

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

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

INVOCATION

Councilman Davis gave the invocation.

I. PROCLAMATIONS:

A. RESOLUTION NO. 05-208 - RESOLUTION OF SUPPORT FOR THE NATIONAL GUARD AND RESERVE

Mayor Worley read and presented the resolution which supports the City of Asheville employees who are in the National Guard and Reserve to Mr. David Burnette, representing the Department of Defense, the Under Secretary for Reserve Affairs, and the NC Committee for Employer Support of the Guard and Reserve. Mr. Burnette presented the City of Asheville with a plaque that salutes the employers who go above and beyond the call of duty.

Councilwoman Bellamy moved for the adoption of Resolution No. 05-208. This motion was seconded by Councilman Newman and carried unanimously.

RESOLUTION BOOK NO. 29 - PAGE

II. CONSENT AGENDA:

At the request of Vice-Mayor Mumpower, Consent Agenda "B" was pulled from the Consent Agenda for an individual discussion.

A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON NOVEMBER 9, 2005, AND THE WORKSESSION HELD ON NOVEMBER 15, 2005

B. RESOLUTION AUTHORIZING THE MAYOR TO SIGN A MUNICIPAL AGREEMENT WITH THE N.C. DEPT. OF TRANSPORTATION TO RECEIVE GRANT FUNDS TO DEVELOP A BIKE PLAN

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

C. RESOLUTION NO. 05-210 - RESOLUTION APPROVING A HOUSING TRUST FUND LOAN FOR VANDERBILT APARTMENTS

Summary: The consideration of a resolution approving a \$150,000 Housing Trust Fund loan for the preservation of affordable rental housing at Vanderbilt Apartments.

-2-

National Church Residences, Inc. (NCR) has requested a Housing Trust Fund (HTF) Loan in the amount of \$150,000 as partial financing for its proposed acquisition and rehabilitation of the Vanderbilt Apartments. NCR has recently completed a similar project at the Battery Park Apartments.

NCR will acquire the property from the current non-profit owner, for \$1 plus assumption of outstanding loan obligations, and, using Low Income Housing Tax Credits and other financing, will extensively renovate the building, the interior of which has been essentially unchanged for 30 years. In the process they will convert many of the hard-to-lease efficiency units into 1-

bedroom units, reducing the number of units from 141 to 123.

In April, Council awarded \$250,000 in HOME funds to this project. Since then, estimated costs have increased from \$10,000,000 to \$11,000,000. Most of this has been offset by increased tax credit revenues. The remaining gap will be filled by deferring more of the developer fee and by this HTF loan. All other financing is now in place, and NCR plans to start work early in 2006.

The application was evaluated by a panel of staff and outside experts and scored well against the HTF criteria. The Housing and Community Development Committee reviewed the application on October 31, 2005, and has recommended awarding an HTF loan of \$150,000 at 2% interest amortized over a 30 year term.

Advantages:

- Long-term preservation of 123 units of affordable housing for the elderly and disabled
- Keeps affordable housing downtown
- Brings a significant tax-exempt property back on to the tax-rolls with estimated annual tax revenue of \$80,000

Disadvantages: None

Staff recommends City Council approve a \$150,000 Housing Trust Fund loan to National Church Residences.

RESOLUTION BOOK NO. 29 – PAGE

D. RESOLUTION NO. 05-211 - RESOLUTION AUTHORIZING THE CITY MANAGER TO APPLY FOR AND ENTER INTO AN AGREEMENT WITH THE N.C. GOVERNOR'S HIGHWAY SAFETY PROGRAM TO ASSIST THE ASHEVILLE POLICE DEPARTMENT IN THE INVESTIGATION AND REDUCTION OF TRAFFIC CRASHES

Summary: The consideration of a resolution authorizing the City Manager to apply for and enter into an agreement with the N.C. Governors Highway Safety Program to assist the Asheville Police Department in the investigation and reduction of traffic crashes, and an accompanying budget amendment, in the amount of \$252,380,

The Police Department and the City of Asheville have the opportunity to be considered for a grant from the North Carolina Governors Highway Safety Program (GHSP) for equipment to outfit a dedicated traffic unit. The total amount of the grant is \$252,380, which includes \$183,690 in grant funds from GHSP and a required City match of \$68,690.

This grant will allow the City to fully outfit a dedicated traffic unit of five officers for traffic enforcement, accident reduction, community traffic education, and overall improved public safety.

-3-

The grant includes fully equipped police vehicles and special traffic investigation and enforcement equipment. The equipment, training and technology provided in this grant will enhance the police department's ability to conduct traffic crash reconstruction. This is an equipment only grant with no personnel cost.

This grant opportunity came about after the adoption of the 2005/06 budget, so the City match of \$68,690 was not budgeted. However, funds have been identified for the local match. The Police Department has been able to save \$42,675 in the school crossing guard program following a review and redesign of the program. The remaining \$26,015 needed for the City match will be taken from the Manager's contingency funds. This will leave \$158,469 in the Manager's contingency account for other needs that may arise during the remainder of the fiscal year.

Pros

- The Police Department obtains much needed traffic enforcement equipment that will improve its ability to address traffic related issues throughout the City.
- The City does not have to bear the full cost of initially purchasing the equipment.

Cons

- The City is required to use \$26,015 in contingency funds.
- The City will have to bear the full cost of replacing the equipment in future budgets.

This grant opportunity meets Council's focus area of *Partnerships to Improve Critical Services & Infrastructures* under Goal 2:

Diversified and broadened revenue sources – Develop alternate revenue sources that are available to address local needs.

- City staff requests City Council adopt a resolution authorizing the City Manager to apply for and enter into an agreement with the N.C. Governors Highway Safety Program to assist the Asheville Police Department in the investigation and reduction of traffic crashes, and an accompanying budget amendment, in the amount of \$252,380,

RESOLUTION BOOK NO. 29 – PAGE

E. ORDINANCE NO. 3301 - BUDGET AMENDMENT FOR GRANT FUNDS FROM THE N.C. GOVERNOR'S HIGHWAY PROGRAM TO PURCHASE TRAFFIC ENFORCEMENT EQUIPMENT

Summary: See Consent Agenda Item "D" above.

ORDINANCE BOOK NO. 22 – PAGE 308

F. RESOLUTION NO. 05-212 - RESOLUTION TO RE-DESIGNATE THE ASHEVILLE STATE DEVELOPMENT ZONE

Summary: The consideration of a resolution to re-designate the Asheville State Development Zone as proposed.

- The State of North Carolina has designated certain census tracts and census block groups in and around the City of Asheville as qualified for inclusion in a State Development Zone. Development zones were created to provide economic incentives to stimulate new investment and job creation in economically distressed urban areas. The City of Asheville has been a participating member in this program since its inception in 1999.

-4-

The current State Development Zone for Asheville will expire on December 31, 2005. Application for re-designation is due and, if approved, will take effect January 1, 2006, for a period of two years.

Staff has revisited the Asheville State Development boundaries and supporting data. Pursuant to the state-mandated guidelines, staff has been able to identify two new, previously undesignated areas for inclusion. The Development Zone area will now include Census Tract 4, Block Group 1 (North Asheville area along Merrimon Ave, north of WT Weaver Blvd) and Census Tract 21.02, Block Group 2 (South Asheville area east of Sweeten Creek Rd). The total zone must have a minimum of 20% population below the poverty level.

Re-designating the Development Zone would provide multiple opportunities to promote the City of Asheville's Strategic Operating Plan goals. The program is designed to stimulate new job creation and employment training, and encourage business expansion and small business development.

Advantages: Continued incentives for investment in economically distressed areas. The inclusion of significant commercial/industrial zoned areas of Asheville.

Disadvantages: None.

Staff recommends City Council adopt the resolution defining the State Development Zone to be effective January 1, 2006, through January 1, 2008.

RESOLUTION BOOK NO. 29 – PAGE

G. RESOLUTION NO. 05-213 - RESOLUTION AUTHORIZING THE EXCHANGE OF A PORTION OF REAL PROPERTY LOCATED ON WEST CHESTNUT STREET FOR A PORTION OF REAL PROPERTY LOCATED ON MAGNOLIA AVENUE

Summary: The consideration of a resolution authorizing the Mayor to convey a portion of real property located on West Chestnut Street in exchange for a portion of real property located on Magnolia Avenue.

- The City and Allen & Susan Roderick (Rodericks) have negotiated an exchange of a portion of City owned real property on West Chestnut Street for a portion of Rodericks property at 8 Magnolia Avenue that will allow an improved course for the Reed Creek Greenway Trail.

The proposed location of the Reed Creek Greenway Trail is just west of Broadway and borders Reed Creek for most of its length. Between West Chestnut Street and Magnolia Avenue there is a "pinch point" that is created by the proximity of the Roderick property to Reed Creek forcing the trail closer to the top of the creek bank where the topography poses a challenge for construction. The proposed exchange of property will allow the trail to follow a less constrictive path.

The City's property (PIN No. 9649.14-23-5411) is on the north side of West Chestnut Street about 100' west of its intersection with Broadway, zoned Neighborhood Corridor District (NCD) and comprising 0.24 acre±. The portion to be exchanged is a 0.05 acre± parcel at the rear of the City's lot that adjoins Rodericks' property. This part of the property due to its configuration is not particularly useful to the greenway design.

The property owned by Rodericks (PIN 9649.13-23-4418) at 8 Magnolia Avenue is on the south side of the street about 100' west of its intersection with Broadway. It comprises 0.24 acre±

-5-

and is zoned NCD. The portion to be exchanged is a 0.05 acre± parcel located at the rear of the property adjoining the City's property.

The value of each parcel was determined by reviewing the tax assessment for the whole property and extrapolating a value for the cut out portion based on the per acre value of the whole. Both whole lots are 0.024 acre± and have an assessed tax value for land in the amount of \$64,000. That reflects a per acre value of about \$267,000. Both cut out parcels are 0.05 acre± which calculates to about \$13,350.

