

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**

Vice-Mayor Carl Mumpower, retired Air Force Veteran, led City Council in the Pledge of Allegiance.

**INVOCATION**

Councilman Dunn gave the invocation.

**I. PROCLAMATIONS:**

**A. PROCLAMATION PROCLAIMING FEBRUARY 24, 2004, AS “211<sup>th</sup> MILITARY POLICE COMPANY DAY”**

Mayor Worley read the proclamation proclaiming February 24, 2004, as “211<sup>th</sup> Military Police Company Day” in the City of Asheville. He presented the proclamation to Mr. Brian Freelan, employee with the Police Department, who has just returned home from Iraq. Mayor Worley also recognized the other City employees who are actively serving in the military.

**B. PROCLAMATION PROCLAIMING MARCH 7-13, 2004, AS “GIRL SCOUT WEEK”**

Mayor Worley read the proclamation proclaiming March 7-13, 2004, as "Girl Scout Week" in the City of Asheville. He presented the proclamation to Ms. Sally Blue, Director of Membership, who presented City Council with boxes of Girl Scout cookies and briefed City Council on some activities taking place during the week.

**II. CONSENT:**

**A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON FEBRUARY 10, 2004, AND THE WORKSESSION HELD ON FEBRUARY 17, 2004**

**B. RESOLUTION NO. 04-47 - RESOLUTION AUTHORIZING THE ISSUANCE OF MULTI-FAMILY HOUSING REVENUE BONDS FOR BATTERY PARK APARTMENTS FOR THE HOUSING AUTHORITY**

Summary: The consideration of a resolution approving the issuance of revenue bonds by the Housing Authority for the Battery Park Apartments project.

The Housing Authority of the City of Asheville proposes to issue revenue bonds in the amount up to \$7,000,000 and to lend the proceeds of the bonds to Battery Park Senior Housing Limited Partnership to acquire and renovate an apartment development known as Battery Park Apartments to be operated for rental to elderly persons.

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The Housing Authority held a public hearing on February 10, 2004, on the question of the issuance of the bonds. The bonds must now be considered and approved by the Asheville City Council.

The bonds being issued are “private activity bonds” under IRS regulations. Essentially, this is a form of financing that allows private entities (both for profit and not-for-profit) to engage in public purpose projects, with some of the advantages of tax exempt financing. There are many requirements and limitations in the use of the money derived from bond proceeds. One of the requirements is that the governmental unit having jurisdiction over the area in which the activity occurs must approve the issuance of the bonds, and this approval may only come after a public hearing. According to the Housing Authority’s attorney, this public hearing requirement will be satisfied by the public hearing to be held by the Housing Authority prior to the City taking action, and a separate hearing by the City is not necessary. Our bond counsel has confirmed this, and this is the position of the Local

Government Commission.

If City Council wishes to approve issuance of the revenue bonds for the Battery Park Apartments project, as required by Sec. 147(f) of the Internal Revenue Code, adoption of the resolution is recommended.

**RESOLUTION BOOK NO. 28 – PAGE 145**

**C. RESOLUTION NO. 04-48 - RESOLUTION APPROVING THE PARKS & RECREATION CO-SPONSORSHIP LIST**

Summary: The consideration of a resolution approving co-sponsored events for 2004.

This year, the Parks and Recreation Department has developed a matrix to assist in determining the minimum requirements for an event to be considered for co-sponsorship. This matrix includes specific points given for such areas as economic development, out-of-town spending, whether the event is designed for raising funds for local charities, or whether the event increases cultural understanding for the community. A total of 41 events were approved last year, which represented an estimated cost to the City of \$90,000. This year, the number has been reduced to 31 events, resulting in a cost of approximately \$75,000, which represents a reduction of \$15,000 from the previous year. The following is a list of the events recommended for approval: Goombay; Greek Fest; Hard Lox Café; Taste of Asheville; Downtown After 5; The Human Race; Fiesta Latina; Light the Night Walk; Citizen Times 1/2 marathon; Walk America 2004; Shindig on the Green; Smokey Mountain Toy Run; Asheville Art Museum Boating Party; Day of Caring; The Sunset Stampede; Very Special Arts Festival; Biltmore Estate 15K; Children First Festival; Heroes for Hope; RiverLink Adventure Weekend; Anti-Cruelty Walk; Organic Fest; Sistahs on Stage; Holiday Parade; Cinema in the Park; Concerts on the Quad; Grove Arcade; October Harvest Festival; Light up the Holidays; Midday Musicals; Grove Arcade Chili Festival; and Mountain Renaissance Fair.

Upsides of Recommendation: (1) Generates in excess of \$15 million dollars for the local economy; (2) New matrix has reduced City's financial contribution; (3) Increases recognition of cultural diversity of the community; (4) Allows for fundraising opportunities for various charities; and (5) Expands special events and festivals for the community.

Downsides of Recommendation: (1) City costs for providing services estimated at \$75,000; (2) A few groups that applied will not be co-sponsored which may jeopardize the event; and (3) Events do place a wear and tear on infrastructure and equipment provided to the organizers.

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The Parks and Recreation Department recommends that City Council accept the list of co-sponsored events for 2004.

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**D. ORDINANCE NO. 3090 - BUDGET AMENDMENT FOR COMPUTER CODING FOR THE DEVELOPMENT OF A WEB SITE TO BE USED AS A MARKETING TOOL FOR CITY DEVELOPMENT AND REDEVELOPMENT**

Summary: This is the consideration of a budget amendment, in the amount of \$20,000, for computer coding for the development of a web site to be used as a marketing tool for City development and redevelopment.

At last year's City Council retreat, staff presented an economic development program concept for the City of Asheville. This concept concentrates on building the tax base through the promotion of higher density, higher intensity development consistent with recommendations from the Sustainable Economic Development Task Force and City development policies. Since that time, City Council has adopted a comprehensive plan and a new Neighborhood Corridor zoning district for Broadway. City Council has also previously approved an Urban Village zoning district and, during the coming year, will receive redevelopment plans for the urban riverfront and the WECAN neighborhood. Downtown Asheville is seeing new growth, but has many areas still available for redevelopment. Additionally, we may see changes to a number of big box development sites, as a result of economic conditions, making these sites also suitable for redevelopment at a significantly higher intensity.

As one means of implementing this tax base enhancement plan, staff is now proposing a marketing program intended to provide the development community with a tool for evaluating the development feasibility of targeted redevelopment areas. This is not a new approach – it uses tools that other communities have developed to promote development and redevelopment of city-owned properties and brownfield sites. It is markedly different, however, in the scope and scale of its focus in that our proposed web site will promote broad but targeted areas of our city versus specific parcels; and, the marketing focus is on the real estate developer rather than the end user.

The marketing program (which we are suggesting be called Priority Places) will use GIS technology to facilitate developer inquiry into suitable areas for high-density, high intensity type development. On the City web site, we will identify areas that have been designated appropriate for development of this type in the City comprehensive plan or in other official plans and documents. Developers will be able to access property appraiser records, census and other demographic information, existing and projected zoning, any available development incentives (such as the affordable housing trust fund, administrative rezoning, or permitting incentives), City staff contact points, surrounding complementary and competing uses, known environmental conditions, and other information necessary for the performance of their preliminary due diligence. Additionally, outreach marketing is planned to further facilitate developer interest in the Priority Places web site, including mailings, articles and advertisements in trade journals, visits to developers' offices, and other measures.

Internal staff has been able to establish the framework for this GIS tool and we will provide Council with a simulation during our worksession presentation. However, there is considerable coding work that is needed to complete the tool and we will require a supplemental budget allocation of \$20,000 from the City's contingency fund to pay for this technical assistance.

Some points to consider as upside include:

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- The Priority Places marketing program supports a wide variety of City goals and policies, including implementation of existing and proposed redevelopment plans, sustainable economic development policies and strategies, land use goals, and affordable housing policies.
- Other local/regional economic development agencies' marketing efforts are on attracting the end user business that will bring jobs. Further, while those efforts cover the City, they are not focused, as this program would be, solely on the City. The Priority Places marketing program is focused on attracting developers creating tax base in specific areas within the City.
- This effort is targeted to developers, both internal and external to the community, interested in this particular kind of development/redevelopment. This is expected to reinforce Council priorities that reflect Asheville as a "business-friendly" community interested in quality development and redevelopment.
- The City is already heavily invested in providing and applying GIS technology. This is an added dimension of its capabilities.

