

Regular Meeting

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

Absent: None

PLEDGE OF ALLEGIANCE

The Asheville Division of the US Navy Sea Cadets led City Council in the Pledge of Allegiance.

INVOCATION

Councilman Mumpower gave the invocation.

ANNOUNCEMENT

Mayor Bellamy asked that the community join together in a Day of Prayer on April 11, 2007.

I. PROCLAMATION:

A. PROCLAMATION PROCLAIMING APRIL, 2007, AS "CHILD ABUSE PREVENTION MONTH"

Vice-Mayor Jones read the proclamation proclaiming April, 2007, as "Child Abuse Prevention Month" in the City of Asheville. She presented the proclamation to Mr. Bill McGuire, who briefed City Council on some activities taking place during the month and the importance of preventing child abuse.

II. CONSENT AGENDA:

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

At the request of Councilwoman Cape, Consent Agenda Item "C" was removed from the Consent Agenda for individual discussion.

A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON MARCH 27, 2007

B. RESOLUTION NO. 07-80- RESOLUTION AUTHORIZING THE MAYOR TO APPLY FOR A GRANT AND ENTER INTO AN AGREEMENT WITH THE N.C. DEPT. OF TRANSPORTATION TO FUND THE TRANSIT PLANNING PROGRAM

From Staff Report: Summary: The consideration of a resolution authorizing the Mayor to apply for a grant and enter into an agreement with the North Carolina Department of Transportation (NCDOT) to fund the Transit Planning Program.

The Metropolitan Planning Organization (MPO) Section 5303 planning grant is a grant of federal and state funds renewable annually to be used for transit planning. This funding is in the amount of \$59,460, \$5,956 (10%) of which is required to be a local match. This will continue funding that has been received in prior years, it is not new funding. The last agreement for this funding was signed in 2001 and NCDOT has requested a new agreement. The money will be used to partially fund a transit planner position and for staff training.

Since the City of Asheville is the lead planning agency for the MPO, the City must approve this grant.

The grant revenue and the match of \$5,946 are currently budgeted in the Transportation and Engineering Department's budget.

Pros:

- This money helps fund an existing position.

- Approval allows \$53,514 of federal and state money to be received for transit planning.

Con:

- Funding requires a 10% match (\$5,956).

City staff recommends City Council approve a resolution authorizing the Mayor to apply for a grant and enter into an agreement with the NCDOT to fund the Transit Planning Program.

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C. BUDGET AMENDMENT TO AUTHORIZE THE PASS-THROUGH OF FEDERAL TRANSIT FUNDING TO HENDERSON COUNTY

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

D. RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A CONTRACT WITH CAROLINA CORNERSTONE CONSTRUCTION FOR THE RENOVATION TO THE PUBLIC RESTROOMS IN THE RANKIN STREET PARKING DECK

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

E. BUDGET AMENDMENT FOR THE RENOVATION TO THE PUBLIC RESTROOMS IN THE RANKIN STREET PARKING DECK

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

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

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

ITEMS REMOVED FROM THE CONSENT AGENDA FOR INDIVIDUAL DISCUSSION

C. ORDINANCE NO. 3455 - BUDGET AMENDMENT TO AUTHORIZE THE PASS-THROUGH OF FEDERAL TRANSIT FUNDING TO HENDERSON COUNTY

From Staff Report: Summary: The consideration of a budget ordinance amendment, in the amount of \$303,700, to authorize the pass-through of federal transit funding to Henderson County.

The Federal Transit Administration (FTA) applies a formula each year to allocated federal transit funds to each Metropolitan Planning Organization (MPO). This formula considers population, population density and transit system performance. The same formula is used to allocate resources between Henderson and Asheville as was used by the FTA to allocate resources to the MPO. This directly reflects the contribution each system made to the federal formula that determines the total transit funding that comes to the MPO.

By this formula Asheville Transit is entitled to \$1,324,300 of the \$1.628 million in federal transit funds appropriated to the French Broad MPO by the Federal Transit Administration. Of the funds allocated to the Asheville Transit System, approximately \$1,011,787 can be used to defray operational expenses.

In turn, Henderson County is entitled to \$303,700 of the \$1.628 million in federal transit funds appropriated to the French Broad MPO by the FTA.

The Asheville Transit System is the sole and designated recipient of all federal transit funds allocated to the French Broad Metropolitan Planning Organization (MPO). Therefore Asheville Transit will be the recipient of both systems' share of the federal transit funding and is responsible for passing Henderson County's share on to them, subject to the provisions of the Sub-Allocation Recipient Agreement approved by the council on March 13, 2007.

This action conforms with the City Council Strategic Operating Plan in Goal 2, Objective A, Task #2: Leverage outside funding to achieve multiple Transportation goals where possible.

Pro:

- Expended regional transportation opportunities to the citizens of Asheville.

Con:

- None identified at this time.

City staff recommends City Council approve a budget ordinance amendment, in the amount of \$303,700, to authorize the pass-through of federal transit funding to Henderson County.

Mayor Bellamy - Item "C" on the Consent Agenda, Councilwoman Cape.

Councilwoman Cape - I apologize that my glasses saw the "C" on our drive and thought it was the "C" agenda item. I was looking for the bathrooms.

Mayor Bellamy - I would just like to highlight that the City of Asheville is working with another partner, that would be the County of Henderson, to be able to provide some transit funds for them. So I'm really happy to have this on the agenda.

Councilman Freeborn moved to approve Ordinance No. 3455. This motion was seconded by Councilwoman Cape and carried unanimously.

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- D. RESOLUTION NO. 07-81- RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A CONTRACT WITH CAROLINA CORNERSTONE CONSTRUCTION FOR THE RENOVATION TO THE PUBLIC RESTROOMS IN THE RANKIN STREET PARKING DECK**
- E. ORDINANCE NO. 3456 - BUDGET AMENDMENT FOR THE RENOVATION TO THE PUBLIC RESTROOMS IN THE RANKIN STREET PARKING DECK**

From Staff Report: Summary: The consideration of a resolution authorizing the City Manager to enter into a contract with Carolina Cornerstone Construction for the renovation to the public restrooms in the Rankin Street Parking Deck and the associated budget amendment in the amount of \$117,330.

In February 2002, the public restrooms in the Rankin Street Parking Deck were closed due to continuous vandalism. Due to the lack of public restrooms in downtown Asheville, City Council directed staff to pursue the re-opening of the restrooms. In working in conjunction with the Police Department, Office of Economic Development, and Transportation and Engineering Department, the Parks and Recreation Department prepared bid specifications for the renovation. The construction will be done in accordance with the International Building Code and to standards equivalent to those of North Carolina Department of Transportation rest area restrooms, in order to keep the vandalism to a minimum. Estimated time of completion is the end of July 2007. Request for bids was distributed to various contractors. The following two contractors responded:

Carolina Cornerstone Construction	\$108,630
Buncombe Construction	no bid

Carolina Cornerstone Construction was the lowest responsible bidder at \$108,630. The bid process and Carolina Cornerstone Construction have complied with the Minority Business Plan.

The budget amendment includes the construction cost of \$108,630 plus \$8,500 for the necessary architectural design fees for a total of \$117,330. The Finance Department recommends that funding for this project be appropriated from the City's general fund balance. Based on current year-end revenue and expenditure estimates, staff anticipates that this appropriation will not have a negative effect on the City's fund balance reserves.

PRO:

- This project will provide public restrooms to the downtown Asheville in accordance with the current input from the Downtown Commission and the Downtown Social Issues Task Force.

CON:

- The City of Asheville will spend \$117,330 for this project beyond the current capital improvement budget.

The Parks and Recreation Department recommends City Council approve a resolution authorizing the City Manager to enter into a contract with Carolina Cornerstone Construction for the renovation to the public restrooms in the Rankin Street Parking Deck and the associated budget amendment in the amount of \$117,330.

Mayor Bellamy - Councilman Mumpower, did you have a question?

Councilman Mumpower - Yes, questions of staff. Mr. Richardson, are you going to be the point of contact on this?

Assistant City Manager Richardson - Councilman Mumpower, I believe we've also got with us folks from Parks & Recreation staff as well as Bruce Black from Transit.

Councilman Mumpower - Mr. Black would be great then. A couple questions. Frankly, this one needs to be highlighted anyway because we are creating something we haven't heard in a long time, at least not functionally had in a long time - that's a bathroom downtown and the successability of pretty much anybody who wants to treat it properly. I wanted to clarify a couple of things. The problem that we've had in the past with a bathroom at this location is that it was vandalized, and abused, mistreated in any other way imaginable. My understanding this is designed, built, for where it's low vandalism potential and then there is some other safeguards for building in place. The question is, what is those safeguards?

Transit and Parking Services Manager Bruce Black - It will be built to interstate standards, which would be a beginning to making it difficult to vandalize. The other safeguard in place is that it will be attended at all times when it is open.

Councilman Mumpower - And what now is the hours of operation?

Mr. Black - Right now the hours are planned to be from 7 a.m. until 6 p.m., six days a week.

Councilman Mumpower - And the City is paying to have the bathroom attended to?

Mr. Black - Yes, sir.

Councilman Mumpower - Mayor, I'll make a motion to approve. Can we do these agenda items together, Mr. Oast?

Mayor Bellamy - Yes.

City Attorney Oast - Yes.

Councilman Mumpower - Approve the agenda items D and E. Thank you Mr. Black.

Mr. Black - You're welcome.

Mayor Bellamy - Is there a second?

Councilman Freeborn - Second.

Mayor Bellamy - Any further questions or comments? Councilwoman Cape.

Councilwoman Cape - Mayor Bellamy, I would like to apologize. My glasses were crooked and this is the one I wanted to talk about also. I saw the "C" on the top and so I apologize for that. I guess my real concern comes from the fact that I know we need bathrooms downtown desperately. Last week we sat with real estate investors, or consultants, about the possibility of selling this building for redevelopment. So, the question that I have is that \$117,000 is a lot of money that we will be. Is this the only option since we have put this on the list to get bathrooms quickly. We haven't been given a price of the portable, or the bathroom stations, that could be moved to someplace else. Do we have a staff member who can give us some information on the cost of those enclosed stations that would maybe stay open past the renovation point?

Economic Development Director Sam Powers - We may need to do some kind of team effort on this Councilwoman. In the initial research, we looked at a number of options, including some of the self-contained units. We did gather some cost information on those. I think the ultimate decision at the time was the most cost-effective method, was to go ahead and renovate the existing space into the standards of interstate accessibility and vandalism-proof. What we would be looking at is at a minimum of probably several years before, if that piece of property that the bathrooms are going to re-open in, was offered for sale and someone

submitted a proposal that would be acceptable and that the City would want to pursue. By the time all of the qualifications were evaluated and a proposal evaluated, I think we are probably talking a number of years, and so, we would get several years of life out of that facility and then ultimately anything that would replace that facility, I think would be designed in a manner that we would still be able to have public restrooms available. I think it's clear that is Council's goals. So, we do have some short-term costs involved. I think in the long-run the public benefit and the cost would be recouped whichever way we go. If it is still a desire of the Council to get some other options, like these self-contained units for other places, we can do that. Stephanie, do you remember off the top of your head in a ballpark figure what we were talking about?

Urban Planner Stephanie Monson - Around \$100,000.

Mr. Powers - A similar cost.

Councilman Mumpower - I think you raise a good point. This is one of what, one of four properties that have been targeted for sale and I'm glad you raised the concern.

Councilwoman Cape - I mean, I know for myself when we talked about opening these bathrooms, I thought we were talking about a \$40,000-\$50,000. I didn't think we were talking about a \$100,000-plus endeavor to open two bathrooms. And I apologize that I didn't bring this to our attention sooner. But, with the cost, may I ask the question, what is the turnaround delivery cost on a \$100,000 stationary unit? Is that something you can get and have delivered in the same amount of time that we could have these two units renovated?

Mr. Powers - I can't answer that question.

Councilwoman Cape - Are they stock items that people have?

Ms. Monson - There are two different companies that make those units and I would have to do more research to answer that question.

Councilman Mumpower - The comment that folks who get this property are going to be supportive of a public restroom on that side, when you look at the dollars involved, I think there is a big question mark around that. I'm glad you brought this up. You're making others feel more strongly about it. But I'm going to withdraw my motion on that basis, because I don't believe we should invest this many dollars on something that may have a short shelf-life.

Councilwoman Cape - I want bathrooms sooner than later. But if for the same amount of money we can order some and have them dropped off a truck and put in place in two or three weeks, I sure would like to have the option of having that choice.

Mayor Bellamy - Councilman Davis.

Councilman Davis - Mr. Powers, let me ask. How far along are we on the process? I know we are a good way into it at this point as far as. Have we signed a contract or anything for the bathrooms?

Mr. Powers - No, sir. And Mr. Orr is here and can answer those specific questions. But we have not. By the same token, we're not into that process with the potential properties either. There has been no decision about whether they would be made available and at what time. So again, as we were looking at this bathroom option, at the time, that appeared to be the most cost-effective over a period of time, and this other potential option for real estate redevelopment came up after we were well into that process. It's certainly a valid concern. I think the access from the Rankin Street Parking Garage to Haywood Street would be reserved and would be available no matter how the property is developed in the future. That is a reservation that the City can make.

Mayor Bellamy - Councilman Davis.

Councilman Davis - I was just heading there with that comment. I agree with Councilwoman Cape. I think that sooner than later is better for the bathrooms, but I see that, in my opinion, there is a great opportunity here because even if we sell that building, we would probably maintain that access. I also feel that there is an opportunity that we could use that hallway for other things as well. It might provide some income. Councilman Freeborn and I and the Mayor were talking about the possibility of stalls or booths in there that might generate some income as well. I think we desperately need the bathroom facilities and this one is moving along at a pretty good speed. I hate to derail that at this point. So if Councilman Mumpower has withdrawn his motion, I would move that we accept Consent Agenda Items "D" and "E".

Vice-Mayor Jones - Second

Mayor Bellamy - Councilman Freeborn.

Councilman Freeborn - That is what I was going to do.

Mayor Bellamy - All right. And I do want to add this comment that, first, are there any other comments from Council? Councilman Davis you really said what I was going to say in that regardless of what is going to happen with the offices over there, that we will have to maintain access for the corridor to get to the Parking Deck, which is where the bathrooms would go. And, ultimately people want restrooms downtown and I think that it would be hard to take something that can come off a truck and place it anywhere downtown without a visible fight. I think this is a great alternative to be able to solve a solution that has been a problem for a long time. And I think that the company that we would want to sign a contract with will do a phenomenal job. I think the cost has to do with the quality of development that we want. This isn't just what we had before - just some stalls and a toilet. We've asked that they be self-contained and be able to address graffiti and vandalism in a way that it is sustainable for years to come. So I think that we are going to have to pay for it. Councilman Newman.

Councilman Newman - From your standpoint, you think if we put the restrooms in this facility, in the hallway, but we do decide to redevelop that property that it's very likely that where these are located would not be part of the redevelopment - would not be affected by the redevelopment and still have a useful lifespan for years and years to come, even with that property redeveloped? Is that what you're saying?

Mayor Bellamy - That's what I'm saying.

Councilman Davis - I don't know that we know that, but there's a good likelihood that it would be built around.

Councilman Mumpower - But to development that property, would you not have to tear it down?

Mayor Bellamy - I'm not sure.

Councilman Mumpower - I think you know you'd have to tear it down and if you tear it down then you destroy that point of access so it creates some real limitations on it.

Mayor Bellamy - That would be part of the process that if they tear it down then they have to put it back and it won't be at the City's expense.

Councilman Davis - And it's very possible that that would be in the RFQ. And I suspect that the value of that building might also include that restroom that has been improved. So we would have the option of accepting or denying in this process.

Mr. Powers - I think any development agreement for the redevelopment of that property could contain any stipulations that Council was interested in. And if that was, throughout any redevelopment process, that the redeveloper provide public restrooms, that certainly could be a part of the process.

Mayor Bellamy - I think it would not only be restrooms, it would have to have adequate access to the Parking Deck. Because I think we would not want to have a parking deck where we are used to having that connectivity and that connectivity gone away. Councilwoman Cape.

Councilwoman Cape - I would just caution us that redevelopment of a site like that could involve temporary lack of access through there. We would have access on the other streets. And my limited knowledge says that likely the bathrooms would be destroyed, even if they are rebuilt and put back there. The ones that come off, you know, these stands are not like port-a-johns. They are constructed, urban bathrooms that would be lasting through the renovation process. And that's just my concern too. It was just brought to my attention sitting there asking them to redevelop this building and then seeing this. This is not an insubstantial amount of money. Especially if we've got something that could sustain through the process for a similar amount of money. So I do have reservations that that will stay in place through the design process. And then we will be out of bathrooms at that point in time. As far as where we can put them, we've got spots in Pritchard Park that we are looking at re-designing. We also have a spot right next to the Rankin Avenue Parking Deck. There are places downtown that could be easily accessible on City property for the location of something like this. Those are just my reservations and I support getting bathrooms downtown 100%.

Mayor Bellamy - Councilman Freeborn

Councilman Freeborn - With these off the truck stalls, do they not require plumbing?

Councilwoman Cape - Of course they do.

Mr. Powers - They do.

Councilman Freeborn - So we have to put them in a place - we have to pay for plumbing. The logistics of getting something like that in place is going to take us a lot longer and it probably - I would even say, at the rate we're going on this, redevelopment of this property would happen before we would have the port-a-johns in place.

Councilwoman Cape - They're not port-a-johns.

Councilwoman Freeborn - Okay. They're great looking port-a-johns, but anyway, I really think, I know this is a lot of money, but this is one of the highest request needs for downtown right now. And I think we would really be putting a lot of people off by not going forward with this, thinking that we might potentially redevelop this building sometime 3-4 years from now. I understand your concern and I think it's well placed, but it's kind of silly for us to not take urgent action that is needed now because we might do something in the future.

Mayor Bellamy - Councilman Newman.

Councilman Newman - I guess I would just say too that I was just down in Georgetown, South Carolina, last spring with a little trip with my family and Georgetown is this quaint little town, historic downtown, and they had one of these facilities that we are talking about. I don't think I'd ever seen one before, but it really works very well and fit well into the historic downtown. I am persuaded by the potential cost end, but more so the fact that we may again lose the public restrooms downtown because it sounds like we are going to get people coming to us with a specific recommendation to do a Request for Proposals to redevelop this property. So it just seems like we are planning to do two different things at the site that are going to be, at least for a period of some time, are going to be incompatible. So anyway, I would support looking at this other option as well.

Mayor Bellamy - So it sounds like we have a motion on the floor and request to staff to get us some additional information regardless of the motion.

