Tuesday – January 22, 2008 - 5:00 p.m.

Regular Meeting

Present: Mayor Terry M. Bellamy, Presiding; Vice-Mayor Jan B. Davis; Councilwoman Robin L. Cape; Councilwoman Diana Hollis Jones; Councilman R. Carl Mumpower; Councilman Brownie W. Newman; Councilman William A. Russell Jr.; City Manager Gary W. Jackson; City Attorney Robert W. Oast Jr.; and City Clerk Keisha Lipe

Absent: None

PLEDGE OF ALLEGIANCE

Mayor Bellamy led City Council in the Pledge of Allegiance.

INVOCATION

Councilwoman Cape gave the invocation.

I. PROCLAMATIONS:

Assistant Director of Parks & Recreation Debbie Ivester introduced the City's new Cultural Arts Superintendent Diane Ruggerio.

II. CONSENT AGENDA:

At the request of Councilman Mumpower, all the Consent Agenda Items, except for Consent Agenda Items "A" and F" were removed from the Consent Agenda for separate discussion and/or individual votes.

A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON JANUARY 15, 2008

B. BUDGET AMENDMENT FOR A GRANT FROM THE U.S. DEPT. OF JUSTICE TO FUND THE SECOND YEAR OF THE WEST RIVERSIDE OPERATION WEED AND SEED PROGRAM

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

C. BUDGET AMENDMENT FOR AN APPROPRIATION FROM THE STATE OF N.C., DEPT. OF HEALTH AND HUMAN SERVICES, DIVISION OF AGING, AND THE LAND OF SKY REGIONAL COUNCIL/AREA AGENCY ON AGING THROUGH THE SENIOR CENTER GENERAL PURPOSE FUNDING FOR THE SENIOR OPPORTUNITY CENTER

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

D. BUDGET AMENDMENT FOR AN APPROPRIATION FROM THE STATE OF N.C., DEPT. OF HEALTH AND HUMAN SERVICES, DIVISION OF AGING, AND THE LAND OF SKY REGIONAL COUNCIL/AREA AGENCY ON AGING THROUGH THE SENIOR CENTER GENERAL PURPOSE FUNDING FOR THE HARVEST HOUSE

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

E. BUDGET AMENDMENT FROM THE CITY MANAGER'S CONTINGENCY FUND TO SUPPORT SPONSORSHIP FEE FROM THE CITY OF ASHEVILLE TO SUPPORT THE 2008 ADVANCE AUTO PARTS BIG SOUTH CONFERENCE WOMEN'S BASKETBALL CHAMPIONSHIP

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

F. RESOLUTION NO. 08-12- RESOLUTION AUTHORIZING CROWELL FARMS DRIVE, EAST FARM CREEK DRIVE, WEST FARM CREEK DRIVE, POLE BARN DRIVE, SILO DRIVE AND SLOSMAN DRIVE TO BECOME PUBLICLY MAINTAINED STREETS

Summary: The consideration of a resolution authorizing Crowell Farms Drive, East Farm Creek Drive, West Farm Creek Drive, Pole Barn Drive, Silo Drive, Slosman Drive to become publicly maintained streets.

Section 7-15-1(f)-4.a requires that streets dedicated for public uses be accepted by resolution of City Council.

Crowell Farms Drive, East Farm Creek Drive, West Farm Creek Drive, Pole Barn Drive, Silo Drive, Slosman Drive are streets in Crowell Farms Drive. This area was annexed effective January 1, 2008. As a part of the annexation agreement, we agreed to accept these streets for maintenance so long as the right-of-way was provided by the property owners. The right-of-way has been provided by the property owners in all the streets listed in this request.

Following City Council's approval of this resolution, Crowell Farms Drive, East Farm Creek Drive, West Farm Creek Drive, Pole Barn Drive, Silo Drive, Slosman Drive will be added to the official Powell Bill list.

Pros:

- The City will receive Powell Bill funds from the NCDOT to maintain the roadway.
- The City will be fulfilling the annexation agreement for the Sardis Road by accepting these streets. Provided the property owners provide right-of-way, we may have some additional streets to be added in this calendar year.

Con:

- Powell Bill funds will not cover 100% of the cost to maintain the street.

Staff recommends City Council approve a resolution authorizing Crowell Farms Drive, East Farm Creek Drive, West Farm Creek Drive, Pole Barn Drive, Silo Drive, Slosman Drive to become publicly maintained streets.

RESOLUTION BOOK NO. 31 - PAGE

G. RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE AN AGREEMENT WITH THE CLEAN WATER MANAGEMENT TRUST FOR A GRANT FOR THE PURPOSE OF CONSTRUCTING WATER QUALITY MEASURES IN THE DINGLE CREEK WATERSHED

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

H. RESOLUTION REQUESTING A GRANT FROM THE N.C. DEPT. OF ENVIRONMENT AND NATURAL RESOURCES TO DEVELOP STORMWATER BEST MANAGEMENT PRACTICES DESIGN GUIDELINES

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

I. RESOLUTION REQUESTING A GRANT FROM THE N.C. DEPT. OF ENVIRONMENT AND NATURAL RESOURCES TO CONSTRUCT STORMWATER BEST MANAGEMENT PRACTICES AT THE STEVENS-LEE CENTER

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

J. RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A CONTRACT FOR PROFESSIONAL SERVICES WITH KIM MCGUIRE TO DEVELOP AND DELIVER AN INTRODUCTORY PRESENTATION ON GROWTH MANAGEMENT AT CITY COUNCIL'S RETREAT ON FEBRUARY 4, 2008

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

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

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

ITEMS REMOVED FROM THE CONSENT AGENDA FOR INDIVIDUAL VOTES

B. ORDINANCE NO. 3574 - BUDGET AMENDMENT FOR A GRANT FROM THE U.S. DEPT. OF JUSTICE TO FUND THE SECOND YEAR OF THE WEST RIVERSIDE OPERATION WEED AND SEED PROGRAM

Summary: The consideration of a budget amendment, in the amount of $200,000, for a grant from the U.S. Department of Justice to fund the second year of the West Riverside Operation Weed and Seed program.

In October 2004, elected officials, City staff and Asheville citizens mobilized to develop comprehensive strategies to address issues of law enforcement, neighborhood restoration, and prevention/intervention/treatment programs and activities in the West Riverside area of Asheville as part of a Weed and Seed initiative. The program was introduced to the community via a series of public meetings to determine the concerns of residents of the target area, and was received favorably with the understanding that residents would be integrally involved in the planning and implementation of the initiative.

An application was submitted in October 2005 to the U.S. Department of Justice for official recognition as part of the Weed and Seed Program. In July 2006, the U.S. Department of Justice announced the designation of Asheville as an "Officially Recognized" site for the federal Weed and Seed initiative aimed at reducing crime and improving quality of life. Official recognition made the City of Asheville eligible to apply for Weed & Seed funds once a year over a five year period. The first funding application was approved and awarded in August 2006.

In August 2007, Assistant Attorney General, Regina B. Schofield announced the City of Asheville's application for second year funding as a continuing site was approved in the amount of $200,000. 50% of the funds will be used to support law enforcement and community police programs; and 50% will be used to support neighborhood initiatives such as youth services, parenting programs, health and nutrition programs, vocational programs, neighborhood clean ups, housing services, and the salary of the Weed & Seed Site Coordinator. A portion of the award, $25,000, is specifically earmarked for gun violence prevention and education. No City funding will be required to support this second-year grant.

The West Riverside Operation Weed and Seed Steering Committee, residents and several community based resource agencies such as the Housing Authority, Asheville City Schools, Children First, YMCA/YWCA, ARP/Phoenix and others continue to collaborate to improve quality of life for the residents of the West Riverside area and Asheville.

Pros:

- Significantly reduce violent crime and drug activity in an area of Asheville that has high crime activity.
- Provide a comprehensive crime prevention plan to address law enforcement, neighborhood restoration and prevention/intervention/treatment programs for the residents of the target area.
- Mobilize community residents to collectively improve the conditions in the target area.
- Provide resources for residents as a means of personal growth and development.
- Multi-agency collaboration to address the social, educational, economic and cultural issues in the target area.
- Leverage resources to sustain the program and replicate the strategies in other problem areas in the city.

Con:

- Some resistance to change by the residents who live in the target area.

The Parks and Recreation Department recommends City Council to approve the budget amendment in the amount of $200,000 to establish a budget for the second year of the West Riverside Operation Weed and Seed program.

Councilman Mumpower stated that he had no trouble with the program, however, he felt if the City is going to have these programs, the City should pay for them and not use borrowed money from the federal government which contributes to the almost ten trillion dollar debt.

Councilman Newman's response is directed at Consent Agenda B, C, D, G, H and I. He said that the citizens of Asheville pay state and federal income taxes and it would be extremely irresponsible for the City to basically say we are not going to accept any state or federal resources for economic development, public safety, community development, environmental protection, etc., until we reform all of these systems at the state and federal government. To say that people in this community who pay taxes are not going to get any of their taxes back to this community for important community projects, infrastructure needs, economic development, environmental protection, etc. would be irresponsible.

Councilwoman Jones' response is directed at Consent Agenda B, C, D, G, H and I. She said that we must be working together, not in a single mentality. In addition to the stewardship of utilizing our taxpayer's investment in the state and federal government, it's important that we build on each other's expertise and knowledge.

Councilman Mumpower's response is directed at Consent Agenda B, C, D, G. H and I. He felt it was irresponsible for us to participate in a federal process that is draining the life out of the country. We don't need to fix the system, but we need to encourage some restraint. In terms of the state, no system reform is necessary, just a shifting of priorities. We are dependent on the State of North Carolina to uphold our court system and to make it work to support our police and our community. That is working together, but they are neglecting that system and focusing on things that we can take care of ourselves.

Mayor Bellamy said that last year Council heard a report from our Police Chief talking about the results of their work in the

WECAN neighborhood. We are seeing a reduced crime rate, increased safety, more citizen involvement and more support for our police officers. She said that the U.S. Dept. of Justice's upfront investment is a worthwhile investment. With their upfront investment we see results.

Councilman Newman moved for the adoption of Ordinance No. 3574. This motion was seconded by Councilwoman Cape and carried on a 6-1 vote, with Councilman Mumpower voting "no."

