

Tuesday – September 28, 2010 - 5:00 p.m.

Regular Meeting

Present: Mayor Terry M. Bellamy, Presiding; Vice-Mayor Brownie W. Newman; Councilman Cecil Bothwell; Councilman Jan B. Davis; Councilwoman Esther E. Manheimer; Councilman William A. Russell Jr.; Councilman Gordon D. Smith; 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 Russell gave the invocation.

**I. PROCLAMATIONS:**

**A. PROCLAMATION PROCLAIMING SEPTEMBER 15 – OCTOBER 15, 2010 AS “HISPANIC HERITAGE MONTH”**

Mayor Bellamy proclaimed September 15 – October 15, 2010, as “Hispanic Heritage Month”.

**B. PROCLAMATION PROCLAIMING OCTOBER 3-9, 2010, AS “MENTAL ILLNESS AWARENESS WEEK”**

Mayor Bellamy read the proclamation proclaiming October 3-9, 2010, as “Mental Illness Awareness Week” in the City of Asheville. She presented the proclamation to Mr. Jim Pitts, with the National Alliance on Mental Illness North Carolina, who briefed City Council on some activities taking place during the week.

**C. PROCLAMATION PROCLAIMING OCTOBER, 2010, AS “FIRE PREVENTION MONTH”**

Vice-Mayor Newman read the proclamation proclaiming October, 2010, as “Fire Prevention Month” in the City of Asheville. He presented the proclamation to Fire Chief Scott Burnett, who briefed City Council on some activities taking place during the month.

**D. PROCLAMATION PROCLAIMING OCTOBER, 2010, AS “BREAST CANCER AWARENESS MONTH”**

Councilwoman Manheimer read the proclamation proclaiming October, 2010, as “Breast Cancer Awareness Month” in the City of Asheville. She presented the proclamation to Ms. Earleen Bennett, representing Beauty Through Cancer, who thanked City Council for their support and briefed Council on some activities taking place during the month.

**E. PROCLAMATION PROCLAIMING OCTOBER 30, 2010, AS “KIDS VOTING DAY”**

Councilman Davis read the proclamation proclaiming October 30, 2010, as "Kids Voting Day" in the City of Asheville. He presented the proclamation to Board Members Jewel Tavener and Kathi Ballard, who briefed City Council on some activities taking place during the day.

**II. CONSENT AGENDA:**

- A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON SEPTEMBER 14, 2010**
- B. RESOLUTION NO. 10-210 - RESOLUTION MAKING PROVISIONS FOR THE POSSESSION AND CONSUMPTION OF MALT BEVERAGES AND/OR UNFORTIFIED WINE AT THE BLUE RIDGE PRIDE EVENT ON OCTOBER 2, 2010**

Summary: The consideration of a resolution making provisions for the possession and consumption of malt beverages and/or unfortified wine at Blue Ridge Pride on October 2, 2010.

Blue Ridge Pride, Inc. has requested through the City of Asheville Development Services Center that City Council permit them to serve beer and/or unfortified wine at Blue Ridge Pride and allow for consumption at this event.

Blue Ridge Pride will be held on Saturday, October 2, 2010 from 12:00 p.m. – 8:00 p.m., within the boundaries of Lexington Avenue between the intersections of the I-240 overpass and Walnut Street, as per the event area limits referenced on the accompanying site map.

This action has no direct connection with the City of Asheville Strategic Operating Plan.

Pro:

- Allows fundraising opportunities for Blue Ridge Pride, Inc.

Con:

- Potential for public safety issues

City staff recommends City Council adopt the resolution authorizing the City Manager to approve a resolution making provisions for the possession and consumption of malt beverages and/or unfortified wine at Blue Ridge Pride.

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- C. RESOLUTION NO. 10-211 - RESOLUTION AMENDING THE 2010 CITY COUNCIL MEETING SCHEDULE TO ADD (1) A CAPITAL IMPROVEMENT PROGRAM PLANNING RETREAT ON OCTOBER 8, 2010, AT 11:00 A.M. IN THE PISGAH B ROOM AT THE HILTON ASHEVILLE BILTMORE PARK, 42 TOWN SQUARE BOULEVARD, ASHEVILLE N.C.; AND (2) A CITY COUNCIL WORKSESSION ON OCTOBER 12, 2010, AT 3:00 P.M. IN THE FIRST FLOOR NORTH CONFERENCE ROOM IN CITY HALL REGARDING UNIFIED DEVELOPMENT ORDINANCE AMENDMENTS ACCORDING TO THE RECOMMENDATIONS OF THE DOWNTOWN MASTER PLAN**

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- D. RESOLUTION NO. 10-212 - RESOLUTION AUTHORIZING THE CITY TO APPLY FOR TWO GRANTS FROM THE ENVIRONMENTAL PROTECTION AGENCY FOR CITY-WIDE BROWNFIELDS ASSESSMENT FUNDING**

Summary: The consideration of a resolution authorizing the City of Asheville to apply for two \$200,000 Brownfields Assessments grants – hazardous materials and petroleum, for a total amount of \$400,000 - from the Environmental Protection Agency (EPA), to obtain funding for approximately ten Phase I or II environmental assessments on sites having known or perceived environmental contamination.

In 2007, Council approved a contract with Land of Sky Regional Council of Governments (LOSRC) to prepare and submit two Brownfields Assessment Grants applications to the EPA. When both applications were successful, Council approved a contract with LOSRC to administer the funds over a three year period as a sub-program within LOSRC's Regional Brownfields Initiative. The two grants are now closing out and LOSRC would like to submit new applications, requesting the same total funding amounts and the same term lengths, effectively renewing the three year program.

LOSRC has recommended that the new applications reflect a City-wide program area with an emphasis on the Riverfront District. This approach will continue to highlight the Riverfront as a priority area for infill development while allowing pursuit and support of infill opportunities anywhere within the City's jurisdiction. Changes to the City's program would include: 1)a significant reduction in the amount of funding used for management of the program by LOSRC - from \$180,000 to \$130,000 over 3 years and 2) inclusion of \$30,000 over 3 years) in the program budget for City staff to perform any or all of the following activities: a) marketing and outreach of adopted Brownfields sites b) assistance to the Asheville Area Riverfront Redevelopment Commission to encourage infill development and c) coordination of the Brownfields program with Challenge Planning Grant activities (part of the Livable Communities Initiative, delineated in the HUD/DOT application the City submitted for East of the RiverWay district) if Challenge Planning grant is successful.

The Asheville Riverfront Redevelopment Commission is scheduled to review this request and the current Brownfields Assessment program on October 14, 2010. The Planning and Economic Development Committee of City Council heard an informal update on this consideration at their meeting on September 21, 2010.

This request complies with the City of Asheville's 2010- 2011 Strategic Plan through the following: (1) Affordable: Identifying resources for strategic initiatives; and (2) Job Growth and Community Development: Support small business through the reductions in taxes, fees, and regulations; partner in regional economic development strategies; promote sustainable, high-density, infill growth that makes efficient use of existing resources; support the riverfront redevelopment partnership.

Pros:

- City promotes sustainable infill development
- City promotes safety of citizens through potential clean up of hazardous materials in the Riverfront District
- City maintains toolbox of incentives for sustainable development without having to redirect current or direct substantial new resources.

Con:

- External management of a City of Asheville initiative.

If the grant application is successful, the City would need to amend the budget to receive the grant funds; however since this initiative would be 100% funded with the EPA grant, there would be no impact to the City's General Fund budget.

Staff recommends Council authorize staff to apply for two \$200,000 Brownfields Assessments grants – hazardous materials and petroleum, for a total amount of \$400,000 - from

the Environmental Protection Agency (EPA), to obtain funding for approximately ten Phase I or II environmental assessments on sites having known or perceived environmental contamination.

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**E. RESOLUTION NO. 10-213 - RESOLUTION AUTHORIZING A LEASE AGREEMENT WITH COMMUNITY ACTION OPPORTUNITIES FOR THE REID ANNEX LOCATED AT THE W.C. REID CENTER FOR OPERATION OF THE HEAD START PROGRAM**

Summary: The consideration of a lease with Community Action Opportunities (CAO) for the Reid Annex located at the W.C. Reid Center for operation of the Head Start Program.

CAO, a locally based non-profit organization, works with citizens who live on limited incomes, and with elected public officials and private sector representatives to confront and solve the problems that cause poverty. One of its services, the Head Start Program, provides comprehensive health, education, family support and services for children.

CAO has leased the Reid Annex for 11 years in which to operate the Head Start Program. The lease began in 1999 at which time the Reid Annex was in a significant state of disrepair. As part of the original lease agreement, CAO made the investment to complete a major building renovation and to design the building to meet the needs and requirements of the Head Start Program. In return, the city agreed to a multi-year lease agreement at \$1.00 per year.

CAO is currently replacing the roof on the Reid Annex at its own expense, further demonstrating its investment to assist the city in maintaining the facility.

CAO wishes to renew the lease agreement for a period of two years beginning October 23, 2010 at \$1.00 per year. At this time the city is limiting the agreement to a two-year period since the long-term future of the Reid Center property is not known at this time. The city will continue to operate the Reid Center as a recreation center until spring 2011 at which time it will move to the new center at Livingston Street Park. It is expected the city will continue to utilize the Reid Center gymnasium for one to two years until the gym at the Livingston Street Park center can be built. During the next six to nine months, the city will conduct community dialogue as part of the process to determine the future of the Reid Center.

A public notice to announce the lease agreement was posted in the Asheville Citizen-Times on September 17, 2010.

At its meeting on September 13, 2010, the Recreation Advisory Board recommended to City Council to enter into a two-year lease agreement with Community Action Opportunities for the Reid Center Annex located at the W.C. Reid Center for operation of the Head Start Program.