Some points to consider as downside include:

- No funding in the current budget.
- For marketing to be effective, it has to be consistent over time. There will need to be some level of funding beyond this start up to support ongoing marketing of the web site, including GIS support and more traditional marketing efforts.

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City staff recommends City Council approve the budget amendment, in the amount of \$20,000, for computer coding to enable the Priority Places marketing program to be established as a marketing tool for City development and redevelopment.

#### **ORDINANCE BOOK NO. 21 – PAGE 58**

##### **E. RESOLUTION NO. 04-49 - RESOLUTION APPOINTING A MEMBER TO THE CITIZENS/POLICE ADVISORY COMMITTEE**

Summary: Ann Flynn has resigned as a member of the Citizens/Police Advisory Committee, thus leaving a vacancy in the Central area until June 30, 2005.

At City Council's worksession on February 17, 2004, City Council instructed the City Clerk to prepare the proper paperwork to appoint John Burchfield as a member of the Citizens/Police Advisory Committee, to serve the unexpired term of Ms. Flynn, term to expire June 30, 2005, or until his successor has been appointed.

#### **RESOLUTION BOOK NO. 28 – PAGE 147**

##### **F. RESOLUTION NO. 04-50 - RESOLUTION APPOINTING A MEMBER TO THE PLANNING & ZONING COMMISSION**

Summary: Selina Sullivan has resigned as a member of the Planning & Zoning Commission, thus leaving a vacancy on the Commission until August 14, 2005.

At City Council's worksession on February 17, 2004, City Council instructed the City Clerk to prepare the proper paperwork

to appoint Sharon Bell as a member of the Planning & Zoning Commission, to serve the unexpired term of Ms. Sullivan, term to expire August 14, 2005, or until her successor has been appointed.

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**G. ORDINANCE NO. 3091 - ORDINANCE GRANTING A FRANCHISE TO DUKENET COMMUNICATIONS, LLC, PURSUANT TO THE CITY'S TELECOMMUNICATIONS ORDINANCE**

Summary: The consideration of an ordinance granting a franchise to DukeNet Communications, LLC, pursuant to the City's Telecommunications Ordinance.

Back in September the City considered and adopted Ordinance No. 2056 to provide for the granting of non-exclusive franchises to install telecommunications facilities in the City's right-of-way. Prior to that time, we had some discussions with DukeNet Communications, a Charlotte-based telecommunications service provider affiliated with Duke Energy. DukeNet and the City have since resumed these discussions, with the result that DukeNet now wishes to begin operation in Asheville.

Most of the substantive terms applicable to this franchise (or any telecommunications franchise) are already set forth in the Telecommunications Ordinance, and DukeNet, by accepting the franchise, agrees to abide by the provisions of the ordinance. The main issues to be determined in connection with this particular franchise are the fee that the City will receive and the length of the franchise term.

As to the franchise fee, a team consisting of representatives from Public Works, Engineering, Planning, Legal, Economic Development, and Information Services reviewed such issues as our administrative costs, wear and tear on our right-of-way facilities, other fees charged for right-of-way use in Asheville, and fees for similar right-of-way use charged by other cities. We determined that a two-tiered fee structure based on density would reflect the value of the right-of-way in high density areas while encouraging the extension of service into under-served and less dense areas. Within the downtown area (defined as Charlotte/South Charlotte Streets on the east; Beaumont/Hilliard Streets on the south; Clingman/Haywood Streets on the west; and I-240 on the north), the rate is proposed to be \$.10 per foot per month for each linear foot of right-of-way used for the installation. Outside of this core area, the rate drops to \$.02 per foot per month.

As to the length of the term, DukeNet has asked for a 10-year term, renewable for two 10-year terms, unless either party terminates. While we have no problem with the length of the term, we think that the rate should be subject to increase based on the CPI after the first five years.

Although DukeNet apparently has some potential customers, they have not revealed the location of their proposed initial installation. Any installation, however, would have to be approved by the City Engineer, at least as to the route and manner of installation, and would become part of the franchise.

Considerations:

- (1) This is the City's first telecommunications franchise, and we really have no local experience with such efforts, other than cable television, which is not directly relevant.
- (2) The City has the obligation to protect and preserve its right-of-way for public use, and the right to expect fair compensation for its use by profit-making enterprises. The compensation that we receive should be fair and equitable, and we may not prefer one provider over another, so the compensation paid by DukeNet will be a benchmark for future installations.
- (3) There is a significant public interest in enabling telecommunications providers to provide their service, and especially to enable, or at least not obstruct, provision of such service to less densely populated and underserved areas.

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If Council wishes to grant a franchise to DukeNet, adoption of the ordinance is recommended. Council may suggest alternatives to the proposed fee schedule and the term, but most other substantive issues are already dealt with in the Telecommunications Ordinance adopted in September. Because this is a franchise ordinance, a second reading of it will be required.

**H. ORDINANCE NO. 3092 - BUDGET AMENDMENT FOR FUNDING THE TRANSIT PLAN FOR THE FUTURE MULTI-MODAL TRANSIT CENTER**

Summary: The consideration of a budget amendment, in the amount of \$9,600, as the City's share of the transit plan for the future multi-modal transit center.

The N.C. Dept. of Transportation (NC DOT) and the City's Transit Department are studying the need for a transit hub facility in the southern part of the City. One possibility is to co-locate the transit hub with a passenger rail station (proposed for Biltmore Village) in the event that service comes to Asheville. Independent of the rail service, should a hub be needed and a new facility built, and, in order to access federal funding for construction of the transit facility, it will be necessary to have conducted a Transit Study (TS) including the Biltmore location. The estimated cost for the TS is \$12,000. The City share for the TS would be \$9,600. The NC DOT Rail and Transit Divisions feel the TS is a priority and needs immediate funding. The NC DOT's share of the funds for the TS is currently available.

City staff recommends approval of the budget amendment to appropriate \$9,600 out of Contingency as the City share of the Transit Study.

**ORDINANCE BOOK NO. 21 – PAGE 73**

**I. RESOLUTION NO. 04-51 - RESOLUTION MODIFYING THE 2004 CITY COUNCIL MEETING SCHEDULE TO CANCEL THE MARCH 2, 2004, CITY COUNCIL WORKSESSION**

**RESOLUTION BOOK NO. 28 – PAGE 149**

Mayor Worley said that members of Council have been previously furnished with a copy of the resolutions and ordinances on 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.

**III. PUBLIC HEARINGS:**

**A. PUBLIC HEARING TO CONSIDER THE REZONING OF 25.429 ACRES ON CRAYTON ROAD FROM COMMERCIAL INDUSTRIAL DISTRICT TO HIGHWAY BUSINESS DISTRICT**

**ORDINANCE NO. 3093 - ORDINANCE TO REZONE 25.429 ACRES ON CRAYTON ROAD FROM COMMERCIAL INDUSTRIAL DISTRICT TO HIGHWAY BUSINESS DISTRICT**

Mayor Worley opened the public hearing at 5:20 p.m.

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Urban Planner Carter Pettibone said that this is the consideration of an ordinance to rezone 25.429 acres on Crayton Road from Commercial Industrial District to Highway Business District. This public hearing was advertised on February 13 and 20, 2004.

The property is located within the City limits on the north side of Crayton Road north of Interstate 40. Surrounding land uses and zoning include commercial and office uses to the north zoned Commercial Industrial (CI), commercial and residential property zoned Commercial Industrial (CI) and RS8, respectively, to the east across a railroad right-of-way, Interstate 40 (unzoned) and commercial to the south zoned CI, and commercial and industrial zoned CI to the west.

The applicant, Michael Goodman, wishes to rezone the property in order to utilize it for uses permitted in the Highway Business District. The purpose of the Highway Business (HB) District is to address the needs of commercial development along major thoroughfares.

The Future Land Use and Transportation Plan of the 2025 Asheville City Development Plan identifies the intersection of Sweeten Creek Road and Interstate 40 as the dividing point between an Urban/Neighborhood Corridor to the north and a Gateway Corridor to the south.

Currently, the property is vacant except for a driveway on the far western portion of the site that provides access to the

property to the north, which the applicant also owns. The property's access is from Crayton Road, which is accessed via Sweeten Creek Road near its interchange with I-40. Crayton Road also provides access to the commercial property directly east across the railroad right-of-way. Further east of that property, a road barrier has been placed across Crayton Road to prevent commercial traffic from entering the residential neighborhoods to the east.

