

Regular Meeting

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

Absent: None

**PLEDGE OF ALLEGIANCE**

- Veteran from the U.S. Marine Corp Danny Roberts led City Council in the Pledge of Allegiance.

**INVOCATION**

Councilman Davis gave the invocation.

**I. PROCLAMATIONS:**

**A. RECOGNITION OF CITY OF ASHEVILLE RESERVISTS**

On behalf of City Council, Mayor Worley recognized Darrell McCurry and Brian Freelan, employees with the Asheville Police Department who have recently returned from military service in the 211<sup>th</sup> Military Police Company.

**B. PROCLAMATION PROCLAIMING THE WEEK OF JUNE 5-12, 2004, AS "NATIONAL NEIGHBORWORKS WEEK"**

Councilman Davis read the proclamation proclaiming June 5-12, 2004, as "National NeighborWorks Week" in the City of Asheville. He presented the proclamation to Mr. William Sewell, Interim Executive Director of Neighborhood Housing Services, who briefed City Council on some activities taking place during the week.

**II. CONSENT AGENDA:**

At the request of Mayor Worley, Councilwoman Bellamy moved to continue Consent Agenda E until the Consent Agenda on June 8, 2004. This motion was seconded by Councilman Davis and carried unanimously.

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

**A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON MAY 11, 2004, AND THE WORKSESSION HELD ON MAY 18, 2004**

Councilman Davis asked that the May 18, 2004, minutes be amended to delete his presence at the meeting.

**B. RESOLUTION NO. 04-113 - RESOLUTION ADOPTING A JOINT RESOLUTION WITH BUNCOMBE COUNTY TO CREATE A CITY-COUNTY TASK FORCE TO DEVELOP A 10-YEAR PLAN TO END HOMELESSNESS AND STEERING COMMITTEE MEMBERS**

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- Summary: The consideration of a resolution to create a City-County Task Force to develop a Ten-Year Plan to End Homelessness and appointment of suggested Steering Committee members.

On March 23, City Council approved the formation of a joint City-County Steering Committee to develop a Ten-Year Plan to End Homelessness. The Downtown Social Issues Task Force stated at that time that they would come back to Council with a suggested list of appointees. Staff and Task Force members have worked to develop a list of suggested appointees that will represent the agencies critical to the writing and implementation of the Plan.

The Task Force will be presenting their recommendation and list of appointees to the Buncombe County Commissioners at their June 1, 2004, meeting. It is hoped that the Steering Committee will start meeting early in June.

Advantages:

- Key agencies from the County, the City and the private sector will be represented on the Steering Committee to oversee the preparation of the Ten Year Plan to End Homelessness. Investment of these agencies is critical to the implementation and success of the resulting plan.

Disadvantages:

- None noted

City staff recommends the adoption a resolution to create a City-County Task Force to develop a Ten-Year Plan to End Homelessness and appointment of suggested Steering Committee members.

**RESOLUTION BOOK NO. 28 – PAGE 258**

- C. MOTION SETTING A PUBLIC HEARING ON JUNE 8, 2004, TO CONSIDER ADOPTION OF THE FISCAL YEAR 2004-05 ANNUAL OPERATING BUDGET**
- D. RESOLUTION NO. 04-114 – RESOLUTION AMENDING THE 2004 SCHEDULED CITY COUNCIL MEETINGS TO INCLUDE A COMMUNITY MEETING ON JUNE 29, 2004, AT THE NORTH ASHEVILLE COMMUNITY CENTER**

**RESOLUTION BOOK NO. 28 – PAGE 259**

- E. APPROVE FORM OF ORDINANCE NO. 3116 – ORDINANCE AMENDING THE CONDITIONAL USE PERMIT OF APPELDOORN CONDOMINIUMS LOCATED AT 200 BROOKLYN ROAD**

This matter was continued until the Consent Agenda on June 8, 2004.

- F. RESOLUTION NO. 04-115 - RESOLUTION APPOINTING A MEMBER TO THE CIVIL SERVICE BOARD**

Summary: The term of Sophie Dixon, as a member of the Civil Service Board, expired on May 21, 2004.

It is the consensus of City Council to reappoint Ms. Dixon, as a member of the Civil Service Board, to serve an additional two-year term. Her term will expire May 21, 2006, or until her successor has been appointed.

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- G. RESOLUTION NO. 04-116 - RESOLUTION AUTHORIZING THE CITY MANAGER TO APPLY TO THE N.C. DEPT. OF TRANSPORTATION FOR GRANTS FOR (1) NEW HAW CREEK ROAD SIDEWALK IMPROVEMENTS – PHASE II; AND FRENCH BROAD GREENWAY TRAIL IN THE RIVERSIDE INDUSTRIAL DISTRICT**

Mr. Dan Baechtold, MPO Coordinator, said that this is the consideration of a (1) resolution authorizing the City Manager to apply for grants from the N.C. Dept. of Transportation (NCDOT), through the Transportation Enhancement Program, for New Haw Creek Road Sidewalk Improvements - Phase II, and for the French Broad Greenway Trail along Riverside Drive; and (2) resolution for City sponsorship of grant applications from Pack Square Conservancy and Mountain Housing Opportunities.

Every two years, the NCDOT puts out a call for applications for transportation enhancement funds. These are federal funds for projects in specific categories such as pedestrian and bicycle improvements, streetscape improvements, beautification, and water quality improvements. If a project is awarded through the state selection process, costs are reimbursed at a rate of eighty percent (80%). The local match is twenty percent (20%).

Any public or private agency may apply for these funds, but each application must have a local government agency as the sponsor. In past years, the City of Asheville has received enhancements funds for projects such as the Urban Trail and the Weaver Boulevard Greenway. In 2002, the City received a grant for sidewalk improvements on New Haw Creek Road. Also in 2002, the City sponsored applications from the Pack Square Conservancy and Mountain Housing Opportunities. All three of these

projects were partially funded in 2002. Construction will begin on these projects this year.

This year, the City of Asheville has prepared two applications: 1) Phase II of sidewalk improvements on New Haw Creek Road. 2) French Broad Greenway Trail on the Progress Energy site located along Riverside Drive. If awarded, the City of Asheville will provide the local match of twenty percent (20%) for both of these projects. If both projects are funded, the total City of Asheville match required would be \$43,000.

In addition to the application from the City of Asheville, both the Pack Square Conservancy and Mountain Housing Opportunities are applying for additional funding. The City of Asheville would be the local government sponsor for these applications. The City is not responsible for the local match for these two projects. The match will be provided by the applying agency. For these applications, the City of Asheville will be responsible for maintenance of any improvements that fall within public right of way, and may provide staff support for project implementation.

The NCDOT will review applications and award Enhancements Grants in the Fall of 2004. Listed below are summaries of the four grant applications presented for approval.

1. New Haw Creek Road Sidewalk Improvements – Phase II

City of Asheville Match: \$ 25,000

Enhancement Funds Requested: \$ 229,200

Total Project Cost: \$ 354,200 (Total project cost with other match sources)

Project Description: The proposed project entails construction of sidewalk, curb, gutter and storm drainage along the south side of New Haw Creek Road from Arco Road west

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to the end of the NCDOT right-of-way. This project is adjacent to a Phase I project partially funded by a 2002 Enhancement Grant.

2. French Broad Greenway Trail on Progress Energy Site – Riverside Industrial District

City of Asheville Match: \$ 18,000

Enhancements Funds Requested: \$ 72,000

Total Project Cost \$ 90,000

Project Description: This greenway path project will complete another portion of the French Broad River Greenway that will be the primary north-south bicycle and pedestrian route in the City of Asheville. This 700 linear foot bike path segment will eventually be united with other greenway routes along the French Broad River and throughout the City of Asheville. Progress Energy currently owns the property that will be conveyed to the City of Asheville in 2004. The project site is bounded by Riverside Drive to the East and the French Broad River on the west. The property is comprised of existing Jean Webb Park and an undeveloped parcel that will be developed as a municipal park in the future.

3. Pack Square Streetscape Improvements – Phase II and III

City of Asheville Match: None

Match by Pack Square Conservancy: \$ 69,949

Enhancements Funds Requested: \$ 279,796

Total Project Cost: \$ 349,745

Project Description:

Phase II – Intersection of Biltmore Avenue and Patton Avenue to the west of Pack Square. Improvements include realigning the current on-street parking from diagonal to parallel spaces in an effort to make the intersection safer. Work will be comprised of new crosswalks located at the corners, sidewalks, curbing, and asphalt paving.

Phase III – Spruce Street, bisecting the center of the new park. This 155-linear foot segment of street will be resurfaced with decorative pavers to indicate it as a special route and encourage slower speeds by vehicular traffic. The pavers will also allow the space to be used as a pedestrian plaza during special events in the park. Other improvements include new curbs, sidewalks, and ADA ramps to work with the new layout and increase safety.

4. Clingman Avenue Streetscape and Greenway – Phase II

City of Asheville Match: None

Match by Mountain Housing Opportunities (and other sources): \$ 57,780  
Enhancement Funds Requested: \$ 231,120  
Total Project Cost: \$ 288,900

Project Description: This project proposes a continuation of streetscape improvements along the Clingman Avenue and Haywood Road Corridor. This project includes the design and construction of a single-lane, traffic circle at the intersection of Haywood Road and Roberts Street, which will include sidewalks and pedestrian crossings. A second component of this project includes the design and layout of a greenway on the southern side of the West Asheville RiverLink Bridge over to Haywood Road. The greenway will include barriers separating pedestrians from vehicular traffic movement. Along with the greenway, the pedestrian area will feature benches, a sun shelter and safe crosswalks. The West Asheville RiverLink Bridge, one of three crossings over the French Broad River serving west Asheville has been traditionally the favorable route for pedestrian and bicycle transit commuters to and from downtown. These changes will

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enhance the existing corridor and reinforce its identity as Asheville's gateway to the riverfront and West Asheville. The proposal will create a safer intersection solution at Haywood Road and Roberts Street and provide over 1,000 feet of on-road greenway into west Asheville.

