

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 Mumpower gave the invocation.

I. PROCLAMATIONS:

A. WELCOME OF DELEGATION FROM OUR SISTER CITY - SAUMUR, FRANCE

Mayor Worley welcomed Claude and Liliane Besomes; Andrea and Marie-Claude Daheuille; Jean and Josiane Lemair; and Michel and Colette Norman, all volunteers from ASRI (Association {of} Saumur {for} Relations International) and stated that the City of Asheville was delighted to have the delegation visit our area. The delegation thanked Mayor Worley and presented the City with a gift.

II. CONSENT:

A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON JUNE 11, 2002, AND THE WORKSESSION HELD ON JUNE 18, 2002

B. RESOLUTION NO. 02-105 - RESOLUTION ESTABLISHING THE MINIMUM PRICE AND DIRECTING THE CITY CLERK TO ADVERTISE AN OFFER TO PURCHASE FOR UPSET BIDS FOR DISPOSAL PARCEL 218 ON WATER STREET

Summary: The consideration of a resolution establishing the minimum price and directing the City Clerk to advertise an offer to purchase for upset bids regarding Disposal Parcel 218 on Water Street.

Louise Gardner has submitted a bid for the purchase of Disposal Parcel 218 in the East Riverside Redevelopment Project in the amount of \$1,500.

Disposal Parcel 218 is a residential lot near the corner of Water Street and Camby Street comprising 4,350 square feet. The assessed tax value on the lot is \$8,300. Disposal Parcel 218 has been in the Community Development inventory for over 20 years and no previous bids have been received. The lot has been "shopped" to several non-profits and individuals and the upset bid process will determine the actual market value of the lot.

The bid from Louise Gardner for Disposal Parcel 218 includes the proposal to incorporate the lot with her property at 36 Water Street.

Approval of the resolution will establish the minimum price for Disposal Parcel 218 at \$1,500 and initiate the sale of the property through the upset bid process as provided in N. C. G. S. 160A-269.

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Community Development staff recommends adoption of the resolution establishing the minimum price and directing the City Clerk to advertise an offer to purchase for upset bids regarding Disposal Parcel 218 on Water Street.

RESOLUTION BOOK NO. 27 – PAGE 188

C. RESOLUTION NO. 02-106 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ISSUE A REQUEST

FOR PROPOSALS FOR THE DEVELOPMENT OF LAND ON AIRPORT ROAD

Summary: The consideration of a resolution authorizing the City to issue a Request for Proposals (RFP) to developers soliciting proposals for development of city-owned land located across from Asheville Regional Airport.

The City owns a 13.08-acre parcel located directly across from the Asheville Regional Airport. A portion of the site had previously been used to house a small office building for the Federal Aviation Administration. The building was destroyed by fire and has since been demolished and the site cleared.

The location of the parcel in proximity to the Airport and I-26, the frontage and access off Airport Road, and the nature of existing development around the site make the parcel a valuable asset. Thus the City objectives (as stated in the proposed RFP) are *"to leverage this asset to enhance the City tax base, generate income to support other economic development initiatives, and establish high development standards for this important City corridor."*

The proposed RFP has been created to provide guidance to developers interested in partnering with the City to develop the site. In accordance with City procedure, the RFP has been circulated internally among department directors.

Staff recommends City Council authorize the City to issue the Request for Proposals as drafted.

RESOLUTION BOOK NO. 27 – PAGE 189

D. RESOLUTION NO. 02-107 - RESOLUTION ABANDONING WATERLINE AND EASEMENT ON BUCKSTONE PLACE AND AUTHORIZING THE CITY MANAGER TO EXECUTE INSTRUMENTS EFFECTING SAID ABANDONMENT

Summary: The consideration of a resolution abandoning a waterline easement and authorizing the City Manager to execute documents to affect same.

In 2000 and 2001, during construction and development of the Spring Hill Suites Hotel on the north side of Tunnel Road, a waterline was damaged, resulting in its relocation by the developer on the same property, but in a different place. Appropriate easements and agreements have been executed for the relocated waterline, and the property owners are now requesting the City to abandon and release the old water line easement.

The Water Resources Department advises that it has no further use for the waterline (which will remain in the ground, but not be used) or the easement. The Water Authority's attorneys have reviewed this request, and concur. The resolution declares the waterline and easement to be abandoned, and authorizes the City Manager to execute appropriate documents to effect the abandonment.

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Adoption of the resolution is recommended.

RESOLUTION BOOK NO. 27 – PAGE 190

E. RESOLUTION NO. 02-108 - RESOLUTION APPOINTING A MEMBER TO THE WNC REGIONAL AIR QUALITY AGENCY

Summary: The consideration of appointing a member to the WNC Regional Air Quality Agency.

The term of Arlis Queen, as a member on the WNC Regional Air Quality Agency, expires on July 1, 2002.

On June 18, 2002, City Council instructed the City Clerk to prepare the proper paperwork to reappoint Mr. Queen to serve an additional six year term, term to expire July 1, 2008, or until his successor has been appointed.

Staff recommends City Council appoint a member to the WNC Regional Air Quality Agency.

RESOLUTION BOOK NO. 27 – PAGE 191

F. RESOLUTION NO. 02-109 - RESOLUTION REAPPOINTING MEMBERS TO THE ASHEVILLE REGIONAL AIRPORT AUTHORITY

Summary: The consideration of appointing members to the Asheville Regional Airport Authority.

The terms of Rhett Grotzinger and Albert Anderson, as members on the Asheville Regional Airport Authority, expire on June 30, 2002.

On June 18, 2002, City Council instructed the City Clerk to prepare the proper paperwork to reappoint Mr. Grotzinger and Dr. Anderson to each serve a four year term respectively, terms to expire June 30, 2006, or until their successors have been appointed.

Staff recommends City Council appoint members to the Asheville Regional Airport Authority.

RESOLUTION BOOK NO. 27 – PAGE 192

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.

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

III. UNFINISHED BUSINESS:

RESOLUTION NO. 02-110 - RESOLUTION AMENDING THE 2002 ANNEXATION SERVICES PLAN TO REFLECT REDUCTION IN THE HUNTINGTON-CHASE ANNEXATION AREA

Urban Planner Paul Benson said that this is the consideration of a resolution amending the Annexation Services Plan for the 2002 annexations to reflect reduction in one of the annexation areas.

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In adopting an annexation ordinance, the City has the authority to annex all or some of an area proposed for annexation, as long as that area qualifies for annexation. The City may also amend the services plan, as long as the requirements for providing service to the annexation areas continue to be met.

At the public hearing on June 11, 2002, staff recommended that the size of the Huntington Chase Annexation Area be reduced by dropping one of the larger lots out. The lot is classified for tax purposes as "agricultural vacant," is currently unimproved, and is one of two "non-urban" areas in Huntington Chase. It is not part of the Huntington Chase subdivision. The effect of this change is that it causes the qualifications of the remaining area to improve somewhat, but does not cause the area to qualify under any additional tests.

Adoption of the resolution is recommended.

Upon inquiry of Vice-Mayor Bellamy, City Attorney Oast said that as long as the Annexation Services Plan does not show the Huntington Chase Area, or any other area, as qualifying under any additional statutory tests, no additional public hearing is required for this amendment to the Plan.

Councilman Dunn asked if the City could postpone for two weeks taking action on the amending the Plan in order to give Huntington-Chase area residents the opportunity to review the information to see if they find any errors with said amendment. City Manager Westbrook responded by saying that the Buncombe County Tax Office sends out property tax bills and requests the information be provided to them prior to June 30 for timely processing.

Councilman Peterson asked if Council could delay adoption of the Plan amendment and annexation ordinances until their scheduled meeting on June 27, 2002. City Manager Westbrook explained that the Annexation Services Plan is an integrated plan which incorporates information on all proposed seven annexation areas. If Council chooses not to annex one area, the Plan would need to be amended again.

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

Councilman Peterson moved to adopt Resolution No. 02-110. This motion was seconded by Vice-Mayor Bellamy and

carried unanimously.

RESOLUTION BOOK NO. 27 – PAGE 193

ANNEXATION AREAS

Councilman Peterson moved to postpone action on adopting the following proposed seven annexation areas until June 27, 2002: Leicester Highway area, Sherwood Heights area, Huntington-Chase area, portion of Bell Road, Forest Lake area, Mill Stone area and Kensington-Windsor area. This motion was seconded by Vice-Mayor Bellamy and carried unanimously.

IV. PUBLIC HEARINGS:

A. PUBLIC HEARING TO CONSIDER THE ISSUANCE OF A CONDITIONAL USE PERMIT TO ALLOW FOR CONSTRUCTION OF 379,000 SQUARE FEET OF RETAIL SPACE FOR PHASE 1 OF THE DEVELOPMENT; AND REZONING OF A PORTION OF PROPERTY LOCATED AT 437 SWANNANOA RIVER ROAD, FORMERLY SAYLES BILTMORE BLEACHERS, FROM

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COMMERCIAL INDUSTRIAL DISTRICT TO URBAN VILLAGE DISTRICT FOR PHASE 2 OF THE DEVELOPMENT

City Attorney Oast reviewed with Council the conditional use district zoning process by stating that this is a two-part process. This matter does not require a conditional use rezoning, which is a legislative act, but it does require 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 or deny the conditional use permit. If the permit is granted, the second vote will be to grant the rezoning to Urban Village District. 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.

Mayor Worley said that Council would be discussing the issuance of the conditional use permit for a large national chain. Council's review of the request is limited to issues that directly affect the City of Asheville and its public services and infrastructure. Many citizens may have strong feelings about corporate hiring and purchasing practices, creation of jobs, wage structure for employees, economic benefits to Asheville, compensation of executives, corporate public involvement in the community, other potential uses for the property and similar issues. While this Council respects the views and concerns, they are not relevant to our decision about the issuance of the conditional use permit. Because they are not relevant, their discussion will serve no purpose other than to distract our attention away from the many complex issues we are charged with addressing, as well as needlessly prolonging the meeting. Consequently, he asked that these issues not be included in comments. He would remind the public of this request if the remarks stray into these areas. He asked that comments not be repeated as unnecessary redundancy can needlessly prolong a hearing and likewise distract Council from the issues that it must consider.

Mayor Worley then reviewed the order of the hearing itself and reviewed the standard time limitations. He reminded Council that the meeting will recess at 11:00 p.m., if necessary, and reconvene on another date.

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.

Oaths were administered 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.

After hearing no questions about the procedure, Mayor Worley opened the public hearing at 5:35 p.m.

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 motion to approve a Conditional Use Permit as outlined in the Unified Development Ordinance (UDO) to allow development of approximately 379,000 square feet of retail space on approximately 60 acres in Phase I of the development located at 437 Swannanoa River Road at the site of the former Sayles Biltmore Bleacheries;

and to consider the rezoning of a portion of the site (approximately 19 acres) from Commercial Industrial District to Urban Village District in Phase II of the development.

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Level III site plans for the development at the Sayles Biltmore Bleacheries located at 437 Swannanoa River Road (PIN No. 9658.15-52-4618) were initially submitted March 29, 2002. No plans have been submitted for Phase III of the development. The Technical Review Committee (TRC) reviewed these plans at their April 15, 2002, meeting. The submitted plans were found to be incomplete and TRC continued action on the request to their May 20 meeting. Revised plans were submitted May 6, 2002, that included the information needed for TRC action. At their May 20, 2002, meeting, the TRC recommended approval with conditions of the Level III site plan for the development of the Sayles Biltmore Bleacheries property. Many of the comments made by TRC identify technical requirements that must be addressed by the applicant when detailed site plans are submitted following political approval of the project by City Council.

The Planning and Zoning Commission reviewed the plans at their June 5, 2002, meeting. The Commission's meeting included a public hearing, during which significant public input was received regarding the proposed development. After receiving the public input, reviewing the plans, and considering the request, the Commission, with a vote of 4-2, to recommend that the Conditional Use Permit be issued with conditions for Phase I, and with a unanimous vote that Phase II be rezoned to Urban Village District. Efforts are underway by the project's design team to address the conditions identified by TRC and the Planning and Zoning Commission.

The City of Asheville River District Design Review Committee has reviewed the site plans and building designs. The applicant's design team worked with the Review Committee members and staff to develop building designs that would comply with the River District Design Guidelines. By a unanimous vote, the site plans and building designs have received conditional approval from the River District Design Review Committee.

The proposed site for the development is the former Sayles Biltmore Bleacheries property located at 437 Swannanoa River Road and consists of approximately 79 acres (City Exhibit 4). The property is split zoned, with a portion of it zoned River District and a portion zoned Commercial Industrial District (City Exhibit 3 – Location Map). Access to the property is currently via Swannanoa River Road, a two-lane N. C. Dept. of Transportation (NCDOT) road with a maximum capacity of 14,000 vehicles per day. As part of the development, a new road providing access from the project site to Fairview Road is proposed.

The proposed development will consist of three (3) phases, with the site plans providing information on the first two (2) phases. Phase I (approximately 60 acres) will consist of a major retail development that will have a total of 367,876 square feet of floor area and 1,839 parking spaces (City Exhibit 3 – Conceptual Site Plan). The following will be included in Phase I:

- A 219,622 square foot retail store with 1,095 parking spaces;
- An 88,474 square foot retail store with 442 parking spaces;
- 32, 000 square feet of retail shops with 152 parking spaces;
- 27,780 square feet of retail shops with 139 parking spaces; and
- Two outparcels, one at 1.31 acres and one at 1.41 acres.

A new 4-lane bridge crossing the Swannanoa River and the new access road that will provide access from the project site to Fairview Road near its intersection with I-240 and Stevens Street will be constructed in Phase I of the proposed development. Construction materials for the buildings in Phase I will include brick, quik-brik, and integral block. Building facades and roofs will be articulated and awnings will be used to help break up the massing of the buildings. The garden area will be fenced with a decorative metal fence. The parking areas will be heavily landscaped and the site will be buffered from Swannanoa River Road with a minimum 50' buffer.

Primary access to the site will be via Swannanoa River Road. A new 4-lane bridge will be constructed east (upstream) of the current bridge providing access to the site. The existing

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bridge will be demolished. Secondary access will be provided by a new 2-lane road that will link the development to Fairview Road. The new road will intersect Fairview Road at Stevens Street, west of the I-240/Fairview Road intersection. An unused railroad right-of-way and existing "tunnel" under I-240 will be used for the alignment of the new road.

The applicant is requesting Level III site plan review and issuance of a conditional use permit for the Phase I portion of the development to allow the development of approximately 379,000 square feet of retail space. Level III projects are conditional uses

within the Commercial Industrial District. Conditional uses are uses, which, because of their unique characteristics or potential impacts on the surrounding neighborhood and/or the city as a whole require individual consideration of their location, design, configuration, and/or operation at the particular location proposed. In addition, this project must meet the supplemental development standards for large retail structures due to its size. The applicant appears to have met the applicable supplemental development standards.

