

Regular Meeting

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

Absent: None

PLEDGE OF ALLEGIANCE

Mr. Trayvon Clark, Eighth Grade student at Asheville Middle School, led City Council in the Pledge of Allegiance

INVOCATION

Vice-Mayor Jones gave the invocation.

I. PROCLAMATIONS:

A. HARVEST HOUSE RECOGNITION AS A NC SENIOR CENTER OF EXCELLENCE

Mayor Bellamy recognized Mr. Joe Connolly, Director of the Land-of-Sky Area Agency on Aging, who presented the NC Senior Center of Excellence Award to Ms. Dee Black, Director of the Harvest House; and Ms. Amy Rickman, Program Supervisor.

B. RECOGNITION OF MR. JEFFREY GREEN, PUBLISHER OF THE ASHEVILLE CITIZEN-TIMES

Mayor Bellamy welcomed Mr. Jeffrey Green, Publisher of the Asheville Citizen-Times, and his family to the City of Asheville.

II. CONSENT AGENDA:

At the request of City staff, Consent Agenda "O" was removed from consideration by City Council.

At the request of Councilman Mumpower, Consent Agenda Items "D", "E", and "Q" were pulled from the Consent Agenda for further discussion and/or a separate vote.

A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON NOVEMBER 14, 2006, AND THE WORKSESSION HELD ON NOVEMBER 21 2006

B. RESOLUTION NO. 06-197- RESOLUTION ESTABLISHING FAIR MARKET VALUE AND DIRECTING THE CITY CLERK TO ADVERTISE AN OFFER OF PURCHASE FOR UPSET BIDS REGARDING PROPERTY ON STATE STREET

Summary: The consideration of a resolution establishing fair market value and directing the City Clerk to advertise an offer of purchase for upset bids regarding property on State Street.

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A bid has been received from Steven & Suzanne Williams in the amount of \$15,000 for the purchase of land on State Street.

The land on State Street was acquired by the City by Commissioner's Deed dated June 29, 1932. There are discrepancies in the chain of title and title would have to be conveyed by non-warranty deed. The lot is 0.18 acre± and is parallelogram shaped. It has a moderate slope upward from the street. It is zoned RM-8 Residential Multi-Family Medium Density District, and it is suitable as a home site. The bid from Mr. & Mrs. Williams is in the amount of \$15,000. Although the tax appraisal is \$20,200, staff considers the offer to be realistic considering the impaired title. The Williams bid includes encumbering the property with a sewer easement to service the lot at the rear of the City's lot where the Williams plan to construct 4 to 5 units of infill housing on Pineview Street.

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.
- It will facilitate the development of 4 to 5 units of infill housing.

Cons: There is no negative impact.

Economic Development staff recommends adoption of a resolution establishing fair market value and directing the City Clerk to advertise an offer of purchase for upset bids regarding property on State Street.

RESOLUTION BOOK NO. 30 – PAGE 145

C. RESOLUTION NO. 06-198- RESOLUTION ESTABLISHING FAIR MARKET VALUE AND AUTHORIZING THE CITY CLERK TO ADVERTISE AN OFFER OF PURCHASE FOR UPSET BIDS REGARDING PROPERTY ON DR. MARTIN LUTHER KING JR. DRIVE

Summary: The consideration of a resolution establishing fair market value and authorizing the City Clerk to advertise an offer of purchase for upset bids regarding property on Dr. Martin Luther King Jr. Drive.

A bid has been received from Ms. Elizabeth White in the amount of \$7,350 for the purchase of land on Dr. Martin Luther King Jr. Drive.

The subject parcel is a proposed 0.08 acre cut-out portion of PIN 9648.07-58-1660 which is a 1.6 acre parcel that runs along Dr. Martin Luther King Jr. Drive and is part of the property where Water Maintenance is located. The subject parcel is triangular shaped and has a gentle slope upward from the street. It is zoned Regional Business District as is the adjoining property. The proposed parcel encompasses an area that Ms. White, who owns and resides on adjoining property, fenced in several years ago by mistake and has since used and maintained. The proposed purchase is to rectify the error by paying the City due compensation for the property.

The bid from Ms. White is in the amount of \$7,350. The value of the parcel was extrapolated from the tax assessment for adjoining land in the amount of \$28,500 for 0.31 acre which translates to a per acre value of \$91,935. The bid amount represents .08 of that amount rounded to \$7,350. Staff considers the offer to be realistic and the proposal to combine the subject parcel with Ms. White's parcel appropriate.

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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 enable the purchaser to rectify an error in a mutually beneficial manner.

Cons: There is no negative impact.

Economic Development staff recommends adoption of the resolution directing the City Clerk to advertise an offer of purchase for upset bids regarding property on Dr. Martin Luther King Jr. Drive.

RESOLUTION BOOK NO. 30 – PAGE 146

D. RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A CONTRACT WITH DALTON'S HEATING, AIR CONDITIONING AND CONTROLS INC. FOR THE REMOVAL AND DISPOSAL OF THE OLD CHILLER AND INSTALLATION OF A NEW CHILLER AT THE PUBLIC WORKS FACILITY LOCATED AT 161 S. CHARLOTTE STREET

This item was pulled off the Consent Agenda for further discussion and/or a separate vote.

E. RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A PROFESSIONAL SERVICES CONTRACT WITH BROWN & CALDWELL FOR BIDDING AND CONSTRUCTION FOR WATER TREATMENT

PLAN UPGRADES AT THE NORTH FORK AND BEE TREE WATER PLANTS

This item was pulled off the Consent Agenda for further discussion and/or a separate vote.

F. **ORDINANCE NO. 3408 - BUDGET AMENDMENT TO APPROPRIATE DEPT. OF JUSTICE BULLETPROOF VEST REIMBURSEMENT FUNDS FOR THE PURCHASE OF POLICE PATROL SAFETY EQUIPMENT**

Summary: The consideration of a budget amendment, in the amount of \$5,251, to appropriate Department of Justice Bulletproof Vest reimbursement funds for the purchase of police patrol safety equipment.

The Asheville Police Department currently participates in the Department of Justice Bulletproof Vest Reimbursement Program. This program is designed to off-set the tremendous cost involved in purchasing bulletproof vests for police officers. During the current fiscal year, the City of Asheville has collected \$5,251 from the Department of Justice Bulletproof Vest Reimbursement Program. Adding these funds into the police (patrol) safety equipment budget line would assist in the purchase of additional bulletproof vests for Asheville Police officers.

This action conforms to the City Council's Strategic Operating Plan under Partnerships to Improve Critical Services and Infrastructure. Goal 2, Objective A: Research and develop strategies for securing significant new recurring revenue sources.

Pro:

- Reimbursement revenue to cover the rising cost of bulletproof vests for Asheville Police officers

Con: None noted.

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City staff recommends City Council adopt the budget amendment, in the amount of \$5,251, to appropriate Department of Justice Bulletproof Vest reimbursement funds for the purchase of police patrol safety equipment.

ORDINANCE BOOK NO. 23

G. **RESOLUTION NO. 06-201 - RESOLUTION ADOPTING THE 2007 SCHEDULED CITY COUNCIL MEETINGS**

Summary: The following schedule of the meetings of the Asheville City Council for 2007 be, and the same is, hereby established as follows:

City Council Formal Meetings
5:00 pm
2nd, 3rd and 4th Tuesdays of each month
Council Chamber – 2nd Floor
City Hall Building, Asheville, NC

City Council Community Meetings
7:00 pm
5th Tuesday of any month
Meeting places to be announced

Due to holidays, the following meetings are hereby cancelled: Tuesday December 18, 2007; and Tuesday, December 25, 2007.

RESOLUTION BOOK NO. 30 – PAGE 149

H. **RESOLUTION NO. 06-202 RESOLUTION AUTHORIZING PINE PROPERTIES INC. TO CONVEY 128 MCENTIRE ROAD IN RUTHERFORDTON, N.C., TO LEON D. AND ANGELINE J. MAST FOR THE SUM OF \$370,000**

Summary: The consideration of a resolution authorizing Pines Properties, Inc. to convey 128 McEntire Road.

No bid was received after advertisement for upset bids for the purchase of real property at 128 McEntire Road. This property was bequeathed to the City by Jake Rusher. It is an irregular shaped parcel comprising 23.79 acres±. It is improved with

a three bedroom log house, a barn, several outbuildings and fencing. It is located in a rural area of Rutherford County. The offer from Leon D. and Angeline J. Mast is in the amount of \$370,000. The offer was submitted through the listing agent, Scott Jackson of Odean Keever & Associates. The property was listed at \$389,500 based on a market analysis at the time of listing. The real estate commission on the sale will amount to 6% or \$22,200.

The Masts previously offered \$370,000 for the property and after being advertised, an upset bid was received from Brad Ford in the amount of \$398,800. Mr. Ford's offer endured advertisement and was approved by Council. A sale contract was executed, but subsequently Mr. Ford was unable to obtain financing and the sale contract was terminated. In accordance with the contract Mr. Ford's bid deposit was returned.

The Masts upon being made aware the property was again available submitted their bid again in the amount of \$370,000. Pines Properties, Inc. advertised for upset bids pursuant to the bid from the Masts. The advertisement was published on November 17, 2006, and no upset bid was received.

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Pros:

- The sale will be at fair market value as established by the upset bid process.
- The sale will generate revenue from the disposition of an un-needed asset.
- It will return property not needed for public use to private ownership.
- It will transfer responsibility for maintenance to the private sector.

Cons: There is no negative impact.

The proceeds from the sale of this parcel based upon the Will of Jake Rusher. The funds will be used for recreation purposes. First, they will be used to enhance the Jake Rusher Park and second, they will be used for payment to skate park. The balance of any funds from his estate will then be deposited into a capital fund to be used for future recreation development or land acquisition as deemed appropriate by Council.

Economic Development staff and Parks & Recreation staff recommend adoption of the resolution authorizing Pines Properties, Inc. to convey 128 McEntire Road to Leon D. and Angeline J. Mast.

RESOLUTION BOOK NO. 30 – PAGE 150

I. RESOLUTION NO. 06-203- RESOLUTION AUTHORIZING THE CITY MANAGER TO SIGN A CONTRACT WITH DPI CONSTRUCTION INC. FOR THE PROJECT KNOWN AS THE AVON ROAD SIDEWALK AND DRAINAGE IMPROVEMENTS

Summary: The consideration of a resolution authorizing the City Manager to sign a contract with DPI Construction, Inc., in the amount of \$274,645.25, for the project known as Avon Road Sidewalk and Drainage Improvements.

In October 2006, City Council approved an additional \$370,000 in the Capital Improvement Budget to construct sidewalk on New Haw Creek Road and Avon Road. City staff requested an extension from the N.C. Dept. of Transportation (NCDOT) for the Encroachment Agreement on New Haw Creek Road sidewalk, which expired in October 2006. Prior to approving the extension, NCDOT is requiring some significant changes to the design of the project. We anticipate this change and approval to take an additional two to three months.

In order to keep the project moving, City staff decided to break the project into two separate contracts, one for Avon Road and the other for New Haw Creek Road. We received informal bids on Friday, November 17, 2006, for Avon Road Sidewalk and Drainage Improvements. Three bids were received from Rock Grading & Paving, Inc., Tennoca Construction Company and DPI Construction, Inc. in the amounts of \$346,380.00, \$352,645.00 and \$274,645.25, respectively. After a thorough review of the bid documents by the Engineering Department, DPI Construction, Inc., was found to be the lowest responsible bidder with a total bid of \$ 274,645.25.

This project consists of the installation of approximately 1,215 linear feet of 6-foot wide concrete monolithic sidewalk and nearly 1,200 linear feet of 18-inch diameter stormwater pipe and other related appurtenances.

DPI Construction, Inc. is the grading and utility construction division of McCarroll Construction, Inc., a local general contractor with experience in site development projects. McCarroll Construction has also performed projects with similar scope for other municipalities in the past in a satisfactory manner.

Pros:

- The execution of this contract will allow the City of Asheville Transportation and Engineering Department to continue upgrading the pedestrian and stormwater infrastructure of the City.
- The bid amount of \$ 274,645.25 for the construction of the Avon Road Sidewalk and Drainage Improvements is equitable and reflects the very lowest cost the City received during the two bidding processes.
- Construction of this sidewalk will enhance pedestrian safety and provide sidewalk connectivity to key area services such as the Haw Creek Area Library and Haw Creek Park.
- Construction of the proposed drainage improvements will enhance conveyance of stormwater run-off along this particular street, improving vehicular safety

Cons

- The only foreseeable disadvantage of adopting a resolution authorizing the City Manager to execute this contract is the temporary land and traffic pattern disturbances along the proposed construction corridor.

