

Regular Meeting

Present: Mayor Terry M. Bellamy, Presiding; Vice-Mayor Diana Hollis Jones (was excused from the meeting due to illness at 7:50 p.m.); 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

- Ms. Megan Sanchez's 4th Grade Class from Emmanuel Lutheran led City Council in the Pledge of Allegiance.

INVOCATION

Vice-Mayor Jones gave the invocation.

I. PROCLAMATIONS:

II. CONSENT AGENDA:

At the request of Councilman Mumpower, Consent Agenda Items "C" and "D" were removed from the Consent Agenda for individual discussions.

A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON FEBRUARY 20, 2007

B. RESOLUTION NO. 07-59- RESOLUTION REAPPOINTING BONNIE LOVE AND CAROL ANN POTHIER TO THE AMERICANS WITH DISABILITIES ACT COMPLIANCE COMMITTEE

Summary: It was the consensus of City Council to reappoint Bonnie Love and Carol Ann Pothier to the Americans with Disabilities Act Compliance Committee to each serve an additional three-year term respectively, terms to expire August 22, 2009, or until their successors have been appointed.

RESOLUTION BOOK NO. 30 – PAGE 272

C. BUDGET AMENDMENT FOR PROJECT MANAGEMENT OF THE CITY-OWNED PROPERTY REQUEST FOR QUALIFICATIONS

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

D. RESOLUTION AMENDING THE CIVIC CENTER CAPITAL IMPROVEMENT PROGRAM

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

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.

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

ITEM PULLED FROM THE CONSENT AGENDA FOR INDIVIDUAL DISCUSSION

C. ORDINANCE NO. 3441 - BUDGET AMENDMENT FOR PROJECT MANAGEMENT OF THE CITY-OWNED PROPERTY REQUEST FOR QUALIFICATIONS

Summary: The consideration of a budget amendment, in the amount of \$68,750, for project management on the City-

owned property Request for Qualifications (RFQ).

This budget amendment authorizes funding for the contract with Real Estate Research Consultants, Inc. for project management on the City-owned property RFQ, which was approved by City Council on January 9, 2007. The amount of the contract is \$68,750 (\$55,000 fee and expenses up to \$13,750 both on a not-to-exceed basis). This amendment is simply a technical, housekeeping item to appropriate the funding for the project since funding was not already included in the budget or appropriated at the January 9, 2007, meeting. Staff recommends that \$68,750 be appropriated from the City's fund balance for this project.

City staff recommends City Council adopt the budget amendment, in the amount of \$68,750, for project management on the City-owned property Request for Qualifications.

Mayor Bellamy asked for clarification regarding the Parkside property. She recalled that when Council discussed the RFQ and then approved the budget amendment for support of the Civic Center, there was discussion about a feasibility study being done on the realistic opportunities for Parkside to occur. She voted for that to happen but not as a part of the RFQ process. In fact, the minutes do not state specifically that the feasibility study would be part of the RFQ process. Since that time she has heard that the feasibility study was part of the RFQ process.

City Manager Jackson explained the RFQ process and said that any responses we get from the RFQ will not represent a feasibility study on a stand-alone performing arts center. It represents an interest on the part of potential partners to go through the due diligence with the City and whether or not that is a concept worth pursuing and investing in detailed feasibility studies, pro forma, development etc. Economic Development Director Sam Powers agreed that the motion approved by Council was not a feasibility study on Parkside for the performing arts center. It is project management to help develop and do a market scan of the sites and then to develop the RFQ and provide evaluation of the RFQ.

Mayor Bellamy said that she recalled when City Council approved the \$400,000 for the next five years for the Civic Center, part of the motion was to do a feasibility study for Parkside.

Councilman Davis said that early on in the process, the Asheville Area Center for Performing Arts had volunteered to do a feasibility study. There was a time that we talked about partnerships with them in doing that feasibility study on the actual performing arts center. The principals still have that interest in doing that.

City Manager Jackson said that at this point it does not make sense for staff to do an independent study, but, subject to Council's approval, it would be one of the things we would ask the project management firm to advise us on.

Councilman Newman's understanding of the direction was to approve the \$15 Million plan to do the deferred maintenance for the Civic Center. Beyond that, we have this property and if the performing arts center effort turns out to be viable, we would be open to reserving that

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property for the performing arts center. He doesn't see carrying out a separate feasibility study as City Council's leadership role on that. He believed that the leadership responsibility for doing the feasibility study for the performing arts center rests with the Asheville Area Center for Performing Arts, at least initially. First, we are saying that we are going to fix up our building that we are responsibility for; and secondly, we are open to the fact that if the private sector and the performing arts organization's efforts turn out to be successful, then the City has some property that seems like an excellent place for the performing arts center to be built and that could be part of what the City contributes to the effort.

Mayor Bellamy felt we needed further dialogue about this issue since it is not clearly stated in our minutes of Council's actual direction.

Councilman Mumpower said that he disagrees with this expenditure of City funds and using those dollars from our savings account.

Councilman Davis moved for the adoption of Ordinance No. 3441. This motion was seconded by Councilman Newman and carried on a 6-1 vote, with Councilman Mumpower voting "no."

ORDINANCE BOOK NO. 23 - PAGE

D. RESOLUTION NO. 07- 60 - RESOLUTION AMENDING THE CIVIC CENTER CAPITAL IMPROVEMENT PROGRAM

Summary: The consideration of the Capital Improvement Plan (CIP) schedule for the Civic Center in conjunction with the CIP recommendations of the Civic Center Commission.

The recommended projects on this six-year CIP list, adopted by City Council on December 12, 2006, were selected by staff because they addressed some of the most critical arena and building-wide deferred maintenance and safety issues. Due to budget constraints, including the absence of a new dedicated revenue stream, annual funding for this six-year plan is limited to approximately \$400,000. The six-year staff recommended CIP only includes one specific auditorium project (smoke hatch replacement) because of the limited funding and the possibility the auditorium could be renovated in the future.

Staff amended the six-year CIP plan that incorporates the recommendations of the Civic Center Commission. Their ideas encompass both the arena and auditorium. They address public safety, efficiency and an appearance upgrade. With those recommendations added in, a funding gap of \$320,000 is created in the six-year plan. There are several options for dealing with this gap. Staff could re-prioritize the project list and move projects slated for Fiscal Year 2007-08 into future years. A second option would be additional funding supplied as directed by Council. A final idea would be consideration given to using any actual dollar savings versus the budgeted deficit on an annual basis. While this latter option is less definite than the prior two options, it could provide some relief to the amount of funding provided by the City in any given year depending on the amount of savings. The amount of any savings in this area would not be known until close to the end of any fiscal year.

City staff recommends that City Council approve the revised CIP project list and further direct staff how to proceed with project scheduling given the funding gap.

Councilman Mumpower confirmed that we are committed to our existing facility, with the exception of the performing arts center component.

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In response to Councilman Davis about the roof on the Thomas Wolfe Auditorium, City Manager Jackson said that if staff determines after an analysis that the roof needs to be moved up, they will be back to City Council for an amendment to the CIP for the Civic Center.

Councilman Davis moved for the adoption of Resolution No. 07-60. This motion was seconded by Councilman Mumpower and carried unanimously.

RESOLUTION BOOK NO. 30 – PAGE 273

III. PRESENTATIONS & REPORTS:

A. POLICE ACTION PLAN FOR DRUG ENFORCEMENT AND NEIGHBORHOOD SAFETY

Police Chief Bill Hogan explained to City Council this following 7-Point Police Action Plan for drug enforcement and neighborhood safety:

Point No. 1 - Increase criminal interdiction traffic enforcement: (1) deploy directed patrols on streets and thoroughfares known for criminal activity or drug trafficking (immediate); (2) increase K-9 interdiction patrols; and (3) increase unobligated time in high crime areas by 50% per officer (summer of 2007).

Point No. 2 - Increase drug investigative special operations: (1) includes surveillance arrest operations, undercover drug buys and search warrant executions (immediate); (2) partner with Buncombe County Sheriff's Office to enhance long- and short-term investigations (immediate); and (3) expedite drug testing analysis with NarTest instrument (March 2007).

Point No. 3 - Increase current Drug Suppression Unit (DSU) staffing by 25%: (1) five vacant DSU (filled March 2007); (2) initial increase in drug-related arrests expected (March 2007); and (3) improved response time to drug tip line (May 2007)

Point No. 4 - Increase partnership with US Attorney's Office in federal drug case prosecution: (1) train officers to understand requirements for cases to be prosecuted at the federal level (immediate); and (2) partner with DEA to increase larger scale, multi-jurisdictional investigations (immediate).

Point No. 5 - Invest additional resources in crime prevention/neighborhood enhancement in public housing and high crime areas: (1) recommend additional full-time employee Crime Prevention Officer (immediate); (2) Housing Security Team to conduct

monthly meetings with residents associations (March 2007); and (3) implement the High Point model (summer 2007).

Point No. 6 - Increase community policing and outreach initiatives: (1) hire community relations manager to implement crime prevention programs (immediate); (a) neighborhood watch programs; (b) youth and children's programs; (c) neighborhood walks; and (d) community events and meetings.

Point No. 7 - Explore additional policy considerations: (1) consider additional resources/enhanced service levels in Fiscal Year 2007-08 budget; and (2) consider developing community work groups to address childcare and employment barriers in high crime areas.

Throughout discussion, Chief Hogan responded to various questions/comments from Council, some being, but are not limited to: is the full-time Crime Prevention Officer the only thing that is new in the budget; how do we measure our success in curtailing the open air drug market or other initiatives in tangible and intangible ways; what is the definition of "unobligated" time; if

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neighborhoods are getting safer over time, is that a possible way to measure success; overview of the difference between federal vs. state prosecutions; is the Police Chief looking at expanding the three districts in the future or expanding the beats within the districts; and how is the Police Department stepping out to use technology to make them more efficient.

Councilman Mumpower suggested strengthening the effort in creating more tangible ways to measure success because he felt that if it were measurable, then we are more likely to accomplish it. He also requested, as the Police Chief discovers weaknesses in our system, that the Chief to bring those concerns to Council along with quarterly feedback.

In response to Councilman Mumpower, Police Chief Hogan said that he would bring a budget amendment for the Crime Prevention Officer to Council on March 13, 2007. Other issues will be coming to Council in the budget process.

In response to Mayor Bellamy, Police Chief Hogan said that they are looking at the proposal of a Federal Bureau of Investigation Task Force located in our area with consideration of a staff person in that effort.

At the request of Councilman Mumpower, it was the consensus of Council to ask the Police Chief to report back to Council with a more detailed plan to measure our progress.

B. VISION FOR BUNCOMBE COUNTY SHERIFF'S OFFICE

At Mayor Bellamy's invitation, Buncombe County Sheriff Van Duncan spoke about the direction of the Sheriff's Office. He explained the new badge of the Sheriff's Office along with the mission statement and guiding principles, said principles being service; integrity, professionalism, accountability and dignity. He then explained in detail the following:

Sheriff Office Changes: (1) shift and squad changes for patrol; (2) field investigator position; (3) school resource officers and the "On Track Program"; and (4) new name and focus for Metropolitan Enforcement Group (MEG).

Patrol Changes: (1) move from a five squad to a four squad division; (2) with the addition of field investigators it will move the number of officers per shift from 12 to 16; and (3) aligned with Asheville Police department (APD).

Field Investigators: (1) eight investigative positions moved to Patrol Field Investigations; (2) immediate response on investigations; and (3) move officers on the road.

School Resource Officers: (1) school administration will have input and ownership; (2) resource officer will be "the best of the best"; and (3) on track program.