The applicant is also requesting rezoning of the Phase II portion of the development of approximately 19 acres from Commercial Industrial District to Urban Village District. Phase II will provide a mix of retail, office, and residential uses in an Urban Village. Of the 19 acres in the proposed Urban Village, approximately 11 acres will be in residential uses and the remaining 8 acres will be occupied by retail/office uses. TRC review has indicated that the design of the Urban Village is not in complete accordance with the design standards for such developments. The proposed breakdown for the Urban Village is:

Residential

- 84 multi-family units
- 8 single family units
- 75 parking spaces

Retail/Office

- 115,042 square feet
- 172 parking spaces

An area adjacent to the Swannanoa River will be preserved as a park and the applicant proposes to convey this area to the City of Asheville for use as a public park. A greenway trail will be constructed along the river, through this park, and also proposed to be conveyed to the City for public use.

The Sayles Biltmore Bleacheries site has development constraints that make development or redevelopment of the site an expensive undertaking. A large scale project on this site will be necessary to overcome the constraints of the site. These constraints include (1) Access – The site is currently accessed by a narrow 2-lane bridge over the Swannanoa River. The current bridge is located downstream of the proposed bridge. Development on the site will require construction of a new bridge, which must meet federal flood standards of sufficient size to provide safe access to the site. (2) Building Rehabilitation or Demolition – The demolition or rehabilitation of the industrial buildings on the site is a major undertaking that will require significant investment. There are also environmental concerns resulting from the industrial use of the site that must be addressed. (3) Flood Designations of the Site – A large section on the site located in the northeast corner is designated as a floodway with no construction or fill permitted within a floodway. With a larger area designated as flood fringe, buildings must be elevated above the flood elevation if located in the flood fringe. Substantial cost is involved in complying with the flood protection standards that apply to the site.

The critical issues associated with the review of this project are stormwater and flood protection, traffic and design.

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The applicant's proposal for handling stormwater involves the construction of stormwater holding ponds and the provision of some areas of pervious paving. Much of the project site is located within a designated flood hazard area, but the portion of the area to be developed currently is located within the designated floodway. The applicant is proposing to revise the floodway on the project site by providing storage areas for floodwaters. The floodway expansion areas will also serve as stormwater detention basins. To construct the floodway expansion areas, an area outside of the River Resource Yard (50' from the bank of the Swannanoa River) will be excavated to create a large holding area for floodwaters and stormwater runoff. The expansion areas will be approximately 10' to 15' deep, 50' to 125' wide, and 1100' long.

The site plan calls for a significant amount of paving in the areas currently designated as floodway. This results in a need to provide a compensating area that will contain floodwater on site and not result in a rise in the downstream flood elevations. Since an amount of land making up the floodway will be reduced, it is necessary to provide a deeper channel for containing the floodwater. Details of the plans to address stormwater and flood protection are addressed through the City's permitting process and the TRC conditions. The applicant's engineering consultant will present details and technical information regarding the measures planned to address the floodwaters.

The applicant is proposing the construction of a new bridge over the Swannanoa River to serve as a primary entrance to the proposed development (City Exhibit 5 – Proposed Overall Master Plan for Riverbend Marketplace). The proposed 4-lane bridge will be constructed upstream of the existing bridge. The main access road, which will be designed and constructed as a public street, will carry traffic through the development and will intersect Fairview Road at Stevens Street. The intersection of the proposed road and Fairview Road will serve as the secondary entrance to the proposed development. A Traffic Impact Analysis (TIA) was prepared for the proposed development. The TIA identifies traffic system improvements designed to mitigate

the anticipated traffic impacts of the development.

A major concern identified that must be addressed prior to the approval detailed plans for the project is the traffic impact on Swannanoa River Road. Of the 17,000 weekday trips estimated to be generated by the proposed development, 10,700 or 63% will access the site from Swannanoa River Road. This impact has not been completely addressed due to the extensive study required to evaluate the viability of options for mitigating the impact. Four options for addressing this concern have been identified and are currently being studied by the applicant and by City staff. Selection of an alternative for addressing this concern has not been completed due to the need to get feedback from both the applicant and the NC Dept. of Transportation (NC DOT). The traffic issue for this proposed development is more complex than the traffic issue at the Gerber Road site due to the larger size of the development and the more integrate traffic patterns at the Tunnel Road site.

The third major issue to be considered in the review of this request is the design – both site and building design. The need to address the flood area designation of a portion of the site and the needs of the proposed tenants for number and location of parking spaces heavily influence the site design. The site design may change as a result of the need to accommodate the traffic impact mitigation. Building design for all buildings in Phase I of the development has been reviewed by the River District Design Review Committee for compliance with the River Design Guidelines. The Design Review Committee approved the design with conditions.

Mr. Green then showed pictures of building elevations (City Exhibit 6, City Exhibit 7 and City Exhibit 8).

In addition to the development standards for the zoning district in which they are located, conditional uses must meet certain general conditions in order to ensure that the use is

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appropriate at a particular location and to ensure protection of the public health, safety, and welfare. The general conditions, which apply to all conditional uses, can be found in Section 7-16-2 (c) of the UDO. City Council must make seven findings based on the evidence and testimony received at the public hearing or otherwise appearing in the record of the case. The findings are listed below. Following each finding is technical information from staff to assist Council in making these findings.

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

The project received technical approval from the Water Resources Department, the Fire Department, Metropolitan Sewerage District, Engineering, and other City departments. The project must meet the technical standards set forth in the UDO, the Asheville Standard Specifications and Details Manual, the N. C. Building Code and other applicable laws and standards that protect the public health and safety. Proposed stormwater management control measures exceed City standards (the stormwater detention basins will accommodate the 100 year storm).

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

The project is proposing the minimum grading necessary to develop the property with this type of intense use. A significant buffer will be preserved, including an area with mature trees that define the character of the area.

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

The size of the tract of land allows room for adequate buffering to alleviate impacts of noise and lighting on adjacent properties. Traffic impacts are an important consideration and are discussed in another section of this report. Stormwater control measures appear to result in an improvement over the current basinwide stormwater conditions if the project is developed as proposed. The development is consistent with the zoning requirements for the property.

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

The property is zoned Commercial Industrial and River District, which have no structure size standards. Much of the neighboring property is zoned Commercial Industrial or River District and is for the most part already developed with retail uses. The development will be heavily buffered from adjacent residential uses and from the highway.

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 proposed development will comply with the City's plans and policies provided the traffic issue below is resolved.

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

The project received technical approval from the TRC, which includes representatives of the Water Resources Department, Metropolitan Sewerage District, Engineering, the Fire Department, and Public Works Department. The adequacy of the transportation facilities is addressed in a Traffic Impact Analysis conducted by the developer and supplemented by staff findings and requirements.

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

The developer submitted a TIA as required by the UDO. This analysis indicated the need for some off-site improvements, including the installation of a new traffic signal at the intersection of Fairview Road and Stevens Street, linking this new signal to other signals along Fairview Road in the immediate vicinity of this intersection, and the contribution of funding for traffic calming. Some of the proposed improvements may not be necessary, but others may require augmentation, according to staff and staff consultant analysis of the TIA. A major concern identified by TIA that must be addressed prior to the approval of the conceptual plans for the project is the traffic impact on Swannanoa River Road. The TIA prepared by the applicant's traffic consultant indicates that the proposed development would use essentially all the remaining capacity of the section of Swannanoa River Road east of South Tunnel Road. This would mean that if the proposed development were constructed with no improvements to Swannanoa River Road, additional development or redevelopment on other properties along this corridor might be precluded. This would violate the City's Sustainable Economic Development Strategic Plan and Smart Growth Policies, as well as not comply with some of the required standards for approval for conditional uses. A potential solution or solutions must be agreed to by the applicant in order for the development proposal to meet this standard for approval, as well as standards for approval 3, 5 and 6 above.

There are four options that have been identified to mitigate the traffic impact on Swannanoa River Road resulting from the proposed development. Staff is amenable to any of these options, combinations of these options, or other feasible alternatives not included below, such as access through the River Ridge shopping center or construction of a new road parallel to and on the opposite side of the river as Swannanoa River Road so long as a significant mitigation of the traffic impact is achieved. Each of the options would need to be fully designed, permitted, and constructed entirely at the developer's expense (or, alternately, through some other source of non-City funding) and in accordance with all appropriate local, state and federal procedures and regulations. In addition, while each option appears to have the potential to mitigate the traffic congestion impact, formal study of the selected option would be necessary to ascertain its specific effectiveness in addressing the capacity issue prior to approval of final plans by the City. The options, in order of staff preference, are:

1. Developer or non-City funding of a public transportation system that would create a "Shopper's Loop" that would circulate among the major retailers in the immediate vicinity. This option would involve the provision of a public transit system that would transport shoppers to major retailer destinations in a manner similar to a "park once and ride" program in use in many downtowns. If designed appropriately, this option has the benefits of maximizing the existing infrastructure, reducing air pollution, and providing a customer convenience amenity. Concerns include whether the system would be successful in reducing the traffic impact sufficiently and the permanence of the system.
2. Developer construction of an extension of Wood Avenue paralleling I-240 and intersecting the proposed Stevens Street extension. This option has several benefits in addition to reserving some capacity on Swannanoa River Road for future development,

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including the resolution of a major cut-through traffic problem and maximization of the use of existing right-of-way. It is also the least expensive of the three options for the developer to construct and provides the most access for the developer's Phase III project site. There is some concern about the feasibility of using interstate right-of-way for a frontage road.

3. Developer construction of a "half-diamond" interchange (east-bound off-ramp and west-bound on-ramp) on I-240 between the Tunnel Road and Fairview Road interchanges. This would provide direct interstate access to the development site and improve the function of the Stevens Street extension. There is some concern about the feasibility of this option given the proximity of the new interchange to the interchanges immediately to the east and west as well as the cost of construction.

4. Developer widening of Swannanoa River Road to a three lane cross-section from the I-240 overpass to Fairview Road. This improvement would directly increase the capacity of Swannanoa River Road. Feasibility of right-of-way acquisition by the developer and cost of construction are the primary drawbacks of this option.

The Planning and Zoning Commission, at their June 5, 2002, meeting, recommended by a vote of 4 to 2 issuance of a Conditional Use Permit subject to conditions for the Phase I development of the site. The Commission unanimously recommended approval of the rezoning from Commercial Industrial to Urban Village District of the Phase II portion of the site. If the Council agrees and issues the Conditional Use Permit, staff recommends the following conditions be part of the motion to recommend approval:

1. All conditions identified by the Technical Review Committee shall be met.
2. The developer shall mitigate the traffic impact of the development to Swannanoa River Road through implementation of a transportation improvement project acceptable to City Engineering staff. This project shall be designed, permitted, and constructed entirely at the developer's expense (or, alternately, using other non-City sources of funding) and in accordance with all appropriate local, state, and federal procedures and regulations. In addition, formal study of the selected mitigation project would be required at the developer's expense to ascertain its specific effectiveness in addressing the capacity issue prior to approval by the City; this study shall be performed under the City's supervision by a traffic consultant under contract with the City. Design, permitting, and initiation of construction of the mitigation project shall occur prior to the issuance of a building permit for any building in Phase I and project construction shall be completed within 12 months of the issuance of any certificate of occupancy, except that the public transportation option shall be in effect within 60 days of the issuance of any certificate of occupancy. The developer shall provide any necessary financial guarantees of this project completion schedule to the City Engineering Department.
3. The applicant shall install or fund the recommended improvements indicated in the TIA, except those specifically not desired by the City Engineering Department. In addition, the applicant shall be responsible for the full cost of linking the new signal at Stevens Street with the other signals in the immediate vicinity in such manner as required by City staff. The applicant shall escrow not less than \$65,000 for a traffic calming study for the surrounding neighborhoods and its implementation, with any unused funds to be returned to the applicant upon completion of the traffic-calming project.
4. The applicant shall work with the Asheville Transit Services Director to locate and construct a transit center on the site to serve as a transit node. The transit center shall be constructed at the developer's expense and shall be architecturally compatible with the development design.
5. The applicant shall work with the City Parks and Recreation Department to convey the park area and greenway to the City of Asheville; such conveyance may require the applicant to create and fund a maintenance plan for this property.
6. A signage package that complies with the City's sign code shall be submitted for review and approval prior to formal approval of this project.

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7. The design of the urban village shall be modified in accordance with the standards for such developments as enumerated in the Urban Village zoning district; the applicant shall be able to construct the proposed number of residential units and the proposed square footage of the office and retail space.
8. Within 90 days of the issuance of a certificate of occupancy for the Wal-Mart building, the Wal-Mart Corporation (or any individual, partnership or corporate entity acting on behalf of the Wal-Mart Corporation) shall terminate any leasehold of the existing Tunnel Road Wal-Mart building and property or, in the event the building and/or property is owned by the Wal-Mart Corporation, said corporation (or any individual, partnership or corporate entity acting on behalf of the Wal-Mart Corporation) shall place the building and/or property for sale or lease for commercial or other purposes allowed under the applicable zoning at fair market prices. The purpose of this condition is to ensure that the Tunnel Road building and/or property is not kept in a vacant state for an extended period of time.
9. The access easement on the south side of the Swannanoa River running from the developer's property to Fairview Road shall be transferred to the City of Asheville for the purpose(s) of extending the Swannanoa River greenway and/or construction of the Riverside Parkway. The City shall have the ability to transfer this easement to the State of North Carolina or some other entity or entities for one or both of these purposes.

In addition to the above conditions, should City Council choose to approve this request, staff recommends that Council direct staff to undertake the following two tasks:

1. Perform a zoning study for the River District to ascertain the geographical extent of future large-scale retail structures in the district.
2. Work toward making the Riverside Parkway the City's top priority on the Metropolitan Planning Organization Transportation Improvement Program.

The condition for mitigating the traffic impact identifies four options for further study rather than a single solution. Options are provided due to the need for extensive study of each option to ensure that the selected options will address the problem. The feasibility of these options to the City staff, the City's traffic engineer consultant and the developer's schedule requires a timely decision from Council regarding this project.

Mr. Green entered into the record City Exhibit 9 - Smart Growth Definition and Policies, City Exhibit 10 – Executive Summary of A Strategic Plan for the Sustainable Economic Development of the City of Asheville, North Carolina, and City Exhibit 11 – Riverbend Marketplace Traffic Impact Evaluation (TIA) dated March 2002.

Mr. Mark Teague, Division Traffic Engineer for the NC DOT, said that they have done preliminary reviews on the half-diamond interchange, the frontage road, and the widening of Swannanoa River Road. Ultimately the decision is going to rest with the Federal Highway Administration (FHWA) on all three issues, however, an FHWA representative was consulted and they have been told that it's a very slim chance that approval would be given, but not totally out of the question. In order for approval, there would have to be extensive studies performed and there are a list of conditions that have to be met in order for approval.

With regard to the "half-diamond" interchange, typically the federal government likes to see a one-mile separation between interchanges and this proposed location is much closer than that. Mr. Teague said that to violate the one-mile interchange spacing rule, it has to be shown that what is out there right now cannot be improved anymore to accommodate the traffic. He said all reasonable alternatives have to be exhausted. Another rule is that the proposed access point does not have a significant adverse affect on the affect of safety, and operation of the interstate facility. With regard to cost, a ballpark figure for the "half-diamond" interchange would be about \$5 million.

