

Tuesday – October 9, 2018- 5:00 p.m.

Regular Meeting

Present: Mayor Esther E. Manheimer, Presiding; Vice-Mayor Gwen C. Wisler; Councilman Brian D. Haynes; Councilwoman Julie V. Mayfield; Councilwoman Sheneika Smith; Councilman W. Keith Young; Acting City Manager Cathy Ball; Interim City Attorney Sabrina Rockoff; and City Clerk Magdalen Burleson

Absent: Councilman Vijay Kapoor

**PLEDGE OF ALLEGIANCE**

Mayor Manheimer led City Council in the Pledge of Allegiance.

**I. PROCLAMATIONS:**

**A. PROCLAMATION OCTOBER 6, 2018, IN MEMORY OF MARIE COLTON**

Mayor Manheimer read the proclamation proclaiming October 6, 2018, in memory of Marie Colton. She presented the proclamation to Elizabeth Colton; and Marie Colton Woodard and her husband Dave Woodard.

**II. CONSENT AGENDA:**

**A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON SEPTEMBER 25, 2018**

**B. SECOND AND FINAL READING OF ORDINANCE NO. 4685 - ORDINANCE GRANTING A FRANCHISE AGREEMENT TO TUK IT, LLC, FOR THE OPERATION OF AN ELECTRIC VEHICLE SHUTTLE SERVICE WITHIN THE CITY OF ASHEVILLE**

Summary: The consideration of an ordinance granting a franchise agreement for the operation of an electric vehicle shuttle service within the City of Asheville.

Staff has been working with an individual that is interested in starting an electric vehicle shuttle service within the City of Asheville under the business name of Tuk It, LLC that would operate in the Central Business District, Biltmore Village, the River Arts District, and the Historic Montford District. The shuttle service can only use public streets that have a speed limit of 35 mph or lower. Service stops may not exceed three minutes on any public right-of-way, except as necessary to embark and disembark passengers, or with the written permission of the City Traffic Engineer. All service stops shall be made in a way to minimize any possible disruption to the flow of vehicular traffic. Loading/unloading zones may be used for service stops but actual travel lanes should not be used.

The shuttle service will provide various tours throughout the service area for individuals, groups, and special events. They will also provide transportation services for participating hotels and businesses for their guests in an effort to minimize traditional vehicle travel within the service area. The hours of operation are Monday through Wednesday 10:00 am until 9:00 pm and Thursday through Sunday 10:00 am until midnight. Typically, each vehicle will provide one tour on Mondays and Tuesdays, two tours on Wednesdays, three tours on Thursday, and four tours on Fridays, Saturdays, and Sundays.

A total of three fully electric vehicles will be available with a maximum capacity of six passengers plus the driver per vehicle. The vehicles are manufactured in the United States and they are US DOT compliant and street legal. The vehicles are registered and “tagged” by the North Carolina Division of Motor Vehicles.

The business owner understands and acknowledges that he/she will comply with all applicable Federal, State, and local laws in the operation of its business including, but not limited to, the City of Asheville open container ordinance, and the State of North Carolina Alcoholic Beverage Control (ABC) laws. In addition, the business owner understands and acknowledges that third-party advertising is not allowed on the outside of the vehicles.

The Asheville Police Department and the Transportation Department have reviewed all of the information that has been provided by the owner and we believe that the shuttle service will not have a negative impact on efficient traffic flow or safety.

Approval of a franchise agreement requires action by City Council at two official meetings with the first meeting on July 24, 2018, and the second meeting on October 9, 2018.

The Public Safety Committee reviewed this franchise agreement on July 2, 2018, and they unanimously endorsed it to move forward to City Council for consideration and approval. The committee members expressed concern about the possibility of alcoholic beverages onboard and according to the business owner, there are no plans on alcohol being consumed on the vehicles.

The MultiModal Transportation Commission reviewed this franchise agreement on September 26, 2018, and they recommended that it move forward to City Council for the second and final reading provided clarifying language was added to the section in the agreement regarding stops and parking. This language has been added to the agreement.

Pros:

- Provides various tours within the Central Business District, Biltmore Village, the River Arts District, and the Historic Montford District which could relieve and/or minimize traffic congestion.
- Provides transportation services for hotels and retail businesses which should relieve and/or minimize traffic congestion.

Con:

- There are no known cons.

There is no known fiscal impact for the subject franchise agreement.

Staff recommends that City Council approve an ordinance granting a franchise agreement to Tuk It, LLC for the operation of an electric vehicle shuttle service within the City of Asheville.

#### **ORDINANCE BOOK NO. 32 - PAGE 165**

- C. RESOLUTION NO. 18-254 - RESOLUTION PROPOSING TO ACCEPT/APPROVE LEASE AGREEMENTS WITH THE N.C. DEPT. OF PUBLIC SAFETY, DIVISION OF LAW ENFORCEMENT, STATE HIGHWAY PATROL, FOR ANTENNAS AND EQUIPMENT FACILITY SPACE AT 130 RESERVOIR ROAD AND PEACH KNOB DRIVE, AND AUTHORIZING THE CITY MANAGER TO EXECUTE THE LEASE AGREEMENTS**

Summary: The consideration of a resolution proposing to accept/approve lease agreements with N.C. Dept. of Public Safety, Division of Law Enforcement, State Highway Patrol, for antennas and equipment facility space at 130 Reservoir Road and Peach Knob Drive, and authorizing the City Manager to execute the lease agreements.

The property at 130 Reservoir Road known as White Fawn Reservoir is on a knoll at the western end of the Beaucatcher Mountain ridge. It has exceptional range for telecommunication with approximately 300° coverage from northeast to west to southeast. Two telecommunication towers are located on the property and the City of Asheville leases antenna space on the towers and ground space for related equipment.

The lower tower has recently been rebuilt to allow for greater equipment loading. The N.C. Dept. of Public Safety has proposed a reciprocal facility sharing agreement whereby the State would operate a NC Highway Patrol radio site at the City's new tower at Lower White Fawn. The State would likewise provide the City with equipment space in their new facility to be located at the base of the tower, and provide the City space for equipment and tower antennas at their Meadows Mountain facility at Peach Knob Drive. The proposed Lease Agreements are based on the following terms:

- Per the proposed lease agreements, the City and State would utilize each other's radio tower sites for a term of 30 years with a total payment of \$1 per lease.

Pros:

- New Highway Patrol VIPER Radio site will serve as a redundant radio system for Police and Fire Departments.
- Long term commitment from NC Highway Patrol will insure future public safety inter-agency coordination and communication in the region.

Con:

- None noted

City staff recommends City Council adopt the resolution proposing to accept/approve the leases with the N.C. Dept. of Public Safety, Division of Law Enforcement, State Highway Patrol, and authorizing the City Manager to execute the lease agreements.

Ms. Jan Howard Kubinek, resident on Reservoir Road, was concerned about adding additional traffic on Reservoir Road.

#### **RESOLUTION BOOK NO. 40 - PAGE 151**

#### **D. RESOLUTION NO. 18-255 - RESOLUTION APPROVING A TACTICAL URBANISM PROJECT ALONG COXE AVENUE BETWEEN HILLIARD AND SOUTHSIDE AVENUES AND AUTHORIZING THE CITY MANAGER TO EXECUTE AN AGREEMENT WITH ASHEVILLE ON BIKES FOR THE PROJECT**

Summary: The consideration of a resolution to approve a tactical urbanism project along Coxe Avenue between Hilliard and Southside Avenues, that seeks to enhance the public realm and improve multi-modal transportation safety in the South Slope and authorize the City Manager to execute an agreement for the project.

Last Fall, the city was approached by Asheville on Bikes and Blue Ridge Bicycle Club to consider implementing a Tactical Urbanism project in the City of Asheville. Tactical Urbanism projects aim to make temporary active transportation infrastructure enhancements on a street in

an effort to demonstrate possible long-term multimodal infrastructure improvements. These two groups raised funds to hire a consultant, have a community process and build an installation. Since that time, their partnership, which is known as the Street Tweaks Partnership (STP), has grown to include AARP, and conversations with City staff have led the team to select Coxe Avenue (between Southside Avenue and Hilliard Avenue) for the project.

This past summer, there was a design workshop held on June 21st to look at possible reconfigurations of Coxe Avenue for the project build. After the consultant took community feedback and did some analysis, they returned in August and presented refined designs for additional input. A wider meeting with relevant city department representatives happened in August as well.

Throughout the process both Planning and Transportation Department staff have been closely involved with the project. Since the design has been finalized, additional meetings with key Public Works staff have taken place to ensure that the project is feasible and supportable by their departments with respect to maintenance.

The proposed design for the tactical urbanism project includes extending the curb line on both sides of the street through the use of paint and adding small delineators called “armadillos” as guidance to clearly separate the spaces identified for pedestrians/bicycles as separate from automobile parking areas. Additionally, there will be vertical delineators and planters to further clarify spaces and to add safety. The design also includes reducing oversized driveways for some parcels. Mike Sule, Executive Director of Asheville on Bikes, has been in contact with property owners to let them know about the project and how it might impact them. Lastly, part of the design is the inclusion of a street mural between Banks and Buxton Avenues and in the middle of the intersection of Hilliard Avenue and Coxe Avenue.

This design builds on the work that has already been done by city staff and the community in the South Slope process. Moreover, the exciting part of this project is the opportunity to build an alternative and test it in real life to see how it works. Due to the temporary materials, adjustments can be made to the design if needed. While the project is in place, staff will begin working with a consultant to plan the long-term re-design for Coxe Avenue. In the meantime, staff will also be pursuing funding of construction dollars to rebuild the street. The installation date is scheduled for November 1-4, 2018 and includes volunteers from the community.

An agreement has been developed for the project. In the agreement, responsibilities are outlined for both the city and Asheville on Bikes (on behalf of the Street Tweaks Partnership). The city is primarily responsible for maintenance of the street, and Asheville on Bikes will be providing supplementary maintenance and monitoring. Asheville on Bikes will inspect quarterly for debris, litter and other maintenance needs. Staff and the partners will meet regularly to evaluate the project and ensure that it continues to be effective and safe. The intent is for the installation to be in place until it is time to reconstruct the street unless both parties agree that it needs to be removed.

The Planning & Economic Development Committee reviewed this project on July 23, 2018, and recommended that it move forward to City Council for review and approval. Also, the Finance & Human Resources Committee reviewed this project on September 25, 2018, and unanimously recommended that it move forward to City Council for review and approval.

