

Regular Meeting

Present: Mayor Terry M. Bellamy, Presiding; Vice-Mayor Diana Hollis Jones; Councilwoman Robin L. Cape; Councilman Jan B. Davis; Councilman Bryan E. Freeborn; Councilman R. Carl Mumpower; Councilman Brownie W. Newman; City Manager Gary W. Jackson; City Attorney Robert W. Oast Jr.; and City Clerk Keisha Lipe

Absent: None

PLEDGE OF ALLEGIANCE

- Mayor Bellamy led City Council in the Pledge of Allegiance.

INVOCATION

Councilwoman Cape gave the invocation.

CITY'S TAX RATE

Mayor Bellamy said that she would like to take a moment to talk about an issue that has been the focus of several media reports in the last few days: the city's budget process and tax rate. It is important to every member of Council that citizens understand their upcoming tax bills, and so she appreciated the opportunity to briefly address this issue again tonight.

At the City Council retreat in January, City Council set a goal of adopting a revenue neutral tax rate. There is a state statute that defines revenue neutral as the rate that will produce the same amount of revenue produced by the current tax rate if no reappraisal had occurred.

Once Council said that was their goal, staff calculated Asheville's revenue neutral tax rate at 41 cents. And even though the city started the budget process with a \$2.4 million dollar shortfall, the city manager worked to fill that gap and propose a budget with the revenue neutral tax rate. The proposed budget document made City Council's intentions clear: to hold the line on property taxes at the 41 cent revenue neutral rate.

However, after the proposed budget was presented to the public, Buncombe County announced that it was looking at increasing its property tax rate from the revenue neutral rate. This was important because the County's tax rate directly impacts the amount of sales tax revenue Asheville receives. Buncombe County's sales tax formula is based on the amount of property taxes a local government takes in; so, the higher a jurisdiction's property tax rate, the more sales tax revenue it receives.

She reviewed a slide from a public meeting held on May 8, 2006, where we discussed this impact. At that same meeting, we also discussed how the city's tax rate would have to be adjusted to avoid losing sales tax revenue.

In essence, City Council had to adjust our property tax rate to keep overall revenues coming into the city equal to the overall expenses. We were looking at Asheville's entire financial picture. It's in this context that the tax rate was referred to as an adjusted revenue neutral rate. Many of you are small business owners, and you know that by this definition, City Council's objective was not to raise new money. Our objective was to hold the line on taxes without having to cut critical public services. Our objective was to keep revenues equal to expenses without raising the tax burden above what was required to keep the city's finances in order.

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The next slide she showed was how this affected the statutorily defined revenue neutral rate. Asheville's tax rate was adjusted by 1.38 cents in order to make up for the lost sales tax revenue. If Council had not adopted the additional 1.38 cents, Asheville would have been lacking \$1.5 million in revenue. We discussed this information at a public meeting on June 20, 2006, so that Asheville citizens would understand what was happening with the city's tax rate and why.

City Council included tax bill education on our agenda last week to make sure our tax rate information right before tax bills were mailed. After that presentation, City staff discovered that the final budget document did not include how and why the tax rate was adjusted from 41 cents to 42.38 cents. Staff has acknowledged this administrative oversight and corrected the adopted budget document. In fact, we are in the process of printing revised budget documents that will be available to the public.

Having acknowledged that mistake, it's important to also acknowledge the efforts of staff and my fellow Council members to make this budget process one of the most open and accessible we've had since she has been a part of City Council. We had seven public meetings on the budget that were all televised live and rebroadcast on the city's government channel. We made all of our budget documents and supporting information available on our website and through the city's e-newsletter. And we've gone to great lengths to explain what tax bills will look like and how Asheville's tax rate will impact citizens.

As Mayor, she can look each of you in the eye and say that Asheville went above and beyond to make the budget process transparent and, most importantly, to hold the line on taxes.

It's important to the entire City Council to conduct business in the open, particularly when it comes to financial matters. As soon as we receive quarterly financial reports, they are also made available to the public. When we have questions about the city's financial performance, we ask those questions during televised meetings. We are dedicated to working with citizens at the table.

When she was sworn in as Mayor, she made a promise to the people that the City's business was their business. And she believes every member of Council and every member of staff has lived up to that same promise during our budget process. It was not easy to dig ourselves out of a \$2.5 Million hole, but we did. And it was not easy to hold the line on taxes, but we did when you take into consideration the City's entire revenue base. And every citizen in Asheville deserves to hear that part of the story.

Finally, she wrapped up by encouraging citizens to sign up for the city's e-newsletter, where they can get City Council's agenda, supporting documents and other city information every week. Citizens who would like to obtain budget documents or DVDs of past Council meetings can request those by calling our City Clerk Keisha Lipe.

I. PROCLAMATIONS:

A. PROCLAMATION PROCLAIMING SEPTEMBER 11, 2006, AS "GLOBAL DAY OF MUSIC FOR PEACE"

Mayor Bellamy read the proclamation proclaiming September 11, 2006, as "Global Day of Music for Peace" in the City of Asheville. She presented the proclamation to Mr. Richard Hall, President of the Asheville Sister Cities Inc. who briefed City Council on some activities taking place during the day.

II. CONSENT AGENDA:

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At the City Manager's request, Consent Agenda Items "L" and "N" will be removed from the agenda entirely.

Mayor Bellamy asked that Consent Agenda "R" be removed from the agenda for an individual vote.

- ### **A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON JULY 25, 2006; THE SPECIAL MEETING HELD ON JULY 31, 2006; AND THE WORKSESSION HELD ON AUGUST 15, 2006**
- ### **B. RESOLUTION NO. 06-141- RESOLUTION AUTHORIZING THE MAYOR TO ACCEPT AN OFFER TO PURCHASE PROPERTY LOCATED AT 8 CEDAR STREET FROM R & G PROPERTIES**

Summary: The consideration of a resolution authorizing the Mayor to accept an offer to purchase property located at 8 Cedar Street from R & G Properties, in the amount of \$158,600.

On July 25, 2006, City Council authorized advertising for upset bids pursuant to a bid from R & G Properties for house and land at 8 Cedar Street in the amount of \$158,600. The advertisement was published on July 28, 2006, and no upset bids were received.

The property is located at the intersection of Fairview Road and Cedar Street in the Oakley community. It is improved with a circa 1926 two story Dutch Colonial with white clapboard siding on a 0.1745 acre lot with typical residential landscaping, fencing, etc. It needs some repairs in order to obtain a Certificate of Occupancy.

The bid from R & G Properties is equal to the minimum price of \$158,600.

Pros:

- The bid is equal to the appraised value and the upset bid method of sale has ensured a competitive process.
- The sale of the property will generate revenue for the City.
- It will place the property back on the tax rolls.

- It is an efficient use of resources, because un-needed property will return to private ownership.
- It will make available moderately priced housing in a fully serviced neighborhood.

Con:

- Future growth and development in the area could require street improvements that could result in the need to reacquire the property, but that is not likely in the foreseeable future due to the residential character of the neighborhood and the number of inter-connecting neighborhood streets which provide alternative routes. Additionally a portion of the property along Fairview Road is being retained by the City to provide an improved turning radius and sidewalk.

Economic Development staff recommends adoption of the resolution which will authorize the Mayor to accept an offer to purchase property located at 8 Cedar Street from R & G properties in the amount of \$158,600.

RESOLUTION BOOK NO. 30 - PAGE 70

C. RESOLUTION NO. 06-142- RESOLUTION APPOINTING MEMBERS TO THE POLICE OFFICERS AND FIREFIGHTERS DISABILITY REVIEW BOARD

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Summary: This is the consideration of appointing members to the Police Officers and Firefighters Disability Review Board.

The terms of Stephanie Cooper, Alexander Maitland and James Lewis, as members of the Police Officers and Firefighters Disability Review Board expired on July 19, 2006.

On June 20, 2006, City Council instructed the City Clerk to prepare the proper paperwork to reappoint Ms. Cooper and Mr. Lewis to each serve an additional two-year term respectfully, terms to expire July 19, 2008, or until their successors have been appointed.

In addition, at the July 18, 2006, worksession, it was the consensus of City Council to wait for a recommendation from the Buncombe County Medical Society for the licensed physician vacancy.

RESOLUTION BOOK NO. 30 – PAGE 71

D. RESOLUTION NO. 06-143 - RESOLUTION AUTHORIZING THE CITY MANAGER TO AMEND AN AGREEMENT WITH THE N.C. STATE RURAL ECONOMIC DEVELOPMENT CENTER IN CONSIDERATION OF A GRANT FOR THE PURPOSE OF IMPLEMENTATION OF THE REDEVELOPMENT PLAN FOR THE REDEVELOPMENT AREAS

Summary: The consideration of a resolution authorizing the City Manager to amend the original agreement dated 4/26/05 with the North Carolina Rural Economic Development Center for adjustments to the approved budget and for the extension of the termination date of the agreement from 8/31/06 to 7/31/07.

The City was successful in obtaining grant funds totaling \$820,000 for planning and implementation of the River Redevelopment Plan. Over the past year the City has worked with the merchants and property owners in Biltmore Village to refine and prioritize the use of the grant funds. Based on this effort, staff proposes the following adjustments, which have been accepted by the Merchant’s Association and the NC Rural Economic Development Center. The Biltmore Village Merchants have requested that the infrastructure improvements be put on hold until after January 1, 2007, resulting in a need to extend the termination date. The floodway buyout program appears to be able to be accommodated through other state funding sources.

Existing Allocation

Loan Program	\$375,000.00
Floodway Property Buyout	\$200,000.00
Tax Increment Finance Study	\$50,000.00
Biltmore Village Infrastructure	\$75,000.00
Planning Grant Remainder to be Reallocated	\$40,000.00
Storm Sewer Improvements All Souls	\$80,000.00
Total	\$820,000.00

Proposed Reallocation

Loan Program	\$467,965.00
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Unallocated Loan Funds	\$74,035.00
Floodway Property Buyout Appraisals	\$4,500.00
Tax Increment Finance Study	\$25,000.00
Biltmore Village Infrastructure/Streetlights/Wiring	\$125,500.00
Storm Sewer & Sidewalk Improvements/All Souls	\$123,000.00

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Total	\$820,000.00
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PROS:

- Fosters “Community Building” through citizen involvement in the identification of priority needs for use of the funding within the community.
- Improves the public infrastructure in Biltmore Village

CON: None noted.

The Planning and Development Department recommends adoption of the resolution authorizing the City Manager to execute an amended grant agreement with the NC Rural Economic Development Center.

RESOLUTION BOOK NO. 30 - PAGE 72

E. RESOLUTION NO. 06-144 - RESOLUTION AUTHORIZING DAWSON PLACE IN EAST ASHEVILLE TO BECOME A PUBLICLY MAINTAINED STREET

Summary: The consideration of a resolution to accept Dawson Place in East Asheville as a publicly maintained street.