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Councilman Peterson asked if it was typical for a developer to pay the costs if the interchange was more than one mile from another interchange or if the NC DOT pays if there is going to be a lot of traffic. Mr. Teague said that it's fairly typical for a developer to pay for the costs and cited the example of a developer in Durham who is heavily involved in funding a new interchange on I-40. There may be cases where the NC DOT can assist.

Councilman Peterson said that most NC DOT funds are for fixed projects and if NC DOT participated in this project, would there be a potential that our other fixed road projects might not be funded. Mr. Teague said that if this goes through the Transportation Improvement Plan process, and most likely it would need to, there would be certain projects that would have to be bumped back in order to move other projects forward.

Councilman Peterson asked about the construction of an extension of Wood Avenue paralleling I-240 and intersecting the proposed Stevens Street extension. Mr. Teague said that was explored in the same light as the "half-diamond" interchange option and the FHWA will have the final decision on that as well. Again, he has been told that it is slim that it would be approved. He said that their reasoning is that when I-240 was built a designated right-of-way was established. To give up that right-of-way for a frontage road, with the risk of needing the right-of-way back it in the future is doubtful. With regard to cost, Mr. Teague felt it might be the least expensive alternative of the three options NC DOT reviewed.

With regard to whether there has been any exploration of the widening of Swannanoa River Road, which is a state road, Mr. Teague said that widening that road is currently not on the NC DOT's TIP program. Any expense in doing that would most likely would fall on the developer. He said that if the road was widened to multi-lanes that would solve the problem of capacity. He said if you could take the rock cliff curve out of the picture, the rest of the construction would be a lot easier, but you would still have right-of-way issues. With regard to cost, Mr. Teague was not able to give Council even a ballpark figure.

Upon inquiry of Councilman Dunn, Mr. Teague said that the "half diamond" interchange can be presented to the FHWA and it would take approximately one year for a decision to be made on whether the project is feasible or not or whether they will even entertain the idea. If NC DOT were totally involved, with planning, permitting, right-of-way, construction, etc., it would take approximately 20 years for total completion (using the Sweeten Creek Road interchange as an example). A lot of times private developers can do things faster and if the money and the approval were there, he felt the developer could probably achieve it in approximately two years.

Mr. Robert Deutsch, attorney representing both applicants, said that this is almost a 100 acre parcel of land in the City limits which the sustainable economic development and smart growth urges be infilled with some development in order to discourage sprawl. To widen Swannanoa River Road is in the City's 2025 plan. The area is a dilapidated eyesore for Asheville. There are a lot of factors supporting development of this process and the applicants have bent over backwards to try to meet the various requirements of the City, state and federal agencies. They have attempted to address the legitimate concerns of the opposition. They have received the unanimous approval of the River District Design Review Committee, the approval of the TRC,

and the affirmative vote of the Planning & Zoning Commission. He felt the applicants are entitled to a conditional use permit with the conditions set forth. He said there are a few areas in which they do not agree with the staff recommendations and they mainly have to do with traffic mitigation. We feel that building this additional access road at a cost of approximately \$4 million, and adding the additional capacity to your existing traffic system, that we have beyond anything reasonable to mitigate the traffic. However, we are willing to attempt to do the other conditions in order to further mitigate the traffic. He pointed out that the preference of the City's staff is the transportation loop. He said that it fits in with sustainable growth goals. He said that another condition concern is that the applicants have not agreed to fund the maintenance of the

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park set forth in Condition No. 5. With respect to Condition No. 8, he said that was not something totally within the control of the applicants. They will do the best they are able to in order to make sure that the building does not stay dark for a continuous period, but he wasn't sure who owns the building. Regarding No. 9 of the access easement through River Ridge, this is something that will take their agreement and it's his understanding they do not agree to this. This is not within their control and urged Council not to include this as a condition on the permit. He said that the proposed development satisfies the City's smart growth land use policies for mixed use developments, infill development, sustainable land development patterns, environmentally sensitive areas and smart growth transportation. He urged Council to adopt both applications in that they comply with the UDO and they would be good for Asheville and Buncombe County. We will be taking away a deteriorating, eyesore building from an obvious part of the community, it will also have a lot of other good impacts on the City. He asked that the following documents be entered into the record: Applicant Exhibit 1 – Site Plan; Applicant Exhibit 2 – Grading Plan; Applicant Exhibit 3 – Landscape Plan; Applicant Exhibit 4 – Preliminary Hydrology Study and Water Quality Calculations; Applicant Exhibit 5 – Pole Lighting Specifications; Applicant Exhibit 6 – Hydraulic Analysis; Applicant Exhibit 7 – Floodway Expansion Cross Sections; Applicant Exhibit 8 – Elevation Drawings for Wal-Mart; Applicant Exhibit 9 A & 9 B – Elevation Drawings for Kohls; Applicant Exhibit 10 A & 10 B – Elevation Drawings for Shops and Additional Retail

Mr. Harley Dunn, Riverbend Business Park, LLC, briefly reviewed with Council the development team and a history of the site. (Applicant Exhibit 11 - Power Point Presentation). After the building closed there were significant numbers of containers containing various chemicals left around the building and an environmental study was commissioned in 1993. In 1995 there was a fire in the building and Superfund came in and cleaned up all the containers. In 1999 the N.C. Dept. of Environment and Natural Resources (DENR) said that there was one small area (150 feet x 300 feet) that had dry cleaning fluid in it and needed remediation. He said that this level of contamination of water is about 4.7 parts per billion and the federal drinking water standard is 5 parts per billion. DENR has required them to remediate that down to .7 parts per billion. He wanted Council to understand this is not some toxic waste dump leeching something into the river – that someone could drink the water and not be at a risk.

Mr. Mark Masters, Architect from Masters Gentry Architects, explained how all the different features of the site were examined and then planned how best they site could be utilized. They believe that the historical value of the site meets Condition No. 4 as far as the character. Even though they cannot keep any of the existing structures, they do pay respect to the existing structures. One example is by using the round-around (which is the location of the existing smokestack) as a focal and entrance point to the site. With regard to Condition No. 4 regarding scale, he pointed out that in addition to a large scale retail project, they also have other small scale buildings within the property as well as creating a walkable community with an urban village. Because across the river is the Lowe's site, Home Depot site and the Asheville Mall they feel the project is well within the keeping of the scale and bulk of the vicinity. With regard to Condition Nos. 2 and No. 5 regarding connectivity, this project reconnects the site to Fairview Road as well as the proposed connection to River Ridge Marketplace and the Swannanoa River. The site is currently somewhat isolated from the surrounding neighborhoods and at one time the site was connected to Oakley before I-240 split those connections. They think that reconnecting isolated sites for properties is good for smart growth planning. He felt that Condition No. 2 has been met regarding providing good services, housing, streets and parks because they are proposing 100 inter-urban residential units and preserving open spaces. They feel that Condition No. 5 is met due to the uniqueness of the project creating the Urban Village concept. Condition No. 2 is met in that they feel the project adds amenities to the City that will serve a large cross-section of the population by creating living, working and recreational opportunities to the general public.

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Mr. Dunn said that the complex issue of floodway management is governed by Federal Emergency Management Agency (FEMA), which requires that the average elevation of the land surface is not raised. They require a Conditional Letter of Map Revision and again, it is a complex process. We have existing some 800-1,200 feet of existing asphalt riverbank and they are proposing to take it up and seed and grass it.

Mr. Todd Seldonridge, engineer, said that the City's minimum stormwater requirements is to provide detention for a 10 year storm. They are providing stormwater detention for up to a 100 year storm. They will also implementing some best management

practices to handle water quality. He said they have pervious pavement on some of the fringes of the parking lots. They are going to see how well the pervious pavement holds up over time since it is a heavily traveled area and the pervious material is very porous and tends to break up over time. He said they have approximately 22,000 square feet of pervious material, which is about 2-3% of the entire paving area.

Upon inquiry of Councilman Mumpower, Mr. Seldonridge said that there is approximately 22 acres of impervious material now and in Phase I there will be about 30 acres.

Mr. Greg Holden, environmental engineer, said that there is an area of groundwater that extends to the river, which contains tetrachloroethylene. Whether it actually goes into the river or not is unknown, but that will be a subject of further feasibility study. When they do the remediation plan, everything will be in compliance with the state requirements.

Upon inquiry of Councilman Dunn on if there is any water contamination now, Mr. Holden explained that at very low flow conditions during an extreme drought, there might be actual charge of the river from the groundwater. Under those conditions there could be some movement of the plume into the river. Under normal conditions, it's the opposite – the river is actually a hydraulic barrier and the water is higher in the river than it is in the groundwater so the water flows from the river into the groundwater.

Mr. Dunn explained the stormwater detention in Phase II. Using pervious pavement to satisfy the runoff around one of the seven buildings in the retail village, instead of placement of a pond, is just one of many combination of things which are very cost effective. This seems to work very well in small scales. It's just that it's very expensive on a large scale. Pervious pavement is approximately \$5 a square foot compared to asphalt at \$2.00-\$2.25 a square foot.

Mr. Becky White, Traffic Engineer, said that the development team has taken very seriously their obligation to mitigate the traffic impacts associated with this development. Through that process they developed a mitigation plan. That plan includes construction of 1.7 miles of new roadway that is the connector roadway that extends from Swannanoa River Road to Fairview Road. The primary motivation for constructing this new public roadway was to provide additional capacity for this development's traffic in order to offset impacts to Swannanoa River Road and also to provide connectivity for other public travel in this area. It is stated in the TIA that the proposed project will generate approximately 17,000 vehicles trip per day. That includes a portion of traffic that is currently on the roadway network and would stop by the development on way to another destination. Those trips are not new trips. Once you take out that portion of traffic, we estimate we are generating 14,500 new trips on the roadway network. The new roadway, which they are planning to construct, will have a minimum capacity of 14,000 vehicles per day. In other words, we are constructing approximately 2 miles of roadway that would have a capacity equivalent to the number of new trips that the development would add to the roadway network. In addition to the construction of this new roadway, which is estimated at a cost of about \$4 million, it includes a bridge over the river as well as a bridge over the railroad that runs through the Oakley area. The development team has agreed to fund traffic calming improvements in adjacent neighborhoods, construct a signal system on Fairview Road that would extend from the

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Cedar/Liberty intersections to the new intersection that we propose to build at Stevens Street. We also propose to construct additional turn-lane improvements on Swannanoa River Road. That is a safety, as well as a capacity, improvement to Swannanoa River Road where our proposed new road would tie into that facility. We believe these improvements more than mitigate the impacts of this development and we disagree with the staff findings that the development uses all of the available capacity on Swannanoa River Road. She clarified that by stating that the traffic volume projections in the TIA are a conservatively high estimate of traffic on the adjacent roadways. A couple of things were not allowed to be taken into account in the TIA. The development has proposed a connection to the existing River Hills Shopping Center, but no trip reductions were allowed. In addition, no trip reductions were allowed for the traffic that will enter the development through the existing intersection that aligns with the ramps on Fairview Road. But, in order to be conservative, we did not include that in the TIA. Further, we believe as congestion builds on Swannanoa River Road, shoppers to Riverbend Marketplace will divert to the point of least resistance which is the back access to Fairview, which we have already projected with our TIA will have excess capacity on it. It is expected to have a minimum capacity of 14,000 vehicles and our projections are only for using up only about 6,000 vehicles per day. Traffic congestion is an important issue in this area. Although we disagree with the staff recommendation that further options are necessary, we have agreed to pursue Option No. 1, the transit system, as our preferred alternative. Options 2-4 contain many requirements that are out of our control. Not only are they extremely expensive, they require permitted from a federal agency, which takes time. Option No. 1 is the most doable of the four options. We have committed to pursue Option No. 1. Improved transit service in this area goes along with the smart growth policies in this area. It reduces pollution and there are a lot of benefits to the overall area. We believe we have mitigated the traffic impacts associated with this development and that we have successfully addressed Condition No. 7.

Upon inquiry of Vice-Mayor Bellamy about Option No. 1, Ms. White said that they envision a shoppers loop that would

serve this area of retail development, the Asheville Mall area, the K-Mart shopping center area, and the new Target area – all the retail concentrated in this specific interchange area. It would not only shave trips off this development, but also potentially reduce traffic impact of the existing shopping centers. We envision it would be a public bus system and we are currently pursuing options for some public funding for transit for this area. This is an on-going commitment - not like a construction project that you go in and build it and you are done. It would need to continue in perpetuity so it goes beyond something that just this one development would take on.

Mr. Dunn said that this exciting shoppers loop is envisioned for anyone to go to one of the shopping areas in this area and park. From there, they can get on a bus that would run frequently throughout the loop. He thinks this is a good marketing tool for the area. The idea is that there would be dedicated buses that would possibly be overseen by the City's Transit Services Department. In fact, when they talked to Congressman Charles Taylor for possible federal funding of interstate highways, he suggested a concept like this. Mr. Dunn said that he sees this as a blending of public and private transportation and a way that we can not only mitigate this traffic issue, but at the same time start having people who drive buy into the idea of public transportation. He said that Congressman Taylor has committed to helping us find funding for this concept.

Upon inquiry of Councilwoman Jones, Ms. White said that they have additional research on areas where transit and shopping is combined successfully. There are excellent models of a transit loop system.

Mr. Bill Boyden, architect, said they went through a very thorough process with the River District Design Review Committee and it was because of their willingness to give very frank feedback that we were able to design buildings that are very reflective of what you see down in

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the River District. In the process of documenting and cataloging all the buildings in the district, it became apparent that the industrial feel of the River District is only part of the story and that the Biltmore Village and some of the other buildings are every bit as important and part of the fabric of the river as the traditional warehouses that we see along there. What we have come up with in terms of building designs is a new definition of the river based on what was there and what is on there now. He felt we have a very successful design that is unique to Asheville and the River District area.

Upon inquiry of Councilman Mumpower, Mr. Boyden said that this in no way is a traditional Wal-Mart model. He said the traditional Wal-Mart building is a navy and gray with a red strip and it's built out of cinderblock and painted. This is a brick-type product with decorative canopies, vestibules, an enhanced central sign element and garden area. This deviates from a traditional Wal-Mart in just about every respect.

Mr. Vic Knight, landscape engineer, said that the basis for the landscape plan was to create a pallet of trees and shrubs that are indigenous to the Asheville area and that frequently occur in wet areas such as along the Swannanoa River. Plants will be located along the public roadway, the parking areas and on the buffers of the property. The trees that will be used along the public roadway are sycamores and this was done for the purpose of tying back to the historical context to the property. Over 600 trees to be used in and around the parking areas will be positioned to spread out the canopies. In the 50-foot required buffer along Swannanoa River Road, there are close to 800 trees. There is a large preservation area to the north side of the property which they will be preserving a lot of mature hardwood trees. The greenway will be connected into the development in several locations to allow visitors to the shopping center. Along the greenway there are several spaces provided for public art to be displayed and that area will be turned over to the City. The concept is to use indigenous plants that are typical along river areas and through this we hope to control noise and light pollution and help to filter sediment as they move from the parking areas into the sediment basins.