ORDINANCE BOOK NO. 24 - PAGE

C. ORDINANCE NO. 3575 - BUDGET AMENDMENT FOR AN APPROPRIATION FROM THE STATE OF N.C., DEPT. OF HEALTH AND HUMAN SERVICES, DIVISION OF AGING, AND THE LAND OF SKY REGIONAL COUNCIL/AREA AGENCY ON AGING THROUGH THE SENIOR CENTER GENERAL PURPOSE FUNDING FOR THE SENIOR OPPORTUNITY CENTER

Summary: The consideration of a budget amendment, in the amount of $16,404, for an appropriation from the State of North Carolina, Department of Health and Human Services, Division on Aging and the Land of Sky Regional Council/Area Agency on Aging through the Senior Center General Purpose Funding for the Senior Opportunity Center.

Funds will be used to 1) remodel the greenhouse, and 2) purchase a new copy machine. The allocation requires a 25% local match which will be provided via in-kind services with in-house project management and labor.

Pros:

- Repair leaking windows, skylight and roof in greenhouse
- Replace planting table in greenhouse to make it accessible
- New copy machine support senior center operations and save staff time in travel and mileage to city hall to use a copy machine

Con:

- None

The Parks and Recreation Department recommends City Council to approve the budget amendment, in the amount of $16,404, to establish a budget for improvements at Senior Opportunity Center.

Councilman Mumpower had no trouble with the service; however, he was concerned about taking money from the state. Where we need their help is with providing a timely and accountable court system. The state needs to focus on core responsibilities like our court system, and not participate in things of this nature, which is our job not theirs.

Mayor Bellamy's comments are directed at Consent Agenda Items C and D. She said the assistance from the State is in the area of helping our seniors. Most seniors are experiencing difficult times and to have the assistance from the Dept. of Health and Human Services to help our seniors have a social outlet through the recreational centers, where the City is paying the majority of the bill, is a good investment for the State of North Carolina.

Councilman Newman moved for the adoption of Ordinance No. 3575. This motion was seconded by Councilwoman Cape and carried on a 6-1 vote, with Councilman Mumpower voting "no."

ORDINANCE BOOK NO. 24 - PAGE

D. ORDINANCE NO. 3576 - BUDGET AMENDMENT FOR AN APPROPRIATION FROM THE STATE OF N.C., DEPT. OF HEALTH AND HUMAN SERVICES, DIVISION OF AGING, AND THE LAND OF SKY REGIONAL COUNCIL/AREA AGENCY ON AGING THROUGH THE SENIOR CENTER GENERAL PURPOSE FUNDING FOR THE HARVEST HOUSE

Summary: The consideration of a budget amendment, in the amount of $16,404, for an appropriation from the State of North Carolina, Department of Health and Human Services, Division on Aging and the Land of Sky Regional Council/Area Agency on Aging through the Senior Center General Purpose Funding for the Harvest House.

Funds will be used to 1) make improvements to the back porch area of the center, 2) install a coffee bar in the kitchen, and 3) renovate the shuffle board area. The allocation requires a 25% local match which will be provided via in-kind services with in-house project management and labor.

Pros:

- Improve the back porch area of the center, a popular gathering space with senior citizens, by improving the landscaping to enhance the natural light and reduce yard debris, repair roof and install an awning.
- Install coffee bar to make better use of space in a small kitchen and design it to better support events and programs.
- Renovated deteriorated shuffle boards for use by senior citizens.

Cons:

- None

The Parks and Recreation Department recommends City Council to approve the budget amendment, in the amount of $16,404, to establish a budget for improvement at Harvest House.

Councilman Mumpower felt that if the City of Asheville wants the improvements at the Harvest House, the City should pay for it. The state needs to focus on their core responsibilities and let the City of Asheville take responsibility for their own programs.

Councilman Newman moved for the adoption of Ordinance No. 3576. This motion was seconded by Councilwoman Cape and carried on a 6-1 vote, with Councilman Mumpower voting "no."

ORDINANCE BOOK NO. 24 - PAGE

E. ORDINANCE NO. 3577 - BUDGET AMENDMENT FROM THE CITY MANAGER'S CONTINGENCY FUND TO SUPPORT SPONSORSHIP FEE FROM THE CITY OF ASHEVILLE TO SUPPORT THE 2008 ADVANCE AUTO PARTS BIG SOUTH CONFERENCE WOMEN'S BASKETBALL CHAMPIONSHIP

Summary: The consideration of a $10,000 sponsorship from the City of Asheville to support the 2008 Advance Auto Parts Big South Conference Women's Basketball Championship hosted by UNC Asheville.

UNC-Asheville is the host of the 2008 Advance Auto Parts Big South Conference Women's Basketball Championship March 14-16, 2008. It is the second of a two-year package as part of a collaborative bid with the Asheville Convention and Visitors Bureau, Biltmore Farms LLC and several other prominent community members to bring the tournament to Asheville for two years.

In 2007 the Advance Auto Parts Big South Conference Women's Basketball Championship made a $750,000 economic impact in Asheville and brought in teams from Virginia, South Carolina, Alabama and North Carolina. The 2007 tournament received sponsorship support from AT&T, Real Yellow Pages, Citizens Fuel, Pepsi Cola Bottling Company, Jan Davis Tire and Verizon Wireless.

The 2008 tournament will expand to include a week of activities centered on health, wellness, sports and civic involvement for the Big South Conference members and the Asheville community. The City of Asheville is invited to be the Pisgah Level Sponsor as the presenting sponsor of the Women's Basketball Tournament Week in return for an investment by the City of $10,000. In return, the City will receive the Pisgah Level Sponsorship benefits listed below.

- One-page ad in the tournament program
- Logo placement on al local tournament promotional materials and website
- Venue signage in named areas
- Opportunity for a booth during the tournament
- Opportunity to speak in named area
- Recognition as a tournament sponsor during all UNC-A 2007-2008 men's and women's basketball season
- One 30-second commercial per game during the UNC-A 2007-2008 men's and women's basketball season
- 10 VIP tournament passes
- Access to additional general admission tickets for Asheville area youth and other city initiatives

Funds to support the sponsorship are available in the City Manager's contingency fund. A budget revision is required to make the funds available for this expense. Once the $10,000 is allocated, it will leave a balance of $55,000 in the City Manager's contingency fund for the remainder of Fiscal Year 2007-09.

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Pros:

- Invest in the local initiative to bring large sporting event to Asheville that result in economic impact
- Partner with our community organizations and sponsors to support the tournament and bring recognition to Asheville

Con:

- None

The Parks and Recreation Department and the City Manager's Office recommend City Council approve a budget revision in the City Manager's contingency fund for $10,000 to support the sponsorship fee.

Councilman Mumpower felt that the City taxpayer dollars should not be used to fund this basketball conference. The money should be raised by the community and private business.

In response to Councilman Russell, Vice-Mayor Davis said that we are in the second year of a partnership with UNC-Asheville in sponsoring the Women's Tournament. The Tournament brings in a number of people to the City and our participation last year included taking a lot of the intercity kids to the Tournament. There was a lot of good exposure for the City. The relationship with the Tourism Development Authority, Chamber of Commerce and UNC-Asheville has further developed and we are entering into other areas of partnership, i.e., baseball field, and prospects of another 2-year bid for 2009-10 at the Civic Center. This partnership connects very well with our Strategic Goals of health and fitness. This is a good collaboration among entities in the community and has great worth to the community.

Councilman Mumpower said that he agrees with the program, but when we have a lot of people in the community who are struggling to pay taxes and other bills, to spend $10,000 to sponsor a basketball tournament is wrong.

Councilman Newman moved for the adoption of Ordinance No. 3577. This motion was seconded by Councilwoman Cape and carried on a 6-1 vote, with Councilman Mumpower voting "no."

ORDINANCE BOOK NO. 24 - PAGE

G. RESOLUTION NO. 08-13 - RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE AN AGREEMENT WITH THE CLEAN WATER MANAGEMENT TRUST FOR A GRANT FOR THE PURPOSE OF CONSTRUCTING WATER QUALITY MEASURES IN THE DINGLE CREEK WATERSHED

Summary: The consideration of a resolution authorizing the City Manager to execute an agreement with the Clean Water Management Trust Fund for a grant in the amount of $330,000 for the purposes of constructing water quality measures in the Dingle Creek watershed.

In 2005, the City of Asheville was awarded a grant from the Clean Water Management Trust Fund in the amount of $133,000. This money was for the purpose of designing and permitting water quality improvements in the Dingle Creek area. This design is complete and the permitting should be complete in March 2008.

The City is in the process of completing the Watershed Stormwater Engineering Analysis. This project has been incorporated into this plan.

The deadline for applying for this grant is January 31, 2008.

Pro:

- If the grant is awarded it will assist in the construction of water quality improvements in the Dingle Creek watershed.

Con:

- The cost to the City is $66,000 of the total project costs of $330,000. The money for the match is currently budgeted in the Stormwater Budget.

The City's contribution to the project will be $66,000 or twenty percent of the amount of the grant. This money is budgeted in the current Stormwater Budget.

Staff recommends City Council approve a resolution authorizing the City Manager to execute an agreement with the Clean Water Management Trust Fund for a grant in the amount of $330,000 for the purposes of constructing water quality measures in the Dingle Creek watershed.

Councilman Mumpower said that this is the City of Asheville's watershed and we should not be using money from another

source. The more you do that, the more difficult it is to determine accountabilities.

Mayor Bellamy's comments are directed at Consent Agenda Items G, H and I. She said these items are from an unfunded mandate from the federal government dealing with stormwater. The State of North Carolina is going to assist us in addressing an unfunded federal mandate. She sees this as a public partnership and a great investment.

Councilman Newman moved for the adoption of Resolution No. 08-13. This motion was seconded by Councilwoman Cape and carried on a 6-1 vote, with Councilman Mumpower voting "no."

RESOLUTION BOOK NO. 31 - PAGE

H. RESOLUTION NO. 08-14 - RESOLUTION REQUESTING A GRANT FROM THE N.C. DEPT. OF ENVIRONMENT AND NATURAL RESOURCES TO DEVELOP STORMWATER BEST MANAGEMENT PRACTICES DESIGN GUIDELINES

Summary: The consideration of a resolution requesting a grant from the North Carolina Department of Environment and Natural Resources (NC DENR) to develop a Stormwater Best Management Practices (BMP) Design Guidelines, in the amount of $24,000.

As part of the new Stormwater and Erosion Control Ordinance adopted in August 2007, some developments are required to provide stormwater best management measures to improve the quality of the stormwater that leaves their site. We are currently using the State stormwater manual to recommend and approve systems that will meet this requirement. Since these approve methods are state-wide, they do not focus on topography specific to the mountains. We would like to work with the local North Carolina State University Water Quality Group to develop Stormwater Best Management (BMP) Design Guidelines to serve this purpose.

