

Tuesday – February 22, 2011 - 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 Gordon D. Smith; City Manager Gary W. Jackson; City Attorney Robert W. Oast Jr.; and City Clerk Magdalen Burleson

Absent: Councilman William A. Russell Jr. (illness)

PLEDGE OF ALLEGIANCE

Mayor Bellamy led City Council in the Pledge of Allegiance.

INVOCATION

Councilman Davis gave the invocation.

I. PROCLAMATIONS:

A. PROCLAMATION PROCLAIMING FEBRUARY 22, 2011, AS "SPAY DAY"

Mayor Bellamy read the proclamation proclaiming February 22, 2011, as "Spay Day" in the City of Asheville. She presented the proclamation to Ms. Elaine Lite, representing Critter Magazine, who briefed City Council on some activities taking place during the day.

B. PROCLAMATION PROCLAIMING MARCH, 2011, AS "WOMEN'S HISTORY MONTH"

Mayor Bellamy read the proclamation proclaiming March, 2011, as "Women's History Month" in the City of Asheville. She presented the proclamation to Ms. Debbie Metcalf, President of the Asheville National Organization for Women, who briefed City Council on some activities taking place during the month.

C. PROCLAMATION PROCLAIMING MARCH, 2011, AS "DEVELOPMENTAL DISABILITIES AWARENESS MONTH"

Mayor Bellamy read the proclamation proclaiming March, 2011, as "Developmental Disabilities Awareness Month" in the City of Asheville. She presented the proclamation to Ms. Karen Harrington, Chairman of the Mayor's Committee on Disabilities, who briefed City Council on some activities taking place during the month.

II. CONSENT AGENDA:

A. APPROVAL OF THE MINUTES OF THE CITY COUNCIL ANNUAL RETREAT HELD ON FEBRUARY 4, 2011; AND THE REGULAR MEETING HELD ON FEBRUARY 8, 2011

B. RESOLUTION NO. 11-33 - RESOLUTION AUTHORIZING THE MAYOR TO ACCEPT THE CONVEYANCE OF REAL PROPERTY LOCATED OFF OF JANE STREET AND ADJACENT TO RIVERSIDE CEMETERY FROM BUNCOMBE COUNTY

Summary: The consideration of a resolution authorizing the Mayor to accept the conveyance of real property located off of Jane Street and adjacent to Riverside Cemetery, from Buncombe County.

In the fall of 2010 Buncombe County approached city staff with an offer to transfer a small residential parcel of land to the City of Asheville. The property is the subject of numerous complaints from an adjacent homeowner over illicit behavior allegedly taking place on the property and dangerous overgrowth. The 0.11 acre property (PIN # 963993508400000) is wooded and undeveloped and sits adjacent to Riverside Cemetery. It is residentially zoned. The county acquired this property through tax foreclosure and offered to transfer the property at no cost to the city.

Acquisition of the property would allow the Parks, Recreation, and Cultural Arts Department to preserve additional wooded acreage on the eastern side of Riverside Cemetery and further buffer it from surrounding residential uses.

This action would comply with the City Council 2010-11 Strategic Operating Plan in that it would promote environmental sustainability (Green and Sustainable category). This action would also comply with Goal 18 of the Parks, Recreation, Cultural Arts, and Greenways Master Plan in that it would preserve significant natural and cultural resources and increase park acreage (Strategy #1, "City Wide" Action step A and C).

This item has been reviewed by the Parks Recreation Advisory Board at the meeting held on February 14, 2011, and they recommended approval of this item.

Pros:

- Acquisition of the property would increase open space in the city.
- Acquisition of the property would buffer the cemetery from surrounding residential uses which will help preserve its serene character.

Cons:

- The lot is overgrown with invasive/exotic species, which is the cause of concern for at least one adjacent homeowner. Upon acceptance of the property, the city would have to perform select clearing.
- The property contains some trees with weighty, ominous limbs protruding over Gray Street, which is the cause of concern for at least one adjacent homeowner. Upon acceptance of the property, the city would have to perform select limbing.

Clearing and limbing will require resources in the form of staff time and equipment. These costs will be absorbed within the existing budget.

City staff recommends that City Council adopt the resolution authorizing the Mayor to accept a 0.11 acre parcel of land, adjacent to Riverside Cemetery, from Buncombe County for the purpose of preserving Riverside Cemetery and increasing open space acreage.

RESOLUTION BOOK NO. 33 – PAGE 341

C. RESOLUTION NO. 11-34 - RESOLUTION TO SUPPORT FRENCH BROAD RIVERKEEPER WORK ON THE SOUTHERN PORTION OF THE FRENCH BROAD RIVER PADDLE TRAIL

Summary: The consideration of a resolution to support French Broad Riverkeeper work on the southern portion of the French Broad River Paddle Trail, a cooperative effort within the Regional Riverfront.

The French Broad River Paddle Trail is a community led effort to establish a continuous paddling and camping trail along the length of the French Broad River. RiverLink- an appointing

partner in the Asheville Area Riverfront Redevelopment Commission- has started community engagement work in parts of Buncombe and in Madison counties. In a separate but not unconnected effort, The French Broad Riverkeeper program and the Western North Carolina Alliance- as staffed by Hartwell Carson- is securing campsites throughout the southern section of the trail, which includes parts of Buncombe County.

The French Broad Riverkeeper is requesting that City Council consider supporting the community's efforts to create the entire French Broad River Paddle Trail, and specifically requests that Asheville City Council support the French Broad Riverkeeper program's request for grant funds to support construction of some of the campsites in the southern section. The activities supported by a successful grant application include improving and adding river access points and establishing paddle-in campsites which would allow visitors to spend a few days paddling down the river and camping at well maintained facilities. Proposed campsites include public and privately owned land. One proposed campsite is owned by the City of Asheville. City staff is currently investigating the feasibility of utilizing the land, which is located outside the Wilma Dykeman RiverWay Master Plan area, as a paddle in (only) campsite. The Asheville Area Riverfront Redevelopment Commission (AARRC) – a partnership between the City of Asheville, The Town of Woodfin, Buncombe County, RiverLink, The Council of Independent Business Owners, The Asheville Area Chamber of Commerce/Economic Development Coalition and the River District Design Review Committee- were scheduled to consider a similar resolution of support for this project on February 10, 2011, however their meeting was cancelled due to inclement weather. The AARRC will consider this matter at their rescheduled meeting on February 17, 2011.

This action aligns with the City Council Strategic Goals as follows (1) Sustainable: Pursue a stronger riverfront redevelopment partnership (and dedicated office); (2) Green: Support open space preservation; and (3) Job Growth and Community Development: Partner in regional economic development strategies (including the HUB; continue partnership in the Economic Development Coalition);

Pro:

- City Council will support regional collaborative effort that aligns with strategic goals.

Con:

- None known.

By adopting this resolution, Council is not committing any funds to this project therefore there is no fiscal impact.

If City Council is amenable to the proposal, staff recommends they adopt a resolution to support French Broad Riverkeeper work on the southern portion of the French Broad River Paddle Trail, a cooperative effort within the Regional Riverfront.

RESOLUTION BOOK NO. 33 – PAGE 342

D. RESOLUTION NO. 11-35 - RESOLUTION AUTHORIZING THE CITY MANAGER TO EXTEND THE EXISTING AGREEMENT WITH THE N.C. DEPT. OF TRANSPORTATION FOR THE CONSTRUCTION OF REED CREEK GREENWAY, PHASE II BY SIX MONTHS

Summary: The consideration of a resolution authorizing the City Manager to extend the existing agreement between the City of Asheville and the N.C. Dept. of Transportation (NCDOT) for the construction of Reed Creek Greenway, Phase II by six months.

On February 12, 2008 City Council approved a resolution authorizing the City Manager to enter into an agreement with the NCDOT for up to \$400,000 to construct Reed Creek Greenway, Phase II. The agreement was executed on April 4, 2008, and allowed a three-year time period for project completion. The completion date as prescribed by the agreement is April 14, 2011. Due to unforeseen delays in land acquisition, design, and the bid process, the greenway construction will not be complete within the three-year period. Staff requested a six-month extension to the existing agreement with NCDOT, which NCDOT has agreed contingent upon City Council approval.

This action complies with the Fiscal Year 2010-11 City Council Strategic Plan in that it supports continuing a funding alternative for enhancing the city's commitment to master plan implementation, infrastructure maintenance, capital improvements. This action also complies with the Parks, Recreation, Cultural Arts, and Greenway Master Plan in that it allows for the implementation of the Reed Creek Greenway, a high priority greenway corridor within the master plan.

Pro:

- Extends the NCDOT agreement to allow the City an additional six months to complete Reed Creek Greenway, Phase II

Con:

- The extension will delay the completion of the greenway construction by six months beyond the original completion date of April 2011 as set forth in the original agreement.

There is no fiscal impact to this action.

City staff recommends City Council adopt a resolution authorizing the City Manager to enter into an agreement with NCDOT to extend the current agreement between the City and the NCDOT for construction of the Reed Creek Greenway, Phase II by six months.

RESOLUTION BOOK NO. 33 – PAGE 343

E. RESOLUTION NO. 11-36 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A CONTRACT WITH DISASTER RECOVERY GROUP AND TREE SERVICE, INC., TO CONSTRUCT REED CREEK GREENWAY PHASE II

Summary: The consideration of a resolution authorizing the City Manager to enter into a contract with Disaster Recovery Group and Tree Service, Inc. to construct Reed Creek Greenway Phase II for an amount not to exceed \$615,000.

The City of Asheville is preparing to construct the second phase of Reed Creek Greenway located along Reed Creek and Broadway Avenue. Once complete the greenway will be a 0.30-mile multi-use trail that will extend between Cauble and Magnolia Street. The second phase will construct the section between Cauble and Catawba Street, and bring the greenway corridor to 50% completion.

The City advertised for bids for construction of the greenway. Staff determined Disaster Recovery Group and Tree Service, Inc. located at 556 Long Shoals Road, Arden, North Carolina is the lowest, responsive and responsible bidder. The base bid is \$478,250 plus \$20,000 for required code plantings not included in the base bid amount, and \$116,750 to exercise a bid alternate to develop a corner park on a city-owned parcel adjacent to the greenway corridor.

This action complies with the Fiscal Year 2010-2011 City Council Strategic Plan in that it supports continuing a funding alternative for enhancing the city's commitment to master plan implementation, infrastructure maintenance, and capital improvements. This action also

complies with the Asheville City Development Plan 2025 in that it implements the adopted Greenway Master Plan. In addition, this action complies with the Parks, Recreation, Cultural Arts, and Greenway Master Plan in that it allows for the implementation of the Reed Creek Greenway, a high priority greenway corridor within the master plan.

Pros:

- Leverages the city's existing capital funds allocated for construction of Reed Creek Greenway.
- The contract amount is within the project budget.
- The project will extend the Reed Creek Greenway by 0.30 miles, bringing the total length of the corridor to approximately 0.5 miles.

Con:

- The additional greenway mileage will require maintenance resources.

The \$615,000 to support the construction contract of Reed Creek Greenway Phase II is budgeted in the FY 2008-2009 capital improvement budget for Reed Creek Greenway Phase II. The budget is funded by a \$400,000 grant from the North Carolina Department of Transportation which was accepted by City Council on February 12, 2008, and the remaining funds were appropriated by City Council as part of the FY 2008-2009 capital improvement budget.

City staff recommends City Council adopt a resolution authorizing the City Manager to enter into a contract with Disaster Recovery Group and Tree Service, Inc. to construct Reed Creek Greenway Phase II for an amount not to exceed \$615,000.

RESOLUTION BOOK NO. 22 – PAGE 344

F. RESOLUTION NO. 11-37 - RESOLUTION AUTHORIZING THE MAYOR TO CONVEY SANITARY SEWER EASEMENTS AT THE NEW RECREATION CENTER SITE AT 285 LIVINGSTON STREET AND AT 415 S. FRENCH BROAD TO THE METROPOLITAN SEWERAGE DISTRICT

Summary: The consideration of a resolution authorizing the Mayor to convey sanitary sewer easements at the new recreation center site at 285 Livingston Street and at 415 S. French Broad to the Metropolitan Sewerage District.

The Metropolitan Sewerage District (MSD) is preparing to relocate existing sanitary sewer lines within the property at 285 Livingston Street in order to accommodate future phases of the new recreation center development. Currently, the existing lines in the park are in poor condition and necessitate replacement. The existing 24", 8" and 6" lines within the property will be replaced with 30" and 12" ductile iron pipe. The relocation will enable future phases of the recreation center to be implemented as well as the proposed Town Branch Greenway. A portion of the easement also crosses within the parcel boundary of Fire Station 2 at 415 South French Broad Avenue. Fire Department staff have reviewed this alignment and noted that it will have no significant impact to the fire station.

MSD is requesting two permanent easements as follows: easement #1 containing approximately 40,882 square feet (0.94 acre) and easement #2 containing approximately 1,899 square feet (0.04 acres). The land area will be restored upon the completion of the work by MSD.

This action would comply with the City Council 2010-11 Strategic Operating Plan in that it would promote public health, safety and welfare by allowing adequate sewer service lines through city-owned property (Safety category).

This item has been reviewed the by Parks Recreation Advisory Board at the meeting held on February 14, 2011, and the Board recommended approval of the item.