A gravel and dirt road currently bisects the subject property through its center. This is the beginning of an eventual street that was approved as part of major subdivision for the property in early 2002. Revisions to the approved subdivision plan may result from the proposed rezoning, necessitating another review by the Technical Review Committee (TRC).

The petitioner believes he is not able to develop the property according to the requirements of the CI District, especially as they relate to front setbacks and the inability to provide parking within that setback. Permitted uses, uses permitted by right subject to special requirements, conditional uses, and prohibited uses in both districts are similar, with the main difference being that HB does not permit industrial uses.

Rezoning the properties would allow the applicant the opportunity to develop the property for uses permitted in the HB District. It would provide the property a less intensive zoning district than it has currently. It would also allow the applicant more flexibility in terms of parking requirements as they relate to front setbacks. In consideration of the above, the adjoining zoning and land uses in the area surrounding site, and the site's proximity to Interstate 40 and Sweeten Creek Road, the proposed zoning change appears to be consistent with the intent and purpose of the Unified Development Ordinance.

The pros for the rezoning include:

- Specifically provides for highway and automobile-oriented type development in close proximity to the Interstate 40/Sweeten Creek Road interchange.
- More flexibility for the property owner in terms of parking in the front setback.
- Rezoning to a lesser intensive zoning district (HB) that allows a large number of similar uses permitted in the existing zoning district.

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- More likely to result in a better-designed commercial development with HB development standards.

A con for the rezoning is the loss of zoning that permits the option of certain types of industrial and manufacturing uses.

City staff recommends approval of the rezoning request. The Planning & Zoning Commission, at its February 4, 2004, meeting voted unanimously to recommend approval.

Mayor Worley closed the public hearing at 5:26 p.m.

Mr. Pettibone responded to questions from Council regarding the loss of industrial property.

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

Vice-Mayor Mumpower moved for the adoption of Ordinance No. 3093. This motion was seconded by Councilman Davis and carried unanimously.

#### **ORDINANCE BOOK NO. 21 – PAGE 75**

#### **IV. UNFINISHED BUSINESS:**

##### **A. CONSIDERATION OF THE ISSUANCE OF A CONDITIONAL USE PERMIT FOR A PROPOSED 55 LOT SUBDIVISION**

##### **ORDINANCE NO. 3094 - ORDINANCE GRANTING A CONDITIONAL USE PERMIT FOR A PROPOSED 55 LOT SUBDIVISION LOCATED AT SAND HILL ROAD (HABITAT FOR HUMANITY)**

Mayor Worley said that the public hearing and approval of the conditional use zoning was held on January 13, 2004. At that meeting, Councilwoman Bellamy 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.

Urban Planner Carter Pettibone said that on Monday, February 16, 2004, Habitat for Humanity held a meeting to discuss the revised plan for their proposed subdivision on Sand Hill Road. In addition to Lew Kraus, Fred Barbour (member of the Habitat's Site Selection Committee), and Gerald Green representing Habitat, twelve neighbors were in attendance, as well as Carter Pettibone of the City's Planning staff.

Mr. Kraus and Mr. Green then presented the proposed changes to the plan, which they felt address the major concerns of the neighbors. The changes to the plan include:

- Reduction of total lots from 60 to 59 (City Exhibit 5 – Revised Site Plan)
- Reduction in the number and increase in the size of lots located closest to the Captain's Drive development
- Changed street stub connection to Buncombe County property to the north to a pedestrian connection
- Changed the two cul-de-sacs near Captain's Drive to "T" type hammerhead turnarounds that will meet City Engineering and County Fire requirements

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- Open space has been reduced, but is still well above the minimum required by the Unified Development Ordinance (UDO)
- The proposed buffer between the development and Captain's Drive will utilize existing vegetation and be supplemented to achieve a "C" type buffer as described in the UDO

Mr. Kraus and Mr. Green then fielded questions about the subdivision plan and its proposed changes.

Neighbors expressed concerns about emergency vehicle access, fencing and buffering, status of the contract between Habitat and the property owner (Fletcher Partners), the number of homes and the scale of project, effect on adjoining property values, Habitat's involvement with the subdivision's homeowner's association, and the future maintenance of the subdivision and its common areas. They also indicated they were especially concerned about not just the first set of residents of the development, but future residents and how they will maintain their homes.

Other topics discussed included how Habitat operates and how it looks for available land in the area, other Habitat projects built or under construction, how Habitat develops its subdivisions, and the number of houses Habitat has had to foreclose on in other subdivisions.

Neighbors asked Habitat to consider widening the proposed buffer and installing a minimum eight-foot tall wood privacy fence on Habitat's side of the buffer that would be built by the time the first home is built. They also requested making the fence surrounding the cemetery plastic-coated chain link fencing, and hiring a property management company to maintain the common areas.

Mr. Kraus indicated he would take these requests to his governing committee later that week. He also said he would see if Habitat could retain a stewardship role in the subdivision once it is complete and a homeowner' association is established, but said it would take more time to investigate the legality of the issue.

Some neighbors asked for Habitat to provide copies of the plan, proposed elevations, and copies of HOA covenants from other Habitat subdivisions. Mr. Kraus said he would provide these when they were completed.

The applicant has provided staff with revised plans (City Exhibit 5 – Revised Site Plan). The applicant also informed City staff that additions to the proposed conditions could result from the neighborhood meeting depending on his consultation with Habitat's governing board.

Staff, in conjunction with the Buncombe County Fire Marshal, has reviewed the revised plans and recommends approval of the amended conditional use permit with the following conditions:

- Streets within the development will be at least 24 feet wide with on-street parking permitted only on one side of the street.
- On-street parking is not permitted in the cul-de-sac or hammerhead turnarounds.
- If a street connection to Buncombe County property to the north is waived in lieu of a pedestrian connection, the proposed pedestrian right-of-way is widened to 20 feet and a 10-foot wide asphalt path is constructed within it.
- The developer will retain as many existing trees as possible during the construction process.
- All other applicable outstanding Technical Review Committee (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).

In addition, Council may want to consider the buffer enhancement proposed by the neighborhood (a fence) or alternative buffering (such as going to a "D" buffer) as an added condition.

Finally, as stated in staff's original report, the TRC recommended approval with the conditions identified by staff. The Planning and Zoning Commission then voted 5-1 to recommend approval with the conditions identified by the TRC (City Exhibit 6)

Mr. Gerald Green, representing Habitat for Humanity, said that in response to comments and direction provided at the January 13, 2004, City Council public hearing, the following revisions have been made to the subdivision plat (Applicant Exhibit 1):

- The cul-de-sac turnaround on the first street has been changed to a hammerhead turnaround in order to increase the land available for the lots abutting the turnaround
- The total number of lots has been reduced to 59
- The proposed stub street to the Buncombe County soccer fields has been removed. In its place a fenced and graveled footprint connecting the subdivision street, sidewalk, and walking trails is proposed
- The lot area of all lots abutting Captain's Drive has been increased. These lots now average 0.40 acre (including buffer areas), the same average size as the adjacent lots in the Captain's Drive development
- Larger homes (3 and 4 bedroom) will be built on the lots abutting Captain's Drive (lots 38, 39, 50, 51 and 52)

Habitat feels that these changes will address the major concerns raised at the January 13 Council meeting. Their goal is to provide homes that are affordable to the working people of Buncombe County in a development that strengthens and enhances the neighborhood, the community, and the City.

Mr. Green showed Council photographs of typical Habitat homes (Applicant Exhibit 2). Regarding neighborhood requests, he said that Habitat will widen the buffering near Captain's Drive to a "D" buffer and will have the fence surrounding the cemetery a plastic-coated chain link fence. Regarding hiring a property management company to maintain the common areas, that is something their attorney is still investigating and how it will impact the home price. Habitat does not feel that a eight-foot tall wood privacy fence on Habitat's side of the buffer is appropriate for two reasons: (1) cost of approximately \$20,000; and more importantly, (2) they do not build communities to wall them off from the rest of the City.

Vice-Mayor Mumpower felt that there was going to be a stronger effort to preserve trees, but after seeing the photographs that Mr. Green presented (Applicant Exhibit 2), he was not left with that sense. Mr. Green responded that (1) the examples shown are homes that weren't heavily wooded to begin with; and more importantly, (2) the pictures are only representative of how the homes are built, what they look like and if there are problems, that Habitat addresses them.