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

Dawson Place is a developer-constructed street that has an average paved width of 22 feet and a length of 0.14 miles. Engineering Department staff inspected this street and finds it to be constructed in accordance with the approved standards.

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

Pro:

- The City will receive Powell Bill funds from the NCDOT to maintain the roadway.

Con:

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

City staff recommends City Council accept Dawson Place in East Asheville as a City maintained street.

RESOLUTION BOOK NO. 30 – PAGE 73

F. RESOLUTION NO. 06-145 - RESOLUTION AUTHORIZING MOSER’S PLACE IN WEST ASHEVILLE TO BECOME A PUBLICLY MAINTAINED STREET

Summary: The consideration of a resolution to accept Moser’s Place in West Asheville as a publicly maintained street.

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

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Moser’s Place is a developer-constructed street that has an average paved width of 25 feet and a length of 0.16 miles. Engineering Department staff inspected this street and finds it to be constructed in accordance with the approved standards.

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

Pro:

- The City will receive Powell Bill funds from the NCDOT to maintain the roadway.

Con:

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

City staff recommends City Council accept Moser's Place in West Asheville as a City maintained street.

RESOLUTION BOOK NO. 30 – PAGE 75

G. RESOLUTION NO. 06-146- RESOLUTION AUTHORIZING THE MAYOR TO SIGN A CONTRACT WITH COOPER CONSTRUCTION COMPANY FOR THE PROJECT KNOWN AS GROVESTONE AREA WATER SYSTEM IMPROVEMENTS

Summary: The consideration of a resolution authorizing the Mayor to sign a contract in the amount of \$557,915 with Cooper Construction for the project known as Grovestone Area Water System Improvements Project; and the associated budget amendment, in the amount of \$74,234 which will provide the additional funding needed to complete the project.

The Water Resources Department is installing a new water pump station, water storage tank, various connections and modifications to the water system along Lake Eden Road and abandoning approximately 8,000 LF of the more than 100 year old twin 16 inch water lines that run through the Grovestone quarry.

Three bids were received for this project, (1) Cooper Construction Company- \$557,915.00; (2) McCall Brothers, Inc. - \$618,917.00; and (3) McCarroll Construction Company - \$965,450.00. Recommendation from our consulting engineering firm of McGill Associates was to award the construction contract to Cooper Construction Company, an area company located in Henderson County. Because of increased prices for materials, the total cost of the project is \$74,234 more than the current budget appropriated for the project. Staff recommends that budget savings in the 2003 Annexation project and the Sweeten Creek Phase I NCDOT project be used to cover this \$74,234 cost increase.

PROS:

- This project will enhance the water system by enabling the Water Resources Department to abandon approximately 8,000 LF of 100 year old problematic 16 inch cast iron lines that break regularly causing customer water outages in the Swannanoa valley area.
- These water lines have also been a safety concern due to the depth of the lines in many places throughout the quarry of more than 70 feet deep.

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CON:

- The cost of the project is more than the original engineering estimate done in 2004 but with the rise in material pricing the past two years the bid price is in line with other area projects as determined by the consulting engineer.

City staff recommends City Council approval of the Mayor signing contract agreement with Cooper Construction Company for the installation of a new pump station, storage tank and other connections to enable the abandonment of 8,000 LF of the old twin 16 inch water lines as well as approval of a budget ordinance amendment to provide adequate funding.

RESOLUTION BOOK NO. 30 – PAGE 77

H. ORDINANCE NO. 3382 - BUDGET AMENDMENT FOR THE PROJECT KNOWN AS GROVESTONE AREA WATER SYSTEM IMPROVEMENTS

Summary: See Consent Agenda Item "G" above.

ORDINANCE BOOK NO. 23 – PAGE 67

I. RESOLUTION NO. 06-147 - RESOLUTION AUTHORIZING THE MAYOR TO APPROVE A GRANT OFFER FROM THE FEDERAL AVIATION ADMINISTRATION

Summary: The consideration of a resolution authorizing the Mayor to approve a Grant Offer from the Federal Aviation Administration (FAA) in the amount of \$1,093,870.

The FAA has offered a grant agreement to the Asheville Regional Airport. This grant, in the amount of \$1,093,870, is for the Airport Improvement Program Project No. 3-37-0005-31. This project consists of acquiring aircraft rescue and fire fighting vehicle and modifying the terminal building (design).

Staff recommends adoption of the resolution authorizing the Mayor to execute the grant agreement for Project No. 3-37-0005-31.

RESOLUTION BOOK NO. 30 – PAGE 81

- J. RESOLUTION NO. 06-148- RESOLUTION MODIFYING THE 2006 CITY COUNCIL MEETING SCHEDULE TO CANCEL THE AUGUST 29, 2006, COMMUNITY MEETING**

RESOLUTION BOOK NO. 30 – PAGE 82

- K. RESOLUTION NO. 06-149 - RESOLUTION AUTHORIZING THE MAYOR TO SIGN A CONTRACT WITH MCGILL ASSOCIATES FOR ENGINEERING SERVICES ASSOCIATED WITH THE NEIGHBORHOOD WATER SYSTEM IMPROVEMENTS PROJECT - PHASE III**

Summary: The consideration of a resolution authorizing the Mayor to sign a contract with McGill Associates, PA for engineering services in the amount of \$108,250 for Neighborhood Enhancement Water System Improvements.

With the assistance of McGill Associates, the Regional Water Authority received a \$3 Million grant for Critical Needs Water System Improvements. These projects are now called Neighborhood Enhancement Water System Improvements. Following completion of the original projects, approximately \$750,000 of the grant proceeds was not spent due to favorable contract

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pricing. Grant funding projects have to be identified prior to requesting construction bids and the low bid was \$750,000 less than the available grant funds. McGill Associates assisted the Water Resources Department with obtaining N.C. Dept. of Environment and Natural Resources (NCDENR) approval to utilize the remaining funds for additional projects. This was a 24 month process with recent approval to expend the remaining funds with the deadline for the expenditure of these funds being July 2007. McGill Associates has completed the majority of the design work associated with the additional Neighborhood Enhancement projects. Approval of this Engineering Services Contract will ensure that the much needed water system improvements occur within the time limits imposed by NCDENR.

McGill Associates prepared the Preliminary Engineering Report that was the basis of the NCDENR's approval of the original \$3 Million grant. McGill Associates also did the engineering design and contract administration on the original Critical Needs Water System Improvements projects. McGill Associates did another Preliminary Engineering Report which resulted in NCDENR's approval to expend the remaining \$750,000 grant proceeds and have completed the design of the additional Neighborhood Enhancement water system improvement projects.

PROS:

- These projects will enhance the water system by enabling the Water Resources Department to replace approximately 13,120 linear feet of existing 2-inch waterline with new 8-inch ductile iron waterline.
- These new waterlines on 8 roads will dramatically improve water service to existing customers, provide fire protection for the adjoining properties and reduce maintenance and operation expenses.
- Continuation of the contract with McGill Associates will ensure that the remaining grant funds are expended within the time constraint established by NCDENR.

CON:

- Failure to move forward with the engineering services contract with McGill Associates would jeopardize completion of the projects within current time constraints and could lead to forfeiture of \$ 750,000 of grant proceeds.

City staff recommends City Council approval of the Mayor signing contract agreement with McGill Associates for Neighborhood Enhancement Water System Improvements.

RESOLUTION BOOK NO. 30 – PAGE 83

- L. RESOLUTION DIRECTING THE CITY CLERK TO PUBLISH NOTICE OF INTENT REGARDING EXECUTION OF**

A LEASE WITH THE UNITED STATES OF AMERICA FOR THE ARMY RESERVE CENTER AT 224 LOUISIANA AVENUE

This item was removed from the Consent Agenda.

M. RESOLUTION NO. 06-150 - RESOLUTION AUTHORIZING THE CITY CLERK TO ADVERTISE AN OFFER TO PURCHASE PROPERTY OFF OF CLEMMONS STREET

Summary: The consideration of a resolution authorizing the City Clerk to advertise an offer to purchase property off Clemmons Street.

A bid has been received from Russell Keith in the amount of \$2,600 for the purchase of land off Clemmons Street.

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The land off Clemmons Street was acquired by the City as part of the East End/Valley Street Community Improvement Program. It is a rectangular shaped fragment lot comprising 0.03 acre±. It has no access and was intended to be sold to an adjoining property owner. It is zoned RS8, and it is not suitable to build on. The bid from Russell Keith is in the amount of \$2,600. We have in file an appraisal letter prepared by Gordon F. Lucks dated March 30, 2006, estimating the market value of the property at \$2,600. Mr. Keith proposes to acquire the subject parcel for assemblage with the property he owns next door.

PROS:

- The sale will be at fair market value as established by the upset bid process.
- It will return property not needed for public use to the tax rolls.
- It will transfer responsibility for maintenance to the private sector.

There is no negative impact.

The proceeds from the sale of this parcel will be Community Development Block Grant Program income.

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

RESOLUTION BOOK NO. 30 – PAGE 84

N. RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE AND CONVEY AN EASEMENT OVER A PORTION OF CITY OWNED PROPERTY AT 224 LOUISIANA AVENUE TO BELL SOUTH TELECOMMUNICATIONS INC.

This item was removed from the Consent Agenda.

O. RESOLUTION NO. 06-151 - RESOLUTION AMENDING RESOLUTION NO. 01-118 AUTHORIZING A LICENSE AGREEMENT WITH MOTIENT COMMUNICATIONS INC.

Summary: The consideration of a Resolution amending Resolution No. 01-118 authorizing a License Agreement with Motient Communications, Inc. (Motient) for an antenna at 36 Reservoir Road.

Motient has operated an antenna and related equipment at 36 Reservoir Road since October, 1995. The current lease with Motient was authorized by Resolution No. 01-118. As a result of a recent review of the file a technical error was discovered in the authorizing resolution. The term of the license agreement was defined as "3 years with 2 one year renewal terms at an annual license fee of \$5,400". The intended definition of the term, as presented in the Staff Report, was "three years at an annual license fee of \$5,400, with 2 three year renewal terms with a 10.5% increase in the annual license fee at the beginning of each renewal term". The license agreement is consistent with the latter definition of the term.

Approval of the resolution will amend Resolution No. 01-118 to correct the technical error.

Economic Development staff recommends adoption of the Resolution amending Resolution No. 01-118 authorizing a License Agreement with Motient Communications, Inc. (Motient) for an antenna at 36

RESOLUTION BOOK NO. 30 – PAGE 85

P. RESOLUTION NO. 06-152- RESOLUTION REAPPOINTING MEMBERS TO THE PLANNING & ZONING COMMISSION

Summary: The consideration of appointing members to the Planning & Zoning Commission.

