

Regular Meeting

Present: Mayor Charles R. Worley, Presiding; Vice-Mayor R. Carl Mumpower; Councilwoman Terry M. Bellamy (participated via speaker phone); 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

US Marine Brownlow Reeves led City Council in the Pledge of Allegiance.

INVOCATION

Councilman Davis gave the invocation.

ADDITIONS TO THE AGENDA

At the request of City Manager Westbrook, City Council added the following actions under Other Business: (1) an ordinance regarding permit and fee waivers to repair structures in designated areas flooded by the effects of Hurricane Frances; (2) a resolution designating the City of Asheville's agent to the N.C. Division of Emergency Management; and (3) an agreement with Complus, Inc., to resolve all issues regarding the Complus Agreement dated October 25, 2001.

At the request of Vice-Mayor Mumpower, City Council added an item to Other Business regarding when City Council will discuss the City's response to the recent disaster from Hurricane Frances.

HURRICANE FRANCES

On behalf of City Council, Mayor Worley thanked City staff, Buncombe County staff, State of North Carolina and Federal Emergency Management Agency for their work in our area during the recent flooding as a result of Hurricane Frances.

Councilman Dunn also thanked our citizens for working together through the tremendous hardship they have encountered over the past week.

I. PROCLAMATIONS:

A. PROCLAMATION PROCLAIMING SEPTEMBER 17-23, 2004, AS "MINORITY ENTERPRISE DEVELOPMENT WEEK"

Mayor Worley read the proclamation proclaiming September 17-23, 2004, as "Minority Enterprise Development Week" in the City of Asheville. He presented the proclamation to Mr. Marvin Vierra who briefed City Council on some activities taking place during the week.

B. PROCLAMATION PROCLAIMING SEPTEMBER 27-OCTOBER 1, 2004, AS "THE MEDIATION CENTER WEEK"

Mayor Worley read the proclamation proclaiming September 27- October 1, 2004, as "The Medication Center Week" in the City of Asheville. He presented the proclamation to The

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Honorable Earl J. Fowler who briefed City Council on some activities taking place during the week.

II. CONSENT AGENDA:

A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON AUGUST 24, 2004, AND THE COMMUNITY MEETING HELD ON AUGUST 31, 2004

B. RESOLUTION NO. 04-183 - RESOLUTION AUTHORIZING THE PURCHASING DIRECTOR TO DISPOSE OF CITY-OWNED PERSONAL PROPERTY BY PUBLIC AUCTION

Summary: The consideration of a resolution authorizing the Purchasing Director to dispose of City-owned personal property by public auction.

This resolution authorizes the City's Purchasing Division to hold a public auction to dispose of motor vehicles, off-road equipment, and other miscellaneous property declared as surplus by various City departments. The auction is to be held Saturday, October 2, 2004, at 10:00 a.m. in the Public Works Complex, 161 S. Charlotte Street.

Pros:

- Auction returns revenue to the City for items of property that are no longer of economical use in carrying out the City's mission
- Combining surplus vehicles in the same venue with other surplus items generates demand for items that could not be sold by themselves and for which the City would otherwise have to pay to have disposed of

Cons:

- Greater staff resources are required to conduct a local public auction than for an on-line electronic auction
- Selling surplus vehicles at a local public auction rather than through an on-line electronic auction may result in a slightly lower price for the vehicles (this is outweighed by the revenue gain from other items)

Staff recommends adoption of the resolution, which authorizes disposal of surplus property by public auction.

RESOLUTION BOOK NO. 28 – PAGE 341

C. ORDINANCE NO. 3158 - ORDINANCE AMENDING CHAPTER 20 OF THE CODE OF ORDINANCE REGULATING TREES

Summary: The consideration of an ordinance amending Chapter 20 of the Code of Ordinances to clean up amendments.

On September 28, 1999, Ordinance No. 2621 was adopted to split the Tree and Greenway Commission into two separate commissions – Asheville Tree Commission and Asheville Greenway Commission. When the Commission was split, the changes were made to Chapter 2, but not to Chapter 20 (which regulates trees). This housekeeping amendment will amend Chapter 20, sec. 20-3, so as not to conflict with the Tree Commission membership.

Staff recommends City Council adopt an ordinance amending Chapter 20 of the Code of Ordinances of the City of Asheville regarding the Tree Commission membership.

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ORDINANCE BOOK NO. 21 – PAGE

D. RESOLUTION NO. 04-184 - RESOLUTION RENAMING THE FRENCH BROAD RIVER PARK – PHASE IV AS “CARRIER PARK”

Summary: The consideration of a resolution renaming the French Broad River Park – Phase IV as Carrier Park as recommended by the Asheville Parks and Recreation Department and its Advisory Board.

For almost one year, Parks and Recreation staff has worked with a sub-committee made up of representatives from RiverLink, the West Asheville community, and various user groups at the park to solicit names. The following top three names were submitted to the Advisory Board for approval before being submitted to City Council:

RiverLink Park
Tahkeyostee Park
Carrier Park

At the June meeting of the Parks and Recreation Advisory Board, the Board unanimously voted to recommend to City Council that the French Broad River Park – Phase IV be renamed as “Carrier Park.” The name “Carrier Park” was selected based upon the fact that the Carrier family was an influential family in the West Asheville area and the park site was the former location of the Carrier airstrip.

Pros:

- By having an official name, staff will be able to give to the general public specific directions for finding this park in relationship to other parks along the French Broad River.
- This name recognizes a historic family in the West Asheville community.
- This name represents a direct tie to a former use of the property.

Cons:

- There may be some resentment from the former racing community for not naming the park after an influential former driver.

The Asheville Parks and Recreation Department and the Parks and Recreation Advisory Board recommend that City Council adopt the resolution approving the renaming the French Broad River Park – Phase IV as Carrier Park.

Mr. Fred English felt City Council should name the park in memory of Bob Pressley.

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E. RESOLUTION NO. 04-185- RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE AN AMENDED FEDERAL AVIATION ADMINISTRATION GRANT AGREEMENT, PROJECT NO. 3-37-0005-29

Summary: The consideration of a resolution authorizing the Mayor to approve an amended Project No. 3-37-0005-29 Grant Offer from the Federal Aviation Administration (FAA) in an amount not to exceed \$4,073,492, if additional FAA funding becomes available prior to October 1, 2004.

The Asheville Regional Airport Authority (Authority) has solicited and received construction bids for several of the projects associated with the Project No. 3-37-0005-29 Grant Offer approved by City Council on August 10, 2004. The final bid for the “Expand Apron (includes

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rehabilitation) Project” was substantially higher than anticipated. The Authority has requested additional federal funding from the FAA to allow the Authority to proceed with this project. The FAA has indicated that there is a possibility that additional grant funding, in the amount of \$1,309,000, may become available prior to September 30, 2004, but the Authority would need to be in a position to have a new Grant Offer executed and submitted back to the FAA within a short period of time of receiving the new Grant Offer, due to the Federal Fiscal Year ending September 30, 2004.

