

Regular Meeting

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

Absent: None

PLEDGE OF ALLEGIANCE

- Retired Air Force Veteran Mick Dove led City Council in the Pledge of Allegiance.

INVOCATION

Vice-Mayor Mumpower gave the invocation.

I. PROCLAMATIONS:

II. CONSENT AGENDA:

Councilwoman Bellamy asked that Consent Agenda "D" be removed from the Consent Agenda for an individual vote.

Vice-Mayor Mumpower asked that Consent Agenda "B" be removed from the Consent Agenda for discussion.

A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON DECEMBER 16, 2003, AND THE WORKSESSION HELD ON JANUARY 6, 2004

B. RESOLUTION SUPPORTING STATEWIDE PASSENGER RAIL SERVICE

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

C. RESOLUTION NO. 04-1 - RESOLUTION ACCEPTING THE NEW STREET NAME OF "GABRIELLE LANE"

Summary: The consideration of a resolution accepting the new proposed street name "Gabrielle Lane."

Gashes Creek Ridge LLC, owner of lots off of Gashes Creek Road, has petitioned the City of Asheville to accept the street name "Gabrielle Lane." The new street will begin at Gashes Creek Road and end at the cul-de-sac on Gabrielle Lane.

City staff recommends adoption of the resolution accepting the new street name "Gabrielle Lane."

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D. BUDGET AMENDMENT FOR N.C. DEPT. OF TRANSPORTATION TEA 21 ENHANCEMENT GRANTS FOR NEW HAW CREEK ROAD/AVON ROAD SIDEWALKS, PACK SQUARE PEDESTRIAN IMPROVEMENTS, AND WEST END/CLINGMAN PEDESTRIAN IMPROVEMENTS

This item was removed from the Consent Agenda for an individual vote.

E. ORDINANCE NO. 3080 - BUDGET AMENDMENT FOR FAIR HOUSING ASSISTANCE PROGRAM GRANT

Summary: The consideration of a budget ordinance, in the amount of \$172,700, for the Fair Housing Assistance Program (FHAP) for Fiscal Year 2003-04.

- The City has been carrying out its Fair Housing Program under contract with the Asheville-Buncombe Community Relations Council (ABCRC) and Fair Housing Commission since January 1988, using HUD FHAP funds. The City's Community Development Division serves as Lead Entity and monitors the program.

We have received notification of the grant awarded to the City for the federal fiscal year of 10/1/02-9/30/03. Staff has submitted the necessary paperwork to HUD. It is characteristic of this grant program that we receive notification of the grant amount at the end of the program year.

A budget ordinance amendment is required in order to receive these funds and subgrant them to ABCRC.

Community Development staff recommends adoption of the ordinance.

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F. RESOLUTION NO. 04-2 - RESOLUTION OF INTENT TO SET A PUBLIC HEARING ON FEBRUARY 10, 2004, TO CONSIDER THE CLOSING OF A PORTION OF AN UNOPENED UNNAMED ALLEY OFF FOREST STREET

Summary: The consideration of a resolution of intent to close a portion of an unopened unnamed alley off Forest Street and setting a public hearing on February 10, 2004.

N. C. Gen. Stat. sec. 160-299 grants cities the authority to permanently close streets and alleys without regard to whether they have actually been opened.

Pursuant to this statute, the adjoining property owners have requested the City of Asheville close a portion of an unopened unnamed alley off Forest Street, the entry of which is located approximately 165 feet east of the intersection of Forest Street and Hendersonville Road (US Hwy 25).

Public Works Department staff has researched and determined that this alley is not a City maintained street and is not in use as a means of ingress or egress for any of the properties abutting the alley. There are three lots that abut this portion of the unnamed alley. They are identified by PIN Nos. 9647.20-90-3952; 9647.20-90-5910; and 9647.20-91-4067.

The developer has agreed to preserve a 17-foot easement to connect future utilities.

City staff recommends that City Council adopt the resolution of intent setting a public hearing for February 10, 2004 to close a portion of an unopened unnamed alley off Forest Street.

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

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

ITEMS REMOVED FROM THE CONSENT AGENDA

RESOLUTION NO. 04-3 - RESOLUTION SUPPORTING STATEWIDE PASSENGER RAIL SERVICE

Summary: The consideration of a resolution supporting statewide passenger rail service.

Since 1999, a group called the Western Carolina Rail Corridor Committee has been meeting and working to advocate and generate momentum for getting passenger rail service from Salisbury to Asheville. The Committee consists of representatives from each of the nine locations along the route where a depot either currently exists or, in the case of Asheville, is proposed. Following this example, a similar 'Committee' has recently formed around a similar movement for passenger rail service between Raleigh and Wilmington/or Morehead City. Now, both groups are collaborating to promote a statewide passenger rail system across North Carolina. To that end, they are asking all affected units of local government, local business organizations, and other groups for their support by adoption of a resolution of support. Their plan is to present the collective resolutions to the NC General Assembly during the upcoming session as a demonstration of wide support for the service.

Staff recommends Council approve the resolution supporting statewide passenger rail service.

Vice-Mayor Mumpower asked what the cost estimate was for the entire statewide service. Director of Economic Development Mac Williams said that he doesn't have that estimate, however, just the western portion from Salisbury to Asheville will be approximately \$130 Million for track upgrade that will accommodate both passenger and freight trains. There will be additional expenses for equipment, operations for the station upgrades, etc. A 2001 estimate for the equipment was approximately \$12 Million.

Mr. Williams then answered numerous questions/comments from Council, some being, but are not limited to: do we have a site for a station in Asheville and are there any estimates for the purchase of the site; what are the projected daily ridership numbers; are there any statistics on interstate travel east and west; there should be adequate parking at the station; have there been any studies on the economic impact of Asheville if rail service did come; and what is the state's projected budget for this system.

Councilman Dunn said that this rail service might not be cost effective because there are only two light rail systems in the United States that have made money. He didn't feel there is a need for this service in Asheville.

When Councilman Dunn asked if the rail service had potential to make money for our taxpayers, Mr. Williams said that the western corridor service was estimated to be a subsidized service.

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City Manager Westbrook said that the money will be coming from the federal government. If the largest city in WNC doesn't support this in some way, it won't support the message that says we want part of those funds.

Mr. Williams explained that the resolution is being advocated so that we can keep the statewide passenger rail service effort alive to do the necessary studies and integrate passenger rail service into the transportation system as an option. He said that 70 jurisdictions (including Buncombe County, the Land-of-Sky Regional Council, and the French Broad Metropolitan Planning Organization) have supported the resolution.

Councilman Newman said that he has heard that Asheville is the most requested Amtrak destination in the country that is not currently served by rail service. Mr. Williams said that the Asheville Chamber of Commerce said that Amtrak has reported that to them.

Councilman Newman said that this is a lot of money but all parts of our transportation structure costs a lot of money. The Airport will never pay for itself, but it's still important to our economy and to our infrastructure.

Vice-Mayor Mumpower said this should be researched prior to Asheville's support. He felt that Asheville doesn't approach the density requirements to support the system.

Mr. Don Yelton felt that the idea of rail is good, however, he encouraged Council to revise the resolution to encourage the legislators to come up with hard figures.

Mr. Fred English felt Asheville did not need this rail service and we should use the money for street maintenance.

Ms. Judy Calvert Ray, Chair of the WNC Rail Corridor Committee, said they are not requesting the City to support passenger rail service at this point in time. They are only asking Council to support the initiative to develop a statewide rail system as an alternative mode of transportation for the state.

Councilman Newman said that he is sympathetic to the concerns raised, however, he understands how difficult it is to move projects like this forward in the legislature. He wondered if it would diminish the value of the resolution if Council spoke with a somewhat different voice than other towns and cities are saying. Ms. Calvert Ray said they worded the resolution as carefully as they could stating that it is an initiative to develop and support a statewide rail system. She would like for council to adopt the resolution as is, but if changes need to be made, she did not know how much impact it would have.

Mr. Alan Ditmore, Leicester resident, felt this was something good for Asheville. He felt that trains are more efficient than airplanes. He suggested reallocating the Airport money towards the rail system.

Ms. Judy Marshall spoke in favor of riding a train to Raleigh.

Councilwoman Jones felt that it is important for Asheville to be a regional player and the counties surrounding Asheville felt this will benefit us all. Therefore, she moved adoption of Resolution No. 04-3 with the understanding that our Transit Director will

follow the progress, ask the hard questions and get data as it comes forward. This motion was seconded by Councilman Newman.

Mayor Worley supported the resolution and felt this was the right direction for Asheville to head. He did note that the state has a lot of studies to do in order to move forward.

