Tuesday – September 27, 2016 - 5:00 p.m.

Regular Meeting

Present: Mayor Esther E. Manheimer, Presiding; Vice-Mayor Gwen C. Wisler; Councilman Cecil Bothwell; Councilman Brian D. Haynes; Councilwoman Julie V. Mayfield; Councilman Gordon D. Smith; Councilman W. Keith Young; Acting City Manager Cathy Ball; City Attorney Robin T. Currin; and City Clerk Magdalen Burleson

Absent: None

PLEDGE OF ALLEGIANCE

Mayor Manheimer led City Council in the Pledge of Allegiance.

I. PROCLAMATIONS:

A. PROCLAMATION PROCLAIMING SEPTEMBER 27, 2016, AS "AVIATION CAREERS APPRECIATION DAY"

Vice-Mayor Wisler read the proclamation proclaiming September 27, 2016, as "Aviation Careers Appreciation Day" in the City of Asheville. She presented the proclamation to Mr. Timothy Anderson, Chairperson for Aviation Management and Career Pilot Technology at A-B Tech Community College, and others.

B. PROCLAMATION PROCLAIMING OCTOBER 10, 2016, AS "INDIGENOUS PEOPLES' DAY"

Mayor Manheimer read the proclamation proclaiming October 10, 2016, as "Indigenous Peoples' Day" in the City of Asheville. She presented the proclamation to Dr. Trey Adcock, Assistant Professor at UNC-Asheville, and Vice Chief of the Eastern Band of Cherokee Indians Richard Sneed, and others, who thanked City Council for their support.

C. RESOLUTION NO. 16- 224 - RESOLUTION STANDING IN SUPPORT OF STANDING ROCK SIOUX

Councilman Smith read the resolution, in which supports the Standing Rock Sioux Tribe as they exercise their sovereignty in protest of the encroachment upon their ancestral land, water and sacred sites by the Dakota Access Pipeline, and which calls upon the United States and the Army Corps of Engineers to obtain the free, prior and informed consent of the Standing Rock Sioux Tribe, prior to taking any federal action regarding the Dakota Access Pipeline that would harm or destroy the Tribe's ancestral lands, waters and sacred sites.

Vice Chief of the Eastern Band of Cherokee Indians Richard Sneed spoke in support of the resolution and thanked City Council for their support.

A member of the Eastern Band of Cherokee Indians spoke in support of the resolution and felt it was time to look at our environmental resources.

Councilman Bothwell moved for the adoption of Resolution No. 16-224. This motion was seconded by Councilman Young and carried unanimously.

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II. CONSENT AGENDA:

A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON SEPTEMBER 6, 2016

B. MOTION APPROVING THE FINDINGS OF FACT AND CONCLUSIONS OF LAW FOR SIMPSON STREET BEAUCATCHER COMMONS LLC)

Summary: This public hearing was held on September 6, 2016.

C. RESOLUTION NO. 16-219 - RESOLUTION SETTING A PUBLIC HEARING ON OCTOBER 11, FOR A LAND USE INCENTIVE GRANT FOR SIMPSON STREET (BEAUCATCHER COMMONS LLC)

Summary: The consideration of a resolution setting a public hearing on October 11, 2016, for a land use incentive grant agreement for Simpson Street (Beaucatcher Commons LLC).

The developer of "Simpson Street," Beaucatcher Commons LLC, has applied for a Land Use Incentive Grant per the policy adopted by Council, and amended on September 22, 2015. Beaucatcher Commons LLC, represented by Kirk Booth, seeks to develop a 1.63 acre site, located at 43 Simpson Street and including two additional adjacent parcels. In his initial proposal, the developer estimated a total development cost of $3.3 million. The LUIG application proposed a project that would consist of 60 one-bedroom units, in six buildings with ten units in each building. The project scale has now been increased by 10 units to 70 units, with an estimated cost of $4 million. This increased scale was approved as a CUP by City Council on September 6, 2016. Kirk intends to make all 70 units affordable.

The project, as presented to staff, appears to meet the following Eligibility Requirements,

- The proposed development consists of three or more dwelling units for rent;
- At least 10% of the units will meet the affordability standards set by the City of Asheville for households earning 80% or less of the Area Median Income.
- The affordable units will be affordable to and leased to income-eligible households for at least 15 years.
- The proposed development must be located inside the city limits.
- The proposed development must be located to provide residents convenient access to jobs, schools and services

Scoring

Affordable Rental Housing

The proposed project will provide 70 units affordable to households at 60% or less of median income, and the developer has committed to the affordability period of 15 years. The project qualifies for 100 points.

Long term affordability

The proposed project will be committed to serving households at the designated rental rates for a period of 20 years. This qualifies the project for 10 points.

Staff has scored the project with 110 points, which qualifies the project for Eleven Years (11) of Land Use Incentive Grant.

The Housing and Community Development Committee reviewed the application at their meeting on June 14, 2016, and unanimously recommended approval of the Land Use Incentive Grant as outlined in this staff report, with the exception that the additional 10 units were not part of the project plan at that time.

The action complies with the following adopted City plans: (1) 2025 Comprehensive Plan; and (2) 2015-2019 Consolidated Plan for the Use of CDBG and HOME Funds.

Pros:

- The proposed project will provide affordable rental housing to 70 households earning 60% or less of area median income, for a period of at least 20 years;
- The proposed project addresses the pressing need for affordable one-bedroom apartments;
- The proposed project has a significant economic impact. Construction wages and material purchases will positively affect the local and regional economy.

Con:

- Cost estimates are not yet fully developed, and project costs as presented may change as it moves towards development.

Estimated value of Land Use Incentive. The current assessed value of the property is $240,000. The developer's estimate of completed project taxable value is $5,000,000. The current annual city tax, based on current assessed value, is $1,140. The annual estimated city tax post completion, based on the developer's estimate of value is $23,750. Therefore, the estimated annual Land Use Incentive Grant would be $22,610, the exact amount to be determined by the length, in years, of the grant award, and the actual assessed value of the development upon completion. If approved for 11 years, the estimated Grant would be $248,710. The subsidy per affordable unit would be $3,553. The subsidy amount per affordable unit/year would be $178.

