Tuesday – October 11, 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 (arrived in meeting at 5:14 p.m.); Councilman William A. Russell Jr.; Councilman Gordon D. Smith (arrived in meeting at 5:06 p.m.); City Manager Gary W. Jackson; City Attorney Robert W. Oast Jr.; and City Clerk Magdalen Burleson

Absent: None

PLEDGE OF ALLEGIANCE

Mayor Bellamy led City Council in the Pledge of Allegiance.

INVOCATION

Mayor Bellamy gave the invocation.

I. PROCLAMATIONS:

II. CONSENT AGENDA:

A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON SEPTEMBER 27, 2011

B. ORDINANCE NO. 4024 - BUDGET AMENDMENT FROM THE FRIENDS OF THE NATURE CENTER FOR CAPITAL PROJECTS AND EDUCATION PROGRAMS AT THE WNC NATURE CENTER AND FROM THE N.C. DEPT. OF COMMERCE TO SUPPORT CAPITAL PROJECTS AT THE WNC NATURE CENTER

Summary: The consideration of budget amendment. in the amount of $75,000, from the Friends of the WNC Nature Center for capital improvements and educational programs at the WNC Nature Center and a budget amendment, in the amount of $92,630, for an allocation from the North Carolina Department of Commerce to support capital projects at the WNC Nature Center.

Friends Donation: The City of Asheville in the Parks, Recreation & Cultural Arts Department has received a contribution from the Friends of the WNC Nature Center, Inc. to support capital improvements and educational programs at the WNC Nature Center.

NC Department of Commerce: Each year the State of North Carolina allocates and distributes funds to 25 to 30 member museums, science centers and nature centers in North Carolina. The WNC Nature Center is a member of the collaborative. These funds will be used to make improvements to the facility and animal exhibits at the WNC Nature Center.

These actions comply with the City Council 2011-2012 Strategic Plan Goal of fiscal responsibility of exploring alternatives for enhancing the city's long-term financial commitment to master plan implementation, infrastructure maintenance, capital improvements, and public facilities. These actions also comply with the Parks, Recreation, Cultural Arts & Greenways Master Plan in that it increases department funding with alternative funding via grants and ensuring a high level of service in parks and facilities by addressing capital maintenance of existing parks and facilities to meet community standards.

Pros:
- Provides additional funds to support capital improvements at the Nature Center without impacting the City's General Fund budget
- Provides funds to enhance special projects and services to Nature Center visitors
- Provides funds to assist in fulfilling standards and maintaining Nature Center accreditation with the Association of Zoos and Aquariums

Cons:
- None

This amendment will increase the City's total budget by $167,630 in the special revenue and general capital projects funds. There is no impact on the City's General Fund budget.

Staff recommends City Council approve the budget amendment in the amount of $75,000 from the Friends of the WNC Nature Center for capital improvements and educational programs at the WNC Nature Center and the budget amendment in the amount of $92,630 for an allocation from the North Carolina Department of Commerce to support capital projects at the WNC Nature Center.

ORDINANCE BOOK NO. 27 – PAGE

C. RESOLUTION NO. 11-209 - 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 FIVE 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 for the construction of Reed Creek Greenway, Phase II by five months.

On February 12, 2008, City Council approved a resolution authorizing the City Manager to enter into an agreement with the North Carolina Department of Transportation (NCDOT) for up to $400,000 to construct Reed Creek Greenway, Phase II. The three year agreement was initially executed on April 4, 2008, and extended by six months on February 22, 2011. Due to construction delays the project will not be complete by October 31, 2011. The NCDOT has agreed to a five month extension until March 31, 2012, to the existing agreement contingent upon City Council approval.

This action complies with the FY 11-12 City Council Strategic Plan in that it supports seeking partnerships for investments in greenway infrastructure, including cost sharing options. 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.

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

Con:
- It is taking more time to complete the greenway construction than originally planned.

There is no fiscal impact to this action. The total budget for this project, which includes $383,000 in City funding, is $783,000. Staff will report on the progress of this capital project as part of the Quarterly Financial Update.

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 five months.

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D. RESOLUTION NO. 11-201 - RESOLUTION AMENDING THE 2011 CITY COUNCIL MEETING SCHEDULE TO (1) CANCEL THE REGULAR MEETING ON TUESDAY, NOVEMBER 8, 2011; AND (2) ADD THE CITY COUNCIL ORGANIZATIONAL MEETING ON TUESDAY, DECEMBER 6, 2011, BEGINNING AT 5:00 P.M. IN THE COUNCIL CHAMBER OF CITY HALL

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E. RESOLUTION NO. 11-211 - RESOLUTION DESIGNATING THE MAYOR AS THE AUTHORIZED SIGNATORY OF THE 2011-12 OUTSIDE AGENCY CONTRACTS

Summary: The consideration of a resolution to change the approved signatory on Outside Agency program contracts.

When Outside Agency program funding was approved (June 14 and September 27, 2011) the City Community Development Director was designated as signatory for the contracts. Typically, this position does not receive authority to sign contracts for this program. The purpose of the resolution is to designate the Mayor as the authorized signatory for the City on these contracts.

Staff recommends approval of the resolution to designate the Mayor as signatory of 2011-2012 Outside Agency contracts.

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

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

Councilman Davis moved for the adoption of the Consent Agenda. This motion was seconded by Councilman Russell and carried unanimously (with Councilwoman Manheimer absent).

III. PRESENTATIONS & REPORTS: None.

IV. PUBLIC HEARINGS:

A. CONTINUATION OF 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 she has received a request from Mr. Kyle Evans, representing Montford Commons, LLC, requesting a continuance until November 22, 2011, as they are still waiting to receive the final funding commitment from HUD required to move the project forward. He spoke with a HUD liaison on October 4 that they have been working closely with and they will do everything they can to bring this to a close before the November 22 date. Therefore,

Councilman Russell moved to continue this public hearing until November 22, 2011. This motion was seconded by Councilman Bothwell and carried unanimously (with Councilwoman Manheimer and Councilman Smith absent).

