

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**

Mayor Worley led City Council in the Pledge of Allegiance.

**INVOCATION**

Councilman Newman gave the invocation.

**I. PROCLAMATIONS:**

**A. PROCLAMATION PROCLAIMING APRIL 2004 AS "CHILD ABUSE PREVENTION MONTH"**

Mayor Worley read the proclamation proclaiming April 2004, as "Child Abuse Prevention Month" in the City of Asheville. He presented the proclamation to Mr. Bill McGuire, who briefed City Council on some statistics of child abuse and some activities taking place during the month.

**II. CONSENT:**

**A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON MARCH 9, 2004, AND THE WORKSESSION HELD ON MARCH 16, 2004**

This matter was pulled off the Consent Agenda for discussion.

**B. ORDINANCE NO. 3096 - BUDGET AMENDMENT TO RECEIVE GRANT MONEY FROM THE N.C. DIVISION OF EMERGENCY MANAGEMENT FOR PROCUREMENT OF EMERGENCY RESPONSE AND PREPAREDNESS EQUIPMENT FOR ASHEVILLE FIRE & RESCUE DEPARTMENT**

Summary: The consideration of a budget amendment, in the amount of \$21,739, to receive grant money from the U.S. Dept. of Justice (DOJ), sub-granted through the N.C. Division of Emergency Management, for procurement of emergency response and preparedness equipment for Asheville Fire and Rescue Department.

The City of Asheville Fire and Rescue Department requested \$21,739 from the NC Division of Emergency Management for equipment to better prepare the City for a hazardous materials or terrorism incident. Staff was successful in obtaining those funds. Twenty-three North Carolina cities received the \$21,739 grant. The City of Asheville received the grant in order to purchase a fire suppression and decontamination device that uses compressed air, water and foam.

Pros: (1) This unit is available at no cost to the City of Asheville; (2) No matching funds are required; (3) This unit will significantly enhance our ability to effectively manage car fires in our parking decks with the use of a quick response vehicle (QRV) as well as efficiently deal with

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brush and trash fires; (4) Currently, to provide fire service within the approximate 20 parking structures that are in the city, we park our large fire engines and must pull hand lines to reach vehicle and trash fires within the structures. This unit would allow us to drive directly to the fire in approximately 13 (or 65%) of those parking structures with a vehicle and minimize our response time and thus minimize damage from car and trash fires in those structures; (5) The unit that we recommend purchasing uses new technology to provide the effectiveness of 2,000 gallons of water with only 100 gallons of water (20:1 ratio) and foam. This allows for a relatively small fire unit that can be placed on a pick up type vehicle and operate efficiently and in tight, restricted areas; (6) When extinguishing woods and brush fires that are off the road, we use a brush truck vehicle with 150 gallons of water. This unit will offer 13 times that amount of fire extinguishing power due to the technological use of compressed air and foam; (7) The unit

can also be used to decontaminate people and equipment as needed. This can be very effective in hazardous materials situations; (8) This unit is planned to be placed into service operating out of the downtown fire station, so that it is centrally located; (9) Cost of operating this unit on a QRV is significantly less than the cost of operating a full size fire engine; and (10) The unit is environmentally responsible.

Cons: (1) When we purchase our next pick up truck, it will need to be of sufficient size and strength to accommodate this unit. However, this additional cost is offset by a savings in costs to operate in this method versus cost of operating a full size fire engine or ladder truck; and (2) We will incur full replacement cost of the unit when it has served it's useful life. We would project the life cycle of this unit to be 10+ years.

City staff recommends City Council approve the budget amendment to receive grant money from the NC Division of Emergency Management.

**ORDINANCE BOOK NO. 21 – PAGE**

**C. RESOLUTION NO. 04-60 – RESOLUTION AUTHORIZING THE MAYOR TO ENTER INTO A FUNDING AGREEMENT WITH THE N.C. DEPT. OF TRANSPORTATION FOR THE PROVISION OF TRANSIT SERVICES TO THE TOWN OF BLACK MOUNTAIN**

Summary: The consideration of (1) a resolution authorizing the Mayor to enter into a funding agreement with the N.C. Dept. of Transportation (NC DOT) for the provision of transit services to the Town of Black Mountain; (2) a resolution authorizing the Mayor to enter into an agreement with Buncombe County and the Town of Weaverville to provide transit services to the Town of Weaverville; and (3) an associated budget amendment, in the amount of \$433,294.

The Asheville Transit System has received funding for the operation of a route to Black Mountain through a contract signed by the Mayor last year. The unexpended funds have allowed some operation into this year. The City will receive these funds again this year enabling it to continue these routes through June 30, 2004, as well as to pass through funding to Mountain Mobility for the operation of their route in Black Mountain through the same date. There are no City funds in any of these operations, and the City is specifically exempted from funding any of these operations in the contract from the NC DOT for these routes.

The Asheville Transit system also received operational assistance in excess of the amount originally budgeted for Fiscal Year 2004.

Mountain Mobility will also fund the operation of a route to Weaverville, using federal Job Funds received by the state and granted to Mountain Mobility. The Town of Weaverville will also contribute \$10,000 to the operation. There will be no City money involved in the operation of this route. The funding is sufficient to operate through October of 2004. This will allow the route to be

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tested, and if warranted, an application made to the state for continued funding through Fiscal Year 2005.

The budget amendment represents state funding of all Black Mountain operations, funds from Mountain Mobility for Weaverville Route, and an increase in state operating funding over the budgeted amount.

The benefit to the City of Asheville is:

- Increased mobility for the citizens of Asheville both within and outside the city at no additional cost to the City of Asheville

There are no disadvantages to the City of Asheville.

City staff recommends City Council to authorize (1) a resolution authorizing the Mayor to enter into a funding agreement with the N.C. Dept. of Transportation (NC DOT) for the provision of transit services to the Town of Black Mountain; (2) a resolution authorizing the Mayor to enter into an agreement with Buncombe County and the Town of Weaverville to provide transit services to the Town of Weaverville; and (3) an associated budget amendment, in the amount of \$433,294.

**RESOLUTION BOOK NO. 28 – PAGE 160**

**D. RESOLUTION NO. 04-61 – RESOLUTION AUTHORIZING THE MAYOR TO ENTER INTO AN AGREEMENT WITH BUNCOMBE COUNTY AND THE TOWN OF WEAVERVILLE TO PROVIDE TRANSIT SERVICES TO THE TOWN OF WEAVERVILLE**

Summary: See Consent Agenda Item "C" above.

**RESOLUTION BOOK NO. 28 – PAGE 161**

**E. ORDINANCE NO. 3097 – BUDGET AMENDMENT TO FUND TRANSIT ROUTES**

Summary: See Consent Agenda Item "C" above.

**ORDINANCE BOOK NO. 21 – PAGE**

**F. RESOLUTION NO. 04-62 – RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO AN AGREEMENT WITH THE N.C. DEPT. OF ENVIRONMENT AND NATURAL RESOURCES FOR A MOBILE SOURCE EMISSIONS GRANT TO CONSTRUCT A PILOT COMPRESSED NATURAL GAS FUELING STATION**

Summary: The consideration of (1) a resolution authorizing the City Manager to enter into an agreement with the N.C. Dept. of Environment and Natural Resources (NCDENR) for a mobile source emissions grant to construct a pilot compressed natural gas (CNG) fueling station; and (2) an associated budget amendment, in the amount of \$455,000.

Almost a decade ago, North Carolina committed to funding the construction of rapid fill compressed natural gas fueling stations along the Interstate 40 corridor. The construction of such a station in Asheville will complete this vision and accommodate CNG fuel needs from the Atlantic Coast to Knoxville, Tennessee (and further West).

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On November 14, 2000, City Council authorized city staff to apply for a grant to construct a fast-fill CNG fueling station and provided \$100,000 to defray 'incremental' costs of CNG-powered vehicles.

In June 2003, the City received notification from the NCDENR (Mobile Source Emissions Reduction Grant) awarding the City a total of \$400,000. Of the 400,000, \$300,000 will be used for constructing a CNG fueling station on City property for fleet and public use. The additional \$100,000 will be to fund the incremental price increase for the purchase of CNG-powered vehicles, which cost about 20% more than conventional vehicles, for the City and its key partners (Mission St. Joseph's and Buncombe County).

The City's cash match is \$55,000, which includes \$35,000 for a public-access card reader system (which will also be used by fleet) and a \$20,000 contingency for concrete, security, fencing, etc. This cash match will have to be appropriated from fund balance.

- Advantages
  - CNG fueling station will complete North Carolina's CNG station master plan
  - Public access for CNG-powered vehicles
  - City's cash contribution is only 13.75%
  - Staff (and partners) will gain valuable experience regarding high-pressure fuel systems.
  - Staff will gain experience in alternative fuel technologies
  - City (and partners) are taking a leadership role regarding CNG, alternative fuel vehicle technologies and emissions reductions
- Challenges
  - Cash match of \$55,000
  - Higher (incremental) costs of vehicles (about 20%)
  - Requires additional training for maintenance staff
  - Public access to CNG fueling system

Staff recommends the adoption of (1) a resolution authorizing the City Manager to enter into an agreement with the N.C. Dept. of Environment and Natural Resources (NCDENR) for a mobile source emissions grant to construct a pilot compressed natural gas (CNG) fueling station and funding for the incremental cost of purchasing CNG vehicles; and (2) an associated budget amendment, in the amount of \$455,000.

**RESOLUTION BOOK NO. 28 – PAGE 162**

**G. ORDINANCE NO. 3098 – BUDGET AMENDMENT TO ALLOCATE A GRANT FROM THE N.C. DEPT. OF ENVIRONMENT AND NATURAL RESOURCES FOR A COMPRESSED NATURAL GAS FUELING STATION**

Summary: See Consent Agenda Item “F” above.

**ORDINANCE BOOK NO. 21 – PAGE**

**H. RESOLUTION NO. 04-63 – RESOLUTION AUTHORIZING THE CITY TO APPLY FOR A GRANT FROM THE U.S. DEPT. OF HOMELAND SECURITY FOR COMPUTERS FOR FIRE APPARATUS, PORTABLE RADIOS AND TWO PORTABLE REPEATERS FOR THE FIRE AND RESCUE DEPARTMENT**

Summary: The consideration of a resolution authorizing the Fire and Rescue Department to apply for Federal funds available from the U.S. Department of Homeland Security (DHS), sub-

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granted through the Federal Emergency Management Agency’s (FEMA) Fiscal Year 2005 Assistance to Firefighter’s Grant Program, for procurement of computers for fire apparatus, portable radios (walkie-talkies) and two portable radio repeaters.

The City of Asheville Fire and Rescue Department, with endorsement of the Asheville City Council in March 2003, requested \$122,205 from the U.S. Department of Homeland Security to replace 44 of the department’s self contained breathing apparatus (air packs) and 24 of the department’s VHF portable radios (walkie-talkies). The Federal grant was for 70% of the costs with the city to match 30%, or \$52,373. Staff was successful in obtaining those Federal funds. We again have an opportunity to apply for the grant program in order to fund laptop computers for fire apparatus, portable radios for firefighters and two portable repeaters.

The computers and walkie-talkies will be used daily by firefighters and are used on virtually every emergency that occurs within the city. The portable repeaters will be used often. Computers are used through the city’s existing Geographical Information Systems (GIS) database to provide street, water line, hydrant, building, pre-incident plans, aerial photography, resource listings and other information to firefighters on a daily basis when responding to and managing emergencies. Additional walkie-talkies would allow each firefighter “seat” to have a portable radio. Currently, only the fire officer and fire engineer on each apparatus have portable radios. This would improve firefighter safety. The two vehicle repeaters would allow firefighters to better communicate in dense or “heavy” buildings, such as the hospitals, the malls, etc.

Staff desires to apply for grant in the amount of \$141,300. Seventy percent (\$98,910) will be Federal dollars and 30% (\$42,390) will be the City’s match. The City’s match will come from Fund Balance.

**PROS:**

- The computer equipment would allow the Asheville Fire and Rescue Department to take advantage of the information and technology that is available to us and allow us to apply it virtually every day. We have field-tested a laptop already for two months and it works great in the field.
- The portable radios would increase firefighter safety on emergency scenes.
- The portable repeaters would allow firefighters to communicate in locations where the current system is very limited such as the hospital, mall and other “heavy” buildings.
- If the grant is approved, 70% of the funds, would be supplied by the Federal Government.

**CONS:**

- In order to maintain the same level of service, computer equipment and radio equipment would have to be replaced by the city when it is worn out. Live expectancy would be approximately five (5) years.
- If the grant is approved, the city would have to contribute 30% of the funds for the project.

City staff recommends City Council approve the resolution authorizing staff to apply for the 2004 Assistance to Firefighters Grant from the U.S. Department of Homeland Security.

**RESOLUTION BOOK NO. 28 – PAGE 164**

**I. MOTION SUPPORTING THE RECOMMENDATIONS OF THE DOWNTOWN SOCIAL ISSUES TASK FORCE THAT A JOINT CITY-COUNTY TASK FORCE BE APPROVED TO DEVELOP A TEN-YEAR PLAN TO END HOMELESSNESS**

**J. RESOLUTION NO. 04-64 – RESOLUTION APPROVING AN AMENDMENT TO THE OPTIONAL RELOCATION POLICY**

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Summary: The consideration of a resolution adopting a revised Optional Relocation Assistance Policy.