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Councilwoman Bellamy said that she is Vice-Chair of the N. C. League of Municipalities Community and Economic Development Committee. They have been briefed on the light rail system initiative and the desire for other municipalities across the state to see this go forward. The Committee found that if we study this issue and accumulate more data, we could get more support in the legislature so that is why as a Committee we supported this initiative.

Councilman Dunn felt the Council should have experts come in and tell us what their experience is with light rail.

The motion made by Councilwoman Jones and seconded by Councilman Brownie carried on a 4-3 vote, with Mayor Worley, Councilwoman Bellamy, Councilwoman Jones and Councilman Newman voting "yes" and Vice-Mayor Mumpower, Councilman Davis and Councilman Dunn voting "no."

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ORDINANCE NO. 3081 - BUDGET AMENDMENT FOR N.C. DEPT. OF TRANSPORTATION TEA 21 ENHANCEMENT GRANTS FOR NEW HAW CREEK ROAD/AVON ROAD SIDEWALKS, PACK SQUARE PEDESTRIAN IMPROVEMENTS, AND WEST END/CLINGMAN PEDESTRIAN IMPROVEMENTS

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

Summary: The consideration of a budget amendment for three municipal agreements with the N. C. Dept. of Transportation (NCDOT) for TEA 21 Enhancement Grants for (1) New Haw Creek Road/Avon Road Sidewalks; (2) Pack Square Pedestrian Improvements; and (3) West End/Clingman Pedestrian Improvements.

On October 11, 2003, City Council authorized the City Manager to sign three municipal agreements with the NCDOT accepting the award of TEA 21 Enhancement grants for the three aforementioned sidewalk and pedestrian projects. The NCDOT will disburse TEA 21 funds for all three projects directly to the City; however, the City is responsible for only the New Haw Creek Road/Avon project and is required to provide a local cash match. The City will distribute the other TEA 21 grant funds to the Pack Square Conservancy, who is responsible for managing the Pack Square Pedestrian Improvement project, and to Mountain Housing Opportunities, who will manage the West End/Clingman Project. Because all funds will initially be issued to the City for subsequent disbursement, a budget amendment authorizing the use of these funds is required.

The specific amounts of the grants are as follows:

- (1) New Haw Creek Road/Avon Road Sidewalk – The TEA-21 grant award for this project is \$172,132. The State is matching this grant with \$150,000 from its Small Urban Fund Grant. Additional matches include \$5,000 from the Haw Creek Community Association, and \$40,000 from the City, which is already budgeted in the City's fee-in-lieu of sidewalks account.
- (2) Pack Square Pedestrian Improvements – The amount of the grant is \$140,000. Pack Square Conservancy will provide the match for the project.
- (3) West End/Clingman Pedestrian Improvements – The amount of the grant is \$172,131. The match for the project will be made by Mountain Housing Opportunities.

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Staff recommends that a budget amendment for three municipal agreements with NCDOT for TEA 21 Enhancement Grants for (1) New Haw Creek Road/Avon Road Sidewalks; (2) Pack Square Pedestrian Improvements; and (3) West End/Clingman Pedestrian Improvements.

Vice-Mayor Mumpower moved for the adoption of Ordinance No. 3081. This motion was seconded by Councilman Davis and carried unanimously.

III. PUBLIC HEARINGS:

A. PUBLIC HEARING TO CONSIDER THE CONDITIONAL USE ZONING OF PROPERTY LOCATED AT SAND HILL ROAD (HABITAT FOR HUMANITY) FROM RS-2 RESIDENTIAL SINGLE-FAMILY LOW DENSITY DISTRICT AND RS-4 RESIDENTIAL SINGLE-FAMILY MEDIUM DENSITY DISTRICT TO RS-8 RESIDENTIAL SINGLE-FAMILY HIGH DENSITY DISTRICT; AND THE ISSUANCE OF A CONDITIONAL USE PERMIT FOR A PROPOSED 61 LOT SUBDIVISION

ORDINANCE NO. 3082 - ORDINANCE REZONING PROPERTY LOCATED AT SAND HILL ROAD (HABITAT FOR HUMANITY) FROM RS-2 RESIDENTIAL SINGLE-FAMILY LOW DENSITY DISTRICT AND RS-4 RESIDENTIAL SINGLE-FAMILY MEDIUM DENSITY DISTRICT TO RS-8 RESIDENTIAL SINGLE-FAMILY HIGH DENSITY DISTRICT/CONDITIONAL USE

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

After hearing no questions about the procedure, Mayor Worley opened the public hearing at 5:47 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. Carter Pettibone, Urban Planner, said that a valid protest petition has been filed, thus requiring a three-fourths vote of City Council to approve the rezoning of the property. If the rezoning passes by the three-fourths vote, then the conditional use permit is subject to a simple majority vote.

Mr. Pettibone 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).

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Mr. Pettibone said that this is the consideration of a request to rezone property located at Sand Hill Road (Habitat for Humanity) from RS-2 Residential Single Family Low Density District and RS-4 Residential Single-Family Medium Density District to RS-8 Residential Single Family High Density District/Conditional Use; and a request to issue a conditional use permit for a proposed 61 lot subdivision. The applicant has revised his application for a 60 lot subdivision.

He said that the project accommodates infill development on an underutilized site and supports efforts to increase the supply of affordable housing, two goals of the 2025 Asheville City Development Plan.

Asheville Habitat for Humanity, the applicant, had submitted a petition for a regular rezoning to RS-8 last year. The Planning and Zoning Commission recommended denial and the applicant did not appeal.

The applicant wishes to conditionally rezone the properties in order to develop a 61-lot single-family residential subdivision (City Exhibit 3 – Location Map). The intent of the RS-8 District is to establish a high density per acre for single-family dwellings where public infrastructure is sufficient to support such development.

The properties are located just outside the City limits in the extraterritorial jurisdiction area on the north side of Sand Hill Road. There is a mix of zoning districts in the area, with Commercial Industrial, RM-6, and RS-4 to the east, RS-2 and RS-4 to

the north, and RS-2 directly to the west and south. Land uses include primarily single-family residential to the east with a small commercial property directly northeast on Sand Hill Road, recreational uses to the north and vacant property to the west.

The development, as proposed in the conditional use plan, would be accessed from Sand Hill Road and consist of one main road, three cul-de-sac streets to serve the 61 lots, and a stub street to the north (City Exhibit 3 – Copy of Site Plan for 60 lot subdivision). While not required due to the proposed density of the subdivision, the applicant has proposed an undisturbed buffer along its boundary with the Captain's Drive development to the north and east. The applicant has also proposed reservation of other undeveloped open spaces within the development, including an area around the cemetery located on the site. The property owner and applicant would also like to propose a condition that, if approved, the properties would revert back to the original RS-2 and RS-4 zoning if for some reason the applicant does not take possession of the property.

The Technical Review Committee (TRC) reviewed this request at its November 17, 2003, meeting and recommended approval with a number of conditions. Chief among these conditions was an Engineering Department requirement that the applicant provide another access to the development or a stub to adjoining property. Unable to provide a street connection to Captain's Drive due to a narrow strip of property between the development and Captain's Drive, and after discussion with the TRC, the applicant had agreed to pursue a stub street to the Buncombe County recreational property to the north and explore other possible connections or stubs.

The Planning and Zoning Commission held a public hearing for this petition on December 3, 2003, and voted to recommend approval with the conditions identified by the TRC and an added condition that the applicant augment the proposed undisturbed buffer to maintain at least a 25' wide "C" type landscape buffer along the portion of the site that adjoins the Captain's Drive subdivision to the north and east.

The applicant has revised the site plan to address most of the TRC and Planning and Zoning Commission conditions. Conditions still outstanding include augmenting the proposed buffer between the site and the Captain's Drive subdivision with plantings to achieve at least a "C" type buffer and increasing the cul-de-sac diameter width from 70' to 90' or some alternative width

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as approved by the City's Engineering Department. With the revised site plan, the applicant has also increased the width of the proposed buffer between the site and Captain's Drive from 25' to 30' along Captain's Drive and increased the amount of open space above the minimum required by the Unified Development Ordinance (UDO).

The 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:

Final approval for the development of the site would need to receive technical approval from the Water Resources Department, MSD, Engineering, and other City and County Departments as part of a subdivision review. 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:

Any development on the site must comply with all City standards in regards to clearing and grading, erosion control, and maximum slope. Extensive grading is not expected. The applicants have also received preliminary approval for the location of the entrance road relative to the floodplain of nearby Hominy Creek.

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

The applicant plans to present evidence that the proposed development will have minimal, if any, negative impact on values of abutting or adjoining properties.

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:

There appears to be no clear development pattern or character in the general area of the proposed site, as there exist a wide variety of lot sizes, zoning districts and land uses nearby. While the nearest residential subdivision, Captain's Drive, is built to a lower density, other residential developments in close proximity like the Biltmore Commons Condominium development directly southeast across Sand Hill Road and the Biltmore Grove subdivision to the east of Captain's Drive are developed at a similar or even greater density than the proposed site.

