

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

Col. Ray Green, Veteran of the US Air Force, led City Council in the Pledge of Allegiance.

INVOCATION

Vice-Mayor Mumpower gave the invocation.

I. PROCLAMATIONS:

II. CONSENT AGENDA:

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

A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON JULY 27, 2004

B. RESOLUTION NO. 04-164 - RESOLUTION SELLING PROPERTY AT THE CORNER OF WYOMING ROAD AND KEEBLER ROAD IN THE KENILWORTH COMMUNITY TO INNOVA HOMES, LLC

Summary: The consideration of a resolution authorizing the Mayor to convey property at the corner of Wyoming Road and Keebler Road to Innova Homes, LLC, in the amount of \$4,400.

On July 27, 2004, the City Council directed the City Clerk to advertise for upset bids on a parcel of land at the corner of Wyoming Road and Keebler Road in the Kenilworth Community.

The land at the corner of Wyoming Road and Keebler Road is an irregular triangle shaped residential zoned lot comprising 0.07 acre±. From street grade it slopes up substantially to the rear property line and is covered with non-significant trees, vines and brush. The size, shape and topography render the lot unsuitable as a home site. The subject parcel is a remnant of property acquired at the time Wyoming Road was improved several years ago and is situated diagonally across from the park. The tax value is \$4,400. The bid from Innova Homes LLC, owner of an adjacent parcel is in the amount of \$4,400. Innova proposes to construct a house on the adjacent property for sale. The proposed construction is consistent with the Strategic Plan policy of encouraging infill development.

The positive aspects of the transaction are:

- The sale will be at fair market value as established by the upset bid process.
- It will return property not needed for public use to the tax rolls.
- It will transfer responsibility for maintenance to the private sector.

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- A non-buildable lot will be assembled with an adjoining parcel to provide a more coherent land use pattern
- The sale of this lot to Innova, while not essential to the proposed infill development, will enhance the development by improving the access.

The advertisement for upset bids ran in the Asheville Citizen-Times on July 30, 2004, as provided in N. C. Gen. Stat. sec. 160A-269. No response was received. Therefore, the offer to purchase from Innova Homes, LLC, in the amount of \$4,400 was not upset and the sale to Innova Homes, LLC should be approved.

- Planning Department staff recommends adoption of the resolution authorizing the Mayor to convey property at the corner of Wyoming Road and Keebler Road to Innova Homes, LLC, in the amount of \$4,400.

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C. RESOLUTION NO. 04-165 - RESOLUTION APPROVING A GRANT FROM THE FEDERAL AVIATION ADMINISTRATION

Summary: The consideration of a resolution approving a grant from the Federal Aviation Administration in an amount not to exceed \$2,764,492.

The Federal Aviation Administration (FAA) has offered a grant agreement to the Asheville Regional Airport. This grant, in an amount not to exceed \$2,764,492, is for the project consisting of: construct service road (Perimeter Road, Phase III), update Airport Master Plan Study (Terminal Area Plan and Forecast), expand apron (includes rehabilitation), expand maintenance building, and install perimeter fencing.

- Staff recommends adoption of the resolution authorizing the Mayor to execute the grant agreement for Project No. 3-37-0005-29.

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D. RESOLUTION NO. 04-166 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO AN AGREEMENT WITH THE N.C. DEPT. OF INSURANCE, OFFICE OF STATE FIRE MARSHAL, AND N.C. GOVERNOR'S HIGHWAY SAFETY PROGRAM, FOR MAINTAINING THE PERMANENT SAFETY SEAT CHECKING STATION

Summary: The consideration of a resolution authorizing the City Manager to enter into an agreement with the N.C. Dept. of Insurance, Office of State Fire Marshal, for maintaining the currently established permanent safety seat checking station and procurement of additional equipment for Asheville Fire and Rescue Department; and an associated budget amendment, in the amount of \$4,000, to receive the grant money.

The City of Asheville Fire and Rescue Department requested \$4,000 from the Office of State Fire Marshal to maintain the permanent child safety seat checking station and for equipment to assist in this project. City staff was successful in obtaining those funds. We received the grant in order to purchase additional safety seats and associated equipment and to add graphics to a trailer supplied in an earlier grant.

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Pros:

- No matching funds are required.
- These funds will significantly enhance our ability to effectively provide quality safety seat equipment and associated devices.
- Currently, the trailer that was awarded in an earlier grant has no markings or graphics to identify it as Asheville Fire and Rescue and to promote the safety program.

Cons: None noted.

City staff recommends City Council authorize the City Manager to enter into an agreement with the N.C. Dept. of Insurance, Office of State Fire Marshal, for maintaining the currently established permanent safety seat checking station and procurement of additional equipment for Asheville Fire and Rescue Department; and adopt the associated budget amendment, in the amount of \$4,000, to receive the grant money.

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E. ORDINANCE NO. 3145 - BUDGET AMENDMENT TO ACCEPT GRANT FUNDS FROM THE N.C. DEPT. OF INSURANCE, OFFICE OF STATE FIRE MARSHAL, AND N.C. GOVERNOR'S HIGHWAY SAFETY PROGRAM, FOR MAINTAINING THE PERMANENT SAFETY SEAT CHECKING STATION

See Consent Agenda "D" above.

