

Tuesday – October 14, 2008 - 5:00 p.m.

Regular Meeting

Present: Mayor Terry M. Bellamy, Presiding; Vice-Mayor Jan B. Davis; Councilwoman Diana Hollis Jones; Councilman R. Carl Mumpower; Councilman Brownie W. Newman; Councilman William A. Russell Jr.; Assistant City Manager Jeffrey B. Richardson; City Attorney Robert W. Oast Jr.; and City Clerk Magdalen Burleson

Absent: Councilwoman Robin L. Cape

PLEDGE OF ALLEGIANCE

Mayor Bellamy led City Council in the Pledge of Allegiance.

INVOCATION

Councilman Russell gave the invocation.

I. PROCLAMATIONS:

A. PROCLAMATION PROCLAIMING OCTOBER 2008 AS "FIRE PREVENTION MONTH"

Vice-Mayor Davis read the proclamation proclaiming October, 2008, as "Fire Prevention Month" in the City of Asheville. He presented the proclamation to Fire Chief Greg Grayson, who briefed City Council on some important safety issues. He also urged the community to sign up on the City's website for the free CodeRed service which allows officials to deliver pre-recorded emergency telephone information to targeted areas regarding emergencies.

II. CONSENT AGENDA:

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

A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON SEPTEMBER 23, 2008, AND THE SPECIAL MEETING HELD ON OCTOBER 7, 2008

B. RESOLUTION NO. 08-200 - RESOLUTION SETTING A PUBLIC HEARING ON NOVEMBER 11, 2008, TO CLOSE A PORTION OF SUMMIT AVENUE

Summary: The consideration of a resolution of intent to close excess right-of-way located on both sides of Summit Avenue and setting a public hearing on November 11, 2008, regarding this issue.

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

Pursuant to this statute, the adjoining property owners have requested the City of Asheville permanently close a portion of Summit Avenue.

The Greenway Commission reviewed the closure of a portion of Summit Avenue at their meeting on October 9, 2008, and concluded there was no visible use for retaining this portion of Summit Avenue.

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

Pros:

- There will be no future compromise of ingress/egress to other property
- The closure would allow for more efficient use of the existing adjacent properties.
- The closing on both sides of Summit Avenue will not affect possible future roadway improvements.

Con:

- In consideration of the location of the unopened right-of-way, staff can find no potential challenges regarding the closure of

the alley.

There will be no fiscal impact related to this closure.

City staff recommends City Council adopt a resolution setting a public hearing for November 11, 2008, to close excess right-of-way located on both sides of Summit Avenue.

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C. RESOLUTION NO. 08-201 - RESOLUTION SETTING A PUBLIC HEARING ON OCTOBER 28, 2008, TO CONSIDER THE VOLUNTARY ANNEXATION OF CROWELL APARTMENTS LOCATED ON CROWELL ROAD AND FARM STREET IN WEST ASHEVILLE

Summary: The consideration of a resolution fixing the date of a public hearing on October 28, 2008, for the voluntary annexation of properties located on Crowell Road and Farm Street.

Crowell Apartments, LLC has petitioned the City of Asheville for the annexation of two parcels located at Crowell Road and Farm Street containing a total of approximately 3.53 acres. The area is contiguous to the existing corporate limits and qualifies for annexation by petition as set forth in N. C. Gen. Stat. sec. 160A-31.

The lot contains the Crowell Apartments, comprised of 63 affordable dwelling units. A tax valuation has not yet been placed on this development as it has only recently been completed.

Pursuant to N. C. Gen. Stat. sec. 160A-31, a public hearing must be held prior to adopting any ordinance for voluntary annexation. Should City Council decide to proceed with this request, the effective date for the annexation would be December 31, 2008.

This action complies with the Strategic Operating Plan in that it complies with the Council goal of working to enable voluntary annexation to support healthy growth of the City.

Pros:

- Complies with the 2025 Plan in that it supports the strategy of promoting voluntary annexation of developing areas and meeting the goal of continued use of the urban development tool of annexation in providing for the orderly growth of the City.

Con:

- Marginal increase in service costs.

The fiscal impact is not yet available as the development of the site has only recently been completed. The 2008 assessed value for the land alone is \$270,500. Additional fiscal impact information will be provided in the staff report for the public hearing.

City staff recommends City Council adopt a resolution setting the date for a public hearing on October 28, 2008, on the annexation petition.

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D. RESOLUTION NO. 08-202 - AUTHORIZING THE CITY MANAGER TO ENTER INTO AN AGREEMENT WITH THE N.C. DEPT. OF CRIME CONTROL AND PUBLIC SAFETY DIVISION, DIVISION OF EMERGENCY MANAGEMENT, FOR THE PROCUREMENT OF EQUIPMENT TO BE USED BY THE HAZARDOUS MATERIALS REGIONAL RESPONSE TEAM 6 – ASHEVILLE

ORDINANCE NO. 3658 - BUDGET AMENDMENT FROM THE N.C. DEPT. OF CRIME CONTROL AND PUBLIC SAFETY DIVISION FOR THE PROCUREMENT OF EQUIPMENT TO BE USED BY THE HAZARDOUS MATERIALS REGIONAL RESPONSE TEAM 6 – ASHEVILLE

Summary: The consideration of a resolution authorizing the City Manager to enter into an agreement with the N.C. Dept. of Crime Control and Public Safety, Division of Emergency Management, in order to accept a non-matching grant in the amount of \$205,714 for the procurement of equipment to be used by Hazardous Materials Regional Response Team 6 – Asheville, and the associated budget amendment.

The U.S. Department of Homeland Security and the Office of Domestic Preparedness has made funds available through State Homeland Security Grant Number: FY2008-GE-T8-0033 to implement the State Homeland Security Strategy. The strategy identifies the NC Hazardous Materials Regional Response Teams (RRT) as an integral component of North Carolina's preparation and response to manmade and natural emergencies and disasters. The purpose of the grant is to purchase specialized equipment to be used on-scene and to prepare for threatened or actual weapons of mass destruction or domestic terrorists attacks or major disasters

There are seven Regional Response Teams (RRT) strategically located throughout the state. Asheville Fire and Rescue hosts one of the seven state funded teams - RRT 6. The team responds to hazardous materials incidents in the twenty westernmost counties of North Carolina.

Each of the seven RRTs will receive an equal amount of non-matching funding and each will procure comparable equipment. The equipment consists of updated detection and monitoring instruments, personal protective equipment and mitigation materials required to lessen the affects of terrorist's attacks and hazardous materials incidents.

The grant is non-matching and all equipment provided through this grant will become the property of the Asheville City Government.

This action complies with the Strategic Operating Plan by better equipping the Hazardous Materials Team with upgraded equipment; this grant will assist in making Asheville a safer city, based on appropriate metrics for similarly sized cities.

