

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

Mr. Larry Rice, veteran from the U.S. Marine Corp, led City Council in the Pledge of Allegiance.

INVOCATION

Councilwoman Jones gave the invocation.

I. PROCLAMATIONS:

A. PROCLAMATION PROCLAIMING JUNE 22, 2004, AS "161ST AREA SUPPORT MEDICAL BATTALION DAY"

Mayor Worley read the proclamation proclaiming June 22, 2004, as "161st Area Support Medical Battalion Day" in the City of Asheville. He presented the proclamation to Mr. B. A. Silver, employee with the Asheville Fire Department, who has just returned home from Iraq. Mayor Worley also recognized the other City employees who are actively serving in the military.

B. RECOGNITION OF CITY OF ASHEVILLE RESERVIST B.A. SILVER

On behalf of City Council, Mayor Worley recognized B.A. Silver from the 161st Area Support Medical Battalion, employee with the Asheville Fire Department

C. PROCLAMATION PROCLAIMING ELLEN RICKMAN AS THE RECIPIENT OF THE BILL FULP AWARD AND VOLUNTEER OF THE YEAR 2004

Mayor Worley read the proclamation proclaiming Ellen Rickman as the recipient of the Bill Fulp Award and Volunteer of the Year 2004 in the City of Asheville. He presented the proclamation to Ms. Rickman.

II. CONSENT AGENDA:

A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON JUNE 8, 2004, AND THE WORKSESSION HELD ON JUNE 15, 2004

Councilwoman Bellamy asked that the June 8, 2004, minutes be corrected regarding the nature of the speaking members involvement regarding public housing.

B. RESOLUTION NO. 04-134 - RESOLUTION OF INTENT TO SET A PUBLIC HEARING ON JULY 27, 2004, TO CLOSE BLANKENSHIP AVENUE

City Attorney Oast said that the first Whereas in the resolution should state that the petition has been filed by all of the property owners adjoining Blankenship Avenue.

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RESOLUTION BOOK NO. 28 – PAGE 283

C. RESOLUTION NO. 04-135 - RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE A CONTRACT WITH CAROLINA MOUNTAIN ROOFING AND CONSTRUCTION COMPANY TO RE-ROOF THE REID RECREATION CENTER ON LIVINGSTON STREET

Summary: The consideration of a resolution authorizing the City Manager to enter into a contact with Carolina Mountain Roofing and Construction Company to re-roof the Reid Recreation Center on Livingston Street and an associated budget amendment from the contingency fund, in the amount of \$77,377.

The current roof at the Reid Recreation Center is well over 25 years old. Over the past three years, requests have been made in the Capital Improvement budget to re-roof this facility. We are currently spending in excess of \$10,000 each year on repairs to the existing roof. Bids were solicited from six roofing companies with two being certified Minority Businesses. The following bids were received and include an additional 10% contingency to cover any excess cost that may occur when the existing roof is removed.

Carolina Mountain Roofing and Construction Company	\$77,377
Stroup Sheet Metal Works	\$78,605
Service One Inc.	\$124,043
Carolina Cornerstone Construction (MB)	Did not Bid
LCM Builders, Inc. (MB)	Non-responsive
McElrath Roofing	Not Licensed in NC

Through the generosity of the Junior League, \$95,000 has been appropriated to make improvements to the interior of the Reid Recreation Center over the next three years. However, due to the extensive problems with the roof, work in the interior of the building should not occur until a new roof has been completed. As stated above, staff continues to address a number of issues at the Reid Recreation Center including the development of a master plan for the facility that will be used as the framework for additional work to occur based upon community and departmental needs. Without the necessary roof repairs none of this work can progress.

Pros:

- Current funding from the Junior League will address much-needed interior needs.
- Extensive water damage has occurred in the facility due to the deteriorated roof. A new roof will eliminate further damage.
- Support of this initiative has been given by the Reid Center Advisory Board and the Parks and Recreation Advisory Board.
- Use of contingency funds will allow this work to occur as soon as possible.

Cons:

- None

The Parks and Recreation Department recommends City Council authorize the City Manager to enter into a contact with Carolina Mountain Roofing and Construction Company to re-roof the Reid Recreation Center on Livingston Street and to approve a budget amendment, in the amount of \$77,377.

RESOLUTION BOOK NO. 28 – PAGE 284

D. ORDINANCE NO. 3128 - BUDGET AMENDMENT TO RE-ROOF THE REID RECREATION CENTER ON LIVINGSTON STREET

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Summary: See Consent Agenda Item "C" above.

ORDINANCE BOOK NO. 21 – PAGE

E. RESOLUTION NO. 04-136 - RESOLUTION REQUESTING THE N.C. DEPT. OF TRANSPORTATION TO INSTALL A TRAFFIC SIGNAL AT THE INTERSECTION OF HENDERSONVILLE ROAD AND YORKSHIRE STREET

Summary: The consideration of a resolution requesting the N. C. Dept. of Transportation (NC DOT) to install a traffic signal at the intersection of Hendersonville Road and Yorkshire Street.

The City of Asheville has been working with some property owners, as well as the Biltmore Methodist Church, to reduce traffic accidents and delays at the intersection of Biltmore Avenue and Yorkshire Street. Some of the property owners hired a traffic consultant to prepare a traffic impact analysis of the intersection. The traffic engineer determined that installing a traffic signal at the intersection of Hendersonville Road and Yorkshire Street would allow vehicles to make the left turn onto Hendersonville Road safely. Additionally, the consultant recommended other improvements such as widening Yorkshire Street.

The NC DOT staff has indicated that the City's support for the installation of the traffic signal may expedite the request.

Pros:

- Provide improved safety for vehicles using the intersection of Hendersonville Road and Yorkshire Road.
- Reduce congestion on Yorkshire Street during the afternoon peak travel period.
- Reduce cut-through traffic on adjacent residential streets.

Cons:

- This change will have a minor increase in congestion to traffic traveling Hendersonville Road.
- The proposed traffic signal must be coordinated with the traffic signal at I-40 and Hendersonville Road. This is initially a technically difficult task to accomplish.
- NC DOT will be responsible for the installation and maintenance cost of the traffic signal.

This request meets the City of Asheville Strategic Operating Plan focus area of Planning Goal #2 Task #1, which states:

"Determine opportunities for managing traffic demand through changes to community patterns and transportation modes, land use patterns, signalization improvements, etc."

City staff requests City Council adopt a resolution supporting the installation of a traffic signal at the intersection of Hendersonville Road and Yorkshire Street and requests NC DOT to consider implementation of this recommendation as soon as is reasonable and feasible.

RESOLUTION BOOK NO. 28 – PAGE 285

F. RESOLUTION NO. 04-137 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO AN AGREEMENT WITH THE U.S. DEPT. OF JUSTICE FOR A LOCAL LAW ENFORCEMENT BLOCK GRANT TO REDUCE CRIME AND IMPROVE PUBLIC SAFETY

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Summary: The consideration of a resolution authorizing the City Manager to enter into an agreement with the U.S. Dept. of Justice, Office of Justice Assistance for a Local Law Enforcement Block Grant and an associated budget amendment to the City's grant fund, in the amount \$71,211, to appropriate the block grant funding; and a budget amendment to the City's general fund, in the amount of \$20,079, to provide grant matching funds and purchase crowd control equipment.

The City of Asheville has been awarded a grant in the amount of \$71,201 under the 2003 Local Law Enforcement Block Grant Program. The City is required to match this grant with \$7,911 of its own funds, which will result in a total block grant budget of \$79,112. The Asheville Police Department will use this grant funding to purchase 20 In-Car Video Camera Systems. In addition to recording traffic stops, drug interdiction efforts and police pursuits, this equipment will improve the quality of evidence obtained by police officers while documenting their daily interaction with the public.

To provide the required grant matching funds and also to provide additional funds for equipment, staff is requesting the appropriation of \$20,087 in Drug Tax Revenue that has been received from the North Carolina Department of Revenue but that is currently unbudgeted. The Department of Revenue assesses the Drug Tax on persons convicted of possessing drugs for sale. The City of Asheville Police Department has used Drug Tax Revenue over the past several years to provide matching funds for grants, as well as for other special projects. Of the \$20,079 amount, \$7,911 will be used as the local match for the aforementioned 2003 Local Law Enforcement Block, and the remaining \$12,168 will be used to purchase crowd control equipment. These items include personal protective equipment for Police Officers as well as communications equipment needed to coordinate public safety operations during public demonstrations.