F. RESOLUTION NO. 04-167 - RESOLUTION APPROVING ACCESS TO MILLS RIVER WATER TREATMENT PLANT FOR WETLANDS PLANT TRANSFER

Summary: The consideration of a resolution approving access to Mills River Water Treatment Plant for wetlands plant transfer.

Dr. Tom Burnet of the Mills River Watershed Conservation Group has requested permission to remove and transfer wetlands plants from the river bank and surrounding areas along City of Asheville property at the Mills River Water Treatment Plant to adjacent properties that require bank stabilization. Dr. Burnet is part of the environmental project in the Mills River area to oversee the protection and continued improvement of water quality of the Mills River.

Dr. Burnet has requested access to City of Asheville property on August 20 and 21, 2004, to remove small amounts of the following plants:

<u>Genus</u>	<u>Species</u>	<u>Common Name</u>	<u>Wet Class</u>	<u>Notes</u>
Andropogon	virginicus	<u>Broomsedge</u> <u>Bluestem</u>	FAC-	WA- inv
Carex	frankii	<u>Frank's Sedge</u>	OBL	WA
Carex	lupulina	<u>Hop Sedge</u>	OBL	WA
Carex	scoparia	<u>Broom Sedge</u>	FACW	WA
Carex	vulpinoidea	<u>Fox Sedge</u>	OBL	WA
Cyperus	esculentus	<u>Chufa Flatsedge</u>	FAC	WA- inv
Echinochloa	crus-galli	<u>Barnyardgrass</u>	FACW-	nn?
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Helenium	autumnale	<u>Common Sneezeweed</u>	FACW+	WA
Juncus	gymnocarpus	<u>Pennsylvania Rush</u>	OBL	WA WA-
Juncus	tenius	<u>Poverty Rush</u>	FAC	inv
Scirpus	cyperinus	<u>Woolgrass</u>	OBL	WA

WA = Water Authority (City of Asheville land)
inv = invasive, nn = non-native

Indicator categories

Code	Wetland Type	Comment
OBL	Obligate Wetland	Occurs almost always (estimated probability 99%) under natural conditions in wetlands.
FACW	Faculative Wetland	Usually occurs in wetlands (estimated probability 67%-99%), but occasionally found in non-wetlands.
FAC	Faculative	Equally likely to occur in wetlands or non-wetlands (estimated probability 34%-66%).
FACU	Faculative Upland	Usually occurs in non-wetlands (estimated probability 67%-99%), but occasionally found on wetlands (estimated probability 1%-33%).
UPL	Obligate Upland	Occurs in wetlands in another region, but occurs almost always (estimated probability 99%) under natural conditions in non-wetlands

in the regions specified. If a species does not occur in wetlands in any region, it is not on the National List.

Dr. Burnet plans on transferring some of these plants to adjacent properties which are having storm water runoff problems which are eroding the river banks. The transfer of wetlands plants will help stabilize the river banks and help promote water quality by decreasing runoff in to the river. Access will be from 8:00 am to 5:00 pm and requires picture identification, signage of liability waiver and restoration of any plant removal areas if requested by staff.

City staff recommends City Council approve access to Mills River Water Treatment Plant river bank area for wetlands plant removals.

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G. RESOLUTION NO. 04-168 - RESOLUTION AUTHORIZING THE MAYOR TO ENTER INTO AN AGREEMENT FOR GRANT FUNDS THROUGH THE N.C. PARKS AND RECREATION TRUST FUND TO ASSIST WITH RENOVATIONS TO MEMORIAL STADIUM

Summary: The consideration of a resolution authorizing the Mayor to enter into a grant agreement for \$248,800 with the N.C. Dept. of Environment and Natural Resources, Division of

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Parks and Recreation, for funds through the N.C. Parks and Recreation Trust Fund, for the renovation of Memorial Stadium; and an associated budget amendment, in the amount of \$263,800, to receive the grant funds and donations for the project.

Resolution No. 04-26 approved by the Asheville City Council on January 27, 2004, authorized the City Manager to enter into the grant agreement with the N.C. Dept. of Environment and Natural Resources, for the renovation of Memorial Stadium. The State of North Carolina requires the Mayor sign the agreement, therefore, the resolution is being brought back to Council for ratification and authority for the Mayor to sign.

The budget amendment of \$263,800 consists of a grant from the State of North Carolina, N.C. Dept. of Environment and Natural Resources, Division of Parks and Recreation in the Parks and Recreation Trust Fund and \$15,000 from donations. The budget amendment supports the ongoing fundraising campaign to raise funds to support the renovations at Memorial Stadium.

Pros:

- Compliance with the grant guidelines as required by the State of North Carolina
- City can move forward in the grant award process in preparation to implement the grant
- City can implement the project and expend the funds to start work on the next phase of work at Memorial Stadium

Cons: None noted.

The Parks and Recreation Department recommends City Council authorize the Mayor to enter into a grant agreement with the N.C. Dept. of Environment and Natural Resources, Division of Parks and Recreation, for funds through the N.C. Parks and Recreation Trust Fund, and to adopt the budget amendment, in the amount of \$263,800, to receive the grant funds and donations for the renovations at Memorial Stadium.

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H. ORDINANCE NO. 3146 - BUDGET AMENDMENT TO REFLECT GRANT FUNDS RECEIVED AND DONATIONS TO ASSIST WITH THE RENOVATIONS TO MEMORIAL STADIUM

See Consent Agenda "G" above.

