

Tuesday - August 24, 1999 - 5:00 p.m.

Regular Meeting

Present: Mayor Leni Sitnick, Presiding; Vice-Mayor Edward C. Hay Jr.; Councilman M. Charles Cloninger; Councilman Earl Cobb; Councilwoman Barbara Field; Councilman Thomas G. Sellers; and Councilman O.T. Tomes; City Attorney Robert W. Oast Jr.; City Manager James L. Westbrook Jr.; and City Clerk Magdalen Burleson

Absent: None

INVOCATION

Councilman Cobb gave the invocation.

I. PROCLAMATIONS:

A. PROCLAMATION PROCLAIMING FRIDAY, AUGUST 27 - SUNDAY, AUGUST 29, 1999, AS "GOOMBAY! FESTIVAL DAYS" IN THE CITY OF ASHEVILLE

Mayor Sitnick read the proclamation proclaiming Friday, August 27 - Sunday, August 29, 1999, as "Goombay! Festival Days" in the City of Asheville. She presented the proclamation to Ms. Oralene Simmons, who briefed City Council on some activities taking place during the Festival.

B. PROCLAMATION PROCLAIMING SEPTEMBER 13, 1999, AS "FREDERICK LAW OLMSTED DAY" IN THE CITY OF ASHEVILLE

Vice-Mayor Hay read the proclamation proclaiming Monday, September 13, 1999, as "Frederick Law Olmsted Day" in the City of Asheville and explained the significance of the new postage stamp honoring Mr. Olmsted. He presented the proclamation to Mr. Bruce Ballard.

II. CONSENT AGENDA:

A. ORDINANCE NO. 2600 - BUDGET AMENDMENT TO APPROPRIATE EXPENDITURES FOR NON-RESIDENT FEES WHICH HAVE BEEN COLLECTED FOR VARIOUS PARKS AND RECREATION PROGRAMS

Summary: The consideration of a budget amendment, in the amount of \$23,000, to appropriate expenditures for non-resident fees which have been collected for various Parks and Recreation programs.

Several years ago, City Council approved collecting non-resident fees for various Parks and Recreation services. These fees include services for classes, adult and youth sports, and various clubs that use Parks and Recreation facilities. The Parks and Recreation Department wishes to establish expenditure line items and appropriations in order to spend funds which have been collected. The revenue that has been collected is intended to be used for various capital projects of the department. It is the intent of staff to use these funds in conjunction with various public/private endeavors and other activities or improvements that will benefit the community.

The Parks and Recreation Department requests City Council approve the budget amendment to appropriate funding from revenue collected from non-resident fees totaling \$23,000.

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B. RESOLUTION NO. 99-120 - RESOLUTION MODIFYING THE SCHEDULE OF THE CITY COUNCIL MEETINGS TO CANCEL THE AUGUST 31, 1999, CITY COUNCIL COMMUNITY MEETING

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C. ORDINANCE NO. 2601 - BUDGET AMENDMENT TO INCREASE APPROPRIATIONS TO THE WATER CAPITAL PROJECTS FUND TO INCLUDE A GRANT FROM THE CLEAN WATER MANAGEMENT TRUST FUND FOR WATERSHED PROTECTION IMPROVEMENTS IN MILLS RIVER VALLEY

Summary: The consideration of a budget amendment, in the amount of \$589,000, to amend Capital Project Ordinance 82-25 (35 Fund) to provide funding for the Mills River Watershed Protection Project.

By Resolution 82-25 dated October 5, 1982, the Regional Water Authority authorized and budgeted for various capital projects to be funded by Investment Earnings, Contributions From Other Funds, and Appropriated Fund Balance.

Capital Project Ordinance 82-25 needs to be amended to provide funding for the Mills River Watershed Protection Project which will protect and improve water quality in the Mills River. This project will include replacing eight stream-side pesticide mixing stations with state-of-the-art agrichemical handling facilities located outside of the floodplain, restoring 41,000 feet of riparian buffer in degraded areas along the Mills River, stabilizing 2.6 acres of streambank using bio-engineering methods, controlling erosion and sedimentation in the Wash Creek watershed, and developing a long-term watershed protection management strategy.

On December 1, 1998, the Regional Water Authority, on behalf of the Mills River Partnership, requested funding from the NC Clean Water Management Trust Fund (NC CWMTF) for the Mills River Watershed Protection Project. Funding of \$541,000 was approved by the NC CWMTF on April 12, 1999. The Regional Water Authority will provide matching funds of \$100,718 with \$33,000 budgeted in 1998/1999, \$33,000 budgeted in 1999/2000 and \$34,718 budgeted in 2000/2001. The City of Hendersonville will provide \$15,000 in matching funds.

Revenues will be increased as follows: \$541,000 for NC CWMTF Grant, \$33,000 for the Authority's 1999/2000 contribution of matching funds, and \$15,000 for Hendersonville's matching funds. The appropriation for the Mills River Watershed Protection Project will increase from \$33,000 to \$622,000.

Staff recommends approval of the budget amendment amending Capital Project Ordinance 82-25 to provide funding for the Mills River Watershed Protection Project for FY 1999/2000.

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D. RESOLUTION NO. 99-121 - RESOLUTION AUTHORIZING A GRANT AGREEMENT BETWEEN THE REGIONAL WATER AUTHORITY AND THE CLEAN WATER MANAGEMENT TRUST FUND FOR WATERSHED PROTECTION MEASURES IN MILLS RIVER VALLEY

Summary: The consideration of a resolution authorizing the Chairman of the Regional Water Authority to execute a Grant Agreement with the North Carolina Clean Water -3-

Management Trust Fund for the Mills River Watershed Protection Project in the amount of \$541,000 to replace pesticide mixing stations and restore riparian buffers on the Mills River and its tributaries.

On December 1, 1999, the Regional Water Authority, on behalf of the Mills River Partnership, requested funding from the NC Clean Water Management Trust Fund (NC CWMTF) for a two-year comprehensive

project to preserve and improve water quality in the Mills River watershed. The NC CWMTF approved funding of \$730,000 on April 12, 1999, for the following elements of the Mills River Watershed Protection Project:

- Replace eight stream-side pesticide mixing stations with USDA-approved agrichemical handling facilities (AHF's) located outside of the floodplain;
- Preserve approximately 50 acres of existing riparian buffer through a combination of purchased and donated conservation easements;
- Re-vegetate or widen 41,000 feet of riparian buffer in degraded areas along the Mills River and its two forks;
- Stabilize 2.6 acres of streambank using bio-engineering methods;
- Control erosion and sedimentation in the Wash Creek watershed by stabilizing 22 camp sites and installing sedimentation control measures along six miles of road; and
- Develop a long-term watershed protection management strategy.

The grant agreement between the Authority and the NC CWMTF will include all of the projects except the preservation of 50 acres of riparian buffers through purchased or donated easements. The total funding provided for the projects being administered by the Authority is \$541,000. The preservation of riparian buffers will require a separate grant agreement between the NC CWMTF and the Carolina Mountain Land Conservancy (CMLC) in the amount of \$189,000.

The Regional Water Authority will provide \$100,718 in matching funds and \$30,972 in in-kind services. The City of Hendersonville will provide a match of \$15,000 for the replacement of the mixing stations and the Carolina Mountain Land Conservancy will provide \$2,400 in in-kind services for management costs related to the preservation of riparian buffers.

The purpose of this project is to restore water quality in the lower Mills River and Wash Creek while maintaining the outstanding quality of the other streams in the watershed. The grant agreement will be approved as to form by the Authority's counsel before the Grant Agreement is executed.

Staff recommends approval of a resolution authorizing the Regional Water Authority to execute a Grant Agreement in the amount of \$541,000 with the North Carolina Clean Water Management Trust Fund

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E. RESOLUTION NO. 99-122 - RESOLUTION AUTHORIZING A CONTRIBUTION AGREEMENT BETWEEN THE REGIONAL WATER AUTHORITY AND NATURAL RESOURCES CONSERVATION SERVICE FOR DESIGN OF AGRICHEMICAL HANDLING FACILITIES FOR MIXING OF PESTICIDES AT EIGHT FARM LOCATIONS IN HENDERSON COUNTY

Summary: The consideration of a resolution authorizing the Regional Water Authority to execute a contract with the Natural Resources Conservation Service to complete the final design -4-

of Agrichemical Handling Facilities for eight farms in the Mills River valley as required by a grant from the Clean Water Management Trust Fund.

The Regional Water Authority was awarded a grant by the Clean Water Management Trust Fund in March 1999 to make improvements to watershed land management practices to protect the quality of water in the

Mills River. A major component of this grant was the award of \$329,157 from the Trust Fund, matched by an additional \$99,000 from the City's Water Fund and \$15,000 from the City of Hendersonville, to relocate the practice of pesticide mixing at up to eight locations from near the streambank to state-of-the-art facilities outside the floodplain.

