

Old Haywood Road and US 19/23 (City Exhibit 8-H)

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The TIA shows that this signalized intersection currently operates at LOS C and will continue to operate at LOS C at full build-out.

Mr. Moule said that after reviewing the TIA and the Technical Memo from the developer's traffic consultant, he concurred with the conclusions presented in those documents.

Mr. Moule responded to various questions from Council regarding the proposed roadway improvements.

Mr. W. Louis Bissette, attorney for the petitioner, explained how this project fits into the strategic plan for the sustainable economic development for the City of Asheville. He explained how residential property owners are paying too large a share of the ad valorem taxes required to operate the City. Prior to adoption of the UDO in May of 1997, this property was zoned Commercial Highway and has not been residential in many, many years. The current tax rate on this property as it now exists is approximately \$200 a year to the City in ad valorem tax revenues. This same property, if developed by Home Depot, will generate ad valorem taxes in the range of \$75,000 per year and that does not include the sales taxes which will be generated by this proposed store. This store will employ 150 people. (Applicant's Exhibit 2) Mr. Bissette pointed out that the surrounding land uses are commercial and that the use is permitted on that property. Home Depot has complied with everything it has been asked to do under the UDO. It has met all the conditions prescribed by the TRC and its design exceeds the point scale under the new design standards. (Applicant's Exhibit 3) (Applicant's Exhibit 4) Mr. Bissette explained that this proposed building design is drastically different from the standard Home Depot project in that it is designed to be in character of with the City of Asheville and the surrounding area (Applicant's Exhibit 5). (Applicant's Exhibit 7 - TIA dated 11-99) (Applicant's Exhibit 8 - TIA dated 1-24-00) He then described the road improvements proposed by Home Depot which is a substantial expenditure. He reviewed each of the conditional use requirements and how the project would be able to meet those standards. He believed that the development of this project will increase the value of adjoining properties. Home Depot is an excellent corporate citizen of the City and State as seen in Applicant's Exhibit 6 - 1998 Social Responsibility Report. The project will provide jobs, increase tax base and actually improve traffic conditions on US 19-23, Acton Circle and Monte Vista Road. Although there will be a few residences affected by this project, he urged Council to look at the big picture and what it will do for the City and the great majority of it's citizens. (Applicant's Exhibit 9 - TRC letter dated 12-20-99)

Mr. Chuck Tessier, Tessier & Associates, commented briefly on the impact of this project on the surrounding land values and urged City Council to proceed with this project.

Mr. Steve Blakely, Kimley-Horn & Associates, traffic engineers for the petitioner, summarized the road improvements and the benefits of those improvements. (Applicant's Exhibit 1) Home Depot is committed to ensure that any impacts that they have are more than mitigated as a result of these improvements.

When Mayor Sitnick asked if the applicant has any questions of staff members before they conclude this part of their presentation, Mr. Bissette replied that they had no questions.

The following individuals spoke in opposition of the Home Depot project for several reasons, some being, but are not limited to: within a half-mile radius, there are three similar businesses (84 Lumber company, Moore's Building Supplies and Lumber and a new Lowe's Mega-Store); increased traffic problems; no police presence in the area now; need for traffic calming measures to slow down speeding traffic on Monte Vista Road; property values will decrease; stormwater run-off problems; no one has addressed the projected

growth rate; exiting onto Acton Circle and Monte Vista Road from the proposed Home Depot has not been addressed in that there will be no traffic light to aid them from entering onto those roads; what will happen to
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the natural stream that runs alongside Acton Circle if road improvements are made; what will happen from the run-off from the project onto Acton Circle; tractor trailers will not be able to negotiate the curve on Acton Circle; need for competitive wages for our residents, not minimum wages; Sand Hill School Road traffic; erosion control problems on Sand Hurst Drive; a 50-foot buffer is not adequate; noise concerns; a smaller structure with a higher pay scale would be preferred on the property; and, the need for some kind of retention pond or wetland areas to filter water run-off:

Mr. Jerry Jones, Candler resident

Mr. Larry Rockman, Candler resident

Mr. Chris Jordan, resident on Monte Vista Road

Ms. Judy Jones, resident on Monte Vista Road

Ms. Julie Fisher, neighborhood resident

Ms. Connie Jones, resident on Sand Hurst Drive (Public Exhibit 1)

Ms. Helen Saunders, neighborhood resident

Ms. Carrie Becker, neighborhood resident (Public Exhibit 2)

A resident on Sand Hill Road

Mr. Paul Young, owner of Shoney's land and building, felt that Home Depot is going out of their way to be a good neighbor in addition to all their road improvements.

Upon inquiry of Councilwoman Field, Mr. Baechtold said the property is zoned Highway Business which allows a wide range of retail and commercial uses. He explained what type of projects would be required to come before City Council for a conditional use permit (Level III projects). He also explained that on Level II projects, which are only required to be approved by the TRC, City Council has no authority to improve additional conditions as they can on Level III projects.

When Councilwoman Field asked if City staff considered the traffic from the proposed soccer complex, Mr. Moule said that the complex will mainly generate traffic on weekends and that the TIA did not analyze Saturday. He explained why there was no need to analyze the Saturday traffic.

Mr. Ken Putnam, Division Traffic Engineer for the NC DOT, explained the traffic signal upgrades in the area and Home Depot's willingness to pay for the improvements to change out their equipment. Presently NC DOT staff in Raleigh is analyzing the TIA to come up with a timing plan. With Home Depot willing to pay for it, they will be able to implement the changes and they will try to coordinate all of this in conjunction with when the proposed store opens.

Mr. Charles Tremel, Real Estate Manager for Home Depot Corporation, explained the difference between the three retail businesses in the home improvement type lumber business. 84 Lumber and Moore's strictly tend to work more with the professional builders than does a Lowe's or a Home Depot. Their demographic studies show that they can well support a store in this market.

Mr. Will Buie, engineer with Lapsley & Associates, said that this site plan does include providing a stormwater detention pond and they will meet all City and State requirements for sedimentation and erosion control and stormwater detention.

When Councilman Hay asked if the City can impose a condition to require Home Depot pay to upgrade the traffic signals, Mr. Moule responded that City Council can make that a condition. Mr. Moule was satisfied that the NC DOT will do something with the amount of money that Home Depot is willing to pay to coordinate the traffic signals because it is to their benefit.

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Councilman Hay asked if tractor trailer traffic on Acton Circle was considered. Mr. Moule replied that it was taken into account. One of the conditions that staff has recommended is that the NC DOT and the City of Asheville review all the final design plans for the roadway improvements. That review could include truck turning and possibly that should be added to the condition for the review - in making sure that trucks can turn at intersections or around the curve on Acton Circle without encroaching on opposing traffic lanes. He recommended modifying that condition in that fashion.

Councilwoman Whitmire agreed that the tractor trailer traffic on Acton Circle needed to be considered. She also stressed that if there is, in fact, no police presence in that area that that issue be addressed as well.

When Councilwoman Whitmire asked if the City could initiate some traffic calming measures on Acton Circle and Monte Vista Road, Mr. Moule said that they are state maintained roads but that he would ask the NC DOT to evaluate the speed.

Upon inquiry of Councilman Worley, Mr. Baechtold explained how a TIA would be triggered if staggered developed occurred on a piece of property.

When Councilman Worley asked how much tractor trailer traffic would be generated, Mr. Hughes Thompson, representing Greenberg Farrow Architects & Engineers, said he expected this store to have a range of 8 to 12 trips a day - 3 or 4 of those trucks delivery about 5 a.m. or 6 a.m. and the remaining trips would be spread out during the day.