New Name and Focus for MEG: (1) new name for MEG with a new focus; (2) will work in conjunction with DEA Task Force as well as DSU; (3) plans to include other municipalities; and (4) collaborative effort with no duplication of efforts.

Vice-Mayor Jones noted that the Asheville Police Department and the Sheriff's Office are working together intelligently, strategically and compassionately on the same page for the same end.

On behalf of City Council, Mayor Bellamy thanked Sheriff Duncan for taking time out of his busy schedule to outline his vision of the Sheriff's Office.

C. DISTRICT ATTORNEY'S OFFICE OVERVIEW

Mayor Bellamy said that District Attorney Ron Moore was unable to attend this meeting to talk about the court system, but will invite him to another meeting in the near future.

D. RIVER SCULPTURE FESTIVAL PRESENTATION

Mr. Robert Winkler, representing the River Sculpture Festival, gave a brief overview of the River Sculpture past and present. He said the emergence of the River Sculpture in 2006 was an unprecedented event on every level. This was not only the City's first large scale public art event, it was the first to feature contemporary outdoor sculpture by Western North Carolina artists; to set a major exhibit in a park setting; to juxtapose sculpture with dance, music, theater and education and to interact with the viewing public through guided tours and surveys.

Conceived and produced by Asheville residents Robert and Arlene Winkler, River Sculpture was the result of a highly successful collaboration with Asheville Park & Recreation, the Public Art Program, the Asheville Area Arts Council, Western North Carolina sculptors and private individuals and sponsors.

Our objectives for the 2006 pilot project were as follows: (1) to display a collection of outdoor works by the best local sculptors, enriching and interacting with the public on multiple levels; (2) to add an important new culture attraction that would draw additional visitors and income flow to area businesses, especially during the tourist "shoulder" between summer and the foliage season; (3) to create higher visibility for Western North Carolina sculptors as a part of the larger cultural community; and (4) to draw visitors to a beautiful part of the City that they might not normally visit. In spite of a tight time-frame and a limited budget, River Sculpture 2006 was an unqualified success with both the artists and the public.

River Sculpture 2007 can and should be even better. Based on our experience in 2006 and the foundation that is now in place, our objectives for River Sculpture 2007 are as follows: (1) to display more and larger contemporary outdoor works; (2) to draw artists from a broader geographic area creating higher visibility for Asheville and expanding the sculptors' dialogue with the larger cultural community; (3) to raise the sculptors' stipend from the current \$250 per sculpture to help the artists offset expenses, to underscore Asheville's reputation as a City that supports the arts, and move us towards becoming the pre-eminent sculpture event in the region; (4) to offer merit awards for individual works in order to attract the highest level of quality as well as create public relation opportunities; (5) to acquire the appropriate permits to keep the exhibition in French Broad River Park for the entire duration; (6) to extend the exhibition period to at least 90 days; and (7) to focus on public relations and advertising beyond Western North Carolina in order to create broader visibility for River Sculpture both statewide and nationally, enabling Asheville to benefit from the high level of spending associated with art tourism.

The ongoing development of River Sculpture will require a commitment in both dollars and interest on the part of the City. It is our intention to continue fund-raising with the private sector, but the level of the City's involvement will underscore the value of the arts and drive the generosity of corporate and private donors.

In response to Councilman Davis, Cultural Arts Superintendent David Mitchell explained why the sculptures were moved from the French Broad River Park to City-County Plaza.

It was the majority of Council's consensus to support and endorse the River Sculpture 2007.

IV. PUBLIC HEARINGS:

A. PUBLIC HEARING TO CONSIDER A CONDITIONAL USE PERMIT AND A REQUESTED DENSITY BONUS FOR A 19-UNIT CONDOMINIUM PROJECT FOR PROPERTY LOCATED AT 2 SUNSET DRIVE AND A MODIFICATION OF THE UNIFIED DEVELOPMENT ORDINANCE TO ALLOW PARKING TO BE LOCATED IN THE FRONT SETBACK

ORDINANCE NO. 3442 - ORDINANCE GRANTING A CONDITIONAL USE PERMIT AND A REQUESTED DENSITY BONUS FOR A 19-UNIT CONDOMINIUM PROJECT FOR PROPERTY LOCATED AT 2 SUNSET DRIVE AND A MODIFICATION OF THE UNIFIED DEVELOPMENT ORDINANCE TO ALLOW PARKING TO BE LOCATED IN THE FRONT SETBACK

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

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

After hearing no questions about the procedure, Mayor Bellamy opened the public hearing at 6:20 p.m.

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

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

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

Ms. Hamel said that this is the consideration of the issuance of a conditional use permit and a density bonus for a 19-unit condominium project for property located at 2 Sunset Drive and a modification of the Unified Development Ordinance (UDO) to allow parking be located in the front setback.

The **ACDP 2025** proposes a Smart Growth development pattern that accommodates realistic, market based alternatives to promote infill development of vacant or underdeveloped property. One way to accomplish this goal is to apply existing zoning tools to encourage higher density residential infill development. This project accomodates this by utilizing the "Exceptional Development Standards" density bonus. In addition, the comprehensive plan discusses the need for residential infill development and new construction to be of a quality that preserves, protects, and enhances existing neighborhoods. The proposed development utilizes a sensitive building approach, design, and materials that will blend in with the existing neighborhood.

This project is also proposing 20% of the units (4 units) at the City's affordable housing rate standard. This is not only meets one of the City Smart growth goals for affordable housing, but also contributes to meeting the needs for affordable housing outlined in the Consolidated Strategic Housing and Community Development Plan 2000-2005.

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This project utilizes the Density Bonus provision as an incentive in providing a higher density infill development as outlined under Housing Opportunities, Goal #3.

The project area is located in the Asheville city limits at the corner of Baird Street and Sunset Drive (City Exhibit 3 - Aerial Map). The property consists of 3.4 acres and is zoned RS-8. The site is currently developed and houses eleven (11) buildings consisting of a total of 23 units (4 duplex units, 1 quadraplex unit, 1 six-plex unit and 5 single family roudette buildings). Some of the units are accessed via a private drive along the backside of the development. The remaining units fronting Sunset Drive are accessed directly from the street.

The current development is considered non-conforming primarily in that the number of units existing on the site exceeds the density allowed under the RS-8 zoning district and Hillside development standards. Based on the Hillside area calculations certified by the project engineer a total of 12 units would be permitted. Under the same calculations, disturbance to the site is limited to 46% or 1.55 acres, less than half of the overall site acreage. The conceptual grading plan and a letter from the project engineer states that site disturbance for this project would be limited to approximately 45% (City Exhibit 3 - Site Plan).

The applicant is proposing to demolish the existing buildings and is requesting a 150% density bonus in order to reconstruct 19 units, a density of 5.6 units per acre. The development of the site will consist of sixteen (16) buildings with four (4) duplex structures, eleven (11) single family structures and one (1) 2-car garage. The development will provide 7- 2 bedroom units, and 12- 3 bedroom units. Of the 19 units, the developer is committing (4) four units to be sold at the City's affordable housing rates.

Access to the development and new structures is proposed via private driveways off of Sunset Drive and also by the existing private drive along the west side of the property that will be upgraded to meet City standards. A total of 33 off-street parking spaces and one two car garage are proposed to serve the development.

The re-development of the site will require that landscaping be brought into compliance with the Unified Development

Ordinance (UDO). A 20-foot, Type B landscape buffer is required along the north and west sides of the property, a 15-foot Type A buffer along Baird Street and street trees along Sunset Drive.

The applicant is proposing significant tree preservation as an "Exceptional Development Standard" item being used to support the density bonus request. The existing vegetation may also be credited towards the landscape requirement once a tree survey is completed and tree protection fencing is installed to ensure the health of the trees.

In an effort to minimize land disturbance and clearing, the applicant is proposing to:

- 1) Use the existing building locations for the new construction and where possible, rebuild on existing concrete pads;
- 2) Utilize and improve the private drive along the west side of the development that serves the units at the rear of the lot;
- 3) Minimize the overall number of parking spaces for the development (33 off street spaces, plus one 2-car garage);
- 4) Utilize and improve the existing parking spaces along Sunset Drive (upgrading to City Standards as required by the Technical Review Committee). Note: This will require a modification by City Council (see below); and
- 5) Preservation of existing landscaping and undisturbed open space.

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Based on the proposed plans and elevations provided by the applicant, staff feels that the project qualifies for the requested 150% density bonus by providing an exceptional development through: Higher quality building design and orientation, green building techniques, enhanced landscaping (significant tree preservation), project amenities (walking trails, open space in excess of City Standards), enhanced stormwater management, and environmentally sensitive design.

At the December 18, 2006, Technical Review Committee (TRC) meeting the project was approved subject to the conditions outlined in the TRC staff report and also with a condition that City Council grants a modification that would allow the parking spaces along Sunset Drive to be located within the front setback.

Regarding the modification request for City Council consideration, the applicant is requesting a modification of Section 7-8-4(f)(9) of the UDO that states no parking shall be permitted in any required setback. The conceptual site plan shows a 15-foot encroachment of 18 parking spaces that are located within the front setback along Sunset Drive. The applicant is requesting a modification from this standard that would allow the development continued use of the existing parking layout (parking spaces located directly off of Sunset Drive). Denial of this request would result in the need for creating a larger parking area that would be necessary to serve the number of units proposed on the lot.

Although staff is in support of this request with approval from the Engineering Department to allow the 90 degree parking off of Sunset Drive; as stated above, the applicant does have an option that would eliminate the need for the modification by creating an off-street parking area on the lot. This, however, would result in additional grading of the lot, removal of existing vegetation and a reduction in the open space area proposed for the project.

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

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

The proposed project has been reviewed by City staff and appears to meet all public health and safety related requirements. The project must meet the technical standards set forth in the *UDO*, the *Standards and Specifications Manual*, the *North Carolina Building Code* and other applicable laws and standards that protect the public health and safety.

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 property in its current state is developed. The redevelopment of the site proposes demolition of all existing structures (23 units). The applicant intends to rebuild at a lower density than what is in place today.

In an effort to reduce the amount of grading and disturbance on the site, and to also reduce the need for excessive removal of existing vegetation, the majority of new buildings (19 units) will be constructed on or near the existing building sites (utilizing existing concrete foundations where feasible).

The majority of disturbance on site will be concentrated around units 9, 13 and 14. These units are being constructed in areas where buildings currently do not exist.

Additional efforts made by the developer to reduce the amount of grading on site include the following:

- Utilizing and improving the private drive along the west side of the development that serves the units at the rear of the lot;
- Minimizing the overall number of parking spaces for the development (33 off street spaces, plus one 2-car garage) and utilizing retaining walls to support these parking areas as necessary to minimize disturbance;
- Utilizing and improving the existing parking areas along Sunset Drive (upgrading to City Standards as required by the Technical Review Committee). Note: This will require a modification by City Council; see below.

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

The development is not expected to injure the value of adjoining and abutting properties, given the proposal to utilize the existing site layout and commitment to preserve the majority of mature vegetation areas along the perimeter and interior portions of the property.

The new construction will be more in character with the existing development patterns on the hillside and will also be more architecturally attractive and consistent with the older Craftsman style homes of the area. The applicant, as part of the exceptional development standards bonus, has committed to the use of 'green building' techniques for appropriateness and energy efficiency.

4. That the proposed use or development of the land will be in harmony with the scale, bulk, coverage, density, and character of the area or neighborhood in which it is located.

The existing development on the hillside currently supports several pockets of medium density development as well as individual lots that would be classified as high density and low density. The redevelopment of this site is considered medium density, and proposes a decrease in the number of units from what currently exists (existing 23 units to 19 units).