Mr. Dunn said that the Wal-Mart Corporation is sponsoring a design competition for our local artists to bring art into the four art exhibit areas along the greenway. We envision funding the competition in such a way that we can sell off a piece or two every six months to a year and re-bid it so the exhibit areas would continue to grow and develop.

Mr. Rick Presley, President of Horne Properties, Inc., which is the lead developer in this partnership in the Phase I retail development, said that good ideas have come out of all the groups they have met with but there were certain economic limitations and site limitations to some of the ideas. They were diligent to put into the plan all of the good ideas. This gives us a plan that works, it is functionally responsible, is a good plan and quite an economic upgrade for an under-producing site in the community. The facts before Council include (1) FEMA will certainly take care of floodway management for the community; (2) there will be environmental clean up. There will be demolition of the building to get to our construction point. It will be a better site from an environmental standpoint; (3) this development represents one of the largest revenue resources for the community and City when built. Those dollars can go toward other road improvements or wherever City Council deems it most important; (4) the involvement of Wal-Mart stores is good for underwriting the program; and (5) the community can count on parking, fire, safety, police protection,

etc. through all the standards which need to be met. We feel that all seven conditional use standards have been met and we believe this is a project that serves the highest and best use for this piece of property. With all the roadway improvements, we hoped that the mitigation proposed with the Fairview Road involvement, would be enough, however, we are willing to look at the other proposals.

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Mr. Deutsch said that his legal research on traffic mitigation shows that it is not necessary or incumbent upon the developer to show zero traffic impact. What they have to show is reasonable mitigation measures.

Mr. Lawrence Henson, President of D.O. Creasman Co., said that his company is located on Swannanoa River Road directly across from where the proposed new bridge will be built. He felt this development would increase his property values.

Mr. John Carson, restaurant owner on Swannanoa River Road, said that the property value of his business would increase if this development occurs and urged Council to vote in favor of the conditional use permit. (Note by City Clerk: This witness was not sworn in.)

At 7:40 p.m., Mayor Worley announced a short break.

Ms. Betty Lawrence, one of two attorneys representing the Beverly Hills Neighborhood Association, the Oakley Community Association and Community Supported Development, said that they are asking City Council to deny the conditional use permit because it fails Conditions No. 1 and 2. In terms of the topography, it will be shown that they are actually digging into the channel of the Swannanoa River according to their cross-sections - 1,300 linear feet of the Swannanoa River banks will be changed. The widening of Swannanoa River Road would be cutting into a cliff. There is a tremendous amount of impact on the site itself. In terms of trying to meet the floodway ordinance, they are actually doing an awful lot of moving of the floodway. It will be shown that there will be damage to property value to property owners who live close by. The proposed development will not be in harmony with the scale, bulk, coverage, density and character of the area or neighborhood in which it is located. Even the River Ridge Shopping Plaza pales in comparison to this proposed development. There is no doubt that the development will cause undue traffic congestion and create a traffic hazard. Council's only question is if it's possible to mitigate and evidence will be presented to show that it is not - at least not under any scheme thus far.

Mr. Charles Houser, resident of Houser Road in Oakley, announced his credentials which includes a BS in Civil Engineering and formerly being employed by the FHWA as a field engineer manager. Using both City Exhibit 5 (overall master plan) and portions of Applicant Exhibit 2 (grading plan), Mr. Houser explained in detail the existing topography of the site and the differences of the topography after the site is developed, noting that one of the conditions is that the topography and the terrain before and after should be somewhat similar, the nature of the site should not be changed, etc. He explained how there would be probably in excess of 25,000-30,000 cubic yards of material moved out to dig the ravine for the overflow effort, which is a significant amount. He wasn't sure if the area would be seen by drivers on Swannanoa River Road, but if so, it would be a significant visual impact. In one of the hydraulic reports, it was noted that the channel would be impacted by dredging and that it will extend probably 1,600 feet up and down left and right of the bridge. Using the grading plan, he showed how even with the proposed stormwater management control measures of the 100 year storm, the back-up would impact the center of the bridge. He explained how the new channel excavation will be graded stating that there will be a different view of the riverside than what is there now. Mr. Houser showed on grading diagram (Applicant Exhibit 2) where 75 feet of a hill is proposed to be removed, which will be a visual impact as you drive on Swannanoa River Road. Mr. Houser said that the portion of the hill to be removed appears to be outside of the property line shown on the grading plan. He explained that there is quite a massive cut section (roughly 110 feet in elevation), which lies to the south of I-240 and that is a significant amount of change to the site. On the new access road proposed to be built, Mr. Houser said he wasn't sure that the old railroad right-of-way could accommodate three lanes and that would limit the capacity of this section of road. In his experience with contaminated sites, once you get in and start excavating and digging, you will find more than you really bargained for which will mean more time and expense.

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Mr. Bob Born, consulting civil engineer with over 50 years of experience in the design of flood control and hydrology projects, said that he is a member of the Board of Directors of the Viewpoint Homeowners Association and is speaking on their behalf. He said it is a joke to think that FEMA is going to take care of the City of Asheville. He has had experience in representing FEMA in two actions they have brought against contract cities, such as the City of Asheville, for violating their own floodplain ordinance. In one case, the community lost its participation in the Flood Insurance Program because of its failure to follow its own ordinance. He pointed out that the ordinance the City of Asheville adopted is a contract between the City and FEMA and it is enforceable under contract law. Using Page CD7:261 from the UDO with a figure entitled "Area of Application for Flood-Proofing Regulations (Neighborhood Exhibit 1), Mr. Born explained that there is an illegal fill in the Swannanoa River Watershed and that

upstream illegal fill could influence the flooding of the downstream area. There is a report prepared by the Tennessee Valley Authority (TVA) on the history of flooding of the Swannanoa River and the French Broad River and the report points out the potential for extreme flooding along the Swannanoa River in the area under discussion. In looking at the engineering for this project, he didn't think that the upstream development that has occurred over the years has been properly considered. The most recent flood insurance rate map is not recent and there have been a lot of developments, including the question of the illegal fill along the Swannanoa River. (Neighborhood Exhibit 2 – 3 pages from Flood Insurance Rate Map) Those points have not been considered, as far as he could tell, in the technical analysis of the flooding potential at this site. He said that on the hydraulic analysis (Applicant Exhibit 6), they considered the SCS analysis method of analysis for the hydraulics of the flooding potential at this site. In his view, that is not a recent type of analysis – it's only suitable for determining hydrographic shape and cannot be used for analysis of the actual magnitude of the flood that would occur under the 100-year or other magnitudes. He doesn't think that the full potential for development and the urbanization that has already occurred upstream of the development has been considered in calculating what will be the 50 or 100-year flood event. That is a significant deficiency in the analysis presented.

Mr. John Sticpewich said that the problem of remediation of the groundwater pollution is a state concern, however, what is important in Council's decision is when that mediation takes place. The work done preformed by the environmental associates is thorough but he disputed the model of the plume presented to Council. He doesn't agree with the exchange between the groundwater and the river water. There is quite a lot of evidence, and it is well published, that the water table changes as the flood level rises in the immediate environment. The problem is that to contour the concentrations in this way (Neighborhood Exhibit 3 – Analysis Report from Holton Environmental Associates), you must have uniformity between two data points, and the last thing we have in these sediments is continuity. He explained in detail that as soon as the first bulldozer cut is made over the area or adjacent to it, the way the rain is taken into the ground and affects the groundwater table and its pollutants will change – change in a way that is not predictable by any methods he was of aware of for the past 40 years. If remediation is done before any groundbreaking occurs, then there is a fairly good idea where the pollutants are but as soon as you change the nature of the surface, we don't. He felt it was very important to do the remediation before there is any work on the site. Using Neighborhood Exhibit 4, he explained what the wells are and what data is coming from them. In addition he showed what features are being built on top of area of the plume. Using a portion of the grading map (Applicant Exhibit 2), he showed that the area of contamination lies in the excavation for the floodway. Again, when you start digging you change the conditions.

Professor David Clark, teacher of civil engineering at Clemson University, said that he thoroughly reviewed the material prepared by the developer's consultants regarding traffic. He said the methodology that was used to prepare the TIA in general is very standard and straightforward and would work in the vast majority of situations. It is apparent here though that there are some traffic problems and specifically capacity concerns on Swannanoa River Road. In looking at Swannanoa River Road and the numbers that were generated, he agreed that it

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appears that we are very close to using up all the available capacity – at least during some hours during the day, if not during the entire day. When he looked at the traffic volume data that was used, especially the background and the adjusted future year for development, he had some concerns about the count information that was used. Specifically it looked like one day or two day counts were used to come up with the volumes at surrounding intersections. He could not ascertain whether these counts had been adjusted to represent true averages. He obtained information from the NC DOT'S Office of Statewide Planning which showed higher ADT's in the year 2000 from their count program on Swannanoa River Road, or portions thereof in the vicinity of the development, than were reflected in the counts that were taken and used in the study. It's possible that traffic has gone down, but in general I think there is a continual escalation in traffic volumes. He would feel more comfortable if the traffic data were adjusted using data from continuous count stations somewhere in the vicinity to reflect true average values throughout the year. It's well known that traffic volumes fluctuate and there is no way to tell on the basis of one day's count. The report examined morning and p.m. peak hours and these are typically high hours of the day for most locations, especially during the week. However, the City took traffic data on Fairview Road near the intersection of Stevens Street, which indicated that the noontime hour was a peak. In essence, it was higher than the morning hour. That could have an affect on the overall analysis and he would feel more comfortable if that were addressed. If traffic follows that pattern on Fairview Road, then one wonders whether the other roads, which are in close proximity in the study area, would have similar characteristics. If we were not so close to the apparent capacity on Swannanoa River Road, this may not matter at all but it should be looked at in more detail. Swannanoa River Road has a number of deficiencies and it does not meet current AASHTO recommendations for roadway design. The lanes are narrow, there are minimal shoulders, there are numerous restricted lateral clearances, and it's 100% no pass zones. This leads me to believe that the capacity issue is a real one. All of those deficiencies would lower the ability of the road to handle traffic. In addition, the horizontal alignment has numerous curves as the road follows the river. Despite those curves, you have a relatively high speed limit of 45 miles per hour. To my mind, improvements to that road need to be looked at very carefully if it's going to bear the type of traffic that it is being counted on to withstand as a result of this development. He did not see anything in the analysis to look at safety issues – either on Swannanoa River Road or on other roads in the vicinity. The UDO requires that the TIA look at safety issues and maybe there aren't any, but this needs to be addressed. The NC DOT provided their latest crash data and Swannanoa

River Road showed a higher crash rate than Tunnel Road – despite the fact that Tunnel Road has twice the average daily traffic. We had a fatality on Swannanoa River Road within the State's reporting period. He felt that since there will be additional traffic on Swannanoa River Road and in view of the fact that the design of the road is not up to current standards, it needs to be carefully looked at as part of whatever mitigation process is done. Ms. White pointed out that the new Stevens Street extension would provide adequate capacity for approximately 14,000 vehicles a day and provide a backdoor to the site and that would hopefully alleviate some of the congestion and the problems with Swannanoa River Road. That is very likely the case, however, if we are going to count on that, then the analysis needs to be redone such that traffic equilibrium is included as part of the analysis methodology. You have to consider shifts in traffic due to congestion, as travelers tend to seek routes that have lower travel times. We may very likely be introducing additional traffic to other areas that was not counted on in the TIA and a refined analysis might point those out. We might find additional mitigation to be needed or we might find less mitigation to be needed. These questions should be answered before a final decision is made. The use of I-240 for either the right-of-way for the Wood Avenue extension or for the interchange for the site offers probably better chances for removing traffic from the existing service street system. But, as Mr. Teague pointed out, there are very severe questions about whether the FHWA would allow the use of their rights-of-way for these projects or whether the operational impacts of a new interchange would be detrimental to the overall performance of I-240. I-240 obviously carries very high traffic volumes compared to these streets and problems there would have a major impact on more citizens in the Asheville area. The existing road configuration of the major entrances on Swannanoa River Road and Fairview Road

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might possibly draw through cut-through traffic that hasn't been counted in the TIA. He wondered what would the effect of that be on traffic in the other areas. The trip generation rates for super centers are a fairly small sample at present. He recalled the current ITE has about nine observations in the data set. Statisticians say that does not give a very tight tolerance on any estimates that are produced with such a small sample. They would prefer to have at least 30-100 data points from super centers in the data set to reliably and confidently use the generation rates that are in ITE. In addition, none of those nine sites are in the western North Carolina area, so we don't know if they represent travel behavior that reflects the citizens of Asheville. That normally is not a major problem, but given we are at the marginal capacity right now, we have to be very cautious about the trip generation rates. His opinion is that the use of transit as a mitigating option will not be very successful. His reason is that we are dealing with a large number of shopping-type trips. If we have a shuttle-type service serving shopping-type destinations, then he thought only captive transit riders would use the transit service. It is very inconvenient to carry packages around with you if you are going from store to store. The automobile will still attract the majority of trips to the site no matter what kind of transit system is put in. In addition, the developer has provided ample parking, which is going to further encourage people to drive to the site. The transit option is very appealing but he didn't think in the majority of cases they would get much ridership from this segment. The only way he could say safety to encourage transit use would be to cut the parking out and force people to come in on transit. His sense is transit will probably not do a whole lot to mitigate unless there is some sort of major incentive to get people into those shuttles. His opinion is that we need to have a solution in hand before we go forth with the development. A little extra time and effort on this may develop that solution and give us the confidence that this whole package will fit in with the sustainable growth goals.

Upon inquiry of Vice-Mayor Bellamy, Professor Clark said that the frequency of crashes on Swannanoa River Road was higher and the rate per million vehicles miles was approximately twice the rate of Tunnel Road (section east of I-240 approximately one mile toward the Highway Patrol Station), despite the fact that Tunnel Road had the average annual daily traffic of approximately twice that of Swannanoa River Road.

Professor Clark responded to various questions from Councilman Peterson regarding how new and existing trips are calculated, what is the capacity of Swannanoa River Road and how is that determined, what will happen on Swannanoa River Road if the capacity is used up, and what would the process be if others want to development on that road.