The only change in the Grant Offer that Council approved in August for Project No. 3-37-0005-29 will be for the total grant funding provided by the FAA, which was originally \$2,764,492.

Project No. 3-37-0005-29 consists 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 approve an amended Project No. 3-37-0005-29 Grant Offer from the FAA in an amount not to exceed \$4,073,492, if additional FAA funding becomes available prior to October 1, 2004.

RESOLUTION BOOK NO. 28 – PAGE 347

F. RESOLUTION NO. 04-186 - RESOLUTION AUTHORIZING THE MAYOR TO CONVEY PROPERTY AT THE CORNER OF BARTLETT STREET AND NELSON STREET TO RAY QUATE

Summary: The consideration of a resolution authorizing the Mayor to convey property at the corner of Bartlett Street and Nelson Street to Ray Quate, in the amount of \$4,000.

On August 24, 2004, City Council directed the City Clerk to advertise for upset bids on property at the corner of Bartlett Street and Nelson Street. The advertisement ran in the Asheville Citizen-Times on August 27, 2004, as provided in N. C. Gen. Stat. sec. 160A-269. No response was received. Therefore, the offer to purchase from Ray Quate in the amount of \$4,000.00 was not upset and the sale to Ray Quate should be approved.

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 bedroom 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:

- 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.
- A small parcel will be assembled with an adjoining parcel to provide a more efficient land use.
- 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 City Council authorize the Mayor to convey property at the corner of Bartlett Street and Nelson Street to Ray Quate, in the amount of \$4,000.

RESOLUTION BOOK NO. 28 – PAGE 348

G. RESOLUTION NO. 04-187 - RESOLUTION ACCEPTING STEGALL LANE AS A PUBLICLY MAINTAINED STREET

Summary: The consideration of a resolution to accept Stegall Lane, in the Chunns Cove area, as a publicly maintained street.

Section 7-15-1(f)-4.a requires that streets dedicated for public uses be accepted by resolution of City Council.

Stegall Lane is a developer-constructed street that has an average paved width of 20 feet and a length of 0.21 miles. Engineering Department Staff inspected this street and finds it to be constructed in accordance with the approved standards.

Following City Council's approval of this resolution, Stegall Lane will be added to the official Powell Bill list. A two-year warranty, from the time of Council acceptance, will be required by the developer to cover major failures in the roadway.

Pros:

- The City will receive Powell Bill funds from the NCDOT to maintain the roadway.
- Homes will be constructed on this roadway increasing the tax base in the City of Asheville.

Cons:

- Powell Bill funds will not cover 100% of the cost to maintain the street.

City staff recommends City Council accept Stegall Lane in the Chunns Cove area as a City maintained street.

RESOLUTION BOOK NO. 28 – PAGE 349

H. RESOLUTION NO. 04-188 - RESOLUTION AUTHORIZING THE CITY CLERK TO ADVERTISE AN OFFER TO PURCHASE TRACT I ON CHOCTAW STREET

Summary: The consideration of a resolution directing the City Clerk to advertise an Offer to Purchase property on Choctaw Street.

A bid has been received from Tilman and Sabrina Jackson, in the amount of \$17,400, for the purchase of Choctaw Street, Tract 1, PIN No. 9648.10-25-5447, in the East Riverside Redevelopment Project. This bid amount is not less than the appraisal value of \$17,400.

Choctaw Street Tract 1 is a residential zoned lot on the north side of Choctaw Street and opposite the intersection with Congress Street comprising 0.224 acre. The parcel is level with the

street and sloping up toward the rear line. It is covered with natural vegetation consisting of grass, small trees and brush.

The Jackson's own the adjoining property where they reside. There are no improvements planned for the subject property at this time.

The positive aspects of the transaction are:

1. The sale will be at fair market value as established by the tax appraisal.
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.

Approval of the resolution will initiate the sale of the property through the upset bid process as provided in N. C. G. S. 160A-269.

Community Development staff recommends adoption of the resolution directing the City Clerk to advertise an Offer to Purchase property on Choctaw Street.

RESOLUTION BOOK NO. 28 – PAGE 350

I. RESOLUTION NO. 04-189 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO AN AGREEMENT WITH MOTOROLA INC. FOR RADIO SYSTEM MAINTENANCE

Summary: The consideration of a resolution authorizing the City Manager to sign an agreement with Motorola, Inc. to provide maintenance coverage for the City's radio system.

Motorola, Inc. has provided maintenance services for the City's radio communications system since installation of the system in 1992. The service agreements are renewed annually. The maintenance cost per unit of equipment for the renewal period of September 1, 2004, through August 31, 2005, has increased by three percent.

The renewal agreement reflects a monthly increase of \$1,247.11 and covers additional equipment purchased by the City that has come out of warranty during the past year. The total monthly cost of this service is \$12,408.50.

Funds have been appropriated in Account No. 110-1100-415-3001 C44108.

Advantages to the contract: By keeping the radio system in optimal condition the City is able to provide communication services to several outside agencies, thereby improving interagency communications. This ties back to Council's goal of partnerships to improve critical services / infrastructure. These partnerships also help the City recoup some of their investment in the system infrastructure through fees collected for use of the system.

Disadvantages to the contract: None noted.

City staff recommends City Council authorize the City Manager to sign an agreement with Motorola, Inc. to provide maintenance coverage for the City's radio system for the term of September 1, 2004, through August 31, 2005.

RESOLUTION BOOK NO. 28 – PAGE 351

J, ORDINANCE NO. 3159 - BUDGET AMENDMENT TO PROVIDE FUNDING FOR WATER SYSTEM IMPROVEMENT PROJECTS

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Summary: The consideration of a budget amendment to the 329 (Water Bond Capital Projects Fund) to reprogram funds to provide additional funding for Annexation Projects and establish funding for Water System Improvement Projects.

There are two new Water System Improvement Projects that require funding. The Bee Tree/Black Mountain Conversion is needed in order to abandon the costly parallel 16-inch water mains that run through the Grovestone property. It will also allow abandonment of the Black Mountain pump station, which would result in savings in operational costs of \$60,000/year. The estimated cost of this project is \$500,000. The Lutheridge Pumping Station and Reservoir will allow conversion of the Mills River Water Treatment Plant to seasonal operation, which will provide an estimated savings of up to \$750,000 per year. Even if seasonal operation is not implemented, the Lutheridge project will allow a reduction in flow from the Mills River Treatment Plant saving up to \$100,000 annually in operational costs. The estimated cost of this project is \$585,791.

