

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; Assistant City Manager Jeffrey B. Richardson; City Manager Gary W. Jackson; City Attorney Robert W. Oast Jr.; and City Clerk Keisha Lipe

Absent: None

PLEDGE OF ALLEGIANCE

Fire Captain Mike Quinones led City Council in the Pledge of Allegiance.

INVOCATION

Councilman Davis gave the invocation.

I. PROCLAMATIONS:

A. RECOGNITION OF ASHEVILLE FIRE DEPARTMENT CAPTAIN MIKE QUINONES AS FIREFIGHTER OF THE YEAR FOR THE STATE OF NORTH CAROLINA

Mayor Bellamy proudly recognized Asheville Fire Department Captain Mike Quinones as Firefighter of the Year for the State of North Carolina.

Fire Chief Greg Grayson was also pleased to announce that Gary Cornett and Scott Burnette have been promoted as Assistant Fire Chiefs.

B. PROCLAMATION PROCLAIMING SEPTEMBER 18-22, 2006, AS "MINORITY ENTERPRISE DEVELOPMENT WEEK"

Mayor Bellamy read the proclamation proclaiming September 18-22, 2006, as "Minority Enterprise Development Week" in the City of Asheville. She presented the proclamation to Ms. Brenda Mills, Minority Business Coordinator, who briefed City Council on some activities taking place during the week.

C. PROCLAMATION PROCLAIMING THE FOURTH MONDAY IN SEPTEMBER 2006 AS "FAMILY DAY – A DAY TO EAT DINNER WITH YOUR CHILDREN"

Mayor Bellamy read the proclamation proclaiming the fourth Monday in September of 2006, as "Family Day – A Day to Eat Dinner with Your Children" in the City of Asheville. She presented the proclamation to Ms. Allison Jordan with Children First, who briefed City Council on some activities which will take place on that date.

II. CONSENT AGENDA:

At the request of Councilman Mumpower, Consent Agenda Items "C," "D," and "E," were removed from the Consent Agenda for separate votes.

At the request of Councilman Newman, Consent Agenda "G" was removed from the Consent Agenda for a separate vote.

-2-

At the request of Mayor Bellamy, Consent Agenda "H" was removed from the Consent Agenda for a separate vote.

A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON AUGUST 22, 2006

B. RESOLUTION NO. 06-160 - RESOLUTION AUTHORIZING THE MAYOR TO ACCEPT AN OFFER TO PURCHASE PROPERTY LOCATED OFF OF CLEMMONS STREET FROM RUSSELL KEITH

Summary: The consideration of a resolution authorizing the Mayor to convey land off of Clemmons Street to Russell Keith, in the amount of \$2,600.

On August 22, 2006, City Council authorized advertising for upset bids pursuant to a bid from Russell Keith for land off Clemmons Street in the amount of \$2,600. The advertisement was published on August 25, 2006, and no upset bids were received.

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 RS-8, 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.

Cons:

-
- There is no negative impact.

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

City staff recommends adoption of the resolution which will authorize conveyance of the property off Clemmons Street to Russell Keith, in the amount of \$2,600.

RESOLUTION BOOK NO. 30 – PAGE 98

C. RESOLUTION ACCEPTING THE U.S. DEPT. OF HOMELAND SECURITY'S SAFER GRANT FOR THE PURPOSE OF HIRING THREE FIREFIGHTERS

This matter was removed from the Consent Agenda for a separate vote.

D. RESOLUTION AUTHORIZING THE CITY MANAGER TO ACCEPT A GRANT FROM THE U.S. DEPT. OF HOMELAND SECURITY GRANT FOR MOBILE EMERGENCY RADIOS FOR THE FIRE AND RESCUE DEPARTMENT

This matter was removed from the Consent Agenda for a separate vote.

-3-

E. BUDGET AMENDMENT ACCEPTING A GRANT FROM THE U.S. DEPT. OF HOMELAND SECURITY FOR THE PURCHASE OF MOBILE EMERGENCY RADIOS

This matter relates to Consent Agenda "D" above and was removed from the Consent Agenda for a separate vote.

F. RESOLUTION NO. 06-163 - RESOLUTION ADOPTING THE NATIONAL INCIDENT MANAGEMENT SYSTEM (NIMS) IMPLEMENTATION PLAN AS THE CITY OF ASHEVILLE'S INCIDENT COMMAND SYSTEM

Summary: The consideration of a resolution adopting the National Incident Management System (NIMS) as the City of Asheville's Incident Command System.

On February 28, 2003, the President in Homeland Security Directive (HSPD)-5, directed the Secretary of Homeland Security to develop and administer a National Incident Management System (NIMS). This system will provide a consistent nationwide approach for Federal, State, and local governments to work effectively and efficiently together to prepare for, respond to, and recover from domestic incidents, regardless of cause, size, or complexity. To provide for interoperability and compatibility among Federal, State, and local capabilities, the NIMS will include a core set of concepts, principles, terminology, and technologies covering the incident command system; multi-agency coordination systems; unified command; training; identification and

management of resources (including systems for classifying types of resources); qualifications and certification; and the collection, tracking, and reporting of incident information and incident resources.

The Incident Command System components of NIMS are already an integral part of various incident management activities throughout the City of Asheville, including current Public Safety training programs. The NIMS provides a consistent, flexible, and adjustable national framework within which government and private entities at all levels can work together to manage domestic incidents. This flexibility applies across all phases of incident management: prevention, preparedness, response, recovery, and mitigation.

This Incident Command System will assist the City of Asheville in effectively and efficiently preventing, preparing for, responding to and recovering from domestic incidents, regardless of cause, size or complexity.

The NIMS provides a set of standardized organizational structures—such as the Incident Command System (ICS), multi-agency coordination systems, and public information systems—as well as requirements for processes, procedures, and systems designed to improve interoperability among jurisdictions and disciplines in various areas, including: training; resource management; personnel qualification and certification; equipment certification; communications and information management; technology support; and continuous system improvement.

Pros:

- NIMS is required under HSPD-5 and a Proclamation dated May 11, 2005, by Governor Easley.
- Use of NIMS is tied to eligibility of a host of US Dept. of Homeland Security grant programs.
- Increases efficiency and effectiveness of operations during daily and emergency events.
- Increases ability to work with other local, state and federal agencies during times of disaster, using the same operational management platform.

-4-

Cons:

- None identified at this time.

City staff recommends approval of a resolution adopting the National Incident Management System as the City of Asheville's Incident Command System.

Ms. Leslee Kulba was of the opinion that the City is accepting money from the federal government for what used to be a local government issue. She did not think that state and local issues should be federalized.

Fire Chief Grayson explained how the Incident Command System components of NIMS are already an integral part of various incident management activities throughout the City of Asheville, including current Public Safety training programs. He explained that local governments are required to adopt the NIMS on or before September 31, 2006.

RESOLUTION BOOK NO. 30 – PAGE 101

G. RESOLUTION OF INTENT TO CLOSE A PORTION OF AN UNOPENED ALLEY OFF OF MONTFORD AVENUE AND SCHEDULING A PUBLIC HEARING ON OCTOBER 10, 2006

This item was removed from the Consent Agenda for a separate vote.

H. RESOLUTION MAKING PROVISIONS FOR THE POSSESSION AND CONSUMPTION OF MALT BEVERAGES AND/OR UNFORTIFIED WINE AT THE PIERZ FAMILY REUNION ON OCTOBER 14, 2006, AT CARRIER PARK CORPORATE PAVILION

This item was removed from the Consent Agenda for a separate vote.

I. ORDINANCE NO. 3386 - BUDGET AMENDMENT TO ASSIST WITH THE DOG PARK AT AZALEA PARK

Summary: The consideration of a budget amendment in the amount of \$5,000 contributed by Mr. Chuck Cloninger to assist with the construction of a Dog Park at Azalea Park.

The City of Asheville is in the process of building its second "Dog Park" at the Azalea Park property in East Asheville. This contribution is to help cover the expense of this project.

Pro

- This will allow the City to construct another enclosed "off-leash" area for dogs to use while their owners socialize. The first such area was built with private donation at the French Broad River Park in West Asheville and is extremely successful, to the point that it is overused. The dog park at Azalea will help with this overcrowding and provide an area across town for additional convenience. Currently, the Dog Park at Azalea is nearing completion with the fencing installed and the gravel parking area completed. Once the mulch ground cover is spread for the "off-leash" area, the park will be ready for use.

Con: None noted

City staff recommends City Council approve the budget amendment in the amount of \$5,000 to increase the budget for development of the Azalea Park Dog Park.

ORDINANCE BOOK NO. 23 Page 80

-5-

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 Davis moved for the adoption of the Consent Agenda. This motion was seconded by Vice-Mayor Jones and carried unanimously.

ITEMS REMOVED FROM THE CONSENT AGENDA FOR SEPARATE ACTIONS

RESOLUTION NO. 06-161 - RESOLUTION ACCEPTING THE U.S. DEPT. OF HOMELAND SECURITY'S SAFER GRANT FOR THE PURPOSE OF HIRING THREE FIREFIGHTERS

Summary: The consideration of accepting the U.S. Dept. of Homeland Security's (DHS) SAFER Grant, in the amount of \$558,143, for the purpose of hiring three firefighters for the Asheville Fire and Rescue Department.

After gaining approval from City Council, the City of Asheville Fire and Rescue Department (AFR) requested \$558,143.00 from the U.S. Dept. of Homeland Security for the purpose of hiring additional personnel. The AFR was successful in obtaining those funds. The funds will be utilized to pay the salaries, wages and benefits of 3 additional full time firefighters. The grant total is \$558,143. This is a matching grant. In the first year of the five year performance period, DHS will fund \$94,616 (90%) of the cost of compensation and benefits for three firefighters. The City's match is \$10,513 (10%) for the first year. The first year's grant revenue, matching funds and additional FTE allocation are already included in AFR's adopted Fiscal Year 2006-07 budget; therefore no budget amendment is needed. The federal match decreases and the City's match increases over the span of the performance period. The funding ratios for subsequent years are:

<u>Year</u>	<u>Federal Share</u>	<u>City Share</u>	<u>Total</u>
2	\$86,626 (80%)	\$21,657 (20%)	\$108,283
3	\$55,766 (50%)	\$55,765 (50%)	\$111,532
4	\$34,463 (30%)	\$80,414 (70%)	\$114,877
5	\$0 (0%)	\$118,323 (100%)	\$118,323

PROS:

- The U.S. Dept. of Homeland Security is funding a total of 49% (\$286,672) of the costs of salaries, wages and benefits for three additional firefighters over a five year period.
- The additional firefighters are needed in order to maintain the City's emergency services overall standard of cover.
- The percentage of time companies are taken out of service due to staffing shortages will be reduced.
- Firefighting capabilities will be enhanced with the additional personnel.
- Emergency medical response, rescue services and fire prevention and education capabilities will benefit from additional personnel.
- Firefighter safety will improve.

CON:

- The City's matching funds are 51% (\$286,672) of the total grant.