Councilman Peterson was concerned about what conditions can be placed on the outparcels once they are developed and whether any TIA's took into account the traffic the outparcels might generate once they are developed. Mr. Shuford said the extent to which the outparcels can be developed may actually be constrained by future traffic patterns. Mr. Moule said that there hasn't been any analysis yet of how the outparcels will affect the traffic in the vicinity. However, in Condition No. 6 states that a revised TIA shall be required at the time of development of any of the sites identified as future outparcels.

Upon inquiry of Councilman Peterson, Mr. Shuford suggested adding a condition no. 8 "Landscaped areas shown on the landscape plan shall not be altered or removed except to the minimum extent necessary to accommodate the requirements of condition no. 5 above, as determined by the City Traffic Engineer. That replacement landscaping shall be provided to an equal or greater extent than the landscaping that is removed elsewhere on the individual site or sites as applicable, as determined by the Planning & Development Director."

In response to Councilman Peterson, Mr. Shuford said that if this property was subdivided into three or more parcels and they remained under one ownership, they would have to be treated as one development and we would retain control over issues such as access. But, if they were sold after the subdivision, then that control would be lost.

Upon inquiry of Councilwoman Field, Mr. Shuford said that approximately 700 residential units could be built

on this site and approximately 6-7,000 one way trips per day would be generated. The proposed Home Depot is expected to generate 4,600 one way trips per day.

Mayor Sitnick closed the public hearing at 9:02 p.m.

Assistant City Attorney Meldrum said that City Council will need a motion to either approve the permit or to deny the permit. If Council approves it, they will need to list the conditions they would like included in the written order. If Council denies it, they should state the reasons for that denial. Then, Council will need to direct the City Attorney's Office to come back -23-

in two weeks on February 22, 2000, with a written order including the findings and conditions that they have set out based on approval or denial.

Councilwoman Whitmire said that she is satisfied that Home Depot has met the seven standards in addition to the eighth one suggested by Mr. Shuford, However, she did want to see the issues of the widening the curve on Acton Circle and traffic calming measures for Acton Circle and Monte Vista Road be addressed.

Councilman Peterson was concerned with Standard No. 4, however, considering how large the parcel is, he felt he could give the developer the benefit of the doubt. He did not think that Condition No. 7 has been met. He explained his concern about the traffic in the area and without further improvements along that stretch of Acton Circle, he felt there is clearly going to be a traffic hazard that will need to be addressed in a couple of years.

Councilwoman Field moved to approve the conditional use permit with (1) the conditions suggested by City staff, (2) Condition No. 8 as suggested by Mr. Shuford; and (3) some type of condition regarding improvements to the curve on Acton Circle. This motion was seconded by Councilwoman Whitmire.

Councilman Hay said that Council has never imposed conditions on developers that go as far as this one does. The 22 acres will definitely be developed, if not now, then in the future. At this time we have an opportunity to not only address the traffic congestion that this will cause, but also to improve the situation in the area if our traffic studies are correct. He does feel that the traffic conditions will be improved with these various improvements. He would like to add in the additional condition Mr. Moule said that he wanted to work up that had to do with tractor trailer traffic on the curve on Monte Vista Road.

Councilwoman Field said that she intended to add into her motion the condition Mr. Moule was going to work up dealing with tractor trailer traffic on the curve on Acton Circle.

Councilwoman Whitmire said that the motion did not mention the traffic calming issues she wanted addressed.

Councilman Worley stated that he was satisfied that the roadway improvements will improve the traffic congestion in the area.

Mayor Sitnick said the major concern here is the traffic and she felt that whatever Council can do to the curve on Acton Circle, traffic calming measures in the area are all very important. She has a special concern about the back-up of traffic onto I-40 mainly because of the speeds people travel on I-40. She reviewed some of the other uses permitted in the Highway Business District. She felt that Home Depot has gone beyond what we have required of them and she would like to see the NC DOT do something about the back-up on I-40 that presently occurs. Considering the potential uses for that property, this is probably the best kind of development we could get for that acreage. With the additional conditional provisions for traffic calming, doing something better with Acton Circle and the curve and having the NC DOT try to alleviate the back-up of traffic onto I-40, she would vote in favor of the project.

Assistant City Attorney Meldrum reviewed the conditions to be included in the written order: (1) conditions recommends by staff; (2) Condition No. 8 as suggested by Mr. Shuford; and (3) some type of condition regarding improvements to the curve on Acton Circle. She asked for clarification of other conditions suggested by Council: (1) condition addressing tractor trailer traffic; (2) traffic calming on Monte Vista Road; and (3) NC DOT addressing the backing up of traffic on the exit ramp off of I-40.

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Councilwoman Field said that we can only request NC DOT to address the backing up of traffic on the exit ramp off of I-40 and not make it a condition of Home Depot's conditional use permit.

City Manager Westbrook felt that traffic calming is something that needs to take place after traffic patterns are well established and you go through a very well fine routine to determine what traffic calming is needed. Councilwoman Whitmire asked if the residents will have to go through the petition process after that traffic pattern is established. City Manager Westbrook responded that the process can be City initiated or community initiated but there does need to be a problem and it does need to come with help from the community to explain the problem as they experience it. Mr. Moule felt that the City's traffic calming policy does not necessarily address this type of road because it's residential on one side and commercial on the other side.

Councilman Hay did point out that Mr. Moule said that he would get with Mr. Putnam and review at least speed limits on Acton Circle in particular. Mr. Moule said that a condition could be that we would begin looking at the speeds now and then after Home Depot is built, evaluate the speed to see if there are some appropriate traffic calming measures that would fit.

In response to a concern of Councilwoman Whitmire, City Manager Westbrook said that the Asheville Police Department does patrol that area and he would be happy to provide documented information to Mr. Jordan.

Assistant City Attorney Meldrum stated that the condition Mr. Moule suggested about reducing the speed limit and future traffic calming measures should not be a condition of this project because changing the speed limit is a legislative decision that Council needs to take up separately.

The motion made by Councilwoman Field and seconded by Councilwoman Whitmire carried on a 5-1 vote, with Councilman Peterson voting "no".

Assistant City Attorney Meldrum said that the written order granting the conditional use permit will be voted on February 22, 2000.

At 9:25 p.m., Mayor Sitnick announced a short break.

C. PUBLIC HEARING TO CONSIDER THE CONDITIONAL USE PERMIT FOR NETTLEWOOD PROFESSIONAL PARK LOCATED OFF OF HENDERSONVILLE ROAD IN THE VICINITY OF WAL-MART

Assistant City Attorney Meldrum reviewed with Council the conditional use permit process by stating that City Council will first hear from staff who will describe the proposal and provide some background information. Then the applicant may make a presentation and then comments from the public will be taken. She said that there will be an opportunity for questions and rebuttal comments, as necessary. Following the hearing, Council will then debate the proposal and will take action on the request. It has been Council's practice to have two separate votes, one today to either grant or denial of the request. At the next formal meeting, staff would prepare a written Order summarizing the finding and conclusions either granting or denying issuance of the permit and there would be a separate vote on that written Order.

After hearing no questions about the procedure, Mayor Sitnick opened the public hearing at 9:25 p.m.

City Clerk Burleson administered the oath to anyone who anticipated speaking on this matter. -25-

Ms. Stacy Merten, Urban Planner, submitted into the record City Exhibit 1 (Affidavit of Publication), City Exhibit 2 (Certification of Mailing of Notice to Property Owners); City Exhibit 3 (Staff Report dated 1/11/00); City Exhibit 4 (Staff Report revised on 1/13/00); City Exhibit 5 (Staff Report dated 1/25/00); and City Exhibit 6 (Staff Report revised on 2/3/00).