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:

Any proposed development on the site would be required to comply with all applicable UDO and Standards and Specifications requirements, as well as any of the City's other plans and policies. The proposed plan also addresses some of the goals and objectives of the 2025 City Development Plan and Smart Growth Policies, including accommodating infill development on underutilized sites and supporting efforts to increase the supply of affordable housing.

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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:

Any development of the site would need to receive technical approval from applicable City and County Departments, which include representatives of the Water Resources Department, MSD, Engineering, and County Fire and Building Safety Departments.

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

During TRC review, the City's Engineering department did not identify significant issues regarding traffic congestion or safety. No undue traffic congestion or traffic hazards are anticipated as a result of this development.

Rezoning the properties to RS-8/Conditional Use Zoning would allow the applicant the opportunity to develop the property for 61 single-family residences and appears to be consistent with the intent and purpose of the UDO and goals of the City's smart growth policy and 2025 City Development Plan.

The Planning and Zoning Commission voted 5-1 to recommend approval with the conditions identified by the TRC and an additional condition that the applicant would augment the existing vegetation to achieve a "C" type buffer in the area along the portion of the site that adjoins the Captain's Drive subdivision.

Since there are still outstanding conditions, staff recommends approval of the conditional use permit portion of the request subject to the following conditions:

- The buffer between the development and Captain's Drive is supplemented to achieve at least a "C" type landscape buffer.
- The diameter width for each cul-de-sac is increased to 90' or to an alternative width as determined by the City's Engineering Department.
- The location of the fence line surrounding the cemetery that abuts the Captain's Drive development is moved back to accommodate a "C" type buffer but still contain the graves located within the cemetery.
- All other outstanding TRC conditions are addressed.
- If the applicant does not take possession of the properties, the zoning of the properties will revert back to the original RS-2 and RS-4 zoning (requested by applicant).

When Councilman Newman asked if the schools are notified of the projects, Mr. Pettibone said that TRC agenda and the Planning & Zoning Commission agendas are sent to the schools. We have not heard anything about school capacity problems resulting from this project.

Upon inquiry of Councilman Davis, Mr. Pettibone said that there is no more property in this tract that is developable because of the floodplain.

Councilman Davis asked if this property were to be developed under it's current zoning how many units could be built, given the floodplain and slope. Mr. Pettibone said that they have not done an analysis of that, however, it would be somewhere from 40-50 units.

Mr. Gerald Green, representing Habitat for Humanity, spoke in favor of the conditional use zoning and conditional use permit. He explained that Habitat provides housing for the working people in our community and expounded on the services

Habitat performs. The Habitat communities add to, not detract, from the surrounding properties. There is no evidence of adverse impact of values of the surrounding properties. Since homes are appraised often on a square foot basis, what we found is that the square foot appraised value of Habitat homes is

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equal to many of the homes in the surrounding areas on a square foot basis. Those homes are often a bit larger so there is a chance that those homes will be valued more, but on a square foot basis the cost is approximately the same. Some advantages of the site is it's proximity to schools and to the Buncombe County soccer complex, which the stub street will provide access to. The site has easy access to interstates and a range of transportation networks. There is also growing employment opportunities in the area with the development of Biltmore Lake, the industrial park that is being developed, Southeastern Container and the other industrial complexes along Sardis Road and the Sand Hill Road area. The infrastructure is adequate. This is a 60-lot single-family subdivision. The current zoning would permit 47 single-family homes, given the existing topography. We are requesting an addition of only 13 lots over the current zoning on 17.33 acres. The average density will be 3.5 units per acre. Taking out for the street system and amount of open space (which is in excess of what is required by the City), the density will actually be 5 homes per acre. Landscaping will be provided to enhance the appearance of the community. He said that no buffer is required by the City but Habitat has proposed a 25' buffer. Following the Planning & Zoning Commission meeting, Habitat agreed to extend the buffer from 25' to 30' at the northern top. The advantage of this conditional use zoning is that City Council can place additional conditions on the zoning of the property to assure that this development will fit in with the neighborhood and not have an adverse impact on the surrounding property owners. A stub street has been added since the Planning & Zoning Commission going to the County's property. At this point the County said that they have no plans to build any street or to allow a street to be built on this property. At this point the street will go nowhere, but it will have a sidewalk along it and will be a good place for the community to access the County's recreational facilities. He then reviewed their responses of the City's seven conditional use standards (City Exhibit 3 – Applicant's Findings of Fact). Benefits of the project include providing housing to meet the needs of the community; infill development; meets the goals of the City by providing affordable housing and infill development; and it is in an excellent location. He urged City Council to vote in favor of the conditional use zoning and permit.

Mr. Gordon Greenwood, President of the Board of Directors for Habitat for Humanity, said that since 1983 they have built 183 homes in our community. Improvements from land to houses to date exceed \$9.5 Million. Property taxes paid by Habitat homeowners in 2003 exceeded \$108,000. The new subdivision will increase the tax base by \$7.5 million. Habitat homes have been appraising from \$112,000. It is anticipated that the homes in this project will be appraised from \$120-125,000. He gave other statistics about Habitat's homes. They would like to start construction in the summer of 2005 and be concluded in 2009. A family of four with an income of \$15,600 to \$34,720 could qualify from an income standpoint for a Habitat house with monthly payments as low as \$365, which would include taxes and insurance. He felt this was a good project and asked for Council's support.

Ms. Lynette Sills, Realtor in Buncombe County for 8 years and member of the Board for Habitat for Humanity, reviewed with Council information from the Buncombe County tax records and from the Asheville Board of Realtors Multiple Listing Service. With the exception of 2 lots, all of the lots on Captain's Drive range from .24 acres to .45 acres. The two exceptions are one lot at .51 acres and another at 1.69 acres. With the exception of the home with 1.69 acres on it, the selling prices for homes on Captain's Drive in the past four years have ranged from \$125-166,500. The list prices have ranged from \$129-189,900. The square footage of these homes ranges from a little over 1,700 heated square feet to a little over 2,000 heated square feet. The price per square foot ranges from a little over \$71 to a high of \$100 with an average resale of \$84 per square foot. The tax records show that these houses are valued for tax purposes between \$138-196,400. She gave similar statistics about the homes on Garden Grove. The homes Habitat proposes to build on the property are 2-4 bedroom homes and the heated square footage ranges from 900-1,300 square feet. The most recent homes appraised by Habitat appraised at \$112,900. She pointed out that their price per square foot is comparable to price per square foot in Biltmore Grove and to Captain's Drive and to comparable properties selling in West Asheville.

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Upon inquiry of Mr. Steve Barden, attorney representing some residents on Captain's Drive, Mayor Worley explained that when dealing with a conditional use zoning and permit, Council does consider the proposed use because if approved, it is restricted to that use only. For a normal rezoning, City Council would not be able to consider the proposed use of that property but would have to consider all the uses under that district.

Mr. Barden said that the rezoning request to RS-8 could allow up to 138 lots in this 17 acre area. There are no other RS-8 districts in that general vicinity. Rezoning this property to RS-8 would basically spot this particular area isolated from other areas of like zoning density. The residents of Captain's Drive bought their property with a reasonable expectation that this area would be low density. He felt this development will directly affect the property owners and their property values. He doesn't think the pattern

of Habitat's previous projects has been in such a low density area. On Captain's Drive the average lot size is .49 acres, which is a far cry from the proposed zoning use of RS-8. It's their position that the current zoning of 40-50 I should be enough. He urged Council to deny the conditional use zoning.