The grant application and grant award provides for funding disbursements and management and construction practices to be handled as currently provided through the Agricultural Cost-Share program. Further, the state-of-the-art agrichemical handling facilities (AHF) are to conform to the standard design developed by the Natural Resources Conservation Service (NRCS) and Henderson County Soil & Water Conservation District (HSWCD). Through discussions with the HSWCD staff, the Water Resources Department staff have been able to obtain a commitment for engineering to complete the final design of these facilities through registered engineers of the NRCS staff. This has an advantage since NRCS engineers are already very familiar with the AHF standard design, and specific site requirements, and are experienced in working with farmers and agricultural practices. NRCS is an agency of the U S Department of Agriculture.

The contract is called a Contribution Agreement and calls for the complete design, including flood elevation surveying, site plan, grading plan, piping plan, layout, and detailed construction specifications for eight locations, to be completed not later than January 1, 2000 at a fee not to exceed \$21,943.00.

Staff recommends the adoption of the resolution authorizing the Regional Water Authority to execute a Contribution Agreement with the Natural Resources Conservation Service.

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F. RESOLUTION NO. 99-123 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A CONTRACT WITH MA ENGINEERING CONSULTANTS INC. FOR A SURVEY AND FEASIBILITY STUDY OF THE LAKE CRAIG AND AZALEA ROAD PARK

Summary: The consideration of a resolution authorizing the City Manager to enter into a contract with MA Engineering Consultants, Inc., for a survey and feasibility study of the Lake Craig and Azalea Road Park.

This property was identified as a potential recreation and public works resource though task teams initiated by the Parks and Recreation and Public Works Departments. These teams combined and developed a consolidated, conceptual program of recreational (soccer fields, gymnasium complex, ballfields, greenway trails, etc.) and public works facilities (beneficial fill, eco-park, composting, etc.). Within the conceptual recreational program, partnerships were solidified with Western North Carolina Soccer Foundation, Western North Carolina Youth Sports Complex Foundation, and RiverLink to maximize recreational needs and funding opportunities.

With these organizational efforts in place, City Council directed staff to proceed with the land acquisition process. Consequently, a request for qualifications was sent for the initial phase which entailed a property survey. Staff from Parks and Recreation, Public Works and Engineering Departments followed city procedures and selected MA Engineering Consultants, -5-

Inc. (from Raleigh, N.C.) as the top firm. A comprehensive boundary and topographic survey will be the scope of service provided by the consultant for \$85,173 (boundary survey \$34,980, topographic survey \$40,185, wetland delineation \$10,008) for this 150 acre tract. In addition, staff is currently discussing with this consultant, an exact scope of work and cost estimate for a feasibility study of the entire project, which includes the needs of the Public Works and Parks and Recreation Departments.

The Parks and Recreation Department recommends that authorization be given to the City Manager to enter

into a contract with MA Engineering Consultants, Inc. for the boundary and topographical survey for Lake Craig and Azalea Road Park and to enter into a change order agreement for a feasibility study if deemed necessary by staff.

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G. RESOLUTION NO. 99-124 - RESOLUTION MAKING PROVISIONS FOR THE POSSESSION AND CONSUMPTION OF MALT BEVERAGES AND/OR UNFORTIFIED WINE AT THE 1999 GOOMBAY! FESTIVAL

Summary: The consideration of a resolution to allow alcoholic beverages on August 27-29, 1999, at the 1999 Goombay! Festival which will be held on August 27-29, 1999, within the area known as City/County Plaza, S. Market Street, Eagle Street, Spruce Street, Wilson Alley, and Beaumont Street.

N.C. Gen. Stat. sec. 18B-300(c) authorizes the City by ordinance to regulate or prohibit the consumption and/or possession of open containers of malt beverages and unfortified wine on public streets, and on property owned, occupied or controlled by the City. The City Council of the City of Asheville has adopted an ordinance pursuant to that statutory authority. That ordinance, Section 11-11 in the Code of Ordinances, provides that the City Council may adopt a resolution making other provisions at a special event or community festival. The 1999 Goombay! Festival Board, YMI Cultural Center and the Parks and Recreation Department recommends that possession and consumption of malt beverages and/or unfortified wine be allowed at the 1999 Goombay! Festival.

The Parks and Recreation Department recommends that City Council adopt the resolution allowing the possession and consumption of malt beverages and/or unfortified wine at the 1999 Goombay! Festival to include the areas as described in the resolution.

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

Councilman Sellers moved for the adoption of the Consent Agenda. This motion was seconded by Councilman Tomes and carried unanimously.

III. PUBLIC HEARINGS:

A. PUBLIC HEARING RELATIVE TO THE VOLUNTARY ANNEXATION OF A NON-CONTIGUOUS AREA LOCATED ON SWEETEN CREEK ROAD AND PEACH TREE STREET KNOWN AS ROYAL PINES POOL AND PARK PROPERTIES

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ORDINANCE NO. 2602 - ORDINANCE EXTENDING THE CORPORATE LIMITS OF THE CITY OF ASHEVILLE BY ANNEXING A NON-CONTIGUOUS AREA LOCATED ON SWEETEN CREEK ROAD AND PEACH TREE STREET KNOWN AS ROYAL PINES POOL AND PARK PROPERTIES

Mayor Sitnick opened the public hearing at 5:12 p.m.

Mr. Paul Benson, Urban Planner, said that this is the consideration of an ordinance extending the corporate limits of the City of Asheville by annexing a non-contiguous area located on Sweeten Creek Road and Peach Tree Street known as Royal Pines Pool and Park properties. This public hearing was legally advertised on August 13, 1999.

The Trust for Public Land, owner of the Royal Pines Pool and Park, has submitted an annexation petition for the property on which the pool and park are located.

This area is located within three miles of the City's corporate limits. The property is located west of Sweeten Creek Road (US 25A). The total acreage is 5.5 acres. The effective date of this annexation is August 24, 1999.

Planning staff recommends City Council adopt the ordinance extending the corporate limits of the City of Asheville by annexing a non-contiguous area located on Sweeten Creek Road and Peach Tree Street known as Royal Pines Pool and Park properties.

Mayor Sitnick closed the public hearing at 5:15 p.m.

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

Councilwoman Field moved for the adoption of Ordinance No. 2602. This motion was seconded by Councilman Sellers and carried unanimously.

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B. PUBLIC HEARING RELATIVE TO THE VOLUNTARY ANNEXATION OF PROPERTY LOCATED OFF OF HENDERSONVILLE ROAD AND KNOWN AS DEERFIELD EPISCOPAL RETIREMENT COMMUNITY INC.

ORDINANCE NO. 2603 - ORDINANCE EXTENDING THE CORPORATE LIMITS OF THE CITY OF ASHEVILLE BY ANNEXING A CONTIGUOUS AREA CONTAINING 24.635 ACRES LOCATED OFF OF HENDERSONVILLE ROAD AND KNOWN AS DEERFIELD EPISCOPAL RETIREMENT COMMUNITY INC.

Mayor Sitnick opened the public hearing at 5:16 p.m.

Mr. Paul Benson, Urban Planner, said that this is the consideration of an ordinance

extending the corporate limits of the City of Asheville by annexing a contiguous area containing 24.635 acres located off of Hendersonville Road and known as Deerfield Episcopal Retirement Community, Inc. This public hearing was legally advertised on August 13, 1999.

Deerfield Episcopal Retirement Community, Inc. has submitted an annexation petition for an area of 24.635 acres currently under development for the expansion of the retirement community. The effective date of this annexation is August 24, 1999. -7-

This area is located adjacent to the established section of the Deerfield Episcopal Retirement Community which is within the City's corporate limits. The property is located west of Hendersonville Road (US 25).

Planning staff recommends City Council adopt the ordinance extending the corporate limits of the City of Asheville by annexing a contiguous area containing 24.635 acres located off of Hendersonville Road and known as Deerfield Episcopal Retirement Community.

At the request of Ms. June Lamb, 16 Carrier Street, City Manager Westbrook explained what kind of tax benefits will there be regarding this annexation.

Mayor Sitnick closed the public hearing at 5:22 p.m.

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

Councilman Tomes moved for the adoption of Ordinance No. 2603. This motion was seconded by Councilman Sellers and carried unanimously.

ORDINANCE BOOK NO. 17 - PAGE 433

IV. UNFINISHED BUSINESS:

A. CONSIDERATION OF FINDINGS FOR CONDITIONAL USE PERMIT FOR THE ASHEVILLE MALL EXPANSION

ORDINANCE NO. 2604 - ORDINANCE ISSUING A CONDITIONAL USE PERMIT FOR THE ASHEVILLE MALL EXPANSION

Councilman Sellers moved to excuse Councilman Tomes from participating in this matter due his being absent from the public hearing. This motion was seconded by Councilman Cobb and carried unanimously.