The estimated amount of fees payable for Zoning Permit, Building Permit, Driveway Permit, Grading Permit, Plan Review Fees and Water Service Connection Fee is $125,000. The value of each 10% of the fee rebate would be $12,500. The exact amount would be determined by the percentage of fee rebate awarded as part of the Land Use Incentive Grant. If approved at the 110 point level, the fee rebate would be $125,000, $1,786 per unit.

This project has been approved for a Housing Trust Fund loan. The loan amount approved is $300,000, for a loan term of 20 years, with an annual 2% interest-only payment, with the principal amount due at the end of the 20 year term. The HTF loan per affordable unit is $4,286. The total combined LUIG and HTF subsidy per unit, if the LUIG is approved, would be $9,625.

Staff recommends that Council set a public hearing on October 11, 2016, to hear and act upon the request of Beaucatcher Commons LLC for a Land Use Incentive Grant.

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D. RESOLUTION NO. 16-220 - RESOLUTION ACCEPTING THE REPETITIVE LOSS AREA ANALYSIS ANNUAL REPORT

Summary: The consideration of a resolution accepting the annual Repetitive Loss Area Analysis report which identifies actions staff has taken since becoming a member of the Community Rating System (CRS) Program.

The City of Asheville joined the Community Rating System (CRS) program administered by the Insurance Services Office (ISO) in 2014. As required by the CRS program, a Repetitive

Loss Area Analysis (RLAA) to supplement the Buncombe's County-wide All Hazards Mitigation Plan was prepared in 2014 by the consultation firm of Brown and Caldwell.

A Repetitive Loss Area (RLA) is defined as an area that contains one or more repetitive loss structures (two or more claims of more than $1,000 that have been paid by the National Flood Insurance Program (NFIP) within any 10-year period since 1978). The RLAA is a mitigation plan developed for those areas with the purpose of reducing damages and increasing awareness from flooding and lowering the cost of claims submitted to the NFIP. The ultimate goal of lowering these costs is to reduce the consistent increase in flood insurance premiums that has been occurring for a number of decades.

The Community Rating System (CRS) is a program administered by the Federal Emergency Management Agency (FEMA). It provides lower insurance premiums under the National Flood Insurance Program. The premium reduction is in the form of a CRS Class. A 5 percent reduction is received by policy holders within the City for each class reduction the community obtains. The classes are obtained by actions that are above and beyond the requirements of the National Flood Insurance Program administered by FEMA. The benefits of joining the CRS program has been a reduction of flood insurance premiums paid for by those citizens who have flood insurance. Currently, the citizens of Asheville receive a 10 percent reduction in their flood insurance premiums because Asheville is a participant in the CRS program.

In order to maintain the current status in the CRS program, staff is required to provide to council the annual report of the Flood Mitigation Actions Items that were part of the RLAA report from Brown and Caldwell adopted by Council on December 10, 2013. As highlighted in the report, staff continues to look for ways to reduce flooding and damage from floods through community awareness through our website and flyers, staff is working with the Army Corps of Engineers on opportunities within the Swannanoa River Basin for flood mitigation opportunities and city staff works with developers and property owner on ways to protect their properties from flooding.

Pros:

- The citizens of Asheville will continue to receive a 10 percent reduction on their flood insurance program.
- Provides higher level of protection through our current flood ordinance
- Promotes public education of the Special Flood Hazard Areas

Con:

- Considerable amount of staff time is necessary to maintain these requirements

There is no additional fiscal impact to continuing the efforts necessary for the CRS program, staff time is currently programmed into the annual operating budget.

Staff requests City Council approve a resolution accepting the report prepared by city staff for the flood mitigation action associated with the repetitive loss area analysis report.

In response to Councilwoman Mayfield, Stormwater Division Manager McCray Coates said that the action items are similar to last year and are on-going.

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E. RESOLUTION NO. 16-221 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A PROFESSIONAL ENGINEERING SERVICES AGREEMENT WITH SCHNABEL ENGINEERING SOUTH, PC, FOR THE NORTH FORK WATER TREATMENT PLANT DAM/SPILLWAY UPGRADE - PHASE II

Summary: The consideration of a resolution authorizing the City Manager to enter into a professional engineering services agreement with Schnabel Engineering South, PC, (Schnabel) for the North Fork WTP Dam/Spillway Upgrade Phase II: Design and Construction Services project for the amount of $4,350,170.

On June 27, 2014, the Water Resources Department (Department) issued a Request for Qualifications (RFQ) for professional engineering services for the upgrade of the North Fork Dam/Spillway. As outlined in the RFQ, engineering services for the project will be conducted in two phases: Design and Construction Services. The selected engineering firm will be responsible for all of the design phase (Phase I) and all of the construction phase (Phase II) aspects of the project. Phase I and II are the engineering phases of the $30 million dam/spillway construction upgrade project to occur at the North Fork Water Treatment Plant in Black Mountain.

On February 24, 2015, City Council awarded the Phase I Design contract to Schnabel in the amount of $3,903,350. Phase I Design included design services, geotechnical exploration, assessment of the existing gated spillway, environmental permitting, bid process support, and public outreach. With Phase I now complete, the Dam/Spillway upgrade project is ready to move onto Phase II.

Phase II Construction Services includes hydrometeorological modeling, contract administration, observation of all construction-related activities, field and laboratory quality control testing, full-time onsite representation, attendance at construction meetings, preparation of reports, and final record drawings. Since the original RFQ included that the selected firm would provide services for both phases, a separate RFQ for Phase II is not required. The department is seeking Council approval for the Phase II contract with Schnabel for the proposed amount of $4,350,170.

Pro:

- This project will allow the Water Resources Department to upgrade the North Fork dam and spillway to comply with State regulations.

