

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 City Clerk Magdalen Burleson

Absent: None

PLEDGE OF ALLEGIANCE

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

INVOCATION

Councilwoman Bellamy gave the invocation.

I. PROCLAMATIONS:

A. RECOGNITION PROCLAIMING JULY 26, 2005, AS “RASHAD MCCANTS DAY”

Mayor Worley read the proclamation proclaiming July 26, 2005, as “Rashad McCants Day” in the City of Asheville. He was pleased to present the proclamation to Mr. McCants.

II. CONSENT AGENDA:

A. APPROVAL OF THE MINUTES OF THE REGULAR MEETINGS HELD ON JUNE 28, 2005; JULY 12, 2005; AND THE WORKSESSION HELD ON JULY 19, 2005

B. ORDINANCE NO. 3265 - ORDINANCE AMENDING CHAPTER 3 (ANIMALS AND FOWLS) OF THE CODE OF ORDINANCE TO INSURE THAT THE CIVIL PENALTIES WILL BE APPLICABLE TO VIOLATIONS OF ARTICLE II AND III OF THE ORDINANCE

Summary: The consideration of an ordinance making minor amendments to the Animal Control Ordinance to insure that the civil penalties will be applicable to violations of Article II and Article III of the ordinance.

On May 24, 2005, City Council passed a revised animal control ordinance. Upon further review of Sec. 3-20, staff questioned whether the civil penalties in Sec. 3-20 could be applied to violations of Article II (Restraint of Animals) and Article III (Livestock and exotic pets) of the ordinance. Based on the wording in Sec. 3-20, it appeared that civil penalties could only be issued for violations of Article I (i.e. animal care, animal licenses etc). It is staff's opinion that the civil penalties should be applicable to the entire ordinance and recommends changing the wording in Sec. 3-20 from “Article” to “Chapter.”

Pros:

- Insures that City staff can issue civil penalties for violation of every article of the Animal Control Ordinance.

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- Resolves any ambiguity regarding the applicability of civil penalties to violations of Article II and Article III of the ordinance.

Cons: None noted.

City staff recommends approval of the ordinance making minor amendments to the Animal Control Ordinance to insure that the civil penalties will be applicable to violations of Article II and Article III of the ordinance.

ORDINANCE BOOK NO. 22 - PAGE

C. RESOLUTION NO. 05-147 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO AN AGREEMENT WITH THE ASHEVILLE HUMANE SOCIETY FOR ANIMAL SHELTER SERVICES WITHIN THE CORPORATE LIMITS OF THE CITY FOR FISCAL YEAR 2005-06

Summary: The consideration of a resolution authorizing the City Manager to sign an agreement with the Asheville Humane Society for animal shelter services within the corporate limits of the City for Fiscal Year 2005-06.

For the past few years, Buncombe County has required the City to pay for animal shelter services through the Asheville Humane Society, who has contracted with the County to run the animal shelter. On June 28, 2005, the City approved the budget for Fiscal Year 2004-05 and in that budget approved \$121,000 to pay for shelter services. The City and the Humane Society need to enter into an agreement for the shelter services for the term of July 1, 2005, through June 30, 2006.

Advantages to the contract: The City will not have to pay for the construction and operation of its own animal shelter to take care of its animal sheltering needs and the Humane Society will be responsible for the care of all animals brought to the shelter.

Disadvantages to the contract: The City has to pay out of its general fund for shelter services where Buncombe County provides the same services to all other non-incorporated county residents at no additional cost except through county taxes.

City staff recommends the adoption of the resolution for animal shelter services for the term of July 1, 2005, through June 30, 2006.

RESOLUTION BOOK NO. 29 – PAGE 181

D. RESOLUTION NO. 05-148 - RESOLUTION DIRECTING THE CITY CLERK TO PUBLISH A NOTICE OF INTENT TO EXECUTE A LICENSE AGREEMENT WITH ARCH WIRELESS OPERATING COMPANY, INC. FOR AN ANTENNA AT 36 RESERVOIR ROAD

Summary: The consideration of a resolution directing the City Clerk to publish a Notice of Intent to execute a License Agreement with Arch Wireless Operating Company, Inc. (Arch) for an antenna at 36 Reservoir Road.

The property at 36 Reservoir Road known as White Fawn Reservoir is on a knoll at the western end of the Beaucatcher Mountain ridge overlooking downtown to the north, Mission Hospital to the west and Kenilworth to the south. The circular concrete rim of an in-ground water tank that has been completely filled is the only trace of its former use. Two telecommunication

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towers are located on the property and the City of Asheville leases antenna space on the towers and ground space for related equipment.

Arch Wireless Operating Company, Inc. has operated an antenna and related equipment at the site since December 1993. The antenna is located on the tower known as the "BellSouthTower" which is the tower to the west. The proposed License Agreement will enable Arch to continue operating an antenna at that site; however, there is a provision which allows the Licensor to terminate the agreement upon 180 days notice or the Licensee to terminate the agreement with 60 days notice. The term of the License Agreement will be 3 years with no renewal periods. Arch will pay a License Fee of \$350 per month (\$4,200 annual) the first year with a 4% annual increase thereafter. In addition to the License Fee, Arch will pay a Utility Fee of \$150.00 per annum.

The positive aspects of the transaction are:

1. The license will generate revenue
2. The license fee represents fair market value.
3. The transaction will retain a fee tenant rather than having a vacant space.
4. It will facilitate Arch being able to continue providing a valuable service to its customer

There are no negative aspects to the transaction

Planning Department staff recommends adoption of the resolution directing the City Clerk to publish a Notice of Intent to execute a License Agreement with Arch Wireless Operating Company, Inc. for an antenna at 36 Reservoir Road.

RESOLUTION BOOK NO. 29 – PAGE 182

E. RESOLUTION NO. 05-149 - RESOLUTION AUTHORIZING THE CITY CLERK TO ADVERTISE AN OFFER TO PURCHASE PROPERTY ON BARTLETT STREET

Summary: The consideration of a resolution authorizing the City Clerk to advertise an offer to purchase property on Bartlett Street in the East Riverside community.

A bid has been received from Ray Quate in the amount of \$2,500 for the purchase of a small parcel of land on of Bartlett Street in the East Riverside community.

The land on Bartlett Street is a rectangular shaped parcel comprising 0.062 acre± (approximately 21' x 127'). It is gently sloping from east to west with the grade of Bartlett Street. It is unimproved and covered with grass. The subject parcel is a cut-out from a 5.73 acre property acquired from the Housing Authority which is now a part of Murray Hill Park. The lot is not large enough to build on as a separate parcel. Based on an opinion letter dated May 11, 2005, by L. Ted Prosser, the value of the cut-out parcel is \$2,500. The bid from Ray Quate, owner of the adjacent parcel is in the amount of \$2,500. Mr. Ouate is renovating the building on the adjoining parcel with historic consideration to provide three (3) main floor artist's studios and five (5) second floor apartments with inside parking. He purchased a 0.13 acre parcel from the City to provide access to the second floor parking in November, 2004. He plans to assemble the subject parcel with his property to provide improved access to the parking and a better buffer.

The proposed renovations are consistent with the Strategic Plan policies of encouraging a strong small business environment and increasing the supply of affordable housing.

The positive aspects of the transaction are:

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1. The sale will be at fair market value as established by the upset bid process.
2. It will return property not needed for public use to the tax rolls.
3. It will transfer responsibility for maintenance to the private sector.
4. A small parcel will be assembled with an adjoining parcel to provide a more efficient land use.
5. The sale of this lot to Mr. Quate will facilitate the re-development by providing improved access.

Planning & Development staff along with Parks & Recreation staff recommend adoption of the resolution which will initiate the sale of the property through the upset bid process.

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F. RESOLUTION NO. 05-150 - RESOLUTION AUTHORIZING THE CITY MANAGER TO SIGN A CONTRACT WITH DEE WILLIAMS & CO. INC. TO INSTALL TRAFFIC CALMING IN THE REDWOOD FOREST NEIGHBORHOOD

Summary: The consideration of a resolution authorizing the City Manager to sign a contract with Dee Williams and Company, Inc. in the amount of \$65,000 to install traffic calming in the Redwood Forest neighborhood.

As part of the approval of the Riverbend Development on Swannanoa River Road, the developer was required to pay for traffic mitigation in adjacent neighborhoods. Staff determined that the neighborhood impacted most by the development was Redwood Forest. Staff has been working with the neighborhood to develop a plan.

Staff and the neighborhood (in accordance with the Traffic Calming Policy) completed the plan. Staff requested bids for the project. We only received one bid from Dee Williams and Company, Inc. The original bid exceed the funds for the project. We have negotiated with Dee Williams to reduce the cost of the project to \$65,000.

