to the

open market includes the existing lease which survives a transaction of the property. It should be noted that the value to the open market is not considered as the City has not initiated plans to sell the land on the open market; instead the hotel owners approached the City with an offer.

It should also be noted that the hotel owner's proposed concepts would have a positive economic effect should the development occur, and selling the property would result in increased property taxes to the City. However, previous discussions have centered around a real estate transaction, and the owner has not indicated a desire to execute a development agreement that would govern the terms and conditions of the development of the site and set conditions for build out prior to closing on the real estate.

Based upon staff analysis of the property, growth potential for the Airport Road corridor, terms of the existing ground lease, the desire to provide effective asset management, and the interest in promoting economic development and smart growth in the area, staff believes it is in the best interest of the City to offer the property at the Fair Market Value established by the City staff of \$5,932,500 (\$5.65 MM escalated to 2008 dollars). If Council desired other alternatives, Council could authorize the City Clerk to advertise for upset bids based on the current offer of \$2,450,000 with the understanding that City Council has the right and authority to reject any and all bids received if the price is not in the City's best interest. City Council could also offer the property for sale at a beginning price of \$5,932,500.

The sale of city owned property is consistent with Council strategic goals and is contemplated in the adopted 2008-09 budget as a method to provide funding for anticipated capital projects.

Pros:

- City would receive a lump sum payment from sale of the property which could be utilized for capital projects.
- Sale of the property would allow the hotel owner to redevelop the property to a higher level of density, thus creating more property tax revenue, sales tax revenue, hotel occupancy tax revenue, and payroll.

Cons:

- City currently has a consistent revenue stream from the lease of the property which would be extinguished at closing.
- The existing ground lease encumbers the property and would survive transfer of ownership thus limiting the interest in the open market for the property to niche purchasers.

The fiscal impact would be the estimated proceeds from the sale, plus any additional tax revenues, less the current annual lease payments.

City staff recommends that City Council rejects the offer of \$2,450,000 by W&K Hotels LLC to purchase the property at 550 Airport Road; and further recommends offering the property for sale in an upset bid process. The suggested offering price is \$5,932,500.

Mr. David Holcombe, representing W&K Hotels, said that he is authorized by Mr. Dennis Hulsing to obtain this site, either by lease or purchase. He showed Council a conceptual plan for everything around the existing hotel. Mr. Hulsing is known for purchasing and then immediately improving, with his own staff, his properties to two and three times their value. He would like the City to look at the original offer made on June 11, 2008, which said either purchase or lease and they would recommend that this go to a long-term lease, which would benefit both parties.

Chief Financial Officer Ben Durant said that staff recommends the City get market value for the property and that we advertise it publicly and see what the market is willing to pay. Short of that, if Council directs us, we can go back and negotiate further and see if there is some type arrangement that can be worked out that would be in the best interests of both parties.

City Attorney Oast said if Council decides to dispose of this property, whether by sale or long-term lease, it will have to go through some sort of competitive process, e.g., an upset bid process, sealed bid process, etc.

Mr. Jesse Junior felt that the conceptual plan presented was vague and Council should ask for something definite in terms of plans for the property.

Throughout discussion, Mr. Powers, Mr. Holcombe and City Attorney Oast responded to various questions/comments from Council, some being, but are not limited to: does staff believe it's realistic that someone would pay approximately \$6 Million on the open market for this property; what is the property currently zoned; is the lease for the entire 10.37 acres; is the Lessee free to do what they want (in normal development parameters) on the property in the remaining 36 years of the lease; what is the life of a hotel; is it possible to consider the lease and sale at the same time; how long does an upset bid process take; and when an existing business has an existing 36 year lease, under those circumstances how common is it to receive an upset bid.

In response to Councilman Newman, Mr. Powers said there are four kinds of transactions available (1) asset management and an income stream; or (2) a real estate transaction; or (3) an economic development deal; or (4) some combination thereof. Up to this point, the owners have not indicated an interest in an economic development deal. If we did a development agreement and there was due diligence and certain milestones in terms of design and construction that were accomplished before the City closed on the land that we knew would ultimately result in a much higher tax base, as was outlined by Mr. Holcombe, then that would affect the value. However, in absence of that, he believed we are looking at the real estate transaction. For the real estate transaction, we have (1) a value to the City; (2) a value to the Lessee; and (3) a value to the open market. The value to the open market is the least favorable for us.

In response to Councilman Russell, Real Estate Manager Nikki Gunter said that the appraisal done for the City by Richard Jacobs in 2006 was \$2.92 Million and the appraisal performed by BB&T for W&K Hotels LLC was \$2.05 Million, but that was for the lease fee interest only – not the fee simple value.

When Councilman Russell asked if the City has clear title, City Attorney Oast said that the property was acquired as part of the initial Airport purchase and when I-26 was built, this remnant remained. Back in the early 1980's we obtained a release of that property from the Federal Aviation Administration (FAA) restrictions on our ability to apply the income to non-aeronautical projects. He felt we can get verification from the FAA that the City does have clear title to the property. He said that would be verified before we sold the property.

In response to Councilman Russell, Mr. Powers said the proposal we have now basically indicates a new lease pretty much at the existing terms of \$130,000 a year. However, staff is not in favor of that, and there are many provisions in the lease that City staff would want to renegotiate.

