

Regular Meeting

Present: Mayor Charles R. Worley, Presiding; Vice-Mayor Terry M. Bellamy; Councilman Joseph C. Dunn; Councilman James E. Ellis; Councilwoman Diana Hollis Jones; Councilman R. Carl Mumpower; and Councilman Brian L. Peterson; City Attorney Robert W. Oast Jr.; City Manager James L. Westbrook Jr.; and City Clerk Magdalen Burleson

Absent: None

INVOCATION

Councilman Dunn gave the invocation.

I. PROCLAMATIONS:

A. PROCLAMATION PROCLAIMING FEBRUARY 12, 2002, AS “JUNIOR LEAGUE OF ASHEVILLE DAY”

Mayor Worley read the proclamation proclaiming February 12, 2002, as "Junior League of Asheville Day" in the City of Asheville. He presented the proclamation to Ms. Julia Heinitsh, President of the Junior League, who briefed City Council on some activities taking place during the day.

B. PROCLAMATION PROCLAIMING FEBRUARY OF 2002, AS “BLACK HISTORY MONTH” IN THE CITY OF ASHEVILLE

Vice-Mayor Bellamy read the proclamation proclaiming February of 2002, as "Black History Month" in the City of Asheville.

C. RECOGNITION OF CITY CLERK MAGDALEN BURLESON

Mayor Worley recognized City Clerk Magdalen Burleson on acceptance into the First Level of the Master Municipal Clerk Academy Program of the International Institute of Municipal Clerks.

II. CONSENT AGENDA:

Mayor Worley announced that Consent Agenda Items “F” and “K” have been removed from City Council consideration due to State budget cuts.

A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON JANUARY 22, 2002; THE COMMUNITY MEETING ON JANUARY 29, 2002; AND THE WORKSESSION HELD ON FEBRUARY 5, 2002

B. RESOLUTION NO. 02-18 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ACCEPT THE BID FOR PROPERTY ON CHOCTAW STREET (TRACT 2) IN THE EAST RIVERSIDE REDEVELOPMENT PROJECT

Summary: The consideration of a resolution authorizing the Mayor to convey property on Choctaw Street in the East Riverside Redevelopment Project to Tilman and Sabrina Jackson in the amount of \$11,800.

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On January 22, 2002, the City Council directed the City Clerk to advertise for upset bids on Choctaw Street, Tract 2. The advertisement ran in the Asheville Citizen-Times on January 25, 2002, as provided in N. C. Gen. Stat. sec. 160A-269. No response was received. Therefore, the offer to purchase from Tilman and Sabrina Jackson in the amount of \$11,800 was not upset and the sale to Tilman and Sabrina Jackson should be approved.

Community Development staff recommends adoption of the resolution.

RESOLUTION BOOK NO. 27 – PAGE 59

C. RESOLUTION NO. 02-19 - RESOLUTION AUTHORIZING THE MAYOR TO CONVEY A DRIVEWAY

EASEMENT OVER A PORTION OF THE YOUNGS COVE RESERVOIR PROPERTY TO BRUCE O'CONNELL

Summary: The consideration of a resolution authorizing the Mayor to convey a driveway easement over a portion of the Youngs Cove Reservoir property to Bruce O'Connell.

Youngs Cove Reservoir is located on Mountain Drive, a private road off Youngs Cove Road in the Candler community. Mr. O'Connell owns land on the mountain behind Youngs Cove Reservoir and accesses his property via a driveway that crosses the Youngs Cove Reservoir property. Mr. O'Connell has requested an easement to establish his right to use the driveway across the Reservoir property. The Water Resources Department has indicated that the driveway easement would not interfere with the City's anticipated use of the Reservoir property.

The driveway easement would be 12 feet wide and 202 feet long comprising 2,424 square feet. The easement would run outside the chain link fence, which encloses the above ground tank, crossing the property along and near the northeast property boundary and running in a northwesterly direction from the entrance to the Reservoir property at Mountain Drive.

The Reservoir property contains 35,000 square feet and has a current tax value of \$20,800.00. The impact of the easement is that the land within the easement area could not be developed. Generally the value of development rights would be 50% of the value of the portion of the property affected by the relinquishment of those rights. A value for the easement was calculated by applying the per square foot value of the whole to the area of the easement and reducing it by 50%. The calculated value of the easement area is \$715.00

Planning Department staff recommends City Council adopt the resolution authorizing conveyance of the driveway easement to Bruce O'Connell for the amount of \$715.00.

RESOLUTION BOOK NO. 27 – PAGE 60

D. RESOLUTION NO. 02-20 - RESOLUTION SUPPORTING THE NAMING OF A PORTION OF I-26 FROM MADISON COUNTY TO ITS INTERSECTION WITH I-240 "MORRIS L. MCGOUGH FREEWAY"

Summary: The consideration of a resolution supporting the designation of a section of I-26 in Buncombe County as the "Morris L. (Mac) McGough Freeway."

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The Western North Carolina Highway Corridors Association would like to name a portion of future I-26 in Buncombe County in honor of Mac McGough. The designation would cover the portion of US 19-23 (future I-26) from the Madison County line to I-240 in Asheville. The N. C. Dept. of Transportation Division 13 Office is coordinating the effort to make the designation. The Division 13 Office is asking local governments along the path of future I-26 for resolutions in support of the designation.

Mr. McGough has earned the title of "Father of Community Development in Western North Carolina" and has been active in community development issues for over 50 years. He was instrumental in organizing groups to advocate for construction of I-26 in Buncombe and Madison Counties.

The resolution supports the designation requested by WNC Highway Corridors Association. Similar resolutions have been adopted by the Buncombe County Board of Commissioners, the Town of Woodfin, and the Town of Weaverville. These local governments, along with the City of Asheville are all along the path of future I-26 in Buncombe County.

The Division 13 Office will forward the resolutions to the Board of Transportation, the Secretary of the Department of Transportation, and the Governor's Office for appropriate action in making the designation.

City staff recommends City Council adopt the resolution.

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E. RESOLUTION NO. 02-21 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO AN AGREEMENT WITH YOUNG AND MCQUEEN GRADING CO. INC. TO INSTALL DECORATIVE CROSSWALKS ALONG THE URBAN TRAIL

Summary: The consideration of a resolution authorizing the City Manager to enter into an agreement with Young and McQueen Grading Company Inc. to install imprinted decorative crosswalks located along the Urban Trail in downtown Asheville.

The City is in need of a contractor to imprinted crosswalk installation services for crosswalks along the Urban Trail. In accordance with N.C. Gen. Stat. sec. 143-131, informal bids for crosswalk installation services were solicited and three responses were received. The bidders are listed below:

Company	MB Part	Drug Free	Bond	Bid
Young & McQueen Grading Company, Inc	0%	Yes	Yes	\$69,000.00
Tarheel Inc. [none1]	Paving, 0%	Yes	Yes	\$92,006.25
Dee Williams & Co. Inc.	100%	Yes	No	\$91,062.40

As part of a TEA 21 Grant, 80% of the project funding is reimbursable from the N. C. Dept. of Transportation. The City's 20% match has already been allocated in the Public Works Department's Capital Improvement Project budget.

The Public Works Department staff recommends City Council adopt the resolution to install decorative crosswalks along the Urban Trail.

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RESOLUTION BOOK NO. 27 – PAGE 62

F. RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A CONTRACT WITH WISE ELECTRIC TO FURNISH AND INSTALL THE LIGHTING SYSTEM FOR THE UPPER FIELD AT ROGER FARMER PARK

This item was deleted from City Council consideration due to State budget cuts.

G. RESOLUTION NO. 02-22 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ACCEPT ST. DAVIDS COURT AS A PUBLIC RIGHT-OF-WAY AND PUBLICLY MAINTAINED STREET

Summary: The consideration of a resolution accepting St. Davids Court as a public right-of-way and City maintained street.

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

St. Davids Court is a newly constructed street servicing building sites for residential structures. The street has been constructed and inspected in accordance with the City of Asheville Standard Specifications and Details Manual. The street is a dead end street that is approximately 500 feet long and has an average width of 21 feet.

Following City Council's approval of this resolution, St. Davids Court will be added to the official Powell Bill list.

Staff request City Council accept St. Davids Court as a public right-of-way and City maintained street.

