

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 Dunn led City Council in the Pledge of Allegiance.

INVOCATION

Councilman Davis gave the invocation.

I. PROCLAMATIONS:

II. CONSENT AGENDA:

Mayor Worley announced Consent Agenda Item "G" will be removed from consideration at this time.

Councilwoman Jones asked that Consent Agenda Item "C" be removed from the Consent Agenda for discussion.

Councilwoman Bellamy asked that Consent Agenda Items "E" and "F" be removed from the Consent Agenda for discussion.

A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON JULY 26, 2005

B. ORDINANCE NO. 3273 - BUDGET AMENDMENT TO ACCEPT GRANT MONEY FROM THE U.S. DEPT. OF HOMELAND SECURITY

Summary: The consideration of a budget amendment, in the amount of \$141,244, to receive grant money from the U.S. Dept. of Homeland Security (DHS), sub-granted through the Federal Emergency Management Agency's (FEMA) FY 04 Assistance to Firefighter's Grant Program, for procurement of portable radios, portable computers, and portable repeaters to be used in emergency response and more efficient use of resources.

The City of Asheville Fire and Rescue Department with endorsement of the Asheville City Council in March, 2004 requested \$98,910 from the U.S. Dept. of Homeland Security to fund computers and walkie-talkies that will be used daily by firefighters and are used on virtually every emergency that occurs with the city. The portable repeaters will be used often. Computer's are used through the city's existing Geographical Information Systems (GIS) database to provide street, water line, hydrant, building, pre-incident plans, aerial photography, resource listings and other information to firefighters on a daily basis when responding to and managing emergencies. Additional walkie-talkies would allow each firefighter "seat" to have a portable radio. Currently, only the fire officer and fire engineer on each apparatus have portable radios. This would improve firefighter safety. The two vehicle repeaters would allow firefighters to better communicate in dense or "heavy" buildings, such as hospitals, the malls, etc.

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Staff desires to accept the grant in the amount of \$141,244, with 70%, or \$98,871 Federal dollars coupled with 30%, or \$42,373, of local (city) dollars.

Pros:

- The computer equipment would allow the Asheville Fire and Rescue Department to take advantage of the information and technology that is available to us and allow us to apply it virtually every day.
- The portable radios would increase firefighter safety on emergency scenes
- The portable repeaters would allow firefighters to communicate in locations where the current system is very limited such as

the hospital, mall and other "heavy" buildings.

- 70% of the funding would come from the Federal Government.

Cons:

- The City of Asheville's share of the matching grant.
- In order to maintain the same level of service, computer equipment and radio equipment would have to be replaced by the city when the service life is met. Life expectancy would be approximately five (5) years.

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

City staff recommends City Council approve the budget amendment to receive grant money from the U.S. Department of Homeland Security.

ORDINANCE BOOK NO. 22 – PAGE

C. RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE A LICENSE AGREEMENT WITH ARCH WIRELESS OPERATING COMPANY, INC., FOR AN ANTENNA AT 36 RESERVOIR ROAD

This item was removed from the Consent Agenda for discussion.

D. RESOLUTION NO. 05-155 - RESOLUTION AUTHORIZING THE MAYOR TO CONVEY PROPERTY ON BARTLETT STREET TO RAY QUATE

Summary: The consideration of a resolution authorizing the Mayor to convey property on Bartlett Street to Ray Quate in the amount of \$2,500.

On July 26, 2005, City Council directed the City Clerk to advertise for upset bids on property on Bartlett Street. The advertisement ran in the Asheville Citizen-Times on July 29, 2005, as provided in N. C. Gen. Stat. sec. 160A-269. No response was received. Therefore, the offer to purchase from Ray Quate in the amount of \$2,500 was not upset and the sale to Ray Quate should be approved.

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

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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. Quate 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 of 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:

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

There are no negative aspects of the transaction.

City staff recommends the Mayor be authorized to convey property on Bartlett Street to Ray Quate.

RESOLUTION BOOK NO. 29 – PAGE 189

E. RESOLUTION AUTHORIZING THE MAYOR TO ENTER INTO A FUNDING AGREEMENT WITH THE N.C. DEPT. OF TRANSPORTATION FOR THE PROVISION OF TRANSIT SERVICES TO THE TOWN OF WEAVERVILLE

This item was removed from the Consent Agenda for discussion.

F. BUDGET AMENDMENT TO REFLECT INCREASED FUNDING FROM THE N.C. DEPT. OF TRANSPORTATION AND THE TOWN OF WEAVERVILLE FOR OPERATION OF A NEW ROUTE TO WEAVERVILLE

This item was removed from the Consent Agenda for discussion.

G. RESOLUTION AUTHORIZING THE CITY CLERK TO PUBLISH A NOTICE REGARDING THE EXCHANGE OF EXCESS RIGHT-OF-WAY ON CROCKETT AVENUE FOR A RIGHT-OF-WAY EASEMENT AND UTILITY EASEMENT ON CROCKETT AVE

This item was removed from consideration at this time.

H. RESOLUTION NO. 05-156 - RESOLUTION APPROVING FREEDOM LANE AS A NEW STREET NAME

Summary: The consideration of a resolution approving Freedom Lane as the name for a new street located off Liberty Street.

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Staff has reviewed the proposed name and found no conflicts that would impede emergency service response. The primary purpose of establishing a name for any new street is to facilitate emergency response. Staff researched the street data and has determined that this name is not duplicated. A street name was necessary to facilitate specific street name and numbers for new structures. It would be impractical, and due to the existing street numbers, impossible to address the new structures from Liberty Street without causing emergency response delays.

Pro:

- The street will be utilized to access four new residential units.
- Assignment of specific addresses, utility connection, and potential emergency response will be enhanced with specific the street name.

Con:

- There are no negative affects of for assignment of Freedom Lane to this new street.

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

Staff recommends adoption of the resolution accepting Freedom Lane as new street name.

RESOLUTION BOOK NO. 29 – PAGE 190

I. RESOLUTION NO. 05-157 - RESOLUTION APPROVING ALEX BREEZE WAY AS A NEW STREET NAME

Summary: The consideration of a resolution approving Alex Breeze Way as the name for a new street located off Deaverpark Drive.