Pros:

- The Department of Crime Control and Public Safety, Division of Emergency Management, will provide \$205,714.00 in non-matching funds for the purpose of upgrading Asheville and Western North Carolina's terrorism response capabilities.
- The equipment is state of the art and will better address the risk of terrorist's attacks and hazardous materials incidents.
- All statewide regional response teams will be comparably equipped and interoperability will be realized should an event require the resources of additional teams.
- This equipment is immediately available to Asheville residents and businesses. This level of equipment would most likely not be able to be obtained through the city's general budget process.
- Firefighter and citizen safety will be enhanced.

Con:

- The City of Asheville will be responsible for maintenance and upkeep of the equipment.

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There is no fiscal impact associated with this grant, as it is non-matching.

City staff recommends that City Council authorize the City Manager to enter into the agreement and accept the non-matching grant from the NC Department of Crime Control and Public Safety, Division of Emergency Management, to enhance AFR's capabilities to protect Asheville and Western North Carolina, and the associated budget amendment.

**RESOLUTION BOOK NO. 31 – PAGE 327
ORDINANCE BOOK NO. 25 – PAGE**

E. RESOLUTION MAKING PROVISIONS FOR THE POSSESSION AND CONSUMPTION OF MALT BEVERAGES AND/OR UNFORTIFIED WINE AT THE "JUST BECAUSE YOU'RE ASHEVILLE" OUTDOOR SPECIAL EVENT ON OCTOBER 25, 2008

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

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

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

Councilman Russell moved for the adoption of the Consent Agenda. This motion was seconded by Councilwoman Jones and carried unanimously.

ITEMS REMOVED FROM THE CONSENT AGENDA FOR INDIVIDUAL VOTES

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E. RESOLUTION NO. 08-203 - RESOLUTION MAKING PROVISIONS FOR THE POSSESSION AND CONSUMPTION OF

MALT BEVERAGES AND/OR UNFORTIFIED WINE AT THE "JUST BECAUSE YOU'RE ASHEVILLE" OUTDOOR SPECIAL EVENT ON OCTOBER 25, 2008

Summary: The consideration of a resolution making provisions for the possession and consumption of malt beverages and/or unfortified wine at the "Just Because You're Asheville" outdoor special event on October 25, 2008.

Dogwood Alliance in conjunction with Mountain Roots Management has requested through the Asheville Parks, Recreation & Cultural Arts Department that City Council permit them to serve beer and/or unfortified wine at "Just Because You're Asheville" and allow for consumption at this event.

"Just Because You're Asheville" will be held on Saturday, October 25, 2008, from 4:00 PM – 10:00 PM within the boundaries of the 100 block of Lexington Avenue, as per the event area limits referenced on the accompanying site map.

This action does not tie-in with the Strategic Operating Plan or any of the adopted City plans.

Pro:

- Allows fundraising opportunities for charity

Con:

- Potential for public safety issues

There is no fiscal impact associated with this action.

City staff recommends City Council adopt a resolution authorizing the City Manager to approve a resolution making provisions for the possession and consumption of malt beverages and/or unfortified wine at "Just Because You're Asheville".

Councilman Mumpower would not support the motion in that he felt there is a remarkable difference in the quality of a festival that allows alcohol vs. a festival with no alcohol.

Councilman Newman moved for the adoption of Resolution No. 08-203. This motion was seconded by Councilman Russell and carried on a 4-2 vote, with Mayor Bellamy and Councilman Mumpower voting "no."

RESOLUTION BOOK NO. 31 – PAGE 328

III. PRESENTATIONS & REPORTS:

A. FUEL UPDATE

Mayor Bellamy asked for this update regarding our fuel status.

Assistant City Manager Richardson briefed the Council on the following e-mail to all City employees on Wednesday, October 8, 2008: "Thank you for your commitment over the past days to conserve fuel. Our region has really been challenged with fuel supply for both public consumers and governmental agencies. Your efforts have enabled city government to continue to provide core health and public safety services through this difficult time. Indicators now advise us that most of our community has fuel available again at local stations. Also, our purchasing and fleet divisions have been more successful in securing a fuel supply for our city government operations. Due to these improving conditions, city government is able to return to level 1 of our accelerated fuel conservation plan at this time. This complete plan is available for you on the city's intranet at: <http://cityhall-nt/citynet/policies/COA%20Fuel%20Conservation%202008-3.PDF>. Please discuss any concerns that you may have about this move with your supervisor or department director."

"It is important that we continue to conserve fuel in every manner possible to offset the budget impact of higher fuel costs. We will remain under the level 1 accelerated fuel conservation measures until further notice. Again, thank you for working together to be able to continue to provide excellent municipal services to our citizens."

He then advised Council that we continue to track fuel availability for our community. As of today, gas merchants are reporting a 96% gas availability across all service stations. Internally, while the City is remaining at Level I in our fuel conservation plan, most all services are operating normal and we will continue our conservation efforts.

Mayor Bellamy asked the community to continue to conserve as well. She noted that the City will be meeting with the Chamber of Commerce to discuss fuel, heating oil, natural gas, etc. in the next 3 weeks after which she will update the community

on that discussion.

IV. PUBLIC HEARINGS:

A. PUBLIC HEARING TO CONSIDER PERMANENTLY CLOSING AN UNOPENED PORTION OF SHADY LANE

RESOLUTION NO. 08-204 - RESOLUTION PERMANENTLY CLOSING AN UNOPENED PORTION OF SHADY LANE

Mayor Bellamy opened the public hearing at 5:18 p.m.

Assistant Director of Public Works Richard Grant said that this is the consideration of a resolution to permanently close an unopened portion of Shady Lane. This public hearing was advertised on September 19, 26, October 3 and 10, 2008.

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

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

The Greenway Commission reviewed the requested closure at their meeting on August 14, 2008, and concluded there was no visible use for retaining this unopened parcel of Shady Lane

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

Pros:

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

Con:

- In consideration of the location of the unopened right-of-way, staff can find no potential challenges regarding the closure of the alley.

There will be no fiscal impact related to this closure.

City staff recommends adoption of the resolution to permanently close an unopened portion of Shady Lane.

An attorney with Roberts-Stevens, representing Skyland First Baptist Church, spoke in support of the closing.

Mayor Bellamy closed the public hearing at 5:20 p.m.

In response to Councilman Russell, Mr. Al Braddock representing Skyland First Baptist Church, explained that right now the space will be left open. He did note that the Church is expanding and suspect that the property may be used for additional parking.

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

Councilman Mumpower moved for the adoption of Resolution No. 08-204. This motion was seconded by Councilwoman Jones and carried unanimously.