RESOLUTION BOOK NO. 27 – PAGE 63

H. RESOLUTION NO. 02-23 - RESOLUTION SETTING A PUBLIC HEARING ON FEBRUARY 26, 2002, TO CONSIDER THE VOLUNTARY ANNEXATION OF 2270 HENDERSONVILLE ROAD KNOWN AS ARDEN SQUARE SHOPPING CENTER

RESOLUTION BOOK NO. 27 – PAGE 64

I. RESOLUTION NO. 02-24 - RESOLUTION AUTHORIZING AN INSTALLMENT PURCHASE CONTRACT WITH SUNTRUST LEASING CORPORATION TO FINANCE THE ACQUISITION OF TWO SANITATION TRUCKS, 8,000 ROLL CARTS AND RADIO EQUIPMENT

Summary: The consideration of a resolution authorizing the installment financing of two sanitation trucks, 8,000 roll carts and 150 radios with accessories.

The City of Asheville Capital Improvement Plan 2001/02 to 2006/07 includes authorization in Fiscal Year 2001/02 for the installment purchase of two automated side-loader sanitation trucks, 8,000 roll carts (trash cans compatible with the side-loader trucks) and the replacement of aging public safety radios that are no longer maintainable due to obsolete technology and the fact that repair parts are no longer manufactured.

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The Finance Department sought proposals from 16 firms to finance the purchase of the above listed equipment purchases. Proposals were received from ten firms, the best of which was submitted by SunTrust Leasing Corporation - - 3.748% interest for four and one half years.

The proposed resolution authorizes an installment purchase contract between the City of Asheville and SunTrust Leasing Corporation for the purchase of the two sanitation trucks, roll carts and public safety radios and authorizes the City Manager, City Attorney, Finance Director and City Clerk to execute and deliver any and all necessary documents.

City staff recommends City Council adopt the resolution.

RESOLUTION BOOK NO. 27 – PAGE 65

J. RESOLUTION NO. 02-25 - RESOLUTION AUTHORIZING THE MAYOR TO ENTER INTO AN AGREEMENT WITH THE N.C. DEPT. OF TRANSPORTATION FOR INSPECTION OF BRIDGES ON THE MUNICIPAL STREET SYSTEM

Summary: The consideration of a resolution authorizing the Mayor to enter into a municipal agreement with the N.C. Dept. of Transportation on a bi-annual basis for the reinspection of bridges on the Municipal Street System.

In 1983 the Federal Highway Administration developed the Federal Off-System Bridge Replacement Program. Since the establishment of the program, the City has replaced 18 bridges through the program. The program is funded 80% through federal funds and 20% through City funds and administered by the N. C. Dept of Transportation (NCDOT). To remain eligible for replacement funds and avoid penalties, it is required that all public bridges are inspected every two years. The NCDOT offers three options for meeting the bi-annual inspection requirements – (1) do the inspection with City forces; (2) the City to hire a consultant to do the inspections; and (3) the City to allow NCDOT to do the inspections through a qualified private engineering firm.

Since 1983, the City has elected to execute an agreement with NCDOT to accomplish the required inspection through their personnel or engineering consultants. This process allows high numbers of bridges to be inspected under one contract or operation, and therefore, results in minimum inspection cost per bridge. The NCDOT representatives anticipate the inspection costs to be \$2,400 per bridge for the upcoming inspection. The City has 25 bridges in need of inspection this year, which would bring the cost to \$60,000. The City's share of 20% is \$12,000. Funds for the City's share are budgeted in the Public Work's Bridge Maintenance line item.

The Public Works Department, Bridge Maintenance Division staff, recommends adoption of the resolution authorizing the Mayor to execute a municipal agreement with the NCDOT for inspection of bridges.

RESOLUTION BOOK NO. 27 – PAGE 67

K. RESOLUTION RESCHEDULING THE TUESDAY, MARCH 12, 2002, CITY COUNCIL FORMAL MEETING UNTIL WEDNESDAY, MARCH 13, 2002, AT 5:00 P.M. IN THE COUNCIL CHAMBER OF THE CITY HALL BUILDING

This item was deleted from City Council consideration due to State budget cuts.

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L. RESOLUTION NO. 02-26 - RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE AN INTERLOCAL AGREEMENT BETWEEN THE CITY OF ASHEVILLE AND COUNTY OF BUNCOMBE FOR THE PURPOSE OF ACQUIRING AND OPERATING A CRIMINAL JUSTICE INFORMATION SYSTEM

Summary: The consideration of a resolution authorizing the City

Manager to execute an interlocal agreement between the City of Asheville and the County of Buncombe for the acquisition and operation of a multi-jurisdictional Criminal Justice Information System (CJIS).

In 1995, the City and County entered into the original CJIS Interlocal Agreement to *develop* and operate the initial multi-jurisdictional criminal justice information system. Due to the challenges of *developing* unique capabilities that proved beyond the capabilities of the contractor on the initial CJIS, not all of the originally envisioned system capabilities were achieved. However, the portions that were successfully fielded are in operation today supporting such functions as: mug shots, master name index, law enforcement records, warrants & arrest, computer aided dispatch and jail management. The initial CJIS, as with virtually all seven-year-old computer systems, has grown obsolete and unsupportable and should be replaced with a more functional and efficient state-of-the-art system.

Over the past two years, City and County staff have jointly worked to define the needed capabilities and select a source for the successor CJIS system. Among the guiding criteria for the acquisition was that the system *not require a development* effort and that it currently be in operation in a multi-jurisdictional environment - -an off-the-shelf, field-proven system. After evaluation of several vendor's products, OSSI has been selected to provide the system. Buncombe County anticipates entering into a contract with OSSI to provide CJIS for both the City and County as soon as the supporting CJIS Interlocal Agreement is approved by City Council and the County Commission. The terms of the contract with OSSI will define capabilities, cost and implementation schedule for CJIS and be used as the benchmark for assessment of the program.

Terms of the proposed CJIS Interlocal Agreement include:

- a. Effective Date/Duration: Effective upon approval by City Council and County Commission for five years with provisions for automatic one-year extensions unless either party gives notice of their intent to terminate (Buncombe County Commissioners signed the Agreement on October 9, 2001);
- b. Management: Day-to-day program management by the CJIS Project Manager – a County staff member – under the supervision of the County Information Technology Director. The City contact will be the Finance Director. Any issues that can not be resolved by the County Information Technology Director and City Finance Director will be forwarded to the City and County Managers for resolution.
- c. Implementation Schedule: Over the next two years as provided in the OSSI contract.
- d. Users Group: Key users of CJIS and program management staff from the City and County will be included in a users group to ensure that the system is successfully implemented and goals of the program are achieved. City members of the users group are the Police Chief, Fire Chief and Finance Director.
- e. Funding: The City will reimburse Buncombe County quarterly for 45% of the cost of: CJIS debt service; CJIS direct operating costs; and Central Data Entry direct operating costs. Both the City and County will seek any potential grant funding for CJIS. Grants received by either party will offset costs for both in the ratio of overall cost sharing (55% County/45% City).

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City staff recommends City Council adopt the resolution which authorizes the City Manager to execute the CJIS Interlocal Agreement.

RESOLUTION BOOK NO. 27 – PAGE 68

Mayor Worley 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.

Vice-Mayor Bellamy moved for the adoption of the Consent Agenda. This motion was seconded by Councilman Mumpower and carried unanimously.

III. PUBLIC HEARINGS:

A. PUBLIC HEARING TO REZONE 500 LONG SHOALS ROAD FROM RS-2 RESIDENTIAL SINGLE-FAMILY LOW DENSITY DISTRICT TO COMMUNITY BUSINESS I DISTRICT

ORDINANCE NO. 2895 - ORDINANCE TO REZONE 500 LONG SHOALS ROAD FROM RS-2 RESIDENTIAL SINGLE-FAMILY LOW DENSITY DISTRICT TO COMMUNITY BUSINESS I DISTRICT

Mayor Worley opened the public hearing at 5:15 p.m.

Urban Planner Paul Benson said that this is the consideration of an ordinance to rezone one lot located at 500 Long Shoals Road from RS-2 Residential Single-Family Low Density District to Community Business I District. This public hearing was advertised on February 1 and 8, 2002.

The City staff has initiated this rezoning to permit re-establishment of commercial use for this property. During the zoning process for the 1,831 acres in the "south" extra-territorial jurisdiction area adopted in August of 2001, this property was initially zoned RS-2. Although vacant at the time the extraterritorial jurisdiction was extended, the property had been previously used for a veterinary clinic.

The Planning & Zoning Commission, at their January 2, 2002 meeting, reviewed, and by unanimous vote, recommended this rezoning. The staff had originally proposed Community Business II zoning but concurs with Planning & Zoning Commission that Community Business I would be preferable. The property owner is also in agreement with this change.

Staff has received no comments of concern or opposition to the proposed rezoning.