Pros:

- Improved sanitary sewer service for the community
- Allows for implementation of future phases of recreation center
- Proposed line replaces the existing, poor line

Con:

- Easement is being dedicated

No monetary consideration involved in this conveyance.

City staff recommends that City Council adopt the resolution authorizing the Mayor to convey sanitary sewer easements at the new recreation center site at 285 Livingston Street and at 415 S. French Broad, identified as PINs # 964814039800000 and # 964814534100000, to the Metropolitan Sewerage District.

RESOLUTION BOOK NO. 33 – PAGE 345

G. RESOLUTION NO. 11-38 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A CONTRACT WITH CINCINNATI SYSTEMS INC. FOR THE INSTALLATION OF AN ELECTRONIC TIME SYSTEM FOR THE ADMINISTRATIVE SERVICES AND PARKS DEPARTMENTS

Summary: The consideration of a resolution authorizing the City Manager to enter into a contract with Cincinnati Systems, Inc., in an amount not to exceed \$69,958, for the installation of an electronic time system for the Administrative Services and Parks departments.

The Administrative Services Department and the Parks, Recreation & Cultural Arts Department are working to streamline the timekeeping process with non-exempt employees. The new system will assist in advancing this process by automating the method for time entry by non-exempt employees. This automation will directly connect to the City's new MUNIS system and payroll.

For the Administrative Services Department, implementation of the timekeeping system will result in approximately 13 work hours gained annually since staff will spend less time manually verifying time cards and less time manually entering the data.

In the Parks, Recreation & Cultural Arts Department, implementation of the timekeeping system will result in approximately 370 work hours gained annually. Staff will spend less time verifying time cards and less time manually entering the data. The current process is very inefficient. Reporting staff payroll hours via a paper timecard requires approximately 20 supervisors to manually verify every timecard, making corrections when needed. These timecards are gathered from 22 different worksites, including community centers, athletic recreational facilities, park maintenance offices, etc. Three administrative support staff then enter the data from each time card into the MUNIS payroll system.

This system expands the existing timekeeping system that is currently in use at Public Works, Water, and other city departments. The system uses handprint recognition to ensure accurate timekeeping and eliminate false time card punching.

This action complies with the City Council Strategic Operating Plan's "Fiscal Responsibility" goal.

Pros:

- Provides a more efficient and accurate timekeeping system for the Administrative Services Department and the Parks, Recreation & Cultural Arts Department.
- Allows for fewer errors and creates less liability for the City organization than a manual, paper-based process.
- Centralizes data and interfaces smoothly with the City's core financial and HR systems, enabling better reporting for the City organization.

Con:

- Will require staff effort, project management, and expenditure of funds.

These funds are budgeted in departmental FY11 budgets.

City staff recommends City Council adopt a resolution authorizing the City Manager to enter into a contract with Cincinnati Systems, Inc., for the installation of an electronic time system for the Administrative Services and Parks departments.

RESOLUTION BOOK NO. 33- PAGE 346

H. RESOLUTION NO. 11-39 - RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE AN AMENDMENT TO THE CONTRACT TO AUDIT ACCOUNTS WITH DIXON HUGHES PLLC FOR THE FISCAL YEAR 2009-10

Summary: The consideration of a resolution authorizing the Mayor to execute an amendment to the contract to audit accounts with Dixon Hughes PLLC for the fiscal year 2009-2010.

NC General Statute 159-34 requires local governments to have their accounts audited each fiscal year by a certified public accountant and confers upon the Local Government Commission (LGC) the authority to issue rules and regulations to ensure the quality and consistency of auditing services. The LGC has issued several rules in connection with the audit contract including:

- amendments to the audit contract be approved by a vote of the governing board in a public meeting
- financial statements submitted after December 1st require an amendment

On June 8, 2010, City Council approved a contract with Dixon Hughes PLLC, in the amount of \$153,450 for auditing services for Fiscal Year 2009-2010. The contract includes certain estimates regarding compliance auditing of federal and state financial assistance programs and does not include auditing new major programs such as the American Recovery and Reinvestment Act of 2009 (ARRA Federal Stimulus). Additionally, the contract contains a completion date of October 31, 2010.

Dixon Hughes has submitted an amendment to the contract in the amount of \$13,600 seeking additional compensation for required work not included in the original contract; such work relating to ARRA single audit compliance and consultation in connection with various compensation and fringe benefit tax matters. If approved, the total amount of the 2009-2010 contract would increase from \$153,450 to \$167,050. Funds are available in the Accounting Division of the Finance Department to cover this additional expenditure. This supplemental billing is not unusual. Dixon Hughes requested and received an additional \$10,500 in connection with the 2008 audit contract.

The proposed amendment also contains a modification of the completion date of contained in the original contract of October 31, 2010 reflecting the delayed submission. This delay, including the factors contributing to the delay and efforts to ensure that such delays are

avoided in the future, was discussed extensively at the Council and Finance Committee meetings of January 25th. While the delay is unacceptable, some historical context may be helpful. The City has experienced delays in presenting the financial results on several occasions as follows:

FY2009 – Delivered to Council – January 12, 2010
 FY2008 – Delivered to Council – February 10, 2009
 FY2007 – Delivered to Council – January 8, 2008
 FY2006 – Delivered to Council – December 12, 2006

Clearly, improving the timely submission of the audit report and keeping Council informed on that progress are on the “top” of the Finance Department and external auditors’ priority list for the fiscal year 2011 audit report.

This action complies with City Council’s Strategic Operating Plan of operating the City of Asheville’s organization to the highest fiscal responsibility.

Pros:

- Complies with the requirements of the Local Government Commission in connection with amending the audit contract
- Conforms to the terms and conditions of the audit contract

Con:

- Requires additional funding (resources are available).

The contract amendment with Dixon Hughes entails compensation in the amount of \$13,600 to cover additional for required work not included in the original contract. This additional amount will be paid for with currently budgeted funds.

Staff recommends approval of a resolution authorizing the Mayor to execute an amendment to the contract to audit accounts with Dixon Hughes PLLC for the fiscal year 2009-2010.

RESOLUTION BOOK NO. 33 – PAGE 347

I. ORDINANCE NO. 3949 - BUDGET AMENDMENT TO THE MCCORMICK FIELD BUDGET FOR THE ASHEVILLE TOURISTS LEASE PAYMENT

Summary: The consideration of a budget amendment to the McCormick Field budget in the amount of \$61,666 for the Asheville Tourists lease payment.

As part of the ten-year lease agreement between the City of Asheville and the DeWine Seeds-Silver Dollar Baseball for the Asheville Tourists at McCormick Field, a scheduled annual lease payment increase occurred from \$125,000 to \$140,000 effective July 1, 2010. In preparation for the FY 2010-2011 budget, the lease increase was not included in the budget. Funds will be used to support the operation and capital improvements to McCormick Field. The budget amendment is to correct the omission of the \$15,000 from the McCormick Field budget.

In addition, the DeWine Seeds-Silver Dollar Baseball recently made an advance payment of \$46,666 toward the FY 2011-2012 \$140,000 lease payment to support the cost of restroom improvements at McCormick Field so the improvements can be completed prior to the opening of the Asheville Tourists 2011 season. The budget amendment is to add \$46,666 to the McCormick Field budget to support the cost.

This action aligns with the City Council Strategic Goal of fiscal responsibility in that it provides an alternative for enhancing the city’s long-term financial commitment to infrastructure

maintenance. This action also complies with the Parks, Recreation, Cultural Arts & Greenways Master Plan in that it will increase the level of service to bring older facilities up to date before building new facilities.

Pro:

- Operations and facility improvements will address existing maintenance projects at McCormick Field.

Con:

- None

The allocation will increase the City's General Fund budget by \$10,000 in the operating budget designated for McCormick Field, and increase the City's Capital Improvement budget designated for McCormick Field by \$51,666.

Staff recommends City Council to approve the budget amendment authorizing the City Manager to increase the budget in the amount of \$61,666 for McCormick Field operations and capital improvement.

ORDINANCE BOOK NO. 26 – PAGE 454

J. RESOLUTION NO. 11-40 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A COOPERATIVE AGREEMENT WITH THE U.S. DEPT. OF TRANSPORTATION FOR THE TIGER II PLANNING GRANT FOR THE EAST OF THE RIVERWAY MULTI-MODAL NEIGHBORHOOD

Summary: The consideration of a resolution authorizing the City Manager to enter into a Cooperative Agreement with the U.S. Dept. of Transportation for the TIGER II Planning Grant for the East of the Riverway Multi-Modal Neighborhood.

On October 20, 2010, the City was informed that it was awarded \$850,000 of TIGER II Planning Grant funds from the US Department of Transportation (DOT) for the "East of the Riverway Multi-Modal Neighborhood." This award came in national competition for HUD and DOT funding for Sustainable Communities. The City received one of 33 TIGER II awards made nationally.

In summary, the funds will enable a partnership among the City, community residents, businesses, property owners and public, non-profit and private organizations to develop and bring plans for sustainable development to readiness. Specific planning activities will include:

- Final route planning, environmental assessment and construction drawings for the Town Branch and Clingman Forest Greenways;
- 2.7 mile section of the Wilma Dykeman Riverway brought to 75% construction drawing completion;
- Transportation Network Plan developed, including multi-modal transportation, road sections, complete streets and projected transit demand;
- Energy Plan, including an assessment of current energy use and an analysis of financing options for a community-based energy efficiency program;
- Transformational redevelopment of City properties will be explored through the development assessment of at least two city-owned properties in the target area;
- Significant public participation in all elements of the planning.

The City is required to provide a 20% match. This will be done through existing, already in place city staff, as in-kind match. The project will be managed within the Community

Development Division, guided by a team of city staff from involved departments. The project duration will be two years from the signing of the Cooperative Agreement.

This action complies with City Council's Strategic Operating Plan under the following goals: 1) *Affordable*: this program will explore opportunities to enhance affordability through innovative energy efficiency financing programs; explore opportunities to incentivize affordable housing development; ; 2) *Fiscal Responsibility*: will explore leverage of partnerships for pursuing capital improvement and infrastructure projects, and proactively pursue funding opportunities; 3) *Green*: will expand community education programs regarding sustainability, and integrate and implement a multi-modal transportation plan in this area; and 4) *Job Growth and Community Development*: Promote sustainable, high density infill growth, support the riverfront redevelopment partnership.

Pros:

- The practical partnerships being formed will lead to projects that are comprehensive and coordinated;
- Community residents, businesses and property owners will be directly involved in the planning activity;
- The activities will lead to “transformational investment” that will create new opportunities for people already living there, as well as incentivize new housing and economic development that will spur the sustainable reuse of existing property, including property now owned by the City;
- This grant will enhance the recommendations in the Wilma Dykeman Plan, and create opportunities for funding for implementation of the plan.

Cons:

- New resources can create expectations of immediate future funding; although HUD and other agencies have implied that this funding will be available, it will depend on the federal (and state and local) budget processes and constraints;
- New development brings inherent conflicts between competing interests. The success of any planning activity will be the ability to create win-win relationships.

Match requirements can be met in-kind through existing staff resources.

City staff recommends City Council adopt the resolution to execute the Cooperative Agreement with the US Department of Transportation.

RESOLUTION NO. 33 – PAGE 348

- K. RESOLUTION NO. 11-41 - RESOLUTION AMENDING THE 2011 CITY COUNCIL MEETING SCHEDULE TO HOLD A WORKSESSION IN THE FIRST FLOOR NORTH CONFERENCE ROOM OF CITY HALL ON (1) TUESDAY, MARCH 8, 2011, AT 3:30 P.M.; (2) TUESDAY, MARCH 22, 2011, AT 3:00 P.M.; AND (3) TUESDAY, APRIL 12, 2011, AT 3:00 P.M.**

RESOLUTION BOOK NO. 33 – PAGE 349

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.

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

III. PRESENTATIONS & REPORTS:

A. UPDATE FROM THE BLUE RIBBON HEALTHCARE TASK FORCE

Assistant City Manager Jeff Richardson introduced Mr. James Christian, representing the Task Force, who will be updating City Council on findings and recommendations of Healthcare Task Force.

He said that City Council appointed the following 5 members of the community to serve on the Healthcare Task Force: Mr. Jim Christian, Mr. Marty Stamey, Dr. Bruce Elliston, Mr. Bill Biddle and Ms. Vicki Banks. Council directed the group to provide final health fund recommendations by the onset of the Fiscal Year 2011–12 budget process (January – February, 2011). The Task Force was initially charged with:

- Evaluating best practices to determine the optimal range of health insurance related benefits afforded to employees
- Cost-for-service comparisons
- Employer-employee cost-share analysis
- Review of the Asheville Project Disease Management Program
- Other areas of interest

The City Council Finance Committee has reviewed and approved the recommendations.

Mr. Christian said that the Task Force convened four times between September and December to review and discuss all aspects of the City's benefits package. Our review included details on the current risk structure, healthcare funding levels, The Asheville Project Disease Management Program, health claim costs, medical and dental administrative costs, health Services on-site clinic costs, and health and wellness initiatives and incentives.

Task Force Defined Objective: Operate a sustainable Health Care Program that provides Access, Quality and Cost-effective medical care to the City of Asheville's employees, retirees and dependents. The Task Force's recommendation encompasses these three broad categories that, when combined, will improve the Health Care program of the City, provide for fiscally responsible spending and improve the health of the participants.