City staff recommends City Council accept the U.S. Dept. of Homeland Security's (DHS) SAFER Grant, in the amount of

\$558,143, for the purpose of hiring three firefighters for the Asheville Fire and Rescue Department.

-6-

Ms. Leslee Kulba was of the opinion that the City is accepting money from the federal government for what used to be a local government issue. She did not think that state and local issues should be federalized.

Fire Chief Greg Grayson said that this program is intended to strengthen our firefighter fighting force in our community. We seek to maintain and improve our standard of cover within the City of Asheville and the two new fire stations are intended to do just that. It is his recommendation that we continue to staff all our units with two personnel and this grant will allow us to hire firefighters to do that.

Councilman Mumpower felt that this is a stretch of the Homeland Security dollars at a time of unprecedented federal deficits. Even though we need firefighters, he could not support the resolution on the basis of the Homeland Security source for those revenues.

Councilman Newman moved for the adoption of Resolution No. 06-161. This motion was seconded by Vice-Mayor Jones and carried on a 6-1 vote with Councilman Mumpower voting "no."

RESOLUTION BOOK NO. 30 – PAGE 99

RESOLUTION NO. 06-162 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ACCEPT A GRANT FROM THE U.S. DEPT. OF HOMELAND SECURITY GRANT FOR MOBILE EMERGENCY RADIOS FOR THE FIRE AND RESCUE DEPARTMENT

ORDINANCE NO. 3385 - BUDGET AMENDMENT ACCEPTING A GRANT FROM THE U.S. DEPT. OF HOMELAND SECURITY FOR THE PURCHASE OF MOBILE EMERGENCY RADIOS

Summary: The consideration of (1) a resolution authorizing the City Manager to accept a grant from the U.S. Department of Homeland Security for the purchase of mobile radios for Asheville Fire and Rescue; and (2) a budget amendment, in the amount of \$120,000 to accept these funds.

After gaining approval from City Council, the City of Asheville Fire and Rescue Department (AFR) requested \$120,000 from the U.S. Department of Homeland Security for funding the purchase of mobile radios for apparatus and staff vehicles. The AFR was successful in obtaining those funds. The funds will be utilized for the purchase of 30 mobile radios which will be permanently mounted in fire apparatus. The grant total is \$120,000 with the US Dept. of Homeland Security providing \$96,000 (80%) of the total amount and the City providing \$24,000 (20%) in matching funds. The \$24,000 city match will be drawn from the \$184,500 that was budgeted in the manager's contingency account for Fiscal Year 2006-07.

PROS:

- The US Dept. of Homeland Security is funding 80% (\$96,000) of the costs of the radios.
- The radios will replace our existing, soon to be obsolete radios.
- If not for obtaining this grant, the City would be required to fund 100% of the mobile radio replacement.
- The radios will be used on a daily basis for emergencies in the City of Asheville.
- The radios are a required component of the City's new mixed mode (analog/digital) Smart Zone 4.1 communications system.
- The radios in conjunction with the new digital platform will provide overall better coverage of the City.

-7-

- The mobile radios will provide an additional margin of safety during fires and emergency operations.
- The radios are compatible with the state-wide communications system known as Voice Interoperability Program for Emergency Responders (VIPER).
- The radios will allow personnel to communicate directly with mutual and automatic aid departments and with fire and other public safety agencies across the state if needed.
- Asheville Fire and Rescue will be able to work more effectively with a variety of public safety agencies from across the state (in addition to other fire departments).

CONS:

- The City's matching funds are 20% (\$24,000) of the total grant.

- The City will incur full maintenance and replacement cost of the radios. However, we will not maintain more radios than we already are maintaining.

City staff recommends City Council adopt (1) a resolution authorizing the City Manager to accept a grant from the U.S. Department of Homeland Security for the purchase of mobile radios for Asheville Fire and Rescue; and (2) a budget amendment, in the amount of \$120,000 to accept these funds.

Ms. Leslee Kulba was of the opinion that the City is accepting money from the federal government for what used to be a local government issue. She did not think that state and local issues should be federalized.

Councilman Mumpower felt that even though the grant is from the Department of Homeland Security he did think that an argument could be made that communication in terms of local security is a Homeland Security effort.

Councilman Freeborn moved to adopt Resolution No. 06-162 and Ordinance No. 3385. This motion was seconded by Councilman Davis and carried unanimously.

RESOLUTION BOOK NO. 30 – PAGE 100

ORDINANCE BOOK NO. 23 – PAGE 78

RESOLUTION NO. 06-164 - RESOLUTION OF INTENT TO CLOSE A PORTION OF AN UNOPENED ALLEY OFF OF MONTFORD AVENUE AND SCHEDULING A PUBLIC HEARING ON OCTOBER 10, 2006

Councilman Freeborn moved to recuse Councilman Newman from participating in this matter. This motion was seconded by Councilwoman Cape and carried unanimously.

Summary: The consideration of a resolution of intent to close a portion of an unopened alley off of Montford Avenue and set a public hearing for October 10, 2006.

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

Pursuant to this statute, Mr. Brownie Newman has requested the City of Asheville permanently close to the public a portion of an unopened alley way off of Montford Avenue as shown as "alley (unopened)" on the plat recorded in Plat Book 79, Page 87 in the Buncombe County Register of Deeds.

Public Works Department staff has researched and determined that this unopened alley is not a City maintained street. Closure of this unopened alley will not deny any of the abutting

-8-

properties a reasonable means of ingress or egress. The two parcels that abut this section of alley are identified as PIN Nos. 9649-13-03-2964 and 9649-13-04-2004. Both abutting property owners have joined in signing the petition for the closure.

Pros:

- The closure allows the property to be used to its maximum potential.
- There will be no future compromise of ingress/regress to other property

Cons:

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

City staff recommends that City Council adopt the resolution setting a public hearing for October 10, 2006, to close a portion of the unopened alley off Montford Avenue.

Councilman Mumpower moved for the adoption of Resolution No. 06-164. This motion was seconded by Councilwoman Cape and carried unanimously.

RESOLUTION BOOK NO. 30 – PAGE 102

RESOLUTION NO. 06-165 - RESOLUTION MAKING PROVISIONS FOR THE POSSESSION AND CONSUMPTION OF MALT

BEVERAGES AND/OR UNFORTIFIED WINE AT THE PIERZ FAMILY REUNION ON OCTOBER 14, 2006, AT THE CARRIER PARK CORPORATE PAVILION

Summary: The consideration of a resolution making provisions for the possession and consumption of malt beverages and/or unfortified wine at the Pierz Family Reunion at Carrier Park Corporate Pavilion on October 14, 2006.

The Pierz Family has requested through the Asheville Parks and Recreation Department that City Council permit them to serve beer and/or unfortified wine at their Pierz Family Reunion on October 14, 2006, at the Carrier Park Corporate Pavilion.

City staff recommends City Council adopt the resolution making provisions for the possession and consumption of malt beverages and/or unfortified wine at the Pierz Family Reunion at the Carrier Park Corporate Pavilion on October 14, 2006.

Councilman Newman moved for the adoption of Resolution No. 06-165. This motion was seconded by Vice-Mayor Jones and carried on a 6-1 vote, with Mayor Bellamy voting "no."

RESOLUTION BOOK NO. 30 – PAGE 103

III. PUBLIC HEARINGS:

A. PUBLIC HEARING TO REZONE PROPERTY LOCATED AT CARIBOU ROAD AND ARDMORE ROAD FROM RS-4 RESIDENTIAL SINGLE-FAMILY MEDIUM DENSITY DISTRICT TO RS-8 RESIDENTIAL SINGLE-FAMILY HIGH DENSITY DISTRICT

Mayor Bellamy opened the public hearing at 5:32 p.m.

Urban Planner Julia Cogburn said that this is the consideration of an ordinance to rezone 6+ acres at Caribou Road and Ardmore Road from RS-4 Residential Single-Family Medium

-9-

Density District to RS-8 Residential Single-Family High Density District. This public hearing was advertised on September 1 and 8, 2006.

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

Ms. Cogburn said that Harry and Linda Giezentanner, property owners, have requested 6+ acres at Caribou Road and Ardmore Road from RS-4 Residential Single-Family Medium Density District to RS-8 Residential Single-Family High Density District. The subject properties are located off of Forest and Ardmore Streets which run parallel to each other off of Caribou Road in the Shiloh community. The property is vacant and abuts railroad tracks to the east.

The property is bordered by properties all used residentially but at varying densities. The property to the east (past the railroad tracks) contains manufactured housing (parks and single-family homes), the property to the south contains an elderly housing facility, and the properties to the north and west contain single-family homes. The zoning is also varied: to the east, Commercial Industrial; to the south, RM-8; to the north, RS-4 and RS-8; to the west, RS-4. The single-family lots in the area are mostly larger than would be allowed in RS-8 (allows minimum 5,000 square foot lots); however many have very narrow lot widths which are more in keeping with RS-8.

The development of this property for a single-family subdivision would be subject to review by the City's Technical Review Committee (TRC). Infrastructure extensions/upgrades and road connections would be examined depending on the number of lots proposed.

At a meeting on August 2, 2006, the Planning and Zoning Commission reviewed this rezoning application and recommended approval (6-1). Based on the above findings and the analysis provided in the report, staff finds this request to be reasonable.

Considerations:

- The property is bordered by a variety of residential densities and a railroad corridor.
- The access to the property may need to be improved to handle increased density.
- The rezoning supports the interests set forth in the City's comprehensive plan of promoting higher density infill development

in existing areas while maintaining the single-family development pattern of much of the Shiloh community.

Ms. Cogburn said that there have been some questions about slope in the area as well as wetlands. Using a map, she showed how the property is sloping on some portions and more gently sloping on the edges. With respect to the wetlands, there is a drainage area and it is mucky. She spoke with the Buncombe County Office of the Corp of Engineers and they said to be a 100% certain that something is or is not a wetlands would require a consultant or someone from their office to confirm it. However, they did indicate that it was highly unlikely that this particular area would be a wetlands that they would regulate because it is not tied to any specific stream or any other water course.

Mr. Harry Giezantner, property owner, said that his family has owned this property for 40 years and is now requesting a rezoning. The development of the property will require Ardmore Street to be widened to 18 feet and paved at his expense. He will be upgrading a street that is zoned RM-8 on the south side. He will be putting in infrastructure as required by the Unified Development Ordinance. His plan is to bring affordable housing to this community and based on past development experiences he cannot do that with the present zoning. He has built 15 affordable homes in the Shiloh community in the past 3.5 years and presently he is building 6 homes on Iris Street. Regarding the wetlands concern, he said that on the east side of the

-10-

property there is a drain basin for all of the property above it. This basin runs into a drainage system underneath the railroad tracks. There is not a water stream on the property. He has had two meetings with members from the Shiloh community and had made every effort to meet with the community to respond to questions. He does not have a development plan available at this time. The cost for the plan is approximately \$50,000. If Council approves the rezoning, any project on this property will have to be approved for major subdivision approval.

