

Regular Meeting

Present: Mayor Charles R. Worley, Presiding (left meeting at 8:52 p.m.); 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

The Enka High School Air Force Junior ROTC Color Guard led City Council in the Pledge of Allegiance.

INVOCATION

Vice-Mayor Mumpower gave the invocation.

I. PROCLAMATIONS:

A. RECOGNITION OF UNC-ASHEVILLE CHANCELLOR ANN PONDER

On behalf of City Council, Mayor Worley recognized UNC-Asheville's Chancellor Ann Ponder and welcomed her to Asheville.

B. PROCLAMATION PROCLAIMING OCTOBER 30-NOVEMBER 6, 2005, AS "ASHEVILLE STUDENT COMMISSION ON RACIAL EQUALITY (ASCORE) EDUCATION WEEK"

Mayor Worley read the proclamation proclaiming October 30-November 6, 2005, as "Asheville Student Commission on Racial Equality (ASCORE) Education Week" in the City of Asheville. He presented the proclamation to Mr. Marvin Chambers, founding member of ASCORE, and Ms. Deborah Miles, Executive Director of the Center for Diversity Education, who briefed City Council on some activities taking place during the week.

II. CONSENT AGENDA:

Councilwoman Bellamy removed Consent Agenda Item "E" from the Consent Agenda for an individual discussion.

A. APPROVAL OF THE MINUTES OF THE SPECIAL WORKSESSION HELD ON OCTOBER 12, 2005, REGULAR MEETING HELD ON OCTOBER 12, 2005, AND THE WORKSESSION HELD ON OCTOBER 18, 2005

B. RESOLUTION NO. 05-196 - RESOLUTION AUTHORIZING THE MAYOR TO CONVEY PROPERTY ON CIRCLE STREET IN THE EAST END COMMUNITY TO BRANDON KNOLLS LLC

Summary: The consideration of a resolution authorizing the Mayor to convey land on Circle Street to Brandon Knolls, LLC, in the amount of \$1,400.

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On October 12, 2005, City Council authorized advertising for upset bids pursuant to a bid from Brandon Knolls, LLC, for land on Circle Street in the amount of \$1,400. The advertisement was published on October 14, 2005, and no upset bids were received.

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 Plisco. The parcels were remnants from N.C. Dept. 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.

The proposed construction is consistent with the Strategic Plan policies of increasing the supply of affordable housing and encouraging infill development.

The positive aspects of the transaction are:

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

Planning Department staff recommends adoption of the resolution authorizing the Mayor to convey land on Circle Street to Brandon Knolls, LLC, in the amount of \$1,400.

RESOLUTION BOOK NO. 29 – PAGE

C. RESOLUTION NO. 05-197 - RESOLUTION AUTHORIZING THE MAYOR TO CONVEY PROPERTY ON HAZZARD STREET IN THE EAST END COMMUNITY TO BRANDON KNOLLS LLC

Summary: The consideration of a resolution authorizing the Mayor to convey land on Hazzard Street to Brandon Knolls, LLC, in the amount of \$7,000.

On October 12, 2005, City Council authorized advertising for upset bids pursuant to a bid from Brandon Knolls, LLC, for land on Hazzard Street in the amount of \$7,000. The advertisement was published on October 14, 2005, and no upset bids were received.

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.

The proposed construction is consistent with the Strategic Plan policy of encouraging infill development.

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The positive aspects of the transaction are:

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

Planning staff recommends adoption of the resolution authorizing the Mayor to convey land on Hazzard Street to Brandon Knolls, LLC, in the amount of \$7,000.

RESOLUTION BOOK NO. 29 – PAGE

D. RESOLUTION NO. 05-198 - RESOLUTION APPROVING THE ASSIGNMENT OF LEASE FOR USE OF MCCORMICK FIELD FROM ASHEVILLE TOURISTS BASEBALL CLUB INC. TO PALACE BASEBALL LLC

Summary: The consideration of a resolution approving the assignment of lease for the use of McCormick Field to Palace Baseball, L.L.C for the continued operation of minor league baseball for the community.

On July 1, 2005, the City entered into a lease with Asheville Tourist Baseball Club, Inc., for the use of McCormick Field to operate a minor league baseball program. Prior to this lease agreement on June 28, 2005, the Asheville Tourist Baseball Club,

Inc entered into an asset purchase agreement with Palace Baseball, L.L.C. Palace Baseball, L.L.C., is part of Palace Sports and Entertainment which also owns the Detroit Pistons of the National Basketball League and the Tampa Bay Lightning of the National Hockey League. The Parks and Recreation Department has been and will continue to work with Palace Baseball, L.L.C., to make McCormick Field a major part of the community. Both parties are interested in making improvements to the facility and incorporating a number of ideas that will make the venue a year-round facility to be enjoyed by the region.

Pros

- Palace Baseball, L.L.C., is committed to keeping minor league baseball in Asheville.
- Palace Baseball, L.L.C., is interested in making improvements to the facility in conjunction with the City of Asheville.
- The facility has the potential of becoming a year round facility.
- Current staff will be retained which will allow for continuity in the transition.

Cons

- Asheville Tourist Baseball, Inc. was an excellent owner and well liked by the community. New ownership will have to establish the same respect from the community.

- This action will meet one of the objectives established by the Strategic Plan regarding the termination of the water agreement and operations of facilities formerly operated by Buncombe County.

- The Parks and Recreation Department recommends City Council approve the assignment of the lease for the use of McCormick Field from the Asheville Tourists Baseball Club, Inc., to Palace Baseball, L.L.C.