The Planning and Development staff and the Planning & Zoning Commission recommend that City Council adopt an ordinance rezoning the property at 500 Long Shoals Road from RS-2 to Community Business I District.

Mayor Worley closed the public hearing at 5:17 p.m.

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

Councilman Ellis moved for the adoption of Ordinance No. 2895. This motion was seconded by Councilwoman Jones and carried unanimously.

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B. PUBLIC HEARING TO AMEND THE UNIFIED DEVELOPMENT ORDINANCE REGARDING FLEXIBLE DEVELOPMENT STANDARDS

ORDINANCE NO. 2896 - ORDINANCE AMENDING THE UNIFIED DEVELOPMENT ORDINANCE TO IDENTIFY FRONT SETBACKS AS A CATEGORY FOR MODIFICATION USING FLEXIBLE DEVELOPMENT STANDARDS AND TO CLARIFY THE PROVISIONS REGARDING VARIANCES AND FLEXIBLE DEVELOPMENT STANDARDS

Mayor Worley opened the public hearing at 5:18 p.m.

Chief Planner Gerald Green said that this is the consideration of an amendment to the Unified Development Ordinance (UDO) to identify front setbacks as a category for modification using flexible development standards and to clarify the provisions regarding variances and flexible development standards. This public hearing was advertised on February 1 and 8, 2002.

Flexible development standards allow City staff to make administrative exceptions to certain parts of the UDO under specific circumstances. We have identified a new dimensional category for the application of flexible development standards - front setbacks.

To a great extent, front setbacks determine the character of most subdivisions. Front setbacks are generally measured from the right-of-way and, in Asheville, street pavement and right-of-way widths have not been consistent. Consequently, subdivisions in the same zoning classification may have front setbacks that measure different distances from the edge of pavement due to this variety. Additionally, in our mountainous terrain, some lots in a subdivision are differently situated than other lots due to topography. These circumstances, among others, warrant some flexibility in establishing the front setbacks for both entire subdivisions and for individual lots within subdivisions.

Currently staff is authorized to grant modifications in the following rules using the flexibility standards: lot size, lot width, setbacks and off-street parking requirements. If a project is required to be reviewed by a design review board, the design review board can waive requirements for the following, if the building design is approved: building size, building height, setbacks and landscaping.

The ordinance provides for the application of flexible development standards in order to make minor adjustments to front setbacks in entire subdivisions or portions of subdivisions. The front setback may be reduced by up to 10 feet in an entire subdivision as part of the plat approval process. A minimum 10 foot setback is required. The front setback in up to 10% of the lots in a subdivision may be reduced by up to 10 feet, except in the RS-2 zoning district where the front setback may be reduced up to 20 feet. The minimum front setback of 10 feet is required.

He said the following conditions must exist that warrant approval of the reduced front setback: (1) protection of significant existing vegetation; (2) accommodation of trails and greenways; (3) provision of a more usable lot arrangement due to topographical constraints; and (4) maintenance of consistent appearance within the subdivision.

Staff believes that this ordinance will provide the needed flexibility to evaluate and approve reasonable adjustments to front setbacks in a number of cases where such flexibility is needed. Property owners/developers can request and receive minor modifications under the flexible development standards without the need to present a variance request to the Board of Adjustment. The Board of Adjustment is in agreement with this amendment. The ordinance amendment also clarifies the relationship between flexible development standards and variances.

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Staff has received no comments in opposition to the proposed revisions.

At their January 2, 2002, meeting, the Planning and Zoning Commission voted 6 to 0 to recommend approval of the proposed ordinance amendment. The Planning and Development staff also recommends approval of the amendment.

Vice-Mayor Bellamy asked that staff look at the possibility of flexible development standards for developments other than residential or subdivisions. Mr. Green responded that staff continually looks for ways to increase the flexibility of our ordinances.

Upon inquiry of Councilman Dunn, Mr. Green said that any staff decision on this matter can be appealed to the Board of Adjustment.

Mayor Worley closed the public hearing at 5:36 p.m.

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

Councilman Mumpower moved for the adoption of Ordinance No. 2896. This motion was seconded by Vice-Mayor Bellamy and carried unanimously.

ORDINANCE BOOK NO. 19 – PAGE

C. PUBLIC HEARING ON THE PLANNED UNIT DEVELOPMENT OVERLAY DISTRICT DESIGNATION AND MASTER PLAN REVIEW FOR ROSS CREEK COMMONS LOCATED AT CHUNNS COVE ROAD AND OLD CHUNNS COVE ROAD

Due to a conflict of interest, Councilman Peterson moved to excuse Vice-Mayor Bellamy from participating in this matter. This motion was seconded by Councilman Dunn and carried unanimously.

City Attorney Oast said that this matter involves two steps: (1) adoption of the Planned Unit Development (PUD) Overlay zoning classification (involves consideration of the usual issues in rezoning: appropriateness of the classification for the location, consistency with the City's master plan, compatibility with surrounding land uses, etc.); and (2) adoption of the master plan for the PUD (Involves determination as to whether the master plan meets specific criteria set out in the ordinance). He said it may be helpful to think of the first step in the PUD process as establishing a zoning classification and applying it to a particular property, and the second step as adopting the regulations that apply within that newly-established zone.

He said that a valid protest petition has been filed by the property owners surrounding the property that is the subject of the application. This protest petition relates to the rezoning element only. The effect of the protest petition is that an affirmative vote of 3/4 of all the members of City Council is required in order to rezone the property. This means that six votes of the City Council will be required to approve the rezoning request. And since Vice-Mayor Bellamy has a conflict her absence does not lower the number of votes required. This, a 6-0 vote will be required in order to approve the rezoning element of the PUD application. He noted that attorneys for the applicants have objected to this ruling. He did note that the protest petition does not affect the master plan; if the rezoning is approved, the vote required to approve the master plan will be a simple majority. He said that the attorneys for the applicants have objected to this ruling as well. If the rezoning element fails to pass, the project is denied and there is no

necessity for consideration for voting on the master plan. Letters from Mr. Steven L. Barden, III, and Mr. W. Louis Bissette, Jr., were entered into the record.

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City Attorney Oast also said that an issue was raised regarding a possible conflict of interest with regard to Councilman Ellis' position as a member on the Board of Directors of the Blue Ridge Area Authority. He has investigated that contention and does not feel there is a disqualifying conflict, therefore, Councilman Ellis must vote in this matter.

City Attorney Oast said that in connection with the rezoning, the main question is whether the PUD Overlay designation is appropriate for this particular property. The PUD Overlay does not change the underlying zoning of the property. What it does is permit increases in density if the developer meets certain standards set out in the Unified Development Ordinance (UDO). Relevant issues on this question are whether the PUD Overlay designation, with the increased density that PUDs allow, is appropriate here. Consideration should be given to such usual rezoning considerations as to whether and to what extent the PUD designation advances the City's policy objectives, as set forth in its various plans (comprehensive plan, land use plan, smart growth policy, etc.), compatibility with surrounding land uses, adequacy of infrastructure, and other general health, safety and welfare considerations. Even though some specific information regarding the Ross Creek Commons master plan will necessarily come before Council with Council's consideration of the rezoning element, it is important to remember that the plan can change and, as with any rezoning, any information regarding its specific proposed use should be considered as an example of what could go on the property, not necessarily what will. Once the PUD Overlay is established, any of the density bonuses allowed under Section 7-9-1 may be obtained if the applicable standards are met.

With regard to the master plan approval, it would be appropriate to get into more specific issues such as the placement of buildings on the site, the number of units in each building and the total number of units, the availability of parking, landscaping and preservation of natural landscape or topographic features on the site, setbacks, pedestrian and traffic circulation within the project etc. City Council may be as specific as it wishes in asking questions about the proposed use of the property. He stressed that City Council must not take into consideration the possibility that one or more of the units may be occupied by persons with mental disabilities or any other kind of disability

Mayor Worley opened the public hearing at 5:46 p.m.

Summary: WNC Housing and Mountain Housing Opportunities, Inc., have applied for a Master Plan approval and Planned Unit Development zoning overlay designation for Ross Creek Commons, a 35 unit affordable housing development. The proposed site for the development is a 3.38 acre parcel located at the corner of Chunns Cove Road and Old Chunns Cove Road, near Buck Cove Terrace. The parcel is currently zoned RM-6 Residential Multi-Family Low Density District, 6 units per acre. The PUD zoning overlay district provides a density incentive bonus for affordable housing and conserving open space that would allow the site to be developed at a density of up to 13 units per acre. The actual development density, as proposed, would be 10 units per acre. While this density is higher than that allowed under much of the surrounding property, it is not inconsistent with multi-family development in other areas of the Chunns Cove community, including the adjacent Buck Cove Townhomes, which have a density of 9 units per acre on much steeper property. It should also be noted that the subject property is located at the entrance to the Chunns Cove community, quite near an interstate interchange, and across the street from a church use. Such locational characteristics lend support to this site as a suitable place to allow density bonuses for affordable housing and open space conservation since traffic and site activity impacts would already be at a center of activity for the Chunns Cove community and will not be directed toward the interior of the community.

