

Regular Meeting

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

Absent: None

**PLEDGE OF ALLEGIANCE**

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

**INVOCATION**

Mayor Worley gave the invocation.

**I. PROCLAMATIONS:**

**II. CONSENT AGENDA:**

Vice-Mayor Mumpower asked that Consent Agenda Item "J" be removed from the Consent Agenda for discussion.

Mayor Worley 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 27, 2005, AND THE WORKSESSION HELD ON OCTOBER 4, 2005**

**B. ORDINANCE NO. 3284 - ORDINANCE DIRECTING THE HOUSING CODE COORDINATOR OF THE BUILDING SAFETY DEPARTMENT TO DEMOLISH THE DWELLING LOCATED AT 34 CRESCENT STREET**

Summary: The consideration of an ordinance directing that the dwelling located at 34 Crescent Street be demolished and that all debris removed from the property, and an associated budget amendment, in the amount of \$15,000.

The structure located at 34 Crescent Street (PIN No. 9649.15-54-5121) is a two-story wooden frame, severely dilapidated dwelling in danger of collapse. The framing of the dwelling is positioned on 4x4 posts and untreated stiff knees with no footings. The roof of the dwelling has several layers of asphalt shingles in various stages of decay causing water penetration and rot throughout the dwelling. The roof is collapsing in on the dwelling. The porches on the back and side of the house have structurally failed and are collapsing. Still photos further illustrate the condition of the dwelling (to be shown during the presentation).

A hearing was held on March 2, 2004, and a Findings of Fact and Order was issued, ordering the dwelling demolished. The owners, Mr. and Mrs. Eugene E. Galloway, have failed to comply with the order of demolition. Pursuant to N.C.G.S. sec. 160A-443, when an Owner fails to comply with an order of demolition, the City has the option of demolishing the dwelling upon compliance with certain due process requirements. The owners have acknowledged the urgency and need for the dwelling to be demolished by executing a Consent for Demolition for the City to

-2-

demolish and remove the dwelling. Further, the owners have executed a waiver of any and all further notice requirements pertaining to the demolition of the dwelling.

In order to file a lien against the property for the cost to the City to demolish and remove the dwelling, the City must have an ordinance directing the demolition of the dwelling as required by N.C.G.S. sec. 160A-443 and sec. 4-217(e)(3) of the City's Housing Code.

The following is an overview of some general information regarding this property:

- Buncombe County Tax value: \$43,000

- Estimated cost to demolish dwelling: Approximately \$15,000
- Notification of affordable housing agencies: Yes (no input received)

Pro: Removes blight and deterioration

Con: Allocation of public funds to demolish private property

This action promotes Goal #4 of the City's Strategic Operating Plan in that as a vacant lot centrally located in downtown Asheville, the lot is appropriate for consideration for the construction of affordable housing.

The Building Safety Department recommends adoption of the ordinance ordering demolition and removal of 34 Crescent Street, and an associated budget amendment.

#### **ORDINANCE BOOK NO. 22 – PAGE**

##### **C. ORDINANCE NO. 3285 - BUDGET AMENDMENT FOR THE DEMOLITION OF 34 CRESCENT STREET**

Summary: See Consent Agenda "B" above.

#### **ORDINANCE BOOK NO. 22 – PAGE**

##### **D. RESOLUTION NO. 05-186 - RESOLUTION AUTHORIZING THE MAYOR TO ENTER INTO A MUNICIPAL AGREEMENT WITH THE N.C. DEPT. OF TRANSPORTATION FOR RE-INSPECTION OF BRIDGES ON THE MUNICIPAL STREET SYSTEM**

Summary: The consideration of a resolution authorizing the Mayor to enter into a municipal agreement with the N.C. Dept. of Transportation on a bi-annual basis for the re-inspection of bridges on the Municipal Street System.

In 1983 the Federal Highway Administration developed the Federal Off-System Bridge Replacement Program. The program is funded 80% through federal funds and 20% through City funds and administered by the N.C. Dept. of Transportation (NCDOT). To remain eligible for replacement funds and avoid penalties, it is required that all public bridges are inspected every two years. The NCDOT offers three options for meeting the bi-annual inspection requirements – (1) do the inspection with City forces; (2) the City to hire a consultant to do the inspections; or (3) the City to allow NCDOT to do the inspections through a qualified private engineering firm.

Since 1983 the City has elected to execute an agreement with NCDOT to accomplish the required inspection through their personnel or engineering consultants. This process allows high numbers of bridges to be inspected under one contract or operation, and therefore, results in

-3-

minimum inspection cost per bridge. It is anticipated the inspections cost to be \$2,500 per bridge for the upcoming inspections. The City has 25 bridges requiring inspection this year, which bring the cost to \$62,500. The City's share of 20% is \$12,500. Funds for the City's share are budgeted in the Public Work's Contracted Services budget line.

Pros:

- Lower cost of bridge inspection due to high volume.
- Use of qualified engineering firms through NCDOT.
- Fulfills requirement for bi-yearly bridge inspections.
- Indicates areas for repair for Public Works staff.

Cons:

- None identified.

The Public Works Department recommends adoption of the resolution authorizing the Mayor to execute a municipal agreement with NCDOT for inspection of bridges.

**RESOLUTION BOOK NO. 29 – PAGE 226**

**E. RESOLUTION NO. 05-187 - RESOLUTION SETTING A PUBLIC HEARING ON OCTOBER 25, 2005, TO CONSIDER THE VOLUNTARY ANNEXATION OF 75 LONG SHOALS ROAD**

Summary: The consideration of a resolution fixing the date of a public hearing on October 25, 2005, for property located at 75 Long Shoals Road.

Robert Hayes, owner of 75 Long Shoals LLC, has petitioned the City for the annexation of one lot owned by the LLC and located at 75 Long Shoals Road (PIN No. 9644.07-79-1146) containing 4.542 acres. This area is contiguous to the existing corporate limits and qualifies for annexation by petition as set forth in N.C. Gen. Stat. sec. 160A-31.

Pursuant to N. C. Gen. Stat. sec. 160A-31, such petitions must be investigated by the City Clerk for sufficiency in accordance with state law. This investigation has been completed and the Certificate of Sufficiency accompanies this petition request.

This area is in the Long Shoals Road annexation that will become effective December 31, 2005, however, in order to proceed with plan approvals, the owner has requested earlier voluntary annexation.

The next step in this process is for City Council to fix the date for the public hearing on this matter. The petitioner has requested that the annexation be effective on the date of adoption of the ordinance if City Council decides to proceed with this request.

Pros:

- Provides for the orderly growth of the City and the tax base through the acceptance of contiguous areas into the corporate limits where owners desire annexation.
- Allows the City to review and approve future plans for this parcel as it is developed.
- Assists the developer of the property in achieving his desired development plan and schedule.

Cons:

-4-

- Marginal increase in service costs (too small to measure or respond to).

This action complies with the 2025 Plan in that it supports the strategy of promoting voluntary annexation of developing areas and meeting the goal of continued use of the urban development tool of annexation in providing for the orderly growth of the City.

City staff recommends City Council adopt the resolution setting the date for a public hearing on the annexation petition.

**RESOLUTION BOOK NO. 29 – PAGE 227**

**F. RESOLUTION NO. 05- 188 - RESOLUTION DIRECTING THE APPLICATION TO THE LOCAL GOVERNMENT COMMISSION FOR APPROVAL OF WATER SYSTEM REFUNDING REVENUE BONDS; REQUESTING LOCAL GOVERNMENT COMMISSION APPROVAL OF THE CITY'S WATER SYSTEM REFUNDING BONDS, SERIES 2005A; AND CERTAIN RELATED MATTERS**

Summary: The consideration of a resolution directing the application to the Local Government Commission for approval of the City's Water System Refunding Bonds, 2005A and certain related matters.