This contract will not include improvements to the intersection of Swannanoa River Road and Beechwood Road. We have not received an approved encroachment from the N.C. Dept. of Transportation. We are still working with them to obtain this approval. The cost for improvements at this location is estimated at \$5,000 to \$7,000. This work will be performed by the City Public Works Department.

Considerations

- This does not allow us to do traffic calming in any other neighborhood's unless additional money is appropriated.
- The contractor is a Certified Minority Business.
- The money for this project is currently budgeted.
- We are able to complete the project as design with this contract.

Staff requests that City Council authorize the City Manager to sign a contract with Dee Williams and Company, Inc. in the amount of \$65,000 to install traffic calming in the Redwood Forest neighborhood.

G. ORDINANCE NO. 3266 - ORDINANCE REVISING THE SIDEWALK ORDINANCE TO BE APPLICABLE TO OTHER COMMERCIAL AREAS OF THE CITY IN ADDITION TO THE CENTRAL BUSINESS DISTRICT AND BILTMORE VILLAGE

Summary: The consideration of an ordinance revising the sidewalk ordinance to be applicable to other commercial areas of the City in addition to the Central Business District and Biltmore Village.

Currently, the sidewalk ordinance, Article V of Chapter 16, applies only to the Central Business District and the Biltmore Village area. Staff has received a request for an outdoor dining permit in the arts district off of Clingman Avenue. Because this area is neither in the Central Business District nor Biltmore Village, staff is prevented from issuing a permit. This is an example of an area that would benefit from businesses spilling out onto the sidewalk making the area more pedestrian oriented. Expanding the scope of the ordinance will allow staff to issue permits to businesses that are located adjacent to a sidewalk and would like to spill out onto the sidewalk.

In addition, staff is anticipating requests from other areas of the City, such as the Haywood Road Corridor, the Head of Montford or Charlotte Street. Widening the scope of the ordinance will allow these businesses to place outdoor dining or retail on the sidewalk. It will also allow for pushcarts to be located in commercial areas as well. All of the same requirements will remain in effect which will ensure that there is sufficient room on the sidewalk for pedestrians.

The proposed changes to the ordinance will allow permits to be issued for outdoor dining and retail in places where there is an appropriate place on the sidewalk for these uses. The outdoor dining or retail area must be either in front of or adjacent to the business.

Advantages:

- Wording amendment will allow staff to issue permits in new areas that are appropriate for outdoor dining, retail and pushcarts. Some businesses will be able to expand their service area where the sidewalk width allows.
- Outdoor seating and retail is seen as a way to make streets more pedestrian friendly and inviting to customers. This expansion of the ordinance may increase the number of areas in the city with this character.

Disadvantages:

- None noted.

City staff recommends the adoption of the ordinance revising the sidewalk ordinance to be applicable to other commercial areas of the City in addition to the Central Business District and Biltmore Village.

ORDINANCE BOOK NO. 22 – PAGE

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

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

III. PUBLIC HEARINGS:

A. PUBLIC HEARING TO CONSIDER THE ISSUANCE OF A CONDITIONAL USE PERMIT FOR PROPERTY LOCATED AT THE CORNER OF COLLEGE STREET AND WOODFIN, KNOWN AS THE COLLEGE STREET OFFICE BUILDING

ORDINANCE NO. 3267- ORDINANCE GRANTING A CONDITIONAL USE PERMIT FOR PROPERTY LOCATED AT THE CORNER OF COLLEGE STREET AND WOODFIN, KNOWN AS THE COLLEGE STREET OFFICE BUILDING

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

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

After hearing no questions about the procedure, Mayor Worley opened the public hearing at 5:15 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 Alan Glines submitted into the record City Exhibit 1 (Affidavit of Publication), City Exhibit 2 (Certification of Mailing of Notice to Property Owners); and City Exhibit 3 (Staff Report).

Mr. Glines said that this is the consideration of the issuance of a conditional use permit for property located at the corner of College Street and Woodfin, known as the College Street Office Building.

This project located in the downtown Central Business District is proposed to be 10 stories tall and contain 130,000 square feet (Attachments to City Exhibit 3 – Location Map and Aerial Map). The building will provide new office space for Buncombe County totaling 50,000 square feet (Attachments to City Exhibit 3 – Building Elevations). The remainder of the building will be leased to the private sector. A bank will occupy the first two floors and will provide a covered teller window along the west façade of the building. Two or three retail uses will occupy the ground floor of the building and one is expected to be a restaurant (Attachment to City Exhibit 3 – Site Plan).

On the site plan the building is placed close to College Street and provides a setback from Oak Street. To better accommodate Technical Review Committee comments regarding site access, the plan has been modified in the current layout. The building has shifted to the west resulting in a 50-foot wide public space at the Oak Street corner. This space will allow an outdoor dining area for a possible restaurant and will provide ample sidewalk space along all street frontages. On College Street the new office building will share a driveway with a parking area for the Health Department. Site access concerns have been addressed with these modifications. Street trees along Oak Street may be retained with the current layout which will be beneficial. The location and scale of this building on the main east side corridor of downtown makes this a gateway building for downtown. This proposal along with the City of Asheville recently completed

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College Street Gateway Boulevard project match closely with the goal noted in the City of Asheville Strategic Operating Plan to encourage new downtown development with improved gateways and corridors.

A question about parking space came up during the Planning and Zoning Commission meeting. Off-street parking is not a requirement for projects in the Central Business District and therefore should not be a factor in the approval of the project. However the developer's agent reported that Buncombe County officials and the developer have agreed to build a parking garage on County property along Woodfin Street on the north side of the Health Department.

The CBD zoning is developed to reinforce the downtown as the urban center of Asheville and Western NC, encouraging private and public investment which will preserve the CBD as the primary retail, office, hotel, institutional, cultural and entertainment center of our community. A high priority is placed on design, integrating new uses into and with existing architecture in a respectful and cohesive manner. There are no building size limits and no height limits. There are also no requirements for off-street parking requirements in the CBD.

The building was reviewed by the Downtown Commission as part of the Design Review for new construction. With minor modifications, the Commission unanimously approved the design.

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 project will meet City and State safety requirements and be subject to the state building code.

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 is located on an infill lot that is currently a parking lot. No conflict was noted regarding any site features there.

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

The project represents a substantial investment by the private sector. Nearby property values are expected to increase because of this public private project.

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 downtown area is an appropriate location for a building of the scale proposed for this parcel. In the vicinity of the site are several structures of similar scale including the Buncombe County Courthouse, City Hall and the Buncombe County Detention Facility.

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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 plans adopted by the City Council support redevelopment and reinvestment at infill locations in a high-density mixed-use pattern. The project will become a gateway building along the east side of the downtown area.

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

Adequate infrastructure appears to be in place to support the development. Transportation facilities appear to be adequate and a Traffic Study will determine if any improvements are required for area roadways.

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

The site plan has been modified to facilitate the safe and orderly flow of traffic through the site. City staff has reviewed these changes and this should be sufficient to minimize any traffic hazards.

Additional Conditional Use Findings related to Government Uses in the Central Business District. In accordance with UDO Section 7-19-2-13, these additional standards must also be met:

1. The proposed location for the use or building will not unduly or unreasonably restrict the availability of key land for private development.

Although the land is owned by Buncombe County the property is being offered back for private development through a long-term lease. Over half the building will be made available to the private sector.

2. No alternative location for the building or use exists within areas previously developed for government buildings and/or uses.

The governmental uses will total about 50,000 square feet of a 130,000 square foot building. The government facilities are in close proximity to other Buncombe offices and uses and offer practical efficiencies in proximity to these sites.

3. If a new structure is proposed in the areas covered by the design review guidelines, the ability of the structure's design to comply with the downtown design review guidelines for new construction shall be a factor in the review of the request.

New structures in these areas must substantially comply with the design guidelines as determined by the Asheville City Council. The project was reviewed by the Downtown Commission for compliance with the Design Review Guidelines. With minor modifications, the plan was thought by the Commission to be in compliance with the design guidelines.

Pros

- A significant gateway corner into the downtown area is being redeveloped.
- The proposed building represents a major private redevelopment in the downtown area.

The mixed-use proposal is supported by many of the plans adopted by the community

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Cons

- Beyond the concern over parking which has already been addressed, no items of concern have been noted regarding the proposed project.

