

Regular Meeting

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

Absent: None

INVOCATION

Councilman Ellis gave the invocation.

I. PROCLAMATIONS:

II. CONSENT:

At the request of Councilman Mumpower, Consent Agenda Items "E" and "F" were removed from the Consent Agenda for individual discussion.

A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON DECEMBER 10, 2002; THE WORKSESSION HELD ON DECEMBER 17, 2002; AND THE WORKSESSION HELD ON JANUARY 7, 2003

B. RESOLUTION NO. 03-1 - RESOLUTION RECOGNIZING THE CONTRIBUTION FROM THE IRENE AND DICK COVINGTON FOUNDATION

Summary: The consideration of a resolution recognizing the contribution made by the Irene and Dick Covington Foundation that will result in the construction of a tennis museum and clubhouse at Aston Park.

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In the early 1990's, a Foundation was established in honor of Irene and Dick Covington, both now deceased. The Covingtons contributed greatly to the growth of tennis in Asheville and Western North Carolina. The Foundation resulted in a total of \$278,336.17, and the majority of this amount was derived from the sale of their estate. The goal of the Foundation was to develop a tennis clubhouse at Aston Park, which would benefit the tennis community and display the archives from Dick Covington's tennis career. The Foundation has been working with a local architect to develop plans, which were approved in September, 2002. The Foundation approved giving the above funds to Buncombe County who will oversee the construction of the proposed Aston Park Tennis Clubhouse. The County Commissioners have already approved a resolution accepting the funds and agree to maintain the building as long as Buncombe County has control of the Aston Park property. In the event the property is reverted back to the City of Asheville, all unused funds will be transferred to the City to continue development of the clubhouse or for perpetual maintenance. Buncombe County has agreed to construct the facility to meet the requirements of the Unified Development Ordinance, and the facility should be completed as early as July, 2004.

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The Asheville Parks and Recreation Department requests City Council recognize the contribution made by the Irene and Dick Covington Foundation that will result in the construction of a tennis museum and clubhouse at Aston Park.

RESOLUTION BOOK NO. 27 – PAGE 288

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C. ORDINANCE NO. 2985 - BUDGET AMENDMENT FOR REIMBURSEMENT OF BULLETPROOF VESTS

Summary: The consideration of a budget amendment, in the amount of \$11,362, to reimburse the Asheville Police Department for bulletproof vests from a grant by the U.S. Dept. of Justice, Bureau of Justice Assistance.

In July of 2002, with the approval of the City Manager, the Asheville Police Department applied for partial reimbursement for bulletproof vests through the Bureau of Justice Assistance. The Asheville Police Department was notified that it would receive the funds and, in September, received 50% (\$11,362) of the funds it expended for bulletproof vests through the Bulletproof Vest Partnership Grant Act of 1998.

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Staff recommends adoption of a budget ordinance amendment appropriating \$11,362 to the Police Department budget.

ORDINANCE BOOK NO. 20 - PAGE

D. ORDINANCE NO. 2986 - BUDGET AMENDMENT FOR THE UPKEEP OF THE URBAN TRAIL

Summary: The consideration of a budget amendment, in the amount of \$12,347.95, to appropriate additional donated funds for the maintenance and upkeep of the Urban Trail.

- The Parks and Recreation Department has been responsible for the maintenance of the Urban Trail for a number of years. Periodically, funds are secured from interested donors to the Urban Trail. This budget amendment will appropriate additional revenue into an existing account, which will continue the maintenance and upkeep of the stations.

- The Parks and Recreation Department requests City Council approval of a budget amendment for upkeep of the Urban Trail.

ORDINANCE BOOK NO. 20 – PAGE

E. RESOLUTION AUTHORIZING THE MAYOR TO APPLY FOR AND ENTER INTO AN AGREEMENT WITH THE N.C. DEPT. OF ENVIRONMENT AND NATURAL RESOURCES TO ASSIST WITH THE DEVELOPMENT OF THE FRENCH BROAD RIVER PARK IV

This item was removed from the Consent Agenda for individual discussion.

F. RESOLUTION AUTHORIZING THE CITY TO APPLY FOR AND ENTER INTO AN AGREEMENT WITH THE N.C. DEPT. OF ENVIRONMENT AND NATURAL RESOURCES TO ASSIST WITH THE DEVELOPMENT OF THE AZALEA ROAD PARK PHASE I

This item was removed from the Consent Agenda for individual discussion.

G. RESOLUTION NO. 03-2 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A CONTRACT WITH NETWORK DATA SERVICES FOR SECURITY SERVICES AT THE NORTH FORK WATER TREATMENT FACILITY

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Summary: The consideration of a resolution to approve a contract with Network Data Systems (NDS) to provide security services at the North Fork Water Treatment Facility.

The City of Asheville requires a security system at the North Fork Treatment Facility. Proposals for a security system were received on November 15, 2002, and NDS was the lowest bidder.

NDS's system will provide secure access to and from gated areas and buildings. It will also provide security outside of buildings and in parking areas through close-circuit cameras. The equipment installed and card entry system will be compatible with current system(s) used at Asheville City Hall, Water Resources Water Maintenance Facility, and the Mills River Water treatment Facility.

The contract will be completed within 45 days from notice to proceed and will not exceed \$60,600.

City staff recommends approval of the contract with NDS to provide security services at the North Fork Facility.

RESOLUTION BOOK NO. 27 – PAGE 290

H. RESOLUTION NO. 03-3- RESOLUTION AUTHORIZING AN INSTALLMENT PURCHASE CONTRACT BETWEEN SUNTRUST LEASING CORPORATION AND THE CITY OF ASHEVILLE TO FINANCE THE UPGRADE OF EXISTING RADIO SYSTEM EQUIPMENT

Summary: The consideration of a resolution authorizing the installment financing of the upgrade of existing radio system equipment.

In 1990 the City purchased and installed an 800 MHz radio system to serve as the City's primary mobile communications system. The existing radio equipment has been in service for approximately ten years. Maintenance is no longer possible on the radios being replaced due to the fact that the manufacturer, or any other sources, no longer makes replacement parts and the proprietary software programming is no longer supported by anyone. The City of Asheville Capital Improvement Plan 2001/03 to 2006/08 included authorization in Fiscal Year 02/03 for the installment purchase of replacement equipment for the City's 800 MHz Radio System.

The Finance Department sought proposals from ten firms to finance the purchase of the above listed equipment. Proposals were received from five firms, the best of which was submitted by SunTrust Leasing Corporation - - 2.63% for five years.

The proposed resolution authorizes an installment purchase contract between the City of Asheville and SunTrust Leasing Corporation for the purchase of the radio system and authorizes the City Manager, City Attorney, Finance Director and City Clerk to execute and deliver any and all necessary documents.

City staff recommends City Council adopt the resolution.