Pros:

- Provides an opportunity for the city and community to work on a project together.
- Should provide a safer experience for all modes of active transportation.
- Provides an opportunity to test out ideas being proposed in the South Slope Vision Plan.

- Design and installation funds provided by private sources.

Cons:

- City is responsible for typical street maintenance including snow removal activities.
- City is responsible to provide before and after traffic counts.
- City is responsible to provide general assistance including staff time.

The Street Tweaks Partnership has raised \$150,000 to fund the design and building of this project. The city has not contributed any funding to this process, but there are in-kind contributions in the form of staff time, traffic counts and general assistance.

Staff recommends that City Council adopt a resolution to approve a tactical urbanism project along Coxe Avenue between Hilliard and Southside Avenues, that seeks to enhance the public realm and improve multi-modal transportation safety in the South Slope and authorize the City Manager to execute an agreement for the project.

Councilwoman Mayfield said that in our ongoing effort to advance good bike and pedestrian infrastructure and safety, she supported this great strategy that has been used in other communities.

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**E. RESOLUTION NO. 18-256 - RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE A CHANGE ORDER TO INCREASE THE ENGINEERING DESIGN SERVICES CONTRACT WITH CDM SMITH FOR THE 2015 NEIGHBORHOOD ENHANCEMENT AREA 3 PROJECTS**

Summary: The consideration of a resolution authorizing the City Manager to execute a change order in the amount of \$160,000 to increase the engineering design services contract for CDM Smith from \$672,572 to \$832,572 for the 2015 Neighborhood Enhancement Area 3 Projects.

Through a qualifications based selection process for engineering services, the City of Asheville selected four engineering firms to provide on-call professional services for Water Distribution and Storage Projects. CDM Smith was one of the selected firms and the City of Asheville entered into a master agreement with them on May 27, 2015, for On-Call Professional Services for Water Distribution and Storage Projects. On November 10, 2015, City Council awarded the engineering design services contract to CDM Smith for the 2015 Neighborhood Enhancement Area 3 Projects.

The contract originally consisted of a survey, a hydraulic analysis, engineering design, construction administration, and other related professional services for approximately 26,500 Linear Feet (LF) of predominately 6 and 8-inch water main and appurtenances along various streets within the Kenilworth and Malvern Hills neighborhoods. Additionally, the project included approximately 1,000 LF of new 30-inch water main along Tunnel Road near the Kenilworth neighborhood.

The original project scope of work assumed a single construction bid package combining the 6 and 8-inch water main replacements in the Kenilworth and Malvern Hills neighborhoods with the 30-inch water main improvements along Tunnel Road. During preliminary design development, it was determined that special and previously unknown conditions for the proposed 30-inch water main would have to be addressed, greatly increasing the complexity of the design. The special conditions that were found required a change in the design scope consisting of: (1)

an additional 200 LF of 30-inch water main; (2) relocation of 200 LF of existing 24-inch water main; (3) adjusting the proposed alignment of the proposed 30-inch waterline into and under NCDOT-maintained Tunnel Road; (4) revising the original plan of removing an existing abandoned bridge over Ross Creek to create the pipe corridor to utilizing the bridge for both the 30 and 24-inch crossing of Ross Creek; and (5) the addition of specialized thrust / surge analysis to determine pipe restraint needs and (6) additional design parameters related to having to install the new water mains significantly deeper than typical to avoid existing conflicts. As a result of the additional time and money needed for the development of the 30-inch water main design, Water Resources staff requested that the overall project be phased in order to keep the replacement of the water infrastructure in the Kenilworth and Malvern Hills neighborhoods on schedule. Thus, the 30-inch water main project on Tunnel Road became NEP 3 Phase 2 and the Kenilworth and Malvern Hills neighborhoods piece of the project is referred to as NEP 3 Phase 1. Additionally, this created the need for a separate construction bid package and a duplication of professional services for the development of the bid packages for Phase 1 and Phase 2 projects.

Originally, it was planned that all areas of the construction for the singular project, prior to the requested phasing, would occur simultaneously. This would have allowed for a shortened time period for the professional services contracted task of construction administration and construction observation, resulting in cost savings due to the maximized effort. Additionally, the previously noted alignment change for the 30-inch water main into and under NCDOT maintained Tunnel Road required revised Encroachment Agreements with NCDOT. This change ultimately resulted in a requirement from NCDOT for construction of the water main within all NDDOT right-of-way to occur at night. This requirement to work at night and the schedule change associated with constructing it as a separate project from NEP Phase 1 substantially increased the required construction administration and observation services during construction.

Construction of NEP 3 Phase 1 has reached Final Completion stages, with Record Drawing preparation extending into late October. The NEP 3 Phase 2 construction contract was awarded in April 2018 and a Notice to Proceed (NTP) was established by the City on August 27, 2018. CDM Smith has been tracking the aforementioned scope changes and invoicing for additional design and construction services as incurred. With the NTP for NEP 3 Phase 2 now established, the full impact to the scope, timeline and overall NEP 3 budget has been determined. It is summarized as an increase in time of six months for the construction services task, which results in the need for an additional \$160,000. This will fund all of the additional design services previously completed and the cost of additional time to provide construction-related services. Therefore, a change order is needed to increase the contract amount by an additional \$160,000 for a revised total contract amount of \$832,572.

Pros:

- Approval of the change order will allow the city to complete the engineering services for the entire project.
- This project is aligned with the City and the WRD goal of continued investment and improvement of the City's water system through Capital Improvement Projects in order to provide safe and reliable service.

Con:

- Failure to approve the change order would prevent the completion of the water system improvements.

The funding needed for the construction agreement is currently allocated within the 2015 NEP Area 3 project in the Water Resources Capital Improvement Projects fund.

Staff recommends City Council adopt a resolution authorizing the City Manager to execute a change order in the amount of \$160,000 to increase the engineering design services contract for CDM Smith from \$672,572 to \$832,572 for the 2015 Neighborhood Enhancement Area 3 Projects.

Acting City Manager Ball said that questions have been raised about Mr. Wiseman working with CDM Smith and the City's interactions with Mr. Wiseman. CDM Smith has approximately 5,000 employees, and the City of Asheville has not had any interaction with Mr. Wiseman when he worked for CDM Smith. The work that we are proposing does not include any work with Mr. Wiseman. We have been able to work with CDM Smith successfully in the past and have procured those services according to state statutes.

**RESOLUTION BOOK NO. 40 - PAGE 153**

**F. RESOLUTION NO. 18-257 - RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE A CONTRACT WITH PATTON CONSTRUCTION GROUP, INC. FOR THE SKYVIEW PLACE RETAINING WALL**

Summary: The consideration of a resolution authorizing the City Manager to execute on behalf of the City of Asheville a contract in the amount of \$575,270 plus a contingency of 15.0% (\$86,290) with Patton Construction Group, Inc. for the project known as Skyview Place Retaining Wall.

This contract covers the construction of a retaining wall between Skyview Place and Sunset Terrace to repair a slope failure caused by excessive runoff.

The existing retaining wall was built in two phases to correct two separate slope failures. The new wall will be a approximately 160 feet long extension of the existing wall. This contract also includes the extension of the existing storm drainage system on Skyview Place. This extension will reduce the amount of runoff this slope will see in the future.

The project was advertised on August 16, 2018, and bids were opened on September 20, 2018, with the following results:

Patton Construction Group, Inc. of Asheville, NC	\$575,270
Thomas Construction Company of Johnson City, TN	\$856,835
Wright Brothers Construction of Charleston, TN	\$903,576
Buchanan and Sons of Whittier, NC	\$1,034,554

A 15.0% contingency (\$86,290) has been added to allow payment for any unforeseen costs that typically arise during projects.

Pros:

- Will repair a slope failure and allows the City to reopen Skyview Place.
- Will extend the existing storm drain system and help prevent runoff from hitting the slope.

Con:

- Project management and contract administration will consume staff time.

Funding for this project is already included in the adopted Capital Improvement Program (CIP).

City staff recommends City Council adopt the resolution awarding the contract to Patton Construction Group, Inc.. and authorizing the City Manager to execute a contract in the amount of \$575,200 plus a contingency of \$86,290 (15.0%) for the Skyview Place Retaining Wall.

**RESOLUTION BOOK NO. 40 - PAGE 154**

**G. RESOLUTION NO. 18-258 - RESOLUTION TO ESTABLISH AN EQUITY-BASED VISION ZERO TASK FORCE TO REDUCE THE NUMBER OF TRAFFIC-RELATED FATALITIES AND SEVERE INJURIES OCCURRING IN ASHEVILLE**

Summary: The consideration of a resolution endorsing and authorizing the City Manager to direct staff to form an Equity-Based Vision Zero Task Force that would work on establishing strategies and policies to help reduce the number of traffic-related fatalities and severe injuries occurring in Asheville.

According to the N.C. Dept. of Transportation (NCDOT), Asheville is consistently ranked as a top crash city in North Carolina, with approximately 5,000 crashes and 10 fatalities in the city every year. The costs associated with fatalities alone is estimated to be close to \$100 million per year. These facts contrast with City Council's long-term Vision that transportation in the city should be reliable and safe.

Recognizing the need to improve the safety of Asheville's streets for all users, the City's adopted Asheville in Motion (AIM) recommended the the City pursue the adoption of a Vision Zero policy and strategies. Vision Zero is a transportation safety philosophy developed in Sweden in the late 1990s to eliminate traffic fatalities and serious injuries. The core principles of Vision Zero are the following: 1) Traffic deaths and severe injuries are acknowledged to be preventable, 2) Human life and health are prioritized within all aspects of transportation systems, 3) Acknowledgement that human error is inevitable, and transportation systems should be forgiving, 4) Safety work should focus on systems-level changes above influencing individual behavior, and 5) Speed is recognized and prioritized as the fundamental factor in crash severity.

More recently, cities across the US who have implemented Vision Zero initiatives have recognized that an important first step to building a successful Vision Zero program is to establish a leadership team that is diverse and representative of the wide array of interests and communities involved in order to ensure that an equity-based approach is front and center, as data confirms that economically-challenged and minority groups bear a disproportionate burden of traffic violence.

