

Regular Meeting

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

Absent: Mayor Charles R. Worley

PLEDGE OF ALLEGIANCE

The Asheville High School ROTC led City Council in the Pledge of Allegiance.

INVOCATION

Reverend Spencer Hardaway, from Rock Hill Missionary Baptist Church, gave the invocation.

SPECIAL REPORT

City Manager Jackson updated City Council on the City's efforts regarding Hurricane Katrina and what our citizens can do to assist in the aftermath.

I. PROCLAMATIONS:

A. PRESENTATION OF CITIZEN BOARD MEMBER AWARD

Vice-Mayor Mumpower recognized Mr. Lindsey Dunevant, President of the North Carolina Recreation and Park Association, who presented Parks & Recreation Directory Irby Brinson with the Citizen Board Member Award.

B. RECOGNITION OF ASHEVILLE WINNING THE MAYOR'S CUP RAFT RACE

Vice-Mayor Mumpower recognized the following crew members in their efforts of Asheville placing 1st in the Mayor's Cup Raft Race: Jonathan Feldman, Jason Mann, Mike Quinones, Charley Cox and stand-by member Herb Roberson. In addition to these crew members, Mayor Worley and Vice-Mayor Mumpower manned the raft as well.

C. PROCLAMATION PROCLAIMING SEPTEMBER 12-16, 2005, AS "UCANSING2 WEEK"

Councilman Newman read the proclamation proclaiming September 12-16, 2005, as "UCANSING2 Week " in the City of Asheville. He presented the proclamation to Bob Burns, Land of the Sky Chapter of the Barbershop Harmony Society, and Mr. Mike Richard, bass player of "Almost Famous." In addition, the quartets "Almost Famous" sang a song.

D. ANNOUNCEMENT OF NEW CHIEF FINANCIAL OFFICER

City Manager Jackson was pleased to announce Benjamin Durant as the City's new Chief Financial Officer.

II. CONSENT AGENDA:

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A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON AUGUST 23, 2005, AND THE COMMUNITY MEETING HELD ON AUGUST 30, 2005

B. RESOLUTION NO. 05-170 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO AN AGREEMENT WITH THE N.C. DEPT. OF TRANSPORTATION TO INSTALL ADA COMPLIANT RAMPS ALONG HAYWOOD ROAD

Summary: The consideration of a resolution authorizing the City Manager to enter into an agreement with the N.C. Dept. of Transportation (NC DOT) to install Americans with Disabilities Act (ADA) compliant ramps along Haywood Road in conjunction with the NC DOT's resurfacing project.

Both the City of Asheville and the NC DOT are in need of ADA compliant ramps along their respective street systems. It is a requirement of NC DOT to install ADA compliant ramps in conjunction with their resurfacing projects. In order to install some additional City amenities, and to expedite completion, the City of Asheville has offered to install these ramps using Street Division forces. For completing this work on their behalf, the NC DOT has agreed to reimburse the City the full cost of construction, which is estimated at \$16,000 (16 ramps X \$1,000 each). In accordance with N.C. Gen. Stat. sec. 136-66, municipalities may participate in improvements to the State highway system through mutual agreement.

Funding for this project has already been allocated in the NC DOT's project budget.

This project meets several goals or task identified in the City Council Strategic Operating Plan, specifically:

- Planning section, Goal 2- Multi-modal transportation enhancement, Task 2- Leverage outside funding to achieve multiple transportation goals.
- Sense of Place, Heritage, and Arts- Goal 3- Support and advocate initiatives to encourage new downtown development including gateway/corridor improvements. Task 1- Construct infrastructure including... sidewalks... to include growth downtown.
- Natural and Built Environment- Goal 3- Increased street and sidewalk connections- Expand street and sidewalk connections- Task 6- Pursue additional local and outside funding.

Pros:

- This project will render the existing sidewalks through the project area ADA accessible, which will meet the City's obligation of providing consistent and compliant accessible features.
- It will aesthetically enhance the impacted intersections by providing a consistent design throughout the project area.
- The NC DOT is willing to reimburse the City the full costs of constructing the ADA ramps.

Cons:

- There is an opportunity cost to the City in that Street Division staff would be pulled off of other duties to complete this project; however, the NC DOT reimbursement could offset those costs by enabling the City to construct other needs with those funds.

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The Public Works Department staff recommends City Council adopt the resolution authorizing the City Manager to enter into a municipal agreement with the NC DOT to install ADA compliant ramps in conjunction with the Haywood Road resurfacing project.

RESOLUTION BOOK NO. 29 – PAGE 205

C. RESOLUTION NO. 05-171 - RESOLUTION AUTHORIZING THE EXCHANGE OF REAL PROPERTY WITH CHRISTOPHER J. PETERSON TO ALLOW ACCESS INTO RICHMOND HILL PARK VIA RICHMOND HILL DRIVE

Summary: The consideration of a resolution authorizing the exchange of real property with Chris Peterson at Richmond Hill

Back in January, the City Council authorized the City to enter into an agreement with the State of North Carolina (National Guard) for the joint use and development of the City's Richmond Hill property. The Guard proposes to construct a training and readiness center there to replace its facility on Shelburne Road, and to perform some grading work for the City's proposed multi-use athletic fields. The City will also have substantial use of the assembly facilities in the Guard's training center.

This agreement was contingent on the City obtaining access to the property from the current terminus of Richmond Hill Drive across intervening property owned by Chris Peterson. The City negotiated an option with Mr. Peterson that provided either for a payment in cash, or for an exchange of adjacent property belonging to the City. If the City exercised the option, Mr. Peterson could elect to receive the cash or the land.

Back in June, Council authorized giving notice to Mr. Peterson of our intent to exercise the option. After completing some routine inspection and title investigation work, that notice was given on August 18. Mr. Peterson has elected to receive property

rather than cash, and has identified the property that he proposes to receive. The resolution is the last step required in the process for authorization of this transaction.

Based on appraisals performed in 2003, the value of the properties to be exchanged is approximately equal, at about \$37,000. The difference in size reflects a difference in per acre value, due mostly to the Peterson tract's accessibility to a road.

Considerations: The property that we will be conveying to Mr. Peterson is larger than the property he will convey to the City, but the values are essentially equal, especially in view of the public benefit that the City will receive through better access to its property.

- The property that the City will be acquiring is needed for access to the City's Richmond Hill property, and would be needed whether or not the National Guard facility were being constructed.
- The completion of this transaction is necessary in order to complete the transaction with the National Guard.
- Other considerations (pros and cons) are set out in the June 14 Staff Report.

City staff recommends adoption of the resolution authorizing the exchange of property.

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- D. RESOLUTION NO. 05-172 - RESOLUTION AMENDING THE 2005 CITY COUNCIL MEETING SCHEDULE IN ORDER TO RESCHEDULE (1) THE TUESDAY, OCTOBER 11, 2005, MEETING UNTIL WEDNESDAY, OCTOBER 12, 2005; AND (2) THE TUESDAY, NOVEMBER 8, 2005, MEETING UNTIL WEDNESDAY, NOVEMBER 9, 2005**

RESOLUTION BOOK NO. 29 – PAGE 210

- E. RESOLUTION NO. 05-173 - RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE AN ADDENDUM TO THE MEMORANDUM OF UNDERSTANDING WITH THE U.S. DEPT. OF HOUSING & URBAN DEVELOPMENT FOR ENFORCEMENT OF FAIR HOUSING BY THE ASHEVILLE-BUNCOMBE FAIR HOUSING COMMISSION**

Summary: The consideration of a resolution authorizing the Mayor to execute an addendum to the Memorandum of Understanding (MOU) with HUD for enforcement of Fair Housing.

The Asheville-Buncombe Fair Housing Commission was created in 1987 by a joint ordinance of the City and County. Since then, it has operated under a MOU between the City, County, Commission and HUD. The purpose of the MOU is to set standards for local enforcement of fair housing law and eliminate duplicate enforcement activity. While the MOU is in force, the City is eligible to receive an annual Fair Housing Assistance Program (FHAP) grant from HUD. In 2004-05 that grant amounted to \$173,600.