The motion made by Councilman Davis and seconded by Vice-Mayor Jones carried on a 4-3 vote, with Councilwoman Cape, Councilman Newman and Councilman Mumpower voting "no."

Mayor Bellamy - There sounds like there is enough support for us to get additional information on additional options for additional restrooms downtown. It never hurts to have too many restrooms downtown.

City Attorney Oast - Mayor, because that last motion didn't receive a 2/3 vote, it needs to come back.

Councilman Newman - Then can we re-vote on it again because I'll change my vote if it means that things can move forward. If we're going to do it, I'd just assume we go ahead.

Mayor Bellamy - Actually since you were on the negative part, somebody on the positive part of the motion would say that they would like to re-vote again, we can re-vote again. Councilman Davis, Vice-Mayor Jones or Councilman Freeborn, would you like to re-vote?

Councilman Davis - I'd like a re-vote.

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

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III. PRESENTATIONS & REPORTS:

A. ASHEVILLE DOWNTOWN COMMISSION ANNUAL REPORT

Urban Planner Stephanie Monson - Thank you Mayor and members of the Asheville City Council. I'm Stephanie Monson with the Office of Economic Development. As staff to the Downtown Commission I want to thank you for your consideration this

evening and I also want to give special thanks to Jan Davis who is a full fledged member of the Downtown Commission. I also want to thank the Mayor for coming to the Downtown Commission's Annual Retreat last month. She gave a lot of precious feedback regarding the possibility of a master plan for downtown Asheville. I want to share two things with you tonight. The first, you may have already seen. We sent it to you in February. It is actually the annual report of the Commission. The second thing is actually just an introduction. We do have a new Chairman of the Downtown Commission, Mr. Pat Whalen. He's going to come up and give a presentation to you tonight.

Mr. Pat Whalen, Chairman of the Downtown Commission - I'm Pat Whalen, Chairman of the Downtown Commission. Thank you for the opportunity of speaking to you. The Downtown Commission is excited about the work you have assigned to us because we believe downtown can help the City face and deal with a lot of its challenges. A little history is in order, I think. Your Downtown Commission was originally called the Asheville Revitalization Commission. It was called that for a reason. Your downtown was dead for 30 years. Our motto, as represented by downtown, was "that will never work here, don't even try." There were years of efforts to resuscitate downtown. One of the things we tried was aluminum - lots of aluminum and that didn't work. We also considered a giant downtown mall. And sensibility voted that down. Other communities talked about doing festival marketplaces, pedestrian malls and big bang projects like that. We did our own big bang projects, which were great projects and brought a lot of hope to downtown, but didn't generate a lot of people. Along with those big projects, local government provided great leadership in the 1980's and early 1990's, approving liquor by the drink for restaurants, the City approved sidewalk dining; the City built parking garages without which we wouldn't have the prosperity we have today; and keeping major public buildings downtown, which has been a big part of downtown's success. Local entrepreneurs responded to those efforts by government, but we were still missing people. That was then. Now we have a great livable downtown. We've discovered the missing piece which was having people live downtown, doing what downtown residents do. People responded to the opportunity and downtown became the fastest growing residential area within the City limits. In 1990, there were just 7 residential projects downtown and in 2005, there were 27. Obviously there are many more on the drawing board. People were tired of Anywhere, USA, and they responded to the small, diverse local businesses we have in our downtown and the pedestrian-friendly, eclectic place which our downtown is. People returning generated excitement and people built new buildings. Why does downtown matter to the rest of the City? There is good news about downtown and how does it matter to the rest of the City as well. The downtown is the beating heart of our community. It is also how outsiders judge us and it's a reflection of how we think of ourselves. Studies have been done showing the way downtown goes directly correlates with the whole region's economic health. We've seen it here and in 20 years we've gone from "that won't even work here, don't even try" to being named over and over again in the Top 10 and Top 20 lists for the country. Would any of that be happening if we still had that boarded up, abandoned downtown I showed you in the earlier slides. Numerous other studies have shown the direct connection between downtown vitality and prosperity for the region. There is a simple dollars and cents calculation as well. We did a study of the taxes generated per acre by various kinds of real estate use, ranging from undeveloped property in the County, which is generated at \$30 per acre to City residential generating near \$4,000 an acre. Biltmore Park - \$4,000 an acre and up to the Asheville Mall generating \$18,000 an acre. When we studied what downtown was generating, we had to change the scale. You see the Asheville Mall at \$18,000 an acre. The entire CBD is averaging over \$32,000 an acre. The City Center close to \$60,000 an acre. And, going up to downtown mid-rise projects, really over 10 stories, can generate over \$1.5 Million an acre annually in taxes for the City, County and our schools. That translates into 2 acres of downtown mixed-use generating the same tax revenue to the community as the 64-acre Asheville Mall. Or, one 3-acre project in downtown generating double the tax revenue of Biltmore Park's 183 acres. By 2025 our community is supposed to add 80,000 people. And if they move into downtown, they can be accommodated in approximately 350 acres, which is the size of that little CBD in the center of that map, or they can take whatever color your projector has converted that big splotch in the middle of the northeast corner of the County, which is over 68,000 acres. By citing people in our smart growth downtown, we also save on public infrastructure, we protect our air and water and conserve energy. We have an obligation as a community to be part of the national solution on issues like global warming and declining petroleum supply. This is how dense, urban development would affect our use of resources in this community if 80,000 people move here. This is how it compares to suburban development and the production of things like CO2, miles driven, gasoline used, and kilowatts consumed. I've talked about now and then - what about our future. On the Commission we feel like we have an opportunity, with good planning, for downtown to reduce the tax loads on our neighborhoods; conserve our land, air and water; help preserve our architectural heritage; improve our economy and job opportunities for our people; reduce unnecessary costs for infrastructure; and provide good homes for our people and good locations for our local businesses. But we may not be ready to take advantage of that opportunity. Our goals for the Commission this year are to (1) help the Council and the City develop an updated Master Plan for Downtown; (2) to complete our promised Phase 2 guidelines for the Downtown Design Guidelines which would help us meet those goals I discussed on the prior slide; and (3) to provide better communication and service to Council on pressing community issues. The last master plan for downtown was done in 1922. There are many vacant lots and underutilized property in downtown. The City has dozens of acres of property which could contribute readily to how downtown and the community develops. We have specific questions we need to get answered, which are not currently answered by any of our planning documents and would help us accomplish the goals I talked about earlier. We may need more staff resources to meet these challenges I have discussed. You can see in 1991 we had 5 staff equivalents when the downtown was valued at \$104 Million. Now in 2007 we are down to 3/4 of a staff equivalent and we have \$552 Million of value in our downtown. The new downtown buildings proposed for 2006-2007 equal the tax value of all the downtown buildings that have been built over the last 100 years. We need a downtown master plan which will require a master plan consultant. We

need to plan our physical environment to help deal with social issues, which we are all familiar with. And help Asheville's economic development to where people have good jobs and can afford reasonable livelihoods. The cost of hiring a consultant would help us plan the Center City we would like to have for the next 100 years would cost less than one moderately priced condominium downtown or less than one year's taxes on a well-planned 1/2 acre lot downtown. Downtown's vitality presents an unprecedented opportunity for this community. We would like to help City Council take advantage of that opportunity. We believe Asheville can be a model for the nation of what a small city can be.

Mayor Bellamy - Thank you and well done in 10 minutes or less. Thank you so much for that. Council, any questions for Pat or Stephanie? And we'll let Councilman Davis start since he is liaison.

Councilman Davis - Let me make a small statement before we begin the questions. First of all, Pat, great presentation. We were all worried about that with that many slides. It was very graphic to look at the buildings we all remember downtown and the aluminum fronts and stuff like that to see what we have today. This Commission works very hard and I think we had a very good retreat. There are some Commission members in the room and I would like for those folks to stand if they would. These people are very dedicated and they meet on a very regular basis and they form task forces. We appreciate the work that you do. And sometimes with commissions as often as commissions do, they feel a little under appreciated and a little over worked. And these people are doing a good job and they care about it. They love the downtown. When we came through our retreat, there was a little bit of angst. I think there is always a little concern when we start asking for consultants at this day and time, but I think Pat very graphically points out that it's a fairly inexpensive price to pay for something that we've only got one shot at. I think that's what his presentation is saying here. I've very reluctant to be a person who advocates consultants, but the realities are that we don't have the staff to make this City a better Center City. We react instead of being proactive. I appreciate what Pat said and appreciate the way you're delivered it and I think you make a very good case. With that, questions.

Mayor Bellamy - Councilwoman Cape.

Councilwoman Cape - Pat, I've very supportive of us doing this work. What do you think the time span is? What do you think the process looking like?

Mr. Whalen - Depending on when we get the go ahead, obviously, because we need to create a structure for what we expect from a consultant. This would be a public process. Here in Asheville we do very exhausting public processes which can be very helpful to the end product. I can see putting out an RFP for a consultant and structure that on the Commission with input from staff and City Council. I think that's something that can be done in a 3-4 month period. The process itself, again, we would want the consultant's input on that, but it could take anywhere from 6 months to one year. We really do, it has been since 1922, we have amazing changes in the community. We have a Center City Plan that was done by staff back around 2002, 2003. Back when that Plan was done, nobody projected things like that slide, where I said in two years were going to equal the tax value of everything that has been built in the last 100 years. Also that Plan depends on a Downtown Development Office keeping track of what's happened to meet the changes and there is no Downtown Development Office anymore unfortunately. So, we kind of have a new day and need a consultant to do that time period. I can't tell you off the top, but I'm obviously saying something like 10 months to 1.5 years. That is the period I'd expect.

Councilwoman Cape - And at the end of that 10 months to 1.5 years, the product of what we will receive, will it be just a plan or will it have - I guess this is one of the things we can decide - will it have components of, say, the forms, the ordinances that structure the plan. Will it be a framework for delivering the product of the plan or will it just be the plan and then we have to go through the delivery. How do we get the document to deliver the plan to us. Do you understand what I'm talking about?

Mr. Whalen - I do. And I really, I mean, my goal and my goal from talking to the members of the Commission, I think, are to get the answers to questions like these - specific answers to questions like these. I don't know whether that will include forms. It's really more of an issue of how we get these things in our downtown which I hope all the community will agree are the kinds of things you want in our downtown. And what we need is a specific roadmap for how to accomplish that, particularly as it relates to public property. I'm not talking about starting to have a million new zoning regulations for downtown. I don't think we need that. There is an issue for how the public space is dealt with so it enhances and helps us accomplish these things in our community. The plan really needs to be very specific about how it recommends things to the City on doing those things.

Councilwoman Cape - So since we already have the Downtown District, one of the products that can come out of it is defining what public space, and what we want the public space to be. And then could that be formulated into the forms of an ordinance or something for the downtown area?

Mr. Whalen - Certainly, if I misunderstood you. When you're talking about forms, we clearly have to end up producing some ordinances. I know City Council loves to wrestle ordinances.

Councilwoman Cape - I would just hope that as we finish this, that would be part of the deliverable is that we would have a product that could be then put in place instead of taking another year to create the product. Because if we are looking at more buildings this year, we're already going to be behind by the time we get the product.

Mr. Whalen - I think all of us on the Commission respect the need for speed on this, as well as thoughtfulness, and that it does not become some never-ending process that doesn't produce a product which immediately starts impacting how our downtown grows.

Councilwoman Cape - That would be my input on what I would like to see.

Mayor Bellamy - As we continue to question, I did want to highlight one thing for the members of the community who are watching, as well as for Council Members, that this presentation that we are receiving from the Downtown Commission is not everything they have done. They have given us their annual report and we get that monthly. The goal today is to hear what they want to do with their time for the City of Asheville. And, as Council Members, they need to hear if that doesn't work, or that works for us, or these are other things we would like to see you take on as a Commission. The goal ultimately is that we are walking together - the Council and the Commission - in the same direction accomplishing the goals that we would like for our City. And so, it would be good if we could give good feedback so we will know the next steps that we need to take to say what we want to happen, happen. Councilman Freeborn.

Councilman Freeborn - I really want to thank the Downtown Commission for bringing this forward. I think this is pretty timely. When I talk with downtown developers, a lot of what is being asked here is concerns they have. How do we address the amount of development that we are going to see in our downtown over the next few years? How do we address the public infrastructure aspects to that? And how do we do this in a coordinated effort so that it is not just hodge-podge development that most people may feel dissatisfied with by the end of the day? My question to the Mayor and Council is, at what point in time do we want to go ahead and show our support and get this process going?

Mayor Bellamy - I think articulating that support to move it forward will help me dictate the process. Like next week we are going to talk about the budget and where we are. So, we are going to do some one-time capital expenses, i.e., invest in this, or a consultant, and/or other things, but we need to make sure that staff knows some of the things we have in mind or would like to see on our list of potentially being supported by some of the successes we've had. Or, we can do it in a budget process which starts in May which is a little more detail and we can look at everything together. So, I just need to know what Council likes or doesn't like or doesn't want to do so we can lay out that process. And so I have one atta-boy and I know Jan is an atta-boy.

Councilwoman Cape - Mine was an atta-boy.

Mayor Bellamy - Okay.

Councilwoman Cape - Mine was an atta-boy and there are a couple of other things that I would ask as we do this RFP. What would be the items that would encourage and incentivize people to develop downtown? What could we offer as a City for that kind of thing, or in the areas we want them to come to, rather than neighborhoods or out in the peripheral. And secondarily, we've got affordable workforce housing there, and that's really important, but we also need to maintain affordable entry level entrepreneurial places. What makes Asheville so unique is that we have home-grown businesses and we do not just want to be replaced by everybody who sees the golden apple from Gap, or larger corporations. So maybe looking at something like a formula ordinance would be good for downtown. Those would be additional questions.

Mayor Bellamy - Councilman Mumpower

Councilman Mumpower - Mayor, is your question whether we want to invest in a consultant, or?

Mayor Bellamy - Yes, that will help. Say if you don't want the consultant, do you feel like it can be staff driven and you would like to see more staff. I need to know what is on your mind as far as I like the idea, but the Commission members should do all the work. That would help guide the next step for us to put before Council again.

Councilman Freeborn - There are two things that I think we really need to spend money on.

Mayor Bellamy - Let's let Councilman Mumpower finish.

Councilman Mumpower - That was the end of my comment.

Councilman Freeborn - Going off what Councilman Mumpower is saying, two things we really need to spend money on,

and I know they sound kind of weird because just like Jan was saying, we hate to spend money on studies, but if we spend our money on a study that produces a result and a plan that we can actually follow and provide good leadership in developing infrastructure in a community, I think that's what we need to spend our money on. A downtown master plan - we need that. We also need a new UDO. I think the community has voiced that both on the development side and our citizens. Those are two things we need to spend money on this year. And I really hope we can find the money for both of those.

Mayor Bellamy - All right. Councilman Mumpower.

Councilman Mumpower - It would be hard to argue with the success of our downtown. I think you can't argue about where that success came from. Some of it we had hands on and some of it - a lot of it - we did not. We're not the only city in Buncombe County or Western North Carolina that has succeeded. About every one of them are. Hendersonville, ..., Weaverville. They've all gone through essentially the same renaissance that we have and have essentially the same period of time that we have - smaller scale. But economics and the natural urban flow of this world that we live in played, to my way of thinking, a bigger part in our success than anything. The point of all that is, I don't think we have a good history of take consultant's reports and turning them into action. You are talking about a lot of money. If you look at the big pool of money, it's a small piece. But there are lots of hands reaching into that pool of money, wanting it for various good and maybe not so good things. So I would not speak in support of investing monies on consultant dollars at this point. If we can narrow our focus down a bit. We've been there before. We've done things, I recall from my experience, and I know this gentleman does and others. As you illustrate so well in your slide presentation, we've created these great things that people didn't come to. I'm not in support of creating new reports that lead us down places of marginal value and would rather see us narrow our focus before we consider spending city dollars for that purpose. Thank you Mayor.

Mayor Bellamy - Councilman Newman.

Councilman Newman - Great presentation. Thanks for everything you are doing. I guess I would also. I mean there is a whole bunch of different things in there, on your list of things to look at, and each one of them - or at least many of them are - you could have a pretty intensive study on each one of them. I mean, I'm very interested in the question of how can we create a world-class mass transit system for a small city. Really great question. That could be a study in and of itself. I do think that there are several of these items where there are some separate analysis going on related to them and we have hired and spent a lot of money to hire folks to help us evaluate the City-owned property. And the conversation we were just having about public restrooms, we are getting some initial information back from that. There has been a lot of thinking about the parking and there are several parking projects that are getting underway. And it looks like we are going to try to do one on some property we own. I'm open to doing what you are talking about, but I wonder if it could be narrowed down a little bit more. There are several of these items, maybe there are some other commissions, maybe like the Transit Commission who should take some of these pieces and develop it. Maybe there are some of these other things that need to be studied, maybe other folks are studying. We've got this Energy & Environment Commission and they are really looking hard at the green building sustainable piece. I just wonder, since there are so many things on the list, that maybe the Downtown Commission should do some of them, but it looks like a lot of work here and I wonder if it's biting off a little bit more than one commission needs to. There are two things I am real interested in getting folks thinking about. We know our community is going to grow. I know your presentation makes a great case for why encouraging much of that in the urban core as possible, if we are going to grow - that that's a great place for that to happen. So I definitely am very interested in, you know you talk about how many people could fit in there and how much growth have we really taken downtown. That is one piece I really would like to see more thinking on, more modeling on. How much infill development can our downtown really absorb? And how much as a community are we willing to absorb in the downtown? I think those are questions I don't see anybody else really wrestling with those questions, and so I think that is one piece, speaking as one member of Council, I really hope you will consider. I know you are wrestling with it and would love to see more drilling down on that. Just one other piece. I know that this is going to be an item that is going to be, we're going to hear a presentation about in I forget which Council meeting it is but in the near future, we are going to hear some feedback from people like the design center. Those folks who are looking at the I-26 Connector and how that interfaces with the downtown. And I'm sure a lot of your members are involved with that as well. I think that is just one other piece that I think is extremely vital and extremely time urgent because there are decisions being made right now and that are going to be made in the very near future that are going to create great opportunities for downtown or not. So, I don't necessary have a question, but I wanted to share that thought of how that process interfaces with your downtown - if there are ways to have synergy on that, I think that is a vital question for the future of downtown.

Mr. Whalen - Can I interject a response at some point, without interpreting the flow of the Council?

Mayor Bellamy - You go right ahead. That's quite all right.