The action complies with the City Council Strategic Operating Plan in that it leverages partnerships that deliver capital improvements and infrastructure maintenance for public facilities.

Pro:

- Leverage facility maintenance and improvements through partnerships.

Con:

- None

There is no fiscal impact on the city's annual operating budget. Although it does not increase the city's capital improvement budget, it does enhance the city's resources to maintain and improve public facilities.

Staff recommends City Council adopt a resolution authorizing the City Manager to enter into a two-year lease agreement with Community Action Opportunities for the Reid Center Annex located at the W.C. Reid Center for operation of the Head Start Program.

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**F. RESOLUTION NO. 10-214 - RESOLUTION AUTHORIZING THE CITY MANAGER TO SIGN A CONTRACT WITH CINCINNATI SYSTEMS INC. FOR ANNUAL MAINTENANCE OF THE PARKING ACCESS AND REVENUE CONTROL SYSTEMS EQUIPMENT**

Summary: The consideration of a resolution authorizing the City Manager to sign a contract with Cincinnati Systems, Inc. for annual maintenance of the parking access and revenue control systems equipment.

The City of Asheville uses Amano brand parking access and revenue control systems equipment for the three City-owned parking garages and the employee parking lots on Valley and Marjorie streets. This equipment includes entry and exit gates, card readers, ticket dispensers, fee computers, pay-in-lane-machines, in-pavement sensors and detectors, and the software to operate the system. The equipment ranges from two years old to over six years old and all of it is out of the original warranty. These machines cycle tens of thousands of times a year and need regularly scheduled preventive and restorative maintenance. Much of the hardware and software is proprietary to Amano systems and is beyond the expertise of City staff to repair.

Cincinnati Systems is the local distributor for Amano brand equipment in this area. They provide maintenance and service beyond the capability of Parking Services' staff. The annual maintenance contract is \$57,770.00 but does not include costs from vandalism. Staff is requesting authorization to sign a contract with Cincinnati Systems, Inc. for an amount not to exceed \$60,000.00; \$57,770.00 for the contract and \$2,230.00 for contingencies. These funds are currently budgeted and do not require further budget action.

This action complies with the City Council's Strategic Operating Plan in the area of fiscal responsibility and the goal to operate the City of Asheville to the highest levels of fiscal responsibility.

Pros:

- The company provides technical assistance and equipment.
- Maintenance contract will keep the equipment operating as efficiently as possible and minimize downtime.

Con:

- Total cost of the project is \$60,000.00.

Funds were approved in the fiscal year 2010/2011 Operating Budget.

Staff recommends City Council adopt a resolution authorizing the City Manager to enter into a contract with Cincinnati Systems, Inc., in an amount not to exceed \$60,000.00 for annual maintenance of parking access and revenue control systems equipment at City-owned garages and parking lots.

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**G. RESOLUTION NO. 10-215 - RESOLUTION AUTHORIZING THE CITY MANAGER TO SIGN A 4-YEAR LEASE AGREEMENT WITH JOHN DEERE LEASING FOR MOWING AND BALL FIELD MAINTENANCE EQUIPMENT**

Summary: The consideration of a resolution authorizing the City Manager to enter into a four-year lease agreement with John Deere Leasing for mowing and ball field maintenance equipment.

The city owns mowers, utility vehicles and ball field groomers located in the Park Maintenance Division of the Parks, Recreation & Cultural Arts Department. The equipment is over 10 years old, deteriorated and has out-lived its useful life. The annual cost to maintain the outdated and low performing equipment is over \$8,000. Cost comparison over a four-year period to replace the equipment and annual maintenance is estimated at \$170,000 to replace the equipment, or \$42,500 per year. This does not include future cost to replace the equipment.

The four-year lease with John Deere Leasing includes two commercial mowers, two utility vehicles, three ball field groomers, and maintenance and equipment replacement will cost \$122,488.58, or \$30,622.14 per year. Over the four-year period, the equipment lease will be a savings of \$47,512 in comparison to the city purchasing the equipment.

This action complies with the City's Strategic Operating Plan in that it supports making smart investments that accomplishes lasting and tangible returns by investing in quality equipment and maintenance for the City of Asheville parks system. It is also consistent with the Parks, Recreation, Cultural Arts and Greenways Master Plan in that it provides ongoing maintenance and care for the City's park system.

Pros: 

- Investment to maintain and care for city-owned park facilities.
- Provide quality service for ongoing, core facility maintenance services.
- Fulfill commitment for maintenance of the park system.

Con: 

- None

The four-year equipment lease, maintenance and equipment replacement cost will be \$122,488.58 at \$30,622.14 per year. To purchase and maintain the same equipment will cost approximately \$170,000 at \$42,000 per year, plus future cost to replace the equipment. The equipment lease represents a \$47,512 reduced cost to the city's general fund. The \$30,622.14 per year to support the lease agreement is budgeted in the FY 2010-2011 operating budget in the Parks, Recreation and Cultural Arts Department.

City staff recommends City Council adopt a resolution authorizing the City Manager to enter into a four-year lease agreement with John Deere Leasing for park maintenance equipment not to exceed \$122,488.58.

#### **RESOLUTION BOOK NO. 33 – PAGE 222**

#### **H. RESOLUTION NO. 10-216 - RESOLUTION AUTHORIZING THE CITY MANAGER TO APPROVE PAYMENT OF EXCESS INSURANCE PREMIUMS FOR WORKERS COMPENSATION, LIABILITY AND PROPERTY INSURANCE PREMIUMS**

Summary: The consideration of a resolution authorizing the City Manager to approve payment of excess insurance premiums for Workers Compensation, Liability and Property Insurance Premiums.

The City has operated a self-funded insurance program since 1993. The self-funded program has provided significant savings in the overall cost of risk for the City of Asheville. The Risk Management Division has the responsibility of providing the necessary insurance and reserves as prudent to meet losses resulting from claims, risks, and potential liabilities. In order to meet these objectives, it is necessary to protect City assets with the purchase of indemnification

policies. These policies protect the City from claims that exceed \$450,000 for Workers Compensation and \$500,000 for liability. Coverage is also purchased for property damage claims exceeding \$25,000. These policies are not intended to act as primary insurance. Rather, the policies provide a stop loss for the City in cases when claims are presented which exceed the aforementioned amount.

This request ties into the goal of the strategic operating plan operate the City of Asheville at the highest levels of fiscal responsibility.

Pros:

- The program protects the City and the citizens of Asheville from losses exceeding \$450,000 for workers compensation claims, \$500,000 for liability claims, and \$25,000 for direct damage to City property.
- The premium costs for the current year represent a \$45,000 savings over last year's premiums.

Con:

- Without these policies, the City and the citizens of Asheville would be responsible for payment of any and all claims above the \$450,000 retention for Workers Compensation and the \$500,000 retention for liability claims-as well as any and all property damage above \$25,000 in any one occurrence.

The 2010 – 2011 premium cost for Workers Compensation is \$146,686. The 2010 -2011 premium cost for the liability and property coverage is \$828,210. These amounts are already included in the FY 2010-11 Insurance Fund budgets.

City staff recommends City Council adopt a resolution authorizing the City Manager to pay the proposed premiums.

**RESOLUTION BOOK NO. 33 – PAGE 223**

**I. RESOLUTION NO. 10-217 - RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE A CONTRACT WITH BRYANT'S LAND & DEVELOPMENT INDUSTRIES INC. FOR THE OLD TOLL ROAD RETAINING WALL PROJECT**

**ORDINANCE NO. 3899 - BUDGET AMENDMENT FOR THE OLD TOLL ROAD RETAINING WALL PROJECT**

Summary: The consideration of (1) a resolution authorizing the City Manager to execute on behalf of the City of Asheville a contract and any change order within the budgeted amount with Bryant's Land & Development Industries, Inc. for the project known as Old Toll Road Retaining Wall; and (2) a budget amendment, in the amount of \$360,000, from the Stormwater Fund reserves to fund the contract.

The Engineering Services Division of Public Works has opened bids to construct a new retaining wall on Old Toll Road near the intersection of Bent Tree Road. The wall and an attached drainage structure had failed, due to excessive stormwater water run off, and the age of the wall. The new wall and associated drainage infrastructure will incorporate modern design and construction methods that should solve the structural integrity of the wall, as well as the hydraulic concerns that were present before.

The initial low bid was rejected after the contractor rescinded their bid. They made a mistake in their interpretation of the plans and specifications, resulting in a bid that was substantially lower than the engineer's estimate, as well as all other bidders. The next lowest bidder was very comparable with the engineer's estimate, and was deemed a responsible bid.

This action complies with the City Council Strategic Operating Plan in fully leveraging funding from the State and other sources for regional transportation improvements.

Pros:

- Will repair an existing stormwater and roadway failure.
- Provides long term investment in the City's infrastructure.
- Improves vehicular safety.
- Enhances stormwater infrastructure.

Cons:

- The City will be responsible for future maintenance of the project.
- Project management and contract administration will consume staff time.
- This section of roadway will be required to be closed for the duration of the construction project.
- Requires an appropriation from Stormwater Fund reserves.

The project budget totals \$360,000. These funds will be allocated from the Stormwater Fund reserves, and would cover the cost of construction and construction administration. Stormwater Fund reserves currently total approximately \$1.2 million; this appropriation will leave \$850,000 available in reserves for emergencies and/or future capital needs.

City staff recommends City Council adopt (1) the resolution awarding the contract to Bryant's Land & Development Industries, Inc. and authorizing the City Manager to execute on behalf of the City of Asheville the contract and any change order within the budgeted amount; and (2) the associated budget amendment in the amount of \$360,000.