Because there was an offer made to either purchase the property at \$2.4 Million or extend the lease, Mr. Holcombe said it appears we will not come to an agreeable price at \$5.9 Million. He said Mr. Hulsing is agreeable to a 99 year lease at a fixed rent rate of \$130,000, noting that this year with the slumping economy and reduced travel, Mr. Hulsing estimates the rent will likely be closer to \$115,000. Mr. Hulsing would then do a Consumer Price Index (CPI) increase of 2%-5%, with perhaps a cap which will be up for negotiations. He felt that the fixed rent of \$130,000 a year with the CPI increase and Mr. Hulsing improves the site for an upscale convention hotel, he felt the City would double their money because the taxes on the property is about \$130,000. If the City does not accept this offer, the rent will probably go down and Mr. Hulsing will not make any improvements on the property.

In response to Councilman Newman, Mr. Holcombe felt that Mr. Hulsing would not be willing to pay an outside consultant to take six months for a detailed plan. However, if Council wanted Mr. Hulsing to refine the conceptual plan given in detail, he would be willing to do that.

Mayor Bellamy said that in the absence of a motion, Council will send the matter back to City staff to talk with the existing Lessee.

City Manager Jackson asked if the motion is to send it back to City staff for the development agreement option if the Lessee is interested in that, that is new information and would be worth pursuing. If the Council is talking about putting the property on the market in an upset bid process for the \$2.4 or \$5.9 Million, or putting it on the market place for a 99-year lease, we still need an upset bid process to go in that direction. The options before Council, short of a development agreement, are (1) to merely set an offering price and begin a public process for placing it on the market; or (2) whether it's a lease or sale, but it if's a sale, at what offering price. The Council is not bound by the offering price.

Councilwoman Cape said if we have a \$130,000 ground lease for 36 years, that's \$4.7 Million. It's not as if we're not getting income on this property. As we go out and evaluate this project, she asked staff to give Council an assessment of the difference between City-owned property, taxes, rent incomes, how the rent would be negotiated, etc. She felt that would give Council information to make a good decision. Getting all the money at once may have some value, but we're getting \$4.7 Million over 36 years with a lease we can negotiate. It's not as if the property is just sitting there. She asked for more information from City staff.

In response to City Manager Jackson, Mr. Holcombe said that said he can provide City staff with a detailed pro forma that shows what the site will allow - a certain amount of square footage which was done by an architect in detail. City Manager Jackson said that having that information available to staff (confidentially) would help expedite their process of analysis.

It was the consensus of the majority of Council to ask staff to work with Mr. Holcombe in an expeditious manner on the options available, and to provide Council with an e-mail update prior to placing it on the agenda in August.

### III. PRESENTATIONS & REPORTS:

### IV. PUBLIC HEARINGS:

#### A. PUBLIC HEARING TO CONSIDER AN AMENDMENT TO AN APPROVED CONDITIONAL USE PERMIT TO INCLUDE THE PROJECT IDENTIFIED AS LANDMARK AVIATION – FIXED BASE OPERATION AND AIRPORT HANGAR, LOCATED AT 275 WRIGHT BROTHERS WAY, FOR A 23,100 SQUARE FEET AIRCRAFT STORAGE HANGAR AND 5,500 SQUARE FEET OF OFFICE SPACE

#### ORDINANCE NO. 3641 - ORDINANCE AMENDING AN APPROVED CONDITIONAL USE PERMIT TO INCLUDE THE PROJECT IDENTIFIED AS LANDMARK AVIATION – FIXED BASE OPERATION AND AIRPORT HANGAR, LOCATED AT 275 WRIGHT BROTHERS WAY, FOR A 23,100 SQUARE FEET AIRCRAFT STORAGE HANGAR AND 5,500 SQUARE FEET OF OFFICE SPACE

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

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

After hearing no questions about the procedure, Mayor Bellamy opened the public hearing at 6:00 p.m.

All Council members disclosed that they have visited the site and would consider this issue with an open mind on all the matters before them without pre-judgment and that they will make their decision based solely on what is before Council at the hearing. Councilman Newman specifically pointed out that he currently serves on the Airport Authority and they have discussed general development plans but would base his decision solely on what is before Council at this hearing.

City Attorney Oast said that the Authorized Practice Committee of the North Carolina State Bar has issued an advisory opinion that appearing in a representative capacity for a party before a local governmental body in a quasi-judicial proceeding is the practice of law, especially with respect to such aspects of the hearing as examining or cross-examining witnesses, or advocating for legal conclusions or results. This does not prevent persons, including land use professionals, from presenting information or expressing opinions within their knowledge or area of expertise.

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

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

Ms. Bernstein said that this is the consideration of an amendment to an approved conditional use permit to include the project identified as Landmark Aviation – Fixed Base Operation Office and Airport Hangar, located at 275 Wright Brothers Way, for a 23,100 square feet aircraft storage hangar and 5,500 square feet of office space.

The applicant is requesting review of site plans for a new airplane storage hangar and fixed base operation office at the Asheville Airport (Attachments to City Exhibit 3 – Site Plan, Aerial Map and Aerial Map with Amendment). This project is being considered as an amendment to the previous Conditional Use Permit (#08-1395) which was considered as a Level III review pursuant to Section 7-5-9(a)(1)b. of the Unified Development Ordinance (UDO), which states “properties located within 1,500’ of each other, under the same ownership and/or developed by the same developer over a period of 3 years or less shall be considered to be one development and reviewed as such.”