The City has an opportunity to refund outstanding Water System revenue bonds and realize a substantial savings in annual debt service costs. In order to execute this refunding, City Council must adopt the resolution, giving staff direction to apply to the Local Government Commission (LGC) for approval of the refunding.

Specifically, the resolution: (1) Provides for the issuance of \$42,000,000 in bonds to refund outstanding water revenue bonds, purchase municipal bond insurance and reserve fund policy in lieu of funding a debt service reserve and pay the cost of issuing the Bonds; (2) Appoints bond counsel, underwriters, underwriter's counsel and the trustee and escrow agent for the Bonds;

(3) Directs the Chief Financial Officer to file an application with the LGC for approval of the issuance of Bonds; (4) Acknowledges that the City Council and the LGC have determined that the issuance of the Bonds is necessary or expedient, etc.

The ability to take advantage of this refunding opportunity, which will produce significant annual debt service savings, is a key benefit derived from achieving our strategic goal of *establishing an improved governance structure and model for the Water System*.

Pros:

- Based on preliminary estimates, the Water System will realize a total of \$3.87 million in savings, or approximately \$200,000 per year in annual debt service costs.

Cons: None noted.

City staff recommends City Council adopt the resolution directing the application to the Local Government Commission for approval of the City's Water System Refunding Bonds, 2005A and certain related matters.

#### **RESOLUTION BOOK NO. 29 – PAGE 230**

#### **G. RESOLUTION NO. 05-189 - RESOLUTION AUTHORIZING THE CITY CLERK TO ADVERTISE AN OFFER TO PURCHASE PROPERTY ON CIRCLE STREET**

**-5-**

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

A bid has been received from Brandon Knolls LLC in the amount of \$1,400 for the purchase of land on Circle Street in the East End Community.

The land on Circle Street is one of three (3) parcels donated to the City in 2001, by Sidney and Mary Schochet and Dale and Irwin Plicso. The parcels were remnants from Department of Transportation takings in connection with the construction of South Charlotte Street. The subject parcel is a trapezoidal shaped lot comprising 0.03 acre±. From street grade it slopes down substantially to the rear property line and is covered with non-significant trees, vines and brush. It is zoned RM-8, but the size, shape and topography render the lot unsuitable as a home site. The tax value is \$1,400. The bid from Brandon Knolls LLC, owner of an adjacent parcel is in the amount of \$1,400. Brandon Knolls LLC proposes to assemble enough property to construct a small affordable home for sale.

This action complies with the City Council Strategic Operating Plan in that the proposed construction will increase the supply of affordable housing and encourages infill development.

The positive aspects of the transaction are:

- The sale will be at fair market value as established by the upset bid process.
- It will return property not needed for public use to the tax rolls.
- It will transfer responsibility for maintenance to the private sector.
- A non-buildable lot will be assembled with adjoining land to provide an affordable home site.
- The sale of this lot to Brandon Knolls will facilitate infill development.

Planning & Development staff recommends adoption of the resolution, which will initiate the sale of the property through the upset bid process.

#### **RESOLUTION BOOK NO. 29 – PAGE 233**

#### **H. RESOLUTION NO. 05-190 - RESOLUTION AUTHORIZING THE CITY CLERK TO ADVERTISE AN OFFER TO PURCHASE PROPERTY ON HAZZARD STREET**

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

A bid has been received from Brandon Knolls LLC in the amount of \$7,000 for the purchase of land on Hazzard Street in the East End Community.

The land on Hazzard Street was one of ten (10) parcels conveyed to the City by the State in 1983, after the construction of South Charlotte Street, as part of a municipal agreement providing for conveyance of residues to the City. A slightly irregular, rectangular shaped lot comprising 0.07 acre±, it is generally level with street grade and mostly covered with grass. It is zoned RM-8, but the size renders the lot unsuitable as a home site. The tax value is \$7,000. The bid from Brandon Knolls LLC, owner of property in the vicinity is in the amount of \$7,000. Brandon Knolls LLC proposes to assemble enough property to develop the lot consistent with the zoning.

This action complies with City Council's Strategic Plan policy of encouraging infill development.

-6-

The positive aspects of the transaction are:

- The sale will be at fair market value as established by the upset bid process.
- It will return property not needed for public use to the tax rolls.
- It will transfer responsibility for maintenance to the private sector.
- A sub-standard lot will be assembled with adjoining land to provide a developable site.
- The sale of this lot to Brandon Knolls will facilitate infill development.

Planning & Development staff recommends adoption of the resolution, which will initiate the sale of the property through the upset bid process.

#### **RESOLUTION BOOK NO. 29 – PAGE 234**

##### **I. RESOLUTION NO. 05-191 - RESOLUTION ACCEPTING STONEBRIDGE DRIVE IN THE HAW CREEK AREA AS A PUBLICLY MAINTAINED STREET**

Summary: The consideration of a resolution to accept Stonebridge Drive as a publicly maintained street in Haw Creek area.

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

Stonebridge Drive is a developer-constructed street that has an average paved width of 19.5 feet and a length of 0.35 miles. Engineering Department Staff inspected this street and finds it to be constructed in accordance with the approved standards.

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

Advantages:

- The City will receive Powell Bill funds from the NCDOT to maintain the roadway.
- Homes constructed on this roadway increase the tax base in the City.

Challenges:

- Powell Bill funds will not cover 100% of the cost to maintain the street.

City staff recommends City Council accept Stonebridge Drive in Haw Creek area as a City maintained street.

#### **RESOLUTION BOOK NO. 29 – PAGE 235**

##### **J. BUDGET AMENDMENT TO PROVIDE FOR LEGAL SERVICES**

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

**K. RESOLUTION ESTABLISH TASK FORCE REGARDING THE ASHEVILLE CIVIC CENTER**

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

-7-

**L. RESOLUTION NO. 05-193 - RESOLUTION AMENDING THE RESOLUTION OF CLOSURE FOR WEST GREENBRIAR ROAD**

Summary: The consideration of a resolution modifying a previous resolution closing West Greenbriar Road

In September of 2003, the City Council adopted a resolution closing a portion of West Greenbriar Road in West Asheville. This road ran through the old Parkwood apartment complex in West Asheville, which is currently developed as a business park. It is located just south of Patton Avenue. Pursuant to discussions with the applicant and owners, the closing was to be subject to a condition that an easement for public access be maintained across the property.

The resolution as signed did not reflect this condition accurately, but rather required the construction of a public road. However, rather than amending the resolution at that time, the applicant and staff agreed to wait on some of the build-out on the site to be completed, and amend the resolution to reflect conditions on the ground.

The plat submitted for redevelopment of the property, and approved by the City, shows a public right-of-way providing pedestrian and vehicular access between Bent Street and Parkwood Road, which remain public streets. Accordingly, even though the right-of-way is not dedicated to the public, to the extent that the City's approvals (including building permits and certificates of occupancy) were based on the existence of the right-of-way, it may not be closed or altered without the City's approval. Also, the right-of-way may be enforced by the abutting property owners.

The resolution of closure contains other conditions that have been satisfied as well. With this in mind, the developer and property owners are requesting that the resolution adopted in 2003 be amended to delete the condition that a public road be constructed across the property, which was never intended, and that the closing be made unconditional.

Staff recommends that the resolution of closure (Resolution No. 03-165) be amended to remove the conditions.

**RESOLUTION BOOK NO. 29 – PAGE 242**

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 DISCUSSION**

**ORDINANCE NO. 3286 - BUDGET AMENDMENT TO PROVIDE FOR LEGAL SERVICES**

Summary: The consideration of a budget amendment, in the amount of \$50,000, to provide for legal services.

