

Regular Meeting

Present: Mayor Charles R. Worley, Presiding; Vice-Mayor R. Carl Mumpower; Councilwoman Terry M. Bellamy (excused from meeting at 8:16 p.m.); 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

INVOCATION & PLEDGE OF ALLEGIANCE

Mayor Worley said that a couple of weeks ago Col. Ray Green died. After Col. Green retired from the U.S. Air Force he continued to give his time to the community. Col. Green led City Council many times in the Pledge of Allegiance and he will be missed. Mayor Worley then gave the invocation, followed by the Pledge of Allegiance.

I. PROCLAMATIONS:

A. THE ASHEVILLE CITY DEVELOPMENT PLAN 2025

Mayor Worley was pleased to announce that The Asheville City Development Plan 2025 received the 2004 Marvin Collins Outstanding Planning Award from the N. C. Chapter of the American Planning Association for large communities. He recognized facilitator Paul Godfrey and members of the City Plan Advisory Committee. Ms. Hazel Fobes said that the Plan does not specify strategies for the Regional Water Authority and accepted the Award noting that omission.

II. CONSENT AGENDA:

Vice-Mayor Bellamy asked that Consent Agenda Items "F" and "G" be removed from the Consent Agenda due to a conflict of interest.

A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON OCTOBER 12, 2004; THE JOINT CITY/COUNTY MEETING HELD ON OCTOBER 19, 2004; AND THE WORKSESSION HELD ON OCTOBER 19, 2004

B. RESOLUTION NO. 04-229 - RESOLUTION SUPPORTING THE FIRE AND RESCUE STRATEGIC PLAN

Summary: The consideration of a resolution adopting Asheville Fire Rescue's Strategic Plan and Standard of Response Cover.

Fire and Rescue staff has been working diligently for several years towards meeting the national fire and rescue services accreditation standards. Staff has now completed the requirements to be reviewed by the Commission on Fire Accreditation International (CFAI). A site visit by peer reviewers is scheduled for November with award of accredited status slated for February, 2005. If all requirements are met, Asheville Fire and Rescue will become the eighth accredited fire and rescue agency in North Carolina and the first accredited agency in Western North Carolina. Prior to the site visit by CFAI, City Council will need to endorse the department's standard of cover and strategic operating plan.

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Asheville City Council has directed staff to validate levels of emergency services provided for our citizens through the City's Strategic Operation Plan. It meets that goal in the section on Critical Services and Infrastructure, Goal 3 – Strong City and County Partnerships; Objective 1 – Review and validate the levels of critical emergency services provided throughout the city; Task 3 – Review and validate the levels of critical emergency services provided throughout the city.

The recognized national model which a fire and rescue agency validates their services is through the CFAI accreditation commission. The CFAI accreditation commission is comprised of fire service leaders from agencies of differing size as well as the International City Manager's Association (ICMA), city government, county government, the insurance industry, labor representatives, the International Association of Fire Chiefs (IAFC) and citizens at large.

At this time, the accreditation process is completely voluntary and has been in full effect for approximately the past five years. To date, within the State of North Carolina, there are seven accredited fire and rescue departments (Cary, Charlotte, Gastonia, Greensboro, Jacksonville, Rocky Mount, Wilson). Nationally, 96 agencies have received accredited agency status. Many more departments are currently at some point in the process. All metropolitan fire and rescue departments in North Carolina are involved in

the CFAI accreditation process.

The accreditation process has several key components. Over eighty (80) members of the fire and rescue department have been actively involved in formulating these three key components. These include:

1. Performance Indicators

There are 254 individual performance indicators that analyze department operations. Of these 254, 108 indicators are considered "core competencies" and must be met in order to become an accredited agency. The indicators are in the following categories:

- a. Governance and Administration
- b. Assessment and Planning
- c. Goals and Objectives
- d. Financial Resource Management
- e. Programs
- f. Physical Resources
- g. Human Resources
- h. Training and Competency
- i. Essential Resources
- j. External Systems Relations

2. Strategic Operating Plan

The strategic plan for the department would parallel the City's Strategic Operating Plan and give the department a specified work plan that goals and objectives can be formulated from. It is envisioned that the department's strategic operating plan be adjusted at least annually in concert with modifications of the city's strategic operating plan.

3. Standard of Cover

The standard of cover illustrates the department's level of service. This is developed from a risk assessment that consists of the following:

- a. Fire flow – amount of water to control the emergency
- b. Probability – likelihood that a particular event will occur within a given time
- c. Consequence – life safety as well as economic impact
- d. Occupancy Risk – risk to life and property
- e. Fire Management Zones – geographical areas of need or risk
- f. Community Profile – demographics, level of services provided

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In addition, the standards of response coverage consists of three key elements. These are:

- a. Distribution of resources – deployment of facilities and apparatus
- b. Concentration of resources – ability to deliver and effective response force
- c. Staffing levels – personnel and their task assignments

Completion of the comprehensive standard of cover document for the department has required a significant amount of research and data collection and data analysis by our firefighters.

Why should Asheville Fire and Rescue become an accredited agency? (PROS):

- Assures City Council and our community that the fire and rescue department is performing according to national standards and that the organization is being managed in a professional manner.
- Ensures that we have proper procedures, policies and guidelines in place and that we are delivering the services needed by our community through risk analysis.
- Promotes excellence within the fire/emergency service organization.
- Encourages quality improvement through a continuous process.
- Provides assurance to the public that the department has a defined mission and related objectives that will result in improved performance by the department.
- Provides a detailed evaluation of the department and the services it provides to the community that we serve and protect.
- Identifies areas of strength and weakness within the department.
- Provides a forum for the communication of management and leadership philosophies throughout the organization and community.
- Provides a formal mechanism for developing concurrent documents, such as strategic and business plans and continuously analyzes all of the services that the department is involved with.
- Fosters pride in the organization and promotes professionalism.

The strategic plan for the department would parallel the City's Strategic Operating Plan and give the department a specified work plan that goals and objectives can be formulated from.

Concerns (CONS):

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There have been no cons identified with the accreditation process for Asheville Fire and Rescue Department at this time. The effort and energy to perform the key components of the process have been completed. There are no substantial continuing costs in maintaining accredited agency status. Re-accreditation is on a five calendar year cycle.

City staff recommends City Council allow the Fire and Rescue Department to complete their accredited agency status from CFAI by giving their support to the Asheville Fire and Rescue Department's Strategic Operating Plan by adoption of the standard of response cover document for the Asheville Fire and Rescue Department.

RESOLUTION BOOK NO. 28 – PAGE 407

C. RESOLUTION NO. 04-230 - RESOLUTION ACCEPTING THE NEW STREET NAME "MAGNUM WAY"

Summary: The consideration of a resolution accepting the new proposed street name "Magnum Way."

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George G. Lycan, owner of lots on Magnum Way off of Round Top Road, has petitioned the City of Asheville to accept the street name "Magnum Way." The new street will begin at Round Top Road and end at T-turn on Magnum Way.

City staff recommends adoption of the resolution accepting the new proposed street name "Magnum Way."

RESOLUTION BOOK NO. 28 – PAGE 408

D. RESOLUTION NO. 04-231 - RESOLUTION ACCEPTING THE NEW STREET NAMES "BULLDOG DRIVE" AND "LASER CIRCLE"

Summary: The consideration of a resolution accepting the new proposed street names "Bulldog Drive" and "Laser Circle" in the Campus Crest community.

Campus Crest of Asheville, LLC, owner of lots off of Montford Avenue, has petitioned the City of Asheville to accept the street names "Bulldog Drive" and "Laser Circle" within the Campus Crest community. The new street Bulldog Drive will begin at Montford Avenue and end at Zillicoa Street. The new street Laser Circle will begin at Bulldog Drive and end at Zillicoa Street.

City staff recommends adoption of the resolution accepting the new proposed street names "Bulldog Drive" and "Laser Circle" in the Campus Crest community.

RESOLUTION BOOK NO. 28 – PAGE 409

E. RESOLUTION NO. 04-232 - RESOLUTION ACCEPTING THE NEW STREET NAME OF "APPELDOORN CIRCLE"

Summary: The consideration of a resolution accepting the new proposed street name "Appeldoorn Circle."

C&R Project Development; owner of lots off of Brooklyn Road, have petitioned the City of Asheville to accept the street name "Appeldoorn Circle." The new drive-around street will begin and end at 200 Brooklyn Road.

City staff recommends adoption of the resolution accepting the new proposed street name "Appeldoorn Circle."

RESOLUTION BOOK NO. 28 – PAGE 410

F. RESOLUTION APPROVING AN AMENDMENT TO THE 2004 CONSOLIDATED ACTION PLAN

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

G. BUDGET AMENDMENT TO ALLOCATE ADDITIONAL COMMUNITY DEVELOPMENT BLOCK GRANT FUNDS FOR EMERGENCY HOUSING REPAIRS DUE TO STORM DAMAGE

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

H. ORDINANCE NO. 3173 - BUDGET AMENDMENT TO CONTINUE CONSTRUCTION OF THE GLENN CREEK GREENWAY

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Summary: The consideration of a budget amendment, in the amount of \$50,000, from the National Trails Grant Program to continue the Glenn Creek Greenway across Merrimon Avenue into Weaver Park.

The Asheville Parks and Recreation Department and the Asheville Greenway Commission continue to work towards the development and implementation of the Greenway Master Plan. A critical connection to downtown has always been connecting North Asheville residents to the Glenn Creek Greenway near UNC-Asheville. The Department has been successful in receiving a \$50,000 grant from the National Trails Grant Program that will allow the existing trail at Weaver Park to be expanded and a connection made to the Glenn Creek Greenway on Merrimon Avenue. This will allow residents near Weaver Park to safely connect to the Glenn Creek Greenway and then ultimately on to the Reed Creek Greenway into downtown. This grant requires a 20% match, which is being met through in-kind services by the Parks and Recreation Department for design and construction.

Pros:

- This will allow continued development of the greenway system with no taxpayer dollars required.
- This will allow safe connection from North Asheville ultimately to downtown using the greenway system.
- This meets the objectives of the Greenway Master Plan.

Cons: None

This project meets several goals established by the Strategic Operating Plan, specifically, the natural and built environment focus area. This will address the goal for increased greenway benefits throughout Asheville.

City staff recommends City Council approval of a budget amendment, in the amount of \$50,000, to continue the Glenn Creek Greenway across Merrimon Avenue into Weaver Park.

ORDINANCE BOOK NO. 21 – PAGE

I. ORDINANCE NO. 3174 - BUDGET AMENDMENT TO ALLOCATE FUNDS FROM THE JUNIOR LEAGUE OF ASHEVILLE FOR RENOVATIONS AT THE REID RECREATION CENTER

Summary: The consideration of a budget amendment, in the amount of \$97,500, to allocate a grant from the Junior League of Asheville to operate a program at Reid Recreation Center for the Cultural Renaissance of the Arts – Impact Project.

Through the generosity of the Junior League of Asheville, the Parks and Greenway Foundation and the Asheville Parks and Recreation Department are able to provide enhanced cultural arts experiences for youth and teens at the Reid Recreation Center. The Junior League will be providing financial assistance as well as volunteers to assist in a three-year project at the Reid Center. This project includes the funding for renovations at the Center, funds for programming the Cultural Renaissance Program and funds for the After School Program. In addition, the Junior League will assist our staff in developing additional funding resources for continued renovations at the Reid Center. A total of \$97,500 will be received over the three-year period as follows:

\$15,000 per year for three years for renovations
\$15,000 per year for three years for the Cultural Renaissance Art Program
\$25,500 per year for three years for the After School Program

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Pros:

- This program will address issues facing at-risk youth.
- This program will allow us to leverage additional resources by using these funds as seed money.
- The Junior League will provide assistance for staff to write additional grant for renovations at Reid Center.

Cons: None

This project will address City Council's Strategic Operating Plan by enhancing the focus area of Sense of Place Heritage and the Arts.

City staff recommends City Council approve a budget amendment, in the amount of \$97,500, to allocate funds secured from the Junior League of Asheville for renovations at the Reid Community Center.

ORDINANCE BOOK NO. 21 - PAGE

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

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

ITEMS REMOVED FROM THE CONSENT AGENDA FOR INDIVIDUAL VOTE

RESOLUTION NO. 04-233 - RESOLUTION APPROVING AN AMENDMENT TO THE 2004 CONSOLIDATED ACTION PLAN

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

Summary: The consideration of a resolution amending the 2004 Consolidated Action Plan to increase Community Development Block Grant (CDBG) funding for Mountain Housing Opportunities' Emergency Repair Program; and the associated budget amendment in the amount of \$20,000.

Mountain Housing Opportunities (MHO) has requested a one-time increase in its CDBG grant for the Emergency Repair Program, from \$80,000 to \$100,000. Following tropical storms Frances and Ivan, MHO received a sharp increase in repair requests. Much of the work is not covered by insurance or FEMA, either because FEMA doesn't accept it as storm damage or because it exceeds the maximum FEMA grant and the homeowners can't afford an additional loan. MHO will work closely with FEMA to maximize federal assistance in each case, before using local CDBG funds.

Typical repairs are for roof leaks; broken sewer lines; repair or replacement of furnaces or water heaters; electrical hazards; and holes in floors or stairs. Grants range from about \$800 to \$5,000. The typical recipient is an elderly or disabled homeowner with less than 50% of area median income.

Funds are available from the City's CDBG program income account, due to the recent pay-off of several rehabilitation loans.

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The Housing and Community Development Committee considered this request at its October 11 2004, meeting and recommends approval.

Potential Advantages:

- Assistance for an additional 6-10 Asheville residents impacted by the storms
- Grant program provides maximum assistance and speed of response
- Addresses only health and safety issues – not general home improvements
- Will not substitute for FEMA assistance where that is available
- Some homeowners may have to leave their homes if not assisted
- Will allow MHO to continue its normal program through the winter months when furnace failures are a serious hazard.

Disadvantage:

- To the extent that CDBG funds are obligated to this program, it reduces the City's ability to respond to other urgent needs that may arise.

No public notice or public hearing is required, as this is not a new program.

City staff recommends City Council approve a \$20,000 increase in the CDBG funding for the MHO Emergency Repair Program and a budget amendment to appropriate program income for that purpose.

Councilman Dunn moved for the adoption of Resolution No. 04-233. This motion was seconded by Councilman Davis and carried unanimously.

RESOLUTION BOOK NO. 28 – PAGE 411

ORDINANCE NO. 3175 - BUDGET AMENDMENT TO ALLOCATE ADDITIONAL COMMUNITY DEVELOPMENT BLOCK GRANT FUNDS FOR EMERGENCY HOUSING REPAIRS DUE TO STORM DAMAGE

Councilman Dunn moved to excuse Councilwoman Bellamy from participating in this matter due to a conflict of interest. This

motion was seconded by Councilwoman Jones and carried unanimously.

Summary: See Resolution No. 04-233 above.

Councilman Dunn moved for the adoption of Ordinance No. 3175. This motion was seconded by Councilman Davis and carried unanimously.

