

Regular Meeting

Present: Mayor Charles R. Worley, Presiding; Vice-Mayor R. Carl Mumpower; Councilwoman Terry M. Bellamy; Councilman Jan B. Davis; Councilman Joseph C. Dunn; Councilwoman Diana Hollis Jones; Councilman Brownie W. Newman; City Manager James L. Westbrook Jr.; City Attorney Robert W. Oast Jr.; and City Clerk Magdalen Burleson

Absent: None

**PLEDGE OF ALLEGIANCE**

- Councilman Davis led City Council in the Pledge of Allegiance.

**INVOCATION**

Councilwoman Bellamy gave the invocation.

**ADDITIONS TO THE AGENDA**

- Mayor Worley added the following three items to the Agenda: (1) Recognition of the delegation from San Cristobal, New Mexico; (2) Resolution authorizing the Mayor to execute a Municipal Agreement with the North Carolina Department of Transportation to provide local funding for noise wall enhancements for the I-40 widening project; and (3) Resolution authorizing execution of a joinder to deed of trust for redevelopment financing for part of Pack Place.

**I. PROCLAMATIONS:**

**A. ASHEVILLE SISTER CITY**

Mayor Worley recognized the delegation from Asheville's Sister City San Cristobal de las Casas, Mexico, who read a letter of appreciation from their Mayor to the City of Asheville.

**B. RESOLUTION NO. 04-251 – RESOLUTION OF APPRECIATION TO RETIRING EMPLOYEE WILLIAM L. SCHAEFER JR.**

Mayor Worley read the resolution of appreciation to retiring Finance Director William L. Schaefer Jr. On behalf of the City Council, Mayor Worley thanked Mr. Schaefer for his eleven years of service he has devoted to the citizens of Asheville.

Resolution No. 04-251 was adopted by acclamation.

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**C. FOR OUR KIDS PROGRAM**

Participants from the For Our Kids Program thanked Vice-Mayor Mumpower, Councilwoman Bellamy and the entire Council for their hospitality and support for their after school program and other sub-programs.

**II. CONSENT AGENDA:**

Vice-Mayor Mumpower asked that Consent Agenda Item "I" be removed from the Consent Agenda for individual discussion.

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**A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON NOVEMBER 23, 2004, AND THE WORKSESSION HELD ON DECEMBER 7, 2004**

**B. RESOLUTION NO. 04-252 - RESOLUTION ADOPTING THE 2005 SCHEDULED CITY COUNCIL MEETINGS  
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**C. RESOLUTION NO. 04-253 - RESOLUTION AUTHORIZING THE CITY CLERK TO PUBLISH A NOTICE REGARDING THE EXCHANGE OF EXCESS RIGHT-OF-WAY ON STRATFORD ROAD FOR A RIGHT-OF-WAY EASEMENT ON STRATFORD ROAD**

Summary: The consideration of a resolution authorizing the City Clerk to publish a notice regarding the exchange of excess right-of-way for a right-of-way easement across real property located on Stratford Road.

The City and Verdi Group LLC (Verdi) have negotiated an exchange of excess right-of-way for a right-of-way easement across real property located on Stratford Road.

The excess right-of-way property is along the east side of Stratford Road comprising 0.008 ± acre generally across the road from and between its intersections with Parkside Avenue and Pinewood Avenue.

The property owned by Verdi (PIN 9730.12-96-3375) is a 0.969 acre parcel zoned RS-4 Residential Single-Family Medium Density District located on Stratford Road contiguous with the right-of-way. As it is the parcel will only support three (3) houses. With the additional land from the excess right-of-way, the Verdi property will support development of four (4) houses. The right-of-way easement to be exchanged for the excess right-of-way will cover 0.131 acre and will provide a logical and consistent right-of-way boundary along the east side of Stratford Road extending ten (10) feet into the Verdi property for the full length of the street frontage.

The positive aspects of the transaction are:

- The exchange will be a fair exchange of value for value.
- It will return property not needed for public use to the tax rolls.
- It will provide a more logical and consistent right-of-way boundary along Stratford Road.
- It will enable maximum infill development consistent with the Strategic Operating Plan.
- The 10-foot easement makes a future sidewalk more constructible.

Approval of the resolution will initiate the exchange of the properties through the process provided in N. C. G. S. 160A-271.

Planning & Development staff and the Traffic Engineer recommends adoption of the resolution authorizing the City Clerk to publish a notice regarding the exchange of excess right-of-way for a right-of-way easement across real property located on Stratford Road.

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**D. RESOLUTION NO. 04-254 - RESOLUTION ACCEPTING THE NEW STREET NAME “JAN DRIVE**

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Summary: The consideration of a resolution accepting the new proposed street name “Jan Drive.”

Southern Pride of WNC, owner of lots on Jan Drive off of Bellevue Road, has petitioned the City of Asheville to accept the street name “Jan Drive.”

The new street will begin at Bellevue Road and end at the cul-de-sac on Jan Drive.

City staff recommends adoption of the resolution accepting the new proposed street name “Jan Drive.”

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**E. RESOLUTION NO. 04-255 - RESOLUTION AUTHORIZING THE CITY TO APPLY FOR A BICYCLE PLANNING GRANT FROM THE N.C. DEPT. OF TRANSPORTATION**

Summary: The consideration of a resolution authorizing the City Manager to submit a proposal requesting \$24,000 in planning funds for the purpose of developing a \$40,000 comprehensive bicycle plan and to commit local match for Fiscal Year 2006 as needed.

This project supports the Asheville 1998 Greenway Master Plan and 2003 Update, the 2025 City Development Plan, and

the 2004 Transportation Demand Management Program Work Plan. It also implements several tasks in City Council's Strategic Operations Plan in the areas of:

- Planning, Goal #2, Obj. A, Tasks 1 and 2 – to incorporate multi-modal uses of transportation options and to leverage outside funding to achieve multiple transportation goals where possible.
- Planning, Goal #2, Obj B, Tasks 1 and 2 – to determine opportunities for managing traffic demand and to explore public-private partnerships with major employers and education providers to increase the effectiveness of the transportation system.
- Sense of Place, Heritage & Arts, Goal #3, Obj. B, Task #1 – to construct infrastructure including bicycle facilities to accommodate growth downtown.
- Natural and Built Environment, Goal # 2, Obj. A, Tasks 1-4 – to implement the Wilma Dykeman Riverway Plan and the Completion of several Greenways. (Note that the Reed Creek Greenway, the Hominy Creek Greenway, and the Azalea Park Connector Greenway are all funded through the NCDOT Bicycle Program and that their staff is encouraging a bicycle plan proposal from the City.)
- Natural and Built Environment, Goal #2, Obj. B, Task 1 – to work with the State to fund greenway projects via the Transportation Improvement Plan.

This proposal is supported by the Blue Ridge Bike Club and the Asheville Bicycle and Pedestrian Task Force, a volunteer group of citizens whose mission is “to educate the public about bicycle and pedestrian transportation, to advocate for the development and maintenance of safe, convenient and inter-connected facilities, and to promote the benefits of walking and bicycling for individual and community health.” The Task Force has assisted in the development of the proposal and is committed to assisting in the planning process.

The positives of this project are that it will:

- Better position the City to continue to pursue funding from the NCDOT Division of Bicycle and Pedestrian Transportation and through the Transportation Improvement Plan and Long Range Transportation Plan processes;

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- Provide \$24,000 or sixty percent of the total cost toward a \$40,000 planning process and enable the City to bring in a bicycle planning specialist;
- Provide a process and opportunity to directly involve the Council, public and interested stakeholders in the development of goals, objectives, and tasks related to improving bicycling in Asheville; and
- Collate, clarify and direct information regarding local bicycle issues and initiatives into one document and series of maps that support the 2025 Plan, Greenways Master Plan, and Strategic Operations Plan.

The negatives of this project are that it will:

- Require time from City staff to manage the contracting process and supervise the consultant; and
- Require a local match of \$16,000 beginning July 1, 2005. The Blue Ridge Bike Club has pledged support of \$1,000 toward this local match requirement, but the remaining \$15,000 will need to be committed for Fiscal Year 2006.

Staff recommends that City Council adopt the resolution authorizing the submittal of a proposal and the commitment of matching funds in the next fiscal year.

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### **F. MOTION ADOPTING THE FISCAL YEAR 2005-06 BUDGET SCHEDULE**

Summary: The consideration of a motion approving the Fiscal Year 2005/2006 budget schedule.

The proposed Fiscal Year 2005/2006 budget schedule identifies key dates for completion of all phases of the budget process leading to adoption. Several administrative steps in the budget process are already underway due to the need to get an early starting as a result of the pending retirement of the City Manager.

Key phases of the budget process, which involve City Council, include the City Council Annual Retreat, presentation of the proposed budget to City Council, a public hearing and formal adoption. This year's schedule includes five scheduled budget

worksessions, allowing City Council sufficient time for effective budget deliberations. Adoption of the Fiscal Year 2005/2006 budget is scheduled for June 28, 2005.

City staff recommends City Council to adopt the Fiscal Year 2005/2006 budget schedule.

**G. RESOLUTION NO. 04-256 - RESOLUTION AUTHORIZING THE SALE OF CITY-OWNED PROPERTY ON VIRGINIA AND BROTHERTON AVENUES TO NEIGHBORHOOD HOUSING SERVICES FOR A MIXED-INCOME HOUSING DEVELOPMENT**

Summary: This is the consideration a resolution approving the sale of City-owned property on Virginia and Brotherton Avenues to Neighborhood Housing Services (NHS) for a mixed-income housing development.

The City purchased a 7-acre site at the corner of Virginia and Brotherton Avenues from the Housing Authority in 2000 and contracted with a private developer to develop 32 units of mixed income condominium-type housing on the site, using Community Development Block

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Grant (CDBG) funds for the site improvements and private financing for the housing construction. The developer completed the site improvements but then withdrew in late 2003, having been unable to get construction financing for the housing development on terms he found acceptable.

In July 2004, staff issued a request for proposals for a new developer. Two responsive proposals were received and reviewed by a panel of outside experts and staff, appointed by the City Manager. This panel has recommended the proposal submitted by Neighborhood Housing Services of Asheville (NHS) in partnership with The Verdi Group. NHS proposes to purchase the improved site for \$454,701 (\$1,001 over appraised value) and construct 44 units of housing. The proposal combines the design and construction experience of the Verdi Group with NHS's experience in marketing to income-qualified buyers and its ability to obtain construction financing on favorable terms from its national affiliate: Neighborhood Housing Services of America.

The development is consistent with the City's Strategic Operating Plan (Housing Opportunities Goal #4) because it increases the supply of affordable housing through relatively dense infill on a vacant parcel and also provides mixed-income housing

The draft resolution authorizes the Mayor to enter into a contract for sale with NHS. NHS will then do its due diligence on the site and prepare construction plans. Council will have the opportunity of reviewing the plans in detail early next year, since NHS's proposal to increase the number of units requires modification of the Conditional Use Permit approved in 2003. The sale will not close until any required zoning process is completed.