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E. RESOLUTION RENAMING THE SHILOH RECREATION COMPLEX FOR LINWOOD CRUMP

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

F. ORDINANCE NO. 3291 - ORDINANCE TO APPROPRIATE REVENUE AND BUDGET EXPENDITURES ASSOCIATED WITH FOUR ANNEXATION AREAS

Summary: The consideration of a budget amendment, in the amount of \$318,044, to appropriate revenue and budget expenditures associated with the Two Town Square, Town Square East, Ascot Pointe, and Long Shoals Road annexation areas

In June 2005, City Council approved the Fiscal Year 2005-06 Operating Budget. Also, in June 2005, City Council approved the annexation of six areas (Ridgefield, Airport Road, Two Town Square, Town Square East, Ascot Pointe, and Long Shoals Road) into the City. Under state law, property owners are allowed sixty days to file legal challenges to any annexation. As a result, staff was unable to determine if there would be legal challenges until well after the Fiscal Year 2005-06 Operating Budget was adopted; and therefore did not include any revenues or expenses from this annexation in the Adopted Budget.

The period for filing legal challenges to the annexations has now passed, and the City has received legal challenges on two of the six annexation areas that Council approved in June - Ridgefield and Airport Road. As a result, these two areas will not be coming into the City as scheduled. As for the remaining four areas, Two Town Square and Town Square East became part of the City on September 30th; and Ascot Pointe and Long Shoals Road will become part of the City on December 31st. Staff expects these four areas to generate \$318,044 in property tax and other revenue in Fiscal Year 2005-06. The cost of providing services to these areas in Fiscal Year 2005-06 will be \$250,773. The City will realize a net gain of \$67,271, which will be placed into the manager's contingency account. If these funds are not used during the year, this money can go to partially offset the \$110,000 reduction in fund balance that is currently projected for Fiscal Year 2005-06. A detailed list of the Fiscal Year 2005-06 revenues and expenditures associated with these four areas is available.

City staff recommends City Council adopt the budget amendment to appropriate revenue and budget expenditures associated with the Two Town Square, Town Square East, Ascot Pointe, and Long Shoals Road annexation areas.

ORDINANCE BOOK NO. 22 – PAGE

G. RESOLUTION NO. 05-200 - RESOLUTION MODIFYING THE SCHEDULED CITY COUNCIL MEETINGS TO INCLUDE THE ASHEVILLE CITY COUNCIL SWEARING-IN CEREMONY ON TUESDAY, DECEMBER 6, 2005, AT 5:00 P.M. IN THE COUNCIL CHAMBER, LOCATED ON THE SECOND FLOOR OF THE CITY HALL

BUILDING; AND CANCELING THE NOVEMBER 29, 2005, COMMUNITY MEETING

RESOLUTION BOOK NO. 29 - PAGE

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

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

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ITEM REMOVED FROM THE CONSENT AGENDA FOR INDIVIDUAL DISCUSSION

RESOLUTION NO. 05-199 - RESOLUTION RENAMING THE SHILOH RECREATION COMPLEX FOR LINWOOD CRUMP

Summary: The consideration of a resolution renaming the Shiloh Recreation Complex for Linwood Crump.

At its September 2005 meeting, the Parks and Recreation Board unanimously voted to rename the Shiloh Recreation Complex after Linwood Crump who recently passed away. The Board approved naming the facility the Linwood Crump/Shiloh Recreation Complex. Linwood was instrumental in making the Shiloh Complex the focal point for the community. He dedicated much of his life to the children who frequented the center and park. He worked many long and hard hours in the concession operation, donating his time so all of the profits could go back to the center and the programs he loved so dearly. Known affectionately as the "Mayor of Shiloh", Linwood made sure that the Shiloh community received its fair share of resources and attention by the City. This recommendation is also supported by the Shiloh Advisory Board. The staff plans to hold a formal ceremony in the future and recognize the family for this honor with a new sign placed at the entrance of the facility.

Pros

- This effort is supported by the Parks and Recreation Board as well as the Shiloh community.
- This effort will be a great tribute to the leader of the Shiloh community.

Cons

- None

City staff recommends that City Council approve the renaming of the Shiloh Complex as the Linwood Crump/Shiloh Recreation Complex.

After expressing her appreciation of the work of Mr. Crump, Councilwoman Bellamy moved for the adoption of Resolution No. 05-199. This motion was seconded by Vice-Mayor Mumpower and carried unanimously.

RESOLUTION BOOK NO. 29 – PAGE

III. PUBLIC HEARINGS:

A. PUBLIC HEARING TO CONSIDER THE VOLUNTARY ANNEXATION OF 75 LONG SHOALS ROAD

ORDINANCE NO. 3292 - ORDINANCE TO EXTEND THE CORPORATE LIMITS OF THE CITY OF ASHEVILLE TO INCLUDE 75 LONG SHOALS ROAD

Mayor Worley opened the public hearing at 5:12 p.m.

Urban Planner Julia Cogburn said that this is the consideration of an ordinance to extend the corporate limits of the City of Asheville to include 75 Long Shoals Road. This public hearing was advertised on October 14, 2005.

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)

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containing approximately 4.5 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.

The lot currently contains a single-family home. The current assessed valuation for this property, according to the Buncombe County tax records, is \$266,900. This parcel is in the Long Shoals Road annexation area that will become part of the City of Asheville on December 31, 2005, however, in order to proceed with plan approvals, the owner has requested earlier voluntary annexation.

Pursuant to N. C. Gen. Stat. sec. 160A-31 a public hearing must be held prior to adopting any ordinance for voluntary annexation.

The petitioner has requested that the annexation become effective on the date of the 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:

- .. 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 ordinance annexing the property set forth in the petition.