Ms. Norma Baynes, liaison for the Shiloh Community Association, said that they have been continuing to strive for their historical status and keeping the neighborhood in tact. They presently struggle with issues of all kinds, including commercial development, all types of development, traffic calming, safety, and infrastructure. To rezone the property to RS-8, it means more houses on the land. They feel that the developer can develop affordable housing in the present RS-4 district. With all the other developments in their neighborhood, there is now an over-population in Shiloh. It is hard on our infrastructure and safety of the neighborhood, with not much recreation in the area. They would like to see specific plans for the neighborhood and how the houses will fit in. She presented Council with pictures of homes in the area.

Mr. Scott Duncan, resident on Forest Street, felt like the Planning & Zoning Commission was given inaccurate and incomplete information in that the planner did not walk on the property and did not have first-hand knowledge of the site's topography. He believes in affordable and housing and infill development, but not in this case because of the topography of the property and the nature of the neighborhood.

Ms. Freda Nash, resident of the Shiloh community, spoke against the rezoning in that their concern is density and safety of the existing residents. She echoed some of the comments from Ms. Baynes and preferred to see a development plan for the property.

Mayor Bellamy moved to close the public hearing at 5:53.

Councilwoman Cape moved to deny the rezoning of 6+ acres at Caribou Road and Ardmore Road from RS-4 Residential Single-Family Medium Density District to RS-8 Residential Single-Family High Density District. This motion was seconded by Councilman Freeborn.

Ms. Cogburn said that the developer has requested that his rezoning petition be withdrawn so that he wouldn't have to wait a year to come back with something a little more detailed.

When City Attorney Oast said that it would be appropriate for the motion to be withdrawn since the developer has asked that his rezoning petition be withdrawn, Councilwoman Cape withdrew her motion.

Upon inquiry of Councilman Mumpower, Planning & Development Director said that we are projecting a need for about 10,000 additional dwelling units over the next 15-20 years and the City has approximately 37,000 now.

Councilman Mumpower felt that we have ordinances covering stormwater run-off. In addition, he could not recall a time when a neighborhood authentically, without qualification, embraced any project and if we echo that "not in my backyard" he doesn't think we serve our city well. He felt we need to look for positive, constructive ways to create more housing. This developer has

had the property in his family for 40 years and is trying to do something positive with it. It concerns him that we ask the developer to spend \$50,000 for a plan where the

-11-

neighbors can trump him with a protest petition. In addition, our filtration system of the Planning & Zoning Commission voted in support of this project on a 6-1 vote.

Councilwoman Cape felt that we have seen where our stormwater ordinances don't always work and we have a situation here where the property has been RS-4 for a long time. In addition, we should support the Army Corp of Engineers when they say they would have to do a study to understand the condition of the land.

Councilman Newman felt that there have been good developments in this community that have been actively supported by neighborhoods.

Councilman Davis felt that protest petitions are difficult to work with regardless of which side you support.

**B. PUBLIC HEARING TO AMEND THE APPROVED CONDITIONAL USE PERMIT TO REVIEW CHANGES TO THE BUILDING DESIGN AND ORIENTATION AT 27 CATAWBA STREET
ORDINANCE NO. 3387 - ORDINANCE AMENDING THE CONDITIONAL USE PERMIT FOR 27 CATAWBA STREET**

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 6:03 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. In addition, Mayor Bellamy and Councilman Newman disclosed that they are Metropolitan Sewerage District (MSD) Board members.

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

Urban Planner Alan Glines 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).

Mr. Glines said that this is the consideration of an amendment to the conditional use permit and associated Master Plan to review changes to the building design and orientation for 27 Catawba Street.

He said that on June 13, 2004, the City Council approved a Conditional Use Permit for a quadraplex in an RS-8 district, located off of Catawba Street (City Exhibit 4 - Location Map). The project was approved by Council subject to the Technical Review Committee (TRC) conditions, and required a detailed site plan review to ensure compliance with the approved site plan and building elevations submitted with the application (City Exhibit 5 - Approved Site Plan).

-12-

On March 29, 2005, the applicant, Mr. Rusty Hunter, submitted final detailed site plans for review that received Level One site plan approval and issuance of the zoning permit on July 14, 2005. On June 19, 2006, the Planning Department received a request for a zoning final inspection of the project in order to gain a Certificate of Occupancy. Upon that inspection, it was noted that the structure had changed in orientation from what was approved by Council (the more narrow part of the building was approved facing the street in order to appear more like a single-family structure; the structure that was now built had been reversed so that the longer, more visible part of the building now faced the street). (City Exhibit 6 - As Built Survey with Proposed Change; and City Exhibit 7 - Conceptual Elevation Approved by City Council). Staff, upon this discovery, contacted the applicant and informed them that the built structure did not comply with the approved conditional use master plan, and that the project would have to return to Council for review and approval.

The owner and building contractor met with staff and explained that the orientation of the building was changed due to a

relocation of a sewer line by the MSD. During the initial planning stages of the project, the owners worked with MSD to establish where the sewer line would be installed, thus the building's original location. When the line was ultimately replaced, MSD had shifted the sewer line to run diagonally across the lot making it virtually impossible to orient the building the way it was approved without encroaching into the sewer easement.

The applicant, in an effort to make the built structure appear more in character and in line with the original approval, has submitted an elevation for adding a porch to the new "front" of the building (City Exhibits 8, 9, 10 and 11 - Pictures of Quadaplex; and City Exhibit 12 - Proposed Elevation). The porch is proposed on the east side of the façade in order to stay clear of the MSD sewer easement which crosses just outside of the handicap ramp. In addition to the porch extension additional foundation plantings and preservation of the vegetation on site is proposed. He noted that there is an existing tree that will need to be removed for the handicapped parking area so that the parking does not encroach into the front setback and landscape buffer areas.

The Asheville City Council shall not approve the conditional use application and site plan unless and until it makes the following findings, based on the evidence and testimony received at the public hearing or otherwise appearing in the record of this case:

1. That the proposed use or development of the land will not materially endanger the public health or safety. The project is still being inspected for compliance with the State Building Code. A certificate of occupancy will not be permitted until full compliance with all City regulations and standards are achieved.
2. That the proposed use or development of the land is reasonably compatible with significant natural and topographic features on the site and within the immediate vicinity of the site given the proposed site design and any mitigation techniques or measures proposed by the applicant. The property is already developed and is in compliance with the grading and erosion control permits. The applicant, as part of the original approval, has preserved much of the existing perimeter vegetation and will complete the installation of the required landscaping around the parking area.
3. That the proposed use or development of the land will not substantially injure the value of adjoining or abutting property. The porch addition and foundation planting proposed on the front of the new façade appears to soften and balance the scale of the structure. This, along with the existing vegetation on site reduces the visible impact of the structure from Catawba Street assuring that the building fits within the single-family neighborhood that surrounds it.

The project is still expected to be an asset on this street and not expected to injure the value of adjoining or abutting properties.

-13-

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. As was noted in the original staff report for the approval of the quadraplex, the surrounding neighborhood provides a range of different building footprint sizes. The footprint of the proposed building falls within this range. The proposed building is two stories in height as are some of the homes in the area. Because the long side of the building has been shifted and is now the front of the structure, the project is being reviewed for a conditional use permit amendment. The proposed porch will improve the residential character of the building and existing vegetation will reduce the perceived scale.
5. That the proposed use or development of the land will generally conform with 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 encourages infill development in areas where the infrastructure is in place to support the use. Projects with greater density along corridors and near bus lines have also been noted as a positive approach to infill 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 has already been built and complies with the majority of TRC conditions including detailed reviews of the plans by representatives of the Water Resources Department, Engineering, the Fire Department and Public Works.
7. That the proposed use will not cause undue traffic congestion or create a traffic hazard. The project scope has not increased from its original application in which it was determined that the existing roadway and capacity were sufficient to handle any increase generated by the proposed use.

In consideration of the above findings, the adjoining zoning and land uses, and the City adopted planning documents, the proposed conditional use permit can be conditioned to be reasonable and consistent with the intent and purpose of the Unified

Development Ordinance (UDO).

Staff feels that the proposed porch extension and additional foundation plantings will soften and balance the appearance of the structure from the street making it more compatible and in character with the neighboring area. Staff recommends approval of this amendment subject to the following conditions: (1) The porch is added to the façade as shown on the drawings provided (City Exhibit 6 and City Exhibit 12); (2) Foundation plantings shall be installed behind the handicap ramp to soften the height of the wall; (3) Parking area shall be revised so that parking does not encroach into the front setback and landscape buffer areas; (4) Existing vegetation shall be maintained and supplemented as needed to meet all landscape requirements; (5) The building shall comply with all State Building and Fire Code requirements; and (6) The subject properties shall be recombined into a single parcel prior to the issuance of the Certificate of Occupancy.

Mr. Bob Spears, builder, explained that they started the project with the understanding that the building would fit on the lot. When they discovered where MSD installed the line, they found that they could not put the building on the lot as proposed. They thought they informed the right people about turning the building and the change in location was not done maliciously in anyway. At the end of the project, they found they were in violation. Their mistake was not coming back to City Council requesting an amendment once they knew MSD was causing the building location to be changed. We have spent quite a bit of money to rectify the error and make the building more pleasing. We did try to save as many trees as possible but there is an old 100-

-14-

year old tree that might have to be cut to meet the UDO. We are happy to make the necessary change to move the project forward.

Mr. Charles R. Worley, attorney for the developer, acknowledged that an error was made and they have worked on a remedy for that error. Not only is this an embarrassment of having to come back to City Council, but there is a financial penalty as well - the estimated \$30,000 cost for the façade to fit into the neighborhood.

After rebuttal, Mayor Bellamy closed the public hearing at 6:17p.m.

Councilman Davis moved for the adoption of Ordinance No. ___, amending the conditional use permit for 27 Catawba Street by adopting the amended Master Plan and the building elevations illustrating a porch addition and foundation plantings along the front of the structure, subject to the following conditions: (1) The porch is added to the façade as shown on the drawings provided (City Exhibit 6 and City Exhibit 12); (2) Foundation plantings shall be installed behind the handicap ramp to soften the height of the wall; (3) Parking area shall be revised so that parking does not encroach into the front setback and landscape buffer areas; (4) Existing vegetation shall be maintained and supplemented as needed to meet all landscape requirements; (5) The building shall comply with all State Building and Fire Code requirements; and (6) The subject properties shall be recombined into a single parcel prior to the issuance of the Certificate of Occupancy. This motion was seconded by Councilman Mumpower.

In response to Councilwoman Cape, Planning & Development Director Scott Shuford explained what was missed in the process and how that will be remedied in the future.

When Councilwoman Cape inquired about the probability of removing the 100-year old tree for parking, Mr. Glines explained that they are required by the State Code to have one handicapped space and there is a provision in the UDO that states that parking cannot encroach into the front setback.

Vice-Mayor Jones wanted to let people know that it okay to make a mistake and was pleased in the way they tried to remedy that mistake. City Council is very serious about the conditions imposed on conditional use permits and feels like this was a very constructive process.