HUD has requested that the City execute an addendum to the MOU, which was last renewed in 1995, to reflect continued certification of the Commission's Fair Housing Program and make minor amendments to reflect changes in HUD procedures.

Pros:

- Continued ability to provide a local response to fair housing complaints
- Continued receipt of an annual FHAP grant in order to fund this work.

Cons:

- None

City staff recommends approval of the resolution authorizing the Mayor to sign the addendum to the MOU.

RESOLUTION BOOK NO. 29 – PAGE 211

- F. RESOLUTION NO. 05-174 - RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE AN AGREEMENT WITH THE N.C. DEPT. OF TRANSPORTATION FOR FUNDING FOR THE REPLACEMENT PURCHASE OF 20 ON-VEHICLE SECURITY CAMERAS FOR THE TRANSIT FLEET**

Summary: The consideration of a resolution authorizing the Mayor to enter into an agreement with the N.C. Dept. of Transportation (NCDOT) for funding for the replacement purchase of 20 on-vehicle security camera systems for the transit fleet.

These cameras record events on the bus. They are useful in reviewing customer complaints, and are very valuable in staving off superfluous or opportunistic lawsuits. The NCDOT requires an agreement between the City and the NCDOT for reimbursement of up to \$120,978 for the replacement of 20 on-vehicle security camera systems for the transit fleet. The

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state will reimburse the City up to 90% (\$120,978) of the total expended amount of \$134,420. The local matching funds have been programmed in the City budget.

This action complies with the Strategic Operating Plan in the Planning Focus Area - Goal #2-A Multi-modal Transportation System, leveraging outside funding sources.

Pros:

- Replacement of aging equipment
- Additional protection from spurious lawsuits
- Enhance safety and security for passengers

Cons:

- \$200 a year on-going costs for recording media

City staff recommends adoption of the resolution authorizing the Mayor to enter into an agreement with the N.C. Dept. of Transportation for funding for the replacement purchase of 20 on-vehicle security camera systems for the transit fleet.

RESOLUTION BOOK NO. 29 – PAGE 212

G. RESOLUTION NO. 05-175 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ACCEPT THE BID OF ORION BUS INDUSTRIES INC. AND AUTHORIZING THE CITY MANAGER TO EXECUTE AN AGREEMENT WITH ORION BUS INDUSTRIES INC. FOR THE PURCHASE OF BUSES

Summary: The consideration of a resolution authorizing the City Manager to execute an agreement with Orion Bus Industries Inc. for the purchase five new 30-foot buses and two new 20-passenger buses and associated equipment.

The City of Asheville has received a federal grant, the federal share of which is \$1,354,796, the state share is \$136,204, and the city share is \$141,645. The total project cost is \$1,632,284. The buses to be purchased are Orion VII, 30 foot, 29 passenger low floor buses similar in appearance to our current buses, and smaller cutaway buses similar to the current models. Both will be purchased through the state bus consortium contract. Delivery will take about 56 weeks after order for the large buses, and 3 to 6 months for the smaller buses. Two of these buses are from congressional earmarks gained by our state delegations.

The Orion buses will have diesel engines with Exhaust Gas Recirculation technology for a cleaner engine than at present and will be able to use Ultra Low Sulfur Diesel fuel, to be required in 2007. The Orion's have been certified to use 5% Bio-Diesel, and it is expected that they will be certified for 20% Bio-Diesel by year's end.

The smaller buses will be able to use bio-diesel, and we will try to purchase diesel engines, which will use ultra-low sulfur fuel. If these are not available we will purchase gasoline engines, as the life expectancy of the vehicle extends beyond 2007.

Associated equipment consists bike racks (triple) and in-bus security cameras for each vehicle.

Funds have been allocated and budgeted for this purchase in the Fiscal Year 2005-2006 budget.

Benefits to the City of Asheville:

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- The purchase of these buses is the beginning of the project to stagger the purchase of the fleet to spread out the demand for funds on state and federal agencies. This also allows the purchase of the latest technology on buses.

- Low floor buses provide better access for all riders, especially for the elderly and handicapped
- Replacement of aging buses.

Costs to the City of Asheville:

- There are no costs to the City other than those already in the currently approved budget.

This action complies with the City Council's Strategic Operating Plan through the routine replacement of buses - Goal #2, Task #2: Leverage outside funding to achieve multiple transportation goals where possible.

City staff recommends City Council grant the City Manager authority to enter into an agreement with Orion Bus Industries Inc.

RESOLUTION BOOK NO. 29 – PAGE 213

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

III. PUBLIC HEARINGS:

A. PUBLIC HEARING TO CONSIDER REZONING AND APPLICATION OF A PLANNED UNIT DEVELOPMENT OVERLAY ZONING TO 72 ACRES LOCATED OFF KENILWORTH ROAD AND RESERVOIR ROAD, IDENTIFIED AS KENILWORTH HEIGHTS, FROM THE UNDERLYING ZONING OF RS-2 RESIDENTIAL SINGLE-FAMILY LOW DENSITY DISTRICT TO RS-4 RESIDENTIAL SINGLE-FAMILY MEDIUM DENSITY DISTRICT; AND MASTER PLAN APPROVAL FOR A 172 UNIT RETIREMENT COMMUNITY WITH RELATED AMENITIES

Vice-Mayor Mumpower said that this public hearing was originally scheduled for August 23, 2005; however, the applicant had requested the hearing be continued until September 13, 2005, in order to have a full Council present for the hearing. That request was granted.

Due to Mayor Worley's absence at this meeting, Mr. Albert Sneed requested that this public hearing be continued until September 27, 2005, in order to have a full Council present for the hearing. Councilman Dunn moved to continue this public hearing until September 27, 2005. This motion was seconded by Councilman Newman and carried unanimously.

B. PUBLIC HEARING TO CONSIDER AN AMENDMENT TO THE CONDITIONAL USE PERMIT FOR A DUPLEX AT 96 LOUISIANA AVENUE REGARDING A CHANGE IN SIDING MATERIAL

Late September 12, 2005, City Clerk Burlson received a fax from Mr. Brian Fuchs, developer and owner of 96 Louisiana Avenue, stating "It has just been brought to my attention that Mr. Worley will not be present at the Council meeting scheduled for 9-13-05. I feel it is

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important to have the Mayor and a full Council in session to hear my request for amendment concerning the materials of the building. For this reason I am requesting a continuance until the next available time on October 25, 2005, or before."

Mr. Nathan Bryant, resident on Louisiana Avenue, spoke against the continuance in that he feels this is an attempt to delay the matter in order to maneuver votes.

Mr. Tom Rightmyer, secretary of the Coalition of Asheville Neighborhoods (CAN), said that CAN has unanimously requested City Council to deny further change the conditions under which the original conditional use permit was approved.

Ms. Julie Allen, resident on Louisiana Avenue, spoke in support of proceeding with the hearing at this time.

Mr. Brian Fuchs urged Council to continue the hearing until there is a full Council present. As soon as he found out Mayor Worley was not going to be present, he faxed a copy of a continuance request to City Clerk Burlson.

Councilman Newman moved to proceed with the public hearing at this time. This motion was seconded by Councilwoman Jones and carried on a 5-1 vote, with Vice-Mayor Mumpower voting "no."

City Attorney Oast said that in order to have the modification to the conditional use permit granted, there would need to be an affirmative vote of 4 members of Council.

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

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.

After hearing no questions about the procedure, Vice-Mayor Mumpower opened the public hearing at 5:44 p.m.

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. Shannon Tuch, Urban Planner, said that this is the consideration of an amendment to a conditional use permit for a duplex at 96 Louisiana Avenue regarding a change in siding material. This public hearing was advertised on September 2 and 9, 2005.