The positive aspects of the transaction are:

- The exchange will be a fair exchange of value for value.
- It will be revenue neutral returning property to the tax rolls in exchange for property being taken off the tax rolls.
- It is consistent with the greenway master plan.
- It will provide a better less constrictive path for the greenway trail.
- It is an efficient use of resources both public and private, because the City will own property more functional to the greenway and un-needed property will return to private ownership.

There are no negative aspects to this proposal.

Approval of the resolution will authorize the exchange of the properties pursuant to the provisions of N. C. G. S. 160A-271.

Planning & Development and Parks & Recreation staff recommend adoption of the resolution authorizing the Mayor to convey a portion of real property located on West Chestnut Street in exchange for a portion of real property located on Magnolia Avenue.

RESOLUTION BOOK NO. 29 – PAGE

H. RESOLUTION NO. 05-214 - RESOLUTION AUTHORIZING THE CITY CLERK TO ADVERTISE AN OFFER TO PURCHASE PROPERTY ON BENT TREE ROAD

Summary: The consideration of a resolution authorizing the City Clerk to advertise an offer to purchase property on Bent Tree Road.

A bid has been received from Sheryl H. Williams in the amount of \$16,000 for the purchase of land on Bent Tree Road.

The land on Bent Tree Road was acquired by the City from Sunset Mountain Company, Inc. in 1954. It is an irregular shaped lot comprising 1.2 acre±. It is very steep and wooded and runs in a long and narrow north/south direction between and parallel to Bent Tree Road and Old Toll Road. It is zoned RS2, but the slope and shape render the lot unsuitable as a home site. The deed of conveyance to the City also restricts the property prohibiting any building or structure of any kind. The bid from Sheryl H. Williams, owner of property across the street, is in the amount of \$16,000. Williams has provided an appraisal prepared by Mark Morris SRA dated September 29, 2005, estimating the market value of the property at \$16,000. Williams proposes to acquire the property to maintain the lot consistent with the residential character of the neighborhood. She is aware of the deed restrictions and does not plan any construction.

The positive aspects of the transaction are:

-6-

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.

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

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 Councilwoman Jones and carried unanimously.

ITEM PULLED FROM THE CONSENT AGENDA FOR DISCUSSION

RESOLUTION NO. 05-209 - RESOLUTION AUTHORIZING THE MAYOR TO SIGN A MUNICIPAL AGREEMENT WITH THE N.C. DEPT. OF TRANSPORTATION TO RECEIVE GRANT FUNDS TO DEVELOP A BIKE PLAN

Summary: The consideration of a resolution approving a municipal agreement with the North Carolina Department of Transportation (NCDOT) to receive \$24,000 in grant money to develop a bicycle plan for the City of Asheville.

In 2004 the City Council approved a grant application to the NCDOT for \$24,000 to develop a bicycle plan in Fiscal Year 2005-06. This grant was awarded in May of 2005. The plan requires \$16,000 in local matching funds. The matching funds are already budgeted in the Fiscal Year 2005-06 operating budget. In addition, the Blue Ridge Bicycle Club has agreed to contribute \$1,000 toward the local match.

The bicycle plan will be developed beginning in early 2006. City staff will oversee the project, which will be carried out by a consultant.

This project supports the Asheville 1998 Greenway Master Plan and 2003 Update and the 2025 City Development Plan. It also implements several tasks in City Council's Strategic Operations Plan in the areas of:

- Planning, Goal #2, Obj. A, Tasks 1 and 2 – to incorporate multi-modal uses of transportation options and to leverage outside funding to achieve multiple transportation goals where possible.
- Planning, Goal #2, Obj B, Tasks 1 and 2 – to determine opportunities for managing traffic demand and to explore public-private partnerships with major employers and education providers to increase the effectiveness of the transportation system.
- Sense of Place, Heritage & Arts, Goal #3, Obj. B, Task #1 – to construct infrastructure including bicycle facilities to accommodate growth downtown.
- Natural and Built Environment, Goal # 2, Obj. A, Tasks 1-4 – to implement the Wilma Dykeman Riverway Plan and the Completion of several Greenways
- Natural and Built Environment, Goal #2, Obj. B, Task 1 – to work with the State to fund greenway projects via the Transportation Improvement Plan.

Consideration:

-7-

- Executing this municipal agreement is one of the required formal steps to follow-through on the 2004 commitment to pursue this grant and develop a bicycle plan for the City of Asheville in Fiscal Year 2005-06.

City staff recommends City Council approve the resolution approving a municipal agreement with the N.C. Dept. of

Transportation to receive \$24,000 in grant money to develop a bicycle plan for the City of Asheville.

Vice-Mayor Mumpower felt that the City is already making an active effort for bike paths where they lend themselves and wondered if this was the best way to spend \$40,000 when he did not feel this grant would have a meaningful impact on the reality

Councilwoman moved for the adoption of Resolution No. 05-210. This motion was seconded by Councilwoman Jones and carried on a 5-2 vote, with Vice-Mayor Mumpower and Councilman Dunn voting "no."

RESOLUTION BOOK NO. 29 – PAGE

III. PUBLIC HEARINGS:

A. PUBLIC HEARING TO CONSIDER AMENDING THE UNIFIED DEVELOPMENT ORDINANCE TO DELETE THE PLANNED UNIT DEVELOPMENT ZONING OVERLAY DISTRICT

Vice-Mayor Mumpower moved to reschedule this public hearing to a later date. This motion was seconded by Councilwoman Bellamy and carried unanimously.

B. PUBLIC HEARING TO CONSIDER THE VOLUNTARY ANNEXATION OF PROPERTY LOCATED OFF OF PATTON MOUNTAIN ROAD

ORDINANCE NO. 3302 - ORDINANCE TO EXTEND THE CORPORATE LIMITS OF THE CITY OF ASHEVILLE TO INCLUDE PROPERTY LOCATED OFF OF PATTON MOUNTAIN ROAD

Mayor Worley opened the public hearing at 5:16 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 portions of two lots located off of Patton Mountain Road. This public hearing was advertised on November 11, 2005.

William J. Kimpton, President, on behalf of Ranch 19 Corp., has petitioned the City of Asheville for the annexation of portions of two lots owned by the corporation and located at Patton Mountain Road just off of the intersection of Patton Mountain with Griffing Boulevard. The PIN Nos. of the lots involved are 9740.16-93-6462 and 9740.16-83-8119. These areas are contiguous to the existing corporate limits and qualify for annexation by petition as set forth in N. C. Gen. Stat. sec. 160A-31.

These areas are part of a larger tract of land that has been reviewed and approved (with conditions) for the creation of a seventeen (17) lot subdivision to be known as Grove Park Cove. The entire tract is approximately 30 acres in size (with a current assessed valuation of \$369,100.00). The portions to be annexed are 3.51 acres in size.

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

-8-

If City Council decides to proceed with this request, it is proposed that the annexation become effective on November 30, 2005.

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 under one jurisdictional review.

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.

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.

Vice-Mayor Mumpower moved for the adoption of Ordinance No. 3302. This motion was seconded by Councilwoman Jones and carried unanimously.

ORDINANCE BOOK NO. 22 – PAGE 310

C. PUBLIC HEARING TO CONSIDER THE INITIAL ZONING OF PROPERTIES ALONG COLUMBINE ROAD AND HEATHBROOK CIRCLE TO RS-8 RESIDENTIAL SINGLE-FAMILY HIGH DENSITY DISTRICT

ORDINANCE NO. 3303 - ORDINANCE TO ZONE PROPERTIES ALONG COLUMBINE ROAD AND HEATHBROOK CIRCLE TO RS-8 RESIDENTIAL SINGLE-FAMILY HIGH DENSITY DISTRICT

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

Urban Planner Julia Cogburn said that this is the consideration of an ordinance to zone properties along Columbine Road and Heathbrook Circle to RS-8 Residential Single-Family High Density District. This public hearing was advertised on November 11 and 18, 2005.

The City of Asheville has recently annexed properties located in Biltmore Park, the most recent annexation becoming effective on September 30th of this year. The purpose of this initial zoning is to zone these odd properties that had not been taken into the City's extraterritorial jurisdiction because they were under Buncombe County's planning jurisdiction. The proposed zoning is RS8 – the zoning of the surrounding properties. Biltmore Farms, Inc. has been contacted concerning this proposal and is supportive of the recommendation.

The City's Technical Review Committee evaluated this initial zoning and voted unanimously in favor of supporting the recommended zoning classification.

-9-

Pros

.. Zones properties recently taken into the City of Asheville in consideration of the surrounding zoning and land use.

Cons

None.

The Planning and Zoning Commission of the City of Asheville, at its meeting on November 2, 2005, unanimously recommended approval of this initial zoning to the Asheville City Council. The Planning and Development Staff and the City's Technical Review Committee also recommend this initial zoning.

Mayor Worley closed the public hearing at 5:20 p.m.

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

Councilwoman Jones moved for the adoption of Ordinance No. 3303. This motion was seconded by Councilwoman Bellamy and carried unanimously.

ORDINANCE BOOK NO. 22 – PAGE 312

D. PUBLIC HEARING TO CONSIDER CONDITIONAL ZONING OF PROPERTY LOCATED ON MERRIMON AND FENNER AVENUES FROM COMMUNITY BUSINESS I TO NEIGHBORHOOD CORRIDOR DISTRICT/CONDITIONAL ZONING FOR A PROPOSED OFFICE BUILDING WITH A BANK DRIVE-THROUGH

ORDINANCE NO. 3304 - ORDINANCE TO CONDITIONALLY ZONE PROPERTY LOCATED ON MERRIMON AND FENNER AVENUES FROM COMMUNITY BUSINESS I TO NEIGHBORHOOD CORRIDOR DISTRICT/CONDITIONAL ZONING FOR A PROPOSED OFFICE BUILDING WITH A BANK DRIVE-THROUGH

Mayor Worley opened the public hearing at 5:21 p.m.

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.