ORDINANCE BOOK NO. 21 - PAGE

I. MOTION SETTING A PUBLIC HEARING ON AUGUST 24, 2004, TO AMEND THE CONSOLIDATED COMMUNITY DEVELOPMENT BLOCK GRANT AND HOME ACTION PLAN

Summary: The consideration of a motion to set a public hearing on August 24, 2004, to consider amending the Annual Consolidated Action Plan for the Community Development Block Grant and HOME programs.

City Council approved the 2004 Action Plan for the CDBG and HOME programs on April 13, 2004. Noted in that plan was the need for later amendment to allocate an additional \$161,843 in HOME funds for the new American Dream Downpayment Initiative (ADDI).

Staff requested proposals from outside agencies to operate the ADDI program, and the Asheville Regional Housing Consortium Board has reviewed the proposals submitted and made

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recommendations for allocating the funds. Since this constitutes a substantial amendment to the Action Plan, a public hearing is required.

Details of the proposed allocation will be provided prior to the public hearing.

Pros:

- The public hearing is necessary in order to utilize the additional funds

Cons: None noted

City staff recommends City Council set a public hearing on August 24, 2004, to consider amending the 2004 Action Plan.

J. BUDGET AMENDMENT FOR MOUNTAIN HOUSING OPPORTUNITIES NORTHPOINT COMMONS

This item was removed 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.

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

ITEM REMOVED FROM THE CONSENT AGENDA DUE TO A CONFLICT OF INTEREST

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ORDINANCE NO. 3147- BUDGET AMENDMENT FOR MOUNTAIN HOUSING OPPORTUNITIES NORTHPOINT COMMONS

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

Summary: The consideration of a budget ordinance, in the amount of \$25,000, to recognize repayment by Mountain Housing Opportunities (MHO) of a HOME Predevelopment Loan and to budget those funds toward the construction of the same project, Northpoint Commons.

Mountain Housing Opportunities was awarded \$25,000 in HOME funds as a Predevelopment Technical Assistance Loan in the 2001 Consolidated HOME and CDBG Action Plan. Such loans are due for repayment when permanent funding for the project is available but are forgivable if the project does not go ahead. The 2002 Action Plan provided for \$395,000 for project construction, including the anticipated proceeds of the loan repayment.

Since the project is now moving forward, the loan has been repaid. A budget ordinance is required to recognize receipt of the \$25,000 and to budget it to construction of Northpoint Commons.

Community Development staff recommends adoption of the budget amendment, in the amount of \$25,000.

Councilman Newman moved for the adoption of Ordinance No. 3147. This motion was seconded by Councilwoman Jones and carried unanimously.

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III. PUBLIC HEARINGS:

A. PUBLIC HEARING TO CONSIDER ORDINANCE TO CLOSE AND VACATE THE DWELLING LOCATED AT 1086 HENDERSONVILLE ROAD

Mayor Worley said that this public hearing was originally scheduled on July 27, 2004, however, the attorney for the owner of the property said that they are working with the City Attorney's Office to negotiate a potential resolution and asked that the matter be continued until August 10, 2004.

Mayor Worley said that the property owner has removed the person from the unfinished basement and has committed to make the remaining repairs prior to September 14, 2004. Therefore, City staff requests that this public hearing be continued until September 14, 2004.

Councilwoman Bellamy moved to continue the public hearing until September 14, 2004. This motion was seconded by Councilman Davis and carried unanimously.

B. PUBLIC HEARING TO CLOSE ROBERTS ROAD EXTENSION

RESOLUTION NO. 04-169 - RESOLUTION TO PERMANENTLY CLOSE ROBERTS ROAD EXTENSION

Mayor Worley opened the public hearing at 5:10 p.m.

Assistant Public Works Director Dave Cole said that this is the consideration of a resolution to close Roberts Road Extension. This public hearing was advertised on July 16, 23, 30 and August 6.

N. C. Gen. Stat. sec. 160-299 grants cities the authority to permanently close streets and alleys.

Pursuant to this statute, the adjoining property owners have requested the City of Asheville permanently close to public use as a public street Roberts Road Extension.

Closure of this section of right-of-way will not deny any of the abutting properties a reasonable means of ingress or egress. There are two lots that abut this section of right-of-way. They are identified by PIN Nos. 9657.10-35-4414 and 9657.10-35-6577. All abutting property owners have joined in the petition to close.

City staff recommends that City Council adopt the resolution to close Roberts Road Extension.

Mr. David Day, abutting property owner, asked City Council for their support in closing Roberts Road Extension.

Mayor Worley closed the public hearing at 5:15 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. 04-169. This motion was seconded by Councilwoman Bellamy and carried unanimously.

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C. PUBLIC HEARING TO CONSIDER THE ISSUANCE OF A CONDITIONAL USE PERMIT FOR THE PROPOSED ADDITION TO THE BUNCOMBE COUNTY DETENTION FACILITY LOCATED AT 20 DAVIDSON STREET

ORDINANCE NO. 3148 - ORDINANCE GRANTING A CONDITIONAL USE PERMIT FOR THE PROPOSED ADDITION TO THE BUNCOMBE COUNTY DETENTION FACILITY LOCATED AT 20 DAVIDSON STREET

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 5:16 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.