Ms. Lawrence said that the new road through Stevens Street will not solve the traffic problem and rather than alleviating traffic on Swannanoa River Road, there is every chance it will create more traffic because of the attractive cut-through from Fairview to Swannanoa River Road. You may be adding trips on Swannanoa River Road at the same time you are building this new road. City staff says we have four alternatives and they want them all studied more. Then they want the City Engineering Department decide which one should be implemented. They all have problems. The interstate exit – you heard slim to none; the possibility of public funding is very slim; and if it is done through the TIP, it will delay the projects that we as a community have identified a need for. Wood Avenue extension – they would have to persuade the NC DOT to give up right-of-way, which they have already purchased and have in wait to widen I-240 in the future. Widening Swannanoa River Road – if they can get past the cliff, there would still be the problems of widening the road in the floodplain, neighborhoods, golf course, and problems in the City's River Parkway Plan. Many are passionate advocates for transit but we can't build our way out of traffic congestion. We need alternate forms of transportation that will work for people. However, we need a systems-wide approach to transit and clearly more than a shuttle bus between the Mall, K-Mart, Target and Wal-Mart stores. The UDO is not about giving conditional use permits so that you can give away things that the City as a whole would otherwise have and that's traffic. The hydraulic analysis (Applicant

3.534 and 3.79 will be excavation from the existing channel of the Swannanoa River to the proposed 2 to 1 slope of the proposed fill. They are talking about 1,300 linear feet of the riverbank according to what has been presented. A portion of the letter from DENR dated June 24, 2002, states, "a remedial action plan must be submitted for the site. ... Plans currently underway for future development of the site must accommodate future remedial action at the site. The placement of structures around the plume, or significant grading may affect the groundwater gradient, and or hinder future remediation activities. Therefore, we recommend for construction plans to be designed to accommodate the contaminated plume and any possible type of remedial action that could take place. Please note that the best type of remedy to be used to address contaminated groundwater at the site has not yet been determined." (Neighborhood Exhibit 5) There is a deadline of 30 days to submit the plan. What Council needs to be aware of is the developer says they will remediate and they will also build over and dig in where it needs remediation. This is not good. Because the current owners of the property did not cause the pollution, there is a possibility they will not be required to do any remediation. They may say we'll follow DENR but that may mean do nothing. We think there is a very serious danger to public health and safety now because of the toxic plume because you don't know what is going to happen if it will be released into the river. Now is not the time to permit this kind of development around that sort of site.

Ms. Corinne Kurzmann, resident on Sayles Road, said that on a portion of Wood Avenue there are curves and no sidewalks. Building an access road is certainly a concern. She is concerned that her property value will decrease if a Super Wal-Mart is allowed in her backyard. Traffic on Wood Avenue is horrendous already. Fairview Road and Swannanoa River Road traffic is a mess. The site is contaminated and she could not imagine how building on it will not endanger the health of everyone in the community. She personally grows her own food on a 2,300 square foot site and this development is not in harmony with her property. You would not want this kind of development in your backyard. She could not find any smart growth principles that would apply to this development. This is not the best thing we can do with this site. Traffic will greatly impact her neighborhood.

Ms. Lawrence wanted to, but did not, request, at this time, that City Council table action on this request, since the UDO states that "Asheville City Council, after conducting the public hearing, may table the application pending submittal of additional information." She said that she believes they have put on a convincing case that this is a danger to public health and safety. The toxic plume effect on the river, being perhaps the most obvious, is not at all clear. The plan does call for putting fill on the floodway and raising the grade. That will have an affect on what happens with the water. They feel that the river resource yard is going to be violated. Regarding the compatibility with natural and topographic features, there are 43 extra acres paved, 1,300 linear feet of the riverbank that is not going to be natural anymore, and the cliff on Swannanoa River Road is a significant topographic feature. There has been evidence about property values. With regard to traffic, the staff's recommendation is to delegate to the City Engineer the authority to choose among those four options. The case Lancaster v. Mecklenburg County makes it very clear that that is an impermissible delegation to an administrative person. This is a quasi-judicial decision about what traffic would mitigate the congestion and hazard. If Council did delegate this authority, Council would be doing something that is clearly illegal. Since Council doesn't have enough information to decide about the traffic, she believed Council should either deny the permit or table it.

Mr. Deutsch asked Mr. Houser if it was his testimony that after the development is over, under the conditional use factors, that the terrain cannot be significantly different than it was before the development. Mr. Houser replied yes in that was how he read the condition. Mr. Deutsch then asked Mr. Houser where Condition No. 2 says it has to be the same. Mr. Houser said the terrain has to be similar in terms of the overall concept. Mr. Houser said that Condition No. 2 reads that the completed project should be compatible with significant natural and

topographic features on the site and within the immediate vicinity of the site given" Mr. Houser said that in other words, "reasonably compatible" to him means you don't build a mountain on it and you don't dig a lake on it. He said the developer will be digging significant excavation for the water and cutting some high cuts – not a lot of volume of earth work, but there is some high cut sections that he felt will be new from what is there now.

Mr. Deutsch said that they would waive their right to ask any further questions due to the cumbersome process.

Mr. Greg Gregory, one of two attorneys representing the Beverly Hills Neighborhood Association, the Oakley Community Association and Community Supported Development, asked Mr. Green if there is a property value impact analysis in the record for this project? Mr. Green replied that there was not.

Mr. Gregory asked Mr. Seldonridge if the floodway excavation areas and sediment ponds would be fenced to keep children

away. Mr. Seldonridge replied yes. Mr. Gregory then asked how many feet of fence would be required. Mr. Seldonridge said he wasn't sure at this time but that they will fence all of the pond areas and the fence will probably be a chain-link fence unless there is some other type of City ordinance that would require them to do more than that.

City Attorney Oast said that Council should disregard e-mails and other items received from individuals who are not speaking at the hearing for purposes of the conditional use permit decision. Because those people are not present, they are not subject to being cross-examined. If speakers submit information, that information can be entered into the record. Petitions and other documents will be received for whatever value they have, but they have no evidentiary value and will not be considered with connection to the issuance of the conditional use permit.

The following individuals spoke against the issuance of the conditional use permit and rezoning. If concerns were expressed by prior speakers or if the comments are not relevant to the decision before Council, they will not be repeated or included. Other comments/concerns include, but are not limited to: rezoning only a portion of the property to Urban Village would represent a lack of vision because small locally-owned businesses will not be able to compete with a Supercenter and if the Urban Village were Phase I instead of Phase II people may not purchase homes right next to a big-box retail store; this proposal contradicts smart growth goals in that it does not meet the needs of the present without compromising future generations to meet their needs; this development will preclude any future development on Swannanoa River Road; if there is no traffic mitigation by the developer, people will complain to City Council and the taxpayers will have to pay for that mitigation; smart growth policy states that industrial land should be preserved and this is turning that land into commercial; the development will destroy the peace and quiet of the Beverly Hills and Oakley neighborhoods; the applicant's conceptual site plan fails to comply with UDO in that the Parcel Identification Number shown on the plans is incorrect, all zoning districts are not shown on the plan, they have not depicted violations of existing federal, state, and local laws and regulations, and the plan indicates significant impacts on the resource yard and that the resource yard will be excavated on adjacent properties; concerns about the application and review process for the proposed development in that required documents were not submitted or major deficiencies were found in the site plan, flood hazard area plan, soil erosion and sedimentation plan, stormwater discharge plan, TIA and sign plan; UDO requires all TRC conditions be met on the revised plans prior to proceeding to public hearings and to date no new plans have been submitted; there are no studies for the four traffic mitigation options to be reviewed for feasibility; UDO states that for a phased project, Council must approve a master plan for the entire development site at the same time a conditional use permit is considered and the applicant has not supplied almost all the information required for Phase II of the project; topography in the Oakley community will be significantly altered if the Wood Avenue extension is built; unaware of plans for bike lanes on the existing dangerous roads and/or any new roads;

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planet pollution; the development will saturate the traffic capacity thus violating smart growth policies; bad location for a new shopping center; values of the family will be negatively affected; commercialization along Swannanoa River Road will further degrade the residential neighborhoods; malls do not want any form of public transportation to service them so the shoppers loop to include the Asheville Mall will not work; the developer should link more routes with the Asheville Transit Services into neighborhoods and provide permanent funding guarantees; residents on Fairview Road would like a traffic calming project; the project has a maximum shell life of 30 years and therefore is not sustainable project; this project has "could be anywhere appearance" and isn't good for a gateway to the City; residents do not want a 10-acre parking lot on the Riverfront; choose a less intensive plan for development with smaller buildings, less paved area and more ground cover that absorbs flooding; there is no clear traffic plan in place; cumulative effect of the traffic from this development as well as the Target and other more appropriate smaller projects must be considered; the trees and topography of the site and the serenity that exists in the area will be gone; the NC Superfund Section of the NC Division of Waste Management will not grant a "no further action status" until the contaminants have been documented at/or below state groundwater standards; the City must require, before any recommendation, (1) a remediation plan which has completed the process for state approval including the public comment period to be sure that any construction will not impact groundwater remediation, (2) complete diagrams overlaying the characterized plume, sowing depth of monitoring wells, with planned construction of all buildings, parking lots, ditches and any other features that could either interfere with the hydrology of the site or present an exposure risk to the public; and (3) installation of any extraction wells and remediation equipment and at least six months of demonstration that the plume of contamination is being "captured" by the pump and treat system, before any site construction with 200 feet or up/gradient of the plume is to begin; City Council should require substantial warranties, such as completion bonds, to cover all unfulfilled proposals allowed in any conditional approval; limited stormwater control measures do not begin to address the stormwater impacts that will be attributable to the site and the additional roadways required for access; developers are just promising their way into compliance with environmental, traffic congestion, flood, pollution and safety guidelines; developer's connector to Fairview Road needs a bridge constructed over a privately-owned railroad and working with the railroad takes a long time; air, noise and light pollution impacts; destruction of historic buildings; who will take responsibility for the liability due to the holding ponds being located next to the greenway; request to add condition to permit to close Beechwood Road at or near its intersection with Swannanoa River Road in order to eliminate cut-through traffic; empty building on Tunnel Road will be an eyesore; no guarantee that Phase II of the Urban Village will occur; average price of the

proposed condominiums is \$150,000 which is not affordable housing; approximately 25 acres will require fill, up to 10 feet, in order to raise the No. 1 anchor store and associated parking out of the floodplain and floodway; 100 feet must be sliced off of a hilltop to create a level area of approximately 4 acres to accommodate the second anchor store; 75 feet of elevation off of a hill adjacent to the river will have to be removed; extensive floodway expansion and stormwater retention ponds will require conservatively another five acres of excavation; 19 acres in Phase II will be altered by cut and fill leaving nothing undisturbed; there is a point across from the U-Haul business just west of the property that looks like a good spot for a bridge to be built into that property; the applicant has made no showing that the railroad will permit the alteration to the overpass of the tracks; and crime will increase and additional police protection will be needed:

Ms. Sharon Martin, Asheville resident (Audience Exhibit 1)
Mr. Christopher Fielden, Liberty Street resident (Audience Exhibit 2)
Ms. Polly Gates, Canterbury Road resident
Mr. Mike Moody, Fairview Drive resident (Audience Exhibit 3)
Mr. Ned Guttman, Beechwood Road resident and speaking on behalf of the Coalition of Asheville Neighborhoods (Audience Exhibit 4)
Ms. Lola LaFey, London Road resident
Mr. Cicada Brokaw (Audience Exhibit 5)

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Ms. Pamela Benes, Caledonia Road resident
Mr. Jeff Kelley (Audience Exhibit 6)
Mr. Stuart Roper, Fairview Road resident (Audience Exhibit 7 which included a Petition containing 82 signatures to initiate a traffic calming project on Fairview Road)
Ms. Sabra Kelley, Fairview Road resident
Mr. Jim Siemens, attorney and North Asheville resident, speaking on behalf of the Smart Growth Partners of Western North Carolina

(At 11:05 p.m., Mayor Worley recessed the meeting to be reconvened at 4:00 p.m. on Wednesday, June 26, 2002. The meeting reconvened at 4:00 p.m. on June 26, 2002, in the Council Chamber with all members of Council being present. Mayor Worley reviewed the rules and conduct of the meeting.)

Mr. Joe Swingle, Asheville resident
Ms. Tamara Calabria, Beverly Hills resident (Audience Exhibits 10 A & 10 B)
Ms. Gail Moody, speaking on behalf of the Beverly Hills Homeowners Association (Audience Exhibits 11 A & 11 B)
Ms. Ann Bryan, Canterbury Road resident
Ms. Deborah Houser, speaking on behalf of Oakley Community and Police Resource Center (Audience Exhibit 12)
Ms. Rebecca Campbell, West Asheville resident
Ms. Davon E. Heath, East Hawthorne Drive resident
Ms. Debbie Applewhite, Beverly Hills resident
Mr. David Herbert, speaking on behalf of the Clean Water Fund of North Carolina (Audience Exhibit 14)
Mr. Roger Gold, Summerhaven Road resident
Ms. Christine Clark, Overbrook Place resident
Mr. Andrew Brown, Asheville resident
Mr. Alan Ditmore (Audience Exhibits 16 A & 16 B)
Mr. Mike Brown, speaking on behalf of Redwood Forest neighborhood
Mr. Herbert Parker, Pinehurst Road resident
Mr. Grant Millin, Oteen resident
Mr. Brad Carlton-Sisk (Audience Exhibit 17)
Ms. Beth Jezek, East Asheville resident (Audience Exhibit 18)
Mr. Cecil Bothwell, Haywood Street resident
Mr. Shane Perlowin, Holland Street resident
Mr. James Hurlston, Asheville resident
Ms. Leni Sitnick, Asheville resident
Mr. Jason Klein
Ms. Connie Duncan, Redwood Forest resident
Ms. Hazel Fobes, North Asheville resident

Mr. David Roat, Asheville resident (Audience Exhibit 19)
Ms. Heather Steele, Montford resident (Audience Exhibit 20)
Mr. John Perry, Sherwood Road resident (Audience Exhibit 21)
Mr. Clarence Lytle, Governor's View Road resident
Ms. Pam Harders, Skyland Circle resident (Audience Exhibit 22)
Mr. Gilian Kearns, Asheville resident
Mr. Brian Evans
Mr. George Clark

The following individuals spoke in favor of the conditional use permit and rezoning. If remarks were expressed by prior speakers or if they are not relevant to the decision before Council, they will not be repeated or included. Other comments include, but are not limited to: all conditions have been met except for traffic mitigation and the developers are addressing that; it

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will take big investors to renovate the magnificent site; cut-through traffic will not be significant; the crash data on the portion of Tunnel Road used and Swannanoa River Road is not a good comparison; developer will build a new street at their own expense to handle much of the traffic; the public transportation route will help to mitigate traffic congestion and diminish the environmental impact of automobile emissions; concept of Supercenter at one location for groceries and other goods will eliminate unnecessary car trips; project will include other retail establishments and housing on-site which will reduce traffic; actual footprint of new development is smaller than the old Sayles Biltmore Bleacheries factory; development is a vast improvement over the eyesore that is on the site now; change is inevitable; once three traffic signals on Fairview Road are synchronized, traffic will flow smoother; project will be a clean, open and friendly environment; the City will have another greenway at no charge; the project will add affordable housing; the Swannanoa River is designated mountain trout stream and if there was a water issue there, the N.C. Wildlife Resources Commission would not stocking it with fish; the River has mallard and wood ducks and no harm has been done to the wildlife on the river; this unused property is ready for development with water and sewer already in place; when big development goes in, property values have risen; and don't give the signal to the development community that they are not welcome in Asheville for future development:

Mr. Leon Govin
Ms. Vickie Gaddy, Asheville resident
Mr. Joel Belz, Haw Creek resident

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Mr. Art Hutson, Wedgefield Drive resident
Mr. Jim Scott, Asheville resident
Ms. Kim Taylor, resident of Brevard, N.C. (Audience Exhibit 8)
Mr. Steven Waddell, Marble Way resident (Audience Exhibit 9). He also presented petition containing approximately 9,769 signatures in support of the development of a Wal-Mart Supercenter at Riverbend Market Place on Swannanoa River Road in Asheville. Also presented approximately 4,438 cards which support the development.
Ms. Kris Seagroves, Ashwood Drive resident
Mr. Charles Jaynes, Oakley resident
Ms. Jean Jaynes, Broadview Avenue resident
Ms. Kathy Bowman, Hendersonville Road resident
Ms. Judy Stevens, Beverly Hills resident
Mr. Van Gerrald, Haw Creek resident
Mr. Kevin Rollins, speaking on behalf of the Libertarian Party (Audience Exhibit 15)
Ms. Betty Donohoe, Gashes Creek Road resident
Mr. Jack Aycock, Buncombe County resident
Mr. John Sherlin, East Asheville resident
Mr. Jesse Rochester, Beverly Hills resident
Mr. Lester Bullock
Mr. Fred English, Haw Creek resident
Mr. Don Funderod, Haw Creek resident
Mr. George Morosani
Mr. John Jensen, Bent Tree Drive resident

Mr. Larry Smith, Greenwood Road resident
Ms. June Grant, owner of property in Asheville

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During the rebuttal period, Mr. Deutsch said that there was testimony that there was going to be grading in the river resource yard. He asked Mr. Gary Tysinger, hydrological engineer to respond. Mr. Tysinger said that the cross-section map that was used was the old plan submitted before they met with City staff and went through the technical review. That map has been revised.

