

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 (arrived in meeting at 6:07); Councilwoman Diana Hollis Jones; Councilman Brownie W. Newman; City Manager James L. Westbrook Jr.; City Attorney Robert W. Oast Jr. (arrived in meeting at 6:21 p.m.); Assistant City Attorney Martha McGlohon (left meeting at 6:21 p.m.); and City Clerk Magdalen Burleson

Absent: None

**PLEDGE OF ALLEGIANCE**

Retired Air Force Veteran Ray Green led City Council in the Pledge of Allegiance.

**INVOCATION**

Mayor Worley gave the invocation.

**ADDITIONS TO AGENDA**

At the City Manager's request, a resolution making provisions for the possession and consumption of malt beverages and/or unfortified wine at the Earth Day 2004 festival to be held on Saturday, April 17, 2004, will be added under "Other Business".

**I. PROCLAMATIONS:**

**II. CONSENT:**

Mayor Worley said that Consent Agenda Item E will be removed from the Consent Agenda.

Councilwoman Bellamy asked that Consent Agenda Item C be removed from the Consent Agenda due to a conflict of interest.

- A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON MARCH 23, 2004**
- B. RESOLUTION NO. 04- 71 - RESOLUTION DECLARING THE INTENT OF THE CITY TO REIMBURSE ITSELF FOR CAPITAL EXPENDITURES INCURRED IN CONNECTION WITH THE ACQUISITION AND CONSTRUCTION OF FIRE STATION NO. 6 FROM PROCEEDS OF A FINANCING**

Summary: The consideration of a resolution declaring the intent of the City to reimburse itself for capital expenditures incurred in connection with the acquisition and construction of Fire Station Number 6 from proceeds of a financing.

City Council has previously directed staff to initiate action to acquire land and contract for the design and construction of a fire station in the vicinity of I-40 Exit 44. City Council has also previously adopted a budget authorizing expenditures for the project, with the supporting revenues to be provided from the proceeds of a Certificates of Participation (COPs) issue. The financing of the fire station will be combined with the financing of the Haywood Street Parking Deck and result in substantial savings in the cost of issuance for the two projects. The current

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project schedule calls for the COPs to be issued early in Calendar Year 2005. However, project expenses are presently being incurred. U.S. Treasury regulations require that, if the City intends to reimburse itself from the proceeds of a tax exempt financing for certain project expenses, which were paid prior to the closing date of the financing, it must adopt a resolution evidencing that intent. The resolution of intent may cover expenses paid by the City during the period beginning sixty days prior to adoption of the resolution of intent and ending on the day of issue of the financing. This resolution indicates the City's intent to reimburse itself accordingly.

**PROS:**

- Savings in cost of issuance for financing of the fire station and the parking deck;

- More efficient use of staff time in doing a single financing rather than two separate COPs (several hundred hours); and
- Potential lower interest rate for fire station by combining it with larger parking deck financing.

**CONS:**

- Potential for interest rates to increase during the approximately 90-day period between when a financing for the fire station would be ready to issue versus when the parking deck financing will be ready; and
- Slight reduction in liquidity of the City due to payment of project expenses prior to receiving the proceeds of the financing.

City staff recommends Council adopt the resolution declaring the intent of the City to reimburse itself for capital expenditures incurred in connection with the acquisition and construction of Fire Station Number 6 from proceeds of a financing.

**RESOLUTION BOOK NO. 28 – PAGE 173**

**C. BUDGET AMENDMENT TO ACCEPT GRANT AND LOCAL MATCH FOR PREPARATION OF THE CLINGMAN/RIVERSIDE INDUSTRIAL NATIONAL REGISTER NOMINATION REPORT**

This item was removed from the Consent Agenda due to a conflict of interest with Councilwoman Bellamy.

**D. RESOLUTION NO. 04-72 - RESOLUTION SETTING A PUBLIC HEARING ON MAY 11, 2004, TO CONSIDER THE CLOSURE OF AN UNNAMED ALLEY OFF COMMERCE STREET, BEHIND ASHEVILLE SAVINGS**

Summary: The consideration of a resolution of intent to close an unnamed alley off Commerce Street and setting a public hearing on May 11, 2004.

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

Pursuant to this statute, the adjoining property owners have requested the City of Asheville close an unnamed alley off Commerce Street, the entry of which is located approximately 135 southwest of the intersection of Commerce and Church Streets. From Commerce Street, the alley proceeds southeasterly approximately 100 feet, then southwesterly approximately 150 feet to its intersection with Buncombe Street.

Public Works Department staff has researched and determined that this alley is not a City maintained street and is not the sole means of ingress and egress for any of the abutting

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properties. There are six lots that abut this unnamed alley. They are identified by PIN Nos. 9649.18-30-7001; 9648.06-39-6929; 9648.06-39-5988; 9648.06-39-5927; 9648.06-39-5867; and 9648.06-39-7227.

City staff recommends that City Council adopt the resolution setting a public hearing for May 11, 2004, to close an unopened unnamed alley off Commerce Street.

**RESOLUTION BOOK NO. 28 – PAGE 175**

**E. RESOLUTION SETTING A PUBLIC HEARING ON MAY 11, 2004, TO CONSIDER ADOPTION OF AN ORDINANCE DIRECTING THE DWELLING LOCATED AT 451 KENILWORTH ROAD BE VACATED AND CLOSED**

This item was removed from the Consent Agenda.

**F. RESOLUTION NO. 04-73 - RESOLUTION AUTHORIZING THE CITY CLERK TO ADVERTISE FOR UPSET BIDS FOR A CONCEALED WIRELESS COMMUNICATION FACILITY AT 50 OREGON AVENUE**

Summary: The consideration of a resolution authorizing the City Clerk to advertise for upset bids regarding an offer to license space for a concealed wireless communication facility at 50 Oregon Avenue.

City of Asheville has received a bid from Triton PCS Property Company, LLC (Triton) for the license of space at 50 Oregon Avenue, the site of Fire Station #3, for a concealed wireless communication facility at a beginning annual fee of \$18,000.

50 Oregon Avenue is located at the Northeast corner of Oregon Avenue and Louisiana Avenue. It is zoned Institutional and has a total area of 0.86 acre. The lot is rectangular in shape and Fire Station #3 is located approximately in the center of the lot. The proposed license area is at the northwest (rear) corner of the building and comprises about 810± square feet.

Triton proposes to construct a cell phone tower designed as a flagpole, which will be lighted and the United States Flag will fly 24 hours per day. Antennas will be concealed within the flagpole. Ground equipment will be housed in a small building of a design and materials to match the fire station building. Triton will own, maintain and insure the tower. The tower will have space for two additional antennas and Triton will sublicense the tower spaces to other carriers. An additional building for each carrier of the same character as the first will be added within the license area at such time as the spaces are sublicensed. The proposal from Triton includes the following fee schedule:

<b>Year</b>	<b>Amount</b>
<b>1</b>	<b>\$18,000</b>
<b>2</b>	<b>\$22,500</b>
<b>3</b>	<b>\$25,960</b>
<b>4</b>	<b>\$27,000</b>
<b>5</b>	<b>\$28,000</b>

The license fee during each renewal term will be increased by four percent (4%) per year compounded annually. Triton will post a cash security deposit in the amount of \$5,000 to be held by the City for the duration of the License Agreement.

In addition to the above, Triton will construct a storage room addition for the exclusive use of the City (Asheville Fire Department) on the east side of the Fire Station; replace the City's

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existing 20 KW generator with a 40KW generator; and construct 3 additional parking spaces for the City's use.

Triton must obtain a Conditional Use Permit in accordance with the Unified Development Ordinance (UDO). Approval of this resolution will not affect consideration of the Conditional Use Permit.

The positive aspects of the proposed license agreement include:

1. Generates revenue for the City that is long term and increases annually.
2. Provides public benefit through better cell phone coverage for the Patton Avenue area.
3. Tower will be located on City owned property as encouraged by the UDO.
4. Promotes co-location of carriers as encouraged by the UDO.
5. Utilizes stealth technology and integrated design; antennas will be concealed within a flagpole tower to present a more esthetic appearance and the ground buildings will appear to be part of the fire station.
6. Licensee (Triton) will own the tower and be responsible for maintaining and insuring it.
7. Puts unused space to productive use.
8. Fire Department will get desired improvements at Fire Station #3.

The negative aspects of the proposed license agreement are:

1. Encumbers the property for up to 25 years, which could impact the disposition of the property should the City no longer need it for a fire station.
2. Would prevent expansion of the station into the licensed area should the need arise to expand.
3. Flagpole tower will be 100' tall and will extend above tree line.

Approval of the resolution will initiate the process for execution of the license agreement as prescribed in N.C.G.S. sec.160A-272 through the upset bid process provided in N.C.G.S. sec. 160A-269.

Planning & Development staff, Fire Department staff and Information Services staff recommend adoption of the resolution authorizing the City Clerk to advertise for upset bids regarding an offer to license space for a concealed wireless communication facility at 50 Oregon Avenue.

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.

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

**ITEM PULLED FROM THE CONSENT AGENDA FOR DISCUSSION**

**ORDINANCE NO. 3101 - BUDGET AMENDMENT TO ACCEPT GRANT AND LOCAL MATCH FOR PREPARATION OF THE CLINGMAN/RIVERSIDE INDUSTRIAL NATIONAL REGISTER NOMINATION REPORT**

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

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Summary: The consideration of a budget amendment, in the amount of \$3,380, to receive \$2,000 in grant money from the North Carolina State Historic Preservation Office (NCSHPO) and \$1,380, from a local match from outside source, for preparation of the Clingman/ Riverside Industrial National Register Nomination Report.