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ORDINANCE BOOK NO. 26 - PAGE**

**J. RESOLUTION NO. 10-218 - RESOLUTION AUTHORIZING THE CITY  
MANAGER TO ENTER INTO AN AGREEMENT WITH THE N.C. DEPT. OF  
TRANSPORTATION TO PERFORM ASPECTS OF A PROJECT RECENTLY  
AWARDED FOR PEDESTRIAN CROSSINGS AT FOUR INTERSECTIONS  
UNDER THE JOB ACCESS AND REVERSE COMMUTE PROGRAM**

**ORDINANCE NO. 3900 - BUDGET AMENDMENT FROM THE FEDERAL  
TRANSIT ADMINISTRATION JOB ACCESS AND REVERSE COMMUTE  
GRANT TO INSTALL PEDESTRIAN SIGNALS AT FOUR INTERSECTIONS**

Summary: The consideration of (1) a resolution authorizing the City Manager to enter into an agreement with the N.C. Dept. of Transportation (NCDOT) to perform aspects of a project recently awarded for pedestrian crossings at four intersections under the Job Access and Reverse Commute Program; and (2) a budget amendment, in the amount of \$99,920, to set up the project budget for the grant awarded.

On August 27, 2010 the Federal Transit Administration (FTA) awarded the city a grant for Job Access and Reverse Commute (JARC) funding to install pedestrian signals at four busy intersections: 1) Haywood Road and Louisiana Avenue, 2) Clingman Avenue and Hilliard Avenue, 3) Choctaw Street and McDowell Road, and 4) Biltmore Avenue and Southside/South Charlotte Street. The sidewalk at the intersections and connecting to the transit stops will be brought up to American's with Disabilities Act (ADA) compliance as a part of the project. The traffic engineering and signal work will be carried out by the NCDOT and/or it's contractors under a reimbursable agreement with the city, and the remaining work will be completed by city forces. The grant is for \$99,920, 80% of the estimated \$124,900 project cost. The local match of \$24,980 is city's in-kind contribution, mainly salaries.



Improving pathways to and from bus stops, including pedestrian street crossing facilities, was the number three priority identified in the MPO's Coordinated Public Transportation/Human Services Transportation Plan (2008). The specific intersections were selected based on transit accessibility, the character of the intersection, proximity to places that people with low to moderate incomes live or work, and willingness of NCDOT to install pedestrian signals at the location. Our FTA regional representative has cited the project as an innovative use of the grant program to solve the challenge of the first mile and last mile of travel for transit users.

This project supports the strategic operating plan's safe, affordable, fiscal responsibility, and green & sustainable focus areas by making the intersections safer for pedestrians, leveraging outside funds, and making transit use easier for travelers.

Pros:

- Improves safety and comfort of pedestrians crossing at four busy intersections
- Adds \$99,920 in federal funding to the city's budget
- Helps further develop a cooperative relationship with NCDOT

Con:

- The city must provide \$24,980 as the match for the project, approved in the grant as in-kind contribution, specifically salaries.

This will bring \$124,900 in new capital investment to Asheville's pedestrian network. The required 20% matching funds will come from amounts already included in the City's adopted budget. The signals will be maintained by NCDOT, so there is no increase in ongoing city costs. This grant does not affect the city's regular FTA transit system funding.

City staff recommends City Council adopt (1) a resolution authorizing the City Manager to enter into an agreement with the N.C. Dept. of Transportation (NCDOT) to perform aspects of a project recently awarded for pedestrian crossings at four intersections under the Job Access and Reverse Commute Program; and (2) a budget amendment, in the amount of \$99,920, to set up the project budget for the grant awarded.

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ORDINANCE BOOK NO. 26 – PAGE**

**K. ORDINANCE NO. 3901 - BUDGET AMENDMENT FOR NORTHWOOD ROADWAY IMPROVEMENTS**

Summary: The consideration of a budget amendment, in the amount of \$225,000, for Northwood Street roadway improvements from the five percent Water Department Sullivan Act Funds.

In Fiscal Year (FY) 2009-10, the City received authorization from the State General Assembly to begin transferring up to 5% of Water Fund revenues to the general capital improvement program (CIP) to fund water-related infrastructure projects. The City transferred the full 5% in FY 2009-10, which provided \$1,657,481 in funding. During this year's budget process, Council directed staff to transfer 1% of Water Fund in FY 2010-11. This 1% transfer will provide an additional \$341,000, which will bring the total amount of Sullivan Act funds transferred over to the general CIP to \$1,998,481. The table below summarizes the Sullivan Act funding and the projects that Council has approved to date.

<u>Revenue:</u>	
FY 2009-10 Water Fund Transfer	\$1,657,481
FY 2010-11 Water Fund Transfer	\$341,000

Total Revenue	\$1,998,481
<u>Approved Projects:</u>	
Dogwood Grove	\$87,440
Azalea Road	\$1,710,000
Ridge Avenue	\$110,000
Total Projects	\$1,907,440
Balance	\$91,041

The Water Department has started construction on a waterline replacement project on Northwood Street this year in which Sullivan Act funds can be used for infrastructure improvements. In the initial five-year CIP submitted to Council during the budget process, staff had anticipated using Sullivan Act funds for the Northwood project in a future budget year. Staff is now requesting to move the Northwood project forward into this fiscal year.

Based on the current schedule for the Azalea Road project, staff anticipates paying for the design of that project in the current fiscal year, but the construction is not anticipated to occur until FY 2011-12. As a result, the entire \$1.7 million budget for Azalea Road improvements will not be spent in FY 2010-11. This request is to move \$225,000 (the cost of the Northwood Street project) to this fiscal year and move funds for the Azalea Road project in the same amount to FY 2011-12, simply switching the funding years but not the funding amounts of the projects. This change will not impact the schedule or the funding for the Azalea Road project.

This action complies with the City Council Strategic Operating Plan in fully leveraging funding from the State and other sources for regional transportation improvements.

Pros:

- Will allow Public Works to make improvements to the Northwood Street after the waterline is replaced and prior to resurfacing the street.
- Provides long term investment in the City's infrastructure.

Con:

- Project will cause longer construction delays to residents.

This budget amendment is a request to move \$225,000 from the Azalea Road project to set up the project budget for the Northwood Street project. Complete funding for the Azalea Road project will be restored in FY 2011-12. This amendment has no other fiscal impact.

City staff recommends City Council adopt the budget amendment for Northwood Street roadway improvements in the amount of \$225,000 from the five percent Water Department Sullivan Act Funds.

**ORDINANCE BOOK NO. 26 – PAGE**

**L. RESOLUTION NO. 10-220 – RESOLUTION SETTING A PUBLIC HEARING ON OCTOBER 26, 2010, TO CONSIDER AN ECONOMIC DEVELOPMENT INCENTIVE GRANT BETWEEN THE CITY OF ASHEVILLE AND FRONTIER SYNDICATE LLC FOR THE MONTFORD COMMONS DEVELOPMENT, PHASE I**

Summary: The consideration of a resolution setting a public hearing on October 26, 2010, to consider an economic development incentive grant between the City of Asheville and Frontier Syndicate LLC for the Montford Commons Development, Phase I.

At its meeting on August 24, 2010, City Council directed City staff to draft an economic incentive grant between the City of Asheville and Frontier Syndicate, LLC for the Montford Commons Development Project, Phase I.

Pursuant to N.C. Gen. Stat. sec. 158-7.1, a public hearing is part of the process for City Council consideration of these grants. It has also been a standard practice for Council. Moreover, Council's direction on August 24 included a request for participation by the County (to be made by Frontier), but the County has not yet acted on this. That information will be needed before the agreement can be drafted.

Staff recommends City Council adopt a resolution setting a public hearing on October 26, 2010, to consider an economic development incentive grant between the City of Asheville and Frontier Syndicate LLC for the Montford Commons Development, Phase I.

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

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

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

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

#### **A. NOISE ORDINANCE APPEALS BOARD UPDATE**

Mr. James Fink, Chairman of the Noise Ordinance Appeals Board, briefly updated City Council on the activities and mission of the Board

On behalf of City Council, Mayor Bellamy thanked Mr. Fink and the entire Board for their hard work and efforts on this Board.

#### **B. ASHEVILLE-BUNCOMBE-HENDERSON REGIONAL FEASIBILITY (TRANSIT) STUDY**

Director of Transportation Ken Putnam said that this is the discussion of the Asheville-Buncombe-Henderson Regional Feasibility (Transit) Study contracted by the North Carolina Department of Transportation (NCDOT).

In November 2009, the N.C. Dept. of Transportation Public Transit Division (NCDOT-PTD) contracted with HDR Engineering of the Carolinas (HDR) and its partners to conduct the Regional Feasibility Study for public transportation in the City of Asheville, Buncombe County and Henderson County. This presentation highlights the findings and recommendations of that plan.

The purpose of this study was to conduct an organizational review of the transit systems in Buncombe and Henderson County to determine the feasibility of establishing a closer working relationship. The work of the study was guided by a steering committee comprised of representatives of the major stakeholders.

The report describes three alternative ways that services can be tied together and make specific recommendations for each one:

- Cooperation – working together in a loose association; focusing primarily on information sharing; separate identities and control remain in place.
- Coordination – group has formal arrangements to make decisions, take action, and manage resources; agencies remain separate organizations.
- Consolidation – one agency provides service through purchase of service agreements or other arrangements.

From the riders perspective these recommendations promote seamless transitions to and from work and services, through scheduling, routing and fare integration and more sophisticated technologies. From the City's perspective the recommendations will reflect in greater staff specialization and a more efficient use of existing resources and funding.

This report will be submitted to Council for approval at a later date.

The Transit Commission had a representative in the steering committee and has received monthly updates during the process.