Pros: The use of drug tax money for the purchase of crucial public safety equipment improves the Police Departments ability to carry out its mission.

Cons: When the purchased equipment requires maintenance or must be replaced, the expectation is created that the general fund will pay for it.

Strategic Operating Plan and Focus Area: The acquisition of this equipment will enhance the focus area, "Critical Services & Infrastructure" and to a large degree, goal #4, *Develop programs and policies to defeat street level drug problems and crime.*

City staff recommends City Council adopt (1) a resolution authorizing the City Manager to enter into an agreement with the U.S. Dept. of Justice, Office of Justice Assistance for a Local Law Enforcement Block Grant and an associated budget amendment to the City's grant fund, in the amount \$71,211, to appropriate the block grant funding; and (2) a budget amendment to the City's general fund, in the amount of \$20,079, to provide grant matching funds and purchase crowd control equipment.

RESOLUTION BOOK NO. 28 – PAGE 286

G. ORDINANCE NO. 3129 - ORDINANCE TO RECEIVE A LOCAL LAW ENFORCEMENT BLOCK GRANT

Summary: See Consent Agenda "F" above.

ORDINANCE BOOK NO. 21 – PAGE

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H. ORDINANCE NO. 3130 - ORDINANCE TO APPROPRIATE DRUG TAX REVENUE TO PROVIDE GRANT MATCHING FUNDS AND PURCHASE CROWD CONTROL EQUIPMENT

Summary: See Consent Agenda "F" above.

ORDINANCE BOOK NO. 21 - PAGE

I. RESOLUTION NO. 04-138 - RESOLUTION SUPPORTING AMENDMENT ONE: SELF-FINANCING BONDS, A LOCAL ECONOMIC DEVELOPMENT TOOL TO CREATE QUALITY JOBS, REVITALIZE COMMUNITIES AND ATTRACT NEW ECONOMIC OPPORTUNITIES IN NORTH CAROLINA

Summary: The consideration of a resolution of support for Amendment One – Self-Financing Bonds Referendum which will appear on the ballot November.

North Carolina communities need every available tool at their disposal to help develop new jobs and tax base. Self-financing bonds are a proven mechanism whereby local governments may finance public infrastructure improvements in support of related private sector development within their communities. As this approach represents another way local governments can approve bonds, a statewide referendum is required.

Support statements:

- NC has lost over 180,000 jobs in recent years – more than most other states. Every tool must be used to make our state and communities more competitive for development opportunities and the jobs they can create. Self-financing bonds are currently used in **48** other states.
- NO NEW TAXES or INCREASED TAXES are required to pay off bonds – they are self-financed from the incremental increase in revenue generated from the increased value resulting from the new private development.
- The tool allows local governments to be a more responsive and nimble partner with the private sector in undertaking catalytic projects resulting in higher quality communities.
- North Carolina's application of the mechanism has some of the strongest accountability safeguards in the country. Public input, local government approval, and Local Government Commission approval are all part of the project/district approval process.

Challenge statements:

- While statewide voter approval is needed to have the tool available as a local option, local voter approval is not required for each specific local application.
- Other means already exist for financing public infrastructure.

Staff recommends approval of the resolution of support for Amendment One – Self-Financing Bonds Referendum to be on the ballot in November.

RESOLUTION BOOK NO. 28 – PAGE 287

J. SECOND READING OF ORDINANCE NO. 3127 - ORDINANCE GRANTING A NON-EXCLUSIVE FRANCHISE TO EDUCATIONAL RESEARCH CONSORTIUM OF THE WESTERN CAROLINAS INC LLC FOR INSTALLATION OF TELECOMMUNICATIONS FACILITIES IN THE PUBLIC RIGHT-OF-WAY OF THE CITY OF ASHEVILLE

Summary: Second reading of an ordinance granting a franchise to the Educational Research Consortium of the Western Carolinas (ERC), pursuant to the City's Telecommunications Ordinance.

In September the City considered and adopted Ordinance No. 3056 to provide for the granting of non-exclusive franchises to install telecommunications facilities in the City's right-of-way. Last year, the City had begun discussions with ERC for a fiber optic installation that lead to a limited area installation that was also limited as to time.

Since then, staff has studied ways to accommodate this emerging technology, and has developed a fee structure and installation guidelines that are now part of our analysis of these proposals and are incorporated into the franchise ordinances.

The franchise ordinance is essentially identical to the DukeNet franchise in its terms and conditions. The most important difference is that ERC will be installing some facilities for use in connection with the City's institutional network, and the cost of this installation and maintenance will be an offset from the franchise fee.

The main lines of the proposed installation are shown on Exhibit A. Some of this proposed installation is within the "high density" areas, where the fees are highest, and some of it is not. The City has requested that some fiber optic lines be installed for its use along these routes, in connection with the existing Institutional Network installed pursuant to the cable TV franchise, and has proposed some connection points as well. The route and connection points are subject to change as conditions dictate, but these would be minor changes and would not need to come back to Council.

The proposed initial term of this franchise is 10 years, renewable for two 10-year terms, unless either party terminates. The franchise fee begins to escalate according to the Consumer Price Index after 5 years.

Considerations:

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

The agreement contains the revisions discussed at the work session on June 15, 2004, together with a list of exhibits.

If Council wishes to grant a franchise to ERC, adoption of the second reading of the ordinance is recommended.

ORDINANCE BOOK NO. 21 – PAGE

K. RESOLUTION NO. 04-139 - RESOLUTION APPOINTING A MEMBER TO THE RECREATION BOARD

Summary: The consideration of appointing a member to the Recreation Board.

Ms. Susan Sparboe has resigned as a member of the Recreation Board, thus leaving an unexpired term until June 30, 2006.

At City Council's worksession on June 15, 2004, City Council instructed the City Clerk to prepare the proper paperwork to appoint Laura Williams to the Recreation Board to fill the unexpired term of Ms. Sparboe, term to expire July 30, 2006, or until her successor has been appointed.

RESOLUTION BOOK NO. 28 – PAGE 289

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

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

III. PUBLIC HEARINGS:

- A. PUBLIC HEARING TO CONSIDER THE CONDITIONAL USE ZONING OF PROPERTY LOCATED AT 407-411 LIBERTY ROAD FROM RM-8 RESIDENTIAL MULTI-FAMILY MEDIUM DENSITY DISTRICT TO OFFICE DISTRICT/CONDITIONAL USE; AND THE ISSUANCE OF A CONDITIONAL USE PERMIT TO ALLOW FOR A PART OF THE EXISTING RESIDENTIAL STRUCTURE TO BE CONVERTED TO OFFICE USE**

ORDINANCE NO. 3131- ORDINANCE REZONING PROPERTY LOCATED AT 407-411 LIBERTY ROAD FROM RM-8 RESIDENTIAL MULTI-FAMILY MEDIUM DENSITY DISTRICT TO OFFICE DISTRICT/CONDITIONAL USE

ORDINANCE NO. 3132 - ORDINANCE GRANTING A CONDITIONAL USE PERMIT FOR PROPERTY LOCATED AT 407-411 LIBERTY ROAD TO ALLOW FOR A PART OF THE EXISTING RESIDENTIAL STRUCTURE TO BE CONVERTED TO OFFICE USE

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

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

After hearing no questions about the procedure, Mayor Worley opened the public hearing at 5:17 p.m.

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

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

Urban Planner Kim Hamel submitted into the record City Exhibit 1 (Affidavit of Publication), City Exhibit 2 (Certification of Mailing of Notice to Property Owners); and City Exhibit 3 (Staff Report).

Ms. Hamel said that this is the consideration of a request to rezone property located at 407-411 Liberty Road from RM-8 Residential Multi-Family Medium Density District to Office District/Conditional Use; and the issuance of a conditional use permit to allow for a part of the existing residential structure to be converted to office use.

The project is supported by several goals and strategies in the plan relating to adaptive reuse, infill development, and smart growth policies. The project utilizes the existing structures on the lot to house a low impact office while maintaining its residential component by providing several affordable rental units to the area. Subsequent phases of the project would support infill development by utilizing the undeveloped portions of the property for additional multi-family development. This project also incorporates smart growth goals by using new zoning tools in order to promote compatible lands uses through the conditional use process.