She said that that this is the consideration of a conditional use permit as outlined in the Unified Development Ordinance (UDO) for the Nettlewood Professional Park located off of Hendersonville Road in the vicinity of Wal-Mart.

Nettlewood Associates, LLC, has submitted development plans for Level III site plan review. The project is a new 180,600 sq. ft. office development to be located on four parcels with a total of 28.09 acres. The property is split zoned with Highway Business and Institutional and is currently undeveloped. (City Exhibit 7) The developer has asked that the Master Plan be reviewed at this time to confirm the City's approval to proceed with the development. As each building site is specifically identified a more detailed plan will be submitted for staff review. The Tree Commission has urged the developer to protect as much of the mature tree population on site as possible in order to enhance the effectiveness of the buffer and to minimize soil erosion and storm water runoff. Access to the site is proposed to be from Deerlake Drive with additional access points at the Wal-Mart Shopping Center and the Hollywood Cinemas parking lot through easements through those areas. Most of the concerns raised by the residents have to do with access to the site.

City Council must take formal action as set forth in section 7-5-5(e) of the UDO, and must make the following findings based on the evidence and testimony received at the public hearing or otherwise appearing in the record of this case [UDO 7-16-2 (c)]:

1. That the proposed use or development of the land will not materially endanger the public health or safety.

The proposed development is a new office park to be located on a total of 28.09 acres. Extensive grading of the site will not be necessary to accommodate the proposed development. All open space requirements as well as all requirements for storm water and erosion control must be met. If any wetlands are disturbed, permits will be required by the Army Corp of Engineers.

2. That the proposed use is reasonably necessary for the public health or 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 proposed development will enhance the successful operation of the surrounding community in its basic function by providing needed office space and facilities for new business to locate or existing business to expand or relocate.

3. That the proposed use or development of the land will not substantially injure the value of adjoining or abutting property.

Residential uses border the proposed development on two sides, the Deerwood condominium development to the north and the Carson Creek apartments to the south. Mixed commercial development borders the property to the west. The plans show a buffer that will need to be enhanced in order to meet the landscaping requirements of the UDO. In the area where a fence is proposed to reduce the buffer width, more space should be allowed on the outside of the fence. This will mitigate any possible negative impacts of the new development on the surrounding properties.

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4. 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 site is split zoned, with three parcels zoned Highway Business and one zoned Institutional. This project conforms to the existing zoning. Most of the proposed development on the site will be concentrated behind the existing commercial uses that will minimize any impact on the neighboring residential uses.

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

The proposed development is in conformance with the Asheville City Plan 2010 which indicates commercial development for this area.

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

The proposed development is located in an existing developed area. The project received technical approval from the Water Resources Department, the Fire Department, MSD, Engineering and Public Works.

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

[The UDO requires that a Traffic Impact Analysis \(TIA\) be prepared for this development. A TIA, which assesses the impact of this development, was submitted for this site and the City's Traffic engineer has reviewed the TIA and concurs with the findings.](#)

The Technical Review Committee (TRC) reviewed the plans at their meeting on December 20, 1999, and took action to approve with the conditions outlined below.

- Parking exceeds maximum. This must be reduced or pervious paving and additional landscaping must be provided. Parking calculations must be provided.
- Square footage notes must match sq. footage of buildings shown.
- Zoning boundaries must be shown on the site plan as the property is split zoned.
- Indicate neighboring uses on site plan.
- Show required setbacks on site plan.
- No activity can occur in the bufferyard. Part of a parking lot and road are located within the required bufferyard on north side of property. If this is necessary due to physical constraints, then a request for alternative compliance may be submitted.
- A 30 ft., type 'D' buffer is required which can be reduced to 15 feet with the construction of a fence. The buffer size shown on the plans is adequate, however the notes are incorrect.
- Street trees and sidewalks are required along all public streets and must be shown on the site plans.
- A railroad encroachment agreement is required from Norfolk Southern Railroad.
- Open space calculations must be provided and areas indicated on the site plan.
- Any access to the development through residentially zoned property must be via a public street. Sufficient right of way of 50 ft. must be obtained along Deerlake Dr before the City will accept as a public street. If the site is redesigned the Traffic Impact Analysis must reflect these changes.
- Additional information is needed for the proposed street, including a profile, cross sections, typical section prior to approving the project.
- Curb & gutter, 5' planting strip and 5' sidewalk required along the proposed street.
- NCDOT encroachment agreement required prior to cutting Hendersonville Highway.

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- Street lighting and signage is required prior to the City accepting the street for maintenance. Designs of these features must be approved by the City's Traffic Engineer prior to installation.
- Plans need to clarify how Peach Tree Road and/or the Wal-Mart property connects to the project. If Peach Tree Road is used as an access point, road improvements may be necessary prior to full build out of the project.
- A driveway permit from the NCDOT and the City of Asheville must be obtained for any new or modified connections to Hendersonville Road. A driveway permit from the City of Asheville must be obtained for any connections to Peach Tree Road.
- The Traffic Impact Analysis must be reviewed and approved by the City of Asheville and the NCDOT prior to approval of this development. Any new traffic signals proposed for this project must have warrant analyses completed and approved by the NCDOT. If a signal is proposed at or near the existing intersection of Deerlake Drive and Hendersonville Road, Valley Springs Road must be reconstructed to connect into this signal.
- Please submit a copy of the plat entitled "Property of Charles W. McCrary and wife, Ruth Fern McCrary" dated August 19, 1971.
- Please submit a survey plat for the right-of-way deed recorded in Deed Book 1765, Page 070 and the deed referred to in that document recorded in Deed Book 1737, Page 335.
- Please submit a copy of the plat recorded in plat Book 53 at Page 128 (the Grantor's Parcel) referred to in the easement agreement recorded in Book 2012, Page 348.

Most of the conditions identified by TRC have been met with a few minor exceptions. Staff recommends that the outstanding conditions as recommended by TRC in addition to the others identified below be attached to the approval of the conditional use permit:

1. The typographical error on the plans which indicate a type B buffer where a type D is required should be corrected.
2. A driveway permit from the NCDOT and the City of Asheville must be obtained for any new or modified connections to Hendersonville Road. A driveway permit from the City of Asheville must be obtained for any connections to Peach Tree Road.
3. Street lighting and signage is required prior to the City accepting any streets for maintenance. Designs of these features must be approved by the City's Traffic Engineer prior to installation.
4. TRC also recommended that the following items be addressed when detailed plans are submitted for building construction and occupancy:
 - A location for bicycle parking must be shown on the site plans.
 - Handicapped parking spaces must be shown on the site plans.
 - Dimension lot aisle widths and parking spaces, including handicapped spaces.
 - Detailed drawings of the proposed fence for bufferyard reduction must be provided.
 - Plant materials and landscaping details must be provided.
- Location of streetlights needs to be shown on the plans.
- If dumpsters are to be used, locations and screening should be shown.
- Details for sidewalks, ADA ramps, and drive entrances should be included in the plans.
- Submitted are missing almost all the items required for storm water management and erosion control approval. Appendix J under section 10 in the Asheville Standard Specifications and Details Manual, as well as Appendix 7-A in the UDO, contain itemized checklists exclusively for storm water management and soil erosion/sedimentation control for design professionals to reflect on in the preparation of their submittals. Verify compliance with sub-section 7-12-2 f.4. applicability of sub-section 7-12-2 e.2. in

regards to slope stability as well as sub-section 7-12-2 q.3. in terms of plan submittal sequence- all of which are contained in the UDO. -28-

