

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 Ellis gave the invocation.

MEMORIAL DAY CELEBRATION

Mayor Worley thanked Mr. Walter Plaue and Council members Mumpower, Dunn and Ellis for their efforts in planning the outstanding City-County Memorial Day Celebration.

I. PROCLAMATIONS:

II. CONSENT:

- A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON MAY 14, 2002, AND THE WORKSESSION HELD ON MAY 21, 2002**
- B. MOTION SETTING A PUBLIC HEARING ON JUNE 11, 2002, FOR THE FISCAL YEAR 2002-03 ANNUAL OPERATING BUDGET**
- C. RESOLUTION NO. 02-94 - RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE A CONTRACT FOR THE PROVISION OF TRANSIT OPERATIONS MANAGEMENT SERVICES TO THE CITY OF ASHEVILLE**

Summary: The consideration of a resolution authorizing the City Manager to sign a contract for the provision of transit operations management services to the City of Asheville.

Because of a conflict between state and federal law, the City is required to hire an operations management company who in turn will employ the drivers, mechanics, supervisors, and other personnel necessary for the operation of the transit service. The current contract will expire on June 30, 2002. The Transit Services Department issued a Request for Proposals for the operations management of the transit system beginning July 1, 2002. This is a three-year contract, with two one-year renewal options.

Five management companies respond. Of those five, a committee consisting of the Chair of the Transit Commission, representatives from the Finance Department and Risk Management Division, the Transit Planner, and the Director of Transit Services, interviewed three.

The committee awarded the top scoring firm, Professional Transit Management (PTM), from Cincinnati, Ohio, 343 points out of 400 possible (85%). The other two management companies interviewed were MV Transportation, from Fairfield, California, which received 295 points (74%); and CCL Management, from Jacksonville, Florida, which received 242 points (61%).

-2-

The fees proposed in the PTM proposal have been negotiated to be sure that the City has their best offer. The total contract fee cost for the first three years is \$395,595, the two remaining one year option fee costs being \$131,424 for the fourth year, and \$136,068 for the fifth year.

The second choice, MV Transportation, fees pre-negotiation are very similar. If the proposed contract is not acceptable to PTM, discussions will begin with MV Transportation.

City staff recommends the City Council authorize the City Manager to sign the transit operations management agreement with either Professional Transit Management or MV Transportation.

RESOLUTION BOOK NO. 27 – PAGE 170

D. RESOLUTION NO. 02-95 - RESOLUTION REQUESTING INTRODUCTION OF LEGISLATION AFFECTING THE CITY OF ASHEVILLE IN 2002 SESSION OF THE NORTH CAROLINA GENERAL ASSEMBLY

Summary: The consideration of a request for legislation to reduce the terms of Housing Authority members.

At Council's retreat in February, there was some discussion regarding reducing the lengths of terms for Housing Authority members from five years to three years. Vice Mayor Bellamy initiated this discussion, and there was general support for the proposal.

The terms of Housing Authority members are established by statute, N.C.G.S. 157-5(d), as five years. Therefore, in order to obtain a reduction in the length of the term, an amendment to the law is required, and only the N.C. General Assembly can do it. The City of Charlotte has already done this in 1990.

The local bill submission deadline for this year's short session of the General Assembly is June 5. Therefore, in order for this request to be transmitted to our delegation and a bill to be introduced, Council action is required before then, and should probably occur on May 28. For short session consideration, local bills must be non-controversial.

RESOLUTION BOOK NO. 27 – PAGE 171

E. RESOLUTION NO. 02-96- RESOLUTION AMENDING THE FISCAL YEAR 2002-03 BUDGET SCHEDULE AND CITY COUNCIL MEETING SCHEDULE FOR ADOPTION OF THE FISCAL YEAR 2002-03 ANNUAL OPERATING BUDGET AT A SPECIAL MEETING ON THURSDAY, JUNE 27, 2002, AT 3:00 P.M. IN THE COUNCIL CHAMBER, 2ND FLOOR, CITY HALL BUILDING

RESOLUTION BOOK NO. 27 – PAGE 172

F. RESOLUTION NO. 02-97 - RESOLUTION APPOINTING A MEMBER TO THE CIVIL SERVICE BOARD

Summary: The consideration of appointing a member to the Civil Service Board.

The term of Sophie Dixon, as a member of the Civil Service Board, expired on May 21, 2002.

-3-

On May 21, 2002, it was the consensus of City Council to instruct the City Clerk to prepare the proper paperwork to reappoint Ms. Dixon, as a member of the Civil Service Board, to serve an additional two-year term. Her term will expire May 21, 2004, or until her successor has been appointed.

RESOLUTION BOOK NO. 27 – PAGE 173

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.