The proposed project is comprised of 4 buildings with a total of 36 units, one of which will be used as a community gathering space. Two buildings will be three stories, with twelve units each. The other two buildings will be two stories high, with six units in each. The buildings will be

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no taller than those allowed under the current zoning of the subject property and under the surrounding residential zoning, including the single family zoned areas. The development will be clustered towards the front of the property (the least steep part of the property along Chunns Cove Road), leaving over 40,000 sq. ft. of undeveloped open space to the west side of the property. A small playground will also be provided on site. Overall the site will have over 56,000 sq. ft. of open space; open space would constitute 38% of the total site. The site will be landscaped in accordance with the City Code for this type and impact of development.

Staff has received considerable public comment on this project. Neighboring property owners are primarily concerned about increased density, traffic impacts, and water and sewer capacity. Most of these issues were addressed through the

Technical Review Committee (TRC) review process. A traffic impact analysis was not required for this project because the traffic generated from the site would be below the threshold for such an analysis. The site was redesigned with a single entrance off of Old Chunn's Cove Road. The applicant is working with the Transit Services Department to work out the provision of public transit via Mountain Mobility. A Letter of Commitment for water availability has been issued and MSD has issued a Wastewater Allocation, which will require the applicant to complete some minor manhole improvements.

Staff recommends approval of the PUD Master Plan and Zoning Overlay, subject to the following conditions: (1) Provide details for the playground equipment; and (2) Provide pedestrian connections between the apartments and the large area of common open space.

Planning & Development Director Scott Shuford said that this proposed zoning change comes before Council with a recommendation of denial (3-3) from the Planning and Zoning Commission. This is the first Planned Unit Development request that has included the affordable housing density bonus. This public hearing was advertised on February 1 and 8, 2002.

He said his first presentation involves the zoning change to the PUD Overlay classification. If Council approves that change, then there will be a separate presentation that deals with the applicant's master plan. He said he would not get into details about site design in this first presentation but that his comments will be limited to general compatibility and infrastructure sufficiency issues associated with the proposed zoning overlay.

As noted at the Council retreat, the PUD zoning tool is relatively cumbersome and has been largely replaced by conditional use zoning. However, the PUD regulations contain an extremely important provision that supports key community goals: density bonuses for affordable housing and for environmental protection. Also as pointed out at the retreat, Asheville has a major affordable housing problem. One of the most important incentives local government can provide for affordable housing is to allow increases in density that reduce the per-unit cost of providing housing. He then reviewed graphs and charts demonstrating the affordable housing problem in Asheville.

He said that if we are to provide affordable housing to the extent that we must provide it to meet the obvious community-wide affordable housing and economic development needs, it will have to occur in multi-family developments. In our land-short situation, we cannot expect single-family development to come close to meeting the need for affordable housing. He showed a map of what land is available for multi-family housing. He said that approximately 2,200 is available and vacant for multi-family development.

Mr. Shuford then reviewed with Council the Sustainable Economic Development Strategic Plan priorities. (1) Shortage of diverse and affordable housing within the City, including rental units; (2) Lack of developable sites; (3) Tight labor supply with a shortage of skilled workers; (4) Lack of local agreement about the type business and industry the City should try to attract; (5) The water supply is inadequate and high cost; (6) Lack of prestigious research

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institutions and technical graduate programs; (7) Problems with the planning, zoning, and permitting process; (8) Lack of cooperation between City and County governments; (9) Need to revitalize the riverfront; (9) High underemployment; (10) Lack of available buildings for manufacturing and distribution; and (11) City's economic development role needs to be more clearly defined.

Mr. Shuford then provided Council with the project description and discussed some of the surrounding land uses in an effort to demonstrate compatibility of this project with the overall development pattern of this part of the City. He said that Ross Creek Commons is a 35 unit multi-family complex to be located at the corner of Chunn's Cove and Old Chunn's Cove Roads on a 3.38 acre parcel. The project site is located about ¼ mile from the intersection of Chunn's Cove Road and I-240. The property is currently zoned RM-6; prior to the UDO, the property was zoned R-2 which also allowed six residential units per acre. Surrounding zoning is almost all RM-6 although there is some RS-2 on the steep, western side of the property. It is in the proximity of nonresidential and other multi-family development – Churches; Buck Cove Townhomes; CentrePark Business Park; multi-family projects farther south and north on Chunn's Cove Road (Willow Springs, 24 Old Chunn's Cove Road). He described the building height, massing, scale and location (building elevations; meet maximum height limits of zoning ordinance; similar design; Laurelwood).

He said that staff feels that the project is physically compatible with the surrounding neighborhood due to (1) the amount of existing multi-family development immediately proximate to and in close vicinity to the subject property; (2) the relationship of the subject property to streets and highways; (3) the natural and topographic circumstances of the subject property; and (4) the surrounding area and the proximity of nonresidential development.

The next questions that must be answered are: whether there is adequate public services to serve this development; and

whether other existing or potential development in the area will be substantially and negatively impacted if these services are used to support this proposed development. Water service has been reviewed by the Water Authority and they have no capacity concerns. Sewer service has been reviewed by the Metropolitan Sewerage District (MSD) and they have no capacity concerns. Streets have been reviewed by the City's Traffic Engineer and he has no capacity concerns. Public Safety (Fire, Police and Emergency Medical Services) have been reviewed by City staff and there are no response time concerns.

He hoped he had sufficiently demonstrated to Council the extent of our affordable housing problem, the importance of resolving that problem to the City's economic development program, the overall compatibility of the proposed development with surrounding properties, and the adequacy of public services necessary to support the development. Based on this analysis, staff recommends your approval of the PUD Overlay zoning.

Mr. Scott Dedman, Executive Director of Mountain Housing Opportunities (MHO) and City resident, asked City Council to approve the City's only land use provision that supports affordable housing for their site in Chunns Cove. On 3.38 acres they want to put 35 attractive apartments. Twenty-seven of those apartments will be affordable to families in the \$15-30,000 income range. Eight of the apartments will be for individuals who have receive care from the Blue Ridge Center and are able to live independently. One additional unit, in addition to the 35 residences, will be a community meeting space. If the PUD Overlay designation is approved, they could have asked for 40 apartments with a double density bonus allowed in the UDO. With other provisions of the PUD, they could have requested up to 44 units. In fact, they did initially request 44 units and last year the City's Technical Review Committee (TRC) unanimously reviewed their proposal on all technical issues. However, after hearing concerns from neighborhood residents about the number of units and the scale of their buildings, they reduced their plan to 35 units (and one community space) and reduced the side of the buildings. If