Mr. Whalen - In terms of Dr. Mumpower's point, I do want to be clear that we are not talking about hiring a consultant to come in here and produce a master plan for downtown. As a consultant's job. We really want a planning consultant to help the Downtown Commission and our community produce that plan. So I don't see this as a consultant's product, I see it as the

community's product. In terms of your points, Councilman Newman, the issue of all these other commissions doing work and the design center. As far as we're concerned, from the Downtown Commission, those are wonderful resources to be a part of the process. We don't intend. This isn't our baby, this is the City of Asheville's baby and all the people who live here. We want to include those people. The design center could be a big part because a lot of this is talking about our downtown design issues. And in terms of transit and the things you seem are a lot to bite off, they are a lot to bite off, but all we're talking about however is the way we're going to deal with those issues in the Center City area. And obviously we want input from people who are wrestling with those things on a city-wide or regional-wide or county-wide basis as well.

Mayor Bellamy - Vice-Mayor.

Vice-Mayor Jones - Just short and sweet. Echo everything being great about the presentation and powerful frankly in terms of the environment and our future. I guess I saw that the investment in the consultant would be kind of this orchestrating of the resources that we already have and maybe leading them to deeper questions based on their expertise. So I don't really see it as an either/or. I see it as kind of a coming together. I am very supportive. I think we should be clear that we are not talking about a study, we are talking about a plan. It's a different situation. I also will be the first one to jump out there and say that I'm hoping in the budget process that we do look at increasing some staff for this office because I think there is a lot of wheels that are being spun and I'm wondering that if a piece of those we could be a lot more efficient with a little more investment in staff. If you just think of all the things that have come before us in the last few months in terms of downtown social issues, you know - the cleanliness campaign, and on. And we almost back-tracked today. After nine months about talking about these public restrooms, I really would have jumped straight over the dais had we done that, and I think you brought up good points. But I wonder if we had a little more investment in staff if we wouldn't be kind of recycling these questions up here, because this is not the best place for those kinds of operational conversations to be. Painfully worked out. So, I'm on board for the consultant and I hope we can get a good deal on it. I hope we can get started soon and would like to really look at getting some additional support for the Economic Development Office downtown. I will say too, that, I wasn't here to see all that, so those were powerful slides to see because I didn't experience that. My Asheville experience has been all what we see now. I'm relatively new to the area. But I do think that we owe some tribute to some people, and maybe there is some forum that we can thank those folks. I know Leslie Anderson was Downtown Development Director during a lot of this and there are some people in the audience that had a lot to do with downtown. Julian Price had a vision and there are names I don't even know that I think we probably need to recognize - I know Roger McGuire. I didn't have the privilege of knowing him either. So, as we think about going forward, I think we also need to recognize the people that have kind of launched us on our way.

Mayor Bellamy - Okay. I think before I call on Councilman Davis you brought up a good point about celebrating those who did help with our downtown. I think it's important to point out that Leslie Anderson did work for the City and she was very hands on at that time with the administrative offices over here and Doug Bean and the vision for downtown. And I think having that additional staff that could hold the hands of developers to be able to address the concerns of the community dealing with the transit issue, because at that time, the transit station that we have beside the Post Office was actually at Pritchard Park. So, we talk about issues with Pritchard Park, but there were significantly more issues at Pritchard Park at that time. And so, when we had the budget cuts in early 2000, we had to dwindle the staff downtown in the Downtown Development Office and that is what happened. That is why you saw that gradual decrease, thinking that eventually we would ramp up here at City Hall, but we've kind of stayed stagnant up until recently. So you do point out good points and I have that on my list to celebrate. Councilman Davis.

Councilman Davis - Lots of great points have been brought up and I think that it can be summed up very well from where Councilman Newman was coming from on Page 58 of the report. It's hard to see on the projection screen. But, the former Chairman, who has just recently stepped down - Peter Alberice - is in the room, came up with this flow chart. And it really distilled what we were talking about. This thing came up at the retreat and we started looking at it and the idea, very clearly, suggests that a master plan can be developed by using a consultant to incorporate these principles - the economic development end of it, physical environment and social issues. These are things we are wrestling with. It's too big to bite off by a volunteer commission or even to enlarge our staff. So, we felt like clearly the best way to do this would be the drilling down of what Brownie is talking about by the public, with the consultant at the helm. Because this is precious stuff and has organically grown over the years. This is stuff that happened because the good people, and a lot of them on this Commission, made an investment in the downtown and have brought it to where it is, but we are running out of those opportunities. And this is the point in time where we as a City are starting to look at not selling off public land, but perhaps leasing it or making it available for public/private partnerships and will have a great deal to do with the way the City looks in the future. That needs to be incorporated into what is going on out here with the private sector. And we have social issues, large things that are outlined and bullet-pointed here that this is just a big-ole project that needs to be approached sooner rather than later. And I think the cost of this depends on the scope of what we are looking for and I would hope that when we leave here this evening, we have given staff the idea of what we need in the RFQ to move forward with. The scope of what we are looking to do and what we are hoping to accomplish. So, I think it's real positive stuff and I think for anyone to give a big nay-say is not giving good thought to what needs to happen in this City in the future. We have limited resources out there to use and if we make wrong mistakes we are seeing big buildings come before us all the time and I think, if they build them, will they come? That's a big question at this point. I think we need to have some direction greater

than we are.

Mayor Bellamy - Council, it sounds like there is enough to move it forward. How about the next process would be for the Commission to really take what they have heard from Council and focus it and go ahead and take it to the PED Committee so you can help with guidance and have Council input and then we will go ahead and put in a process for the funding, and look at some of the pricing. Councilman Newman.

Councilman Newman - What is a moderately priced condo?

Mr. Whalen - A moderately priced condo would be between \$200,000 - \$300,000. We don't want to build an expensive condo, that would be a mistake.

Councilman Newman - I would just say that is a pretty big sticker shock for me. That's a lot of money. I would like to set some priorities and figure out if there is a more moderately priced condo on the market that we could potentially look at.

Mr. Whalen - We could buy a really, really cheap condo somewhere, but again, that 1/2 acre of downtown planned well pays for it in a year.

Mayor Bellamy - Thank you very much.

B. DISTRICT ATTORNEY'S OFFICE OVERVIEW

District Attorney Ronald L. Moore (presented Council with a packet of information) - I moved here in 1980 and watched the downtown change and it has been amazing, although the question then becomes do you become a victim of your own success, as you said. Whether it's your infrastructure or criminal justice system, which I'm hear to talk about. When you were talking about 80,000 more people in the next 20 years in our County, I just see what we are going to have to do over in the Courthouse. But at any rate, I sent some information over today. I did not put it on slides since I'm not that quite sophisticated. Next time I come, I will try to do that. But I do want to highlight a few things. There are 42 District Attorney's in the State. Buncombe County is a single county district. As of January, I'm allocated 13 Assistant DA's. And we've been very blessed to have gotten two this past year. We got a new judge so we started running another court to try to ease the crowding. The Fire Marshal has been visiting us over the last several months to tell us we need to do something with all the people in the hall. With all the people we are dealing with. We deal with tens of thousands of people on a yearly basis. We run anywhere from 3 to 8 courts every day. Today, I believe, we had 6 courts running. Tomorrow we'll have 5-6 running. So we are full at the seams and a lot of it is driven by population. The crime rate has gone down through the years. Asheville generally has a crime rate that is better than most of the towns in this state. You can't look at a one-year snapshot, you have to look at 3, 5, 7, 9 years. Because you could have 2 or 3 homicides, or whatever, that would change your rate over a one year period. I included a chart for you, marked Exhibit A, that shows a snapshot of the last 12 months, the number of people that have been sent to prison. It's the 8 most populous counties. Basically I took the counties with 200,000 or more people and then I looked at the population figures which are included in the back which I found on line. And you can see that we sent more people per capita than anyone in the state, amongst those counties. The state average was 322 and we're at 420. We sent twice per hundred thousand. We sent twice as many as Durham, for example. We sent more people, well we only sent 14 less than Mecklenburg County in the last 12 months. So we send a lot of people to jail. We send too many people to jail. We need more people to behave themselves. Deterrents are what we need, which I will talk about in a minute. We need more police officers to have more deterrents so that people won't commit crime. Then at the bottom of that sheet, I think you have received this before because I was talking to the Police Department awhile back about arrests and things like that, and in the Police Department's file you see our reports every year. All city and county police departments. I suggested to them that they look at comparing those per officer per municipality. And you can see that the City and County here are almost twice the average state-wide and they are better than any of these jurisdictions. So, we arrest a lot of people here. One of the things that I thought would be instructive, I was looking through a file and in fact a case we were supposed to try tomorrow, but the attorney has some illness and can't do it, is on Exhibit D. This is a typical drug arrest. Someone coming out of Pisgah View that we arrested that had ecstasy and mushrooms that wound up testing out. But you can look at this and see the amount of work for this officer who is assigned to the DSU unit put in. One, the observations he was doing. Two, the stopping of the car and waiting for back-up of the drug dog. The exchange he had with the person arrested. Taking him to jail. Processing that. Then writing this report. This is a very thorough report. A very well written report. This is not the only piece of paper he sent to my office, but it's pretty instructive. You can't go out and make an arrest every 5 minutes is the point I'm trying to make to you. I thought that might be of interest to you. The second document, Exhibit B, is we generally keep up with our habitual felons. We have a full-time habitual felon program that removes people who continually comes through court. January and February of this year, we sent 13 of them to prison. Trafficking, manufacturing (and that involves meth labs), in fact we sent one off yesterday. We sent 4. And then sexual assault, we dealt with 17. Fifteen of them who actually went to prison. Two were put on probation. I've included a sentencing chart. A lot of people don't understand our sentencing system we have in this state. We changed it in 1994. Formerly all our sentences were in years. You would give someone a 10-year sentence for

breaking into a home and the concept back then, the criminologist said we need to give people incentives so that every day you serve on the front end you get a day off the back. That would be 5 years in the middle. You could get extra time for working in the kitchen or on the road. So, when I first started practicing law in the 1980's, you serve 40-45%. So, if you got a 10-year sentence for breaking into a home, you would serve 4-4.5 years. By the time I became DA in 1991, because of the overcrowding in prisons, you were serving about 15%. So you were serving 1.5 year on a 10-year sentence. There was a public outcry about "you're lying to us, you're giving people 10 year sentences and they're back home in no time," so we set up a Sentencing Commission in this State that looked at structured sentencing, which is what we have now. You can see the sentencing that we classify our felonies A through I. And then you see columns going across the top and that is how many points you have. Basically, that is your prior convictions for the most part. So whatever class of crime, whatever column you land in, that is where the judge has to choose a defendant's sentence. Cases were fed into a computer and they can tell you in this State how many breaking and enterings we will have on an average year. How many cases of selling cocaine. How many forgery and utterings. How many homicides, etc. We have a lot of breaking and enterings. That affects more people directly than any other property crime. We have a lot of drug sales, drug possessions. So they fed it into a computer and so breaking into a home is classified at the lower end - Class H. Someone breaks into your home now, where formerly they could get 10 years, now they may get 6-8 months. And they will do all of the 6-8 months, but that's all they are going to do. Misdemeanors, down at the bottom, where we basically decriminalized misdemeanors, other than drunk driving or serious misdemeanor assaults. I know from time to time you pass ordinances here in town and those are Class III misdemeanors. You can look at the very bottom of the page and see what our legislature has said what happens with a Class III misdemeanor. Up at the top, where you see the letter "C" or "I" or "A", "C" is a community punishment, "I" is intermediate, and "A" is an active. Unless there is an "A" they cannot go to jail. So if you pass a misdemeanor Class III, unless you have five or more convictions, you cannot even go to jail and a lot of people we deal with, especially people who are itinerant, we don't really know who they are or if they came from another state, we will not be able to pull up their misdemeanor record. So a lot of times, we don't have the ability to give them a minute in jail. Sometimes when you have misdemeanors, I know that are of a concern to you about things that go on downtown. This year, we are paced to handle 4,000 cases in Superior Court. That is where we try our most serious cases. Probably another 1,000 in probation. So, roughly 5,000 cases. That is not people. That is about 2,000-3,000 people in that range. But we have 47 weeks of court generally. And so, you see we do 100 cases a week basically, which is 30-50 people. That is every week. Now if we have a murder trial that lasts 3-4 weeks, you can see that we have to catch up on that to stay our average. That is the kind of situation we are dealing with. We do 50-75 jury trials a year. Last week I think we had a couple of jury trials. This week we'll get one tomorrow, because of the sickness of the attorney we won't be able to do. We have a lot of programs that we try to defer people from going to prison, whether it's drug court, worker's check program, deferred prosecution. We're always looking for other alternatives. The jail today has 452 people. I look at the list every morning. It's probably designed to hold 375-400. Prison has 38,144 people in prison today. We are about to have a crisis in prisons again. We had one in the early 1990's. That was when we started turning people loose serving small percentages. The legislature passed a bill to build 6 prisons back in 2000. The last two went on line last year. They were all 1,000 bed prisons. We have 80 prisons. They hold about 38,000. We are very inefficient in this State on how we build our prisons. It came out of the depression era where prisons were employers in small counties. We have prisons that only hold a few hundred people still in this State. We don't have 1,000 prisons, except the newest ones. To build one of those prisons is \$85 Million and to operate it is \$25 Million. But there are no more prisons on line. The prisons next summer will be, if nothing else happens, will be 1,100 over capacity in this State. There is pressure on the legislature, there are bills introduced. I was talking to one of our representatives today. There is going to be pressure on the legislature to reduce sentences instead of being 6 months for entering into your home, it's going to be 5 months. Not because it's good public policy, but because unless they build some more prison beds, that is where we are going to be. So, the criminal justice system is in a mess in terms of the funds. Now everyone wants us to lock up everybody that comes to court, but it costs. The criminal justice system is expensive. If you want people to go to jail, then sentences don't need to be cut and prison beds will have to be built. If we don't do anything in our State, then we are going to have more people than we have room and there is going to be pressure for the legislature to let folks out. That is where we are. There is an article in there that is pretty good. And there are some other items in there. The bottom line is that we have a lean criminal justice system. Most places have one prosecutor for 10,000 people. In this State, it's about 18,000. But that's by design. If you give us more people and more courts, we will send more people quicker to prison. And that has not been the public policy of this State. But at any rate, I do want to brag on the police here. I know they get a lot of criticism from time to time. I've worked with them now for 16-plus years on a daily basis and I've been out at night with them for 16 years, in the middle of the night in housing areas. The DSU group is one of the best things you've done here. They are out everyday. And they are lying in the bushes, they are spraining their ankles when they are chasing people, fighting people. The report I showed you was written by one of the DSU people. It takes time, it takes energy, and it takes commitment, but it's a tough job. People are going to - as long as drugs come into this country and I'd say 90% are coming across the border is my observation based on what we have seen the last 4-5 years, we are going to have drug issues. And deterrents is one of the best today is getting more officers that are highly visible. We will continue to process what they bring to us. Our labs are backed up. The SBI lab we were getting reports 8, 10, 12, 14 months and now we are down 8 to maybe 4 months. We have done so well in the western part of the State, when I went to a DA meeting a couple of weeks ago, the lab director from Raleigh said that "we're sending cases to you from Raleigh and Wilmington." They send 1,500 cases up here to be tested. And I told him I didn't think that was a very good idea because the lab personnel will have to go to Wilmington to testify and they will lose a day or two worth of work. That makes no sense to me. But those are the kinds of things we deal with everyday. But I do want to say the officers work hard and

they do a good job here. Asheville has a good police department and they need to be supported and they need to be supported financially. Most of them have to work second jobs. They need to be supported with enough help to get the job done. Our City has grown. Our County has grown. And that is what I've observed. When we deal with so many more people in the justice system because so many more people live here. I wish I had more time, but I'll entertain questions.

Mayor Bellamy - Thank you so much. Councilwoman Cape.

Councilwoman Cape - Thank you very much. Part of the question I have, and it sounds like you said, first of all I want to know if you say we have a better crime rate. Does that mean we have more or less crime.

Mr. Moore - Less. Our rate is lower.

Councilwoman Cape - I must say though it really is a sad state of affairs that we send more people to prison. In my heart, there are children, many of them, that have gone in the wrong direction and so it is a larger social issue than just putting them in prison that we have to look at addressing in a more constructive way, hopefully. And that's up to us to start being productive with how we help kids stay in school. All of those things. How they have hope outside of what they have right now. Go ahead.

Mr. Moore - The three themes we see everyday is the lack of education (people's lack of job skill), drugs and alcohol, and peer pressure. And a lot of those relate to the young people as they are coming up and the directions that they take. I had to go up and handle a matter in juvenile this morning. This kid is 16, so he is now out of juvenile if he commits more crimes. He was going to Swain recovery. He had a drug and alcohol problem. I sat there and talked to him and his momma and his attorney for about 15 minutes in the back room and said "look, you're on the wrong path. I see how this works. This is your last chance, or you will spend most of your adult life in prison."

Councilwoman Cape - You know I sit on a lot of economic development boards and the conversation exists that we have people coming here that want to hire people. We have good jobs that people can have if they stay in school. And so it is incumbent on all of us to help kids understand that and help see that there is an opportunity for them, other than fast food job, or a life of crime. The thing that I am curious about and have had some conversations about people and would like to have more conversations are the ideas of alternative sentencing processes that have. I know the drug court is one and it works real well. But we have some of these misdemeanors. I'm a part of the Police and Citizen Advisory Committee also and we had a presentation by the Police Chief one day and he said one of the hardest thing is when there is no consequences. The police stand in the face of crimes all the time and people are almost like, essentially spitting on them, like who cares, what's the big deal. Nothing is going to happen to me. As a mother of a teenager, I know there has to be consistent consequences. If you're going to have laws, there has to be some consequences. The consequences you have to offer are eroding because of the pressures. What are the options for this community? I know in other places they have citizens courts, not courts like vigilantes, but where there is community consequences. If you are a consistent litterer, you spend time picking up. First of all you come to grips with your part of this community and you face your peers and then you spend a lot of time picking up litter. What are our options? What are other things we can do as a community?

Mr. Moore - I've always wanted a pile of cow manure outside the Courthouse, you can move it from one circle to the other, but I didn't think you'd let me get away with it.

Councilwoman Cape - We have lots of little things that can be done.

Mr. Moore - I've probably talked to 200 kids a year and their mothers and their attorneys trying to decide what to do to see what alternative there is. I go through the night court line and will have some 16 year old who has done some reckless act and will talk to them and try to develop a sense of what is the appropriate thing. I will send them to wash fire trucks. We wash a lot of fire trucks in this town. But misdemeanors were so decriminalized. Formerly misdemeanors would carry 6 months to 2 years, but when we changed the system, we put it at such a low end, that there is not much of a consequence. The only people you can really put into alternative sentences at the misdemeanor level, are people who care about having a record. We probably put 600-700 people a year on deferred prosecution where generally first time offenders, low level crimes, if they will go and do community service, then we will dismiss their case. People who have been around crime, they don't really care about a low level misdemeanor because they know that the State of North Carolina does not treat it very seriously.