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

III. PUBLIC HEARINGS:

A. CONTINUATION OF PUBLIC HEARING TO REZONE A PORTION OF PROPERTY LOCATED AT 1153 SWEETEN CREEK ROAD FROM RS-8 RESIDENTIAL SINGLE-FAMILY HIGH DENSITY DISTRICT TO COMMERCIAL INDUSTRIAL DISTRICT

ORDINANCE NO. 2921 - ORDINANCE TO REZONE A PORTION OF PROPERTY LOCATED AT 1153 SWEETEN CREEK ROAD FROM RS-8 RESIDENTIAL SINGLE-FAMILY HIGH DENSITY DISTRICT TO RM-16 RESIDENTIAL MULTI-FAMILY HIGH DENSITY DISTRICT

Mayor Worley said that this public hearing was opened on October 23, 2001, and continued until December 18, 2001, in

order to give staff time to work with the property owner and his realtor to refine the uses and at the same time to work with the neighborhood to coordinate the uses through them. On December 18, 2001, the petitioner requested a continuance of this public hearing until January 22, 2002. At the January 22, 2002, meeting, the petitioner and the neighborhood representative requested the public hearing continued again to February 26, 2002, in order to achieve something that will be agreeable for all concerned. At the February 26, 2002, the petitioner and the neighborhood representative requested the public hearing continued again to May 28, 2002, in order to achieve something that will be agreeable for all concerned.

Ms. Stacy Merten, Urban Planner, said that this is the consideration of an ordinance to rezone a portion of 1153 Sweeten Creek Road from RS-8 Residential Single-Family High Density District to Commercial Industrial District. This public hearing was advertised on October 12 and 19, 2001.

On August 28, 2001, Chris Jarrett submitted an application for the rezoning of the eastern portion of the property located at 1153 Sweeten Creek Road (PIN No. 9657.18-30-1919). The property is located on the east side of Sweeten Creek Road, between W. Chapel and Busbee View Road. The parcel is currently split zoned, with the front portion, adjacent to Sweeten Creek, zoned Commercial Industrial District and the back portion zoned RS-8 Residential Single-Family High Density District. The rezoning request is for the back portion of the property only, which is approximately 2.5 acres. The entire parcel is approximately 4 acres and 745 feet deep, extending into a residential neighborhood. Currently, the only access to the parcel is via Sweeten Creek Road.

This rezoning request originally came before Council on October 23, 2001. At that time the owner was requesting that the entire parcel be zoned Commercial Industrial. In recognition of the unique nature of the parcel in question, Planning & Development staff had suggested a conditional use rezoning for the property, but because there were no plans for the parcel, Mr.

-4-

Chris Jarrett, owner of the property, did not choose to pursue this option. Consequently, Planning staff recommended that the property be rezoned to Community Business II, instead of Commercial Industrial. Although many of the uses allowed in CB II District overlap with those allowed in Commercial Industrial, the CB II is a less intensive zone than Commercial Industrial and would provide a more appropriate transition from the Commercial Industrial portion of the property to the residentially zoned property surrounding the parcel. The Planning & Zoning Commission reviewed this at their meeting on October 3, 2001, and recommend 6-1 to approve with conditions that the parcel be rezoned CB II.

There was considerable comment at the City Council public hearing and concern about commercial encroachment into the Shiloh Community. Council ultimately decided to continue the hearing in hopes that a more amenable compromise could be worked out amongst all of the parties. The hearing was subsequently continued three more times to give the applicant time to pursue other options and work with the community. Despite a great deal of effort by all parties it was difficult to develop a compromise agreeable to all. Mr. Jarrett is reluctant to place a conditional use zoning on the property as he has no specific plans for development but is merely attempting to sell the parcel and believes it will be more marketable if entirely zoned Commercial Industrial.

Staff's continuing effort to work with Mr. Jarrett has resulted in the recommendation of RM-16 Residential Multi-Family High Density District for the rear portion of this parcel. Although Mr. Jarrett would prefer this property be rezoned to Commercial Industrial, he would be agreeable to the RM-16 designation. The continuation of single family zoning for this portion of the property is not suggested as the only access is via the front portion of the property. However the RM-16 zoning coupled with the Commercial Industrial provides more opportunity for a high density mixed use development conveniently located with respect to transportation and other commercial services, while at the same time respecting the residential character of the surrounding community. This rezoning would not preclude a potential buyer from pursuing a conditional use zoning for the property.

Vice-Mayor Bellamy was concerned about encroachment into the residential neighborhood and asked if RM-8 Residential Multi-Family Medium Density District was considered. Ms. Merten said that it was considered, but the owner did not agree to it. Again Ms. Merten stated that the RM-16 designation is a compromise, which will allow the residential character of the neighborhood to remain while at the same time making it more marketable for the owner.

Ms. Norma Baynes, liaison for the Shiloh Community Association, said they do not want the property zoned Commercial Industrial. The commercial intrusion into the residential neighborhood will result in additional traffic, lights and noise problems. They would like the property to remain zoned RS-8 but would be willing to compromise at an RM-6 designation, which they feel is better for community and development of the neighborhood. She said they would be willing to work with whoever buys the property. Since the Shiloh community has commercial encroachment on three sides, they need help to define their boundaries so they can preserve their community.

Mr. Jarrett pointed out that his property is on the boundary of the Shiloh community. He noted that only area residents, not adjoining property owners, have expressed concern over the rezoning. He said that he would like to be able to market the property and with the split zoning, the tax value on the property is more than what the property is worth. He said that he lives in Charlotte, N.C., and has no use for the property.

Even though Mr. Jarrett's realtor has met with the Shiloh neighborhood to discuss compromises, Ms. Baynes said that they did not talk with them about the RM-16 designation.

-5-

Mayor Worley closed the public hearing at 5:39 p.m.

