

Worksession

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

CONSENT AGENDA:

Exchange of Interests in Real Property with Buncombe County

Summary: The consideration of a resolution authorizing the Mayor to convey the City's interest in property on Millbrook Road to Buncombe County in exchange for easements over County-owned real property located at Hominy Creek Park and Recreation Park.

The City and Buncombe County have negotiated an exchange of the City's interest in property on Millbrook Road for greenway easements over the County's property at Hominy Creek Park and Recreation Park. The property on Millbrook Road (PIN Nos. 9638.07-67-0634 and 9638.11-67-1425) includes two contiguous lots owned by the County and City comprising 1.4 acres. The property has a tax value of \$50,000. The County proposes to donate the property with restrictions to the Buncombe County Rescue Squad for a new facility.

The proposed greenway easements are over property owned by the County at Hominy Creek Park (PIN No. 9637.01-16-5732) comprising 1.5 acres and at Recreation Park. (PIN No. 9668.13-04-6364) comprising 1.5 acres. The proposed Hominy Creek Greenway will connect Hominy Creek Park to Amboy Road Park. The Azalea Park Greenway will connect Azalea Park to Recreation Park and Swannanoa River Road (NC 81). The total value of the greenway easements would be approximately comparable to the City's interest in the Millbrook Road property.

The positive aspects of this transaction are:

- It is mutually beneficial to the City and the County.
- The County will be able to donate the land to the Rescue Squad for a needed facility.
- The City will acquire needed greenway easement at no cost.
- It is an opportunity for local government collaboration for the benefit of the community.
- It involves only publicly owned property and does not remove any property from the tax base.
- The City receives real estate interests of comparable value for its interest in the Millbrook Road property as opposed to donating it.

A negative aspects is:

- The property on Millbrook Road will remain in public ownership and not be returned to the tax base.

Approval of the resolution will authorize the exchange of the properties as provided in N. C. G. S. 160A-271.

Planning & Development staff recommend adoption of the resolution authorizing the Mayor to convey the City's interest in property on Millbrook Road to Buncombe County in

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exchange for easements over County-owned real property located at Hominy Creek Park and Recreation Park.

Offer to Purchase Property at the Corner of Bartlett and Nelson Streets

Summary: The consideration of a resolution authorizing the City Clerk to advertise an offer to purchase property at the corner of Bartlett Street and Nelson Street in the East Riverside community.

A bid has been received from Ray Quate, in the amount of \$4,000, for the purchase of a parcel of land at the corner of Bartlett Street and Nelson Street in the East Riverside Community.

The land at the corner of Bartlett Street and Nelson Street is a rectangular shaped parcel comprising 0.13 acre+ (37'X151.9'). It is generally level at street grade and slopes up gradually to the rear. It is covered with grass. The long narrow shape renders the parcel unsuitable as a homesite. The subject parcel is a cut-out from a 5.73 acre property acquired from the Housing Authority which is now a part of Murray Hill Park. Based on an opinion letter dated July 28, 2004, by L. Ted Prosser, the value of the cut-out parcel is \$4,000. The bid from Ray Quate, owner of an adjacent parcel is in the amount of \$4,000. Mr. Quate plans to renovate the building on the adjoining parcel with attention to preservation of historic architectural characteristics. The main floor on Depot Street will be three artist's studios and on the second floor will be five apartments with inside parking. Some of the apartments will be one bedrooms and are expected to be within the affordable range. He plans to assemble the subject parcel with the property he owns to provide access to the parking and a buffer.

The proposed renovations are consistent with the Strategic Plan policies of encouraging a strong small business environment and increasing the supply of affordable housing.

The positive aspects of the transaction are:

1. The sale will be at fair market value as established by the upset bid process.
2. It will return property not needed for public use to the tax rolls.
3. It will transfer responsibility for maintenance to the private sector.
4. A small parcel will be assembled with an adjoining parcel to provide a more efficient land use.
5. The sale of this lot to Mr. Quate will facilitate the proposed re-development by providing necessary access.

Planning & Development staff along with Parks & Recreation staff recommends adoption of the resolution which will initiate the sale of the property through the upset bid process.

Offer to Purchase Property located on Courtland Avenue (Lot #11)

Summary: The consideration of a resolution authorizing the City Clerk to advertise an offer of purchase for upset bids for property located on Courtland Avenue.

The subject property is an RS-8 Residential Single-Family High Density District zoned parcel located on Courtland Avenue comprising approximately 0.14 acre (PIN No. 9649.17-01-0636). The Fair Reuse Value for the parcel, based on an appraisal dated April 21, 2004, by Gwen M. Keller is \$6,000.00. The proposed land use for the property in the Head of Montford Redevelopment Plan is for residential development.