ORDINANCE BOOK NO. 21 – PAGE

III. PUBLIC HEARINGS:

A. PUBLIC HEARING TO CONSIDER THE ISSUANCE OF A CONDITIONAL USE PERMIT FOR THE MOUNTAIN HOUSING OFFICE ADDITION LOCATED AT 64 CLINGMAN AVENUE FOR A PROPOSED EXPANSION OF THEIR OFFICE SPACE

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

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A letter was received on November 9, 2004, from Mike Vance, Homeownership Manager from Mountain Housing Opportunities Inc., stating that "due to a delay in a required response from HUD, Mountain Housing Opportunities is requesting that our proposal to amend the Conditional Use Permit for the Merritt Park Condominiums scheduled for November 9, 2004, be continued until the next available City Council meeting." Therefore, Councilwoman Jones moved to continue the public hearing until January 11, 2005. This motion was seconded by Councilman Davis and carried unanimously.

B. PUBLIC HEARING TO CONSIDER THE ISSUANCE OF A CONDITIONAL USE PERMIT FOR PROPERTY LOCATED ON SPRINGSIDE PARK DRIVE, LOCATED OFF WHITE PINE DRIVE, FOR THE CONSTRUCTION OF A 60-UNIT MULTI-FAMILY DEVELOPMENT (KENILWORTH FOREST VILLAGE APARTMENTS) IN AN RM-8 RESIDENTIAL MULTI-FAMILY MEDIUM DENSITY DISTRICT

ORDINANCE NO. 3176 - ORDINANCE GRANTING A CONDITIONAL USE PERMIT FOR PROPERTY LOCATED ON SPRINGSIDE PARK DRIVE, LOCATED OFF WHITE PINE DRIVE, FOR THE CONSTRUCTION OF A 60-UNIT MULTI-FAMILY DEVELOPMENT (KENILWORTH FOREST VILLAGE APARTMENTS) IN AN RM-8 RESIDENTIAL MULTI-FAMILY MEDIUM DENSITY DISTRICT

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

Ms. Patsy Brison, attorney representing the Kenilworth Forest Community Club, moved to continue this matter for the following reasons: (1) The application has not been signed by all of the property owners or agents of property owners whose properties are included within the project, as is required by subsection 7-5-2 (c) (1) of the Code of Ordinances of the City of Asheville; (2) The proposed access to the project is by way of a driveway shown on the tax maps as being named "Springside Park Road." We previously raised a question in our July 14, 2004, letter to you regarding the use of this access road and that issues has not been addressed. As a result, there is no clear access to the project; (3) it was not until 4:00 p.m. yesterday that we received a 'revised traffic study' for the project. The revised traffic study was to take into consideration the change in the access road. There were no changes made in the traffic study other than changing the site plan. Among other problems with the traffic study, there is no analysis or study done regarding the limited site distance from the crest of the hill on White Pine Drive to the proposed access road for the project; (4) As a result of recent floods due to hurricanes in September in our area, the flood plain maps are to be redrawn by FEMA. This project includes a flood plain area. At this point, it is not known how much of this property would be affected by the redrawn FEMA maps; (5) It is impossible to tell the amount of acreage which will be available for this project as there is a proposed subdivision of the property which has not yet been completed. As a result, it is impossible to determine the density allowed for the project; (6) the staff report prepared for the City Council public hearing includes City staff 'findings' on the standards required for approval for issuance of a conditional use permit. All of the standards are noted as being met, without having an evidentiary hearing before City Council. This constitutes clear pre-hearing bias, having instructed the City Council on how to find in a positive manner on all of the standards, without having heard the evidence at its quasi-judicial hearing; and (7) the conditions which were required by the Technical Review Committee and the Planning & Zoning Commission to be met prior to submission of City Council have not been met in that an updated traffic analysis and site plan based on the use of Springside Park Drive and associated improvements have not been submitted and the ability to access Springside Park Drive has not been clarified and the road has not been made public." (Neighborhood Exhibit 1)

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Ms. Brison said that if Council chooses to deny the first motion, she moved "to strike the staff report in that it constitutes evidence provided to the City Council outside of the quasi-judicial hearing." This constitutes pre-hearing bias in violation of the standard set forth in Crump v. Board of Education and its progeny. (Neighborhood Exhibit 1)

Ms. Brison further stated that "it remains our view that the access to this property must be resolved before the conditional use permit can be approved. While there may be private property rights involved and at issue, it is our view that a City permit cannot be approved without proof of adequate access to the project site. In addition, it is our view that the property owners who own the underlying fee over which the proposed access road is to be constructed must be a part of the application process. We have found no evidence that the applicant, Virginia May, owns the underlying fee for the properties over which the access road is to be constructed." (Neighborhood Exhibit 1)

City Attorney Oast said that he has considered all of the reasons for continuance and doesn't think that any of them is a basis for continuing the hearing tonight. (1) The access issue has been raised and he didn't think that this is the appropriate forum to resolve the issues regarding private property rights. City Code Section 7-2-4 (c) states that this chapter (meaning the Unified Development Ordinance) "is not intended to abrogate any easement, covenant, or other private agreement." Whatever rights exist in that access are matters that if they are not resolved to the point that a road can be built there, the project can't be built. This Council cannot resolve those issues as they need to be resolved in another forum; (2) As to the issue of pre-hearing bias, he has examined case law and he didn't think that is an issue. This Council receives staff reports all the time and Council frequently makes decisions contrary to those staff reports. He does ask before each conditional use permit public hearing whether Council has any information that they think would cause them to not make a fair decision in the case. There is nothing that he is aware of that prevents Council from receiving this information from staff; (3) Regarding the redrawn FEMA maps, he was not aware of anything where FEMA had indicated that the City should stop development in or near floodplains; and (4) City staff feels that the property owners or their agents have signed the application. In summary, it was City Attorney Oast's recommendation that Council can proceed with the hearing.

Upon inquiry of Councilman Dunn, City Attorney Oast said that the applicant has made application and they asserting that they have access. Others say they don't have access. Again, this Council can't resolve that issue. We do require any new development in the City, especially with a conditional use permit, have appropriate access to a public road or on a public road. Even if Council grants the conditional use permit and they find they don't have access, the project can't go forward.

Upon inquiry of Councilman Newman, City Attorney Oast said that the subdivision will occur after the project is approved. As he understands it, the applicant wants to subdivide the piece of property that has the single-family residence on it away from the rest of the project. It doesn't make sense to do that unless the project is approved. And when that is done, it will have to comply with our subdivision regulations.

When Mayor Worley asked for a motion by Council to grant or deny Ms. Brison's continuance motion, there was none. Therefore, in the absence of a motion, Mayor Worley ruled the continuance request denied.

When Mayor Worley asked for a motion by Council to grant or deny Ms. Brison's motion to strike the staff report, there was none. Therefore in the absence of a motion, Mayor Worley ruled the motion to strike the staff report was denied.

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

After hearing no questions about the procedure, Mayor Worley opened the public hearing at 5:36 p.m.

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

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

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

Ms. Hamel said that this is the consideration of the issuance of a conditional use permit for property located on Springside Park Drive, located off White Pine Drive, for the construction of a 60-unit multi-family development (Kenilworth Forest Village Apartments) in an RM-8 Residential Multi-Family Medium Density District. This project is a request from Virginia May for a Level III site plan approval.

This project was originally submitted and reviewed under the Neighborhood Developer Meeting Procedures. However, prior to the scheduled Council meeting in May of this year, the developer withdrew the project due to unresolved private matters concerning deed restrictions for the use of the property and the legality of using Springside Park Drive as the proposed access for the development. There were also questions regarding the number of units proposed. The owner has since hired legal counsel to address the deed restrictions, and also the question regarding whether this development has legal conveyance to use Springside Park Drive, both considered private matters between the two parties involved.

The site plans for this project have been revised from what was submitted during the initial review and include the following revisions:

1. The relocation of the drive entrance from White Pine Drive to Springside Park Drive.
2. A change in lot sizes for the main tract of land that will house the development and also the proposed lot housing the owner's existing residence.
3. Relocation of the dumpster which has been moved further west of its original location and 58 feet in from the abutting vacant residentially zoned tract on the south side of the site.
4. A reduced buffer with privacy fence has been added along the access drive; and
5. The maximum height of retaining walls has been added to the plans.

The project site is located off of Springside Park Drive, a private street that is located off of White Pine Drive within the Kenilworth Forest Neighborhood (Attachment to City Exhibit 3 – Location Map). The parcel consists of 7.16 acres and is zoned RM-8 Residential Multi-Family Medium Density District. The owner's residence also located on this parcel will be subdivided from the main tract, leaving 6.9 acres (Attachment to City Exhibit 3 – Aerial Map). In this district, 5,000 square feet per unit is required. Based on the remaining acreage, 60 units are permitted.

Single-family development is prominent along portions of the East and south sides of the property closest to White Pine Drive. Single-family development is found along portions of the west sides of the property along with several large vacant-residential tracts of land. A motel,

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apartment complex and a large vacant parcel border sections of the northeastern side of the property on the east side of Springside Park Drive (Attachment to City Exhibit 3 – Aerial Map).

The existing topography on the lot portrays a moderately steep decline in elevation along the northern side of the property. The more level areas of the site are located between the west and south sides of the property, where the majority of the development will be concentrated (Attachment to City Exhibit 3 – Aerial Map). Portions of this property are also located within the 100-year flood plain due to the location of Ross Creek, which flows along portions of the northwestern and northern property lines (Attachment to City Exhibit 3 – Aerial Map). A small section of one of the proposed buildings is located within this flood plain area, however, as long as the building is elevated to meet the FEMA requirements, this would be permissible.

The conceptual site plan proposes a 22-foot driveway off of Springside Park Drive as access to the development (Attachment to City Exhibit 3 – Zoning Site Plan). In addition to the new driveway, the City will require that Springside Park Drive be improved to meet the City's street standards and require that the road be made public.

The development will consist of two apartment buildings, housing 30 units each. Ten units in each building will be provided a one-car garage on the lowest level of the building. In addition, a parking lot consisting of 96 spaces will be constructed to serve the facility.

Open space for the development is being provided in two large areas within the site along the north and on west side of the property (Attachment to City Exhibit 3 – Zoning Site Plan). As an added amenity to the facility, the developer is proposing several walking trails and bird watching stations within these areas. Additionally, a 30-foot greenway easement along Ross Creek will be dedicated to the City that will provide for a future greenway connection.

In addition to the vegetation being preserved by the developer in these areas, an equivalent of a 20-foot, type "B" vegetative buffer is required along the entire perimeter of property, with street trees along the access drive and parking lot landscaping as required by the Unified Development Ordinance (UDO). The applicant is proposing a 6-foot privacy fence in lieu of the 20-foot vegetative buffer along the access drive between the owner's residence and abutting residential property along the east side of the site.

The proposed building elevations for the project illustrate the use of high-quality materials and added architectural and design elements that will enhance the appearance of the buildings (Attachment to City Exhibit 3 – Building Elevations). Cultured stonework, hardiplank siding, and architectural shingles are among the list of materials proposed for the façade of the buildings. A total of 36 – one-bedroom units; and 24 – two bedroom units are proposed. The buildings will be constructed in a ¾ story split design, 3 stories in the front facing White Pine Drive, and 4 stories in the rear.

Although not relevant to the process by which we are reviewing this project today, a Neighborhood Developer Meeting with the Kenilworth residents was held on Thursday, April 29, 2004. The residents in attendance at the meeting expressed a number of concerns in regards to the proposed development including: deed restrictions for the use of the property, traffic concerns, location of the proposed entrance and trash compactor, impact of development on Ross Creek, and light and noise pollution generated by the

development.

Regarding two of the main issues raised by the neighborhood concerning traffic and deed restrictions, the City's Traffic Engineer Anthony Butzek has stated that the level of service and capacity of the development does not meet the threshold for requiring a Traffic Impact Analysis (TIA). The developer, however, in order to address traffic concerns by the neighborhood, chose to have a traffic study completed for the development that was submitted to the City for review

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during the initial application of the project. The City's Traffic Engineer requested a revised copy of the traffic study to be provided before this hearing in order to review site distance requirements at Springside Park Drive and White Pine Drive. It was her understanding that Mr. Butzek has received the revised traffic study.

In regards to the referenced deed issues, staff consulted with the City Attorney who has advised that enforcement of private deed restrictions is a private matter and should be disregarded in our consideration of the request.

Other concerns raised by the neighborhood have been addressed with the re-submittal of plans and also with added conditions, should Council choose to approve the project.

On Wednesday, October 6, 2004, the Asheville Planning and Zoning Commission approved the project subject to the conditions by Technical Review Committee (TRC) and recommended conditions by staff.

The Asheville City Council shall not approve the conditional use application and site plan unless and until it makes the following findings, based on the evidence and testimony received at the public hearing or otherwise appearing in the record of this case:

1. That the proposed use or development of the land will not materially endanger the public health or safety:

The proposed use of the property is a multi-family residential project. Prior to the issuance of any permits, the Technical Review Committee will review the final detailed plans to insure technical standards set forth in the UDO, the Standards and Specifications Manual, the North Carolina Building Code and other applicable laws and standards that protect the public health and safety, are met.

2. That the proposed use or development of the land is reasonably compatible with significant natural and topographic features on the site and within the immediate vicinity of the site given the proposed site design and any mitigation techniques or measures proposed by the applicant:

Grading of the site will be necessary to develop the property as proposed. The site has been designed in a manner that is environmentally sensitive by concentrating the development on the more level areas of the site, limiting land disturbance near Ross Creek and significant steep areas; and by preserving existing large vegetated areas that will be reserved for open space.

A condition has been added to the project for the developer to work with staff to ensure water quality issues in relation to Ross Creek are addressed by means of stream bank stabilization, appropriate wetland species, riparian buffers and use of other Best Management Practice tools.

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

Landscape buffering will be installed in accordance with the standards set forth in the UDO. In addition, several large wooded areas along the North and West sides of the property will remain undisturbed and be reserved toward the required open space standards. The buildings will also be constructed with long lasting materials and enhanced with architectural features that will have a positive effect on the surrounding community.

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4. That the proposed use or development of the land will be in harmony with the scale, bulk, coverage, density, and character of the area or neighborhood in which it is located:

The development is being proposed at the density permitted for the lot. The low-density residential properties along White Pine Drive sit at a higher elevation than the proposed development. This will assist in providing visual relief of the full scale and height of the buildings.

In addition, landscape buffering will be installed along the entire perimeter of the property that will assist in mitigating any negative impacts the development may have on abutting properties and will also increase the compatibility of the site with the

surrounding area. The proposed buildings are also being designed with enhanced architectural features that will increase their compatibility with the neighborhood.

5. That the proposed use or development of the land will generally conform with the Comprehensive Plan, smart growth policies, sustainable economic development strategic plan and other official plans adopted by the City:

The project is supported by numerous goals and strategies in the plan relating to infill development, smart growth policies and transportation goals. The project utilizes the existing zoning on the lot to create a sustainable medium-density residential development within the city limits and where infrastructure capable of handling this type of development exists. The site is also within very close proximity of transit service, potential employment centers, restaurants and shopping centers.