1. A buffer is required to protect the residential uses on Peachtree Road and should be shown on the Master Plan.
2. Where a fence is to be constructed to allow a buffer reduction, the fence should be set back 10 feet from the property line. This will give the buffer plantings more room to grow and enhance the effectiveness of the buffer.
3. There are wetlands on the site. If any disturbance is necessary in these areas then a permit will be required from the Army Corp of Engineers.
4. Staff level approval will allow minor revisions to roadways, buildings and parking lot locations.
5. The Planning Director has made the interpretation that access to the site via Deerlake Drive at the northern end of the property should be permitted only upon the occurrence of one of the following options:

(1) Nettlewood Associates, LLC, uses only that thirty foot strip of property which fronts on Hendersonville Road, which is a portion of the property known as the "McCrary Property" and which is owned by Nettlewood in fee simple, for access as a private driveway to the McCrary Property and the other properties which constitute Nettlewood Business Park, provided access is maintained for property owners in the Deerwood Condominiums development over a single driveway entrance off of Hendersonville Road; or

(2) Nettlewood Associates, LLC, uses that thirty foot strip of property, which fronts on Hendersonville Road, which is a portion of the property known as the "McCrary Property" and which Nettlewood owns in fee simple, and the right-of-way granted to McCrary in that right-of-way agreement recorded in Deed Book 1275 at Page 171 in the Office of the Register of Deeds for Buncombe County for a private driveway from Hendersonville Road to only that portion of Nettlewood Business Park which is included within the McCrary Property, provided that the site plan is revised to show and the recorded plat of Nettlewood Business Park shows clearly that legal access is so limited and that access is maintained for property owners in the Deerwood Condominiums development over a single driveway entrance off of Hendersonville Road; or

(3) Nettlewood Associates, LLC, enters into agreement with Deerwood Homeowners Association, to use the right-of-way granted to McCrary and the thirty foot strip on the McCrary Property as either a private driveway or as a dedicated public street to serve both Nettlewood Business Park and the Deerwood Condominiums development.

Further, that if any of the access options used creates a change of circumstances from those contemplated by the Traffic Impact Analysis, a revised Traffic Impact Analysis be prepared and the developer comply with any and all requirements of a revised Traffic Impact Analysis.

Planning & Development Director Scott Shuford said that this item has been continued in order to address basically the access issue of Condition No. 9. The question is how do you handle the legal issues associated with access that pertain to both the Deerwood development and the proposed Nettlewood development. Staff has had numerous meetings with the developer and the Deerwood community to try to determine how the access issue could be resolved. Using a hand-drawn map (City Exhibit 8), Mr. Shuford explained the access concerns. Mr. Shuford then summarized the options for Condition No. 9 as follows (City Exhibit 9): (1) Relocate the Deerlake access road to the Nettlewood property, allowing access to entire Nettlewood site so long as Deerwood is also allowed access; or (2) Keep the road as is and access only the "McCrary portion" of the Nettlewood property from Deerlake; or (3) Both parties agree to work out an access arrangement.

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Councilman Hay asked if it would not take an agreement from Deerwood to relocate the Deerwood access

road. Assistant City Attorney Meldrum said that is the reason the option is stated as Nettlewood uses only that 30-foot strip on their property and provided that they maintain access to Deerwood. It doesn't tell them how to do it, or how to reach the agreement, but it only says it's one option of being able to achieve access.

At the request of Councilman Hay, Assistant City Attorney Meldrum explained the difference between Option No. 1 and Option No. 3.

Upon inquiry of Councilwoman Whitmire, Assistant City Attorney Meldrum said that the McCrarys initially owned more than this four acre tract. They owned the front part of the Deerwood tract and then an additional tract in the back part which is also part of Deerwood now. The McCrarys sold off to a predecessor in interest of Deerwood the front part of Deerwood that fronts on Hendersonville Road and then later the back part was sold. At the time the front part was sold, a right-of-way agreement was entered into to provide access across a 40-foot wide strip to the McCrary property. That is one of the options to getting on the Nettlewood property, but that was only to serve the McCrary property (the Nettlewood property consists of other properties that wrap back around behind Wal-Mart, the Cinemas and back down to Hendersonville Road). That's why one option is to use that 40-foot right-of-way only for the McCrary portion. And then one option is using only the 30-foot strip to serve the McCrary tract and the rest of the properties. The third option is if the two parties can reach an agreement to use all of that 40-foot strip either as a private driveway or dedicate it as a public street.

Mr. Jerry Grant, partner of Nettlewood Associates, said that Nettlewood Associates is trying to develop an office park where residential, office, retail, entertainment, and restaurants can all be accessed in a walking community. Nettlewood is the last key to a pod in this area. The office park will have sidewalks that will allow people to walk to whatever services they might need that are available in the park. He said the taxes now are less than \$14,000 a year on this 28-acre property. When this project is complete, the difference in what the taxes would be is that you can hire five new teachers for a year every year. He said they have met with Deerwood formally on five occasions and they will continue to make efforts to work with them. He noted this is not their only access and he would not want to see this project judged on whether or not there is a legal definition that all the attorneys can agree on.

Mr. Thomas Pugh, resident of 142 Deerlake Drive and former president of the Board of Directors of Deerwood, said that he is currently serving on an ad hoc committee to study the impact of this proposal on Deerwood. They are not protesting an office park in their backyard. However, they are concerned about the impact of the inordinate amount of traffic proposed for their private entryway. Their current road was constructed by Deerwood to fulfill a deed contract with the McCrary family to prevent the McCrary property from becoming land-locked. The contract was executed in 1981 and is still in force to 3-4 acres of McCrary property. The current Nettlewood design would attempt to extend the contract to an additional 25 acres of office park traffic. It is true that for some reason, that the actual road is located slightly off the mutual right-of-way and part of it is on Deerwood's private property but the McCrary's have never been denied use of the roadway - which was the intent of the road. He then gave some statistics about the Deerwood community and noted that they have been a big contributor to the beauty of the City and on their own initiative they have provided their residents with a lot of services that the City would normally be expected to provide. If their entranceway is commercialized by becoming part of the Nettlewood Office Park, the quality of life and the property values of Deerwood will be severely diminished. It has been conservatively estimated that this loss in property values could be a minimum \$1.7 Million. At a meeting with some Board members, Mr. Grant said that the traffic impact study indicated the amount of traffic out of Nettlewood would only have a slight impact. He challenged that study and wondered how long it will take to get out of Deerwood with 10-12 cars from Nettlewood blocking their entry onto the highway. As far as -30-

the possibility of a traffic signal, the current assessment of the City's Traffic Engineer is that projected traffic from Deerwood and Nettlewood alone would not warrant a traffic signal. They are protesting the attempt to tie their private contract roadway into a commercial endeavor. They are not blocking the entry into the

professional park because Deerlake Drive is not the only entry into the proposed park. There are at least four other entryways and they believe the plans should be re-submitted to utilize one or more of those other entryways as their main entrance into the professional park. They feel that there are too many other conditions which should be resolved before approval of the conditional use permit by City Council. Another concern is they feel there should be a unified stormwater runoff system, however, they really want to focus on the entryway concern.

Mr. Robert Dungan, attorney representing Deerwood, addressed Condition No. 9. He explained their positions on all three options. Their position is that Option No. 1 ultimately would be found to be illegal and that the Council should not consider it. He felt that the law is clear and that the scope of an expressed easement is controlled by the terms of the conveyance, if the conveyance is precise. This conveyance is precise. (Public Exhibit 1 - Easement recorded in Deed Book 1274 at page 171) The easement states that the McCrarys and the predecessor in interest or developer of Deerwood agreed that this entryway would be a private roadway for ingress, egress, and regress to those properties hereinabove described - thus being only the three tracts and not including the 24 acres that are in addition to the four acre tract. Private must be construed here as not open or accessible to the general public. (Attachment to City Exhibit 5 - Master Development Plan - Grading, Stormwater Drainage and Landscape Plan) He pointed out that there are other entrances, but to traverse that tract, he believe would violate the easement. In addition, since the road is private, he felt the stop sign which will be necessary at the "Y" will face the people on Deerlake so they will have to wait for the traffic from the office park.