Councilwoman Cape - So, I guess I would ask that if we could partner in any kind of way. If the City of Asheville could be a partner in any kind of way in helping this situation of making. If we are going to have laws on the books, it's counter productive for there to be no impact to breaking those laws.

Mr. Moore - I was on the Sentencing Committee for six years. And you could ask that a law be changed. Arson was one I always tried to get upgraded because we treat it as a property crime and I view it as a crime of violence because you don't know if

somebody is in the building, you don't know if a firefighter is going to get hurt. And Wilma Sherrill would introduce bills to try to raise it. And the first thing that happens is any criminal law bill in Raleigh goes to the Sentencing Commission and they use their computer, they know how many arson cases there are, how many burning of churches, whatever, and they will tell you this will cost - I think in the case of arson, it was five hundred and some prison beds over 10 years. So every time you try to make a change, that is the first line of inquiry in Raleigh is how many prison beds does this equate to. So that is the difficulty. Here, like in many communities, is our jail is full. So a judge has a tough time taking the next 25 litterers and saying, if they qualify - it's not putting them in jail, it's the threat of putting them in jail. That is where you get the deterrents. The threat. That is where you get people to comply with alternatives. You have to have a threat - the carrot and the stick if you will.

Councilwoman Cape - You can't make people comply with alternatives without jail being the other option. What if their consequence is you do the ... well, I guess if you don't do the alternative, then you go to jail.

Mr. Moore - Right. And you have to have people who care about that or that it is a realistic threat. In a lot of cases and in a lot of people that we deal with that are doing these types of things, they don't have the instinct in them to walk over to the trash can - they are going to throw it on the ground. That's just the way they are. So, I don't have an answer for you.

Councilwoman Cape - You paint a pretty hopeless picture.

Mr. Moore - Well, for low level misdemeanors, there is not a whole lot of consequence.

Councilwoman Cape - What about as we move up? I'm also thinking of the young kids who get into this entry level drug dealing. What are the options for this community? Understanding the legislative restrictions we have. Are there any options for us to partner with you in alternative sentencing, community justice, whatever those tools are? Are there any options for us?

Mr. Moore - I think job programs are one thing this town has always needed. For kids in the summer, especially.

Councilwoman Cape - Before they get into trouble.

Mr. Moore - Or even if they have gotten into a low level the first time. A lot of kids that are first timers, we put on deferred prosecution and basically deferred prosecution is a contract between me, the defendant, their lawyer and the judge that if you do these things, whatever they are, sometimes it says stay in school, sometimes it says work, sometimes it says get your GED, do community service, whatever it might be, pay restitution if somebody has broken a window on your car. We may give them deferred but we wanted them to repay you. You can certainly add go get a job, and if they do that then the case is dismissed and they get it off the record. They can still go into the military or they can still go to school in certain places that might not let them in if they had a record. Again, it's a carrot and a stick. There has to be somebody who cares about the consequences we have.

Councilwoman Cape - Well Mayor Bellamy, towards that end, if there is anything that we can do to participate, I would like us to explore that.

Mayor Bellamy - All right. Councilman Mumpower.

Councilman Mumpower - Mr. Moore, thank you for being here. We appreciate your efforts on our behalf. In terms of things that we can do, you mentioned more officers on the street as a deterrent.

Mr. Moore - Yes, sir.

Councilman Mumpower - We know better than most of us in this room that as these officers arrest people and find them back on the street quickly, they find themselves recycling the same folks over and over again. It's a morale buster and it leads to complacency on all levels. This is not a good guy, bad guy thing. It's not about lazy DA's or lazy judges or lazy officers. It is about a dysfunctional system that you articulate very well. What can we do? You mentioned job programs, more officers. What can we do to tackle what amounts to a paralysis. When you look at what you are really describing here, a system that has to rely on plea bargains, a system that can't provide prompt justice because, as you suggest, can't provide accountability. What can we do to tackle that paralysis of a system that is funded as roughly 48th in the country. I think you have a good quote, we have a 1980 criminal justice system in the year 2007. What can this City Council do to help you and your compatriots up there in that system to address that?

Mr. Moore - Before I respond to that, can I say, given when we arrest people repeatedly before we get to deal with them, bond in our state and our nation is not to keep people in jail. That is not what we're allowed to do. Now if we can show they are a danger to the community or it's first degree murder, then yes, we can keep them in. But all other crimes, the purpose of bond is for people to show up in court. So that is the argument that is made in court on a daily basis - "My client has lived here all their

life. They had 4 crack rocks, or whatever it is. Judge they are not going anywhere. They have a job at Bojangles or McDonalds, or working in a park facility or whatever it might be. They are a good person other than this one little deal, so let them out." There was a case a week or two ago, a guy you wrote an e-mail about. I forget his name - Jeffries I think, that had been bonded out four times. And I got to looking at his stuff and we got him in prison last week. And the feds are going to pick up his new case. So he's going to be history, I believe. But the point being, he had made an \$8,000 bond on the case we handled a week or two ago, so whether he had \$8,000, or whether somebody put their home up, or whether he had 15% to pay a bail bondsman, I don't know. But that is the continuing problem we had. That is one of the reasons we started the habitual felon here. We started it full-time in January 1997. The legislature gave me an Assistant DA and the County gave me an investigator here to help with violent criminals, habitual felons and things like that and we started a task force. So we do 40-60 a year and those are people that had come through continually and to define a habitual felon under our law, they are coming through the Superior Court system at the felony level for the 4th time. They have committed their first set of felonies, then maybe one felony, then maybe breaking into 10 homes, it may be breaking into 50 cars and we deal with those cases and that counts as one for habitual purposes. So after they have done that three time and they are on their fourth trip we can treat them as a habitual and any felony will do. So most people who go off as habitual felons here are going for 70-90 months, somewhere in that range, opposed to going off for 6, 8, 10 or 12 months. So it's at that level that we can finally do something with them. But, it's not much of a deterrent, especially we're about ready to get out of the group, but for awhile where you had the old time criminals who were used to getting 20 years and serving 8 or 10 or 7 or 8, and then they get these 6 month sentences, I think we almost create a situation where the system became a joke for those going to prison because 6, 8, 10, 12 months was no big deal. They'd been used to serving 5-10 years and at their age they are out now. But with the young kids coming up, 6, 8, 10 months, it's almost a right of passage for some of them, I think. But, if you want a justice system that functions, you have to adequately fund it. We spend more on indigent defense than we do prosecution. We have a public defender's officer here that does a good job, but they only handle 40-50% of the cases. I handle a 100% and I only have a couple more Assistant DA's than they have public defenders. So that is the type of. We are spending a lot of money there. We have inefficient prisons. I mean there is a whole overhaul. If we don't look at, and I think we are going to put together a group in this County to look at our system. We've got to look 20 years out because we are going to have 80,000 more people. We are building the jail next door that probably will be full in a matter of months, because people are making bond and because there is no room at the inn.

Councilman Mumpower - Your point. We did put it on our legislative agenda asking our local delegation to look as hard as possible on this issue. You're behind on technology. Most of your basic computer system is what, the early 1990's now?

Mr. Moore - They have spent a little money. If they spend a million or two here and there we do great with technology - that's how cheap it is in terms of the overall. But again, the number one issue that I see is the prison beds are full, the pressure to lower sentences, and the citizens will have less respect for the system if we do it again, after telling them in 1994, "trust us, truth in sentencing, here is what we're going to do." Breaking into your home hasn't suddenly become a 6-month punishment as opposed to a 7-month punishment. That is no way to run a criminal justice system.

Councilman Mumpower - One last question and I think this Council will continue to encourage our legislators to look at this roadblock to the functionalism of our criminal justice system. What percentage of felonies are plea bargained?

Mr. Moore - Probably 98%. We try about 2% of our cases and if we have 4,000 cases, we try in this County 50-90. Some years it may be on the high end, some years it may be on the low end. So we try state-wide, nation-wide somewhere between 1.5 and 3% of our cases. That's all we can try. Again, I have 47 weeks of Superior Court. We try a 3 week murder case and there we go.

Councilman Mumpower - I offer no criticism with that question. It just points to the fact that maintaining accountability for people that get involved in criminal activities is tough under that system and by the time we catch up with so many of these young people, they are career criminals. And they are lost.

Mr. Moore - What you also have to do, and we did this when we got in 1991, prior to my getting in there were not that many trials. We tried 11-12 murder cases the first 12 months I was in office. I only had 6 Assistants then. But we established that we could and will try you. And we still do that. Habitual felon. If you don't plead guilty, we are going to try you or you can take this 70 or 80 months, or whatever the number is. And so, we will go through a cycle with sex offenders the same way. You can see on the sheet I gave you we had some people who got 300, 400, 500 months. They had a trial and the judge ... them where we offered them 100 months or 200 months, or whatever the number might be. You have to be willing to try them which we are, but you also have to figure out what the settlement value is on a frequent occasion because we can't try everybody.

Councilman Mumpower - Mr. Moore, one last question. If I did crack cocaine and was caught and convicted, how many times, an estimate, would I have to be caught and convicted to do jail time?

Mr. Moore - Depends on what judge on what day. But if you look at the chart on "C", if you sell crack cocaine, it is a Class

G. If you have never been in any trouble before, you're in the first column and you could get 16-months sentence active. But, as a practical matter, very few people go the first time. If you get caught a second time, you will move over a column and face a couple extra months, but if that is the system we operate under. Again, the judges get memos on how many people are in jail. I have probation officers come in from time to time who tell me in one ear that they would like to see this person be revoked, but because of the pressure from the Probation Department out of Raleigh, when they staffed it with their supervisor, they were told to say, let's do this to give them one more chance. We have one of the highest revocation records here. They are always telling me they are getting memos, nasty-grams, about Buncombe County because we revoke a lot of people. That means a lot of people got on probation, but we were able to revoke them. Again, we handle 4,000 cases at the Superior Court level every year.

Councilman Mumpower - Thank you Mr. Moore.

Mayor Bellamy - Vice-Mayor.

Vice-Mayor Jones - I just want to talk a little bit about, because there are so many levels and we've kind of touched on the hardest core today as well as those folks who are just entering the system and how do you either deter them from entering, or you stop it before they are so far down. I definitely heard you say that one piece for you of deterrents is more police officers. I'm actually of the mind-set, in addition to obviously, this visibility of our law enforcement, that there are environmental - and nothing is perfect, and nothing is fail safe - but if we are investing in some environmental deterrents, for example, and we know a lot of them. Like the red light camera. That ultimately deters people, I think. If they are getting caught by traffic, and you can kind of say that traffic is not the most important thing. We know, this is what we know. We might not like it. As someone who likes her little glass of wine from time to time, if we raise the alcohol tax, we know that drunk driving goes down. This is what we know because of the correlation between people being able to get alcohol. Anyway, in addition to more police officers and better computer systems, that we've got to put all these pieces in our brain. A silly thing, and I think one of the reasons why my house has not been broken into is that I always have a dog. My house is not fool proof, but if somebody is going down the street, my house is going to be less attractive. And I'm not saying that everybody go out and get a dog. But you see where I'm going. How can we as a community start talking about these other types of deterrents to help you out and to help our pocketbooks out? That is part one. What do you believe, in your experience, are effective deterrents for some of the entry level problems that we are seeing?

Mr. Moore - Starting kids with a good education. Probably the number one thing we see. And I've gone into schools and mentored under Big Brothers and Big Sisters. I have a young child and I've been in the schools a lot. You have kids that come to school that nobody is helping them at home and you can see some of them coming. I coached Little League Football and Baseball when I first moved here. I had two kids that I saw that I thought would be violent. They are both in prison. One for murder and one for drug dealing and assaulting people. But you could see them at age 10 or 11. That's where you have to start in the community with the little kids. A couple things you said, one, you said the drinking and driving. Buncombe County has one of the highest conviction rates in the State. We have for 40 years here. We're always in the 90% range. You are talking about raising the taxes. Well, go to Raleigh and try that and the lobby will be all over you. There should have been a no-brainer to take the pseudo-ephedrine off the shelf to do something about meth labs. And we had a tremendous fight down there. I was down there several times and the merchants were against it because they made so much money. One of the examples they gave was at the truck stop in, I think, Oklahoma and how much money they made versus selling Coca-Cola vs. selling ephedrine or pseudo-ephedrine products. It was unbelievable. So the merchants fought us even though you talk about a public health crisis that the meth labs and things like that that we had. So, it's very hard to do that. I think invest in education is the number one thing. I think to try to get kids trained, if they are not going to go to college and get their Masters, then do the vocational. We almost made a turn away from that in the State, and I think we are catching ourselves and go back and have a vocational track in school. I think education is the key to the drug and alcohol issues and the other education in those. I think people smoke cigarettes less now than they used to, so it's got to be an educational issue.

Vice-Mayor Jones - Can I have one follow-up? How do you feel about, if we raise the driver's license age to age 18? How do you see that as potentially a deterrent?

Mr. Moore - To punish the parents.

Vice-Mayor Jones - Here's an idea. If you have to do driver's license in school, thus then you have to stay in school.

Mr. Moore - I think the driver's license is one of the biggest carrots you have to try to get people to do right. But we have situations now where we have graduated license and I have people in my office all the time, the kid did something dumb, and if they are convicted of it or it's not reduced, then they are going to be back in the situation at age 17 than they were when they first got their license. And that is only going to punish the parent who needs to carry them to this activity, or whatever it may be. So, it's not an easy answer, but that is one of the few things. So, if you raise the age of staying in school, then that is a whole another issue.

Vice-Mayor Jones - Do you think that would help?

Mr. Moore - I don't know. I didn't have the time to think that out fully. But, those are the things, whether it's staying in school, your license or whatever. We will have to adapt how our schools are run if we are going to keep people in school. Some people drop out, I think, because they get so far behind.

Mayor Bellamy - I agree and I think for me I don't have any questions about your statistical data that you presented. The numbers are what they are. But what you said hit home to me. The education of our students. That, more than anything, is important. If you look at the statistical data of how many drop-outs we have in the system now in the jail right next door, you would be astounded at home many high school drop-outs we have. For me, it's an SOS to our community. We have to have more mentors and tutors assisting our school system to help educate our kids.

Mr. Moore - And another thing we did when we cheapen their sentences, people that we send for selling crack cocaine for 6, 8, 10, 12 months or for breaking into a home, they don't stay long enough like they used to, to get into the vocational or the education, or even some of the drug treatment. You know we have the DARE program in prison, but if you have a 6 or 8 month sentence and you spend two months in jail before you got there, you don't have time to go through the program. That is one thing we have done with the way we have done our prison system. We don't help people like we used to. When I was in Law School, I went to ... prison a couple of times, right across from the State Fairgrounds. There you could get your certificate to be a barber, you could learn to be an upholster. You could get out and make \$10-\$15 an hour upholstering furniture. So we had vocational programs, but now, because so many people stay for such a short period, and the majority of people, we sent 28,000 people to prison in the last 12 months in this State. Well probably 20,000 of them have circulated out in a 1-1.5 year or so. So they are not staying long enough for us to do much with them in prison, other than we go there and feed them 3 meals a day and they get out, not necessarily coming out with a plan on behaving themselves.

Mayor Bellamy - I think our emphasis should be definitely on police officers, but prevention and education of our citizens. If you have an hour a week to go tutor a child, invest it. You are paying for it sooner or later in either your time or your taxes. I think it's important that people to look beyond themselves and get back to helping someone else - help our children. I think that's important. To create jobs for our teens. That's imperative that we have more jobs for our teenagers in this community so our teens can have some resources to be able to see themselves in a different light. Councilman Newman.

Councilman Newman - We have a population of folks who get arrested, not just 2, 3 or 4 times, but about 40, 50, 100 times. And in some cases, most of them are not real serious things.

Mr. Moore - Drunk and disruptive would be number one.

Councilman Newman - Things like that. Obviously not the most serious crimes in the community. We are trying to do things to really address some of the root causes of that - mental health, plan to end chronic homelessness, and things like that. We are trying to be proactive on that. And seeing some initial good results from it. But for folks who are not taking some of the options the community is presenting them, is there, in light of the situation with the crowding in our prisons, is there any way that we can hold those folks more accountable than we are now?

Mr. Moore - I've been practicing law here now for 26 years or so, and we have always known who the 10 or 15 people are who will, when it's cold, they are coming to jail. Or after their check comes the first of the month, they spend it and they are going to come and be with us. And what happens with those people is, they get down in the court after 10-15 days, whenever their case cycles through and they are going to plead guilty and get time served. And then we are going to see them again in a week, or the next first of the month when the check comes. That is a fact of life that we have seen again and again. What you do about that, I don't know I have an answer for you. The mental health issue is another whole ball of wax. Our State, because they just did away with the system without being prepared to deal with the consequences, we have more and more people we're seeing that have issues that have to be dealt with and have no where to deal with it. So I don't know that I have a good answer for you there. But you are going to have a group of people, at least historically it would appear, that are going to spend 200-300 days a year in jail because they are going to get arrested and get out for a week or two - maybe until their check comes and they have enough money to go buy some alcohol. We all know who they are.

Mayor Bellamy - Vice-Mayor are you going to wrap it up for us?

Vice-Mayor Jones - I really appreciate your being here even though we're all like, what can we do. We want to help and we want to be part of the answer. But I did want to end on one positive note that is coming out of your office. There is more than one positive thing, but this is an initiative with Assistant DA ... with Gang Prevention and specifically kind of getting to the groups that are having the early indicators of gang activity and trying to get to them on the front end. So I think that is a fabulous collaborative effort and so I think she deserves a lot of credit for her leading that up and hopefully that is something we can

replicate in a lot of other ways to get to the issues we are talking about.

Mr. Moore - She worked very hard and has spent many hours. In fact we talked about that before I came over here today. You know, just like you are talking about a consultant to give you a plan, if we had somebody who had the time to write grants all the time you could get lots of money like this. But, most of us have full-time jobs and having time to do that is a problem. But this is one that she took on, on behalf of my office, and did very well. Thank you.

IV. PUBLIC HEARINGS:

A. PUBLIC HEARING TO CONSIDER AN AMENDMENT TO THE UNIFIED DEVELOPMENT ORDINANCE RELATING TO REVISIONS TO THE ADJUSTMENTS TO ENFORCEMENT PROCEDURES

This public hearing was originally scheduled for Council consideration on March 13, 2007, but was continued to this date at City staff's request.

