

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 Gary W. Jackson; City Attorney Robert W. Oast Jr.; and Deputy City Clerk Phyllis Corns

Absent: None

PLEDGE OF ALLEGIANCE

Mayor Worley led City Council in the Pledge of Allegiance.

INVOCATION

Mayor Worley gave the invocation.

CHANGES TO THE AGENDA

Councilman Newman asked that Consent Agenda Item "I" be removed from the Consent Agenda for discussion since it related to the Water Agreement. In addition, he requested a discussion regarding the negotiations of the Water Agreement be added under "Other Business."

I. PROCLAMATIONS:

A. CERTIFICATE OF APPRECIATION TO ROBERT L. CAMBY JR.

On behalf of City Council, Councilman Davis, liaison to the WNC Regional Air Quality Agency, read the certificate of appreciation to Robert L. Camby, Jr., Executive Director of the Western North Carolina Regional Air Quality Agency, who will be retiring after several years of service.

B. PRESENTATION OF TELLY AWARDS

Mayor Worley said that the Telly Awards were founded in 1979 and is the premier award honoring outstanding cable television programs and commercials, as well as the finest video and film productions. Award recipients represent the best work of the most respected advertising agencies, production companies, television stations, cable operators, and corporate video departments in the world. With a 25-year history of recognizing creative excellence, the Telly Awards is a widely known and highly respected international competition. The 26th Annual Telly Awards received over 10,000 entries from all 50 states and numerous countries. This was the first time the City of Asheville submitted programming for judging, and as a result, The Asheville Channel was recognized with two awards for the programs, "Asheville City Limits: Fire Rescue", and "Asheville City Limits: Sanitation and Recycling."

On behalf of City Council, Mayor Worley congratulated Jeff Reble, Cable Access Coordinator, Kelley Webb and Richard Grant for their work on these productions.

II. CONSENT AGENDA:

Councilman Newman asked that Consent Agenda Item "I" be removed from the Consent Agenda for discussion since it related to the Water Agreement.

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Councilwoman Bellamy asked that Consent Agenda Item "J" be removed from the agenda for an individual vote.

A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON JUNE 14, 2005, AND THE WORKSESSION HELD ON JUNE 21, 2005

B. RESOLUTION NO. 05-127 - RESOLUTION ACCEPTING HOYLE LANE AND TREETOP ROAD IN LAKESHORE HILLS SUBDIVISION AS CITY-MAINTAINED STREETS

Summary: The consideration of a resolution to accept Hoyle Lane and Treetop Road in Lakeshore Hills Subdivision as a

City maintained streets.

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

Hoyle Lane and Treetop Road are developer constructed streets that have an average paved width of 23 feet and a length of 0.14 and 0.10 miles respectively for a total length of 0.24 miles. The City of Asheville staff inspected the construction of these roadways and certified they were built in accordance with City standards.

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

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City staff recommends City Council adopt the resolution to accept Hoyle Lane and Treetop Road in Lakeshore Hills Subdivision as a City maintained streets.

RESOLUTION BOOK NO. 29 – PAGE 152

C. RESOLUTION NO. 05-128 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO AN AGREEMENT WITH THE N.C. STATE HISTORIC PRESERVATION OFFICE FOR A GRANT FROM THE U.S. DEPT. OF INTERIOR, NATIONAL PARK SERVICE, FOR HAYWOOD ROAD NATIONAL REGISTER DISTRICT NOMINATIONS

Summary: The consideration of a resolution & budget amendment to enter into an agreement with the North Carolina State Historic Preservation Office (NCSHPO) to accept a federal grant from the US Department of Interior, National Park Service via the NCSHPO in the amount of \$4,140 for the purpose of the preparation of the West Haywood Road Commercial Historic District & East Haywood Road Commercial Historic District National Register Nominations and to receive the local match of \$2,760 from SAW Ventures, LLC.

The project is to prepare two National Register nomination forms for the West Haywood Road Commercial Historic District & East Haywood Road Commercial Historic District. The proposed West Haywood Road District includes approximately 27-28 properties on 3 ½ blocks running roughly between Dunwell Avenue and Brevard Road to the east past Mildred Avenue to the west. The proposed district was added to the North Carolina Study List in February of 2005, as the Haywood Road Historic District. The proposed East Haywood Road District includes approximately 12 properties on roughly two blocks and runs roughly between Michigan Avenue to the east and Hanover Street to the west. It was added to the North Carolina Study List in 1999 as the Haywood Road/ Westwood Commercial Historic District. A consultant who meets the qualifications outlined in 36 CFR 61 will be hired to prepare the nomination according to the

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guidelines outlined in National Register Bulletin 16A. The complete and final draft will be submitted to the NCSHPO no later than August 31, 2006.

The total cost for the project is \$6,900. The grant is for \$4,140. SAW Ventures, LLC has agreed to provide the local match of \$2,760. The City will not be responsible for the local match, although the HRC would like to reimburse Saw Ventures for a portion of the match, if possible. The grant period is from 7/1/2005-8/31/2006.

Pros:

- If the nomination is approved for listing on the National Register, no obligations or restrictions will be placed on the property
- If listed on the National Register privately owned buildings in the district will be eligible for a 20% federal income investment tax credit and a 20% state tax credit
- The local match will be provided by the SAW Ventures, LLC

Cons:

- National Register listing does not prevent demolition of structures or inappropriate alterations.

This architectural study will document the architectural and cultural history of the Haywood Road Corridor, which is vital to understanding the history of West Asheville. The preservation of this area further acknowledges the importance of cultural and architectural heritage in maintaining Asheville's unique "Sense of Place", which is identified as a Focus Area in the City's Strategic Operating Plan.

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City staff recommends that the City of Asheville enter into an agreement with the State Historic Preservation Office and

adopt a budget amendment to receive grant funds and local matching funds from SAW Ventures, LLC, to hire a consultant to complete the nomination report for the West Haywood Road Commercial Historic District & East Haywood Road Commercial Historic District National Register Nominations.

Planning & Development Director Scott Shuford responded to some questions from Councilman Davis regarding this grant.

RESOLUTION BOOK NO. 29 – PAGE 154

D. ORDINANCE NO. 3243- BUDGET AMENDMENT FOR GRANT FROM THE N.C. STATE HISTORIC PRESERVATION OFFICE FOR PREPARATION OF THE WEST HAYWOOD ROAD COMMERCIAL HISTORIC DISTRICT AND EAST HAYWOOD ROAD COMMERCIAL HISTORIC DISTRICT NATIONAL REGISTER NOMINATIONS

Summary: See Consent Agenda Item "C" above.

ORDINANCE BOOK NO. 22 – PAGE 126

E. ORDINANCE NO. 3244 - BUDGET AMENDMENT FOR FEMA REIMBURSEMENTS

Summary: The consideration of a budget amendment which adds FEMA reimbursements to the Fiscal Year 2004-05 budget to replenish various departmental budgets that incurred storm related expenses.

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Several departments incurred extraordinary expenses this year as a result of major clean-up efforts that the City had to undertake after the impact of hurricanes Ivan and Francis. Clean-up expenses for major tropical storms or hurricanes are typically not included in the City's an annual budget since they generally do not represent recurring annual expenses; as such, departments had to redirect resources that were initially earmarked for the provision of basic services to storm-related clean-up. The City has applied for and received FEMA for reimbursements for most of these expenses. The amendment will add \$599,610 to the General Fund and \$549,252 to Parks Capital Project budgets to replenish various departmental operating line items that were used to cover clean-up costs.

City staff recommends the budget be amended to add revenue received from FEMA to the Fiscal Year 2004-05 to cover the City's storm-related clean-up costs.

ORDINANCE BOOK NO. 22 – PAGE 128

F. RESOLUTION NO. 05-129 - RESOLUTION APPOINTING A CHAIR TO THE CIVIL SERVICE BOARD

Summary: The consideration of appointing the Chair to the Civil Service Board.

It is City Council's responsibility to appoint a Chair to the Civil Service Board annually.

At the City Council's worksession on June 21, 2005, it was the consensus of City Council to appoint T. Clark Brown as Chair to the Civil Service Board, to serve at the pleasure of City Council.

RESOLUTION BOOK NO. 29 – PAGE 155

G. RESOLUTION NO. 05-130 - RESOLUTION APPOINTING MEMBERS TO THE CIVIC CENTER COMMISSION

Summary: The term of Max Alexander, as a member of the Civic Center Commission, will expire on June 30, 2005. In addition, Charlie Cole has resigned as a member, thus leaving an unexpired term until June 30, 2006.

At the City Council worksession on June 21, 2005, the City Council instructed the City Clerk to prepare the proper paperwork to reappoint Max Alexander to serve an additional three year term, term to expire June 30, 2008, or until his successor has been appointed.

Also at the June 21, 2005, worksession, City Council instructed the City Clerk to prepare the proper paperwork to appoint Jean Ann Taylor to fill the unexpired term of Mr. Cole, term to expire June 30, 2006, or until her successor has been appointed.

H. RESOLUTION NO. 05-131 - RESOLUTION APPOINTING MEMBERS TO THE ASHEVILLE-BUNCOMBE HISTORIC RESOURCES COMMISSION

Summary: The terms of Diane Duermit and John Cram, as members on the Asheville-Buncombe Historic Resources Commission, expire on July 1, 2005.

At City Council's worksession on June 19, 2005, the City Council instructed the City Clerk to prepare the proper paperwork to reappoint Diane Duermit and John Cram to each serve a

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three-year term respectively, terms to expire July 1, 2008, or until their successors have been appointed.