Staff recommends that City Council adopt a resolution authorizing the City Manager to sign a contract with DPI Construction Inc., in the amount of \$274,645.25, for the project known as Avon Road Sidewalk and Drainage Improvements.

RESOLUTION BOOK NO. 30 – PAGE 151

J. RESOLUTION NO. 06-204- RESOLUTION AUTHORIZING VERONA DRIVE, SPRINGMILL DRIVE AND TIVOLI ROAD IN WEST ASHEVILLE TO BECOME PUBLICLY MAINTAINED STREETS

Summary: The consideration of a resolution authorizing Verona Drive, Springmill Drive and Tivoli Road in West Asheville to become publicly maintained streets.

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

Verona Drive, Springmill Drive and Tivoli Road are developer-constructed streets that have an average paved width of 24 feet and a length of 0.04, 0.06, 0.05 miles, respectively. Engineering Department staff inspected these streets and found them to be constructed in accordance with the approved standards.

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

Pros:

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

Cons:

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

City staff recommends City Council adopt a resolution authorizing Verona Drive, Springmill Drive and Tivoli Road in West Asheville to become publicly maintained streets.

RESOLUTION BOOK NO. 30 – PAGE 152

K. RESOLUTION NO. 06-205 - RESOLUTION AUTHORIZING THE CITY MANAGER TO SIGN A CONTRACT WITH MCGILL ASSOCIATES FOR THE DINGLE CREEK STORMWATER ENGINEERING ANALYSIS

Summary: The consideration of a resolution authorizing the City Manger to sign a contract with McGill Associates for the Dingle Creek Stormwater Engineering Analysis in the amount of \$321,000; and the associated budget amendment, in the amount of \$88,000, to complete this work.

In December 2004, City Council adopted a Stormwater Utility. As part of the budget, City Council endorsed a program for

the expenditure of the funds. Of the approximate \$2 million of expected revenue, \$200,000 per year was programmed to prepare stormwater engineering analysis for watersheds.

Staff prepared a Request for Qualifications in the summer of 2006. Ten proposals were received. Based on qualifications, staff along with citizen input selected McGill Associates to perform this work.

In 2005, the City of Asheville received a grant from the Clean Water Management Trust Fund in the amount of \$133,000 to assist in completing the Stormwater Engineering Analysis for the Dingle Creek Watershed. Staff budgeted an additional match for the grant of \$100,000. The total cost of the work is \$321,000. Staff is requesting a budget amendment in the amount of \$88,000 to complete this work. This money would come from the Stormwater Utility Fund Balance.

On November 17, 2006, the Flood Damage Reduction Task Force met and recommended approval of this contract by consensus.

Staff has developed a question and answer format to help Council and the public understand the components of a Stormwater Engineering Analysis.

What is a Stormwater Engineering Analysis? A stormwater engineering analysis is a detailed engineering study that evaluates the stormwater drainage system in a watershed. In order to complete the analysis, the consultant must prepare an inventory of the drainage system. A hydraulic model is developed to analyze the capacity of the system. The model will indicate which pipes, ditches and/or streams need repaired and in what priority. The analysis also evaluates water quality concerns such as stream bank erosion, hazardous materials, etc.

What are the goals of a Stormwater Engineering Analysis? The goals of completing this analysis include the following:

- Developing a capital improvement program that evaluates upstream and downstream impacts of improvements;
- Prioritizing the storm drainage needs within the watershed;
- Developing a hydraulic model that can be used to determine improvements that need to be made as part of new development; and,
- Assisting in the justification for grant monies.

What are the deliverables of a Stormwater Engineering Analysis? The deliverables of this analysis include:

1. Detailed GIS Inventory of the Storm Drainage System in the watershed;
2. Hydraulic Model of the Watershed;
3. Capital Improvement Program of water quality and water quantity needs; and,

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4. Detailed cost estimates for the improvements.

How do we prioritize what Watersheds get done in what order? Watersheds are prioritized based on flooding, funding opportunities, opportunity to impact development and water quality concerns.

Staff acknowledges that the cost of these studies is a significant investment. However, this information allows us to make better decisions in the future.

Pros:

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- Completing the engineering analysis will allow us to make better decisions on how to prioritize capital improvement projects.
- Data from this analysis will allow the development community to determine the impact of their development on upstream and downstream property owners.
- The City will have a detailed inventory of the storm drainage system.

Cons:

- The cost associated with completing the work is significant. The Engineering Analysis must be completed by engineers that specialize in hydrology and hydraulics.

Staff recommends adoption of a resolution authorizing the City Manger to sign a contract with McGill Associates for the Dingle Creek Stormwater Engineering Analysis in the amount of \$321,000; and the associated budget amendment, in the amount of \$88,000, to complete this work.

RESOLUTION BOOK NO. 30 – PAGE 154

L. ORDINANCE NO. 3409- BUDGET AMENDMENT FOR THE DINGLE CREEK STORMWATER ENGINEERING ANALYSIS

Summary: See Consent Agenda Item “K” above.

ORDINANCE BOOK NO. 23

M. RESOLUTION NO. 06-206- RESOLUTION AUTHORIZING THE CITY MANAGER TO SIGN A CONTRACT WITH BROWN & CALDWELL FOR THE UPPER ROSS CREEK WATERSHED STORMWATER ENGINEERING ANALYSIS

Summary: The consideration of a resolution authorizing the City Manager to sign a contract with Brown and Caldwell for the Upper Ross Creek Watershed Stormwater Engineering Analysis in the amount of \$200,000; and the associated budget amendment, in the amount of \$50,000, to complete this work.

In December 2004, City Council adopted a Stormwater Utility. As part of the budget, City Council endorsed a program for the expenditure of the funds. Of the approximate \$2 million of expected revenue, \$200,000 per year was programmed to prepare stormwater engineering analysis for watersheds.

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Staff prepared a Request for Qualifications in the summer of 2006. Ten proposals were received. Based on qualifications, staff along with citizen input selected Brown and Caldwell to perform this work.

The total cost of the work is \$200,000. Staff is requesting a budget amendment in the amount of \$50,000 to compliment the \$150,000 already budgeted to complete this work. This money would come from the Stormwater Utility Fund Balance.

Ross Creek is listed on the State 303 D list as an impaired stream. This means that this stream has been identified as having poor water quality.

On November 17, 2006, the Flood Damage Reduction Task Force met and recommended approval of this contract by consensus.

Staff has developed a question and answer format to help Council and the public understand the components of a Stormwater Engineering Analysis.

What is a Stormwater Engineering Analysis? A stormwater engineering analysis is a detailed engineering study that evaluates the stormwater drainage system in a watershed. In order to complete the analysis, the consultant must prepare an inventory of the drainage system. A hydraulic model is developed to analyze the capacity of the system. The model will indicate which pipes, ditches and/or streams need repair and in what priority. The analysis also evaluates water quality concerns such as stream bank erosion, hazardous materials, etc.

What are the goals of a Stormwater Engineering Analysis? The goals of completing this analysis include the following:

- Developing a capital improvement program that evaluates upstream and downstream impacts of improvements;
- Prioritizing the storm drainage needs within the watershed;
- Developing a hydraulic model that can be used to determine improvements that need to be made as part of new development; and,
- Assisting in the justification for grant monies.

What are the deliverables of a Stormwater Engineering Analysis? The deliverables of this analysis include:

1. Detailed GIS Inventory of the Storm Drainage System in the watershed;

2. Hydraulic Model of the Watershed;
3. Capital Improvement Program of water quality and water quantity needs; and,
4. Detailed cost estimates for the improvements.

How do we prioritize what Watersheds get done in what order? Watersheds are prioritized based on flooding, funding opportunities, opportunity to impact development and water quality concerns.

Staff acknowledges that the cost of these studies is a significant investment. However, this information allows us to make better decisions in the future.

Pros:

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- Completing the Engineering Analysis will allow us to make better decisions on how to prioritize capital improvement projects.

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- Data from this analysis will allow the development community to determine the impact of their development on upstream and downstream property owners.
- The City will have a detailed inventory of the storm drainage system.

Cons:

- The cost associated with completing the work is significant. The Engineering Analysis must be completed by engineers that specialize in hydrology and hydraulics.

Staff recommends adoption of a resolution authorizing the City Manager to sign a contract with Brown and Caldwell for the Upper Ross Creek Watershed Stormwater Engineering Analysis in the amount of \$200,000; and the associated budget amendment, in the amount of \$50,000, to complete this work.

RESOLUTION BOOK NO. 30 – PAGE 155

N. ORDINANCE NO. 3410 - BUDGET AMENDMENT FOR THE UPPER ROSS CREEK WATERSHED STORMWATER ENGINEERING ANALYSIS

Summary: See Consent Agenda Item “M” above.

ORDINANCE BOOK NO. 23

O. BUDGET AMENDMENT FOR THE LEGAL DEPARTMENT TO INCREASE LEGAL SERVICES LINE ITEM

This item was removed from consideration by City Council.

P. RESOLUTION NO. 06-207 - RESOLUTION AUTHORIZING THE CHANGE IN WATER POLICIES TO REFLECT CHANGES IN THE NUMBER OF DAYS FROM 8 TO 15 BEFORE AN ACCOUNT IS ELIGIBLE FOR CUT-OFF FOR NON-PAYMENT; PAYMENT PLAN ARRANGEMENTS; AND ALL REFERENCES OF REGIONAL WATER AUTHORITY OF ASHEVILLE, BUNCOMBE & HENDERSON BE AMENDED TO READ “THE CITY OF ASHEVILLE”

Summary: The consideration of a resolution authorizing the change in Water Policies to reflect changes in the number of days before an account is eligible for cut-off for non-payment; payment plan arrangements; and all references of Regional Water Authority of Asheville, Buncombe and Henderson amended to read The City of Asheville.

Staff has been verifying current water policies ensuring all references to the Regional Water Authority of Asheville, Buncombe and Henderson were replaced with the City of Asheville as appropriate and the water policies did not conflict with the City Engineering Standards Manual, state mandated programs such as backflow and cross-connection. Staff through a cross-departmental team evaluated current billing and cut-off for non-payment policies.

A team made up of Water Resources, Engineering, City Administration and Finance Department's staff has reviewed current water billing policies. Staff has analyzed the advantages and disadvantages of changing current billing and cut-off for non-

payment policies and any impact suggested changes will have on the water fund. Staff compared current billing and cut-off practices with ten public utilities and four private utilities.

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PROS: These water policy changes reflect increased level of customer service by extending the utility bill grace period to a minimum of 15 days after the due day and administrative changes of the City of Asheville as the water provider replacing the Regional Water Authority references.

CONS: The change in the grace period from 8 days to 15 days could cause minor fluctuations in water fund revenue being generated by customers waiting until the end of the grace period to pay their bill.

Staff recommends City Council adopt the resolution authorizing the change in Water Policies to reflect changes in the number of days before an account is eligible for cut-off for non-payment from 8 to 15 days; allowing more payment plan arrangements; and all references of Regional Water Authority of Asheville, Buncombe and Henderson amended to read The City of Asheville.

RESOLUTION BOOK NO. 30 – PAGE 156

Q. MOTION TO REVIEW LEASE OF CITY-OWNED PROPERTY AT 224 LOUISIANA AVENUE TO US ARMY CORPS OF ENGINEERS

This item was pulled off the Consent Agenda for further discussion and/or a separate vote.

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

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

ITEMS PULLED OFF THE CONSENT AGENDA FOR FURTHER DISCUSSION AND/OR A SEPARATE VOTE

RESOLUTION NO. 06-199- RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A CONTRACT WITH DALTON'S HEATING, AIR CONDITIONING AND CONTROLS INC. FOR THE REMOVAL AND DISPOSAL OF THE OLD CHILLER AND INSTALLATION OF A NEW CHILLER AT THE PUBLIC WORKS FACILITY LOCATED AT 161 S. CHARLOTTE STREET

Summary: The consideration of a resolution authorizing the City Manager to enter into a contract with Dalton's Heating, Air Conditioning and Controls Inc. for the removal and disposal of the old chiller and installation of a new chiller at the Public Works Facility, 161 South Charlotte Street.

The chiller at the Public Works Facility is approximately 15 years old and has reached the end of its functional life. The past few years numerous breakdowns have occurred resulting in a large amount of parts replacement, maintenance and repair time by the Parks and Recreation Department maintenance personnel. Funds are budgeted in the Public Work's 2006 – 2007 capital budget.