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

Mr. Shuford said that this is the consideration of the issuance of a conditional use permit for the proposed addition to the Buncombe County Detention Facility located at 20 Davidson Drive.

The 2025 Asheville City Development Plan and the Center City subsection supports the efforts to group together the governmental uses downtown. These plans also encourage infill development at locations where the infrastructure is in place to service those uses at the least amount of cost. The Smart Growth Policy also supports these common sense efforts.

Asheville City Council approved an earlier version plan for the Buncombe County Detention Center addition on 8-26-03.

Nearly a year ago, the City Council reviewed the Buncombe County Detention Center addition. Since then the County has re-worked and expanded the building and has changed the design significantly. The parcel for the project is bordered by streets on 3 sides; Davidson Street, Marjorie Street and Valley Street (City Exhibit 3 – Location Map). The project requires a conditional use permit because it is a governmental use. The proposed new jail facility will be located on most of the lot, which totals .67 acre. The new structure will be 92,453 square feet and comparable to a 6 story building. The prior proposal contained about 53 thousand square feet (City Exhibit 3 – Elevation Drawings). The proposed facility will share the existing detention center entrance on Davidson Street. A second entrance along the Marjorie Street façade will be used rarely at first but may have greater application with a future addition. The overall height of

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the building will not exceed the balustrade of the City Hall building. The height issue was a requirement from City Council in the agreements to sell the lot to Buncombe County (City Exhibit 3 – Site Plan).

The new facility will provide two 40-person dorms (one for men and one for women) as part of the work release program. The other portion of the facility will provide three 40 person cell pods as part of the expansion of the prison facilities. The three 40 person cell pods can be retrofitted at a future date to accommodate twice as many prisoners.

Because this is a conditional use permit, if approved, the uses on the site are limited to those applied for during this permit review process. The site plan and building façade elevations are submitted for approval. Deviating from the plan would require a modification of the conditional use permit following an approval process similar to what we are undertaking now.

For Detention Center Facilities in the Central Business District, these additional special requirements also apply. City Council must state if the project meets or does not meet each of the standards for Detention centers, jails and related correctional facilities found in section 7-16-2(c) of this chapter.

Design Standards- The project must comply with the design guidelines for projects located in this area: The project was reviewed by the Downtown Commission for compliance with the design guidelines. The Downtown Commission voted to approve the design and allowed a variance for fewer openings for the street facing facades because of the special nature of the use. The project appears to meet the design guidelines for downtown.

Fencing- No chain link, barbed wire, razor wire or similar fence material shall be used in areas that are visible from adjacent properties or from the public way unless specifically permitted by the City Council. No fenced areas are proposed on the plan.

Lighting- Lights in pedestrian areas and parking lots shall not exceed 16 feet in height. All lights other than those in public pedestrian areas including security lights shall be full cut-off type fixtures, and shall not produce direct glare or light trespass on adjacent properties. Lighting provided as a part of the project will comply with these requirements.

Signage- All signage must be reviewed and approved as part of the conditional use permit application. City Council may attach conditions addressing the location, size, number, and illumination of signs based upon circumstances related to the location and impact of the sign. The detention center additions will share an entrance with the Buncombe County Detention Center located on Davidson Street. No additional signage will be required.

Operational Standards- No outdoor speaker systems shall be permitted. Vehicle entering and or leaving the facility shall not use sirens or emergency lights unless responding to an emergency. No outdoor speaker systems are proposed for the project and vehicles will not use sirens unless responding to an emergency.

Loading and unloading- All loading and unloading areas shall be located internally on the site and screened from view from adjacent properties and public ways. All loading and unloading activities shall take place between the hours of 6:00 am and 9:00 pm unless specifically waived by the City Council. Loading and unloading of inmates will take place as part of in the existing detention facility inside to the building.

Exercise yard – Exercise yards and other outdoor activity areas shall be located internally on the site and screened from view from adjacent properties and public ways. Exercise yards are inside the building and are not visible from adjacent properties or public ways.

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Vehicle storage - All vehicles associated with the use shall be stored in an enclosed or screened area. The vehicle storage area may be screened with vegetation, fences, a combination or fences and landscaping material or other means designed to effectively screen the stored vehicles from adjacent properties and the public way. No vehicles will be stored on the property. Parking provided by the parking area at the corner will be used by Buncombe County employees.

City Council must take formal action as set forth in section 7-9-9(c) 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 development will comply with all health and safety requirements.
- 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.** This site is an infill site and given this context the proposal is compatible with the site. In addition the highest point of the roof of the detention center addition will be below the balustrade of the City Hall Building. This will protect the view of City Hall from other vantage points from east and south.
- 3. That the proposed use or development of the land will not substantially injure the value of adjoining or abutting property.** The project is within what may be considered the government complex. This is the best location for this special use. Because the design is integrated into the existing detention facility this will minimize any negative spillover to adjacent uses.
- 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.** This area of downtown is quite urban in form. The new structure will be smaller than neighboring buildings and will reinforce this urban fabric by fronting on the street at the sidewalk level. The design of the new facility was approved by the Downtown Commission as a part of the Downtown Design Review for new construction.
- 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.** This detention facility would be ill placed most anywhere else in the downtown area. Expanding the use adjacent to the other detention facility will simplify operations for both. This proposal is more fiscally sustainable in the long run.