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B. PUBLIC HEARING TO CONSIDER THE CONDITIONAL ZONING OF THE PROJECT IDENTIFIED AS ALOFT – MIXED USE DEVELOPMENT, LOCATED AT 51 BILTMORE AVENUE, FROM CENTRAL BUSINESS DISTRICT TO CENTRAL BUSINESS DISTRICT/CONDITIONAL ZONING FOR THE DEVELOPMENT OF A 145 UNIT HOTEL, 83 SEAT RESTAURANT, 2,600 SQUARE FEET OF RETIAL SPACE, AND A PUBLIC PARKING DECK

ORDINANCE NO. 3659 - ORDINANCE TO CONDITIONALLY ZONE THE PROJECT IDENTIFIED AS ALOFT – MIXED USE DEVELOPMENT, LOCATED AT 51 BILTMORE AVENUE, FROM CENTRAL BUSINESS DISTRICT TO CENTRAL BUSINESS DISTRICT/CONDITIONAL ZONING FOR THE DEVELOPMENT OF A 145 UNIT

HOTEL, 83 SEAT RESTAURANT, 2,600 SQUARE FEET OF RETAIL SPACE, AND A PUBLIC PARKING DECK

Mayor Bellamy opened the public hearing at 5:21 p.m.

Urban Planner Jessica Bernstein said that this is the consideration of an ordinance to conditionally zone the project identified as Aloft – Mixed Use Development, located at 51 Biltmore Avenue, from Central Business District (CBD) to Central Business District/Conditional Zoning for the development of a 145 unit hotel, 83 seat restaurant, 2,600 square feet of retail space and a public parking deck. This public hearing was advertised on October 3 and 10, 2008.

Ms. Bernstein said that this is a request for review of a proposed Conditional Zoning in the CBD to accommodate the construction of a mixed-use development including a City-operated public parking structure.

The project area consists of 2 parcels with a combined area of 1.11 acres. The site is located at 51 Biltmore Avenue, towards the southern end of the CBD and is bounded by Biltmore Avenue to the east, Aston Street to the north and South Lexington Avenue to the west. Currently this site consists of a surface parking lot and a single-story commercial structure (Hot Dog King).

Structure: The proposal includes the construction of a mixed-use development, including a 145-room hotel; 2,600 square feet of retail space, an 83-seat restaurant and a public parking deck. The hotel and retail uses occupy the frontage along Biltmore Avenue and above a portion of the street level on Aston Street, with pedestrian entrances along Biltmore. The structure is 7-stories along Biltmore Avenue and measures just under 94' to the top of the structure along that street frontage. The upper floors of the structure are stepped-back approximately 10-12' from the property line (which corresponds to the front of the 2nd story balcony) which results in the structure having a less visually-bulky mass from the pedestrian perspective.

Parking: The parking deck is proposed to include 433 spaces on six levels – 85 spaces will be dedicated (leased) to McKibbon Hotel Group and Public Interest Projects on a 24/7 basis and an additional 115 spaces will be dedicated to McKibbon Hotel Group during evenings and weekends. This arrangement leaves between 233 to 348 spaces available for public use, depending on the time of day, resulting in a net gain of between 136 - 251 parking spaces available to the public (97 spaces currently exist on the site). The deck is accessed via three locations: a right-turn in (entry-only) point on Biltmore Avenue, an exit-only point on Aston Street and an ingress/egress on Lexington Avenue. Several garage levels are below grade, accommodating the natural terrain changes to meet Aston and Biltmore at grade (approximately 15' change from Biltmore to Lexington).

These uses occupy approximately 36,628 square feet (0.8 acres) of this 1.1 acre site. The project proposal includes a lot recombination which will result in a separate, undeveloped parcel fronting along Lexington Avenue. The parcel will be approximately 30' deep by approximately 240' long (+/- 7,200 square feet) and will not be designated as CBD/Conditional Zoning (it will remain zoned straight CBD). There will also be a small area along Biltmore Avenue left undeveloped. There are no current proposals for these locations, although they are under common ownership.

Streetscape: Streetscape improvements are proposed with this project, including street trees and planters along Biltmore and Aston. Sidewalks on Biltmore will be 10' wide; however the sidewalks along Aston are less than the required 10' in width which requires approval by the City Traffic Engineer. Existing sidewalks along Lexington are approximately 5' in width. There is a passenger drop off/loading zone along the Biltmore frontage. No improvements are proposed along Lexington Avenue.

Signage: The signage proposed for this project appears to comply with the City's sign ordinance except for the individual tenant identification signs along Biltmore Avenue. According to Section 7-13-4(c) of the UDO, when more than two tenants share a common entrance, each tenant is allowed a window sign only, not to exceed 25-square feet. The developer has proposed ground floor retail that may result in a restaurant and up to three other tenant spaces, all of which gain access through the same entrance. These spaces are each proposed to have individual attached/awning signage. The restaurant sign would be 20-square feet and the individual retail space signs would each be approximately 6-square feet or approximately 17-square feet for a single-tenant option, with approximately 16-square feet of signage for the WXYZ bar located on the 2nd-level and 25-square feet of signage for the tenant identification sign on the canopy over the common entrance.

Staff is supportive of this modification request, as the individual attached signage is equal to or less than the size limits that these tenants would be allowed, per the ordinance, and is compatible with signage found on other retail spaces along Biltmore.

Development Agreements: According to submitted concept plans, the end result for this project will be four parcels under separate ownership with a number of easements and air right agreements. As submitted, the hotel would occupy a parcel fronting on Biltmore Avenue - owned by McKibbon Hotel Group. A second parcel would be owned by the City and would contain the parking garage and include the area underneath the hotel's Biltmore frontage. The remaining parcels, which would remain vacant for now include the one along the entire Lexington Avenue frontage and the other along Biltmore Avenue (where the Hot Dog King

is presently located), both owned by PIP, who would also retain air rights over the garage structure.

The structure of these ownership and access agreements has not yet been finalized. Currently the building code does not allow for structures to cross property lines in the manner proposed; however, this proposal is currently being reviewed with other cases across the state and may result in changes to the building code that would allow such an arrangement. In the event that the necessary code changes do not occur, two parcels may be created (one containing the hotel/parking garage structure and Hot Dog King site and one containing the Lexington Avenue property) with the proposed development being accommodated through a condominium association.

Approval from Council on air rights is also required for an awning over the hotel entrance on Biltmore Avenue and the architectural "swoof" on the roof and the "angle" on the Aston Street façade. These will require a separate approval from the Conditional Zoning proposal.

Impact to the Built Environment: This project involves the demolition of one small, single-story retail structure (the Hot Dog King) and will necessitate temporary sidewalk closures along Aston Street and Biltmore Avenue.

As mentioned, undeveloped portions of the site include the parcel fronting on Lexington and a small area on Biltmore Avenue, just south of the hotel. Until these future phases are completed, there will be a blank façade on both the Biltmore parcel and the entire Lexington Avenue length. It should also be noted that the Lexington Avenue parcel is only approximately 30' deep and any proposed development would be constructed against the garage façade. Structure design and streetscaping for any project proposed along Lexington would have to work with this shallow lot depth. Further, due to the hotel design, development on this site could not exceed the height of the garage or it would conflict with the hotel's pool deck and five floors of the hotel fronting Aston Street.