The Parks and Recreation Department received 3 bids as follows:

Dalton's Heating, Air Conditioning and Control	\$54,590.00
R & W Inc.	\$54,716.00
McNutt Services Group	\$54,899.00

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Dalton's Heating, Air Conditioning and Control was the lowest responsible bidder at the cost of bidder at the cost of \$54,590.00.

Pros:

- Chiller repair costs will be reduced
- Improved reliability
- Less maintenance personnel time for repair

Cons:

- Costly repairs will continue.
- Breakdowns will occur at an increased frequency.

The Public Works Department recommends City Council adopt the resolution authorizing the City Manager to enter into a contract with Dalton's Heating, Air Conditioning and Controls Inc. for the removal and disposal of the old chiller and installation of a new chiller at the Public Works Facility, 161 South Charlotte Street.

Councilman Mumpower expressed concern about the City including existing utilized City properties in a Request for Qualifications (RFQ) to offer City-owned property for redevelopment. And, since this property is in that RFQ, he was also concerned about spending \$50,000 in a facility that will possibly be sold.

Councilman Newman felt that we need to take care of our facilities.

Councilman Davis said that with the RFQ we are asking the development community to look at the City's properties to see if there is a better use for our land.

Vice-Mayor Jones moved for the adoption of Resolution No. 06-199. This motion was seconded by Councilman Freeborn and carried on a 6-1 vote, with Councilman Mumpower voting "no."

RESOLUTION BOOK NO. 30 – PAGE 147

RESOLUTION NO. 06-200- RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A PROFESSIONAL SERVICES CONTRACT WITH BROWN & CALDWELL FOR BIDDING AND CONSTRUCTION FOR WATER TREATMENT PLAN UPGRADES AT THE NORTH FORK AND BEE TREE WATER PLANTS

Summary: The consideration of a resolution authorizing the City Manager to enter into a professional services contract with Brown & Caldwell.

The Water Resources Department requires a professional engineering firm to handle the project management and bid and construction phase of the water treatment plant upgrades. Engineering design for the North Fork and Bee Tree water treatment plant upgrades has previously been prepared through another engineering contract with the engineering firm of Brown & Caldwell. Only one firm responded to the Request for Qualifications. Staff contacted numerous firms to find out why no one else submitted proposals and each firm stated that they would not submit proposals for design work their firm did not prepare. The design work was at a cost of over \$1,000,000. Brown & Caldwell submitted a proposal and due to their previous design work and good standing with the City and department on previous engineering projects this firm was selected to continue this project. Part of this project includes looking at green power (hydroelectric) for the two plants. This is an opportunity for the City to pursue energy savings and ensuring future storm events do not restrict the flow of water from the treatment plants due to

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downed power lines. Excess power would be sold to Progress Energy. Total cost is not to exceed \$1,548,871, which is allocated in the current Fiscal Year 2006-07 budget.

Pros:

- This project will enhance the water system and ensure we continue to meet all federal and state mandated clean water regulations.
- Funds are allocated in the current year budget.

Cons: There is no negative impact.

City staff recommends City Council adopt the resolution authorizing the City Manager to enter into a professional services contract with Brown & Caldwell.

Councilman Mumpower moved for the adoption of Resolution No. 06-200. This motion was seconded by Councilman Freeborn and carried unanimously.

RESOLUTION BOOK NO. 30 – PAGE 148

MOTION TO REVIEW LEASE OF CITY-OWNED PROPERTY AT 224 LOUISIANA AVENUE TO US ARMY CORPS OF ENGINEERS

Summary: The consideration of review of a lease of City-owned real property at 224 Louisiana Avenue to the US Army Corps of Engineers.

Members of City Council have expressed interest in alternative vehicles for the lease between the City of Asheville and the United States of America Army Corps of Engineers for the property at 224 Louisiana Ave which is the Army Reserve Center. The site is an 8.857 acre tract on the west side of Louisiana Ave about 200' from its intersection with Patton Avenue.

The lease was approved on October 10, 2006, for a three year term of July 1, 2006-June 30, 2009, at an annual rate of \$112,000 with no escalation clause.

A possible option for offering to renegotiate the current lease that could be explored would be to establish the lease at a beginning rate based on the previous lease which expired in June 2006 at an annual rate of \$60,000. The City could offer to base the rate at the \$60,000 with an annual adjustment based on the Consumer Price Index (CPI) of the most recent year of the lease. For example, the CPI for 2005 was 3.4%. The CPI is used by many government agencies to base cost of living adjustment payments.

Pros:

- Provide an opportunity for collaboration and partnership with the US Army Corps of Engineers and the local Army Reserve Center.

Cons:

- Loss of Revenue and lease terms below market rate.

City staff requests City Council provides direction to staff to offer the US Army Corps of Engineers to renegotiate the current lease for 224 Louisiana Avenue.

Mr. Fred English questioned why this item was on the Consent Agenda and not a public hearing.

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Mr. Walter Plaue felt that this lease should not focus on costs, but should reflect the City's support toward our service members.

Councilman Newman said we need to be fair to the people who lease facilities from the City and also fair to the owners of the facilities - which are the taxpayers. When building and/or land leases expire, we need to ask some of our partners to contribute a little more. As we move forward, we need to make sure that we are getting the highest and best use out of our land and think through what we want to see in the future for that piece of property.

Councilman Mumpower moved to renegotiate the current 3-year lease at \$60,000 with an annual adjustment based on the CPI. This motion was seconded by Vice-Mayor Jones and carried unanimously.

The following comment was heard by City Council after action had already taken place. Mr. Jim Reeves presented Council with an alternative proposal for the Army Reserve Center. He suggested Council leave the lease at the market rate and use a percentage of it for testing returning vets for depleted uranium poisoning. He presented Council information relative to exposure to depleted uranium.

III. PUBLIC HEARINGS:

A. PUBLIC HEARING TO CONSIDER CONDITIONAL ZONING OF PROPERTY LOCATED AT 1741 HENDERSONVILLE ROAD FROM RM-6 RESIDENTIAL MULTI-FAMILY LOW DENSITY DISTRICT TO HIGHWAY BUSINESS DISTRICT/CONDITIONAL ZONING FOR WEIRBRIDGE VILLAGE

ORDINANCE NO. 3411- ORDINANCE TO CONDITIONALLY ZONE PROPERTY LOCATED AT 1741 HENDERSONVILLE ROAD FROM RM-6 RESIDENTIAL MULTI-FAMILY LOW DENSITY DISTRICT TO HIGHWAY BUSINESS DISTRICT/CONDITIONAL ZONING FOR WEIRBRIDGE VILLAGE

Mayor Bellamy opened the public hearing at 5:28 p.m.

Urban Planner Julia Cogburn said that this is the consideration of an ordinance to conditionally zone property located at 1741 Hendersonville Road from RM-6 Residential Multi-Family Low Density District to Highway Business District/Conditional Zoning for Weirbridge Village. This public hearing was advertised on November 14 and 24, 2006.

Ms. Cogburn said that the Weirbridge Village project supports the following goals of the City's Comprehensive Plan: (1) The goal of pursuing compatible infill development; (2) The goal of permitting and encouraging transit supportive density along and adjacent to major corridors and at logical transit nodes; (3) The goal of developing and using BMPs (rain gardens) to address the effect of development on stormwater runoff and water quality; (4) The goal of providing affordable housing; and (5) The goal of promoting the use of green building techniques.

The subject property, 20.66 acres, is located within the City limits, at the corner of Hendersonville Road and Racquet Club Road. The property currently contains a few homes and accessory buildings, but otherwise is undeveloped. Surrounding properties are both residential and commercial. To the north is the Racquet Club (a recreational facility) and the Racquet Club Village condominiums. Applebee's restaurant is on the northwestern corner of Racquet Club and Hendersonville Roads. Across Hendersonville Road are apartments and commercial properties. To the south, a low density multi-family development (Crowfields Condominiums) abuts the development and to the east another condominium development, South Oaks, is located. The

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zoning in the area reflects the development; to the north and east, RM-16 and Highway Business, and to the south and west, RM-6.

The property owners, Sizemore Developers, LLC and Dawgbilt NC, LLC, are requesting that the property be rezoned from RM-6 Residential Multi-Family Low Density District to HB Highway Business District to allow for the development of a 336-unit multi-family development with commercial out-parcels along Hendersonville Road. The multi-family portion of the development is comprised of 16 buildings of 2 types. The developer is proposing a mix of one- two- and three-bedroom units for a total residential density of 20.75 units per acre. Highway Business zoning allows up to 32 units per acre. The commercial portion of the development is shown as traditional suburban commercial out-parcels abutting Hendersonville Road. Instead of separate curb cuts, the developer proposes to access all commercial parcels off a road that runs parallel to Hendersonville Road. Other access to the property is via a new entrance to the property along Hendersonville Road (to the south) and 3 entrances off of Racquet Club Road. The roads are proposed to remain private. A traffic impact analysis has been submitted by the developer. The developer has proposed a connection to Crowfields as a means to facilitate ingress and egress for the Crowfields community. Staff is supportive of this traffic management measure; however, it will require approval by the Crowfields Association. Staff will require a road stub-out at the site of the possible connection if the connection to Crowfields is not accepted.

The developer has submitted a proposal for the development of the commercial parcels that indicates there may be as many as 5 out-parcels but perhaps fewer than the illustrated 4. They propose restrictions that no commercial parcel will be greater than 3.5 acres (the entire commercial development area is approximately 5 acres in size). They also propose maximum gross floor areas for the buildings, limitations on uses, and signage restrictions. Restrictions on this portion of the development should be made a part of any approval on this conditional zoning request.

The residential portion of the development is comprised of 16 buildings covering approximately 16.19 acres of land. 112 one-bedroom units, 176 two-bedroom units and 48 three-bedroom units are shown. The developer is going for LEED certification with this project. Over half of the 647 parking spaces provided are garage spaces (388) leaving 259 surface parking spaces. The residential buildings are comprised of three stories with a garage level underneath. The developer is proposing that approximately 5% (17 units) in the project will be affordable, with an additional 5% considered by the developer to be "workforce" housing units.

The developer is proposing improvements to Racquet Club Road as part of the development. The proposal is to turn it into a landscaped boulevard with parking on the Weirbridge Village side of the street. With the widening of Racquet Club Road, the developer is indicating a need to reduce the front setback from 35 feet to 12.5 feet. With the sidewalk provisions, orientation of the buildings and parking along Racquet Club, staff does feel like this qualifies for a pedestrian oriented development and would recommend as part of this approval that the pedestrian oriented development design and reduced setback along Racquet Club Road be accepted from 35 feet to 12.5 feet.

Type-C buffers will be required on the southern side of the property adjacent to Crowfields and the western side adjacent to South Oaks.

Stormwater management has been a major issue in the past in this area where a number of creeks converge. The subject property contains two drainage channels and one creek. The developer is proposing to pipe Turtle Creek where it crosses the property but is showing open space area (with one road interruption) around the drainage on the western side of the property. The developers propose to incorporate rain gardens throughout the development for stormwater management.

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At a meeting on October 16, 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. The developer has resubmitted since that time, addressing a number of conditions.

The Planning and Zoning Commission, at a meeting on November 1, 2006, reviewed the application and made a positive recommendation (6-1) for approval of this request subject to the conditions placed on the development by the TRC and subject to the following additional condition: (1) That the developer would work with staff to provide limitations on the commercial development that would be presented to Council as part of any approval of the proposal.

Prior to and at the Planning and Zoning Commission meeting, staff and the Commission received significant public comment on this project. Outside of the meeting staff has received 7 letters or calls in support of the project and over 15 letters or comments in opposition (citing density, height, traffic, and stormwater runoff as the major concerns). There were a significant number of speakers at the Planning and Zoning Commission meeting, most citing the aforementioned concerns about the project.

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 developer is working with the N.C. Dept. of Transportation (NCDOT) to obtain a light at the intersection of Racquet Club and Hendersonville Roads to facilitate ingress and egress for this and surrounding developments. The project, if approved, must meet the technical standards set forth in the City's UDO and Standards and Specifications Manual.

2. That the proposed use or development of the land is reasonably compatible with significant natural or topographic features on the site and within the immediate vicinity of the site given the proposed site design and any mitigation techniques or measures proposed by the applicant.

The developer has proposed piping one stream along Hendersonville Road (will necessitate permitting by the Army Corps of Engineers) and proposes to leave open a drainage channel on the property. The developer is proposing the use of rain gardens for stormwater management throughout the residential portion of the project. The site, while over 2220 feet in elevation is not subject to the hillside ordinance because the average natural slope on the property is approximately 9%. Hillside requirements begin at a 15% slope.

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 multi-family residential and commercial, as is proposed for this property. The residential density, however, is greater than most of the surrounding residential developments.