The applicant, James Edmonds, is requesting a conditional use rezoning of a parcel located at 407-411 Liberty Road in Candler (City Exhibit 3 – Location Map). The property, consisting of 1.69 acres, is in the City's Extraterritorial Jurisdiction area and is zoned RM-8. Currently, two structures exist on the lot that includes a garage apartment and a 2-story residential structure. The applicant is pursuing a rezoning of the lot to Office/Conditional Use in order to convert the lower story of the residential structure to a law office. This structure has been used as a single-family dwelling and also a 2-unit apartment building in the past. It is the applicant's intent to continue renting the second floor apartment in this structure. No change is intended for the garage apartment. Future development of the site may include additional multi-family units that would be reviewed by staff in accordance with the RM-8 zoning requirements.

The conditional use master plan shows the location of the existing structures and the proposed parking areas for the development of the site (City Exhibit 3 – Site Plan). The plan also shows the location of existing trees and other vegetation around the developed portions of the lot. In addition to the existing vegetation, a 20-foot, Type “B” buffer will be required around the North and West sides of the property adjacent to low-density, single-family uses. Street trees will be required on both Liberty Road and Ridge Street. The applicant will also be required to provide parking lot landscaping, if the parking lot exceeds 6 spaces.

The purpose of the RM-8 zoning district is to establish a diverse medium density multifamily and single-family district in areas where public infrastructure is sufficient to support such densities. The purpose of the Office District is to provide small-scale office uses (or a mixture of office and residential use) adjacent to residential uses and to serve as a transition as residential areas convert to other uses or between residential and commercial areas. Due to the location of the Office District near residential areas, uses in this district shall conduct most of their activities during daylight hours.

At their May 19, 2004, meeting, the City of Asheville Technical Review Committee (TRC) reviewed the Conditional Use Rezoning request and made a positive recommendation that the

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project be forwarded to the Planning and Zoning Commission subject to the TRC conditions outlined in their report.

The plan submitted with the staff report has been revised to address several TRC comments that resulted in minor changes to the initial design. This plan addresses the first five “Planning” comments on the TRC staff report in regards to the number and location of permitted parking spaces and the location of buffer plantings and other required landscaping. Additionally, Engineering has determined that sidewalks will not be required for this phase of the development. The remaining conditions outlined in the TRC report are items that would be addressed at the final submittal to the TRC, should the project be approved.

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)).

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 site is relatively flat. The property will be developed with minimal disturbance to the site and existing vegetation. The only land disturbing activity occurring on site will be the construction of the proposed parking area and the installation of required landscaping. Renovations required for the conversion to office space will be confined to the interior of the structure. Any future development of the site will be in accordance with the requirements of the RM-8 zoning district.

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

The proposed use is considered to be low impact. Only one floor of the existing main structure on the lot will be converted to office space. The second floor apartment and the garage apartment will continue in its current use. No exterior change to the existing structures is proposed. Additionally, landscape buffers in accordance with the UDO standards will be required in areas directly adjacent to residential uses to mitigate any potential negative impacts. Any future development of the site will be reviewed in accordance with the requirements of the RM-8 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.

As stated above, the proposed use is considered to be low impact. The exterior of the existing structure(s) will not be

altered and will continue to be in scale, bulk, coverage,

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density and character with the neighborhood. The property will be developed with minimal disturbance to the site and existing vegetation. Additionally, any future development of the site will be reviewed in accordance with the requirements of the RM-8 zoning district.

- 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 project is supported by several goals and strategies in the plan relating to adaptive reuse, infill development, and smart growth policies. The project utilizes the existing structures on the lot to house a low impact office while maintaining its residential component by providing several affordable rental units to the area. Subsequent phases of the project would support infill development by utilizing the undeveloped portions of the property for additional multi-family development. This project also incorporates smart growth goals by using new zoning tools in order to promote compatible land uses through the conditional use process.

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

Transit service is currently unavailable in this area of the City. The project is, however located near major road facilities, interstate connections and other service centers. Additionally, the proposed development was reviewed by the City's Technical Review Committee that includes representatives of the Water Resources Department, Fire Department, Engineering Department, Public Works Department, and Public Works Department.

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

The proposed office use is not expected to generate any noticeable amounts of traffic. The site will be developed with an off-street parking area that will adequately serve the proposed use and the existing multi-family component.

Pros:

1. Allows for the adaptive reuse of an existing building while maintaining its residential component with its multi-family use.
2. Provides for office use in an area that is accessible to residential and commercial services.
3. The character and integrity of the existing structures are preserved through the conditional use zoning process.
4. Additional land on this site is available for future infill development that could make a contribution towards meeting the need for multi-family housing.

Cons:

1. Paving of the proposed parking area will somewhat alter the residential character of the lot.

The site plan submitted as part of this conditional use zoning application allows for an adaptive reuse of property for a low impact office. It preserves the existing residential structures while maintaining its residential component; it limits land disturbance and tree removal on the site and ensures compatibility with the surrounding neighborhood. Additionally, landscape buffers required by the UDO would mitigate any negative impacts to the adjoining properties.

Based on the proposed development and the seven findings staff recommends approval of the project subject to the following conditions: (1) All conditions by the Technical Review Committee be met; (2) In addition to the mixed adaptive reuse of the existing structures permitted

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herein, other uses of the remaining portions of the site that may be permitted without a modification to this permit shall be limited to multifamily development in accordance with the density and dimensional limitations of the RM-8 zoning district; and (3) Signage shall be limited to 8 feet in height, 32 square feet in size, and cannot be internally illuminated.

Mr. Jim Edmonds, applicant, spoke in support of the rezoning and conditional use permit. He felt it would be good for the community.

After rebuttal, Mayor Worley closed the public hearing at 5:25 p.m.

Vice-Mayor Mumpower moved for the adoption of Ordinance No. 3131, to rezone property located at 407-411 Liberty Road from RM-8 Residential Multi-Family Medium Density District to Office District/Conditional Use. This motion was seconded by Councilwoman Bellamy and carried unanimously.

ORDINANCE BOOK NO. 21 – PAGE

Councilman Dunn moved for the adoption of Ordinance No. 3132, granting a conditional use permit for property located at 407-411 Liberty Road to allow for a part of the existing residential structure to be converted to office use, subject to the following conditions: (1) All conditions by the Technical Review Committee be met; (2) In addition to the mixed adaptive reuse of the existing structures permitted herein, other uses of the remaining portions of the site that may be permitted without a modification to this permit shall be limited to multifamily development in accordance with the density and dimensional limitations of the RM-8 zoning district; and (3) Signage shall be limited to 8 feet in height, 32 square feet in size, and cannot be internally illuminated. This motion was seconded by Vice-Mayor Mumpower and carried unanimously.

ORDINANCE BOOK NO. 21 - PAGE

B. PUBLIC HEARING TO CONSIDER THE REZONING OF THREE LOTS AT 70 ALLEN AVENUE FROM RS-2 RESIDENTIAL SINGLE-FAMILY LOW DENSITY DISTRICT TO RM-16 RESIDENTIAL MULTI-FAMILY HIGH DENSITY DISTRICT

ORDINANCE NO. 3133 - ORDINANCE REZONING THREE LOTS AT 70 ALLEN AVENUE FROM RS-2 RESIDENTIAL SINGLE-FAMILY LOW DENSITY DISTRICT TO RM-16 RESIDENTIAL MULTI-FAMILY HIGH DENSITY DISTRICT

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

Urban Planner Carter Pettibone said that this is the consideration of a rezoning of three lots at 70 Allen Avenue from RS-2 Residential Single-Family Low Density District to RM-16 Residential Multi-Family High Density District. This public hearing was advertised on June 11 and 18, 2004.

The property is located within the City limits at the western end of Allen Avenue north of Long Shoals Road. Surrounding land uses and zoning include school and recreational uses to the north zoned Institutional, multi-family residential to the east zoned RM16, and vacant property and a manufactured housing community zoned RS2 and INST respectively.

The property owners, Albert and Hilda Sorrells, wish to rezone the properties in order to utilize them for uses permitted in the RM16 District.

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According to Buncombe County Tax information, the largest of the three properties is used for single-family residential use and the others are vacant. The properties are accessed via Allen Avenue by a private street named Lance Lane, which contains the driveway to the home.

The purpose of the RS2 District is to establish a low density for single-family dwellings and other compatible uses. The purpose of the RM16 District is to permit a full range of high-density multi-family housing types along with limited institutional, public, and commercial uses appropriate within high-density residential areas.

