

Tuesday – September 23, 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

Mayor Bellamy led City Council in the Pledge of Allegiance.

## INVOCATION

Councilman Newman gave the invocation.

## FUEL SUPPLY UPDATE

Chief Financial Officer Ben Durant updated City Council on the fuel supply. He explained the conservation measures for Level 1 (1) no disruption of core City services; (2) delay non-essential travel when possible; and (3) consolidate services where possible. Level 2 conservation measures include (1) no disruption of police, fire and rescue, sanitation, and transit services; and (2) non public safety related services will be reduced (a) inspectors carpooling to work sites; (b) planning field inspections are delayed; (c) suspension of street cleaning and tree crew work; (d) yard waste, bulky item and white goods collection will be suspended; (e) parks center programs; and (f) minimal staffing. Level 3 conservation measures include reducing services in order to fully focus on public safety and health as well as transportation.

Marketing transit and alternatives include (1) press release on 9-15-08 and 9-22-08 (all outlets); (2) contacted television highlighting public transit; (3) newspaper op-ed submitted; (4) website – Asheville Transit is featured; (5) website – All current service information posted; (6) City Channel – All transit and other information current; (7) Share the Ride NC; and (8) Emergency Ride Home.

Regarding the Asheville Transit ridership, (1) ridership numbers remain strong; (2) arterial route ridership up on Merrimon Avenue, Hendersonville Road, and Tunnel Road; and (3) ridership analysis has been provided.

The next steps are to monitor, fuel supply management, conservation and public relations.

Mr. Mack Sulley, representing the Buncombe County Emergency Management Services, explained what Buncombe County is doing regarding fuel conservation.

Mr. Allen Johnson, representing the Buncombe County Schools, updated Council on how the Buncombe County Schools are implementing conservation measures.

Mr. Randy Flack, representing Congressman Heath Shuler's Office, explained how Congressman Shuler has been making contact with all the counties in Western North Carolina to keep them updated regarding the status of the Colonial Pipeline (which supplies Spartanburg). Congressman Shuler spoke with the Dept. of Energy, Governor Easley's Office, the Attorney General's Office and Mr. Sam Whitehead who is the President of Colonial Oil. The fuel supply is getting better, although slowly. They hope within a week the pipeline will be running at full capacity.

Mayor Bellamy spoke with representatives from Senator Burr's office as well. They have contacted the distributor in Wilmington to see if we can get additional tankers into our community. She also contacted the Assistant Director of the U.S. Dept. of Energy to see what he could do to get additional fuel to our community. In addition, she too talked with Mr. Whitehead and the two lines that serve our area are running at reduced rates and Asheville is on the lower end. She explained that Wilco-Hess continues to get gas as they are connected to a larger oil company coming out of Wilmington. She said that we do not have any oil companies in our community. The biggest oil company in our area is Wilco-Hess and they are serviced by Wilmington. The three oil companies in our area have been in our community for many years and they are not here to price gauge. She hoped these reports will clear up the misinformation circulating in our community. She stressed the need to be civil to each other during this period of time as we are all in this together. Since our community will not have full capacity for 7-10 days, she urged the community to make concerted efforts to conserve fuel. The City Council wants business as usual in our City and not for students

to miss class. She asked that City staff continually update the City's website in order to give our community up-to-date and accurate information.

## **I. PROCLAMATIONS:**

### **A. PROCLAMATION PROCLAIMING OCTOBER 2008 AS "NATIONAL ARTS & HUMANITIES MONTH"**

Councilwoman Jones read the proclamation proclaiming October, 2008, as "National Arts & Humanities Month" in the City of Asheville. She presented the proclamation to Ms. Dana Irwin, member of the Public Art Board and Ms. Barb Lothrop, Chair of the Urban Trail Committee who briefed City Council on some activities taking place during the month.

### **B. PROCLAMATION PROCLAIMING OCTOBER 5-12, 2008, AS "MENTAL ILLNESS AWARENESS WEEK"**

Mayor Bellamy read the proclamation proclaiming October 5-12, 2008, as "Mental Illness Awareness Week" in the City of Asheville. She presented the proclamation to Mr. James Pitts and a member of the National Alliance on Mental Illness, who briefed City Council on some activities taking place during the week.

Mayor Bellamy noted that the City has invested in the Neil Dobbins Center that is providing assistance to individuals. In addition, the City has also invested in a crisis intervention training program for our police officers.

### **C. PROCLAMATION PROCLAIMING OCTOBER 4, 2008, AS "AIDS WALK DAY"**

Vice-Mayor Davis read the proclamation proclaiming October 4, 2008, as "AIDS Walk Day" in the City of Asheville. He presented the proclamation to Ms. Keisha Hightower who briefed City Council on some activities taking place during the day.

## **II. CONSENT AGENDA:**

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

### **A. APPROVAL OF THE MINUTES OF THE FORMAL MEETING HELD ON SEPTEMBER 9, 2008, AND THE WORKSESSION HELD ON SEPTEMBER 16, 2008**

### **B. RESOLUTION NO. 08-194 – RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A CONTRACT WITH H & M CONSTRUCTORS TO SUPPLY, CONSTRUCT AND INSTALL A NEW CHILLDER UNIT FOR CITY HALL**

Summary: The consideration of a resolution authorizing the City Manager to enter into a contract with H & M Constructors to supply, construct and install a new chiller unit for City Hall for an amount not to exceed \$206,815.00.

City Council approved \$200,000 in funding for the City Hall chiller replacement as part of the City's Fiscal Year 2007-08 capital improvements budget. As a part of this project, the City hired a firm to complete engineering drawings at a cost of \$13,000. The City then issued a request for proposals for the project and the lowest, responsible bid was received from H & M Constructors for a cost not to exceed \$206,815. Therefore, the total cost of the project, including the engineering drawings, will be \$219,815. The additional \$19,815 that was not included in the initial budget for this project will be taken from the City's FY 2007-08 general building maintenance fund.

This action complies with the City Council Strategic Operating Plan in that it supports and enhances basic city services and is part of the public facilities maintenance 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, construct and install a new chiller unit at City Hall.
- Fulfill commitment to replace aging infrastructure that is failing and cost more every year to maintain.
- Reduce energy consumption.

#### Con:

- The total cost of the project (\$219,815) exceeds the original budgeted amount by \$19,815.

\$200,000 was approved in the City's Fiscal Year 2007-08 capital improvement budget for this project. The additional

\$19,815 needed to complete this project will be taken from the general building maintenance fund that was approved in the City's Fiscal Year 2007-08 budget.

City staff recommends City Council to adopt a resolution authorizing the City Manager to enter into a contract with H & M Constructors to supply, construct and install a new chiller unit for City Hall for an amount not to exceed \$206,815.00.

**RESOLUTION BOOK NO. 31 – PAGE 317**

**C. RESOLUTION NO. 08-195 – RESOLUTION APPOINTING MEMBERS TO THE POLICE OFFICERS AND FIREFIGHTERS DISABILITY REVIEW BOARD**

Summary: The consideration of reappointing members to the Police Officers and Firefighters Disability Review Board.

The terms of Dr. Alexander Maitland, Stephanie Cooper and James Lewis, as members on the Police Officers & Firefighters Disability Review Board, expired on July 19, 2008.

On September 16, 2008, it was the consensus of City Council to instruct the City Clerk to prepare the proper paperwork to appoint Dr. Stephen Hulkower (as the licensed physician); and reappoint Stephanie Cooper and James Lewis to each serve a two year term respectively, terms to expire July 19, 2010, or until their successors have been appointed.

**RESOLUTION BOOK NO. 31 – PAGE 318**

**D. RESOLUTION NO. 08-196 – RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE A LICENSE AGREEMENT WITH NEW CINGULAR WIRELESS PCS, LLC, FOR ANTENNAS AND RELATED EQUIPMENT ON CITY-OWNED REAL PROPERTY AT 36 RESERVOIR ROAD**

**ORDINANCE NO. 3653 – BUDGET AMENDMENT REGARDING THE LICENSE AGREEMENT WITH NEW CINGULAR WIRELESS PCS, LLC, FOR ANTENNAS AND RELATED EQUIPMENT ON CITY-OWNED REAL PROPERTY AT 36 RESERVOIR ROAD**

Summary: The consideration of a resolution authorizing the City Manager to execute a License Agreement with New Cingular Wireless PCS, LLC for antennas at 36 Reservoir Road; and the associated budget amendment, in the amount of \$61,200.

The property at 36 Reservoir Road known as White Fawn Reservoir is on a knoll at the western end of the Beaucatcher Mountain ridge. It has exceptional range for telecommunication with approximately 300° coverage from northeast to west to southeast. Two telecommunication towers are located on the property and the City of Asheville leases antenna space on the towers and ground space for related equipment.

New Cingular Wireless PCS, LLC has offered to enter into a license agreement for antenna space and related equipment on the tower known as the "Lower Tower" which is the smaller tower to the west. New Cingular is an existing tenant on the lower tower, seeking to reinstate the contractual relationship with the City. The proposed License Agreement will enable New Cingular to continue operating their existing equipment at the tower; however, there is a provision, which allows either the Licensor or the Licensee to terminate the agreement upon 180 days notice. The term of the License Agreement will be five (5) years with one renewal period of five (5) years. New Cingular will pay an annual License Fee based on the initial rate of \$30,000 with a 4% increase annually thereafter. Two years of license fees will be collected in advance.

The initial rate was determined by gathering and comparing rate structures used by other municipalities across the state, including the Cary, Hickory, Charlotte and others. Formal findings were presented to the Planning and Economic Development Commission on August 20, 2008. Results indicate that base fee of \$30,000 per annum represents fair market value for this type of installation.

The Notice of Intent to enter into a License Agreement with New Cingular Wireless PCS, LLC was published on September 12, 2008, in the Asheville Citizen-Times. Ten days have passed since the publication and authorization to execute the License Agreement is being requested.

Regarding the City Council Strategic Operating Plan, the strategic tower asset management presents the City with revenue enhancements. These revenue enhancements can help the City's telecommunications operations become more sustainable.

Several new or renewing tenant leases are anticipated in Fiscal Year 2009. A portion of this additional revenue has been planned to underwrite a cost savings plan for the City's own telecommunication operations. Specifically, the City is planning on

utilizing an estimated \$80,000 of these new revenue enhancements to re-locate equipment from the Spivey Mountain site (where the City pays \$29,000 per year with a 7% escalation each year) to the White Fawn site (owned by the City). This re-engineering was proposed in the Fiscal Year 2009 budget, and once implemented, will promote significant cost savings to the City over time. The budget amendment will appropriate \$61,200 into the re-engineering account.