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 stated above, the residential density proposed on this site is greater than the surrounding residential developments. The commercial out-parcels proposed would be similar to much of the suburban commercial strip development that is found along Hendersonville Road at present.

5. That the proposed use or development of the land will generally conform to the comprehensive plan, smart growth

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policies, sustainable economic development strategic plan and other official plans adopted by the City.

The proposed use supports the 2025 goals as follows: (a) Permits and encourages transit supportive densities along and adjacent to major corridors and at logical transit nodes; (b) Pursues infill development; (c) Develops and uses BMPs to address the effect of development on stormwater runoff and water quality; (d) Provides affordable housing; and (e) Utilizes greenbuilding techniques.

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

The proposed use is located along a major (five lane) thoroughfare in the City. Transit is available along this corridor and the developer proposes a transit shelter as part of the project. Other infrastructure is in place to support this development.

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

The developer has submitted a traffic impact analysis that is being analyzed by the City's Engineering Department.

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

Considerations:

- The proposed development is in keeping with the mix of uses found along Hendersonville Road.
- The residential density proposed is greater than that found in the surrounding area.
- The developer has provided access largely through internal circulation on private roads and is working with NCDOT to obtain a traffic light at the Racquet Club Road intersection to facilitate traffic ingress and egress.

A review of the subject proposal indicates that the proposed development continues the existing suburban style development pattern along Hendersonville Road. This style includes relatively low density commercial development along the road frontage in the form of single-use out-parcels and transitions to multifamily development at the part of the site not directly fronting on Hendersonville Road. Access control is provided through internal driveway access to all development, including the commercial out-parcels. Some City affordable housing, interparcel connectivity and green development goals are met by the proposed development. More "urban" development alternatives were explored with the developer to cluster development and reserve larger areas of green space (e.g., Biltmore Park, Gerber) but these were not pursued for a variety of reasons, primarily due to marketing and compatibility concerns. Much of the existing "character" of the site, including the mature vegetation will be lost with this proposed development pattern. Since the size and generally undeveloped nature of the site is currently unique along the corridor, there has been public concern.

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Staff finds that the proposed development is generally compatible with the surrounding development pattern and reflects a suburban style characteristic to much of the Hendersonville Road corridor. The development would contribute to meeting certain City goals and is not anticipated to create infrastructure or service impacts that cannot be mitigated by the on-and off-site improvements agreed to by the applicant. As a consequence, staff recommends approval of the proposed conditional zoning request subject to a variety of conditions provided below.

Recommended Special Conditions:

- Greater detail must be provided on the operation of the rain gardens and the establishment of a maintenance agreement concerning the rain gardens will be required.
- Because of flooding on adjacent properties due to urban stormwater run-off, stormwater management controls must be provided to control peak flows, which exceed those as required by the City of Asheville UDO. (25 year storm recommended).
- The proposed signal on Racquet Club Road must be installed prior to any certificate of occupancies being issued.
- A pedestrian signal shall be provided at the existing traffic signal, if not already included in the NCDOT pedestrian signal plan.
- Commercial uses must be further defined and architectural restrictions further delineated.
- A connection shall be made to the Crowfields Condominium property, if permitted; if not permitted, a road stub-out shall be provided for any future possible connection.
- A certain percentage of the units should be affordable and meet the City's requirements for affordability. This number (probably 5%) is being discussed with the developer who is committed to some affordable units.

- Type-C buffer adjacent to both the properties
- The pedestrian oriented design component along Racquet Club Road, which would allow for the reduction of the setback to 12.5 feet

Ms. Cogburn said that the developer has agreed with complying with all of the conditions.

Standard Conditions:

- The project shall comply with all conditions outlined in the TRC staff report.
- 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.
- All existing vegetation that is to be preserved must be clearly indicated and dimensioned on the site, landscape and grading plans.
- 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.
- At the direction of the Planning Director, this Project will be reviewed by the TRC prior to issuance of any building [or grading, etc....] permits.

Mr. W. Louis Bissette Jr., attorney for the petitioner, felt that after Council hears the presentation, they will agree that Weirbridge Village can be a model for Asheville's smart growth policies. The project is innovative in many areas. The developer will spend approximately \$5 Million on improvements to Racquet Club Road; the 25-year stormwater system; the LEED certified building design; the affordable and workforce housing units; and the new traffic signals, along with the Crowfields access easement, turn lanes and deceleration lanes. Smart growth and reasonable density in relatively flat areas, such as this, means less sprawl on our ridge tops and a better quality of life for our citizens. This project will produce an annual tax net gain of \$594,594 for the City, as calculated in a letter from Mr. Tom Tveidt, Director of Asheville Metro Business Research Center. He provided Council with several letters of support from neighboring developments.

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Mr. Clay Mooney, landscape architect with Design Associates, addressed the design of the stormwater system which, through the use of rain gardens throughout the site and other structural designs, will meet the 25 year storm event standards, not the City required 10 year storm event standards. As far as they know, no developer in Asheville has ever been asked to do that. The result, however, will be less stormwater impact downstream than exists today with the pasture land.

Mr. Gerald Green, with Greenplan, discussed density. The Highway Business District being requested permits a density of up to 32 units per acre and they are proposing 20.75 units per acre. This site is the appropriate location for dense residential development due to its amenities and attributes, some being, it is located on a major transportation corridor; it is located on a major transportation route (they are proposing a bus shelter as part of the development); it is located in close proximity to shopping, services and employment opportunities; it will be connected to adjacent property with the system of sidewalks along Racquet Club Road, Hendersonville Road, and internally to the site; pedestrian cross walks and signals will be provided at the intersection of Turtle Creek Road and Hendersonville Road and also at the intersection of Hendersonville Road and Racquet Club Road to provide safe pedestrian access to the major commercial and residential areas across Hendersonville Road; and enhanced access points with traffic signals for safe traffic management. Steps were taken in the planning of the project to ensure protection of site amenities, including siting of buildings to preserve existing trees, design of buildings to minimize grading, and underground parking to minimize impervious surfaces and to preserve green space. He said over 27% of the site will be preserved as open space. As Asheville continues to grow we must look at density in a different way in order to provide the housing and services for current and future residents. Rather than judging density in numbers they identified the impacts of the density and addressed those.

Mr. Ken Putnam, traffic engineer with Mattern & Craig, addressed the traffic concerns. He said the NCDOT is currently installing a synchronized traffic signal system along Hendersonville Road to improve traffic flow. In order to minimize the potential impact from the proposed development, the developer will provide the following enhancements, subject to review and approval by the City and the NCDOT: (1) limit the direct access onto Hendersonville Road to only one access point; (2) provide secondary access points along Racquet Club Road; (3) provide a right turn deceleration lane along the southbound approach of Hendersonville Road at Racquet Club Road and also at the main access point; (4) provide three egress lanes or existing lanes onto Hendersonville Road at Racquet Club Road and also at the main access point; (5) install a new traffic signal including the pedestrian device at Racquet Club Road; (6) revise the existing traffic signal including pedestrian devices, if needed, at Turtle Creek Drive; and (7) serve the commercial out-parcels internally with no direct access onto Hendersonville Road. In addition to the proposed development, the new traffic signal at Racquet Club Road would benefit seven distinct neighborhoods.

Mr. Rusty Pulliam, developer, spoke about his vision for the commercial part of the development and the voluntary restrictions which he is willing to place on this part of the project. He said the restrictions are (1) the number of commercial parcels will be limited to a maximum of five; (2) the size of any one commercial parcel will be limited to a maximum of 3.5 acres; (3) no big box retail stores will be permitted; (4) deed restrictions will be placed on the property to prohibit night clubs, bars, adult uses and dance clubs; (5) architectural standards will be placed on the design of the commercial buildings to require them to mirror the residential architecture of the Weirbridge Village residential condominium buildings located behind the commercial property. The exterior materials used on the commercial structures shall be the same as those used on the residential structures; (6) exterior lighting will be restricted to the same lighting fixtures and low impact lights as used in the residential condominiums behind the commercial property; (7) landscaping will meet with City of Asheville standards and be approved by the owner; and (8) no 24-hour uses, other than bank ATM's and pharmacies, will be permitted. In addition, additional

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restrictions include (1) the size of any one commercial building will be limited to a maximum of 25,000 square feet of gross floor area; (2) the height of all commercial buildings will be limited to a maximum of 30 feet (two stories); (3) signage for the commercial development shall be limited to: (a) one development identification sign that will be architecturally compatible with the overall design of the development; (b) one monument style tenant identification sign per street frontage (maximum of 2 signs) with a size not to exceed 50 sq. feet per face and a height not to exceed 8 feet shall be permitted for each commercial building. The monument identification signs shall be architecturally compatible with the overall design of the development; and (c) one attached tenant identification sign shall be permitted for each commercial tenant. The maximum size for any one attached tenant identification signs shall not exceed 50 sq. feet per face and may be internally or externally lit; (4) outside speaker systems shall be limited to a low volume speaker for the bank drive through teller(s) and pharmacy drive through(s). The hours of operation of the bank teller speaker systems shall be limited to 8:30 a.m. - 6:00 p.m. Monday -Friday and 9:00 a.m. - Noon on Saturdays. The hours of operation of the pharmacy drive through speaker system shall not be limited; (5) no outdoor storage of merchandise, equipment, or other items shall be permitted; and (6) commercial uses shall be limited to financial institutions; pharmacies; restaurants; professional offices; retail sales; bakeries; barber shops and salons; bookstores; clinics, medical; delicatessens; florists, gift shops; grocery stores; and health and fitness facilities. He said that they will grant a permanent easement for Crowfields at no cost.

Mr. Chip Cassinger, developer, described the green-building construction techniques which will be utilized to make this project a national LEED certified model for multi-unit residential buildings. He also discussed the planned inclusion of 34 affordable housing and workforce housing units in Weirbridge Village, noting that all their units will be handicapped accessible. Regarding height, the City measures height from finished floor to top of the third floor, and their 3-story garden style buildings measure approximately 33 feet. The footprint on the ground does not exceed 10,000 sq. feet, which is a comparable footprint with Crowfields. He said that 60% of the parking is underneath.

Mr. Mack Cox, President of the Executive Committee of Crowfields Condominium Association, gave a brief history of Mr. Pulliam's development when it was originally proposed in February of 2006. He proposed to build 80 town homes on the back 10 acres and a commercial development on the front 10 acres. He also offered Crowfields access to a traffic light on his property if Crowfields would give him one acre of their prime frontage for his commercial use. The Crowfields Board of Directors overwhelming rejected the proposal. In July of 2006, Mr. Pulliam then proposed what is before Council today. He said new developments should not exceed zoning which is greater than existing surrounding neighborhoods. Crowfields is zoned RM-6 and the surrounding developments are zoned no greater than RM-16. He felt the density was too much and there were too many conditions yet to be resolved.

Mr. Bob Malkin said that the opposition is not opposed to development of the site, but how the site is being developed. He said that based on the developer's plan, 161 mature trees will be bull-dozed down, leaving maybe 10 trees left on the site. After the trees are cut, then the developer will grade the site flat. He questioned what would happen if the developer could not follow through with his plans after cutting down 161 trees and grading the land. He said that there is not enough parking on the site, so 35 cars will have to park on Racquet Club Road. He showed photos of other properties where this developer has ravaged the land noting that he has no environmental conscience. He then explained how the buildings will be 60 feet tall and will be incompatible to other area developments.

Mr. Paul Bidwell, attorney for Crowfields Condominium Association, explained that the developer's plan shows a 46 foot height which does not appear to include the garage or the roof peak. He said this plan is not compatible with the surrounding neighborhood nor is it smart growth. He felt the plan benefits only the developer and he could see no reason why the

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developer couldn't develop the property in half the size. This project is not the right plan for this property, as the land deserves

less development. He said that zoning is a promise to the community, noting that it can change, but it is some protection for the people who live in the area. He said there is no good reason to change the zoning to such a high density. He urged Council to ask the developer to come back with a more appropriately-sized development which is more compatible with the neighborhood. He urged Council not to approve the development plan at the expense of the quality of life for the people in the neighborhood.