The proposed development does not appear to be out of scale with many of the larger single family homes in the area as well as the existing multi-family structures. Units most visible to the area, along Sunset Drive, are a mix of 2 and 3 story buildings. The 3 story buildings will appear 2-story-like with 2 levels on Sunset Drive and the 3rd level below grade with a daylighted basement.

Lastly, the character of all the proposed structures would be more compatible with the architecture and materials of the more historic Craftsman style homes in the area and throughout Asheville.

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

The **ACDP 2025** proposes a Smart Growth development pattern that accommodates realistic, market based alternatives to promote infill development of vacant or underdeveloped property. One way to accomplish this goal is to apply existing zoning

tools to encourage higher density residential infill development. This project accommodates this by utilizing the "Exceptional Development Standards" density bonus. In addition, the comprehensive plan discusses the need for residential infill development and new construction to be of a quality that preserves, protects, and enhances existing neighborhoods. The proposed development utilizes a sensitive building approach, design, and materials that will blend in with the existing neighborhood.

This project is also proposing 20% of the units (4 units) at the City's affordable housing rate standard. This is not only meets one of the City Smart growth goals for affordable housing, but also contributes to meeting the needs for affordable housing outlined in the Consolidated Strategic Housing and Community Development Plan 2000-2005.

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

This proposed development is within close proximity to alternative transportation and is located near major road facilities, interstate connections and other service centers with Charlotte Street & I-240. In addition, basic infrastructure appears adequate and preliminary review by other service providers has not revealed any problems for future service to the development.

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

The development proposes a decrease in the number of units. The City's Traffic Engineer has reviewed the proposal and determined that there are no traffic issues created by the project nor is a traffic impact analysis warranted.

Pros:

- Project incorporates green building and environmentally sensitive approach to development.
- The proposed development will replace outdated buildings with new construction that is more architecturally compatible with the surrounding neighborhood.
- The redevelopment of the site will result in a reduction in the number of units than what currently exists on the site today.
- Four (4) units will be sold at the City's affordable housing rate standards.

Cons:

- The project exceeds the density allowance under the RS-8 zoning district and Hillside development standards, unless the Conditional Use Permit and density bonus is approved.
- If a modification to allow the parking to encroach into the front setback along Sunset Drive is not approved, additional grading and clearing of a portion of the site will be necessary to create an off-street parking area.

Based on the above findings and that the project appears to display an "exceptional development", staff recommends approval of the conditional use permit and approval of the 150% density bonus requested by the applicant.

Mr. Alan Laibson, one of the developers of Sunset Park, spoke in support of the conditional use permit (Applicant Exhibit 1). He explained this project will exemplify the City's comprehensive plan what calls for new construction to preserve, protect and enhance existing neighborhoods, as well as epitomize what the City expects of a residential infill project. They have incorporated 20% of the units in Sunset Park to fall within the City's affordable rate standards. In order to achieve that goal, they had to partially subsidize their construction. Granting the density bonus will help them accomplish that goal. They have met with neighbors

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who are supportive of the project. There will be minimal disturbance of the property. To the most part, they will build on existing building footprints. They will be reducing the density from 23 rental units to 19 single-family homes and town homes of which 4 are affordable. The size and design are compatible with the existing neighborhood. In addition to creating energy efficient and green buildings and site plan, it should be noted that the site's proximity to public transportation and the ability to walk to downtown and north Asheville sites contributes to the sustainability the City is looking for.

Mr. Daryl Rantis, Architect, reviewed with Council a computer animation of the development (Applicant Exhibit 2). Using pictures (Applicant Exhibit 3), he explained how this development will meet the City's exemplary development standards. He said it was important to the development team that the building designs reflect the architectural heritage of the neighborhood and of north Asheville. They have always been ambitious about incorporating environmentally conscious design. They are incorporating passive and active solar heating and cooling strategies. They are fitting all of the buildings that have good solar access with panel ready rooflines for the direct application of photovoltaic and thermal hot water panels as an option for the buyers. They will be employing Energy star and healthy house certification programs as a minimum standard for all of the built structures. They will be incorporating a photovoltaic electrical panel system to run the site irrigation and lighting system. And they will also incorporate water conservation methods by specifying water conserving fixtures in the buildings and capturing rain water for use on the site.

Mr. Mike Lavoy, civil engineer, briefly explained the development.

After rebuttal, Mayor Bellamy closed the public hearing at 6:37 p.m.

Councilman Freeborn moved for the adoption of Ordinance No. 3442, granting a conditional use permit and a density bonus for a 19-unit condominium project for property located at 2 Sunset Drive and a modification of the UDO to allow parking be located in the front setback, subject (1) conditions recommended by City staff; (2) the project shall comply with all conditions outlined in the TRC staff report; (3) All site lighting must comply with the City's Lighting Ordinance and be equipped with 90 degree cut-off fixtures and directed away from adjoining properties and streets. A lighting plan is required to be submitted for review and approval; (4) All existing vegetation that is to be preserved must be clearly indicated and dimensioned on the site, landscape and

grading plans; (5) A grading permit will not be approved until a tree survey is performed and tree protection measures are in place. Final Landscape and Grading plans shall clearly denote all tree's being preserved and also show tree protection devices in compliance with the City's UDO standards; (6) 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 may result in reconsideration of the project by the reviewing boards; (7) The applicant shall provide documentation to staff ensuring that the affordable units proposed with this project are being offered at the City's affordable housing rate standards; and (8) This project will undergo final review by the TRC prior to issuance of any required permits. This motion was seconded by Vice-Mayor Jones and carried unanimously.

ORDINANCE BOOK NO. 23 - PAGE

B. PUBLIC HEARING TO CONSIDER THE VOLUNTARY ANNEXATION OF PROPERTY LOCATED AT 341 ROCKWOOD ROAD

ORDINANCE NO. 3443 - ORDINANCE EXTENDING THE CORPORATE LIMITS OF THE CITY OF ASHEVILLE TO INCLUDE PROPERTY LOCATED AT 341 ROCKWOOD ROAD

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

Urban Planner Julia Cogburn said that this is the consideration of an ordinance to consider extending the corporate limits of the City of Asheville to include property located at 341 Rockwood Road. This public hearing was advertised on February 16, 2007.

Crown/Asheville, LLC has petitioned the City for the annexation of one lot owned by the LLC and located at 341 Rockwood Road (PIN 9643.02-65-9836) containing approximately 1.93 acres.

The lot is adjacent to the new Southridge Shopping Center located along Airport and Rockwood Roads in South Buncombe County. A restaurant is under construction on this property. The area, while contiguous to other non-contiguous ("satellite") parcels in the City of Asheville, is not contiguous to the primary corporate limits of the City and, therefore, is subject to the standards for annexation of noncontiguous areas contained in N.C. Gen. Stat. sec. 160A-58.1. One of these standards states, "no point on the proposed satellite corporate limits may be closer to the primary corporate limits of another city than to the primary corporate limits of the annexing city....." The area proposed for annexation is closer to the corporate limits of the Town of Fletcher. However, since Fletcher's charter precludes them from annexing into Buncombe County, staff has determined that this annexation is not contrary to state statutory requirements. Council may recall that similar situations have arisen in the past and we have handled these annexations by voluntary petition or legislative action.

Pursuant to N. C. Gen. Stat. sec. 160A-58.2 a public hearing must be held prior to adopting any ordinance for voluntary annexation. If City Council decides to proceed with this request, it is proposed that the annexation become effective on April 30, 2007.

Considerations:

- .. Provides for the orderly growth of the City and the tax base through the acceptance of areas into the corporate limits where owners desire annexation.
- .. Marginal increase in service costs (too small to measure or respond to).

This action complies with the 2025 Plan in that it supports the strategy of promoting voluntary annexation of developing areas and meeting the goal of continued use of the urban development tool of annexation in providing for the orderly growth of the City.

City staff recommends City Council adopt the ordinance annexing the property set forth in the petition.

Mayor Bellamy closed the public hearing at 6:41 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. 3443. This motion was seconded by Councilwoman Cape and carried unanimously.

ORDINANCE BOOK NO. 23 - PAGE

C. PUBLIC HEARING TO CONSIDER REZONING 11 LOTS LOCATED ON CRAVEN STREET, ROBERTS STREET, WEST HAYWOOD STREET, RIVERSIDE DRIVE AND THOMPSON STREET FROM RIVER DISTRICT TO URBAN PLACE DISTRICT

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ORDINANCE NO. 3444 ORDINANCE TO REZONE 11 LOTS LOCATED ON CRAVEN STREET, ROBERTS STREET, WEST HAYWOOD STREET, RIVERSIDE DRIVE AND THOMPSON STREET FROM RIVER DISTRICT TO URBAN PLACE DISTRICT

Mayor Bellamy opened the public hearing at 6:42 p.m.

Urban Planner Alan Glines said that this is the consideration of an ordinance to rezone 11 lots located on Craven Street, Roberts Street, W. Haywood Street, Riverside Drive and Thompson Street from River District to Urban Place District. This public hearing was advertised on February 16 and 23, 2007.

Mr. Glines said that the rezoning effort began with the intent to support the Wilma Dykeman Riverway Master Plan (Dykeman Plan) that was adopted by the City of Asheville in 2004. The Urban Place District provides the best fit for the development vision provided for in the Dykeman Plan. The Dykeman Plan anticipates the French Broad and Swannanoa Rivers becoming a vital mixed-use urban district. The individual program highlights of the plan provide a holistic approach to redevelopment in the river area. One area of importance is expanding the current roadway system to provide a cross town access route by improving existing roads and providing some new bridge connections. The economic development part of the plan proposes new mixed-use development, strengthening the arts community and opportunities for business growth in Asheville's core business sectors. A third highlight of the Dykeman Plan envisions environmental protection and recreation opportunities for the corridor which includes completion of the greenway system along the Swannanoa and French Broad Rivers, park development and water quality improvements for surface runoff. Above all, the river flood issues must be dealt with in an environmentally sensitive way to balance this special issue and still allow for the development in the floodplain. The Urban Place District encourages a scale and density to create the critical mass to make infill and redevelopment successful. Upper stories of buildings can be used for residential uses similar to the way downtown has redeveloped. The river area would benefit from the incorporation of live-work units which may have particular application as artist spaces.

The Urban Place District is designed to encourage higher density mixed-use development that is pedestrian friendly and includes special building design considerations similar to other mixed-use districts. The district is expected to foster development and redevelopment of areas with sufficient infrastructure in place to support the uses. Urban Place is expected to be applied to areas faced with blight and neglect and for areas that may have special environmental considerations. The list of uses is broad enough to support compatible infill redevelopment. This rezoning is an effort to begin implementing the Dykeman Plan by providing the appropriate zoning for the area properties. The proposed wording amendment to the Urban Place District also being considered will ensure that properties that are located in the floodplain will meet environmental standards that are similar to the River District.

The River District is developed to encourage redevelopment of the river areas in a manner that complements the natural environment of the river. The River District is unique in that it allows any use that is not prohibited in the list of uses. The residential density of the River District is relatively low for the nature of the district and the fact that most housing will be multi-family in style.

The River District Design Review Committee became interested in the topic of providing incentives for redevelopment of the river areas. The group reviewed the river maps and discussed areas most favorable for redevelopment. On September 14, 2006, a community meeting was held for all property owners with River District zoned property. The turnout was

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reasonable and the majority of those in attendance agreed with the rezoning proposal for mixed-use nodes. The current rezoning proposal to Urban Place includes properties within those areas identified at the community meeting.