Public Benefits: The creation of additional parking capacity in this area of downtown and a commitment to some level of sustainable design are the primary public benefits offered for this project.

Regarding sustainable design, although not committing to achieving LEED-certification with this development proposal, the McKibbin Hotel Group has provided information regarding their planned measures toward sustainable development. This includes a list of 29 proposed "green" building features that the developers indicate they will attempt during the design/construction phase of the hotel project. Many of these items are directly from the LEED project checklist.

McKibbin has also submitted their intent to follow an "Environmental Policy," which focuses on running hotels dedicated to energy reduction, water conservation, air quality improvement, recycling and education. Additionally, information has been provided regarding the *Florida Green Lodging Program*, which although not applicable in North Carolina, is regularly implemented by the McKibbin Hotel Group and is dedicated to sustainable day-to-day operations in the hotel industry.

The modifications supported by the Downtown Commission would allow a stretch of solid wall greater than 20 feet in length along Aston Street. Commissioners felt this modification was acceptable due to the challenges of incorporating the garage structure and the change in grade as Aston falls away from Biltmore Avenue. To mitigate the stretch of blank wall along Aston Street, the developer has indicated an intent to install a public art piece and will work with the City's Public Art Board in the future to implement the art after construction of the garage is complete.

Required Reviews

Downtown Commission Review: The project was reviewed and approved (4-0 with 4 members present) by the Downtown Commission on September 12, 2008. After several informal design review meetings, the applicant modified aspects of the design to accommodate recommendations by the Commissioners and to better meet the Downtown Design Review Guidelines. Future phases of this development will be required to return for separate design review.

Members of the Commission commented on aspects of the project, including:

- praise for the incorporation of design changes that result in increased activation along Biltmore,
- concern regarding the blank facades along Biltmore and Lexington prior to future phase completion and how to deter graffiti on the site,
- concern regarding traffic congestion along Biltmore and that sufficient Wayfinding measures can be incorporated to direct motorists approaching from the south to the Aston Street entry.

Commissioners added two conditions to their vote recommending approval of this project:

- that the applicant consider applying construction mitigation measures (similar to those recommended for the Haywood Park mixed-use project, including Wayfinding and directional signage), and
- if Phase 2/3 has not started within 1-year of completion of the hotel and garage structure, a mitigation plan should be established for the blank façades along Lexington and Biltmore Avenues.

At the Downtown Commission meeting, a member of the community provided written concerns which included the potential traffic impact of additional cars on Biltmore Avenue due to the public parking deck.

Technical Review Committee (TRC) Review: This project was approved with technical conditions by the TRC on September 15, 2008. There were no citizen comments received regarding this project at the meeting.

Planning & Zoning Commission: The project was considered by the Planning & Zoning Commission on October 1, 2008. The request was approved by a vote of 5-0. There was one member of the public present (a resident of a confronting structure) who expressed positive comment regarding the proposal and design. The Commission modified language for the additional condition (#7) included in this report, agreeing with the Downtown Commission's suggesting of requiring a mitigation plan for the blank façades along Lexington and Biltmore Avenues prior to construction of "future phases."

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

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

The 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 (+/- 15') grade change from Biltmore Avenue to Lexington Street with parking deck levels entering and exiting at the street level and ramps up within the structure.

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, there should not be a negative impact to adjoining or abutting property. The uses proposed should complement existing businesses and augment the needs of both residents and visitors. The parking garage with its public parking is expected to add value to the surrounding area by supporting nearby businesses and will be a benefit to downtown visitors during the daytime and after hours while promoting a safe 24-hour downtown area.

Concern has been expressed that the blank façades along Lexington and Biltmore Avenues until the completion of future phases could have a negative visual impact on these streetscapes and the properties across from them. The Downtown Commission and P&Z Commission added a condition to their approval that if Phase 2/3 has not started within 1-year of completion of the hotel and garage structure, a mitigation plan should be established for the blank façades along Lexington and Biltmore Avenues.

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

The project is proposed at a height and scale similar to other buildings in this part of the historic core of the downtown and substantially below the 305' height of the Ellington project approved in 2007. The retail uses along Biltmore will complement the active pedestrian experience along this corridor. Also, the upper floors (3-7) have been designed to step-back 10-12' from property line after the 2nd story balcony, which reduces the perceived mass of the structure from the pedestrian level.

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 mixed-use infill developments. Retail, restaurant and hotel uses align with economic development priorities, supporting the lives of local residents as well as the tourism industry, helping the downtown become and remain a "destination". The building has been designed in such a way that the streetscape maintains an appropriate pedestrian scale and encourages pedestrian activity, by including active retail

openings along Biltmore Avenue and a balcony at the second story).

This site is identified in the Center City Plan as a potential future catalytic development area – a site that has the potential to stimulate additional investment or provide Downtown with missing uses that are critical to maximizing economic vitality. The plan indicates that a proposal such as this should be “managed to achieve maximum public benefit” which is why staff feels the future phases will be critical.

Parking in the Downtown is often identified as a persistent problem and this project does include 433 structured spaces – a net gain of between 136 - 251 parking spaces available for public use (the project site was identified as in a zone with a parking deficit, per the Comprehensive Parking Study, 2008). The Center City Plan identifies parking structures as a key solution to the parking deficit and encourages wrapping the structure with retail or other active uses at the street level. The proposal to include a city parking garage is a public/private partnership, which is noted in the Plan as essential for maximizing the success of economic development efforts.

One area of possible discord with the plans is that both stress the need for a variety of housing options in the Downtown. The applicant has indicated that they may include housing (workforce) in a future phase, but the current proposal does not include any residential component nor is there any surety of what will be submitted in the future.

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 infill growth where infrastructure currently exists and encourages economic development in the downtown.

On April 24, 2007, the City Council passed a resolution that all City-owned buildings will be LEED certified at the Gold level. There are noted difficulties with obtaining LEED certification of a parking structure, which is further complicated by the multiple entities involved in ownership of this proposal, however, as a development project that the City is involved in directly, there should be a clear dedication to sustainable design practices. The applicant has expressed the intent to incorporate LEED-eligible design elements and has provided additional information regarding their environmental policy.

Increasing the amount of housing in the downtown (especially at affordable or workforce rates) is a major component of the sustainable and affordable goals. At this time, the project does not provide any affordable residential component.

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.