The term of Tom Byers and Steven Sizemore, as members on the Planning and Zoning Commission, expired on August 14, 2006.

At the City Council worksession on August 15, 2006, City Council instructed the City Clerk to prepare the proper paperwork to reappoint Mr. Byers and Mr. Sizemore to each serve an additional three-year term respectively, terms to expire August 14, 2009, or until their successors have been appointed.

- Staff recommends City Council appointing members to the Planning & Zoning Commission.

RESOLUTION BOOK NO. 30 – PAGE 86

Q. RESOLUTION NO. 06-153 - RESOLUTION REAPPOINTING A MEMBER TO THE BUNCOMBE COUNTY TOURISM DEVELOPMENT AUTHORITY

Summary: The consideration of a resolution appointing a member to the Buncombe County Tourism Development Authority.

The term of Herman Turk, as a member of the Buncombe County Tourism Development Authority, will expire on August 30, 2006.

At the City Council worksession on August 15, 2006, City Council instructed the City Clerk to prepare the proper paperwork to reappoint Mr. Turk, representing the owner or operator of a hotel, motel or other taxable tourist accommodation with more than 100 rental units, to serve an additional three-year term, term to expire August 30, 2009, or until his successor has been appointed.

Staff recommends City Council adopt a resolution appointing a member to the Buncombe County Tourism Development Authority.

RESOLUTION BOOK NO. 30 – PAGE 87

R. RESOLUTION MAKING PROVISIONS FOR THE PROVISIONS FOR THE POSSESSION AND CONSUMPTION OF MALT BEVERAGES AND/OR UNFORTIFIED WINE AT THE ROCKIN' THE RIVER RAFT RACE FESTIVAL ON AUGUST 26, 2006; AND THE RIVER SCULPTURE FESTIVAL OPENING AND CLOSING EVENTS ON SEPTEMBER 1 AND OCTOBER 28, 2006

This matter was removed from the Consent Agenda for an individual vote.

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

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

ITEMS REMOVED FROM THE CONSENT AGENDA FOR AN INDIVIDUAL VOTE

RESOLUTION NO. 06-154 - RESOLUTION MAKING PROVISIONS FOR THE PROVISIONS FOR THE POSSESSION AND CONSUMPTION OF MALT BEVERAGES AND/OR UNFORTIFIED WINE AT THE ROCKIN' THE RIVER RAFT RACE FESTIVAL ON AUGUST 26, 2006

RESOLUTION NO. 06-155 - RESOLUTION MAKING PROVISIONS FOR THE PROVISIONS FOR THE POSSESSION AND CONSUMPTION OF MALT BEVERAGES AND/OR UNFORTIFIED WINE AT THE RIVER SCULPTURE FESTIVAL OPENING AND CLOSING EVENTS ON SEPTEMBER 1 AND OCTOBER 28, 2006

- Summary: The consideration of resolutions making provisions for the possession and consumption of malt beverages

and/or unfortified wine at The Rockin' The River Raft Race Festival on August 26, 2006, and at the River Sculpture Festival Opening and Closing Events on September 1 and October 28, 2006.

The below listed groups have requested, through the Asheville Parks and Recreation Department, that City Council permit them to serve beer and/or unfortified wine at the following events and to allow for consumption at these events.

- The Rockin' The River Festival, which is a benefit for RiverLink, Inc., has requested that City Council permit them to serve beer and/or unfortified wine at their event and allow for consumption on August 26, 2006 in the infield area of Carrier Park.
- The River Sculpture Festival, which is an Asheville Area Arts Council event, has requested that City Council permit them to serve beer and/or unfortified wine at their opening and closing events and allow for consumption on September 1, and October 28, 2006, in the French Broad River Park.

The Asheville Parks and Recreation Department recommends City Council adopt the resolutions making provisions for the possession and consumption of malt beverages and/or unfortified wine at The Rockin' The River Raft Race Festival on August 26, 2006, and also at the River Sculpture Festival Opening and Closing Events on September 1 and October 28, 2006.

Councilman Newman moved for the adoption of Resolution Nos. 06-__ and 06-__. This motion was seconded by Vice-Mayor Jones and carried on a 6-1 vote, with Mayor Bellamy voting "no."

RESOLUTION NO. 06-154 - RESOLUTION BOOK NO. 30 – PAGE 88
RESOLUTION NO. 06-155 - RESOLUTION BOOK NO. 30 – PAGE 91

III. PUBLIC HEARINGS:

A. PUBLIC HEARING TO CONSIDER AN AMENDMENT TO THE CONDITIONAL USE PERMIT AND ASSOCIATED MASTER PLAN FOR MILLS CREEK CONDOMINIUMS, LOCATED OFF MILLS GAP ROAD AND SWEETEN CREEK ROAD FOR A CHANGE IN ACCESS

ORDINANCE NO. 3383 - ORDINANCE AMENDING THE CONDITIONAL USE PERMIT AND ASSOCIATED MASTER PLAN FOR MILLS CREEK CONDOMINIUMS, LOCATED OFF MILLS GAP ROAD AND SWEETEN CREEK ROAD FOR A CHANGE IN ACCESS

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

City Attorney Oast reviewed with Council the conditional use district zoning process. This process is the issuance of a conditional use permit, which is a quasi-judicial site specific act. At this public hearing, all the testimony needs to be sworn.

After hearing no questions about the procedure, Mayor Bellamy opened the public hearing at 5:17 p.m.

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

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

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

Ms. Tuch said that this is the consideration of an amendment to the conditional use permit and associated Master Plan for Mills Creek Condominiums located off Mills Gap Road and Sweeten Creek Road for a change in access.

The **Asheville City Development Plan 2025 (ACDP 2025)** describes a number of reasons why properties within the City limits remain underdeveloped or vacant, including topographical or other physical problems with the property resulting in prohibitive development costs under existing market (or zoning) conditions. The **ACDP 2025** encourages a Smart Growth development pattern that accommodates realistic, market based alternatives to promote infill development of vacant or underdeveloped property to meet the increasing housing needs of the City of Asheville's work force population. This property, located on a major corridor, is already zoned to allow for a high-density residential development and is one of many development projects proposed for this growing area

of the City.

While the proposed plan and amendment still appears to achieve one of the City's social goals of providing reasonably priced work force housing, the **ACDP 2025** also discusses the need for transportation and development to meet other physical and economic goals. The proposed amendment eliminates the secondary entrance onto Sweeten Creek Road resulting in a less desirable road layout that does not meet the City of Asheville's physical technical standards and does not provide the interconnectivity desirable for positive economic development.

The applicant, Stan Robinson, is requesting an amendment to a previously approved Master Plan and conditional use permit (CUP) for a 76 unit condominium development. The proposed development is located on 9.75 acres off of Mills Gap Road (City Exhibit 3 - Aerial Map). The new residential construction will all be 2 story, attached condominiums clustered in groups of 2, 3, and 4 units. The property is within City limits and is zoned RM-16 (Residential Multi-family, High Density). This property is subject to Hillside Development Standards and the total number of units is well within the allowable density for RM-16.

The original review of this Master Plan also included the consideration of a new public road that would provide a valuable connection between Sweeten Creek Road and Mills Gap Road (City Exhibit 3 - Old Master Plan). Since approval by the City Council in January 2006, the adjacent property owner who had previously agreed to the road connection through their property is no longer supporting this proposal. The applicant, in an effort to keep the residential

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development moving forward, is proposing an alternative emergency access through the parking area of the adjacent apartment complex; this secondary access, like the primary, will also exit onto Mills Gap Road (City Exhibit 3 - New Master Plan). Because the secondary connection is not public road and gated for emergency access only, the second connection is not considered a full access point and does not meet the City of Asheville's maximum cul-de-sac length of 1000 feet and is exceeding it by 600 feet (60%). A recent ordinance amendment approved in June 2006 allows the City Council to vary dimensional and other technical standards applied to Conditional Zonings and Conditional Use Permits.

The original proposal was approved in January of 2006 with the added condition that the applicant work with the City traffic engineer on developing some appropriate traffic calming measures to discourage cut-through traffic on the new road.

From a technical standpoint the applicant has several options: (1) provide a second full access point, if not on Sweeten Creek then somewhere else; (2) reduce the road length and the number of units; (3) redesign the site and perhaps consider a different housing product that wouldn't rely on a public road; or (4) request an amendment to the approved Master Plan and CUP along with a request to vary the City's maximum cul-de-sac length requirement – which the Council now has the authority to do as a result to an Ordinance amendment approved in June of this year.

It's also important to note that the applicant is proposing a gated emergency access point as an alternative that would route emergency traffic through the parking area of the adjacent apartment complex. Although staff recognizes appreciates the alternative proposed, this option fails to meet our minimum technical standards and cannot be supported by staff primarily due to (1) anticipated problems with traffic stemming from providing only a single point of access; (2) delayed emergency response times; and (3) problems with providing service and maintenance.

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

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

The proposed Master Plan amendment has been reviewed by City Planning, Engineering, and Asheville Fire Department staff which finds that the proposed amendment does not meet all public health and safety related requirements by not meeting the technical standards set forth in the Standards and Specifications Manual for maximum cul-de-sac length. The following concerns have been cited by the City Fire Marshal and Traffic Engineer: (1) a single point of access provides very poor traffic access and circulation, requiring all site traffic to access via one driveway. This substantially increased the possibility of future traffic challenges. Mills Gap Road is a busy road that will only get busier; (2) A single point of access also makes maintenance a major challenge. As the only access the road is very difficult to repave or construct, utilities cannot be reasonable accessed or reconstructed, and common maintenance activities are complicated; (3) Any number of occurrences can and do close streets or intersections around the city; crashes, tree fallings, water line breaks, debris spills; leaving residents with no alternative; (4) Dead-end streets discourage activities such as walking and bicycling because streets are not interconnected; and (5) Emergency access is reduced as responders have to have proper equipment ready for gated accesses in the city limits. The gate also imparts delay on responders.

It is important to note that both the Fire Marshal and Traffic Engineer feel that the secondary access proposed is a better alternative than providing no alternative.

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.

As described in the original report, the proposed amendment remains reasonably compatible with natural features of the site.

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

As described in the original report, the proposed amendment will not result in a negative impact to adjacent property values.

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 amendment does not affect the massing or home layout that had been previously considered and approved.

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

The *Asheville City Development Plan 2025 (ACDP 2025)* describes a number of reasons why properties within the City limits remain underdeveloped or vacant, including topographical or other physical problems with the property resulting in prohibitive development costs under existing market (or zoning) conditions. The *ACDP 2025* encourages a Smart Growth development pattern that accommodates realistic, market based alternatives to promote infill development of vacant or underdeveloped property to meet the increasing housing needs of the City of Asheville's work force population. This property, located on a major corridor, is already zoned to allow for a high-density residential development and is one of many development projects proposed for this growing area of the City.