When Mr. Deutsch asked Mr. Tysinger what disturbance there will be within the river resource yard, Ms. Lawrence objected.

Ms. Lawrence objected on the basis that this was not information that was available until, as they heard it from the City, last week. Section 7-5-20 of the UDO states that "When the Planning & Development Director has determined that an application is complete and that a public hearing is required by this chapter, the director shall request that a date, time, and place be set for the required hearing and shall insure that all notices are provided pursuant to subsection 7-5-20 (a) above, this chapter, and the statutes." (Neighborhood Exhibit 6) This sets the time after which the application is completed will be considered on the merits at that time. This public hearing was noticed on June 14 and 21, 2002. It's all a matter of due process. Other boards, for example the Asheville-Buncombe Historic Resources Commission, that require quasi-judicial reviews have a two week deadline after which nothing can be considered because it has not been previously submitted. The reason for those deadlines is so the public has notice of what is being proposed.

Mr. Deutsch said he was not so concerned about the actual plan but the testimony given about what either will or will not be done in the river resource yard. He assumed Council would prefer to have accurate information. He didn't think it was critical whether or not the actual map comes into evidence, because Council has already ruled that the actual map is the latest one in the possession of the City staff. All he would like is to have Mr. Tysinger tell Council what, if any, grading there will be done in the river resource yard.

Ms. Lawrence said this is a due process question and that if Mr. Deutsch wants up to the minute information that was not supplied to the public, that was not supplied to the staff before the application was certified as complete, and before the public had a right to expect that that's what they should study and prepare for at this meeting, then she believed that a continuance based on that fact alone would be in order. She did not believe it was legal under the UDO or under the Constitution for Council to consider this now. And whether it's in the form of introducing the map or introducing what he says the map says, the plan was submitted and was certified by the Planning Director as complete.

City Attorney Oast said that in the nature of projects like this as they proceed into development, there are details about plans that can and will change because of compliance with technical requirements. He doesn't think that it is relevant to the political approval of what is being sought here. A map could even change even after a conditional use permit is allowed. They may get into site development after the conditional use permit is issued that would case them to have changes to some of their plans. He didn't think that there is a basis for continuance that the revised map has since been submitted. He didn't know how relevant it is from either standpoint that this kind of technical information enters into Council's consideration at this point. Again, he didn't think there is a basis for a continuance. It was his option that it would be appropriate to overrule the objection and let Mr. Deutsch proceed, with the understanding that the information that he is eliciting may not be relevant to Council's consideration.

Ms. Lawrence submitted Wade v. Town of Ayden, 125 N.C.App. 650, 482 S.E.2d 44 as Neighborhood Exhibit 7.

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Planning & Development Director Scott Shuford said that many of the opponents and some of the proponents think that at the conclusion of this hearing, if Council issues a conditional use permit, that's tantamount to issuing a building permit and that is not true. What was required from the applicant is a concept plan and if it is approved through this review process, Council will impose conditions that will make changes to that plan. That's why it's a conditional use permit. If it were fully complete, staff would come to Council and ask for approval as is, and then Council may or may not be in a position to make many adjustments to it. Assuming it gets passed, and this is true for any conditional use permit, there will still need to be formal site plan review by the Technical Review Committee, formal erosion and stormwater control review by City staff, and when the building permits come in, they will have to be reviewed by Building Safety Department and by the Fire Department. DENR will enforce any of the contamination requirements. FEMA rules will have to be followed and the Army Corp of Engineers, from what he understands, will have a say over the development of this project. There is a huge amount of technical information that still is going to be required of the developer in order to actually construct the project. This is a static plan subject to some change and modification through

this process. However, the material that was presented by the represented opposition was based upon information that was in the Planning Department's files. That information changed. He didn't know when the changed information was received, but apparently it was last week. So, to hold the represented opposition accountable might not be fair. He noted that the City Attorney has advised Council that it may not be a relevant issue anyway.

Mr. Shuford said the City Engineer indicated that when the changed information was received, she did contact Mr. Guttman and passed it onto him at that time.

In the interest of time, Mr. Deutsch waived their right to put on any further rebuttal evidence.

Mayor Worley said that since Mr. Deutsch waived any rebuttal evidence, it would render the objection moot.

At 8:09 p.m., Mayor Worley announced a break.

Ms. Lawrence, one of the attorneys for the represented opposition, said the burden of proof in a conditional use permit hearing is on the applicant to make out a main case that he can meet these standards. She referred to the case SBA Inc. v. City of Asheville. We contend that the applicant has not met this burden of proof. Condition No. 1 has not been met – the proof she noticed was the assurances that it wouldn't, assurances that the toxic plume would be dealt with at some point, and that their extension of the floodplain would protect it from flood. None of these are substantial evidence. Council did hear substantial evidence that a toxic plume exists on the site, it will be around for another 5-15 years unless remediation takes place quicker, that it is about 15 feet underground and at one of the places above it, the plans call for grading down 14 feet – just being one foot of ground to protect the movement of that toxic plume. The recommendation is to get the remediation in place and working before you can be assured that it will be dealt with. All of the plans of the developer use the land over the toxic plume. This is a serious health and safety issue. It does not mean they can never do anything with the property. It means that right now you have a very serious safety issue. The runoff and the retention ponds are being used for two purposes – for stormwater and for flood control. To use them for two may mean that when the flood comes along, the ponds are full. There is significant work, according to the plans, in the river resource yard. Our ordinances prohibit anything going into the river resource yard that would require fill and this would. The requirement is that the proposed restricted use does not require fills or that the average elevation of the land surface is not raised. If you do not fill and you do not raise the land surface, then you can put parking areas there. But they are filling and they are raising the elevation of the land. They are putting some permeable parking but mostly impermeable because it costs more to put in permeable pavement. This is a

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flood hazard. This is 58 acres of pavement. Condition No. 2 – Council has heard how this will involve grading 25 acres and 1,300 linear feet of the river is going to be scooped out and straightened to a 2 to 1 fill. If you chose the widening of the Swannanoa River Road for traffic mitigation, that would mean a big impact on the cliff and many people have testified that it would cause horrible damage to the natural and topographic features. The applicant said that it would be compatible. We believe that is not meeting the burden of proof. Condition No. 3 – They would be overburdening the easement on the River Ridge Apartments and grading adjoining property. That certainly will have a value on River Ridge Apartments after it's graded. The applicant did not present any kind of market analysis as to property values. You heard a lot of opinion testimony but didn't have strong evidence acceptable to the finding that there would not be a decrease in property values. Condition No. 4 – The scale of the Wal-Mart building would be twice the size of the biggest building around which is Lowe's. There is a case called Vulcan Quarry that talks about what this standard might mean. Two of the three conditions they use is that it's surrounded by residential property and that it's a violation of the comprehensive plan. The 2010 plan does zone this site industrial. We admit that in the Vulcan case the nearest different use was a commercial use two miles away and given the City, we don't believe that we could meet that condition. But we think that the two out of three conditions are so compelling, along with the testimony that Council had on this point. Condition No. 5 – The developer testified that it would be smart growth and that the 2025 plan said it would be good. According to the 2010 plan, which is the official comprehensive plan, this is zoned industrial and that does not comply with our official plan. There was testimony that it does not comply with economic sustainability and the 2025 plan. In the 2025 draft plan, it makes a list of smart growth vs. sprawl and under sprawl is big-box development. The proof that it will conform is not there. Condition No. 6 – The evidence is that it did pass all of the technical boards that it's been through so far. The only thing we have brought up to question is that traffic congestion is going to interfere with all finds of emergency services and that is very substantial. Condition No. 7 – The applicant admitted that it would cause undue traffic congestion and a traffic hazard. The question is whether they can successfully mitigate that so that Council can make that finding in good faith. We have four choices. City staff is saying to leave that choice to the developer, with the final approval to be by staff. Lancaster County, S.C. vs. Mecklenburg County, N.C. (Neighborhood Exhibit 8) is a case that shows what you can and cannot delegate to an administrator. It says in quasi-judicial situations, such as this, you cannot give decisions which require decision-making discretion to your administrators. It is not their role to take on that kind of responsibility. If they make the final decision there will be no opportunity for the public to have input on any kind of specific mitigation plan. We have four choices – none of which are developed and none of which can be shown to

work. It's hard to have meaningful input or study on that plan. If you look at all four choices, you see serious problems with each one. The shuttle buses - all we know is that Congressman Taylor may be able to find some money for it. We don't know if it will work. We have had vague reference to other cities where the bus systems in question are significantly different, such as Boulder and Chattanooga. Everyone will drive to the area to get on the bus and the obvious conclusion is that they will drive to Wal-Mart to park, even if they are going to get on the bus. If public transit funding is spent on this private shuttle system, it will deprive the Asheville community of desperately needed funding for the City bus system. The "half-diamond" interchange from I-240 is a remote possibility. It violates FHWA safety standards concerning the placement of exits. If they are too close, there is too much weaving and there is a safety hazard. You don't solve a safety hazard by creating another one. It will also be very costly and if done with public funds would push back the completion of the projects already identified as priority needs for the City. It would also require the taking of privately held lands. The construction of a frontage along Wood Avenue – this is an extremely remote possibility because the NC DOT is not fond of giving away right-of-way along interstates which they assume will need added lanes in the future. This would also be very costly. This option has the drawback of severely impacting the Sayles Village neighborhood and creating a traffic hazard there. The widening Swannanoa River Road. Many people think that would be a solution but it would be a very complex project because of the geography, environmental concern, and the cliff. This is a years long proposition and to

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widen a road in this state takes 10-12 years. To get a conditional use permit that you couldn't use for 10-12 years is not much good. If they use up all the capacity of Swannanoa River Road then that road is too congested, which would prohibit other large undeveloped lots along Swannanoa River Road to be developed. There is one small point about Stevens Street – we don't know how the developer will accomplish going over the railroad tracks. The minimum height clearance that NC DOT has been asking for gets raised almost every year and it's now to 25 feet. Whether or not that road can be engineered to meet Norfolk Southern's specifications is still an open question. The applicant has the burden of proving that traffic can be accommodated safely. It seems unlikely to us that that condition can be met. It certainly has not been proven to be met. Many, many rules of procedure of the City, in her opinion, have not been followed. The conceptual site plan was never revised after the TRC review and there is a very clear requirement for that to happen. It says it "shall" be amended and a new one presented before the Planning and Zoning Commission. That never happened. It makes it very hard to know what you are judging. She cited a case Freewood Association where the applicant applied for a conditional use permit for a private family campground and it turned out they were going to put in a nudist camp. The court said the use of the property has to be stated truthfully and accurately in the application. It's the right of the public to examine these things before so they can address Council. We haven't had that chance. Phase 2 is before Council for rezoning. We don't think that all of those requirements have been met. We don't really know what is going to happen in Phase 2 and Phase 3. It seems to me that the only way you can approach those two in terms of impacts that might be adverse, is that you need to look at the impacts of this proposal. Council needs to realize that there is absolutely no requirement for them to ever build the Urban Village. Will their plans erode the opposite bank of the Swannanoa River? We don't know. We do know that they will take down a 100-foot hill, there will be 25 acres of fill, and an additional 5 acres in the floodway. We do know that they are going to disturb 1,300 linear feet of the riverbank. We do know they will disturb the river for a new bridge. What will happen to property values? We don't know. You have heard a list of other reviews this project has to go through but what you didn't hear is any other chance for the public to have any input on this. We believe you cannot meet your duty responsibly by granting the conditional use permit on the basis of the evidence before Council today. We would urge you to deny it. If you do not deny it, we would urge you to continue it so that everybody does have a chance to examine the information. We believe if all the plans were submitted and all of the conditions that the TRC has asked to be complied with were done, they could not show you a plan that would work. They could only show you a plan that would require a variance because of disturbing the river resource yard and there are no variances from that. You cannot ask for a variance in a conditional use permit. We think this project would not happen if they had complete information.