The following individuals (who supported Habitat and it's efforts) spoke in opposition to the proposed conditional use zoning for some reasons, some being, but are not limited to: the wildlife will be destroyed in the beautiful woods along Captain's Drive; adding 100 or more cars in area will add to the already congested street system; RS-8 will crowd families to close together which will create conflict between neighbors; a home on .2 lots or less won't give those homeowners a chance to improve their home like adding garage, shrubs, flowers, trees, carport, etc. that other homes in the area have; homes and lots will be smaller than the surrounding area; homes will not be close to the value of the surrounding area homes; RS-8 zoning is out of character with Captain's Drive; this will allow a high density population in a low density community; no public transportation to that area and no plans for the bus service to come to that area; since the development is in the County the homeowners will have an added expense of garbage collection; the development can only be made legal by the exception to the existing regulations; the cemetery and surrounding area deserves special attention because of it's historical value; the lots, not the homes, are not compatible; adjoining property values will be decreased; there will be additional significant traffic congestion; residents have been waiting for 25 years for Sardis Road to be widened and 10 years for a longer exit lane at Exit 44; City has recognized traffic concerns by requiring a second road access but there is only a stub street; property damage collisions have increased 50% on Sand Hill Road; property damage collisions have increased 91.6% on Sardis Road; there will be no public access to the cemetery; trees will be cut; environment will be destroyed; school capacity not addressed; homes should be built to current zoning; stub street will be a safety hazard for children at the soccer complex; applicant has not worked with the community to find a common ground; tax figures by applicant do not reflect basement square footage; no sidewalks on Sand Hill Road; dangerous intersection at proposed project and Biltmore Commons; who will maintain cemetery; a home on 1/8 acre will not equal monetary value of a home on 1/2 acre; Habitat home will average 1,100 square feet whereas home on Captain's Drive averages 1,852 square feet (68% larger); average Habitat home will be on .20 acre whereas home on Captain's Drive averages on .48 acre (2.5 times larger); no published 2025 Plan; 350 single-family homes being built on Oakview Road, 400 proposed homes in Biltmore Lake; new apartment complex behind school with 48 homes, 250 apartments at Biltmore Commons – all with no school or road upgrading; and Sand Hill School Road is too narrow to allow a school bus and a full-size SUV to pass:

Ms. Sandra Bailey, resident on Captain's Drive
Mr. Steve Ayala, resident on Captain's Drive
Mr. Fred English, resident in Haw Creek
Ms. Kathleen Bailey, resident on Captain's Drive (Neighborhood Exhibit 1)
Mr. Scott Bailey, resident on Captain's Drive
Ms. Dawn Treadway, resident on Sand Hill Road

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Mr. Roger Cook, resident on Captain's Drive
Ms. Julie Case, resident on Sand Hill Road
Mr. John Owen, resident on Captain's Drive
Ms. Carol Tracy, resident on Captain's Drive
Ms. Gail Crawford, resident on Captain's Drive
Mr. Joe Treadway, resident on Sand Hill Road (City Exhibit 3 – Arial Photo and Neighborhood Exhibit 2)
Mr. Tom Rogers, resident in Sand Hill Road area
Mr. Tommy Plemmons, resident on Sand Hill Road
Ms. C. Russell, resident on Captain's Drive
Mr. Kevin Varner, resident on Captain's Drive
Mr. Russ Tracy, resident on Captain's Drive

Mr. Alan Ditmore, resident in Leicester, spoke in favor of the proposed development.

Mr. Martin Lewis, partner with Fletcher Partners, supported the proposed development. His company is proposing to build an industrial center adjoining the property which will have a tremendous economic impact in Buncombe County with jobs and state/local tax revenues and they would be happy to have the view of the Habitat community.

Mr. Green responded to the various comments voicing opposition to the proposed development. He said that Habitat will consider voluntary annexation into the City after the homes are constructed. The lots are similar in size to the size of the lots in Biltmore Grove Subdivision located on the other side of Captain's Drive and that development has not adversely impacted the property values on Captain's Drive. The second access was required for future road construction because of the length of the

street. They will work with the residents on Captain's Drive to provide public access to the cemetery. They are trying to protect the environment by minimizing tree clearance and providing a large open area around the cemetery and other open spaces, as well as the undisturbed 30' buffer along Captain's Drive which will be enhanced. They are preserving a much larger area around the cemetery to assure there is no disturbance of the cemetery or any of the unmarked or poorly marked graves. Regarding contact with the schools, Ms. Welsh with Habitat contacted Mr. Marshall Roberts who is the Facility Director of Buncombe County Schools. He stated that Enka High School is projected to be 37 over capacity this year. Enka Middle School is near capacity and Sand Hill Venable Elementary School is in good shape. He said that Mr. Roberts further stated that while the Enka district has seen steady growth over the past 8 years he doesn't believe the community should perceive school overpopulation to be a problem.

Mr. Barden said that the average of the 17 lots on Captain's Drive is .48 acres. He doesn't think the fact that one lot over one acre really skews those figures. Regarding the stub street, the applicant has given no evidence if they can ever get right-of-way out of that through the County property. And, there is no evidence they can ever get legal right-of-way out of the cemetery property into Captain's Drive. They feel the developer is asking for a large zoning change and the residents in the surrounding area are entitled to the same kind of protection that anyone else in the County has. Changing zoning to increase the density is a very serious step and he urged City Council to protect the rights of the property owners.

Mayor Worley closed the public hearing at 7:40 p.m.

Mayor Worley then announced a short break.

Mr. Pettibone then responded to various questions/comments from Council that arose out of the public hearing, some being, but are not limited to: describe the buffer planned; where is

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the buffering planned; can City Council increase the buffering; and was the second access an issue of concern.

Upon inquiry of Councilwoman Bellamy, Mr. Anthony Butzek, the City's Traffic Engineer, said that the need for the second access point is dictated by the length of the cul-de-sac. The City typically does not allow cul-de-sacs that exceed 1,000 feet in length (based on the Fire Code). When that situation does occur we require a second connection to be made. In this case, the first possibility we looked at was connecting to Captain's Drive, however, that was determined to not be feasible. With the floodplain on the opposite side of the project that was also infeasible. The only connection that had any feasibility was the connection to the Buncombe County parcel. It is true that connecting a street through there is unlikely, at least in the near future, but we hope to get is a sidewalk or greenway connection to the park.

Vice-Mayor Mumpower asked what the recommendation would be if there was no other access. Mr. Butzek said that if the cul-de-sac length exceeded 1,000 feet and there were no other solutions and traffic were not a concern, we would probably permit it with the condition that it does meet this particular standard and let City Council make that determination.

Ms. Butzek and Mr. Pettibone answered various questions from Council, some being, but are not limited to, why a traffic impact study was not required; what the level of service is on area roads; why can't the other access be on Captain's Drive; why doesn't the City like to approve cul-de-sacs; are they required to provide fire hydrants along the street; and the pattern of development in the area (City Exhibit 4).

There was considerable discussion about the stub street and its function.

Vice-Mayor Mumpower was concerned that Standard No. 3 has not been met. He felt there would be an impact. If there is not an impact, it's going to be because property values in Asheville are going up and compensate for changes in neighborhood. But if property values weren't going up he wondered if this project wouldn't have a negative impact. He was also concerned that Standard No. 4 has not been met. He said that the area seems to compare about every zoning district Asheville has. Their most immediate neighbors are RS-2 and RS-4 and Biltmore Commons is really a significant distance from this property.

Councilman Davis said that Biltmore Grove changed the pattern of development in the area. He did note that it is built out much more densely than when it came before the Planning & Zoning Commission a couple of years ago. Therefore, he had some concerns when we start comparing what that neighborhood really looks like to what it looked like before Biltmore Grove.

Upon inquiry of Vice-Mayor Mumpower, City Attorney Oast said that the consideration of school overcrowding is not one of the factors that is listed in the ordinance. He noted that Council received information going to both sides of that issue.

Planning & Development Director Scott Shuford addressed Councilman Dunn's concern that Standard No. 4 was not met

because the development in the surrounding area is not in the "neighborhood in which it is located."

Upon inquiry of Councilman Davis, Mr. Lou Kraus, representing Habitat for Humanity, said that they had a preliminary meeting with the neighborhood before the Planning & Zoning Commission and TRC meetings. They invited neighbors in the surrounding area to A-B Tech, showed them their proposed plan (which at the time was 64-units), heard their concerns and took those comments into their consideration regarding the buffering and reduction of some units.

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Upon inquiry of Councilman Davis, Mr. Kraus said that a 13-lot loss would probably put them out of the market for affordable housing on the property.

Councilman Davis was not sure that Standard No. 4 has been met. He does think there may be some compromise if a few units were dropped off. Mr. Kraus said that they have reduced the number of units from 64 to 60 already.

Councilman Dunn pointed out that we all want affordable housing, however the density and scale doesn't seem it fit Standard No. 4. He hoped there was a way to scale the project down.

Councilman Davis felt there should be a provision for maintenance of the cemetery due to it's historic nature. Mr. Kraus said that if the project moves forward, there would be a homeowners association that would be responsible for all of the common land and property in that area. Part of that would be their responsibility to maintain the cemetery.

Upon inquiry of Mayor Worley, City Attorney Oast said that to the extent that the cemetery is included in the site plan then it's consideration is relevant.

Upon inquiry of Councilman Newman regarding property values, City Attorney Oast explained the courts have interpreted similar provisions in other ordinances is the showing must be that the property values will be lower if the project goes in than they are if the project doesn't.

Discussion occurred regarding the ability to adopt the conditional use zoning and then continue the conditional use permit part to give the parties an opportunity for discussion to see what might be amended in the site plan.

When Councilwoman Jones asked if there were a less dense development would the stub street be required. Mr. Butzek responded that the stub street is based entirely upon the length of the cul-de-sac exceeding 1,000 feet. It is the general policy of the City to encourage connectivity among streets. The Fire Code also limits the maximum length of the cul-de-sac to 1,000 feet without another connection.