When federal funds, such as Community Development Block Grant (CDBG) or HOME, are used in a project in which people are involuntarily displaced from their homes, there are strict regulations for providing adequate relocation assistance to the displaced households. CDBG funds can also be used “optionally” to provide assistance in cases not covered by these regulations. The City adopted such an optional policy in December 2000 in response to the closure of the Merrimon House. It provides for CDBG-assisted relocation when tenants are displaced by City housing code enforcement action.

Staff has found that the current the policy is not very effective in emergency situations because it requires Council approval for each case. We have also started to encounter cases of need not covered by the original policy.

A recent code enforcement case made us aware of the need to provide relocation assistance quickly in emergencies. The City's Housing Code Coordinator issued an immediate Notice to Vacate to a household consisting of an owner and tenants whose health and safety were at risk because the property lacked a sanitary sewer. The residents had minimal financial resources. Due to the urgency of the situation, staff authorized CDBG Emergency Relocation funding to enable the Affordable Housing Coalition to provide advice and financial aid. Without such assistance, the residents might have become homeless.

In addition, participants in the City's homeowner rehabilitation program are sometimes required to temporarily relocate during the rehabilitation process to protect their health and safety. This has presented problems for some applicants who cannot afford to pay for rent and moving costs in addition to their regular mortgage payment.

These cases are fairly unusual, averaging one or two a year, although, as with the Merrimon House, several households may be relocated in one case.

The revised relocation policy would allow staff to approve CDBG relocation assistance up to \$2,000 per household, and would extend assistance to homeowners displaced by code enforcement action and to participants in the homeowner rehabilitation program. In every case there would have to be clear evidence of financial hardship. The number of cases is expected to increase to an average of 2-4 a year.

The advantages of adopting the revised policy as drafted are:

- Allows rapid response to emergency needs, preventing possible homelessness;
- Extends benefits to homeowners displaced by code enforcement action, as well as tenants;
- Allows low-income homeowners to participate in the FAIR program without fear of hardship if they have to relocate temporarily;
- Avoids involvement of Council Members in administrative decisions involving small expenditures;
- Avoids public discussion of cases, which may be embarrassing for the individuals involved; and
- Avoids setting a precedent for administrative (as opposed to advisory) action by the HCD Committee.

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Disadvantages include:

- Removes cases from direct Council oversight; and
- By extending benefits to more people, marginally increases the possibility of abuse.

Staff recommends adoption of the Revised Optional Relocation Assistance Policy in which the City's Housing Code Coordinator and Community Development Director determine the relocation assistance is necessary to mitigate hardship (not the Housing & Community Development Committee).

**K. RESOLUTION NO. 04-65 – RESOLUTION APPROVING A POLICY GOVERNING BANNERS ON LIGHT POLES IN THE CITY OF ASHEVILLE**

Summary: The consideration of a resolution adopting a policy governing banners on lights poles in the City of Asheville.

Requests for placing banners on City light poles have been increasing over the past few years. City staff needs a policy to guide how this program should work.

The City of Asheville reserves the right to install its own banners for special events, holidays or other purposes. There are two categories of banners provided for in the policy for other participants:

- District Identification – Banners can be used to identify specific neighborhoods or business districts, which will also assist visitors with way finding. These banners may be displayed for up to a year, and are renewable.
- Co-Sponsored Events – Events that are co-sponsored by the City of Asheville may want to promote their event with banners for a month preceding the event date. Examples of such banners could be Bele Chere, the Greek Festival or Goombay.

Sponsorship is allowed on 20% of a banner to identify private businesses or individuals who have contributed funds towards supporting the banners. This sponsorship can appear on the banner itself or on a hang down piece that will be no greater than 20% of the banner area. The hang down option gives participants the ability to produce banners for multiple uses, while changing sponsorships.

The policy outlines standard size requirements for banners. The size of 30" x 60" is a standard size for city streets, as well as a standard manufacturing size. In the case of larger profile roads, such as Patton Avenue in West Asheville, a longer banner could be allowed.

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Advantages:

- Individuals or groups will be able to put up banners recognizing business districts or neighborhoods of the city.
- Events co-sponsored by the City will be able to promote their event for a month prior to the event.
- Event Banners will reflect events that benefit the entire community.

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Disadvantages:

- The policy does not allow for other types of banners to be put up, which may seem restrictive, but should prevent community division over the content of the banners.

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City staff recommends the adoption of the policy governing banners on light poles in the City of Asheville.

**RESOLUTION BOOK NO. 28 – PAGE 167**

**L. MOTION APPROVING THE FISCAL YEAR 2005 FEDERAL AGENDA**

Summary: The federal budget process is underway for Fiscal Year 2005. An official city agenda is needed to ensure that important city projects are considered by legislators during the appropriations process.

Input has been solicited from members of City Council, city staff, as well as from the City of Asheville federal lobbyist, Ball-Janik, to help determine a prioritized list of projects for inclusion on the City's Fiscal Year 2005 official federal agenda.

Based on input received to date and on recommendations from Ball-Janik, the following are recommended as priorities for the Fiscal Year 2005 federal agenda:

Appropriations Requests:

Economic Development - Renovation of Pack Square - \$1.5 million  
Transportation - City Bus Fleet Replacement – 30 ft. bus - \$290,000  
- Asheville Riverway – PE and Design - \$600,000

- Homeland Security - Digital Platform Upgrades for Police/Fire Comm. - \$2.75 million
- Public Health - Water System Infrastructure Upgrades - \$600,000

Non-Appropriations Requests:

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- Transit Issue - Section 5307
- S. 150 - Internet Tax Non-discrimination Act

Staff recommends City Council approve the above items as the priority items for the official Fiscal Year 2005 City of Asheville federal agenda.

**M. RESOLUTION NO. 04-66- - RESOLUTION AMENDING THE 2004 CITY COUNCIL MEETING SCHEDULE TO CANCEL THE APRIL 6, 2004, WORKSESSION**

**RESOLUTION BOOK NO. 28 – PAGE 168**

**N. MOTION SETTING PUBLIC HEARING ON THE CONSOLIDATED ACTION PLAN FOR 2004-05**

Summary: The consideration of a motion setting a public hearing on April 13, 2004, to receive public input on the City's draft Consolidated Action Plan for 2004-05.

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The Annual Consolidated Action Plan sets out the City's planned use of federal Community Development Block Grant (CDBG) and HOME funds for the next fiscal year. In compliance with HUD regulations, the following schedule is being followed for preparing the Plan:

**2003**

- November 10 Public Hearing (for Buncombe & Madison Counties)
- November 12 Public Hearing (for Henderson & Transylvania Counties)

**2004**

- January 30 Deadline for applications
- March 12 Consortium Board makes HOME funding recommendations
- March 23 Housing & Community Development Committee makes CDBG recommendations
- March 26 Draft Plan published for public comment
- April 13 Asheville City Council: Public Hearing on draft plan
- April 26 Deadline for citizen comments on draft plan
- April 27 Asheville City Council approves Action Plan
- May 12 Action Plan submitted to HUD

Approximately \$3,800,000 will be available for allocation this year.

A full staff report, detailing the funding recommendations made by the City's Housing and Community Development Committee and the Asheville Regional Housing Consortium, will be submitted to Council before the hearing.

City staff recommends City Council set the public hearing for April 13, 2004.

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.

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

**ITEM PULLED OFF CONSENT AGENDA FOR DISCUSSION**

## **APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON MARCH 9, 2004, AND THE WORKSESSION HELD ON MARCH 16, 2004**

Councilwoman Jones moved to amend the minutes of the March 16, 2004, worksession to show that the funding for writing the 10-year plan to end homelessness would be monies coming from the HOME funds, not Community Development Block Grant funds; and to approve the minutes of the March 9, 2004, meeting. This motion was seconded by Vice-Mayor Mumpower and carried unanimously.

### **III. PUBLIC HEARINGS:**

#### **REQUEST FOR CONTINUANCE OF PUBLIC HEARING RELATIVE TO A CONDITIONAL USE PERMIT REQUEST FOR PROPERTY LOCATED OFF BRITT DRIVE FOR THE CONSTRUCTION OF A 100 UNIT APARTMENT COMPLEX IN AN RM-16 RESIDENTIAL MULTI-FAMILY HIGH DENSITY DISTRICT**

Mayor Worley said that there has been a request for a continuance of this public hearing.

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Ms. Patsy Brison Meldrum, attorney representing Britt & Tilson Glass Company, one of the neighboring property owners to the proposed project, requests a continuance for three reasons. (1) The Technical Review Committee recommended approval of the project with conditions. One of the conditions is that Britt Drive be used as an access if legally permissible. If Britt Drive is not available for access, the City's Traffic Engineer requires that a traffic impact analysis be performed. Our firm has conducted a limited title search of the property proposed for the Foxwood Apartments development limited to determining whether or not access to Britt Drive was conveyed. We have found no such conveyance. In addition, the recorded subdivision plat for property, including our clients property, shows Britt Drive as a portion of that subdivision, but the subdivision does not include the property proposed for the Foxwood Apartments project. In addition, our clients, and other adjoining property owners, have installed the paved surface for Britt Drive and our records indicate that the City has not maintained Britt Drive. Therefore, it is our opinion that Britt Drive is not a public street and access is not available via Britt Drive. As of March 15, 2004, no determination by the City of Asheville has been made about the use of Britt Drive and no traffic impact analysis has been done for the project. On that basis, we are requesting a continuance of the public hearing until a determination can be made as to whether or not Britt Drive may be used for access and, if not, until a traffic impact analysis can be performed and reported to the City and available for review by adjoining property owners. Secondly, a portion of this project is located within the River District. Because there is a substantial change to the landscape for new construction over 5,000 square feet in size, the project would be classified as a "major works" which requires a formal review by the River District Design Review committee, which has not been done. Thirdly, she feels the continuance should be granted because of pre-hearing bias. In the staff report there are included proposed findings based upon evidence not yet before Council. Council has evidence that has been given before you before this hearing and that needs to be deleted from the record before the matter is considered.

Mr. Albert Sneed, attorney representing the property owner and developer, objected to a continuance. He explained that the developer didn't want access over Britt Drive. That was a suggestion by City staff. It was his understanding that the City Attorney has just determined that there is no public access over Britt Drive and that issue is no longer in question. There has never been a requirement for a traffic study. City staff's recommendation was that if Britt Drive was not available for access then a limited traffic study was required to determine whether or not the design of the entrance on Swannanoa River Road was proper. This project is able to provide 100 units of affordable housing because of a tax credit program. Since the application must be made shortly after April 1, he felt this is a ploy by the neighborhood to kill the project by asking for a continuance. The only thing in the River District is the entrance onto Swannanoa River Road and there are no building proposed in that District. Regarding the "pre-hearing bias," Mr. Sneed felt City staff was entitled to make recommendations to Council with the ultimate decision being made by City Council.

Planning & Development Director Scott Shuford said that the requirement that City staff is proposing for a traffic impact analysis is not to determine whether there is a capacity on Swannanoa River Road to handle the volume of traffic that will come from this project. It's an operational issue to determine what the best design for that single driveway would be in the event that Britt Drive was not available. We don't need the traffic impact analysis to determine whether the seven standards for a conditional use permit approval can be met. Regarding the River District, only a small portion of the property is located in the River District. It is located at the access drive with no structure in that District and consequently there is no need for River District design review.

City Attorney Oast said that Britt Drive is not publicly maintained beyond a certain point. The staff report does not require access via Britt Drive at this time. It may be that we later determine that it is available for public access, but that information is inconclusive at this time. He



didn't think Council needed to make that conclusion in order for Council to make the decision tonight. In any event, it was his understanding that staff has made the determination that the project will work with a single access. Regarding the pre-hearing bias claim, he reminded Council that they are to make your decision on the basis of the information that has been provided to you at the public hearing. He didn't think the staff report with recommended findings rises to the level of pre-hearing bias.

Councilwoman Bellamy disclosed that she is the City Council liaison to the Housing Authority Board and has heard the presentation by the developer because there are project based Section 8 vouchers being given for this project. City Attorney Oast felt it was appropriate for Councilwoman Bellamy to disclose that fact, however, he did not feel that was a disqualifying conflict.

City Engineer Cathy Ball explained that initially looking at the plan they felt like because the number of units and because of the proximity to Swannanoa River and the possible flooding, they wanted to see two access points to the site. Our recommendation from the beginning was that the developer be able to acquire and be able to make access to Britt Drive. If that was not possible, (this project does not fall under the requirements of needing to complete a traffic impact analysis) then we need to do a limited study to make sure that there won't be issues if there is only one entrance into the site provided. There may be other ways to mitigate the problem of not having the other drive. An engineer can look at that entrance and make sure it can handle the capacity of all the vehicles that come in and out of there and make sure they can maneuver in and out. This is not a full-blown traffic impact analysis because we know Swannanoa River Road can handle the traffic. The engineer will look at that entrance and determine that if in certain conditions will traffic flow safety and can emergency services be provided to that facility. If it can't then are there other alternatives that would help accomplish the same thing, like is there another place on the property where another drive could be located.