Mr. Pettibone used City Exhibit 4 to remind Council what the area looked like from Captain's Drive.

Councilman Dunn felt the 59-lot subdivision is too dense to have room for children to play. He was concerned that the Buncombe County soccer field will not be available for the kids and with the increased traffic from this development, it will be dangerous for those kids who play in the streets. Mr. Green felt that children will play in the yards, in the open spaces, at parks, and playgrounds.

When Councilman Dunn expressed his concern of traffic, Mr. Green responded that the City's traffic engineer did not identify significant issues regarding traffic congestion or safety.

Councilman Davis appreciated Habitat's working with the neighborhood on enlarging the lots and the buffer areas. He was encouraged to see the larger lots around the turnarounds but was distressed to see the size of the other lots along Hominy Creek. He felt that it would be ideal to make the subdivision a little less dense in order to allow the lots along Hominy Creek a more spacious and more space for the children to play. Mr. Green replied that the project originally was planned for 65 lots they have reduced the lots by 10% to 59 lots. However, there may be some room where they can reduce the density a bit more, but the point of affordability can be no less than 55 lots.

Upon inquiry of Vice-Mayor Mumpower, Mr. Pettibone said that this plan is well above the parameters of the open space requirements without the cemetery.

Councilman Dunn felt that Habitat can afford to build less lots because they have volunteer labor. Mr. Green responded



that a lot of the costs are the same as for private contracts, e.g., land; infrastructure; water and sewer; sidewalks; curbs and gutters, building materials, reviews, etc.

The following individuals spoke against issuance of the conditional use permit for various reasons, some being, but are not limited to: the housing project is completely out of character with Captain's Drive; Captain's Drive homes have basements, not crawl spaces; the housing project will injure surrounding property values; how can trees be saved with 59 homes; the cemetery is fragile and should not have children playing around it; the City is not making Habitat follow guidelines like other developers; there is a liability issue if there are unsupervised children playing on the County soccer field or on the school property; reducing the lots from 59 to 55 is only a token, not a solution; is the floodplain included as open space; houses will be too close to each other; there will be clear-cutting of trees; children should not play around the cemetery; there is no access to the County soccer park; Habitat has not given the neighborhood anything they wanted; this is an urban development in a suburban area; people will be crammed together; need for open space in the middle of the development for a playground or basketball court; they keep changing what the bottom line is on number of units; let Habitat build to the existing zoning; the stub-street was a TRC requirement and now is completely out of the plan; Habitat is being given preferential treatment; and more open space is needed.

Ms. Sandra Bailey, resident on Captain's Drive  
Ms. Carol Tracy, resident on Captain's Drive  
Mr. Steve Ayala, resident on Captain's Drive  
Mr. Walter Plaue, County resident  
Mr. Joe Treadway, resident on Sand Hill Road  
Mr. Gail Crawford, resident on Sand Hill Road (Neighborhood Exhibits 4 and 5)  
Mr. Tom Plemmons, resident on Sand Hill Road  
Ms. Kathleen Bailey, resident on Captain's Drive

Upon inquiry of Mayor Worley, Mr. Green said that the reduction of lots to 55 will result in approximately \$5,000 more per house.

When Councilwoman Bellamy asked what the City will do to assure the parking prohibitions, Mr. Pettibone said that the would be achieved by signs. City Attorney Oast said that he would investigate if that provision could be included in the homeowner's covenants, if Council chooses to do that.

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Upon inquiry of Councilwoman Bellamy, Mr. Pettibone said that approximately 45 units could be built on the property with the existing zoning.

In response to Councilwoman Bellamy, Mr. Pettibone said that if Habitat acquired additional land, the density would go down.

Mr. Pettibone said that Habitat did not receive any preferential treatment on this development. They had to be reviewed by TRC and comply with all City requirements. Planning & Development Director said that they are not eligible for reduced permit fees nor reduced fees regarding water. However, they would be eligible for a reduced MSD fee.

Councilman Newman asked if children could use the Buncombe County soccer field and the school's recreational facilities if they are supervised. Mr. Pettibone said that they have contacted the County but have not received a response.

Councilwoman Bellamy moved to adopt Ordinance No. 3094 to issue a conditional use permit for property located at Sand Hill Road (Habitat for Humanity) for a 55 lot subdivision, subject to the following conditions: (1) Streets within the development will be at least 24 feet wide with on street parking permitted only on one side of the street; (2) On-street parking is not permitted in the cul-de-sac or hammerhead turnarounds (to be included in the homeowners covenants depending on the City Attorney's investigation); (3) If a street connection to Buncombe County property to the north is waived in lieu of a pedestrian connection, the proposed pedestrian right-of-way is widened to 20 feet and a 10-foot wide asphalt path is constructed within it; (4) The developer will retain as many existing trees as possible during the construction process; (5) All other applicable outstanding TRC conditions are addressed; (6) 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); (7) The buffer between the development and Captain's Drive is supplemented to achieve at least a "D" type landscape buffer; and (8) Children not be allow to play in the cemetery. This motion was seconded by Councilwoman Jones.

Vice-Mayor Mumpower explained why he felt the development did not meet Standards 3 or 4. He felt the development will have a negative impact on adjoining properties and also that it is not in character of the neighborhood.

Councilman Dunn explained that the developers have not meet Standards 1, 3, 4 or 7. He felt the density was too high, the development does not fit the character of the neighborhood, the development will injure the value of abutting properties and the development will cause undue traffic congestion.

Councilman Newman hoped that if there was going to be more open space that there will be a process on the best way to achieve it. He would rather not marginally increase the lot sizes, but maybe find an open space that might be used for some recreational function.

Councilwoman Bellamy suggested Habitat might want to partner with Quality Forward on tree plantings or work with them regarding playgrounds.

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

City Attorney Oast said that he would draft the Order and bring it back at Council's next formal meeting on March 9, 2004.

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At 6:45 p.m., Mayor Worley announced a recess.

#### **B. BUDGET AMENDMENT FOR THE SECTION 108 GUARANTEED LOAN AND ECONOMIC DEVELOPMENT GRANT**

Mayor Worley said that on January 27, 2004, City Council reviewed this matter and continued it until February 24, 2004, to receive additional information. He said that public comment would be limited only to the new information City Council requested at that meeting.

Planning & Development Director Scott Shuford said that this is the consideration of a budget amendment, in the amount of \$1,140,000, to recognize receipt of a Section 108 Guaranteed Loan and an Economic Development Initiative (EDI) grant from the U.S. Dept. of Housing and Urban Development and expenditure of the proceeds on the redevelopment of South Pack Square.

Prior staff reports have provided considerable information concerning this budget amendment request to allocate \$800,000 of HUD Section 108 funds and \$340,000 of EDI grant monies to an Eagle Market Streets Development Corporation project to redevelop property on Eagle and Market Streets.

This is an economic development project that will be funded through private investment using historic tax credits and conventional financing, along with the funding sources from this budget amendment. By itself, it will create over 8,000 square feet of additional retail and office space and 14 residential units. The funding would also leverage additional monies to be spent in a Mt. Zion Church project, resulting in a total of approximately 12,000 square feet of retail and office space and a total of 47 residential units. Five historically significant buildings will be restored to Secretary of Interior standards and a new infill building will be constructed on vacant property if these two projects are realized. It is important to note that this project is not an affordable housing project, although the units will be affordable (renting at 95 cents a square foot) to many service workers, City employees, and other people that make up our local workforce. This is a greatly underserved group in our Downtown housing market.

In January, Council continued this item for additional information. The following are our responses to this information request.

**Compliance with Plan** - Staff finds that the proposed project will be fully consistent with the South Pack Square Redevelopment Plan. Plan quotes and map references follow.

On page 16, the Plan provides:

[T]he site plan options present a wide variety of mixed residential, commercial, and support uses to achieve the objectives of this plan. The general obligations presented by the development options are: . . .

5. To provide for the area the widest possible variety of compatible mixed use development; and

6. To promote upper story residential development over mercantile business as well as the possibility of new housing construction.

Additionally, in several places, the Plan specifically calls for infill development and new construction:

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- There will also be an effort to provide for space for new construction within the project area. (Plan, p. 19).
- Infill on vacant property for new commercial structures on Market Street and Biltmore Avenue is encouraged. (Plan p. 21; emphasis added).