Mr. Brad Freeman spoke in support of the annexation.

Mayor Worley closed the public hearing at 5:18 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 for the adoption of Ordinance No. 3292. This motion was seconded by Councilman Dunn and carried unanimously.

ORDINANCE BOOK NO. 22 – PAGE

B. PUBLIC HEARING TO CONSIDER A CONDITIONAL USE PERMIT FOR BILTMORE POINT, LOCATED ON FAIRVIEW ROAD, FOR A PROPOSED 136-UNIT MULTI-FAMILY DEVELOPMENT

ORDINANCE NO. 3293 - ORDINANCE TO GRANT A CONDITIONAL USE PERMIT FOR BILTMORE POINT, LOCATED ON FAIRVIEW ROAD, FOR A PROPOSED 136-UNIT MULTI-FAMILY DEVELOPMENT

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

City Attorney Oast said that this is a quasi-judicial site specific act and at this public hearing, all the testimony needs to be sworn.

After hearing no questions about the procedure, Mayor Worley opened the public hearing at 5:19 p.m.

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

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

record.

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

Ms. Tuch said that this is the consideration of the issuance of a conditional use permit for Biltmore Point, located on Fairview Road, for a proposed 136-unit multi-family development.

The applicants, Charles Radford and Bruce Goforth, have requested a site plan review for a Level III residential townhome development to allow for the new construction of 136 affordable units, public road, secondary emergency access, and other related amenities. The project site is located within City limits just above the northwest corner of Fairview Road and Stoner Road, directly adjacent to the Slosman property from which the 13 acres under consideration will be subdivided. The subject property is surrounded on three sides by industrial or commercial warehousing/storage land uses. The fourth side borders a mix of commercial storage, single family residential, and vacant Commercial Industrial zoned property.

The site, as it currently exists, is undeveloped and heavily wooded with moderate to steep slopes (over 15%) (Attachment to City Exhibit 3 – Aerial Map). The 13 acre site has frontage on two city maintained roads; principal access will be located off of Fairview Road while a gated emergency access road is required off of Stoner Road per the City of Asheville Ordinance and State Fire Code requirements. In addition, a new loop road built to City of Asheville standards will be constructed to provide access to the individual townhome units (Attachment to City Exhibit 3 – Master Plan).

This project was previously reviewed under a Conditional Use Rezoning (CUZ) application that was approved in May 2004. Without project work being initiated, the approved Master Plan and Conditional Use Permit expired after one year; however, the RM-16 zoning remains in place for two years after approval. The applicant is now prepared to initiate site-work and wishes to re-file an almost identical site plan from what had originally been approved. In the intervening 15 months a number of other, unrelated, applications have come forward where a variety of issues and concerns have been discussed and explored including: compatibility with adjacent properties; open space; excessive and tall retaining walls; excessive clearing, grading, and mature vegetation removal. In light of these recent events, staff has re-examined this request and has qualified the earlier position of support with additional information and detail.

At their September 19, 2005, meeting, the Technical Review Committee (TRC) reviewed the Level 3 site plan and Conditional Use Permit request and recommended approval stipulating

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that the applicant meet the conditions outlined in the report, along with the following conditions added by the City Traffic Engineer:

1. Remove condition #4 in the TRC staff report
2. A traffic study will be needed to determine the need for a left turn lane on Fairview Road. If the turn lane is required it will be the responsibility of the developer to provide this improvement.
3. Provide a right-of-way for the emergency access road.

At their October 4, 2005, meeting the Planning & Zoning Commission reviewed the proposed site plan and recommended approval with the following conditions:

1. The project is to meet all outstanding TRC conditions
2. The conditions of affordability be worked out between City staff and the applicant and reviewed by the City Attorney's office for legal sufficiency.

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

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

The proposed project has been reviewed by City staff and appears to meet all public health and safety related requirements. The project must meet the technical standards set forth in the UDO, the Standards and Specifications Manual, the North Carolina Building Code and other applicable laws and standards that protect the public health and safety. In the event that federal or City funds are used to support the affordable housing component, an Environmental

Review Record (ERR) would have to be completed. Of particular concern to staff is the close proximity of residential units to substantial noise producers and the potential for environmental injustice as a result of excessive noise. There are active Norfolk Southern railroad lines in proximity to the project area (north and south) with one of the two lines running along the northern property boundary and within 100 feet of a number of proposed units. In addition, residents already living in the area have reported noise as the result of steam release from the industrial activity on the Slosman property (once a week for 30-45 minutes). This project is proposed to be constructed with private funds and would not require an ERR. The Planning & Zoning Commission did not require noise abatement measures as a condition of this project however; staff continues to have concern over this issue and would like to note that this project could be conditioned to require review and mitigation measures comparable to those normally required for a publicly funded project.

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 majority of the project area has an average natural slope of over 15% which is not unusual for Asheville. A revised grading plan shows a significant amount of clearing and grading that would be required for a project of this size and layout. As a result of the revised grading plan, additional grading and retaining wall information has been supplied

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showing removal of 80,000 cubic yards of material from the site and a need for over 2500 linear feet of retaining wall. Approximately 1000 linear feet will be over 20' tall, 500 linear feet will be between 8-19', with the balance of the walls being under 8' tall. During the Planning & Zoning Commission meeting, the landscape architect for the project indicated that extent of retaining walls shown could be reduced considerably if excess dirt from the site could be removed (230,000 additional cubic yards removed could reduce the height of the walls by 50%). Despite the potential reduction in retaining walls, staff remains concerned over the extent of the clearing, grading, & retaining wall particularly given concerns raised by the Commission and City Council regarding projects like Campus Crest. Furthermore, as a result of the extensive grading, very little usable open space is provided. 50% of the land area meeting the open space requirement has slopes over 30% and cannot be used actively. The remaining requirement is met with the installation of one basketball court and a small lawn area (to be shared by all 136 units) where the majority is graded to be over 15% (Attachment to City Exhibit 3 – Grading Plan).

