

Regular Meeting

Present: Mayor Charles R. Worley, Presiding; Vice-Mayor Terry M. Bellamy; Councilman Joseph C. Dunn; 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: Councilman James E. Ellis

INVOCATION

Vice-Mayor Bellamy gave the invocation.

I. PROCLAMATIONS:

A. PROCLAMATION PROCLAIMING AUGUST 17, 2002, AS "TOGETHER WE READ ... THE FRENCH BROAD DAY"

Mayor Worley read the proclamation proclaiming August 17, 2002, as "Together We Read ... The French Broad Day" in the City of Asheville. He presented the proclamation to Mr. Rob Neufeld who briefed City Council on some activities taking place during the day.

B. PRESENTATION BY ASHEVILLE VELODROME GROUP

Mr. Chris Kamm thanked City Council for the beautiful French Broad River Park. The diverse facilities are a real asset to not only cyclists, but the community as a whole.

II. CONSENT:

A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON JULY 23, 2002; COMMUNITY MEETING HELD ON JULY 30, 2002; AND THE WORKSESSION HELD ON AUGUST 6, 2002

B. ORDINANCE NO. 2941 - BUDGET AMENDMENT FOR REIMBURSEMENT BY THE N.C. DEPT. OF TRANSPORTATION OF A TECHNOLOGY GRANT

Summary: The consideration of (1) a budget amendment incorporating N. C. Dept. of Transportation (NCDOT) funding for purchase of two computers with associated equipment and one telephone system compatible with the City system to be purchased by the Transit Services Department and (2) and accompanying resolution authorizing the Mayor to enter into an agreement with NCDOT.

The NCDOT requires an agreement between the City and the NCDOT for reimbursement of up to \$37,800.00 for the purchase of two (2) computers and one (1) telephone system. The state will reimburse the City up to 90% (\$37,800) of the total expended amount of \$42,000. The local matching funds have been programmed in the Transit Services Departmental budget. Additionally, execution of this agreement will require an amendment to the City budget.

City staff recommends adoption of the resolution and the proposed budget amendment.

ORDINANCE BOOK NO. 20 – PAGE

-2-

C. RESOLUTION NO. 02-126 - RESOLUTION AUTHORIZING THE CITY TO ENTER INTO A CONTRACT WITH THE N.C. DEPT. OF TRANSPORTATION FOR REIMBURSEMENT OF A TECHNOLOGY GRANT

See Consent Agenda Item "C" above.

RESOLUTION BOOK NO. 27 – PAGE 216

D. RESOLUTION NO. 02-127 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO AN

AGREEMENT WITH APAC INC. TO INSTALL TRAFFIC CALMING DEVICES ON VARIOUS CITY STREETS

Summary: The consideration of a resolution authorizing the City Manager to enter into an agreement with APAC, Inc., for installation of traffic calming measures on City of Asheville streets in the amount of \$87,680.76.

In the 2000-01 budget, City Council appropriated \$100,000 for traffic calming projects throughout the City. Of this \$100,000 approximately \$97,000 remains for the purpose of installing traffic calming and all the signs and marking associated with the traffic calming measures. The following projects were selected:

1. Florida Avenue/Dorchester Avenue (West Asheville)
2. Caribou Road/ Booker Avenue (South Asheville)
3. Gracelyn Road and Ottari Road (North Asheville)
4. South French Broad Avenue (Central Asheville)
5. Wyoming Road (Central Asheville)
6. Wood Avenue (East Asheville)

Staff was unable to get the needed signatures for Wood Avenue. Staff worked with the residents extensively to obtain these signatures but was unsuccessful.

Over the past year and a half we have worked with the residents of the other streets to develop traffic calming plans. Given that the project was estimated to cost less than \$100,000, the City solicited bids from four contractors, which included, APAC, Inc., Asphalt Unlimited, Tarheel Paving, and Lonesome Mountain Paving for the work. Two bids were received with the lowest bidder being APAC at \$87,680.76. The estimate performed by the Engineering staff was \$66,203.94.

City staff requests that City Council approve a resolution authorizing the City Manager to enter into an agreement with APAC, Inc., for traffic calming in the amount of \$87,680.76.

City Engineer Cathy Ball answered various questions from Council, some being, but are not limited to: are there other traffic calming projects being undertaken; is there any kind of breakdown on how much it costs the City to perform a traffic calming study; and, if there is a safety problem, does the City go through the traffic calming study or just take action.

RESOLUTION BOOK NO. 27 – PAGE 217

E. ORDINANCE NO. 2942 - ORDINANCE AMENDING THE WATER BOND CAPITAL IMPROVEMENTS FUND (29 FUND)

Summary: This consideration of a budget amendment to the 29 Fund (Water Bond Capital Improvements Fund) to reflect reprogramming of funds to provide for an increase in

-3-

NCDOT projects, an increase in Master Plan Improvements, and an increase in Annexation Projects.

Funds will be reprogrammed to increase funding for NCDOT Betterment, increase funding for new Annexation projects, and increase Master Plan Improvements. Most of these changes were approved as part of the FY 2002-2003 Water Fund Budget's Capital Improvements Program. Staff is proposing an \$874,847 increase in NCDOT Non-Betterment projects. This is needed to provide additional funding for under budgeted projects and to set up funding for the first of three annual payments for Pisgah Highway Phase II and Sweeten Creek Phase II. Staff is also proposing a \$13,030 increase in NCDOT Betterment (Brevard Road I-240 to I-40) and an increase of \$275,000 for the Sand Hill Road Master Plan Project. These increases are needed because of under budgeting. Finally, an increase of \$175,000 is needed for the new 2002 and 2003 Annexation Projects. All of the increases summarized above will be offset by deleting \$832,370 in Building Safety Improvements and decreasing Critical Needs Improvements Phase II by \$505,507.

Staff recommends approval of the amendment to the 29 Fund to reflect the changes identified above.

ORDINANCE BOOK NO. 20 – PAGE

F. RESOLUTION NO. 02-128 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A CONTRACT WITH BENTLEY SECURITY INC. FOR SCHOOL CROSSING GUARDS

Summary: The consideration of a resolution authorizing the City Manager to renew a contract with Bentley Security for school crossing guards.

The City of Asheville currently contracts with Bentley Retirements Inc., d/b/a Bentley Security to provide school crossing guards for students who attend Asheville City Schools. The total contract price is \$80,233.20 and has not increased from the previous contract period.

Asheville City Schools require the services of school crossing guards at 23 locations to insure the safety of students who must cross the street on their way to school. The work performed requires the presence of the crossing guards for approximately 2 hours each school day (180 days per year). The proposed contract period of (2) years remains unchanged. The minority business office has reviewed the list of available service providers and recommends the City of Asheville renew the contract with the current service provider.

City staff recommends City Council authorize the City Manager to renew a contract with Bentley Security in the amount of \$80,233.20.

RESOLUTION BOOK NO. 27 – PAGE 222

G. ORDINANCE NO. 2943 - ORDINANCE AMENDING THE WATER MAJOR CAPITAL IMPROVEMENTS FUND (35 FUND)

Summary: The consideration of a budget amendment to the 35 Fund (Water Major Capital Improvements Fund) (1) to establish funding for a \$115,000 Environmental Protection Agency (EPA) Grant for a Water Security Assessment; (2) to reduce Contributions From Other Funds – Future by \$718,511 to reflect that the funding for Pisgah Highway Phase II and Sweeten Creek NCDOT projects will be provided in the 29 Fund; and (3) to reprogram funds to increase funding for FY 02/03 Distribution System Improvements, provide for a Contingency to fund FY

-4-

03/04 Distribution System Improvements, and to increase funding in several other projects that were under budgeted.