Councilman Davis noted that for all practical purposes the stub street doesn't really do anything. Mr. Butzek said that the applicant is meeting the intent of the ordinance by making every effort to achieve the connection to allow for a future connection in a most likely spot possible. Mr. Shuford also responded to not discount the stub street as just a paper way to meet the requirement. The Buncombe County soccer facility is very well attended and having a secondary access point to that facility, through this neighborhood, might be something the County would be very interested in.

Mr. Shuford said that the best secondary connection would be to Captain's Drive, however, the subdivider of the property put a 1-foot strip to keep the adjoining property owner from every being able to access Captain's Drive. Therefore, there needs to be some flexibility if this property is to be developed regardless of how many homes are placed on it. There have been efforts by the applicant to try to meet both the spirit and intent of those standards. The City's Traffic Engineer and the City's Fire Marshal are satisfied that those standards have been met.

In response to Vice-Mayor Mumpower, Mr. Kraus said that on an area such as this, they would clear all rights-of-way that would be needed for roads and utilities. They do not go in and clear-cut an area, grade it and then begin their house construction. They clear each individual lot at a time, cutting out the necessary house seat and the area around it. If there are trees that will have root damage when the house seat is cut in, we have found from experience that it's best to

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go ahead and take some of those trees out immediately rather than go back in when they die and pay a high cost to take the trees down. They have every intent of preserving the wooded integrity and the look of this area. They have a landscaping budget for each house. These sorts of amenities can be done and still keep our housing costs more affordable than in giving up another 3-5 lots in a subdivision.

At 9:01 p.m., Mayor Worley re-opened the public hearing in order to hear from the public regarding the following new information received: traffic access, connectivity, stub street, neighborhood/developer meeting, density necessary for the project to work financially, and buffer width.

Upon inquiry of Councilman Dunn, Mr. Kraus said that they have already reduced the project by five lots and probably a sixth one with the stub street. All of this represents dollars in terms of affordable housing. We do not want to see this project fall apart. In addition to what we have given up already, if Habitat needed to forfeit another 2-3 lots maximum we will take that under consideration without saying this project is dead. If we are going beyond that then these developed land costs are out of the realm of affordable housing.

When Councilman Dunn asked about selling prices, Mr. Kraus said that the selling prices, on no interest loans, will be for the appraised value, but the amount that the homeowner will pay back to Habitat (money reinvested back into their program) will be approximately \$85-95,000.

Mr. Barden said there is confusion on the legal access of the stub street. Obviously there is no foreseeable access through the Buncombe County property so the stub street is basically useless. It is his understanding that there has been no substantial meeting between the developer and the property owners since June of 2003. Regardless of the trees, the density is high and you have to cut down a lot of trees in order to fit a 1,100 square foot house on lots that small.

Mr. Joe Treadway said that the TRC meeting on November 17, 2003, discussed the stub street and the minutes reflect that the developer needs the secondary access.

Mr. Don Yelton suggested Council exempt this development from having the stub street. He also suggested Council add a condition that no cars be parked on the cul-de-sacs in the subdivision.

Ms. Gail Crawford said that the applicant did meet with neighborhood in June of 2003. At the July 22, 2003, Planning & Zoning Commission meeting, the Commission highly recommended the developer meet again with the neighborhood, but they have not.

Mayor Worley closed the public hearing at 9:15 p.m.

Upon inquiry of Vice-Mayor Mumpower, Mr. Kraus said that they would be happy to lose the stub street because it is a one-lot loss. Regarding meetings with the neighborhood, Mr. Kraus also said that there have been a lot of public meetings, 2 Planning & Zoning Commission public hearings, TRC meeting and this City Council public hearing.

Councilwoman Bellamy moved to adopt Ordinance No. 3082 to rezone property located at Sand Hill Road (Habitat for Humanity) from RS-2 Residential Single Family Low Density District and RS-4 Residential Single-Family Medium Density District to RS-8 Residential Single Family High Density District/Conditional Use. This motion was seconded by Councilwoman Jones.

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Mayor Worley said that he would be willing to continue the conditional use aspect in order to give the participants an opportunity to explore whether there is some reduction possible. He explained how the two biggest concerns surrounded impact on property values and harmony with the existing neighborhood. He felt the objections brought up don't hold up when you really look at it closely and look at the surrounding neighborhood in total and at the density of the proposed project compared to the allowable density immediately surrounding it.

Vice-Mayor Mumpower felt the neighborhood has legitimate concerns. He hoped that when the parties meet that considerations be given to deleting the stub street and giving us something tangible that will have more impact on our future than the dead-end, a community path to access the soccer field, and holding onto trees to mitigate visual impact. He encouraged the developer and neighborhood to meet and not get into token reduction of lot size.

City Attorney Oast said that since there are two different considerations to be made. The first issue is the rezoning. The question Council needs to be considering is whether the requested zoning classification is appropriate for this site if the use is conditioned and not necessarily get into the specifics of the proposal which is fluid and subject to change before Council considers the conditional use permit.

Councilwoman Jones said that the County-City Housing Task Force has just presented their report that notes that the

number one barrier for affordable housing is zoning. She felt Habitat is a reputable developer that delivers quality projects and she appreciated the voluntary annexation openness. She believed that many of the concern raised, Council will be able to protect with the rezoning because of the buffer. We can't enforce the buffer unless we have a conditional use.

City Attorney Oast reminded Council that this is not a vote on who the applicant is, but what is happening on the property.

Councilman Dunn pointed out that we do need affordable housing, however, we also need to consider the people that are currently living in the area. He was not sure whether this development would hurt property values in the long run, but it may in the short term. He hoped the developer would be amenable to decrease the lot sizes.

Councilman Davis said that we are not really changing the complexion of that area because that has been done already. He believed that if this was a straight rezoning and the developer was going to build 45 units, the neighborhood would probably be just as upset. He hoped that in the conditional use permit, Council consider perhaps a little more buffer than 30 feet. He would support the rezoning part since the area has already changed, but with reluctance.

Councilwoman Bellamy felt that the site plan helps our community. She urged the developer and neighborhood to come together because there are more commonalities than you think. She felt the RS-2 zoning abutting the property is misleading.

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

Councilwoman Bellamy then moved to continue consideration of the conditional use permit until February 24, 2004, in order for the developer and neighborhood to meet to discuss the stub street, additional buffer, fewer lots, and/or other things that might make the development more attractive or palatable. This motion was seconded by Vice-Mayor Mumpower and carried unanimously.

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ORDINANCE BOOK NO. 21 – PAGE

At 9:43 p.m., Mayor Worley announced a short recess.

B. PUBLIC HEARING TO CONSIDER AN AMENDMENT TO THE UNIFIED DEVELOPMENT ORDINANCE TO REVISE THE REVIEW AND APPROVAL PROCESS FOR DUPLEXES IN SINGLE-FAMILY ZONING DISTRICTS AND TO ESTABLISH NEW DEVELOPMENT STANDARDS FOR THESE USES IN SINGLE-FAMILY ZONING DISTRICTS, AND TO REVISE THE ADDITIONAL CONDITIONAL USE STANDARDS FOR PARKING ASSOCIATED WITH TRIPLEXES, AND QUADRAPLEXES IN SINGLE-FAMILY ZONING DISTRICTS

ORDINANCE NO. 3083 - ORDINANCE AMENDING CHAPTER 7 OF THE CODE OF ORDINANCES TO REVISE THE REVIEW AND APPROVAL PROCESS FOR DUPLEXES IN SINGLE-FAMILY ZONING DISTRICTS AND TO ESTABLISH NEW DEVELOPMENT STANDARDS FOR THESE USES IN SINGLE-FAMILY ZONING DISTRICTS, AND TO REVISE THE ADDITIONAL CONDITIONAL USE STANDARDS FOR PARKING ASSOCIATED WITH TRIPLEXES, AND QUADRAPLEXES IN SINGLE-FAMILY ZONING DISTRICTS

Mayor Worley opened the public hearing at 9:55 p.m.

Planning & Development Director Scott Shuford said that this is the consideration of an amendment to Chapter 7 of the Code of Ordinances of the City of Asheville (Unified Development Ordinance) to revise the review and approval process for duplexes in single-family zoning districts and to establish new development standards for these uses in single-family zoning districts, and to revise the additional conditional use standards for parking associated with triplexes, and quadraplexes in single-family zoning districts. This public hearing was advertised on January 2 and 9, 2004.

This code amendment provides for administrative (staff) approval of duplex uses in all single family zoning districts. This code amendment has been under development for some time and City Council has asked staff to expedite its completion. Under the proposed amendment, duplex uses would go from being conditional uses to uses by right subject to special requirements. This amendment was originally proposed to include triplex and quadraplex uses as well, but meetings with a focus group of developer and neighborhood members resulted in this staff-recommended compromise. As of December 3, 2003, the following development standards would have to be met in order for staff to approve a duplex use:

- Separation requirements of 150 feet or 300 feet between such uses (depending on the zoning district), subject to block size provisions.