At the Multimodal Transportation Commission's April 2018 meeting, the Commission recommended that the Public Safety Committee ask Council to consider establishing a Vision Zero Task Force, as well to "establish safety as the primary goal for projects on City streets." However, today's request seeks only to establish a Vision Zero Task Force, which will be charged with developing a Vision Zero policy(ies) and strategies with the support of staff, and which will be brought forward for Council consideration at a future date.

It is envisioned that the Task Force could include representatives from (but not limited to) the Multimodal Transportation, Neighborhood Advisory, and Human Relations Commissions; members of the Citizens Police Advisory, Transit, Greenway, and Homeless Initiative Advisory Committees; representatives of non-profit organizations, such as Just Economics, Asheville On Bikes, Pisgah Legal, and Disability Partners; as well as others from health, school, and business sectors. Transportation Staff will work with the Multimodal Commission to further develop and refine the list and reach out to potential Task Force members.

During the first 6 to 12 months, the Task Force would likely achieve the following activities (with staff support):

1. Creation of vision, goals, objectives
2. Identification of data needs and gaps (crash statistics, locations, contributing crash factors, etc.), including assembling data and information so that it can be easily understood and viewed by the Task Force and the public
3. Compilation and review of existing/current City activities related to traffic-safety (i.e. existing bike/ped committees/actions, TRC project review, budget prioritization of capital projects, UDO regulations, City Standards and Specifications, educational initiatives, NCDOT programs and practice, etc.)
4. Possible focus groups/public input opportunities related to transportation safety concerns/needs to seek broad-based input
5. Development of communication strategies, including what Vision Zero is and what it is not, and how equity will be addressed, including related marketing campaigns to inform the public

These activities are not expected to result in a direct fiscal impact to the City budget with the exception of staff time and existing resources. Following these initial steps, the Task Force would identify areas of concern and develop a Vision Zero Action Plan, including strategies and action steps to improve traffic-related safety, which may or may not involve budget impacts that would be taken to the City Council for consideration.

While Transportation will serve as the lead for the effort, it is expected that additional City departments/divisions will be involved in supporting and providing information to the Task Force, including Equity and Inclusion, Public Works, Planning, Sustainability, Risk Management, Asheville Police and Fire Departments, and Communications and Public Engagement.

This action was reviewed by the Planning and Economic Development Committee on November 21, 2017, and by the Public Safety Committee on August 28, 2018, and both committees recommended that it move forward to City Council for review and approval.

Pros:

- Will lead to an equity-based traffic-safety initiative
- Will lead to reductions in the number of severe injuries and deaths in Asheville
- Will reduce public costs as the number of crashes declines over time
- Make Asheville a safer, more livable community

Con:

- Staff time will be used to develop and support the ongoing efforts of the Task Force

There will be no impact to the City budget except current staff time and existing resources that would be used to develop and support the efforts of the Task Force.

Staff recommends that City Council adopt a resolution endorsing and authorizing the City Manager to direct staff to form an Equity-Based Vision Zero Task Force that would work on establishing strategies and policies to help reduce the number of traffic-related fatalities and severe injuries occurring in Asheville.

Councilwoman Mayfield said that in our ongoing effort to advance good bike and pedestrian infrastructure and safety, she supported this Task Force as it's a first step in the right

direction to make our City safety for everyone.

Mr. George Webb, spoke in favor of this Task Force and with his experience and background he hoped that he could be appointed to this Task Force.

**RESOLUTION BOOK NO. 40 - PAGE 155**

**H. RESOLUTION NO. 18-259 - RESOLUTION AUTHORIZING THE CITY MANAGER TO AMEND THE CONTRACT WITH 21ST CENTURY PC SOLUTIONS LLC FOR THE PURPOSE OF TRAVEL FOR THEIR PRESENTATION OF FINDINGS FOR THEIR FINAL SITE VISIT ON AUGUST 28, 2018**

Summary: The consideration of a resolution authorizing the City Manager to execute an amendment to the contract with 21st CP Solutions, LLC.

The City of Asheville entered into a contract with 21CP Solutions, LLC on April 12, 2018, to review the Hickman incident and make recommendations to APD and to Council. The original contract was \$87,500. Due to the timing of the consultants' trips to Asheville and how those coincided with City Council meetings, an additional trip was added for two of the 21CP consultants to return to Asheville for a public presentation of findings and recommendations. Additional funding is needed to pay for travel expenses for the additional trip to present to City Council on August 28, 2018.

Pro:

- In addition to having 21 CP Solutions present findings and recommendations to the APD and to Council, the report from 21 CP Solutions was also presented to the Council in a public meeting.

Con:

- None identified.

The additional \$5,000 in funding for this contract will come from the existing Police Department budget.

City staff recommends City Council adopt a resolution authorizing the City Manager to amend the 21CP Solutions Contract to include payment for the presentation that occurred at the August 28, 2018 Council meeting.

**RESOLUTION BOOK NO. 40 - PAGE 156**

**I. RESOLUTION NO. 18-260 - RESOLUTION DEDICATING A SECTION OF HAYWOOD ROAD IN MEMORY OF ROB BINGAMAN**

Summary: Announcement of a request to dedicate a section of Old Haywood Road near the Traffic Safety Unit Office in memory of Sr. APD Officer Robert Bingaman.

The Asheville Police Department is proposing to dedicate a section of Old Haywood Road near the Traffic Safety Unit Office in memory of Sr. APD Officer Robert Bingaman.

On Tuesday, October 29, 2013, the City tragically lost a member of the Asheville Police Department family in the line of duty. Officer Bingaman was driving across the French Broad River when the patrol vehicle he was driving left the Captain Jeff Bowen Bridge. Despite the

great efforts of emergency personnel and APD officers who responded to the scene, Officer Bingaman succumbed to his injuries. He honorably served his country as a member of the Marine Corps and his city as a well respected police officer.

Pursuant to the City's policy on naming public property, suggestions for the naming of any public property or portion thereof may come to the Council from any City of Asheville Department Director or official. The Asheville Police Department and the Fraternal Order of Police have brought this request to the council for consideration.

The fiscal impact would be \$500 for signage to dedicate portion of the street. This is included in the Transportation Department's operating budget.

Staff recommends City Council approve the dedication of a section of Old Haywood Road near the Traffic Safety Unit Office in honor of Sr. APD Officer Robert Bingaman.

### **RESOLUTION BOOK NO. 40 - PAGE 157**

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

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

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

#### **A. UPDATE ON COMMUNITY EMT PROGRAM**

Assistant Fire Chief Barry Hendron said that the Community EMT Program goals are as follows: (1) To enhance the safety of the public in the Central Business District and South Slope; (2) To build relationships with the people in the downtown and south slope areas including business owners; (3) Improve patient outcomes for medical emergencies in the designated areas by having firefighters actively engaging with community members; (4) Gather information and data to help inform future programs and possible solutions; and (5) Help to gather data for First Due Size Up pre-planning system.

The program overview consists of 16 days in service; 117 Interactions; 2 - 2 person teams; days of operation; and hours of operation.

Interactions are classified in 4 Main Categories:

- Assistance - 30%
- Outreach - 62%
- Interaction with Business Owner - 3%
- Interaction with Concerned Member of Public - 4%

He then reviewed the coverage area and interactions.

Overall costs include \$7,000 labor; and \$5,000 equipment - Bikes, EMS Equipment, and Uniforms.

He said they have had a very fruitful initial meeting with the BeLoved street medics earlier this week where they discussed further opportunities to collaborate and work together as a group. The City's Homeless Program Manager Brian Huskey did an excellent job of facilitating the

meeting and they are planning to meet again soon.

He shared with Council the resources they use along with the challenges of consistent staffing and weather.

Mr. Hendron responded to various questions from Mayor Manheimer concerning staffing and cost sharing.

Mayor Manheimer hoped that as this pilot program continues, that the teams will have an opportunity to build relationships with the business owners as well.

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

##### **A. PUBLIC HEARING TO PERMANENTLY CLOSE AN UNOPENED RIGHT-OF-WAY KNOWN AS SMATHERS LANE**

##### **RESOLUTION NO. 18-261 - RESOLUTION TO PERMANENTLY CLOSE AN UNOPENED RIGHT-OF-WAY KNOWN AS SMATHERS LANE**

Interim City Attorney Rockoff recused herself from this matter due to a conflict of interest. Senior Assistant City Attorney Jannice Ashley was seated for this discussion.

Public Works Director Greg Shuler said that this is the consideration of a resolution to permanently close an unopened right-of-way known as Smathers Lane. This public hearing was advertised on September 14, 21, 28 and October 5, 2018.

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

Pursuant to this statute, adjoining property owner, Duke Energy, owner of parcel 9648-19-0490, has requested the City of Asheville to permanently close an unopened r/w known as Smathers Lane.

The Multimodal Transportation Commission reviewed this request at their May 23, 2018, meeting and recommended approval of the closure.

On August 28, 2018, the City Council adopted a resolution of intent to permanently close the right-of-way and calling for a public hearing on said closure for October 9, 2018. Copies of the resolution of Intent were properly served and posted, in accordance with N.C. General Statute 160A-299.

#### Pros:

- There will be no future compromise of ingress/egress to other property
- The closure would allow for more efficient use of the existing adjacent properties
- Meets Council's goals to promote sustainable high density infill growth that makes efficient use of existing resources

#### Con:

- None

There will be no fiscal impact related to this closure.

City staff recommends City Council adopt a resolution ordering the permanent closure of an unopened right-of-way known as Smathers Lane.

Mayor Manheimer opened the public hearing at 5:31 p.m.

Mr. Robert Oast, attorney for the applicant, spoke in support of the street closure and asked for Council's support.

Mayor Manheimer closed the public hearing at 5:32 p.m.

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

Vice-Mayor Wisler moved for the adoption of Resolution No. 18-261. This motion was seconded by Councilman Young and carried unanimously.

**RESOLUTION BOOK NO. 40 – PAGE 158**

**B. PUBLIC HEARING TO PERMANENTLY CLOSE AN UNOPENED RIGHT-OF-WAY LOCATED NEAR THE INTERSECTION OF HENDERSONVILLE ROAD AND SWEETEN CREEK ROAD**

**RESOLUTION NO. 18-262 - RESOLUTION TO PERMANENTLY CLOSE AN UNOPENED RIGHT-OF-WAY LOCATED NEAR THE INTERSECTION OF HENDERSONVILLE ROAD AND SWEETEN CREEK ROAD**

Interim City Attorney Rockoff recused herself from this matter due to a conflict of interest. Senior Assistant City Attorney Jannice Ashley was seated for this discussion.