Councilman Freeborn - Is there a reason why we need to delay it? What was the justification?

City Attorney Oast - If it's what I think it is, there were some fine-tuning that needed to be done at the Planning & Zoning Commission meeting so it went back there first. Then the Planning & Zoning Commission took action on it at their last meeting and it will come to you on May 8. There were a couple of changes that were recommended. Most of them came from my office.

At staff's request, Councilman Mumpower moved to continue this matter until May 8, 2007. This motion was seconded by Councilman Davis and carried unanimously.

B. PUBLIC HEARING TO CONSIDER THE CONDITIONAL ZONING FOR THE PROJECT IDENTIFIED AS EAGLE'S LANDING LOCATED AT 179 JOHNSTON BOULEVARD FROM RM-6 RESIDENTIAL MULTI-FAMILY LOW DENSITY DISTRICT TO RS-8 RESIDENTIAL SINGLE-FAMILY HIGH DENSITY DISTRICT FOR A 26-LOT SUBDIVISION WITH SETBACK, LOT SIZE, AND OPEN SPACE MODIFICATION REQUESTS

ORDINANCE NO. 3457 - ORDINANCE TO CONDITIONALLY ZONE THE PROJECT IDENTIFIED AS EAGLE'S LANDING LOCATED AT 179 JOHNSTON BOULEVARD FROM RM-6 RESIDENTIAL MULTI-FAMILY LOW DENSITY DISTRICT TO RS-8 RESIDENTIAL SINGLE-FAMILY HIGH DENSITY DISTRICT FOR A 26-LOT SUBDIVISION WITH SETBACK, LOT SIZE, AND OPEN SPACE MODIFICATION REQUESTS

Urban Planner Alan Glines said that this is the consideration of an ordinance to conditionally zone property located at 179 Johnston Boulevard, for the project identified as Eagle's Landing, from RM-6 Residential Multi-Family Low Density District to RS-2 Residential Single-Family Low Density District/Conditional Zoning for a 26-lot subdivision with setback, lot size and open space modification requests. This public hearing was advertised on March 30 and April 6 2007.

From Staff Report: This site is located in the city limits on the west area of the City. The surrounding neighborhood is zoned residential multi-family low density (RM-6). Until recently the two parcels were a single property with a smaller home on it. The request is to change the zoning to residential single family high density (RS-8) to provide a cottage-style major subdivision. The plan will provide 25 home sites. Five of the residential units will be sold at an affordable rate. The existing home will be relocated and will be remodeled to follow the patterns provided with the project. None of the units in the development will be larger than 1,500 square feet. Most of the units are being offered at between 1,000 square feet and 1,200 square feet. A small number of units will be offered at 700 square feet. The affordable units will be the one and two bedroom units. Although three bedroom units will be offered, the majority of homes will be two bedroom units. The site plan provides a cul-de-sac design and a sidewalk along one side of the street. The developer is seeking modification from City Council for several items: lot size, side setbacks and a reduction in open space. The lots require a minimum of 5,000 square feet in the RS-8 District. Of the 26 lots in the subdivision proposal, 20 of them will need a modification of the lot size. Although one lot requires a 1,600 square foot modification, the average request is for about 600 square feet. In addition the development will require a side setback from the six feet standard setback to five feet. This will accommodate the placement of the homes and driveways. Finally, the developer is seeking acceptance to provide 4,200 square feet in open space instead of the 13,000 square required in the UDO (500 s.f. per home). Without the open space modification two additional lots will be required to meet this number and so two fewer affordable units will be provided. All in all the reduction in lot size, side setbacks and open space modifications are not expected to diminish quality of life in the community. The houses are smaller by design and fit well on a smaller lot.

A number of site elevations are provided with this proposal. The homes are smaller cottage style plans that should blend in well with the character of the area. The developer has committed to use quality materials including hardi-plank and shingle, board and batten siding, standard wood shingles, heavy bracket and porch detailing and asphalt roof shingles. Some of the

windows, trim and details may vary from that shown on the elevations. Some of the market rate homes may be modified from plan to allow such things as an extra rear addition to accommodate individual preferences. In addition some stand alone rear garages may be added for some of the market rate homes but will meet setback requirements. The units will range in size from one, two, and three bedroom units. If approved, the elevations will govern the style of the homes built in the development. Major deviations from the elevations provided in the presentation will require reconsideration by reviewing boards.

Staff has reviewed the request and feels that the plan provides a positive addition to the community. The units will be smaller and will fit in with the surrounding area and provide residential units at lower cost. Five of the units including the existing home (to be relocated and refurbished) will be offered at an affordable rate. The Comprehensive Plan encourages proposals to provide workforce and affordable housing in the community. This plan does that. The designs of the homes will be compatible with the wider community. The Technical Review Committee (TRC) reviewed the project and noted minor items to be revised on the plan. A sidewalk section along Johnston Boulevard will require additional grading. The developer has the option to provide a fee in lieu of sidewalk if approved by the Engineering Department. The open space for the development will be provided on lot 24 on the plans. The three large existing trees located there will be preserved as a part of the open space amenity. These trees are the most substantial trees on the entire project. The developer has committed to providing variety within the development by limiting the number of any one plan that is built and also by not allowing the same design to sit side by side to another. By varying the materials the development should take on a 'craftsman character'.

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

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

The proposal has been reviewed by the TRC and will not endanger public health or safety.

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

The development of the site will alter it. The current site is open and rolling without a lot of existing vegetation. The development is compatible with the topography 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 development is expected to building value in the community through home ownership.

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 development with its single family cottage homes will be in harmony with the surrounding neighborhood. On the whole the proposed lots will be smaller than neighboring residential lots but the houses will be of similar scale.

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.

This type of residential in-fill development with affordable units is supported by the comprehensive plan and other official plans adopted by the City.

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

Utility infrastructure is in place to support the development. The property is not located on a bus line but there is a line a few blocks away. The property is located in the City limits and will be served by police and fire protection.

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

The development is not expected to generate undue traffic or create a traffic hazard.

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

This conditional zoning request was recommended for approval by a 6-0 vote by the Planning and Zoning Commission. Two people spoke at the Planning & Zoning Committee meeting, with their comments centering on technical issues related to the project.

Pros:

- In-fill development is recommended in City adopted plans.
- The project provides affordable units.
- The housing units are compatible with the surrounding area.
- The modifications requested for development are not expected to negatively impact quality of life.

Cons:

- Open space is limited for this development.
- Sidewalk infrastructure is needed in areas like this to provide connectivity throughout the community.

The Planning and Zoning Commission voted 6-0 to recommend approval of the conditional zoning proposal with project submittal materials and the TRC staff report included as conditions. Staff concurs with that recommendation.

Mr. Glines - Thank you Madam Mayor and members of City Council. We are reviewing a project of two parcels along Johnston Boulevard, totaling about 3 acres to be rezoned to Residential Single-Family High Density/Conditional Zoning. Another image is Exhibit B. There is a single home on the site that is mostly cleared and there is a few existing trees here which will stay for open space. The plan is for a cul-de-sac development with 25 house sites. A total of 26 lots. One of the lots will be used for open space. The project includes street trees and the usual subdivision products, including sidewalk and City infrastructure. The lots in an RS-8 District typically require a minimum of 5,000 square feet. Of the 26 lots in the subdivision, 20 of them are requesting modification of the lot size, averaging of about 600 square feet. In addition the development will seek a side setback from the six feet standard setback to five feet. Finally, the developer is seeking acceptance to provide 4,200 square feet in open space instead of the 13,000 square required in the UDO (500 sq. ft. per home). Without the open space modification two additional lots will be required to meet this number and so two fewer affordable units will be provided. All in all the reduction in lot size, side setbacks and open space modifications are not expected to diminish quality of life in the community. The houses are smaller by design and fit well on a smaller lot. I have some details about the house sizes and the scale. It is a cottage sized subdivision. None of the units are larger than 1,500 sq. ft. The average will be 1,200 sq. ft. The smallest units will be 700 sq. ft. There are about 800-900 sq. ft. units. One and two bedroom units. There are lots of amenities such as front porches and detailing that will encourage strong community. As I said, five of these units will be provided at an affordable rate. That will be the one and two-bedroom units. It provides a community need with affordable housing. Another note about the details and materials used. The developer has committed to use quality materials including hardi-plank and hardi-shingle, asphalt shingles for roof, board and batten siding, and other details to make those homes comfortable and attractive with the craftsman and character. Staff has reviewed the request and feels that the plan provides a positive addition to the community. The units will be smaller and will fit in with the surrounding area and provide residential units at lower cost. Five of the units at an affordable rate, including the existing home (to be relocated and refurbished). The Comprehensive Plan encourages proposals to provide workforce and affordable housing in the community in an infill design setting. The designs of the homes will be compatible with the wider community. The Planning & Zoning Committee did review this request and recommended approval with a vote of 6-0 and staff concurs with that recommendation. Thank you.

Mayor Bellamy - I will open the public hearing at 6:51 p.m. Are there any members of the community wishing to address Council on this particular item?

Mr. Tom Overholt, developer and builder - I just wanted to ask for your consideration because we are going to try to do affordable, which we all know is very, very difficult in this day and age with the cost of land. We are trying to keep it not upscale, but not cheap so that people can feel proud when they drive in their own community. At the same time, we can't offer quite as much land wise, and what-not, to be able to make the numbers work, so this is profit driven, but it's not profit driven to the point we know there is less money in this type of project. So we are having to scrimp and save with different items we are asking for, like reduced lot size and still be able to get a decent sized house by ... and setbacks. We ask for your consideration on this tonight.

Mayor Bellamy - Thank you. Any other members of the community wishing to speak on this matter? All right. I'll close the public hearing at 6:56 p.m. Council, any questions, comments and/or a motion? Councilman Freeborn.

Councilman Freeborn - Quick question for Mr. Glines. Where is the closest bus stop to this location? How far away is it? Do you know?

Mr. Glines - Let me check on that.

Mayor Bellamy - It's probably either Deaverview or Leicester Highway.

Councilman Freeborn - Is it more than 1/4 of a mile?

Mr. Glines - I think it's less than that. I think there is one on Bear Creek. I might need to verify that.

Mayor Bellamy - I don't think the bus runs down Bear Creek. Actually it doesn't go on Bear Creek. I think it's on one street over, but you may need to check on it. Oh we have someone with a bus map. Just give it to the City Clerk.

Mr. Glines - Sorry, I don't know that answer.

Councilman Freeborn - That's okay. I should have checked that before I came in today. I apologize.

Mayor Bellamy - The bus may go up Bear Creek and cut to Deaverview.

Mr. Glines - ... one of our maps in City Hall. I didn't note the line, but I did note that we had one not so far away. At least I felt that way about it.

Mayor Bellamy - It would be the one that goes to Camelot and Deaverview and further out to the DMV - that bus route. That will be my route on "Strive Not To Drive Day" and I don't have my car because it's at Jan Davis'.

Assistant City Manager Richardson - It looks like Deaverview or Patton Avenue would be the closest.

Councilman Freeborn - Okay. Thank you.

Mayor Bellamy - Any other questions? Councilman Mumpower.

Councilman Mumpower - There is no one here from the public to raise questions about this development. It looks like a nice thing. It's pretty intense though. It's not a dramatic zoning change, but still the level of density is much more dramatic than the surrounding environment. Any flags that have been brought to your attention by the folks who live in that area?

Mr. Glines - No. One neighbor just had called to ask about infrastructure for stormwater and stormwater controls in this area. And a second neighbor did call to comment that they wished they were going to build larger homes, for property value sake. I kind of explained that with the housing need in this community for affordable housing, that this was a great product and it should add value through home ownership.

Councilman Mumpower - Mayor, on that basis I move for the adoption of Ordinance No. 3457 to conditionally zone property located at 179 Johnston Boulevard, for the project identified as Eagle's Landing, from RM-6 Residential Multi-Family Low Density District to RS-8 Residential Single-Family High Density District/Conditional Zoning, along with the requested UDO modifications, subject to (1) the site plans and conceptual home elevations included as conditions; (2) The project shall comply with all conditions outlined in the TRC staff report; (3) All existing vegetation that is to be preserved must be clearly indicated and dimensioned on the site, landscape and grading plans; (4) The building design, construction materials and orientation on site must comply with the conceptual site plan and building elevations presented with this application. Any deviation from these plans may result in reconsideration of the project by the reviewing boards; and (5) This project will undergo final review by the TRC prior to issuance of any required permits.

Mayor Bellamy - Is there a second?

Councilman Newman - Second.

Mayor Bellamy - Any further questions or comments? Councilwoman Cape.

Councilwoman Cape - I just have a few. Alan, could you outline just what the differences are. I want to talk about that here. If that RM-6 on 3 acres we could have 18 units, with multi-family dwellings typically, right?

Mr. Glines - Correct.

Councilwoman Cape - Okay, so that's a difference. We are going from 18 to 27 individual units.

Mr. Glines - 25.

Councilwoman Cape - 25 units. We are going from lot sizes, in the RS-8 from, the lot size is typically 5,000 and we are going down to 600 sq. ft.

Mr. Glines - On average they are seeking a request to about 4,400 sq. ft.

Councilwoman Cape - So they are asking us to take away 90%. I guess, I'm seeing some complications in that, I mean, I love a good plan for putting houses in a nice place. And we're also going from 13,000 sq. ft. of open space down to 4,000. So we are putting a lot of people in a very small place and we're reducing the amount of open space we are giving them for compacting them together to virtually 1/3 of what we have decided is decent, open space for people to live around. Those are the areas where I'm having concerns about. Where is the closest park? One thousand, five hundred foot square houses are not necessarily a couple. We are looking at families. Where are the kids playing? On the street? That's a lot of houses for a street. Where are the parks? Where is this trade-off that makes this work?

Mr. Glines - I just wanted to point out that most of the lots are within 4,000 sq. ft. of the proper size. They are about 4,000 sq. ft. lots. Most of them.

Councilwoman Cape - You said they were 600. Oh, you're dropping 600. Okay, I thought that was pretty ridiculous. I didn't see how that was working.

Mr. Glines - There is one lot that is 1,600 sq. ft. of modifications, meaning that it's about 3,400 sq. ft.

Councilwoman Cape - So the modifications are what you were taking off. Thank you.

Mr. Glines - In the RM-6 District too, the other thing that is a challenge is there is a lot frontage requirement that is greater than 50 feet. It's 70 feet. And I'm going to look at staff to make sure that is the correct amount. I believe that is right. So, on a street like this with a fairly shallow width, it's not so wide, you would really be cutting out - you would have to have 70 feet on the street and you would have a lot fewer lots than 18. So we are still cutting back because RM-6 has a different standard.

Councilwoman Cape - I like it but I am a little concerned that there is too much with very little space. If we could take one or two out and put a children's play area. Someplace where the kids could go. The houses are 10-feet apart?

Mr. Glines - This is probably on par with some of the best west Asheville neighborhoods with the scale of lots.

Councilwoman Cape - I didn't hear that part. I'm sorry, what?

Mr. Glines - There's some great neighborhoods in west Asheville that we could probably study and see what the density is and how tight the lots are. Some of them go deep. The only modification from a visual standpoint won't be side to side, but the depth of the lot. Most of the lot depths are shallower which is why they are smaller than 5,000 sq. ft. They don't go 100 feet back.

Councilwoman Cape - So it's the side to side. But once again.

Mr. Glines - It's the dept of lot. The side to side works pretty much as a standard RS-8.

Councilwoman Cape - Where is the closest place for kids to play? People to play? I mean where are the kids playing? In the street?

Mr. Glines - I guess the closest place for kids to play is the old elementary school, which is up the street. It's just a little ways up.

Councilman Freeborn - And are there sidewalks?

Mayor Bellamy - There are no sidewalks.

Mr. Glines - They will do a sidewalk for their front. I know that's a challenge on Johnston Boulevard is sidewalks in general in that part of the community. That part of the community was sort of one of those recently annexed areas. I don't know exactly the year, but I imagine we are still catching up with community infrastructure.

Councilwoman Cape - This is the first generation of kids that will not outlive their parents because of diabetes and lack of outside exercise and ability to walk to school. I'm very supportive of doing infill. It creates a healthy neighborhood. I would really like to see one place, besides the street, for the kids to play in. Something. Is there anything the developer perceives that he would be able to offer us? I do have a question of what affordable means. Affordable is a tricky question. What are the five affordable? You're basically saying if you take away a few lots, we lose the affordability. Can you tell me what the difference between the affordable and the non-affordable homes are?

Mayor Bellamy - If we could have the developer up. And the first question that was presented, could we take away one to two houses for open space for children.

Mr. Overholt - Let me address the open space first. If this was a 20-lot subdivision, no open space would be required. And if you consider that the average subdivision has 3-bedroom homes and usually the bedroom dictates the size of the family - that would be 60 bedrooms. This average is 2 bedrooms. So we have 25 homes with two bedrooms average and that impact would be 50 bedrooms. We are actually having a less impact than your ordinance that is already in place.

Councilwoman Cape - So, we have ten less kids and the size of the yard differences.

Mr. Overholt - The size of the lot is about a 5,000 sq. ft. lot. I don't know what all you can do approximately. It might be 4,500.

Councilwoman Cape - Is there not a place to put a playground down at the corner or down at the end?

Mr. Overholt - A playground could be put on the open space lot?

Councilwoman Cape - Where is the open space lot?

Mr. Glines - The open space lot will be right here. It's where the existing trees are located that we are going to save.

Councilwoman Cape - So there is an open space lot? Would you consider building a playground for these kids?

Mr. Overholt - Well, I would have liability issues. The City has not agreed to take it if I build it.

Councilwoman Cape - Is there going to be a homeowners association in this subdivision?

Mr. Overholt - Probably. Because there is some common space.

Councilwoman Cape - So could the homeowners association. I just want a place to get the kids out of the street. You know, it's a little thing, but.

Mr. Overholt - It's a 5,000 sq. ft. It's a regular lot. It's probably the best one because it has the best trees.

Councilwoman Cape - About twice the size of this room?

Mr. Overholt - It's much bigger. I'd say it's bigger than that.

Councilwoman Cape - That would be a nice place. I didn't see that lot and I apologize for not seeing that sooner. That's good.

Mr. Overholt - As far as a playground and even maintenance of the lot, it looks as though it will fall back possibly on the homeowners. That hasn't been decided at this point.

Councilwoman Cape - That's okay. I guess they can decide as a community if they want to build something or just let the kids play outside. There are sidewalks getting to that?

Mr. Overholt - There are sidewalks. The sidewalk is across the street and comes around half-way. I believe the sidewalk was put over there. It could be put on that side of the street probably without any problem. It's just that the topographical is more difficult. There is a tree we are really trying to save that is close to the street. We actually moved the street trying to save it and it would be much more difficult to put the sidewalk on that side.