Cons:

- The cost for the engineering services agreement, while substantial, is typical for a construction project of this size. The overall construction project is estimated at $30 million.
- Failure to award an engineering services agreement would prevent Water Resources from making the necessary upgrades to the North Fork dam and spillway.

The funding needed for the professional engineering services contract is currently allocated within the North Fork WTP Dam/Tunnel Repairs project in the Water Resources Capital Improvement Projects fund.

Staff recommends City Council adopt a resolution authorizing the City Manager to enter into a professional engineering services agreement with Schnabel, for the North Fork WTP Dam/Spillway Upgrade Phase II: Design and Construction Services project for the proposed amount of $4,350,170.

When Mayor Manheimer asked if the City knows what wages the employer is paying its employees, Director of Water Recourses Director Jade Dundas said that was not asked in preparation of this contract and we don't know.

In response to Councilwoman Mayfield, Mr. Dundas said that the estimated timeframe for the construction bid awards coming to Council will be in the December/January timeframe.

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F. RESOLUTION NO. 16-222 - RESOLUTION AUTHORIZING THE CITY MANAGER TO CONVEY TRANSMISSION AND DISTRIBUTION EASEMENTS TO DUKE ENERGY PROGRESS INC. IN THE RIVER ARTS DISTRICT TRANSPORTATION PROJECT AREA ALONG RIVERSIDE DRIVE

Summary: The consideration of a resolution authorizing the City Manager to convey transmission and distribution easements to Duke Energy Progress, Inc. in the River Arts District Transportation Project (RADTIP) area along Riverside Drive.

The River Arts District Transportation Improvement Project (RADTIP) is a City of Asheville multi-modal transportation project that includes the installation of sidewalks, street trees, public art, bike lanes and greenways. As part of this project, the City is coordinating with Duke Energy on the location of utility poles and aerial lines throughout the project area. There are existing transmission lines and distribution lines that run along City-owned property on Riverside Drive. These lines will either remain in the existing location(s) or will be modified to some degree to accommodate the new roadway, greenway and recreation improvements. Duke is requesting that the City grant easements to clearly identify the areas of the utilities, as follows:

<table>
<tr><th>Location</th><th>Area of Distribution Easement</th><th>Area of Transmission Easement</th></tr>
<tr><td>Parcel 20, 172 Riverside Dr.</td><td>+/- 0.28 acres more or less</td><td>+/- 0.17 acres more or less</td></tr>
<tr><td>Parcel 26 Riverside Dr.</td><td rowspan="3">+/- 1.01 acres across three parcels more or less</td><td rowspan="4">+/- 1.512 acres across four parcels more or less</td></tr>
<tr><td>Parcel 27, Riverside Dr</td></tr>
<tr><td>Parcel 28, 14 Riverside Dr</td></tr>
<tr><td>Parcel 30, 5 Riverside Dr</td><td>NA</td></tr>
<tr><td>Parcel 31, Lyman Street</td><td>NA</td><td>+/- 0.167 acres more or less</td></tr>
</table>

These easements are to be conveyed as part of the Utility Relocation Agreement for the City's RADTIP project and therefore no compensation for the easements is considered. Duke prohibits certain improvements within easement areas, and the City has worked with Duke so that improvements for RADTIP, the new Craven Street River Access point, the upgraded river access at Jean Webb Park, and 14 Riverside project are not in conflict with these easements. City land on the East side of Riverside Drive is not impacted by the easements.

Pros:

- Easements are consistent with current City improvement projects.
- Granting these easements will provide Duke the needed property rights on City property to install or relocate utilities lines as part of the City's RADTIP project.

Con:

- Utility easements limit the use of property.

City staff recommends City Council approve a resolution authorizing the City Manager to convey transmission and distribution easements to Duke Energy Progress, Inc. in the River Arts District Transportation Project area along Riverside Drive.

In response to Councilwoman Mayfield, Real Estate Manager Nikki Reid said that the placement of these easements do not change anything about our development plans. The plans for this Duke utility relocation were designed in concert with the City recreation improvements, as well as the RADTIP improvements and the 14 Riverside Drive improvements.

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

Mayor Manheimer 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 Bothwell moved for the adoption of the Consent Agenda. This motion was seconded by Vice-Mayor Wisler and carried unanimously.

III. PRESENTATIONS & REPORTS:

A. UPDATE ON ASHEVILLE SISTER CITIES

Ms. Karon Korp updated City Council on the Asheville Sister Cities programs and projects that took place this summer and an exciting event that is coming up.

On behalf of City Council, Mayor Manheimer thanked Ms. Korp and the entire Sister Cities organization for their hard work and dedication.

IV. PUBLIC HEARINGS:

A. PUBLIC HEARING TO CONSIDER CONDITIONAL ZONING OF PROPERTY LOCATED AT 25 FORSYTHE STREET FROM RS-8 RESIDENTIAL SINGLE-FAMILY HIGH DENSITY DISTRICT TO RS-8 RESIDENTIAL SINGLE-FAMILY HIGH DENSITY DISTRICT/CONDITIONAL ZONING TO RE-ESTABLISH A PLACE OF WORSHIP

ORDINANCE NO. 4523 - ORDINANCE TO CONDITIONALLY ZONE PROPERTY LOCATED AT 25 FORSYTHE STREET FROM RS-8 RESIDENTIAL SINGLE-FAMILY HIGH DENSITY DISTRICT TO RS-8 RESIDENTIAL SINGLE-FAMILY HIGH DENSITY DISTRICT/CONDITIONAL ZONING TO RE-ESTABLISH A PLACE OF WORSHIP

Urban Planner Jessica Bernstein said that this is the consideration of an ordinance to conditionally zone property located at 25 Forsythe Street from RS-8 Residential Single-Family High Density District to RS-8 Residential Single-Family High Density District/Conditional Zoning to re-establish a place of worship on an existing site with specific conditions to typical zoning requirements. The parcel is owned by Greater Works Church of God and is identified as PIN 9649.24-3580. This public hearing was advertised on September 16 and 23, 2016.