This action supports the City Council's fiscal responsibility and green and sustainable focus areas. Specific tasks are to "fully leverage funding from the State and other funding sources for regional transportation improvements" and "operate the City of Asheville to the highest levels of fiscal responsibility".

Pros:

- It explores the options to provide a regional service establishing a closer working relationship.
- It does not commit the City of Asheville to any specific action.

Con:

- None

City staff recommends City Council receive the report and refer to the Transit Commission for review and comment.

Mr. Robert Bush from HDR Engineering reviewed the following Study background: (1) Part of NCDOT planning process; (2) Guided by steering committee; (3) Examined feasibility of closer ties among Asheville, Buncombe, and Henderson transit services; (4) Recommended phased approach; and (5) Requesting your approval tonight.

Advantages of regionalization: (1) Better service for passengers (a) 12,000 daily commuters across county line; (b) Daily commutes from Enka, Black Mountain, Weaverville; and (c) More reflective of actual travel; (2) Increased profile for transit (a) Greater awareness through larger system; and (b) Regional fares and service coordination; (3) Supports more technologies (a) Regional fareboxes, scheduling, dispatching; and (4) Permits staff specialization (a) Grant writing, marketing, safety & training, planning.

Short-term concepts: (1) Set the stage for later phases; (2) Within staff authority (mostly); (3) Timeframe: 1-2 years (a) Could be faster with strong local support.

Short-term recommendations: (1) Establish Regional Transit Council (staff & citizens); (2) Joint marketing; (3) Coordinate routes & schedules; (4) Adopt common fare structure (requires approval); and (5) Adopt common policies & procedures.

Mid-term concept: (1) Requires action by elected bodies; (2) Longer lead time facilities; and (3) Timeframe: 2-4 years.

Mid-term recommendations: (1) Operating environment (a) Merge demand-response scheduling systems; and (b) Harmonize operating contracts; (2) Capital & technology (a) Joint vehicle & service procurements; (b) Common fareboxes and (c) New transfer facilities; (3) Commuter services; and (4) Funding (a) Single grants administrator.

Long-term concept: (1) Regional services (a) In one or two counties; (2) New organization (a) Outside of either county or city; (3) Requires new funding (a) County \$7 vehicle registration; (b) Bi-county \$8 vehicle registration; and (c) ¼ cent sales tax (requires vote); and (4) Timeframe: 4+ years (a) At least 1 year past end of mid-term.

Long-term recommendations: (1) Organization (a) New transit authority under Article 25; (b) Interlocal agreement between Asheville & Buncombe; and (c) Henderson can join at outset or later; (2) Authority staffing (a) Hire new general manager at earliest possible time; (b) Proportional board representation; (c) Transfer existing staff to new organization; and (d) No union issues anticipated; (3) Construct new operating facility in Buncombe (a) Needed by 2016; and (b) Will require union determination; and (4) Create new identity (a) Rebranding of service.

Today's action include (1) Approval of Feasibility Plan; and (2) Agreement to implement recommendations (a) Subject to available funding; and (b) Phased implementation proceeds only when earlier phases are successfully implemented.

Councilman Davis was discouraged to see the comments from the other stakeholders regarding a possible joint venture. He felt that comments showed a reluctance to be a part of the Asheville system. He was still bothered that Weaverville didn't want to participate with the bus service to Weaverville. Asheville seems to carry the ball but no one wants to play. He hoped our Transit Commission could review the study carefully. He wanted Council to know that his support for accepting the report at this meeting should not be construed as his supporting the recommended funding mechanisms, which he does not.

Councilman Smith, liaison to the Transit Commission, said that he would relay Councilman Davis' concerns to the Transit Commission.

It was the consensus of Council to accept the Asheville-Buncombe-Henderson Regional Feasibility (Transit) Study and refer it to the Transit Commission for review and comment.

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

##### **A. PUBLIC HEARING TO CONSIDER THE PERMANENT CLOSING OF A PORTION OF DAVIDSON DRIVE**

##### **RESOLUTION NO. 10-219 - RESOLUTION TO PERMANENT CLOSE A PORTION OF DAVIDSON DRIVE**

Mayor Bellamy opened the public hearing at 5:36 p.m.

Assistant Public Works Director David Foster said that this is the consideration of a resolution to permanently close a portion of Davidson Drive.

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

Pursuant to this statute, the adjoining property owner, Buncombe County has requested the City of Asheville to permanently close a portion of Davidson Drive.

The Greenway Commission approved the proposed closure at their meeting of August 12, 2010.

The closing is subject to three utility easements as follows: (1) retention by the Metropolitan Sewage District of Buncombe County, its successors and assigns, of a 20 foot wide permanent easement, for the operation and maintenance of a public sewer line, lying 10 feet on each side of said sewer line located and existing within the portion of Davidson Drive proposed to be permanently closed; (2) retention by the City of Asheville Water Resources Department its successors and assigns, of a 20-foot wide permanent easement for the operation and maintenance of a water line lying 10 feet on each side of the center line of said water line located within the portion of Davidson Drive proposed to be permanently closed; and (3) retention by the Charter Communications its successors and assigns, of a 20-foot wide permanent easement for the operation and maintenance of a communication cable lying 10 feet on each side of the center line of said water line located within the portion of Davidson Drive proposed to be permanently closed.

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:

- None

There will be no fiscal impact related to this closure.

City staff recommends City Council adopt the resolution to permanently close a portion of Davidson Drive.

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

City Attorney Oast said that City Council voted previously on a conditional zoning permit application for Buncombe County and Council's vote on that conditional zoning should not be regarded as binding Council on this vote.

When Mayor Bellamy asked for a motion to recuse her from voting on this item due to her lack of objectivity on this street closing, City Attorney Oast said that this is a legislative decision, not quasi-judicial, and not subject to the same requirements as to absolute objectivity. The key consideration is that Council understands that their previous vote on the conditional zoning does not bind them to a particular vote on this street closing.

In response to Councilman Bothwell, Mr. Keith Hargrove, architect for the project, explained that two levels of parking will be built, but the parking will only serve the court system.

In response to Councilwoman Manheimer, Mr. Foster said that City staff has talked with Buncombe County and the N.C. Dept. of Transportation about the possibility of an additional entrance at the end of Valley Street onto Charlotte Street. We also provided some rough estimation of what it would cost to make that connection. On a parallel track, Director of Transportation Ken Putnam is working with another group who wants to re-name and re-establish Valley Street as the major connector in that area and maybe include that connection,

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

Councilman Russell moved for the adoption of Resolution No. 10-219. This motion was seconded by Councilman Smith and carried unanimously.

**RESOLUTION BOOK NO. 33– PAGE 226****B. PUBLIC HEARING TO REPEAL ORDINANCE NO. 1240 DESIGNATING THE RICHMOND HILL HOUSE AS A LOCAL HISTORIC LANDMARK****ORDINANCE NO. 3902- ORDINANCE TO REPEAL ORDINANCE NO. 1240 DESIGNATING THE RICHMOND HILL HOUSE AS A LOCAL HISTORIC LANDMARK**

Mayor Bellamy opened the public hearing at 5:42 p.m.

Development Review Specialist Cristin Moody said that this is the consideration of an ordinance to repeal Ordinance No. 1240 designating the Richmond Hill House as a local historic landmark. This public hearing was advertised on September 17 and 24, 2010.

Ms. Moody said that the Richmond Hill House was originally located at 45 Richmond Hill Drive in Asheville. The house was moved to 87 Richmond Hill Drive in 1984, where it stood until it was destroyed by fire on March 19, 2009. What was left of the historic structure after the fire was deemed unsalvageable by the Historic Resources Commission and approved for demolition. Only a portion of the building, a rear addition that was built in 2000, still remains in place and the site is extremely deteriorated.

Richmond Hill House was built in 1890 for Richmond Pearson and his family. It was a large, rambling, two-story frame mansion in the Queen Anne Style and had been saved from demolition by the Preservation Society of Asheville & Buncombe County in the early 1980s. As a prominent and historic mansion, it was added to the National Register of Historic Places in 1977, and designated as a local historic landmark on September 10, 1981.

Due to the unfortunate circumstances of this historic house having been severely damaged by fire and subsequently demolished, the historical significance and integrity has been permanently and irretrievably lost.

The ordinance is to repeal Ordinance No. 1240, passed on September 10, 1981, which designated this property as a local landmark.

As a consequence of this action, the property will no longer be subject to review and approval by the Historic Resources Commission for alterations and additions. Furthermore, this de-designation will result in the owner being ineligible for the 50% historic landmark tax deferral in the future. The amount of the deferral, as of 2008 was approximately \$6,350, as applied to only the historic portion of the property. The City will not see an immediate increase in tax revenue from the property, however, since the value has significantly decreased due to the loss of the historic Inn.

**Pros:**

- The property will be brought into compliance with current circumstances and applicable laws regarding local historic landmarks.
- The owner will be free to modify the property without obtaining a Certificate of Appropriateness from the Historic Resources Commission.
- The property will cease to be eligible for the 50% local landmark tax deferral.

**Con:**

- This comes as the result of an unfortunate loss of a significant historic resource that was an irreplaceable symbol of our unique cultural heritage.

Based upon the foregoing, the Historic Resources Commission recommends that the Asheville City Council adopt an ordinance repealing the designation of Richmond Hill House as a local historic landmark. Staff concurs with the recommendation of the HRC for this designation.

Mayor Bellamy closed the public hearing at 5:43 p.m.

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

Councilman Russell moved for the adoption of Ordinance No. 3902. This motion was seconded by Councilman Davis and carried unanimously.