There is insufficient funding in Annexation 2002 (Haywood Rd and CM Doan Area) and Annexation 2003 (Old County Home, Old Haw Creek, and Bell Area). Street restoration costs for Annexation 2002 were more than expected, so additional funding of \$45,109 is needed. Annexation 2003 was only partially funded and additional funding of \$196,000 is needed at this time.

Funding for the projects listed above will be provided with excess funds from closed out projects, deleted projects, and investment earnings. Excess funds from the following closed projects will be used: \$83,231 from Revenue Bonds 2001 General Operations; \$351,996 from NCDOT US 74 Phase I; \$89,940 from Bee Tree Spillway; \$40,629 from NCDOT Brevard Rd 240 to 40; \$43,349 from Master Plan Sand Hill; and \$69,379 from Critical Needs II. Annexation 2001 is being funded in the 335 fund (Water Major Capital Projects Fund), so the \$104,220 that was budgeted for this will be reprogrammed to fund the projects listed above. Finally there is \$544,156 in investment earnings generated from the 2001 Revenue Bonds that will be reprogrammed.

Pros:

- Reprogramming funds for the Black Mountain and Lutheridge Projects will improve the water system as well as reduce annual operating costs.
- Annexation 2002 and 2003 will improve water service and enhance fire protection in newly annexed areas.

Cons: None noted.

Staff recommends that City Council approve a budget amendment to reprogram funds to provide adequate funding for Annexation Projects and establish funding for two new Water System Improvement Projects.

ORDINANCE BOOK NO. 21 – PAGE

K. RESOLUTION NO. 04-190 - RESOLUTION AUTHORIZING THE EXCHANGE OF A PORTION OF CITY-OWNED REAL PROPERTY LOCATED OFF MCDOWELL STREET ALONG TOWN BRANCH FOR A PORTION OF REAL PROPERTY LOCATED AT 7 MCDOWELL STREET

Summary: The consideration of a resolution authorizing the Mayor to convey a portion of property off McDowell Street in exchange for a portion of real property located at 7 McDowell Street.

The City and Weston Partners LLC (Weston) have negotiated an exchange of a portion of City owned property off McDowell Street for a portion of the property at 7 McDowell Street on which Weston has a contract to purchase from Victoria Investment Company.

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The City's property (PIN No. 9648.10-25-8816) and Weston's property (PIN No. 9648.10-26-8282) share a common boundary line that zigzags back and forth across Town Branch. Weston's property backs up to the east bank of Town Branch and is improved with a medical office building, parking and trees along the creek bank. The City's property lies on the west bank with trees along the creek bank and the remainder of the property in grass. It is part of East Riverside Park, which follows the meanderings of Town Branch from the Southside/Asheland/ McDowell intersection to the old Glenn Rock Hotel property. The portions of the properties to be exchanged are those areas where the City's and Weston's properties extend across the creek in an unusable fashion.

The parcels to be conveyed by the City include a 0.003 acre triangle and a 0.085 acre long narrow piece almost entirely covered by a storm drainage easement for a total of 0.088 acre. Weston's parcel is a 0.032 acre triangle. The City's Real Estate Manager has estimated the value of the City's property at \$4,100 and the value of Weston's parcel at \$4,200. All of the areas to be exchanged are on the creek bank and unsuitable for construction or any sort of economic use.

The positive aspects of the transaction are:

- The exchange will be a fair exchange of value for value.
- It will return property not needed for public use to the tax rolls.
- By incorporating land on the west bank into the park, it will allow greater flexibility for greenway construction on the City's property.
- It will conform the boundary line to the creek as a natural divide and provide a more logical and usable land ownership pattern.

Pursuant to N. C. G. S. 160A-271 a notice was duly published in the Asheville Citizen-Times on September 1, 2004.

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

Planning & Development staff and Parks & Recreation staff recommend adoption of the resolution authorizing the Mayor to convey a portion of property off McDowell Street in exchange for a portion of real property located at 7 McDowell Street.

RESOLUTION BOOK NO. 28 – PAGE 352

L. RESOLUTION NO. 04-191 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO AN AGREEMENT WITH MARTIN ALEXIOU BRYSON, PLLC, FOR TRANSPORTATION PLANNING AND ENGINEERING SERVICES FOR THE LONG-RANGE TRANSPORTATION PLAN

Summary: The consideration of a resolution authorizing the City Manager to execute a contract with Martin Alexiou Bryson, PLLC in the amount of \$74,000 for professional transportation engineering and planning services.

The City of Asheville is the Lead Planning Agency for the French Broad River Metropolitan Planning Organization (MPO). The MPO staff works cooperatively with the State of North Carolina to develop and maintain a travel demand model for the region. This model is a computer-based simulation of existing and future travel patterns. Developing and refining the computer travel model is an ongoing, regional project. The model is an essential tool in developing a long-range multi-modal transportation plan for the Asheville urban area.

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The State of North Carolina recently completed an extensive process to develop a new travel model for the Asheville area. The model is state of the art in terms of software, complexity, and the effort spent to collect accurate input data. The consulting firm of Martin/Alexiou/Bryson (MAB) developed this model for the N. C. Dept. of Transportation and the MPO.

The MPO is now ready to use the travel demand model to develop the Long Range Transportation Plan and Congestion Management System for the MPO. This will involve testing a variety of solutions to meet our transportation needs in the future. The model will be used to test the effectiveness of various strategies to reduce congestion, manage travel demand, and improve air quality in the Asheville region and French Broad River basin.

This funding for the contract with MAB is a part of the adopted budget for 2004-2005. No budget amendment is required. Eighty percent (80%) of the funding will come from federal funds provided to the MPO. The City of Asheville match for this contract is twenty

percent (20%) in the amount of \$14,800.

This effort fulfills one of the tasks in the Council's Strategic Operating Plan. This task is identified in the Planning Focus Area under Goal #2: "A multi-modal and congestion management transportation program." This item is part of Objective A, Task 1: "Update long-range transportation plan to incorporate multi-modal uses of transportation options including congestion management plan."

PROS:

- This contract is in support of an identified task in the Council's Strategic Operating Plan and is part of the approved budget and approved Planning Work Program for the MPO.
- Eight Percent (80%) of the funding comes from the federal government.
- The project fulfills federal requirements for local transportation planning.
- Martin Alexiou Bryson is a very capable firm with demonstrated credibility in our region.

CONS:

- The City of Asheville must provide twenty percent (20%) of the funding for this contract, even though the effort will benefit the entire region.

City staff recommends City Council authorize the City Manager to execute a contract with Martin Alexiou Bryson, PLLC in the amount of \$74,000 for professional transportation engineering and planning services.