- Minimum lot size requirements.
- Parking in the rear of the site, except in certain circumstances.
- Architectural design standards to ensure that duplex structures resemble single family homes in the neighborhoods in which they are located, including: door and window placement requirements; structure height limits; roof design, pitch and materials requirements; setback limits; and siding requirements.
- Infrastructure sufficiency determination.
- Property maintenance standards.

Duplex uses in single family zoning districts help promote the infill development and affordable housing goals of the City, while providing financial incentives for the development of infill lots. Going from a conditional use permit process that requires a minimum of two public

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hearings to a staff-administered design review process would greatly reduce the amount of time necessary for obtaining permits for construction of these uses, reducing development costs and uncertainty about approval.

This code amendment also provides for revised parking requirements for triplex and quadraplex uses in single family zoning districts. Council has directed staff to prepare an amendment to the code to provide parking flexibility for duplex, triplex and quadraplex uses in single family zoning districts. This has been accomplished in the proposed administrative standards for duplexes but an additional amendment is necessary for triplexes and quadraplexes.

The amendment has been routed to CREIA, the Affordable Housing Task Force of Asheville and Buncombe County, the Coalition of Asheville Neighborhoods and the Council of Independent Business Owners for review and comment.

At the January 6, 2004, City Council worksession, Council directed the amendment to be revised as follows:

- Reflect a linear, blockface measurement for the separation requirement.
- Maintain a conditional use permit option for developers of duplex uses not wishing to meet the use by right subject to special requirements conditions.
- Provide for on-street parking.
- Increase the number of parking spaces allowed in the front yard from two to three.

City staff will need to return to Council with a separate code amendment that makes the separation standards for these uses consistent with the conditional use permit requirements.

On December 3, 2003, the Planning and Zoning Commission recommended approval of the proposed code amendment by a vote of 6-0. City staff recommends approval of the proposed code amendment.

Ms. Barber Melton, President of the Coalition of Asheville Neighborhoods, explained why they would not be supportive of the changes City Council directed staff to make at their January 6, 2004, worksession. She urged City Council to adopt the ordinance which was unanimously adopted by the Planning & Zoning Commission stressing there was consensus of many organizations on that proposed ordinance.

Ms. Norma Baynes, representing the Shiloh Community Association, also urged City Council to adopt the original proposed ordinance and explained why.

Mr. C.D. Williams, representing the Jackson Park/Woolsey Neighborhood, asked City Council to adopt the original proposed ordinance because there was consensus reached by many groups.

Mr. Scott Dedman, member of the County-City Housing Task Force, felt the ordinance, with amendments by City Council on January 6, 2003, was a modest step in the right direction.

Mayor Worley closed the public hearing at 10:15 p.m.

Councilman Newman felt it was good to integrate attractive small scale multi-family homes into residential areas in the City, if we have design standards that are going to allow them to fit in well with the character of those neighborhoods. He thinks that this ordinance is a good step in the right direction for doing that. He would be comfortable with the idea that, if we have good design standards, that the small scale multi-family, including the quadraplexes and smaller, be allowed in the residential areas

without distance requirements. He felt the development

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standards are very strong and believes there are opportunities to make them a little more simple and easy to understand. He felt that if we are going to have the strong design standards and not allow triplexes or quadraplexes, he would be comfortable in having an ordinance that duplexes would be allowed without a distance requirement.

Councilman Dunn would not support the ordinance amendment because we are giving City Council's authority to staff.

Councilman Davis would not be supportive of revising the design standards at this point because they were given good thought from the focus group and they gave us their best recommendation. He felt that we have taken a lot of the ability of a neighborhood to be heard away.

Mayor Worley stated that it is the general agreement of City Council to revisit this matter in one year to see if we are having construction occur.

Councilwoman Bellamy felt that the ordinance is asking a lot but is willing to give it a try for a year. She pointed out that committee recommendations are not etched in stone and even though they are very helpful to Council, City Council will revise any recommendation if they feel it is for the best for the entire City.

Councilman Newman felt there are issues about fairness to neighborhoods. We need policies so that we are treating different neighborhoods with the same kinds of standards that we treat other neighborhoods. The reality is that the historic pattern of development that we have in Asheville is that there were small scale multi-family dwellings built in all of the older neighborhoods. His perspective on this is that we have some neighborhoods in Asheville which are zoned multi-family where developers can built anything they want with no design standards. Whereas in other neighborhoods you can't build any multi-family homes at all even though there are multi-family homes integrated throughout them. That is a fundamental fairness issue we need to talk about. This step is a step in the right direction.

City Attorney Oast responded to a question from Councilman Dunn about restrictive covenants.

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

Councilwoman Jones moved to adopt Ordinance No. 3083, with the changes outlined by Mr. Shuford resulting from the January 6, 2003, worksession. This motion was seconded by Councilman Davis.

Councilman Newman moved to amend the motion that there not be a distance requirement as it applies to duplexes with the design standards outlined in the ordinance. This motion was seconded by Councilwoman Jones and failed on a 3-4 vote, with Councilwoman Bellamy, Councilwoman Jones and Councilman Newman voting "yes" and Mayor Worley, Vice-Mayor Mumpower, Councilman Davis and Councilman Dunn voting "no."

Vice-Mayor Mumpower believed that there is a natural order to development patterns and Council can nudge those but he believes it's naive and arrogant that City Council can control them.

The original motion made by Councilwoman Jones and seconded by Councilman Davis carried on a 5-2 vote with Vice-Mayor Mumpower and Councilman Dunn voting "no."

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ORDINANCE BOOK NO. 21 – PAGE

IV. UNFINISHED BUSINESS:

A. SECOND READING OF RESOLUTION NO. 03-207 – RESOLUTION PERMANENTLY CLOSING AN UNOPENED SECTION OF EMMA ROAD BETWEEN LEICESTER HIGHWAY AND OLD COUNTY HOME ROAD

Mayor Worley said that the public hearing and first reading of this resolution occurred on December 16, 2003. Due to the vote, a second reading was required.

Mayor Worley announced that the applicant has worked with the City and worked out alternates thus changing City staff's

recommendation to approve the closing.

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

Vice-Mayor Mumpower moved for the adoption of Resolution No. 03-207. This motion was seconded by Councilman Newman and carried on a 6-1 vote, with Councilwoman Bellamy voting "no."

RESOLUTION BOOK NO. 28 – PAGE 73

V. NEW BUSINESS:

A. ORDINANCE NO. 3084 - BUDGET AMENDMENT TO ALLOCATE FUNDS TO WRES-FM

Councilwoman Jones said that a new radio station (WRES-FM) will broadcast information for minority and low-income communities in and around the downtown area of the City. They will offer programming relating to homeownership, employment, credit establishment, entrepreneurship, and other subjects that will enhance the quality of life for those who listen. She felt that this would be an excellent tool for reaching out to people who many not be reached through our mainstream communications. They have raised \$15,500 and have a good solid diverse base of funders. She felt the City of Asheville should be a part of the success story of the radio station and asked City Council to consider funding \$4,500 as a one-time start-up cost to WRES-FM to cover the cost of a remote unit and console.

Mr. John Hayes, President and CEO of the Empowerment Resource Center, spoke in support of the radio station and the requested budget allocation. Buncombe County has allocated them \$5,000.

Mr. Fred English, Haw Creek resident, spoke in opposition of using tax dollars for this purpose.

Mr. Don Yelton spoke against this allocation and requested information on non-profits opening up their books for the public to review.

Mr. Scott Dedman, Board member of the Empowerment Resource Center, spoke in support of the allocation to the radio station for equipment.

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

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Councilman Newman moved to approve Ordinance No. 3084. This motion was seconded by Councilwoman Jones.

Councilman Dunn explained why he would not support public dollars for this kind of issue.

Councilwoman Bellamy said this is a one-time allocation and she would support it.

Vice-Mayor Mumpower was opposed to City tax dollars being used for this purpose, however, he was supportive of the concept.

Councilman Davis supported the one-time allocation for better communication.

Mayor Worley supported the request, however, was concerned about the timing of the request and the process itself.

The motion made by Councilman Newman and seconded by Councilwoman Jones carried on a 5-2 vote, with Vice-Mayor Mumpower and Councilman Dunn voting "no."

ORDINANCE BOOK NO. 21 – PAGE

Councilwoman Bellamy asked the City Manager if there was anyway to provide education on the tax system and non-profits and how they relate.

At 11:11 p.m., Mayor Worley announced a short recess.