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 project was reviewed by utility and safety providers. No items of concern were noted.
7. **That the proposed use will not cause undue traffic congestion or create a traffic hazard.** The detention center addition is not expected to generate a large number of additional trips or create a traffic hazard.

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In summary, the County is seeking to take care of its space needs for the Detention Center by providing a well-designed addition connecting to the main facility. The management of the new facility can be handled in a fiscally conservative manner through shared facilities, access and operations. The location of the expansion in the government complex area of downtown provides some reassurances to the downtown business and residential community. The design will not negatively impact the views of City Hall and County Courthouse.

Pros:

- The proposed addition is appropriately located adjacent to the existing detention facility.
- The proposed design is a seamless match to the existing detention facility.
- Views of City Hall and Buncombe County Courthouse are protected.

Cons:

- Expanding detention facilities is controversial to some people.
- The prime real estate is not available for other office or governmental uses.

The TRC Commission at their July 19, 2004, meeting voted to recommend approval of the Conditional Use Permit with conditions that the outstanding TRC issues are satisfied. Staff also recommends approval of the rezoning request.

Mr. Harry Pilos felt this is probably a good plan, however, the County still owns the Union Transfer Building and he felt they needed to first consider what will happen to that building because it is difficult for private development to build something that is compatible to the growth in that area.

Upon inquiry of Mayor Worley, City Attorney Oast said that Council can't place a condition on this permit unless there was some substantial connection, e.g., geographical. And, as far as the disposition or the use of another property, he felt placing a condition would be a stretch.

Councilman Davis said that there is a subcommittee being formed in the Downtown Commission to look at the governmental use of lands on slopes and in other places in the City. He said that he would be happy to keep the Council informed as work progresses.

After rebuttal, Mayor Worley closed the public hearing at 5:30 p.m.

Upon inquiry of Councilman Dunn, Mr. Jon Creighton, Director of Planning and Development for Buncombe County, explained that this addition will not be the end. When the existing jail was built in the early 1990's they were projecting that around 2002 they would start experiencing over-crowding. Last year the average daily population was 359 and the capacity is 356. Our current projections show that around 2012 we will begin experiencing over-crowding again. As the community grows, we need larger facilities to accommodate the community. It's a fine line of what you can afford and how far can you go out in the future in order to meet those needs.

Upon inquiry of Councilwoman Jones, Mr. Creighton said that the expansion will cost approximately \$23 Million. He said that the EMS expansion was cost-prohibitive and will not be in the future expansion area.

Councilwoman Jones was it was discouraging to think that in 10 years we will have doubled the amount of people in the criminal justice system. She wished the \$23 Million could be used for our education system and after-school programs that could keep people out of the criminal justice system. She calculated that each bed costs taxpayers \$115,000. She was

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concerned that the schools are not getting the funding that they need, but we find money to build larger jails.

Upon inquiry of Councilman Newman, Mr. Shuford said that there were no concerns that the expansion will adversely impact the other revitalization efforts on other adjacent properties.

Upon inquiry of Councilwoman Bellamy, Mr. Shuford said that in the 2025 Plan there is a provision made to encourage a Master Plan. Also, there is a provision in the City-County agreement to transfer the property to the County that they work together towards the development of a Master Plan. He agreed that having a better idea of what the County's future plans are on the property that they own in this area and throughout downtown will be helpful as people invest in our area and we try to maximize other property for private sector purposes, opposed to governmental purposes.

Councilwoman Bellamy felt that it would be nice for people to look forward to some other development coming into Asheville on this side of town that is inviting and welcoming to our City, opposed to the large jail facilities. Mr. Shuford responded that Council has, in their Strategic Operating Plan, asked staff to work on gateway plans and the College Street/Charlotte Street area is a big gateway to our downtown and it will figure prominently in our plans.

Councilman Davis moved for the adoption of Ordinance No. 3148, granting a conditional use permit for the proposed addition to the Buncombe County Detention Facility located at 20 Davidson Drive, subject to the outstanding Technical Review Committee conditions being satisfied. This motion was seconded by Councilman Dunn and carried unanimously.

ORDINANCE BOOK NO. 21 - PAGE

D. PUBLIC HEARING TO CONSIDER THE INITIAL ZONING OF RECENTLY ANNEXED PROPERTIES KNOWN AS THE HENDERSONVILLE ROAD AREA TO COMMERCIAL BUSINESS II DISTRICT, COMMERCIAL INDUSTRIAL DISTRICT AND INDUSTRIAL DISTRICT

ORDINANCE NO. 3149 - ORDINANCE TO ZONE RECENTLY ANNEXED PROPERTIES KNOWN AS THE HENDERSONVILLE ROAD AREA TO COMMERCIAL BUSINESS II DISTRICT, COMMERCIAL INDUSTRIAL DISTRICT AND INDUSTRIAL DISTRICT

Mayor Worley opened the public hearing at 5:42 p.m.

Mr. Joe Heard, Director of Development Services with the Planning & Development Department, said that this is the consideration of an ordinance to zone recently annexed properties known as the Hendersonville Road area to Commercial Business II District, Commercial Industrial District and Industrial District. This public hearing was advertised on July 30 and August 6, 2004.

