

Regular Meeting

Present: Mayor Charles R. Worley, Presiding; Vice-Mayor R. Carl Mumpower; 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: Councilwoman Terry M. Bellamy

PLEDGE OF ALLEGIANCE

The Army ROTC Color Guard from Owen High School led City Council in the Pledge of Allegiance.

INVOCATION

Councilwoman Jones gave the invocation.

I. PROCLAMATIONS:

A. UNITED WAY

Mr. David Bailey, representing the United Way, thanked the City of Asheville for the outstanding United Way campaign. City employees exceeded their goal by an increase of 16.4%. Mayor Worley also thanked the City of Asheville's Campaign co-coordinators Kelley Webb and David Cole.

B. PROCLAMATION PROCLAIMING FEBRUARY 2005 AS "BLACK HISTORY MONTH"

Mayor Worley read the proclamation proclaiming February 2005 as "Black History Month" in the City of Asheville.

II. CONSENT AGENDA:

A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON JANUARY 25, 2005

B. RESOLUTION NO. 05-22 - RESOLUTION AUTHORIZING THE EXCHANGE OF AN EASEMENT ON REAL PROPERTY LOCATED ON BLACK OAK DRIVE FOR AN EASEMENT ON REAL PROPERTY LOCATED ON PINECROFT ROAD

Summary: The consideration of a resolution authorizing the Mayor to convey an easement on real property located on Black Oak Drive in exchange for an easement on real property located on Pincroft Road.

The City and Mr. & Mrs. Fulton H. Beville have negotiated an exchange of a driveway easement over the Beaverdam Reservoir property (PIN No. 9751.17-10-7654) on Black Oak Drive for a slope/fill easement across real property located on Pincroft Road (PIN No. 9751.17-10-9594).

At the time that the Beaverdam Reservoir was built a substantial amount of fill was placed on the Beville's property thereby allowing a cost savings to the City and providing lateral

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support to the reservoir site maximizing the use of the property. The Beville's were not compensated for the use of their property, but instead understood that the use of the reservoir access road would be available to them to access a portion of their property not easily accessible from Pincroft Road because of topography.

A formal arrangement has not been in place heretofore, but it is advisable to formalize the arrangement through an exchange of easements which will satisfy the City's need to keep the fill in place as well as the Beville's need to access their property.

The driveway easement would be 12' wide and about 350' long comprising an area of 4,200 square feet. Based on the tax value of the land per square foot (.92), at a 50% easement value, the driveway easement would have a value of \$1,932. Water

Resources staff estimates that the benefit to the City of having the fill in place would equal or exceed the value of the driveway easement.

The use of the driveway by the Bevilles will not impair the function nor security of the reservoir, but could improve security to the extent that the Bevilles would be able to observe the reservoir site.

The positive aspects of the transaction are:

- The exchange will be a fair exchange of value for value.
- It will establish record title in the City of the right to have the fill area remain on the Beville's property.
- It will establish a clear description of the size and location of the driveway easement.
- It will formalize the arrangement thereby reducing the likelihood of future misunderstandings.

The negative aspects are:

- The driveway easement will limit the use of the reservoir property within the easement area.

On January 25, 2005, City Council approved Resolution No. 05-12 directing the City Clerk to publish a notice regarding the proposed exchange. Pursuant to N.C.G.S. sec. 160A-271 the notice was published in the Asheville Citizen-Times on Friday, January 28, 2005.

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

Planning & Development staff and Water Resources staff recommend adoption of the resolution.

RESOLUTION BOOK NO. 29 – PAGE 1

C. RESOLUTION NO. 05-23 - RESOLUTION ACCEPTING THE NEW STREET NAME OF "CRAFTSMAN CIRCLE" LOCATED OFF ROLLING TERRACE

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

Chunns View LLC, owner of lots on Craftsman Circle, off of Rolling Terrace, has petitioned the City of Asheville to accept the street name " Craftsman Circle." The new street will begin at Rolling Terrace in a complete circle and end at Rolling Terrace.

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

RESOLUTION BOOK NO. 29 – PAGE 2

D. RESOLUTION NO. 05-24 - RESOLUTION ACCEPTING THE NEW PROPOSED STREET NAME OF "VILLAS COURT" OFF CEDAR HILL ROAD

Summary: The consideration of a resolution accepting the new proposed street name "Villas Court."

Villas at Cedar Hill, LLC, owner of lots on Villas Court off of Cedar Hill Road and Pisgah View Road, has petitioned the City of Asheville to accept the street name " Villas Court." The new street will begin at Cedar Hill Road and end at Pisgah View Road.

City staff recommends adoption of the resolution accepting the new proposed street name "Villas Court."