RESOLUTION BOOK NO. 28 – PAGE 353

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

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

III. PUBLIC HEARINGS:

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

ORDINANCE NO. 3160 - ORDINANCE TO CLOSE AND VACATE THE DWELLING LOCATED AT 1086 HENDERSONVILLE ROAD

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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.

On August 10, 2004, City staff requested that this public hearing be continued until September 14, 2004.

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

Housing Code Coordinator Jeff Baker said that this is the consideration of an ordinance to close and vacate the dwelling located at 1086 Hendersonville Road. This public hearing was advertised on July 16, 2004.

The dwelling at 1086 Hendersonville Road (PIN 9656.05-08-6459) is a wooden structure containing nine dwelling units. Since December of 1998, following the first complaint, City staff has repeatedly worked with the property owners to bring the dwelling into compliance with the Housing Code, to no avail. As of July 27, 2004, the dwelling remained in non-compliance with the Housing Code.

A hearing was held on November 19, 2003, and an Order issued to the owner to render all nine dwelling units compliant with the Housing Code by February 2, 2004. The owner failed to comply with the Order and to date has not completed the required electrical repairs. In addition, with clear notice that they were renting the dwelling units in violation of the Housing Code, the owners exacerbated their non-compliance by renting the unfinished and un-permitted basement.

Prior to the previously scheduled hearing on July 27, 2004, the owners entered an agreement with the City which specified that a negotiated penalty would be paid and all outstanding work would be completed on or before September 14, 2004, or the Housing Division would proceed with enforcement as though there had been no agreement. As of September 10, 2004, there had been no request for a final inspection as required by the negotiated agreement. On September 13, 2004, a request for a final inspection was requested. City inspectors did inspect the dwelling on September 13, 2004, however, they failed the inspection. Therefore, until such time as the dwelling is made to comply with the Housing Code, the dwelling must be closed and vacated as required by the Findings of Fact and Order.

In order to effect this provision the City Council must adopt an Ordinance authorizing the Housing Code Coordinator to cause the

dwelling to become vacated and closed.

Staff recommends adoption of an ordinance ordering the dwelling located at 1086 Hendersonville Road vacated and closed until brought into compliance with the City's Housing Code.

Mr. Jeff Baker then reviewed with Council a chronology of events, which began on December 18, 1998, showing various pictures of violations. He then reviewed the summary of the most critical violations as of July 19, 2004 – most of which have not been corrected to date. He explained the process, which ends with either a final inspection or a fine for failure to comply. The fine is \$250 and \$50 per day after that. The fine for Ms. Tate (the owner) had accrued to \$8,400, however, in an effort to work with the owner, the City reduced the fine to \$5,000 and entered into a Memorandum of Understanding, which stated that repairs were to be finished by September 13, 2004. They paid the \$5,000, however, the repairs were not made. Now, the fine is \$8,400 plus 40 days of accrual (\$2,000). If compliance is gained, then the matter is settled. If compliance is not gained and if Council approves this ordinance, they will proceed with eviction

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per state law and place a lien on the property. They are still trying to work with the owner. At this time we are only looking at evicting people from Units 3, 4, 5 and 9.

Mr. Bill Lewis, attorney representing Ms. Tate, said that Ms. Tate is working on the repairs; however, she has run into financial constraints, e.g., \$6,000 for a sewer line and \$5,000 for the City's fine associated with the Memorandum of Understanding. He said Ms. Tate hired an electrician and was under the impression that all the electrical repair work had been done. He showed Council an invoice to Ms. Tate from Doug Grindstaff Electric Company Inc. dated April 19, 2004. Ms. Tate has requested that City Council postpone taking action on this ordinance for an additional 30 days, as she needs additional time to work on the violations.

Vice-Mayor Mumpower noted that at least Ms. Tate was showing a good faith effort on the electrical violations. When he asked what efforts were made in the other areas to correct violations and if Ms. Tate understands the seriousness of the issue, Mr. Lewis replied that Ms. Tate has contacted a plumber and even though she is limited in her ability to move around because of health issues, he felt she does understand the seriousness.

Councilman Dunn felt that Ms. Tate has had ample time, since 1998, to repair these violations and was concerned that she is now only starting to make an effort on the critical repairs.

When Councilwoman Bellamy asked about the number of tenants currently living in the 9-unit apartment building, Mr. Lewis said that he believed two of the units are not occupied.

Upon inquiry of Councilwoman Bellamy, Mr. Baker said that Ms. Tate is in violation of the Housing Code that was adopted on July 1, 1994, and then amended on October 14, 2003. He said that Ms. Tate did not mention any financial difficulties during the five-year grace period, which began in 1994.

Upon inquiry of Councilwoman Bellamy, Mr. Baker said that time and time again Ms. Tate has asked for extensions and he felt that the City has allowed her adequate time, since 1998, to do the minimal amount of repair work to maintain the property. In addition, through the Housing Code Program, they have tried to encourage people into good management practices and help them understand how to operate their rentals. He has encouraged Ms. Tate to get in touch with the Carolina Real Estate Investment organization in order for them to help her manage her rentals. The City has been proactive in helping Ms. Tate to manage what is great property.

Upon inquiry of Vice-Mayor Mumpower, Assistant City Attorney Martha McGlohon said that the ordinance before Council does not need to be amended to reflect only specific units to be vacated because State law requires the City to comply with the Findings of Fact and Order issued by the Director of Inspections, which state the four units to be vacated.

Upon inquiry of Councilman Newman, Mr. Lewis said that the property has been up for sale, but it has been taken off the market now. It is his understanding that Ms. Tate will try to keep the property and bring it into compliance.

At 6:02 p.m., Mayor Worley closed the public hearing.

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

Councilman Dunn moved for the adoption of Ordinance No. 3160. This motion was seconded by Councilwoman Jones and carried unanimously.

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Upon inquiry of Councilman Davis of what happens to the property now, City Attorney Oast said that hopefully the units can be brought into compliance and staff can come back to Council with a request to repeal the Ordinance.

ORDINANCE BOOK NO. 21 – PAGE

B. PUBLIC HEARING RELATIVE TO REZONING 58.63 ACRES OF PROPERTY LOCATED OFF OF RACQUET CLUB ROAD, VALLEY SPRING ROAD AND LANCE ROAD, IDENTIFIED AS THE RAMBLE AT BILTMORE FOREST, FROM RS-2 RESIDENTIAL SINGLE-FAMILY LOW DENSITY DISTRICT TO RS-4 RESIDENTIAL SINGLE-FAMILY MEDIUM DENSITY DISTRICT AND INSTITUTIONAL DISTRICT

ORDINANCE NO. 3161 – ORDINANCE REZONING 58.63 ACRES OF PROPERTY LOCATED OFF OF RACQUET CLUB ROAD, VALLEY SPRING ROAD AND LANCE ROAD, IDENTIFIED AS THE RAMBLE AT BILTMORE FOREST, FROM RS-2 RESIDENTIAL SINGLE-FAMILY LOW DENSITY DISTRICT TO RS-4 RESIDENTIAL SINGLE-FAMILY MEDIUM DENSITY DISTRICT AND INSTITUTIONAL DISTRICT

Mayor Worley opened the public hearing at 6:06 p.m.