The Historic Resources Commission of Asheville & Buncombe County requested \$2,000 from NCSHPO to prepare a national register nomination. Staff was successful in obtaining these funds. We received the grant funds for the preparation of a National Register Nomination Report for the Clingman/Riverside Industrial Historic District, which is on the North Carolina Study List. The District encompasses between 20-25 properties on approximately 2.5 acres. It will include only the historic industrial and commercial areas within the larger West End/Clingman Avenue Neighborhood (WECAN) and roughly follow the areas on a Study Area map. The local match of \$1,380 was provided by property owners from the WECAN Community.

Pros:

- The local required match of \$1,380 has been provided by the WECAN community.
- If the nomination is approved for listing on the National Register, no obligations or restrictions will be placed on the property.
- If listed on the National Register privately owned buildings in the district may be eligible for a 20% federal income investment tax credit, which is an incentive for the preservation of the structure.

Cons:

- National Register listing does not provide absolute protection from state or federal actions that may affect the property.

City staff recommends City Council approve the budget amendment to receive grant money from the NCSHPO and the local match from the WECAN sponsors.

Vice-Mayor Mumpower moved for the adoption of Ordinance No. 3101. This motion was seconded by Councilwoman Jones and carried unanimously.

**ORDINANCE BOOK NO. 21 - PAGE**

**PUBLIC HEARING CONTINUANCE REQUEST**

Mayor Worley said that on Monday, April 12, 2004, a letter was received from Mr. Craig Justus, requesting the public hearing to consider adoption of an ordinance ordering demolition of 86 Crayton Road be continued until the next City Council formal meeting. The letter stated that Mr. Justus would be in Raleigh on the public hearing date and his partner has a scheduling conflict. They have been recently asked to look into the merits of the City staff's claims concerning this property.

Vice-Mayor Mumpower moved to continue the public hearing to consider an ordinance ordering demolition of 86 Crayton Road until April 27, 2004. This motion was seconded by Councilwoman Jones and carried unanimously.

**III. PUBLIC HEARINGS:**

**A. PUBLIC HEARING ON THE CITY'S CONSOLIDATED ACTION PLAN FOR 2004-05 ALLOCATING FEDERAL COMMUNITY DEVELOPMENT BLOCK GRANT AND HOME FUNDS**

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**RESOLUTION NO. 04-74 – RESOLUTION ADOPTING THE CITY'S CONSOLIDATED ACTION PLAN FOR 2004-05 ALLOCATING FEDERAL COMMUNITY DEVELOPMENT BLOCK GRANT AND HOME FUNDS**

Mayor Worley opened the public hearing at 5:13 p.m.

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

Community Development Director Charlotte Caplan said that this is the consideration of the City's Consolidated Action Plan for 2004/05, allocating federal Community Development Block Grant (CDBG) and HOME funds. This public hearing was advertised on April 2 and 9, 2004.

The City expects to have available \$1,981,372 in CDBG funds and \$2,038,859 in HOME funds to allocate for housing and community development activities in the fiscal year beginning July 1, 2004. The City's Housing and Community Development Committee and the Asheville Regional Housing Consortium have made recommendations for allocating these funds to 35 projects. She reviewed a summary of the applications received and the funding section of the draft action plan.

If approved, the HOME and CDBG funding will assist 288 affordable housing units Consortium-wide. CDBG funds will also help replace nearly 2/3 mile of undersized water pipes in west Asheville, and provide 250 Asheville residents with employment or business training and over 3,000 residents with other needed services.

Notice of the public hearing and a summary of the draft plan were published on March 28, 2004. A 30-day public comment period is required by federal regulations. The final plan must be submitted to U.S. Dept. of Housing and Urban Development by May 15, 2004.

Advantages:

- Allocates \$4,020,231 in compliance with federal rules and the City's Consolidated Strategic Housing & Community Development Plan
- Reflects the carefully considered recommendations of the City's Housing & Community Development Committee

Disadvantages

- Funding insufficient to meet all requests – some applicants are disappointed.

City staff, the Housing and Community Development Committee and the Asheville Regional Housing Consortium recommend approval of the draft Action Plan.

Mayor Worley closed the public hearing at 5:21 p.m.

Councilman Newman moved to adopt the Consolidated Action Plan. This motion was seconded by Councilwoman Jones and carried unanimously.

**RESOLUTION BOOK NO. 28 – PAGE 177**

**B. PUBLIC HEARING TO CONSIDER ADOPTION OF AN ORDINANCE DIRECTING THE DWELLING LOCATED AT 86 CRAYTON ROAD BE DEMOLISHED**

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This public hearing was continued to April 27, 2004.

**C. PUBLIC HEARING TO CONSIDER REZONING A PORTION OF 812 MERRIMON AVENUE FROM RS-8 RESIDENTIAL SINGLE-FAMILY HIGH DENSITY DISTRICT TO COMMUNITY BUSINESS II DISTRICT**

**ORDINANCE NO. 3102 - ORDINANCE TO REZONE A PORTION OF 812 MERRIMON AVENUE FROM RS-8 RESIDENTIAL SINGLE-FAMILY HIGH DENSITY DISTRICT TO COMMUNITY BUSINESS II DISTRICT**

Mayor Worley opened the public hearing at 5:21 p.m.

Urban Planner Carter Pettibone said that this is the consideration of an ordinance to rezone a portion of 812 Merrimon Avenue from RS-8 Residential Single-Family High Density District to Community Business II District. This public hearing was

advertised on April 2 and 9, 2004.

This portion of property is located in the City limits west of Merrimon Avenue and East of Mt. Vernon Circle. Surrounding land uses and zoning include commercial uses to the north, east, and south zoned Community Business II (CB II) and a residence zoned RS-8 to the west.

The applicant (Gary Houser of Houser Investments) wishes to rezone this portion of the property, which is currently vacant, in order to add it to his already commercially-zoned property to the east, which contains a retail sales business. The purpose of the CB II District is to provide areas for medium to high-density business and service uses serving several residential neighborhoods.

The applicant is swapping a narrow, RS 8-zoned portion of his own property that connects with Mount Vernon Circle for the portion in question with the subject property owner.

Currently, a retail shoe sales business is located on the applicant's property. He would like to add this portion of his neighbor's property and rezone it in order to better access the rear of the property and building. If this portion of property were rezoned, the applicant would be required to use part of this portion to screen his commercial use and vehicular use area from the neighboring residential property.

Advantages (Pros):

- Better vehicular access to the rear of the site and building.
- No additional commercial access onto Mt. Vernon Circle.
- Once properties are swapped, the Houser CB II parcel will no longer have direct access onto a residential street (Mt. Vernon Circle).
- If rezoned and the applicant were to expand the vehicular use area, additional screening or buffering would be required against the neighboring residential property.

Disadvantages (Cons):

- Delivery and support vehicles accessing the rear of the site near residentially zoned property.

In consideration of the above, the adjoining zoning and land uses in the area surrounding the property, and its proximity to Merrimon Avenue, the proposed zoning change appears to be consistent with the intent and purpose of the Unified Development Ordinance.

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Staff recommends approval of the rezoning request. The Planning and Zoning Commission, at its March 3, 2004, meeting, voted unanimously to recommend approval of the rezoning request.

Mayor Worley closed the public hearing at 5:28 p.m.

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

Councilman Davis moved for the adoption of Ordinance No 3102. This motion was seconded by Councilwoman Bellamy and carried unanimously.

**ORDINANCE BOOK NO. 21 - PAGE**

**D. PUBLIC HEARING TO CONSIDER THE INITIAL ZONING OF A .77 ACRE PARCEL ADJOINING PROPERTY AT 31 COLLEGE PLACE TO CENTRAL BUSINESS DISTRICT**

**ORDINANCE NO. 3103 - ORDINANCE TO ZONE A .77 ACRE PARCEL ADJOINING PROPERTY AT 31 COLLEGE PLACE TO CENTRAL BUSINESS DISTRICT**

Mayor Worley opened the public hearing at 5:29 p.m.

Urban Planner Alan Glines said that this is the consideration of an ordinance to rezone a .77 acre parcel adjoining property at 31 College Place to Central Business District. This public hearing was advertised on April 2 and 9, 2004.

The property is located within the City limits in the downtown area. The property was recently acquired from the State of North Carolina by 31 College Place LLC. Surrounding land uses and zoning include highway and right-of-way areas to the north and east which are not zoned. To the west, the property is zoned Central Business District (CBD). To the south, the parcel is at the edge of the CBD area with residential uses, (RS-8) nearby too.

The applicant, Martin Lewis, wishes to zone the property to CBD and to develop uses permitted in this district. The Central business District zoning supports and reinforces the downtown as the urban center of Asheville and western North Carolina and encourages private investment to support this role in the community.

Currently the property is vacant and has been used as NC Department of Transportation right-of-way for I-240. This property totaling .77 acre was recently combined with property already owned by 31 College Place LLC. The combined parcel totals 4.3 acres. The property and any future development will use existing driveways on College Place and College Street for access.

It is an unusual situation to have right-of-way property made available for private development. The Central Business District zoning application is appropriate for this parcel due to its relationship to other CBD zoned property and close proximity to the downtown area. CBD zoning allows for mixed use commercial and residential projects in support of the downtown area as the community center of Asheville and western North Carolina.

PROS: Property that was unavailable is now available for development. The property is well situated with access and infrastructure already in place.