She said that the Asheville City Development Plan 2025 (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 and was utilized to allow for this property to be developed at a higher density than the current zoning would allow. However, the same sections of the comprehensive plan that discusses the need for residential infill development also states

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that the "protection, preservation, and enhancement of existing neighborhoods must be as much a part of our development pattern as promoting new construction". The applicant is proposing a change to the Conditional Use Permit that is felt to detract from the predominant character of the homes in close proximity and the larger neighborhood, particularly those homes that are currently under consideration for historic district designation.

This property was Conditionally Rezoned from a split-zoned RM-8/RS-8 lot to RM-8 CUZ to allow for the addition of a new duplex at the rear of the lot for a total of 4 units.

This project was originally reviewed under a conditional use rezoning application for 96 Louisiana Avenue on April 12, 2005, where the property owner requested a rezoning of the unusually configured and split-zoned lot in order to allow for the addition of a new duplex at the rear of the lot behind an existing single family home and accessory apartment.

During the public hearing for this project there was a substantial amount of concern expressed by both the neighborhood and the Council regarding the appearance and compatibility of this project. At the Council's request, staff attempted to mitigate these concerns by adding conditions during the hearing that would help ensure a more compatible product that would contribute to the enhancement of the neighborhood. This included a condition that was designed to reflect the proposed illustrative character sketch supplied by the applicant and described a number of architectural features and building materials. The condition in question is as follows:

"Before the issuance of a final zoning permit, the applicant shall provide final plans detailing and qualifying the character of the proposed building elevations including details such as the amount and location of window and door fenestration, the number and direction of the multiple roof pitches with moderate to deep overhangs, the location and layout of the proposed foot paths and ornamental plantings, building materials and architectural details including asphalt roof shingle, hardi-plank siding, cedar shake shingles, window shutters, exposed end rafters and/or painted wood trim."

With this condition (and others) added to the CUP, the project was approved 7-0.

In the weeks following the hearing, staff was contacted by the applicant who stated that he had always intended to use vinyl siding and wanted administrative approval to change the building materials included in the conditional use permit. Although staff was not aware of the applicant's intentions, it was felt that siding materials contributed significantly to the appearance and character of a structure and that a change from hardi-plank and cedar shake siding to vinyl siding constituted a significant change and would require Council approval. Staff polled Council and did not find consensus on this issue and we advised the applicant of his appeal options.

The recommended usage of hardi-plank and cedar shake siding was a deliberate choice due to its ease to obtain, apply, and maintain. It is also considered to be more durable and affordable than real wood siding and more flexible than vinyl siding. Lastly, hardi-plank is the only non-wood alternative that is recommended in situations where the preservation of historic character is preferred. This property borders the boundary of a neighborhood in West Asheville (Brucemont/Dorchester) that is currently under consideration for Historic District designation and it is common for conditional zonings to be held to a standard that helps enhance a neighborhood's character.

Staff has worked with the applicant on a number of other relatively minor changes that deviate slightly from the illustrative drawing presented at the April hearing including: changes to window placement to accommodate an internal staircase, the addition of a building protrusion to the rear of the building face to accommodate unanticipated exterior venting to second story (protrusion will resemble a chimney flu), a small increase in height, alterations to stairs leading to

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the second entrance, reductions/alterations to the ornamental plantings, and removal of the exposed end-rafter requirement. These changes were approved administratively.

Because this requested amendment involves a change to the appearance of the structure only, it was not required a review by the Technical Review Committee.

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.

Not applicable.

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.

Although the vinyl siding itself is not believed to adversely affect adjacent property values, it is felt that the proposed vinyl siding does little to enhance the character and subsequent values of the adjacent properties.

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

It has generally been argued that the character defining features of a structure do have an impact on more than the character of the building itself; they also alter the visual relationship between buildings. The applicant is proposing to add a vinyl-sided structure that would be surrounded by other homes, the majority of which, are currently sided with a material other than vinyl. Furthermore, the predominant siding material on the larger block is not vinyl and the vinyl sided homes that do exist in the area are typically older wood-sided homes that have been covered in vinyl.

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)** 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 and was utilized to allow for this property to be developed at a higher density than the current zoning would allow. However, the same sections of the comprehensive plan that discusses the need for residential infill development also states that the “protection, preservation, and

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enhancement of existing neighborhoods must be as much a part of our development pattern as promoting new construction”. The applicant is proposing a change to the Conditional Use Permit that is felt to detract from the predominant character of the homes in close proximity and the larger neighborhood, particularly those homes that are currently under consideration for historic district designation.

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.

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

Not applicable.

Pros

- Results in less expense to property owner.

Cons

- Compromises the character of the structure.
- Weakens the relationship between subject property and adjacent homes through less compatible materials.
- Further dilutes the historic character of the area attempting to be preserved.

Staff does not recommend a change to the conditional use permit to allow for the substitution of the previously specified hardi-plank and cedar shake siding for vinyl siding.

Ms. Tuch summarized by saying that this is a request for an amendment to a conditional use permit associated with the conditional use zoning of the property located at 96 Louisiana Avenue. The purpose of this rezoning was to grant a multi-family zoning designation to allow for the addition of a duplex to a site that already supported two residential units. This project was originally approved in April of 2004. (Attachment to City Exhibit 3 – Location Map).

The project met with a fair amount of opposition from the adjacent property owners and other west Asheville residents and despite the relatively small scale, resulted in a fairly significant amount of discussion. Ultimately, the infill project was approved after being conditioned by staff, at Council’s request, to ensure adherence to an illustrative drawing that was submitted by the applicant (Attachment to City Exhibit 3 – Illustrative Drawings). These conditions included the application of a cement fiberboard siding (commonly referred to as hardi-plank siding) and cedar shake siding to the new structure. With this condition in place, the Council unanimously approved the proposal.

After the hearing, the applicant contacted staff to request a change in the siding material. Although siding had never been discussed prior to the City Council’s public hearing, apparently the staff’s choice of preferred siding material was not what the applicant had intended to use. Given the amount of discussion over the appearance of the structure, staff was uncomfortable with an administrative change and felt that the project should return to the City Council for an amendment. In evaluating the project against the seven conditional use standards, not all standards are applicable in this case, but of particular concern to staff is standard #4 related to compatibility with a neighborhood’s character. Although vinyl siding is present in the neighborhood, it is not the predominant siding material and it is staff’s preference that the project be more compatible with the older more historic character of the neighborhood rather than the

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some of the other less historic structures. Furthermore, conditional use rezonings are often projects that request special consideration. These projects are commonly asked to meet a higher standard than the minimal standard normally required, and for this they are allowed to do something that they are not normally allowed to do. In this case, Mr. Fuchs was granted the ability to

add two additional units to this property that otherwise would not have been allowed. For this, staff feels that it is not unreasonable to request a building material that aids in the project's compatibility with the neighborhood.

Lastly, the character of the neighborhood is of a higher concern given it's proximity to a proposed historic district (Brucemont/Dorchester area) currently under consideration (City Exhibit 4). Even though this property is not included in this proposed district, it is in close proximity. That is another reason why staff is concerned with compatibility issues. The choice of hardi-plank siding and the cedar shake siding was a deliberate choice by staff, not to burden the applicant, but because it is the only non-historic material that is generally considered to be acceptable in historic areas. It is also very flexible building material and it is a relatively cost-effective material. Again, staff felt that material better reflected the character that was proposed by the applicant.