While the proposed plan and amendment still appears to achieve one of the City's social goals of providing reasonably priced work force housing, the *ACDP 2025* also discusses the need for transportation and development to meet other physical and economic goals. The proposed amendment eliminates the secondary entrance onto Sweeten Creek Road resulting in a less desirable road layout that does not meet the City of Asheville's physical technical standards and does not provide the interconnectivity desirable for positive economic development.

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

The project area is located in clear and close proximity to major road facilities, interstate connections, service centers, and easily accessed employment centers; however, the compromised access can delay emergency response.

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

As described in Standard No. 1, the proposed single access point results in very poor circulation and access and can result in undesirable traffic congestion or blocks due to emergency street closings.

For the reasons outlined above, staff finds the proposed site plan amendment to be unreasonable.

Considerations

- Amendment to proposed road does not meet City's technical standard for maximum cul-de-sac length and provides a single point of access for a high density development.
- Gaining a second full public access requires the cooperation of adjacent property owners and may not be feasible.
- Maximum cul-de-sac length has been waived by the City Engineer on previous occasions but all instances involved a very limited number of single family homes where full access would require an excessive amount of earth moving.
- Under the current building form, meeting the maximum cul-de-sac length would reduce the total number of units from 76 to 50 (approximately).
- Public right-of-way to adjacent property is still proposed allowing for a future connection if feasible.

Planning staff defers to the recommendation of the City Fire Marshal and Traffic Engineer that the proposed amendment be denied and the applicant pursue a full public access easement with the adjacent apartment complex owner and/or other design or development options for this property.

Planning staff recommends denial of the Master Plan amendment for the Mills Creek Condominium development project. However, should City Council move to approve the proposed amendment, staff would recommend the following conditions: (1) A full right-of-way to vacant property to the south to allow for future connections; and (2) Full compliance with all other technical standards identified by the TRC as a result of the final detailed review.

Mr. Craig Justus, attorney representing the applicants, explained that all the good reasons this project was approved for back in January are still there - infill development, housing prices are modest (average price is \$159,000), lower density, etc. He said that the road's shape is dictated by the shape of the properties. One option that they have is to cut 20 units, bringing the total to 54 units but 54 units would not make the project feasible. In reviewing the January staff report, the second access was necessary for emergency purposes. Because they were unable to acquire the property in the original Master Plan for the second access, they met with City staff to talk about other options. The best option available to them was through Mr. George Morosani's adjoining property through his apartment complex, and he asked that it be for emergency access only. Therefore, they feel that they have met the intent of providing a second access. Mr. Justus pointed out that Council has approved a project in the past that had only one full access, with a requirement for an emergency access (which is gated). He urged Council to approve the amendment to the Master Plan for a change in access and to also waive the 1,000 feet maximum cul-de-sac length requirement.

Mr. Ken Putnam, traffic engineer with Mattern & Craig, said that when this project is fully built out, it is expected to generate about 500 trips a day. After an analysis, we get acceptable levels of service indicating that there should be no problems with the intersection functioning from a traffic standpoint. Regarding the emergency access, emergency vehicles are already accessing the adjacent apartment complex by existing access points and there seems to be no problem there. It is reasonable that the emergency vehicles should go into the new project just as easily (Applicant Exhibit 1).

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

Upon inquiry of Councilman Davis, Fire Marshal Wayne Hamilton explained the different devices used for gates. His recommendation would be a 20-foot wide gate and that the access road be 20-foot wide. It is the intent of the State Fire Code that emergency access points allow emergency vehicles to pass one another in the event of an emergency. The lowest we have allowed is 16-feet which meets the City's alley standards.

Mr. Chris Eller, with Civil Design Concepts, said that the proposed access road will be 16-feet (with shoulders) and they have a 20-foot easement reserved. He feels the 20-foot gate could be accommodated, along with the 16-foot of access. He said that he would work with Fire Marshal Hamilton to agree upon a common gate that would be acceptable. The road in Mr. Morosani's parking lot is at least 24-feet in width.

Upon inquiry of Councilwoman Cape, Fire Marshal Hamilton said that they always encourage the use of sprinklers and if they sprinkle the units, that would alleviate his concern of two access points. He would still support the connectivity issue, even with sprinkler protection.

Upon inquiry of Councilman Mumpower, Fire Marshal Hamilton said that if they have a 16-foot width for the emergency access road, they can negotiate that. In addition, they would reduce the gate width to accommodate the road width.

When Councilman Mumpower asked about the cost of sprinklers, Fire Marshal Hamilton said that the statewide average is about \$2.40 a square foot and that does not take into account any infrastructure needs.

Mr. Justus spoke against the sprinkling because it will drive the cost of the project out of their price range. He noted that they are preparing a cross-easement to the Morosani property so that they have a second point of access, which will be through this property.

There was a brief discussion about the other projects that have been approved with similar circumstances as this project.

Upon inquiry of Councilwoman Cape, City Traffic Engineer Anthony Butzek said that the City would enforce the sight triangles at Mills Gap Road similar to any project and at the final review we will check to make sure that sight triangle is abundantly clear.

Councilman Mumpower moved for the adoption of Ordinance No. 3383, granting an amendment to the conditional use

permit and Master Plan for the Mills Creek Condominiums, subject to the following conditions: (1) a minimum 16-foot paved surface for the emergency access road with gate; (2) waiver of the 1,000 feet maximum cul-de-sac length requirement; (3) if the applicant develops the property on Sweeten Creek Road, that it would be a point of access as well; and (4) full compliance with all other Technical standards identified by the TRC as a result of the final detailed review. This motion was seconded by Councilman Davis and carried unanimously.

ORDINANCE BOOK NO. 23 – PAGE 69

D. PUBLIC HEARING TO REZONE PROPERTY LOCATED AT 45 TOMS ROAD FROM RM-16 RESIDENTIAL MULTI-FAMILY HIGH DENSITY DISTRICT TO RESORT DISTRICT

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ORDINANCE NO. 3384 - ORDINANCE TO REZONE PROPERTY LOCATED AT 45 TOMS ROAD FROM RM-16 RESIDENTIAL MULTI-FAMILY HIGH DENSITY DISTRICT TO RESORT DISTRICT

Mayor Bellamy opened the public hearing at 6:02 p.m.

Urban Planner Blake Esselstyn said that this is the consideration of an ordinance to rezone 7+ acres at 45 Toms Road from RM-16 Residential Multi-Family High Density District to Resort District. This public hearing was advertised on August 11 and 18, 2006.

As this site is located near the western edge of the extraterritorial jurisdiction (ETJ) area, much of the property around it is not zoned. Additionally, it is worth noting that the property lies within the Manufactured Housing Overlay District as well as the Manufactured Housing Community Overlay District.

The *Asheville City Development Plan 2025* lists the “Smart Growth Land Use Policies” adopted by the City Council in 2000. The plan also recognizes the “New Urbanism” concept and includes as an appendix this movement’s charter, which mentions tenets such as the promotion of neighborhoods with a variety of land uses and increased land use intensity. Beyond that, there are no specific goals of the plan that this project would be furthering, but neither can it be said that the project is out of compliance with the plan.

With the exception of perhaps encouraging a small business, approval of the proposed plan would neither support nor hinder the goals and tasks of the Strategic Operating Plan.

On October 12, 2005, City Council voted to approve a rezoning of roughly 31 acres off of Dogwood Road from Industrial to RS-4. The rezoned area is approximately one-half mile north-northwest of the Toms Road site.

On January 24, 2006, City Council voted to deny a rezoning of several properties along Smoky Park Highway and Rutherford Road from RM-16 and CBII district to HB district. That area is approximately one-half east-northeast of the Toms Road site.

On January 24, 2006, City Council voted to approve a rezoning of properties located at 16 Forsythia Lane from CBII and RM-16 to entirely RM-16. The properties are slightly more than half a mile east-northeast of the Toms Road site.

On June 7, 2006, City of Asheville staff issued a notice of violation to the applicant (Suzanne DeJohn and Dale Lane) for operating a bed and breakfast homestay without having obtained a permit for the change of use from a single family residence. The bed and breakfast homestay use is a use by right subject to special requirements under the existing zoning; the applicant can bring the property into compliance for this use without the approval of this rezoning request

The subject site is located near the western edge of the City’s ETJ area, about 200 yards south of Smoky Park Highway on Toms Road (the property also has a significantly smaller frontage on Short St). The property consists of just over 7 acres and is currently zoned RM-16. The majority of the property is vacant with the exception of a single-family residence, a barn and some smaller outbuildings. Railroad tracks cross Pallet Road between the applicant’s property and Smoky Park Highway. Surrounding land uses include manufactured housing, vacant land, a quarry, and a pallet manufacturing operation. Large properties to the south and west of the site are outside of the City’s Zoning Jurisdiction.

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The larger area in which the subject site is situated has a variety of uses represented. The mix of the commercial area fronting Smoky Park Highway, the presence of a 36-acre mobile home park about 100 feet east of the property, and the

aforementioned quarry and manufacturing operations make the area difficult to classify with a single label. The current low-intensity use of this property is in contrast with the neighboring high-intensity uses, though it should be noted that the site cannot be intensively developed owing to the substantial fraction which lies in floodway and floodplain hazard areas.

The applicant has applied for a rezoning of the lot from RM-16 (Residential Multi-family High Density District) to Resort District. The residential density allowed within the Resort district is essentially the same as that of the existing RM-16 district; the applicants wish to have the flexibility to use the property for future tourism-related businesses. The Resort zoning district was established to provide an area for the development of resort oriented uses and conference/retreat facilities and the development and expansion of facilities which serve primarily tourists and vacationers.

The intent of the RM-16 Residential Multi-Family High Density District (the existing zoning) is to permit a full range of high density multi-family housing types along with limited institutional, public and commercial uses appropriate within high density residential areas.

The Resort District does require a minimum lot size of 5 acres, a requirement which this property meets. The district also has design and operation standards specifically added to protect adjacent residential areas. Given the limited extent of developable land on the site (due to flood hazard areas) and the design and operation standards, staff does not see the potential impact of development under the proposed zoning to be significantly different from that which could be pursued under the existing zoning. Further, staff is of the opinion that, given the presence of varied high-impact uses nearby, a seven-acre resort district provides opportunities for appropriate land uses.

As of this writing, staff has received one communication from a neighbor who was seeking more information but voiced no opposition to the proposed rezoning.

On August 2, 2006, the Planning and Zoning Commission voted unanimously to recommend approval of the rezoning.

Based on the above findings and the analysis provided in the report, staff finds this request to be reasonable.