This project also supports and implements goals specified in the Greenway Master Plan by providing an easement along Ross Creek that will provide for a future greenway connection. Water quality goals as it relates to Ross Creek are also being implemented through the project's design and development.

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

Any development of the site would require technical approval from all applicable departments including representatives of the Water Resources, MSD, Engineering, Fire and Building Safety Departments. The conceptual plans for the development have been reviewed by the City's Technical Review Committee, which found that adequate services and facilities are available for the proposed development. Several transit service stops on Tunnel Road are within a mile of the site.

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

The City's Traffic Engineer has determined that the project does not meet the threshold for requiring a Traffic Impact Analysis. As part of the project, the developer must address site distance requirements for the improvements required to bring Springside Park Drive up to City Standards.

In closing, staff feels that the proposed development adequately addresses the seven conditional use standards and provides an appropriate infill development project that meets many of the City's Smart Growth goals.

As such, staff recommends approval of the project subject to the following conditions:

1. That the project meet all conditions required by the Technical Review Committee;

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2. Legal and adequate access to Springside Park Drive must be clarified and the road made public.
3. Based on the TIA and the need to address sight distance at Springside Park and White Pine, the developer shall be required to complete one of the following: re-grade White Pine to soften the crest vertical curve near Springside Park and increase sight distance; or reduce the design speed on White Pine through geometry (such as a neighborhood traffic circle at the intersection).
4. All site lighting shall be equipped with 90-degree cut-off fixtures and oriented away from the surrounding residential property.
5. The developer shall work with City staff to address water quality issues in the design and monitoring of stormwater run-off infrastructure and by means of stream bank stabilization, selection of appropriate wetland species, riparian buffers and use of other Best Management Practice tools as approved by the City Engineer and Planning Director.
6. The developer shall work with the Buncombe County Health Department to evaluate safety concerns regarding the abandoned septic tank on the owner's adjoining vacant lot.
7. Developer shall relocate the compactor to an internal location within the development.

Additionally staff would like to recommend that Council consider adding the following conditions expressed by the neighborhood at the Neighborhood Developer Meeting:

1. Prior to the issuance of the Certificate of Occupancy, the developer shall remove all damaged limbs and trees on their property that overhang abutting properties.
2. The developer shall install a privacy fence along portions of the south side of the property as requested by the abutting property owners.
3. In addition to the required buffers, the developer shall provide additional landscaping along the internal road to deflect headlights from properties along Aurora Drive.

Pros:

- The site is appropriately zoned for this type of development.

- The project supports numerous goals and strategies outlined in the City's 2025 plan as it relates to smart growth, infill and sustainable development, and transportation goals.
- The conditional use permit will require the developer to work with staff on addressing water quality issues in order to protect the sensitive wetland environment surrounding Ross Creek.
- The proposed development has been designed in a manner that is environmentally sensitive by concentrating the development in the center of the property, leaving the steepest areas on the site undisturbed, and by preserving large areas of existing vegetation around the perimeter of the site.

Cons:

- The buildings will be larger in scale than those found in the surrounding single-family neighborhood (although consistent with building sizes typically found in multifamily-zoned property).
- Properties along the north and west sides of the development are at the same elevation and may visually experience the height and scale of the project. However, in addition to the required buffer plantings, two large existing vegetated areas within these areas will be preserved and dedicated as required open space for the development.
- An increase in traffic on White Pine Drive may be noticeable by current neighborhood residents, but would still be well below the carrying capacity of the road. Most of the traffic concerns expressed by neighbors relate to traffic already generated by the Asheville Mall.

Ms. Virginia May, applicant, said that she has been a contributing member of the community since 1974 and would now like to develop her property.

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Mr. Bob Grasso, Land Planner representing Ms. Virginia May, spoke in support of the conditional use permit in that it will be a nice addition to the City. They worked hard to fit 60 apartments in a residential area that has a lot of surrounding single-family residences. He explained the ¾ story split (Attachment to City Exhibit 3 – Zoning Site Plan). They placed the units in the middle of the property so that they could retain a good buffer of existing vegetation around the perimeter of the property. They held a neighborhood/developer meeting in order to work with the neighborhood, hear their concerns and try to alleviate their concerns. They have no problem in complying with any of the recommendations listed by Ms. Hamel. When concerns were raised about traffic impact, they hired a traffic engineer to look at how the project would affect the intersection at White Pine Drive. Also in their original proposal they were showing a driveway access through a lot that the Mays had purchased for that purpose. Because of deed restrictions of that lot they could not use it to serve the back part of the property, so they revised their site plan to show the access on Springside Park Drive to White Pine Drive. They do have a legal opinion that says they have right-of-way to White Pine Drive using Springside Park Drive. They would not be before Council if they didn't think they had legal access.

Mr. Ken Putnam, Traffic Engineer who prepared the traffic study, said that the City did not require a TIA because the anticipated traffic during the peak hour was going to be only 51 new trips, instead of the threshold of 100 trips that kick in a study. However, the developer did hire him to prepare a study to see what impacts her development would have specifically at the intersection with Tunnel Road and White Pine Drive, which is currently signalized. Basically the report concluded that there would be very little impact after the apartment complex is fully built out. The level of service is around a "B" and at build-out it will still be a "B". The study did not address anything else, other than that one intersection. In order to improve the site distance where Springside Park comes into White Pine Drive, City staff has suggested two alternatives. One is to lower the existing grade on White Pine Drive and the other is to create a traffic circle which would lower the design speed.

When Councilman Dunn questioned only 51 trips for a 60-unit apartment complex, Mr. Putnam explained he used the formulas in the Trip Generation Manual, which is based on research of similar sites.

Mr. Grasso said that even though they can't restrict the type of residents that will occupy the apartments, they will market them to retired people. We feel the traffic impact will be even less because they will not be traveling during peak rush hour times. The type of amenities included will enforce that audience we are marketing to. We do not have any tot lot areas or play equipment for young children. We will have passive recreation consisting of trails and bird watching stations. They are also pleased to be able to tie into the greenway system.

Mr. Chris Eller, Civil Design Concepts, said that from an infrastructure standpoint, this is an ideal site for urban infill in that water and sewer are directly adjacent to the site. MSD has just completed an upgrade of the Ross Creek line and as part of that construction we had them coordinate a stub out for us. For stormwater management we will be doing underground detention to minimize above-ground disturbance. In conjunction with that, we will coordinate with water quality and stream improvements.

Mr. Grasso said Ross Creek is a valuable asset to the project as part of the passive recreation and we have agreed to do some natural channel design stabilization to the stream banks so that we could improve the health of the stream and contribute to the water quality of the French Broad River basin. The architect has done a nice job of designing a building that has enough architectural detail so that it makes the massive building smaller and it fits in with the surrounding area as far as the type of residential architecture. These are large building, but we've done is by moving them to the center of site by preserving the perimeter existing vegetation and stepping them down the hill, we have made every attempt to fit this in with the neighborhood

and to keep site disturbance to a minimum. He said one of the concerns by the neighbors was the odor of the dumpster, so they now have a trash compactor which will be totally enclosed. On a scheduled basis, the hauler will remove the trash compactor and replace it with another one. He explained the location of the compactor and the need to have it sited on a downhill slope (Applicant Exhibit 1). Again, to address the concern of the adjoining property owner, they moved the compactor further into the property and addressed the visual impact with a very dense screen which more than exceeds the buffer that is required.

Ms. Brison entered into the record (1) five deeds and two plats where they contend that shows there is not access via Springside Park Drive (Neighborhood Exhibit 2); and (2) a copy of a tax map showing that 10-foot easement that the applicant has discussed having access to, is a separate tax lot not owned by this applicant and also a deed showing ownership of that lot (Neighborhood Exhibit 3). Based upon the limited research that they have done, they believe the applicant does not have access to this property. The applicant has not provided any documentation or oral testimony, other than hearsay testimony, about their access to this property. She entered into the record the Traffic Impact Study referred to by Mr. Putnam dated May 25, 2004 (Neighborhood Exhibit 4). The evaluation of traffic does not make an evaluation of the intersection at Brackettown Road, or at Springside Park Drive – only the intersection of White Pine Drive and Tunnel Road. Also you will see from the traffic study that none of the traffic counts made on April 26, 2004, considered the revised access to the road. In addition, none of the traffic counts were made on a Friday evening after 2:00 p.m., none were made on a Saturday, and none were made on holidays. In addition, on Page 17 of that report, there is a reference to a “D” level and problems with the queuing of traffic accessing that area. Finally, the traffic impact study does not take into consideration that there are 96 parking spaces proposed for this 60-unit apartment complex.

Ms. Brison asked Mr. Putnam the following questions, all to which he replied no: Is there is anything in the study that addresses site distance between the proposed access at Springside Park Road and the crest of the hill on White Pine Drive; have you measured the distance between the crest of that hill and Springside Park Drive; have you done any analysis of traffic counts at the intersection of Brackettown Road and White Pine Drive; have you done an analysis of traffic counts at the intersection of Springside Park Drive and White Pine Drive; other than the change in the site plan from the initial draft given to City staff, were any changes made to the traffic impact study after the access road was changed to Springside Park Drive.

Mr. Jimmy Boyd, resident at 26 East Shore Drive in Kenilworth Forest, showed Council photos of the intersection of White Pine Drive and Springside Park Road (Neighborhood Exhibit 5). He explained that in icy or snowy conditions drivers must maintain speed to avoid sliding back down the hill and even near the crest of the hill, Springside Park Road still cannot be seen. After cresting the hill, Springside Park Drive is visible to a vehicle entering Kenilworth Forest, however, even the safest driver would have difficulty stopping in the short distance available. He showed that Springside Park Drive is a narrow road and it will be a narrow, tight turn for large emergency vehicles entering onto it off of White Pine Drive. One of the two solutions offered for site distance was to lower the crest of the hill. However, the crest of the hill is the natural buffering required by City Council when Highway Business was put there. The other solution would be to put a traffic circle to slow traffic coming in or going from the Kenilworth neighborhood. He said the from the crest of the hill on White Pine Drive to Springside Park Road is 85 feet and because the road is on a north-facing hill, in the winter White Pine Drive stays iced over. It's already hard to slow down and stop when it's dry. And, he was not aware that there is any other ingress or egress to Kenilworth Forest other than White Pine Drive.

Mr. Boyd presented to Council an e-mail copy from Anthony Butzek to Ken J. Putnam dated September 1, 2004 (Neighborhood Exhibit 6).

In response to Ms. Brison, Mr. Butzek, City's Traffic Engineer, read from Neighborhood Exhibit 6 as follows: “Sight distance at Springside Park and White Pine was raised as a concern. I looked at it, and it is not adequate. At 25 mph, 105' is required, and only about 105-110' exists. I see two options – regrade White Pine to soften the crest vertical curve near Springside Park and increase the site distance – reduce the design speed on White Pine through geometry ... a neighborhood traffic circle at the intersection could accomplish this.”

When Ms. Brison said that there has been testimony about the distance from the crest of the hill to Springside Park Road being 85 feet instead of 105-110 feet, Mr. Butzek responded that he would stand by his opinion based on the way site distance is properly measured.

In response to Ms. Brison, Mr. Butzek said the speed limit on White Pine Drive is 25 mph.

In response to Ms. Brison, Mr. Butzek said he made no traffic counts at the intersection of White Pine Drive and Springside Park Road, nor at the intersection of Brackettown Road and White Pine Drive.

Ms. Brison then entered into the record a N. C. Court of Appeals case Ghidorzi vs. Town of Chapel Hill 80 NC App 438 (1986) which stands for the proposition that a city council can deny a conditional use permit on the basis of traffic problems (Neighborhood Exhibit 7).

Mr. Dick Mansfield, resident of 215 White Pine Drive in Kenilworth Forest, showed Council photos of homes in the Kenilworth Forest area (Neighborhood Exhibit 8). He said that most homes are small bungalow-type homes (around 950 square feet). He showed a picture where he measured 85-feet from the center of Springside Park Road to the water meter on the top of the hill. He said that he measured 20 feet from the corner of the Lewis' deck to the center of Springside Park Road. If Springside Park Road is widened, traffic will be 5 feet from the Lewis' deck. He said that there are no 2, 3 or 4 story homes in Kenilworth Forest.

Mr. Alan Driscoll, resident of 30 Ridgecrest Road in the Oakley community and Certified Residential Appraiser for 18 years said that he has appraised homes in the Kenilworth Forest area. He has appraised a single-family residence adjacent to an apartment complex within the past year. There are factors to be considered in single-family home values being located adjacent to an apartment complex. He said there is a concept in appraisal known as conformity. He read an excerpt from the "American Institute of Real Estate Appraisers" textbook (Neighborhood Exhibit 9) as follows: "Conformity, Principle of: In appraising, the theory that value is based (in part) on similarity. The more similar a subject property is to the surrounding property is to the surrounding properties, the greater the value." From the "Basic Real Estate Appraiser 2nd Addition" textbook he read, "Conformity – A reasonable degree of conformity is required for maximum value to result. A serious lack of market conformity in size, style, quality, or use type can be detrimental to value, particularly in single-family residential properties." It is his opinion that the location of an apartment complex adjacent to single-family homes in Kenilworth would substantially injure the property values. He explained another instance where he appraised property in east Asheville that was located adjacent to an apartment complex. He did make an adjustment to that property lowering the value. That was based on its proximity to that apartment complex; lack of buffer; and issues of light and noise. He explained the term location adjustment. If there are adverse factors present that affect the subject property or the subject neighborhood which are not present in other homes that are within that market area, then a location adjustment is made, if warranted. Using Attachment to City Exhibit 3 – Building Elevations, and Neighborhood Exhibit 8, and a portion of a site plan that shows the 3 stories on one side and 4 stories on the other (Neighborhood Exhibit 10), he said it was his opinion that this apartment complex is not in harmony with the scale, bulk, density and character of the Kenilworth Forest neighborhood. Based on the definitions he read earlier, it was his opinion that the 3 and 4

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story apartment project would not be compatible with the single-family homes in Kenilworth Forest.

Upon inquiry of Councilwoman Bellamy, Mr. Driscoll said that the topography factors could play a role in his assessment. The more you can have conformity within any neighborhood, property values will remain more stable and you should realize greater property appreciation if that is the case.

In response to Ms. Brison and using the site plan (Neighborhood Exhibit 10), Mr. Driscoll said that it appears to him that from the base of the building up to just below the roof looks like an additional story and a half, above the 3 or 4 stories planned for the project.