Councilwoman Cape - What about a crosswalk speed-bump kind of raised thing? Before we get there. If not, people are going to ask us to put it in.

Mr. Overholt - It's a very short street.

Mr. Glines - Do you mean off-site like on Johnston Boulevard?

Councilwoman Cape - Oh no, I'm talking about right across from that lot to your connecting sidewalk on the other side so

that everybody who is walking on your sidewalk can cross the street. One thing we looked at on Burton Street is a raised sidewalk crosswalk. It kind of serves the purpose of slowing people down and seeing who is walking on the crosswalk much easier. What did they say, \$6,000 for something like that. So the idea is that you are building a sidewalk on one side for topographical. Is there some way we can make it a safe crossing for kids to get across the street? I don't want to micro-manage your project, but these are the kinds of things that makes folks - here's our opportunity to say, can we make it a nice place to live. We are putting a lot of houses in here.

Mr. Overholt - I'm not sure what it would take to make it safe. I believe the cars will be going very slowly. It's like one block long. I have a feeling that the kids are going to be in the street whether we ask them to or not. I don't anticipate this being a large children community because of the type of response I'm getting. It's a lot of single people that have been contacting me and wanting to be put on a list and what-not. It's people that have been trying to buy houses and can't buy houses.

Councilwoman Cape - Single people often get married and want to stay where they are. That's what makes a nice place. It's where people can stay. What is the affordability aspect?

Mr. Overholt - The affordability is your standards that we have to meet. I think recently it has been changed. They originally were \$100,000 for a one-bedroom; \$120,000 for two; and \$135,000 for three. In order for us to build that, obviously, it's probably going to be our cost is greater than that. But I'm agreeing to do at least five for the concessions. The rest of the houses may not be in that price range, but they will still be affordable by today's standards.

Councilwoman Cape - \$150,000? And then the other ones, what are they selling for? Just curious.

Mr. Overholt - Well, we are still, because we don't have approval yet we don't have the plans completed, but we are expecting somewhere between \$150,000-\$250,000.

Councilwoman Cape - One last question. Alan, is there no landscaping required around the peripheral of this project? You are changing the density pretty dramatically?

Mr. Glines - There is not a standard for single-family subdivisions ... street trees.

Councilwoman Cape - This is almost a change of use which we are looking at with the landscape standards. It's an increased impact even though it's a funny thing on our chart it goes from RS to RM as an increased impact but this is a lot more houses. Is there no sense that is going to be a problem?

Mr. Glines - We don't have a standard for that. I don't think it's really going to be a problem. I think in the past we have allowed single-family subdivisions to meet the minimum, which is the street at this point and there is not another buffer required from single family and other single family uses.

Mr. Overholt - Could I address that too? The house sizes are very similar to the neighborhood. The lot sizes are not as similar. The house on the property that we are going to move was only 850 sq. ft., which is plus or minus very close to a neighborhood. That is adjacent to it.

Councilwoman Cape - I see some places where you see two lots per one lot. It's going to feel thicker.

Mayor Bellamy - Councilman Freeborn.

Councilman Freeborn - I'm okay.

Mayor Bellamy - Maggie, who made and seconded the motion?

City Attorney Oast - I have Councilman Mumpower as making the motion and seconded by Councilman Newman.

Mr. Overholt - May I make one comment on the motion before it's complete?

Mayor Bellamy - yes.

Mr. Overholt - When you mentioned about the elevations, we had talked about there will be minor changes to the elevations to these houses. I don't know how strictly you're interpreting that.

Mayor Bellamy - That is a great question.

Mr. Overholt - We want to be adding some brackets to some of the houses. Some of the houses won't have brackets. Some of the houses are shown with metal roofs which we won't be doing. They will be a single roof and that type of thing. So, some of the houses have smaller porches. We may want to have a little larger porch. There are just some changes. We will keep the overall concept of the house, but there will be some minor changes because there are different architects in houses.

Councilman Mumpower - Mr. Glines, would you recommend any language on which to modify the motion to support this gentleman in this effort?

Mr. Glines - I tried to include a comment about the materials to be used and some modifications that would be allowed. What I would say is that if we had houses that were unrecognizable to the general eye, so to speak, of looking at them and they are nothing like we are looking at on these plans, then we will be bringing something back to you. We will be watching that carefully.

Councilman Mumpower - So our current language provides the flexibility he suggested he needs?

Mr. Glines - I believe so.

Mr. Overholt - The other comment I have, we've been building for many, many years and we have done projects where we thought something was a seller and early on we found out that people weren't interested in that design. And we do want to be able to add a designer, if we have to, to be able to meet what the people needs are. I need to know what my requirements with that if we decide to do that.

Mr. Glines - I would say something like this picture of the house with rock in front. It's not one of our materials. We're not going to see this in rock because of the cost, but it will be made out of other materials that we have listed in the staff report.

City Attorney Oast - And if you wanted to, you could add language such as the houses will be characterized by pitch roofs, with shingles, porches.

Councilman Mumpower - With the eyeballs that will be on this and on this gentleman's presentation, I'm comfortable unless Mr. Glines' offers caution with the existing language. But thank you Mr. Oast. Mr. Overholt, you've done exactly what we ask people to do. You have provided some nifty ... housing and made good use of the land and did it without assaulting folks in the neighborhood and we appreciate what you're doing.

Mayor Bellamy - I also want to say that your clarifying questions were great. I'm glad you asked those because it clears it up for staff, for Council and for the community so we know the expectations going in. And I think that's important to make sure that everyone is on the same page as we move forward.

The motion made by Councilman Mumpower and seconded by Councilman Newman carried on a 6-1 vote, with Councilman Freeborn voting "no."

ORDINANCE BOOK NO. 23 - PAGE

C. PUBLIC HEARING TO CONSIDER REZONING A PORTION OF PROPERTY LOCATED AT 18 AND 20 MEADOW ROAD FROM CI COMMERCIAL INDUSTRIAL DISTRICT TO URBAN PLACE DISTRICT

ORDINANCE NO. 3458 - ORDINANCE TO REZONE A PORTION OF PROPERTY LOCATED AT 18 AND 20 MEADOW ROAD FROM CI COMMERCIAL INDUSTRIAL DISTRICT TO URBAN PLACE DISTRICT

Urban Planner Alan Glines said that this is the consideration of an ordinance to rezone a portion of property located at 18 and 20 Meadow Road from CI Commercial Industrial District to Urban Place District. This public hearing was advertised on March 30 and April 6, 2007.

From Staff Report: The property under review with this application is split zoned between Commercial Industrial District (CI) and Residential Single Family High Density (RS-8). The CI portion of the property is located at the bottom of the slope adjacent to Meadow Road. The property had a metal building on the property and this was recently removed. A smaller residential style building was also located on the site but has now been removed.

The property is located along the route of the Wilma Dykeman Riverway Master Plan that was adopted by City Council in 2004. The Plan is a vision document that encourages redevelopment of the river area and valley floor to be a mixed-use district in

Asheville. Part of the proposal is to improve the roadway system along the French Broad and Swannanoa Rivers with improvements to be called the Wilma Dykeman Riverway. Mixed-use and recreational opportunities are proposed in the document. Staff have identified that the Urban Place District is appropriate for many areas of this district. Even though the property is not located in the River District Design Review area, the River Design Committee has commented that the areas along Biltmore Avenue and surrounding areas should be part of a mixed-use node. The area could have special pedestrian significance because it is near to Biltmore Village.

The rear section of the property is zoned RS-8. This section of the properties would be difficult to access from Meadow Road and relates most closely with the St. Dunstan's neighborhood. Any access for this portion of the property would come from an un-opened right of way from Roebbling Circle.

The Urban Place District emphasizes a mix of uses within the district and in the same building. A strong emphasis is placed on how the buildings relate to the street and create a streetscape that is pedestrian friendly. Buildings are also required to be two stories to support the mixed-use goals for the district and to add value to the area. As with other mixed-use districts in the UDO there are also some design and operational standards which ensure that that the building is pedestrian friendly and interacts with the street. Parking is allowed but not between the street and the front of the building. A higher density is allowed in Urban Place to encourage an urban vitality and provide an array of housing options.

The Commercial Industrial District is established to allow a wide range of commercial and industrial uses and was applied in areas considered as transitional districts and areas where redevelopment has potential. While a mix of uses would be allowed in the CI District, this is not a specific goal of the district.

The rezoning request was recommended for approval by a vote of 6-0 by the Planning and Zoning Commission. No one spoke at the public hearing.

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

Pros:

- The rezoning proposal meets goals of the comprehensive plan to encourage redevelopment of infill parcels.
- Urban Place District supports the goals of the City Council adopted Wilma Dykeman Riverway Plan.
- The City Council Goal and Vision Plan encourages the economic development and growth of the river area.
- The portion of the property zoned RS-8 provides a natural buffer from the St. Dunstan's neighborhood.

Cons:

- No items of concern are noted

The Planning and Zoning Commission at their meeting of March 7, 2007, voted 6-0 to recommend approval of the request. Staff concurs with that recommendation.

Mr. Glines - We have a request to rezone a portion of a lot located at Meadow Road from Commercial Industrial to Urban Place. The rear section of the property is zoned RS-8 and will remain so with this proposal. (Using a map) This is Meadow Road here, this is the property in question and in the rear section you can see the blue line that cuts the zoning line, that is in the rear. This is sort of up in the St. Dunstan's neighborhood that you classified as a local historic district. This is Biltmore Avenue and this is sort of Biltmore Village just off the plans to the south.

The property is located along the route of the Wilma Dykeman Riverway Master Plan that was adopted by City Council in 2004. The Plan is a vision document that encourages redevelopment of the river area and valley floor to be a mixed-use district in Asheville. Part of the proposal is to improve the roadway system along the French Broad and Swannanoa Rivers with improvements to be called the Wilma Dykeman Riverway. Mixed-use and recreational opportunities are proposed in the document. Staff have identified that the Urban Place District is appropriate for many areas of this district, including this site. Even though the property is not located in the River District Design Review area, the River Design Committee and some of our reviews that we had has commented that this area and areas along Biltmore Avenue would be likely areas for a mixed-use node. This site could be a part of that. The rear section of this property will not be changed. It is at a different grade and is part of this parcel, but will not be affected by this rezoning request. The Urban Place District emphasizes a mix of uses within the district and in the same building. A strong emphasis is placed on how the buildings relate to the street and create a streetscape that is pedestrian friendly. The Commercial Industrial District is mixed use commercial district. It can accommodate a mix of uses, although is not really a goal of that district. The Planning & Zoning Commission did review this request and recommended approval by a vote of 6-0 and staff concurs with that request.

Mayor Bellamy - Thank you. Does any member of the community wishing to address Council on this matter tonight? Yes.

sir.

Mr. Nathan Bryant - I'm with Carlton Architecture here in Asheville. We're representing the applicant on this property. I just wanted to follow Alan's report by saying that we are excited about this proposal to rezone this to Urban Place. We feel that this is a more compatible use to the neighboring St. Dunstan's neighborhood. We wanted to be ahead of the curve implementing the Dykeman Plan. This is what you want and this is what we want to do as well. We will utilize smart growth techniques such as pedestrian scale streetscapes, ground level retail and mixed use constructions. I urge you to vote in favor of this rezoning. Thanks. If you have any questions, feel free.

Mayor Bellamy - Thank you so much. Any other members of the community wishing to address Council on this matter this evening? I will close the public hearing at 7:15 p.m. Council, any questions, comments or a motion? Councilman Freeborn.

Councilman Freeborn moved for the adoption of Ordinance No. 3458 to rezone a portion of property located at 18 and 20 Meadow Road from CI Commercial Industrial District to Urban Place District and find 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 Councilman Mumpower and carried unanimously.

ORDINANCE BOOK NO. 23 - PAGE

Mayor Bellamy - Can I have a motion to go into closed session? We are going to do that while we take our break.

At 7:19 p.m., Councilman Mumpower moved to go into closed session for the following purposes: (1) 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 on Victoria Road by purchase, option, exchange or lease. The statutory authorization is contained in G.S. 143-318.11(a)(5); and (2) To consult with an attorney employed by the City about matters with respect to which the attorney-client privilege between the City and its attorney must be preserved, including litigation involving the following parties: City of Asheville; State of North Carolina; County of Buncombe; and Gabriel Ferrari. The statutory authorization is contained in G.S. 143-318.11(a)(3). This motion was seconded by Councilman Freeborn and carried unanimously.

At 7:48 p.m., Mayor Bellamy stated that the closed session would continue after the completion of the agenda for the regular meeting.

D. PUBLIC HEARING TO CONSIDER AN AMENDMENT TO THE UNIFIED DEVELOPMENT ORDINANCE RELATING TO REVISIONS TO THE LANDSCAPE STANDARDS

Assistant Director of Planning & Zoning Shannon Tuch said that this is the consideration of an ordinance amending the Unified Development Ordinance (UDO) relating to revisions to the landscape standards. This public hearing was advertised on March 30 and April 6, 2007.

From Staff Report: Staff has identified challenges to reviewing required landscape plans; specifically, staff has noted that in reviewing plans it is extremely rare that the existing landscape standards are interpreted and applied correctly. This results in multiple revisions and re-reviews and requires additional time to be spent on the project for both the applicant and City staff. Additionally, City Council has requested that staff examine the 'Alternative Compliance' component of the landscape standards and propose a more objective set of standards to apply when a project requires additional flexibility. Lastly, the existing standards are virtually unchanged from those adopted almost ten (10) years ago and are somewhat out-dated; the new draft will better reflect current practices and current city goals and objectives. This draft is intended to replace, in its entirety, the existing Landscape and Buffering standards (Sec. 7-11-2).

To examine the existing standards, staff felt it best to assemble a group of individuals who could review the existing standards and help identify opportunities to clarify, update, and/or enhance the existing standards. This "Landscape Committee" met every other week for almost four months and would often reference common practices in communities across the country; committee members included:

Planning & Development - Shannon Tuch, Scott Shuford, Alan Glines

Public Works - Mark Foster (City Arborist), Richard Grant (Assistant Director)

Tree Commission Representatives – Peter Loewer (Botanist), Peter Gentling (Retired Physician), Bob Gale (Landscape Designer & Environmental Planner), Starr Silvis (Water Quality Engineer), Bill Jones (Nurseryman)

Design Professionals – Suzanne Godsey, RLA (Site Work Studios), Stephanie Pankiewicz, RLA (Land Design), Jason Gilliland, RLA (Land Design)

Additionally, staff has presented this draft along with a summary of the changes at the last CIBO meeting in January and has also circulated the same draft to a number of other design professionals in the area as well as to representatives of CAN and CREIA. As a result, a number of additional comments have been received and addressed in this latest draft.

This ordinance is intended to replace the existing *Landscaping and Buffering* Section (Sec. 7-11-2) in its entirety, with this new revised and updated version.

The following is a summary that describes the changes proposed by the planning staff, influenced by the Landscape Committee. Some of the more significant changes have been noted with an asterisk (*).

** Re-organization/Re-formatting* – The Committee and staff all agreed that it was in the City's best interest to produce a revised *Ordinance* that was easier to understand and apply. Paring down and re-organizing the content of the section was proposed by staff with input from the Committee. The Committee was particularly helpful in identifying opportunity for illustrations and construction details. The illustrations in this draft are very rough and will be replaced by more refined computer generated drawings as part of an effort to uniformly replace all drawings in the *Ordinance* at a later date.

Purpose Statement – The Committee felt quite strongly that the existing purpose statement was too generic for Asheville's unique plant diversity and geology. This revised statement is the work of several Committee members and has not been altered by staff.

** Buffering Between Zoning Designations (not uses)* – This was one of the most significant changes and was proposed by staff for the Committee's consideration. The rationale behind the change was to support a stronger relationship between parcels to minimize the number of non-conformities and to encourage the re-development of non-conforming uses to better support the development goals of the community at large. The Committee was concerned over the possible reduction in the total amount of plant material required for a project but agreed to support the change with the enhancement of other standards.

** Elimination of the 5' Planting Strip Requirement* – Staff proposed the elimination of this requirement due to the frequency of misinterpretation and misapplication that was responsible for a large number of revisions that consumed staff time as well as that of the designers and developers. Again, as with the changes to buffers, the loss of plant material by the elimination of this standard is proposed to be counter-balanced by enhancing other standards.

** Enhanced Requirements for Parking Lots* – the total number of trees and shrubs has been increased by 25% (trees) and 100% (shrubs). Additionally, new requirements were added to improve the growing conditions of the plant material while maintaining flexibility in site design.

Establish Compliance and Maintenance Standards – Staff worked with the Committee to develop some basic pruning standards not formerly addressed in the *Ordinance*. Additionally, compliance with these standards has been strengthened with the simultaneous development of a separate set of "destruction" fines that would apply to excessive pruning, topping, or unpermitted removal of required landscaping. This amendment to Enforcement (Article XVIII) will be handled separately and prepared by the City's legal department. In the interim, the fine table shown will be utilized.

Changes in Plant Specifications – these changes were recommended by the Committee to better reflect the standards used in the plant nursery industry.

Changes in the Species Composition of the Buffers – again, these changes were proposed by the Committee to better reflect naturally occurring plant communities. These changes resulted in less evergreen material but more mid-sized material in order to continue to offer effective buffering; total plant numbers were slightly increased.

** Providing Objective Standards for Alternative Compliance* – Recent scrutiny over the City's application of "Alternative Compliance" has guided staff to develop objective standards for consideration. Given the varying standards and circumstances in which they are applied, plans reviewers were polled for the most commonly applied alternatives to develop a list specific to each standard. Additionally, opportunity for consideration for other alternatives is provided through a review by the Asheville Tree Commission who will act as an advisory board and provide a recommendation to the Planning Director. For those who disagree with the recommendation may then appeal that recommendation to the Asheville Board of Adjustment.

** Required Tree Preservation/Building Landscaping* – The Landscape Committee and staff were interested in exploring the possibility of requiring tree and shrub preservation as a new requirement to help off-set some of the proposed reductions; however,

developing a simple and fair standard proved to be extremely challenging given the varying nature of possible development proposals. As an alternative, staff has proposed a new standard of requiring 1 tree and 4 shrubs for every 1000 square feet of building footprint. This is intended to help balance the loss of plant material through the elimination of some buffers and 5' planting strips.

This ordinance is intended to replace the existing *Landscaping and Buffering* Section (Sec. 7-11-2) in its entirety, with this new revised and updated version.