Councilman Mumpower questioned the \$30,000 mitigation cost and whether those mitigation measures are necessary.

Councilwoman Cape said that the conditions imposed by Council on conditional use permits are important. It's also important that the process has honor and consistency. It's unfortunate that the developer had to go through more hoops and financial expense, but this Council spends a lot of time on conditional use processes and it's only right that this kind of mitigation (which he has accepted) offers some respect to the process.

Councilman Davis wondered if we could amend the motion that the developer make efforts to save the 100-year old tree if City Council can waive the Code provision about parking in the front.

City Attorney Oast said that there is a provision in our Code with regard to quadrplexes, that parking shall be located in the rear and shall be screened with vegetation from adjacent single-family uses. It goes on to say that on-street parking or parking in front or on the side of the lot may be approved by the City Council provided that any off-street parking can be adequately screened from adjacent residential uses. It appears that the parking in the front is the issue and

-15-

not in the setback so it appears that Council may permit this, although we do not have a specific site plan showing where that parking space is going to be.

Mr. Shuford said that it appears we have a zoning requirement that Council does have some authority to adjust and it sounds like the motion would give staff the ability to make those adjustments. He did indicate that it may be the parking space is a handicapped parking space and there are some specific requirements about the grade to which the site has to conform to in order

to allow adequate handicapped access under the State Building Code, and that would not be something that we can seek a variance on. We will do what we can to save the tree based upon what appears to be the direction from Council, but it may turn out that it will have to be cut to meet the State Building Code requirement. If that is the case, we will let you know whether it has to go or not.

Upon inquiry of Councilman Mumpower, Dr. Jim Wells, principal in the company that owns the property, said that the \$30,000 will be reflected in the cost of the rent. He does want the site to look attractive and is willing to make the modification.

At 6:37 p.m., Councilman Freeborn called the question.

Councilman Mumpower withdrew his second to the motion.

Councilwoman Cape then seconded the motion made by Councilman Davis with said motion be carried on a 6-1 vote, with Councilman Mumpower voting "no."

Councilman Mumpower continued to be concerned that this Council is at risk for indulging neighborhoods and indulging ourselves in exercises of control and that if we aren't more careful with our polices and our efforts to control almost everything that comes before us, we risk choking the city and the people who live here.

Mayor Bellamy felt that the developer acknowledged he made a mistake and we accepted the change allowing the project to be better. To say we are sending the wrong message is inappropriate. For us to work for a better community there has to be give and take on both sides.

ORDINANCE BOOK NO. 23 – PAGE 82

C. PUBLIC HEARING TO CONSIDER CONDITIONAL ZONING OF PROPERTY LOCATED AT 7 GRANDVIEW PLACE FROM RS-8 RESIDENTIAL SINGLE-FAMILY HIGH DENSITY DISTRICT AND COMMUNITY BUSINESS I DISTRICT TO COMMUNITY BUSINESS I DISTRICT/CONDITIONAL ZONING TO CORRECT A NON-CONFIRMING PARKING LOT

City Attorney Oast said that he received a letter on September 12, 2006, from Mr. Steven Aceto, attorney representing the applicant Mr. Nicholas E. Papanastasiou and/or Pegasus Holdings, LLC, requesting that the public hearing be continued since they would not be able to complete the required Letter of Credit in the form appropriate for submission to City Council. Therefore, Councilman Davis moved to continue this public hearing until September 26, 2006. This motion was seconded by Vice-Mayor Jones and carried unanimously.

D. PUBLIC HEARING DIRECTING THE HOUSING CODE COORDINATOR OF THE BUILDING SAFETY DEPARTMENT TO VACATE THE DWELLING LOCATED AT 128 ALABAMA AVENUE

-16-

City Attorney Oast said that after speaking with Robert Griffin, Director of Building Inspections, Mr. Griffin advised him that all issues have been resolved and City Council will not need to hold a public hearing on this matter.

E. PUBLIC HEARING TO CONSIDER CONDITIONAL ZONING OF PROPERTY LOCATED AT 301 E. CHESTNUT STREET FROM RM-16 RESIDENTIAL MULTI-FAMILY HIGH DENSITY DISTRICT TO INSTITUTIONAL DISTRICT/ CONDITIONAL ZONING FOR RE-ESTABLISHMENT OF A HOTEL

ORDINANCE NO. 3388 - ORDINANCE TO CONDITIONALLY ZONE PROPERTY LOCATED AT 301 E. CHESTNUT STREET FROM RM-16 RESIDENTIAL MULTI-FAMILY HIGH DENSITY DISTRICT TO INSTITUTIONAL DISTRICT/ CONDITIONAL ZONING FOR RE-ESTABLISHMENT OF A HOTEL

Mayor Bellamy opened the public hearing at 6:40 p.m.

Urban Planner Julia Cogburn said that this is the consideration of an ordinance to conditionally zone property located at 301 E. Chestnut Street from RM-16 Residential Multi-Family High Density District to Institutional District/ Conditional Zoning for re-establishment of a hotel. This public hearing was advertised on September 1 and 8, 2006.

The subject property is located within the city limits, at the corner of Furman Avenue and E. Chestnut Street. The Princess Anne Hotel was originally built as a hotel and is on the National Register of Historic Places (as a contributing building in a National Register District – the Chestnut-Liberty District). In the 1970s this building was converted to a residential apartment building and has been used as a boarding house, retreat center, and apartments since that time. It is unclear if every use conversion of this building in the past was done in accordance with local regulations. The current owners, Howard and Janet Stafford, have completed the restoration of this building to its original use as a small hotel. In order to make certain that all aspects of their operation are legal, the owners are seeking conditional zoning to Institutional for the purpose of operating their hotel as renovated.

Surrounding properties are largely residential in use. To the north there is an apartment complex (zoned RM-16) and to

the west and south there are individual apartment buildings. East of this site the land use is predominately single-family in nature (zoned RS-8). A variety of uses are found in the broader area including offices along Furman and commercial uses along Charlotte Street.

The property owners propose that the conditional zoning allow the operation of a 16 room hotel on this property. Additionally, there are 3 staff apartments and a small (32 seats) dining area. The owners do request that the use permit small functions (receptions, fundraising events, etc.) to be held at the hotel.

At a meeting on July 17, 2006, the Technical Review Committee (TRC) reviewed the conditional zoning request and made a positive recommendation (with conditions) that the project be forwarded to the Planning and Zoning Commission. In addition to the conditions stated in the staff report, the TRC added the following conditions:

- That a more detailed description of all proposed uses is provided for the Planning and Zoning Commission and City Council review.
- That more detail be provided on the parking – numbers; location; dimensions; handicapped parking.
- That access is clarified.

-17-

At a meeting on August 2, 2006, the Planning and Zoning Commission recommended unanimously (7-0) the conditional zoning request subject to the TRC conditions and with the following description of permitted uses:

- Sixteen (16) room hotel.
- Three (3) apartments for hotel staff.
- 32 seat dining room to be used for hotel guests (breakfast; afternoon refreshments) and for restricted dining open to the public only on Friday and Saturday evening and for Sunday brunch.
- Special functions allowed, being restricted when the expected attendance is over 75 persons. There shall be no more than 4 such large functions per month and in those circumstances, special off-street remote parking arrangements would be required. There would be no limit on the number of special events involving fewer persons.

Prior to this Council meeting, the applicant had provided a more detailed drawing of the site plans and presented an opinion letter addressing the right to use the existing access route for access to the parking on site. Accompanying the detailed site plans was a request for alternative compliance for landscaping. It details the tree credits requested for existing vegetation and details additional plantings to be made. Council will need to approve, deny or modify the alternative compliance request if choosing to approve this rezoning request. Staff feels this request to be reasonable and in keeping with the intent of the ordinance and in the interest of preserving the considerable existing vegetation on site.

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

1. **That the proposed use or development of the land will not materially endanger the public health or safety.** The project, if approved, must meet the technical standards set forth in the City's UDO. The existing site plan shows compliance with most all of the City's development standards and the applicant is working with staff on full compliance.
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.** There are no real topographic or natural issues on this site. The applicant has done considerable landscaping on the site to date, in addition to leaving all existing tree cover, and is working with the City to further enhance the landscaping.
3. **That the proposed use or development of the land will not substantially injure the value of adjoining or abutting property.** The use of the property immediately surrounding the site is residential (multi- and single-family). The small hotel (16 rooms) is compatible with the higher density residential and with the office and commercial uses found in the surrounding area. The renovation of this hotel to its original use from an apartment building/boarding house should enhance the values of abutting properties
4. **That the proposed use or development or the land will be in harmony with the scale, bulk, coverage, density, and character of the area or neighborhood in which it is located.** This use is a use that was developed as part of a historic community in the 1920s and thus is in harmony with the character of the Chestnut-Liberty District. Though larger than

many structures in the area, there are considerable large single-family and multi-family structures found throughout the neighborhood.

-18-

5. **That the proposed use or development of the land will generally conform to the comprehensive plan, smart growth policies, sustainable economic development strategic plan and other official plans adopted by the City.** The proposed use supports the 2025 Plan in that it promotes the traditional diversity of uses found in historic neighborhoods, and that it assures that redevelopment of structures is of high quality, adding to the character of the City.
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 Princess Anne is within close proximity to transportation facilities and other utilities appear adequate. The parcel on which the hotel is located is near major road facilities and other service centers.
7. **That the proposed use will not cause undue traffic congestion or create a traffic hazard.** The hotel is a very small property (16 rooms) and should not cause significantly greater traffic issues than the previous use as an apartment/boarding house. The traffic engineer did not express traffic concerns for the operation at the TRC review.

Considerations:

- The rezoning makes certain that all aspects of the renovation of the Princess Anne Hotel are in conformance with City regulations.
- The renovation returns a historic property in an historic neighborhood to its original use.
- Parking on the street may be necessitated for some functions held at the hotel.

Mr. W. Louis Bissette Jr., attorney representing the petitioners, briefed Council on one of Asheville treasurers - The Princess Anne Hotel, which opened in 1924. He said the Hotel is on the National Historic Registry and is a real asset for the City of Asheville. He spoke in support of the conditional zoning and presented City Council with a petition containing 45 signatures and 14 letters of support. He said the application meets all the criteria necessary and the petitioners are willing to work with any conditions imposed by City Council.

Ms. Barber Melton, Vice-President of the Coalition of Asheville Neighborhoods, said that they support the conditional zoning; however, they raised a question regarding parking for the special functions. When there is parking on the side streets in a neighborhood, safety is an issue. She suggested perhaps a method of parking permits be utilized between Mr. Stafford and the neighbors.

A resident who resides on Chestnut Street said that she does support the conditional zoning and loves that the building was restored. She does fear, however, that there will be problems with parking on the special events. She feels that the existing apartments on Chestnut Street will be moving toward the direction of non-residential property.