Planning & Development Director Scott Shuford said that this is the consideration of an ordinance to conditionally zone property located on Merrimon Avenue and Fenner Avenue from Community Business I District to Neighborhood Corridor District/Conditional Zoning for a proposed office building with a bank drive-through. This public hearing was advertised on November 11 and 18, 2005.

Mr. Shuford said that Neighborhood Corridor District (NCD) zoning requires corner properties to address the corner by placing the building within the maximum setback areas at the corner. In this case, the corner street – Fenner – is a wholly residential street that intersects Merrimon Avenue at a sharp angle and is much higher in elevation than Merrimon along most of its length. Access to Fenner from the subject property is precluded by code. Because of these circumstances, staff has classified this property not as a corner lot but as a mid-block lot for the purpose of applying the building placement and setback requirements of the NCD district.

-10-

The 2025 Plan classifies Merrimon Avenue as an Urban/Neighborhood Corridor: “The Urban/Neighborhood Corridor connects neighborhoods with each other, with employment centers, with institutional uses, and with major thoroughfares. Mixed-use structures, typically 2 to 4 stories in height, contain retail, office, and residential uses that serve and are complemented by adjacent neighborhoods. Sidewalks, streetscape and building design acknowledge and provide a safe environment for the significant pedestrian users of the urban/neighborhood corridor. “ The proposed development is consistent with this type of development when conditioned as recommended by the Planning & Zoning Commission and City staff.

A variance request to permit a bank drive-through was denied by the Board of Adjustment on April 25, 2005. The Planning and Zoning Commission directed staff to investigate a revised zoning pattern for Merrimon Avenue on May 4, 2005.

The proposed development redevelops an existing nonconforming fast-food restaurant development/drive-through with a multistory bank/retail/office building. The proposed drive-through would serve a bank and would have limitations placed on the hours of operation.

A policy issue for this development involves the drive-through. Drive-through uses are not allowed in CB-I zoning and staff opposed a prior variance request to allow a drive-through on this site. Drive-through uses were specifically avoided in the 1997 Unified Development Ordinance (UDO) rezoning of much of Merrimon Avenue and later-hour drive-throughs associated with pharmacies on Merrimon Avenue have not been approved. Staff feels that a rezoning approach is the best way to gauge current policy direction on this matter.

In the subject case, the proposed drive-through would serve a bank as opposed to the current fast food restaurant drive-through that is grandfathered. This allows strict limits to be placed on the hours of operation of the drive-through. The applicant has agreed to provide 24-hour ATM service on the street side of the development that will be accessible only to pedestrians.

The design of the proposed development is fully compliant with and helps implement the 2025 Plan. It is consistent with desirable new and older development on Merrimon Avenue in terms of scale, including building height and orientation. The applicant has added features recommended by the neighborhood, including distinguishing driveway location through special pavement treatments where they cross the sidewalk, the construction of a missing sidewalk segment between Fenner and Larchmont, and crosswalk and pedestrian-signal installation at Merrimon and Larchmont. The existing buffer will remain. The applicant has also agreed to rezone a separate tract to the rear of the site from CB-II to RS-8 at the neighborhood's request.

City Council must take formal action as set forth in section 7-9-9(c)(4) of the UDO and must take the seven standards for approval of conditional use permits into account when considering conditional zoning requests. Staff review indicates that all standards are met as proposed in the site plan and the recommended conditions of approval.

1. That the proposed use or development of the land will not materially endanger the public health or safety. *The development is designed to meet City standards for access and site design; it poses no danger to public health or 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 development will convert a non-conforming developed site into one meeting City landscaping and buffering standards. Existing on-site vegetation will remain largely intact and be supplemented with additional plantings.*

-11-

3. That the proposed use or development of the land will not substantially injure the value of adjoining or abutting property. *City standard buffering will be provided. The site is considerably lower in elevation than the neighboring residential development and this topography change provides a natural buffer. The proposed development is a significant upgrade from the prior land use in terms of on-site activity, noise, and hours of operation. Property values should not be negatively impacted by this development.*
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 development is consistent with the recommended development pattern for the corridor according to the 2025 Plan. The building location is topographically separated from residential areas, site lighting and buffering standards will address visual and audible impacts.*
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 proposed development is consistent with the recommended development pattern for the corridor according to the 2025 Plan.*
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 proposed development is a mixed use, infill redevelopment that makes appropriate use of infrastructure serving the site.*
7. That the proposed use will not cause undue traffic congestion or create a traffic hazard. *The City Traffic Engineer has approved the site access and traffic study. The proposed access will meet current City access standards.*

Pros

- Redevelops a nonconforming site to a fully-conforming one.
- Complies with and helps implement the 2025 Plan.
- Appropriately utilizes existing infrastructure and contains many pedestrian features.

Cons

- Would "legitimize" a drive-through use on this site.

The Planning and Zoning Commission recommended that Council approve the proposed conditional zoning proposal subject to the following conditions. Staff also recommends approval subject to the same conditions: (1) All TRC conditions shall be met; (2) The teller-assisted drive-through operation shall be limited to the hours between 7:00 a.m. to 6:00 p.m. Monday through Saturday; (3) Site lighting shall be limited to a maximum of 12 feet in height and fitted with 90-degree cutoff fixtures to minimize light trespass onto adjoining properties. Site lighting shall be oriented away from residential properties; (4) Retention areas shall be designed as rain-gardens with slopes and depths so as to not require protective fencing; (5) The ATM shall be placed on the front of the building and not be part of the drive-through; (6) Pedestrian design (distinct pavement treatments) shall be installed where driveways cross the sidewalk; (7) The applicant shall install a sidewalk connection between Fenner and Larchmont prior to any occupancy of the building; (8) The applicant shall install a pedestrian crosswalk and signalization across Merrimon at Larchmont prior to any occupancy of the building; (9) Large shade trees shall be utilized for interior landscaping; and (10) The southernmost driveway shall be designed to be right-out only.

Mr. Shuford presented City Council with a list of conditions from the Grace Neighborhood Association. He said that Ms. Billie Buie, representing the Grace Neighborhood Association, met

-12-

with Mr. Greg Edney, the developer, and they have agreed on the conditions. However, one item still in question is the sidewalk specification of a ten-foot width. The Association would prefer a two-foot buffer-planting space between the sidewalk and Merrimon Avenue. It was his understanding that Mr. Edney is in agreement with that, however, he needed to clear it through the City's Traffic Engineer. The Association feels that an 8-foot width on most of Merrimon will be sufficient, especially if a buffer is used between the sidewalk and the street. They hoped City Council would include the following conditions in the ordinance: (1) A copy of the final conditions set by City Council will be attached to or recorded on all site plans used for inspection purposes by City staff. This is to insure that inspectors are aware, on site, of all conditions that need to be met. Representatives of Grace

Neighborhood Association will review those conditions if they feel the conditions aren't being met; (2) The sidewalk between Fenner and Larchmont that the developer has agreed to build will be completed by the time a CO is granted for the proposed development. The retaining wall behind said sidewalk will be faced with stone or brick or pavers of equal quality. No cinderblock.; (3) The façade of the proposed buildings will be faced with stone, brick, stucco or materials of equal quality to those listed; (4) Real windows will be built into both floors of the proposed building; (5) The South "exit only" curb cut will be a right-turn only exit and will have signage to that effect; (6) Both proposed curb cuts will include paving material different from that of the driveway where the sidewalk crosses it (for pedestrian safety); (7) Hours of operation for the drive-through on the site will be limited to regular banking hours; (8) Rain gardens as shown on the site plan will remain as rain gardens and not just retention basins. Shade trees will be part of the islands used for rain gardens to help shade paved areas; (9) Shade trees that will reach a mature height of greater than 30-feet will be used in the parking lot to shade paved areas; (10) On-site lighting will be low level and directed away from adjacent residential properties; (11) Speaker systems used at the drive-through area will remain at low levels; and (12) signage for the site will follow the requirements of the existing CB-I zoning if it is more restrictive than the proposed NCD/conditional use. Mr. Shuford said that many of the conditions are covered in the staff's recommendation; however, for some conditions he presented alternates or revised conditions.

Ms. Patsy Brison, attorney representing the developer, spoke in support of the conditional zoning, noting how the developer has met with the neighborhood and has made many revisions at the suggestion of the neighborhood.

There was considerable discussion of the hours of operation of the drive-through, in that the staff recommendation was limited between 7:00 a.m. to 6:00 p.m. Monday through Saturday; the neighborhood and developer agreed to 8:30 a.m. to 6:00 p.m. Monday through Friday; and some members of Council were apprehensive about restricting the bank's drive-through hours when the banking business is evolving.

Mr. Shuford responded to Council's concerns associated with some of the neighborhood conditions.

Mr. W. Louis Bissette, attorney representing the property owners who signed the valid protest petition, urged Council to either deny the conditional zoning, or remand it back to the Planning & Zoning Commission for significant changes to the site plan. The proposed structure would block the visibility of the small shopping center just to the south of it. He felt that the proposed zoning is more permissive than the current zoning, allowing the larger building and drive-through. In addition, he felt the exit drive is too close to the existing entrance and will cause more traffic congestion in that area. They have talked to the developer and he said that moving the building 5 feet to the north is the best he could do regarding overshadowing the smaller shopping center.

Mr. Mike Lewis, resident on Gracelyn Road, stated this is the third request for a drive-through since 1995 for a drive-through and wondered why we have a Unified Development

-13-

Ordinance if it is not being enforced. He asked Council to consider an interim conditional zoning regulation for the entire Merrimon Avenue corridor until a comprehensive and coordinated plan can be developed.

Ms. Billie Buie reviewed with Council some of the conditions requested. She agreed with Mr. Lewis that there be an interim conditional zoning regulation for the entire Merrimon Avenue corridor until a comprehensive and coordinated plan can be developed. She said that Mr. Edney and his development team have done a really good job meeting with and continuing dialogue with the surrounding neighbors. She hoped that the process the neighborhood and developer have gone through for this development proposal can be a model for future development along Merrimon Avenue.