Mr. Dungan addressed Councilman's Hay question about the difference of Option No. 3. He said the declaration of covenants, conditions and restrictions of Deerwood as initially recorded in 1982 (Public Exhibit 2) and as restated and amended in 1993 (Public Exhibit 3) require that if there is any dedication of common area, which is what the City street would require, then it must be approved by 2/3 of the owners at Deerwood. He said the same attorney that drafted the easement, drafted the original covenants. He also pointed out that Nettlewood does not own the McCrary tract at this time - they have contract to purchase it. (Public Exhibit 4 - Survey prepared for Nettlewood which shows the current easement and entryway) (Public Exhibit 5 - Copy of Plat for Deerwood in Plat Book 48 at page 133)

The following residents spoke in opposition of the proposed access at the north entrance for several reasons, some being, but are not limited to: Deerwood is already a walkable neighborhood; speeding on Hendersonville Road; more traffic turning into the proposed office park will create a safety hazard; two or three other entrances can be used for this project and the Deerwood residents do not want their entranceway destroyed; Deerwood residents take a lot of pride in their community and they don't want any more foot or car traffic; Deerwood has rights with respect to the entranceway; Nettlewood's primary objective is to make a profit; Nettlewood wants Deerwood to join with them in asking the City to take over the maintenance into Deerwood and into the McCrary property and accept it and the remainder of Nettlewood streets as City streets - you cannot use public funds for private purpose (and it may be a matter of just compensation for the taking away of that right) and it would impair the obligation of contract that Deerwood has with the McCrarys and its assigns; can the 30 feet become a City street and where will the other 20 feet come from if it is proposed to be a 50-foot street; if Nettlewood does not own the McCrary property, why this is before City Council; and another option has been proposed:

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A resident of Deerwood

Mr. Harry Martin

Mr. Russell Burns, resident of Deerwood

Ms. Patricia Pugh

Mr. Peter Best, attorney representing Nettlewood, briefly described the history of this property. He pointed out that when Deerwood was being developed and his client went to the McCrarys, the McCrarys owned that piece of property in fee. What happened was that Valley Springs Property, in developing Deerwood, discovered that with the location of the 30-foot strip owned by McCrary and the lake did not have enough room to put in the road they wanted to put in. They entered into this agreement with the McCrarys whereby several things were agreed. The McCrarys continued to own their 30 feet, but their access was expanded by 10 feet so that they have the 30 feet of land they own, plus a 10-foot wide right-of-way across the Deerwood property for as much distance as it takes to get into the remainder of their property. There were some other parts of that, one of which was that Deerwood did agree in perpetuity to maintain that right-of-way. Deerwood was given a right of first refusal to buy the McCrary property and they have turned down that right. The McCrarys were simply expanding what they already had - they owned 30 feet of land which fronted on Hendersonville Road and extended to the property in the rear. If you take Option No. 1 (which is really the only one that needs to be discussed), they are simply saying that Nettlewood (when it is the owner of the McCrary property) will have a right to go over its property and access any other property that it wants to. There can be no overburdening argument and no argument that you are overwhelming the use of the easement that has been contemplated by that agreement when Nettlewood is staying on its own property. Option No. 1 is the simplest because it says to let Nettlewood stay on the 30 feet of land that is included in the McCrary property and let Nettlewood relocate the roadway. One of the things the agreement says is that the road would be built within the 40 foot area that was described and it was not. So historically they say they have the right to relocate the roadway onto their property, still maintaining access for Deerwood. If that cannot be worked out, Nettlewood can live with a 30 foot private roadway to access the McCrary property and the other property that Nettlewood owns. All of the discussion of the public road is unnecessary because that depends on an agreement with Deerwood.

When Councilman Worley asked how cut-through traffic would be prevented, Mr. Best said a lot of what would have to do with the design of the office park and the way the traffic pattern is designed.

When Councilman Hay asked about Option No. 1, Mr. Best said that since they can only have one road and part of that road is on the McCrary property, they would simply have to relocate the roadway to the south to put it completely on the McCrary property and Deerwood would be provided continuous access through that whole process.

Upon inquiry of Councilwoman Field, Mr. Best said that this north entrance is the only egress and ingress into Deerwood's property.

Discussion occurred regarding the possible relocation of the roadway.

Councilwoman Field felt that this whole access issue is not a zoning issue - more of a legal question - and she didn't see how this is an issue City Council can resolve since Council can't direct someone to do something on private property.

Assistant City Attorney Meldrum said that is why the option is worded the way this it is. It says that they would use the 30 foot strip - it's not saying that the road should be relocated and it's not declaring either party's rights with regard to the 1981 right-of-way agreement. The parties still may have to go to court to resolve their issues, but one of the options is to be able to use -32-

their own property for access. Now if there are other issues that are unrelated to this matter about the use of that property, then they have to solve that outside of this hearing.

Mr. Best explained that Nettlewood is requesting a conditional use permit granted which would recognize

Nettlewood's right to access it's property over it's 30 foot strip. If they have issues that are contractual in nature with Deerwood, then that is certainly their problem and they are not asking the City to solve that problem. But they are simply saying that there is no reason to limit the access into their property and the right to add other properties to it so long as Nettlewood uses only Nettlewood property.

Upon inquiry of Councilwoman Whitmire, Mr. Shuford said that the access issue would still be there, regardless of whether they were developing the property with residential, retail or office.

It was Vice-Mayor Cloninger's understand that the Planning staff is not saying that whether we approve a conditional use permit for use of this property for an office complex should be contingent upon access being provided through this particular area. Even if Council decides not to allow access through the north entrance, Council can still approve the project given there are other access areas. He understood that if Council decides to grant access through the north entrance, they should do it by way of the three options.

Mr. Shuford said that staff thinks access through the north entrance is very important because the property is second tier property. Staff's point is that there appear to be at least three different options for access to occur at this point and because it deals with a contractual issue between two different parties and they can't come to an agreement, then staff is at the point saying let's leave these three options open to the Nettlewood development and see how it turns out as it goes through the further process. He'd like to see a public street built by the Nettlewood development to public street standards that would allow access to Deerwood as well loop the entire road through the project and maximize the potential for there to be a light at this location, but that doesn't seem to be an agreement that can be reached.

Vice-Mayor Cloninger asked what would happen if Council passed the conditional use permit including the three options and then it turned out that none of the three options panned out. He asked what would staff's position be then - should the project still go forward or should that be the determining factor that prevents that project from being built. Mr. Shuford said if that northern access is not provided, since it is a key one from the standpoint of emergency vehicle access and general automotive access and their TIA is based upon having that access, then staff would come back to Council and ask the developer to provide a revised site plan that would address the concerns of not being able to access that spot.

Councilman Hay understands that the permit could be granted without any northern access at all - that having the northern access is not a condition. But Mr. Shuford feels like northern access is a condition of approval. Mr. Shuford responded that they think that's an important access for this property and obviously the developer does as well. Councilman Hay then wondered if the language should read that one of the conditions be that there be northern access.