Public Works Director Greg Shuler said that this is the consideration of a resolution to permanently close an unopened right of way located near the intersection of Hendersonville Road and Sweeten Creek Road. This public hearing was advertised on September 14, 21, 28 and October 5, 2018.

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

Pursuant to this statute, adjoining property owner, Dena Yamalis, owner of parcels 9654-40-6970 and 9654-40-6803, In addition 2506 Hendersonville Rd LLC, owner of parcel 9654-40-6526,, has requested the City of Asheville to permanently close an unopened r/w near the intersection of Hendersonville Road and Sweeten Creek Road.

The Multimodal Transportation Commission reviewed this request at their May 23, 2018, meeting and recommended approval of the closure.

On August 28, 2018, the City Council adopted a resolution of intent to permanently close the right of way and calling for a public hearing on said closure for October 9, 2018. Copies of the resolution of Intent were properly served and posted, in accordance with N.C. General Statute 160A-299.

Pros:

- There will be no future compromise of ingress/egress to other property
- The closure would allow for more efficient use of the existing adjacent properties
- Meets Council's goals to promote sustainable high density infill growth that makes efficient use of existing resources

Con:

- None

There will be no fiscal impact related to this closure.

City staff recommends City Council adopt a resolution ordering the permanent closure of an unopened right-of-way near the intersection of Hendersonville Road and Sweeten Creek Road.

Mayor Manheimer opened the public hearing at 5:32 p.m.

Mr. Robert Oast, attorney for the applicant, spoke in support of the street closure and asked for Council's support.

Mayor Manheimer closed the public hearing at 5:33 p.m.

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

Councilwoman Mayfield moved for the adoption of Resolution No. 18-262. This motion was seconded by Councilman Young and carried unanimously.

#### **RESOLUTION BOOK NO. 40 – PAGE 160**

#### **C. PUBLIC HEARING TO CONSIDER THE CONDITIONAL ZONING OF 28 AND 32 MAXWELL STREET FROM RM-8 RESIDENTIAL MULTI-FAMILY MEDIUM DENSITY DISTRICT TO LODGING EXPANSION/CONDITIONAL ZONE TO ALLOW SHORT-TERM VACATION RENTAL USE AND AN AMENDMENT TO THE FUTURE LAND USE MAP TO CHANGE 28 AND 32 MAXWELL STREET FROM TRADITIONAL NEIGHBORHOOD TO TRADITIONAL CORRIDOR**

Councilman Young moved to recuse Mayor Manheimer from this matter due to a conflict of interest. This motion was seconded by Vice-Mayor Wisler and carried unanimously. At this time, she handed over the gavel to Vice-Mayor Wisler to preside over this matter and left the meeting room.

Urban Planner Jessica Bernstein said that this is the consideration of conditionally zoning 28 and 32 Maxwell Street from RM-8 Residential Multi-Family Medium Density District to Lodging Expansion/Conditional Zone to allow short-term vacation rental use. In addition, this will also require an amendment to the Future Land Use map to change 28 and 32 Maxwell Street from Traditional Neighborhood to Traditional Corridor. This public hearing was originally scheduled for public hearing on August 28, 2018, and advertised on August 17 and 24, 2018; however, on August 28, 2018, this public hearing was continued to this date.

Ms. Bernstein said that the applicant is requesting review of a conditional zoning to allow short-term vacation rental (STVR) use for two properties located at 28 and 32 Maxwell Street with a zoning change from Residential Multi-Family Medium Density District (RM-8) to Lodging Expansion (LODG EXP) District. This project is considered under conditional zoning pursuant to Sections 7-7-8 and 7-8-45 of the Unified Development Ordinance (UDO). Pursuant to a recent

amendment to N. C. Gen. Stat. sec. 160A-383, an approval of the rezoning request would result in an amendment to the Future Land Use Map, from Traditional Neighborhood to Traditional Corridor.

The subject properties (PINs 9649-33-4037 & 9649-33-4069) are currently owned by Parkway Court, LLC; the petitioner/project contact is Joe Minicozzi.

The project site consists of two properties located at 28 and 32 Maxwell Street. The parcels are 0.12 and 0.09 acres respectively and both are developed with two-story single-family home structures (ca. 1920). The sites front onto Maxwell Street and are currently zoned RM-8, as are properties to the north, east and west, which are occupied by residential and office uses. Across Maxwell Street to the south are commercial and residential uses, zoned Community Business II and Neighborhood Commercial District. There are a number of legally-permitted homestays in the immediate neighborhood.

The applicant is proposing to rezone the properties to allow short-term vacation rental use (STVR) as well as the flexibility for the units to be rented as long-term residential uses. Per the applicant at the Technical Review Committee (TRC) meeting the structure at 28 Maxwell Street is currently operating as a triplex with three one-bedroom units; 32 Maxwell Street contains one unit at this time but the applicant requests to increase the building to house three units, for a total of six units between the two properties. This would be an increase in the allowed density for the lot area at number 32, which would only be permitted to have one unit by-right under the current zoning.

At the Planning & Zoning Commission hearing, the applicant offered a condition that one of the six units (the ground-floor unit in 32 Maxwell) would be rented long-term and the other five would be available for STVR use.

There is an existing driveway easement running between the two structures that can provide parking for two vehicles. Sidewalks and on-street parking exist along Maxwell Street; however, the parking is residential-permit only and not for commercial use and therefore would not be open to users of the STVR units under the current policy.

Based on the number of bedrooms proposed in the application, between two and a half and five off-street parking spaces are required for the lodging use. The applicant is not proposing any off-street parking for the uses other than the two vehicular spaces in the driveway easement that operate in a "first-in, last-out" configuration. Also, at the Planning & Zoning Commission meeting, the applicant's representative indicated that parking in the driveway would be used by the long-term rental unit, leaving only one space designated for the five proposed lodging units.

Landscaping is required for uses in this district and would include a 30 foot wide, type B property line buffer along the east, west and north property lines adjacent to residential zoning. Additionally, street trees are required at a minimum of every 40 feet. There are trees on number 32 that can be used as credits but none on number 28. The applicant is proposing a modified five foot property line buffer around the rear and part of the sides, with no additional planting other than the garden plots and yard currently in place, *see conditions below*.

Fifteen percent of the parcel area is required to be dedicated as open space. The existing rear yards would provide sufficient land area provided that no accessory structures are built in the future (*see conditions*).

There are standards relating to building orientation and fenestration in the proposed zoning district and the plans appear to comply with the possible exception of ground level fenestration.

*Conditions* - The following standards related to the Lodging Expansion district do not appear to be met. There are additional conditions noted in the draft B.1 exhibit.

1. *Lot Size* - The minimum lot size for the district is 0.75 acres; the subject lots are 0.12 and 0.09 acres as an existing condition.
2. *Lot Width* - The minimum lot width for the district is 100 feet; the subject lots have approximately 42 feet of width as an existing condition.
3. *Setbacks* - The minimum front setback is 35 feet; the existing structures have a front setback of approximately 38 feet. The minimum side setback is 15 feet; the structures are approximately two feet from the side property lines on the west side of each parcel.
4. *Landscaping* - A 30 foot wide, type B property line buffer is required for this commercial use adjacent to residential zoning and would be required along the the rear and both sides; a partial five-foot wide property line buffer is proposed along a portion of the site. There are two trees that could count for street tree requirement on 32 Maxwell but not on 28 Maxwell.
5. *Open Space* - 15% of the lot area is required to be dedicated open space. This standard can be met by preserving the existing rear yard areas, however any future expansion of the structures or construction of accessory buildings may render the open space area non-compliant so future building would need to be restricted.
6. *Parking and Loading* - Guest drop off is not permitted along the primary access corridor; the applicant proposes to use driveway and on-street parking for guest use and does not propose compliant or additional off-street parking. *On-street parking is currently restricted for residential permit holders only and would not be available for a commercial (lodging) use; therefore, the applicant's proposal for STVR users to park on-street would not be permitted.*
7. *Sidewalks* - Sidewalks exist on Maxwell Street but do not meet the 10 foot standard.
8. *Design and Operational Standards* - The applicant proposes to retain the existing structures, which were constructed circa 1920 as single-family homes. The design and operational standards in the district may not be met as far as fenestration (50% ground floor required) but comply with the height and orientation standards.
9. *Density* - Since the applicant has requested to have flexibility for five of the six units to be either STVR or long-term rental, the residential density in the Lodging Expansion District are applicable. The maximum is 20 units per acre without dedicated affordable units. Based on this, three units in each building exceeds the maximum allowable density of 2.4 units in 28 Maxwell and 1.8 units in 32 Maxwell. *If the applicant dedicates a long-term affordable unit in each structure, the proposed density would comply.*

Projects undergoing conditional zoning review are required to hold a neighborhood meeting; the meeting for this project was held on March 1, 2018. The project was approved with conditions by the TRC on April 16, 2018.

The Planning and Zoning Commission discussed this proposal at two meetings, on May 2nd and July 19th, ultimately recommending approval by a 5-2 vote at their July 19, 2018, meeting. Commissioners of the majority recommendation opined that Maxwell Street is subject to negative impacts from the commercial grocery neighbor and that current enforcement efforts do not seem to be remedying those impacts. However, there was not unanimous agreement that allowing whole-house STVRs are the appropriate use for the subject sites. One Commissioner requested that the applicant dedicate a long-term residential unit in each house to more closely resemble the legal homestay use in the vicinity; the applicant did not agree with this condition. Staff also previously asked the applicant to consider including one long-term affordable unit in each building in order to further the city's affordable housing goals; the applicant was unwilling to agree to this condition.

The site is currently zoned Residential Multi-Family Medium Density (RM8) and the STVR lodging use is prohibited in that district, thus requiring the conditional zoning request. Commercial zoning (Community Business II) and uses are present across Maxwell Street; however, STVRs are also prohibited in that district. Residential Single-Family High Density (RS8) zoning is located to the north, along E Chestnut Street, while the Neighborhood Corridor District (NCD) is located to the west and southwest of the subject sites. The suitability of the request at the subject sites are evaluated below.

In 2017 - Level II project approved for a mixed-use building on Broadway, approximately two-tenths of a mile north.