Mr. Walter Plaue suggested that the entrance to the parking lot be on Fenner Avenue instead of Merrimon Avenue with a traffic light to alleviate traffic congestion on Merrimon Avenue. Mr. Shuford responded why this is not a good option.

Ms. Sarah Rightmyer, area resident, spoke in support of the development in that it does raise the bar for good development along Merrimon Avenue.

At 6:20 p.m., Mayor Worley closed the public hearing.

Mr. Shuford responded to various questions/comments from Council, some being, but are not limited to: can the building be moved back 5 feet; will there be a visibility problem for people exiting onto Merrimon Avenue; is the development compatible with the neighborhood; and is there any solution for the visibility of the one-story building that is at a much lower level than the surrounding property.

Mr. Shuford said that they are planning to do some surveys of people who own property along Merrimon Avenue, as well as

in the general vicinity and neighborhoods; to find out how they use Merrimon Avenue; what their visions are for Merrimon Avenue; and what type of development that has occurred along Merrimon Avenue that they like and what type they don't like. That information will be used to help put together a draft corridor zoning plan to comply with the direction that the Planning & Zoning Commission has given and that Council has affirmed.

City Attorney Oast explained to City Council on conditional zonings that the seven conditional use standards need only be considered, not agreed to.

Councilman Davis felt that as we see more development with the new urban design, that we need to educate the public that this is a pedestrian friendly concept.

Councilman Newman moved for the adoption of Ordinance No. 3304, conditionally rezoning property on Merrimon and Fenner Avenues from Community Business I to Neighborhood Corridor District/Conditional Zoning for a proposed office building with a bank drive-through, subject to the following conditions: (1) All TRC conditions shall be met; (2) The teller-assisted drive-through operation shall be limited to the hours of 8:30 a.m. to 6:00 p.m. Monday through Friday (3) Site lighting shall be limited to a maximum of 12 feet in height and fitted with 90-degree cutoff fixtures to minimize light trespass onto adjoining properties. Site lighting shall be oriented away from residential properties; (4) Retention areas shall be designed as rain gardens with slopes and depths so as to not require protective fencing; (5) The ATM shall be placed on the front of the building and not be part of the drive-through; (6) Pedestrian design (distinct pavement treatments) shall be installed where driveways cross the sidewalk; (7) The applicant shall install a sidewalk connection between Fenner and Larchmont prior to any occupancy of the building; (8) The applicant shall install a pedestrian crosswalk and signalization across Merrimon at Larchmont prior to any occupancy of the building; (9) Large shade trees shall

-14-

be utilized for interior landscaping; (10) The southernmost driveway shall be designed to be right-out only; (11) The sidewalk between Fenner and Larchmont that the developer has agreed to build will be completed by the time a CO is granted for the proposed development. The retaining wall behind said sidewalk will be faced with stone or brick or pavers of equal quality. No cinderblock.; and (12) We remain flexible in the two-foot buffer-planting space between the sidewalk on Merrimon Avenue. This motion was seconded by Councilwoman Jones.

After further discussion about the conditions, and at 7:02 p.m., it was the consensus of Council to take a short recess to allow Mr. Shuford, the developer and Ms. Buie (as the neighborhood representative) to meet and see if an agreement can be reached regarding the conditions.

At 7:25 p.m., Mr. Shuford presented City Council the a set of conditions that were agreeable to the City, the developer and the neighborhood.

Therefore, Councilman Newman and Councilwoman Jones were agreeable to revising their motion to approve Ordinance No. 3304, conditionally rezoning property on Merrimon and Fenner Avenues from Community Business I to Neighborhood Corridor District/Conditional Zoning for a proposed office building with a bank drive-through, subject to the following conditions: (1) All TRC conditions shall be met; (2) The bank teller-assisted drive-through operation shall be limited to the hours between 8:30 AM to 6:00 PM Monday through Friday; (3) Site lighting shall be limited to a maximum of 12 feet in height and fitted with 90-degree cutoff fixtures to minimize light trespass onto adjoining properties. Site lighting shall be oriented away from residential properties; (4) Retention areas shall be designed as rain gardens with slopes and depths so as to not require protective fencing. Rain garden plantings shall include shade trees adaptive to rain garden conditions; (5) The ATM shall be placed on the front of the building and not be part of the drive-through; (6) Pedestrian design (distinct pavement treatments via stamped concrete) shall be installed where driveways cross the sidewalk; (7) The applicant shall install a sidewalk connection between Fenner and Larchmont prior to any occupancy of the building. Any associated retaining walls will be faced with stone, brick or pavers of equal quality; (8) The applicant shall install a pedestrian crosswalk and signalization across Merrimon at Larchmont prior to any occupancy of the building; (9) Large shade trees shall be utilized for interior landscaping; (10) The southernmost driveway shall be designed to be right-out only, including directional signage; (11) Building façades shall be faced with stone, brick, stucco, or materials of equal quality to those listed; real windows shall be used on both floors of the proposed building; and (12) Sidewalk design shall include features that provide a clear transition from the pedestrian to the vehicular realm. The revised motion by Councilwoman Newman and Councilwoman Jones carried unanimously.

ORDINANCE BOOK NO. 22 – PAGE 314

E. PUBLIC HEARING TO CONSIDER THE REZONING OF VACANT PROPERTY ON MERRIMON AVENUE FROM COMMUNITY BUSINESS I DISTRICT TO RS-8 RESIDENTIAL SINGLE-FAMILY HIGH DENSITY

DISTRICT

ORDINANCE NO. 3305 - ORDINANCE TO REZONE VACANT PROPERTY ON MERRIMON AVENUE FROM COMMUNITY BUSINESS I DISTRICT TO RS-8 RESIDENTIAL SINGLE-FAMILY HIGH DENSITY DISTRICT

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

Planning & Development Director Scott Shuford said that this is the consideration of an ordinance to rezone a vacant lot on Merrimon Avenue from Community Business I District to RS-

-15-

8 Residential Single-Family High Density District. This public hearing was advertised on November 11 and 18, 2005.

The adjoining Burger King site is proposed for Neighborhood Corridor District/Conditional Zoning development as a mixed use development.

The *Asheville City Development Plan 2025* encourages compatible zoning. The proposal would rezone a parcel that is physically separated from the commercially-zoned property by topography to the same zoning as the more similarly-situated neighboring properties.

The owner, Northwest Properties, is pursuing this rezoning as a concession to the neighborhood for their support of his NCD CZ zoning of the Burger King site. Staff finds that the proposed rezoning is substantially more compatible than the existing zoning.

- The Community Business-I zoning district is established to provide areas for medium density business and service uses which may serve as a workplace for residents and should be sensitive to a significant pedestrian population. These business areas should be located primarily on streets that serve multiple residential neighborhoods.
- The RS-8 zoning district is designed to establish and promote a suitable and high-density single-family district where public infrastructure is sufficient to support such development.

Pros

- Recognizes the property's physical orientation to surrounding development.

Cons – None noted.

The Planning and Zoning Commission recommended approval of this rezoning request. Staff also recommends approval of this rezoning request.

Ms. Patsy Brison, attorney representing the developer, spoke in support of the rezoning, noting that this rezoning was at the neighborhood's request.

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

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

Councilwoman Jones moved for the adoption of Ordinance No. 3305. This motion was seconded by Councilwoman Bellamy and carried unanimously.

ORDINANCE BOOK NO. 22 – PAGE 316

- F. PUBLIC HEARING TO CONSIDER AMENDING THE UNIFIED DEVELOPMENT ORDINANCE TO CONFORM WITH REQUIREMENTS OF STATE LAWS 2005-418 AND 2005-426 ADOPTED SEPTEMBER 22, 2005, CLARIFYING AND MAKING TECHNICAL CHANGES TO THE STATUTES REGARDING PLANNING AND LAND USE MANAGEMENT (INCLUDING THE ENABLING LEGISLATION FOR PLANNING AND REGULATION FOR DEVELOPMENT, ART. 19 OF CHAPTER 160A OF THE N.C. GEN. STATUTES)**

-16-

ORDINANCE NO. 3306 - ORDINANCE AMENDING THE UNIFIED DEVELOPMENT ORDINANCE TO CONFORM WITH REQUIREMENTS OF STATE LAWS 2005-418 AND 2005-426 ADOPTED SEPTEMBER 22, 2005, CLARIFYING AND MAKING TECHNICAL CHANGES TO THE STATUTES REGARDING PLANNING AND LAND USE MANAGEMENT (INCLUDING THE ENABLING LEGISLATION FOR PLANNING AND REGULATION FOR DEVELOPMENT, ART. 19 OF CHAPTER 160A OF THE N.C. GEN. STATUTES)

Mayor Worley opened the public hearing at 7:38 p.m.

Mr. Joe Heard, Director of Development Services, said that this is the consideration of an ordinance to amend the Unified Development Ordinance for the purpose of bringing City codes into compliance with recently adopted amendments to State planning statutes. This public hearing was advertised on November 11 and 18, 2005.

On September 22, 2005, the General Assembly of North Carolina passed two pieces of legislation amending planning and development procedures: Session Law 2005-418 entitled *An Act to Clarify and Make Technical Changes to City and County Planning Statutes*; and Session Law 2005-426 entitled *An Act to Modernize and Simplify City and County Planning and Land-Use Management Statutes*. In general, this legislation was adopted to codify certain legal issues, update the types of development tools available to local governments, and clarify many procedural aspects of the development process. Specifically, the legislation requires the City of Asheville to amend the UDO in order to address the following issues:

- Conditions applied to approval by the Board of Adjustment must be related to the circumstances that give rise to the need for the variance.
- The Planning & Zoning Commission must provide a written recommendation to the City Council addressing a proposed amendment's consistency with adopted plans.
- In adopting any amendment, the City Council must adopt a statement describing whether its action is reasonable and consistent with adopted plans.
- Any condition placed on a project undergoing conditional zoning must be mutually agreed to by the City Council and the petitioner.
- Many standards for protest petitions are amended and clarified. Changes of significance include vacant or excused seats on Council shall not be calculated when figuring a supermajority, a minimum of 5% of a buffer 100 feet surrounding the property is necessary for a valid protest, and a person can withdraw his/her name from a petition at any time prior to the vote.