Ross B. Parkinson has submitted a bid to purchase the property in the amount of \$6,000, and he proposes to build a single-family residence for his home.

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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.
- The sale of this lot will afford the opportunity for infill development.

Approval of the resolution will establish a minimum price of \$6,000 and initiate the sale of the property through the upset bid process as provided in N. C. G. S. sec. 160A-269.

Planning & Development staff recommends adoption of the resolution authorizing advertisement for upset bids for property located on Courtland Avenue.

Offer to Purchase Property located on Courtland Avenue (Lot #12)

Summary: The consideration of a resolution authorizing the City Clerk to advertise an offer of purchase for upset bids for property located on Courtland Avenue.

The subject property is an RS-8 Residential Single-Family High Density District zoned parcel located on Courtland Avenue comprising approximately 0.15 acre (PIN No. 9639-20-91-9684). The Fair Reuse Value for the parcel, based on an appraisal dated April 21, 2004, by Gwen M. Keller is \$6,000.00. The proposed land use for the property in the Head of Montford Redevelopment Plan is for residential development.

Samuel Koerber has submitted a bid to purchase the property in the amount of \$6,000, and he proposes to build a single-family residence for his home.

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.
- The sale of this lot will afford the opportunity for infill development.

Approval of the resolution will establish a minimum price of \$6,000 and initiate the sale of the property through the upset bid process as provided in N. C. G. S. sec. 160A-269.

Planning & Development staff recommends adoption of the resolution authorizing advertisement for upset bids for property located on Courtland Avenue.

Pack Square Renaissance Project Budget

Summary: The consideration of a resolution approving the Pack Square Renaissance Project budget as adopted by the Pack Square Conservancy.

The agreement for the Pack Square Renaissance development between the Pack Square Conservancy (PSC) and the City requires that the Asheville City Council approve the budget for the project. In early July, the PSC adopted a revised budget for the project that represents the current cost projections based on the approved design.

Please note that in approving the PSC budget, there is absolutely no commitment on the City's part to any funding participation beyond what we have committed to in the agreement.

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The revenue to pay for construction costs will come from private donations and grants secured by the Pack Square Conservancy.

City staff recommends City Council approve the resolution approving the PSC budget for this project as adopted by the Pack Square Conservancy.

After Ms. Carol King, President of the Pack Square Conservancy, explained the revenue sources, Councilwoman Bellamy asked if the campaign report could be put in writing.

Mayor Worley asked that the record show that City Council has received this information and instructs the City Manager to place these items on the next formal City Council agenda.

DOWNTOWN SOCIAL ISSUES FINAL REPORTS

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Panhandling

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Planning & Development Director Scott Shuford said that the Downtown Social Issues Taskforce is making recommendations to further deal with panhandling in the downtown area. The recommendations are relatively simple, combining a public relations campaign with the collection of funds to be given to those non-profit agencies that help the homeless. This approach has been used in many other cities in the United States and Canada. The Asheville Downtown Association Foundation has been identified as the appropriate organization to collect and distribute funds from the locked boxes and boxes placed in businesses.

Legal staff has advised that if Council direct staff to permit the locked boxes, it will start a precedent to allow other groups

to put out collection boxes on the sidewalk. Otherwise, the City would be open to litigation under the First or Fourteen Amendment of the Constitution. To avoid this situation, the City could collect these funds itself but that would then require additional staff time in administration and coordination. In other cities where boxes have been put out on the street, there have not been large amounts of funds collected. Thus it would not seem worthwhile for the City to take on this function. Staff is therefore recommending that the collection of funds as a part of the campaign to divert money from the panhandlers be kept to the downtown businesses. This same recommendation was echoed in the public input and focus groups on this recommendation.

Advantages

- All of the panhandling recommendations, with the exception of the request for a greater police presence and locked boxes in some sidewalk locations, do not require any public funding or subsequent City Council action; civic groups in the community would undertake most of the action items.
- The recommendations build on the ordinance passed by City Council in November 2002.
- Reducing the amount of money given to panhandlers is an important part of reducing the panhandling activity in the community.
- The public relations campaign is a positive way for our community to relate to visitors that Asheville is an urban place with urban problems, but that the community does care about its homeless population and is working proactively to alleviate those conditions.

Disadvantages

- Approval of locked boxes on City sidewalks for the purpose of collecting funds will result in the possibility of other groups pursuing this strategy.

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- There have been concerns raised by the public about the lock boxes being a target for vandalism and robbery. The intent of the Task Force is that the lock boxes be burglar proof and repainted frequently.
- Coordination of the public relations campaign and money collection/distribution will be a challenge, but it has been accomplished in other cities. Again, this will be the responsibility of a private non-profit.

City staff recommends City Council accept the Downtown Social Issues Task Force's Panhandling report and directs the City Manager to bring back to Council, at a later date, recommendations for changes to City ordinances, where appropriate.