The sale will be governed by the terms of N. C. Gen. Stat. 160A-279 (private sale of property to entities carrying out a public purpose). This does not require a public hearing or upset bid process.

Advantages:

- Authorizing the sale enables the development of the property to move forward.
- A strong partnership has been formed by NHS to acquire the necessary financing, and design, construct, and market mixed-income housing on the site.
- Council will have final approval of the project when design is complete and before the sale closes.
- The proposal offers 24 units of affordable housing and 20 units of market rate housing with the benefits of good design, energy efficiency, and preservation of open space on the site.

Disadvantage:

- The NHS/Verdi group's plan will require a modification of the Conditional Use Permit, and is therefore not ready to move into construction immediately

Staff recommends approval of the resolution authorizing the Mayor to enter into a contract for sale with NHS.

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**H. RESOLUTION NO. 04-257 - RESOLUTION SETTING A PUBLIC HEARING ON JANUARY 11, 2005, TO VACATE AND CLOSE THE ENTIRE DWELLING AT 1086 HENDERSONVILLE ROAD**

Summary: The consideration of a resolution setting a public hearing on January 11, 2005, for the adoption of an ordinance to vacate and close the remaining dwelling units located in the dwelling at 1086 Hendersonville Road.

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The dwelling at 1086 Hendersonville Road is a wooden structure containing nine separate dwelling units. After unsuccessfully attempting to work with the property owners to bring the dwelling into compliance with the Housing Code since December of 1998, City staff's efforts to bring about compliance intensified during the summer of 2004. In August of 2004, the property owners entered into a Memorandum of Understanding but failed to honor their commitment to bring the dwelling units into compliance with the Housing Code. As a final effort to obtain compliance, City staff asked City Council to adopt an ordinance ordering certain of the dwelling units to be vacated and closed, which Council adopted. Despite the ordinance directing the property owners to vacate and close certain of the dwelling units, the property owners continue to offer said dwelling units as well as the remaining dwelling units for rent.

A second hearing was held on October 15, 2004, whereby Elizabeth Tate, one of the property owners, made it clear that she had no intentions of voluntarily vacating and closing the dwelling. A Findings of Fact and Order was entered ordering the property owners to vacate and close the entire dwelling or otherwise bring the dwelling into compliance with the Housing Code by November 15, 2004. To date, the dwelling has not been brought into compliance with the Housing Code and neither has a housing certificate been issued.

After trying every possible approach to obtain the property owners' compliance with the Housing Code, such has failed. Meantime, the property owners continue to rent and receive rent for each of the unfit dwelling units, which is a violation of the City's Housing Code.

Staff recommends City Council adopt a resolution setting a public hearing on January 11, 2005, to consider an ordinance ordering the entire dwelling located at 1086 Hendersonville Road vacated and closed until brought into compliance with the City's Housing Code.

#### **RESOLUTION BOOK NO. 28 – PAGE 439**

##### **I. RESOLUTION AUTHORIZING THE CITY TO ENTER INTO AN AGREEMENT FOR THE REMOVAL OF CERTAIN SIGNS**

This item was removed from the Consent Agenda for individual discussion.

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.

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

#### **ITEM REMOVED FROM THE CONSENT AGENDA FOR INDIVIDUAL DISCUSSION**

##### **RESOLUTION NO. 04-258 - RESOLUTION AUTHORIZING THE CITY TO ENTER INTO AN AGREEMENT FOR THE REMOVAL OF CERTAIN SIGNS**

City Attorney Oast said that this is the consideration of an agreement for the removal of billboards.

For the last several years, the City has been involved in disputes with some of the businesses that own and operate billboards within the City. The disputes have centered primarily on whether certain billboards comply with the City's 1990 Sign Ordinance. These disputes have included numerous enforcement proceedings before the Board of Adjustment and Superior Court, and at least two appeals to the North Carolina Court of Appeals. Some of these cases are still pending before the Board of Adjustment. These matters were in addition to other litigation over the 1997 Ordinance that went to the Supreme Court.

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In connection with resolving these issues, we have been discussing with the sign companies the possibility of a "cap and replace" ordinance, that would essentially cap the total number of billboards in the City, but allow them to be relocated or replaced within certain zones, subject to certain limitations. While this has been done in other jurisdictions, the legal authority to enter into

such agreements in North Carolina was unclear.

This past summer, the N. C. General Assembly adopted N.C.G.S. 160A-199, which essentially took away a city's ability to amortize billboards over time by requiring payment of the fair market value of any sign whose removal was required. Even this method can result in delayed removal because the sign can remain in place while value is determined, and until the value determined is paid, which can take up to three years. Included in this law, however, were provisions authorizing a city and a billboard company to enter into removal and relocation agreements – essentially “cap and replace” by agreement.

In September, the Council adopted an ordinance providing for such agreements pursuant to the new law. Against this legal and factual background, the first such agreement has been proposed in an effort to resolve some outstanding enforcement issues. The sign companies involved are Fairway and Lamar, which own and operate most of the billboards in town.

The essential features of the proposed agreement are that the billboard companies will immediately remove 10 billboards, some of them in prominent “gateway” locations, and some of them having multiple faces, at their expense. The locations of these billboards are as follows: (1) Charlotte Street south of College Street; (2) Biltmore and Hilliard; (3) McDowell Street northbound exiting tunnel; (4) Patton Avenue and Coxe on a building; (5) Haywood Road and State Street; (6) Haywood Road and Virginia Avenue; (7) Haywood Road and Michigan Avenue; (8) 339 Lyman Street; (9) Riverside Drive at Amboy Road; and (10) Biltmore Village (8 faces). In consideration for their removal of these signs, the City agrees that, if an ordinance requiring amortization of billboards is adopted within the 10 year term of the agreement, the City will pay for the removed signs on a straight-line depreciation basis. The value assigned to these signs for depreciation purposes is computed based on annual income for the sign, which is one of the methods specified by the new law for determining value.

In addition to the 10 signs listed above, which will not be replaced, the agreement provides for the immediate removal of the sign at the entrance to Haw Creek, but that sign can be replaced pursuant to the ordinance adopted in September.

Pursuant to the agreement, Fairway will convey to the City the property on which the South Charlotte Street billboard is located. Also, the billboard companies agree to remove signs within the Urban Riverfront Plan area properties within those areas are developed in accordance with the Plan.

Considerations:

- Cities' ability to require removal of billboards is now severely limited, and what ability they do have has financial consequences, and possibly significant time delays.
- This is an offer – essentially free – by the sign companies to do something that we may not be able to require them to do without significant cost and delay.
- This will terminate contentious and lengthy administrative and judicial proceedings, and should limit future actions.
- All other billboards are still subject to the registration requirements of the new ordinance.

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- There will be a net decrease in the number of billboards in Asheville
- This sets a good precedent for future removals.

If Council approves of the agreement, adoption of a resolution authorizing the Mayor to enter into it on behalf of the City is recommended.

City Attorney Oast responded to various questions from Council regarding other outdoor advertising companies that are not part of this agreement and clarified the certain zones and certain limitations when/if the signs are replaced.

Vice-Mayor Mumpower moved for the adoption of Resolution No. 04-258. This motion was seconded by Councilwoman Bellamy and carried unanimously.

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**III. PUBLIC HEARINGS:**

**A. PUBLIC HEARINGS TO CONSIDER THE ANNEXATION OF THE RIDGEFIELD BUSINESS PARK AREA, THE ASCOT POINT VILLAGE AREA, THE LONG SHOALS ROAD AREA AND THE AIRPORT ROAD AREA**

Planning & Development Director Scott Shuford said that due to recent requests for voluntary annexation of two parcels and the possibility of adding additional properties to the annexation areas, staff recommends that Council cancel the scheduled public hearings and adopt the resolutions rescinding the original Resolutions of Intent to annex these four areas. Staff will re-initiate the process in the near future, enabling the effective date of annexation to remain the same as previously proposed for three of the four annexation areas.

Proposed effective date of annexations – June 30, 2005 (Ridgefield Business Park)  
December 31, 2005 (Ascot Point Village, Long Shoals Road, Airport Road)

City staff recommends City Council cancel the scheduled public hearings and adopt the resolutions rescinding the original Resolutions of Intent to annex these four areas.

**B. PUBLIC HEARING TO CONSIDER THE REZONING OF THREE LOTS LOCATED ON NEW LEICESTER HIGHWAY FROM RM-6 RESIDENTIAL MULTI-FAMILY LOW DENSITY DISTRICT (WITH A MANUFACTURED HOUSING OVERLAY AND A MANUFACTURED HOUSING COMMUNITY OVERLAY) AND RS-8 RESIDENTIAL SINGLE-FAMILY HIGH DENSITY DISTRICT TO COMMUNITY BUSINESS II DISTRICT**

**ORDINANCE NO. 3188 - ORDINANCE REZONING THREE LOTS LOCATED ON NEW LEICESTER HIGHWAY FROM RM-6 RESIDENTIAL MULTI-FAMILY LOW DENSITY DISTRICT (WITH A MANUFACTURED HOUSING OVERLAY AND A MANUFACTURED HOUSING COMMUNITY OVERLAY) AND RS-8 RESIDENTIAL SINGLE-FAMILY HIGH DENSITY DISTRICT TO COMMUNITY BUSINESS II DISTRICT**

Mayor Worley opened the public hearing at 5:30 p.m.

Urban Planner Julia Cogburn said that this is the consideration of an ordinance to rezone three lots on New Leicester Highway from RM-8 Residential Multi-Family Low Density District

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(with a Manufactured Housing Overlay and a Manufactured Housing Community Overlay) and RS-8 Residential Single-Family High Density District to Community Business II District. This public hearing was advertised on November 12 and 19, 2004.

The subject property is located within the City limits on New Leicester Highway, just south of its intersection with Eliada Home Road. Surrounding zoning is varied. Zoning on the west side of New Leicester Highway is CBII. The eastern side, where the subject property is located, is a mix of residential (RM-6 and RS-8) and commercial (HB) zoning. The Eliada Home property immediately to the west of the subject property is zoned Institutional.

Land uses in the area are likewise varied. Along New Leicester Highway the predominant land use in this area is commercial although there are single family homes located in the CBII District directly across New Leicester Highway from the subject property. Institutional uses (Eliada Home and Erwin Hills Baptist Church) lie to the south and east of the subject property. Recent developments in the area have predominately been of a commercial nature.

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The subject property includes two vacant wooded parcels. The largest property contains a manufactured home community consisting of approximately 30 units.

The CBII District is designed to provide areas for medium to high density business and service uses serving multiple residential neighborhoods along minor and major thoroughfare streets. This district allows for residential uses, however, manufactured homes are not allowed.

Pros:

- CBII, while providing commercial opportunities, limits the size and impacts of such commercial development on the surrounding area.
- New Leicester Highway is a major thoroughfare more conducive to commercial or office development than residential development.
- Rezoning is in keeping with the character and recent developments in the area.