This past summer, the Water Agreement terminated, and operation of the water system became the City's responsibility. Almost coincident with the June 30 effective date of the termination of the agreement, the North Carolina General Assembly adopted Sullivan Acts II and III, which limit the City's ability to operate the water system as a public enterprise. These restrictions apply only to the City of Asheville.

-8-

The Council has authorized the filing of a declaratory judgment action by the City against the State of North Carolina. The complaint, filed in Wake County on August 10, asks the court to determine the constitutional validity of these local acts. The City has engaged a Charlotte law firm to handle this litigation. This proposed budget amendment will increase the City's legal services budget by \$50,000 to cover the City's costs for the lawsuit. It is difficult to estimate with accuracy how much will ultimately be required, and we may have to make a supplemental request later in the fiscal year. However, in the current budget crunch – precipitated in part by the very legislation we are challenging – we thought it better to make these requests incrementally.

City staff recommends City Council adopt the budget amendment to provide for legal services.

Vice-Mayor Mumpower felt it would be less than responsible to accept the legislation that has been placed uniquely upon Asheville. Council doesn't like spending this money, but we have no choice and we will stand up to what we feel is an abusive intrusion on local governmental affairs.

Vice-Mayor Mumpower moved for the adoption of Ordinance No. 3286. This motion was seconded by Councilman Newman and carried unanimously.

**ORDINANCE BOOK NO. 22 – PAGE**

**RESOLUTION NO. 05-192 - RESOLUTION ESTABLISH TASK FORCE REGARDING THE ASHEVILLE CIVIC CENTER**

As a result of City Council discussion of October 4, 2005, a task force of the Asheville City Council be, and is hereby, established, to be named the "Asheville Civic Center for the 21<sup>st</sup> Century Task Force," and consisting of the following three City Council Members and representatives of community organizations:

- a. Mayor Charles Worley
- b. Council Member Terry Bellamy
- c. Council Member Jan Davis
- d. Member of the Buncombe County Board of Commissioners
- e. Member of the Tourism Development Authority
- f. Member of the Asheville Area Center for the Performing Arts
- g. Civic Center Commission

The members of the Task Force shall serve a six month term for purposes of recommending a specific policy direction for the City Council.

Mayor Worley felt it may be more appropriate for Council to appoint someone other than him to this Task Force, since he will no longer be a seated member of City Council.

Council members spoke in support of retaining Mayor Worley on this Task Force due to his knowledge and experience in the Civic Center.

City Manager Jackson explained the Civic Center Task Force's Action Plan, which includes a meeting agenda and schedule; and an extensive communications plan. The Task Force's final recommendation and report will be delivered to City Council by the end of February 2006.

Councilman Newman moved to keep Mayor Worley on this Task Force. This motion was seconded by Councilwoman Jones and carried unanimously.

-9-

**RESOLUTION BOOK NO. 29 – PAGE 237**

**III. PUBLIC HEARINGS:**

**A. PUBLIC HEARING TO CONSIDER REZONING PROPERTY AT 309 SUMMIT STREET FROM RS-8 RESIDENTIAL SINGLE-FAMILY HIGH DENSITY DISTRICT TO OFFICE DISTRICT**

**ORDINANCE NO. 3287 - ORDINANCE TO REZONE PROPERTY AT 309 SUMMIT STREET FROM RS-8 RESIDENTIAL SINGLE-FAMILY HIGH DENSITY DISTRICT TO OFFICE DISTRICT**

Mayor Worley opened the public hearing at 5:13 p.m.

Urban Planner Julia Cogburn said that this is the consideration of an ordinance to rezone property at 309 Summit Street from RS-8 Residential Single-Family High Density District to Office District. This public hearing was advertised on September 30 and October 7, 2005.

Ms. Cogburn said that the subject property is located on Summit Street, one block off of Hendersonville Road. The property currently contains a single-family home. The property is a through lot, abutting both Summit (to the west) and Reed Street (to the northeast) and is one lot removed from the right-of-way for the Interstate 40 exit ramp.

The property is bordered on two sides by property zoned Office and on the other two sides by property zoned RS-8.

The land uses in the area are varied. Immediately to the north is a Masonic Lodge and vacant parcels associated with this use. To the west, are the developments along Hendersonville Road (hotels, restaurants) and most directly across from the subject property, medical office buildings that are accessed via Summit Street. Immediately to the south are single-family homes (before reaching the highway) and to the east, the land use is single-family in nature. The land uses that currently have access off of Summit Street include single-family and multi-family residences, a church, the lodge and medical offices.

Developing this property for office uses would involve some challenges without combining this property with additional land. The lot does conform to Office District standards. However, the lot is relatively narrow, so that compliance with all the parking and landscaping requirements would be challenging. As Reed Street is a residential street, it is unlikely that access for an office use would be permitted off of Reed.

Office zoning does allow for single-family detached dwellings, so the existing structure would not become nonconforming with this rezoning.

-  
**Pros**

- The property is bordered on two sides by nonresidential uses and is on a street that is lined with nonresidential uses on one side.
- The property is bordered on two sides by property zoned Office.
- The proximity to the highway and Hendersonville Road (and the uses located along this thoroughfare) make this a less desirable residential location. Noise from the surrounding uses has been an issue as Hendersonville Road has developed more intensely.
- The current use as a single-family dwelling would remain a conforming use.

-10-

-  
**Cons**

- If the use were converted to office, there would be a loss of a single-family house in this area.
- Development of this lot for office purposes would be challenging without combining this property with additional land.
- The rezoning could be viewed by some as an incursion of nonresidential uses into a residential area.

The Planning and Development Staff recommended approval of this rezoning to the Asheville Planning and Zoning Commission. At its meeting on September 7, 2005, the Planning and Zoning Commission unanimously (6-0) voted to recommend approval of this rezoning to the City Council.

Ms. Dawnn E. Vaughan, property owner, spoke in support of this rezoning request.

Mayor Worley closed the public hearing at 5:19 p.m.

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

Councilwoman Bellamy moved for the adoption of Ordinance No. 3287. This motion was seconded by Vice-Mayor Mumpower and carried unanimously.

**ORDINANCE BOOK NO. 22 - PAGE**

**B. 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**

**ORDINANCE NO. 3288 - ORDINANCE AMENDING 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**



Mayor Worley said that this public hearing was held on September 13, 2005, and the matter was continued until this date in order to give the developer an opportunity to try to mitigate some of City Council's concerns.

City Attorney Oast said that Mayor Worley was not present at the September 13 meeting, however, it was his opinion that it would be appropriate for the Mayor to participate in the vote on this matter provided he studied the staff report and reviewed the minutes. Mayor Worley acknowledged that he had.

Ms. Shannon Tuch, Urban Planner, said that 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 (Attachment to City Exhibit 3 – Aerial Map; City Exhibit 6).

-11-

Ms. Tuch then reviewed with Council the following information, which was requested at the September 13 meeting:

Water: The City Water Resources Department has responded that a new 6" water line was installed for the area approximately 2 years ago. The water flow is sufficient for domestic service for the number of multi-family units proposed. The flow at the nearest hydrant was checked 3 separate times (Mar 04/ Aug 05/ Sept 14, 05) and flow was recorded to be between 600 to 780 gallons per minute at 20 PSI. This is sufficient for the proposed residential use of this site.

In the event that lines are relocated due to the N.C. Dept. of Transportation (NCDOT) road widening plans, NCDOT will contract out the relocation and normally increases the size of lines (to accommodate future growth). The increase in the size of lines normally increases flow and that would result in an improvement to water service.