Staff has reviewed the proposed name and found no conflicts that would impede emergency service response. The primary purpose of establishing a name for any new street is to facilitate emergency response. Staff researched the street data and has determined that this name is not duplicated. A street name was necessary to facilitate specific street name and numbers for new structures. It would be impractical, and due to the existing street numbers, impossible to address the new structures from Deaverpark Drive without causing emergency response delays.

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Pro:

- The street will be utilized to access three new residential units.
- Assignment of specific addresses, utility connection, and potential emergency response will be enhanced with specific the street name.

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Con:

- There are no negative affects of for assignment of Alex Breeze Way to this new street.

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

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Staff recommends adoption of the resolution accepting Alex Breeze Way as new street name.

RESOLUTION BOOK NO. 29 – PAGE 191

J. RESOLUTION NO. 05-158 - RESOLUTION APPROVING EDBAR STREET AS A NEW STREET NAME

Summary: The consideration of a resolution approving Edbar Street as the name for a new street located off Sweeten Creek Road.

Staff has reviewed the proposed name and found no conflicts that would impede emergency service response. The primary purpose of establishing a name for any new street is to facilitate emergency response. Staff researched the street data and has determined that this name is not duplicated. A street name was necessary to facilitate specific street name and numbers for new structures. It would be impractical, and due to the existing street numbers, impossible to address the new structures from Sweeten Creek Road without causing emergency response delays.

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Pro:

- The street will be utilized to access existing and new businesses.
- Assignment of specific addresses, utility connection, and potential emergency response will be enhanced with specific the street name.

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Con:

- There are no negative affects of for assignment of Edbar Street to this new street.

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

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Staff recommends adoption of the resolution accepting Edbar Street as new street name.

RESOLUTION BOOK NO. 29 – PAGE 192

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

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

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ITEMS REMOVED FROM THE CONSENT AGENDA FOR DISCUSSION

RESOLUTION NO. 05-159 - RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE A LICENSE AGREEMENT WITH ARCH WIRELESS OPERATING COMPANY, INC., FOR AN ANTENNA AT 36 RESERVOIR ROAD

Summary: The consideration of a resolution authorizing the City Manager 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 towers are located on the property and the City of Asheville leases antenna space on the towers and ground space for related equipment.

Arch 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 Notice of Intent to enter into a License Agreement with Arch was published on July 29, 2005, in the Asheville Citizen-Times. Ten days have passed since the publication and authorization to execute the License Agreement is being requested,

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

City staff recommends City Council authorize the City Manager to execute a License Agreement with Arch Wireless Operating Company, Inc. for an antenna at 36 Reservoir Road.

Upon inquiry of Councilwoman Jones, Field Services Director Ed Vess said that Arch had four antennas, however, they removed all of them except for one. This is the rate for one antenna.

Councilman Jones moved for the adoption of Resolution No. 05-159. This motion was seconded by Councilman Dunn and carried unanimously.

RESOLUTION BOOK NO. 29 – PAGE 193

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E. RESOLUTION NO. 05-160 - RESOLUTION AUTHORIZING THE MAYOR TO ENTER INTO A FUNDING AGREEMENT WITH THE N.C. DEPT. OF TRANSPORTATION FOR THE PROVISION OF TRANSIT SERVICES TO THE TOWN OF WEAVERVILLE

Summary: The consideration of a resolution authorizing the Mayor to enter into a funding agreement with the N.C. Dept. of Transportation (NC DOT) for the provision of transit services to the Town of Weaverville, and an associated budget amendment, in the amount of \$108,839.

The Asheville Transit System has received funding for the operation of a route to Weaverville. The route will operate five

times per day (out and back) six days per week, with the last run retiring around 7:30 p.m. The State and the Town of Weaverville have funded the entire amount of the operating costs less fare box revenue. The Town of Weaverville has budgeted \$10,000 to this route. There are no City funds in this operation, and the City is specifically exempted from funding any of these operations in the contract from the NC DOT for these routes. The route will run from the downtown transit center up Merrimon to UNC-Asheville, then to Weaverville, Rose's Shopping Center, Sonopress, and back through Weaverville to the downtown transit center via Merrimon Avenue. Using the Black Mountain operations as a guide, it is reasonable to project ridership after three years to be in the range of 15,000 trips annually with the potential for up to 25,000 trips at full maturity (5 years), with 2,700 vehicle trips removed from roads after three years.

Conformance to City Development Plan 2025:

- Goal VI: Develop a transit system that is capable of meeting the needs of all residents of and visitors to the region.
 - Strategy 4: Expand inter-city service to Hendersonville, Black Mountain, Weaverville, Mars Hill, and Sylva.

Conformance to Strategic Plan:

- Strategic Plan Section on Planning, Goal 2, Objective B, by creating a partnership between the state, the Town of Weaverville and the Asheville Transit System to mitigate congestion.

The benefit to the City of Asheville is:

- Increased mobility for the citizens of Asheville both within and outside the city at no additional cost to the City of Asheville
- Increased accessibility to jobs in Weaverville (Sonopress being the largest employer in Weaverville), and access to jobs in Asheville by those living along the route

Costs to the City of Asheville:

- None

City staff recommends City Council endorse a resolution authorizing the Mayor to enter into a funding agreement with the NC DOT for the provision of transit services to the Town of Weaverville, and the associated budget amendment.

In response to Councilwoman Bellamy, Transit Services Director Bruce Black explained benefits and promotion of this new bus route.

Councilwoman Bellamy moved for the adoption of Resolution No. 05-160. This motion was seconded by Councilman Davis and carried unanimously.

RESOLUTION BOOK NO. 29 – PAGE 194

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F. ORDINANCE NO. 3274 - BUDGET AMENDMENT TO REFLECT INCREASED FUNDING FROM THE N.C. DEPT. OF TRANSPORTATION AND THE TOWN OF WEAVERVILLE FOR OPERATION OF A NEW ROUTE TO WEAVERVILLE

Summary: See Resolution No. 05-160 above.

Councilwoman Bellamy moved for the adoption of Resolution No. 05-160. This motion was seconded by Councilman Davis and carried unanimously.