**ORDINANCE BOOK NO. 26 – PAGE**

**C. PUBLIC HEARING TO CONSIDER THE ISSUANCE OF A CONDITIONAL USE PERMIT FOR CALEDONIA APARTMENTS LOCATED ON CALEDONIA ROAD FOR CONSTRUCTION OF 100 APARTMENT UNITS CONTAINED IN TWO BUILDINGS AND A REQUEST TO MODIFY OPEN SPACE STANDARDS**

City Clerk Burlison 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 as documentary evidence is submitted, he would be noting the entry of that evidence into the record.

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.

When City Attorney Oast asked if any Council members had any special knowledge of this matter other than familiarity with the site, Councilman Bothwell said that he made a site visit and met with a number of the neighbors who talked about the site. However, he felt that he could consider this issue with an open mind without pre-judgment and would make his decision based solely on what is before Council at this hearing.

After hearing no questions about the procedure, Mayor Bellamy opened the public hearing at 5:43 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 Caledonia Apartments located on Caledonia Road for construction of 100 apartment units contained in two buildings and a request to modify open space standards (Location Map and Aerial Map – City Exhibit 3).



She said that applicant is proposing to construct 100-residential units to be housed in two adjacent buildings for a residential density of approximately 15.5 units per acre. The buildings have a combined gross floor area of 160,444 square feet and contain a mix of units (8 studios; 44 1-bedroom; 44 2-bedroom and 4 3-bedroom units) (Site Plan –City Exhibit 3). The units will be Energy Star rated for environmental efficiency.

There is a considerable slope to the site, resulting in a building height of 19' 11½" from Caledonia Road (just over 49' to the top of the highest architectural element). Because the grade of the site slopes approximately 40 to 50 feet from the street edge to the back face of the buildings, the structures will appear to be two stories from Finalee Avenue and Caledonia Road while all four stories and the underground parking would be visible from the rear.

There are two vehicular access points proposed – one from Finalee Avenue and one on Caledonia Road. Parking is provided primarily beneath the structures and on exposed (interconnected) surface lots in the center and at either end of the project site. A total of 153 parking spaces are shown on plans (57 uncovered, 96 covered), including 6 accessible spaces and bike parking. There are two pedestrian access bridges shown on the plan, one to the front of each building from the roadway.

Landscaping is required on the site and includes street trees along Finalee and Caledonia, building impact landscaping, street buffer, parking lot landscaping and a Type 'B' property line buffer along the RS-8 zoned parcels adjacent to the west. The site is heavily vegetated and much of that existing vegetation will remain and will be applied to the required tree save area. The applicant is deliberately trying to keep the site as undisturbed as possible – with only 2.2 acres to be graded.

Sidewalks do not currently exist along Caledonia Road, which is identified by the City as a needed pedestrian linkage. The applicant is proposing to install sidewalk along the northern side of Caledonia, where the topography lends itself better to pedestrian accessibility, and will work with staff to determine the exact sidewalk placement location. Sidewalks are not required along Finalee Avenue, however there may be existing sidewalk buried underground along the project's frontage but the condition is unknown.

The applicant is proposing a modular construction type and anticipates completion of construction within one-year of starting, in a single-phase. Staging of materials will be on the applicants own parcel(s) along Swannanoa River Road. The developer has indicated that they plan to temporarily widen the hairpin curve at Caledonia and Pickwick to accommodate construction traffic.

Open Space standards require that 15% of the lot area be designated (0.97 acres), however the code also stipulates that only 50% of designated open space may exceed 25% grade. In this situation, the existing grade of the project area is over 25% (most of the project area is over 40% slope). The applicant is proposing to leave approximately almost four acres undisturbed; however that entire area exceeds the allowable slopes for open space designation. The applicant is requesting relief from due to existing conditions (Pedestrian View Renderings – City Exhibit 3) (Slope Map – City Exhibit 4)

This project was approved with conditions by the Technical Review Committee (TRC) on August 16, 2010. On September 1<sup>st</sup>, the Planning & Zoning Commission recommended approval of this project, including the relief to open space, by a unanimous vote (6-0). The Commissioners recognized the valid concerns of the neighbors but ultimately decided that the proposal meets multiple City goals, is an appropriate use for the site and appreciated the site design which leaves significant acreage undisturbed – preferring to recommend that City Council grant the open space relief rather than encourage the developer to greatly disturb the site by artificially creating "flat" open space areas.

There has been significant public comment received, at the TRC and P&Z meetings as well as outside of the public forum both with staff and at a neighborhood meeting. Primary concerns focus on:

- Traffic and traffic-related issues on Finalee and Caledonia, such as narrow pavement width (18' on Finalee and Caledonia), blind curves, steep streets, limited sidewalks and existing congestion;
- Difficulty when attempting to leave the Kenilworth neighborhood onto Biltmore Avenue or Swannanoa River Road due to traffic congestion;
- Concern that potential future development in the area on the remaining land could have a collective negative traffic impact and no Traffic Impact Study is technically required;
- The ability for large construction vehicles and modular unit delivery trucks to safely and efficiently access the site, especially given the sharp, narrow Caledonia roadway – as well as the ability for moving trucks to access the site once construction is complete;
- The steepness of the designated open space on the site (see *modification request* above)
- Potential for erosion on the steep slope during and after the construction process;
- How views of this vegetated bank from Biltmore Village will be altered;
- A request for increased articulation on the proposed roof design to appear more like the Kenilworth Inn with living space under the roof;
- Concern about impacts from potential use as high-turnover vacation rentals (would be allowed in Institutional zoning).

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

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

*The project will meet State building code requirements and will be reviewed in detail by the Technical Review Committee to ensure compliance with health 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.**

*The project site has a change in elevation of approximately 160 feet from Caledonia Road to the southern boundary (towards Swannanoa River Road) and has an existing grade over 30% with areas over 40%. To accommodate the steep site, the applicant has located the development footprint closest to Caledonia and Finalee Avenue, running along with the elevation change instead of against it. Additionally, the building footprint and area of disturbance is minimized by placing parking beneath the structures which lessens the physical and visual impact to the site. Only 2.2 acres of the 6.45 acre project site will be disturbed (leaving approximately 4 acres untouched) and landscaping around the building site along with the dedicated tree save area will help retain the natural, wooded areas of the location.*

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

*The proposed residential use is not expected to injure the value of adjoining or abutting property. The area is almost exclusively residential and there is an established multi-family use across Caledonia to the north (Kenilworth Inn Apartments). Neighborhood concern has been expressed regarding the negative impacts of traffic congestion on narrow roadways, which is seen as an existing issue that may be increased from this*

development; however a Traffic Impact Study was not required and it is the determination of the Transportation Department that the existing infrastructure can support the additional traffic generated from this project.

**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.**

*This parcel is zoned Institutional and therefore a variety of non-residential uses would be permitted but the proposed use as multi-family residential aligns with the residential uses in the area. The neighborhood is comprised primarily of single-family detached structures but the presence of the Kenilworth Inn Apartments building across the street creates an established precedent for a larger-scale, higher density, multi-family structure. Additionally, the slope on the site is such that the structures will appear as two-stories from the street level, minimizing the scale and bulk. The design proposes a limited footprint to preserve and retain significant vegetation on the site, retaining the natural feel of this southern end of the Kenilworth neighborhood. The architect has drawn from the historic Kenilworth Inn for design elements and materials such as stucco, cedar shakes, stone and steep pitched rooflines. The proposal is in harmony with the scale, bulk, coverage, density and character of the area in which it is located.*

**5. That the proposed use or development of the land will generally conform to the comprehensive plan, smart growth policies, sustainable economic development strategic plan and other official plans adopted by the City.**

*The Asheville City Development Plan 2025 encourages higher-density infill development in areas where infrastructure can support the development and specifically in existing neighborhoods near downtown, such as this location in the Kenilworth neighborhood. The Plan also states that new development should promote a sustainable land development pattern and reduce impervious surfaces to reduce environmental impacts - this proposal minimizes land disturbance on the site by placing parking beneath the structures, retains vegetation and preserves the most steeply sloped areas. Transportation objectives in the Plan recognize the need to locate buildings close to transit and suggest a minimal density necessary to support transit – this site is proximate to two bus routes and proposes just under 16 units per acre, which is ideal for transit support. Additionally, the Plan stresses the benefit of neighborhood meetings – the applicant initiated meetings with the neighborhood prior to the City review process to keep open communication and address concerns.*

*This project aligns with City Council’s goal of affordability by offering a mix of unit sizes and types, including smaller studio units, which will fit the housing needs of a variety of Asheville residents. In terms of green & sustainable, the project will meet Energy Star ratings, will be installing rainwater collection devices and has been sited in a way to minimize land disturbing activity as much as possible and retain acres of existing vegetation and natural features.*

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

*This proposed development is located near major road facilities as well as proximate to several transit lines (Rtes. 4 & 8). In addition, the project has been reviewed by the Technical Review Committee who found that existing infrastructure appears adequate and preliminary review has not revealed any problems for future service to the development.*

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

*The UDO requires a traffic impact study for a proposed development that will generate at least 100 new vehicle trips in the peak hour as determined by the ITE Trip Generation Manual. The proposed Caledonia Apartments project will have 100 apartment units. The ITE Trip Generation Manual contains two possible categories that are applicable to this development – ‘Mid-Rise Apartments’ and ‘Apartments’. The ‘Mid-Rise Apartments’ category is a closer fit based on the size of the development, but has a smaller data set. The ‘Apartment’ category has a larger data set, but includes a wider range of development sizes with an average number of 230 units. Neither of these categories project a volume that meets the City’s threshold (Mid-Rise Apartment – 42 peak hour trips; Apartment – 75 peak hour trips).*

*If a development does not trigger a traffic impact study by city ordinance, then it is implied that the generated traffic will not cause an adverse effect to the existing level of service.*

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

Pros:

- The proposal minimizes site disturbance with the parking situated beneath the building footprint and leaves almost 4 acres of the 6.45 acre parcel in its current natural, vegetated state.
- A mix of unit sizes is included from studios to 3-bedrooms, providing a variety of residential options at a range of price points.
- Because of the natural slope on the site, the building will appear much smaller scale from the street and pedestrian level.
- Sidewalk will be installed along one side of Caledonia Road, which is identified as a ‘needed linkage.’