Access – Improving access to health care by removing barriers (cost and availability), encouraging preventive health care and wellness exams, and affiliating with health care providers/networks to offer expanded services and access to care.

- **Expansion of Employee Health Clinic** – Expansion of services involves acute care diagnosis and treatment by an on-site physician from the current 2 day per week to 5 days, expanded lab services and capabilities, disease management intervention for patients not yet enrolled in The Asheville Project program and current Asheville Project enrollees not compliant with evidence based medical norms. Potential savings also generated through decreased time out of work due to illness, improving health education for patients in all risk levels through preventive medical education, reduction in prescription drug cost through generic utilization and lower cost brand by prescribing physicians and reduction in cost per event for lab work. Details on the financial impact of Expansion of the Employee Health Clinic shown below under the Cost Category.
- **Coordination of Care with Physicians** located in the Community for Employees & Dependents by affiliating with networks and providers, encouraging all Medical Plan participants to find a primary care physician, and facilitating communication with providers through the use of Electronic Health Records. The Medication Therapy Management Program began in July 2010 to review Prescription Drug Utilization of

members on health plan is an example of Coordination of Care with pharmacists, physicians and members. Communication of recommendations to members and their Physicians for potential opportunities to reduce member and City costs through prescription drug changes is on-going.

Quality - Health Care that focuses on Prevention and Wellness will improve patient health and well-being.

- **Affiliate with Health Care providers** committed to provide quality care and that are committed to Prevention and Wellness Care.
- **Reward prevention/wellness** by creating a system of real rewards for participation in a Wellness Program. The Wellness Program presented by City staff offers financial rewards to participants for committing to basic biometric testing and healthy behaviors. The Wellness Program should provide incentives for modifying unhealthy behavior and educational opportunities to participants.
- **Preventive Care Services** should be covered by the Medical Plan for all members. The U.S. Preventative Services Task Force publishes a detailed recommendation of Preventive Care Services based on evidence-based medical standards of care. Medical Plan changes should be reviewed to ensure these recommendations will be covered.
- **Education and Communication** to all employees and retirees on the actual plan costs and cost saving information.
 - Provide information concerning advanced directives before illness begins and partner with Crescent Health Care to provide details upon diagnosis of life threatening illness.

Cost – The third part of our recommendation involves reducing the overall cost of the City's health insurance program and stabilizing the long-term financial health of the program. The key is to reduce costs and ensure the long-term viability of the fund while still providing Access to Quality health care. The City's current plan design and costs were benchmarked against other plans offered by private and public employers in North Carolina. The City's current Medical benefits and corresponding employee/retiree contributions require less employee expense than those offered through other employers. Modification of Plan designs to reduce costs and increases in employee and retiree contributions will bring the City's Medical benefits to be more in line with the plans reviewed.

- **Modify Plan Designs** to reduce cost to be more consistent to benefit plans offered by other Public and Private Employers in NC. The new plans should promote preventive care and wellness and provide incentive to utilize the City's Health Clinic.
 - Plan Design Changes effective 7/1/11: Estimated 14% decrease in claim cost for Fiscal year 2012, which will offset health care trend increase, estimated increase for Health Care Reform changes required by PPCA and increases in Reinsurance Premiums. The estimated reduction in claims is \$1,647,000.
- **Increase Employee and Retiree Contribution** by utilizing an *alternate Contribution Strategy* which sets the City's Contribution at the same level for all plans offered.
 - Proposed changes increase the employee contributions and retiree contribution. Changes being considered would result in a savings of approximately \$840,000. Calculation of Retiree contribution increase is based on the actual cost of the City's Retiree population, which is more than 2 times the cost for active employees. The recommended increases in Employee and Retiree contributions must be reviewed for legal compliance and policy objectives. Legal review is necessary due to changes in rating methodology and contribution strategy.

Modifying contribution levels to a more moderate increase for employees and retirees combined is equal to approximately \$420,000 in annual costs.

- **Future Employee Retiree Health Insurance** – City staff and Consultants should perform a detailed analysis of the Retiree Health Insurance options for Future Employees. Medical claim costs, liability for future costs, and eligibility limitations should be reviewed and benchmarked with other public employers in North Carolina.
- **Cost Expansion of the Employee Health Clinic** reviewed by the Task Force is shown below. The recommendation is based on future projections of Cost Avoidance and the ability to provide Access to Quality Health Care to Health Plan participants.

	<u>Feb 2011- June 2011</u>	<u>Fiscal Year 2012</u>
Expansion of Health Clinic		
Lease of space & construction costs	\$52,500	\$66,000
Addition of Physician Assistant 5 days per week	\$41,670	\$100,000
Current Health Services Budget	\$113,310	\$251,933
Additional nursing staff	\$10,420	\$25,000
Lab, Supplies & Equipment	\$10,000	\$10,000
Electronic Health Record System	\$10,000	\$17,000
Physician Occupational Costs	<u>\$33,330</u>	<u>\$80,000</u>
Total:	\$271,230	\$549,933
Cost with no change	<u>\$154,972</u>	<u>\$371,933</u>
Additional Costs	\$116,258	\$178,000
Estimated reduction in Medical Claims Cost	-\$100,000	-\$500,000
Additional Cost (1st year)	\$16,258	
Cost Avoidance (year 2)		-\$322,000

- **Margins and Reserve** - Priority should be given to stabilizing the Health Insurance Fund by rebuilding the Reserve Fund that will remain available to offset normal variances in claims costs from year to year (margin), unforeseen catastrophic claims, larger than expected Medical Inflation trends, Incurred But Not Reported Claim Liability and the impact of future Health Care legislative mandates.
 - Each year the City staff should work with their consultants utilizing sound underwriting methodology to determine an adequate level of margin and reserve based on the projected claim fund and reinsurance protection.
 - To ensure an appropriate level of margin and reserve in the fund, we suggest that the City’s current level of funding remain the same for Fiscal Year 2012, despite benefit reductions and increases in Employee and Retiree contributions. Additional claim savings generated by the benefit changes, expansion of the Health Clinic and Employee and Retiree contribution changes should be used to stabilize the fund.
 - Funding should be reviewed and adjusted annually.

Ms. Kelley Dickens, Director of Human Resources, said that next steps include (1) the expansion of health care clinic - in progress; (2) communication/education on healthcare - in

progress; (3) Wellness Program – July 1, 2011; (4) plan design changes – July 1, 2011; (5) examine retiree insurance for future employees is in progress; (6) financial stability of Health Fund – reviewed annually/ongoing.

Staff is prepared to continue to implement the recommendations of the Task Force along with the direction received previously from City Council to offer domestic partner benefits.

On behalf of City Council, Mayor Bellamy thanked Mr. Christian and the Task Force members for their hard work in providing the framework for Council to consider during their budget process.

IV. PUBLIC HEARINGS:

A. PUBLIC HEARING TO CONSIDER CLOSING SEVERAL PORTIONS OF UNOPENED RIGHTS-OF-WAY AND CITY STREETS WITHIN THE MONTFORD COMMONS DEVELOPMENT AREA

Mayor Bellamy said that the applicant has requested this public hearing be continued until March 8, 2011. Therefore, Councilman Davis moved to continue this public hearing until March 8, 2011. This motion was seconded by Councilman Smith and carried unanimously.

B. PUBLIC HEARING TO CONSIDER REZONING 103 N. BEAR CREEK ROAD FROM COMMERCIAL INDUSTRIAL DISTRICT/CONDITIONAL ZONING TO RM-16 RESIDENTIAL SINGLE-FAMILY HIGH DENSITY DISTRICT

ORDINANCE NO. 3950 - ORDINANCE TO REZONE 103 N. BEAR CREEK ROAD FROM COMMERCIAL INDUSTRIAL DISTRICT/CONDITIONAL ZONING TO RM-16 RESIDENTIAL SINGLE-FAMILY HIGH DENSITY DISTRICT

Mayor Bellamy opened the public hearing at 5:40 p.m.

Urban Planner Alan Glines said that this is the consideration of an ordinance to rezone 103 N. Bear Creek Road from Commercial Industrial District/Conditional Zoning to RM-16 Residential Single-Family High Density District. This public hearing was advertised on February 11 and 18, 2011.

He said that the subject property (2.28 acres) is located within the City limits on North Bear Creek Road, just north of the intersection with Deaverview Road. Surrounding properties to the north and west are residentially zoned (RS-8, RM-8, RM-16) and the properties to the south and east are zoned Commercial Industrial. The existing land uses follow the surrounding zoning with single-family and multi-family in the areas to the north and west, and commercial uses to the south and east.

The underlying zoning before the conditional zoning to Commercial Industrial was approved was RM-8, Residential Multi-family Medium Density district. The purpose of that district is to be a transitional area, with single-family and multi-family residential uses, between high density single family and multi-family areas. Some non-residential development is normally permitted to provide the basic elements of a balanced and attractive mixed-use residential area.

The prior Conditional Zoning / Commercial Industrial application (CI-CZ) was approved with a site development plan in 2006 and modified in 2007 for a preschool and K-12 school. Plans included two classroom buildings, site access and student drop-off areas. Some of the site grading has been completed and the existing home on the property is being used as a child day care home. The applicants have stated that they are pursuing a zoning change as a straight rezoning in order to satisfy a requirement from a bank financing the project to have a clear underlying zoning for the property that is not conditioned on a specific use and site plan.

The proposed zoning for the current application is for RM-16, Residential Multi-family High Density District. The purpose of this district is to permit a full range of high density multi-family uses along with limited institutional, public, and commercial uses appropriate within high density residential areas. It is intended that this district be located near employment centers, shopping facilities, roads and other urban infrastructure capable of handling the range of uses. No site plans or specific uses are required or submitted with an application for a straight rezoning, because the range of uses is limited only by the list of permitted uses and uses by right subject to special requirements.

As they are likely to be proposed for this property, we note that both child daycare centers and schools are uses by right subject to special requirements in the RM-16 district. Each use has specific requirements that cover lot size minimums, setbacks, activity spaces, drop-off areas and number of children allowed. The lot size of the property proposed for rezoning is sufficient to meet that requirement and any site plans will be reviewed for compliance with the use standards.

The staff believes that the RM-16 zoning provides an appropriate use buffer between the residentially zoned properties to the west and north and the commercially zoned properties to the south and east.

At their meeting on February 2, 2011, the Planning and Zoning Commission voted 5-0 to recommend approval of the zoning change.

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

Pros:

- The site provides an appropriate buffer for the residential districts to the north and west.
- The location is close to Patton Avenue and nearby residential areas providing convenient access.
- The site is on the Asheville Transit Route 15 for both outbound and inbound portions of the route.

Con: None noted.

Staff recommends approval of the rezoning request to RM-16 because a goal of the district is to act as a buffer between commercial uses and residential areas. The list of permitted uses in RM-16 district include some non-residential uses that can be expected in healthy diverse neighborhoods. The site is conveniently located to transportation corridors and the transit system.

Ms. Amica Venturi hoped Council would approve her request and submitted a letter of support from seven of her neighbors.

Mayor Bellamy closed the public hearing at 5:40 p.m.

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

Councilman Bothwell moved for the adoption of Ordinance No. 3950. This motion was seconded by Councilman Davis and carried unanimously.

C. PUBLIC HEARING TO CONSIDER A CONDITIONAL ZONING REQUEST FOR INGLES MARKETS INC. LOCATED AT 153 SMOKY PARK HIGHWAY FROM HIGHWAY BUSINESS DISTRICT TO HIGHWAY BUSINESS DISTRICT/CONDITIONAL ZONING FOR THE DEVELOPMENT OF A NEW 105,175 SQUARE FOOT GROCERY STORE WITH ASSOCIATED CAR WASH, GAS STATION AND 32,060 SQUARE FEET OF ADDITIONAL RETAIL SPACE AND A SIGNAGE PLAN

Mayor Bellamy said that the applicant has requested this public hearing be continued until March 22, 2011, in order to have the full Council hear his request. She noted that Councilman Russell was ill and would not be in attendance at the meeting.

Mr. Bernard Arghiere was disappointed about the continuance request when people have made arrangements to be at this meeting.

Ms. Laura Piraino, representing the Executive Committee of the local Wenoca Sierra Club, was also disappointed on the continuance request.

Mr. Gene Ellison, representing Ingles Markets, requested this matter be continued until March 22 in order for his request to be heard by a full Council.

Vice-Mayor Newman moved to proceed with the public hearing. This motion was seconded by Councilman Smith.

Mayor Bellamy noted that normally Council would continue a public hearing to allow the applicant the opportunity to address a full Council. No one knew until today that Councilman Russell would not be in attendance. She felt the issues regarding the request would not change between now and March 22 and felt Council should allow the continuance request. The applicant has a large investment in our community and she felt it was important for them to be given the opportunity of presenting their case before a full Council.

City Attorney Oast said that it would take four votes to continue the public hearing.

The motion made by Vice-Mayor Newman and seconded by Councilman Smith to proceed with the public hearing carried on a 4-2 vote, with Mayor Bellamy and Councilman Davis voting "no."

Mayor Bellamy said that there will be one combined public hearing, with two separate votes.

Mayor Bellamy opened the public hearing at 5:44 p.m.