The project site consists of one parcel located at 25 Forsythe Street in the Five Points neighborhood of North Asheville and has an area of 1.44 acres. The area is zoned RS-8 and the surrounding neighborhood is primarily residential. The site contains an existing church building and surface parking.

The applicant is proposing to legally re-establish a place of worship on the site with special conditions related to parking, setbacks and landscaping. The site contains a single structure that is two-stories in height and 12,800 square feet, built around 2001 that is not proposed to be changed or altered.

Access to the site is from two driveways off of Forsythe Street, on either side of the structure. Parking is located to the rear and sides of the structure (north, east and west). There are between 71-86 spaces currently and 78 proposed to remain after restriping, including 6 handicapped accessible spaces. There is an existing concrete sidewalk along part of the project frontage which will remain.

At the northernmost corner of the parking lot, there is an existing garage carport for an adjacent residential property that fronts into and is accessed through the parking lot. This access will remain as an existing break in the landscaped property line buffer.

Landscaping is required for compliance and would typically include street trees, parking lot landscaping, building impact landscaping, screening of the trash enclosure and the USSR-specific property line and street buffers. The applicant was granted an alternative landscaping plan in 2014 consisting of reduced property line buffers and vehicular use area plantings which corresponds to a requested condition, detailed below. The landscaping from the 2014 approval is all in place.

Due to the adaptive reuse of the existing site features, the following conditions accompany this request:

1. Side setbacks will be reduced to 15 feet
   Typically side setbacks are 25 feet for places of worship in residential areas but with this application, the setback would be reduced to 15 feet
2. Landscaping will correspond with the 2014 alternative compliance approval and includes a reduced property line buffer
   Typically a 20 foot property line buffer would be required along the north, east and west; the plan proposes mostly a 15 foot buffer on these boundaries with reduced planting. There are a few sections that do comply with the 20 foot area and areas with less (garage access as mentioned above).
3. Number of parking spaces exceeds the maximum number for the use
   The range of spaces based on the number of seats in the sanctuary (175) is between 22-58; the plan proposes to use 78

This proposal was approved with conditions by the Technical Review Committee on August 15, 2016, and requires review by the City Council and Final TRC prior to zoning approval. Staff has received a number of letters of support for the request to allow the additional parking to remain in the current configuration as it is shared for use with surrounding neighbors.

At the Planning & Zoning Commission meeting on September 7th, the Commission voted to support the request (7-0) and supportive public comment was heard. Staff relayed communication and provided copies of letters signed by adjacent neighbors supporting the request. The Commission was supportive of the proposal to utilize the site as is, especially since off-street parking is noted by residents as being needed as Forsythe, Hillside and other surrounding streets are congested with on-street parking and have narrow rights-of-way, so the ability for neighbors to park on the site is well-received. The Commission suggested a condition formalizing the agreement letting neighbors and members of community park on the site, however Planning and Legal staff do not recommend a condition such as this due to complications and potential unintended consequences from inserting or requiring public parking on a private site.

As stated above, typically places of worship are considered as uses by right, subject to special requirements (USSR) according to Section 7-16-1(c.)(55) of the UDO and therefore necessary upgrades to the site are typically required for compliance. The applicant completed a Level II review process and received a zoning permit for a compliant site plan in 2012. This request would supplant that previous approval and proposes modifying the standards as described above. As variances may not be pursued for USSR projects, a conditional zoning is being sought.

USSR Standards: The standards that are met or not met are indicated below:

- *Lot area*- Minimum lot area required is 5,000 SF and this site is 1.44 acres

- *Lot location*- May be located on any street – Forsythe is publically maintained
- *Access*- Limited to two points – two driveways currently exist and will remain
- *Height* – Limited to 40' with additional height for architectural features. Building is noted as 47' in height overall.
- *Impervious area*- limited to 60% of site
- *Size*- There is a capacity for 175 in the sanctuary and as such, this church would be designated as a "small place of worship" (not more than 300 seats).
- *Lighting* – Various standards to minimize impact to adjacent properties -No change to site lighting.
- *Setbacks*- Front 15 feet front; sides and rear 25 feet, no parking within these areas
    - Applicant is requesting a reduced side setback from 25 feet to 15 feet
- *Parking*- Range between 1 space per 3-8 seats = minimum 22 spaces and maximum 58 spaces
    - Applicant will be requesting a condition to allow greater than the maximum number of parking spaces but not to follow the requirements of section 7-11-2 regarding pervious paving and additional landscaping
- *Specific landscaping* – A 20' Type A buffer is required around three sides of this property and a planting strip is required along the street frontage, both incorporating a wall, berm and/or shrubs as well.
    - Applicant is requesting to follow an alternative compliance plan approved in 2014 with reduced property line buffers and less vehicular use area planting.

While the City seeks to preserve residential neighborhoods for residential uses, the code anticipates that complimentary community supported non-residential uses will often be located within the neighborhoods, such as schools and churches. These uses are given special standards to mitigate the potential negative impacts associated with the increased activity on these sites (typically parking and traffic). This site has been the location of a non-residential use around 2001 when the current building was constructed (permit issued in 1999) and has been used as a church since then. Because of this, the use is considered compatible. However, the proposal does not comply with the additional standards for greater landscaping and parking restrictions that are applied to a place of worship within a neighborhood.

This proposal does not necessarily conflict with the *City Development Plan 2025* but is also not directly supported by the *Plan* either. The Land Use section notes that "many of the older neighborhoods zoned as single family still incorporate a variety of land uses" but also that "protection, preservation and enhancement of existing neighborhoods" is essential, which is typically done through compliance with zoning standards.

The proposal can be said to both align and conflict with the 2036 Council vision regarding "*A Well-Planned and Livable Community."* Traditional neighborhood development incorporates uses such as churches into the fabric of a residential area and the sites are often utilized by neighbors as well (such as for shared parking or gathering spaces); however, typically required standards for mitigating additional impact on neighbors are not met with this application.

