

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

Mayor Worley gave the invocation.

ADDITION TO THE AGENDA

Mayor Worley said that there will need to be Council discussion of current status of water negotiations with Henderson County including what our responses might be to Henderson County. Since he anticipated that this Council meeting will be lengthy, he will add an item to "Other Business" to ask for a motion to continue the Council meeting until Thursday, November 14, 2002, at 3:00 p.m. in the Council Chamber.

I. PROCLAMATIONS:

A. RECOGNITION OF HOUSING NORTH CAROLINA AWARD FOR MOUNTAIN HOUSING OPPORTUNITIES' WIND RIDGE APARTMENTS

Mayor Worley recognized Mountain Housing Opportunities' (MHO) Executive Director Scott Dedman, MHO Board Chair John Hayes, Chairman of the Buncombe County Commissioners Nathan Ramsey, and Community Development Director Charlotte Caplan for receiving the North Carolina Award for Mountain Housing Opportunities' Wind Ridge Apartments. Each spoke about the cooperation between the City, County and non-profits and the fine example of this development resulting from that cooperation.

B. PROCLAMATION PROCLAIMING NOVEMBER 11, 2002, AS "VETERANS DAY"

Council members Dunn, Ellis and Mumpower, veterans, presented the proclamation, which proclaimed Monday, November 11, 2002, as "Veterans Day" in the City of Asheville. They acknowledged all veterans present in the Council Chamber.

II. CONSENT:

Mayor Worley removed Consent Agenda Item B from the Agenda due to an upset bid being received.

- A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON OCTOBER 22, 2002; THE WORKSESSION HELD ON OCTOBER 29, 2002; AND THE WORKSESSION HELD ON NOVEMBER 5, 2002**
- B. RESOLUTION AUTHORIZING THE SALE OF PROPERTY OFF BLAKE MOUNTAIN CIRCLE TO RHETT A. GROTZINGER**

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This item was removed from the consent agenda due to an upset bid being received.

C. RESOLUTION NO. 02-175 - RESOLUTION APPROVING THE BUNCOMBE COUNTY SOLID WASTE MANAGEMENT PLAN

Summary: The consideration of a resolution to approve the Buncombe County Solid Waste Management Plan.

The City of Asheville actively participated in the development of the Buncombe County Solid Waste Management Plan covering the period July 1, 2002, to June 30, 2012, as required by the North Carolina Department of Environment and Natural Resources.

N. C. Gen. Stat. sec. 130 A-309.09A (b) requires each unit of local government to develop a comprehensive 10 year solid waste management plan in cooperation of local governments. The draft report was presented to City Council August 24, 2002, and the public comment period has ended. The changes to the draft report include:

- Buncombe County cardboard recycling figures changed to reflect residential customers only.
- Asheville's recycling program cost correction (\$3.00/mo to \$2.55/mo)
- Formatting and grammatical edits.
- Comments from private citizens.

- City staff recommends approval of the Buncombe County Solid Waste Management Plan.

RESOLUTION BOOK NO. 27 – PAGE 273

D. RESOLUTION NO. 02-176 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A TEMPORARY SERVICES AGREEMENT WITH FORSYTH INITIATIVE FOR RESIDENTIAL SELF-HELP TREATMENT INC.

Summary: The consideration of a resolution to approve the Temporary Services Agreement with the City of Asheville and Forsyth Initiative For Residential Self-Help Treatment Inc. (FIRST) for temporary workers.

The City of Asheville requires temporary workers throughout the budget year for seasonal workloads in the Public Works Department (Sanitation Division), Parks and Recreation Department and Civic Center. The contract is a collective contract for all City Departments.

FIRST is a non- profit organization providing counseling to individuals and provides individuals with opportunities to learn new skills through job placements with various organizations. The City of Asheville utilized FIRST staff last year with excellent results and has expanded the seasonal program with FIRST.

- City staff recommends approval of the Temporary Services Agreement with the City of Asheville and Forsyth Initiative For Residential Self-Help Treatment Inc. for temporary workers.

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E. RESOLUTION NO. 02-177 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO AN AGREEMENT WITH THE U.S. DEPT. OF JUSTICE FOR A COPS IN SCHOOL GRANT AWARD

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Summary: The consideration of a resolution entering into an agreement with the U.S. Department of Justice, Office of Community Oriented Policing Services (COPS), to accept a COPS in Schools grant award and adoption of the accompanying budget amendment.

The Asheville Police Department was awarded a \$110,912 grant for three years from the U.S. Department of Justice to hire one, full-time police officer through the COPS in Schools program. No match is required for this grant.

The Asheville Police Department has participated in the School Resource Officer program since the early 1990's. Since 1988, ten schools have had contact with a school-based police officer on a regular basis. The program has been very successful in our community. The COPS in Schools grant is a great opportunity for the City of Asheville Police Department to enhance our community policing efforts by adding one full-time officer to the department to work exclusively with one of our city schools. All salary and benefit expenses for the officer are covered through this program for the three-year grant period.

The City of Asheville entered into an agreement with the City of Asheville School System for this School Resource Officer in April 2002. The agreement outlines the duties of the School Resource Officer, which include consulting with school officials on methods to increase student safety, regularly checking on the school facilities when not in use, and initiating and/or assisting with investigations of thefts, fights, drug possession, etc.

- City staff recommends the City accept the grant award by entering into an agreement with the United States Department of Justice, and by increasing the budget by \$110,912.

RESOLUTION BOOK NO. 27 – PAGE 275

F. ORDINANCE NO. 2968 - BUDGET AMENDMENT FROM COPS IN SCHOOLS GRANT AWARD

Summary: See Consent Agenda Item "E" above.

ORDINANCE BOOK NO. 20 – PAGE

G. RESOLUTION NO. 02-178 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO AN AGREEMENT WITH THE U.S. DEPT. OF JUSTICE FOR A LAW ENFORCEMENT BLOCK GRANT AWARD

Summary: The consideration of a resolution entering into an agreement with the U.S. Department of Justice, Office of Justice Programs, to accept a Law Enforcement Block Grant and adoption of the accompanying budget amendment in the amount of \$90,066.

The Asheville Police Department was awarded a \$90,066 grant from the U.S. Department of Justice to fund programs designed to reduce crime and improve public safety. A local match of \$10,007 is required, which is funded with drug tax refund proceeds.

The Asheville Police Department has received Law Enforcement Block Grants since 1997. Local Law Enforcement Block Grants can be used for a variety of general purposes. These include: hiring new law enforcement officers, paying overtime for current officers, procuring equipment to aid in law enforcement functions, enhance security measures at schools, and establish crime prevention programs. These grants are very helpful for the Asheville Police Department because there are few restrictions on how the funds are spent.

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The Local Law Enforcement Block Grant has enabled the Asheville Police Department to hire several new law enforcement officers as well as purchase important small equipment items, including, photographic security equipment, bomb protection equipment, and an equipment transportation trailer.

City staff recommends the City accept the grant award by entering into an agreement with the United States Department of Justice, and by increasing the budget by \$90,066.

RESOLUTION BOOK NO. 27 – PAGE 276

H. ORDINANCE NO. 2969 - BUDGET AMENDMENT FROM THE LOCAL LAW ENFORCEMENT BLOCK GRANT AWARD

Summary: See Consent Agenda Item "G" above.

ORDINANCE BOOK NO. 20 - PAGE

I. ORDINANCE NO. 2970 - BUDGET AMENDMENT FOR FAIR HOUSING ASSISTANCE PROGRAM

Summary: The consideration of a budget amendment, in the amount of \$40,700, to recognize a Fair Housing grant.

The City of Asheville has been awarded a grant of an additional \$40,700 from the U.S. Department of Housing & Urban Development for the City's Fair Housing Assistance Program (FHAP).

Staff recommends approval of the budget amendment.

ORDINANCE BOOK NO. 20 – PAGE

J. RESOLUTION NO. 02-179 - RESOLUTION AUTHORIZING THE EXECUTION OF AN INSTALLMENT PURCHASE CONTRACT WITH WACHOVIA BANK, NATIONAL ASSOCIATION FOR THREE FIRE ENGINES

Summary: The consideration of a resolution authorizing the installment financing of three fire engines.

The City of Asheville Capital Improvement Plan 2001/02 to 2006/07 included authorization in Fiscal Year 01/02 for the installment purchase of two fire engines and the 2002/03 to 2007/08 Capital Improvement Plan included authorization in Fiscal Year

02/03 for a ladder truck.

The Finance Department sought proposals from 14 firms to finance the purchase of the above listed equipment. Proposals were received from nine firms, the best of which was submitted by Wachovia Bank, N.A. - - 3.06% for ten years.

The proposed resolution authorizes an installment purchase contract between the City of Asheville and Wachovia Bank, National Association for the purchase of the three fire engines and authorizes the City Manager, City Attorney, Finance Director and City Clerk to execute and deliver any and all necessary documents.

City staff recommends City Council adopt the resolution to authorize the installment purchase contract for three fire engines.

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RESOLUTION BOOK NO. 27 – PAGE 277

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 FOR PROPERTY LOCATED AT THE INTERSECTION OF ARDMION PARK ROAD AND ALEXANDER DRIVE 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 CONSTRUCTION OF 12 DWELLING UNITS

ORDINANCE NO. 2971 - ORDINANCE TO CONSIDER THE CONDITIONAL USE ZONING OF PROPERTY LOCATED AT THE INTERSECTION OF ARDMION PARK ROAD AND ALEXANDER DRIVE FROM RS-8 RESIDENTIAL SINGLE-FAMILY HIGH DENSITY DISTRICT TO RM-16 RESIDENTIAL MULTI-FAMILY HIGH DENSITY DISTRICT/CONDITIONAL USE

ORDINANCE NO. 2972 - ORDINANCE GRANTING A CONDITIONAL USE PERMIT TO ALLOW FOR CONSTRUCTION OF 12 DWELLING UNITS

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.

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

After hearing no questions about the procedure, Mayor Worley opened the public hearing at 5:20 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.