RESOLUTION BOOK NO. 29 – PAGE 157

I. RESOLUTION ALLOW THE EXECUTION OF DOCUMENTS NECESSARY TO COMPLY WITH THE COVENANT REQUIREMENTS OF THE CITY'S WATER SYSTEM REVENUE BONDS, SERIES 2001 FOR TERMINATION OF THE RESTATED AND AMENDED SUPPLEMENTAL WATER AGREEMENT

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

J. RESOLUTION MAKING PROVISIONS FOR THE POSSESSION OF MALT BEVERAGES AND/OR UNFORTIFIED WINE AT THE CITY OF ASHEVILLE TENNIS TOURNAMENT PICNIC

RESOLUTION MAKING PROVISIONS FOR THE POSSESSION OF MALT BEVERAGES AND/OR UNFORTIFIED WINE AT THE CLUES, CARATS & GRAPES AMERICAN CANCER SOCIETY EVENT

RESOLUTION MAKING PROVISIONS FOR THE POSSESSION OF MALT BEVERAGES AND/OR UNFORTIFIED WINE AT THE ASHEVILLE WELCOMES THE WORLD SISTER CITIES EVENT

These items were removed from the Consent Agenda for an individual vote.

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

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

ITEMS REMOVED FROM THE CONSENT AGENDA

RESOLUTION NO. 05-132 - RESOLUTION ALLOW THE EXECUTION OF DOCUMENTS NECESSARY TO COMPLY WITH THE COVENANT REQUIREMENTS OF THE CITY'S WATER SYSTEM REVENUE BONDS, SERIES 2001 FOR TERMINATION OF THE RESTATED AND AMENDED SUPPLEMENTAL WATER AGREEMENT

City Attorney Oast said that this is the consideration of a resolution allowing the execution of documents necessary to comply with the covenant requirements of the City's Water System Revenue Bonds, Series 2001 for termination of the Restated and Amended Supplemental Water Agreement.

The City Council has given notice of its intention to terminate the Restated and Amended Supplemental Water Agreement effective June 30, 2005. The bond documents for the Water System Revenue Bonds, Series 2001 contain a covenant, which must be deleted in order to allow the termination of the Water Agreement. There may also be other documents legally required to allow the termination of the Water Agreement. The resolution allows for the execution of the necessary documents to allow for the termination of the Water Agreement.

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PROS:

- All necessary documents will be executed to allow for termination of the Water Agreement

CONS:

- None noted.

City staff recommends Council adopt the resolution allowing the execution of documents necessary to comply with the covenant requirements of the City's Water System Revenue Bonds, Series 2001 for termination of the Restated and Amended Supplemental Water Agreement.

Councilwoman Bellamy moved for the adoption of Resolution No. 05-132. This motion was seconded by Councilman Davis and carried unanimously.

RESOLUTION BOOK NO. 29 – PAGE 158

RESOLUTION NO. 05-133 - RESOLUTION MAKING PROVISIONS FOR THE POSSESSION OF MALT BEVERAGES AND/OR UNFORTIFIED WINE AT THE CITY OF ASHEVILLE TENNIS TOURNAMENT PICNIC

RESOLUTION NO. 05-134 - RESOLUTION MAKING PROVISIONS FOR THE POSSESSION OF MALT BEVERAGES AND/OR UNFORTIFIED WINE AT THE CLUES, CARATS & GRAPES AMERICAN CANCER SOCIETY EVENT

RESOLUTION NO. 05-135 - RESOLUTION MAKING PROVISIONS FOR THE POSSESSION OF MALT BEVERAGES AND/OR UNFORTIFIED WINE AT THE ASHEVILLE WELCOMES THE WORLD SISTER CITIES EVENT

Summary: The consideration of resolutions making provisions for the possession and consumption of malt beverages and/or unfortified wine at various events.

The below listed groups have requested through the Asheville Parks and Recreation Department that City Council permit them to serve beer and/or unfortified wine at their events and allow for consumption at these events.

- Asheville Welcomes the World, scheduled for July 5, 2005, in the grassy knoll next to the Biltmore Building. This is an event to acknowledge Asheville's Sister Cities.
- City of Asheville Tennis Tournament Picnic, scheduled for July 21 and 22, 2005, at Aston Park. This is a hospitality picnic for the spectators and players.
- Clues, Carats and Grapes, scheduled for September 22, 2005, in the grassy knoll next to the Biltmore Building. This is a benefit for the American Cancer Society.

City staff recommends City Council approve these resolutions on behalf of the applying organizations.

Councilman Newman moved for the adoption of Resolution No. 05-133. This motion was seconded by Councilwoman Jones and carried on a 6-1 vote, with Councilwoman Bellamy voting "no."

RESOLUTION BOOK NO. 29 – PAGE 160

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Councilman Newman moved for the adoption of Resolution No. 05-134. This motion was seconded by Councilwoman Jones and carried on a 6-1 vote, with Councilwoman Bellamy voting "no."

RESOLUTION BOOK NO. 29 – PAGE 162

Councilman Newman moved for the adoption of Resolution No. 05-135. This motion was seconded by Councilwoman Jones and carried on a 6-1 vote, with Councilwoman Bellamy voting "no."

RESOLUTION BOOK NO. 29 – PAGE 164

III. PUBLIC HEARINGS:

- A. PUBLIC HEARING TO CONSIDER THE REZONING OF 1451 SWEETEN CREEK ROAD FROM RM-16 RESIDENTIAL MULTI-FAMILY HIGH DENSITY DISTRICT TO COMMERCIAL INDUSTRIAL DISTRICT**

ORDINANCE NO. 3245 - ORDINANCE TO REZONE 1451 SWEETEN CREEK ROAD FROM RM-16 RESIDENTIAL MULTI-FAMILY HIGH DENSITY DISTRICT TO COMMERCIAL INDUSTRIAL DISTRICT

Mayor Worley opened the public hearing at 5:21 p.m.

Ms. Julia Cogburn, Urban Planner, said this is the consideration of an ordinance to rezone 1451 Sweeten Creek Road from RM-16 Residential Multi-Family High Density District to Commercial Industrial District. This public hearing was advertised on June 10 and 17, 2005.

The owners, Narrell E. and Billie S. Owenby, have petitioned the City for rezoning property located on Sweeten Creek Road in South Asheville, which presently contains a single-family residence. The property backs up to Edgewood Road, a predominately residential street that intersects with Rock Hill Road. Sweeten Creek runs through the back of this property. As a result, a little over half of the property is in the regulatory flood area. The immediate back portion of the property is in the floodway.

The zoning surrounding the site is varied. Zoning to the west is RS-8; to the south RM-16; to the east RS-4; and to the north, CI.

The property immediately south of this property is wooded and vacant. Farther south there are a mix of residential uses. To the west, the land use is predominately single-family residential as you cross Edgewood Road although the Asheville Bit and Steel operation is located to the northwest of the subject property across Edgewood Road. Land uses to the north along Sweeten Creek Road are primarily commercial and commercial/industrial in nature from this property to the intersection of Sweeten Creek with I-40. To the east, across Sweeten Creek Road from the subject property, the land use is predominately residential. The Biltmore Church of God is located immediately northeast across Sweeten Creek Road.

CI zoning does not allow for single-family dwellings, so the existing structure would become nonconforming with this rezoning. CI zoning does, however, permit multi-family dwellings.

Sanitary sewer and water are available to this property.

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Pros

1. The property is in an appropriate area for commercial development and is served by water and sewer. It is a level piece of property located along a busy road just south of the intersection of this road with an interstate highway.
2. Sweeten Creek provides a natural delineation point for the transition between commercial and residential development along Sweeten Creek Road as just south of this lot is where two streams converge into the creek.

Cons

1. This rezoning could be viewed by some as a continuation of strip commercial development along Sweeten Creek Road.
2. The properties surrounding the subject property in every direction, except to the north, are predominately developed for residential purposes.

The Planning and Development staff recommended approval of this rezoning to the Asheville Planning and Zoning Commission. At its meeting on April 6, 2005, the Planning and Zoning Commission had a split vote of 3-3 on this petition. The applicant has appealed to the Asheville City Council.

Ms. Cogburn presented City Council with a copy of a petition which contained approximately 35 signatures from members of the Stockwood Association who are opposed to the proposed rezoning.

Mr. W. Louis Bissette Jr., attorney representing the petitioner, presented City Council with a petition which contained approximately 75 signatures of people who support the rezoning to Commercial Industrial District. He said that this property has been in Mr. Owenby's family since around 1925. He showed City Council pictures of the property which showed the close proximity of other Commercial Industrial uses. He felt the rezoning would have a very minimal impact on the Stockwood Subdivision. He urged City Council to rezone the property and noted that with all the restrictions on the property, they would not be able to get anywhere near 16 residential units built. In addition, he felt residential would not be attractive on the site due to the close proximity of other industrial and commercial uses and the fact that it is on a major thoroughfare.

Mrs. Hazel Edwards, resident on Stockwood Road and owner of property adjoining the subject property, did not oppose the rezoning.

The following individuals spoke in opposition to the proposed rezoning for various reasons, some being, but are not limited to: there will be a negative impact on the residential quality and integrity of the Stockwood community; the proposed property to be rezoned is kiddy-corner from the only entrance to the Stockwood community; various uses can be built on the property is the property is rezoned to Commercial Industrial; other properties along Sweeten Creek Road are likely to request to be rezoned Commercial Industrial as well; area residents bought their homes because other residential property was around them; property values of the residential homes will be reduced since they will be able to see industrial from their homes; City Council should stop rezoning residential property; if Council does want to rezone the property, they should wait until the widening of Sweeten Creek Road is completed; and more traffic will be added to Sweeten Creek Road if zoned Commercial Industrial:

Mr. Douglas Johnson, resident on Stockwood Road
Ms. Martie Hillyer, resident on Stockwood Road
Mr. Kevin Blanton, resident on Stockwood Road
Ms. Nancy Taylor, resident on Stockwood Road
Mr. Paul McNeil, resident on Stockwood Lane

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Mr. Bissette pointed out that for commercial zoning, they are required to have a 35-foot setback, which is a great deal more than the residential required setback. He felt the setback would help buffer the building from the road and from the neighborhood.

Mayor Worley closed the public hearing at 5:50 p.m.

At the request of Councilwoman Bellamy, Ms. Cogburn read the permitted uses allowed in the Commercial Industrial District.

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

Councilman Davis moved for the adoption of Ordinance No. 3245. This motion was seconded by Vice-Mayor Mumpower.

