

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; Assistant City Manager Jeffrey B. Richardson; City Attorney Robert W. Oast Jr.; and City Clerk Magdalen Burleson

Absent: None

PLEDGE OF ALLEGIANCE

Vice-Mayor Mumpower led City Council in the Pledge of Allegiance.

INVOCATION

Councilman Newman gave the invocation.

ADDITION TO AGENDA

Councilman Dunn asked that an item be added to the Agenda regarding Police Department vacancies and how that affects annexation.

I. PROCLAMATIONS:

A. PROCLAMATION PROCLAIMING OCTOBER 2005 AS “SISTER CITIES MONTH”

Mayor Worley read the proclamation proclaiming October, 2005, as "Sister Cities Month" in the City of Asheville. He presented the proclamation to Mr. Dick Hall, President of Asheville Sister Cities Inc., who briefed City Council on some activities taking place during the month.

B. PROCLAMATION PROCLAIMING OCTOBER 8, 2005, AS “RIDE TO CURE DIABETES DAY”

Councilwoman Jones read the proclamation proclaiming October 8, 2005, as “Ride to Cure Diabetes Day” in the City of Asheville. She presented the proclamation to Mr. Brian Sarzynski and his family, who thanked Council for their support and them on some activities taking place during that day.

II. CONSENT AGENDA:

Vice-Mayor Mumpower asked that Consent Agenda Item “B” be removed from the Consent Agenda for discussion.

Councilman Newman asked that Consent Agenda Item “K” be removed from the Consent Agenda for discussion.

A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON SEPTEMBER 13, 2005, AND THE WORKSESSION HELD ON SEPTEMBER 20, 2005

B. RESOLUTION AUTHORIZING ACQUISITION AND ACCEPTANCE OF A PARTIAL DONATION OF PROPERTY ON ROCKY RIDGE ROAD

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This item was removed from the Consent Agenda for further discussion.

C. RESOLUTION NO. 05-178 - RESOLUTION ACCEPTING AN OFFER OF SALE OF LAND ON LAKE EDEN ROAD

Summary: The consideration of a resolution accepting an offer of sale of land on Lake Eden Road, which is needed for the Grovestone Pump Station.

City of Asheville has received an Offer of Sale of Land from Robert & Michelle Grabill for land on Lake Eden Road in the amount of \$5,000. The subject property is a cut out parcel located at the north east corner of a 2.57 acres parcel at the corner of

Lake Eden Road and Eden View Drive. It is an irregular trapezoidal shape containing approximately 0.049 acre. It is generally level with the street, wooded and adjacent to a small creek. Its highest and best use per the surrounding properties is residential. It is proposed to be acquired as part of the Grovestone Pump Station project.

Real Estate Manager Ed Vess reviewed the tax values of residential properties in close proximity to the subject property. Six lots were investigated in the Glen Eden subdivision, which is about a quarter mile from the subject property. The lots ranged in size from 0.35 acre to 0.67 acre and values ranged from \$36,000 to \$38,200. The per acre values calculated from the tax values ranged from \$102,857 to \$57,000 per acre respectively. This is consistent with the trend in real estate prices that the smaller the parcel the higher the per acre price. The subject parcel is quite small and thus the higher per acre value would be most indicative of the value. Using a per acre value of \$102,857 the indicated value for the subject parcel would be \$5,000.

The positive aspects of the proposed acquisition are:

1. It offers an efficient and practical site for the needed pump station.
2. The price is consistent with value evidence for property near the site.
3. The purchase will expedite completion of the Grovestone Pump Station.
4. It is a voluntary sale and will not involve eminent domain.
5. It only includes the land necessary for the pump station leaving the remainder of the property in private ownership.

There are no negative aspects to this transaction.

Approval of the resolution will establish \$5,000 as the just compensation for the property and accept the Offer of Sale of Land from Robert & Michelle Grabill for that amount.

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Planning & Development staff and Water Resources staff recommend adoption of the resolution accepting an offer of sale of land on Lake Eden Road, which is needed for the Grovestone Pump Station.

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D. RESOLUTION NO. 05-179 - RESOLUTION AUTHORIZING RENEWAL OF CLAIMS ADMINISTRATION CONTRACT WITH ASHEVILLE CLAIMS CORPORATION

Summary: The consideration of a resolution authorizing renewal of claims administration contract with Asheville Claims Corporation

Since 1993, the City of Asheville has funded and operated a self-funded loss reserve program, as authorized by North Carolina law. This program is administered by the Asheville

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Claims Corporation (herein "ACC"). Pursuant to this Agreement, ACC is the first referral for claims that are made against the City of Asheville. The claims are reviewed by ACC, and based on that review, determinations are made as to the City's potential liability and damages. In appropriate cases, claims are paid. If a claim develops into a lawsuit, the City's legal defense is provided through ACC. The City Manager, City Attorney, Risk Manager, and Finance Officer are also consulted as and when appropriate with respect to the processing of claims.