Fire: A flow of 1250 gpm is required for serving the 3-story buildings without additional fire protection. As this site averages around 700 gpm, any wood-frame structure 3-stories or greater requires the addition of sprinklers or the addition of extra fire walls that reduce floor areas to no more than 3600 square feet. The need to mitigate is not uncommon and sprinkler systems are the more common solution, although the applicant hasn't yet decided on the preferred option. Sprinklers have been used in both the Appeldoorn and Campus Crest developments, for example.

Traffic: According to traffic engineering trip generation standards, a condominium/ townhome unit generates 40-45% less traffic than an average single family home (primarily due to smaller family sizes, fewer drivers, more singles, etc.). The proposed increase in density from the prior approved project will increase the trips generated during the peak hour from 17 (Brotherton) to 24 (Greenwood). Developing this site with single family homes would require removal of some acreage for right-of-way (20%) and stream buffer (1.3 acres) to determine development potential. If you then developed the balance of the property at 4 units an acre (pretty typical for the area), that would produce approximately 20 homes. Twenty homes would generate approximately 20 trips in the peak hour. Building to the zoned density, less the right-of-way and stream buffer areas, could result in up to 40 homes, with an associated 40 peak hour trips.

The addition of the road widening to improve the on-street parking situation would result in less congestion while the on-street parking would still provide a modest amount of traffic calming and improved pedestrian environment on Virginia Avenue. Virginia Avenue is suitable for traffic calming measures with a traffic count of around 1,700 per day, and an 85% speed of 35 (posted 30). It is wide enough to accommodate speed humps or islands, depending on neighborhood preference. Using the Appeldoorn model of \$500/affordable unit for traffic calming, the City could contribute \$12,000 for traffic calming in support of affordable housing. This amount would likely accommodate several speed humps or one island on Virginia Avenue. As with the Appeldoorn case, the developers' financials do not accommodate any traffic calming contribution so the allocation would be from the City.

Mass: The architect for the project and staff had stated during the public hearing that mass of the buildings will be mitigated by the existing topography and position on site. The architect has produced the elevation drawings (City Exhibit 7) demonstrating that much of the building mass will not be visible from the street.

Density: The most recent plan presented to Council proposed to remove the 1.71 acre northern lot from the development proposal in the interest of limiting liability insurance and maintenance fees that would be passed onto the homeowner's through association fees. The

-12-

applicant has agreed to retain the upper lot as part of the project, keeping it in its current single family zoning classification and

reserving it for open space. Including this upper lot would reduce the overall density from 7.8 units/acre to 6.1 units/acre and provide additional open space for the residents of the development.

Density comparison:

Brotherton Commons - 32 units on 7.2 acres = 4.4 units/acre

Greenwood Point - 44 units on 7.2 acres = 6.1 units/acre

Appeldoorn - 168 units on 11.4 acres = 14.7 units/acre

Prospect Terrace - 21 units on 2.6 acres = 8.1 units/acre

Open Space: The Greenwood Point project proposes:

- 13,400 square feet (.30 acres) of active open space, the largest area being over 8,300 square feet. Note: 8,300 square feet is enough to hold 1 basketball court plus 1 volleyball court side by side.
- Over 1.3 acres of undisturbed green space along a riparian corridor on the east side of the site.
- Over 1.7 acres of undisturbed open space on the north side of the site.

In addition to providing a 1,000 square foot community center, the applicant will work with the condominium association to provide amenities identified by the association in the area reserved for active open space. Ideas discussed with the applicant include an association "playground-build" with the applicant providing materials and technical advice to the residents as they design and construct their own playground as part of a community building effort.

Mayor Worley opened the public hearing at 5:30 p.m.

The following individuals spoke against the proposed amendment to the Master Plan for various reasons, some being, but are not limited to: Virginia Avenue is narrow and increased traffic will endanger the children that live in the area; no sidewalks on Virginia Avenue; lack of existing water pressure; project is not in scale with the rest of the neighborhood; improvements made will be to the project, not benefiting the surrounding neighborhood; speeding on Virginia Avenue; the additional 1.7 acres are not suitable for recreation;

Ms. Marsha Hammond, resident on Virginia Avenue

Mr. Patrick Stacy, resident on Virginia and Brotherton Avenues

Mr. Carlos Montgomery, resident on Virginia Avenue

Ms. Brown, resident on Drake Street

Mr. Brown, resident on Drake Street

Resident at 115 Virginia Avenue

Mr. Leslie Hammond Jones, resident on Virginia Avenue

Resident on Hubbard

Ms. Ballew, resident on Virginia Avenue

Mr. Anthony Jones, resident on Virginia Avenue (Neighborhood Exhibits 2 – Photos)

Ms. Christy Carter, resident on Langwell Avenue, expressed her support for this project. She felt that this is an avenue to get traffic calming on Virginia Avenue.

Mr. Gerald Green, former Board member of Neighborhood Housing Services, spoke in support of the amendment in that the developer has met the Unified Development Ordinance (UDO) standards and will continue to work with the neighborhood to address their concerns. He stated that a multi-family type condominium development generates less traffic than single-family.

-13-

Mr. Christopher Slusher, Executive Director of Neighborhood Housing Services, spoke in support of the project and addressed the concerns which Council brought up during the September 13, 2005, public hearing.

Mr. Michael Soren, architect on the project, spoke in support of the amendment. He urged Council not to require this developer to solve the bigger community issue of traffic on Virginia Avenue. He felt this is a good solid project that will increase the property values in the area.

Mayor Worley closed the public hearing at 6:06 p.m.

In response to Councilman Dunn, Community Development Director Charlotte Caplan explained who has paid for the

\$307,000 in infrastructure on the property.

Ms. Tuch responded to various questions/comments from Council, which include, but are not limited to: how were the traffic counts arrived at; what type of road improvements are proposed and where are those road improvements scheduled to be located; why isn't the developer just building recreational facilities for the project; how big is the open space inside the project area; if the City contributes \$12,000 for traffic calming, and how will the City determine the type of traffic calming measures necessary on Virginia Avenue.

Councilman Dunn supported affordable housing, however, he felt this project did not fit in with the scale of the neighborhood and would cause an increase of traffic on Virginia Avenue. In addition, he felt that the proposed open space in the project was not big enough for children to play.

Councilman Newman moved for the adoption of Ordinance No. 3288, subject to all outstanding TRC conditions being met. This motion was seconded by Councilwoman Jones.

Councilman Newman felt this project does meet the standards and felt that the density per acre is not unusual for older residential neighborhoods or streets the size of Virginia Avenue. He knew of many other developments in the City that doesn't have as much open space as this project. He also agreed with the developer to let the homeowners of the project decide the type of recreational facility they would like to have.

When Councilwoman Bellamy questioned if we could use the Housing Trust Fund monies for sidewalks, Planning & Development Director Scott Shuford suggested Council direct staff to come back with options for sidewalks.

In response to Councilwoman Bellamy, Mr. Slusher said that they would be willing to develop a passive park. In response to that, Mr. Shuford suggested the following condition: "That the area set aside for passive recreation shall be cleared to create opportunities for improved access including the possibility of stairs being installed in some of the steeper areas."

In response to Councilwoman Bellamy, Mr. Slusher said that they will be committed to talking with the neighborhood about other recreational needs for the area children.

Councilman Newman and Councilwoman Jones agreed to amended their motion to include the following additional condition: "That the area set aside for passive recreation shall be cleared to create opportunities for improved access including the possibility of stairs being installed in some of the steeper areas."

-14-

Vice-Mayor Mumpower was appreciative of Neighborhood Housing Services trying to do something with this land, however, he did not feel they met the standards relating to traffic and being in harmony with the neighborhood.

Councilman Davis also felt that this project was out of character with the surrounding neighborhood and would not be supportive of the amendment.

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

Councilwoman Bellamy moved to direct City staff to bring back options for (1) funding \$12,000 for traffic calming; and (2) funding options for sidewalks on Virginia Avenue. This motion was seconded by Councilwoman Jones carried on a 5-2 vote, with Vice-Mayor Mumpower and Councilman Dunn voting "no."