Ms. Ball explained said that the City maintenance of Britt Drive ends prior to getting to this project, however, there is a platted right-of-way, and whether that right-of-way has limitations that would not allow this property owner to access it is a question that needs to be answered.

Councilman Dunn moved to not continue the public hearing to another date. This motion was seconded by Councilwoman Bellamy and carried unanimously.

Ms. Meldrum asked that City Council re-order the public hearings and allow this public hearing to be heard first based on the number of people in attendance (in excess of 80). Based on no motion being made by Council to re-order the public hearings, the meeting continued.

## **ANNEXATION PUBLIC HEARINGS**

Mr. Carter Pettibone, Urban Planner, explained that purpose of these hearings is for the City to explain the plan for extending City services to the proposed annexation areas, and to give all persons resident or owning property within the areas, and all residents of the City, the opportunity to be heard.

On January 13, 2004, the City Council adopted Resolutions of Intent beginning the annexation process for the following six areas referred to as the 2004 annexations: 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. The Annexation Services Plan was approved on January 27, 2004, and a public information meeting was held on March 4, 2004. Approximately 30 persons affected by the proposed annexations attended this meeting. On April 13, 2004, City Council will consider adoption of the ordinances extending the corporate limits, with an effective date of the annexations being June 30, 2004.

Mr. Pettibone said that annexation is defined as an extension of the City's corporate limits. Annexation areas under the statutes must be developed to urban standards. Once annexed, the property owners and residents are entitled to City services and are subject to the City's taxes and ordinances. The authority for annexation comes under the N. C. General Statutes. 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 fact is that people living in close proximity to cities benefit from the cities, and state annexation law is designed to include these people in the costs and benefits of governing and servicing the City.

Mr. Pettibone explained the standards necessary to qualify areas for annexation – (1) at least 1/8 of the area's boundary must be adjacent to the current corporate limits; and (2) each area must meet at least one or more of four development tests - (a) population/density test; (b) subdivision test; (c) development test; or (d) nonresidential urban use test. The state also recognizes

that certain areas within these annexation areas may be classified as non-urban areas and there are two qualifications that must be met.

He explained the City's annexation strategy has been to target areas (1) that are clearly developed and meet statutes, (2) include areas where water and sewer infrastructure have been extended, (3) improve the City's boundaries by eliminating pockets and clarifying boundaries; and (4) disburse the annexation areas geographically.

Mr. Pettibone then reviewed the various services (police protection, fire protection, solid waste collection, street maintenance, water distribution, and sewer collection) that would be provided to each of the annexed areas. He then reviewed the following financial plan:

**Financial Impact:**

Revenue: Total ad valorem property tax revenue - \$254,055; Total state utility tax revenue - \$22,742; Total local option sales tax - \$91,799; Total Powell Bill allocation - \$21,276; and Total fees, permits, licenses and charges for services - \$38,845. Total revenue - \$424,717.

Annual recurring expenditures: Police (one additional officer) - \$35,000; Fire (rural fire department contracts expected to be in place for at least 5 years. Additionally, there is a general annual expenditure not associated with a particular area of \$17,000 to reflect a portion of the cost for the hiring of a Deputy Fire Marshal. This position will be hired effective January 1, 2005) - \$62,446; Solid waste - \$13,827; Recycling - \$3,922; and Street lighting - \$101. Total recurring expenditures - \$115,296.

Annual capital expenditures: Water lines - \$135,020; Sewer lines - \$31,200; Solid waste (cost equals potential economic loss compensation for private solid waste haulers) - \$60,839; Rollout containers - \$16,760; Street signs - \$2,100; Street repair - \$39,500; Sidewalks - \$232,000. Total annual capital expenditure - \$517,419.

**A. PUBLIC HEARING TO CONSIDER THE ANNEXATION OF THE HERITAGE BUSINESS PARK AREA**

Mayor Worley opened the public hearing at 5:45 p.m.

Mr. Pettibone explained the Heritage Business Park area – This area contains commercial and vacant lots. This contains 11 lots totaling 13.58 acres. There is no estimated population. If the property is annexed, it would bring in \$7,591 in annual property tax revenue.

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Mr. Pettibone said that there are nine businesses in this proposed annexation area: Andy Oxy Company; Go Grocery Outlet (portion of property); Heritage Limited; James C. Greene Company; Land-of-Sky Regional Council; Leicester Carpet (portion of property); Mike Creasman, Certified Financial Planner; N.C. Division of Pollution Prevention; and Wilco.

City Attorney Oast said that N.C. Gen. Stat. sec. 160A-49 requires that the appropriate persons who handled those tasks make certain certifications regarding public notice provided for this hearing. Urban Planner Carter Pettibone and City Clerk Burlson have made the appropriate certifications. In addition, City Clerk Burlson has certified certain other ministerial facts regarding the availability of the Annexation Services Plan; the delivery of the statement of impact to Buncombe County; letters to volunteer fire departments and their responses; and letters to the solid waste providers and their responses. He asked that these certifications be entered into the record.

Mayor Worley closed the public hearing at 5:49 p.m.

Mayor Worley said that the ordinance to extend the corporate limits into this area would be considered by City Council on April 13, 2004.

**B. PUBLIC HEARING TO CONSIDER THE ANNEXATION OF THE HONEY DRIVE AREA**

Mayor Worley opened the public hearing at 5:49 p.m.

Mr. Pettibone explained the Honey Drive area – This area contains single-family residential. This contains nine lots totaling 4.5 acres. There is an estimated population of 13. If the property is annexed, it would bring in \$6,037 in annual property tax revenue.

Mr. Pettibone noted that initially the Annexation Services Plan did not include taking over a portion of Honey Drive for maintenance. We do plan to bring a small amendment to the Services Plan to Council to show that we will be taking over the portion of Honey Drive within the proposed annexation area for maintenance.

Mr. Wayne Marshall, Honey Drive resident, said that he was not opposed to being annexed and was surprised that they had not been annexed years ago. However, he questioned if the process would be good for Asheville given the amount of revenue it would create from the few properties being annexed. He compared the \$82,000 cost of upgrading the water system improvements with the revenue that the few homes on Honey Drive would bring.

Mr. Fred English, Haw Creek resident, felt that the City should not be annexing until they provide services to current residents and also felt that there would be no affordable housing when rents have to be increased.

Mr. Dick Washam, Honey Drive resident, questioned where the \$82,000 for water system improvements to their area would come from and how does the City justify putting newly annexed areas ahead of other areas in the City that have been waiting for water line improvements.

City Attorney Oast said that N.C. Gen. Stat. sec. 160A-49 requires that the appropriate persons who handled those tasks make certain certifications regarding public notice provided for this hearing. Urban Planner Carter Pettibone and City Clerk Burleson have made the appropriate certifications. In addition, City Clerk Burleson has certified certain other ministerial facts regarding the availability of the Annexation Services Plan; the delivery of the statement of impact to Buncombe County; letters to volunteer fire departments and their responses; and letters to the

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solid waste providers and their responses. He asked that these certifications be entered into the record.

Mayor Worley closed the public hearing at 5:58 p.m.

Mayor Worley said that the ordinance to extend the corporate limits into this area would be considered by City Council on April 13, 2004.

### **C. PUBLIC HEARING TO CONSIDER THE ANNEXATION OF THE ENKA PARK AREA**

Mayor Worley opened the public hearing at 5:59 p.m.

Mr. Pettibone explained the Enka Park area – This area contains single-family residential and industrial. This contains 89 lot totaling 30.27 acres. The estimated population is 170. If the property is annexed, it would bring in \$39,257 in annual property tax revenue.

Smith Dray Line Company is the only business in this proposed annexation area.

Mr. C. V. Parker, Enka Village resident, said that this is annexation is 2/3 of Enka Village. He noted that this is the only remaining intact mill village in the State of North Carolina. They currently pay for water assessments, street lights, and sewer maintenance. But since the City is only annexing 2/3 of Enka Village, the City is taking over four streets and leaving two. He understands the other 1/3 of Enka Village does not meet the annexation standards, but the Enka Village residents will still have to be responsible for the other two streets' sewer maintenance, street lights, etc.

Upon inquiry of Councilman Davis, City Engineer Cathy Ball said that the water service in the area is maintained by the City of Asheville. The property owners are working with MSD to have their sewer lines taken into the MSD system for maintenance purposes. If the sewer lines are up to MSD standards and taken over by MSD, they will take over the entire line but the homes in the County will be considered outside the district and would be charged an additional \$0.01 per CCF (100 cubic feet = 1 CCF) on their bill.

Upon inquiry of Councilman Davis, Planning and Development Director Scott Shuford responded about the other two streets. He believed that when the Biltmore Lake development went in, those properties were connected to the sewer and water system that was being installed for that project. Upon annexation into the City, we will be providing to the Enka Village residents street light service. He also said that the narrow streets are not dissimilar to other streets in the City. In addition, the City felt that the original sidewalks needed to be replaced so we have added \$232,000 in our Annexation Services Plan to address that need.

City Attorney Oast said that N.C. Gen. Stat. sec. 160A-49 requires that the appropriate persons who handled those tasks make certain certifications regarding public notice provided for this hearing. Urban Planner Carter Pettibone and City Clerk Burleson have made the appropriate certifications. In addition, City Clerk Burleson has certified certain other ministerial facts regarding the availability of the Annexation Services Plan; the delivery of the statement of impact to Buncombe County; letters to volunteer fire departments and their responses; and letters to the solid waste providers and their responses. He asked that these certifications be entered into the record.

Mayor Worley closed the public hearing at 6:04 p.m.

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Mayor Worley said that the ordinance to extend the corporate limits into this area would be considered by City Council on April 13, 2004.

#### **D. PUBLIC HEARING TO CONSIDER THE ANNEXATION OF THE ASHWOOD AREA**

Mayor Worley opened the public hearing at 6:04 p.m.

Mr. Pettibone explained the Ashwood area – This area contains single-family residential and mobile homes. This contains 58 lots totaling 14.42 acres. The estimated population is 113. If the property is annexed, it would bring in \$30,881 in annual property tax revenue.

City Attorney Oast said that N.C. Gen. Stat. sec. 160A-49 requires that the appropriate persons who handled those tasks make certain certifications regarding public notice provided for this hearing. Urban Planner Carter Pettibone and City Clerk Burleson have made the appropriate certifications. In addition, City Clerk Burleson has certified certain other ministerial facts regarding the availability of the Annexation Services Plan; the delivery of the statement of impact to Buncombe County; letters to volunteer fire departments and their responses; and letters to the solid waste providers and their responses. He asked that these certifications be entered into the record.

Mayor Worley closed the public hearing at 6:07 p.m.

Mayor Worley said that the ordinance to extend the corporate limits into this area would be considered by City Council on April 13, 2004.

#### **E. PUBLIC HEARING TO CONSIDER THE ANNEXATION OF THE HEATHBROOK AREA**

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

Mr. Pettibone explained the Heathbrook area – This area contains single-family residential. This contains 24 lots totaling 4.51 acres. The estimated population is 47. If the property is annexed, it would bring in \$27,956 in annual property tax revenue.

City Attorney Oast said that N.C. Gen. Stat. sec. 160A-49 requires that the appropriate persons who handled those tasks make certain certifications regarding public notice provided for this hearing. Urban Planner Carter Pettibone and City Clerk Burleson have made the appropriate certifications. In addition, City Clerk Burleson has certified certain other ministerial facts regarding the availability of the Annexation Services Plan; the delivery of the statement of impact to Buncombe County; letters to volunteer fire departments and their responses; and letters to the solid waste providers and their responses. He asked that these certifications be entered into the record.

Mayor Worley closed the public hearing at 6:09 p.m.

Mayor Worley said that the ordinance to extend the corporate limits into this area would be considered by City Council on April 13, 2004.

#### **G. PUBLIC HEARING TO CONSIDER THE ANNEXATION OF THE SWEETEN CREEK ROAD AREA**

Mayor Worley opened the public hearing at 6:09 p.m.

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Mr. Pettibone explained the Sweeten Creek Road area – This area contains single-family residential, condominiums and

multi-family residential, and commercial. This contains 190 lots totaling 74.86 acres. The estimated population is 545. If the property is annexed, it would bring in \$140,303 in annual property tax revenue.

There are seven businesses in this proposed annexation area: Arden Garage and Towing; BellSouth; Crazy Dave's Fireworks World; Lane and W.M.C. Auto Group; The Oaks at Sweeten Creek; Papa's Grill and T & J Auto Service Center.

Upon inquiry of Councilman Newman, Mr. Pettibone said that this area meets the population test. It contains 7.3 persons per acre, which is well above the minimum of 2.3 persons per acre.

Ms. Janice Dotson, resident in Pensacola Heights, explained how the additional property taxes would be a hardship on the 12 units in Pensacola Heights.

Mr. Ralph Shindler, representing the Pensacola Heights Homeowners Association, said that his complex is made up of many retirees on fixed incomes and with the higher price of drugs, fuel, etc. they would not like to have increased property taxes. He felt that annexation is unfair. The City already has streets that need repair, and a Civic Center that needs renovation. It does not need any more problems associated with annexation. His area already has water, sewer and excellent police and fire protection so the City will not be offering them anything they don't already have.