The project site is a leased portion of a 535 acre parcel (according to submitted site plans) containing the Asheville Regional Airport. The site is located at the northwest corner of Wright Brothers Way and Lindbergh Lane, north of the Asheville Regional Airport passenger terminal and the previous hangar project. The site and surrounding properties are zoned Industrial. The applicant is proposing to construct a 23,100 square foot aircraft storage hangar with a 5,500 square foot office space. The structure will be 38 feet in height (Attachment to City Exhibit 3 – Conceptual Site Layout).

Landscaping on the site includes a street buffer, street trees along Wright Brothers Way, vehicular use and building impact landscaping. A small parking lot is included and plans as proposed include 44 spaces, which exceeds the maximum parking range by 14 spaces, however staff is supportive of this excess as the lot will accommodate not only the new structure but also supports other buildings in the vicinity.

Ordinarily this project would be considered as a Level 1 on its own, however due to Section 7-5-9(a)(1)b. listed above and the projects approved in the past three years (Level 1 - May 2007; Level 2 - August 2005; Level 2 – March 2005; CUP – May

2008), this proposal is being considered as an amendment to the previous CUP.

City Council must take formal action as set forth in Section 7-5-5(e)(3) of the UDO, and must find that all seven standards for approval of conditional uses are met based on the evidence and testimony received at the public hearing or otherwise appearing in the record of this case pursuant to Section 7-16-2(c). Staff's review indicates that all seven standards are met as proposed in the site plan.

1. That the proposed use or development of the land will not materially endanger the public health or safety.  
*The project will meet State building code requirements and will be reviewed in detail by the Technical Review Committee to ensure compliance with safety requirements.*
2. That the proposed use or development of the land is reasonably compatible with significant natural or topographic features on the site and within the immediate vicinity of the site given the proposed site design and any mitigation techniques or measures proposed by the applicant.  
*All land in the immediate vicinity of the site is also operated by the Asheville Regional Airport and supports private and public aviation. The proposed airplane storage hangar and FBO will support and complement adjacent uses. There are no significant or topographic features on the site that raise any conflict other than the need to plant some of the required landscaping offsite, due to the nature of the bulk of the parcel as paved apron area for flight craft.*
3. That the proposed use or development of the land will not substantially injure the value of adjoining or abutting property.  
*Abutting property is also owned by the Asheville Regional Airport. The proposed airplane storage hangar and FBO supports and complements the existing uses, especially due to existing storage hangars being currently filled to capacity. It should not injure the value of abutting or adjoining property.*
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.  
*The proposed airplane storage hangar and FBO is similar to other storage hangars in the immediate vicinity and is compatible with the adjacent public airport. This proposal is in harmony with the scale, bulk, coverage, density and character of the other uses in the area.*
5. That the proposed use or development of the land will generally conform to the comprehensive plan, smart growth policies, sustainable economic development strategic plan and other official plans adopted by the City.  
*The 2025 Plan identifies that the airport is a "major economic generator for the community, with an estimated \$199.8 million in annual direct, indirect and multiplier benefits, creating an estimated 2,956 jobs." Improvements to the airport, such as this one, assist in maximizing the efficiency and success of this regional transportation hub. General aviation additions are specifically stated as a needed long-term improvement of the Plan (pg. 146). Improvements to the Asheville Regional Airport indirectly support the City's goals relating to Economic Development and Sustainability, as maximizing the efficiency of the airport will make it easier for visitors (and residents) to travel to and from the area.*
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 hangar and FBO is located just off I-26 at the Airport Road exit within the Asheville Regional Airport, which places the project in an easily accessible and appropriate location. The project has been reviewed by the Technical Review Committee and has been found to have adequate access to infrastructure.*
7. That the proposed use will not cause undue traffic congestion or create a traffic hazard.  
*Based on the proposed use of the subject project, it is reasonable to conclude that it would probably generate very little new traffic. The project will provide basic office use and covered storage for airplanes and it will more than likely serve the airplanes that already exist. Therefore, the overall traffic impact in the immediate area of the subject project should be minimal.*

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

As an amendment to a Conditional Use Permit, this project was not required to be reviewed by the Planning & Zoning Commission. It was approved with conditions by the Technical Review Committee on June 16, 2008.

Pros:

- Proposal contributes to the efficiency of operations at the Asheville Regional Airport.
- Parking lot will serve the needs of other existing storage hangars on the site and assist in complying with federal regulations.

-  
Con:

- None identified

Staff recommends approval of the airplane storage hangar and fixed base operation subject to the standard conditions.

Mr. Alan Ditmore spoke against the amendment to the conditional use permit in that aviation is doomed as it wastes tremendous amounts of oil.

Mayor Bellamy closed the public hearing at 6:07 p.m.

After finding that the request is reasonable based on information provided in the staff report and stated in the staff recommendation, Councilman Newman moved to adopt Ordinance No. 3641 to approve the amendment to the Conditional Use Permit adopting the proposed master plan for the Landmark Aviation FBO & Aircraft Hangar, subject to the following standard conditions: (1) The project shall comply with all conditions outlined in the TRC staff report; (2) All site lighting must comply with the City's Lighting Ordinance and be equipped with cut-off fixtures and directed away from adjoining properties and streets. A detailed lighting plan will be required upon submittal of detailed plans to be reviewed by the Technical Review Committee; (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 Russell and carried unanimously.