City Attorney Oast said that this is the consideration of an ordinance making findings and conclusions, and establishing conditions, for a Conditional Use Permit for the expansion to the Asheville Mall.

On July 27, 1999, City Council held a public hearing and voted unanimously (6 - 0; Councilmember Tomes absent) to issue a Conditional Use permit for the Level III expansion of the Asheville Mall. Staff was directed to research and provide more information to Council relative to certain concerns that surfaced during the public hearing, and to develop proposed conditions to deal with them. Some of this information was presented to Council in a progress report at your August 10, 1999, meeting.

City Attorney Oast briefly summarized the following findings in the Order noting that it is in draft form and may be modified by Council prior to voting on it:

1. Notice of the hearing of this matter was published on July 16, 1999, and July 23, 1999; signs advertising the hearing were posted, and notification was mailed to adjacent property owners.
2. The applicant, CBL and Associates, seeks a Conditional Use Permit for an expansion to the Asheville Mall (herein "the Project"). -8-
3. The Asheville Mall is located on approximately 64 acres (herein "Subject Property"), situated on the Southwest side of South Tunnel Road (US Highway 74), immediately South of its intersection with Tunnel Road (US Highway 70), and North of its intersection with Swannanoa River Road (N.C. Highway 81).
4. Tunnel Road and South Tunnel Road are both major multi-lane highways carrying a high volume of traffic. The Asheville Mall is the largest shopping center in Western North Carolina and serves a regional market. Across South Tunnel Road from the Subject Property are several strip shopping centers, housing several high traffic retail businesses, and a multiple screen theater. Located nearby on South Tunnel Road are another multiplex theater, a major home improvement retailer (Lowe's), and another strip shopping center.
5. The Lowe's store, currently located immediately to the south of the Subject Property, is constructing an expanded facility immediately to the south of its current location. Plans have been submitted to redevelop the current Lowe's site as a strip shopping center.
6. Interstate 240 passes to the North and East of the Subject Property, and crosses over Tunnel Road. There is a two lane exit from I-240 which deposits exiting traffic at the above-described intersection of Tunnel Road

and South Tunnel Road, which intersection is signalized.

7. Located along Tunnel Road to the North and West (heading towards downtown Asheville) are smaller scale commercial uses, consisting of motels, restaurants, retail businesses and automobile service stations, among other uses.

8. Immediately adjacent to the South and West of the Subject Property is an established residential area, Kenilworth Forest, consisting primarily of single family residences on small lots. There are approximately 90 single family residences in Kenilworth Forest.

9. The Subject Property is zoned to a RB-Regional Business – classification. The other non-residential properties adjacent to the Subject Property and across South Tunnel Road are zoned RB or HB-Highway Business. Kenilworth Forest is zoned RS-4 Medium Density Residential.

10. The City's 2010 plan provides for regional commercial development along the Tunnel Road/South Tunnel Road corridor.

11. The current Asheville Mall contains over 900,000 square feet of enclosed space and approximately 4200 parking spaces. The Project consists of demolishing the existing twin theaters, (approximately 14,000 square feet) located at the South end of the Subject Property, adding approximately 154,000 square feet of retail space and adding a total of 573 new parking spaces. Most of the retail space expansion will occur on the Eastern elevation of the existing mall, on the far side of the building from Kenilworth Forest. Some ground level parking spaces will replace the demolished theaters. Most of the additional parking will be added in a two-tiered parking deck, also to be located on the eastern elevation of the mall building. The amount of land occupied by the Mall will not increase.

12. The Subject Property is served by 5 driveways: 3 signalized two-way driveways along South Tunnel Road, one two way driveway (Brackettown Road) on White Pine Drive at the north end of the Subject Property, and one unsignalized two-way driveway that originates on Tunnel Road just north of the intersection with South Tunnel Road. -9-

13. White Pine Drive, where the Brackettown Road driveway is located, is a two lane residential street and is the only street that serves the Kenilworth Forest neighborhood. The two commercial uses, a restaurant and a service station, located at the intersection of White Pine Drive and Tunnel Road, also have driveways onto White Pine Drive. The intersection of White Pine Drive and Tunnel Road is controlled by a traffic signal.

14. During times of peak usage, including Saturdays, work weeks, homebound rush hour, and seasonal (especially Christmas) holiday shopping, vehicles using the Brackettown Road driveway to enter and exit the mall frequently back up White Pine Drive to the point where the Brackettown Road driveway intersects, resulting in inconvenience and delays to the residents of Kenilworth Forest trying to enter and leave the subdivision. The driveway is just below the crest of a hill on White Pine Drive, and vehicles exiting Kenilworth Forest sometimes have difficulty stopping for backed up Mall traffic.

15. A traffic analysis reviewed and concurred in by the City's staff indicated that the additional traffic generated by the proposed Mall expansion would not significantly worsen the peak usage traffic problems on White Pine Drive, but that closing that driveway or making it a one way entrance would negatively affect the peak hour traffic along Tunnel Road and South Tunnel Road. The traffic analysis also indicated that any traffic problems on White Pine Drive could be mitigated by making adjustments to the signal timing at the White Pine Drive/Tunnel Road intersection, and to other signals in either direction from that intersection along Tunnel Road and South Tunnel Road. The staff's recommendation was that the Brackettown Road driveway not be eliminated or made one way in connection with the Project, but that other adjustments, such as signs, signals, and curbing and markings, should be considered.

16. Residents from Kenilworth Forest expressed concern over the proximity of the Mall and the impact of the proposed expansion to their neighborhood. These concerns centered on (a) traffic, primarily the Brackettstown Road driveway, as described above; (b) noise anticipated from the construction and from Mall activities in general; (c) litter and trash from the Mall parking lot; (d) light and glare from the parking lot light poles and from the headlights of cars using the parking lot and parking deck; and (e) privacy, especially in the vicinity of the existing theaters where the grade differential changes.

17. The City's Technical Review Committee has reviewed the Project and indicated that all applicable technical and development standards, including provision of adequate water, sewer and emergency services, storm water and erosion control, and buffering from adjacent residential areas will be met if the Project is developed according to the submitted site plan. The TRC approval was subject to several recommendations as to conditions, which are contained in Attachment 1 hereto, and include:

- 1) installation of additional buffer or a solid wall along the property line in the area of the theaters to be demolished, in order to provide a visual and noise buffer.
- 2) designing new light fixtures to minimize intrusion of light into the adjacent residential area.
- 3) installation of a sidewalk along the entire South Tunnel Road frontage of the Subject Property.

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City Attorney Oast said that the conclusions, or determinations, are what Council must make under the ordinance and Council must find in favor of the applicant on each one of the conditions in order for the conditional use permit to be issued. He briefly reviewed the following draft conclusions:

1. The Project is a Level III project within the meaning of City Code Sec. 7-5-9(a) and a Conditional Use Permit is required.

All notice and advertising requirements were properly and timely met, and no one has objected to this public hearing on the basis of any alleged failure to satisfy said requirements.

2. That the proposed use or development of the Project will not materially endanger the public health or safety in that the Project is an expansion of an existing retail facility in a regional retail shopping area. The Project received technical approval from the Water Resources Department, the Fire Department, and MSD, Engineering, and other City Departments.

3. That the Project is reasonably necessary for the health and general welfare, such as by enhancing the successful operation of the surrounding area in its basic community functions or by providing an essential service to the community or region.

The Asheville Mall serves as a regional shopping center. The presence of the mall enhances the successful operation of the surrounding area as a commercial corridor.

4. That the Project will not substantially injure the value of the adjoining or abutting property, provided that adequate buffering and screening are installed so that negative impacts of the mall on adjoining property will not be increased above pre-expansion conditions.

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

The existing mall is located on property zoned Regional Business. The neighboring uses along Tunnel Road include a number of large-scale retail developments. Adequate buffering and screening are necessary to

separate this use from neighboring single-family residential development.

6. That the proposed use or development of the land will generally conform with the Comprehensive Plan and other official plans adopted by the City.

The Asheville City Plan 2010 indicates commercial development for the Tunnel Road corridor. The proposed expansion of the Asheville Mall is consistent with the intent and the standards of the Regional Business zoning district.

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

The proposed development is located in an existing developed area. The project received technical approval from the Water Resources Department, the Fire Department, and MSD. The mall is located on a five-lane major thoroughfare as identified on the Asheville Thoroughfare Map.

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

The developer prepared a Traffic Impact Analysis (TIA) for the proposed mall expansion as required by the UDO. The TIA considered the impact of this expansion and other projected traffic on the transportation system. The TIA concluded that "with modifications in the timing will not have a detrimental impact on the traffic operations on S. Tunnel Road." The TIA also indicated that the proposed expansion would have no substantial impact on the existing situation on White Pine Drive. The City Engineer and Traffic Engineer reviewed the findings of the TIA for accuracy, and concur with the findings.