Ms. Brison stated that Council must find that all seven standards for a conditional use permit must be met. The applicant has not submitted hardly any evidence in any of these standards, and it is their burden of proof. In her view, none of the seven have been met. Regarding Standard No. 1, she has provided testimony through the City's Traffic Engineer that the site distance is inadequate at the intersection of Springside Park Road and White Pine Drive and that only with a substantial fix (lowering the crest of the hill or creating a traffic circle) that it might be addressed. In addition, she has presented testimony (Neighborhood Exhibit 7) that says that future traffic improvements may not be considered by city council, but the present traffic situation is what you should consider in determining whether or not to approve or deny a conditional use permit. Regarding Standard No. 2, we have shown disharmony with the area. Regarding Standard No. 3, we have presented competent, material and substantial evidence in support of there being injury to the property value. Regarding Standard No. 4, we provided photographs of the single-family one-story homes in the area vs. the two very large buildings proposed. In addition, Mr. Driscoll testified about the great difference in the bulk and scale. Regarding Standard No. 5, the applicant has not submitted any evidence of any conformity with any of the City's plans. Regarding Standard No. 6, there was testimony that the only way in and out of Kenilworth Forest neighborhood is via White Pine Drive. If that were blocked due to problems at the intersection of Springside Park Drive, then there would be no access for emergency vehicles. Regarding Standard No. 7, there is a problem with traffic impact and there is inadequate site distance as the City's Traffic Engineer testified based on the present situation on the ground.

In addition, Ms. Brison pointed out that there is no access to this property. Council cannot make a determination as to whether or not the density is appropriate because you simply don't know how many acres is included in this project. They have not subdivided it yet. There has been no accounting for unusable land. There is in fact an unopened 30-foot right-of-way across this property that has not been closed. The height limitation of 40-feet has been exceeded – if you add the roof, it adds another story and a half. Again, they request the matter be continued until these issues can be addressed. In the alternative, she feels they have clearly shown that by the substantial material evidence in this record that this project should be denied.

Mr. Grasso said that they have agreed to make the necessary traffic improvements to White Pine Road so that it will be safe. He noted that this property was down-zoned from RM-16 to RM-8 and they have met the standards outlined in the UDO for a RM-8 development. They have done an outstanding job of citing these buildings so that it reduces the impact to the surrounding neighborhood. We are preserving a buffer of existing trees around the perimeter so that it will reduce the visual impact to the

surrounding neighbors.

Regarding Mr. Driscoll's appraisal to downgrade property near an apartment complex because of light, Mr. Grasso asked what specifically were the issues with light. Mr. Driscoll said that light is going to be emitted when you have public lighting when you do not have it existing in the neighborhood at the present time. When Mr. Grasso asked Mr. Driscoll if he was aware that

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the apartment units are below the elevation of the surrounding residences, Mr. Driscoll replied yes. Mr. Grasso asked how can the light go up the hill and spill onto adjoining properties when they have cut-off light fixtures, Mr. Driscoll replied that he was not a lighting engineering.

Regarding Mr. Driscoll's appraisal to downgrade property near an apartment complex because of noise, Mr. Grasso asked what type of residents were in those apartments. Mr. Driscoll replied that they were typical apartment residents. Mr. Grasso noted that they would be marketing to retirees.

In response to Mr. Grasso regarding buffering, Mr. Driscoll said he didn't feel that a building that size could be adequately buffered with vegetation and a 6-foot privacy fence. Mr. Grasso explained that the 6-foot privacy fence would be installed to screen the driveway between this property and Ms. May's property and in order to have the adequate amount of acreage that is required by the UDO for a single-family residence. This is the only way they can get a road grade that meets the UDO. In addition to the existing vegetation, they are providing a buffer that will meet or exceed the UDO standards. They have had requests from the neighbors to increase the buffer so that headlights won't spill onto neighboring properties and they have agreed to that. They have tried to meet the desires of the neighborhood.

Mr. Grasso said that there would be elevators in the buildings. He said that security was an issue that was built into the design. There will be one entrance on the front side and there will be an entrance on the lower side. This elevation doesn't take into account that the adjoining property owners will be looking down onto the apartments so they won't be seeing the full impact of this elevation. This residential use does conform with the neighborhood. It conforms with the way the property is zoned. They have made every effort to fit into this neighborhood. Regarding the traffic issue, their study has shown they will not be adding to any of the traffic congestion that already exists there.

The following residents spoke in opposition of issuing the conditional use permit for various reasons, some being, but are not limited to: when the Asheville Mall was built the intersection of Brackettstown Road and White Pine Drive wasn't adequate and how can it be adequate now; if there is another traffic device at the crest of the hill on White Pine Drive, there will be the potential for traffic to be backed up onto Tunnel Road; people who live on the back side of the building (on Aurora Drive) will be looking directly at the building; in the winter when White Pine Drive is icy, the entire road is hazardous, not only at the crest; since there is only one road into the apartment complex, residents will have a problem getting in and out when it's icy; cut-off fixtures don't work as you can see when you are in White Pine Park looking at the Asheville Mall; traffic counts should be taken between Thanksgiving and Christmas; and it sometimes takes Kenilworth Forest residents 10 minutes to get onto Tunnel Road and if you add 96 more cars, it will be more dangerous:

Ms. Jan Howard, resident of Kenilworth neighborhood
Mr. Fred English, Haw Creek area
Ms. Claire Payne, resident of 291 White Pine Drive
Ms. Addison Martin, resident of 33 East Shore Drive
Mr. Steve Ritt, resident of 24 Swannview Drive
Mr. Philip Hawkins, resident of 244 White Pine Drive

Upon inquiry of Vice-Mayor Mumpower, Mr. Butzek said that traffic on White Pine Drive is an existing problem and certainly having the development there will increase the amount of traffic. However, the developer is willing to assume the cost to solve the problem. Both solutions proposed have positives and drawbacks. Lowering the crest of the curve would result in some grading and delays during construction. They would have to do a topographic survey to measure the exact profile of the street and compute what kind of grading would be required to achieve the

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necessary site distance. A guesstimate on lowering would be somewhere in the range of five feet. The second solution would be to implement a traffic calming measure – something to slow down the traffic so that when they reach the intersection it would have to be traveling slow enough that people could safely turn out of the intersection. He was hoping to hear more from the residents on which they prefer. Since neighbors talked about icing, perhaps grading may be the better solution. City staff has no problem with either option. If Council prefers one option over the other, he would ask Council to make that a requirement. If not, then it would be up to the developer's discretion which option to proceed with.

Councilman Dunn questioned the traffic study not taking into consideration peak times on Fridays and Saturdays. Mr. Butzek

said it does not concern him. He said it is very typical for traffic studies to look at the afternoon peak hour. In cases where the morning peak hours is a concern, sometimes they would study that. And for retail developments, a Saturday peak hour is fairly typical to study. But for this type of development and this type of situation, studying the afternoon peak hour is standard practice.

In response to Councilwoman Bellamy Mr. Butzek said the traffic count was taken at the intersection of White Pine Drive and Tunnel Road, at the traffic signal. Typically in doing a traffic study it's standard practice to look at the signalized intersections and if there are any other points where we feel we may have an issue. Based on typical practice and discussions with the engineer in this case, we decided the intersection of White Pine Drive and Tunnel Road would be the first thing to have operational difficulties, if any.

Upon inquiry of Councilman Newman, Mr. Butzek said that Springside Park Road will have to be brought up to City standards inasmuch as possible within the right-of-way. That would include street, curb and sidewalks, assuming the right-of-way or available property permits that.

Upon inquiry of Councilman Davis, Mr. Butzek agreed that the Lewis' house was about 20 feet from the centerline on Springside Park Road.

When Councilwoman Bellamy asked how Springside Park Road could be expanded, Mr. Butzek said that there is a public right-of-way that has been platted but he doesn't know the dimensions of it. That is public right-of-way is for the possibility of being used as a public street. The street they are widening would have to occur within that space unless additional property was purchased from those property owners.

Upon inquiry of Vice-Mayor Mumpower, Mr. Butzek said that regarding the traffic impact, they looked at the build-out of the project, which is two-years from now, and that is standard practice to use for analysis purposes. They verified that traffic would operate acceptably in that future year.

When Vice-Mayor Mumpower asked Mr. Butzek if he was concerned that there was only one point of access, Mr. Butzek replied that he preferred multiple access points; however, in this particular case there are no additional possible points of access. He said that the Fire Department staff did not raise any objection over the one point of access at the TRC meeting.

City Engineer Cathy Ball responded to Councilman Dunn's question regarding the redrawing of the FEMA maps. She said that we are supposed to work under the current maps that we have. We have not been regulated or told by FEMA that we should use different maps or that we don't need to go by the existing maps that we have. She has no issues in this specific area or any indication that there will be a great deal of change in where the floodplain is. She doesn't view that as a concern in this case. Part of the property is in the floodway and flood fringe. In the part that has a building in it, they are required to elevate that building so that it is above the 100-year flood elevation and that is a proposal they have in place.

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Vice-Mayor Mumpower asked if there are concerns regarding the impact of sediment from this project in Ross Creek. Ms. Ball said that anytime development there is a real opportunity for erosion concerns. Our ordinance requires the developer to design for controlling a 10-year storm event and the erosion that would come from the site from that. It doesn't preclude them from keeping as much erosion on site as possible, but that is a problem when there is a lake. We will work hard with the contractor to make sure that his erosion control measures are in place and operate effectively.

Vice-Mayor Mumpower asked if our current erosion control protections for that area are adequate. Ms. Ball felt that our design standards to control erosion are adequate. She said that Council may impose a stricter penalty if their erosion control measures do not work properly. One of the issues that we have is if the measures fail then there is a requirement that they fix the measure and make it not happen again. Very few times are there fines or penalties associated with that. She did not know if that is within the purview of the conditional use permit to have an additional penalty or fine or some type of consequence when the measures fail.

City Attorney Oast said that Council has the ability to impose stricter standards, but he hasn't specifically looked at the issue of imposing stiffer penalties in case where standards are violated. One penalty that Council can impose is revocation of the conditional use permit.

In response to Councilwoman Bellamy, Ms. Ball said their stormwater measures and their stormwater control are different things. They are proposing to put in underground detention in order to control stormwater runoff and that is after construction. The erosion control measures typically are sediment basins, silt fences, straw bales, etc.

Mr. Shuford explained that the reason this project is before Council is because it is a Level III project – it is more than 50 residential units. If this project were 50 or less units, it would be approved by the TRC under the conditions that have been imposed by the TRC. The development intends to be above what the current zoning allows. The property is large enough and able to accommodate 60 units that is triggering the Level III review.

In response to Councilwoman Bellamy about the 40-foot height restriction, Mr. Shuford said that 40-feet is the height limit for

almost all of our residential zoning districts. That height is measured from the primary entrance to be used by the Fire Department to gain access to the building to the ceiling of the upper floor. That is the same standard for single-family residential as it is for this project. He said that in Kenilworth Forest on a single-family lot you could build a building as tall as this, with a roof-line like that. He read the definition of "building height" from the UDO as follows: "Building height means the vertical distance from the ceiling of the highest occupied floor to the primary level of fire department access."

Councilman Davis said that this is a fairly tall roof once you get beyond that upper floor, which may be to access the elevator towers. He was concerned about the actual height of the building. Mr. Shuford said that Council has the option of specifying a lower roof pitch.

Upon inquiry of Councilman Dunn, Ms. Hamel used a map (City Exhibit 4) showing elevations. She said that the building is lower and almost sits at the same elevation on the Aurora Drive side. Most of the visual impact will be on the Aurora Drive side.

Upon inquiry of Councilman Davis regarding the building height, Mr. Grasso said that he didn't have the exact height, but guessed it would be four floors (40 feet), and then about another 15 feet. The roof line is designed to be either a 10/12 or 12/12 pitch, which matches a lot of the roof lines in the surrounding neighborhood. The architect tried to mimic the roof lines in neighborhood. The Aurora Drive side of the site will be looking across an area that is wetlands

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and has a lot of trees. We will not be doing any disturbance on this side. They will be looking at quite a buffer to the back-side of the units.

When Vice-Mayor Mumpower asked why the developer chose to do 60 units instead of 50, Mr. Grasso said that they looked at the zoning and acreage available and they came up with calculation of 60 units. They knew they would be going through a Level III review, but the 60 units is important from the standpoint of offsetting site construction costs and to make the numbers work as an apartment project.

Councilwoman Bellamy asked if there was a way Council can be sure that people are not deliberately excluded from applying. City Attorney Oast said that they have to comply with the Fair Housing Law. He didn't think there was a lot of control Council can have over how they market the project. They indicated their desired marketing target, but that doesn't guarantee that you're going to have retirees moving in there. He wasn't sure there was anything additional that Council can do to structure the mixture of the tenants in the apartments.

Councilman Newman moved to approve the project, subject to all TRC and staff conditions being met, in that he believes it meets all of the conditions set forth in the UDO. Mayor Worley ruled the motion out of order since the public hearing on this matter has not been closed.

Even though Councilman Davis understood Council cannot control the access issue, he was concerned about the centerline of Springside Park Road being 20-feet from someone's deck. He was also unsure about lowering the crest of White Pine Drive by five feet to make that area functional. He was also not sure a traffic circle is a good solution for traffic calming. He felt a 55-foot tall structure is certainly out of conformity with the rest of that neighborhood as seen from Aurora Drive side. He could not support the project since he felt it was out of scale with the rest of the neighborhood and his concerns regarding access.

Councilman Dunn was concerned with accessibility to the property. He felt that to put a 60-unit apartment complex in the middle of the Kenilworth Forest neighborhood did not conform with the neighborhood, especially knowing that there will be one side looking up at a 4.5 story apartment building.

Vice-Mayor Mumpower asked Mr. Driscoll what loss of property value percentage is attached to property located in proximity to an apartment complex. Mr. Driscoll said that he has not done the market research in this case and that would have to be done to be able to quantify that number. Some objective range, however, would be 10%.

Councilman Newman asked if it was Mr. Driscoll's testimony that if this project were approved, the neighboring property values would go down from where they are today and in five years. Mr. Driscoll said that he feels the property values could continue to escalate, but the way he sees that is if a person has an opportunity to earn a 10% annual growth rate and someone by reason of this type development or any another non-conforming development comes into that neighborhood, you restrict that individual from the opportunity to earn 10% in that market area. To him that is a loss of value. He thinks the property will continue to appreciate, but he thinks for many of them, especially the ones in close proximity, that the rate of appreciation for these properties would be less than properties unaffected.

Councilman Newman stated that the Condition 3 reads that "the proposed or use or development of the land will not substantially injure the value of adjoining or abutting property." He asked the City Attorney if the property is continuing to grow in value, but perhaps at a different rate, is that "substantially" injure. City Attorney Oast said that is a question for Council to determine, but Mr. Driscoll did say that the property would continue to appreciate.

Upon inquiry of Councilwoman Jones, Mr. Grasso said that he didn't know if the project wasn't approved today whether the applicant would end up developing the property with a lower number.

Mr. Grasso said that he has the plat information to help Council understand the access issues. He also clarified where Aurora Drive is in proximity to this project and what they would be looking at. Using the topography map (City Exhibit 4), Mr. Grasso again explained that Aurora Drive residents will be looking across wetlands and a lot of trees. The distance of the apartment buildings and Aurora Drive is several hundred feet.