#### **ORDINANCE BOOK NO. 22 - PAGE**

At 6:46 p.m., Mayor Worley announced a recess.

#### **C. PUBLIC HEARING TO CONSIDER CONDITIONAL ZONING FOR PROPERTY LOCATED AT 6 EDWIN PLACE FROM RS-4 RESIDENTIAL SINGLE-FAMILY MEDIUM DENSITY DISTRICT TO RM-6 RESIDENTIAL MULTI-FAMILY LOW DENSITY DISTRICT/CONDITIONAL ZONING FOR A PROPOSED BED AND BREAKFAST HOMESTAY**

Mayor Worley opened the public hearing at 7:21 p.m.

Urban Planner Blake Esselstyn said that this is the consideration of conditional zoning for property located at 6 Edwin Place from RS-4 Residential Single-Family Medium Density District to RM-6 Residential Multi-Family Low Density District/Conditional Zoning for a proposed bed and breakfast homestay. This public hearing was advertised on September 30 and October 7, 2006.

The applicant, Jean M. Cassidy, owns a residence located in an RS-4 zoning district within the corporate limits of the City of Asheville and seeks to rezone the property to RM-6 in order to operate a bed and breakfast homestay. The lot is 0.31 acres in area and is located on the south side of Edwin Place.

Bed and breakfast homestays are a use by right subject to special requirements in the RM-6 district, and the proposed project appears to meet all the requirements. Operation of the bed and breakfast homestay would require no changes to the exterior of the existing structure, and the rented rooms would use less than 25 percent of the residence's 2,850 square feet of floor area. The applicant has predicted an average of six visitors a month, typically staying 2-4 days each.

While the property is located in a block face which is zoned entirely RS4, there are a variety of other zoning districts in close proximity. The lot is faced by multi-family zoning districts to both the front and rear. Approximately 30% of the lots on this block face are occupied by multi-unit dwellings (existing nonconformities).

At their July 18, 2005, meeting, the Technical Review Committee (TRC) reviewed the Conditional Zoning and concept plan proposal and made a positive recommendation that the project be forwarded to the Planning and Zoning Commission, stipulating the following project conditions summarized as follows:

-15-

1. A combination of vegetation and fence screening meeting type A buffer requirements will be required along the south and west property lines, and a type B buffer will be required along the east property line.
2. Concept plan "title block" lacks the following information: map of the vicinity, date of drawing, zoning district, and parking calculations.
3. Information about driveway and pedestrian paths, setbacks, encroachments into setbacks, parking lot layout, location of nearest fire hydrant, accessibility compliance, street trees, and vehicular use area plantings must be provided.
4. Applicant will need to provide floor plan of building with each room existing use and new use identified.
5. The owner must contact water resources for information regarding required backflow prevention on all commercial water taps.
6. A separate driveway permit must be applied for.
7. Disabled parking will be required, and location depicted on the plans.
8. Show all existing and proposed utilities on the plan.

-

At their August 3, 2005, meeting, the Planning and Zoning Commission voted 4-3 to deny the request. Two of the four Commission members who voted against the rezoning explained their reasoning; their chief concerns were compatibility and the possibility of a detrimental effect on the neighborhood. The applicant subsequently decided to appeal the Planning & Zoning Commission decision.

-

Staff has received a number of communications about the proposed rezoning from neighbors, both those for the conditional rezoning and those against. The current and previous presidents of the Grove Park/Sunset neighborhood association have expressed their resistance. The primary reasons for opposition have been concerns about encroachment, traffic, spot zoning, and the applicant's having previously operated this business without a zoning permit (the applicant has since suspended operations). Those in support argued that the business would be beneficial for the community.

Section 7-7-8(d)(2) of the Unified Development Ordinance (UDO) states that planning staff shall evaluate conditional zoning applications on the basis of the criteria for conditional use permits set out in section 7-16-2. Reviewing boards may consider these criteria; however, they are not bound to act based on whether a request meets all seven standards. Staff's review indicates that all seven standards are met as proposed in the conceptual site plan.

1. **That the proposed use or development of the land will not materially endanger the public health or safety.** *The proposed project has been reviewed by City staff and appears to meet all public health and safety related requirements. The project must meet the technical standards set forth in the UDO, the Standards and Specifications Manual, the North Carolina Building Code and other applicable laws and standards that protect the public health and safety.*
2. **That the proposed use or development of the land is reasonably compatible with significant natural or topographic features on the site and within the immediate vicinity of the site given the proposed site design and any mitigation**

**techniques or measures proposed by the applicant.** *The proposed use is highly compatible with the surrounding natural features and topography, in that the site would hardly be changed at all from its existing state. The only significant changes to the site required thus far would consist of additional plantings and a pervious surface over two parking spaces.*

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

-16--

*would have anything more than a minimal impact on property values, and expects that the impact could just as likely be in a positive direction..*

4. **That the proposed use or development of the land will be in harmony with the scale, bulk, coverage, density, and character of the area or neighborhood in which it is located.** *The proposed project would be in harmony with these characteristics of the area. The existing residence fits in seamlessly with the surrounding properties, and the proposed use would change very little about the appearance or character of the site.*
5. **That the proposed use or development of the land will generally conform to the comprehensive plan, smart growth policies, sustainable economic development strategic plan and other official plans adopted by the City.** *The Asheville City Development Plan 2025 lists the "Smart Growth Land Use Policies" adopted by the City Council in 2000. The plan also recognizes the "New Urbanism" concept and includes as an appendix this movement's charter, which mentions tenets such as the promotion of neighborhoods with a variety of land uses and increased land use intensity. Approval of the proposed plan could perhaps encourage a small business, but excepting that, it would neither support nor hinder the goals and tasks of the Strategic Operating Plan. Thus, it can be said that the proposed use would generally conform to these plans and policies.*
6. **That the proposed use is appropriately located with respect to transportation facilities, water supply, fire and police protection, waste disposal, and similar facilities.** *The project's location near Charlotte Street ensures access to transportation facilities and other services. Transit route 5 serves the area. In addition, technical review from other departments has not revealed any problems for serving the development.*
7. **That the proposed use will not cause undue traffic congestion or create a traffic hazard.** *The proposed project has been reviewed by the City's traffic engineer and is not expected to cause undue traffic congestion or create a traffic hazard.*

#### **Pros**

- Proposed use is highly compatible with surrounding area.
- Bed and breakfast homestays have successfully coexisted with residential uses in other neighborhoods.
- The property would maintain its existing residential appearance.

#### **Cons**

- Spot zoning has been raised as an issue.

Staff recommends approval of the Conditional Zoning based on the submitted concept plan subject to the conditions listed in the TRC staff report.

Ms. Jean Cassidy, applicant, said that she preferred to remain RS-4, however, she had to apply for conditional zoning since that was the only option to allow her to maintain her homestay. She said that in 1999 she came to the City to find out what she needed to operate a homestay at 6 Edwin Place. She was told she didn't need anything because she hadn't taken in enough yet from the business. She has had limited homestay over previously years while she restored the house. In 2004 she completed the restoration totaling approximately \$100,000. She bought a privilege license from the City and was told she needed nothing else, except to have fewer than five rooms. In June 2005, she then received a letter stating that she was in violation of the zoning ordinance. She said that the surrounding properties are multi-family. Her homestay resembles a more of a single-family residence than those around her. The homestay is not just a smaller version of a Bed & Breakfast Inn, but it is an in-home business with an owner/manager on site.

-17-

The conditional zoning will restrict what she can do with this property and it will not increase the traffic on Edwin and will not open the doors for businesses in the area. She urged Council to allow her to stay open while discussions continue.