The 40 properties make up the Hendersonville Road Area that was annexed on June 30, 2004. They are located in the block bounded by Hendersonville Road to the north, Buck Shoals Road to the south, Old Shoals Road to the west, and Glen Bridge Road to the north. Surrounding land uses are varied with large industrial properties to the north, commercial establishments to the east, residential properties to the south, and commercial businesses to the west. These surrounding properties, as well as the parcels in the annexation area until initially zoned by the City, are subject to Buncombe County's Limestone Township Zoning Ordinance. Only the properties to the east across Hendersonville Road are currently in the City's jurisdiction; they are zoned CBII.

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According to Buncombe County Tax information and field observation, there are a variety of land uses within the annexation area. A number of banks, retail businesses, and offices along with a post office and a few multi-family buildings are located along Hendersonville Road to the east of the area. Numerous properties fronting on Glen Bridge Road and Walden Drive in the area's center contain office/warehouse or multi-purpose type commercial buildings. Some large vacant properties are also located along Walden Drive. The Day International Plant is located on the largest and westernmost parcel in the annexation area. The properties fronting Hendersonville Road are presently zoned Community Service (CS) under Buncombe County's Limestone Zoning Ordinance, while the remaining parcels are zoned Employment (EMP), an office/wholesale/industrial district.

The Planning and Development Department recommends an initial zoning of Community Business II (CB-II), Commercial Industrial (CI), and Industrial (IND) Districts for the area as shown on the Exhibit A map. Staff recommends CB-II for the area along Hendersonville Road since it mirrors the zoning to the east across Hendersonville Road and accommodates the existing uses in the proposed district. Commercial Industrial (CI) zoning seems appropriate for the existing commercial and office/warehouse uses along Walden Drive, Glen Bridge Road, and Buck Shoals Road. Vacant properties in the proposed district can also be developed according to the CI zoning district, which allows a wide range of commercial and industrial uses. The Industrial (IND) designation accommodates the existing industrial use of the large Day International plant.

Advantages (Pros)

- The proposed zoning accommodates existing uses in the proposed districts.
- Non-conforming use situations, if any, are minimized.
- CB-II zoning for the west side of Hendersonville Road continues the pattern set by the CB-II zoning across the highway.

Disadvantages (Cons)

- None

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

Staff recommends approval of the proposed initial zoning of the properties within the recently annexed Hendersonville Road Area. The Planning and Zoning, by a unanimous vote of 5-0 at its July 7, 2004, meeting, recommends approval as well.

Mayor Worley closed the public hearing at 5:46 p.m.

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

Upon inquiry of Councilwoman Bellamy, Mr. Heard said there will be no non-conforming uses associated with this initial zoning.

Councilwoman Bellamy moved for the adoption of Ordinance No. 3149. This motion was seconded by Councilwoman Jones and carried unanimously.

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E. PUBLIC HEARING TO CONSIDER THE INITIAL ZONING OF RECENTLY ANNEXED PROPERTIES KNOWN AS THE SWEETEN CREEK ROAD AREA TO RS-4 RESIDENTIAL SINGLE-FAMILY MEDIUM DENSITY DISTRICT, RM-16 RESIDENTIAL MULTI-FAMILY HIGH DENSITY DISTRICT, COMMUNITY BUSINESS I DISTRICT, HIGHWAY BUSINESS DISTRICT AND INSTITUTIONAL DISTRICT

ORDINANCE NO. 3150 - ORDINANCE TO ZONE RECENTLY ANNEXED PROPERTIES KNOWN AS THE SWEETEN CREEK ROAD AREA TO RS-4 RESIDENTIAL SINGLE-FAMILY MEDIUM DENSITY DISTRICT, RM-16 RESIDENTIAL MULTI-FAMILY HIGH DENSITY DISTRICT, COMMUNITY BUSINESS I DISTRICT, HIGHWAY BUSINESS DISTRICT AND INSTITUTIONAL DISTRICT

Mayor Worley opened the public hearing at 5:48 p.m.

Mr. Joe Heard, Director of Development Services with the Planning & Development Department, said that this is the consideration of an ordinance to zone recently annexed properties known as the Sweeten Creek Road area to RS-4 Residential Single-Family Medium Density District, RM-16 Residential Multi-Family High Density District, Community Business I District, Highway Business District and Institutional District. This public hearing was advertised on July 30 and August 6, 2004.

The 190 properties make up the Sweeten Creek Road Area that was annexed on June 30, 2004. Most of the properties are located on the east side of Sweeten Creek Road south of the Royal Pines subdivision and north of Pensacola Avenue. Included are also properties on the west side of Sweeten Creek Road south of Buck Shoals Road.

Surrounding land uses include primarily single-family residences to the north, east and west that are currently zoned as part of Buncombe County's Limestone Township Zoning Area. Properties to the west across Sweeten Creek Road include a number of commercial properties, a place of worship, and a large vacant parcel. Zoning districts for these properties, which are in the current City limits, are Institutional (INST), Commercial Industrial (CI), and Industrial (IND).