The whole-house STVR use has long been prohibited in residentially-zoned neighborhoods for a number of reasons, including the need to preserve and increase the supply of long-term residential units, the desire to limit commercial activity in residential neighborhoods and to preserve the character of residential neighborhoods in Asheville. On January 9, 2018, the Asheville City Council approved zoning changes that prohibit STVR uses except in the Resort zoning district and other applicable expansion districts, providing a clear directive that the lodging use is to be evaluated only by City Council to determine compatibility through the conditional zoning process. Standards were created at that time to mitigate impacts of the higher intensity of the STVR use, including but not limited to, providing off-street parking for guests, buffering the use from adjacent properties through landscaping and requiring the operator to obtain annual permits, inspections and insurance.

The subject properties are located directly across from an active commercial use (Greenlife) and the property adjacent to the east operates as an office, which are examples of limited office and neighborhood-serving commercial uses in the vicinity. However, there are standards that are required when commercial uses are proposed adjacent to residential uses to lessen the impacts of the increase in intensity and these are not included in this application.

Maxwell Street is currently operating under a residential parking permit program that reserves spaces only for residents of the units on the street as a result of past issues from the impact of nearby commercial uses previously utilizing these spaces and not leaving enough parking for the residents. This program has been in place since 2011 and was initiated by the residents of the area, including the applicant. With on-street parking spaces restricted for use by residents on the street and very limited off-street parking proposed for guests, there is no plan for lessening the impact of this use in that regard.

Similarly, landscape buffers are required on property lines shared with residential uses. This occurs on three sides of the project area but there is insufficient space due to existing conditions of the smaller, historical lot development; leaving very little buffer to mitigate the intensity associated with multiple STVR units in a small area.

As noted in the City's conditional zoning application materials, conditional zoning permits are "uses which are *generally compatible with other land uses permitted in a zoning district* but which, because of their unique characteristics or potential impacts on the surrounding neighborhood and/or the city as a whole, require individual consideration of their location, design, configuration, or operation at the particular location proposed. Such individual consideration may also call for the imposition of individualized conditions in order to ensure that the use is appropriate at a particular location and to ensure protection of the public health, safety, and welfare." In this case, the STVR use has long been established to be incompatible and prohibited in residential zoning districts and this use is also prohibited in the nearby commercial zoning districts. Neighbors are operating legal homestays in the vicinity, which maintains some of the long-term community nature of the neighborhood while still allowing those property owners or residents to make limited commercial use of their properties. This would be an avenue open to

the applicant.

The petitioner has been cited for illegally operating STVRs on the site and is seeking this zoning change to legitimize this infraction. In the city's application materials, it is stated that the conditional zoning tool *"is available to promote land uses and activities that benefit the public in general. If there is only private benefit, the tool should not be used."* There is no community benefit noted by changing the zoning of these two properties; furthermore, there is anticipated to be a negative impact due to the increase in intensity of use without compliance with mitigating standards such as off-street parking, landscaping and density. The applicant's representative stated at the Planning and Zoning Commission hearing that the desire to use these properties for STVR rather than long-term residential or another non-residential use is to recoup the greatest financial benefit.

Staff finds the STVR use as proposed by the applicant to be incompatible with the neighborhood.

Pending Litigation: The applicant is currently operating three illegal STVRs on the property and has been doing so since at least August 2016. The City issued Notices of Violation and a citation in the fall of 2016. The applicant did not bring the property into compliance and did not pay the assessed fines. On March 22, 2017, the City filed a civil action in Buncombe County Superior Court seeking to enforce the requirements of the UDO and recover the fines accrued, which at that time totaled \$232,500. They are now approaching \$1 million dollars. The applicant filed several counterclaims in that case. The case was mediated on September 5, 2018, and impasse. Questions relating to this lawsuit and proposed settlement should be directed to the City Attorney.

Compliance with Comprehensive Plan: This project was submitted prior to adoption of Living Asheville: A Comprehensive Plan For Our Future ("Living Asheville"); however, it is not aligned with goals in the Asheville City Development Plan 2025 as that plan stresses the need to preserve, protect and maintain residential uses and neighborhood character. Land Use Goal I indicates that adaptive reuse of existing structures should only be done when neighborhood compatibility and viability can be protected. The 2025 Plan recognizes that there are areas where more intense development may be appropriate close to downtown; however, it must be done in a way that "protect(s) the neighbors from inappropriate non-residential encroachment and further states that "protection, preservation and enhancement of existing neighborhoods must be as much a part of our development pattern as promoting new construction [or uses]".

The applicant has stated in the public hearings several times that the 2002 Broadway Corridor Action Plan indicates this is an area for mixed-use development; however, the subject properties are actually outside of the study area included in the plan so this is not applicable to this proposal. The study area for the action plan only included parcels on Maxwell Street up to Marcellus.

Although not adopted at the time of application, Living Asheville provides guidance that allowing the conversion of existing residential homes into STVRs contributes to the lack of affordable housing options and does not recommend this use in applicable future land use designations such as this area (Traditional Neighborhood). The applicant has stated that they believe the subject properties are erroneously included in the Traditional Neighborhood future land use category and should be a part of the Traditional Corridor future land use designation. Staff contends that the proposed zoning and STVR uses are inconsistent with the Future Land Use Map. Maxwell Street is a local street and not an arterial corridor (such as Broadway, Merrimon, Charlotte Street, Haywood Road and others) that have received the future land use designation of Traditional Corridor, in which the intent is to establish a transit-supportive corridor. Staff believes the subject properties are appropriately designated as Traditional Neighborhood on

the Future Land Use Map and that the character of Maxwell Street and the surrounding block are consistent with the intent and purpose of the Traditional Neighborhood future land use designation. Pursuant to N.C. Gen. Stat. § 160A-383(b)(3), approving the proposed application would automatically amend the Future Land Use Map, from Traditional Neighborhood to Traditional Corridor.

The proposal does not align with the 2036 Council vision in that it eliminates residential units for lodging use (*Quality Affordable Housing*) and has the potential to negatively impact the neighborhood (*A Well-Planned and Livable Community*).

Considerations:

- The use is not permitted in the surrounding residential districts nor in surrounding commercial zoning districts. Lengthy public discussion surrounding this restriction has taken place resulting in the deliberate action to prohibit whole-house STVR uses and to increase the availability of the homestay permit as a balanced option.
- Due to the historic residential development pattern, there is not sufficient room on the properties to provide compliant landscape buffering or adequate off-street parking.
- If permitted, the applicant should be required to provide an off-street parking plan to mitigate the impact on other residents on the street (perhaps remote parking), which utilizes a residential-only permit parking system due to past commercial overuse.
- Approval of this change from residential to STVR to legitimize an ongoing illegal use may set a precedent to the community that is contrary to the ongoing efforts of the City to prohibit this use in whole-house structures in residential and other zoning districts and may open the door to other applicants expecting this change to be allowed throughout other residential neighborhoods.
- It has been requested of the applicant to provide a long-term affordable residential unit in each house to more closely mirror the homestay use that is allowed and existing along this street, and to meet city affordable housing goals; the applicant was unwilling to commit to this request.
- The density of three units in each structure exceeds the minimum allowed residential density in the Lodging Expansion district, without the inclusion of dedicated affordable units.
- While the applicant has stated that he is unable to keep a long-term tenant, properties immediately adjacent to Greenlife on Maxwell Street is consistently rented at at least \$1,250 per the property management group.

Staff does not recommend approval of the conditional zoning to allow STVR use on these properties. This is based on directives from City Council on prohibiting the use in both residential and commercial zoning districts. Further, the applicant has not provided a plan for mitigating the increased impact of the use or a plan to reasonably accommodate parking for the proposed non-residential uses, the proposed conditional zoning is only for the benefit of one property owner and does not provide any benefit to the long-term residential neighbors or community, and the proposal does not align with goals and strategies in the 2025 Comprehensive Plan and City Council's 2036 Vision.

Staff agrees that the residential character of the street is impacted by the commercial use of trucks and loading; however, staff does not agree that allowing the STVR use is the best and most appropriate use. The homestay use within a long-term, occupied residential dwelling is afforded to and utilized by residents along the street to maintain residential consistency. Also there are other non-residential uses that can be integrated into the periphery of a neighborhood (such as office uses similar to along Chestnut Street or Arlington) that provide community benefits. The applicant disagrees that this would be available to him due to the limited ability of the properties to comply with non-residential requirements and standards such as off-street parking, but they are similarly not proposing to comply with standards through this application.

The Planning and Zoning Commission reviewed this request at their meeting on July 19, 2018, and voted 5-2 in support of the project. As stated above, Commissioners opined that the street faces negative impacts from the commercial grocery neighbor and that current enforcement efforts do not seem to be remedying the conflicts from large truck traffic on this street. However, there was not unanimous agreement that allowing whole-house STVR use is the appropriate use. One Commissioner requested that the applicant dedicate a long-term residential unit in each house to more closely resemble the legal homestay use in the vicinity; the applicant did not agree to this condition.