At the initial presentation of the rezoning request at the January 3, 2007, meeting of the Planning and Zoning Commission staff from RiverLink expressed concern with the zoning change primarily because of environmental issues. The Commission continued the item to allow time to explore those concerns. RiverLink staff, the River District Design Review Committee and City staff met on several occasions to review ordinances pertaining to environmental standards in the proximity of the river floodplain. The wording amendment to Urban Place District to include similar requirements from the River District is a result of these

discussions. The net effect is that the environmental standards will still apply to properties that are located in the 100-year floodplain regardless to the zoning change to Urban Place.

Since the January meeting, two properties located on Thompson Street owned by the Dalton Family have requested to be added to the rezoning proposal. These properties are adjacent to the properties known as the Mica Village site. Recently the property owner of 91 Thompson Street has requested to be removed from consideration at this time. Staff is supportive of these changes.

The Planning and Zoning Commission considered the rezoning proposal and the Urban Place wording amendment at their February 7, 2007, meeting. Eight people spoke about the proposals and most were in favor of the changes. The Planning and Zoning Commission voted 5-0 to recommend in favor of the proposals.

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

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Pros:

- Proposal is supports the goals of the City Development Plan 2025 related to river-area land use, smart growth concerns, transportation opportunities, potential for economic growth and greenway and environmental features.
- The rezoning is in line with the goals of the Wilma Dykeman Riverway Master Plan which was a planning effort spearheaded by RiverLink and adopted by City Council in July 2004 as an official plan of the City.
- The zoning to Urban Place will encourage private investment and redevelopment in the river areas.
- The zoning changes raise public awareness of the redevelopment potential in the river areas.

Cons:

- Additional rezonings will be needed over time to create the districts and nodes that are outlined in the Wilma Dykeman Riverway Master Plan document. (a potential pro) staff will need direction from City Council to move forward.
- Public participation for infrastructure needs will be required in the river area to realize the area's full potential. (a potential pro)
- Maps for the 100 year special flood hazard area are being revised and may be available this summer so the actual flood elevation may change.
- Flood and water quality issues are continuing concerns for some in the community and both issues have task groups working on them. (a potential pro)

At their February 7, 2007, meeting, the Planning and Zoning Commission voted 5-0 to recommend approval. Staff concur with this recommendation.

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Ms. Spangler asked what the implications are when the properties are changed from River District to Urban Place District.

The following individuals spoke in support of this rezoning request:

Ms. Pattiy Torno, resident on Riverside Drive and member of the River District Design Review Committee

Ms. Regina Trantham, representing Mica Village on 75 Thompson Street

Mr. Joe Ferikis, property owner in the River District

Mr. Alan Shepherd, one of the owners of the stockyard property

Mr. Whitt Riley

Mr. Mike Klepper, owner of four lots adjacent to the area, would like for his four lots to be included in this request as well. Mr. Glines responded that we cannot include the lots at this time, but would be happy to include them when City staff brings Council more properties, if Council is agreeable to this rezoning.

Mr. Don Yelton supported cleaning up the river area, but feared development due to flooding.

Mayor Bellamy closed the public hearing at 6:59 p.m.

In response to Councilwoman Cape, City Attorney Oast explained why he felt that spot zoning is not a legal issue in this case.

At the request of Vice-Mayor Jones, Mr. Glines spoke to the concern of RiverLink regarding flooding. It was his understanding that their concern was that flood ordinances in general may not be complete enough for what the City needs. Our Engineering Department is working on both the floodplain ordinance and the stormwater ordinance and feel that they will have a flood ordinance in place later this summer for Council consideration. Planning & Development Director Scott Shuford also replied that in a following public hearing, there is a proposed Unified Development Ordinance wording amendment with specific changes to address some of the issues that have come up during this process. All of our erosion control, stormwater management, flood control ordinances are separate and stand alone and they apply no matter what the underlying zoning is. It really makes no difference on what the zoning is if those regulations are sound and we are working on improving them. They will address the issues at hand.

Vice-Mayor Jones was concerned about how the City is balancing more development with issues of flooding. Mr. Glines said that the flood ordinances are managed by the Engineering Department and we are working together to strengthen the ordinances.

Councilman Newman said that this rezoning looks good, but wondered if we have a process in place (similar to information on how traffic impacts the streets in terms of congestion) to look at the big picture to make sure that the pattern of development that we see unfolding will not exasperate flooding.

Mr. Chad Pierce, City Stormwater Services Manager, said that the Flood Reduction Task Force is looking at this particular issue. He said that Mr. Shuford made a presentation to the Task Force on this rezoning issue, coupled with the RiverLink presentation for the Wilma Dykeman Plan.

In response to Councilman Davis, Mr. Glines explained why some of the area property owners were not interested in joining this rezoning request at this time.

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Councilwoman Cape said that the comprehensive watershed issue is absolutely important, but in that stead, we need to comprehensively look at the location of this section of the River and the overall regional benefit for bringing our density to this area. If we create these vibrant places, we are going to overall lessen the need to fill up the mountainside with houses for people to live. Cities and rivers can live together very vibrantly. We need to let local landowners be a part of the redevelopment boom of the River. We need to let them take their properties and make them viable right now. If we don't, what happens is the big developers are the ones who come in and reap reap the benefits. She encouraged Council to be supportive in moving forward and allowing these people to set the positive example. The flood regulations are in place to help manage the flooding issues.

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

Councilman Freeborn moved for the adoption of Ordinance No. 3444, finding that the request is reasonable based on information provided in the staff report and as stated in the staff recommendation. This motion was seconded by Councilwoman Cape and carried unanimously.

ORDINANCE BOOK NO. 23 - PAGE

At 7:26 p.m., Councilman Mumpower moved to go into closed session for the following reasons: (1) to consult with an attorney employed by the City about matters with respect to which the attorney-client privilege between the City and its attorney must be preserved, including litigation involving the following parties: City of Asheville; State of North Carolina; and County of Buncombe. The statutory authorization is contained in G.S. 160A-318.11 (a) (3); and (2) to establish or to instruct the City's staff or negotiating agents concerning the position to be taken by or on behalf of the City in negotiating the terms of contracts for the acquisition of real property by purchase, option, exchange or lease. The statutory authorization is contained in G.S. 160A-318.11 (a) (5). This motion was seconded by Councilman Freeborn and carried unanimously.

At 7:45 p.m., Mayor Bellamy moved to continue the closed session until after the completion of the agenda for the regular meeting. This motion was seconded by Councilman Davis and carried unanimously.

At 7:50 p.m., Councilman Freeborn moved to excuse Vice-Mayor Jones for the remainder of the meeting due to illness. This motion was seconded by Councilwoman Cape and carried unanimously.

D. PUBLIC HEARING TO CONSIDER AN AMENDMENT TO THE UNIFIED DEVELOPMENT ORDINANCE RELATIVE TO AMENDING THE URBAN PLACE DISTRICT

ORDINANCE NO. 3445 - ORDINANCE AMENDING THE UNIFIED DEVELOPMENT ORDINANCE RELATIVE TO AMENDING THE URBAN PLACE DISTRICT

Mayor Bellamy opened the public hearing at 7:50 p.m.

Urban Planner Alan Glines said that this is the consideration of an ordinance to consider an amendment to the Unified Development Ordinance (UDO) relative to amending the Urban Place District. This public hearing was advertised on February 16 and 23, 2007.

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The Urban Place District is written to develop walkable pedestrian oriented mixed-use districts for areas that may be in decline and blighted or otherwise are not meeting their potential. The River area was anticipated as a likely area for the Urban Place District when it was created. The built environment is an important consideration and requirements are in place to ensure that new construction embraces the street and creates a active streetscape and pedestrian environment. The changes proposed in this amendment are the result of the request from RiverLink to strengthen the environmental standards for properties located within the special 100-year flood hazard area. The primary focus of the changes included here are specifications for properties that are affected by the special 100 year flood hazard areas. Most of the wording is currently found in the River District and has direct application to the Urban Place District for flood prone properties. A few minor wording changes cover other issues in the Urban Place District and will be briefly outlined.

The initiation of the wording amendment began with a proposal sponsored by the planning staff and the River District Design Review Committee, (River Design Committee) to rezone several parcels in the River District to Urban Place District. The River Design Committee supported this effort as a way to begin implementing goals of the Wilma Dykeman Riverway Master Plan which encourages redevelopment of river-area properties with sensitivity to the flood plain. After working on this proposal in 2006 and holding a community meeting in the fall, several property owners offered the rezoning of their property to Urban Place District. The amendments to Urban Place have been considered by the River Design Committee and RiverLink staff. The largest amendment to the Urban Place District is the addition of section 14 of the code to cover properties that are located within the 100-year special flood hazard area.

Section 14 replicates most of the special language from the River District to provide for a river resource yard, limits to speculative grading without a site plan, limits to impervious surfaces standards to match the River District. The remaining items cover design for new construction, elevated structures and encouragement for green building. The river resource yard is proposed to be expanded from a minimum of 20 feet in the River district to 25 feet. Several people from the review team recommended an even greater dimension for the river resource yard perhaps up a minimum of 50 feet. Staff notes that there was not sufficient time to meet with affected property owners and that the requirements found within the Urban Place District were not intended to replace or super cede the floodplain ordinance. The floodplain ordinance is managed by the City Engineering Department and there is some work being done to provide amendments to the floodplain ordinance and the stormwater ordinance. While the change to the river resource yard is minimal, it is still an improvement. Staff feels that larger and more comprehensive revisions are better researched and reviewed by the Engineering Department which is charged with managing this special area.

Another minor change is to remove 'inn' from the list of allowable uses and replace it with 'lodging facilities.'" The change will be more consistent with other districts found in the UDO by using the term lodging facility.

Considerations:

- This amendment seeks to provide an expanded understanding of the goals and opportunities of the Urban Place District especially as it pertains to parcels located in the special flood hazard areas.
- The amendment includes purpose statements directly from the Wilma Dykeman Riverway Master Plan.
- This amendment requires additional development standards for properties that are located adjacent to the French Broad or Swannanoa Rivers that was inspired by requirements found in the River District.

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- The changes to fenestration requirements for building that are raised above the 100-year flood elevation will address what is a unique reality for development in the floodplain area of the rivers.
- A minor changes in the list of uses for lodging facilities provides consistency for Urban Place with other districts in the UDO.

Staff recommends approval of the proposed ordinance amendments to Urban Place.

Mayor Bellamy closed the public hearing at 7:52 p.m.

Mr. Glines responded to various questions/comments from Council, some being, but are not limited to: would this allow small river boat type manufacturing; will this change affect any existing businesses in that district; and is there a need to mention bus transfer stations in the permitted uses.

In response to Councilwoman Cape, Mr. Glines said that the Urban Place District does not allow salvage yards, salvage warehouses, recycling yards or recycling warehouses.

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

Councilman Freeborn moved for the adoption of Ordinance No. 3445. This motion was seconded by Councilwoman Cape and carried unanimously.

ORDINANCE BOOK NO. 23 - PAGE

E. PUBLIC HEARING TO CONSIDER A CONDITIONAL USE PERMIT FOR NORTH VIEW AT BILTMORE LAKE PHASE II ON ENKA LAKE ROAD FOR 257 RESIDENTIAL MULTI-FAMILY UNITS ON 33 ACRES

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

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

After hearing no questions about the procedure, Mayor Bellamy opened the public hearing at 7:57 p.m.

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

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

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

Mr. Glines said that this is the consideration of the issuance of a conditional use permit for North View at Biltmore Lake Phase II on Enka Lake Road for 257 residential multi-family units on 33 acres.