The City's "loss experience" since embarking on this self-funded reserve program has improved dramatically over what it was before. Costs are down, and claims are handled better, and there is an emphasis on loss prevention. Asheville's experience as compared to cities with conventional insurance coverage is very favorable. If the City had to obtain insurance on the open market to provide similar coverage, the costs would likely be higher in terms of premiums and claims administration, and the coverage would likely not be as good.

Considerations:

- current arrangement has worked well since 1993
- City is more closely involved in the handling of claims
- costs are lower than for conventional insurance
- coverage is better than with conventional insurance

City staff recommends City Council adopt the resolution authorizing renewal of the claims administration contract with

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E. ORDINANCE NO. 3281 - BUDGET AMENDMENT FROM THE NC DIVISION OF EMERGENCY MANAGEMENT FOR PROCUREMENT OF EMERGENCY RESPONSE AND PREPAREDNESS EQUIPMENT FOR THE FIRE & RESCUE DEPARTMENT AND 12 OTHER BUNCOMBE COUNTY PUBLIC SAFETY AGENCIES

Summary: The consideration of a budget amendment, in the amount of \$180,000, to receive grant money from the N.C. Dept. of Crime Control and Public Safety, Division of Emergency Management through the Governor's Crime Commission, for procurement of emergency response and preparedness equipment for Asheville Fire and Rescue Department and 12 other Buncombe County public safety agencies.

With Council approval, the City of Asheville Fire and Rescue Department requested \$492,800 from the NC Division of Emergency Management for emergency response by updating communication equipment. Council Resolution Number 05-13 adopted on January 25, 2005, approved applying for the grant. The grant will enhance interoperability between City and County public safety agencies. Staff was successful in obtaining \$144,000 of the requested funding. The City share will be \$36,000 of which a prorated share will be reimbursed to the City by the other 12 Buncombe County public safety agencies upon purchase of the equipment. A memorandum of understanding was signed by all agencies sharing in this grant on January 19, 2005. This grant will purchase mobile radios for vehicles without communications and additional portable radios for positions without a radio assigned. The added communication will increase firefighter safety during emergency response.

PROS:

- Interoperability between differing agencies and responding units will be increased.
- The equipment will increase the City's ability to protect human life, property, and the environment.

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- The equipment will increase firefighter and police officer safety.
- 75% of the funding comes from the State of North Carolina.
- The other 12 Buncombe County agencies would share in the 25% cost not funded by the State.

CONS:

- The City of Asheville's share of the matching grant.

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 NC Division of Emergency Management.

ORDINANCE BOOK NO. 22 – PAGE

F. RESOLUTION NO. 05-180 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO AN AGREEMENT WITH THE NC GOVERNOR'S HIGHWAY SAFETY PROGRAM FOR THE PURCHASE OF COMPUTER EQUIPMENT AND TRAVEL/TRAINING MONEY FOR THE POLICE DEPARTMENT'S REGIONAL LAW ENFORCEMENT LIAISON

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

The City of Asheville has been awarded a grant from the GHSP in the amount of \$10,000 with no local match required. The purpose of the grant program is to fund highway safety projects, allowed under the grant program, designed to reduce traffic speed, traffic accidents and improve highway safety. We have chosen to purchase a Dell Dimension XPS Gen 5 desktop computer and a Dell Inspiron 9300 Laptop computer totaling \$5000.00. The other grant monies would be spent on in-state and out-of-state

travel expenses, totaling \$5,000.00. The desired equipment is to be located in an office where officers could utilize the desktop computer to complete traffic crash investigation duties. The laptop would be assigned to the GHSP Regional Liaison to aid that person in managing GHSP duties as well as performing traffic crash investigation duties. The travel monies will allow out department's Regional Liaison Officer to maintain contact with other liaisons and attend necessary highway safety functions as requested by the Governor's Highway Safety Program.

Pros:

- Equipment will improve the efficiency and availability of traffic safety computer related resources.
- Will contribute to the enhanced effectiveness of traffic homicide investigators and crash reconstructionists by providing needed computer hardware and software.
- Equipment will facilitate better communication between the Regional Law Enforcement Liaison and other Highway Safety Specialists around the country.

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- The travel funds will allow the liaison to attend important training and interact with other highway safety specialists so that highway safety concerns are addressed appropriately.

Cons:

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

This action complies with City Council's Strategic Operating Plan: Goal #2 A multi-modal and congestion management transportation program – In conjunction with major employers and traffic generators, develop and implement a comprehensive multi-modal transportation and congestion management program that works for Asheville. Objective B. Mitigate overall impacts of congestion through effective local partnerships. This is accomplished by identifying areas of the City that are particularly prone to traffic accidents due to speed and other aggressive driving tactics. Through the efforts of the Asheville Police Department and the use of the equipment purchased through the GHSP Grant, this will allow officers and traffic engineers to develop better highway safety goals. This will be achieved by utilizing the computer equipment to aid in the traffic crash investigation area. Better investigations and crash reporting facilitates better policy and engineering decisions, related to highway safety.

City staff recommends City Council adopt (1) the resolution authorizing the City Manager to enter into an agreement with the N.C. Governor's Highway Safety Program for the purchase of computer equipment and travel/training money for the Asheville Police Department's Regional Law Enforcement Liaison; and (2) the associated budget amendment, in the amount of \$10,000.