Mr. Joe Minicozzi, representing the applicant Parkway Court and Reid Thompson, used a PowerPoint for his presentation. He showed the two houses in question, noting that Mr. Thompson had three other houses on Maxwell Street that he was forced to sell during this entire process, which started in 2004. From a Google earth image you can see the trucks on Maxwell Street. In 2004 Greenlife converted an office into a grocery store, showing an image that did not show two loading bays. They went to two loading bays in the initial site plan and there was supposed to be a buffer that is acknowledged in the image shown. The buffer was removed without a public process and a second loading bay was added, to which the City removed parking on the street and forced the loading into the street. The intent of the law is to have buffering between residential and commercial. The law states that there should be five feet of landscaping between the fence and the sidewalk. He showed a view from Mr. Thompson's property from many years ago. What is notable is that the City has identified that the issue is there because they have put visibility triangles in the street, essentially making the street a loading area. There is acknowledgement that the street has become commercialized. For all intent and purposes, the street is the loading area by neglect of the existing rules which require the street to be residential and protected by buffering. From a non-compliance standpoint, the City asked Dr. David Owens, who is an expert of zoning law from UNC-Chapel Hill, for a report. In his report he basically cited that the site is non-compliant and does not meet the qualifications of what the law is. He essentially told City Council they have to follow certain requirements. He showed a video of former City Attorney Bob Oast in 2006 saying "our code is fairly specific in terms of timelines for compliance with respect to notices of violation and it's my suggestion that we just follow that code." Former Mayor Bellamy said "that works for me." The notice of violation to be delivered to the property owner never happened. He showed a copy of a letter from UNC-Chapel Hill where it stated "... it should be equal to or better than regular compliance." He said there should be a 20 foot buffer there or something equal to or better than that for it to be legal. In 2007, the City brought forward the "either/or" plan, either Greenlife fixes it's loading bay with a buffer added in or the City move forward with traffic calming. He alleged that former Mayor Bellamy said to put it in writing and make it so. When the Mr. Owens' report came in, the City was notified of the non-compliance and several different times the seated City Council asked for Greenlife to come back and gave several different deadlines. Using a video, Mr. Minicozzi said that in 2007, then Interim Planning Director Shannon Tuch presented before the seated City Council, showing the drawings and plans saying "no application has been made at this time but this is very typical of a conditional zoning process and this is what we would expect to see at this point." Using a video, in 2007 former Councilwoman Robin Cape is shown speaking with Mr. Swann saying "...partners in other places who aren't as committed to our community as you are and that has been part of the issue for you. Do you feel like you have their support to move this forward?" Mr. Swann replied "Absolutely, we wouldn't have these prints on the table if we didn't have full support of management and ownership of the company." He said Mr. Swann was supposed to have brought plans forward to City Council. There is also the issue of the side parking lot that wasn't part of the original plan. He asked the Planning Department to show him where Greenlife got their permit to use the lot without paving it or meeting the standards. When he first talked to John Swann about this in 2004 Mr. Swann said it was a loading area and they didn't own that property. Somehow they have been using that with a notice of violation or compliance. City staff even says "the city finds that the property and land use occurring on Greenlife are largely in compliance."

You can't be largely in compliance - you're legal or you're not. There are nuisance issues and we have been before the Noise Board. There are frequent noise complaints, frequent sounds and noise disturbances. City Council receives these emails. 4:00 a.m./3:00 a.m. there are trucks on this street every single day ignoring the No Truck signs and driving right past them. This is Mr. Thompson's everyday experience on the street. Trucks drive over telephone lines. He showed a picture of the morning of the Planning & Zoning Commission meeting. Neighbors deal with beeping of the trucks and would anyone live with this? The sidewalk is blocked. From a video, former Councilman Mumpower says "Do that for a week, and if you don't get response, start calling us." The reason why Mr. Thompson has been calling is because he was directed by council to do so if he didn't get responses. Showing pictures, he said Greenlife blows their garbage down the street and have had snow plowed in front of Mr. Thompson's property. They do not care about their neighbors. Yet, the City allows them to sponsor that street. Using a photo, he said that staff sends memos that they are enforcing laws that no trucks will block the sidewalk, but you can see from a picture that a truck is blocking the sidewalk. There are trucks that are not allowed on the street. There are private services being delivered on Maxwell Street (showing a private garbage truck on the street three times a week) - the law only allows for public contracted garbage trucks to be operated on the street. He said Mr. Thompson was even cited for a shrub violation in June for the shrubs growing over the sidewalk. He provided Council with a 2005 petition from 11 people on Maxwell Street requesting enforcement of the City's Code. He also provided Council with letters from neighbors in 2004 (and one from 2018) who complained about Greenlife, noting they were paying \$850/month rent. Even Airbnb people complain. The ethical principles of planners say we have to deal with the related issues - we can't ignore them. He noted that the Comp Plan for 2025 was not presented by staff, but it clearly contemplates a mixed-use environment.

Vice-Mayor Wisler opened up the public hearing at 6:03 p.m.

The following individuals spoke in support of the conditional zoning; however, most voiced concerns relating to Greenlife acknowledging that this seated Council is not responsible for the inactivity of the past but should be responsible for the solution. Some concerns expressed were, but are not limited to: Maxwell Street is no longer a residential street, but a commercial street; precedent is set that the City chooses large businesses over residents; unable to live or rent on Maxwell Street due to constant traffic, noise and nuisances every day; City staff abused their power to ignore and marginalize this community and Mr. Thompson in particular; the City needs to enforce the buffering requirement of Greenlife; in 2007 the seated City Council gave Greenlife 45 days to mitigate concerns, but 11 years Greenlife made no changes; the City has issued no violations to Greenlife; there is flagrant commercialism on Maxwell Street that the City has allowed; the fines accrued by Mr. Thompson should be dropped; even with low rent, people will not want to live on Maxwell Street due to the noise of the trucks; the residences are no longer suitable for long-term rental; there are community benefits to having short term rentals as those people spend money in our city; if the properties are allowed to be short-term rentals, the reviews by customers might contain damaging comments about loud truck traffic and Mr. Thompson might not be able to rent them short-term even; problems in accessing homes on Maxwell Street due to trucks; cars parked on Maxwell Street are getting hit by trucks; the large trucks create a lot of dust; trees have been damaged by the large trucks maneuvering on Maxwell Street; even legal homestays on Maxwell Street are having a hard time getting customers due to the truck activity on Maxwell Street; Mr. Thompson is being denied due process and equal protection of the law; and the residents on Maxwell Street might be treated the way they have been treated is because the property is owned by State representative Brian Turner and he makes money off of this lease:

Former City Councilman Cecil Bothwell  
Ms. Meg Jamison, former resident of 17 Maxwell Street  
Ms. Karen Ramshaw  
Former resident of 32 Maxwell Street

Mr. Jonathan Wainscott  
Mr. Michael McDonough, Montford resident  
Mr. Pat Whalen, President of Public Interest Projects  
Mr. William Huxley, resident  
Ms. Hope Trammel, employee of Mr. Thompson  
Ms. Velvet Hawthorne, resident of 17 Maxwell Street  
Mr. Sidney Bach  
New City resident  
Mr. James John, resident of Asheville  
Ms. Brandee Boggs, resident on Maxwell Street  
Ms. Jan Howard Kubinek, resident on Reservoir Road

Mr. Peter Landis, downtown resident, felt City Council should deny Mr. Thompson's request for short term rentals as it would set a terrible precedent. He requested Council to either drop or suspend the fines accumulated by Mr. Thompson because of inaction by the City. Finally, because Greenlife is owned by the world's richest person the City should put pressure on Greenlife to find a solution.

Mr. Reid Thompson, applicant, said that residents on Maxwell Street have lived with 14 years of an illegally operated commercial alley and loading in the street that has been completely unenforced. For 12 years, the City has had a report from the School of Government so everyone has known Greenlife has not be in compliance. He has been threatened, assaulted and arrested. He has been banned from public buildings without due process. In 2015 he was removed off a field trip with his daughter because of staff's actions. When you look at the record, it shows he was banned after he had been promised corrective action by Council. All he did was ask staff for the plan to get the trucks off the street. It's obvious to him now that all that was was misdirection by our government. He and his neighbors have been intimidated from speaking out. He would have had more realtor friends at this meeting but they were afraid to be singled out like he has been singled out. He sold three houses and dealt with continuous nuisances. One of his tenants went to Europe and when she returned the rats had eaten the wiring in her car. She moved out and he sold the property. He asked Council to do the right thing and help mitigate this situation. If he were asking for special treatment, he would be asking for what Greenlife got 14 years ago. He put in his application prior to the change in zoning. Ms. Shannon Tuch, who was directed to get the commercial traffic off Maxwell Street a decade ago, is the same person that denied his application. One of two that were denied out of 36. Mr. Joe Minicozzi put in his application and by his peers he is ranked as one of the top 100 urbanists that have ever lived. He works with governments across the country and around the world. It puzzles him that he was unable to complete an application that was acceptable to Ms. Tuch. In the 32 page report prepared by staff, Greenlife is mentioned one time in the minutes from the Planning & Zoning Commission meeting. The published Planning & Zoning Commission minutes are 7 pages. Quite by accident he ran into the woman who kept the minutes in a restaurant and she told him there were 9 pages. He didn't imagine that staff did him any favors with their edits. He feels like he's been singled out, like he's been treated unfairly by the City for standing up for himself. How can the Planning staff say the two issues are not related when that is what planning is all about - the interrelatedness of properties. Because of the same situation for all the residents on Maxwell Street, he felt we should rezone the whole street so everyone can do short term rentals. He said he has been the buffer to his neighbors for 15 years. Regarding Ms. Tuch, he showed a letter from North Carolina Real Estate Commission where Ms. Tuch made a statement about his activities, where she felt he was a "loose cannon" in the community - in her opinion, he was not stable." In that same letter it said "she never felt threatened and did not actually see if he was going to follow her." He then showed an email from Mr. Cecil Bothwell where he had met with Gary Jackson and Bob Oast and read "When I showed them the letter from the BOR ... they said that the information in the letter was not what Tuch had told them about the incident." And then what he noticed was missing from the Planning & Zoning Commission minutes was the information he supplied about

the Turner's. The Turner's own the property. Every morning they are woken up by the beep, beep, beep from the garbage truck. He has sent Council a lot of pictures showing his daughter sitting in the window crying with the truck behind her. He has invited all of Council to come out and have coffee with him on his porch and none of them has taken him up on it. He was sorry that he seems upset but he has dealt with this for 15 years and he knows that he has not been treated fairly by staff because they can't see the interrelatedness. Using a map, he said what didn't get shown was this area used to be a part of the Broadway Corridor District. In that map he showed Kevin Kerr's building. That building is 20 units an acre but Council down-zoned it and now he can't ask for Airbnb on his other property. He doesn't know if that was directed by Council or done by staff. The same thing was done to Mr. Chris Peterson and to Mr. Jim Siemens.

Vice-Mayor Wisler closed the public hearing at 6:50 p.m.

Councilman Haynes said that the City has been wrong over the years and they have an obligation to make this right. Short term rentals may not be the solution here, but he wondered if the units can be rented for anything other than short term rentals. He felt that Maxwell Street is no longer a residential street. He felt this is a special case and City Council will not be setting a precedent because they will need to come before Council for approval.