RESOLUTION BOOK NO. 29 – PAGE 3

E. RESOLUTION NO. 05-25 - RESOLUTION ACCEPTING THE NEW PROPOSED STREET NAMES OF "VERONA DRIVE," "SPRINGMILL DRIVE," AND "TIVOLI DRIVE" LOCATED IN WOODLAND DRIVE SUBDIVISION

Summary: The consideration of a resolution accepting the new proposed street names "Verona Drive," "Springmill Drive," and "Tivoli Drive."

Michael Pierce of MK Properties of Fairview, Inc., owner of lots in Woodland Drive Subdivision, has petitioned the City of Asheville to accept the street names of "Verona Drive," "Springmill Drive," and "Tivoli Drive." The new streets will begin near the intersection of Woodland Drive and Spring Drive and end near the intersection of Woodland Drive and Shadowlawn Drive.

City staff recommends adoption of the resolution accepting the new proposed street names "Verona Drive," "Springmill Drive," and "Tivoli Drive."

RESOLUTION BOOK NO. 29 – PAGE 4

F. RESOLUTION NO. 05-26 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO AN AGREEMENT WITH THE N.C. GOVERNOR'S HIGHWAY SAFETY PROGRAM FOR THE PURCHASE OF SPEED ENFORCEMENT EQUIPMENT AND TRAVEL/TRAINING MONEY FOR THE ASHEVILLE POLICE DEPARTMENT'S REGIONAL COUNTY COORDINATOR

Summary: The consideration of the resolution authorizing the City Manager to enter into an agreement with the North Carolina Governor's Highway Safety Program (GHSP) for the purchase of speed enforcement equipment and travel/training money for the Asheville Police Department's Regional County Coordinator, and the associated budget amendment, in the amount of \$10,000.

The City of Asheville has been awarded a grant from the GHSP in the amount of \$10,000 with no local match required. The purpose of the grant program is to fund highway safety projects, allowed under the grant program, designed to reduce traffic speed, traffic accidents and

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improve highway safety. We have chosen to purchase five Custom Pro 1000 RADAR Units at \$1,000 each with a total of \$5,100. The other grant monies would be spent on in-state and out-of-state travel expenses, totaling \$4,900. The desired equipment, to be installed in Patrol Division vehicles, is for the purpose of speed reduction through rigorous enforcement, thus reducing minor and major accident statistics. The travel monies will allow out department's Regional Liaison Officer to keep in contact with the other eight

Pros:

- Equipment will improve the quality of evidence obtained by police officers during their daily interaction with the public particularly in the area of traffic enforcement.
- Will contribute to the reduction of crime by improving the effectiveness of traffic enforcement which is related to the discovery and solvability of a variety of other criminal activities.
- Equipment will increase public safety by ensuring that officers are conducting themselves in the proper manner and within the legal requirements of state law.
- Officer safety will be increased by documenting encounters between the police and contacts in the public.

Cons:

- The City Of Asheville and the Asheville Police Department would be required to maintain the upkeep of the equipment including servicing and replacement when needed.

This action complies with City Council's Strategic Operating Plan: Goal #2 A multi-modal and congestion management transportation program - In conjunction with major employers and traffic generators, develop and implement a comprehensive multi-modal transportation and congestion management program that works for Asheville. Objective B. Mitigate overall impacts of congestion through effective local partnerships.

This is accomplished by identifying areas of the City that are particularly prone to traffic accidents due to speed and other aggressive driving tactics. Through the efforts of the Asheville Police Department and the use of the equipment purchased through the GHSP Grant, this will alleviate minor traffic accidents and reduce traffic congestion.

City staff recommends City Council adopt (1) the resolution authorizing the City Manager to enter into an agreement with the North Carolina Governor's Highway Safety Program (GHSP) for the purchase of speed enforcement equipment and travel/training money for the Asheville Police Department's Regional County Coordinator; and (2) the associated budget amendment, in the amount of \$10,000.

RESOLUTION BOOK NO. 29 – PAGE 5

G. ORDINANCE NO. 3212 - BUDGET AMENDMENT TO ALLOCATE FUNDS FROM N.C. GOVERNOR'S HIGHWAY SAFETY PROGRAM GRANT

Summary: See Consent Agenda Item "F" above.

ORDINANCE BOOK NO. 22 – PAGE 1

H. ORDINANCE NO. 3213 - BUDGET AMENDMENT FOR ASTON PARK TENNIS CENTER TRANSFER

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Summary: The consideration of a budget amendment, in the amount of \$63,548 for expenditures and \$25,000 for anticipated revenue, to proceed with the transfer of the Aston Park Tennis Center to the City of Asheville.

On November 16, 2004, Buncombe County Commissioners voted to authorize the County Manager to proceed with the transfer of the Aston Park Tennis Center to the City of Asheville. On January 25, 2005, City Council adopted Resolution No. 05-20 authorizing acceptance of the transfer effective February 1, 2005. The Parks and Recreation Department is recommending a budget amendment, which represents an expenditure of \$63,548, which will be offset by \$25,000 anticipated in revenue (from membership fees, daily court fees and concessions) for the five-month period. The result is a cost of \$38,548 to the City for this five-month operation.