Mr. Dwight Butner, member of the Downtown Social Issues Task Force sub-committee on panhandling, presented City Council with their research and final recommendations on panhandling.

He then briefly described the following recommendations, along with action steps for each one:

- 1, Through the Asheville Downtown Association and the Asheville Downtown Association Foundation, implement a comprehensive program entitled "Real Change vs. Spare Change". The first goal of this program is to direct funds being donated to panhandlers to those institutions currently addressing the consequences of poverty and homelessness, drug and alcohol abuse. The second goal in this program is to make panhandling more difficult and less rewarding by redirecting the funds away from the panhandlers themselves, instead to the agencies established which address the conditions fostering panhandling behaviors. The third goal of the program is to distribute information about the availability of support services not only to the panhandlers themselves but to the public at large and to raise awareness of the potential consequences of donating directly to an individual. The fourth goal of this program is to provide the entire downtown community with a vehicle through which they can individually and collectively address panhandling and the various other social issues affecting downtown. The steps to implement this program follow:
 - A. Locate four locked collection boxes throughout downtown to receive both money and feedback cards. Collection displays will also be located throughout downtown businesses and offices that choose to participate.
 - B. Develop information brochures for distribution detailing the services, locations and hours of operation of the various relief agencies, while at the same time urging individuals to make contributions at the various collections boxes for the benefit of the disadvantaged.
 - C. Implement a public relations campaign through the use of posters and rack cards that encourages downtown visitors and residents to make donations for the benefit of the homeless in the collection boxes for distribution to the various relief agencies instead of to the panhandlers themselves.
 - D. In conjunction with the same campaign establish an urban neighborhood watch program. The vehicle for this program will be feedback cards providing downtown business owners and residents a means to pass on

information to the police, Quality Forward, and the various relief agencies about activities and behaviors that they observe in downtown. These postcard size documents can be dropped in the locked collection boxes or mailed to the Downtown Association.

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2. Maintain the current panhandling ordinance but review the enforcement process for effectiveness. Based upon the level of current enforcement, devise strategies to improve the implementation of the ordinance.

In conclusion, several examples of the types of programs we are suggesting are included in the various appendices. We were particularly impressed with the programs instituted in Baltimore, Maryland and Jacksonville, Florida. but there were many examples of the strategies employed in various parts of the country. We cannot stress enough the necessity of implementing a multifaceted approach to this and all the social issues facing downtown. It is unlikely that these issues will go away and it is imperative that we institute programs that will have a lasting impact on the conditions, which we'll continue to face.

Upon inquiry of Councilman Davis, Mr. Butner said that the money collected will go to Asheville Downtown Association and they will re-direct funds to those institutions currently addressing the consequences of poverty and homelessness, drug and alcohol abuse.

During discussion, Mr. Butner responded to various questions and comments from Council, some being but are not limited to: are more cities implementing panhandling laws; is there a reluctance in the court system to enforce the ordinances; what communities have locked collection boxes; are the collection boxes financially viable; and if collection boxes are not used, is there an alternative plan.

Upon inquiry of Councilwoman Jones, City Attorney Oast explained his First Amendment concerns. He felt that any attempt to regulate panhandling or the ability to give money are subject to First Amendment concerns.

Councilwoman Jones felt City staff could craft the program to meet the goals of the Downtown Social Issues Task Force and the City's goals without opening up the possibility of other groups pursuing this strategy of locked collection boxes.

Councilwoman Bellamy hoped that staff take into consideration and support the service providers who are trying to help people short and long term.

On behalf of City Council, Mayor Worley thanked Mr. Butner and the Task Force for their time and effort in compiling this report on this very important issue.

It was the consensus of City Council to accept the Downtown Social Issues Task Force's panhandling report and direct the City Manager to bring back to Council, at a later date, recommendations for changes to City ordinances, were appropriate, and subject to City Attorney review.

Public Drunkenness

Planning & Development Director Scott Shuford said that public drunkenness was picked by the Downtown Social Issues Task Force at the beginning of its work as an important issue to be tackled. As the center for social services, shelters and public life in general, downtown has the highest concentration of homeless individuals in Asheville. A subpopulation of the homeless community is made up of alcoholics who are often inebriated on the streets. Of this group there is also a subset of people who chronically are being arrested for drunk and disorderly behavior or taken to the emergency room because of their physical state.

These recommendations have the goal of reducing the tolerance for such behavior, while supporting some programs that will help solve the problem over the short and long term. As City Council and the County Commissioners have jointly appointed the Ten Year Plan to End

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Homelessness Task Force, some of these recommendations (Numbers 2 & 3) may overlap with that group's work and not require immediate Council action.