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

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

Mr. Green said that this is the consideration of a request to rezone property located at the intersection of Ardmion Park

High Density District to RM-16 Residential Multi-Family High Density District/Conditional Use and of a motion to issue a Conditional Use Permit to allow for construction of 12 dwelling units.

At their October 2, 2002, meeting the Planning and Zoning Commission recommended rezoning of property located at the intersection of Ardmion Park Road and Alexander Drive (City Exhibit 3 – Location Map) from RS-8 to RM-16. The 2.33 acre property is located on Beaucatcher Mountain in an area with a variety of land uses (City Exhibit 3 – Proposed Master Plan). Existing development in the area includes apartments, single family homes, and attached condominiums. An abandoned single family home is located on the property. Topography of the property is steep, with the area subject to the City's hillside area development standards. The standards limit the density of development and the percent of the site that can be graded. The proposed development complies with the limitations of the hillside area development standards, provided the requested rezoning is approved. The site plan calls for the buildings and the parking areas to be located on the upper part of the property in the location of the existing home in order to limit the land disturbance required to develop the site.

The original rezoning request for this property was for a standard reclassification to RM-8 (no conditional use permit requested). This request received a unanimous recommendation for approval from the Planning and Zoning Commission. Prior to being heard by City Council, the request created concern among the neighbors. Neighbors met with the applicant and expressed concern about the proposed development of the property and how this development could impact their property. The developer withdrew the original rezoning request and submitted this request for conditional use rezoning, with a specific site plan and conditions designed to address the concerns of the neighbors. The revised request appears to be supported by the area residents.

The site plan shows the two buildings and parking area located on the upper portion of the lot on the site of the existing home. Access to the 18 space parking area will be directly off Ardmion Park Road. By placing the buildings and parking in this location, grading required for the development will be minimal. Most of the property will remain undisturbed, with tree removal and clearing of vegetation also kept to a minimum.

The two buildings are proposed as 3 stories with a height not to exceed 40'. Daylight basements will be accessible via doors located on the back (downhill) side of the buildings. The first floor elevation of the buildings will be at least 20' below the elevation of the road, reducing the visual impact from the street. Exterior construction materials for the buildings will consist of wood, hardiplank, brick, stone, and/or stucco.

The City's ordinances require a minimum of 500 square feet of open space per unit for multi-family developments. A minimum of 6,000 square feet of open space is required for the Ardmion Park Town Homes development. A great deal more than this will be provided by the development.

Existing vegetation will be used to buffer the development from adjacent uses on the sides and rear. Landscaping must be provided to screen the parking area and buildings from Ardmion Park Road. Existing trees will be used for street trees along the existing street.

Sidewalks are required for any multi-family development with more than 10 dwelling units, so this development is required to provide sidewalks along all street frontage. Given the location and topography of the site, the developer is encouraged to work with the City staff to identify the best option for providing pedestrian amenities for the development.

City Council must take formal action as set forth in section 7-5-5(e) of the Unified Development Ordinance (UDO), and must find that all seven standards for approval for conditional uses are met based on the evidence and testimony received at the public hearing or

otherwise appearing in the record of this case [UDO 7-16-2 (c)]. Staff's opinion is that all seven standards appear to be met.

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

The proposed project has been reviewed by City staff and appears to meet all public health and safety related requirements. The project must meet the technical standards set forth in the UDO, the Standards and Specifications Manual, the North Carolina Building Code and other applicable laws and standards that protect the public health and safety.

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 must comply with all City standards in regards to maximum clearing and grading, erosion control, and stormwater management. The proposed buildings will be located on the upper portion of the property adjacent to the street in order to minimize land disturbance and clearing. The project will also need to demonstrate compliance with the City's Hillside Development Standards for permitted density and clearing and grading.

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

The density of the proposed development will be approximately 5 units per acre, which is in keeping with the overall development pattern in the area. The buildings will be constructed of materials of quality comparable to that of existing development in the area. A condition that is recommended for the project addresses stormwater to assure that it has no negative impact on property located downhill.

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 project site is located in a vegetated area containing a variety of residential uses. Residential uses range from single family homes to attached condominiums and large buildings containing several multi-family units. Most of the developed properties in the area have maintained a significant number of trees and smaller vegetation. The proposed development will maintain most of the vegetation on the project site. Only a small percentage of the site will be covered by the development. In addition, the buildings, which are compatible in bulk and scale with other structures in the area, will be at a lower elevation than the street and screened from adjacent properties to minimize any visual impact.

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 all applicable UDO and Standards and Specifications requirements. The development also meets the City's goals for providing a variety of housing options and for infill development.

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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 has received preliminary approval from the City's operating departments and will be subject to detailed review prior to issuance of zoning and building permits.

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

The addition of 12 small dwelling units at this location will not have an adverse impact on traffic in the area. Streets in the area are capable of accommodating the traffic to be generated by the 12 units.

The Planning and Zoning Commission unanimously recommended approval of the request, with conditions, at their October 2, 2002, meeting. This recommendation incorporates comments made by members of the public at that meeting. Staff concurs with the recommendation to approve the conditional use rezoning and to issue the Conditional Use Permit for the proposed use. The recommended conditions are:

- Development of the site shall be in compliance with the conceptual site plan submitted with this application;
- The development shall consist of 12 dwelling units in two buildings (6 units per building);
- Grading and land disturbance shall not exceed the limits indicated on the conceptual site plan;
- No clear cutting of the property shall occur; vegetation removal shall be limited to horticulturally correct thinning and trimming, with advice regarding tree removal provided by the City staff;
- Stormwater management plans shall be developed and implemented with consideration for the neighbors on Carroll Avenue and acknowledging current problems with water runoff and shall comply with the City's standards as set forth in the Stormwater Management Ordinance;
- Exterior building materials shall consist of wood, hardiplank, brick, stone, and/or stucco;

- Maximum building height shall not exceed 40’;
- The current sewer line connection that is tapped by the neighbors across the street shall be moved to a legal easement and reconnected to the MSD system; and
- The parking area shall be screened with vegetation from the street.

Mr. Green responded to various questions from Vice-Mayor Bellamy dealing with traffic and erosion. He reiterated that our Traffic Engineer feels that the streets in the area are capable of accommodating the traffic to be generated, however, there was mention at the Planning & Zoning Commission meeting about speeding. He said that the residents were provided with information about how to become involved with the City’s traffic calming program. Regarding erosion, Mr. Green said that because the site plan is being submitted as part of the conditional use permit, the limits of grading are pretty much set by the plan shown. The City will require the developer to adhere to this basic plan in terms of land disturbance as well as complying with the City’s erosion control and stormwater ordinances.

Mr. Chris Eller, project engineer representing Dean Pistor, reviewed with Council their site plan (Applicant Exhibit 1) showing that they have preserved at least 2/3 of the site. He said there currently exists a private sewer line on the property. They will be relocating that sewer line and tying it into a public manhole which will be extended to serve the new units as well as the adjacent property owner. He felt that erosion control will be easily maintained because of the amount of vegetated buffer that will be between this property and the adjacent property owner and grading will be minimal.

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Ms. Jan Howard, resident on Reservoir Road, spoke in favor of higher density development on Beaucatcher Mountain. However, according to Ms. Howard, she feels that Reservoir Road is her private driveway and it should be closed and used for a bike and hiking trail. She felt that Reservoir Road has been at its vehicular capacity for years.

Mr. Jeff Kelley, resident on Carroll Avenue, said that speeding is an existing problem on the narrow Carroll Avenue and doesn’t feel that there is enough volume to make it as a traffic calming project. He expressed concern about the hillside development ordinance. By allowing a property owner to buy up adjacent properties and include all the parcels as one to increase the density on one part of the site seems to defeat the whole purpose of the standard. He asked City Council to instruct the Planning staff to begin the neighborhood study on the East Valley area as the study is proposed Asheville City 2025 Plan. The neighborhood wants to work to protect the RS-8 zoning in their neighborhood.

Mr. Dean Pistor, property owner, spoke in support of the project and about how he met with neighbors to try to meet their concerns.

Upon inquiry of Councilwoman Jones, Mr. Pistor said that the units will be approximately under \$200,000 and they will try to meet some affordable needs with some of the units.

When Councilman Mumpower asked about what the next step would be for Ms. Howard to take regarding her request, City Manager Westbrook said that when Ms. Howard petitioned the Council to close Reservoir Road several years ago, City Council did not close it because of a public safety issue. If there are any new circumstances Ms. Howard can bring to the City’s attention, he, along with the Public Works Director and the Police Chief will be happy to discuss those with her.

There being no request from the applicant for rebuttal, Mayor Worley closed the public hearing at 5:51 p.m.

Councilman Ellis moved to adopt Ordinance No. 2971 to rezone two lots located on Ardmion Park 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 Councilman Dunn and carried unanimously.

ORDINANCE BOOK NO. 20 – PAGE

Councilman Peterson moved to adopt Ordinance No. 2972 to issue the conditional use permit to allow for construction of 12 dwelling units, subject to the following conditions: (1) Development of the site shall be in compliance with the conceptual site plan submitted with this application; (2) The development shall consist of 12 dwelling units in two buildings (6 units per building); (3) Grading and land disturbance shall not exceed the limits indicated on the conceptual site plan; (4) No clear cutting of the property shall occur; vegetation removal shall be limited to horticulturally correct thinning and trimming, with advice regarding tree removal provided by the City staff; (5) Stormwater management plans shall be developed and implemented with consideration for the neighbors on Carroll Avenue and acknowledging current problems with water runoff and shall comply with the City’s standards as set forth in the Stormwater Management Ordinance; (6) Exterior building materials shall consist of wood, hardiplank, brick, stone, and/or stucco; (7) Maximum building height shall not exceed 40’; (8) The current sewer line connection that is tapped by the

neighbors across the street shall be moved to a legal easement and reconnected to the MSD system; and (9) The parking area shall be screened with vegetation from the street. This motion was seconded by Vice-Mayor Bellamy and carried unanimously.