The Parks and Recreation Department recommends City Council approve a budget amendment for \$63,548 for expenditures and \$25,000 for anticipated revenue

ORDINANCE BOOK NO. 22 – PAGE 3

I. RESOLUTION NO. 05-27 - RESOLUTION AUTHORIZING EXECUTION OF AN EASEMENT TO THE METROPOLITAN SEWERAGE DISTRICT FOR A SEWER LINE REPLACEMENT ACROSS CITY-OWNED PROPERTY

Summary: The consideration of a resolution granting a sewer line easement to MSD.

MSD is currently rehabilitating its sewer lines within the Smith Mill Creek corridor along Patton Avenue. This work consists of repairing broken lines and enlarging existing lines. The line crosses the City's property occupied by the Army Reserve Training Center on Louisiana Avenue, on the north end of the property, which is also the south side of the creek.

As proposed, part of the line will be relocated across the creek so that in the end, less of it will be on the City's property than currently. It will be enlarged from its current 16 inch diameter to a 20 inch size. This is an old line, and although it will essentially be repaired/enlarged in place, there is currently no easement for it, probably because it was installed back when the City operated the system, and this is City property.

The requested easement consists of a permanent easement approximately 20-25 feet in width, and a temporary construction easement that is a little wider, at approximately 35-40 feet in width.

The easement will not interfere with the current use of the property by the Army Reserve. The Reserve has been contacted, and has consented to and signed the easement.

Adoption of the resolution is recommended.

RESOLUTION BOOK NO. 29 – PAGE 6

J. RESOLUTION NO. 05-28 - RESOLUTION APPOINTING JAMES L. WESTBROOK JR. AS INTERIM CITY MANAGER EFFECTIVE FEBRUARY 28, 2005

Summary: The consideration of a resolution appointing retiring City Manager Jim Westbrook as Interim City Manager, and a resolution authorizing the City to enter into a contract with Mr. Westbrook for interim management services.

Current City Manager Jim Westbrook is retiring effective March 1, 2005. Council has not selected his replacement, but is in the process of doing so. However, there will be a continuity gap between Mr. Westbrook's retirement date, and the date when the new manager starts.

North Carolina law, N.C.G.S. 160A-150, provides that when the manager's position is vacant, "the council shall designate a qualified person" to perform the duties of the manager until the position is filled. At Council's request, Mr. Westbrook has consented to continue as manager in an interim capacity until the new manager is on the job. He has agreed to do this at his current compensation (salary plus certain expenses).

One resolution appoints Mr. Westbrook as Interim City Manager, effective February 28, 2005, at 5:00 p.m., until the new city manager is on the job.

Another resolution authorizes the Mayor to sign a contract with Mr. Westbrook setting out the terms and conditions of his employment as Interim City Manager.

The appointment and the contract are both terminable at the will of Council, as the law requires; however, the contract contains some provisions for notice of any premature termination. The contract also contemplates that Mr. Westbrook may be retained in a consulting capacity even after the new manager is on the job, but any such service would be pursuant to a separate agreement.

If Council approves of the appointment of Mr. Westbrook as interim city manager, adoption of the resolutions is recommended.

RESOLUTION BOOK NO. 29 – PAGE 7

K. RESOLUTION NO. 05-29 - RESOLUTION AUTHORIZING THE MAYOR TO SIGN A CONTRACT WITH JAMES L. WESTBROOK JR. TO SERVE AS INTERIM CITY MANAGER

Summary: See Consent Agenda Item "J" above.

RESOLUTION BOOK NO. 29- PAGE 8

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

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

III. PUBLIC HEARINGS:

A. PUBLIC HEARING TO REZONE 8.8 ACRES LOCATED ON BRITT DRIVE FROM RS-4 RESIDENTIAL SINGLE-FAMILY MEDIUM DENSITY DISTRICT AND RM-16 RESIDENTIAL MULTI-FAMILY HIGH DENSITY DISTRICT TO RIVER DISTRICT

Mayor Worley opened the public hearing at 5:12 p.m.

Urban Planner Kim Hamel said that this is the consideration of an ordinance to rezone 8.8 acres located on Britt Drive from RS-4 Residential Single-Family Medium Density District and RM-16 Residential Multi-Family High Density District to River District. This public hearing was advertised on January 28 and February 4, 2005.

The Asheville City Development Plan 2025, the Wilma Dykeman Riverway Master Plan and the Economic Development Strategic Plan all call for redevelopment efforts along Asheville's riverfront areas that will maximize its full potential as a quality of life amenity as well as the assignment of appropriate zoning along portions of the riverfront that will permit higher density development and mixed use opportunities.