At their June 1, 2005, meeting the Planning and Zoning Commission voted (7-0) to recommend approval of the conditional use permit based on the CUP findings and with the conditions outlined in the TRC report and the following conditions added at the TRC meeting: (1) A letter from Buncombe County stating who is responsible for inspections and permitting must be provided (Fire & Building Safety Departments); (2) One of the two existing driveways must be closed with cross access provided between the two lots (Fire & Engineering Departments); and (3) The dimensions of the leased area need to be identified and subdivided from the larger parcel (Planning Department).

Ms. Patsy Brison, attorney representing the developer and applicant, asked that the application and any supporting documents be made a part of the record (Applicant Exhibit 1), including the traffic impact analysis (Applicant Exhibit 2), and the Downtown Commission minutes of May 13, 2005 (Applicant Exhibit 3). Ms. Brison then reviewed the seven conditional use permit standards as well as the additional findings related to governmental uses.

Mr. Gerald Green, representing the developer, spoke in support of the permit. He explained there is no conflict with the roundabout on the corner. He explained how the project meets the City's goals, including it is a mixed-use building and will be subject to property taxes. The project has been reviewed by the TRC, the Downtown Commission and the Planning and Zoning Commission with only some minor modifications that have been or will be met as the development moves forward. Although the UDO does not require off-street parking for projects within the Central Business District, the tenants of the building do require off-street parking. As part of the lease for this property, Buncombe County is committed to providing a parking deck with approximately 750 parking spaces dedicated to this building. The construction period for the building is about three times longer than the construction period for a parking deck, so even though the deck has not been brought before Council yet, they don't see any problem with meeting the end date when the deck comes on line. Again, off-street parking is not a requirement for projects in the Central Business District and therefore should not be a factor in the approval of this project.

Mr. Brad Burns spoke in opposition to the project. After the Grove Park Inn development public hearing, he felt that city government should have reviewed the process of citizen appointees, revised their standards and set guidelines. If they had, then this project would not be before Council. Urban parks should be designed within or just outside the buildings. The exceptional heights of the buildings in the Central Business District are exceptions and no more should be allowed. We need to establish office hubs outside the Central Business District and traffic hubs from which others can bus shuttle back and forth. The bottlenecking of traffic and pedestrian safety on College Street should prohibit future development.

After rebuttal, Mayor Worley closed the public hearing at 5:39 p.m.

Upon inquiry of Councilman Dunn, Mr. Green said that the building will be built by a private developer and will be privately owned. He explained that the County will lease space in the building.

In response to Vice-Mayor Mumpower, Mr. Green said that he hoped that construction would be approximately 18 months with construction to begin in spring of 2006.

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Mr. Green responded to various questions/comments from Council, some being, but are not limited to: what is the impact on the surrounding area; and where will the sidewalks be located (Applicant Exhibit 4 – Earlier Site Plan).

In response to Councilwoman Bellamy, Mr. Green said that the building design doesn't conform to a lot of buildings in the community because they wanted to construct something that honors the buildings downtown and builds on the architectural buildings in Asheville.

Mr. Glines responded to Councilman Davis' concern about drive-throughs in the Central Business District.

There was considerable discussion about why the parking deck plan is not being presented concurrently with this project plan. Mr. Green explained that the parking deck is not part of this development project. It will be reviewed by the City as a separate project. City Attorney Oast said that the fact that there is a contractual arrangement between Buncombe County and the developer to provide parking is useful information but is not relevant to Council's consideration of this project. Councilwoman Jones and Councilman Newman felt that if there is a process that doesn't allow us to look to the future and take the project and the parking

deck into account, then we need to look to see if there are procedural inadequacies in our current process. They didn't want to be backed into a corner to approve a project based on a previous decision. Planning & Development said that this project does meet all requirements we have for a building in the Central Business District. They are not required to have parking for a building of this type, but they do it for their own marketing purposes, but again, not to comply with any of the City's codes.

In response to Councilwoman Jones, Mr. Green explained the public notice procedures they have used for this project, in addition, he showed a June 13, 2005, article in the Asheville Citizen-Times in which the project was discussed (Applicant Exhibit 5).

Councilman Dunn moved for the adoption of Ordinance No. 3267, granting a conditional use permit for property located at the corner of College Street and Woodfin, known as the College Street Office Building, subject to the following conditions: (1) A letter from Buncombe County stating who is responsible for inspections and permitting must be provided; (2) One of the two existing driveways must be closed with cross access provided between the two lots; and (3) The dimensions of the leased area need to be identified and subdivided from the larger parcel. This motion was seconded by Councilman Davis and carried unanimously.

In response to Councilwoman Jones' concern, Mr. Shuford said that staff will come back to Council at a future worksession to share a range of issues that were identified from a design standpoint by the Urban Design Associates as they looked at Pack Square and the surrounding properties and what are some of the key issues are that need to be addressed in terms of the infill development along College Street. That way, Council will have a framework, not a master plan because we don't control the property, so we can give you a clear idea of what to look for as additional projects come along in that area of town, and what are the critical design elements that need to be taken into account.

ORDINANCE BOOK NO. 22 - PAGE

B. PUBLIC HEARING TO CONSIDER THE CONDITIONAL USE ZONING OF PROPERTY LOCATED AT 200 TECHNOLOGY DRIVE FROM CENTRAL BUSINESS DISTRICT TO COMMERCIAL INDUSTRIAL DISTRICT/CONDITIONAL USE; AND THE ISSUANCE OF A CONDITIONAL USE PERMIT FOR THREE PROPOSED OFFICE BUILDINGS

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ORDINANCE NO. 3268 - ORDINANCE REZONING PROPERTY LOCATED AT 200 TECHNOLOGY DRIVE FROM CENTRAL BUSINESS DISTRICT TO COMMERCIAL INDUSTRIAL DISTRICT/CONDITIONAL USE

ORDINANCE NO. 3269 - ORDINANCE GRANTING A CONDITIONAL USE PERMIT FOR PROPERTY LOCATED AT 200 TECHNOLOGY DRIVE FOR THREE PROPOSED OFFICE BUILDINGS

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 6:19 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 Blake Esselstyn 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).

Mr. Esselstyn said that this is the consideration of a request to rezone property located at 200 Technology Drive from Central Business District to Commercial Industrial District/Conditional Use, and a request to issue a conditional use permit for three proposed office buildings.

The applicant, Biltmore Farms, Inc., seeks a Conditional Use Rezoning (CUZ) based on a concept plan showing an office

development with associated parking on 19.3 acres on Technology Drive in the Biltmore Park community (Attachments to City Exhibit 3 – Location Map and Aerial Map). The site for the proposed project is a portion of a 145-acre lot in the City of Asheville's extraterritorial jurisdiction area (ETJ). This portion of the parcel is currently zoned Central Business District (CBD). The applicant seeks to rezone the portion to Commercial Industrial (CI). (Offices are a permitted use in the CI district) (City Exhibit 4).

The project has a total building area of 225,000 square feet. The number of parking spaces shown is sufficient for project (Attachments to City Exhibit 3 – Master Plan and Master Plan with phasing).

The applicant has agreed that the subdivision of the property will a condition for approval of the rezoning.

At their May 16, 2005, meeting, the Technical Review Committee (TRC) reviewed the Conditional Use Rezoning and concept plan proposal and made a positive recommendation that

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the project be forwarded to the Planning and Zoning Commission, stipulating the following project conditions summarized as follows. The applicant agreed at the meeting to comply with these conditions. Please note that the plans accompanying this report have been revised since the TRC meeting to address most of the conditions mentioned in the TRC staff report:

1. The CI zoning district requires a 35-foot front setback, in which parking is not permitted. Design will have to be altered to remove parking from within 35 feet of the northeast edge of the lot (Attachment to City Exhibit 3 – Landscape Plan).
2. As this high impact use will be adjacent to a low impact use to the northeast, a type "A" vegetated buffer will be required along the shared boundary.
3. If any of the entrance drive to the project will become part of Technology Drive for City maintenance, street trees must be indicated.
4. Project will require provision of an urban level of public safety service.
5. Parking spaces to be City Standard (18'X9') and drive aisles to be standard 24' width.
6. Bike rack will be required for the project. The bike spaces shall be 5% of total vehicle spaces.
7. Striped pedestrian crosswalks will be required at all proposed pedestrian crossings.

At their June 1, 2005, meeting, the Planning and Zoning Commission reviewed the Conditional Use Rezoning and concept plan proposal and approved the application by a 7-0 vote, with the stipulation that all TRC conditions be met.

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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)). Staff's review indicates that all seven standards are met as proposed in the site plan.

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

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

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

Though some grading and site disturbance will be required, the proposed project's design will mostly preserve the existing topographic relationships. Provided the applicant employs proper erosion control measures and the proposed landscaping and mitigation, the nearby streams should not be adversely affected.