Councilwoman Mayfield agreed that people are more important than companies, but this doesn't have anything to do with Greenlife or the Turner family. The truth is that the decisions the City made years ago were wrong, and it was wrong that it wasn't fixed. She doesn't understand why it hasn't been fixed. She believed that the City's actions have harmed, to some degree, everyone on Maxwell Street, particularly Mr. Thompson has been impacted and that has caused enormous distress and real damage. She apologized for that. We have been trying to figure out the solution, but she didn't think we have found the solution yet. She was equally troubled by the proposal mainly because turning these properties into short term rentals doesn't solve the problem. The problem is Greenlife and the fact that there is a loading dock where there shouldn't be a loading dock. The problem is there is a loading dock with no buffer, and the problem is there are trucks on that street that should be on that street. That's the problem we have to fix. Allowing these houses to be used as short term rentals, in complete violation of every direction this Council has gone in terms of that policy, doesn't fix the problem. Turning the street into a commercial street also doesn't solve the problem because short term rentals are illegal everywhere. In her view, we need to focus on Greenlife and said those conversations have opened. Our City staff is in conversations already with Greenlife about them coming to look at this problem and try to find a solution. There have been other options on the table for resolving this, i.e., a mediation and a number of options put on the table to try to alleviate the distress that Mr. Thompson is experiencing. We have not been able to come to an agreement on any of those things, but she remains convinced that the City has to actually solve the problem, which is Greenlife. She has committed to staff that she will put energy into trying to do that. Allowing these two houses to be used a short-term rental will not fix the problem.

Councilman Young felt that short term rentals is not the fix for this problem and this is not the end of trying to find a solution.

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

Councilman Young moved to deny the conditional zoning request for Parkway Court LLC for 28 and 32 Maxwell Street from Residential Multi-Family High Density District (RM-8) to Lodging Expansion District Conditional Zone (LODG EXP CZ) and find that the request is not consistent with the adopted comprehensive plan and that the denial is reasonable and in the public interest for the following reasons: (1) The use is not permitted in the surrounding residential

districts nor in surrounding commercial zoning districts. Lengthy public discussion surrounding the restriction has taken place resulting in the action by City Council to prohibit whole-house STVR uses and greatly limit the use elsewhere; (2) Due to the historic residential development pattern, there is not sufficient room on the properties to provide the buffering and parking required by code; (3) On-street parking along Maxwell Street is purposely reserved for long-term residential users only is a concerted effort to reduce the impact of commercial users in the vicinity; (4) In the city's application materials, it is stated that the conditional zoning tool *"is available to promote land uses and activities that benefit the public in general. If there is only private benefit, the tool should not be used."* This action is only for the financial benefit of the applicant; and (5) A change in the Future Land Use Map to Traditional Corridor is not appropriate as these properties are more suited to the Traditional Neighborhood designation and Maxwell Street would not be identified as a corridor (although it is noted that this is the edge of the neighborhood). This motion was seconded by Councilwoman Mayfield and carried on a 4-1 vote, with Councilman Haynes voting "no." (Mayor Manheimer recused).

At this time, Mayor Manheimer re-entered the meeting and presided over the remainder of the meeting.

**H. PUBLIC HEARING TO CONSIDER THE CONDITIONAL ZONING OF PROPERTY LOCATED AT 511 BREVARD ROAD FROM HIGHWAY BUSINESS DISTRICT TO HIGHWAY BUSINESS DISTRICT/CONDITIONAL ZONE AND LODGING EXPANSION/CONDITIONAL ZONE FOR THE DEVELOPMENT OF A 4-STORY HOTEL BUILDING AND A FUTURE DEVELOPMENT PARCEL**

**ORDINANCE NO. 4702 - ORDINANCE TO CONDITIONALLY ZONE PROPERTY LOCATED AT 511 BREVARD ROAD FROM HIGHWAY BUSINESS DISTRICT TO HIGHWAY BUSINESS DISTRICT/CONDITIONAL ZONE AND LODGING EXPANSION/CONDITIONAL ZONE FOR THE DEVELOPMENT OF A 4-STORY HOTEL BUILDING AND A FUTURE DEVELOPMENT PARCEL**

Urban Planner Sasha Vrtunski said that this is the consideration of an ordinance to conditionally zone 511 Brevard Road from Highway Business (HB) to Lodging Expansion Conditional Zone (LODG-EXP-CZ) for the development of a 106 room hotel with associated parking and an outparcel for future development on the property to Highway Business CZ (HB CZ) located on 3.03 acres at 511 Brevard Road in West Asheville. This project is considered a Level III Development, which requires a Conditional Zoning review pursuant to Section 7-5-9 of the city's Unified Development Ordinance (UDO). This public hearing was advertised on August 17 and 24, 2018. On August 28, 2018, this public hearing was continued to this date at the applicant's request.

The project proposes to build a 58,398 sf hotel with 106 rooms with 103 parking spaces. The building is shown at four stories and 62 feet to the top of the roof ridge. The height to the floor of the top occupied story is 32 feet. The building is placed to the rear of the lot, towards I-40.

The outparcel at the corner of South Bear Creek and Brevard Road is proposed to be conditionally zoned as HB-CZ. The benefit of this is to ensure proper connectivity between the two future parcels including sidewalks, and a sidewalk along South Bear Creek for the frontage of the outparcel. The applicant has agreed to prohibiting drive-thrus associated with uses for the outparcel.

The project site is 3.03 acres on Brevard Road and South Bear Creek Road, just north of

I-40 in West Asheville. The site is located in an "island" of land between I-240 and I-40. The portion to be conditionally zoned is currently zoned Highway Business. The parcel to the north is outside of the city jurisdiction, and is zoned Commercial Services (CS) in Buncombe County.

The site is accessed via a driveway off of South Bear Creek Road. A secondary driveway is shown going to S. Bear Creek Road closer to the intersection of Brevard Road, as required by the Fire Department. Sidewalks are shown along S. Bear Creek and Brevard Road. The applicant agreed to make these improvements with the development of the hotel instead of waiting for a development to occur on Lot 2.

The applicant has also agreed to provide the standard city transit shelter at the transit stop on Brevard Road. In addition, the applicant has agreed to install a pedestrian crossing signal at S. Bear Creek Road, which will assist anyone using the bus get to the northbound (inbound) bus stop on Brevard Road. The pedestrian crossing signal will be subject to the N.C. Dept. of Transportation approval.

The applicant has agreed to provide a ten foot easement along Brevard Road for a potential future Buncombe County greenway. Lastly, the applicant has agreed to provide shuttle services for guests to downtown and other destinations.

Plans show street trees, building impact, and Vehicle Usage Area landscaping. Screening for dumpsters is also noted. Open space is shown at 15% in compliance with UDO standards.

The current design as submitted does not fully meet the city's design standards for the Lodging Expansion District. The building orientation is oriented more to I-40 than S. Bear Creek and there is parking between the building at the primary facade that faces S. Bear Creek. The original design showed the building sides having very few windows. Since the Planning and Zoning Commission meeting, the design team has added windows to the Brevard Road facade (side of building).

The applicant is requesting the following condition to modify the standards.

1. Parking between the building at the primary access corridor.
2. Reduced fenestration on the side facades.

This project was approved with conditions by the city's Technical Review Committee (TRC) on February 19, 2018. As this is a Level III review, City Council review and approval is required. A Final TRC review is also required if approved by City Council.

Planning and Zoning Commission reviewed this project on August 1, 2018, and voted 6-1 in favor of the project. The Commission did discuss the side of the building facing Brevard Road and as a part of their approval recommended that the side be redesigned to look more like the front of the building. The applicant has added windows to a greater extent on the side facade facing Brevard Road.

At the Planning & Zoning Commission meeting there was one person who commented about the project. The speaker's concern was about the safety of the location of the hotel entrance drive with the RV Park just up the road, citing vehicle speeds and the curviness of the road. No comments were made in opposition to the project.

Current zoning is Highway Business District. The applicant is requesting Lodging Expansion Conditional Zone and has agreed to the outparcel being zoned Highway Business Conditional Zone.

In May 2017, City Council approved a Conditional zoning for the Buncombe County Transfer Station which is nearby. No other zoning actions have been taken for properties nearby.

The proposed project should be compatible with the surrounding context in part due to its separation from the surrounding area. To the rear of the site along South Bear Creek Road is a RV park. Further down South Bear Creek, the area transitions to a more residential community. The city zoning along the South Bear Creek corridor between the site and I-240 is Regional Business which would allow for much more intense and mixed uses than is there today. To the north of this property is one large parcel that is a older farm, which is outside the city jurisdiction and zoned Commercial Services (CS) by Buncombe County.

In the newly adopted Living Asheville Comprehensive Plan, the Future Land Use Map identifies this area as an Urban Corridor area. Urban corridors are appropriate for infill development and “redevelopment in the form of mixed-use residential, commercial and office uses that place emphasis on pedestrian-friendly amenities”. Hotels are recognized as a compatible use in the Urban Corridor areas. At the same time, the Living Asheville plan does recommend further study on all lodging types and how they impact the local community, which would assist future reviews of hotel proposals.

The proposal aligns with the 2036 Council vision in the area of A Well-Planned and Livable Community – The project is located within a short driving distance of miles of stores, restaurants and Bent Creek/Lake Powhatan. The subject site is also located next to a highway exit and on the ART S3 bus line.

Considerations:

- Project makes use of land that is bordered by two N.C. Dept. of Transportation rights-of-way that may be less attractive for other uses such as residential.
- Traffic to the site will be primarily coming from I-40, I-240 and Brevard Road; should have limited traffic coming through the neighborhood via South Bear Creek Road.
- Improved sidewalk facilities along Brevard Road and South Bear Creek Road.
- Applicant has agreed to prohibit drive through uses on the outparcel.
- Applicant has agreed to a shuttle service and building a transit shelter on Brevard Road.

Staff supports the application. The hotel is an appropriate use for the area, close to highways, the Farmers Market and the North Carolina Arboretum/National Forest. The conditions on the outparcel in the form of HB-CZ zoning will ensure that future development will limit drive-throughs. Overall, the development will improve the pedestrian infrastructure and facilities.

Mr. Derek Allen, attorney representing the applicant, said that they have agreed to all the conditions staff has requested. He gave a brief description about the developer BlackStream Development noting that they have an office in downtown Asheville. The project complies with the Land Use Plan, and noted that the property is really an island bounded by Bear Creek Road, Brevard Road and I-40. There were no issues at the Technical Review Committee or at the Planning & Zoning Commission. We have agreed to sidewalks around the entire of the property, a bus stop, open space, greenway easement, interconnectivity between the out parcel and the hotel parcel, no drive-thrus on the out parcel, and shuttle service from the hotel to downtown, Airport and retail area on the other end of Brevard Road. Outside of those conditions, they have committed to provide a living wage. They have also committed to contribute at least \$150,000 to the A-B Community Land Trust that the City is establishing for land-banking for affordable housing. That commitment is to be triggered in the first calendar year following occupancy of the hotel and pay it in six annual installments of \$25,000. That is an acknowledgement that we do have an affordable housing issue, but housing on this parcel does not work.