CONSIDERATIONS:

- If awarded, these grants will bring in federal funds to complete transportation projects in the City of Asheville.
- A local cash match of 20% is required on all of the projects. The City of Asheville would only be responsible for the cash match on two of the projects.
- This is a competitive process across the State of North Carolina. If the money is not awarded to local projects, it will be spent on enhancements in other Counties.
- Staff time will be required to manage and implement the projects.
- City of Asheville will assume maintenance responsibilities for the improvements that are installed. In the case of Pack Square improvements, however, the Conservancy is taking steps to provide for long-term maintenance.

City staff recommends City Council (1) approve a resolution authorizing the City Manager to apply to the State of North Carolina for grant applications for New Haw Creek Road Sidewalk Improvements – Phase II, and for the French Broad Greenway Trail; and (2) approve a resolution designating the City of Asheville as the local government sponsor for grant applications for Pack Square Streetscape Improvements – Phase II and III, and Clingman Avenue Streetscape and Greenway – Phase II.

**RESOLUTION BOOK NO. 28 – PAGE 261**

**H. RESOLUTION DESIGNATING THE CITY OF ASHEVILLE AS THE LOCAL GOVERNMENT SPONSOR FOR GRANT APPLICATIONS FROM PACK SQUARE CONSERVANCY INC. AND MOUNTAIN HOUSING OPPORTUNITIES TO THE N.C. DEPT. OF TRANSPORTATION THROUGH THE TRANSPORTATION ENHANCEMENTS PROGRAM**

This item was pulled from the Consent Agenda due to a conflict of interest.

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

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

**ITEM PULLED FROM THE CONSENT AGENDA FOR INDIVIDUAL VOTE**

**RESOLUTION NO. 04-117 - RESOLUTION DESIGNATING THE CITY OF ASHEVILLE AS THE LOCAL GOVERNMENT SPONSOR FOR GRANT APPLICATIONS FROM PACK SQUARE CONSERVANCY INC. AND MOUNTAIN HOUSING OPPORTUNITIES TO THE N.C. DEPT. OF TRANSPORTATION THROUGH THE TRANSPORTATION ENHANCEMENTS PROGRAM**

For summary see Consent Agenda Item G above.

Councilman Dunn 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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Councilwoman Jones moved to adopt Resolution No. 04-117. This motion was seconded by Councilman Dunn and carried unanimously.

**RESOLUTION BOOK NO. 28 – PAGE 262**

**III. PUBLIC HEARINGS:**

**A. PUBLIC HEARING TO CONSIDER THE ISSUANCE OF A CONDITIONAL USE PERMIT FOR PROPERTY LOCATED OFF WHITE PINE DRIVE FOR THE CONSTRUCTION OF A 60 UNIT APARTMENT COMPLEX (KENILWORTH FOREST VILLAGE APARTMENTS) IN AN RS-4 RESIDENTIAL SINGLE-FAMILY MEDIUM DENSITY DISTRICT AND RM-8 RESIDENTIAL MULTI-FAMILY MEDIUM DENSITY DISTRICT**

Mayor Worley said that a letter has been received from Mr. Robert M. Grasso, on behalf of the developer Virginia May, requesting a continuance of the hearing until July 27, 2004.

Councilman Dunn moved to continue the public hearing until July 27, 2004. This motion was seconded by Councilwoman Bellamy and carried unanimously.

**B. PUBLIC HEARING TO CONSIDER CLOSING A PORTION OF AN UNOPENED SECTION OF APPALACHIAN WAY**

**RESOLUTION NO. 04-118 - RESOLUTION CLOSING A PORTION OF AN UNOPENED SECTION OF APPALACHIAN WAY**

Mayor Worley opened the public hearing at 5:18 p.m.

Assistant Public Works Director David Cole said that this is the consideration of a resolution to close a portion of an unopened section of Appalachian Way. This public hearing was advertised on April 30, May 7, 14 and 21, 2004.

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

Pursuant to this statute, City of Asheville staff has initiated a request to close a portion of an unopened section of Appalachian Way. The closing of this portion of right-of-way will facilitate the realignment and connection of a greenway to a proposed extension of Oakcrest Place.

Closure of this section of right-of-way will have no impact on the ingress and egress for any of the abutting properties. There are three lots that abut this section of right-of-way. They are identified by PIN Nos. 9628.14-34-2261; 9628.14-34-5074; and 9628.14-34-2396.

City staff recommends that City Council adopt the resolution to close a portion of an unopened section of Appalachian Way.

Mayor Worley closed the public hearing at 5:22 p.m.

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

Vice-Mayor Mumpower moved for the adoption of Resolution No. 04-118. This motion was seconded by Councilwoman Bellamy and carried unanimously.

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**C. PUBLIC HEARING TO CONSIDER THE CONDITIONAL USE ZONING OF PROPERTY IDENTIFIED AS**

**BILTMORE POINTE LOCATED AT 100 FAIRVIEW ROAD FROM COMMERCIAL INDUSTRIAL DISTRICT TO RM-16 RESIDENTIAL MULTI-FAMILY HIGH DENSITY DISTRICT/CONDITIONAL USE; AND THE ISSUANCE OF A CONDITIONAL USE PERMIT TO CONSTRUCT 136 NEW TOWNHOME UNITS**

**ORDINANCE NO. 3119 - ORDINANCE REZONING PROPERTY ON 100 FAIRVIEW ROAD FROM COMMERCIAL INDUSTRIAL DISTRICT TO RM-16 RESIDENTIAL MULTI-FAMILY HIGH DENSITY DISTRICT/CONDITIONAL USE**

**ORDINANCE NO. 3120 - ORDINANCE GRANTING A CONDITIONAL USE PERMIT FOR PROPERTY IDENTIFIED AS BILTMORE POINTE LOCATED AT 100 FAIRVIEW ROAD TO CONSTRUCT 136 NEW TOWNHOME UNITS**

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 5:24 p.m.

All Council members disclosed that they have visited the site and/or have talked to the developer, prior to having any knowledge that the matter would come before Council as a conditional use permit. City Council said that they would consider this issue with an open mind on all the matters before them without pre-judgment and that they will make their decision based solely on what is before Council at the hearing.

City Attorney Oast said that as documentary evidence is submitted, he would be noting the entry of that evidence into the record.

Mr. Joe Heard, Director of Development Services with the Planning & Development Department, submitted into the record City Exhibit 1 (Affidavit of Publication), City Exhibit 2 (Certification of Mailing of Notice to Property Owners); and City Exhibit 3 (Staff Report).

Mr. Heard said that this is the consideration of a request to rezone property located identified as Biltmore Pointe located at 100 Fairview Road from Commercial Industrial District to RM-16 Residential Multi-Family High Density District/Conditional Use, and a request to issue a conditional use permit to construct 136 new townhome units.

The Asheville City Development Plan 2025 (ACDP 2025), through its "Land Use and Transportation" goals and strategies, clearly supports and encourages efforts to provide affordable housing particularly in areas where public transit and alternative modes of transportation are available. In addition, both the ACDP 2025 and the City's Sustainable

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Economic Development Strategic Plan describe the connection and need for affordable housing to support economic development.

The applicant, Bruce Goforth, has requested a rezoning of 13.04 acres of Commercial Industrial District property to RM-16 (Residential multi-family, high density) to allow for the new construction of 136 individual affordable townhome units (City Exhibit 3 – Aerial Map). The Conditional Use component of this project will be a site master plan showing the location of the proposed townhome units, amenities, open space, landscape buffers, drives, and new road access. The project site is located within City limits near the northwest corner of Fairview Road and Stoner Road, directly adjacent to the Slosman property from which the 13 acres under consideration is being subdivided. The subject property is surrounded on three sides by industrial or commercial warehousing/storage land uses. The fourth side borders a mix of commercial storage, single family residential, and vacant CI zoned property.

The site is a moderately sloping wooded site with frontage on two city maintained roads. Principal access will be located off of Fairview Road (City Exhibit 3 – Utilities & Grading Plan). A secondary access is required off of Stoner Road per the City of Asheville Ordinance and State Fire Code requirements, to be established before more than 30 units are built and occupied. This access will be gated and used only during emergency situations. In addition, a new loop road built to City of Asheville standards

will be constructed to provide access to the individual townhome units. The rezoning component of this project is not being sought for higher density purposes. The CI zoning district currently allows the same density permitted in RM-16 (16 units per acre).

Rather, this designation is being sought for its compatibility with the proposed use and reduced front setbacks more typical of residential developments. CI normally requires a 35' front setback meant to separate the more industrial uses from road traffic, while the RM-16 district has only 15' setbacks. Residential developments in CI are typically multi-family apartment developments with outdoor parking lots that do not require additional setbacks from new road frontage. In order to provide a less monolithic residential development of townhomes (with garages) that provide opportunity for ownership, the developer would prefer to rezone to RM-16.

The purpose of the CI zoning district is to provide areas for a wide range of commercial and industrial uses including but not limited to, light manufacturing, wholesale, and warehousing with outdoor storage, office, and residential. This district is to be established in areas where environmental conditions and urban infrastructure are adequate to support these uses.