Landscape buffers, a small amount of tree preservation along Stoner Road, and some terracing are proposed and will provide some minor mitigation. The extent of clearing, grading, and retaining walls could be further mitigated by reducing the number of units and/or by massing the units in an alternative layout.

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

There is a significant amount of literature that describes how “affordable” housing does not negatively impact adjacent property values. Developments of this size in the City do require a homeowner’s association that manages the common open space and typically has minimum site standards that control the deterioration that can contribute to a decrease in property values. These will be individually owned units that, historically, inspire care and upkeep. In addition, the higher density development could serve as a buffer/transition area to the existing single family residences that could be impacted by the more intense uses permitted in the CI zoning district.

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 surrounding properties are primarily light manufacturing and warehousing/storage uses with significant work traffic. The proposed development will be residential but through its density and activity, will not be out of character/harmony or scale with these uses. Along the majority of the eastern side of the property are small, modest single family homes on small lots (some lots are vacant) located on the opposite side of the right-of-way for Stoner Road. These homes are similar in size and are expected to be harmonious with the proposed development. The only area of concern is a smaller portion of the eastern boundary where there are two moderately sized single family homes on comparatively larger lots. These homes are larger and less typical of the development in the area and are separated from the proposed development by a vacant lot and a 30' Type C buffer required where adjacent to the subject property. It is expected that these lots will not be significantly impacted by the proposed development.

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.**

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The Asheville City Development Plan 2025(ACDP 2025), through its “Land Use and Transportation” goals and strategies, clearly supports and encourages efforts to provide affordable housing particularly in areas where public transit and alternative modes of transportation are available. In addition, both the *ACDP 2025* and the *City’s Sustainable Economic Development Strategic Plan* describe the connection and need for affordable housing to support economic development. Lastly, the *City of Asheville Strategic Operating Plan* describes a number of goals encouraging an increase in the supply of affordable housing through policy/program changes and developer incentives.

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

This proposed development is within close proximity to transportation facilities with the Route 12 bus line running regularly down Fairview Road. In addition, there are some infrastructure improvement plans in place for new sidewalk, road resurfacing, and stormwater control that will improve access along this corridor along with improvements that will be part of the proposed development (additional sidewalk, bus shelter, etc.). The project area is also located in clear and close proximity to other major road facilities and interstate connections, service centers, and easily accessed employment centers. Technical review has not revealed any problems for future utility service to the development.

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

The proposed project will include the construction of a new road to provide clear and safe access to the individual units while a second entrance will be provided to help facilitate traffic movement in the event of an emergency. Lastly, preliminary review by the City’s Traffic Engineer does not reveal any significant concern over traffic loads generated by a development of this size; however, he is requiring a traffic impact analysis for verification and to determine whether a left turn lane into the development would be required on Fairview Road.

Pros

- Clearly supports City goals to provide affordable housing in appropriately located areas.
- Provides an opportunity for infill residential development on underdeveloped property.

Cons

- High density residential development that will contribute to the traffic load of Fairview Road and Stoner Road.
- A number of proposed units are located within close proximity to a noise sources (Norfolk Southern Railroad & manufacturing business) without noise abatement measures proposed.
- Proposed residential development is located adjacent to commercial industrial zoning whose current land uses could change to a heavier impact over time.
- Will require significant amounts of clearing, grading, and retaining walls to accommodate the proposed density and layout.

Staff feels that the proposed development has many positive aspects and does meet the minimum technical and conditional standards required of a Level III project and Conditional Use Permit. However, staff also recognizes areas of potential improvement and recommends that the Commission utilize the experience gained over the last 15 months in dealing with such projects

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as Campus Crest and in directing staff regarding development on steep sites, to carefully consider whether the conditional use permit should be conditioned to mitigate any potential concerns.

Mr. Bob Grasso, land planner, explained some of the differences of the earlier plan compared to this plan, some being, but are not limited to: number of units reduced from 138 to 136, moved units around to accommodate better access to common areas, and improved the emergency gated access in the rear. He further explained the project and how they have worked to minimize the impact to surrounding neighbors. He felt this affordable housing project was needed for the community and urged Council for their support.

Mr. George Morosani said that he owns the property on the other side of the railroad tracks and has agreed to take 80,000

cubic yards of dirt off this developer's property to fill in on his property. He supported this proposed plan.

After rebuttal, Mayor Worley closed the public hearing at 5:37 p.m.

In response to Vice-Mayor Mumpower's concern about traffic, Traffic Engineer Anthony Butzek said that the Traffic Impact Analysis had not been performed yet so at this point we don't have a specific idea of what traffic will be like. There may be some design modifications required at the intersection, such as the addition of a turn lane, but other than that one intersection, he believed that the roadway system will handle the additional traffic without any problem. Regarding the access, the City always tries to ensure multiple points of access to a community. In this case, there was concern from neighbors on Stoner Road and for that reason the rear access was modified to be an emergency access. He said that we are not stepping around our normal criteria on this emergency access only. Again, he would prefer to have multiple access points, but one access would work.

There was a brief discussion about the noise from the railroad (City Exhibit 4 – Sketch regarding number of feet from train to proposed units). Ms. Tuch explained that it is possible to require additional measures to help mitigate that noise.