The proposed project is anticipated to generate 241 vehicles per hour (194 vph ingress and 47 vph egress) during the morning peak hour and 246 vehicles per hour (74 vph ingress and 172 vph egress) during the afternoon peak hour at full build-out conditions (two years). In addition, the proposed project could generate 1,200 vehicles per day during a typical weekday. Existing weekday traffic volumes along Biltmore Avenue are about 12,000 vehicles per day. The proposed traffic that could be generated by the Ellington Hotel, a project that was approved earlier in the year, was included in the subject traffic study.

Based on these anticipated peak hour traffic volumes, a traffic impact study was required. The scope of work included six intersections (five signalized intersections and one unsignalized intersection) in the immediate area of the project site and the annual traffic growth rate was 4%. Three access points, one along Biltmore Avenue, one along Aston Street, and one along South Lexington Avenue will serve the proposed project. Several scenarios regarding the operation of the access points were analyzed in the traffic impact study and all of them produce satisfactory results. The recommended scenario that should ensure safe, efficient operation and traffic flow includes a right-in only ingress access point along Biltmore Avenue, an egress only access point along Aston Street, and a full-movements ingress and egress access point along South Lexington Avenue.

The traffic impact study has demonstrated that it is reasonable to conclude that the proposed development should not have an adverse impact on the surrounding street network provided the following mitigation measures are made, which the developer has agreed to in writing:

- 1. Intersection of Biltmore Avenue and Patton Avenue/Pack Square – Re-optimize the traffic signal timing/intersection splits and follow through with planned geometric changes to the eastbound approach. Estimated Cost = \$7,000.*
- 2. Intersection of Biltmore Avenue and Hilliard Avenue – Revise the eastbound approach to provide a shared left-turn and*

through lane and an exclusive right-turn lane. Estimated Cost = \$3,000.

3. *Intersection of Biltmore Avenue and Proposed Access Point – Prohibit ingress left turns. Estimated Cost = \$100.*
4. *Construct all three access points to enable future changes to their traffic operation if needed.*

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

Pros:

- Garage component supplies needed public parking spaces in a zone identified as deficient – a net gain of between 136 - 251 public spaces
- Building design follows urban design principles (retail activation at the street level, 2nd story balcony further creates activity and pedestrian level interest, building steps back 10-12' after the 2nd story which reduces massing when viewed from the street)
- Proposed "green" features in the design and construction of the project as well as the daily operations of the hotel show a strong commitment to environmentally-sustainable development.

Cons:

- Does not include any residential units, with no firm commitment to residential in future phases.
- No commitment to achieve LEED certification.
- Project design results in blank undeveloped façades along Biltmore and Lexington Avenues until future phases are completed, and may be a target for graffiti.

Staff recommends approval of the project and the sign modifications, subject to the conditions recommended by City staff and the Planning & Zoning Commission.

Mr. W. Louis Bissette Jr., representing the McKibbon Hotel Group (one of the partners in the project), said the project is a little unusual as it is a public/private partnership with the City, the McKibbon Hotel Group and Public Interest Projects. He said the project does meet a number of the downtown needs, including 433 structured parking spaces. He said that this project is in harmony and scale with the surrounding neighborhood, and he hoped the Commission will act favorably on their request.

Mr. Wes Townson, representing McKibbon Hotel Group, said this is collaboration in the finest sense of the word and was excited to be a partner in this effort.

Ms. Cathy Ball, the City's Director of Transportation and Engineering, explained the City's need for parking in that area, as shown by a Parking Study and a Downtown Parking Action Plan. With the opportunity to look at working with the private development sector and being able to work with the property owner, the challenge was going to put that parking in, make it look good on the site, and have a multi-use development structure. She stressed that the City's involvement in this project is the public parking component.

Mr. Pat Whalen, representing Public Interest Projects, explained how the lot on the Lexington Avenue side is only conceptual at this point, but it is their intention that it be affordable housing. He was proud of their involvement in this public/private partnership.

Mr. Jesse Plaster, representative of the Downtown Commission, said that the developer made changes to the project to address the Commissioner's concerns. The result is a better project and this is a good example of the design review process. The project did receive full support of the Downtown Commission and he urged Council to approve this good public/private partnership. He reiterated the two additional conditions the Downtown Commission requested (and staff has included in their recommendation), being (1) that the applicant consider applying construction mitigation measures (similar to those recommended for the Haywood Park mixed-use project, including Wayfinding and directional signage); and (2) if Phase 2/3 has not started within 1-year of completion of the hotel and garage structure, a mitigation plan should be established for the blank façades along Lexington and Biltmore Avenues.

Ms. Betsy Rose Weiss, owner of American Folk Art and Framing on Biltmore Avenue across the street from this project, was concerned about (1) inability to turn left onto Aston Street; and (2) diluting Asheville's uniqueness with the possible addition of corporate chain entities.

At 5:38 p.m., Mayor Bellamy closed the public hearing.

City Attorney Oast said that on October 28, 2008, City Council will be reviewing the downtown development agreement, and other documents, that will set up the City's and the other private partner's participation. He said that Council's vote on this item will not bind Council with respect to their vote on the other items.

In response to Councilman Russell, Ms. Ball said that Aston Street will be two-way.

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

Based on information provided in the staff report and as stated in the staff recommendation, Councilman Russell moved to approve the project identified as Aloft – Mixed Use Development, located at 51 Biltmore Avenue, from Central Business District (CBD) to Central Business District/Conditional Zoning for the development of a 145 unit hotel, 83 seat restaurant, 2,600 square feet of retail space and a public parking deck and the sign modifications, subject to the following conditions: (1) The project shall comply with all conditions outlined in the TRC staff report; (2) All site lighting must comply with the City's Lighting Ordinance and be equipped with cut-off fixtures and directed away from adjoining properties and streets. A detailed lighting plan will be required upon submittal of detailed plans to be reviewed by the Technical Review Committee; (3) All existing vegetation that is to be preserved must be clearly indicated and dimensioned on the site, landscape and grading plans; (4) The building design, construction materials and orientation on site must comply with the conceptual site plan and building elevations presented with this application. Any deviation from these plans may result in reconsideration of the project by the reviewing boards; (5) This project will undergo final review by the TRC prior to issuance of any required permits; (6) During construction, all sidewalks around the project area will be kept open (safely covered) if possible and when not possible, a diverted pedestrian route will be clearly defined; (7) If future development on Lexington and Biltmore Avenue frontages is not in progress (meaning an application submitted to the Planning Department) within one-year of the completion of the hotel and garage structure (meaning a Certificate of Occupancy has been granted), the City shall take appropriate action in conjunction with the developer (Public Interest Projects) to cover, screen or decorate the wall in a manner approved by the Downtown Commission; (8) The traffic mitigation improvements have been identified and agreed upon; (9) A traffic mitigation/staging plan should be submitted and reviewed by appropriate City staff prior to the issuance of any permits; and (10) Future development on the Lexington Avenue parcel and the area south of the hotel along Biltmore Avenue will not be required to return to City Council for review as an amendment of this Conditional Zoning permit. This motion was seconded by Councilman Newman.