Conditional Zoning

Urban Planner Nate Pennington said that this is the consideration of two ordinances (1) a conditional zoning ordinance from Highway Business District to Highway Business District/ Conditional Zoning for the development of a new 105,175 square foot grocery store with associated car wash, gas station and 32,060 square feet of additional retail space with modification requests to off-street parking, landscaping, retaining wall standards, open space, outdoor lighting and large retail development standards; and (2) a signage plan. This public hearing was advertised on February 11 and 18, 2011.

He said the applicant is requesting a Conditional Zoning for two parcels zoned HB (Highway Business) to HB-CZ (Highway Business – Conditional Zoning) for the redevelopment of an existing Ingles shopping center in accordance with Section 7-7-8 of the Unified Development Ordinance (UDO).

The project site consists of two separate parcels comprising 31.595 acres according to the submitted site plans. The project proposes to retain the existing Ingles store (for conversion to an alternate retail use) and shops to the west of the site and construct a new Ingles store, future retail space, gas station/convenience store, car wash and four (4) commercial outparcels. The following list provides a breakdown of the existing shopping center and the proposed development:

Existing

Ingles Store:	53,000 SF
Shopping Center:	47,053 SF
Pizza Hut:	2,535 SF
Suntrust Bank:	<u>2,325 SF</u>

Note: Shops along former Cooper Boulevard and the State Employment Credit Union (SECU) bank are to be demolished.

Proposed

New Ingles Store:	105,175 SF
Future Retail:	32,060 SF
Car Wash:	2,280 SF
Gas Canopy/Convenience Store:	<u>8,745 SF</u>

Total Shopping Center: 253,173 SF

The combined square footage of the development meets the Level III review threshold (projects exceeding 100,000 square feet) and is subject to the Conditional Use Permit findings outlined in Section 7-16-2(c). Multi-tenant developments located in the Highway Business (HB) district are permitted up to 200,000 square feet; and developments may exceed the square footage cap by up to 50% if the project complies with the Supplemental Design Standards For Large Retail Structures (Big Box Standards) as listed in Section 7-16-2(b)(10) of the UDO. The applicant has elected to have this project reviewed as a Conditional Zoning as this process allows for added flexibility to vary from the mandatory requirements of the big box standards (see below section for Big Box Standards) with Council approval.

Phasing

The new Ingles store, gas station/convenience store, car wash and access drive are proposed to be built in one (1) phase. Some shifting of the parking lot layout will occur, however, to keep the existing Ingles open during construction of the new store. Development of the future retail area and outparcels is expected to be incremental and market driven.

Access

Primary access to the site is gained from an existing traffic light along Smoky Park Highway. A secondary entrance (currently Cooper Boulevard – see road closure section listed below) is proposed to be upgraded to allow for full access to the site. Additionally, a driveway is proposed to connect to the primary entrance to the adjacent Lowes home improvement store. The future outparcels will take access from this driveway.

Road Closure

Cooper Boulevard was the access to a former mobile home park on the vacant parcel to the north and east of the existing Ingles store site. That site is the location of the new Ingles store, future retail area and outparcels. The proposed site plan calls for the closure of the Cooper Boulevard to create a secondary entrance to the property. The City Council must approve the

closure of this right-of-way by City Council to accommodate this development. This request was recommended for approval by the Greenways Commission at their January 13, 2011, meeting (see below under section Required Reviews).

Parking

According to the site plan, 732 spaces are required inclusive of required Americans with Disabilities Act parking. Bike parking is dispersed throughout the site in front of the existing and new Ingles stores, to the side of the existing shops, and in front of the Pizza Hut restaurant. A modification request is being sought to authorize a reduction in the amount of required off-street parking (see Modifications section below).

Landscaping & Open Space

Significant landscaping will be required throughout the site, including street trees, parking lot landscaping, street buffer, building impact landscaping, dumpster/loading zone screening, and a Class "B" bufferyard at the rear of the property. That rear buffer separates the neighboring residential zoning designation (RS-4) from the commercial zoning designation (HB) of the subject property. The Class "B" buffer standards for "Big Box" developments require 150% of the plantings called for in a standard Class "B" buffer. A number of modification requests to the landscaping requirements are being sought (see Modifications section below).

The open space requirement for this type of development is 15% of the total site size; a total of 4.52 acres for this site. The applicant has elected to pay a fee in lieu of for the remaining portion of deficient open space - .22 acres as prescribed in Section 7-11-4(g) of the UDO.

Big Box Standards- Appendix 7-F (Supplemental Development Standards for Large

Retail Structures)

As noted above, the overall size of the development requires that the project be evaluated for compliance with Appendix 7-F, Supplemental Development Standards for Large Retail Structures (Big Box Standards). These development standards address building design, architectural compatibility with the surrounding area, landscaping, pedestrian safety and public enhancements. The standards are divided into two categories: 1) Required standards and 2) Optional design standards that are point based. In order to achieve full compliance with these standards the applicant must demonstrate that the project meets all the "required standards" and that the project has incorporated an adequate amount of "optional design standards" to accumulate a minimum of 150 points.

In regards to the proposed project, the applicant has fully demonstrated compliance with the optional design standards with an accumulated total of 160 points. However, several modification requests are being sought for two (2) of the required standards (see Modifications section below), including the façade standards. The applicant has provided a letter outlining their plan for proposed façade enhancements for the existing shopping center.

Signage

While signage is illustrated on the elevation drawings for this project, it is not part of this development review. Signage for the development will be reviewed in detail with the master sign package application following the public hearing on this project.

Modification Requests:

The applicant is requesting a total of 9 modifications to the site plan which must be approved by City Council. The staff supports 4 of the requests.

1. *Retaining Walls* – Section 7-10-5 of the UDO requires that foreground landscaping or attached vegetative screening be required for any retaining wall sections over 20 feet in height regardless of location relative to a public or private street. The applicant is proposing instead a 23-26 foot retaining wall behind outparcels #1 and #2; located above proposed detention pond #1. The wall will not be visible from the access drive connecting the outparcels to the Lowe's driveway or Smoky Park Highway. Given the difficulty in planting in such close proximity to the proposed detention pond, the **staff supports this request.**
2. *Off-Street Parking* – Section 7-11-2(c)(1) of the UDO requires a minimum number of off-street parking spaces based on land use. The Ingles shopping center development requires a total of 846 spaces. 732 spaces are provided resulting in a deficiency of 114 spaces or approximately 13% of the required total. The applicant has provided staff with reasonable justification for supporting the parking reduction based on the peak operating hours of the various retail and restaurant uses within the development, the **staff supports this request.**
3. *Parking Lot Landscaping* – Section 7-11-2(d)(4)c. of the UDO requires that when more than four trees are required in a parking lot with interior rows, 50% of the trees and shrubs must be planted in islands or medians located within the parking lot. The required amount of trees to be planted in islands and medians throughout this shopping center is 115 trees. The intent of this requirement is to break up large expanses of impervious surface with vegetation to help reduce urban heat island effect.

The applicant is proposing to plant 70 trees throughout the parking lot resulting in a deficiency of 45 trees or 40% of the required total. As an alternative to this requirement, the applicant is proposing to plant the remainder of trees in other locations throughout the site. The reason given for requesting the modification is the applicant feels that their plan "creates an even distribution of trees though the proposed parking lot without reducing the parking space totals to below the City's minimum required." Those alternate locations would not, however, provide shade to the parking areas - a primary rationale for the requirement.

The staff does not support this request as tree plantings in the alternate locations would not provide shade to the parking areas – a primary rationale for the requirement, and the reasons stated for requesting the modification have never before been accepted for requesting such a modification.

4. *Parking Lot Landscaping* – Section 7-11-3(d)(4)d. of the UDO requires that when more than four bays of parking are proposed, an interior island with an average width of 20 feet and a length equivalent to the length of the parking bay is required. This island must be planted and include a pedestrian walkway no less than five feet wide and placed in a location that enhances pedestrian circulation preferably leading directly to a building entrance or sidewalk. The intent for this requirement is to add shade in the parking area (thus reducing heat island impacts) in a larger island where trees will have better growth, and to provide a safer "refuge" for pedestrians. They are most often used by parents with small children, the elderly, and others who move slowly or wish to avoid vehicles in drive aisles.

The applicant is instead proposing to wrap a sidewalk around the perimeter of eastern portion of the parking lot from Smoky Park Highway to the drive aisle in front of the stores. The reason stated for the requested modification is that "Ingles feels this request eliminates possible conflicts between pedestrians and automobiles."

The staff does not support the request since the alternate sidewalk location does not

meet the primary intent of the standard. Staff notes that including the central island and sidewalk would result in a further reduction to the available parking spaces; however, additional spaces could be accommodated along the perimeter of the parking field or on one of the proposed outparcels. Further, the alternative sidewalk proposed would require approximately 710 linear feet of sidewalk while a central sidewalk would result in approximately 180 linear feet of sidewalk, thus further adding to impervious surface on the property. Also, the central island could support additional parking lot trees, offsetting the modification request. Additionally, the staff would support further reductions to the displaced parking given the large size of the new and existing parking lot.

Further, it is the belief of the staff that locating the sidewalk along the perimeter of the parking area would defeat the primary purpose of the standard, which is to provide safer pedestrian access into the parking areas; and added shade in the primary parking fields. Human nature being what it is, few are likely to take the time to go the perimeter and walk that much further to reach the store access. Further, installation of the required island would help the applicant meet the requirements of modification #'s 3 and 4 by providing additional areas for planting trees.

Finally, the staff also notes that multiple other "big box" retail developments approved in recent years have met this requirement without protest, including the Target store off of Tunnel Road, the Super Wal-Mart on Swannanoa River Road, and the recent renovation of the Wal-Mart store on Hendersonville Road. If this modification request is granted without reasons that establish its uniqueness, it would call into question the basis for the standard.

5. *Parking Lot Landscaping* – Section 7-11-3(d)(4)h. of the UDO requires that each parking space be located within 60 feet of a tree as measured from the trunk of the tree to the closest point of the parking space. The intent of this requirement is to provide shade to the parking area and reduce the urban heat island effect.

While the required number of parking lot islands has been provided, eight (8) of the islands do not meet the parking lot tree requirement. The developer requests to provide only shrubs in these islands, creating a deficiency of 96 parking spaces that would not be within 60 feet of a tree, representing 13% of the total 732 spaces. The majority of these islands are located directly in front of the new Ingles store entrances. If installed and planted as required, the deficiency would decrease by 60 spaces to less than one-half percent.

Additionally, the requirement for the large island noted in request #4 would also reduce this deficiency. The reasoning provided for not planting these trees reflects a general philosophy at odds with a basic intent of the landscaping standards: "The parking lot landscaping is designed to maximize visibility at both the vehicular and pedestrian levels."

The staff does not support this request because it defeats the intent of the standard which is to provide for adequate shade and reduce the urban heat island effect. As with the previous request, if this modification request is granted without reasons that establish its uniqueness, it would call into question the basis for the standard. Further, planting larger, single trunk shade trees (rather than often chosen smaller ornamental trees) would alleviate any visibility concerns; as larger trees grow to create a canopy above the sight level of vehicles and pedestrians while providing the desired shading.

6. *Open Space* – Section 7-11-4(c) of the UDO requires that 15% of lot area be reserved for open space for developments that primarily include suburban open space amenities. Since the time of the Planning and Zoning Commission meeting, the applicant has worked with staff to identify areas of the property where open space can be provided.

The current plan reserves 4.52 acres of the required 4.74 acres of open space. The UDO provides a fee in lieu option if an applicant cannot meet some or the entire required amount of open space. The fees collected are used to purchase or to enhance recreational use of property necessary to implement features of the greenway master plan or the Parks and Recreation Master Plan of the City of Asheville. **Ingles has elected to pay this fee and therefore this modification request is no longer necessary.**

- 7. *Outdoor Lighting for Vehicular Canopies* – Section 7-11-10(k)(1) of the UDO requires that areas under a vehicular canopy have an average illuminance of 20 maintained footcandles. The intent of this requirement is to mitigate the negative light trespass that is emanated from vehicular canopies.

The applicant is requesting an average of 80 maintained footcandles or 400% increase although the submitted photometric site plan indicates an average of 57.9 maintained footcandles which equates to a 289.5% increase. The stated reason for requesting the modification is that, “Ingles has created a prototypical fuel center that they feel meets the needs of their customers while providing utmost visibility and safety.”

Once again, the rationale for the request is at odds with the primary reasons for the regulation, and approving it without establishing elements that are unique to this particular location would call into question the basis for the regulation.

At the Planning and Zoning Commission meeting, Ingles representatives noted that the canopy’s footcandle output would somewhat diminish over time like other older similar canopies that have been installed at previous project locations. The staff recognizes that reasonable consideration could be given due to the deterioration of the lights over time but feels that the increase being requested by the applicant is excessive. The City of Asheville’s footcandle output maximum for vehicular canopies are in line with other local communities in the area (see below).

Municipality	Footcandle (FC) Maximum
Asheville	20 FC
Black Mountain	24 FC
Brevard	10 FC
Fletcher	24 FC
Waynesville	15 FC
Weaverville	24 FC
Woodfin	20 FC

The staff does not support the request for 80 FC as the existing 20 FC requirement reflects Asheville’s commitment to efficient and appropriate lighting levels. [This standard comes directly from the Illuminating Engineering Society of North America (IESNA) recommendations and is a national standard, NOT a dark sky standard.] As with other requested modifications noted, to allow a modification, especially a modification so greatly in excess of our standards, and of other prevailing standards in the region, would call into question the basis for the lighting standards unless there were elements unique to the site. The staff does not believe that there are any elements unique to this site that warrant this great a variation from our regulations. 20 FC is an appropriate amount of light and neither the insurance industry nor the agencies regulating fuel dispensing require higher levels. Excessive illumination is designed to attract customers and, if granted, provides Ingle’s an advantage over other fueling centers that meet the standards. The staff also notes that a recent replacement canopy on Long Shoals Rd. has complied with this new standard without protest.