Pro –

- The proposed amendments would bring the UDO into compliance with State planning statutes, making the UDO more consistent with other adopted laws and more legally defensible.

Con –

- The proposed requirements place additional burdens on applicable boards, commissions, and City Council to justify decisions based on reasonableness and consistency with adopted plans.

The Planning and Zoning Commission recommended approval of these code amendments on November 2, 2005, by a unanimous vote of 6-0. In order to bring the UDO into compliance with State planning statutes, staff recommends approval of the proposed ordinance amendment as well.

-17-

Mayor Worley closed the public hearing at 7:42 p.m.

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

Councilwoman Jones moved for the adoption of Ordinance No. 3306. This motion was seconded by Councilman Davis and carried unanimously.

ORDINANCE BOOK NO. 22 – PAGE 318

IV. UNFINISHED BUSINESS:

V. NEW BUSINESS:

A. ANNUAL AUDIT REPORT

Chief Financial Officer Ben Durant said that this is the presentation of the City of Asheville annual audit report for the Fiscal Year Ended June 30, 2005.

City Council retained an independent audit firm, Martin Starnes & Associates, CPA's, P.A. of Hickory, N.C., to perform an audit of the City of Asheville for the Fiscal Year ended June 30, 2005, as required by N. C. Gen. Stat. sec. 159-34. The auditors gave the City an unqualified audit opinion. (The term "unqualified" means that the auditors' opinion that the financial statements present fairly the financial position of the City, is not modified by reservations or restrictions.)

Ms. Marcie Spivey, of Martin Starnes & Associates, gave Council a brief presentation of their findings. She explained the role of the auditor, those being (1) to obtain reasonable assurance that basic financial statements are free of material misstatement; (2) to examine evidence supporting the amounts and disclosures in the financial statements; and (3) to assess accounting principles used and overall financial statement presentation. She said they have issued an unqualified opinion on the financial statements of the City. They have noted no matters involving the internal control over financial reporting and its operation that they consider to be material weaknesses. They disclosed no instances of non-compliance or other matters that are required to be reported under Governmental Auditing Standards. Regarding the management letter, (1) they noted certain areas where the City can further enhance its internal control and reported them in a management letter; (2) a management letter normally covers items too immaterial to be included in the report on internal control and compliance; and (3) the items in the current year management letter have been addressed and additional procedures have been put in place. She then reviewed the Fund Balance Summary.

In response to Councilwoman Jones, Mr. Durant said that he would provide Council with details on the approximately \$8 Million increase in the total expenditures and transfers to other funds.

B. MOTION TO ACCEPT THE BROWN & CALDWELL WATER SYSTEM IMPROVEMENT REPORT AND DIRECT STAFF TO REPORT BACK TO COUNCIL WITH A PLAN FOR PUBLIC INVOLVEMENT AND RECOMMENDATIONS FOR A TIMEFRAME FOR IMPLEMENTATION FOR BOTH THE CAPITAL IMPROVEMENT FEE AND THE RATE RESTRUCTURING

Mr. Richard Stahr, consultant with Brown and Caldwell Engineering, reviewed with Council the current water system overview along with the goals related to water infrastructure

-18-

sustainability. He benchmarked Asheville vs. other utilities. He pointed out that staff reductions over 10 years have resulted in a lean organization. There has been a 30% reduction in the number of positions since Fiscal Year 1992-93.

He explained that the goals of the Asset Management Program is to minimize life cycle costs while meeting customer needs. Benefits of the Asset Management Program include (1) establishes funding requirements for refurbishment and replacement; (2) prioritizes capital investments; (3) increases dependability of water delivery; (4) focusing resources in the "right" places using asset criticality; and (5) uses improved system knowledge and analytical tools to meet customer services expectations at the lowest life-cycle cost.

He explained that the water plant optimization identifies large capital savings – (1) plant upgrade was expected to cost \$12 Million; (2) pilot study showed smart operational changes would save capital dollars; and (3) scaled back upgrade focused on minor improvements and refurbishment needs saving \$6 to \$7 Million.

He said that the focus needs to be on main replacement rather than leak repair. He said that \$5 to \$6 Million in upgrades are needed – North Fork upgrade needed to meet regulations; and Bee Tree upgrade needed for long-term operation following 6-year closure. He outlined how the asset management principles were used to develop prioritized a repair & replacement capital improvement program, but more refinement is needed. The current budget for capital projects does not fund needed improvements. The average rate increase over the past 13 years is less than the inflation rate. The current funding shortfall could have been avoided with an annual 4.1% rate increase.

He explained the cost distribution of priority capital projects – (1) management, operations and maintenance projects at \$5,750,000; (2) mandatory N.C. Dept. of Transportation projects at \$9,305,000; and (3) Repair and Restoration Projects are \$32,034,000. The total 7-year capital improvement program is \$57.09 million.

He shared the results of a customer telephone survey and focus group meeting surrounding the issue of whether our rate payers would support an increase to fund sustainable infrastructure.

Some consequences of inaction would be (1) Safe Drinking Water Act compliance risks; (2) increased line breakages resulting in higher water loss and increased response costs; (3) inability to support economic development (4) deteriorating customer service; and (5) possible violation of bond covenant.

Water rate challenges include residential customer base is growing but demand remains flat; adequate funding is needed for sustainability; current declining block structure should be evaluated; and outdated development fee may not reflect current value of facilities needed to serve new customers.

He reviewed with Council the capital improvement fee structure that will be based upon meter size with small residential type meters having a monthly charge of \$3.50 up to a ten-inch meter monthly charge of \$1,430. He used a graph to explain the N.C. water rates trending away from declining block structures.

In summary, the Capital Improvement Program recommendations are to (1) implement the Capital Improvement Program to address the backlog of urgent infrastructure needs; (2) adopt the Capital Improvement Program fee effective January 1, 2006, to address the critical refurbishment and replacement needs; and (3) use revenue bond financing to accelerate the recovery from historical underinvestment (Funding Plan is under development.)

-19-

In summary, the rate structure recommendations are to (1) conduct stakeholder input process for an updated development fee and migrating toward a Uniform Rate Structure; and (2) complete the rate structure analysis on a timeline that ties to the budget process.

Mr. Stahl then presented Council with the following implementation timeline: (1) January 1, 2006 – CIP fee effective; (2) January 1, 2006, through, July 1, 2006 – stakeholder input/education process for uniform rate and debt financing plan development; and (3) July , 2006, rate restructuring effective.

He then reviewed with Council the following capital program timeline: (1) November 22, 2005 – Council approves the CIP fee; (2) December 13, 2005 – CMMS Award; (3) January 1, 2006 – CIP fee effective; (4) January 2, 2006 – Water Plant bidding; (5) April, 2006 – Water Plant award; and (6) July 1, 2006 – CIP implementation and rate restructuring effective.

Upon inquiry of Councilman Newman, Mr. Stahl explained the difference of a uniform rate and a flat rate.

Mr. Fred English spoke against the fee in that the City of Asheville citizens already pay the highest rates in North Carolina.

In response to Vice-Mayor Mumpower, City Attorney explained that by the end of calendar year 2006 we should have the Sullivan Acts II and III resolved. Vice-Mayor Mumpower said that he was hesitant in moving forward until the larger picture is resolved.

Councilwoman Jones moved to accept the Brown and Caldwell Funding Needs for Sustainability Report and direct the City Manager to begin scheduling these recommendations into the budget for Fiscal Year 2006-07, specifically not implementing the Capital Improvement Fee to be effective January 1, 2006, because the community needs to be educated similar to the stormwater user fee communication plan. This motion was seconded by Councilman Newman.

Councilman Newman felt it was important to look at the overall rate structure and make those kinds of decisions concurrently with decisions of the Capital Improvement Plan.

Mayor Worley was concerned with the delay of the Capital Improvement Fee, especially since this Council has voted in favor of it in the past, but it had not been implemented due to Buncombe County turning it down when there was a Regional Water Authority. He did feel that January 1, 2006, was a little quick, but he could support a motion that says Council will move forward with the public input portion of the rate fee as quickly as possible. He agreed that we need to look at the rate structure as well.

Councilwoman Bellamy suggested City Council receive the report and give staff adequate time to look at all the nuances as we move forward. Council hasn't even discussed the implementation as she would like to phase the fee in a little at a time. She agreed we need to give staff time to look at this and as it moves forward staff can come back with recommendations on how we are going to implement the recommendations presented tonight, as opposed to beginning the Capital Improvement Fee January 1, 2006.

Councilman Dunn felt the community is well aware that the water system needs to be repaired and would support a few

months of public education. Even though no one wants to see their water rates increase, he would support the Capital Improvement Fee be implemented as soon as possible.

Councilman Newman felt there are other ways to talk about reforming our water rate structure. For example, going to a uniform rate structure would be a much less painful rate

-20-

structure for residential customers. Some communities are looking at deeply discounting that first amount of water that families need for their most basic necessities to make sure that all customers can afford that amount of water they need to survive with. That could be an important part of looking at a rate structure that would serve our community well into the future.

Mayor Worley moved to amend the main motion to delete directing the City Manager to begin scheduling these recommendations into the budget for Fiscal Year 2006-07, and insert the direction for staff to come back to Council with a plan for public involvement and recommendations for a timeframe for implementation for both the Capital Improvement Fee and the rate restructuring. This motion was seconded by Councilwoman Bellamy and carried on a 6-1 vote, with Vice-Mayor Mumpower voting "no."

The amended main motion to accept the Brown and Caldwell Funding Needs for Sustainability Report and direct staff to come back to Council with a plan for public involvement and recommendations for a timeframe for implementation for both the Capital Improvement Fee and the rate restructuring carried on a 6-1 vote, with Vice-Mayor Mumpower voting "no."