RESOLUTION BOOK NO. 27 – PAGE 291

I. RESOLUTION NO. 03-4 - RESOLUTION SUPPORTING INCREASED CONGESTION MITIGATION AIR QUALITY FUNDING AND REVISED ELIGIBILITY CRITERIA

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Summary: The consideration of a resolution supporting increased Congestion Mitigation Air Quality (CMAQ) funding and revised program eligibility requirements.

At the December 17, 2002, meeting, Council adopted a resolution authorizing the City to enter into an Early Action Compact with other local governments in the Greater Asheville Basin to take voluntary steps to reduce pollution in an effort to delay or avoid designation by the EPA as a non-attainment area, which would trigger the imposition of mandatory pollution control measures.

At that meeting, it was suggested that Council should consider adopting a resolution supporting amendments to various laws that would make federal funding available to assist in the implementation of the voluntary measures emerging from the EAC. Currently, federal funding is only available after the non-attainment designation has been made. This resolution is similar to one adopted by the Central Texas Clean Air Coalition.

If Council approves of the resolution, its adoption is recommended.

RESOLUTION BOOK NO. 27 – PAGE 292

J. RESOLUTION NO. 03-5 - RESOLUTION APPROVING THE HOUSING TRUST FUND LOANS

Summary: The consideration of a resolution allocating \$587,000 in Housing Trust Fund loans for affordable housing development.

The City's 2003 budget included an appropriation of \$500,000 for the Housing Trust Fund (HTF). In addition, there has been \$87,000 in repayments received from prior years' loans. The application process for the third annual offering of HTF loans was opened on October 23, 2002, and seven applications were received by the November 27 deadline. The applications were evaluated by a panel of city and outside professional staff and then reviewed by the Housing and Community Development Committee. The HCD Committee has recommended funding six projects by five developers, as follows:

WNC Housing, Inc. (4 rental units for special needs)	\$75,000
Ron Moser Inc. (21 units for sale)	\$230,000
Neighborhood Housing Services (10 units for sale)	\$150,000
Tim & Wendy Vorst (4 rental units in two projects)	\$100,000
Villas at Cedar Hills, LLC (30 units for sale)	<u>\$32,000</u>
Total	\$587,000

Staff estimates that within two years of the loans closing, approximately \$245,000 will be repaid to the trust fund.

This will be the third year of the HTF program.

City staff recommends City Council approve the HTF loans listed above.

RESOLUTION BOOK NO. 27 – PAGE 293

K. RESOLUTION NO. 03-6 - RESOLUTION FIXING DATE OF A PUBLIC HEARING ON JANUARY 28, 2003, ON THE QUESTION OF THE VOLUNTARY ANNEXATION OF PROPERTY LOCATED EAST OF PISGAH VIEW ROAD AND IDENTIFIED AS THE PISGAH VIEW ROAD AREA

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RESOLUTION BOOK NO. 27 – PAGE 294

L. RESOLUTION NO. 03-7 - RESOLUTION APPOINTING MEMBERS TO THE DOWNTOWN COMMISSION

Summary: The terms of Chuck Pickering, William Byrne and Kim MacQueen expired on December 31, 2002. Mr. Pickering and Mr. Byrne have requested reappointment. Ms. MacQueen has resigned as a member of the Downtown Commission to take the President of the Downtown Association appointment.

Mr. Tim Fierle has resigned as a member from the Downtown Commission, thus leaving an unexpired term until December 31, 2003.

On December 17, 2002, it was the consensus of City Council to instruct the City Clerk to prepare the proper paperwork to (1) reappoint Mr. Pickering and Mr. Byrne to each serve an additional three year term respectfully, terms to expire December 31, 2005, or

until their successors have been appointed; (2) appoint J. Patrick Whalen to serve a three year term, term to expire December 31, 2005, or until his successor has been appointed; and (3) appoint Peter Alberice to serve the unexpired term of Mr. Fierle, term to expire December 31, 2003, or until his successor has been appointed.

RESOLUTION BOOK NO. 27 – PAGE 296

M. RESOLUTION NO. 03-8 - RESOLUTION APPOINTING A MEMBER TO THE FIREMEN'S RELIEF FUND

Summary: The term of Lloyd Williams, as a member on the Firemen's Relief Fund Board of Trustees, expired on January 1, 2003.

On December 17, 2002, it was the consensus of City Council to instruct the City Clerk to prepare the proper paperwork to reappoint Mr. Williams to serve an additional two year term, term to expire January 1, 2005, or until his successor has been appointed.

RESOLUTION BOOK NO. 27 – PAGE 297

N. RESOLUTION NO. 03-9 - RESOLUTION APPOINTING MEMBERS TO THE GREENWAY COMMISSION

Summary: The terms of Gerry Hardesty and Linda Giltz, as members on the Greenway Commission, expired on December 31, 2002.

On December 17, 2002, it was the consensus of City Council to instruct the City Clerk to prepare the proper paperwork to reappoint Gerry Hardesty and Linda Giltz to each serve an additional three year term, terms to expire December 31, 2005, or until their successors have been appointed.

RESOLUTION BOOK NO. 27 – PAGE 298

O. RESOLUTION NO. 03-10 - RESOLUTION APPOINTING MEMBERS TO THE ASHEVILLE TRANSIT COMMISSION

Summary: The terms of Stacy Anderson, Ruth Chaet and Robert Potter, as members on the Asheville Transit Commission, expired on December 31, 2002.

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On December 17, 2002, it was the consensus of City Council to instruct the City Clerk to prepare the proper paperwork to (1) reappoint Stacy Anderson and Ruth Chaet to each serve an additional two year term respectively, terms to expire December 31, 2004; and (2) to appoint Mr. James F. Garner Jr. to serve a two year term, term to expire December 31, 2004. All terms are until their successors have been appointed.

RESOLUTION BOOK NO. 27 – PAGE 299

P. RESOLUTION NO. 03-11 - RESOLUTION APPOINTING MEMBERS TO THE TREE COMMISSION

Summary: The terms of Kasty Latven, Peter Gentling and Sofia Mannos, as members on the Asheville Tree Commission, expired on December 31, 2002.

On December 17, 2002, it was the consensus of City Council to instruct the City Clerk to prepare the proper paperwork to (1) reappoint Kasty Latven and Sofia Mannos to each serve an additional three year term respectively, terms to expire December 31, 2005; and (2) to appoint Joseph Carney to serve a three year term, term to expire December 31, 2005. All terms are until their successors have been appointed.

RESOLUTION BOOK NO. 27 – PAGE 300

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

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

ITEMS REMOVED FROM THE CONSENT AGENDA FOR INDIVIDUAL DISCUSSION

It was the consensus to deal with both resolutions at the same time.

RESOLUTION NO. 03-12 - RESOLUTION AUTHORIZING THE MAYOR TO APPLY FOR AND ENTER INTO AN AGREEMENT WITH THE N.C. DEPT. OF ENVIRONMENT AND NATURAL RESOURCES TO ASSIST WITH THE

DEVELOPMENT OF THE FRENCH BROAD RIVER PARK IV

Parks & Recreation Director Irby Brinson said that this is the consideration of a resolution authorizing the Mayor to apply for and enter into an agreement with the N.C. Dept. of Environment and Natural Resources to assist with the development of the French Broad River Park IV.