In response to Councilman Mumpower, Mr. Townson was concerned about the economy, but they are very much committed to the project. They have been located in Asheville for over 10 years and intend to proceed with preparation of construction documents with the hope that after the first of the year the financial markets will certainly be more clear and everything will go as planned. The financing and timetable will be discussed with the documents on October 28.

Councilman Mumpower was concerned about locking the City into anything that has the potential of putting the citizens of Asheville at risk. City Attorney Oast responded that in the downtown development agreement there are a number of contingencies - one of those is that we are able to obtain financing. There will be a period of time between when we approve that agreement and when we would be committed beyond the ability to get back out of it. The same thing is true of the developer. We are hopeful that within that time the financial picture will clear up enough that we can provide you more assurance than we can today.

When Councilman Mumpower asked if there was a performance bond component, Mr. Townson said no. He did say that there would be bonding required for the general contractor who they anticipate will be doing the entire project.

Councilman Mumpower felt this is a major investment and was concerned about moving forward in our current economy. However, as the issue before Council now is a land use issue, he will base his vote on that issue alone. But, he noted that unless the fog clears dramatically with regard to the economy, he would not be able to support moving forward with this project.

In response to Councilwoman Jones, Ms. Ball explained how they will utilize the property along Lexington Avenue for staging, however, that doesn't mean that sections of the street won't need to be closed off periodically. She also noted that when the infrastructure and sidewalk work commences along Biltmore Avenue and Aston Street, that work will be coordinated with the work on The Ellington project.

In response to Councilwoman Jones and Councilman Newman, Mr. Whalen spoke to Council about the plans for the affordable housing component on Lexington Avenue in Phase 2 of the project. They are uncertain at this time whether the units will be rental or for sale, but they do intend for them to be workforce housing prices. The project is not very complicated and it will give them a chance to test protocol types of new workforce lofts in downtown.

Mr. Whalen responded to Councilwoman Jones' hopes that whatever unfolds on the retail floors that they keep in mind the independent entrepreneurial flavor that we currently have in the downtown area.

Vice-Mayor Davis agreed that our economy is weak. If for some reason the Phase 2 doesn't occur within a year, he would not be in favor of any parking garage today that wouldn't involve a wrap on the Lexington Avenue side. Mr. Whalen said that PIP and the City have agreed to each bear half the cost of softening the wall with something that has some architectural or artistic

character if for some reason the affordable housing units are not built right away. However, they didn't want to spend a lot of time on that because they plan on building the affordable housing.

Councilwoman Mumpower advised the developer of the following issues he would like addressed at the October 28 meeting when the downtown development agreement is discussed: (1) performance bond; and (2) timeline on project regarding the economy and financing. Regarding chain stores, since that is not a criteria in our ordinances, he didn't think it was appropriate to put subjective pressures on developers by telling them who they should lease their private property space to..

In response to Councilman Mumpower, City Attorney Oast said that the conditional zoning approval is valid for two years from the date it is adopted by Council. That two year timeframe is not for the developer to complete the project, but it is for making substantial progress on the project.

In response to Mayor Bellamy, Assistant Director of Traffic and Engineering Ken Putnam explained the entrances and exits and how they will be built if in the future a change in the access needs to occur.

When Mayor Bellamy asked about the apparatus in the parking deck, Mr. Putnam said the same type system will be used as our other parking decks to make sure the traffic flows smoothly.

In response to Mayor Bellamy, Mr. Putnam said that adding the signage to this parking garage into the Wayfinding Program is already a condition, subject to Council's approval the project.

When Mayor Bellamy asked about site lines on Aston Street, Mr. Putnam explained that site lines are addressed in the Traffic Impact Study and all site lines, even for pedestrians, are to be accounted for.

Mayor Bellamy felt that as the project begins to be built from the ground up, screening the area, similar to the Bohemian project in Biltmore Village, would be a benefit to the community from a safety and appearance reasons. When she asked for a friendly amendment to the motion for screening, Councilman Russell did not accept the amendment as he felt that (1) it is a public safety issue to be addressed by the general contractor to protect the public; and (2) there may be better technology out there when the project begins. City Attorney Oast did note that this project will go back to the TRC once the design is in place and those are the kinds of details that are covered.

Mayor Bellamy suggested the developer contact Ms. Cindy Weeks with Mountain Housing Opportunities (MHO) for creative ideas MHO has done regarding financing with affordable housing and mixed-income developments.

The motion made by Councilman Russell and seconded by Councilman Russell carried unanimously.

Councilwoman Jones felt it might be beneficial for Council to receive information the financial benefits of doing development downtown, with particular emphasis on local employment. Council can then weigh that information against the debt that would be incurred.

Mayor Bellamy also felt it would be important for Council to have information on how much we have saved for this parking deck, what we anticipate the debt service on the parking deck will be, etc.

Councilman Mumpower advised Council that he will be asking questions, if it is appropriate within the confines of our ordinances, about whether their protocol is for hiring legal citizens as well.

ORDINANCE BOOK NO. 25 - PAGE

V. UNFINISHED BUSINESS:

VI. NEW BUSINESS:

A. RESOLUTION NO. 08-205 - RESOLUTION OF APPRECIATION TO THE N.C. DEPT. OF TRANSPORTATION AND THE FEDERAL HIGHWAY ADMINISTRATION FOR SUPPORT IN THE EVALUATION OF ALTERNATE 4B OF THE I-26 CONNECTOR PROJECT

Mayor Bellamy has asked that City staff prepare the following resolution: "Whereas, the North Carolina Department of Transportation and the Federal Highway Administration are developing a highway improvement project known as the I-26 Connector; and Whereas, in response to considerable public desire for constructive input into the design of this critical highway project, the City of Asheville and the Asheville Metropolitan Planning Organization requested additional opportunities for this input