Planning & Development Director Scott Shuford said that this is the consideration to rezone 58.63 acres of property located off of Racquet Club Road, Valley Spring Road and Lance Road, identified as The Ramble at Biltmore Forest, from RS-2 Residential Single-Family Low Density District to RS-4 Residential Single-Family Medium Density District and Institutional District. This public hearing was advertised on September 3 and 10, 2004.

Mr. Shuford said that the 2025 Asheville City Development Plan recommends expansions and new development in areas where infrastructure is in place to service this development. The Institutional zoning may allow expansion of existing retirement communities in the area, which serves older citizens of Asheville. The proposed RS-4 area would provide another housing product. A wide variety of housing choices are recommended for the Asheville community. The site is well situated to meet needs for transportation and community services.

The Technical Review Committee of the City of Asheville recently reviewed final plans for Gerber Village Phase I, which is located less than a mile away.

The property is located in the extraterritorial jurisdiction (ETJ) area in the southern portion of the City. The 1,000 plus acre parcel is located south of the Blue Ridge Parkway and west of Hendersonville Road and represents one of the last large land tracts in the ETJ area. Although City Council is not reviewing any specific development plan as a part of this rezoning request, the developer has committed to implementing some unique stormwater management systems throughout the entire development. Access to this large parcel will be improved by several connection points to the north and southwest with access to Hendersonville Road.

The initial rezoning request for a 59acre portion of the large parcel was to rezone it Institutional District. The Planning and Zoning Commission was concerned about compatibility of the uses permitted in Institutional District and the surrounding residential areas. The developer offered the Institutional and RS-4 change to the request. This revised configuration of the zoning designation works with their development goals.

The current rezoning request seeks to provide approximately 37 acres as Institutional zoning and approximately 23 acres as RS-4 District. The proposed RS-4 rezoning area provides

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a transition area of compatible uses for the surrounding RS-2 and RM-6 zoned residential areas. The Institutional portion of the rezoning request is located adjacent to the Deerfield Episcopal Retirement Community which is zoned RM-16. This arrangement will provide suitable buffering and screening to the surrounding community. In addition the Institutional District requires a height transition area when the neighboring parcels are residentially zoned. In those instances, the height of the building must match the residential height maximums within 100' of the residentially zoned property.

Residential Single Family Low Density District (RS-2) is developed to set aside areas for low density housing where environmental constraints are high or view sheds and watersheds are to be preserved. This district is also intended to stabilize and protect the districts residential character. Very limited non-residential uses are allowed in this district.

Residential Single Family Medium Density District (RS-4) is intended to establish medium density single family dwellings and to stabilize and protect the residential character of the district while promoting a suitable environment for single-family living. Limited other non-residential uses are also allowed in this district.

Institutional District is established to reserve land for the development of major educational and medical facilities and other complementary and supporting uses such as health related developments, office developments and public services. Development standards for uses in this district are established to minimize conflict with adjacent land uses. Residential density in the Institutional District is 16 units per acre. If the zoning change is accepted, the height transition area will apply within a 100' distance from residentially zoned property as described above.

The Limestone Township district to the east of this rezoning consideration is zoned R-2 which allows in conjunction with new water and sewer service lines, up to 12 multi-family residential units per acre or roughly 4 units per acre for single family residential development. Any future project in this area will need to be reviewed by the Buncombe County Planning Department and meet their

requirements.

Pros:

- The arrangement of the zoning will provide a suitable transition from the low-density residential character of the surrounding area.
- May allow expansion of retirement housing in this area.
- Access to Hendersonville Road may be improved through future development.
- New development here will strengthen the area tax base.
- Future development will be reviewed to meet City and County requirements for access and landscaping, setbacks, etc.

Cons:

- Access can be challenging onto Hendersonville Road from Racquet Club Road.
- Any uses allowed in the Institutional District will be permitted here and some of these uses would require suitable landscaping buffering from neighboring uses.

The request for Institutional District allows uses by right that are already located on neighboring properties in the vicinity. Any development that may be proposed on this site will be subject to the requirements of the City of Asheville Unified Development Ordinance including review for landscaping, site access and setbacks. In addition any structures located within 100 feet of residentially zoned property will be limited to 40 feet in height. This will assure that any development does not over-shadow nearby residential uses. The RS-4 District will provide a suitable transition area between activity on the Institutional portion of the parcel and surrounding residential uses. Furthermore, development of this site

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will strengthen the area tax base. The site is well situated close to services and to public transit. Wide shopping choices are also located nearby.

The Planning and Zoning Commission at their September 1, 2004, meeting voted 4-0 to recommend approval of the request to rezone the parcel area to Institutional and RS-4. Planning staff recommends approval of the rezoning request as well.

Mr. and Mrs. Robert Harroff, area property owners, spoke against the rezoning in that any change from RS-2 to RS-4 will decrease the value of their property, and also the value of the properties in the adjoining Lance Tract.

Mr. Anthony Walgate, area property owner, fully supported the rezoning.

Mr. Robert Fitch, resident in Crowfields, said that Biltmore Farms management has had great communication with them and have made modifications to address their concerns. Because they are reasonably pleased with their response, the consensus of the Executive Committee of Crowfields is in favor of the rezoning.

At 6:14, p.m., Mayor Worley closed the public hearing.

Upon inquiry of Councilman Newman, Mr. Shuford said that he is not aware of any concerns regarding traffic on Hendersonville Road, however, one of the main problems on that road is the lack of synchronization of the traffic signals and we have funding for that and hope to have it completed in the near future.

When Councilman Newman asked if the City has specific plans for Deerfield, Mr. Shuford said that while it does appear that this would make a lot of sense for the Deerfield Episcopal Retirement Community to expand into this area, should Council rezone the property to Institutional, he cautioned Council that the property can be used for any use allowed in the Institutional classification. The same applies to the RS-4 zoning classification requested. While we have received plans from Biltmore Farms, he has no information that would be useful to council's consideration of the rezoning.

Councilman Newman pointed out that South Asheville is growing fast and wondered at what point will traffic levels on Hendersonville Road become problematic. Mr. Shuford replied that in all likelihood, any development on the 37-acre tract would probably be a Level III review, so Council will have an opportunity to determine whether it is appropriate for the area. Also, a project the size of The Ramble, even though it is mostly large lot/low-impact single-family development, is going to require a Traffic Impact Analysis that will require the developer, no doubt, to do some off-site improvements. Those may include installation of traffic signals and other improvements to the street network to make sure an adequate level of service is maintained.