Cons:

- Although there is a considerable amount of undisturbed land left as open space, the existing grade of that area is over 40% which may inhibit usability and requires a modification from City Council.
- There are long-standing traffic-related concerns in the Kenilworth neighborhood and additional residential units will add to volumes.

Staff recommends approval of the project, finding that the proposal will be compatible with the neighborhood in a positive way and provides a variety of housing options in an infill location. Staff is supportive of the request for relief with meeting the open space requirement due to the topographical challenges inherent to the site.

Mr. Clay Mooney, landscape architect for the project, said the project consists of two separate buildings with 100 units and ranges in mix from studios to 3-bedroom units. The developer feels there is a distinct need for rental properties located within the I-40 to I-240 envelope that encompasses most of Asheville. The last project constructed in this envelope was the Woodbury Apartment project in 1995. We feel the project meets or exceeds many of the goals of the City Plan 2025. We acknowledge this is a steep site, but we have dealt with those issues in a creative and responsible way. Regarding the impervious area, with the institutional zoning designation 80% impervious area is allowed; however, they are only providing 20% impervious area. He used a site plan (City Exhibit 3) to illustrate the parking beneath the building. The disturbed area is only 34% (2.2 acres) of the entire site (6.54 acres). Using an aerial map (Developer Exhibit 1), he showed how the footprint of the Biltmore Gardens Apartments (6.29 acres with 73% disturbed area) compared to their proposed development (6.45 acres with 34% disturbed area). Regarding stormwater, their stormwater detention requirements are significantly reduced because of the amount of their impervious area. He explained the concept of their design for handling stormwater using an aerial map (Developer Exhibit 2), noting that they will meet all the requirements of the City regarding stormwater. Regarding the tree save area, they

are proposing 44% (2.83 acres) which greatly exceed the City's requirements of 30% (1.94 acres). They meet all the City's requirements, except for the City's open space requirement. The site is very steep and they can come within 3500 sq. ft. of meeting the open space requirements by clearing and disturbing an area, but the developer felt that in light of the slopes and also just clearing land to construct something a little less steep was contrary to the intent of the open space ordinance. Therefore, they respectfully request Council grant their modification to the open space requirements. Regarding traffic, the City's Traffic Engineer said the project did not meet the threshold to require a Traffic Impact Study. They are proud of this project and request Council approve the conditional use permit.

The following individuals spoke against the conditional use permit for the Caledonia Apartments, for various reasons, some being, but are not limited to: this project will be the 4<sup>th</sup> major Kenilworth development project to come before the City in the last 5 years and the three earlier approvals now stand in various stages of development purgatory; the prior development approvals collectively represents a 40% increase in housing units in the Kenilworth neighborhood; new development reviews should not only be judged on the merits of the proposal, but should take into account the latent population and traffic growth associated with the prior approvals; project approval will exasperate existing pedestrian safety and traffic issues; the applicant arranged one meeting with the neighborhood which was a presentation of the applicant's proposed plan; process flawed in that it appears to want public input but then disregards it; neighborhood wants their concerns reviewed; 4 acres of the 6.45 parcel is un-walkable as there are no trails, the terrain is too steep for most people, snakes will be forced to move and the site is full of poison ivy; when trees are cut they will leave unprotected soil that will be washed down to Biltmore Village; because the developer owns two extra parcels of land, he could use it for open space requirements but instead he plans to build another 100 units resulting in a possibility of at least 600 more people with 1200 cars in the future; constructing a 30' tall segmental block wall on a 40% slope is going to take a serious structural feat; the retaining wall required to be built to support the parking and building is not compatible with the natural or topographic features; the project does not fall under the steep slope ordinance (above 2220' in elevation and having an existing grade of 15% or more), but this project sits at 2116' and has an average slope of 40%; allowing this project to move forward will not preserve the scenic views and vistas of Asheville but would spoil the prominent vista from historic Biltmore Village; existing steep, substandard road with many blind curves; developer should have designed his project in a way that accommodated the open space requirements – include additional land in this project sufficient to satisfy statutory open space requirements; traffic safety concerns related to motorized vehicles, bicycles and pedestrians – roadway improvements along Caledonia Road; buildings are too large to reflect neighborhood character – should explore additional articulation of façade and roof to be more compatible with scale and character of neighborhood; proximity of staging site to construction site is a concern due to difficult travel path, traffic congestion and construction personnel parking; concerns regarding move in/move out and service vehicles on-site loading head clearances – increase head clearance in parking and drive under building to accommodate move in/move out vehicles on-site; existing traffic issues in Kenilworth include only one traffic light, steep roads, narrow roads, dangerous curves, non-existent or missing sidewalks, blind corner at Kenilwood and Finalee, and choke points; footprint of building spans more than 960 feet from one side to the other and with one inch of rain many tens of thousands of gallons of water will leave through only 3 outlets; there have been big landslides on slopes with less severe grade than this; since geotechnical studies had not been performed at the time the project was reviewed by the Technical Review Committee, how did they know the site was suitable for such a project; what is the potential need for blasting or pile driving; most trees on the site are about 60 feet tall, not 104 feet tall; the building will appear as 4 stores (not 2 stories) from street level and will be more massive when coming up either of the two access roads; the proposed development will detract from the charm and intrigue that the Kenilworth Inn creates; concern of negative impact on nearby property values; to allow this development will destroy the aesthetic value; not all open green space should be built on; area mainly consists of single-family homes and this large development of modular, manufactured construction is not in harmony with the neighborhood; petition against development for following reasons (1) Not an affordable housing project; (2)

public traffic and pedestrian safety issues; (3) disproportionate amount of density on three streets in south Kenilworth (Kenilwood, Finalee, Caledonia); (4) runoff from impervious surfaces; (5) many stalled developments around Asheville; and (6) requires an exception to city's open space requirements; only one (No. 6) of the seven conditional use standards have been met; and perhaps institutional zoning is not the correct zoning designation for the area:

Ms. Teddy Jordan, President of the Kenilworth Residents Association  
 Mr. Peter Loewer, resident on Lakewood Drive (Neighborhood Exhibit 1)  
 Mr. Peter Stebbing, resident on Finalee Avenue (Neighborhood Exhibit 2)  
 Ms. Jennifer MacDonald, resident on Caledonia Road  
 Mr. Terry Meek, resident on Pickwick Road (Neighborhood Exhibit 3)  
 Mr. David Evers, resident on Finalee Avenue (Neighborhood Exhibit 4)  
 Ms. Miller Graves, resident on Caledonia Road (Neighborhood Exhibit 5)  
 Mr. Don Jeffries, Arden resident (Neighborhood Exhibit 6)  
 Mr. Cliff Yudell, resident on Forest Hill Drive  
 Ms. Valerie Hoh, resident on Finalee Avenue  
 Ms. Mary Evers, resident on Finalee Avenue (Neighborhood Exhibit 7)  
 Ms. Angela Maddix, resident on Kenilworth Road (Neighborhood Exhibit 8)  
 Ms. Ann McLellan, resident of Duke Street (Neighborhood Exhibit 9)  
 Mr. Bill McClement, resident on Forest Hill Drive  
 Ms. Roberta Newman, resident on Chiles Avenue

For rebuttal, Mr. Mooney said that they are proposing a sidewalk on Caledonia but on the opposite side of the project. A geotechnical report has since been received. Borings were from 29' to 34' at which point they were terminated because construction would not necessitate excavation below that level. In the report, it states that we can expect excavations to be accomplished by heavy construction equipment, but that blasting would probably not be necessary. Some materials may be hard, but new mattock devices would probably be sufficient to remove that material. He stressed that if the project is approved, they must submit plans to the Technical Review Committee again for final plan approvals or they cannot receive any permits.

Mr. Frank Howington, developer, said that he had no plans to build anything else on the rest of the property. He wants to provide housing for the City of Asheville. Every apartment building in the envelope of I-240 – I-40 down to Biltmore Park is 100% leased. Even if they started the project tomorrow, it would not be on-line for 12-14 months. This project fits well in the institutional zoning. He said that they would do a tutorial revival construction that will complement the Kenilworth Apartments.

When Mayor Bellamy asked if Ms. Jordan, representing the Kenilworth Residents Association, would like to make any rebuttal comments, she declined.

Mayor Bellamy closed the public hearing at 7:17 p.m.

Vice-Mayor Newman moved to deny the Conditional Use Permit for the proposed master plan for the project identified as Caledonia Apartments as it is not compatible with the scale and character of the neighborhood and it is not in compliance with the open space requirements. This motion was seconded by Councilman Bothwell.

Councilman Russell said we must all realize that when we move into a neighborhood that abuts commercial industrial or institutional zoning that the character of the area is going to change over time. However, there are seven standards that must all be met for approval of a conditional use permit. He did not feel that Condition Nos. 1, 2 and 4 have not been met.

Councilman Bothwell felt the project did not meet four of the seven conditions required for approval.

Mr. Mooney said that they do believe this is a worthwhile project for this area, but in light of the comments, he requested that they be allowed to withdraw the project and work with City staff and the neighbors to come up with other options for the project. He also requested any suggestions Council may have to make this a more palatable project.

Mayor Bellamy explained that if the project is not withdrawn then the developer cannot bring back substantially the same project to Council for one year.