According to Buncombe County Tax information and field observation, there are a variety of land uses within the annexation area. Two large condominium developments as well as some large vacant and residential properties are located the north of the area. Further south along Sweeten Creek Road a nursing home facility is located on three lots and further south of that are two large undeveloped properties. Single-family subdivisions occupy land along both sides of Weston Road to the east of the area. South of Weston Road land use is mostly multi-family residential with a commercial properties located south of Buck

Shoals Road. The properties are presently zoned a mixture of Single-Family Residential (R-1), Residential (R-2), and Commercial Service (CS) under Buncombe County's Limestone Zoning Ordinance.

The Planning and Development Department recommends initial zonings of Residential Single-Family Medium Density (RS-4), Residential Multi-Family High Density (RM-16), Community Business I (CB-I), Institutional (INST) and Highway Business (HB) Districts for the area.

Staff recommends RM-16 for much of the area on the east side of Sweeten Creek Road since it would accommodate the high density condominium and multi-family developments located in area as well as allowing vacant and single-family lots to be redeveloped for multi-family use. RS-4 zoning appears to be well suited for the single-family lots in the subdivisions along Weston Road to the area's east. INST is a good fit for the three properties along Sweeten Creek

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road that contain a nursing home and rehabilitation center. On properties immediately to the south, the INST zoning would accommodate the planned mixed use development of two larger vacant parcels and the existing use of two properties containing a BellSouth phone service station and a PSNC pumping station, respectively, and allow for the appropriate redevelopment of the parcels in the future. An individual parcel at the five-point intersection of Sweeten Creek Road and Pensacola Avenue was deemed appropriate for CB-I zoning, allowing small scale office/business uses, by the Planning & Zoning Commission. Finally, HB would allow the continued use of four properties in the Sweeten Creek/Buck Shoals/Hendersonville Road triangle as commercial establishments.

According to staff's research, only one non-conforming use would be created, where a duplex currently exists in the area proposed for RS-4 zoning. The proposed zoning designations are also similar to the current Limestone Township Zoning for the area, which remains in effect until zoned by the City.

Based on comments from members of the public at their meeting on July 7, 2004, the Planning & Zoning Commission voted to amend the initial zoning districts proposed by staff for the following six (6) properties:

PIN# 9654.14-43-3218	RM-16 to INST/RS-4
PIN# 9654.14-42-4818	RM-16 to INST/RS-4
PIN# 9654.14-42-4606	RM-16 to INST
PIN# 9654.18-42-2491	CB-II to INST
PIN# 9654.18-42-5531	CB-II to INST
PIN# 9654.18-41-6502	RM-16 to CB-I

Advantages (Pros)

- The proposed zoning pattern accommodates existing land use uses in the area.
- The proposed zoning allows for the appropriate development/redevelopment of large vacant and single-family lots.
- Non-conforming use situations are minimized.

Disadvantages (Cons)

- One non-conforming situation, a duplex in the proposed RS-4 district, would be created.

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

Staff recommends approval of the proposed initial zoning for the properties within the recently annexed Sweeten Creek Road Area as proposed. The Planning and Zoning Commission, by a unanimous vote 5-0 of at its July 7, 2004, meeting, has recommended approval of the initial zoning as well. As referenced above, the Planning and Zoning Commission members opted to amend staff's proposed zoning for six (6) parcels based on comments received from members of the public. These amendments are reflected in the current proposed zoning being considered by City Council.

Mayor Worley closed the public hearing at 5:55 p.m.

Upon inquiry of Vice-Mayor Mumpower, Mr. Heard said that any property owner that had a concern had their concerns satisfied at the Planning & Zoning Commission meeting.

Upon inquiry of Councilman Newman, Mr. Heard explained that said that the residential capacity allowed in the Institutional District is 16 dwelling units per acre.

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

Councilman Davis moved for the adoption of Ordinance No. 3150. This motion was seconded by Councilwoman Jones and carried unanimously.

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F. PUBLIC HEARING TO CONSIDER THE INITIAL ZONING OF RECENTLY ANNEXED PROPERTIES KNOWN AS THE HEATHBROOK AREA TO RS-8 RESIDENTIAL SINGLE-FAMILY HIGH DENSITY DISTRICT

ORDINANCE NO. 3151 - ORDINANCE TO ZONE RECENTLY ANNEXED PROPERTIES KNOWN AS THE HEATHBROOK AREA TO RS-8 RESIDENTIAL SINGLE-FAMILY HIGH DENSITY DISTRICT

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

Mr. Joe Heard, Director of Development Services with the Planning & Development Department, said that this is the consideration of an ordinance to zone recently annexed properties known as the Heathbrook area to RS-8 Residential Single-Family High Density District. This public hearing was advertised on July 30 and August 6, 2004.

The unzoned properties make up the Heathbrook Area that was annexed on June 30, 2004. They are located along Heathbrook Circle in the Biltmore Park Subdivision north of Long Shoals Road. Surrounding land uses include single family residential to the north and vacant/common area to the east, south, and west. The area is completely surrounded by RS-8 zoning.

According to Buncombe County Tax information and field observation, there are single-family homes located on all of the lots except two, which are used as common open space for the subdivision.

The Planning and Development Department recommends an initial zoning of Residential Single-Family High Density (RS-8) District for the properties. The intent 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.

Advantages (Pros)

- Continues the zoning pattern of properties surrounding the annexation area, which are zoned RS 8.
- Single-family homes are a permitted use in the RS-8 District.
- No non-conforming use situations would be created.