Considerations:

- Maximum residential density for the proposed zoning is essentially the same as that for the existing zoning.
- Flood hazard areas on the subject site would prevent high-intensity development of much of the property.
- The site's proximity to quarrying and industrial uses make it well suited for small-scale non-residential activities.
- The Resort District requires compliance with standards specifically designed to ensure compatibility with neighboring residentially zoned areas.

Staff views the proposed zoning district to be equally appropriate for the site as the existing zoning and recommends approval of the request.

Mr. Dale Lane, applicant, said that this zoning gives them a great deal of flexibility to create a variety of micro-businesses.

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Mr. Fred English felt that Asheville has to stop allowing people to cut trees down.

Mayor Bellamy closed the public hearing at 6:09 p.m.

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

Councilman Mumpower moved for the adoption of Ordinance No. 3384, to rezone 7+ acres at 45 Toms Road from RM-16 Residential Multi-Family High Density District to Resort District, and find the request is reasonable based on information provided in the staff report and as stated in the staff recommendation. This motion was seconded by Councilwoman Cape and carried unanimously.

ORDINANCE BOOK NO. 23 – PAGE

IV. UNFINISHED BUSINESS:

V. NEW BUSINESS:

A. RESOLUTION NO. 06-157- RESOLUTION APPOINTING MEMBERS TO THE CIVIC CENTER COMMISSION

Vice-Mayor Jones, Chair of the Boards & Commissions Committee, said that this is the consideration of a resolution appointing members to the Civic Center Commission.

The terms of Jerri Goldberg and George Keller, as members of the Civic Center Commission, will expire on June 30, 2006. In addition, Jean Ann Taylor has resigned as a member, thus leaving an unexpired term until June 30, 2006.

At the City Council worksession on June 20, 2006, the City Council instructed the City Clerk to prepare the proper paperwork to reappoint George Keller to serve a three year term, term to expire June 30, 2009, or until his successor has been appointed.

Also at the June 20, 2006, worksession, City Council instructed the City Clerk to re-advertise for the vacancies another month.

At the July 18, 2006, worksession, City Council instructed the City Clerk to arrange interviews Joseph Malki, Chip Hood, Tebbe Davis and Timothy Laughlin.

After Council spoke highly of the candidates, Joseph Malki received 0 votes; Chip Hood received 1 vote; Tebbe Davis received 7 votes; and Timothy Laughlin received 6 votes. Therefore, Tebbe Davis and Timothy Laughlin were appointed as members of the Civic Center Commission to each serve a three-year term respectively, terms to expire June 30, 2009, or until their successors have been appointed.

In addition, George Keller was reappointed to serve a three year term, term to expire June 30, 2009, or until his successor has been appointed.

RESOLUTION BOOK NO. 30 – PAGE 95

B. RESOLUTION NO. 06-158 - RESOLUTION APPOINTING MEMBERS TO THE COMMUNITY & ECONOMIC DEVELOPMENT ALLIANCE

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Vice-Mayor Jones, Chair of the Boards & Commissions Committee, said that this is the consideration of appointing members to the Community & Economic Development Alliance.

Pursuant to Resolution No. 06-100 adopted by the City Council on May 9, 2006, endorsing the HUB Project's governing structure, City Council needs to appoint five members to this board.

At the July 18, 2006, worksession, City Council instructed the City Clerk to re-advertise the vacancies.

On August 15, 2006, City Council instructed the City Clerk to arrange interviews for Joyce Dorr, Cheryl McMurray, Ty Hallock and Steve Cochran. In addition City Council will consider the following candidates, but no interview was necessary: Greg Walker-Wilson, Chuck Tessier, David McConville, Becky Anderson and Kim MacQueen. Ms. McMurray is unable to attend the interview.

Also at the August 15, 2006, worksession City Council instructed the City Clerk to prepare the proper paperwork to appoint Scott Dedman to serve a term to be established once the entire board has been convened.

After Council spoke highly of the candidates, Joyce Dorr received 4 votes; Cheryl McMurray received 5 votes; Ty Hallock received 1 vote; Steve Cochran received 5 votes; Greg Walker-Wilson received 3 votes; Chuck Tessier received 1 vote; David McConville received 4 votes; Becky Anderson received 1 vote; and Kim MacQueen received 4 votes. Because of a tie, City Council re-voted on the 3 or 4 vote-getters: Joyce Dorr received 4 votes; Greg Walker-Wilson received 3 votes; Kim MacQueen received 4 votes; and David McConville received 3 votes. Therefore, Cheryl McMurray, Steve Cochran, Joyce Dorr and Kim MacQueen were appointed as members to the Community & Economic Development Alliance to serve a term to be established once the entire board has been convened.

In addition, Scott Dedman was appointed to serve a term to be established once the entire board has been convened.

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C. RESOLUTION NO. 06-159 - RESOLUTION APPOINTING A MEMBER TO THE RIVER DISTRICT DESIGN

REVIEW BOARD

Vice-Mayor Jones, Chair of the Boards & Commissions Committee, said that this is the consideration of appointing a member to the River District Design Review Board.

Ms. Maureen Grozier has resigned from the River District Design Review Board, thus leaving an unexpired term until September 1, 2007.

On July 18, 2006, City Council instructed the City Clerk to arrange interviews for Wendy Kussrow, William Langdon and Martha Jane Peiser.

After Council spoke highly of the candidates, Wendy Kussrow received 6 votes, William Langdon received no votes and Martha Peiser received 1 vote. Therefore, Wendy Kussrow was appointed as a member of the River District Design Review Committee to serve the unexpired term of Ms. Grozier, term to expire September 1, 2007, or until her successor has been appointed.

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At 6:20 p.m., Mayor Bellamy announced a 25-minute recess.

D. THIRD PARTY REVIEW BY PROFESSOR DAVID W OWENS OF DEVELOPMENT PLANS

Mayor Bellamy said that at Council's request, Professor David W. Owens, professor of Public Law and Government at the UNC-CH School of Government, conducted a review of three recent development projects. His expertise in the areas of law and zoning and his familiarity with other cities' practices made his review to us very valuable. We asked for this review to take an objective look at the projects and application of Asheville's Unified Development Ordinance (UDO). Professor Owens and the School of Government are well-respected and credible authorities on this subject, and we appreciate their time and expertise.

The report has been available to Council and the public since late June and Professor Owens is here to formally present his report to City Council.

Mayor Bellamy said that this review will help us - as a community - work to clarify our goals and to amend the UDO to more closely reflect those shared goals. She asked for both the participation and the patience of our citizens as we continue this process. Only by coming together and trusting one another can we achieve the community's vision for Asheville. She said that after Professor Owens makes his presentation, the City Manager will give a brief status report on actions and milestones related to the UDO, both those that have already taken place and those that are upcoming. Then Council will take public comments on the report, after which City Council will have an opportunity to ask Professor Owens any questions related to his report.

Professor Owens said that City Council asked for his review of three controversial development decisions - Staples and Greenlife on Merrimon Avenue and Prudential on College Street. He noted that he submitted a letter with his findings on June 23, 2006, and at this time he will summarize his findings and address any questions:

"1. Purpose and Scope of Review: I examined the files of these three cases to address the question of whether the permit approvals were consistent with the terms of the Asheville Unified Development Ordinance. In addition to technical and legal adherence to the standards, I was also particularly mindful of two points raised by Mayor Bellamy in requesting this study. She noted there must be a "basic level of trust in our ordinances, staff and city officials" and that it was paramount to have ordinances that are "clear and understandable." Therefore I was particularly watchful for any indications of intentional wrongdoing on the part of those charged with ordinance implementation and for areas where improvements in ordinance clarity were needed.

It is important to emphasize that the purpose of this review was an examination of three past controversial decisions in order to learn how the city's ordinances and decision-making process can be improved in the future. This review was not an adjudication of the ongoing legal disputes in these cases nor was it a mediation to achieve resolution of these particular cases.

2. Comments on the Individual Decisions:

(a) Prudential Realities Sign. This case was the least complicated of the three in that there was only one central issue - the number, placement, and size of signs allowed - but even it was far from simple.

I concluded that one of the two signs - the sign on the north side over the entrance - was within the

ordinance requirements. I found it was properly characterized as a “wall sign” and that it was within the height and size limits of the ordinance.

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The second sign, however, as acknowledged early on by the staff, does not comply with the ordinance. How far out of compliance it is depends on several factors. First, the ordinance only allows a second tenant identification sign for a side of the building with an “exterior public business entrance.” It was not clear to me that the east side of the building had a public entrance. Second, if a sign is allowed on that side, it is limited to a total area of one square foot per lineage footage of that side of the building. The second sign that was permitted far exceeds this size.

(b) Staples. Two principal issues were raised by the Staples case - (1) the size and location of the four signs along the top of the building; and (2) the location and design of the building along its street frontage.

The key issue with the sign size is how much of the red background behind the lettering should be considered part of the “sign.” The ordinance provides that the background is included if it is “an integral part of and related to the sign.” A reasonable argument can be made that the entire red rectangle is a standard part of the corporate logo and should be included, thereby making the permitted sign too large. While I am inclined to agree with that view, a reasonable argument can also be made that this area is not “integral” and can be characterized as an architectural detail rather than a part of the sign. A secondary issue is the applicability of the sign height limitation. As an attached sign, I found the height limit for freestanding signs would generally not apply. The exception would be if the area to which the sign is attached is a “parapet,” in which case the ordinance does limit the height. I was not inclined to view this as a parapet, but that would not be unreasonable, and if so, the signs are too high (particularly if the background area is included.)

A building in this zoning district is allowed to have a zero street setback based only if it is a “pedestrian oriented design.” I found such a characterization of this building to be problematic. While it has some of the elements that meet this definition in the ordinance, its lack of street side entrances and street level windows leave me questioning whether it is consistent with the council’s intent for pedestrian interaction. Also, the ordinance provision does not clearly allow this same setback exemption for side streets and it is imprecise in defining the reference points for calculation of the required sight triangle (particularly regarding whether the sidewalk can be included.)

(c) Greenlife Grocery. A key issue raised by the Greenlife project was the location and operation of loading facilities on the Maxwell Street side of the project. Resolution of this question involves consideration of ordinance provisions on nonconformities, renovations, loading docks, buffers, landscaping, driveways, sight triangles, and street use.

In my review I found the interrelationship of these various provisions to be complicated and somewhat confusing. Even though the building had once housed a grocery store, its nonconforming status for zoning purposes had been long abandoned. The application inadequately addressed the scope of additions and the cost of renovations. The ordinance standards for use of alternative compliance with buffer requirements likely delegate undue discretion to staff. While the ordinance provisions can be read to allow use of the buffer area for “operation” of the loading dock, I would question whether that is consistent with the intent of the buffer requirements. Similarly, allowing a dock entrance to adjoin a driveway may not technically violate driveway width requirements, but it does raise questions of adherence to the intent of access point separation requirements in the ordinance. Also, it appears truck traffic should not have been allowed to use Maxwell Street for access, but whether the street can be used for truck maneuvering is much less clear.