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B. PUBLIC HEARING TO CLOSE A RIGHT-OF-WAY KNOWN AS CAROLINA AVENUE FROM MOUNT CLARE TO ITS DEAD-END

RESOLUTION NO. 02-180 - RESOLUTION TO PERMANENTLY CLOSE A RIGHT-OF-WAY KNOWN AS CAROLINA AVENUE FROM MOUNT CLARE TO ITS DEAD-END

Mayor Worley opened the public hearing at 5:55 p.m.

Mr. Mark Combs, Director of Public Works, said that this is the consideration of a resolution to permanently close the right-of-way known as Carolina Avenue from Mount Clare Avenue to dead end. This public hearing was advertised on October 18 and 25 and November 1 and 8, 2002.

According to N. C. Gen. Stat. sec. 160-299, a City has the authority to permanently close a street or alley without regard to whether it has actually been opened.

To proceed with this process, Walter Christian, Montview Drive resident, on behalf of the Montview Drive Neighborhood, has requested to close the right-of-way known as Carolina Avenue from Mount Clare Avenue to the dead end.

Public Works Department staff has determined that the right-of-way known as Carolina Avenue, beginning at Mount Clare Avenue, and ending at the dead end, is not part of an adopted street plan and is not a City maintained right-of-way. Lots bordering Carolina Avenue are PIN Nos. 9649-09-26-1492, 1531, 0596, 0650, 0605, 1149 and 9649-09-16-8599, 8801, 9792, 9778, 9846, 9966 and 9649-09-27-0013, 0047, 0171, 0217 and 9649-09-17-8176.

Mr. Combs said that after the worksession on October 1, 2002, City staff met with the petitioners and now have no objection to the closing. They feel that any smart growth and density issues can be worked out if there were any future growth plans for the area.

Mr. Ed Subkis and Mr. Lothar Dohse, property owners on Montview Drive, each spoke in support of the closing.

Ms. Betty Lawrence, resident on Hillside Street, agreed with the closing from a historic prospective.

Mayor Worley closed the public hearing at 6:03 p.m.

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

Vice-Mayor Bellamy moved for the adoption of Resolution No. 02-181. This motion was seconded by Councilwoman Jones and carried unanimously.

RESOLUTION BOOK NO. 27 – PAGE 279

C. PUBLIC HEARING TO AMEND CHAPTER 7 OF THE CODE OF ORDINANCES TO ESTABLISH A NEW NEIGHBORHOOD CORRIDOR DISTRICT

ORDINANCE NO. 2973 - ORDINANCE TO AMEND CHAPTER 7 OF THE CODE OF ORDINANCES TO ESTABLISH A NEW NEIGHBORHOOD CORRIDOR DISTRICT

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On August 27, 2002, City Council continued this public hearing until October 8, 2002. On October 8, 2002, City Council continued the public hearing until November 12, 2002.

City Attorney Oast said that a protest petition was received on Thursday, November 7, 2002, on the proposed amendment to the Unified Development Ordinance (UDO). He reviewed the petition and felt it was not a valid protest petition for the following

reasons. One is that the date established for the public hearing (which was August 27, 2002) was the date from which it was continued and the way he interprets the law is that is the date that sets the deadline for submission of protest petitions. Secondly, this is a text amendment. Council is being asked to establish regulations for a particular zoning classification but not to apply that zoning classification to any particular property or any group of properties. It was recently established in the Supreme Court that the protest petitions do apply to text amendments, but he felt that also requires the determination of what the effected property is. In that case, it was a specifically identifiable set of properties that had signs on them and in this case, there is no set of properties that is specifically identifiable to which this would apply. Therefore, the affected property would be the whole City and they do not have 20% of the signatures of the owners of property in the City. For those reasons, he feels the protest petition is invalid. It may be that the protest petition submitted would be sufficient if, and when, this zoning district classification is applied to the Broadway Corridor, which he believes is what their interest is, but it is not before Council yet.

Ms. Betty Lawrence said that she respectfully differs with City Attorney Oast on a couple of the legal points. The reason that they know what property is to be affected is because in August there was a proposal, at the same time as the new proposed Neighborhood Corridor District zoning was proposed, before Council to rezone portions of Broadway to Neighborhood Corridor District. Therefore, those properties are going to be affected by what goes into Neighborhood Corridor District zoning. The signatures are from people that are within 100 feet of what is going to be rezoned. She then explained that they didn't want to submit a protest petition because a lot of people feel that the Neighborhood Corridor District is good. However, after numerous meetings, the way the negotiating procedure ended left a couple key parts of the ordinance being worse than when the ordinance was first given to Council. Therefore, since she felt this is a different ordinance than originally presented, she feels the protest petition was submitted on time.

Mayor Worley said that on the advice of our City Attorney, he would rule the protest petition not valid.

Mayor Worley opened the public hearing at 6:08 p.m.

Planning & Development Director Scott Shuford said that he could caution the audience in that this item does not apply this new zoning district to any property in the City. If Council approves this ordinance, City staff will bring forward the request to apply it to portions of Broadway Avenue at a later meeting.

Mr. Shuford explained that in analyzing our development patterns in terms of our smart growth policy, we have learned that almost all of our commercial corridors are functionally and fiscally underutilized. Problems associated with this underutilization include tax equity and inefficient use of infrastructure. In an area where land is limited due to topography and existing development patterns, it is critical for us to use the available land efficiently. If we are to overcome the problems associated with this development pattern, we will need to take active steps to provide incentives that will promote the redevelopment of our commercial corridors. The steps have to be rooted in the practicality of the local real estate market; it will do no good to create a zoning district that will not be used. Likewise, we must recognize that development of an appropriate scale is important to protect our neighborhoods.

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Mr. Shuford said that consequently, his staff has spent countless hours in meetings with developers and neighborhoods in crafting this ordinance. In fact, they completed neighborhood meetings as late as Thursday of last week. All of these meetings have helped shape the ordinance that it before Council tonight. The ordinance represents a balance between the incentives necessary to spur redevelopment and the scale that is appropriate to the community.

Some opposed to the ordinance are concerned about scale of development. Please be aware that the maximum height proposed for most development is actually less than the building height allowed in our single-family zoning districts. The size standards for buildings in this district are human-scale and designed to support a pedestrian experience. The uses are compatible with the neighborhoods that abut most of our commercial areas. The intent of the ordinance is to create new development of this sort. Please note that this development is very similar to historic development in Asheville in terms of architectural style and scale. Also, please be aware that the Planning and Zoning Commission voted unanimously to recommend this ordinance. Since that vote, while there have been modifications to address the concerns of developers, most of the modifications we have made have been to "soften" it from a neighborhood scale standpoint.

We feel we have developed a zoning district that will help us implement a smart growth development pattern and allow us to reclaim our commercial corridors for more productive purposes. We feel the development of this ordinance has been highly public and that the comments received from the public have been carefully accommodated where appropriate to the objectives of the new zoning district. We urge your support of this ordinance.

Chief Planner Gerald Green said that this is the consideration of an ordinance amending the Unified Development

Ordinance (UDO) to create a new mixed use in-fill corridor zoning classification called the Neighborhood Corridor District, which incorporates City Council direction for smart growth and sustainable development initiatives as well as input from the community. This public hearing was advertised on August 16 and 23, 2002.

Since the first presentation of the Neighborhood Corridor zoning district to City Council, staff has met with the Coalition of Asheville Neighborhoods, Economic Development Task Force, and the self-named Broadway Coalition (development interests and neighborhood residents). In addition two community forums have been held to share the goals of the district and gather input (West Asheville meeting 11-4-02 and North Asheville 11-7-02). Most of the discussion and changes have centered on uses permitted along the corridor, the scale of the potential structures and some requirements for mixed-use projects. An additional item that staff feels may be useful in the district is drive-through facilities. These facilities are identified as conditional uses in the proposed district to permit their review on a case-by-case basis. Other standards/issues that have been revised include scale and height and design standards. These are discussed below.

Scale and Height:

The community incentives table has been received with support and interest. Several comments have been received to require higher design standards. Staff feels that basic design standards can be written into the ordinance with modifications allowed by a City approved decision-making body. The highlights of the incentives table are presented below:

- Base Density permitted in NCD = 24 units/ acre Bonus to 32 units / acre
- Building footprint maximum in NCD = 12,000 S. F.
- Building square foot maximum in NCD = 24,000 S.F. Bonus to 48,000 S.F.
- Base building maximum height in NCD = 3 stories Bonus to 4 stories

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Community Incentive Table

<u>Incentives</u>	<u>Mixed Use</u>	<u>Residential</u>
Density greater than 24 units per acre	Minimum 20 percent of building square feet is retail or office uses	In combination with; 25 percent of units provided are affordable units OR a minimum of 25 percent up to a maximum of 50 percent of the units are less than or equal to 700 square feet each and 10 percent of the residential units are affordable.
Building square footage greater than 24,000 square feet	Minimum 25 percent of building square feet is retail OR minimum 20 percent of square feet is retail and 15 percent of square feet is office uses	In combination with; a minimum of 25 percent of the building square feet is residential uses and a minimum of 25 percent of the units are less than or equal to 700 square feet each
Height greater than 3 stories to a maximum of four stories (45')	Minimum of 50 percent of street level square feet is used for retail	In combination with; a minimum of 25 percent of the building square feet are residential units and building setbacks adjacent to residentially zoned properties is expanded to a minimum of 40 feet

Design Standards:

To ensure that new projects are in keeping with the scale and bulk of the surrounding neighborhoods a few additional

design and operational issues have been included in the language for the district that take their inspiration from the Charlotte Street Overlay District: Where new building facades will be wider than 45 feet the façade surface shall be subdivided into portions not exceeding this distance by varying setbacks, roof forms, or other architectural elements.

We also propose to change the wording in the NCD to require that upper level windows make up at least 25% of the wall surface to allow a fuller range of uses to utilize the upper floors of buildings. The previous ordinance proposed that upper level windows make up 40% of the wall surface.