The following individuals spoke in support of the conditional zoning for the Princess Anne Hotel for several reasons:

Mr. Jody Whitehurst
A resident on Furman Avenue

Ms. Julie Brandt, member of the Board of Directors of Asheville Preservation Society of Asheville and Buncombe County
(not speaking on behalf of the Board)

Mr. Mark Allison, resident on Furman Avenue

Ms. Erin McLoughlin, resident on Oak Park Road

Mr. Shannon Fields

Mr. Craig Tiller, resident on Oak Pak Road

-19-

Mayor Bellamy closed the public hearing at 7:06 p.m.

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

Councilman Freeborn moved for the adoption of Ordinance No. 3388, to conditionally zone property located at 301 E. Chestnut Street from RM-16 Residential Multi-Family High Density District to Institutional District/ Conditional Zoning for the

purposes of operating a small hotel subject to the following conditions: (1) The project shall comply with all conditions outlined in the TRC staff report; (2) The permitted uses on the property shall be limited to the following: (a) Sixteen room hotel; (b) Three apartments for hotel staff; (c) 32 seat dining room to be used for hotel guests (breakfast; afternoon refreshments) and for restricted dining open to the public only on Friday and Saturday evening and for Sunday brunch; and (d) Special functions allowed, being restricted when the expected attendance is over seventy-five (75) persons. There shall be no more than four (4) such large functions per month and in those circumstances, special off-street remote parking arrangements would be required. There would be no limit on the number of special events involving fewer persons; (3) All site lighting must comply with the City's Lighting Ordinance and be equipped with 90 degree cut-off fixtures and directed away from adjoining properties and streets; (4) The building design, construction materials and orientation on site must comply with the conceptual site plan and building elevations presented with this application. Any deviation from these plans must gain approval through the Planning and Development Department; and (5) At the direction of the Planning Director, this Project will be reviewed by the TRC prior to issuance of any permits. In addition, his approval includes acceptance of the request for alternative compliance as stated in the letter provided by the applicant. This motion was seconded by Councilwoman Cape.

When Councilman Mumpower asked if the last condition was necessary, Ms. Cogburn said that the condition is worded that it is at the direction of the Planning Director that the project will be reviewed by the TRC prior to issuance of any permits.

Councilman Mumpower asked if Councilman Freeborn would be willing to amend his motion to delete that last condition. Councilman Freeborn felt that if staff felt it was a necessary condition, he would not change his motion. Councilman Mumpower responded that this is an example of that unnecessary level of control.

The motion made by Councilman Freeborn and seconded by Councilwoman Cape carried unanimously.

ORDINANCE BOOK NO. 23 – PAGE 83

At 7:09, Mayor Bellamy announced a short recess.

F. PUBLIC HEARING TO CONSIDER AN AMENDMENT TO THE CONDITIONAL ZONING OF 103 N. BEAR CREEK ROAD (COMMERCIAL INDUSTRIAL CONDITIONAL ZONING) FOR A TEMPORARY CLASSROOM STRUCTURE

ORDINANCE NO. 3389- ORDINANCE AMENDING THE CONDITIONAL ZONING OF 103 N. BEAR CREEK ROAD (COMMERCIAL INDUSTRIAL ZONING) FOR A TEMPORARY CLASSROOM STRUCTURE

Mayor Bellamy opened the public hearing at 7:18 p.m.

-20-

Urban Planner Julia Cogburn said that this is the consideration of an ordinance to amend the conditionally zone property located at 103 N. Bear Creek Road (Commercial Industrial Conditional Zoning) for a temporary classroom structure. This public hearing was advertised on September 1 and 8, 2006.

Ms. Cogburn said that the subject property is located within the City Limits on North Bear Creek Road, just north of the intersection of N. Bear Creek and Deaverview Road. Two parcels totaling 2.28 acres were included in the original conditional zoning application and are also the subject of this modification. Access to the property is off of N. Bear Creek. Surrounding properties to the north and west are zoned residentially (RS-8, RM-8, RM-16) and the properties to the south and east are zoned Commercial Industrial. The land use pattern in the area follows the zoning. To the north are single-family homes; to the west, both single-family and multi-family housing. A self-service storage facility is located immediately south of the property. MB Haynes construction/contracting/electronics operation is located to the east.

The applicants, Amica Venturi and Ken Huck, recently received rezoning approval and final Technical Review Committee (TRC) approval for their plans to rezone the property from RM-8 to Commercial Industrial/Conditional Zoning for the purpose of establishing a preschool. The property currently contains a single-family home. It is proposed that the single-family home be preserved and used as a residence for staff until the building is removed. (This is a clarification from the initial approved plans and needs to be approved along with the modification concerning the temporary modular classroom). The original development plan showed, in addition to the preservation of the existing home, the construction of two buildings approximately 3,744 square feet in size. A sidewalk along Bear Creek is proposed along with one-way entrance and exit drives to facilitate drop off and pick up of children.

The applicants are now seeking modification of their original plans to show phased development of this property. They

propose the use of a temporary modular classroom on the southern end of the property (where parking will be located upon project completion) during the construction of the first classroom on the site. The proposed classroom would be licensed for up to twenty-five children and two staff members. The proposal is that the building would remain on site no more than one year with the ability to renew for an additional year, with good cause shown, upon approval of a written request to the Director of Planning and Development.

At their meeting on August 21, 2006, the TRC reviewed the modification to the conditional zoning and made a positive recommendation (with conditions) that the request be forwarded to the Planning and Zoning Commission. The TRC required that all improvements still be in place prior to the receipt of a Certificate of Occupancy for the modular classroom.

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

1. **That the proposed use or development of the land will not materially endanger the public health or safety.** The temporary placement of a modular classroom on the site, if approved, must meet the technical standards set forth in the City's UDO. The proposed site plan shows compliance with many of the City's development standards; the applicant is working with City staff on full compliance. The applicants are also working with the appropriate childcare-licensing professionals on the development of this site.
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**

-21-

measures proposed by the applicant. The applicant is proposing little grading for either of the two phases of the development of the child care facility. They are utilizing a portion of the eventual parking area for the temporary classroom. The majority of the existing trees on site are proposed to be maintained.

3. **That the proposed use or development of the land will not substantially injure the value of adjoining or abutting property.** The use of the property surrounding this site is varied. There exist commercial, industrial, and residential uses on various sides of the subject property. The applicants propose to save as much of the existing vegetation on the site as is possible. Compliant buffering is proposed in appropriate locations. Self-service storage facilities are immediately adjacent to the portion of the property on which the temporary classroom will be placed.
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 character of the area in which this development is proposed is not easily defined due to the varied nature of uses found. The scale of the proposed modular building (approximately 800 square feet) to be utilized for the preschool is not out of character with the residential area. The area has a fairly dense residential population for which the preschool would be a convenience.
5. **That the proposed use or development of the land will generally conform to the comprehensive plan, smart growth policies, sustainable economic development strategic plan and other official plans adopted by the City.** The proposed development (and phasing) supports the 2025 Plan regarding permitting appropriately scaled non-residential uses that serve residents of neighborhoods in appropriate residential locations.
6. **That the proposed use is appropriately located with respect to transportation facilities, water supply, fire and police protection, waste disposal, and similar facilities.** Asheville Transit Route 15 services the Deaverview Apartments immediately southwest of the proposed development. All technical aspects of the project have or can be met by the applicants.
7. **That the proposed use will not cause undue traffic congestion or create a traffic hazard.** The applicants are working with the City of Asheville Engineering Department to provide appropriately for the automobiles that will enter and exit this property for the drop off and pick up of children attending the facility. The provisions will be reviewed for both phases of the development.

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

Considerations:

- .. Proposes appropriate phasing for a nonresidential use in a transition area between residential and commercial/industrial uses.
- .. Landscape plan indicates the preservation of considerable existing vegetation.

Staff recommends approval subject to the original conditions placed on the development by the TRC and with the following provisions: (1) That the first phase (placement of the modular classroom) is approved for no more than one year with the ability to renew for an additional year, with good cause shown, upon approval of a written request to the Director of Planning and

-22-

Development; and (2) That the existing home will be used for a residence for staff until it is removed from the site.

Mr. Gerald Green, representing the applicants, said that due to the demand for the facility, the applicants wish to provide the services for the members of the community and for those who work in the area.

Mayor Bellamy closed the public hearing at 7:23 p.m.

Upon inquiry of Councilwoman Cape, Ms. Cogburn said that one of the requirements of the TRC is that all of the requirements of the entire project, including the landscaping, driveway and sidewalks, be put into place so they will have to have the appropriate safe ingress and egress.

Mayor Bellamy suggested the applicants look at the MacAbee School that is over by the Beth Israel Synagogue as it is an excellent model of a temporary structure.

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

Councilman Freeborn moved for the adoption of Ordinance No. 3389, to amend the conditionally zone property located at 103 N. Bear Creek Road (Commercial Industrial Conditional Zoning) for a temporary classroom structure, subject to the original conditions placed on the development by the TRC and with the following provisions: (1) That the first phase (placement of the modular classroom) is approved for no more than one year with the ability to renew for an additional year, with good cause shown, upon approval of a written request to the Director of Planning and Development; and (2) That the existing home will be used for a residence for staff until it is removed from the site, noting that the request is reasonable based on information provided in the staff report and as stated in the staff recommendation. This motion was seconded by Vice-Mayor Jones and carried unanimously.

ORDINANCE BOOK NO. 23 – PAGE 85

G. PUBLIC HEARING TO AMEND THE UNIFIED DEVELOPMENT ORDINANCE TO ALLOW TATTOO PARLORS AS A PERMITTED USE IN THE COMMUNITY BUSINESS I DISTRICT, COMMUNITY BUSINESS II DISTRICT, COMMERCIAL INDUSTRIAL DISTRICT, THE HIGHWAY BUSINESS DISTRICT, THE REGIONAL BUSINESS DISTRICT, THE CENTRAL BUSINESS DISTRICT AND THE RIVER DISTRICT

ORDINANCE NO. 3390 - ORDINANCE TO AMEND THE UNIFIED DEVELOPMENT ORDINANCE TO ALLOW TATTOO PARLORS AS A PERMITTED USE IN THE COMMUNITY BUSINESS I DISTRICT, COMMUNITY BUSINESS II DISTRICT, COMMERCIAL INDUSTRIAL DISTRICT, THE HIGHWAY BUSINESS DISTRICT, THE REGIONAL BUSINESS DISTRICT, THE CENTRAL BUSINESS DISTRICT AND THE RIVER DISTRICT

Mayor Bellamy opened the public hearing at 7:25 p.m.

Urban Planner Julia Cogburn said that this is the consideration of an ordinance amending the Unified Development Ordinance to allow tattoo parlors as a permitted use in the Community Business I District, Community Business II District, Commercial Industrial District, the Highway

-23-

Business District, the Regional Business District, the Central Business District and the River District. This public hearing was advertised on September 1 and 8, 2006.

The City of Asheville's Unified Development Ordinance does not currently address "tattoo parlors" as a use within the City's jurisdiction. In the past, interpretations have allowed tattoo parlors to be permitted in various districts within the City.