Mr. Brian Fuchs said that he is not requesting to change anything he originally had planned to do. He felt there was a major misunderstanding that occurred at the end of the Council meeting in April. There was a major issue Council had concerning the look of the building. Council wanted to hold him accountable to make sure it looks like the picture he presented at the Council meeting and not the picture he used at the Planning & Zoning Commission meeting. His problem is the siding materials (hardi-plank, cedar shakes and open-end rafters) suggested by Ms. Tuch (and voted on by Council) were materials never discussed with him because they were not an issue. He did not have the opportunity at the Council meeting to raise that concern since the public hearing was closed. All along he was going to use a very high end vinyl siding, as well as a vinyl shake. He stressed that the siding materials staff suggested were never discussed or agreed to by him. He raised two issues about using the material suggested by staff – maintenance and the cost of \$6-10,000. He said that out of the 17 dwellings on his block, 30% have vinyl siding. He feels vinyl siding will fit well into the character of the neighborhood. Using photographs (Applicant Exhibit 1) he showed the siding materials of various houses in the immediate area. He said that the closest house with hardi-plank siding is 3.2 miles away. He urged Council to allow him to use a top-end and first-class vinyl siding.

Mr. Nathan Bryant, resident on Louisiana Avenue, felt that the purpose of the conditions were for the neighborhood and Mr. Fuchs to come to a middle ground. He felt it was appropriate to draw from the best materials for something that has a high impact to the neighborhood. He urged Council to not allow vinyl siding in that he did not think it was aesthetically pleasing material.

Ms. Shao Chung, resident who lives on Louisiana Avenue two doors down from the applicant, noted that her house has hardi-plank siding on it. She presented photographs (Neighborhood Exhibit 1) of a sewer line the developer put in. She was opposed to allowing vinyl siding on the building. She felt that any additional buildings or renovations to existing homes should be to enhance the area.

Ms. Julie Allen, resident on Louisiana Avenue, said that the developer has already had administrative modifications made to his project and felt that vinyl siding materials should not be allowed.

Ms. Jennifer Long, resident on Dorchester Avenue, asked Council protest the integrity of the neighborhood and not allow vinyl siding.

Vice-Mayor Mumpower closed the public hearing at 6:09 p.m.

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Upon inquiry of Councilman Dunn, Planning & Development Director Scott Shuford said that at the April Council meeting, Council asked staff to help formulate an exact description of the materials that would be used for the building in order to allay neighborhood concerns and to clarify what the building would look like and what it would be made out of. At Council's request, Ms. Tuch made her best effort to clarify that for Council and came up with a condition of hardi-plank siding and cedar shake siding. Those materials were arrived at considering the age of the neighborhood, the type of materials available, etc. It was Council's decision to accept that condition. Unfortunately there was not a lot of time for discussion with the developer.

Councilman Dunn felt it was the developer was never given the opportunity to comment about the siding materials.

Councilwoman Jones said that it would have been City Council's responsibility to engage the developer at the point when the condition was developed by staff.

At the request of Councilman Davis, Ms. Tuch outlined other minor changes made, which did not detract from the character of what the conditional use permit issued by City Council.

Councilman Davis and Councilman Dunn felt that a lot of people have vinyl siding and thought that that siding would be in character with the surrounding neighborhood.

Councilman Dunn moved to approve the amendment to the conditional use permit to allow for the substitution of the previously specified hardi-plank and cedar shake siding for vinyl siding.

Councilwoman Jones said that if Council is going to be advocates of affordable housing we have got to make sure that the neighborhoods know that the project will be attractive and compatible. She feels Council made a commitment to the neighborhood of what the building siding will be.

Councilman Newman felt that staff has been willing to work with the developer on changes to the project but they did not feel comfortable with the compatibility issue of the siding. He felt there was a compromise crafted because this was such a tough site to fit in. He would not be able to support the modification request.

Councilwoman Bellamy explained that Council deliberated at length about what the project would look like and would not support the modification request.

Vice-Mayor Mumpower felt the kind of vinyl siding Mr. Fuchs is talking about installing on the home would look similar to the materials outlined in the condition.

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

At 6:40 p.m., Vice-Mayor Mumpower announced a short recess.

C. PUBLIC HEARING TO CONSIDER AN AMENDMENT TO A PREVIOUSLY APPROVED MASTER PLAN ASSOCIATED WITH THE FORMERLY KNOWN BROTHERTON COMMONS PROJECT, NOW KNOWN AS GREENWOOD POINT, TO ALLOW FOR A MULTI-FAMILY PROJECT LOCATED AT VIRGINIA AND BROTHERTON AVENUES

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

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.

After hearing no questions about the procedure, Vice-Mayor Mumpower opened the public hearing at 6:54 p.m.

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).

This is the consideration of an ordinance to amend a previously approved Master Plan associated with the formerly known Brotherton Commons Project, now known as Greenwood Point, to allow for a multi-family project located at Virginia and Brotherton Avenues. This public hearing was advertised on September 2 and 9, 2005.

The project is supported by numerous goals and strategies in the **Asheville City Development Plan** relating to infill development, smart growth policies and affordable housing. The project will provide for a sustainable medium-density residential development within the City Limits. The site is also located within close proximity to transit service along Haywood Road, several area parks (Riverfront Park, Malvern Hills, and West Asheville Park) potential employment centers, restaurants and shopping centers.

In addition, this project will make a significant contribution to meeting the needs for affordable housing outlined in the **Consolidated Strategic Housing and Community Development Plan 2000-2005**.

Although, not directly related to the identified tasks of the "Housing Opportunities" goals of the SOP, this project utilizes CDBG funding that will assist in providing an increased supply of affordable housing opportunities within the City Limits.

This project received a conditional use rezoning from RS-8 to RM-8/Conditional Use in May of 2002.

The applicant, the Hunter Group working with Neighborhood Housing Services (NHS), is requesting an amendment to the Master Plan and Conditional Use Permit associated with a Conditional Use Rezoning from RS-8 to RM-8/Conditional Use for the Brotherton Commons project located in West Asheville on the corner of Virginia Avenue and Brotherton Avenue. In May 2002 the Asheville Council approved the rezoning and Master Site Plan for two lots totaling approximately 7.61 acres to allow for a 32-unit co-housing project. The proposed amendment proposes to remove 1.7 acres from the total site area in addition to an increase in the total number of units to 44. The smaller total site area combined with the increase in units raises the density of the project from the previously approved 4.2 units per acre to 7.8 units per acre. Both density totals are classified as "Medium Density".

Since 2000, the City has invested federal Community Development Block Grant (CDBG) funds in acquiring and improving the Brotherton site. The developer, Morse Properties Inc.,

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began development of the site including some infrastructure improvements, as approved by Council in May 2002, but later withdrew from the project in October 2003 after failing to obtain construction financing on terms that were acceptable to the developers.

After the withdrawal of Morse Properties Inc., the Community Development Division drafted a new Request for Proposals of which NHS/Hunter Group and Carolina Cornerstone submitted proposals in September 2004. NHS/Hunter Group was selected as the developer due to their direct access to construction financing without typical pre-sale requirements, and the agency's Loan Program which provides an experienced, full-time staff person dedicated to developing a steady pool of low to moderate income buyers.

The Master Site Plan approved by City Council in May 2002 included the following:

- 2 lots totaling approximately 7.61 acres;
- A co-housing development consisting of 32 units at a density of approximately 4 units per acre;
- Seven residential buildings consisting of a mix of quadraplex and sixplex structures ranging in heights of 2-3 stories;
- A 3500 square foot Common House and several storage shed areas;
- 2 parking lots consisting of 52 spaces (some stacked);
- A central Village Green, Court Yard and Plaza and the proposal of a woodland conservation easement with an extensive network of trails.

On March 21, 2005, the project was presented to the Technical Review Committee (TRC) for review and approval. The project was approved with a number of minor conditions easily addressed in a revised site plan. The most significant condition was that due to the existing low pressure water flow, the applicant had to meet with a representative of the Fire Marshall's office to determine an acceptable alternative to meeting fire building code for the two largest multi-family structures. The applicant has met with the Fire Marshall's office and has resolved the issue by proposing to either add additional fire walls to create areas less than 3600 square feet or to sprinkler the buildings.

In addition to the TRC revisions, the plans reflect previous revisions deviating from the original approved plan for the Brotherton Commons Co-Housing project.