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Under review is a proposal to build 257 residential units on 33 acres located in the City's western extraterritorial jurisdiction area (ETJ) (City Exhibit 3 - Location Map and Aerial Map). The site is zoned RM-16 and is being presented as a second phase of the North View at Biltmore Lake project that was approved in 2003. Under the current zoning the developers could build many more units than is proposed at this time. North View at Biltmore Lake Phase II (North View Ph. II) has access from Enka Lake Road at a point close to Sand Hill Road. The phase two site will share the main driveway with the phase one project (made up of apartments and condominiums) now called Seasons at Biltmore Lake. A second driveway will be constructed south of the existing driveway. A Traffic Impact Analysis (TIA) was completed for the original first phase and included a full build-out scenario for the two phases. Improvements to Enka Lake Road were constructed during the Phase I project as a result of this study.

The modified Site Plan (City Exhibit 4 - Modified Site Plan) consists of an additional six one-bedroom units.

The Master Plan proposes a circuitous driveway route across the hill top parcel. The main part of the development is clustered in the center of the site in the area that is now an open meadow. The fifteen residential buildings and clubhouse structure proposed on the plan will be accessed from the main drive route and will have two access points along Sand Hill Road. The front part of the lot and rear of the lot are heavily wooded. Some of these trees will be protected and will remain to provide natural buffers for the project. A portion of the rear section of the site is in the hillside ordinance area. This portion of the lot is not being developed and is being set aside. Open space is provided by the buffer areas and the space around the central clubhouse.

This number of units was recently updated based on the discussion during the Planning and Zoning Commission meeting. The 257 units are now designated as 102 one-bedroom units, 115 two-bedroom units and 40 three-bedroom units. Since the project does not require a density bonus or other incentive for development it is difficult to leverage affordable units in this project.

Staff requested that the developer consider providing some percentage of the units at a rate affordable to people with incomes below 80% of area median income (AMI). The area median income for a family of four is \$50,400. Projects throughout the City are needed to assist in the affordable housing crunch in Asheville. The developer has responded that the public sector should provide a subsidy to augment the financing for this kind of project to make the below-market rents feasible. The developer has noted that the projected rents at this point in the planning process for North View Phase II will serve the market that is making between 80% and 120% of the area median income. This market segment is commonly referred to as 'workforce housing'. They also noted in a recent meeting with staff that many of the units will be affordable to persons making between 80 and 100% of the AMI. At the Planning and Zoning Commission meeting the developer offered to take six three-bedroom units and convert them to 12 smaller one bedroom units. This would allow the developer to offer less expensive units within this project. The Planning and Zoning Commission and staff were supportive of this proposal. The numbers for the project now reflect this change from 251 total units to 257 units. The building footprints for the buildings (with the conversions from three bedroom units to two one-bedroom units) will not substantially change. Neither will site grading or parking requirements, etc.

Since the Technical Review Committee (TRC) reviewed the project some amendments were made to the plans which address some of the concerns from staff. Buildings One and Two at the front end of the parcel have been shifted closer to the access driveway to reduce the impact on the hill below and the existing vegetation there. The existing trees that can be protected are shown in more detail on the plans. Staff still recommends that the developer tighten the distance of the building to the driveway route to lessen the grading required and provide a tree survey for the areas below the two driveways and buildings One and Two. This will assist in preserving the buffer trees during construction and to reduce the limits of clearing in this

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area. The project will lessen the visual impact from Enka Lake Road by saving trees in these areas.

The elevations that have been provided with this submittal have also been revised. The elevations show greater definition in the materials used on the facades. Two sizes of hardi-plank are being proposed to provide some visual interest for the facades. Stone veneer will be placed at the lower portions of the building. The colors of the materials should also offer variety in the facades.

Section 7-7-8(d)(2) of the Unified Development Ordinance (UDO) notes the seven conditional use standards and states that the Asheville City Council shall not approve the conditional use application and site plan unless and until it makes the following findings, based on the evidence and testimony received at the public hearing or otherwise appearing in the record of the case;

1. **That the proposed use or development of the land will not materially endanger the public health or safety.**
The proposal is being reviewed and will meet requirements for City standards and the state building code. If the project is approved, detailed plans will be submitted and reviewed for permitting.
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 development is in keeping with the underlying zoning for the area, residential multi-family high density (RM-16). The actual development will be located at the center of the site on a sloping knoll on the part of the site that is mostly already open. Parts of the front area and the rear portions of the site will be preserved and not graded or cleared. The upper section of the rear of the site is located in the city regulated Hillside area and no grading or clearing will occur in this area. The creek area at the front of the site will have some disturbance mainly from the required second driveway. Other sections adjacent to the creek will not be disturbed. The project is reasonably sensitive and compatible with the significant natural features of the site.
3. **That the proposed use or development of the land will not substantially injure the value of adjoining or abutting property.**
The proposed use is not expected to injure the value of adjoining or abutting property. This type of investment is important for providing a mix of residential uses in this sector of the community. The area has seen significant growth in the single family residential market and the original North View Phase I is converting to condominiums. This rental project will provide balance to the area.
4. **That the proposed use or development of the land will be in harmony with the scale, bulk, coverage, density, and character of the area or neighborhood in which it is located.**
The density of the project is just under eight units per acre. The zoning of the site is RM-16. The project does not require density bonuses or special incentives to build this project. The proposed use is in harmony with the scale, bulk, coverage, density and character of the underlying area. The clustering of the units and the preservation of some of the existing trees

at the front and rear of the site will assist the development in blending into the site in a similar fashion as other developments in the area have done.

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

The comprehensive plan encourages development in areas where the infrastructure is in place to support the development. The comprehensive plan encourages a variety of housing types in a given sector of the community. The west end of the City is expected to continue to develop and redevelop to serve the growth in the population there. The project is providing market rate rental units with initial prices in a range that can be considered workforce housing. This is an important segment of the population to serve. Affordable units are a challenge to provide for without some public participation through subsidy or tax credit. The project should still be an asset to the west Asheville community.

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

Plans are underway for road widening for Sand Hill Road, the closest connecting street, based on growth projections for the community. Staff is recommending that the developer provide an urban level of service for the development and provide a comment for how they will accomplish this requirement. If this is made a requirement then this condition can be met. Other facilities are in place to support the development.

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

With two driveway access points for Phase II and the road widening planned along Sand Hill Road, the proposed development is not expected to create undue traffic congestion or create a traffic hazard. A traffic impact analysis was completed for the Phase I project and anticipated an even larger build-out between the two North View phases. The roadway improvements that were noted in the TIA have been completed (turn lanes and widening on Enka Lake Road).

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

Pros:

- Project provides some diversity in housing choices from smaller one bedroom units to three bedroom units.
- The site provides space for undisturbed buffers and open space to minimize impacts and improve the quality of life for residents.
- Provides a suitable transition from busier commercial areas to lower density residential and institutional uses.
- The developer has provided initial projections that most of the units will be in the price range of workforce housing, (families making 80% to 120% of area median income which is \$50,400 for a family of four).

Cons:

- Project does not address the need for housing options to those residents making 60%-80% of AMI.
- Developer cannot ensure that projected rents will remain within the 80%-120% AMI.
- Besides the short term possibility that the widening along Sand Hill Road may fall behind this project timeline, no other items of concern are noted.

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This conditional use permit was recommended for approval by a 5-0 vote by the Planning and Zoning Commission at their February 7, 2007, meeting. Besides the development team, no one spoke regarding the project. Staff also supports the approval of the project.

Mr. Will Buey, representing the design team, said that the clustering of homes is on property that was a meadow and was already cleared. We tried to make sure that the disturbance from the project is limited to that area. We have preserved quite a bit of open space and are staying away from the hillside area. He reviewed some statistics about what is allowed and what they are providing in terms of density, open space, undisturbed area, buffers and pervious area (Applicant Exhibit 1). They are providing a secondary access into the project. He explained the stormwater measures which will meet or exceed the City's standards.

Mr. Wyatt Dixon, representing the owner of the property, pointed out that the building footprints are half the size of the building footprints of the units in Phase I (Applicant Exhibit 2) (Applicant Exhibit 3). Regarding affordable housing, we did revise the Site Plan for smaller units at approximately \$600 per month.

After rebuttal, Mayor Bellamy closed the public hearing at 8:09 p.m.

Councilman Newman moved to grant a conditional use permit for the proposed Master Plan for North View at Biltmore Lake Phase II on Enka Lake Road for 257 residential multi-family units on 33 acres (noting that the request is reasonable based on information provided in the staff report), subject to the conditions recommended by City staff and the following standard conditions: (1) The project shall comply with all conditions outlined in the TRC staff report; (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 and substantially agree with the plan presented to City Council; (4) The developer shall provide an urban level of public safety service for the development; (5) 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 may result in reconsideration of the project by the reviewing boards; and (6) This project will undergo final review by the TRC prior to issuance of any required permits. This motion was seconded by Councilman Mumpower.

In response to Mayor Bellamy, Mr. Dixon said that the units will be rental units.

When Mayor Bellamy asked if they would voluntarily annex into the City, Mr. Dixon said that they have had discussions with City staff about that and at this point they are not prepared to commit to doing that, but they do note that as part of their approval process that they are required to provide an urban level of service. He explained that they would need to examine that further because this request has just recently been raised. Due to their investors and financing in place, he could not unilaterally commit to do that, however, they are willing to discuss that with City staff.

Councilwoman Cape suggested continuing this matter in order for Council to receive advice from the City Attorney as to what their options are concerning annexation as a term of a conditional use permit.

When Councilman Freeborn asked what would happen if Council did not approve this project, Mr. Dixon said that they would have to go back to the drawing board but was hopeful that would not happen.

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Mr. Craig Justus, attorney, said that the issue of voluntary annexation was brought to their attention last week. It has never been brought to their attention at any time that a policy of the City requires a developer in an ETJ area, as a condition of approval, has to ask for annexation. The bottom line is these developers have spent a lot of money based on the rules in place presented to them. The only discussion about urban level of services at the Planning & Zoning Commission level was, you can ask for voluntary annexation, or you can by contract, contract with private services to provide an urban level of service. They would like to maintain that option. He asked what the point of continuance would be, unless Council believes they can create a policy to then apply it to the developers, almost retroactively. He hoped Council would not do that.

Councilman Freeborn said that he could not support any project in the ETJ unless they voluntarily annex.

In response to Councilman Newman, City Attorney Oast said that Council has to find in favor of every one of the seven conditional use standards in order to approve the conditional use permit. If they fail to meet any one of them, then Council may deny the conditional use permit. Council can put reasonable and appropriate conditions on a conditional use permit. He would have to explore whether a developer will or will not voluntarily annex into the City is a basis for Council's decision on this project.

Councilman Mumpower said that the developer has come before Council with a project that seems to meet our criteria and standards and for us to ask if they would like to come into the City is fine, but to make a vote conditioned on that is municipal blackmail. This developer did not comply with our ordinances with an understanding that we had the criteria of voluntary annexation for acceptance of the project.

Councilwoman Cape said one of the roles of City Council is land planning. Regarding Condition No. 5, this continuance of adding people to our borders and spreading out, in an urban fashion, is not strategically economic or smart growth. She did not think this fits a comprehensive plan for how a city grows. They are contributing to the urban development of the area.

In response to Councilman Freeborn, Mr. Justus preferred that Council have adequate time for the City Attorney to them of what they are required to do under the law. He said that at no point in time did anyone point to a policy in writing, comprehensive plan or otherwise, that said that as part of the ETJ they have to come into the City. If after Council creates a policy, he felt to impose that retroactively is fundamentally unfair. They prefer not to be put into a corner because their only option is to litigate.

Councilman Davis said the developer is offering a lot of what we are looking for in this project, recognizing that they are enjoying building on the border of our City. He would not be comfortable in making any policy retroactive since this project is so far along.

Councilman Freeborn asked City staff ever asked this developer, who was looking at such a large scale project in our ETJ, if they were interested in voluntary annexation. Mr. Glines replied that they did discuss, in a general way, urban level of service can mean annexation, but they could provide it in another fashion as well.