Finally to allow flexibility to the design standards for situations that would create a difficulty for a developer, modifications to these design requirements may be heard by a City appointed board. At this time we have suggested the Planning and Zoning Commission because of their valuable experience with project review and rezonings.

As a result of a meeting last Thursday evening, Mr. Green submitted to Council a revised ordinance. Said ordinance contained the following additional amendments: (1) amended the development standards for parking/loading to include the underlined language as follows:

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“Shared and remote parking is encouraged ...” ; (2) outlined the use districts which recycling collection centers are permitted in; and (3) minor clarifications.

In presenting these changes to City Council, staff does not intend to suggest that all parties are in total agreement with every item in the revised provisions of this district. Some members of the community still have concerns about the height of the structures permitted and some have concerns about the size of the footprint of the structures. What staff has tried to do is reach a compromise that will alleviate the bulk of the concerns that they have heard. Staff feels that the incentive table will do just that and create a healthy mixed use community along our medium sized corridors where this district is applied.

Staff recommends adoption of the proposed ordinance amendment. The Planning and Zoning Commission recommended adoption of the earlier draft of the ordinance.

Upon inquiry of Councilman Dunn, Mr. Green explained that the modification provision applies only to design and operational standards. Regarding the relocation of the footprint in another area on the lot, setbacks can range from zero to 15 feet, although the Planning & Zoning Director can authorize an additional up to 25 foot setback if there are topographical constraints. If the developer wants to put it back 50 feet from the street, that would require a variance from the Board of Adjustment. The basic variances will still be handled by the Board of Adjustment, but only the design and operational standards can be modified by the Planning & Zoning Commission.

In addition, City Attorney Oast explained that there is a provision in the law that allows us, in certain circumstances, to assign the functions of a board of adjustment to a planning agency, and in this case we are assigning the certain functions to the Planning & Zoning Commission. Staff feels the Planning & Zoning Commission is in a better position to judge whether or not a variance was justified from these particular design standards. He suggested adding language to the modification provision which indicates that the Planning & Zoning Commission is designed to perform the duties of a board of adjustment for this purpose. He explained that if we make a reference in the section to the Planning & Zoning Commission performing the functions of a board of adjustment, then whoever is applying for a variance from those design standards would have to demonstrate the same things that anyone applying for a variance would, so we could omit the language “... upon demonstration of practical difficulty in meeting the standards.”

Upon inquiry of Councilman Peterson, Mr. Green requested an amendment to the setback standards to read “2. For four story structures, a minimum side and rear setback of 40 feet shall be required, if adjacent to residential development or uses.”

Regarding drive-throughs, Councilman Peterson felt that if the goal is to encourage more pedestrian oriented development, having a lot of drive-throughs detracts from that goal and people won't feel safe walking on the sidewalks. He felt that perhaps there should be at least some upper limit on the number of windows. He felt the concern is that people don't want to see a lot of fast food restaurants along Broadway to take away from the pedestrian aspect. Mr. Green responded that City staff would prefer one, but there may be a case where a particular use can't operate with just one single window. This provides the developer with the opportunity to come before City Council, as part of their conditional use permit request, and make their case for the second window.

The following individuals basically spoke in favor of the new district (with some concerns) for various reasons, some being, but are not limited to: limiting fast-food restaurants by a distance limitation; need to strengthen incentives to encourage historic

preservation of older buildings; needs to be incentives for making larger apartments affordable; suggestion to have power lines be placed underground during new construction; when redeveloping, the City needs

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to address deteriorating traffic circumstances; need for long-term affordable housing; concern about the scale of development; need to make sure all standards contribute to a walkable lifestyle; need to increase the housing stock in the community; developers should be allowed to build high in order to reduce sprawl; the need for bike lanes; the buildings will be out of scale and character and this may take away from the integrity of the remaining buildings possibly making them ineligible for historic designation; when you sit and idle at drive-throughs there are health impacts from the air quality; and the need for impervious surfaces:

Mr. Tom Gallaher, Community Corridors, LLC
Mr. Andy Reed, resident on Dogwood Road
Ms. Sharon Farr, representing the Preservation Society of Asheville and Buncombe
County
Ms. L. Myers, resident on Vermont Court
Mr. Carl Ricker, real estate developer
Ms. Susan Roderick
Mr. Keith Thomson, resident on Bridle Path Road
Ms. Lynn Johnson, Asheville resident
Mr. David Ramsey, developer
Ms. Sophia Long, resident on Magnolia
Mr. Daniel Breen, Asheville resident
Mr. Alan Ditmore, Leicester resident
Mr. Fred English, Haw Creek resident
Ms. Eleanor Patronie, Cumberland Avenue resident
Mr. Walter Plaue
Ms. Betty Lawrence

The following individuals spoke in opposition of the new district for various reasons, some being, but are not limited to: remote parking should not be included in the parking/loading standards as there is just enough parking one block from Merrimon Avenue for residences; four stories is too high; lighting needs to be shielded from the neighborhood;

Mr. Jamie Thomason, Wendover Road resident
Mr. Greg McCoy, Monroe Place resident
Ms. Kathleen McLoughlin, Broadway area resident
Ms. Marilyn Hastings, Starnes Avenue resident

Vice-Mayor Bellamy said that regarding keeping units affordable after the implementation of this ordinance, it will be very important that we look at whom we are working with in partnership on the development side.

Mayor Worley closed the public hearing at 7:37 p.m.

Councilman Peterson said there are a lot of good things in this kind of development and we have had smart growth policies for a long time, but this is a start to say that we want a different kind of development pattern along some of our major corridors. He felt that Council needs to focus on getting that greater financial value on our properties, the commercial corridors. It helps those pay more so that our residential people don't have to pay as much and it helps to be able to provide services. On Broadway we need to ask the N.C. Dept. of Transportation, after some community consensus, to allow on-street parking on the lower part so that people feel safe walking. On Haywood Road, those folks need to figure out what they want to do and reach that consensus and develop some transportation plans. Just having a new district will not change the transportation pattern to allow greater pedestrian traffic. He felt there were benefits for the City and also for the developers and neighborhoods. He explained why he suggested an amendment

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to the incentive table that the incentive for building square footage greater than 24,000 square feet have the same mixed use requirement as the height greater than 3 stories incentive.

Upon inquiry of Councilman Mumpower regarding historic preservation enhancements, City staff suggested an amendment to the incentives table for existing historic structures. For all three incentives (density, building square footage and height),

Planning & Development Director Scott Shuford recommended the following language be added to the incentives table under a new title of "Existing Historic Structures." Said language to read "Compatible adaptive reuse and/or additions to historic structures."

Mr. Green responded to various questions/comments from Council, some being, but are not limited to: application of the district will make some properties non-conforming; impervious surfaces;

Upon inquiry of Councilman Mumpower about underground utilities, Mr. Green said that we do require underground utilities in new primarily-residential subdivisions. He suggested an amendment to our Asheville Standard Specifications and Details Manual to require installation of underground power line conduits to new development and redevelopment.

Upon inquiry of Vice-Mayor Bellamy, Mr. Green said that as the new district is applied to different corridors, public input would be encouraged through the community meeting, the Planning & Zoning Commission public hearing and also the City Council public hearing.

Councilman Ellis felt the new district will serve the City well. He noted that if revisions are needed or something is not working out, City Council can amend the ordinance.

Mayor Worley explained why this ordinance does fit in with the City's smart growth policies.

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

Councilman Peterson moved to adopt Ordinance No. 2973 (with the revisions outlined above by Mr. Green after the Thursday community meeting), with the following amendments: (1) to (f) (5) Setback Standards "2. For four story structures, a minimum side and rear setback of 40 feet shall be required, if adjacent to residential zoning."; (2) to (f) (12) (e) title change to "Variances. Requests for variances of the design and operational standards set forth in this subsection 12 may be granted by the Asheville Planning and Zoning Commission which is hereby designated to perform the duties of a board of adjustment for this purpose. Requests for variances shall be submitted to the Planning and Zoning Department and considered by the Planning and Zoning Commission at their next available regularly scheduled meeting."; (3) to amend the incentive table that the incentive for building square footage greater than 24,000 square feet have the same mixed use requirement as the height greater than 3 stories incentive with the addition of "AND building setbacks adjacent to residentially zoned properties are a minimum of 40 feet"; and (4) to amend the incentive table to include a new title "Existing Historic Structures" and to have all three incentives (density, building square footage and height) include the following language "Compatible adaptive reuse and/or additions to historic structures." This motion was seconded by Councilman Dunn.

Councilwoman Jones felt strongly that this was a unique opportunity to address the affordable housing problem. Since we are asking the community to make these great sacrifices of height and square footage, then we need to at least addressing the community need of affordable housing. Therefore, she moved to amend the main motion to insert, in the incentive table, the following language in both the building square footage incentive and the height

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incentive under residential: "In combination with: a minimum of 25 percent of the building gross square footage are residential units AND a minimum of 25 percent of the units are less than or equal to 700 square feet each AND 10 percent of the residential units are affordable AND building setbacks adjacent to residentially zoned properties are a minimum of 40 feet."

Mr. Shuford said that the best way to provide for long-term affordability is, as pointed out by Vice-Mayor Bellamy, the partnerships with the City. Another way is making sure that our Housing Trust Funds give great weight to projects that will be built in corridors. He felt that is a much better way of controlling the affordability issue for the long-term. In addition, he felt that a good way to deal with the affordability issue is providing that extra density and this ordinance does that.

After discussion, the motion made by Councilwoman Jones died for a lack of a second.

Vice-Mayor Bellamy said that this is a good place to improve density. Our corridors are transit oriented and need to be developed as such. This new district supports that need.

The motion made by Councilman Peterson and seconded by Councilman Dunn carried unanimously.

City Attorney Oast noted that since the vote for adoption of the ordinance was unanimously, if the protest petition had been valid, it would have been overcome.

At 8:21 p.m., Mayor Worley announced a short break.