A complete summary of the proposed amendment to the Master Site Plan is as follows:

Proposed Changes to Master Site Plan:

- The removal of the smaller 1.71 acre tract of land from the development which would result in the lot reverting back to an RS-8 zoning designation;
- A change from co-housing units to more traditional condominium units;
- An increase in the number of proposed units to 44-units, for a density of 7.8 units per acre;
- A total of 11 buildings consisting of a mix of duplex and triplex units along Virginia Avenue and Brotherton Avenue, and 3 larger scaled buildings to be located internal to the site. Heights range from 1.5 stories for the smaller buildings, and up to 3 stories for the larger scaled buildings;
- A smaller (1000 s.f.) Community Center;
- A total of 54 off-street spaces and the creation of 21 on-street spaces on both Virginia and Brotherton Avenue; and

- Several designated open space areas and the preservation of approximately 2.1 acres.

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Building details consist of 4 duplex units and 4 triplex units intermixed on the street faces of Virginia Avenue and Brotherton Avenue. These smaller multi-family units will all be 3 bedroom units, 1½ stories, and will range in size from 2460 s.f. for the smallest duplex, to 5718 s.f. for the largest triplex. Interior to the site will be the three multi-family buildings; the two larger buildings will include 9 units each while the third building is slightly smaller with 6 units total. The multi-family buildings are 2 and 3 stories and range in size from 7290 s.f. to 11,135 s.f. The total project will consist of 16 two bedroom units, and 28 three bedroom units, for a total of 116 bedrooms and 44 units. All units will be sold as condominiums.

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.

Previous grading and retaining wall work on site has constricted the practical building area of the site and the applicant has proposed a revised plan that adapts well to the site constraints utilizing the existing retaining walls and building pads. Where practical, the applicant has also proposed adding basements to some of the units to better accommodate and utilize the existing grades. Lastly, the steep topography and riparian area along the eastern boundary of the site will remain undeveloped and be preserved as open space for the project.

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

There is significant evidence that supports the position that the addition of well maintained multi-family or affordable housing does not substantially injure the value of adjoining or abutting property. The applicant has proposed a mix of housing types whose architecture will be in keeping with the character of the neighborhood.

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

The mix of housing types proposed are designed to place the smaller structures (duplexes and triplexes) along the street faces of Brotherton and Virginia Avenues in order to create a stronger and more compatible relationship between the new units and the existing single family homes; these units are not out of scale with the average new single family home. The larger buildings are placed further from the street and internal to the site effectively buffering their mass. In addition, the architecture of all the buildings

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will have features that reflect the character of some of the older craftsman homes in the area by providing a mix of siding materials (hardi-plank and cedar shake), porches, multiple roof lines & pitches, moderate overhangs, exposed end rafters, and windows with craftsman styled muntins. Lastly, the overall density, although higher than most of the adjacent lots, is still within the overall density of the RM8 or RS8 zoning designations and is not out of character with the medium density zoning districts.

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

The project is supported by numerous goals and strategies in the *Asheville City Development Plan* relating to infill

development, smart growth policies and affordable housing. The project will provide for a sustainable medium-density residential development within the City Limits. The site is also located within close proximity to transit service along Haywood Road, several area parks (Riverfront Park, Malvern Hills, and West Asheville Park) potential employment centers, restaurants and shopping centers.

In addition, this project will make a significant contribution to meeting the needs for affordable rental housing outlined in the ***Consolidated Strategic Housing and Community Development Plan 2000-2005***.

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 subject property is well positioned in respect to transportation facilities with easy access to major thoroughfares and multiple bus lines operating on Haywood Road and Brevard Road. The project has also been reviewed by the technical review committee which did not indicate any problems with providing service to the property (with special provisions to accommodate state fire code requirements).

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 who determined that the project would not cause undue traffic congestion or create a traffic hazard due to the relatively modest scale of the project, typical trips generated by residential units, and multiple access points. In addition, the project is proposing a mix of off-street parking with newly created on-street parking that is expected to adequately meet the needs of the residents while providing an improvement to the current on-street parking situation.

Pros

- Provides a variety of housing types accommodating a mix of income levels
- Provides infill housing compatible with the existing neighborhood
- Provides on-street parking improvements

Cons

- Results in a higher density than what had previously been approved.

Staff recommends approval of the proposed masterplan and map amendment to the former Brotherton Commons project, now referred to as Greenwood Point.

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Ms. Tuch said that this is a request for an amendment to the Master Plan associated with the Brotherton Commons Co-housing project, originally approved by the City Council back in May 2002. The original application was a request for a Conditional Use Rezoning from RS-8 to RM-8 to allow for a multi-family style co-housing project for 7 buildings and a total of 32 units. The former developers for the project abandoned the approved co-housing development after having done some infrastructure work on site due to financing constraints. The zoning from the original approval the project remains in place and the new developers are requesting an amendment to the approved Master Plan (Attachment to City Exhibit 3 – Aerial Photo).

She pointed out that the original proposal included two lots, of which a 1.7 acre upper lot would remain undeveloped (Attachment to City Exhibit 3 – Location Map). The new proposal removes this lot from the overall project area, which contributes to the increase in density.

The original project proposed 32 units on 7.6 acres which resulted in a density of 4.2 units/acre (Attachment to City Exhibit 3 – Original Brotherton Co-Housing Site Plan). The Master Plan shows 7 buildings, 2 quadraplex buildings, 4 sixplex buildings, and one large community building. There was open space delineated in the center of the development area as well as a preserved area along the eastern boundary buffering the steeper slopes and the creek. In addition, there were 3 curb cuts and a couple of large parking areas.

Among the infrastructure improvements to the site included the addition of a fairly significant amount of retaining walls. The designers for the new Master Plan have attempted to optimize the already disturbed area while minimizing any additional disturbance to the site.

The new Master Plan increases the number of units to 44 which, combined with removing the upper parcel, increases the density to 7.8 units an acre (City Exhibit 4 – Site Plan). Both the original density and the new proposed density are classified as medium density and are within the standards for both the RS-8 and RM-8 zoning districts. The new Master Plan includes 4 triplexes, 4 duplexes, and 3 multi-family buildings with the smaller duplex/triplex structures fronting on the street facing Brotherton and Virginia Avenues. The larger multi-family buildings are placed further away from the street with off-street parking in proximity. The 100 and 200 buildings are 9 units each, 3 stories while the 300 building is 6 units and two stories. As with the earlier proposal, open space is shown central to the project as well as the preserved area along the creek. In addition, there have been a few road and traffic improvements over the original plan including a reduction in the number of curb cuts, off-street parking has been more evenly distributed throughout the site creating a lesser demand on certain spaces, a turn-around has been provided at the dead-end of Brotherton Avenue, and the surface area of both Brotherton and Virginia Avenues has been widened to accommodate on-street public parking, improving the current on-street parking situation. Lastly, the architecture for the project buildings has been revised to better reflect the character of the existing craftsman style homes (City Exhibit 5 – Streetscape Elevations) (Attachments to City Exhibit 3 – Building Elevations for the Different Units).

The revised Master Plan has been reviewed by the Technical Review Committee where the project was approved with a number of minor conditions. The most significant condition dealt with water pressure and fire code compliance to which the applicant has responded by coordinating with the Fire Marshall's office to agree to either adding sprinklers to the two 3 story multi-family buildings or by adding firewalls to create floor areas of less than 3600 square feet. Again, this would only be required of the two largest multi-family buildings. The other buildings all currently comply.

Staff has reviewed this project for compliance with the 7 conditional use standards and has determined that the project does meet these standards.

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Mr. Richard Rice, member of the West Asheville Community League, felt the original project did not meet the seven standards that must be met in the Unified Development Ordinance, in particular condition no. 7 dealing with traffic. The City of Asheville being the owner of the property creates a problem. He said the City, as owner, is biased and incapable of sitting in judgment on its own application for conditioning zoning. He cited the Supreme Court case of The County of Lancaster SC vs. Mecklenberg County NC (No. 293 PA 92). The North Carolina Supreme Court determined that due process requires an impartial decision-maker. He said City Council will probably have to appoint an independent group, hopefully made up from representatives from the neighborhood, to obtain an impartial decision. He would be glad to serve on that group.