The future Land Use and Transportation plan of the *Asheville 2025 Plan* identifies redevelopment of the riverway in the

core areas as an Urban/Neighborhood Corridor (connects neighborhoods with each other, with employment centers, with institutional uses and with major thoroughfares) and the remainder of the parkway being designed as a Gateway Boulevard (adjacent development in the form of residential subdivisions, apartment complexes, office parks or concentrated commercial development).

The subject site was denied approval of a Level III, Conditional Use project for an affordable housing development in March 2004.

The subject site is located off of Swannanoa River Road and Britt Drive and consists of approximately 8.8 acres. The lot is currently vacant and split zoned RM-16 and RS-4. The zoning line between the two districts runs directly behind the 14-foot strip of land that abuts White Pine Drive and the remainder of the site.

Surrounding land uses and zoning include: multi-family (2 units) uses to the north and single-family residential uses to the east zoned RS-4; commercial uses to the south zoned River; and a mix of residential and commercial uses zoned RS-8, RM-16 and River to the west of the site.

The subject site has road frontage along Swannanoa River Road and also Britt Drive. The property may also have the ability to access White Pine Drive via the narrow strip of land along the east side of the property. The topography on the lot is fairly steep along the north and east sides of the property. The land begins to gradually level out throughout the center of the property and along the west and south sides of the site. Abutting residential uses along the north and east sides of the property, for the most part, sit at a much higher elevation than the subject site. Abutting commercial uses to the west and south of the property sit at or just slightly below the same elevation as the more level areas of the site.

The applicant is requesting a rezoning of the lot in order to maximize its development potential in allowing the wider range of uses that would be permitted in the River District.

- The purpose, intent and goals of the River District is to promote economic revitalization throughout the river valleys by allowing a mixture of river oriented land uses (residential, recreational, office/institutional, commercial, manufacturing, industrial, open space and agricultural) to be developed responsibly by ensuring that new development is compatible with and enhances the riverway's unique river resources.
- The purpose and intent of the RM-16 district is to permit a full range of high density multi-family housing types along with limited institutional, public and commercial uses to be located near employment centers, shopping facilities, and other urban infrastructure capable of handling the demand generated by high density residential development.

A recent effort to develop the property with apartments was denied by City Council due to public safety concerns for residents due to the location of a private dam in the area. Allowing a wider range of uses, especially nonresidential uses, may serve to address this concern, although it should be noted that the River District does allow residential development as well as nonresidential development.

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On January 5, 2005, the Planning and Zoning Commission made a positive recommendation (6-1) to approve the rezoning of the property, as requested.

Pro's

- Rezoning the lot to River District will allow the applicant an opportunity to select from a range of uses when developing the site that may be more compatible with the existing development along Swannanoa River Road, and also with the redevelopment efforts along the riverway.
- The existing topography on the site provides, somewhat of, a natural separation from abutting residential uses on the north and east sides of the property, making the land more suitable for a wider range of uses.
- Any development of the site will require review by the River District Design Committee.
- Any development of the site must comply with all City regulations including UDO requirements, NC State Building Code, and FEMA requirements.

Con's

- Portions of the site are within a flood hazard area. However, any development of the site would be required to comply with all FEMA regulations prior to the issuance of any building permits.
- The potential for an access connection from the lot to White Pine Drive may be of concern to abutting residential property owners.

The proposed rezoning to River District would be consistent with the zoning of abutting properties to the south of the site along Swannanoa River Road, and also with the established zoning along the north and south sides of the riverway. Staff feels that rezoning the lot to River District will have little effect on the residential uses to the north and east of the site due to the existing topography and differences in elevation. Any development of the site would have to comply with the development and design standards required in the Unified Development Ordinance, including the landscaping and buffering of incompatible uses.

Based on the above, staff recommends approval of the rezoning to River District as requested by the applicant.

Mr. Thomas Wolfe, agent for the owner, Batt and Associates, Inc., said that the current density is RM-16 which would provide for approximately 150 units and the conditional use permit brought before Council last year was for 100 units, which permit was denied by City Council. From that denial, he understands that Council feels this property is not conducive to high density residential development (which is what it is currently zoned). Therefore, the owner desires to develop it sensitively and responsibly, but they needed some parameters they can work within.

Councilman Newman asked what might be developed on the property if it were rezoned to River District. Mr. Wolfe said that there have been several options, however, after spending approximately \$40,000 last year on the plan denied by Council, they are hesitant to move forward with any plans.

City Attorney Oast reminded Council that if the property is rezoned, it is available for any use in that zoning classification. Council should not rely on any representation about specific uses on the property.

Mr. Mike Wiseman, resident at 7 East Shore Drive in Kenilworth Forest, said that his neighborhood is not trying to obstruct the process of development, however, they have a specific concern about the rezoning in light of the potential for residential development. They would like to help Mr. Wolfe develop the land responsibly. He briefly reflected on City Council's wisdom last year to deny the multi-unit project by showing various photographs of the area during recent

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floodings. In fact, the Swannanoa River has flooded 5 times in the last 9 years. Another concern is that any residential development that has fewer than 20 units is only subject to River District Design Committee review with no City Council approval and no public hearing. He urged City Council to put the citizens of Asheville's safety first and don't allow for residential development on that property.