B. RESOLUTIONS OF INTENT TO ANNEX THE HERITAGE BUSINESS PARK AREA, THE HONEY DRIVE AREA, THE ENKA PARK AREA, THE ASHWOOD AREA, THE HEATHBROOK AREA, AND THE SWEETEN CREEK ROAD AREA AND SETTING A PUBLIC INFORMATION MEETING ON MARCH 4, 2004, IN THE PUBLIC WORKS BUILDING LOCATED AT 161 S. CHARLOTTE STREET, AT 5:30 P.M., AND SETTING CITY COUNCIL PUBLIC HEARINGS ON MARCH 23, 2004, IN THE COUNCIL CHAMBER, LOCATED ON THE 2ND FLOOR OF THE CITY HALL BUILDING AT 5:00 P.M.

Urban Planner Carter Pettibone said that this is the consideration of resolutions stating the intent of the City to annex the Heritage Business Park area, the Honey Drive area, the Enka Park area, the Ashwood Area, the Heathbrook area, and the Sweeten Creek Road area.

He said that the State of North Carolina enables cities to grow by annexation of areas that meet certain statutory requirements. This state legislation is based on the proposition that strong cities are the basis of a strong state economy and essential to the continued economic development of the state, and that cities are the best units of government to meet the needs of urban areas. The state's intent is often summed up as "what is urban should be municipal."

North Carolina state law recognizes that the cities need to expand their boundaries to include this growth so that we don't end up in a situation where an increasingly relatively smaller number of citizens are financing the urban infrastructure used by a much larger population.

The City of Asheville has initiated annexations for the past four years – six areas in 2001, five areas in 2002 and seven areas in 2003 and five in 2004. These recent annexations, like the ones being presented are designed to include: areas that are clearly urban, areas surrounded by the City but not within the City of Asheville and can only be accessed through the City; areas that

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will create a more logical City boundary; and areas with at least some existing water and sewer service.

It is now time for the City to initiate the next phase of annexations for 2004. Staff has identified six areas: Heritage Business Park, Honey Drive, Enka Park, Heathbrook, Ashwood, and Sweeten Creek Road with potential for being annexed. Another area, the Sand Hill/Oakview area, was initially identified as a seventh candidate for annexation, but after further review, staff has determined some technical issues that would affect the area's ability to be annexed and be appropriately served by City services. We are not recommending the City pursue annexation of this area until these issues have been further studied and addressed.

The following steps and dates meet the process required by State law:

Council Adoption of Resolutions of Intent	January 13, 2004
Council Adoption of Plans of Services	January 27, 2004
Staff-Sponsored Public Informational Meeting	March 4, 2004
City Council Public Hearings	March 23, 2004
Council Adoption of Annexation Ordinances	April 13, 2004
Effective Date of Annexations	June 30, 2004

City staff recommends that City Council adopt the resolutions of intent stating the City's intent to annex the Heritage Business Park area, the Honey Drive area, the Enka Park area, the Ashwood area, Heathbrook area, and the Sweeten Creek Road area.

Mr. Pettibone stated that the resolutions of intent state that (1) it is the intent of the City Council of the City of Asheville to consider annexation of the territory described in the resolution pursuant to Part 3 of Article 4A of Chapter 160A of the North Carolina General Statutes; (2) a public informational meeting on the question of annexing the above-described territory will be held in the Public Works Building located at 161 S. Charlotte Street, Asheville, N.C., at 5:30 p.m. on the 4th day of March, 2004, at which time a representative of the City of Asheville shall make an explanation of plans for extending services to said territory and all residents and property owners in said territory and all residents of the City of Asheville will be given the opportunity to ask questions and receive answers regarding the proposed annexation; (3) a public hearing on the question of annexing the above-described territory will be held in the Council Chamber located on the 2nd Floor of the City Hall Building, 70 Court Plaza, Asheville, N.C., at 5:00 p.m. on the 23rd day of March, 2004, at which time a representative of the City of Asheville will make an explanation

of plans for extending Services to said territory and all residents and property owners in said territory and all residents of the City of Asheville will be given an opportunity to be heard; (4) a report of plans for extending services to the above-described territory shall be made available for public inspection at the office of the City Clerk at least thirty (30) days prior to the date of the public informational meeting; (5) the statement of financial impact contained in the report shall be delivered to the Buncombe County Board of Commissioners at least thirty (30) days prior to the date of the public informational meeting; (6) a legible map of the area to be annexed and a list of identified persons holding freehold interests in property in the area to be annexed shall be posted in the office of the City Clerk, Asheville City Building, 70 Court Plaza, Asheville, North Carolina, at least thirty (30) days prior to the date of the public informational meeting; (7) the effective date of annexation shall be at least one year, but no more than 400 days, from the date of passage of the annexation ordinance; and (8) notice of the public informational meeting and public hearing shall be given as required by law.

Our annexation strategy has been to (1) select areas that are clearly developed; (2) include areas where water and sewer have been extended; (3) improve city limits by eliminating pockets and clarifying boundaries; and (4) disperse areas geographically.

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Heritage Business Park – This area contains commercial and vacant lots (existing business park, some properties split by the City limits and New Leicester Highway area). This contains 11 lots totaling 12.85 acres. There is no estimated population. If the property is annexed, it would bring in \$7,953 in annual property tax revenue.

Honey Drive area – This area contains residential and vacant lots (single-family subdivision located in Chunn's Cove area). This contains 9 lots totaling 4.5 acres. There is an estimated population of 13. If the property is annexed, it would bring in \$5,909 in annual property tax revenue.

Enka Park area – This area contains residential and commercial (densely developed older subdivision, large commercial building, Enka area). This contains 89 lot totaling 30.27 acres. The estimated population is 170. If the property is annexed, it would bring in \$45,258 in annual property tax revenue.

Ashwood Area – This area contains residential and vacant lots (single-family subdivision and single-family and mobile homes on West Chapel Road/School Road). This contains 58 lots totaling 14.42 acres. The estimated population is 117. If the property is annexed, it would bring in \$29,955 in annual property tax revenue.

Heathbrook Area – This area contains residential and vacant lots (single-family residential section of Biltmore Park development in Long Shoals Road area). This contains 24 lots totaling 4.43 acres. The estimated population is 47. If the property is annexed, it would bring in \$27,117 in annual property tax revenue.

Sweeten Creek Road Area – This area contains residential, commercial and vacant lots (large area, single-family, condominiums, multi-family residential, small commercial portion between Sweeten Creek Road and Hendersonville Road). This contains 190 lots totaling 74.86 acres. The estimated population is 545. If the property is annexed, it would bring in \$136,561 in annual property tax revenue.

Upon inquiry of Councilman Newman, Mr. Pettibone explained the resolution of consideration annexation approach.

Councilman Dunn asked for a list of small and large businesses in the area.

Mr. Mike Fryar alleged a discrepancy in what City staff said was built directly across from Enka Village and what is actually there.

Mr. Alan Ditmore asked why the City doesn't annex the Biltmore Estate and how does annexation affect zoning.

Mr. Don Yelton suggested, as City Council annexes, that they review the density and the history of Asheville.

City Attorney Oast said that City Council members have received the written descriptions of each area, along with a correction sheet, and asked that they be incorporated into the resolutions of intent.

Vice-Mayor Mumpower always had the difficulty of forced annexation but has viewed it as a necessary evil because we don't have control over our water and sewer resources and that is what compels people to voluntary annex. There is an issue of fairness. If you live near the City, drive on City roads, benefit from being near a population center, and if you look like the City, then you should help share the costs of running the City. However, he doesn't think our tax structure

is fair. We should explore issues like room tax which has the potential to take some of the direct tax burden off property owners. Also explore the issues of prepared food and beverage taxes and user fees. We have a large percentage of our City taken by non-profits and other organizations that don't pay taxes. This is a state issue, but it's time for us to reach toward the state and ask that they explore about these groups beginning to carry some of their share of law enforcement costs, fire protection, etc. He also has serious concerns about annexing manufacturing industries. This is a high risk time for those jobs and the City shouldn't be a part of helping to nudge people away.

Councilman Dunn felt that annexation throughout our state is hurting our economy. Asheville is No. 2 in sales tax expenses already. He feels that one of the reasons why North Carolina has the highest unemployment in the south is partly due to aggressive annexation. He hoped Council would open their minds up to other ways. The number one issue is cutting government spending and lowering taxes. We cannot keep taxing people.

Councilwoman Jones asked that the state data be followed up on regarding the correlation between annexation and unemployment in Asheville. She is not pleased with annexation, however, it does need to get started and then Council can look deeper at the service plans.

Mayor Worley said that members of Council have been previously furnished with copies of the resolutions and they would not be read.