#### **ORDINANCE BOOK NO. 25 – PAGE 9**

#### **B. PUBLIC HEARING TO CONSIDER AN AMENDMENT TO THE UNIFIED DEVELOPMENT ORDINANCE FOR THE PURPOSES OF FILLING IN MISSING INFORMATION, CORRECTING MISTAKES, RESOLVING DISCREPANCIES AND CLARIFYING THE ORDINANCE AS IT RELATES TO SIGN REGULATIONS**

#### **ORDINANCE NO. 3642 - ORDINANCE AMENDING THE UNIFIED DEVELOPMENT ORDINANCE FOR THE PURPOSES OF FILLING IN MISSING INFORMATION, CORRECTING MISTAKES, RESOLVING DISCREPANCIES AND CLARIFYING THE ORDINANCE AS IT RELATES TO SIGN REGULATIONS**

Mayor Bellamy opened the public hearing at 6:08 p.m.

Urban Planner Julia Cogburn said that this is the consideration of many amendments to the Unified Development Ordinance (UDO) for the purposes of filling in missing information, correcting mistakes, resolving discrepancies, and clarifying the ordinance as it relates to sign regulations. This public hearing was advertised on July 11 and 18, 2008

Working with the UDO on a daily basis, the Planning and Development staff has noted a number of instances where the ordinance contains discrepancies, is incomplete, or needs clarification. Staff compiles these issues as they are noted and regularly proposes amendments to correct these situations and to make the UDO a clearer document for staff and public use. She reviewed the various set of amendments which deal with sign regulations.

Regarding the Strategic Operating Plan, this ordinance supports the Council goal of completing UDO amendments to improve clarity and address community goals.

Pros:

- Codifies past staff interpretations on issues concerning sign standards.
- Adds language to address sign regulations on which the code is now silent.
- Adds language to aid in clearer enforcement actions.
- Changes standards to make consistent with other City regulations.

Con:

- None Noted.

The Planning and Zoning Commission of the City of Asheville, at a meeting on July 2, 2008, unanimously (6-0) recommended that City Council adopt the ordinance amending Chapter 7 of the Code of Ordinances of the City of Asheville with one minor clarification. No one spoke on the proposed amendment.

-

City staff recommends City Council adopt the amendments to the UDO for the purposes of filling in missing information, correcting mistakes, resolving discrepancies, and clarifying the ordinance as it relates to sign regulations.

Mayor Bellamy closed the public hearing at 6:15 p.m.

Throughout discussion regarding the various amendments, the following two amendments were agreed upon by the majority of Council: (1) In Section 7-13-02 (d) (1), Signs Exempt from Permit Requirements, Real Estate Signs be amended by adding the following sentence at the end of (1): "A minimum setback of five (5) feet is required."; and (2) Section 7-13-3 (3), Signs Prohibited in All Zoning Districts, Signs on Vehicles, be amended by deleting the last sentence ("Such vehicles must also be used periodically during the normal course of business") and replacing it with the following: "Such vehicles must also be used weekly during the normal course of business." (underlining denotes changes)

Councilman Newman moved for the adoption of Ordinance No. 3642, with the two amendments noted above. This motion was seconded by Councilwoman Jones and carried on a 4-3 vote, with Mayor Bellamy, Councilman Mumpower and Councilman Russell voting "no."

City Attorney Oast noted that because of the vote, this ordinance would need to come back to Council at their next formal meeting for a second and final reading.

#### **ORDINANCE BOOK NO. 25 – PAGE**

#### **C. PUBLIC HEARING TO CONSIDER AN AMENDMENT TO THE UNIFIED DEVELOPMENT ORDINANCE TO CREATE NEW ALLOWANCES FOR THE EXPANSION OF EXISTING OR PLANNED GATED COMMUNITIES**

#### **ORDINANCE NO. 3643 - ORDINANCE AMENDING THE UNIFIED DEVELOPMENT ORDINANCE TO CREATE NEW ALLOWANCES FOR THE EXPANSION OF EXISTING OR PLANNED GATED COMMUNITIES**

Mayor Bellamy opened the public hearing at 6:31 p.m.

Assistant Planning & Development Director Shannon Tuch said that this is the consideration of many amendments to the Unified Development Ordinance (UDO) to create new allowances for the expansion of existing or planned gated communities. This public hearing was advertised on July 11 and 18, 2008

Ms. Tuch said that this amendment is brought forward for your consideration at the request of Biltmore Farms. In 2007, City Council reviewed and approved a prohibition on gated communities in Asheville's jurisdiction. Once made effective, this prohibition applied to all properties not already developed as gated communities or otherwise approved and permitted as a gated community; the prohibition did not contemplate property that was in possession, marketed, or otherwise encumbered for the purpose of developing or expanding a gated community. This amendment seeks to offer relief for those rare instances. Staff is only aware of two situations where this amendment would be exercised and they are both Biltmore Farms developments.

The amendment would add the following explicatory sentence to the following prohibited use: "Gated Communities. This shall not include those gated communities lawfully established prior to June 12, 2007, or extend to those properties acquired as part of such communities prior to June 12, 2007, provided it can be demonstrated that these properties were included in a documented community master plan."