The Capital Project Ordinance will be amended as follows:

- It will be increased to reflect a \$115,000 grant awarded to the Regional Water Authority (RWA) by the EPA on July 1, 2002. This grant will provide the funding necessary to provide a vulnerability assessment and related security improvements at the water treatment plants and distribution system facilities. The objective of this grant program is to reduce the vulnerabilities that large drinking water utilities present to a terrorist attack.
- Future NCDOT projects will be decreased by \$718,511 because these projects will be funded with 2001 revenue bond proceeds in the 29 Fund. This includes the Pisgah Highway Phase II and Sweeten Creek Phase II NCDOT projects approved as part of the FY 2002-2003 Water Fund Budget's Capital Improvements Program.
- Funds will be reprogrammed to increase funding for FY 02/03 Distribution System Improvements, to provide for a Contingency to fund FY 03/04 Distribution System Improvements, and to increase funding in several other projects that were under-budgeted. These changes were approved as part of the FY 2002-2003 Water Fund Budget's Capital Improvements Program. Staff is proposing a reduction of \$116,811 for Critical Needs Contracts Phase I, a reduction of \$55,011 for FY 99/00 Distribution System Improvements, a reduction of \$9,660 for Bee Tree Dam Renovations, a reduction of \$14,252 for Annexation Blackberry Lane, a deletion of \$83,863 for FY 98/99 Distribution System Improvements, a deletion of \$1,150,000 for FY 01/02 Distribution System Improvements, an increase of \$1,000,000 for FY 02/03 Distribution System Improvements, and an increase of \$429,597 for Contingency for FY 03/04 Distribution System Improvements.

Staff recommends approval of the amendment to the 35 Fund to reflect the changes identified above.

ORDINANCE BOOK NO. 20 - PAGE

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

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

III. PUBLIC HEARINGS:

A. PUBLIC HEARING TO CONSIDER THE CONDITIONAL USE ZONING OF 200 BROOKLYN ROAD/APPLEDORN CONDOMINIUMS FROM RS-8 RESIDENTIAL SINGLE-FAMILY HIGH DENSITY DISTRICT TO RM-16 RESIDENTIAL MULTI-FAMILY HIGH DENSITY DISTRICT/CONDITIONAL USE, AND ISSUANCE OF A CONDITIONAL USE PERMIT TO ALLOW FOR A PROPOSED 168 UNIT CONDOMINIUM

ORDINANCE NO. 2944 - ORDINANCE TO CONSIDER THE CONDITIONAL USE ZONING OF 200 BROOKLYN ROAD/APPLEDORN CONDOMINIUMS FROM RS-8 RESIDENTIAL SINGLE-FAMILY HIGH DENSITY DISTRICT TO RM-16 RESIDENTIAL MULTI-FAMILY HIGH DENSITY DISTRICT/CONDITIONAL USE

-5-

ORDINANCE NO. 2945 - ORDINANCE GRANTING A CONDITIONAL USE PERMIT TO ALLOW FOR A PROPOSED 168 UNIT CONDOMINIUM AT 200 BROOKLYN ROAD/APPLEDORN CONDOMINIUMS

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

After hearing no questions about the procedure, Mayor Worley opened the public hearing at 5:17 p.m.

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.

Planning & Development Direct Scott Shuford said that this is a very significant project. It will essentially double the density of the underlying zoning. It's important to realize that in-fill projects like this require that type of higher density, generally, to make them affordable. That is probably the very reason why this applicant can make this project an affordable project without the infusion of any public money. It's also equally important to understand that the impacts of this project need to be addressed. In this particular case, staff feels that traffic impacts are the primary concerns. The Shiloh neighborhood is in need of traffic calming and intersection improvements. We are proposing a condition that will enable the traffic impacts of the development to be mitigated and that mitigation will occur through a plan that will be developed in concert with the neighborhood with the developer funding. These improvements will eventually benefit both the residents of the neighborhood and the residents of the Appledorn Condominiums. We have a strong record of support for the Shiloh neighborhood and in the past we have (1) made recommendations to Council for denial of a commercial parking lot on Shiloh Road; (2) we opposed an adaptive re-use office project on Caribou Road; (3) we have worked with the neighborhood to resolve a concern about some zoning along Sweeten Creek Road that involved a commercial industrial site; and (4) we're going to be recommending that a small area plan be developed for the neighborhood in the near future. Our support needs to be taken in that context. A valid protest petition has been filed. He showed (City Exhibit 1) how the protest petition was valid due to the signature of residents in Wilson Creek Subdivision. He then noted that Wilson Creek Subdivision, which is also an affordable housing development, received opposition when it was approved. Council will hear specific concerns about traffic, water and sewer, infrastructure, electric utility service, stormwater management and similar issues, but we believe these technical concerns are addressed either in our underlying code requirements or in the specific conditions staff is proposing as part of the recommendation. City staff is recommending approval of this project because (1) they feel the negative impacts can be mitigated; (2) neighborhood traffic conditions will actually be improved; and (3) this project provides significant and substantial promotion of our goal of providing affordable housing in the city.

-6-

City Attorney Oast explained that a valid protest petition has been filed with respect to the rezoning portion of this request. The law requires that in the case of a valid protest petition, the rezoning can only pass by favorable vote of $\frac{3}{4}$ of the entire Council.

Since Councilman Ellis is absent does not affect the number of votes required to pass. Therefore, in this case, it will require all six Council members to vote in favor of the rezoning in order for it to pass.

Mr. Alan Glines, Urban Designer, submitted into the record City Exhibit 2 (Affidavit of Publication), City Exhibit 3 (Certification of Mailing of Notice to Property Owners); and City Exhibit 4 (Staff Report).

Mr. Glines said that this is the consideration of a request to rezone property located on 200 Brooklyn Road from RS-8 Residential Single-Family High Density District to RM-16 Residential Multi-Family High Density District/Conditional Use and of a motion to issue a Conditional Use Permit for a proposed 168 unit condominium.

Mr. Glines said that on May 31, 2002, Rod Hubbard submitted an application for conditional use zoning from RS-8 to RM-16 for an 11.43 acre tract in the Shiloh neighborhood (City Exhibit 5). The property is addressed as 200 Brooklyn Road and is north of West Chapel Road. The plan includes constructing 168 residential condominiums, which will be priced within City affordable housing guidelines.

The surrounding area is zoned RS-8 including this parcel. The RS-8 single-family residential district allows up to 8 single-family units an acre. Under the current zoning, up to 91 single-family units could be constructed on the site given the acreage. Likely though, some number less than that could be built since some of the land would be given over for infrastructure improvements like roads, utility easements etc. With the current rezoning request the applicant is seeking approval of 168 units with a density yield of 14.7 units per acre.

The development consists of seven, three story buildings each housing 24 condominiums (168 units total). Currently the site is undeveloped except for a few small structures that supported the nursery business that operated on the property. The site (City Exhibit 6) also contains an internal parcel that is home to the Faith Tabernacle Christian Church. Under the proposed plan, the church will share an entrance driveway with the development on Brooklyn Road.