Vice-Mayor Mumpower felt this would be a limited intrusion on the neighborhood but a reality of a growing city.

Councilwoman Bellamy agreed that the Sweeten Creek Road area is changing, however, this property is basically surrounded by residential. She felt that if the property was brought to Council as a conditional use permit, then Council could place restrictions on it. However, a straight rezoning allows too many unknowns.

The motion made by Councilman Davis and seconded by Vice-Mayor Mumpower carried on a 4-3 vote, with Mayor Worley, Vice-Mayor Mumpower, Councilman Davis and Councilman Dunn voting "yes" and Councilwoman Bellamy, Councilwoman Jones and Councilman Newman voting "no."

Mayor Worley said that due to the number of votes received in favor of this ordinance, it would require a second reading, which will be held at the next formal meeting on July 12, 2005. He said that there will be no public comment allowed at the second reading.

ORDINANCE BOOK NO. 22 – PAGE 133

B. PUBLIC HEARING TO CONSIDER THE ISSUANCE OF A CONDITIONAL USE PERMIT FOR PROPERTY LOCATED ON KENILWORTH KNOLL, KNOWN AS THE BEAUCATCHER CONDOMINIUMS, FOR A PROPOSED 106-UNIT CONDOMINIUM PROJECT

ORDINANCE NO. 3246 - ORDINANCE GRANTING A CONDITIONAL USE PERMIT FOR PROPERTY LOCATED ON KENILWORTH KNOLL, KNOWN AS THE BEAUCATCHER CONDOMINIUMS, FOR A PROPOSED 106-UNIT CONDOMINIUM PROJECT

Oaths were administered 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 5:58 p.m.

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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.

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

Ms. Hamel said that this is the consideration of the issuance of a conditional use permit for property located on Kenilworth Knoll, known as the Beucatcher Condominiums, for a proposed 106-unit condominium project.

On April 29, 2005, the Kassinger Development Group and their representative Gerald Green submitted a conceptual master plan for the construction of a 106-unit condominium project proposed on approximately 5.2 acres off of Kenilworth Knoll (Attachment to City Exhibit 3 – Aerial Map). The project site involves two parcels; the former McGuffy's Restaurant site and the Visions Healthclub site, each zoned Highway Business. The properties surrounding the site are all zoned Highway Business and include the following uses: an assortment of retail, restaurant and lodging facilities along the north and west sides of the property, a high-density multi-family complex to the south and Interstate 240, to the east.

The conceptual master plan and development of the site will include (Attachment to City Exhibit 3 – Site Plan):

- Demolition of the McGuffy's restaurant and Visions Healthclub facilities;
- A 14,400 square foot parking deck consisting of 48 spaces;
- A 36, 210 square foot off-street surface parking area consisting of 116 spaces;
- Sidewalks will be provided from the development to Tunnel Road;
- Transit shelter will be provided at the existing bus stop located at Tunnel Road and Kenilworth Knoll;
- Construction of a 163, 600 square foot building, housing 106 condo units;
 - 74 – 2 bedroom units, and 32- 1 bedroom units
 - Building will consist of 4-stories at a height of 50-feet

The elevations included in the plan submittal are for the front and rear facades of the building (Attachments to City Exhibit 3 – East Elevation and Rear Elevation Drawings). It illustrates craftsman style architecture with details such as: porches, chimneys, gabled rooflines with moderate to deep overhangs and double-hung windows. A list of proposed building material includes: stonework, hardi-plank siding, painted wood trim and cedar shake siding.

On May 16, 2005, the Technical Review Committee (TRC) approved the project subject to the conditions outlined in the staff report and with the following added conditions: (1) The applicant address right-of-way and property discrepancy issues; (2) Sidewalk shall be installed along Kenilworth Knoll Drive down to Tunnel Road; and (3) Pedestrian signals shall be required at Kenilworth Knoll Drive and Tunnel Road.

The plans have been revised to address several TRC conditions outlined in the TRC Staff report including: setbacks, landscaping, open space and parking. Additional comments will be addressed upon final submittal to the TRC, should the project be approved by City Council.

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On June 1, 2005, the Planning and Zoning Commission voted 7-0 in favor of approving the project subject to conditions by the TRC, staff and the following condition: The crosswalks required by the Technical Review Committee at the corner of Tunnel Road and Kenilworth Knoll, shall be upgraded to high-visibility type crossings. Markings may be ladder-style or piano-key style, similar to City markings in the downtown area. Material shall be white thermoplastic meeting N.C. Dept. of Transportation standards.

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)).

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

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

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

The project site consists of two developed parcels that will be excavated in order to construct the proposed development. Additional grading of the site will occur along portions of the western side of the property where the land begins to drop in elevation, excluding the steeper parts of the bank. This is necessary to accommodate both the parking deck and portions of the building that are proposed below grade. A single retaining wall structure will only be necessary around the sidewalk proposed on the northern end of the building. The required landscaping in this area, however, will mask the height of the structure.

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

The project site and the surrounding properties are all zoned Highway Business district and consist of both low to high impact commercial uses and high density residential uses. The building is being designed with high-quality, long lasting building materials with enhanced architectural features and is likely to have a positive affect on adjoining and abutting properties. In addition, landscape buffers are proposed around the perimeter of the site, which will assist in mitigating any negative impacts the development may have on the surrounding area.

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

The development will be compatible with the immediate and surrounding area that is zoned Highway Business district where a wide range of uses and a mixture of both small and large scaled buildings exist. The site is not only being developed at a density below what is permitted, but is also being developed in a manner that preserves the steeper slopes on site. In addition to the perimeter landscaping required for the project, both the

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parking deck and portions of the residential building are proposed below grade in order to assist in providing visual relief of the full scale and height of the structures. Lastly, the proposed building is designed with enhanced architectural features and long lasting building materials that is likely to add character to the surrounding area.

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 project is supported by numerous goals and strategies in the plan relating to infill development, smart growth policies and transportation goals. The project utilizes the existing zoning on the lot to create a sustainable high-density residential development within the City Limits. The site is also located within very close proximity of transit service, potential employment centers, restaurants and shopping centers.

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

A transit stop currently exists along the north side of Kenilworth Knoll and Tunnel Road. Additionally, any development of the site would require technical approval from all applicable departments including representatives of the Water Resources, MSD, Engineering, Fire and Building Safety Departments. The conceptual plans for the development have been reviewed by the City's TRC, which found that adequate services and facilities are available for the proposed development.

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

The site is served by a traffic signal at the intersection of Kenilworth Knoll and Tunnel Road. Comments received from Engineering staff at the Technical Review Committee meeting did not foresee any undue traffic congestion or hazards being created from this development.

Pros

- The site is appropriately zoned for this type of development.
- The project supports numerous goals and strategies outlined in the City's 2025 plan as it relates to smart growth, infill and sustainable development, and transportation goals.
- The proposed development will provide a high-quality infill site on several properties, one of which has remained vacant for a period of time.
- The density proposed for the development can be supported by the existing infrastructure and is in close proximity to transit service, potential employment centers and shopping venues, which makes the development attractive and appropriate at this location.
- The project will provide housing for people with a range of incomes and needs. Proposed pricing of the units range from \$143,000k to \$300,000.

Cons

- It is noted that staff did not find any "cons" with the proposed development.

Based on the seven findings, staff recommends approval of the conditional use permit with the conditions outlined by the TRC and the following added conditions (1) All site lighting shall be equipped with 90 degree cutoff features and be directed away from adjoining properties and streets; (2) All existing vegetation to be retained shall be clearly indicated and dimensioned

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on the site plan; and (3) The crosswalks required by the Technical Review Committee at the corner of Tunnel Road and Kenilworth Knoll, shall be upgraded to high-visibility type crossings. Markings may be ladder-style or piano-key style, similar to City markings in the downtown area. Material shall be white thermoplastic meeting N.C. Dept. of Transportation standards.

Upon inquiry of Councilwoman Bellamy, City Attorney Oast said that City Council does not have a role in the contractual issues between the operator of the health club and the patrons.

Mr. Gerald Green, representing the developer, spoke in support of the conditional use permit. They hope to strengthen the residential core in that area. This project will provide a wide-range of home ownership for people in our community.

After rebuttal, Mayor Worley closed the public hearing at 6:15 p.m.

Councilman Newman moved for the adoption of Ordinance No. 3246, granting a conditional use permit for property located on Kenilworth Knoll, known as the Beacatcher Condominiums, subject to the conditions outlined by the TRC and the following added conditions: (1) All site lighting shall be equipped with 90 degree cutoff features and be directed away from adjoining properties and streets; (2) All existing vegetation to be retained shall be clearly indicated and dimensioned on the site plan; and (3) The crosswalks required by the Technical Review Committee at the corner of Tunnel Road and Kenilworth Knoll, shall be upgraded to high-visibility type crossings. Markings may be ladder-style or piano-key style, similar to City markings in the downtown area. Material shall be white thermoplastic meeting N.C. Dept. of Transportation standards. This motion was seconded by Councilman Dunn and carried unanimously.

ORDINANCE BOOK NO. 22 – PAGE 135

C. PUBLIC HEARING TO CONSIDER THE REZONING OF TWO LOTS ON HAYWOOD ROAD FROM COMMUNITY BUSINESS II DISTRICT TO CENTRAL BUSINESS DISTRICT

ORDINANCE NO. 3247 - ORDINANCE TO REZONE TWO LOTS ON HAYWOOD ROAD FROM COMMUNITY BUSINESS II DISTRICT TO CENTRAL BUSINESS DISTRICT

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

Mr. Alan Glines, Urban Planner, said this is the consideration of an ordinance to rezone two lots on Haywood Road from Community Business II District to Central Business District. This public hearing was advertised on June 10 and 17, 2005.

The owners of 797 Haywood Road, Paul and Margaret Nichols, with a lease purchase option to SAW Ventures Haywood LLC, were given a letter of violation regarding grading activity without an approved permit on the two lots that are a part of the rezoning request. This is related to renovation work being done at 797 Haywood Road to excavate the basement of the existing building.