Vice-Mayor Cloninger felt if there was a way to approve the conditional use permit so that the developer could go forward regardless of where he ultimately was able to gain access at the north entrance, that would facilitate things, rather than if the parties have to wait for a lawsuit that may take 2-3 years. He wondered if Council could approve the conditional use permit in such a way that even if they don't get access at the north entrance they can go forward with the project. Mr. Shuford responded that if Council were to do that, then in effect Council would be approving the Master Development Plan that would allow a certain intensity of office
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development to occur at this site with some proposed accesses. But, if access at the north entrance cannot be achieved, then there would be substantial internal changes to the circulation pattern that would be handled by staff to work out. The revised site plan would then have to come back to City Council for review.

Mr. Steve Barden, attorney representing Nettlewood, stated that no one disputes the fact that Nettlewood, pursuant to their contract with McCrary, will own a fee simple title to the 30-foot strip of property that will give them full legal access to the entire project. The only question presented was the overburdening of the 10 feet

just to the north of that, that if they were to expand, the question is can they use that 10 feet to access the rest of the property behind the McCrary property. It's Nettlewood's position that they don't care to use that additional 10 feet, therefore, there is really no legal question, because they have that 30 foot access to all of their property.

Vice-Mayor Cloninger asked if Nettlewood has the absolute right to use that 30 foot strip as an access point to Hendersonville Road regardless of what Council does, or does Council have the authority to prevent access to Hendersonville Road through that 30-foot strip. Assistant City Attorney Meldrum said that she couldn't say they have an absolute right to use that because that is not for City Council to decide here. As far as a zoning matter and whether or not they can access their property via the frontage that they have, yes they would. The other limitation that Council could make is to limit the accesses to properties.

Mayor Sitnick felt that this should never should have come to City Council until the access issue was resolved. She felt we are trying to determine a legal question that should have been determined initially. We are being asked to approve a conditional use project and clearly Council is stymied in doing that because this issue hasn't been resolved.

Councilman Peterson felt City Council cannot apply the seven standards when the access issue is so undecided.

Assistant City Attorney Meldrum explained what the problems would be with this site plan if the northern access through some option is not approved. The technical standards of the Fire Department require a turn-around for fire trucks and the site plan would have to be revised to have some turn-around before you get out to what would be the northern entrance near Deerwood. The other thing is the TIA would have to be revised to show that the northern access is not being used. Generally for major revisions, she recommends the revised site plan come back through the process. However, if Council wanted to authorize staff review, then she felt Council do that. Through the conditions, Council can require that if no northern access can be achieved, then the site plan and the TIA be revised to take out that access and that all other required standards be met and if the revised TIA requires any other measures that they be complied with as well.

Mayor Sitnick closed the public hearing at 11:31 p.m.

Vice-Mayor Cloninger wanted to get back to the point of whether it is feasible to go ahead and approve the project with the conditions recommended by staff in such a way that the project could go forward if it turns out there are only two access points rather than three - and not decide anything on the north entrance because it sounds like it needs to be determined by the courts or the parties have to agree. He'd hate to see the project held up completely just on that one issue.

Councilmen Hay and Worley agreed with Vice-Mayor Cloninger.

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Councilman Peterson felt that one project was evaluated (the proposal with the northern access) and now Council is being asked to approve another project. Mr. Shuford said that this project was analyzed with this access arrangement before Council now. However, he doesn't think that it's infeasible for other access arrangements to be considered because it's just a matter of moving where some of the traffic goes. It's entirely feasible that a new TIA would be favorable to the development of this property because the first one didn't show any major traffic impacts. Staff had suggested earlier the possibility of allowing the project to go forward and if the northern access proves infeasible, then Council would authorize staff by Council's approval to go ahead and take it through the technical process to see if the other accesses would work. In the event they do not, then perhaps City staff will come back to Council with something radically different, of course that would be at the developer's option. He felt Council could approve this with the details to be worked out

with staff since the main features of the site is not in dispute. He said that there are technically feasible ways the project can work without the Deerlake access.

Mayor Sitnick said that there are internal traffic controls that may be applied. She felt that maybe a majority of the traffic using the businesses in the office park could be directed out a different way to eliminate a major percentage of traffic on Deerlake Drive.

Vice-Mayor Cloninger hoped to see the project approved with or without that northern access. Mr. Shuford suggested leaving the three potential access options in Condition No. 9 and add a fourth option. That option would indicate that if none of the other three options can be accommodated, then the item would be referred back to the Technical Review Committee with a requirement that a TIA be performed for the revisions. If it turns out pretty much the same way, then that would be the alternative that could be pursued. That way it doesn't hold up the project but still leaves open the other three options.

Assistant City Attorney Meldrum said that part of the problem is the way the plan is drawn. It shows it using the 40 feet and so the City wants to make it clear that Council is not approving a plan that allows using all of that 40 feet to access the whole property.

Councilman Peterson felt that what is submitted with all the conditions is impossible to apply the seven standards City Council legally has to find that the project meets.

Councilman Hay liked the proposal that approves the project with the additional provision that in the event northern access doesn't work that staff is to review revised plans and if they meet all standards, that it can go forward with approval. If Mr. Shuford runs into a problem that he feels is beyond his scope of authority, he can bring it back to City Council.

Vice-Mayor Cloninger said that it could take 2-3 years in order for it to be determined whether northern access is feasible. He would like to see staff work with the developer to develop a plan that they can approve with or without northern access. If it's ultimately determined in the courts that the developer is entitled to northern access, he can put it in because it's already been approved. If it's determined that he doesn't have it, in the meantime he can go ahead with the project.

Assistant City Attorney Meldrum clarified Vice-Mayor Cloninger's proposal - the project would be approved with the other accesses and not the northern access, but if they are able to secure it, then that would also be approved.

Because Mayor Sitnick wanted to ask Mr. Grant a question, Vice-Mayor Cloninger moved to re-open the public hearing at 11:44 p.m. This motion was seconded by Councilwoman Whitmire and carried on a 6-1 vote with Councilwoman Whitmire voting "no."

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Upon inquiry of Mayor Sitnick, Mr. Grant said that without northern access, the proposed office park becomes economically unfeasible and they would have to sell the property for whatever use they could.

Mayor Sitnick closed the public hearing at 11:46 p.m.

Upon inquiry of Councilwoman Whitmire, Assistant City Attorney said that the other conditions would stay in place. Two options have been discussed. One is to include the eight conditions set out in the staff report with the ninth condition with the three options that have been discussed and a further provision that if northern access can't be achieved that the project be approved with the other accesses shown on the site plan, provided that the site plan and TIA be revised and the City staff, through the Technical Review Committee, ensure compliance with other Code provisions. The other option is that the project be approved without the

northern entrance and if the northern entrance could be achieved through some means then the project be approved with the addition of that northern entrance. She said that if the site plan has to be revised through either one of these processes, all eight conditions would stay in effect because the only condition that would be impacted by the change would be the ninth condition.

Assistant City Attorney Meldrum felt that either option could work with our processes. If Council's approval includes the northern entrance, then she recommended that it be subject to certain options because the options haven't been worked out yet for that northern entrance. The three options in Condition No. 9 are what the City Attorney's Office and the Planning & Development Department staff have been able to come up with for the northern entrance. If Council takes out the northern entrance, then Council wouldn't have any of the three options. She suggested that if the developer wants to maintain the northern entrance possibility as part of the approval, then to include some options which the developer would chose from and it would be subject to whatever rights there are outside of our process being determined. The Council needs to stay focused on the site plan showing a northern entrance and how can that be allowed with the other questions. Staff has tried to say that there are some options where it could be allowed just relating to land use questions and not relating to the separate legal issues outside of it. We are not telling the developer which one of these options to choose and we are not deciding the rights of the two parties with regard to the right-of-way agreement from 1981.