Discussion surrounded the appropriate zoning designation for the property taking into account the marketability of the property and the protection of the residential neighborhood.

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

Councilman Mumpower moved to rezone the portion of 1153 Sweeten Creek Road from RS-8 to RM-16. This motion was seconded by Councilman Ellis.

Vice-Mayor Bellamy explained that her concern with rezoning the property to RM-16 was the uncertainty of what would be built on the property. If a specific use was planned, the conditional use tool could be applied with additional conditions on the development.

Councilman Peterson did not support the RM-16 zoning in that a developer could build 40 units and would not have to come to City Council for any kind of approval. He supported the rezoning to RM-8 instead.

The motion made by Councilman Mumpower and seconded by Councilman Ellis carried on a 5-2 vote with Vice-Mayor Bellamy and Councilman Peterson voting "no."

ORDINANCE BOOK NO. 19 – PAGE

B. PUBLIC HEARING TO CONSIDER THE CONDITIONAL USE ZONING ON PROPERTY LOCATED AT BROTHERTON AVENUE AND VIRGINIA AVENUE FROM RS-8 RESIDENTIAL SINGLE-FAMILY HIGH DENSITY DISTRICT TO RM-8 RESIDENTIAL MULTI-FAMILY MEDIUM DENSITY DISTRICT/ CONDITIONAL USE AND ISSUANCE OF A CONDITIONAL USE PERMIT TO ALLOW FOR CONSTRUCTION OF A 32-UNIT CONDOMINIUM DEVELOPMENT

ORDINANCE NO. 2922 - ORDINANCE TO REZONE PROPERTY LOCATED AT BROTHERTON AVENUE AND VIRGINIA AVENUE FROM RS-8 RESIDENTIAL SINGLE-FAMILY HIGH DENSITY DISTRICT TO RM-8 RESIDENTIAL MULTI-FAMILY MEDIUM DENSITY DISTRICT/CONDITIONAL USE

ORDINANCE NO. 2923 - ORDINANCE GRANTING A CONDITIONAL USE PERMIT FOR PROPERTY LOCATED AT BROTHERTON AVENUE AND VIRGINIA AVENUE TO ALLOW FOR CONSTRUCTION OF A 32-UNIT CONDOMINIUM DEVELOPMENT

City Attorney Oast reviewed with Council the conditional use district zoning process by stating that this is a two-part process. It requires rezoning, which is a legislative act, and the issuance of a conditional use permit, which is a quasi-judicial site-specific act. Even though the public hearing on those two items will be combined, all the testimony needs to be sworn and two votes will need to be taken. The first vote will be to grant the rezoning to the conditional use district category and the second vote will be to issue the conditional use permit. If Council runs into a situation that it votes to rezone, Council doesn't have to issue the conditional use permit on the same night.

-6-

All Council members disclosed that they have visited the site and would consider this issue with an open mind on all the matters before them without pre-judgment and that they will make their decision based solely on what is before Council at the hearing.

After hearing no questions about the procedure, Mayor Worley opened the public hearing at 5:58 p.m.

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

City Attorney Oast said that as documentary evidence is submitted, he would be noting the entry of that evidence into the record.

Planning & Development Director Scott Shuford explained the history of this project noting that it achieves several of the City's smart growth policy goals. The major concern of the neighborhood was fire flow, however, the Water Resources Department has completed a project that has resulted in increased fire flow to the area which they believe resolves the concern.

Mr. Gerald Green, Chief Planner, submitted into the record City Exhibit 1 (Affidavit of Publication), City Exhibit 2 (Certification of Mailing of Notice to Property Owners); and City Exhibit 3 (Staff Report).

Mr. Green said that this is the consideration of a request to rezone property located at Brotherton Avenue and Virginia Avenue from RS-8 Residential Single-Family High Density District to RM-8 Residential Multi-Family Medium Density District/Conditional Use and a motion to issue a Conditional Use Permit to allow for construction of a 32-unit condominium development.

At their May 1, 2002, meeting the Asheville Planning and Zoning Commission recommended rezoning of property (7.4 acres) located at the intersection of Brotherton Avenue and Virginia Avenue from RS-8 to RM-8 (Location Map – Attached to City Exhibit 3). The property is currently owned by the City of Asheville. The applicant, Jack Morse of Morse Properties, has an option to purchase the property. The project site is located in a predominantly detached single-family residential area. The site has public street frontage along Brotherton Avenue and Virginia Avenue. The project site is currently zoned RS-8, which allows for a maximum density of 8-units per acre. The RS-8 zoning does not allow for multi-family or attached single-family structures. Consequently, the project applicant is requesting RM-8 zoning, which allows for multi-family and attached single-family structures at a maximum density of eight units per acre. The project proposes nine residential buildings, two of which will have 6-units each, 3 that will have 4 units per building, and the remaining 4 buildings will have 2 units per building. The project will have a total of 32 units located on 7.364 acres, or 4.35 units per acre (Site Plan – Attached to City Exhibit 3).

The request is to conditionally zone the property to permit the applicant to construct a 32-unit condominium development. The project site plan indicates nine residential buildings, a one-story with basement Common House, three small storage buildings, a bicycle shed, a 38-space parking area, a 10-space parking area, a central Village Green, a Court Yard, and a Plaza. One of the key elements of the proposal is the woodland conservation easement and the extensive network of nature trails and pedestrian paths meandering throughout the majority of the site.