Cons:

- Loss of the manufactured housing overlay on the largest parcel in this rezoning with potential loss of the manufactured housing community (and affordable housing) that will become nonconforming. These losses are reduced by the impact the widening of New Leicester Highway has already had on this community.
- Allows for the potential continued commercial strip development of New Leicester Highway.

Staff recommended approval of the rezoning request to the Planning and Zoning Commission. The commission considered the matter at its meeting on November 3, 2004, and unanimously (5-0) recommended approval.

Mayor Worley closed the public hearing at 5:34 p.m.

Councilwoman Bellamy expressed concern that the mobile home park can't expand and that special care and ample time be given to the tenants if they need to find suitable housing.

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

Vice-Mayor Mumpower moved for the adoption of Ordinance No. 3188. This motion was seconded by Councilman Davis and carried unanimously.

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### **C. PUBLIC HEARING TO CONSIDER REZONING THREE LOTS AT 2 GRANDVIEW PLACE FROM HIGHWAY BUSINESS DISTRICT AND RS-8 RESIDENTIAL SINGLE-FAMILY HIGH DENSITY DISTRICT TO COMMUNITY BUSINESS I DISTRICT**

#### **ORDINANCE NO. 3189 - ORDINANCE TO REZONE THREE LOTS AT 2 GRANDVIEW PLACE FROM HIGHWAY BUSINESS DISTRICT AND RS-8 RESIDENTIAL SINGLE-FAMILY HIGH DENSITY DISTRICT TO COMMUNITY BUSINESS I DISTRICT**

Mayor Worley opened the public hearing at 5:36 p.m.

Urban Planner Shannon Tuch said that this is the consideration of an ordinance to rezone three lots at 2 Grandview Place from Highway Business District and RS-8 Residential Single-Family High Density District to Community Business I District. This public hearing was advertised on November 12 and 19, 2004.

The subject properties are located within the City limits in the Oteen area, covering both corners of the junction between Grandview Place and Tunnel Road. The three separate parcels currently include a split-zoned (RS-8 Residential Single-Family High Density District/Highway Business) lot located on the southwestern corner of the T-intersection while across Grandview Place, on the opposite corner, is the commercially zoned Highway Business (HB) lot fronting Tunnel Road with a RS-8 Residential Single-Family High Density District (RS-8) zoned parcel directly behind.

The applicant (Nicholas Papanastasiou) has requested a rezoning from Highway Business/RS-8 Residential Single-Family High Density District to Community Business I District to allow for (1) the redevelopment and/or expansion of an existing non-residential use for a community based business, and (2) to render a non-conforming ancillary parking area to be conforming.

- The Community Business-I zoning district is established to provide areas for medium density business and service uses which may serve as a workplace for residents and should be sensitive to a significant pedestrian population. These business areas should be located primarily on streets that serve multiple residential neighborhoods.
- The RS-8 zoning district is designed to establish and promote a suitable and high density single-family district where public infrastructure is sufficient to support such development.
- The Highway Business district is established to address the needs of commercial development along major thoroughfares where automobile use is prevalent and a wide range of commercial uses is permitted. Due to the dominance of the automobile, a primary objective within this district is to preserve the traffic capacity of the thoroughfare.

The subject properties total approximately .95 acres and currently support one restaurant and its ancillary parking area in addition to the old American Legion Hall building and the vacant single family home behind it. Rezoning the lots would allow for



the redevelopment and/or expansion of community oriented commercial, office, or residential uses consistent with the CB-I development standards. A community oriented business in this location would primarily serve the Oteen neighborhood but could potentially extend to other neighborhoods such as, Parkway Forest, Beverly Hills, Haw Creek as well as any future development around the Veterans Administration Hospital.

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Pros

- Corrects a non-conforming use.
- Allows for the expansion or redevelopment of a community-based business that is more pedestrian oriented.
- Removes the existing split-zoning.

Cons

- Access to the rear of the split-zoned lot would be off of a residential road (Grandview Place).
- Without a Conditional Use Permit (CUP) there is no way to ensure the preservation of the existing structure(s).

At their November 3, 2004, meeting, the Planning and Zoning Commission reviewed the rezoning proposal and made a positive recommendation that the project be forwarded to the Asheville City Council. City staff concurs with the Planning and Zoning Commission and recommends approval of the zoning change (3 lots) from RS-8 and HB to CB-I.

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

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

Vice-Mayor Mumpower moved for the adoption of Ordinance No. 3189. This motion was seconded by Councilman Dunn and carried unanimously.

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**D. PUBLIC HEARING TO CONSIDER THE ISSUANCE OF A CONDITIONAL USE PERMIT FOR PROPERTY LOCATED A 59 TAMPA AVENUE FOR A PROPOSED DUPLEX IN AN RS-8 RESIDENTIAL SINGLE-FAMILY HIGH DENSITY DISTRICT**

**ORDINANCE NO. 3190 - ORDINANCE GRANTING A CONDITIONAL USE PERMIT FOR PROPERTY LOCATED AT 59 TAMPA AVENUE FOR A PROPOSED DUPLEX IN AN RS-8 RESIDENTIAL SINGLE-FAMILY HIGH DENSITY DISTRICT**

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

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

After hearing no questions about the procedure, Mayor Worley opened the public hearing at 5:43 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.

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Urban Planner Shannon Tuch 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. Tuch said that this is the consideration of the issuance of a conditional use permit for property located 59 Tampa Avenue for a proposed duplex in an RS-8 Residential Single-Family High Density District.

The Asheville City Development Plan 2025 (ACDP 2025) discusses typical reasons why properties within the City limits

remain vacant or underdeveloped. Of the problems listed, a very applicable challenge to this project is the high development costs involved for a relatively small return. The ACDP 2025 proposes a Smart Growth development pattern that accommodates realistic, market based alternatives to promote infill development of vacant property. One way to accomplish this goal is to apply existing zoning tools to encourage compatible, higher density residential infill development. Currently, the Unified Development Ordinance has several tools that can be exercised to allow duplexes in single family residential districts. The most appropriate tool in this case allows duplexes as "Conditional Uses" in the RS-8 zoning district and can be considered with respect to the conditions outlined in the Unified Development Ordinance and other conditions associated with the Conditional Use Permit. Staff's review of this project indicates that the proposed development does meet the technical standards described in Sec. 7-16-2(d)(5).

The applicant is requesting a Conditional Use Permit for a .54 acre lot to allow the new construction of a 2,480 s.f. duplex in a RS-8 (Residential Single Family, High Density) zoning district in the Lucerne Park neighborhood in west Asheville (Attachment to City Exhibit 3 – Location Map). The lot is an existing flag lot created in 2001 when subdivision standards allowed more than one flag lot to be created side by side off of an existing right-of-way. The duplex would occupy the last of the three lot subdivision where the other two lots are currently occupied by single family homes. The second lot, directly adjacent on the south side, is also included in this application because it was a more practical location for the required turn-a-round due to topography. Because of changes in the subdivision standards, the two subject lots are currently non-conforming by access. As a condition of final approval, the applicant would have to complete a lot recombination that would eliminate the flag lots and provide a right-of-way with a private drive to access the lots. All three structures would share the common driveway but provide parking separately.

The subject property is currently zoned RS-8 and is surrounded on all sides by other RS-8 zoned properties supporting single family and other non-residential uses including vacant properties, a church, recreation fields, and rail road right-of-way (Attachment to City Exhibit 3 – Aerial Map). The proposed structure will be oriented to capitalize on the open space view out towards existing ball fields and wooded area, with parking located to the rear of the units (Attachments to City Exhibit 3 – Revised Site Plan; Site Photos).

Currently, there are several tools for allowing duplexes in a single family zoning district. The particular circumstances of any proposal help determine the most appropriate tool to be applied. In respect to the unique conditions of this site, a Conditional Use Permit application was determined to be the most practical and flexible tool to be utilized. As part of the conditional use permit requirements, the project must meet several conditions for duplexes found in section 7-16-2(d)(5) of the Unified Development Ordinance:

- b. Duplexes must be located a minimum of 300 feet from all other multifamily uses (excluding dwellings with accessory apartments) on the same street in the single family district.  
***The property is located over 300 feet from all other multifamily uses.***
- c. Minimum lot area shall be 125 percent of that required for a single family residential unit in the respective district.  
***The existing lot is .54 acres, well above the minimum .14 acres required for a duplex in an RS-8 district.***
- d. Parking shall be located in the rear and screened with vegetation from adjacent single family uses.  
***Two 3-bedroom units will require a minimum of 4 parking spaces (maximum of 6) located in the rear where existing vegetation and topography will screen the parking from the properties fronting Ivanhoe Avenue, while additional vegetation will be planted to screen the proposed parking area from the newer adjacent single family home.***
- e. The structure shall have a single front entrance and other entrances as required (Attachment to City Exhibit 3 – Building Elevations).  
***The proposed duplex has a single front entrance with a secondary entrance at the rear.***
- f. Requirements of the N.C. State Building Code shall be met.  
***The proposed duplex will be new construction and will be built to meet building code requirements.***

The Technical Review Committee (TRC) reviewed this project at their November 15, 2004, meeting where it was unanimously agreed that the project be forwarded to the City Council with a recommendation of approval with conditions. Many of the TRC conditions have been met in a revised site plan and, if approved, will have to be reviewed again for final approval. Review by the Planning and Zoning Commission is not required for this use.

City Council must take formal action as set forth in section 7-9-9(c)(4) of the Unified Development Ordinance (UDO), and must find that all seven standards for approval of conditional uses are met based on the evidence and testimony received at the

public hearing or otherwise appearing in the record of this case (UDO 7-16-2(c)). Staff's review indicates that all seven 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.

***The proposed project has been reviewed by City staff and appears to meet all public health and safety related requirements. The project must meet the technical standards set forth in the UDO, the Standards and Specifications Manual, the North Carolina Building Code and other applicable laws and standards that protect the public health and safety.***

2. That the proposed use or development of the land is reasonably compatible with significant natural 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.