The total cost of the document and training would be $48,000. The City would be required to pay half of this costs or $24,000. This money is currently budgeted in the Stormwater Budget.

Pros:

- If the grant is awarded it will assist in the cost of the developing Stormwater BMP Design Guidelines.
- These guidelines would be developed specifically for the mountainous terrain.
- The work would be performed locally by the North Carolina State University Water Quality Group.

Con:

- Con: The cost of the work would be $24,000.

Staff recommends City Council approve a resolution requesting a grant from NC DENR to develop a Stormwater BMP Design Guidelines, in the amount of $24,000.

Councilman Mumpower said we should not be reaching to the State as they have their own responsibilities to uphold as we have ours.

Councilman Newman moved for the adoption of Resolution No. 08-14. This motion was seconded by Councilwoman Cape and carried on a 6-1 vote, with Councilman Mumpower voting "no."

RESOLUTION BOOK NO. 31 - PAGE

I. RESOLUTION NO. 08-15 - RESOLUTION REQUESTING A GRANT FROM THE N.C. DEPT. OF ENVIRONMENT AND NATURAL RESOURCES TO CONSTRUCT STORMWATER BEST MANAGEMENT PRACTICES AT THE STEVENS-LEE CENTER

Summary: The consideration of a resolution requesting a grant from the North Carolina Department of Environment and Natural Resources (NC DENR) to construct Stormwater Best Management Practices (BMP) at the Stevens-Lee Center.

A grant is available from NC DENR, Division of Water Resources, Water Projects Section to construct a stormwater management project at the Stevens-Lee Center. This grant will pay for two-thirds of the costs of construction.

The installation of a stormwater management project at this location will serve to reduce the pollutants that flow off the parking lot. The project will also serve as an educational opportunity for the community.

The amount of money requested is $66,000. The City's cost would be $33,000 for the project. This money is currently budgeted in the Stormwater Budget.

Pros:

- If the grant is awarded it will assist in the cost of constructing a stormwater management project. The grant will cover 66.6 percent of the costs.
- This project could be used for educational purposes.

Con:

- The cost of the work would be $33,000.

Staff recommends City Council approve a resolution requesting a grant from NC DENR to construct Stormwater Best Management Practices (BMP) at the Stevens-Lee Center.

Councilman Mumpower said we should not be reaching to the State as they have their own responsibilities to uphold as we have ours.

Councilman Newman moved for the adoption of Resolution No. 08-15. This motion was seconded by Councilwoman Cape and carried on a 6-1 vote, with Councilman Mumpower voting "no."

RESOLUTION BOOK NO. 31 - PAGE

J. RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A CONTRACT FOR PROFESSIONAL SERVICES WITH KIM MCGUIRE TO DEVELOP AND DELIVER AN INTRODUCTORY PRESENTATION ON GROWTH MANAGEMENT AT CITY COUNCIL'S RETREAT ON FEBRUARY 4, 2008

Summary: The consideration of a resolution authorizing the City Manager to enter into a contract in an amount not to exceed $1,200 for professional services with Ms. Kim McGuire to develop and deliver an introductory presentation on growth management at City Council's retreat on February 4, 2008.

In a memorandum dated January 4, 2008, Mayor Bellamy shared a preliminary draft of the agenda for City Council's upcoming retreat scheduled for February 4-5, 2008. In the same memorandum, she explained her intent to approach City Council for consideration of approving an agreement with Kim McGuire to develop and facilitate a presentation on growth management during our retreat. Ms. McGuire submitted a proposal for the delivery of these services.

Growth management and sustainability have been top goals for City Council during the last several years. It is Mayor Bellamy's hope that Council will devote time during the retreat to discuss these topics and explore where we are now and where we want to be in the future. She believes hiring Ms. McGuire to facilitate the discussion (a local professional with experience in program development and research) will help Council create a concise vision for next steps.

The funding for Ms. McGuire's services can be paid from the Manager's Contingency Budget. A current accounting of the Manager's Contingency is included below.

	Manager's Contingency Budget
$100,000	Beginning balance
- 10,000	Assisted UNCA with archiving historical documents
- 25,000	Gun buy back program
$65,000	Balance

Finally, she wanted to clarify that Ms. McGuire's services are separate from the facilitation services provided throughout the retreat by Mr. Andy Atkinson.

It is Mayor Bellamy's recommendation that City Council approve the resolution authorizing the City Manager to enter into a contract in an amount not to exceed $1,200 for professional services with Ms. Kim McGuire.

Councilman Mumpower felt this is a significant amount of money and he disagreed with the expenditure.

Councilwoman Cape was supportive of Council having the discussion on growth management but could not support $1,200 for what seems to be a 45-minute program. She would be more interested in having a longer discussion as part of a

worksession. She was extremely interested in the idea of regional growth management, but would like to enter into that conversation at the retreat and talk about where the City should go.

Mayor Bellamy felt, as a Council, we should discuss this issue at the retreat and Ms. McGuire is working to create a comprehensive proposal to City Council to look at growth and development. The Community Foundation of Western North Carolina is currently looking at seven western counties for growth and development management. She saw this as an opportunity to connect with potential resources for our City to address this issue on not just a City-wide basis but eventually a County and Western North Carolina basis. The proposal outlines where the money will be spent - not just for the 45-minute presentation.

In response to Councilman Newman, Mayor Bellamy said the City will receive the expertise and presentation material from Ms. McGuire. The type of material we will be receiving isn't just words on paper, but actual utilization tool that we could support. The 45-minute presentation will be followed by dialogue.

Councilman Newman could support the action if we start the conversation at the retreat in terms of regional growth, and then if we have subsequent worksessions, Ms. McGuire might also be available to follow-up on those discussions.

Mayor Bellamy said that Ms. McGuire's proposal spells out what she anticipates accomplishing. She is willing to meet with Council individually in order to get Council to come to a consensus of how and where we want to grow. This is someone who was willing to assist Council in that endeavor.

Vice-Mayor Davis felt the 2025 plan offers some of that same direction, but not on a regional basis.

Councilwoman Cape thought the goal of the strategic retreat was for each Council member to have the opportunity to identify what their strategic priorities are. She felt Council has very little time to discuss their priorities and then from that discussion to craft what presentations we would like to see. Regional growth management is a big topic of hers but this is not necessarily the manner in which she would like for it to move forward. She feels like we are moving in a direction that is setting the agenda for Council without Council having the opportunity to participate in that agenda-setting. She would prefer to reserve the retreat for Council conversation about the directions we would like to go. It may be that we want to hire Ms. McGuire after the retreat and tell her we would like to see conversation about regional development. But, that that conversation should take place amongst Council first. She feels the retreat is giving small opportunities for Council to weight in on their strategic items, especially since they have not even been called by a facilitator to see what their interests are. She feels we are locking ourselves into a very managed retreat with very little room for individual Council members to engage.

Mayor Bellamy reminded Councilwoman Cape that she did send an e-mail on what she would like to talk about at the retreat. As a Council, at the retreat, Council always has an opportunity to talk about priorities and what they want to accomplish. That has not changed. But she did feel like, based upon conversations she heard all last year and based upon feedback from public hearings about developments and how we want to see our City grow, she wanted to be proactive and facilitate a better discussion about how we move forward.

Councilwoman Jones felt that regional growth management is something that a lot of Council feels is very important. She felt Ms. McGuire could frame her presentation accordingly and felt confident that we can meet everyone's goals around this conversation.

Councilman Newman sees this as the start of the conversation about regional growth and what Council can do to have good planning within the City and also look for those opportunities to work with other governing bodies on regional approaches. Since we don't have a new Planning Director, he felt it's important to have the expertise to help set the stage for some of those conversations. He felt this will add value to the subsequent Council conversations about this issue.

Councilwoman Jones moved for the adoption of resolution authorizing the City Manager to enter into a contract in an amount not to exceed $1,200 for professional services with Ms. Kim McGuire to develop and deliver an introductory presentation on growth management at City Council's retreat on February 4, 2008. This motion was seconded by Councilman Newman and failed on a 3-4 vote, with Mayor Bellamy, Councilwoman Jones and Councilman Newman voting "yes" and Vice-Mayor Davis, Councilwoman Cape, Councilman Mumpower and Councilman Russell voting "no."

III. PRESENTATIONS & REPORTS:

A. ASHEVILLE DRUG COMMISSION'S DRUG ENFORCEMENT OFFICER OF THE YEAR AWARD

On behalf of City Council, Councilman Mumpower, Chairman of the Drug Commission, was pleased to recognize Asheville Police Sgt. Eric Lauffer as the co-winner (with Lt. Scott Allen of the Buncombe County Sheriff's Department) of the Drug

Commission's "2007 Drug Enforcement Officer of the Year Award".

Police Chief Bill Hogan spoke about the dedication of Sgt. Lauffer and was honored to have him part of the Asheville Police Department.

B. MOTION TO SUPPORT THE TRUST FOR PUBLIC LAND LISTING THE CITY OF ASHEVILLE AS A POTENTIAL PARTNER ON AN APPLICATION TO THE N.C. CLEAN WATER MANAGEMENT TRUST FUND FOR ACQUISITION OF WALLER TRACT FOR THE HOMINY CREEK GREENWAY

From Staff Report: "At the January 9, 2008, Greenway Commission meeting, Maggie Clancy of TPL presented a funding strategy for acquiring the above-mentioned tract. The Greenway Commission has been aware of this site as a potential land acquisition opportunity since April, 2007. TPL has determined that the Waller Tract fits within the guidelines for the N.C. Clean Water Management Trust Fund (CWMTF), which provides for the acquisition funding for water quality and greenway projects to match funding from local government, state or federal sources. TPL is prepared to be the lead applicant on a CWMTF grant if the city is willing to be listed as a potential source for matching funds for the land acquisition ($126,720). The deadline for applications is February 1, 2008, thus the reason for the urgency in moving this agenda item through the Greenway Commission to Asheville City Council.

In the Fiscal Year 2007-08 Parks Capital Improvement Program (CIP), City Council approved $590,000 funding earmarked toward the French Broad River Greenway Extension project, which will connect to the future Hominy Creek Trailhead. The $590,000 is committed to four right-of-way acquisitions, which are under negotiation, and construction costs.

This specific parcel (Waller Tract) is included in the conceptual plans for future development of the Hominy Creek Greenway corridor, which is currently ranked ninth (9th) on the Greenway Priority list. This section of Greenway has not been designed or funded and the exact corridor will not be determined until we complete the update of the Comprehensive Master Plan, which is currently under way. We do not have a defined timeline on when this corridor will be designed or fully developed.