Councilman Newman questioned the buffering around the project. Ms. Tuch responded that the only condition we have as far as tree preservation is in the area along Stoner Road. Staff is not recommending a similar buffer on Fairview Road because it appears to be impossible to achieve given this particular layout.

In response to Vice-Mayor Mumpower, Ms. Tuch said that the two-bedroom unit would be \$120,000 and a three-bedroom unit would be \$135,000.

In response to Vice-Mayor Mumpower, Ms. Tuch said that in the previous application Council dedicated \$50,000 of Housing Trust Fund money to help relieve the burden of development costs from the developer for improvements to Fairview Road, if necessary. Again, that was part of the earlier application, which has expired. Ms. Tuch also noted that the emergency access road does have a 30-foot right-of-way associated with it, so in the event that traffic becomes an issue, that right-of-way can be opened to public standards.

There was a brief discussion of open space, with Ms. Tuch stating that it does meet the minimum technical requirements. She could not see any creative ideas to help with open space with the proposed layout.

Upon request of Councilman Newman, Mr. Grasso explained their erosion control plan (City Exhibit 5).

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Planning & Development Director Scott Shuford explained that staff tries to make sure that there is adequate open space for suburban-type projects. He said that Planning staff will be bringing forward for Council consideration an ordinance to strengthen our open space requirements.

Mr. Shuford also asked for City Council to clarify, should Council decide to move forward with this project, whether (1) Council is still interested in allocating any funds for infrastructure improvements; and (2) also with the possibility of opening up the emergency access road, that at least we leave open the possibility for requiring that to be converted to a full access at some point in the future, otherwise what will happen is we will determine a need to open that roadway up and be precluded from doing that by the fact that it is shown as an emergency access only on the site plan.

In response to Councilman Newman regarding the affordability aspect, City Attorney Oast said that to the extent they have gotten some incentives from the Metropolitan Sewerage District (MSD) with regard to the provision of some infrastructure based on the affordable housing component, that is one condition that they will have to continue to fulfill under the MSD criteria. In the conditional use process, the best way that we have of controlling affordability is allowing the project to be designed so that the units will be affordable. Based on their representation we can put a condition in that the units be marketed within certain ranges because beyond the point of initial sale it is difficult to guarantee that the units remain affordable.

Mr. Doug Hill, partner in the development, responded to various questions from Council. He said that he did not have any problem with the condition that the units be marketed within certain ranges. The only things that would concern them would be conditions that would raise the cost per unit of the project. He said there were some things they can do to reduce the noise on a unit basis like additional insulation in the walls. He explained the open space in the center is a different grade and also felt that once the homeowners association gets established they may wish to develop the basketball court space into something else.

Councilman Davis moved to adopt Ordinance No. 3293, granting a conditional use permit for Biltmore Point, located on Fairview Road, subject to the following conditions: (1) All outstanding TRC conditions are met; (2) The conditions of affordability be

worked out between City staff and the applicant and reviewed by the City Attorney's office for legal sufficiency; (3) Work with City staff to address the buffer along Fairview Road in lieu of an undisturbed area; (4) A traffic study be performed to determine the need for a left turn lane on Fairview Road. If the turn lane is required it will be the responsibility of the developer to provide this improvement; (5) Provide a right-of-way for the emergency access road to be converted into a full access in the future if the Traffic Impact Analysis shows a need; and (6) The sidewalk on Stoner Road be waived. This motion was seconded by Councilwoman Jones.

Councilman Newman was concerned about what happens if after the buildout, the developer can't market the units in the affordability range. City Attorney Oast said that the City can (1) modify the conditional use permit; (2) issue fines and get some kind of financial payback as a result of violating the conditional use permit; or (3) revoke their conditional use permit.

In response to Councilwoman Bellamy, Mr. Shuford said that the applicants will not perform the Traffic Impact Analysis until further along in the project, however, City staff will update Council once we know what the Traffic Impact Analysis shows.

Vice-Mayor Mumpower explained why he would not be able to support the project because he felt Council is bending their rules for this project.

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Upon inquiry of Councilman Dunn, Mr. Butzek said that from a technical standpoint, it would be a positive to the development to have two access points. In this case staff felt that if the Traffic Impact Analysis showed traffic could be accommodated from one access, with an emergency access with the option of opening it up in the future, then one access would suffice.

The motion made by Councilman Davis and seconded by Councilwoman Jones carried on a 6-1 vote, with Vice-Mayor Mumpower voting "no."

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C. PUBLIC HEARING TO CONSIDER REZONING NINE PROPERTIES ON COUNTRY GARDEN LANE FROM RM-8 RESIDENTIAL MULTI-FAMILY MEDIUM DENSITY DISTRICT TO RM-8 RESIDENTIAL MULTI-FAMILY MEDIUM DENSITY DISTRICT/MANUFACTURED HOUSING OVERLAY

ORDINANCE NO. 3294 - ORDINANCE TO REZONE NINE PROPERTIES ON COUNTRY GARDEN LANE FROM RM-8 RESIDENTIAL MULTI-FAMILY MEDIUM DENSITY DISTRICT TO RM-8 RESIDENTIAL MULTI-FAMILY MEDIUM DENSITY DISTRICT/MANUFACTURED HOUSING OVERLAY

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

Development Services Director Joe Heard said that this is the consideration of an ordinance to rezone 9 properties on Country Garden Lane from RM-8 Residential Multi-Family Medium Density District to RM-8 Residential Multi-Family Medium Density District/Manufactured Housing (MH) Overlay. This public hearing was advertised on October 14 and 21, 2005.