Ms. Betsy Gardner felt this annexation process is moving too rapidly in that the short notice puts property owners at a disadvantage. It does not allow them proper time to research and prepare a rebuttal to the proposal. She felt it gives the impression of bulldozing annexation just to receive one more year of taxes. In addition, their area is marginally eligible for annexation due to the difference between the character of existing City land and the land proposed to be annexed. It may meet the letter but not the spirit of the annexation statutes.

Ms. Jeanette Senn, property owners, said that because Carrington Place has a Condominium Association, their roads and street lights are private and there is nowhere to house the green trash cans. They feel they are being taxed with no services being provided. Since the City does not have the proper equipment to pick up dumpsters, they would like to make sure that private carriers to have the right to contract with the City. In addition, she asked that the City look at their streets to see if they meet the criteria for maintenance and perhaps provide street lighting.

Upon inquiry of Councilman Dunn about the lack of sidewalks on Sweeten Creek Road, Mr. Pettibone said that the City requires sidewalks be constructed when developments are built within our jurisdiction.

City Attorney Oast said that N.C. Gen. Stat. sec. 160A-49 requires that the appropriate persons who handled those tasks make certain certifications regarding public notice provided for this hearing. Urban Planner Carter Pettibone and City Clerk Burleson have made the appropriate certifications. In addition, City Clerk Burleson has certified certain other ministerial facts regarding the availability of the Annexation Services Plan; the delivery of the statement of impact to Buncombe County; letters to volunteer fire departments and their responses; and letters to the solid waste providers and their responses. He asked that these certifications be entered into the record.

Mayor Worley closed the public hearing at 6:25 p.m.

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Mayor Worley said that the ordinance to extend the corporate limits into this area would be considered by City Council on April 13, 2004.

**H. PUBLIC HEARING TO CONSIDER THE REZONING OF 34.6 ACRES LOCATED AT SCHENCK PARKWAY FROM RS-2 RESIDENTIAL SINGLE-FAMILY LOW DENSITY DISTRICT TO COMMERCIAL INDUSTRIAL DISTRICT**

**ORDINANCE NO. 3099 – ORDINANCE TO REZONE 34.6 ACRES LOCATED AT SCHENCK PARKWAY FROM RS-2 RESIDENTIAL SINGLE-FAMILY LOW DENSITY DISTRICT TO COMMERCIAL INDUSTRIAL DISTRICT**

Mayor Worley opened the public hearing at 6:29 p.m.

Planning & Development Director Scott Shuford said that this is the consideration of an ordinance to rezone 34.6 acres located at Schenck Parkway from RS-2 Residential Single-Family Low Density District to Commercial Industrial District. This public hearing was advertised on March 12 and 19, 2004.

Biltmore Farms Inc., (applicant) wishes to rezone the property in order to continue the business park development of the Biltmore Park Master Plan. The properties are located just outside the City limits in the extraterritorial jurisdiction area on the extension of Schenck Parkway. There is a mix of zoning districts in the area, with RS-2 and RS-8 to the east, RS 2 to the north, and CBD to the south and unzoned interstate right-of-way to the west. Land uses include primarily single-family residential to the east, a scenic corridor (Blue Ridge Parkway) to the north, vacant property to the south and I-26 to the west. The surrounding properties to the east and south are part of the Biltmore Park development and, in addition to being regulated by zoning, are subject to the provisions of Biltmore Park's master plan. The property is separated from the Blue Ridge Parkway roadway by a knob and topography that limits the visual impact of the development from that scenic corridor except from the Parkway's I-26 bridge crossing. Staff has identified no compatibility concerns that would not be mitigated by the Unified Development Ordinance's buffer requirements.

The 2025 Plan calls for the protection of scenic views and vistas and enhancement of the Blue Ridge Parkway viewshed. The subject property is separated from the Blue Ridge Parkway roadway by a knob that limits the visual impact of the development from that scenic corridor except from the Parkway's I-26 bridge crossing. The Plan also calls for the City to identify and zone areas appropriate for large-scale commercial uses where transportation and other infrastructure is available for such uses. This area has been planned and developed for uses permitted in the CI zoning district.

#### **Pros**

- Rezoning the property CI would allow the applicant the opportunity to continue the development plan for the Biltmore Park project.
- The rezoning is consistent with the intent and purpose of the Unified Development Ordinance (UDO) and goals of the City's smart growth policy and 2025 City Development Plan.
- Staff has identified no compatibility concerns that would not be mitigated by the buffering requirements of the UDO.

#### **Cons**

- Perception of commercial intrusion.
- Potential of development to affect Blue Ridge Parkway viewshed.

On March 18, 2004, the Planning and Zoning Commission voted unanimously (4-0) to recommend approval of this rezoning request. The only public comment received was from the

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applicant's representative, Greg Hildebrand, who was in support. We have received no informal objection to the request.

City staff recommends approval as well

The following residents were opposed to the rezoning for various reasons, some being but are not limited to: traffic study and noise abatement study should be performed before any decisions are made to rezone; desire to see the view preserved; 6-story corporate headquarters will not be compatible with the neighborhood; all uses in Commercial Industrial District are not compatible with the RS-2 adjoining neighborhood; noise already a concern in the area; safety for children from traffic near park and in the residential development is a concern; not enough buffering from site to residential property; view will be destroyed because of the significant grading and loss of trees; removal of trees will create a wetland for stormwater runoff from the development; request for mandatory 100' buffer (not 30'); residential properties will have to look at a parking lot; and air pollution:

Ms. Kay Whittington, resident on Dianthus Drive  
Ms. Jackie Steward, resident on Dianthus Drive  
Mr. Wyatt Stevens, resident on White Ash Drive  
Mr. William McCann, resident of Red Cedar Lane

Mr. Rick Lutovsk, representing the Chamber of Commerce and Economic Development Commission, spoke in support of the rezoning in that it has the potential for job creation.

Mr. Yates Pharr, employee with Biltmore Park representing the property owner, explained that this land was unzoned until approximately two years ago when the City zoned it residential because it was in the extraterritorial jurisdiction area. They have always intended to use this land to be commercial and to continue their Master Plan in Biltmore Park. They intend to carry out the same type of Class A improvements that they have so far.

Councilwoman Bellamy asked if the developer would be willing to place a 100-foot buffer on the residential side. Mr. Pharr explained that when anyone is interested in looking at Biltmore Park there is an illustrative plan that is given that shows where the property was intended to be developed as commercial (he showed a similar plan). There is almost no difference in the

development or the houses from the illustrative plan originally shown. The distance between the residential and where the planned usable area is at this time is anywhere from 200-300 feet as it is now. With the 30-foot buffer (Type-D buffer required), that would be added to the existing 200-300 feet boundary.

City Attorney Oast cautioned Council that they cannot consider specific development plans for any rezoning, in that any use permitted in the Commercial Industrial District is allowed. He said that Council can rezone some, all or none of the property, but Council cannot put conditions on it. The only buffering we can require is what is provided by the Unified Development Ordinance.

After a brief discussion about additional buffering, City Attorney Oast said the developer can work with the neighbors as to any additional buffering, but again, the only buffering Council can require is the Type D buffer that the UDO provides.

Mr. Shuford advised Council that any large scale project is subject to all City requirements and if the project is large enough it would be considered a Level III project. A Level III project will have to be approved by City Council which will give Council an opportunity to cover some concerns expressed tonight.

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Councilwoman Bellamy urged the developers to meet with the neighbors regarding the buffering. Mr. Pharr said that he will be happy to listen and work with the neighborhood where they can.

Mayor Worley closed the public hearing at 7:08 p.m.

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. 3099. This motion was seconded by Councilman Dunn and carried unanimously.

#### **ORDINANCE BOOK NO. 20 - PAGE**

At 7:25 p.m., Mayor Worley announced a short break.

#### **H. PUBLIC HEARING RELATIVE TO A CONDITIONAL USE PERMIT REQUEST FOR PROPERTY LOCATED OFF BRITT DRIVE FOR THE CONSTRUCTION OF A 100 UNIT APARTMENT COMPLEX IN AN RM-16 RESIDENTIAL MULTI-FAMILY HIGH DENSITY DISTRICT**

#### **ORDINANCE NO. 3100 - ORDINANCE DENYING A CONDITIONAL USE PERMIT FOR PROPERTY LOCATED OFF BRITT DRIVE FOR THE CONSTRUCTION OF A 100 UNIT APARTMENT COMPLEX IN AN RM-16 RESIDENTIAL MULTI-FAMILY HIGH DENSITY DISTRICT**

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

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

After hearing no questions about the procedure, Mayor Worley opened the public hearing at 7:45 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.

Urban Planner Kim Hamel 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).

Ms. Hamel said that this is the consideration of the issuance of a conditional use permit for property located off Britt Drive for the construction of a 100 unit apartment complex in an RM-16 Multi-Family High Density District.

Ms. Hamel said the project is supported by numerous goals and strategies in the plan relating to infill development, smart growth policies and affordable housing. The project utilizes

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the existing zoning on the lot to create a sustainable high-density residential development within the City Limits. The site is also within .5 mile to 2-mile proximity of transit service, parks, potential employment centers, restaurants and shopping centers.

This project will make a significant contribution to meeting the needs for affordable rental housing outlined in the Consolidated Strategic Housing and Community Development Plan 2000-2005. The plan projected a need for 370 new affordable rental units each year within the City of Asheville. All units within this development will be affordable for households with less than 60% area median income and some will be affordable to households with as little as 30% area median income. Affordability will be assured for 30 years under the terms of the federal and state Low Income Housing Tax Credit programs.

In 2000 - Conditional use rezoning request from RM-16 to CB-II requested. The application never proceeded past the TRC level because the applicant could not provide the necessary site plan requirements.

On January 4, 2004, Tommy Ward with Gateway Companies submitted a conceptual master plan for the construction of a 100-unit multifamily development on approximately 9.59 acres with access proposed on Swannanoa River Road and Britt Drive (Attachment to City Exhibit 3 – Location Map). The property is zoned RM-16 and River District, which allows for a density of 16-units per acre. Based on the acreage, up to 153 units could be constructed. The developer is proposing 100 units, a density of approximately 11 units per acre.

Using a schematic grading plan (Attachment to City Exhibit 3), she said there are steep areas and changes in elevations when compared to the surrounding existing single-family residential dwellings. There are some significant changes in elevation where it's closest to Swannanoa River Road. There is an average of a 35-50' change in elevation and the development will sit below the residential properties. Another significant feature on the site is the location of Ross Creek (City Exhibit 4). A portion of the property is located in the floodway. Kenilworth Dam is located approximately 250 feet north of the site.

The project will consist of five buildings, housing 20 units each to include 30 – one bedroom units, 50 – two bedroom units and 20 – three bedroom units. (Attachment to City Exhibit 3 – Schematic Site Plan) They will be constructed in a 2-3 story split design (3 stories in the front, 2 stories in the back) with a maximum height of 40-feet. Amenities to the complex include: a 3,000 square foot community building, swimming pool and several play areas within the site. Open space, in excess of the standard City requirement, is shown in multiple locations throughout the development. A bus stop with shelter is also being proposed at the entrance of the development on Swannanoa River Road. Although transit service is currently unavailable to areas along Swannanoa River Road, the developer will work with the transit director in order to determine an appropriate level of service. Currently, a transit stop is available near the entrance to River Hills Shopping Center, approximately .5 miles from the site. Two other transit stops, located near the Asheville Mall on Tunnel Road, are within a mile of the site.

Due to the challenging topography and proposed location of the buildings, a large retaining wall will be constructed along portions of the eastern property boundary. The plan also shows several other retaining walls proposed around the northern edge of the parking lot and around portions of the building located on the west side of the property.

A 25-foot, type "C" vegetative buffer is required along the north, east and northwestern sides of the property where adjacent to Low-density residential uses (Attachment to City Exhibit 3 – Schematic Landscape Plan). A 15-foot, Type "A" vegetative buffer is required along the western side of the property (Britt Drive) where mainly low impact commercial uses exist. In addition to the required landscaping and in an effort to further mitigate the impact of the

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development to abutting residential uses, the developer has offered to install a privacy fence around the perimeter of the property where permitted.

On Thursday, December 11, 2003, and Wednesday, January 21, 2004, the developer, Tommy Ward, and the owner of the property, Thomas Wolfe, met with the Kenilworth residents to discuss the details of the project and to receive input on site design and landscaping from the neighborhood. At both meetings a number of concerns from the neighborhood were voiced including: traffic on Swannanoa River Road, flooding and liability concerns for Kenilworth Dam, site design, noise, access through Kenilworth Forest, emergency access to Foxwood apartments during times of congestion and flooding, stormwater and erosion control and the environmental impact to Ross Creek, sewer service issues, and construction concerns.



Some of the comments and concerns from the neighborhood could not be addressed due to the limited information required for a conceptual plan. However, following the Council approval process, detailed plans will be submitted to the Technical Review Committee (TRC) for review. This review will provide a level of detailed information that will enable staff to address many of the concerns by the neighborhood.