Vice-Mayor Cloninger moved to approve the conditional use permit along with Condition No. 9 and it's three options and the fourth option suggested by Mr. Shuford. This motion was seconded by Councilman Worley.

Again Councilman Peterson felt that what is submitted with all the conditions is impossible to apply the seven standards City Council legally has to find that the project meets.

The motion made by Vice-Mayor Cloninger and seconded by Councilman Worley passed on a 5-2 vote, with Councilman Peterson and Councilwoman Whitmire voting "no".

Mayor Sitnick announced at short break at 12:07 a.m.

D. PUBLIC HEARING TO CONSIDER AN AMENDMENT TO THE UNIFIED DEVELOPMENT ORDINANCE WHICH WOULD DELETE THE DEFINITION OF CHURCH, ADD THE DEFINITIONS FOR A PLACE OF WORSHIP AND SANCTUARY, AND CREATE STANDARDS FOR PLACES OF WORSHIP

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ORDINANCE NO. 2662 - ORDINANCE TO AMEND THE UNIFIED DEVELOPMENT ORDINANCE WHICH WOULD DELETE THE DEFINITION OF CHURCH, ADD THE DEFINITIONS FOR A PLACE OF WORSHIP AND SANCTUARY

ORDINANCE NO. 2663 - ORDINANCE AMENDING THE UNIFIED DEVELOPMENT ORDINANCE TO CREATE STANDARDS FOR PLACES OF WORSHIP

Mayor Sitnick opened the public hearing at 12:15 a.m.

Senior Planner Gerald Green said that this is the consideration of two amendments to the Unified Development Ordinance which would establish definitions for place of worship and sanctuary and establish standards for places of worship in residential districts. This public hearing was legally advertised on January 28 and February 4, 2000.

The Planning and Zoning Commission, at their January 5, 2000, meeting, reviewed and recommended approval of amendments to the Unified Development Ordinance which would establish definitions for place of worship and sanctuary and establish standards for places of worship located in residential districts. The

definitions and standards are the result of several months of work by a committee composed of representatives of neighborhoods and the religious community, the Planning and Zoning Commission, and the Planning and Development staff. The definitions established by the proposed amendment would be applicable throughout the City's jurisdiction; the standards would apply to places of worship located in residential zoning districts only. As proposed, the definition of place of worship would make it clear that schools, day cares, recreational facilities, and other facilities could be developed in conjunction with a place of worship but would have to meet applicable development standards. The proposed standards for places of worship in residential districts establish three categories for places of worship based upon the number of seats in the sanctuary(ies):

- Small - Not more than 300 seats;
- Medium - 301 to 800 seats; and
- Large - More than 800 seats.

Locational requirements, with regard to the functional classification of the abutting street, are established for the three categories. In addition, standards are established which address:

- Lot size;
- Setbacks;
- Access points;
- Parking;
- Landscaping and buffering;
- Impervious surfaces
- Building height;
- Lighting;
- Space devoted to office use;
- Commercial activities;
- Grading; and
- Outdoor speaker systems.

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The intent of the proposed standards is to permit the expansion and development of places of worship in residential districts while minimizing their impact on adjacent residential uses.

The Planning and Zoning Commission voted 7 to 0 to recommend approval of the wording amendments. The Planning and Development staff recommends approval of the amendments.

Councilman Peterson clarified that the grandfather clause was not considered by the church committee. Mr. Green said that was correct, that it was a Planning & Zoning Commission recommendation.

Councilman Peterson asked if there are other provisions in the UDO that give other uses similar sort of exceptions? Mr. Green said there is a general grandfather clause with regard to non-conforming uses and non-conforming structures, but none that he was aware of that would allow an existing building to expand beyond a limit otherwise established if they own the land or the property on which they wish to expand at a certain time.

Upon inquiry of Councilman Peterson, Assistant City Attorney Meldrum said that there is a definition of major and minor thoroughfares in the UDO. Mr. Green also said that staff is looking at revised definitions for major and minor thoroughfares and for residential collector streets.

Vice-Mayor Cloninger clarified that there is no limit of the size of new churches on minor thoroughfares.

In response to Vice-Mayor Cloninger, Mr. Green said that if the church wanted to do other things, like a school, they would have to meet the standards established elsewhere in the ordinance - regardless of whether it's a church or a private enterprise.

Ms. Betty Garofano, member of the Church Committee, said that they did not discuss the grandfather clause. She asked which churches fit into the category which fit the criteria of the grandfather clause. She also asked if the grandfather clause added to allow Trinity Baptist Church to build its commercial development in the RM-6 low density residential neighborhood.

Mr. Green responded that he doesn't know how many churches fit into the category for the grandfather clause. Regarding Ms. Garofano's second question, Mr. Green said that Planning & Zoning Commissioner Koon (who made the recommendation for the grandfather clause) never mentioned Trinity Baptist Church.

Ms. Jessie Corpening, resident on Shelburne Road, urged Council to put a limit or a cap on the size of a church that can be built in residential areas. She used Trinity Baptist Church as an example of what kind of negative impact to the neighborhood can occur.

Ms. Ann Anderson, resident on Shelburne Road, said that large churches have to be located on major thoroughfares in other places and the City should postpone this issue until they have had sufficient time within which to research what other cities have done.

Mr. Green responded to Ms. Anderson in that a general survey of other cities in North Carolina was conducted and the information was given to the Planning & Zoning Commission prior to their recommendation.

Mr. Robert C. McCarthy, representing the Carrier Heights Neighborhood Association, talked about the Trinity Baptist Church project and how they proceeded without prior approval. He noted that the standards state that a large place of worship shall be located on property which -38-

abuts a major or minor thoroughfare. He felt it strange that the standards for a medium place of worship shall be located on property which abuts a major or minor thoroughfare or on a residential collector street provided that the property (if located on a residential collector street) is located within 1,000 feet of a major or minor thoroughfare if that part of the collector street passes through an area with only non-residential. He urged City Council to vote against the proposed ordinance.

Mr. Bill Sizemore felt that the proposed ordinances are fair for all churches.

Ms. Carol Collins, representing the Community Council for Biblical Values, said that the Planning & Zoning Commission did an outstanding and thorough job in their research and discussion on this topic. She felt the Commission had a sense of closure as seen by their unanimous vote on the standards. She urged Council to adopt the ordinances in their entirety. With regard to the grandfathering, Commissioner Koon did a study of 39 churches (out of 120 churches that were sent the questionnaire) which responded to a questionnaire. Of the 39 churches, Commissioner Koon said that based upon street location, other standard requirements based on that location, number of pew seats, and number of parking spaces, that nearly 89% of the responding churches were out of compliance with the UDO as the Planning & Zoning Commission was discussing it at the time (what is basically before City Council now). She said that if the grandfather clause is withdrawn from the ordinance, nearly 90% of the churches will be out of compliance with the UDO. It was her understanding that the grandfathering clause covers every church in the City.

Rev. Jerry Grant, Trinity Baptist Church, spoke in support of the two proposed ordinances and felt they were fair for both the churches and neighborhoods.

Discussion surrounded the grandfathering clause.

Mayor Sitnick closed the public hearing at 1:07 a.m.

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

Councilwoman Field moved to adopt Ordinance No. 2662. This motion was seconded by Councilman Peterson and carried unanimously.

ORDINANCE BOOK NO. 18 - PAGE

Councilwoman Field moved to adopt Ordinance No. 2663. This motion was seconded by Councilman Hay.

Councilman Hay felt this is the end of a long process that has resulted in a collaborative effort.

Vice-Mayor Cloninger appreciated the hard work that has gone into this ordinance, however, he would vote against this ordinance. He is concerned about the grandfathering issue and also the fact that large churches are allowed on minor thoroughfares.