The following individuals spoke against the conditional zoning for several reasons, some being, but are not limited to: density is too high for the property; height of the buildings are too high; no location set aside for children to play in; City should honor the zoning status of properties; and the commercial property fronting Hendersonville Road will be strip development:

Mr. Joe Brady, Asheville resident
Crowfields resident
Mr. Maloy Rash, Crowfields resident
Mr. Michael West, Crowfields resident
Ms. Anne Campbell, Crowfields resident
Mr. Stuart Wilson, Devonshire resident
Ms. Barber Melton, Vice-President of Coalition of Asheville Neighborhoods
Mr. Robert Philip, Crowfields resident

The following individuals spoke in support of the conditional zoning for several reasons, some being, but are not limited to: needed traffic improvements to Racquet Club Road; development will increase adjoining property values; developer has proven record of following through with development plans; property warrants the higher density; good traffic management plan for Crowfields; developer will provide external natural buffer screening and shrubs along the southern Weirbridge Village boundary with Crowfields; developer will provide a 25-year stormwater system; 5,807 people will be affected by the improvements to Racquet Club Road; project supports City's smart growth policies; plan is for infill development, which slows down urban sprawl; the plan of commercial use in the front and residential in the rear is similar to what is already in place on Hendersonville Road; and plan calls for underground parking:

Mr. John Crook, South Oaks resident
Mr. Buster Brown, developer
Mr. Miller Williams, former resident of Crowfields
Ms. Susan Roderick
Mr. Robert Fitch, Crowfields resident
Mr. Will Morris, co-owner of one of the units in Crowfields
Mr. Laneal Vaughn, owner of the Asheville Racquet Club
Mr. Neal Hanks, resident in Biltmore Park Subdivision
Mr. Otto Claude Smith, Crowfields resident
Mr. Robert Cox, Racquet Club Road resident
Mr. Charles Frederick, Regional President for Southern Community Bank & Trust

Mayor Bellamy closed the public hearing at 7:32 p.m.

Throughout discussion, Mr. Shuford responded to various questions and/or comments from Council, some being, but are not limited to: what was the reasoning behind why the Planning & Zoning Commission member voted against the development; when was the property zoned RM-6; why was the property zoned RM-6; what is the tax appraisal for the property; are working farms taxed at a much lower rate; and how will the Dingle Creek Stormwater Analysis affect this area.

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Councilman Mumpower felt there were many persuasive arguments for this development plan, but was concerned with why we have zoning if we are willing to make abrupt leaps in density this dramatically.

Councilwoman Cape said that the 2025 Plan (compiled by the community in 2002) identifies several items as positive ways for us to build in our community, which this project adheres to, e.g., smart growth, infill development, transit orientation, green-building, etc. The footprint of the proposed buildings are essentially the same size as the Crowfields buildings, but instead of housing six families, they are housing 20 families in high energy efficient homes. She did question why one building couldn't be deleted in place of more open space, but overall she commended the developer for the plan.

Councilman Freeborn felt that it doesn't make sense to continue medium to low density development on Hendersonville Road. Even though the developer doesn't anticipate this being a family-oriented development, he suggested a playground facility be placed on the property. Another suggestion would be to include a \$120 annual transit pass to the rent or to the condo

association fee, which would go a long way in reducing the number of cars on Hendersonville Road.

In response to Vice-Mayor Jones' concern about screening, Mr. Mooney said they will have a 25-foot buffer and the final locations of plant materials will be adjusted by an on-site visit with a member of the Planning staff and the landscape architect. The purpose of that is to try to concentrate those materials where they have the most need. They will try to do a replication of what is existing on the Crowfields side.

Upon inquiry of Vice-Mayor Jones, Ms. Cogburn said that technical height in the UDO is approximately 38 feet and is measured from the primary entrance (in terms of fire access) to the ceiling of the highest livable space. It is true that if you stand at the garage level on the lower side and look to the very top of the roof, you are getting close to 60 feet, but 60 feet is the height that is allowed in the Highway Business District.

When Vice-Mayor Jones asked about enforcement, Planning & Development Director Scott Shuford said that one enforcement technique if a violation should occur is that we do not issue a Certificate of Occupancy. City Council has authorized an additional person to his staff and that person will be able to make sure the conditions established are known up front by the developer and the contractor, and will meet with them on-site throughout the construction process.

Upon inquiry of Councilman Davis about maintenance of the rain gardens, Mr. Chad Pierce in the City's Engineering Department, explained that after the rain gardens are installed, we will require an inspection and a recorded maintenance agreement, one provision which is an annual report. If the system is not working properly and the homeowners do not fix it, then the City has the option to go in, make the correction, and then put a lien on the property.

Councilwoman Cape wanted to make sure that the LEED aspects of this project are real and want to make sure they are part of the conditions of this project.

Councilman Newman asked if there is a technology that we can use prior to approving projects that tells how much more capacity the roads can bear before they become a low level standard. City Traffic Engineer Anthony Butzek responded that we can utilize traffic modeling to make some predictions. In addition, we can look at best management practices from other cities regarding development along certain corridors, e.g., improving pedestrian access, transit and bicycle access.

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There was discussion regarding a condition requiring the buildings be LEED certified before being issued a Certificate of Occupancy. Mr. Shuford understood the LEED certification process contains a component that you have to demonstrate that you are achieving certain things and the only way to do that is to get the buildings occupied. Mr. Cassinger explained that after the project is completed, the National LEED Council reviews the entire project. He suggested allowing the TRC to verify the number of points met in order to achieve the LEED certification.

City Attorney Oast suggested the condition be that prior to the issuance of final site approval that the developer demonstrate to the TRC sufficient LEED elements associated with the site plan to achieve a minimum level of 30 points, understanding that the LEED certification cannot be obtained until after the project is built. Councilman Newman said that as the points are calculated that we do it in a very conservative way.

Mr. Mooney responded to Mayor Bellamy regarding the erosion control measures taking place during construction, the percentage of the site being preserved as open space, and the minimum parking requirements.

In response to Mayor Bellamy, Mr. Shuford said that if the developers do something above the underlying RM-6 zoning, they will have to come back to City Council. If the conditional zoning is not acted on in a timely fashion, the property reverts to its original zoning.

Councilman Newman moved for the adoption of Ordinance No. 3411, to conditionally zone property located at 1741 Hendersonville Road from RM-6 Residential Multi-Family Low Density District to Highway Business District/Conditional Zoning for Weirbridge Village, subject to the following conditions: (1) The project shall comply with all conditions placed on the development by the TRC; (2) 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; (3) All existing vegetation that is to be preserved must be clearly indicated and dimensioned on the site, landscape and grading plans; (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; (5) At the direction of the Planning Director, this Project will be reviewed by the TRC prior to issuance of any building [or grading, etc....] permits; (6) Greater detail must be provided on the operation of the rain gardens and the establishment of a maintenance agreement concerning the rain gardens will be required; (7) Because of flooding on adjacent properties due to urban stormwater run-off, stormwater management controls must be provided

to control peak flows, which exceed those as required by the City of Asheville UDO. (25 year storm recommended); (8) The proposed signal on Racquet Club Road must be installed prior to any certificate of occupancies being issued; (9) A pedestrian signal shall be provided at the existing traffic signal, if not already included in the NCDOT pedestrian signal plan; (10) Commercial uses must be further defined and architectural restrictions further delineated; (11) A connection shall be made to the Crowfields Condominium property, if permitted; if not permitted, a road stub-out shall be provided for any future possible connection; (12) A certain percentage of the units should be affordable and meet the City's requirements for affordability. This number (probably 5%) is being discussed with the developer who is committed to some affordable units; (13) That the developer would work with City staff to provide limitations on the commercial development with said commercial development restrictions being a part of any approval of the proposal; (14) Type-C buffer adjacent to both the properties; and that (15) the pedestrian oriented design component along Racquet Club Road, which would allow for the reduction of the setback to 12.5 feet be accepted; and (16) Prior to the issuance of final site approval that the developer demonstrate to the TRC sufficient LEED elements associated with the site plan for the residential component of the project to achieve a minimum level of 30 points, understanding that the LEED certification cannot be obtained until after the project is built. This motion was seconded by Councilman Freeborn.

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Councilwoman Cape asked if there was a condition that could be crafted to eliminate speculative grading if the developer does not move forward with the plan or cannot obtain financing for the project. City Attorney said that Council can incorporate certain requirements into the conditional zoning ordinance, noting that any condition has to be agreed to by the developer. He suggested a condition that no grading permits be issued until we receive some indication that construction financing has been committed to. Mr. Pulliam agreed with that condition.

Councilman Newman and Councilman Freeborn agreed to include in their original motion a condition that no grading permits be issued until we receive some indication that construction financing has been committed to.

Councilman Mumpower felt that this is a good project; however, his decision falls on whether zoning is real or not and until then, it is our responsibility to error in fairness of practicalities.

The motion made by Councilman Newman and seconded by Councilman Freeborn (including the condition regarding financing) carried on a 6-1 vote, with Councilman Mumpower voting "no."

At 9:01 p.m., Mayor Bellamy called for a short recess.

ORDINANCE BOOK NO. 23

At 9:20 p.m., Councilman Mumpower moved to excuse Councilman Freeborn from the rest of the meeting due to illness. This motion was seconded by Vice-Mayor Jones and carried unanimously.

B. PUBLIC HEARING TO CONSIDER AN AMENDMENT TO THE UNIFIED DEVELOPMENT ORDINANCE TO PROVIDE FOR "HOMESTAYS" (CURRENTLY KNOWN AS "BED AND BREAKFAST HOMESTAYS") IN SINGLE-FAMILY RESIDENTIAL ZONING DISTRICTS

ORDINANCE NO. 3412- ORDINANCE TO AMEND THE UNIFIED DEVELOPMENT ORDINANCE TO PROVIDE FOR "HOMESTAYS" (CURRENTLY KNOWN AS "BED AND BREAKFAST HOMESTAYS") IN SINGLE-FAMILY RESIDENTIAL ZONING DISTRICTS

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

Planning & Development Director Scott Shuford said that this is the consideration of an amendment to the Unified Development Ordinance to provide for "homestays" (currently known as "bed and breakfast homestays") in single-family residential zoning districts. This public hearing was advertised on November 17 and 24, 2006.

This code amendment provides for "homestays" (currently known as "bed and breakfast homestays") in single family residential zoning districts as uses by right subject to special requirements. Since the initiation of proactive enforcement on illegal short-term (less than 30 days) rentals in various Asheville neighborhoods, staff has been meeting with a focus group of realtors, B&B owners, Tourism Development Authority staff, and Coalition of Asheville Neighborhood (CAN) members to discuss areas for compromise. One area of apparent agreement is the provision of homestays as uses by right subject to special requirements in single family residential zoning districts. Bed and breakfast homestays are currently allowed as uses by right subject to special requirements in multifamily zoning districts.

A bed and breakfast homestay is defined as: a private, owner-occupied residence with one to three guest rooms where overnight accommodations and a morning meal are provided to transients for compensation and where the use is subordinate and incidental to the main residential use of the building. This definition would be applied to "homestays".

Section 7-16-1 provides the conditions under which uses by right subject to special requirements can be established. Bed and breakfast homestays must meet the following requirements:

- Current use districts: RM-6, RM-8, RM-16.
- No displays of goods, products, services, or other advertising shall be visible from outside the building.
- Shall be carried on by a resident of the property.
- A maximum of one full-time equivalent (one FTE) non-resident of the dwelling may be employed.
- On premise retail sales shall not be a component of the bed and breakfast homestay.
- A maximum of 25 percent of the gross floor area of the dwelling unit may be used for the bed and breakfast homestay. For the purpose of calculating the area of the structure devoted to the bed and breakfast use, only the floor areas of the bedroom and bathroom areas used by the bed and breakfast guests shall be considered in such calculations.
- No activities other than lodging, a morning meal, and an evening and/or afternoon refreshment shall be provided.
- Activities shall be provided for overnight guests only.
- Off-street parking shall be provided as required by subsection 7-11-1(c) of this chapter. Parking shall be located on the same lot on which the bed and breakfast homestay is located, at the rear of the lot and screened with vegetation from adjacent properties and from the street.
- No accessory structures shall be used to accommodate guests.
- The owner shall reside in the principal structure.
- The length of stay of guests shall not exceed 14 days.
- No home of less than 2,500 heated square feet shall be used for a bed and breakfast homestay.
- Signage shall be limited to a single sign, not to exceed four square feet, attached to the home.
- Exterior lighting shall be residential in nature and shall not be directed towards adjacent properties.
- Bed and breakfast homestays shall be located a minimum of 500 feet from other bed and breakfast homestays and bed and breakfast inns. In calculating the 500 foot distance between bed and breakfast establishments, measurements shall be taken from the closest property line of the lot of the existing bed and breakfast establishment to the closest property line of the lot of the proposed bed and breakfast homestay. Existing, legally established bed and breakfast homestays that do not meet this separation requirement of 500 feet are permitted to expand to the maximum limits allowed under this chapter, as long as all applicable development standards are met.