B. PUBLIC HEARING TO CONSIDER THE CONDITIONAL ZONING OF PROPERTY LOCATED AT 3 EAST WANETA STREET FROM RM-8 RESIDENTIAL MULTI-FAMILY MEDIUM DENSITY DISTRICT TO RM-16 RESIDENTIAL MULTI-FAMILY HIGH DENSITY DISTRICT/ CONDITIONAL ZONING TO ALLOW FOR CONVERSION OF THE DUPLEX TO A SINGLE FAMILY HOME; THE CREATION OF A SECOND PARCEL FOR FUTURE DEVELOPMENT OF A SINGLE-FAMILY DWELLING; AND A REQUEST FOR MODIFICATIONS TO STANDARDS FOR SETBACKS AND LOT SIZE

ORDINANCE NO. 4025 - ORDINANCE TO CONDITIONALLY ZONE PROPERTY LOCATED AT 3 EAST WANETA STREET FROM RM-8 RESIDENTIAL MULTI-FAMILY MEDIUM DENSITY DISTRICT TO RM-16 RESIDENTIAL MULTI-FAMILY HIGH DENSITY DISTRICT/ CONDITIONAL ZONING TO ALLOW FOR CONVERSION OF THE DUPLEX TO A SINGLE FAMILY HOME; THE CREATION OF A SECOND PARCEL FOR FUTURE DEVELOPMENT OF A SINGLE-FAMILY DWELLING; AND A REQUEST FOR MODIFICATIONS TO STANDARDS FOR SETBACKS AND LOT SIZE

Urban Planner Julia Fields said that this is the consideration of an ordinance to conditionally zone 3 East Waneta Street from RM-8 Residential Multi-Family Medium Density District to RM-16 Residential Multi-Family High Density District/Conditional Zoning for the conversion of the duplex to a single family home; the creation of a second parcel for future development of a single-family dwelling, and approval of modifications to the standards for setbacks and lot size. This public hearing was advertised on September 29 and October 7, 2011.

Ms. Fields said that the property that is the subject of this conditional zoning application is currently part of a 7,353 square foot (.18 acre) parcel located at 3 E. Waneta Street in the Montford Historic District containing one structure with two dwelling units (a former garage with upstairs apartment modified to create a dwelling unit in the former garage area). The lower level dwelling unit was, according to research by city staff, created without a permit at some time in the past. The owners, Alexis and Jenny Giese, initially filed an application for the conditional rezoning of a portion (2,353 square feet or 0.054 acre) of the parcel identified as PIN 9649.03-6746 from RM-8 (Residential Multi-Family Medium Density District) to URD-CZ (Urban Residential Conditional Zoning) to allow that structure to remain as a duplex on the property. They plan to divide off the rest of the property creating a lot for a single family dwelling.

The 1976 inventory of properties in the Montford Historic District indicates that at that time 3 E. Waneta contained a building with an apartment above and a garage below. Although the addresses were different, this building was located on the same parcel as a single-family home with the address of 38 Soco Street. Despite the different addresses the building appears to have been an accessory structure to the primary residence with the Soco Street address. The home at 38 Soco was demolished sometime after 1976. The zoning of the property from 1976 until 1997 was R-3 Medium Density Residential. While this district allowed multi-family dwellings on a property, the required minimum lot area was 8,000 square feet for the first unit and 2,500 square feet for any additional unit. That zoning would not have allowed the creation of additional units on the property. In fact, two units (the single family home and accessory apartment) created a nonconforming situation. Additionally, staff can find no record of any permits being issued to allow for the garage portion of the building to be converted to a residence from 1976 forward.

With the adoption of the Unified Development Ordinance (UDO) in 1997, this property became zoned RM-8. Again, this district allows for multiple dwelling units on a property but would require 10,000 square feet for two units (5,000 per unit) unless the additional dwelling was

considered an accessory apartment. There can only be one accessory apartment on a parcel with a single-family home and the accessory apartment is limited in size. This information from our research has led staff to the conclusion that the additional apartment in the former garage was created in violation of City ordinances.

When the Gieses bought the property at 3 E. Waneta, at the corner of Waneta and Soco Street, the property only contained the former accessory structure (the single-family home having been destroyed). Mr. Giese indicates that the two units were in existence at that time. In 2006, the Gieses received permits to renovate the accessory structure to replace the garage door openings with period appropriate carriage house doors and replace the covered porch with a screened in porch in addition to a number of exterior materials enhancements. At the time of this permitting the accessory apartment (only one) would continue to meet the accessory apartment standards in the UDO should a primary residence be constructed on the property at a later date.

In 2007, the Gieses received a notice of violation from the City when it was learned that the screened in porch had been fully enclosed. Mr. Giese subsequently received zoning and building permits to allow for this work – but the approvals were granted with the understanding that the accessory apartment was now too large (approximately 800 square feet) to qualify as an "accessory apartment" unless any new single-family home built on the parcel was at least 3200 square feet in size (accessory apartments are limited to 500 square feet or 25% of the principal residence). At about the same time, the Gieses received a notice of violation (NOV) for violating the minimum housing code for the second (downstairs) garage unit (no housing certificate obtained) and for an expired certificate for the upstairs unit. The NOV required that the downstairs dwelling unit be returned to unoccupied space per zoning code and building safety standards.

Mr. Giese met with members of City staff (Historic Resources, Planning and Zoning, Building Safety) on many occasions. The staff's position at those meetings was that:

- The Gieses may keep the upper apartment but the second unit must be returned to the previous use as a garage or comparable unoccupied space.
- Because of the size of the unit, for the upstairs unit to be considered an accessory apartment, should a new single-family home be built on the property, the single family home would have to be at least 3200 square feet in size.
- If no primary residence is built, the apartment can become the primary residence and the rest of the property (with the Soco Street address) will have to remain vacant.
- Under current zoning, the property is too small to support a duplex (10,000 square feet required).
- Under current zoning, the property is too small to subdivide legally (RM-8 requires 5,000 square foot minimum lot size).
- Staff indicated to the Gieses that we could support a subdivision of the property creating a separate 5,000 square foot lot; if they agreed to leave one dwelling unit with garage on the remaining portion (2,353 sf). This would require a conditional zoning to RM-16 for only one unit on that portion.

Instead the Gieses initially sought conditional zoning to URD-CZ (Urban Residential Conditional Zoning) for the portion (2,353 square feet) of the property containing the former accessory structure. They had hoped to keep and "legalize" the two units in this structure and leave the remaining portion (5,000 square feet) of the parcel for future single-family development. Urban Residential zoning is the only residential zoning that would allow the two units to remain in the current accessory structure on that sized (2,353 square feet) lot.

The staff expressed significant concerns with this proposal as the Urban Residential District was established to provide for urban scaled residential structures that relate to the street and are located on significant transit corridors and/or in high growth areas. The district standards require orientation to the street and establish design criteria for entrances and openings on the

facades. While the URD would allow for a density of two units on the parcel for which this conditional zoning is applied, staff expressed our belief that this district was not created for situations like the one on E. Waneta and using this zoning in this manner would establish an inappropriate precedent.

The Technical Review Committee reviewed this proposal on July 18, 2011, and made the technical comments.

The Asheville Planning and Zoning Commission first considered this matter on August 3, 2011. The commission members expressed concern that if this conditional zoning was approved, that ultimately there could be four units total on the site (the two existing units plus a single family home and accessory apartment on the 5,000 square foot portion). It was suggested that the applicant meet with staff to try to come up with a solution that would limit the property to no more than three units. The matter was continued until September 7th.

Prior to the meeting on the 7th of September, the applicant met with staff and amended the application to request that the subdivision still take place. However the current duplex portion (2,353 square feet) of the property would be conditionally zoned RM-16 only allowing one unit. The 5,000 square foot portion would remain RM-8 unconditioned. The applicant is willing to convert the duplex back to a single unit.