This project and property came to the attention of the Planning and Development staff because of grading activity on the two parcels adjacent to the Nichols Furniture building at 797 Haywood Road. The new owners of this building are SAW Haywood Ventures, LLC who are renovating the building. They also have a lease purchase agreement for the two adjacent parcels. The parcels provided parking for Nichols Furniture when it operated there. In order to use the basement of the former Nichols Building, the owners began to excavate soil in order to

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lower the floor level. The soil material was placed on these adjacent lots and the grading began. The Unified Development Ordinance outlines that grading activities require a permit.

After meeting with staff, SAW Haywood Ventures decided to seek a rezoning for the two parcels to provide consistent zoning for the properties that are under their control. A rezoning to CBD will also provide some relief to the landscape bufferyard requirements for the CBD parcels. This is consistent with the historic pattern of development for the downtown business section of the Haywood Road. Properties are often developed parcel line to parcel line without a large landscape buffer area. However, if a parking lot were developed, a minimum five foot wide parking lot landscape strip would be required which includes a row of trees interspersed with shrubs. Additional parking lot landscaping may be required if internal parking lot aisles are provided.

Staff is considering some rezoning action along the Haywood Road corridor. Based on the high level of redevelopment activity along Haywood, staff is interested in selecting a suitable zoning district. It seems clear that the older development pattern with the building placed at the street front with a commercial storefront would be a successful pattern for new development along the corridor. A recent report produced by students from UNC-Chapel Hill also recommended a consistent pattern for commercial uses along the corridor. Zoning options considered by staff for Haywood Road have included the Neighborhood Corridor District, Urban Place District or a special district created for Haywood Road. The study by staff for this area is just getting underway and we are not ready to provide a complete recommendation for what zoning district will be most suitable at this time.

The Central Business District (CBD) is provided to reinforce the downtown as the center of commerce for the region. It also allows a wide variety of uses including office, retail, residential and commercial uses. It is likely that parts of Haywood Road were zoned CBD because this was the best fit for existing buildings and uses along the corridor. More of the properties are conforming with the CBD zoning in place. Also the Haywood Road corridor is historically the main commercial street for west Asheville and provides a similar function that the central business district does. Buildings are required to be set just behind the sidewalk in the Central Business District zoning areas. There are also some building development standards for new projects in this district.

The Community Business II District (CBII) allows medium to high density business and service uses serving several residential neighborhoods. CB II is also expected to serve as a workplace for many residents in the surrounding neighborhood and also be pedestrian and auto friendly. A wide variety of office, retail and residential uses are allowed in the CB II district. Although buildings can be placed anywhere on the lot, locating the building to the front of the lot is encouraged and parking is allowed to the side or rear of the building but not in front.

Pros

- The rezoning provides zoning consistency for this property and other adjoining properties under the same ownership.
- The historic development pattern is maintained and consistent with the surrounding area.
- A zoning change to CBD provides an efficient development pattern with some additional development standards for new buildings.

Cons

- The rezoning request removes the requirement for the landscape bufferyard, which is based on compatibility of uses.

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The Planning and Zoning Commission at their June 1, 2005, meeting voted 7-0 to recommend approval of the rezoning request. City staff concurs with that recommendation.

Mr. Austin Walker, applicant, was pleased to see what is happening in west Asheville and urged City Council to support his rezoning.

Councilwoman Bellamy said that the subject lots are deeper than the surrounding ones on Haywood Road and asked that as plans are developed, that they work with City staff to ensure that the houses are shielded from excess traffic and noise.

Mayor Worley closed the public hearing at 6:22 p.m.

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

Councilman Dunn moved for the adoption of Ordinance No. 3247. This motion was seconded by Councilwoman Bellamy and carried unanimously.

ORDINANCE BOOK NO. 22 - PAGE

D. PUBLIC HEARING TO CONSIDER THE REZONING OF FOUR LOTS ON CLINGMAN AVENUE AND ADJOINING RIGHT-OF-WAY FROM RM-8 RESIDENTIAL MULTI-FAMILY MEDIUM DENSITY DISTRICT TO URBAN RESIDENTIAL DISTRICT

ORDINANCE NO. 3248 - ORDINANCE TO REZONE FOUR LOTS ON CLINGMAN AVENUE AND ADJOINING RIGHT-OF-WAY FROM RM-8 RESIDENTIAL MULTI-FAMILY MEDIUM DENSITY DISTRICT TO URBAN RESIDENTIAL DISTRICT

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

Mayor Worley opened the public hearing at 6:28 p.m.

Ms. Julia Cogburn, Urban Planner, said this is the consideration of an ordinance to rezone four lots on Clingman Avenue and adjoining right-of-way from RM-8 Residential Multi-Family Medium Density District to Urban Residential District. This public hearing was advertised on June 10 and 17, 2005.

The owners, Mountain Housing Opportunities, Inc., have requested the rezoning of property located on the western side of Clingman Avenue immediately south of the developing Prospect Terrace area. The properties are currently vacant. The area proposed for rezoning abuts Clingman Avenue. It is proposed that one property be split zoned so that only the portion that abuts Clingman is rezoned to URD (leaving the portion abutting Jefferson as RM8). A small creek runs through a deep ravine in the property. Fill and piping will be necessary to develop the site. An unopened right-of-way has been included in this rezoning. MHO plans to petition to close this right-of-way in the future.

Zoning and land use surrounding the site are predominately higher density residential in nature. The zoning to the west is RM8; to the south RM8 with CI further down Clingman; to the east, the zoning is RM8 and to the north the zoning is mostly RM16.

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The property immediately to the south of the subject properties is vacant. The Silver Dollar Restaurant is on property further south along Clingman as you approach the commercial/industrial section of the West End/Clingman neighborhood at the river. Properties to the north, west and east are predominately higher density single-family residential in character.

The RM8 District is intended to permit a full range of medium density multi-family housing types including single-family detached and attached residences.

The URD District is established to complement existing residential neighborhoods by providing an improved diversity of housing types, scale, affordability and character in areas where they can best be served by city services and infrastructure and is intended to be located on significant transit corridors and/or high growth areas. It is designed to provide new development and redevelopment opportunities that encourage urban scaled residential structures that relate to the street and character of Asheville's urban areas. A density of 32 units per acre is permitted.

Access to the properties is off of Clingman Avenue and Owens Bell Road. Sanitary sewer and water are available.

Pros

- The property is an appropriate area for higher density residential development as it is located in an area close to downtown with infrastructure to support such development.
- The plans for the West End/Clingman area promote higher density residential development in the residential core of the neighborhood.
- Surrounding development is predominately higher density residential in nature.

Cons

- Large ravine on the property will make development difficult.
- Non-residential development allowed in the URD District as part of a mixed use development may be considered by some to be inappropriate for this residential area.

The Planning and Development staff recommended approval of this rezoning to the Asheville Planning and Zoning Commission. At its meeting on June 1, 2005, the Planning and Zoning Commission unanimously (6-0) voted to recommend approval of this rezoning to City Council.

Mr. Mike Vance, representing Mountain Housing Opportunities, urged City Council to support their rezoning request.

Mayor Worley closed the public hearing at 6:30 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. 3248. This motion was seconded by Councilwoman Jones and carried unanimously.

ORDINANCE BOOK NO. 22 - PAGE

E. PUBLIC HEARING TO CONSIDER THE CONDITIONAL USE ZONING OF PROPERTY LOCATED AT 13 SUMMERLIN ROAD FROM RM-6 RESIDENTIAL MULTI-FAMILY LOW DENSITY DISTRICT TO INSTITUTIONAL/CONDITIONAL USE; AND THE ISSUANCE OF A CONDITIONAL USE PERMIT FOR A PROPOSED 9,000 SQUARE FOOT

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BUILDING EXPANSION AND AN ADDITIONAL 24-SPACE SURFACE PARKING LOT

ORDINANCE NO. 3249 - ORDINANCE REZONING PROPERTY LOCATED AT 13 SUMMERLIN ROAD FROM RM-6 RESIDENTIAL MULTI-FAMILY LOW DENSITY DISTRICT TO INSTITUTIONAL/CONDITIONAL USE

ORDINANCE NO. 3250 - ORDINANCE GRANTING A CONDITIONAL USE PERMIT FOR PROPERTY LOCATED AT 13 SUMMERLIN ROAD FOR A PROPOSED 9,000 SQUARE FOOT BUILDING EXPANSION AND AN ADDITIONAL 24-SPACE SURFACE PARKING LOT

Oaths were administered to anyone who anticipated speaking on this matter.

City Attorney Oast reviewed with Council the conditional use district zoning process by stating that this is a two-part process. It requires rezoning, which is a legislative act, and the issuance of a conditional use permit, which is a quasi-judicial site-specific act. Even though the public hearing on those two items will be combined, all the testimony needs to be sworn and two votes will need to be taken. The first vote will be to grant the rezoning to the conditional use district category and the second vote will be to issue the conditional use permit. If Council runs into a situation that it votes to rezone, Council doesn't have to issue the conditional use permit on the same night.

After hearing no questions about the procedure, Mayor Worley opened the public hearing at 6:36 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.

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 a request to rezone property located at 13 Summerlin Road from RM-6 Residential Multi-Family Low Density District to Institutional/ Conditional Use, and a request to issue a conditional use permit for a proposed 9,000 square foot building expansion and an additional 24-space surface parking lot.

The owners of the property, Clear Channel Communication, have requested the conditional use zoning of property located in the City's extraterritorial jurisdiction area (ETJ) and unnamed neighborhood in West Asheville, north of Patton Avenue (Attachment to City Exhibit 3 – Location Map). The property is relatively large with a significant natural woodland surrounding the developed portion of the site. The existing building and parking area is accessed off of the dead-end of Summerlin Drive where City maintenance ends at the edge of the property (Attachment to City Exhibit 3 – Aerial Map). The property is surrounded by a few different zoning districts with the majority of the adjacent zoning being multi-family residential (RM-6 & RM-16); the property south of the subject site is single family residentially zoned (RS-2). Also located on the site are four communication broadcast towers scattered throughout.