The purpose of the RM-16 zoning district is primarily to encourage a full range of high density multi-family housing types to be located near employment centers, shopping facilities, roads and other urban infrastructure capable of handling the demand generated by high density residential development.

At their April 19, 2004, 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 the following project conditions summarized as follows:

1. Sidewalk (or fee in lieu of) and street trees be provided along road frontage for Fairview and Stoner Roads. (Staff is not recommending a fee in lieu of.) If not feasible along the subject property, the Stoner Road sidewalk can be located across the street.
2. Show sewer easements and ensure that no required tree falls within the easement.
3. Revise required landscapes buffers per section 7-11-2(d) of the Unified Development Ordinance (UDO)
4. Obtain encroachment permits from Norfolk Southern (if necessary).

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5. Show location and species of required street trees.
6. Delineate open space requirements.
7. Show and label building setbacks. Setbacks are to be measured from perimeter parcel lines and rights-of-way for existing and proposed roads. RM-16 requires a 15' front setback where some proposed footprints encroach.
8. Provide a revised site plan showing the following missing information:
  - Label and dimension all rights-of-way.
  - Label proposed road.
  - Show location of required fire hydrants.
  - Show location of required street lights.
  - Provide information describing the number of bedrooms per unit.
  - Provide plant schedule.
9. Provide a second entrance required per the City Ordinance and State Fire Code.
10. Provide accessible sidewalk connection to all common areas.
11. Show pedestrian protection on proposed retaining walls.
12. Turning radii must be less than 20'.
13. Traffic impact analysis is required.
14. A covered bench should be provided at the entrance of the neighborhood by the completion of Phase II.
15. A recorded subdivision will be required before grading or final approval.

City Council must take formal action as set forth in section 7-9-9(c)(4) of the UDO, and must find that all seven standards for approval of conditional uses are met based on the evidence and testimony received at the public hearing or otherwise

appearing in the record of this case (UDO 7-16-2(c)). Staff's 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 moderately sloped and will require clearing and grading. Given the typical Asheville terrain, the amount of grading is not unusual for a project of this type or size. Care will need to be taken to provide open space and roads that do not exceed a certain maximum percent slope. Minor retaining walls (under 8') are shown and may need to be extended to meet other project requirements.***

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- 3) That the proposed use or development of the land will not substantially injure the value of adjoining or abutting property.  
***There is a significant amount of literature that describes how "affordable" housing does not negatively impact adjacent property values. Developments of this size in the City do require a homeowner's association that manages the common open space and typically has minimum site standards that control the deterioration that can contribute to a decrease in property values. These will be individually owned units that, historically, inspire care and upkeep. In addition, the higher density development could serve as a buffer/transition area to the existing single family residences that could be impacted by the more intense uses permitted in the CI zoning district.***
- 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 surrounding properties are primarily light manufacturing and warehousing/storage uses with significant work traffic. The proposed development will be residential but through its density and activity, will not be out of character/harmony or scale with these uses. Along the majority of the eastern side of the property are small, modest single-family homes on small lots (some lots are vacant) located on the opposite side of the right-of-way for Stoner Road. These homes are similar in size and are expected to be harmonious with the proposed development. The only area of concern is a smaller portion of the eastern boundary where there are two moderately sized single-family homes on comparatively larger lots. These homes are larger and less typical of the development in the area and are separated from the proposed development by a vacant lot and a 30' Type C buffer required where adjacent to the subject property. It is expected that these lots will not be significantly impacted by the proposed development.***
- 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 (ACDP 2025), through its "Land Use and Transportation" goals and strategies, clearly supports and encourages efforts to provide affordable housing particularly in areas where public transit and alternative modes of transportation are available. In addition, both the ACDP 2025 and the City's Sustainable Economic Development Strategic Plan describe the connection and need for affordable housing to support economic development.***
- 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 with the Route 12 bus line running regularly down Fairview Road. In addition, there are some infrastructure improvement plans in place for new sidewalk, road resurfacing, and stormwater control that will improve access along this corridor along with improvements that will be part of the proposed development (additional sidewalk, bus shelter, etc.). The project area is also located in clear and close proximity to other major road facilities and interstate connections, service centers, and easily accessed employment centers. Technical review has not revealed any problems for future utility service to the development.***
- 7) That the proposed use will not cause undue traffic congestion or create a traffic hazard.



**The proposed project will include the construction of a new road to provide clear and safe access to the individual units. In addition, a second entrance will be**

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**provided to help facilitate traffic movement and to accommodate alternative access in the event of an emergency. Lastly, preliminary review by the City's traffic engineer does not reveal any significant concern over traffic loads generated by a development of this size but is requiring a traffic impact analysis for verification.**

Pros:

1. Clearly supports City goals to provide affordable housing in appropriately located areas.
2. Provides opportunity for infill residential development.
3. Proposed land use will provide a lesser impact than some potential land uses under current zoning designation.

Cons:

1. High density residential development that will contribute to the traffic load of Fairview Road and Stoner Road.
2. Located adjacent to commercial industrial zoning whose current land uses could change to a heavier impact over time.
3. Will require moderate to large amounts of clearing and grading to accommodate proposed density and road layout.
4. Removes opportunity for Commercial Industrial development in a generally Commercial Industrial area.

For the reasons outlined in this report, staff concurs with the Planning & Zoning Commission's recommendation to approve of the zoning change from CI to RM-16/Conditional Use and to approve the associated conditional use permit, as proposed by the applicant, subject to all TRC conditions being met.

Mr. Bob Grasso, land planner for the project, felt this is a great opportunity for affordable housing and it's a great urban infill project. When the project was laid out, they tried to create a sense of neighborhood. They have provided a basketball court, volleyball court and playground equipment to serve the residents in the development. There will be 2-bedrooms with a third bedroom option. Each unit will have a single-car garage and parking in front. They have provided the emergency access on the backside of the development. Questions arose at the TRC meeting if they could provide a second street access onto Stoner Road. He explained that (1) the residents on Stoner Road said that they did not want to see any traffic from the development onto Stoner Road; (2) he didn't think that Norfolk Southern would grant them any kind of right-of-way on top of their right-of-way; and (3) the intersection where Stoner Road comes out onto Fairview Road is a blind intersection. Therefore, he felt it was a good compromise to have the emergency access. He explained that the sidewalks along Stoner Road on the opposite side of the development would be very difficult from a grade standpoint, pointing out that they are trying to preserve as many of the mature trees along Stoner Road and also along Fairview Road as possible. He felt the scale of the project fits in well with the adjoining properties and he urged Council to support the conditional use rezoning and permit.

Mr. Doug Hill, partner of Biltmore Pointe, LLC, spoke in support of the development, however, asked that City Council amend a couple of the conditions, which will affect the cost of the affordability of the units. Regarding sidewalks along the road frontage for Fairview and Stoner Roads, he explained that along Stoner Road it is steeply elevated and there are mature trees and dense foliage. He felt the natural way it is might be a better fit for the neighborhood. He also pointed out that no other side streets in that neighborhood have sidewalks. Regarding sidewalks on the Fairview Road side, there is a concrete drainage ditch that runs the length of

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their property that will have to be removed and something done to have the water rerouted. The cost of the sidewalks and trees alone would add \$1,000 to each unit. He explained that after all the units are sold, there will be approximately \$16 Million to the City's tax base. He hoped the City would cover the sidewalk costs with the additional tax revenue brought in by their development. The other condition they asked to be relieved of was the requirement to provide a Traffic Impact Analysis (TIA). The City's Traffic Engineer said he didn't think the development would cause any significant traffic loads but was still requiring a TIA. A TIA will cost approximately \$6-7,000. He felt that if there was no impact, the requirement for a TIA should be waived. He said the units will sell for approximately \$120-125,000 per unit. He said it is their goal to keep the unit costs under \$120,000. He also mentioned the secondary access road issue required by the Fire Department. He explained by putting in the emergency access road they have lost two units. He said that is another cost which will be added to the development fees, ultimately increasing the cost of the units by approximately \$500 per unit.

Planning & Development Director Scott Shuford explained that it is a requirement of the State Fire Code that a secondary

access road be built. When Councilman Newman asked if there could be two accesses onto Fairview Road, Mr. Heard said that there is a requirement that the accesses be a certain distance apart, thus eliminating the idea of two accesses on Fairview Road.

When Councilman Newman asked how the gate would work on the secondary road access, Mr. Shuford said that Fire Department will be able to access the road through a special arrangement that they have with a type of lock-box that is placed there. This is something that the Fire Department accesses all the time and it is a very routine type of situation for them.

Councilman Newman asked what other type of infrastructure improvements are planned for the area. City Engineer Cathy Ball said that a sidewalk will be built within the next 6 months, regardless of this development, from the church on Fairview Road down toward Sweeten Creek Road across the street from this development. Regarding sidewalks on Fairview and Stoner Roads, they feel like the impact of this project is significant enough to warrant the sidewalks being constructed and not allowing a fee in lieu of, particular with it being an affordable housing project. Regarding the condition that a sidewalk can be being constructed across the street from the development on Stoner Road, the Engineering Department staff surveyed Stoner Road and determined that there isn't enough of an easement for that to happen. Therefore, that is not an option.

Councilman Davis felt that the topography on the Stoner Road side of the project lends itself to not having sidewalks. He did think, however, that sidewalks on the Fairview Road side was appropriate.