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CONS: The hillside residential area nearby may be impacted from I-240 and possible CBD uses.

The Planning and Zoning Commission, at its March 3, 2004, meeting, voted unanimously to recommend approval. City staff recommends approval of the rezoning request as well.

Mayor Worley closed the public hearing at 5:32 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. 3103. This motion was seconded by Councilwoman Jones and carried unanimously.

#### **ORDINANCE BOOK NO. 21 - PAGE**

#### **E. PUBLIC HEARING TO CONSIDER CONDITIONAL USE ZONING FOR PROPERTY LOCATED AT 15 LYNNDALE AVENUE FROM RM-8 RESIDENTIAL MULTI-FAMILY MEDIUM DENSITY DISTRICT TO INSTITUTIONAL DISTRICT/CONDITIONAL USE, AND ISSUANCE OF A CONDITIONAL USE PERMIT FOR THE CONVERSION OF TEMPORARY USE BUILDINGS FOR PERMANENT USE**

#### **ORDINANCE NO. 3104 - ORDINANCE REZONING PROPERTY LOCATED AT 15 LYNNDALE AVENUE FROM RM-8 RESIDENTIAL MULTI-FAMILY MEDIUM DENSITY DISTRICT TO INSTITUTIONAL DISTRICT/CONDITIONAL USE**

#### **ORDINANCE NO. 3105 - ORDINANCE GRANTING A CONDITIONAL USE PERMIT FOR PROPERTY LOCATED AT 15 LYNNDALE AVENUE**

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

City Attorney Oast reviewed with Council the conditional use district zoning process by stating that this is a two-part process. It requires rezoning, which is a legislative act, and the issuance of a conditional use permit, which is a quasi-judicial site-specific act. Even though the public hearing on those two items will be combined, all the testimony needs to be sworn and two votes will need to be taken. The first vote will be to grant the rezoning to the conditional use district category and the second vote will be to issue the conditional use permit. If Council runs into a situation that it votes to rezone, Council doesn't have to issue the conditional use permit on the same night.

After hearing no questions about the procedure, Mayor Worley opened the public hearing at 5:25 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.

Mayor Worley said that as documentary evidence is submitted, he would be noting the entry of that evidence into the record.

Planning & Development Director Scott Shuford submitted into the record City Exhibit 1 (Affidavit of Publication), City Exhibit 2 (Certification of Mailing of Notice to Property Owners); and City Exhibit 3 (Staff Report).

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Mr. Shuford said that this is the consideration of a request to rezone property located at 15 Lynndale Avenue from RM-8 Residential Multi-Family Medium Density District to Institutional District/Conditional Use and a request to issue a conditional use permit for the conversion of temporary use buildings for permanent use.

The applicant (West Asheville Baptist Church) has requested a rezoning of a total of .52 acres (two lots) of RM-8 property to Institutional (INST-CUZ) to allow for the extended maintenance of three separate temporary use structures as accessory uses to the main church facility. A temporary use permit was issued to the West Asheville Baptist Church in April 2002 to allow the temporary placement of three modular buildings to be used as classrooms while the expansion at the main facility was under construction. The church issued a letter to the City stating the buildings would be removed no later than July 2003. Since the buildings were to remain in place longer than 180 days, the applicant agreed to install landscape buffer as required by the ordinance. Due to the assurance of the temporary nature of the buildings, the Planning Department applied flexible development standards to allow for the reduction of a side setback and waiver of a rear setback that would normally be required for an accessory use to a place of worship in an RM-8 district. Under the current zoning, the use is a 'Use by Right, Subject to Special Requirements' which is not eligible for variance requests. As such, the structures would be non-conforming and could not be approved. Due to the institution's desire to keep the structures unchanged, the only course of action was to pursue a rezoning to an Institutional designation that would reduce the side setback requirement to a conforming level in addition to completing a recombination of the two lots in order to provide for an appropriate rear setback. The Church administration recognizes the temporary nature of the modular structures and wishes to extend the temporary use to a maximum of five years to accommodate the growing needs of their congregation.

The project site is located within the City Limits and is surrounded on two sides by Institutional zoning and uses. Due to the unusual configuration of the two lots combined, the other three sides of the lot are surrounded by residential zoning with single family uses and a non-conforming church parking lot. The two lots were, historically, single family uses with one of the existing homes being reused as an accessory use to the church facility. The other single family home was removed to allow for the placement of the three temporary structures to accommodate the West Asheville Baptist Church during their recent expansion.

The purpose of the RM-8 zoning district is to establish a diverse medium density multifamily and single family district in areas where public infrastructure is sufficient to support such densities. The Institutional zoning district is to reserve land for the development of major educational facilities, medical facilities, and other complementary and supporting uses such as health related developments, office developments and public services. Development standards for uses in this district are established to minimize conflict with adjacent land uses and as such allows for the development of high density multi-family, to serve as a potential buffer between other institutional uses and single family areas.

Pros:

- 1) Accommodates the growing needs of a local Place of Worship until a time when a more suitable alternative can be explored.
- 2) Allows for the continued use of community based functions.
- 3) Limited disturbance to the site is required.
- 4) Some site improvements will be installed.

Cons:

- 1) Loss of residential potential.
- 2) Project can be perceived as an encroachment into the neighborhood and could open the door for future encroachments.



- 3) Impact of temporary structures on adjacent property values is uncertain.
- 4) Project will require the recombination of two lots resulting in an undesirable configuration.

At their January 21, 2003, meeting, the City of Asheville Technical Review Committee (TRC) reviewed the Conditional Use Rezoning request and made a positive recommendation that the project be forwarded to the Planning and Zoning Commission, stipulating that the conditions outlined in the report be addressed prior to final review by the TRC.

The Planning and Zoning Commission reviewed the proposed plan on March 3, 2004, and after some discussion, tabled the hearing until the mid-month meeting. On March 18, 2004, a quorum of Planning and Zoning Commission members (4-0) voted to approve the Conditional Use Rezoning request to extend the maintenance of the temporary use structures for a maximum of five years.

City Council must take formal action as set forth in section 7-9-9(c)(4) of the Unified Development Ordinance (UDO), and must find that all seven standards for approval of conditional uses are met based on the evidence and testimony received at the public hearing or otherwise appearing in the record of this case (UDO 7-16-2(c)). Staff's review indicates that all seven standards are met as proposed in the site plan.

- 1) That the proposed use or development of the land will not materially endanger the public health or safety.  
***The proposed project has been reviewed by City staff and appears to meet all public health and safety related requirements. The project must meet the technical standards set forth in the UDO, the Standards and Specifications Manual, the North Carolina Building Code and other applicable laws and standards that protect the public health and safety.***
- 2) That the proposed use or development of the land is reasonably compatible with significant natural and topographic features on the site and within the immediate vicinity of the site given the proposed site design and any mitigation techniques or measures proposed by the applicant.  
***The project area is relatively flat and the proposed project will not require any additional grading or other ground disturbing activity other than minor site improvements.***
- 3) That the proposed use or development of the land will not substantially injure the value of adjoining or abutting property.  
***It is fairly well established that mobile/modular structures do not appreciate over time and can have a negative impact on adjacent property values. However, the existing structures are intended to be temporary in nature and it is difficult to determine whether these temporary structures would have the same impact to property values as permanent structures. Despite the temporary nature of the proposed use, concern over a potential negative impact to adjacent property values initiated the landscape buffer requirement in the original application. These buffers will be expanded and further enhanced to meet minimum buffer requirements per the UDO and staff feels that any concern over the impact on adjacent properties can be mitigated through the landscape and potential improvements to the appearance of the buildings.***
- 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 modular structures are well in scale with the library and larger church use. Similarly, the temporary structures are fairly compatible with the existing parking lot to the south of the site. In respect to the adjacent single family uses, height, bulk, or density do not appear to be exceeded but issues with harmony, character, and coverage could be considered. As mentioned earlier in the report, the appearance/character of the structures is to be mitigated through landscaping and other site improvements along with potential improvements to the buildings. Staff feels that these improvements along with the temporary nature of the structures addresses any concern over these issues.***

- 5) That the proposed use or development of the land will generally conform to the comprehensive plan, smart growth policies, sustainable economic development strategic plan and other official plans adopted by the City.  
***The Asheville City Development Plan 2025 does not appear to specifically address Places of Worship or other non-profit uses. However, there is one minor reference under the Land Use and Transportation section regarding W. Asheville and Haywood Rd. that reads, "Schools, Churches, and parks complement the retail and service uses located in close proximity to the residential uses. . ." This site is located on Lynndale Avenue. less than one***

**block south of Haywood Rd, in proximity to the local library, church, and residential areas.**

- 6) That the proposed use is appropriately located with respect to transportation facilities, water supply, fire and police protection, waste disposal, and similar facilities.  
***This proposed development is within close proximity to transportation facilities and other utilities appear adequate. The project area is located near major road facilities, interstate connections and other service centers***
- 7) That the proposed use will not cause undue traffic congestion or create a traffic hazard.  
***The proposed project will share the existing parking area with the larger Church facility located across the Lynndale Avenue, resulting in no real change to off-street parking or traffic flow. In addition, pedestrian connections will have to be improved and will tie into existing, clearly delineated crosswalks.***

City staff, along with the Planning and Zoning Commission, recommends approval of the Conditional Use Rezoning request subject to the conditions of TRC being met and also with the condition that the temporary structures and use cease after a maximum of five years.

Mr. Marshall Roberts, member of the Property and Grounds Committee of West Asheville Baptist Church, spoke in support of the project and felt that through this project they can add community equity because not only does the Church use the modulars, but community organizations and clubs use them as well.