Councilman Davis said that the existing traffic signals are very close together at where an entrance may be located and he feels it make take some effort to get the signals functional so as not to cause additional traffic problems in that area. Mr. Shuford said that he would take that concern to the Technical Review Committee meeting.

Vice-Mayor Mumpower initiated discussion regarding the fairness of religious-related properties not paying taxes. City Manager Westbrook said that the Buncombe County Tax Assessor is working through the court system and other means to make sure that the non-religious components of a property are properly taxed.

Mr. Shuford acknowledged Vice-Mayor Mumpower's concern that the issue of potential for residential development on this industrial tract

to be problematic to our City tax base, however, this particular venue is not the appropriate place to address that issue. If the project comes to Council as a

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Level III project then that would be a good time to address those issues. He felt the issue is probably a bigger issue than just this particular rezoning. It may be a policy issue with regard to these types of developments where the use is primarily residential in nature and yet the way they are treated in terms of the provision of services and their paying for those services is a little out of kilter.

City Attorney Oast said that Vice-Mayor Mumpower's concern is a tax policy question, not a land use question. He said these-type issues have been litigated through the courts. To the extent that it bears on land use, it is something we can raise with out legislative delegation. However, this is a rezoning request and it may be fair to presume that it may be developed as an extension of Deerfield, but that is something City Council should not take into consideration in their deliberations.

Councilman Davis said that Deerfield was voluntarily annexed into the City about three years ago. He wondered why the City would want to voluntarily annex that type of property into the City when City residents will have to pay a portion of their services without any enumeration. He felt this issue needs to be addressed.

City Attorney Oast said that the question before Council is a land use question and not a tax policy question and the request should be evaluated as such.

Mr. Shuford pointed out that this property is in our extraterritorial jurisdiction area and it is not annexed into the City at the current time. As a result, Council's decision about this really has no affect on the City's tax base. At the point in time it would come into the City may be the appropriate time to address that issue.

Upon inquiry of Councilman Davis, Mr. Shuford said that it was his understanding that the developer asked if Biltmore Forest had an interest in voluntarily annexing them and Biltmore Forest was not.

Vice-Mayor Mumpower felt a policy discussion in the near future is necessary. Mr. Shuford agreed that Council should talk about this in general. Council's policy discussion could generate changes to the standards for approval for conditional use permits, for example, that would help guide staff when we run into these types of situations.

Upon inquiry of Councilman Dunn, City Attorney Oast said that this is a broader policy concern and since it the property is in the extraterritorial jurisdiction area, the time for that to enter into Council's consideration is when Council annexes.

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

Vice-Mayor Mumpower moved for the adoption of Ordinance No. 3161. This motion was seconded by Councilman Davis.

Councilman Newman wondered what the right timing would be for dialogue about the tax issues. Further frustration is with the conditional use zoning process. The fact that once we get a specific development brought to us, we are further prohibited from talking to the developers. He would support the rezoning but hoped that in a future worksession Council look at the broader policies that are in front of them. In addition, he hoped that before specific detailed developments are brought forward to Council that we can talk to developers about our concerns of infrastructure and the fairness questions around these kinds of developments.

Mayor Worley asked staff to research what Council's options are, particularly in the conditional use process and bring that report back at an appropriate worksession where we can start getting into that policy discussion and see what tools might be available and what our limitations are on those tools.

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The motion made by Vice-Mayor and seconded by Councilman Davis carried unanimously.

ORDINANCE BOOK NO. 21 - PAGE

C. PUBLIC HEARING TO CONSIDER AN AMENDMENT TO THE UNIFIED DEVELOPMENT ORDINANCE TO PROVIDE FOR PUBLIC SAFETY PLANS FOR CERTAIN TEMPORARY USES

ORDINANCE NO. 3162 - AN ORDINANCE AMENDING THE UNIFIED DEVELOPMENT ORDINANCE TO PROVIDE FOR PUBLIC SAFETY PLANS FOR CERTAIN TEMPORARY USES

Mayor Worley said that this public hearing was continued from the August 24, 2004, meeting in order to give staff time to research questions that arose from the August 17, 2004, worksession.

Mayor Worley opened the public hearing at 6:37 p.m.

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 public hearing was advertised on August 13 and 20, 2004.

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, Carolina Real Estate Investment Association, 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.

Mr. Shuford said that he has sent the amendment to the Buncombe County Tourism Development Authority and they have no concerns.

Mayor Worley closed the public hearing at 6:39 p.m.

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

Councilman Davis moved for the adoption of Ordinance No. 3162. This motion was seconded by Councilwoman Jones and carried unanimously.

ORDINANCE BOOK NO. 21 – PAGE

IV. UNFINISHED BUSINESS:

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A. SECOND READING OF ORDINANCE NO. 3157 – AN ORDINANCE AMENDING APPROPRIATE SECTIONS OF THE CODE OF ORDINANCES REGARDING CHURCHES AND OTHER PLACES OF WORSHIP

Mayor Worley said that the first reading of Ordinance No. 2157 was held on August 24, 2004, which amended Sections 7-8-21 (b) and 7-8-22 (b) regarding places of worship.

Mayor Worley explained there has been a lot of misinformation regarding this amendment and all it was intended to do was to bring two sections of the Unified Development Ordinance (UDO) in conformity with the rest of the UDO. He read the definition of "places of worship" from the UDO, which specifically includes churches. Because this is the second reading of an ordinance, public comment will not be taken.

Councilman Newman agreed that this is purely a technical housekeeping amendment to make the UDO consistent with the other 24 places in the UDO where we describe religious institutions. It doesn't change any land use or community development process.

Councilwoman Bellamy moved to waive the rules and allow public comment. This motion was seconded by Councilman Dunn and failed on a 2-5 vote, with Councilwoman Bellamy and Councilman Dunn voting "yes" and Mayor Worley, Vice-Mayor Mumpower, Councilman Davis, Councilwoman Jones and Councilman Newman voting "no."

Vice-Mayor Mumpower felt this was becoming a more divisive issue than it should. He felt that since both terms ("churches" and "places of worship") have been used in the UDO and the use of both is inclusive and reasonably covers the spectrum of spiritual frameworks, he would be supportive of using both terms.

Councilman Dunn spoke in support of using both terms, at the very least for a little tradition to continue.

Councilman Newman moved to adopt on the second and final reading Ordinance No. 3157, amending Sections 7-8-21 (b) and 7-8-22 (b) regarding places of worship. This motion was seconded by Councilwoman Jones.