<u>Considerations</u>:

- Allows continued use of an existing structure with no additional site disturbance
- Additional landscaping has recently been incorporated into the buffers and parking field
- Places of worship in residential neighborhoods are typically required to comply with non-variable standards related to landscaping and parking restrictions (which are included as requested conditions in this application)

While the use is considered to be a compatible component of the historic development pattern, current standards in place for places of worship in a residential district require standards intended to mitigate impacts to adjacent properties and these are not met with the application. Because of that, staff cannot recommend support of the proposed conditional zoning as proposed.

In response to Councilwoman Mayfield, Ms. Bernstein explained the 2014 landscaping approval and said that what is on the site plan now is what they would do, noting most of it is already in place.

Senior Pastor Ronald Gates of the Greater Works Church explained the different community uses that use their parking lot. Keeping the lot at the 78 spaces helps the community and eliminates the need of overflow into the street. He noted they have a great relationship with the community and they actually watch over the property.

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

Councilman Young moved to approve conditional zoning request from Residential Single Family High Density District (RS-8) to Residential Single-Family High Density Conditional Zone (RS-8 CZ) with the requested conditions for the use of the site for a place of worship and find that the request is reasonable, is in the public interest, and is consistent with the Comprehensive Plan and other adopted plans in that: (1) the site has historically been a non-residential use in the current configuration, and (2) additional landscaping has been provided on the site through an alternative compliance process. This motion was seconded by Councilwoman Mayfield and carried unanimously.

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B. PUBLIC HEARING TO CONSIDER AN AMENDMENT TO ARTICLE X OF CHAPTER 7 OF THE CODE OF ORDINANCES FOR THE PURPOSE OF ADDING A GENERAL DEVELOPMENT AND PERFORMANCE STANDARD REGULATING STRUCTURES IN THE NAVIGABLE AIRSPACE OF THE GREATER ASHEVILLE REGIONAL AIRPORT

ORDINANCE NO. 4524 - ORDINANCE AMENDING ARTICLE X OF CHAPTER 7 OF THE CODE OF ORDINANCES FOR THE PURPOSE OF ADDING NEW STANDARDS REQUIRING REVIEW AND APPROVAL BY THE FEDERAL AVIATION ADMINISTRATION FOR ANY PROJECT THAT FALL WITHIN THE AIRPORT'S NAVIGABLE AIRSPACE

Principal Planner Shannon Tuch said that this is the consideration of a proposed ordinance to add new standards requiring review and approval by the Federal Aviation Administration (FAA) for any project that fall within the airport's navigable airspace. This public hearing was advertised on September 16 and 23, 2016.

Planning and Urban Design staff were approached by representatives from the Asheville Regional Airport requesting cooperation from the City of Asheville in communicating to the general development community the FAA's restriction on height of structures and features on properties that fall within the aircraft approach and departure zones that extend beyond the boundaries of the airport property.

The navigable airspace for the Asheville Regional Airport crosses multiple jurisdictions including: the City of Asheville, the Town of Fletcher, the Town of Mills River, Buncombe County, and Henderson County. Of the five affected jurisdictions, Asheville has the least amount of land area affected by these approach/departure zones.

The requirement to avoid any encroachments or penetrations into navigable airspace is a federal requirement and applies regardless of whether a municipality chooses to adopt a local standard. However, in order to help communicate this requirement and safeguard against the potential for new construction that violates this standard, many jurisdictions will choose to incorporate standards into their local development code that can be found and referenced during the planning and review stages of a project. The two most common code strategies are:

1. Adopt an airport overlay zoning district with special standards for any property that falls within that overlay area, or
2. Adopt the same or similar special standards as part of the general development code, which are applied only as needed or when applicable and without an overlay.

The first option requires both a wording amendment that adds the special requirements, and a zoning action that applies the overlay zoning district to all affected properties that fall within the runway's clear airspace. The second option also includes a wording amendment but there is no zoning action that applies an overlay. In this strategy, the burden is on the owner/developer to investigate whether these standards apply to their property. Through reference maps supplied to staff by the airport, an effort to identify affected properties would be made.

Given the relatively small amount of land impacted by the FAA restrictions, and the likelihood of that land being developed with structures tall enough to encroach into the navigable airspace, applying an airport overlay may arouse unnecessary concern from property owners as the zoning action is pursued. Primarily for this reason, option #2 is being proposed.

This proposal was reviewed and approved unanimously by the Planning and Zoning Commission at their September 7, 2016, meeting. All wording amendments receive final review by City Council.

This wording amendment complies with City's Comprehensive Plan as it relates to Land Use (Goal X) and Transportation (Goal IX) by guiding growth to accommodate various forms of transportation and by supporting the growth of the Asheville Regional Airport consistent with general aviation and commercial air traffic demands and operational needs.

The wording amendment most closely aligns with the 2036 Council vision in the following ways: (1) ***A Thriving and Local Economy*** - by supporting a regional asset that benefits local Asheville businesses; and (2) ***Transportation and Accessibility*** – by supporting all modes of transportation that provide opportunities and access to Asheville citizens.

This proposal is consistent with goals outlined in the Comprehensive Plan and City Council 2036 Vision, and staff recommends approval of the wording amendment as proposed.

Mayor Manheimer opened the public hearing at 5:49 p.m., and when no one spoke, she closed the public hearing at 5:49 p.m.

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

Councilman Smith moved to approve the wording amendment modifying the General Development and Performance Standards and find that the request is reasonable, is in the public interest and is consistent with the Comprehensive Plan and other adopted plans in the following ways: (1) by supporting a regional asset that provides a valuable and needed service to Asheville residents and businesses; (2) by improving communication of development requirements to prevent unnecessary costs and delays; and, (3) by safeguarding the welfare of all air travelers to Asheville by limiting the potential for unsafe obstructions. This motion was seconded by Councilman Haynes and carried unanimously.

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V. UNFINISHED BUSINESS:

A. DOWNTOWN PLANNING AND DEVELOPMENT POLICIES

Planning & Urban Design Director Todd Okolichany said that this report outlines staff recommendations for Central Business District (CBD) related requirements regarding:

- Development review thresholds,
- Review process for large projects,
- Development review thresholds and process for review for hotel applications; and,
- Public outreach during the development review process.