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3. Conclusion. I did not find any evidence of intentional wrongdoing by the staff nor any flagrant disregard of the clear provisions of the ordinance. The staff did make several mistakes, which is not uncommon when reviewing the many dimensions of complicated projects and applying the multiple provisions of a complicated ordinance. My sense of the overall staff performance was that there was a good faith effort to carry out the terms of the ordinance. Several judgment calls were made to the benefit of the developers and to the considerable dismay of neighborhood advocates, but I found no conscious effort to subvert the ordinance’s intent. At the same time, I found a number of instances where key parts of the ordinance are unclear, confusing, and ambiguous.

4. Recommendations.

(a) Consider modifications to the development review process

(1) *Improve the application form and the review for completeness at the initiation of permit review.* The application forms must elicit all of the information necessary to review compliance. Examples of problems in these projects include

imprecise building frontages and entrances in the Prudential case and inadequate information on additions and renovations cost in the Staples case.

(2) *Clearly address the impact of application modifications during the permit review process.* Multiple changes are often made over the course of a permit review, as with the Staples façade and the Greenlife loading area. It is important for all involved - the applicant, neighbors, and staff - to have a clear and common understanding of exactly what the project actually is. At some point modifications are significant enough to warrant a re-start to the process. It should be clear when that is required.

(3) *Consider opportunities for meaningful public comment at key stages of important permitting determinations.* A wide variety of tools are available, including for example pre-application neighborhood meetings, community advisory councils, expanded public notices, listserves, internet postings of application materials, comment by advisory boards, formal hearings, and many others. It is important to carefully tailor the public review process to the particular decisions being made.

(4) *Review the process and standards for some critical preliminary determinations.* Some preliminary determinations are critical, as with the alternative buffer and landscape election in the Greenlife project and the pedestrian oriented design determination for Staples. The ordinance should be clear as to when the applicant is requesting these determinations, the criteria for and process for approval need to be clearly delineated, and careful thought should be given to the nature and timing of public review. Any delegation to staff for these determinations must be accompanied with adequate guiding standards for decision. If the council wants to include standards that involve judgment and discretion, a quasi-judicial review process is required. An administrative review process can be used only if objective standards are used.

(b) Clarify council intent on critical issues

(1) *Improve the standards and review process for projects along major corridors and other sensitive areas.* Several significant policy issues were raised by these projects. Is the Staples project within what the council considers pedestrian oriented design? Should the signage guidelines for the downtown and adjoining areas continue to be advisory only? Are the design and location standards for developments along major corridors clear and adequate and what the council intends? As the recent Merrimon Avenue study report illustrates, creation and maintenance of a vibrant, attractive, and successful corridor requires attention to a

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number of issues beyond the UDO, but the development code plays a critical role in the overall success of these efforts.

(2) *Clarify the standards for infill development.* Redevelopment of existing neighborhoods poses significant opportunities and challenges, as the Greenlife project amply illustrates. Clear standards and decision-making procedures are necessary to address traffic, noise, buffering, landscaping, appearance, scale, and a variety of other factors. Where flexibility is allowed, clear goals and ample opportunity for participation by affected parties is very important.

(3) *Establish a regular process for ordinance clarification and improvement.* Project reviews invariably identify unanticipated questions on an on-going basis. Novel sign placements and design, calculation of mandatory sight lines, and the interplay of separate ordinance provisions are examples in these projects. It is reasonable to ask staff to collect these, develop potential solutions, secure review of affected persons and the planning board, and to regularly bring options for clarifications and solutions to the council for action. I understand from Gary Jackson that staff work is already underway to address a number of the specific difficulties raised in the June report. It will be important for Council to not only follow through with the corrections, clarifications, and refinements identified through review of these projects, but to also establish an on-going process for ordinance clarification.”

Mr. Chris Pelly, President of the Coalition of Asheville Neighborhoods, thanked City Council, Professor Owens and City staff on this review process.

Regarding the Prudential sign, Mr. Joe Minicozzi asked Council (1) to amend the confusing table that has led some to interpret that sign height standards apply to attached sign, or at least a moratorium be placed on sign permits until the table is amended; and (2) if it's determined that there is not a legitimate business entrance on the east side of the building, that the sign be removed on that side; or if it does constitute a business entrance, we ask that they come forward for a variance.

Regarding the Staples sign, Mr. Minicozzi recommended Council (1) to amend the same sign table as requested for the Prudential sign; (2) calculate the red area in the background of the Staples sign as part of the logo which would make the permitted sign too large; (3) all the signs be brought down to the 25 feet height; and (4) have the parapets match by a green screen or some sort of landscaping to soften the building.

Regarding the Greenlife Grocery, Mr. Minicozzi recommended Council (1) require the owner to apply for a variance on the driveway cut or that the project be amended to meet the 36-foot requirement; (2) screening brought to Maxwell Street; (3) buffer separation between the commercial use and residential use; (4) retract the letter by Police Chief Hogan about exception of delivery vehicles blocking the rights-of-way; (5) apply a moratorium on the standards of alternative compliance until we find a better way to articulate the policies and procedures for alternative compliance.

Mr. Fred English commented about truck delivery in the Greenlife issue.

Mr. John Swann, one of the owners of Greenlife Grocery, passed out to City Council a report regarding Greenlife. He explained the beneficial efforts of Greenlife on the neighborhood and City, noting that tax revenues generated from July 17, 2004 - August 8, 2006 was \$1,127,312. He pointed out that Greenlife employs approximately 150 people and had a 2005 weekly payroll of approximately \$43,000. He said they have taken a lot of steps to try to mitigate the neighborhood concerns, including, but not limited to: memos and maps to the truck drivers regarding traffic; putting up chains across the loading dock after 6:00 p.m. until 6:00 a.m.; overlaid

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asphalt in the gutter swale at the Maxwell Street to eliminate the problem of trucks hanging up; replaced dumpsters with roll-off trash compactors; screened the loading and compactor area from adjoining streets; installed a groundwater processing system to eliminate runoff from compactor area; installed a sound absorption panel and fencing to help block the sound generated by refrigeration compressors; and entered into mediation with Mr. Reid Thompson but it ended with no resolution. As of today, Greenlife has spent \$107,000 to try to take the neighborhood needs into account, none of which were required by the City. The three closest grocery stores to Greenlife do not have any screening and several of them are visible to nearby residential houses, noting that Greenlife is willing to go well beyond what is being required of other grocery stores. He then reviewed with Council the proposals considered by Greenlife to mitigate the impact on the neighborhood and the reasons why those actions were not taken.

Mr. James Judd, resident in Chunns Cove, felt that the area to which the Staples sign is attached is a parapet, resulting in the signs being too high.

Mr. Hugh Bradburn, General Manager of Greenlife Grocery, said that many Greenlife employees are residents of the surrounding area and it is their intent to mitigate the situation as much as possible. They do work with the truck drivers making their deliveries a safe and quick process. He feels like Greenlife is an asset to the community and they are making their best effort in keeping the community in mind.

Mr. Benjamin Gilliam felt there was no question that the red area in the background of the Staples sign is part of the Staples logo, opposed to just the text lettering. He asked that the City work with Staples to reduce their sign size. He also asked that Council take under consideration that the side street setback on the Staples building is not allowed by our ordinances. Regarding the Greenlife Grocery, he felt that they turned Maxwell Street into a commercial alley.

Mr. Walter Plaue felt that Council is spending their valuable time on minor issues such as the Staples and Prudential signs. However, he did feel that the neighborhood has legitimate concerns regarding the use of Maxwell Street by Greenlife Grocery.

A resident of Asheville thanked Council for taking time to review these issues. She felt that the visual integrity of the City is important.

City Manager Jackson said that there have been significant efforts by Council and City staff on the overall planning and development process and to the three projects specifically. Using a timeline, he showed how those efforts have been made and Council's commitment to community and economic development. He also noted that in November or December the Planning and Zoning Commission will be reviewing proposed amendments to the UDO and those amendments will be presented to Council. City staff is committed to continuous improvement. Specifically with regard to Greenlife, a presentation was made to Council on August 15, 2006, regarding the traffic issues on Maxwell Street. Council challenged Greenlife to respond and Mr. Swann has presented to Council today some response to that challenge. He expected Council would want staff to continue discussions with Greenlife about their mid- and long-term plans to expand, improve and make that facility more capable with the existing neighborhood and their customers as well. Regarding Staples, Mayor Bellamy and Vice-Mayor Jones have sent a letter to re-open the dialogue regarding that issue. Regarding the Prudential sign, City staff has indicated to the property owner that they have until the end of August, 2006, to bring the City a modified sign plan that will be consistent with the ordinance.

Discussion surrounded Professor Owens' responses to various questions and/or comments from Council, some being, but are not limited to: can a UDO document be perfected; as you try to fix certain provisions of the Code, is there a tendency to break other provisions; can you cite some examples of better zoning models; in terms of our development process, how is

Asheville, a size of 70,000 people, doing; is there a shorter, more simplified way to guide our development process; is the Staples building pedestrian oriented; is Merrimon Avenue or Orange Street the front of the Staples building; does the entrance from the sidewalk on Orange Street meet the Americans with Disabilities Act (ADA) requirements; are the sight triangle requirements for the driveway leading to Orange Street met; is Maxwell Street residential in nature or commercial in nature; does the loading dock meet the alternative compliance requirements on buffering; explanation of when staff can be delegated to make alternative compliance determinations or when a quasi-judicial review process is required; does staff have the authority for sight triangle modifications in our existing UDO; and what actions do cities take when they find a discrepancy.