Mr. David Matney, attorney representing the developers, emphasized that this project has been approved unanimously by the River District Design Review Committee, approved by the TRC and by the Planning & Zoning Commission. City staff has recommended approval with certain conditions. We agree the conditions with the exception of a couple. We do not agree that Ms. Lawrence and Mr. Gregory represent anyone who is distinctly affected by this project. We object to everything they said to the extent of their views doing that. Condition No. 1 – An important term is "materially" endanger the public health and safety. Anything anybody does affects somebody. That's not the issue. Is there going to be a little more traffic or is there going to be a little more danger – is it material? We have to comply with the engineering requirements about flooding. We have to make no difference for the floodway. Regarding environment, we have to comply with the State. The State isn't going to let us do anything that materially endangers. You don't have all the plans for that because this is a use. City Council is not the technical people to make that decision. Council needs to look to see if the use meets the seven conditional standards. You have all the evidence from City staff and from the City agencies that says it does not materially endanger. There will be someone injured or killed on Swannanoa River Road whether this development is built or not. Condition No. 2 – The proposed use is "reasonably" compatible. The only way you can make it totally compatible is to build it

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underground. Every development changes something. Staff has looked at this and has said the developer has disturbed the site as little as possible. It is correct that we will be disturbing on the riverbank, but what we are doing (and Ms. Lawrence was not at the Planning & Zoning Commission hearing when this issue was first brought up) is removing asphalt that the Sayles people put along the riverbank to stabilize it. We don't think that's a good idea. So, yes, we are disturbing that part of the riverbank to take up asphalt. If you don't want us to do that, we won't – but it seems like the sensible thing to do is to change it from asphalt to the natural topography of dirt and plants. The only other two things they will be doing is taking up one bridge and putting in another bridge. In reading through the report of our flood engineer, moving that actually helps the flood because the existing bridge is narrow and restricts the flow and the new bridge will not restrict the flow. So, moving it from the one location to the different location and making it wider will actually be helpful. We are not doing any digging or drilling in the river resource yard and we know we can't – that could be one of the conditions is that we don't do that. We won't do that. The flood water issue is a non-issue from Council's perspective other than saying "comply with our technical people." Whatever permits we have to have, we will comply. Pollution. It's the same non-issue from Council's perspective because what the City requires is that we meet applicable governmental requirements. We will meet DENR requirements. If the Environmental Protection Agency is involved, we will meet those requirements as well. One man testified that this is on a Superfund site because of the groundwater. That's incorrect. It was on the Superfund site because the drums that were left there when Sayles Biltmore Bleacheries went out of business. The Superfund had to clean up the chemicals that were contained in drums - not because of the groundwater. The opposition experts talked about the environmental, water, etc. but not a single one of them had done a study. They looked at our reports and said those reports were good but disagreed with their conclusions. That is not evidence. They haven't done their own studies – they just don't like what we've done. Condition No. 3 – "...development ... will not substantially injure the value of adjoining or abutting property." The people who testified for the applicant talked about the property around the development and that it's value will not go down. The people who said it's going to hurt their property values were up on Fairview Road and in Beverly Hills – they are not adjoining or abutting. The closest residence is either across either I-240 or on the other side of Swannanoa River Road and behind the commercial development. The closest residents are people in the apartments and there was no testimony that it would hurt their values. Condition No. 4 – We are taking a 650,000 square foot building that is presently on the property and reducing it to 400,000 square feet. We are making it smaller. The neighborhood consists of commercial development and the interstate. When you look at the scale, yes, this is bigger than what is around it, but it is smaller than what is there now. Condition No. 5 – "...development ... will generally conform ..." There are a lot of things in the proposed 2025 plan which talks about concentrated pockets of urban development (our urban village) because they are easier to serve with public transit and the opportunity for people to park once and go to several destinations. It talks about concentrated urban villages along major corridors. When we start looking at the City's plan, the Riverside Parkway says that there would be a gateway boulevard, which adjacent development should occur on larger parcels with few access points. That is what we are doing. It said it should also be apartment complexes, office parks or a concentrated commercial development. I think we meet all of that. The plan talks about infill (taking vacant or underused lots) and this development is not sprawl – this is coming back in. Condition No. 6 – All of City staff and agencies that have said this condition is met. A concern was expressed about rescue vehicles. What they are talking about is problems right now. No one has done a traffic study and said that there will be interference with rescue vehicles. Condition No. 7 – "... use will not cause undue traffic ..." Most people say we have traffic problems right now. The development is not causing those. People on Fairview Road say that there is a problem. There is no evidence that this is going to "cause" traffic. We were instructed by City staff to make a decision that won't use up all the capacity on Swannanoa River Road. First traffic mitigation – we build a 1.7 mile road from Swannanoa River Road to Fairview Road. Second, we are doing to synchronization the lights on Fairview Road, which helps existing as well as future traffic. Third, we are going to widen Swannanoa River Road at our entrance and add

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turning lanes for people traveling each way to help the traffic and make it safer. Plus, we have agreed to pay a substantial sum for a traffic calming study to see what else might be needed. If you look through our numbers, which he doesn't think the City's traffic engineer has disagreed with – we use substantially all of the capacity on Swannanoa River Road. That's not all, most, but not all. We think we have satisfied everything and we don't need to do anymore. But, it's a political decision if substantially all is close enough to all or if something more is needed. We recognize that being close is enough to have to do something. We met with City staff and the NC DOT and City staff felt that all four options would all work from a traffic mitigation standpoint. Whether or not any or all of them can be done is a different issue. What Council is looking at is if City staff and our engineers say these work, Council can approve the permit saying that they find that any one of these four options would be a significant traffic mitigation. Then the developer would work with the City's technical staff to see if they can meet one of these. If the developer can meet one of these options, the project proceeds. To put off the use until we meet one of these would probably be another lengthy meeting. Contrary to what Ms. Lawrence says, Council can delegate certain things, but not the decision. Council would be saying to staff that they approve this, provided the developer meets the technical requirements. City staff has to confirm that the developer has met technical requirements. In each one of the four options it would be up to City staff to determine that the developer has met the technical requirements on the one that the developer picks. And basically that is the way procedurally to do it. Professor Clark was very careful about what he said and what he said was that he couldn't say it was wrong. He said he might have done it differently, but he can't say it's wrong. That is not evidence. If he had done it differently, that would have been evidence. So, the

only evidence Council has is the developer's staff saying the mitigation things that the developer has done is enough. City staff is saying what you have done is almost enough – but you need to do one of these other four things. In number 8 of the staff's recommended conditions, about the Wal-Mart lease over the existing facility, we don't want it dark either. We understand Wal-Mart's intentions are to sell it (as a matter of fact our developer wants to buy it if it's been on the market), but we have no control. We are not lessor and we are not lessee. No applicant has any control over that. We don't mind a condition that we exert our best efforts to talk them into this, but we can't control that. In number 9 of the staff's recommended conditions, regarding the access easement, we don't have the control or ability to transfer that without the permission of the adjoining property owner. We are willing to do whatever we can legally do, but he believed the City Attorney has received a letter from the adjoining property owner's attorney saying they don't know that they are going to agree to it. Given all of the discussion, in number 2 of the staff's recommendations, he wasn't sure if 12 months is long enough if the developer ends up having to do one of the options off I-240. He asked that Council extend that to 24 months.

At 9:10 p.m., Mayor Worley closed the public hearing.

City Attorney Oast said that this action requires two separate votes. There are two applications in an integrated plan. The applicants would prefer that Council vote up or down on the conditional use permit before a vote is taken on the rezoning for the Urban Village District. It was his understanding that the applicant might withdraw their application for the rezoning if they conditional use permit is not granted.

Mr. Shuford said that one purpose of a public hearing is to get more information on a particular project and the end result is usually to get a better project. He said that traffic engineering numbers are not derived from an exact science. Some facts are not in dispute from a general sense is that the current volume on Swannanoa River Road traffic volume is roughly 8,600 cars a day and that current volume is about 60% of the bottom level of Level of Service D capacity of the roadway. The proposed development would add roughly 5,000 trips a day to that roadway. That development would use about 35% of the total Level of Service D capacity of that roadway, which is more than a 50% increase over the base conditions. That is the basis for staff's insistence on mitigating that impact. As we went through this process we did discuss the

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traffic matter in great detail from the very beginning with the applicant. Of the four proposed traffic mitigation options presented by staff, the first three were all suggested by the applicant as possible ways to resolve it. The only option that unilaterally came from staff was the widening of Swannanoa River Road. Given the testimony heard at this hearing, it is clear that the most direct method of addressing the capacity issue is imposing a condition of widening Swannanoa River Road from South Tunnel Road to Fairview Road as a condition. As a consequence, and given the information we have heard through the public hearing, staff would now recommend that Council select that option as a condition of approval, if they wish to select a specific option. The road widening will be quite expensive and we would not want to put ourselves in a situation where there wasn't some flexibility on the part of the applicant to perhaps consider eliminating the 1.7 mile connection through to Fairview Road as a means of reducing that expense. He explained that the developer proposed the 1.7 mile new road as a method to mitigate the traffic on Swannanoa River Road and it takes off approximately 15-20% of the total project traffic that would use Swannanoa River Road. Since the 1.7 mile new road is a very expensive option on the part of the developer to create a road improvement that mitigates a fairly small amount of the impact on the network, staff is suggesting that if they didn't want to go to that expense and build the 1.7 mile of new road at this time, to use that money to widen Swannanoa River Road, so long as the mitigation of the traffic gets to a reasonable number. That would be something at the developer's option to address. There has been some pressure from both sides to try to get to that number more exact. He read the following suggested condition: "The developer shall mitigate the traffic impact of the development to Swannanoa River Road through the implementation of the following transportation improvement project: Swannanoa River Road shall be widened from South Tunnel Road to Fairview Road to such an extent that it retains not less than 10% of its design capacity (for that Level of Service D) for use by future development. This project shall be designed, permitted, and constructed entirely at the developer's expense and in accordance with all appropriate local, state, and federal procedures and regulations. In addition, formal study of the mitigation project would be required at the developer's expense in order to ascertain its specific effectiveness in addressing the capacity condition prior to approval by the City. This study shall be performed under the City's supervision by a traffic consultant under contract with the City. Design, permitting, and initiation of construction of the mitigation project shall occur prior to the issuance of a building permit for any building in Phase I and project construction shall be completed within 12 months of the issuance of any certificate of occupancy. The developer shall provide any necessary financial guarantees of this project completion schedule to the satisfaction of the City Engineering Department." The reason for the delay is, as are the first building to be constructed will be the largest building on the site, but that is only a percentage of the total site development for this project, so having time for future build-out as that project occurs, it does make sense to have a delay built in there. In effect, if Council wants to select a particular option, that would be the one staff recommends. Should Council approve the conditional use permit subject to that option and we get to some point in the future where there is some reason why it cannot be done, that option can come back to City Council (go through the same public process) for further debate and decision.

When Councilman Mumpower asked about the 1.7 mile access road, Mr. Shuford said that access road was a component of the developer's project at the beginning as a way to address the traffic which would have some benefit for their project. Obviously having a connection to another spot in which there is an interstate interchange would be a great way to address that issue and it also provides a good access when they get ready to develop the Phase 3 area in the future. It was not until City staff got through the TIA in mid-to-late May that we knew the total extent of the relief that that particular option provided to Swannanoa River Road and that was at the point in time that City staff started discussing options for the developer. That was when the developer brought forward the first three options that they felt were appropriate. Then staff suggested the fourth option of widening Swannanoa River Road.

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When Councilman Mumpower asked if it is staff's opinion that the mitigation efforts on the part of the developers on the traffic issue are not adequate, as they currently exist in the plan. Mr. Shuford replied that they are not and that has been said from the very beginning. The issue is what method to use to get to that point. At the outset of the process we suggested four alternatives and as we have gone through the public hearing process, we feel comfortable in narrowing it to one option and to leave it broad enough so that some aspects of it can result in cost savings for the developer by adjusting it.

Vice-Mayor Bellamy said that Professor Clark gave his opinion on the four traffic mitigation options and he did spend a little more time in talking about the improvements on Swannanoa River Road. After listening to his testimony, she felt he did support the widening of Swannanoa River Road.

Upon inquiry of Councilman Mumpower, City Attorney Oast said that Professor Clark was rendering his opinion on technical information that had been supplied to him by the staff. An earlier point Mr. Matney made was that Professor Clark is not a licensed professional engineer in North Carolina and as such may not qualify as an expert in some forms in this state. City Attorney Oast felt Council can take note of his qualifications and evaluate them however they wish.

Ms. Gaye Sprague, the City's traffic consultant who is licensed in the State of North Carolina, said that the City had presented four alternatives to Council of ways that the issue of almost being at the top of Level of Service D on Swannanoa River Road could be addressed. After listening to the public hearing and the issue of what can and cannot be delegated to staff, the staff decided that the one we can most firmly put our finger on knowing that we can add a certain amount of more capacity on the road was widening.

Ms. Sprague said Council has to have is an objective and reasonable way to assess the operations of traffic with and without whatever the proposal is. And you have to also clearly lay out what is required to address any deficiencies identified. In Asheville, you require an applicant to produce a TIA. You have very clear methodology on how that has to be handled and that methodology is the generally accepted methodology. You can take the method of doing it and any traffic engineer should accept it. In Asheville the precedence has also been set that the applicant must make recommendations on how to mitigate any location that exceeds Level of Service D. In most cases we are looking at intersections only. This applicant was required to analyze 13 intersections because this is a big development. The applicant's traffic engineer worked with the City's traffic engineer and went over all the assumptions. They were cleared through the City's traffic engineer. There are assumptions in any study that is done. They then identified those intersections where we were going over Level of Service D. The intersections that the applicant identified and recommended mitigation are (1) at the entrance to the development, and (2) a signal at Fairview Road and Stevens Street. In addition they recognized that traffic calming is an issue. City staff agreed with those recommendations, but we disagreed on the degree of problem that traffic calming was and we asked them to give more money to that. We pointed out that the closed spacing along Fairview Road was a problem and that we would want them to do a signal system to correct that. The issue that is getting the most attention is the operation of Swannanoa River Road. We, as staff, want Council to remember that we are close to going over the guideline number we use for Level of Service D over 24 hours.

Upon inquiry of Councilman Peterson, Ms. White defined interceptor trips as people who stop by a development on route to another destination, which is their primary destination. We did not try to forecast how much cut-through traffic might use the new 1.7 mile access road.

Councilman Peterson said that we now estimate Swannanoa River Road can handled approximately 14,000 trips per day. If it were widened to 4 lanes, divided with perhaps nice turn

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lanes, how much traffic could it hold then? Mr. Shuford guessed if the road were widened to a 3-lane cross section, which is an acceptable gateway design in both our proposed 2025 plan and in the long range TIP that the Transportation Advisory Committee

has adopted, it would hold approximately 18,000. If the road was widened to 4-lanes, it would hold approximately 27,000. Either one of those widenings appears to overcome the issue, with or without the 1.7 mile new access road to Fairview Road.

Councilman Peterson's traffic calculations show that if the new 1.7 access road is not built and all the traffic comes in from Swannanoa River Road, then they would have to widen Swannanoa River Road to 4-lanes.

Mayor Worley understood (and Mr. Shuford confirmed) that the staff's new condition is not 3-lanes or 4-lanes, but to widen Swannanoa River Road to the point where you maintain a minimum of 10% unused capacity. He took that to mean that if it's 3 lanes, they may still need to keep the new 1.7 mile access road and if it's 4 lanes they may not need to keep the access road. The condition would be the mitigation necessary to maintain at least 10% unused capacity on Swannanoa River Road.

Councilman Peterson felt that if Swannanoa River Road were designed as a 4-lane parkway and there was no access road the impact in Oakley would be a lot less.

Mr. Shuford said since traffic engineering is not an exact science, that instead of getting into a preference, the condition would need to be studied and go through a process in a way that would result in us having at least a series of very strong assumptions about what would happen before we have a final decision – that is why we structured the condition that way.

Councilman Peterson felt the public expects Council to make that decision. He was a little uncomfortable of giving too many options. He didn't want to give the public the impression that Council is not making the decision about where major roads will be constructed.

Councilman Mumpower asked if the developer's traffic engineer agrees with staff's position that there needs to be a 10% minimum excess capacity on Swannanoa River Road and that their mitigation efforts do not provide for that. Ms. White said that she understands how they came up with the 10% but she doesn't agree that it should necessarily be a requirement. The requirements for the TIA require us to mitigate to a Level of Service D and it does not specifically say to a Level of Service D with 10% of the traffic still remaining. This is the first time a percentage has been defined.