The buildings are all situated facing the interior of the lot with parking located along the periphery of the lot. All of the buildings are located in southwest corner of the lot, providing for the preservation of a large undisturbed area. The site plan depicts that the five buildings on the interior of the site will have three stories at a height of 30 feet and the buildings closer to the streets will be two stories at a height of 20 feet. The individual units will have an average of 1,300

-7-

square feet of floor area. All units will utilize the two common parking lots and no individual driveways are planned. The plan also depicts the preservation of existing trees along the street frontages, providing a buffer between the development and properties across the street.

The site plan depicts a 20-foot front yard along Virginia Avenue, with porches and/or patios encroaching into the front yard. The plan depicts a 15-foot front yard setback along Brotherton Avenue with an 8-foot porch or patio encroachment into the setback. The RM-8 district requires a 15-foot front yard setback along Virginia Avenue. Section 7-10-2 (c) of the Unified Development Ordinance (UDO) reduces the front setback along side streets by 50% of the requirement, therefore requiring a 7 ½ - foot setback along Brotherton Avenue. Section 7-10-2 (f) states that patios and uncovered decks with a height of not more than 30 inches may encroach up to ten feet into a required front yard setback. Parking has been provided at a ratio of 1.5 spaces per unit. The site plan depicts a "B" (10-foot with alternative compliance) buffer with a 6-foot fence along the adjacent detached single-family residences.

An issue raised by persons from the neighborhood commenting on this project involves the adequacy of the water infrastructure to support this development. The Water Resources Department has recently completed some improvements to the infrastructure. Tests of fire hydrants in this neighborhood indicate that these improvements have been effective in resolving this concern.

Mr. Green displayed three photos (City Exhibit 4) of a similar development built by Mr. Morse.

City Council must take formal action as set forth in section 7-5-5(e) of the UDO, and must find that all seven standards for approval for conditional uses are met 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)]. Staff's opinion is that all seven standards appear to be met.

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

All public health and safety concerns have been addressed through the site plan development process and it appears that the proposed use and development will not materially endanger the public health or safety.

2. *That the proposed use or development of the land is reasonably compatible with significant natural and topographic features on the site and in the immediate vicinity of the site given the proposed site design and any mitigation techniques or measures proposed by the applicant;*

The project site has been designed with every consideration for the natural and topographic features on the site and in the immediate vicinity. The development was designed to provide for the minimum changes and alterations to the existing conditions on the site.

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

The project will preserve a significant amount of open space that may be used by people in the area. In addition, the project's proposed density is below the permitted density of either the existing or the proposed zoning. Building design and scale will be compatible with the surrounding development.

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;*

-8-

The project is designed to take advantage of the natural slope by incorporating basement units, instead of building higher buildings. The proposed density is consistent with the area's current development and the project will be compatible with the character of the area.

5. *That the proposed use or development of the land will generally conform with the comprehensive plan, smart growth policies, sustainable economic development strategic plan, and other official plans adopted by the City;*

The project proposes low density residential, which appears to be consistent with the 2010 plan.

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

The project received conditional approval from City's Technical Review Committee, including the Water Resources Department, the Fire Department, Metropolitan Sewerage District, Engineering Department and Public Works Department. Tests of fire hydrants in this neighborhood indicate that recent improvements to the water infrastructure have been effective in resolving a neighborhood concern about fire flow.

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

The project is designed with pedestrian oriented characteristics. Any traffic impact generated by the proposed use will be minimal.

The Planning and Zoning Commission unanimously recommended approval of the request, with conditions, at their May 1, 2002, meeting. This recommendation incorporates comments made by members of the public at that meeting. Staff concurs with the recommendation to approve the conditional use rezoning and to issue the Conditional Use Permit for the proposed use. The recommended conditions are: (1) The site plan must be revised to identify forested areas to be preserved and provision must be made to protect these areas; (2) The applicant and/or landscaper shall work with the Planning and Development Department to determine the best placement of buffering and landscaping materials throughout the development; and (3) The architectural design of the proposed buildings shall be compatible with the surrounding neighborhood; in particular, the design of the buildings facing Virginia and/or Brotherton Avenues shall not present the appearance of "turning their back" to these streets.

Mr. Green responded to questions from Councilman Mumpower as they related to the property being previously owned by the Housing Authority and their earlier proposal to Council for development of the area.

Upon inquiry of Councilman Dunn, Community Development Director Charlotte Caplan said that we purchased the site from the Housing Authority for \$120,000 and have invested less than \$10,000 in preliminary work, i.e., site work, appraisals, environmental review, etc. The City has committed to the developer \$250,000 plus the value of the land (which is now valued at \$147,000). That total of \$397,000 will be invested in the infrastructure, i.e., site work, putting in utilities, grading, retaining walls, etc. The City is prohibited in using Community Development Block Grant (CDBG) funds into the actual housing construction.

When Councilman Dunn asked about the average selling price for the affordable units, Ms. Caplan said that they would range from approximately \$70,000 for a one bedroom up to \$130,000 for a three bedroom unit and two or three of those are going to be market rate units that may go a little higher than that. But with the subsidy second mortgages, the affordable units will come down and will be priced within what a family at or below 80% of area median can afford.