Ms. Addison Martin, secretary of the Kenilworth Forest Community Club, said they are concerned about the habitual flooding of the Swannanoa River and the safety of any potential resident. She also showed photographs of recent floodings, in particular of how the River directly impacts the access to Mr. Wolfe's property and why they request that no residential buildings be allowed on that property.

Mr. William Mansfield, resident at 215 White Pine Drive, also showed Council photographs of recent floodings in the area proposed for rezoning. He stressed out how difficult it would be for any emergency vehicles to reach the residential property during flooding. They are not opposed to development of the property, however, they do not feel any form of residential, single-family or multi-family homes, should be allowed on that property. This is a plea to prevent potential loss of life and/or homes when flooding happens again with no access for emergency response. He suggested the property be developed with light commercial or light industrial. If the property is rezoned to River District, he requested the owner put in writing that they will not develop any residential dwellings on the property. Or, he requested City Council to remand this matter back to the Planning & Zoning Commission for their review of light industrial or commercial use.

City Attorney Oast said that City Council cannot condition its vote on the application for rezoning to do or not to do any particular kind of development.

Ms. Claire Payne, resident at 291 White Pine Drive, said that an historian has said that this property was used as a dumping ground for asbestos from the construction materials removed from the Kenilworth Inn. She said that during the previous hearing last year the City Engineer said that the City would not put a road within the 100-year floodplain. She questioned if the City's position has changed. During the hearing last year Mr. Wolfe said that he did not plan to develop or use that narrow strip of land that connects Mr. Wolfe's property to White Pine Drive. Mr. Wolfe had offered to deed the land to adjacent neighbors on White Pine Drive. She asked that condition be offered again to the Kenilworth Forest Community Club. If Mr. Wolfe rejects that request, then she requested the City make sure that strip of land remains zoned RS-4.

City Attorney Oast said that it would be possible for Council to zone this property to some classification other than River

District, provided it was less intense zoning than the River District, which may or may not prohibit residential development. As far as the access onto White Pine Drive, there is a provision in our Zoning Code that would not allow the strip that connects to White Pine Drive to be used to access the property – it would be allowing access to a nonresidential use through a residential area and our Zoning Code prohibits that.

Mr. Rick Holm, resident at 414 Beaucatcher Road, urged City Council to not zone the property when they can't put restrictions on the developer. He used his neighborhood as an example, citing the location of the new Cheeseburger from Paradise restaurant is where the originally proposed development was a medical/dental cluster of buildings.

Ms. Kathy Sheldon, resident at 159 White Pine Drive, spoke against any residential development on the property due to the anticipated flooding in the area.

Mr. Harold Payne, resident at 299 White Pine Drive, said that his property abuts the narrow strip of land from White Pine Drive to the subject property. Regardless of what is

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developed on that property, he asked Council to do what they can to keep that strip of land from becoming a thoroughfare.

At 5:40 p.m., Mayor Worley closed the public hearing.

Upon inquiry of Vice-Mayor Mumpower, Ms. Hamel said if Council makes no changes to the zoning, the owner is limited to residential, with very limited institutional, public and commercial uses. With the current zoning, she said that he could build 20 or fewer units with only staff level review. Twenty to fifty units would go before the Technical Review Committee for review. Under the current zoning, the owner can build up to 150 units, but that would trigger the conditional use permit process. Again, she said that even if the property were rezoned to River District the same density (16 units per acre) is permitted in the River District.

In response to Vice-Mayor Mumpower, Planning & Development Director Scott Shuford said that during the first flood, portions of Swannanoa River Road were closed for approximately 72 hours due to debris, mud and roadway damage. During the second flood, Swannanoa River Road was closed for approximately 24-28 hours.

Vice-Mayor Mumpower questioned safety concerns. Ms. Hamel said that at the last hearing some access concerns with the 100-year floodway were raised. After review with our City Engineer Cathy Ball, she believed that the access issue was in regard to the application being reviewed by the U.S. Dept. of Housing and Urban Development (HUD) for affordable housing. HUD was who actually limited the access onto Swannanoa River Road. Ms. Ball clarified today that the Flood Code requires that they would have to provide a dry access route only if it is not adjacent to a public road. Because Swannanoa River Road is a public road, they would still allow access, regardless of whether it was below the flood elevation or not.

Mr. Shuford said that the safety issue is hard to determine until we have some certainty what is being proposed for the property. Residential is a possibility under the River District and almost a certainty under the current RM-16 zoning. About the only zoning district that would not have a significant residential component might be industrial, which does allow accessory units, like a caretaker's residence. He didn't know how acceptable that district would be to the applicant, however.