The maps accompanying the Plan also suggest that infill development is generally encouraged and is an appropriate use for the Subject Property:

- The Existing Land Use Maps (Maps 8 & 10) show the Subject Property as being in commercial use;
- The Existing Zoning Map (Map 9) shows the Subject Property zoned to a CBD (Central Business District) classification;
- The Vacancy Map (Map 13) does not identify the Subject Property as vacant;
- The Proposed Site Plan (Options 1 and 2) (Maps 14 & 15) show the Subject Property as available for “mixed use (res./comm.)”.
- The Greenway and Open Space Map (Map 17) does not show the Subject Property as being set aside as a greenway or open space.

**Pro-Forma Projections** – Pro-forma projections appear to be sound. A staff survey of similarly-priced product (100 units total) in our downtown shows a 97% occupancy rate, with waiting lists for units in the larger buildings. In addition, the project is fully consistent with all applicable financial review criteria necessary for the City to carry out its responsibility in monitoring the allocation of federal funds and in securing the consequent City financial interest in the project.

**Lease and LLC Agreements** - Copies of lease agreement and organizational (LLC) agreements have been provided to Council.

**Private Party Background Information** – Council has received corporate profiles for Historic Acquisitions LLC and Enterprise Real Estate Services plus informational brochures. Other background information about the private parties involved in the project, including reference information and web-page referrals, has been previously provided.

**EMSDC Information** – This includes the completed 2002 audit, deadline for the 2003 audit, by-law compliance, board term limits, consultant recommendations on internal organization, evidence of progress in developing an effective and broadly inclusive community involvement plan, and a plan for maximizing economic opportunities from the project for minority and low-income residents. EMSDC will provide this information.

**Other Information** – The following information has been previously provided:

- Market Study completed in September, 2003.
- Property Appraisal completed in November, 2003.
- Risk to City funds if the project fails or the CDC disbands or is not funded.
- “Exit strategy” should Council choose not to fund this project.
- Rationale for drawing down the Section 108 loan monies in August.

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**Reasons to Support/Not Support** – Pursuant to Council’s direction, the following are reasons to support and to not support the project:

Support:

- Residential – builds 14 units; leverages 33 more = 47 total units
- Residential – market rate, workforce housing
- Retail/Restaurant/Office – more than 12,000 square feet
- 5 historic structures restored to Department of Insurance standards
- More than \$6 Million in tax base
- Implements South Pack Square Redevelopment Plan
- Partnership with Enterprise Foundation (because of its expertise, reputation, and potential role in future developments in Asheville)
- Partnership with David Rogers (because his expertise gives us confidence it will be constructed as planned)
- Project fully complies with all relevant financial review standards
- All federal monies are fully secured
- There are no local tax monies in the project
- Project rental vacancy and rate projections are sound based on downtown market
- Infill building and renovations approved by two different design review boards
- Public support from EMSDC, Mt. Zion, Preservation Society, and many individuals, particularly African Americans who remember the Block in its heyday

Reasons not to support:

- Fence – poor public relations by EMSDC
- Capacity of EMSDC – management issues
- Residential units not “affordable” enough
- Want something else on infill site (park, parking, etc.)
- Do something else with the money
- Opposed by adjoining property owners
- Council goals have changed

Staff recommends that the City Council approve the budget amendment that allocates \$800,000 of HUD Section 108 funds and \$340,000 of EDI grant monies to the EMSDC project.

On February 20, 2004, EMSDC provided City Council with the following information: (1) completed audit report for 2002; (2) agreement with auditor for completing the 2003 audit by April 30, 2004; (3) updated list of Board members showing how membership complies with the agency’s by-laws and HUD’s requirements for Community Based Development Organizations; (4) draft revised by-laws presented for approval by the EMSDC Board on February 24, 2004; (5) organizational development recommendations prepared by management consultant Leslie Anderson in February 2004; (6) summary of “You Stand” program activities for recruiting and developing minority-owned businesses; (7) extract from performance report to the City for year-ended June 30, 2003, relating to “You Stand” activities; (8) residential/business Marketing Outreach Work Plan for 2003-04; (9) Minority Participation Plan by Clancy & Theys, general contractor for the project; (10) draft Community Involvement Plan – SPS Advisory Panels; (11) agenda and other material for SPS meeting held at the YMI on February 19, 2004; and (12) draft memorandum of understanding between EMSDC and the City, on community involvement (staff has not yet had an opportunity to review this).

Mr. Shuford presented Council with the following construction prices per square foot:

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- EMSDC - \$91/sf
- Harry Pilos – Rehab: clean shell, no structural issues - \$90-120/sf  
 New construction: 4 story, mixed use, 25% commercial - \$135/sf commercial  
 \$100-110/sq ft residential (unsure if it includes upfit costs, probably not)
- Peter Alberice – Rehab: \$50/100/sq ft  
 New construction: \$150/250/sq ft
 

Mid grade residential	\$150
Mid grade office	\$175
Retail	\$200

- Harry Weiss – Rehab: \$90-120/sf (breakdown \$60-85/sf hard costs plus soft costs of 25-32% of construction cost)

Mr. Shuford said that City Council has received information which summarized the first community meeting held on February 19, 2004, and information on the alternative projects presented at the community meeting held on February 23, 2004.

Mr. Gene Ellison, co-owner of the Ritz building, said that City Council has challenged them to come up with an alternative plan. He said that in 3.5 days they have come up with an alternative plan that a great deal of people think is a possibility. He said private individuals have invested close to \$2 Million on the Block and they need to be included. This project can be done in a lot of different ways.

Mr. C. Crawford Murphy, architect, briefly reviewed with Council his alternative to the EMSDC plan, noting that he used the exact amount of square footage. Showing sketches, he said he added open space, increased the parking and maintained all the retail. A concession to be made is that the alternative might jeopardize the historic tax credits, but in the design alternatives, relatively speaking, we think there is a savings of approximately \$500,000 in construction costs. In summary, the plan shifts the infill building to above the Collette building on Eagle Street. The building located at 3 Wilson Alley would be saved and a two-level, open-air parking deck would be constructed on the existing parking lot. There would be an interior park created on the second level of the parking deck that would be accessible through the Collette building. The parking deck is accessed from Market Street via two single lane driveways, one going to the upper deck and another going to the lower deck. He said this is a \$3.1 Million project including the parking, which is not in the other plans, and the development of the building in the back.

Mr. Jesse Plaster presented Council with another alternative plan of a renovation-only project. The plan would create a park on the existing parking lot, providing for a public market space and outdoor seating/cafes. The Campbell and Collette buildings, and possibly 3 Wilson Alley, would be renovated in an historically appropriate fashion. Some advantages include (1) renovation is more economical than new construction (\$60/sf rehab vs. \$80/sf for new construction); (2) tax credits come only from renovation work; (3) Collette and Campbell buildings require little, if any, structural modifications; (4) Eagle-Market Streets properties can be renovated with money in-hand; (5) renovation of building at 3 Wilson Alley will be for affordable housing; (6) precarious nature of EMSDC Plan puts properties at financial risk; (7) this plan uses real numbers for vacancy rates (10%), management fees (10%) and maintenance costs (5%); (8) this alternative requires no subsidy from the City; and (9) this alternative includes a community park with the opportunity for community input on design. He pointed out that using \$100/sq ft for

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renovation and \$150/sf for new construction the EMSDC Plan would bring the project over budget by \$1.5 Million.

Pastor William Henry Hutchison, tenant of EMSDC, explained to Council his displeasure surrounding alleged forged documents by EMSDC staff regarding a reimbursement request for moving and storage expenses.