City Engineer Ball explained the charges per linear feet for sidewalks in the Fees & Charges Manual. She also pointed out that the Fees & Charges Manual says that if it's an affordable housing project, and if Council decides to allow the fee in lieu of construction for the Stoner Road sidewalks, then after the last unit is sold and they can show that they are all affordable housing were sold under the affordable housing threshold, then the developer can get back 50% of the amount they paid in.

Councilwoman Bellamy asked what affordable housing rebates could be sought for this development. Mr. Shuford said that we have an arrangement with the Water Authority where they would get half their tap fees back, half of their building permit fees and half of their sewer tap fees back from MSD. In a project this size, it would be approximately \$1,000-\$1,500 per unit. He did note that the affordable housing rebates would be whatever affordable housing threshold is in place when they get their Certificate of Occupancy.

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Regarding a comment from Mr. Hill about street trees, Mr. Shuford said we have an alternative compliance provision in our landscaping ordinance and if they are preserving the natural vegetation, that may very well substitute for the street trees.

Upon inquiry of Councilwoman Bellamy, Mr. Anthony Butzek, City Traffic Engineer, said that he does have a particular concern about concentrating traffic from this many units through one single entryway, which is the original reason why they requested a second access point. After hearing concerns of the residents on Stoner Road about that access point, we agreed with the Fire Department that an emergency access road would be adequate and requested that be conveyed to the City in either the form of a right-of-way or an access easement. The TIA is intended to determine what, if any, improvements are needed to be made to that primary access point. We did try to be reasonable in only requiring the study be done to show that that access point would work adequately. He said that they anticipate 1,000 trips per day to be generated by this development. He said that a TIA would cost approximately \$3-4,000, depending on the consultant they select to do the study.

Mayor Worley asked what would happen if when the TIA analysis comes in and it indicates a need for some traffic measures. Mr. Butzek responded that if Council approves the conditional use permit, staff would ask for an additional condition of approval that gives staff the authority to make any corrections generated by the review of the traffic study for this project. If the developer objected to those, then he would have the ability to come back to Council and ask for a waiver.

Mr. Butzek explained that without having the study, they cannot project what traffic problems might ensue from the development. Since Fairview Road is such a busy street, there will be a significant number of vehicles turning in and out of this development, particularly in the morning peak hours. There will be a lot of cars exiting the development through one single point onto a very busy street. The traffic analysis might show that they need to provide a turn lane exiting the site, maybe a turn lane entering the site or maybe the need for a signal. The cost for a turn lane would be approximately \$50,000. The City would like to know that ahead of time so the City is not burdened with that responsibility at a later date.

When Councilman Dunn asked why a TIA was not done prior to this meeting, Mr. Butzek responded that staff would have preferred that the study be done before now, but it was his understanding that the developer wanted to move forward quickly, and to require the TIA before going to Council would have delayed their process significantly.

Councilman Dunn suggested the developer pay for the TIA, and if the analysis calls for a turn lane at approximately

\$50,000, then Council use Trust Fund dollars to pay for it.

Councilwoman Bellamy agreed with Councilman Dunn, however, she recommended that a condition of approval be that the initial sales price have a cap of whatever the affordable housing rebate threshold will be, in order to make it eligible for Housing Trust Fund dollars. She said that the threshold is now \$120,000, but anticipates that being raised to \$130,000 in the very near future.

Upon inquiry of Mayor Worley, Mr. Hill said they have done their cost study based on \$120,000 for a 2-bedroom unit. The \$120,000 per unit already takes into account the affordable housing rebates. It does not include the cost for sidewalks outside the development, which will increase the per unit cost by over \$1,000 per unit.

Councilman Newman asked Mr. Hill if he would be confident they could meet the affordable housing threshold. Mr. Hill replied that costs rise over time and this will be a 3-4 year project. He didn't want to get about 2 years down the road and find it's not feasible to build any

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more units because they are locked into a threshold. However, he said the \$130,000 threshold is fine now and in the foreseeable future.

Ms. Smith, resident of Stoner Road, said that her community club has come to Council in the past to ask for sidewalks on their road. She stressed that they do want sidewalks. She said that most of the trees on the developer's side of Stoner Road are dead and always seem to be falling onto the road. The traffic on Stoner Road is getting to where the residents are thinking about asking the City for speed humps.

Mr. Alan Ditmore felt the traffic assumptions were incorrect in that the unit density reduces traffic by allowing people to walk or bus, instead of driving. He felt the more you build, the less traffic there will be.

After hearing no rebuttal, Mayor Worley closed the public hearing at 6:24 p.m.

Councilwoman Bellamy said that in the past, City Council has approved development that had issues related to Norfolk Southern and they did give the developer permission to use access for their right-of-way. Mr. Butzek also noted that this is not a rail crossing, but just putting a street near a rail line.

Upon inquiry of Councilman Davis, Ms. Ball said staff cost estimates differ from the developer's estimates. They did some sidewalk costs for Stoner and Fairview Roads and their estimate of the maximum cost was \$60,000, which is about \$300 per unit for the sidewalks. The TIA requested is only a limited one just for the driveway (City Exhibit 4), which would be about \$4,000 or \$24 per unit. The estimated fee in lieu of for Stoner Road would be approximately \$24,000.

Upon inquiry of Councilwoman Jones, Mr. Shuford recalled some of the items being discussed regarding building permit fees for affordable housing.

Vice-Mayor Mumpower felt the developer would not want Council to do anything that would step outside our standards. Therefore, he asked if City Council has the ability to waive the sidewalk requirement on Stoner Road in terms of the building a sidewalk or the fee in lieu of. Ms. Ball said that for Level 3 projects staff makes a recommendation to Council. Council has the option of accepting or rejecting staff's recommendation. City Attorney Oast also responded in that some cases Council has authorized forms of alternative compliance with sidewalks, i.e., through the use of sidewalks that may not necessarily be on a road, but are more in the nature of greenways.

When Vice-Mayor Mumpower asked if Council has the ability to waive the TIA requirement, Ms. Ball replied that Council also has the option of not requiring that analysis.

Mayor Worley explained why he would support waiving the sidewalk requirement on Stoner Road. He felt the entrance and the pedestrian activity generated by this development will clearly be on Fairview Road and there will be sidewalks inside the development. He would be willing to waive the sidewalk requirement on Stoner Road only. Councilman Dunn agreed with Mayor Worley.

Councilman Newman supported waiving the sidewalk requirement on Stoner Road. He suggested maintaining the sidewalk requirement (or a fee in lieu of) on Fairview Road and require the TIA with the understanding that if the TIA does indicate there are some additional improvements that need to be made on Fairview Road that the public handle those costs. Also, if certain

requirements are waived, he felt Council needs to make sure that the homes will be affordable. He recommended an affordable housing threshold of \$130,000 per unit.

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City Attorney Oast said that until Council knows what the cost of the improvements are on Fairview Road, if any are recommended by the TIA, Council should stay away from a commitment to pay for them. He suggested City Council consider funding such improvements as recommended at the time they have such recommendations.

Councilwoman Jones supported the recommendations by Councilman Newman. However, she think that Council needs to have a more intentional conversation about the Housing Trust Fund than just saying that is for affordable housing. To date Council has been very clear, up until the last exception on Appeldoorn Condominiums, that the Fund would be for money being paid back at a certain percentage rate. She is fine with going outside those bounds, but would like to have that conversation.

Mr. Shuford said that we are not pursuing sidewalks in the Joint Planning Area, but when new streets are created we are asking that grading occur to allow sidewalks to be put in more effectively. He offered that as a compromise if no sidewalks will be required on Stoner Road and/or Fairview Road.

Vice-Mayor Mumpower thanked the developer for bringing affordable homes to Asheville, but he was concerned that Council may be taking steps that we don't normally take. He thinks we are stepping further than we should and ultimately are not going to realize that great of savings to this project. He felt that we have standards for a reason and even though he does not agree with all of them, we do have them and should try to apply them as consistently as we can.

Councilman Davis supported the TIA being performed and liked the suggestion about grading for sidewalks on Fairview Road or a fee in lieu of. However, regarding sidewalks on Stoner Road, he felt we would be losing valuable trees for sidewalks that will never be used.

Vice-Mayor Mumpower moved to adopt Ordinance No. 3119 to approve the conditional use rezoning for property located at 100 Fairview Road from Commercial Industrial District to RM-16 Residential Multi-Family High Density District/Conditional Use. This motion was seconded by Councilwoman Bellamy and carried unanimously.

#### **ORDINANCE BOOK NO. 21 – PAGE 163**

Councilman Newman moved to adopt Ordinance No. 3120 to issue a conditional use permit for property located at 100 Fairview Road to construct 136 new townhome units, subject to (1) waving the sidewalk requirements on Stoner Road; (2) maintain the sidewalk requirement (or a fee in lieu of) on Fairview Road; (3) require a Traffic Impact Analysis, with the understanding that City Council will consider funding such improvements at the time they have such recommendations; (4) the initial sales price of the units may not exceed the affordable housing threshold established by the City; and (5) all other TRC conditions being met as outlined above. This motion was seconded by Councilman Davis and carried on a 6-1 vote, with Vice-Mayor Mumpower voting "no".

#### **ORDINANCE BOOK NO. 21 – PAGE 165**

At 7:00 p.m., Mayor Worley announced a short break.

#### **D. PUBLIC HEARING TO CONSIDER A CONDITIONAL USE PERMIT FOR PROPERTY LOCATED AT 50 OREGON AVENUE FOR A PROPOSED TELECOMMUNICATION FACILITY/FLAGPOLE**

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#### **ORDINANCE NO. 3121 - ORDINANCE GRANTING A CONDITIONAL USE PERMIT FOR PROPERTY LOCATED AT 50 OREGON AVENUE FOR A PROPOSED TELECOMMUNICATION FACILITY/FLAGPOLE**

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

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

After hearing no questions about the procedure, Mayor Worley opened the public hearing at 7:28 p.m.