There being no request from the applicant for rebuttal, Mayor Worley closed the public hearing at 5:40 p.m.

Vice-Mayor Mumpower moved to adopt Ordinance No. 3104 to conditionally rezone property Located at 15 Lynndale Avenue from RM-8 Residential Multi-Family Medium Density District to Institutional District/Conditional Use. This motion was seconded by Councilman Newman and carried unanimously.

#### **ORDINANCE BOOK NO. 21 - PAGE**

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After an inquiry from Councilwoman Bellamy regarding landscaping, there was a brief discussion about landscaping around the modulars that face the street side. Mr. Shuford suggested that if the conditional use permit is approved, that a condition be attached directing City staff to work with the West Asheville Baptist Church using the alternative compliance procedures to move some landscaping around to the street side.

Councilman Davis was concerned with the issuance of the conditional use permit as the modulars are a real intrusion into the residential neighborhood. He was pleased to see the Church growing, but felt that five years is too long for a temporary use and for something that is out of context with the neighborhood, even with the additional landscaping. Mr. Shuford responded that the Church is planning to build a permanent building as soon as they can raise funds.

Upon inquiry of Councilman Davis, Mr. Roberts said that the modulars will all be for adult education space.

Vice-Mayor Mumpower moved to adopt Ordinance No. 3105 to issue a conditional use permit for property located at 15 Lynndale Avenue, subject to (1) the conditions of TRC being met; (2) that the temporary structures and use cease after a maximum of five years; and (3) City staff be directed to work with the West Asheville Baptist Church using the alternative compliance procedures to move some landscaping around to the street side. This motion was seconded by Councilwoman Bellamy.

Councilman Newman moved to amend the original motion to reflect that the temporary structures and use cease after a maximum of three years (not five years). This motion was seconded by Councilman Davis and carried on a 5-1 vote, with Vice-Mayor Mumpower voting "no."

Vice-Mayor Mumpower voted against the amended motion because the Planning & Zoning Commission, City staff and the neighborhood didn't seem to think five years was a significant concern.

The original amended motion, to issue a conditional use permit for property located at 15 Lynndale Avenue, subject to (1) the conditions of TRC being met; (2) that the temporary structures and use cease after a maximum of three years; and (3) City staff be directed to work with the West Asheville Baptist Church using the alternative compliance procedures to move some landscaping around to the street side, carried unanimously.

#### **ORDINANCE BOOK NO. 21 - PAGE**

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

##### **A. RESOLUTION NO. 04-75 -RESOLUTION AMENDING THE ANNEXATION SERVICES PLAN**

Urban Planner Carter Pettibone said that this is the consideration of a resolution amending the Annexation Services Plan for the 2004 Round Two Annexation Areas to reflect the City's intention of taking over a portion of another private street for public maintenance and correct a typographical error.

In adopting an annexation ordinance, the City has the authority to annex all or some of an area proposed for annexation, as long as that area qualifies for annexation. The City may also amend the services plan, as long as the requirements for providing service to the annexation areas continue to be met.

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At the public hearing on March 23, 2004, City staff recommended that the City take over for maintenance the portion of Honey Drive that is within the Honey Drive Annexation Area. The Services Plan, as it is currently written, does not propose any street within the Honey Drive Annexation area to be taken over for public maintenance. The effects of this change are that it raises slightly the amount of projected annual Powell Bill revenue for the Honey Drive Area, total Powell Bill Revenue, and total revenues from the annexation areas. Additional costs are not expected since no street paving is required for the 0.24-mile segment and new street signs were already figured into the capital costs for the area. An amendment is also required for a typographical error on page 20 of the Services Plan.

These technical amendments allow the City to provide better municipal service for the annexation area and incorporate improved information for projected revenues into the Services Plan. The change does not increase the size of area under consideration nor add any additional property to the annexation area.

As long as the Annexation Services Plan does not show the annexation areas as qualifying under any additional statutory tests, no additional public hearing is required for this amendment to the Plan.

City staff recommends City Council adopt a resolution amending the Annexation Services Plan to include taking over the portion of Honey Drive within the Honey Drive Annexation Area for public maintenance and to correct the minor typographical error.

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

Councilwoman Jones moved for the adoption of Resolution No. 04-75. This motion was seconded by Vice-Mayor Mumpower and carried unanimously.

#### **RESOLUTION BOOK NO. 28 – PAGE 178**

##### **B. ORDINANCE NO. 3106- ORDINANCE EXTENDING THE CORPORATE LIMITS OF THE CITY OF ASHEVILLE TO INCLUDE THE HERITAGE BUSINESS PARK AREA**

Mayor Worley said that the public hearing on this matter was held on March 23, 2004.

Urban Planner II Carter Pettibone said that this is the consideration of adopting an ordinance to extend the corporate limits of the City of Asheville to the Heritage Business Park area.

On January 13, 2004, City Council adopted Resolutions of Intent beginning the annexation process for the following six areas: 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 for all of these areas was approved on January 27, 2004, and the Plan was amended on April 13, 2004. A public information meeting was held on March 4, 2004. Public hearings on each of annexations were held by City Council on March 23, 2004. Adoption of the annexation ordinances is the final step in the annexation process.

Mr. Pettibone said that a metes and bounds description is attached to the ordinance. The annexation area does meet the requirements of General Statutes. It is the intent of the City to extend City services outlined in the Annexation Services Plan. On the effective date of the annexation, the City will have funds in sufficient amount to finance all capital expenditures. The effective date of this annexation is June 30, 2004.

Mr. Pettibone explained Council what is located on this site and what is located in the surrounding area.

Staff recommends adoption of annexation ordinance for the Heritage Business Park area, with an effective date of June 30, 2004.

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

Councilman Newman moved for the adoption of Ordinance No. 3106. This motion was seconded by Councilwoman Bellamy and carried on a 5-1 vote with Vice-Mayor Mumpower voting "no."

#### **ORDINANCE BOOK NO. 21 – PAGE**

#### **C. ORDINANCE EXTENDING THE CORPORATE LIMITS OF THE CITY OF ASHEVILLE TO INCLUDE THE HONEY DRIVE AREA**

Mayor Worley said that the public hearing on this matter was held on March 23, 2004.

Urban Planner II Carter Pettibone said that this is the consideration of adopting an ordinance to extend the corporate limits of the City of Asheville to the Honey Drive area.

On January 13, 2004, City Council adopted Resolutions of Intent beginning the annexation process for the following six areas: 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 for all of these areas was approved on January 27, 2004, and the Plan was amended on April 13, 2004. A public information meeting was held on March 4, 2004. Public hearings on each of annexations were held by City Council on March 23, 2004. Adoption of the annexation ordinances is the final step in the annexation process.

At the public hearing on March 23, 2004, City staff recommended that the City take over for maintenance the portion of Honey Drive that is within the Honey Drive Annexation Area. The Services Plan has been amended to reflect that change.

Mr. Pettibone said that a metes and bounds description is attached to the ordinance. The annexation area does meet the requirements of General Statutes. It is the intent of the City to extend City services outlined in the Annexation Services Plan. On the effective date of the annexation, the City will have funds in sufficient amount to finance all capital expenditures. The effective date of this annexation is June 30, 2004.

Mr. Pettibone explained Council what is located on this site and what is located in the surrounding area.

Staff recommends adoption of annexation ordinance for the Honey Drive area, with an effective date of June 30, 2004.

Upon inquiry of Councilwoman Jones, Mr. Pettibone said that there are three vacant parcels in this development, however, it appears that only one parcel is developable.

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

Mayor Worley moved for the adoption of an ordinance to extend the corporate limits of the City of Asheville to the Honey Drive area. This motion was seconded by Councilman Davis and failed on a 3-3 vote, with Mayor Worley, Councilwoman Bellamy and Councilman Davis voting "yes" and Vice-Mayor Mumpower, Councilwoman Jones and Councilman Newman voting "no."

City Attorney Oast said that the Annexation Services Plan will need to be amended to reflect the deletion of the Honey Drive area.

#### **D. ORDINANCE NO. 3107 - ORDINANCE EXTENDING THE CORPORATE LIMITS OF THE CITY OF ASHEVILLE TO INCLUDE THE ENKA PARK AREA**

Mayor Worley said that the public hearing on this matter was held on March 23, 2004.

Urban Planner II Carter Pettibone said that this is the consideration of adopting an ordinance to extend the corporate limits of the City of Asheville to the Enka Park area.

On January 13, 2004, City Council adopted Resolutions of Intent beginning the annexation process for the following six areas: 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 for all of these areas was approved on January 27, 2004, and the Plan was amended on April 13, 2004. A public information meeting was held on March 4, 2004. Public hearings on each of annexations were held by City Council on March 23, 2004. Adoption of the annexation ordinances is the final step in the annexation process.

Mr. Pettibone said that a metes and bounds description is attached to the ordinance. The annexation area does meet the requirements of General Statutes. It is the intent of the City to extend City services outlined in the Annexation Services Plan. On the effective date of the annexation, the City will have funds in sufficient amount to finance all capital expenditures. The effective date of this annexation is June 30, 2004.

Mr. Pettibone explained Council what is located on this site and what is located in the surrounding area.

Staff recommends adoption of annexation ordinance for the Enka Park area, with an effective date of June 30, 2004.

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

Councilwoman Jones moved for the adoption of Ordinance No. 3107. This motion was seconded by Councilman Newman and carried on a 5-1 vote with Vice-Mayor Mumpower voting "no."