On Monday, February 16, 2004, the TRC reviewed the conceptual plans and voted to continue the project to the March 1, 2004, meeting to allow the developer time to address concerns from the neighborhood and comments outlined in the staff report including building location, schematic grading plans and potential locations of retaining walls. On Monday, March 1, 2004, the TRC reviewed the revised conceptual plans and made comments primarily identifying items that must be addressed in the submission of detailed plans following the Council approval process. The TRC members voted unanimously to recommend approval of the project subject to the conditions outlined in the staff report and the following additional conditions:

1. The site plan must identify walkways between buildings and parking areas.
2. Any retaining wall over 30" in height must have pedestrian guardrails installed.
3. The developer will work with affected property owners and MSD to reach a reasonable agreement on the relocation of sewer lines on the subject property.
4. If it is determined that Britt Drive cannot be used as a secondary access point, then a traffic impact study needs to be completed for the main entrance drive.
5. If it is determined that Britt Drive cannot be used as a secondary access point, then all of the buildings, including the clubhouse, must contain sprinkler systems.

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

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

The proposed use of the property is a multi-family residential project. The property is appropriately zoned for the proposed use. Prior to the issuance of permits, the Technical Review Committee will review the final plans to insure technical standards set forth in the Unified Development Ordinance (UDO), the Standards and Specifications Manual, the North Carolina Building Code and other applicable laws and standards that protect the public health and safety, are met. Kenilworth Dam is classified as a high-hazard dam, which reflects its potential for property damage in the event of failure, not its current condition. The dam is inspected yearly by the Department of Environmental and Natural Resources and examination of these inspection reports indicate the dam is in sound condition.

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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. Grading of the site will be necessary to develop the property as proposed. The buildings will be located on the eastern side of the property in order to reduce construction within the floodplain, minimize land disturbance near Ross Creek and to provide a greater area for preservation of existing vegetation. A condition has been added to the project for the developer to work with staff and other local agencies to address water quality issues by means of appropriate wetland species, riparian buffers and use of other Best Management Practice tools.

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.

In addition to the significant elevation differences between the project site and abutting residential properties, existing landscaping is expected to be preserved around the perimeter of the property; a privacy fence and a 25-foot landscape buffer will also be installed. The buildings will also be constructed with long lasting materials and designed in manner that will enhance the surrounding community.

4. That the proposed use or development of the land will be in harmony with the scale, bulk, coverage, density, and character of

the area or neighborhood in which it is located;

The existing zoning on the property is River District and RM-16. The applicant is proposing a density well below what is permitted on the lot. In addition to the landscape buffers that will be installed, the buildings are designed with features that will increase their compatibility with the character of the abutting neighborhood. Although larger than the buildings in the immediate neighborhood, the buildings are compatible with the development along Swannanoa River Road. The development should positively contribute to the character of this area.

5. That the proposed use or development of the land will generally conform with the Comprehensive Plan, smart growth policies, sustainable economic development strategic plan and other official plans adopted by the City:

The project is supported by numerous goals and strategies in the plan relating to infill development, smart growth policies and affordable housing. The project utilizes the existing zoning on the lot to create a sustainable high-density residential development within the City Limits, and where infrastructure capable of handling this type of development exists. The site is also within .5 mile to 2-mile proximity of transit service, parks, potential employment centers, restaurants and shopping centers.

This project will also make a significant contribution to meeting the needs for affordable rental housing outlined in the Consolidated Strategic Housing and Community Development Plan 2000-2005. The plan projected a need for 370 new affordable rental units each year within the City of Asheville.

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

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Any development of the site would require technical approval from all applicable departments including representatives of the Water Resources, MSD, Engineering, Fire and Building Safety Departments. The conceptual plans for the development have been reviewed by the City's Technical Review Committee, which found that adequate services and facilities are available for the proposed development. The site is also within .5 mile to 2-mile proximity of transit service, parks, potential employment centers, restaurants and shopping centers. In addition, the developer is providing a bus stop with a shelter at the entrance of the project on Swannanoa River Road and has agreed to work with the Transit Director on determining an appropriate level of transit service to the site.

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

Two access points are currently proposed for the project, one on Swannanoa River Road and one off of Britt Drive. The City's Traffic Engineer has determined that a Traffic Impact Analysis will only be required if it is found that access cannot be legally provided on Britt Drive.

**Pros:**

- The site is appropriately zoned for this type of development.
- The project makes a significant contribution to meeting the need for affordable rental housing in the City of Asheville.
- The project supports numerous goals and strategies outlined in the City's 2025 plan as it relates to smart growth, infill and sustainable development.
- The site is within close proximity to potential employment centers, shopping venues, and parks and recreational activities (Rec. Park, Azalea Park, future Riverside Parkway).
- Development of the site will necessitate an environmental clean up, eliminating any on-site hazardous materials.
- The conditional use permit will require the developer to work with staff on addressing water quality issues in order to protect the sensitive wetland environment surrounding Ross Creek.
- The buildings are located opposite Ross Creek and outside of the flood hazard area. This will assist in minimizing land disturbance near Ross Creek and potentially allow a greater area for the preservation of existing vegetation.

**Cons**

- Due to the existing topography on the site, extensive grading will be necessary to develop the property as proposed. This will require the construction of several large retaining walls on the site.
- The property is located approximately 250 feet downstream from Kenilworth Dam, which is classified as a high-hazard dam.
- Although a Traffic Impact Analysis is not required for this project, ingress and egress to the site may be difficult at times due to traffic on Swannanoa River Road.
- City transit does not currently provide service to Swannanoa River Road.

The TRC voted unanimously to recommend approval of the project subject to the conditions outlined in the staff report and the following additional conditions:

1. The site plan must identify walkways between buildings and parking areas.
2. Any retaining wall over 30" in height must have pedestrian guardrails installed.
3. The developer will work with affected property owners and MSD to reach a reasonable agreement on the relocation of sewer lines on the subject property.
4. If it is determined that Britt Drive cannot be used as a secondary access point, then a traffic impact study needs to be completed for the main entrance drive.

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5. If it is determined that Britt Drive cannot be used as a secondary access point, then all of the buildings, including the clubhouse, must contain sprinkler systems.

Staff recommends approval of the conditional use permit with the conditions outlined by the TRC and the following added conditions:

- All site lighting shall be equipped with 90-degree cut-off fixtures and oriented away from the surrounding residential property.
- The portions of the retaining wall visible from Swannanoa River Road shall be designed to accommodate vegetation to visually screen the effects of its height.
- Privacy fencing shall be installed by the developer to screen and prevent access to and from the adjoining residential development to the extent possible.
- The developer shall work with city staff and other independent groups to address water quality issues in the design and monitoring of stormwater run-off infrastructure.

At Council's discretion, the Kenilworth Neighborhood has requested consideration of the following conditions:

- Light shields that block out 100% of potential light pollution.
- Full barrier protection from trespassing into the neighborhood and protection from our yards being used as cut through to the mall. This will also protect the Developer from cross trespassing from the neighborhood. A metal fence such as the one used by the Asheville Mall, if this does not work it could be topped with barbed wire.
- Landscaping that would provide maximum noise pollution and act also as a sight barrier while maintaining its natural context.
- A written plan of how to maintain all barriers, assurance that upkeep will be a priority, and updated contact information to report breaches in the barrier.
- Annual monitoring of Ross Creek by a qualified independent group or engineer much like was demanded by City Council for the Overlook Village project on Tunnel Road.
- Deeding to Kenilworth Forest Community Club, Inc. the strip of land between lot 109 and lot 1, as verbally promised by Mr. Ward at the first public neighborhood/developer meeting.
- Written assurance from Mr. Ward that he will not use blasting in construction of the project, as verbally stated as the first TRC meeting. Blasting could jeopardize the integrity of the dam.
- For the developer to meet all conditions to date and any others provided in the future by City Council and the neighborhood.

City Attorney Oast entered the City Exhibit 3 into the record. Ms. Patsy Brison Meldrum, attorney representing Britt & Tilson Glass Company, one of the neighboring property owners to the proposed project, objected to offering the staff report (City Exhibit 3) into the record because Council has evidence that has been given before this hearing and that needs to be deleted from the record. Therefore, she objected based on pre-hearing bias. Mayor Worley noted the objection and overruled it.

Mr. Albert Sneed, attorney for the developer and property owner, questioned Mr. Tom Ward, developer. Mr. Ward gave testimony about his company – Gateway Companies out of Florence, Alabama. They specialize in affordable housing. This project cost will be almost \$90,000 per unit. He explained how they are in competition with other 152 other applications for tax credits, which would enable the project to be constructed. He explained that his company will own the property for 30 days, which is mandated by the State of North Carolina. Mr. Ward said they are willing to deed the right-of-way that leads up into the existing neighborhood to their homeowners association. They will not use that for foot traffic. The City has asked them to grant

an easement for a water-loop, which they will do. He said the Asheville area has a medium income of \$49,700. Twenty-five percent of the units would be leased to persons making 40% of that amount. The other remaining 75 units would be leased to persons making 60% of the area medium. There are no market rate units. They are building 10 handicapped units, which is 5 more than required, and also two additional hearing-impaired units. Using City Exhibit 3 (Schematic Grading Plan) Mr. Ward explained the elevation differences from White Pine Drive to the existing property. Mr. Ward said that there has been debris dumped on this site which will have to be removed and tested, at their cost. Based on his experience, this project is appropriate for this location because it's close proximity to jobs, e.g. the Asheville Mall, retail outlets and hospitals. Mr. Ward explained that there are 200 parking spaces (two spaces for each unit), however, the majority of the houses would only require one parking space due to the income levels. It was his opinion that this project would not endanger the public's health or safety.

Mr. Albert Sneed questioned Mr. Thomas Wolfe, officer of the company that owns this property. He said that they have a contract to sell the property to the Gateway Companies which contract was in place before the application was filed. He said that The Gateway Companies had the authority to file the application on this company's behalf. Using photos (Applicant Exhibit 1), Mr. Wolfe showed the existing property which consists of left-over sewer pipe, construction debris, old tires, grown up weeds, bulldozer, warehouse, etc.

Mr. Albert Sneed questioned Mr. Elbert Taylor, Realtor and Appraiser. Mr. Taylor said he has been appraising property in Asheville since 1981 and has appraised approximately 5-6,000 residential properties in Asheville. He has been qualified as an expert witness in courts on various types of cases. He said that he was familiar with this property and the property on White Pine Drive and had in fact inspected them earlier in the day.

When Mr. Sneed asked Mr. Taylor if he had an opinion of whether or not this project will not have any impact on the property values adjacent to this project, Ms. Meldrum objected. Mayor Worley noted the objection and overruled it.

When Mr. Taylor said that he did have an opinion, Ms. Meldrum objected. Mayor Worley noted the objection and overruled it.

Mr. Taylor said that this project will have a neutral effect, no effect or will increase the value of the property on White Pine Drive. He bases that opinion on the studies he has seen on affordable housing as well as from his experience in this market. He said the elevation runs from 35-60 feet to the backyard of the properties on White Pine Drive and once they have no access from White Pine Drive, and the residents from this property cannot get to White Pine Drive this will actually be a benefit to the residents. Any affect to the property to the south and east of the property will be a benefit to all properties as well. It will clean up the area and it will also buffer on each side of the project.

Mr. Albert Sneed questioned Mr. Anthony Butzek, the City's Traffic Engineer. Mr. Butzek said he was a registered professional engineer, with a Bachelor degree and Masters degree in traffic engineering. He has studied traffic engineering for approximately 9 years and the City regularly relies on his expert opinions about traffic engineering matters. Mr. Butzek said that he has reviewed this project. The traffic count on Swannanoa River Road is approximately 12,000 per day. He said the estimate for development of a 100-unit complex would be 734 trips generated per day or 73 trips during the p.m. peak hour.

When Mr. Sneed asked Mr. Butzek if he had an opinion as to whether or not this project would have any serious impact or undue influence on traffic congestion, Ms. Meldrum objected. Mayor Worley noted the objection and overruled it.

Mr. Butzek said that he did not expect this project to have a significant impact on traffic congestion along Swannanoa River Road.

When Mr. Sneed asked Mr. Butzek if he had formed an opinion as to whether or not this proposed use will cause undue traffic congestion, Ms. Meldrum objected. Mayor Worley noted the objection and overruled it.

Mr. Butzek said that he has formed the opinion that he does not believe that this project will contribute to undue traffic congestion.

Upon inquiry of Mr. Sneed, Mr. Butzek said that it was his opinion that the project will not create a traffic hazard.

Mr. Butzek said that he requested the study for entrance on Swannanoa River Road. He explained that it is preferred that multiple access points be provided to better distribute traffic. Since this is a unique case and it appears that it may or may not be

feasible to make that connection, if a single connection were to be made, given the size of the development and the concentration of the traffic all in one driveway on a fairly busy street, they wanted to be sure that that driveway was designed appropriately, including proper lanes and that if there were any potential problems that we could mitigate those in the design process. He explained this is a traffic impact study inasmuch as it is considering the operation of the driveway, but the development would not be expected to adversely impact on Swannanoa River Road. This is to simply to ensure that proper access is provided. For a two-lane road like Swannanoa River Road, assuming there needs to be turn-lanes where appropriate, 16,000 would be the maximum capacity. The current traffic count on Swannanoa River Road is 12,000 and with the additional 734 trips from this development the traffic count would be well below the maximum of 16,000.