Upon inquiry of Vice-Mayor Newman, City Attorney Oast said that if the developer submitted a new application for a substantially different project, the time limitation would not apply and he could bring the substantially different project back to Council within the one year.

In response to Councilwoman Manheimer, Mr. Mooney said that his request is to withdraw the project. City Attorney Oast said that if the application has been withdrawn, there is nothing to vote on.

At 7:40 p.m. in order to give the City Attorney time to research the question of whether the application can be withdrawn after a motion is made and seconded but not voted on, Mayor Bellamy announced a short recess.

Mayor Bellamy explained that City Attorney Oast has advised Council that it is at Council's discretion as to whether they allow the developer to withdraw the motion before a vote or to proceed with the motion. She explained that normally before a motion is made Council comments on the project; however, a motion was immediately made and the developer did not have the opportunity to hear Council comments prior to their motion.

Vice-Mayor Newman felt either way it was pretty clear that a project would need to be substantially different in order to gain City Council support. His preference would be to follow through on the motion and invite the developer to bring forward a new proposal in the future that addresses concerns heard at this meeting. He said that Council does recognize the substantial shortage of mid-range and affordably-priced housing in the City of Asheville. Council will be considering a new policy to provide substantial new incentives (on a case-by-case basis) to encourage that type of infill development in the City.

City Attorney Oast said that if a new project is brought forward and is not identical or substantially similar to the one acted on, the ordinance imposes no delay.

Councilmen Bothwell and Smith agreed to proceed with the motion.

Councilwoman Manheimer felt we might want to examine our Comprehensive Plan regarding urban infill on certain slopes that have certain criteria like roads and other infrastructure issues and to also re-examine our slope development ordinance as it pertains to properties under the 2220' threshold. Regarding this project, she felt it would have to be substantially different being sensitive to the already imposed limitations on the neighborhood. She also felt we need to consider its impact on the overall beauty of that area of the City, e.g., Biltmore Village. Regarding comments about City staff, she felt the City was lucky to have talented, hard-driven staff and she felt they always have the best intentions. Technically speaking the project met all City requirements, except for the density. She felt that staff looked at this project and knew that Council wanted density and urban infill with a tradeoff of land conservation, so it was with that good intention that City staff brought this forward to Council.

The motion made by Vice-Mayor Newman to deny the Conditional Use Permit for the proposed master plan for the project identified as Caledonia Apartments and seconded by Councilman Bothwell and carried unanimously.

## **V. UNFINISHED BUSINESS:**

**A. DISCUSSION OF ADOPTING A TRANSFORMATIONAL DEVELOPMENT PROJECTS INCENTIVE POLICY**

Mr. Jeff Staudinger, Community Development Director, said that this is the consideration of a resolution adopting a Transformational Development Projects Incentive Policy.

At the August 24 meeting the City Council directed the staff to prepare a proposal for a new Council policy that would support development meeting thresholds that support major elements of the Council's Strategic Plan. These major elements include easy access (walkability and transit) to major employment centers and areas proposed for redevelopment, that offer jobs as well as affordable and workforce housing elements. The staff had already received direction from the Planning and Economic Development Committee for such a "Transformational Development" policy, and the additional request from the Council that would support "workforce" housing elements was added to that request.

The purpose of the policy would be (1) encourage infill development projects; (2) located in urbanized employment centers of the City; or (3) currently underutilized area in close proximity to major transit lines.

The Planning and Economic Development Committee discussed the proposed policy elements at their meeting last week. The document reflects their comments with one exception. The Committee recommends the following changes to the proposed policy:

1. To ensure flexibility in consideration of projects the policy intent was modified to state:
 

"This policy is intended to provide incentives to encourage infill development projects that are located in urbanized employment centers of the City *or* that are currently underutilized but are in close proximity to major transit lines. ("or" added)
2. Item #3 in the required elements was modified to more clearly articulate the intended relationship between support for a project, financial need, and important public benefits (*changes in italics*):
 

"Demonstrate that *but for* the requested support it would not be able to *provide the public benefits desired by the City.*"
3. Item #4 in the required elements was modified to substitute language from the State law authorizing development financing, NCGS 158-7.2, for "redevelopment area. NCGS 158-7.2 (c) defines "development financing district as an area "comprised of property that is one or more of the following:
  - (1) Blighted, deteriorated, deteriorating, undeveloped, or inappropriately developed from the standpoint of sound community development and growth.
  - (2) Appropriate for rehabilitation or conservation activities.
  - (3) Appropriate for the economic development of the community."
4. Item #6 in the preferred elements was moved from the required elements; as the Committee felt that it imposed too strict a standard for businesses. Also, the language regarding required pay levels was changed from a percentage requirement to a more general requirement:
 

"Demonstrate that 70% of all permanent jobs created will, for the life of the incentive, pay ~~at or above 110%~~ of competitive salaries for similar jobs in Buncombe County.



This will be verified in an annual report to be submitted to the City Manager for the life of the incentive.

On one issue, the Committee was divided. Item #1 in the required elements states that a “percentage of affordable and/or workforce level housing units” must be included if housing is provided as a part of the project. Concern was expressed that this statement should perhaps state a specific percentage requirement as is stated in #4 of the preferred elements. Although that preference was not unanimously supported, the Committee requested that the alternate language be presented to the Council for your consideration. The modified #1 in the required elements would be:

“Demonstrate how it fulfills important public purposes that should include creating jobs, installing desired public infrastructure, using a substantial level of green building techniques, and if housing is included providing a minimum of 10% affordable housing or 25% workforce level housing units.”

The strategic plan goals that are most closely aligned with this proposal are within the (1) Affordable Goal in that it expands opportunities for public/private partnerships and innovative financing mechanisms to incentivize affordable housing development; and (2) Job Growth and Community Development Goal in that it will support diversified job growth and small business development; and will promote sustainable, high-density, infill growth that makes efficient use of existing resources.

Pros:

- Adds a tool to achieve the Council goal for expanding opportunities for public/private partnerships and innovative financing mechanisms to incentivize affordable housing development
- Adds a tool to achieve the Council goal for supporting diversified job growth and small business development; and promotes sustainable, high-density, infill growth that makes efficient use of existing resources

Con: None noted

The proposed policy elements are intended to achieve these stated goals of the Council. No new incentives are offered, but the existing incentives for affordable housing and development that creates jobs are extended to allow consideration of projects offering substantial levels of workforce housing. There are three parts to the policy described below: elements that must be included before the Council would consider support for a project, elements that are preferred, and the types of assistance the Council can consider extending. A basic tenant of the policy is that meeting the thresholds for Council consideration is not a guarantee that such assistance would be offered – that would remain at the discretion of the Council. The elements provide a threshold for consideration only.

The threshold requirements (1) meet public purposes (a) create jobs; (b) desired public infrastructure; (c) using substantial level of green building techniques; and (d) provide a percentage of affordable and/or workforce housing; (2) directly address Council’s annual strategic goals; (3) the proposal would have to show, but for the requested support it would not be able to provide the public benefits desired by the City; (4) be located in “redevelopment” areas; or in areas designated by Council as priority redevelopment areas (in or within ¼ mile of designated urbanized employment centers) or voluntary annexation areas; (5) floor area ratio exceeding 1.0; (6) located on an area of land larger than 1 acres; (7) greater than 3:1 private investment to public assistance; and (8) minimum 20% equity.

Preferred elements (that the developer would have to document that they meet the majority of these elements) include: (1) if it included housing, would have to have a minimum of

20% square feet of non-residential (job creation) uses; (2) pedestrian or open space amenities as noted in the master plan for the location; (3) meet an outside agency certification “green” or “sustainable” standard (such as LEED standard); (4) if housing in the project, the housing element of the project must include a minimum of 10% defined “affordable” housing or a minimum of 40% workforce housing units; (5) residential units must be the primary residence of the occupants; and (6) 70% of all permanent jobs created will, for the life of the incentive, pay competitive salaries for similar jobs in Buncombe County.

Eligible areas (1) urbanized employment centers annually designated by Council (2) areas current designed by City Council as priority redevelopment areas (a) under utilized areas of the downtown Central Business District; and (b) River Arts District; and (3) recommended initial designated urbanized employment centers.

Using a map, he said it indicates, according to the proposal, what the recommended areas for designation would be: downtown Central Business District; French Broad River corridor from the I-240 bridge to the I-240 on-ramp at Amboy Road; Swannanoa River corridor from the French Broad River to Biltmore Village; Mission Hospital Complex/A-B Tech Campus area; East Riverside area along Clingman Avenue and Depot Street; Biltmore Village; West Haywood corridor (in West Asheville) from its intersection with Beverly Drive in the east to its intersection with Patton Avenue to the west; Merrimon Avenue from I-240 to Beaver Lake; Broadway Avenue from I-240 to its intersection with Hillside Drive; Patton Avenue from the French Broad River in the east to the intersection with Haywood Road in the west; Biltmore Avenue from the edge of the downtown Central Business District to its intersection with I-40 south of Biltmore Village; Tunnel Road from the Beaucatcher Tunnel to the intersection with South Tunnel Road; and East Tunnel Road from I-240 to the intersection with the Blue Ridge Parkway.

He said if the policy is approved the following assistance will be available at the discretion of the Council: (1) affordable housing elements are eligible for use of the Asheville Housing Trust Fund; (2) 50% fee rebate for the following fees and charges: zoning permit fees, building permit fees, driveway permit fees, grading permit fees, plan review fees and water service connection fees; and (3) economic incentive grant agreement (a) an amount equivalent to City property taxes (in excess of currently assessed taxes); and (b) annually applied for the first 5 years of its operation after construction is complete.

If support is given, the City will not receive standard development permitting fees (that fund staff time required for reviews), but all required reviews will be needed. If support is given, the City will not receive additional taxes for the improved property for the length of the incentive authorized; although City services will need to be provided to the property.