The amendment clarifies this issue and provides for tattoo parlors as a permitted use in the Community Business I, Community Business II, Highway Business, Regional Business, Commercial Industrial, Central Business, and River Districts. It provides a definition for "tattoo parlors" as well.

The amendment has been routed to the Coalition for Asheville Neighborhoods, CREIA and CIBO for review and comment.

Considerations:

- .. The amendment provides for a use not currently provided for in the Unified Development Ordinance.
- .. The amendment clarifies the ordinance with regards to permitted uses.
- .. Tattoo parlors may be seen as inappropriate uses in certain districts enumerated.

At its meeting on June 7, 2006, and August 2, 2006, the Planning and Zoning Commission unanimously (6-0; 7-0) recommended approval of this wording amendment. Staff recommends approval as well.

City staff recommends City Council amend the Unified Development Ordinance to allow tattoo parlors as a permitted use in various zoning districts.

Mayor Bellamy closed the public hearing at 7:26 p.m.

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

Councilman Freeborn moved for the adoption of Ordinance No. 3390. This motion was seconded by Councilman Newman.

ORDINANCE BOOK NO. 23 – PAGE 86

H. PUBLIC HEARING TO CONSIDER AN AMENDMENT TO THE CONDITIONAL USE PERMIT MASTER PLAN FOR INGLES ON HENDERSONVILLE ROAD FOR ALLOWANCE OF A THIRD DRIVEWAY TO ACCESS AN OUT-PARCEL TYPE USE OF A GAS STATION

Urban Planner Alan Glines requested a continuance in this matter since City staff is waiting on a revised Master Plan for the project that will illustrate compliance with site issues required in the Unified Development Ordinance. Therefore, Councilman Mumpower moved to continue this public hearing until September 26, 2006. This motion was seconded by Councilwoman Cape and carried unanimously.

I. PUBLIC HEARING TO CONSIDER RENAMING THE EXISTING STREET OF "HOLIDAY INN DRIVE" LOCATED OFF HIGHWAY 240 EAST TO "RESORT DRIVE"

-24-

Mayor Bellamy said that the petitioners have again requested the public hearing be continued to November 28, 2006, in order to address the cost of highway signs in their budget. Therefore, Councilman Mumpower moved to continue the public hearing until November 28, 2006. This motion was seconded by Vice-Mayor Jones and carried unanimously.

IV. UNFINISHED BUSINESS:

V. NEW BUSINESS:

A. UPDATE FOR RICHMOND HILL PARK PROJECT

ORDINANCE NO. 3391- BUDGET AMENDMENT FOR RICHMOND HILL PARK PROJECT

Parks & Recreation Director Irby Brinson updated City Council on the recent occurrence of erosion control issues at Richmond Hill Park and apologized for any embarrassment this was caused the City of Asheville.

The City of Asheville received notification from the N.C. Dept. of Environment and Natural Resources (NCDENR) on August 23, 2006, of erosion control violations related to the clearing and grading work at Richmond Hill Park to prepare the site for an entrance road, parking lot, disc golf course and future restroom facility. The clearing and grading work is being performed by the National Guard as part of its agreement with the City of Asheville.

Immediately following notification, Parks and Recreation staff met with consulting engineer McGill and Associates to begin taking steps to clean up and stabilize the site. Parks and Recreation staff also began an internal review of the work on the project.

As the managing department, the Parks and Recreation Department takes full responsibility for the erosion issues that have occurred at Richmond Hill Park. The clearing and grading portion of the project proved to be too large and complex, and required more significant resources, expertise and quality control than had been allocated to complete the work in a timely manner.

Below is a summary of the immediate actions that began on August 25, 2006, to rectify the current situation at Richmond Hill Park.

- Priority 1: Create new barrel riser sediment basin below existing sediment trap #2. Re-direct diversion ditch to front of existing sediment trap. Correct weir on existing sediment trap. Remove debris from draw, smooth out and install erosion control matting down length of draw. Seed matting and secure with rip rap. Install straw bale checks over matting down length of draw.
- Priority 2: Cut in new sediment trap on south side of site to replace existing trap #1, which was installed in the wrong location.
- Priority 3: Cut in a second sediment trap on south side of the site behind the debris pile. Relocate the debris pile after trap constructed to allow water flow to basin. Remove debris from disturbed area in front of trap and smooth down. Install erosion control matting. Seed matting and secure with rip rap. Install straw bale checks over matting down length of disturbed area.

-25-

- Priority 4: Create two permanent barrel riser sediment basins on either side of future restroom area.
- Priority 5: Clean debris out of toe of south slope. Re-grade slope to gradually taper into edge of clearing limits. Stabilize with seed.
- Priority 6: Remove debris from valley on north side of site where silting has occurred near the new disc golf course. Smooth out area and seed.
- Priority 7: Clean-up silt from the south side of site near Smith's Creek tributary. NCDENR will prescribe a clean-up plan.

Ongoing Priorities:

- ÿ Clean out all silt fencing and replace section(s) where necessary.
- ÿ Chip debris piles. Use mulch for soil stabilization in place of seed where feasible.
- ÿ Hydro-seed the entire area when notified by the consulting engineer.

Additional equipment was secured from the Public Works Department to assist with the work. The top priorities were accomplished by September 1, 2006. A contract for hydro-seeding is expected to be in place by the first of September; the most effective way to eliminate erosion and runoff from a project site is by re-establishing ground cover.

City staff also requests that City Council approve a budget amendment that will appropriate the funds from the timber sales totaling, \$29,300 and \$50,000 from the City Manager's contingency fund to address the issues from the notice of violation. It should be noted that \$23,300 of the funds collected from the timber sales will go to the National Guard for trees removed from their site, minus costs associated for security on site.

Pros

- ÿ Sedimentation damage was discovered early and staff took immediate action to minimize impact on the site. The NCDENR report classified the damage as "slight."
- ÿ Site grading as part of the agreement with the National Guard has saved the City between \$750,000 and \$1 million.

Cons

- ÿ There was minor damage due to sediment runoff.
- ÿ Grading by National Guard is not the most effective and efficient resource to complete work due to time constraints they have

available to support the project.

Y Parks and Recreation staff failed to adequately stabilize the site in the absence of the National Guard crew.

-
Future Considerations:

-
National Guard:

Y As part of the agreement, the National Guard will be responsible for armory construction and the surrounding site which has been approved by the Technical Review Committee

Y There will be no formal interaction between the City and the National Guard as it relates to the construction of both sites once the grading in Richmond Hill Park is complete.

Y The National Guard is responsible for armory site compliance and will be monitored by NCDENR regarding erosion and sedimentation control measures.

-26-

Proposed Ball Fields:

Y Construction of the ball fields has been on hold since May 2006. No clearing and grading work has been performed for the ball fields.

Y We have learned from the current erosion situation that construction of the ball fields will require more time and resources than originally anticipated. Because of the site sensitivity, a consulting engineer might be required to oversee that construction.

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Based on current issues surrounding development Richmond Hill Park, staff recommends securing the services of a professional engineering firm for the duration of the project to oversee the administration and compliance as required by NCDENR. Also, staff recommends that Council consider proceeding with the park development as planned, with the exception of the ball fields, and evaluating alternative locations for ball field development which would include land cost, accessibility, traffic impact and environmental impact. This analysis will be completed by January, 2007. Staff also recommends approval of the budget ordinance revision.

Mr. Brinson then reviewed with Council the project history, project construction, project sediment issues, examples of the violations, project compliance, examples of compliance, next step and asked for policy direction and considerations: (1) pursue park plan with ball fields at Richmond Hill Park (community concerns: cost of additional project management resources); (2) continue existing Richmond Hill Park Plan - with ball fields on hold (funding to pursue alternative location - land, grading, etc. and/or partnerships); or (3) remove ball field from the Richmond Hill Park Plan (need in North Asheville for ball fields).

The following individuals were opposed to City Council proceeding with ball fields at Richmond Hill Park for various reasons and supported alternative designs that work with the landscape and scenery. They felt the Park should be used for a wildlife refuge, an environmental education center, plant refuge, protection for streams, reduction of noise, reduction of flood damage, filtering urban water sources, urban greenspace recreation, air pollution reduction and urban climate modifier, mountain biking, hiking, jogging, dog walking, bird watching, and just seeking serenity:

Mr. Craig Young, Asheville resident

Mr. James Wood (used a PowerPoint presentation and presented 10 letters and petition containing over 700 names).

Recommendations: (1) cease all disc golf construction activities immediately; (2) conduct environmental assessment of the disc golf course by a local conservation group; and (3) fairways be relocated into other areas. Ultimately requested City to adopt a vision for Richmond Hill Park for education, recreation and conservation.

Ms. Julie Brandt, Weaverville resident and City of Asheville property owner

Dr. Dee Eggers, Professor in the Environmental Studies Department at UNC-Asheville

Ms. Elaine Lite, Beaverdam resident

Mr. Jim Drummond, member of the Recreation Board, said that the ball fields at Richmond Hill Park would serve a large group, not just North Asheville. He hoped City Council would continue with the ball fields, noting that mistakes were made and history can teach us how to move forward.

Mr. John Gillam, member of the Board of WNC Disc Golf Club, felt that there are three issues involved: the ball fields; the disc golf course and the Armory. He felt the City has done a good job in working on the disc golf course in a responsible manner. There are some issues in erosion from the equipment that was used to put the infrastructure in. That infrastructure is now in and the equipment is not needed anymore. He believes that with some simple measures we can address any kind of erosion that will happen on the site with seeding, stormwater collection devices, etc. He also felt that the golf course should not be grouped in with the other two issues.

Rev. Christopher Chiaromonte felt that the City should determine who is liable for the damages - the City or the National Guard Armory.

Upon inquiry of Vice-Mayor Jones, Mr. Brinson said that of the \$50,000 requested, the piece for the engineering services (approximately \$5,000) is above and beyond what we would have to do anyway. The hydro-seeding would have to have occurred; the rock and materials that are necessary for sediment basins would have had to occur; and the contingency is for planning ahead if we needed additional funds (additional grading that may be necessary).

Mr. Brinson said that this was actually in our Capital Improvement Plan (CIP) request, but was not funded. The reason we need the budget amendment now is because there was a 30-day Notice of Violation and we have to make these improvements within that 30-day period.

Upon inquiry of Councilman Freeborn, Mr. Brinson said that the commitment in the contract with the Armory was only the rough grading.

Councilman Newman questioned if we don't proceed with the ball fields at the Richmond Hill Park site and find an alternative site that will require some grading, could the City ask the National Guard to partner with us in doing that, since we will be saving them grading at the Richmond Hill site. Mr. Brinson responded that he does think they would be open to that, but doesn't know what their schedule would be. From the legal standpoint, we would need to look closely at the agreement to make sure that in some way we are receiving that benefit, whether that is through them or through another contractor.