Mr. Shuford said there is an awful lot of property in the River District that is either in the floodway or floodplain. It is possible to develop that property and to develop it safely. This particular property is not going to have an access connection to White Pine Drive, simply because we have a provision in our Code that does not allow nonresidential uses to connect through to a residential area. In addition, that strip of land won't be a primary access to White Pine Drive because of the width of the access area. It's possible that it could be some sort of an emergency access to the site, but we would have to review that and we don't have any plans to accommodate that. This is an area that will be basically isolated in a flood event and the developer will have to understand that as well as the people involved. If it is used for residential, then some provisions will need to be made to get the people out in the event of a flood which would threaten their access to their homes.

When Vice-Mayor Mumpower asked if the Fire Department was concerned at the last hearing about the number of units, Ms. Hamel said that they were okay with the number of units proposed. She didn't know if the Fire Department's opinion has changed since the floods.

Vice-Mayor Mumpower asked if, as a matter of policy, if it is not Planning's recommendation to Council that we take land off the table because access might be impaired by floodplains. Mr. Shuford said that was correct and that we would have to take a lot of property off the table if that would be the case, including significant portions of Biltmore Village.

Upon inquiry of Vice-Mayor Mumpower, Mr. Shuford explained what happened at the Cheeseburger in Paradise location. He didn't think there was any zoning change by City Council on that site, but would have to check the file to verify that.

Councilman Dunn recalled that the dam had not had a major inspection in a long time and he recalled the City Engineer saying that if the dam broke it would be catastrophic. He might be able to support a commercial zoning district, but would not support this zoning change in that we will risk human life. Mr. Shuford responded that he didn't know what the inspection process is for that, but it is an annual inspection process for these types of privately owned dams. He said that Kenilworth Lake is not a public lake and the dam is not a public dam. It is privately owned and there are inspections that are required by the State to maintain it. The only sure way to ensure safety downstream of the dam would be to remove the dam and drain the lake. There is no guarantee that even if that were a new dam that it would not fail at some point in time.

Councilman Newman moved to deny rezoning 8.8 acres on Britt Drive from RS-4 Residential Single-Family Medium Density District and RM-16 Residential Multi-Family High Density District to River District. This motion was seconded by Councilman Dunn.

Councilman Newman said that he doesn't support rezoning of the property at this time. The dam is not the reason for his lack of support because at the hearing last year he was persuaded by the developer's attorney who made the case that if the dam is genuinely considered a safety risk, the neighborhood has a responsibility to dismantle the dam - there are already people who work below the dam. There are dams all across Western North Carolina and people live and work below dams and it's the State's responsibility to make sure that dam is safe. He does not support this rezoning because it is a very difficult site to develop. The topography is very difficult and on the previous project he voted against it citing more issues on the scale and character criteria of the conditional use permit. The fact that Council did not support the previous development proposal, which was consistent with the RM-16 zoning, does not logically follow to him that Council would then turn around and give the property owner greater flexibility. He doesn't want to make this property impossible for the developer to develop, but at the same time he was not sure he wants to give greater flexibility in terms of what can be allowed as a use by right on that site. The developer can already develop up to 50 units with the current zoning. A smaller development with a smaller footprint may make sense on that site. But if it's going to be a larger, more intense development, he feels it would have to be tied up into some careful conditional use aspects that Council would need to consider. He also noted that in staff's analysis of compatibility, they show the only high degree of compatible is on the south side which is up against commercial and industrial uses. He would be open to the idea that there may be some nonresidential uses that might be more compatible.

In response to Vice-Mayor Mumpower, Ms. Hamel said that the developer did consult with City staff prior to bringing forth the application to River District. Ms. Hamel said that given what happened with the project last year when Council didn't think the site was safe for residential, staff looked at the existing zoning pattern along Swannanoa River Road (and we did take topography into account - the residential area sits 20-30 feet above), River District was what was most compatible with the established zoning along the riverway.

When Councilman Newman asked if there has been any progress made about using Britt Drive as a key access, City Attorney Oast said the opponents to the project, through their attorney, raised issues regarding the availability of Britt Drive as an access point. Those issues have not been resolved but they would have to be resolved before any site specific development plan could be approved that used Britt Drive.

Mr. Shuford said that Council may only be comfortable with a zoning change that was associated with a particular development plan. However, because of the expenditure made by the applicant last year may make them reluctant to pursue that route.

Mayor Worley felt it was hypocritical to say, last year, that we are not going to approve any residential development on this property, and then turn around and say we are not going to change the zoning to anything other than residential. The other part is that even though Council may feel more comfortable with a development specific project through a conditional use process, the developer spent \$40,000 last year and they may be reluctant to spend a lot of money to go through another conditional use process, with the possibility of losing that money as well.

Upon inquiry of Vice-Mayor Mumpower, Ms. Hamel said that there are portions of the property along Ross Creek that are within the 100-year floodplain. It's more likely that it would include Swannanoa River Road due to its close proximity to the river. The development proposed last year did not have any buildings in the floodplain - it was the access.