Pros:

- Enhanced revenue through the license fee income
- Maximized vacant space on existing tower infrastructure
- Underwrites long term cost savings plan for telecommunications

Cons:

- None

Fiscal Impact:

- Fiscal Year 2009: \$61,200 revenue
- Fiscal Year 2009: \$61,200 investment programmed to support re-location of City equipment
- Beyond Fiscal Year 2009: Additional revenue stream based on initial rate of \$30,000 per year with 4% escalation per year.
- Beyond Fiscal Year 2009: Resulting savings of initial rate of \$29,000 per year with 7% rent escalations.

City staff recommends City Council adopt (1) a resolution authorizing the City Manager to execute the license agreement with New Cingular Wireless PCS, LLC on behalf of the City of Asheville; and (2) approve associated budget amendment to be used for cost savings plan for telecommunications.

**RESOLUTION BOOK NO. 31 – PAGE 319  
ORDINANCE BOOK NO. 25 – PAGE**

**E. BUDGET AMENDMENT FOR THE PURCHASE OF 20 NEW FAREBOXES FOR THE ASHEVILLE TRANSIT SYSTEM**

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

**F. BUDGET AMENDMENT TO CLOSE OUT LAND ACQUISITION IN RICHMOND HILL**

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

**G. ORDINANCE NO. 3656 – BUDGET AMENDMENT TO INSTALL A TRAFFIC SIGNAL AT THE INTERSECTION OF FAIRVIEW ROAD AND THIRD STREET IN THE OAKLEY COMMUNITY**

Summary: The consideration of a budget amendment, in the amount of 50,000, to install a traffic signal at the intersection of Fairview Road and Third Street in the Oakley community because of a sight visibility problem.

Fairview Road can be classified as a collector-type residential street with a posted speed limit of 30 mph. According to traffic counts that were collected during October 2007, 4,600 vehicles per day use Fairview Road in the immediate area of Third Street and the 85<sup>th</sup> percentile speed for these vehicles is 37.9 mph. Full-turning movement traffic counts were collected at the intersection of Fairview Road and Third Street during November 2007 and these counts determined that about 4,700 vehicles per day were using the subject intersection. During the 12-hour count timeframe from 6:30 am until 6:30 pm, 54 vehicles entered Fairview Road from Third Street, 24 vehicles made a left turn and 30 vehicles made a right turn.

Third Street can be classified as a local-type residential street with a statutory speed limit of 35 mph. It is a dead-end street with an average pavement width of 16 feet and an overall length of 0.28 mile. Third Street provides access to about 21 properties.

According to our records, five angle-type crashes have occurred at the subject intersection during the past year including one crash in 2006 and four crashes in 2007. All of these crashes involved a vehicle attempting to turn left onto Fairview Road that was struck by a westbound vehicle traveling along Fairview Road. One of the crashes involved injuries and the rest were property damage only. A contributing factor to all of the crashes is limited sight distance, which is the primary issue that you and the other residents along Third Street are concerned about and you have suggested a traffic signal as a possible solution. Compounding the limited sight distance is the fact that Third Street intersects Fairview Road on the inside of a horizontal curve. Also, vegetation including mature trees and shrubs, a fence, and parked vehicles contribute to the limited sight distance. The City of Asheville

installed a pair of mirrors at the subject intersection during December 2006 in order to help improve the decision making process for the drivers attempting to enter Fairview Road. I believe the mirrors have been partially successful; however, they are not intended to be used as a long-term solution and four of the angle-type crashes occurred after the mirrors were installed.

Although from a traffic volume standpoint, the nationally recognized traffic signal warrants are not satisfied, the decision to install a traffic signal at the subject intersection was based on several factors, including the fact that a definite crash history exists that could be eliminated and/or minimized with the installation of a traffic signal and that no reasonable alternatives to traffic signal control can be identified that would significantly improve the limited sight distance. Compared to some other traffic-related projects, the subject project was originally listed as a number 5 priority; however, recent conditions have changed that should move the subject project to a number 1 priority. A special needs child now lives along Third Street and is transported on a daily basis to Fairview Elementary School. Due to the limited sight distance at the subject intersection, the bus driver has been directed not to pickup or drop-off the child directly at his/her home but to do so at the intersection. We have contacted the Buncombe County School Bus Transportation staff to confirm this information and they have told us that if a traffic signal is installed, they would then direct the bus driver to go directly to the child's home.

This action complies with the City Council 2008-09 Strategic Operating Plan by protecting the traveling public and giving citizens an opportunity to have safe and reasonable access to and from their homes.

Pros:

- The traffic signal will enable vehicles attempting to enter Fairview Road from Third Street opportunities to make the movements in a safe and reasonable manner.
- An actuated traffic signal will minimize the potential delay to vehicles along Fairview Road compared to a pre-timed traffic signal.

Cons:

- When the traffic signal provides a green indication for the Third Street approach, vehicles along Fairview Road will come to a STOP condition.
- The total cost of the project including survey and design is \$57,275.

The total estimated construction cost is \$50,000 assuming there will be no right-of-way and/or easement issues. The survey and design work was accomplished during Fiscal Year 2007-08 at a cost of \$ 7,275. As mentioned in earlier staff reports, on September 19, 2008, there was \$410,000 available in the General Capital Reserve Fund. The previous appropriations for the fareboxes and the Richmond Hill project, along with this \$50,000 appropriation, will lower the available funds in the General Capital Reserve fund to \$238,316.

Staff recommends that City Council approve a budget amendment, in the amount of \$50,000, from the General Capital Reserve fund to install a traffic signal at the intersection of Fairview Road and Third Street in the Oakley community.

Also, staff encourages review in the coming months for budget planning to accommodate additional projects of this nature.

Mayor Bellamy said that City staff will be bringing back some opportunities for City Council to look at other projects in the community of this nature, as well as an overall policy for items like this.

#### **ORDINANCE BOOK NO. 25 - PAGE**

Mayor Bellamy said that members of Council have been previously furnished with a copy of the resolutions and ordinances on the Consent Agenda and they would not be read.

Mayor Bellamy asked for public comments on any item on the Consent Agenda, but received none.

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

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

##### **E. ORDINANCE NO. 3654 – BUDGET AMENDMENT FOR THE PURCHASE OF 20 NEW FAREBOXES FOR THE ASHEVILLE TRANSIT SYSTEM**

Summary: The consideration of a budget amendment, in the amount of \$233,417, 20% of which will come from the City's capital reserve funds, to purchase twenty fareboxes to replace the existing ones.

City staff has identified the acquisition of new fareboxes as the number one priority in the capital program, after replacement of existing fleet.

The fareboxes are an essential part of operations; they are used to collect the cash fares ensuring a safe environment for drivers and system users. The fareboxes currently installed in City's transit fleet operate with a very simple technology that only receives cash and tickets. Five of the fareboxes installed in the 2006 buses were borrowed from High Point transit system. These fareboxes are smaller than the regular ones and cannot be used in high demand routes because of the lack of capacity to store the fares.

During the last years, Asheville Transit ridership has been growing, and the city has provided diverse alternatives to facilitate the trips, such as 11-ticket booklet, monthly passes and annual passes.

In addition, the city has been promoting very successfully the Passport program of employer-provided passes. Under this program, the only requirement is to show the ID card to the driver, in order to use the bus.

The acquisition of new fareboxes will enhance driver effectiveness and work conditions. Currently the driver is responsible to record all these movements, and count all the passengers who are using the system as well as to identify the programs. The driver has to be able to identify each of the passes and ID cards of riders that are boarding the bus; this task disrupts the driver's ability to focus on driving the bus and ensuring passenger safety.

City staff is proposing to acquire GFI GENFARE CENTSaBill electronic registering fareboxes. This decision was made in conjunction with Transit Operations. The proposed technology stores cash, and accept magnetic swipe cards which will expedite boardings and will increase safety. The farebox system records fares and passenger data and produce accurate and reliable reports about system usage. This technology can be upgraded to issue tickets, handle transfers and read smart cards.

The fareboxes will be acquired through a State contract which expires on September 30, 2009. The use of an existing contract (piggy back) facilitates and expedites the procurement process. The city is required to issue a purchase order for the fareboxes and perform sole source procurement for the software which is not part of the contract. The vendor estimates that production will take four months after receiving the purchase order.

This project will cost \$233,417. The City will fund this project using section 5307 of the Federal Transit Administration which provides eighty percent (80%) for capital projects or \$186,733. The City will be required to provide the remaining twenty percent (20%) of the funding, which will total \$46,684. The City's funding will be taken from the general capital reserve fund which consists of the accumulated savings from capital projects that have been completed and come in under budget. City staff will also apply for a North Carolina Department of Transportation grant to cover ten percent (10%) of the total price. If this grant effort is successful, the City's contribution will be reduced to \$23,342 and the unused funding will be returned to the capital reserve fund.

This action complies with the Strategic Operating Plan in the acquisition of new technology that will support the area of environmental sustainability.

Pros:

- Increases financial reliability and better usage of resources and funds.
- Improves system operation, promoting smoother and faster boardings.
- Produces accurate and reliable passenger data related to usage of the transit system.
- Increases safety.
- Promotes a better work place reducing the driver's stress.
- Expedites the procurement process using the State contract currently in place.
- 80% of the cost will be covered by the Federal Transit Administration.

Cons:

- The City match of \$46,684 was not budgeted in the Fiscal Year 2008-09 budget; therefore, the funding will have to be taken from the City's capital reserve funds, which will reduce the funding available to other projects.

The project cost will be \$233,417, with 80% of this total to be paid by federal funds - FTA section 5307 and 20% by the City. On September 19, 2008, there was \$410,000 in the General Capital Reserve fund. Appropriating the \$46,684 for the fareboxes will reduce this amount to \$363,316.

City staff recommends City Council adopt a budget amendment, in the amount of \$233,417, 20% of which will come from

the City's capital reserve funds, to purchase twenty new fareboxes to replace the existing ones.

Director of Transportation and Engineering Cathy Ball and Interim Transit Director Mariate Echeverry responded to various questions/comments from Councilman Mumpower, some being, but are not limited to: are there other less expensive opportunities to purchase fareboxes; are there different qualities of fareboxes; where do these fareboxes fall in those different categories; how much were the fareboxes that we currently borrow from High Point; does the cost of the farebox include software; why did the City purchase the new buses without fareboxes; and were the drivers of the buses consulted about what kind of farebox works best.

Councilman Newman explained why he felt this is a good investment, especially with the partnerships we are building in the community.

Councilman Mumpower felt our transit system is one of the best social services we have in Asheville, but it is a highly subsidized service and this action represents another increase in that subsidy. He was concerned that we are losing our point of realism in our ability to sustain that subsidy.

Councilman Newman moved for the adoption of Ordinance No. 3654. This motion was seconded by Councilwoman Cape and carried on a 6-1 vote, with Councilman Mumpower voting "no."