A traffic impact analysis was required of the applicant. Under the proposed plan, 984 vehicle trips are estimated to be generated per day with the peak hour generating 91 trips in the evening. The Technical Review Committee (TRC) of the City requested a traffic impact analysis (TIA) be completed even though the peak hour does not meet our threshold of 100 trips. The issues of the narrow roads in the area and additional traffic needed to be reviewed and may be mitigated by incorporating traffic calming measures and intersection improvements. Staff is proposing that the developer contribute some funds toward neighborhood traffic improvements to mitigate the anticipated impact of this amount of new traffic.

The project will be required to provide almost 2 acres of open space. On the plans submitted, ample open space is reserved for use by residents. Staff feels that, in addition, a children's playground should be provided as part of the development to meet the recreational needs of the condominium residents.

The TRC reviewed this project at their June 17, 2002, meeting and recommended that the project be forwarded to the Planning and Zoning Commission and City Council with a recommendation of approval with conditions.

-7-

At its July 10, 2002, meeting, the Planning and Zoning Commission recommended approval of the request by a 7-0 vote, subject to the following conditions. Planning and Development staff concurs with this recommendation.

1. Final landscape plans will be fully reviewed for shrub and tree counts (buffer plantings and parking lot plantings included), which should include existing plant material that will be credited towards the planting requirements.
2. Setback dimensions for the buildings for side and rear property lines need to be a minimum of 40 feet. In addition, a "C" buffer which (25' wide as per Article 11 of the Code) is needed on all property lines except the property line with Brooklyn Road.
3. The existing vegetative buffers along the perimeter of the parcel should also be preserved and will help to minimize the impact of the development on adjoining properties; there shall be no grading in any setback areas, except at vehicle access points.
4. The developer shall provide an internal sidewalk system and connections to Brooklyn Road and Caribou Road; this system shall include crosswalk striping where it crosses internal driveways.
5. To mitigate negative traffic impacts from the development, the developer shall provide up to \$500 per unit for neighborhood traffic calming and intersection improvements to implement plans to be developed by the City in working with the neighborhood; these monies shall be escrowed by the developer prior to the issuance of the initial building permit for any of the condominium buildings and any remainder shall be refunded to the developer at either the completion of the traffic calming and intersection improvement project or three years from the date of escrow, whichever occurs first.

6. The plans must be revised to provide a detail of the intersection of the condominium project with Brooklyn Road, including a 20-foot turning radii.
7. The developer shall provide street lighting.
8. The developer shall work with staff to determine in a reduced number of parking spaces can be accommodated.
9. Open spaces need to be suitable for recreation - particularly for children. Recreation and play areas shall be expanded to include a playground for children.
10. Each unit shall be occupied by the owner or owners thereof, and may not be rented or leased by the owner except as necessary to accommodate transitory situations. "Transitory situations" means a set of circumstances or conditions that are temporary in duration, usually for 18 months or less. By way of illustration and not limitation, such transitory situations may include temporary work assignments, divorce or separation, sickness, or extended travel. This condition shall not be construed to prohibit interfamilial rental arrangements, or a tenancy resulting from court order in a domestic matter. In the case of units acquired through foreclosure or other involuntary or distress-induced conveyance, the period of occupancy by a non-owner shall not exceed 18 months.
11. All units in this project shall have an initial purchase price that meets the City of Asheville housing affordability guidelines.

City Council must take formal action as set forth in section 7-9-9(c)(4) of the Unified Development Ordinance (UDO), and must find that all seven standards for approval of conditional uses are met based on the evidence and testimony received at the public hearing or otherwise appearing in the record of this case (UDO 7-16-2 (c)). Staff's preliminary review, absent the benefit of public input, indicates that all seven standards are met provided certain impacts are mitigated through site design modifications and off site road improvements.

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

-8-

The development is within standards of development practice set forth by the City of Asheville.

- 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 11.43 acre site is gently rolling from Brooklyn Road to the back of the property. The site has significant existing natural vegetation. The buildings have been sited to preserve many of the significant trees. Preserving the existing vegetation around the periphery, along with the natural topography of the site, will serve to buffer neighboring properties.

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

The properties are proposed to be condominium units offered for sale. These residential units represent homeownership opportunities for members of the community and are not expected to injure property values of adjoining or abutting properties. The developer has indicated a willingness to accept an ownership condition that will preclude this development from becoming a rental project.

- 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 surrounding properties are made up of single-family units occupying one-quarter acre and larger lots. This development, which places 24 condominium units per building in seven buildings, appears to have greater scale, bulk and coverage than the surrounding neighborhood. However, by preserving and adding to the natural vegetation along the edges of the property the developer will mitigate any adverse impacts on surrounding properties, making this development be in harmony with the surrounding neighborhood.

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

This proposed development supports the smart growth policies of affordable in-fill housing and adaptive reuse of a former commercial property. The developer has indicated a willingness to accept a condition limiting the initial purchase price for the units within the development.

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

This proposed development is located near transportation facilities and other utilities appear adequate. The project area is centrally located near major road facilities, interstate connections and near the bus transit line that serves Shiloh. In addition, the Asheville Transit System may be able to modify the Route 8 bus service to go by this property. Preliminary review by other utility providers has not revealed any problems for serving the development.

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

-9-

The proposed development will substantially increase the number of cars operating on Brooklyn Road. While the road is not above its ability to handle the additional traffic, the roads in Shiloh are typically quite narrow in width with limited sight distances. Traffic calming measures and intersection improvements are necessary to mitigate the impact of this development from a traffic standpoint. Staff recommends a condition be placed on the development that provides up to \$500 per unit for making those improvements that are determined by the City, in working with the neighborhood, to mitigate traffic safety and operational impacts of the development.

Upon inquiry of Councilman Peterson, Mr. Glines explained the setback requirements along the property and the landscape buffering that will be required. He noted that the site was formerly a nursery and there is a lot of significant plant material that will be stored and reused as part of this buffering.

Councilman Peterson asked if City staff has already identified the particular intersections for improvements. Mr. Shuford said that staff is planning to work with the neighborhood to determine exactly what are the most problematic intersections, as well as where traffic calming problems already exist.

Mr. Rod Hubbard, representing C&R Project Development, LLC, explained how the property has been in his wife's family for a number of years and how he restored the Kress Building in downtown Asheville. He showed pictures of the property (Applicant Exhibits 1, 2 and 3), which showed the height of the trees being 80-120 feet high. His intention is not to remove any of the trees because the property has a natural buffer. When he purchased the land, he promised the Appledorns that he would not cut down any major trees and if he was to develop it, was to leave all of the boundary trees and all of the major vegetation. He said they have had a tree survey done on the entire property and he guaranteed City Council that not one major tree will be removed from the property unless it was diseased. Since the community is important, especially with a development of this size, he met with Mrs. Baynes and a delegation of Shiloh residents at the Shiloh Community Center to explain his development. He also invited Mrs. Baynes and others to join him on the property so he could show them how the buildings would be set. Unfortunately, due to vacations and scheduling conflicts, that was not possible. Using City Exhibit 6, he showed how the Faith Tabernacle Church is in the middle of the development. He met with the Church on numerous occasions and explained his development. He responded to their concerns. He said this is an affordable housing development – not a low-income project. He plans to be able to produce one, two and three bedroom condominiums, starting off at \$69,900. All 168 units will be priced under \$100,000. The one bedrooms will be approximately 800 square feet and each unit will have its own independent balcony. There are 3.5 acres of open space. There will be walkways, trails and two designated play areas for the children. It will be a safe community. The buildings will be located in a way that doesn't affect the tree line buffer and doesn't affect the vegetation and trees. He is guaranteeing to City Council the specimen trees will remain on the property. He guaranteed that there would be no plastic sidings on the buildings. The dressed exterior will be rock, brick or stone with iron for the balconies and that the exterior will be aesthetically pleasing. The TRC said that everything could accommodate the additional 168 units. The Planning and Zoning Commission voted unanimously to approve the project. Since traffic was an issue, they had a TIA performed. Even though the study says we need to bring in some traffic calming issues, there were no major significant problems in the area. He explained how he tried to answer the concerns of the neighborhood. He said that the density is needed to be able to sell affordable housing units. One reason he is proposing this development is to help the community with affordable housing. All of the units will be owner-occupied. He will have condominium documents drawn that says people cannot purchase the units to rent. He had a market research study performed which stated, "Asheville has by some measures the least affordable housing in North Carolina. Asheville ranks lowest in the state and 144th out of 184 cities nationwide for home ownership affordability" He believed his