Mr. Heard said that of the nine lots within the subject area, six of the parcels presently contain manufactured homes and another parcel contains a modular home. The residences appear to be newer models and kept in good condition. In fact, at least three of the manufactured homes are set on permanent foundations similar to a modular home. The proposed Manufactured Housing Overlay zone is requested to allow the remaining parcels to be developed in a manner similar to the rest of the neighborhood. Several adjoining residential neighborhoods to the west already have a manufactured home overlay and contain a mixture of mobile, manufactured, and stick-built homes.

Pros

- Several, larger residential neighborhoods abutting the subject area already have MH Overlay zoning.
- Placement of the MH Overlay District would bring many existing uses into conformity and allow for compatible future infill development.
- With many existing manufactured and mobile homes in the surrounding area, adding the MH Overlay District would allow more affordable housing development in an appropriate area.

Cons

- Having the MH Overlay zoning would potentially discourage more substantial investment in this area of the community.

City staff recommends approval of the proposed Manufactured Home Overlay District.

Ms. Clarissa Cornette, resident on Country Garden Lane, spoke in support of this rezoning request.

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Mayor Worley closed the public hearing at 6:47 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. 3294. This motion was seconded by Vice-Mayor Mumpower and carried unanimously.

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At 6:48 p.m., Mayor Worley announced a short recess.

D. PUBLIC HEARING TO CONSIDER CONDITIONAL ZONING FOR PROPERTY LOCATED ON MARDELL CIRCLE FROM RM-8 RESIDENTIAL MULTI-FAMILY MEDIUM DENSITY DISTRICT TO RM-16 RESIDENTIAL MULTI-FAMILY HIGH DENSITY DISTRICT/CONDITIONAL ZONING FOR A PROPOSED CHILDCARE CENTER

Ms. Patsy Brison, attorney representing the applicant, said that her client has spent some time reviewing the Planning & Zoning Commission report and the City's staff report, in addition to spending a lot of time talking with the neighborhood, and they feel it might be helpful to remand this issue back to the Planning & Zoning Commission. Therefore, she asked Council to consider a motion to remand this matter back to the Planning & Zoning Commission in order for them to address some of the issues raised by the neighborhood and possibly adjust the project.

City Attorney Oast said that a valid protest petition has been received. If this matter is remanded back to the Planning & Zoning Commission, a new protest petition would have to be filed.

Vice-Mayor Mumpower moved to remand this issue back to the Planning & Zoning Commission. This motion was seconded by Councilman Newman.

The following individuals spoke in favor of continuing the hearing at this meeting and against remanding this matter back to the Planning & Zoning Commission for various reasons, some being, but are not limited to: applicant also requested postponement at the Planning & Zoning public hearing; postponement is an attempt to wear down residents opposed to rezoning; difficult to keep community organized; applicant has already met with community and no effort has been made to look at their point of view; nothing will change at the Planning and Zoning Commission because there is nothing to negotiate; and neighborhood has been inconvenienced by attending this meeting and now a postponement has been requested:

Mr. Jeff Mackey, resident on Bryant Street
Ms. Sharon Martin, resident on Mardell Circle
Mr. Rick Sculthorp
Ms. Evelyn Baker, area property owner
Mr. Ted Baker
Mr. Andy Askew, resident on Bryant Street
Ms. Gwendolyn Barton, area property owner
A resident on Mardell Circle
Ms. Laurie Newman, resident on Bryant Street

A resident who lives on Burton Street felt that this matter should be remanded back to the Planning & Zoning Commission. She said that she has a petition containing 250 names of people who are in support of the rezoning. She felt that child care is important to the community and

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postponing the matter will give the applicant an opportunity to look into the traffic issue and present correct information to Council.

Vice-Mayor Mumpower said that Council does recognize and understand the inconvenience for the neighborhood, but when you talk about development, it is not a seamless process. He agreed that this dialogue should have occurred before it came

to Council, but for Council to make a reasonable effort and allow the applicant to address the problems is the responsible thing to do.

The motion made by Vice-Mayor Mumpower and seconded by Councilman Newman carried unanimously.

E. PUBLIC HEARING TO CONSIDER REZONING SEVERAL PROPERTIES ALONG THE WESTERN END OF SARDIS ROAD, LOCATED ON SARDIS ROAD AND SAND HILL ROAD, FROM COMMUNITY BUSINESS II DISTRICT TO COMMERCIAL INDUSTRIAL DISTRICT

ORDINANCE NO. 3295 - ORDINANCE TO REZONE SEVERAL PROPERTIES ALONG THE WESTERN END OF SARDIS ROAD, LOCATED ON SARDIS ROAD AND SAND HILL ROAD, FROM COMMUNITY BUSINESS II DISTRICT TO COMMERCIAL INDUSTRIAL DISTRICT

Mayor Worley opened the public hearing at 7:44 p.m.

Development Services Director Joe Heard said that this is the consideration of an ordinance to rezone several properties along the western end of Sardis Road, located on Sardis Road and Sand Hill Road, from Community Business II District to Commercial Industrial District. This public hearing was advertised on October 14 and 21, 2005.

Mr. Heard said that on May 10, 2005, Asheville City Council evaluated a petition submitted by property owners along Sardis Road and authorized Planning & Development staff to conduct a zoning study of the area. He then reviewed the zoning study. He said that staff evaluated several potential alternatives for zoning and has proposed a mixture of Commercial Industrial (CI) and Community Business II (CB-II) zoning that accommodates a variety of needs in the area.