Planning & Development Director Scott Shuford reviewed with Council the following conditions which address the points that City Council raised:

Brackettown Road

The issue of Brackettown Road was an issue City Council reviewed on August 10, 1999, and determined that based upon staff's acceptance of a consultant's report prepared by the applicant, that Council would not modify the traffic access on Brackettown Road. Since that is a performance-based condition that the signalization changes that are proposed for Tunnel Road will resolve some of the access issues, then staff feels it's important that Council consider alternatives if the projected performance does not occur. The following condition will address this potential problem:

1. Brackettown Road - Prior to the issuance of a certificate of occupancy for the Asheville Mall expansion floor area, the traffic signal timing changes recommended by the applicant's consultant in the Mall's vicinity shall be implemented. After a six month performance evaluation period (from the date of the opening of the Mall expansion to the public), staff shall coordinate a public meeting to receive comments from the Kenilworth Forest neighborhood, the applicant, NCDOT, and City Engineering regarding the effectiveness of the signal timing changes in addressing the traffic safety, capacity and convenience objectives of the City in general and the neighborhood and the Mall in particular. If deemed warranted by City staff, further engineering and operational adjustments to the White Pine Drive and Brackettown Road intersection shall be implemented by the applicant, including, but not limited to: adjustments to the intersection design (realignment, radius reduction, one way in or out, etc.); signalization options (flashing red beacons, "traffic in intersection" warning signals, etc.); and/or operational changes ("no truck traffic" signage, etc.). Alternately, further signalization adjustments in the Mall's vicinity may also be considered as a possible means of meeting the performance objectives established in the consultant's report; however, this alternative shall require a similar re-evaluation of the performance within six months of implementation.

After this condition was drafted, staff did hear from the applicant and they did raise an important consideration - they have legal obligations to their tenants with regard to driveway access and they are concerned that the wording proposed will put them in some jeopardy. City staff recognizes that and recommends the following amended version of Condition No. 1:

1. Brackettown Road - Prior to the issuance of a certificate of occupancy for the Asheville Mall expansion floor area, If deemed warranted by City staff, further engineering and operational adjustments to the White Pine Drive and Brackettown Road intersection ~~may shall~~ be implemented ~~by the applicant~~, including, but not limited to:

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Upon inquiry of Councilwoman Field, City Attorney Oast said that this doesn't solve the problem because we don't know until the Mall is expanded what the problem will be. What this does is preserves for the City the right to go in and make appropriate changes to the extent that we can, if deemed warranted by City staff. He said the point of including this condition is to not set up a situation where the City is precluded from going in and making changes if we think the situation warrants it.

Site Lighting

There seems to be a general agreement with this. The Mall's existing lighting creates an unacceptable glare situation and ambient lighting cannot be increased without negatively affecting the Kenilworth Forest neighborhood. The applicant has agreed to insure that the glare effect will be eliminated and that ambient light will be maintained at current levels or reduced. This agreement will be enforced through staff review of the proposed lighting plan prior to issuance of electrical permits for the lighting, comparison of pre-existing photometrics and post-construction photometrics, and shielding of the existing and proposed light sources in order to eliminate glare (the direct visibility of an unshielded light source from the Kenilworth Forest neighborhood).

2. Site Lighting - The applicant shall eliminate all existing glare into the Kenilworth Forest neighborhood and no glare shall be created from the proposed site lighting; for the purpose of this condition, "glare" shall be considered as the direct visibility of any unshielded light source on the Asheville Mall property from any point within the Kenilworth Forest neighborhood. Additionally, ambient light shall not be increased as it affects the Kenilworth Forest neighborhood; preferably, the ambient light should be decreased. To enforce this condition, the applicant shall provide City staff with a pre-construction photometric study and proposed lighting plan prior to the issuance of any electrical permits for the proposed site lighting. A post-installation photometric study shall be provided to City staff by the applicant to allow evaluation of the lighting design and installation in meeting this condition. The applicant shall correct any deficiencies noted by City staff in both the analysis of these studies and the inspection of the effectiveness of the installation prior to the issuance of a certificate of occupancy for the Asheville Mall expansion floor area. Any future installation of outdoor lighting, including upgrades to, or replacement of existing outdoor lighting on Mall property shall be done in accordance with a photometric plan approved by the Planning and Development Director.

Councilman Cloninger suggested the following amendment: ... for the purpose of this condition, "glare" shall be considered as the direct visibility of any unshielded **or inadequately shielded** light source on the Asheville Mall property"

Mayor Sitnick suggested the following amendment: "Additionally, ambient light shall not be increased as it affects the Kenilworth Forest neighborhood.; ~~preferably, the ambient light should be decreased.~~"

Upon inquiry of Councilwoman Field, Mr. Shuford explained what kinds of measures can be taken to

decrease the ambient light.

Buffer Wall/Landscaping

The applicant indicated there would be a buffer wall erected essentially at the place where the cinema will be removed. The extent of that buffer wall, from the staff's perspective, is -13-

not satisfactory in addressing the issue. Staff feels it needs to be largely along the entire west side of the property from the edge of the existing parking deck all the way to a point beyond the cinema.

3. Buffer Wall/Landscaping - The applicant shall erect a buffer wall consisting of an aesthetically pleasing, acoustic-deadening/absorptive material mounted on posts and projected to reduce noise volume of the specified type (routine auto traffic on the perimeter road, car stereos, and tire squeals) by a minimum of 65% below existing volume as measured along the common property boundary between the Mall and Kenilworth Forest. This buffer wall shall be of a material and height necessary to achieve the specified level of performance and shall be approved by the Planning and Development Director. The buffer wall shall be erected after the demolition of the cinema building and before the start of other construction. The buffer wall shall be erected along the west side of the property boundary starting at the south end of the existing parking deck and running the remainder of the western property boundary to where it jogs to the south (app. 600 ft.); the buffer shall replace the existing vinyl-slatted chain link fence. The buffering along the remaining property boundary shall be a fence-option Type-D buffer. To protect existing trees which form an integral part of the buffer, the following requirements shall be met by the applicant:

- Existing trees along the west property line shall not be removed.
- Prior to receiving a zoning permit, the applicant shall submit a tree survey and tree protection plan showing the location of the buffer wall in relationship to the tree trunks to demonstrate that the trees will remain undisturbed; additionally, the applicant shall work with City staff to identify and apply appropriate fertilization to the existing landscape buffer to improve survivability.
- The edge of the wall shall be no closer than 4 feet from the tree trunks.
- If necessary, the edge of the proposed parking lot shall be shifted to achieve this performance.

Mr. Shuford said that the City received today from the applicant a proposal to do a buffer wall, and it's not clear to City staff yet where they are proposing it. Their proposal is to do a buffer wall that is a Georgia DOT standard wall, 8-feet tall, consisting of metal panels which are caulked together, that would, given the information that they have presented to the City, come into pretty general compliance with the standard that we propose. We need to give that further study.

Vice-Mayor Hay asked if you determine, before the wall is constructed, that it will in fact reduce the noise by 65%, or do you have to build the wall and then test it before it is known. Mr. Shuford suspected that we will be able to tell with some relative reasonable degree of assurance, given the parameters of the wall whether or not it's going to perform to that standard, and of course, the method of construction may have an affect on that. For instance, if they did not caulk between the panels, sound could leak through there. This particular type of wall, from the information from the applicant, generally seems to cover that range that the

neighborhood indicated was a problem.

Councilwoman Field felt the noise reduction should be stated in terms of a range, since not every frequency will be reduced by 65%, and the ultimate desire is to have a substantial decrease in the amount of noise going into the neighborhood. She felt that a better indicator might be the use of the standard in the industry which is a STC level. Mr. Shuford noted that in the information provided to them by the applicant, this particular wall had an STC rating of 27. As to what that exactly means, staff will have to go back and do some calculations to see if that rating meets the intent of Council. -14-

To address Councilwoman Field's concerns, Mr. Shuford suggested the following amendment to Condition No. 3: "The applicant shall erect a buffer wall ... to reduce noise volume of the specified type ... by a minimum of **an average of 65%**"

Mayor Sitnick was concerned that the applicant's original proposal lacked specificity and was limited in scope enough for City staff to say that it doesn't address the noise issue raised by the neighborhood. Mr. Shuford explained that at the time the condition was written they had not received further clarification from the applicant as to what type of wall they were proposing. Staff does now have that information, in that they would erect an 8-foot tall buffer wall, however, staff doesn't feel that that limited length proposed by the applicant is sufficient to address the issues City Council felt were important. Staff recommends the buffer wall be erected along the west side of the property boundary starting at the south end of the existing parking deck and running the remainder of the western property boundary to where it jogs to the south (app. 600 ft.), to address the fact that there will be increased traffic activity in the back.