-10-

development is the right thing for the community. Using Applicant Exhibit 4, he showed a map showing where the people who signed the protest petition lived. Most of the signatures were from residents of Wilson Creek Subdivision, which is a Habitat for Humanity affordable housing development. Those people were given an opportunity to purchase their own home and he felt the same chance should be given to 168 other families. He urged Council to vote in favor of his development.

Upon inquiry of Councilman Mumpower, Mr. Hubbard said that he did have a concern about the \$84,000 (\$500 per unit)

required for traffic calming. He explained that he trying to keep the units affordable starting at \$69,900 and he doesn't want to have to sell it for \$71,400. He did agree though that he did needs to contribute in some way to traffic calming, but he felt \$84,000 might be a little too much.

The following individuals spoke in favor of rezoning the property for various reasons, some being, but are not limited to: area residents are afraid of change; development of the property into condominiums will allow young people to be able to purchase a home; City needs affordable housing; home ownership is needed in the City; the Faith Tabernacle Christian Center and the surrounding area will benefit from this development; playground will allow the children in the area to not have to play in the street; this upscale development will enhance property values of the area; if people on Brooklyn Road parked in their driveways and not on the street there would be enough room for two school buses to pass; and this development is a real step forward to meeting the affordable housing needs of the community:

Mr. Tracy Jefferson, resident on West Chapel Circle
Mr. William Wynn, member of Faith Tabernacle Christian Center
Mr. Maurice Baumgardner, speaking on behalf of the Board of Elders for the Faith Tabernacle Christian Center
Rev. William Robertson, Pastor of Faith Tabernacle Christian Center
Mr. Ulysses Mills, resident on West Chapel Road
Ms. Georgia Jefferson
Mr. Walter Plaue, speaking on behalf of the Carolina Real Estate Investors Association
Mr. Jesse Goode, Asheville resident
Ms. Judy Chaet, representing the Affordable Housing Coalition
Ms. Pat Appledorn
Ms. Christopher Appledorn
Mr. Christopher George Smith, Shiloh resident

The following individuals spoke in opposition of rezoning the property for various reasons, some being, but are not limited to: intersection at Wyatt Street and Brooklyn Road is currently a problem; there is too much traffic in the area; density is too high for the area; development will increase drug activity; crime rate will increase; buildings will not be compatible to the surrounding properties; current problem of exiting onto Brooklyn Road; need for an additional entrance and/or exit not on Brooklyn Road; project drastically change from the initial proposal; condominiums will have a negative impact on the single-family homes in the neighborhood; current infrastructure will not support additional families; no plans for water run-off; no one will want to pay \$69,900 for a bedroom the size of a matchbox; owner will come to Council in the future and ask that they be allowed to not have the condos owner-occupied; single-family homes need to be built in the area; streets are too narrow in Shiloh to allow additional traffic; if Brooklyn Road is widened due to this development, then land will be taken and property values will not decrease; blind spot at the intersection of West Chapel and Brooklyn Road; no sidewalks for the children to walk on in Shiloh; a lot of times Habitat for Humanity doesn't have the families to put in the houses they want to build; buffer is sparse on the Wilson Creek Subdivision side; development will be noisy; and children will use Wilson Creek Subdivision as a cut-through:

-11-

Ms. Anita White Carter, resident on Wyatt Street
Ms. Johnnie Walker, President of the Shiloh Community Association
Ms. Sophie Dixon, Shiloh resident
Ms. Norma Baynes, speaking on behalf of the Shiloh Community Association
(Neighborhood Exhibit 1)
Ms. Georgia Allen, Taft Avenue resident
Mr. Charles Williams, Shiloh resident
Mr. Frederick Payne, Brooklyn Road resident
Ms. Freida Nash, Shiloh resident
Ms. Jean Brown, Wilson Creek Subdivision resident
Ms. Martha Gardenheight, Wyatt Street resident

Mr. Chris Eller, Project Engineer at Civil Design Concepts, said that a tree survey was performed and they have preserved most of the large trees on the site. There will be a 40-foot buffer minimum, but currently there is a 100-foot buffer on the front of the property. The intent is to make this development an affordable for-sale type residential housing restricted to owner-occupied units and in order to do this larger buildings had to be designed. We were still able to provide walking trails and amenity areas surrounding the buildings for all of the neighborhoring community as well as this development to enjoy. Utility allocations have been obtained. A TIA was performed which was not required by City standards. The conclusions read "The existing street system can adequately accommodate the traffic projected to be generated by the new subdivision without making any physical

improvements to the roadways. However, it is recommended that development of the proposed subdivision be able to proceed as planned. Consideration should be given to surrounding street networks to improve existing clearance and site distance deficiencies. Such considerations could include pavement markings, restricted street-side parking, and the removal of vegetation and other visual obstacles." We feel those can easily be accommodated with much less than \$500 per unit. We feel confident this will be a benefit to the community and we hope to work with the City's Transit Department to provide multi-modes of transportation to the development.

When Vice-Mayor Bellamy asked about stormwater control, Mr. Eller said that currently all stormwater flows to the rear into a ravine. The ravine carries the water into Wilson Creek. We will be providing stormwater detention with an impoundment of sorts, either above or underground, controlling and regulating the release of all stormwater to pre-development conditions.

Upon inquiry of Vice-Mayor Bellamy, Mr. Eller said sidewalks will be running along the front of the property on Brooklyn Road and there is a series of sidewalks inter-connecting all of the buildings internally in the development. He said that they will need to work with the City to try to preserve as much of the vegetation as possible, so if there are large trees that have to be accommodated, they may have to ask for a fee in lieu of.

Upon inquiry of Vice-Mayor Bellamy, City Engineer Cathy Ball said that the TIA performed by a professional traffic engineer concluded that the roadway could handle the traffic. Handling the traffic means handling the volume of traffic that would be generated by the development. Basically the capacity of the roads would not be exceeded with the new development. When City staff looked at the project they felt there could be some improvements made by making improvements to the intersections, not particularly to the road width but to the intersections. That is the point where they requested additional funding. Specific intersections have not been identified yet. In the TIA, four different intersections were studied, including the one into the site, and they did not find they reduced from Level of Service A. All of the intersections after the development would remain a Level of Service A, except for one and it went to a Level of Service B. The average width of the roads are about 18-20 feet and if we were to build them today, we would build them wider if they were going to be collector streets. However,

-12-

the streets will allow a bus and a car to pass but they have to slow down. The other request staff made was funding to be used for traffic calming. A bid was just approved to do traffic calming on Caribou Road which runs parallel with Brooklyn Road. We would like to do some additional traffic calming on Brooklyn Road, as well as on Shiloh and West Chapel with the money we have requested from the developer.