Rezoning the properties would allow the owner the opportunity to develop the property for uses permitted in the RM16 District. The three properties could also be combined to form a larger development parcel if rezoned.

Advantages (Pros)

- RM16 zoning would mirror the RM16 to the east across Lance Lane.
- Increase in the amount of zoning dedicated to multi-family residential.
- RM16 zoning could yield around 58 multi-family residential units on the property.
- Allen Avenue already provides access to multi-family residential as well as office and commercial uses along the street.

Disadvantages (Cons)

- Increase vehicular traffic resulting from development of the properties.
- Allen Avenue may need to be improved to handle the vehicular traffic resulting from potential development of the properties.

In consideration of the above and the adjoining zoning and land uses, the proposed zoning change appears to be consistent with the intent and purpose of the Unified Development Ordinance.

Staff recommends approval to rezone 70 Allen Avenue from RS-2 to RM-16.

The Planning and Zoning Commission, by unanimous vote at its June 2, 2004 meeting, recommends approval as well.

Mr. Albert Sorrells, property owner, spoke in support of the rezoning request.

Mayor Worley closed the public hearing at 5:30 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. 3133. This motion was seconded by Vice-Mayor Mumpower and carried unanimously.

ORDINANCE BOOK NO. 21 - PAGE

C. PUBLIC HEARING TO CONSIDER THE REZONING OF 18 BALDWIN STREET FROM NEIGHBORHOOD BUSINESS DISTRICT TO RS-8 RESIDENTIAL SINGLE-FAMILY HIGH DENSITY DISTRICT

ORDINANCE NO. 3134 - ORDINANCE REZONING OF 18 BALDWIN STREET FROM NEIGHBORHOOD BUSINESS DISTRICT TO RS-8 RESIDENTIAL SINGLE-FAMILY HIGH DENSITY DISTRICT

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Mayor Worley opened the public hearing at 5:31 p.m.

Urban Planner Carter Pettibone said that this is the consideration of a rezoning of 18 Baldwin Street from Neighborhood Business District to RS-8 Residential Single-Family High Density District. This public hearing was advertised on June 11 and 18, 2004.

The *Asheville City Development Plan 2025 (ACDP 2025)* specifically calls for an initiative to strengthen and enhance neighborhood viability through the encouragement of compatible development that preserves architectural diversity and protects neighborhoods from inappropriate non-residential encroachment.

The Future Land Use and Transportation Plan of the ACDP 2025 also identifies this area as being located near a future Regional Development Node at the intersection of Interstates 40 and 240.

The property is located within the City limits on the west side of Baldwin Street north of Fairview Road. Surrounding land uses and zoning include single family residential to the north zoned RS 8, residential to the east zoned NB, commercial to south zoned NB and a place of worship to the west zoned RS 8.

The property owner, Floyd Bailey, wishes to rezone the property in order to utilize it for uses permitted in the RS-8 Residential Single-Family High Density District. Specifically, he would like to construct a single-family home on the property but the NB Neighborhood Business District does not permit a detached single-family home as a permitted use.

According to Buncombe County Tax information and field observation, a cellular communications tower and its associated equipment are located to the rear of the property. The cell tower was constructed on the property prior to it being rezoned NB in 1997 and its use would be a non-conformity whether the property was zoned NB or RS 8. The property also contained a single-family home until it was demolished recently. The property would be mainly accessed from Baldwin Street, but the cell tower equipment is accessed from the rear of the property, which abuts a church property to the west.

The purpose of the NB District is to reserve areas for low-intensity business centers which are accessible to pedestrians from the surrounding neighborhood. The purpose of the RS 8 District is to establish a high density per acre for single-family dwellings where public infrastructure is sufficient to support such development.

Rezoning the property to RS 8 would allow the owner the opportunity to build another single-family home on the property.

Advantages (Pros)

- Continues the zoning pattern of properties directly north and west and a portion of the property to the east which are zoned RS 8.
- Properties to the east across Baldwin Street that front on Fairview Road that are not yet developed for commercial use will remain zoned NB.
- Lessens the possibility of further encroachment of commercial uses into single-family residential neighborhood to the north.
- The property owner has a clear intention of building a single-family house on the property.

Disadvantages (Cons)

- Loss of zoning devoted to small-scale commercial zoning near a well-traveled intersection.
- The cell tower on the property would continue as a non-conforming use.

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In consideration of the above and the adjoining zoning and land uses, the proposed zoning change appears to be consistent with the intent and purpose of the UDO.

Staff recommends approval of the rezoning request to rezone 18 Baldwin Street from Neighborhood Business District to RS-8 Residential Single-Family High Density District.

The Planning and Zoning Commission, by unanimous vote at its June 2, 2004, meeting, recommends approval as well.

Mr. Alan Ditmore said this is an expansion of single-family zoning, which he opposed as exclusionary barrier to affordable housing.

Mayor Worley closed the public hearing at 5:32 p.m.

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

Vice-Mayor Mumpower moved for the adoption of Ordinance No. 3134. This motion was seconded by Councilman Davis and carried unanimously.

ORDINANCE BOOK NO. 21 - PAGE

IV. UNFINISHED BUSINESS:

A. ORDINANCE NO. 3135 - ORDINANCE ADOPTING THE FISCAL YEAR 2004-05 ANNUAL OPERATING BUDGET

City Manager Westbrook said that this represents the Fiscal Year 2004/2005 Annual Operating Budget for City Council's consideration before adoption.

The Fiscal 2004/2005 Annual Operating Budget was presented to City Council on May 3, 2004. In accordance with the North Carolina Local Government Budget and Fiscal Control Act, a summary of the Budget along with a notice of the Public Hearing was published on May 28 and June 4, 2004. The City Council conducted a public hearing on the Budget on June 8, 2004.

The Fiscal Year 2004/2005 Annual Operating Budget is balanced with a tax rate of \$0.53 per \$100 of assessed valuation, which reflects no increase over the current property tax rate. All essential City programs and services are maintained.

The net operating budget as currently presented to City Council is set at \$98,560,570, which includes a General Fund appropriation of \$71,737,276. This budget includes several changes that were made during Council budget deliberations that took place in May and June. Those changes are reviewed below:

- An appropriation of \$600,000 is included in the budget for a Safe Neighborhoods Initiative program aimed at improving safety in neighborhoods and addressing the root causes of crime. This program includes 5 additional police officer positions and equipment at a cost of \$250,000; \$50,000 to expand community policing efforts; \$50,000 for a summer youth program; \$50,000 for an educational tutoring program; and \$200,000 to support affordable housing infrastructure.
- An additional 5-person construction crew was added to the budget during the deliberation process in order to expand the City's resources directed toward the construction of new sidewalks. The budget for salaries and materials associated with this crew is \$298,539. This

budget is supported by \$202,000 in additional grant revenue and fee-in-lieu of sidewalk funds. Based on the expenditures and revenues associated with this crew, the net cost of this program is \$96,500.

- Council funded the Safe Neighborhoods Initiative program and the net cost of the additional sidewalk crew by reinstating the full recycling fee, which generated an additional \$366,000 in revenue; reducing the merit-pay budget from an average award of 3% to 2.5%, which saved approximately \$112,000; reducing \$129,000 from the vehicle replacement budget; cutting \$55,000 from the Civic Center budget; and making other minor changes and revisions.
- The City and the Water Authority proposed a new capital maintenance fee as a part of the Water Resources Department's operating budget. This fee provided approximately \$5.2 million in revenue that was earmarked for various water capital improvement projects. On Tuesday, June 15, however, Buncombe County voted not to approve the Water Resources Proposed Budget, which included the new capital maintenance fee. As you know, the Water Resources Budget requires approval from the City, the Water Authority, as well as Buncombe County, before it can be officially adopted.

In light of the County's action, the Water Budget that is currently presented for adoption has been revised to exclude the new capital maintenance fee. The exclusion of this fee reduces the Water Resources Budget from \$27,940,616 to \$22,646,720. Staff made cuts to various capital, operating and rolling stock line items to offset the loss of revenue. The Water Authority and Buncombe County must still approve this revised budget in conjunction with the City. If either of these two entities do not approve the revised budget, the Water Budget will revert back to the Fiscal Year 2003-04 approved budget and it will be necessary for Council to amend the current budget ordinance accordingly.