Vice-Mayor Wisler asked that the condition regarding the shuttle service be revised to include the Asheville Outlets area at the other end of Brevard Road. Mr. Allen agreed to amending that condition.

Mr. Chris Day, representing Civil Design Concept, reviewed the proposed location. An effort was made to orient the building and place it up against the interstate. It helps to provide any type of shielding and buffering towards the uses and it also creates an out parcel. That out parcel will remain Highway Business and they are committing that to no drive-thrus. Whatever goes on the out parcel will provide a connectivity to the adjacent hotel use. The second vehicular access was a requirement by the Fire Marshal and while they have it shown in this particular location, as the out parcel is developed, it is their intention that it may adjust slightly to accommodate what retail or use that goes on that Highway Business tract. They propose to put in the sidewalk along the out parcel tract as well as sidewalks along Brevard Road. They propose a transit shelter along Brevard Road as well as pedestrian signals for a crossing across S. Bear Creek Road. The Planning & Zoning Commission requested additional fenestration on the Brevard Road side of the building and windows were added where feasible.

Vice-Mayor Wisler suggested that whatever is placed on the out parcel, when it is developed, that it be a local company.

Mr. Josh Howard, principle of BlackSteam Development, said they are committed to Asheville and that is why they are excited about this project. They recognize that affordable housing is an issue and while housing did not work for this site, they are committed to being good community stewards. That is why they are committing to contribute \$150,000 to the A-B Community Land Trust.

Mayor Manheimer understood that the developer has worked with staff on a number of conditions to include the sidewalk piece around both parcels, prohibit a drive-thru on the out-parcel, and provide a shuttle service. The contribution to the A-B Community Land Trust is not a condition, but will be a separate non-profit entity working in partnership with the City and others. The City has two staff on the board for the A-B Community Land Trust. Her understanding that the commitment to the A-B Community Land Trust would begin in the year 2020 (or if the Community Land Trust takes longer to create) with \$25,000 per year for six years.

Mr. Howard agreed to the commitment of \$150,000 to the A-B Community Land Trust beginning within the calendar year after occupancy.

Mayor Manheimer thanked Councilman Young and Councilwoman Smith for thinking of this creative concept to try to help us marry the challenges we are having around tourism and hotel growth with this continuing affordable housing crisis we are experiencing in Asheville.

Mayor Manheimer opened the public hearing at 7:22 p.m., and when no one spoke, she closed the public hearing at 7:22 p.m.

Councilwoman Mayfield questioned what the value is of the pedestrian crossing signal at S. Bear Creek, a two-lane road, when we don't have one across Brevard Road, a five-lane road. Ms. Vrtunski said the S. Bear Creek Road crossing was at the request of the Transportation Department. She said that Brevard Road and S. Bear Creek Road are both on N.C. Dept. of Transportation (NCDOT) right-of-way. It was the consensus of Council to ask the NCDOT to construct the pedestrian crossing on Brevard Road and to allow the applicant to construct the pedestrian crossing signal at S. Bear Creek Road. To the extent that we need any land on the northwest corner of the intersection of S. Bear Creek Road and Brevard Road for the purposes of creating a pedestrian crossing on Brevard Road, Mr. Allen said that they would be willing to provide an easement.

Councilwoman Mayfield appreciated all of the community benefits the applicant is willing to provide as a part of this project; however, she will not support this project because she felt this is a place where we need multi-family housing.

Mayor Manheimer said that she has personally considered if we should consider a moratorium on hotels for the City; however, legally moratoriums are very difficult in North Carolina and if you can get them passed, they are extremely temporary. That is not the answer. City Council we hold a worksession dedicated to just this topic and look at all the pieces of tourism that impact our community, especially how we are able to finance the needed infrastructure improvements to be able to host the number of people that are coming to the City, while balancing the level of growth we are seeing with preserving what makes our community wonderful. And also so that the people that live here can afford to live here. It's important that hotel applicants understand that we have to carefully review each application individually. We will need to understand how the particular project will contribute to our City. In this situation the applicant has worked hard to figure out a way to address some of the issues we are having, especially around housing. There is a tendency in the hotel industry to think they will generate property tax revenue, jobs, etc., and we have done a little research on the revenue side, noting that we will look at the whole picture. Asheville collects around \$64 Million in property tax revenue every year (the majority revenue source that balances our budget) and of that, hotels contribute \$3.25 Million. That means the taxpayers are subsidizing the infrastructure improvements needed to help maintain a City that hosts that many people that come to it everyday. There is an argument to be made about the economics around the hotel industry and the tourism industry that has helped keep this City strong for as many years as it has been. She understands that and it's valid. But when you realize how much it costs to fix sidewalks and to pave road and to keep a community safe, etc. and try to provide a forum that creates good quality jobs for the people that live here, everyday we struggle with it. We need developers that want to participate and invest in our community, and we will need to see that partnership piece of it.

Councilman Haynes will not support the conditional zoning and wanted to developers and investors in the City wanted them to realize what we are really looking for - we want housing and businesses that will add some diversity to our economy, not just aimed towards tourism.

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

Councilman Young moved approve the conditional zoning request for Highway Business District to Lodging Expansion Conditional zone for the Mainstay Suites Hotel at 511 Brevard Road with the requested conditions and find that the request is reasonable, is in the public interest and is consistent with the Living Asheville Comprehensive Plan in that: (1) the project is located in a well established commercial area; (2) increases pedestrian connectivity; and (3) a new shelter will be built at an existing ART stop on Brevard Road. This motion was seconded by Councilwoman Smith and carried on a 4-2 vote with Councilman Haynes and Councilwoman Mayfield voting "no."

## **ORDINANCE BOOK NO. 32 – PAGE 217**

### **V. UNFINISHED BUSINESS:**

### **VI. NEW BUSINESS:**

#### **A. BOARDS & COMMISSIONS**

Regarding the Board of Electrical Examiners, since no applications for the layman seat were received, it was the consensus of Council to re-advertise for the position.

Regarding the Citizens-Police Advisory Committee, since no applications for the resident of property owned by the Housing Authority were received, it was the consensus of Council to re-advertise for the position.

Regarding the Neighborhood Advisory Committee, since no applications for the representative that resides in the 28806 or 28728 zip code, it was the consensus of Council to re-advertise for the position.

Regarding the Public Art & Cultural Commission, the following individuals applied for the vacancy: Cate Ryba, Mariana Llorente, Karven Depew, Valeria Watson, Karin Peterson and Travis Smith. It was the consensus of Council, as requested by the Public Art & Cultural Commission, to re-advertise for the vacancy while the Commission seeks a minority representative.

#### **RESOLUTION NO. 18-263 - RESOLUTION APPOINTING A MEMBER TO THE CIVIL SERVICE BOARD**

Vice-Mayor Wisler, Chair of the Boards & Commissions Committee, said that this is the consideration of appointing a member to the Civil Service Board.

On September 9, 2018, City Council rescinded Alan Escovitz' appointment to the Civil Service Board, thus leaving an unexpired term until May 21, 2019.

The following individuals applied for the vacancy: Stephen P. Hyleck and Carter B. Webb.

Vice-Mayor Wisler moved to appoint Carter B. Webb to serve the unexpired term of Mr. Escovitz, term to expire May 21, 2019, or until his successor has been appointed. This motion was seconded by Councilman Haynes and carried unanimously.

#### **RESOLUTION BOOK NO. 40 - PAGE 162**

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

Ms. Kara Jahn was concerned about kudzu on the Reed Creek Greenway and suggested using goats which are eco friendly and cost effective. Mayor Manheimer suggested the Recreation Board would be a good place to start this discussion and said the City Manager would be in contact with her.

Mr. Sidney Bach was concerned that the Hospital Corporation of America may ask for the assessed value of the Mission property be reviewed. He pointed out that this happened in Sylvania and the value of the land dropped by more than 70%. Mayor Manheimer suggested the City Manager look into this possibility.

Mr. Joe Minicozzi spoke about his disappointment of how we operate in our community.

Mr. Jonathan Wainscott spoke about gentrification in Asheville.

#### **Results of the September 25, 2018, Civil Service Board Employee Elections**

One copy of the results of the Civil Service Board employee election held on September 25, 2018, is to be filed with the City Manager and one with the City Clerk, who shall present such certification to the City Council at its next regular meeting. The Board of Canvassers provided the following certified certificate on September 26, 2018: We do hereby certify, having opened, canvassed, and determined the original returns of the Civil Service Board employee election, the results of the Civil Service Board Employee Election held on September 25, 2018, noting the name of each person voted for and the number of votes cast for each person as follows: Alan Escovitz - 128; and Steve Hayleck - 36.

**Closed Session**

At 7:49 p.m., Councilwoman Smith moved to go into closed session for the following reasons: (1) to prevent disclosure of information that is privileged and confidential, pursuant to the laws of North Carolina, or not considered a public record within the meaning of Chapter 132 of the General Statutes. The law that makes the information privileged and confidential is N.C.G.S. 143-318.10(a)(3). The statutory authorization is contained in N.C.G.S. 143-318.11(a)(1); (2) To consult with an attorney employed by the City about matters with respect to which the attorney-client privilege between the City and its attorney must be preserved, including, but not limited to, a lawsuit involving the following parties: James Robert Wet vs. City of Asheville. The statutory authorization is N.C. Gen. Stat. sec. 143-318.11(a)(3); and (3) To consider the qualifications, competence, performance, character, fitness, or conditions of appointment of an individual public officer or employee. The statutory authorization is contained in N.C. Gen. Stat. § 143-318.11(a)(6); and to prevent the disclosure of information that is confidential pursuant to N.C. Gen. Stat. § 160A-168, the Personnel Privacy Act. The statutory authorization is contained in N.C. Gen. Stat. § 143-318.11(a)(1). This motion was seconded by Vice-Mayor Wisler and carried unanimously.

At 8:55 p.m., Vice-Mayor Wisler to come out of closed session. This motion was seconded by Councilwoman Mayfield and carried unanimously.

**VIII. ADJOURNMENT:**

Mayor Manheimer adjourned the meeting at 8:55 p.m.

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CITY CLERK

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MAYOR