Big Box Modification Requests:

8. *Required Standard #1* – Appendix 7-F of the UDO requires that if less than 25% of the parking is located to the side or rear of the building, then the parking area is to be buffered from the street with a 50-foot landscaped buffer that incorporates 150% of the plantings called for in a Class “B” buffer and includes a berm or wall with a minimum height of 42 inches. The applicant is requesting the elimination of this requirement due to the existing development on the site.

The Big Box standards were primarily designed to address and mitigate the impacts a “new” large retail development has on surrounding and adjacent properties. Since its adoption, staff has had difficulty applying a number of the standards to “existing” developments undergoing renovation where the majority of property was already developed and in use. The landscape requirements in Appendix 7-F is somewhat outdated and has not been revised since the adoption of the City’s current landscape ordinance which also incorporate many of the same standards. In lieu of the requirement noted above, the applicant proposes to meet the typical street tree and buffering from the street requirement along Smoky Park Highway and proposes installation of additional buffer plantings between the residential neighborhood and store at the rear of the site. **The staff feels that this proposal is more appropriate and in character with the existing development and therefore supports this request.**

9. *Required Standard #1* – Appendix 7-F of the UDO requires that outparcels shall meet the design standards set forth in this section and shall not incorporate drive through facilities. The applicant is seeking to have this requirement eliminated. **The staff supports this request** as the outparcels are setback more than 200 feet from Smoky Park Highway and are separated by an active Norfolk Southern rail line. Further, the outparcels are situated so that their ingress/egress is via the internal driveway that connects Ingles to Lowes, and will not create additional curb cuts along Smoky Park Highway.

In conclusion, while the staff found good reason to support four of the requested modifications, the staff found the remaining requests to be very problematic in both the degree to which they vary from the requirements and the nature of the reasons stated for requesting the modifications. These requests are deeply divergent from the required standards, and the reasons stated by the applicant are generally related to personal preference and standards of the company, not the standards adopted for the City or hardship inherent to this site. Unless the Council finds the situation at this location to be truly unique, approval of the requested modifications (particularly to the levels requested) would make it difficult to uphold the standards in other locations. The staff does not find elements at this location that make it unique enough to warrant significant divergence from the landscaping and lighting standards that are used throughout the city. If, however, the Council supports these modifications; they may wish to direct the staff to reconsider the basis of these standards.

This proposal was recommended for approval with conditions by the Technical Review Committee (TRC) on January 3, 2011. No members of the public were present to speak on this project and no comments have been received by staff. Susan Roderick (TRC representative for the Tree Commission) stated concern about the developer’s proposal to provide fewer shade trees in the parking lot than required by the ordinance. She also stated a belief that the internal pedestrian walkway requirement provides a safer pedestrian connection and would also provide additional area for meeting the internal landscape requirements and prefers it over the alternative sidewalk location that wraps around the perimeter of the property.

It should be noted that the Alternative Compliance Sub-Committee of the Tree Commission has reviewed previous versions of the Ingles site when it was thought that the project would be reviewed under the purview of a Level II site plan review. Many of the same

modification issues/concerns were noted during these past reviews as noted by Ms. Roderick above.

The Greenway Commission considered the application for the permanent closure of Cooper Boulevard on January 13, 2011. Attention was focused on the existing dirt walking trail in the rear of the property connecting Old Starnes Cove Road to the rear of the existing Ingles store. The Commission, after some discussion, made the following motion unanimously approving the request for the permanent closure of Cooper Boulevard: "City staff shall research the feasibility of a permanent, multi-use, maintained trail connecting the neighborhood to the new Ingles Market development, and for the Planning & Zoning Commission and City Council to consider that research in their approval of the street closure and zoning modifications."

The Planning and Zoning Commission, at their regularly scheduled meeting on February 2, 2011, unanimously approved the project with all 9 modification requests. The Commission noted that they felt that the applicant presented valid points on why the modifications were being requested and that they felt that the requests were unique to the project. Reasons stated were generally related to the shape of the parking areas (being wider and shallower than many others), or a personal reluctance to use amenities like center pedestrian islands, or a concern about shade trees blocking vehicle visibility. Commissioners also noted that some sites are "not going to be able to meet the City's standards but may be able to achieve the same outcome in a different way" although no specific examples were given as to why this site was achieving those outcomes in other ways. The Commissioners stated that "they review each project that comes before them independently and make adjustments if they see fit." Additionally, it was the consensus of the Commission to request that a marked crosswalk be installed across Smoky Park Highway in front of the new proposed "Cooper Boulevard" entrance. The staff notes that there is currently a crosswalk across Smoky Park Highway at the Lowe's entrance.

Additionally, the Sustainable Advisory Committee on Energy & the Environment met on February 16 and voted to recommend: "Whereas properly landscaped parking lots provide environmental benefits to reduce heat island effect and whereas enforcing the city's existing lighting standards reduces light pollution therefore SACEE strongly supports staff's recommendation to deny the variance request from the Planning and Zoning Commission. SACEE is further concerned that allowing these variances will set a harmful precedent for permitting unsustainable development."

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

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

The proposed project has been reviewed by City staff and appears to meet all public health and safety related requirements. The project must meet the technical standards set forth in the *UDO*, the *Standards and Specifications Manual*, the *North Carolina Building Code* and other applicable laws and standards that protect the public health and safety.

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.

This project represents the redevelopment of the existing Ingles store and shopping center with an expansion onto an adjoining parcel that formerly housed a now demolished mobile home park.

The residential neighborhood to the rear of the property is separated from this project by existing trees and a Class "B" buffer of additional width and plantings to be installed by the developer as well as topography change of over 20 feet. The remaining portions of the property are surrounded by similar commercial developments along the Smoky Park Highway corridor.

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

As noted in Finding #2, the proposed development is compatible with surrounding commercial uses and the residential nature of the property to the rear of the development will be buffered by additional vegetation, open space and the existing topographical elevation change.

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

The site is adjacent to the Lowes home improvement store to the east, auto sales and body shop to the west and a number of commercial uses along the Smoky Park Highway corridor including a motel, convenience store and the Asheville School campus. The proposed use is consistent with both the existing zoning and character of the Smoky Park Highway commercial corridor in which it is located and maintains sensitivity to the adjoining residential neighborhood along Old Starnes Cove Road through the use of mitigating factors including additional landscaping, open space and existing topography.

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.

Elements of the proposal are aligned with the City's goals and objectives as noted in the Compliance with Comprehensive Plan and other Adopted Plans section (listed above). Specifically, the redevelopment and expansion of this site is consistent with the goals of infill development along an established commercial corridor.

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

The site is located just off Smoky Park Highway (US 19-23) and is within approximately one (1) mile of an entrance to I-40. Although the City of Asheville transit route does not currently extend this far west, provisions are included for a bus stop location on Smoky Park Highway to accommodate future transit expansion. Adequate water supply, fire and police protection, waste disposal and similar facilities are verified during the TRC review process.

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

Based on the development size, a traffic impact study for this development is required by City of Asheville ordinance. The traffic impact study has been received and reviewed by staff. No adverse traffic impacts occur on the adjacent roadways because the recommended mitigation elements are implemented. Further, as this development's entire street frontage borders a NCDOT facility, all recommendations will require their approval.

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

Pros:

- Provides an opportunity to redevelop and upgrade an existing developed site.

- The project will ultimately provide additional jobs to the local economy.
- An enhanced architectural building and landscaped parking lot will significantly improve the overall appearance of the shopping center making the development more compatible with the surrounding area.

Cons:

- Includes a significant number of modification requests that could be mitigated by designing the development in such a way that meets all applicable UDO requirements.
- Granting modification requests arising from a preference for maintaining standard prototypes could establish precedents for requests from future developments seeking such relief, and a dilution of the intent of the standards.

Staff recommends approval of the conditional zoning request as submitted by the applicant, including the modifications supported by staff. In addition to the standard conditions, staff recommends the following additional conditions as well: (1) A lot recombination of both subject parcels must be completed before zoning permit issuance; (2) Existing trail connecting the Old Starnes Cove Road neighborhood to the Ingles store will be required to clearly delineate surface with a pervious material such as mulch or gravel; (3) Façade enhancements to the existing shops within the center are required to be completed within 5 years of the Conditional Use Permit approval and shall be architecturally compatible in color and shall incorporate design elements in common with the Ingles structure; and (4) Future development of outparcels shall adhere to the design standards outlined in the Façade Renovation addendum provided by the applicant to ensure compatibility with the overall design of the structures within the development. Furthermore, staff requests that City Council consider the long term implications of approving modifications related to preference only, and do not achieve goals established by the City in the standards for review of these types of uses.

Signage Plan

Technical Review Manager Kim Hamel said that this is the consideration of an ordinance to approve a signage plan for a new Ingles Store and proposed ancillary uses and existing shops located at 153 Smoky Park Highway. This public hearing was also advertised on February 11 and 18, 2011.

The proposed master signage plan is being reviewed concurrently with a Conditional Zoning application for the redevelopment of the site. The signs included in this proposal primarily address the signage for the new supermarket, gasoline sales/convenience store, and car wash facilities.

The Ingles development site also houses several other businesses each with a freestanding and attached sign (Pizza Hut, Suntrust, and State Employees Credit Union). In addition to the signs being requested to support the new development, Ingles is also proposing a new multi-tenant identification sign to replace the existing free standing signs on site. This sign will be located near the western entrance, closest to the existing shops.

The project site consists of approximately 31.6 acres, zoned Highway Business (HB), and is considered to be a multi-tenant development. The Unified Development Ordinance (UDO) currently allows multi-tenant developments one free-standing development or joint identification sign and also attached signage for each individual business within the development. Tenants within a multi-tenant development are not permitted to have separate freestanding signs.

The signage plan is divided into two categories: (1) signage for the new Ingles supermarket and proposed ancillary uses, and (2) signage for the existing businesses remaining on the site and signage for future development within the center and on the proposed outparcels.

Category Description and Analysis

1) New Development: Separate attached signage is requested for each separate service and includes:

- Multiple signs for the principal Ingles supermarket
- Attached signage for a convenience store (The i Market)
- Attached signage for the retail gasoline sales (Gas Express)
- Attached signage for the car wash (Laser Wash)

Along with this attached signage, Ingles is also requesting consideration of two separate free-standing pylon signs to be located along the street front for both the retail gasoline sales and the Ingles supermarket. Changeable copy panels are requested for both pylon signs.

Using exhibits, she reviewed the following table which provides information on each of the signs that is being requested:

Note: Multi-tenant signage allowance: One freestanding sign permitted for the development: 25-foot in height and up to 200 s.f. Attached signage: one square foot per one linear foot of building frontage (1:1 ratio) not to exceed district maximum of 200 s.f.

INGLES MARKET EXHIBIT 2A – 2B	PROPOSED	WHAT IS ALLOWED	AMOUNT EXCEEDED
Ingles (Store Sign) (Exhibit 2A)	201.95 s.f.	1 attached sign; not to exceed 200 s.f.	1.95 s.f.
American Owned	36.0 s.f.	Not allowed	# of signs and s.f. has been exceeded
Fresh Foods	29.46 s.f.	Not allowed	“
Starbuck's	16.0 s.f.	Not allowed	“
Café	**8.48 s.f.	Not allowed unless not visible from the R.O.W.	“
Pharmacy Drive-Thru	*13.13 s.f.	Wayfinding/directional	allowed
Free-standing Pylon (Exhibit 2B)	180.26 s.f.	1 sign @ 200 s.f.	Permitted and Complies

GAS CENTER EXHIBIT: 3A - D	PROPOSED	WHAT IS ALLOWED	AMOUNT EXCEEDED
Gas Express, canopy (Exhibit: 3A)	36.6 s.f.	Not allowed; not a separate tenant	# of signs and s.f. has been exceeded
Ingles, canopy (Exhibit: 3A)	21.0 s.f.	Not allowed; not a separate tenant	“
The i Market (Exhibit: 3B)	16.37 s.f.	Minimum of 25 s.f. or 1:1 ratio	Permitted and Complies
Wash Express and Laser Wash (Exhibit: 3C)	33.86 s.f. 4.32 s.f.	Minimum of 25 s.f. or 1:1 ratio	Permitted and Complies
Free-standing Pylon (Exhibit: 3D)	112.0 s.f.	(1) Joint identification sign per development.	Number of free-standing signs have been exceeded.

* The Pharmacy Drive-Thru sign was not included in the total square footage since it is considered wayfinding or directional signage. ** There is also a precedent for exempting the Café

sign when reduced in size so as not to be visible from the public right-of-way or adjacent properties.

The proposed plan for the grocery store exceeds the number of attached signs allowed as it is proposing five separate signs instead of the one to two normally allowed. The attached signage also exceeds the total allowed square footage of the district maximum (291.89 s.f. instead of 200 s.f.).