Upon inquiry of Vice-Mayor Mumpower, City Attorney Oast said that if they don't have access or the right-of-way, they can't build on the property. Council needs to base their decision on the seven standards that are contained in the UDO. If they can't meet this condition, the project cannot move forward.

Mr. Shuford said that when the applicant originally came in, they proposed a driveway access through another property to White Pine Drive but were unable to proceed with that because of deed restrictions on that property (it limited it to a single-family use). They are using the access point they have available to them.

Upon inquiry of Councilwoman Bellamy, Ms. Hamel said the applicant is required to install a 20-foot Type "B" vegetative buffer. It is required along entire perimeter of the property. They are requesting to do a privacy fence (by Ms. May's house) and plantings that will be outside of the privacy fence in lieu of the 20-foot buffer, which is something that is available to them under the UDO. They can use existing vegetation to count towards the 20-feet. We would ask them to do a tree survey once it comes back in for final approve through TRC. But as part of the conditional use permit and what they have presented, we can make that a requirement that the existing vegetation be preserved. Council may want to add a condition that all the existing vegetation be preserved in addition to the buffer plantings.

Upon inquiry of Councilman Davis, Mr. Butzek said that in order to lower the crest on White Pine Drive there would have to be some grading adjacent to the roadbed to provide for slopes, but it would be just the roadbed and slopes through that crest. He felt that is probably the better long-term solution. The negatives he sees with that is the construction issue, lane closures, etc. to lower that grade. But, in terms of a long-term solution, that is probably the best solution and is probably the more expensive solution as well. It will, however, improve an existing problem as well.

Vice-Mayor Mumpower asked how dangerous is that crest to the residents now. Mr. Butzek said he wouldn't classify it as extreme danger. The available site distance is just over 2/3 of what it needs to be. There is some concern, but he wouldn't say it is a crucial concern. We do have other places in Asheville with the same topography with the same condition.

Upon inquiry of Vice-Mayor Mumpower, Mr. Butzek said that on Springside Park Road there are about 8 apartments and one residence. The danger factor would be increased with the addition of the new units, if mitigation were not performed.

Upon inquiry of Councilwoman Bellamy, Mr. Butzek said that they would recommend the traffic mitigation be in place prior to issuing a Certificate of Occupancy for the building.

Councilman Dunn was concerning with the light issue. Mr. Shuford said that we have imposed standards for lighting that do have the 90-degree cut-off. We think that type of lighting standard will be effective in reducing the amount of light trespass that comes from the property.

Mr. Shuford said that if Council was inclined to recommend or require one of the two traffic mitigation measures on White Pine Drive, he asked that in the event that there is some technical reason why that measure can't done that staff proceed with the other alternative.

Vice-Mayor Mumpower asked if there was a condition to require the developer to maintain the erosion control system put in place. City Attorney Oast said one possible condition might be to require the developer to engage an independent stormwater expert to perform the inspections on a more frequent basis than City staff can and then make reports to appropriate staff if matters are out of compliance.

Mayor Worley closed the public hearing at 7:42 p.m.

Councilman Newman moved for the adoption of Ordinance No. 3176, granting a conditional use permit for property located on Springside Park Drive, located off White Pine Drive, for the construction of a 60-unit multi-family development (Kenilworth Forest Village Apartments) in an RM-8 Residential Multi-Family Medium Density District, subject to the following conditions: (1) all conditions outlined in the Technical Review Committee staff report; (2) An updated traffic impact analysis and site plan based on the use of

Springside Park Drive and associated improvements must be submitted prior to City Council; (3) The ability to access Springside Park Drive must be clarified and the road made public; (4) Legal and adequate access to Springside Park Drive must be clarified and the road made public; (5) Based on the Traffic Impact Analysis and the need to address sight distance at Springside Park and White Pine the developer shall be required to complete one of the following: regrade White Pine to soften the crest vertical curve near Springside Park and increase sight distance; or reduce the design speed on White Pine through geometry (such as a neighborhood traffic circle at the intersection); (6) All site lighting shall be equipped with 90-degree cut-off fixtures and oriented away from the surrounding residential property; (7) The developer shall work with City staff to address water quality issues in the design and monitoring of stormwater run-off infrastructure and by means of stream bank stabilization, selection of appropriate wetland species, riparian buffers and use of other Best Management Practice tools as approved by the City Engineer and Planning Director; (8) The developer shall work with the Buncombe County Health Department to evaluate safety concerns regarding the abandoned septic tank on the owner's adjoining vacant lot; (9) Developer shall relocate the compactor to an internal location within the development; (10) Prior to the issuance of the Certificate of Occupancy, the developer shall remove all damaged limbs and trees on their property that overhang abutting properties; (11) The developer shall install a privacy fence along portions of the south side of the property as requested by the abutting property owners; (12) In addition to the required buffers, the developer shall provide additional landscaping along the internal road to deflect headlights from properties along Aurora Drive; (13) In addition to planting the 20-foot buffer, the existing vegetation on the Master Plan should be preserved; and (14) At the developer's expense, the developer shall engage an independent stormwater expert to monitor sedimentation control on a more frequent basis than City staff can and provide regular reports to City staff which would allow for more timely interventions if problems occur. This motion was seconded by Councilwoman Jones.

Councilman Newman feels the project does meet all the seven standards in the UDO. He feels that the site distance on the Aurora Drive side has a big distance of buffer that will remain in a natural state. If you look into the neighborhood it is primarily single-family, but if you look to the immediate east of the project, it is very different. He feels this is a transitional area. He believes it fits the existing zoning and if we don't approve the project, the developer can take ten units off this project and proceed with construction without any Council input. Regarding the two traffic mitigation solutions on White Pine Drive, he will leave that open so that staff can continue to look at it and the neighborhood can have input as well. He understands the traffic mitigation will be one of those two solutions and that it must be addressed in some way for the project to move forward.

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Councilman Davis said that he would like to see housing, however, he felt that this project is out of context with the rest of the neighborhood.

Vice-Mayor Mumpower said that he would like to see the project proceed and it sounds like it would be a good addition to the City. However, he didn't think the project meets Standard No. 4, in that he feels the project is not in harmony with the scale, bulk, coverage, density and character of the neighborhood in which it is located.

Councilman Newman's motion passed on a 4-3 vote, with Vice-Mayor Mumpower, Councilman Davis and Councilman Dunn voting "no."

City Attorney Oast said that he would bring the ordinance back to City Council for second reading on November 23, 2004. Mayor Worley announced there would be no public comment at the second reading of the ordinance.

At 7:50 p.m., Mayor Worley announced a short recess.

ORDINANCE BOOK NO. 21 - PAGE

At 8:16 p.m., Councilwoman Bellamy asked to be excused from the remainder of the meeting. Therefore, Vice-Mayor Mumpower moved to excuse Councilwoman Bellamy from the meeting. This motion was seconded by Councilman Newman and carried unanimously.

Vice-Mayor Mumpower commented that the organized opposition and the neighborhood deserve some positive attention for their efforts to be civil, bring facts to the table, and to bring information to Council in order to help them sort through those facts.

C. PUBLIC HEARING RELATIVE TO PERMANENTLY CLOSING VIVIAN AVENUE

RESOLUTION NO. 04-234 - RESOLUTION TO PERMANENTLY CLOSE VIVIAN AVENUE

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

Assistant Public Works Director David Cole said that this is the consideration of a resolution to close Vivian Avenue. This public hearing was advertised on October 15, 22, 29 and November 5, 2004.

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

Pursuant to this statute, the University of North Carolina at Asheville has requested the City of Asheville permanently close to public use as a public street Vivian Avenue as shown on a plat entitled, "Property of the Christian School of Asheville," at Plat Book 32, Page 28 in the Buncombe County Register of Deeds.

Public Works Department staff has researched and determined that this right-of-way is not a City maintained street. Closure of this right-of-way will not deny any of the abutting properties a reasonable means of ingress or egress. There are three parcels that abut this section of right-of-way. They are identified by PIN Nos. 9649.09-17-3141, 9649.09-16-0734, and 9649.09-16-2885. The petitioner has authority over all the abutting parcels.

City staff recommends that City Council adopt the resolution to close Vivian Avenue.

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Mayor Worley closed the public hearing at 8:23 p.m.

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

Vice-Mayor Mumpower moved for the adoption of Resolution No. 04-234. This motion was seconded by Councilman Davis and carried unanimously.

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D. PUBLIC HEARING RELATIVE TO DESIGNATING PROPERTY KNOWN AS THE RICE CORNELL BROWN HOUSE, LOCATED ON RICE BRANCH ROAD, AS A LOCAL HISTORIC LANDMARK

ORDINANCE NO. 3177 - ORDINANCE DESIGNATING PROPERTY KNOWN AS THE RICE CORNELL BROWN HOUSE, LOCATED ON RICE BRANCH ROAD, AS A LOCAL HISTORIC LANDMARK

Mayor Worley opened the public hearing at 8:24 p.m.

Ms. Stacy Merten, Historic Resources Director, said that this is the consideration of an ordinance to designate the Rice Cornell Brown House on Rice Branch Road as a local historic landmark. This public hearing was advertised on October 29 and November 5, 2004.

Ms. Merten explained the process the applicant goes through in designating a local historic landmark.

This proposed landmark designation consists of the Rice-Cornell-Brown House with its ca. 1850 original portion and subsequent 1890, 1927 and 1953 additions; a ca. 1848 cabin moved to the site in 1975; a ca. 1848 pig pen moved to the site in 1975; a ca. 1848 smoke house moved to the site in 1975; and a tool shed built in 1953, all of which are contributing structures. Also included is a 1968 horse barn, which is a non-contributing structure.

The Rice-Cornell-Brown House is an assemblage of three main side-gabled blocks that reflect the century long development of the house from a single-pen, log cabin to a modest but well crafted log and frame house that retains integrity from each of its periods of development.

The original structure of the Rice-Cornell-Brown House was a one and one-half story plus loft, one room log cabin constructed of half dovetailed, hand hewn logs. The 1890 addition, which extends to the east is wood frame construction with unpainted clapboard siding and a side gabled roof of asphalt shingles. The inside of this addition exhibits more detailing than the original one-room cabin with beaded ceilings and plaster walls. The 1927 one room addition, located to the southeast of the 1890 addition, is of frame construction, unpainted clapboard siding and gable roof with asphalt shingles, similar to the 1890 addition. Inside the walls and ceiling are of rough sawn boards. The 1953 addition built on the south side and extending the full length of the original cabin has stained board and batten siding with a low pitched gable roof of asphalt shingles. The interior was designed to be in keeping with the rustic style of the rest of the cabin.

The Rice-Cornell-Brown House, the site, as well as the additional structures and outbuildings, with a period of significance from 1848-1953, are historically significant for their contribution to the broad pattern of history of the Beaverdam Valley. They represent the evolution of a small log cabin that housed subsistence farmers, into an early 20th century working farmstead. Additionally, the House is significant as it is the most architecturally intact of only two examples in the County exemplifying the use of native materials and mid-nineteenth century log

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cabin construction techniques and the later evolution of the building as the family grew and prospered.

The additional mid-nineteenth century log house and structures moved to the site in 1975 are also important as both historic and architectural reminders of the widespread use of this house form throughout Buncombe County. These structures would have been demolished if not moved from their original site.

The Rice-Cornell-Brown House was listed on the National Register of Historic Places on December 24, 1998. The listed property includes a 26-27 acre tract of land which is the residual acreage of the tract that was farmed by the J.O. Rice family, builders of the original log portion of the house. The current landmark designation would only include a 6.71 acre portion of that larger tract. The 6.71 acres being the location of the original house and contributing outbuildings. The remainder is a separate 20 acre tract, which is currently in forest use and maintained under a forest management plan.

Designation of this site as a local historic landmark makes the property owner eligible for a 50% reduction in local property taxes. Currently the tax appraisal for the property included in the proposed designation is \$224,200. If the property is designated as a local landmark the potential tax savings for the property owner, including city, county and school taxes, would be \$1479.72.

Although designation of the property places no obligation on the property owner to provide public access to the property, the Brown's while being good stewards of the land and structures have allowed and encouraged public access to many organizations and other groups over the years, such as high school clubs, church groups, the Preservation Society and very recently the Sons of the Confederacy, just to name a few.

The ordinance designates the Rice-Cornell-Brown House as a local historic landmark. The property included in the designation consists of Rice-Cornell-Brown House and the 1.61 acre parcel on which it is located as described in the deed. The designation also includes the exterior of the house, some interior details and landscape features.

When a property is designated historic, restrictions are placed on the property, and any modification to the land or structure must receive a Certificate of Appropriateness from the Historic Resources Commission of Asheville and Buncombe County. All improvements must follow the Secretary of the Interior's Standards for Rehabilitation and Illustrated Guidelines for Rehabilitating Historic Buildings. It is important that properties of local significance are preserved and protected for cultural, historic, and economic reasons and for the benefit of future generations.

Pros:

- The designation will provide the property owner with a local property tax deferral that will help with the costs of keeping the structure in good repair.
- A significant property will be recognized for its contribution both architecturally and culturally to the history of the area.

Cons:

- The tax deferral will result in a loss of revenue to the city and county.

Based upon the foregoing, the Historic Resources Commission recommends that the Asheville City Council adopt an ordinance designating the Rice-Cornell-Brown House, as a local historic landmark. Staff concurs with the recommendation of the HRC for this designation.

Mayor Worley closed the public hearing at 8:30 p.m.

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

Councilwoman Jones moved for the adoption of Ordinance No. 3177. This motion was seconded by Councilman Newman and carried unanimously.

ORDINANCE BOOK NO. 21 – PAGE

E. PUBLIC HEARING TO CONSIDER AN ECONOMIC DEVELOPMENT INCENTIVE GRANT FOR HIGHWATER CLAYS

RESOLUTION NO. 04-235 - RESOLUTION TO APPROVE AN ECONOMIC DEVELOPMENT INCENTIVE GRANT FOR HIGHWATER CLAYS

Mayor Worley opened the public hearing at 8:32 p.m.

City Manager Jim Westbrook said that this is the consideration of a resolution approving an economic development incentive grant for HighWater Clays. This public hearing was advertised on October 29 and November 5, 2004.

City Council approved a grant to HighWater Clays in June 2003 and the required performance agreement was signed. In February 2004, HighWater Clays asked to revise that agreement as they anticipated investing a significantly higher amount than was originally programmed. It was determined that a new agreement would be needed, including going through the public process again, versus simply revising the original agreement.

Based on new information, the capital investment, for purposes of determining a grant amount is now \$1,560,000 (vs. \$750,000 originally) in building renovation and new equipment. Further, the owner states that the number of new jobs created will go up from 5 to 7 and that the average hourly wage will go up to \$10.43 from \$9.00.

As an incentive, City Council originally agreed to \$7500 payable in two equal installments. For the new grant, it is proposed to offer \$31,000 payable in equal installments over five years.

Support statements:

1. Grant supports expansion of local small business. This supports Strategic Plan: Key Area – Economic Development Goal 1, Objective A.
2. HighWater Clays continue to invest in riverfront area.

Staff recommends approval of the resolution approving an economic development incentive grant to HighWater Clays, Inc.