Upon inquiry of Councilwoman Field if the wall proposed by the applicant will allow the vegetative buffer to remain, Mr. Shuford responded that the wall is fairly narrow and it appears that it will allow the vegetative buffer to remain.

Upon inquiry of Councilwoman Field, Mr. Shuford felt that given the way the property drops off and the elevation change that occurs in the back, it seems like to achieve what City Council is after, some physical barrier will have to be constructed. Staff hasn't said what that physical barrier needs to be, but it needs to be in conjunction with the existing landscaping. He is pretty confident that the barrier needs to be the approximately 600 feet in order to achieve that level of noise reduction. However, if City staff finds that it is not necessary, the applicant and staff may come back before City Council to suggest a modification to that condition.

City Attorney Oast said that in an appropriate circumstance, a modification to a condition can be made. He said the intent of the condition staff is proposing is that we get a projection from the people who are going to be installing the wall, or some engineering certification, that the wall is designed to reduce the average noise by 65%.

Councilwoman Cobb didn't want to lose sight of the fact that privacy is an issue for the neighborhood as well.

Upon inquiry of Mayor Sitnick, Mr. Shuford said that the condition would require that the existing vinyl-slatted chain link fence be removed and replaced by the buffer wall.

Existing Parking Deck Privacy Wall

The July 27, 1999, Council meeting included testimony from neighbors immediately adjacent to the existing parking deck who expressed concerns about privacy. While much of the existing parking deck is shielded from the Kenilworth Forest neighborhood by topography, there are some areas where privacy may be an issue. The applicant should address this issue through the selective placement of six foot tall visual barriers.

4. Parking Deck Wall - The applicant shall work with City staff to identify where Kenilworth Forest properties

can be seen from the existing parking deck and shall install six foot tall visual barriers where necessary to eliminate privacy concerns. These barriers shall be erected prior to the issuance of a certificate of occupancy for the Asheville Mall expansion floor area.

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City staff suggested that might be the possibility of increased planting of evergreens which might have the same effect. Council may wish to consider whether to leave that option a little open-ended in order to give some flexibility to the applicant.

Transit

The applicant has agreed to a City Council suggestion to provide transit access to the Mall. The recommended condition to address this issue is:

5. Transit - Prior to the issuance of a certificate of occupancy for the Mall expansion project, the applicant shall allow access to mall property to the Asheville Transit Authority for pick up and drop off of bus patrons at a mutually agreed-upon location near a primary entrance to the mall. This access shall include internal circulation of transit buses through the mall parking lot.

Mayor Sitnick thanked the developers for agreeing to provide this transit service which has been requested for many years.

Sidewalk

The applicant has agreed to a City staff condition to install sidewalks along the Mall's street frontage. This sidewalk will tie into the one being constructed on the "former" Lowe's site. The recommended condition to address this issue is:

6. Sidewalk - Prior to the issuance of a certificate of occupancy for the Mall expansion project, the applicant shall construct a five-foot sidewalk along the entire frontage of the mall property where none exists as shown on the revised site plan (revision date 7/9/99).

Mayor Sitnick thanked the developers for agreeing to this condition which will be a great safety and convenience benefit to our citizens.

Deliveries/Service

The neighborhood has expressed concern about the timing of deliveries and service activities such as parking lot vacuuming, as well as the location of dumpsters. To address this issue, the following condition is recommended:

7. Deliveries - The applicant shall limit delivery (loading and unloading) and service activities (parking lot vacuuming, dumpster service, etc.) on the west side of the Mall to between the hours of 7:00 a.m. and 10:00 p.m. Dumpsters shall be located as specified on the revised site plan (revision date 7/9/99).

Mr. Shuford said that the applicant does have a concern with this because they indicate that there is some limited ability to influence deliveries by their tenants.

Councilwoman Field agreed that there is nothing a developer can do to tell trucking companies when to deliver. Therefore, she suggested the following amendment: "The applicant shall limit ~~delivery (loading and unloading)~~ and service activities"

Councilwoman Field noted that when leases are re-negotiated or new leases are drawn, that something could be included in the lease agreement that the tenant would make every attempt to have deliveries between 7:00 a.m. and 10:00 p.m.

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Hours of Construction

The neighborhood has requested some limit on construction hours. The applicant has agreed to limit the time period for cinema demolition, but needs the ability to work a flexible schedule for other construction activities.

8. Hours of Construction - The applicant shall limit construction hours for cinema demolition to the hours between 7:00 a.m. and 7:00 p.m., Monday through Saturday. Upon installation of the proposed buffer wall, construction hours for the Mall expansion shall not be limited.

Proposed Parking Deck Privacy Wall

Mr. Shuford said that there was one issue which was raised by the neighborhood that staff did not propose a condition for. That dealt with the need to have a privacy wall on the proposed parking deck. The applicant has submitted a line-of-sight study that shows that the proposed parking deck will allow someone standing on the part of the deck nearest the closest adjoining residences to see into the backyards of some of these residences. The view distance to these homes is through wooded areas and ranges from 223 ft. to 313 ft. to the property lines and 298 ft. to 410 ft. to the residential structures.

Staff has measured the height of the headlights of the largest vehicles reasonably anticipated to be parked on the parking deck (a Ford F-250 pickup equipped for off-roading; Chevy Tahoe) and has determined that the proposed four foot high wall will contain the light from these vehicle types.

Given these facts, staff does not recommend a condition to address this issue raised by the neighborhood. The neighborhood proposal of a very high privacy wall on top of this parking deck does not appear warranted given the distance involved and the four foot tall screening proposed by the applicant will block headlights.

General discussion:

Upon inquiry of Councilman Cloninger, Mr. Shuford said that many communities are going to performance standards to allow some flexibility and alternative means of meeting conditions. He felt it was important for City staff to address compatibility issues because as our city grows and redevelops we will have more and more cases where neighborhoods are going to come into a potential impact from non-residential or residential development and we need ways to address that.

Upon inquiry of Councilman Cloninger, Mr. Shuford agreed that some of the engineering and operational adjustments spelled out in Condition No. 1 have been determined not feasible and realistically some of them will not be feasible in six months. However, staff was trying to list the items that had been brought forward by the neighborhood and City Council as items to be looked at in six months. He noted that the City Traffic Engineer earlier indicated that some of these measures would have limited effectiveness - for example, a flashing signal on top of the existing stop signs probably would be ignored just as frequently as the stop sign itself, once people got used to seeing it there. But, he said there is always a possibility that it could be introduced and it be effective.

Upon inquiry of Mayor Sitnick, Mr. Shuford said that there is a sign on Brackettown Road that says "Do Not Block Intersection" but still people will try to squeeze out and get in line to make the left hand turn onto Tunnel Road. He felt that perhaps there are some stripping options that could be put on the pavement. He said City staff can pursue that unilaterally.

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Vice-Mayor Hay said that essentially we are being told the best thing we can do is rely on the traffic signal changes along South Tunnel Road to mitigate traffic problems at the intersection of White Pine Drive and Brackettown Road. He noted that we are relying on the applicant's consultant making that decision, although our City staff agrees with that decision. What this says is we want to go back in 6 months and see if that's right or not. If it's not right, then we want to do something about it because essentially the representation that was made to us about mitigating traffic was an erroneous representation. Therefore, he didn't know if we should be so willing to let the developer out of the re-evaluation process. They are the ones that represented to City Council in the first place, that this is the way to mitigate the traffic problems. If they were mistaken about that, and I think it's a good faith representation if it turns out not to be true, I think the developer should be a more active participant in what we do to go ahead and meet that need that apparently wasn't met with the traffic study in the first place. Mr. Shuford said that adjustment staff proposed was intended to address the specific issue and that was they did not want to have to re-visit the issue on their part of closing that driveway or making it one way in or one way out. I will try to work on some language that might address that specific thing and that be a city issue - which we always have the right to do - we control the access to our roads so we can put that in as an alternative and let the other things, which are basically signage and warning lights, etc., potentially be the responsibility of the developer.

Mr. Michael Lebovitz, Senior Vice-President of CBL & Associates Properties (owners of the Asheville Mall) said that Condition No. 1 regarding Brackettown Road as drafted and amended is not acceptable to them. Their traffic report made suggestions as a way of accommodating the increased traffic that will be generated by the proposed Mall expansion. The NC DOT controls the signals on Tunnel Road and we can't tell them when to make those changes. They can, however, request those changes be made and file an application for those changes. He felt that Condition 1 puts the burden on the applicants to make those changes and, therefore, he requested that Condition No. 1 be modified.