Ms. White agrees that widening Swannanoa River Road is an ideal solution. If that were totally within our power we would have pursued that as the total access plan for the site and would not have pursued the 1.7 mile road access to the back. What is problematic for us from a standpoint of making that happen is that the right-of-way is very prescriptive and very narrow. The end of Swannanoa River Road near Fairview Road runs by the golf course. As a private entity we have no power to take property from the golf course to provide the required amount of right-of-way for a wider section. That would mean we would be restricted to the one side of the river, which is a narrow piece of land off of the existing shoulder of the road to do all of the widening. We don't believe that it is physically possible for us to accommodate that given the limits of our power as private landowners. We cannot condemn property and we cannot force someone to sell to us in order to provide the required amount of right-of-way. City staff has indicated that the City is not able to offer assistance in that way. Our next best plan to mitigate the traffic impacts of this development was to seek alternative access to the site and that's where the rear access proposal was developed.

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Mr. Shuford said that the TIA requirement for the City deals with a Level of Service D at intersections and not necessarily for a road segment, because it's intersections that generally are the controlling factor in the level of service determination. Ms. White is correct in that the developer did the right thing according to the TIA requirements, but there is a condition regarding traffic with the issuance of a conditional use permit. It is in staff's opinion that we are close enough to the traffic capacity on this road that there is going to be an undue level of congestion. We have tried to work with the developer to resolve this. There are limits on what the developer can do for any of the four traffic mitigation options. They don't have the ability to condemn land and we did discuss the possibility of the state doing that. This particular project would have to be put on the TIP before they would be in a position to do that. The City is not able to assist with the condemnation of property if that is what is necessary. The golf course is owned by Buncombe County and he didn't know if they would be willing or able to accommodate the right-of-way but that is something that needs to be study, especially if Swannanoa River Road is going to be widened in the future.

Councilwoman Jones asked if consideration was given to make the development smaller thus creating less traffic. Ms. White said that there was a different proposal presented and because there were problems with dealing with traffic on that issue, the developers made a lot of changes to that development plan incorporating the urban village concept to get sharing of trips between different land uses, the intensity of out-parcel usage (like restaurants) was downsized. That proposal was more intensive from an overall traffic standpoint.

When Councilwoman Jones asked what percentage of traffic would come from the Supercenter, Ms. White said it would be approximately half for full build-out, which would include Phase 3.

Councilman Ellis preferred the new 1.7 mile new access road. It appears that a lot of the traffic can get to the project with access to I-240. That would serve Swannanoa, Black Mountain, south Asheville and east Asheville. He felt that keeping the new access road, they might not need as much of mitigating traffic from the bridge to Fairview Road. What seems very important is from the bridge to South Tunnel Road.

Ms. White said that when they met with City staff to discuss options, Councilman Ellis' suggestion was discussed. City staff was not satisfied with that.

City Engineer Cathy Ball explained that what that option showed was that even with the access road built, there was the same amount of traffic on both sections of Swannanoa River Road from the bridge to South Tunnel Road and then from the bridge to Fairview Road. Even with having the back entrance it didn't decrease the amount of traffic on the section of Fairview Road to the bridge.

Upon inquiry of Mayor Worley, Ms. Ball said in reviewing the TIA, there is actually more traffic from the bridge to Fairview Road even with the back entrance. That was the basis of staff's recommendation that Swannanoa River Road be widened from South Tunnel Road to Fairview Road.

Mayor Worley asked if the money is made available, would that impact the State's ability, willingness and speed within which the project could be done. Mr. Ken Putman, Division Operations Engineer with the NC DOT, said that one of the big hurdles is money, so if the money came from a private source, that would take care of that issue. But, the planning, design and all environmental impacts would still have to be met. Availability of money would probably speed up the process some because if we were to put a new project in TIP today, it might be ten years before we see it done. In this case, that might knock off two-four years, so we are still talking about in excess of five years of all that planning and design.

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Upon inquiry of Councilman Mumpower, Ms. White said that transit is a way to reduce vehicle trips. Turn lane improvements will also provide some additional capacity.

Councilman Mumpower asked if a continuance of this matter provide staff with an opportunity to explore options and possibilities on this one aspect. Mr. Shuford replied that it would and might be advisable to allow this option to be explored.

City Attorney Oast said that Council could continue this matter to obtain further information.

Councilman Peterson would be in favor of continuing the matter because he would like to see some preliminary designs of a nice 4-lane parkway on Swannanoa River Road, with some turn lanes. Also he'd like to know how much the impact would be, whether it is feasible, etc.

Councilman Dunn felt that the golf course has a lot of character and should not be disturbed for a 4-lane road.

Vice-Mayor Bellamy asked if some of the over 1,000 parking spaces could be reduced for more green space which might help control stormwater runoff. Mr. Green replied that the parking proposed by the developer is approaching the maximum that is permitted under the UDO. There is room to reduce the parking being proposed and still meet the City's UDO requirements. Their tenants have certain parking requirements so we would have to work closely with them. If the issue is continued and with the direction from Council, staff will work to assure that the tenant needs are being met also. Mr. Green said that staff will work with the developer, since reducing the stormwater runoff is the end goal, and maybe we can provide the parking but look at more pervious paving so that the needs of the tenants are met but the goal of reducing stormwater runoff is met also.

Ms. Lawrence felt that a continuance of this matter would be appropriate. We ask that it be continued until after all the requirements for all the different plans are met. We want a full and complete record so that Council can have that to consider and they can have that to give input on.

Mr. Matney said what he has heard the City say on the traffic issue is that we like this revised forth option that Mr. Shuford suggested. He didn't hear Mr. Shuford say that the others wouldn't mitigate he just thinks a lot of them couldn't be met because of other issues. If those could be accomplished that would be adequate mitigation. The revised forth option, if it could be accomplished, would be adequate mitigation. He felt Council could approve the permit and say you have five things that Council finds would mitigate the traffic. Some of them will not happen but leave it up to the developers to see if they can make it happen. If we can do any one of those, it is adequate mitigation. They would rather have more options than one.

Mayor Worley said that if Council decides to continue this matter, we would not be required to re-open the public hearing. City Attorney Oast said that the continuance would be to explore the option that Mr. Shuford has suggested (revised option no. 4). He didn't think that would require an additional public hearing.

Mayor Worley suggested that instead of the condition being to widen Swannanoa River Road so that we maintain a minimum capacity of at least 10%, what if we said to widen Swannanoa River Road and prepare a traffic mitigation plan that maintains the minimum of 10% excess capacity on Swannanoa River Road by whatever means that our traffic engineer confirms meets those tests.

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City Attorney Oast said that there is case law to the effect that you should not leave some kinds of discretionary matters in the hands of the staff. He couldn't say for sure whether that proposal approaches that threshold or not. As long as staff's discretion is sufficiently confined within certain specific parameters, he felt it would be defensible. He noted that the less Council leaves in staff's discretion the more better defensible it is.

Vice-Mayor Bellamy and Councilman Peterson felt that Council should give clear direction to staff.

Mr. Shuford said that there are several other issues that can be addressed. One of the things raised was the urban village won't get built. The applicant did submit, as part of his materials, a schedule that basically ensures that there is simultaneous construction for all practical purposes of Phase I and Phase II (City Exhibit 12). If Council is concerned about that aspect, Council could make that a condition of the conditional use permit. He has some language, approved by DENR, on the environmental issue and how to address that. If Council is interested about the fencing issue raised, we have language we could suggest to Council. In addition, we have some responses for a couple of things that the developer's representatives indicated that they need some help on. One thing is the easement issue where they are not sure that it could be legally assigned to the City and obviously we would want to qualify it. Then the issue they raised about the possibility of having a condition that addresses the existing Wal-Mart store being kept vacant. We have a response to that as well. Basically, though, that response is that we would encourage Council to stay with the original condition. If this matter is continued, there may be another way to get some assurance that the building will not be kept vacant.

Vice-Mayor Bellamy asked about the feasibility of dead-ending Beechwood Road. Mr. Shuford said that instead of doing that, their condition is that there be a neighborhood calming study done. We're really not too enthusiastic about the possibility of simply closing that road off. If you restrict traffic in one area, it expands to another area. Solving the problem of Redwood Forest by simply closing the road might compound the problem of Governor's View Road or the roads in Beverly Hills. That is something that can be studied as part of the traffic calming study.

City Attorney Oast said that if the plan substantially changes then a modification with a public hearing on that part of it would be in order. We won't know if the plan substantially changes until we know the results of this discussion. Council can confine the subject matter, if an additional hearing is required, to just the new information.

At 10:40 p.m., Mayor Worley announced a short break.

Mr. Matney said that if the five options are approved, one of them being widening Swannanoa River Road, then allow the developer to do them, or some combination of them, to keep a minimum of 10% excess capacity on Swannanoa River Road, with the City's traffic engineer confirming the results. He felt that was a technical issue. He didn't think that was giving overbroad discretion to staff.

City Attorney Oast said that Mr. Matney is asking Council to establish a parameter of reserving 10% capacity on Swannanoa River Road and then leaving it to the developer within the five options suggested to figure out a way to reduce their volume to meet that 10% reserve. He advised Council again that the case law is that staff cannot have an undue amount of discretion although some discretion is permissible. The more Council confines that discretion, the more defensible the condition is. He felt that fairly strong arguments could be made that the developer would be expected to bear some of the burden of defending it.

Ms. Lawrence felt that Council should have a transportation plan on the table that Council can agree (after public input) would mitigate the traffic.

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Councilman Mumpower is more concerned about the mitigation and that they resolve it based on our criteria rather than

how they resolve it.

Mayor Worley said Council can (1) continue this matter to a date certain to give staff and the developer more time to explore the transit options; (2) approve the conditional use permit with a condition that sets standards for the mitigation but leaves some degree of flexibility of the five options or combinations to get the mitigation down; (3) approve the conditional use permit with one of the five conditions as being the flat out condition; and (4) turn it down.

City Manager Westbrook said the staff recommendation is widening Swannanoa River Road from South Tunnel Road to Fairview Road, to the point where a minimum of 10% unused capacity is maintained.

Mr. Shuford said that the way the conditional use permit process works, is that Council can vote on the permit and then at the next regular meeting the City Attorney presents an Order before Council, based upon the discussion, and Council has a chance to vote on that.

City Engineer Ball said that one of the things that has been very difficult for staff is that they do not particularly look forward to making a decision about one of these because there are technical issues that they would make a decision on that may not be the political will of the Council. So staff is not at all offended by Council saying they think they should make the decision. One of the things that has been a concern about the four issues raised is the feasibility of each of those. The reason staff made the revised fourth recommendation is primarily for that reason – there may be some legalities as to how much you can delegate to staff (not that staff is not technically capable of doing that. There is other information that comes in to make that decision, other than technical information. That is one of the reasons staff looked at this and said of the alternatives that we have on the table, which one do we think is most likely. In fact we have been working on a Riverside Parkway that would consist of widening this section of road in some form or fashion. That is the reason we came back to you and said these other ones are kind of up in the air, we don't know if they are going to happen, but we feel like this one is something we have been looking at anyway, so it's most likely to happen. We still don't know the cost. I don't think staff is opposed to, at this point in time, saying the developer needs to go back and explore the feasibility of each of these options and come back with a little more information on each of them. We have heard from the State that the changes of getting the off-ramps are questionable. The question of getting the frontage road is questionable. There has not been any detailed study on any of these options.

Councilman Peterson said that they will be building the development in phases and they will not be generating all the traffic in one year. He felt it would be best to continue to give staff time to look into their suggestion that the widening of Swannanoa River Road is the best option, how likely is that, what is the timeframe, and what would be the best and worst case scenarios. Then Council can have further discussion with staff about the other conditions and their concerns.

City Engineer Ball said that they would like to request that Council recommend that the developer assist City staff with the feasibility study of the four options, especially within the timeline we are talking about.

Mr. Matney said that he hasn't heard City staff say that the five options don't mitigate traffic and now they want the developer to pay money to do studies not knowing whether the concept will be approved. City staff said that the concept of each one of the options is acceptable if they can happen. We would request Council's approval on one of those five specifically or a 10% minimum capacity on Swannanoa River Road using one or more of the four. In addition, City staff has said that they were going to widen Swannanoa River Road anyway, so that means

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if we don't build this project you're going to widen it, but now they are asking us to widen it. That doesn't seem fair.

Councilman Mumpower moved to continue of this matter until July 23, 2002, to allow staff and developers time to come up with a doable concept traffic mitigation plan, within the confines of the four options (including the modified fourth option), that achieves a 10% extra capacity on Swannanoa River Road. This motion was seconded by Vice-Mayor Bellamy.

Upon inquiry of Vice-Mayor Bellamy, City Attorney Oast said that if Council specifies the developer do something as a condition and it turns out they couldn't do it, then they could not proceed with the build-out of their project, unless they come back to Council to get a modification to either eliminate that condition or have another condition.

Ms. Sprague said that the practical application of Councilman Mumpower's motion is that we would see from the developer some actual lines on a map that show a 3 or 4-lane road. We have not done that to date. The lines on a map to widen Swannanoa River Road will point out to us those pinch points (if they do exist), whether the widening can be done (if they can get the right-of-way), or if it can't be done under any circumstances. It just gives Council more information on which to base their final decision. Some reduction in square footage might be part of it too. If we find out that we can only get 3 lanes for 2,000 feet, but

they are willing to reduce the square footage, maybe that would be the appropriate answer. She didn't think the other options would happen, except transit.

Mr. Shuford said that staff would be comfortable with continuing the matter to allow these options to be more fully explored with some better realization of their feasibility so that when it does come back before Council, Council has a better range of certainty as to how well they will work and what can be done.

City Attorney Oast said that it was his understanding that the motion is to delay Council's consideration of whether to issue the conditional use permit pending receipt of more information on traffic mitigation.

Mayor Worley said that if we approve the motion to continue the matter, then the other concerns Council has on other issues would still be up for discussion at the continued meeting.

The motion made by Councilman Mumpower and seconded by Vice-Mayor Bellamy carried unanimously.

V. NEW BUSINESS:

VI. OTHER BUSINESS:

A. CLAIMS

The following claims were received by the City of Asheville during the period of May 24-June 13, 2002: Billie MaryAnn Jones (Streets), Dan David (Inspections), Nathan Clark (Streets), Allen Boyd (Police), Lonnie Hoglen (Streets) and Howard Wise (Water).

The City received the following claims during the period of June 14-20, 2002: William R. Burton (Water), Rebecca Guderger (Fire), Francis Cummings (Water), Elizabeth Ballard (Water), J.W. Collins (Water) and Mark White (Streets).

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

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VII. INFORMAL DISCUSSION AND PUBLIC COMMENT:

Comments by Grant Millin

Mr. Grant Million, east Asheville resident, spoke about the visioning in Asheville in terms of the development of land.

Comments by Alan Ditmore

Mr. Alan Ditmore, Leicester resident, was concerned that Wal-Mart's pharmacies have a policy of refusing to carry emergency contraceptives.

VIII. ADJOURNMENT:

Mayor Worley adjourned the meeting at 11:35 p.m.

CITY CLERK

MAYOR