-9-

Upon inquiry of Councilman Dunn, Ms. Caplan explained that a common house is similar to a clubhouse in a condominium development. It will have a large room used for dining or for meetings, a kitchen, office, couple of guest bedrooms, etc.

In response to Councilman Dunn, Ms. Caplan said that the property is not paying any taxes now, but when it is fully developed, it bring in roughly \$20,000 annually in property tax revenue.

Ms. Caplan explained the Request for Proposal process that occurred for this development and also how the City of Asheville got involved.

Upon inquiry of Vice-Mayor Bellamy, Mr. Green said that if the property is not rezoned, 56 homes could be built on this property. He said a conditional use permit was requested to provide the Council, staff and the neighbors with more assurance of what will be built on that property. Given the topography of the site, development of it could have a significant detrimental impact on the neighborhood if it were completely developed. The City challenged the developer from the start to develop the site with housing that would be available for the working people and still preserve the unique features on the property.

Fire Marshal Wayne Hamilton said that a water line project on the southern part of the site adjacent to the interstate has been completed. One of the problems they had previously with this project was on the lower fire flows due primarily to dead-end fire lines in this immediate area. Due to the recently completed waterline extension from Virginia Avenue all the way around to Hubbard Avenue, there has been a significant change in the fire flow. Testing in previous years showed 340-400 gallons a minute and since the waterline has been extended, testing now shows an average of about 670 gallons a minute. This does meet our minimum standard for the proposed development. Another significant item is that since this property will be moving from single-family to a multi-family type facility, that will fall under the purview of State Fire and Building Codes and therefore more restrictive fire protection requirements will be established. The Fire Department has also been working with the developer to designate an interior pedestrian path as a fire line for the Fire Department's use only or other emergency vehicles. In addition, the Fire Department will require the developer to place an on-site fire hydrant in the interior part of the development. Even though he has not seen the proposed square footage of the common house, based upon the fire flow requirements that we currently have in our Standard Specifications and Details Manual, we can adjust the construction type and square footage type to meet the water amount that is available on the site.

Mr. Richard Nantelle, President of the West Asheville Community League, felt that this development does not fully meet some of the seven conditional use standards. He said that when development was proposed on this site seven years ago by the Housing Authority, it suffered from three major safety infrastructure deficits: (1) inadequate water supply; (2) congested streets plagued with speeding traffic; and (3) lack of sidewalks. The City has now corrected the water issue but not the other two unresolved safety factors. With the recent budget cuts and a possible tax increase, the City has no funds to resolve these concerns. He felt it would be best to construct this development somewhere else where improvements are not necessary.

Mr. Dick Rice, representing the West Asheville Business Association, was opposed against the rezoning and conditional use permit for this project. He felt that the single-family designation should not change. He felt that four of the seven conditional use standards have not been met. He said that Virginia Avenue, which is narrow and dangerous with no sidewalks, couldn't handle the additional traffic from the development. He urged Council to keep the character of the neighborhood intact.

-10-

Ms. Sylvia Montgomery, resident on Virginia Avenue, spoke in opposition of the development in that they have just received adequate fire flow protection and now the City plans to add more houses to the line which will reduce the flow again.

Mr. Carlos Montgomery, resident on Virginia Avenue, was opposed to the development for water fire flow reasons. He also was concerned that if I-240 is widened, water problems will occur again in that area.

Mr. Jack Morse, representing Morse Properties, spoke in support of the development. He said that the most expensive unit would be \$160,000 but they will have 21 affordable units, which will average in the mid-\$70,000. He said this is a mixed income development and there will be 11 units at the market rate. He said the project meets some affordable housing goals and smart growth goals that the City has set for itself. He pledged to work with the neighborhood.

There being no request from the applicant for rebuttal, Mayor Worley closed the public hearing at 7:22 p.m.

Discussion occurred with regard to the additional traffic from the development on Virginia Avenue. Mr. Shuford said that this proposal does not change the density that would be allowed under the existing zoning, so in effect there is no net increase beyond what could occur with the current zoning.

Mr. Hamilton responded to various questions from Councilman Peterson regarding water, some being, but are not limited to: what would happen to the waterlines if I-240 were widened, why are they requiring an additional fire hydrant on the site, are there adequate fire hydrants along Virginia Avenue, what are the requirements for fire separation between the units, and is there any report of a problem on Virginia Avenue of the waterline being inadequate and having frequently leaks.

Councilman Mumpower asked if the new waterline extension was a planned extension or in response to this site need. Mayor Worley, Vice-Chair of the Regional Water Authority, said that there has been a serious concern about fire flow in that area since the Housing Authority project was before Council about seven years ago. At that time, it was reported that the Regional Water Authority had plans in progress to make this connection, but it hadn't been done at that point in time.

Upon inquiry of Vice-Mayor Bellamy, Mr. Hamilton explained that since the rezoning is from a single-family development to a multi-family development more stringent requirements are place on it – not just from the fire flow aspect, but also from the commercial building code and the statewide fire codes. There are more stringent requirements on this project than would be on a single-family development.