This amendment allows the added flexibility for these extremely restricted uses to be accommodated in all residential districts. Additionally, the length of stay is proposed to change from 14 to 30 days and a prohibition on external signage in single family residential districts is proposed to increase neighborhood compatibility.

A suggestion was made by a citizen to increase the distance between homestay uses to 1,000 feet. A request has also been received for additional short-term rental uses in residential districts.

The amendment has been routed to Coalition of Asheville Neighborhoods (CAN), CREIA, and Council of Independent Business Owners for review and comment.

Pros:

- The City's rich architectural heritage can be shared with more visitors.
- There are many neighborhoods and properties that can benefit from the positive effects of these uses, just as Montford has.
- The regulatory limitations on these uses mitigate their impacts.
- There would be an opportunity for persons negatively affected by the City's short-term rental enforcement efforts to legitimately establish a homestay use.

Cons:

- This would allow an Edwin Avenue property previously denied by City Council to likely qualify as a homestay.
- An additional nonresidential/commercial use would be allowed in single family zoning districts.

On October 4, 2006, the Planning and Zoning Commission recommended partial approval of the proposed code amendment by a vote of 6-1 (Weeks opposed). The Commission was concerned about the expansion of "commercial" uses like homestays into single family districts so their recommendation was to delete the portions of the ordinance dealing with expansion of the uses and retain the change in nomenclature. One proposed ordinance represents the ordinance recommended by the Commission. Another version of the ordinance is the ordinance change originally prepared by City staff. City staff also requests that Council provide direction to staff concerning whether additional efforts should be undertaken to "legalize" short-term rental of properties in residential areas.

In summary, Mr. Shuford asked Council for direction on the following: (1) change the name of "bed and breakfast homestay" to "homestays; (2) increase the allowable length of stay from 14 days to 30 days; (3) extend homestay uses into the RS districts (if so, staff recommends that a prohibition on signage be included); and (4) provide for some relaxation of the 500 foot separation requirement, for example: where homestays are located in physically-discrete neighborhoods without common street connections or neighborhoods separated by major roads, water bodies, railroad rights-of-way or other significant physical barriers, the planning and development director may waive the separation requirement for homestay uses in such circumstances.

Ms. Barber Melton, Vice-President of CAN, explained how their vote was to support the amendment, but only two votes separated the final vote. Spacing was important in addition to the commercial intrusion into residential neighborhoods.

Ms. Elizabeth Ann Wyndelts spoke in favor of the ordinance. She did feel that parking should be addressed in that she felt there should be no on-street parking allowed.

Mayor Bellamy closed the public hearing at 9:30 p.m.

Councilman Davis could not be supportive of this amendment in that he feels it was crafted as an effort to work around the reasons why a bed & breakfast was denied on Edwin Place about a year ago. In addition, he was concerned about the Planning & Zoning Commission discussion which ultimately they only approved the name change.

Councilman Newman said that Council didn't have an overall policy last year when the matter on Edwin was considered, but now we have a policy.

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After Mr. Shuford replied to Councilwoman Cape how the 2500 square foot home standard was arrived at, she explained how we should be looking for different ways for people to make a living in our community and this amendment provides that option for people to supplement their income in their own home. In addition, she was interested in having the 2500 square foot limit be evaluated because it seems prejudicial for those who do not live in large homes.

Councilman Mumpower said that we are talking about a regulated activity when there are all kinds of things that can go on in someone's home that we have no way of regulating at all. This regulated activity would provide some opportunity for people to make some money, for people to come to Asheville, and in a sense expand our housing stock. He questioned why we would want to have a 500 feet separation and why cap the square footage requirement. As long as it's regulated activity, people are a lot better off in the neighborhood with something that we can control.

Vice-Mayor Jones moved to adopt Ordinance No. 3412, to (1) change the name of "bed and breakfast homestay" to "homestays; (2) increase the allowable length of stay from 14 days to 30 days; (3) and extend homestay uses into the residential-single family districts, with a prohibition on signage. This motion was seconded by Councilwoman Cape.

Mayor Bellamy felt that the vote from the Planning & Zoning Commission is rare and explained her reasoning why perhaps the ordinance is not as thought out as some of the other wording amendments.

At the suggestion of Councilman Newman, it was the majority of Council's decision to support City staff in developing a vacation rental policy in the context of owner-occupied homes, similar to this policy.

The motion made by Vice-Mayor Jones and seconded by Councilwoman Cape carried on a 4-2 vote, with Mayor Bellamy and Councilman Davis voting "no."

City Attorney Oast said that because the ordinance failed to reach the 2/3 vote of the full Council, it is required to come back to Council for a second vote at their next formal meeting.

ORDINANCE BOOK NO. 23

C. PUBLIC HEARING TO CONSIDER RENAMING THE EXISTING STREET OF “HOLIDAY INN DRIVE” LOCATED OFF HIGHWAY 240 EAST TO “RESORT DRIVE”

RESOLUTION NO. 06-208 RESOLUTION RENAMING THE EXISTING STREET OF “HOLIDAY INN DRIVE” LOCATED OFF HIGHWAY 240 EAST TO “RESORT DRIVE”

Mayor Bellamy said that on May 23, 2006, the petitioners requested this public hearing be continued to July 25, 2006, in order to address street signage. That request was granted. On July 7, 2006, the petitioner requested the public hearing be continued to September 12, 2006. That request was granted as well. In addition, on September 12, 2006, the petitioners requested the public hearing be continued to November 28, 2006, in order to address the cost of highway signs in their budget. That request was granted.

Mayor Bellamy opened the public hearing at 10:02 p.m.

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Ms. Abby Moore, Emergency Address Coordinator, said that this is the consideration of a resolution renaming the existing street of “Holiday Inn Drive,” located off Highway 240 East, to “Resort Drive.” This public hearing was advertised on May 12 and 19, 2006.

The owners of Crowne Resort have petitioned the City of Asheville to rename “Holiday Inn Drive” to “Resort Drive.” City staff has reviewed the proposed name and found no conflicts that would impede emergency service response. The primary purpose of establishing a name for any street is to facilitate emergency response. Staff researched the street data and has determined that this name is not duplicated. The adoption of the new street name is to enhance emergency response to the citizens and for easy of use for the owners of Crowne Resort. The cost will be borne by the developer.

Pros:

- The street will be utilized to access the existing business and infrastructure to the Crowne Resort.
- Assignment of specific addresses, utility connection, and potential emergency response will be enhanced with specific the street name.
- All cost related to renaming of street will be borne by the applicant.
- Elimination of corporate names for street name assignment due to change in corporation name changes.

Cons:

- There are no negative effects of for assignment of “Resort Drive” to this existing road.

Asheville City Council has directed staff to validate levels of emergency services provided for our citizens through the city’s strategic operation plan. This action complies with the City of Asheville Strategic Operating Plan section on Critical Services and Infrastructure: Goal 3 – Strong City and County Partnerships; Objective 1 – Review and validate the levels of critical emergency services provided throughout the city; Task 3 – Review and validate the levels of critical emergency services provided throughout the city.

City staff recommends City Council adopt a resolution renaming the existing street of “Holiday Inn Drive,” located off Interstate 240 East, to “Resort Drive.”

Mayor Bellamy closed the public hearing at 10:03 p.m.

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

Councilman Mumpower moved for the adoption of Resolution No. 06-208. This motion was seconded by Councilwoman Cape and carried unanimously.

RESOLUTION BOOK NO. 30 – PAGE 157

D. PUBLIC HEARING TO CONSIDER A REQUEST BY THE ST. DUNSTAN’S COMMUNITY TO CREATE AN HISTORIC PRESERVATION OVERLAY DISTRICT FOR THE ST. DUNSTAN’S NEIGHBORHOOD

ORDINANCE NO. 3413- ORDINANCE TO CREATE AN HISTORIC PRESERVATION OVERLAY DISTRICT FOR THE ST. DUNSTAN'S NEIGHBORHOOD

Mayor Bellamy opened the public hearing at 10:04 p.m.

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Historic Resources Director Stacy Merten said that this is the consideration of an ordinance to create an historic preservation overlay district for the St. Dunstan's neighborhood. This public hearing was advertised on November 14 and 21, 2006.

Ms. Merten said that the Historic Preservation Section of the *Asheville City Development Plan 2025 (ACDP 2025)* encourages neighborhood livability and maintenance of property values through the restoration and rehabilitation of existing and future historic district. The establishment of a new local historic district will provide a mechanism for design review of new construction and will insure that new development is compatible with the existing historic character and density of the neighborhood which will help to protect the quality of life for neighborhood residents as well as protect the value of property.

She said that a zoning study for the St Dunstan's neighborhood was initiated several years ago to down zone the neighborhood from RS-8 to RS-4. The Planning staff did not recommend in favor of the rezoning, primarily due to the fact that the rezoning would result in a large number of non-conforming properties with regard to lot size and building setbacks.

She said that the St. Dunstan's neighborhood has been working with the Historic Resources Commission (HRC) over the past 18 months to develop an inventory of the community's historic resources and to document the history of the community as required by state law in order to prepare a report on the historic significance of the community. We have also worked with the State Historic Preservation Office to establish the period of significance and establish the appropriate district boundaries. The neighborhood would like to include a number of non-contributing properties that are located at the edges of the district, so that these structures will also have to undergo design review for any future alterations.

The report finds that the neighborhood, which is located south of downtown Asheville on a promontory overlooking the Swannanoa River, represents a relatively intact example of architectural styles prevalent during Asheville's economic expansion in the early 20th century. The architecture of the buildings within the small enclave is unique in that it represents a variety of styles, materials and construction methods from the period of significance. One of the most interesting and unique features of the residential area is a stone wall constructed of huge cut boulders that define the circular tip of the hill overlooking Biltmore Village. The area is locally significant under National Register criteria C.

The HRC staff has worked with the neighborhood to draft guidelines for the district. These will be adopted by the HRC once the district receives final approval by City Council. All future alterations and new construction will then be subject to design review by the HRC. Density concerns may be addressed through the guidelines.

Pro: Design review will protect the neighborhood from incompatible modifications to existing historic structures and infill development.

Con: Local designation will add another layer of review to the development process.

Based on the above findings and the analysis provided in the report, staff recommends in favor of the local historic designation of the St. Dunstan's Neighborhood.

Ms. Merten said that since the Planning & Zoning Commission meeting, owners of Lots 183 and 188 has requested not to be included in the designation. As these specific properties are non-contributing and they are on the edge of the district, staff has no problem in recommending they not be included. In addition, the owner at 13 St. Dunstan's Circle asked that her property be excluded from the district; however, Ms. Merten could not support that request as her property is in the middle of the district.

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Ms. Vicki Schomer, owner of the bed & breakfast on St. Dunstan's Circle, could not support this designation in that the overlay will make it practically impossible to make any energy efficient retrofits to homes.

Ms. Sharon Tabor, former owner of 25 St. Dunstan's Circle, spoke in favor of the designation in that the guidelines were established by the neighborhood and they have been available for the community to review since April of 2006. We did allow for energy efficient windows and a tremendous effort has been made in the construction business in the last 20 years to develop doors, windows, etc. that are energy efficient.

Mr. Mike Byer, St. Dunstan's area resident, spoke in support of the overlay district.

Mayor Bellamy closed the public hearing at 10:11 p.m.

Upon inquiry of Councilwoman Cape about solar panels, Ms. Merten said that the Montford guidelines state that solar panels are allowed but they cannot be visible to the street. She said that the concept of preservation is about preserving old buildings. One of the biggest concerns is windows and we do allow storm windows, so there are other ways to achieve energy efficiency.

In response to Councilman Newman about including solar panels in these guidelines, Ms. Merten said that these guidelines are developed, but not yet adopted by the HRC, so that is something that can be considered. In fact, if approved by Council, she plans to have another community meeting and specifically review the important issues. She said that another issue they could work on is to distinguish between historic buildings and new construction. New construction could certainly meet all green building standards. We are talking about just the historic building themselves and many changes can be made in the interior.

Councilwoman Cape suggested, and the majority of Council agreed, that the guidelines include an option for energy technologies on homes to make them more livable and more energy efficient.

Vice-Mayor Jones said that in the future, she would like to discuss amending the other three local districts guidelines to include the option for energy technologies on homes as well.

Mayor Bellamy suggested Ms. Merten review the Charleston, S.C., and Savannah, Georgia, models on how they balance preservation and environmental issues.

Councilman Mumpower felt that we should create elite communities very carefully and feels it is a mistake under most circumstances. He felt that Asheville is fortunate to have adequate natural and economic motivations to preserve historic properties without government intervention.

When Councilman Newman stated that he would be more informed if he saw a copy of the draft guidelines, Ms. Merten had no problem in sharing those guidelines noting that they are modeled closely after the Montford guidelines.