#### **ORDINANCE BOOK NO. 25 – PAGE**

#### **F. ORDINANCE NO. 3655 – BUDGET AMENDMENT TO CLOSE OUT LAND ACQUISITION IN RICHMOND HILL**

Summary: The consideration of a budget amendment, in the amount of \$75,000, to amend the annual budget to close out land acquisition in Richmond Hill.

In 2005, the City entered into a contract for the acquisition of real property to facilitate access to the recreation facilities that were under development at Richmond Hill. At the time, those facilities were planned to include athletic fields and a National Guard training center and equipment maintenance facility. The owner of the adjacent property needed for the access was Chris Peterson, and it was part of a larger tract owned by him. As part of the consideration for the access, the agreement provided for the City to provide 20,000 cubic yards of fill material on adjacent property, and to grade and compact it sufficiently to allow for construction of a road. Most of this fill was planned to come from grading and excavating activities on the City's Richmond Hill property, especially the planned athletic fields.

The scope of the Richmond Hill project has been significantly reduced; the training center is reduced in size, and the athletic fields are not being constructed. As a result, the fill material that was to be placed on the adjacent property is not available on site. At this point, fulfilling this term of the agreement would mean trucking the material in, which would be prohibitively expensive (estimates as high as \$200,000) and disruptive for the neighborhood, even if the fill was generated by the City's activities.

In lieu of the City providing the fill, Mr. Peterson has agreed to accept \$75,000 to close this contract out.

Regarding the fiscal impact, \$75,000 is to come from other Capital Projects. As mentioned in the previous staff report for the transit fareboxes, on September 19, 2008, there was \$410,000 available in the General Capital Reserve fund. The previous appropriation for the fareboxes, coupled with this \$75,000 appropriation for Richmond Hill, will lower the available funds in the capital reserve to \$288,316.

#### Pros:

- Closes contract out
- Less cost than actual performance of contract
- Minimizes disruption to neighborhood

#### Con:

- Additional cost in tight budget year

Adoption of the budget amendment is recommended.

Vice-Mayor Davis moved for the adoption of Ordinance No. 3655. This motion was seconded by Councilman Russell and carried on a 4-3 vote, with Councilwoman Jones, Councilman Newman and Councilman Mumpower voting "no."

#### **ORDINANCE BOOK NO. 25 – PAGE**

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

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

#### **A. PUBLIC HEARING TO CONSIDER AN ECONOMIC DEVELOPMENT GRANT TO UNISON ENGINE COMPONENTS (FORMERLY SMITHS AEROSPACE)**

##### **RESOLUTION NO. 08-197 – RESOLUTION AUTHORIZING AN ECONOMIC DEVELOPMENT GRANT FOR UNISON ENGINE COMPONENTS**

##### **ORDINANCE NO. 3657 – BUDGET AMENDMENT FOR ECONOMIC DEVELOPMENT GRANT FOR UNISON ENGINE COMPONENTS**

Mayor Bellamy opened the public hearing at 5:52 p.m.

Economic Development Director Sam Powers said that this is the consideration of a resolution approving a \$236,250 economic development incentive grant to Unison Engine Components; and the corresponding budget amendment in the amount of \$47,250 for the estimated first year's installment of this five-year economic development incentive grant. This public hearing was advertised on September 12 and 19, 2008.

This is consideration for an economic development incentive grant under the City of Asheville Economic Development policy. Unison Engine Components (herein "Unison") operates and maintains a manufacturing facility in Buncombe County substantially all of which is located in the City of Asheville. Unison is proposing new, taxable, capital investment of \$15,000,000 for additional production equipment and facility improvements at the local facility, and has requested consideration for a cash grant under the City of Asheville Economic Development policy. The purpose of this investment is to allow Unison to expand its operations, and is projected to result in the retention of jobs that pay at or above the average wage for Buncombe County.

The City of Asheville proposes to offer Unison a performance-based grant not to exceed \$236,250. The performance-based grant will be paid over a five (5) year period. Payments begin after the investment is made, taxes are paid and verified, and the company requests payment. The amount of the annual payment will take into consideration the estimated annual ad valorem property tax revenue attributable to the capital improvements, and each annual payment is projected to equal approximately 75% of said estimated revenue.

The City will fund the payments from the general fund. The first year estimated payment of \$47,250 will be funded with an appropriation from fund balance; subsequent years' payments will be included in the annual general fund budgets adopted by Council.

The economic development incentive grant to Unison Engine Components ties into City Council's Strategic Operating Plan as it addresses the Affordability Strategic Plan focus area by meeting the objective to support diversified job growth and small business development. The grant also addresses the Sustainability Strategic Plan focus area by promoting sustainable, high density infill development that makes efficient use of existing resources. Staff believes that the project will stabilize and improve the economic prospects of the City and the area.

#### **Pros:**

- Performance driven grant that is distributed after job and investment is achieved;
- Supports job creation and capital investment in manufacturing in Asheville;
- Supports development of an identified economic cluster in the City; and,
- Supports regional and state cooperation in the project.

#### **Con:**

- Grant is formulated based on use of 75% of value of new incremental tax revenue for a five year period.

The project has a positive fiscal impact on tax revenues received by the city. Initially (during the grant period), the city will receive approximately 25% of the new incremental ad valorem revenues from the project, in addition to the current taxes paid by the company. After five years, the City will henceforth receive 100% capture of new taxes.

City staff recommends Council approve the resolution authorizing an economic development incentive grant to Unison Engine Components not to exceed \$236,250 payable in five (5) annual installments, subject to compliance of a performance agreement between the City and Unison Engine Components, and also the corresponding budget amendment in the amount of



\$47,250 for the estimated first year's installment of this economic development incentive grant.

Mr. John Bellows, financial leader at Unison Engine Components, said they have been a part of the Asheville community for over 60 years. Their decision to grow the business is directly related to the quality of the local work force and the incentives not just from the City, but in conjunction with the county, state and other agencies. They are nearly doubling the manufacturing footprint. They have spent over \$2 Million in upgrading the existing facility. To date, we have exceeded the \$15 Million investment and they have plans to make similar investments in the future. They have increased their workforce by approximately 70 employees out of the 200 they originally identified in their goal. They currently have 390 employees in our two facilities. Their business plan is to grow the business approximately 50% and next year they are looking forward to an additional top line growth in the 37% range.

Mr. Jerry Rice questioned how many Unison employees are from Asheville and Buncombe County. He felt that if their employees are from other counties, those counties should be contributing as well.

Mayor Bellamy closed the public hearing at 6:02 p.m.

In response to Councilwoman Jones, Mr. Bellows said that he did not have the exact number of Asheville and Buncombe County employees with him at this meeting; however, he guessed it would be approximately 50% of his workforce. He said he would be happy to provide Council with the accurate information as early as tomorrow.

When Councilman Mumpower asked if Unison uses the E-verify program which is a federal program used for verification of citizenship, Mr. Bellows responded that they use a private agency to perform a detailed background check on all their employees, which check does include citizenship. At Councilman Mumpower's request, Mr. Bellows said that he would be happy to provide him with information on their verification program.

Councilman Mumpower felt this action represents an exercise in corporate welfare and is a special deal for an employer. He felt the City helps businesses best by having a safe, clean and affordable city and not by granting tax exemptions that most taxpayers do not receive. Most taxes in Asheville are paid by citizens and not businesses.

Councilman Newman noted that Asheville does have an economic development policy that any business can apply for if they meet the criteria outlined in our policy. However, he questioned if the policy, even if administered consistently, is a good public policy. It is an issue that communities and states struggle with. If we got rid of economic incentive policies across the board, he feels most people would support that. That way cities could compete on who has the best schools, best infrastructure, cleanest environment, etc. Since that is not the case, it is extremely important to have good paying jobs in our community to be competitive.

Mayor Bellamy said that members of Council have previously received copies of the resolution and ordinance and they would not be read.

Councilman Newman moved for the adoption of Resolution No. 08-197. This motion was seconded by Vice-Mayor Davis and carried on a 6-1 vote, with Councilman Mumpower voting "no."

Councilman Newman moved for the adoption of Ordinance No. 3657. This motion was seconded by Councilwoman Cape and carried on a 6-1 vote, with Councilman Mumpower voting "no."

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**B. PUBLIC HEARING TO CONSIDER THE ISSUANCE OF A CONDITIONAL USE PERMIT FOR THE PROJECT IDENTIFIED AS HAYWOOD PARK MIXED-USE REDEVELOPMENT PROJECT**

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.

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 also noted that as documentary evidence is submitted, he would be noting the entry of that evidence into the record.

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.

After hearing no questions about the procedure, Mayor Bellamy opened the public hearing at 6:17 p.m.

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

Ms. Bernstein said that this is the consideration of the issuance of a conditional use permit for the project identified as Haywood Park Mixed-Use Redevelopment Project, with 130,000 square feet of retail, office and ballroom space, 200 hotel rooms and 100 condominium units, located at 1 and 35 Battery Park Avenue, 34 and 46 Haywood Street and Page Avenue.

She said the Smart Growth principles adopted in the *2025 Plan* encourages higher-density, mixed-use developments. Retail, residential, office and hotel uses align with economic development priorities, supporting the needs of local residents as well as the tourism industry, helping the downtown become and remain a "destination." This project supports objectives of the *Plan* by providing not only a variety of uses suitable to a Central Business District, but also a range of housing options and sizes appealing to different income levels, located in close proximity to public transit and in a walkable urban location.

The tower structures would be the tallest in the City (surpassing the BB&T by approximately 39'), but the project has been designed to maintain a human-scale experience from the street/pedestrian level and promote compatibility with the existing urban context. Although the Kostas building and a four-story mixed use building along Haywood Street will be demolished to accommodate this proposal, the adaptive reuse of two existing buildings (the Haywood Park Hotel and Starnes Building) into the overall project will aid in maintaining the existing streetscape and character. The proposal includes a dedication to LEED certification (base level), which corresponds to the City's dedication to environmentally-responsible development.

Goals in the Center City Plan are addressed through aspects of this proposal as well – the project has a mix of uses which can work towards ensuring a balanced and lively downtown; provides a variety of residential spaces; the design complements and stimulates pedestrian activity; existing structures are preserved and incorporated into the project; and includes needed parking spaces.

Three catalytic projects are located in the immediate vicinity: the Grove Arcade, Civic Center and Battery Hill City-Owned Property. Catalytic sites are identified as such for their potential to stimulate additional investment. It may have originally been thought that the "additional development spurred" would be on vacant or underutilized property, and not on parcels already occupied by uses and structures. However, the investment expected due to proximity to those sites has begun to be realized by this proposal.