RESOLUTION BOOK NO. 29 – PAGE 219

G. ORDINANCE NO. 3282 - BUDGET AMENDMENT FROM A GRANT FROM THE NC GOVERNOR'S HIGHWAY SAFETY PROGRAM

Summary: See Consent Agenda Item "F" above.

ORDINANCE BOOK NO. 22 – PAGE

H. RESOLUTION NO. 05-181 – RESOLUTION AUTHORIZING THE CITY MANAGER TO SIGN A CONTRACT WITH STEWART-COOPER-NEWELL ARCHITECTS FOR ARCHITECTURAL SERVICES FOR THE CONSTRUCTION OF FIRE STATIONS 11 IN THE BILTMORE SQUARE MALL AREA

Summary: The consideration of a resolution authorizing the City Manager to sign a contract with Stewart-Cooper-Newell Architects for architectural services for the construction of Fire Station #11 in the Biltmore Square Mall area on Rocky Ridge Road.

The need of a Fire Station in the southwest quadrant of the City is a priority for emergency response and our community's Insurance Service Office public fire protection rating. This rating directly affects the amount of fire insurance home owners or business owners pay for property insurance. Council allocated funds to purchase land in the Fiscal Year 2004-2005 budget. Property to place the station on has been properly identified and option to purchase signed by both parties. Asheville's fire protection and emergency response standard of cover will increase with the addition of this fire station. A fire station in the Brevard Road and I-26 area is necessary to provide municipal level fire protection and emergency services to the southwestern sections of the City. In addition to the building housing an engine company, the building will also provide some office space for the

A formal request for qualifications (RFQ) was properly advertised and a preliminary meeting was held with interested architects in conjunction with the relocation of Fire Station 6. The RFQ was specific for the one station with the potential for additional stations in the near future. Written proposals were received by city staff and were evaluated against identified rating criteria distributed in the RFQ. A team of staff from Fire and Rescue, Police, Parks and Recreation as well as Budget reviewed all of the submittals. Three finalists were identified and one firm was clearly selected as the recommended architect to complete the job. References for the recommended firm, especially past performance with other North Carolina cities, were completed with a focus on combination fire and police stations. The committee selected Stewart-Cooper-Newell Architects as the recommended architects for this project.

Stewart-Cooper-Newell Architects, based in Gastonia, North Carolina has provided architectural services for scores of North Carolina cities for fire stations and police stations. Stewart-Cooper-Newell has designed a number of combination fire and police stations. The firm continuously has between 25-35 fire stations in progress at any given time. Approximately 15-20 stations are completed each calendar year under their direction. Stewart-Cooper-Newell is the largest architectural firm in the fire station construction arena in the United States at the current time. With over 100 cities as customers, to date, Stewart-Cooper-Newell Architects reports that they have never completed a fire station project in which the owner did not use the firm again on subsequent fire station projects.

Fire Station 11 is planned to be approximately 12,000 square feet with approximately 11,000 square feet for fire and rescue use and approximately 1,000 square feet for police use. Construction cost of the project is anticipated at an average of \$135.00 per square foot, or \$1,620,000.00. Stewart-Cooper-Newell proposes their fee for full architectural, civil, structural, plumbing, mechanical and electrical design to be at seven and one-half (7.5) percent of the cost of construction, or approximately \$121,500.00. The fee is ½ percent lower than previous work due to this station having the same basic floor plan as Fire Station 6. Funding for the entire project including construction, architectural, and utility/site/furnishings and other "soft" costs is budgeted at \$2,800,000 as approved within the Fiscal Year 05-06 budget.

Completion of this station would be in approximately 18 months. Timeliness of this project is important to the City of Asheville due to the upcoming evaluation of the City's fire insurance rating by the Insurance Services Office and North Carolina Office of State Fire Marshal. Stewart Cooper Newell has designed Fire Station 6 and this station would follow that same format. Both stations would be bid at the same time. It is anticipated that by having the same floor plan and construction simultaneously a significant cost savings could occur.

The resolution authorizes the City Manager to execute a contract with Stewart-Cooper-Newell Architects for Fire Station #11. The contract is an AIA Document with appropriate modifications for the City of Asheville.

Pros:

- The experience of the firm in designing fire stations for the City of Asheville;
- One design firm bidding two stations with the same basic floor plan;
- Lower architectural fee.

Cons:

- None could be identified.

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.

The Fire and Rescue Department recommends City Council authorize the City Manager to sign the contract with Stewart-Cooper-Newell Architects for architectural services in the construction of Fire Station #11.

RESOLUTION BOOK NO. 29 – PAGE 220

I. RESOLUTION NO. 05-182 - RESOLUTION APPOINTING A MEMBER TO THE FIREMEN'S RELIEF FUND

Summary: Bill Schaefer has resigned as the City's Finance Director, thus leaving a vacancy on the Firemen's Relief Fund until January 1, 2006. This resolution will appoint Ben Durant, City's Chief Financial Officer, to fill the unexpired term of Mr. Schaefer, term to expire January 1, 2006, and then to serve a full two-year term, term to expire January 1, 2008, or until his successor has been appointed.