The following residents spoke in opposition of the conditional zoning for various reasons, some being, but are not limited to: Grove Park/Sunset Neighborhood Association has consistently over the years opposed Bed & Breakfast Inns and similar ventures in their residential area; conditional zoning would negatively impact the neighborhood; the multi-family housing in the area is just grandfathered in; Edwin Place is shown to be single-family; the area has many non-confirming multi-family units and could readily reach a tipping point as incremental changes to the RS-4 are made; rezoning of this will result in spot zoning; rezoning this property will limit the rights of many neighboring property owners because those within 500 feet of a Bed & Breakfast cannot apply for a Bed & Breakfast on their property; a Bed & Breakfast homestay is not affordable housing; a Bed & Breakfast homestay is for transient visitors which will increase traffic in the neighborhood; there are plenty of guest accommodations in the area already; and this rezoning will diminish the residential use and allow commercial intrusion into the neighborhood:

Ms. Grace Curry, President of the Grove Park/Sunset Neighborhood Association  
Mr. Kevin Huston, resident on Lawrence Place  
Ms. Barber Melton, member of Coalition of Asheville Neighborhoods  
Ms. Jane Mathews, area resident  
Ms. Barbara Hodgson, resident on Edwin Place  
Mr. Dennis Hodgson, resident on Edwin Place

Mayor Worley closed the public hearing at 7:51 p.m.

A short discussion was held whether this would constitute spot zoning and what would happen if the owner sells the property.

Councilwoman Bellamy moved to not conditionally rezone the property from RS-4 to RM-6/Conditional Zoning. This motion was seconded by Councilman Davis and carried unanimously.

**D. PUBLIC HEARING TO CONSIDER CONDITIONAL ZONING FOR PROPERTY LOCATED ON CATAWBA STREET FROM RS-8 RESIDENTIAL SINGLE-FAMILY HIGH DENSITY DISTRICT TO INSTITUTIONAL DISTRICT/ CONDITIONAL ZONING FOR A PROPOSED GREENWAY, OVERLOOK AND OUTDOOR EXHIBIT SPACE FOR THE PROPOSED HEALTH ADVENTURE PROJECT**

**ORDINANCE NO. 3289 - ORDINANCE TO CONSIDER CONDITIONAL ZONING FOR PROPERTY LOCATED ON CATAWBA STREET FROM RS-8 RESIDENTIAL SINGLE-FAMILY HIGH DENSITY DISTRICT TO INSTITUTIONAL DISTRICT/ CONDITIONAL ZONING FOR A PROPOSED GREENWAY, OVERLOOK AND OUTDOOR EXHIBIT SPACE FOR THE PROPOSED HEALTH ADVENTURE PROJECT**

Mayor Worley opened the public hearing at 8:04 p.m.

Urban Planner Alan Glines said that this is the consideration of conditional zoning for property located on Catawba Street from RS-8 Residential Single-Family High Density District to Institutional District/Conditional Zoning for a proposed greenway, overlook and outdoor exhibit space for the proposed Health Adventure project. This public hearing was advertised on September 30 and October 7, 2006.

-18-

The Asheville 2025 Development Plan recommends that key corridors (such as Broadway) be redeveloped with a higher intensity, mixed use pattern of development. The proposed Health Adventure project would be consistent with these objectives and encourage additional development of the Broadway corridor. The plan also specifically notes the completion of the Reed Creek Greenway as a goal for the City.

The Strategic Operating Plan encourages greenway development in throughout the community. The plan also lists several goals relating to improving gateways and corridors into the downtown. The Health Adventure project could be a positive step toward achieving these goals.

This property has been in City ownership since a portion of the parcel was donated to the City from the Penick family in the late 1960's. The property has been used as the City leaf mulch pile for many years. Over the last few years the Health Adventure has planned an expansion and relocation from their existing downtown site. They were able to purchase the neighboring eight acre parcel a few years ago. The Health Adventure approached the City about acquiring the 'leaf pile' parcel to combine with their land. In 2004 City Council agreed to sell the parcel to be used for the Health Adventure expansion. The conditional zoning request to Institutional District will provide space for the Health Adventure expansion but will limit the use of the City owned parcel

to providing outdoor exhibit areas, structures to support these exhibits, greenway and overlook areas and landscape screening. The Reed Creek Greenway section will be located at the outer edges of the property closer to Catawba Street and Broadway. The museum exhibit areas will be located in from the corner.

The specific development plans for the entire Health Adventure project site will be reviewed by the City of Asheville Technical Review Committee (TRC) when they are formally submitted. Plans may be submitted later in the year but this is dependent on the Health Adventure internal schedule. The Health Adventure site development will comply with City development standards.

Section 7-7-8(d)(2) of the Unified Development Ordinance (UDO) states that planning staff shall evaluate conditional zoning applications on the basis of the criteria for conditional use permits set out in section 7-16-2. Reviewing boards may consider these criteria; however, they are not bound to act based on whether a request meets all seven standards.

1. **That the proposed use or development of the land will not materially endanger the public health or safety.** The development of the site will comply with all codes and regulations and will not create a public hazard.
  2. **That the proposed use or development of the land is reasonably compatible with significant natural or topographic features on the site and within the immediate vicinity of the site given the proposed site design and any mitigation techniques or measures proposed by the applicant.** The proposed use of the site will be a low impact development in a mostly natural state. The project there will be compatible and complement the significant natural features of the site.
  3. **That the proposed use or development of the land will not substantially injure the value of adjoining or abutting property.** The use of the property is not expected to injure the value of adjoining or abutting property. The use of the property will provide a community amenity.
  4. **That the proposed use or development or the land will be in harmony with the scale, bulk, coverage, density, and character of the area or neighborhood in which it is located.** The proposed use of the property will be in harmony with the scale, bulk, coverage and density and character of the neighborhood.
- 19-
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 Comprehensive plan notes the completion of the Reed Creek Greenway as an outlined goal for the City. This parcels is partially be used to provide a section of the greenway. In addition, the Health Adventure museum is an enhancement to the quality of life for the community.
  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 parcel has suitable infrastructure in place to serve the requirements of the use.
  7. **That the proposed use will not cause undue traffic congestion or create a traffic hazard.** The proposed use is not expected to create a traffic hazard.

#### **Pros**

- Supports the use and expansion of the Health Adventure Museum
- Provides space for the Reed Creek Greenway
- Transfer of the property retains its use and access by the public

#### **Cons**

- Could facilitate driveway access from Catawba (could be a pro)

-  
At their September 7, 2005, meeting, the Planning and Zoning Commission voted 6-0 to recommend in favor of the rezoning request. Staff concur with that recommendation with TRC comments as conditions.

A resident on Cumberland Circle questioned what measures would be in place to ensure the developer uses the property for the specific purposes outlined.

A resident on Panola Street felt that the Health Adventure will be environmentally aware of what they are doing, however, she wanted to make sure there are good buffers for the neighborhood. In addition, she suggested the service entrance be moved

from the top of Catawba closer to Broadway. She felt Council should deny this request until they have those type plans in place.

Mr. Michael Hunter, resident on Panola Street, agreed that the service entrance should be moved. He felt Catawba Street is narrow with no sidewalks and drainage ditches on both sides. Residents will be affected by traffic and urged Council to deny this rezoning.