One area of possible (temporary) discord with the Center City Plan is the goal "actively work to retain existing downtown businesses and foster their continued success and growth." There is the possibility of unavoidable consequence or negative impact on surrounding businesses during the extended construction period for this project as well as the displacement of active businesses in the buildings proposed for demolition.

City Council adopted the following four strategic goals: *sustainable, affordable, green* and *safe*; this development proposal supports the strategic goal of *sustainability* and reflects other vision plans by providing for high-density infill growth; supports and provides amenities for downtown living; and encourages economic development in the downtown. Additionally, the LEED elements of the development proposal address the desire for *green* development features and practices.

While this proposal has many positive aspects and clearly supports several key goals, it fails to address the issue of affordability in that it does not provide affordable units within the development. Additionally, the donation offered to the Eblen Foundation as part of the public benefits package does not contribute to the creation of new affordable units, although it is a valuable endowment dedicated to helping citizens in need of housing assistance.

Other hotel/residential projects planned or approved include:

- Hotel Indigo (currently under construction) which includes 100 hotel rooms and 12 residential units, and

- Ellington (approved in 2007 – not yet under construction) which proposed 125 hotel rooms and 52 residential units.
- These projects will bring the number of hotel rooms in the CBD to 774 (549 existing). If approved, this project would bring the total to 974 rooms.

Residential projects recently planned include 452 residential units approved in the Central Business District (CBD) over the past year and a half, with 80 units currently under construction (Hotel Indigo and 60 North Market). If approved, this project would bring the total to 552 units approved. Data on the number of existing residential units in the CBD is not accurately available.

This is a request for review of site plans for a mixed-use redevelopment project with residential and commercial components. Pursuant to section 7-5-9(a) of the Unified Development Ordinance (UDO), any residential development of more than 50 units and any mixed-use structure with more than 45,000 square feet located within a half-mile of the CBD shall be considered as a Level III project and a Conditional Use.

The project area consists of five parcels with a combined area of approximately 1.92 acres (Attachments to City Exhibit 3 – Location Map and Aerial Map). The site is located on the downtown block bordered by Page Avenue to the west (Grove Arcade), Battery Park Avenue to the south and Haywood Street to the east. The proposal includes construction of a mixed-use redevelopment, incorporating some existing structures. The 4-story Haywood Park Hotel and Starnes Building (northwest corner of Battery Park and Haywood) will remain as office uses.

The project will include a mix of uses including approximately 200 hotel rooms; approximately 100 residential units; 80,000 square feet of retail space (including a multi-story internal arcade); 50,000 square feet of office space; and 506 parking spaces. This is an increase of approximately 170 hotel rooms (currently +/- 33 rooms in the Haywood Park Hotel); 100 residential units (currently none); 40,000 sq. ft. of retail space (currently +/- 40,000 sq. ft. existing); +/- 20,000 sq. ft. of office space (currently +/- 30,000 sq. ft. existing); and a net gain of 226 parking spaces available to the public (30 currently available to the public). (Attachment to City Exhibit 3 – Site Plan)

The proposed new construction is separated into five parts for ease of review: Haywood Street base, Haywood Street tower, Page Avenue base, Page Avenue tower and underground parking (although it should be noted that the project is proposed as a whole and will be constructed as such):

*Haywood Street base:* 5 levels (expanded 16'6" ground story level with 10'6" upper floors), includes retail spaces on ground level with residential above (units ranging in size from 632 to 1,700 square feet, all units with balconies facing onto Haywood). Includes pedestrian entry to arcade, pedestrian entry to residential lobby, vehicle entry/exit for the parking garage (30' wide). This "platform" is a similar height to adjacent structures and maintains visual consistency along the streetscape.

*Haywood Street tower:* The tower is proposed at 258' 6" from the street to the top of the architectural element (approximately 23 levels) and includes residential units (units ranging in size from 1,800 to 2,200 square feet – four units per floor). The structure steps back after the 5<sup>th</sup> level with proposed floor-plates of approximately 9,900 sq. ft. This creates a slender structure with a less bulky visual impact. In addition, the tower's walls curve away from the street, further diminishing the mass of the structure. This tower has a contemporary design. (Attachment to City Exhibit 3 – Haywood Street Elevation)

*Page Avenue base:* The 36 foot high base of this side of the structure has 2-3 levels (all expanded floor-to-floor heights) that include retail/restaurant space on the ground level with hotel ballroom/meeting rooms above. The base includes a pedestrian entry into the retail arcade, a pedestrian entry into hotel lobby, and a vehicle entry/exit for parking garage (25'9" wide) from Page Avenue. This "platform" is similar to the height of adjacent structures as well as the Grove Arcade across Page Street, maintaining visual consistency along the streetscape and a complementary relationship to the Arcade.

*Page Avenue tower:* The tower is proposed at 339' 9" from the street to the top of the architectural element (approximately 25 levels) and includes approximately 200 hotel rooms. The number of levels could increase depending on the floor-to-floor ratios desired by the yet-to-be-determined hotelier. This structure does not step back from the street face until the 14<sup>th</sup> level. The floor-plates are approximately 7,400 sq. ft. on the lower floors with front and rear step-backs resulting in a reduced 4,200 sq. ft. footprint, further diminishing the mass of the structure. This tower is designed in the spirit of the original tower intended to be built on top of the Grove Arcade, which was proposed at a height around 300'. (Attachments to City Exhibit 3 – Page Avenue Elevation and Battery Park Avenue Elevation)

*Parking:* Parking for the project is proposed primarily underground, with 6 levels for 506 spaces (159 proposed as tandem spaces). There are 2 automobile access points proposed for entry/exit to the underground parking, one on Haywood Street and one on Page Avenue. This project will require cutting off a portion of Battery Park Alley due to the new structure covering the entire width of the block, which must be coordinated through Public Works to maintain the existing level of service for residents of 21 Battery Park and other existing businesses on the block. The project proposes assigning 250 parking spaces to the hotel and

condominium, with 256 available at a fee for public use (a net gain of 226 parking spaces).

*Other Public Improvements:* Significant streetscape improvements are proposed as a part of this project, including bump-outs, space for outdoor dining, benches, bollards, special pavers and 10' wide sidewalks. All proposed street furniture is subject to final approval by Public Works. Landscaping for this project will include street trees along Page and Battery Park Avenues and Haywood Street. There will also be screening for the loading zone, accessed from the north via Battery Park Alley.

*Impact to the Built Environment:* As noted above, office uses are proposed for the Haywood Park Hotel structure (blt. 1923) and Starnes Building (1930). There are, however, several structures that will be demolished as a part of this proposal: the Kostas Building (northeast corner of Battery Park and Page Avenue), the parking garage and surface parking located near the center of the block, and a 4-story mixed-use building along Haywood Street.

*Public Benefits Package:* The applicant has submitted a Public Benefits Package listing job created by the project (approximately 200), increased tax base (estimated to generate over \$1,000,000 in annual taxes), parking (net gain of 226 spaces available to the public), LEED certification, Preservation/Adaptive reuse of historic buildings and public contribution to housing assistance. Additionally the applicant has agreed to implement a list of construction mitigation improvements. Their benefits package consists of (1) job creation - they anticipate that 200 jobs will be created, broken down as follows – 180 hotel employees, 10 retail and office (supervisory and maintenance personnel), and 10 in condominium building (supervisory and maintenance personnel); (2) increased tax base - it is estimated that the project will generate over \$1 Million in annual ad valorem taxes to the City and County governments; (c) parking - they will be asking 250 parking spaces to the hotel and condominium, and the remainder (256) parking spaces will be available at a fee to the public; (d) LEED certification – the project will be committing to obtain a base LEED certification; (e) preservation/adaptive re-use of historic buildings – the existing Haywood Park Hotel and Starnes building will be preserved and renovated; (f) public contribution – a minimum contribution of \$3 Million, taken from the condominium sales, will be made directly to The Eblen-Kimmel Charitable Foundation, which will distribute the funds to meet the housing needs of our most vulnerable citizens; and (g) construction mitigation measures – they will work with City staff per their Construction Mitigation Measures Agreement. This agreement includes efforts to keep sidewalks open, an “Open for Business” marking campaign, and hiring an ombudsman.

The affordable housing contribution promises 1.5% of the initial sales price of each condominium or a total of \$3 million (whichever is greater) to be allocated to the Haywood Park Housing Assistance Program (HAP), which will be administered by the Eblen-Kimmel Charitable Group and will provide housing, utility and emergency assistance to local families in need. This contribution seeks to satisfy Council's goal to provide sufficient, safe and affordable housing opportunities. While the HAP will provide assistance to local residents with housing issues, there is no new construction of affordable units within the project or elsewhere included as a part of this proposed benefit.

### **Required Reviews**

*Downtown Commission Review:* This project was reviewed by the Downtown Commission (DTC) over the course of five months. The Commission voted on July 1, 2008, to recommend approval of the project's design (6-2) after the developer incorporated DTC requested modifications, incorporating suggestions on improving the design of the Haywood Street tower and cap. No variances from the UDO CBD requirements were required. The Commissioners expressed positive comments regarding:

- the activation of the street level,
- the compatibility of the platform with existing adjacent structures,
- the stepping-back of the towers from the street level, and
- the small footprint of the towers that creates a slender structure to minimize viewshed impact.

Some Commissioners expressed concerns regarding:

- the scale of the development,
- the height of the towers, and
- the necessity for the craftsmanship and materials to be of utmost quality.

The largest concerns of the Commission focused on the impact of the construction and resulting project on the existing and displaced businesses in the immediate area.

At their meeting on September 12, 2008, the Downtown Commission voted to recommend Council consider the following construction mitigation measures:

- Allow affected businesses to purchase free parking garage vouchers at a reduced price from the City to offer to their customers, and
- Require the developer to run a monthly newspaper ad supplementing the "Open for Business" marketing campaign, listing affected business as open.

At the Downtown Commission hearings, members of the community expressed concerns regarding:

- the impact of the development with regard to shadows and air flow;
- how this project would mesh with the recommendations of the upcoming Downtown Master Plan;
- the scale of the project and impact on existing businesses, especially the Grove Arcade;
- the potential physical impact of construction on adjacent commercial and residential structures; and
- the design of the contemporary Haywood Street tower.

*Technical Review Committee (TRC) Review:* The project was approved with conditions by the TRC on July 21, 2008. Several members of the community voiced comments, including:

- ensuring adequate access for residents of 21 Battery Park to their building in the event of the proposed alley closure;
- safety concerns associated with high-rise buildings; and
- concerns regarding safeguarding the City from fiscal harm in the event that the developer is unable to complete the project as proposed.