In reviewing this request, staff has identified the following options for city council to consider:

1) Accept the Greenway Commission's recommendation that TPL seek funding from the Clean Water Management Trust Fund and other sources, and commit funding necessary for the local match, to include city council prioritizing additional capital funding necessary in next year's CIP.
2) Accept the Greenway Commission recommendation and direct staff to reprioritize next year's park CIP priorities and allocate $126,000, thus moving other priorities accordingly.
3) Modify the Greenway Commission recommendation and direct TPL to pursue the entire cost of the property acquisition ($290,000) through the CWMTF application process with no local allocation.

Staff is prepared to carry forward on any of the three (3) options as outlined above."

Ms. Maggie Clancy, Project Manager with the Trust for Public Land (TPL), informed Council of the project and to seek Council's approval to include the City as a potential source for matching funds on an application to the NC Clean Water Management Trust Fund (CWMTF) for acquisition funding.

Using a map, she showed said the Waller Tract is in West Asheville. The tract was once part of trolley line in the late 1880's to connect downtown Asheville to the Sulphur Springs Hotel. It was the first electrical powered trolley line in Western North Carolina. The Waller tract is included the Phase I of the Hominy Creek Greenway. The Hominy Creek Greenway was identified as a major west to east greenway corridor in the 1998 Greenway Master Plan. The Waller tract is 11.91 acres and comprises about one mile of the Phase I Hominy Creek greenway corridor. Phase I of Hominy Creek greenway is ranked 9th on the Parks & Recreation Department's Greenway Priority List. Three other additional properties are needed for Phase I. The property owners have not been approached by TPL or the City about required right-of-way.

The project was brought to TPL and the Greenway Commission by Doug Barlow, who lives in the neighborhood. Early on they discovered the land owner's family needed to sell the property to support the elderly land owner who is in a nursing home. In August of 2007, she and Mr. Barlow met with the Greenway Commission and gained support to get an appraisal on the property and start negotiations with the land owner. The land appraised for $290,000. Last fall she met with the Parks & Recreation Department to discuss funding alternatives, including the CWMTF. The Department recommended she brief Council on the project and the proposed funding structure for the acquisition. She presented the funding plan to the Greenway Commission on January 8, 2008, and received the Commission's support for the acquisition and for the funding plan. TPL and the landowner are in agreement on the terms of the purchase and TPL anticipates having a fully executed purchase agreement signed by the end of January, 2008. The acquisition of the Waller tract fits within the guidelines for the CWMTF. The Trust Fund will provide acquisition

funding for water quality and greenways projects to match funding from local governments or other sources. TPL is prepared to be the lead advocate on a clean water grant if the City is willing to be listed as a potential source for matching funds for the acquisition. If the City allows TPL to go ahead with the clean water application, the following is how the acquisition of the money will be allocated:

CWMTF totals $153,170; City of Asheville matching funds - $126,720; private donations and matching funds - $26,460; for the total project cost of $306,340.

If the proposal to the CWMTF is successful and the City approves the acquisition structure, the City will acquire 11.91 acres of land for around $10,000 an acre, as compared to the appraised value of the land of approximately $24,000 per acre.

The proposed timetable is as follows: CWMTF application due February 1, 2008 (only one deadline a year); firm commitment of funds from City in spring in 2008; CWMTF grant decision is September, 2008; TPL purchase property by December 31, 2008; and TPL conveys the property to the City in January 2009. The City funds will not be needed until early in 2009.

In conclusion, they are seeking City Council's approval to include the City of Asheville as a source for matching funds on an application to the CWMTF for acquisition funding for the Waller tract.

Councilman Newman pointed out that even though this is listed as one of the top ten projects on the Greenway Priority List (9th), there are several other projects more important ahead of this project.

Ms. Clancy explained the urgency for the acquisition is that the family wants to sell the land. It's one mile of greenway and that will bode well for the CWMTF application.

Councilman Newman said that (1) in light of the fact that the Greenway Commission has reviewed the project and is recommending support for this project; (2) in recognition of the opportunity to leverage our investment with the CWMTF dollars; (3) in light of the fact that this is listed as one of the top ten greenway priority projects in the City; and (4) we can get one mile of land for a relatively low investment, he moved to support listing the City as a potential partner on the application to the CWMTF for the Waller tract. This motion was seconded by Councilwoman Jones.

Councilwoman Cape wanted Council to discuss how much money we will have available each year for projects like this. There are a lot of conflicting needs in the community. She questioned if we applied for the CWMTF grant, does that preclude any of the other parts of the property being built on. Ms. Clancy responded that the CWMTF will put an easement on the flood plain portions of the property. There are some portions of the property that will be out of the easement area and you can consider appropriate uses for those portions.

In response to Councilwoman Cape, Ms. Linda Giltz, Chair of the Greenway Commission, said that the Commission, working with staff, developed the Greenway Priority List last spring, about the same time they were learning about this Waller tract. They didn't know the opportunity that was there with this tract, or they may have rated this slightly higher had they known this information ahead of time. The Commission did talk about the eyes on the park and housing next to the greenway a little bit. We thought that would be one way to help this be more affordable. There are two parts of the property that can be built upon.

Councilwoman Cape wanted to support the project and at the same time to make it even more affordable to the City so we can do more projects across the City. She asked the Greenway Commission to research the idea of whether it would be viable for the City to separate those parts of the property and sell them.

Councilman Mumpower felt that the City has trouble protecting and maintaining what we have now with parks. He can't argue against creating more parks, but felt you can go bankrupt with good deals. He felt that this money is not out of reach for many of the wealthy people who live in Asheville who speak about how wonderful greenways are but leave the taxpayers to pay for it.

In response to Vice-Mayor Davis about the Greenway Commission's enthusiasm about this project given the City's limited funds, Ms. Giltz said the Commission sees this as a good opportunity for land acquisition at this point - to start putting the pieces together for that greenway section. But, they realize it's not a high priority to get something built on the ground right away because there are other priorities that are higher for that.

When Vice-Mayor Davis asked about the application deadline, Ms. Clancy said that they can submit the application listing the City as a potential source of matching funds and then have several months to get the City's commitment to get the funds. She said they can withdraw their application or lower the match. They have several months to play around with the interior workings of the funding.

Mayor Bellamy asked that the Greenway Commission talk with the Metropolitan Sewerage District to see if any of their right-of-ways in that area might work collaboratively with this project. It might be worthwhile to see if the greenway could continue along their right-of-way.

In response to Mayor Bellamy, Ms. Clancy said that the TPL doesn't have a master plan, but are interested in working with the Parks & Recreation Department, along with the Greenway Commission, to make their priorities TPL's priorities.

Mayor Bellamy noted that this is the second project in recent months brought to Council but noted that the Nasty Branch project (which was number 6 on the top ten list) didn't make it to Council's agenda. She recalled that the Nasty Branch project was faced with needing a match from the City, but it didn't reach Council's agenda for it to be considered. The Nasty Branch project is an intercity greenway project that is higher on the list. She felt we needed a formalized fair process advising people of the steps they need to go through to reach City Council's agenda. Mayor Bellamy asked City Manager Jackson to work with the TPL to formalize a process for that to happen.

Councilman Newman felt the master planning process will be helpful to get away from these one by one piecemeal decisions. He hoped that as we move forward and decide on whatever amount of resources we can invest in greenways that we can delegate that to the Greenway Commission to largely make the decisions about the most strategic way to make that. He felt Council's primary job is to figure out how much can we afford to invest on greenways and largely allow the Greenway Commission, in working with community groups that are involved in it, to decide what is the most effective way to invest those in the priorities and to stretch those dollars out by levering opportunities.

The motion made by Councilman Newman and seconded by Councilwoman Jones carried on a 5-2 vote, with Vice-Mayor Davis and Councilman Mumpower voting "no."

IV. PUBLIC HEARINGS:

A. PUBLIC HEARING TO CONSIDER ADOPTION OF THE WECAN (WEST END/CLINGMAN AVENUE NEIGHBORHOOD) CITIZENS MASTER PLAN AS A COMPANION DOCUMENT TO THE COMPREHENSIVE PLAN ADOPTED BY THE CITY OF ASHEVILLE

RESOLUTION NO. 08-16 - RESOLUTION TO ADOPT THE WECAN (WEST END/CLINGMAN AVENUE NEIGHBORHOOD) CITIZENS MASTER PLAN AS A COMPANION DOCUMENT TO THE COMPREHENSIVE PLAN ADOPTED BY THE CITY OF ASHEVILLE

Mayor Bellamy opened the public hearing at 6:03 p.m.

Urban Planner Alan Glines said that this is the consideration of a resolution to adopt the WECAN (West End/Clingman Avenue Neighborhood) Citizens Master Plan as a companion document to the Comprehensive Plan adopted by the City of Asheville. This public hearing was advertised on January 11 and 18, 2008.

The WECAN Citizens Master Plan was created in 2000 and included public meetings and a charette process to create a master plan for the community. The plan has been referenced informally ever since it was created but was never officially adopted. The master plan is still relevant for the community today and provides guidelines for growth for the area and a vision for infill development opportunities. The WECAN Citizens Master Plan will be a companion document to the *Asheville City Development Plan 2025*.

In 2000 Mountain Housing Opportunities (MHO) with assistance and sponsorship from the WECAN, the City of Asheville and several other sponsors undertook a process to develop a comprehensive master plan for the area bordered by I-240 to the north, Clingman Avenue to the East, Lyman Street to the South and the French Broad River to the west.

The planning process focused on a charette format and also included smaller meetings for the community and stakeholder groups. Through these meetings the general goals, constraints and visions for the community were determined. The goals centered on pedestrian connections, infill development, strengthening the residential character of the heart of the neighborhood, commercial infill at appropriate locations, calming traffic speeds, improving sense of place and maintaining affordable home ownership opportunities.

From these far-reaching goals the design team developed a series of recommendations that became part of the plan. The plan provides a conceptual vision for the entire project boundary.

The plan highlights are summarized here:

- Traffic improvements and gateway development at Patton Avenue, Clingman Avenue and Hilliard Avenue.
- Neighborhood housing infill development for vacant parcels scattered throughout the community.
- Architectural compatibility of new homes with existing homes.
- Park and greenway space added throughout the neighborhood.
- Riverfront redevelopment providing space for commerce and art studios.
- Natural green-type features to improve the quality of stormwater runoff and habitat creation.
- New connecting streets throughout the neighborhood.