***Site preparation for the earlier 3 lot subdivision created a clear, buildable terrace for the proposed duplex. The applicant is proposing to place the structure in a way to minimize any additional site disturbance and preserve the existing vegetation remaining on site.***

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

***The subject properties were created from a remnant parcel that is tucked back behind the older homes of the Lucerne Park neighborhood. All three lots are located down below the backs of the homes fronting Ivanhoe Avenue where only the first lot containing a single family home is visible from the dead-end of Tampa Avenue. The other two lots are separated from the rest of the neighborhood, not only by access but also by topography and existing vegetation, serving to buffer the proposed development from the older neighborhood. In addition, the proposed duplex will be in character with the new construction located on the adjacent lot and is not expected to negatively impact the property values of the adjacent single family home or the older homes in the neighborhood.***

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

***As discussed in standard #3, the proposed duplex is separated somewhat from the majority of the Lucerne Park neighborhood. Nevertheless, the coverage of the 1240 square foot footprint is comparable to most homes in the neighborhood; while the two story bulk is in scale with many of the older homes in addition to the single family home directly adjacent to it. Density is also fairly typical of the larger neighborhood due to the size of the lot; and lastly, the character of the new construction will be in harmony with the character of the other two homes sharing the private drive.***

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

***The Asheville City Development Plan 2025 (ACDP 2025) discusses typical reasons why properties within the City limits remain vacant or underdeveloped. Of the problems listed, a very applicable challenge to this project is the high development costs involved for a relatively small return. The ACDP 2025 proposes a Smart Growth development pattern that accommodates realistic, market based alternatives to promote infill development of vacant property. One way to accomplish this goal is to apply existing zoning tools to encourage compatible, higher density residential infill development. Currently, the Unified Development Ordinance has several tools that can be exercised to allow duplexes in single family residential districts. The most appropriate tool in this case allows duplexes as "Conditional Uses" in the RS-8 zoning district and can be considered with respect to the conditions outlined in the Unified Development Ordinance and other conditions associated with the Conditional Use Permit. Staff's review of this project indicates that the proposed development does meet the technical standards described in Sec. 7-16-2(d)(5).***

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

***The proposed development is located near major thoroughfares and transportation facilities with the Route 1 bus***

**line running down Patton Ave. and Haywood Rd. Preliminary review by utility providers has not revealed any problems with serving the development and, as a condition of approval, emergency access to the property will be improved.**

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

**The amount of traffic generated by a duplex is nominally greater than that generated by a single family home. The proposed development will accommodate off-street parking and is not expected to cause undue traffic congestion or hazards.**

**Pros**

- Promotes infill development
- Provides additional housing in an established residential neighborhood
- Corrects a non-conformity

**Cons**

- Strict architectural compatibility with older neighborhood is not required

Staff concurs with the Technical Review recommendation of approval with the conditions outlined in the TRC report.

After rebuttal, Mayor Worley closed the public hearing at 5:52 p.m.

In order for the duplex to build in as much as possible, Councilwoman Bellamy asked to add two conditions: (1) that a porch be constructed over the rear entrance to reflect the character of the adjacent single-family home; and (2) that the developer add shutters to the windows where practical.

Councilwoman Bellamy moved for the adoption of Ordinance No. 3190, granting a conditional use permit for property located at 59 Tampa Avenue for a proposed duplex in an RS-8 Residential Single-Family High Density District, subject to (1) the conditions outlined by the Technical Review Committee; (2) that a porch be constructed over the rear entrance to reflect the character of the adjacent single-family home; and (3) that shutters be installed to the windows where appropriate. This motion was seconded by Vice-Mayor Mumpower and carried unanimously.

**ORDINANCE BOOK NO. 21 - PAGE**

**E. PUBLIC HEARING TO CONSIDER AN AMENDMENT TO THE UNIFIED DEVELOPMENT ORDINANCE TO ELIMINATE LEVEL III REVIEW OF INDUSTRIAL USES**

**ORDINANCE NO. 3191 - ORDINANCE TO AMEND THE UNIFIED DEVELOPMENT ORDINANCE TO ELIMINATE LEVEL III REVIEW OF INDUSTRIAL USES**

Mayor Worley opened the public hearing at 5:56 p.m.

Planning & Development Director Scott Shuford said that this is the consideration to amend the Unified Development Ordinance to eliminate Level III review of industrial uses. This public hearing was advertised on November 12 and 19, 2004.

This code amendment deletes the requirement for industrial developments to receive Level III review, thereby allowing them to be approved without public hearing by the Planning and Zoning Commission and City Council. The intent is to expedite the review and permitting of industrial developments consistent with Goal 2/Economic Development of the Strategic Operating

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Plan which states: Reform the permitting process to make it more conducive to do business in Asheville.

Large projects would still be heard by the Technical Review Committee (TRC); all existing buffering, landscaping and other site design requirements would apply to the projects. In addition, the change would apply only to properties already zoned for industrial uses; any needed zoning changes (for example, a change from Highway Business to Industrial) would still require Planning and Zoning Commission and City Council consideration.

Pros:

- Provides a tool to make Asheville more competitive in economic development
- Streamlines the development review process consistent with general Council direction

Con:

- Removes opportunities for the public to be heard on site design issues (although these projects will still receive TRC review)

On November 3, 2004, the Planning and Zoning Commission recommended approval of the proposed code amendment by a vote of 5-0. City staff recommends approval of the proposed code amendment as well.

Using a map, Mr. Shuford showed the amount of residential areas around industrial properties.

Mayor Worley closed the public hearing at 5:59 p.m.

Mr. Shuford responded to Councilwoman Jones about how the City finds out about various violations and what steps are taken to correct the violations.

Councilman Newman questioned what would happen if the proposed development triggered a lot of traffic. Mr. Shuford said that the standards do not change. If a Traffic Impact Analysis (TIA) is required, the developer will have to perform that TIA, turn it in and it will be subject to review by City staff. He noted that City staff cannot require more than what our codes require, however, regarding a TIA, if there are alternative ways of accomplishing the traffic mitigation that is required under the TIA, City staff does have the ability to select those alternatives. If the development did not meet City standards, City staff would be forced to deny the project. However, there is an appeal mechanism to the Planning & Zoning Commission and then ultimately to City Council. In addition, if the project is a desirable prospect and they can't meet the standards from an infrastructure standpoint, there would be the potential for an economic development incentive package and that would go through City Council for consideration.

Upon inquiry of Councilwoman Jones, Mr. Shuford said that there are avenues for individuals to give input/concerns to City staff. For example, a neighbor might call and state that after looking at the site plan a dumpster will be too close to their home. City staff can then bring that concern to the attention of the developer and suggest they look for an alternate location for that dumpster.

Upon inquiry of Councilman Davis, Mr. Shuford said that he was only aware of only one Level III review of this type in the past couple of years. Chances are City Council will be aware of any development of this type from an economic development incentive package.

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In response to Vice-Mayor Mumpower, Mr. Shuford said that roughly two months is saved by eliminating the Planning & Zoning Commission and City Council review of these types of projects.

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

Councilman Newman moved for the adoption of Ordinance No. 3191. This motion was seconded by Councilwoman Jones and carried unanimously.

**ORDINANCE BOOK NO. 21 – PAGE**

**F. PUBLIC HEARING TO CONSIDER AN ORDINANCE ESTABLISHING A STORMWATER SERVICES ENTERPRISE FUND AS A MECHANISM FOR FUNDING A COMPREHENSIVE STORMWATER PROGRAM**

**ORDINANCE NO. 3192 - ORDINANCE ESTABLISHING A STORMWATER SERVICES ENTERPRISE FUND AS A MECHANISM FOR FUNDING A COMPREHENSIVE STORMWATER PROGRAM**

Mayor Worley opened the public hearing at 6:20 p.m.

City Engineer Cathy Ball said that this is the consideration of an ordinance to establish a Stormwater Services Utility and Enterprise Fund as a mechanism for funding a comprehensive stormwater program for the City of Asheville. The public hearing was advertised on December 3 and 10, 2004.

Ms. Ball said that the methodology of the enterprise fund would be based on the amount of impervious surface that a parcel has. Staff is not asking that City Council adopt a budget at this time or a fee structure in association with this program. That will be done as part of the Fiscal Year 2006 budget process. She also pointed out that of the six communities in North Carolina that were a part of the EPA Phase I Program, all six of these communities have established an enterprise fund as a mechanism for obtaining revenue to pay for the program, in addition to three major cities in North Carolina that were part of the Phase II regulations. In the event that the enterprise fund is not approved, City staff will need to come back to City Council as part of the budget process with approximately \$1.3-1.5 Million request to pay for an unfunded mandate from the Environmental Protection Agency.

In November 2003 City Council authorized City staff to complete a study, to include establishment of a stakeholders group, to determine if a Stormwater Enterprise Fund is a feasible method for funding stormwater quantity and quality needs of the City.

The City must comply with Phase II of the Federal Clean Water Act, known as the Environmental Protection Agency's National Pollution Discharge Elimination System (NPDES) Permitting and Stormwater. In March 2003, City Council approved a plan to comply with the "Six Minimum Measures" of the regulations which are: (1) Public Education and Outreach; (2) Public Participation and Involvement in Implementing the Plan; (3) Detection and Elimination of Illicit Discharges; (4) Construction site Run-off Control; (5) Post-Construction Run-off Control, and (6) Pollution Prevention and Good Housekeeping by the Municipality.

The stakeholders group known as the Stormwater Advisory Committee (SAC) has served as an advisor to the City Manager since June 2004. McGill Associates has provided engineering expertise and served as a facilitator to the SAC.

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Pros:

- A dedicated funding source to address stormwater needs.
- Equitable fees based upon impervious service.
- Bigger users to pay the majority of the cost of the program.

Cons:

- A new fee to the community.
- Staff time to educate the public.

This recommendation meets the City's Strategic Goal in the focus area of Natural and Built Environment, Goal #1 - A high quality of air and water – Enhance and preserve air and water quality through comprehensive efforts. Objective D - Improve water quality by complying with EPQA Federal NPDES – Phase II Stormwater Rules. Task #2 - Adopt and implement a stormwater fee.

Again, the fees and expenditures for the program will be established during the budget process. A public meeting will be held as part of the budget process to obtain input at that time.

City staff recommends City Council adopt an ordinance establishing a Stormwater Services Utility Enterprise Fund as a mechanism for funding a comprehensive stormwater program for the City of Asheville.

Mr. Joel Storrow, McGill Associates President, explained the federal and state mandate: (1) under EPA's Phase II Rules, Asheville must develop, implement and enforce a stormwater management program; (2) the program must reduce the discharge of pollutants to the "maximum extent practicable" to protect water quality; (3) the program must address 6 minimum control measures: (a) public education and outreach; (b) public participation/involvement; (c) illicit discharge detection and elimination; (d) construction site runoff control; (e) post-construction runoff control; and (f) pollution prevention/good housekeeping; (4) Asheville must select "Best Management Practices" (BMP) and measurable goals for each minimum measure; and (5) This program must be approved by the State.

He explained that the Stormwater Advisory Committee (SAC) was established to advise the City Manager on matters related to the Phase II stormwater requirements. The SAC comprised of 19 local citizens serving as a broad cross section of stakeholders. The established objective of the SAC is to: "Assist the City in implementation of a compliant stormwater program that serves the best interests of the community."

He said that key elements of the proposed stormwater program consist of the Engineering Department being responsible for (1) public education about stormwater; (2) program administration and planning; and (3) regulation of stormwater releases. The Public Works Department would be responsible for (1) system operation and maintenance; and (2) rehabilitation of infrastructure.

Regarding allocation of future program costs, (1) the annual stormwater program costs would increase to \$2.5 Million from the current \$800,000 budget; ((2) the projected costs are considered minimum for (1) compliance with the federal and state mandate; (2) public education; (3) capital planning; (4) maintenance of the current system; and (5) development of new infrastructure and major repairs to existing facilities. The SAC recommends establishing an Enterprise Fund to pay for the Stormwater Program.

Their decision is not whether there will be a stormwater program, but what will the scope of the program be and how to pay for it. There are two options for funding the program: The General Fund and an Enterprise Fund.