Mr. Albert Sneed questioned Ms. Cathy Ball, the City's Engineer. Ms. Ball said that she has reviewed the reports provided from the State on the Kenilworth Dam. Her comments are based upon the State's reports. The report from the State inspection consisted of two pieces for 4 different years. Letters sent back to owners of the Dam stated that there was no immediate danger. Each letter had a report attached of the conditions of the Dam at the time the inspection was done. The letters indicated that there was no immediate threat but if the Dam did fail there would be danger to the public. In looking at a report that was completed, there was an indication of places where there was seepage in the Dam that tended to be normal wear on a dam of this age. She did not know if the Dam has been worked on or upfitted recently. Ms. Natalie Berry of her staff reported that she did look at the Dam and simply commented on seeing it. If the Dam is unsafe, the State of North Carolina requires the property owner to immediately repair it.

The following residents spoke against the issuance of the conditional use permit for various reasons, some being, but are not limited to: Flood Insurance Rate Map inaccurately portrays floodplain lines; in times of heavy rain and flood, emergency vehicles will not be able to reach residents at the entrance because the Swannanoa River Road is in the floodway; a no-rise engineering study needs to be performed since the floodway encroaches on a good portion of the property where the parking lot is to be located; City Engineer stated that a development on the property would increase the exposure of the Kenilworth Lake Commission and that the Dam failure could result in significant damage and possible loss of life; granting a conditional use permit may very well increase the City's liability for personal injury and property damage; without adequate safeguards to insure the integrity of the Dam the process should be stopped; it is highly likely that blasting will be required for grading and construction and it is a concern because the Dam was built in 1925; request for bond to be provided by the developer which would remain in place during construction and for one year after all construction is completed which would be sufficient to cover any damages to Kenilworth Lake Dam and surrounding properties and any personal injuries; request for bond that would not be released until the Kenilworth Lake Dam has

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been inspected by an independent engineer selected by the Kenilworth Forest Community Club and paid for by the developer; V-shaped retaining wall near the entrance to Foxwood is deceptive in plan view; in places, the 40 foot setback does not allow sufficient buffering and emergency access; there are massive retaining walls; steeply graded land; tall fencing; the UDO will be violated because in the River District grading is prohibited on a degree of 45 degrees or more and prohibits the removal of existing vegetation; there is a perimeter fence along areas that would not be under water in times of flood which will be a death trap to the residents; residents won't want to walk on Swannanoa River Road at night to go to and from their jobs; there were only 9 minimum wage jobs available on one day at the Asheville Mall; there are no parks within walking distance of this development; why are 200 parking spaces being built if they will not be needed; there is no grocery store in the area; there is no place for children to ride their bikes; who will be watching the developer's company during the 30 years they must retain ownership of the property; the property is better suited for a bird sanctuary; illegal dumping on site must be removed in presence of County officials and site must be tested; soil contaminants can result in serious health effects; an environmental impact study should be performed before disturbing the site; there are no sidewalks on Swannanoa River Road; development is bordered by massive retaining walls, the Dam and the Swannanoa River; foot traffic cannot be prevented through the Kenilworth neighborhood; failure of the Dam would be catastrophic; an earthquake is not impossible and that would damage the Dam; light from development will be bothersome; there will be additional noise from the development; the parking lot turning radius will not be wide enough; there needs to be a study to ensure that adjoining property owners values are not negatively impacted; the City has not factored in all the Super Wal-Mart or Target traffic on Swannanoa River Road; a lot of inconsistencies and carelessness from developer; disabled people should not live below the Dam in case of flooding; undue traffic congestion and traffic hazards because many tractor-trailer trucks load and unload materials along Britt Drive for business located there; Britt Drive is a private road; Britt and Tilson floods during rains; if Britt Drive is widened, Britt & Tilson Company will have to be reduced by 1/3 and that would force him to close down; and many trees will have to be cut down if there is going to be an entrance on Swannanoa River Road:

Mr. Mike Weizman, President of Kenilworth Forest Neighborhood (Neighborhood Exhibit 1 - Letter dated February 5, 2004 to Mr. Tom Ward; Neighborhood Exhibit 2 - Flood Insurance Rate Map; Neighborhood Exhibit 3 - Photo of Lake Kenilworth Dam Spillway During Flood; and Neighborhood Exhibit 4 - Map showing 500

Year and 100 Year flood lines)

- Mr. Jimmy Boyd, resident on East Shore Drive (Neighborhood Exhibit 5 – “Foxwood Development Opposition Sign In” containing 62 signatures; Neighborhood Exhibit 6 – Photo of Dam in 1925; Neighborhood Exhibit 7 – Photo of Dam repair in 1992; Neighborhood Exhibit 8 – Photo of Possible Blasting Damage to Lake Kenilworth Dam; and Neighborhood Exhibit 9 – Comments by Jimmy Boyd)
- Mr. Phillip Hawkins, resident on White Pine Drive (Neighborhood Exhibit 10 – Topography Concerns with the Proposed Foxwood Project; Neighborhood Exhibit 11 – Schematic Grading Plan, Sheet S-2, 3-10-04; and Neighborhood Exhibit 12 – Building 2 Elevation, Sheet 7, 3-10-04)
- Ms. Leigh Heminger, resident on White Pine Drive and Vice-President of Kenilworth Forest
- Mr. Peter Loewer
- Ms. Kathy Toler, resident of Kenilworth Forest Community (Neighborhood Exhibit 13 – Photo of Illegal Dumping in Ross Creek Watershed; and Neighborhood Exhibit 14 – Photo of Lower Ross Creek Watershed Illegal Dump Site)
- Ms. Claire Payne, resident on White Pine Drive
- Mr. Eric Finstick, resident on White Pine Drive
- Mr. William Mansfield, resident on White Pine Drive
- Ms. Addison Martin, resident on East Shore Drive

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- Mr. Les Whittington, resident on East Shore Drive
- Ms. Karen Flynn, resident on White Pine Drive
- Mr. Frank Adams, resident on Forest Hill Drive
- Ms. Kathy Sheldon; resident on White Pine Drive
- Mr. Bill Britt Jr.; co-owner of Britt & Tilson Glass Company (Neighborhood Exhibit 15)
- Mr. David Tilson, co-owner of Britt & Tilson Glass Company (Neighborhood Exhibit 15)

Ms. Meldrum cross-examined Mr. Butzek about traffic on Swannanoa River Road. Mr. Butzek said that he has not taken traffic counts on Swannanoa River Road because the N.C. Dept. of Transportation (NC DOT) takes those counts. He has reviewed the NC DOT published traffic counts for this meeting. He did not take into consideration any additional traffic impact from the Super Wal-Mart or the Target store because neither one of those would push it over the capacity limit that he estimated for the roadway. He did not examine any traffic accident reports for Swannanoa River Road. The road profiles for Swannanoa River Road are submitted in the final TRC plans. If a traffic study is required, then there would be a study of if a traffic light should be installed at the proposed entrance on Swannanoa River Road. He said that in his opinion the site distance he from the new proposed entrance to the curb going towards Lowe's is adequate.

Ms. Meldrum cross-examined Ms. Ball regarding the Kenilworth Lake Dam (Attachment to City Exhibit 3 – E-Mail to Kim Hamel regarding Kenilworth Lake Dam). Ms. Ball read the following portion of the e-mail: “A new development would increase their exposure.” She explained that it is the Kenilworth Lake Commission's exposure that would increase. She said that the 500-year floodplain is not shown on the map provided by the developer, but the 500-year floodplain is close to the 100-year floodplain. Using Neighborhood Exhibit 2, she said that the proposed entrance on Swannanoa River Road is located within the 100- and 500-year floodplain line.

Ms. Meldrum cross-examined Mr. Taylor. Using the schematic grading plan (Attachment to City Exhibit 3), Mr. Taylor said that had not performed any appraisal reports on the single-family residents adjacent to the proposed property. He said that he has been appraising in Buncombe County since 1981 and it was his opinion that property values in Buncombe County have continued to increase no matter where the property is located. He has not done an appraisal on the impact of a 100-unit development on single-family homes.

Ms. Meldrum cross-examined Mr. Ward. He responded to questions regarding the elevations. He said that there is a sewer line that runs across the developer's property down to Swannanoa River Road and they are willing to work with the residents to provide them with an easement. They will relocate any utility lines necessary to construct the buildings. Using the schematic grading plan (Attachment to City Exhibit 3), Mr. Ward explained where the retaining walls will be located. Soil borings have not been performed yet nor do they know if any blasting will be required at this point. If blasting is required, their engineers will obtain the necessary permits. He did not have any power of attorney or other authority from the owner of the property to make this application; however, the owner of the property delivered the application to the City.

Upon inquiry of Councilwoman Bellamy, Mr. Ward explained the process for tax credits and why the conditional use permit is required before the application is submitted. He said that the State of North Carolina reviews their plans and because they are using tax credits. Each year they must re-verify everyone's income and they must also monitor and inspect the units. He explained some of the guidelines they must follow for tax credits.

Ms. Meldrum entered into evidence a letter dated March 23, 2004, on behalf of Kenilworth Forest Community Club Inc., requesting denial of the conditional use permit (Neighborhood Exhibit 16).

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Mr. Sneed cross-examined Ms. Ball. She said that the entrance of the project is within the 100 and 500-year floodplain, but there are no buildings in the floodplain (Attachment to City Exhibit 3 – Schematic Grading Plan). She said that sections Swannanoa River Road go in and out of the 100-year floodplain areas (Neighborhood Exhibit 2). She said that she was asked to evaluate the reports provided by the N.C. Dept. of Environment & Natural Resources (Attachment to City Exhibit 3). In Ms. Ball's testimony that the Kenilworth Lake Commission's exposure would increase if there was a new development, Ms. Ball agreed that of Britt & Tilson Glass Company hired an additional employee, or if there were any more cars on Swannanoa River Road, the Kenilworth Lake Commission's exposure would also be increased.

Ms. Meldrum outlined to City Council why the application should be denied due to its failure to comply with condition use standards 1, 2, 3, 6 and 7. (Neighborhood Exhibits 15 and 16). If, however, City Council approves the conditional use permit, she requested (1) there be no access to the development via Britt Drive; (2) that the permit include all of the conditions set forth in the staff report (City Exhibit 3) from the Planning & Development Department as well as the conditional from the Kenilworth Forest neighborhoods; and (3) that a bond be provided by the developer which would remain in place during construction and for one year after all construction is completed. The bond should be sufficient to cover any damages to Britt & Tilson Glass Company's property, which may occur during construction for the project, including, but not limited, flooding and erosion damage and interruption of business. She felt that the application was void from the beginning because at the time of the application, it was not filed by the owner or agent specifically authorized by the owner to file such application.

Mr. Sneed explained that during every meeting with the City and the neighborhood Mr. Wolfe (owner) and Mr. Ward (developer) have attended, showing that they are both in agreement with the plans. He felt Council has a wonderful opportunity to have 100 units of low-moderate income housing. The neighborhood doesn't have evidence that the Dam is unsafe because it's their responsibility to fix it. The Dam is safe and the buildings are outside of the 500-year floodplain. They gave no evidence that property values would be substantially injured. Our appraiser said these units do not injure the value of adjacent property. The City's Engineer said that the standards regarding traffic have been met. A Traffic Impact Analysis is not required for this project and that only a traffic study of the entrance is required to make sure that the entrance is properly designed for curb, turning radius, fire trucks, entry into the traffic, etc. They have no problems with the traffic study of the entrance or with the staff conditions for the permit, but he did not agree with the posting of the bonds. He urged Council to approve the conditional use permit.

Mr. Wilton Davis said that part of his property runs from Swannanoa River Road up Ross Creek. He explained that they haven't tried to develop their property because of the topography and floodplain. His main concern is liability.

Upon inquiry of Vice-Mayor Mumpower, Ms. Hamel said that the project will have to come back through TRC and meet all regulations and City standards prior to the issuance of any permits.

In response to Councilwoman Bellamy, Ms. Hamel said that there is a condition that the lighting needed to minimize any lighting pollution to the above residential neighborhood. Mr. Shuford explained that the lights will have to conform with the City's lighting standards and that the lights will be shorter than the buildings. He said that there may be security lighting in the back, but it will be at a low level.

When Vice-Mayor Mumpower asked about the neighborhood/developer process, Ms. Hamel said that it was her opinion that the process worked well. She felt the developer was very open with the neighborhood and in fact, flip-flopped the buildings per the neighborhood request.

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Upon inquiry of Vice-Mayor Mumpower, Ms. Ball said that prior to doing any blasting, the developer will need a permit from the Fire Department and the Fire Department has to be at the site when the blasting occurs. They will also need to do an inspection report of the Dam. That is not something the City regulates, but it would be in their best interest to do that to make sure they can prove whether or not any blasting they have done has caused damage to that structure. She said there are safe ways to blast close to a dam and provide for the safety of the dam. With appropriate measures and safeguards in place, she felt the blasting can be done safely.