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

Staff does not expect that the proposed use would have anything more than a minimal impact on property values.

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

The proposed project would be in harmony with these characteristics of the area—the office park design is similar to the neighboring properties which are developed.

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 lists the “Smart Growth Land Use Policies” adopted by the Asheville City Council in 2000. While this project is more suburban in character than the new urbanist designs promoted in the Comprehensive Plan, it is located near an interstate highway “node,” as the plan recommends for large office developments. In addition, the proposal includes significant area reserved for open space, and the developers have stated an intention (though not a final design) to include walking trails to the nearby services of the Biltmore Park Town Square, both goals of the Comprehensive Plan and the Strategic Operating Plan.

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

The project’s location off a parkway feeding into Long Shoals Road close to I-26 ensures access to major transportation facilities and other services. In addition, technical review from other departments has not revealed any problems for serving the development.

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

The proposed project has been reviewed by the City’s traffic engineer and is not expected to cause undue traffic congestion or create a traffic hazard. The proposed entrances and exits are similar to those currently in place.

Pros

- Project would include substantial open space, and developer has stated intention to provide walking trails, both amenities that are unusual for an office park.
- Project corresponds well to the closest neighboring developments.

Cons

- Design of project resembles suburban style of office park development.

Staff recommends approval of the rezoning request from CBD to CI with approval of the associated Conditional Use Permit and detailed site plan.

Mr. Thomas Jones, applicant, spoke in support of the project. He felt Biltmore Park needs this type of office space and the project works with the existing topography.

- After hearing no rebuttal, Mayor Worley closed the public hearing at 6:28 p.m.

Vice-Mayor Mumpower moved to approve the conditional use rezoning for property located at 200 Technology Drive from Central Business District to Commercial Industrial District/Conditional Use. This motion was seconded by Councilman Dunn and carried unanimously.

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Vice-Mayor Mumpower moved to adopt Ordinance No. 3269 to issue a conditional use permit for property located at 200 Technology Drive for three proposed office buildings, subject to all the TRC conditions being met. This motion was seconded by Councilwoman Bellamy and carried unanimously.

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- C. PUBLIC HEARING TO CONSIDER THE ISSUANCE OF A CONDITIONAL USE PERMIT FOR PROPERTY LOCATED AT 4, 6 AND 7 ROBERTS ROAD, KNOWN AS FUN DEPOT, FOR A PROPOSED EXPANSION OF THE EXISTING OFFICE BUILDING AND RECREATIONAL FACILITY AND CONSTRUCTION OF A NEW OFFICE BUILDING**

ORDINANCE NO. 3270 - ORDINANCE GRANTING A CONDITIONAL USE PERMIT FOR PROPERTY LOCATED

AT THE 4, 6 AND 7 ROBERTS ROAD, KNOWN AS FUN DEPOT, FOR A PROPOSED EXPANSION OF THE EXISTING OFFICE BUILDING AND RECREATIONAL FACILITY AND CONSTRUCTION OF A NEW OFFICE BUILDING

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

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

After hearing no questions about the procedure, Mayor Worley opened the public hearing at 6:32 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 Julia Cogburn 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. Cogburn said that this is the consideration of the issuance of a conditional use permit for property located at 4, 6 and 7 Roberts Road, known as Fun Depot, for a proposed expansion of the existing office building and recreation facility and construction of a new office building.

The project site is located at the corner of Sweeten Creek and Roberts Road just south of the intersection of Sweeten Creek with I-40 (Attachment to City Exhibit 3 – Location Map). Access to all parcels involved in this development is off of Roberts Road. The total project site (presently three lots) is currently listed for tax purposes as 6.32 acres and is zoned CI (Commercial Industrial) (City Exhibit 4 – Aerial Map). Commercial Industrial zoning allows for office buildings and for both indoor and outdoor recreational facilities. The three separate site proposals are being considered as a singular development under a provision in the City's Unified Development Ordinance (UDO) that requires development proposals located within 1500 feet, developed by one entity, to be treated as one development for review purposes. The concept

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plan shows these lots being combined for development purposes and the project has been reviewed as if it were all one lot.

The applicant, Day and Elizabeth LLC and Asheville Fun Depot LLC, is proposing an expansion of the existing Asheville Fun Depot recreational facility on the property located at 7 Roberts Road (PIN 96571036577) (City Exhibit 5 – Site Plan). This expansion will add 22,020 square feet to the existing structure, creating a total of 58,700 square feet of enclosed recreational use. The applicant is also proposing the development of a new multi-level outdoor go-cart track and a pedestrian bridge and stairwell to take patrons of Fun Depot from the facility down to the lower parking at the Day Associates Office Building.

At 6 Roberts Street, the site of the existing Day Associates Office Building, the applicant is proposing an interior expansion (creation of a second floor) of 3,284 square feet of office space. The applicant currently has a Level I application for this expansion and for the go-cart track under review.

A new office building, Depot Crossing at Sweeten Creek, is proposed for the western most lot. The proposal is for a 39,000 square foot building, three stories in height. Approximately one-third (1/3) of this property is in the floodway for Sweeten Creek. It is proposed that the creek be culverted and filled over to allow this development to take place.

The City's Technical Review Committee (TRC) met on April 18, 2005, to review this development proposal. At that meeting, as there were still some legal issues to be addressed, the committee tabled this proposal to their May 2nd meeting. At their meeting on May 2nd the TRC voted to approve the project with the conditions outlined in the TRC report. Additionally, it was stipulated that the lease agreement with Norfolk Southern would need to be received prior to hearing before the Planning and Zoning Commission and that any proposal on additional buffering would have to be presented to and informally accepted by the Tree Commission.

City Council must take formal action on this matter 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 has been reviewed by City staff and appears to meet all public health and safety related requirements once the conditions enumerated by the Technical Review Committee are met. The project must meet the technical standards set forth in the UDO, the City Standards and Specifications Manual, the North Carolina Building Code, and other applicable laws and standards that protect the public health and safety.

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

The applicant is working with the topographic features of the site in locating the structures. The applicant will have to obtain a no-rise certificate for work done in the floodway and a LOMR if construction changes the location of the floodway or floodplain.

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

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The project consists primarily of expansions to existing operations and the construction of a new office building that is in keeping with the uses in the area. These improvements should increase the property values and encourage additional investment in the surrounding area. Required landscaping and buffers will shield the project from less intensive uses.

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 development is surrounded by major highways (I-40, Hwy 25-A), railroad tracks, an office complex, and a major equipment sales and service operation. The scale and character of the development is in keeping with all that surrounds it.

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.

This development supports the *Asheville City Development Plan 2025* objectives concerning infill development and the adaptive reuse of properties through flexible development standards. It also implements the strategy of permitting more intense commercial and office developments in locations where there exist adequate public facilities.

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

Development on the site will require final technical approval from all applicable departments including representatives of the Water Resources, MSD, Engineering, Fire and Building Safety Departments. The conceptual plans for the development have been reviewed by the City's Technical Review Committee, which found that adequate services and facilities are available for the proposed development.

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

The subject site is located adjacent to an interstate interchange and on a major artery in the community. Traffic associated with the development will have ample resources for access to the site. All other services are readily available to the development.

Pros

- The proposed development consists mostly of expansions to two existing facilities, appropriate to the location. The additional development is in keeping with the area.
- The project supports the City's comprehensive plan as indicated in this report and is adequately served by needed infrastructure.
- The developer has utilized shared parking and flexible development standards to reduce the number of parking spaces provided.

Cons

- The project site has difficult topographic and flood challenges for the developer. Proposed retaining walls and creek culverts will have to meet all applicable regulations.

The Asheville Planning and Zoning Commission reviewed this application at their meeting on July 6, 2005, and voted unanimously (7-0) to recommend approval to you subject to the conditions outlined by the Technical Review Committee including the need to resolve all the legal

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issues concerning the use of the Norfolk Southern property. Based on the seven findings, staff also recommends approval of the conditional use permit with the aforementioned conditions.

Mr. Mike Connor, representing the applicant, spoke in support of the project.

After rebuttal, Mayor Worley closed the public hearing at 6:38 p.m.

Vice-Mayor Mumpower moved to approve the conditional use permit adopting the proposed master plan for the proposed expansion of an existing office building and recreational facility and construction of a new office building located at 4,6, and 7 Roberts Road subject to the conditions outlined by the TRC including the need to resolve all the legal issues concerning the use of the Norfolk Southern property. This motion was seconded by Councilwoman Bellamy and carried unanimously.