Plan Details: The West End neighborhood was founded around the various mills and other river area businesses that became the employment base of the neighborhood. Over the years various roadway projects including I-240 and the Smoky Park Bridge severed the neighborhood and reduced its original boundaries. As a result, Haywood Street Methodist Church and West Haywood Road businesses were disconnected from the rest of the neighborhood and downtown. About the same time as mills closed down, the economic base of the neighborhood declined.

Roadway Improvements: The plan provides a vision for various roadway and road connections through the neighborhood. In the area beside the river, I-240 and Patton Avenue consume a lot of valuable property because of the wide merge lanes providing access to the highway. The plan shows the reclamation of the Patton Avenue area adjacent to the WECAN neighborhood as a major gateway boulevard. The boulevard would be lined with mixed-use buildings and provide a traffic oval to create a gateway feature. Neighborhood scale connections are also recommended in the plan. A green space is shown in the area of Haywood Street at Jefferson Drive as a gateway feature for the neighborhood. A new street is recommended for the top of the hill area occupied by the Asheville Transit Center and running parallel to Jefferson Drive. Throughout the neighborhood various footpaths and other pedestrian connections are recommended to improve connectivity.

The Top of the Hill: The plan encourages infill development throughout the residential neighborhood, referred to as the “top of the hill” area. The plan was somewhat ahead of its time by recommending higher infill densities to support transit use, affordable housing units, and mixed-use development. Interestingly, these discussions influenced the direction and adoption of new initiatives for the entire City and have become commonplace today. Multifamily development may be a part of the proposed infill but should be sensitive to the historic character of surrounding residential properties. In some cases, greater densities may be difficult given compatibility issues in the neighborhood but may be more appropriately sited along the connecting corridors. The challenge of affordable housing often means that densities must be pushed upward to support the affordable housing subsidy. This has been a topic of discussion in the neighborhood as projects have been proposed. Architectural compatibility with new construction can assist the neighborhood in accepting these proposals. This may include simple gable roof forms and front porches facing the street among other things. A generous portion of the master plan provides character studies for residential buildings. Some of the plans show small footprint homes for steep slopes and a ‘manor’ style home for multifamily projects.

The River Arts District: The river front and art district is featured in the master plan. This area overlaps with the recently adopted Wilma Dykeman Riverway Master Plan (Dykeman Plan). The recommendations of the two plans are similar with many common goals. The Dykeman Plan provides a greater focus on this area though and is the primary document to provide direction. The WECAN plan can provide direction if needed or for areas not covered in the Dykeman Plan. Both plans emphasize the following goals: protecting water quality and consideration for the special nature of the floodplain, strengthening a strong arts economic base in the river area, additional park development, mixed-use buildings with residential units on upper floors, regional attractions and opportunities for small business development.

In summary, the WECAN Citizens Master Plan is a vision document that provides direction for the west-central area of the City. The area is truly a gateway to many neighborhoods including downtown Asheville, West Asheville and the French Broad River. The strength of the neighborhood is still intact and is being improved by redevelopment projects and a very active neighborhood association. Even though the plan is nearly eight years old now it is still relevant for future growth and many of the highlights of the plan are informing the discussions we are having today about mixed-use development, infill development, affordable housing and greater infill densities. The plan will be a useful support document for the Asheville City Development Plan 2025 and will help guide appropriate and desirable development in the WECAN area.

Although no zoning changes are being brought forward as a part of the adoption of the master plan, the plan does make recommendations to adopt the master plan with a developable overlay for the neighborhood with the intent that this overlay could control some of the development proposals that may be proposed in the neighborhood. Staff and the neighborhood favor another approach instead of the overlay; recently several projects have been reviewed and approved as conditional zoning projects. Through this review process, developments are reviewed for context and rezoned with a project master plan on a case by case basis with a final approval coming from City Council. During the review process the neighborhood has an opportunity to weigh in on the proposal and voice any comments or concerns. Each project is reviewed for compliance with City codes and ordinances as

a part of the process. Staff feels that the conditional zoning process is an effective tool for neighborhood development proposals.

Staff has reviewed the proposal to adopt the WECAN Citizens Master Plan with representatives of the WECAN Association. The members of the group felt adoption of the plan would be good for the neighborhood and generally support the proposal. Some people expressed concern that the infill densities may be out of scale with the neighborhood but felt that the conditional zoning process would ensure that each project is reviewed individually.

Pros:

- The plan was developed by members of the neighborhood and area stakeholders using a City endorsed neighborhood process.
- Formalizes the plan and provides context for reviewing proposals that come forward (this has already been occurring informally) the plan provides a comprehensive view and vision of the neighborhood.
- Rezoning requests may be inspired by this document and will be evaluated in reference to it.

Cons:

- The plan is now seven years old and the situation has not been reevaluated
- Some residents have concerns about the proposed density of the in-fill housing
- Some current residents may not have been involved in the master plan development

The Planning and Zoning Commission reviewed the proposal and voted (5-0) to recommend adoption of the master plan at their December 5, 2007, meeting.

Staff recommends City Council approve a resolution accepting the WECAN Citizens Master Plan as a companion document to the Comprehensive Plan adopted by the City of Asheville.

The President of the WECAN Association spoke in support of the Master Plan in that it is an excellent tool to be used in neighborhood development.

Ms. Leslee Kulba didn't think the government should be involved in subsidies. She felt it was a nice plan as long as the private sector will support it.

A member of the Board of the WECAN Association spoke in support of the Master Plan in that it is a visioning document that will help shape the future of their neighborhood.

At 6:16 p.m., Mayor Bellamy closed the public hearing.

Councilman Mumpower felt that master plans usually represent an exercise in using other people's money to control other people's property. After seeing some of the sketches in the Plan, he felt this Master Plan is a far reaching fantasy and it's not realistic to our financial capabilities. He felt there are parts in the Master Plan that make good sense and are down to earth, but this is not a practical master plan.

When Councilwoman Cape asked about what the procedural benefits would be if there are no incentives for people to follow them, Mr. Glines said that developers can look at the Plan and see what is appropriate for the area. It's similar to the 2025 Plan, except this Plan gives more detail to a specific area of the City. When plans are submitted, our plan reviewers will look to see if those plans fall into this area. They will share the Plan with the developer to see how their plan might fit into the area.

Councilwoman Jones felt that if there ever was a mixed neighborhood of income, race and occupancies, it's this neighborhood. This is an exciting Plan and everyone needs the chance to dream.

Mayor Bellamy noted for the record that at the time this plan was being created she was an employee of MHO, but she is no longer employed by them. Since the creation of the plan, several things have been implemented, i.e., the Metropolitan Sewerage District (MSD) has improved the sewer system in the area; the City improved water lines in the area; the citizens implemented a pocket park in the neighborhood; the Chamber of Commerce, partnering with the City, is placing a sign at the western gateway entrance into downtown; and housing being developed along Clingman Avenue (Merritt Park Condominiums have received national recognition). All this activity shows her that the private sector, the City Water Department, MSD and the Chamber of Commerce has seen the usefulness of this Plan as a tool to have implemented. In addition, the 2025 Plan tells us that we should have more neighborhood plans. Many times the Planning Department staff has held this plan as a good example of the community coming together to discuss issues before there is a problem in their area. She is very supportive of this plan as it

takes into consideration what we want as a community and what the neighborhood residents have said they would like to see in their community.

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

Councilwoman Jones moved for the adoption of Resolution No. 08-16. This motion was seconded by Vice-Mayor Davis and carried on a 6-1 vote, with Councilman Mumpower voting “no”.

RESOLUTION BOOK NO. 31 - PAGE

B. PUBLIC HEARING TO CONSIDER AN AMENDMENT TO THE UNIFIED DEVELOPMENT ORDINANCE TO MODIFY THE HEIGHT STANDARDS IN THE URBAN VILLAGE DISTRICT

ORDINANCE NO. 3578 - ORDINANCE TO AMEND THE UNIFIED DEVELOPMENT ORDINANCE TO MODIFY THE HEIGHT STANDARDS IN THE URBAN VILLAGE DISTRICT

Mayor Bellamy opened the public hearing at 6:31 p.m.

Urban Planner Jessica Bernstein said that this is the consideration of an ordinance to amend the Unified Development Ordinance (UDO) to modify the height standards in the Urban Village District. This public hearing was advertised on January 11 and 18, 2008.

The Urban Village zoning district was created in September 2001 to allow for high-density mixed-use developments that contribute to the place-making character of the built environment. When established, the maximum building height allowed in the district was 80 feet, with the intent that predominant height of structures within the Urban Village be within a range between 20 and 60 feet.

In 2006, an amendment to the district was passed that increased the maximum height allowed to 150 feet but retained the same intent for predominant structure height between 2 and 6 stories. A requirement was added that structures taller than 6 stories be located internally to the site unless surrounding context could support the scale and mass. This amendment allowed for taller structures to be considered where appropriate but did not intend for 150 foot buildings to be the norm.

Due to an increase in Urban Village proposals, City Council has directed staff to re-evaluate the maximum height allowed in the district. Staff found that the majority of Urban Village proposals that have received master plan approval by City Council since the conception of the district have consisted of structures smaller than 80 feet, suggesting that successful Urban Village proposals with building heights predominantly between 20 to 60, and up to 80 feet are appropriate to Asheville. In at least one development where a taller structure was approved in the master plan, the developer later downsized the building considerably.

Additionally, 80 feet is the uppermost height allowed in almost all other zoning districts, with the exception of the Central Business District (CBD) where there is no building height limit. Re-establishing this similar height restriction of 80 feet in the Urban Village District creates the possibility for tall, high-density development in a number of zoning districts within the city limits but retains the CBD as the urban core and the location for the city’s tallest structures.

On December 5, 2007, the Asheville Planning and Zoning Commission made a positive recommendation to approve the amendment (by a vote of 4-1) to return the maximum height of structures allowed in the Urban Village district to 80 feet. The member of the Commission voting against this proposal felt that 80 feet was too low and that a height limit of closer to 100 feet would be more appropriate for Urban Villages. The Commission discussed adding a provision whereby an applicant could seek height greater than 80 in special exception cases where the surrounding context can support the increase.

Taking into account the Commission’s desire to allow for additional height in certain circumstances and understanding that there may be potential Urban Village sites where some additional height would not impose a negative effect on the surrounding context, staff recommends limiting height to 80 feet with the inclusion of a provision for the City Council to allow for an increase in special exception cases. Such requests will be evaluated separately to ensure the appropriateness and compatibility of taller structures with adjacent neighborhoods or development.

Staff recommends that the maximum height for structures be returned to the original 80 foot limit and concurs with the Planning and Zoning Commission’s recommendation for allowing greater height in appropriate conditions.