Councilman Ellis moved to adopt Ordinance No. 2922 to rezone the property located at Brotherton Avenue and Virginia Avenue from RS-8 Residential Single-Family High Density District to RM-8 Residential Multi-Family Medium Density District/Conditional Use. This motion was seconded by Vice-Mayor Bellamy and carried unanimously.

ORDINANCE BOOK NO. 19 – PAGE

Councilman Mumpower was concerned about the real traffic safety issue on Virginia Avenue and asked if it would be appropriate to get the developer involved in traffic management on that street and what kind of cost factors are involved for traffic calming devices. Mr. Green responded that a condition could be placed on the conditional use permit regarding traffic calming on Virginia Avenue. He said that a study and implementation could cost \$50-60,000.

-11-

Mr. Shuford said that speed humps cost approximately \$1,500-2,500 and suggested that Council direct staff to make sure that Virginia Avenue is on the priority list for traffic calming measures. He said the City certainly would not want to install traffic calming devices in a neighborhood without getting the neighborhood involved in deciding what those would be.

Councilman Mumpower suggested a condition be placed on the permit that some arrangement be made whereby the developer pays a set amount (perhaps \$5-7,000) and the developer, staff and neighborhood work together to develop traffic management on Virginia Avenue.

City Attorney Oast said that a condition could be placed in the conditional use permit that would require the developer to contribute an amount of money towards the effort of traffic calming on Virginia Avenue, if the City makes that recommendation within a certain amount of time.

Upon inquiry of Councilman Peterson, Ms. Caplan said that CDBG funds could not be used for traffic calming.

Councilwoman Jones and Councilman Ellis felt that Virginia Avenue is not a major thoroughfare but just a neighborhood

street traveled primarily by the residents. They felt that residents in the area need to hold each other accountable for the speeding.

Councilman Peterson was concerned about the water, however, it looks as though the Water Department has taken measures to correct those concerns and satisfy the Fire Department. The developer has tried to make the property along Virginia Avenue to be similar to the property across the street from it and whatever gets developed on the site will increase traffic. He didn't think that co-housing would be the best approach for that property; however, the developer has made it as sensitive as possible. He said that the problems on Virginia Avenue (water pressure, need for road improvements, traffic calming) are not uncommon to other streets in the City and we don't restrict development on those streets.

Vice-Mayor Bellamy moved to adopt Ordinance No. 2923 to issue the conditional use permit to allow for construction of a 32-unit condominium development, subject to the following conditions: (1) The site plan must be revised to identify forested areas to be preserved and provision must be made to protect these areas; (2) The applicant and/or landscaper shall work with the Planning and Development Department to determine the best placement of buffering and landscaping materials throughout the development; and (3) The architectural design of the proposed buildings shall be compatible with the surrounding neighborhood; in particular, the design of the buildings facing Virginia and/or Brotherton Avenues shall not present the appearance of "turning their back" to these streets. This motion was seconded by Councilwoman Jones.

Discussion occurred about (1) whether Virginia Avenue should by-pass the traffic calming policy since there are currently a number of streets that have already been identified; (2) the uncertainty of what type of traffic calming measures are needed since no study has been done; (3) whether the developer or the City should pay for a study and implementation; and (4) getting neighborhood involvement in the process.

Councilman Mumpower moved to amend the motion made earlier to add a condition that the developer to provide financial support up to \$15,000 to support a traffic management plan as designed and implemented by City staff, with the understanding that it include strong neighborhood input. This motion was seconded by Councilman Peterson.

-12-

Mr. Morse pointed out that one main facet of the project is the affordable units and he has a fixed fee. Therefore, anything added to the cost of the project will have to be passed onto the buyers, which will affect the affordability of the units.

Vice-Mayor Bellamy asked that City staff follow-up with the residents on the neighborhood. City Manager Westbrook said that City Council has adopted a traffic calming priority list and he would look to see if Virginia Avenue is on that list. He said the list might have to come back to Council for re-prioritization.

The amended motion by Councilman Mumpower and seconded by Councilman Peterson failed on a 2-5 vote, with Councilman Mumpower and Councilman Peterson voting "yes" and Mayor Worley, Vice-Mayor Bellamy, Councilman Dunn, Councilman Ellis, and Councilwoman Jones voting "no".

The main motion made by Vice-Mayor Bellamy and seconded by Councilwoman Jones carried on a 6-1 vote, with Councilman Mumpower voting "no."

Mayor Worley announced a short break.

ORDINANCE BOOK NO. 19 - PAGE

C. PUBLIC HEARING TO CONSIDER THE REZONING OF PROPERTY AT 400 CARIBOU ROAD FROM RS-8 RESIDENTIAL SINGLE-FAMILY HIGH DENSITY DISTRICT TO NEIGHBORHOOD BUSINESS DISTRICT

Mr. Robert Tucker, property owner at 400 Caribou Road, withdrew his petition to rezone 400 Caribou Road from RS-8 Residential Single-Family High Density District to Neighborhood District since the neighbors are opposed to this rezoning request.

D. PUBLIC HEARING RELATIVE TO ANNEXING REYNOLDS MOUNTAIN SUBDIVISION, PHASE I

ORDINANCE NO. 2924 - ORDINANCE EXTENDING THE CORPORATE LIMITS OF THE CITY OF ASHEVILLE TO INCLUDE PROPERTY LOCATED NORTH OF WINDSOR ROAD AND IDENTIFIED AS REYNOLDS MOUNTAIN SUBDIVISION, PHASE I

Mayor Worley opened the public hearing at 8:28 p.m.