Mayor Worley closed the public hearing at 8:34 p.m.

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

Councilwoman Jones moved for the adoption of Resolution No. 04-235. This motion was seconded by Vice-Mayor Mumpower and carried unanimously.

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F. PUBLIC HEARING TO CONSIDER A MODIFICATION TO THE CONDITIONAL USE PERMIT FOR PHASE I OF RIVER BEND MARKET PLACE (SAYLES BLEACHERIES) TO ALLOW FOR AN INCREASE IN DEVELOPMENT INTENSITY THAT MAY INCREASE TRAFFIC ON SWANNANOA RIVER ROAD (CITY OF ASHEVILLE ORDINANCE NO. 2939, CONDITION NO. 2)

ORDINANCE NO. 3178 - ORDINANCE AMENDING THE CONDITIONAL USE PERMIT FOR PHASE I OF RIVER BEND MARKET PLACE (SAYLES BLEACHERIES) TO ALLOW FOR AN INCREASE IN DEVELOPMENT INTENSITY THAT MAY INCREASE TRAFFIC ON SWANNANOA RIVER ROAD (CITY OF ASHEVILLE ORDINANCE NO. 2939, CONDITION NO. 2)

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

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

After hearing no questions about the procedure, Mayor Worley opened the public hearing at 8:41 p.m.

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

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

Planning and Development Director Scott Shuford said that this is the consideration of amending the conditional use permit for Phase I of River Bend Market Place to allow for an increase in development intensity that may increase traffic on Swannanoa River Road. City Council will also be considering a modification to the Urban Village Master Plan for Phase 2 of the River Bend Market Place to permit an increase in development intensity. Both public hearing will be summarized in this one staff report, however, City Council will need to hold separate public hearings and take separate votes.

City Council must consider both the conditional use permit modification and the modified master plan pursuant to the revision process for such permits and plans. For technical reasons, the Planning and Zoning Commission will not formally review this master plan (the code process involves only City Council review of master plan changes). Two separate votes will be needed.

The applicant *River Bend Business Park, LLC, is proposing an expansion of the scale of development associated with the Urban Village approved as Phase 2 of the Sayles Bleacheries redevelopment project. As a result, the City Council must consider a proposed modification to the Conditional Use Permit (CUP). Specifically, the applicant proposes a modification to Condition 2 that limits the total development potential for traffic impact reasons. Condition 2 is quoted in part below (emphasis added). The applicant wants to add additional traffic to Swannanoa River Road without adding additional traffic impact mitigation measures.

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2. No changes shall be made in the level of development intensity (Exhibit A) that will or may increase traffic on Swannanoa River Road unless further traffic impact mitigation measures are implemented.

Additionally, the Council must consider modifying the Urban Village Master Plan to accommodate the additional development proposed by the applicant. Staff review of that modification indicates that the applicant is in compliance with the design standards for urban villages. We feel that the development intensity is much more likely to make this a successful project than the limited amount provided for in the original approval. As conditions for added intensity, we feel the applicant should provide 17 of the added 115 units (or 15% of the added residential development) as affordable housing and that a transit stop should be added to the project in a central location.

He summarized that two actions that City staff recommends:

(1) That the City Council approve the proposed modification of the first sentence of Condition #2 of the previously-approved conditional use permit to read as follows:

2. The attached Exhibit A, the level of development intensity approved for this project, is amended to permit the following level of development for Phase 2 (the urban village) of the project: 96,858 sq. ft. of commercial uses (retail, office, restaurant, etc.) and 240 residential condo/townhouse units. There shall be no further changes to Exhibit A that will increase traffic on Swannanoa River Road unless further traffic impact mitigation measures are implemented. *{The remainder of the condition remains unchanged.}*

(2) That the City Council approve the proposed modification of the Urban Village Master Plan to permit 240 residential units and 96,858 sq. ft. of commercial space subject to the following conditions: (1) All Technical Review Committee conditions shall be met; (2) Not less than 17 residential units shall be priced at an affordable level (\$130,000 for a 2 or more bedroom unit) at time of initial sale; and (3) A transit stop shall be provided at a central location in the urban village, the location of which shall be subject to the approval of the Transit and Parking Director.

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

The Asheville City Development Plan 2025 recommends mixed use commercial and residential centers around the City as a way to provide variety to the marketplace, strengthen the tax base and provide areas for growth within the City limits. The subject property is identified as a possible urban village location on the Future Land Use and Transportation Map.

The original Conditional Use Permit for the River Bend Development was approved on July 23, 2002. The Order issuing the Conditional Use Permit was signed on August 13, 2002.

Mr. Glines showed the properties in question (City Exhibit 4) and the different connecting points to the site (City Exhibit 5). The conditional use permit must be modified because some traffic is generated by the proposed expansion and will be using Swannanoa River Road. A recent traffic study was conducted to understand the impacts of traffic in the vicinity of the project. Three entrances are provided for the River Bend Market Place Shopping Center. The Swannanoa River Road and the Fairview Road entrances were illustrated in the same format in that original proposal. He showed the third entrance from River Ridge Shopping Center (City Exhibit 5). Since 2002, Horne Properties, who is developing the River Bend Market Place project acquired the River Ridge Shopping Center. This common ownership makes more formal efforts to provide a viable third access point more feasible. But even with the third entrance some

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additional traffic generated by the project is anticipated to use Swannanoa River Road. The conditional use permit must be modified to allow more traffic generated by the project to use Swannanoa River Road. Specifically, the applicant proposes a modification to Condition 2, that limits the total development potential for traffic impact reasons. The applicant wants to add additional traffic to Swannanoa River Road without adding additional traffic impact mitigation measures. He read Condition No. 2 as follows: "2. *No changes shall be made in the level of development intensity (Exhibit A) that will or may increase traffic on Swannanoa River Road unless further traffic impact mitigation measures are implemented.*" The Exhibit A of the conditional use permit provides for the following level of development in the Urban Village: "That 54,000 square feet of general office development and 125 residential condo or townhouse units" be provided in that original permit. The applicant is requesting to build 96,858 square feet of commercial uses and

240 residential units in the new proposal. The proposed level of new development will result in a small increase in traffic on Swannanoa River Road. No mitigation measures have been proposed or appear feasible to address this added traffic. The intent of this Condition No. 2 is to allow some traffic carrying capacity to remain on Swannanoa River Road after Phases 1 and 2 of the development project come online. The standard approved by City Council was for a level of service on Swannanoa River Road to not be decreased below 90% of a level of service "D" volume. In other words, 10% of a level of service "D" volume capacity was to remain after construction of the project. The applicant's proposed impact is 5% to Swannanoa River Road, based on the Traffic Impact Analysis (TIA) submitted by the applicant's traffic engineer.

City Council must take formal action as set forth in section 7-9-9(c)(4) of the Unified Development Ordinance (UDO), and ordinarily must find that all seven standards for approval of conditional uses are met based on the evidence and testimony received at the public hearing or otherwise appearing in the record of this case (UDO 7-16-2(c)). Since this is a modification to a previously-established condition, only those standards directly relating to that condition need to be met. Staff's review indicates that all applicable standards are met as proposed in the site plan.

1. That the proposed use or development of the land will not materially endanger the public health or safety.

Not applicable.

2. That the proposed use or development of the land is reasonably compatible with significant natural or topographic features on the site and within the immediate vicinity of the site given the proposed site design and any mitigation techniques or measures proposed by the applicant.

Not applicable.

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

Not applicable.

4. That the proposed use or development of the land will be in harmony with the scale, bulk, coverage, density, and character of the area or neighborhood in which it is located.

Not applicable.

5. That the proposed use or development of the land will generally conform to the comprehensive plan, smart growth policies, sustainable economic development strategic plan and other official plans adopted by the City.

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Not applicable.

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

Not applicable.

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

The proposed development will incrementally increase traffic at all intersections nearby. The increase is small, typically not exceeding 2.1% at the critical intersection (Swannanoa River Road & South Tunnel Road) during the critical period (Saturday). With modifications to signal timing, all intersections appear to function at level of service "D" or better. Based on this information, this condition appears to be satisfied.

Pros:

- The additional square footage and type of nonresidential uses and the increased number of units has the potential to ensure a more successful urban village project.
- The urban village project will allow significant new development with minimal traffic impacts because many of the trips generated by the project will be internal.

Cons:

- There will be a minor increase in traffic volume on Swannanoa River Road from the project.

Staff recommends that the City Council approve the proposed modification of the first sentence of Condition #2 of the previously-approved conditional use permit to read as follows:

"2. The attached Exhibit A, the level of development intensity approved for this project, is amended to permit the following level of development for Phase 2 (the Urban Village) of the project: 96,858 sq. ft. of commercial uses (retail, office, restaurant, etc.) and 240 residential condo/townhouse units. There shall be no further changes to Exhibit A that will increase traffic on Swannanoa River Road unless further traffic impact mitigation measures are implemented. *{The remainder of the condition remains unchanged.}*"

Mr. Glines then reviewed with Council the request for a modification to the Urban Village Master Plan for Phase 2 of the River Bend Market Place to permit an increase in development intensity.

Using maps (City Exhibits, 6, 7 and 8), Mr. Glines showed the Urban Village District and the central drive through the Urban Village. The Master Plan for the Urban Village has also been adjusted to make the uses and buildings more integrated compared to the original submission in 2002. The core of the Urban Village is comprised of 5 multi-story buildings (City Exhibit 8) that will support ground floor commercial uses and upper floors will be comprised of residential units. Wide sidewalks front these buildings as well as a park space that runs the length of the street that separates the traffic (City Exhibit 8). Along the east and south sides of the development, townhouse style development will be provided. Eighty residential units will be provided as townhouses (City Exhibit 8). There is also an internal street that will provide access to these units. Using a map of building elevations (Attachment to City Exhibit 3 – Elevation Study of Buildings Three and Four), he illustrated the character of the buildings. Some of the buildings have pitched roofs and others have flat roofs. Windows and balconies are plentiful. Parking will be located on-street, which is a requirement of the Urban Village District, and some are providing parking lots under the buildings as well. The townhouse units will have garages. Other Urban Village requirements appear to be met and TRC conditions will be specifically reviewed for compliance during formal plan submittal, should the conditional use permit modification and the

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modification to the Urban Village Master Plan be approved. Staff feels that the increased development intensity is much more likely to make this a successful project than a limited amount of uses contained in the original approval. As conditions for added intensity, staff would like for the applicant to provide 17 of the added 115 units as affordable housing and that a transit stop be added to the project in a central location. In summarizing the proposal, the additional square footage and type of non-residential uses and the increased number of residential units has the potential to ensure a more successful Urban Village project. The Urban Village project will allow significant new development with minimal traffic impacts, as many of the trips are generated by the project will be internal. Also with that integral activity, pedestrian and bike movement is also a viable option as well. The only real item of concern is that there will be minor increase in traffic volume on Swannanoa River Road from the project.

Staff recommends that the City Council approve the proposed modification of the Urban Village Master Plan to permit 240 residential units and 96,858 sq. ft. of commercial space subject to the following conditions: (1) All Technical Review Committee conditions shall be met; (2) Not less than 17 residential units shall be priced at an affordable level (\$130,000 for a 2 or more bedroom unit) at time of initial sale; and (3) A transit stop shall be provided at a central location in the urban village, the location of which shall be subject to the approval of the Transit and Parking Director.

Mr. Anthony Butzek, City Traffic Engineer, said that regarding the increase of traffic on Swannanoa River Road, the River Bend development was approved with a condition that traffic volumes would not exceed 90% of the theoretical capacity of the street. This development will put it over that threshold. The composition of the traffic on Swannanoa River Road, composed of the Urban Village, we expect to be about 5%. Additionally in the past two years since the Wal-Mart was approved, we expect the traffic has grown, which constitutes another 2.5%. The previous Urban Village plan also generated about 2.5%, so the increase is from 2.5% of the capacity of Swannanoa River Road to 5%, that would be generated by the Urban Village. Coupled with the growth over the past couple of years, that puts us at about 95% of the theoretical capacity.

Mr. Butzek said the second issue, and this is where the traffic study comes in, is the actual operation of the studied intersections with the addition of growth and with the addition of project traffic. The study looks in a very high level of detail at the critical intersection in the study area. South Tunnel Road and Swannanoa River Road; Swannanoa River Road and the Wal-Mart entrance (with the bridge over the river); Fairview Road and the new street (Bleachery Boulevard); and Fairview Road and the River Ridge entrance (in addition to the internal intersections). All of those intersections are projected to operate at a level of service "D" or better during the morning peak hour, the afternoon peak hour and the Saturday peak hour. One of the reasons why this development does have the ability to handle the traffic load is because we have three good connections to public streets – all of which come out at traffic signals. One thing he sees as favorable in this project is that it allows a fairly high level of development without generating the same level of traffic volumes that the comparable amount of density done in a not so appropriate way would. The synergy created by having a mix of retail and residential uses results in a variety of travel choices to people – they can walk, bike, use transit vs. the more sprawled out development, which really encourages driving. This particular type of development encourages a variety of modes of transportation. The conditions he is recommending based on the review of the traffic study are as follows: (1) to change the plan for the roadway striping on the new bridge that is being constructed over the Swannanoa River. The bridge is being built as a 5-lane bridge with two lanes in and two lanes out and a stripped out median, which will be reserved for a future turn lane. He is recommending that they add that turn lane, so that they will have a left, a through and a right coming out of the development, since there will be a new development across Swannanoa River Road. This adds a very small amount of capacity but it is a very minor improvement; (2) that a roundabout be constructed at the intersection of Bleachery

Boulevard with the River Ridge connector. Without that improvement, and going with an uncontrolled intersection, there is one movement that operates at a level of service "F", which means traffic experiences a high level of delay. That would be making a left turn out of the Shopping Center traveling down Bleachery Boulevard. The roundabout will ensure that the intersection operates at a level of service "A", which means the average car waits less than 10 seconds at the intersection. The only other long-term solution that we can utilize at that intersection would maybe someday need a traffic signal. What the traffic signal would do is delay drivers who have stopped at the red light coming through there, more so than a roundabout, and given that we want to encourage people to use this connection (since we know Swannanoa River Road will be congested), he feels a roundabout will best handle that traffic; (3) that the developer provide a walking path and a right-of-way to connect to the River Ridge Shopping Center. That will ensure that people who live in the River Ridge apartments don't have to get in their cars, drive out to Fairview Road and then drive all the way back in. They can simply walk across; and (4) that the developer implement changes in the traffic control to the River Ridge Shopping Center internal intersection (City Exhibit 4). That traffic control would favor movements following the new connection in and out and that appropriate signage be installed to make sure that is a safe movement.

Mr. Harley Dunn, an owner of River Bend Development, reviewed the background of the project stating that they started the project five years ago. The first phase is well on its way to completion. The second phase is the mixed use project. Throughout the project members of City staff have encouraged them to increase the density in this project. Over a period of time, they agreed with staff after looking at these kinds of projects around the country. He noted there is 3.5 miles of sidewalks just with in the Urban Village, and they connect to 4 miles of sidewalks in Phase I of the large shopping center development – not to mention attaching to the greenway. It is our desire to see a development built that will be a source of pride for Asheville and western North Carolina. He urged Council to approve the modification to the conditional use permit and to also approve the modification of the Urban Village Master Plan.