Disadvantages (Cons)

- None

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

Staff recommends approval of the proposed initial zoning of the unzoned properties known as the Heathbrook Annexation Area. The Planning and Zoning, by a unanimous vote of 5-0 at its July 7, 2004, meeting, recommends approval as well.

Upon inquiry of Councilwoman Bellamy, Mr. Heard said there will be no non-conforming uses associated with this initial zoning.

Mayor Worley closed the public hearing at 6:10 p.m.

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

Councilman Newman moved for the adoption of Ordinance No. 3151. This motion was seconded by Councilwoman Bellamy and carried unanimously.

G. PUBLIC HEARING TO CONSIDER THE INITIAL ZONING OF RECENTLY ANNEXED PROPERTIES KNOWN AS A PORTION OF THE DEAVERVIEW AREA TO COMMUNITY BUSINESS I DISTRICT

ORDINANCE NO. 3152 - ORDINANCE TO ZONE RECENTLY ANNEXED PROPERTIES KNOWN AS A PORTION OF THE DEAVERVIEW AREA TO COMMUNITY BUSINESS I DISTRICT

Mayor Worley opened the public hearing at 6:11 p.m.

Mr. Joe Heard, Director of Development Services with the Planning & Development Department, said that this is the consideration of an ordinance to zone recently annexed properties known as a portion of the Deaverview area to Community Business I District. This public hearing was advertised on July 30 and August 6, 2004.

The unzoned properties are part of the Deaverview Road Area that was annexed on June 30, 2004. They are located at the intersection of Deaverview Road and Pisgah View Road. Surrounding land uses and zoning include single family residential and a mobile home park to the north that are not zoned, a church and convenience store zoned CB-I, unzoned residential and vacant properties to the south zoned, single-family residential and a mobile home park to the west that are not zoned.

According to Buncombe County Tax information and field observation, there are a convenience store, restaurant and associated parking located on the two parcels at the northwest corner of the intersection. The third lot across the street has a single-family home constructed on it.

The Planning and Development Department recommends an initial zoning of CB-I for the three properties. The purpose of the CB-I District is to provide areas for medium-density business and service uses serving several neighborhoods.

Rezoning the properties to CB-I would allow the owners of the convenience store and restaurant to continue their operations and allow the owner of the single-family home to continue that use or redevelop the property for uses permitted in the CB-I District.

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Advantages (Pros)

- Continues the zoning pattern of properties directly east across Pisgah View Road, which are zoned CB-I.
- The convenience store located on two of the parcels is a permitted use in the CB-I District.
- The property owner of the third parcel can redevelop the property for use permitted in the CB-I District or continue the residential use.

Disadvantages (Cons)

- None

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

Staff recommends approval of the proposed initial zoning of the three unzoned properties in the Deaverview Road Annexation Area. The Planning and Zoning, by a unanimous vote of 5-0 at its July 7, 2004, meeting, recommends approval as well.

Upon inquiry of Councilwoman Bellamy, Mr. Heard said there will be no non-conforming uses associated with this initial zoning.

Upon inquiry of Mr. James Carpenter, Mr. Heard explained that Mr. Carpenter's property is not in the zoning area.

Mayor Worley closed the public hearing at 6:18 p.m.

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

Councilman Newman moved for the adoption of Ordinance No. 3152. This motion was seconded by Councilwoman Jones and carried unanimously.

IV. UNFINISHED BUSINESS:

V. NEW BUSINESS:

VI. OTHER BUSINESS:

Vice-Mayor Mumpower announced a farewell ceremony Thursday, August 12, 2004, for the North Carolina Army National Guard's 105th Military Police Company headquartered in Asheville, N.C. The ceremony will occur at 11:30 a.m. at the Trinity Baptist Church at 216 Shelburne Road.

Vice-Mayor Mumpower announced that on Saturday, August 21, 2004, there will be a community day at the Deaverview Community Housing Development, which is a project associated with the overall For Our Kids Program, which he and Councilwoman Bellamy share responsibilities in.

Vice-Mayor Mumpower announced upcoming vacancies on various boards and committees.

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Vice-Mayor Mumpower thanked City Manager Westbrook and his staff for a well-designed and easy to read budget book.

Councilwoman Jones acknowledged the passing of Ms. Thelma Caldwell, former Executive Director of the YWCA, who was an important figure in this community who made a positive impact on hundreds of women and children.

The following claims were received by the City of Asheville during the period of July 16-29, 2004: CP&L (Water), BellSouth (Water), Mission Hospital (Streets), Kyle E. Corn (Police), Don Farrow (Water), Kelly Snead (Water) and Joe Bowman (Water). These claims have been referred to Asheville Claims Corporation for investigation.

VII. INFORMAL DISCUSSION AND PUBLIC COMMENT:

Mr. Fred English urged City Council to help in any way possible for the visually impaired citizens in our community.

Closed Session

At 6:23 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: Eugene Ellison, Howard McGlohon, Eagle/Market Street Development Corporation and the City of Asheville – 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 – G.S. 143-318.11 (a) (5). This motion was seconded by Councilwoman Jones and carried unanimously.

At 7:45 p.m., Councilman Davis moved to come out of closed session. This motion was seconded by Councilman Dunn and carried unanimously.

VIII. ADJOURNMENT:

Mayor Worley adjourned the meeting at 7:45 p.m.

CITY CLERK

MAYOR