Advantages

- Housing First models have been proven to cost the public sector less funds overall, reducing costs in police manpower, jail time and emergency hospital visits.

- A detox center available around the clock would be a vast improvement over the current system where inebriates are taken to either the hospital or the jail.
- The additional sales tax could provide much needed funds to go directly to detox and/or treatment centers.

Disadvantages

- Some restaurant and bar owners are opposed to the potential ½% additional sales tax on beer and wine.
- The recommendation on Inebriate Safety Zones raises some constitutional issues and may be difficult to enforce.
- The recommendation on not allowing closed containers in public parks may be pre-empted by State law.

City staff recommends City Council accept the Downtown Social Issues Task Force's Public Drunkenness report and directs the City Manager to bring back to Council, at a later date, recommendations for changes to City ordinances, where appropriate.

Mr. Pat Whalen, Chair of the Downtown Social Issues Task Force, presented City Council with their final recommends on public drunkenness.

He then briefly described the following recommendations, along with action steps for each one:

1. Recommend that the City of Asheville petition the authority with control over existing ABC local tax collections to dedicate locally collected funds to improve detox and treatment availability and/or seek legislation from the state giving authority to pass a local ½% sales tax on beer and wine with the funds earmarked for such improvements in detox and treatment.
2. Recommend that the City of Asheville establish a Housing First program providing housing for our most difficult, chronic, and expensive to manage alcohol-dependent homeless.
3. Recommend that the City of Asheville, in concert with the County and already existing local service resources, establish an emergency detox/treatment/recovery center similar to the Healing Place in Raleigh or the jail-based public inebriate program in Roanoke, VA.
4. Recommend that the City of Asheville pass an ordinance in which the city recognizes certain Inebriate Safety Zones. These Zones would be limited to streets and adjacent sidewalks in downtown, which experience a combination of heavy pedestrian traffic, substantial vehicular traffic, and substantial on-street parking. It is expected these Area's would be limited to downtown's busiest vehicular and pedestrian arteries where there is on-street parking. These Zones would be selected: 1) because the areas have consistent problems with some individuals presenting themselves in an extremely inebriated condition, with insufficient control of their motor faculties; and 2) because of the heavy car and pedestrian traffic on these streets and the reduced sight lines caused

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by the many parked cars, in these areas such individuals create significant danger for themselves and for innocent third parties, particularly children and the elderly. The special restriction for these Zones would be that individuals with more than 10 convictions involving alcohol or substance abuse related offenses over any twelve-month period, thereby having proven themselves to be a potential danger to themselves and others in such areas, would be prohibited from entering the areas for one year.

5. Recommend that the City of Asheville pass an ordinance against possession or use of alcoholic beverages, whether open or closed, in city parks without permission from the City Parks and Recreation Director or the City Manager.
6. Recommend that the City Council, in light of the seriousness of the problems and dangers to themselves and others created by chronically inebriated individuals, issue a proclamation to the District Attorney's office requesting: that said office prosecute repeat offenders charged with alcohol or substance abuse related offenses to the extent the law allows, that they seek to discourage the use of "time served" as an appropriate sentence for such repeat offenses, and that they seek, recommend, and encourage the longest available jail sentences for repeat offenders, in an effort to reinforce individual responsibility in such repeat offenders, to improve and reinforce the effectiveness of our local police, and to encourage said offenders to take advantage of recovery opportunities created by the community.

During discussion, Mr. Whalen responded to various questions and comments from Council, some being, but are not limited to: concern of a non-elected entity (ABC Board) using taxpayer money; what other cities are using the Inebriate Safety Zones; what percentage of the downtown area is envisioned to have Inebriate Safety Zones; how many beds are in the current Detention

Facility; maybe a percentage of beds in the Detention Facility should be set aside for chronic offenders; and how much consensus was there on a local ½% sales tax on beer and wine.

Councilman Davis spoke about the need for enforcement by the City.

Mayor Worley explained how this issue and the panhandling issue tie into the Ten Year Plan to End Homelessness.

Upon inquiry of Vice-Mayor Mumpower about a timeframe on staff recommendations, City Manager Westbrook said that this is a complex problem in which the City will have to work with Buncombe County and other agencies. He felt it would take approximately 3-4 months before he could bring back final recommendations for changes. Or, he said he could bring back the priorities in all other departments and let City Council prioritize them if Council feels the 3-4 month timeframe is too long.

After a brief discussion initiated by Councilman Newman, it was the consensus of Council to come back to a worksession with a list of staff's priorities and possibly also a list of things the City can do short-term regarding this issue. Also, in the interim, the City Manager will begin dialogue with Buncombe County.

On behalf of City Council, Mayor Worley thanked Mr. Whalen and the Task Force for their time and effort in compiling this report on this very important issue.