Vice-Mayor Mumpower asked about Britt Drive being a City maintained road. Ms. Ball said the City of Asheville City Maintained Street Inventory (City Exhibit 5) shows 0.08 miles (422.4 feet) of Britt Drive as a City maintained street.

Upon inquiry of Vice-Mayor Mumpower, Mr. Butzek said there is no City standard to require second entrance. It was a suggestion by City staff to improve the traffic flow as well as emergency access. The Fire Marshal has a threshold when second entrances are required, but this project does not meet that threshold.

Upon inquiry of Councilman Newman, Mr. Butzek said that what is before Council is only a conceptual plan. Details such as the turning radius for fire trucks would be addressed in the final TRC review of the plans. He did say though that nothing he has seen in their plans would prohibit emergency access in any form.

Upon inquiry of Councilman Newman, Mr. Butzek said that he felt the project would be viable with only one access onto Swannanoa River Road, assuming that after the traffic study is complete, the developer is willing to implement any of the recommendations.

When Councilwoman Jones asked about the increased traffic from the Super Wal-Mart, Mr. Butzek said that you probably won't see a lot of increased traffic on this section of Swannanoa River Road.

Councilman Dunn asked if the Dam broke would it take the development with it. Ms. Ball replied that she felt it would.

Councilman Dunn said the Dam inspection reports (City Exhibit 3) indicate that the inspections are superficial. He felt that with the potential for loss of life and property, there should be an inspection on the internal part of the Dam. Ms. Ball explained that the inspections are limited to what they can physically see and based upon that they see no need for immediate attention. She said that the City has regulations

When Councilman Dunn asked if the City can be liable if the City issues the conditional use permit and the Dam fails, City Attorney Oast said that if a problem is detected with the Dam, the responsibility falls on the owners of the Dam to either fix it or dismantle the Dam and drain the lake.

Councilman Dunn asked if Council can require the Dam to be inspected. City Attorney Oast said that the Dam is not on the property that is under consideration here and the information in the record indicates the Dam is inspected regularly by the State officials who are in charge of that process. If Council wanted to have more engineering studies done, Council could require that, but he assumed the inspectors would look for the same things that the State inspectors look for.

Councilman Dunn asked if the conditional use permit was approved and after all site preparation was done, could an internal and external inspection be performed on the Dam before any more construction. City Attorney Oast said that Council can require inspections.

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Upon inquiry of Councilman Davis, Ms. Ball explained that the City regulates the 100-year flood elevation, so the buildings could not be constructed within the 100-year elevation, unless they are one foot higher than that elevation. The City does not have regulations over the 500-year flood elevation. There may be some stipulations on the 500-year flood through the federal government and through the tax credits the developer is seeking.

Councilman Davis asked if consideration was given to the significant changes made in Chunns Cove and the downstream flow of that water, which eventually goes into Kenilworth Lake. Ms. Ball said that typically with the size of that lake, the type of impervious area above stream, and the water surface elevation, she felt the Lake could handle that amount of water, however, that has not been studied specifically.

Councilman Davis was concerned that if there was a flood on Swannanoa River Road, there would be no access for emergency vehicles. Mr. Britt said that he has not been able to get to his business about one time in the past nine years and had to wait about 1-1-1/2 days until the flooding subsided on Swannanoa River Road.

Upon inquiry of Councilman Davis about how much grading will be required to have the primary entrance on Swannanoa River Road, Ms. Ball said we don't have detailed plans, but they will be required to adhere to the regulations in our Standard Specifications and Details Manual.

Councilman Davis was concerned about the children using the Dam and creek as a playground. Mr. Ward said they proposed to build a fence along the creek area but they now have to take that out because they are not allowed to build a fence in a flood zone area. At this point they are talking about a heavily dense landscape buffer.



Upon inquiry of Councilwoman Jones, Ms. Ball said that the City would not build a new road in a 100-year floodplain.

When Councilwoman Jones asked if there are any environmental concerns, Ms. Ball said she doesn't know enough about that to have a professional opinion either way. What she has seen on the property appears to be construction debris, but she did not look at the soil.

Mayor Worley noted that any the soil borings would have to be tested and if there are any environmental hazards they would have to be cleaned up.

Upon inquiry of Councilman Newman, Ms. Hamel said that internal sidewalks will be located throughout the site and there will be required on Swannanoa River Road for the length of their property. Ms. Ball said that sidewalks on Swannanoa River Road are a high priority on the Pedestrian Thoroughfare Plan but there is no funding allocated for it. She said that a half-mile of sidewalks is approximately \$100,000.

Councilman Newman was concerned that the developer testified that most people wouldn't have two cars, so why are 200 parking spaces being proposed. He wondered if that is a potential way to reduce the footprint of the project on the site. Ms. Hamel said that parking spaces are based on the number of bedrooms per unit. They are allowed a minimum of 120 parking spaces up to a maximum of 200 parking spaces. Mr. Ward said they would be willing to construct 1.5 parking spaces per unit.

Upon inquiry of Councilman Newman, Mr. Ward said that since he can only apply for the tax credits annually. If the project were not approved, he would not be able to make an application for at least one year.

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Councilman Newman recognized the challenging site and wondered if there was discussion about building a road that had more contour of the property. Mr. Ward said until they get a fully engineered topography map, they don't know exactly what the grades are, but chances are they will probably have to angle the road at some point.

Upon inquiry of Vice-Mayor Mumpower, Mr. Shuford said that the Urban Riverfront Master Plan, that City Council will be reviewing shortly, provides residential along the river as a high priority.

Upon inquiry of Councilwoman Bellamy, Ms. Ball explained the no-rise engineering study, which is required anytime work is done in a floodway.

When Councilwoman Bellamy asked about the retaining walls, Ms. Ball said that we do require slope stabilization. There has to be an engineer's report showing that the design for the retaining wall is safe and then after it is designed, there must be an engineer's report saying that it was built according to the plans.

Upon inquiry of Councilwoman Bellamy, Fire Chief Greg Grayson said that for residential properties the N.C. State Code allows up to 100 units without having a mandatory secondary access road. It is his understanding from his staff that this project will be fully protected with automatic fire sprinklers.

Upon inquiry of Councilwoman Bellamy, Ms. Ball said that City regulations require the project to have some type of facility on site to hold back a 10-year storm event.

Mayor Worley closed the public hearing at 10:51 p.m.

Vice-Mayor Mumpower moved to approve the conditional use permit for property located off Britt Drive for the construction of a 100 unit apartment complex in an RM-16 Multi-Family High Density District, subject to the following conditions: (1) The site plan must identify walkways between buildings and parking areas; (2) Any retaining wall over 30" in height must have pedestrian guardrails installed; (3) The developer will work with affected property owners and MSD to reach a reasonable agreement on the relocation of sewer lines on the subject property; (4) If it is determined that Britt Drive cannot be used as a secondary access point, then a traffic impact study needs to be completed for the main entrance drive; (5) If it is determined that Britt Drive cannot be used as a secondary access point, then all of the buildings, including the clubhouse, must contain sprinkler systems; (6) All site lighting shall be equipped with 90-degree cut-off fixtures and oriented away from the surrounding residential property; (7) The portions of the retaining wall visible from Swannanoa River Road shall be designed to accommodate vegetation to visually screen the effects of its height; (8) Privacy fencing shall be installed by the developer to screen and prevent access to and from the adjoining residential development to the extent possible; and (9) The developer shall work with city staff and other independent groups to address water quality issues in the design and monitoring of stormwater run-off infrastructure. This motion died for lack of a second.

Councilman Dunn said that water is an unknown factor and it cannot be contained. He felt affordable housing is very important but the safety of the future residents of the development is more important.

Councilman Newman felt the intensity of the footprint of the project and the intensity of the development is not reasonable compatible with significant natural and topographic features on the site. In addition, he felt the scale of the cuts into the site are genuinely out of scale.

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Councilwoman Bellamy felt that the proposed use or development was not reasonably compatible with significant natural and topographic features on the site. She felt that with Kenilworth Dam so close, this was not the right location for this particular development.

Vice-Mayor Mumpower felt this was one of the worst displays of "Not In My Backyard" than he has seen on City Council. He felt City Council had an opportunity to step forward with affordable housing and feels the developer has met the requirements.

Councilman Davis felt it was not appropriate to build houses below a dam.

Councilman Dunn moved to deny the conditional use permit for property located off Britt Drive for the construction of a 100 unit apartment complex in an RM-16 Multi-Family High Density District. This motion was seconded by Councilman Davis and carried on a 5-2 vote, with Mayor Worley and Vice-Mayor Mumpower voting "no."

#### **ORDINANCE BOOK NO. 21 – PAGE**

City Attorney Oast said that he would bring back the draft order for City Council wording approval at their next formal meeting on April 13, 2004.

At 11:06 p.m. and after a brief discussion on whether to continue with the rest of the agenda items or postpone them to another date due to the lateness of the hour, Councilwoman Jones moved to proceed with the remainder of the agenda tonight. This motion was seconded by Councilman Newman and carried on a 4-3 vote, with Mayor Worley, Councilwoman Jones, Councilman Dunn and Councilman Newman voting "yes" and Vice-Mayor Mumpower, Councilwoman Bellamy and Councilman Davis.

At 11:10 p.m., Mayor Worley announced a short recess.

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

##### **A. MOTION TO APPROVE THE PACK SQUARE CONSERVANCY PLAN AND ALLOW THE CONSERVANCY TO MANAGE NAMING RIGHTS FOR PARK FEATURES AS A FUND-RAISING/MARKETING TOOL**

Ms. Carol King, Chair of the Pack Square Conservancy, said the Pack Square Conservancy is requesting consideration of plan revisions to Pack Square Conservancy Plan and approval of allowing the Conservancy to manage naming rights for the park features.

Ms. King briefly reviewed with Council the history of the project. The Pack Square Conservancy (PSC) recently held a design charette to receive and respond to public input concerning redesign of the middle section of the Pack Square Renaissance project. This was necessitated by the withdrawal of the Grove Park Inn's proposed building at this site. City Council has previously received a copy of the recommended plan by the PSC. This plan substitutes a smaller building for the large mixed-use structure proposed by Grove Park Inn (GPI).

As our experience with GPI indicates, there are currently existing development constraints at this site that complicate certain types of large-scale development. These constraints include the expense of underground parking and the need for expensive relocation of existing utilities (estimated by professional contractors at approximately \$450,000).

Additionally, please note that Engineering staff will present a redesign for College Street for your consideration in April. This redesign will complement the PSC project but was identified

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as a public safety and capital project need (and was under design & development) prior to the PSC plan.

Plan Approval:

Pros:

- Public acceptance of the new design
- Allows fundraising for the park to continue without public controversy and for park development to continue on schedule
- Maintains a building at the park edge as an urban design component and revenue source

Cons:

- Potential loss of a larger scale infill redevelopment opportunity and resultant public revenue

Naming Rights:

Pros:

- Allows opportunity for greater private fundraising for the park

Cons:

- None noted.

City staff recommends City Council consider plan revisions to PSC Plan and consider approval of allowing the Conservancy to manage naming rights for the park features.

Ms. King requested approval of allowing the PSC Conservancy the ability to manage naming rights for park features as a fund-raising/marketing tool. She then reviewed with Council the PSC Donor Recognition Policy.

Mr. Fred Bonci, designer, briefly reviewed with City Council the PSC Plan and how the consensus items are woven into the Plan, e.g., of calming traffic, re-establishing a more regimented street grid within the area, a place for leisurely daily activities, a green space, a place for residents to enjoy themselves, a place to build civic pride, space that was flexible to accommodate not only everyday use but the tradition of festivals; a place for families; and a place of destination.

The following individuals spoke in support of the PSC Plan:

Mr. Joe Bly

Ms. Kim MacQueen, member of the Downtown Commission and Chair of the Asheville Downtown Association

Ms. Bill Byrne, member of the Downtown Commission

Mr. Herman Turk, General Manager of the Renaissance Hotel, Vice-Chair of the Buncombe County Tourism Development Authority and member of the Pack Square Conservancy Board

Ms. Becky Anderson, member of the Pack Square Conservancy Board and Director of Hand-Made in America

Mr. Glenn Bannerman

Mr. Craig Madison, President and CEO of the Grove Park Inn and Spa

Mr. James Geter, member of the Pack Square Conservancy Board and representative of the Eagle-Market Streets Development

Ms. Pam Myers, Director of the Asheville Art Museum

Mr. Brad Burns, Asheville resident, asked City Council to stipulate that the primary function of any group formed as an extension of City Council is to provide a public forum to be incorporated by Council. He asked Council to stipulate a minimal number of forums with plenty of public notification for public access before the process is concluded. He felt the Plan was

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pleasant but had no confidence that the PSC can navigate a community aesthetic. He asked a sub-committee be composed of local designers, visual & performing artists, sociologists, social workers and civil engineers to accommodate our community. He also spoke against the donor naming policy. He felt that at the southwest corner of Pack Place, near the Jackson Building, a feature conjoining the two areas of Pack Square and The Block so they will be considered equal.

Mr. Roger Smith, downtown property owner, said that he supported most of the Plan, however, did not support reducing College Street from 4 lanes to 2 lanes and diverting the free flow of traffic. He also felt we should not change the name of City/County Plaza.