Pros:

- Reduction in height to 80’ still allows for dense development with a mix of uses, structure sizes and building heights while

integrating better with the existing location.

- Height limitation of 80' is more compatible with height intended for "predominant structures."
- Requests for additional height will allowed, but will be evaluated separately to ensure appropriateness.

Con:

- None identified.

Staff recommends City Council approve an ordinance amending the UDO to modify height standards in the Urban Village District.

Mr. Chris Peterson spoke against lowering the height standards. He felt that the people who can afford to build higher buildings ultimately brings jobs and a tax base to the City, both of which the City needs. He felt that height is needed in the Urban Village District to prevent sprawl.

At 6:41 p.m., Mayor Bellamy closed the public hearing.

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

Councilman Newman moved to approve an ordinance amending the UDO by lowering the height standards in the Urban Village District from 150 feet to 80 feet with the provision for the City Council to allow for an increase in special exception cases. This motion was seconded by Councilwoman Cape.

Councilman Russell has heard so much about growing up instead of growing out and this amendment to lower the height limits concerns him. This might be an opportunity to create some good development in good areas with good density. If the Urban Village District is limited to 80 feet, the cost per square foot will go up, which would be opposite to trying to create more reasonably priced housing. Personally he supported leaving the height at 150 feet.

Councilman Newman stressed that if we have the 80 foot limit, it doesn't preclude Council from approving projects where taller structures can be allowed. His concern is we don't want to give developers a false expectation that 150 feet is what normally is allowed in Urban Village zoned areas. With this amendment, we are telling developers that 80 feet is the norm, but if you want to make a case for a higher building, then City Council will listen.

Vice-Mayor Davis said that if we have an 80 foot height limit we are basically saying a 6 story building. He feels in some urban villages the height speaks well. He would be in favor of lowering the height limit from 150 feet to 100 feet.

Councilwoman Cape agreed with Vice-Mayor Davis and also pointed out that because of our topography, some buildings measure differently depending on which side is measured.

Councilman Mumpower felt that cities are where you create density and to create density is through height. He felt that height can make or break a project and since we are trying to fix a program that doesn't exist, he would not support the motion.

Mayor Bellamy agreed on lowering the height from 150 feet to 100 feet. She felt by lowering the height limit to 80 feet, we may be losing a lot of potential growth in the River District.

Councilwoman Cape offered a friendly amendment to the motion in that the height standards in the Urban Village District be reduced from 150 feet to 100 feet, with the provision for the City Council to allow for an increase in special exception cases. Councilman Newman accepted the friendly amendment.

The amended motion made by Councilman Newman and seconded by Councilwoman Cape carried on a 5-2 vote, with Councilman Mumpower and Councilman Russell voting "no."

ORDINANCE BOOK NO. 24 - PAGE

C. PUBLIC HEARING TO CONSIDER AN AMENDMENT TO THE UNIFIED DEVELOPMENT ORDINANCE REGARDING CHANGES TO THE RIVER DISTRICT

ORDINANCE NO. 3579 - ORDINANCE TO AMEND THE UNIFIED DEVELOPMENT ORDINANCE REGARDING CHANGES TO THE RIVER DISTRICT

Mayor Bellamy opened the public hearing at 6:54 p.m.

Urban Planner Alan Glines said that this is the consideration of an ordinance to amend the Unified Development Ordinance (UDO) regarding changes to the River District. This public hearing was advertised on January 11 and 18, 2008.

The River District is created to celebrate, conserve, promote, and manage those areas on both sides of the French Broad and Swannanoa Rivers. The standards seek to encourage economic revitalization throughout the river valleys in a manner that complements the natural environment of the river. The River District is unique in that it allows any use that is not specifically prohibited in the list of uses or allowed in the district with special requirements.

This wording amendment is based on numerous conversations since the 2004 floods, recent rezoning conversations regarding River District properties, comments and direction from City Council and recent staff awareness of state statutes (NCGS Chapter 143, Article 21, Part 6) restricting certain uses in flood hazard areas staff became aware of the need for changes to the district. After the initial submittal to the Planning and Zoning Commission three meetings were held with members of a river related focus group to review the changes. Some of the changes were endorsed by the group; other items may not be completely accepted by the group.

The changes focus on uses that have the potential for environmental degradation from chemical or petroleum spills or pollution through downstream displacement of floatable materials during a flood event. The changes would allow salvage yards in areas not subject to the flood hazard area restrictions on sites in the River, Industrial and Commercial Industrial Districts.

The additions to the River District prohibited use includes:

- Chemical Storage facilities
- Hazardous waste management facilities
- Solid waste disposal facilities

In addition, the following uses are proposed to be added to the River District Uses by Right Subject to Special Requirements (USSR) section with restrictions that if they are operated in a way that met FEMA, state and local guidelines (such as but not limited to operating in an enclosed building or outside of the flood hazard area), would pose less of a threat of water quality damage from flooding:

- Automobile, truck other vehicle servicing and repairs
- Outdoor storage
- Recycling center
- Recycling collection center
- Recycling plant
- Salvage yard
- Storage tanks and containers mounted above ground
- Tanks used for storage of chemicals, oil or fuel subordinate to a use that is allowed in the river district

The special requirements for the recycling activities focus on operating the use in an enclosed building meeting FEMA, state and local guidelines. Storage tanks will be required to be secured and elevated above the base flood elevation. The salvage yard and automobile, truck and vehicle servicing and repair would be allowed outside of the regulated flood hazard areas of a site. For salvage yards this is in agreement with the NC State adopted statute. Outdoor storage areas are proposed to be located on the site but elevated to meet FEMA, state and local guidelines. The FEMA, state and local guidelines are outlined and reviewed in the City of Asheville Environmental Protection Standards found in Article 12 as a part of the Unified Development Ordinance (UDO).

Staff also recommends minor changes to the Industrial District to complement what is being proposed in the River District. This is to ensure that there are sufficient places for the needed services and businesses to operate within the City of Asheville. Due to the heavy impact of uses and character of the Industrial District, the addition of these proposed uses should not impact the district in a negative way. The proposed items listed below would be added to the USSR section for the Industrial District:

- Automobile, truck and other vehicle servicing and repairs
- Salvage Yard

These two uses noted above are proposed to be allowed except in the special flood hazard areas as indicated on the Flood Insurance Rate Maps.

Finally staff is proposing two amendments to the definitions section for “salvage yard” and “recycling plant” for the purposes of clarification and regulating the uses.

He offered Council another amendment to the proposed ordinance before Council explaining that “salvage yard” is the current term used in the UDO. Staff is asking Council to instead use “salvage operation” as a broader term. Yard may be understood to mean “open air” which has been the subject of disagreement. This would change salvage operation to be reflected also in the USSR section for the River and Industrial Districts and the definitions section. Also “salvage operation” means a non-residential property used for the storage, collection and/or recycling of any type of equipment including but not limited to vehicles, appliances and related machinery.

A second amendment to the proposed ordinance before council is the addition of USSR for the Commercial Industrial District as follows:

Salvage Operation
a. Use districts: Commercial Industrial District
b. New uses and expansions of this type shall operate in an enclosed building
c. Outdoor storage is limited to 25% of the building size and shall be screened from view from adjacent properties

Recycling Plant
a. Use districts: Commercial Industrial District
b. New uses and expansions of this type shall operate in an enclosed building
c. Outdoor storage is limited to 25% of the building size and shall be screened from view from adjacent properties

Pros:

- Removes environmentally hazardous uses from the River District resulting in improvements to water quality and safety.
- Removes the opportunity for unenclosed floatables and reduces potential for downstream obstructions during a flood event.
- Brings City requirements in alignment with State Statutes.
- Retains the opportunity for storage and operations of some uses when located in structures meeting flood hazard standards.
- Industrial Districts provide additional opportunities for some uses with reasonable restrictions.

Cons:

- Some existing uses will be non-compliant.
- Grandfathered uses will have limited expansion potential unless they comply with the ordinance changes (a potential pro).

The Planning and Zoning Commission reviewed the proposed River District amendment over several meetings and voted (5-0) to recommend approval of the amendment at the December 5, 2007, meeting.

Staff recommends City Council approve an ordinance amending the UDO to amend the River District.

At 7:00 p.m., Mayor Bellamy closed the public hearing.

There was a brief discussion about the existing uses being non-compliant and how they can expand.

When Councilman Mumpower wondered why the City has to amend their ordinance when we are operating under state statutes, City Attorney Oast said that the state essentially delegates the authority for enforcement and regulation to the municipalities. In this particular case it makes sense to amend the UDO since this is a law we are responsible for enforcing.

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

Councilwoman Jones moved for the adoption of Ordinance No. 3579, with the two amendments outlined by Mr. Glines. This motion was seconded by Councilman Newman and carried on a 6-1 vote, with Councilman Mumpower voting “no.”

In response to Mayor Bellamy’s request about streamlining the UDO, Interim Planning & Development Director Shannon Tuch said that is something they have been discussing for quite some time. She explained why it is such a large endeavor to undertake. She said it is something they can work towards bringing to Council, but in the meantime they will “shoot for some low hanging fruit.”

At Mayor Bellamy’s request, and after receiving consensus of Council, City Manager Jackson said that staff will bring back a review of this and a suggested schedule that might be workable.

D. PUBLIC HEARING REGARDING WOODFIN BOUNDARY AGREEMENT

Because staff did not attach a map with the information she sent to Woodfin Mayor VeHaun, Mayor Bellamy requested this public hearing be withdrawn from consideration until a later date.

At 7:13 p.m., Mayor Bellamy announced a short recess.

V. UNFINISHED BUSINESS:

A. RESOLUTION NO. 08-17 - RESOLUTION APPROVING AMENDMENT TO THE AIRPORT AUTHORITY LEASE AGREEMENT

City Attorney Oast said that this is the consideration of amendments to Airport Authority lease agreement

The Airport Authority was established by interlocal agreement with Buncombe County in 1979. The initial term of the agreement was 25 years, or until 2005. In 1988, the agreement was amended to extend the term to 2018 (among other things). In November of 2007, Council approved several amendments to the interlocal agreement. Those same amendments were presented to the County Commissioners today (January 22); and it is his understanding that the County ratified the amended agreement.

Concurrent with the interlocal agreement, the City entered into a lease with the Airport Authority whereby it leased the Airport property to the Authority for a period of time co-extensive with agreement. In 1993, this term was extended to coincide with the 2018 expiration of the interlocal agreement. Over the years, several subsequently acquired properties have been incorporated into the lease.