Councilwoman Cape spoke in support of not looking back on these issues, but moving forward. She felt that the red square is part of the corporate logo and that area is a parapet and the sign is too large. She also felt that the pedestrian oriented building amenities aren't there in the manner and intent the community expects out of the UDO. She proposed that the Downtown Commission be re-engaged in the process of working with Staples on some pedestrian oriented amenities that the community feels are acceptable. Regarding Greenlife, she feels the loading docks on Maxwell Street are non-conforming and the building was not a continuous use and therefore for those docks to be there is wrong. She felt that the buffer is inadequate. She appreciated Council is looking at these issues. She agreed that Greenlife and Staples are assets to our community, but they need to be done right. Our community needs to be more willing to incorporate those type businesses closer in. She said that she and Councilman Newman talked about giving the following direction to the City Manager and City Attorney. In terms of Maxwell Street, the purpose and goal of protecting the residential character of Maxwell Street means we need to eliminate the uses of the street by commercial loading trucks. We do not feel it is appropriate to use Maxwell Street for commercial loading trucks either to access the grocery store or for maneuvering to access the loading dock. We ask all parties to explore possible design solutions that would eliminate the need for the use of Maxwell Street at all. We are open to the idea that they meet short-term as well as long-term solutions to this issue. And open to even considering rezoning of adjacent properties as necessary to facilitate design solutions. Also would like to offer support to Greenlife should they make a choice to expand or incorporate design solutions. We believe the buffer on Maxwell Street should be improved and expanded as part of the design solution. In terms of the sign on Staples, the bright red background on the Staples building is part of their copywrited corporate logo and should be counted as part of the sign itself; and, pursuant to our Code the sign is not in compliance. We ask that our City Manager and City Attorney work with Staples to bring that signage into compliance with our sign ordinance. Landscaping is needed on Merrimon Avenue to achieve any semblance of compliance with pedestrian-oriented design, and the Downtown Commission might be a good group for doing this kind of negotiation. She hoped that City staff will work with the local property owners and businesses to achieve these goals within some kind of timeframe and if there are legal questions that need to be taken into consideration, she would like for Council to go into closed session for that purpose.

Councilman Davis felt the suggestions outlined by Councilwoman Cape and Councilman Newman were good. He feels that the letter from the Mayor and Vice-Mayor to Staples is good and felt they will try to mitigate some of the problems. He commended our staff in being pro-active and moving forward with amending the UDO for a better document.

Mayor Bellamy explained that it is now time to made decisions on these three issues; and staff has received direction on amendments to the UDO.

Regarding the Prudential sign, it was the consensus of Council that the second identification sign on the east side of the building should comply with the sign ordinance requirements. Mayor Bellamy said that she will write a letter on behalf of Council to the building

owner. City Attorney Oast said that our Code is fairly specific in terms of timelines for compliance with respect to notices of violation and his suggestion is that we follow that Code. This process was agreed to by Council.

Regarding the Staples sign, it was the consensus of Council that the red background behind the lettering should be calculated as part of the sign.

Upon inquiry of Councilman Mumpower, City Attorney Oast said that the difficulty you encounter with a situation like this is there is a split of opinion on whether the sign is too big or not. Mr. Shuford shared an interpretation earlier this year where that kind of interpretation would affect a number of other signs in this community and unless Council is prepared to take similar action against all of them, it could be a problem. It was therefore his suggestion that before we go down that road, is to do what Councilwoman Cape suggested and allow him and the City Manager to work with Staples to see if we can get some resolution to it.

Councilman Newman didn't envision the City sending them a notice of violation, but writing them and say something similar to "as you are aware, your sign has been the subject of significant community interest and controversy. We have had a third-party

review and Council after Council discussion, the majority of Council does believe that the red background is part of the corporate logo. Therefore, we would like to see you reduce the size of the sign to what our Code allows.” City Attorney Oast said that in the cases he has reviewed where this kind of action has occurred, it has been the staff’s determination, not the Council’s determination, that resulted in the mistake being recognized and steps being taken. That is exactly what we are doing in the Prudential sign. In this case, Council can direct that the investigation occur, but he was not sure if Council can direct the results of it.

In response to Councilwoman Cape about the plans being received in color or black and white, Mr. Shuford believed that the plans were in black and white. She felt that Staples knew what their colors were and made a concentrated effort to have as large of recognizable identifiable logo.

Mr. Shuford gave Council examples of other signs that you can make the argument that the background is either part of the corporate logo or something that would cause the sign to stand out. They range from a number of chain businesses to other circumstances. He thinks the issue Council has is that they would like to see some resolution of the concerns regarding Staples. The easiest way is that we seek some voluntary reactions. Staples was very responsive when the community raised objections early on and spent a significant amount of money finding out what people wanted - only to be faced with an appeal which caused them to lose interest in working with the City. But, he thinks there is an opportunity for us to explore their willingness to proceed and seek their interest to be rekindled. He suggested that as a first step.

Regarding the pedestrian orientation of the building, he heard one Council member suggest landscaping as an alternative to help soften the building and one presentation made included that. That is something we can work with Staples at a fairly minimal cost and big public relations benefits. If Council would like staff to do that, they will start with that and move into another arena should we not meet with success. He said we need to see what their reaction is first and then engage Council’s interest at that time.

Councilman Mumpower questioned the reality of the next step. Mayor Bellamy said the next step as a policy-making body would not only be for Staples, but a letter sent out to all other signs that Mr. Shuford has alluded to that would fall into this category. She said that Council is taking over the ownership of the process from here on out with the City Manager, City Attorney and Staples. The first step in this process will be a letter from City Council asking Staples to come to the table in a good faith effort and get to a good point on the sign, the height of the sign,

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the pedestrian oriented amenities, and the assurance that the access from the sidewalk on the Orange Street side is ADA accessible. If Staples is not willing to work with the City, then City Council will go into closed session to discuss their next option, which will include writing a letter to all non-conforming signs that fall into the category mentioned by Mr. Shuford.

Regarding Greenlife Grocery, it was the majority of Council’s decision that screened fence does not meet the buffering requirements.

Upon inquiry of Councilman Mumpower, Professor Owens said that the ordinance says that if you have an access from a commercial road, use that. Do not use a residential street for access to a commercial building. That is the basis of his conclusion that it would be inappropriate to have Maxwell Street as an access route to the building. What he thought the ordinance did allow was the use of Maxwell Street (if you entered from Merrimon Avenue and you had to pull onto Maxwell Street to back into the loading dock) for maneuvering. There is another ordinance provision that says design of all loading docks, including maneuvering room, on sight. He believes those two provisions are somewhat in conflict, but it seemed to him that the intent of the ordinance is relatively clear that a commercial truck should not be using a residential street to get to the store.

Councilwoman Cape said that part of the reason Maxwell Street was used is because City staff considered the grocery store use was continuous. But it seems very clear here that Professor Owens’ opinion is that, even though the building had once housed a grocery store, its non-conforming status for zoning purposes had long been abandoned. So it did go back to a new use and then all our standards came into play to not use Maxwell Street. It’s clear to her that in the UDO it says that if there are several street accesses, then the residential street cannot be used, and there are several street accesses.

With regard to the buffering, Mayor Bellamy said that Council deals with buffering all the time and none of the buffering ever completely shields anything we are asking it to shield because the buffering isn’t mature. She didn’t think buffering is required to completely shield, but to create some distance between uses. Mr. Shuford said that even if there was a fully compliant buffer and setback, the unloading truck would still be located relatively near Maxwell Street and would certainly be above whatever buffer would be installed, certainly at the time of the installation, and only the trees spaced in that buffer would create any sort of visual blockage. He did suggest the possibility of using a landscape material not often used for buffers, but has the potential to fairly quick get to a height that would get to the issue of screening the trucks. That would be the use of some sort of bamboo that grows thickly and tall enough to shield a 12-13 foot tall truck. It’s not a perfect solution, but a landscape solution that would ultimately be

more effective than a fence, along with some effort to get some small shrubs in at that location.

Councilwoman Cape said that the issue is that about 8-12 feet of the truck sticks out of the buffer onto the sidewalk. The key issue is that the loading dock should have been built somewhere else.

Upon inquiry of Councilman Freeborn, Professor Owens said that it was his opinion that the buffer on Maxwell Street does not meet the intent of the ordinance in the sense that the delivery truck, during its normal operation, is sitting in the buffer area and that seems to be the basic problem. From a legal standpoint, however, the ordinance does allow alternate compliance and the question is does that alternate compliance extend so far as to allow them to regularly put a part of the operational portion of a loading dock within the buffer area. One of the difficulties is that the alternate compliance provision in or ordinance is that it be equal to or better than regular compliance and it's difficult for him to see how the current configuration is equal to or better than the regular compliance.

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Mayor Bellamy asked if on the buffering issue does Council need to have a quasi-judicial review to really address this issue. Professor Owens responded that for future projects, if Council wants to retain the alternate compliance that you now have in the ordinance with comparable standards, then you need to convert it to a quasi-judicial procedure rather than a staff level approval.

Councilman Davis felt that the buffer doesn't offer the intent of the buffer, but we have an operating business that is doing a good job of infill development. He feels that we can address future issues with the quasi-judicial review. He felt we would be opening Pandora's Box if we say we are going to step beyond what experts say is a compliant situation. The courts will decide those issues. The truth of the matter is that the other grocery stores and other uses that have this same situation. He does understand the feelings of the residents on Maxwell Street but he felt that maybe a renewed effort of mediation might be worth pursuing.

Mayor Bellamy said that if we ask Mr. Swann to come to the table, it will not be with the neighborhood, but with her, if okay with Council, the City Manager and the City Attorney to talk about opportunities. Since we are accountable to the community, after we meet with Greenlife we will report back to the community.

Councilman Newman felt that Council would like to explore some possible design ideas to try to make it better, rather than simply managing making an existing situation better.

City Manager Jackson said that the direction received from Council last week was to pursue interim and long-term strategies and that is a level of discussion that hasn't occurred before.

Councilman Mumpower was concerned that we are taking risks with the future of Asheville to pursue these kinds of policy approaches and was especially concerned that we are second-guessing our staff in an area that is not clear to any of us. If we ask our staff to function perfectly in an imperfect world with an imperfect document, we risk paralyzing them. And when we paralyze them, then we affect the development and growth of the city adversely from this point forward. He fears we will be taking some steps that represent second-guessing and he doesn't want to participate in that.

Mayor Bellamy said that Council is following through with what they recommended last week about asking what Greenlife's future plans are, how can we address some concerns of the surrounding neighborhood, and if there are opportunities for a positive response to some of the concerns.

At the request of Mayor Bellamy and after a brief discussion, it was the majority of Council's decision to ask the City Manager to bring forward to Council at the next formal meeting a budget amendment for additional planning staff to address the growing demands of our community.

At 9:02 p.m., Mayor Bellamy announced a 5-minute break.

E. RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A CONTRACT WITH CONVENTIONAL WISDOM TO DEVELOP A COST ANALYSIS FOR REFURBISHMENT AND UPGRADING THE CURRENT CIVIC CENTER FACILITY

Councilman Jan Davis said that this is the consideration of a resolution authorizing the City Manager to enter into a contract with Conventional Wisdom to develop a cost analysis for refurbishing and upgrading the current Civic Center facility.

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On May 9, 2006, the Civic Center Task Force presented its report to the Asheville City Council. The report recommended two options for consideration; the first included building a new arena, and the second called for building a new performing arts center next to City Hall. A third option, estimated at approximately \$17 million, was also discussed. This third option would only cover repairs of deferred maintenance items and would not improve service to customers, nor conditions for event performers and producers. The majority of the Task Force felt that money being spent on refurbishment alone is not a satisfactory desire.