#### **ORDINANCE BOOK NO. 21 – PAGE**

#### **E. ORDINANCE NO. 3108 - ORDINANCE EXTENDING THE CORPORATE LIMITS OF THE CITY OF ASHEVILLE TO INCLUDE THE ASHWOOD AREA**

Mayor Worley said that the public hearing on this matter was held on March 23, 2004.

Urban Planner II Carter Pettibone said that this is the consideration of adopting an ordinance to extend the corporate limits of the City of Asheville to the Ashwood area.

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On January 13, 2004, City Council adopted Resolutions of Intent beginning the annexation process for the following six areas: 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 for all of these areas was approved on January 27, 2004, and the Plan was amended on April 13, 2004. A public information meeting was held on March 4, 2004. Public hearings on each of annexations were held by City Council on March 23, 2004. Adoption of the annexation ordinances is the final step in the annexation process.

Mr. Pettibone said that a metes and bounds description is attached to the ordinance. The annexation area does meet the requirements of General Statutes. It is the intent of the City to extend City services outlined in the Annexation Services Plan. On the effective date of the annexation, the City will have funds in sufficient amount to finance all capital expenditures. The effective date of this annexation is June 30, 2004.

Mr. Pettibone explained Council what is located on this site and what is located in the surrounding area.

Staff recommends adoption of annexation ordinance for the Ashwood area, with an effective date of June 30, 2004.

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

At 6:07 p.m., Councilman Dunn arrived at the meeting.

Councilwoman Jones moved for the adoption of Ordinance No. 3108. This motion was seconded by Councilman Davis and carried on a 5-2 vote, with Vice-Mayor Mumpower and Councilman Dunn voting "no."

**ORDINANCE BOOK NO. 21 – PAGE**

**F. ORDINANCE NO. 3109 - ORDINANCE EXTENDING THE CORPORATE LIMITS OF THE CITY OF ASHEVILLE TO INCLUDE THE HEATHBROOK AREA**

Mayor Worley said that the public hearing on this matter was held on March 23, 2004.

Urban Planner II Carter Pettibone said that this is the consideration of adopting an ordinance to extend the corporate limits of the City of Asheville to the Heathbrook area.

On January 13, 2004, City Council adopted Resolutions of Intent beginning the annexation process for the following six areas: 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 for all of these areas was approved on January 27, 2004, and the Plan was amended on April 13, 2004. A public information meeting was held on March 4, 2004. Public hearings on each of annexations were held by City Council on March 23, 2004. Adoption of the annexation ordinances is the final step in the annexation process.

Mr. Pettibone said that a metes and bounds description is attached to the ordinance. The annexation area does meet the requirements of General Statutes. It is the intent of the City to extend City services outlined in the Annexation Services Plan. On the effective date of the annexation, the City will have funds in sufficient amount to finance all capital expenditures. The effective date of this annexation is June 30, 2004.

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Mr. Pettibone explained Council what is located on this site and what is located in the surrounding area.

Staff recommends adoption of annexation ordinance for the Heathbrook area, with an effective date of June 30, 2004.

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

Vice-Mayor Mumpower said there are good arguments in support of annexation and he recognizes the dilemma that we face on Council in that respect. The largest argument being the issue of fairness in that people who live near the City should help pay for the City. However, he will vote against the annexations largely on the basis of divisiveness. Forced annexation runs against the founding principles of the country and it creates a lot of ill will and a lot of repercussions that he was not sure serves the City well.

Councilman Newman moved for the adoption of Ordinance No. 3109. This motion was seconded by Councilwoman Jones and carried on a 5-2 vote with Vice-Mayor Mumpower and Councilman Dunn voting "no."

**ORDINANCE BOOK NO. 21 – PAGE**

**G. ORDINANCE NO. 3110 - ORDINANCE EXTENDING THE CORPORATE LIMITS OF THE CITY OF ASHEVILLE TO INCLUDE THE SWEETEN CREEK ROAD AREA**

Mayor Worley said that the public hearing on this matter was held on March 23, 2004.

Urban Planner II Carter Pettibone said that this is the consideration of adopting an ordinance to extend the corporate limits of the City of Asheville to the Sweeten Creek Road area.

On January 13, 2004, City Council adopted Resolutions of Intent beginning the annexation process for the following six areas: 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 for all of these areas was approved on January 27, 2004, and the Plan was amended on April 13, 2004. A public information meeting was held on March 4, 2004. Public hearings on each of annexations were held by City Council on March 23, 2004. Adoption of the annexation ordinances is the final step in the annexation process.

Mr. Pettibone said that a metes and bounds description is attached to the ordinance. The annexation area does meet the requirements of General Statutes. It is the intent of the City to extend City services outlined in the Annexation Services Plan. On the effective date of the annexation, the City will have funds in sufficient amount to finance all capital expenditures. The effective date of this annexation is June 30, 2004.

Mr. Pettibone explained Council what is located on this site and what is located in the surrounding area.

Staff recommends adoption of annexation ordinance for the Sweeten Creek Road area, with an effective date of June 30, 2004.

Councilman Dunn was concerned that the Sweeten Creek Road area only meets 1 out of 4 development tests. Planning & Development Director Scott Shuford explained that it's possible for an annexation to meet 3 out of the 4 development tests and another annexation have a strong

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qualification under one single test. It is a strong possibility that the single test annexation would be more likely to withstand a challenge. He explained the annexation laws were set up to provide for 4 different ways (population density, subdivision, development and non-residential urban use) to qualify for annexation and if the area meets one test, that is sufficient.

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

Councilwoman Jones moved for the adoption of Ordinance No. 3110. This motion was seconded by Councilman Davis.

Councilman Newman said felt that annexation is an issue of fairness in how we pay for the infrastructure in our community and the issue of community planning in areas that are urbanizing. State law says that areas that become urban should belong to the cities that they are associated with and that makes good sense from a planning standpoint. The families and businesses that are inside the City limits now pay almost twice what people who live outside the City limits pay in taxes for our infrastructure, even though Asheville is the economic, cultural and commercial center of western North Carolina. The infrastructure that Asheville provides is critical to the economy of the larger area. The economic opportunities that we have in our area would not be possible without the infrastructure that we create in the City. The need to invest more in infrastructure in Asheville is beyond debate. We have huge infrastructure needs in Asheville and it would be irresponsible for us to not invest more in that infrastructure. It's not fair for us to have to further raise taxes on the families and businesses who are already in the City of Asheville. Our only other strategy is to pursue annexation policies so that some of the areas that have become truly urban can help pay for that infrastructure that we need to invest in in Asheville. We also need to create new revenue sources that take advantage of the fact that Asheville is the economic center of western North Carolina and a major tourist destination. Unfortunately for this Council, the state legislature has to approve giving this body the authority to use some of those other revenue options that would allow tourists and visitors and people who live outside the City to help pay for our infrastructure. We are trying to make a case for those other revenue options which will help us pay for infrastructure, without necessarily having to pursue annexation as our only tool that is available for us. Until we get that tool, annexation is the only strategy that we have to invest in our infrastructure, other than raising taxes further on the citizens and businesses in Asheville, which is unacceptable. It is my hope that we can work with the County Commissioners and our state legislators to develop some other options that will give us more funding to invest in infrastructure and perhaps allow us to not have to pursue such an aggressive annexation policy in the future.

Councilman Dunn agrees that we must work with our state legislators to get some other revenue options. He doesn't think the City has enough police officers and the street maintenance schedule is not adequate. Until the citizens of Asheville have the basic City services he will not support annexation.

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

Councilwoman Bellamy did not support this annexation because she felt the City could not accommodate some of the needs of the residents in this area, e.g. trash pick-up.

**ORDINANCE BOOK NO. 21 – PAGE**

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**H. ORDINANCE NO. 3100 – ORDINANCE DENYING THE 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**

Mayor Worley said that the public hearing and adoption of this ordinance denying the conditional use permit (CUP) was held on March 23, 2004. At the City Attorney's request, this ordinance is being brought back for approval of the wording of the order only.

City Attorney Oast said that this is the consideration of the form of the ordinance denying the CUP for Foxwood Apartments on Swannanoa River Road.

At Council's March 23, 2004, meeting, a public hearing was held to consider whether to issue a conditional use permit for a 100 unit apartment complex on Swannanoa River Road. Council voted to deny the permit.

A conditional use proposal must satisfy all 7 standards listed in Sec. 7-16-2(d), together with any standards specific to the use, in order for a CUP to issue. Failure to meet any one of the criteria requires that the CUP be denied. The order denies the CUP on the grounds that the project will materially endanger the public safety (standard #1), and that it will be incompatible with natural topographic features on the site (standard #2). These were the standards that Council based its decision on.

If Council is satisfied with the order denying the CUP, then adoption of the ordinance is recommended.

Councilman Davis moved for the adoption of Ordinance No. 3100. This motion was seconded by Councilwoman Jones and carried on a 5-2 vote, with Vice-Mayor Mumpower and Mayor Worley voting "no."

**ORDINANCE BOOK NO. 21 – PAGE**

**V. NEW BUSINESS:**

**A. ORDINANCE NO. 3111 - BUDGET AMENDMENT TO RECOGNIZE RECEIPT OF A SECTION 108 GUARANTEED LOAN AND AN ECONOMIC DEVELOPMENT INCENTIVE GRANT FROM THE U.S. DEPT. OF HOUSING AND URBAN DEVELOPMENT AND EXPENDITURE OF THE PROCEEDS ON THE REDEVELOPMENT OF SOUTH PACK SQUARE**

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

The developer for the Eagle-Market Streets Development Corporation (EMSDC) project has submitted a letter that provides responses to a number of the concerns raised by City Council in its prior consideration and denial of the budget amendment. The budget amendment would accept and allocate \$800,000 of U.S. Dept. of Housing & Urban Development (HUD) Section 108 loan funds and \$340,000 of Economic Development Incentive (EDI) grant monies to an EMSDC project that would create over 8,000 square feet of additional retail and office space and 14 residential units.