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D. PUBLIC HEARING TO CONSIDER THE CONDITIONAL USE ZONING OF PROPERTY LOCATED AT 891 PATTON AVENUE FROM RM-8 RESIDENTIAL MULTI-FAMILY MEDIUM DENSITY DISTRICT TO HIGHWAY BUSINESS DISTRICT/ CONDITIONAL USE; AND THE ISSUANCE OF A CONDITIONAL USE PERMIT FOR A PROPOSED EMPLOYEE PARKING LOT

Mayor Worley said that on July 26, 2005, a letter was sent to Ms. Kim Hamel in the Planning Department from Pat Grimes, from Harry's Cadillac, and Pastor Randy Bray, from Temple Baptist Church, stating that "As you may know, we held a neighborhood meeting this past week. Several of our neighbors are opposed to our rezoning request. We asked for options at that meeting and received none. After discussion the matter at length with our attorney, we believe that it is prudent to withdraw our application at this time to allow us additional time to re-consider our planning options. Hopefully, if we re-submit in the near future, our new proposal will receive more favorable neighborhood support and perhaps support from your department."

E. PUBLIC HEARING TO CONSIDER THE CONDITIONAL USE ZONING OF PROPERTY LOCATED ON OAK PARK ROAD FROM RS-4 RESIDENTIAL SINGLE-FAMILY MEDIUM DENSITY DISTRICT AND RS-2 RESIDENTIAL SINGLE-FAMILY LOW DENSITY DISTRICT TO RM-8 RESIDENTIAL MULTI-FAMILY MEDIUM DENSITY DISTRICT/CONDITIONAL USE; AND THE ISSUANCE OF A CONDITIONAL USE PERMIT TO ESTABLISH TWO DUPLEXES AND SIX SINGLE-FAMILY UNITS

On July 26, 2005, City Clerk Burleson received a letter Mr. Gerald Green, Principal of GreenPlan Inc., as follows: I am requesting that the public hearing for the Skyview Park Conditional Use Rezoning scheduled for July 26, 2005, be continued until August 9, 2005. This continuance will provide time for us to address some of the concerns identified by neighboring property owners. We will be revising the site plans to address some of the concerns that have been identified and we will continue to meet with neighboring property owners to identify their concerns regarding the project."

Mr. Bill Chase, resident on Oak Park Road, was not so much opposed to the continuance request, but that residents have made accommodations to be present for this public hearing.

Mr. Green said that the continuance will allow the developer to spend more time trying to address the concerns of the property owners.

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City Attorney Oast said that a valid protest petition has been filed and it would not need to be re-filed.

Vice-Mayor Mumpower moved to continue this public hearing until August 9, 2005. This motion was seconded by Councilman Newman and carried unanimously.

F. PUBLIC HEARING TO CONSIDER REZONING VARIOUS LOTS IN SECTIONS B, C AND F OF THE BREVARD ROAD REZONING STUDY

ORDINANCE NO. 3271 - ORDINANCE TO REZONE VARIOUS LOTS IN SECTIONS B, C AND F OF THE

BREVARD ROAD REZONING STUDY

Mayor Worley opened the public hearing at 6:41 p.m.

Urban Planner Shannon Tuch said that this is the consideration of an ordinance to rezone various lots in Sections B, C and F of the Brevard Road Rezoning Study. This public hearing was advertised on July 15 and 22, 2005.

In the summer of 2003 the N.C. Dept. of Transportation (DOT) publicly revealed final plans to widen two sections of Brevard Road from the existing 2 lanes to a more accommodating 4-5 lanes. The first section was from just south of Oakview (near Interstate 26) to Pine Road (near the Toyota/Saturn Car Dealership). The second stretch begins just south of Stradley Mountain Road all the way to the NC Arboretum and Blue Ridge Parkway entrances. The intervening stretch already contained anywhere from 4 to 6 lanes to accommodate the Biltmore Square Mall and other large businesses and retail centers.

There were a number of reasons stated by DOT for the widening including anticipated increases in traffic volumes, which are expected to almost double by 2025, and a need for increased safety. However, the strongest reason for the widening was simply that 191 (Brevard Rd.) was part of an "intrastate" road system and it was part of the DOT's larger plan to widen all intrastate roads.

As a result of the road widening plans, the Planning and Development office was flooded with requests from property owners along the corridor, wanting to rezone their properties to allow for a higher use. As a result, a number of requests were initiated and approved at various points along the corridor. The amount of interest in rezoning along the corridor prompted staff to re-examine the existing land-use patterns in conjunction with the goals and strategies of the Asheville City Development Plan 2025 (ACDP). The study revealed six pocket areas that were felt to be better served by a different zoning classification. Those six sections are described as:

- Section A – 10 lots, RS-8. Staff proposed to rezone these properties to RM-16
- Section B – 1 lot, CI. Staff proposed to rezone this single property to OFFICE
- Section C – 14 lots, HB. Staff proposed to rezone these properties to CB-II
- Section D – 54 lots, RS-8. Staff proposed to rezone these properties to RM-16.
- Section E – 2 lots, OB. Staff proposed to rezone these properties to HB.
- Section F – 3 lots, CI. Staff proposed to rezone these properties to RB.

Although staff felt, based on the study, that a different zoning classification was warranted for these areas, it was of paramount importance that property owner interest and input was garnered for these proposed changes. In an effort to effectively communicate with these property owners, a separate informational meeting was held on March 16, 2005, where each individual property owner was invited to attend and participate in a discussion about the rezoning petition. The meeting was well attended and property owners from Sections A and D uniformly spoke against the zoning change and expressed a preference to retain the RS-8 designation.

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The ACDP 2025 describes the need to encourage transit supportive density along major corridors, however, it also describes as a purpose of the plan to propose a land use pattern, transportation network and a system of city services and infrastructure that reflects the community's desires and wishes concerning future growth of the city. Having heard the community's desires and the recommendation from the Planning & Zoning Commission, staff made the decision to drop sections A and D from the study. In addition, as a result of these two sections dropping out, it was felt that Section E should also be removed from the study since its proposed change was contingent on rezoning the residential areas to a higher density. The other three sections (Section B, Section C, and Section F) were retained and are part of the current petition.

On June 1, 2005, the Planning & Zoning Commission reviewed the rezoning study and requests and unanimously approved the recommendation to rezone Sections B and F. A moderate amount of discussion revolved around the proposed rezoning of Section C where public comment was received both in favor and in opposition of the zoning change. The primary concern was over a single wholesale business that would be rendered non-conforming in use if rezoned to CB-II. The individual property owner, although notified of the informational meeting and public hearing, was not in attendance and had not expressed interest in the potential zoning change. The Planning & Zoning Commission postponed voting on a recommendation for Section C and asked staff to try to contact the property owner directly to better discern a position or preference for the zoning change. After some time and effort, staff did make contact with the property manager and owner who both expressed concern over a change to CB-II. Although the business did not have any immediate plans for expansion, they did not want to limit their ability if they felt it necessary to expand in the future. As an alternative, staff proposed rezoning the majority of Section C to CB-II while rezoning the wholesale florist property and an adjacent vacant lot to the west (owned by Anderson Dental Laboratories) to CI. The CI zoning would allow the use to remain conforming, would retain the same setback requirements, and better matched existing land use and zoning patterns. Both the property owner and manager did support this alternative. On July 6, 2005 the Asheville Planning & Zoning Commission reviewed

the revised recommendation and unanimously approved rezoning 12 lots to CB-II and 2 lots to CI.

In summary, staff now recommends the following rezoning actions:

Section B (one lot) from CI to OFFICE to better address the existing pattern of growth and redevelopment and to more accurately reflect the existing office use. The property currently supports a chiropractor's office and two additional structures that appear to be residential structures but may be used as additional office space. The purpose of the CI zoning designation is to provide for a wide range of commercial and industrial uses; common CI uses include, light manufacturing, wholesale, warehousing, service uses, and retail. The purpose of the OFFICE zoning is to reserve areas for the development of small scale office uses adjacent to residential uses and/or to serve as a transition between residential and commercial areas. This property will fill in the transition office zone between the existing residential area to the north and the existing commercial area to the south.

Section C (12 lots) from HB to CB-II to encourage a Smart Growth Development pattern adjacent to residential areas and to preserve and enhance the character of the Gateway Boulevard. The purpose of the HB zoning designation is to address the needs of commercial development along major thoroughfares where automobile use is prevalent and a wide range of commercial uses is permitted. Due to the dominance of the automobile, a primary objective within this district is to preserve the traffic capacity of the thoroughfare; common HB uses include shopping centers, big box retail, and grocery stores. The purpose of the CB-II zoning designation is to provide business and service uses to medium/high density residential areas located along minor and major thoroughfares. CB-II development should provide for adequate and safe vehicular access while being sensitive to a significant pedestrian population; common CB-II uses include medical

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offices/clinics, restaurants, banks, and mixed-use developments. The properties are relatively small for the underlying HB zoning making typical large scale re-development more difficult. In addition, all existing uses are smaller businesses that currently conform in use and structure size.