- Exclusion of the Capital Maintenance Fee from the Water Resources Budget also had an impact on the City's General Fund. Per the Water Agreement, the City currently receives 5% of the Water Fund's gross revenues as a payment in lieu of taxes. By excluding the capital maintenance fee, the general fund's revenues are reduced by \$264,000. In the proposed budget, the revenue to the general fund associated with the capital maintenance fee was earmarked for additional street improvement and paving projects. In light of the reduced revenue, expenses for those projects have been removed from the budget.
- Outside agency funding is presented in accordance with the Outside Agency Committee recommendations to allow most agencies that currently receive funding to receive the same appropriation in Fiscal Year 2004-05 as originally appropriated in Fiscal Year 2003-04. Funding for the Asheville Buncombe VISION, Inc. has been eliminated, and funding for the Asheville Area Arts Council has been reduced from \$25,000 to \$20,000. Below are the recommendations:

Asheville Area Arts Council - \$20,000
A-B Community Relations Council - \$60,000
Asheville Sister Cities Inc. - \$2,000
Clean Air Community Trust - \$5,000
Economic Development Commission - \$40,000 (annual payment for Board participation)
The Health Adventure - \$5,000
Hospitality House of Asheville Inc. - \$20,000
Kids Voting - \$1,000
One Youth at a Time Inc. - \$9,500
Project STEAM - \$7,500
Visitor's Center - \$100,000 (part of a 5-year capital campaign)
YWCA - \$10,000

- Various changes or increases to fees & charges are presented in accordance with the Fees & Charges Committee recommendations. Specific fees & charges recommendations are provided as a part of the annual budget ordinance. Changes to building safety fees are not included as part of the currently presented annual budget ordinance, but will be reviewed during the coming fiscal year for possible adoption in October, 2004.

Staff requests that Council review the Fiscal Year 2004-05 Annual Operating Budget, including the changes noted above, and make necessary recommendations or adjustments followed by adoption of the Budget Ordinance.

Upon inquiry of Councilman Newman, Mayor Worley said that that budget, as presented to us, has a water budget in it that does not reflect the Water Authority's proposed maintenance and refurbishment fee. That is based upon the recent decision by the

County that puts some conditions on their approval. His thought would be to adopt our budget ordinance, including the water budget without the maintenance fee, but to then consider a motion approving the Water Authority's proposed budget with the understanding that if the County approves the Water Authority's proposed budget with a maintenance fee increase, then we would amend our budget accordingly. If it doesn't happen, then we will have dealt with it appropriately.

Councilman Dunn, member of the Water Authority, said that the Water Authority has scheduled a meeting this Friday to re-visit the budget that the Water Authority first presented and the County did not approve. He personally believed that we should not raise water rates that high until we can get a better handle on the Water Agreement. He has talked to two County Commissioners who said they would like to approve a capital budget, but they would like for it to be a lesser amount.

Councilman Newman moved to approve the 2004-05 Annual Operating Budget as presented by the City Manager. This motion was seconded by Councilwoman Bellamy.

Councilman Newman said that he appreciated the way the City Manager structured the budget process this year. He said we've had a positive growth in our fund balance from last year and that represents the responsible thing we should be doing for the economic strength and financial health of the City. We are not facing pressures for tax increases this year either. He said the 2004-05 budget includes a strategic investment in improving maintenance and construction of sidewalks. This will allow us to take better care of the sidewalks we have in our neighborhoods and help make Asheville a safer place for people to walk and to lead a healthier lifestyle. While there have been some disagreements about specific funding for neighborhood safety and law enforcement, he was very glad our Council had a focus on those discussions, even though we don't all agree on how much funding we should put into the different parts of the plan to be effective in making neighborhoods safer. Even if Council does have some differences of opinion about exactly what we should do, he looked forward to Council working together as we move forward to make this effective. We all know that we are going to need more funding for all parts of what we need to do to have an effective approach and he was glad that the Council has agreed to work together to find other sources of funding for that. He felt that the dialog with the ABC Board was a good step in finding the additional resources that we can use for more law enforcement. He supports the safe neighborhood initiatives. While it will not solve all of the communities problems in a single year, it lays the foundation we need to have a comprehensive approach to addressing neighborhood safety and vitality issues in our community. About 50% of the funds in this initiative will go towards increasing law enforcement and organizing stronger community policing in the neighborhoods where we have documented crime. The other 50% of those funds will go to create job opportunities for young people from those neighborhoods. We also have funds to invest in infrastructure to disburse attractive affordable housing throughout Asheville and improve the quality of life in neighborhoods with concentrated poverty. He feels that this is the type of effective foundation we need for long term success.

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Councilwoman Jones moved to amend the budget to allocate \$5,500 to Asheville-Buncombe VISION. That amount reflects a 50% decrease in what was allocated to them last fiscal year. She said that they did request the amount they received last year (\$11,500), however, they felt that \$5,500 would help. This motion was seconded by Councilman Davis and carried on a 5-2 vote, with Vice-Mayor Mumpower and Councilman Dunn voting "no."

Councilman Dunn was concerned with a budget increasing from \$86 Million to \$103,000 Million in two years. He understands that the City has good staff, but some of the work they do is self-inflicted by too many regulations and too much oversight in many ways. He thinks he could support this budget if he knew we were doing everything we could to work with the County to eliminate the duplication of services, e.g., two school systems, two police forces, two recreation departments, etc. Using a current telephone book, he showed Council the numerous number of listings for drug problem agencies pointing out the extensive drug problem in Asheville. He is willing to work with Council, but this budget does not reflect the real needs in this community regarding drugs. He felt that both plans (the Safe Neighborhood Initiative and the Hard Drug Interdiction Program) had some mistakes, however, he hoped that Council would wait to spend the \$600,000 until they receive the Police Chief's recommendations since he is more experienced in these matters. He would be voting against the budget in its present form.

Upon inquiry of Vice-Mayor Mumpower, City Manager Westbrook said that 5 additional police officers from the Safe Neighborhood Initiative will be added to the 3 new officers for a total of 8 new police officers in Fiscal Year 2004-05.

Vice-Mayor Mumpower said there has been a lot of misinformation shared in the community about the issue of hard drugs. One of which is that some of us have been portrayed as having an interest in seeing more people arrested. That is not what the proposal is about at all. It has been about decreasing traffic. Arresting more people has not and will not be the answer, but there are things you can do to stop people from selling and buying drugs in Asheville. He spoke very strongly against the Safe Neighborhood Initiative proposal in the budget. He thinks we are being terribly deceptive to ourselves and others to suggest that social programs and housing are going to solve, in any meaningful way, our hard drug problem in Asheville. If houses, jobs and other things would solve our drug problems, we wouldn't have doctors, lawyers or rich people with those problems. Council has

been told that it's a parade of Mercedes and Lexus'. It escapes him to think how \$200,000 spent on affordable housing is going to have any meaningful impact on our hard drug problem. Five more police officers is great, but will not stop our problem. The three Council members who supported the Hard Drug Interdiction program didn't come up with 12 additional officers without any research. They asked the Interim Police Chief what it would take to go after the people who deal and sell drugs in Asheville at the street level, with persistency, 24 hours a day. The best answer they could get was 12 additional police officers. Drugs are like a cancer in our city and you can't make it go away with watered down chemotherapy. Five additional officers, when we need 12, won't do it either. Asheville is a regional resource for drugs in our region and that is not okay. There is no evidence that money and social programs have significant impact on hard drug use. Once you start saying "no" to people and once you take away their drug resources and their opportunity to sell drugs, then you need programs to help these people. He asked the majority number of Council members who voted against a strong street level drug interdiction program if they will reconsider. He will not resist the social program and other initiatives, but he would ask that we do not do "watered-down chemotherapy." Let's fund enough officers to get this right this year. There is a way to do that without assaulting our budget. If we make a decision to do that this year and allow our new Police Chief as much time as he needs, that can get the budget dollars down to where it is more acceptable to Council. The people who use and sell hard drugs in Asheville are not going to stop and one day this Council will have to take steps. The problem will get worse and worse. One day we will have to find the courage and political will to take some steps that are costly and are difficult and that conflict with some of our personal values to try to address this problem.

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Councilwoman Jones said that in terms of diagnosing a cancer, chemotherapy can be a very effective treatment, but sometimes you operate, do radiation, change your diet, and pray. That is the holistic approach and a skilled doctor determines what that holistic approach is. It's not necessarily a one-shot thing. She believes this is a strong approach. Part of its strength is because it will be received by not the dealers, but the people that live in peril everyday. If we want our tax dollars to yield fruit, there has to be receptivity in the community. The Safe Neighborhood Initiative will be received well. Again, she feels this is a strong effort. She was glad that we are building more police officers to our force. She was also excited the budget has a lot of capital investments and that the neighborhoods are going to see more sidewalks. She was pleased that we have come up with a way to help the private sector developers who have been courageous to step into affordable housing development. The Safe Neighborhood Initiative is not 100% perfect but it is a start. She will be willing to work with all Council and the Police Chief in moving forward.