City staff recommends approval of the new Council policy, with any amendment determined by the Council.

Mr. Staudinger responded to various questions/comments from Council, some being, but are not limited to: how can we confirm that “but for the requested support it would not be able to provide the public benefits desired by the City”; since there was discussion about using this policy on a purely residential development, does staff feel comfortable from a legal standpoint; does the policy adoption require a public hearing; do we have the internal experience to verify that developers have achieved their green and sustainable points since we are not requiring them to be formally certified; and if a developer does the majority of the preferred elements and chooses not to do any green building, can they still get the incentives.

Councilman Bothwell often expressed his skepticism about incentives for any developers because we tend to pick and choose winners. The only justification that he can find is to get a real social benefit, therefore, he suggested the housing element of the project must include a minimum of 30% defined “affordable” housing units and a minimum of 60% “workforce” housing units.

Vice-Mayor Newman would like to see the policy as simple, predictable and accountable as possible. He would be generally in favor of ratcheting up some of the standards we are asking people to hit, but in return for not making it so subjective for Council.

Councilman Smith suggested the following amendment to threshold No. 1: ““Demonstrate how it fulfills important public purposes that should include creating jobs, installing desired public infrastructure, using a substantial level of green building techniques, and if housing is included providing a minimum of 10% affordable housing or 25% workforce level housing units.” From a financial standpoint, perhaps within the Central Business District (CBD) itself, that those affordable housing requirements would look more like 8%, whereas, those areas outside the CBD would have the hard 10% affordable and 25% workforce. Also in the preferred elements, he recommended that the affordable housing must exceed 10% and that the workforce housing must exceed 25%.

In response to Councilman Davis, Mr. Staudinger explained that that the section entitled “If the City Council extends support, the following assistance will be available at the discretion of Council” was added to just show that there are other incentives (existing programs) that can be available.

Mayor Bellamy felt it was confusing to include that in the policy because the first two points regarding the Housing Trust Fund and 50% fee rebates have already been discussed and voted on.

Mayor Bellamy felt it would be appropriate to talk to HUD representatives to make sure that the policy we put in place will not disqualify projects from consideration from our partners in the community that use HUD funding.

Councilman Russell felt that the transformational projects can happen in areas other than those eligible areas (e.g., Shiloh). Also, he felt that requiring the project be located on an area of land larger than 1 acre is too large.

In response to Councilman Russell, Director of Economic Development Sam Powers said that staff will look at how we could incorporate the areas of the Urban Progress Zones.

Mayor Bellamy explained why she did not support the title of the policy being “transformational” projects policy and incentives. She felt that since we want to encourage a multi-modal system, we should include all major corridors – all of Hendersonville Road, Merrimon Avenue, Tunnel Road and Patton Avenue. She expressed concern about No. 1 of the preferred elements, in that we are asking a proposed developer that comes in with a residential project that he must include a minimum of 20% square feet of mixed use, even though it does not meet Council’s goals of green, affordable, etc. Also in the preferred elements, she asked (1) that a map of designated urbanized employment centers be a part of the policy; (2) the policy be made clear to show that as long as the LEED standards have been achieved in the building, no actual LEED certification is required (due to cost of actual certification); (3) how long the project needed to comply with the minimum of 10% affordable units and minimum of 40% workforce housing units; and (4) is it realistic that residential units must be the primary residence of the occupants.

Vice-Mayor Newman said that he had several comments which he would put them in writing and circulate them to Council and staff.

In the threshold requirements, Councilwoman Manheimer (1) supported the expanded “redevelopment” areas; and (2) supported the one acre threshold is too large in the CDB and suggested .25 in the CBD and one acre outside the CBD. Regarding the preferred elements, she (2) wondered how a developer would view the preferred element requiring a certain percentage of affordable housing, because she wants this policy to function as an incentive; and (2) supported

requiring the minimum of 10% affordable housing units and a minimum of 40% workforce housing units outside the CBD, but inside the CBD require some percentage because of the cost of land within the CDB is cost prohibitive.

Vice-Mayor Newman felt that if a project has some residential in it then some of it should be affordable or workforce and there should be a greenbuilding requirement. In fact, he felt that a greenbuilding requirement should be for any project in the City, especially if you are asking public support of the project. He would be open for the Healthy Built Homes standards.

Councilman Smith said that he supported (1) the Healthy Built Home standard certification or the elements therein; (2) the expanded "redevelopment" areas; and (3) the one acre threshold in the CDB be reduced to .25 in the CBD and ½ acre outside the CBD. He wanted to make it clear that if a developer accesses the Affordable Housing Trust Fund monies they understand that the affordability requirements would go beyond the five years because of the Trust Fund requirements.

City Manager Jackson suggested Council either call him or send him with any additional comments they would like reviewed for incorporation in to the policy.

It was the consensus of Council that this item be continued to allow City staff the opportunity to review Council's comments for perhaps a revised policy.

Upon inquiry of Councilman Davis, City Manager Jackson agreed to send this policy to the non-profit and for-profit development community for their input. He would send it to the affordable housing community, green building community, Council of Independent Business Owners, Chamber of Commerce, etc. He said that the policy is crafted in such a way that it does not impact the project on the table (Montford Commons).

## **VI. NEW BUSINESS:**

### **A. MOTION TO ALLOW DEVELOPMENT PERMIT EXTENSION FOR ANOTHER YEAR TO DECEMBER 31, 2011**

City Attorney Oast said that this is the consideration of Permit Extension Act "opt-out" provision.

In 2009, the N.C. General Assembly adopted the "Permit Extension Act of 2009." The effect of this law was to suspend the running of expiration periods for certain government-issued development permits. Most of the listed permits were State-issued, such as environmental permits, but the Act also covered some permits typically issued by local governments, such as conditional use permits, plat approvals, site plan approvals, and certificates of appropriateness. This law was a reaction to the economic situation and its impact on the building and financing industry.

The suspension period, which is applicable to all permits encompassed by this law, is retroactive to January 1, 2008, and runs through December 31, 2010 - - three years.

In 2010, the General Assembly amended the Permit Extension Act to extend the period of suspension for an additional year, to December 31, 2011. That new law, however, provided that local governments may by resolution "opt-out" of the additional one-year extension.

Provided that a local government does not opt-out of the additional one-year extension, the Act establishes some additional requirements that are intended to protect the City from the consequences of abandoned projects, such as maintaining performance guarantees and completing infrastructure. The previous law was silent as to these additional protections and there has been some disagreement between local governments and developers on these issues.

The new law makes it clear that certain development regulations continue to apply, and that permits may be revoked for non-compliance.

This extension is an “opt-out” extension; if Council wishes for the City’s development permits to be extended for one year, no action is required. This extension, or the “opt-out,” would apply to all permits; the City may not “opt-out” as to some but not all.

This is consistent with the Strategic Operating Plan goals of streamlining the development process. It is also consistent of several actions taken by Council in the last several years to provide some relief to developers, and the establishment of the development permitting center.

Pros:

- Extends development permits without having to consider individual projects.
- Provides some relief to finance and development industry in difficult times.
- Provides extra protection regarding abandoned/stalled projects.

Cons:

- Slight revenue loss from permit renewals.
- Staff will need to monitor dormant sites.

Slight revenue loss is anticipated but the size of the loss is difficult to estimate since we don’t know which projects might reapply if their permits were to expire.

Do not opt-out; allow the additional extension to apply to the City of Asheville (and extraterritorial jurisdiction). No action or resolution is needed.

City Attorney Oast noted that the Planning & Economic Development Committee asked that staff provide a list of permits that the permit extensions would apply to; however, due to the amount of projects, the list is still being developed.

Mayor Bellamy noted that the developers have already spent money and time on these projects in addition to being approved through a public hearing process.

City Attorney Oast reiterated that the extension would apply to all permits and the City cannot not “opt-out” individual projects.

When Mayor Bellamy asked for public comments, none were received.

Councilmen Bothwell and Smith felt it would be appropriate to see the list of projects that the permit extensions would apply since a decision does not need to be made until December 31, 2010.

Councilman Davis moved to allow the development permit extension for another year, to December 31, 2011. This motion was seconded by Councilman Russell and carried on a 5-2 vote, with Councilman Bothwell and Smith voting “no.”

City Attorney Oast said that he will provide the list of projects to Council and after reviewing the list if City Council would like to opt-out of the additional one-year extension, they could adopt a resolution prior to December 31, 2010.

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

Mayor Bellamy recognized Councilman Davis for his efforts in bringing the Speedway Memorial to fruition on September 23, 2010, at Carrier Park. Councilman Davis thanked various members of the community for their donations and support, along with City staff, for their hard work on an important part of the racing community that needed to be recognized.

Councilman Bothwell thanked Councilman Davis and Economic Development Director/Interim Civic Center Director for their efforts in bringing events to the Civic Center, e.g., Elton John Concert and the Moogfest.

The following claims were received by the City of Asheville during the period of September 1-16, 2010: Phil Clark (Streets), Carol O'Neal (Streets), Lisa Lail (Streets), Ravencroft (Water), Mariya Fesiuk (Parks & Recreation), Anna Marie Smith (Police) and Edie Dooley (Sanitation). These claims have been referred to Asheville Claims Corporation for investigation.

The City was served with the following Complain on September 23, 2010, which is generally described as follows: Erie Insurance Group, as Subrogee of David Hirschman and Wendy Peterson v. City of Asheville. The nature of the proceeding is an insurance subrogation claim alleges damage to structure due to ruptured waterline. This matter will be handled by outside counsel.

**VIII. ADJOURNMENT:**

Mayor Bellamy adjourned the meeting at 8:47 p.m.

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CITY CLERK

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MAYOR