To rezone the smaller portion to RM16 conditionally allowing only one unit in the existing structure, will require modifications to be granted. These are as follows:

1. That the lot size be modified from the required 3,500 square feet by 1,147 square feet.
2. That the front setback be modified by 5 feet. (15 feet required; the existing structure is only 10 feet back).
3. That the side setback to the west be modified 3.6 feet (6 feet required and only 2.4 feet from property).
4. That the rear setback be modified by 10.8 feet (15 feet required and only 4.2 feet from property line).

Staff feels this is an acceptable solution to the situation presented. At its meeting on September 7, 2011, the Asheville Planning and Zoning Commission unanimously (4-0) voted to recommend this conditional zoning to you. Three people spoke at this meeting commenting that they felt the density to be too great for the area.

Section 7-7-8(d)(2) of the 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 applicant is proposing to subdivide the property and use the rezoned portion for a single dwelling unit in a residential neighborhood. The proposal, if approved, must meet the technical standards set forth in the City's Unified Development Ordinance and other applicable standards except for those modifications proposed.

2. **That the proposed use or development of the land is reasonably compatible with significant natural or topographic features on the site and within the immediate vicinity of the site given the proposed site design and any mitigation techniques or measures proposed by the applicant.**
   The applicant proposes to retain all existing vegetation on the site.

3. **That the proposed use or development of the land will not substantially injure the value of adjoining or abutting property.**
   It is the opinion of Planning Department Staff that the density that is proposed with the amended request is in keeping with the surrounding area which is comprised of single-family homes on small lots.

4. **That the proposed use or development or the land will be in harmony with the scale, bulk, coverage, density, and character of the area or neighborhood in which it is located.**
   It is the opinion of the staff that the density is in keeping with that found in the area surrounding this property.

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.**
   This application supports goals related to the provision of affordable housing.

6. **That the proposed use is appropriately located with respect to transportation facilities, water supply, fire and police protection, waste disposal, and similar facilities.**
   The proposed use is located one block from Montford Avenue which is serviced by Transit Route 11 of the City's Transit System. The project has been reviewed by the Technical Review Committee and noted the technical comments are found in their report.

7. **That the proposed use will not cause undue traffic congestion or create a traffic hazard.**
   The City's Transportation Department has reviewed the plans and feels that no undue traffic congestion or traffic hazards will be created.

Pros:

- Provides additional affordable housing in an area with transportation facilities and infrastructure to support it.
- Applicant has worked with staff and the Asheville Planning and Zoning Commission to come up with a solution to remedy an existing situation.

Con:

- Creates a lot that is smaller than is allowed in the RM-16 district for a single-family structure.

Based on the above findings and the analysis provided in the report; staff finds this request to be reasonable and recommends approval for the conditional zoning request and modifications.

At its meeting on September 7, 2011, the Asheville Planning and Zoning Commission unanimously (4-0) voted to recommend this conditional zoning to you. Three people spoke at this meeting commenting that they felt the density to be too great for the area.

Mayor Bellamy opened the public hearing at 5:11 p.m.

Ms. Patsy Brison, attorney representing the applicants, said that they tried to take into all concerns expressed by the Planning & Zoning Commission and staff and modified their application for three units for the entire track of land. They are trying to encourage affordable housing and infill development. She noted that the lot fronting on Soco Street is within the Montford Historic District and will require a lot of review which will hopefully address the

neighborhoods concerns regarding density and parking. She urged Council to support the conditional zoning request.

Mr. David Patterson, resident on Short Street and President of the Montford Neighborhood Association, opposed to seeing the parcel divided and the density increased. He said that the issue is density and approving this conditional zoning will be setting a precedent in the neighborhood.

Ms. Ellen Nutter, resident on Flint Street representing the Montford Neighborhood Association, expressed concern about density. She said that the immediate neighborhood, and almost all of Montford, is zoned RM-8 which allows two units per lot. She said they supported the subdivision of the lot, but asked Council to allow only two units, not three (no accessory unit on the lot on Soco Street). Allowing three units would create a precedent for increasing density in many areas in Montford. East Waneta Street is very narrow with no opportunity for on-street parking. The unit on East Waneta Street has a concrete pad in its front yard for parking of one car and it cannot be expanded for more than one car due to the smallness of the lot and it's within the required setback. She asked that the Council rezone the new lot on Soco Street to RM-8 Residential Multi-Family Density District/Conditional Zoning with the condition that only one unit be permitted on that lot.

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

For clarity purposes, Ms. Fields explained that the property owner could not build a duplex on the lot fronting Soco Street because 5,000 sq. ft. is required for each unit in RM-8 and the lot size is too small. He could only build a single family home with an accessory apartment (either a garage apartment or within the structure). The owner would still have to meet the standards for an accessory apartment. The neighborhood wants only the single family home and not the accessory apartment.

In response to Councilwoman Manheimer, Ms. Fields said the owner wants to make the small lot a conforming lot (with the duplex being converted into one unit) and the larger lot be a conforming lot allowing whoever buys it the ability to build a single-family home and potentially an accessory structure.

In response to Councilman Davis, Ms. Fields reminded Council that whatever is built on the larger lot would have to go through the Historic Resources Commission as well. There are historic retaining walls on the property and she understood that it would be very difficult to tear them down. Therefore, it will be difficult for accessory unit, unless it's located within the structure itself (like a basement unit). The accessory structure limitations in the ordinance state that the structure has to either be a maximum of 500 sq. ft. or a maximum of ¼ of the single-family home on the property.

Councilman Davis expressed concern of the accessory structure being allowed on the small size of the property.

In response to Mayor Bellamy, Ms. Fields said that she had no proof that the former home on the larger lot that burnt down was multi-family.

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

Councilman Smith moved for the adoption of Ordinance No. 4025 to conditionally zone 3 East Waneta Street from RM-8 Residential Multi-Family Medium Density District to RM-16 Residential Multi-Family High Density District/Conditional Zoning for the conversion of the duplex to a single family home, the creation of a second parcel for future development of a single-family dwelling, and approval of modifications to the standards for setbacks and lot size, subject to the

following conditions: (1) The project shall comply with all conditions outlined in the TRC staff report; (2) This project will undergo final review by the TRC prior to issuance of any required permits; (3) Any new site lighting must comply with the City's Lighting Ordinance, Section 7-11-10 of the Unified Development Ordinance; (4) All existing vegetation that is to be preserved must be clearly indicated and dimensioned on the site, landscape and grading plans; (5) 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. This motion was seconded by Councilman Russell and carried on a 4-3 vote, with Mayor Bellamy, Councilman Davis and Councilwoman Manheimer voting "no."

City Attorney Oast said that because the ordinance was not adopted by a 2/3 vote of Council, it is necessary to bring the ordinance back at the next meeting for a second and final reading.

In response to Councilwoman Manheimer, Assistant Planning & Development Director Shannon Tuch said that there is an extent to what the Board of Adjustment can grant and the lot size is too small. The only alternative for the applicant was to go through the conditional zoning process.