Regarding the Strategic Operating Plan, this report's recommendation most appropriately addresses the goal of *sustainability* by supporting a variety of housing choices.

#### Pros:

- Accommodates a legitimate economic interest and expectation
- Supports another form of housing and community choice for residents

#### Cons:

- Somewhat contrary to the prohibition – allows for the expansion of gated communities that are not approved or otherwise permitted
- Documenting ownership of property and record of master plan can prove challenging and may be subject to appeal

The Planning & Zoning Commission reviewed this amendment at their July 2, 2008, meeting where it was approved unanimously by a 6-0 vote, with one member absent.

Supporting this amendment will have a positive fiscal impact through higher valuations of new properties that are supported minimally by City services.

City staff recommends City Council adopt the amendment to the UDO to create new allowances for the expansion of existing or planned gated communities.

Mr. Alan Ditmore felt there are only two groups that have the need for gated communities for heightened security, those being abortionists and gays.

Mr. Chad Lloyd, representing Biltmore Farms, spoke in support of this proposed amendment and explained how this amendment is necessary to prevent an unfair and injurious application of the existing ordinance to neighborhoods, homeowners and developers who have a legitimate economic, personal, health and welfare interest in preserving their gated communities as they were when they were proposed, developed (and continue to be developed), sold (and continue to be sold) and occupied.

Mr. Jesse Junior was concerned about what a gated community says about Asheville.

Mayor Bellamy closed the public hearing at 6:40 p.m.

Councilman Newman moved for the adoption of Ordinance No. 3643. This motion was seconded by Vice-Mayor Davis and carried unanimously.

## **ORDINANCE BOOK NO. 25 – PAGE**

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

#### **A. MOTION TO ACCEPT THE WATER LINE EXTENSION INCENTIVES PARTICIPATION AND EVALUATION FORM FOR AFFORDABLE HOUSING AND INFILL DEVELOPMENT**

Water Resources Director David Hanks said that on November 27, 2007, City Council approved participation in funding water line upgrades and/or extensions for promoting affordable housing and infill development in areas where the current water lines or no water lines exist to support new development. At that time, Council directed the Sustainability Advisory Committee on Energy and the Environment (SACEE) to review the form and add energy and environmental elements to the proposed form.

After a sub-committee of SACEE drafted changes to the original form (with informal approval), on February 29, 2008 Water and Public Works staff met with representatives from Mountain Housing Opportunities, Habitat for Humanity and Pisgah Legal Services to review the SACEE's draft form and scoring criteria. Based on these stakeholder's input, staff made further revisions to the form to include scoring 'weights' which provide a flexible means to attain necessary points. Subsequent follow up dialogue never resulted in unanimous consensus by the stakeholders.

On June 13<sup>th</sup> staff presented the revised form to the full SACEE for review and disposition. They added areas for smart growth, affordability, water conservation and energy efficiency and recommends acceptance of the participation and evaluation form. Following discussion the SACEE unanimously approved the form as revised for presentation to Council.

"SACCE supports the Water Line Application and Evaluation Form for Affordable Housing and Infill development in recognition that long term community sustainability involves economic, environmental, and social considerations and that this form provides a good first step towards balancing the aforementioned tenants of sustainability."

On June 19<sup>th</sup> staff provided the revised form to the Mayor's Affordable Housing Taskforce for review and comment. The Task Force provided no comments or questions regarding the form.

This action complies with the City Council Strategic Operating Plan in that it addresses the following goals: (1) Pursue strategies to increase the supply of sufficient, safe and affordable workforce housing opportunities; (2) Reduce energy consumption in privately owned buildings; and (3) Promote sustainable, high-density, infill growth that makes efficient use of existing resources

-  
Pro:

- This application and evaluation form will address affordability of projects, land use, water conservation and energy efficiency of new projects.



Con:

- These requirements could add cost to projects which could affect the affordability of housing units.

The fiscal impact is \$500,000 annually to the Water Fund.

Staff recommends City Council accept the Water Line Cost Participation Application and Evaluation Form

Ms. Cindy Weeks, representing Mountain Housing Opportunities, supported the program and said that if the program is approved, they plan to use the proceeds, they get through the incentive monies, to increase the affordability of their units. She did have some mixed feelings about the results, especially in the definitions of affordable and green building, but staff has made numerous compromises. She felt that with this point system, there will be some changes that need to be made as they move forward. She asked for Council's consideration, if there are adjustments to the point system or some definitions after approved, that it be allowed to be done by the Housing & Community Development Committee.

Councilwoman Cape said that the Housing & Community Development Committee talked about the various incentives that were put forward. And, the SACEE Committee is looking at incentives for energy efficiencies. She felt this document is a good start but it's not the end product. She felt the end product will be a comprehensive program that offers a variety of incentives and rebates and supports achieving the strategies Council has put forward. Those strategies are not only affordability and green, but safety incentives as well.

Councilman Mumpower could not support the motion as he felt the water customers will be paying for Council initiatives.

Councilwoman Jones felt the City Council owns their own water system and they can promote the public goals – one of which is affordable housing. She felt that one of the biggest barriers for affordable housing is the running of water lines. She also pointed out that one of the best things we can do for the environment and sustainability of our community is to be able to build closer in, so we are not traveling back and forth. She hoped this program will be a model for other communities in North Carolina.