Urban Planner Paul Benson said that this is the consideration of an ordinance extending the corporate limits of the City of Asheville to include property located north of Windsor Road and identified as the Reynolds Mountain Subdivision, Phase I. This public hearing was advertised on May 17, 2002.

Thomas O. Meyer, representing T & T Meyer, LLC, and Kirk Boone, representing Reynolds Mountain Development, LLC, sole owners of the Reynolds Mountain Subdivision, Phase I, have submitted an annexation petition for that subdivision. This area is contiguous to the existing corporate limits, being bordered to the south by the existing municipal boundary.

The area proposed for annexation consists of approximately 80 acres and is platted for single-family residential development. The area will be accessed by primarily by Elmwood Place. This area is within the City's extraterritorial jurisdiction and is currently zoned RS-2 Residential Single-Family Low Density District.

-13-

The owners/petitioners are developing utilities and streets. City services will begin on the effective date of annexation. The petitioners have requested that the effective date of annexation be set for June 30, 2002.

City staff recommends that City Council adopt the ordinance extending the corporate limits to include Reynolds Mountain Subdivision, Phase I.

Upon inquiry of Vice-Mayor Bellamy, Mr. David Foster from the Public Works Department, said that the streets in this subdivision would be constructed to City standards.

City Manager Westbrook responded to an inquiry of Vice-Mayor Bellamy regarding the school system.

Mr. Benson responded to Councilman Peterson with regard to the extraterritorial jurisdiction extension in that area.

Mayor Worley closed the public hearing at 8:45 p.m.

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

Councilman Peterson moved for the adoption of Ordinance No. 2924. This motion was seconded by Councilwoman Jones and carried unanimously.

ORDINANCE BOOK NO. 19 – PAGE

E. PUBLIC HEARING TO CONSIDER THE DESIGNATION OF THE SOUTH ASHEVILLE CEMETERY ON CHURCH ROAD AT THE END OF DALTON STREET AS A LOCAL HISTORIC LANDMARK

ORDINANCE NO. 2925 - ORDINANCE DESIGNATING THE SOUTH ASHEVILLE CEMETERY ON CHURCH ROAD AT THE END OF DALTON STREET AS A LOCAL HISTORIC LANDMARK

Mayor Worley opened the public hearing at 8:46 p.m.

Ms. Victoria Houser, former intern from UNC-A who worked with the Historic Resources Commission Director, said that this is consideration of an ordinance designating the South Asheville Cemetery on Church Road at the end of Dalton Street as a local historic landmark. This public hearing was advertised on May 17 and 24, 2002.

The South Asheville Cemetery is located within the Kenilworth neighborhood on a plot of land consisting of 2.025 acres. The cemetery is nestled north of St. John "A" Baptist Church, off Church Road, at the end of Dalton Street. The cemetery is in the mist of a wooded area. To the north and east of the cemetery is the encroachment of mid-twentieth century residential development. To the west is a steep hillside of dense woods approachable by the cemetery access road. The Cemetery itself is hilly, however, the sinking graves have contributed to the falling and rising landscape. Several estimates have been made about the number of graves and it is most likely that number is around twenty-four hundred.

The South Asheville Cemetery, established by James McConnell Smith around 1850 for burial of his slaves, is a site that possesses local historic significance as a tangible reminder of the ethnic heritage of African Americans in western North Carolina from the mid-nineteenth century to the mid-twentieth century. The South Asheville Cemetery serves not only as a visual

reminder of the African-American heritage, it also serves as a reflection of the social history of African American burials. African-Americans in the South attached great importance to the death and burial of their fellow community members. The funerals were deemed a religious ritual in African American culture. Although no records exist that outline the specific burial practices, the Cemetery exhibits many characteristics among African-American burial grounds in the southeast.

Designation of this site as a local historic landmark makes the property owner eligible for a 50% reduction in property taxes; however, this site is owned by the South Asheville Cemetery Association, a non-profit organization, and the property is tax exempt.

When a property is designated historic, restrictions are placed on the property and any modification to the land, the graves or grave markers must receive a Certificate of Appropriateness from the Historic Resources Commission of Asheville and Buncombe County. All improvements must follow the Secretary of the Interior's Standards for Rehabilitation and Illustrated Guidelines for Rehabilitating Historic Buildings.

This ordinance designates the South Asheville Cemetery as a local historic landmark. It is important that properties of local significance are preserved and protected for cultural, historic, and economic reasons for future generations.

The Historic Resources Commission of Asheville and Buncombe County (HRC), by unanimous vote, recommends to City Council that the South Asheville Cemetery be designated a local historic landmark. Staff concurs with the recommendation of the HRC to designate the South Asheville Cemetery a local historic landmark.

Upon inquiry of Councilman Peterson, Ms. Houser explained the efforts that volunteers made to restore the cemetery.

Mayor Worley closed the public hearing at 8:49 p.m.

Vice-Mayor Bellamy and Councilwoman Jones thanked the AmeriCorps volunteers and other members of the community who devoted countless hours to regain this rich history that had been lost.

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

Vice-Mayor Bellamy moved for the adoption of Ordinance No. 2925. This motion was seconded by Councilman Peterson and carried unanimously.