The following individuals spoke in favor of revitalizing the Block but preferred an alternative Plan to EMSDC's plan:

Ms. Amy Plaster, owner of the Wilson building at 13 Eagle Street  
Mr. Jesse Ray Jr., Vice-Chair of YMI Cultural Center and Chair of YMI Community  
Development Corporation  
Mr. Don Yelton  
Mr. Isaac Coleman

The following individuals spoke in favor of revitalizing the Block with the EMSDC's plan:

Ms. Dena Banks, owner of New Ebony Bar and Grill in Collette building  
Mr. Marvin Chambers, Board Member of EMSDC  
Mr. Marvin Vierra, Board Member of EMSDC  
Mr. Fred English, Haw Creek resident  
Mr. Billy Adams, former Eagle Street resident

Councilwoman Bellamy had originally asked for the delay at Council's last meeting when this issue was before us in the hopes that we could come to a place where the community can be unified behind one plan or the other. She said Council has been provided with the minutes of the February 19 and February 23 meeting minutes. The two alternative plans have arisen out of the two community meetings and it was her hope that one plan could be supported. There was no consensus of the community on

either alternative plan. Throughout the process it has been encouraging to hear the dialog and it was unanimous on February 19 that the vision was to see redevelopment. Now it's just how do we get there. She would be opposed to delaying this issue any longer. The number one goal of the 1996 South Pack Square Redevelopment Plan was to eliminate and prevent further deterioration of South Pack Square. Over the past month she has met with people in the area, but consistently EMS didn't move. That was discouraging. At last night's meeting when there was an opportunity to hear comments, EMS didn't come to the meeting just to hear more public input. Some people felt it wasn't important enough for them to come and in her opinion, they hid behind the fact that they are in a lawsuit and their attorney advised them not to say anything. However, one thing is to listen to the community, and the other thing is to participate. For her, we are asking the lead organization on this development to entrust them with \$1.14 Million and it's hard for her to get beyond the hurdle of issues discovered in the last four weeks that were not mentioned before. It's hard for her to entrust this amount of money into an organization who is not willing to listen, even if they say they are not changing. EMSDC is the agent for the City to get the job done, so they should be the extension of what we want to see. The ultimate goal is to see something preserved that is important to the entire community. And, she doesn't see it in the lead organization that we are supposed to entrust our money. She has no doubt that Rogers & Associates can do the work because they are good developers. Her concern is she can't get over the hurdles of the organization's capacity to ensure that when the money is given to them, that they know Rogers are doing the right thing. She doesn't see that at the current level. She would like to see a lot of changes in the Board and staff at EMSDC.

Upon inquiry of Vice-Mayor Mumpower, Mr. Shuford said that the EMSDC plan is 35,132 square feet with total development cost of \$3.2 Million which is approximately \$91/square foot (not including the acquisition cost but that is a given for anyone who would build on this particular

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site). The figure for total development costs, with the acquisition, including hard costs, soft costs, new construction and rehab is \$101/sf. In addition, from figures given to him by Mr. Plaster, Mr. Shuford said that Mr. Plaster had earlier quoted his rehab figure of \$60/sf, however, his figures show that Mr. Plaster developed his rehab building for approximately \$83/sf. Mr. Plaster disagreed stating his rehab amount was \$60/sf.

Vice-Mayor Mumpower said that his concerns about Rogers & Associates have been addressed. Even though he doesn't believe Mr. Rogers is responsible, he did note that the Grove Arcade Project had \$3 Million in cost overruns and they ran into problems they didn't foresee. If that can happen with the best minds and a strong developmental process, he is left with concerns that the same potential exists in this project.

Responding to Vice-Mayor Mumpower concern about cost-over-runs, Mr. Shuford said that in this project there is a reserve that would allow the project to sustain a 20% vacancy rate for a period of nine years. Given the quality of the developer and the thoroughness of the architect, he felt the chances of having an over-run are small, but there is a provision in the way the financing is set up for that to be accommodated.

Vice-Mayor Mumpower continued to express concerns about hidden cost over-runs and questioned how this project can be developed at \$91/sf and others say it cannot be developed at that cost. Ms. Caplan attempted to show Council how resilient the project is to vacancy rates that could exceed 4% for a period of time. She said that the City would expect to see any project coming up for our City support to show a robust pro forma, stressing that an operating reserve is something that should be shown in prudent budgeting.

Councilman Dunn felt that the taxpayer's money that is in the reserve account (20% vacancy rate for nine years) might be used for another project or perhaps the City could build some sidewalks or put in infrastructure somewhere else. Community Development Director Charlotte Caplan explained that this reserve is the bank's money required by the bank lender. It will be reserved from the bank loan funds. Mayor Worley further explained that the money we are talking about under the terms of the grant is money that is from HUD for this purpose only and if it's not used, it goes back to HUD. The City cannot turn around and use that money for any City infrastructure.

Upon inquiry of Councilman Newman, Ms. Caplan said that the developer would potentially lower the rental prices in order to get a higher rate of occupancy. In fact, the pro forma also includes a very generous allowance for marketing incentives, which she thinks is mainly aimed at the commercial tenants.

Vice-Mayor Mumpower asked if there were any unaccounted dollars that staff was aware of that is not in the materials before Council. Ms. Caplan said that two things do not appear in the pro forma: (1) the cost of acquisition of property (because the project will be leased); and (2) approximately \$3,000 a month the City has been paying EMSDC for their operating costs.

Mayor Worley asked Mr. Crawford what was the basis upon which he addressed the costs to his alternative plan. Mr.

Crawford responded that he took the EMSDC design and began to look in the design concept of the alternative he was offering to see what impact did it have on the costs of the construction, particularly the new construction. He found that in the alternative design there was about 40% less exterior wall, 50% less roof area and there was a whole floor that wasn't needed. Then he added back differences of improving the basement of the Collette building vs. the EMSDC plan to put parking under there. Then at the end he applied \$100/sf to remodel and \$130/sf to new construction. These are broad stroke figures. He hasn't had time to get relative evaluation between the two. He feels that both are viable alternatives and with

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enough examination, he felt they are worth consideration. He said that these numbers are so broad that just by changes of the design, you can create economic opportunities.

When Mayor Worley asked Mr. Crawford if he had an opportunity to go through the buildings, Mr. Crawford said that he has been in several of the buildings and examined the Wilson building in a walk around and look through.

Mayor Worley said that he recalled that the Gennett Building is scheduled to be demolished as a part of the EMSDC plan because it was too far deteriorated to be renovated. Mr. Crawford said that he called six companies that specialized in cleaning out buildings like that and he could have had a contract yesterday morning to clean the building out because that is a common task that can be overcome. He hasn't had a chance to look in it, but took the worse case scenario which is to gut the whole inside, leave the exterior, and build back inside. That cost is almost \$300,000 for 3500/sf.

Mayor Worley then asked Mr. Plaster what was the basis upon which he addressed the costs to his alternative plan. Mr. Plaster responded that best resources they used was the powerpoint slide EMSDC used, showing how they arrived at \$60/sf for rehab and \$80/sf for new construction. Regarding the condition of the Gennett building, Mr. Plaster said they talked to Bill Wescott, a preservation engineer, because he has had experience with that building. However, their conversation wasn't directed at this debate at the time he spoke to him. The Gennett building is locked and they have not been able to gain access. However, Mr. Wescott spoke about the interior condition of the building and felt that it could be preserved and that there was significant architectural detail inside the building making it a good case for preservation.

Upon inquiry of Vice-Mayor Mumpower, Mr. Plaster felt the EMSDC's projections are not realistic. His father is an architect and he has grown up with a close relationship to the construction industry. He felt that even \$91/sf for an infill residential project is a far cry from most other architect's projections. He said the difficulties of this site are it's in an urban environment, it has immediate adjacencies on three sides, a public street – all of which factor into increased construction costs.

Upon inquiry of Mayor Worley, Mr. David Rogers, with Rogers & Associates, said that one reason the risk factor is low is because he has 30 years experience in rehab of old buildings totaling \$1 Billion. He is confident that he has all the unknowns taken care of. They commonly refer to renovations as discovery because after you begin, there may be structural problems they don't see. He explained that they have a contingency in the General Contractor contract and a contingency in the pro forma which should cover any unknowns that should come up. Regarding the Grove Arcade project, he said that the 330,000/sf project at a \$332 Million pro forma is approximately \$100/sf for that high quality renovation. Regarding the construction numbers, HUD and the City requires them to furnish the City the lump sum guaranteed maximum contract from the contractor, who is bondable and capable of doing that project, which guarantees the costs before any HUD money is spent. That has been furnished to the City. He explained that there is no risk in the construction costs because we have someone guaranteeing the construction costs and they have contingencies built in their numbers. The only thing that would ever go up would be a change order from an unknown and we have money to cover that. The reserves are something that the lender requires and the tax credit investor requires us to fund those reserves at the start and put them in escrow. We cannot touch them – they are there for the project.

Upon inquiry of Councilman Newman, Mr. Rogers said the reserve is higher than normally a lender would require because of the tax credit investor.