All Council members disclosed that they have visited the site and would consider this issue with an open mind on all the matters before them without pre-judgment and that they will make their decision based solely on what is before Council at the hearing.

City Attorney Oast said that as documentary evidence is submitted, he would be noting the entry of that evidence into the record.

Mr. Joe Heard, Director of Development Services with the Planning & Development Department, submitted into the record City Exhibit 1 (Affidavit of Publication), City Exhibit 2 (Certification of Mailing of Notice to Property Owners); City Exhibit 3 (Staff Report); and City Exhibit 4 (other information required by the ordinance).

Mr. Heard said that this is the consideration of the issuance of a conditional use permit for property located at 50 Oregon Avenue for a proposed telecommunication facility/flagpole.

The Asheville City Development Plan 2025 thoroughly describes the need to accommodate and encourage new technology as a critical factor in sustainable economic development both through the further stimulation of investment and technology and through the improved quality of life desired by residents and tourists. In addition, the proposed installation supports the notable Smart Growth Goal of 'adaptive reuse/infill' through the seamless co-operation with an existing site.

The applicant (Triton, PCS) is requesting a Conditional Use Permit for a 0.86 acre parcel to allow for the installation of a concealed monopole telecommunication tower on Institutional zoned property (City Exhibit 3 – Aerial Map). The City owned property being considered for this installation is located at 50 Oregon Avenue (corner of Oregon and Louisiana Avenues) and currently houses City Fire Station #3. The telecommunication tower will be located within a lease area of approximately 810 s.f. and will be housed within a 100' tall concealed monopole capable of accommodating up to 3 separate users (City Exhibit 3 – Tower Elevation). In addition to the monopole, a small (214 s.f.) building addition will be built to house the necessary ground equipment. This addition will be designed to blend into the existing fire station's architecture through material and form (City Exhibit 3 – Landscaping Plan and Details). Two separate areas will also be dedicated to accommodate future user's ground equipment; one of which will be concealed within a second building addition, the other is to be screened by a free standing brick wall and proposed vegetation. In addition to the site plan changes designed to accommodate the tower and equipment, other minor site improvements are planned as part of this development project. Specifically, a sidewalk, 4 additional parking spaces, a utility easement, storage space for firehouse use, a new generator, and a newly paved maneuvering area for vehicles and maintenance crews.

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The original application called for the installation of a 100' tall stealth flagpole that would fly an American flag and be up lighted for visual effect (City Exhibit 3 – Site Plan). The recent discussion at the Technical Review Committee (TRC) meeting resulted in the recommended condition that in lieu of the flagpole design, a concealed monopole design be considered by City Council due to the maintenance concerns over the long term care and attention being afforded to the flag, as well as the presence of existing flags on the site, a bank on the adjacent property, and across Louisiana Avenue on the Army Reserve site (City Exhibit 3 – Tower Elevation).

The subject property is a corner lot located within the City Limits just one block south of Patton Ave. Although the lot is located on the corner, the lease area for the monopole is located to the rear of the site, behind the fire station adjacent to the ABC store. At ground level, the pole is well buffered from adjacent properties by existing vegetation.

Separate from this development review is a parallel review for a lease/contract agreement between the City and Triton PCS.

As part of the special requirements applied to Conditional Uses in the Institutional zoning districts per Sec. 7-16-2(c)(3), the project must meet a number of conditions for 'telecommunication towers' including those technical conditions addressed in the TRC report. In addition to the technical conditions, the following, non-technical standards must also be met:

- f. Applicants shall first be encouraged to consider properties owned by the City or Buncombe County before considering private properties.  
**The site located at 50 Oregon Avenue is City of Asheville owned property.**
- i. No telecommunication facility shall interfere with usual and customary radio and television reception.  
**Triton PCS has stated in their application and notification letters that no interference is expected.**
- t.7. Generators may not be used as a primary electrical power source.  
**Generators will not be used as a primary electrical power source.**

t.13. The City Council may require any other conditions deemed necessary or desirable to ameliorate the impact of the tower on the adjacent properties and uses.

**Additional conditions to be proposed as deemed necessary by Council.**

u. An annual wireless telecommunication facility permit shall be required for each wireless telecommunication facility located in the city.

**In order to annually renew this permit the applicant must certify the information described in Sec. 7-16-2(c)(3)(u)1-6.**

v. Conditional use permits for telecommunication towers shall be valid for an initial period of five years.

**In order to review the permit for an additional five year period, the applicant must submit a renewal request within 60 days prior to the expiration of the initial permit period. A review shall be conducted to determine whether and under what conditions the conditional use may be extended for successive five year periods. Additional details of this renewal process are described in Sec. 7-16-2(c)(3)(v).**

w. A conditional use approval for a telecommunication tower shall become null and void if the facility is not constructed and placed in service with one year of the date of approval.

**Approval will become null and void after a period of one year; however, the conditional use approval may be extended for a period of 6 months if substantial**

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**construction has commenced before the end of the initial year. If construction has not begun before the end of the initial year, re-application for a new conditional use permit would be required.**

At their May 3, 2004, informal meeting, the TRC reviewed the Conditional Use Permit request and made a positive recommendation that the project be forwarded to City Council stipulating the conditions outlined in the TRC staff report with the additional recommendation that City Council consider the concealed monopole design in place of the stealth flagpole design.

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 proposed tower and accessory building additions, as a technical condition, must be designed to blend with the surrounding environment and is expected to have a nominal impact on the site area. In addition, the installation is extremely limited in its footprint and will require an extremely small amount of site disturbance with little to no grading or ground disturbing activity.***
- 3) That the proposed use or development of the land will not substantially injure the value of adjoining or abutting property.  
***The proposed telecommunication tower is designed to blend with the surrounding environment, is well screened at ground level, and is most visible from the adjacent commercial corridor where the impact of a concealed tower will be nominal. In addition, no reception interference is expected which could potentially affect other quality of life issues for adjacent or nearby residents.***
- 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.  
***As mentioned earlier, the lease/installation area for the tower is extremely small (810 s.f.) and, by definition, is designed to be in harmony with the scale, bulk, coverage, density and character of the area or neighborhood. The height of the pole is somewhat atypical but is located in proximity with other poles and objects of significant height including; flagpoles, power poles, light poles, signage, church steeples, and transmission lines. In***

**addition, part of the justification for the concealed monopole, in place of the flagpole, was to minimize attention being drawn to the pole by the flying of a flag and possible uplighting.**

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- 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 thoroughly describes the need to accommodate and encourage new technology as a critical factor in sustainable economic development both through the further stimulation of investment and technology and through the improved quality of life desired by residents and tourists. In addition, the proposed installation supports the notable Smart Growth Goal of 'adaptive reuse/infill' through the seamless co-operation with an existing site.**
- 6) That the proposed use is appropriately located with respect to transportation facilities, water supply, fire and police protection, waste disposal, and similar facilities.  
**The proposed development is located near transportation facilities and other utilities appear adequate. The initial technical review by other technical agencies and utility providers has not revealed any problems for serving the use.**
- 7) That the proposed use will not cause undue traffic congestion or create a traffic hazard.  
**The proposed installation is not expected to cause any increase in traffic to the site other than the occasional maintenance visit.**

Pros:

1. Generates revenue for the City that is long term and increases annually.
2. Provides public benefit through better cell phone coverage.
3. Tower designed for co-location and use of three antennae, which eliminates the need for additional towers in the future.
4. Using stealth technology, the tower will not be obtrusive.
5. Installation can operate simultaneously and independently of other existing land use and does not occupy developable space.
6. As part of the license agreement, Fire station #3 will receive other site improvements.

Cons:

1. Encumbers the property for 5 years with the ability to renew for subsequent 5 year periods, potentially impacting the redevelopment of the property.
2. Monopole will be 100' tall and visible above tree line and from a significant distance.

Staff concurs with the Technical Review Committee recommendation of approval with the conditions outlined in the TRC report with the additional condition that a 'concealed monopole' design be used in lieu of the originally proposed 'stealth flagpole'.

Mr. Heard updated City Council on a letter dated April 20, 2004 (Attachment in City Exhibit 4). He said they (1) changed their proposal to a concealed monopole design; (2) received their letter of determination from the FAA in that the pole could present no hazard; (3) received their environmental determinations from the EPA; (4) received the Emissions Safety Report stating that the site will be in full compliance with FCC standards; and (5) a balloon test was not conducted pursuant to the TRC.

A resident on Louisiana Avenue asked if there are any possible or known health risks associated with the tower, will the licensor remedy any interference if it should arise, and where are the other towers located at in the west Asheville area.

Mr. Chad Groseclose, Property Management Specialist with Triton Systems, responded to the questions raised by a resident on Louisiana Avenue. Throughout his presentation, Mr. Groseclose used the following to support his responses to each conditional use standard:

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Applicant Exhibit 1 (photo of tower); Applicant Exhibit 2 (analysis of the impact of communication towers on sale prices in residential neighborhoods by Charleston Appraisal Service Inc.); Applicant Exhibit 3 (map showing other towers in the west Asheville area); and Applicant Exhibit 4 (letter dated May 19, 2004, regarding the stability of a proposed flagpole/communications tower from Paul J. Ford and Company Structural Engineers).