This process began in December 2015 with a request by City Council for review of the aforementioned areas of concern. Since that time, staff has conducted a community engagement process that included a public forum, a presentation to the Asheville Lodging Association, an online survey and several updates to City Council, the Downtown Commission and the Planning and Zoning Commission.

The Downtown Commission has received regular updates on the topics concerning downtown development review. In addition, the Commission held a special meeting on September 1st, to respond to and discuss staff's recommendations. While there was a variety of opinions and points expressed on these topics, there was consensus on the need for fairness and to have expectations for developers laid out as clearly as possible. The Commission then voted September 9th on a list of recommendations to be shared with City Council. At that meeting, the Commission also recommended that parking requirements for new downtown projects be studied for a potential UDO amendment.

Based upon feedback received as part of the outreach process, staff offers the following considerations:

DEVELOPMENT REVIEW THRESHOLDS FOR PROJECTS IN CENTRAL BUSINESS DISTRICT

PROCESS FOR REVIEWING LEVEL III PROJECTS IN THE CENTRAL BUSINESS DISTRICT

- Issue:
  Review Thresholds for Level II and Level III projects: Level II projects are proposals that have a gross floor area of greater than 20,000 square feet but not exceeding 175,000 square feet, with a height not exceeding 145 feet. These projects are reviewed by the Technical Review Committee (TRC), the Downtown Commission (DTC) and the Planning and Zoning Commission (PZC).

  Level III projects are those projects that have a gross floor area greater than 175,000 square feet and a height taller than 145 feet. These projects are reviewed by the TRC, the DTC and the PZC with final review by City Council following a review process that differs depending on the location downtown (see the following section for additional comment on the Level III review process).

- Staff recommendation:
  Staff recommends no change to the development review thresholds for Level II and Level III projects. There have not been any projects that have qualified as a Level III project aside for the redevelopment application for the BB&T building on

7 and 11 Patton Avenue (i.e. Arras), which included a change of use for an existing building. There were a number of public comments both for and against changing the established thresholds from the public forum and the online downtown survey. The current review threshold was developed during the Downtown Master Plan (DTMP) process completed in 2009, which included extensive community input and engagement and was ultimately adopted by City Council. While we have had a number of Level II projects proposed and approved since 2010 only two new projects have reached 130,000 square feet or larger.

Staff also reached out to several other cities in North Carolina in order to inquire about how those cities review projects in their respective downtowns. All of the cities that had design guidelines or standards, review downtown projects at the staff level with the rationale that those cities are trying to encourage growth and development in their downtowns. The City of Asheville's existing Unified Development Ordinance (UDO) also contains a similar purpose and intent for Asheville's CBD.

Issue:
The larger Level III projects in the CBD follow either the conditional zoning (CZ) or conditional use permit (CUP) process. Level III projects located in the CBD, but outside of the Traditional Downtown Core, are reviewed following the CUP process. Level III projects located inside the Traditional Downtown Core are reviewed following the CZ process.

A CUP is a site plan review that follows a quasi-judicial process with the City Council as the final review step. A developer must prove through testimony and evidence that the seven standards for CUPs are met through the project proposal. Council can't participate in conversation (no ex parte communication) about the project prior to the public hearing for the review. The inability for Council to communicate early in the process has been the subject of some concern and frustration among the community.

A CZ is a rezoning application to a new zoning district with a site plan and conditions that both Council and the developer must agree to. This discussion between Council and developer may begin early on in the review process. In some cases, a developer may not know at initial submittal what to expect as project conditions. Many community members feel that a CZ process is preferred because of the availability to communicate amongst Council members and with the developer.

- Staff recommendation:
  Staff recommends that all Level III projects in the CBD follow the conditional zoning (CZ) process. Most feedback from the community also supports this change, which would involve an amendment to the UDO.

Councilman Bothwell felt that we should lower the Level III threshold to 100,000 square feet or 100 feet tall and extend it throughout the City. He felt that we will soon see more hotel projects in the River Arts District and west Asheville.

Councilman Smith would like to explore some possible incentive opportunities, if legally permissible. He wondered if certain types of uses should have a higher threshold for review. For example, if a residential project that was greater than 100,000 square feet, but if 80% square footage was devoted to residential purposes, and if 20% of those units were affordable or workforce, and it was clear that this would be for residential only, and that it complied with the

Downtown Master Plan and other design guidelines, that then they might have as lower review threshold since they are meeting some of Council's big goals.

In response to Councilman Bothwell, City Attorney Currin said that we can start with a district that allows a certain number of uses and then Council has the flexibility to negotiate with that developer on what the individual project zoning district will look like. Both sides will have to agree to the conditions. To achieve that flexibility, that might create the need for some new districts that don't exist now.

It was the consensus of Council to direct staff to prepare a wording amendment to the Unified Development Ordinance to amend the development review threshold of Level II projects to 100,000 square feet or less throughout the City with an additional new threshold of 100 feet tall or less in the Central Business District.

It was the consensus of Council to direct staff to prepare a wording amendment to the Unified Development Ordinance to amend the development review threshold of Level III projects throughout the City to anything over 100,000 square feet or over 100 feet tall, which would require a rezoning and which would follow that process; and to establish certain incentive criteria for developers wishing to build residential.

It was the consensus of Council to direct staff to explore using the rezoning process for all Level III projects throughout the City, especially in areas where mutual agreement would like to be reached.

DEVELOPMENT REVIEW THRESHOLDS AND PROCESS FOR REVIEW FOR HOTEL APPLICATIONS IN THE CBD

- Issue:
  Hotels are reviewed like all other uses in the downtown area, which is based on the scale of the project. While there is not consistent feedback about the growth and impacts of the hospitality industry in downtown, it can be acknowledged that a number of the recent larger scale proposals in the downtown are hotel developments. Since 2010 there have been seven hotel projects approved in or near the CBD. Two additional hotel proposals are currently under review. Some of the concerns that have been shared focus on the growth of a single industry sector, concerns about lower wage paying jobs, the need for parking, having a balance of uses in the CBD and the sense that the downtown area is benefitting tourists instead of residents of Asheville.