City Manager Jackson said that we will develop the impact of uniform rates on all customer classes and provide that to Council after the first of the year. We will also review the projects and what this capital money will be used for in some detail that will benefit this Council as well as the community. That will facilitate the kind of discussion Council will want to have after the first of year and then we can move at a pace that the Council is comfortable with – it doesn't have to wait until the budget process. He thinks Council will find that the end of June will come pretty quickly if you do a proper level of analysis and review with the community. Staff will move as quickly as this Council wants to move.

C. RESOLUTION NO. 05-215 - RESOLUTION AUTHORIZING THE MAYOR TO ENTER INTO A PROFESSIONAL SERVICES CONTRACT WITH SCHNABEL ENGINEERING SOUTH P.C., FOR UPDATING WATER RESERVOIR PLANS AND MAPS

City Engineer Cathy Ball said that this is the consideration of a resolution authorizing the Mayor to enter into a contract with Schnabel Engineering for updating reservoir operations and emergency action plans; and approval of a budget amendment, in the amount of \$692,835, to provide funding for this project.

She said that the following are 10 year old plans – Operation and maintenance of reservoirs and dams; emergency action plans; flood inundation maps; and operations of flood gates at North Fork.

She said that the Water Resources and Engineering Department looked at old plans which required updating. The stakeholders involvement was solicited to create Request for Proposals (RFP) for professional services to update existing plans and also create flood inundation maps and a flood control management plan to minimize downstream flooding from operation of the flood gates at North Fork. The stakeholders group included Biltmore Village representatives, Town of Black Mountain, Buncombe County Emergency Management, RiverLink, local professional engineer and City staff, including Water Resources, Engineering, Planning, and City Administration.

The stakeholders group went over the draft RFP to ensure all concerns of group were covered in the proposal. The draft the RFP went through three changes before final version was acceptable to group and the final version was sent out to over 25 local, regional and national engineering firms. The stakeholders group selected Mr. Jim Augins and Mr. Michael Miller to

-21-

represent the group in the selection process; and (5) selection committee also consisted of City staff from Water Resources and Engineering Departments.

Ms. Ball briefly outlined the RFP and the selection process: (1) three firms submitted proposals; (2) selection committee was given copies of the proposals and asked to upgrade each on a number system of questions – based upon criteria in the RFP; (3) each committee member graded the three proposals and then met as a group to discuss; (4) committee agreed that one proposal did not meet the required standards requested in the RFP; (5) the other two firms were highly qualified and scoring by all

committees members was very close; (6) the committee decided to bring both firms in for face-to-face interviews; (7) selection committee graded each firm on its presentation and answers to questions by each member of the committee; (8) the committee selected Schnabel Engineering South as the best firm for conducting these studies and plans for operations of the dams at North Fork and Bee Tree; (9) staff met with representatives from the engineering firm to establish cost and time schedule for each task; (10) cost is not to exceed \$692,835; and (11) estimated completion for the entire project is October 2006 with modeling requirements by July 2006.

City staff recommends that Council approve (1) the request for the Mayor to enter into a contract with Schnabel Engineering South in the amount of \$692,835 for reservoir and dam operation plans; and (2) the budget amendment to reallocate funds from the Water Fund equity account to cover the cost of this project.

Upon inquiry of Vice-Mayor Mumpower, Water Resources Director David Hanks felt that this action will be positive long-term.

Councilwoman Jones was pleased the City was being proactive in this matter and glad about how inclusive the process was for stakeholders.

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

Councilwoman Bellamy moved for the adoption of Resolution No. 05-215. This motion was seconded by Councilwoman Jones and carried unanimously.

RESOLUTION BOOK NO. 29 – PAGE

D. ORDINANCE NO. 3307 - BUDGET AMENDMENT TO UPDATE WATER RESERVOIR PLANS AND MAPS

Summary: See New Business Item "C" above.

Councilwoman Bellamy moved for the adoption of Ordinance No. 3307. This motion was seconded by Councilwoman Jones and carried unanimously.

ORDINANCE BOOK NO. 22 – PAGE 321

E. RESOLUTION NO. 05-216 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO CONTRACTS WITH LOCAL NON-PROFIT AGENCIES TO PROVIDE HOUSING FOR FAMILIES DISPLACED BY HURRICANE KATRINA

Ms. Charlotte Caplan, Community Development Director said that this is the consideration of (1) a resolution authorizing the City Manager to enter into contracts with local non-profit agencies to provide housing for families displaced by Hurricane Katrina; the costs of

-22-

which will be reimbursed by FEMA via the NC Division of Emergency Manager; and (2) the associated budget amendment, in the amount of \$100,000.

The Asheville Chapter of the Red Cross has dealt with requests for assistance from over 500 individuals or families who have evacuated to our area as a result of Hurricanes Katrina and Rita. Of these, 332 had registered with FEMA by October 18 giving temporary addresses within Buncombe County – the fourth highest total for counties in North Carolina.

Housing is the #1 need reported by these evacuees and, to date, approximately 300 families have been provided with temporary shelter in hotels/motels, in conference centers such as Ridgecrest, and in apartments offered by private individuals. An estimated one-third of these have already moved back home to the Gulf States and a handful have moved into more permanent housing here. Over the next few weeks, as Red Cross payment for hotel accommodation runs out we expect that the remainder will either move back home, or seek more permanent housing in our area.

Staff has been in close contact with the non-profit agencies assisting these families – the Red Cross, Asheville-Buncombe Community Christian Ministry (ABCCM), the Affordable Housing Coalition (AHC), and the Housing Authority of the City of Asheville (HACA). A number of faith-based groups and individuals have donated temporary accommodation to ABCCM, and the Red Cross

receives reimbursement directly from FEMA for the cost of hotel/motel accommodation for up to 60 days, but otherwise our local non-profits have used their own resources for intake, advice, and housing placements. They will not be able to support the cost of longer-term housing assistance without severely diminishing the assistance they provide to local residents.

We have contacted FEMA and NCEM to find out what federal assistance is available for local efforts and how to structure those efforts in a way that is consistent with FEMA rules for reimbursement. On October 17, we received detailed guidance from NCEM on FEMA's Interim Shelter Assistance program and on October 28 submitted the Interim Shelter Plan, created after consultation with the agencies listed above and with Buncombe County staff.

Through this plan, the City will be reimbursed for the cost of providing housing (not rent assistance) to evacuees for up to 12 months. The City will contract with ABCCM and AHC who will identify those in need of housing, lease suitable units, and place families in those units. We are also seeking retrospective reimbursement of housing expenses already incurred by non-profit providers but at this point we are uncertain whether or not that will be allowed.

It has not been possible to obtain a reliable estimate of the number of people who will remain in our area and seek assistance through the Interim Shelter Program nor for how long they will need it. Other types of FEMA and HUD assistance are available, though not to everyone. We are initially requesting budget authority for \$100,000, which is sufficient to rent about 35 apartments for three months.

Every effort will be made to ensure that all expenses incurred by our non-profit partners are eligible for reimbursement by FEMA through NCEM. However, it is possible that our partners may, in good faith, incur expenses that FEMA will deem ineligible. We recommend that in such cases, after all other avenues have been explored, staff should have the discretion to use the City's Housing Trust Fund as a contingency fund to reimburse such good-faith expenses. It is extremely unlikely that such costs would exceed \$5,000.

Advantages:

- Provides up to 12 months of housing for people displaced by Katrina
- Prevents homelessness

-23-

- Should be 100% reimbursed by FEMA
- Ensures that local non-profits can maintain services to local residents as well as helping Katrina evacuees.

Disadvantages:

- Scale of need is still uncertain – budget is only a rough estimate
- A small probability exists that some expenses may not be reimbursed, requiring a source of contingency funding (Housing Trust Fund recommended).

Staff recommends City Council adopt (1) a resolution authorizing the City Manager to enter into contracts with local non-profit agencies to provide housing for families displaced by Hurricane Katrina, which costs will be reimbursed by FEMA via the NC Division of Emergency Manager; and (2) the associated budget amendment, in the amount of \$100,000.

Ms. Caplan noted that at November 15, 2005, worksession when this item was being discussed, FEMA issued a press release drastically changing the rules for the interim housing program. FEMA will now provide assistance for only three months, and only for leases entered into before December 1, 2005.

FEMA will continue to provide direct individual assistance to evacuees who are responsible for finding and paying for their own housing. However, there are some evacuees who have already used their initial rent assistance to pay excessive housing costs or for other urgent needs such as food, gas, or clothing for their families. There may be others who for one reason or another do not qualify for FEMA's direct assistance. These families are at risk of becoming homeless just as the coldest winter weather sets in.

In order to avert this risk and utilize FEMA resources through the Interim Shelter Assistance Plan to the greatest extent possible by November 30, she issued a press release urging all Katrina evacuees who are still in short term housing to contact the Affordable Housing Coalition immediately.

At this time, we are aware of 14 families who have been placed in short-term accommodation by the Red Cross or ABCCM, but we are also starting to receive calls from other people who made their own short-term arrangements but now need

longer term help. We hope to be able to assist as many as 30 families before the November 30 deadline.

We have been assured by NCEM officials that the plan we submitted is acceptable and that, provided we adhere to FEMA program guidelines, the cost of providing housing to evacuees for three months will be reimbursed in full.

If we do not access this program, it is likely that the same families will eventually seek help either from the Affordable Housing Coalition or from homeless shelters, using funds earmarked for local needs thereby reducing the capacity of these agencies to serve local residents with critical housing needs.

Vice-Mayor Mumpower was concerned that we are not certain FEMA will reimburse the City and we have limited dollars. He doesn't think Asheville is an appropriate mecca for people seeking affordable housing, in that we are struggling to meet the needs of the people we have here. He understands that we are being accommodating to people that would like to be here, but that is not the same thing as wisely using our dollars.

Ms. Caplan responded to Councilman Newman about opportunities for displaced families to stay at Housing Authority facilities.

-24-

When Vice-Mayor Mumpower voiced concern about what would happen to the displaced families after 90 days, Ms. Caplan said that those receiving this transitional housing assistance must take responsibility for paying their own rent.