Councilman Newman appreciated the community's underlying concerns to want to fight to maintain the integrity of those institutions, but this is not what is happening. This will have no impact on the health and vitality of churches in our community. Frankly he could support using both terms, however, the amendment by staff makes sense and he will support it.

Mayor Worley stressed that the definition in the UDO of "places of worship" specifically includes churches. He felt it was important to be consistent in the UDO and that is why staff has brought these amendments to Council. They are nothing more than housekeeping, not substantive, changes.

Councilwoman Bellamy felt that the amendment deleting the two references to “churches” affects the spirit of the UDO. She felt that the amendment lessens the significance of churches.

Councilwoman Jones felt it was important not to elevate on religion above another and when one is pulled out and defined and the others aren't included, that is what is happening. The City Attorney has advised Council that if that happens, it opens the City up for lawsuits. We should use our limited resources in the City, not for legal battles, but for making this place a better community, e.g. investing in our water structure, parks, affordable housing, etc. From her perspective, she feels like this captures theologically her Christian tradition.

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Councilman Davis said that the term “places of worship” is very inclusive of churches, however, he would not be opposed to using both terms.

Councilman Newman said the City is facing some big important issues, most notably the future of our water system. When Council went through their strategic planning process, Councilman Dunn hoped that this Council could come together and spend the next year focused on the really big important issues – things that will really make a difference in peoples lives. He was not opposed to using both terms, but wondered if we need to be spending our time working on this amendment issue, or some of the other issues.

Upon inquiry of Vice-Mayor Mumpower, City Attorney Oast said that the intent of the amendment was to make all the terms internally consistent and if Council wanted to go with an alternate wording for all of them, then it would not be necessary to send this back to the Planning & Zoning Commission. Regarding the definition, City Attorney Oast said that our Code provides that if a term is not defined, then you rely on the dictionary definition.

Upon inquiry of Councilwoman Jones, City Attorney Oast said that his review of the law indicates that an ordinance that singles out one place of religious assembly and regulates it either more or less strictly than another place of religious assembly may be constitutionally invalid. Similarly, ordinances that attempt to itemize different types of places of worship may be challenged if they leave something out, however inadvertently.

Councilman Davis made a substitute motion to amend Ordinance No. 3157, to replace the words “churches” and “places of worship” with “churches and other places of worship” throughout Chapter 7 of the Code of Ordinances. This motion was seconded by Vice-Mayor Mumpower and carried on a 6-1 vote, with Councilwoman Jones voting “no.”

ORDINANCE BOOK NO. 21 – PAGE

V. NEW BUSINESS:

A. RESOLUTION NO. 04-192 - RESOLUTION AUTHORIZING THE MAYOR TO ENTER INTO AN AGREEMENT WITH THE STATE OF NORTH CAROLINA FOR THE DEVELOPMENT OF NATIONAL GUARD FACILITIES AND CITY RECREATIONAL FACILITIES AT RICHMOND HILL, AND FOR THE CONVEYANCE OF CERTAIN REAL PROPERTY INTERESTS TO THE STATE

Parks & Recreation Director Irby Brinson said that this is the consideration of a resolution authorizing the Mayor to enter into an agreement with the North Carolina National Guard for the development of a new Armory at Richmond Hill Park.

The Parks and Recreation Department, along with other City departments, has been working for several months with the North Carolina National Guard for the development of a new Readiness Center to be located on approximately 15 acres at Richmond Hill. The current location of the Armory on Shelburne Road is not meeting the needs of the National Guard Armory and will be closed. This property will revert back to the City of Asheville. In an effort to try to address the Armory's needs and to enhance Parks and Recreation's services at Richmond Hill, the following issues have been agreed upon as part of the overall agreement between both parties.

1. The National Guard Armory will appropriate approximately \$7 million to the overall project.

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2. The National Guard Armory will develop the entrance road to both the Armory facility and the proposed ballfield complex to meet City standards.
3. The National Guard Armory will rough grade four baseball/softball fields and one multi-purpose soccer/football field.
4. As part of the overall construction of the new Armory facility, a gymnasium will be available for public use operated by the Parks and Recreation Department.
5. Landscaping around the Armory facility will meet the requirements of the Unified Development Ordinance.
6. The entire Armory facility will be fenced.
7. A shared parking area will be constructed at the Armory site for the Armory's use and as overflow parking for the park area.
8. The final design of the Armory facility will be approved by the City of Asheville.
9. All conditions outlined through the conditional use zoning process will be implemented.

10. The master plan will be developed over time to provide enhanced recreation opportunities.

This is an excellent opportunity to provide much-needed recreation facilities in the Richmond Hill area as well as a state-of-the-art Readiness Center for Asheville. In August, 2000, a community meeting was held in the Richmond Hill area. The information gathered from this meeting was used to develop the master plan for this 187-acre property. Another community meeting was held on March 19, 2003, with over 75 people attending to share their issues and concerns. Staff has tried to address these issues to the best of their ability. In addition, this issue was discussed at the Planning & Zoning meeting on April 2, 2003, and the Conditional Use Permit was approved by City Council on April 22, 2003. The agreement will allow for development in accordance with the conditional use permit. The development of the property is contingent on obtaining adequate access across some intervening land owned by a private party, and this contingency will be recognized in the agreement; the City is currently negotiating for the acquisition of that property.

Pros

- Excellent opportunity to develop a recreation complex in Northwest area of City at a low cost.
- Construction of a new Readiness Center will add to the economic development of the community.

Cons

- Concerns have been expressed by some residents in the area about increased traffic.
- A number of trees and vegetation will be disturbed for the construction of this site.

City staff recommends City Council authorize the Mayor to enter into an agreement with the National Guard Armory to develop a Readiness Center and associated park features as outlined by the Conditional Use Permit.

Upon inquiry of Vice-Mayor Mumpower, Mr. Brinson said that the agreement is contingent upon the finalization of the property entrance area, which we are currently in negotiations with the land owner. The National Guard is ready to start their design work and begin development almost immediately.

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

Vice-Mayor Mumpower moved for the adoption of Resolution No. 04-192. This motion was seconded by Councilman Dunn and carried unanimously.