Vice-Mayor Bellamy questioned the one entrance on Brooklyn Road. Mr. Eller said that Brooklyn Road is 24 feet wide in front of the site. He said they did look at other access points and they did have a right-of-way through another section. However, in order to not impact more surrounding property owners and in order to not impact other driveways or remove trees, they settled on the one entrance on Brooklyn Road.

There being no request from the applicant for rebuttal, Mayor Worley closed the public hearing at 7:36 p.m.

Councilman Dunn felt that with a strict condominium association documents, they will be able to make sure that the condominiums remain owner-occupied.

Councilman Mumpower said that as he weighed out the facts and the testimony, he felt that the developer has met the seven criteria established by the UDO. His experience to date with the UDO is that it has been a helpful tool for balancing good development and taking care of neighborhoods at the same time. He would support a motion in favor of approving the proposal, however, he felt that \$500 per unit for the developer to pay for traffic calming was excessive.

Vice-Mayor Bellamy said that it was never easy to face people that you know in the community to make a decision that affects not only today but tomorrow. City Council can only take into consideration the seven conditions that need to be met, noting that we all have ideas on what our community needs. The TRC is a committee comprised of people who are paid to make technical decisions. The Planning & Zoning Commission is comprised of people that City Council appoint to represent Council's ideas. Based on seven conditions, she would have to support the development. She feels this is the best development for this piece of property. Even though the TIA keeps the intersections at Level of Service A, City staff has requested funding for additional traffic calming measures to meet the needs of the community. Public input continues with traffic calming measures. She feels confident that the TRC has addressed the infrastructure requirements. City staff will work with the developers on the sidewalks and the additional playground will only benefit the community.

Councilwoman Jones believed that this development would enhance Shiloh. She felt the good benefits far outweigh the negative effects. There are people out there that do not have a voice and we need to remember those people as well. She did

have some concerns but she feels they have been taken care of. Affordable housing is our number one concern. The City cannot stamp out affordable housing by itself, but needs private development like this to work on the problem.

Upon inquiry of Councilman Dunn, Mr. Hubbard said that there would be a condominium association formed after the project is built.

Councilman Peterson felt the traffic mitigation fee of \$84,000 is fairly reasonable. If the City was just looking at speed humps, that would be too much. But, if the City is going to realign or make some improvements to the intersections, then we start getting into substantial costs. He too felt this was a hard decision for Council. If single-family houses were to be built, the maximum density would likely be larger houses, 3-4 bedrooms, probably upscale, probably have 2-3 car families and would probably generate as much traffic as a lower income multi-family. Compared to what the developer could do without the rezoning with what he could do with the

-13-

rezoning, the impact will not be that substantially different. With the funds the developer will escrow for traffic mitigation, it will go a long way of mitigating traffic. The development on this property will not have the kind of harm that other types of development might have and they meet the seven standards. Therefore, he would vote in favor of the project.

Mayor Worley agreed with Vice-Mayor Bellamy and Councilwoman Jones. He felt that change is inevitable and since we can't stop growth, this is a desirable way to accommodate that change.

Councilman Mumpower moved to adopt Ordinance No. 2944 to rezone property located on 200 Brooklyn Road from RS-8 Residential Single-Family High Density District to RM-16 Residential Multi-Family High Density District/Conditional Use. This motion was seconded by Vice-Mayor Bellamy and carried unanimously.

ORDINANCE BOOK NO. 20 – PAGE

Discussion surrounded the amount to have the developer escrow for traffic mitigation.

Mr. Shuford said that City staff doesn't know what the actual numbers will be for traffic mitigation until we find out from the neighborhood what they feel is appropriate and the City does some engineering studies of our own to find out which intersections need improvements. Ms. Ball also stated that intersection improvements are quite expensive, especially if additional right-of-way is required.

Councilman Mumpower suggested a compromise of \$200 per unit, which would total \$33,600. He felt the traffic could be mitigated at a lower cost. He felt we may be doing some overkill in traffic mitigation compared to some of our previous efforts. He felt that \$85,000 is a lot of traffic mitigation compared to what we have done in other places.

Mr. Shuford said that City Council will ultimately approve a bid for this and perhaps a better way to satisfy both issues is to bring back the plan showing the intersection improvements and the traffic calming improvements and ultimately the amount of money the developer would have to escrow.

Councilwoman Jones felt the compromise is that if the City doesn't use the entire \$84,000, they will refund it back.

Councilman Dunn felt that we are asking developers to pay for something that property tax should be used for.

Vice-Mayor Bellamy felt Mr. Shuford's idea for staff to bring back the plan showing the improvements was a good idea with no set dollar amount.

Mayor Worley felt that the developer should have to share in some of the expense to mitigate traffic in the area and suggested \$250 per unit, totaling \$42,000.

Councilman Mumpower moved to adopt Ordinance No. 2945 to issue the conditional use permit for a proposed 168 unit condominium, subject to the following conditions:

1. Final landscape plans will be fully reviewed for shrub and tree counts (buffer plantings and parking lot plantings included), which should include existing plant material that will be credited towards the planting requirements.

-14-

2. Setback dimensions for the buildings for side and rear property lines need to be a minimum of 40 feet. In addition, a "C" buffer which (25' wide as per Article 11 of the Code) is needed on all property lines except the property line with Brooklyn Road.
3. The existing vegetative buffers along the perimeter of the parcel should also be preserved and will help to minimize the impact of the development on adjoining properties; there shall be no grading in any buffer areas, except at vehicle access points.
4. The developer shall provide an internal sidewalk system and connections to Brooklyn Road and Caribou Road; this system shall include crosswalk striping where it crosses internal driveways.
5. To mitigate negative traffic impacts from the development, the developer shall provide up to \$250 per unit for neighborhood traffic calming and intersection improvements to implement plans to be developed by the City in working with the neighborhood; these monies shall be escrowed by the developer prior to the issuance of the initial building permit for any of the condominium buildings and any remainder shall be refunded to the developer at either the completion of the traffic calming and intersection improvement project or three years from the date of escrow, whichever occurs first.
6. The plans must be revised to provide a detail of the intersection of the condominium project with Brooklyn Road, including a 20-foot turning radii.
7. The developer shall provide street lighting.
8. The developer shall work with staff to determine in a reduced number of parking spaces can be accommodated.
9. Open spaces need to be suitable for recreation - particularly for children. Recreation and play areas shall be expanded to include a playground for children.
10. Each unit shall be occupied by the owner or owners thereof, and may not be rented or leased by the owner except as necessary to accommodate transitory situations. "Transitory situations" means a set of circumstances or conditions that are temporary in duration, usually for 18 months or less. By way of illustration and not limitation, such transitory situations may include temporary work assignments, divorce or separation, sickness, or extended travel. This condition shall not be construed to prohibit interfamilial rental arrangements, or a tenancy resulting from court order in a domestic matter. In the case of units acquired through foreclosure or other involuntary or distress-induced conveyance, the period of occupancy by a non-owner shall not exceed 18 months.
11. All units in this project shall have an initial purchase price that meets the City of Asheville housing affordability guidelines.