Vice-Mayor Mumpower was concerned that if after 90 days the displaced families don't have additional housing that the City will end up with accountability for something that the federal government has agreed is their accountability. Ms. Caplan said that she would strongly advise the ABCCM and Affordable Housing Coalition that the City of Asheville does not enter into any accountability for more than the first three months of rent.

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

Councilman Newman moved for the adoption of Resolution No. 05-216. This motion was seconded by Councilwoman Jones.

Councilman Davis felt someone should have contacted the displaced families in our area to see what their future plans are.

Councilwoman Bellamy felt we should approve these actions and then deal with the issue of whether we get reimbursed or not with the proper individuals at FEMA. She suggested a resolution be sent to FEMA mandating that they reimburse the City for the appropriate funds.

After further discussion, Vice-Mayor Mumpower moved to call the previous question which motion carried unanimously.

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

RESOLUTION BOOK NO. 29 – PAGE

F. ORDINANCE NO. 3308 - BUDGET AMENDMENT FOR INTERIM SHELTER EXPENSES FOR FAMILIES DISPLACED BY HURRICANE KATRINA

Summary: See New Business Item "E" above.

Councilwoman Jones moved for the adoption of Ordinance No. 3308. This motion was seconded by Councilman Newman and carried on a 5-2 vote, with Vice-Mayor Mumpower and Councilman Dunn voting "no."

ORDINANCE BOOK NO. 22 – PAGE 323

G. RESOLUTION NO. 05-217 - RESOLUTION DIRECTING THE CITY CLERK TO PUBLISH A NOTICE OF INTENT TO EXECUTE A LICENSE AGREEMENT WITH MOUNTAIN AREA INFORMATION NETWORK FOR AN ANTENNA AT 36 RESERVOIR ROAD

Real Estate Manager Ed Vess said that this is the consideration of a resolution directing the City Clerk to publish a Notice of Intent regarding execution of a License Agreement with Mountain Area Information Network (MAIN) for an antenna at 36 Reservoir Road.

The property at 36 Reservoir Road known as White Fawn Reservoir is on a knoll at the western end of the Beaucatcher Mountain ridge. It has exceptional range for telecommunication with approximately 300° coverage from northeast to west to southeast. Two telecommunication

-25-

towers are located on the property and the City of Asheville leases antenna space on the towers and ground space for related equipment.

MAIN has offered to enter into a license agreement for antenna space and related equipment on the tower known as the "U S Cellular Tower" which is the tower to the east with several large dish antennas attached. U S Cellular is the primary tenant on that tower and any antenna installations by others are subject to their approval. U S Cellular is agreeable to the installation by MAIN subject to a favorable tower analysis. A tower analysis is required by the license agreement to assure that the new installation does not interfere with existing installations and that the tower is structurally able to support the additional installation. MAIN will pay for and provide a tower analysis. The proposed License Agreement will enable MAIN to operate three (3) antennas at that site; however, there is a provision, which allows either the Licensor or the Licensee to terminate the agreement upon 180 days notice. The term of the License Agreement will be 3 years with 2 renewal periods of 3 years. MAIN will pay a License Fee of \$7,200 (\$200 per antenna per month) the first year with a 4% increase annually thereafter.

The request by MAIN has been reviewed by staff and the proposed equipment compared to existing installations to determine comparability. Currently we have three somewhat similar installations that are producing as follows:

Arch Communications	1 antenna @ \$350 per month
Cingular Communication	4 antennas @ \$287.50 per antenna per month
Morris Communications	3 antennas @ \$276.25 per antenna per month

The license fee proposed for MAIN is somewhat below market rate consistent with the rate approved for the Housing Authority of the City of Asheville by Resolution No. 05-92. Both MAIN and the Housing Authority provide public benefit services to lower income persons that are compatible with governmental function and/or sponsorship. A discounted rate for a non-profit providing such services as well as public safety and emergency response agencies seems reasonable and appropriate

Staff recommends that Council review discounted antenna license fees annually during consideration of appropriations to outside agencies.

Relationship to Broadband Initiative: Antenna rental requests are relatively simple transactions and will not materially affect any potential municipal broadband strategy. Specifically cellular and 900Mhz antenna rentals will not create interference with likely technologies to be used for broadband.

The following benefits will be realized from approval of this item:

- The City will receive revenue that it does not currently receive.
- Antenna space that is currently vacant will be utilized.
- MAIN will have improved capacity to provide low cost high speed wireless internet service to City residents.

Planning & Development and Information Technology staff recommend City Council adopt the resolution directing the City Clerk to publish a Notice of Intent regarding execution of a License Agreement with MAIN for an antenna at 36 Reservoir Road.

Councilman Dunn expressed concern that MAIN is being given a below market rate like the Housing Authority, noting that the Housing Authority puts all their money back into housing.

-26-

Councilman Newman spoke in support of MAIN stating that there is a compelling public interest function that they are performing that the other companies are not.

Vice-Mayor Mumpower said that he likes what MAIN is doing, but it is an obvious political entity.

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

Councilwoman Jones moved for the adoption of Resolution No. 05-217. This motion was seconded by Councilman Newman and carried on a 5-2 vote, with Vice-Mayor Mumpower and Councilman Dunn voting "no."

RESOLUTION BOOK NO. 29 – PAGE

H. RESOLUTION NO. 05-218 - RESOLUTION AUTHORIZING THE EXECUTION OF AGREEMENTS WITH CP&L SETTLING LITIGATION REGARDING THE ANNEXATION OF THE LAKE JULIAN POWER PLANT, AND AMENDING THE 1994 AGREEMENT WITH CP&L REGARDING UTILITY FRANCHISE TAXES

City Attorney Oast said that this is the consideration of a resolution authorizing the execution of agreements with CP&L settling litigation regarding the annexation of the Lake Julian Power Plant, and amending the 1994 agreement with CP&L regarding utility franchise taxes.

In the 1940s, the State of North Carolina adopted a uniform method for assessing utility franchise taxes on certain regulated utilities, and making distribution of those revenues to N. C. municipalities. Prior to that time, utility franchise taxes varied from city to city, and Asheville, like many cities, had its own utility franchise tax. Under the State law, the local taxes were not entirely pre-empted, but there is language that provides that a local tax may not exceed the tax that was imposed as of January 1, 1947.

In the 1980s and early 1990s, the amount of utility franchise tax paid to the City by CP&L and Public Service Gas Company came into dispute, and the parties were headed toward litigation. In 1994, however, they reached an agreement whereby the amount paid by those utilities to the City was fixed. For CP&L, this amount was fixed at \$659,418.16. Beginning in 1996, this amount is reduced by property taxes on CP&L's business property in the City. This agreement was enacted into law. The ratio of property / utility tax within this fixed amount varies from year to year. The property tax component – based on natural appreciation – is growing while the utility franchise tax component diminishes. When property tax liability equals or exceeds the fixed amount, CP&L pays the entire property tax, together with a utility franchise tax fixed at \$12,153.22 annually (the 1947 level).

In 1989 and again in 2000, the City attempted to annex an unincorporated area on the south side of town which included the Lake Julian Power Plant. On both occasions, the City's annexation of this area was invalidated by the courts. On both occasions, the Lake Julian property has been difficult to "qualify" for annexation, due to its size and other characteristics.

Shortly after finalizing the 1994 agreement, the City and CP&L began discussions about the Lake Julian facility, including annexation and litigation issues. These discussions continued while the 2000 annexation attempt was being reviewed by the courts, and have continued since then. For its part, CP&L (now Progress Energy) uses few City services, is required by law to provide many such services (security, fire protection) itself, and its power generating activities are closely regulated by the federal and State governments. For these reasons, CP&L has resisted, and will continue to resist, annexation of the Lake Julian facility. The City recognizes this, but

-27-

also believes that Progress Energy benefits from the proximity of its Lake Julian facility to the City, that the location and availability of City services has value, and that the facility may therefore be fairly considered for annexation.

With this legal and historical background in mind, the City and Progress Energy, have developed a proposed agreement that will resolve these issues and terminate the litigation wherein the 2000 annexation was challenged, it will also foreclose future attempts to annex the Lake Julian facility, and the litigation likely to ensue, and the City will realize some revenue, based on the value of the facility.

Using a formula that incorporates Progress Energy's current City property tax liability, the amount of City property tax that would be due on the Lake Julian facility if it were annexed, and the utility franchise tax, Progress Energy would pay the City an amount that is more than they would pay if the Lake Julian facility were not annexed, but less than they would pay if it were. He reviewed with Council an illustration of how that amount would be computed for 2005, based on current valuation and tax rates. In consideration for an annual payment computed according to this formula, the City would not annex the Lake Julian facility, and the current litigation would be resolved.

The agreement contains provisions that cover what happens if the Lake Julian facility is ever "decommissioned" as a power plant, or if parts of it are ever sold off for other uses. The agreement ensures that Progress Energy will continue to pay its full property tax for all its property in the City (they could not legally do otherwise). The amount received by the City is subject to adjustment in every tax re-valuation year (beginning in 2006), and will increase if the value of the Lake Julian facility (which is fixed by the State) increases. If for some reason the value of the Lake Julian facility decreases, the payment received by the City in franchise fees and property taxes will never drop below the 2005 amount of \$759,418.16, as established in the proposed agreement.

Because this agreement affects the City's legislative powers regarding annexation, and because it is an amendment of the 1994 agreement, it will need to be enacted into law by the N. C. General Assembly, as the 1994 agreement was. Under the proposed agreement, this must occur by November 1, 2008. Preliminary discussions with some members of the legislative delegation have been positive.

Considerations:

- Terminates an ongoing (and expensive) dispute about annexation
- Provides escalating revenue stream for the City, based on property values
- Payments will never drop below the 2005 level.
- City relinquishes its ability to annex Lake Julian
- Potential loss of increased tax revenue (including sales tax distribution)
- Precedent may be established
- City will not have to furnish urban services to the property
- Create potential for a "hole" in the City, but does not create a problem for service delivery to surrounding areas

If Council approves of the proposed agreement, adoption of the resolution is recommended.