ORDINANCE BOOK NO. 22 - PAGE

III. PUBLIC HEARINGS:

A. 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

This public hearing was continued from the July 26, 2005, City Council meeting in order to allow the developer time to address some of the concerns identified by neighboring property owners.

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.

City Attorney Oast said that a valid protest petition has been filed, thus requiring a three-fourths vote of City Council to approve the rezoning of the property. If the rezoning passes by the three-fourths vote, then the conditional use permit is subject to a simple majority vote.

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/or have received correspondence relating to this project and would consider this issue with an open mind on all the matters before them without pre-judgment and that they will make their decision based solely on what is before Council at the hearing.

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

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

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Ms. Tuch said that this is the consideration of a request to rezone 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 a request to issue a conditional use permit to establish two duplexes and six single-family units.

The project area is located in the Asheville city limits with frontage on both Oak Park Road and on Sky View Place in North Asheville (Attachments to City Exhibit 3 – Location Map and Aerial Map). The subject properties (2 lots) are the result of a lot recombination with additional property gained through a quit claim processed in 2004. The subject properties total approximately 1.46 acres, of which approximately .72 acres is zoned RS-2 and .74 acres is zoned RS-4.

The site currently supports a non-conforming garage that will be removed to make way for new construction consisting of the addition of 2 duplex buildings and 5 single family structures for a total of 9 units (Attachment to City Exhibit 3 – Site Plan). Four of the 5 single family structures will be located on subdivided lots accessed off of Sky View Place, with the remaining 1 single family units and 2 duplex units all being located on a larger single lot where all 5 units will share a 10 space parking lot (+ 2 garage spaces) accessed off of Oak Park Road. The duplex units will be 2 stories and approximately 1980 square feet per unit, 3960 square feet total. The single family structures will be 3 stories and approximately 1850 square feet with a comparatively smaller footprint, a little over 600 square feet. Also associated with the project is additional landscaping required for parking lot, street buffer, street tree, and landscape buffers along with tree preservation shown on the proposed Master Plan (Attachments to City Exhibit 3 – Building Elevations).

The rezoning component of the application is a request to rezone from RS-4/RS-2 to RM-8 to allow for a higher density and to allow for multi-family structures on a single lot. Current zoning would allow up to 3-4 single family units.

At their May 4, 2005, meeting, the Planning & Zoning Commission reviewed the proposed project and unanimously denied the proposal as submitted. Issues of concern centered primarily on the increase in traffic as a result of the increase in density and the inability for the existing road system and infrastructure to support the proposed density. There was a fair amount of public comment in opposition of the proposed project that pointed to examples of lack of off-street parking for existing homes resulting in congestion on the streets from on-street parking, narrow roads, sharp turns, steep grades, and emergency response times. The applicant responded to the some of these concerns with a revised site plan that removed one of the units (originally there had been 6 single family structures proposed) and increased the ratio of parking spaces per unit in order to alleviate any potential contribution to the existing on-street parking situation. In addition, the revised site plan shows that parking spaces from in front of the homes located on Sky View have been moved to parallel on street spaces and that this change, combined with the use of retaining walls, has further reduced the overall impact to the site by further reducing the amount of clearing and grading necessary for

construction.

Despite the changes to the site plan, staff remained somewhat concerned over the lack of support from the Commission and the public. In response Planning staff re-visited the site and reviewed the revised plans with both the Fire Marshal's office and the City's Traffic Engineer. Travel routes to both the upper half of the site and the lower half of site appeared to be easily navigated with the lower portion being accessed from the straight line of Baird Street while the upper portion of the site was easily reached from Town Mountain Road. The Fire Marshal's office did not find issue with serving the development and was pleased with the amount of parking provided for development commenting that it would aid in their response to the area. In addition, the Traffic Engineer reviewed the proposal and did not find that the amount of trips generated

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from the proposed development would contribute significantly to the traffic on the roads, particularly the less traveled roads that were more problematic for safe and easy navigation or wayfinding. In addition, the change to the parking for the units on Sky View was generally preferred by the traffic engineer since it reduced the need for backward movements and provided more spaces per unit.

City Council must take formal action as set forth in section 7-9-9(c)(4) of the Unified Development Ordinance (UDO), and must find that all seven standards for approval of conditional uses are met based on the evidence and testimony received at the public hearing or otherwise appearing in the record of this case (UDO 7-16-2(c)).

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

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

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 site area is an unusual combination of very mild and easily developed property with an equivalent amount of very steep terrain that is significantly more challenging to develop. The applicant has responded appropriately with the larger buildings and parking lot being located in the mildly sloped areas where less grading would be required. The steeper portions of the property are being developed with single family structures that have a comparatively small (600 s.f.) footprint that will accommodate the existing terrain more sensitively and require less disturbance than the average single family home. The use of retaining walls is also shown to help minimize the total disturbed area.

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

The proposed development will be in character with the development patterns already existing on the hillside and will also be architecturally attractive and consistent with the older Craftsman style homes of the area. This development is not expected to negatively affect adjacent property values.

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.

It is a relatively typical scenario to find the size of single family home sites increase with the rise in terrain and an increase in grade; as slopes become steeper, lots become larger (Attachment to City Exhibit 3 – Slope and Density Analysis Map). The larger lots perched higher on the hillside are typically developed at a low density due to physical challenges and development costs. Understandably, lower lying properties are commonly developed at a higher density where development costs are not as restrictive. Oftentimes, between the relatively flat low lying properties and the relatively steep hillside properties are pockets of “transition” properties. The subject area appears to be located

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in just such a transition zone with a proposed density classified as Medium Density (City Exhibit 4 – Use/Access Study Map). The existing development on the hillside currently supports several similar pockets of medium density development as well as individual lots that would be classified as high density and low density (City Exhibit 5 – Property Selection

Map). The scale of the larger duplexes is not out of scale with many of the larger single family homes in the area as well as the existing multi-family structures. The proposed single family homes are taller (3 stories) than many of the single family homes in the more traditional lower lying neighborhood but are not out of place with many of the homes perched on the hillside designed to capture views out over the valley floor. Lastly, the character of all the proposed structures would be compatible with the architecture and materials of the more historic Craftsman style homes in the area and throughout Asheville (City Exhibits 6-10 – Photos).