Regarding Condition No. 1 still, Mr. Lebovitz said that the City has the right to come in and make changes to the public streets around the Mall that the City controls and the Mall has the right to challenge those changes if they chose. But, for them to agree, through this conditional use permit process, to allow the City to potentially make Brackettown Road a one-way in/one-way out, is, in their opinion, giving the City more room to make future changes that can adversely affect their development. For that reason, they requested that Condition No. 1 be modified to eliminate any of those requests.

Mr. Lebovitz agreed that Brackettown Road can be improved in terms of safety, mainly by drivers from the subdivision improving their driving habits and by the Mall patrons improving their driving habits. He agreed that there does need to be increased signage, a better painted stop bar, etc. But, Brackettown Road cannot be something that they allow to potentially be closed or changed as it impacts their development.

With regard to Condition No. 2 (site lighting), Mr. Lebovitz said that you can decrease ambient lighting by making the edge lighting zero, which is a mistake from a safety standpoint. They provided a site photometric study that shows a very low level of lighting at the edge and we propose that level of lighting be maintained because you just can't have no lighting at the edge of the parking lot.

With regard to Condition No. 3 (buffer wall), Mr. Lebovitz said that at the public hearing they understood from Council that the fence they proposed was not acceptable. They have spent a lot of time trying to find something that is acceptable and they chose a Department of Transportation sound wall that is used in Atlanta, Georgia, on I-285 (he passed out three photographs of the wall). He said that in Georgia that wall buffers a major 10-lane freeway from a residential area. With regard to the requirement that the wall reduce noise by 65%, he -18-

discovered that the 65% was arbitrary and they don't feel it is appropriate because their buffering is beyond the City's Code, as is the sound barrier. They feel that erecting the DOT approved sound barrier is something that is being used in the field and to place an arbitrary percentage on noise is not appropriate. As to the length of the sound barrier, they are not aware of any complaints from the neighborhood residents before they entered into this process. He agreed that to erect a sound barrier to replace the theatre is an important thing to do and that is why they are proposing the wall to be the length of the theatre.

With regard to Condition No. 4 (existing parking deck privacy wall), Mr. Lebovitz said that only one comment was made regarding this issue at the public hearing. Because they have never had any reported incidences, they don't feel that is an appropriate condition because there has been no problem with that in the past.

With regard to Condition No. 7 (deliveries/service), Mr. Lebovitz appreciated the amendment to that condition. He said they can control their services and will agree to that.

Mr. Lebovitz said that the Mall owners want to be good corporate citizens and good corporate neighbors. He said that they did some research and found that 76% of the residents of Kenilworth Subdivision purchased their house after the Mall was built, stressing that they chose to live next to a regional mall. A statement was made earlier that the Mall decreases property values. They talked to several appraisers in town who said that was not a true statement. He said that, as owners of the Mall, they have an obligation to not only protect the neighborhood and be good corporate citizens, but also to enhance the Asheville Mall.

Vice-Mayor Hay agreed with Mr. Lebovitz in that the NC DOT does have control over the signal timing changes and essentially our Condition No. 1 states that the certificate of occupancy will not be issued until NC DOT makes the traffic signal timing changes. He felt that would be a fair request to amend that condition to something similar to "the applicant will do everything humanly possible to get the NC DOT to make the traffic signal timing changes recommended by the applicant's consultant"

Vice-Mayor Hay said that his point of reference to most of these issues is to limit the intrusion by the new expansion. One issue regarding the length of the buffer wall is increased traffic on the back side of the Mall - not only in the space behind the theatre. He noted that the traffic study shows the expansion will result in a 20% increase of traffic on Brackettown Road and if the Mall patrons want to go to the new Mall expansion, they will go along the back of the Mall from Brackettown Road.

Mr. Lebovitz said that with regard to the increased traffic in the back, they are not re-focusing the entrance to the Mall. If anything, the back area will remain a relatively unused over-flow area, even to a lesser extent than it is now because the cinemas are gone. The way this expansion is being designed, this will not be a high traffic area, except possibly in the 19 days during the holiday season.

Councilwoman Field felt that Council needed to be fair to this new developer to make sure that they are addressing problems that are due to the expansion and not pre-existing problems from the prior Mall owners.

Mr. Phil Noblitt, resident of 297 White Pine Drive and representative of the Kenilworth Forest Neighborhood Association, encouraged Council not to summarily exclude any further consideration of Brackettown Road. There are some things that can be done that may not be as radical as closing that Road, or even making it one-way, for example, looking at the turning radius, installation of stop signs, increase signage to promote traffic onto the new Sears Auto Center entrance. Condition No. 1 does call for NC DOT involvement. As he reads the condition, -19-

there is no indication that the traffic signal timing changes would be done summarily and without NC DOT input. He said that on the entrance road to the Sears main entrance, there is a "No Truck" sign and he requested that be removed because that specifically diverts truck traffic to White Pine Drive.

Mr. Noblitt proposed Condition No. 2 be amended to read: "glare" shall be considered as the direct visibility of any ~~unshielded or inadequately shielded~~ light source on the Asheville Mall property" He was concerned about "refracted" light and felt there may be a need to look at taking existing light levels within the neighborhood itself so that you can address any glare issue that may be very indirect and may be refracted. He believed that Brackettstown Road is a safety issue. Since Council has asked how many traffic accidents have been recorded at the intersection of Brackettstown Road and White Pine Drive, he felt that to be consistent, Council should ask how many assaults have been made at the Mall to justify that much additional lighting in the Mall itself.

Regarding the buffer wall, Mr. Noblitt requested Council look at the 65% noise reduction at all frequency ranges. Height of the wall is a factor and in his opinion, an 8-foot buffer wall simply will not be adequate, or reasons such as trash thrown over the wall and security. He reemphasized that even if this is some additional expense, this is a \$15 million project. He also requested that the noise wall go from one elevation and topography to the other elevation and topography, whether that's 575 feet or 625 feet (specifically from the two existing banks, noting that one bank goes up hill approximately 30-feet beyond the parking deck).

With regard to the parking deck wall, Mr. Noblitt requested that there be some slightly higher elevation than the four foot wall. He felt that some inexpensive could be installed.

Mr. Noblitt felt that Condition No. 7 regarding limiting delivery hours is a critical issue for the neighborhood. If the applicant cannot limit the delivery hours, he felt Council should revisit the neighborhood's request for a 75% noise reduction and 14-foot high sound wall. He agreed that delivery trucks go into the parking lot area at night and wait till the Mall opens. He felt it would be a good faith effort on the part of the Mall to ask their security personnel to ask the delivery truck drivers to turn off their diesel engines when they sleep in their cabs at night waiting for the stores open.

Mr. Noblitt pointed out several issues where Mr. Lebovitz said they weren't aware of or could not be responsible for, however, not once did he hear Mr. Lebovitz say that they would voluntarily do something that might improve the situation. He felt this process allows the developer selectively to accept responsibility. The neighborhood has acted in good faith, agreed to mediation but is disappointed that there was no attempt made to contact them prior to formal notice being given that this project was going before the Technical Review Committee.

Upon inquiry of Mayor Sitnick, City Manager Westbrook said that Mr. Ken Putnam, Division Traffic Engineer for the NC DOT was at the public hearing and said that are very interested in working with the City of Asheville in doing whatever they can to improve the signal timing.

Councilman Cloninger reminded Council that there is an evaluation, which starts six months after the date of the opening of the Mall expansion to the public. City Attorney Oast noted that Condition No. 1 will be amended so that the performance is evaluated six-months after the changes that the City has recommended, and hopefully implemented, by the NC DOT.

Mayor Sitnick asked that the "No Truck" sign on the entrance road to the Sears main entrance be removed.

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Councilwoman Field suggested Council take a short break and let Mr. Shuford talk with the neighborhood representative, the developer and the City Attorney to address the issues that City Council has raised.

Councilman Cloninger felt that the City should retain performance standards to allow some flexibility in the noise wall.

At 6:55 p.m., Mayor Sitnick announced a short break.

Mr. Shuford said that the following amended Condition No. 1 is staff's attempt to address the following concerns: (1) the applicant not having the ability to unilaterally influence the NC DOT; (2) the applicant being forced to make adjustments on Brackettown Road because of contractual agreements with tenants; (3) comments from Vice-Mayor Hay with regard to what the City can do if the NC DOT fails to accept the signalization options; and (4) indicate that the City has the right to unilaterally take certain traffic engineering actions:

1. The traffic signal timing changes recommended by the applicant's consultant in the Mall's vicinity shall be immediately presented to the NC DOT for consideration for implementation. The applicant shall work cooperatively with the NC DOT and the City to maximize the potential for implementation of this performance standard. If the NC DOT fails to enact signalization changes or after a six month performance evaluation period (from the date of the opening of the Mall expansion to the public), or the implementation of signalization changes (whichever is later), staff shall coordinate a public meeting to receive comments from the Kenilworth Forest neighborhood, the developer, NC DOT, and City Engineering regarding the effectiveness of the signal timing changes in addressing the traffic safety, capacity and convenience objectives of the City in general and the neighborhood and the Mall in particular. If deemed warranted by City staff, further engineering and operational adjustments to the White Pine Drive and Brackettown Road intersection shall be implemented by the applicant. These options shall not include closure of the intersection or access changes such as one-way in or out, although the City reserves the right to unilaterally take these actions and the applicant has the right to take whatever legal means necessary to preserve his right of access. Alternately, further signalization adjustments in the Mall's vicinity may also be considered as a possible means of meeting the performance objectives established in the consultant's report; however, this alternative shall require a similar re-evaluation of the performance within six months of implementation.