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RESOLUTION BOOK NO. 28 – PAGE 354

VI. OTHER BUSINESS:

ORDINANCE NO. 3163 - ORDINANCE AMENDING THE 2004-05 ANNUAL OPERATING BUDGET TO AUTHORIZE PERMIT AND FEE WAIVERS TO REPAIR STRUCTURES IN DESIGNATED AREAS FLOODED BY THE EFFECTS OF HURRICANE FRANCES BEGINNING SEPTEMBER 6-8, 2004

City Attorney Oast explained the ordinance as follows: The City of Asheville adopted the 2004-05 Annual Operating Budget on June 22, 2004, providing for certain permit fees for building and related activities. Following the eye of Hurricane Frances touching down in the state of Florida, substantial rainfall felled upon the City of Asheville, beginning September 6, 2004, through September 8, 2004, causing major flooding of commercial and residential properties. Many of the commercial and residential structures were completely submerged in water. Before re-occupancy of such structures, the City of Asheville must first issue appropriate building and related permits. In an effort to minimize the substantial financial and emotional loss already suffered by certain City of Asheville residents and businesses, staff of the City of Asheville is of the opinion that it is in the best interest of the City to waive building and related permit fees for owners of such properties. NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ASHEVILLE THAT (1) Building permit fees for structures suffering flooding damage due to the effects of Tropical Storm/Hurricane Frances from September 6-8, 2004, within the jurisdiction of the City of Asheville, be and are hereby waived beginning on September 9, 2004. Eligibility for this waiver will be limited to structures located within or contiguous to the 100 year flood plain as shown on applicable Flood Insurance Rate Maps for the City of Asheville; (2) The Building Safety Director is further authorized to expedite the processing of permits for repairs to flood damaged structures by waiving the requirement for a City of Asheville Privilege License for N.C. Licensed Contractors; and (3) This budget ordinance amendment will expire on January 1, 2005.

Councilman Newman moved for the adoption of Ordinance No. 3163. This motion was seconded by Councilwoman Jones and carried unanimously.

ORDINANCE BOOK NO. 21 - PAGE

RESOLUTION NO. 04-193 – RESOLUTION DESIGNATING CITY OF ASHEVILLE'S AGENT TO THE N.C. DIVISION OF EMERGENCY MANAGEMENT

City Manager Westbrook said that the N.C. Division of Emergency Management requires a resolution designating the City's agent. This resolution will designate William F. Schaefer, Jr., Finance Director, as the primary agent and Cynthia A. Fortune, Finance

Operations Manager, as the secondary agent.

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

Councilman Dunn moved for the adoption of Resolution No. 04-193. This motion was seconded by Vice-Mayor Mumpower and carried unanimously.

RESOLUTION BOOK NO. 28 – PAGE 357

RESOLUTION NO. 04-194 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO AN AGREEMENT WITH COMPLUS, INC., TO RESOLVE ALL ISSUES REGARDING THE COMPLUS AGREEMENT DATED OCTOBER 25, 2001

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Transit Services Director Bruce Black said that this is the consideration of a resolution authorizing the City Manager to sign an Agreement with Complus Data Innovations to terminate an existing contract.

Complus Data Innovations (Complus) currently provides contracted services to Parking Enforcement. Complus locates the addresses of persons with delinquent parking citations, sends out notices to those people, and attempts to collect the past due amount from them. The City Of Asheville has now implemented an in-house citation processing and collections system better integrated with the existing systems and software of the City. The new program is expected to save administration costs and increase efficiency and collections. The services of Complus Data Innovations are no longer needed by the City.

Currently, the City Of Asheville pays Complus a fee based on a percentage of all citations collected. That fee is 14% on all in-state citations and 22% on all out-of-state citations. The current contract is not set to expire until February of 2005.

The total fee paid to Complus in Fiscal Year 2004 amounted to \$149,546. The total fee for Fiscal Year 2005 to the expiration of the contract is projected to be slightly over \$88,000. The City has proposed a contract buy-out to Complus, and they have accepted the proposal. The buy-out price is \$70,000.

Pros:

- The level of service (i.e. timeliness of notices etc.) to the public will increase
- The number of collected citations will increase
- The City of Asheville will save money in the administration of its parking program.

Cons:

- Parking Service will have to develop the capacity to look-up delinquent license plate numbers. This is being done at this time, and provisions have been made for the interim.

Staff requests that City Council approves the resolution authorizing the City Manager to sign an Agreement with Complus Data Innovations to terminate an existing contract.

When Vice-Mayor Mumpower asked if Complus was in violation of their contract, Mr. Black replied no, just that they are problematic.

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

Vice-Mayor Mumpower moved for the adoption of Resolution No. 04-194. This motion was seconded by Councilman Davis and carried unanimously.

RESOLUTION BOOK NO. 28 – PAGE 358

MISCELLANEOUS

At the request of Vice-Mayor Mumpower and after a brief discussion, it was the consensus of Council to have a status report on the City's response to the recent disaster at the next worksession. City Manager Westbrook explained the City's preparation for Hurricane Ivan.

Vice-Mayor Mumpower announced current vacancies on our current boards and commissions, with the application deadline.

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Vice-Mayor Mumpower thanked those who participated on Saturday, September 11, 2004, 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.

CLAIMS

The following claims were received by the City of Asheville during the period of August 13-26, 2004: Wilma Anderson (Police), Johnny Buckner (Sanitation), Dr. Eleanor Radford (Water), and Sue Buchanan (Water).

The following claims were received during the period of August 27-31, 2004: Norm Inche (Sanitation), Kizzy Allen (Sanitation), David Greenbaum (Water) and Heather Carrigan (Water).

The following claims were received during the period of September 1-9, 2004: Sandy Shaw (Streets), Roy Tipton (Fire), Fred Friedman (Water), Mildred Whitener (Sanitation), Robert Hensley (Water) and Lorraine Sweeney (Parks & Recreation).

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

VII. INFORMAL DISCUSSION AND PUBLIC COMMENT:

Mr. Walter Plaue was concerned about a trend he sees in the City of Asheville for an elitist community. He explained how the property in the City is being taken off the tax rolls by tax-exempt organizations, thus forcing the working people to pay all the taxes. He urged Council to give some thought on what direction the City of Asheville should be moving.

Mr. Fred English was concerned that the Pack Square Conservancy was using tax money for the Pack Square Renaissance Project, which he understood they were not going to use. He was opposed to the plans to change the lanes on College Street.

CLOSED SESSION

At 7:48 p.m., Councilman Newman moved to go into closed session for the following reasons: (1) To establish or to instruct the City's staff concerning the position to be taken by or on behalf of the public body in negotiating the price or other material terms of a contract for the acquisition of real estate. The statutory authorization is contained in N. C. Gen. Stat. 143-318.11(a)(5); and (2) 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 and Howard McGlohon; City of Asheville; and Eagle Market Streets Development Corporation. The statutory authorization is contained in G.S. 143-318.11(a)(3). This motion was seconded by Councilwoman Jones and carried unanimously.

At 8:55 p.m., Councilman Dunn moved to come out of closed session. This motion was seconded by Councilman Davis and carried unanimously.

VIII. ADJOURNMENT:

Mayor Worley adjourned the meeting at 8:55 p.m.

CITY CLERK

MAYOR