Councilman Newman and Councilwoman Cape withdrew the motion to approve the conditional use permit to give the City Attorney time to look at the questions raised by Council.

Mr. Justus asked for Council to agree that this is a good project, and if part of the conditioning is to say they have to come into the City, they would like the opportunity to re-design

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the project to increase the density to off-set the costs that they were unaware of at the beginning of the application.

Councilwoman Cape moved to continue this matter until March 13, 2007, in order to give the City Attorney time to look at the questions raised by Council. This motion was seconded by Councilman Freeborn and carried on a 4-2 vote, with Councilman Davis and Councilman Mumpower voting "no."

F. PUBLIC HEARING TO CONSIDER AN AMENDMENT TO THE UNIFIED DEVELOPMENT ORDINANCE REGARDING NEW REQUIREMENTS FOR USE AND DIMENSIONAL NONCONFORMITIES

Mayor Bellamy opened the public hearing at 8:28 p.m.

Planning & Development Director Scott Shuford said that this is the consideration of an ordinance to consider an amendment to the Unified Development Ordinance (UDO) regarding new requirements for use and dimensional nonconformities. This public hearing was advertised on February 16 and 23, 2007.

There has been recent community confusion about how the nonconformities section of the UDO addresses dimensional nonconformities. The community perception is that any renovation amounting to more than 50% of the appraised value of the structure causes full compliance with ALL sections of the UDO. This is incorrect. In Asheville, the "50% rule" applies only to certain site improvements, not to all of them. The code section in question is Section 7-11-2(b)(1) that states, in part, that "{t}he following developments must bring the entire site into **full compliance with the requirements of Article XI** of this chapter" (emphasis added) with one of the listed developments being "{r}enovations with a total cost exceeding 50 percent of the assessed value of the building, according to Buncombe County tax records." The reference to Article XI limits site compliance to only the standards that are covered in that Article which are:

- Parking, loading and access standards
- Landscape and buffering standards
- Open space standards
- Sidewalk requirements

As a consequence, building location, setback, height and other requirements are not required to be complied with in renovations exceeding 50% of appraised value. While it is common for zoning codes to exempt certain features from compliance in cases of significant site improvement, Asheville's UDO is one of the more generous. We have seen situations where virtually the entire structure has been demolished without triggering compliance with anything more than site design requirements.

In response to Council direction, staff has developed this ordinance which significantly increases the extent to which "virtual teardowns" must comply with all dimensional requirements but which exempts renovations (see definition below) from compliance with anything other than site design (Article XI) requirements.

Renovation means the repairing or remodeling of a structure in which the exterior walls, foundation and roof are maintained structurally intact.

There are two other significant changes in this ordinance from the current situation regarding nonconformities. First, the current provisions require adjoining lots in common ownership on the day that the UDO became effective to be combined to create a conforming or less-nonconforming lot(s). In other words, if there are two adjoining lots that were lawfully

created sometime in the past and which have become nonconforming due to code changes and if the lots were owned by the same entity in 1997, they cannot be separately developed. The same two lots owned by different entities in 1997 can be separately developed. The proposed amendment corrects this inequity.

Second, the proposed ordinance creates a new role for the Planning and Zoning Commission. Under current code, a nonconforming use can be replaced by another nonconforming use of equal or lesser intensity using the table provided in Section 7-11-2(d)(10). If the proposed existing or replacement use is not specifically listed, City staff makes the determination of whether replacement can occur. Under the revised ordinance, the Planning and Zoning Commission makes the determination as to whether the unlisted uses are of equal or lesser intensity.

Pros:

- Provides a simpler, cleaner approach to nonconforming uses and dimensional nonconformities.
- Meets the expectations of many in the community about site compliance during renovation.

Cons:

- Will likely result in increased cost of site development.
- Some projects may not be pursued due to expense of compliance.

The Planning and Zoning Commission considered this code amendment on February 7, 2007, and recommended approval of this amendment by a vote of 5-0, subject to staff adding a definition of the term "impact" and evaluating whether there was ordinance confusion about the terms "communication tower" and "telecommunication tower." Staff has added a definition for "impact" and reviewed ordinance provisions concerning the other two terms, finding that there is indeed sufficient ordinance clarity about the distinctions. City staff recommends approval of the proposed code amendment as modified.

When Mr. Shuford said that he has recently received five concerns from Mr. James Judd, some of which are well founded, Mayor Bellamy wondered if the Planning & Zoning Commission should review the concerns prior to City Council taking action.

Mr. Eugene Katz explained why he encouraged the use of non-conforming lots.

Mayor Bellamy closed the public hearing at 8:37 p.m.

Councilman Freeborn moved to remand this issue back to the Planning & Zoning Commission. This motion was seconded by Councilman Mumpower and carried unanimously.

V. UNFINISHED BUSINESS:

A. GREENLIFE/MAXWELL RECOMMENDATION

Assistant City Manager Jeff Richardson said that at the January 12, 2007, meeting, City Council directed staff to continue to analyze options regarding minimizing local commercial traffic on Maxwell Street.

At City Council's direction, City staff has continued to work with Greenlife Grocery Store officials and representatives for the property owners at located at 70 North Merrimon Avenue, in an effort to mitigate local commercial traffic accessing Greenlife Grocery from Maxwell Street.

As part of this process, store officials have analyzed the volume and size of delivery truck traffic accessing Greenlife in a seven (7) day period. The data represents store truck delivery broken down into two categories:

- Non-Commercial (cars, trucks, vans)
- Commercial ((Straight Trucks, Semi-Tractor Trailer)

Analysis reveals an approximate 50/50 volume split between commercial/non-commercial delivery traffic. Store officials believe that by reconfiguring the parking lot to include relocation of the one residential home, the redesign will allow for one (1) additional loading dock adjacent to the current loading dock on the west side of the store entrance. This additional dock will

virtually guarantee that all mid-size straight trucks, along with all tractor trailer trucks will unload using the front store delivery entrance. Therefore, non-commercial trucks will use the side loading dock accessed using Maxwell Street and commercial truck deliveries will occur via Merrimon and confined to the front parking lot of the grocery store.

If this site design moves forward, store officials would obtain plan approval from City planning staff, which requires a privacy fence in addition to a minimum ten foot vegetative buffer. In addition, the Greenlife property owners have expressed continued support for a rezoning request for 37 Maxwell Street, which if approved, would provide Greenlife necessary space for the proposed parking lot redesign.

City Council may consider the options as outlined and staff is prepared to take further direction accordingly.

Ms. Hillary Stewart, resident on Maxwell Street, said that even with these changes, the volume is tremendous on this residential street.

Mr. James Judd if Council supports this solution, then he explained his concerns of due process. In the spirit of compromise, he believed the neighbors would be satisfied if the loading was taken off Maxwell Street, the parking reinstated on the Maxwell Street, the intended buffer placed on Maxwell Street and no commercial traffic on Maxwell Street. He questioned the Planning & Development Director's authorities. City Council should direct the City Manager to delivery the notices of violation for the decision that exceeds staff's authority.

Councilman Newman said that the four major complaints heard include the question of the site triangle and the safety of trucks entering and exiting Greenlife property on Maxwell Street; problems of trucks on Maxwell Street, especially the large trucks; buffer compliance on Maxwell Street; and the need to restore street parking on Maxwell Street. He is not asking Council to vote on anything tonight because there are aspects on what is being presented which would require Planning & Zoning Commission review. These are the efforts which he and Councilman Freeborn have undertaken to see if there are different design options to address the concerns. This design option is not a perfect solution to the problems, but it goes a long way to address three of them - the site triangle issue is fully resolved; buffer compliance on Maxwell Street; and street parking is restored on Maxwell Street. Regarding the trucks on Maxwell Street, this design makes a significant impact on that issue. It would eliminate about 1/2 of the total truck traffic on Maxwell Street, but more important, it would significantly eliminate all of the large trucks. People have asked Council to do their best to create a situation where we are fully enforcing our laws. As he understands our laws, he does not think the City Council has the authority to require Greenlife to do everything people are asking Council to do. All Council has the authority to do is to spend some time in making the situation better and this design goes a long way to that end.

Councilwoman Cape thanked Greenlife for continually stepping up to the table to help solve this difficult situation, unlike others who do business in our community and who refuse to try

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to seek solutions with us. She hoped that we would get better at removing some of those difficulties in those places and she is comfortable with the compromise that we have all come to for this difficult situation. One of the huge issues in a livable community is having grocery stores that people can walk to and be a part of in our community.

Councilman Mumpower felt this represents the best compromise effort to try to meet the most needs in the fairest way possible.

Councilman Freeborn wanted to hear what the Greenlife's plan is for managing truck traffic, since he is getting an additional loading dock and only 50% of the receiving traffic will be taken off Maxwell Street. He said that he would be happy to meet with Greenlife and talk about the type of management plan he is looking for in order to consistently manage the traffic of the deliveries.

Mr. Hugh Bradburn, Greenlife Store Manager, explained the overall operations of the store.

Councilman Davis noted that Greenlife will be spending a lot of money on this design to get to a better place, and wondered, if the end of the process, if there will still be neighborhood conflict. He hoped that Greenlife and the neighborhood will talk about what will happen at the end of the process.

Since it was agreed by Council that this is the best site design available, Councilwoman Cape asked what the next step would be. City Attorney Oast said that if a rezoning is required, it will go through the Planning & Zoning Commission. All that City Council can do at this point is to agree to consider the rezoning request.

B. PUBLIC HEARING TO CONSIDER AN AMENDMENT TO THE UNIFIED DEVELOPMENT ORDINANCE TO REGULATE THE REMOVAL, RELOCATION AND RECONSTRUCTION OF QUALIFIED SIGNS WITHIN THE QUALIFIED SIGN OVERLAY

ORDINANCE NO. 3446 - ORDINANCE AMENDING THE UNIFIED DEVELOPMENT ORDINANCE TO REGULATE THE REMOVAL, RELOCATION AND RECONSTRUCTION OF QUALIFIED SIGNS WITHIN THE QUALIFIED SIGN OVERLAY

Mayor Bellamy said that this public hearing was held on January 9, 2007, and continued in order to allow staff to develop some illustrations showing what the modified ordinance would permit.

Using illustrations, City Attorney Oast responded to various questions/comments from Council, some being, but are not limited to: what is the purpose of this amendment; are billboard companies assigned a certain number of signs; does this allow dynamic (electronic screen) signs; how many signs does this amendment have the potential of affecting; and how many billboards are in our City.

Mayor Bellamy said that Council worked hard on an agreement with the billboard industry about three years ago and felt this might erode on what was agreed to.

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

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Councilman Mumpower moved for the adoption of Ordinance No. 3446. This motion was seconded by Councilman Freeborn and carried on a 5-1 vote, with Mayor Bellamy voting "no."

ORDINANCE BOOK NO. 23 - PAGE

C. SECOND READING OF ORDINANCE NO. 3413, AN ORDINANCE TO CREATE AN HISTORIC PRESERVATION OVERLY DISTRICT FOR THE ST. DUNSTAN'S NEIGHBORHOOD

Mayor Bellamy said that the public hearing on this matter was held on November 28, 2006, and because the ordinance failed to reach the 2/3 vote of the full Council, the matter needed to be brought back for a second vote.

In response to Councilman Newman, City Attorney Oast said that he would research the issue of allowing City Council to approve the guidelines for a historic district (since Council designates the area), with the Historic Resources Commission (HRC) providing Council with draft guidelines for their consideration, instead of having the HRC being the body to approve those guidelines.