Councilman Davis agreed that the Safe Neighborhood Initiative is a strong effort. However, he would not be supportive of the budget as proposed. He felt that somewhere between the Safe Neighborhood Initiative and the Hard Drug Interdiction Program there is a good plan. The Initiative is a good show of good faith, a desire to do good in the community and we have heard people say they would like some help in their neighborhoods. It shows we have their interests in our heart. He personally feels the police presence is very important initially so we can provide protection to those neighborhoods. He didn't think we are adequately doing that with the addition of 5 police officers. The \$200,000 for affordable housing is a good thing, but let's call it what it is – affordable housing, not a Safe Neighborhood Initiative. This Council is supportive of affordable housing. He felt it was important to have summer job programs and mentoring, but he doesn't think that competes well with people that are giving kids big dollars to stand lookout or run drugs. It does give them a positive alternative and he does think we should be spending money in that direction. He would personally like to see us utilize our assets with our new Police Chief coming up with a plan. He wouldn't mind funding the Initiative with the knowledge that we would create a better plan. Another problem he has with the Initiative is that we are funding it with .5% merit increase from City employees when we give ourselves a raise, which he does feel is appropriate. Also, the Civic Center Director has made good progress with the Civic Center and we are going to cut his \$30-40,000 needed for tables and chairs. Also, we are cutting out \$120,000 for needed replacement vehicles. He knows that we need to fund this Initiative if we put it in there, but he's just not sure he feels good about funding it in this method for what we are going to get out of this. This is a good movement, but not the right one. He will not support the budget as proposed.

Councilman Dunn said that aggressive problems need aggressive treatment. Wherever our Police Chief thinks the City should go, with more police officers or affordable housing, we should go. We can't remove thugs if we don't have the manpower. We lost the drug war because we didn't have enough of a commitment in the first place. And, there is a fear of retaliation for those people in the neighborhoods. We need to take aggressive action.

Councilman Newman said that he looks forward to working with Police Chief Hogan and appreciates how he is getting out into our communities to listen to people. In addition to listening to Chief Hogan's recommendations, we also need to listen to people in the neighborhoods that are being affected. Council has heard that some of the things in the Initiative will make a real difference in the life in those communities. The Initiative contains \$250,000 for law enforcement and \$50,000 for organizing stronger community policing. The only part of the Initiative that can be described as a social program is the \$100,000 for creating job opportunities for young people in neighborhoods where crime has been identified as a problem. We do need support of this part of the Initiative. Generally he doesn't think it's the government's job to go out and create jobs for people, but the reality is that in some parts of our community we need to take the jobs to the young people because a lot of these kids don't have a way to get to

opportunities for kids in those neighborhoods will make a real difference in their life. He didn't think that frankly for the vast majority of young people in our community we don't have to compete dollar for dollar with folks who sell drugs in their neighborhoods – most young people don't want to sell drugs. They don't want to get involved in drug activities. But if the only people they see in their neighborhood who are making money are people who are involved in drug activities, that is wrong. He felt that the first job offer that a young person gets should not be from someone who is enticing them to sell drugs. We have a responsibility to create those opportunities. The affordable housing part of the Initiative talked about least is also fundamental to a long term effective vision for our community. It's not just about safety, it's about community and the vitality of our neighborhoods. Through local and federal governmental policies we have created situations in our community where we have neighborhoods with heavily concentrated poverty. Studies have shown that the creation of high concentrations of poverty creates higher levels of drug activity. He agreed that \$200,000 is not going to make a dent in that, but if we are going to identify creating safer neighborhoods long-term as a goal for our City, then we have to have the dispersal of affordable housing within our community as a key part of that. The allocation of funding as part of the Initiative will lay the foundation that we can build on.

Councilwoman Jones explained the very generous compensation for City employees, noting that Council is not cutting employee benefits to fund the Initiative. There is a 1% cost of living increase, 2.5% merit increase, and a 1% increase for the 401-K program. Regarding the tables and chairs for the Civic Center, she asked the City Manager that as we close year-end, if there are some additional dollars that we prioritize those needs to the top.

Vice-Mayor Mumpower said that at the very least we are ignoring drug dealers and users with this budget proposal. At the worst we are protecting them. That's wrong. This budget also provides excessive support for the non-profit community and that's a community that employs 3 of the 7 members on Council. He likes to be gentle, fair and even-handed, but he's not the man who people are shooting at, the mother trying to raise kids around drug dealers, the person who gets his house broken into all the time, or the person who gets solicited for drugs every time he drives to his home. He lives somewhere safe where he doesn't have to deal with this so he can afford to be humble, but this is not the time for us to be demonstrating humility. This is the time for us to be bold, to say it's not okay, or to turn our head aside and let people consistently and persistently break the laws, specifically with reference to hard drugs. He feels anger and is ashamed and at some point we will have to deal with this and he looks forward to the time when we find the courage to do it.

Councilwoman Jones said that in such a volatile arena that we are in, she thinks it is even more important that the leadership has boldness, but rationality around the issue. It is really important that we keep our cool and that not tread lightly into some dangerous areas. She felt it is imperative for city-elected officials to be wise, safe, and cautious in this arena. She was thrilled there was a misinterpretation about the one of the plans presented entitled "Operation Hard Time." She could see where people were confused, because the whole plan sounded like it was being packaged with the end being prison. She was glad that misunderstanding was cleared up because it will make it easier to go forward as we try to work together.

Vice-Mayor Mumpower said there have been five compromise plans put on the table by three Council members. The first one was called "Operation Hard Time" and it meant giving drug dealers and users a hard time – making it difficult to buy and sell drugs in Asheville. None of the subsequent plans ever reflected on that topic because Councilwoman Jones brought it to their attention early on and he felt that was a good point.

Mayor Worley said that from the discussions, you can see that all Council members are concerned about drugs in Asheville. It's too easy to lose site of the fact that that is the case. It is also obvious that we have passion about our feelings and how we want to approach that issue.

It's clear that we differ in our approach but that's good too because when we differ we come up with a lot of different ideas and good solutions. The reality is that none of Council really knows what the best solution is and the key is to pull it all together. No program is perfect – we are not the experts on this issue. Unfortunately now is the time we adopt our budget each year so we have to do something and we have to do what we think is best, given what we have and our knowledge at the present time. We are forced to decide now and implement later. The good news is we can implement a lot of this later. We now have a new Police Chief and have had no chance for his input. While we are prepared to move forward with a 600,000 budget appropriation, he was pretty certain that all of Council is willing to wait, to listen and to consider recommendations that will come from Police Chief Hogan after he becomes familiar with Asheville and is able to see what the problem is and present us with recommendations as to how to best approach it and then perhaps then Council can reconsider how some of this \$600,000 is allocated.

Councilman Dunn suggested that we allocate \$250,000 that we expect from the Alcoholic Beverage Control Board to be earmarked for the drug program. They have to spend 5% on drug and alcohol education, so he felt it was appropriate they allocate the money to the City for their drug program. He also suggested that Council agree to wait until the Police Chief comes to Council with his recommendations and then Council make a decision on the best approach to the problem.

Mayor Worley said that the Council can't include the \$250,000 in the budget because it is not a revenue source locked in, however, he thinks that asking the ABC Board is entirely appropriate. If the City receives the money, then Council can make a decision at that time in terms of how to allocate it, but that would be given very serious consideration.

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

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

Mayor Worley moved to approve the Water Authority budget as presented to City Council by the Water Authority with the understanding that if the other required approvals are obtained, we will conform our adopted budget to be consistent with the Water Authority budget. This motion was seconded by Councilman Dunn and carried unanimously.

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At 6:33 p.m., Mayor Worley announced a short break.

V. NEW BUSINESS:

A. RESOLUTION NO. 04-140 - RESOLUTION AUTHORIZING THE CITY TO ENTER INTO A DOWNTOWN DEVELOPMENT AGREEMENT WITH THE GROVE PARK INN

City Attorney Oast said that this is the consideration of an amendment to the Downtown Development Agreement with Grove Park Inn (GPI) for Site #2.