Pros

- This proposal seems to strike a balance between the provision for larger, more regional retail and services uses and community-scaled shopping and services to serve the surrounding neighborhoods.
- The CB-II district would provide an adequate space for development of a shopping area to serve the surrounding community.
- Development of the CB-II zoned area would be at a smaller, community scale with greater pedestrian orientation.
- Placement of the CI zoning would bring the existing uses into conformity and allow for the compatible future infill development.

Cons

- Developed uses within the remaining CB-II area, including the gas station/convenience store and car wash, would be allowed uses, but are developed in a nonconforming manner (parking in front of building, etc.).
- The CI zoning designation allows intensive business and industrial development. Light manufacturing, warehousing and wholesale uses are all permitted. The presence of residential uses in adjoining areas could lead to conflicts with these higher intensity uses.

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Per the zoning study, staff recommends maintaining the existing CB-II zoning for four parcels located at the intersection of Sardis and Sand Hill Roads and rezoning the remaining parcels in the study area to the CI district for the following reasons:

- Given the previous trends of commercial and industrial development in the study area before zoning was introduced in 2001, CI zoning would be consistent with the recent development of the area along Sardis Road.
- CI zoning along this stretch of Sardis Road would bring many nonconforming uses in the study area into conformity while providing for compatible infill development in the future.
- The Sardis Road and Sand Hill intersection is in a stronger location for CB-II zoning because of heavier traffic in this area, as well as residential development in relatively close proximity to the intersection. Zoning for CB-II on both sides of the intersection would encourage the development of a community-oriented shopping/service area in the future.

Mr. Paul Smith spoke in support of this rezoning request.

Mr. Mike Fryar questioned why three of the properties were not zoned Commercial Business II District.

Mayor Worley closed the public hearing at 7:56 p.m.

There was considerable discussion about the requirements and application of the Commercial Business II District in this

rezoning request as well as for the entire City.

Councilman Davis felt the area was rural and will have the suburban feel for many years to come. Therefore, he felt the entire study area should be zoned Community Industrial District.

Councilwoman Jones stated that Council asked our staff to study this area and their recommendation is for four lots to remain Community Business II District. In addition, the Planning & Zoning Commission has unanimously agreed. She then moved to support staff's recommendation to rezone 20 parcels along the western end of Sardis Road to Commercial Industrial District and retain the existing Commercial Business II District for 4 parcels. This motion was seconded by Councilman Newman and failed on a 3-4 vote, with Mayor Worley, Councilwoman Jones and Councilman Newman voting "yes" and Vice-Mayor Mumpower, Councilwoman Bellamy, Councilman Davis and Councilman Dunn voting "no."

There was a discussion about land planning in the extraterritorial jurisdiction area.

Councilman Davis moved to approve rezoning the 24 parcels along the western end of Sardis Road to Commercial Industrial District. This motion was seconded by Councilman Dunn and carried on a 5-2 vote, with Councilwoman Jones and Councilman Newman voting "no."

As a result of Council's discussion, City Manager Jackson said that it would be appropriate for a Planning & Development worksession to revisit the 2025 vision, annexation, goals and objectives, development patterns and standards, and where Council wants to apply these zoning designations. These topics also lend themselves well to developing the alternatives, seeking some public input on the vision and then the development patterns and land use regulations Council wants to put in place. We may talk about a more significant process than just a worksession presentation, but will lay something out for Council in term of what kind of report and presentation to Council and perhaps even some dialogue involving not only the community but also the Planning & Zoning Commission. We will review some of the process ideas after the first of the year.

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Councilman Newman said that if the City is going to do land use planning, then Council needs to hear and understand from our Planning & Zoning Commission and Planning staff about how growth and development is occurring around the City and what different choices would accomplish.

ORDINANCE BOOK NO. 22 – PAGE

F. PUBLIC HEARING TO AMEND SPECIFIC DEADLINE REQUIREMENTS FOR REZONING APPLICATIONS AND ZONING STUDY PETITIONS

ORDINANCE NO. 3296 - ORDINANCE TO AMEND CHAPTER 7 OF THE CODE OF ORDINANCES TO AMEND SPECIFIC DEADLINE REQUIREMENTS FOR REZONING APPLICATIONS AND ZONING STUDY PETITIONS

Mayor Worley opened the public hearing at 8:34 p.m.

Mr. Joe Heard, Development Services Director, said that this is the consideration of this amendment to the Unified Development Ordinance (UDO) for the purpose of amending specific deadline requirements for rezoning applications and zoning study petitions. This public hearing was advertised on October 14 and 21, 2005.

Presently, the UDO outlines a deadline of 9:00 a.m. on the first Monday of the month for the submittal of rezoning applications and zoning study petitions. This day/time conflicts with the application deadline for all other types of applications (conditional use permits, Level II/III projects, etc.). This amendment is proposed by staff to set a consistent deadline for the types of larger scale applications heard by the Technical Review Committee, Planning & Zoning Commission, and/or City Council.

Pro –

- The amendment would make application deadlines consistent for all larger development applications.

Con –

- Moves the currently stated deadline 5.5 working hours earlier.

The Planning and Zoning Commission recommended approval of these code amendments on September 7, 2005, by a unanimous vote of 6-0.

- City staff recommends City Council adopt the ordinance to amend specific deadline requirements for rezoning applications and zoning study petitions.

Mayor Worley closed the public hearing at 8:36 p.m.

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

Vice-Mayor Mumpower moved for the adoption of Ordinance No. 3296. This motion was seconded by Councilwoman Bellamy and carried unanimously.