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Since Council's denial of the budget amendment that would have allocated federal monies to the previous project, four important things have happened. First, there has been a visioning session held involving a large number of people interested in the redevelopment of South Pack Square. This session resulted in the identification of a number of common issues and concerns, including:

- Greater affordability of residential, retail and office rents
- Preservation of the architectural character of The Block
- The need to keep the federal dollars invested in South Pack Square
- A desire for and commitment to greater inclusion of the various interests of the community in the decision-making process
- The need for timely redevelopment of The Block

Second, to address issues concerning proper oversight of public funds invested in the project, EMSDC has consented to its removal from direct participation in the project. EMSDC will still own the property, receive appropriate lease payments from the developer, and have an option to purchase the improvements to the property at a price that cash-flows any time between five and



seven years after completion of the project. The developer will make a special effort to install restaurant equipment to help accommodate the relocation of the Ebony Grill to the site; this expense, along with the rent reductions described below, will increase the buy-back requirements for EMSDC but there will still be a positive cash flow, making buy-back feasible.

Third, the developer has committed to working with the City to remove the fence; the City will temporarily sublease the parking lot that will contain the new infill building and open it to public parking. This will allow the City to assume liability for the property while it is used for public parking. If the project moves forward, the developer will need to do some final environmental testing and does not want to have the property tied up with parking which would be difficult to work around. It is anticipated that within ten days the fence will be removed until actual construction activities start on the site, which is anticipated to be approximately 60 days.

Fourth, the developer has obtained additional financing through the federal New Markets Tax Credit program and has been able to make the following significant reductions in rents under its pro-forma.

- **Residential** – 20% of the residential units will be rented at 75% (\$0.727 per square foot per month) of market rates. The remainder will be rented at market rates (\$0.975 per square foot per month); this market rate will still be affordable to service workers, City employees, and other people that make up our local workforce. This is a greatly underserved group in our downtown housing market.
- **Retail/Office** – Market rates for retail and office space in this area of downtown are \$12.50 per square foot per year. The developer will rent 80% of his retail space and 67% of his office space at 88% of market rates (\$11.00 per square foot per year) and, additionally, he will rent the remaining 20% of retail space and 33% of office space at 64% of market rates (\$8.00 per square foot per year).

Staff finds that the proposed revised project will be fully consistent with the South Pack Square Redevelopment Plan. In addition, the project appears to be consistent with all applicable financial review criteria necessary for the City to carry out its responsibility in monitoring the allocation of federal funds and in securing the consequent City financial interest in the project.

Pros:

- This project provides significantly greater rent affordability compared with the prior project that Council failed to fund; in particular, the \$8 psf commercial/retail rent will be accessible for the type of neighborhood businesses that formerly flourished on The Block

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and the \$0.727 psf residential rents are very affordable to singles or couples below 80% of AMI.

- Concerns about EMSDC oversight have been addressed.
- It appears that this project is more consistent with the community vision for South Pack Square redevelopment.
- A major redevelopment project for South Pack Square will be funded.

Con:

- The effort to accommodate the return of the Ebony Grill and the lower rents will result in a higher buy-back cost for EMSDC.

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

The following individuals spoke against City Council taking action at this meeting for several reasons, some being, but are not limited to: following Council's decision on February 24, 2004, public notice was given that Council would next take up this issue at the April 20 worksession; the April 20, 2004, worksession date was repeated by City representatives at subsequent community meetings and broadly distributed by local media; no public notice has been given of the tonight's hearing, only a press release that was printed in the paper on Good Friday; the South Pack Square Association, as directed, has met and formed a resolution on this project and they request the opportunity to present their work to Council at the April 20 worksession; and hearing this matter tonight will compromise the process which Council initiated: the South Pack Square Association has only been given a few days to look over the new proposal and they have several questions; what happened to the inclusive process City Council wanted to achieve; and who will be the owner of the improvements in 2009:

Mr. Gene Ellison  
Mr. Jesse Plaster  
Mr. Fred English  
Ms. Amy Plaster

Mr. Jesse Ray  
Mr. Walter Plaue

Mayor Worley responded to Mr. Ellison's comment about the February 24, 2004, meeting. He explained that it was Council's intent to put a general discussion of where do we go from here having turned that project down. This is not the same thing. This is a revamping of the proposal which has some critical time elements to it, and which necessitates it being on the agenda tonight. That is the reason why it is different from what we talked about and intended to have on the worksession agenda for April 20, 2004.

Upon inquiry of Mayor Worley regarding ownership of the improvements in 2009, Mr. David Rogers, developer, explained that they do not want to be the long-term owners of the property. In our 7-year lease, the tax credit investor has to own the property for at least five years to give the best change for EMSDC to be able to buy the improvements back. During that time period, EMSDC will have a capital campaign to enable them to buy the improvements back within 5-7 years. If EMSDC does not buy the property back, there is a provision in the lease that extends it to 99 years so we can find another buyer for the property.

Community Development Director Charlotte Caplan said that EMSDC will continue to own the freehold and have the option to buy back the improvements after 5-7 years. However, during the development phase, that will be handled by the highly-capable developer in the form of

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historic acquisitions and by the Enterprise Real Estate Services. EMSDC realized they needed that additional expertise and City staff supports them in that decision.

Mr. Rogers explained the New Market Tax Credits Program, which was started by the federal government in 2002. He explained that the reason why they did not discuss the New Market tax credits for the first proposal is because the EMSDC project (with the Mt. Zion Church project) did not qualify for those tax credits. Two weeks ago he was asked by Mt. Zion Church to talk about moving ahead with just their project without the EMSDC project. In that meeting they explained to him what they wanted to do differently on their site. Once they told him that, their project immediately qualified for the New Market tax credits. With the Mt. Zion project qualifying for the tax credits, the EMSDC project would qualify as well. He then contacted the City and said there has been a change in what financing is available due to the Church's change in their project. They have been able to reduce a 7.5% loan down to a 4.25% loan, fixed rate for 7 years. He said that they are proceeding with the project on the Mt. Zion Church site regardless of what happens with the EMSDC project.

Mr. Rogers then responded to various questions/comments from Council regarding the role of the EMSDC in this project and how they anticipate the buy-back in 5-7 years.

Mr. Rogers explained how the community can participate in the jobs, training and minority contracting. He said they have already been taking applications from general contractors. In the advertisement they require the contractor to hold job fairs and take pricing from minority sub-contractors. They will abide by all U.S. Housing & Urban Development requirements.

Upon inquiry of Councilwoman Bellamy, Mr. James Geter, President of the EMSDC Board, said that the Board has agreed there needs to be additional representation on the Board. Their Vice-Chair is leading that effort in putting together an advisory council. The Board has also determined that there needs to be additional community seats available. They have passed out applications throughout the community at least three times searching for new Board members, but have received none back to date. The YMI Cultural Center will have a seat on the Board.

When Councilwoman Bellamy asked about the EMSDC's plan to buy back the improvements, Mr. Jeter said that they want to make sure that these properties stay in the community and they don't lose control of the properties. He said that the Board will begin capital campaigns soon after the development starts and develop a plan to raise a certain amount of money each year so that when the 5-7 year period comes they will be ready to buy the improvements back. They hope they don't have to borrow any money to buy the improvements back, but if they do, they will be in a better position.

Upon inquiry of Councilwoman Bellamy, City Attorney Oast said that the City has a contract with the EMSDC, as they are the redevelopment agent for the South Pack Square area. The contract puts certain responsibilities on them to facilitate the development of the area in accordance with the South Pack Square Plan. He felt there are some provisions in the contract that are required by federal law that the City can't amend, but with respect to the things we can change, certainly we can do that.

Councilwoman Bellamy asked how the EMSDC is different from the City's relationship with the Housing Authority, Metropolitan Sewerage District Board, Alcoholic Beverage Control Board, Regional Water Authority, etc. City Attorney Oast said

that the EMSDC is not a governmental entity but a corporation formed under the N. C. Corporation Laws. There is some misconception that they are an arm of the City, but they are not. They are only the City's redevelopment agent, not a redevelopment commission.

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

Vice-Mayor Mumpower moved to adopt Ordinance No. 3111. This motion was seconded by Councilwoman Jones.

Vice-Mayor Mumpower agreed with people who feel the Council has made an unfortunate step away from normal procedures to be making such a major step forward. He also agrees that Council is side-stepping portions of the South Pack Square Redevelopment Plan in that we are marginalizing EMSDC without any clear reform plan and he doesn't understand the logic in that. With that said, the African American community's historical connection to The Block is a key component of the development plan and that is going to be much more clearly preserved by this effort than if we let traditional piecemeal development occur there. EMSDC, as representatives of the African American community, will be in a position to guide things in that area and make use of the revenues that will have a much greater impact than if we let it just occur traditionally. There are cons to this process but the pros seem to clearly outweigh the cons.

Councilman Dunn was concerned about the process. The uncertainty of the availability of tax credits is unknown by the developer and the City. He doesn't like to feel pressured into voting because we are spending taxpayers' money. However, The Block will be developed anyway and voting in favor will help create that re-birth. In addition, he feels that every board Council works with should be reviewed in depth.