The following individuals spoke in support of the conditional zoning for various reasons, some being, but are not limited to: this property will be improved at their cost, making it a safer place for children to play and bicycle; the greenway will be built at their cost; the Health Adventure's mission is about safety and community values; the Health Adventure is willing to continue to work with the neighbors; the leadership of the Health Adventure is one of stewardship and that will guide their work; the Health Adventure has over 40 years of success and this project will match their quality work;

Mr. Sam Stickney, Chairman of the Board of the Health Adventure  
Volunteer and Member on the Board of Directors of the Health Adventure  
Ms. Jane Mathews, partner on architectural team for the Health Adventure  
Mr. William Wolcott, member of the Board of Directors and Chairman of the Building  
Committee

-20-

Mr. John Spake, member of the Board of Directors and Building Committee for the  
Health Adventure  
Mr. Tom Boyette, Chief Executive Officer of the Health Adventure

Mayor Worley closed the public hearing at 8:23 p.m.

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

City Attorney Oast stated that the City of Asheville does not have a contractual obligation to rezone this property.

There was a brief discussion about how the Health Adventure would continue to work on issues raised regarding buffering for the neighborhood and the impact of the Catawba Street service entrance.

Vice-Mayor Mumpower moved to approve Ordinance No. 3289 to conditionally zone property at Broadway and Catawba to Institutional District/Conditional Zoning with uses limited to those noted above and subject to the TRC conditions being met. This motion was seconded by Councilman Dunn.

A brief discussion surrounded a possible change to the service entrance in that it would be angled away from the front door of more homes.

Vice-Mayor Mumpower moved to amend his original motion to not only conditionally zone the property to those uses noted above and subject to the TRC conditions being met, but to also permit the developer to change the angle of the service entrance from the conditionally zoned property on Catawba Street. This amendment was agreed to by Councilman Dunn with said amended motion being carried unanimously.

#### **ORDINANCE BOOK NO. 22 - PAGE**

#### **E. PUBLIC HEARING TO CONSIDER REZONING PROPERTY ON DOGWOOD ROAD FROM INDUSTRIAL DISTRICT TO RS-4 RESIDENTIAL SINGLE-FAMILY MEDIUM DENSITY DISTRICT**

#### **ORDINANCE NO. 3290 - ORDINANCE TO REZONE PROPERTY ON DOGWOOD ROAD FROM INDUSTRIAL DISTRICT TO RS-4 RESIDENTIAL SINGLE-FAMILY MEDIUM DENSITY DISTRICT**

Mayor Worley opened the public hearing at 8:47 p.m.

Urban Planner Blake Esselstyn said that this is the consideration to rezone property on Dogwood Road from Industrial District to RS-4 Residential Single-Family Medium Density District. This public hearing was advertised on September 30 and October 7, 2006.

Mr. Esselstyn said that as property is located at the westernmost end of the extraterritorial jurisdiction area (ETJ), much of



the property around it is not zoned.

One of the City of Asheville's adopted Smart Growth Land Use policies noted in the ACDP 2025 states that Industrially zoned land should be reserved for industrial purposes. This is further emphasized in the Sustainable Economic Development Strategic Plan that identifies a shortage of industrial zoned properties as one of its top priority issues to be addressed in our

-21-

area. It further stresses the importance of strengthening the current zoning ordinance to preserve and maintain selected existing areas of the City that allow industrial type uses.

An application for rezoning of these same two parcels to RM-8 was submitted in January of this year and withdrawn in February, before any public hearing.

The subject site is located in the westernmost section of the City's ETJ area, less than ½ mile off of Smoky Park Highway on Dogwood Road. The property consists of approximately 31 acres and is currently zoned Industrial. The majority of the property is vacant with the exception of a single-family dwelling that is located on the smaller parcel within the site.

Surrounding land uses and zoning include manufactured housing, zoned RS-4 and Industrially zoned land containing multiple dwelling units along the east side of property. Properties to the north, south and west of the site are all outside of the City's Jurisdiction. Land uses, classified by Buncombe County, indicate vacant rural residential land to the north, agricultural land with multiple dwellings to the south and agricultural land plus a single dwelling unit to the west.

The subject site is located within a very low-density rural area of the City's ETJ. The lots surrounding the property range in acreage from less than one acre to 72 acres. The property was zoned Industrial as part of the 2001 ETJ Expansion area for Sardis Road and Brevard Road. The entire area off of Dogwood Road identified for Industrial zoning consists of approximately 103 acres. It was targeted for industrial zoning based on its vicinity to major road facilities (Smokey Park Highway-19/23, and I-40 where the MPO has identified the need for a new interstate interchange at Dogwood Road), the amount of contiguous acreage and the gentle sloping topography of the land making it suitable for industrial development.

The applicant has applied for a rezoning of the lot from Industrial to RS-4 (Residential Multi-family Medium Density District). Based on acreage and density permitted within the RS-4 district, as many as (approximately) 120 units could be permitted. The RS-4 zoning district was intended to establish a medium density for single-family dwellings and to stabilize and protect the residential character of the district while promoting a suitable environment for single-family living.

The purpose of the Industrial zoning district is to reserve land for existing and future industrial activities. Sites are located, where possible, near existing infrastructure and transportation facilities, and also where surrounding land uses provide support to the industrial development and its employees. Development standards within the district were intended to ensure that land uses outside of the Industrial zoning area are not adversely affected by the negative impacts of industrial uses.

At their September 7, 2005, meeting, the Planning and Zoning Commission approved the rezoning by a 5-1 vote. Four neighbors spoke to express their preference for residential use as opposed to industrial.

Information about this application has been passed on to the City's Economic Development Advisory Committee.

### **Pros**

- A residential development in this vicinity would be close to major road facilities, shopping venues and potential employment centers.
- RS-4 zoning would be consistent with the area to the northeast of this property.
- Because the topography of the land is relatively flat, a residential development could be designed to minimize land disturbance.

-22-

### **Cons**

- A rezoning of the lot to primarily residential development would go against the practices and policies of several adopted City plans supporting future industrial development.
- The rezoning of the lot would result in the loss of valuable land well suited for a large-scale industrial development that has the potential of generating jobs and contributing to the local economy's tax base.
- Any development on the lot would require a significant extension of public utilities to service the site.

Due to importance of industrial uses to the local economy and given the shortage of land within the City's jurisdiction that is suitable for industrial type development, it has been a practiced policy, based on adopted City Plans and Smart Growth policies, to discourage the rezoning of large tracts of land zoned Industrial.

Based on the above policy and the suitability of this land for industrial uses, staff feels strongly that this rezoning is not in the best interests of the community.

Mr. Gerald Green, representing the property owner, urged Council to rezone this property in that to convert the property to Industrial would require the extension of water and sewer and grading of the property. He reviewed with Council a chart showing the industrial land absorption rates, prices and current stock in Buncombe County. He noted that information provided by the Chamber of Commerce shows that industrial uses typically look for land that is close to an interstate or other major collector road, has good access, is graded, and has utilities installed and internal roads constructed. In addition, the N.C. Dept. of Transportation staff said that it would be at least 10 years before the interchange at Dogwood Road and I-40 would be built.

Mr. Bob Penland, President of an area Homeowners Association, spoke in support of rezoning the property to residential in that they would prefer to have homes in their backyards and not industrial uses.

Ms. Joanne Young, area resident, felt it was out of character for that property to be zoned Industrial and urged Council to rezone it to residential.

Mr. James Harkins, resident on Valleyview Drive, spoke in support of rezoning the property to residential. He felt the industrial zoning will devalue adjacent properties.

Mayor Worley closed the public hearing at 9:04 p.m.

Upon inquiry of Councilman Newman, Economic Development Director Sam Powers said that in general what we see in Buncombe County are projects that are looking for buildings, more so than for green sites. However, he felt it is important to preserve and maintain the limited amount of property that is suitable for industrial development. This property is not fully serviced, but generally speaking the property lends itself to industrial development, especially with the property's location close to a proposed interchange. He pointed out that we can zone the property Industrial, but if the owner is not willing to make it available to be an industrial site, then it doesn't really do us any good. The Economic Development Advisory Committee did receive this information and agreed it was a tough issue in trying to preserve and maintain limited amounts of property that would be suitable for industrial uses vs. making land available for residential growth.