Mayor Worley asked Mr. Rogers what his opinion is regarding whether the Gennett building was salvageable or not. Mr. Rogers said that he has looked at the building, the

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environmental reports and the quotes that EMSDC received. They had 82 people show up and only 2 people quoted (the lowest quote being \$315,000), and neither one guaranteed that the mold and spores in the building could be killed. Mold is a very serious problem that is hard to overcome and kill. He said they had another use for the property in another phase in the future.

Upon inquiry of Vice-Mayor Mumpower, Mr. Rogers said that he doesn't spend over \$100/sf for any renovation project

whether it's a \$3 Million project or a \$30 Million project

Mayor Worley asked Mr. Rogers if he felt there was merit to any of the concepts of the two alternatives just presented to Council. Mr. Rogers replied that one proposal was 100% different than EMSDC's plan. The other proposal was virtually doing the same thing as the EMSDC plan, but rather than comment on how the EMSDC can change their proposal to fit other needs, they brought forward a brand new proposal. He has heard no comments on what he could do to change EMSDC's plan. He did note that it took them eight months to get where they are at now and it's hard to believe that anyone can come in and tell you in three days what is a good proposal and the cost to make it work.

Councilman Dunn asked Mr. Rogers if, after Council had time to review the two new proposals, he would be willing to be the developer to work with them. Mr. Rogers explained that they have already spent approximately \$200,000, and he wasn't sure how to overcome that at this stage in the game. There will have to be all new architectural fees, a new appraisal to do, etc. However, he would be willing to sit down and talk with them. He wished this input would have come forward six months ago. He then explained why there is no way that tax credits can be used on either one of these alternatives. He explained that the EMSDC plan is what all the different agencies (State Historic Preservation Office, and Park Service) would approve.

Councilman Dunn said that historical buildings are nice, but if it interferes with good development then we might have to lose it.

Councilman Dunn asked if Mr. Rogers could be reimbursed and the City advise HUD that we have found a better project that will save money. City Attorney Oast said that he would have to investigate reimbursing Mr. Rogers back. He did state, however, that there are restrictions on how federal money can be used.

Vice-Mayor Mumpower asked if there was any concern about the \$97.5/sf rental rate for residential units. Mr. Shuford said that the rental rate for both the office space and residential is well within market for our downtown. Larger residential projects have waiting lists and there is very little vacancy in our downtown right now. After researching other parts of downtown and reviewing the numbers with a commercial realtor, he thinks the rent rates for both residential and commercial are fine.

Vice-Mayor Mumpower asked if this area is considered as the core area. Mr. Shuford responded that this is in an area that is in one of the more exciting and vibrant parts of downtown and certainly the effort that is going on to rejuvenate it through the private sector is starting to bring this area back.

Vice-Mayor Mumpower asked if there are any concerns that this has the potential to be seen as federally funded gentrification. He said that we have a rich history and a rich level of activity in that area, but we don't have a history of high-dollar format and this seems like it's high-dollar. Mr. Shuford said that it is always a struggle to figure out who is going to live in the units. We have finally gotten away from who can live in the unit to if they can afford the payments, then they can live in the unit. That is the appropriate way and how it should be. In this particular case, it is the lower end of our rental market rate housing in our downtown.

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Councilman Newman said that substantially he thinks this is a good project. For him, voting to support investment and rehabilitating historic buildings in the downtown and to support an infill building on an empty parking lot is easy. But for him, voting for a large subdivision in a mature wooded area is hard. He does think the project will go a long way towards addressing the blighted condition of the neighborhood. His concern has been the scarcity of affordable housing as part of the project. While he realizes that simply addressing the blighted nature of the neighborhood is very valuable in its own right, he is concerned about the overall gentrification that is occurring in the community and in downtown. He lives in a neighborhood now that 10 years ago was considered an unsafe area. Today it is very hard for people to be able to buy a home there. It can happen very fast. He would not support the project if he felt that the affordability issue could be changed significantly for the better, but after talking with the developers and other people who are involved in this project, he thinks that there are significant physical constraints on the ability to do that. We are dealing with historic buildings and it is expensive to renovate old buildings. Even on the infill building where one might think it might be easier to design more affordable units into it, simply by including small units rather than a smaller number of larger units, the cost of the space is there and there are significant constraints on that as well. He is convinced that the developers would like to include more affordable units if it were more physically possible to do that with this project. Regarding the process, he thinks there has been a bad process. In many ways over the last decade there has almost been too much discussion and not enough action going on in terms of substantive revitalization of this area. And then in the last year, there has been a lot more action and not enough community input which is unfortunate. He doesn't want to legitimize a bad process but he also has concerns from a process standpoint about not moving forward. The City has invested a lot of money over many years to revitalize this area. The blighted nature of the Block adds significant costs to our community in a very real sense in terms of the costs that we need to invest in policing of this area and the lost economic opportunities if the area was more productive and vibrant. The City



Council has voted to postpone this issue twice to get more input and bring people together and he is concerned if we continue to postpone it, the project could collapse under its own weight. Some people say that the market force will continue to renovate this area and he commends the people who have gone out of their way and been the pioneers by investing in the neighborhood. But, the City has made it a priority to invest in the renovation of this area, EMSDC has purchased buildings, and the Church has purchased buildings, so the reality is that most of the important buildings in this neighborhood are now owned by these entities and if they can't move forward with some kind of renovation then we know that this neighborhood will remain in a blighted condition. For those reasons, he is supportive of moving forward with the project. His remaining concerns deal with the community representation on the Board of the EMSDC and also concerns about retaining the existing businesses that are in the community. He is very concerned when he hears business people who have operated in this area say that they fear they will be left out once the renovations happen. It's not necessary the issue that we are voting on tonight, but those two concerns about board representation and supporting existing businesses will have to be addressed for him to provide any other future support of EMSDC's work in this area. He said that in future phases of the development of the neighborhood he would like to see a very significant component of affordable housing so that we don't have gentrification of this neighborhood. Therefore, he moved that City Council approve a budget amendment, in the amount of \$1,140,000, to recognize receipt of a Section 108 Guaranteed Loan and an Economic Development Initiative (EDI) grant from the U.S. Dept. of Housing and Urban Development and expenditure of the proceeds on the redevelopment of South Pack Square. This motion was seconded by Councilman Davis.

Councilman Davis said that he agrees with Councilman Newman. There is a part of him that is almost sick to second the motion because of the process that has gone on. This has been going on for a long period of time and he thinks that in spite of the ill handling of the public involvement early on in this, EMSDC has managed to get a very good developer to the table. They have also managed to bring with them the Enterprise Real Estate which is another good plus for the second or third phases of this project. As a business person, he feels like the

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business community and the private investors have been left out of the process which they should have been considered early on. But, we also have at this point gotten a lot of money at the table and some good plans and, quite frankly, if this falls in, he doesn't see the private sector coming down and spending a lot of money to take this forward to the degree that we have the opportunity to do so now. If we go back through Mr. Murphy's plans, we will be re-inventing the wheel at a late stage, so he is comfortable with moving forward with this now.

Mayor Worley said the one thing he has heard unanimity on is that everybody is for the redevelopment of the Block. We all recognize that the process was not the process that we would desire to see a project like this move forward. The process seemed to pick up a little bit once things surfaced in the fall. There were some meetings in the fall and early winter and even kicked into higher gear over the last week, which is very late in the overall scheme of things. City Council has postponed a decision on this issue at least twice. We have done so each time with some trepidations about what that might mean for the viability of the project in terms of potential or rising interest rates, etc. Today we have received alternatives. They are very preliminary, at best, and they come in very late in the process. There is a wide range of guesswork in the cost and feasibility of those and there is a pretty wide difference of opinion in terms of the feasibility of renovating vs. demolishing at least one component of it. The choice that we are left with is to either approve the EMSDC development or turn it down. If we turn it down, he thinks it will be because of flaws in the process and perhaps the potential for the new alternatives. He doesn't think we can effectively postpone this. If we don't reach a decision tonight, whether we officially turn it down, we will have turned it down. Turning it down at this point will leave us with some very real unknowns in alternatives that are as yet un-designed. They are sketches and concepts but no design or full blown architectural study. It would leave us with unconfirmed costs. Also if we turn it down, we need to consider the \$200,000 that has already been spent so far. It is a hard choice. He is convinced that when you weigh the alternatives – where we are at this point in time and the prospects for the future - the only logical choice you can come to is to approve the EMSDC project and move forward. He was very concerned about the process and one of the conditions he would insist on would be that the board representation be changed with EMSDC to be sure that there is full community representation and that process be monitored very closely to be sure that there is full community participation in future decisions relating to the Block. Sometimes you have the participation and a lot of disagreement, but we must have that participation to the fullest extent going forward. He has a lot of confidence in Mr. Rogers, his past experience and his proven track record. When he looks at the alternatives, the pro forma and cost per square foot, he has to rely on those people who have expertise in those areas. He did note that on the figures that Mr. Shuford provided Council on the square footage cost that most of the others who were contacted gave a range and the EMSDC cost per square foot falls within that range, although at the low end. When he weighs all of those things, he comes to the conclusion that we do need to approve this and move on and see some redevelopment occur on the Block.