RESOLUTION BOOK NO. 29 – PAGE 221

J. RESOLUTION NO. 05-183 - RESOLUTION APPOINTING A MEMBER TO THE BOARD OF DIRECTORS OF VICTORIA OF ASHEVILLE INC.

Summary: Bill Schaefer has resigned from the Board of Directors of Victoria of Asheville Inc, thus creating a vacancy until November 29, 2006. This resolution will appoint Bob Oast, City Attorney for the City of Asheville, to fill the unexpired term of Mr. Schaefer, term to expire November 29, 2006, or until his successor has been appointed.

RESOLUTION BOOK NO. 29 – PAGE 222

K. RESOLUTION ESTABLISHING THE ECONOMIC DEVELOPMENT ADVISORY COMMITTEE

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

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

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

ITEMS REMOVED FROM THE CONSENT AGENDA FOR FUTURE DISCUSSION

RESOLUTION NO. 05-177 - RESOLUTION AUTHORIZING ACQUISITION AND ACCEPTANCE OF A PARTIAL DONATION OF PROPERTY ON ROCKY RIDGE ROAD

Summary: The consideration of a resolution authorizing acquisition and acceptance of a partial donation of property on Rocky Ridge Road.

The City of Asheville Fire and Rescue Department (AFRD) has recognized the need for a fire station in the vicinity of the Brevard Road and I-26 interchange in order to provide fire protection for residents and businesses in the area. AFRD staff has selected certain real property

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located on Rocky Ridge Road, identified as PIN No. 9626.08-78-7720 as the optimal location for the new fire station.

The property is located about 250' west of the intersection of Rocky Ridge Road and Brevard Road at the I-26 interchange. It is rectangular in shape and contains approximately 0.81 acre. It is generally level with the street and forms an elevated flat building site with retaining walls along three sides. There is a traffic signal at the intersection with Brevard Road providing direct access to Brevard Road in either direction and I-26 East. Access to I-26 West is at the next intersection one block away. The site has been evaluated by the architectural firm of Stewart-Cooper-Newell Architects and found to be suitable for its intended use.

The property was appraised by Francis J. Naeger, MAI, at a value of \$603,000. Real Estate Manager Ed Vess has reviewed the appraisal and concurred with the fair market value of \$603,000 based on the appraisal. In discussing the City's needs and budget limitations with the property owners, Karl and Nick Koon of G. E. Enterprises, they agreed to donate a portion of the purchase price in order to make the purchase possible for the City. The City and the Koons executed an Option to Purchase Real Property, which provided for a purchase price of \$603,000 with \$303,000 of the purchase price to be donated by the Koons to the City. The remaining \$300,000 of the purchase price would be paid in cash by the City.

The AFRD has \$300,000 budgeted for the purchase of a site in the Brevard Road area.

The positive aspects of the proposed acquisition are:

- The site is the optimal location for a fire station based on the service area and access.
- There will be significant savings in site preparation costs compared to other available sites.
- The purchase of this site will enable this station to be bid at the same time as the Exit 44 station resulting in construction cost savings.
- It is a voluntary sale at fair market value.
- Includes only the land necessary for the fire station.

The negative aspects are:

- Removes property from the tax base.
- Removes a commercial lot from the market.

Approval of the resolution will establish \$603,000.00 as fair market value for the property, authorize exercising the option along with a cash payment of \$300,000 and accept the donation of \$303,000 from G. E. Enterprises, Inc.

Planning & Development staff and AFRD staff recommend adoption of the resolution authorizing acquisition and acceptance of a partial donation of property on Rocky Ridge Road.

Vice-Mayor Mumpower thanked Karl and Nick Koon of G. E. Enterprises for helping the City of Asheville secure a safe and more accessible site for a fire station.

Councilman Davis moved for the adoption of Resolution No. 05-177. This motion was seconded by Vice-Mayor Mumpower and carried unanimously.

RESOLUTION BOOK NO. 29 – PAGE 216

RESOLUTION NO. 05-184 - RESOLUTION ESTABLISHING THE ECONOMIC DEVELOPMENT ADVISORY COMMITTEE

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Summary: On September 20, 2005, City Council heard a report from the Sustainable Economic Development Implementation Plan Task Force on the progress to date for the implementation of the recommendations of the Sustainable Economic Development Plan by Lockwood Green Consulting.

Pursuant to their recommendation, City Council felt it was in their best interest to establish an Economic Development Advisory Committee.

Councilman Newman wanted to make sure that this new standing committee of Council will go through the normal board/commission appointment process.

Vice-Mayor Mumpower moved for the adoption of Resolution No. 05-184. This motion was seconded by Councilman Davis and carried unanimously.

RESOLUTION BOOK NO. 29 – PAGE 223

III. PUBLIC HEARINGS:

A. PUBLIC HEARING TO CONSIDER CLOSING AN UNNAMED ALLEY OFF CLINGMAN AVENUE

RESOLUTION NO. 05-185 - RESOLUTION TO CLOSE AN UNNAMED ALLEY OFF CLINGMAN AVENUE

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

Mayor Worley opened the public hearing at 5:27 p.m.