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Regarding the Enterprise Fund, the fundamental concept is that the properties that contribute pay in proportion to their contribution. This is accomplished by calculating the magnitude of impervious surface for each contributor. This system recognizes the contribution of contributors such as UNC-Asheville, hospitals, state government, federal institutions and others that pay no property taxes. This eases the burden on residences and businesses. There is a direct relationship between stormwater contributions and payments.

Mr. Storrow reviewed with Council the SAC's recommendations: (1) They recommend that the existing stormwater program be expanded to meet the regulatory mandate to protect and preserve water quality and educate the public; (2) They recommend that the stormwater program be expanded to provide capital necessary to operate and maintain the system and provide for future needs; (3) They recommend funding the stormwater program with a newly created self-sustaining Enterprise Fund; (4) They suggest tiering residential billing categories to promote affordability; and (5) They recommend developing a credited system that encourages users to improve water quality.

Ms. Ball explained the difference between SAC's recommended \$2.5 Million budget to staff's \$1.3 Million budget. She explained that staff developed a chart for a five-year program of the costs to implement the Phase II regulations, resulting in the \$1.3 Million budget. She said the City must address the six minimum measures (a) public education and outreach; (b) public participation/involvement; (c) illicit discharge detection and elimination; (d) construction site runoff control; (e) post-construction runoff control; and (f) pollution prevention/good housekeeping. One of the most expensive measures is the illicit discharge detection and elimination. We must have a system set up to find any illegal connections to the storm drain system. We have to have a mapping system set up that will enable us to find out if we have an illegal connection and who is contributing that illegal discharge. We have to have a system set up with ordinances and fines to get people to alter their systems and their plumbing so that they go into the correct places. That requires staff, maintaining a mapping system, and having an ordinance in place fining people who do not comply. The proposed ordinance that we have in place meets all the requirements of Phase II. The post-construction runoff control, which is probably the heaviest on development, but it requires a whole new development review on our part. All development that disturbs any land size of an acre or greater has to put in measures that reduce water quality damages into the streams or off of their property. She showed a 5-year chart showing that the majority of funding comes in the third measure of illicit discharge detection and elimination. What staff had hoped to do was to be able to bring forth a fee during the review that wouldn't have to be changed every year. This is a bare minimum program that in the fifth year is about \$1.3 Million. The \$1.3 Million is what we have to do to comply with this mandate.

When staff presented the \$1.3 Million budget to the SAC, there were members who felt strongly that the City needed to have a stronger program, to address the needs that the City has, than just the minimum amount of the \$1.3 Million. At the last SAC meeting, there was a unanimous decision by the SAC, to recommend putting in an addition \$300,000 into the educational component of this Program.

Again, staff is asking for Council to approve an ordinance that would allow for an enterprise fund to be established, fees to be charged based on the amount of impervious surface of a piece of property; and to also allow for a crediting mechanism, a tiering program for single-family residential units, and an appeal process.

Mr. Fred English was concerned that City Council is allowing large developments and the City taxpayers will have to pay for their stormwater runoff. Councilman Newman explained that everyone will pay based on the amount of impervious surface that a parcel has, including non-profits that don't pay any property taxes.

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Mr. Bill Fishburne felt that if we put this user fee on non-profits and churches, the City may be forcing small churches out of business.

Mayor Worley closed the public hearing at 6:35 p.m.

Upon inquiry of Councilman Dunn, Ms. Ball said that the majority of sidewalks are located within the City's right-of-way and the property owners will not be responsible for paying for the sidewalks impervious surface.

Even though at this stage Council is not discussing a fee structure, Vice-Mayor Mumpower asked what the guesstimate would be for an average residence in Asheville. Ms. Ball said that with a \$2.5 Million annual budget, a residential fee is approximated to be \$2.50 per month. She noted that if Council wishes to a lesser annual budget, then staff is willing to move forward to prepare a budget that reflects what Council wants.

Vice-Mayor Mumpower said that a personal concern is that we should step in uncharted waters slowly and accelerate as we get a sense of the depth of what we are getting into. Everyone will have to step up to the plate because the federal government said we must do this. We will be adding another fee to people who have a lot of other bills to contend with. He felt it makes more sense to go slowly and then after people have had a chance to get a sense of what this is all about and the impact on their lives and their budgets, then to increase a bit if the community will is there and it's the appropriate thing to do. He hoped that staff starts at the minimum and then possibly we can work our way up as the community sees best.

Throughout the discussion, Ms. Ball responded to various questions and comments from Council, some being, but are not limited to: is it anticipated that the regulations will become stricter after the 5-year permit expires; what does the SAC want to educate the public about and how; how do the current stormwater problems impact the street network structure; and what kind of charges will the developer incur to renew their credit applications.

Councilman Newman was looking forward to being presented with different options and what we will get at different levels for different amounts. He was also interested in learning more about the ideas envisioned by SAC of the educational component. He noted that if the development community is the key group we are trying to reach, then perhaps we can do a more targeted education program designed to just reach that group.

Upon inquiry of Councilman Newman, Ms. Ball said that regarding the educational component, we are working with the Land-of-Sky Regional Council, as well as NC State Extension Agency, to try to develop a regional program that just doesn't reach Asheville, but reaches the region as a whole.

In response to Councilman Davis about the credit component, Ms. Ball said that companies/properties can apply for a stormwater utility fee credit for actions that go above and beyond the minimum requirements. The credit must be renewed every year to make sure their system is being maintained. Mayor Worley suggested a sentence in the "credit" section in the ordinance be amended to read "Credits expire at the end of one year from the date of award and may be renewed by the submittal of a renewal application."

Vice-Mayor Mumpower asked if there are any other incentives for the properties to either comply or go beyond the minimum requirements. Using a chart, Ms. Ball responded that some cities have elected to go higher than the 50% credit of the stormwater utility fee, however, she felt that to go any higher would put the burden of paying the fee back on the residential customers. She explained how she felt that 50% is reasonable and attainable. After a brief discussion, Ms.

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Ball was not opposed to Council raising the credit to 60% for those properties who go beyond the minimum requirements.

Mayor Worley felt that this utility will allow us to collect a fee from anyone who generates stormwater runoff and lessens the impact on our property taxpayers. In terms of what kind of a fee we ultimately come up with, he would support the minimum fee as we work our way into this program.

Councilman Newman felt it was fair for everyone who creates impervious surfaces to contribute to the solution for cleaning up our water. He felt that SAC's recommendations will make a positive influence on water quality in Asheville.

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. 3192, with the following sentence amendments to Section (e) (2): "Credits expire at the end of one year from the date of award and may be renewed by the submittal of a renewal application. In no case shall credits exceed sixty percent (60%) of the stormwater utility fee." This motion was seconded by Vice-Mayor Mumpower and carried unanimously.



**ORDINANCE BOOK NO. 21 - PAGE**

At 7:22 p.m., Mayor Worley announced a short break.

**IV. UNFINISHED BUSINESS:**

**V. NEW BUSINESS:**

**A. ANNEXATIONS:**

**RESOLUTION NO. 04-259 - RESOLUTION RESCINDING THE RESOLUTION OF INTENT TO ANNEX THE RIDGEFIELD BUSINESS PARK AREA, AND CANCELING THE ANNEXATION PUBLIC HEARING FOR SAID AREA**

**RESOLUTION NO. 04-260 - RESOLUTION RESCINDING THE RESOLUTION OF INTENT TO ANNEX THE ASCOT POINT VILLAGE AREA, AND CANCELING THE ANNEXATION PUBLIC HEARING FOR SAID AREA**

**RESOLUTION NO. 04-261 - RESOLUTION RESCINDING THE RESOLUTION OF INTENT TO ANNEX THE LONG SHOALS ROAD AREA, AND CANCELING THE ANNEXATION PUBLIC HEARING FOR SAID AREA**

**RESOLUTION NO. 04-262 - RESOLUTION RESCINDING THE RESOLUTION OF INTENT TO ANNEX THE AIRPORT ROAD AREA, AND CANCELING THE ANNEXATION PUBLIC HEARING FOR SAID AREA**

Planning & Development Director Scott Shuford said that due to recent requests for voluntary annexation of two parcels and the possibility of adding additional properties to the annexation areas, staff recommends that Council cancel the scheduled public hearings and adopt the resolutions rescinding the original Resolutions of Intent to annex these four areas. Staff will re-initiate the process in the near future, enabling the effective date of annexation to remain the same as previously proposed for three of the four annexation areas.

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Proposed effective date of annexations – June 30, 2005 (Ridgefield Business Park)  
December 31, 2005 (Ascot Point Village, Long Shoals Road, Airport Road)

City staff recommends City Council cancel the scheduled public hearings and adopt the resolutions rescinding the original Resolutions of Intent to annex these four areas.

Mayor Worley said that members of Council have been previously furnished with copies of the resolutions and they would not be read.

Councilwoman Jones moved for the adoption of Resolution No. 04-259. This motion was seconded by Councilwoman Bellamy and carried unanimously.

**RESOLUTION BOOK NO. 28 – PAGE 443**

Councilwoman Bellamy moved for the adoption of Resolution No. 04-260. This motion was seconded by Councilman Davis and carried unanimously.

**RESOLUTION BOOK NO. 28 – PAGE 444**

Councilwoman Jones moved for the adoption of Resolution No. 04-261. This motion was seconded by Councilman Dunn and carried unanimously.

**RESOLUTION BOOK NO. 28 – PAGE 445**

Councilwoman Bellamy moved for the adoption of Resolution No. 04-262. This motion was seconded by Councilman Davis and carried unanimously.

**RESOLUTION BOOK NO. 28 – PAGE 446**

**B. HAYWOOD STREET PARKING GARAGE IN THE BATTERY PARK AREA**

**RESOLUTION NO. 04-263 - RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE AN AMENDMENT TO THE CONTRACT WITH CARL WALKER FOR DESIGN OF THE HAYWOOD STREET PARKING GARAGE IN THE BATTERY PARK AREA**

**RESOLUTION NO. 04-264 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A CONTRACT WITH HANSCOMB, FAITHFUL AND GOULD FOR PROJECT MANAGEMENT SERVICES FOR THE HAYWOOD STREET PARKING GARAGE IN THE BATTERY PARK AREA**

**ORDINANCE NO. 3193 - BUDGET AMENDMENT FOR THE HAYWOOD STREET PARKING GARAGE IN THE BATTERY PARK AREA**

City Engineer Cathy Ball said that this is the consideration of (1) a resolution authorizing the City Manager to amend the contract with Carl Walker, Inc., to include an additional \$187,000 for the revisions to the design/development drawings and the construction documents for the Haywood Street Parking Garage; (2) a resolution authorizing the City Manager to sign a contract with Hanscomb, Faithful and Gould, in the amount not to exceed \$300,000, for project management services for the Haywood Street Parking Garage; and (3) a budget amendment in the amount of \$9,000,000 (from \$11.9 Million to \$20.8 Million) for the Haywood Street Parking Garage.