ORDINANCE BOOK NO. 20 – PAGE

D. PUBLIC HEARING TO CONSIDER A CONDITIONAL USE PERMIT FOR PROPERTY LOCATED AT 2360 SWEETEN CREEK ROAD IDENTIFIED AS GIVENS ESTATE RETIREMENT COMMUNITY TO CONSTRUCT 59 SINGLE-FAMILY HOMES AND A 139-UNIT APARTMENT BUILDING

ORDINANCE NO. 2974 - ORDINANCE GRANTING A CONDITIONAL USE PERMIT FOR PROPERTY LOCATED AT 2360 SWEETEN CREEK ROAD IDENTIFIED AS GIVENS ESTATE RETIREMENT COMMUNITY TO CONSTRUCT 59 SINGLE-FAMILY HOMES AND A 139-UNIT APARTMENT BUILDING

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

City Attorney Oast reviewed with Council the conditional use district zoning process. This process is the issuance of a conditional use permit, which is a quasi-judicial site specific act. At this public hearing, all the testimony needs to be sworn.

After hearing no questions about the procedure, Mayor Worley opened the public hearing at 8:49 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.

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

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Mr. Carter Pettibone, Urban Designer, 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. Pettibone said that this is the request to consider a Level III Conditional Use Permit to construct 59 single-family homes and a 139-unit apartment building as an expansion to the Givens Estates Retirement Community located at 2360 Sweeten Creek Road in the RM-16 Residential Multi-Family High Density District.

On August 30, 2002, the applicant, Givens Estates Retirement Community, submitted development plans for a Level III site plan review. The proposed project consists of 59 single-family cottages along with a 5 story, 139-unit apartment building (City Exhibit 3 – Location Map). The 59 homes, which will be accessed via 3 new private streets, will be almost entirely located on a 55-acre property (PIN No. 9655.07-58-3386) located directly north of the existing Givens parcel, while 3 existing residential buildings will be removed from the existing Givens site to make room for the new apartment building, which will straddle the property line between the existing and new parcels. The Technical Review Committee (TRC) reviewed the plans at its September 16, 2002, and recommended approval with conditions. Some of the TRC comments were addressed in revised plans submitted September 26, 2002. The Planning and Zoning Commission at their October 2, 2002, meeting voted to recommend approval of the plans with the conditions identified by the TRC.

Residential projects greater than 50 units in size are Level III projects, which are conditional uses in the RM-16 District. Conditional uses are uses, which because of their unique characteristics or potential impacts on the surrounding neighborhood and/or city as a whole require individual consideration of their location, design, configuration, and/or operation at the location proposed.

The project site is located within the City limits on Sweeten Creek Road just north of the existing Givens Estates property. There is a mix of development types, land uses, and zoning in the area with residential subdivisions zoned RS-8 and RS-4 to the north, RM-16, Highway Business, Industrial, and Commercial Industrial zoning to the west across Sweeten Creek Road, and unzoned agricultural land to the east.

The site's access is from Sweeten Creek Road through the existing Givens' site. This intersection of the entrance drive and Sweeten Creek contains a stoplight, which is used to maintain an adequate traffic flow in the area. The existing streets within the complex are private streets, as will be the proposed streets. The existing Givens' site is also the terminus point for one of the City's bus lines, Route 30. Parking will be provided for the new apartment complex in the form of off-street parking lots located around the building.

The proposed apartment building will be five stories in height with the parking lot and main entrance level four stories tall expanding to five stories in the rear of the building. The applicant obtained a variance to allow the height of the building to extend six and a half (6.5) feet above the maximum 40 feet permitted by the RM-16 District in the Unified Development Ordinance (UDO). Detailed elevations will need to be submitted that demonstrate compliance with the granted variance.

The UDO requires 500 square feet of open space for every residential unit proposed (City Exhibit 3 – Site Plan). This would result in a total of 2.27 acres for reservation as open space for the new residential units. While the site plan shows large areas of open space, it does not specifically identify which areas are to be used to satisfy the requirement.

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Buffering is not required along the boundaries of the site since the proposed number of units results in a low density that would be bordering existing low-density development to the north, vacant property to the west across Sweeten Creek, and unzoned agricultural land to the east. Landscaping is provided in and around the off-street parking areas serving the apartment building.

The UDO requires that new developments provide one large maturing tree (over 35 feet in height at maturity) for every 40 linear feet of property abutting a street. Any proposed street or street that is being realigned would need to be lined with these street trees.

The UDO requires sidewalk installation along the frontage of all new streets. The applicant must provide these sidewalks or an alternative pedestrian walkway system as approved by the Engineering Department.

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 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 (7) 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. The Asheville City Council shall not approve the conditional use application and site plan unless and until it makes the following findings, based on the evidence and testimony received at the public hearing or otherwise appearing in the record of this case:

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

The project received conditional technical approval from the Water Resources Department, the Fire Department, Metropolitan Sewerage District (MSD), Engineering, and other City Departments. The project must meet the technical standards set forth in the UDO, the Standards and Specifications Manual, the North Carolina Building Code and other applicable laws and standards that protect the public health and safety.

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 must comply with all City standards in regards to maximum clearing and grading, erosion control, and maximum slope for streets. Development, the density of which is considerably less than permitted, is concentrated to the front of the site and is not proposed to the rear, which is significantly steeper and more heavily wooded. The project will also need to demonstrate compliance with the City's Hillside Development Standards for permitted density and clearing and grading.

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

The density of the single-family portion of the site is comparable to that of the single-family developments to the north of the site. The size of the tract of land also allows room for buffering to alleviate impacts of the size and height of the apartment building. Staff has determined that the additional traffic generated will not adversely impact of the

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existing road conditions or capacity. The development is also at a density that is significantly lower than what is permitted by 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 RM-16, which has no structure size standards and the developer has obtained a variance to allow the height of the apartment building to exceed the maximum 40-foot height permitted by the UDO. The 5-story apartment building also sits in one of the lowest parts of the site and is surrounded by the single-family cottages located at higher elevations. These factors will help mask the apartment building's height and bulk from neighboring low density residential to the north. The density of the single-family cottages of the project is also similar to that of the single-family developments to the north.

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 all applicable UDO and Standards and Specifications requirements, as well as any of the City's other plans and policies. The development will meet some of the City's Smart Growth policies for transportation through the provision of a transit stop and by preserving areas with steep slopes.

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, MSD, Engineering, the Fire Department, and Public Works.

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

The existing Givens site is served by a traffic signal at the intersection of the entrance road and Sweeten Creek. The site is also a terminus for one the City's bus lines and contains a designated a bus stop to serve the residents of the proposed expansion as well as the residents of the existing community. Because of this and the numbers of car trips that will likely be generated by the development, Engineering and Planning and Development Staff feel adequate capacity exists to serve the additional traffic generated by the expansion.

The plan for the expansion was reviewed by the TRC at it's September 16, 2002, meeting. The TRC identified a number of outstanding technical issues and recommended approval with the condition that these issues be addressed prior to final approval. Due to the timing between the TRC meeting and the Planning and Zoning Commission meeting, the applicant was unable to address all the conditions. At it's meeting, the Planning and Zoning Commission, by a vote of 6-0, also recommended approval subject to these conditions. At present, the applicant is working with the various City departments to address these outstanding conditions.

Since all the conditions have not been addressed at this time, City staff recommends approval with the following conditions:

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- The applicant submit detailed plans for review by the TRC that address all conditions identified by the TRC at its September 16, 2002, meeting.
- Sidewalks are provided along all new streets within the project or an alternative pedestrian walkway system is designed and constructed to Engineering Department requirements.
- The site plan must demonstrate it meets the requirements for the Hillside Development Standards of the UDO for any portion of the site above 2220 feet in elevation and with an average slope of 15% or greater.
- The site plan clearly identifies areas to be set aside for permanent open space as required by the UDO.
- A transit shelter is located on the property to serve the residents using the City transit system.
- Elevations for the proposed apartment building are provided to insure compliance with the variance granted for building height.

Upon inquiry of Councilman Dunn, Mr. Pettibone said that the Sweeten Creek Road widening is on the N.C. Dept. of Transportation's Transportation Improvement Plan but is not funded and won't be funded for at least seven years. Even though the widening is on the TIP, the applicant is still required to either building the sidewalk along the frontage of the street or pay a fee in lieu of.

Mr. W. Louis Bissette, attorney representing the Givens Estates, spoke in support of the expansion plan. He said that where the property inside the development is not suitable for sidewalks, they have developed greenway trails. He said they are prepared to build the 600 foot section of sidewalk on Sweeten Creek Road that abuts the project, but he has talked with the N.C. Dept. of Transportation and they estimate another 7-8 years before the widening. He said that if a fee in lieu of arrangement would work for the City, he would be happy to consider that.

Mr. Ken Partin, Executive Director of Givens Estate, answered various questions from Council, some being, but are not limited to, are the units sold to individuals or does Givens Estates own them; does Givens Estate have any other long-range plans; could the walking trail system be tied into Ballentree Subdivision; and where is the transit shelter going to be located.

There being no request from the applicant for rebuttal, Mayor Worley closed the public hearing at 9:10 p.m.

Councilman Ellis moved to adopt Ordinance No. 2974 to issue the conditional use permit for property located at 2360 Sweeten Creek Road identified as Givens Estate for a proposed 59 single-family cottages and a 137-unit apartment development, subject to the following conditions: (1) The applicant submit detailed plans for review by the TRC that address all conditions identified by the TRC at its September 16, 2002, meeting; (2) Sidewalks are provided along all new streets within the project or an alternative pedestrian walkway system is designed and constructed to Engineering Department requirements; (3) The site plan must demonstrate it meets the requirements for the Hillside Development Standards of the UDO for any portion of the site above 2220 feet in elevation and with an average slope of 15% or greater; (4) The site plan clearly identifies areas to be set aside for permanent open space as required by the UDO; (5) A transit shelter is located on the property to serve the residents using the City transit system; and (6) Elevations for the proposed apartment building are provided to insure compliance with the variance granted for building height. This motion was seconded by Councilman Dunn and carried unanimously.