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

The *Asheville City Development Plan 2025 (ACDP 2025)* describes a number of reasons why properties within the City limits remain underdeveloped or vacant, including topographical or other physical problems with the property resulting in prohibitive development costs under existing zoning (by limiting density and a sufficient return given the market for the property's development). The *ACDP 2025* proposes a Smart Growth development pattern that accommodates realistic, market based alternatives to promote infill development of vacant or underdeveloped property. One way to accomplish this goal is to apply existing zoning tools to encourage higher density residential infill development. A Conditional Use Rezoning is one such tool that would allow this property to be developed at a higher density than the current zoning would allow. In addition, the same section of the comprehensive plan that discusses the need for residential infill development also outlines the need for this new construction to be of a quality that preserves, protects, and enhances existing neighborhoods. The proposed development utilizes a sensitive building approach and building design that will blend in with the existing hillside neighborhood.

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

This proposed development is within close proximity to alternative transportation and is located near major road facilities, interstate connections and other service centers with Charlotte Street & I-240 only ¼ mile away and within walking distance. In addition, basic infrastructure appears adequate and preliminary review by other service providers has not revealed any problems for future service to the development.

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

The proposed use splits access to the project area on two road frontages and will safely distribute traffic to roads with a higher capacity. The heaviest use to the site, 5 multi-family units, will be able to utilize an existing driveway (that will be improved) that empties onto Oak Park Road, a very short distance from the intersection of Baird Street which is part of the City's more navigable road system. In addition, all units will have the maximum number of off-street parking spaces allowed to prevent the need for any on-street parking. Lastly, the proposed use has been reviewed by the City's traffic engineer who has determined that the number of units and their access does not pose an undue or dangerous traffic hazard.

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Pros

- Allows for an attractive mix of infill housing types strategically located to transportation, services, & employment.
- Provides a topographically sensitive design and layout.
- New building construction will be in scale with existing multi-family and single family structures.
- Provides off-street parking in excess of the minimum required (alleviating on-street parking congestion).

Cons

- Results in a higher density than some of the existing residential units.

City staff recommends approval of the zoning change from RS-4/RS-2 to RM-8 (CUZ) and approval of the associated conditional use permit, as proposed by the applicant.

Should the Council choose to deny the request as submitted, staff would like to recommend the following alternatives that reduce the total number of units:

- Remove the single family structure on the multi-family lot (for a total of 4 single family homes+2 duplexes)
- Reduce the number of single family homes on Sky View from 4 to 3
- Replace duplexes with single family structures

Discussion then surrounded why the Planning & Zoning Commission has not reviewed the revised plans, especially since it was a Planning & Zoning Commission unanimous denial. City Attorney Oast advised Council that they have the ability to remand the matter back to the Planning & Zoning Commission. He also noted that the valid protest petition would remain in effect when the issue is brought back again before Council.

Mr. Gerald Green, representing the applicant, said they would be willing to take the project back to the Planning & Zoning Commission. That will give them an opportunity to show the Commission how they have addressed their concerns. In addition, they will meet with a wider range of the neighborhood to see if their concerns can be addressed.

Councilman Dunn moved to remand this matter back to the Planning & Zoning Commission. This motion was seconded by Councilwoman Jones.

The following individuals spoke against remanding this issue back to the Planning & Zoning Commission for various reasons, some being, but are not limited to: the neighborhood has already looked at the revised plans and there is not a huge change; Skyview Place is a narrow road; the inconvenience to the neighborhood; the development does not fit into the site; the developer has not made an effort to meet with the neighborhood:

Mr. Bill Chase, resident on Oak Park Road
Ms. Erin McLaughlin, resident on Oak Park Road
Ms. Elizabeth Wyndelts, resident on Oak Park Road

Mr. Alan Laibson, applicant, said he would like the opportunity to go back to the Planning & Zoning Commission, in particular to address the parking and density concerns. He felt there was some misinformation being relayed to the neighborhood and he would like the opportunity to clear that up as well.

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In response to Councilman Newman, Ms. Tuch felt that the Planning & Zoning Commission's prospective was evenly balanced between the technical and fundamental aspect of the project.

After further discussion, the motion made by Councilman Dunn and seconded by Councilwoman Jones to remand the matter back to the Planning & Zoning Commission failed on a unanimous vote.

Mr. Green, on behalf of the developer, withdrew the request at this time. He said they would re-evaluate the site, meet with the neighborhood and possibly come back to Council at a later date.

B. PUBLIC HEARING TO CONSIDER AMENDING THE CONDITIONAL USE PERMIT TO CONSIDER POTENTIAL OUTPARCEL USE BASED ON NEW INFORMATION INCLUDED IN AN UPDATE TO THE TRAFFIC IMPACT ANALYSIS FOR THE RIVERBEND MARKETPLACE DEVELOPMENT, LOCATED OFF BLEACHERY BOULEVARD

ORDINANCE NO. 3275 - ORDINANCE AMENDMENT THE CONDITIONAL USE PERMIT TO CONSIDER POTENTIAL OUTPARCEL USE BASED ON NEW INFORMATION INCLUDED IN AN UPDATE TO THE TRAFFIC IMPACT ANALYSIS FOR THE RIVERBEND MARKETPLACE DEVELOPMENT, LOCATED OFF BLEACHERY BOULEVARD

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 6:08 p.m.

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

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

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

Ms. Tuch said that this is the consideration of an amendment to the conditional use permit to consider potential outparcel use based on new information included in an update to the Traffic Impact Analysis for the Riverbend Marketplace development located off Bleachery Boulevard.