This motion was seconded by Councilman Dunn.

Councilman Peterson felt that if there was some significant change that needs to be made to one of the intersections, it might not get done because the developer will only be required to pay half the amount City staff has suggested. The City taxpayers shouldn't have to pay for improvements that will result from this development.

Vice-Mayor Bellamy wanted to allow City staff to come back with a plan with specifics in it and then Council will have a better direction of what it wants to do to mitigate the traffic and how much money will be needed for those improvements.

Mr. Shuford suggested Condition No. 12 be reworded to something like "To mitigate negative traffic impacts from the development, the developer shall fund neighborhood traffic calming intersection improvements to implement plans to be developed by the City in working with the neighborhood. These plans shall be approved by City Council after reviewing the proposed mitigation measure and determining whether they are appropriate for addressing the issue. These monies shall be escrowed by the developer prior to the issuance of the initial building permit for any of the condominium buildings and any remainder shall be refunded to the

-15-

developer at either the completion of the traffic calming and intersection improvement project or three years from the date of escrow, whichever occurs first."

Councilman Mumpower said that he would amend his motion as suggested by Mr. Shuford, with the understanding that the plan will come back to City Council. In the meantime, City Council can discuss the issue amongst themselves.

Mayor Worley said that if the \$500 per unit stays as the condition, which is escrowed. If Council makes it clear that the plans and estimates for cost, etc. are to be presented back to and approved by City Council then Council has the ability to deal with total costs and to accept or reject parts of the plans. He felt that City staff clearly has Councils intent to do this in the safest and best manner for the neighborhood, but also the most economical. That still leaves Council with control over those amounts and the ultimate cost per unit.

At Councilman Mumpower's request, City Attorney suggested the following Condition No. 5: "To mitigate negative traffic

impacts from the development, the developer shall provide up to \$500 per unit for neighborhood traffic calming intersection improvements to implement plans to be developed by the City and approved by City Council in working with the neighborhood. These monies shall be escrowed by the developer prior to the issuance of the initial building permit for any of the condominium buildings and any remainder shall be refunded to the developer at either the completion of the traffic calming and intersection improvement project or three years from the date of escrow, whichever occurs first."

Councilman Mumpower moved to amend his original motion to approve the conditional use permit with the eleven conditions outlined above and with Condition No. 5 being revised as read by City Attorney Oast. Councilman Dunn did not accept the amendment. Therefore, the original motion made by Councilman Mumpower died for a lack of a second.

Vice-Mayor Bellamy moved to amend the motion to approve the conditional use permit with the eleven conditions outlined above and with Condition No. 5 being revised as read by City Attorney Oast. This motion was seconded by Councilman Peterson and carried unanimously.

The original motion, as amended, carried unanimously.

ORDINANCE BOOK NO. 20 – PAGE

At 8:31 p.m., Mayor Worley announced a short break.

B. PUBLIC HEARING TO REZONE TWO LOTS ON ARDMION PARK ROAD FROM RS-8 RESIDENTIAL SINGLE-FAMILY HIGH DENSITY DISTRICT TO RM-8 RESIDENTIAL MULTI-FAMILY MEDIUM DENSITY DISTRICT

City Attorney Oast said that a valid protest has been filed which will require a ¾ majority vote by Council to approve the project. The petitioner has requested that the public hearing be continued until September 10, 2002, in order to allow him additional time within which to prepare for the City Council meeting.

Vice-Mayor Bellamy moved to continue this public hearing until September 10, 2002. This motion was seconded by Councilwoman Jones and carried unanimously.

C. PUBLIC HEARING TO REZONE TWO LOTS AT 1896 HENDERSONVILLE ROAD FROM COMMERCIAL INDUSTRIAL DISTRICT TO HIGHWAY BUSINESS DISTRICT

-16-

ORDINANCE NO. 2946 - ORDINANCE TO REZONE TWO LOTS AT 1896 HENDERSONVILLE ROAD FROM COMMERCIAL INDUSTRIAL DISTRICT TO HIGHWAY BUSINESS DISTRICT

Mayor Worley opened the public hearing at 8:56 p.m.

Chief Planner Gerald Green said that this is the consideration of an ordinance to rezone two lots at 1896 Hendersonville Road from Commercial Industrial District to Highway Business District. This public hearing was advertised on August 2 and 9, 2002.

At their July 10, 2002, meeting the Asheville Planning and Zoning Commission recommended rezoning from Commercial Industrial District to Highway Business District property located at 1896 Hendersonville Road (PIN No. 9655.13-24-2854 and 4984). The 2.77-acre parcel is located near the intersection of Hendersonville Road and Mills Gap Road. Currently the site is undeveloped. Surrounding zoning is Highway Business and Commercial Industrial. This property is one of the last parcels fronting on Hendersonville Road zoned Commercial Industrial. Changing land use patterns along the Hendersonville Road corridor have resulted in commercial development and office uses dominating along the corridor. The requested rezoning would permit the property to be developed in a pattern similar to that of the other properties along the corridor. Highway Business zoning would permit more efficient development of the property by permitting parking and related uses in the setback. Adequate infrastructure is in place to serve development permitted in the Highway Business district.

The Planning and Zoning Commission unanimously recommended approval of the request to rezone two lots at 1896 Hendersonville Road from Commercial Industrial District to Highway Business District. Staff concurs with this recommendation.

Mayor Worley closed the public hearing at 9:00 p.m.

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

Councilman Dunn moved for the adoption of Ordinance No. 2946. This motion was seconded by Vice-Mayor Bellamy and carried unanimously.

ORDINANCE BOOK NO. 20 – PAGE

D. PUBLIC HEARING TO CONSIDER A REQUEST TO APPROVE A MODIFICATION FROM THE SUBDIVISION STANDARD THAT ALL RESIDENTIAL LOTS ABUT A PUBLICLY MAINTAINED STREET ON PROPERTY AT 24 HAW CREEK CIRCLE, ASHEVILLE NC

Mayor Worley opened the public hearing at 9:01 p.m.

Urban Planner Carter Pettibone said that this is the consideration of a request to grant a modification of the Subdivision Regulations of the Unified Development Ordinance (UDO) to allow the creation of a lot that does not front upon a public street. This public hearing was advertised on August 2 and 9, 2002.

The City has received a request from Karl Lail and Donald Sheppard to subdivide a parcel (PIN No. 9659.08-87-9831) located at 24 Haw Creek Circle into two lots. The parcel is 1.2-acres in size, zoned RS-4 Residential Single Family Medium Density District and currently has two homes located on it. The property owner occupies the home located farther from the street and rents out the other. The property has approximately 20 feet of frontage on Haw Creek

-17-

Circle and contains one driveway that provides access to both homes. Since it is not possible to obtain the minimum frontage for each lot as specified in the Subdivision Ordinance, a modification is required in order to subdivide the property with one lot not having street frontage.

The petitioners wish to subdivide the lot in order for each home to have its own lot and for the property owner (Sheppard) to sell the front lot and home to the other applicant (Lail). No additional homes are proposed and each resulting lot would be able to meet the UDO requirements of the RS-4 District for minimum lot size and setbacks.

Since one of the resulting lots would not have street frontage, access to the rear lot would need to be maintained through the creation of an access easement across the front lot. The establishment of this easement was a condition placed on the recommendations of staff, the Technical Review Committee (TRC) and the Planning and Zoning Commission.