Upon inquiry of Councilman Newman of the terms of the lease, Field Services Coordinator Ed Vess said that the developer

will initially be doing improvements to the fire station that should cost them around \$60-70,000, including the new generator, the new storage area, sidewalks, paved parking, etc. Then there will be a lease fee that they will begin paying. First year - \$18,000; second year - \$22,500; third year \$25,960; the fourth year \$27,000; and the fifth year \$28,000. After that, the rate will increase 4% per year from then on.

After rebuttal, Mayor Worley closed the public hearing at 8:05 p.m.

Vice-Mayor Mumpower moved for the adoption of Ordinance No. 3121, granting a conditional use permit for property located at 50 Oregon Avenue for a proposed telecommunication facility/flagpole, subject to the Technical Review Committee conditions being met and that a "concealed monopole" design be used in lieu of the originally proposed "stealth flagpole." This motion was seconded by Councilwoman Bellamy and carried unanimously.

#### **ORDINANCE BOOK NO. 21 – PAGE**

#### **E. PUBLIC HEARING TO CONSIDER REZONING ONE LOT AT 555 BREVARD ROAD FROM RM-8 RESIDENTIAL MULTI-FAMILY MEDIUM DENSITY DISTRICT TO COMMERCIAL BUSINESS II DISTRICT**

#### **ORDINANCE NO. 3122- ORDINANCE TO REZONE ONE LOT AT 555 BREVARD ROAD FROM RM-8 RESIDENTIAL MULTI-FAMILY MEDIUM DENSITY DISTRICT TO COMMERCIAL BUSINESS II DISTRICT**

Mayor Worley opened the public hearing at 8:06 p.m.

Mr. Joe Heard, Director of Development Services with the Planning & Development Department, said that this is the consideration of an ordinance to rezone one lot at 555 Brevard Road from RM-8 Residential Multi-Family Medium Density District to Commercial Business District. This public hearing was advertised on May 14 and 21, 2004.

Mr. Heard said that the Asheville City Development Plan 2025 discusses land use and transportation goals and strategies for infill development that include pursuing, "compatible infill development in order to actively promote appropriate development and redevelopment within the City and its ETJ" along with assuring that the City of Asheville, "continues to serve as the regional commercial center for western North Carolina by providing opportunities for the location of large commercial uses within the City." The proposed rezoning and redevelopment of the Brevard Road corridor support these land use goals.

Two properties located on the northwest corner of Brevard Road and Pole Creasman Road were recently (12-16-03) rezoned from RS-4/RM-8 to Community Business II District.

The applicant (Progress Energy) has requested a rezoning from RM-8 (Residential Multi-family, Medium Density) to CB-II (Community Business II) to allow for further commercial development of the Brevard Road corridor. The subject property currently supports a CP&L Substation with numerous lines running across the property, but is otherwise undeveloped. The property is bordered by commercial retail and low density residential (mobile home sites) to the

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north, low density residential (zoned RM-8) to the east across Brevard Rd., vacant commercially zoned property to the south, and vacant residentially zoned property to the west. There are some additional CB-II zoned properties to the north and south along Brevard Rd. The majority of CB-II properties on the Brevard Road corridor are non-conforming.

Understanding the recent and anticipated changes to the Brevard Road corridor, the Asheville City Council recently directed the staff of Planning and Development to conduct a zoning study for the corridor to determine whether there was need to consider rezoning areas along Brevard Road to better reflect the goals and guidelines of the City's development plan(s) and Smart Growth goals. As a result of the preliminary study, the subject parcel was noted as property better suited for commercial and/or mixed use development.

The purpose of the RM-8 district is to provide medium density multi-family housing types along with single family detached and attached residences. This district is also intended to provide a transitional area between medium density single family dwellings and other higher density residential uses and/or uses of a heavier impact.

The Community Business II district is established to provide business and service uses to medium/high density residential areas, serving several residential neighborhoods.

With the recent commercial rezoning to the properties on the corner of Brevard Road and Pole Creasman Road, the



remaining RM-8 zoned property no longer serves as an effective transition area between low density residential and higher impact uses. In addition, it is recognized that the subdivision of the larger RM-8 parcel and proximity of the power substation remaining on site has decreased the opportunity for a quality multi-family development. Lastly, there is precedent for rapid turnover of non-conforming properties in areas where new conforming development and increased traffic spurs new demand. With the current road widening underway, increasing residential density, and the potential for new conforming CB-II commercial uses, it is believed that there is significant potential for quality commercial development along this corridor.

Pros:

1. Allows for opportunities of quality, conforming commercial and/or mixed use development.
2. Could spur the redevelopment of non-conforming, vacant, or underutilized properties.
3. Allows for infill development that supports City adopted plans and goals.
4. Rezoning will better support the commercial character of Brevard Rd.

Cons:

1. Reduces potential for residential multi-family development along a major corridor.
2. Rezoning has the potential to stall the turnover of existing non-conforming, vacant, or underutilized properties currently commercially zoned through the opportunity for new construction.

As a result of recent and anticipated changes to the Brevard Rd. corridor and for the reasons stated above, Planning and Development concurs with Planning and Zoning's recommendation to approve this rezoning request from RM-8 to CB-II.

Mr. Lou Bisette, attorney representing Progress Energy, urged City Council to support the rezoning in that the pretty is better suited to commercial use.

Councilwoman Jones felt this was an appropriate rezoning, however, she continues to be concerned about the multi-family residential districts being "whittled away" and at some point Council needs to figure out how we are going to replace what we are rezoning.

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Mayor Worley closed the public hearing at 8:13 p.m.

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

Councilman Dunn moved for the adoption of Ordinance No. 3122. This motion was seconded by Councilwoman Bellamy and carried unanimously.

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

#### **F. PUBLIC HEARING TO CONSIDER REZONING 142 N. BEAR CREEK ROAD FROM INSTITUTIONAL DISTRICT TO RM-8 RESIDENTIAL MULTI-FAMILY MEDIUM DENSITY DISTRICT**

#### **ORDINANCE NO. 3123 - ORDINANCE TO REZONE 142 N. BEAR CREEK ROAD FROM INSTITUTIONAL DISTRICT TO RM-8 RESIDENTIAL MULTI-FAMILY MEDIUM DENSITY DISTRICT**

Mayor Worley opened the public hearing at 8:14 p.m.

Urban Designer Alan Glines said that this is the consideration of an ordinance to rezone 142 N. Bear Creek Road from Institutional District to RM-8 Residential Multi-Family Medium Density District. This public hearing was advertised on May 14 and 21, 2004.

Mr. Glines said that the property is located within the City limits in the western area of the City. The property appears to have been zoned Institutional based on its proximity to Institutional uses and to create compatibility with the underlying higher density manufactured housing units that are located on this parcel and the surrounding parcels.

The 2025 Asheville City Development Plan does not show any major changes expected in this area of west Asheville. The plan does recognize the need to strengthen residential neighborhoods and to provide a mixture of housing types in a wide range of prices to serve the needs of the community.

Surrounding properties to the north, west and south are zoned Institutional and have residential uses on them. To the

east, across Bear Creek Road from this parcel the area is zoned RM-8 and include single family uses.

The Buncombe County parcel data does not entirely agree with a survey that has been prepared for this lot. The discrepancies are of a dimensional nature and location of the right-of-way for Bear Creek Road. Staff has spoken with Buncombe County who agreed with the survey information provided for the property. County staff will update the GIS map layer for this parcel. For the consideration of this rezoning, we will consider the survey information as most accurate for our review.

The parcel under review contains two single family homes and a single manufactured home. The rezoning would allow uses permitted in the RM-8 district and would allow some relief for the subdivision requirements for the property since the lot area is reduced and street frontage requirement is also reduced.

The Institutional District reserves land for the development of major educational, medical and offices uses and multifamily residential uses while minimizing conflicts with adjacent land uses.

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RM-8 Residential Multi-Family Medium Density District establishes areas to provide a full range of medium density multifamily and single family housing types and limited non-residential development normally required to provide basic services in a community.

PROS: RM-8 Zoning is consistent with the properties located across the street. The zoning change will more closely align with the current use of the property.

CONS: The rezoning will remove the possibility of future institutional uses from this property.

The Planning and Zoning Commission, at its May 5, 2004, meeting, voted 7-0 to recommend approval. City staff recommends approval of this rezoning request as well.

Upon inquiry of Vice-Mayor Mumpower, City Attorney Oast said that due to the size of the parcel it might look like spot zoning, however, he thinks that Mr. Glines has done a good job explaining the foundation of his recommendation and if you look at the aerial photograph it is actually zoning it to a use that is more compatible with what it is already being used for.

Mayor Worley closed the public hearing at 8:20 p.m.

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

Councilwoman Bellamy moved for the adoption of Ordinance No. 3123. This motion was seconded by Councilman Dunn and carried unanimously.

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

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

##### **A. RESOLUTION NO. 04-119 - RESOLUTION APPROVING CITY COUNCIL'S STRATEGIC OPERATING PLAN**

Mayor Worley said that this is the consideration of a resolution approving City Council's Strategic Operating Plan. He said this Plan is the outgrowth of Council's retreat process, visioning process and goal-setting process.

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

Councilwoman Bellamy moved to adopt Resolution No. 04-119. This motion was seconded by Councilwoman Jones.

Councilman Newman said that the planning process that we went through as a Council to create this strategic plan was really valuable. He knows Council all has a lot of different ideas that are not reflected in this document but it was really useful to work together to identify some of the areas that there are large areas of agreement on. He came out of the process realizing there are some really critical community needs that have been talked about for a long time but we haven't have the collective voice to tackle them. He was excited that some of those challenges have been identified and are committing ourselves to work together.