In 2002, the Riverbend Marketplace was approved and subsequently permitted for a large scale, level 3, commercial development project (City Exhibit 4 – Site Plan). Concerned about the effect of the development on the carrying capacity of Swannanoa River Road led the Asheville City Council to condition approval for the large project to restrict development so that, at

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project build-out, traffic volumes on Swannanoa River Road would not exceed 90% of level of service D; new development above the limits that this established in the plan could not occur without additional mitigation measures and conditional use permit (CUP) modification. This restriction prevented the development of one of the two outparcels (Outparcel 1) and limited development in other areas of the project. Subsequently, in 2004, City Council approved a modification to the CUP to allow an expansion of the allowable development intensity of the associated urban village project based on a traffic impact analysis (TIA) that showed that the constructed road network was capable of handling peak hour traffic without degradation of the level of service on Swannanoa River Road below acceptable limits, although the 90% requirement was exceeded. Staff made its review at that time using site-specific analysis of intersections, a more accurate and accepted method of gauging traffic impact than the somewhat arbitrary 90% of level D capacity measure used in the prior CUP. Now, an updated TIA has been submitted that examines the intersections in the vicinity of this proposal, taking into account the added traffic anticipated from the new Aldi grocery store, the proposed urban village, and the proposed outparcel development, as well as other background traffic increases. This analysis showed that, while the 90% requirement was again exceeded on the corridor, all but two intersections would operate at a level of service meeting the intent of Council's original condition. The two intersections that were not operating optimally are:

1. Swannanoa River Road & S. Tunnel Road
2. Tunnel Road & S. Tunnel Road

The intersection of Swannanoa & S. Tunnel is not of great concern since it is anticipated that the road improvements required as a condition of the Target development will improve the level of service at this intersection. The second intersection, Tunnel and S. Tunnel, was of greater concern, with a level of service of "F". However, it was recognized that the Riverbend Marketplace development contributes a very small amount of peak hour trips to this intersection and is generally considered not to be responsible for its poor level of service. Similarly, it is anticipated that the development of Outparcel 1 would not contribute significantly to the existing problem. Consequently, the mitigation measures planned for the Swannanoa River and Tunnel Roads intersection mitigate the added traffic planned for Outparcel 1.

In summary, in an effort to seek relief from development restrictions established over concern due to increases in traffic, the applicant has updated the former TIA to demonstrate that any increases in traffic as a result of the Riverbend Marketplace development, including Outparcel 1, can be accommodated with recent and anticipated road connections and improvements to meet an acceptable level of service on all affected roadways. As a result, the developer would like to amend the conditional use permit (CUP) to allow Outparcel 1 to be considered for development, based on the updated TIA.

The revised TIA was reviewed at the July 18, 2005, Technical Review Committee meeting where the project was approved with conditions. The majority of the departments commented that since a development plan for the parcel had not yet been determined, a separate review would be required at a later date. As a result, these departments abstained from voting. The only other comments were from the City Traffic Engineer who provided a summary of the revised TIA and how it related to the overall development project. In addition, the Traffic Engineer also responded to questions from the public and provided clarification on issues raised. Ultimately, it was only the Engineering Department that voted, and the project was approved with conditions. The conditions included:

- Identify recommended improvements to the intersection of Tunnel Road and South Tunnel Road
- Provide additional detail to some of the analyses.

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A revised TIA has been submitted and will be reviewed to see if the above conditions have been met.

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)).

The larger Riverbend Marketplace Master Plan was reviewed and approved in July of 2002. At that time, the overall development project was found to meet all seven conditional use standards (listed below). It is generally felt that the ability for the project to meet the seven standards has not changed as a result of the requested amendment, however, as it relates to traffic, standards #1 and #7 have been reviewed.

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

The updated TIA demonstrates that an acceptable level of service is maintained on all affected roadways. As a result, the proposed use is not expected to endanger the public health or safety. Concern was raised during the TRC meeting that increases in traffic accidents have resulted post-development but any information provided to support this concern could be attributed to any number of factors including a simple increase in traffic increasing the statistical likelihood of an accident or a small and/or aberrant sample. In addition, traffic calming that will be implemented as a result of Urban Village development would reduce the likelihood of traffic accidents.

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

Not applicable.

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

Not applicable.

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

Not applicable.

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

Not applicable.

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

Not applicable.

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

An update to the TIA generated for the project reveals that an adequate level of service will be maintained on all affected roadways as a result of this development project. Areas of poor service will either be improved as a result of anticipated road improvements or are not attributable to this development project.

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Pros

- Allows for the infill development in an already established retail area.

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Cons

- Contributes to a small increase in traffic (but within acceptable limits).

For the reasons stated above, Planning staff concurs with the City Traffic Engineer and recommends approval of this CUP amendment subject to the TRC conditions being met.

Mr. Rick Pressley, with Horne Properties representing the development company, said that this Outparcel was always a part of an intended use of the development. The updated TIA in May of the roads and the new two miles of roadway emptying onto Fairview Road and through the River Ridge Shopping Center shows that traffic is being adequately handled. He noted that the conditional use permit that they were granted included approximately 5,500 square feet of allowable area, which they are not building. Notably, the Outparcel square feet will probably be less than 5,500 square feet. Finally, the study that was brought before Council for the second phase, which they do not own, which is the Urban Village, included this lot and there is further proof that the level of services are adequate within that study. He asked for a favorable approval to get this Outparcel freed up for development which will conclude the Riverbend Market Place development as far as build-out.

In response to Councilman Newman, Traffic Engineer Anthony Butzek said that when the project was originally approved, Council expressed some concerns about one development absorbing all of the capacity on the roadway and the development density of the project was therefore limited. Now that the project has been built and we are seeing how traffic operations are occurring, the developer is asking relief from a condition that was agreed to at that time. This Outparcel was removed from the project to get them below that maximum density that Council wanted them to adhere to.

In response to Mayor Worley, City Attorney Oast explained that the Urban Village project has a different owner and is not part of this conditional use permit for this project.

Ms. Tuch said that there is a difference between the level of service and the 90% anticipated traffic load. The 90% is a theoretical number. The anticipated amount of traffic that the project will contribute to the road was 90%, which included the Urban Village. An amendment to the conditional use permit for the Urban Village added another 5% to a total of 95% for the Riverbend project. The Aldi development contributed 10% and now this Outparcel is anticipated to contribute 1%. The total percentage is 106%. That theoretical number can exceed 100% because it is theoretical. The way to measure the service is to go out and measure the traffic through the intersections. That is what the TIA did and it showed that we are at an adequate level of service, with the exception of the two. One intersection did not meet that level of service, but it is anticipated that it will be improved as a result of traffic improvements to be completed for the Target development. The other intersection remains at a poor level of service, however, it has been determined that a number of the trips at that intersection are not coming from this Riverbend development. It seems unfair to penalize them for something they are not significantly contributing to.