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Contract Amendment for Design and Development Plans:

In 2000, the City of Asheville went through a formal process to select Carl Walker, Inc. to design the Haywood Street Parking Garage in the Battery Park area. The original contract was for a parking structure on the existing surface lot of the BellSouth lot. The original cost of the project was \$510,000. Since that time several changes have been made in the scope of the work. These changes include:

- The location of the site has moved, causing the design cost of the project to increase because of the geometry of the site; and,
- The Engineering fees of the Consultant have gone up annually since 2000;
- The Consultant was requested to complete design/development drawings for the private development component of the project.

All of the additional costs for the contract amendment will be recovered with bond proceeds. This amendment brings the total cost of the project to \$901,113.00. This change was approved by Council in February 2003.

The increase in costs associated with this amendment includes the following:

- Eliminating the lowest level of the parking garage and designing an additional level of parking to increase the height of the deck in order to retain approximately the same number of parking spaces in the deck. This change will reduce the cost of the construction of the parking garage significantly. (Approximately \$1.5 Million)
- Redesign the roundabout on Haywood Street to reduce the need for BellSouth to relocate their service lines. This change will result in a cost reduction of \$500,000 due to the elimination of the need to relocate BellSouth Utilities in this location.

This request would bring the total contract cost for the design of the project to \$1,088,113, which is approximately 9% of the total construction costs. Typical design costs for a project of this nature is 6 to 10% of the total construction costs.

Money for this increase is in the requested budget amendment included as an item on this agenda.

Considerations:

- The design costs would increase by \$187,000.
- The overall construction cost would decrease by \$1,700,000.
- The number of parking spaces would remain at approximately 650.

Contract for Project Management:

In 2003, staff requested proposals from qualified firms to perform project management services for the development of construction documents, costs estimates and construction oversight for the Haywood Street Parking Garage in the Battery Park area. Staff reviewed the proposals and determined that Hanscomb, Faithful and Gould was the most qualified firm.

The role for project management as an independent service is a key element to reducing overall cost while receiving a good quality structure. Hanscomb, Faithful and Gould would work directly for the City of Asheville and represent the best interest of the City. We currently have them on retainer on an hourly basis. They have already played a crucial role in reducing the costs of the project.

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All of the additional costs for the contract amendment will be recovered with bond proceeds. Money for this increase is in the requested budget amendment included as an item on this agenda.

Considerations:

- a. The project costs would increase by \$300,000.
- b. This cost could be offset by the savings recommend but the project manager because of their expertise.

Budget Amendment:

In the Capital Improvement Budget for Fiscal Year 1999-2000 \$11.9 Million was appropriated for the construction of a parking garage in the Battery Park area. Since that time there have been several changes in the scope of work of the project. During the course of this project, staff has met with Council Members several times to inform them of some of the significant changes in the project. These changes are outlined below:

#	Description	Increase	Decrease	Total (M)
1.	Location of parking garage changed from Bell-South Lot to behind the Battery Park Apartments – This increase was in construction costs due to the change in shape of the structure (rectangle to L-Shape) (2000)	\$500,000		\$12.3
2.	Number of parking spaces increased from 400 spaces to 650 spaces. The Citizen-Times originally agreed to participate in the garage. This increase is offset somewhat by the private-development component of the project. (2002)	\$3,000,000		\$15.3
3.	Building the site below ground due to height restrictions imposed by Battery Park Apartments. (See Item 6) (2003)	\$1,500,000		\$16.8
4.	Increase in Bell-South Utility costs to relocate major trunk lines. (See Item 6) (2003)	\$500,000		\$17.3
5.	Increase in design costs to include private development component of the project. (2003)	\$391,113		\$17.7
6.	Increase in design costs to reduce the cost of constructing the parking garage underground and revising the roundabout. (Decrease in construction costs.) (2004)	\$187,000	\$2,000,000	\$15.9
7.	Contract with Project Manager (2004)	\$350,000		\$16.3
8.	Increase in construction costs since 1999	\$2,600,000		\$18.9
9.	Huge increase in the cost of steel. (2004)	\$1,800,000		<b>\$20.8</b>

Some of this cost can be offset by the development of the private development component of the project. This money cannot be specified until the City enters into an agreement for the private development component of the project. Therefore, the City must pay these costs upfront.

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Staff recommends that the number of parking spaces remain at 650 to allow for some growth in monthly parking spaces, an increase in hourly parking spaces and the opportunity to provide parking for the private development adjacent to the parking garage.

Considerations:

- The project costs would increase by \$9,000,000 some of which can be offset by the development of the private development component of the project.
- Eliminating parking spaces from the garage will not proportionally reduce the cost of the garage.

These actions will meet City Council's Strategic Plan in the focus area of "Sense of Place, Heritage and Arts. Goal #3: Downtown Development with improved gateways/corridors - Support and advocate for initiatives to encourage new downtown development including gateway/corridor improvements. Objective 2. Enhance and encourage new downtown development by establishing funding strategies to partner with or make downtown more attractive to private developers. Task: (1) Construct infrastructure including parking, shuttle/trolley service, sidewalks, streetscapes, and bicycle facilities to accommodate growth downtown.

City staff requests that City Council authorize the City Manager to amend the contract with Carl Walker, Inc. to include an additional \$187,000 for the design of the Haywood Street Parking Garage in the Battery Park area; and, to sign a contract with Hanscomb, Faithful and Gould, in the amount not to exceed \$300,000, for project management services for the Haywood Street Parking Garage. City staff also requests City Council approve a budget amendment in the amount of \$9,000,000 for the Haywood Street Parking Garage.

Using a spreadsheet, Finance Director Bill Schaefer reviewed with Council the funding strategy on how the new parking deck would be funded. He assumed the amount to be financed will be \$16.3 Million (\$20 Million project total less \$3.7 Million already paid for). He also assumed that half the amount will be tax exempt (at 5% for 20 years) and the other half taxable (at 8% for 20 years). He included projected revenues from the new deck beginning in the second year at \$250,000 (slightly more than only half what the Civic Center deck produces today) and has increased the revenue in years three and beyond to \$350,000 per year. In summary, there will be a deficit of \$79,500 in the first year; a surplus of \$170,500 in the second year (after revenues from the deck kick in) that will be needed to reduce the deficit in the third year; and a surplus of \$360,093 beginning in year four and continuing annually through year 20. An additional source of revenue for Council's consideration in making up the slight deficits in years one and three would be an increase of \$10.00 per month for all three existing decks. That would bring in an additional \$78,000 per year, which would almost exactly match the anticipated deficits.

Vice-Mayor Mumpower noted that the spreadsheet used by Mr. Schaefer showed a total project budget of \$20 Million, not \$20.8 Million (resulting in the interest on the \$800,000 being roughly \$52,000 a year). Mr. Schaefer apologized for the error and still felt that the \$800,000 would not be a problem at all because it would be made up over 20 years. He also explained a different formula to where the \$800,000 would not be a problem.

Upon inquiry of Councilman Newman, Mr. Schaefer explained that the parking enterprise fund generates about \$920,000 a year profit (from on-street parking, citations, fines, decks and surface lots), after all personnel costs, maintenance costs, debt service, depreciation, etc., is taken out. As soon as the other decks get paid off, in year four and beyond, that money becomes available for debt service or whatever Council chooses to use it for. Looking at operations similar to what we have today, the system will generate more than it needs to sustain its operations, and still be good stewards of the properties we are responsible for.

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Councilman Newman understands that the existing policy of the City of Asheville is to put all of the money from street parking and parking tickets into construction of additional parking garages. However, he questioned the wisdom of continuing that policy indefinitely into the future. He felt that Council should revisit the policy for the parking enterprise fund and use some percentage of the excess revenue (which would require a General Fund subsidy until year four), for other purposes, e.g., streets, sidewalks, greenways, additional police officers or community transit.

Vice-Mayor felt that the figures Mr. Schaefer presented puts the burden of paying for the parking garage on the customers and businesses downtown, unlike in the past where the average taxpayer had to subsidize the parking garages.

Mr. Schaefer noted that he didn't even include in his spreadsheet figures the sale of the outparcels, which may be as much as \$4-5 Million.

Upon inquiry of Councilwoman Jones, Ms. Ball said that out of the already expended \$3.7 Million, approximately \$2.5 Million was for land. The rest was for design costs, real estate fees, miscellaneous fees, etc.

The following individuals spoke in support of the construction of the Haywood Street Parking Deck for various reasons, some being, but are not limited to: parking is crucial to the Grove Arcade merchants and all the merchants in that area; there is no more monthly parking available in the existing three parking decks and there is a 300+ waiting list; an agreement that the Grove Arcade entered into with the City in 1997 says that if the parking study recommends that construction of a deck in this area is needed that the City will agree to undertake the construction of this facility; financially the City will be able to construct the deck; any area in the City has redevelopment costs and that should be remembered when talking about the cost per parking space; the inflation factor will help pay for the parking deck; Asheville has a good bond rating; need to act now and not let interest rates continue to rise; merchants in the Grove Arcade are counting on the additional traffic resulting from the parking garage; Grove Arcade merchants employ 150-200 employees which need parking; survey of Grove Arcade merchants shows that their need is 351 parking spaces, however, they encourage the garage contain 650 parking spaces for the future growth; special events at the Civic Center will require additional parking; one reason why Progress Energy invested in the Grove Arcade in 1999 was based on the City's commitment to build a parking deck; building the 650 parking space garage will let downtown Asheville grow; need to educate local people that there is parking available; tourists do not want to have to park at metered spaces because they constantly worry about getting a parking ticket and therefore do not browse downtown Asheville and spend dollars; location of deck is good because it is right off of I-240; additional signage is necessary for existing parking garages; in addition to parking deck there is a need for alternative means of transportation – loop bus system around the City, especially where the clubs are located; significant events will be happening in Asheville that will support the additional parking garage, one being the new Chamber of Commerce Building; this land resource needs to be utilized for it's best use for the next 100 years; and the parking deck will be regional resource:

Mr. W. Louis Bissette, Jr., former Mayor of Asheville, Chairman of the Grove Arcade Public Market Foundation

Mr. Russell Martin, former Mayor of Asheville, Vice-Chairman of the Grove Arcade Public Market Foundation

Mr. C. Jerome Jones, incoming Chairman of the Grove Arcade Public Market Foundation

Ms. Ruth Summers, Executive Director of the Grove Arcade Public Market Foundation

Ms. Nancy Thompson, representing Progress Energy, Board Member of the Grove Arcade Public Market Foundation

Mr. George Morosani, Board Member of the Grove Arcade Public Market Foundation

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Owner of Anthony's Caribbean Café in the Grove Arcade, Board Member of the Grove Arcade Public Market Foundation, President of the Grove Arcade Merchant's Association, Bele Chere Board Member

Mr. Chuck Riley, immediate past Chairman of the Grove Arcade Public Market Foundation

Ms. Donna Eagle, merchant at the Grove Arcade (Warren Wilson store)

Ms. Claudia Nix, representing Liberty Bicycles, facilitator for the Bike Pedestrian Task Force, former member of the Asheville Transit Commission

Owner of Kamm's Frozen Custard in the Grove Arcade

Ms. Laura Copeland, incoming Board Member of the Grove Arcade Public Market Foundation, staff member of the Asheville Area Chamber of Commerce

Mr. Ron Ainspan, Board Member of the Grove Arcade Public Market Foundation

Mr. Michael Ford, merchant at the Grove Arcade

Mr. Chuck Tessier

The following individuals spoke in opposition of the City constructing the Haywood Street Parking Deck for various reasons, some being, but are not limited to: parking is only one tool for transportation and funds should be spent for other transportation modes that support students and low-income families; money should be used to improve Asheville as a whole creatively; \$20.8 Million is too big of an investment; public transit system should be improved; if a new deck is built, improved transit services will fall through the cracks; existing bus service should have a higher frequency and later hours; there has been no public oversight of this parking garage project; need for a Parking Commission; parking is needed, however, not at such a large \$21 Million facility; if the large deck is built, and it will take up less space for building businesses and housing:

Mr. Yuri Koslen

Ms. Karen Austin, member of the Western North Carolina Alliance, member of the

Asheville Transit Commission

Mr. Andrew Goldberg, member of the Asheville Transit Commission

Mr. Bryan Freeborn, member of the Asheville Transit Commission, (not speaking on behalf of the Commission)

Ms. Sarah Uminski, Executive Director of the Affordable Housing Coalition, urged Council to require the inclusion of an affordable housing component in any residential development at the Haywood Street/Battery Park area.