The proposed amendment does several things:

1. Incorporates all of the previous amendments, including the amendments that added property to the lease.
2. Includes a provision allowing for the siting of a fire and police station.
3. Includes a provision that will allow for subleases to extend beyond the term of the lease for up to 20 years (Airport Authority requested 60 years and he would not object to that).
4. Allows Airport law enforcement personnel to use the police firing range.

Because this lease involves governmental entities, the usual procedural requirements that apply to the City's real property transactions do not apply in this case, and the City may authorize the amendments to the lease by adoption of the resolution.

Pros:
- Allows the Airport Authority to negotiate leases for commercially reasonable terms
- Incorporates several previous lease amendments
- Incorporates some revisions to the recently amended interlocal agreement

Cons:
- City may have to manage long term subleases if Authority is dissolved or terminates

If Council approves of the amendment to the lease and the terms outlined above, adoption of the resolution is recommended.

Airport Director David Edwards asked Council to consider a provision that will allow for subleases to extend beyond the term of the least for up to 99 years, as the City has done 99 year leases in the past. As things change, it may take longer terms to be able to amortize major projects. They are asking for as much flexibility as possible. On hotel properties, 50-60 years is not uncommon on a lease in order to achieve a hotel siting. They will be trying to bring some non-aviation development to the Airport and this lease term issue is a critical item in trying to bring some of those items to fruition as we try to move forward.

In response to Councilman Mumpower, City Attorney Oast said that the Airport Authority wants more ability to negotiate long-term leases without having to come before Council.

Councilman Mumpower didn't see evidence that we have a problem with certain decisions that the Authority makes, other than inconvenience and that seems to be relatively minor. This is a City asset and right now we can't benefit directly from that

asset, but that doesn't mean tomorrow that will change. He is reluctant to do anything that represents a surrender of our assets in any form. He will have to speak against the changes because he does not feel they are necessary. He feels that once you appoint an Authority, they have tremendous powers and marginal accountability.

Councilwoman Jones said that the Airport is clearly one of our greatest economic development resources and it is imperative that we do operate in a business-like fashion with greater efficiencies.

Councilman Newman supported establishing a provision that will allow for subleases to extend beyond the term of the lease for up to 60 years.

Councilwoman Cape said that earlier Council talked about having a regional growth management plan and having that conversation with our region. Therefore, she felt this seems premature to lock in a 99, 60 or 20 year provision until after we have conversation with the community.

Councilman Newman said that all land use policies and community development policies are things the City has full oversight and authority for. These are just about the mechanics of site specific development projects. He feels the Airport is already to such a high degree very regional in nature. We need to give the Airport Authority the mechanism to function as a healthy regional authority.

Councilman Newman thanked former-Councilman Bryan Freeborn for serving as Chairman of the Airport Authority. He felt City Council was very fortunate to have a representative from City Council who really brought a huge amount of passion to the Airport and got very actively involved in the Authority. He felt City Council was very well represented by former-Councilman Freeborn.

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

Councilwoman Jones moved for the adoption of Resolution No. 08-17, with the provisions outlined by City Attorney Oast and with the provision that will allow for subleases to extend beyond the term of the lease for up to 60 years. This motion was seconded by Councilman Newman and carried on a 5-2 vote, with Councilwoman Cape and Councilman Mumpower voting "no."

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B. DISCUSSION OF AN APPOINTED VS. ELECTED SCHOOL BOARD

Councilman Mumpower presented Council with the following PowerPoint on weighing the merits of Appointment vs. Election of the Asheville City School Board.

"Candor on current realities (1) the City school system teaches less than half the students living within the City limits - a majority of our City's students attend a county or private school; (2) the annual budget for teaching the system's 3,600 students is $50,000,000 (averages out at $13,500 per pupil expenditure versus $6,600 for Buncombe County system - figures taken off of the School Board's website); (3) the School Board is currently appointed by the Asheville City Council - the Council has no direct governance role with the Board once those appointments are made; (4) the gap in achievement between black and white students is dramatic and persistent - we (parents, communities, elected officials, administrators, etc.) are failing to bridge far too many of our children to a future of hope in an increasingly desperate world; (5) the drop out rate for all our students is approximately 30% - for minority students it's approximately 50%; (6) the impacts of a persisting drug-thug culture in our public housing developments and other vulnerable neighborhoods spills into our schools in both subtle and dramatic ways; and (7) parental involvement with our schools and teachers is marginal.

On the plus side (1) we have a School Board that appears to be dedicated to high standards and the risks of meaningful change efforts; (2) Asheville High graduates some of the best and brightest students in the state; (3) we have teachers, administrators and people with demonstrated concern trying to make things better; and (4) there is incremental progress.

What's wrong with our School System? (1) we are plagued with excessive federal and state bureaucratic controls that limit local initiative and real accountability; (2) consolidation and outside authority has disengaged parents and communities from schools, teachers and students; (3) we have mocked the potentials of our schools by allowing dangerous and corruptive activity in many of our neighborhoods; (4) we continue to pat ourselves on the back while education in America slips further behind our world competitors; and (5) we throw money, programs and rhetoric at our children instead of building the only bridge that has ever worked - relationships.

So what should we be doing differently? (1) we need to persistently confront core issues such as the harmful impact of the drug-thug culture and our open air drug markets; (2) jobs, real jobs, continue to be our best social service. It is my belief that the flood of illegal alien labor has undermined our motivation to motivate, train, and uplift our own citizens - especially minorities; and (3) without high standards and people who care, we will continue to fail many of our children. They know that many of us do not really care and that we would be more involved in protecting them and resisting the harms if we did.

Ninety-four percent of America's school boards are elected (1) greater direct accountability and independence; (2) encourages parents and community investment - it becomes our Board versus theirs; (3) appointed boards are more easily manipulated, politicized, and stacked to support special or selfish interests; and (4) our continued failure to fix our school problems points to a need for urgency and change - electing our School Board members will help illuminate the issues.

In conclusion (1) we are surrendering too many of our children; (2) what we really care about becomes urgent and we fix it; (3) there are evidently far too many people who do not care; (4) electing School Board members illuminates the issues; (5) electing School Board members connects voters; (6) those who are aware and connected tend to care; and (7) those who care are more likely to act.

There is urgency. Electing our School Board members is a place to start."

Councilwoman Jones said both elected and appointed bodies can fail or can succeed. She was sure all of Council wants to fix the achievement gap and improve the dropout rate. If this was an answer, we would all approve it (even though we don't have the authority to make that change). In her research, she found no correlation between governance models regarding improvement in dropout rates or decreasing in achievement gaps. From Councilman Mumpower's presentation, she highlighted relationships. She feels that because of the way Council has chosen School Board members, we do have members that have relationships in the schools and with the children. She cited several examples of those relationships. If the magic is in the relationships, at this moment we have appointed a body that has relationships. That should not be lost. She believed that the general consensus is that appointed bodies, while there may be some political issues involved, contain less politics than elected bodies. What we would lose with an elected board has to do with people's access to serve, because to win you have to raise money. One advantage that we currently have is we are able to, through the appointment process, try to have a diverse group of people, not only in terms of race, but in terms of gender, background, business, non-profits and parents. That is something that can make for a strong board and a board with not only vision but with the common sense to move an agenda forward. There are some good things are happening, but they are not happening fast. She feels it would be bad timing when we do start to see changes and we start to see trust being built to change the structure. While she thinks there is merit to the elected system, she would be hesitant to change, just for the sake of changing. There is no reason to think this change will get us to a better place.

Councilman Russell talked to his family of educators and in every case they were supportive of an elected school board. He did think there is some merit about the community, parents and teachers feeling involved in that process. Some people he has talked with think it is very political to have a group appoint the school board. He personally did not like to run a campaign, but there is a message that comes out in someone's campaign and there is some buy-in for people who vote for you and some added accountability. He would like to think that the community might have a better idea of who they want leading the schools than 7 members of Council.

Councilwoman Cape was aware that the public wants to be involved in this discussion. She wondered what the process would be to engage the community in this question. She feels that the Board we have now is great, but there is something about being on the campaign trail and hearing ideas. She proposed we leave this question in the hands of the community instead of Council.

Councilman Mumpower moved to submit a resolution to our state representatives supporting a change in state law to support election of the Asheville School Board. This motion was seconded by Councilman Russell.

Mr. Al Whitesides, Vice-Chair of the Asheville School Board, spoke about his relationships in the school system. He said that this year, the City School System will celebrate its 121st Anniversary. We have always been in the top of the school systems in the state. The quality of education in Asheville has always been there. We are also fortunate with the diversity of the members. He supports the limited term limits as it takes advantage of the talents in our community.

Mr. Gene Bell, Chairman of the Asheville School Board, said that if Council wants to change to an elected school board based on statistics and success, it will be difficult to argue since we are in the top 2 or 3 in every category in the State of North Carolina. If the issue is the success of the school, 7-8 years ago he made a presentation to Council candidates about having the largest achievement gap in the State of North Carolina. We are one of the most successful school systems in the state, even recognized nationally 5-6 years ago as being one of the best schools in Time Magazine.

Councilwoman Jones was concerned this is a little elite' discussion - something we think the community needs and we're going to impose it. For over a year, she felt that this is a conversation that needed to come from the community forward and even in that absence of coming forward, we talked about it anyway. She doesn't think that that community feels that the way the school board is selected translates into fixing the achievement gap or dropout rate.

Councilman Newman felt there are pros and cons in both models. He was not supportive of this action because (1) he has never heard someone say they support the idea; and (2) that this change will result in changes we want to see happen to the educational institution. Unless there is a community push to change the model, he could not support the motion.

Councilman Mumpower felt this is an exercise in democracy. He felt the cost of a city school board election would be low. He reiterated some of the comments from his presentation. He did agree that we are making incremental progress, which goes up and down, but the base dropout rate statistic has not changed near as significantly as we need it to. He feels that you can successfully manipulate appointed boards because there are 7 people making the decisions and you need only manipulate 4 of those 7. It is much harder to manipulate a community. He does believe that elections will get people involved.