*Planning & Zoning (P&Z) Review:* The project was unanimously approved by the Planning & Zoning Commission (5-0) on August 6, 2008, (one commissioner absent, and one position vacant). The applicant provided an outline of their public benefits package, with includes LEED-certification and a minimum \$3 Million donation to the Eblen-Kimmel Charitable Foundation for assisting housing needs of the less-affluent residents of Asheville. They also stated that they will not demolish any existing structures until they have a hotel operator secured and at least 60% of the residential units pre-sold.

The P&Z members proposed modifications to several conditions included in the staff report including:

- requiring that the applicant finalize the LEED-certification proposal and commitment to affordable housing prior to moving forward to City Council,
- requiring that the funds dedicated to affordable housing be earmarked for distribution within the City limits.
- requiring that staff and the applicant come to an agreement on traffic mitigation measures and construction mitigation measures prior to moving forward to City Council.

These items have all been discussed and agreed to by the applicant. Details can be found in the *Public Benefits Package* section of this report.

Approximately 11 members of the public provided comment on this proposal, including:

- concern about the economic impact on adjacent businesses during the construction process;
- the impact from increased traffic congestion, especially around the parking deck access points;
- the economic viability or need for a project of such a significant scale;
- concern that this development will house "chain stores" and impact street-level character;
- support for the narrow tower design and the pedestrian gateway created from Page to Haywood; and
- support for the additional retail and office spaces in the downtown.

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) of the UDO. 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 TRC 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.**

*There are no significant natural or topographic features on the site that will pose a major issue with this development. The project has been designed to accommodate the existing (12') grade change from Page Avenue to Haywood Street with a ramped walkway through the arcade at a 4% slope.*

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

*When the project is complete, the project should not injure the value of adjoining or abutting property. The uses proposed are should complement existing businesses and augment the needs of both residents and visitors. However, without conditions to limit disruption during construction, there are likely to be adverse economic impact to smaller businesses.*

*There has been some concern expressed by the Downtown Commission and members of the public that the construction period may have negative impacts on businesses in the vicinity. Concerns have also been raised regarding what fiscal security or protection the City has in the event that the developer is unable to complete the project as proposed.*

**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.**

*Uses: The mix of uses proposed is allowed and appropriate for the CBD.*

*Height: The proposed towers at 258 feet and 340 feet will be the tallest in the city and can be considered to be out of scale with the existing structures immediately adjacent to the project site. However, as stated in the Downtown Design Review Guidelines, tall structures identify the CBD as an urban core and these buildings have been designed to respect views to and from neighboring properties (such as 21 Battery Park, the Basilica, the Grove Arcade). Also, there is a precedent of height in this end of the CBD, including the +/- 160' Battery Park Apartments and the +/- 145' Vanderbilt Apartments, although the proposed towers are considerably taller than these buildings. The tower originally planned for the Grove Arcade was planned to be nearly as tall as these two structures.*

*Design: The small floor-plates with stepped-back towers follow basic urban design principles by creating slender structures with significantly less visual mass than if they were shorter but had no step-backs, and thereby appearing more bulky when viewed from the street. When towers are stepped-back from a platform building, they create more compatible rooflines from the pedestrian level, especially when the platform is proposed at roughly the same height as adjacent structures. Also, the designs of the towers are significantly different from one another, which is supported by the Landmark Guidelines in the Downtown Design Review, which state that "new, unique designs may be appropriate to deviate from the norm and add special accent to the urban fabric".*

*Character: Typical building heights in this established core of downtown are around 3-4 stories, with some exceptions (see heights of Vanderbilt and Battery Park Apartments as mentioned above). The proposed 23 and 25-story structures will bring a substantial change to the character of 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.**

*Smart Growth principles adopted in the 2025 Plan encourage these types of higher-density, mixed-use developments). Retail, residential, office and hotel uses align with economic development priorities, supporting the needs of local residents as well as the tourism industry, helping the downtown become and remain a "destination"). This project agrees with objectives of the Plan by providing a not only a variety of uses suitable to a CBD, but also a range of housing options and sizes appealing to different income level), located in close proximity to public transit and in a walkable urban location.*

*Although the tower structures would become the tallest in the City, the project has been designed in a way that maintains a human-scale from the street/pedestrian level and seeks to encourage compatibility with the existing urban context. Also notable is the adaptive reuse of existing buildings (the Haywood Park Hotel and Starnes Building) into the overall project, which aids in maintaining the existing streetscape and character. The proposal includes a dedication to basic LEED, which corresponds to the City's dedication to environmentally-responsible development.*

*Goals in the Center City Plan are addressed through aspects of this proposal as well – the project has a mix of uses which can work towards ensuring a balanced and lively downtown;; provides a variety of residential spaces; the design complements and stimulates pedestrian activity; existing structures are preserved and incorporated into the project; and includes needed parking spaces – 226 net gain of parking spaces available to the public.*

*Three catalytic projects are located in the immediate vicinity: the Grove Arcade, Civic Center and Battery Hill City-Owned Property. Catalytic sites are identified as such for their potential to stimulate additional investment. It may have originally*

*been thought that the "additional development spurred" would be on vacant or underutilized property, and not on parcels already occupied by uses and structures. However, the investment expected due to proximity to those sites has begun to be realized by this proposal.*

*One area of possible (temporary) discord with the Center City Plan is the goal "actively work to retain existing downtown businesses and foster their continued success and growth." There is the possibility of unavoidable consequence or negative impact on surrounding businesses during the extended construction period for this project as well as the displacement of active businesses in the buildings proposed for demolition. Appropriate mitigation measures are vital to avoid this impact.*

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

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

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

*Traffic Engineer: The proposed project is anticipated to generate 289 vehicles per hour (168 vph ingress and 121 vph egress) during the morning peak hour and 604 vehicles per hour (274 vph ingress and 330 vph egress) during the afternoon peak hour at full build-out conditions (three years). In addition, the proposed project could generate 6,100 vehicles per day during a typical weekday. Existing weekday traffic volumes along Haywood Street are about 4,300 vehicles per day. It is anticipated that about 48 percent of proposed traffic will use the Haywood Street access point.*

*Based on these anticipated peak hour traffic volumes, a traffic impact study was required. The scope of work included 16 intersections (eight signalized intersections and eight unsignalized intersections) in the immediate area of the project site and the annual traffic growth rate was 3 ½%.*

*Based on the anticipated traffic that the proposed project could generate, it is reasonable to conclude that the project would impact the surrounding street network and as a result, certain mitigation improvements should be required. It should be noted that common mitigation improvements such as providing left and/or right-turn lanes are difficult to construct in a downtown setting due to physical constraints. Therefore, mitigation improvements that would improve the existing street infrastructure such as upgrading existing signalized intersections are typically required for projects in a downtown setting. Mitigation improvements that have been identified and agreed to by the developer (letter dated August 28, 2008) include the following items:*

- 1. The existing traffic signal at the intersection of the I-240 WB On/Off Ramps and Montford Avenue will be upgraded to provide 2070 technology. The total estimated cost including appropriate design and approval is about \$30,000.*
- 2. The existing traffic signal at the intersection of Haywood Street and Montford Avenue will be upgraded to provide 2070 technology. The total estimated cost including appropriate design and approval, new signal heads, cabinet and controller, pedestrian signals, and metal poles and mast arms is about \$100,000.*
- 3. The existing traffic signal at the intersection of the I-240 EB On/Off Ramps/O.Henry Avenue and Haywood Street should be revised to remove the split side street phasing subject to review and approval by the North Carolina Department of Transportation. Remove existing vegetation along the southbound approach to improve overall sight distance at the intersection subject to approval by the N.C. Dept. of Transportation. The total estimated cost including appropriate design and approval is about \$20,000.*

*The total estimated cost for the proposed mitigation improvements is about \$150,000.*

Based on the above findings and the analysis provided in the report, staff finds this request to be reasonable, if certain conditions, as included in this report, can be met.

Pros:

- Incorporation of existing structures (adaptive reuse)
- Project provides a mix of housing options, including smaller-sized units available at a "workforce" rate
- Includes 506 added parking spaces in the heart of downtown – 256 available to the public – a net gain of 226 parking spaces
- Provides a variety retail sizes to encourage a mix of businesses
- Applicant has indicated an intent to support affordable housing goals through the \$3 Million minimum contribution to the Eblen-Kimmel Charitable Foundations
- Buildings are proposed to be LEED-certified at the basic level
- Applicant has agreed to implement construction mitigation measures to lessen the negative impacts of the construction process

on adjacent businesses and residents

- Building design follows sound urban design principles (slender towers reduce massing and are stepped-back from the street, platform level is at a compatible height with adjacent structures, street-level activation for pedestrians)
- Design provides variety and diversity to skyline and downtown architecture

Cons:

- Proposal includes the demolition of currently occupied, economically viable buildings/businesses
- Potential negative impact of large scale development on adjacent businesses and residents during the extended construction process
- While there is a financial contribution to support affordable housing goals included with this proposal, no new affordable units are to be created with this money
- Downtown Master Plan not yet completed, but is expected to indicate "appropriate" areas for height and may also include market analysis on the economic potential of downtown (currently no means to determine the cumulative impact of this large development proposal)
- While the Haywood Street tower does step-back from the street after the 5<sup>th</sup> level, the Page Avenue tower does not step-back until the 14<sup>th</sup> level, thereby appearing more visually massive from a pedestrian perspective.

Based on the findings and analysis above, staff feels there is reasonable cause to support this project inclusive of the conditions by the TRC, Downtown Commission and Planning & Zoning Commission. However, members of City Council may want to consider community and stakeholder concerns and comments to help mitigate the potential impact of this proposal.

Should City Council choose to support this project, staff would recommend the consideration of a condition that would redirect a portion of the donation to the City's Housing Trust Fund, or other comparable fund dedicated to the creation of new affordable units.

Should City Council choose to include the Downtown Commission's two additional construction mitigation measures to the conditions for approval of this project, Parking and Engineering staff should be consulted as to the financial implications of offering reduced-rate parking vouchers.

Mr. Tony Fraga, developer of the Haywood Park Complex, spoke in support of the project and explained the existing conditions and the proposed conditions. Existing: hotel, 4 levels, 33 keys; office - approximately 29,000 sq. ft.; retail - approximately 40,000 sq. ft.; residential - none; and parking - approximately 119. Proposed: 25 levels, approximately 189 keys; office - 42,000 sq. ft.; retail - approximately 80,000 sq. ft.; residential - 23 levels (97 units); and parking - approximately 500 spaces. While describing the project he showed images of the towers and various views of the proposed buildings. He said they have tried to design the project in the harmony and in respect to the existing streetscape, along with trying to respect the views of their neighbors. He briefly reviewed the public benefits package outlined above by Ms. Bernstein. The goal of the Haywood Park office complex is to have sustainable companies and sustainable retailers. He said they have redesigned their project to address the view concerns raised by area residents.