Last year, the City entered into a Downtown Development Agreement with the Grove Park Inn for the potential development of public-private projects on two sites in downtown near City Hall. Site #1 was at the intersection of College Street, Spruce Street, Market Street and

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Patton Avenue extension. Site #2 was on the south side of the City Building, on property that is used by the City as a parking lot.

Pursuant to the Agreement, Council authorized the City to enter into an option of GPI for Site #1. After analyzing financial information and projections, however, GPI decided not to proceed with Site #1, and officially withdrew from consideration of Site #1 in December of 2003.

Since then, staff and representatives of GPI have continued to discuss possibilities for Site #2. Progress on this site was delayed while the City completed its acquisition of the "old jail site" from Buncombe County, which gave us ownership of the entire upper level. As noted below, some of the property in Site #2 is still in private hands.

The Amended Downtown Development Agreement under consideration is characterized as an amended agreement to recognize that it involves the same parties and one of the same properties, and that the delay in proceeding with it was due to property acquisition issues. But it is really a new agreement dealing only with Site #2. In fact, the Agreement recites that Site #1 is no longer under consideration.

Proposed Uses: Design. As proposed, the building on Site #2 will include a mixture of commercial, office, and residential units (15% in the affordable range) in the private part of the development, and incorporating a substantial City employee/public parking facility as the public element, with the possibility of some City office or meeting space as well. The physical design of the building has not progressed beyond the conceptual stage at this point, but discussions with GPI have indicated that it will be multi-story, with a pedestrian-scaled and oriented street level appearance. It may be designed to be built in phases. The Agreement contains some height restrictions (no higher than the cornice of the City Building), and some other required considerations, but more details will depend on the actual design of the building, which must undergo an extensive public review process, and extensive review by the City

Design review. The Agreement provides for an extensive review process, including at least two public meetings coordinated by GPI. In addition, there are required reviews by the Downtown Commission, the Technical Review Committee, and the Pack Square Conservancy. The final design of the building is subject to approval by the City, which could take the form of a Conditional Use Permit, but in any case will involve a public hearing.

Process. Following the parties' entering into this Agreement, and subject to obtaining an appraisal, the parties would enter into an option (which requires a public hearing), that would secure the property while GPI goes through the design approval process, and investigates financing feasibility. During this time, the City would also be exploring the financial feasibility for its part of the project. Provided the design is approved, and financing secured, the property would be conveyed and construction would begin.

Time line. The tentative dates for these events are:

1. Enter Downtown Development Agreement – June 2004
2. Obtain appraisal – July 2004
3. Consideration of Option Agreement – August 2004
4. Option period – 1 year (with extension possible)
5. Completion of design review – prior to expiration of option
6. Conveyance of property (no date yet)
7. Construction (no date yet).

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Amendment. It is anticipated that, once the decision is made to proceed with an approved project, further amendments to the Downtown Development Agreement, or additional agreements, will be needed to clarify the public / private roles in this project.

Other issues.

- The Agreement requires that the design be sensitive to the Eagle/Market Street Area and Pack Square / City-County Plaza, and that area stakeholders are involved in the design review process.
- The City will have to acquire a piece of Site #2 that remains in private hands. GPI may have to acquire the Hayes & Hopson Building, also in private hands.

Considerations.

- The projected value of the structure will exceed \$40 million
- The project will help tie the South Pack Square area into the rest of downtown, economically and physically
- The project will provide a commercial / residential anchor for this end of town
- The Downtown Development Agreement enables the City to work with one developer, and does not require the City to use a competitive process to sell the land. This encourages the private sector to invest the time and resources necessary to design these complex projects, without fear that they might lose the property to another purchaser.
- Despite this part of the project having been heavily publicized in connection with the public debate about Site #1, there has been no other interest expressed in Site #2.
- Entering into the Downtown Development Agreement does not commit the City to anything but the process; no building is approved and no property is sold without further action by Council.
- This Agreement is heavy on process and public participation.

If the Council desires to pursue the development of Site #2, adoption of the resolution is recommended.

Mr. Oast then reviewed the issues raised by Council at the June 15 work session regarding the Amended Downtown Development Agreement with the Grove Park Inn.

1. Parking spaces. There was some disagreement over the number of parking spaces that would be included for preliminary design purposes. The lot currently has approximately 220 spaces, with roughly 125 of these spaces being for employee parking. Other spaces are for storage of City vehicles or County employee parking. When the County detention center is expanded onto the lot on the east side of the City building, the City will lose approximately 90 spaces. The lower parking lot that we acquired from the County (southwest corner of Marjorie and Davidson Streets) contains about 35 spaces that will be available for the City's use, and some surface parking spaces may remain on Site #2. Although designs for the GPI Site #2 project are still in the conceptual stage, the project will almost certainly include a parking facility for use by the tenants and residents of the building. In order for the

City not to experience a net loss of parking spaces for employees as a result of this project, we would need approximately 200 spaces in whatever facility is constructed. This is probably a more appropriate figure to use for preliminary design purposes as it establishes an absolute floor, with the potential for adding employee or public spaces as the design evolves. There is also some potential for shared parking, depending on the uses of the GPI building.

2. Relationship to South Pack Square Redevelopment Plan. The property comprising Site #2, which is the property that is the subject of this agreement, is not part of the area covered by

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the South Pack Square Redevelopment Plan. The SPS Plan area involves property on the south side of Eagle Street, but does not include the property on the north side of Eagle Street, where Site #2 is located.

3. Inclusion of South Pack Square stakeholders in design review process. The agreement as drafted provides that the preliminary design will reflect a sensitivity to the Eagle/Market Street area. There are several organizations operating in the South Pack Square area, and all of them potentially have an interest in the design of GPI's project for Site #2; some as owners of nearby property, some as operators of nearby businesses, and some just because of their interest in the area.

Paragraph 3.b. of the agreement, regarding public participation, strongly encourages GPI to involve stakeholders from the South Pack Square area in the public presentations required as part of the preliminary design process. This paragraph has been revised to require GPI to send targeted invitations to these presentations to the following organizations, or to meet with them separately:

- a. South Park Square Business Association
- b. Eagle Market Street Development Corporation
- c. YMI Cultural Center and YMI Development Corporation
- d. Mt. Zion Development Corporation
- e. Any other organization identified by the City.

As with the Downtown Commission and Pack Square Conservancy, any design presentations involving these organizations will be of a "mandatory review / voluntary compliance" nature.

4. Pack Square Conservancy. The inclusion of the Park Square Conservancy as a reviewing agency is because the Pack Square Design Guidelines adopted by Council last year specifically identified portions of Site #2 as a site where the design of a proposed development would have a potentially significant effect on the Conservancy's plans and programs. Site #2 is not within the area subject to the City's agreement with the Conservancy, so the Conservancy's role in this Agreement as to Site #2 is one of mandatory review, voluntary compliance.

5. Affordable Housing Component. The provision in the agreement for some of the residential units to be within the affordable range was included in an effort to be consistent with Council's continuing desire to increase the supply of affordable housing in the area. This has recently been incorporated into the Strategic Operating Plan as Goal #4. Though no specific percentages are mentioned in the Plan, the 15% figure approximates the percentage that has been used in connection with other projects, such as the Eagle/Market Street project, and is in the same range (10% - 20%) as other such projects nationally. This also approximates the percentage where other provisions of the City Code (e.g. Planned Unit Development) trigger density bonuses.

6. Other. A provision has been added to para. 6.b.(2). that it is not a breach of a material term of the Agreement, and thus not grounds for termination of the Agreement, if City Council does not approve the design for the project as submitted by GPI.

In its approval of the final design of the project, the City Council may adopt some or all of the recommendations resulting from any of the design review processes set out in the Agreement.

Mr. W. Louis Bissette Jr., attorney representing the GPI, said that this agreement will see if the City's and the GPI's needs can join together and produce a project which will be good for the City of Asheville and the GPI. The GPI would like to develop the property for a number of

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reasons and they would like to build something on Site 2 that will serve everyone's needs. Because the GPI is a for-profit entity, it has to meet their economic feasibility studies. That is what this agreement will begin. With this process, the GPI can begin to identify what the City wants to see there and the GPI can begin to educate the City on what it would like the City to see there. We

do agree to the new conditions outlined above by the City Attorney.