Mayor Bellamy felt Council may want to review the accessory apartments standards to see if we are being successful without being contentious at the same time.

Councilman Davis felt that since this is a fairly small piece of property he wondered if Council could condition the accessory structure to be attached to the single-family home. Ms. Fields said that the applicant would have to agree to that condition. The applicant would have to make an application and it would have to go through the review process of the Technical Review Committee, the Planning & Zoning Commission and then back to City Council. City Attorney Oast noted that without going through a new process initiated by the owner, Council cannot condition the use of the lot that is not subject to the rezoning.

In response to Vice-Mayor Newman, Ms. Brison said that the constraints of the site will likely result in one single-family home with the possibility of an accessory unit within it - provided it meets all the other requirements. She said that it has been a long process to get to this point and after compromising, they believe this is the best solution.

ORDINANCE BOOK NO. 27 - PAGE

C. PUBLIC HEARING FOR THE MISSION HOSPITAL SIGN PACKAGE FOR PHASES 2-4

ORDINANCE NO. 4026 - ORDINANCE APPROVING THE MISSION HOSPITAL SIGN PACKAGE FOR PHASES 2-4

Technical Review Manager Kim Hamel said that this is the consideration of an ordinance to approve the Mission Hospital Sign Package for Phases 2-4. This public hearing was advertised on September 29 and October 7, 2011.

Ms. Hamel said that this is the consideration of a multi-phase signage plan for Mission Hospital and surrounding campus locations.

On January 25, 2011, the Asheville City Council approved the first Phase of a forthcoming master signage plan for Mission Health Systems (MHS). The initial phase was submitted in advance of the multi-phased approach to signage for the campus in order to address the immediate needs for directional signage associated with the Hospital Drive road opening and the impending opening of the Cancer Center slated for completion in December of this year.

The signage plan submitted with this application addresses Phases 2- 4 of an 8 phase Wayfinding program that is to be implemented over the next four years. The plan builds upon the changes implemented in the first Phase and includes the installation of additional directional and identification signs. It also continues with planned retrofits of older signs to be consistent with the current design standards and wayfinding methodology established in the first Phase.

For the purposes of this review, the staff focused on signs that would normally require review and permitting; primarily signs visible to adjoining properties and roadways. In their submission, however, MHS felt that it was important to provide Council with a broader view of the project to illustrate the complexities of developing a wayfinding program (for a hospital with multiple campus locations) and to help explain the reasoning behind the sign package request.

As in the staff review of the first Phase, a "Development Area" for Mission Health Systems was defined and evaluated. It includes the Memorial Mission and St. Joseph's Campus drives and entrances along Biltmore Avenue, the new Hospital Drive and Victoria Road connections and MHS mini campus locations on the NW and SE sides of the street (445-495 Biltmore Avenue and Cancer Center), and the Mission Hospital entrances along McDowell Street and Doctors Drive.

In addition to the maps and illustrations provided by applicant, the following tables provide a summary of the signs that are required a sign permit by the City. The information includes the types of signs proposed, their respective sizes and the phase in which the sign is to be installed. The sign package review is (again) broken into two areas: Identification Signage and Directional Signage.

<u>Phase 2:</u>

Phase 2 of the signage plan proposes new identification signs, retrofits of existing signs, and vehicular directional signs within the development area. It also includes placeholders for future construction and building expansions, retrofit of several MAHEC signs (upon completion of MHS's purchase of the property), and new identification signs for the Cancer Center.

Two (2) new and one existing corporate façade identification signs are proposed within the development area. (Sign 2.142c has been omitted from the sign package.) Signs are proposed to be located on the upper stories of existing buildings or buildings targeted for future expansion. The signs include:

- Location 2.215 (new/ future expansion): Mission Hospital campus signage proposed on the twelfth story of a future expansion at Mission Hospital above the Surgery Center entrance located off of Lily Carmichael Drive.
- Location 2.142a (new/ existing): Cancer Center signage proposed on the 4th story facing Hospital Drive
- Location 2.083 (retrofit): Mission Hospital campus signage replaces existing sign and is proposed on the seventh story and visible from Biltmore Avenue.

In addition to the corporate identification signs noted above, one new additional wall mounted sign (Location 2.142b) is proposed for the new Cancer Center and is located above the primary entrance into the Cancer Center, facing Hospital Drive.

The specific sign dimensions for each of the identification signs proposed for the development are provided in the table below.

CAMPUS IDENTIFICATION AND WALL MOUNTED SIGNS: PHASE 2

SIGN TYPE/ LOCATION	PROPOSED
Corporate Façade Identification Memorial Campus I-1 (New / Future Vertical Expansion) Location: 2.215 * Illustration I	Wall Mounted- 12th story (future expansion) Size: < 80 square feet
Corporate Façade Identification – Cancer Center I-2 (New) Location 2.142a * Illustration II	Wall Mounted- 4th story (5 story bldg.) Size: < 105 square feet
Building Identification Cancer Center IB-5a (New) Location: 2.142b * Illustration III	Wall Mounted – above building entrance Size: 12.5 square feet
Building Identification IB-5b (Remove and Replace) Location: 2.212b * Illustration IV	Decorative Wall Mounted – Remove MAHEC sign, replace with new Mission Health Sign Size: Not to exceed 60 square feet
Building Entrance Identification IB-5c (Retrofit) Location: 2.214 * Illustration V/VI	Remove and replace wall MAHEC signs (wall mounted and freestanding sign) with new Mission Health signage Wall: not to exceed 60 square feet Freestanding: Not to exceed 8'in height, 60 square feet in area

Phase 3

The proposed directional signs in Phase 3 are intended to serve future development projects and expansions (not yet reviewed by the City). Several include: the construction of a new parking deck along Hospital Drive with an overhead connection to Lily Carmichael Drive and an expansion of the service zone with new internal road connections to Doctor's Drive. They will thus not be installed until these expansions are completed.

Phase 4

As in Phase 3; the Phase 4 signage is proposed to support several new projects that will require alteration of existing signage and necessitate additional signage needs. In the submitted documents MHS plans a significant building expansion over a portion of the Memorial Visitor Parking Deck that will result in a new Main Entrance and circular drop-off area for the Memorial

Campus. The circular drive in front of the new main entrance will connect the new Parking deck proposed in Phase 3 to lower levels in the existing Memorial Visitor parking deck.

Vehicular Directional Signs – Phase 2, 3 and 4

All three phases of this review include new directional signs or retrofits of existing directional signs to bring them up to the current design standards approved in the first Phase. The type and size of the directional signs included in this review are identical to those approved in Phase 1, and are designed to direct and route emergency vehicles, patients and visitors to the correct hospital and entrance.

As noted in the January staff report, the various types of directional signs are differentiated by height, square footage and branding (name/logo) provided. The larger signs are designed to comply with the DOT cap heights standards (letter size) that address higher vehicle speeds on roadways with multiple traffic lanes; while smaller directional signs are primarily located at street intersections and in several internal sites within the campus boundary where there are higher levels of vehicle and pedestrian activity.