Pros:

- Provides a format that is easier to read and comprehend – reducing review times.
- Eliminates problematic standards that offered little value while enhancing other standards that will result in increased health of the urban landscape.
- Provides objective standards for alternative compliance and creates an appeal process that was previously unavailable.
- Establishes a separate set of fines for the improper maintenance or unapproved removal of required landscape material (public education will be provided prior to the initiation of these fines).
- Better reflects City adopted goals/objectives and current practices.
- Encourages 1) the redevelopment of non-conforming uses in commercially zoned areas; 2) preservation of existing plant material; 3) smaller building footprints.

Cons:

- Some projects may result in more landscape material than currently required.
- Some projects may result in less landscape material than currently required.
- Will require a period of learning and adjustment by staff, developers, and designers.

Planning and Development staff recommends City Council approve an ordinance amending Chapter 7 of the Code of Ordinances of the City of Asheville establishing landscape and buffering requirements.

From Memo dated April 10, 2007, from Ms. Tuch - Recommended Changes to the Landscape Standards Amendment (Sec. 7-11-2): Planning staff has been engaged in an ongoing, collaborative effort with representatives of CAN, and other members of the community, to address a number of comments and concerns regarding the proposed amendment to the landscape standards. The large majority of these comments have been easily accommodated or addressed in various revisions and the interest and input has been greatly appreciated believing that this effort has resulted in a better, more comprehensive product.

Most recently, several new comments have been raised that staff feels can be easily accommodated and incorporated into the recommended draft. Staff was already working on several of these items when new comments were received from Mr. James Judd. In most cases, staff feels that all items raised by Mr. Judd can be easily addressed through minor revisions to the current draft. The following is a summary of those revisions presented in the order of Mr. Judd's most recent comments:

1) 7-11-2(e) *Alternative Compliance*.

As Mr. Judd indicated, we have "agreed to disagree" as to whether alternative compliance requests need to be quasi-judicial. However, staff has continued to work to address some of Mr. Judd's concerns and would like to revise the subsection 7-11-2(e)(5) *Other alternative compliance requests to read:*

All other alternative compliance requests not identified in this subsection may be reviewed by the Asheville Tree Commission who will act as an advisory board to the Planning Director. [The applicant for such a request shall notify by mail all adjacent property owners at least 10 days in advance of the meeting of the Tree Commission where the request is to be considered. The notice shall state the time and place of the meeting, and shall include a general description of the request.](#) The Commission, upon consideration of such a request may recommend approval, approval with conditions, or denial of the request. After receiving the recommendations of the Tree Commission, the Planning Director shall make the final decision on such requests, and shall provide a copy of that decision to any adjacent property owners who have requested one. Under no circumstances may the Tree Commission recommend or the Planning Director approve an alternative that reduces the standard requirements by more than 50%. Applicants or other aggrieved parties may appeal a recommendation to the Asheville Board of Adjustment as outlined in Article VI of this chapter.

a. *Alternative compliance standards*. No request for alternative compliance under this section may be approved unless the information provided in support of the request shows the following:

- i. The site in question is affected by physical conditions or constraints, not attributable to proposed site design or building design, that make compliance with the standard requirements practically

impossible.

- ii. The physical conditions or constraints are not a result of the applicant's own actions.
- iii. The proposed alternative will not present a safety hazard.
- iv. The proposed alternative will, upon maturity, provide landscaping that is equal to or better than the standard requirements.
- v. The proposed alternative is designed to address plant health and vigor.
- vi. The proposed alternative is reasonably compatible with the natural and topographic features of the site.

2) 7-11-2(d)(1)g *Corner Lots and Through Lots*.

Again, as Mr. Judd has mentioned, staff had been working on a refinement to this standard and would like to propose that we remove a portion of last sentence and add definition of "pedestrian oriented"

Pedestrian oriented design. Means a building design and orientation that is conducive to pedestrian access and comfort. These designs shall at a minimum include the following features: buildings shall be oriented towards the appropriate access corridors; access corridors must be identified on the pedestrian thoroughfare plan, evenly distributed windows shall be provided at the pedestrian level; no uninterrupted expanse of wall greater than 20'; a well defined, operable public entrance on side of building with direct access to a public sidewalk or courtyard within 15'.

3) Non-Screened Fences with 50% buffer yard reduction.

The current version of the ordinance [7-11-2(d)17d] contains the ability to reduce the buffer yard by 50% with installation of a fence or wall under the condition that trees/shrubs are spaced closely in front of the wall to screen at least 50% of the fence. The proposed ordinance covers this in the alternative compliance section [7-11-2(d)1e] but has NO requirement for screening of the fence with trees/shrubs. It is my impression that staff has knowingly removed this. It is very tough to understand why we are reducing the buffer yard by 50% in exchange for getting a blank wall or fence possibly RIGHT on the property line with all of the shrubs / trees hidden behind it. Why should this be allowed or why is it even necessary to not abide by the current standards? A requirement for plantings along a fence is, in fact, included in the new draft where it reads, "buffer widths and plantings may be reduced by 50% with the installation of a 6' high, opaque privacy fence. . ." This results in more vegetation than what is currently required. Not requiring plantings to be placed on the outside of the fence was an intentional change suggested by the committee due to typically encountered site constraints. This can be amended to require the plantings to be placed on the exterior of the fence, should the Council desire this.

4) Fence Screening for Dumpsters etc. Should specify that the trees and shrubs for screening the fence needs to be "on the side which faces the abutting property owner" [7-11-2(c)6]

Staff addressed this in the new draft requiring that the "landscape . . . screen at least 50% of the fence or wall" but this can very easily be further clarified to state that the requirement is to screen the "exterior" of the fence or wall. Staff is happy to make this adjustment.

5) Alternative Buffering from Street Should consider adding similar fence screening wording as proposed above. Should consider if a 3 foot high berm covered with grass is the intended standard for "completely covered with vegetation". [7-11-2(d)2]

Requiring the vegetation on the exterior of the fence or wall is very easily accommodated, staff can easily make this adjustment.

Regarding the second comment, berms are often covered with other plant material besides "grass" and can include ornamental shrubs, hedges, trees, groundcovers, or any combination of these materials. Staff would prefer for the standard to remain as proposed to encourage more ornamental alternatives than a simple "grassed" berm.

6) Applicability [7-11-2(b)] This section discusses what developments must be brought into full compliance with Article 11. I am concerned about the following:

- Cohesiveness with the new Article 7-17 on nonconforming items. To be cohesive with Article 7-17 need to at least define Appraised in the context of 50% renovation and need to put a time span on accumulation of costs.
- Because it requires compliance to all of Article 11 and not just Landscaping (7-11-2), this section was slated to be moved

(and made it at least to Planning & Zoning) to the beginning of Article 11 (7-11) instead of being at the beginning of 7-11-2. Staff revised this portion of the draft to conform with a recent amendment to Article 11 (approved 11/28/06) that sets forth applicability standards for the entirety of Article 11, including the landscaping section. This information is duplicated in 7-11-2 because there is an existing requirement (new additions/expansions less than 50% of pre-existing structure) that is applied only to landscaping and not to the other sections of Article 11 – staff felt it best to duplicate the information rather than cross-reference. The 11/28/06 amendment also included several definitions, including one for appraised value. Mr. Judd's other comments regarding the accumulation of renovation costs is addressed in Mr. Shuford's amendment to Article 17 but can also be addressed through a minor amendment to Article 11 – this is a good suggestion but should be covered in both 7-11-1 and 7-11-2. Staff is happy to make this adjustment.

Amend 7-11-2(b)(1)(c) and 7-11-1(c) to read:

(c) Renovations with a total cost exceeding fifty (50) percent of the appraised value of the building. The value of any expansions, enlargements, or reconstruction of such structures over a three year period shall be cumulated in calculating the fifty percent threshold.

7) Other Alternative Compliance Standards Should add a standard that the problem wasn't created by the developer. Should add the current standard that the alternative compliance should be "as good as or better than normal compliance".

Suggested change is incorporated into the revised Alternative Compliance section above.

8) Driveway Openings recommend adding stronger wording to make it clear that openings through the buffer yard for driveways should be minimized as to distance through the buffer yard. Had proposed specifying maximum angle of driveway crossing. Staff added drive aisles (parking lot) and driveways as prohibited. My concern is that Council's intent is very clear. Historically, Mr. Shuford has used the lack of clarity to approve driveways and parking aisles in the buffer yard which circled 3 sides of a development while calling this a driveway opening even though driveways and parking lots (per zoning district which includes spaces and aisles) were prohibited in the buffer yard.

Mr. Judd's alternative had recommended a detailed description of the angle of the driveway opening and BOA options for those driveways that did not meet this description. Staff felt this was an excessive amount of detail and preferred the flexibility of a general driveway opening that could cross a buffer. We did attempt to address (at least) some of Mr. Judd's concerns through a prohibition of drive aisles and driveways in buffers. The detailed standard that Mr. Judd recommended can be incorporated, should Council desire this.

Mayor Bellamy - Thank you and good evening. Mayor Bellamy, Council members and members of the public. I would like to make this introduction be pretty brief so that we can reserve some time for some questions as we go. But as the Mayor has already indicated, this item before you is the consideration of an amendment to Article 11, and specifically it is subsection 7-11-2, which is devoted entirely to the City's required landscaping. I am pleased to be here before you tonight because presenting this draft represents a lot of hard work by a lot of different individuals in our community. The work began last summer with the assembling of a committee of a diverse group of professions, all volunteers, who met with staff regularly to research and examine the different landscape standards. In addition to the work that these volunteers did, there were a number of people in the community who also helped on their own reviewing various drafts and providing some input. We have also taken the opportunity to present these drafts to different organizations including CIBO and some other groups and again, to any other part who was interested. We worked pretty diligently to incorporate a variety of concerns and comments from these different parties into the draft you have before you tonight. To summarize, our landscape standards have remained virtually unchanged since the UDO was adopted. Evolving practices, technologies and goals have warranted the consideration of an amendment. Now the amendment that you have, basically to summarize, seeks to improve the clarify and applicability of the standards, this includes changes to our alternative compliance process which has been the subject of some attention over the last year or so. We also propose to remove complicated standards that we feel have offered little benefit and possibly even conflict with some other goals. We propose to enhance other standards that we think will be more effective and easier to apply. And to create some new standards that will improve the aesthetics and health of our urban landscape and which will also provide incentives to retain existing vegetation on site. Staff feels as though this amendment will allow for some more optimal and efficient use of land while allowing for more flexibility in site design. As such, we are recommending that you approve this draft tonight with some recommended changes that were included in the memo that was addressed to you earlier today. I'll only add that the work regarding our landscape standards doesn't end with the adoption of this amendment. Once this is approved, staff will complete the work that has been devoted to developing some construction details that will ultimately be included in our Standards & Specifications Manual. Currently we have no such details and so work has already been initiated and we will complete that. Also I believe it was noted in your staff report that the illustrations that are in your staff report are pretty crude, rough illustration. We are working on all revising all of those illustrations to be in a more consistent form throughout the ordinance. That will include all illustrations in the ordinance, not just in subsection 7-11-2. (Used illustration example) But just to give you an example, one of the illustrations you had basically represented this scenario and this is a more refined version. This is what we expect to produce for you as we move through that process. (Using 3-D illustration example) Additionally, the illustrations are what would be included in the document, but we are also looking at creating a 3-D short of virtual development scenario - where you have commercial against residential. This will be

a 3-D version that will be accessible through the City's website. It would allow anybody who was wondering what exactly we are talking about with these landscape islands, what does a buffer look like, how does it get applied. And allow you to zoom in on specific views representing those different standards. This is just a snapshot of one of those views. Another thing that staff will initiate once we are beyond the amendment process is we would like to work with the Landscape Committee, the Tree Commission and the City Arborist to develop some seminars to educate landscape contractors and other interested parties in regards to the new pruning and maintenance standards. And we would like to do this before enforcement of those fines that are imposed in the table are actually initiated. Lastly, the Asheville Tree Commission has been working with staff in updating the City's recommended species lists. That is a process that has been underway. I think they've almost got consensus on what needs to be included in the list and what doesn't. So we expect that to be revised very shortly. That concludes my summary and you may now proceed with opening the public hearing for public comment.

Mayor Bellamy - All right. Thank you. I'll open the public hearing at 7:48 p.m. Do any members of the community wish to address Council on this matter?

Mr. Joe Minicozzi - I'm President of the Coalition of Asheville Neighborhoods.

Mayor Bellamy - Mr. Minicozzi, are you requesting 3 minutes or 10?

Mr. Minicozzi - I'll try to do it in 3. We have actually been in conversation with Shannon today. We want to see this go forward and we want to see the changes that were recommended to you. We just have some comment as far as the alternative compliance standards that were written in the document. I don't have what is before you tonight. I only have what went before the Planning Board. Basically it leaves a lot of room for interpretation in the alternative compliance standards. There is still some discretion that can be made. It's not fully clear with objective standards as far as where the leeway is. I'll draw your attention to, this is one here. It just says vertical separation is completely covered with vegetation. My question to you is "what kind"? Is it just grass? If the standard stated that you have to have trees and shrubs and all this other stuff, but you can exchange that with the berm or a mound that is just covered with grass, does that meet the standard. There are some things that we need to work out with Shannon. I don't know what the best way to do that, or the best way to communicate this and still get the policy moving forward and not slow things down. These are questions that we have on the alternative compliance. And finally with that. The process of trying to use, or utilize the Tree Commission and whether or not that meets the full standards of a quasi-judicial hearing. Here you are changing numeric requirements and is the due process being followed in that. And that's a question we have. I don't know whether it was resolved this afternoon between Shannon and James, but I did want to have that as part of the record and part of the conversation. Thank you.

Mayor Bellamy - Thank you. And just so you know, Shannon did do another amendment to the information that was presented to Council that specifically addressed point by point the matters that James Judd and representatives of CAN put forward. For instance, the example that you just put up, staff's response was "Regarding the second comment, berms are often covered with other plant material besides "grass" and can include ornamental shrubs, hedges, trees, groundcovers, or any combination of these materials. Staff would prefer for the standard to remain as proposed to encourage more ornamental alternatives than a simple "grassed" berm. And so I think that typically they are trying to get to some of the issues you have presented.

Mr. Minicozzi - It should say that. It should say exactly what you mentioned, so that there is no discretion or unpredictability. I, as a developer, may say it's got grass, so it's vegetation. And the intention of the policy may be to have shrubs, trees, ornamental flowers, whatever. But if that's the intention, it should be there in the document.

Mayor Bellamy - It should say specifically what the preference would be. Got it for clarity. That is good. That will be up to us to negotiate that into the motion that is made. Because staff did answer each of the questions specifically with something that is easily able to be clarified. Does that make sense Council?

Councilwoman Cape - If you don't mind Mayor, it did get a little confusing with me. Could we ask Shannon to clarify? I see their point completely with this one. If you just say vegetation, you could have ... and that wouldn't suffice much for landscaping buffering. So how, if we are trying to say we are putting landscaping buffering in to protect - these aren't just visual - it is landscaping for - what is the intent of the landscaping in this place?

Ms. Tuch - You have to consider the context in all these situations. In this particular case, the standard applies to the alternative buffering from the street, which is basically shrubs, usually combined with street trees in between, say a parking area and pedestrian sidewalk. Typically. So, this is an area that already has trees and shrubs. So, what this allows is the creation of a berm, in lieu of the shrubs. And what we're saying is we want that covered in vegetation. It could be grass. It could be perennials. It could be a combination of shrubs and perennials. It could be a combination of trees. I believe our intent was to preclude the ability for somebody to do grass, when it's combined with trees, because that would be an effective buffer. So, it's an

easy amendment to make to simply put in the description that the Mayor read earlier, at Council's discretion.

Mayor Bellamy - Okay. How about if we take additional public comment and maybe there are other issues we need to address and the Council can put in there. Any other members of the community wishing to address Council on the landscaping requirements? Councilman Davis.

Councilman Davis - May I address one more point that Joe brought up?

Mayor Bellamy - I promise you that if you let me see if there is anyone else, then we can go right into this. Any other members of the community wishing to speak? I will close the public hearing at 7:50 p.m. Councilman Davis, go right ahead.

Councilman Davis - I thought it was a great question about the quasi-judicial nature of the Tree Commission's findings. I don't think at any time during this process that the Tree Commission had ever thought that they would be the quasi-judicial body that would hear this. They would make a recommendation to the Zoning Administrator and the applicant could, of course, appeal his or her decision. But the Tree Commission would not be that hearing body.

Mayor Bellamy - Okay. That is a good piece of information, but I think that if it's not stated in our ordinance, it could be misconstrued. So, how about we put that little language as part of our ordinance that the Tree Commission isn't quasi-judicial, but their information or recommendations are just that.

Mr. Minicozzi - The comment was that if we have numeric requirements of the Code, like I have to wear a black blazer, one black blazer, and to adjust that number that becomes a quasi-judicial hearing. Now we are exposing the law in changing numbers. And in the alternative compliance, the whole section of the alternative compliance does that, so it becomes a quasi-judicial hearing and the Tree Board - I don't know if that has the capacity to become. In theory, once you start changing numbers, it goes into the Board of Adjustments. So at the very end, the last number is another form of alternative compliance without numeric requirements in it. So, is that a quasi-judicial process - yes or no? And, the Tree Commission doesn't have the authority to make those decisions.

Mayor Bellamy - Got it. Councilwoman Cape.

Councilwoman Cape - Can we ask Bob? Bob, what is the process? I mean he's saying that if we made adjustments, it becomes quasi-judicial. It seems like it should go towards the Board of Adjustment if that is the case.

City Attorney Oast - I think that as long as the ability of the staff to make determinations is confined within certain parameters, or the Tree Commission. I think that what we need to guard against is unbounded discretion. In the cases that we are looking at here, the discretion is very much bounded. First of all, the situation won't arise that much, that frequently. Secondly, staff has to make certain objective determinations in the course deciding whether alternative compliance is applied. And finally, the amount of alternative compliance that they can authorize is limited. The changes that we have made in response to Mr. Judd's comments would provide that the applicant who wants to get this alternative compliance has to notify the adjacent property owners of the Tree Commission's meeting. The Tree Commission in this case is merely advisory. The Commission makes recommendations to the Planning Director. The Director then makes the decision and has to notify anyone who requests a copy of the decision. That decision can then be appealed to the Board of Adjustment. The case in North Carolina that covers this situation is County of Lancaster v. Mecklenburg and that is pretty much the process that was outlined in that case.

Mayor Bellamy - Sidebar. Maggie if you could make sure that when you do the minutes, you transcribe that verbatim. This conversation verbatim.

City Attorney Oast - I guess is what I want to say is I understand Mr. Judd's due process concerns. I think that we have addressed those in the manner that the law permits us to. And addressed a lot of his concerns about the adjacent property owners having notice and the ability to participate and know when a decision is made so they can appeal it.