to occur while simultaneously maintaining the construction schedule for the I-26 Connector project; and Whereas, , during the summer of 2000, the Community Coordinating Committee, in cooperation with the North Carolina Department of Transportation and the Federal Highway Administration, held two extensive public meetings-the Education Forum and the Design Forum-to educate and involve the public regarding the necessity and the design of the I-26 Connector project; and Whereas, the Asheville Design Center identified an alternative alignment for the I-26 Connector know as Alternate 4B, which reduces the amount of right-of-way required to complete the project and separates interstate and local vehicular traffic; and, Whereas, the City of Asheville and Buncombe County funded an additional engineering study by Figg Bridge Engineering to further evaluate Alternate 4B for the purposes of consideration as the preferred alignment for the I-26 Connector; and, Whereas, the North Carolina Department of Transportation and Federal Highway Administration had accepted Alignment 4B as one of four alternate designs for the I-26 Connector; and, Whereas, the North Carolina Department of Transportation and Federal Highway Administration held a public hearing for said project on September 16, 2008; and, Whereas, City Council wishes to provide official public comment on the Draft Environmental Impact Statement for the I-26 Connector Project. Now, therefore, be it resolved by the City Council of the City of Asheville that the North Carolina Department of Transportation and the Federal Highway Administration are hereby commended for their cooperative spirit and willingness in consideration of Alternate 4B of the I-26 Connector Project, particularly in their efforts to visually communicate the various alternates during the September 16, 2008, Public Hearing. Be it further resolved that Council supports expediting the design and construction of the I-26 Connector project. Be it finally resolved that based on review of the four alternates for the I-26 Connector Project that City Council supports selection of Alternate 4B in that it meets many of the community's strategic goals by reducing the amount of right-of-way required for the construction of the project and separates local and interstate vehicular traffic." She felt this action is important in that the City did get Alternate 4B looked at by the N.C. Dept. of Transportation (NCDOT). The engineering part was a joint effort paid by the City and County in order to get Alternate 4B to a level which the NCDOT could take it over, which they did. She did note that City Council and the community were informed that the process would not slow down what the NCDOT was doing. This did not negatively impact the timing of the project. She felt it was important to acknowledge the time and involvement by the community in Alternative 4B.

Director of Transportation and Engineering Cathy Ball reiterated the amount of cooperation they received from the NCDOT and the Federal Highway Administration in being able to move into a process that was unchartered for the work that they do. To be able to have the County and the City come together and bring in a consultant that could review a community proposal and be able to understand that that could become a viable alternative. Also, we were very pleased with the staff level interaction and willingness to share data and a true willingness on the state's part to be able to find solutions to the problems that we came up with through this alternate. We have also been able to put the information shared at the public hearing on the City's government channel. The effort that NCDOT and the Federal Highway Administration put into making visuals so that people could understand them is outstanding. We propose, as an input way into the environmental impact assessment, that Council, from the community perspective, would support Alternate 4B which meets a lot of the community's goals, separating state and local traffic, reducing the amount of right-of-way that is required for the project, reducing the amount of surface from pervious to impervious, as well as having overwhelming community support.

In response to Councilman Newman on whether the NCDOT has recognized that Alternate 4B is an official alternative within the context of the Environmental Impact Statement (ESI) process, Ms. Ball said that a draft EIS has been released and there has been an amendment to that draft. She thinks that the state has reserved the right, through the process, to say that if for some reason this alternate falls out before they re-issue in paper that final EIS then it would not be included. She thinks it's more of a technicality. She does hear them say it is a viable alternative.

Councilman Newman hoped that Alternate 4B is the preferable alternative for the project as it seems to have a lot of common ground and the most advantages for the community.

In response to Councilman Mumpower, Ms. Ball said the Connector project has 4 alternates, two of which do not separate the local and interstate traffic and two which do. Alternate Numbers 2 and 3, which do not separate local and state traffic, are in the neighborhood of \$221-261 Million. Alternates 4 and 4B range from \$368-425 Million. These estimates were completed using standard NCDOT methods and measures that they would use to install things. We would hope to work with them to provide engineering and looking at different types of bridge structures to be able to try to reduce that. These numbers do include right-of-way. We are having discussions to see the value of that right-of-way and get further clarification on that number. These costs do not include bridge costs nor do they include some new types of bridge designs that actually cost less to build.

Councilman Mumpower felt that Alternate 4B is the nicest alternative but it would roughly double the cost of the next lowest alternative. He felt that Asheville politicians have delayed this project to death and was concerned that we are considering this resolution in the face of what is happening with our economy. He felt we have borrowed ourselves nationally in a terrific hole and didn't think the federal government would be in any position to proceed with this kind of activity in the foreseeable future. He would have to speak against the motion in that he did not feel it was appropriate to endorse a project that costs twice as much as what will work.

Councilman Newman briefed the Council on the original concept back in the 1980's when the plan was to have an interstate loop around Asheville, but due to the high costs of building roads through our mountainous terrain and the high environmental impact, the community decided to bring the project through the heart of our City. The NCDOT supported that largely for financial reasons. If Asheville would have insisted on the same type of loop project that other cities had done, the price tag would have been 2-3 times what the most expensive way of building it through the City would be. In light of our community is saving the state taxpayers a lot of money by accepting that this project be built in the very heart of our City, it is fair for our community to say we want a really good project.

Mayor Bellamy noted that the process, outlined in the resolution, did not delay the process for this project, as specifically stated by the convener of a prior meeting that was open to elected officials.

Councilman Newman moved for the adoption of Resolution No. 08-205. This motion was seconded by Councilwoman Jones and carried on a 5-1 vote, with Councilman Mumpower voting "no."

RESOLUTION BOOK NO. 31 – PAGE 331

B. ADOPTION OF THE CITY COUNCIL CANDIDATE TIMELINE

Vice-Mayor Davis, Chair of the Boards & Commissions Committee, said that there has been discussion in the past about how to fill a vacated Council seat during the middle of a term. The Boards & Commissions Committee initiated the process of the following timeline. If such process proves to run smoothly, it was the consensus of the Committee to include this process in the City Council's Rules and Regulations. He noted that this accelerated timeline is necessary as City Council's Retreat will be held on January 9-10, 2009, and it was imperative that the new Council member(s) be oriented and be a part of the retreat. The process is below:

- Monday, 10-13 - Clerk to send out e-mail to all Council asking for two questions each for Council candidate. Questions must be received by Thursday, October 16 at 5 pm
- Thursday, 10-16 - Deadline for Clerk to receive Council questions (2 each)
- Friday, 10-17 - Clerk to send to City Council Boards & Commissions Committee all 14 questions
- Tuesday, 10-21 - Boards & Commissions Committee to narrow down 14 questions to 5
- Wednesday, 11-5 - Receipt of Notice of Resignation
- Wednesday, 11-5 - Begin advertising for City Council vacancy
- Wednesday, 11-5 - Any interested person will be given an application form, with a request for a resume to be attached, along with the 5 essay questions - ½ page response each. Deadline for all applications is Wednesday, November 26 at Noon
- Wednesday, 11-26 - Deadline for applications - Noon
- Wednesday, 11-26 - Clerk to verify all candidates of (1) City of Asheville residency; and (2) that they are registered to vote in Buncombe County
- Wednesday 11-26 - Clerk to send to City Council all eligible candidates applications, along with resume and completed essay questions. In addition, a letter will sent to all candidates notifying them that if they are chosen the City Council orientation will be held one day during the week of December 15
- Tuesday, 12-2
FORMAL MTG - City Council determine (1) how many to interview; (2) who to interview; (3) length of interviews; (4) date of interviews – December 9 before formal meeting; and (5) time interviews are

to begin

- Wednesday, 12-3 - Clerk to contact candidates to arrange Interviews on December 9
- Tuesday, 12- 9 - Interviews in Council Chamber – Interviews to be held prior to FORMAL MTG meeting **AND** listing on the formal 12-9 agenda – Appointment of new Council member
- Friday, 12-12 - New Council member sworn in with brief reception
- One day during week of 12-15 - New Council member orientation

If Council chooses to adopt the timeline, it will be necessary to amend the 2008 City Council Meeting schedule to include December 2 as a formal meeting; and December 12 as a special meeting to swear in the new Council member(s).