At 4:55 p.m., Mayor Worley announced a short break.

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UDO AMENDMENT REVIEWS

- City Attorney Oast said that these Unified Development Ordinance amendments are being brought before City Council in order that staff may respond to questions Council may have prior to the public hearings, which have been scheduled on August 24, 2004. He advised Council that it would be inappropriate for Council to receive comments from the public at this worksession.

Provision for Public Safety Plans for Certain Temporary Uses

- Planning & Development Director Scott Shuford said that this is the consideration of an ordinance to amend the Unified Development Ordinance to provide for public safety plans for certain temporary uses.

This code amendment provides for public safety plans for certain temporary uses. Certain temporary uses, such as a motorcycle rally last year, result in significant public safety concerns and public expenses. The proposed amendment would require the submittal of a public safety plan and a way for public expenses associated with the temporary use to be recouped.

The amendment has been routed to the Coalition of Asheville Neighborhoods, CREIA, and the Council of Independent Business Owners (CIBO) for review and comment. Based on comments from CIBO, the amendment has been revised to clarify to what types of uses public safety plans may be required and to include language about coordination with non-City emergency management operations.

On August 4, 2004, the Planning and Zoning Commission recommended approval of the proposed code amendment by a vote of 6-0. City staff recommends approval of the proposed code amendment as well.

Upon inquiry of Councilwoman Bellamy, Mr. Shuford said that he solicit comments on this amendment from the Buncombe County Tourism Development Authority and the Economic Development Commission.

Mayor Worley expressed concern of how the City will distinguish between different groups. City Attorney Oast said that he would research this issue and address it prior to formal adoption of the ordinance.

It was the consensus of City Council to continue the public hearing that is scheduled for August 24, 2004, in order to give City staff ample time to respond to concerns raised.

Technical Corrections and Clarifications

Mr. Joe Heard, Director of Development Services with the Planning & Development Department said that this is the consideration of an ordinance to amend the Unified Development Ordinance for the purposes of filling in missing information, correcting mistakes, resolving discrepancies and clarifying the ordinance.

Working with the Unified Development Ordinance (UDO) on a daily basis, the Planning & Development staff has noted a number of instances where the ordinance contains discrepancies, is incomplete, or needs clarification. Staff has compiled a list of these issues and proposes the following amendments to correct these situations and make the UDO a clearer document for staff and public use. The proposed amendments deal with a variety of issues throughout the ordinance.

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Pros –

- The UDO will be more easily understood and interpreted by staff and the public.
- The intent of the ordinance will be made clearer and less subject to legal challenge.

Con –

- None.

The Planning and Zoning Commission recommended approval of these code amendments on August 4, 2004, by a unanimous vote of 6-0. City staff recommends approval of the proposed code amendments.

Mr. Heard briefly explained the clarifications to the ordinance.

City staff recommends approval of the proposed code amendments to the Unified Development Ordinance for the purposes of filling in missing information, correcting mistakes, resolving discrepancies, and clarifying the ordinance.

City Attorney Oast responded to Councilman Dunn who was concerned about changing the word “church” to “places of worship.” He strongly recommended Council retain the words “places of worship.”

Councilman Dunn and Councilwoman Bellamy said that they would like to vote on the amendment to Section 7-8-21 (b) to change “Churches” to “Places of Worship” separately.

It was the consensus of Council to have two separate ordinances prepared – one with the amendments presented and one with the amendment to Section 7-8-21 (b) to change the word “Churches” to “Places of Worship.”

Mayor Worley asked that the record show that City Council has received this information and instructed the City Manager to place this public hearing on the next formal City Council agenda. City Attorney Oast said that he would research whether another public hearing would be required to separate out the amendment to Section 7-8-21.

CONSIDERATION OF CONDITIONAL USE ZONING AS A DEVELOPMENT TOOL

Planning & Development Director Scott Shuford said that at the July 27, 28804, City Council meeting, concern was raised about the frequency of use of conditional use zoning (CUZ) as a development tool; separate but related concerns were raised about the potential for CUZ to be considered “spot zoning” and its arbitrary use by staff for “control” purposes. This report addresses these issues, provides possible alternatives to CUZ, and makes several specific recommendations.

When adopted in early 2000, staff anticipated that CUZ would generally be more frequently used than “straight” rezoning. Staff research concerning CUZ found that most communities with this development tool end up using it as their predominant rezoning tool. This is due to its chief advantage over straight rezoning: It allows the establishment of a known use and site plan as opposed to the potential of an extensive list of uses and site design limited only by standard setbacks, height, and landscaping/buffer requirements.