Councilman Newman appreciated the HRC addressing the concerns raised by Council regarding incorporation of green building construction methods into new and existing structures in the local historic districts. He encouraged their sub-committee to continue to work on new language that could be incorporated into the guidelines.

It was the majority of Council's consensus to have the City Attorney provide Council with a memorandum on the guidelines of the St. Dunstan's Historic Preservation Overlay District along with the response regarding guideline approval requested by Councilman Newman. In addition, at Councilwoman Cape's request, the City Attorney was directed to report on the difference between the national guidelines around solar panels and what our HRC uses.

Councilman Mumpower felt there was no longer a need to create historic overlay districts to preserve historic properties anymore. He wondered when the last historic property was torn down in recent years that had anything left to it. He felt we are creating special privileges and government oversight in an elite community and could not support the motion.

Councilman Newman moved for the second and final reading of Ordinance No. 3413. This motion was seconded by Councilman Freeborn and carried on a 5-1 vote, with Councilman Mumpower voting "no."

ORDINANCE BOOK NO. 23 - PAGE

D. RESOLUTION NO. 07-62 – RESOLUTION REQUESTING LEGISLATIVE ACTION FOR THE CITY OF

ASHEVILLE IN THE 2007 GENERAL ASSEMBLY

City Attorney Oast said that last week Council took action to request the introduction of legislation dealing specifically with the City of Asheville. These were requests for local legislation, and the action last week was necessary in order to meet the submission deadline of February 27, 2007, that applied with respect to the Senate (the House deadline for local bills is March 7). The resolution also requests withdrawal of support for certain bills regarding annexation that have been introduced, and further requests that members of the delegation consider the introduction of legislation or other action to ensure that Asheville has the ability to encourage voluntary annexation. He then asked for further direction with respect to the other matters of local concern and potential legislative action. He noted that as bills come forward on items Council has expressed an interest in, he will advise Council.

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Councilman Newman moved to support the Land for Tomorrow initiative. This motion was seconded by Councilwoman Cape and carried on a 5-1 vote, with Councilman Mumpower voting "no."

Councilman Freeborn moved to support increased funding for criminal justice. This motion was seconded by Councilman Mumpower and carried unanimously.

Councilman Newman moved to ask the state legislators to increase the state minimum wage and index it annually for inflation. This motion was seconded by Councilwoman Cape and carried on a 5-1 vote, with Councilman Mumpower voting "no." Councilman Mumpower felt this is against every basic economic principle upon which this country is founded.

Councilwoman Cape moved to support review of child care reimbursement amounts for Buncombe County. This motion was seconded by Councilman Freeborn and carried unanimously.

Councilman Freeborn moved to support campaign funding, reform to allow local governments to implement public financing of local elections. This motion was seconded by Councilman Newman and failed on a 3-3 vote, with Councilwoman Cape, Councilman Freeborn and Councilman Newman voting "yes" and Mayor Bellamy, Councilman Davis and Councilman Mumpower voting "no." Councilman Mumpower felt we talking about using forced taxpayer money to finance elections and would not support the motion.

After a brief discussion, Councilwoman Cape moved to revise state laws relative to the homestead exemption for low-income, elderly homeowners. This motion was seconded by Councilman Freeborn and carried on a 5-1 vote, with Councilman Mumpower voting "no." He was concerned that when you give people exemptions, you take away their incentives to participate in local government. Mayor Bellamy asked the City Attorney to advise Council as taxation bills come forward.

Councilman Mumpower moved to support strengthening criminal laws dealing with sexual predators, especially as related to children. This motion was seconded by Councilman Freeborn and carried unanimously.

After a short discussion, Councilman Freeborn moved to support obtaining legislation to strengthen the City's ability to regulate development on steep slopes, including transfer of development rights. This motion died for a lack of a second.

After a short discussion, Councilman Freeborn moved to support obtaining stronger legislation in order to create financial incentives for private sector development who would like to build more affordable housing. This motion was seconded by Councilman Newman and carried on a 4-2 vote, with Councilman Davis and Councilman Mumpower voting "no."

Councilman Newman moved to support obtaining stronger legislative authority to allow governments to create stronger incentives for environmentally sustainable design. This motion was seconded by Councilwoman Cape and carried on a 5-1 vote, with Councilman Mumpower voting "no."

Councilman Mumpower moved to support obtaining stronger legislation to deal with illegal immigration at the local level. This motion was seconded by Councilman Davis and carried on a 5-1 vote, with Councilman Freeborn voting "no." Councilman Freeborn felt that this is a federal issue and felt confident that our new Congress will be able to deal with this issue.

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There was no motion to support obtaining stronger legislative authority for regulation of trees and vegetation.

After a brief discussion, Councilman Freeborn moved to establish authorization and funding for a program to allow for

enforcement of City's "quality of life" ordinances (noise, solicitation, junk vehicles, minimum housing, etc.), similar to existing programs in other N.C. cities, e.g., Durham. This motion was seconded by Councilman Davis and carried unanimously.

After a brief discussion initiated by Mayor Bellamy, Councilman Freeborn moved to ask our legislators for a direct appropriation of \$5 Million to fund improvements to the Civic Center (in case they do not authorize Asheville to charge a 1% room occupancy tax as a revenue source for this effort). This motion was seconded by Councilman Davis and carried on a 5-1 vote, with Councilman Mumpower voting "no."

Councilman Newman moved to support the state funding of the Asheville Art Museum's expansion. This motion was seconded by Councilwoman Cape and carried on a 5-1 vote, with Councilman Mumpower voting "no." Councilman Mumpower said that expansion will be expensive and would not be able to support the motion.

Councilwoman Cape was supportive of the Chamber of Commerce's legislative agenda item regarding transportation and infrastructure.

Councilman Freeborn moved to support the Chamber of Commerce's state legislative agenda item regarding unfunded mandates. This motion was seconded by Councilman Mumpower and carried unanimously.

After a short discussion initiated by Councilman Mumpower, Councilwoman Cape moved to reprioritize and focus on the I-26/I-40 interchange and then perform the due diligence for the remainder of the project, with the community input. This motion was seconded by Councilman Freeborn. (No vote was taken.)

Councilman Mumpower moved to support expediting the planning and construction of the I-26 Connector Project. This motion was seconded by Councilman Davis and carried on a 4-2 vote, with Councilwoman Cape and Councilman Freeborn voting "no."

Councilman Freeborn updated City Council on the proposal to create an independent Airport Authority. He said that he has been working actively, with the Airport staff and the City and the County to move this issue forward. He said that they feel confident that they will have a recommendation to bring forward soon. They have drafted very basic language for legislation to be introduced this session in case the details with the City, Buncombe County and the Airport Authority can be agreed upon. If the details are agreeable, they wanted to act on it this session. Therefore, they have asked Representative Goforth to introduce the very basic legislation. They feel confident that the legislation will be amended once the details are agreed upon by the three bodies. On March 27, 2007, he will provide Council with a detailed update.

RESOLUTION BOOK 30 PAGE 277

VI. NEW BUSINESS:

A. RESOLUTION NO. 07-61 - RESOLUTION APPOINTING MEMBERS TO THE DOWNTOWN COMMISSION

Mayor Bellamy said that Larry Turner, member of the Downtown Commission, resigned thus leaving an unexpired term until December 31, 2008.

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City Council instructed the City Clerk to arrange the following interviews: Amy Merritt, Brad Galbraith, Hutch Kerns and James Kilbourne. Ms. Merritt was moving out of state and withdrew her application.

After Council spoke highly of the candidates, Brad Galbraith received 4 votes, Hutch Kerns received 1 vote, and James Kilbourne received 1 vote. Therefore, Brad Galbraith was appointed as a member of the Downtown Commission to serve the unexpired term of Mr. Turner, term to expire December 31, 2008, or until his successor has been appointed.

RESOLUTION BOOK NO. 30 – PAGE 276

B. CONSIDER DIRECTION FOR REVIEW OF SUBDIVISION REGULATION AND PROCESS

Planning & Development Director Scott Shuford said that City staff is requesting direction from Council concerning changes to subdivision requirements.

Staff would like to receive direction from City Council on several proposed or potential changes to the subdivision

requirements. The changes are scheduled to be considered by the Planning & Zoning Commission on March 7, 2007. Changes identified by staff include:

- Update application procedures for better consistency with other application processes
- Re-organize and re-format to improve comprehension and clarity
- Remove engineering/construction standards that will be separately covered in the Standards and Specifications Manual
- Add information regarding "Planned Community Act"
- Update definitions
- Cross-reference access standards covered in other sections of the City Code and Standards and Specifications Manual
- Revise and enhance enforcement processes
- Establishing standards for allowing gated communities as a conditional use permit
- Treating all subdivisions of more than 50 lots as Level III projects (conditional use permit)

While most of the changes listed above fall into general housekeeping or clarification categories, the last two items are more substantive and are discussed in more detail below.

Gated communities – Council has noted that there may be times in which gating a community may be appropriate. These may include when criminal activities may need to be addressed through CPTED measures or when connectivity is not necessary or desired (e.g., when an inappropriate cut-through situation would occur). These times are likely infrequent so staff suggests creating a conditional use permit process, allowing Council to consider any gating proposals. The conditional use permit process would involve all developments, not just subdivisions. Alternatives include: Outright prohibition; status quo.

Pros: Allows case-by-case consideration; allows control over gating

Cons: Additional review time for developer, staff, & Council; not prohibitive

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Level III – Subdivisions have been excluded from the Level III process because they primarily involve technical development standards and result only in the creation of lots that conform to underlying zoning district requirements. Council oversight was not regarded as necessary since the lot layout is required to meet existing lot size and width, street access and design, stormwater management, utility placement, and similar standards. The areas for significant negotiation are therefore much more limited than for site plans. Additionally, it may be legally-problematic to turn unpopular subdivisions down if all the road width, utility locations, and lot sizes meet highly objective standards, creating a situation where Council's ability to act is more limited than what the public expects. Public input occurs at Technical Review Committee (TRC) meetings. Staff estimates that Council would see five or fewer such subdivisions in a typical calendar year. Alternative: Status quo.

Pros: Allows case-by-case consideration; allows control over subdivision details

Cons: Additional review time for developer, staff, & Council; Council involvement in what is primarily a technical decision-making procedure; public expectations may not match Council's ability to manage subdivision design.

Other pending amendments related to subdivisions (and other developments) that may be of interest to Council will be brought forward separately. These include:

- **Open space requirements** – Scheduled for March 7 Planning & Zoning Commission meeting
- **Steep slopes and ridgetops** – Scheduled for March 7 Planning & Zoning Commission meeting
- **Retaining walls** – Scheduled for March 7 Planning & Zoning Commission meeting
- **Infill development incentives** – To be developed (will include regulatory incentives for cluster developments, green infrastructure, etc. using a "menu" system)
- **Level III incentives**

City staff recommends City Council provide direction regarding Council expectations for changes to the subdivision ordinance.

At the request of Councilwoman Cape, it was the consensus of Council to ask the Planning & Zoning Commission to re-evaluate the standard in the minor subdivision regulations regarding 1,500 feet or 1/4 mile between these kind of developments.

It was the consensus of Council to ask the Planning & Zoning Commission review the subdivision requirements for potential changes and make a recommendation to City Council.

Mr. Shuford said that in the absence of no recommendation (1) regarding gated communities, staff will put the more

restrictive language in the draft ordinance (a prohibition of gated communities); and (2) a requirement that large subdivisions be a Level III review. These will be reviewed by the Planning & Zoning Commission and then brought to City Council for consideration.

Councilwoman Cape moved to establish standards for allowing gated communities through a conditional use permit process. This motion was seconded by Councilman Freeborn and Councilman Newman.

Mayor Bellamy didn't support the gated community concept in that they divide our community.