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The current use, radio broadcast studios and offices, is currently a "grandfathered" non-conforming use due to the existing RM-6 zoning in which business and office uses are not permitted. Non-conforming uses are not allowed to expand and any consideration of expansion would require a rezoning to a district that would allow the use as a "permitted use". The applicant is requesting a rezoning to the INST-CUZ designation in order to allow for the expansion but to also ensure that there will be limits on this, and any future development, in order to secure some compatibility with the adjacent properties.

The proposed Master Plan shows the existing 6,733 square foot building and existing 39 space parking lot (Attachment to City Exhibit 3 – Site Plan). Also shown on the Master Plan are two building and parking lot expansions. The first expansion (Phase 1) is for 9,000 square feet and an additional 24 parking spaces. The applicant is also seeking conceptual approval for a second building expansion (Phase 2) of an additional 5,200 square feet and 39 parking spaces (that would absorb the previous 24 spaces). Phase 1 would result in the maximum amount of parking permitted; Phase 2 would reduce the parking ratio to be within the minimum and maximum amount of parking permitted for the entire project area. Also associated with the project will be landscaping and other site compliance required for the parking areas (City Exhibits 4 and 5 – Existing Parking Photos). The proposed project will result in a medium impact use; when a medium impact use is adjacent to low or medium density residential a 25' Type 'C' landscape is required. This buffer may be reduced by approximately 40% when a distance separation of over 100 linear feet exists. Due to this separation and the amount of existing woodland that will remain, an alternative compliance that preserves the existing woodland edge will be considered as an alternative that is "equal to or better" than normal compliance. In areas where the surrounding woodland does not meet the minimum standard, additional plant material will be installed to meet the requirements of Section 7-11-2 of the Unified Development Ordinance.

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At their May 16, 2005, meeting, the Technical Review Committee (TRC) met to review the project and made a motion to approve the rezoning and Conditional Use Permit request with the conditions outlined in staff's report. The majority of the revisions were minor revisions of clarification.

At their June 1, 2005, meeting, the City of Asheville Planning and Zoning Commission reviewed the Conditional Use Rezoning and Master Plan proposal and voted unanimously to recommend approval to the Asheville City Council, stipulating that the applicant meet all outstanding TRC conditions. In the intervening month the applicant has submitted a revised Master Plan that does appear to address the majority of the TRC comments, in addition to a formal letter of alternative compliance.

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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)).

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.

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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.**

The proposed building expansion will be located in the portion of the property where topography is very mild and only a relatively small amount of site disturbance is expected.

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

The existing use and proposed expansion are centrally located on the site with a substantial distance and vegetative buffer in place. No new access points for the project are proposed and it is anticipated that the expansion will be barely detectable by adjacent properties.

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

The proposed expansion is considered to be small (one story; 15,200 square feet total), relative to the size of the subject property (over 61 acres). In addition, as a result of the proposal a significant vegetative buffer will remain in place which will aid in preserving the character of the residential areas by buffering them from the non-residential use.

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* describes the need for the city to move away from “smokestack” type industries while attracting high-tech businesses. It also states that as a goal of the *Sustainable Economic Development Strategic Plan* that effort must be made to insure that Asheville’s urban planning, zoning, and permitting processes, facilitate sustained and positive development (p. 200). Approval of this project would allow for the expansion of a “smokeless” high-tech business while the adoption of the associated masterplan would help insure compatibility with the adjacent residential uses.

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

This proposed development is within close proximity to transportation facilities and other utilities appear adequate. The project area is located near major road facilities, interstate connections and other service centers on Patton & the New Leicester Highway. In addition, the proposed project will only require a relatively small expansion to the existing water and sewer service and preliminary review has not revealed any problems with providing future service to the building expansion.

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

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Although the proposed building expansion is 1 ½ times the size of the existing building, the parking area is not being expanded to the same ratio. No new access points for the project are being proposed and the use is not expected to generate at significant amount of traffic. Lastly, the City Traffic Engineer has reviewed the proposal and has not identified any traffic hazards.

Pros

- Allows for the expansion of a high-tech business.
- Retains a significant distance and vegetative buffer to adjacent properties.

Cons

- Allows for the expansion of a currently non-conforming use.

- Reduces the potential for the property to be redeveloped for a multi-family residential development.

For the reasons outlined, City staff concurs with the Planning and Zoning Commission and recommends approval of the zoning change from RM-6 to Institutional/Conditional Use and approval of the associated conditional use permit with detailed Master Plan.

Mr. Jeff Glasscock, architect representing Clear Channel, urged City Council to support the conditional use zoning.

After hearing no rebuttal, Mayor Worley closed the public hearing at 6:38 p.m.

Vice-Mayor Mumpower moved to approve the conditional use rezoning for property located at 13 Summerlin Road from RM-6 Residential Multi-Family Low Density District to Institutional/Conditional Use. This motion was seconded by Councilman Newman and carried unanimously.

ORDINANCE BOOK NO. 22 - PAGE

Vice-Mayor Mumpower moved to adopt Ordinance No. 3250, to issue a conditional use permit for property located at 13 Summerlin Road for a proposed 9,000 square foot building expansion and an additional 24-space surface parking lot, subject to the applicant addressing all outstanding TRC conditions before final zoning approval. This motion was seconded by Councilwoman Bellamy and carried unanimously.

ORDINANCE BOOK NO. 22 – PAGE

IV. UNFINISHED BUSINESS:

A. RESOLUTION NO. 05-136 -RESOLUTION AMENDING THE ANNEXATION SERVICES PLAN

Planning & Development Director Scott Shuford said that this is the consideration of a resolution amending the Annexation Services Plan for the Year 2005 Annexation Areas to reflect revisions to the revenue estimates.

In adopting an annexation ordinance, the City has the authority to annex all or some of an area proposed for annexation, as long as that area qualifies for annexation. The City may also amend the services plan for the proposed annexation area or areas, as long as the requirements for providing service to the annexation areas continue to be met.

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City staff presented the Annexation Services Plan for the Ridgefield Business Park, Ascot Point Village, Long Shoals Road, Airport Road, Two Town Square, and Town Square East areas to City Council on April 26, 2005. The report included a financing plan with estimates for revenues and expenditures included. The City Council adopted the Plan on this date.

The staff is now proposing that three pages of this plan be amended (those dealing specifically with revenue estimates) for two reasons. The first is to revise these revenue figures to reflect last minute changes to the qualifications numbers (population and acreage) that we failed at final publishing of the Plan to transfer to the revenue section of the plan. Secondly, the Budget and Research Division has provided us with new estimates for a few of the revenue figures, based on more current data. These revisions/corrections result in a net increase to the revenue estimate for these annexations of \$53,550.00

As long as the Annexation Services Plan does not show the annexation area as qualifying under any additional statutory tests, no additional public hearing is required for this amendment to the Plan.

City staff recommends City Council adopt a resolution amending the Annexation Services Plan to reflect revisions/corrections to the revenue estimates.

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

Councilwoman Bellamy moved for the adoption of Resolution No. 05-136. This motion was seconded by Councilwoman Jones and carried unanimously.

RESOLUTION BOOK NO. 29 – PAGE 166

B. ORDINANCE NO. 3251 - ORDINANCE EXTENDING THE CORPORATE LIMITS OF THE CITY OF ASHEVILLE TO INCLUDE THE RIDGEFIELD BUSINESS PARK AREA

Mayor Worley said that the public hearing on this matter was held on June 14, 2005.

Planning & Development Director Scott Shuford said that this is the consideration of adopting an ordinance to extend the corporate limits of the City of Asheville to the Ridgefield Business Park area.

On April 12, 2005, City Council adopted Resolutions of Intent beginning the annexation process for the following six areas: the Ridgefield Business Park area, the Ascot Point Village area, the Long Shoals Road area, the Airport Road area, Town Square East, and Two Town Square. The Annexation Services Plan for all of these areas was approved on April 26, 2005, and the Plan was amended on June 28, 2005. A public information meeting was held on May 31, 2005. Public hearings on each of annexations were held by City Council on June 14, 2005. Adoption of the annexation ordinances is the final step in the annexation process.

Mr. Shuford said that a metes and bounds description is attached to the ordinance. The annexation area does meet the requirements of General Statutes. It is the intent of the City to extend City services outlined in the Annexation Services Plan. On the effective date of the annexation, the City will have funds in sufficient amount to finance all capital expenditures. The effective date of this annexation is September 30, 2005.

Mr. Shuford explained Council what is located on this site and what is located in the surrounding area.

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Staff recommends adoption of annexation ordinance for the Ridgefield Business Park area, with an effective date of September 30, 2005.

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

Councilwoman Bellamy moved for the adoption of Ordinance No. 3251. This motion was seconded by Councilwoman Jones and carried on a 6-1 vote, with Vice-Mayor Mumpower voting "no."

Councilman Dunn said that he has voted against every annexation since being elected because he did not feel that the City was addressing some major issues, such as the water agreement, police presence, drug enforcement, and the issue of an increased room tax. As long as those issues were not addressed, he would not vote for annexation because we are not taking care of things we should be taking care of. Hopefully with the budget soon to be adopted, Council will be addressing some of those major issues and he would start supporting annexation.

Vice-Mayor Mumpower said there are strong arguments for annexation; however, he is principally against the idea of forced annexation. In addition, he said that we have a demonstrated willingness to annex manufacturing industry and he is opposed to that. Finally, he thinks it's unfair to annex County residents and not be able to give them any lower rates to help compensate for those added taxes.

Councilman Newman felt that annexation is about fairness in taxation. While the involuntary nature of the annexation process is not pleasing, it's even less fair to require the citizens and businesses who are located in the City of Asheville to pay twice the level of taxation. The families and businesses in the City of Asheville are paying for infrastructure and services that are important to the City of Asheville but are also important to all of Buncombe County and Western North Carolina. As the areas around the City limits become just as urbanized and just as developed as the areas across the street that are in the City limits, then to require the people who live in the City to pay double of what the others pay, is not fair.