Upon inquiry of Councilman Cloninger, Mr. Shuford said that all intersection design changes would have to be done by the developer, except the drastic ones, such as closure. For example, if there was a need to adjust the radius of the roadway or to install signage, signalization, then those would be at the expense of the developer, but they are relatively minority compared to that one issue.

When Councilman Cobb asked who will do the six-month evaluation after the Mall opens, Mr. Shuford said City staff will convene a meeting of the NC DOT, City Engineering staff, applicant and the neighborhood and talk about whether or not the performance issues have been addressed to everyone's satisfaction. The City will reserve the right to make the ultimate decision with regard to whether Condition No. 1 has been met.

Councilman Cobb was reluctant to eliminate the one-way in/one-way out issue on Brackettown Road. He felt the developer inherited a bad situation and he was not sure whether the City needed to hold the developer liable to make the change. If the City made the mistake years ago, they should assume some responsibility to correct it.

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Mayor Sitnick announced that there was City Council consensus on Condition No. 1 as amended by Mr. Shuford after the break.

Mr. Shuford said that the following amended Condition No. 2 is staff's attempt to address the following concern, in addition to the two amendments suggested earlier by Councilman Cloninger and Mayor Sitnick: (1) the neighborhood's need to address the issue from their side of the neighborhood:

2. The applicant shall eliminate all existing glare into the Kenilworth Forest neighborhood and no glare shall be created from the proposed site lighting; for the purpose of this condition, "glare" shall be considered as the direct visibility of any unshielded or inadequately shielded light source on the Asheville Mall property from

any point within the Kenilworth Forest neighborhood. Additionally, ambient light shall not be increased as it affects the Kenilworth Forest neighborhood. To enforce this condition, the applicant shall provide City staff with a pre-construction photometric study and proposed lighting plan prior to the issuance of any electrical permits for the proposed site lighting. A post-installation photometric study shall be provided to City staff by the applicant to allow evaluation of the lighting design and installation in meeting this condition. **All photometric studies shall include readings taken from locations in the Kenilworth Forest neighborhood affected by ambient and glare lighting.** The applicant shall correct any deficiencies noted by City staff in both the analysis of these studies and the inspection of the effectiveness of the installation prior to the issuance of a certificate of occupancy for the Asheville Mall expansion floor area. Any future installation of outdoor lighting, including upgrades to, or replacement of existing outdoor lighting on Mall property shall be done in accordance with a photometric plan approved by the Planning and Development Director.

Mr. Lebovitz said that since there are street lights in the neighborhood, it is hard to get a good reading and determine where the lights are coming from when you have multiple light sources. Mr. Shuford responded that if you go in and do a photometric study prior to the installation of the lighting and do one afterwards (the street lighting factor has not changed) and there is a difference, then the City can suggest some adjustments to the lighting.

Mayor Sitnick announced that there was City Council consensus on Condition No. 2 as amended by Mr. Shuford after the break.

Mr. Shuford said that the following amended Condition No. 3 is staff's attempt to address the concerns raised by City Council, in addition to the amendment suggested earlier by Councilwoman Field:

3. Buffer Wall/Landscaping - The applicant shall erect a buffer wall consisting of an aesthetically pleasing, acoustic-deadening/absorptive material(s) mounted on posts and projected to reduce audible noise volume **to a weighted average of not more than 65 decibels during the hours of operation of the Mall** of the specified type (~~routine auto traffic on the perimeter road, car stereos, and tire squeals~~) by a minimum of ~~65% below existing volume~~ as measured along the common property boundary between the Mall and Kenilworth Forest, **and in no case shall the buffer wall be less than eight feet in height.** This buffer wall shall be of a material and height necessary to achieve the specified level of performance and shall be approved by the Planning and Development Director. The buffer wall shall be erected after the demolition of the cinema building and before the start of other construction. The buffer wall shall be erected along the west side of the property boundary starting at the south end of the existing parking deck and -22-

running the remainder of the western property boundary to where it jogs to the south (app. 600 ft.); the buffer shall replace the existing vinyl-slatted chain link fence. The buffering along the remaining property boundary shall be a fence-option Type-D buffer. To protect existing trees which form an integral part of the buffer, the following requirements shall be met by the applicant:

- Existing trees along the west property line shall not be removed.
- Prior to receiving a zoning permit, the applicant shall submit a tree survey and tree protection plan showing the location of the buffer wall in relationship to the tree trunks to demonstrate that the trees will remain undisturbed; additionally, the applicant shall work with City staff to identify and apply appropriate fertilization to the existing landscape buffer to improve survivability.

- The edge of the wall shall be no closer than 4 feet from the tree trunks.
- If necessary, the edge of the proposed parking lot shall be shifted to achieve this performance.

Mr. Shuford said that the City Attorney has been studying this issue from the standpoint of the noise ordinance. He has indicated to them that in an average neighborhood, during daytime, you have an ambient noise of between 60-65 decibels. Staff recommends that standard be measured from the property line, so that during the operating hours of the Mall, there would be an average reading of 65 decibels or less at the property line. The intent of that would be to try to keep the Mall from not creating a non-neighborhood level of noise. Whether that means it needs to be an 8-foot wall or an 18-foot wall is a performance issue to be resolved at some future point.

Mayor Sitnick said that personally she would like to see the buffer wall be erected the full length (along the west side of the property boundary starting at the south end of the existing parking deck and running the remainder of the western property boundary to where it jogs to the south, app. 600 ft.). Mr. Shuford said that if Council wants to go with the true performance standard, Council would not specify the length or height of the wall.

Upon inquiry of Vice-Mayor Hay, City Attorney Oast said the 65 decibel standard is from expert sources he consulted for residential noise levels in urban areas.

When Mayor Sitnick asked if we can amend a condition that would require delivery trucks that come in early for early deliveries, to sleep in a different part of the parking lot, to address the concerns of noise when they leave their motors running all night. City Attorney Oast said that the revised noise ordinance will take part of that. He said that regardless of whether or not the developer or his tenants can control deliveries, the people who make deliveries will have to abide by the noise ordinance. The City has some ability to enforce the noise ordinance on private property and we are in the process of clarifying that ability when the revisions are reviewed by City Council.

Upon inquiry of Councilman Cobb, Mr. Shuford said that if you use the weighted average of not more than 65 decibels, you will balance out those highs and lows and end up with something that basically keeps the noise activity in the neighborhood at neighborhood levels.

When Councilwoman Field asked about comparison of decibels, City Attorney Oast said that a vacuum cleaner is about 90 decibels.

Upon inquiry of Mayor Sitnick about devices that measure decibels, City Manager Westbrook said that the Police Department does have decibel meters.

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Mr. Lebovitz said that if noise is the concern of City Council, just set the standard since that can be measured. He realized that they have to extend the privacy area behind the cinema, but there already is a privacy barrier extending to the parking deck (the chain-link fence). He said that after the construction is completed and they find that they are higher than the 65 decibels, they will extend the sound wall to the parking deck.

When Councilwoman Field said that the wall needs to be either a sound wall or a visual wall against the neighborhood, Mr. Lebovitz felt that as long as it is listed as a visual wall, that's fine because it can be of a material that they chose and which they feel is architecturally compatible.

Mr. Noblitt felt that the discussion is moving from a noise wall to a wooden fence. He felt we should be looking to decrease the noise and decrease the light in the neighborhood, because he feels they are making a trade-off on traffic congestion. He said that the fence is also a privacy and security issue and an 8-foot fence is easy for a young person to jump. Even a 10-foot fence would be a trash issue and security issue.

Mayor Sitnick said that we are talking about improvements - meeting a standard for as long and as high as the wall has to go to meet that standard. In addition to that, behind the cinema now there is nothing.

Mr. Noblitt said that there is a barbed-wire fence now behind the cinema and he hoped that the materials would not be mixed and matched so that they could have a continuous fence that would be aesthetically pleasing and not part barbed-wire and part not. He suggested that it be a pleasing fence and be of consistent material.