ORDINANCE BOOK NO. 20 – PAGE

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E. PUBLIC HEARING TO CONSIDER AN AMENDMENT TO THE UNIFIED DEVELOPMENT ORDINANCE TO REVISE THE THRESHOLD FOR LEVEL II SITE PLAN REVIEW PROJECTS AND ALSO TO AMEND THE UNIFIED DEVELOPMENT ORDINANCE TO REVISE THE NOTIFICATION REQUIREMENTS

ORDINANCE NO. 2975 - ORDINANCE AMENDING THE UNIFIED DEVELOPMENT ORDINANCE TO REVISE THE THRESHOLD FOR LEVEL II SITE PLAN REVIEW PROJECTS

ORDINANCE NO. 2976 - ORDINANCE AMENDING THE UNIFIED DEVELOPMENT ORDINANCE TO REVISE THE NOTIFICATION REQUIREMENTS

Upon request of Chief Planner Green, Mayor Worley said that the two public hearings would be combined but separate votes would be taken on the individual ordinance amendments.

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

Regarding the amendment regarding the revision of the threshold for Level II site plan review projects, Chief Planner Gerald Green said the public hearing was advertised on November 1 and 8, 2002.

Several months ago, City Council adopted an ordinance amendment revising the Level II site plan threshold for residential projects. By increasing the range of residential projects identified as Level I site plan projects, this amendment eliminated Level II review for residential projects. Under the current standards, residential projects between 3 and 50 units are reviewed as Level I projects and residential developments with more than 50 units are reviewed as Level III projects. Neighborhood associations expressed concern that residential developments that could have impacts on neighborhoods, physical infrastructure, and quality of life were not subject to public meetings and discussion under the current standards.

In response to these concerns, staff worked with a focus group composed of representatives of the Coalition of Asheville Neighborhoods to develop an ordinance amendment that would assure projects of a size that could impact neighborhoods and/or the community as a whole were subject to public meetings and discussion. In addition to this goal, the focus group and City staff wanted to provide for speedy review of those residential projects that have little potential of impacting neighborhoods. In reviewing the existing standards, the focus group recognized that large non-residential uses permitted in residential districts, such as churches and schools, could impact the residential areas and should be subject to some level of public discussion.

The draft ordinance amendment presented to Council identifies the following as Level II site plan projects:

- Any manufactured housing rental community, camper/trailer park, or other residential development containing 20 to 50 individual dwelling units; and
- Any new non-residential use in a residential zoning district containing more than 10,000 square feet or the expansion of an existing non-residential use in a residential zoning district if the expansion contains more than 10,000 square feet.

As Level II site plan projects, these developments would be reviewed by the TRC (Technical Review Committee) in a public meeting. Notice of the TRC meeting would be

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provided to surrounding property owners and others as required by the City's public notification standards.

The Planning and Zoning Commission voted 6 to 0 to recommend approval of the wording amendment revising the thresholds for Level II site plan projects. The Planning and Development staff recommends approval of the wording amendment.

Regarding the amendment to revise the notification requirements for public hearings, Mr. Green said that the public hearing was advertised on November 1 and 8, 2002.

The Planning and Development staff has been reviewing the current public hearing notification requirements in an effort to identify improvements. A focus group composed of representatives of the Coalition of Asheville Neighborhoods provided assistance with this task. The task force and staff developed the following goals to assist in developing recommendations:

- Provide improved notification of public hearings;
- Assure that people impacted by proposed projects are aware of the public hearing(s);
- Identify and implement cost-effective methods for notifying affected and interested citizens of public hearings; and
- Identify a variety of methods for notifying citizens of public hearings.

Using these goals as guidelines, the focus group and staff identified several methods for improving the public notifications processes used by the City to inform citizens of public hearings. The improvements in the notification process identified by the focus group include:

- Place a larger sign on sites proposed for rezoning, development, etc.;
- Include location and information about proposed projects on the department's web page;
- Continue to expand the department's list of neighborhood contacts and use this list to notify affected neighborhoods of proposed projects; and
- Decrease the area of notification for public hearings and other meetings requiring notification from 400 feet to 200 feet.

The only identified change that requires an amendment to the City's code is the final one regarding area of notification. The draft ordinance amendment making this change is presented with the Planning and Zoning Commission's unanimous recommendation for approval. An area of notification extending 200 feet from the affected property will assure that all property owners within the immediate area are notified of proposed projects. This change, in combination with the other notification improvements identified above, will ensure that all citizens with an interest in proposed development projects, rezonings, etc are notified of public hearings and other public meetings.

A minor change being included in this amendment is a statement that fees charged for CA's (Certificates of Appropriateness) are established by the City of Asheville Fees and Charges Manual. This change will bring the process for establishing fees for CA's into compliance with the adopted City policy.

The Planning and Zoning Commission voted 6 to 0 to recommend approval of the wording amendment revising the notification process for public hearings. The Planning and Development staff recommends approval of the wording amendment.

Mr. Green said that they have a list of 51 neighborhoods registered and Ms. Barber Melton, President of the Coalition of Asheville Neighborhoods (CAN), said that they have an intern who will update the list and provide that list to the City.

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Ms. Barber Melton, President of CAN, spoke in support of the amendment to the notification requirements. She said that

neighborhoods are trying to be pro-active in working with the development community and they appreciate notification very early on. She felt that the process may need some revision in the future, but feels at this time, this new process will work.

Mr. Dick Washam felt that what has evolved out of several concerns a few months ago is a positive resolution. He felt this ordinance is a constructive step forward.

Mr. Scott Dedman, Executive Director of Mountain Housing Opportunities, said that he had no knowledge of these amendments and felt that perhaps only a select group of neighborhoods were involved in the process. It feels as if we are asking neighborhoods for their permission to have others move in beside them. He urged the Council to consult with the development community on these amendments if they have not already done so.

Mr. Green said that they did talk to a few developers and did a short presentation at the developer's forum, which at least 50 developers attended.

Mayor Worley closed the public hearing at 9:34 p.m.

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

Councilman Mumpower moved for the adoption of Ordinance No. 2975 to revise the thresholds for Level II site plan projects. This motion was seconded by Councilman Peterson and carried unanimously.

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Councilman Ellis moved for the adoption of Ordinance No. 2976 to revise the notification requirements. This motion was seconded by Vice-Mayor Bellamy and carried on a 6-1 vote with Councilman Peterson voting "no".

Councilman Peterson said that he did not feel that we would be improving notification by sending out less notification.

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IV. UNFINISHED BUSINESS:

V. NEW BUSINESS:

A. ORDINANCE NO. 2977 - ORDINANCE AMENDING THE CITY'S SOLICITATION ORDINANCE

ORDINANCE NO. 2978 – BUDGET AMENDMENT FOR A-HOPE TO PROVIDE SATURDAY HOURS AT THEIR DAY SHELTER

Police Chief Will Annarino said that this is the consideration of an amendment to the City's solicitation ordinance by (1) making it a class three misdemeanor to ask, beg or solicit funds for alms or contributions within certain areas within the City limits boundaries; and (2) making it a class three misdemeanor to urinate in public, sleep on public property and loiter with

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the intent to obstruct any public street, public highway, public sidewalk or other public place or building by impeding the free uninterrupted passage of vehicle traffic or pedestrians.

City staff has received numerous complaints from residents, visitors and merchants regarding the large amount of panhandling and soliciting occurring in Asheville. In addition, the Asheville Police Department has also witnessed a large increase in panhandling occurring in the City. City staff has determined that such activities are causing a public safety hazard by interfering with the free flow of pedestrian traffic on sidewalks; creating fear and anxiety for persons traveling downtown; and discouraging people from visiting Asheville's downtown and Biltmore Village. In an effort to insure the public safety of pedestrians in high traffic areas and to preserve a pleasant family friendly atmosphere in the downtown area and Biltmore Village, City staff recommends placing a limited ban on solicitation in specified areas based on the volume of pedestrian traffic as well as the impact the location has on tourism. Staff is proposing prohibiting solicitation in the following zones: ZONE 1 - Hilliard Avenue as the southern boundary south, French Broad Avenue as the western boundary, Cherry Street and Woodfin Avenue as the northern boundary and Woodfin and Valley Street as the western boundary and ZONE 2 – the entire Biltmore Village Historic District.

Staff is also proposing prohibiting solicitation throughout the City within a certain distance from bus stops, banks and

automatic teller machines, entrances to buildings, and outdoor dining areas. The ordinance will also prohibit soliciting in the evening and prohibit a person from soliciting while under the influence of drugs or alcohol.

In an effort to reduce the amount of street nuisance type activities in Asheville, City staff is also recommending the ordinance prohibit relieving one's self on public, sleeping on public property and loitering that impedes pedestrian or vehicular traffic throughout the City.

Class 3 Misdemeanor – conviction on 1st offense results in a \$50.00 fine. 2nd and subsequent convictions can result in fines up to \$500.00.

Police Chief Annarino briefed Council on some random reports received over a one month period from the downtown area. An analysis reveals that 230 arrests have been made in the past two years under the current panhandling ordinance.

City staff recommends approval of the ordinance.

Upon inquiry of Councilman Dunn, Police Chief Annarino said that the area can be expanded in the future.