Public Works Director Marks Combs said that this is the consideration of a resolution to permanently close an unnamed alley off Clingman Avenue.

N. C. Gen. Stat. sec. 160-299 grants cities the authority to permanently close streets and alleys.

Pursuant to this statute, Mountain Housing Opportunities has requested the City of Asheville permanently close to public use as an unnamed alley off Clingman Avenue. This alley is more particularly described as the alley mentioned in Deed Book 1700 at page 471 and prior deeds in the same chain of title, said alley being further described as Lot 1 of a plat of property of Wilson and Teasley as recorded in the Office of the Register of Deeds for Buncombe County, North Carolina, in Plat Book 2 at page 24 in the Buncombe County Register of Deeds.

Public Works Department staff has researched and determined that this alley is not a City maintained street. Closure of this alley will not deny any of the abutting properties a reasonable means of ingress or egress as Mountain Housing Opportunities has submitted to the Planning Department a recombination request for the parcels affected. There are three parcels that abut this section of alleyway. They are identified by PIN Nos. 9648.05-08-4179, 9648.05-08-5118, and 9648.05-08-4248. The petitioner has authority over all the abutting parcels.

Pros:

- The closure allows the property to be used to its maximum (density) potential.
- Affordable housing can be constructed on the consolidated site.

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- There will be no future compromise of ingress/egress to other property.

Cons:

- In consideration of the proximity of the alley, staff can find no potential challenges regarding the closure of the alley.

City staff recommends that City Council adopt the resolution to permanently close an alley off Clingman Avenue.

Mayor Worley closed the public hearing at 5:28 p.m.

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

Councilman Dunn moved for the adoption of Resolution No. 05-185. This motion was seconded by Councilwoman Jones and carried unanimously.

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B. PUBLIC HEARING TO CONSIDER EXCLUDING TWO PROPERTIES FROM THE CITY'S EXTRATERRITORIAL JURISDICTION

ORDINANCE NO. 3283 - ORDINANCE EXCLUDING 143 AND 145 AVONDALE RIDGE ROAD FROM THE CITY'S EXTRATERRITORIAL JURISDICTION AREA

Mayor Worley opened the public hearing at 5:29 p.m.

Planning & Zoning Director Scott Shuford said that this is the consideration of an ordinance amending the City's extraterritorial jurisdiction to excluded two properties known as 143 and 145 Avondale Ridge Road. This public hearing was advertised on September 16 and 23, 2005.

The properties identified by address and PIN below were added to the City of Asheville's extraterritorial jurisdiction (ETJ) in 2001 as part of a large-scale expansion of the ETJ. The purposes behind that expansion included: Preservation of land suitable for industrial development; securing the development of critical City gateways; and bringing areas likely for rapid, character-defining development under City regulatory authority.

143 Avondale Ridge Road	PIN 966713032937
145 Avondale Ridge Road	PIN 966713031539

Staff was approached by an owner of one of these two properties about further residential development on his property. Because his land did not front on a public or private street in general compliance with City standards, we were unable to

accommodate his request. Further staff investigation revealed that the subject properties are not accessed through the City of Asheville's ETJ, that the likelihood of annexation of these properties in the future is extremely remote, and that it is unlikely that their further development will significantly alter the character of the surrounding area. The properties are not suitable for industrial development, nor are they critically situated along a gateway corridor. Consequently, staff was not able to identify a public purpose in maintaining these properties in the City's ETJ.

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City staff recommends City Council remove 143 and 145 Avondale Ridge Road from the City of Asheville's extraterritorial jurisdiction.

Mayor Worley closed the public hearing at 5:32 p.m.

Councilman Davis was asked to relay that the property owner was pleased with the Planning Department's quick action and courtesy regarding this matter.

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

Councilman Newman moved for the adoption of Ordinance No. 3283. This motion was seconded by Councilwoman Jones and carried unanimously.

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C. 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

Mayor Worley 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.

On September 13, 2005, 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. That request was granted.

Mr. Craig Justus, representing the applicant, said that this is a unique project and has a lot of merit. In the last week or so there has been a lot of information they have received from the community that is based in part on principally the issue of where the main building is located on the property and how big the main building is. It is clear that not all of us agree with where the main building is planned. In talking with staff, we are still trying to figure out, based on their objection to the location and size of the building, what would work from the staff's standpoint. We think the Planned Unit Development (PUD) process is very helpful because Council is controlling how the property will be tailored and they would hate for it to go to something that is more traditional cookie-cutter subdivision. He asked for a continuance to allow them to meet with staff and to also allow them to meet with Ms. Patsy Brison, who has just been retained by the Kenilworth Residents Association. It has been very difficult talking to one representative of a neighborhood with so many others communicating via e-mails, etc. Now that they have an attorney representing an Association, they are hopeful that they can meet with staff and Ms. Brison and her client, to see if we can come to an agreement of the location and size of the main building on this project. We also understand there is some confusion about the tax consequences. He stated that they are not like Deerfield, or Givens Estate, but that we intend to pay taxes and carry their burden as it relates to infrastructure and paying taxes. They would like for it to be a condition of the development that they plan on paying taxes, but we don't understand the legal vehicle to accomplish that. In talking with the City Attorney, it is his understanding that Council cannot condition the approval of this project on them paying taxes. But there may be some method through restrictive covenants that would allow that to occur. In the next 30 days,

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they would like to meet with City staff, Ms. Brison and her client to talk about the location and size of the main building on this property, and to also find a better way to lock them in on the representation that they have made that they intend to pay taxes.