Mr. Pat Whalen, representing the Downtown Commission, said they reviewed the project in five separate meetings. Some of the following comments were received: the Downtown Commission should table the project until the Downtown Master Plan is adopted; massive size of the project; negative impact on local businesses during construction process; potential physical impact to the 60 Haywood condominium project; compliment on design and thoughtfulness of slender towers; added vitality to the downtown after the project is completed; negative comments on design of the contemporary Haywood Street tower; issues about the driveway cut on Haywood Street; compliments of arcade connecting Page and Haywood Street; concerns of public benefit package; questions of green or LEED certification; and questions about the length of the project. Because the project activates Page Avenue, creates a connection between Page Avenue and Haywood Street, puts eyes on the street from the residential balconies, has slender buildings; has step-backs on the property; includes addition of parking spaces with only two access points; and no UDO variances, the Downtown Commission approved the project on a 6-2 vote. He said that on September 12, 2008, the Downtown Commission voted to recommend Council consider the following construction mitigation measures: (1) The City allow affected businesses to purchase free parking garage vouchers at a reduced price to offer to their customers, and (2) Require the developer to run a monthly newspaper ad supplementing the "Open for Business" marketing campaign, listing affected business as open.

The following individuals spoke in support of the conditional use permit for several reasons, some being, but are not limited to: letter of understanding signed regarding satisfaction of outstanding issues and impacts raised by the 60 Haywood Condominium Association; well thought out project; solution to parking problems downtown; positive impact to the downtown businesses once the project is complete; background history of the Eblen-Kimmel Charitable Foundation and how they work with families; increased tax base; project will house national and global tenants who exercise corporate responsibility and practice sustainability at the highest



level; entire project will be LEED certified; project will bring more people downtown to shop; had E.W. Grove lived past 1927, the tower probably would have already been constructed and been an historic gem; if project is approved, request it be conditioned upon 21 Batter Park Condominium Association receiving a letter of understanding similar to the 60 Haywood Condominium Association; project will be a strong economic pillar in the downtown area; the project will bring in more eyes on the street to deter crime and drugs trafficking; project will bring in more people to the downtown area to purchase items from the unique shops; thin towers will not block mountain views; one of the towers matches the Grove Arcade; support the use of parking vouchers; since growth is inevitable, this is a good project which will bring more jobs and parking downtown; growth occurs in cities all the time and people do not give up because of construction; long term positive impact on downtown Asheville; the restaurant experience on Page Avenue must be preserved during the construction process through monitoring the construction staging and traffic flow to minimize the impact; and parking issues must be addressed with a suggestion of off-site parking for construction workers, hotel staff, retail staff and condominium visitors:

Mr. Patric Mullen, President of the 60 Haywood Condominium Association  
(Neighborhood Exhibit 1)  
Mr. Joe Kimmel, businessman in downtown Asheville  
Mr. Bill Murdock, Executive Director of Eblen-Kimmel Charitable Foundation  
Mr. Joe Eblen, with the Eblen-Kimmel Charitable Foundation  
Mr. Greg Tolen, Executive Director of the National Center for Sustainability  
Mr. Mark Ellis Bennett, restoration and craftsman for historic buildings  
Mr. Bill Winkler, representing 21 Battery Park Condominium Association  
Owner of a Days Inn  
Mr. and Mrs. Tom Gallagher, owners of 26 Battery Park  
Mr. Bill Foley, owner of the Chocolate Fetish  
Mr. Bill Lehnert, representing the Grove Arcade merchants  
Mr. Bill Waddell, community relations with Eblen-Kimmel Charitable Foundation

The following individuals spoke in opposition of the conditional use permit for several reasons, some being, but are not limited to: height of the buildings are too high; scale of the buildings are too large; the underground parking will eliminate two parking spaces on Haywood Street mid-block; Haywood Street is one of the smallest thoroughfares downtown; request the City postpone action until the Downtown Master Plan is adopted; project should be scaled down to medium-rise buildings that fit into the landscape; project promotes gentrification of downtown Asheville for a small group of rich people; the St. Lawrence Basilica will cease being a focal point and turn into a smudge in the shadow of the huge towers; the towers will monopolize the views; funds will go to a foundation but will not promote affordable housing in that area; the construction process will cease operation on the west side of Haywood Street; concern of Montford Street bridge durability from dump trucks; concern of no traffic downtown during the construction process; negative impact to the Civic Center events during construction; since Mr. Fraga told the press that he wouldn't be able to begin construction until 2010, the process should be continued until that date and then let it conform with the Downtown Master Plan; disregard to the historic surroundings; people come to downtown Asheville for the uniqueness of the area; tall buildings will destroy downtown and diminish the visual beauty; there will be large shadows looming over the downtown area; increase in traffic resulting in more pollution; more people trolling for parking spaces; narrow streets not capable of handling increase in traffic; project is not economically feasible at this time; and there is no demand for high end residential units, offices, retail or condominiums:

Ms. Paula Dawkins, business owner on Haywood Street  
Mr. John Lantzius, property owner on Lexington  
Mr. David Wheeler  
Mr. Bud Crawford, co-owner of the Earth Guild  
Mr. Steve Rasmussen  
Mr. Mac Coxe, native of Asheville  
Owner of two businesses in the affected area  
Ms. Amina Spengler, Asheville resident  
Mr. Alan Berger, representing the Buncombe Green Party and Park

At 7:50 p.m., Mayor Bellamy closed the public hearing. She then announced a short 10-minute recess.

Vice-Mayor Davis expressed concern regarding pedestrian and vehicular conflicts with the driveway cuts on Haywood Street.

In response to Councilwoman Cape, Ms. Bernstein explained where the loading docks will be located and what size trucks will be able to access that area.

As Council is to take serious consideration of the seven standards for approval of a conditional use permit, Councilman Mumpower explained how the project dramatically fails to meet Condition No. 4. Regarding the \$3 Million contribution to the Eblen-Kimmel Charitable Foundation, he felt the developer should be allowed to give their money to whoever they wish and we should be grateful for that contribution. He was concerned that we have created a complex document (UDO) so that no one can figure it out and no one can have any predictable confidence in success when they go through this horrific process.

Councilwoman Cape felt this project may work in a different area of town. She felt this project may be very disruptive and counter productive to the long term health of this growing and thriving downtown. She believes this materially endangers public health with the addition of 6,100 cars on our streets that are already difficult to navigate on. She also feels the project is out of scale for this area.

Councilman Russell felt everyone has talked about growing up and not out and to have a dense downtown. He felt the seven conditions for approval of conditional use permits is an evasion on people's property rights. He felt that scale includes the entire downtown area and because there is some history of this type of project in that area, he felt the project is appropriate. He noted there are a lot of positive benefits for the community.

Councilman Newman felt that a lot of these issues were debated when the Ellington project was considered. He liked the commitment to green building, parts of the project that are outstanding from a design standpoint, and for projects that are not going to include affordable housing unit, he felt this is a sound way to materially and significantly contribute towards addressing an important need for affordable housing in downtown. The way he interprets the UDO is when projects are of this scale they come to City Council - a process of whether the benefits of the project outweigh some of the inherent pain that goes along with this kind of growth in the community. Developers have ideas for ways they can help the project contribute to those community goods. Comparing this project with the Ellington building, the Ellington building is on the down slope and in a location where based of the building would not seem out of character for the community if you simply looked at the height of it compared to other buildings. In this case, we have two buildings next to each other that are even taller and they are on one of the highest points in the downtown. We do have tall buildings downtown, but we have a pattern of lower-rise buildings (2-4 stories) interspersed with tall buildings downtown. He felt if the project was one building, rather than two buildings of this scale immediately adjacent to each other, he felt the community would see the project differently. With the greatest respect for the Eblen-Kimmel Charitable Foundation, he felt that if we are going to have resources contributed to a public benefits fund from a project like this, then he felt we needed additional discussion about how we want to structure that. We have created an Affordable Housing Citizens Task Force which came up with an Affordable Housing Plan for the City. He felt that before we make a specific decision about how to program those funds, he felt we should get input from that group on that question. He wouldn't suggest automatically putting it in the Housing Trust Fund, but it is an important question that should be thought through carefully as part of the overall decision.

Vice-Mayor Davis felt it was obvious that the project does not comply with Condition No. 4 regarding the project being in harmony with the scale, bulk ... character of the area. He did think this is a great project, but the two tall buildings in such close proximity are not in harmony with the scale in the area. He hoped that the developers might reconsider some of the project to see if they can get to a better place.

Upon inquiry of Mayor Bellamy, City Attorney Oast said that if the project is denied by Council, the one year waiting period does not apply if the project has changed substantially.

Mr. W. Louis Bissette Jr., attorney representing the developer, said he has seen a lot of development in Asheville and has never seen one done in a more sensitive way than this project. Mr. Fraga has had 50 meetings on the project and 5 meetings with the Downtown Commission. The project has been approved by the Downtown Commission, TRC and the Planning & Zoning Commission. Now one year into the process, and no telling how much money has been spent, they are told the project is not in harmony with the area.

Regarding the process (seven standards which must be met to approve a conditional use permit), Mayor Bellamy said that there have been times (on the south slope) where she personally voted in favor of a project when she could not find project being in harmony with the scale, bulk ... character of the area.

Councilman Mumpower outlined the dramatic differences between this project and the Ellington project.

Mr. Bissette asked for a continuance of this matter. He was uncertain what the developer could do to change the project to gain support by Council, but they will look to do that.

Vice-Mayor Davis noted that this is a quasi-judicial process and as such Council doesn't have the opportunity to discuss the project outside of the Council Chamber. In addition, information was provided to Council on Friday, which leaves a short amount of time for Council to digest all the applicable information.

Councilman Newman hoped the developer could find some ways the project can be adjusted, noting that even though the projects received approval by the Downtown Commission, TRC and Planning & Zoning Commission, many comments heard today were expressed during those reviews as well.

Councilwoman Cape noted some of her following concerns: (1) two buildings that tall so close together; (2) need better pictures for scale; (3) that many cars on Haywood Street with difficult turning radii; (4) concern of entryway for trucks; and (5) what is the realism of 80,000 sq. ft. or retail being served with the truck size mentioned.

Councilman Newman moved to continue this matter until November 11, 2008. This motion was seconded by Vice-Mayor Davis and carried unanimously.