City Attorney Oast said that in response to a couple of concerns raised, he offered the following amendments to the proposed ordinance that will clarify some of the issues raised: (1) Section 11-5 (a) Definitions (1) be amended to read: "Ask, beg or solicit: includes, without limitation, the spoken, written or printed word or such other acts as are conducted in furtherance of the purpose of immediately collecting alms or contributions."; (2) Section 11-5 (a) Definitions (3) be amended to read: "Public Place means any street, alley, highway, parking lot, sidewalk, garage, park, plaza, building, ground, or other property owned or controlled by the City of Asheville, or any portion thereof."; (3) Section 11-5 (b) (1) be amended to read: "It shall be unlawful for any person to solicit in a public place at the following locations and times:"; (4) Section 11-5 (b) (1) (e) be amended to read: "No person shall solicit after dark, shall mean one-half hour after sunset until one-half hour before sunrise."; (5) Section 11-17 (b) be amended to read: It shall be unlawful for any person to loiter, loaf, wander, stand or remain idle alone or in consort with others in a public place with the intent to:"; and (6) Section 11-17 (b) (2) be amended to read: "Commit in or upon any public street, public highway, public sidewalk or any other public place or building any act which is an obstruction or interference to the free and uninterrupted use

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of property or with any business lawfully conducted by anyone in or upon or facing or fronting on any such public street, public highway, public sidewalk or any other public place or building, all of which prevents the free and uninterrupted ingress, egress and regress, therein, thereon or thereto."

Upon inquiry of Councilman Dunn, City Attorney Oast said that someone engaging in unwanted activity on private property is guilty of a trespass.

Vice-Mayor Bellamy said that she would like the ordinance amended if it prohibits the Salvation Army's Christmas kettle and other types of those activities.

The following residents spoke in support of the ordinance amendments for various reasons, some being, but are not limited to: will make the streets safe; these behaviors are not what people move to Asheville for; small businesses and pedestrians feel physically and financially threatened; if we continue to let these problems exist, we will threaten the viability of downtown which has taken over 25 years to occur; these are tools that will allow the Police Department to address panhandling; and constructive solutions must be found and the City must also be willing to help fund organizations like ABCCM and Hospitality House:

Mr. Fred English, Haw Creek resident

Mr. Mike McCrary, Asheville resident

Mr. W. Louis Bissette, Asheville resident

Mr. Doug Tate, speaking on behalf of the Asheville Downtown Association

The following residents spoke against the ordinance amendments for various reasons, some being, but are not limited to: adoption of the ordinance will not change for the better for the already disenfranchised and there be no less discrimination for the poor, homeless, mentally ill, or people of color; this will widen the door for selective enforcement and will increase police autonomy without increasing police accountability; criminalization of poverty; many do not have a choice but to make their homes on the street; sleeping and performing bodily functions are not chosen activities; we need policies that help people feel safe downtown and protect the viability of local businesses while dealing with the challenges in a constructive and humane way; the ordinance is wrong morally, wrong as a matter of policy and it violates the Constitution of the United States as an infringement on free speech and expressive conduct; there needs to be a strategy for eliminating the wide-spread street harassment of women; people in the

community need to support initiatives to help get youth off the street; solutions need to be found that will not be so invasive and not on selectively chosen people; Council is adding one more burden to people who already have more than they can bear; this is institutional abuse; there have been no citizen or focus groups to craft the ordinance; this is an assault on human and civil liberty; adding more legislation is not going to deter criminals from this kind of activity; there needs to be more public restrooms, more room in the shelters, more affordable housing and more high paying jobs and the entire community needs to address this issue; lack of shelter capacity leads to more persons outside; ordinance should distinguish between intentionally disrespectful behavior and life-required bodily functions like sleeping, urination and defecation; state facilities should be held accountable for appropriate and effective discharge planning for persons discharged from various state and regional systems and institutions; more effective use of tax dollars would be to convince the District Attorney to prosecute the aggressive panhandlers and make an example of those folks; there should be solutions for poverty and homelessness rather than aggressiveness towards panhandlers; and this ordinance makes homelessness illegal:

Ms. Allie Morris
Mr. Shawn Gaynor, Asheville resident
Pastor Beth Duttera Newman of First Presbyterian Church and Chair of
Hospitality Board

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Mr. Bruce Elmore, representing the Western North Carolina ACLU
Mr. Bud Howell, Asheville resident
Ms. Crystal Watley
Mr. Frank Goldsmith
Ms. Melanie Shellor
Ms. Karen Van Ammon, Asheville resident and volunteer with Help-Mate
Mr. Alan Ditmore, Leicester resident
Mr. Jamie Thomason, resident on Wendover Road
Mr. Daniel Castell, Asheville resident
Mr. Christopher Fielden, Liberty Street resident
Ms. Martha Are, Executive Director of Hospitality House of Asheville
Mr. Jim Barrett
Minister Ukiah Morrison
Mr. Scott Dedman

Councilman Mumpower asked if our ordinance is legally defensible. Assistant City Attorney Curt Euler responded said that what we are proposing, in terms of the solicitation, is a valid time, place and manner restriction. We are not regulating the type of speech or singling out one group over another. We have significant government interest in that we want free flow of traffic, we want to promote our local merchants, and we want to promote tourism. The ordinance is narrowly tailored in that we are only restricting this ban to two limited areas where we are experiencing the most problems. Therefore, he felt we have a defensible ordinance.

When Councilman Mumpower asked if the City can amend the ordinance to address some inoculate activities, like charities, Mr. Euler said that if we amend our ordinance to allow those forms of activities, that is where we will get ourselves in the most constitutional trouble – by allowing certain forms of solicitation to happen in this area, while banning others.

Councilman Mumpower believed that many of the people involved do actively pursue predatory, criminal and destructive behavior and activities and that should not be minimized or ignored at the expense of the common good. We have a responsibility to try to address that. He knows there are many in our community who are not only offended and irritated by these activities, but are frightened and intimidated by the acts this ordinance is trying to address. He did not think that we should ignore the symptoms because we do not have the wherewithal to effectively fix the problem. We must attempt to do both. There is a good place being indifferent to a problem and indulging a problem and I believe that our staff has tried to make a reasonable effort to hit the mid-point.

Councilman Peterson felt that the provisions about sleeping on public property are overbroad. City Attorney Oast suggested the following amendment to Section 11-16 (a): "It shall be unlawful for any person to sleep outdoors on any of the streets, sidewalks or public parks in such a way, or in such a manner, as to interfere with pedestrian or vehicular traffic or permitted activities."

Councilman Peterson felt that in Section 11-17 (Loitering), (b) (2) was basically a duplication of (b) (1) and suggested (b) (2) be deleted entirely. City Attorney Oast agreed with this amendment.

Councilman Peterson had concerns expressed that if you drive the panhandlers out of town they will go to other areas of Asheville and why the ordinance is not City-wide. Mr. Euler explained that the downtown area probably has the most heavily pedestrian and vehicular traffic. That is different than other parts of the City and that is why staff is proposing the ban in a limited area to start out with. In the future if other areas grow and start to have those same types of characteristics, City Council can amend the ordinance and add those areas. But, based on the

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research, the two areas that fit the heavy pedestrian traffic, tourism and vehicular traffic were the Biltmore Village Historic District and downtown area.

Discussion surrounded street performers and whether they would be subject to the ordinance if they just played and had a suitcase open or a hat beside them. Mr. Euler responded this ordinance would prohibit that type of activity. Constitutionally he did not see how we could differentiate between a panhandler asking for money, a musician asking for money, or a charity asking for money. We are trying to have a consistent ordinance, which is no asking for money regardless of your motivation.

Vice-Mayor Bellamy felt a permitting process should be reviewed for a possible amendment to this ordinance at a future date. City Attorney Oast said that it would be possible to have that kind of process, but if we are regulating solicitation, we have to regulate it for anyone who solicits for any purpose. He would research other jurisdictions to see how they handle their permitting process in cases like this and report back to Council.

Upon inquiry of Councilman Jones about street musicians, City Attorney Oast explained that one of the difficulties encountered in ordinances of this type is that we can't, to the extent that solicitation does enjoy some First Amendment protections, regulate one kind of solicitation over another. That is why this regulation affects asking for money for one's self, for a charity or to the accompanying of a musical instrument. Musicians can play, but solicitations cannot be sought.

Councilman Ellis felt that that it's important to have street musicians downtown because they help make Asheville very special and diversified. Even though he is in favor of the ordinance to help the situation, he requested staff to see if there is some way to for this activity.

Councilman Peterson felt Section 11-5 (5) (d) should be clarified to read: "(d) Soliciting money from anyone who is waiting in line for any purpose."

Councilman Dunn spoke in support of the ordinance and did feel, like others, that this is a community problem. He felt that we do need to do more for the helpless, but there is a silent majority of people who are frightened and if City Council doesn't take a first step to try to address these problems, then nothing will happen. He also would like to see if there is a way to have street musicians, however, he does understand the Constitutional issue.

Councilman Jones is very committed and supportive of downtown Asheville with her presence and her pocketbook. There will always be a give and take between individual freedoms and corporate life. To adopt the ordinance is increased regulation of corporate behavior, but she believes that adoption will have an overall positive effect on the downtown district. We will incur the costs associated with enforcement, prosecution, possibly defense, selective enforcement and human costs. All people are of value and homeless people can't be sited away and pretend they are not part of our community. We must find solutions. She felt that the community has begun to understand the complexities of the problems and encouraged by the efforts and commitment of the Downtown Association, the Downtown Commission and the faith communities in those directions. She asked Council to support the following three acts in order to take this conversation to the next level and also support efforts in the community to address the root of homelessness: (1) commit to a conversation about public restrooms and how we can address this need. Specifically if we can ask the Director of Public Works and other appropriate City staff, to do a vast search of what has worked in other cities and other technology; (2) participate in Blue Ribbon Commission or the Social Issues Task Force, but not to necessarily talk about the need, but talk about the solutions and then commit to do something about it; and (3) as a beginning monetary start, to allocate from the Contingency Fund \$20,000 to A-Hope to provide Saturday hours at their day shelter.

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Vice-Mayor Bellamy supported the three acts requested by Councilman Jones. She said this is a difficult decision about our community and its future. We want everyone to have the opportunity to live in our community, which is a community of givers, but we have to set some rules and some boundaries.

Mayor Worley said this decision is not easy and needs to be a balanced decision. This balance is for the needs of those

who are much less fortunate than we are and the safety and welfare of the rest of our citizenry, who are offended when people urinate in public, accosted or feel threatened. City Council is willing to seriously consider ways to find assistance for those in need. He said the Downtown Commission is forming a Social Issues Task Force and feels they would welcome others who would like to participate in that process.