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Council approves the PUD Overlay, then the exact details of the site plan will be discussed in detail. If Council does not approve the PUD Overlay, then they will build 20 apartments on the site. Fifteen families or individuals will live somewhere else, most likely further away from convenient shopping, transportation, jobs and services. He showed slides to illustrate the location of the site, noting that the site is less than 2/10 of a mile from I-240, 1/4 of a mile from Tunnel Road and 1.5 miles from downtown. He then entered into the record a booklet entitled "The Story of Ross Creek Commons" dated February 8, 2002, which included (among other things) a timeline of communication with the neighbors. He agreed that people should care about and be involved their neighborhoods. But issues of "Not in My Back Yard" (NIMBY) are issues of concern all across our nation, many which reference inadequate infrastructure. Infrastructure is a significant reason MHO has chosen this site. Water and sewer lines are ample and right at the site, grading costs will be well below any other site they have been able to find and develop, and the land is located on a good road and a good intersection. All regulations have been met. Concerns have been raised about the height of the buildings and they will address that concern fully if the PUD Overlay is approved. But as a side note, the buildings are below the height of the City's regulations not only for multi-family development but for single-family development. Even though neighbors stress that building height is the main difference between other developments in the community and this proposed development, he showed slides to dispute that issue. Therefore, the question is density and density is people. He read various letters from residents that support the phrase "we support affordable housing, but" Some excerpts were (1) "if they just build 20 units and not ask for any affordable housing density bonus, they well welcome us with open arms;" (2) "hope you will look elsewhere for another piece of property;" (3) "affordable housing belongs in areas where similar housing exists just as commercial buildings belong in settings that foster other commercial enterprises;" (4) "the proposed development will house people with substance abuse and mental illness problems. Similar MHO developments may be accepted by other communities, but I do not believe it will be accepted here – certainly not by me or many of my neighbors in Buck Cove Townhouses;" (5) "children will have to spill over onto a very congested part of Chunns Cove Road and into the properties of those who are and have been established. This is a real cruelty to the people would be living under these conditions. There is plenty of land to be had to allow more space and probably cost less. Perhaps the deserted theatre at Innsbruck Mall with the space around it could be bought, along with the Heilig Meyers space." He said that after the Planning & Zoning Commission meeting of 2-1/2 hours of discussion about traffic, sewer, buffers, density and building height, a neighborhood representative asked "I just want to know one thing – why type of people will live there." The City Attorney ruled her out of order in that the question was not relevant to the rezoning issue. Mr. Dedman said their families are typically in the income range of \$15-30,000. These families can afford the rent, they just can't afford Asheville's market rent which is very high. MHO does not build public housing and they do not admit residents who have had a violent history or history of sexual offense. Because of neighborhood concerns expressed, MHO will commit to having a paid person on site to keep watch and alert other professionals if a problem arises. This goes beyond what is available to any other home or property in the neighborhood. He summarized by saying that City Council unanimously approved the zoning map of six units per acre on their site and they also unanimously approved the affordable housing density bonus. MHO try to help the families who live in their apartments and homes to fulfill their highest aspirations. He asked City Council to help not just 20 families but 15 additional families to achieve their highest aspirations.

Ms. Patsy Brison-Meldrum, attorney representing MHO and extra-territorial jurisdiction resident, addressed the legal

issues. She discussed the authority for a PUD Overlay District, clearly pointing out that it is authorized under North Carolina law. She then said that State law also sets out the purposes that should be considered in determining whether to adopt a zoning designation. She cited from a few cases which note that you do not have to consider all of the purposes or to adopt a zoning designation that complies with all of these purposes. One purpose is that zoning regulations shall be made in accordance with a comprehensive plan. That

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plan for the City is known as the 2010 Plan. She then pointed out some case law regarding zoning designations. Again, there is clearly authority in North Carolina for establishing this overlay district. City Council must consider the character of the land, the suitability of the land for the uses permitted, and the comprehensive plan or the existence of circumstances justifying the rezoning application. She asked Council to apply the law set forth in those cases in determining how they have met the rules for this zoning designation and to base their decision on those factors, not on someone's characteristic of the area or on unfounded facts set forth. She reviewed language from the City's 2010 Plan to show that this zoning designation requested will be in compliance with the comprehensive plan. Another policy adopted by the City regarding affordable housing is the Consolidated Housing and Community Development Plan for 2000-2005 adopted on June 9, 2000. In concert with the 2010 Plan and the Consolidated Housing and Community Development Plan, City Council adopted the PUD Overlay District in the UDO.

She noted it has been shown how this project is compatible of the uses in the area and also the density in the area with this proposed zoning designation. This proposal fits within the uses in the area, not that this proposal would provide for about 10.4 units per acre, whereas Buck Cove Townhomes are about 9 units per acre and Willow Ridge Apartments are about 10.1 units per acre. There is clearly compliance with uses and with density in order to support this designation.

Ms. Meldrum entered into the record a letter from Mr. Dan Baechtold, Urban Planner, dated May 24, 2001, noting that on May 21, 2001, the TRC reviewed the proposed site plan and took action to move forward with conditions. She believed that by the action of the TRC, that clearly shows that the infrastructure supports this zoning designation. She referred to letters in the booklet Mr. Dedman entered into the record earlier regarding water commitment; sewer allocation; adequate capacity in the fire hydrants and fire flow; and no problems with crime in the area. She then submitted into the record email correspondence from Michael Moule, the City's Traffic Engineer, regarding the analysis of the traffic in the area that it was well below the threshold of requiring an Traffic Impact Analysis. Mr. Moule also detailed that he "pulled the crash reports for Chunns Cove Road. According to our data, since 1994, there have been no crashes at the intersection of Chunns Cove Road and Old Chunns Cove Road." He did point out, however, that there have been some minor fender-benders in the vicinity. Another reason the zoning designation should be approved is because it meets the purposes of the PUD. She detailed how it encourages more open space; it retains natural features, especially on steep slopes, and to encourage developments that will be compatible with environmentally sensitive areas; facilitates more affordable housing; facilitates energy costs through clustering of dwellings; effective use of transportation system; and encourages pedestrian circulation. The project meets the location standards of the PUD in that it shall be located on a street which is capable of accommodating the projected traffic needs of the proposed development. It must meet the infrastructure standards and the infrastructure in this area supports the density proposed. There may be other issues raised, such as an environmental impact statement and also concern about whether or not there may be some history to the site related to the underground railroad. Because federal funding is involved there is approval for the project from the N.C. Dept. of Cultural Resources in a letter dated September 28, 2001, saying they have conducted a search of their maps and files and determine that this structure is not located in or adjacent to any district which is listed in or eligible for listing in the National Register of Historic Places. In addition the structure, meaning also the property, is neither listed in, nor eligible for listing in, the National Register as an individual property. "We therefore have no comment." Also a notice to the public of no significant impact to the environment was published in the Asheville Citizen-Times on October 9, 2001, pursuant to requirements of the United States Dept. of Housing and Urban Development to release federal funds under the Title 1 of the Housing & Community Development Act. Clearly there has been a determination that there is no historic designation for the property and no need for an environmental impact study under federal regulations. In summary, the UDO, the comprehensive land use plan and the Consolidated Housing Plan has set forth Council's policies. In carrying out those policies, a provision in the UDO, the PUD has been adopted to allow for an affordable housing density bonus to carry out Council's policies. We have presented evidence that this is the right location, the right size, has access to I-240 and Tunnel Road, to a major

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commercial strip. City Council has set out the rules and they have complied with those rules. She respectfully urged City Council to adopt this zoning designation for the site.

At 7:00 p.m., Mayor Worley announced a short break.

Mr. W. Louis Bissette, attorney representing the Chunns Cove neighborhood and City resident, started out by saying he was disappointed in Mr. Dedman's attacking the Chunns Cove. The Chunns Cove Road neighborhood is made up of good people in a diverse neighborhood with low, medium and high income residents. These are working people, retirees, minorities, single-

family parents and others and they share a fierce pride in their homes and community. City Council needs to look at the compatibility of this project to the neighborhood. The neighborhood is asking that Council deny the appeal of the developers for the proposed Ross Creek Commons project. The Planning & Zoning Commission denied the request after a thorough review of the facts and a full hearing. The Commission is a body Council appoints and they should listen to those members. The property located at the corner of Chunns Cove Road and Old Chunns Cove Road is a steep site rising 10 feet above Chunns Cove Road at the entrance to the Chunns Cove community. The property is currently zoned RM-6, Residential Multi-Family Low Density District. He read the description of RM-6 from the UDO. RM-6 is what the people of Chunns Cove counted on at the entrance to their community – a zoning district that would limit the size and density of multi-family development. The RM-6 district allows the developer to build 20 units and the PUD Overlay with its density bonus provisions would permit the developers to put more than twice that many units. He said their plan, which they contend is partially through the process, shows 35 units plus an office. But there is nothing that says if Council passes this PUD Overlay that they can't come back with a plan for 44 units. This is a 3.38 acre site, but really the construction of the project will be on 1.77 acres – less than one-half of that site. That calculates to be 18 units per acre. Very few, if any, of MHO existing projects have this level of density per acre. Furthermore, they disagree with some of the numbers given on the multi-family developments in Chunns Cove. Buck Cove is 20 units on 2.41 acres (8 units per acre) and Pinecliff Condos and Stone Ridge Condos are not in the Chunns Cove area. The Chunns Cove neighborhood strongly supports affordable housing and they support many of the efforts of MHO. This neighborhood, however, opposes the density and scale of this project. It simply does not fit into the character of their neighborhood. They think, in addition to the project being incompatible with the character of the neighborhood, this oversized project will exacerbate existing sanitary sewer, stormwater and traffic problems that already exist in the Cove. He has a police report that lists 23 accidents last year at different spots on Chunns Cove Road. These issues have not been properly addressed by needed traffic, infrastructure or environmental studies. Setback and buffering requirements have been waived and there are none on one side of the project at all. There are serious concerns about fire safety and concerns about the site. Mr. Baechtold's letter that Ms. Brison submitted into the record was dated May of 2001 and was based on a plan that is no longer in existence. That was the original plan that had two access points and had a different configuration of buildings. We contend that the new plan only has one access point and the Fire Department has never seen the revised plan. He didn't think the Tree Commission has seen the revised plan either. After looking at the plat of ownership for this project and it looks like their property line does not come over to Old Chunns Cove Road where this access road exists. So, they're not sure if they actually own the property that their one access road goes on. He felt the PUD Overlay process is unfair – not just to Chunns Cove, but to anyone. The PUD Overlay with its density bonus provisions have never been used by the City to date. It was also his understanding that there have been some issues about this process and there may well be some forthcoming modifications or deletions recommended to City Council. Chunns Cove was the only neighborhood who was forced to suffer through the "rock pile" fiasco when I-240 was built. They request City Council not vote to make it the only neighborhood to suffer through the unfair provisions of the PUD Overlay District. People in a neighborhood have the right to know, with some certainty, what can be constructed in that neighborhood. That's why there is zoning. The residential PUD Overlay process, however, does nothing but bring about uncertainty and destroys