Upon inquiry of Councilman Davis, Ms. Merten said that landmark designations and historic preservation overlay districts are two mutually exclusive processes.

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

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Vice-Mayor Jones moved for the adoption of Ordinance No. 3413, establishing an historic overlay zoning district for the St. Dunstan's neighborhood. This motion was seconded by Councilwoman Cape and carried on a 4-2 vote, with Councilman Newman and Councilman Mumpower voting "no."

City Attorney Oast said that because the ordinance failed to reach the 2/3 vote of the full Council, it is required to come back to Council for a second vote at their next formal meeting.

ORDINANCE BOOK NO. 23

E. PUBLIC HEARING TO CONSIDER THE INITIAL ZONING OF SOUTHRIDGE SHOPPING CENTER TO HIGHWAY BUSINESS DISTRICT

ORDINANCE NO. 3414 - ORDINANCE TO INITIALLY ZONE THE SOUTHRIDGE SHOPPING CENTER TO HIGHWAY BUSINESS DISTRICT

Mayor Bellamy opened the public hearing at 10:29 p.m.

Urban Planner Julia Cogburn said that this is the consideration of an ordinance to initially zone the Southridge Shopping Center to Highway Business District. This public hearing was advertised on November 14 and 21, 2006.

The North Carolina General Assembly, in 2005, approved legislation adding properties on Airport Road to the corporate limits of the City of Asheville. This bill was enacted at the request of Southridge Associates, LLC, developers of the shopping area and out-parcels at the intersection of Airport Road and Rockwood Road. The effective date of annexation for two of these parcels was October 31, 2005. The effective date for the remaining four parcels is October 31, 2006. These parcels are currently under the zoning jurisdiction of Buncombe County and are zoned "Employment" under the Limestone Township Ordinance. The four parcels that are the subject of this initial zoning total 47.36 acres in size.

Other properties in the Airport Road area that are within the City's jurisdiction (such as the Holiday Inn Hotel and Carabba's Restaurant) are zoned Highway Business District. Staff proposes the same zoning for these properties.

At a meeting on October 16, 2006, the City's Technical Review Committee voted unanimously to recommend approval of this initial zoning. At their meeting on November 1, 2006, the Planning and Zoning Commission recommended approval of this initial zoning. No one commented on the proposal at either meeting. There have been telephone inquiries, but no comments on this proposal.

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

Considerations:

- Zones property recently taken into the City of Asheville in consideration of the surrounding zoning and land use and current land use and the City's Comprehensive Plan.
- Some could be concerned with additional Highway Business zoning along Airport Road.

The Planning and Development staff recommends approval of this initial zoning.

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Mayor Bellamy closed the public hearing at 10:30 p.m.

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

Councilman Newman moved for the adoption of Ordinance No. 3414. This motion was seconded by Vice-Mayor Jones and carried unanimously.

ORDINANCE BOOK NO. 23

F. PUBLIC HEARING TO CONSIDER CONDITIONAL ZONING OF PROPERTY LOCATED AT ONE VOLVO DRIVE FROM RS-2 RESIDENTIAL SINGLE-FAMILY LOW DENSITY DISTRICT TO INDUSTRIAL DISTRICT/ CONDITIONAL ZONING

ORDINANCE NO. 3415 - ORDINANCE TO CONDITIONALLY ZONE PROPERTY LOCATED AT ONE VOLVO DRIVE FROM RS-2 RESIDENTIAL SINGLE-FAMILY LOW DENSITY DISTRICT TO INDUSTRIAL DISTRICT/ CONDITIONAL ZONING

Mayor Bellamy opened the public hearing at 10:31 p.m.

Urban Planner Julia Cogburn said that this is the consideration of an ordinance to conditionally zone property located at One Volvo Drive from RS-2 Residential Single-Family High Density District to Industrial District/Conditional Zoning. This public hearing was advertised on November 14 and 21, 2006.

Ms. Cogburn said that the subject property is part of the existing campus associated with the Volvo Construction Equipment operations on Hendersonville Road. Presently, the property can only be accessed from the Volvo site, however, the proposal is that a new gated road would be developed connecting this portion of the Volvo campus with Long Shoals Road. Volvo has been in discussions with N.C. Dept. of Transportation (NCDOT) concerning this connection which would be serviced with a traffic light. The property can be viewed off of Lance Lane and Atkins Street. The surrounding properties to the north, east and south are primarily residential in nature and in zoning. To the south and west there is the existing Volvo facility and vacant land owned by Progress Energy as part of their Lake Julian property.

Two parcels totaling 3.7 acres are the subject of this conditional zoning request. The applicant wishes to rezone this portion of their property from RS-2 Residential Single-Family Low Density District to Industrial District/Conditional Zoning for the purpose of expanding their operation; specifically to allow for the outdoor storage of manufactured construction equipment. The

property is currently vacant. The need for this space (for this purpose) is precipitated by operations expansions underway at the Volvo facility and by the requirements of the Foreign Trade Zone status of the operation there.

In addition to the road connection to Long Shoals, the applicant plans to clear and grade a portion of the property to create the aforementioned secure graveled storage area for finished product. The applicant is showing a sixty (60)-foot undisturbed area on three sides of the property at present but will work with the City as the project progresses to ensure a Type D buffer in these areas with as much undisturbed area as is possible. The applicant has met with the surrounding property owners to inform the residents of their plans.

At their meeting on November 6, 2006, the City of Asheville Technical Review Committee (TRC) reviewed the conditional zoning request and made a positive recommendation (with

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conditions) that the project be forwarded to the Planning and Zoning Commission. The Committee added the following conditions: (1) That the property owner considers combining all parcels into one single parcel encompassing the entire Volvo campus; and (2) That the location and design of the gated connection to Long Shoals Road be detailed for approval by the City Traffic Engineer and Fire Marshal.

At a meeting on November 16, 2006, the Asheville Planning and Zoning Commission reviewed the conditional zoning request and recommended approval (5-0) with the conditions as set forth by the Technical Review Committee. No one (except Volvo representatives) spoke at the meeting. Staff received one comment prior to the meeting from a neighboring resident concerned about the impact of the development on wildlife and a letter of support for the project from the Asheville Area Chamber of Commerce.

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 applicable development standards and the applicant will continue working with the City 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.

The proposed road location is designed to avoid detrimental impacts to the Lake Julian area and the applicant proposes to disturb the natural vegetated state of the property as little as is possible.

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

The adjoining properties already co-exist with the Volvo operation. While this is an expansion of their operation, it is a low impact expansion and the adjacent residential properties will be heavily buffered from this impact.

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 previously stated, this area is already an area of Asheville and Buncombe County that experiences a mix of residential and industrial and public utility operations. There is no additional building proposed as part of this expansion.

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

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The proposed development of this land conforms to the economic development goals of both the City's comprehensive

plan as well as the City's strategic plan. (See specific references above).

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

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 proposed use will not increase traffic in the area. The applicant will be working with City staff and NCDOT to ensure that no traffic hazards will be created with the addition of the gated connection to Long Shoals Road.

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

Considerations:

- Proposes and supports the appropriate low impact expansion of an existing major industrial operation.
- The landscape plan shows a significant undisturbed area surrounding the portion of the property on which the operation will take place.
- Some may consider this application a further intrusion of industrial development into a residential area.

Staff recommends approval subject to the conditions placed on the development by the Technical Review Committee including the added conditions: (1) That the property owner considers combining all parcels into one single parcel encompassing the entire Volvo campus; (2) That the location and design of the gated connection to Long Shoals Road be detailed for approval by the City Traffic Engineer and Fire Marshal. (Turnaround provided as well).

The following standard conditions shall also apply:

- Any 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.
- All major existing vegetation that is to be preserved must be clearly indicated and dimensioned on the site, landscape and grading plans.
- Actual improvements to the site must comply with the conceptual site plan presented with this application. Any deviation from these plans must gain approval through the Planning and Development Department.
- At the direction of the Planning Director, this Project will be reviewed by the TRC prior to issuance of any zoning [or grading, etc....] permits.

Mr. Mike Connor, representing Day Associates, spoke in support of the conditional zoning.

Mayor Bellamy closed the public hearing at 10:36 p.m.

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

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Councilman Newman moved for the adoption of Ordinance No. 3415, to conditionally zone property located at One Volvo Drive from RS-2 Residential Single-Family Low Density District to Industrial District/Conditional Zoning, subject to the following conditions: (1) The project shall comply with all conditions placed on the development by the TRC; (2) That the property owner considers combining all parcels into one single parcel encompassing the entire Volvo campus; (3) That the location and design of the gated connection to Long Shoals Road be detailed for approval by the City Traffic Engineer and Fire Marshal. (Turnaround provided as well); (4) Any 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; (5) All major existing vegetation that is to be preserved must be clearly indicated and dimensioned on the site, landscape and grading plans; (6) Actual improvements to the site must comply with the conceptual site plan presented with this application. Any deviation from these plans must gain approval through the Planning and Development Department; and (7) At the direction of the Planning Director, this Project will be reviewed by the TRC prior to issuance of any zoning [or grading, etc....] permits. This motion was seconded by Vice-Mayor Jones and carried on a 5-1 vote, with Councilman Mumpower voting "no".

ORDINANCE BOOK NO. 23

G. PUBLIC HEARING TO CONSIDER REZONING PROPERTY LOCATED ON LEXINGTON AVENUE AND UNDER THE I-240 BRIDGE FROM NEIGHBORHOOD CORRIDOR DISTRICT TO CENTRAL BUSINESS DISTRICT

ORDINANCE NO. 3416 - ORDINANCE TO REZONE PROPERTY LOCATED ON LEXINGTON AVENUE AND UNDER THE I-240 BRIDGE FROM NEIGHBORHOOD CORRIDOR DISTRICT TO CENTRAL BUSINESS DISTRICT

Mayor Bellamy opened the public hearing at 10:41 p.m.

Urban Planner Alan Glines said that this is the consideration to rezone property located on Lexington Avenue and under the I-240 Bridge from Neighborhood Corridor District to Central Business District. This public hearing was advertised on November 14 and 21, 2006.

Mr. Glines said that that Strategic Plan mentions parking needs as an item to be addressed in the downtown area and a goal of enhancing core services to promote cleanliness and vibrancy. With City management of this N.C. Dept. of Transportation (NCDOT) property, the site can be cleaned and maintained in better fashion. The area is considered a gateway into the downtown area from points north.

He said that this request is being made by the City of Asheville. The City has an agreement with the NCDOT to take over and manage the parking area under the I-240 bridge. The area has been a 'no-mans land' of sorts for years. Some of the activities occurring there have generated a number of complaints. The City and NCDOT have arrived at an agreement to allow for the City to maintain and manage the area under the bridge. This agreement limits the use of the area to a parking facility and related public facilities such as landscaping, signage, lighting and artwork. To create a conforming parking area, the property needs a rezoning to allow a stand-alone lot.

The Central Business District has been developed to strengthen the downtown area as the center of business and culture in the western North Carolina region.

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The Neighborhood Corridor District was developed to foster medium density mixed-use development. Stand-alone parking lots are not an allowed use in the district.

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

Considerations:

- The parcel is being taken over by the City of Asheville for management.
- The rezoning would allow uses compatible with the Central Business District which forms the southern end of the property and its identity.
- Use of the property will comply with City regulations and requirements.
- The Central Business District recognizes the need for support services and facilities to enhance the vitality of the downtown area.

The Planning and Zoning Commission at their November 1, 2006, meeting voted to recommend approval of the rezoning request from NCD to CBD. Staff concurs with this recommendation.

Mayor Bellamy closed the public hearing at 10:43 p.m.

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

Mayor Bellamy asked that Councilman Newman, member on the Transportation Advisory Committee, see how we can work with the N.C. Dept. of Transportation on more creative uses of their rights-of-way and vacant land.

Councilwoman Cape moved for the adoption of Ordinance No. 3416, and find that the request is reasonable based on information provided in the staff report. This motion was seconded by Councilman Mumpower and carried unanimously.

ORDINANCE BOOK NO. 23

H. PUBLIC HEARING TO CONSIDER AN AMENDMENT TO THE UNIFIED DEVELOPMENT ORDINANCE

REGARDING DEVELOPMENT AND DESIGN STANDARDS APPLICABILITY

ORDINANCE NO. 3417 - ORDINANCE TO AMEND THE UNIFIED DEVELOPMENT ORDINANCE REGARDING DEVELOPMENT AND DESIGN STANDARDS APPLICABILITY

Mayor Bellamy opened the public hearing at 10:45 p.m.