Ms. Julie Brandt felt that downtown property is very valuable especially when it borders the park on our historic square. Therefore, she asked that the City get the highest possible price and not the lowest price allowable on Site 2. She asked that because this is a complicated project and the City and the GPI are partnering, that when details are worked out on what part the City will own and the part the GPI will own, that the GPI is taxed appropriately for their proportion of the land and the building, etc. She asked that the architecture be in keeping with the historic nature of the square and the adjacent Courthouse and City Hall Building and not block the viewshed of the Courthouse or City Hall. She asked that the Downtown Review Guidelines be mandatory compliance. She also asked that since the area is in the historic downtown district, that the A-B Historic Resources Commission play a role in the review of the design process. Finally she asked where the City will be getting the money from for their portion of the project.

Mr. Fred English felt the property should be sold to the highest bidder.

Councilman Newman asked if it would be possible to sent out a Request for Proposals with specific criteria. City Attorney Oast said that it is possible that Council can have a design competition with a Request for Proposals, but it was his opinion that when you do that you lose some front-end control on the ultimate project. You can specify certain things but he felt that working with a developer from the very beginning, you wind up with the ability to have a lot more input into the process and the ultimate project. He doesn't want to suggest that a design competition wouldn't yield a good product, but in this case we are able to get some assurances that a design competition wouldn't give us, in addition to getting the appraised value of the property. This project has been in the public for almost a year now and no one with means has expressed any interest in developing the property. He was not was not sure that we would get much response if we were to do a Request for Proposals and he was not sure that we have the in-house ability to design the kind of project we would like to see there.

Upon inquiry of Councilman Newman, City Attorney Oast said the 15% affordable component applies only to the residential space, not the commercial space.

Upon inquiry of Councilman Newman, Mr. Craig Madison, President of the Grove Park Inn, said they are currently looking at a mix of condominium, rental, affordable housing, and also some townhome components, but it is a floating target at this time.

When Councilman Newman asked about the parking component, Mr. Madison said 200 spaces is a requirement for the City, so there will be no net loss to parking on that site. Additional parking will be required for the office, retail and living. Parking is an expensive commodity at \$1,500-\$1,800 a space.

Councilman Dunn was concerned how 15% for affordable housing can be negotiated when the GPI doesn't have final numbers. Mr. Madison explained how they do have some working numbers.

Vice-Mayor Mumpower was pleased that the GPI will be trying to create something good on that property. However, he said that last time when the GPI was trying to development Site 1, we used up a lot of community good will and wear and tear on Council coming to a point of good decision and then we found it was not doable, probably from the very beginning. So, this time, are you are saying you will do all the studies and have the plan in place before this Council ever

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makes a final decision on this? Will you be able to make a decision on whether it will work or not? Mr. Madison responded by saying yes. When the Site 1 process began, the restrictions (particularly the height) placed mid-way was the factor which dramatically changed the viability of the project to work. It was also a tremendous stress to his company and to him personally but he is still committed to Site 2. He has already spent \$250,000 to get to this stage and the next stage will be another \$250,000. So, as far as his commitment to not waste public good will and stress to Council, they are committed to take it to that stage or end it as soon as possible.

Vice-Mayor Mumpower pointed out that regarding Site 1, Mr. Madison was specifically asked at that hearing when those changes were made if he could make the project work and Mr. Madison replied that to the best of his knowledge they can, with these changes. Mr. Madison responded that that it was their intent to try to make it work but they failed. Vice-Mayor Mumpower said that his point is we need to get to a better place this time and we are grateful they are here and we will help you get there.

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. 04-140. This motion was seconded by Councilman Dunn

and carried unanimously.

RESOLUTION BOOK NO. 28 – PAGE 290

B. RESOLUTION NO. 04-141 - RESOLUTION APPOINTING A MEMBER TO THE WNC REGIONAL AIR QUALITY AGENCY

Vice-Mayor Mumpower said that this is the consideration of appointing a member to the WNC Regional Air Quality Agency.

The term of Ms. Nelda Holder, as a member on the WNC Regional Air Quality Agency, expires on July 1, 2004.

At City Council's worksession on June 15, 2004, City Council instructed the City Clerk to arrange interviews for Lawrence Haas, Loyd Kirk and George Peery.

Lawrence Haas received 3 votes, Loyd Kirk received 4 votes and George Peery received no votes. Therefore, Loyd Kirk was appointed to the WNC Regional Air Quality Agency to serve a six-year term. His term will begin July 2, 2004, and expire July 1, 2010, or until his successor has been appointed.

RESOLUTION BOOK NO. 28 – PAGE 291

C. RESOLUTION NO. 04-142 - RESOLUTION APPOINTING A MEMBER TO THE AIRPORT AUTHORITY

Vice-Mayor Mumpower said that this is the consideration of appointing a member to the Asheville Regional Airport Authority.

The term of Mr. Robert Turner, as a member on the Asheville Regional Airport Authority, expires on June 30, 2004.

At City Council's worksession on June 15, 2004, it was the consensus of City Council to appoint a member of City Council to the Airport Authority. Vice-Mayor Mumpower and Councilman Dunn both expressed an interest in serving on the Authority.

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Regarding Council's discussion at the June 15, 2004, worksession, City Attorney Oast said that he would include a paragraph in the resolution that City Council wishes to appoint a member of the City Council to the Airport Authority to ensure that the City's interests, as expressed through the Council, are represented on the Authority. He said that he feels that with the language in the resolution, Council has grounds for a for-cause removal if the appointee refuses to resign at the end of the term.

Vice-Mayor Mumpower said that by consensus City Council has agreed to appoint Councilman Dunn to the Airport Authority as the City Council representative to serve a four-year term, term to begin July 1, 2004, and expire June 30, 2008.

RESOLUTION BOOK NO. 28 – PAGE 292

D. RESOLUTION NO. 04-143 - RESOLUTION APPOINTING A MEMBER TO THE ASHEVILLE DOWNTOWN COMMISSION

Vice-Mayor Mumpower said that this is the consideration of appointing a member to the Asheville Downtown Commission.

Mr. Bill Byrne has resigned as a member of the Asheville Downtown Commission, thus leaving an unexpired term until December 31, 2005.

At City Council's worksession on June 15, 2004, City Council instructed the City Clerk to arrange interviews for Leslie Yancey and Leesa Young. Pamela Myers will be considered as an applicant, however, an interview is not necessary.

Leslie Yancey received 6 votes, Leesa Young received 1 vote and Pamela Myers received 0 votes. Therefore, Leslie Yancey was appointed as a member of the Downtown Commission to serve the unexpired term of Mr. Byrne, term to expire December 31, 2005, or until her successor has been appointed.

RESOLUTION BOOK NO. 28 – PAGE 293

VI. OTHER BUSINESS:

Vice-Mayor Mumpower thanked several people for the work in the Hillcrest Community Clean-Up Day, which is a project associated with the overall For Our Kids Program, which he and Councilwoman Bellamy share responsibilities in.

The following claims were received by the City of Asheville during the period of May 28-June 10, 2004: Boyd Stevens (Fire), Loretta Woolley (Water), Beverly Williams (Streets), Matt Ballard (Sanitation).

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

VII. INFORMAL DISCUSSION AND PUBLIC COMMENT:

Fred English, Haw Creek resident, spoke about the 229th anniversary for the U.S. Army and hoped that in the future the City of Asheville tries to publicize this wonderful event.

Mr. Mike Fryar supported City Council's decision to wait until they hear from the Police Chief before implementation of the drug program.

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Closed Session

At 7:21 p.m., Councilman Newman moved to go into closed session for the following reasons: (1) To consult with an attorney employed by the City about matters with respect to which the attorney-client privilege between the City and its attorney must be preserved, including lawsuits involving the following parties: Morris Communications d/b/a Fairway Outdoor Advertising; Lamar Outdoor Advertising; and City of Asheville. The statutory authorization is contained in G.S. 143-318.11(a)(3); and (2) To establish or to instruct the City's staff concerning the position to be taken by or on behalf of the public body in negotiating the price or other material terms of a contract for the acquisition of real estate. The statutory authorization is contained in N. C. Gen. Stat. 143-318.11(a)(5). This motion was seconded by Councilman Dunn and carried unanimously.

At 8:45 p.m., Councilman Dunn moved to come out of closed session. This motion was seconded by Vice-Mayor Mumpower and carried unanimously.

VIII. ADJOURNMENT:

Mayor Worley adjourned the meeting at 8:45 p.m.

CITY CLERK

MAYOR