Councilwoman Cape was under the impression that \$50,000 was remediation work from the memorandums we received. Now she is hearing this money is what we needed to spend anyway. She feels we are being forced into spending money that we didn't want to approve in the budget process because we went ahead with a project and now have to come back and fund. It doesn't feel like it honors our ability to be involved in the budget. She said she owes the community an apology because when she was elected to City Council, she accepted what she was told by staff about the way we were going to move on this project. One of the first times she met with the City Manager and Mr. Brinson, we walked down at Azalea Park and she mentioned her concern with our sedimentation control out there. It was nominal compared to the Richmond Hill Park. Then on June 1 she had some concerns about what was going on with sedimentation control at the Richmond Hill site and was told that she was over-reacting and we were talking care of it, and this was the highest environmental concern. She has some concerns about how the whole process works. She didn't doubt that we have to do this at this point, but was definitely disturbed about how it is being presented to Council.

City Manager Jackson said that he would like to have an opportunity to meet with the Chief Financial Officer to go through the CIP request and visit with Mr. Brinson before giving City Council a detailed answer.

Mr. Brinson explained that the 30-day Notice of Violation is driving this budget request at this point. We were anticipating the deployment of the Armory to be on site for the two weeks for their period of work and not to be back every other weekend to address this particular issue. We got into the position of where we were beyond the budget and we knew we were going to have to address the issue at some particular point and then when the violation occurred, the 30-day time period started.

Upon inquiry of Mayor Bellamy, Mr. Brinson explained that there was \$40,000 in our budget to deal with this particular issue. We knew it was not going to be enough to get us to where we needed to be to have the whole park completed. We had requested in the 2006-07

budget process \$100,000 for us to go to the next phase. That was not approved in the budget process. Knowing we had \$40,000 to spend, we felt like we could get beyond this particular point and we wouldn't have to do some of the things we are having to do now (because of the violations), but the additional funds for the hydro-seeding we felt like we could pay that out of existing funds. Because we did two environmental assessments for \$6,000 and had to hire additional security on site because of vandalism issues, that depleted the \$40,000 down to the point where we didn't have the money to address these issues.

Councilwoman Cape wondered why we went ahead with the project if Council didn't appropriate the money. City Council's role in this process is to determine what to fund and what not to fund. She feels like we have switched how that works and has a concern as that being a staff decision.

Mayor Bellamy said that when staff comes to Council, traditionally, and requests money for a park or police cars and

Council doesn't fund it, staff doesn't stop because Council didn't fund it. They continue to look for alternative ways to fund whatever their initiative is. But if Council stated a policy direction that they don't want staff to move forward, then staff stops. An example is the Civic Center - staff still paints the walls and continues to operate with what they have.

Councilwoman Cape said that Council didn't fund the \$100,000 and there were heads up. She has been informed that on June 28 there was a breach discovered. She didn't hear until September that the contract with the Armory was that they got the privilege of learning on the site. She was told that it would be handled with the utmost environmental care and that this would be a park that would show the environmental sensitivity used. To her frustration, she then finds out that we used it as a training ground for people in a very sensitive area. She thinks that there is some disconnect on how we inform Council about process and how we listen to concerns. She did not know what she needed to do at the time was to get the majority of Council to tell City staff stop. She was trying to work with the public process and knew that this has been worked on for a long time. She had expressed concerns of environmental care and was being given assurance. We can't continue to say we don't have the money to do the job well, so let's do the job and then make up for it later. If we have a project that we can't afford to do well without money, let's as an organization not do it and let's have that discussion. It is not okay to not have oversight. A two-week project turned into a four-month project which happens to every developer in our community. We are the ones that set the example and the standard. She was very upset by the process and wants to move forward. She questioned if there is any ability for the Armory to accept any responsibility in this budget amendment since they were the ones in their learning process who drove over the silt fences. There seems like there could be some participation we could explore.

Councilman Mumpower believed the impact has been dramatically exaggerated. In a complicated world, everyone makes errors and Mr. Brinson has demonstrated ownership and a willingness to learn. He felt Council's job is to assist Mr. Brinson with that and help him move on. Every concern that he heard raised about environmental concerns were raised by people trying to kill this project. From his exposure, the body of the people that he has encountered were not people who came forward and said they know some things and who offered to help, but people who didn't want this park to happen and who wanted control over the land they didn't own and were not concerned about the City as a whole. If you look at the average person who has by-pass surgery and you take pictures of them in the middle of that surgery, you won't have a sense of success or what the potentially good can come of that. You will be scared and feels the pictures shown represent the middle of the surgery on that property when it's at its worst. This is a complex project. He believed this is an operational issue and we gave you policy guidance. He was glad that we have the staff that has the courage and professionalism to try to take policy guidance and be creative and forward-thinking and dynamic and try to bring things to life.

-29-

In response to Councilman Mumpower's question about detailed information on how much actual damage was done by some of these mistakes that were made, Mr. Brinson said that he didn't want to minimize the issue, because it is an issue that deserves the attention it is getting. The inspection report that is done by DENR classified this as "slight" damage. DENR's classifications are "slight," "moderate," and "severe." On the cleaning of the sediment areas towards the creek were about 12 wheelbarrow loads of dirt, debris and silt that was removed. Water Quality was back on site today and basically has given us a clean slate. Therefore, the water quality issue, according to their terms, has been taken care of. He is not here to say that is acceptable, because it's not. One bit of sediment off that site is not acceptable. If there is any good thing out of this, we did not impede on anyone else's property - it was all contained on site. The standard grass is coming in exceptionally well and we feel confident that the site will totally be re-seeded by 2 weeks.

Councilman Newman said that Richmond Hill is a public park and many people were warning Council about the wisdom of taking very rough topography and turning it into a large flat area for ball fields. He recommended we give direction to staff to aggressively look for alternative sites for the ball fields.

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

Councilman Mumpower moved for the adoption of Ordinance No. 3391. This motion was seconded by Councilman Davis.

Vice-Mayor Jones echoed Councilwoman Cape's comments. She does have concerns about incurring a lot of debt before we identify the source of the revenue. She would be supportive of the budget amendment, but would not be supportive of this process until we have a Council discussion about how we can do it better and be better stewards of taxpayer money. She is mainly concerned about new projects opposed to maintaining what we have.

City Manager Jackson said that all points are well taken. We have worked with Council very closely in reengineering the operating budget and we will begin with the retreat discussing how we can improve the CIP budget process. He is confident that the same success we had with the operating budget can be translated into success in the CIP budget process.

Councilman Davis is supportive of moving along with the budget amendment. He questioned if we have pursued asking the National Guard for some help in the problem they have exacerbated. He also senses that we spent a great deal of money because of some obstruction efforts on the part of the community to stop the project earlier and that's some of the reason why we are here.

Mr. Brinson said that he will be exploring the liability option with the City Attorney. He felt sure that the National Guard would be seeking advice from their legal counsel as well.

Councilman Davis also noted that we did two surveys of the wetlands for \$6,000 and the results of those studies were that it is not a jurisdictional wetland and we have not found anything to change our course because of what has been found there. This still continues to be an issue here. Mr. Brinson noted that we were not required to do an environmental assessment study on the property. The federal government was required to do one (total of three studies on this property) and they found no significant impact.

-30-

Councilman Davis felt we should correct the mistake and it's notable that DENR said our difficulties were "slight." He does feel that there are a lot more layers that we are dealing with here today but was pleased to move forward and fix what we have.

In response to Councilwoman Cape, Mr. Brinson said that if Council doesn't approve the budget amendment, we could not meet the requirements of the violation.

Councilman Mumpower pointed out that there were 12 wheelbarrows of dirt in a place they shouldn't have reached over 16 acres disturbed.

When Councilman Mumpower asked if there is a pattern of mistakes for the Parks & Recreation Department, Mr. Brinson said there was a violation of Azalea Park and it dealt with a decision that we had to make it quickly in regard to saving the wetland area.

City Manager Jackson said that our Parks & Recreation Department is a nationally recognized department and has a track record of competence in delivering programs as well as facilities. This is the exception to the rule and we want to deal with this forthright and aggressively to get this on the right track the Department has been on for years under Mr. Brinson's leadership and direction.

Councilman Newman said that there may have been 12 wheelbarrows of mud taken out of the creek, but it's obvious that there were a lot more wheelbarrows of mud taken off that site.

Councilwoman Cape said that Mr. Brinson's history with the Parks & Recreation Department is not under review. We are collecting money from the citizens of Asheville for stormwater control and we need to be the stewards and example of this. She feels this is different than looking at heart surgery because the problem with siltation in rivers is one of the major causes of much environmental degradation and is nothing to take lightly.

The motion made by Councilman Mumpower and seconded by Councilman Davis carried unanimously.

Councilman Freeborn felt there was ample property along the riverway for ball fields and would support staff looking in those areas. He does feel that grant dollars would be available. He did not want to continue with ball fields at Richmond Hill Park.

Councilwoman Cape moved to remove ball fields from Richmond Hill Park Plan. This motion was seconded by Councilman Freeborn.

Councilman Mumpower said that we are a city of hills with the little flat lands being taken up by other things. The City maximized what they had using existing resources. This is about our children needing a place to play ball. A tremendous amount of thought, money, energy, staff time and Council deliberations went into this plan and to walk away from it, he felt would be a mistake.

Upon inquiry of Councilman Davis, Mr. Brinson said that he will explore partnerships with other municipalities, other governmental agencies and other providers to see if there is a possibility to maybe collaborate on these issues.

-31-

Councilman Davis felt North Asheville deserved ball fields like other parts of town. He felt that removing salvage yards on the riverway is an expensive proposition and not a reality at this point. He asked that we continue to explore other partnerships. We have had some setbacks but also we have invested a lot of time and energy in great plans to bring this forward. He doesn't want to see us abandon ball fields at Richmond Hill Park before we explore the other alternatives.

Councilwoman Cape supported ball fields in North Asheville, but looking at a flat piece of paper is different than being on the site. Now we have recognized how difficult the transfer of these plans will be and she thinks there are other areas for ball fields other than at Richmond Hill Park.

Councilman Newman asked if we could amend the motion to make sure that we have looked at every other possible places for ball fields in North Asheville.

Upon inquiry of Councilman Freeborn, Mr. Brinson said that it would cost approximately another \$700,000 to complete the ball fields. Originally the plan called for 5 fields and was toned down to 2 fields to address many of the issues brought forth in discussions.

In response to Councilman Freeborn about appropriating the \$700,000, Mr. Brinson said that staff will have to come back to

Council many times for requests to continue development of ball fields, whether they are at Richmond Hill or somewhere else. It may be a land acquisition cost, grading costs, infrastructure costs, etc. That will be a multiple-year request process, if the decision is made to build ball fields anywhere.

City Attorney Oast said that we do have a contractual arrangement with the National Guard. He has not reviewed the contract in advance of this meeting and whichever policy direction Council gives staff, we need to explore the contractual implications of that contract. If there are further specific actions that need to be taken, like amending the contract, we might need to come back to Council.

Councilwoman Cape moved to amend her motion to remove ball fields from Richard Hill Park Plan forever and pursue alternative locations and partnerships. The amended motion carried on a 5-2 vote, with Councilman Davis and Councilman Mumpower voting "no."