Urban Planner Julia Cogburn said that this is the consideration of an amendment to the Unified Development Ordinance to clarify standards and codify interpretations concerning the applicability of development and design standards. This public hearing was advertised on November 14 and 21, 2006.

The City of Asheville's Unified Development Ordinance (UDO) currently provides that certain developments must bring the entire site into compliance with the development regulations found in Article XI of the UDO. These regulations have to do with parking, loading, access, landscape and buffering, open space, traffic impact analysis, and sidewalks. The developments enumerated that must bring the entire site into compliance are the following:

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- Any new public or private development with the exception of single or two-family housing developments.
- Changes of use to a higher impact use.
- Renovations with a total cost exceeding fifty (50) percent of the appraised (ordinance previously referred to assessed) value of the building according to the Buncombe County tax records.
- Expansions exceeding fifty (50) percent of the pre-expansion gross floor area or paved surface.
- Existing unpaved parking lots that are paved over or existing paved lots that are demolished and repaved.

These provisions concerning applicability, although pertaining to all the standards found in Article XI, are found in the landscape and buffering section of that article making it difficult for developers and citizens to know the particulars concerning applicability. This wording amendment moves the language concerning requirements for full compliance to the beginning of Article XI and makes them consistent for all requirements of this article, except where enumerated. The amendment also adds definitions for "renovation" and "expansion" and "appraised value."

Additionally, it has long been interpreted by the Planning and Development Department that "new development" includes the use of a building or property that has been vacant for a period of more than one hundred and eighty (180) days. This provision is consistent with the provisions concerning nonconforming situations found in the Unified Development Ordinance. The proposed wording amendment codifies this interpretation. The wording amendment also adds provisions for overcoming the presumption of cessation of use (due to vacancy for one hundred and eighty (180) days) through demonstration of substantial good faith efforts to continue the use.

This proposed amendment also clarifies the interpretation that the nonconforming provisions of Section 7-17-7, concerning parking and loading facilities, control when in conflict with Article XI applicability standards.

This amendment has been routed to CAN, CREIA, and CIBO for review and comment. Staff received some questions from one citizen prior to the Planning and Zoning public hearing on this matter. No one commented at the Planning and Zoning Commission meeting on this matter.

Pros:

- Codifies past staff interpretations on issues concerning the applicability of design and development standards.
- Clarifies design and development standards in the ordinance by moving language to a more appropriate code section and by adding definitions.
- Provides interpretation for overcoming the presumption of cessation of use through demonstration of good faith efforts to continue a use.

Cons

- Some may feel that allowing property owners to overcome the presumption of the cessation of use leads to continuation of many nonconforming uses.

At its meeting on November 1, 2006, the Planning and Zoning Commission unanimously (7-0) recommended approval of this wording amendment.

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Staff recommends adoption of an ordinance to amend the UDO to clarify standards and codify interpretations concerning the applicability of development and design standards.

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Mayor Bellamy closed the public hearing at 10:46 p.m.

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

Councilman Mumpower moved for the adoption of Ordinance No. 3417. This motion was seconded by Vice-Mayor Jones and carried unanimously.

ORDINANCE BOOK NO. 23

I. PUBLIC HEARING TO CONSIDER AN AMENDMENT TO THE UNIFIED DEVELOPMENT ORDINANCE REGARDING THE URBAN VILLAGE DISTRICT DEVELOPMENT STANDARDS

ORDINANCE NO. 3418- ORDINANCE TO AMEND THE UNIFIED DEVELOPMENT ORDINANCE REGARDING THE URBAN VILLAGE DISTRICT DEVELOPMENT STANDARDS

Mayor Bellamy opened the public hearing at 10:50 p.m.

Urban Planner Alan Glines said that this is the consideration of an amendment to the Unified Development Ordinance regarding the Urban Village District development standards. This public hearing was advertised on November 14 and 21, 2006.

The Urban Village District is written to develop walkable pedestrian oriented mixed-use districts designed around an arrangement of connecting streets. A goal of the district is to encourage a lively pedestrian environment. The wording amendment concerns two areas of the ordinance that deal with setbacks and window openings.

The setbacks generally require that buildings be placed up to 15' from the back of curb. Several special provisions are provided for additional setbacks for things such as outdoor dining areas (25'), institutional uses (75') or multi-family residential buildings (25'), etc. A circumstance has come up during project review concerning topographic challenges and a change in grade across the face of a building. In this instance the buildings are setback up to 40 feet from the back curb and include a retaining wall separating the building from the street. In order to accommodate this fairly common problem of grade change and the use of retaining walls, staff is providing this amendment to the ordinance to provide some practical flexibility.

The proposed amendment to section 7-8-23(8) would allow a building to be setback up to 40 feet from back of curb for topographic reasons subject to the following requirements:

- A pedestrian zone and sidewalk is provided at the back of the curb meeting UV standards and include street trees and other streetscape enhancements;
- The top of the retaining wall (excluding handrails, etc.) does not exceed 5 feet above (or below depending on the specific topographic grade) the sidewalk level;
- The area above (or below) the retaining wall and adjacent to the building includes uses to encourage a lively pedestrian space and shall be considered an active pedestrian level;
- Building frontages facing this active pedestrian level shall meet fenestration requirements as described in the ordinance.
- No more than 50% of the length of the façade of the building is separated from the main sidewalk level with the use of a retaining wall.

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The wording amendment to the window and doorways section 7-8-23(11)(c) is designed to provide more flexibility in consideration for fenestration for street-facing facades of buildings. Upon review of other mixed-use type ordinances in the UDO, staff found the most useful language to be the statement "windows, doors and other openings" as read from the Central Business District ordinance. The inclusion of "windows doors and other openings" allows consideration of covered balconies, arcades and other openings in the calculation which complement the goals of a variety of fenestration along the façade of buildings along with the more usual windows and doors. This has worked well in the central business district ordinance and should be useful in the Urban Village District and other mixed-use districts.

For the second floor and above, similar language is proposed.

For the Urban Village section, staff proposes to reduce in the openings requirement from 40% down to 30% of the second and upper story wall surfaces. This will reduce the requirement by 10%. Staff came to this conclusion after reviewing a proposal of the Biltmore Park Town Center Urban Village and determined that the facades met the pedestrian interest goal even though they provided only 30% window openings. This reduction in window openings did not seem to harm the interest in the building facades as viewed from the street and sidewalk level. Staff is also proposing to allow residential-only buildings that are identified on the approved Master Plan to have their ground level openings reduced to 30%.

Pros:

- This amendment seeks to provide some flexibility for situations where topography makes placement of the building at the back of the sidewalk difficult
- This amendment protects the goals of pedestrian orientation and activity of the ordinance by limiting the use of retaining walls to just 50 % of a particular facade.
- The areas separated by the wall and adjacent to the building will be treated as an active pedestrian space and should be designed with that in mind.
- The changes concerning to the windows and doorways section to include the language 'windows, doors, and other openings' has been used successfully in other sections of the code and meets the intent of providing interest to the façade.
- The changes to the openings percentages to upper story windows of building and the allowance for a reduction for residential-only buildings to 30% is expected to provide more design flexibility without harming the vitality of the urban village district.

Cons:

- Separation of the pedestrian from the front of building may lessen the experience and the pedestrian nature of the district.
- Designers and engineers should try to minimize the use of retaining walls to situations where there is no other feasible solution to the topographic issues.
- There is no design criteria established for the retaining walls.

At their meeting in November 1, 2006, the Planning and Zoning Commission to recommend approval of the changes to the urban village district. Staff concurs with this recommendation.

Mayor Bellamy closed the public hearing at 10:54 p.m.

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

Councilwoman Cape moved for the adoption of Ordinance No. 3418. This motion was seconded by Councilman Mumpower and carried unanimously.

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ORDINANCE BOOK NO. 23

IV. UNFINISHED BUSINESS:

A. STATUS OF ROCK HILL ROAD SEPTIC SYSTEM

City Engineer Cathy Ball updated Council on the Rock Hill Road Septic System, which was discussed on November 21, 2006.

She said that City staff met on site with Tom Hartye and Ed Bradford with the Metropolitan Sewerage District (MSD) and Ken Castelow and Steven Jones with the Buncombe County Health Department on Thursday, November 16, 2006. Mr. Jones has been the case manager on this issue since September 18, 2006. He received an anonymous call from someone saying that the septic system at 236 Rock Hill Road had failed. Mr. Jones met with Mr. Author Edington on site and determined that the septic system had failed. He issued a permit to Mr. Edington to relocate the septic field to the side yard on this same property. This change means that the sewer from the basement would need to be pumped to the side yard (maybe 3 feet in elevation.) After further research, some of the key facts are as follows:

- Mr. Author Edington does not live at this location. It appears that this is rental property. Mr. and Mrs. Edington live at 129

Graham Lane.

- As stated above, according to the Health Department the septic system can be repaired on the existing property. Mr. Jones with the Health Department has designed and permitted this repair. The Health Department had no issue with stormwater runoff from the road.
- The cost of repairing the septic system is minimal (\$7,000) as opposed to extending the public sewer system.
- Programs are available through the Clean Water Management Trust Fund, Mountain Housing Opportunities and EPA. The Clean Water Management Trust Fund and EPA programs are administered through the Land of Sky Council of Governments. These funds are structured as "forgivable" loans.
- Mr. Jones cannot confirm that other septic systems in the area were failing. He is planning to follow up on this matter.

City staff will be glad to assist Mr. Edington with contracting the agencies mentioned above to determine if he is eligible for the "forgivable" loans.

Staff also recommends that the request to extend public sewer to all of the locations listed at the November 21, 2006, worksession be evaluated as part of the annual budget process due to the financial impacts of this decision. Staff will coordinate this evaluation with the MSD.

Mr. Edington, son of the owners, felt that to site the septic tank in the front yard will also cause the system to fail since water drains down Graham Lane, over the curb and into their front yard.

Councilman Mumpower said that even though \$7,000 is a lot of money, in all fairness the Edingtons own two homes and they are doing a lot better than a lot of other people. He felt that many people in Asheville have problems with septic tanks and he didn't feel the City is in the position of taking care of everyone's septic tank problems.

Ms. Ball reviewed with Council the drawing from the Health Department which recommended siting the septic tank in the side yard of the same property.

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In response to Councilman Mumpower, Ms. Ball said that this is a unique circumstance in that 98% of the City is covered with public sewer system. She didn't think it was unique about replacing the septic tank. The Health Department did not see a concern of stormwater runoff at the new location. However, because of the location of the plumbing in the house, it would require pumping to the septic field.

In response to Councilman Newman, it is Ms. Ball's understanding from the Health Department that if the septic tank is relocated to the side of the house, there is a high degree of probability that it will be successful at least for the life of the tank as long as maintenance is provided.

Upon inquiry of Councilwoman Cape, Ms. Ball said that the City is responsible for maintenance of Rock Hill Road, not Graham Lane, which is a private street. In order to address Councilwoman Cape's concern of keeping water off the property, if so directed, they will review the curb across the Edington drive to make sure it is adequate to keep drainage from going down the drive and make sure it goes into the existing ditch.

Vice-Mayor Jones asked that future discussion take place about how we develop in areas where we know there are these type problems. City Manager Jackson said that we will work with the Health Department as we look at future building permits.

In response to Councilman Davis about this being a stormwater issue, City Manager Jackson said that our Public Works Department went out and cleaned out the culvert that appeared to have some sort of blockage.

It was the consensus of Council to instruct City staff to (1) make minor improvements to the curb to keep drainage from going down the Edingtons drive; and (2) assist Mr. Edington with contracting the agencies mentioned above to determine if he is eligible for the "forgivable" loans.

After a short discussion, it was the consensus of Council to instruct our Planning & Development Director to brief Council on annexation policies regarding sewer systems, and possible options for Council to consider to assist existing and/or future residents that are not on the sewer system. This information will be useful to Council during the budget deliberations.

V. NEW BUSINESS:

VI. OTHER BUSINESS:

Councilman Mumpower unveiled the November Asheville Drug Commission poster.

VII. INFORMAL DISCUSSION AND PUBLIC COMMENT:

Ms. Heather Rayburn urged Council to vote to send a Notice of Violation to Staples for enforcement of the Unified Development Ordinance. Mayor Bellamy stated that a letter has been sent to Staples, with language that this is a City Council concern, inviting them to attend a near certain date Council meeting and be prepared to address the issues raised, e.g., signs, pedestrian amenities to soften the flat wall in some form of green-screening, etc.

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VIII. ADJOURNMENT:

Mayor Bellamy adjourned the meeting at 11:31 p.m.

CITY CLERK

MAYOR