The gas center (that includes the convenience store, gas pumps and car wash) must also comply with the multi-tenant signage allowance. Compliance with that standard would limit the attached signage to only the convenience store and carwash and would not permit a freestanding pylon sign since only one joint identification sign is permitted per development.

2) Signage for existing businesses and shops (Exhibit 4):

A total of 4 single tenant freestanding signs exist on the Ingles development site including: the existing Ingles sign, Pizza Hut, Suntrust, and the State Employees Credit Union. Currently, the Ingles development consists of two separate parcels that would have permitted at least two of the freestanding identification signs. There is also precedent for allowing businesses located on lease parcels to obtain separate single tenant signage as long as the lease area is constructed to meet all of the UDO design standards as if it were located on its own parcel.

Ingles is proposing to remove all of the existing freestanding signs within the development and replace them with one joint identification sign that will provide advertisement at the street for the other businesses located within the shopping center. The sign would comply with the height and size standards permitted for a multi-tenant development (25-foot tall, 200 s.f) and would also reduce the visual clutter and distraction that multiple free standing signs (located within close proximity to one another) can create for motorists traveling on the highway.

The Conditional Zoning application that is associated with this review is conditioned upon Ingles recombining the two parcels into one lot. This is a standard requirement when there are not enough parking spaces within a multi-tenant development to support all of the uses on the property (when calculated separately for compliance) and when other infrastructure on the site is used in common (ingress/egress, sidewalks, etc.). This requirement also eliminates the need for separate cross access and shared parking agreements between business uses.

As noted in the Conditional Zoning report, staff supports the applicant's request to allow for a reduced parking requirement to support the various uses on site. This, however, creates unique challenges in applying fair and equitable signage for the existing and future uses and development that may occur on the site. Because the existing development falls short of providing the number of required parking spaces the lot must be recombined into one parcel. This, however, eliminates the option for existing tenants to maintain their current "single tenant" status as they can no longer comply with all of the design standards for a business located on a separate parcel or lease area.

Additionally, unlike other recent Ingles developments, the site cannot be subdivided (or re-subdivided) to accommodate the features included in the new Ingles prototype development that includes not only a supermarket but also a gas station with convenience store and car wash. The prior signage plan approvals that Ingles received were supported because the gas center uses could be located on a separate parcel from the supermarket and the signs could have been permitted as single-tenant signs by right (with exception to the larger sizes that were approved). It is also not unusual for the primary business, Ingles, to request a separate free-standing sign with a changeable copy component for advertising the various uses within the store and special sales on products.

The stated purpose of allowing the consideration of a separate signage plan is as follows:

The purpose behind this section is to permit creativity in sign design and placement to address site issues and constraints associated with topography, pedestrian-orientation, way-finding and other conditions unique to the subject development.

In the context of the significant number of applications for signs received daily by the City, we feel that the site presents unique site conditions and constraints that warrant the special consideration allowed. Staff also feels that a precedent for Ingles has been set through the approval of two other sign packages that were substantially similar to the signage included in this report.

Pros:

- Provides clear and recognizable signage to a large grocery retailer.
- Allows for the removal of multiple signs within close proximity to one other and replaces them with a more compliant sign option;
- Allows for equitable signage opportunities for the existing retail center and future uses
- Reduces visual clutter by removing multiple signs that may lead to distracted motorists along a corridor

Con:

- Exceeds existing standards without creatively addressing pedestrian-orientation or way-finding

Staff recommends that the signage plan for the Ingles development located at 153 Smoky Park Highway be approved as submitted with the following conditions: (1) All signs shall meet the HB zoning district setbacks, the site distance triangle requirements and all applicable building code requirements; (2) Window films shall be limited to image displays only; films that incorporate any form of commercial advertisement or trademark must be counted towards the development's signage requirements which are not included in this application; (3) Any changes to the signage included in this plan may require a new review by City Council; and (4) All signs shall comply with the proposed standards and no exceptions or variances are permitted.

Mr. Ellison said that Ingles has been working on this good plan for over 5 years. They began with 9 modification requests and have worked their way down to only 4 modification requests. Regarding the parking lot trees, they are in 87% compliance in a small parking lot that has a unique shape. He noted that in the parking lot there will be 330 large canopy trees, 146 small deciduous trees, 135 evergreen trees for a total of 611 trees. While there is a shortage in the parking area, they believe they are addressing those issues by the number of canopy trees around it. Regarding the parking island, Ingles feels that it is safer to build the wrap around sidewalk. They received a letter from Asheville School in support of the alternate wrap around sidewalk. He feels that safety of the public is the issue and with the sidewalk around the lot, it will reduce the battle between pedestrians and cars. They are not trying to dodge the requirements, but have found some alternative ways to meet the requirements. He quoted comments from the Planning & Zoning Commission February 2, 2011, meeting in which the Commissioners unanimously approved all modifications noting that they were unique to the site. Ingles has worked with the neighbors and they have made adjustments to the plan based on community input. This \$20 Million project has many economic benefits to Asheville, including increase in jobs, payment of more taxes, etc. Regarding the lighting issue, he again said the issue is safety. He explained that the superior Ingles fuel center canopy design allows the light to remain on their property. He said that every Ingles store with a gas station in western North Carolina has a standard of 100 maintained footcandles; however, they are requesting 80 maintained footcandles. He urged Council to approve the conditional zoning request with modifications.

Even though the following individuals were supportive of the conditional zoning request of Ingles, they did not support the four variances not supported by City staff for the various reasons, some being, but are not limited to: properly landscaped parking lots provide environmental

benefits to reduce heat island effect; the City's existing lighting standards reduces light pollution; allowing these variances will set a harmful precedent for permitting unsustainable development; and the internal pedestrian walkway requirement provides a safer pedestrian connection:

Mr. Bernard Arghiere
 Mr. Bob Gale, Chairman of the Tree Commission
 Mr. Kenneth Fulford
 Ms. Laura Piraino, Executive Committee of the local Wenoca Sierra Club
 Ms. Raelin Hansen
 Ms. Susan Roderick, Asheville Greenworks
 Ms. Lisa McWherter, Executive Committee member for the local Sierra Club Chapter
 Mr. Steve Rasmussen
 Mr. James Judd (opposed also to signage plan)

Mayor Bellamy closed the public hearing at 6:48 p.m.

Councilman Bothwell moved to adopt an ordinance for the conditional zoning of the project identified as Ingles Markets, Inc., located at 153 Smoky Park Highway from Highway Business District to Highway Business District/Conditional Zoning to allow for the development of a new 105,175 square foot grocery store with associated car wash, gas station and 32,060 square feet of additional retail space, and approval of the modification requests only supported by City staff (not the three parking lot standards modifications or the outdoor lighting for vehicular canopies modification), subject to the following conditions (1) The project shall comply with all conditions outlined in the TRC staff report; (2) All site lighting must comply with the City's Lighting Ordinance and be equipped with full cut-off fixtures (including wall packs) and directed away from adjoining properties and streets. A detailed lighting plan will be required upon submittal of detailed plans to be reviewed by the Technical Review Committee; (3) All existing vegetation that is to be preserved must be clearly indicated and dimensioned on the site, landscape and grading plans; (4) The building design, construction materials and orientation on site must comply with the conceptual site plan and building elevations presented with this application. Any deviation from these plans may result in reconsideration of the project by the reviewing boards; (5) This project will undergo final review by the TRC prior to issuance of any required permits; (6) A lot recombination of both subject parcels must be completed before zoning permit issuance; (7) Existing trail connecting the Old Starnes Cove Road neighborhood to the Ingles store will be required to clearly delineate surface with a pervious material such as mulch or gravel; (8) Façade enhancements to the existing shops within the center are required to be completed within 5 years of the Conditional Use Permit approval and shall be architecturally compatible in color and shall incorporate design elements in common with the Ingles structure; (9) Future development of outparcels shall adhere to the design standards outlined in the Façade Renovation addendum provided by the applicant to ensure compatibility with the overall design of the structures within the development; and (10) that the City's standards be met regarding the three parking lot landscaping requirements and the outdoor lighting for vehicular canopies outlined above by City staff. This motion was seconded by Vice-Mayor Newman.

City Attorney Oast said that because this is a conditional zoning, any conditions imposed by City Council must have mutual consent by the applicant. If there is no mutual consent by the applicant, then the conditional zoning project fails and cannot be brought back to Council for one year, unless there are significant changes (if the ordinance to be considered on second reading by City Council later in the meeting passes.)

Mr. Ellison advised Council that he did not have the authority to consent to the condition regarding the four variance requests not recommended by City Council. He suggested Council continue the matter in the hopes of working towards approval of the variances requested.

City Attorney Oast suggested Council continue the matter to a date certain to see if the applicant will agree to the conditions incorporated into the motion. This will also allow staff to

meet with Ingles representatives and hopefully come to some agreement. If the matter is continued, Council could continue the public hearing and take further comment on new information only related to the parking lot landscaping requirements and the outdoor lighting issue.

It was the consensus of Council that Ingles is an outstanding corporate citizen and they hope that staff and the applicant can work out a compromise on the four remaining modification requests.

Councilman Bothwell withdrew his motion. He then moved to continue the public hearing on the conditional zoning request to March 22, 2011. This motion was seconded by Vice-Mayor Newman and carried unanimously.

Councilman Smith moved to continue the public hearing regarding the signage plan for a new Ingles Store and proposed ancillary uses and existing shops to March 22, 2011. This motion was seconded by Councilman Davis and carried unanimously.

D. PUBLIC HEARING TO CONSIDER CLOSING COOPER BOULEVARD

Because the public hearing to consider closing Cooper Boulevard relates to the conditional zoning request for Ingles Markets Inc. located at 153 Smoky Park Highway, Councilman Smith moved to continue the public hearing to March 22, 2011. This motion was seconded by Councilman Davis and carried unanimously.

At 7:15 p.m., Mayor Bellamy announced a short recess.

V. UNFINISHED BUSINESS:

A. ORDINANCE NO. 3947 - ORDINANCE TO CONSIDER AN AMENDMENT TO THE UNIFIED DEVELOPMENT ORDINANCE RELATIVE TO CHANGES TO DEVELOPMENT REVIEW PROCEDURES REGARDING RESUBMISSION OF A DENIED CONDITIONAL USE

ORDINANCE NO. 3948 - ORDINANCE TO CONSIDER AN AMENDMENT TO THE UNIFIED DEVELOPMENT ORDINANCE RELATIVE TO CHANGES TO DEVELOPMENT REVIEW PROCEDURES REGARDING SEPARATION REQUIREMENTS

Due to a recent conflict of interest, Councilwoman Manheimer asked to be recused from participating in discussions of Ordinance Nos. 3947 and 3948. Vice-Mayor Newman moved to recuse Councilwoman Manheimer from participating in these matters. This motion was seconded by Councilman Bothwell and carried unanimously.

Councilwoman Manheimer then left the Chamber.

City Attorney Oast advised Council that in order for the ordinances to pass, they will require four votes in favor.

Planning & Development Director Judy Daniel said that on February 8, the City Council voted 4-3 to adopt two changes to the Unified Development Ordinance addressing the decisions of the City Council, and separation requirements for developments in or adjoining residential areas. A 4-3 votes requires a second vote, set for February 22. During the discussion of these amendments, the Council requested that the staff get additional comments on them from several organizations including (but not limited to) the Council of Independent Business Owners (CIBO) and the Coalition of Asheville Neighborhoods (CAN).

The first amendment establishes that if the Council denies a conditional use or conditional zoning application, a project that is essentially the same (or substantially similar) may not be submitted under any approval process within one year of the Council action.

Conditional Use approvals, resubmission of denied applications: No application for approval of a conditional use development project (conditional use, site plan, project plan) under any approval process (Level I, Level II, or Level III), shall be filed with or accepted by the planning and development department if that project ~~which~~ is identical or substantially similar to a conditional use or conditional zoning application which has been denied by the city council within one year of the final action by the city council denying the request.

The second amendment modifies the threshold for Level II vs. Level III review of a site plan, affecting properties under the same ownership in residential areas, establishing (as was the standard in the Unified Development Ordinance (UDO) until modifications in 2009) that to be reviewed as a Level II, the projects must not contain multiple structures less than 1,500 feet apart.

Level II Site plan review process: Properties not adjoining or fronting single-family zoning, that are within 500 feet of each other, under the same ownership and/or developed by the same developer over a period of three years or less shall be considered to be one development and reviewed as such. Properties adjoining or fronting single-family zoning, located within 1,500 feet of each other, under the same ownership and/or developed by the same developer over a period of three years or less shall be considered to be one development and reviewed as such.

This change does not affect properties in commercial areas (as was the intent of the modification in 2009) and such properties in residential areas can still move forward as Level III projects.

The staff presented the changes at the CIBO meeting on Friday, February 11. Their overall comments were very negative about the proposed changes. There were a number of comments, most feeling that changing the process is a bad idea, especially given the current economic conditions. The tone and content were very much the same as expressed by a CIBO representative and a representative of the Board of Realtors at the Council meeting on February 8.

The staff met with CAN representatives on Monday evening, February 14. Their overall comments were very much in support of the proposed changes. There were several comments on both amendments. On the first amendment most reflected a feeling that the process needed to be changed so that if the Council did not approve a project, it could not return as essentially the same or slightly modified within a year. On the second amendment most reflected a feeling that distance requirements should be wider in or adjoining residential neighborhoods; and projects under the same ownership that are proposing structures within 1500 feet of each other should go to the Council for approval.