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Mr. William Lentz, resident on Governor's View Road, presented Council with Neighborhood Exhibits 1 and 2 which are photos of the congestion of the South Tunnel Road area with the intersection of Swannanoa River Road. He urged Council to not approve any more development which will contribute to the traffic congestion.

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

Mr. Butzek said that an update to the TIA was required for this project. That TIA does meet the typical traffic engineering standards and shows an acceptable level of service with improvements to the roadways. Improvements to two intersections would be necessary. With regard to the intersection of South Tunnel and Swannanoa River Road, Target is required to do some improvements there. In fact, the N.C. Dept. of Transportation has made some signal timing improvements to that intersection. Regarding the other intersection of South Tunnel Road and Tunnel Road, signal timing improvements would improve conditions there as well. That is quite a distance from this project and the number of trips that this particular outparcel would contribute to the intersection is minimal.

In response to Councilwoman Bellamy, Mr. Butzek said that a TIA looks at intersection analysis and determines the specific level of service. The 90% rule is a fairly general type rule that doesn't relate very closely to the specific analysis. It's not a standard way of determining the capacity of a roadway. It's a way of getting a general idea of the capacity of a roadway. That condition was imposed to keep this one development from absorbing all the capacity. The TIA looks much more specifically at intersections and is a better determination of actual operations. The Aldi development, which is unrelated to this development, contributed approximately 10%. They also had a separate traffic study which determined acceptable operation. This study then factored in all of those approved developments, the Urban Village expansion as well as the Aldi development.

Councilman Newman was concerned about how close are we getting until we see a poor level of service to the intersections in the area, based on the rate growth in the area. He wondered if we had a planning tool for future development in that area.

In response to Councilwoman Bellamy, Planning & Development Director Scott Shuford said that this is the last piece of development for the Riverbend project. There are two outparcel pieces that are undeveloped. The first outparcel piece was

included in the original TIA and has been accommodated in this TIA. The second outparcel piece here is the last piece of the Wal-Mart development itself. The Urban Village is at the top of the hill and its traffic generation has been accommodated in this study as well.

Responding to Councilwoman Bellamy's question about future plans for the corridor development, Mr. Shuford said we have a plan for constructing the Wilma Dykeman Riverway. It won't be a huge capacity increase because Swannanoa River Road will still remain a two-lane roadway, but many of the intersections that do cause congestion will be widened. He said that if we continue to look at high traffic generating retail uses in that area, we will run out of capacity a lot faster than if we look at mixed-use development. He said that Swannanoa River Road is a state road and there are no plans to widen it. He did say that they are trying to get the Wilma Dykeman Riverway Plan on the Transportation Improvement Program, which they hope they will get it on this year.

When the Urban Village project was brought before Council, Councilwoman Jones felt she was clear in asking what plans there were for future development on that site. She did not recall this being mentioned. She did recall a possible movie theatre and asked what the status of that is. Mr. Shuford said that was associated with the Urban Village project and as far as he

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knows there are no plans to construct that. He did state that if a movie theatre is proposed, it would have to come back to City Council for approval.

Upon inquiry of Councilman Davis, Mr. Shuford said that Target will add another left turn lane from Swannanoa River Road onto Tunnel Road. With regard to the intersection improvements, Mr. Butzek said that several deadlines have passed and the City is working with Target to move the improvements forward. He has another meeting scheduled with Target within the week. He said that staff will let Council know if they reach a stopping point, however, he doesn't feel Council involvement at this time is necessary. He feels comfortable that they intend to move forward with that improvement. If the improvement is not completed, City Council can revoke Target's conditional use permit.

In response to Vice-Mayor Mumpower, Mr. Butzek said that the Target improvement will have a very large impact to that intersection. It will increase the capacity on the east bound approach significantly as it will provide for an additional left-turn movement. It will also reduce the amount of greentime that is allocated to that eastbound movement. The traffic signal will reallocate that greentime around the intersection to serve the other movements more appropriately.

Councilwoman Jones pointed out that in staff's report, it says that "this analysis showed that, while the 90% requirement was again exceeded on the corridor, all but two intersections would operate at a level of service meeting the intent of Council's original condition." She clarified that it was not her sole intent. The level of service is one aspect of it in terms of traffic, but it was also the future planning capacity. She felt the 90% was too high even then. She felt that Council made a promise to the community. To say that this is an amendment to the intent of Council is a problem for her.

Mr. Shuford said that the 90% issue was not a requirement. It is referred to in one of the findings of the conditional use permit. It was never included as a specific condition of the conditional use permit. The point was, and an effort was made at that time, to try to reserve some capacity for future development along the roadway. There is no question that was what Council intended. He felt he may have made a mistake back on July 23, 2002, when the conditional use permit was before Council, by suggesting that particular measure, because that is not a standard measure for level of service. It was his planner's effort to try to take a number that a two-lane roadway would typically have and have some capacity associated with it to get Council to where they wanted to go be. He feels Council's intent was that Council wanted to make sure that the roadway operated at an acceptable level of service. That is why the sentence was written the way it was.

In response to Councilman Newman, Mr. Butzek said that it appears that neighborhood encroachment has not been as significant as the original traffic study forecasted, based on the data we have available. In addition, traffic calming is scheduled for Governor's View Road and also for Redwood Forest.