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the trust which should exist between the City and its neighborhoods. He felt that every neighborhood in Asheville should be concerned about this. If we are going to have areas where we want affordable housing, let's zone it that way so that people know what's there and what's going to be there. We contend that the people who live in the proposed development will be jammed into a crowded environment that is not going to be adequate for what is trying to be done. They would like to see a smaller project with 20 units with more amenities and a safer and comfortable residency for those people who will be living in the development. He realized that cost considerations have no bearing on Council's decision but the people in Chunns Cove are taxpayers and they are disturbed by the magnitude of the monies used to purchase this site. The site was purchased in late 1996 by a local attorney for \$59,000. It's valued on the tax books of Buncombe County for \$40,000. According to the tax stamps, the developers paid last week \$282,000. He can't believe that other sites are not available. On behalf of the citizens of Chunns Cove, he promised that if the developer will reduce the density of this project to the allowed 20 units, the people of Chunns Cove will welcome these new residents into the Cove as friends and neighbors. He said that Mr. Dedman visited the neighborhood about two weeks ago and one of the things he said was that if they don't get this density bonus, they will build 20 units and they will put more mentally disadvantaged people in those 20. He said that the Chunns Cove residents don't care. He said since Mr. Dedman will not voluntarily consider a reduction in density, they respectfully request City Council deny their appeal and require them to comply with the existing RM-6 density requirements. This will be a win-win-win for the City, the Chunns Cove neighborhood and also for affordable housing.

The following residents support affordable housing, however, they urged City Council to deny the PUD Overlay District request for various reasons, some being, but are not limited to, the height elevation of the buildings, once constructed, will be overwhelming since the first building will already start off at 20 feet higher than Chunns Cove Road and then the 38 foot building would be built on top of that; development is out of proportion for the area; the development would denominate the entrance to Chunns Cove and the surrounding neighborhood; the project is not compatible to the neighborhood; density of the project is too high; project doesn't fit into the character of the neighborhood; already existing sanitary sewer, stormwater and traffic problems on

Chunns Cove Road; fire safety; buffers and setbacks are insufficient; revised plan was not approved by the Fire Department as reported at the Planning and Zoning Commission meeting; fire safety concerns; turn area in the drive is inadequate in that it a 30-foot fire truck (medium size) has to use both lanes of the road to complete the turn; not a well-designed project; only one close by fire hydrant; speeding on Chunns Cove Road; Chunns Cove Road is dangerous with a blind hill; there have been many traffic accidents on Chunns Cove Road; Chunns Cove Road and Old Chunns Cove Road is a dangerous intersection; existing sewer line is inadequate; existing seepage, overflow and spilling sewage problems; developer knew what the zoning was when they purchased the property; there will be clear-cutting of large trees; there will be bull-doing of historical artifacts; City to be looking to attract businesses with good paying jobs and then people could affordable homes; other sites are available that would support the density, in particular the 30 acres behind Memorial Stadium; Chunns Cove neighborhood just wants the residents of this development to have a little space and not be overcrowded in the development; property values will be harmed; if the PUD Overlay is granted, other area properties will petition to rezoned to a higher density; since the PUD Overlay process is going to be reviewed, why rush to approve it and then it will be the only one standing that already is greatly at variance with traditional UDO policies and would then be grandfathered in at a later time; several old oak trees need to be protected so they can live through the grading and construction of the site; important historic reminders of Asheville and southern history should stay in their original places and be preserved for future generations; proposed site is too hilly; Chunns Cove Road has no sidewalks; entire development will be on the front half of the lot; there is not enough parking, buffer zones, outdoor recreation space or setbacks provided for the residents of the development; inadequate water flow; with only one access, if an emergency occurs people will be trying to drive out and the emergency vehicles cannot get into the development; the 3-story buildings will block the views;

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there are no other 3-story buildings in Chunns Cove; keep the zoning only RM-6; the extra 15 units (if a PUD Overlay is granted) will not solve Asheville's affordable housing needs; 20 units will be welcomed into the Chunns Cove neighborhood; City and County should work together to solve affordable housing problems; and more higher paid jobs than \$7.00 need to be created:

Mr. Jeff Burleson, adjoining property owner and resident in the City's extraterritorial jurisdiction
Mr. Thomas Custer, resident of Chunns Cove
Mr. James Judd, 26 Rollingwood Road (entered into record four letters)
Mr. Gerald Wagstaff, resident on Honey Drive
Ms. Rhonda Byrd, 156 Chunns Cove Road
Ms. Patty Robertson, 35 Covewood Road in Chunns Cove
Ms. Jean Wall Penland, resident on Rollingwood Road
Mr. Nian Avery, 46 Chunns Cove Road
Ms. Jean Baker, resident of Chunns Cove
Ms. Linda Price, property owner in Chunns Cove
Ms. Beth Pilz, resident on Covewood Road
Ms. Carol Collins, Co-Chair of Highland Gate Neighborhood Association
Ms. Nancy Orbin, resident on Rollingwood Road in Chunns Cove
Ms. Patricia Teague, resident of East Asheville
Mr. Kermit Brown, 398 Chunns Cove Road
Ms. T. Finch, 655 Chunns Cove Road
Mr. Ed Teague, Asheville resident
Ms. Beth Chestnut, resident on Rollingwood Road
Ms. Judy Marshall, 1 Honey Drive
Mr. Wayne Marshall, 1 Honey Drive
Mr. Dick Washam, resident on Honey Drive
Ms. Susan Counsel, 37 Rollingwood Road
Ms. Helen Coman
Mr. Don Sly, Asheville resident
Ms. Madge Murray, 19 Old Chunns Cove Road
Mr. David Herbert, Kenilworth resident
Ms. Carolyn Turminy, 658 Chunns Cove Road
Ms. Karen Hunnicutt, resident in Chunns Cove
Ms. Linda Baker, 33 Rollingwood Road
Ms. Denise Garrison, 5 Rollingwood Road
Mr. Joe Wald, property owner in Chunns Cove
Ms. Barber Melton, President of the Coalition of Asheville Neighborhoods and Haw Creek resident
Mr. Walter Plaue, Carolina Real Estate Investors Association

The following residents urged City Council to approve the PUD Overlay District to allow a 35 unit development for MHO for various reasons, some being, but are not limited to, the project is actually less than the allowed 44-units; the PUD is a new concept that forward thinking cities have used; the PUD gives the City an additional tool to accept higher density if other conditions are met; affordable housing is desperately needed in Asheville; good design of the project; people shouldn't have to fight to live in a section of town; people need a place to live; neighborhoods should be enriched with diversity; this project is an opportunity to advance the cause for affordable housing; affordable housing is important to the City's economic development; MHO has complied with all the City's regulations and should be allowed to build these needed affordable housing units; working people can't afford a decent place to live; Chunn's Cove Road neighborhood is changing just by the fact that people move to Asheville; affordable housing will increase the affordability of nearby houses; MHO has had meetings with the neighborhoods and have reduced the number of units as a result of those meetings; some Chunn's Cove residents

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say they support affordable housing, but not in their neighborhood or less of it or they want houses and not apartments; there is not much more land available for multi-family development; zoning should have nothing to do with the wealth of a resident or ownership status of resident; this development is over a one million dollar private investment in affordable housing; the more units that can be built, the less rent they have to charge; to allow this development is pro business and pro economic development; if MHO doesn't get funded for Ross Creek, there will be no new affordable housing units built in Asheville next year; for the City's investment of \$1 Million the City can receive approximately \$3 Million in return; and development will not overtax water, sewer or roadways:

Mr. Robert Todd, Asheville resident
Ms. Willie Vincent, Asheville resident
The Rev. Jim Abbott, Pastor of St. Matthias Episcopal Church and East End/Valley Street resident
Mr. Mathew Ashworth
Ms. Suzanne Walker Wilson, Asheville resident
Ms. Veronika Gunter, Asheville resident (entered into record letter with 11 signatures)
Mr. Barry Summers, Asheville resident
Mr. Alan Ditmore, County resident
Ms. Ann Bamberger, East Asheville resident
Mr. Richard Genz, 355 Sunset Drive
Ms. Pauline Counsel, 415 Chunn's Cove Road and Asheville resident
Mr. Tony Sayer, resident on Florida Avenue
Mr. Douglass Keen, 105 Sunny Ridge Drive in Town of Woodfin
Mr. Al Mojonier, Buncombe County resident
Mr. Bud Walker, 315 Chunn's Cove Road
Mr. Brownie Newman, Asheville resident
Ms. Beth Maczka, Asheville resident
Ms. Amanda Ross, Asheville resident
Ms. Robin Merrill, housing attorney for Pisgah Legal Services
Mr. Jim Barrett, Asheville resident
Mr. Greg Walker Wilson, North Asheville resident
Mr. Rich Olejniczak, Asheville resident (entered into record NCHFA Multi-Family Rental Development 2002 Preliminary Application Report)
Ms. Karen Keenan, Executive Director of the Affordable Housing Coalition
Ms. Melendez, Asheville resident
An unidentified lady
Ms. Beth Duttera, Asheville resident
Mr. Howard Shepherd, West Asheville resident
Ms. Noel Nickle, Asheville resident
Ms. Selina Sullivan, Asheville resident
Mr. Bob Smith, Montford resident

Ms. Rebecca Campbell felt both sides of the issue need to sit down and find a way to work together.

Mayor Worley said that Mr. Tom Hartye, General Manager of the Metropolitan Sewerage District, called him earlier that day and said that they have plans to line this section within the next four months and that lining that section will stop the current infiltration. He said that the date of completion of this lining is June and the line is scheduled for a major upgrade in approximately

two years.

Mr. David Matney, attorney representing WNC Housing Inc. and Buncombe County resident, said that they do have a legal right-of-way to the roadway. Zoning has the provision for

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change to allow for changing circumstances and the PUD Overlay is to promote innovative design by providing flexibility. The flexibility and site design is intended to accomplish, among others, to facilitate more affordable housing through clustering of dwellings through increased density. The issue here is whether City Council will assist affordable housing at this site by increasing the density. City Council should follow the philosophy set forth in the UDO and support the PUD Overlay for this property.

Mr. Steve Barden, attorney representing MHO and City resident, said that MHO undertook an exhaustive search for suitable property for affordable housing and this tract was one of the few suitable places in the City. MHO submitted a first-class application and made many concessions to please the Chunns Cove Road homeowners. The City's TRC approved this and the Planning & Development staff recommended approval. They say that it meets the City's smart growth policies, preserves a significant amount of open space and it helps the City meet its affordable housing goals. He stressed this is an ideal site for a PUD Overlay and it meets all of the UDO's criteria. One of the rights of all of us as property owners is to use our property as we see fit as long as that use complies with laws and land use regulations. The applicant/property owner in this case has complied to the letter of the law. Mr. Bissette stated that none of the other MHO projects had the same density, but that is not true. With regard to the traffic impact, the City's Traffic Engineer determined that it's below the threshold to require a traffic study. The City has certified there are no water, sewer or fire problems. The price of the site has absolutely nothing to do with this issue, but the fact of the matter is that the contract price in this acquisition was completely supported by an appraisal by a qualified professional appraiser in Asheville. Mr. Bissette referred to Mr. Baechtold's letter being outdated. The plan changed but the changes did not reflect the substance of the letter. When the plans were revised the revised plans did not have to go back to the TRC because it involved an actual reduction in the density. In a letter dated today to City Attorney Oast from Mr. Bissette, it reads in part "We are very concerned that the City Council's prior action in approving the \$100,000.00 in CDBG funds for this project will make it very difficult for the Council to make an impartial decision on this Appeal. It is our understanding that \$100,000.00 in City of Asheville CDBG funds was approved by the Asheville City Council last year for this project and those funds have already been disbursed to the Developers for acquisition of the property." Mr. Barden was confident that City Council will be fair and impartial. He cited a case in that the City of Raleigh Court of Appeals held that there is nothing improper about a council voting on a project it previously participated in planning on. There were comments about the project being higher than the rock pile, but is it not. There was a comment about the sewer line capability, but pointed out that a 80 unit condo complex was approved and that runs into the same main sewer line but only two residents of Chunns Cove residents were present at that hearing. There was a question about fire hydrant pressure, but it's indicated that there is no problem with fire hydrant pressure. There has been no good reason raised why this application should not be approved. He stressed that they have complied with all the requirements and are entitled to a PUD Overlay.

Mr. Dedman admitted to stating that if they did not get approval for 35 units and were only able to build 20 units that there might in fact be more mental health units. The reason is that a tax credit development is very complex and when you get to a certain size of units its not feasible. A 20 unit development is very difficult for a tax credit development. If eight of those 20 are mental health, it's that much worse as far as the flexibility of the funding. With regard to not being flexible about the plan and the number of units, that is not true. He has offered Mr. Bissette and Mr. Washam several times to sit down. They took the position that 20 units is it and anything above 20 units would not be acceptable.

Mr. Bissette cleared up a statement in that he meant to say that if they want to put this number of affordable housing apartments in an area, do it in an area that is zoned for that number. This seems to be framed as a referendum on affordable housing. It's not. Chunns Cove residents say they want, will take and will be great neighbors to 20 affordable housing units

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because they believe that is what is compatible to their neighborhood. Chunns Cove is not against affordable housing. There are affordable units going up in other areas of the City and these 15 units are not going to bring us from last place to first place. This development is clearly not going to be compatible with this neighborhood. There are safety problems, road problems, sewer problems and water problems in this area. The area residents want these problems cleared up before something of this size is allowed in this area. Pinecliff Condos and the Stone Ridge development sewer does not go into Chunns Cove but into the Haw Creek sewer. The TRC did not approve the revised plans and they are not something with one change on them – they go from two access to one and that's a big change. He said that if City Council denies the PUD Overlay, there will still be 20 units of affordable housing. He entered into the record a petition containing 275 names. Said petition read "Petition against proposed 40-unit, 3-story Mountain Housing Opportunities/Blue Ridge Mental Health Joint P.U.D. project/development to be known as 'Ross

Creek Commons.' Proposed project to be located at the corner of Chunns Cove Road and Old Chunns Cove Road. Said project is to begin 2002. Please sign your name, address and are you a voter (Y/N)?"

Mr. Dick Washam reiterated that the issue with the Chunns Cove community is not affordable housing – it's the density overlay position of the UDO. He felt the property should be built to the existing zoning and they would support 20 units. The cost of the property has a significant impact on the ability to have affordable housing and that is driving the number of units they would like to have there in order for it to be affordable housing. Either too much was paid for the property or the property is an inappropriate choice for affordable housing. If that is the case, then that is a poor business judgment and why ask the community to stand behind a poor business judgment by a developer.

Mayor Worley closed the public hearing at 11:50 p.m.

City Attorney Oast reiterated that there are certain things that are not relevant to City Council's consideration on the rezoning issue: nature or degree of ability or disability of the potential tenants of the project; as with any rezoning, MHO may not always be the owner or operator of the project and so their policies, practices and track record is not relevant to Council's consideration; the PUD Overlay is in the UDO and the applicant has applied to the law and that is what Council needs to apply; and whether it is a good or bad financial decision, or the price paid for the property is irrelevant to Council's consideration.

Upon inquiry of Councilman Mumpower, City Attorney Oast said that a PUD may contain any type of residential use except manufactured homes. He said there is nothing in the Code that restricts the application of PUDs to mixed use developments.

Mayor Worley clarified that City Council has used the PUD Overlay District before, but just not with density bonuses.

Upon inquiry of Councilman Peterson, Mr. Shuford said that by the time the site is prepared and ready for occupancy that would put a demand on the sewer system, the sewer line improvements will be in place. MSD has issued a sewage allocation letter for the project saying there is sufficient sewage capacity in the treatment facility and the lines leading to that treatment facility to accommodate this use.