Funds are available through the N. C. Dept. of Environment and Natural Resources, Division of Parks and Recreation in the North Carolina Parks and Recreation Trust Fund, to assist with the development of parks and greenways. If awarded, grant funds will be used to assist with the next phase of construction at French Broad River Park IV.

French Broad River Park IV represents the City of Asheville's next phase of a major greenway and park system being developed along the French Broad River on Amboy Road. The next phase includes a picnic pavilion, wetland interpretive/education area, river overlooks, a boat landing, trails and parking.

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The Parks and Recreation Department, the Asheville Parks and Greenways Foundation and RiverLink are in partnership to implement a fundraising plan to raise approximately \$800,000 to build the next phase of the park.

The Parks and Recreation Department is requesting \$250,000 in grant funds from the North Carolina Parks and Recreation Trust Fund, which requires a dollar for dollar cash match. The cash match is available through a partnership with RiverLink, and in funds allocated by the City of Asheville.

The Parks and Recreation Department recommends the City of Asheville to apply for and enter into an agreement for grant funds through the North Carolina Parks and Recreation Trust Fund to assist with the construction of the French Broad River Park IV.

When Councilman Mumpower asked how much City money is involved in the French Broad River Park IV grant, Mr. Brinson said that the match would be \$185,000. He explained that the grant requires a \$250,000 match but we currently have \$25,000 from a grant that we have secured from Progress Energy and a \$40,000 contribution from RiverLink. This resolution would give City staff the authority to proceed with the grant application. He said staff would be requesting the \$185,000 as part of the budget process, with or without the grant, since we want to continue the development of that park. If Council decides at budget time not to allocate those funds we would go back and readjust that grant application based on the amount of dollars that we do have that are secured. In addition, staff is still looking at other opportunities to match the \$250,000 with non-City money so that it gives us an opportunity during that period of time for applying for that grant to show where that match comes from.

Upon further inquiry of Councilman Mumpower regarding timing, Mr. Brinson said there are only two grant cycles for this particular grant and if we don't apply this cycle, we won't be able to apply until later, which will push us in trying to use the funds to complete the park in the fall of 2004. Again, he explained that the \$185,000 match is flexible and we are only trying to keep our options open.

Mr. Brinson said that with the Azalea Road Park, the City is not committing any funds toward the match. That match would come from the \$400,000 Tourism Development grant that the City will receive. Plus, we have another match from the Lewis Trust Fund that was established. He said the City has the option to use in-kind match, but we have enough cash already to make that match, so we would not necessarily have to use the in-kind. If we do use the in-kind, it allows us to use the flexibility of using that cash for other matches.

City Manager Westbrook said that the \$185,000 match will be programmed for that year's budget in compliance with the Master Plan, which City Council approved. Regardless of whether the grant was there, we were going to try to do some work with \$185,000 and Mr. Brinson has found a way, through a grant, to leverage that additional funding from the state. He felt it was good business to try to do that.

Councilman Mumpower felt that money we spend for parks and recreation are good dollars, however, his discomfort with this is a timing matter. He said Council just spent a difficult summer balancing our budget and we even raised taxes. He was a little uncomfortable with Council stepping forward this quickly in view of the recent budget crisis and the possible budget crisis next summer. He did understand we are trying to keep our options open and that the budget may look better in the summer. If the budget outlook is good, he will be happy to vote to approve the match, but if not, then he would be against spending money for the match because we have other priorities.

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Upon inquiry of Councilman Peterson, Mr. Brinson said the French Broad River Park IV is without a doubt the most heavily used park.

Councilman Dunn was concerned about the lack of playground facilities at the Hall Fletcher School Park. Mr. Brinson said that over the past 4-5 years, there has been a concentration to upgrade playgrounds. He said the Hall Fletcher School Park is in our Capital Improvement Budget request and will be forwarded to Council through the budget process.

Upon inquiry of Councilwoman Jones, Mr. Brinson said that revenue brought in from the French Broad River Park was approximately \$30,000-\$40,000 last year from concessions and in-line hockey, which he hoped would grow. He also noted that expenditures for last year were approximately \$30,000-\$40,000.

Vice-Mayor Bellamy felt that this is a long-term investment in that Council needs to invest in good venues for our children now than invest in police enforcement later.

Mr. Brinson said that the total cost to date, including the property, for the French Broad River Park is \$2,135,000 and the City of Asheville has put in \$200,000, which is less than 10% of that cost.

RESOLUTION NO. 03-13 - RESOLUTION AUTHORIZING THE CITY TO APPLY FOR AND ENTER INTO AN AGREEMENT WITH THE N.C. DEPT. OF ENVIRONMENT AND NATURAL RESOURCES TO ASSIST WITH THE DEVELOPMENT OF THE AZALEA ROAD PARK PHASE I

Summary: The consideration of a resolution to apply for and enter into an agreement with the N. C. Dept. of Environment and Natural Resources to assist with the development of Azalea Road Park Phase I.

Funds are available through the N. C. Dept. of Environment and Natural Resources, Division of Parks and Recreation, for funds through the Land, Water and Conservation Fund to assist with the development of outdoor recreation facilities. If awarded, grant funds will be used to assist with the construction of the first phase of Azalea Road Park.

Azalea Road Park represents the City of Asheville's first phase of a major greenway and park system being developed along the Swannanoa River on Azalea Road. This first phase will include the development of two fields of the four field soccer complex, restrooms, concession, kayak launch, two picnic shelters, a large playground, disc golf, fitness and greenway trails, river observation decks, restoration of the Thomas Wolfe cabin, and parking areas.

The Parks and Recreation Department, Western North Carolina Soccer Foundation and RiverLink are in partnership to implement an ambitious fundraising plan to raise \$3 million to build the first phase of the park.

The Parks and Recreation Department is requesting \$500,000 in grant funds from the Land, Water and Conservation Fund, which requires a dollar for dollar cash or in-kind match. The cash match is available through the Western North Carolina Soccer Foundation, and the in-kind match is available in labor, equipment, and project management in the Parks and Recreation Department.

The Parks and Recreation Department recommends the City of Asheville to apply for and enter into an agreement for grant funds with the Land, Water and Conservation Fund to assist with the construction of Azalea Road Park Phase I.

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Vice-Mayor Bellamy moved to approve Resolution No. 02-12 and Resolution No. 02-13. This motion was seconded by Councilwoman Jones.

Councilman Mumpower felt City staff does an excellent job of leveraging money. He hoped, and was encouraged to believe, that other departments will have the same opportunity and be equally creative in their efforts to maintain our streets, building new sidewalks, replace sidewalks that need replacement, keep police well-equipped and maintain our equipment.