Section C (2 lots) from HB to CI to better address an existing wholesale business. Originally, staff looked at rezoning all 14 lots in Section C to CB-II but discovered that the existing wholesale florist was the only existing business that would be rendered non-conforming in use. This was a concern due to an existing restriction that does not allow the expansion of non-conforming uses. It was recognized that the existing business would be better served by either the current HB zoning or, as an alternative, a rezoning to CI. To prevent the isolation of a single vacant lot, the property immediately west of the wholesale business is also proposed to be rezoned to CI.

Section F (3 lots) from CI to RB to better reflect the existing development patterns and preserve the character of this portion of Brevard Road described as a "Regional Commercial Corridor". The purpose of the CI zoning designation is to provide for a wide range of commercial and industrial uses; common CI uses include, light manufacturing, wholesale, warehousing, service uses, retail, and large office centers. The purpose of the RB zoning designation is to provide areas of large scale commercial and retail operations. These centers should be concentrated around the intersections of high traffic volume thoroughfares and arterial roads and should be easily accessible by the automobile while providing for shared parking opportunities and pedestrian connections; common RB uses include big-box retail, restaurants, lodging facilities, and shopping malls. The subject properties are adjacent to the Biltmore Square Mall (zoned RB) which already acts as a destination shopping center. In addition, the three lots currently support uses consistent with the RB zoning designation (K-Mart, misc. strip retail, and Ryan's Steakhouse).

Pros

- Proposed zoning changes will more accurately reflect existing land use patterns.
- Redevelopment will better preserve the character of Brevard Road as a Gateway Boulevard.
- Proposed zoning will better preserve the character of the existing residential areas.
- Existing uses remain conforming.

Cons

- Renders some existing parking lots to be non-conforming.

City staff recommends City Council approve the zoning map amendment identified as (1) Section B (1 lot) from CI to OFFICE; (2) Section C (12 lots) from HB to CB-II; (3) Section C (2 lots) from HB to CI; and (4) Section F (3 lots) from CI to RB.

Mayor Worley closed the public hearing at 6:54 p.m.

There was discussion about Councilman Davis' concern that the Highway Business District may be more favorable in the future as the road widens and the city continues to grow.

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

Councilman Newman moved for the adoption of Ordinance No. 3271. This motion was seconded by Councilwoman Bellamy and carried on a 6-1 vote with Vice-Mayor Mumpower voting "no".

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At 7:18 p.m., Mayor Worley called a short recess.

G. PUBLIC HEARING TO AMEND THE UNIFIED DEVELOPMENT ORDINANCE TO ESTABLISH NEW LIVE-WORK UNIT REQUIREMENTS AND TO ALLOW SUCH USES IN VARIOUS ZONING DISTRICTS

ORDINANCE NO. 3272 - ORDINANCE AMENDING THE UNIFIED DEVELOPMENT ORDINANCE TO ESTABLISH NEW LIVE-WORK UNIT REQUIREMENTS AND TO ALLOW SUCH USES IN VARIOUS ZONING DISTRICTS

Mayor Worley opened the public hearing at 7:36 p.m.

Planning & Development Director Scott Shuford said that this is the consideration of an amendment to the Unified Development Ordinance ("UDO") to establish new live-work unit requirements and to allow such uses in various zoning districts. This public hearing was advertised on July 15 and 22, 2005.

This code amendment is intended to accommodate a mixed residential/ commercial use of property known as live-work. A live-work unit can be defined as a building or space within a building that is used jointly for commercial and residential purposes where the residential use of the space is secondary or accessory to the primary use as a place of work. Since a live-work unit as defined above is predominately commercial in nature, it should be regarded as the equivalent of 0.5 residential unit for the purpose of applying density requirements.

The parking requirements for a live-work unit should be based on the square footage of the nonresidential use plus one space for the residential use. The minimum parking for the nonresidential space of a live-work unit should be the same as for other retail and office uses (a minimum of one space per each 350 square feet and a maximum of one space per each 250 square feet).

Live-work units should be allowed in any zoning district that allows a mix of commercial and residential uses (i.e., virtually all zoning districts that are not exclusively residential).

Pros

- Provides an added option for entrepreneurship development.
- Accommodates an increasingly popular form of land use that can reduce trip generation by mixing uses.

Con

- None noted.

On July 6, 2005, the Planning and Zoning Commission recommended approval of the proposed code amendment by a vote of 7-0. City staff recommends approval of the proposed code amendment as well.

Upon inquiry of Mr. Matthew Hebb, Mr. Shuford said that any concerns regarding sanitation will be addressed through other mechanisms, not the Unified Development Ordinance.

Mayor Worley closed the public hearing at 7:39 p.m.

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

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Vice-Mayor Mumpower moved for the adoption of Ordinance No. 3272. This motion was seconded by Councilwoman Bellamy and carried unanimously.

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IV. UNFINISHED BUSINESS:

V. NEW BUSINESS:

A. RESOLUTION SUPPORTING THE CONVERSION OF THE DOWNTOWN ONE-WAY PAIR OF COLLEGE STREET AND PATTON AVENUE

Councilwoman Bellamy asked that if this matter could be postponed in order to give the community an opportunity to become familiar with the recent changes that have occurred on College Street. Planning & Development Director Scott Shuford said that with the construction of the Pack Square Renaissance Project, that will cause a portion east of Biltmore Avenue to be converted this year. The part west of Biltmore Avenue will be on a timeline that will be at least 1-3 years because of the phasing of traffic signals. He felt there will be an ample period of time for people to get used to the College Street and Pack Square Renaissance changes. Alternately, it may be possible for Council to provide staff with a timeframe for implementation.

Traffic Engineer Anthony Butzek said that one of the reasons they are bringing this to Council is there is a significant amount of work that would have to be done by staff including pursuing some funding, particularly from the State, in moving us forward. As far as implementation, it depends somewhat on the available funding. Once we have an adopted plan from Council for the conversion, staff will be pursuing funding from the N.C. Dept. of Transportation (NC DOT) for modifications to the traffic signals and we can't pursue that funding until we have an approved plan from Council.

Mr. Shuford said that this is the consideration of a resolution supporting the conversion of the downtown one-way pair of College Street and Patton Avenue back to two-way operation so that staff may pursue State funding for implementation.

Staff has been studying the benefits of converting College Street and Patton Avenue back to two-way operation for several years. Discussion of this conversion was initiated with the Pritchard Park project and has continued with the Pack Square Renaissance project, although neither of these projects requires conversion for their operation.

There are several benefits with conversion to two-way operation:

- It supports the conversion of the main east-west traffic access through downtown (east of Pritchard Park) from Patton Avenue to College Street.
- It improves accessibility and exposure of businesses along these roads, thereby supporting the overall business climate in downtown.
- It improves the level-of-service (LOS) for eastbound traffic while maintaining the LOS for westbound traffic.
- It improves pedestrian safety on two critical east-west streets in downtown.
- The proposed design offers opportunities for enhanced sidewalk café operations on downtown sidewalks, allowing greater business use of public space.
- It improves the linkage between two important downtown parks – Pritchard Park and Pack Square.

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- It provides additional parking on the eastern end of the corridor while maintaining current parking levels on the western end.
- It allows adjustments to loading zones to improve business access, although some businesses may be slightly farther away from loading zones than is currently the case.
- It promotes multiple use of loading zones (loading during the day, parking at night).

The Downtown Commission considered the conversion issue at its July 8, 2005, meeting and unanimously recommended that Council proceed with the conversion. Communities that have made similar conversions are pleased with the results. The following table lists several communities studied in the late 1990s by a traffic engineering periodical, including the results experienced.

Characteristics of Projects Converting Downtown Streets from One-Way to Two-Way Operation

City	Pop.	Year	Type of Conversion	Average ADT	Results
Anniston, AL	26,400	1997	Convert major downtown streets back to two-way.	10-15,000	Vacancy dropped, very positive for business development
Dubuque, IA	60,000	1998	Convert one-way loop around pedestrian mall to improve access, reduce confusion.	6,000	Very positive, better business access, customer friendly.
Gardner, MA	22,000	1993	Convert one-way loop around to two-way on	40,000	Conversion immediately enhanced business

			three downtown streets.		development, reduced vacancy.
Green Bay, WI	97,000	1997	Convert main downtown gateways to two-way.	5,000	Improved business access.
Hickory, NC	36,000	1999	Converting paired one-way traffic system to two-way flow.	5,000	Good results, calmed traffic, improved business access and development, new investment.
North Little Rock, AR	61,000	1999	Converting to two-way after 16 years.	13,000	Announced two-way flow attracted property investment and new businesses.