Councilman Dunn moved to adopt Ordinance No. 3275 to approve the modification to Ordinance No. 2939 and to Ordinance No. 3178, and Condition No. 2 as set forth in said ordinances is amended to read (changes indicated in **red**) provided all TRC conditions are met and that there be no further changes without traffic mitigation, a Traffic Impact Analysis, etc.: The attached Exhibit A, the level of development intensity approved for this Project, is amended to permit the following level of development for Phase 2 (the urban village) of the project: 96,858 sq. ft. of commercial uses (retail, office, restaurant, etc.) and 240 residential condo/townhouse units as approved by Council by adoption of Ordinance No. 3179, **and for the development of Outparcel 1 as a 5,000 square foot high-turnover restaurant or similar use of an equal or lesser impact.** There shall be no further changes to Exhibit A that will increase traffic on Swannanoa

River Road unless further traffic impact mitigation measures are implemented. In addition, the applicant agrees to support a general transit service hub at the site and to participate in an effort to develop a specialized transit system for the site and surrounding area, including developer provision of a transit stop on the site, designing the interior of the site to accommodate transit vehicles, allowing transit vehicles to traverse the site, developer participation in a plan to create a specialized transit program, and developer commitment to any agreed upon funding mechanism, such as a special taxing district, necessary to maintain this system that may be implemented in the future. Finally, in order to ensure the viability of the River Ridge Shopping Center connection, the applicant shall escrow not less than \$50,000 to be used for improvements on the River Ridge site to upgrade the interior access "road" that will connect to the public street being constructed by the developer as part of the Phase II urban village project; the implementation of this upgrade project will require approval by the River Ridge Shopping Center owner and by the City of Asheville. This motion was seconded by Councilman Davis.

Vice-Mayor Mumpower wondered at what point, if any, should the City should say no to development in order to keep the capacity open for future development. Mr. Shuford felt this is a policy question for Council. He suggested Council look at the roadway corridor and think about the type of land use you want to see occurring and think about the traffic generation characteristics of that type of land use and then see if there are ways to accommodate it or not. We are trying to do that with the River Redevelopment Plan.

In response to Councilwoman Bellamy, Mr. Shuford believed that Ingles has purchased the former Wal-Mart site, but would confirm that and report back to Council.

Vice-Mayor Mumpower commented that he felt it was unfair to limit or otherwise impair development allowed under our ordinance in anticipation of future development that Council might feel is better.

Councilwoman Jones will not support the motion. She actually likes the Urban Village site, however, the 90% meant something to her and she feels that we are going beyond the capacity of the road. In addition to that being an important part of her reasoning, she also feels like Council made some statements to the community and she doesn't feel we are living up to those statements.

Councilman Newman said that this was a very controversial project when it came before Council and traffic congestion was a principle part of the equation that people were concerned about. Since the traffic projections at that time showed that on the day the project opened, it would already be above a level of service "D", a decision was made to require the developers to scale the project back to 90%. He felt that while there was not community consensus, it was like a deal was struck with the community.

Councilwoman Bellamy said she could not support the motion. She read the following portion of the July 23, 2002, minutes: "However, the applicant indicated that the option they would prefer to pursue at the current time is to reduce the scale of the project in order to meet the 10% capacity retention standard proposed at the City Council meeting. Included in this option is the provision of an expanded connection, via a public street to be constructed by the applicant, to the River Ridge Shopping Center. In other words, they propose to delete some land uses from this request and to change others to such an extent that the total projected traffic on Swannanoa River Road falls below 12,600 vehicles per day."

Upon inquiry of Councilman Dunn, Mr. Pressley said that with all the testimony heard it is very easy for anyone to get tangled up on intent. He assured Council that at no time did they ever mean to state, or in his opinion state, that they would not develop that second outparcel. We said that we had the intent, along with everyone in the room, to address the traffic situation. We have

done that through the exterior and rear entrances. Again, it was never their intent to take this off the table on a continuing, forever basis.

When Councilman Dunn called the question, a vote was taken to cut off the debate, which motion carried unanimously.

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

ORDINANCE BOOK NO. 22 - PAGE

At 7:26 p.m., Mayor Worley announced a short recess.

C. PUBLIC HEARING TO CONSIDER AN AMENDMENT TO THE UNIFIED DEVELOPMENT ORDINANCE FOR UMBRELLA SIGNS

ORDINANCE NO. 3276 - ORDINANCE CONSIDER AN AMENDMENT TO THE UNIFIED DEVELOPMENT ORDINANCE FOR UMBRELLA SIGNS

Mayor Worley opened the public hearing at 7:34 p.m.

Urban Planner Julia Coburn said that this is the consideration of an amendment to the Unified Development Ordinance for the purpose of adding provisions for umbrella signs. This public hearing was advertised on July 29 and August 5, 2005.

The current sign regulations of the City of Asheville do not address umbrella signs. Umbrella signs are those signs printed on umbrellas that are commonly used at outdoor eating and drinking establishments and often advertise products sold on the premises. This amendment provides for such signage.

This ordinance amendment defines umbrella signs as those signs printed or painted on an umbrella. This amendment goes on to classify umbrella signs as a type of sign exempt from permit requirements. This means that an umbrella sign is permitted without having to actually obtain a permit for the signage so long as the applicable regulations are met.

The regulations stipulated in this amendment for umbrella signs include that such signs not be illuminated, that they be located at a lawfully permitted outdoor dining/drinking establishment, that they not be suspended from the umbrellas, and that the signage be limited to 25% of the surface area of the umbrella cloth.

The amendment has been routed to CAN, CREIA, and CIBO for review and comment.

Pros-

- The amendment sets forth regulations for a type of signage not currently addressed in the UDO and which has been raised as an issue for enforcement staff.
- The amendment permits umbrella signs without permit (subject to specific requirements) which will not add to the permitting burden for staff.

Cons-

- The amendment allows this type of signage (with restrictions) that may be considered to add to sign clutter.

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The Planning and Zoning Commission recommended approval of this code amendment on February 2, 2005, by a unanimous vote of 7-0. Staff recommends approval as well.

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

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

Councilwoman Bellamy moved for the adoption of Ordinance No. 3276. This motion was seconded by Councilwoman Jones and carried unanimously.

ORDINANCE BOOK NO. 22 – PAGE

D. PUBLIC HEARING TO CONSIDER AN AMENDMENT TO THE UNIFIED DEVELOPMENT ORDINANCE REGARDING THE DEFINITION OF ADULT ESTABLISHMENTS

ORDINANCE NO. 3277 - ORDINANCE AMENDING THE UNIFIED DEVELOPMENT ORDINANCE REGARDING THE DEFINITION OF ADULT ESTABLISHMENTS

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

Urban Planner Julia Cogburn said that this is the consideration of an amendment to the Unified Development Ordinance for the purpose of changing the definition of "adult establishments. This public hearing was advertised on July 29 and August 5, 2005.