Councilwoman Jones questioned the process for review with regard to fire safety. Mr. Shuford explained that this project went to the TRC in May of 2001. Since that time the developer did reduce the density and change some of the site configurations. They did go from a loop access road to a single access road. To do that requires a fire truck turn-around which he believed has been approved. There are also some additional minor adjustments for the Fire Department that the plan will require in order to get the lane configuration. In addition, when the

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plans come in for a permit there would be an additional review by all of the different departments that are involved. That gives the City an opportunity to catch any changes, mistakes or omissions.

Councilman Dunn felt like Council needs to look at the spirit of the law and then the letter of the law. He felt that if you have a certain density, that density should apply to the entire property, however, he does understand the upper part is too steep on this site. Even though City staff feels that the extra acreage is a buffer, the truth is that it's too steep to build on. He felt we should be looking at putting apartments in a project that may be spread out a little more. When you have a density of 6 per acre, that means six units per acre – not just crammed into a little area that calculates to 18 units per acre. That fulfills the letter of the law, but doesn't think it is the spirit of the law. He felt if Council votes to approve this and allows a developer to arbitrarily put buildings where they want to when it's zoned to be put on the entire property, that would be starting a dangerous precedent.

Mr. Shuford explained that they encourage developers to do just that - whether or not we had the density bonus provision that encourages clustering. If the units were spread out into the steeper area, they would be just as difficult to serve as Buck Cove Townhomes which is in a very steep environment. Those Townhomes would run into very serious permitting issues today due to the steepness of the road and the design of the facility. In addition, we want to encourage the preservation of open space and in this particular case, roughly 1/3 of the site would be retained for open space. It's good planning to concentrate the units on the flatter part and try to preserve the steeper part and the wildlife habitat up towards the top of the mountain.

Councilman Mumpower confirmed that City Council recently passed the Stone Ridge Condominium development which built their units on the flatter property and left the higher elevations open. When he asked why there is no elevation drawing for this project, Mr. Shuford said that the developers actually have a model that would show how the elevation pieces work but that information has to be presented when Council talks about the actual site design.

Councilman Peterson said that some concern is about a very large building right-up- against Chunns Cove Road.

Because of the N. C. Dept. of Transportation right-o-way, he questioned if there will be some setback requirements and if staff took those into consideration with regard to buffering on the property. Mr. Shuford said that at the request of the neighborhood, MHO did try to make some adjustments to the building in front and saved a fairly good stand of taller trees. But that gets into the site design issue. However, the buildings meet the height limit and anything that is built on that site could probably meet that setback and have that height whether it be a single family home, a duplex, or some other form of multi-family.

Upon inquiry of Councilman Dunn about how the height of the buildings are measured, Mr. Shuford said the building height is measured from the ground up. He explained that the first building will be approximately 10-15 feet above the road because of how the land lays. It would require extensive grading to reduce that back to the road level.

Councilman Dunn said he didn't think a decision tonight will kill affordable housing in this community. The Housing & Community Development Committee have just recommended spending \$500,000 on affordable housing projects and the City just started, last year, designating \$400,000 to the Housing Trust Fund. He didn't feel that 15 units is going to destroy economic development.

Councilwoman Jones asked if some common ground might be achieved by cutting off a few units from the three story buildings. Mr. Dedman said that if they remove the third story units on the front building and make it a two story, that would be a reduction of four units for a total of 31 units. Even though he believed there are tax credit developments that have been successful

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with 30 units, the developments MHO has done have been 38, 40 and 48 units and those have been successful tax credit developments.

Councilman Dunn pointed out that not only is height a concern of his, but also the density.

Mr. Dedman said that there are a lot of regulations when you start building on steep land. Some of the older developments, e.g., Buck Cove Townhomes and Pinecliff Condos, could not be built today because of those regulations. He, frankly,, would like to move a little further up the hill with some of the buildings, but didn't know if regulations would allow him to do that. As to other accommodations of the site plan, there wasn't a lot of room for that in the process because the neighbors chose the position of only 20 units. If Council approves the PUD Overlay, he would commit to coming back and sitting with the neighbors and discussing the density on the site plan.

Even though this PUD Overlay public hearing is not supposed to be about how many units are on that site, they had to submit a site plan saying how many units were on the site. They couldn't submit the application without it. He did reiterate that if Council wants to discuss 30 or 31 units, he would be willing to discuss that in the next public hearing and would accommodate Council's wishes as to the site plan.

Upon inquiry of Mayor Worley, City Attorney Oast explained Council's ability to change the site plan is limited to a large extent by what the applicant brings to Council. If the applicant brings a site plan that meets the qualifications of the ordinance, Council doesn't have a lot of room to amend it, from a legal standpoint. They can't require adjustments to the site plan, but can strongly encourage them. Again, if the applicant can demonstrate that they have met the requirements, Council may not have a choice but to approve the site plan. He did note that the site plan can change, but it would have to be approved by the Planning & Zoning Commission or by the City Council, if appealed.

Councilman Mumpower said it was Council's job to implement the ordinances in a fair and consistent manner, therefore, he moved to adopt the PUD Overlay District designation for Ross Creek Commons, located at Chunns Cove Road and Old Chunns Cove Road. This motion was seconded by Councilwoman Jones.

Councilman Peterson pointed out how this is a discretionary call for City Council with regard to whether the project is compatible with the surrounding area. Looking at what is immediately around the property, with no development on two sides, apartments and multi-family mostly on the other side and then other multi-family further down the road, his judgment is that it is a close call, but feels it is compatible.

Councilwoman Jones said that during the campaign process a lot of the comments were that City Council was not predictable and were inconsistent. The City does have mechanisms in place to give Council information and she has to rely on staff's expertise. She felt MHO has followed the rules. She felt it's a scary precedent in the other direction for the business and development community if Council sends mixed messages.

Councilman Dunn reiterated his comments with regard to density and how it should be spread over the entire property and not just in one small area. Again, the City has an Housing Trust Fund and the Housing & Community Development Committee will

recommend \$500,000 in affordable housing projects. He said this Council is committed to affordable housing, so, he didn't think, this vote won't kill affordable housing or economic development.

Councilman Ellis pointed out some of the similarities of the Stone Ridge Condominium Project City Council recently approved, noting that Councilman Dunn was absent from that

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meeting. He did have several site specific questions, but would wait until the appropriate time to ask those questions.

Councilman Worley explained why the PUD Overlay district with the density bonus was adopted in 1997 as part of the UDO, noting that the UDO was just a recompilation of the existing zoning ordinances. There was a serious concern about recognizing the lack of affordable housing in 1997. He sees this project as a comprehensive plan for the development of this site that utilizes the density bonus. This density is no different than in any of our other zoning districts, in that whether you have a density bonus or not, the density allowed is done that way. You frequently see a concentration on one portion of the lot, where another portion may not be buildable or you want to preserve open space. Again, the application of the density bonus is no different than that theory when you apply just regular zoning density to it. He did have some concerns about the site plan, especially with regard to fire safety and he will discuss those at the appropriate time. He, too, was a little concerned about the height of the building at the front and hoped MHO will come back with a lower building and slightly fewer units on that front building. However, at this stage, he is prepared to vote for application of the PUD.

Upon inquiry of Councilman Dunn, Mayor Worley said that Council may have some influence, but not total control, of the number of units that can be placed on that site.

When Mayor Worley called for a vote on the motion to approve of the PUD Overlay District, said motion failed on a 5-1 vote, with Councilman Dunn voting "no."

IV. UNFINISHED BUSINESS:

V. NEW BUSINESS:

VI. OTHER BUSINESS:

A. CLAIMS

The following claims were received by the City of Asheville during the period of February 1-7, 2002: Claire Payne (Water), Rose Gwaltney (Water), Dave Ariola (Streets), Marilyn Pagett (Water), Koriander (Streets), Rita Lunsford (Water), Glenda Whitten (Streets), Hazel Guthrie (Water) and Stanley Woodruff (Water).

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

B. LAWSUITS

The City was served with the following Complaint on January 31, 2002: Kenny McDaniels v. City of Asheville. The nature of the complaint is EEOC charge of racial discrimination.

The City was also served on January 28, 2002, with the following Complaint: Charles D. Williams v. City of Asheville. The nature of the complaint is EEOC charge of racial discrimination.

Both lawsuits will be handled in-house.

VII. INFORMAL DISCUSSION AND PUBLIC COMMENT:

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A. COMMENTS BY KEVIN NUTTELL

Mr. Kevin Nuttall, representing NC AIDS Policy Center, stressed the need for education for HIV and AIDS.

VIII. ADJOURNMENT:

Mayor Worley adjourned the meeting at 12:56 a.m.

CITY CLERK

MAYOR

[\[none1\]](#)