Councilman Davis said that he did not support the ordinances on first reading because he felt it was a reaction and came forward out of our normal policy of doing business; however, the amendments are good and in consideration of neighborhoods and he would support them at this time.

Mayor Bellamy concurred with Councilman Davis in that these amendments will help developments going forward so when Council denies a project, they will have that decision stand for one year.

Vice-Mayor Newman moved to adopt Ordinance No. 3947 on its second and final reading. This motion was seconded by Councilman Smith and carried unanimously (with Councilwoman Manheimer excused).

ORDINANCE BOOK NO. 26 – PAGE 450

Vice-Mayor Newman moved to adopt Ordinance No. 3948 on its second and final reading. This motion was seconded by Councilman Bothwell and carried unanimously (with Councilwoman Manheimer excused).

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Councilwoman Manheimer returned to the Chamber.

C. CONSIDERATION OF SUSTAINABLE ADVISORY COMMITTEE ON ENERGY & THE ENVIRONMENT'S RECOMMENDATION REGARDING THE TRANSFORMATIONAL DEVELOPMENT PROJECTS INCENTIVE POLICY FOR THE CITY OF ASHEVILLE

Vice-Mayor Newman explained that the City Council Planning & Economic Development Committee discussed the "transformational projects" economic incentive policy at their meeting earlier this week. They asked the HCD Committee to have some further discussion about the affordability requirements as well, and so they had additional discussion at our HCD Committee on February 17.

The HCD Committee felt that we are getting closer to agreement about the key elements of this policy but that we would benefit from having a little more time to flesh out the policy details. It is our understanding that the issue may be scheduled for Council consideration at our next meeting. We wanted to request consideration for scheduling this at the meeting after next in order to provide a little more time to work out these details before it comes back to full Council.

Councilman Bothwell moved to delay consideration of this item until the March 8, 2011, meeting. This motion was seconded by Councilman Smith and carried unanimously.

D. STATE LEGISLATIVE UPDATE

City Attorney Oast said that the North Carolina General Assembly convened for the 2011 regular session on January 26. Almost immediately, bills were introduced in both chambers that would, if enacted, place a moratorium on involuntary annexation by cities. The bills would also stay annexations in progress, including those currently under review by the courts. This legislative stay would apply to Asheville's annexation of the Biltmore Lake area, which is currently pending in the North Carolina Court of Appeals. Council has been supplied with information from the North Carolina League of Municipalities and other sources regarding the progress of the bills in legislature. Additionally, we are receiving updates from League staff, and will pass them along as we receive them.

On a related note, local bills were introduced to repeal recently completed annexations by some cities.

Other bills for general legislation have been introduced that would have some effect on municipal operations. House Bill 111 would permit the carrying of concealed weapons in local government parks. House Bill 95 would clarify certain aspects of railroad corridors, and would have some effect on municipal subdivision and zoning processes. House Bill 36 would prohibit State and local government contracts with contractors who employ illegal immigrants, and require contractors to verify and certify the legal status of their employees.

We have not noted any local bills of particular interest to Asheville (other than the annexation repeal bills described above), but the pace of local bill introduction should pick up next month. A local bill has been introduced to authorize Alleghany County to collect an additional three percent room and occupancy tax. (H.B. 96).

City Attorney Oast said that he received a call from the Buncombe County Attorney who said a bill had been introduced – An Act to Authorize Brunswick County to Require the Payment of Delinquent Property Taxes Before Recording Deeds Conveying Property. The Buncombe County Commissioners have expressed an interest in having Buncombe County added to that bill and they have asked if the City would support them in that request.

Councilwoman Manheimer moved to support Buncombe County being added to the following bill: “An Act to Authorize Brunswick County to Require the Payment of Delinquent Property Taxes Before Recording Deeds Conveying Property.” This motion was seconded by Councilman Davis and carried unanimously.

Councilman Smith moved to discourage the state legislature to support House Bill 129 – bill “Level Playing Field Local Government Competition Act” which would prohibit or limit the ability of local governments to provide broadband or any other communication services or systems. This motion was seconded by Councilman Bothwell.

After a brief discussion, Councilman Smith withdrew his motion.

It was the consensus of Council for City Attorney Oast to provide information to Council on this bill and if no concerns are raised to place the resolution on the March 8, 2011, consent agenda.

VI. NEW BUSINESS:

A. RESOLUTION NO. 11-42 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A NEGOTIATED PURCHASE AGREEMENT WITH THE ASHEVILLE HOCKEY LEAGUE AND AWARD THE SALE OF THE ASHEVILLE CIVIC CENTER ICE RINK AND ALL RELATED EQUIPMENT

Administrative Services Director Lauren Bradley said that this is the consideration of resolution authorizing the City Manager to enter into a negotiated purchase agreement with the Asheville Hockey League and award the sale of the Asheville Civic Center ice rink and all related equipment.

On December 14, 2010, Asheville City Council delayed consideration of a resolution authorizing the City Manager to award sale of Civic Center ice rink and equipment to the highest bidder in order to provide time for staff to explore options for privately negotiating a sale of the equipment to the Asheville Hockey League (AHL).

After the December 14 meeting, staff completed legal research regarding the disposal of the equipment. Normally, personal property with a value in excess of \$30,000 cannot be disposed of by private sale and negotiation. Advertised bids would be required. However, GS 160A-279 provides an exception to this rule. This statute authorizes a City to dispose of property by private sale to a non-profit agency that is carrying out a public purpose. Conveyance of the property is conditioned on the use of the property for a public purpose. Based on this research, staff concluded that the AHL could meet the requirements of the statute and carry out a public purpose by allowing public access to the rink and equipment.

At the January 25, 2011, Finance Committee meeting, representatives from the Asheville Hockey League presented staff with a plan for putting the ice rink into use. The Finance

Committee directed staff to review the proposal and discuss options for negotiating a sale of the ice rink and equipment for City Council consideration.

After the January 25 Finance Committee meeting, staff met with AHL representatives to review the plan and determine mutually acceptable terms by which the ice rink and equipment could be conveyed to the league. These terms would be summarized in an agreement between the City and AHL and would include:

- AHL will provide an up-front payment to the City for the purchase of the ice rink and associated equipment in the amount of \$15,000 with one payment of \$5,000 at the execution of the agreement and the remaining \$10,000 paid by May 31;
- The ice rink would be operational and open to the public within three years. If the ice is not open within three years, the City would have the right to exercise a reversion clause;
- AHL would agree to move the equipment out of the Civic Center by May 31, and would have a signed contract with a contractor to remove the equipment as well as evidence of a reserved storage space no later than May 1, and;
- The City would require as exhibits to the agreement a bio of AHL board members and others who would be involved to demonstrate that the group has the background and experience to operate the ice rink.

The purchase price was negotiated based on the AHL's estimates for moving and repairing the ice rink, which is estimated by the league to be \$57,000-\$85,000.

The Finance Committee was updated on progress at its February 8, 2011, meeting, where the Committee voted to move the item forward for City Council consideration at its February 22, 2011 meeting.

The consideration of this action does not specifically relate to the City's Strategic Plan.

Pros of the negotiated sale:

- Allows the ice rink and equipment to remain in the Asheville community for public use.
- Supports the City's goal to partner with outside groups and agencies to provide recreational programming.
- Provides a certain date and specified sale amount by which the rink will be disposed.

Cons of the negotiated sale:

- AHL plans for utilizing the rink and equipment are still somewhat conceptual and will rely on fundraising; therefore, implementation is not guaranteed.
- The value of the rink and equipment has been estimated by staff to be around \$100,000. The negotiated purchase price is below this amount and could result in the loss of additional revenue generated through a competitive bid process.

A negotiated sale to the AHL would result in \$15,000 in revenue. A competitive disposal process could yield a higher amount of revenue for the Civic Center Fund; however, this potential loss of revenue could be offset by the benefit of putting the ice rink and equipment into public use for the Asheville community. It also recognizes the capital investment AHL will have to make in order to make the ice rink operational in Asheville.

Staff is seeking City Council consideration of a resolution authorizing the City Manager to enter into a negotiated agreement with the Asheville Hockey League for the sale of the Civic Center ice rink and all related equipment. If City Council is not supportive of the negotiated sale, staff would further seek City Council's consideration of resolution authorizing the City Manager to award the ice rink and all related equipment to the highest sealed bidder.

The following individuals spoke in support of the City entering into an agreement with Asheville Hockey League for various reasons, some being, but are not limited to: the public and economic value of an ice rink in town and the great recreational opportunity for Asheville:

Mr. Hutch Kerns, President of Asheville Hockey League
 Mr. Jim Delany, Youth Director of Ice Hockey with Asheville Hockey League
 Mr. Dean Pistor
 Current Active In-Line Youth Commissioner
 Three young hockey players
 Ms. Julie Pratt

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

Councilman Bothwell moved for the adoption of Resolution No. 11-42. This motion was seconded by Councilman Davis and carried unanimously.

RESOLUTION BOOK NO. 33 – PAGE 350

B. RECEIVE AND CONSIDER PROPOSAL FOR FORMATION OF MILLS RIVER WATERSHED PROTECTION PROGRAM

Mr. Jere Brittain, Mills River resident and conservation landowner, said there have been concerns over the past several years about maintaining the quality of the water that flows through the community. He invited the City of Asheville to name a member to the Board of Directors of the Mills River Partnership.

Mr. Shaun Moore, Watershed Coordinator with the Henderson County Soil and Water Conservation District, highlighted the importance of this drinking water supply and history of the Mills River Project.

Mr. Kieran Roe, Executive Director of Carolina Mountain Land Conservancy, explained that the informal Mills River Partnership is now attempting to form a formal non-profit. He then invited the City of Asheville to participate in the revitalization of water supply restoration and protect efforts in the Mills River drinking water supply watershed by appointing a representative to serve on the Mills River Partnership Board of Directors.

In response to Mayor Bellamy, Mr. Roe said that the first meeting of the Board is March 2, however, if it takes the City longer to name a representative perhaps the City could send a representative to the first meeting. He will meet with City Manager Jackson to discuss how the City can be more engaged in the process.

In response to Mayor Bellamy, City Manager Jackson felt that staff needed at least 60-90 days to evaluate the structure, funding recommendations, etc. of this request. He said that City staff can report back to Council in 30 days with an interim report. At this point, this is a lot of information that needs to be considered from a policy standpoint, including the proposal which is to establish this as a perpetually funded entity with fees to be charged to water rate payers.

Mayor Bellamy requested this be reviewed, prior to coming back to Council on March 22, by the City Council Planning & Economic Development Committee or the City Council Finance Committee.

City Manager Jackson said there has been a lot of good work done to evaluate the needs for watershed protection and we want to be on board with that. It is important to protect this watershed and to play a role. At this point in time, he and the Water Resources Director are not

in the position to say that with 1 out of 13 seats on a non-profit board is meaningful for our level of investment in this process.

C. RESOLUTION NO. 11-43 - RESOLUTION IN SUPPORT OF FULL EQUALITY FOR ALL ASHEVILLE CITIZENS

The resolution being considered outlined the following final actions requested by City Council: The Asheville City Council act to affirm and protect the equal rights of all its citizens by (1) Extending the city's employment discrimination clause to include "sexual orientation", "gender", and "gender identity or expression"; (2) Enacting an anti-bullying ordinance for all city institutions and grounds; (3) Creating a Domestic Partner Registry to recognize same-sex relationships for the purposes of providing documentation and offering a mechanism through which hospitals, businesses, and other entities will have the opportunity to recognize these relationships; and (4) Endorsing and supporting the rights of same-sex couples to share fully and equally in the familial rights and responsibilities of civil marriage.

Councilman Smith was honored to bring this forward to City Council and thanked the various individuals and groups who have been important in this process.

The following individuals spoke in support of the resolution for various reasons, but mainly due to equal rights for all:

Rev. Joe Hoffman, Senior Pastor of First Congregational United Church of Christ, on behalf of People of Faith for Just Relationships
 Ms. Angel Chandler
 Mr. Juan Oyola
 Mr. T.J. Thomasson
 Mr. Chris Oaks
 Ms. Yvonne Cook-Riley
 Mr. James Sheeler
 Mr. Wes Heath
 Ms. Ashley Arrington
 Mr. Simon Thompson
 Mr. Alan Robinson
 Mr. David Spicer
 Ms. Carmen Ramos-Kennedy
 Mr. Alan Ditmore
 Mr. Craig White
 Mr. James Dye
 Mr. Aixa Wilson
 Ms. Leslie Boyd
 Mr. Monroe Gilmore, Coordinator of WNC Citizens for an End to Institutional Bigotry
 Ms. Jennifer Thornberg
 Ms. Heather Talley
 Founder of Justice for All
 Mr. Robert Wells
 Ms. Vivian Gold
 Ms. Allison Shad

The following individuals spoke in opposition of the resolution for various reasons, but mainly due to religious and financial reasons:

Rev. Wendell Runion
 Mr. Randy Bray
 Mr. Tom Ascik
 Pastor Larry Sprouse, Oak Ridge Baptist Church

Pastor Jerry Young
 Mr. Meredith Hunt
 Ms. Leslee Kulba
 Mr. Donald Fleming
 Rev. David Hall
 Mr. Ricky Parham
 Mr. Sam Taylor
 Taxpayer in Asheville
 Mr. Phillip Wilson

NOTE: Information before City Council from Staff Report from Assistant City Manager Jeff Richardson: "A community group has formally requested the Asheville City Council to adopt a resolution at the February 22 council meeting 'in support of full equality for all Asheville citizens.'