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

RESOLUTION BOOK NO. 27 – PAGE 301

RESOLUTION BOOK NO. 27 – PAGE 302

III. PUBLIC HEARINGS:

A. PUBLIC HEARING TO CONSIDER REZONING PROPERTIES IDENTIFIED ON THE BROADWAY CORRIDOR

ORDINANCE NO. 2987 - ORDINANCE TO REZONE PROPERTIES IDENTIFIED ON THE BROADWAY CORRIDOR SOUTH OF MAGNOLIA STREET

ORDINANCE NO. 2988 – ODINANCE TO REZONE PROPERTIES IDENTIFIED ON THE BROADWAY CORRIDOR NORTH OF MAGNOLIA STREET

Mayor Worley said that this matter was tabled from the August 28, 2002, agenda. On December 10, 2002, the matter was rescheduled until this date due to failure of properly posting the properties to be rezoned along the Broadway corridor. This public hearing was advertised on January 3 and 10, 2003.

Mayor Worley opened the public hearing at 5:32 p.m.

City Attorney Oast said that a protest petition has been filed with respect to the rezoning portion of this request. The law requires that in the case of a valid protest petition, the rezoning can only pass by favorable vote of $\frac{3}{4}$ of the entire Council. In this case, however, after investigation by Urban Planner Carter Pettibone and himself, it is their determination that it is not a valid protest petition. He said that the reason is that, as calculated, they don't believe they have met the minimum 20% threshold of one of the qualifying areas you have to meet. In particular, when you have a case like this where you have a large irregularly shaped parcel, the law is unclear and some judgment calls had to be made. He did consult with attorneys at the Institute of Government, attorneys on his own staff, and reviewed similar situations from his own career on where to draw the lines to divide the areas. It was their belief that we applied what rules there are in a reasonable manner. Again, it is his opinion that the petition is not valid.

Upon inquiry of Councilman Peterson, City Attorney Oast used a copy of the corridor to explain how he made the calculations and how the lines for each area were drawn (which were done before he knew where the property owners were that had that signed the protest petition), noting that he followed property lines or extensions of zoning lines. If the area were considered as a whole, it would not qualify for a valid protest petition. And, in drawing the four lines, none of the four areas drawn met the percentages necessary for a valid protest petition.

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When Councilman Peterson said that there was no clear state law on where the lines should be drawn, City Attorney Oast agreed that the lines could be drawn in a number of areas, but his lines were drawn in a reasonable way.

Upon inquiry of Vice-Mayor Bellamy, City Attorney Oast explained why any lines were drawn at all.

Councilman Peterson explained why he felt the application of the law by City Attorney Oast that the total acreage of the entire lot that touches within 100 feet is included in the calculations is incorrect. He said that case law is that only that part of the property that is within 100 feet of the boundary of the zoning district that is to be changed should have been calculated. City Attorney Oast agreed that the law is not clear on that, but the way that he applied it is that it includes the area of the lot that is in within 100 feet, not just so much of it as is within the 100 feet.

Vice-Mayor Bellamy suggested that Council divide the rezoning area up into two areas and vote on them separately since it seems there is not a lot of dispute in rezoning the south area.

Ms. Betty Lawrence, attorney, said that the petitioners tried very hard to get an opinion from the City Attorney as to, in this situation with these irregular boundaries, what a side would be so that they would have some amount of clarity as to how many property owners they would need on the protest petition. She explained how the lines could have been drawn differently in order to have a valid protest petition. In addition, she agreed with Councilman Peterson in that only 100 feet of the boundary of the zoning district should have been calculated. She stated that she does have authorizations to withdraw the protest petition if there are changes made in the boundary.

Planning and Development Director Scott Shuford said that first, this zoning change would implement the development pattern proposed in the Broadway Corridor Plan that Council adopted last year. In addition, staff feels the zoning will help the implementation of the greenway project proposed for the west side of Broadway. The proposed zoning is consistent with the recommendations of the Sustainable Economic Development Task Force for missed use development and redevelopment. Finally, your smart growth policies would be implemented by this change in zoning, including the first three land use policies: (1) mixed use developments and buildings should be encouraged; (2) compatible, higher density commercial and residential infill development should be encouraged; and (3) new development should promote a sustainable land development pattern.

Secondly, the Broadway corridor's zoning over the past 6-7 years has impeded its redevelopment. In the single family zoned area north of Five Points, the only development has been a church, one of the few non-residential uses allowed in an RS-8 Residential Single-Family High Density District (RS-8) zoning. Virtually nothing has changed south of Five Points despite the suburban commercial zoning. Staff does not find the level of development activity in either area acceptable, given Council's charge to staff to create a smart growth development pattern that effectively and sustainably uses our resources. If we want the corridor to change, the zoning also needs to change. We have local developers waiting to build to the provisions of the Neighborhood Corridor District (NCD).

Mr. Shuford said that Broadway is a corridor having great potential to meet the future needs of our community. It is a critical link between downtown and UNC-Asheville. It is largely a "fresh palette," allowing the City to create a vision for future mixed-use development of the smart growth variety that Council has said it wants. Council and staff is asked daily to demonstrate our support for development that reverses the road-building and air quality impacts of a sprawl development pattern. Staff believes this proposed rezoning will be a step in the right direction to achieving these objectives.

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Urban Planner Carter Pettibone said that this is the consideration of an ordinance to rezone a 40.9-acre area located along Broadway Street from Community Business II (CB II) and RS-8 to NCD.

The Planning and Development Department has proposed the rezoning of 40.9 acres along Broadway Street to NCD as the next step in the Broadway Corridor Area planning process, following the development of the Broadway Corridor Action Plan and the adoption of the Neighborhood Corridor District as a new zoning district. Following the future zoning action steps outlined in the Corridor Plan of

revising zoning standards to encourage mixed use development and identifying appropriate zoning designations to promote those mixed uses, Staff has identified an area for the implementation of this zoning district.

The proposed area is made up of 92 parcels and their associated rights-of-way. The area essentially runs one property deep along both sides of Broadway from I-240 north to its intersection with Magnolia Street, and also includes the two city blocks between Broadway and Marcellus south of Maxwell Street. The area then proceeds north along the eastern side of Broadway one lot deep until it reaches the southern edge of UNCA property. Along the western edge of Broadway north of Magnolia only eight lots near the intersection of Broadway and Cauble Street are included.

Several of the properties on the west side of Broadway north of Five Points were purposely not considered for the proposed rezoning area because they are to be used for the planned greenway along the creek to the west of Broadway. Staff also considered the impact of possible commercial vehicular traffic on the surrounding neighborhoods and limited the depth of the rezoning area to mainly one property deep along Broadway.

The existing land uses in the area include a variety of commercial uses and vacant properties and buildings in the southern portion of the proposed area, which is currently zoned CB II. North of the Five Points area in the RS-8 section, the majority of the properties are vacant, with a few residential homes, a church, and a gas station interspersed between. Over the past few years the City has seen little development activity in the corridor, but has recently received interest from various groups about possibilities for mixed-use redevelopment opportunities. In rezoning this area, staff believes the Broadway Corridor Plan's goals of providing a pedestrian friendly, mixed-use area that provides connection and neighborhood services to adjoining communities and a gateway to the Downtown area can be achieved.