Upon inquiry of Councilwoman Bellamy, City Attorney Oast said that City Council always has the option to remand matters

back to the Planning & Zoning Commission and if the changes to the site plan are significant enough, that is an option. By requesting this continuance, it would come back to City Council, not to the Planning & Zoning Commission. Regarding the protest petition, it is his opinion that unless the site plan changes significantly (although they do not have the percentages that they originally had) the protest petition is still valid. He said that the access to this project has to be included within the zoning that they are requesting, thus making the protest petition continue to remain valid. The protest petition would continue to be valid, even into the continuation of the hearing.

Mr. Justus said that they have a 6-1 favorable vote from the Planning & Zoning Commission. What he is suggesting would be changes that would be favorable to the neighborhood, and which typically have been treated as not being significant to have to start over again with the Planning & Zoning Commission.

Upon inquiry of Councilman Newman, Mr. Justus envisioned setting up a charette, where we have staff, representatives from the developer, representatives from the neighborhood and perhaps a Council member to talk about the issues that separate us. Then, they would come back to City Council in approximately 30 days.

Mayor Worley confirmed that if Council continues this public hearing and as a result of whatever discussions take place, City Council can still remand this back to the Planning & Zoning Commission.

Councilwoman Bellamy's only concern regarding process is ensuring that there is due process on both sides, specifically with the validity of the protest petition.

Councilman Dunn didn't see a reason to remand this back to the Planning & Zoning Commission at this point. He was hopeful that the attorneys and the neighborhood could reach a compromise.

Ms. Patsy Brison said that she is representing the Kenilworth Residents Association, not everyone who might wish to speak or who may have signed a protest petition. She only represents the Kenilworth Residents Association. Her client is concerned about continuing this process again. However, they desire to be cooperative in this process. Therefore, it seems like the fairest way to proceed is if there is to be an opportunity for change, which other people can look at and consider whether or not they believe it is appropriate for this property, that the developer should instead withdraw their application and begin anew. That gives everyone a fair change at what the process would be and would remove the question of what happens with the protest petition. That would be their preference. Another reason is a question arises that the ownership of the property has changed during this process. The current property owner has not made application for this project. We would prefer that they withdraw their application at this point. If Council decides it is appropriate to continue it based upon their request, we would not oppose that and will work with the process, at least the client she represents, to have some dialogue. She is not saying that they would agree to anything, but they would be willing to engage in that process.

Mr. Justus said that they are trying to work things out and felt it wasn't fair to make them start all over again.

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Upon inquiry of Councilman Newman, Mr. Justus said that they have made a number of efforts to address the concerns raised. Despite those efforts, after they bought the property, they have not gotten a position from staff of what staff would be satisfied with. If the project is turned down, his client already owns the property and will be left with the traditional methods of development, which may not be as good for the property.

Urban Planner Shannon Tuch said that from the very beginning they advised the design team that the number of units, the type of community and traffic weren't huge concerns. Our biggest concern was the amount of disturbance caused as a result of the placement of the two largest buildings on the site. We recommended from the very beginning to keep the buildings off the slopes of 20% or more. If we can keep the buildings off the slopes of 20%, there is no need for a rezoning or a height variance. It would simplify the application significantly. There are portions of this property that are well below 20%. We also cautioned the applicant from the beginning as to whatever development they put forward that it be harmonious with the neighborhood and be sensitive to hillside and ridgeline aesthetics. We don't think that the project that came forward has accomplished that. She felt that staff has been clear from the beginning what their biggest concerns were.

Upon inquiry of Vice-Mayor Mumpower, said they are preserving 50% of open space on this property and where the views are happen to be in an area that is more elevated than where the valley is on this property. It is correct that we want the residents of this community to enjoy views from this property, so we have been trying to balance where we locate the buildings with the views.

Planning & Development Director said that what has been put on the table today is the willingness on the part of the

developer to try to reach a better balance between the City's requirements and what the community desires. From that standpoint, staff would support that. It has been staff's position all along that we would prefer to see a clustered development on this property rather than it be developed with a standard subdivision, because the property does vary in elevation, it's not a uniformed site and doesn't lend itself well to standard single-family type of developments.

Councilman Newman wondered if Council continued the meeting if the developer would seek to make further changes to invalidate the protest petition. Mr. Justus responded that at this meeting was the first time he heard that the protest is still valid. He said they don't want to remove the access road. He thinks the access road is important for this development. He said that the first continuance was requested because they were informed that there was a protest petition and they were entitled under state law to reduce the project scope to avoid it. We didn't increase the project scope, but actually reduced the density on the property.