Mr. Carlos Montgomery, resident on Virginia Avenue, cited neighborhood concerns of water supply. He said that the I-240 project will cut a connection that was re-established recently to allow the water flow to meet minimum acceptable standards. Since the project size is increasing, the problems exacerbates the concerns over traffic, water and pedestrian safety. The only sidewalks installed will be around the project. Access to Haywood Road has not changed - there will be no sidewalks to access City or school buses. When the I-240 project cuts off a piece of the property, there will be only one entrance.

Mr. Anthony Jones, resident on Virginia Avenue, felt the density is too high and the parking is not enough. He feels that the parallel parking on the road will cause more congestion. This development will double the number of houses on Virginia Avenue.

Ms. Katherine Stevens, owner of property on Brotherton Avenue, stated her biggest concern is the on-street parking. She feels that the people who parallel park will use the property owner's driveways and yards to turn around.

Mr. Patrick Stacy, resident on the corner of Brotherton and Virginia Avenue, was concerned about the traffic on Virginia Avenue, the lack of sidewalks, and the water pressure. He feels that once this development is built, there will be no more peace and quite in the neighborhood.

Mr. Christopher Slusher, Executive Director of Neighborhood Housing Services, said that this development will be in high quality and design. They have tried to be respectful of the community by placing the lower density housing units along the edges of the street. They have met with community representatives on-site and acknowledged their concerns about traffic increases. Unfortunately we see traffic increases all over the City as we grow and try to find decent housing for people. He believed that on-street parking will help slow the traffic down. In addition, the City's Traffic Engineer did not feel that the increase in traffic is so burdensome that the street cannot handle it. He urged Council to approve the amendment.

Mr. Chris Eller, engineer for the project, said that water has been an issue, but some improvements have been made by the City to improve the water flow. We have worked closely with the water maintenance crew for updated information to verify that our original projections and original design would still incorporate the existing infrastructure that is now in the ground as well as

accommodate additional units proposed. We are confident we can meet all building codes and domestic and Fire Code requirements regarding water. We are proposing on-street parking which is a natural traffic calming measure. In addition to the on-street parking there are sidewalks being proposed around the perimeter of the property. All of these measures are mitigating the addition of units requested. They do feel like this revised Master Plan will blend in with the neighborhood.

Vice-Mayor Mumpower closed the public hearing at 7:23 p.m.

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Upon inquiry of Councilman Newman, City Attorney Oast said that he didn't think that there is a legal impediment to Council considering this application. The City's ownership of this property has been disclosed and discussed publicly. Council acts on zoning requests involving its own property not infrequently.

Discussion surrounded the water flow in the area and the potential of I-240 connection cut. Mr. Eller said that they are required to have 1,000 gallons per minute for multi-family if the buildings are not sprinklered. A couple of years ago the flows were 700-730 without sprinkling. With sprinkling, they are allowed to reduce that to 500 gallons per minute. Based on recent flows, the 700's would drop to 650-670, but again, they feel confident they can meet the 500 gallon per minute requirement, coupled with the sprinkling or the additional fire walls that could potentially be added. He felt that if there is a connection cut, he was confident that there will be cross connectivity with other existing lines to supply the availability for water.

When Councilman Dunn expressed concern over the number of parking spaces in the development as well as the on-street parking.

Upon inquiry of Councilman Newman about the people using existing driveways to turn around, Mr. Mitchell Sorin, architect for the project, said that the turnaround is designed for emergency vehicles as well as for people coming to the end of the street.

Upon inquiry of Councilman Davis, Mr. Slusher said that the 1.78 parcel of property has not been included in the design of this project. At present, it is only a request for the City to consider taking that parcel out. They see the extra 1.78 acres as an additional burden of maintenance and insurance risk for a condominium community. We are trying to hold the costs of administration down. He said it can stay as unimproved green space for the City. It is very steep and beautifully wooded and they would prefer not to take it into this project. If they do buy it, it will be undeveloped green space for the condominium community. Again, they do not have any plans for development that 1.78 parcel.

Upon inquiry of Councilman Newman, Planning & Development Director Scott Shuford said that they did share the original plans for this property with the N.C. Dept. of Transportation. He said that he does not see that there would be any significant impact of the property. They would put in noise walls and other things to mitigate the impact. In addition, if the connection is severed, it may be an opportunity to make better connections.

Councilman Dunn felt this project did not comply with the conditional use zoning standard no. 4, in that it does not fit in the existing neighborhood. He felt the project condenses a lot of people in a small area with no room for the children to play.

Councilman Dunn moved to deny the amendment to the conditional use permit. This motion was seconded by Councilman Davis.

Councilman Newman felt this is a good solid project and the density is very typical in the older neighborhoods in West Asheville. He also felt the quality of the units, in terms of design, is good.

Councilwoman Jones explained why she supported the project since there is such a need for affordable housing and land is scarce.

Vice-Mayor Mumpower's concern is traffic and felt the neighbors voiced legitimate concerns about on-street parking.

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The motion made by Councilman Dunn and seconded by Councilman Davis to deny the amendment to the conditional use permit failed on a 3-3 vote, with Vice-Mayor Mumpower, Councilman Davis and Councilman Dunn voting "yes" and Councilwoman Bellamy, Councilwoman Jones and Councilman Newman voting "no."

Councilman Newman asked if Council or Mr. Slusher had any ideas to address Council's concerns so the project could move forward. Mr. Slusher explained they tried to scale the project at the absolute minimum to make it work financially and they are right on the cusp at 44 units. They tried to give as much green space in the community as possible within the property. He said they have spent a great deal of time and money on this project trying to design a project that is respectful of the neighborhood by putting duplexes and triplexes along the edge that look like the style of the neighborhood.

Councilman Davis expressed concern about traffic and water flow, even though it will meet the minimum flow standards. He felt the project would be better if it was a little less dense, more than the minimum flow, and provided the extra parcel for open space for kids to play.

Councilwoman Jones moved to table the matter until the developer has had some time within which to think about mitigation and the concerns raised by Council. This motion was seconded by Councilman Newman.

City Attorney Oast said that public comment will need to be taken only on the new information, if any, presented.

Mr. Slusher pointed out that delaying the project will have a big impact on them because construction costs are going up daily. However, he said that he would look at a traffic study to see what kinds of mitigation measures might be implemented to make it safer for the community.

The motion made by Councilwoman Jones and seconded by Councilman Newman to table the matter failed on a 3-3 vote, with Councilwoman Bellamy, Councilwoman Jones and Councilman Newman voting "yes" and Vice-Mayor Mumpower, Councilman Davis and Councilman Dunn voting "no."

Mr. Slusher asked City Council to continue this matter until October 12, 2005. Therefore, Councilman Newman moved to continue the meeting until October 12, 2005. This motion was seconded by Councilwoman Bellamy and carried on a 4-2 vote, with Vice-Mayor Mumpower and Councilman Dunn voting "no."

ORDINANCE BOOK NO. 21 - PAGE

D. PUBLIC HEARING TO CONSIDER AN AMENDMENT TO THE UNIFIED DEVELOPMENT ORDINANCE TO ADD GENERAL RETAIL SALES AS A USE OF RIGHT IN THE NEIGHBORHOOD BUSINESS DISTRICT

ORDINANCE NO. 3279 - ORDINANCE AMENDING THE UNIFIED DEVELOPMENT ORDINANCE TO ADD GENERAL RETAIL SALES AS A USE OF RIGHT IN THE NEIGHBORHOOD BUSINESS DISTRICT

Vice-Mayor Mumpower opened the public hearing at 8:23 p.m.

Mr. Joe Heard, Director of Development Services, said that this is the consideration of amending the Unified Development Ordinance (UDO) for the purpose of adding general retail

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sales as a use of right in the Neighborhood Business District. This public hearing was advertised on September 2 and 9, 2005.