Councilman Peterson moved to adopt Section 11-15 (Public Urination); Section 11-16 (Sleeping on Public Property) with the amendment to (a) as read by City Attorney Oast above; and Section 11-17 (Loitering) with the amendment to (b) as read by City Attorney Oast above and with the entire deletion of (b) (2). This motion was seconded by Vice-Mayor Bellamy and carried unanimously.

Councilman Mumpower moved to adopt Section 11-5 with the amendments to (a) (1), (a) (3), (b) (1) and (b) (1) (e) as read by City Attorney Oast above, with the understanding that City staff will look for ways to possibly permit street musicians, charitable organizations, etc. so they will not be in violation of this ordinance. This motion was seconded by Vice-Mayor Bellamy and carried on a 6-1 vote, with Councilman Peterson voting "no."

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Councilwoman Jones moved to (1) commit to a conversation about public restrooms and how we can address this need. Specifically if we can ask the Director of Public Works and other appropriate City staff, to do a vast search of what has worked in other cities and other technology; (2) participate in Blue Ribbon Commission or the Social Issues Task Force, but not to necessarily talk about the need, but talk about the solutions and then commit to do something about it; and (3) adopt Ordinance No. 2978 which will allocate from the Contingency Fund \$20,000 to A-Hope to provide Saturday hours at their day shelter and revisit the appropriation again next Fiscal Year. This motion was seconded by Vice-Mayor Bellamy.

Councilman Dunn wondered if we should allocate the \$20,000 now, or wait until a plan is in place perhaps by the Downtown Social Issues Task Force because they may say the best place to allocate the money is for public restrooms.

The motion made by Councilwoman Jones and seconded by Vice-Mayor Bellamy carried unanimously.

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VI. OTHER BUSINESS:

A. CLAIMS

The following claims were received by the City of Asheville during the period of October 18-24, 2002: Rufus Kendall (Water), Steve McIntyre (Transit Services), William Sibbach (Transit Services), Louise McCauley (Water) and Christine Martin (Water).

The following claims were received during the period of October 25-31, 2002: Berlin Tire Center (Police) and Antonina Tsysan (Transit Services).

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The following claims were received during the period of November 1-7, 2002: Donna Tolar (Streets), Carrols Corp. (Water), Jack Roberts (Sanitation) and Paul Campbell (Parking Services).

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

VII. INFORMAL DISCUSSION AND PUBLIC COMMENT:

Mr. William Wynn presented City Council with a petition containing approximately 1,298 signatures. Said petition read "On July 21 two rookie Asheville police officers topped Ismael Hassan, a local youth corrections officer, and his friend Khalid Saadiq, a former Asheville Police Department Officer, in front of Ismael's home for driving while black, in the South French Broad neighborhood. Without provocation the officers proceeded to arrest the two, in the process beating Ismael on the lawn of his residence, while he was in his corrections officers uniform. Help bring justice to this case by making the following demands: (1) Ismael and Khalid's charges be dropped; (2) A full independent investigation of the Asheville Police Department into this incident of racial profiling and police brutality; (3) An end to police brutality and racial profiling; and (4) That officers Breneman badge # 2170, and Maltby badge # 2162, be dismissed from the APD, and that Khalid and Ismael be given a public apology." City Manager Westbrook said that an internal investigation is being done and he would report back to City Council.

At 12:12 a.m., Councilman Dunn moved continue this meeting until Thursday, November 14, 2002, at 3:00 p.m. in the Council Chamber, to discuss the regional water renegotiations with Henderson County. This motion was seconded by Councilman Ellis and carried unanimously.

Thursday – November 14, 2002 - 3:00 p.m.
Council Chamber – City Hall

Continuation of Tuesday, November 12, 2002, City Council 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

Mayor Worley said that this is the continuation of the formal meeting of November 12, 2002, for the purpose of focusing on renegotiations with Henderson County, where the City's stands with those renegotiations and how to proceed in the future.

Mayor Worley reviewed with Council the background of the Regional Water Agreement with Henderson County. He then explained in some detail the current agreement difficulties, which include: (1) effort and intent to provide regional solution; (2) Bent Creek property; (3) American Freightways example – which is not consistent with the Agreement; and (4) other issues being the Henderson County "system" and the Hendersonville water distribution system.

Current discussions included an offer at formal renegotiation session to pay Henderson County \$2 million and terminate the agreement. Informal discussions include (1) revise the agreement, pay \$1 million plus \$500,000 over period of time; (2) continue participating in Authority with one seat; (3) provide for needs of Henderson County; and (4) create Regional Infrastructure Council.

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Henderson County's responses were to revise the agreement, pay \$2 million, be allowed two seats on Water Authority, and create a Regional Infrastructure Council.

Guiding principles are the (1) commitment to regionalism – (a) water is a resource for entire region; and (b) all water producing/distributing entities need to be included; and (2) creation of Regional Infrastructure Council – needed regardless of outcome of discussions with Henderson County.

The following are three proposals to Henderson County:

Option 1

- Continue with present agreement
- Joint commitment to abide by agreement by all parties
- Provide for needs of Henderson County as per the present agreement
- Create Regional Infrastructure Council

Option 2

- Pay Henderson County \$1.5 million
- Continue participating in Authority with one seat
- No "regional water lines" but all part of Water Authority system
- Provide for needs of Henderson County on same basis as all other customers
- Create Regional Infrastructure Council

Option 3

- Pay Henderson County \$2 million and terminate agreement
- Provide for needs of Henderson County on same basis as all other customers
- Create Regional Infrastructure Council

In summary; he asked that we give Henderson County the option to accept any of the above proposals and to express

hope and desire that they opt to continue participating by accepting Option 2.

Regardless of the outcome of Henderson County negotiations we are committed to provide water where needed, as needed on a regional basis. Also, we need to move to create a Regional Water Infrastructure Planning Council made up of all water producing, using, and distributing governmental entities in Buncombe County and Henderson Counties.

The regional approach mission is to plan water infrastructure in the region to provide for planning in the event of shortages, prevent duplication of scarce resources and promote cooperation.

In conclusion (1) Asheville wants to preserve and promote the spirit of regionalism that began in 1994; (2) Asheville recognizes that we are all neighbors in WNC and can only truly succeed by working together; and (3) many more areas where we can all benefit if we work together.

Mr. Mickey Mahaffey supported the Regional Water Infrastructure Planning Council proposal and hoped that the entire water agreement will be examined and that we truly have a regional approach.

Ms. Hazel Fobes said we must have a proper independent Water Authority and we do need regionalism.

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Upon inquiry of Councilman Peterson, Mayor Worley said that the Bent Creek property was purchased in the mid-1980's with water revenues. He felt that if the City buys the property back and eventually sells it, the money should go back to the Water Department, thus benefiting all of the water customers.

Councilman Peterson said that we have an agreement with Henderson County to build regional water lines and there is an argument over what a regional water line is, but what obligation does the City have that the Asheville taxpayers should give Henderson County \$1.5 or \$2 million. Mayor Worley said that money would come from the Regional Water Authority's Water Fund and the benefit to the City would be that we would have the Bent Creek property.

Councilman Ellis said that there is a feeling in Henderson County that when the water processing plant was built in Henderson County, it took a lot of land off of the tax books and their citizens feel they deserve something for that.

Mayor Worley said that part of the agreement with Henderson County would be that they use the funds for sewer and/or waterline extensions. He indicated that they would spend most of it on sewer because that is their biggest need.

Upon inquiry of Vice-Mayor Bellamy, Mayor Worley said that 60% of the water customers are Asheville residents, 40% are Buncombe County residents and about less than 1% are Henderson County residents.

Mayor Worley said that the Regional Water Authority currently has a current Master Plan that, up until now, only covers only Asheville and Buncombe County. We are in the final stages of completing the Master Plan process for northern Henderson County and once that is complete, it will be incorporated into our Master Plan.

Councilman Ellis explained that City of Hendersonville has no desire to be a part of a Regional Agreement.

Councilman Dunn said that sometimes regionalism can be a problem in that you gain a lot by working together, but you lose control. We need to make sure that we remember that Asheville residents are our number one concern.

Councilman Peterson said that we have a regional Civic Center, which Asheville taxpayers pay the full cost and everyone else enjoys it. The regional approach shouldn't be that Asheville taxpayers pay for everyone else's development and infrastructure.

There was discussion about each of the three options and under what circumstances the Bent Creek property would revert back to the City of Asheville.

Councilman Peterson felt that if we provide water for Henderson County at the same rate, we will lock ourselves into the Sullivan Act. If it is our ultimate goal to have a true City Water Department and lower the rates, he felt this is going in the wrong direction.

Mayor Worley stressed that the agreement is not working for both parties. He asked for Council's guidance to allow him and Councilman Ellis to make a formal offer to Henderson County of Options 1, 2 or 3. He stated that there are still more negotiations to take place and the agreement would have to be thoroughly reviewed by City Council.

City Manager Westbrook said that since the agreement is not working, the proper way to reverse things is to back out of the second agreement (with Henderson County) first for several

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reasons, including financial pledges on bonds. If, or when, that agreement is dissolved then the City can work with Buncombe County to renegotiate their contract.

Upon inquiry of Councilman Dunn, Finance Director Bill Schaefer said that our obligations under the current agreement with Henderson County causes great concern in the financial community and we are hesitant to go to market until the matter clears up.

City Manager Westbrook said that we are only using slightly over 50% over our treatment capacity and the more water we sell, the lower our overhead. We have a lot of capacity which is good for regionalism.

Councilman Ellis moved to authorize the Mayor to present the three options to Henderson County and let them decide what is in their best interest. This motion was seconded by Councilwoman Jones and carried on a 6-1 vote, with Councilman Peterson voting "no."

VIII. ADJOURNMENT:

Mayor Worley adjourned the meeting at 4:45 p.m.

CITY CLERK

MAYOR