Councilman Cloninger suggested Council adopt the 600 feet length with the wall to be comprised of whatever materials staff feels fit to meet the decibel requirements and privacy issues.

Upon inquiry of Councilman Cobb, Mr. Shuford said that staff is trying to address the noise level that will not be affected by the City's upcoming noise ordinance. Noise, like boom-boxes, etc. will be addressed by enforcement of the revised noise ordinance.

Mr. Shuford reiterated that City Council does need to address the issue of height and the aesthetics of the wall in Condition No. 1, and Council certainly wants to leave the provision in there about the chain-link fence being removed. He understands that was the consensus of the Council that even though that serves as a barrier to people crossing back and forth to property and it is 8-feet tall, that it is not the level of aesthetics that Council is interested in pursuing.

Mayor Sitnick announced that there was City Council consensus on Condition No. 3 as amended by Mr. Shuford after the break.

Mr. Shuford said that the following amended Condition No. 4 is staff's attempt to address another alternative for the applicant:

4. The applicant shall work with City staff to identify where Kenilworth Forest properties can be seen from the existing parking deck and shall install six foot tall visual barriers where necessary to eliminate privacy concerns. **Alternatives to the visual barrier, such as the planting of evergreens, may be proposed by the applicant and accepted by the City in its sole discretion.** These barriers shall be erected prior to the issuance of a certificate of occupancy for the Asheville Mall expansion floor area.

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Mayor Sitnick announced that there was City Council consensus on Condition No. 4 as amended by Mr. Shuford after the break.

Mr. Shuford said that the following amended Condition No. 7 is staff's attempt to address the amendment suggested earlier by Councilwoman Field:

7. Deliveries - The applicant shall limit service activities (parking lot vacuuming, dumpster service, etc.) on the west side of the Mall to between the hours of 7:00 a.m. and 10:00 p.m. Dumpsters shall be located as specified on the revised site plan (revision date 7/9/99).

Mayor Sitnick felt that another way to address parking lot vacuuming is that crews could start cleaning part of lot nearest the neighborhood earlier in evening and end up in the farthest areas later at night.

Again, Mr. Shuford said City staff didn't feel the need to address the issue of the height of the wall on the proposed parking deck because they feel the distance from the properties is going to address that issue.

Mayor Sitnick announced that there was City Council consensus on Condition No. 7 as amended by Mr. Shuford after the break.

Mayor Sitnick noted that Condition Nos. 5, 6 and 8 have consensus by City Council as read by Mr. Shuford before the break.

City Attorney Oast said that if Council is comfortable is voting on the conditions as modified by Mr. Shuford, he will proceed in drafting the Order for the Mayor's signature, upon vote of City Council.

Councilman Cloninger moved to adopt the ordinance which incorporates the order granting the conditional use permit with the modifications as explained by Mr. Shuford. This motion was seconded by Councilman Sellers.

Mayor Sitnick felt that it needs to be absolutely clear to everyone that this Council's main concern, where Brackettown Road is, is safety - secondary to convenience. She agreed with Councilman Cobb in that Brackettown Road was not a problem created by the expansion and it shouldn't be something the current owners have to deal with, and certainly she didn't think that it's Council's intention to give you any surprises in six months after completion of your expansion. She did think it was important to say, however, that whatever this City has to do to make sure Brackettown Road is safe for the neighborhood residents and the Mall patrons, is what we will do when, and if, the time comes to do it.

The motion made by Councilman Cloninger and seconded by Councilman Sellers carried unanimously.

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At 8:10 p.m., Councilman Sellers moved to excuse Councilman Cloninger from the meeting. This motion was seconded by Councilman Cobb and carried unanimously.

V. NEW BUSINESS:

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A. MOTION AUTHORIZING CITY STAFF TO ADVERTISE A REQUEST FOR PROPOSAL FROM NON-PROFIT AGENCIES INTERESTED IN MANAGING THE PUBLIC ACCESS CHANNEL

Councilman Tomes said that the cable franchise agreement adopted by City Council designates three initial access channels to be used for public, educational and/or governmental programming.

Last November Council discussed several possible ways to organize these channels. The governmental and educational channels were established first because they were less involved and could be on-the-air quickly. It is now time to concentrate on the public access channel.

City Council requested that staff prepare a Request for Proposal (RFP) for proposal soliciting non-profit organizations to run the public access channel. Council also decided to appoint a Public Access Channel Commission following the section of this non-profit organization.

Staff has prepared an RFP that has been reviewed by the City Manager's Office, the Legal Division, Buncombe County and members of the community. Changes were made to the document based on suggestions presented from these different sources. An ordinance has also been prepared establishing a Public Access Channel Commission which will set policy and oversee the management of the public access

channel.

Staff requests that City Council approve issuance of the Request for Proposal. Staff further requests that City Council approve the ordinance establishing a Public Access Channel Commission.

Upon inquiry of Mayor Sitnick, Ms. Robin Westbrook, Public and Community Information Coordinator, said that 4-5 organizations have requested a copy of the RFP.

When Councilman Cobb asked what would happen if we don't get any responses to the RFP, Ms. Westbrook said that then Council can go back and try one of the other possible ways in which to organize this channel.

Mr. Jack Fobes presented Council with the following statement: "It will be interesting to see what reactions you receive from non-profit citizens groups to the Request for Proposals on the operation of a so-called public access TV channel. I feel, however, that the approach which has been adopted is faulty and will result in further delays in providing this new facility for citizens. My thinking begins with two premises. First, that an integrated system for public learning or public service television is desirable, covering so-called government information reporting, school and higher education outreach to the community and public access. All three are public services and all are part of lifelong learning in a community. Moreover, there is likely to be an overlap in programming by the education institutions and those arranging public access. For example, non-profit groups can be expected to bring educational videos for exhibition to either channel. My second and more important premise is this: it is Council's role and responsibility to establish the overall principles, goals, policies and strategies for all three public service TV operations. Moreover, only with such a basis can the next steps toward implementation of an integrated system be fruitful. In my view, the Council should have drafted - perhaps with advice from a citizens committee - and adopted a solemn resolution embodying two provisions. First, there was and is a needed a statement of principles and goals for such an important public service operation. Second, we need to see set forth the policies and strategies within which a government 'channel' and organized education 'channels' and a public access 'channel' should function. One element of such a policy and strategy would cover the future of -26-

cable TV services spanning both city and county. Clarification is needed also as to policies governing current and future sources of funding. Although the RFP records some important principles and policies, their place is in a Council resolution. Under present circumstances, any responses to the present RFP will surely be accompanied by questions to the Council on basic policy and strategic considerations. If such a basic policy resolution had been adopted, the Council could logically then have decided whether a single board or commission or separate boards or commissions should be established. The resolution could have directed the single board or the several boards to begin by reviewing tentative plans for the operations involved and to return to the Council with recommendations for authorization of actual operations. The basic resolution would have set forth the second and continuing function of such board or boards, that is, to monitor and to receive accountability reports from the operators, including, by the way, from the City Manager. You will guess that I believe that one public commission should be charged with overseeing all community learning as it is severed through cable television, whether the programs originate with or come from government entities and civil servants, from high school or higher education authorities or from individuals or citizens groups who are given the possibility of 'speaking out' on cable TV. My guess is that no single non-profit group will be able to put together a proposal on public access TV and that efforts to form a responsible and accountable coalition for such service will raise basic questions which bring matters back to the Council for solution. Some, I am sorry to say, will probably welcome the delay in launching what is a difficult and sensitive, but highly desirable form of enhancing learning and promoting citizen participation in democracy. By then, who knows? -- advances in technology and competition for the public eye and ear may have satellite and telephone company services in the picture with the cable franchisees to complicate matters."

Councilman Tomes moved to authorize City staff to advertise the Request for Proposal from non-profit agencies interested in managing the public access channel. This motion was seconded by Councilman

Sellers and carried unanimously.

VI. OTHER BUSINESS:

A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON AUGUST 10, 1999, AND THE WORKSESSION HELD ON AUGUST 17, 1999

Vice-Mayor Hay moved for the adoption of the minutes of the regular meeting held on August 10, 1999, and the worksession held on August 17, 1999. This motion was seconded by Councilman Cobb and carried unanimously.

B. CLAIMS

The following claims were received by the City of Asheville during the period of August 6-12, 1999: Deborah I. Parries (Parks & Recreation), BellSouth (Streets) and Patricia Youngblood (Water).

The following claims were received by the City during the period of August 13-19, 1999: Sam Arrington (Water), Janelle Taylor (Police) and Iris Wardlaw (Water).

These claims have been referred to Asheville Claims Corporation for investigation.

VII. INFORMAL DISCUSSION AND PUBLIC COMMENT:

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VIII. ADJOURNMENT:

Mayor Sitnick adjourned the meeting at 8:17 p.m.

CITY CLERK MAYOR