Councilwoman Jones studied very hard the issues which concerned Council on the earlier proposal and feels they have been addressed - there are commercial rents that are affordable, Ebony Grill is included in the plans, affordable housing, separate the Church project from EMSDC, and flush out the discussions with the EMSDC. The timing is not great, but it is not unfair. Councilwoman Bellamy worked very hard to hear a lot of different voices and made sure that their words have been heard. She asked the developer take initiative to have regular contact with the property owners and apprise them of anything that will disrupt their business and work in concert with that. She also asked City staff to look at the Urban Trail's role in that area. Also, she pointed out that this Council is committed to finding other dollars through a lobbyist to bring other amenities to South Pack Square.

Councilman Davis said that he supported the earlier project and feels that it is now in a better form. However, he felt Council should give all groups concerned the opportunity to report back to Council and didn't feel one more week to the April 20 worksession was asking too much.

Councilwoman Bellamy would like for Council to evaluate our relationship and partnership with the EMSDC. There may be a possibility that the City can make appointments to that Board. She wants the City to pursue what we can do to ensure that the level of participation that we really want, we can achieve. We need to make sure we have input into seeing the changes in the Board organization going forward.

Councilman Newman said that the Housing & Community Development Committee allocated \$50,000 in Community Development Block Grant (CDBG) funds for overall redevelopment for South Pack Square without indicating exactly how that would be utilized or exactly what agency would receive those funds. Even though the project was not approved in February, the Council maintained its commitment to the revitalization of this area. That does provide us with an opportunity to remain in dialogue with all of the different people who are interested in South Pack Square and how best to use those funds to move the overall redevelopment effort forward and to remain in dialogue with EMSDC about what form of

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partnership the City would like to have with that organization. He also thanked Councilwoman Bellamy and Councilwoman Jones on their hard efforts to help move this forward.

Councilwoman Bellamy suggested a portion of the \$50,000 of CDBG funds be allocated to the YMI Cultural Center for some incubator-type small businesses and/or a marketing plan being created to get more African-American businesses on The Block. She commended Mt. Zion Church for stepping up in their willingness to move ahead because they saw a need in our community and made holistic changes to their plan. She appreciated the developer working with the Ebony Bar and Grill, constructing affordable apartments, lowering office and commercial spaces, working with Mt. Zion Church to create a new Master Plan, and finding financing for the project. She also thanked the local bank for investing in this project. She hoped other issues

identified will be addressed as well, e.g., parking, ventilation and electrical system of surrounding property owners, etc. She hoped that more people would be included in the process and asked the developer to openly communicate with the property owners. She also felt that the 1996 South Pack Square Redevelopment Plan needed to be revised.

Mayor Worley felt that City Council has followed their processes in that the item was placed on the agenda in the normal way with the normal notice. The City even went to the unusual step to issue a press release to try to be sure that the publicity got out there. Since February, there have been many public meetings in which Councilwoman Bellamy and Councilwoman Jones worked hard to make this a better project and he thanked them for their efforts. He said this issue has been before Council for over six months and since there have been changes in the companion project, which allowed for the change in some of the financing options, we have an opportunity to make a decision at this point.

The motion made by Vice-Mayor Mumpower and seconded by Councilwoman Jones carried on a 6-1 vote, with Councilman Davis voting "no."

## **ORDINANCE BOOK NO. 21 - PAGE**

At 8:05 p.m., Mayor Worley announced a short break.

### **ADDITION TO THE NEW BUSINESS AGENDA**

#### **B. RESOLUTION NO. 04-76 – RESOLUTION AMENDING THE ANNEXATION SERVICES PLAN FOR 2004 ROUND TWO ANNEXATIONS**

City Attorney Oast said the amended annexation services plan adopted earlier in the meeting will require another amendment to reflect the Honey Drive area was not annexed. The Annexation Services Plan, as amended, will continue to meet the requirements of N.C.G.S. 160A-47 with respect to all of the other 2004 annexation areas.

City Attorney Oast then read the following resolution: WHEREAS, pursuant to N.C.G.S. 160A-49(e), the City has the authority to amend the report required by N.C.G.S. 160A-47; and WHEREAS, the Asheville City Council has, pursuant to N.C.G.S. 160A-47, approved the Annexation Services Plan for the annexation in 2004 of the areas known as Heritage Business Park Area, Honey Drive Area, Enka Park Area, Ashwood Area, Heathbrook Area, and Sweeten Creek Road Area (Resolution Numbers 04-28, 04-29, 04-30, 04-31, 04-32, and 04-33; adopted January 13, 2004); and amended the Plan by resolution adopted April 13, 2004; and WHEREAS, City Council decided not to annex the Honey Drive Area and the Annexation Services Plan as adopted and amended, is in further need of revisions to reflect the fact that the Honey Drive Area was not annexed; and WHEREAS, the revision of the Annexation Services Plan to reflect that Honey Drive was not annexed will not negatively affect the City's ability to provide required services to the other areas as called for in the Annexation Services Plan and that the Annexation

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Services Plan will continue to meet the requirements of N.C.G.S. 160A-47 as to those remaining area; and WHEREAS, amending the Plan to reflect the fact that the Honey Drive Area has not been annexed will not cause any of the remaining areas to qualify for annexation under any of the additional subsections of N.C.G.S. 160A-48 (c) and (d). NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF ASHEVILLE THAT: (1) The Annexation Services Plan approved by the Asheville City Council on January 27, 2004, and amended on April 13, 2004, be further amended by revising said Plan to reflect the fact that the Honey Drive Area was not annexed; and (2) The Planning and Development Director is hereby directed to cause the amendments described herein to the Annexation Services Plan to be made to all official copies of the Annexation Services Plan, including the Plan on file in the Office of the City Clerk.

Councilwoman Jones moved to adopt Resolution No. 04-76. This motion was seconded by Councilwoman Bellamy and carried on a 5-2 vote, with Vice-Mayor Mumpower and Councilman Dunn voting "no."

#### **C. RESOLUTION NO. 04-77 - RESOLUTION AUTHORIZING THE MAYOR TO SIGN MEMORANDUM OF UNDERSTANDING WITH THE CITY OF HENDERSONVILLE AND THE REGIONAL WATER AUTHORITY CONCERNING FUTURE WATER PLANT CONSTRUCTION AND EMERGENCY, TEMPORARY OR WHOLESALE BASIS CONTRACT WATER TREATMENT**

Mayor Worley said that this is the consideration of a resolution approving a Memorandum of Understanding between the City of Asheville, the City of Hendersonville and the Regional Water Authority concerning future water plant construction and emergency, temporary or wholesale contract water treatment.

As you know, for an extended period of time the City Manager and the Mayor have been working with the City Manager and Mayor of Hendersonville on a joint draft Memorandum of Understanding to provide for regional cooperation and emergency, temporary or wholesale contract water to the City of Hendersonville. The Memorandum of Understanding is divided into two parts. Part One addresses regional cooperation at the point in time when the City of Hendersonville has to expand or build additional capacity at its water treatment plant. Simply stated, the agreement will call for a study to determine whether it is best for Hendersonville to expand their current plant, or to expand the Mills River Water Treatment Plant, which is newer and has access to the French Broad River. The second part of the agreement sets out that each party will supply the other with emergency, temporary and wholesale water, should the need occur. It sets the rate per 100 cf in advance, with provisions for adjustments based on documentation and increased costs.

Mayor Worley thinks this is a firm step toward further regional cooperation and provides for future areas of cooperation between the two largest water producers in the region.

Mayor Worley recommended that Council approve the Memorandum of Understanding and forward it to the Regional Water Authority for their approval on April 20, 2004.

Councilman Dunn, member of the Regional Water Authority, doesn't think it was a good precedent for a unilateral decision to be made with the City of Asheville and the City of Hendersonville. The Henderson County Commissioners, the Regional Water Authority members and City Council were not included in this process. Mayor Worley did a good job in addressing this important issue and he would support it, however, he was concerned about the lack of inclusiveness.

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Mayor Worley explained that was basically done at the staff level. It was done in the same manner as the agreements with the Town of Black Mountain, Woodfin Water & Sewer District and Town of Weaverville. Nothing was different in this process.

Interim Water Resources Director David Hanks said that this was done as a result of a vulnerability assessment performed last year and brought before Council. It brought up the fact that we only had handshake agreements and nothing in writing if an emergency arose. He explained that Henderson County has expressed some concern and felt they should have been more of an active partner. However, they are not a supplier of water and that was what we were basically looking at – having agreements with people who produce water, just as our system does.

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

Councilman Dunn moved for the adoption of Resolution No. 04-77. This motion was seconded by Councilwoman Jones and carried unanimously.

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

#### **D. RESOLUTION NO. 04-78 - RESOLUTION AMENDING CITY COUNCIL RULES REGARDING THE CONDUCT OF MEETINGS**

City Attorney Oast said that this is the consideration of a resolution amending City Council Rules regarding the conduct of meetings.

One of Council's continuing concerns has been the length of council meetings and the conduct of public comment sessions, including public hearings. The public shares and frequently has expressed this concern. The law is clear that Council may establish rules for the conduct of its meetings and public hearings. In the conduct of some required public hearings and quasi-judicial hearings, due process is also a concern.

Most public hearings or public comment periods are concluded quickly, but there are some matters that require special attention, and the ability to establish special procedures. Accordingly, some revisions to Rule 7 are proposed to deal with general public address to the Council, and a new Rule 7.5 is proposed to deal with special matters with respect to which, due to their nature or anticipated length, it may not be possible or desirable to conduct them within the framework of the normal rules.