Planning & Development Director Scott Shuford said that assuming Buncombe County has 280 acres of available industrial land, that is less than ½ a square mile in the entire County. Asheville is over 40 square miles, resulting in 1/80<sup>th</sup> of the City of Asheville available for industrial development. He said this is a classic property rights issue vs. a long range planning issue that

-23-

Council has to debate. In the future, if the property is rezoned to residential, people will be wondering why there is a low-density single-family subdivision located right at a highway interchange. In addition, if a large industry does come into that area, he didn't think it would take long before the N.C. Dept. of Transportation builds the interchange.

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

Because since this is in a rural area in the City's extraterritorial jurisdiction area, Councilman Davis moved to adopt Ordinance No. 3290 to rezone the property from Industrial District to RS-4 Residential Single-Family Medium Density District. This motion was seconded by Vice-Mayor Mumpower.

Councilwoman Jones and Councilman Newman felt that land planning was very important and we need to preserve the little industrial acreage that we have identified.

The motion made by Councilman Davis and seconded by Vice-Mayor Mumpower carried on a 5-2 vote, with Councilwoman Jones and Councilman Newman voting "no."

Mr. Shuford said that City staff will be bringing back to Council a recommendation to rezone the adjacent industrial land RS-4 Residential Single-Family Medium Density District or a similar residential district, due to the residential districts surrounding the Industrial District property.

**F. PUBLIC HEARING TO CONSIDER REZONING PROPERTY ON STATE STREET FROM NEIGHBORHOOD BUSINESS DISTRICT TO RM-16 RESIDENTIAL MULTI-FAMILY HIGH DENSITY DISTRICT**

Mayor Worley opened the public hearing at 9:20 p.m.

Urban Planner Blake Esselstyn said that this is the consideration to rezone property on State Street from Neighborhood Business District to RM-16 Residential Multi-Family High Density District. This public hearing was advertised on September 30 and October 7, 2006.

City Attorney Oast said that a valid protest petition has been filed, thus requiring a three-fourths vote of City Council to approve the rezoning of the property.

Mr. Esselstyn said that rezoning this lot from Neighborhood Business to RM-16 would be in keeping with the Strategic Operating Plan's objective of encouraging higher-density infill development. Such a rezoning *would* remove an area currently available for a small business (whose development the Strategic Operating Plan aims to facilitate); however, the viability of a business in that location is uncertain.

The subject site is located in West Asheville, within the City of Asheville's corporate limits, two blocks east of where State Street passes beneath I-240. The property consists of approximately 1.2 acres of vacant area and is currently zoned Neighborhood Business.

Surrounding zoning is mostly Residential Multi-Family Medium Density and High Density (RM-8 and RM-16), with the exception of the area across Hanover Street and two small adjacent parcels to the south, which are zoned for neighborhood business. The adjacent residential areas are mostly single-family homes or vacant residential lots. The properties across Hanover Street

-24-

include one housing businesses which have been closed and boarded up. The average area of parcels in this vicinity is approximately 0.3 acres.

The southern corners at this intersection were zoned Neighborhood Business for the potential development of small businesses to serve the surrounding area. The southeastern corner was developed with a laundromat, restaurant, and grocery, but reportedly problems including theft and vandalism impelled the operators to close the businesses, and they now stand unused.

The applicant, Robert "Tico" Espinosa, has applied for a rezoning of the lot from Neighborhood Business to RM-16 Residential Multi-Family High Density District. Based on acreage and density permitted within the RM-16 district, up to 19 units could theoretically be permitted on the project site (though issues with the right-of-way and the stream bed would have to be addressed). The RM-16 zoning district was intended to permit a full range of high density multi-family housing types along with limited institutional, public, and commercial uses appropriate to the area.

The Neighborhood Business District was established to reserve areas for low-intensity business centers which are accessible to pedestrians from the surrounding residential neighborhood. The intent of the district is to provide for the daily convenience and personal service needs of the surrounding residential neighborhood while minimizing conflicts with surrounding residential uses. In this district, residential uses are restricted to parts of a building other than the first floor or street level.

At the September 7, 2005, meeting, the Planning and Zoning Commission approved the rezoning by a 6-0 vote. Four neighbors voiced their opposition to the project primarily on the grounds that they felt it could exacerbate existing problems with crime in the neighborhood.

**Pros**

- The RM-16 zoning designation is highly compatible with the surrounding zoning.
- The area can be shown to support residential use, whereas recent attempts at neighborhood businesses have not succeeded.
- The potential for higher-density infill development is consistent with both the City's Comprehensive Plan and Strategic Operating Plan.

-

## Cons

- Loss of a potential site for a new small business.

While the encouragement of small business and the provision of services accessible to businesses at this particular intersection indicates that residential use may be a more appropriate use for the subject property. In addition the adopted City plans' promotion of high-density residential infill supports the type of use, which the proposed rezoning would allow. Based on the above policies and observation, staff recommends approval of this request.

The following individuals spoke against the rezoning for various reasons, some being, but are not limited to: existing crime in the area; proposed units will be low cost housing because no one will build in an environment of drugs and crime that surround them; there is already enough multi-family housing in the area; increase of traffic in the area; State Street is a cut-through street with speeding;

Ms. Mary Steiner, resident on Stewart Street

Ms. Fisher Caldwell, area property owner

Ms. Leslie Cowan, area resident

Ms. Rene' Treece, resident on State Street (presented petition with 7 signatures)

-25-

Ms. Sandy Dryman, resident on Stewart Street

Mr. Roberto Espinosa, property owner, suggested the neighborhood get together and organize a neighborhood watch to help with the crime in the area. He urged Council to support his rezoning request in order to build some affordable housing.

Mayor Worley closed the public hearing at 9:46 p.m.

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

Councilman Newman moved to rezone the property from Neighborhood Business District to RM-16 Residential Multi-Family High Density District. This motion was seconded by Councilwoman Jones.

Vice-Mayor Mumpower would not support the rezoning in that he felt we are not protecting the neighborhood and should not be adding any more people to the dangerous mix.

Councilwoman Bellamy felt to rezone the property residential would not be an effective use of land use planning.

Councilman Newman agreed that the area has major crime problems, but you shouldn't have empty lots in neighborhoods that have crime. The more eyes on the street and the lack of vacant lots will help with that crime problem.

There was a brief discussion on the possibility of having this property owner withdraw his application until the City gets a tighter hold of the harsh reality of crime in that area.

With the approval of Mr. Espinosa, Vice-Mayor Mumpower moved to postpone this matter indefinitely, with the understanding that it be remanded back to the Planning staff and then to the Planning & Zoning Commission prior to it coming back before City Council. This motion was seconded by Councilwoman Bellamy and carried unanimously.

## **IV. UNFINISHED BUSINESS:**

### **V. NEW BUSINESS:**

### **VI. OTHER BUSINESS:**

#### **A. CLAIMS**

The following claims were received by the City of Asheville during the period of September 23-October 6, 2005: Errol A. Green (Police), Lynn Frazier (Civic Center), William A. Chase (Sanitation), Heather Smith (Sanitation), Patricia Mejia (Sanitation) and Larry Motsinger (Sanitation).

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

**VII. INFORMAL DISCUSSION AND PUBLIC COMMENT:**

Mr. Reid Thompson presented City Council with alleged violations of different sections of the Unified Development Ordinance regarding Greenlife Grocery. After a brief discussion of enforcement avenues, City Attorney Oast cautioned City Council in this matter as the City is in litigation on this issue.

-26-

**VIII. ADJOURNMENT:**

Mayor Worley adjourned the meeting at 10:05 p.m.

---

CITY CLERK

---

MAYOR