Upon inquiry of Vice-Mayor Mumpower, Planning & Development Director Scott Shuford explained why College Street was made 4-lanes. He said that the City's Traffic Engineer has studied the reduction to 2-lanes and will be bring a presentation to

Council in April.

Upon inquiry of Vice-Mayor Mumpower, Mr. Shuford explained what design features the City would participate in and said the City has asked in their federal legislative request for \$1.1 Million to be earmarked for this project.

Vice-Mayor Mumpower voiced concern that we had a dedicated revenue stream and the City taxpayers were not going to have carry the infrastructure costs of creating this nice park. Mr. Shuford explained the alternatives available to the City that would address costs concerns.

Vice-Mayor Mumpower said that this Council supported the goals of the Conservancy by taking that piece of property off the table, which property represented the dedicated revenue stream. When Vice-Mayor Mumpower asked if there has been any discussion with the Conservancy asking them to compensate the City for the loss of revenue, Mr. Shuford replied there has not been any discussion.

Councilman Dunn also expressed concern of infrastructure costs on City taxpayers.

Councilwoman Bellamy moved to approve the Pack Square Conservancy Plan and to allow the Conservancy to manage naming rights for park features as a fund-raising/marketing tool. This motion was seconded by Councilwoman Jones and carried unanimously.

#### **V. NEW BUSINESS:**

Due to the lateness of the hour, Vice-Mayor Mumpower moved to continue the remaining items on the agenda until another date. This motion was seconded by Councilwoman Bellamy. After a brief discussion, Councilwoman Bellamy withdrew her second. Said motion then died for lack of a second.

Councilwoman Bellamy then moved to consolidate New Business Items A-D and approve them with one motion. This motion was seconded by Councilwoman Jones.

Councilman Newman stated that these items were discussed in the March 16, 2004, worksession.

Vice-Mayor Mumpower felt that there too many issues and too much money being lumped together.

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

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

#### **A. RESOLUTION NO. 04-67 - RESOLUTION AUTHORIZING THE MAYOR TO ENTER INTO AN AGREEMENT WITH THE HEALTH ADVENTURE TO TRANSFER 1.14 ACRES OF CITY-OWNED PROPERTY LOCATED AT THE CORNER OF CATAWBA AND BROADWAY IN EXCHANGE FOR AN .89 ACRE GREENWAY EASEMENT AND CONSTRUCTION OF A GREENWAY ACROSS THEIR PROPERTY**

Summary: The consideration of a resolution authorizing the Mayor to enter into an agreement with The Health Adventure to transfer 1.14 acres of City-owned property located at the corner of Catawba and Broadway in exchange for a .89 acre greenway easement and construction of a greenway across their property.

For the past several months, City staff has met with representatives from The Health Adventure to discuss the transfer of 1.14 acres of property located at the corner of Catawba and Broadway known as the "Leaf Pile." This property was formerly part of the Penick Property, which was donated to the City several years ago. During these discussions, staff expressed the need for the continuation of the Reed Creek Greenway to occur through this property and across The Health Adventure property to connect to the Glenn Creek Greenway on Weaver Boulevard. The final determination in regard to this transfer includes The Health Adventure granting an easement representing .89 acres adjacent to Broadway Avenue. In addition, the Health Adventure has agreed to pay for and construct the greenway across this property from the corner of Catawba to the intersection of Broadway and Weaver Boulevard. The greenway will be constructed to the standards established by the Greenway Master Plan with final approval of the design by the Greenway Commission and City staff. In addition, The Health Adventure will work with the Public Works Department to continue the use of the "Leaf Pile" until actual

construction occurs for the proposed Health Adventure facility. City staff wishes to ensure that the property remain for public use as much as possible, and the City will work with The Health Adventure to ensure that the property is open to the general public as feasible. In addition, if for some reason The Health Adventure fails to build their facility on this site and they wish to resell the property, the 1.14 acres should revert back to the City of Asheville to remain as public space. City staff will be working with representatives of The Health Adventure to develop and agreement that will incorporate all of the above issues.

Upside:

- The City of Asheville will be able to continue development of the greenway from Catawba to the entrance at Weaver Boulevard at no cost to tax payers.
- Greenway design and construction will be approved by the Greenway Commission and City staff.
- The City retains property in the future if The Health Adventure wishes to resell the property.
- The City and The Health Adventure will work together on design elements on and around the Greenway.

Downside:

- The City will lose the use of the "Leaf Pile" for public use.
- Some restrictions may occur with the use of the former property by the public due to accessibility issues with The Health Adventure operations.

The Parks and Recreation Department recommends that the Mayor enter into an agreement with The Health Adventure for the transfer of 1.14 acres of City property in exchange for a greenway easement of .89 acres and the construction of a greenway on Reed Creek.

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**RESOLUTION BOOK NO. 28 – PAGE 169**

**B. RESOLUTION NO. 04-68 – RESOLUTION AUTHORIZING ADOPTION OF THE AIR QUALITY IMPROVEMENT INITIATIVE 2004 TO IMPROVE AIR QUALITY IN THE CITY OF ASHEVILLE**

Summary: The consideration of a resolution authorizing adoption of the Air Quality Improvement Initiative 2004 as a tool to improve air quality in the City of Asheville

In December 2002, City Council adopted a resolution to enter into an Early Action Compact (EAC) along with Buncombe County and other local governments. The first step in the process was to develop a list of measures that can be taken by each of the local governments to reduce air pollution. In an effort to develop this list, EPA recommended that a group of stakeholders be created to make recommendations to local governments. City Council reviewed and approved the stakeholders in March 2003.

Due to the differences in size and economic base, it was agreed that each county would identify local control measures individually. This process allows greater stakeholder participation and allows each jurisdiction to evaluate local resources and determine if county-specific control measures can reasonably be implemented.

This group of stakeholders representing the City of Asheville and Buncombe County developed a list to City Council in June 2003. Since that time, no major changes in the measures has been made by the stakeholders.

Since the June 2003 update to City Council, the City has received information that indicates that our area will not be considered for non-attainment status in the next review largely due to the wet summer and fall we experienced in 2003 as well as some major changes that Progress Energy is making in their process at the Lake Julian site.

The stakeholders met to discuss this issue and recommend that the City approve this plan as an effort to improve air quality regardless of the threat of becoming non-attainment. The stakeholders indicated that they would like to see a more aggressive approach to improving air quality particularly in the area of educating the public of measures they can take to reduce pollutants.

Buncombe County along with the City of Asheville held a public meeting on January 8, 2004, to solicit input on the plan. The comments were good but many participants requested that the measures in the plan be mandatory as opposed to optional.

The Southern Environmental Law Center has indicated they will file suit against EPA if they allow communities to use the Early Action Compact as a method of avoiding non-attainment status. EPA has indicated they will not challenge this suit. This means that adopting an Early Action Compact may not allow communities to avoid the non-attainment designation. This area is

not affected by this challenge because we would not be considered for non-attainment status for the reasons described above. For that reason many of the counties in the surrounding area have chosen not to adopt an air quality improvement plan.

Rather than passing this plan as an "Early Action Compact" Plan, staff recommends that we refer to it as an "Air Quality Improvement Initiative 2004" to avoid any possibility of being involved in the possible lawsuit mentioned above.

Most of the measures in the imitative do not cost money, they simply state that we will try to take measures that have been proven to reduce pollutants. The only initiative that cost money

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is developing and implementing an educational/public relations plan. The Engineering Department has requested \$15,000 in the Fiscal Year 2004-05 budget to cover these expenses.

Staff recommends that City Council adopt the Plan under the title of Air Quality Improvement Initiative 2004 to improve air quality in the City.

#### **RESOLUTION BOOK NO. 28 – PAGE 170**

#### **C. RESOLUTION NO. 04-69 – RESOLUTION SUPPORTING THE RECOMMENDATIONS OF THE HAYWOOD ROAD TRAFFIC STUDY (MARCH 2004)**

Summary: The consideration of a resolution supporting the recommendations of the Haywood Road Traffic Study dated March 2004.

Improvements to Haywood Road, the "Main Street" of West Asheville, have long been identified as a critical desire of the residents of Asheville. This traffic study proposes modifications developed based upon public input and technical analysis, with the intent of improving the corridor's role as an urban commercial district while enhancing traffic flow. The modifications can be implemented almost entirely by restriping the pavement, at a very low cost.

Based upon years of input from citizens, businesses, and political leaders, and significant investment in community planning, the report requests the proposed modifications to Haywood Road be implemented by N.C. Dept. of Transportation (NC DOT) as part of the proposed resurfacing (currently scheduled for 2004). The proposed modifications would address a number of goals intended to support the viability of West Asheville's community business district, including improving facilities for pedestrians, bicyclists, transit users, and vehicles, and better providing and clearly marking on-street parking spaces. The modifications should clean up what can be a very confusing street on which to drive.

The corridor study proposes one through lane in each direction with turn lanes where appropriate and marked on-street parking. The proposal would eliminate the confusing pattern of lane-adds and lane-drops, as well as the existing condition of cars parking in a travel lane. The proposal would also relieve the bottleneck at the intersection of Haywood Road with Dorchester, State, and Majestic by removing Majestic from the traffic signal (this will also reduce Majestic's use as a cut-through). In summary, the proposal maintains current level of service for traffic while improving the corridor for businesses, pedestrians, bicyclists, and transit users.

#### Pros:

- Support of revitalization through improved environment for pedestrians, bicyclists, and transit users.
- Elimination of traffic bottleneck at Dorchester/State/Majestic.
- Expected reduction in crashes due to elimination of confusing lane adds and drops and elimination of parking in travel lanes.
- Implementation of a plan developed with significant community input.
- Minimal cost of implementation by coordinating with scheduled resurfacing.

#### Cons:

- NC DOT may not approve proposal due to reduction in number of lanes in certain areas and addition of some on-street parking.
- Minimal cost of installation includes minor traffic signal modifications at Dorchester/State/Majestic and installation of several concrete islands.

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City may need to accept maintenance responsibility in order to implement if NC DOT rejects proposal.

City staff requests City Council adopt a resolution supporting the recommendations of the Haywood Road Traffic Study (dated March 2004) and the forwarding of said resolution to the NC DOT.

**RESOLUTION BOOK NO. 28 – PAGE 171**

**D. MOTION TO APPROVE BUDGET ADJUSTMENT ALLOCATING \$80,000 FOR HALL FLETCHER PLAYGROUND, \$50,000 FOR TWO QUICK RESPONSE VEHICLES FOR THE FIRE DEPARTMENT, AND \$25,000 TO THE WNC VETERANS MEMORIAL ASSOCIATION TO SUPPORT THEIR MEMORIAL EFFORT ON PACK SQUARE**

Summary: The consideration of a motion to approve a budget adjustment for expenditures previously not included in the adopted budget.

The Fiscal Year 2003-2004 Adopted Budget included funds to provide social security benefits to firefighters. The Fire Department, however, elected not to participate in social security, which freed up \$563,146 in budgeted funds. City Council has recommended reusing a portion of these funds for the following expenditures:

- 1) \$25,000 grant to the WNC Veterans Memorial Association
- 2) \$50,000 for two new Quick Response Vehicles for the Fire Department
- 3) \$80,000 to renovate the Hall Fletcher Playground

**Pros:** City Council is able to fund needs that could not initially be accommodated in the Adopted Budget.

**Cons:** The appropriation to the WNC Veterans Memorial Association is being made outside of the normal outside agency review process. Appropriations made outside of the normal budget process (fire vehicles, playground renovation) may not reflect overall citywide priorities.

City staff recommends City Council approve the budget adjustment for expenditures previously not included in the adopted budget.

**E. RESOLUTION NO. 04-70 – RESOLUTION APPOINTING MEMBERS TO THE ASHEVILLE-BUNCOMBE COUNTY HISTORIC RESOURCES COMMISSION**

Vice-Mayor Mumpower said that Angela Heitter has resigned as a member of the Asheville-Buncombe County Historic Resources Commission, thus leaving a vacancy until July 1, 2005. In addition, the term of Allen Roderick expires on July 1, 2004.

City Council's worksession on March 16, 2004, City Council instructed the City Clerk to arrange interviews for Marsha Shortell and Diane Duermit.

On March 23, 2004, City Council interviewed Marsha Shortell and Diane Duermit.

It was the unanimous decision of Council to appoint Diane Duermit as a member of the Asheville-Buncombe County Historic Resources Commission, to serve the unexpired term of Ms. Heitter, term to expire July 1, 2005, or until her successor has been appointed.

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In addition, Mayor Worley moved to appoint Marsha Shortell to serve a three year term, term to begin July 1, 2004, and expire on July 1, 2007. This motion was seconded by Councilman Dunn and carried unanimously.

**RESOLUTION BOOK NO. 28 – PAGE 172**

**VI. OTHER BUSINESS:**

**A. CLAIMS**

The following claims were received by the City of Asheville during the period of March 5-18, 2004: Faith Chapel (Police), Jose A. Lopez (Water), Bayshore Co. (Water) and Bob Arthur (Water).

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

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

**VIII. ADJOURNMENT:**

Mayor Worley adjourned the meeting at 12:27 a.m.

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CITY CLERK

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MAYOR