ORDINANCE BOOK NO. 22 – PAGE

C. ORDINANCE NO. 3252 - ORDINANCE EXTENDING THE CORPORATE LIMITS OF THE CITY OF ASHEVILLE TO INCLUDE THE ASCOT POINT VILLAGE AREA

Mayor Worley said that the public hearing on this matter was held on June 14, 2005.

Planning & Development Director Scott Shuford said that this is the consideration of adopting an ordinance to extend the corporate limits of the City of Asheville to the Ascot Point Village area.

On April 12, 2005, City Council adopted Resolutions of Intent beginning the annexation process for the following six areas: the Ridgefield Business Park area, the Ascot Point Village area, the Long Shoals Road area, the Airport Road area, Town Square East, and Two Town Square. The Annexation Services Plan for all of these areas was approved on April 26, 2005, and the Plan was amended on June 28, 2005. A public information meeting was held on May 31, 2005. Public hearings on each of annexations were held by City Council on June 14, 2005. Adoption of the annexation ordinances is the final step in the annexation process.

Mr. Shuford said that a metes and bounds description is attached to the ordinance. The annexation area does meet the requirements of General Statutes. It is the intent of the City to

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extend City services outlined in the Annexation Services Plan. On the effective date of the annexation, the City will have funds in sufficient amount to finance all capital expenditures. The effective date of this annexation is December 31, 2005.

Mr. Shuford explained Council what is located on this site and what is located in the surrounding area.

Staff recommends adoption of annexation ordinance for the Ascot Point Village area, with an effective date of December 31, 2005.

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

Councilman Newman moved for the adoption of Ordinance No. 3252. This motion was seconded by Councilwoman Jones and carried on a 6-1 vote, with Vice-Mayor Mumpower voting "no."

ORDINANCE BOOK NO. 22 – PAGE

D. ORDINANCE NO. 3253 - ORDINANCE EXTENDING THE CORPORATE LIMITS OF THE CITY OF ASHEVILLE TO INCLUDE THE LONG SHOALS ROAD AREA

Mayor Worley said that the public hearing on this matter was held on June 14, 2005. .

Planning & Development Director Scott Shuford said that this is the consideration of adopting an ordinance to extend the corporate limits of the City of Asheville to the Long Shoals Road area.

On April 12, 2005, City Council adopted Resolutions of Intent beginning the annexation process for the following six areas: the Ridgefield Business Park area, the Ascot Point Village area, the Long Shoals Road area, the Airport Road area, Town Square East, and Two Town Square. The Annexation Services Plan for all of these areas was approved on April 26, 2005, and the Plan was amended on June 28, 2005. A public information meeting was held on May 31, 2005. Public hearings on each of annexations were held by City Council on June 14, 2005. Adoption of the annexation ordinances is the final step in the annexation process.

Mr. Shuford said that a metes and bounds description is attached to the ordinance. The annexation area does meet the requirements of General Statutes. It is the intent of the City to extend City services outlined in the Annexation Services Plan. On the effective date of the annexation, the City will have funds in sufficient amount to finance all capital expenditures. The effective date of this annexation is December 31, 2005.

Mr. Shuford explained Council what is located on this site and what is located in the surrounding area.

Staff recommends adoption of annexation ordinance for the Long Shoals Road area, with an effective date of December 31, 2005.

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

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Councilman Davis moved for the adoption of Ordinance No. 3253. This motion was seconded by Councilwoman Jones

and carried on a 6-1 vote, with Vice-Mayor Mumpower voting "no."

ORDINANCE BOOK NO. 22 – PAGE

E. ORDINANCE NO. 3254 - ORDINANCE EXTENDING THE CORPORATE LIMITS OF THE CITY OF ASHEVILLE TO INCLUDE THE AIRPORT ROAD AREA

Mayor Worley said that the public hearing on this matter was held on June 14, 2005.

Planning & Development Director Scott Shuford said that this is the consideration of adopting an ordinance to extend the corporate limits of the City of Asheville to the Airport Road area.

On April 12, 2005, City Council adopted Resolutions of Intent beginning the annexation process for the following six areas: the Ridgefield Business Park area, the Ascot Point Village area, the Long Shoals Road area, the Airport Road area, Town Square East, and Two Town Square. The Annexation Services Plan for all of these areas was approved on April 26, 2005, and the Plan was amended on June 28, 2005. A public information meeting was held on May 31, 2005. Public hearings on each of annexations were held by City Council on June 14, 2005. Adoption of the annexation ordinances is the final step in the annexation process.

Mr. Shuford said that a metes and bounds description is attached to the ordinance. The annexation area does meet the requirements of General Statutes. It is the intent of the City to extend City services outlined in the Annexation Services Plan. On the effective date of the annexation, the City will have funds in sufficient amount to finance all capital expenditures. The effective date of this annexation is December 31, 2005.

Mr. Shuford explained Council what is located on this site and what is located in the surrounding area.

Staff recommends adoption of annexation ordinance for the Airport Road area, with an effective date of December 31, 2005.

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

Councilwoman Jones moved for the adoption of Ordinance No. 3254. This motion was seconded by Councilman Newman and carried on a 6-1 vote, with Vice-Mayor Mumpower voting "no."

ORDINANCE BOOK NO. 22 – PAGE

F. ORDINANCE NO. 3255 - ORDINANCE EXTENDING THE CORPORATE LIMITS OF THE CITY OF ASHEVILLE TO INCLUDE TWO TOWN SQUARE

Mayor Worley said that the public hearing on this matter was held on June 14, 2005.

Planning & Development Director Scott Shuford said that this is the consideration of adopting an ordinance to extend the corporate limits of the City of Asheville to Two Town Square.

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On April 12, 2005, City Council adopted Resolutions of Intent beginning the annexation process for the following six areas: the Ridgefield Business Park area, the Ascot Point Village area, the Long Shoals Road area, the Airport Road area, Town Square East, and Two Town Square. The Annexation Services Plan for all of these areas was approved on April 26, 2005, and the Plan was amended on June 28, 2005. A public information meeting was held on May 31, 2005. Public hearings on each of annexations were held by City Council on June 14, 2005. Adoption of the annexation ordinances is the final step in the annexation process.

Mr. Shuford said that a metes and bounds description is attached to the ordinance. The annexation area does meet the requirements of General Statutes. It is the intent of the City to extend City services outlined in the Annexation Services Plan. On the effective date of the annexation, the City will have funds in sufficient amount to finance all capital expenditures. The effective date of this annexation is September 30, 2005.

Mr. Shuford explained Council what is located on this site and what is located in the surrounding area.

Staff recommends adoption of annexation ordinance for Two Town Square, with an effective date of September 30, 2005.

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

Councilman Newman moved for the adoption of Ordinance No. 3255. This motion was seconded by Councilwoman Jones and carried on a 6-1 vote, with Vice-Mayor Mumpower voting "no."

ORDINANCE BOOK NO. 22 – PAGE

G. ORDINANCE NO. 3256 – ORDINANCE EXTENDING THE CORPORATE LIMITS OF THE CITY OF ASHEVILLE TO INCLUDE TOWN SQUARE EAST

Mayor Worley said that the public hearing on this matter was held on June 14, 2005.

Planning & Development Director Scott Shuford said that this is the consideration of adopting an ordinance to extend the corporate limits of the City of Asheville to the Town Square East area.

On April 12, 2005, City Council adopted Resolutions of Intent beginning the annexation process for the following six areas: the Ridgefield Business Park area, the Ascot Point Village area, the Long Shoals Road area, the Airport Road area, Town Square East, and Two Town Square. The Annexation Services Plan for all of these areas was approved on April 26, 2005, and the Plan was amended on June 28, 2005. A public information meeting was held on May 31, 2005. Public hearings on each of annexations were held by City Council on June 14, 2005. Adoption of the annexation ordinances is the final step in the annexation process.

Mr. Shuford said that a metes and bounds description is attached to the ordinance. The annexation area does meet the requirements of General Statutes. It is the intent of the City to extend City services outlined in the Annexation Services Plan. On the effective date of the annexation, the City will have funds in sufficient amount to finance all capital expenditures. The effective date of this annexation is September 30, 2005.

Mr. Shuford explained Council what is located on this site and what is located in the surrounding area.

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Staff recommends adoption of annexation ordinance for the Town Square East area, with an effective date of September 30, 2005.

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

Councilman Davis moved for the adoption of Ordinance No. 3256. This motion was seconded by Councilwoman Jones and carried on a 6-1 vote, with Vice-Mayor Mumpower voting "no."

ORDINANCE BOOK NO. 22 – PAGE

At 7:05 p.m., Mayor Worley announced a short recess.

H. ORDINANCE NO. 3257 - ORDINANCE ADOPTING THE FISCAL YEAR 2005-06 ANNUAL OPERATING BUDGET

Assistant City Manager Jeff Richardson said that this represents the Fiscal Year 2005-06 Annual Operating Budget for City Council's consideration before adoption.

The Fiscal Year 2005/2006 Annual Operating Budget was presented to City Council on May 2, 2005. In accordance with the North Carolina Local Government Budget and Fiscal Control Act, a summary of the Budget along with a notice of the Public Hearing was published on June 3 and June 10, 2005. The City Council conducted a public hearing on the budget on June 14, 2005.

The Fiscal Year 2005/2006 Annual Operating Budget is balanced with an Ad Valorem Tax rate of \$0.53 per \$100 of

assessed valuation, which reflects no increase over the current property tax rate. All essential City programs and services are maintained.