The table below provides the location and type of directional signage proposed for each location point identified on the map.

VEHICULAR DIRECTIONAL SIGNS: PHASES 2-4

INSTALLATION PHASE	SIGN TYPE/ LOCATION	WHAT IS PROPOSED
Phase 2 New * Illustration V-I	DV-2 Locations: 2.250 (Biltmore Avenue) Directional Sign w/ Name, Logo, Address	MAHEC Replacement Height: 9'-11" Size: < 50 sqft
Phase 2 Retrofit * Illustration V-I	DV-2r Locations: 2.002, 2.028, 2.080 (Biltmore Avenue) Directional Sign w/ Name & Logo,	Height: 9'-11" Size: < 50 sqft
Phase 2 Retrofit * Illustration V-2	DV-3r Location: 2.017, 2.079 (Internal locations but visible) Direction Sign w/ Name & Logo	Height: 11'-1/2" Size: < 53 sqft
Phase 2 Retrofit * Illustration V-3	DV-4r Location: 2.018,2.019 (Internal location, St Joe's Campus) Direction Signage w/ Name & Logo	Height: 7'-6" Size: < 20 sqft
Phase 2 Retrofit * Illustration V-4	DO-1r Location: 2.036a,2.088 (Biltmore Avenue) Overhead Wall-Mounted Directional w/ Name & Logo	Size: < 50 square feet
Phase 3 New * Illustration V-2	DV-3 Location: 3.219 (Memorial Campus Entrance) Direction Sign w/ Name & Logo	Height: 11'-1/2" Size: < 53 sqft
Phase 3	DV-4	Height: 7'-6"

New * Illustration V-3	Locations: 3.221, 3.222, 3.223, 3.224 (Doctor's Drive) Direction Signage w/ Name & Logo	Size: < 20 sqft
Phase 3 New * Illustration V-4	IB-4p (Doctor's Drive) Building Entrance/ Parking Identification Sign	Height: 7'-6" Size: < 15 sqft
Phase 3 Retrofit * Illustration V-2	DV-3r Location: 3.052 (Internal location but visible) Direction Sign w/ Name & Logo	Height: 11'-1/2" Size: < 53 sqft
Phase 3 Retrofit * Illustration V-5	DV-5r Location: 3.102 (Corner - McDowell and Victoria Rd Directional Sign w/ Name and Logo	Height: 8'- 6" Size: < 28 sqft
Phase 3 New * Illustration V-6	DO-1 Location: 3.215, 3.215a (Hospital Drive, new bridge) Overhead Wall-Mounted Directional w/ Name & Logo	Size: <50 sqft
Phase 3 New * Illustration V-6	DO-2 Location: 3.088a (Biltmore Avenue) Overhead Wall-Mounted Directional w/ Name & Logo	Size: < 35sqft
Phase 4 Retrofit * Illustration V-7	DV1.3 Location: 4.001 (Biltmore Avenue) 3-Sided Directional Sign- No logo	Update Message Panels Height: 8'-11" Size: 42 sqft
Phase 4 Retrofit * Illustration V-2	DV-3r Location: 4.036, 4.219 (Hospital Dr – 445, Future Campus Entrance) Direction Sign w/ Name & Logo	Update Message Panels Height: 11'-1/2" Size: < 53 sqft
Phase 4 Retrofit * Illustration V-5	DV-5r Location: 4.087, 4.102 (Corner - McDowell and Victoria Rd) Directional Sign w/ Name and Logo	Update Message Panels Height: 8'- 6" Size: < 28 sqft

Findings:

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.

The staff believes that MHS has proposed a comprehensive sign program that meets the intent and purpose of a signage plan. The signs have been creatively designed and customized to exclusively identify multiple MHS campus locations and parking areas by providing visible cues that are consistent in color, layout, branding (pictography), and structural form (stone bases).

The Directional (wayfinding) signage is also customized to complement the common design elements featured in the identification signs (noted above) visually informing motorists that they are still within the hospital campus area. The signs are strategically located throughout the development area and should provide clear direction to visitors and patients traveling to specific campus destinations.

Pros:
- Comprehensive, graphically consistent signage
- Presents an intuitive and effective wayfinding (directional) approach

Con:
- None noted

Staff supports MHS efforts to create a unique and consistent identity. We believe this approach is satisfactory and we recommend approval with the list of the following conditions: (1) A 10% deviation to the sign standards presented in Phases 1-4 can be considered with review and approval by the Planning Director. All other deviations to this approved plan will result in an amendment to be reviewed and approved by City Council; (2) All signs shall meet site distance triangle and building code requirements, including clearance requirements for pedestrian and vehicular traffic; (3) All signage must comply with illumination standards as outlined in Articles 11 and 13 of the UDO; and (4) All signs in the project area shall comply with the proposed standards and no exceptions or variances are permitted.

Mayor Bellamy opened the public hearing at 5:44 p.m. and when no one spoke, she closed the public hearing at 5:44 p.m.

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

Councilman Russell moved for the adoption of Ordinance No. 4026 to approve the signage plan for Mission Hospital Systems as proposed with the following conditions: (1) A 10% deviation to the sign standards presented in Phases 1-4 can be considered with review and approval by the Planning Director. All other deviations to this approved plan will result in an amendment to be reviewed and approved by City Council; (2) All signs shall meet site distance triangle and building code requirements, including clearance requirements for pedestrian and vehicular traffic; (3) All signage must comply with illumination standards as outlined in Articles 11 and 13 of the UDO; and (4) All signs in the project area shall comply with the proposed standards and no exceptions or variances are permitted. This motion was seconded by Councilman Davis and carried unanimously.

ORDINANCE BOOK NO. 27 – PAGE

V. UNFINISHED BUSINESS:

A. RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A THREE-YEAR CONTRACT WITH PONDERWELL, INC., FOR COMMUNITY MEDIA DEVELOPMENT SERVICES

Public Information Officer Dawa Hitch said that this is the consideration of a resolution authorizing the City Manager to enter into a three-year contract with Ponderwell, Inc. for community media development services.

In May 2011, public access studio space provided by a third-party organization closed as a result of funding challenges. Due to the status of the organization, the City decided not to renew or extend its recently expired contract for public access management services. As an alternative, the City of Asheville and Buncombe County issued a joint Request for Proposals (RFP) for community media development services, projects or initiatives with an emphasis on: community development, economic and workforce development, industry development, and training and education.

The RFP was posted on July 1, and submissions were due by August 1. Nine submissions were received by the August 1 deadline. An evaluation panel of nine employees from the City of Asheville, Buncombe County and the Asheville Area Chamber of Commerce reviewed and scored the submissions during the month of August. Evaluators reviewed and scored proposals independently, and then scores were aggregated together to provide an average score for each submission.