Councilman Newman supported the program as well in that people want to see Asheville remain a place for people who work here to live here.

Vice-Mayor Davis supported the program but noted why there may not have been consensus on some of the items. If the program is approved, he asked that staff track the performance of the program to see if more units are on the ground and that this issue be revisited in one year to see that progress.

Councilwoman Cape moved for the adoption of the Water Line Cost Participation Application and Evaluation Form and that staff track the performance of the program to see if more units are on the ground and that this issue be revisited in one year to see that progress. This motion was seconded by Councilwoman Jones and carried on a 5-2 vote, with Councilman Mumpower and Councilman Russell voting "no."

**B. RESOLUTION NO. 08-159 - RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE A CONTRACT WITH CORT ARCHITECTURAL GROUP, P.A. TO PROVIDE CONSTRUCTION PLANS AND DOCUMENTS, AND CONSTRUCTON ADMINISTRATION SERVICES TO REPLACE THE EXISTING ROOF ON THE CIVIC CENTER ARENA AND CONCOURSE WITH AN ENVIRONMENTALLY SENSITIVE HIGH EMISSIVITY ROOF**

Director of Transportation and Engineering Cathy Ball said that this is the consideration of a resolution authorizing the City Manager to execute a contract with Cort Architectural Group, PA in the amount not to exceed \$132,099 plus a contingency of \$20,000 to provide construction plans and documents, and construction administration services to replace the existing roof on the Civic Center arena and concourse with an environmentally sensitive high emissivity roof.

In July 2007, Council authorized Cort Architectural Group, PA to complete a structural analysis to determine if the existing truss system on the Civic Center arena and concourse could support a living roof. The analysis determined the existing structure could not support the load necessary to support a living roof without additional reinforcement. The cost of the additional reinforcement is estimated at \$36,500. This price does not include the removal of lead primer paint that will need to be removed prior to reinforcing the members. Even with the additional reinforcement, the consultant could not with certainty say that truss tees used would support an intensive living roof.

During this evaluation period, the Civic Center roof has continued to deteriorate. Patrons at several events over the past few months have been relocated due to leaks in the roof. Due to the need to replace the Civic Center roof as soon as possible, staff recommends that construction plans and documents be completed to begin the replacement of the roof. Staff recommends

that the existing roof be replaced with an environmentally sensitive high emissivity roof.

The Civic Center Commission unanimously approved the resolution.

This recommendation complies with City Council's 2008-09 Strategic Plan by providing a green alternative roof option and sustainability of addressing capital needs of the Civic Center.

Pros:

- The development of the plans and specifications can begin within the next four weeks. The construction phase of the project could begin spring 2009, pending the scheduled events at the Civic Center.
- The cost of the project continues to increase due to rising oil prices. Expediting the project will help keep these increases to a minimum.
- An environmentally sensitive high emissivity roof reflects light thus reducing cooling costs.
- The recommended roof decreases the heat island effect in downtown.
- A living roof is expected to cost an additional \$1.3 million, which is not currently budgeted.

Con:

- Staff had hoped to replace the existing roof with a living roof. Due to the uncertainty of our ability to structural support a living roof and the continued deterioration of the existing roof, we recommend moving forward with the environmentally sensitive high emissivity roof.

Funds for the development of the construction plans, specifications and construction administration have been budgeted in the Civic Center Capital Budget.

City staff recommends City Council consider of a resolution authorizing the City Manager to execute a contract with Cort Architectural Group, PA in the amount not to exceed \$132,099 plus a contingency of \$20,000 to provide construction plans and documents, and construction administration services to replace the existing roof on the Civic Center arena and concourse with an environmentally sensitive high emissivity roof.

Mr. Alan Ditmore spoke against the resolution in that the building is for entertainment which is not a human need. He felt the site should be used for high density affordable housing.

Mr. Dennis Justice supported the resolution. He felt that regardless of what is done with the facility, the roof has to be replaced.

Councilwoman Cape was frustrated that it has taken a year to have someone look at the question of whether it was feasible for a green roof on the Civic Center. In addition, from the beginning no one thought an extensive roof would work and always believed if there was going to be a green roof, it would be a light-weight green roof. And, to have this report come back and say it won't support an extensive roof was nothing new. She felt that green roofs are seen as a viable an important resource in many communities. In the future, she hoped that when Council asks for a fair analysis to come back, that it be done in a timely fashion. She would continue to push for new technologies to see if they are applicable in our community.

In response to Councilman Mumpower, Mr. John Cort, representing Cort Architectural Group, P.A., explained the different kinds of roofs.

In response to Councilman Mumpower, Ms. Ball said that the City has spent \$18,000 (this contract with Cort Architecture) on studies related to a living roof. Regarding delays, she said there was about a 4-month delay in getting the contract to Mr. Cort to execute and the green roof issue has taken approximately six months.

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

Councilman Russell moved for the adoption of Resolution No. 08-159. This motion was seconded by Vice-Mayor Davis and carried unanimously.

**RESOLUTION BOOK NO. 31 – PAGE 259**

**C. DIRECTION FOR NEXT STEPS IN THE CITY-OWNED PROPERTY REQUEST FOR PROPOSAL PROCESS**

Economic Development Director Sam Powers said that this is the consideration by City Council of direction for next steps in the City owned property Request for Proposals (RFP) process for Eagle Market properties and for Park Maintenance properties.