Mr. David Day, Licensed General Contractor and developer of this project, briefed Council on other projects he has worked on in Asheville. He feels this project is good for Asheville. We have worked with the City for approximately four months in trying to come up with goals to make this a successful project. The first goal was that in order for the project to be successful, we need to maximize density. In order for an Urban Village to be a success, it has to have a mixed use of residential and commercial. It has to have enough density to it that it creates a great environment where people can interact. The second goal was to minimize the traffic. The increase is approximately 2.1%. By doing this type of development, we have created an area where people can live, work and play. He said that the project is approximately 96,000 square feet, consisting of a restaurant, retail space, office space, and also 240 residences. The perimeter of the project will consist of 80 townhouses, a club house and a pool. The five larger buildings shown on the plan will be four stories. The reason we have gone with a four story type of building is to minimize the building footprint. By minimizing the footprint, it allows more green space and a lot more common areas that enhance the project. We have placed parking in the basements. The main floor on ground level will be a retail-type of center that has restaurant, etc. Using elevation drawings (Applicant Exhibit 1), he described the atrium in the building. The second, third and fourth floors will be the residential areas. Each one of the residential areas in the multi-story buildings will have their own private balconies, which will overlook the streetscape. The streetscape located in the center will be a large landscaped courtyard type of area where there will be three large fountains, 91 park benches and more than 220 large trees. Regarding sidewalks, they tried to create a pedestrian friendly environment where this will become a neighborhood where people can access through walking and bicycle-riding. The project is located close enough to the Oakley community where children can get out of Oakley school and walk on a sidewalk all the way into the Urban Village for entertainment and recreation. We believe that the Urban Village will be an excellent neighborhood and that it will be lively and a

good place for people to live, work and play. He said they do not have a problem with a roundabout or helping out with any kind of turn lanes that may be recommended by the City's Traffic Engineer. However, this afternoon he has just found out about the recommendation of 17 affordable housing units and he hasn't had an opportunity to review that recommendation. He did not know what kind of an impact that would have on the project. In the alternative, he would be willing to have a mixed residential area where we have one, two and three bedroom units that will be able to accommodate a family, as well as someone who just needs a one bedroom.

Ms. Gay Sprague, Registered Engineer in three states and Traffic Engineer on the project, said that she did the TIA for this new version of the Urban Village.

Mr. Marvin Slosman, local developer, briefed Council on the successes in Asheville on mixed-use projects. He feels this is a win/win project for all parties. Regarding the affordable housing issue, he said that it is hard to drive a number into affordable housing and what that really means to people. One of the things that is very common in these types of projects is to do a pre-sale effort, which is in effect discounting the market value, so that people that get in early and in effect get a discount on what the market will drive in terms of supply and demand. It is always difficult when you look at the price per square foot. When you talk about affordable housing many times people refer to that as subsidized housing and that is difficult to do because as a developer and builder you don't get the same discount effect from the suppliers that you have and therefore it is hard to pass those along. He felt the pre-sale effort approach might be a solution other than designating a specific number of affordable homes.

The following residents spoke against the modification of the conditional use permit for various reasons, some being, but are not limited to: the third entrance through River Ridge Shopping Center was on the original conditional use permit; the traffic number estimates are on the low side and are subject to error and assumptions; traffic counts are not representative of normal, average traffic – in that they were taken on a rainy day, snowy day, and when Hurricane Ivan came through Asheville, thus reducing traffic counts; earlier traffic count numbers in front of the new bridge disagree with the N. C. Dept. of Transportation (NC DOT) numbers – showing a two year growth rate of approximately 22%; the traffic survey did not consider the gridlock at the South Tunnel Road intersection; the number of vehicles from the side streets were not considered in the input data; we are working toward capacity on Swannanoa River Road right now; there is gridlock even without the Wal-Mart being open; request that the lower end of Beechwood Road be closed; Council should not allow further development until the City has sufficient traffic infrastructure; there will be additional cut-through traffic on Overbrook Road because frustrated people who are tired of waiting will seek alternative routes; Overbrook Road is small, has a single-lane, is winding and has a blind-curve and cannot handle cut-through traffic; do a pre-emptive traffic calming measure on Overbrook Road by either closing their road or installing speed bumps; current project will dramatically change the charm of the surrounding neighborhoods and the lifestyles of its residents; any additional square footage will ruin area's property values, peacefulness and sanity; there has been additional commercial development along Swannanoa River Road since the project was approved in 2002, thus increasing the traffic; most pedestrian traffic will be contained in the Urban Village and is therefore not a traffic mitigation solution; changes are being made in neighborhoods and the residents are asking the City to compromise too; what will happen when the other businesses on Swannanoa River Road want to expand and they can't because the capacity of the road is full; the third access in River Ridge Shopping Center is not user-friendly; if intersections can be improved with synchronizing the lights, why hasn't it already been done; this has proceeded with the TRC, Planning & Zoning Commission and City Council too quickly and doesn't give the neighborhood associations to meet and prepare for this hearing; what will influence the owners at River Ridge Shopping Center to make improvements to the access there; request for a bike lane to be constructed on Swannanoa River Road; and request for a speed limit reduction on River Ridge Road:

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Mr. Ned Guttman, President of the Redwood Forest Homeowners Group
Mr. John Granados, resident at 26 Overbrook Place (Neighborhood Exhibit 1)
Mr. Don Baker, resident at 15 Overbrook Road
A resident at 60 First Street
Mr. David Bailey; resident at 6 Beechwood Road in Redwood Forest
Mr. Christopher Fielden, President of the Community Supported Development
Mr. Fred English, Haw Creek resident
Ms. Barber Melton, member of Coalition of Asheville Neighborhoods
Ms. Debbie Applewhite, resident in Beverly Hills
Mr. Mike Moody, resident in Beverly Hills
Mr. William Lance, property owner in Beverly Hills
Ms. Bonnie Bailey
Mr. Steve Ritt, resident of 24 Swannaview Drive

Ms. Sprague responded to various level of service questions from Mr. Guttman. Mr. Guttman stated that a statement was made that the overall level of service at the intersections at all times was level of service "D" or better. He wanted to ensure that was true even though there are many turning movements at various times at different intersections that have a level of service that is rather poor and in some cases gridlock.

Upon inquiry of Councilman Dunn, Ms. Sprague said that in performing a traffic analysis at an intersection, you take the peak hour and apply an additional peak hour factor, which means that you have it down to the worst 15 minutes. Her report was for a routine situation but also included the worst 15 minutes as well. In addition, she said that Mr. Butzek requested she look at the volume to capacity ratios of these movements, which she did. She said you can look at delay, which is what level of service is based on, and you can also look at volume to capacity ratio. She did both and Mr. Butzek reviewed them.

Upon inquiry of Mayor Worley, Ms. Sprague explained the TIA in the overall context of how you can have a number of intersections that are rated level of service "E" and yet come out with an overall analysis in the TIA that says it is an acceptable level of service.

Upon inquiry of Vice-Mayor Mumpower, Mr. Butzek said that after review of the TIA, he is satisfied the TIA is a realistic estimate that looks at a reasonable estimation of the amount of traffic, the distribution of traffic, and what means are necessary to mitigate the traffic.

Mr. Butzek said that one of the conditions of Target's approval was that they widen Swannanoa River Road at South Tunnel Road by adding a second left-turn lane. We do expect that to be completed and that will help the gridlock at that intersection significantly. Regarding the congestion along South Tunnel Road, it is true there are many traffic signals through there that require very good coordination to move the traffic through. NC DOT has been working to install a coordinated system from the tunnel down to the last intersection near the Circuit City. Once that goes on line, that should improve conditions somewhat on South Tunnel Road.

Upon inquiry of Vice-Mayor Mumpower, Mr. Butzek said that the original approval on the conditional use permit was based on three access points. He said the third was a little nebulous because it was through the River Ridge Shopping Center, which at the time was under separate ownership. We were unsure of what kind of connection we would get. Horne Properties now owns the River Ridge Shopping Center and is expected to make some improvements to that connection to better facilitate the traffic. There is some expectation that more traffic will utilize that connection. There is a very small amount of traffic put onto that connection when it was originally approved, but the current traffic study does anticipate more traffic using that connection.

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Upon inquiry of Vice-Mayor Mumpower, Mr. Butzek said that on a consistent basis there will be a marginal increase in traffic but it will fall within the typical standards.

At Councilman Newman's request, Mr. Butzek explained there will be a new traffic signal along Swannanoa River Road, which will be a location where people can currently drive straight through without stopping for a traffic signal. That signal operates at a level of service "C" or "D". At the intersection of Swannanoa River Road and South Tunnel Road, there is some increase in delay that will come from that additional traffic. It currently operates at a level of service "F" because of the turn-lane improvement that Target needs to make. Once that improvement comes on line and with the increase in traffic, that will bring our level of service to "D".

Upon inquiry of Councilman Newman, using a table (City Exhibit 9), Mr. Butzek explained what the existing traffic is on Swannanoa River Road, what the increase of 2% per year for two years will be, what traffic will be from the Wal-Mart/associated development; what traffic will be from the Urban Village; and what traffic will be from outparcel development.

In response to Councilman Newman, Mr. Butzek explained why he believed that the 2% per year increase is a reasonable estimate.

Upon inquiry of Councilman Newman, Mr. Butzek described what a level of service "E" will look like on Swannanoa River Road.

Councilman Newman asked if the City will not recommend any further development on this part of the City that would add additional capacity to Swannanoa River Road when we reach level of service "E". Mr. Butzek said that his recommendation would be that if there is an improvement that can be made to reasonably mitigate that, he would recommend that. He feels that is a policy determination the City needs to make as to what level of service they want to commit within the City limits. "D" is the most common and we would recommend mitigation measures to preserve a level of service "D". There are other intersection improvements that could be made on Swannanoa River Road but they do get progressively more expensive, for example, adding lanes on South Tunnel Road at Swannanoa River Road. There are some other turn lanes that could be added at some fairly high costs and at some point it may mean widening the bridge on Wood Avenue to increase capacity if that becomes the most appropriate route.

Upon inquiry of Councilman Newman, Mr. Butzek explained that some of the 5% growth on Swannanoa River Road is attributed to the growth over the past two years.

Vice-Mayor Mumpower said that the 90% level is the level that we were considering in the original conditional use permit for Wal-Mart and the existing plan for the Urban Village. At that time staff recommended to us that we leave room for growth. He feels that this is considered new good growth - housing.

Upon inquiry of Mayor Worley, Mr. Shuford explained that growth of this type in some ways may generate less traffic than the same growth somewhere else.

Councilman Newman said that the irony to him is that this is a good development idea, but the problem is that the big box development adjacent to it has consumed all the highway capacity. Now we don't have the capacity to do redevelopments like this without using up most of the rest.

Mr. Butzek said that for the amount of traffic that is being generated on Swannanoa River Road from this development, he feels it is a good deal for the City (City Exhibits 10, 11 and 12).

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Upon inquiry of Vice-Mayor Mumpower, Mr. Butzek said that the City is not considering any traffic calming for Overbrook Road at this time. He said we will continue to monitor that area and consider it for prioritization in the traffic calming project. If Council determines that a specific allocation should be made, that would need to be done separately for this area, otherwise it will follow the same prioritization.

When Vice-Mayor Mumpower asked if the \$50,000 a year allocation for traffic calming projects was enough, Mr. Butzek said that we would be more successful with a larger allocation. Fifty thousand dollars accomplishes typically one street per year. City Manager Westbrook said that the traffic calming process takes time and we are only able to do about \$50,000 a year.

In response to Vice-Mayor Mumpower, Mr. Butzek said that the developer contributed \$65,000 for traffic calming and that is being utilized in Redwood Forest to mitigate their traffic. We feel that once the traffic calming is complete, we will have mitigated that and improve the quality of life in that neighborhood. As with any transportation funding, more money accomplishes more, but as the City Manager pointed out, City staff is stretched trying to accomplish the projects we need to accomplish in neighborhoods around the City. If additional projects are developed, we would be requesting some portion of that to hiring a consultant or additional staff to augment our current forces. There are additional streets in that area that would love to have traffic calming. It would be beneficial to those communities if Council decides to make that recommendation.

Vice-Mayor Mumpower felt that if we are going to ask anything from the developer, rather than force affordable housing components on him, it seems like for asking some additional traffic mitigation monies might be a more appropriate course.

When Vice-Mayor Mumpower asked for a guesstimate on what might help have a further impact, Mr. Butzek said that the more allocated, the more they can do. He felt maybe an additional \$50,000 might be fair to be used in other neighborhoods.

Upon inquiry of Councilman Davis, Mr. Butzek said that the developer is responsible for doing improvements in River Ridge where the intersection comes onto Fairview Road. That work is fairly minimal, which is limited to signs and markings. There was a condition placed on the Wal-Mart approval that Horne Properties spend a certain amount of money to improve that access road. That is separate from the operational changes that he is recommending.

In response to Vice-Mayor Mumpower, Mr. Shuford said that about October 19, 2004, City staff suggested that since the applicant had increased the amount of residential units from 164 to 240, there was an opportunity for affordable housing to be accommodated in that increase. City staff suggested a much larger number than 17 (40). We received a letter back from Mr. Day indicated that number was unacceptable so we put a smaller number in the staff report to Council. The basis we did that is because we have a city-wide policies to promote affordable housing opportunities. This is a fairly large scale development. It is a development that will have characteristics which will be very facilitative for affordable housing, such as the ability to be served by transit, the ability for people to walk easily to places of employment, and to walk for groceries and other services. It seemed like a natural opportunity to suggest that to the developer.

Vice-Mayor Mumpower can understand why we would want to have affordable housing there, but it seems like official blackmail to force them to do it. Mr. Shuford said this is a staff recommendation to City Council. Staff makes many recommendations to Council, some of which Council agrees with and some Council does not.

After hearing no further rebuttal, Mayor Worley closed the public hearing at 10:45 p.m.

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Councilman Newman moved to deny the conditional use permit modification to Phase I of River Bend Market Place to allow for an increase in development intensity that may increase traffic on Swannanoa River Road. This motion was seconded by Councilwoman Jones.

Councilman Newman felt this fails to meet Condition No. 7 in terms of traffic impact. He thinks this is a really good development concept, but due to the other developments that have been approved as part of the larger development, we have used up almost all the capacity we have on Swannanoa River Road. We know that traffic will continue to grow on Swannanoa River Road even if there is no other development of other properties on that Road. We will very soon have an unacceptable level of service on Swannanoa River Road and if we approve this additional development intensity on the site, we will greatly hasten that day. Again, he feels the development concept is good and it's the kind of development we need more of in our community, but because of the transportation capacity limits we have on Swannanoa River Road, he doesn't think that it makes sense to approve it.