The Planning and Zoning Commission voted 3-2 to recommend approval of the rezoning of the Broadway Corridor Area to NCD. The Planning and Development staff recommends approval as well.

Upon inquiry of Councilman Ellis, Urban Designer Alan Glines said that most of the property on the west side north of Five Points is dedicated to the greenway but about nine parcels could be developed in some fashion, hopefully to enhance the greenway.

Councilman Peterson noted that some gas lines are being installed on the east side of Broadway and wondered if that had been taken into account regarding what can be built on those lots. Mr. Pettibone said that a utility representative is on the Technical Review Committee and we are aware of that. He said the line might impact where the building would sit on the parcel and they might need a greater setback to accommodate the easements. Mr. Shuford agreed that if the gas lines are going in a right-of-way they have to get the appropriate encroachment agreement.

Councilman Peterson expressed concern of losing the existing housing stock on Broadway. He feared that the approximate nine houses on the east side of Broadway would be

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torn down to build commercial structures or commercial parking and that would intrude more into the residential areas.

Councilman Peterson also expressed concern about shared parking outside the NCD. Mr. Shuford responded that residentially zoned areas may not be used to provide shared or remote parking spaces for this district, except that non-residential uses in residential districts may be used. For example, if there is a church nearby or some other non-residential use, the shared parking could occur, but it would not be allowed on general residential property.

After Mr. Pettibone said that the text of the wording amendment to establish the NCD was amended after it passed by the Planning & Zoning Commission, Councilman Mumpower asked if that would be an issue. It was the opinion of City Attorney Oast that there is no procedural issue, but it may be something Council would want to be aware of in their deliberations.

Mr. Shuford said that City staff recommends a zoning district that is continuous from downtown to UNC-Asheville. They feel it would be better for a lot of the different goals they were trying to achieve, e.g., transit supported density, neighborhood level services, encouraging a mixed of uses within buildings, encouraging mixed income residential, and more effectively using the infrastructure along that corridor. If Council wishes to separate the vote, or direct staff to look at a different zoning district, they would be happy to do that.

Upon inquiry of Councilman Ellis, Mr. Glines revised some of the standards of the NCD, particularly as they related to grocery stores and drive-throughs. He noted that drive-throughs would require a conditional use permit, which would have to come before City Council for approval.

The following individuals spoke in support of rezoning the entire area of Broadway for various reasons, some being, but are not limited to: strong link from UNC-Asheville to downtown; better front door for UNC-A to signify the important connection between our community and its public university; foster expanded range of retail services easily accessible and walkable from UNC-Asheville; foster economic development for City; proposed development along Broadway will steer new growth in a part of town where people can walk or bike to jobs, services and school and which is served by public transportation; allow development at densities which can support viable public transportation; and, growth is taking place in the outlying areas in Buncombe County where people have to drive, so to reduce air pollution generated by cars is to redirect some of that growth into areas where people don't have to drive so much to meet daily needs:

Mr. Tom Byers, Executive Assistant to the Chancellor at UNC-Asheville
Mr. David Hill, Architect with Community Corridors, LLC
Mr. Brownie Newman, resident in Montford

The following individuals spoke in opposition of rezoning the entire area of Broadway for various reasons, some being, but are not limited to: difficult to make the area pedestrian friendly with the increased traffic volume; smart growth policies apply to more of a urban setting; south of Chestnut Street is commercial, but north of Chestnut Street is residential and should remain as residential; northern part of Broadway will never be pedestrian friendly due to the wide width of Broadway; more curb-cuts will be dangerous for pedestrians; there should be a buffer between the sidewalk and the traffic for pedestrians to feel safe; buildings in the NCD are not in scale with the residential area; commercial property does not carry as much tax burden as residential property; houses will be torn down for parking; drive-throughs are not pedestrian friendly; if the law regarding the protest petition is vague, it should be applied inclusively, not exclusively; Broadway will never be pedestrian friendly; proposed Health Adventure vision in area will affect the character of the Broadway development and not be affected by it; since you can't build over gas lines, the lots will have less buildable space on them; there are only a couple of buildable

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lots; homes will be torn down for commercial development; and, huge potential for 1/3 of mile north on Broadway with UNC-Asheville, Botanical Gardens, Health Adventure and the greenway:

Ms. Brandy Boggs, property owner on the south side of Broadway
Mr. Sammy Cox, resident on West Street
Mr. Peter Brezny, resident near the proposed rezoning
Ms. Mary Jo Brezny
Ms. Margaret Muller, resident in the area
Mr. Greg McCoy, resident on Chestnut Street
Ms. Veronika Gunter, resident on North Street
Ms. Amanda Rollins, resident on Monroe Place
Ms. Cynthia Long, resident on Magnolia
Mr. Mike Burton, resident on Mt. Clare
Mr. Bradley Taylor, resident near the proposed rezoning
Ms. Megan Gordon, property owner on Broadway
Ms. Betty Lawrence, attorney (presented portion of 8-27-96 City Council minutes)
Ms. Marilyn Hastings, resident on Starnes Avenue

At 8:12 p.m., Mayor Worley closed the public hearing and announced a short recess.

At the request of Councilman Mumpower, Mr. Pettibone responded to questions related to building on small lots, buffer requirements, and side street parking,

Councilman Dunn asked what could be done if parking does become a problem on side streets. Mr. Glines said that the ordinance can be amended and staff can look at creative programs that other cities use.

Upon inquiry of Vice-Mayor Bellamy, Mr. Glines said that it's a goal for the community to have parks and greenways near residential areas to have eyes on the park and for their benefit as well.

Vice-Mayor Bellamy felt that the northern portion of Broadway, on the east side, has great potential for multi-family development but we need a higher density. She felt the best use of that land would be high density residential.

Mr. Shuford said that to rezone the northeast part of Broadway to RM-16 Residential Multi-Family High Density District (RM-16) is only marginally better than the existing RS-8. He explained that it is not a mixed-use district, it has none of the development incentives of the NCD, it has a suburban setback, and it has suburban parking requirements. He did not recommend RM-16 for that area. He suggested that since we don't have anything in our Code that would fit, Council could direct staff to create some sort of urban residential district with some of the site design characteristics that we tried to build in the NCD. He did caution Council that if there were an exclusively residential district near a university, you would see student housing being a potential component of that off-site. That has been a problem for some neighborhoods in North Carolina.

Vice-Mayor Bellamy stressed that we do need more affordable housing and a more variety of housing. We need higher density and more incentives for developments to put affordable units in their developments. She felt that you need residential development to use the commercial services that will be available.