ORDINANCE BOOK NO. 19 - PAGE

IV. UNFINISHED BUSINESS:

V. NEW BUSINESS:

A. DISCUSSION OF LEGISLATIVE CONCERNS RELATED TO THE BUDGET

Mayor Worley said that we have budgetary issues this year due to the State's budget crisis and we have a team from City Council traveling to Raleigh on May 29, 2002, to express concern to our delegation about the State's budgetary situation and its effect on cities. He thanked Councilman Mumpower for spearheading this trip.

Councilman Mumpower said they would share Council's concerns about two issues. One issue is that the State is hanging onto significant City funds in the form of reimbursements and we will ask that they not do that in the coming year. Secondly, to ask that they give consideration to providing the City with a more stable and reliable menu of revenue sources. Council would like to make our delegation aware of their concerns and would also like to make City residents aware that the City does not currently have a budget crisis – except as has been created by the State withholding funds. Some of Council feel strongly that if you have the authority to spend monies then you should have the responsibility for raising those monies too and not put that on the backs of cities like Asheville.

Mayor Worley said that the impact of the State withholding local government revenues from the City of Asheville has been devastating to our current year's budget. We ask our legislators to support the legislation which will be introduced to protect these local reimbursement revenues (utility franchise fees and alcohol taxes) from being taken by the Governor ever again.

We also ask our legislators to support legislation to move up the implementation of the ½ cent local option sales tax, which will replace the other portion of our reimbursements. This is the third time in ten years that reimbursements have been withheld from cities and counties. Therefore, we urge our legislation to support giving cities and counties a menu of revenue options to choose from and eliminate our dependency on state reimbursements. This would place the burden of imposing those revenue sources at the local level and allow each city and county to utilize those sources that best suit local resources and needs.

Councilman Dunn stressed the need to find another revenue stream. He felt that the City should keep some of the room tax and earmark it for infrastructure. In addition, he felt a menu of revenue options is crucial to cities and counties.

Vice-Mayor Bellamy emphasized that Asheville provides many of the economic development opportunities and recreational activities for our citizens as well as those who are from neighboring cities and counties. She urged our local delegation to consider increasing the State's cigarette tax, the State's beer tax, and the wine tax. These three taxes would tax the users, not everyone, while providing a steady stream of income to our State. She also expressed the need of a menu of revenue options for cities and counties in order to have the revenue structure we need to be successful.

B. RESOLUTION NO. 02-98 - RESOLUTION AMENDING THE ASHEVILLE STANDARD SPECIFICATIONS AND DETAILS MANUAL

Chief Planner Gerald Green said that this is the consideration of a resolution to amend the Asheville Standard Specifications and Details Manual to establish standards for lighting of parking lots, outdoor display areas, vehicular canopies and similar activities/uses to ensure adequate safety, night vision, and comfort and not cause excessive glare onto adjacent properties and public street rights-of-way.

Mr. Green said that this ordinance has been reviewed by a focus group, which included neighborhood representatives and people in the lighting industry. They are in agreement with the amendment to the Manual.

Citizens have consistently identified glare and light trespass as an adverse impact of non-residential development. In addition, citizens have expressed concern about the "over-lighting" of uses such as gas stations and convenience stores. In response to these concerns, the staff of the Public Works and Planning and Development Departments have worked with staff of CP&L to develop lighting standards designed to ensure adequate lighting for all uses while minimizing glare and light trespass. The ordinance establishes general lighting standards and specific standards for the following uses:

-16-

- Parking lots and outdoor areas;
- Vehicular canopies;
- Outdoor display areas;
- Outdoor sports fields and performance areas;
- Parking decks; and
- Signs.

The goal of the proposed standards is to provide developers, contractors, and property owners with standards that will ensure adequate lighting for the development being proposed while minimizing adverse impacts on adjacent properties and public rights-of-way caused by glare and light trespass. The City staff was fortunate to have the assistance of a lighting expert employed by CP&L to assist in the development of the lighting standards. Our goal was to provide reasonable standards that would meet the needs of and benefit the entire community.

The Public Works and Planning and Development staff recommend approval of the ordinance establishing lighting standards for the City of Asheville.

Mr. Green thanked Mr. Robert Henderson from Carolina Power & Light Company, and Mr. David Foster from the City's Public Works Department, who were primarily responsible for the development of these standards.

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

Councilman Ellis moved for the adoption of Resolution No. 02-98. This motion was seconded by Councilman Mumpower and carried unanimously.

VI. OTHER BUSINESS:

A. CLAIMS

The following claims were received by the City of Asheville during the period of May 3-16, 2002: Bernice Penn (Fire), Karen Tessier (Streets), Econo Lodge (Water) and McDowell Co. (Fire).

The following claims were received by the City during the period of May 17-23, 2002: Charles E. Clark (Engineering), Teresa Caldwell (Inspections), Stephanie Solomon (Streets), Blue Ridge Center (Water), Battery Park Apartments (Streets) and Jonathon Clark (Fire).

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

VII. INFORMAL DISCUSSION AND PUBLIC COMMENT:

VIII. ADJOURNMENT:

Mayor Worley adjourned the meeting at 9:19 p.m.

CITY CLERK

MAYOR