Pursuant to this request, the City Manager requested staff to provide analysis and any applicable guidance for consideration with this draft resolution. This draft resolution is intended to affirm and protect the equal rights of all citizens through the four steps outlined below. Staff has provided analysis and/or operational steps with each of the four steps as follows:

1. Extending the city's employment discrimination clause to include sexual orientation, gender, and gender identity or expression.

Staff Review: The city's EEO policy which was originally passed in 1994, does include language to address sexual orientation as a protection:

"Every employment related decision the City makes shall be on the basis of merit without regard to an individual's race, color, creed, religion, national origin, sex (including pregnancy) age, disability, sexual orientation or familial status except when being a member of a particular group is deemed to be a bona fide occupational qualification."

Research indicates some employers have included this language as outlined, mostly in the private sector. Legal review suggests that 'at will' status in the City of Asheville remain as is, meaning that this language, if adopted, would only affect employees covered under the City's personnel ordinance.

2. Enacting an anti-bullying ordinance for all city institutions and grounds.

Staff Review: The City's Ethics Policy appears in line with the goals of this language as stated, 'the policy intent is to foster trust and respect among city employees and the public by creating an environment in which citizens and employees feel valued, safe, and welcome.' The City's Workplace Violence Policy is in line with anti-bullying policies in that it requires employees to treat each other with respect and consideration and to maintain a workplace free of intimidation and violence. In addition, the Parks and Recreation Department has adopted a *Discipline and Behavioral Management Policy* for youth programs that outlines in detail behavioral expectations to include threatening behavior. Staff feels that current policies as outlined adequately address the intent of the proposed language in the resolution and no further edits are necessary to existing city policies. If Council adopts the ordinance and directs Staff to include additional language addressing anti-bullying in City of Asheville parks on supplementary signage, Staff should anticipate that the fiscal impact would be between \$3,000 to \$4,000 based on the costs of the signage stating the City's anti-smoking policy outlined in the December 2010 Staff Report. Staff suggests that if signs are needed for informing citizens of the anti-bullying policy that the posts supporting the City's anti-smoking policy for recreation areas and facilities be utilized.

3. Creating a Domestic Partner Registry to recognize same-sex relationships for the purposes of providing documentation and offering a mechanism through which hospitals, businesses, and other entities will have the opportunity to recognize these relationships.

Staff Review: Chapel Hill and Carrboro are the two N.C. cities that currently provide this service. Chapel Hill enacted this registry in 1995, and it is operated in the City Clerk's Office. Chapel Hill offers this service to same sex and opposite sex domestic partners and has registered partners all over the U.S. at a fee of \$50. Over the 16 year history, Chapel Hill reported 141 domestic partner registrations. City staff is prepared to administer this service upon the direction of city council accordingly and if adopted, staff would like to recommend a fee structure accordingly.

4. Endorsing and supporting the rights of same-sex couples to share fully and equally in the familial rights and responsibilities of civil marriage.

Staff Review: Regarding applicable city policies: 1) Sick Leave: does currently enable employees to use sick leave for domestic partners under the term of 'significant other,' which is defined as any person with whom the employee has cohabitated and shares an intimate relationship regardless of marital status. 2) Bereavement Leave: does allow leave for employee's significant other. 3) FMLA: this federal law does not provide benefits to domestic partners. While the city could extend FMLA leave benefits for domestic partners, this would be in addition (over and above) to the employee's leave entitlement under federal law. 4) Extended Medical Leave: does not indicate leave could be used for the care of a domestic partner and this section would need modification if this resolution is passed. Nepotism Policy: does currently address domestic partners in the Immediate Relative definition to include significant other.

This action aligns with City Council's Strategic Operating Plan in the *Job Growth and Community Development* Goal: "Enhance diversity throughout the City as an organization so that the workforce more closely resembles the community, especially in the area of public safety.

Section three, *Creating a Domestic Partner Registry*, requires administrative and operational oversight of the program. A proposed fee structure offsets the cost of the program, however, it is difficult to determine total cost of the program until ample time has passed to study volume of requests is analyzed compared to revenue collected. Staff recommends differential fee for non-city and non-state residents. The fiscal impact of additional signage addressing the City's anti-bullying policy would be between \$3,000 to \$4,000 based on the costs of the signage stating the City's anti-smoking policy outlined in the December 2010 Staff Report.

Staff analysis is intended to show operational impact to the City of Asheville. Staff is prepared to take steps to implement policy changes as directed through City Council action."

In response to Councilman Smith, Assistant City Manager Jeff Richardson said that the last fall City Council directed staff to look at same sex domestic partner health insurance benefits. Council asked staff for guidance on an implementation date. After analysis, staff reported that they would be prepared, in conjunction with the budget process, to bring back any issues with the domestic partner health insurance implementation within an expected implementation of July 1, 2011. Beginning in March, Council will begin looking at pieces of the budget process including compensation and benefits. At this point, staff is not recommending any General Fund transfer to the Health Fund next year. We are preparing for the domestic partner health insurance roll-out July 1, 2011.

Councilman Smith said Council's job isn't to prefer one religious view over another and it's clear that there are all sorts of strongly held beliefs around these issues. Nothing Council does at this meeting will restrict you from believing that which you choose to believe. We have a responsibility to address the equality, safety and opportunity of all our Asheville citizens. This is about justice.

Councilman Smith moved to adopt Resolution No. 11-43. This motion was seconded by Councilman Bothwell.

In response to Mayor Bellamy, Councilman Smith reviewed each of the four points in the resolution as follows:

- (1) Extending the city's employment discrimination clause to include "sexual orientation", "gender", and "gender identity or expression." Councilman Smith said that City's employment discrimination clause would broaden this to include "gender identity or expression."
- (2) Enacting an anti-bullying ordinance for all city institutions and grounds. Councilman Smith said that this would be for within City institutions and on City grounds, e.g, parks.

When Mayor Bellamy asked how "bullying" would be defined, Councilman Smith said that he was using the language in the School Violence Prevention Act.

Mayor Bellamy felt it was important that Council have the opportunity to review the definition of "bullying" to be clear on what exact language Council is being asked to vote in support of.

Councilman Smith felt Council is only providing general policy direction for staff and they would return to Council with details of implementation.

Mayor Bellamy agreed that staff could be given direction; however, before we adopt the resolution with that provision in it, Council and the community should be clear on what the language means.

- (3) Creating a Domestic Partner Registry to recognize same-sex relationships for the purposes of providing documentation and offering a mechanism through which hospitals, businesses, and other entities will have the opportunity to recognize these relationships. Councilman Smith said the Registry would be in City Hall. Using Chapel Hill as a model, domestic partners from anywhere are able to register through their city process. This same Registry would be used to register those City employees who would be applying for same sex domestic partner benefits.

Mayor Bellamy felt the Register of Deeds Office seems like the more logical place for this Registry as it is the location of all the vital records impacting our community. In addition, the Register of Deeds Office has several employees to handle the additional workload, whereas, we have one and will have to add one.

City Attorney Oast said it's his understanding of what can be recorded in the Clerk of Court's Office or the Register of Deeds Office is regulated to a large degree, or perhaps entirely, by state law. He would ask the County and let Council know.

- (4) Endorsing and supporting the rights of same-sex couples to share fully and equally in the familial rights and responsibilities of civil marriage. Councilman Smith said that we as a city cannot offer marriage, but this is an acknowledgement that same sex couples should be afforded those rights. This resolution states that City Council endorses the capability of same sex couples to execute the responsibilities and believe they should be afforded those rights. This is the most we can offer today. This is a way to tell everyone in our

community that we stand together with them towards a broader equality.

When Mayor Bellamy asked if this is an endorsement of same sex marriage, Councilman Smith said that it is saying that same sex couples are capable of exercising the responsibilities of civil marriage and that we as a Council endorse them being able to marry.

Councilman Bothwell pointed out that the City's budget is balanced every year. He also said that his is an ordained minister and when he marries couples, he is clear in his counseling and in his ceremony that the only reason government cares about marriage at all is property.

Councilman Davis felt that it is common sense that we don't discriminate. That should not be tolerated. Regarding the anti-bullying ordinance, he was concerned about our enforcement abilities along with the lack of definition. He voted against the domestic partner health insurance package because he did not know the financial implications. With the domestic partner insurance being implemented, there will need to be a Registry with a fee attached. Regarding the fourth request, City Council does not have the ability to offer civil marriages, so when you take religion and government out of the issue, then you are talking about rights for people. He felt that people should be treated equal and he will support the resolution for that reason.

Vice-Mayor Newman felt that what we are doing is part of a larger effort to create equality in our country. He is proud that our country took the step last year to repeal the "Don't Ask, Don't Tell" legislation that prevented gay men and women from serving in our armed forces and protecting the country that they love. The steps we are taking tonight will make a difference to people's lives in Asheville in practical ways. He believed that ultimately the goal in terms of these equality issues is that if there are two adults who decide they want to commit their lives to one another that they will be able to get married and the government will not be able to stand in their way. The steps we are taking tonight will at least say for the elected officials from Asheville, North Carolina, that is what we believe is the direction we should be going in. We don't have the legal authority to make it happen, but we want to raise our voice in support of doing everything that is within our power to go in that direction.

Councilwoman Manheimer was proud to vote on something that brings more equality and justice to this issue.

Because of the importance of this issue, Mayor Bellamy asked that prior to City Council voting on this resolution that staff be allowed to bring back language that is clear to all parties in our community on just what we are enacting. She said the resolution could be placed on the March 8 agenda.

Vice-Mayor Newman supported the City enacting an anti-bullying ordinance, but he agreed with Mayor Bellamy that the language in the policy is important.

Councilman Bothwell felt that the resolution is the intent to create an anti-bullying ordinance and item 4 could be constructed as a legislative instruction.

Mayor Bellamy said that this policy is significant and it will create fear in the minds of some people because it's not clear. Since we are making policy it needs to be clear. She recalled some incidents of being ignored because the individual made the assumption about her feelings about people who are gay, lesbian, transgender, etc. based upon some comments from the dais. She has never had a malicious thought toward gay, homosexuals, queers, transgenders, lesbians, etc. in our community. Because she did not vote for the domestic partner benefits she was demonized. In 2010 she was threatened and told to go back to Africa. Asheville, North Carolina, is her hometown where she grew up and graduated from a local high school. So, to say discrimination is going to go away because City Council adopts this resolution

is not true. She is not against people having equal rights. She knows what it's like to be discriminated against. If we keep rushing to get policy passed, just because we have the votes, then we continue to divide our community. It would behoove us to have leaders who unite not divide. Although she supports the rights of individuals, it is unfortunate that she can't say that she doesn't agree in same sex marriage and not be condemned. Her belief is that marriage is between a man and a woman. But, she also believes that all North Carolinians should have a right to vote on the issue. She didn't believe the Registry should be located in City government. That is not what we do. If we believe something should be done, it should be done right. If we are going to recognize individuals who are in a committed relationship, then the documents should be held in the right place in our government that recognizes those forms. She could not say, with a clear conscious, that she wouldn't want the significant other of her lesbian cousin at her death bed. She believed individuals who are about to die should have the right to have whomever they want at their bedside or to leave their money to whoever they want to leave it to. But she can't say that she supports gay marriage. If we are saying that in the resolution, she would have to vote against it. The first three issues (with some modifications) she could support. The fourth issue, if stated by Councilman Smith, is endorsing gay marriage, she could not support that. We need to be clear on how we define bullying, where it applies, how it is enforced and the penalties. She represents, whether people like her or not, all citizens of Asheville. Again, she asked for staff to have time to flesh this out so it is clear on what we are and are not approving.

Councilman Smith sees the resolution as providing broad policy direction. If an anti-bullying ordinance comes back to Council and it looks to threaten free speech, he would be the first to send it back to staff. The intent of the anti-bullying ordinance is to diminish fear and increase safety.

Vice-Mayor Newman asked for a friendly amendment in item 2 to read "Ask City staff to research policies related to protecting public safety related to bullying activities." Councilman Smith and Councilman Bothwell accepted the friendly amendment.

Vice-Mayor Newman said that in terms of item 3 regarding the Domestic Partner registry, he agreed that it would be logical to have the Registry at the Register of Deeds office. However, that is not something under City Council's control. If we think it is the right thing to have in the community, then the City Clerk's Office is the only place we can do it. That is the only option for us.

When Mayor Bellamy asked if Councilman Smith would not honor her request to give staff two weeks to flesh out the resolution, Councilman Smith said that with no disrespect, he hoped that the friendly amendment regarding the anti-bullying ordinance will give Council clarity. The other items seem to be straightforward in the staff report from Mr. Richardson.

Councilman Smith called the question.

The amended motion made by Councilman Smith and seconded by Councilman Bothwell and carried on a 5-1 vote, with Mayor Bellamy voting "no".

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VII. INFORMAL DISCUSSION AND PUBLIC COMMENT:

Mr. Gillian Kerns was proud that Council did what they said when they ran for Council.

Mr. Alan Ditmore spoke about methods to stop climate change.

VIII. ADJOURNMENT:

Mayor Bellamy adjourned the meeting at 10:53 p.m.

CITY CLERK

MAYOR