There as a brief discussion about the application deadline.

In response to Mayor Bellamy, City Clerk Burluson said that all applications, resumes and responses to the essay questions will be available for public inspection on Wednesday, November 26, as part of the City Council meeting agenda.

In response to Councilman Newman, City Attorney Oast said that the last meeting of the Council member resigning depends on when they make their resignation effective, which is normally the last day before they get sworn in to another office. They cannot serve on City Council once elected to the other office, whether they submit a letter or resignation or not. He said that the Council member(s) can remain on Council until they are sworn in to the other office – Buncombe County Commissioners take office on December 1, 2008; and the U.S. House of Representatives take office on January 20, 2009.

In response to Mayor Bellamy, City Attorney Oast said that a Council member who is elected to another office cannot vote on their replacement because the vacancy on Council does not exist until that Council member's resignation is effective. Their leaving Council is what creates the vacancy.

It was the expectation of Council that any Council member elected to another office would plan to participate in their City Council capacity only through November 30, 2008.

In response to Councilman Newman, City Attorney Oast said that the City's Charter reads "The mayor and members of the council, and all other officers, elected under the provisions of this Charter, shall at the time of their election be qualified electors of the City of Asheville." It was his opinion that that means the applicant must be 18 years of age and be registered to vote.

Councilman Mumpower, who is campaigning for the U.S. House of Representatives seat, assured Council that if he is elected, it will be his desire to work with the Council in whatever way he can to set up a good future for this Council and cooperate in any way possible. He thanked Vice-Mayor Davis for creating a healthy, fair process for filling vacant Council seats.

Councilwoman Jones confirmed that all Council members (including those running for other offices) can participate in the process by submitting two essay questions.

Councilman Mumpower moved to adopt the City Council Candidate Timeline as outlined above. This motion was seconded by Councilwoman Jones and carried unanimously.

C. CITY COUNCIL MEETING SCHEDULE FOR DECEMBER, 2008

Due to potential vacancies on City Council, Councilman Mumpower moved to instruct City Clerk Burluson to place an item on an upcoming agenda to amend the 2008 City Council meeting schedule for (1) December 2, 2008, be a formal meeting; and (2) December 12, 2008, be a special meeting. This motion was seconded by Councilwoman Jones and carried unanimously.

Mayor Bellamy noted that at the special meeting on Friday, December 12, 2008, not only will the new Council member(s) be sworn in but that the former Council member(s) who were elected to another office will be recognized as well.

Regarding the December 16, 2008, worksession, it was the consensus of Council to cancel that worksession; however, if there is a need for action prior to the end of the calendar year, he hoped that the Council members would be amenable to keeping that date available.

VII. OTHER BUSINESS:

N.C. League of Municipalities Board of Directors

Mayor Bellamy was pleased to announce that today she was elected to the Board of Directors to the N.C. League of Municipalities (League) to represent the City of Asheville. She explained the League is a nonpartisan, voluntary association of cities, towns and villages with 542 member municipalities as of July 1, 2008. It is a 27-member Board of Directors, elected by the membership, which oversees all League activities, which include direct services to municipal officials of member cities and towns and advocacy at the state and federal levels on behalf of cities and towns. Municipal officials representing member cities and towns develop and adopt the advocacy agenda that determines municipal legislative goals. The membership also adopts the core principles that determine and guide the organization's advocacy efforts. The area she represents will not only include Asheville, but municipalities in the following counties: Mitchell, Yancey, Buncombe, Madison, Henderson, Haywood, Jackson, Transylvania, Macon, Swain, Graham, Cherokee and Cherokee counties.

Mayor Bellamy then briefly reported to Council items of interest from the League's annual meeting, with special interest on the state's budget as it relates to transportation, in particular the taking of cities Powell Bill funds. Other pressing issues addressed were state highways, gang violence, and sustainability, all of which conversations will continue.

Award by N.C. League of Municipalities – Green Challenge

Mayor Bellamy was also pleased to announce that the City of Asheville was awarded the Level One of the N.C. League of Municipalities Green Challenge, which acknowledged the City's commitment to efficient, energy saving operations and practices. She thanked the City's Energy Coordinator Maggie Ullman for her work on the application.

Claims

The following claims were received by the City of Asheville during the period of September 13 – October 2, 2008: William Marquissee (Police), AT&T (Water), AT&T (Water), Charter Communication (Water), Dallas Norris (Water), Dawn Banks (Sanitation), David Love (Streets), Donnie Isley (Fire) and Gerald Echols (Transit).

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

Lawsuit

The City was served with the following Complaint on September 18, 2008: Carroll Anderson and Ruby Anderson vs. Allstate Insurance Company and the City of Asheville. The nature of the proceeding is a complaint for property damage resulting from a waterline break. This matter will be handled by an attorney outside of the City Attorney's Office.

VIII. INFORMAL DISCUSSION AND PUBLIC COMMENT:

Mr. Jeffrey L. Meadows Sr. spoke to Council about Darwin-ism. Assistant City Manager Richardson said that he would be happy to meet with Mr. Meadows.

Rev. Christopher Chiaromonte spoke to Council about his prophecy regarding the direction of the nation.

Closed Session

At 7:05 p.m., Councilwoman Jones 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, County of Buncombe, Asheville Regional Airport Authority; Asheville Jet Inc., d/b/a Million Air - The statutory authorization is contained in G.S. 143-318.11(a) (6); and to prevent disclosure of information that is privileged and 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 that information privileged and confidential is N. C. Gen. Stat. sec. 143-318.10 (e). The statutory authorization is contained in G.S. 143-318.11 (a) (1). This motion was seconded by Councilman Newman.

Councilman Mumpower said that Council has made a commitment in the past to not conduct water agreement negotiations in closed session. He felt that Council's deliberations regarding negotiations should be discussed in the open forum. He would

speaking against the motion.

In response to Councilman Russell, Mayor Bellamy said that Council will be discussing the Sullivan Act lawsuit.

The motion made by Councilwoman Jones and seconded by Councilman Newman carried on a 4-2 vote, with Councilman Mumpower and Councilman Russell voting "no."

At 8:11 p.m., Councilman Newman moved to come out of closed session. This motion was seconded by Vice-Mayor Davis and carried unanimously.

IX. ADJOURNMENT:

Mayor Bellamy adjourned the meeting at 8:11 p.m.

CITY CLERK

MAYOR