Vice-Mayor Mumpower said that based on the testimony, there is no question that it will have an impact, but this is new development. If we had a choice between another big box development or some of the other options down there, new residences is good. This is the epitome of everything we say we're going to support in this city and that we try to support in this city – it's an urban village. That is good growth. If we are going to be using that additional capacity at the artificial point of 90%, he can't imagine there is anything we could use it on that would meet our city guidelines, plans and our intent better than this.

Councilwoman Jones said that 90% was an artificial number, but it perhaps is artificially high. While this is a good development proposal, it is probably the largest development proposal that Asheville has seen in years and one neighborhood is taking the brunt of it. We all have good intentions but this is about public trust and for her, that 90% was a real big stretch and now to whittle away at it really is not fair to the neighborhoods that will be significantly impacted.

Councilman Newman said he didn't think this is a new development. This is the same development that came before City Council two years ago modified. He respects the integrity of the studies that have been done, but the original level of capacity on Swannanoa River Road was around 60%. If you have one development that goes from 60% of capacity to around 95% and that doesn't have a level of unacceptable traffic impact, it begs the question what would. He thinks it is too much.

The motion made by Councilman Newman and seconded by Councilwoman Jones to deny the conditional use permit modification failed on a 2-4 vote, with Councilwoman Jones and Councilman Newman voting "yes" and Mayor Worley, Vice-Mayor Mumpower, Councilman Davis and Councilman Dunn voting "no."

Councilman Dunn moved for the adoption of Ordinance No. 3178, amending the conditional use permit for Phase I of River Bend Market Place to allow for an increase in development intensity that may increase traffic on Swannanoa River Road, by amending Exhibit A, the level of development intensity approved for this project, to permit the following level of development for Phase 2 (the urban village) of the project: 96,858 sq. ft. of commercial uses (retail, office, restaurant, etc.) and 240 residential condo/townhouse units. There shall be no further changes to Exhibit A that will increase traffic on Swannanoa River Road unless further traffic impact mitigation measures are implemented. *{The remainder of the condition remains unchanged.}* This motion was seconded by Councilman Davis and carried on a 4-2 vote with Mayor Worley, Vice-Mayor Mumpower, Councilman Davis and Councilman Dunn voting "yes" and Councilwoman Jones and Councilman Newman voting "no."

ORDINANCE BOOK NO. 21 – PAGE

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G. PUBLIC HEARING TO CONSIDER A MODIFICATION TO THE URBAN VILLAGE MASTER PLAN FOR PHASE II OF RIVER BEND MARKET PLACE TO PERMIT AN INCREASE IN DEVELOPMENT INTENSITY

ORDINANCE NO. 3179 - ORDINANCE GRANTING A MODIFICATION TO THE URBAN VILLAGE MASTER PLAN FOR PHASE II OF RIVER BEND MARKET PLACE TO PERMIT AN INCREASE IN DEVELOPMENT INTENSITY

Mayor Worley opened the public hearing at 10:51 p.m.

Mr. Alan Glines, Urban Planner, said that this is the consideration of granting a modification to the Urban Village Master Plan for Phase II of River Bend Market Place to permit an increase in development intensity. This public hearing was advertised on October 29 and November 5, 2004.

Mr. Glines said that his presentation on this matter was covered with the earlier public hearing on the conditional use permit modification.

Mr. Robert Deutsch, attorney for the developer, urged City Council support for this modification to the Urban Village Master Plan.

Mr. Steve Ritt asked how with the developers be financially responsible for the long-term environmental and socioeconomic factors. He said the large parking lot acts just like a roof washing all the water to the river.

Vice-Mayor Mumpower was uncomfortable with the way Council is going about the affordable housing aspect. He feels we should approve or disapprove the project on the basis of its merits.

Mr. David Day, Licensed General Contractor and developer of this project, said that after the Technical Review Committee meeting there was no mention was of doing affordable housing. However, after the meeting he received an e-mail requesting that they be able to incorporate an affordable housing component. We e-mailed them back and said no, that there is no way we can see that would happen. To his knowledge, he has not heard anything for sure that it would be a staff recommendation until a fax he received today. There was a discussion back then, but he did not realize it was going to become a recommendation.

Upon inquiry of Vice-Mayor Mumpower about the impact of the affordable housing component on the development, Mr. Day did not know financially. He said they would be willing to mix some 1, 2 and 3 bedroom units in the development so it would be more affordable for families or singles. He said that to address the City's traffic concerns, other areas impose an impact fee on transportation and education; however, he doesn't recommend it but feels it should be considered. He would rather see \$50,000 go toward transportation needs to help the neighborhoods, than to go toward demanding that they do affordable housing.

Regarding impact fees, City Attorney Oast said that our ability to use those in North Carolina is limited. Some cities have that authority and some cities don't. He thinks it is something that is being discussed at the legislative level, but it has not been authorized on a broad scale yet.

In response to Vice-Mayor Mumpower, Planning & Development Director Scott Shuford said that the City may see more revenue from the 18 acres of the Urban Village than from the 60 acres of the big box. He anticipated a \$60-70 Million tax base.

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Vice-Mayor Mumpower asked if the City took affordable housing off the board, is there anything the developer might propose

to Council to further assist us with traffic mitigation in the area of this project. Mr. Day felt the problem is that the City needs to acquire more right-of-way for more lanes.

Mr. Butzek said that there are two types of traffic mitigation. One is capacity improvements (turn lanes, etc.) which some may need right-of-way. The other was neighborhood traffic management. From a neighborhood traffic management standpoint additional funds could be used, with the understanding that some of that money may be used to hire a consultant to bolster our staff.

Upon inquiry of Councilwoman Jones about the traffic generated from a proposed movie theatre in one of the outparcels, Mr. Shuford said that the movie theatre is shown as a potential future development. Should a movie theatre be proposed, the peak hours for the movie theatre are not lining up typically for some of the other things. He said that in the Wal-Mart project proper there were two outparcels proposed for that location. One outparcel was permitted under the original conditional use permit and the one was taken off the table to make the transportation numbers work. The one outparcel that was taken off the table may come back to Council in a process similar to this. They are talking about a 7,500 square foot restaurant use.

Upon inquiry of Councilman Davis, Mr. Shuford said there is a large number of recommendations about affordable housing in the 2025 Plan. We didn't specifically target them to any specific type of development.

In response to Vice-Mayor Mumpower, Mr. Shuford said that we have a variety of different incentives for developers to build affordable housing. Councilman Newman pointed out that an affordable housing component was a requirement of the contract with the Grove Park Inn for the development of the City-owned property.

Mr. Day said that one of staff's recommendations is that a roundabout or a turn lane from the Wal-Mart coming into the Urban Village be constructed as a result of the TIA. He offered that the developer construct the roundabout, which will cost about \$125,000. In addition, he offered \$25,000 to go toward transportation needs in the City and hoped the City would match that amount.

Councilman Dunn felt that that the City should not be forcing the developer to build affordable units. He also felt that to require the developer to pay for the roundabout and also pay for more traffic mitigation was a little heavy handed too.

Upon inquiry of Councilwoman Jones, Mr. Day said that a 3-bedroom condominium will be approximately \$275,000, and one and two bedrooms will be adjusted accordingly.

In response to Councilman Newman, Mr. Shuford said that other than what was discussed here, he did not know of any other developments proposed on Swannanoa River Road.

Mr. Shuford pointed out that the Wal-Mart developer built a new public road, which is a substantial transportation enhancement to the betterment of the City of well over \$1 Million. They also gave \$65,000 for traffic calming for other areas.

In response to Councilwoman Jones, Mr. Shuford said that in his study of urban villages that have most recently occurred, they have not really been affordable from a residential standpoint.

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Councilwoman Jones said that she appreciates staff trying to fold the affordable housing aspect in. She felt we need to educate people what affordable housing is, and that it is not public housing. Affordable housing is for our working professionals. She thinks this is a way to improve our community. She felt that 17 affordable units is a very small number compared to the huge increase of residential units they requested.

Councilman Newman said that if the project of this scale is approved, in conjunction with all the other related developments on it, it basically uses up all our development capacity in this entire part of the City, unless we widen Swannanoa River Road that we built with our taxpayer money. We may not be able to build other projects that have affordable housing over in this part of the City because we don't have any highway capacity left. If we don't get some affordable housing in projects like this, we may not be able to do a lot more. He noted that the City is only requesting 7% of the units be priced at \$130,000 or less.

Councilman Dunn said that the tax revenue generated from this development will allow the City to build infrastructure elsewhere in the City for affordable housing. This is a significant amount of tax base coming to the City.

At 11:22 p.m., Mayor Worley closed the public hearing.

Vice-Mayor Mumpower moved for the adoption of Ordinance No. 3179, granting a modification to the Urban Village Master Plan for Phase II of River Bend Market Place to permit 240 residential units and 96,858 sq. ft. of commercial space subject to the following conditions: (1) All Technical Review Committee conditions shall be met; (2) A transit stop shall be provided at a central location in the urban village, the location of which shall be subject to the approval of the Transit and Parking Director; (3) the developer construct and assume all costs for a roundabout at the intersection of Bleachery Boulevard with the River Ridge connector; (4) the developer pay an additional \$25,000 for traffic mitigation; (5) that the developer change the plan for the roadway striping on the new

bridge that is being constructed over the Swannanoa River to show a left, a through and a right coming out of the development; (6) that the developer provide a walking path and a right-of-way to connect to the River Ridge Shopping Center; and (7) that the developer implement changes in the traffic control to the River Ridge Shopping Center internal intersection, which traffic control would favor movements following the new connection in and out and that appropriate signage be installed to make sure that is a safe movement. This motion was seconded by Councilman Davis and carried unanimously.

Councilman Jones moved to amend the motion to include the condition that not less than 17 residential units shall be priced at an affordable level (\$130,000 for a 2 or more bedroom unit) at time of initial sale. This motion was seconded by Councilman Newman and failed on a 2-4 vote, with Councilwoman Jones and Councilman Newman voting "yes" and Mayor Worley, Vice-Mayor Mumpower, Councilman Davis and Councilman Dunn voting "no."

The original motion made by Vice-Mayor Mumpower and seconded by Councilman Davis carried on a 4-2 vote, with Councilwoman Jones and Councilman Newman voting "no."

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IV. UNFINISHED BUSINESS:

V. NEW BUSINESS:

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A. ORDINANCE NO. 3180 - ORDINANCE AMENDING THE FEES AND CHARGES MANUAL ESTABLISHING FEES TO SUPPORT AFFORDABLE HOUSING AND THE OPERATIONS OF THE BUILDING SAFETY DEPARTMENT

Building Safety Director Terry Summey said that this is the consideration of amending the Fees & Charges Manual to implement portions of the City Council's 2004 Strategic Operating Plan.

The Fiscal Year 2004/05 budget proposed amendments to the Fees and Charges Manual to promote the construction of Affordable Housing (AH) and provide 95% operational cost to the Building Safety Department. Council members requested that the proposed amendments receive further review from the public. For the past 6 months, the proposed amendments have been in the possession of the public. To date, no objections or changes have been received from the public or the Development Review Task Force. The amended fees incorporate several proposed goals in the Strategic Operating Plan to include the following:

- Housing Opportunities Goal #1: Increased development incentives for AH – Create incentives and revise the permitting process throughout the City to encourage AH.
 - Objective A. Increase incentives to invest in AH (work to decrease fees and revise development specifications.
 - Task#1: Revise fees- (new ranges and reductions) increase AH incentives.
 - Task#2: Increase AH Cap-extension of incentives to ensure more AH
- Economic Development Goal #2: Efficient/economical permitting process – Reform to make more conducive to do business in Asheville.
 - Objective B. Encourage independent business development-reduce permitting costs for subcontractors and small renovation projects.
 - Task #1: Revise fees/charges structure (subcontractors- more work/smaller fee).

Pros

- Fees support public relations: encourages the development of affordable housing.
- Fee changes support the cost of services provided.
- Public/Industry: No changes or negative comments received in over 6 months of promotion.

Cons - None

Staff recommends City Council adopt the ordinance to amend the Fees and Charges Manual to support AH and the cost of services, effective December 1, 2004.

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

Councilwoman Jones moved for the adoption of Ordinance No. 3180. This motion was seconded by Councilman Davis and carried unanimously.

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VI. OTHER BUSINESS:

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Claims

The following claims were received by the City of Asheville during the period of October 1-14, 2004: Ben Pace (Water), Linda Black (Sanitation), Amy Lunsford (Sanitation) and Asheville Investments (Police).

The following claims were received during the period of October 15-28, 2004: BellSouth (Streets), Jamie Hutchison (Water), Terry Lee Edgerton (Parks & Recreation), John Petty (Police), Larry Sanders (Transit Services), Charter Communications (Water) and Aban Fritsch (Sanitation).

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

VII. INFORMAL DISCUSSION AND PUBLIC COMMENT:

Mr. Fred English, resident in Haw Creek, showed pictures to Council of the poor condition of his street on Pressley Road in Haw Creek. He requested funds be allocated for improvements in the Haw Creek area.

After Vice-Mayor Mumpower discovered that City Council voted on the ordinance regarding fees and charges for affordable housing and fees for the Building Safety Department while he was out of the room (he stated that he indicated he was going to take a break after three hours, which was after the modification to the Urban Village District motion), he felt it was inappropriate to move forward with that vote.

A man who spoke earlier in the modification to the conditional use permit for River Bend Market Place, felt that traffic should have been mitigated by having a mixed residential use in the Urban Village so that people who work in that development could walk to work. He also noted that the traffic mitigations have not been approved by the Redwood Forest neighborhood.

Mr. Michael Patterson, representing Horne Properties, said that the traffic from the outparcel on Phase I of the River Bend project is already incorporated in the Traffic Impact Analysis approved by Council tonight in the conditional use permit modification for River Bend Market Phase.

Ms. Tiffany Kyle, said that in the State's ABC audit of Store No. 3 there was \$244,411 reported in 2002 of employee theft and employee embezzlement. After working for the ABC for 13 years, her mother Robin Jones, was wrongfully charged with around \$119,000 embezzlement. She questioned where is the rest of the money is that was embezzled. With all of the findings and all of the misused funds found by the Deloitte report and State auditors, why hasn't the SBI or a CPA been brought in to look at everything from 2000 to the present. After that is done, the real truth will be brought out.

Mr. Joe Smith felt that when the Chair of the ABC Board was brought in before Council she failed to adequately answer Council's questions. He felt she should not be reappointed and that she should have been coming forthcoming with answers. Councilman Dunn noted that the District Attorney has advised him that the ABC Board records from 2001 back have all disappeared.

Vice-Mayor Mumpower made the following announcements: (1) a vacancy on the Recreation Board; (2) the importance of Veterans Day on November 11; (3) appreciation to everyone for the For Our Kids day event at McCormick Heights; and (4) recognition of Kathryn Reynolds, Hillcrest resident, for her exceptional effort of cleaning up around her development.

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VIII. ADJOURNMENT:

Mayor Worley adjourned the meeting at 11:42 p.m.

CITY CLERK

MAYOR