During the May 9 Council meeting, there was a request from members of Council that a "fourth option" be developed. This option consists of refurbishing and upgrading the current facilities so that the Civic Center can continue operations into the future successfully. In pursuit of this option, staff contacted Ian Vingoe, a consultant with Conventional Wisdom, who wrote much of the Heery Report. Mr. Vingoe is intimately familiar with the Civic Center and has the capability to develop realistic and detailed estimates for improvements in a short time frame.

Mr. Vingoe has indicated that the fee for the costs estimates report will be up to \$10,000 plus expenses. There is additional cost if City Council would like him to attend a City Council meeting to discuss the results. Staff is confident that the total cost of these items would not exceed \$20,000.

Councilman Davis said that at the May 9 meeting, Councilman Newman expressed a desire to look at incremental repairs in order to keep the building functioning and producing. It is his personal opinion that if we do that there is a white paper in existence that was done by the Civic Center Commission that gives us an outline of what we can do. He feels we know what we need to do to keep the building functioning, without entering into this agreement. At the same time, Councilman Mumpower suggested the "fourth option" of refurbishing and upgrading the current facility to allow the facility to continue and operate with improved, functional ability for a significant amount of time. We have Civic Center staff that has identified these needs. Regarding marketability of the building, we do acknowledge that there is a conflict with some of the uses in the building at the same time. To alleviate that conflict, we would probably build another entrance, as outlined in the Heery Report. That, however, is something we cannot do ourselves. But, should we want to go in that direction, we should retain experts like Conventional Wisdom. Contrary to all the studies spent on the Civic Center to this point, taxpayer dollars have been fairly minimal. His personal feeling is that we move forward and do the incremental repairs that are necessary and step forward and look at things that will carry this good operating building into a longer term future. And, at the same time we are pursuing the option of a stand-alone performing arts center.

Mr. Bill Lack, member of the Civic Center Commission, had a lot of confidence in the Civic Center staff and thought the \$20,000 would be a good investment.

Mr. Fred English said that we need to get help from our state legislators for assistance with the Civic Center.

Councilman Freeborn moved to deny the resolution authorizing the City Manager to enter into a contract with Conventional Wisdom to develop a cost analysis for refurbishing and upgrading the current Civic Center facility. This motion was seconded by Councilman Newman.

Councilman Newman felt that if the majority of Council thinks that the option of building a new performing arts center on the Parkside property is the preferred choice, then he doesn't think it would make sense to spend a lot of money exploring other options. He feels that it will take several years to work that option out and the success of it will depend on the level of private sector money that will be necessary to make that happen. If we go that route, then we do need to do things to our existing Civic Center to take care of it and we already know what needs to be

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done. If ultimately the new performing arts center doesn't work, then the "fourth option" is probably what we need to pursue. He is supportive of following the direction that the majority of Council wants to go in with the new performing arts center and focusing the dollars we have to take better care of the facility we have today.

Councilman Davis felt a better motion could have been what the City is going to do with the Civic Center, since we have clearly identified the steps. He moved to amend the motion to contract with Ms. Sasha Vrtunski (who the City has worked with in the past on this issue) on a short-term basis to have her work with Civic Center staff on a priority list of things that need to be done.

Upon inquiry of Councilman Freeborn, City Manager Jackson said that he feels we can benefit from the additional staff support. If Council gives him the flexibility, he didn't think Council would need to give him formal direction other than to supplement existing staff as needed through contracting to get the work done. The money would not rise to the amount of money Council would need to authorize.

Councilman Davis withdrew his motion to amend the resolution since City Manager Jackson said that he would not need formal direction to contract with Ms. Vrtunski.

Councilman Mumpower said that while he likes the idea, his hesitancy is that the only realistic thing is fixing what we have. We need to get this issue focused on by itself.

The motion made by Councilman Freeborn and seconded by Councilman Newman carried unanimously.

Councilwoman Cape is excited about moving forward. She asked Council to direct staff to bring back opportunities for Council to look at changes to the Civic Center illustrative and reflective of our community and look at energy-efficient measures, green-building techniques (including, but not limited to, a green roof on the Civic Center) and other options as we make changes. As we direct people to move forward with these key issues, let's take the opportunity of taking the stigma of this 1950 high school auditorium and turn it into an example for something we can be proud of.

Mayor Bellamy instructed the City Manager to do a better job of promoting the Civic Center on our website and what good things are happening there.

Councilman Mumpower asked that the Civic Center issue be brought back to Council on a regular basis. Mayor Bellamy said that the City Manager will work with Ms. Vrtunski on this.

F. RESOLUTION NO. 06-156- RESOLUTION IN SUPPORT OF IMMIGRATION REFORM

Councilman Mumpower read the following reasonable, balanced resolution: "Whereas, historically, the cities and towns of the United States are a melting pot of multiple cultures and nationalities based on our nation's history of welcoming immigrants, and the City of Asheville in particular has benefited from the contributions of immigrant communities; and Whereas, Asheville reaches out to immigrant communities in a number of ways, including through the Sister Cities program, and cultural festivals such as Fiesta Latina and the Greek Festival; and Whereas, when admitted through a well-regulated system, immigrants strengthen the City by creating economic opportunities, increasing scientific and cultural resources, strengthening the City's ties with other nations and cultures, fulfilling humanitarian commitments, and supporting family ties and family values that are necessary to build strong communities; and Whereas, failure on the part of the

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federal government to secure the borders, track visa recipients in the interior, or enforce worksite laws allows illegal immigration to thrive, with record numbers of persons entering the country illegally or overstaying their visas; and Whereas, the National League of Cities on July 21, 2006, adopted a "Resolution in Support of Comprehensive Immigration Reform," which called upon the federal government to strengthen and reform immigration laws, and to undertake consistent and comprehensive enforcement of them. Now, therefore, be it resolved by the City Council of the City of Asheville that the City Council does hereby recognize the substantial contributions that immigrants have made to the City of Asheville, and requests that action be taken at the federal level to enforce immigration laws, and to devote sufficient resources to enforce those laws, as set out in the above-referenced National League of Cities resolution. In addition, the City Clerk is hereby directed to transmit a copy of this Resolution to Senators Elizabeth Dole and Richard Burr, and to Congressman Charles Taylor."

The following individuals spoke in support of the resolution for various reasons:

Mr. Tim Peck
Mr. Carlos Gomez
Mr. Shawn Presnell
Mr. H. R. Carlyle
Ms. Kathie Lack, President of the Action Club
Rev. Christopher Chiaronmonte
Mr. Bill Lack
Ms. Loretta Reynolds
Mr. Walter Plaue

The following individuals spoke about the positive points of immigration:

Mr. Bill Cavallaro, west Asheville resident
Ms. Jerri Soloman
Dr. Steve Buser
Ms. Minnie Jones

Councilman Mumpower moved to adopt Resolution No. 06-156. This motion was seconded by Vice-Mayor Jones.

Councilwoman Cape wanted to include language that not only addressed the punishment aspects, but also encouraging the opportunities for legal immigration. The language she asked to add is as follows: "Be it further resolved that the federal government must provide an appropriate, legal means of immigration, as is determined to be necessary and effective for the United States, for foreign nationals that want to work here temporarily, become legal permanent residents, or gain citizenship; and that this process would include the ability for those undocumented immigrants who currently live here and who have proven themselves by their consistent work history, absence of criminal activity and integration into our communities, to attain legalized status and should also be able to apply for citizenship through additional process, as appropriate and practical in a manner that is fair to all applicants." However, she said that Councilman Newman was under the impression that the resolution Councilman Mumpower read essentially supported the comprehensive immigration reform resolution that the National League of Cities passed. If that is so and if we can change the wording in such a way to say that we support the National League of Cities resolution then she would be fine to not add the language she recommended above.

Councilman Mumpower said that he supported the resolution without the suggested change read by Councilwoman Cape. He thinks that the language staff has drafted provides

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some flexibility and perspective but does not specifically endorse the National League of Cities recommendations.

Upon direction of the majority of Council, City Attorney Oast said that resolution read by Councilman Mumpower does not say that City Council does hereby endorse the National League of Cities resolution, but he didn't think there was any question that it does not disagree with it. If directed, he would be glad to amend the resolution to reflect Council's intent.

Councilman Newman moved to amend the motion made by Councilman Mumpower and seconded by Vice-Mayor Jones by asking the City Attorney to include language clarifying that we are supporting the National League of Cities resolution. This motion was seconded by Councilwoman Cape.

City Attorney Oast said that he can amend the resolution as follows: "... and requests that action be taken at the federal level to enforce immigration laws, and to devote sufficient resources to enforce those laws, as set out in the above-referenced National League of Cities resolution, which the City Council does hereby endorse." (underlining denotes amendment)

When Mayor Bellamy called for a vote on the motion to amend the main motion, said motion carried on a 6-1 vote, with Councilman Mumpower voting "no."

After a brief discussion, Councilman Mumpower moved to withdraw his main motion.

Councilman Freeborn moved to approve the language in the resolution as presented with the additional language suggested by City Attorney Oast. This motion was seconded by Councilwoman Cape and carried on a 6-1 vote, with Councilman Mumpower voting "no."

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VI. OTHER BUSINESS:

Councilman Mumpower thanked the Breakfast Rotary Club for their efforts in building two Top A Stop bus stops.

Mayor Bellamy encouraged residents to drive safely, especially since the school year has started.

Mayor Bellamy said that the Asheville-Buncombe Coalition System is in need of volunteer mentors and tutors to assist our young people in both school systems.

The following claims were received by the City of Asheville during the period of Steve Slagle (Water), Suzanna Baum (Sanitation), Margaret Carol Godefroi (Fire), Sheila Shearon (Streets), Jacqueline Brown (Water), Stephen P. Thompson (Sanitation) and Angela Fisher (Transit Services.) In addition, the following claims were received by the City of Asheville during the period of August 4-17, 2006: Oalma Hazel Norton (Sanitation), Kendra Edgerton (Streets), BellSouth (Fire), Janice Redfern (Water), BellSouth (Water) and Colis J. Muchemu (Transit Services). These claims have been referred to Asheville Claims Corporation for investigation.

VII. INFORMAL DISCUSSION AND PUBLIC COMMENT:

Rev. Christopher Chiaromonte was disappointed that food vendors after Bele Chere were told not to give the left-over food to the homeless. He urged Council to move quickly on providing public restrooms in the downtown area.

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Mr. Gene Hampton, founder of Asheville-Buncombe Citizens for Quality Government, spoke to Council about the quality of life in Asheville and the need for quality education.

Mr. Adam Ripley asked that his ministry be allowed to serve grilled cheese sandwiches at Pritchard Park on Friday nights when The Drum circle is present.

VIII. ADJOURNMENT:

Mayor Bellamy adjourned the meeting at 10:55 p.m.

CITY CLERK

MAYOR