The UDO regulates "adult establishments" as conditional uses. In defining "adult establishments" the current ordinance simply refers to the definition contained in the North Carolina General Statutes.

The definition of "adult establishment" found in the North Carolina General Statutes does not specifically address retail operations that deal specifically with "sexually oriented devices" although that term is defined in the statutes. N.C. Gen Stat. sec. 14-202-11 gives local governments power to regulate "adult establishments or other sexually oriented business to the extent consistent with the constitutional protection afforded free speech." "Sexually oriented devices" are defined in the statutes as "without limitation any artificial or simulated specified anatomical area or other device or paraphernalia that is designed principally for specified sexual activities but shall not mean any contraceptive device."

Due to recent inquiries concerning operations that retail "sexually oriented devices," the Planning and Development Department and the City Attorney's Office recommend the addition of operations where the principal retail business is in such items to the definition of "adult establishment."

The amendment has been routed to CAN, CREIA, and CIBO for review and comment.

Pros-

- The amendment clarifies an issue that has recently been brought to staff's attention as to whether or not retail operations dealing primarily in "sexually oriented devices" are "adult establishments."

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Cons-

- Some as unnecessary could view the amendment over regulation of adult establishments.

The Planning and Zoning Commission recommended approval of this code amendment on March 2, 2005, by a unanimous vote of 6-0. Staff recommends approval as well.

Mayor Worley closed the public hearing at 7:37 p.m.

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

Vice-Mayor Mumpower moved for the adoption of Ordinance No. 3277. This motion was seconded by Councilman Davis and carried unanimously.

ORDINANCE BOOK NO. 22 - PAGE

IV. UNFINISHED BUSINESS:

V. NEW BUSINESS:

A. RESOLUTION AUTHORIZING THE CITY MANAGER TO SIGN AN AGREEMENT WITH BUNCOMBE COUNTY FOR MAINTENANCE OF NON-CITY WATER LINES, TANKS AND PUMPS LOCATED IN BUNCOMBE COUNTY

This matter was removed from consideration at this meeting.

B. RESOLUTION NO. 05-161- RESOLUTION SUPPORTING SENATE BILL 1006 INTRODUCED IN THE 2005 SESSION OF THE NORTH CAROLINA GENERAL ASSEMBLY

Councilman Newman explained the need for the following resolution and asked for City Council's consideration and support: "WHEREAS, air pollution is a significant contributing cause of respiratory and other ailments in the population of Western North Carolina, especially in the very young and very old; and WHEREAS, air pollution has harmful effects on the ecology and environment, including the weakening and destruction of vegetation at high elevations; and WHEREAS, air pollution has a harmful effect on the economy of Western North Carolina, in that it interferes with mountain views which have long been an attraction for the tourism industry; and WHEREAS, a major source of controllable air pollution is exhaust emissions from motor vehicles; and WHEREAS, a bill has been introduced in the N. C. General Assembly, Senate Bill 1006, entitled "An Act to Establish the North Carolina Low-Emission Vehicles Program," which bill provides for the State of North Carolina to adopt and administer a program for reducing vehicular emissions, and for the State and its political subdivisions to purchase low-emissions vehicles. NOW,

THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF ASHEVILLE THAT: (1) The Asheville City Council of the City of Asheville does hereby express its support for Senate Bill 1006, and urges the members of its local delegation, and all members of the General Assembly, to adopt said legislation, and further urges the Governor to sign said legislation into law, as soon as possible (2) The Mayor, through the City Clerk, is authorized to transmit a copy of this resolution to the sponsors of Senate Bill 1006.”

It was the consensus of Council that Asheville is a leader in the south and this continues our leadership role.

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Councilman Newman moved for the adoption of Resolution No. 05-161. This motion was seconded by Vice-Mayor Mumpower and carried unanimously.

RESOLUTION BOOK NO. 29 – PAGE 195

C. RESOLUTION SUPPORTING FULL IMPLEMENTATION OF THE FEDERAL CLEAN AIR ACT AND THE ADOPTION OF OTHER MEASURERS TO CONTROL INTERSTATE POLLUTION

This matter was removed from consideration at this meeting.

VI. OTHER BUSINESS:

Councilman Davis commended the Asheville Police Department for responding in such a rapid manner to a break-in at his store, resulting in the culprit being captured.

Vice-Mayor Mumpower announced the Midnight Basketball event at Hillcrest Apartments for the children of Hillcrest and Deaverview on Friday, August 12, 2005.

The following claims were received by the City of Asheville during the period of July 15-28, 2005: Kyle Ann Ross (Police), Rob Weed (Water), Ann E. Sams (Streets) and Teresa Foster (Sanitation). These claims have been referred to Asheville Claims Corporation for investigation.

VII. INFORMAL DISCUSSION AND PUBLIC COMMENT:

Mr. Gene Hampton felt the City of Asheville “needs to demonstrate its ability to consistently provide service that meets customer ... requirements.” He felt City Council should review the ISO 9001 requirements to operate successfully.

At 7:55 p.m., Councilman Newman moved to go into closed session for the following reasons: (1) To consider the qualifications, competence, performance, character, fitness, conditions of appointment, or initial employment of an individual prospective public officer or employee. The statutory authorization is contained in G.S. 143-318.11(a)(3); and to prevent the disclosure of information that is confidential pursuant to G.S. 160A-168, the Personnel Privacy Act. The statutory authorization is contained in G.S. 143-318.11(a)(2); and (2) To consult with an attorney employed by the City about matters with respect to which the attorney-client privilege between the City and its attorney must be preserved, including potential litigation. The statutory authorization is contained in G.S. 143-318.11(a)(3). This motion was seconded by Councilman Dunn and carried unanimously. At 9:05 p.m., Councilwoman Bellamy moved to come out of closed session. This motion was seconded by Councilman Dunn and carried unanimously.

VIII. ADJOURNMENT:

Mayor Worley adjourned the meeting at 9:05 p.m.

CITY CLERK

MAYOR