### **Closed Session**

At 9:22 p.m., Councilman Mumpower moved to go into closed session for the following reason: (1) To consult with an attorney employed by the City about matters with respect to which the attorney-client privilege between the City and its attorney must be preserved, including litigation involving the following parties: State of North Carolina; City of Asheville; and County of Buncombe - The statutory authorization is contained in G.S. 143-318.11(a) (6); and (2) To prevent the disclosure of information that is confidential, pursuant to the laws of North Carolina, or not considered a public record within the meaning of Chapter 132 of the General Statutes. The law that makes the information privileged and confidential is N.C.G.S. 143-318.10(e) - The statutory authorization is contained in N.C.G.S. 143-318.11(a)(1). This motion was seconded by Councilman Russell and carried unanimously.

At 9:40 p.m., Vice-Mayor Davis moved to come out of closed session and return to the formal meeting. This motion was seconded by Councilman Mumpower and carried unanimously.

## **V. UNFINISHED BUSINESS:**

### **A. GRAFFITI PROGRAM UPDATE AND POLICY DIRECTION**

Public Works Director Mark Combs said that City Council requested an update on graffiti program efforts.

In March 2007 the Asheville Police Department (APD) formed a Graffiti Task Force in response to more than 200 incidents throughout the City. Their efforts included over 50 surveillance operations including 10 search warrants, which to date resulted in 20 charges for damage to property. In May 2007 the Public Works Department formed a graffiti removal team, procured specialized removal equipment & chemicals, and formed a partnership with Quality Forward (to promote removal of graffiti on private property to include supplies). Staff continues to aggressively pursue vandals and clean up public property.

Based on interviews with key staff from cities with graffiti programs, the following common elements were noted:

- o Graffiti adds to 'visual' feeling that the community is not safe
- o Graffiti should be removed as soon as possible
- o Public/private partnerships (for removal) are effective
- o Good programs consist of two key elements:
  - o Enforcement: Zero tolerance, arrests, severe penalties, education
  - o Logistics: Consistent & diligent removal, public/private partnerships
- o Some communities (Los Angeles) provide locations for 'painters'
- o It requires the entire community, businesses, neighborhood associations, police and prosecutors, etc. to work together to put out the message: "Graffiti is not acceptable in this community!"
- o Removal compliance (once established by ordinance or policy) must be strictly enforced
- o 5-10% of graffiti in Asheville is gang-related

In response to outcomes from the Social Issues Task Force regarding removal of graffiti on private property, in July 2007 staff completed research and benchmarking and drafted a pilot graffiti program in the Central Business District (CBD) for the removal of graffiti on both public and private property. With increased emphasis by APD, input from community stakeholders and field experience, the draft pilot program was further refined and submitted as an enhancement project for funding in the Fiscal Year 2008-09 budget; however, due to budgetary constraints the program was not funded.

The draft graffiti removal program addresses reporting, removal process, department responsibilities and future considerations (regarding program expansion/refinement). Following is a chart comparing Asheville's existing efforts to the

proposed formal program (including private property):

	Existing program	Proposed program
<b>Reporting:</b>	Call APD; Customer Svc.	Graffiti 'hotline'; Cust. Svc.
<b>Removal:</b> Public ROW: Public Buildings: Private property:	48 hours (DPW staff) 48 hours (multi-city staff) <b>NONE</b>	48 hours (DPW staff) 48 hours (multi-city staff) 48 hours ( <b>owner-voluntary?</b> ) <b>or</b> 48 hours ( <b>PW staff w/release?</b> ) <b>or</b> 48 hours ( <b>by ordinance?</b> )
<b>Priorities:</b>	APD-ID'd graffiti Key corridors-high visibility	APD ID'd graffiti Key corridors- high visibility <b>Private property</b>
<b>Cost:</b>	In current budget	\$279,500 (\$190,590/yr.)

A formal graffiti program would be consistent with the following Strategic Plan initiatives: SAFE: Strengthen enforcement of existing laws and regulations; and, GREEN: Increase downtown cleanliness and beautification.

**Pros:**

- o A formal graffiti program will provide the means and resources to remove graffiti from both public and private property
- o Aggressive removal of graffiti will eliminate 'visual' feeling of unsafe community
- o Combination Graffiti/weed/median crew will improve visual aesthetics of community in 3 key areas: graffiti, sidewalks & gutters and islands & bulb-outs

**Cons:**

- o Mandatory removal of graffiti on private property may be a financial burden to property owners
- o Court system does not currently mete out severe punishment for such crimes
- o Total eradication of graffiti will take a long time with effort from entire community

Initial investment of equipment & staff: \$279,590; annual costs: \$190,590

Using a PowerPoint presentation, Mr. Combs said the on March 2007, the Asheville Police Department (APD) formed a Graffiti Task Force (a) 200 incidents recorded; (b) 10 search warrants; (c) 50+ surveillance ops (500 man hours); (d) 20 people charged; and (e) aggressive public relations campaign.

In May of 2007, the Public Works Department formed a removal crew to remove graffiti on public property (a) mission was to remove it as quickly as possible; (b) pressure washer, chemicals and training; and (c) partnership with Quality Forward on supplies.

On public property the graffiti was removed as soon as possible; coordinated efforts with the APD, N.C. Dept. of Transportation, Quality Forward, neighborhoods and associations; and sporadic (a) 'tagged' areas vary; and (b) volume varies.

The key challenge is removal from private property (a) property owners are victims of graffiti crime; (b) many property owners do not live in community; (c) requires constant vigilance (time and money); (d) requires cooperation/effort from entire community; (e) no current ordinance requiring removal; and (f) three key options (1) continue to encourage voluntary removal; (2) City removes it which will require an ordinance; liability release from damages, if any; and staff and equipment; and (3) ordinance requiring removal within 24 hours (enforcement required).

The following is a summary of policy options (1) maintain current program (APD focus/removal on rights-of-way/partnerships); (2) require removal on private property (a) property owner responsible for removal – ordinance, enforcement system required; and (b) City staff removes (with liability release) – staff/equipment/administrative resources and ordinance authorizing such work required; and (3) other.

Councilman Mumpower felt graffiti is a form of urban terrorism. He could not support penalizing business owners who are really victims of the crime. Since the City cannot keep up with removing graffiti off public property it is not fair to lay harsh demands on private property owners. He wondered if there are any additional civil penalties for people who abuse the City. He also advocated for some establishment of a reward program. He would be happy to contribute to the initial effort to get it started.

In response to Mayor Bellamy, Councilman Mumpower said this program would be different from the Asheville-Buncombe Crime Stoppers program. This would be a more specific targeted element. He suggested we partner with some other organizations, like the Tourism Development Authority (TDA) and others, who are affected by this crime. Mayor Bellamy noted that a letter was sent to the TDA requesting a meeting with them and this is a possible item that may be included in that meeting discussion.

Vice-Mayor Davis noted that Mr. Kelly Miller, Executive Director of the TDA, came to the Downtown Commission meeting and outlined a list of what the TDA saw as the community needs and graffiti was very high on the list. He asked Mr. Keller forward the list to all of Council.

Mayor Bellamy felt that since the City is responding quickly to removal, we should request the N.C. Dept. of Transportation remove graffiti on their properties in a timelier manner. She noted our corridors are being impacted tremendously.

In response to Councilman Newman, Mr. Combs said that the City is investing approximately \$5,000 in graffiti removal now.

Councilman Russell responded to Councilwoman Cape's inquiry about whether property owners can purchase insurance for this kind of damage. He noted that insurance is optional and business deductibles are fairly high.

Councilwoman Jones suggested a prominently placed phone number on the City's website for citizens to call in and report graffiti. She felt that everyone needs to become more actively involved in reporting graffiti.

Police Chief William Hogan responded to Councilwoman Cape's inquiry on whether graffiti adds to the dangers of crime in the community. He felt that if graffiti is not removed immediately it leaves the impression the City doesn't care. Private property owners need to be encouraged to remove graffiti from their property quickly. The City and private property owners need to be hard core about taking it down quicker than they are about putting it back up.

In response to Councilwoman Jones, Police Chief Hogan felt there is a profile for "taggers" and a pattern that is sometimes associated with other activities and specific age groups. He felt there is some informal network of taggers that is inter-connected with each other.

Councilman Newman suggested that if there is an ordinance requiring property owners to remove graffiti on their property that there be an opt-out clause for property owners to call to say they do not want the City or Quality Forward not to come onto their property for graffiti removal.

In response to Councilwoman Cape regarding a property owner signing a release, City Attorney Oast said that if we are operating pursuant to an ordinance that the City may enjoy some kind of immunity.

Mayor Bellamy summed up the discussion by saying that Council would like more options before it gives policy direction. She suggested staff research best practices for other cities on how they handle removal of graffiti. Once staff has compiled that information it will be scheduled on Council's agenda for further consideration.

## **B. E-VERIFY SYSTEM**

Human Resources Director Lisa Roth said that the purpose of this memorandum is to respond to a request made by Councilman Mumpower on July 15, 2008, for the following information:

- An evaluation of how the e-verify tool could be utilized for verification of citizenship. This would apply to verification of citizenship for (a) city employment and (b) contractor / subcontractor employment
- A review of the acceptability of how E-verify is displayed as a link on our city web pages.

E-Verify, formerly known as Basic Pilot, was developed in 1996 and is operated by the Department of Homeland Security (DHS) in partnership with the Social Security Administration (SSA). The purpose of the internet-based system is to verify employment eligibility in the United States by cross-checking identification information presented for employment with information in the Social Security Administration's (SSA) database. The system is not equipped to verify the authenticity of the identity,

immigration status or citizenship.

Once employment information has been entered, the system provides either a confirmation or a tentative non-confirmation of a match in the SSA database. If a tentative non-confirmation is received, the employee must be contacted to notify him or her of the right to contest the tentative non-confirmation. The employee must be allowed to continue to work during this period. If a final non-confirmation is received, which can take up to several weeks or months, and then the employer can terminate the employee.

It is important to note that it is illegal to discriminate against any individual (other than an alien not authorized to work in the U.S.) in hiring, discharging, or recruiting or referring for a fee because of that individual's national origin or citizenship status. It is illegal to discriminate against work eligible individuals. U.S. citizenship is not a requirement of work eligibility.

The city's current employment processes include steps to ensure compliance with Federal requirements regarding work eligibility and Social Security number verification. In addition, the city's contracting process includes a clause that requires all contractors to comply with local and Federal laws, including the same work eligibility requirements with which the City of Asheville must also comply.

#### *Employment Eligibility Verification*

All U.S. employers are responsible for completion and retention of a Form I-9 for each individual they hire for employment. This includes citizens and noncitizens. On the form, the employer must verify the employment eligibility and identity documents presented by the employee and record the document information on the Form I-9. The City of Asheville complies with this requirement.

#### *Identification Verification*

When a new employee is hired by the City of Asheville, his or her Social Security number is verified when he or she is entered in the payroll system and a contribution is sent to the SSA and Medicare. If the Social Security number is not valid, the city receives a "no-match" letter. On average, the city receives two "no-match" letters per year, usually due to clerical errors in the employee's paperwork. Asheville has resolved all "no match" issues to the SSA's satisfaction, and the organization has not terminated anyone in recent years due to a fake social security number.