Councilman Peterson felt that since commercial property is more valuable, it would push out the residential development. He felt residential will not be developed in a commercial area. Because the lots are so shallow between North Street and Hillside, that area might be appropriate

for an RM-16 zone (with a variance), which would allow some townhouses to be built. There is already a fair amount of residential there now and in some ways we will lose that housing and will have no housing along that street at all.

Councilman Ellis explained why he felt that mixed development would be appropriate on the northeast side of Broadway.

Councilwoman Jones suggested that the Planning staff be directed to develop an urban residential district. In addition, she felt that the north section and the south section of Broadway should be voted on separately.

Councilman Peterson said that because there is some question about the validity of the protest petition, a lawsuit would stop all development for maybe three years. Since he didn't want Broadway sitting idle for another three years and if there was consensus to move forward on the south area of Five Points, he suggested Council vote on that portion. Then Council can either vote to rezone the northern section to NCB, decide to rezone it to RM-16, or we can send it back to Planning.

Councilman Mumpower felt to split the vote would be avoiding the complexity of a hard decision. He did have some hesitancy about rezoning the north end but feels that the entire corridor should be considered as a whole.

Councilman Dunn explained how he was familiar with this area and it has not changed much in many years. He felt that this rezoning will actually increase property values of adjoining properties, but it will take time.

Because Councilwoman Jones wanted to separate the rezonings into two areas, she moved to rezone to NCD from Five Points south to I-240. This motion was seconded by Vice-Mayor Bellamy.

There was some discussion about where to draw the boundary line on the southern portion, e.g., at Ocala Street/Woodrow Avenue area or at Magnolia Street.

City Attorney Oast said that if the protest petition is valid, it applies to the whole corridor and you can't rezone any part of it except by at least a 6-1 vote. As he understands Councilwoman Jones' motion is to, because there is some unanimity on the southern part, she is proposing to rezone that to put that out of the reach of a challenge based on the protest petition. He did feel that Council can separate these two and he doesn't think it would be subject to legal challenge for that reason.

At 9:30 p.m., Mayor Worley announced a short recess.

Councilwoman Jones moved to amend her motion to rezone to NCD the southern portion of Broadway from Magnolia Street south to I-240. This amended motion was seconded by Vice-Mayor Bellamy and carried unanimously.

ORDINANCE BOOK NO. 20 – PAGE

Councilman Mumpower moved to rezone to NCD the rest of the proposed Broadway Corridor (northern portion of Broadway from Magnolia Street north). This motion was seconded by Councilman Dunn.

Mayor Worley said that he recalled the discussion back in 1986 in that it centered around the recognition that the then current zoning (some of which was commercial) was not suitable the

Broadway Corridor because it was developing and it needed to be developed in a mixed use or commercial/residential mixture. But, Council did not have the tools at the time to do it. Council recognized that and in late 1996 we were in the process of working on the UDO, which we adopted in the spring of 1997, and we knew that it would need staff study. We purposefully rezoned it residential temporarily at that point in time because we did not have the tools nor did staff devote the time to come up with the proper way to do it. Now we have the tools in place and staff had done their work. He also noted that since 1996 there has been no residential development along the Broadway Corridor, nor does he think it's likely to be any significant residential development if the property remained zoned residential. This rezoning is being innovative in the ways that we deal with development to encourage people to better utilize transportation methods, in particular alternative transportation methods. This type of concept fits right in where you increase the density relatively close to the central core of the city by encouraging more walkability and encouraging more dependency on public transportation.

The motion made by Councilman Mumpower and seconded by Councilman Dunn to rezone the rest of the Broadway Corridor to NCD carried on a 4-3 vote with Mayor Worley, Councilman Dunn, Councilman Ellis and Councilman Mumpower voting "yes" and Vice-Mayor Bellamy, Councilwoman Jones and Councilman Peterson voting "no."

City Attorney Oast said that because the ordinance requires an affirmative vote of 2/3 members of Council, a second reading would need to be held at Council's next meeting. Councilwoman Jones noted that she will not be at the next formal meeting on January 28, 2003, and asked if the second reading could be held at the January 21, 2003, worksession. The City Attorney advised that would be appropriate and it was the consensus to hold the second reading at the January 21, 2003, City Council worksession.

B. PUBLIC HEARING TO CONSIDER CONDITIONAL USE ZONINGS FOR A SPLIT ZONED 8.84 PARCEL LOCATED AT 1875 HENDERSONVILLE ROAD FROM OFFICE BUSINESS DISTRICT AND RM-6 RESIDENTIAL MULTI-FAMILY LOW DENSITY DISTRICT TO HIGHWAY BUSINESS DISTRICT/CONDITIONAL USE (5.22 ACRE PORTION DIRECTLY BEHIND THE INGLES PLAZA) AND OFFICE BUSINESS DISTRICT/CONDITIONAL USE (3.62 ACRE PORTION TOWARDS THE REAR OF THE PARCEL), AND ISSUANCE OF A CONDITIONAL USE PERMIT TO ALLOW FOR THE EXPANSION OF A SHOPPING PLAZA

ORDINANCE NO. 2989 - ORDINANCE REZONING AN 8.84 PARCEL LOCATED ON 1875 HENDERSONVILLE ROAD FROM OFFICE BUSINESS DISTRICT AND RM-6 RESIDENTIAL MULTI-FAMILY LOW DENSITY DISTRICT TO HIGHWAY BUSINESS DISTRICT/CONDITIONAL USE (5.22 ACRE PORTION DIRECTLY BEHIND THE INGLES PLAZA) AND OFFICE BUSINESS DISTRICT/CONDITIONAL USE (3.62 ACRE PORTION TOWARDS THE REAR OF THE PARCEL)

ORDINANCE NO. 2990 - ORDINANCE GRANTING A CONDITIONAL USE PERMIT TO ALLOW FOR THE EXPANSION OF A SHOPPING PLAZA

Oaths were administered to anyone who anticipated speaking on this matter.

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

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public hearing on those two items will be combined, all the testimony needs to be sworn and two votes will need to be taken. The first vote will be to grant the rezoning to the conditional use district category and the second vote will be to issue the conditional use permit. If Council runs into a situation that it votes to rezone, Council doesn't have to issue the conditional use permit on the same night.

After hearing no questions about the procedure, Mayor Worley opened the public hearing at 10:00 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.

Mr. Alan Glines, 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. Glines said that this is the consideration of a request to rezone an 8.84 parcel located on 1875 Hendersonville Road from Office Business District and RM-6 Residential Multi-Family Low Density District to Highway Business District/Conditional Use (5.22 acre portion directly behind the Ingles Plaza) and Office Business District/Conditional Use (3.62 acre portion towards the rear of the parcel), and issuance of a conditional use permit to allow for the expansion of a shopping plaza and general buffer areas for the office/business portion of the proposed development

On November 1, 2002, John Spake of Spake Realty, agent for Ingles Markets submitted a request to rezone a split zoned parcel from Office Business (OB) and RM-6 Residential Multi-Family Low Density District to Highway Business (HB)/Conditional Use and Office Business (OB)/Conditional Use in the south area of the City.