The TRC and Planning and Zoning Commission each voted unanimously to recommend approval with the above-mentioned condition. The Planning and Development staff also recommends approval of the subdivision modification with the condition.

Mayor Worley closed the public hearing at 9:04 p.m.

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

Councilman Mumpower moved to approve a modification from the subdivision standard that all residential lots abut a publicly maintained street on property at 24 Haw Creek Circle in Asheville, N.C., subject to an access easement across the front lot. This motion was seconded by Vice-Mayor Bellamy and carried unanimously.

E. PUBLIC HEARING TO REZONE A PARKING LOT LOCATED BEHIND 818 HAYWOOD ROAD FROM RM-8 RESIDENTIAL MULTI-FAMILY MEDIUM DENSITY DISTRICT TO COMMERCIAL BUSINESS II DISTRICT

ORDINANCE NO. 2947 - ORDINANCE TO REZONE A PARKING LOT LOCATED BEHIND 818 HAYWOOD ROAD FROM RM-8 RESIDENTIAL MULTI-FAMILY MEDIUM DENSITY DISTRICT TO COMMERCIAL BUSINESS II DISTRICT

Mayor Worley opened the public hearing at 9:06 p.m.

Urban Planner Carter Pettibone said that this is the consideration of an ordinance to rezone 818 Haywood Road from RM-8 Residential Multi-Family Medium Density District to Community Business II District. This public hearing was advertised on August 2 and 9, 2002.

The applicants, Raife and Steve Davis, have requested the rezoning of a 0.13-acre parcel (PIN No. 9638.13-04-9818)

located at 818 Haywood Road to allow for the reuse of an existing commercial building on the site. The purpose of the CB II District is to provide areas for medium-to-high-density business and service uses serving several residential neighborhoods.

The existing land uses in the area include single-family residences to the south and west, multi-family residences to the east and offices and parking to the north. The site is located behind a lot that has frontage on Haywood Road, which is a major thoroughfare with sufficient capacity to handle uses allowed in the CB II District.

-18-

The building on the site is a former single-family home that was converted to an office and moved back from its original location closer to Haywood Road in 1992. At the time of this change, the property was zoned Commercial Service (CS), which allowed offices and other commercial uses. The property owners, who also own the property in front of the one in question, developed the properties in accordance to the CS standards, but placed the building in a location that straddled the properties' common line. At the time of the City-wide zoning change in 1997, the dividing line between CB II and RM-8 was drawn essentially one property deep along Haywood Road. The building and its parking were located on two lots, but only the lot adjacent to Haywood Road was zoned CB II. This resulted in the zoning line actually running through the building. It is the Planning staff's opinion that both lots should have been zoned CB II at that time.

In consideration of the above, the adjoining zoning and land uses in the area to the north and east of the site, and the project site's proximity to the Haywood Road thoroughfare, the proposed zoning change appears to be consistent with the intent and purpose of the Unified Development Ordinance. The proposed rezoning is also in keeping with the intent of the Haywood Road Corridor Plan, which was approved in 1999 and serves as a guide for future development along Haywood Road in the West Asheville neighborhood. This parcel is one of the properties included in the Haywood Road Corridor Study Area and rezoning it to CB II would help accomplish the Plan's goal of enhancing the existing balanced mix of uses on Haywood Road through commercial, institutional, open space, and small parks.

The Planning and Zoning Commission voted unanimously to recommend approval of the rezoning of the property located at the 818 Haywood Road from RS-8 to CB II. The Planning and Development staff also recommends approval.

Pastor Alton Scott was curious about what the long-term plans are for that particular piece of property.

Mayor Worley closed the public hearing at 9:13 p.m.

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

Councilman Mumpower moved for the adoption of Ordinance No. 2947. This motion was seconded by Vice-Mayor Bellamy and carried unanimously.

ORDINANCE BOOK NO. 20 – PAGE

F. PUBLIC HEARING TO AMEND THE 2002 CONSOLIDATED COMMUNITY DEVELOPMENT BLOCK GRANT & HOME ACTION PLAN

RESOLUTION NO. 02-129 - RESOLUTION AMENDING THE 2002 CONSOLIDATED COMMUNITY DEVELOPMENT BLOCK GRANT & HOME ACTION PLAN

ORDINANCE NO. 2948 - BUDGET AMENDMENT TO GIVE EFFECT TO AMENDMENTS TO THE CITY'S CONSOLIDATED COMMUNITY DEVELOPMENT BLOCK GRANT AND HOME ACTION PLAN FOR 2002-03

At Vice-Mayor Bellamy's request, Councilwoman Jones moved to excuse Vice-Mayor Bellamy from participating in this matter due to a conflict of interest. This motion was seconded by Councilman Dunn and carried unanimously.

-19-

Mayor Worley opened the public hearing at 9:14 p.m.

Community Development Director Charlotte Caplan said that this is the consideration of amendments to the 2002 Consolidated Community Development Block Grant (CDBG) and HOME Action Plan. This public hearing was advertised on August 2 and August 9, 2002.

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Council originally approved the 2002 Action Plan for CDBG and HOME funding on April 23, 2002. Since then, some additional CDBG funds have become available from program income or programs completed under budget, and a request has been received for a significant change to a HOME-assisted program. The following changes are now recommended:

A. CDBG AMENDMENTS

Unallocated CDBG funds currently total \$249,018 as follows:

Funds returned from NHS Montford Gateway Loan Guarantee (project completed)	\$ 44,045
Additional program income anticipated from sale of Biltmore Avenue property	70,000
Contingency	86,575
Program income recd. in 2001-02 and not yet allocated	<u>48,398</u>
Total available	\$249,018

The recommended allocations are:

1. Woodfin Apartments New CDBG allocation: \$89,250

The Housing Authority of the City of Asheville has re-submitted its request for CDBG assistance for acquisition and renovation of the 19-unit Woodfin Apartment, located in downtown Asheville, reducing the amount requested from \$250,932 to \$89,250. The Housing & Community Development (HCD) Committee recommends this grant on the grounds that the need for the project remains very high and that the amount requested is now within the funds available.

2. Code Enforcement Demolitions New CDBG allocation: \$41,370

The general fund appropriation for demolitions was eliminated from the 2003 City Budget. The removal of certain vacant, dilapidated structures that are a blight on surrounding property is both CDBG-eligible and desirable for the achievement of Consolidated Plan goals. The HCD Committee recommends an allocation of \$41,370, which is sufficient to demolish about eight structures.

3. Hillcrest Enrichment Program Increase CDBG allocation by: \$5,000

Funding constraints led to a reduction in the grant allocated for this Housing Authority youth program from \$50,000 in 2001-02 to \$45,000 in 2002-03. The HCD Committee now recommends restoring the grant to its former level.

4. CDBG Administration Increase CDBG allocation by: \$29,065

As part of the 2003 interim City Budget, Council has approved the transfer of one filled position within the Planning & Development Department from general funding to CDBG/HOME funding. The transferred staff person will work exclusively on CDBG- and HOME-eligible administrative and planning work. Staff estimates that the cost will be \$48,441 this year, to be funded 60% from CDBG and 40% from HOME (see below).

5. Contingency \$84,333

Funds will be retained for urgent needs, unforeseen cost overruns, or shortfalls in anticipated program income during the year. If not needed, these funds will be available for the 2003-04 funding cycle.