Councilwoman Jones said that she brought up a lot of issues around organizational capacity a month ago and the EMSDC is on a path to tighten up a lot of the problems that she identified at first glance. She commended the EMSDC Board for working so hard on that. No matter how the vote goes today, that will send them on a road that will make them stronger. She appreciates

the optimism of Councilwoman Bellamy but it's important to her to say that she is aware of the things that we are going to lose if we don't approve the project. Money on the table has been identified. She hasn't had problems with David Rogers from the beginning and he has been very helpful and she thinks he would do a great job. We will lose Enterprise Real Estate and that is a huge resource to this community. We will not get the tax credits back. We might have a chance at the EDI. She felt the process does matter. But she does believe that as strong as Councilman Newman's arguments are, that if we have a shot at some of that intent for affordability and to plan out the plan, then she has to vote no for going forward. She understands what we will be giving up and its lose to our community. It is in the community's hands, and she

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will hold hands with you, to try to see what we can salvage to go forward. This is the hardest vote she has ever cast.

Councilman Dunn said this is one of his hardest decisions as well. To say that we must move on due to the money and studies that have already been presented, when he has heard better ideas, even though they are late, bothers him. He thinks it is a way of rationalization that he can't condone. There was a comment about this being a historical vote. He doesn't think it will change the history of Asheville. Market forces are in place. The Block is coming back. He grew up here and he's seen what it used to be like. This isn't a black or white issue and not one neighborhood against another. To him it involves common sense. When he sees information from staff that says we have this Section 108 money and worse case scenario is that we can pay it back, he felt we are not good stewards with this taxpayer money. It should be dealt with in a very conscientious way. He doesn't see that it is. The Board has worked hard on this but he still has problem with what has gone on in the past. The process has been flawed. Sometimes the best deal you can make is one you walk away from. It troubles him that we are going to lose something big but he sees a re-birth of ideas. He doesn't think this is a lost cause. He can't support something that there are too many uncertainties. He can't believe the pro forma is as good as it is. To say that we are going to use taxpayers money to have a 20% vacancy rate for nine years shows that we are not good stewards of taxpayer's money. That money could be used for other things. He will vote against this. He hoped to reconstitute this Board and move forward in a new direction.

Vice-Mayor Mumpower felt we have a failed planning process. He does think that we have a federally-funded gentrification effort. With that said, he does think a lot of hard work has gone into it with a lot of good minds and well intended people. We have all made our share of errors. When we look at our guiding document, the South Pack Square Redevelopment Plan under goals and objectives, he believes three goals have not been met: No. 4 – To stimulate and nurture small business development and job creation primarily for, but not limited to, the African American Community (he doesn't think this project will do that); No. 5 – to increase property values in the area while at the same time working to ensure the long term affordability of commercial space for small businesses and the long term affordability of housing for low and moderate income residents (he thinks this clearly doesn't do that); and No. 7 – to plan and implement development that is sensitive and responsive to the needs of the people who have traditionally inhabited and conducted business in the area (he doesn't believe this plan does that). Therefore, he will not vote for it.

Councilwoman Bellamy said that when this first came before Council she was optimistic in the future of it. At the last meeting Council had comments from individuals talking about Dr. Martin Luther King's vision, dreams, and goals for our community and for African Americans. Tonight, for her, she feels like we missed it again. This is a hard decision. She has had to ask tough questions. She hates to think that she is letting people down or stopping progress. But she has to stand for what is right. She believes by supporting this project she wouldn't be doing that. She would be legitimizing a process that is exclusive. She'd be saying it's okay to change forms and it is okay not to talk to everyone at the table. She can't do that. She thinks that looking at things as though they could be, even though they are not, isn't a bad thing. She thinks that to add another six months to this process and having everyone at the table isn't a bad thing. She won't support the motion. She will offer other motions moving forward to see some changes.

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

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After a brief discussion initiated by Councilwoman Bellamy, it was the consensus of City Council to have staff prepare a report at a worksession on what they are doing regarding a renegotiated contract with EMSDC and then give staff further direction.

## **V. NEW BUSINESS:**

### **A. RESOLUTION NO. 04-52 - RESOLUTION APPOINTING MEMBERS TO THE BOARD OF ADJUSTMENT**

Vice-Mayor Mumpower said that this is the consideration of appointing alternate members to the Board of Adjustment.

The terms of Headlee Howard (Alternate) and Patricia Grant (Alternate) expired on January 21, 2004. In addition, there is a vacancy left by Steven Sizemore (Alternate) until January 21, 2005.

At City Council's worksession on January 20, 2004, City Council instructed the City Clerk to re-advertise for these vacancies.

On February 17, 2004, it was the consensus of City Council to instruct the City Clerk to arrange interviews for John Kiser, Jane Mathews, Lee McElrath, Michael Anders and David Brown. John Kiser has moved out of the City and would not attend the interview.

Jane Mathews received 3 votes; Lee McElrath received 7 votes, Michael Anders received 7 votes, and David Brown received 4 votes. Therefore, Lee McElrath and Michael Anders were appointed as Alternate members to the Board of Adjustment to each serve a three year term respectively, terms to expire January 21, 2007, or until their successors have been appointed. In addition, David Brown was approved as an Alternate member to serve the unexpired term of Mr. Sizemore, term to expire January 21, 2005, or until his successor has been appointed.

#### **RESOLUTION BOOK NO. 28 – PAGE 150**

##### **B. RESOLUTION NO. 04-53 - RESOLUTION APPOINTING MEMBERS TO THE FILM COMMISSION**

Vice-Mayor Mumpower said that Ray Sanow has resigned as a member of the Asheville Film Commission, thus leaving a vacancy on the Commission until November 1, 2006. In addition, Gail Wurthner has resigned from the Commission, thus leaving another unexpired term until November 1, 2004.

At City Council's worksession on February 17, 2004, City Council instructed the City Clerk to arrange interviews for Lillian Alexander, Matthew Marquis, David Schulman, Jim Lawrence and Jon Menick. Mr. Menick had a prior commitment and could not be able to attend the interview.

It was the consensus of Council to appoint Jim Lawrence as a member to the Asheville Film Commission, to serve the unexpired term of Mr. Sanow, term to expire November 1, 2006, or until his successor has been appointed. In addition, David Schulman was appointed as a member to the Asheville Film Commission, to serve the unexpired term of Ms. Wurthner, term to expire November 1, 2004, or until his successor has been appointed.

#### **RESOLUTION BOOK NO. 28 – PAGE 151**

#### **VI. OTHER BUSINESS:**

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##### **Asheville Community Resource Center**

Upon inquiry of Councilwoman Bellamy, Mayor Worley said that City Council has received correspondence about the Asheville Community Resource Center and the Asheville Free School losing their lease at 63 N. Lexington Avenue. He advised Council that the landlord is terminating their leases and the City of Asheville, regreftfully, has no ability or authority to do anything regarding that.

##### **Claims**

The following claims were received by the City of Asheville during the period of January 30-February 13, 2004: Cheryl Singles (Water), Jim Lowe (Water), CP&L (Water), Mark Morales (Water) and Janet McPherson (Fire).

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

#### **VII. INFORMAL DISCUSSION AND PUBLIC COMMENT:**

Mr. Fred English was opposed to the City's public access television station.

Mr. Don Yelton presented City Council with information off of the URTV's (public access television station) website which

one day read "You can make a show about anything that you want, and no one can legally censor it unless it breaks federal laws." He then presented Council with a copy of the information off the website the following day that has that language deleted. He expressed his concern about this station and material that would be shown on it.

**VIII. ADJOURNMENT:**

Mayor Worley adjourned the meeting at 10:04 p.m.

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CITY CLERK

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MAYOR