Councilman Dunn said there is no perfect plan. He said that sometimes his vision conflicts with other Council members but it's healthy. He felt this document is very important. His support on this document means he will listen to what the other visions

are as long as others will

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listen to his vision. The statement that Council will all speak in one voice probably won't happen because we are all individuals. He was pleased, however, that Council has finally decided to tackle some of the big issues.

Vice-Mayor Mumpower felt this was a well-intended effort initiated by our Mayor and City Manager. He finds himself in an awkward position in that there are parts of this document that he agrees with a lot and there are parts that he disagrees with a lot. At its core, he has a concern that this document represents a distraction from our main mission, which is city services. He feels the document represents an expansion of our city government at a level that exceeds his personal comfort zone. He feels we are growing our government faster in some respects than we are of people and he has discomfort with that. The strongest point to take him away from signing this document, however, is that he believes we have fundamental things that we need to focus on (core city services) and that we are stepping in so many other directions that we tend to neglect some of those fundamental services. He pointed to sidewalks. We have a \$100 Million budget and are only earmarking (for several years) \$50,000 a year for new sidewalk construction and \$150,000 for sidewalk repair. He said that is a very nominal portion of our budget for a fundamental infrastructure issue. There are other monies that go to sidewalks, like fee in lieu of, but those are inconsistent monies. We have had recent discussion about a hard drug interdiction program that the majority of Council spoke against. That to him is fundamental. Public safety is fundamental. We can talk about other exciting initiatives that can have a good and special impact on Asheville, but before we go to the exotic, we should stay with the basic and he believes this document takes us too far away from that. With regret, he will have to vote against the strategic plan.

Councilwoman Jones encouraged all citizens to go to the City's website and read the document. She believed that this document is very grounded in housing, economic development, infrastructure and planning. We are a growing community and it is part of what we are elected to do is to anticipate the growth so that we are able to deliver those critical services well into the future for our children. She felt this document will take us in a good direction in next 20 years.

Mayor Worley felt the process to arrive at this document was a good process, a very collaborative process and had a lot of give and take from Council. He felt this is a good vision for Asheville. He doesn't think it takes away from our core services and he doesn't think it expands government, but he does think it's a recognition of what we are and the direction we are going in as a City. The document reflects what makes Asheville the 8<sup>th</sup> best place in the country to live. Also, it's clear that this is a high level vision supported by strategic goals. He felt that each of us, while we may buy in the overall vision, all have different ideas about how we institute it. He does believe that this document moves us in a good direction.

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

#### **RESOLUTION BOOK NO. 28 – PAGE 265**

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

##### **A. RESOLUTION NO. 04-120 - RESOLUTION AUTHORIZING THE CITY MANAGER TO RENEW THE CONTRACT WITH BALL-JANIK, LLP, FOR THE PROVISION OF FEDERAL REPRESENTATION SERVICES**

Economic Development Director Mac Williams said that this is the consideration of a resolution authorizing the City Manager to renew the contract with Ball-Janik, LLP, for the provision of federal representation services.

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The City of Asheville entered into the initial contract with Ball-Janik in April 2003 for a 12-month period. In doing so, it was suggested at that time to consider the approach of engaging federal representation for at least three years but using annual contracts. The initial contract called for monthly payments of \$5,000 "inclusive" of out-of-pocket expenses. The renewal contract is the same except that Ball-Janik is now asking for out-of-pocket expenses to be "exclusive" of the \$5,000 monthly fee. Ball-Janik is proposing that out-of-pocket expenses would not exceed \$5,000 annually.

The current Fiscal Year 2004-05 City budget proposal includes adequate funding for this proposed contract.

Support statement:

- Representation services enhance positioning of and advocacy for City agenda items by our own elected representatives as well as other Members of Congress and their staffs who also have influence over decisions affecting City agenda items.

Challenge statement:

- Representative Taylor, in particular, as a member of the House Appropriations Committee, is uniquely positioned to respond to City funding requests without the need for City funding of professional representation services.

Staff recommends approval of the resolution authorizing the City Manager to renew the contract with Ball-Janik, LLP, for the provision of federal representation services.

When Councilman Dunn asked if there have been any monies obtained for the City that we can directly attribute to our consultant's involvement, Mr. Williams said that there have been two specific funding earmarks for projects. One for \$300,000 for a new transit bus and the other is \$2,000,000 for traffic signal upgrades. He said that monies obtained for the City that can be indirectly attributed to Ball-Janik's involvement include: (1) they lobbied for inclusion of language in the reauthorization of the federal transportation bill known as TEA-21 which extends flexibility to Asheville and the Asheville Transit System to use federal transit funds for operational assistance. Without this legislative fix, the Asheville Transit System would lose approximately \$800,000 in federal funding that it now receives for operational assistance. This effort has been ongoing as Congress continues to debate the reauthorization of TEA-21. (2) they supported two additional earmarks that made their way into Omnibus spending bill – a \$1 million earmark to NC DOT for the WNC Passenger Rail Initiative which will be distributed to transit systems throughout the state for buses and bus facilities.

Mr. Williams said that the lobbyists also promote the City's priorities to the Congressional delegation staff, subcommittee, committee staff and the delegation members on a regular, sustained and on-going basis. Given the time pressures placed on the members of the Congressional delegation, considerable behind-the-scenes work takes place at the staff level and our lobbyists work hard to maintain and build strong relationships with delegation and committee staff. In doing so, they are able to gain access to these staff at critical points in the legislative process and to remind them of the City's funding priorities.

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.04-120. This motion was seconded by Councilman Dunn.

Vice-Mayor Mumpower felt this is an ex-officio level of government that we are creating artificially and he disagrees with it in principle. He thinks that it's the congressman's job and it's our job to work with our congressman in that regard. He believes that these connections can be

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developed independently. He felt it was hard to track the work and he doesn't think it's fair to say that they have created all these revenues for us, but he's sure they had an impact. He thinks that tracking what they do for us in a concrete way is extremely difficult. He also thinks it makes us an active participant in a system that is notorious for pork barrel politics and that's stepping out of the system that we have in place and that's wrong.

Councilman Dunn said that he voted against the contract last year. However, he will reevaluate them every year and if they can continue to produce, he will support them. He pointed out that Congressman Taylor does care for our community and will work for Asheville's need.

Councilman Davis agreed with Vice-Mayor Mumpower, however, he would support the contract for another year but look for more activity in the coming year.

Vice-Mayor Mumpower said that he has talked to Congressman Taylor's office and they have assured him that if we bring things to them, they will actively pursue them. He couldn't understand why Asheville doesn't do their own work and why we need the buffer of a lobbyist. Mr. Williams said that we can do our work for those individuals, but they only just one vote on the committees that they sit on. City Manager Westbrook also responded that Council decided about 1.5 years ago that we were not effective in Washington and we needed more professional assistance. He said it takes someone in Washington to pursue our items at this level.

Councilwoman Bellamy felt that our \$60,000 investment has been returned and after reviewing our 2005 federal agenda requests, she felt having a lobbyist to assist the City was something she would support.

Ms. Hazel Fobes said that what Council could be using for the infrastructure of our water system is far more important than paying a lobbyist.

Councilwoman Jones said that delivery on basic infrastructure improvements was \$2.3 Million. Part of what we are elected to do is to be smart, be strategic for Asheville, and to do what we need to do ethically to bring home our citizens what they need to be safer and to have better city services.

Mayor Worley spoke in support of the lobbyist. He was pleased that we have a congressman that works well with Asheville, however, he has a limited staff and we can't rely on his staff to do all the research. He felt this is a team effort.

The Secretary of the Libertarian Party of Buncombe County would rather see Asheville not hire a lobbyist.

Mr. Mike Lewis originally felt that hiring a lobbyist was not a good thing, however, after seeing what the lobbyist has helped the City obtain funds for, he now feels it is a good thing to continue and hoped Council will re-evaluates it again next year.

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

#### **RESOLUTION BOOK NO. 28 – PAGE 266**

#### **B. RESOLUTION NO. 04-121 - RESOLUTION APPOINTING MEMBERS TO URTV INC. BOARD OF DIRECTORS**

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Vice-Mayor Mumpower said that this is the consideration of appointing members to URTV Inc., the non-profit selected by Asheville and Buncombe County to manage the community's public access television station.

On December 16, 2003, City Council adopted Resolution No. 03-208 that the City and County would appoint two members each to the URTV Inc. Board of Directors.

At City Council's worksession on May 18, 2004, City Council instructed the City Clerk to arrange interviews for DeWayne Barton, Sandra Bradbury, Kofi Caldwell, Katina Turner and Mark Wilson. Ms. Bradbury was out of town and unable to attend the interview process.

Council was impressed with all candidates interviews and instructed the City Clerk to send the applications to Buncombe County and the URTV Inc. Board for their consideration.

DeWayne Barton received 2 votes, Sandra Bradbury received 7 votes, Kofi Caldwell received 0 votes, Katina Turner received 0 votes and Mark Wilson received 4 votes. Councilman Dunn noted that he was unable to attend the interviews and would only therefore vote for the person he knew and would recommend. Therefore, Sandra Bradbury and Mark Wilson will be the City representatives on the URTV Inc. Board of Directors to each serve a two year term respectively, terms to expire June 30, 2006, or until their successors have been appointed.