Councilman Peterson moved to amend Councilwoman Field's motion to delete "or minor" from 10 33 d. 3 so that it would read " Large places of worship shall be located on property which abut a major thoroughfare, as identified in the City of Asheville's Thoroughfare Plan." This motion was seconded by Vice-Mayor Cloninger and carried on a 4-3 vote, with Councilwomen Field and Whitmire and Councilman Hay voting "no".

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Councilman Peterson moved to amend Councilwoman Field's motion to delete the grandfather clause from the ordinance. This motion was seconded by Vice-Mayor Cloninger and failed on a 2-5 vote with Mayor Sitnick, Councilwomen Field and Whitmire and Councilmen Hay and Worley voting "no".

The original motion, as amended by Councilman Peterson, carried on a 5-2 vote, with Vice-Mayor Cloninger and Councilman Peterson voting "no".

ORDINANCE BOOK NO. 18 - PAGE

E. PUBLIC HEARING TO CONSIDER AN AMENDMENT TO THE UNIFIED DEVELOPMENT ORDINANCE TO ESTABLISH A PROCESS FOR THE PAYMENT OF A FEE IN LIEU OF CONSTRUCTION OR REHABILITATION OF SIDEWALKS

ORDINANCE NO. 2664 - ORDINANCE TO AMEND THE UNIFIED DEVELOPMENT ORDINANCE TO ESTABLISH A PROCESS FOR THE PAYMENT OF A FEE IN LIEU OF CONSTRUCTION OR REHABILITATION OF SIDEWALKS

RESOLUTION NO. 00-26 - RESOLUTION AMENDING THE FEES AND CHARGES MANUAL

Mayor Sitnick opened the public hearing at 1:30 a.m.

Ms. Cathy Ball, City Engineer, said City staff is requesting that the amendment to the Unified Development Ordinance (UDO) to revise requirements for construction of sidewalks and to establish requirements for the rehabilitation of sidewalks be removed from City Council's consideration at this time. She said that since the City Council worksession on January 18, 2000, staff has met with both the development community and affordable housing advocates and both of those groups are very interested in working with City staff to try to

come up with a better resolution for the requirements for sidewalks. For that reason, they requested the City move forward only with the process for the payment of a fee in lieu of construction or rehabilitation of sidewalks. This public hearing was legally advertised on January 28 and February 5, 2000.

The only exception to the fee in lieu of process is the affordable housing advocates did ask that they be exempt from paying that fee in the event they were developing over 10 units or over 20 single-family units and for some reason City staff did not require a sidewalk to be installed at that time. Staff, however, felt that in keeping in line with what the City is doing with permit fees, is if the developer builds the units and they end up selling them or renting them as affordable housing, the City would reimburse them 50% of the cost.

Councilwoman Whitmire and Vice-Mayor Cloninger both felt the fee should be waived completely for affordable housing.

Councilwoman Field asked how long do the units have to stay affordable and when would the City refund the fee? Community Development Director Charlotte Caplan responded that for single-family housing there is a definition that is based on the sales price. For rental housing, City staff has accepted only rental housing where there are affordability restrictions on rents for other reasons and typically it is about 20-30 years when it has that sort of funding in it.

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When Mayor Sitnick asked why the City just doesn't charge the fee instead of refunding the fee, Ms. Caplan said that in the case of single family homes, you don't know until they sell what they are going to sell for.

Upon inquiry of Mayor Sitnick, Ms. Ball said that if the affordable home needs a sidewalk, it will be put in at the time of the development. This doesn't do anything that would not require a sidewalk be installed. She felt that it will be unusual to find a situation where we would allow a fee in lieu of for that many units.

Councilman Worley said that he hasn't had time to think about the effect of this and would prefer City Council continue the public hearing.

Councilwoman Field had no problem with waiving the fee 100% but was concerned about how we guarantee that particular property, especially rental property, will stay affordable for a period of time.

Ms. Ball suggested if Council wants staff to look at the "guarantee that the property stays affordable" issue, in addition to the requirements for sidewalks, staff can revisit this item again and report back to Council when staff makes their presentation on the sidewalk requirements.

Assistant City Attorney Meldrum said that the City has a policy of not including fees or charges in the Code of Ordinances. Therefore, she recommended any language in the ordinance regarding fees be deleted. Then the Code provision can be adopted. The Fees and Charges Manual can be adopted at this time and then later amended with regard to whatever Council decides in the future about these fees.

Mayor Sitnick closed the public hearing at 1:40 a.m.

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

Councilman Hay moved to adopt Ordinance No. 2664 with the deletion of two paragraphs on page 3 regarding fees. This motion was seconded by Vice-Mayor Cloninger and carried unanimously.

ORDINANCE BOOK NO. 18 - PAGE

Councilman Worley moved to adopt Resolution No. 00-26, which will set fees other than affordable housing. This motion was seconded by Vice-Mayor Cloninger and carried unanimously.

RESOLUTION BOOK NO. 25 - PAGE 418

IV. UNFINISHED BUSINESS:

V. NEW BUSINESS:

Due to the lateness of the hour, Councilman Worley moved to (1) reschedule the

Resolution Adopting the Neighborhood Traffic Calming Policy and the Approval of the City Council Goals to the February 22, 2000, formal meeting; and (2) reschedule the Resolution appointing members to the Public Access Channel Commission to the February 15, 2000, worksession. This motion was seconded by Councilwoman Whitmire and carried unanimously.

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VI. OTHER BUSINESS:

A. DISCLOSURE STATEMENT

Assistant City Attorney Meldrum read the following option from the Department of Housing and Urban Development into the minutes:

"Under North Carolina law, all Council members are precluded from voting on matters in which they have financial interest or that affects their own official conduct. They are also prohibited from contracting with the City. Under State law, all that is required is that a Council member not participate in certain votes where his or her interest may be questioned.

"Where an employee of an agency that receives funds from the U.S. Department of Housing and Urban Development becomes a member of a unit of local government that makes decisions regarding those funds, federal regulations require the additional step of reporting the situation to HUD, and requesting an opinion as to whether that employee's governmental service is consistent with the intent of the regulations. Such opinions are routinely requested and routinely given.

"Council member Terry Whitmire is an employee of Mountain Housing Opportunities. Although she is not directly involved in any HUD-funded activities, her election to Council has resulted in the application of this regulation. Our review -- including analysis of the regulation, conversations with HUD officials, Ms. Whitmire and other officials at MHO -- has indicated that Ms. Whitmire, because of the nature of her job, is not in a position to benefit directly from the receipt of HUD funds by MHO. Even so, as a Council member, State law would preclude her from voting on any matters that directly affected MHO.

"On the advice of HUD officials, we propose to write to HUD to request an opinion as to the application of the regulation to Ms. Whitmire and, depending on that opinion, request an exception or some other action by HUD that will permit Ms. Whitmire to serve on Council while working at MHO.

"This is brought to your attention now because public disclosure is one of the prerequisites of requesting the opinion from HUD. Unless Council has questions or an objection, the City Attorney's office will send out the appropriate correspondence this week."

B. CLAIMS

The following claims were received by the City of Asheville during the period of January 21-27, 2000: Jeanette Jones (Water), Wesley Gray (Streets), Gregg Darity (Streets), Thomas E. Merrill (Water), Terry Miller (Water), Jack Casey (Water) and Barbara Aanonsen (Civic Center).

The following claims were received during the period of January 28-February 3, 2000: Robert McElrath (Sanitation), Carol Winter (Water), John Long (Water), Enterprise (Streets), Clay Property Management (Inspections) and Tom Jones (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 1:45 a.m.

CITY CLERK MAYOR