The processes described above are required by Federal law. Based on these requirements and the city's current employment practices, the use of E-Verify would create a redundant system for verifying identification information. Implementing the system would require additional staff work and resources to manage. In addition, the use of E-Verify in conjunction with city contracts would also require additional resources to track and monitor compliance by third-party vendors.

Concerns about the U.S. Citizen and Immigration Services' ability to provide adequate staffing resources to properly manage E-Verify's appeal and reverification process have been raised by the U.S. Government Accountability Office in testimony to Congress. Additional concerns about the system's error rate (4.1 percent error rate on routine verifications and as high as 10 percent for legal foreign-born workers) have also been noted.

Based on previous Council direction, staff has included a link to the e-Verify system at [www.ashevollenc.gov](http://www.ashevollenc.gov). The link can be found under the section entitled "Doing Business with the City" and is called "Voluntary Participation in e-Verify." Staff believes the link's placement and title are reflective of Council's current policy direction and are ready to modify the placement based on additional Council feedback.

If the majority of the City Council is interested in further pursuing the use of E-Verify, staff would recommend additional in-depth analysis be conducted to thoroughly examine the concerns noted above, other legal considerations, required resources and potential benefits of utilizing the system.

Chief Financial Officer Ben Durant provided Council with comparative information about enforcement practices from other cities. Ms. Roth reviewed with Council a survey of other cities about their use of E-verify.

Councilman Mumpower explained that E-verify is a federal system to validate the legal work status of a potential employee. He feels the City is part of a conspiracy to ignore illegal immigration (not of the City's own employees) but our subcontractors, especially with the contract work on the City's water system upgrades. He felt the City should be encouraging our subcontractors to use E-verify and the City should be a model for others.

In response to Councilman Mumpower, Mayor Bellamy said that there is a visible link on the City's website regarding the use of E-verify. She felt that to ask our contractors to take the extra step to validate work status shouldn't be too hard. In addition, she noted that the City will be looking at living wage information.

In response to Councilwoman Cape, Ms. Roth said that at this time this is a free government service from the U.S. Dept. of Justice. They are in the process of discussing charging for this service in the future.

There was a brief discussion, initiated by Councilwoman Cape, about the 4.1% error rate has been documented by the U.S. Government Accountability Office and the 10% for legal foreign-born workers. She asked for additional information about the error rate and if there is an appeal process in place. Councilwoman Cape agreed in that it's not easy to fix things in the federal system if something is wrong. She too would like some clear process in safeguarding civil liberties.

Councilman Mumpower moved that the City of Asheville immediately require our subcontractors to use the federal E-verify system in affirming the legal employment status of all employees connected with City contracts.

In response to Councilman Russell regarding staff recommending an additional in-depth analysis be conducted to thoroughly examine legal considerations, required resources and potential benefits of utilizing the system, City Attorney Oast said that the City currently has a requirement that contractors and sub-contractors comply with all applicable federal, state and local laws which he interprets to include immigration laws.

Councilman Mumpower withdrew his motion noting that the City does require our subcontractors pay a certain wage. He was pleased that the City can also require subcontractors affirm, in a legal manner, the legal status of their employees. He would like to refer this to the City Attorney for further research.

Mayor Bellamy corrected Councilman Mumpower's statement in that the City does not require subcontractors to pay a certain wage. However, there is research being conducted that will come back to Council in the very near future.

In response to Vice-Mayor Davis, Ms. Roth said that staff feels we are doing a thorough job in meeting the federal requirements. She noted that the other North Carolina cities she surveyed do not use this system. She felt this would require additional staff to monitor, however, she would be happy to proceed with Council's direction.

It was the consensus of the majority of Council to instruct the City Attorney's Office conduct an additional in-depth analysis regarding the legal considerations, required resources and potential benefits of utilizing the system for contractors and sub-contractors and report back to Council on November 11, 2008. In addition, his research will also consist of (1) whether the City can require as a condition of the contract or subcontract that they further produce verification of employment eligibility status; (2) what ability the City has as a political subdivision of the state to be monitoring compliance with federal law; (3) what are the unintended consequences for contractors and what that would mean in terms of bidding on our contracts; (4) what kind of administrative burden this will put on the City and our contractors to monitor this, as many of the contractors we have employ labor that is not well paid or have a different work force show up every day; and (5) will the City be taking on any legal liability by requesting this of our contractors and subcontractors.

## **VI. NEW BUSINESS:**

### **A. RESOLUTION NO. 08-198 – RESOLUTION SUPPORTING A FULL AND PROPER CLEANUP OF THE FORMER CTS OF ASHEVILLE**

Councilwoman Cape said that this is consideration of a resolution of support for the CTS/Asheville efforts to encourage Environmental Protection Agency (EPA) restoration of soil and water quality in the area impacted by the CTS facility. On August 20, 2008, Mr. Barry Durand appeared under Public Comment at the meeting of Council's Planning and Economic Development Committee. Mr. Durand informed the Committee of the petition effort in the neighborhood, and he requested action from the City of Asheville. She said that all of our federal representatives are looking into this issue and have a great deal of interest in helping this community move this clean-up forward. It would be useful for the City of Asheville to say we are interested in having this clean-up happen, especially in terms of groundwater and water supplies in this area. This kind of contaminant is extremely dangerous and will continue leeching into the groundwater. The sooner we can get this cleaned up the better. This is in the Dingle Creek Watershed which the City has spent so much money to figure out how to make a good watershed. She urged City Council to adopt the resolution in support of the EPA doing a full and proper clean-up of this site, which is something they said they would do, but it has slowed down and it needs to be reactivated.

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

Councilwoman Jones moved for the adoption of Resolution No. 08-198, as amended. This motion was seconded by Councilman Mumpower.

The following individuals spoke to Council about the history of this contamination site and the history of sickness and death

from individuals who breath the vapors and drink the water from subdivisions and neighborhoods surrounding the plant, noting that the EPA has know about this issue since the mid 1980's. Since then contaminants have shown up in several springs and wells surrounding the property. It has been almost a year since residents living near the plant began asking federal, state and local county officials to clean up the site after tests indicated the contaminants might be spreading. They urged Council to request the EPA to perform a full and proper clean-up of the contributing source area of contamination and to endorse the efforts being made by the federal government to hold the EPA administrators accountable for enforcing, addressing and containing further groundwater contamination by effecting an expeditious clean-up at the plant site.

Mr. Tate MacQueen, Buncombe County resident in affected area  
Mr. Aaron Penland, Buncombe County resident in affected area  
Mr. Jerry Rice, Buncombe County resident (who suggested amendments to the resolution regarding public health, safety and welfare)  
Mr. James Wilson, Buncombe County resident in the Oaks Subdivision  
Buncombe County resident who lives 500 feet from contamination site  
Mr. Eric Penland, family member of individuals who lived in affected area  
Mr. Scott Hollowell, Buncombe County resident in affected area  
Buncombe County resident in affected area (School Board will not move bus stop which is contaminated with the highest toxic fumes tested by the EPA)

Councilman Mumpower noted that this area is out of the City's jurisdiction. However, it is such an important matter that he suggested area residents update Council in the future under the information discussion and public comment section of their agenda.

At Councilman Mumpower's request, it was the consensus of City Council to instruct City Manager Jackson to prepare a short staff report regarding Mr. Rice's assertion that the Enka Plant, located in the City limits, is the most hazardous waste site.

Mayor Bellamy requested City Manager Jackson provide Council with information on the City's waterline extension plans for this area, because there may be opportunities to partner with Buncombe County to provide the area with clean drinking water.

Mayor Bellamy asked for a friendly amendment as outlined by Mr. Rice. Said amendment would be to (1) amend the first Whereas as follows: "The Asheville City Council ... supports the protection of ... groundwater resources ... in the interest of protecting the health, safety and general welfare of its citizens."; and (2) amend the Now, therefore paragraph as follows: "The City Council ... request of the EPA for a full and proper cleanup ... to protect the public health, safety, welfare and environment from a still pending threat from release." Councilwoman Jones and Councilman Mumpower accepted the friendly amendment.

At Mayor Bellamy's request, it was the consensus of Council to send a letter to the Buncombe County School Board requesting they move the bus stop which area resident alleges is contaminated with the highest toxic fumes tested by the EPA.

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

## **RESOLUTION BOOK NO. 31 – PAGE 321**

### **B. RESOLUTION APPOINTING A MEMBER TO THE CITIZENS-POLICE ADVISORY COMMITTEE**

Vice-Mayor Davis said that the term of Davidson Jones (east representative) expired on June 30, 2008.

At the September 16, 2008, worksession, it was the consensus of Council to interview Kyle Ann Ross, Brock Moore and Ronald Maynard. Mr. Maynard was not able to attend the interview due to fuel conservation measures. Therefore, it was the consensus of Council to postpone action on this appointment until Mr. Maynard could be brought in for an interview.

### **C. RESOLUTION NO. 08-199 - RESOLUTION APPOINTING A MEMBER TO THE TRANSIT COMMISSION**

Vice-Mayor Davis said that Yuri Koslen has resigned from the Transit Commission, thus leaving an unexpired term until December 31, 2010.

At the September 16, 2008, worksession, it was the consensus of Council to interview Michael Orford, Bruce Emory and Larry D. Chapman. In addition, David Lack was a candidate; however, no interview is necessary. Mr. Orford could not be reached by telephone or letter arranging the interview.

After Council spoke highly of the candidates, Michael Orford received no votes, Bruce Emory received 1 vote, Larry



Chapman received 3 votes, and David Lack received 1 vote. Therefore, Larry Chapman was appointed to serve the unexpired term of Mr. Koslen, term to expire December 31, 2010, or until his successor has been appointed.

**RESOLUTION BOOK NO. 31 – PAGE 322**

**VII. OTHER BUSINESS:**

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

Vice-Mayor Davis reported to Council the Tree Commission's report on tent worms. Councilwoman Cape asked that Ms. Steiner, who brought this to Council's attention, be sent the report.

Vice-Mayor Davis presented Council with a draft timeline for replacement of vacant Council seats. He asked that Council review the draft and contact him with any additions or corrections.

Mayor Bellamy congratulated the Minority Enterprise Development (MED) Committee for their hard work on the 26th Annual Awards Luncheon. She also congratulated the several MED Week Award nominees from Asheville and Buncombe County.

Mr. Jerry Rice questioned the purpose of the bridge over to the Enka Plant.

**IX. ADJOURNMENT:**

Mayor Bellamy adjourned the meeting at 10:46 p.m.

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CITY CLERK

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MAYOR