Source: *The Urban Transportation Monitor*, May 12, 2000.

Mr. Butzek said that a traffic study commissioned by the City in 2001 concluded that the conversion to two-way traffic is feasible and would not significantly degrade traffic operations. Levels of service remained generally similar to conditions under one-way operation with the full implementation of the conversion, including several minor geometric improvements. This study, conducted by Kimley-Horn and Associates, analyzed traffic conditions in the downtown area, recommended improvements for two-way operation, and estimated costs for conversion.

The conversion from one-way to two-way would be done to support the economic vitality of downtown and increase pedestrian safety. It is generally felt that one-way streets have the ability to move more traffic, while two-way streets are more conducive to economic vitality. Two-way streets also avoid the confusion to motorists that one-way streets create, allowing for more direct routes of travel. This is especially important in Asheville as downtown is a tourist destination. Two-way streets would result in slower traffic movement, and slightly increased

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congestion. The idea that congested downtown streets keep people away is generally obsolete, with current wisdom dictating that slower traffic is representative of economic vitality. As noted above, many cities are converting their one-way streets back to two-way, as traffic conditions permit.

Generally, downtown merchants have expressed support for two-way streets. A survey of ground-level businesses indicates support for the conversion. Out of the thirty-three businesses and/or property owners surveyed, sixteen support the change, eight felt that they might support the plan and ten were against the plan. The businesses that indicated a lack support were concerned primarily about loading zones and parking spaces that serve their business. As the result of this feedback, staff has ensured that the same amount of loading and parking is available as is currently.

College Street and Patton Avenue are currently proposed to be converted to two-way east of Biltmore Avenue/Broadway to facilitate traffic movement consistent with the Pack Square Plan. In order to pursue conversion of the remainder to the west (to Coxe Avenue), and to request State funding to perform necessary replacement of the signals on Biltmore Avenue/Broadway at Patton Avenue and College Street, staff requests approval of the conversion by City Council.

The following table provides a summary of City staff modeling of the PM peak-hour operational differences at various intersections showing expected levels of service (LOS). By direction of travel, the converted roadways show an improvement in the level-of-service (LOS) for eastbound traffic while maintaining the LOS for westbound traffic.

Intersection	One-way LOS	Two-way LOS
College & Spruce	B	B
College & Market	A	A
College & Broadway	B	B
College & Lexington	B	B
College & Haywood	B	B
Patton & Coxe	C	C
Patton & Haywood	A	A
Patton & Lexington	B	B
Patton & Biltmore	C	C
Patton & Market	B	*

Concerns regarding the effect of the conversion to 2-way traffic on traffic flow, parking availability, and loading zones, were raised consistently as input was taken for this project. Staff has analyzed each in detail and studied ways to improve operations for each as part of the development of this plan.

Traffic Flow:

Traffic operations are not expected to be degraded by the conversion to 2-way, and will be improved for some traffic. The conversion to 2-way relieves the existing bottleneck at Pack Square, the intersection of Biltmore, Broadway, and Patton. Drivers traveling eastbound through downtown, or north or southbound along Biltmore/Broadway, will see improved travel times compared to existing conditions. Drivers traveling westbound through downtown will see comparable travel times compared to existing conditions. Some rush-hour congestion will occur, as it does under the current configuration.

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Loading Zones:

This was raised as a significant concern by businesses and the Downtown Commission. A number of marked loading zones exist on College and Patton, in addition to a number of informal loading zones. Informal loading zones typically occur in "dead space", non-critical and unmarked pavement between travel lanes, along curbs, or in excess vehicle travel lanes. Loss of loading zones on College Street will occur, given that College Street would be a 3-lane street, thus removing most parking and loading. Staff reviewed and documented these marked and informal loading locations in an effort to replace the space with a reasonable provision of marked loading zones.

The number of marked loading zones on College and Patton, and within a short distance along side streets, will increase from 11 loading zones totaling 265 linear feet (plus informal zones) to 17 zones totaling 706 linear feet (removing most informal zones). The increased length reasonably offsets the loss of informal loading space. These 17 proposed zones could revert to 36 parking spaces after-hours and on weekends.

Parking:

Loss of parking along College Street was raised as a significant concern, given that College Street would be a 3-lane street, thus removing most parking and loading. Staff worked to provide added parking on side streets as possible to offset these losses. Gains in the Pritchard Park, Biltmore Avenue, and Pack Square areas more than offset this loss of parking, although in different locations than the lost parking. Overall, the number of parking spaces would increase by 11 spaces downtown, with a net gain on the central and east parts of the corridor, and a net loss (5 spaces) on the west side of downtown. Additionally, 36 additional spaces are gained after-hours and on weekends in the marked loading zones.

The conversion requires modification to or replacement of eight traffic signals (six City and two State) along the corridor, and allows for removal of three others (Haywood & Battery Park, Patton & Haywood, Patton & Market). These replacements comprise most of the costs associated with the conversion. Replacement of all eight signals with decorative poles is estimated to cost \$1.05 million. Modification to the City's six signals could serve two-way traffic on a temporary basis at an estimated cost of \$100,000. Geometric modifications to the streets for two-way traffic are estimated at \$125,000, about half of which will be done as part of Pack Square.

Staff proposes that Council allocate approximately \$250,000 per year over the next four budget years in order to facilitate the necessary geometric modifications and replacement of traffic signals.

Pros

- Expected economic benefits for downtown, including improved accessibility and enhanced opportunities for use of public space for sidewalk cafes
- Reduced traffic speeds downtown with improved pedestrian safety
- Greater consistency with Pack Square plans
- Supported by many downtown merchants
- Supported by the Downtown Commission

Cons

- Cost
- Reduced traffic speeds downtown (con for impatient drivers)
- Concerns from some downtown office buildings

This project meets several of Council's strategic goals and objectives: Planning Goal #2, Objective A, Task 2: Leverage outside funding to achieve multiple transportation goals where

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possible. Planning Goal #2, Objective B, Task 1: Determine opportunities for managing traffic demand through changes to commuting patterns and transportation modes, land use patterns, signalization improvements, etc.

Staff recommends approval of the two-way plan and authorizing staff to pursue State funding and phased implementation of the two-way conversion as budgets permit.

Mr. Butzek said that they have not been able to reach a solution with the property owner of the BB&T building. An alternative to those two loading zone spaces, staff is proposing to add two new loading zones in the front of the BB&T building. Unfortunately that does cause an inconvenience for that operation.

Mr. Fred English and Mr. Peter Dawes spoke against the conversion. They were both concerned from the public safety standpoint.

Mr. William Wilcox, representing Tower Associates Inc., owners and managers of the BB&T Building, opposed the 2-waying of the street section between the intersections of Broadway Avenue/College Street and Lexington Avenue/College Street. He presented City Council with a copy of an e-mail outlining his concerns dated July 25, 2005, to Mr. Anthony Butzek and Ms. Sasha Vrtunski. One of his main concerns is the elimination of the existing loading docks on the north side of their building. He explained the problems with re-locating those loading zones to the front of their building,

Throughout the discussion about the conversation, Mr. Butzek responded to various questions/comments from Council.

City Manager Jackson said that he will report back to Council with a public safety response and with a financial analysis laying out in detail what the costs will be and what the funding alternatives are. In terms of the community preference and the policy considerations, he will leave that to the Council.

In summary, Councilman Dunn moved to postpone this matter until the City Manager has had the opportunity to do further analyses. This motion was seconded by Councilwoman Bellamy and carried unanimously.

B. RESOLUTION NO. 05-151 - RESOLUTION ADOPTING THE RIVER REDEVELOPMENT PLAN

Planning & Development Director Scott Shuford said that this is the consideration of a resolution adopting the River Redevelopment Plan funded by the NC Rural Economic Development Center and authorizing staff to forward the Plan to the Rural Center for consideration.

In response to the Fall 2004 floods, the NC Legislature authorized redevelopment planning and implementation monies. In late April, the City of Asheville was awarded a \$20,000 grant from the NC Rural Economic Development Center to prepare a redevelopment plan for Biltmore Village. We were also invited to submit other planning grant applications and were successful in obtaining an additional \$20,000 grant to study two other areas. Council recently approved these grants.