Mayor Bellamy said this discussion was based upon an appointed vs. an elected school board. She could not support the motion. If the true conversation is about the success of all students, then the conversation should be significantly changed. If we really want to help as a Council for our children to be successful, we should be putting a motion forward to increase the dropout age 16 to 17 or 18 years old. We are one of the last remaining states who has 16 as the dropout rate. We should also be supporting the initiatives of the Asheville-Buncombe Education Coalition, who has found out accurate data that mentoring and tutoring is what helps with children. When they come before Council for support through the outside agency process, she hoped we will support those efforts. Council also has the ability to fix our community centers which have become a safe haven for teenagers. That's where we should put our money. When she looks at the success of the school system, she has concerns about African American and White males who are increasingly dropping out, whether they are in city or county schools. The problem is the lack of hope. We can help their parents with better jobs. So when economic development opportunities become before Council, we should support those endeavors. We should help to ensure our students have something to strive for. She hoped that as a Council we would support the City of Asheville Youth Leadership Academy that provides 25 jobs for our youth to strive for over the summer. It should be Council's desire for every youth who wants a job in the summer to have a job. The basic premise that an elected vs. an appointed board will fix all the ills in our school system is flawed. She believes there are other issues that we as a Council should do to help engage our parents and our students (especially our teenagers) in fixing the educational system.

The motion made by Councilman Mumpower and seconded by Councilman Russell failed on a 2-5 vote, with Mayor Bellamy, Vice-Mayor Davis, Councilwoman Cape, Councilwoman Jones and Councilman Newman voting "no."

Mayor Bellamy moved to offer legislation to our state legislators to increase the dropout age from 16 to 17 years old. This motion was seconded by Councilwoman Jones.

City Attorney Oast said that he would like to have a little time to gather more information on this issue before Council adopts this in their legislative package. Therefore, Mayor Bellamy withdrew her motion and pointed out that this is evidence that whenever there is an opportunity to move forward, it doesn't. She hoped that, as a Council, we are really serious about addressing the dropout rate and helping all students succeed. She looked forward to further discussion on this issue as the year progresses and when opportunities come before Council to truly address the issue of achievement with all students.

VI. NEW BUSINESS:

A. RESOLUTION NO. 08-18 - RESOLUTION AUTHORIZING THE CITY TO ENTER INTO AN AGREEMENT FOR DONATION OF REAL PROPERTY ON RIVERSIDE DRIVE FROM PROGRESS ENERGY CORPORATION

ORDINANCE NO. 3580- BUDGET AMENDMENT FOR DONATION OF REAL PROPERTY ON RIVERSIDE DRIVE

City Attorney Oast said that this is the consideration of a resolution authorizing City Manager to enter into agreement for donation of real property on Riverside Drive (formerly Asheville MGP site) and associated budget amendment.

Progress Energy Corporation proposes to donate approximately 8 acres of land (herein "Subject Property") on Riverside Drive to the City of Asheville for use as a park. The Subject Property is located under and to the north and south of the RiverLink Bridge, which connects Clingman Avenue with Haywood Road, crossing the French Broad River. The property lies between the railroad tracks on the east and the river on the west. It is transected by Riverside Drive.

The property is the former site of a manufactured gas plant, and was acquired by Carolina Power & Light Company (now Progress Energy) from Public Service Gas Company. The gas plant was originally operated by Asheville Power & Light Company.

Due to its former use, the Subject Property has been classified as an inactive hazardous substance or waste disposal site under the North Carolina Superfund law. To this end, a "Notice of Inactive or Hazardous Waste Disposal Site," showing the Subject Property and listing the containments found in the soil and groundwater has been recorded in the Buncombe County Registry.

CP&L, now Progress Energy, has been engaged in remedial activities on the property, pursuant to a Remedial Action Plan (herein "RAP") entered into with the State of North Carolina Department of Environment and Natural Resources (DENR). Under the supervision of DENR, remediation is ongoing as to monitoring but has been completed to the extent that DENR has determined that the Subject Property is suitable for non-residential uses, but some activities, such as agriculture, child care centers, schools, and animal lodging, are prohibited. Excavation (less than 3 feet) and groundwater extraction are also prohibited. These restrictions are included in a document on record in the Buncombe County Registry (herein "Use Restrictions").

Effect of State DENR Involvement. When DENR enters into a RAP for an inactive hazardous waste site, the remediation is intended to bring the property back to suitability for some purpose. For reasons that are self-evident, a remediation to the point of suitability for residential (or "unrestricted use") is the highest standard. This rarely occurs with a contaminated site. More frequently, contaminated land is remediated to the point of suitability for non-residential purposes, like the Subject Property has been. Not uncommonly, these properties are turned over to the governments in the jurisdictions where they are located for use as parks, greenways, open space or for other non-developmental purposes.

In carrying out its responsibilities under the law, DENR investigated the Subject Property and detected the presence of toxic substances in the soil and groundwater and, working with CP&L, developed the RAP, which CP&L has voluntarily carried out, and continues to carry out. The point of doing this (besides cleaning the property up), is that, under the law, as long as the property is not used in violation of the recorded restrictions, PEC's, liability for further remediation is limited. If the Subject Property is transferred, the liability of successors in title is similarly limited. As to third parties who might claim some injury from exposure to the hazardous substance, the law does not provide immunity from a legal action, but the fact that the RAP has been complied with would be important.

The RAP survives any transfer, and PEC remains responsible to the State (but not to a subsequent owner) for carrying it out. The RAP for the Subject Property has been substantially completed; monitoring wells remain on the site, and there are reporting requirements. PEC would retain a right to come on the property to perform its duties under the RAP.

Scope / Effect of Agreement. The Agreement that the City is being asked to enter into is essentially an option that gives the City the right for 90 days to perform due diligence for real estate transactions such as surveys, title search, and field inspections. Final transfer of the property to the City is subject to final approval by Council in open session. To this end, the RAP and RAP Final Report will be made available to the City within 5 days of signing the Agreement. The City may terminate the Agreement for reasons related to survey or title, or if it determines that the Property is unsuitable for use as a park, or if final approval by the City is not obtained.

The Parks and Recreation Department has already made a preliminary determination that the Subject Property would be suitable for use in the City's Park system and RiverLink is supportive of the acquisition as well. Due to the size of the property, the anticipated complexity of the title, and the environmental review work that may be necessary to complete the City's "due diligence," a budget amendment in the amount of $15,000 is being requested to proceed with this review.

Pros:

- Adds a key link to the City's parks and greenway system
- Activates a previously unused tract of land in a reviving area of the City
- Low acquisition cost
- Limited liability

Cons:

- Remote potential for future environmental issues to arise
- Limited uses

If we accept the donation we would accept the property subject to some restrictions on the use. Two in particular would be that the donation would be subject not only to Progress Energy being able to go on the site to check monitoring wells and that kind of thing, but also subject to easements that currently exist on the property for things like power lines. Although there are restrictions on excavations deeper than 3 feet (it's not that we can't ever do it if we needed to sink a footing for a pavilion or

something like that), it may be possible to do that with the permission of Progress Energy and the State.

It is recommended that Council authorize the execution of the Agreement, and adopt the budget amendment to fund the City's due diligence.

Councilman Mumpower asked how many of the services being provided by the consultant are we unable to do. City Attorney Oast said that there will be extensive title work that will need to be done to research all the outs for Progress Energy, Public Service Gas Company and Carolina Power and Light Company. We will also need to engage a consultant who will have to do more than the usual Phase I assessment for environmental work.

Vice-Mayor Davis explained his support of these actions and asked City Attorney Oast to determine if the little brick operations building adjoining the property is included in this action (which City Attorney Oast did not think it was).

Mayor Bellamy said this was an important piece of land in the reformation of how the river is growing, as well as the open space that is available for the community. When it comes to the City, we can actually refurbish it and put more eyes on the Jean Webb Park.

Mayor Bellamy said that members of Council have been previously furnished with copies of the resolution and ordinance and they would not be read.

Councilwoman Cape moved for the adoption of Resolution No. 08-18. This motion was seconded by Councilwoman Jones and carried unanimously.

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Councilwoman Cape moved for the adoption of Ordinance No. 3580. This motion was seconded by Councilman Mumpower and carried unanimously.

VII. OTHER BUSINESS:

VIII. INFORMAL DISCUSSION AND PUBLIC COMMENT:

Mr. Reid Thompson said that in June 2006, David Owens, a professor of law and government with the Institute of Government at UNC-Chapel Hill, sent a written report to City Manager Jackson which said, among other things that City staff could not legally allow such modifications. A quasi-judicial hearing with public input would be required before the City could allow alternative compliance. In Owens' words "In North Carolina, a land-use decision that requires application of standards involving judgment and discretion is a quasi-judicial rather than and administrative decision. A quasi-judicial zoning decision cannot be delegated to staff and it requires an evidentiary hearing prior to a decision." When Professor Owens presented his report to Council in August, 2006, City Council accepted the report and said it would work with Greenlife's owners on changes to address complaints the business violated City zoning laws. In January 2007 City Council gave Greenlife 30 days to submit a plan for corrective action. Greenlife failed to meet the deadline, but Council failed to take any action. All Council members took an oath of office to uphold the U.S. Constitution, North Carolina State laws and our local ordinances. Two dollars a square foot is an unrealistic number to convert an office building to a grocery store. Has anyone on Council looked into the possibility that something wrong happened here. Why does Council want to compromise our laws to benefit someone who lied on their application in the first place? The Constitution says we are all created equal under the law.

At the request of Councilman Mumpower, City Attorney Oast said that he would provide Council with the information about the initial permit and if the low dollar figure on the permit was reflective of the restoration.

Councilman Newman thanked Mayor Bellamy for helping bring the Mayor of Detroit, Michigan, to Asheville to speak at the Martin Luther King Jr. breakfast. He said it was one of the most inspiring speakers we have heard in a long time.

At 8:50 p.m., Councilman Mumpower moved to go into closed session for the following reasons: (1) To consult with an attorney employed by the City about matters with respect to which the attorney-client privilege between the City and its attorney must be preserved, including litigation involving the following parties: City of Asheville, BSF Retail & Commercial Operations, LLC, Bonny Wardlaw; and the Asheville City Council. The statutory authorization is contained in G.S. 143-318.11(a)(3); (2) To discuss matters relating to the location or expansion of industries or other businesses in the area served by the City Council, including agreement on a tentative list of economic development incentives that may be offered in negotiations, provided that any action authorizing the payment of economic development incentives will occur in open session. The statutory authority is contained in G.S. 143-318.11(a)(4); and (3) To establish or to instruct the City's staff or negotiating agents concerning the position to be taken

by or on behalf of the City in negotiating the terms of contracts for the acquisition of real property by purchase, option, exchange or lease. The statutory authorization is contained in G.S. 143-318.11(a)(5). This motion was seconded by Vice-Mayor Davis and carried unanimously.

At 9:27 p.m., Councilwoman Cape moved to come out of closed session. This motion was seconded by Vice-Mayor Davis and carried unanimously.

IX. ADJOURNMENT:

Mayor Bellamy adjourned the meeting at 9:27p.m.

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CITY CLERK MAYOR