Submissions were scored on a 100-point scale using weighted criteria, which included such factors as the potential of the project to achieve results consistent with goals outlined in the RFP, the extent to which the project would engage the public, and the appropriateness of the budget, funding support and sustainability strategy.

The City Council Finance Committee reviewed preliminary scoring results at its September 13, 2011, meeting and agreed with staff's recommendation to invite the top two scoring organizations to make presentations to the evaluation panel. Presentations were made on September 13, 2011, and scored on a 55-point scale. Points from the presentation were combined with the total scoring tabulation for the RFP process.

The overall scores for the top six submissions included:

Ponderwell	126.6
Mountain Xpress	111.5
JB Media	58.6
American Green Media	57.5
Asheville Area Arts Council	56.8
Lakehouse Music	55.9

After the presentation process, the evaluation panel noted that the top two scoring submissions were meritorious projects that would add considerable value to the region's growing multi-media industry and were worthy of funding consideration. Based on the point system, Ponderwell was the top scoring submission.

Ponderwell proposes to launch a web-based, community driven local news and information outlet that is driven by local writers, photographers and videographers.

Pros:

- Funds a project that could result in job creation and workforce training as well as community engagement.
- Proposes a funding model that encourages self-sufficiency within three years.

Con:

- Typical risks associated with any start-up project including delays in implementation, ability to deliver final product and/or maintain financial projections. The contract will include specific performance metrics to ensure funding aligns with expected deliverables.

The structure of the contract award is intended to provide seed funding to allow a new community media development initiative to achieve financial independence and sustainability within three years. During the three year award period, funding will be provided to Ponderwell according to the following schedule:

- Year 1 (Sept. 2011-Sept. 2012): $60,000
- Year 2 (Sept. 2012-Sept. 2013): $40,000
- Year 3 (Sept. 2013-Sept. 2014): $20,000
- After three years, funding will be discontinued.

Buncombe County and the City of Asheville will split the funding allocation each year, and each government will provide $30,000 in year 1, $20,000 in year 2, and $10,000 in year 3. In the FY 11-12 budget, the City has allocated $30,000 for community media services.

Based on the results of the RFP process, staff recommends that City Council approve the resolution authorizing the City Manager to enter into a three-year contract with Ponderwell, Inc. for community media development services.

Councilman Bothwell voiced concern that the proposals didn't meet their intent they desired when the Request for Proposals was created. He felt the proposals are more of an aggregator function for community media, which is already happening on blogs. He felt we are funding something that is already happening. Councilman Russell agreed.

When Councilwoman Manheimer asked what would happen to the funds if Council doesn't accept any proposal, Ms. Hitch said that the funds are part of the General Fund and can be used for anything.

Councilwoman Manheimer moved to not authorize the City Manager to enter into an agreement with Ponderwell and that the funds remain in the General Fund. This motion was seconded by Councilman Davis.

Rev. Lisa Landis stressed the importance of public access in Asheville and requested the equipment from URTV be used for the public. Ponderwell has stated that they will work with the community, not just in mentoring, and if they had our equipment, the community can continue to speak.

Ms. Amie Tracey, representing Ponderwell, said they don't want to just build a website, but to create a system that facilitates people getting involved in community journalism by creating an editorial process and mentorship program. They didn't put the equipment into the proposal because they felt like within the grant monies they really needed the money to build the system and build the community in order to get people involved. If there is anyway to incorporate the equipment they would certainly work with people to get it out into the community.

Rev. Christopher Chiaronmonte felt that the community needs a public forum and public access.

Dr. Milton Byrd explained why he was not in favor of the contract moving forward.

Mr. Michael Tracey, Chief Technical Officer of Ponderwell, said they are proposing a community-run on-line news editing system to allow all the people in the community to write niche news for the very small issues they are concerned with. They will let everyone have a voice by building a platform. They are also building educational and mentoring systems so the people who want to shoot video or audio or photography can work and build news articles on-line together.

Mr. Coleman Smith felt there is a huge digital divide of people that do not have access to internet.

Mr. Heywood spoke in support of the contract because it will be an opportunity to give people the opportunity to learn about the things they care about themselves.

Ms. Davyne Dial felt the proposal falls short of the four major objectives in the Request for Proposals and felt the contract was aimed at serving a small group of people who are already producing content in the community. This narrow and exclusive proposal offers little benefit to the community in a time when job creation is imperative.

Councilman Smith understood there was a lot of work in this process; however, there is so much accessibility to the internet now. He wanted to see more of the economic and workforce development objectives and more of the training and education pieces being accented. He questioned whether government should be funding an arm of journalism. Should Ponderwell be able to secure other funding for this, he wondered if Council might be willing to explore some kind of co-applicant on future grants using the City's equipment.

The motion made by Councilwoman Manheimer and seconded by Councilman Davis carried unanimously.

VI. NEW BUSINESS:

A. COUNCIL DIRECTION ON PERMANENT ALLEY CLOSING BETWEEN NEBRASKA STREET AND NEVADA AVENUE

RESOLUTION NO. 11-212 - RESOLUTION SETTING A PUBLIC HEARING ON NOVEMBER 22, 2011, TO CONSIDER THE PERMANENTLY CLOSING OF AN ALLEY BETWEEN NEBRASKA STREET AND NEVADA AVENUE

City Attorney Oast said that the street closure process is a two-step process with the first step being adoption of a resolution of intent to close and establishing a date for the public hearing. The public hearing would occur approximately four weeks later. He said there is more disagreement amongst the property owners that abut the alley than Council usually sees with respect to other street closures and he suggested those issues be addressed at the public hearing.

Public Works Director Cathy Ball said that staff is requesting direction from Council on the closure of an unopened alley between Nebraska Street and Nevada Avenue.

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

Pursuant to this statute, adjacent property owners, Julia Watts Schafer, Edward V. Hardin, Jane P. Ward, Hannah Danise, Dewitt Hurst, Kandi Kilpatrick, Alexander Brown, Bonnie R. Locklear, Jack Askew and Katherine Folkman, and Joanne C Gunter have requested the City of Asheville to permanently close an alley between Nebraska Street and Nevada Avenue. In accordance with the City of Asheville Fees and Charges Manual, the applicants paid the City $4,000 to process this closure.

The Greenway Commission met on August 11, 2011. The Commission discussed various subject areas and voted 4-1 against supporting the closure.

The right to use or occupy the alley is a matter in litigation between some of the property owners abutting the alley, including the petitioners. The attorneys for the parties met with City staff, including City Attorney and the Assistant Planning Director, to review the closure process

and the implications of closure on the legal issue in the lawsuit. With their consent, further processing of the petition was delayed to allow additional time for the parties to try to resolve their differences, which might eliminate the need for the closure, or affect the form that it might take. The petitioners asked if they could be refunded the application fee of $4,000. The petitioners were informed that they would be able to get a refund on the application fee so long as the petition was withdrawn before any public notification or advertising occurred.

On September 23, 2011, Vice-Mayor Newman and Council Members Davis and Smith requested an item be placed on the agenda to provide policy direction.