However, in Asheville, CUZ activity in 2003 and 2004 has not reflected that pattern (due to time constraints, I did not research back further). The following table illustrates a summary of Planning and Zoning Commission reviews of rezonings, CUZs, and conditional use permits (CUPs) over those two years. In 2004, it should be noted that while five of the rezoning cases were “initial” zonings of property (one case involved NCDOT conversion property off College

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Street near the tunnel and the other four were zoning of recently-annexed areas), rezonings would still outnumber CUZs this year even if these five cases were discounted.

ZONING ACTIVITY BY TYPE – 2003 & 2004			
YEAR	REZONING	CUZ	CUP
2003	19	8	2
2004 (TO DATE)	20	8	3

“Spot zoning” potential. CUZ was established by the City in February 2000. Please note that concerns about “spot zoning” were raised at that time. “Spot zoning” is a difficult issue, especially in a community like Asheville where property development has occurred over such a long period of time and where our growth management policies promote infill and adaptive reuse.

One thing to keep in mind is how the NC Supreme Court handled this issue in the 1980s in what is known as the *Chrismon* case. The Court found that spot zoning had occurred in a particular situation but noted an important factor – there was a public benefit associated with the particular case. This allowed the Court to find that spot zoning was not problematic or illegal where a public benefit was secured, but where there was only a private benefit, spot zoning was inappropriate and illegal. If we can demonstrate that a particular rezoning or CUZ-ing promotes an existing public policy, it is not automatically a legal concern even if it appears to be (or actually is) spot zoning.

Having said that, however, we should approach this issue with a great deal of caution. First, the public benefit needs to be clear and substantial in relationship to the private benefit. Second, there should be some evidence that the proposed use is relatively similar to surrounding uses or that the intent of the proposed zoning takes differences between surrounding uses and those allowed in the proposed zoning into account (e.g., zoning a single lot in a neighborhood to Neighborhood Business).

Taking the Roberts Street CUZ from last month as an example, using the above information it is clear that the proposal did not represent illegal spot zoning because it was supported by a wide range of City policies and plans and because the uses in the surrounding area were relatively similar in impact and scale.

Arbitrary use. He would like to think that this concern is mitigated somewhat by the information contained under the frequency of use table above, but the following information is also provided for your consideration. Of the nine CUZ cases in 2004, two could have possibly been supported by staff as straight rezonings: The Biltmore Pointe development in Oakley and the 673 Sand Hill Road case. However, conditions imposed by Council allowed a number of neighborhood concerns and compatibility issues to be addressed.

Using maps, he explained how staff would not have supported straight rezoning proposals for the following cases for the listed reasons:

- West Asheville Baptist Church temporary buildings (institutional encroachment)
- Trinity United Methodist Church parking lot (commercial encroachment)
- Liberty Road office/residential reuse of an existing house (nonresidential encroachment; illegal spot zoning)
- Charlotte Street parking lot (commercial encroachment)
- Forsythe Street church conversion (too dense residential zoning)
- Roberts Street NCD mixed use project (potential to create a compelling precedent for NCD zoning of the entire corridor; size of the parcel)

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We did not support the CUZ for the office use on Arlington Street.

Alternatives.

Greater or entire reliance on straight rezoning – Staff can certainly adopt this approach but, as indicated above, there will be fewer cases that we can support and fewer opportunities to resolve neighborhood issues while allowing beneficial development to occur. It is our strong impression that the development community accepts and embraces CUZ as a development tool and that neighborhoods have greatly benefited from its careful application.

Pros:

- Less staff discretion (also a con)
- Less legislative discretion (also a con)
- Greater range of uses allowed for property owner (also a con)

Cons:

- Less staff discretion (also a pro)
- Less legislative discretion (also a pro)
- Greater range of uses allowed for property owner (also a pro)

Parallel zoning code – During your budget discussion, we proposed the development of a parallel zoning code that would basically allow new urbanist development by right in selected areas while still allowing the option for property development under the existing UDO provisions. Having such a code in effect would have potentially allowed the Liberty Road, Forsythe Street, and Roberts Street cases to be uses by right.

Pros:

- Promotes a desired land use pattern and mix of uses
- Allows choice in style of development (also a con)
- Could reduce the number of CUZ cases

Cons:

- Choice can result in incompatible mixture of new urbanist and suburban developments
- Potential compatibility issues if applied over too much of the City

Comprehensive review of zoning pattern of much, if not all, of the City – This approach could be taken to effect a comprehensive zoning/rezoning of the City to attempt to eliminate conflicting zoning patterns and allow a more frequent use of straight rezoning. Based on my practical experience, such efforts rarely fully accomplish the goal due to changes in market forces, technology, and attitudes about development over time. For example, the process that implemented the UDO was intended to result in such an outcome (and can arguably be said that it has achieved that outcome to an extent).