The City has engaged in a Request for Qualifications/Proposals (RFQ/RFP) for potential redevelopment of three city owned/controlled properties to achieve strategic economic and community development goals. At the April 22, 2008, City Council meeting, staff was directed to proceed with negotiations for a draft development agreement on the Haywood Street properties. Staff expects to return to Council in the next 90 days with an update on Haywood Street site. At the April 22<sup>nd</sup> meeting Council also directed staff to continue due diligence on the Eagle Market site and the Park Maintenance site. Status and recent activities are outlined below.

The RFP process addresses multiple goals of the 2008-09 Strategic Plan. Specific goals include: (1) Promote sustainable, high density infill growth that makes efficient use of existing resources; (2) Develop and implement the comprehensive affordable housing plan and proactively pursue strategies, including completing the city-owned land redevelopment process, to increase the supply of workforce housing; (3) Support diversified job growth and small business development; (4) Reduce energy consumption in privately owned buildings; and (5) Increase downtown cleanliness and beautification efforts.

Pros:

- Provides reinforcement to the RFP process.
- Proposals meet multiple Council Strategic Goals.
- Proposals meet multiple goals of 2025 Plan.
- Job creation (construction and permanent).
- Proposals received are consistent with Asheville's moderate, stable growth market.
- Proposals received are in the small to mid-scale range.

Cons:

- Extends the time frame for possible work force housing at Park Maintenance site.
- Cost-benefit of relocation of municipal facilities.

There is no immediate impact. Intermediate and long term impacts include: (1) Tax base enhancement by returning public sites to private sector; (2) City Council has indicated that proceeds from sale of land be directed to provide workforce housing opportunities; and (3) Relocation of existing city facilities at Park Maintenance to other city property will require up fit for Parks Department use, but will allow site development thereby eliminating negative equity of Park Maintenance site.

City staff recommends City Council approve a motion to move forward with recommended next steps: (1) Allow staff and Eagle Market Street Development Corporation (EMSDC) to enter negotiations with Eagle Market Renaissance LLC to draft a development agreement that outlines roles and responsibilities of City, EMSDC, and developer Eagle Market Renaissance; and (2) Allow staff to enter into negotiations with MHO to draft a development agreement, including a Purchase and Sale Agreement, that outlines roles and responsibilities of City and MHO.

Councilwoman Cape moved to excuse Councilwoman Jones from participating in the Eagle-Market Street properties matter due to a conflict of interest. This motion was seconded by Councilman Mumpower and carried unanimously. At this time, Councilwoman Jones left the Chamber.

Eagle-Market Street Properties: The development group, Eagle Market Renaissance LLC, (EMR) has proposed a mixed use residential project with street level commercial sites. The proposal is an intensified use of the existing site. There would be limited on site parking. The developer proposes historic preservation of existing facades, and to provide retail space to anchor the cultural heritage of the area. The proposal is responsive to the RFP in the following criteria: diversity of development team; proposed sustainable job creation and business incubator space; equity involvement with Eagle-Market Street Development Corporation (EMSDC); enhanced tax base; increased site density.

In summary, it has (1) mixed use, multi-family residential with street-level commercial; (2) anchors cultural heritage district; (3) African American development team; (4) EMSDC directly involved in developer discussions; (6) equity partnership between EMR and EMSDC; and (7) desire to use Section 108 and Community Development Block Grant (CDBG) funds.

Mr. Alan Ditmore felt that if developments are taller, they could provide more affordable housing with more mixed income.

Councilman Mumpower felt that due to the economic downturn and real estate market he felt we may be setting ourselves up for failure.

In response to Councilman Mumpower, Mr. Powers said that the amount of staff time involved will probably be pretty intensive. They do, however, understand this has been a high priority of Council for a long time and it's important to the community and residents of the South Pack Square area.

In response to Vice-Mayor Davis, Mr. Powers said that they will continue to conduct and open and inclusive project.

In response to Mayor Bellamy, Mr. Powers said that the City has up-to-date information posted on their website regarding these projects and initiatives.

Councilwoman Cape moved to allow staff and Eagle Market Street Development Corporation (EMSDC) to enter negotiations with Eagle Market Renaissance LLC to draft a development agreement that outlines roles and responsibilities of City, EMSDC, and developer Eagle Market Renaissance. This motion was seconded by Councilman Newman and carried on a 5-1 vote, with Councilman Mumpower voting "no" (with Councilwoman Jones being excused). At this time, Councilwoman Jones returned to the Chamber.

Councilman Mumpower moved to excuse Mayor Bellamy from participating in the Park Maintenance properties matter due to a conflict of interest. This motion was seconded by Councilwoman Cape and carried unanimously. At this time, Mayor Bellamy turned over the gavel to Vice-Mayor Davis to conduct the remainder of the meeting.

Park Maintenance Properties: This is an optimal site for workforce housing to support and link downtown, the hospital/community college district, and the river area due to the land cost basis and consistency with the neighborhood plan. The City received a proposal on May 30 from Mountain Housing Opportunities (MHO) to develop a mixed income, multifamily residential project with limited street side commercial/community space. The residential mix would include rental and ownership. There would be potential for future phases of additional units. MHO is proposing green and sustainable design. The proposal is responsive and meets adopted neighborhood plans.