Pursuant to these grants, City staff has prepared a redevelopment plan. Due to the timeframe associated with the Rural Center grants, the plan was developed with only limited public input. It consequently has many areas that will require additional public involvement prior to any implementation actions taking place. However, the plan does follow the adopted Wilma

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Dykeman Riverway Master Plan in scope and design, examining a mixed-use development pattern and suggesting economic revitalization of the City's urban riverfront, greenway implementation, construction of the Wilma Dykeman Riverway, and use of environmentally-sensitive construction methods. It also offers implementation funding from the Rural Center for items not able to be funded using traditional means and opens the possibility of receipt of much more significant funding from the Rural Center for the designated projects.

The following three areas were identified for redevelopment planning:

- **Biltmore Village Redevelopment Area** – This includes the Biltmore Village local historic district and a large area to the east, including the Koon Development located at Glendale Avenue and Thompson Street.
- **East Swannanoa River Redevelopment Area** – This area includes property located on Swannanoa River Road across from the Sayles Wal-Mart.
- **French Broad River Redevelopment Area** – This area is located south of the Smoky Park Bridges southward to the Norfolk Southern RR property.

In the plan, staff proposes to proceed with a variety of tasks; key items are summarized below:

- Conduct public input sessions about the appropriate development pattern(s) and associated financial incentives for the three redevelopment areas and bring these ideas forward for Council consideration.

Develop, with public comment, best management practices for environmentally-sensitive design for inclusion in the Standards and Specifications Manual.

- Continue to pursue grant and other funding options for implementation of the Wilma Dykeman Riverway Plan and begin implementing the Riverway project by allocating the federal earmark funding to studying the corridor in the three redevelopment areas.
- Pursue improvements to Biltmore Village called for in the plan, including traffic safety and aesthetic improvements and funding for an architectural “flood proofing” program for vulnerable historic buildings to ensure their continued economic vitality.
- Bring forward ideas for constructing public parking in Biltmore Village after reviewing these ideas with the public and with Biltmore Village property owners.
- Purchase floodway properties in the East Swannanoa River redevelopment area from willing sellers.
- Demolish an unsafe structure in the Biltmore Village area.
- Design and construct the riverside greenway in the French Broad River redevelopment area.
- Seek consultant services about the use of project development financing in the French Broad River redevelopment area.

He said that the key components of the Plan include (1) identifies projects for Rural Center implementation funding for each area; (2) proposes the use of federal earmark funding to study Riverway improvements in each area; (3) lays out public involvement program for identifying (a) desired land use and zoning pattern for area redevelopment; and (b) financial incentives needed to implement desired pattern of redevelopment; (4) proposes creation of best management practices for environmentally sensitive development; (5) proposes hiring consultant to identify opportunities and mechanism to use project development financing to jump-start river redevelopment; and (6) proposes active implementation efforts for the parking, traffic circulation, and aesthetic improvements called for in the Biltmore Village Development Plan.

If the Rural Center Board approves the Plan, the City will become eligible for grant funding of up to \$700,000 per area.

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City staff recommends City Council adopt the River Redevelopment Plan funded by the NC Rural Economic Development Center and authorize staff to forward the Plan to the Rural Center for consideration.

Throughout his presentation, Mr. Shuford responded to various questions/comments from Council.

Mr. Jim Auggins, a business owner in the Biltmore Village area, was disappointed with the Plan in that there is no linkage between this Plan and the Army Corp of Engineers reconnaissance studies that have been funded, which are to present options for flood control and reducing flooding. Another major concern is that development in the Swannanoa River Watershed is going to increase future flooding in Biltmore Village and along the Watershed. He doesn't believe that the City has put in place tools to use to evaluate the impact of land use on the degree of flooding.

In response to Vice-Mayor Mumpower, Mr. Shuford said he would add language in the Plan to indicate that the City will be pursuing information, of the nature of the Army Corp of Engineers reconnaissance studies, as we go forward.

Upon inquiry of Vice-Mayor Mumpower about the county land use impact on flooding, Mr. Shuford said it is difficult for us to calculate what might happen in an area where there are no zoning standards. At Vice-Mayor Mumpower's suggestion, Mr. Shuford said that he would include language in the Plan that suggests, within the limits of our abilities, to look upstream and seek efforts to collaborate with people that do have that control.

In response to Councilman Newman, Mr. Shuford explained what specific projects we are committing to and at what cost.

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. 05-151, with the language suggested by Vice-Mayor Mumpower. This motion was seconded by Councilman Davis and carried on a 6-1 vote, with Vice-Mayor Mumpower voting “no.”

Vice-Mayor Mumpower said that there is some real potential for abuse. You don't hear about riverfront development for the poor. He understands that we will have opportunities to guide things to make sure this doesn't become a sanctuary for the rich and privileged.

RESOLUTION BOOK NO. 29 – PAGE 185

C. RESOLUTION NO. 05-152 - RESOLUTION APPOINTING A MEMBER TO THE CITIZENS/POLICE ADVISORY COMMITTEE

Vice-Mayor Mumpower said that the term of Jimmy Hungerford (West area), as a member of the Citizens/Police Advisory Committee, expired on June 30, 2005.

At Council's June 21, 2005, worksession, the City Clerk was instructed to re-advertise for the West Asheville area position.

At the July 19, 2005, City Council worksession, it was the consensus of City Council to arrange interviews for Craig Young and Robert Burns.

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After each Council member spoke in support of the candidates interviewed, Craig Young was appointed as the west Asheville representative on the Citizens/Police Advisory Committee, to serve a three-year term, term to expire June 30, 2008, or until his successor has been appointed.

RESOLUTION BOOK NO. 29 – PAGE 186

D. RESOLUTION NO. 05-153 - RESOLUTION APPOINTING A MEMBER TO THE PUBLIC ART BOARD

Vice-Mayor Mumpower said that Betty Clark has resigned from the Public Art Board, thus leaving a vacancy until December 31, 2005.

At the July 19, 2005, City Council worksession, it was the consensus of City Council to arrange interviews for Susan Chambers Overstrom, Meg Winnecour and Bill Fishburne.

After each Council member spoke in support of the candidates interviewed, Bill Fishburne was appointed to the Public Art Board to serve the unexpired term of Ms. Clark, term to expire December 31, 2005, or until his successor has been appointed.

RESOLUTION BOOK NO. 29 – PAGE 187

VI. OTHER BUSINESS:

RESOLUTION NO. 05-154 – RESOLUTION REGARDING THE CITY'S POSITION ON EMINENT DOMAIN

At the suggestion of Councilman Dunn, Mayor Worley read the following resolution: "Be it resolved, that the Asheville City Council has no intention of utilizing eminent domain to take private property for any purpose other than a bona fide public purpose and, under no circumstance would private property be taken by eminent domain and utilized for the benefit of private development such as was allowed in the United States Supreme Court in the New London, Connecticut, case. Further, that the Asheville City Council encourages our local delegation to the North Carolina General Assembly to work to ensure that there is no legislation that would permit any government entity in North Carolina to use eminent domain in the manner approved by the United States Supreme Court in the New London, Connecticut, case.

Vice-Mayor Mumpower moved to adopt Resolution No. 05-154. This motion was seconded by Councilman Dunn and carried unanimously.

Ms. Leesa Kulba and Mr. Fred English both spoke in support of adoption of the resolution.

RESOLUTION BOOK NO. 29 – PAGE 188

CLAIMS

The following claims were received by the City of Asheville during the period of July 8-14, 2005: Patsy Medford (Transit Services), Greg Goodman (Streets), Adrian Pachico (Streets) and James Cutshall (Water).

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

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VII. INFORMAL DISCUSSION AND PUBLIC COMMENT:

Vice-Mayor Mumpower was pleased to present Council with the first For Our Kids Program T-shirt, which will be designed in the future by children from public housing developments.

An intern at the WNC Alliance presented Council with 100 letters from downtown and west Asheville businesses supporting moving forward with the minimum number of lanes on the I-26 Connector, not to exceed six travel lanes. They strongly oppose the N.C. Dept. of Transportation's proposal to build an unnecessarily large eight-lane Connector, which would have negative impacts on Asheville's business community and quality of life.

Mr. Fred English spoke in opposition of the City spending money for an updated comprehensive study of emergency operations at North Fork. He felt that information is available through the Army Corp of Engineers.

Mr. Gene Hamilton, founder of Asheville Citizens for Quality Government, urged City Council to include their priority objectives in Council's goals. Those objectives are (1) improving the quality of education received by every student in Asheville; (2) increasing the minimum wage through a "just and living wage" ordinance to \$8.50 per hour, with annual incremental increases each year to \$10.00 per hour in 2008; and (3) improving the quality of public transportation for all the citizens of Asheville.

VIII. ADJOURNMENT:

Mayor Worley adjourned the meeting at 10:00 p.m.

CITY CLERK

MAYOR