Pros:

- Could eliminate conflicting zoning patterns
- Allows a more frequent use of straight rezoning

Cons:

- Time-intensive
- Repeats fairly recent UDO process
- Loses effectiveness over time

Conditional zoning – Charlotte and other cities in NC have obtained legislative authority for *conditional zoning* which is very similar to CUZ except the action happens in one step instead of two (CUZ requires approval of both a rezoning and a CUP). Developers are held to specific site plans and uses approved by the governing boards just as in CUZ, but the process is

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legislative, not quasi-judicial. Having this tool would allow us to stop requiring sworn testimony and for Council members to not be restricted in their discussions of cases outside the hearing by the prohibition of *ex parte* communications. Staff is very interested in obtaining such authority for Asheville in order to simplify our procedures and to increase the ability of Council to get relevant information.

Pros:

- Simpler procedure
- Allows more flexibility in information gathering

Con:

- Could be used even more often than CUZ or straight rezoning (possibly a pro)

City staff recommends that until we are able to replace CUZ with conditional zoning that we continue to utilize CUZ as a zoning tool due to its ability to provide development flexibility and address compatibility issues. We remain interested in pursuing the parallel code as a companion to CUZ. We do not recommend elimination of CUZ or undertaking another comprehensive rezoning effort.

There was a brief discussion surrounding the report.

Councilman Newman was pleased with the conditional use zoning process, however, he wasn't pleased that City Council is not able to talk or listen to people outside of the public hearing.

It was the consensus of City Council to (1) continue to utilize the CUZ as a zoning tool; (2) work to obtain legislative authority for conditional zoning; and (3) instruct City staff to pursue the parallel code as a companion to the CUZ.

DEVELOPMENT REVIEW PROCESS TEAM

- Building Safety Director Terry Summey said that this is the consideration of appointing members to serve on the "2004 Development Review Process" Team.

As part of this year's budget approval process, City Council postponed action on some recommended Building Safety Department permit fee changes, including an adjustment in the affordable housing rebate program, in order to allow for the independent evaluation of our permitting process. At the 2002 City Council retreat, staff presented a summary of our successes in implementing the year 2000 recommendations of that Development Process Review Team. That team was established in 1999 to evaluate the development review process that existed at that time. The team was led by former Mayor Russ Martin and included the following team members:

- Brett Cannady
- Dale Groce
- Ted Prosser
- Ron Butler
- Rod Hudgins
- Ben Slosman
- Patti Glazer
- Danie Johnson
- Pat Whalen

The 2004 Development Review Process Team, once appointed, would meet frequently in order to develop recommendations for your consideration in a timely fashion. The team would clearly identify problems and concerns, to receive information and reports from staff regarding these issues, and to develop recommendations for improving our processes. These issues and recommendations, once finalized, will be forwarded to Council for your consideration and action, on or before Council's September 28th Council meeting.

City staff recommends contacting the members of the 1999 team to determine their willingness to serve on the 2004 Development Review Process Team, with Marvin Slosman

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replacing his late father, Ben. This will ensure continuity of the review team and allow for comparative analysis of the changes made to our processes since 2000. Additionally, John Mark Stroud of the Asheville Chamber has expressed an interest in serving on the 2004 Team. The following is a proposed list of members recommended by Councilman Dunn and City staff:

Task force volunteers recommended by Councilmember Dunn:

- Brian Anderson (owner of Anderson Family Homes)
- Larry Buckner (Manager of Blossman Gas – Plbg. Dept.)
- Brett Cannady (Contractor)
- Chamber of Commerce (as given to Jim Westbrook)
- John Van Dyke (works for George Morosani)
- Samartha Forrest (she is legislative co-chair of Asheville Board of Realtors - Program Director; she is an attorney by profession)
- Buddy Gaither (CEO of "Milko")
- Russell Knight (residential contractor)
- Bill Newman (Taylor/Murphy)
- Nancy Padgett (she was nominated to serve as a Rep. for Homebuilders Association by Steve Royster – President of H.A.)
- Bill Stamey (builder)
- Tim Turner (land surveyor)
- Winston Pulliam (Pulliam Properties)
- Terry Vorst (builder)
- Representative to be appointed by the Asheville Architect's AIA Chapter

Other possible task members very involved with the development and permitting processes:

- Kirk Boone or Bob Galloway (KCB Construction Co.)
- Johnny Chandler (Buncombe Construction; Project Manager)
- Harry Giezentanner (affordable housing – modular)
- Rick Grant (Beverly-Grant; developer/contractor)

- Steve Grigg or Danny Shope (Grigg Electric)
- Al Knapp (White and Williams; mechanical contractor)
- Carroll Hughes (Spaceplan Architects)
- Jane Mathews (Mathews Architecture)
- True Morris (Mission/St. Joseph Hospitals; Engineering Dept. Director)
- Ron Moser (affordable housing)
- Allen Roderick (Heartwood renovations)
- Tom Vorst (general contractor)

Staff Member support to the Process Review Team:

- Building Safety Department (Terry Summey)
- Engineering Department (Cathy Ball)
- Fire Department (Greg Grayson)
- Planning Department (Scott Shuford)
- Water Department (David Hanks)

Staff recommends that Council appoint the Process Review Team.