In summary, it has (1) mixed income, multi-family residential with limited street-side commercial; (2) 54 residential units (for rent and potentially for sale affordable workforce and market rate housing); (3) potential for additional units in future phase; (4) goals for green and sustainable design; (5) community room planned; (6) sustainable job creation; (7) local business involvement; and (8) consistent with West End/Clingman Avenue Neighborhood Citizens Master Plan and Clingman Forest Greenway Plan.

When Vice-Mayor Davis asked for public comments, he received none.

Councilman Mumpower reiterated his earlier comments relative to the economic downturn and real estate market.

There was a brief discussion, initiated by Councilman Mumpower, about relocating the existing Park Maintenance facilities to another location. Mr. Powers responded that staff will be making a presentation on August 19 regarding all the City's facilities, with a specific staff recommendation to move forward with relocating the Park Maintenance facilities to property already owned by the City at the Armory site on Shelburne Road.

Councilman Mumpower did not see the urgency of a Council decision on surrendering this property to a development initiative, however good, before we know the details of the proposed transition of the facility.

In response to Councilman Russell, Mr. Powers explained that part of the Park Maintenance site has topography challenges. How we utilize the remainder of the land for future phases is very much a part future discussions. He did note that part of it has been proposed for the Clingman Forest Greenway.

Councilman Russell felt ideally it would be nice to get more than just 50 units on this large site. Due to our economic climate, he wondered if this is something that should be tabled for a couple of years.

Councilman Newman supported staff moving forward on this good opportunity for quality infill development.

In response to Vice-Mayor Davis, City Manager Jackson said that the City is not boxing itself in with moving forward to the next step and that City staff is prepared to discuss the facilities master plan in August.

Councilwoman Cape moved to allow staff to enter into negotiations with MHO to draft a development agreement, including a Purchase and Sale Agreement, that outlines roles and responsibilities of City and MHO. This motion was seconded by Councilwoman Jones and carried on a 4-2 vote, with Councilman Mumpower and Councilman Russell voting "no" (with Mayor Bellamy being excused).

**VI. NEW BUSINESS:**

**VII. OTHER BUSINESS:**

**A. CLAIMS**

The following claims were received by the City of Asheville during the period of June 13 - 26, 2008: David Albertson (Water), Bruce Fitchett (Fire), Rod Brombacher (Police), Hugh R. Trent (Transit Services), Brenda Banks (Parks & Recreation), Timothy J. Carter (Sanitation), Ashley Bolen (Transit Services), Marian Chambers (Transit Services), Elizabeth Maskell (Police), AT&T (Water), Terry Clark (Streets), Cindy Plemmons (Streets) and Valarie Menard (Streets).

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

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

Ms. Pam Stewart presented Council with several concerns regarding the operation of the Asheville Transit System, summarized as follows: (1) Asheville Transit System is operating understaffed with presents concerns; (2) there is a serious lack of communication between the Transit Director and her staff and the transit staff; (3) bus operators are expected to maintain the time schedule on routes that are too tight to make safely; (4) members of City staff are improperly involving themselves in personnel issues concerning Union Represented Transit employees; and (5) the Transit Director, Transit Manager and Parking Manager met once a week over the past three years to report matters of concerns, but this has not happened with new Transit Director. She then described maintenance concerns including (1) upper side of Transit Center is sinking; (2) concrete in bus washer at the Haywood Street garage is deteriorating; (3) roof in the shop area of the Haywood Street garage facility needs to be replaced; and (4) damaged bus stops due to lack of communication. In addition, she raised several personnel issues regarding the Asheville Transit System.

Councilman Mumpower said that Mayor Bellamy has scheduled the transit issues to be discussed at the September 16 worksession but felt that due to the urgency of these items, that Council give some consideration to advancing this matter.

City Manager Jackson said that City staff has attempted to open the lines of communication. He said that after the presentation on June 24, 2008, staff provided Council with follow-up memo to the transit issues. Because he has not received a copy of what Ms. Stewart just presented to Council, he cannot respond without consulting with the Director of Transportation and Engineering to see if there are new issues, ones that have been addressed, if there are policy matters; or matters of contract administrative procedures. He is, however, committed to a timely response. Once he receives a copy of the material presented, he will delineate those things that are time sensitive, urgent and operational. Regarding the policy related matters, he will leave it to the Mayor's judgment as to whether or not those should be combined with the policy briefing on September 16.

Mr. Mike Fryar outlined his concerns while presenting Council with the various contracts and documents regarding the transit management contract. He then questioned a Transit Committee member's address being located in Buncombe County and not in the City of Asheville.

City Manager Jackson felt there are three issues involved (1) the verification of Mr. Yuri Koslen address (which will be addressed); (2) the contractual framework and the authorization to extend the contract (which is being addressed with the City Attorney); and (3) the protest in the middle of the contract process (which caused the City to conduct individual opportunities for the 3 finalists to make presentations which resulted in a changing of the ranking of the companies).

After a brief discussion, Vice-Mayor Davis asked that the City Manager address these matters honestly, fairly and expeditiously.

**IX. ADJOURNMENT:**

Vice-Mayor Davis adjourned the meeting at 8:37 p.m.

---

CITY CLERK

---

MAYOR