Discussion surrounded as Ms. Ball and Mr. Schaefer responded to various questions, many financial, from Council, some being, but are not limited to: why is only half of the amount going to be tax exempt; when was the last time any General Fund money went into the parking enterprise fund; is it true to say that one parking deck lays the groundwork financially for another parking deck to be built without using General Fund monies; if we defaulted on the loan, would the worse case scenario be that we lose the parking facility itself; how many existing private parking decks are there in downtown Asheville and can they expand; what is the currently monthly parking rates in the existing three parking garages; has the St. Lawrence Basilica church reviewed the façade of the parking deck; what is the cost of a parking space in the new deck; is the cost of the façade included in the cost per space; will there be any financial partnership with the downtown businesses or property owners; what percentage of days in the last couple of years have the existing parking garages been full; approximately how long will it take for the new parking deck to be full; if we require a developer to incorporate an affordable housing aspect on the outparcel, should we require it in our own developments; are the St. Lawrence Basilica church or the Battery Park Apartments concerned with the scale of the project; what are some cost reduction items, e.g., removing one story of the parking garage; what would be the cost of the project if one story of the parking were removed or a retail component in the garage were constructed on the Haywood Street side; what is the estimate of locals vs. tourists using the

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existing parking garages; and do we know the percentage of residents who commute downtown to work.

Councilman Newman supported a parking facility on this site; however, he expressed concerns regarding the total cost, the scale and how it will affect the area around it, especially since when the parking study was performed, one of the things it anticipated was the renovation of the Civic Center (which has not happened yet).

Councilman Newman asked about the development agreement that the City has with the Grove Park Inn on Site B (next to the City Hall Building) for a 200 space parking garage. If that development goes forward, then in the near future the City will be looking at the need to also finance those additional parking spaces, as part of that development. Ms. Ball said that it's her understanding that the City owns the land for Site B and in exchange for the land, the City expects to get 200 parking spaces. There has been an appraisal of the land and it equals the amount of parking spaces the City will need. City Attorney Oast noted that the details have not been worked out yet.

Councilman Newman requested additional information about the role the Grove Arcade Public Market Foundation (GAPMF) is to pay regarding financing the parking garage on this site. City Attorney Oast said that the agreement states: "If the City determines within five years from the date of the agreement to undertake construction of a parking facility within the area shown on the map attached" (which includes the area we are talking about), "GAPMF will pay 50% of any operating deficit of said facility, including debt service on any bond issue; provided, that GAPMF's obligation to pay said 50% shall be limited to the fraction of such costs that is derived by dividing 300 by the total number of spaces in the new parking facility." It is not a binding obligation for the City to build the deck, but a promise by the Grove Arcade Public Market Foundation to assist us financially if we do build the deck. Mr. Schaefer noted that there is no obligation to help at all with the financing of the building of the deck – it's only if there is a very significant deficit in the operation of the deck and he doesn't anticipate that. The Grove Arcade will not be pitching in for construction and he would not expect ever to see them pitching in for operation either.

Councilman Newman felt the City should revisit the different policies regarding the parking fund enterprise. Not long ago we were concerned about getting people to park in the garages instead of on the street and we started the first hour free parking in the decks. That has been a real success. Now that our decks are starting to fill up, we haven't modified our policies that were put in place to address the under-utilization problem. Transit Services Director Bruce Black said that if we construct the parking garage we may need to leave the one hour free parking in place for a period of time. He said that the fee structure has to be based against the metered times. When the metered times becomes less expensive than our deck time, then you start getting the opposite flow and there is no incentive to park in the decks.

Mr. Black responded to various questions surrounding Councilman Newman's statement that most of our buses are underutilized at the time. Councilman Newman felt that we need to create incentives so that more people use transit as a commuter tool.

Planning & Development Director Scott Shuford responded to Councilman Newman when he expressed concern that the Haywood Street side of the parking garage will create dead space.

Councilman Newman expressed concern that the present design of the project and the site constraints doesn't leave a lot of property in the outparcels for an affordable housing portion. Mr. Shuford replied that if Council goes with a different scale element and perhaps a taller structure, we might have the opportunity for some mixed income housing in the project.

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Upon inquiry of Vice-Mayor Mumpower, the City acquired the outparcels primarily to (1) maintain an infrastructure to move vehicles around – relocating Page Avenue; and (2) the need for a staging and storage area.

In response to Vice-Mayor Mumpower regarding the outparcels, Ms. Ball said that if we put a Request for Proposals out and we include the elements that Council feels are very important we will have people who will want to respond to that. In a lot of cities, the city may donate the land, discount the land, or do different things in order to get the type development they want. The value of the outparcels as appraised, because it will be site-ready plus adjacent parking, makes it extremely valuable. She estimated the land would be about \$1.5-2 Million and the rest of the \$4-5 Million would be in parking spaces.

In response to Vice-Mayor Mumpower, City Attorney Oast said that there has been no violation of the Open Meetings Law regarding the City's purchase of the land.

Mayor Worley said that members of Council have been previously furnished with copies of the resolutions and ordinance and they would not be read.

Councilman Dunn moved for the adoption of Resolution No. 04-263. This motion was seconded by Councilman Davis.

Councilman Dunn felt that if we want economic development and want people to live, work and shop downtown, then we need parking. Other areas, for example the Asheville Mall, have ample parking and the downtown should have adequate parking as well. He felt other modes of transit are important, but cars are our main source of transportation.

Councilman Davis felt that the City has too much committed to not build a parking garage and Mr. Schaefer has provided the figures to show that it can happen.

Councilman Newman again realized the need for an additional parking facility in this area and the need to move forward. However, he asked Council take a little more time to get this project the way that the community would like to see it. He felt we can get more good out of the project than we have with the current design. He suggested asking staff to sit down with the engineers for a short, reasonable period of time and look at the current design to see if there are some ways to modify the engineering plans already developed, in a way that will reduce the price tag of the total project and hopefully to include some additional opportunities for private sector development, including some moderately priced residential development. He felt we should also not continue our policy of investing 100% of our parking fund enterprise dollars into building more parking garages. That does not reflect the priorities of our community. In addition, he asked staff to work in the coming months to bring Council some ideas on how to make transit more an effective tool for people who want to work downtown. Our current fee structure needs to be modified so that people who use the facility should pay a little more to build the facility.

Vice-Mayor Mumpower said that parking is an economic engine that creates other revenue that can be filtered out to other transportation improvements. He does have concerns on the cost and size of the garage; however, he feels the City should uphold its commitment in the agreement it signed with the Grove Arcade Public Market Foundation.

Councilwoman Jones would support the two contracts, but was concerned about the \$9 Million budget amendment increase. She is hopeful that staff will express Council's concerns to Carl Walker and to Hanscomb, Faithful and Gould, especially in terms of affordable housing. She feels the parking garage is the other part of the Grove Arcade's future. She was glad that the numbers work, however \$9 Million is a lot to finance. She felt we could have a smaller parking lot by reducing one level and make it more reasonable to finance. She felt it was important to note

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that the City has already made an investment in the Grove Arcade. We have invested \$2.5 Million in the public market and \$200,000 for streets and sidewalks. We want to continue being supportive of the Grove Arcade and other people involved in tourism need to come to the table as well.

Councilwoman Bellamy felt there are some policies Council needs to discuss on the issues of transit and where we want to go, including affordable housing on city property. We do need to look at these issues holistically. We need to be making policy decisions from a long-term standpoint. If we had the entire budget before us, we could see how it would impact us in the future.

Upon inquiry of Councilwoman Bellamy, Ms. Ball said that she is looking to Council to tell her what they want to see happen with the project. She said that she is open to go back and talk with the design engineers about west side and the north side. She did think the project needed to move forward, but if there is a change as a result of the discussions, then City staff would like to come back to Council.

Mayor Worley said that Council has been given updates over time and the costs will continue to escalate. He noted that in year 4, there will be a \$360,000 in surplus of funds that are available for other uses, which can be used for transit, if we choose. He would love to see a circulator system downtown.

The motion made by Councilman Dunn and seconded by Councilman Newman to approve Resolution No. 04-263 carried on a 6-1 vote, with Councilman Newman voting "no."

#### **RESOLUTION BOOK NO. 28 – PAGE 447**

Councilman Dunn moved for the adoption of Resolution No. 04-264. This motion was seconded by Councilman Davis and carried on a 6-1 vote, with Councilman Newman voting "no."

#### **RESOLUTION BOOK NO. 28 – PAGE 448**

Councilman Dunn moved for the adoption of Ordinance No. 3193. This motion was seconded by Councilwoman Bellamy.

Councilwoman Bellamy asked that staff continue talking with the design engineering firm to find cost-cutting methods that can be implemented.

City Manager Westbrook said that those discussions will take place. He said that if Council wants four floors instead of five, staff will need to know that now. However, if five floors is decided on and Council wants it built in the most cost effective manner, we will continue to seek, right up to the date that we start construction. The contract with Hanscomb, Faithful and Gould will be looking for those additional savings. We will only borrow what we need when we have a firm number.

Councilman Newman said that if we approve the money to build this design, he didn't think that we are sending a clear signal to staff or the engineers that we really want to take a hard look at this design and see if there are some ways to change the design (not just to find cost savings in building this design) to adjust the scale of the parking proposed and get more residential development. He felt we should hold off on the budget amendment for some reasonable time and let those conversations happen.

Vice-Mayor Mumpower didn't believe this is an ideal setting for affordable housing. It will address other needs, however, the project is surrounded by other affordable housing.

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Councilman Davis felt the affordable housing component conversation might be more appropriate when we come into the outparcel discussion.