-20-

B. HOME AMENDMENTS

1. HOME Administration

The cost to the HOME program of the transferred staff position will be \$19,376. The Asheville Regional Housing Consortium Board recommends that this be covered by reducing Member Government Administration and increasing City of Asheville HOME Program Administration by the same amount. The total amount allocated for HOME administration will remain unchanged at 10% of the HOME budget.

2. Change of Location for Henderson County Habitat Affordable Housing Project

Henderson County Habitat for Humanity was awarded \$50,000 in 2002 HOME funds, through Henderson County, to purchase land for 10 new single-family homes at the Village of King Creek on Spartanburg Highway in Hendersonville. The agency has now asked to use these funds instead to purchase land on Stepp Road in the Clear Creek district of Henderson County. Habitat will go ahead with the Village at King Creek project using a different source of funds. A separate public hearing on this item was held in Hendersonville on July 24, 2002, and both the Henderson County Board of Commissioners and the Asheville Regional Housing Consortium Board recommend approval.

Staff recommends approval of the amended Action Plan.

Mayor Worley closed the public hearing at 9:18 p.m.

Mayor Worley said that members of Council have previously received copies of the resolution and budget amendment and they would not be read.

Councilman Mumpower moved for the adoption of Resolution No. 02-129. This motion was seconded by Councilman Dunn and carried unanimously.

RESOLUTION BOOK NO. 27 – PAGE 223

Councilwoman Jones moved for the adoption of Ordinance No. 2948. This motion was seconded by Councilman Dunn and carried unanimously.

ORDINANCE BOOK NO. 20 – PAGE

IV. UNFINISHED BUSINESS:

A. ORDINANCE NO. 2939 – ORDER GRANTING A CONDITIONAL USE PERMIT TO ALLOW FOR CONSTRUCTION OF A LEVEL III PROJECT AT 437 SWANNANOA RIVER ROAD

City Attorney Oast said that this is the consideration of an ordinance granting a conditional use permit to Horne Properties, Inc. for the Riverbend Marketplace Project.

The ordinance is granting a conditional use permit to Horne Properties, Inc. for the Riverbend Marketplace Project to be located on Swannanoa River Road, formerly known as the Sayles Biltmore Bleacheries site. Public hearings were held on June 25 and 26, and July 23, 2002, to hear the proposal of the developer and receive public comment on the Project. Council voted to grant the permit, and directed staff to prepare an order with findings and conclusions.

If City Council approves the order granting a conditional use permit to Horne Properties, Inc. for the Riverbend Marketplace Project, adoption of the ordinance is recommended.

-21-

City Attorney Oast said that he has submitted to City Council a memo with changes to the draft conditional use permit. In addition, he outlined other minor changes. He said that the only condition he drafted without City Council voting on the actual wording was Condition No. 14. Said condition reads "All necessary agreements, easements and permits shall be in place prior to the construction of any development phase or part thereof, including those necessary for the construction of the roads and other infrastructure serving the Project."

Regarding Condition No. 14, Councilman Peterson recalled that at the public hearing, one person said that the contamination plume wasn't moving because the existing building and parking lot was there preventing water from coming into the ground and washing it away. It seems that if the site is cleared then you would have that water seeping into the ground and possibly spreading that contamination. He asked if that has that been taken into account.

City Attorney Oast said that the way Condition 14 was worded, it does not preclude demolition from taking place before all these permits are in place.

Councilman Peterson felt there was a bit of potential contradiction in Condition No. 10, about having the applicant enter into an agreement with the N.C. Dept. of Environment and Natural Resources (DENR) before work is done, and then Condition No. 14 saying that they could do that work without entering into that agreement.

City Attorney Oast said that before any ground disturbing activity could take place on the site, including demolition, they would have to have entered into the agreement that is provided for in Condition No. 10. What Condition No. 14 is referring to are things like the agreements for constructing the road through River Ridge Shopping Center, the approval from Norfolk Southern Railway, etc. He felt the environmental aspect provided for in Condition No. 10 would require that any demolition activity be approved by the State before it could occur.

City Engineer Cathy Ball said that she felt it may be possible to change it so that we state that they can't do demolition

unless it's necessary in order to alleviate some of the environmental problems that are going on. She understood Councilman Peterson's concern that doing anything could potentially cause some problems, unless they provided the City with an engineer's report specifically stating that the demolition would not harm the plume at all.

Mayor Worley suggested amending Condition No. 14 to add at the very end "and any activity on the site, including demolition, shall be consistent with the Administrative Agreement entered into under Condition No. 10 above."

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

Councilman Mumpower moved for the adoption of Ordinance No. 2939 as amended by the memo with changes, the additional changes outlined by City Attorney Oast, and the addition to Condition No. 14. This motion was seconded by Councilman Dunn and carried on a 5-1 vote with Councilman Peterson voting "no."

ORDINANCE BOOK NO. 20 – PAGE 8

V. NEW BUSINESS:

A. RESOLUTION NO. 02-130 - RESOLUTION APPOINTING A MEMBER TO THE PUBLIC ART BOARD

-22-

Vice-Mayor Bellamy said that this is the consideration of appointing a member to the Public Art Board.

Mr. Tucker Cooke has resigned as a member on the Public Art Board, thus leaving an unexpired vacancy until December 31, 2003.

On August 13, 2002, City Council interviewed Lois Mills, Barbara Cary, Louise Glickman and Joel Helms.

Barbara Cary received five votes; Lois Mills received one vote, and Joel Helms received no votes. Therefore, Barbara Cary was appointed as a member to the Public Art Board to fill the unexpired term of Mr. Cooke, term to expire December 31, 2003, or until her successor has been appointed.

RESOLUTION BOOK NO. 27 – PAGE 224

VI. OTHER BUSINESS:

A. CLAIMS

The City received the following claims during the period of July 19, 2002, through August 1, 2002: Patricia Glazener (Transit Services), Annette Pulley (Parks and Recreation) and Joyce Facemyer (Transit Services).

The City received the following claims during the period of August 2-8, 2002: Harold Littlejohn (Transit Services), Mike O'Conner (Streets), Police Tow (Police) and Bele Chere '02 (Sanitation).

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

B. LAWSUIT

The City was served with the following lawsuit on July 23, 2002: James Edward Imes v. City of Asheville, CCL Management, Inc. and Asheville City Coach Lines Inc. The nature of the proceeding is a Complaint for wrongful discharge in violation of public policy – jury demanded. This matter will be handled in-house.

VII. INFORMAL DISCUSSION AND PUBLIC COMMENT:

Vice-Mayor Bellamy recognized Dr. Nilous Avery who has retired. She invited the public to one of the several events honoring Dr. Avery. He and his wife Christine have worked hard for our community.

Councilwoman Jones stressed the need for mentors and tutors for our school children.

Vice-Mayor Bellamy welcomed the new Executive Director of the YMI Cultural Center Rita Martin.

Councilman Dunn praised the Henderson County All-Stars for proceeding to the Babe Ruth World Series.

Vice-Mayor Bellamy congratulated City Manager Westbrook in receiving the ICMA Accredited Manager Award.

-23-

Mr. Fred English felt the City was contributing too much to the Chamber of Commerce because they are not bringing in industry to our area.

VIII. ADJOURNMENT:

Mayor Worley adjourned the meeting at 9:42 p.m.

CITY CLERK

MAYOR