Mr. Sipes, Regional Vice-President for Operations in Western North Carolina for Progress Energy, spoke in support of the agreement in that he feels it is a fair and equitable agreement for all concerned.

-28-

Councilwoman Bellamy voiced concern that we are binding future Councils and will need legislative approval to change it.

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

Councilman Newman moved for the adoption of Resolution No. 05-218. This motion was seconded by Councilwoman Jones and carried unanimously.

RESOLUTION BOOK NO. 29 – PAGE

I. RESOLUTION NO. 05-219 - RESOLUTION APPOINTING MEMBERS AND A CHAIR TO THE ALCOHOLIC BEVERAGE CONTROL BOARD

Councilman Newman moved to excuse Mayor Worley from participating in this matter. This motion was seconded by Vice-Mayor Mumpower and carried unanimously. At this time, Mayor Worley turned the meeting over to Vice-Mayor Mumpower and left the meeting

Vice-Mayor Mumpower said that the terms of Tom Bell and Duane Jarnecke, as members on the Alcoholic Beverage Control Board, expired on November 13, 2005.

At the City Council worksession on August 15, City Council instructed the City Clerk to prepare the proper paperwork to (1) reappoint Mr. Bell to serve an additional three year term, term to expire November 15, 2008; and (2) appoint Charles R. Worley to serve a three year term, term to begin December 7, 2005, and expire November 15, 2008. Both terms are until their successors have been appointed.

City Council also needs to appoint a Chair to the Board. Members are: Tom Bell, Barbara Field, Debora Holmes-Young, Ken Kaplan and Charles R. Worley.

Councilman Dunn expressed concern that the ABC Board is still in a reactive mode, not a proactive role. He felt that all

current members on the Board should be held accountable and felt that if Council reappointed Mr. Bell, that the inactivity would continue. He supported Ken Kaplan for the Chairman position.

Vice-Mayor Mumpower thanked Councilman Dunn for bringing accountability to the ABC Board. As a result of that, one of the City's two new members became Chairman and they have appointed a new General Manager.

After Council spoke in support of their candidate for Chairman, Barbara Field received 1 vote, Ken Kaplan received 2 votes, and Charles Worley received 3 votes. Therefore, Charles R. Worley was appointed as Chairman of the ABC Board effective December 7, 2005, until his term expires on November 13, 2008, or until City Council appoints a replacement.

At this time, Mayor Worley returned to the meeting.

RESOLUTION BOOK NO. 29 – PAGE

J. RESOLUTION NO. 05-220 - RESOLUTION APPOINTING A MEMBER TO THE CITIZENS/POLICE ADVISORY COMMITTEE

Vice-Mayor Mumpower said that Mr. John Burchfield, representing the Central area, has resigned from the Citizens/Police Advisory Committee, thus leaving an unexpired term until June 30, 2008.

-29-

At Council's November 15 worksession, the City Clerk was instructed to arrange interviews for Ed Taylor and Beverly Jeter.

It was the consensus of Council to appoint Ed Taylor as the Central area representative to the Citizens-Police Advisory Committee to serve the unexpired term of Mr. Burchfield, term to expire June 30, 2008, or until his successor has been appointed.

RESOLUTION BOOK NO. 29 - PAGE

VI. OTHER BUSINESS:

A. RESOLUTION NO. 05-221 – RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A CIVIC CENTER LEASE AGREEMENT WITH THE AMERICAN INDOOR FOOTBALL LEAGUE

Civic Center Director David Pisha said that this is the consideration of a resolution authorizing the City Manager to book AIFL indoor football at the Civic Center.

The Civic Center has held discussions with officials of the AIFL indoor football league for some time. The purpose was to book one of their teams into the venue. The overall financial results accruing to the facility was an important consideration.

The league and the staff at the Center have agreed on terms of a contract that staff believes will provide an equitable basis for both parties upon which to proceed. The basic rent will be \$3,750 per game. Basic staffing will be provided as part of the rent. The team will be allowed to sell advertising within the arena. The Civic Center will share in a portion of these proceeds. There are only seven home games in a season. They have requested office space within the venue.

The games will be played during the spring portion of the year when other Civic Center events are less. Interference with other actual events or possible event bookings should be kept to a minimum. No major electrical requirements or other major expenses are foreseen as part of the building's responsibility as encountered with other sports teams. Any specific football equipment needs will be the responsibility of the AIFL. The results are expected to prove profitable for the venue and it provides another type of event for the citizens of Western North Carolina. There does not appear to be any serious negative factors that would affect the Civic Center by booking this event. The initial term of the contract is for one year. This will give both parties the opportunity to access the market for this activity.

The staff believes that booking the event will prove successful. Members of the AIFL have met with the Civic Center Commission at their November 21, 2005, meeting. The Commission was also were positive about indoor football at the Center and concur with staff's recommendation.

City staff recommends City Council authorize the City Manager to sign a contract to book indoor football at the Civic Center.

At the suggestion of Vice-Mayor Mumpower, Mayor Worley felt that a \$5,000 deposit would be reasonable amount to cover any loss expenses, if any should occur.

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

-30-

Councilwoman Jones moved for the adoption of Resolution No. 05-221. This motion was seconded by Councilman Davis and carried unanimously.

RESOLUTION BOOK NO. 29 – PAGE

B. ORDINANCE NO. 3309 – BUDGET AMENDMENT FOR REIMBURSEMENT FROM THE ASHEVILLE CLAIMS CORPORATION'S RESERVES TO PAY CLAIMS

Ms. Betty Coulter, new City's Risk Manager, said that this is the consideration of a budget amendment, in the amount of \$250,000, from the Asheville Claims Corporation's (ACC) reserves to pay for higher than anticipated immediate and future claims.

The Asheville Claims Corporation is an entity established in 1993 with the charge of managing a self-insurance program and claims administration for the City of Asheville. The Corporation provides claims administration services within the limits established by City Council. The responsibility of the Corporation for administering claims and paying judgments shall also be applicable to claims against officers and employees of the City in accordance with Resolution No. 79-253 entitled "Resolution Relating to Claims and Judgments Sought or Entered Against City Officers or Employees. Although there are numerous matters in which the City can assert Governmental Immunity, there are instances when the City becomes liable for damages. This year has seen an unusually high number of claims where the City's liability could not be seriously contested, and damages have been substantial.

A ten year claims history indicates an average annual claims expense of \$150,000, with the highest claims expense of \$344,336 occurring in 1999-2000. It is projected that in the current year, claims expenses will exceed our average annual claims amount, thus requiring an additional appropriation of \$250,000 to be funded with ACC reserves.

Pro:

- Approval of this amendment will allow us to pay current claims and avoid potential litigation, which could prove to be more costly

Con:

- Reduction of ACC reserves

City staff recommends City Council amend the general insurance and liability budget to increase the claims line appropriation by \$250,000.

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

Councilwoman Bellamy moved for the adoption of Ordinance No. 3309. This motion was seconded by Councilwoman Jones and carried unanimously.

ORDINANCE BOOK NO. 22 – PAGE 325

C. CLAIMS

The following claims were received by the City of Asheville during the period of November 4-17, 2005: Wesley B. Allen (Police), Ed Hardin (Sanitation), Mike Harrill (Sanitation),

-31-

Kathleen McGuire (Streets) and Robert E. Harris (Water). These claims have been referred to Asheville Claims Corporation for investigation.

**D. PRIMARY ELECTION RESULTS - CITY OF ASHEVILLE - OCTOBER 11, 2005
GENERAL ELECTION RESULTS - CITY OF ASHEVILLE, NOVEMBER 8, 2005**

Attached hereto as Exhibit "A" is the abstract containing the number of legal votes cast in the Primary Election, City of Asheville, held on October 11, 2005. Also attached as Exhibit "B" is the abstract containing the number of legal votes cast in the General Election, City of Asheville, held on November 8, 2005.

VII. INFORMAL DISCUSSION AND PUBLIC COMMENT:

Councilwoman Bellamy moved to direct the City Attorney to prepare a resolution to FEMA asking for them to reimburse the City of Asheville \$100,000 after 90 days for the cost of providing housing (not rent assistance) to evacuees of Hurricane Katrina; and to receive a report from the City's Community Development Division on the accountability of the number of people the City of Asheville has helped. This motion was seconded by Councilman Davis and carried unanimously.

Mr. Peter Dawes questioned Council about where they draw the line on freedom of speech or profanity in and out of the Council Chamber.

At this time, Mayor Worley turned the meeting over to Vice-Mayor Mumpower and left the meeting. Mr. Reid Thompson spoke about the problems he has encountered with delivery trucks at Greenlife Grocery on Merrimon Avenue, in addition to the alleged violations of the Unified Development Ordinance regarding buffering.

At this time, Mayor Worley returned to the meeting. Mayor Worley thanked the citizens of Asheville for allowing him to serve as Mayor for the past four years. During his tenure, over a half billion dollars of economic development was added to the tax base; Asheville regained control of its water system, a move that will have a long lasting impact on the City's future; and Asheville saw substantial growth in its parks, greenways and recreation facilities, including the construction and dedication of the John B. Lewis Soccer Complex at Azalea Park. Again, he thanked City Council, staff and the citizens of Asheville for the opportunity to see Asheville prosper.

CLOSED SESSION

At 10:17 p.m., Councilman Newman moved to go into closed session in order to consult with an attorney employed or retained by the City Council about matters in respect to which the attorney-client privilege must be preserved, including potential litigation. The statutory authorization is contained in N. C. Gen. Stat. sec. 160A-318.11 (a) (3). This motion was seconded by Councilman Dunn and carried unanimously.

At 10:35 p.m., Councilman Davis moved to come out of closed session. This motion was seconded by Councilwoman Jones and carried unanimously.

VIII. ADJOURNMENT:

Mayor Worley adjourned the meeting at 10:35 p.m.

CITY CLERK

MAYOR