The proposed revisions to Rule 7 establish general rules of decorum, applicable to all public comment, and recognize the Mayor's power, as the presiding officer, to control proceedings.

The proposed new Rule 7.5 establishes some procedures, such as the maximum time allotted and the manner of

submitting documents, that will apply to all public hearing/comment items. The proposed new rule also provides for the establishment of rules and procedures applicable to particular matters. These include: recognition of spokespersons, order of presentation, and rulings on relevance and repetition of information. Due process will be taken into consideration in establishing any special rules.

Considerations:

- There may be other proposed amendments that come out of Council's recently completed goal-setting process.

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- There will need to be some break-in period for these rules, while the public and Council become accustomed to them.
- Staff will attempt to recognize those matters where special procedures may be appropriate, and will work with the affected citizens to establish appropriate special procedures in advance of hearings.
- Respect for any rules and procedures is essential to their effectiveness.

In response to comments made at the March 15, 2004, work session, the following revisions have been made to the proposed amendments to Council's rules:

1. Rule 7(c) – clarification of time limits applicable to groups and to individual members of that group.
2. Rule 7(e) – addition of a prohibition against discussion of City personnel matters.
3. Rule 7(g) – substitution of “rude, inappropriate” for “vexatious”; also added “any person or group of people.”
4. Rule 7.5 B. – addition of subsection 7, allowing mayor to require use of speaker sign up sheets.
5. Rule 7.5 F. – addition of rule clarifying that vice-mayor or temporary chair has power to administer rules regarding public hearings and public comment in the absence of the mayor.

Considerations: The staff will endeavor to identify in advance those agenda items where “special orders” might be needed, and submit the special order for consideration at the work session prior to the meeting where the item is to be considered.

He reviewed with Council the following changes:

## 7. PUBLIC ADDRESS TO THE COUNCIL

Citizens desiring to address the council shall be given the opportunity to do so as follows:

- (a) Any individual or group who wishes to address the council may make a request to be on the agenda to the city clerk. The mayor and city manager shall determine when preparing the agenda for the meeting whether the matter will be placed on the agenda.
- (b) Subject to the time limitations set forth in paragraph (c), below, the public shall be allowed to comment on matters under consideration by the council prior to a final vote on the matter by the council. Public comment shall generally be taken regarding such matters under consideration by the council during the ~~formal~~ “regular” 5:00 p.m. meetings of the council as referenced in Rule 1. Public comment will not be taken during the “worksession” discussions of the council except in those instances where a final vote of the council is being taken during a worksession. In such instances, public comment shall be allowed in accordance with the time limits set forth hereinafter.
- (c) Any person addressing the council shall be limited to a three minute presentation except that any group making a presentation to the council may have a single

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spokesperson who will be allowed ten minutes to address the council. formal organizations such as neighborhood associations and public interest groups are encouraged to designate a single spokesperson to present that

organization's position. No person who identifies himself or herself as a member of a group will be permitted to address the Council as an individual on the same agenda item.- The council will receive written information from any individuals or groups that cannot conclude their presentations within these time limitations.

- (d) At each "regular" meeting ~~and each "worksession"~~ of the Council, under the "Informal discussion and public comment" section of the agenda, any group or person wishing to address the Council on any matter not previously considered during the meeting may do so. For matters coming before Council pursuant to this paragraph, and with respect to which the Council may not act, the following limitations apply:
- (i) No more than three persons (one at a time) may address the Council, and no person may take longer than three minutes to complete a presentation.
  - (ii) In lieu of the limitation set forth in (i) above, a group may elect to designate a spokesperson who may take no longer than ten minutes to complete a presentation.

As used herein, "presentation" means all forms of address, including speaking, use of audio or video materials, and distribution of literature. For presentations that cannot be completed within the limitations of this paragraph, written comments or other information may be delivered to the Council through the City Clerk.

(e) Persons addressing the Council are expected to observe the decorum of the Chamber, to be respectful of the Council and the public, to refrain from the use of profanity or foul language, to refrain from personal attacks and commentary on candidates for political office, and to refrain from making disclosures prohibited by the Personnel Privacy Act with respect to any City employee.

~~(f)~~(e) The mayor ~~(or the vice mayor, in the absence of the mayor)~~ shall be authorized to allow additional comments and time for comments as he or she may deem appropriate for the orderly conduct of business.

(g) Pursuant to Rule 9(b), the mayor may rule out of order any comments made under this part of the agenda if such comments are unruly or repetitive of information previously received by council on the same subject at the meeting then in session or at previous meetings. The mayor may also rule out of order any comments made during this part of the agenda that are rude, inappropriate, or intended to harass any person or group of people, and is authorized to take reasonable and appropriate measures to ensure compliance with these rules.

## 7.5 SUPPLEMENTAL RULES AND PROCEDURES FOR PUBLIC HEARINGS AND PUBLIC COMMENT.

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- A. The time limit applicable to public hearings or public comment periods on any agenda item shall be one hour. This time limit shall be exclusive of staff presentations and any structured Council debate. This time limit may be shortened or extended by the ~~Mayor~~mayor, with the concurrence of Council.
- B. In addition to the rules set forth in Rule 7 and herein, the ~~Mayor~~mayor may, in consultation with the City Attorney and with the concurrence of Council, establish supplemental rules and procedures applicable to particular public hearings or public comment periods in order to facilitate the receipt of relevant information by Council, while affording appropriate due process. Without limitation, such rules and procedures may include:
1. The order of presentation;
  2. The length of individual or group presentations;
  3. Recognition of a primary spokesperson or representative to provide information or respond to a particular question.
  4. The maximum time allotted for the public hearing.
  5. Relevance of information and repetition of information previously received; and
  6. Determining when new information has been presented.

7. Requiring speakers to sign up in advance.

- C. The ~~Mayor~~mayor may, with the concurrence of Council, determine when sufficient information has been presented at any public hearing or public comment period, and is ready for action by Council.
- D. Any documentary information that is to be used in a public hearing or public comment period shall be furnished in advance to the City Clerk in electronic format or 15 copies thereof. This rule may be waived for good cause.
- E. In order to facilitate the efficient use of time, citizens are encouraged to coordinate their presentations with others who have similar positions, and to designate a spokesperson, where practicable, to speak for the group.

F. In the absence of the mayor, and subject to compliance with N.C.G.S. 160A-70, the vice-mayor temporary chairman shall be authorized to administer the provisions of this rule and Rule 7.

If Council approves of the amendments as revised, adoption of the resolution is recommended.

Discussion occurred regarding whether Council needed a definition of group, what constitutes a group, how groups are recognized, and how it is determined who gets to speak if they are associated with a group.

Councilwoman Jones also noted that City Council will need to do their part to expedite the meetings as well. She felt that Council is as much of the time problem as the public.

Upon inquiry of Mr. Fred English, Mayor Worley said a sign-up sheet would be instituted if there were a particularly contentious issue.

When Councilwoman Jones suggested the rules be placed at the Council Chamber door, City Attorney Oast said that he will also put the rules in bullet-point format and suggest the

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Planning & Development Department send them out with their public hearing notices, in addition to posting it on the website in the general area of the electronic agenda.

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

Councilwoman Bellamy moved for the adoption of Resolution No. 04-78. This motion was seconded by Councilman Dunn and carried unanimously.

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

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

#### **RESOLUTION NO. 04-79 – RESOLUTION MAKING PROVISIONS FOR THE POSSESSION AND CONSUMPTION OF MALT BEVERAGES AND/OR UNFORTIFIED WINE AT THE EARTH DAY FESTIVAL**

Mr. Paul Clarke, Festival Coordinator, said that this is the consideration of a resolution making provisions for the possession and consumption of malt beverages and/or unfortified wine at the Earth Day 2004 festival to be held on Saturday, April 17, 2004.

Earth Day 2004, scheduled for April 17, is a celebration committed to raising awareness of the environment and what every person can do to help maintain and improve our world. They have requested through the Asheville Parks and Recreation Department that City Council permit them to serve beer and/or unfortified wine at their event and allow for consumption at the event.

The Asheville Parks and Recreation Department recommends approval of the resolution authorizing the possession of malt beverages and/or unfortified wine at the Earth Day 2004 event at the specific location and time noted in the resolution.

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

Councilman Newman moved for the adoption of Resolution No.04-79. This motion was seconded by Councilwoman Jones



and carried on a 6-1 vote, with Councilwoman Bellamy voting "no".

**RESOLUTION BOOK NO. 28 – PAGE**

**COMMENTS BY VICE-MAYOR MUMPOWER**

On behalf of the Memorial Stadium Task Force, Vice-Mayor Mumpower thanked Buncombe County and the City of Hendersonville for approving resolutions that support our effort to restore our regional memorial to our war dead at Memorial Stadium.

Vice-Mayor Mumpower also thanked people who participated in the first and very successful For Our Kids Day at Lee Walker Heights.

**CLAIMS**

The following claims were received by the City of Asheville during the period of March 19-April 1, 2004: Roxanne Williams (Streets), Robert West (Streets), Helen C. Whitten (Water), Virginia Avenue (Inspections) and Pershing Road (Inspections).

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

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

Mr. Fred English felt the City of Asheville did not need the public access television station.

Mr. Mike Fryar spoke against annexation and how he felt people don't receive any services after being brought into the City.

**VIII. ADJOURNMENT:**

Mayor Worley adjourned the meeting at 9:18 p.m.

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CITY CLERK

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MAYOR