The net operating budget as currently presented to City Council is set at \$103,926,947, which includes a General Fund appropriation of \$74,392,126. This budget includes several changes that were made by Council at the June 21 Council meeting. Those changes are summarized below:

- Council added a total of \$672,710 to the budget to support various new programs and initiatives. Those initiatives included \$100,000 in annual debt service payments to finance the replacement of the Civic Center roof; \$165,000 for repairs and renovations at the Reid Center and other recreation centers; \$115,000 for the widening of Yorkshire Street; and \$292,710 to hire five additional police officers, fund necessary training and equipment expenses, and purchase 3 additional police cars.
- In addition, \$55,000 has been added to the budget to cover the cost of an additional Project Engineer position. This position was requested in the Proposed Budget; however, no funds were included to cover its cost, as funding was contingent upon Council approval of an increase to the Plans Review fee for Water Line Extensions. Council subsequently approved the fee increase; thus revenue and expenditures associated with the Project Engineer have been added.
- A portion of the aforementioned new initiatives was funded by identifying \$245,813 in revenue adjustments. Specifically, \$7,500 in revenue was added by increasing Adult Athletic Fees; \$35,000 by increasing Co-sponsored group fees; \$115,000 by transferring savings from the Affording Housing Infrastructure Project to the General Fund; \$36,000 from increased MPO matching support from other jurisdictions; and \$52,313 was added by

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adjusting sales tax revenue estimates.

- The remaining portion of the new initiatives was funded by reducing expenditures by \$426,897 in various areas of the budget. Specific reductions are as follows:

Remove Pack Square Consultant Cost	\$12,500
Re-bid Recycling Contract	\$11,000
Reduce Free Transit Pass Budget	\$17,000
Eliminate 3 Vacant Telecommunicators	\$105,261
Eliminate Vacant GASB Accountant	\$40,000
Bring Minority Affairs In-House	\$50,000
Reduce Azalea Park	\$50,000
Reduce Memorial Stadium	\$50,000
Reduce Contingency	<u>\$91,136</u>
Total	\$426,897

- Outside Agency funding is presented in accordance with the Outside Agency Committee recommendations. Several changes were made to Outside Agency appropriations for Fiscal Year 2005-06.
- Various changes or increases to fees & charges are presented in accordance with the Fees & Charges Committee recommendations. Specific fees & charges recommendations are provided as a part of the annual budget ordinance. Changes to the Affordable Housing Rebate program have been made to make it consistent with the standards used for the Affordable Housing Trust Fund Program.

Staff requests that Council review the FY 2005/2006 Annual Operating Budget, including the changes noted above, and make necessary recommendations or adjustments followed by adoption of the Budget Ordinance.

Discussion surrounded Councilman Newman's proposed amendment to the stormwater program. He suggested investing more funds into the Priority Capital Projects (\$50,000 increase) for infrastructure and reducing education/outreach (\$15,000 reduction), public participation (\$5,000 reduction) and stormwater planning (\$30,000 reduction).

City Engineer Ball could support reducing the education/outreach and public participation by \$20,000 and putting that into Priority Capital Projects, however, she explained the need for the existing \$200,000 in stormwater planning. She said that any savings will be folded into the capital projects.

To address Councilman Davis' concern about people who have gone the extra mile to comply with stormwater regulations, Ms. Ball said there is the opportunity for people to get up to a 60% credit. City Manager Jackson said that since this is the first year of the stormwater mandated program, staff would report back in 6 months to update Council on how the policies and implementation of the program is proceeding.

Discussion surrounded Councilman Newman's proposed amendment to move forward with the Police take-home car policy in light of the significant budget reductions previously agreed to and with a modest reduction in the municipal salary increase (3% average pay increase but not the 1% cost-of-living). He explained four significant benefits: (1) creating a significant "perk" for our law enforcement officers; (2) improving the retention of good officers; (3) creation of a strong incentive for officers to consider living in Asheville; and (4) it will free up additional parking spaces

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in downtown. Discussion of Police moral and vehicle maintenance surrounded this suggested amendment.

Discussion surrounded Councilman Newman's proposed amendment regarding the deletion of the 1% cost-of-living increase. He felt a 3% average increase is a fair and positive increase, given the state employees are expecting a 2.5% increase. He also felt that in light of the uncertainty of the water agreement Council should be careful to limit the expansion of government spending which will create permanently recurring costs. Discussion surrounded this suggested amendment.

Councilwoman Bellamy supported the Police take-home car policy; however, not at the expense of deleting the 1% cost-of-living increase for all City employees. She suggested the amount for the take-home car policy come out of Fund Balance.

Councilman Newman moved to approve a 3% average increase and a .5% cost-of-living increase for City employees and implement the 4-year lease program for the Police take-home car policy. This motion was seconded by Vice-Mayor Mumpower. Said motion failed on a 3-4 vote, with Vice-Mayor Mumpower, Councilwoman Jones and Councilman Newman voting "yes" and Mayor Worley, Councilwoman Bellamy, Councilman Davis and Councilman Dunn voting "no."

Discussion surrounded other areas (Housing Trust Fund, Fund Balance) to find the necessary funds to implement the 4-year lease program for the Police take-home car policy.

City Manager Jackson said here is merit to the take-home car policy if the cars stay within the City limits. However, he would not recommend any cut of non-recurring funding for this policy direction. He said that staff will update Council in 90 days on sales tax data, the revenue picture and the overall budget position along with providing some other options on how to implement this program.

Mayor Worley felt there is a majority support for the take-home car policy, but the real concern is the budgetary implications. After a short discussion, it was the consensus of Council to support the Police take-home car policy and leave it up to City staff to implement.

After a discussion initiated by Councilwoman Bellamy, it was the consensus of City Council to co-sponsor the Parks & Recreation events in the amount of \$35,000.

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

Councilwoman Bellamy moved to adopt Ordinance No. 3257, with the following changes (1) in the stormwater program budget, reducing the education/outreach and public participation by \$20,000 and reallocating it into Priority Capital Projects; (2) implement the Police take-home car policy; and (3) reinstate the \$35,000 for the co-sponsor of Parks and Recreation events. This motion was seconded by Vice-Mayor Mumpower and carried unanimously.

ORDINANCE BOOK NO. 22 – PAGE

V. NEW BUSINESS:

A. RESOLUTION NO. 05-137 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A LEASE AGREEMENT WITH THE ASHEVILLE TOURISTS FOR THE USE OF MCCORMICK FIELD

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Parks & Recreation Director Irby Brinson said that this is the consideration of a resolution authorizing the City Manager to

enter in to a lease agreement with the Asheville Tourists for the use of McCormick Field.

The Asheville Tourists of the South Atlantic Baseball League have used McCormick Field for many years and wish to continue this arrangement. The use of the facility is governed by a lease agreement between the Tourists and the owners of the facility.

With the transfer of McCormick Field from Buncombe County to the City of Asheville upon the termination of the 1981 Water Agreement, the current lease agreement between the Asheville Tourists and Buncombe County is no longer in effect. A new lease agreement has been negotiated between the City of Asheville and the Asheville Tourists. The new lease agreement will be effective July 1, 2005, for a period of nine years and eleven months.

Pros:

- Allows for the continued use of McCormick field by the Asheville Tourists for a significant period of time.
- Allows for cooperative efforts between the City and the Asheville Tourists to encourage greater community use of the facility, especially in terms of youth baseball.

Cons:

- Failure to enter into the agreement would cause the Asheville Tourists to find another facility for baseball, possibly away from Asheville.

This action relates to City Council's Strategic Operating Plan of improved water system governance that better serves City of Asheville goals; Objective A: Gain control of growth by disengaging from the existing Water Agreement.

City staff recommends that City Council authorize the City Manager to enter into a lease agreement with the Asheville Tourists for the use of McCormick Field.

Because of the water agreement negotiations, Mr. Brinson said that City Council has not had the opportunity to review this item at a worksession. He then responded to various questions from Council regarding this lease, some being, but are not limited to: maintenance of the facility; parking; how long has the Asheville Tourists been in their current contact; what is the lease amount and does that amount increase in future years; has consideration been given to a shorter term than 9 years; and has the City looked at what other cities do in terms of minor league baseball franchises.

City Manager Jackson suggested this matter be deferred until City Council has had an opportunity to get more background information and review the terms of the lease. Mr. Brinson explained that the lease will expire on July 1, 2005, depending the outcome of the water agreement termination.

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

Councilwoman Bellamy moved for the adoption of Resolution No. 05-137. This motion was seconded by Councilman Dunn and carried on a 6-1 vote, with Vice-Mayor Mumpower voting "no."

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B. RESOLUTION NO. 05-138 - RESOLUTION AUTHORIZING THE MAYOR TO SIGN A PROPERTY TAX COLLECTION AGREEMENT WITH BUNCOMBE COUNTY TO CONTINUE COLLECTION OF THE CITY OF ASHEVILLE'S PROPERTY TAXES

Interim Finance Director Ben Durant said that this is the consideration of a resolution authorizing the Mayor to sign a property tax collection agreement with Buncombe County to continue collection of the City of Asheville's property taxes.

As part of the Restated and Amended Supplemental Water Agreement, Buncombe County has collected and remitted property tax payments on behalf of the City of Asheville. The property tax collection process is a long, involved process which utilizes staff specifically trained in that function. If the City Council decided to begin to collect City property taxes within the City, it would require significant staff time and expense to prepare for implementation of the collection process and to perform such a process effectively. The proposed agreement would allow for continuation of the current property tax collection process for the City while the Council decided either to begin such a collection process within the City or to negotiate a long-term agreement with the County or some other service provider.

The Buncombe County Board of Commissioners approved this on June 21, 2005.

PROS:

- The City's property tax collection rate would remain high, as it mirrors the collection rate of Buncombe County
- The proposed agreement continues until terminated on a year-to-year basis and does not lock the City into a long-term agreement
- The proposed agreement would allow time for Council to decide to perform the process in-house or for a more favorable agreement with the County to be negotiated

CONS:

- None noted.

City staff recommends City Council authorize the Mayor to sign a property tax collection agreement with Buncombe County to continue collection of the City of Asheville's property taxes.

Councilman Dunn wondered how much it would cost for the City to begin collecting the property taxes. Mr. Durant said that we could probably do it for half of what the County is charging us; however, there are other issues to be considered, one is the logistical sort out that would need to occur and we just didn't have an opportunity in this budget year to do that. Next year when we renegotiate this contract, we will look for a better rate.

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

Vice-Mayor Mumpower moved for the adoption of Resolution No. 05-138. This motion was seconded by Councilman Dunn and carried unanimously.