ORDINANCE BOOK NO. 22 - PAGE

IV. UNFINISHED BUSINESS:

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V. NEW BUSINESS:

A. RESOLUTION NO. 05-201- RESOLUTION ACCEPTING THE DEED OF GIFT FOR THE COLONEL ROBERT K. MORGAN MEMORIAL PUBLIC ART ENTITLED "ASHEVILLE DEPARTURE"

Mr. David Mitchell, Cultural Arts Supervisor, said that this is the consideration of a resolution accepting an unrestricted gift to the Public Art Collection of the City of Asheville.

- On August 23, 2005, the Public Art Board unanimously approved the donation of artwork for the Colonel Robert Knight Morgan Memorial entitled "Asheville Departure." The value of the artwork is \$200,000 and will be located between City Hall and the Buncombe County Courthouse, which is the actual location of the Asheville Departure of Colonel Morgan and the Memphis Belle. This is a Deed of Gift to the City of Asheville from the Neal Hanks Sr. Community Foundation, Beverly Hanks & Associates and other community contributors.

As per the requirements of the Public Art Master Plan, a "Public Input Meeting" was held on October 3, 2005, to ascertain feedback from the community. The artwork was received with overwhelming approval and support from the community. The Public Art Board, collaborating artists and the architects from the Pack Square Conservancy, will work together to insure the artwork will be integrated into the design of the new City-County Plaza Pack Square Park.

PROS:

- Commemorates a decorated American war hero who is a native of Asheville
- Recognizes the exceptional talents and legendary status of Colonel Morgan as the pilot of the Memphis Belle
- Educates the community and visitors about the famous and unbelievable flight between City Hall and the County Courthouse
- Enhances the Public Art Collection by including a memorial of this local modern American war hero
- Encourages involvement of local businesses and corporations in the city's public art program and its process

CONS:

- Integrating the design of the Colonel Robert Knight Morgan Memorial in the overall design of the new Pack Square Park
- Cost of the memorial projected to be over \$200,000

This action is in keeping with the City of Asheville Strategic Plan by contributing to the (1) "Livability" of Asheville by recounting an uplifting experience in the life of the City of Asheville; (2) "Sense of Place" of Asheville and the need to educate citizens and visitors of its significant history and contributions of local citizens through the arts; (3) "Vibrancy" of Asheville's art scene and its commitment to the development and enhancement of the public art collection; (4) "Participation" of Asheville citizens in the public art process as programmatic and financial contributors; and (5) "Heritage & Art" through the significant historical account of that famous flight in Asheville and the need to celebrate and memorialize a local hero.

- City staff recommends City Council approve the unrestricted gift of the Colonel Robert K. Morgan Memorial "Asheville Departure" to the Public Art Collection of the City of Asheville.

Ms. Dana Irwin, member of the Public Art Board, explained how she designed the memorial. The symbolic columns are representative of two municipal buildings. The plan (B-17) will be angled at 60 degrees between the two columns, with wind powered propellers. There will be an information plaque/artwork suspended between two columns. Metal propellers inlaid in ground level base structure with cement roundabout viewing area. The dimensions will be (1) 20 feet high (10 feet wide and 8 feet deep); (2) columns will be pink/grey granite; (3) plane will be cast aluminum; (4) plaque will be bronze; and (5) base will be concrete with inlaid metal propellers.

Mr. Steven Duncan, Chair of the Neal Hanks Sr. Community Foundation, discussed how the funding focus will be private and nature of the gift.

In response to Councilman Dunn, Mr. Mitchell said that a significant contribution of marble for the Memphis Belle and the Col. Robert K. Morgan Memorial will come from the Asheville Regional Airport.

Councilwoman Jones would support allocating funds from the Public Art Board allocation for this project, given the historical nature of the Memorial and its location.

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

Vice-Mayor Mumpower moved for the adoption of Resolution No. 05-201. This motion was seconded by Councilman Dunn and carried unanimously.

RESOLUTION BOOK NO. 29 – PAGE

VI. OTHER BUSINESS:

Vice-Mayor Mumpower announced current vacancies on the Alcoholic Beverage Control Board and the Citizens-Police Advisory Committee.

Vice-Mayor Mumpower thanked Housing Authority staff, volunteers and residents for their work at Altamont Apartments for fixing and cleaning their game room.

The following claims were received by the City of Asheville during the period of October 7-20, 2005: Loren Hord II (Transit Services), Loraine Wright (Transit Services), Chris Eby (Police), Peter Pardee (Transit Services), Hertz Rental (Parks & Recreation), Sherif Bytyqi (Sanitation), Phil Stubblefield (Sanitation), Dana Alexander (Transit Services), Kimbra Waters (Transit Services), Avail Med Prop (Water), and BellSouth (Water). These claims have been referred to Asheville Claims Corporation for investigation.

VII. INFORMAL DISCUSSION AND PUBLIC COMMENT:

Mr. Gene Hampton spoke to City Council about the need for a quality management system.

Mr. Mike Fryar spoke about the finances of the construction at Pack Square, annexation, and affordable housing.

At this time, 8:52, Mayor Worley left the meeting and did not return.

Mr. Joe Minicozzi and Mr. Reid Thompson spoke about the problems they are encountering on Maxwell Street from Greenlife Grocery and their alleged violations. City Attorney Oast advised City Council that they are in litigation on this matter, and provided Council with a general response regarding the loading docks. He then said that he has sent a letter to Ms. Patsy Brison, attorney for Greenlife Grocery, today and a recommendation in the letter was that a group be formed where an on-going dialogue of these kinds of issues could take place. He offered to assist in that process as much as the City can.

VIII. ADJOURNMENT:

Vice-Mayor Mumpower adjourned the meeting at 9:14 p.m.

CITY CLERK

MAYOR