After walking the site in June, Vice-Mayor Jones didn't realize the huge amount of grading required for disc golf. She felt we should look for alternative ways to make the fairways less intense, which might be cheaper to build and maintain. She felt we need to discuss this with the disc golf group first and ask them to look for some alternative ways to accomplish this.

Mr. Brinson clarified that there was no grading for the disc golf course, only clearing. He said that the disc golf course has been moved on two occasions, really at the request of Mr. James Wood, to stay out of the wetland area. Mr. Nichols, who is doing the design for the City, has done a great job of trying to appease that issue. He has moved a number of holes away from the wetland area to keep them from being disturbed. The course is about 90% complete. If we go back and look at re-locating, we might be doing more disturbance in other areas. However, he said that he would be happy to work with Mr. Nichols on Vice-Mayor Jones' request.

Councilman Freeborn said that the National Guard did the work for the City that led us to this point and he felt they should have to pay for the cost of the clean-up regarding the violation. If they are unable to do this, he would not feel comfortable in seeing the Armory portion of the project moving forward. This was a well-intended project and he does support more ball fields in North Asheville. He admires our staff and former Councils for looking at avenues to build park

-32-

facilities. He then moved ask the City Attorney's Office to review the contract to see if the National Guard's inability to provide adequate grading work (or their unwillingness to pay for the cost of clean-up) on the site is a breach of contract. This motion died for a lack of a second.

Councilman Davis said that it is not the National Guard's fault that we are not going to build ball fields at Richmond Hill Park. They may not have timely provided the grading as we would like and it created a problem for us. But, in good faith, they were performing grading. Now we are not going to be needing them to complete what we expected them to do in this contract, so we need to have staff talk to the National Guard about what opportunity we have with perhaps transferring this grading to another site at a later date.

City Attorney Oast said that he was going to review the contract in terms of what level of responsibility the National Guard has regardless of whether Council gave him direction or not.

Councilwoman Cape asked staff to clarify whether the National Guard would be willing to grade in another location.

Councilman Mumpower said that even though he spoke against the disc golf course from the beginning, we have made a commitment to them and we should proceed, especially since 90% of it is complete.

In response to Councilman Newman, Mr. Brinson said that the previous disc golf course was pretty rough due to the amount of play. We have learned a lesson and have worked with Mr. Nichols on the design. We have looked for ways of putting in steps in places where we know there is going to be traffic, we have put mulch in places where the area won't be degraded, and we have seeded areas where we know we may have erosion problems. In addition, we have formed the t-boxes and put gravel in the bottom of them and then put synthetic turf on the top so they won't erode the particular area. There are things we are trying to do. Asheville is the envy of a lot of people because of that disc golf course. Most disc golf courses are in open areas and they are not very challenging. There is a benefit for having a unique course there, but there is also an issue of dealing with the sensitivity of the site.

Councilman Mumpower moved to support the disc golf course moving forward. This motion was seconded by Councilman Davis.

Councilman Newman moved to amend the motion, noting that he did support the disc golf course at Richmond Hill, that we ask the disc golf course people to pause and review the plans to see if there may some adjustments before final build-out. If we are not going to proceed with the plans to immediately build out the ball fields, there may be some really positive changes that could be made to the golf course to the benefit of disc golf and to the benefit of the park. This motion was seconded by Councilwoman Cape.

Councilman Mumpower felt the amendment to the motion is more of an effort to micro-manage the process that is already 90% complete. He would not support the amendment.

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

In response to Mayor Bellamy, Mr. Brinson said that his staff works with the disc golf course people all the time and they do not need to get formal direction from Council to do that.

Councilman Mumpower felt Council is micro-managing and he withdrew his original motion, which was amended.

Councilman Davis moved to have staff collaborate with the disc golf course people and come back with a final plan giving City Council an opportunity to have a final look at it. This motion was seconded by Councilman Mumpower.

Mr. James Nichols, representing the WNC Disc Golf Club, said that they are committed to working with the Parks & Recreation Department staff.

Councilwoman Cape would like to include some other people, other than City staff and the disc golf club. She felt it was only fair that people who are sharing concerns with this location be included in that conversation as well. Mayor Bellamy instructed City staff to advertise this meeting, specifically placing a notice on our website and in our eNews.

The motion made by Councilman Davis and seconded by Councilman Mumpower carried unanimously.

Mr. Brinson shared with Council that they have learned many lessons from this and staff will be more diligent in addressing the projects in the future. He thanked former Councils and the seated Council for the following projects that you have assisted us with: (1) approving the development of the French Broad River (FBR) Park system, especially Carrier Park, which is a showcase for water quality improvements by retaining and filtering the runoff from West Asheville prior to reaching the FBR and which will also become part of the curriculum for the city schools; (2) partially funding the Reed Creek greenway project which will again serve as a learning lab for our community on collecting runoff from over 1/3 of the stormwater in Asheville; (3) support of Azalea Park, which has become the showcase for a soccer complex in the southeast, the envy of communities who use to laugh at Asheville because of our poor collection of soccer fields; (4) allowing us to build Food Lion Skatepark for an underserved group of children and which also allowed us to successfully solve a major problem downtown with destruction of property; (5) allowing us to feed over 100 seniors in our community Monday-Friday with the only hot meal they sometimes receive; (6) allowing us to bring in the wonderful staff who were transferred from Buncombe County. Through their efforts we: (a) Reduced the deficit in the first year of operation at the golf course from 135,000 to less than 25,000; (b) Completed over 750,000 worth of improvements at McCormick Field for a cost of less than 80,000 for the city taxpayer; (c) Completed the Covington clubhouse at Aston Park at no cost to the city taxpayers; (d) Exposed over 20,000 school children to the wonderful world of nature and living things at the accredited Nature Center; and (e) For allowing Recreation Park pool to have its most successful year financially that it has ever had; (7) allowing us to provide supervised Afterschool care to over 250 children each day at little or no cost to those who need it the most; (8) allowing me to work with a dedicated maintenance staff who have inherited over 350 acres of additional park land and 14 new parks and facilities with fewer people than we had ten years ago; (9) allowing us to provide an outdoor recreation program that has allowed inter city children their first real experience in being in the outdoors through caving, canoeing, camping, hiking and mountain biking; (10) the opportunity to work with the Junior League of Asheville at the Reid Center for providing our youth a way to express their feelings on social problems through drama, dance and creative music; (11) allowing us to renovate Stephens-Lee Center when there were so many saying it would never happen; (12) allowing us to participate in the "top of stop" program that provides shelter for those needing a place to get out of the sun or rain at our bus stops; (13) allowing our staff "on our own time" to work on habitat for humanity projects, adopt a street, support two families through Eblen each year at the holiday season and the other hundreds of hours they spend giving back to the community they so love; (14) allowing us the flexibility and resources to secure over 15 million in out side funding, non-city taxpayer dollars, for projects and programs over the last ten years; (15)

for your support of the many festivals, special events, and activities, that brings in over 25 million dollars in economic impact for this community; (16) allowing us to provide an award winning wellness program that has reduced the sick leave by city employees dramatically; (17) supporting the youth and adult athletic programs for this community which provide positive outlets for many who would be doing other negative activities; (18) assisting in the funding of renovations to 15 playgrounds and parks over the last ten years that allow for equal access by all; (19) allowing us to support the over 100 building, several which are historic that the city owns as part of our on-going maintenance operations with 3 dedicated staff members; (20) support of public art, which can be sometimes controversial, but adds so much to the culture, historic fiber of our community and celebrates our diversity; (21) the opportunity to nurture relationships with such great people like Jake Rusher who, through his will gave the City almost 1,000,000; (22) supporting our therapeutic recreation program which serves over 2800 youth and adult who frankly would go un-served if not by our wonderful staff; (23) allowing us to teach on an average 350 people to learn to swim each year at no cost, increasing the likelihood that they could save someone else's life or their own; (24) allowing us to provide logistic support to those returning home and recreation opportunities to the families of those serving in our armed forces through the Citizen Soldier Program; (25) allowing us to provide hundreds of unique programs and activities at our 10 recreation centers, many at little or no costs; (26) allowing us to continue to provide a summer playground program that gives so many youth and teens a place to socialize, learn and play while out of school; and (27) the 135,000 hours over 2,500 volunteers give to our programs each year. This alone saves well over \$500,000 each year thanks to their commitment.

ORDINANCE BOOK NO. 23 - PAGE 88

VI. OTHER BUSINESS:

Vice-Mayor Jones thanked UNC-Asheville and their freshmen for volunteering at Azalea Park. She spoke about how the relationship with the student body and the City of Asheville is mutually beneficial.

The following claims were received by the City of Asheville during the period of August 18 - 31, 2006: David Meek (Sanitation), Wit Jakutowicz (Streets), Dorothy Countryman (Sanitation), Kelvin Benjamin (Water), Everette Hardy (Water), Nichole Compton (Transit Services), Angela Smith (Transit Services), Bjorn Larson (Police) and Stephene Dury (Transit Services). These claims have been referred to Asheville Claims Corporation for investigation.

VII. INFORMAL DISCUSSION AND PUBLIC COMMENT:

Rev. Christopher Chiaromonte performed a survey which revealed that 99% of the people don't mind being asked for money. He understands that the banning ordinance from parks is for those drinking in the parks, noting it says nothing about smoking pot or having it in your possession.

Mr. Chris Weeks said that appearances are deceiving.

CLOSED SESSION

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At 9:36 p.m., Councilman Mumpower moved to go into closed session for the following reasons: (1) to consult with an attorney employed by the City about matters with respect to which the attorney-client privilege between the City and its attorney must be preserved, including litigation involving the following parties: City of Asheville, State of North Carolina, County of Buncombe. The statutory authorization is contained in G.S. 143-318.11 (a) (3); (2) to discuss matters relating to the location or expansion of industries or other businesses in the area served

-35-

by the City Council, including agreement on a tentative list of economic development incentives that may be offered in negotiations, provided that any action authorized the payment of economic development incentives will occur in open session. The statutory authorization is contained in G.S. 143-318.11 (a) (4); (3) to consider the qualifications, competence, performance, character, fitness, conditions of appointment of an individual public officer or employee. The statutory authorization is contained in G.S. 143-318.11 (a) (3); and to prevent the disclosure of information that is confidential pursuant to GS. 160A-168, the Personnel Privacy Act. The statutory authorization is contained in G.S. 143-318.11 (a) (2); and (4) to establish or to instruct the City's staff or negotiating agents concerning the position to be taken by or on behalf of the City in negotiating the terms of a contract for the acquisition of real property on Brevard Road by purchase, option, exchange or lease. The statutory authorization is contained in G.S. 143-318.11 (a) (5). This motion was seconded by Councilman Freeborn and carried unanimously.

At 11:25 p.m., Councilman Mumpower moved to come out of closed session. This motion was seconded by Councilman Freeborn and carried unanimously.

VIII. ADJOURNMENT:

Mayor Bellamy adjourned the meeting at 11:25 p.m.

CITY CLERK

MAYOR