Vice-Mayor Mumpower said there is a difference between convenience and safety concerns. We just can't reach down and take property off the map because there are convenience concerns. He thinks Council may be micromanaging because we're saying our expertise exceeds that of the authorities in this matter, which would be the Fire Department and the people who evaluate the dam. If these people have an unsafe dam, they are responsible for it – not the people below the dam. The safety concerns are concerns, but that should paralyze this person's ability to do something with their property, especially in a City that needs property to develop. It is private property and he has some difficulty with us artificially impairing people's ability to use their property. He thinks controlled growth makes sense, but we have to do it thoughtfully and carefully. He feels the motion on the floor forces residential use, which doesn't make any sense. To allow the property owner a little more limited flexibility for them to make a meaningful use of this property makes more sense.

Councilman Davis recalled that last year the project was denied because the density was not compatible, among other issues. He would like to see that property be developed and would like to see some good uses in there – maybe some different uses than allowed in the River District. Without being able to add conditions, he is not comfortable with rezoning the area to River District given the types of uses allowed in that District and the density it can be developed. He would not be supportive of rezoning this property to River District.

Mr. Wolfe asked City Council to postpone action for 2-4 weeks in order to give him an opportunity to consult with Planning staff about a different district which may more be acceptable to Council, given Council's discussion.

Councilman Newman didn't have any problem with continuing to explore ideas. He wants to be supportive of finding a way to improve the property consistent with the concerns from Council.

Mr. Wolfe said that the leaning of the property owner is certainly towards commercial development. He asked Council to continue this matter in order for him to go back to his clients to see if they can narrow the scope of their development possibilities. He will then consult with Planning staff and see if they can amend the application.

Councilman Dunn wanted the owner to be able to use his property, however, City Council has already conducted two public hearings on this property and personally he preferred to make a decision now.

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Upon inquiry of Councilman Newman, City Attorney Oast said that the only thing City Council could do, other than vote the River District zoning request up or down, is to rezone this to a less intensive zoning classification or to rezone part of the property to River District. He senses there is a possibility that a site specific development plan may be coming to Council, and he doesn't know if Council can change the procedure in mid-stream. If this proposal is denied, there is a one-year delay in coming back with the same rezoning proposal, but there would be nothing to prevent him from coming back within a year with a different rezoning proposal.

Vice-Mayor Mumpower made a substitute motion to continue this matter until March 8, 2005. This motion was seconded by Councilwoman Jones.

Mr. Shuford said that it sounds like Council will be reluctant to go forward with something other than a specific plan for the property, and that would be a conditional use zoning, which will require a re-start on the entire process. One alternative for consideration is to have Council refer this back to the Planning & Zoning Commission – which basically starts the process again. He didn't think they could find a satisfactory single zoning district that is going to address the issues Council has raised. It will have to be a site plan issue. If referred back to the Planning & Zoning Commission, they may take it up at their April meeting and then back to Council sometime after that.

Mr. Wolfe said that he is asking for the continuance to give him an opportunity to meet with his client to see if another zoning district might be acceptable. He said that there are certain requirements in the UDO for a conditional use permit application and he doesn't believe his client is willing to go through those motions again with full blown drawings.

Mr. Shuford said that they can explore some opportunities to split zone the property that might address some of the issues raised. However, if another zoning district is recommended, we are opening up that wider range of uses.

At this time, Councilwoman Jones withdrew her second on the substitute motion to continue because she said she would be interested in a site plan.

Vice-Mayor Mumpower's substitute motion to continue this matter until March 8, 2005, failed, due to a lack of a second.

The original motion made by Councilman Newman and seconded by Councilman Dunn to deny rezoning 8.8 acres on Britt Drive from RS-4 Residential Single-Family Medium Density District and RM-16 Residential Multi-Family High Density District to River District carried on a 4-2 vote, with Mayor Worley and Vice-Mayor Mumpower voting "no."

Councilman Newman said that he hopes that the property owner does not interpret Council's vote as saying there is nothing they can do to get Council's approval. In fact, the instincts where they wanted to go with this in terms of giving some commercial possibilities is good, and that is probably some of the kinds of things that could work well there. Council does have to consider the most intense possible use that can be allowed under that zoning district, and there were a few things in the River District classification that if fully built out would be a little too much for that site.

IV. UNFINISHED BUSINESS:

V. NEW BUSINESS:

A. RESOLUTION NO. 05-30 - RESOLUTION APPOINTING A MEMBER TO THE CIVIC CENTER COMMISSION

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Vice-Mayor Mumpower said that Denise Goodson has resigned as a member of the Civic Center Commission, thus leaving an unexpired term until June 30, 2005.

At the City Council worksession on January 18, 2005, City Council instructed the City Clerk to arrange interviews for Jean Ann Taylor, Brian Turner, Linda Fowler and W.E. Lack.