The fee for a petition, which includes public notification and advertising, is $4,000.

Provide direction on the role of the City with regard to the alley closure. A resolution is provided should the Council wish to proceed with the public hearing.

Mayor Bellamy said that the normal process for a street closure would be to put the resolution of intent to close the alley and set the public hearing on the consent agenda and consider the details at the public hearing.

In response to Vice-Mayor Newman, City Attorney Oast said that Council's adoption of the resolution of intent to close the alley does not commit Council to close the alley.

Ms. Ball said that staff is asking for another clarification regarding the $4,000 application fee. The petitioners have submitted the application fee which covers the cost of advertising, public notice and staff time. That money has been deposited. Some petitioners are now requesting that money back since City Council is now the body requesting the closure. She asked for Council direction.

Vice-Mayor Newman said the primary issue is to set in motion the process to determine whether this paper alley should be closed or not. The second issue is the process question about whether this is a City Council initiated consideration or whether it is a citizen initiated process, noting there are arguments on both sides.

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

Vice-Mayor Newman moved to adopt Resolution No. 11-212, setting a public hearing on November 22, 2011. This motion was seconded by Councilman Smith.

Dr. Milton Byrd felt that just closing the alley does not solve the problem and suggested a plan of action to deal with the alley once closed.

In response to Mayor Bellamy, City Attorney Oast said that issue of the street closing is not in litigation, but there are disagreements amongst the neighbors about the appropriate use of the alley which is in litigation.

Mayor Bellamy felt this sounded like a private property rights issue. City Attorney Oast responded that Council is not being asked to adjudicate the rights of the neighbors and Council would not be taking sides. The request before Council is whether the City has an interest in keeping the alley open for any permissible purpose. He said the paper street has never been accepted by City and never used for public purposes.

In response to Mayor Bellamy, City Attorney Oast said that the $4,000 application fee covers the requirements for advertising for 4 consecutive weeks, which is expensive, and a lot of staff time in assessing whether the City has any interest in keeping the alley open.

In response to Mayor Bellamy, Ms. Ball said that typically an applicant comes in and makes a request for a closure and staff asks Council to adopt a resolution of intent to close and set the public hearing. The normal process is that it would have come to Council. Staff would have brought this to Council earlier but staff was asked to hold off so that the property owners could have a discussion and possibly come up with a resolution.

City Attorney Oast said the process and the costs are the same, regardless of who initiates the request. Staff met with the attorneys from both sides to make sure that they clearly understood the implications of the closing and the legal effect of it was.

Mayor Bellamy could not support the motion because she felt by Council's intervening sets a precedence, including a precedence of refunding the money that is to be used to cover our expenses. Council's parameters set at their retreat are for cost recovery. She felt Council should not intervene on this issue.

Vice-Mayor Newman felt it's the City's job to make a decision on whether that street should be built.

The motion made by Vice-Mayor Newman and seconded by Councilman Smith to set the public hearing on November 22, 2011, carried on a 6-1 vote, with Mayor Bellamy voting "no."

Vice-Mayor Newman moved to consider this action as a Council initiated request. This motion was seconded by Councilman Smith.

Mr. Jay Fiano, property owner who started clearing the alley, said that he started clearing the alley with the permission of the Building Safety Department, which issued him a grading permit. He did reach out to the neighbors but received no response until his grading began.

Ms. Julia Schafer, adjoining property owner, said that the neighbors have asked for evidence of the permits; however, the City said that permission and permits were never granted.

The motion made by Vice-Mayor Newman and seconded by Councilman Smith to consider this a Council initiated process carried on a 6-1 vote, with Mayor Bellamy voting "no."

RESOLUTION BOOK NO. 34 – PAGE 184

B. BOARDS & COMMISSIONS

ABC Board

Vice-Mayor Newman, Chair of the Boards & Commissions Committee, noted that the Commission recommended interviewing Mr. Jim Ellis on November 22 as his term expires November 13, 2011, and he is eligible for reappointment to the ABC Board. City Clerk Burleson advised that the term of Mr. Charles Worley, Chair of the ABC Board, will also expire on November 13, 2011, and that advertising for the vacancies will begin October 15.

Board of Adjustment

At Mayor Bellamy's request to re-advertise in order to try to reach racial diversity, it was the consensus of Council to re-advertise for unexpired regular seat term left by Ms. Kristy Carter, term to expire January 21, 2014. Alternates Richard Fort, Phillip Hardin, Doug Hattaway, Nelda Holder and James Sheeler have expressed interest in the regular seat; and David Nutter is the only individual who applied for the vacancy.

RESOLUTION NO. 11-213 - RESOLUTION APPOINTING MEMBERS TO THE HOMELESS INITIATIVE ADVISORY COMMITTEE

Vice-Mayor Newman, Chair of the Boards & Commissions Committee, said that this is the consideration of appointing members to the Homeless Initiative Advisory Committee (HIAC).

The terms of Tom Rightmyer, Stephen Bolden and Wanda Lanier will expire on November 1, 2011.

The following individuals have applied for the vacancies: Debbie Metcalf, Micheal Woods, Michael Akers, Marcie Walker and Chris Sullivan.

The HIAC recommended appointing Chris Sullivan and re-advertising for the other two remaining vacancies in order to give the HIAC an opportunity to interview any new applicants. The Boards & Commissions Commission concurs with their recommendation.

Vice-Mayor Newman moved to appoint Chris Sullivan to serve a three-year term, term to expire November 1, 2014, or until her successor has been appointed. This motion was seconded by Councilwoman Manheimer and carried unanimously (with Mayor Bellamy absent).

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VII. INFORMAL DISCUSSION AND PUBLIC COMMENT:

Rev. Lisa Landis requested some of the URTV equipment so she can continue to record history and allow people's voices to be heard. She wanted government to be held accountable for things they are doing wrong.

Ms. Patricia Dockery, west Asheville resident, urged Council to revise the noise ordinance to restrict noise from 11:30 p.m. to 7:30 a.m. Vice-Mayor Newman noted that Council is in the process of looking at the noise ordinance and will consider her suggestion. In addition, Mayor Bellamy asked City Manager Jackson to contact Ms. Dockery to see if we can address her immediate concerns.

Rev. Christopher Chiaronmonte spoke about democracy and said that he would fast until City Council gives him five acres of land.

When Mr. James Smith requested a transcript of a specific 911 call, City Attorney Oast said that a copy of that requested transcript has been mailed to Mr. Smith; however, he would provide him with what was sent.

Ms. Melissa Porter, representing Moogfest, said that on October 28-30, 20-30,000 people will be coming into Asheville to attend Moogfest. Therefore, she asked City Council (1) for a temporary amendment to the banner pole-hanging policy that says only co-sponsored events and/or City-produced events can take advantage of that policy; and (2) to waiver the temporary sign policy for additional direction signage and larger directional signs. Mayor Bellamy instructed City Manager Jackson to work with Ms. Porter on her requests and report back to City Council at their next meeting on October 25.