#### **RESOLUTION BOOK NO. 28 – PAGE 267**

#### **C. RESOLUTION NO. 04-122 - RESOLUTION TO AMEND OR TERMINATE THE RESTATED AND AMENDED SUPPLEMENTAL WATER AGREEMENT**

Mayor Worley said that one of the things that came out of Council's goal setting process was a desire to regain control of the water. We talked about it in terms of what it means when we annex and the ability to have the potential to charge differential rates. There are also other financial and non-water issues involved. As a part of the resolution, we include in it a provision that directs the giving of one year's notice of termination of the Water Agreement and that will give us a one-year timeframe within which to conduct negotiations. Hopefully we will be able to conduct negotiations and arrive at some results satisfactory to both Asheville and Buncombe County, but it gives us some options down the road if those negotiations prove to be unsuccessful.

Mr. Brian Peterson, member of the Regional Water Authority but only speaking as a citizen of Asheville, applauded the Mayor and Council for taking this step. He has felt this is something that should have already happened. Even though some of comments he's heard has been about annexation or differential rates, but it's much more than that. Looking at where we are now, having been on the Regional Water Authority over a year, it's not that it's not properly managed, it's that it cannot be properly managed. He feels that the staff, governmental bodies and the Regional Water Authority do a good job, but the structure is dysfunctional. He thinks that making a significant change is the only thing we can do to be able to get out of that mess. Anytime we try to make some small improvements, this political dysfunction keeps coming up so that we can't really fix the system. He feels the fundamental problem is lack of accountability. If the people running the system don't do a good job, they are held

accountable by the customers and voters. As it is now, no one is accountable. In looking at some of the negotiations with Hendersonville, it's hard for the members of Authority to think of themselves as Authority members – everybody thinks of themselves as looking out for their individual governmental body. He didn't think the Regional Water Authority works and thinks this is a good step. He hoped the City will get back into control and be held accountable.

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Mr. Mike Lewis felt that this is a core issue in this community. If you can't supply the basics, and water is very basic, then you are not governing. He urged City Council to regain control and do something about our extremely high water bills.

Ms. Hazel Fobes, Chair of Citizens for Safe Drinking Water and Air, provided City Council with her comments. She attended the May 13 and 18 Regional Water Authority meetings to hear public comments on the budget. She was pleased that the entire group seemed to have a cooperative exchange about the water system. They were very interested in the amount of money that the Water Authority needs, the lack of sources and the fact that Asheville and Buncombe County were taking off the top \$2 Million. She thought they were going to do something about getting all or part of that money back. Now there is this resolution which she feels was hastily drawn up. It seems that the City of Asheville wants to take over the Water Authority, but Council wants to take it over in a way that is not pleasant. She knows it is Asheville's water system, but if you take it over, then we don't have any Regional Water Authority. She wants an independent Water Authority. She urged Council not to pass this resolution immediately. The Water Authority now has a civil engineer who has the authority to practice water and systems and land planning in North Carolina, South Carolina and Florida. She asked Council to have an independent regional water system, but the resolution doesn't even talk about regionalism.

Councilman Dunn said that regionalism isn't about who owns the system, but about the water. The important thing is for everyone in this community to have water. The Regional Water Authority has not worked and he is pleased that this Council is going to do something about the Water Agreement. The citizens of Asheville elected City Council to do something and it's now time for the City of Asheville to regain control of our water system and give a break to the water users. He has been on the Regional Water Authority for approximately three months and agrees it is a broken system, which is not accountable to anyone. The City of Asheville taxpayers are paying the bonds on these water improvements – not Henderson County and not the City of Hendersonville, and the City Council needs to be accountable to our taxpayers. He feels that City Council is fair and will take into consideration what the County needs are. He felt the people in Henderson County should be able to have water, but it doesn't mean they should be making decisions for the City of Asheville taxpayers.

Councilman Newman said that families and businesses in Asheville pay twice the property taxes as all the other residents and businesses in Buncombe County and they pay some of the highest residential water rates in North Carolina. The Water Authority is currently proposing to increase water rates by 50% over the next five years and we still need to invest a lot more into the infrastructure. Someone needs to look out for the taxpayers of Asheville. He hoped we can negotiate successfully with the County and our neighbors but we need to start getting some kind of change in place.

Vice-Mayor Mumpower said we are only announcing the beginning of the process of looking at change. We are not locking ourselves into anything and we are not violating any agreements. We are announcing to other bodies that we think we have a broken system of management and we need to look at ways to fix that. We hear a lot about regional authorities and it is a good concept, but when you look across the state, that is not the model that exists in North Carolina. Most cities own their resources and they own them for a reason. Our not owning our resources is one of the reasons we have such a difficult time with annexation. It is a fairness issue to the City and we can talk about regionalism as a good concept but when you get down to reality, that is not what everyone else is doing. We are trying to fix a broken system and do it in a fair, even-handed manner. Nothing will change quickly or thoughtlessly.

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Councilwoman Bellamy said the primary purpose of the 1996 Water Agreement was to provide for the operation of a unified water distribution system that was regional in scope, and to provide a means for the orderly extension of water service to unincorporated areas of Buncombe County and beyond, and to provide for the cost-effective repair and maintenance of the existing water distribution system. She doesn't feel like those purposes are being addressed today. She thinks it is regional in name only. When we did try to extend water lines into Henderson County, there was a lot of disagreement on how that should have been done. Conflict continues to arise when we think about decisions that need to be made with regard to the water system. She feels that putting this issue on the table for Council to review in detail over the next year will give the people the opportunity to give input on what they want to see as well as our elected officials. If we are going to look at being cost-effective, we need to look at every aspect of that happening, not just what it would look like from a regional approach. She supports looking at this for a year to decide if we want to continue with our current relationship under the 1996 Water Agreement.

Councilwoman Jones said that it is her observation is that the Regional Water Authority has very good people on it that care about the region and the entities that they represent, but that regional body has not been able to do what it needed to do for the region. A recent example is that Asheville wanted to work with the City of Hendersonville (the only other water distributor in our region) on a plan to scout out what would happen in an emergency. We couldn't even get an emergency plan for our people. That is not looking after the region. To assume that Asheville is moving towards controlling its taxpayers assets equals to a disregard of the water needs of our region is not the case.

Mayor Worley said the water system is a ¾ of a billion dollar asset and that is a pretty significant asset for us not to be managing ourselves. We do a disservice to our citizens in the water rates. Our citizens pay higher water rates than just about any other city in North Carolina. And, all of those cities have deferential rates involved, which serves as a tool for many aspects. It is a tool we don't have. This is also a process that will take considerable amount of time and we don't know what's going to come out of the negotiations. He anticipates a lot of give and take, a lot of discussion and a lot of ideas. He doesn't think the steps we are taking tonight or anything that will come out of the negotiations over the coming year in any way diminishes our regional commitment. Every member of this Council recognizes that in this day and age we have to be regional in nature. What benefits our neighbors benefits us and vice versa. We only succeed by working together. The provision of water is certainly a regional commitment and a regional asset, but we get a portion of our water from another county and it's only fair that we share that water with other counties and other jurisdictions that need it. We have done that in the past and we will continue to do that in the future. The way we are regional in nature may change, but he doesn't see any change whatsoever in the regional commitment. We will continue to have that commitment, will continue to work with our neighbors, and will continue to honor every regional agreement that we are a party to.

Following up on Councilman Dunn's comment, Mayor Worley said that it's easy to say the \$1 Million Asheville gets out of the water revenues should be given back, but the water system is our asset. If we gave up that \$1 Million to replace it, we would have to raise our property tax rates by 2-cents on the dollar. We have to have that \$1 Million to balance our budget. So, the question is do we get that as a return on the investment of our asset where all the water customers pay that bill (which a substantial number of whom do not live in the City of Asheville) or do we shift that burden to strictly City residents. That is how giving back the \$1 Million affects Asheville.

Vice-Mayor Mumpower moved for the adoption of Resolution No. 04-122. This motion was seconded by Councilwoman Bellamy and carried unanimously.

#### **RESOLUTION BOOK NO. 28 – PAGE 268**

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

Vice-Mayor Mumpower announced the following vacancies for June, 2004. He asked interested people to contact the City Clerk for an application form.

Vice-Mayor Mumpower reminded Council of the various ceremonies which will be taking place on Memorial Day. He especially invited the public to the Memorial Day Ceremony on May 31 at 2:00 p.m., in the City/County Plaza area.

Councilwoman Bellamy formally recognized the Asheville High Girl's Basketball Team, Asheville High Girl's Soccer Team and T.C. Roberson's Soccer Team on their successful seasons. She also congratulated the Asheville High School Seniors and was astounded to see the amount of community service these young people commit to.

All of City Council congratulated Councilman Newman and his wife Beth on their daughter, Tess Newman.

The following claims were received by the City of Asheville during the period of May 7-13, 2004: Natalie Baker (Police), Katherine Mccoy (Fire), Lisena Moss (Sanitation), Linda Buckner (Fire), Jimmy Cole (Water) and Bellsouth (Water). These claims have been referred to Asheville Claims Corporation for investigation.

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

Mr. Mike Fryar asked City Council to approve an arbitrator to meet with him, his attorney Mr. Reidinger, the City Manager, and the City Attorney to discuss a fair solution of his concerns regarding annexation of his property on Smoky Park Highway. Mayor Worley responded that City Council has listened to Mr. Fryar for the past year and has carefully considered every aspect. City Council has not sided with the views of Mr. Fryar. He put Mr. Fryar on notice that Council is not going to continue having the same presentation on the same subject every time we meet.

**VIII. ADJOURNMENT:**

Mayor Worley adjourned the meeting at 9:45 p.m.

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CITY CLERK

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MAYOR