This proposed ordinance was drafted in response to requests from local businesses and property owners to allow a broader range of retail activities in the Neighborhood Business District (NBD). In reviewing this proposal, staff noted that many types of specific retail uses are already allowed within the NBD, including bakeries, bicycle shops, bookstores, candy/snack shops, delicatessens, florists, fruit/vegetable markets, gift shops, grocery stores, hardware/garden supply stores, pharmacies, and video stores. Both Planning staff and the Planning & Zoning Commission gave careful consideration to types of retail uses that would not be desirable in this district. More objectionable uses, such as the sale of adult-oriented items, are subject to more restrictive standards and are not classified as "retail sales". As the NBD does not allow drive-thrus or outdoor storage and limits the size of any building to 3,000 square feet for commercial use, uses are not of a scale or character that could significantly impact a neighborhood.

The intent of the NBD is to provide for the daily convenience and personal service needs of the surrounding residential neighborhood while minimizing conflicts with surrounding residential uses. The district is designed to be located within or adjacent to residential neighborhoods where large commercial operations are inappropriate, but small neighborhood oriented businesses are useful and desirable. Examples of existing NBD districts include small, traditional commercial areas within Emma, Montford, Oakley, Shiloh, and West Asheville.

Pro –

- This amendment would allow a greater variety of opportunities for the establishment of businesses in the NBD.
- The additional uses allowed would not have a greater impact than the uses presently allowed in the NBD.

Con –

- None.

The Planning and Zoning Commission recommended approval of these code amendments on August 3, 2005 by a unanimous vote of 7-0. Staff recommends approval of the proposed ordinance amendment as well.

Vice-Mayor Mumpower closed the public hearing at 8:25 p.m.

Vice-Mayor Mumpower 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. 3279. This motion was seconded by Councilman Dunn and carried unanimously.

ORDINANCE BOOK NO. 22 – PAGE

IV. UNFINISHED BUSINESS:

V. NEW BUSINESS:

A. ORDINANCE NO. 3280 - ORDINANCE INCREASING THE TAXICAB FARES

RESOLUTION NO. 05-176 - RESOLUTION AMENDING THE FEES AND CHARGES MANUAL TO ELIMINATE THE TAXICAB INSPECTION FEE

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Transit Services Director Bruce Black said that this is the consideration of an ordinance amending Ordinance No. 2773, § 1, 11-28-00 adopted November 28, 2000, Appendix F Schedule Of Taxicab Fares, and amending the Fees and Charges Manual to reduce the fee for Taxicab inspections from \$15.00 to zero.

The Fare Schedule (Appendix F) established by section 18-5 (a) of the Asheville Code of Ordinances establishes the Taxicab Fares for all vehicles operating legally within the City of Asheville. Appendix F established fares of \$1.90 for the activation of the meter (Drop Fee), and \$0.20 per every 1/10th mile thereafter, or, \$2.00 per mile. Appendix F has not been amended since November of 2000.

Two taxicab operators have suggested that the drop charge be increased to \$3.00 and the per mile rate be increased to \$0.25 per 1/10th mile, or \$2.50 per mile. Staff is recommending a drop charge of \$2.20 and a per mile rate of \$0.22 per 1/10th mile, or \$2.20 per mile.

In making its recommendation, staff analyzed both gasoline and overall cost increases that have occurred since the last time fares were increased in November 2000. Staff determined that the average price per gallon of gas in 2005 (prior to Hurricane Katrina) is \$1.12 higher than it was in 2000. Assuming that a taxicab gets 13 miles per gallon of gas, this per gallon cost increase translates into a per mile cost increase of only nine cents. Staff also looked at the overall Consumer Price Index (CPI) for the South region and determined that prices overall have increased by 11.8% since November 2000. Staff believes that is more appropriate to use the CPI when adjusting fares since it reflects the overall increase in operating costs as opposed to just the increase in the cost of gasoline. Applying the CPI to Appendix F would yield new fares of a \$2.20 drop charge and \$0.22 per 1/10th mile, or \$2.20 per mile. Appendix F, Schedule of Taxicab Fares should be adjusted to reflect the increase in the overall CPI. Specifically, the drop charge should be increased to \$2.20 with a charge of \$0.22 for each additional 1/10 mile.

The State of North Carolina requires that taxicabs be inspected annually. There is a great deal of duplication between the annual taxicab inspection performed by the City and the annual vehicle inspection required by the State of North Carolina. The current taxi cab inspections performed by city cover only three additional items: 1) vehicle appearance, 2) company lettering, and 3) top light & trip meter. The City charges taxi cab owners \$15 for this annual inspection. Over the last three fiscal years, the City has collected, on average, approximately \$600 in annual revenue from taxicab inspections. Since the North Carolina Inspection is

identical to all other requirements of section 18-33 except items 1 through 3 above, presentation of a state inspection certificate would satisfy all requirements of 18-33 except for items 1 through 3 above. The inspection of the taxicab for items 1 through 3 above requires minimal staff time and uses no city equipment. If a taxicab has already passed the annual State inspection, then the city need only inspect those three items not covered by the State inspection and since time and labor is minimal, the fee for the inspection should be discontinued.

Benefits to the City of Asheville:

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- Preservation of mobility for the citizens of Asheville at a level commensurate with the increase in costs as expressed by the Consumer Price Index, the best available measure of inflation
- Preservation of revenue to the Taxicab operators at a level commensurate with the increase in costs as expressed by the Consumer Price Index, the best available measure of inflation.

Costs to the City of Asheville:

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- Increased costs to those who are dependent on taxi transportation

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City staff recommends City Council amend Ordinance No. 2773, § 1, 11-28-00 Adopted November 28, 2000, Appendix F Schedule Of Taxicab Fares be amended to increase taxi fares from \$1.90 for the initiation of the meter (drop charge) to \$2.20 for the initiation of the meter (drop charge), and from \$0.20 for each 1/10th mile to \$0.22 for each 1/10th mile, and amend the Fees and Charges Manual to reduce the fee for taxicab inspections from \$15.00 to zero.

Mr. Fred English felt that poor people can't afford much of an increase and agreed with the City's proposed increase.

The following individuals spoke in support of an increase because of the location of Asheville. They talked about the terrain in Asheville being different from other cities; the rise of gas prices; the higher insurance rates; the increase in the price of tires; and their taxes. They requested a compromise of \$2.50 drop charge and \$2.80 a mile:

Mr. Jerry Queen, J&J Cab Service
Ms. Georgie Jefferson, owner Your Cab II
Representative from the Blue Bird Cab Company
Mr. Spiro Alferis, A Red Cab Company

Mr. Liverman, visually impaired citizen, said he spends over \$2,000 a year on taxicabs. He suggested Council look at the Raleigh system where the federal government subsidizes taxicab fares.

Mr. Peter Dawes commented how Asheville was a tourist town with prohibited taxicab service to our major airport.

Councilman Dunn, member of the Asheville Regional Airport Authority, felt that taxicabs should be allowed to service the Airport and would bring that matter up at the next Authority meeting.

Councilman Davis, owner of a Jan Davis Tire Store, pointed out that our terrain makes a lot of difference on everything automotive, e.g., tires, brakes, etc. He would like the taxicab owners to be able to make a reasonable profit to be able to deliver this important service.

Councilman Davis moved to increase the taxicab rates to \$2.50 drop charge and \$2.80 per mile. This motion was seconded by Councilwoman Bellamy.

Discussion took place after reviewing a comparison of different North Carolina cities and their taxicab structure.

At 9:10 p.m., Vice-Mayor Mumpower announced a short recess.

Discussion surrounded the appropriate cost increase for taxicab service. Mr. Black recommended Council increase the drop charge to \$2.50 and a \$2.50 per mile fee, with staff continuing to work with the taxicab companies to refine those figures.