Councilman Dunn spoke in support of appointing new people.

Councilwoman Bellamy suggested each person submit an application and that Council hold interviews for this significant Task Force.

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Councilwoman Jones felt this was going to be more of a focus group and didn't understand how fee review got included into this process since we don't include fee review in other groups.

Building Safety Director Terry Summey suggested two more people and felt that the Task Force could be as many people as are interested – the list is not inclusive. He will then break them into different focus groups and bring back recommendations to Council at their September worksession. At this point he would like to get direction from Council to start the process.

Councilman Newman did not want the focus group's intent to be misinterpreted. It is a focus group of the development community formed to give City Council feedback on the development and permitting process.

It was the consensus of Council to appoint former Mayor Russ Martin as the Chair of the focus group and if he felt an outside facilitator would be useful that the City use its resources. City staff will verify if the following members are interested in serving on the focus group: the 1999 Development Process Team Members, John Mark Stroud, City staff members outlined above, Councilman Dunn's suggested members, other suggested members outlined above, and others who may be interested. After staff compiles the report from the focus group, they will bring it back to Council at the September worksession. At that time City Council may need to delegate individual issues to an existing appropriate committee for further study, or to solicit applications to appoint a new committee.

BOARDS/COMMISSIONS

It was the consensus of City Council to reappoint Sherry Fitzpatrick and Mary Robertson to the Americans with Disabilities Act Compliance Committee. At the suggestion of Councilwoman Bellamy, it was the consensus of City Council to discuss at a future worksession ways to expand the role of the ADA Compliance Committee..

It was the consensus of City Council to instruct the City Clerk to readvertise for the vacancy on the Asheville-Buncombe Fair Housing Commission.

It was the consensus of City Council to instruct the City Clerk to arrange interviews with Eric Zetterholm and David Brown for the Planning & Zoning Commission. In addition, Cindy Weeks is a candidate, however, it is not necessary for her to be interviewed.

It was the consensus of City Council to instruct the City Clerk to (1) arrange interviews with Kimberly Campton and Maureen Grozier for the at-large position the River District Design Review Committee; (2) appoint Richard Hall to the member of RiverLink Board of Directors; (3) reappoint Ken Fulford as a design professional; (4) reappoint Hunt Mallett, as a owner of property

within the District); (5) appoint Jane Mathews as a design professional; (6) re-advertise for an owner of property within the District; and (7) re-advertise for a member of the RiverLink Board of Directors.

It was the consensus of City Council to instruct the City Clerk to (1) arrange interviews for Victor Trantham and Ripley Hotch for the vacancy of an owner/operator of a hotel, motel or other taxable tourist accommodation with 100 or fewer rental units; and (2) re-advertise for the individual who is involved in the tourist business but who does not own or operate a hotel, motel or other taxable tourist accommodation. In addition, City Attorney Oast was instructed to review the language of the statute for an interpretation of the "individual who is involved in the tourist business but who does not own or operate a hotel, motel or other taxable tourist accommodation." It was also City Council's consensus to discuss, at a future worksession, what the role of the City's representatives on the Buncombe County Tourism Development Authority

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should be and then ask the City Manager to arrange a meeting with our representatives to outline Council's expectations of their representatives.

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CLOSED SESSION:

At 7:25 p.m., Councilwoman Bellamy moved to go into closed session for the following reasons: (1) To consider the qualifications, competence, performance, character, or fitness of an individual, public officer or employee. The statutory authorization is N. C. Gen. Stat. sec. 143-318.11 (a) (6); and to prevent disclosure of information that is privileged or confidential pursuant to the laws of North Carolina, specifically, the Personnel Privacy Act, N. C. Gen. Stat. sec. 160A-168. The statutory authorization is N. C. Gen. Stat. sec. 143-318.11 (a) (1); and (2) To discuss matters relating to the location or expansion of industries or other businesses in the area served by the City Council, including agreement on a tentative list of economic development incentives that may be offered in negotiations, provided that any action authorizing the payment of economic development incentives will occur in open session. The statutory authorization is N. C. Gen. Stat. sec. 143-318.11 (a) (4). This motion was seconded by Councilman Dunn and carried unanimously.

At 8:00 p.m., Councilman Newman moved to come out of closed session. This motion was seconded by Councilwoman Jones and carried unanimously.

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ADJOURNMENT:

Mayor Worley adjourned the meeting at 8:00 p.m.

CITY CLERK

MAYOR