- Staff recommendation:
  Staff recommends that lodging facilities (e.g. hotels) with 50 or more rooms should be reviewed at a different threshold than other uses in order to allow for additional Council review of hotel developments. Staff proposes that all lodging facilities with 50 or more rooms be reviewed following a conditional zoning process, with final consideration by City Council. This would involve a UDO amendment to implement this change.

  If this threshold had been in place beginning in 2010, all of the hotel proposals would have been reviewed by Council (as the ordinance stands today, only two were). If the change is approved, Council will have the opportunity to consider each proposal individually along with the potential impacts of these projects, and communicate with the developer throughout the development review process.

Councilman Haynes supported making lodging facilities with 20-25 or more rooms a use which would require a rezoning and which would follow that process. He in particular wanted Council review in the downtown area, River Arts District and Haywood Road.

Councilman Smith felt the review should be City-wide because we may be finding hotels just outside the district boundaries. He felt this is a clumsy way to go about managing tourism, and would rather work with Buncombe County and the Tourism Development Authority around a sustainable tourism study that would help us work together to decide how many rooms are enough and how can we achieve environmental and economic and social sustainability with our tourism industry. Until that bigger conversation happens, he feared we will get to where we want to go with the tools we have available.

Councilwoman Mayfield felt we are missing the issue around trying to preserve the historic fabric and feel of downtown of the smaller and older buildings. Mr. Okolichany did advise her that there is an on-going joint working group between the Historic Resources Commission and the Downtown Commission around design guidelines. Also, similar to hotels over a certain size having to come before Council, she suggested if someone was going to tear down an existing building in Asheville that would really change the historic fabric/feel of the street and that should come to Council as well.

Mayor Manheimer said the design guidelines and preservation issues can be a second part to this process. Those issues are on the horizon and Council will tackle those next.

Councilman Bothwell said that in June the Finance Committee heard a report regarding the actual cost of tourism to cities. It was clear that when we hear reports about all the benefits of tourism we never hear about the cost. He felt it would be valuable information to know if it's costing us more than it's worth.

It was the consensus of Council to direct staff to prepare a wording amendment to the Unified Development Ordinance to make lodging facilities with 20-25 or more rooms throughout the City a use which would require a rezoning and which would follow that process.

At the suggestion of Councilman Smith, it was the consensus of Council to direct staff to explore Council reviewing applications for retail space over 3,000 square feet in the Central Business District. In analyzing that change, Mayor Manheimer wanted to know the number of projects that have occurred in the downtown in the past five years that Council would have reviewed.

When Councilwoman Mayfield also asked for information of what existing stores are over 3,000 square feet, Mayor Manheimer felt that may be difficult to find out. Councilman Smith suggested the Downtown Association may be able to help us with that.

Vice-Mayor Wisler noted that the potential review of all applications for retail space over 3,000 in the Central Business District by City Council is a new topic and should be reviewed by various organizations and vetted through public forums.

Councilwoman Mayfield said that Council is not telling developers they can't develop in Asheville. Her view is that if you are going to develop in Asheville what you build needs to add to the City - to contribute to the incredible urban fabric and vibrancy of our downtown which has been built over the years. That building and use, to some degree, has to contribute to the success of Asheville.

PUBLIC OUTREACH DURING THE DEVELOPMENT REVIEW PROCESS

- Issue:
  During the CBD Development Forum held in March, many participants expressed concerns that citizens are not aware of new development proposals early enough in the development review process and that they learn of a proposal only when construction begins. During the Open City Hall survey, four notification methods

were identified as the most helpful: Posting the site with signs at each stage of the approval process, providing information on a web portal, better notification for the developer's required neighborhood meeting and social media communication.

- Staff recommendation:
  Staff recommends that public outreach methods be expanded in order to better communicate development proposals in the CBD. Options to improve the public notification process may include posting the site during different stages of the approval (such as before the Downtown Commission meeting and prior to the developer's neighborhood meeting), requiring that the developer's neighborhood meeting occur at a specific time period prior to TRC review, recommending the use of a facilitator at neighborhood meetings, and working with the city's Communication and Public Engagement (CAPE) division and IT Department to broaden the web portal and social media outreach.

It was the consensus of Council to direct staff to prepare a wording amendment to the Unified Development Ordinance to increase public notification for Level II and Level III projects in the Central Business District in accordance with staff's recommendations.

VI. NEW BUSINESS:

A. CONSIDERATION OF A PARTNERSHIP WITH PISGAH LEGAL SERVICES FOR THEIR POVERTY FORUM

Acting City Manager Ball said that the City has received a partnership request from Pisgah Legal Services. Pisgah Legal Services provides free legal advice, pro bono lawyers, and community legal services for underserved populations in Western North Carolina. The city currently partners with Pisgah Legal Services through the Community Development Division/CDBG. Additionally, in Fiscal Year 2015 & 2016, City Council authorized Pisgah Legal Services' utilization of the U.S. Cellular Center banquet hall for Affordable Care Act sign ups each November at the City interdepartmental rental rate, a 66% discount from the established fees and charges manual. This city partnership was previously approved by Council.

Pisgah Legal Services is requesting Council to consider partnership for their annual poverty forum event. In previous years this event has been held in another venue. According to Pisgah Legal staff members, the event has outgrown the previous venue. The partnership assistance would be for covering fees associated with equipment, labor, and other costs in both the Banquet Hall and Thomas Wolfe Auditorium within the U.S. Cellular Center. Total estimated fees related to the use of U.S. Cellular Center facilities, staffing, contracted labor and equipment is over $9,000. The partnership request from Pisgah Legal is for $4000 to provide off sets in these costs. This does not include any costs associated with catered bar service. Catered bar service will be billed on a consumption basis. Due to restrictions related to the USCC ABC permit, staff does not recommend waiving fees or covering costs associated with bar service.