After Council members spoke in support of the candidates interviewed and the difficult decision to appoint one member, Jean Ann Taylor received no votes, Brian Turner received 2 votes, Linda Fowler received 2 votes, and W.E. Lack received 2 votes. Because of the three-way tie, it was necessary to vote again. Brian Turner received 3 votes, Linda Fowler received 2 votes, and W.E. Lack received 1 vote. Therefore, Brian Turner was appointed to fill the unexpired term of Ms. Goodson, term to expire June 30, 2005, and then to serve a full three year term, term to expire June 30, 2008, or until his successor has been appointed.

RESOLUTION BOOK NO. 29 – PAGE 9

B. RESOLUTION NO. 05-31 - RESOLUTION APPOINTING A MEMBER TO THE METROPOLITAN SEWERAGE DISTRICT BOARD OF DIRECTORS

Vice-Mayor Mumpower said that the term of Brady Blackburn, as a member on the Metropolitan Sewerage District Board (MSD), expired on January 19, 2005.

At the City Council worksession on January 18, 2005, City Council instructed the City Clerk to arrange an interview with W. Louis Bisette Jr.

City Council spoke about the outstanding work Mr. Blackburn contributed to the MSD Board, however, he has served two full consecutive terms. Therefore, City Council unanimously appointed W. Louis Bisette Jr., as a member of the Metropolitan Sewerage District Board of Directors to serve a three year term, term to expire January 19, 2008, or until his successor has been appointed.

RESOLUTION BOOK NO. 29 – PAGE 10

C. RESOLUTION NO. 05-32 - RESOLUTION APPOINTING MEMBERS TO THE TRANSIT COMMISSION

Vice-Mayor Mumpower said that the terms of Stacy Anderson, Ruth Chaet and W.F. Michie Jr., as members on the Transit Commission, expired on December 31, 2004.

At the City Council worksession on January 18, 2005, City Council instructed the City Clerk to prepare the proper paperwork to reappoint Mr. W.F. Michie Jr., to serve a three year term, term to expire December 31, 2007, or until his successor has been appointed.

Also at the City Council worksession on January 18, 2005, City Council instructed the City Clerk to arrange interviews for J. Neal Jackson, Robert W. Mair, Yuri Koslen, Thomas Hilgendorf and Kim A. MacQueen. Mr. Hilgendorf withdrew his name from

consideration.

After Council members spoke in support of the candidates interviewed, J. Neal Jackson received 6 votes, Robert W. Mair received 4 votes, Yuri Koslen received no votes, and Kim A. MacQueen received 2 votes. Therefore, J. Neal Jackson and Robert W. Mair were appointed to each serve a three year term respectively, terms to expire December 31, 2007, or until their successors have been appointed.

RESOLUTION BOOK NO. 29 – PAGE 11

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D. RESOLUTION NO. 05-33 - RESOLUTION APPOINTING MEMBERS TO THE TREE COMMISSION

Vice-Mayor Mumpower said that the terms of Margaret Tinkler and Ginger Mahler, as members on the Asheville Tree Commission, expired on December 31, 2004.

At the City Council worksession on January 18, 2005, City Council instructed the City Clerk to arrange interviews for Robert W. Oast, Jay Marino, Richard Koerber and Parker Andes.

After Council members spoke in support of the candidates interviewed, Robert W. Oast received 4 votes, Jay Marino received 2 votes, Richard Koerber received no votes, and Parker Andes received 6 votes. Therefore, Robert W. Oast and Parker Andes, were appointed to each serve a three year term respectively, terms to expire December 31, 2007, or until their successors have been appointed.

RESOLUTION BOOK NO. 29 – PAGE 12

VI. OTHER BUSINESS:

Claims

The following claims were received by the City of Asheville during the period of January 21-February 3, 2005: Miriam Hoch (Streets), M'Press Cards (Streets), Patti Cassida (Streets), Kimberly J. McKinney (Sanitation), Paul McIntosh (Parks & Recreation), Lizzetta Slack (Streets), BellSouth (Water) and Gene Lummus (Police.) These claims have been referred to Asheville Claims Corporation for investigation.

VII. INFORMAL DISCUSSION AND PUBLIC COMMENT:

Mr. Mike Fryar voiced concern over the College Street roadway improvements and how the City spends more money in downtown than in other areas of the City.

Mr. Walter Plaue voiced concern over the College Street roadway improvements and urged City Council to contact our legislators to help fund flood recovery efforts in Western North Carolina.

Mr. Gene Hamilton, founder of Asheville Citizens for Quality Government, urged City Council to perform an audit, as specified under the International Standards Organization 9000 Series, to determine the degree of quality achievement in all City departments. He felt the audit would be beneficial in the new City Manager search.

VIII. ADJOURNMENT:

Mayor Worley adjourned the meeting at 6:44 p.m.

CITY CLERK

MAYOR