RESOLUTION BOOK NO. 29 – PAGE 171

VI. OTHER BUSINESS:

DISCUSSION REGARDING NEGOTIATIONS OF THE WATER AGREEMENT

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RESOLUTION NO. 05-139 – RESOLUTION OF THE CITY OF ASHEVILLE, NORTH CAROLINA, REGARDING TERMINATION OF THE WATER AGREEMENT WITH BUNCOMBE COUNTY

Considerable discussion surrounded Councilman Newman's proposal if there is not an agreement reached between the City and the County. He addressed some of the following concerns: (1) concern customers who live outside the City feel there may be some sudden and dramatic changes to their water bills if there is no agreement is reached and the City resumes full management and governance of the water system; (2) concern about different rates for customers inside and outside Asheville; and (3) concern the current water customers might be required to annex into Asheville as a condition of continuing to receive water service. He suggested that if there is no agreement reached between the City and County that the City Council would agree for a period of at least 12 months to not institute any rate deferential between customers inside the City and outside the City of Asheville. In addition, the City would make it a policy that existing water customers outside the City of Asheville would never be annexed into the City of Asheville as a condition of continuing to receive water service. These proposals would allow us some additional time to continue to talk to the County Commissioners to see if there are some ways that we can reach agreement about water policies into the future.

The final element of the proposal, would be that even if we don't reach an agreement this week that we would communicate our willingness to impose these restrictions on ourselves to provide reassurance to all parties and that we would request that we establish a regular time for open public meetings with our County Commissioners to continue to seek a final mutually acceptable resolution to the water issues in our community. If, however, the State of North Carolina passes either of the two anti-Asheville bills, this agreement would be null and void because the City would be forced at that point to defend the interests of the people of Asheville through appropriate legal measures.

Mayor Worley said that it never has been the City's intent or policy and is not and will not be our policy that existing water customers outside the City of Asheville would have to be annexed into the City of Asheville as a condition of continuing to receive water service.

Councilman Dunn explained why he did not want to box ourselves into a 12 months of not instituting any rate deferential

between customers inside the City and outside the City of Asheville.

Vice-Mayor Mumpower explained why would be able to support the resolution for a shorter period of time.

Councilman Newman explained why he is proposing the 12-month period of refraining from implementing any rate deferential, which is basically to give opportunities for public negotiations between the City and the County.

Councilman Newman moved to adopt Resolution No. 05-139 as follows: WHEREAS, the Water Agreement between Asheville and Buncombe County will expire at midnight on June 30, 2005; and WHEREAS, there are pending in the North Carolina General Assembly two local acts affecting Asheville known as Sullivan Act II and Sullivan Act III; and WHEREAS, Asheville and Buncombe County have been negotiating over the issues surrounding the termination of the Water Agreement, which negotiation has been severely hampered by the pending legislation; and WHEREAS, there have been misunderstandings about the intent of the City of Asheville with regard to continued water service for water customers of the City of Asheville system living outside the corporate limits of Asheville; and WHEREAS, there is a desire on the part of the Asheville City Council to have regular, periodic meetings with the Buncombe County Commissioners to seek a resolution of the issues surrounding the termination of the Water Agreement; NOW, THEREFORE BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF

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ASHEVILLE THAT: (1) The City of Asheville does hereby agree not to charge or attempt to charge a rate differential to water customers of the City of Asheville system living outside the corporate limits of Asheville at any time prior to July 1, 2006, provided that the pending legislation known as Sullivan Act II and Sullivan Act III is not enacted into law; (2) The City of Asheville further reaffirms that it has never been its intent, is not its intent and will not be its policy in the future to require any existing customer of the Asheville water system residing outside the corporate limits of Asheville to annex into the City of Asheville as a condition of continuing to receive water; and (3) The Asheville City Council further requests that the Buncombe County Commissioners establish a regular, periodic open meeting schedule with the Asheville City Council for the purpose of seeking a resolution to the issues surrounding the termination of the Water Agreement. This motion was seconded by Councilwoman Bellamy.

Ms. Leslee Kulba felt the City should not cave into Buncombe County. She didn't see where the County is negotiating with the City and the City should re-think another strategy.

Councilwoman Jones felt that it is clear that the citizens care about the water issue and they don't want it to be resolved at all costs. She spoke about the City's commitment and willingness to continue this meeting until later this evening to work on the water agreement.

The motion made by Councilman Newman and seconded by Councilwoman Bellamy carried on a 4-3 vote, with Mayor Worley, Councilwoman Bellamy, Councilwoman Jones and Councilman Newman voting "yes" and Vice-Mayor Mumpower, Councilman Davis and Councilman Dunn voting "no."

RESOLUTION BOOK NO. 29 – PAGE 172

MISCELLANEOUS

Vice-Mayor Mumpower thanked Capital Fitness which donated fitness equipment to the Fire Department.

Vice-Mayor Mumpower spoke about the success of the For Our Kids event in Pisgah View Apartments.

Vice-Mayor Mumpower also applauded Jean McCloud for her work in litter clean-up.

CLAIMS

The following claims were received by the City of Asheville during the period of May 27-June 9, 2005: Lori Becker (Streets), David Freeland (Police), Duraline Imaging (Fire) and 29 Haywood Street (Parks & Recreation).

The following claims were received by the City during the period of June 10-23, 2005: Christopher Hollifield (Police), Dan Zavoras (Water), Carol Haack (Parking Garage), Abraham Adams (Police) and Franklin Fountain (Police).

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

VII. INFORMAL DISCUSSION AND PUBLIC COMMENT:

CONTINUATION OF REGULAR MEETING

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At 9:30 p.m., Mayor Worley continued the regular meeting until Thursday, June 30, 2005, at 4:00 p.m., in the Council Chamber of the City Hall Building.

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Thursday – June 30, 2005 - 4:00 p.m.

Continuation of Regular Meeting

Present: Mayor Charles R. Worley, Presiding; Councilwoman Terry M. Bellamy; Councilman Jan B. Davis; Councilman Joseph C. Dunn; Councilwoman Diana Hollis Jones; Councilman Brownie W. Newman; City Manager Gary W. Jackson; City Attorney Robert W. Oast Jr.; and Deputy City Clerk Phyllis Corns

Absent: Vice-Mayor R. Carl Mumpower

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At 4:00 p.m., Mayor Worley reconvened the regular meeting.

Mayor Worley said that City Council has worked very hard with the Buncombe County Commissioners over the last year to negotiate an appropriate resolution to the water agreement. Council has been absolutely dedicated to advocating for the best interests of the City residents that we serve. He recapped the reasoning and history of the termination process of the water agreement. He then reported on his and City Attorney Oast's meeting with the General Assembly yesterday before the Senate Committee on Local Government that was considering the Sullivan II and III bills. We found that one of the bills had been substantially altered from what we had previously seen. The altered bill made is very clear that water could not be used in any manner or method to promote growth of the City's boundaries. It also said there would be no transfers of any funds from the Water Fund to the General Fund. Actually, City Council wanted the revenue from the assets of the water system to go back into the water system to meet the needed maintenance requirements. We have consistently talked about doing that, but we talked about doing a phasing in period of five years. We approved our budget on June 28 including those funds (\$1 Million) and now find that the legislature took that away from us. He explained the terms of the resolution Council passed Tuesday night to the Local Government Committee. He asked the Committee to defer action on the bills, leave them in place, and if we can't come to an agreement, then the legislature would be free to take whatever action they deem most appropriate with respect to the bills. He stressed there was no need to rush through them right now. The Committee, the Senate, and the House, however, quickly approved both bills.

City Manager Jackson said that we have a very well thought out transition plan and have been communicating closely with the County for a smooth transition. Interim Water Resources Director David Hanks spoke on how the water system transfer will occur and Parks and Recreation Director Irby Brinson spoke on how the recreation facilities transition will occur.

City Manager Jackson spoke about the transition of the maintenance of water lines in the County. With the agreement termination those become a County maintenance responsibility. It is his preference for all the operation and maintenance of the water system to be a City responsibility and it would be a better-managed system if all the operation and maintenance of that system would be done in one place. The question is what would be the fair compensation to the City for managing and operating those assets, which are no longer a City responsibility. Those discussions between him and the County Manager will continue.

City Manager Jackson said that we basically have a \$1.1 to \$1.2 Million budget question. Through City staff, he is developing a series of cost-cutting alternatives that he will bring back to Council in 60-90 days. They would like to have the time to evaluate not only the impact of this legislative change and the timing of it, but also to re-evaluate our revenue generation options and get direction from Council on potential operating impact reductions, etc. In an interim period, he suggested Council implement the budget as approved by Council on June 28, with the exception that we implement what we can administratively, without impacting services or making any policy changes, such as, postpone hirings, postpone acquisition of equipment, entering into contracts

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that are not time-sensitive or mission critical. We will challenge ourselves to close this gap administratively while we develop a very comprehensive budget amendment package that Council might consider. Council has the ability today to proceed under the budget document that Council approved on June 28 and to weigh your alternatives for potential amendments in the future. That is made possible because the City, under Council's leadership, has established a significant Fund Balance.

It was the consensus of Council to have the City Manager bring back a proposed budget balancing plan in 60-90 days.

Each Council member briefly commented on their perspective of the water agreement negotiations.

Mayor Worley responded to various questions from the media.

Closed Session

At 4:58 p.m., Councilman Newman moved to go into closed session in order to consult with an attorney employed by the City about matters with respect to which the attorney-client privilege between the City and its attorney must be preserved, including lawsuits involving the following parties: Gannett Pacific Corporation d/b/a Asheville Citizen-Times Publishing Company, an Hawaii Corporation; Chesapeake Television, INC., d/b/a WLOS-TV, a Maryland Corporation; City of Asheville; and County of Buncombe, and to discuss potential litigation. The statutory authorization is contained in G.S. 143-318.11(a)(3). This motion was seconded by Councilwoman Bellamy and carried unanimously.

At 6:10 p.m., Councilwoman Jones moved to come out of closed session. This motion was seconded by Councilman Dunn and carried unanimously.

ADJOURNMENT:

Mayor Worley adjourned the meeting at 6:10 p.m.

CITY CLERK

MAYOR