Options for consideration by City Council include: 1) No Action; 2) Approve a partnership with Pisgah Legal Services for a Council decided amount, up to $4,000, in operational expenses for the event, without a budget amendment, through savings within the City's general fund, which will be transferred to the U.S. Cellular Center enterprise fund to cover associated costs.

Acting City Manager Ball provided additional information about the specific request from Pisgah Legal Services for renting the Thomas Wolfe Auditorium. The total fees for renting the Thomas Wolfe break down as follows:

Rent:	$2,000
Equipment Rental:	$1,750
Staffing:	$3,700
Facility Fees:	$1,000

For a total of $8,450

Pisgah Legal is requesting that this amount be reduced by $4,000.

Of the $8,450 approximately $4,870 is money that the City will pay out of pocket. The breakdown of out-of-pocket costs is $3,700 for staff and approximately $1,170 in utility costs.

Councilman Bothwell felt that part of the justification for this request is that the City doesn't permit donated beer and wine to be brought into the US Cellular Center, and they are having to pay for that as part of their catering. General Manager of the US Cellular Center Chris Corl responded that they are doing an open bar, which is what they sold their tickets as, so they can't do a cash bar. The US Cellular Center occasionally does allow one-time permits in the building, but only for events that are 100% centered around food. He said the timeline to issue a one-time permit has passed. The State ABC application process is a 90-day lead-time for a one-time permit and their decision to move to the Thomas Wolfe Auditorium was less than 30 days ago.

Vice-Mayor Wisler said that she is very supportive of Pisgah Legal Services and supports their work, but she can't support this request. She understands they want to expose more people to this important topic, but it is a fund-raising event and while the fees charged at Thomas Wolfe Auditorium are higher than the Diana Wortham Theatre, they do have an opportunity to recoup at least part of these expenses through more ticket sales. More importantly to her; however, is during our budget process they consider a lot of requests from many worthy non-profits for partnerships. It is a very competitive process and we have to turn down a lot of local non-profits. She didn't believe it is equitable to pull Pisgah Legal Services out and give them a partnership outside of the established process.

Councilwoman Mayfield felt this is a relatively unique situation in that it would have never occurred to them to apply for a partnership given their original parameters of their event. She was less worried about the precedential value of this given the nature of the speaker and the fact that the Thomas Wolfe Auditorium was the only place they could find to house this number of people. She felt it is the City's fees and the City's limitation around alcohol that are causing the increase in expenses. She said we are not actually paying them $4,000 but only reducing the fees they would have to pay.

Councilwoman Mayfield moved to transfer $4,000 from the General Fund to the US Cellular Center Enterprise Fund for the Pisgah Legal Services Poverty Forum.

Councilman Smith was also concerned about the precedent-setting, going outside of the established process, and taking taxpayer money out of the General Fund to support a non-profit fundraiser. As a supporter of Pisgah Legal Services for years, he asked for a friendly amendment to the motion to reduce the amount by $250 which will be a donation he will personally make to Pisgah Legal Services towards this event to reduce their costs. He won't be able to support the request though.

Councilwoman Mayfield agreed to donate $250 as well and amended her motion to transfer $3,500 from the General Fund to the US Cellular Center Enterprise Fund for the Pisgah Services Poverty Forum. This motion was seconded by Councilman Haynes.

Mayor Manheimer said that Council has tried to streamline the process and had a total re-vamp of how we partner with groups in the City. Council even doubled the outside agency funding, but that was done within the parameters of the process. It is a struggle for Council since there are so many worthy applicants. She appreciated all the work of Pisgah Legal Services, but unfortunately she will not be able to support the funding. She would, however, talk to her law firm that is also a stronger supporter of Pisgah Legal Services and see what they might like to do to help offset the costs associated with this event.

Councilman Bothwell also supported Pisgah Legal Services and would donate to them; however, he could not support the motion.

Brother Christopher Chiaronmonte felt City Council should stick to their rules.

The motion made by Councilwoman Mayfield and seconded by Councilman Haynes failed on a 2-5 vote, with Mayor Manheimer, Vice-Mayor Wisler, Councilman Bothwell, Councilman Smith and Councilman Young voting "no."

VII. INFORMAL DISCUSSION AND PUBLIC COMMENT:

Brother Christopher Chiaronmonte spoke him being in Asheville for 14 years.

Mr. Kennenth Buckner spoke about crowd control issues at the Trump rally in Asheville at the U.S. Cellular Center and the need for buffer zones between opposing groups.

Ms. Kim Roney, member of the Multimodal Transportation Commission and Transit Committee, spoke about transit route changes and evening services.

Mr. Timothy Sadler encouraged Council to work with Buncombe County to have better resources to deal with people that have served their time and need to get back into the community.

Mr. Travis Smith thanked City Council for their public service in making Asheville the best City possible.

Councilwoman Mayfield updated Council on the workshop on our Use of Force/De-escalation Policy.

Closed Session

At 7:00 p.m., Councilman Young moved to go into closed session for the following reasons: (1) To prevent disclosure of information that is privileged and confidential, pursuant to the laws of North Carolina, or not considered a public record within the meaning of Chapter 132 of the General Statutes. The law that makes the information privileged and confidential is N.C.G.S. 143-318.10(a) (3). The statutory authorization is contained in N.C.G.S. 143-318.11(a)(1); (2) To consult with an attorney employed by the City about matters with respect to which the attorney-client privilege between the City and its attorney must be preserved, including, but not limited to, a potential lawsuit. The statutory authorization is contained in N.C. Gen. Stat. § 143-318.11(a)(3). This motion was seconded by Vice-Mayor Wisler and carried unanimously.

At 7:22 p.m., Councilman Bothwell moved to come out of closed session. This motion was seconded by Vice-Mayor Wisler and carried unanimously.

VIII. ADJOURNMENT:

Mayor Manheimer adjourned the meeting at 7:22 p.m.

CITY CLERK	MAYOR