Upon inquiry of Vice-Mayor Mumpower, City Attorney Oast said that it is state law and this occurs in other communities. This is not peculiar to Asheville. He said that a lot of the issues concerning protest petitions are being addressed in the new legislation, which takes effect on January 1, 2006.

Ms. Brisson said that the kind of changes being talked about are substantial changes so it would seem that the developer would withdraw their application and give us a chance to do the charette. However, in order to move forward, we would not oppose the continuance. We have a lot of concern about this being continued before, and the reason for the continuance was perhaps to redraw the lines. She argued that the changes that they made do not help the neighborhood. We believe that the protest petition submitted originally is still valid. We are very concerned that if the public hearing is continued again, the lines will be moved and the project changed, which might lose the protest petition validity that we have today. It is her view that the law in North Carolina is not clear on being able to move the lines after the advertisement has been made for

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the public hearing. The case law talks about moving the lines before the public hearing, so then you can determine where the protest petition area is. If it's moved afterwards and it's not a benefit to the neighborhood, our argument that it is an evasion and a subterfuge and we believe that is what was done and we do not want that to happen again.

Upon inquiry of Councilman Newman, City Attorney Oast said that our position is that the PUD consists of two elements – the PUD overlay, which is a zoning decision, and then the Master Plan. It is his position, after talking with staff, that the two have to be co-extensive. To drop that access road, which is to be constructed as part of the project, out of the consideration for zoning purposes, but leave it in for master planning purposes, gives us somewhat anomalous situation where you have a piece of the Master Plan that exists outside of the PUD overlay. For that reason, we felt like the access road needed to be included within the amount of the zoning being requested. If the access road were deleted from the project, then it may be that the protest petition is not valid, but as of this morning, we made a determination that the access road needed to be included, meaning that some of the protesters that were adjacent to the access road made the protest petition valid again.

After a brief discussion, Councilman Davis moved to continue the public hearing until November 9, 2005. This motion was seconded by Councilman Dunn.

When Councilman Newman asked if public comment would be allowed on the continuance request, City Attorney Oast said that Council has heard from both sides and if Council wants to take a limited amount of public comment, that would be up to Council. Usually a motion to continue is within the discretion of Council. Those motions are debatable amongst Council and it's not really a substantive motion and public comment is not required, however, Council usually does take some.

Councilwoman Bellamy wanted to reserve the right to remand whatever comes back from the charette to the Planning & Zoning Commission if it is a substantial difference to the process. She thinks it's important that people who are part of the process, have the right to the protest petition process.

The motion made by Councilman Davis and seconded by Councilman Dunn carried on a 6-1 vote, with Councilman Newman voting "no."

IV. UNFINISHED BUSINESS:

V. NEW BUSINESS:

- A. RESOLUTION AUTHORIZING THE MAYOR TO ENTER INTO A RENEWAL CONTRACT WITH BALL-JANIK, LLP**

Economic Development Director Sam Powers said that this is the consideration of a resolution authorizing the Mayor to enter into a renewal contract through June 30, 2006, with Ball Janik, LLP, to provide advocacy for the City's federal appropriations and legislative agenda.

Beginning in March 2003, Asheville retained the firm Ball Janik, LLP, to provide advocacy for the City's federal appropriations and legislative agenda. The firm has been retained for two one-year contracts; the third renewal contract is presented for review with no increase in the fee structure as in 2004.

In March 2005, Council agreed on federal priorities for FY 2006. These included City Bus Acquisition; Methamphetamine Response, and Water System improvements as Tier 1 priorities. Additionally, a placeholder for Veteran's Memorial, and Thomas Wolfe Cabin Restoration were

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submitted since Council had not voted on priorities by the March 1st deadline, and advocacy with TEA-21 Reauthorization issues, including Pack Square Pedestrian and Roadway Improvements, and Transit Funding flexibility. Ball Janik staff has recently visited Asheville along with congressional staff members, to review current appropriated projects and begin to develop timelines for submittal of any 2007 city priorities.

Funding for this contract renewal has been appropriated in the approved 2005-06 Annual Operating Budget.

Pros: During the two years that the firm has been under contract and tentatively for '06, the City has been successful in receiving \$9.99 Million in federal appropriations commitments. The City has also received alerts and analysis about potential legislation and grant opportunities from the firm.

Con: There is no certainty that future federal funding will be secured as a result of the contract renewal.

This action would support the City's Strategic Operating Plan in the following focus areas: Sense of Place, Heritage, and Arts, thru the support for funding of the Pack Place renovations; and Partnerships to improve critical services and infrastructure, thru the efforts to secure funding for programs and policies to defeat street level drug problems and crime.

City staff recommends City Council renew the agreement with Ball Janik for the remainder of the Fiscal Year 05-06 year, with a Request for Proposals process for future contracts when the current agreement expires. Staff also recommends seeking direction from Council to determine any benefits of long-term representation, opposed to one-year contractual agreements for future contracts.