Occupy Asheville

The following individuals urged City Council to waive the 10:00 p.m. park curfew that would permit Occupy Asheville a permanent place to camp to assemble 24 hours indefinitely within Pack Square Park/Roger McGuire, respecting their constitutional right to assemble and give the protests a peaceful outlet (noting that the WNC CLC AFLCOI will provide port-a-johns):

Dr. Milton Byrd
Chaplain Robert Zachary, former civil rights activist

Mr. Matthew Burd
Ms. Clare Hanrahan
Ms. Jennifer Foszer, attorney who has guided process (provided Council with petition alleged to contain over 350 signature from business owners, business managers and concerned citizens)
Mr. Timothy Sadler
Mr. Charles Rawls
Ms. Jessica Archer
Mr. Mark Case, President of the WNC CLC AFLCIO
Mr. Steve Arpin
Mr. Anthony Benton

Councilman Bothwell moved to all Occupy Asheville 24-hour occupancy of Pack Square Park/Roger McGuire subject to an agreement about health, safety and sanitation.

Councilwoman Manheimer was concerned about the other groups who have reserved the area a long time ago and have spent thousands of dollars for their events. She thought the request was for night-time occupancy only – not 24-hour occupancy. For night-time occupancy, she suggested the Public Works Facility parking lot.

At the request of Councilman Smith, Councilman Bothwell withdrew his motion so any concerns could be addressed in a possible motion.

In response to Mayor Bellamy, Director of Building Safety Robert Griffin relayed to Council several events booked at Pack Square Park between now and October 25, at which time the park is scheduled for one month of re-seeding to re-generate, as it experiences a lot of activity which damages the grass.

Councilman Davis was sympathetic to the cause and wanted to help, but asked that people realize the Pack Square Park has come at a great price with a lot of small donations to build the park with still quite a bit of debt to keep it going. The Park was not designated as an overnight camping spot. He felt the suggestion of the Public Works Facility parking lot for overnight camping was a good suggestion.

Vice-Mayor Newman explained that first amendment rights are not always simple, citing the bullhorns used by pastors at Bele Chere. The City has had extensive public input to develop the rules for all our public parks. Currently our policy is that our public parks are not open all night. The policy was not developed for the special reason of denying people political expression rights, but sincerely developed with public safety issues in mind. Based on the processes we have in place, he would not be comfortable in simply discarding all the public involvement we've had to develop the policies today at this meeting. He would like to see City staff work with representatives from Occupy Asheville to see if there is a mutually acceptable place. He also noted that we must treat everyone the same and if we create a first amendment area that is different than all our other parks, it will have to be for anyone, not just for one organization. Councilman Russell agreed.

Councilman Smith appreciated the peaceful nature of the group and reaching out to Council. The theme that resonates with him is patience, understanding and dialogue. Those values can help guide the process. As an elected official, his responsibility is to ensure public health, safety and other things.

Councilman Bothwell suggested Aston Park for overnight camping; however, understanding that it doesn't fit the purpose of Occupy Asheville which want to be located downtown. He felt that as the City looks to find a suitable location that we not drag our feet to address this issue.

Mayor Bellamy felt Council needed to direct staff to gather recommendations and report back to Council. She recommended Council not make a decision at this meeting without allowing staff to have an opportunity to find a suitable location, working not only with Occupy Asheville, but with neighborhood representatives who are not members of Occupy Asheville. We have listened to Occupy Asheville supporters for almost one hour and if Council decides at this meeting an overnight camping area, Council will hear from others who don't agree with that location. As we deliberate this process, Council needs to make a choice that is a win/win for the community. She said that when someone occupies a space for 24-hours that is not designed for that, neighbors or business owners need to have their voices heard.

Councilman Smith agreed that an indeterminate length of time is something that needs to be considered, but wants Council to address this in a timely manner.

Councilwoman Manheimer voice concern that this item is not on Council's agenda and the community has not had the opportunity to speak with Council, other than supporters of Occupy Asheville. She would be willing to consider giving the City Manager to authority to work with Occupy Asheville to find a temporary location for overnight camping, until Council can hear the recommendations from City staff at their October 25 meeting. She did not support using Pack Square Park/Roger McGuire as there are already scheduled events.

In response to Councilman Russell, City Manager Jackson said that staff will work within Council policies. What is possible, within the current framework, is along the lines of what Seattle's Mayor decided to do, and that is not to create an exception to their park policy, but rather find public property wherein the public can convene. That way Council s not violating their stated park policy. To the extent that the organizers would want to come forward with a permit, and act like any other group that wants to rent and reserve and reasonably comply with the standards, we can make parks available under a permit process. My understanding there is an application pending to use Pritchard Park for three hours on Sunday and we are expediting the review of that. Staff will work within Council's park policies and offer creative opportunities to make public space, that is not park space, available. We will also work to avoid conflict with business hours and make those safety provisions. Again, staff's goal would be not to make policy, but find a creative solution within the policies.

City Manager Jackson noted that if we are going to make public property available, we must make it available to the entire public. We will not reserve public property for the exclusive use of any one group.

Mayor Bellamy thanked Occupy Asheville supporters for attending the meeting. She noted that with regard to the request for Council to dialogue, City Council goes to different parts of the community to hear concerns. Asheville is a very inclusive community. When it comes to dialogue, there are more outlets in Asheville for dialogue than in any other parts of the State. Regarding issues involving the Police Department, we have a Citizens/Police Advisory Committee that is made up from community residents, along with a Police Academy for citizens. A City Council meeting is not the only forum for input. She stressed that Asheville has more non-profits per capita than anywhere else in North Carolina and we have a lot of people who dedicate their time to help kids graduate from high school, Manna Food Bank sends food all over North Carolina, Mountain Housing Opportunities works on affordable housing, etc. So, as Occupy Asheville articulates who you are, don't do that in isolation of other people who are working in our community as well. What you are trying to accomplish is important, but don't negate the efforts of others in our community who are also working on the issues near and dear to other people's hearts. She hoped they understand that Council is willing to work with them and when this matter is before Council again in two weeks that Occupy Asheville be open to hear other citizens voices about their concerns. She also noted that statements about other city mayors have a different form of government where the mayor has the final say; however, this is not a proclamation, which is a ceremonial document that she has authority to declare herself. She cannot authorize a group to use a park 24-hours indefinitely. She said this is not the end of the conversation.

It was the consensus of Council to direct the City Manager to work with Occupy Asheville representatives to find a temporary location for overnight camping, until Council can hear the recommendations from City staff at their October 25 meeting.

Lawsuit

The City received a Complaint on October 5, 2011, from Brittany Rose Sams vs. City of Asheville, Officer James A. Boyce, in his individual and official capacity. The Complaint is negligence and the Plaintiff requests a trial by jury. This matter will be handled by an attorney outside the city Attorney's Office.

VIII. ADJOURNMENT:

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

_____ _____

CITY CLERK MAYOR