Councilman Davis amended his motion to increase the drop charge to \$2.50 with a \$2.50 per mile fee, with staff review of the fee schedule in 90 days. Councilwoman Bellamy withdrew her second. However, Councilman Newman seconded Councilman Davis' amended motion.

At the request of Councilwoman Bellamy, Councilman Davis and Councilman Newman amended their motion for review in 30 days rather than 90 days.

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Councilman Newman also asked that the Council's Fees & Charges Committee review this matter as well.

Councilman Dunn felt that 30 days will not give an accurate picture of the gas prices. He would vote against this amended motion but would support a higher increase. Councilwoman Bellamy agreed.

The amended motion by Councilman Davis and seconded by Councilman Newman to increase the drop charge to \$2.50 with a \$2.50 per mile fee, (1) with staff review of the fee schedule in 90 days, (2) with the City Council's Fees and Charges Committee reviewing this matter in conjunction with the staff review, and (3) with staff reviewing the federal subsidizes and tier system that the City of Raleigh is currently using, passed on a 4-2 vote, with Councilwoman Bellamy and Councilman Dunn voting "no."

ORDINANCE BOOK NO. 22 – PAGE

Councilwoman Jones moved for the adoption of Resolution No. 05-176. This motion was seconded by Councilman Dunn and carried unanimously.

RESOLUTION BOOK NO. 28 – PAGE 214

B. WIRELESS INTERNET NETWORK SERVICE FOR CITY OF ASHEVILLE

Vice-Mayor Mumpower said that on behalf of Councilman Davis and Councilman Dunn and himself, this is a presentation on the possibilities for a citywide broadband wireless system as a utility to city residents and an enhancement to public safety and citywide service delivery.

Discussion surrounded Councilman Newman's questioning of why this matter was being brought up at a formal meeting opposed to a worksession. He felt this was the kind of issue that would normally be reviewed at a worksession, in that it is a new idea. In addition, Mayor Worley and our Information Technologies Director are absent. He understands that Councilman Davis will not be at the September 20, 2005, worksession, but suggested it can be brought up at the October 18, 2005, worksession. He said that it has been mentioned that there is national legislation affecting this and after a little research into that, his research indicates that there is little or no chance that Congress is on the verge of passing some legislation that would pre-empt anything the City of Asheville wants to do this year.

After further discussion, Councilman Davis moved to continue this matter until the September 20, 2005, worksession, stating that he would rearrange his plans in order to attend the worksession. This motion was seconded by Councilwoman Bellamy and carried on a 4-2 vote, with Councilwoman Jones and Councilman Dunn voting "no."

VI. OTHER BUSINESS:

Vice-Mayor Mumpower announced activities taking place with the For Our Kids Program.

The following claims were received by the City of Asheville during the period of August 12-25, 2005: J.W. Burris Co. (Water), Ismini Barlas (Engineering), Randolph Carson (Sanitation), Beverly Dillon (Police), Fred Daugherty (Sanitation), Jerry Cook (Water), Lee Davis (Water) and Stoner Giltz (Water). The following claims were received during the period of August 26-31, 2005: Patricia Leake (Streets), Vladimir Shostak (Transit Services) and D'Lorah Small (Streets). These claims have been referred to Asheville Claims Corporation for investigation.

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VII. INFORMAL DISCUSSION AND PUBLIC COMMENT:

Mr. Gene Hampton spoke about the Asheville Citizens for Quality Government is a public information and participation organization whose primary function is government quality assurance. He stated that the NC Citizens for Quality Government Conference will be held on March 25, 2006.

Mr. Mike Fryar commented on how the City can annex when it doesn't have enough Police officers to take care of the existing City limits.

Mr. Joe Minicozzi said that he is working on behalf of some of the residents (in particular Mr. Thompson) in the Maxwell Street neighborhood. He said that Mr. Thompson is not suing the City of Asheville. He said what has happened is that they are following due process that is required by law. We have an issue of what was approved and we filed the challenges administratively to appeal those things. First to staff, and then to the Board of Adjustment. Our case went to the Board of Adjustment and was dismissed by the City Attorney's Office, to which we are now appealing again. We have not had a public hearing on any of this. We have gone before the noise board for the trucks for the air conditioners three different times. The first time it was moved in an order of compromise. The second two times it was dismissed by the City Attorney's Office. This is now a request for the process. He asked that City Council become involved in this. He showed some pictures of Greenlife Grocery and pointed out where Mr. Thompson and Mr. Miller live. They have many issues with this project, but there are some basic problems. First of what is allowed to be administratively approved by City staff. He showed the driveway on Maxwell Street. He said that what is allowed by Code is a 36-foot wide driveway. The driveway is about 78 feet from edge to edge. He has asked Mr. Shuford if this is allowed to be approved and Mr. Shuford stated yes. He questioned the City Attorney if it is allowable for Mr. Shuford to administrative approve a numeric adjustment to the code. After Mr. Shuford makes a decision, we have 30 days within which to appeal it. If it is an administrative decision, how does a neighborhood know about it. There is no way legally, in his experience as a former zoning administrator, that a zoning individual can give an approval for variances without the proper procedure to go before a board of adjustment. The Merrimon Avenue entrance is measured at 69 feet. The allowable dimension is 36-feet. Mr. Thompson has complained about the trucks coming in Maxwell and received a letter from the Police Chief, basically citing that there are large trucks that appear in the driveway. He said that sometimes there are 16 trucks a day on this residential street. The Police Department, in an effort to curb their own manpower that they put on that street, issued a letter to Mr. Thompson, basically saying that if the trucks are too big and they don't fit, so be it – they will not cite. We appealed that decision to the City Manager. They are well aware of the staff time that has gone into this and how complex the issue is, but they are questioning the process. They are basically saying that trucks can appear there and park on sidewalks, block sidewalks all when the code states they are not allowed to block a sidewalk. The Police Chief's letter basically says that if they are too big, they are too big. In addition, the nature of that residential street has been compromised. The law states that you can't have anything greater than a 22-foot long truck on a City street. In addition to that, nothing greater than 10,000 pounds. He showed a picture of a truck on the Greenlife property that was 14,000 pounds. Council has approved Maxwell Street as a residential street that shall have no through truck traffic. There needs to be some due diligence done in a very objective, independent way. Finally, the originally loading area was approved by the City. The only working drawing that he could find in the City's building department has a roof on a pole mounted loading bay that they constructed. Using a picture taken back in 2004, you can see the structure in a distance with the pole. Today, you would see that they have enclosed it. There is no permit for that. He also asked how a truck was allowed to be approved in a visibility triangle. They have brought that to the attention of City staff and nothing has been done. They asked Council to have a worksession on this so they can state their concerns to an objective body. Vice-Mayor Mumpower asked that Mr. Minicozzi summarize his points raised and submit those to the City Manager. The City

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Manager was instructed to report back to Council on those concerns raised and Council will in turn, respond to Mr. Minicozzi.

Mr. Peter Dawes questioned whether the City of Asheville has an evacuation program in conjunction with Buncombe County. He also spoke about the lack of manpower in the Police Department.

Upon inquiry of Councilman Dunn, Assistant City Manager Jeff Richardson responded to questions raised and updated City Council on the efforts that are underway to address sworn officer vacancies in the Police Department. In addition, City Attorney Oast said that he would respond in a memorandum form to City Council regarding vacancies in the Police Department since we have been challenged in a couple of the annexations. City Manager Jackson also stated that the market competitiveness and analysis of salaries and health care is a major issue for the upcoming budget. He was pleased that Council is open to receive the analysis of that.

Vice-Mayor Mumpower announced vacancies on the Taxicab Advisory Board.

Ms. Mary Steiner spoke about the drug problems near Pisgah View Apartments. At Councilwoman Bellamy's request, City Manager Jackson said that he would provide Council with an update of police services at Pisgah View Apartments.

VIII. ADJOURNMENT:

Vice-Mayor Mumpower adjourned the meeting at 11:00 p.m.

CITY CLERK

MAYOR