Councilwoman Jones felt that if we don't allow staff to consider the scale issues, she would not be able to support the budget amendment.

The motion made by Councilman Dunn and seconded by Councilwoman Bellamy to approve Ordinance No. 3193 (with staff being directed to continue talking with the design engineering firm to find cost-cutting methods that can be implemented – not including the scale of the project) carried on a 5-2 vote, with Councilwoman Jones and Councilman Newman voting "no."

#### **ORDINANCE BOOK NO. 21 - PAGE**

- C. RESOLUTION NO. 04-265 - RESOLUTION AUTHORIZING THE CITY TO ENTER INTO AN AGREEMENT WITH THE HARRISON SHANNON GROUP FOR THE HOPE VI FEASIBILITY STUDY AND A MOTION TO ALLOCATE \$18,000 OF THE HOUSING INFRASTRUCTURE FUNDS FOR THAT STUDY**



Mayor Worley said that Councilwoman Bellamy and himself heard a presentation at the Housing Authority to ask the City for \$18,000 plus expenses for a feasibility study to see if Asheville is eligible to obtain a Hope VI grant to do some redevelopment in conjunction with the Housing Authority in public housing projects.

Vice-Mayor Mumpower applauded the effort, however, he felt that the Hope VI monies are very limited and will likely go lower and didn't feel that to spend \$18,000 at this time was good.

Councilman Newman felt that even though federal resources are being reduced, there are a lot of opportunities for private sector redevelopment. Even if there are not Hope VI federal funds, there may very well be good opportunities to cultivate more economically integrated neighborhoods through local, public and private partnerships for redevelopment in those areas and it's important to explore those possibilities.

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

Councilwoman Jones moved for the adoption of Resolution No. 04-265. This motion was seconded by Councilwoman Bellamy and carried on a 6-1 vote with Vice-Mayor Mumpower voting "no".

#### **RESOLUTION BOOK NO. 28 – PAGE 449**

#### **VI. OTHER BUSINESS:**

#### **RESOLUTION NO. 04-266 - RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE AN AGREEMENT WITH THE N.C. DEPT. OF TRANSPORTATION TO PROVIDE LOCAL FUNDING FOR NOISE WALL ENHANCEMENTS FOR THE I-40 WIDENING PROJECT**

Planning & Development Director Scott Shuford said that this is the consideration of a resolution authorizing the Mayor to execute an agreement with the N.C. Dept. of Transportation (NCDOT) to provide local funding for noise wall enhancements for the I-40 widening project.

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At the request of City Council and the Metropolitan Planning Organization (MPO), the NCDOT allowed the establishment of an I-26 Connector Aesthetics Advisory Committee (AAC) to develop ideas about improving the appearance of the I-26 Connector. The AAC has been meeting regularly and was recently offered the opportunity by NCDOT to offer suggestions for aesthetics considerations for a roughly one mile long section of I-40 that is scheduled to be widened to six lanes over the next two to three years.

This section of I-40 runs from just west of Exit 44 to just west of the I-40/I-26 intersection and will be constructed under a fast-track, design-build contract. Since the project is to be constructed within the existing right-of-way, there are limited options to provide landscaping and median treatments. The AAC recognized these limitations and concentrated its discussion in two areas: The new overpass at Exit 44 and the noise wall that will be constructed along the south side of the highway. Because of its scale, the noise wall offers the greatest opportunity for aesthetic impact – It will run for over 4,000 feet, two-thirds of which will be quite close to the southern edge of pavement. There will be some segments of the wall that will be setback; these areas will receive landscape treatments.

The AAC researched what other communities were doing with noise wall aesthetics and found numerous examples from Western states. These ranged from elaborate examples of individualized public art to simpler treatments involving the use of concrete form liners that imprint a pattern on noise wall panels. Because of concerns about costs and the fact that NCDOT needed quick decisions on this project due to its timeline and the design-build contract, the AAC focused on form liners. The use of this technique enables replication of patterns and has the potential to be re-used for the I-26 project as well.

The AAC researched this concept extensively and has developed a proposal that is very cost-effective while having strong aesthetic impact. Typically, about one percent of an interstate highway project's budget is reserved for landscaping and other aesthetic treatments; in this case, the project is estimated to cost roughly \$30 million, leaving around \$300,000 available for aesthetics. The noise wall treatment proposed by the AAC will cost approximately \$100,000 and have the potential to be carried over to the I-26 project. Given Council's Strategic Operating Plan goals for improving City gateway appearance, this seems to be an outstanding project.

We learned on Friday, December 10, that despite the efforts of Division Engineer Jay Swain to have a portion of the

\$300,000 be applied to the noise wall, NCDOT has a standing policy of requiring local funding for any noise wall enhancements. This news means that the City must act quickly to agree to execute a Municipal Agreement with the NCDOT committing to fund the noise wall improvements if they are to be accommodated in the project.

The AAC and City staff feel the attention to detail offered by this project will reflect well on the City of Asheville and open the door for greater community acceptance of highway projects. Interstate projects in particular are necessarily invasive and aesthetic enhancements can help heal the physical scars the projects cause to the local landscape. In a tourist and "sense of place" economy like ours, such treatments are especially important. This is why the Chamber of Commerce executive board recently passed a resolution supporting the work of the AAC and requesting that NCDOT fund the noise wall improvements.

Executing the Municipal Agreement will commit the City to providing the funds, but the NCDOT will not require payment until the project is complete. This will allow time for the City to seek grants (such as from federal TEA funds or from the Tourism Development Authority enhancement grants) and other funding sources for the enhancements. While there is a high likelihood of full or at least partial grant funding for these improvements, the City will be ultimately obligated to fund the enhancements.

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Pros:

- Cost-effective, high-impact aesthetic enhancement
- Able to be re-used on the I-26 project
- Supports work of AAC
- Supported by Chamber of Commerce
- High likelihood of grant funding for all or part of the project

Con:

- Potential \$100,000 price tag

City staff recommends City Council authorize the Mayor to execute a Municipal Agreement with NCDOT to provide local funding for noise wall enhancements for the I-40 widening project.

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

After a short discussion, Councilwoman Jones moved for the adoption of Resolution No. 04-266. This motion was seconded by Councilman Dunn and carried on a 4-3 vote, with Councilwoman Bellamy, Councilman Davis and Councilman Newman voting "no."

#### **RESOLUTION BOOK NO. 28 – PAGE 450**

#### **RESOLUTION NO. 04-267 – RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE JOINDER TO DEED OF TRUST FOR REDEVELOPMENT REFINANCING FOR PART OF PACK PLACE**

City Attorney Oast said that this is the consideration of a resolution authorizing execution of a joinder to deed of trust for redevelopment financing for part of Pack Place.

Last week, as you may have heard, PLB Investments, LLC sold its interest in the Pack Place development to Pack Square Investors, LLC, and two individuals from Charleston, SC. The assets transferred consisted of an ownership interest in the parking facility and associated retail spaces on Biltmore Avenue and Eagle Street, together with the leasehold interest in the underlying land. This does not involve the Pack Place Arts, Education and Science Center. This development comes out of the City's redevelopment efforts in this area in the 1980's, and the City is the owner of the land on which these improvements are built. The City leased the land to the developer pursuant to a 1987 Ground Lease for a term of 99 years. In addition to nominal rent, the developer/Lessee agreed to make the improvements (parking deck and retail/office space) that currently occupy the land.

The 1987 Ground Lease includes a provision for the City, as Lessor, to join in any instruments required for the Lessee to obtain mortgage financing for the development. The Lessee must make certain certifications as to the sufficiency of the loan amount and the qualifications of the lender, and any joinder is subject to the condition that the City, as Lessor, is not personally liable. The City joined in such documents in connection with the initial financing in 1987.

As a result of the transaction last week, the new owners of the improvements also became the new Lessees under the 1987 Ground Lease. They wish to refinance the debt on the improvements and have requested the City, as Lessor under the 1987

Ground Lease, to join in the deed of trust that will secure the loan. The 1987 Ground Lease contains essentially the same provisions for refinancing as it does for initial financing, and the Lessees have, or will, provide the required certifications. Upon Lessees' providing these certifications, the City may approve the

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joinder, or make a written objection within 10 days. In the absence of an affirmative approval or written objection, the approval is deemed given.

Last week, we received a document, "Joinder to Deed of Trust," which would be the City's joinder for the refinancing as contemplated by the Ground Lease. The document we received requires some revision to meet the intent of the 1987 Ground Lease, in my opinion, but I do not think that making these revisions will present a problem for the Lender or the Lessee. Accordingly, I believe that the "Joinder to Deed of Trust" or a similar document can be executed on behalf of the City once the revisions are made.

Adoption of the resolution, which authorizes the Mayor to execute the "Joinder to Deed of Trust," subject to approval of the City Attorney, is recommended.

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

After a brief discussion, Vice-Mayor Mumpower moved for the adoption of Resolution No. 04-267. This motion was seconded by Councilwoman Jones and carried unanimously.

#### **RESOLUTION BOOK NO. 28 – PAGE 451**

#### **BOARD AND COMMISSION ANNOUNCEMENTS**

Vice-Mayor Mumpower announced the various upcoming board and commission vacancies. He encouraged interested people to contact City Clerk Burseson.

#### **SCOTTY RHODARMER**

Councilman Dunn announced the retirement of WWNC Radio Announcer Scotty Rhodarmer who will be retiring after 50 years of service.

#### **INTERLACE PROGRAM - TRANSITION HOUSING PROGRAM FOR WOMEN AND CHILDREN**

Councilwoman Jones said that Interlace, a program of the Affordable Housing Coalition, is a transitional housing program for women and children who are homeless due to domestic violence. This year Interlace has organized another successful Shop for Change event in the downtown area. Over 90 downtown retail businesses and restaurants participated in the 8<sup>th</sup> annual event. Carolers from WomanSong and Enka Middle School sang on downtown streets throughout the day. There are dozens of businesses that consistently contribute to this event each year to help raise funds and awareness. EnviroDepot, on Haywood Road, is always particularly enthusiastic about helping out with the important cause. Ms. Alissa Gill and Ms. Susan Diehn, Interlace volunteers, were essential to the team effort of putting together an event of this size. She thanked all of the participating businesses, shoppers and volunteers for helping to end abuse in our community.

#### **CLAIMS**

The following claims were received by the City of Asheville during the period of November 12 – December 2, 2004: BellSouth (Water), George Artom (Water), Jeffrey H. Hatmaker (Water), Rose Beck (Transit Services), Emma Jarvis (Sanitation), Demos Real Estate (Water), Alvin Smith (Police) and Firestone (Water).

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

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#### **VII. INFORMAL DISCUSSION AND PUBLIC COMMENT:**

Mr. Gene Hampton, founder of Asheville Citizens for Quality Government, said that policies and standards, as well as plans

and procedures are needed to assure the quality of education received by every student in the Asheville public school system. He asked Council to establish the policies, standards and requirements to achieve this vital objective.

**VIII. ADJOURNMENT:**

Mayor Worley adjourned the meeting at 12:19 a.m.

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CITY CLERK

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MAYOR