RESOLUTION NO. 04-4 - RESOLUTION OF INTENT TO ANNEX THE HERITAGE BUSINESS PARK AREA, SETTING A PUBLIC INFORMATION MEETING ON MARCH 4, 2004, IN THE PUBLIC WORKS BUILDING LOCATED AT 161 S. CHARLOTTE STREET, AT 5:30 P.M., AND SETTING A CITY COUNCIL PUBLIC HEARING ON MARCH 23, 2004, IN THE COUNCIL CHAMBER, LOCATED ON THE 2ND FLOOR OF THE CITY HALL BUILDING AT 5:00 P.M.

Councilwoman Bellamy moved for the adoption of Resolution No. 04-4. This motion was seconded by Councilwoman Jones and carried on a 5-2 vote, with Vice-Mayor Mumpower and Councilman Dunn voting "no."

RESOLUTION BOOK NO. 28 – PAGE 81

RESOLUTION NO. 04-5 - RESOLUTION OF INTENT TO ANNEX THE HONEY DRIVE AREA, SETTING A PUBLIC INFORMATION MEETING ON MARCH 4, 2004, IN THE PUBLIC WORKS BUILDING LOCATED AT 161 S. CHARLOTTE STREET, AT 5:30 P.M., AND SETTING A CITY COUNCIL PUBLIC HEARING ON MARCH 23, 2004, IN THE COUNCIL CHAMBER, LOCATED ON THE 2ND FLOOR OF THE CITY HALL BUILDING AT 5:00 P.M.

Councilwoman Bellamy moved for the adoption of Resolution No. 04-5. This motion was seconded by Councilwoman Jones and carried on a 5-2 vote, with Vice-Mayor Mumpower and Councilman Dunn voting "no."

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RESOLUTION NO. 04-6 - RESOLUTION OF INTENT TO ANNEX THE ENKA PARK AREA, SETTING A PUBLIC INFORMATION MEETING ON MARCH 4, 2004, IN THE PUBLIC WORKS BUILDING LOCATED AT 161 S. CHARLOTTE STREET, AT 5:30 P.M., AND SETTING A CITY COUNCIL PUBLIC HEARING ON MARCH 23, 2004, IN THE COUNCIL CHAMBER, LOCATED ON THE 2ND FLOOR OF THE CITY HALL BUILDING AT 5:00 P.M.

Councilwoman Bellamy moved for the adoption of Resolution No. 04-6. This motion was seconded by Councilwoman Jones and carried on a 5-2 vote, with Vice-Mayor Mumpower and Councilman Dunn voting "no."

RESOLUTION BOOK NO. 28 – PAGE 89

RESOLUTION NO. 04-7 - RESOLUTION OF INTENT TO ANNEX THE ASHWOOD AREA, SETTING A PUBLIC INFORMATION MEETING ON MARCH 4, 2004, IN THE PUBLIC WORKS BUILDING LOCATED AT 161 S. CHARLOTTE STREET, AT 5:30 P.M., AND SETTING A CITY COUNCIL PUBLIC HEARING ON MARCH 23, 2004, IN THE COUNCIL CHAMBER, LOCATED ON THE 2ND FLOOR OF THE CITY HALL BUILDING AT 5:00 P.M.

Councilwoman Bellamy moved for the adoption of Resolution No. 04-7. This motion was seconded by Councilwoman Jones and carried on a 5-2 vote, with Vice-Mayor Mumpower and Councilman Dunn voting "no."

RESOLUTION BOOK NO. 28 – PAGE 93

RESOLUTION NO. 04-8 - RESOLUTION OF INTENT TO ANNEX THE HEATHBROOK AREA, SETTING A PUBLIC INFORMATION MEETING ON MARCH 4, 2004, IN THE PUBLIC WORKS BUILDING LOCATED AT 161 S. CHARLOTTE STREET, AT 5:30 P.M., AND SETTING A CITY COUNCIL PUBLIC HEARING ON MARCH 23, 2004, IN THE COUNCIL CHAMBER, LOCATED ON THE 2ND FLOOR OF THE CITY HALL BUILDING AT 5:00 P.M.

Councilwoman Bellamy moved for the adoption of Resolution No. 04-8. This motion was seconded by Councilwoman Jones and carried on a 5-2 vote, with Vice-Mayor Mumpower and Councilman Dunn voting "no."

RESOLUTION BOOK NO. 28 – PAGE 97

RESOLUTION NO. 04-9 - RESOLUTION OF INTENT TO ANNEX THE SWEETEN CREEK ROAD AREA, SETTING A PUBLIC INFORMATION MEETING ON MARCH 4, 2004, IN THE PUBLIC WORKS BUILDING LOCATED AT 161 S. CHARLOTTE STREET, AT 5:30 P.M., AND SETTING A CITY COUNCIL PUBLIC HEARING ON MARCH 23, 2004, IN THE COUNCIL CHAMBER, LOCATED ON THE 2ND FLOOR OF THE CITY HALL BUILDING AT 5:00 P.M.

Councilwoman Bellamy moved for the adoption of Resolution No. 04-9. This motion was seconded by Councilwoman Jones and carried on a 5-2 vote, with Vice-Mayor Mumpower and Councilman Dunn voting "no."

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C. REQUEST BY PACK SQUARE CONSERVANCY

Ms. Carol King, Chair of the Pack Square Conservancy Board of Trustees, asked City Council to (1) move from consideration any proposal now or in the future for the construction of a "high rise" building on the land known as Site "A" which was formerly under consideration by the Grove Park Inn; (2) delay by City Council on any sale or development activity on that City-owned site; (3) allow the Pack Square Conservancy time to develop alternate plans for Site "A" that will help enhance the park; and (4) approval of the concept of moving forward with an easement activity between the City of Asheville and the Conservancy for the park area.

Vice-Mayor Mumpower asked how much time the Conservancy might need before they can report back to Council. Ms. King said their design team will be back in town in a couple of weeks. They will work with them and look at putting together a design workshop following the process that they have used all along to develop the design on the park. It would take approximately two months to get back to City Council.

Councilwoman Bellamy asked that in their process they have at least two public meetings and that the meetings be advertised in different media outlets. She suggested we put the meetings in the City's eNews so we can address the issue of the public not being informed. Ms. King said that they would be happy to do that.

Ms. Julie Brandt, representing Asheville People Advocating Real Conservancy, supports the Conservancy's request to rule out any high rise building at the corner of College and Market Streets and to enact a moratorium on sale or development. However, she asked specifically that the City designate the entire parcel of land known as Site "A" as park land in perpetuity. She asked for some legal documentation that the park is preserved for the people and that only park enhancements would be permitted, not building-type development. In addition, the Conservancy has stated that they want to ask the public to help decide what goes on the property and to move ahead with the park renovation project. She requested the Conservancy formulate and publicize in a timely fashion a policy and process of how they will integrate that public input into the park renovation plans. She asked City Council to require that the Pack Square Conservancy business, meetings and minutes be open to the public on order to make this a truly, inclusive public process.

Councilwoman Bellamy appreciated the Conservancy's support regarding the easement.

Vice-Mayor Mumpower moved to approve the Conservancy's request with the caveat of sixty days. This motion was seconded by Councilman Dunn and carried unanimously.

VI. OTHER BUSINESS:

ABC Board

Councilman Dunn reported that Mayor Worley and he met with the Chair of the ABC Board. He outlined several questions directed to the Board and they agreed to all of them. He was concerned, however, that since that meeting he has asked for several more pieces of information and have not received them yet. He felt the ABC Board does need to be more responsive.

Claims

The following claims were received by the City of Asheville during the period of December 12-31, 2003: Amanda H. Sadler (Police), BellSouth (Water), Suzette M. Roberts

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(Police); Beverly Bryan (Civic Center), Kenneth Hamlin (Water), Donald Lamb (Parks & Recreation); Chamin W. Meadows (Transit Services) and Jeanne Murphy (Water).

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

VII. INFORMAL DISCUSSION AND PUBLIC COMMENT:

Mr. Fred English didn't appreciate someone disputing his remarks at the conditional use zoning held earlier in the meeting.

Mr. Don Yelton invited City Council to a citizens speak meeting on January 14, 2003, at which time they will prioritizing people's needs, wants and wishes and developing a system in Buncombe County to keep people informed.

Mr. Mike Fryar submitted to council a list of questions and asked for response. Councilman Dunn asked Attorney Martin Reidinger the following three questions, after which Mr. Reidinger responded: in what way does the City's annexation ordinance not comply with the annexation statutes, can City Council repeal an annexation ordinance; and can City Council waive the 60-day limitation within which to appeal an annexation. After hearing the responses, Councilman Dunn asked for guidance from Council. Councilwoman Bellamy said that this should be a matter for a closed session in order to receive advise from our attorney.

VIII. ADJOURNMENT:

Mayor Worley adjourned the meeting at 12:17 a.m.

CITY CLERK

MAYOR