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Councilman Freeborn withdrew his second of the motion made by Councilwoman Cape.

Councilman Newman felt this will send the development community a message to not count on getting a high-end gated community approved.

The motion made by Councilwoman Cape and seconded by Councilman Newman failed on a 3-3 vote, with Councilwoman Cape, Councilman Davis and Councilman Newman voting "yes" and Mayor Bellamy, Councilman Freeborn and Councilman Mumpower voting "no."

Councilwoman Cape moved to disallow gated communities. This motion was seconded by Councilman Freeborn and carried on a 4-2 vote, with Councilman Davis and Councilman Mumpower voting "no." Mr. Shuford said that this language will be put into the draft ordinance that will be reviewed by the Planning & Zoning Commission.

C. ANNEXATION POLICY DISCUSSION

Planning & Development Director Scott Shuford said that City staff is requesting direction from Council concerning the City annexation program.

Staff is preparing the 2007 annexation program and would like to receive direction from City Council prior to initiation of the first step in the process.

Asheville's ability to annex is and has been complicated by many factors, including an unwillingness to involuntarily annex throughout the 1990s, a water agreement that limited our ability to require annexation as a condition of service from 1981 to 2006, and the new Sullivan Acts imposed by our legislative delegation that also limit our ability to annex. As a consequence, Asheville likely has the most restrictive annexation rules for any City in NC. If the local act sponsored by Mr. Thomas and Mr. Goforth passes, Asheville will undoubtedly have the most restrictive statutory environment for municipal annexation in NC.

Some quick annexation history facts developed by the NC State Demographer's Office showing population growth due to annexation and natural growth of NC's 15 largest cities show:

- Charlotte annexed over 83,000 people between 1990 and 2000 and about 55,000 since 2000 – a total of 138,000 people (or almost 2 entire cities of Asheville).
- Fayetteville annexed about 60,000 people in the last 15 years.
- Raleigh has annexed ~84,000 people in the last 15 years.
- Wilmington (perhaps the city most similar to Asheville) – ~27,000 in 15 years.
- Concord – (a much smaller city – for now) - ~20,000.
- Jacksonville (also much smaller – for now) – ~38,000.
- Asheville - about 8,000 in 15 years.

Our annexation efforts since 2000 have increased the City property tax base by over \$300 million. We receive additional revenue in the form of sales taxes, Powell Bill funds, and fees. These revenues have enhanced our public safety staffing, provided much-needed capital investment in annexed areas, and improved the operation of our sanitation services, among other benefits.

Our strategic planning document provided to Council last year notes the effects of our daytime population and our tourist population on our infrastructure. It notes the challenges the City has faced and continues to face in addressing key service needs. It provides a key perspective about our failure to grow and its effect on our political influence in our region: "Had the Water Agreement not existed, we would have added around 25,000 new people to our population since 1981 through voluntary annexation to receive water services; it is interesting to

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think of the political implications of our City having half Buncombe County's population, rather than one third.”

City staff requests Council direction to staff regarding annexation.

Councilman Mumpower said that cities have to grow and there are a lot of ways to grow. One way is to expand the borders to sustain a balance of upper, lower and middle classes. We have a large upper class and a large lower class, in terms of social economic resources, and a shrinking middle class. He is against forced annexation in principle and practice. However, you have to either reach out and get people at the borders or you have incentives, like all other cities in North Carolina have, to make coming into the city attractive, e.g., lower water rates, lower sewer rates, fair tax rates, etc. Asheville has the worst of both worlds and that is not fair to the people who live in Asheville and who have to absorb the double tax rate. Our legislators should treat Asheville like all other cities in North Carolina and should have the same resources as other cities have to offer incentives for people to come in and get away from forced annexation.

Mayor Bellamy asked staff to look at creating incentives that we can use, e.g., the success of Biltmore Park came as a result of the City working with the developer on the front end on infrastructure. An agreement was worked out for voluntary annexation during the different phases.

Councilman Freeborn asked staff to do a better job in promoting voluntary annexation at the beginning of an application being received in the ETJ area.

Councilman Mumpower suggested that Council make a policy decision against forced annexation with the consideration that our state legislators provide us with incentive tools to facilitate voluntary annexation. Forced annexation is the default position for the City of Asheville and no Council Member likes it, takes pleasure in it, or enjoys it but there are no other alternatives.

Councilman Mumpower suggested a resolution be sent to our legislators stating that unless they give us the incentive tools to facilitate voluntary annexation, Asheville has no choice but to force annexation. Councilman Davis asked that language also be included in the resolution requesting a meeting with the legislators and the mayors of the municipalities in Buncombe County about what the future plans are for municipalities.

Councilman Mumpower was curious how the equation would change if the City had all the tools to create tax fairness when people come into the City. Mr. Shuford explained why he didn't think the equation would change that much in terms of relative difference between the City taxes and the taxes they pay in the County. He would have to get more information on that.

Councilman Mumpower asked what the other cities in the country do to make their voluntary annexations work. Mr. Shuford said that if they get the development at the stage where it's starting, they offer zoning incentives, the water and sewer services, potential economic development incentives, and possible tax incentives. It is very difficult to get a subdivision already in existence to voluntarily annex.

Mayor Bellamy was agreeable with the resolution to the legislators with a timeframe. The language could be if you don't want us to do forced annexation, then in this legislative session give us the tools that we need to facilitate voluntary annexations.

Councilman Newman supported asking our legislators to give Asheville the tools other cities have. The single biggest step that could be taken would be to allow Asheville to be able to work directly with the developers who are building on the edge of the City to come into the City

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and not put the families who move into the subdivisions later through this unpleasant process. But, with that said, it would be wrong for Asheville to take the only tool they have left, which is the State law that authorizes cities to look at new developments at their borders that do meet specific criteria, and throw that tool out of the toolbox. He felt we should look for ways to create incentives for voluntarily annex and also proceed with using the basic State law tool. The basic principle is that as areas urbanize they should be included in the municipal boundaries. He wanted Council to ask staff to look at areas they believe meet the statutory requirements for annexation and proceed with bringing that information to Council.

In response to Councilman Davis, Mr. Shuford explained the how areas are determined if they meet the criteria for annexation and the annexation process. Staff is prepared to begin that process at Council's direction. He agreed with Councilman Newman in that Council needs to very seriously consider removing that one tool with regard to expanding our borders. There are a variety of other things that could be suggested to the legislature that may be more palatable to them, e.g., perhaps changing the qualifications for what constitutes an urban area. But, in exchange for having a higher standard before you could bring in areas

involuntarily, perhaps there should be a counter to that, which is if there are lawsuits filed that are not successful, then the taxes become retroactive.

Councilwoman Cape explained how property taxes also give the community their share of sales taxes and Powell Bill funds (road fees). Her main concern is growth and how we keep expanding. We have developers who build right outside of our City and then sell proximity without the price which is unfair to the people who live in Asheville. State law says that cities are supposed to incorporate the urban areas into the city.

Councilman Freeborn moved to call our legislators tomorrow and ask them in this session to provide us those tools that other cities have to encourage to encourage voluntary annexation and if they do not act upon it in this legislative cycle that we pursue the most aggressive annexation policy going forward. This motion died for lack of a second.

Councilman Mumpower moved to submit a resolution to our legislative representatives requesting that they give fair consideration to supporting the creation of incentive resources for the City of Asheville to duplicate the model provided by other cities in North Carolina and in consideration of their actions that we initiate a moratorium on forced annexation until the end of the current legislative year. This motion died for lack of a second.

Councilman Newman moved to ask our legislators to allow Asheville to have the tools to work directly with developers in voluntary annexations in the same manner and using the same infrastructure and regulatory tools other cities have. This motion was seconded by Councilman Davis and carried on a 5-1 vote, with Councilman Mumpower voting "no".

Councilwoman Cape explained how we not only need the tools moving forward, but we need the tools retroactive as well because it's not fair to the new people coming in (using the new tools) when we have others at our borders that we could have been annexed, but were not.

Councilman Davis agreed with Councilwoman Cape that it is a land use planning tool that we need in the future, but it will leave gaps in our city boundaries. We don't want to lose our only annexation tool that we have now.

Councilman Newman moved to notify the City Manager that Council believes that the state's basic principle that urbanized area that meet objective criteria for urbanization should be included in the municipal boundaries is a sound principle and Council wants to proceed with considering areas that staff considers high priorities for incorporation. This motion was seconded by Councilwoman Cape.

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The following individuals spoke against forced annexation and some urged Council to let the citizens who are potentially being annexed to vote on the issue to be annexed or not:

Mr. Jerry Jensen, Biltmore Lake resident
Mr. Don Yelton, property owner in Asheville
Mr. Mike Thompson, Biltmore Lake resident
Dr. Mark Stultzo
Mr. Philip Murphy, Biltmore Lake resident
Mr. Ed Panek, Biltmore Lake resident
Ms. Leslee Kulba

Ms. Patti Beaver, representing the Council of Independent Business Owners, said that since City Council currently has an annexation process, she was surprised with Council's action requiring the voluntary annexation of the North View at Biltmore Lake be part of the development process.

The motion made by Councilman Newman and seconded by Councilwoman Cape carried on a 4-2 vote, with Councilman Freeborn and Councilman Mumpower voting "no."

Mayor Bellamy was taken aback how people characterized Asheville and described the wonderful acknowledgments Asheville has received and the many improvements that have taken place over the past year. She was dedicated to making Asheville a better place to live, work and play.

VII. OTHER BUSINESS:

Councilman Freeborn urged the community to contribute to Vance Elementary School for a 5th grade field trip out of

Buncombe County.

The following claims were received by the City of Asheville during the period of January 27 - February 22, 2007: McDonalds (Sanitation), Kerlee Johnson (Transit Services), Serena Hirst (Police), Alexis Giese (Streets), Henry S. Anderson (Water) and David Nard (Water). These claims have been referred to Asheville Claims Corporation for investigation.

VIII. INFORMAL DISCUSSION AND PUBLIC COMMENT:

Consolidation

Ms. Carol Keleher, Biltmore Lake resident, presented City Council with information on consolidation, which she feels is the solution to forced annexation.

Upon inquiry of Councilman Mumpower, Mayor Bellamy said that the issue of consolidation was brought up at the City Council retreat. City Council will receive an update by staff and will have the opportunity to discuss it.

13 Detroit Avenue

Mr. Steve Arpin, resident at 13 Detroit Avenue, urged City Council to extend the March 1, 2007, deadline from Building Safety Department to reduce the number of people living in his house, who are not related by blood or marriage, to five. He said that he is researching group ownership. He would like City Council to review the laws, e.g., people not living in outbuilding. He urged Council to contact the state legislators to request the State law regulating the number of people allowed to live in a home, who are not related by blood or marriage, be changed from five.

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Mr. Brendon Gallagher, Mr. Paul Feather and Ms. Terra Curry all spoke in support of Mr. Arpin's sustainable community and environmental awareness at 13 Detroit Avenue.

After a short discussion and after hearing Planning & Development Director Scott Shuford's explanation of the violations and City Manager Jackson's report, Mayor Bellamy asked the City Manager to meet with Mr. Arpin personally to discuss the matter. She noted that Asheville has worked very hard as a community to develop the Minimum Housing Code and if we make some allowances and not look at the bigger picture, we may not be doing the best thing for our community as a whole.

It was the consensus of City Council to extend the enforcement by the Building Safety Department for two weeks, noting that we may not be able to grant waivers to the State Building Code, but anything under City's control, we will extend for two weeks.

IX. ADJOURNMENT:

Due to the hour at which the agenda was concluded, there was no continuation of the closed session and Mayor Bellamy adjourned the meeting at 12:04 a.m.

CITY CLERK

MAYOR