The conditional use rezoning request is for a parcel known as 1875 Hendersonville Road (PIN No. 9655.09-15-0411) totaling 8.84 acres. The property is located directly behind the Ingles Plaza on Hendersonville Road (City Exhibit 3 – Location Map). The conditional use component of this application will be a site master plan that shows the expansion of the shopping center and some general buffer areas for the office/business portion of the proposal. The parcel is split zoned at present and is divided nearly evenly between OB and RM-6. The 5.22 acre portion of property directly behind the existing Ingles Plaza acres is proposed to be rezoned to Highway Business District/Conditional Use. The remaining 3.62 acre portion towards the rear of the parcel is proposed to be rezoned Office Business District/ Conditional Use (City Exhibit 3 – Site Plan).

As proposed, the Highway Business portion of the parcel will be the location of the expansion of the Ingles store. Buffer areas and setbacks will be developed per landscape requirements. The areas of the existing parking will be brought up to current standards in the Unified Development Ordinance (UDO) for landscaping and pedestrian access. The exact uses in the Office Business portion of the lot are not determined at this time but will incorporate a landscape buffer adjacent to the rear property line in excess of UDO requirements per the request of the developer. Other landscape buffers for this portion of the proposal will follow the guidelines in the UDO. Access to the Office Business area of the lot will come from Hendersonville Road. The developer has worked with the neighborhood to establish buffer and site design conditions that will make the Office Business portion of the site better fit with surrounding residential development.

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The back half of the site is currently undeveloped. Most of the trees at the front area of this portion of the site were logged in the past. There are existing trees at the rear section of the property.

The Highway Business District is established to provide a full range of large scale commercial activities along major thoroughfares. The RM-6 Residential Multi-Family Low Density District is established to provide low density single and multifamily projects that provide a transition between single family and multifamily districts. It is appropriate for areas where environmental constraints and infrastructure limit development potential. The Office Business District is established to reserve an area for the development of office uses and related support uses. This district will reserve areas for medium scale offices and a limited range of business uses and may serve as a transition area between commercial and residential areas. Residential density equals 12 units per acre.

The parcel lies just behind the Hendersonville Road commercial corridor. Access to the property is from Hendersonville Road. Other neighboring parcels in the vicinity fronting on Hendersonville Road are zoned Highway Business. Neighboring parcels to the south of the subject parcel are zoned Office Business. Parcels to the west and north are zoned a variety of residential categories: RM-6 Residential Multi-Family Low Density District, RS-4 Residential Single-Family Medium Density District, and RS-2 Residential Single-Family Low Density District. As stated before, the Highway Business portion of the lot will allow the expansion of the Ingles center on Hendersonville Road. The area of Office Business will provide a buffer between large scale commercial activities on Hendersonville Road and residential areas.

The Technical Review Committee (TRC) met on November 18, 2002, and recommended the conditional use rezoning approach as a way to ensure the compatibility of the proposal.

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

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

If developed as proposed and conditioned, the development will create no public health or safety problems as determined by TRC review.

- 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 development of the front area of the 5.22 acre portion of the parcel for use by the grocery store will require substantial soil and substrate removal. This excavation can be mitigated by the planting of buffer trees and shrubs according to landscape ordinance requirements. The rear portion of the parcel that will be used for the Office Business uses will not require extensive grading and will also maintain a developer-proposed undisturbed 50' rear landscape buffer from the residential uses. Side buffers setbacks will be up to 25 feet (as determined by requirements of the UDO) and will also be undisturbed save for future points of cross-access if any.

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

The property is located just off of the Hendersonville Road commercial thoroughfare. Access to the parcel will come from Hendersonville Road eliminating any possibility of residential cut-through access. In addition landscape buffering by commercial uses along residential uses will

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protect neighborhoods. If developed as proposed and conditioned, the project will not injure the value of adjoining or abutting 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 commercial expansion and the Office Business uses will be in keeping with development patterns found in the adjacent area. This also follows an existing pattern of development for Hendersonville Road and will be in harmony with the scale, coverage and character of the area.

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

This proposed development is in keeping with patterns already established in this area and with the large scale mixed commercial uses as identified in the proposed Asheville 2025 Comprehensive Plan.

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

The proposed development site is located along a major thoroughfare for the City of Asheville and has adequate infrastructure services.

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

The proposed development at final completion will represent a net gain of approximately 15,000 square feet of retail space in the shopping plaza. This is because existing retail space will be replaced by the larger store. Traffic impacts will be reviewed at final site plan submittal but are not expected to create undue traffic congestion or create traffic hazards. As proposed, the use and access to the 8.84 acre parcel will come from Hendersonville Road and will effectively remove one curb cut from use on Hendersonville Road.

- Two separate actions are required by the UDO for conditional use rezoning approval: (1) Council must vote to rezone of the parcel; and (2) Council must vote to approve the project master plan as a conditional use.

The Planning and Zoning Commission voted 5-0 at their December 19, 2002, meeting to recommend approval of the rezoning and conditional use permit with the following conditions. Staff also recommends approval with these conditions.

1. Traffic issues will be fully reviewed at the time of detail site plan submittal. The City Traffic Engineer may recommend a traffic study to include signal timing issues and lane configurations and other issues to be determined upon review.
2. The Office Business zoned area of the parcel should share a driveway with the Ingles shopping plaza to connect to the signalized intersection.
3. No additional driveways will be approved for the project.
4. The Highway Business zoned portion of the parcel will be required to be combined with the existing shopping plaza parcel.
5. The site areas included in the conditional use proposal shall bring the development into compliance with the UDO requirements for landscaping, parking and pedestrian access issues.
6. For the Office Business portion of the project, there shall be no grading or clearing in the landscape bufferyard (where required) in order to protect existing trees. In addition a

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minimum of a 'C' buffer will be required adjacent to neighboring residential properties. Future cross-access between Office Business parcels may require driveway connections through the bufferyard. The Highway Business uses will incorporate a landscape bufferyard as required by the UDO.

7. In the Office Business portion of the project, air conditioning units will be located on the ground level; natural building materials will be used to construct any buildings (metal or vinyl siding are not approved materials); buildings will feature residential styled roof pitches; and evergreen plant materials (trees and/or shrubs) will be added to the buffer area adjacent to the residential areas.

Councilman Peterson questioned if the property owner agrees to the 50 foot buffer at the back of the parcel, why it wasn't included as a condition. He felt it was important to include that as a condition since it is the only part that is adjacent to existing residential. Mr. Glines said that it is included on the site plan. City Attorney Oast further noted that we incorporate the site plan into the conditional use permit instead of listing all the conditions on the plan.

Councilman Peterson felt this action was unusual to issue a conditional use permit on the back portion of the property when there is no plan for what will be on that portion of the parcel. Mr. Glines explained that when conditions are listed on the site plan then that is enough to be a conditional use, along with the uses that are allowed as part of the Office Business District. Planning & Development Director further explained in this case we have a developer suggested condition with regard to building height, building style, building materials and that has been communicated to the surrounding neighbors in a fashion that makes them feel comfortable. The neighbors will have a chance to see this when it goes to the Technical Review Committee for a Level II approval for anything that is built on that rear portion. He felt the impacts are covered by the conditions and the site design.