Mr. Fred English requested information regarding how much the City has spent on the lobbyists and what kind of commitments they secured for Asheville for that money.

There was a brief discussion about the good work of Ball-Janik and the reasons why the City originally contracted with them, however, the majority of Council stated that they felt that in a time of growing federal deficit, the City of Asheville doesn't wish to request special appropriations. However, some Council felt they would be open for using lobbyists in the future.

Councilman Newman moved to not renew the contract with Ball-Janik, LLP. This motion was seconded by Vice-Mayor Mumpower and carried on a 6-1 vote, with Mayor Worley voting "no".

VI. OTHER BUSINESS:

ANNEXATION

Councilman Dunn felt that since public safety should be City government's first priority, he was concerned how the City can annex when the Police Department already has 29 vacancies. He felt the City did not have enough police to cover what is currently in the City. He asked Council to rescind our most current annexation ordinances.

Planning & Development Director Scott Shuford updated City Council on the most recent annexation ordinances. In summary, out of the six annexations, two (Ridgefield and Airport Road) have been challenged; two (Ascot Point and Long Shoals Road) are scheduled to come into the City on December 31, 2005; and two are scheduled to come into the City on September 30, 2005 (Two Town Square and Town Square East). The two coming into the City on

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September 30 have a total population of 40 people, in an area that is already being well-served in the Biltmore Park area. He explained that we do intend to implement our Annexation Services Plan and will be prepared to give Council a full report for action to implement the Annexation Services Plan.

Assistant City Manager Jefferson reviewed with Council the Police Department staffing issues, some being, but are not limited to: obligated/unobligated times, districts, scheduling, rookie schools, minimum requirements, recruiting and retention.

City Attorney Oast said that it is his opinion that there is not a process that he is aware of for Council to de-annex the areas that are not under appeal. There is a method available to those people in those annexation areas, where if they feel like they are not receiving services at the level that was promised and the level that we are required to deliver. they can petition for relief in Superior Court to require us to provide those services at that level.

There was considerable discussion about annexation, police officer salaries, and vacancies in the Police Department.

It was the consensus of City Council to review the Police Department staffing at the October 18, 2005, City Council worksession.

CLAIMS

The following claims were received by the City of Asheville during the period of September 1-15, 2005: Marilyn Gray (Streets), Alvin Fate Jr. (Police), Deloris Cunningham (Transit Services), Terrie Attwood (Parks & Recreation), Teresa Balding (Fire), Bill Wolfe (Sanitation) and Shawn Hallums (Sanitation).

The following claims were received during the period of September 16-22, 2005: Beverly Belden (Water), BellSouth (Water), BellSouth (Water), Billy Owenby (Water), Penny Benson (Transit Services), Chris Blackwell (Water), David Roberts (Water) and Jonah Phillips (Water).

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

VII. INFORMAL DISCUSSION AND PUBLIC COMMENT:

Mr. Gene Hampton spoke about the City's need for a quality management system.

Mr. Fred English felt that the City should hire him as a recruiter for police officers.

Mr. Bill Fishburne, member of the Public Art Board, said that he was requested by the Chair of the Public Art Board to show Council a sketch of the Veterans Memorial, which the Public Art Board approved unanimously earlier today.

Mr. Peter Dawes said that the Sheriff's Department has had to respond to calls in the City of Asheville due to the number of vacancies in the Police Department.

Mr. Mike Fryer presented Council with a petition, containing 183 signatures, opposing annexation of Wellington Park. The petition states "We are residents in Wellington Community Estates Mobile Home Park. We understand that Wellington Park is included in one of the current annexations by the City of Asheville. By this petition we ask that the City of Asheville stop all efforts to annex Wellington Park or any area including Wellington Park. Wellington Park is one of the few affordable housing communities in South Buncombe County. Annexing Wellington Park will nearly double the taxes for the properties in Wellington Park, and will increase our housing

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expenses each month. This will make our affordable housing all the less affordable. For these reasons we ask the City of Asheville to discontinue all efforts to annex Wellington Park and to repeal any annexation ordinance that includes Wellington Park." He was concerned that if they move their trailers out for some reason, another one cannot be put back.

Ms. Julia Brant, representing for Asheville Park Community Group, spoke about the City's poor public process. She felt City Council should have given the public the opportunity to speak on the motion to continue in the Kenilworth Heights matter heard earlier in the meeting. She urged Council to take citizen input seriously.

Mr. Martin Reidinger, attorney who has filed the two annexation lawsuits, spoke in support of the City petition to de-annex

Wellington Park. It was his opinion that any ordinance City Council has the authority to pass, City Council has the authority to repeal. Once the ordinance becomes effective, you cannot de-annex the area, but until the effective date of that annexation, you can repeal that ordinance.

Mr. Walter Plaue spoke about the shortage of police officers.

Ms. Mary Steiner urged City Council to protect the senior citizen population in Asheville.

VIII. ADJOURNMENT:

Mayor Worley adjourned the meeting at 8:22 p.m.

CITY CLERK

MAYOR