Mr. Glines responded to questions from Councilman Peterson about what would happen to the buffer areas if there a future cross access between the Office Business parcels.

Councilman Peterson was concerned that City Council is not standing firm when they say they want to protect residential districts because in this proposed rezoning Council is rezoning a residential district to office uses.

Mr. John Spake, with Spake Real Estate representing Ingles Markets, spoke in support of the conditional use permit.

There being no request from the applicant for rebuttal, Mayor Worley closed the public hearing at 10:20 p.m.

Vice-Mayor Bellamy moved for the adoption of Ordinance No. 2989 to rezone an 8.84 parcel located on 1875 Hendersonville Road from Office Business District and RM-6 Residential Multi-Family Low Density District to Highway Business District/Conditional Use (5.22 acre portion directly behind the Ingles Plaza) and Office Business District/Conditional Use (3.62 acre portion towards the rear of the parcel). This motion was seconded by Councilman Ellis and carried unanimously.

ORDINANCE BOOK NO. 20 - PAGE

Vice-Mayor Bellamy moved to adopt Ordinance No. 2990 to issue the conditional use permit to property located on 1875 Hendersonville Road to allow for the expansion of a shopping plaza, subject to the following conditions with the understanding that the

master plan will be incorporated into the permit: (1) Traffic issues will be fully reviewed at the time of detail site plan submittal. The City Traffic Engineer may recommend a traffic study to include signal timing

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issues and lane configurations and other issues to be determined upon review; (2) The Office Business zoned area of the parcel should share a driveway with the Ingles shopping plaza to connect to the signalized intersection; (3) No additional driveways will be approved for the project; (4) The Highway Business zoned portion of the parcel will be required to be combined with the existing shopping plaza parcel; (5) The site areas included in the conditional use proposal shall bring the development into compliance with the UDO requirements for landscaping, parking and pedestrian access issues; (6) For the Office Business portion of the project, there shall be no grading or clearing in the landscape bufferyard (where required) in order to protect existing trees. In addition a minimum of a 'C' buffer will be required adjacent to neighboring residential properties. Future cross-access between Office Business parcels may require driveway connections through the bufferyard. The Highway Business uses will incorporate a landscape bufferyard as required by the UDO; and (7) In the Office Business portion of the project, air conditioning units will be located on the ground level; natural building materials will be used to construct any buildings (metal or vinyl siding are not approved materials); buildings will feature residential styled roof pitches; and evergreen plant materials (trees and/or shrubs) will be added to the buffer area adjacent to the residential areas. This motion was seconded by Councilman Dunn and carried unanimously.

ORDINANCE BOOK NO. 20 – PAGE

When Vice-Mayor Bellamy advised Mr. Spake of the deplorable conditions of the Ingles Market on Tunnel Road near the Wal-Mart site, Mr. Spake said that Ingles is well aware of the problems with that store. He said if the existing Wal-Mart moves into their new Super Center on Swannanoa River Road, they hope to move Ingles into the Wal-Mart building.

IV. UNFINISHED BUSINESS:

Councilman Mumpower said that City staff made a strong effort to come up with a plan that worked for as many people as possible. The neighborhoods participated in good fashion and brought their issues to the table and got as much as they could. Then, however, the next step seems to be to come to City Council and get as much as you can, and then if that doesn't work take legal steps and get as much as you can. His concern is that that kind of process doesn't allow cooperative resolution and partnership to help us get to a good place together. It's get what you want using whatever means you can and if every time we start getting neighborhoods and staff and developers together, everyone reserves the right to tromp that process. He has concerns about that and would be interested to see how we might create some initiative around that to see if we can avoid that process in the future.

V. NEW BUSINESS:

A. RESOLUTION NO. 03-14 - RESOLUTION APPOINTING MEMBERS TO THE ASHEVILLE-BUNCOMBE COMMUNITY RELATIONS COUNCIL

Vice-Mayor Bellamy said that the terms of Kathryn Liss and Cynthia Janes, as members on the Asheville-Buncombe Community Relations Council, expired on December 31, 2002.

On December 17, 2002, City Council instructed the City Clerk to arrange the proper paperwork to appoint Dr. James Mullen to serve a three year term, term to expire December 31, 2005, or until his successor has been appointed.

Also on December 17, 2002, City Council instructed the City Clerk to arrange for interviews for Michael Burkhead, Jennifer Simpson-Oliver and Robert Glenn. Ms. Simpson-Oliver withdrew her name from consideration.

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Mr. Burkhead received 7 votes and Mr. Glenn received 0 votes. Therefore, Dr. James Mullen and Mr. Michael Burkhead were appointed to each serve a three year term respectively, terms to expire December 31, 2005, or until their successor have been appointed.

City Council noted that they were very impressed with Mr. Glenn's interview and suggested he apply for another board or commission that he may be interested in.

RESOLUTION BOOK NO. 27 – PAGE 303

VI. OTHER BUSINESS:

Pledge of Allegiance

Councilman Dunn suggested that at the beginning of the meeting that we invite the veterans in the room to lead the meeting in the pledge of allegiance.

Claims

The following claims were received by the City of Asheville during the period of December 6-12, 2002: BellSouth (Water), Richard Smith (Streets), Brenda Graham (Water), Grove Park Inn (Transit Services) and Brett Joiner (Water).

The following claims were received by the City of Asheville during the period of December 13-19, 2002: Helmut Lindemann (Fire), Jim Henderson (Sanitation) and Patsy O'Donnell (Fire).

The following claims were received by the City of Asheville during the period of December 20, 2002 – January 2, 2003: BellSouth (Water), BellSouth (Water) and Don Frank (Streets).

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

Lawsuit

The City has obtained a copy of a Complaint filed on December 11, 2002, which is described as follows: Timothy Burdine v. Asheville Transit Authority and Asheville City Coach Lines, Inc. The nature of the proceeding is a former employee of transit company is seeking damages under the Americans with Disabilities Act. This matter will be handled in-house.

VII. INFORMAL DISCUSSION AND PUBLIC COMMENT:

Mr. Fred English spoke against installing red light cameras at intersections.

Mr. Peter Dawes hoped that the City and the County would work together to find a way to communicate better with the radio system. Mayor Worley stated that he will be meeting with the Chair of the County Commissioners and that is one item for discussion.

Mr. Veronika Gunter hoped that City Council will provide sidewalks to the side streets of neighborhoods that connect to Broadway and follow-through on other ideas discussed with regard to the Broadway Corridor, including mass transit, bike traffic and pedestrian traffic.

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VIII. ADJOURNMENT:

Mayor Worley adjourned the meeting at 10:43 p.m.

CITY CLERK

MAYOR