Mayor Bellamy - Councilwoman Cape, did you have a list of questions?

Councilwoman Cape - That was where the issue comes up. If people do have opposition to it and at what point in the process can they say they have opposition to it. You're saying that we can designate description that staff has bounds to make decisions upon and that these have been designated. Now I would like, since this has been brought up to us, do you have and accept what is being said here?

Mr. Minicozzi - The hard part for me is that I don't have what is in your hands. What I have is the ordinance that went before the Planning Board. And when I read this item. (Mayor Bellamy gave Mr. Minicozzi the memo from Shannon Tuch dated

April 10, 2007.)

Councilwoman Cape - I'd be happy to read it to you. If you don't mind Mayor Bellamy, they would say "All other alternative compliance requests not identified in this subsection may be reviewed by the Asheville Tree Commission who will act as an advisory board to the Planning Director. The applicant for such a request shall notify by mail all adjacent property owners at least 10 days in advance of the meeting of the Tree Commission where the request is to be considered. The notice shall state the time and place of the meeting."

Mr. Minicozzi - But when that body meets, when you meet on a conditional use permit, like you're about to have tonight, you have to have standards for giving that conditional use. You have items to meet and those are your rules to make that decision. That statement allows the board to make a discretionary decision without any rules. So the Tree Board meets and they pass judgment with the Planning Director. What framework do they have to make those decisions? Can they all of a sudden decide we're the Tree Commission and we don't like trees today - all the trees come down. Does that meet the objective zoning standards of the requirement?

City Attorney Oast - There are standards in paragraph (a).

Councilwoman Cape - Under (a) compliance standards exist. The only problem that I see in this, Mayor Bellamy, is the aspect of we are talking about street frontage landscaping? Is that right? You said that these were the berms, or are you talking about any alternative compliance in this?

Ms. Tuch - The draft that you have describes what the typical standards are. Towards the end of the draft, it describes alternatives that are codified. So, if you can't meet the basic standard, here are some special exceptions so if you can meet these objective standards, then you can be approved. All other cases would go to the Tree Commission.

Councilwoman Cape - My biggest concern is that a lot of times the people who are directly upset by this are not the people who live on either side of it. It's the people who drive by. So we put up zoning signs in communities to say this is going to be zoned. Is there a possibility of having an alternative compliance sign that goes up as a notification?

Mayor Bellamy - One of the things that has to be blatantly clear in this revision is what is codified, and actually list what exactly our alternatives and who has the authority to determine when that can be triggered. When it can be triggered that they cannot technically meet the requirements that are set forth here and what triggers them to be able to go to the alternative. And that list of alternatives has to be crystal clear.

Ms. Tuch - And that is in the draft. We do have very specific guidelines by which certain standards can be applied. When, of course, we are talking about a lot of different scenarios. A lot of different kinds of landscaping requirements, whether it's from street trees, to buffering from the streets, to parking lot landscaping, to screens around dumpsters.

Mayor Bellamy - You know in our trusty-dusty UDO there is list of uses for RM-2, RM-6 districts and every conceivable use is listed in one part of the UDO. We used to have a list up here at our places, that for RM-6 everything that is conceivable could be developed in the RM-6 district was listed. Is that possible? If you have a berm, these are the alternatives. If you have a required shrub or trees, these are the alternatives. Not all over, but in the places that it's referred to, you could see appendix item j. That way it is crystal clear what is available for an alternative and who has the authority to allow that to happen.

Ms. Tuch - I think if I understand you correctly, that is what we are proposing in this draft. What we did is we pulled staff and we asked all the people who reviewed the landscape plans, what is the most common alternative compliance scenarios that you encounter, so that we can incorporate those into an actual standard, rather than have to review it as an alternative compliance. That's in this draft. It's all of those all unusual a-typical situations that we are trying to address in the section that Mr. Judd referred to. What we have attempted to do is bound what could possibly be reduced or waived or altered and that is what Mr. Oast is referring to. We put a maximum limit on that. So we feel as though we have addressed those concerns and a concern legally, by putting some parameters on that. And we also created the opportunity for the public to be notified so that if there were a concern, it could be appealed. And it could be appealed to a quasi-judicial body which would be the Board of Adjustment, not necessarily the Tree Commission.

Mayor Bellamy - Okay. I think that needs to be pin-point accurately spelled out in the ordinance. The steps by which an individual or a property owner can appeal for a change, or have the opportunity to state I can't meet this need and staff said this, so what is my next step. And someone that is an adjacent property owner who doesn't agree with the ruling or the alternative put in.

Ms. Tuch - It is put in there, but we can make it even a little more crystal clear.

Mayor Bellamy - Councilman Newman.

Councilman Newman - I think this looks good. Getting this additional information right before the meeting and we were getting some e-mails from folks from the Coalition of Asheville Neighborhoods earlier in the day. And we had a meeting starting at 3:00 p.m. right up to the beginning of this meeting. Are we being asked to approve this tonight? Yes, that is what is anticipated, correct?

Mayor Bellamy - Yes.

Councilman Newman - Would it be possible, for myself, I would appreciate having just a little more time to look at this information and process the information that staff has presented with us tonight. Would it be possible for us to continue this for one week or two weeks to just process this information a little bit better before we take a final vote on it?

Mayor Bellamy - Let's go ahead and carry that out before I hear any other comments and questions from members of Council, because I don't want to do this again. Keeping in mind, we have opened and closed the hearing and have covered all information that has been presented. So that would just be an opportunity for Council to digest all that we have been given. So, the issue on the floor, if no other comments about the ordinance, is the vote. Do we want to delay that at least a week, two weeks is a bigger bear. Like my terminology? To the 17th. Am I okay with notification - there is not a public hearing, but there is a vote. Am I okay with the notification process?

Ms. Tuch - Mayor, I'm out of town on the 17th.

Mayor Bellamy - So we're going to stop all City business because you're out of town? Where is Alan Glines? Sorry about the comedy.

Councilman Mumpower - Mayor, is it absolutely necessary to postpone this item?

Mayor Bellamy - We're going to carry that out in just a second, but Bob. First of all, technically can we continue it for a week and meet any notification requirements?

City Attorney Oast - Yes.

Mayor Bellamy - Okay. Council I have one request. Is that in the form of a motion for a continuance?

Councilman Newman - You mean if we're going to come back and Shannon's not going to be here? There may be some questions that arise and there is no one that can answer the questions. Do you think we need you?

Ms. Tuch - I think that would be the best if it were me.

Mayor Bellamy - Then we will have to delay this until May 8. Only because the 24th we already have four UDO amendments that are comprehensive in nature.

Councilman Newman - Then I have a process question related to this. I hear the staff saying there are several different things that they are thinking about tweaking additionally, or do you think it's already there enough?

Ms. Tuch - I think we have been very successful in working with - Mr. Minicozzi I think is getting involved sort of a little bit late in the game. But the majority of my correspondence has been with Mr. Judd, most recently with Mr. Judd. And I think we have been very effectively addressing his comments. There may be a couple points where it may be simply, we're not going to recommend that, but it's something that can be incorporated and adopted, should Council direct that.

Mayor Bellamy - All right. Councilman Newman is there still a desire to continue?

Councilman Newman - The question is, if we did just go ahead and vote on it tonight and it were approved, it sounds like there still may be some tweaking done to it to look at some of this?

Ms. Tuch - Well, we have tweaked it. And that is the memo that is before you. Our hope was that you would be able to approve this with the revisions outlined in this memo. Now there are a couple of items on this memo, and I can go through those if you like, that Mr. Judd preferred a different alternative than what staff was recommending. And that is something that Council can make a decision on.

Mayor Bellamy - And keeping in mind that if we approve this and you write it out in UDO format, we can still bring it back and tweak it on May 8 or later. Council still has that opportunity because it's a UDO amendment and we can change it. So, Councilman Newman, I want to make sure you're where you need to be so we can move forward.

Councilman Newman - For myself, I would prefer to take a couple more weeks. It's just hard to read information.

Mayor Bellamy - If you will make a motion, we can carry it out to May 8.

Councilman Newman - I make a motion that we continue the matter until May 8.

Mayor Bellamy - Is there a second? Motion dies for lack of a second. Councilwoman Cape was next.

Councilwoman Cape - I actually have been digging into this and so these amendments have been very helpful. So there is an area where you say, should Council desire, I do want to understand, I do think that when we put up a landscape, it's people on the other side, not our project, that need to be protected. I personally would rather see trees, than a fence. So, is it not standard that the landscaping, the beautiful landscaping side is on the people on the receiving end?

Ms. Tuch - Currently our standard is that you can reduce your buffer width by 50%. So, I'll just give you an example. If you have a 20 ft. wide buffer, you can reduce that to 10 feet with the installation of an opaque privacy fence. What is required as far as vegetation with that fence is one shrub planted every 8 feet on center on the exterior fence. You are looking at shrubs. So, the majority of those situations we've found were adapted infill, the shrubs didn't grow well. When people tried to, oftentimes there was existing vegetation on the adjacent property owner's property and to try to dig holes for trees or shrubs sometimes created more root disturbance than what the fence post would require. So what we've done is we have increased the amount of landscaping that would be required with that fence. First of all we've made restrictions on when you can use a fence. Currently there are no restrictions of when you can use a fence. It's just allowed by right. We are putting parameters on when a fence can be used as an alternative. And then with that, we have increased the amount of vegetation. So, understanding the common scenario that we encounter with running into problems with vegetation actually being able to grow in those sort of shaded environments, it's not always that way but typically it's pretty common, that we thought it best to just require the landscaping. We'd encourage people to put it on the opposite side of the fence if we could, but now that we are requiring trees in addition to a fence, the thought, by the committee at least, was that the trees would grow and branch over. There would be more visual interest than just a blank fence. We can change that. It's not a standard that would be difficult to change to require the landscaping on the other side. But, that will probably result in more alternative compliances going to the Tree Commission because we are going to encounter those scenarios where vegetation is not going to grow.

Mayor Bellamy - Councilman Freeborn.

Councilman Freeborn - On the section going back to the Tree Commission making a recommendation to the Planning Director making the final decision. It goes down to say "applicants or aggrieved parties may appeal a recommendation to the Asheville Board of Adjustment as outlined in Article VI of this chapter." I'm not finding that. I just want to know when is an aggrieved party going to know that a decision has been made and at what point in time are they able to appeal the decision. Because that is something that has come up and I want to make sure that we are addressing that and that it's crystal clear.

Ms. Tuch - With one glaring exception - I shouldn't say that - there are a few cases where people will approach the department and say why isn't that subdivision like we saw earlier. Where is the buffer? Why isn't there a buffer? And then we have to explain there was no buffer required. We do run into that occasionally, but we are attempting to address that by requiring that the applicant notify adjacent property owners as they would be the most likely aggrieved party. So they would be notified. They would not know that there is an alternative compliance being requested and they would have the opportunity to come to the Tree Commission, hear the request and voice their concern. If they don't like the outcome of that recommendation, they can appeal that to the Board of Adjustment.

Mayor Bellamy - The key thing being that they will be notified if it's an alternative compliance request.

Councilman Freeborn - Okay. I'm just going to repeat what you said, Mayor, just to make sure I'm not dense. You're saying that if the decision is made that it is alternative compliance, then the adjacent property owners are going to be notified.

Ms. Tuch - No, they will be notified that the request is being considered. So they'll have the opportunity to come to the Tree Commission meeting, hear the request, contact the owner ahead of time. Just like you would with any other public hearing notification process that we have now. They would be able to learn what that request was. If they agreed with that request, then problem solved. If they don't agree with the recommendation, then they would have the opportunity to appeal that.

Councilman Freeborn - At what point in time are they going to know a decision is made? The Planning Director ultimately makes the decision. So the decision is made by the Planning Director and neighbors are not notified unless they.

City Attorney Oast - Unless they have requested a copy of the ruling. And it says that right in the provision.

Councilman Freeborn - How will they know that a ruling has been made?

City Attorney Oast - It says that " the Planning Director shall make the final decision on such requests, and shall provide a copy of that decision to any adjacent property owners who have requested one."

Councilman Freeborn - But at what point in time? What is the timeframe to which the Planning Director will make a decision like this?

Ms. Tuch - Truthfully and in reality, same day. Only in extremely extraordinary conditions would I envision that the Planning Director would disagree with the recommendation of the Tree Commission.

Councilman Freeborn - The reason why I am kind of belaboring this is because the average citizen doesn't know that. And the average citizen is going to go to the Tree Commission, hear what happens there, maybe it's approved, maybe it's not approved. They still don't know what is ultimately been decided and then they go home and wonder what's going to happen. It isn't until activity starts or a project is finished before they may realize that a decision had been made one way or the other. Then are they out? Is their ability to appeal that decision gone? Is it too late? We just need to make sure that the mechanism. If we are making these amendments to our UDO, we want to make sure that it's crystal clear to people and that we are not seeing the same problems coming before us time and time again.

Mayor Bellamy - Council. One thing is, it's just like tonight. This is on our agenda. The public was notified that we are having this meeting. And the public was notified of the changes that were made to some extent. And staff did another presentation to Council tonight. But it's on the citizens to find out did they vote for it or did they not vote for it. And I think what you are asking staff to do is carry it all the way through. Staff has done a good job, supposedly on a new part of this, to notify the community or the adjacent property owners that there has been a request for an alternative compliance. Is that correct?

Ms. Tuch - That is correct.

Mayor Bellamy - So, it seems to me that somebody who really cares would pick up the phone and say what was the end result of the request.

Ms. Tuch - And I'll add that you might want to think about the Planning & Zoning Commission. They are an advisory body. They make a recommendation to the City Council. Same situation. The public wouldn't necessarily, if for some reason staff didn't agree with the recommendation of the Planning & Zoning Commission, the public wouldn't necessarily know that unless they requested that information or when the extra mile to investigate it in the staff report that went before Council. So, when you deal with advisory bodies, that is the burden that the citizen has to bear.

Vice-Mayor Jones - I wonder if there is some minor adjustment if we can do this. I have a similar concern.

City Attorney Oast - I do want to point out is that you're getting here that you don't currently have is notification that the request is going to be considered and the ability to obtain a copy of that decision.

Councilman Freeborn - I like all that. I think that's great. I'm just wanting to make sure, at what point in time does the clock run out for the aggrieved party, because that is the question I have asked and have not received an answer.

City Attorney Oast - It would be 30 days after they get a copy of the decision.

Vice-Mayor Jones - First of all, we're talking about alternative compliances. It's not like there is going to be 1,000. So, if we are going to have that list of folks who are adjacent property owners that we're going to send a notice of the meeting, what is the harm of firing off to the same list the decision, with the specifics about if you would like to appeal, here is the timeframe. Because I also - I don't know if we got your answer about what is the recommendation outlined in Chapter VI of this chapter.

Ms. Tuch - That is one detail that we can spell out and make crystal clear in this amendment is to describe that per Article VI that an aggrieved party has 30 days from the receipt of that decision to appeal this to the Asheville Board of Adjustment. That is an option we can do to make it much clearer.

Vice-Mayor Jones - That seems like a very simple thing. If we are already going to be notifying folks, then just.

Ms. Tuch - One thing that is different is we are asking. Because we are trying to balance customer service with a more public process. So we are asking that the applicant be the one to notify adjacent property owners. And that is a little different than what we currently do for other public hearings. As far as who is responsible to notify those individuals and how and when.

Councilman Freeborn - I think we should just take ownership and notify the adjacent property owners. If a request comes in for alternative compliance. If it is something that happens rarely then it shouldn't be that big of burden on us as an organization.

Ms. Tuch - It's a bigger burden than you may think. We receive a lot of alternative compliance requests. Now we are attempting to reduce the potential for those numbers of requests by codifying some of this information and basically creating some disincentives to pursue an alternative compliance. But, I think you are still going to see quite a number of requests.

Councilman Freeborn - Okay, in that case, let's try to approach it in a different way. What about if we just notify on the requests that are granted. If we say a request has been made, it's up to the applicant to notify their neighbors. We don't know if they've notified their neighbors or not - we're taking their word at it, I'm assuming.

Ms. Tuch - There are ways for us to find out. We could request, as part of their submittal, a copy of the certification or we could require that they do confirm delivery. There are ways that we can ensure that they did notify.

Mayor Bellamy - Councilwoman Cape.

Councilwoman Cape - I still go back to the idea that the way we could cheaply notify people is put an alternative compliance AC sign on a stake in the landscape area and anybody driving by who has problems with it goes to the project development website and says what is the alternative compliance being asked for. That way anybody who drives by, I mean, we do it for rezonings all the time. We don't notify every single person in the town that we are doing a rezoning. We have a big Z out there.

Ms. Tuch - You would see significantly more signs than you are currently seeing.

Councilwoman Cape - And then we would be in trouble with signs.

Ms. Tuch - Well, we would have signs everywhere and there is a fair amount of staff time that's taken, mileage, vehicles. A fair amount of coordination is taken to do that. As I mentioned, what we are attempting to do is balance customer service and efficiency with a more public process.

Mayor Bellamy - Council, Councilman Newman offered the opportunity to look at this thing a little more closely and have staff look at this and you call with any conditions or concerns that you may have. Because we've gone around the mulberry bush a little while on this particular issue and so I don't think there is a resolution to this. So, I would ask if someone on the board to reconsider that opportunity that we've been provided to be able to look at this a little bit closer to address any concerns that may be out there. And if not, it would be nice to have a motion to go ahead and approve it understanding that we will look at it again in the future.

Councilwoman Cape - I would like to make a motion that we approve this as presented with the changes given to us this evening, with a couple of little changes myself. So, my motion is to approve the landscaping ordinance with the changes staff gave us this afternoon. On the issue of non-screened fencing, where possible for plant protection, it will be planted on the abutting property side. Now if that could be added in there just as a caveat. And then on the screening of dumpsters, be on the exterior of the dumpster fencing. And seeking the best practice in notification of the community about alternative compliance.

Mayor Bellamy - I think that's wonderful. Is there a second to that motion with the three caveats that were included?
Councilman Freeborn.

Councilman Freeborn - I'll second it for the sake of conversation.

Mayor Bellamy - I'd rather you not if you're not going to support it.

Councilman Freeborn - I may support it or may not. I think this is better than what we have now. I just want to know are we going to - is staff going to come back to us at any point in time with this?

Mayor Bellamy - No, not until Council would like to see it revisited.

Councilman Freeborn - Okay, then no, I'm not going to second this.

Mayor Bellamy - All right. Is there a second?

Vice-Mayor Jones - Your modifications were with non.

Councilwoman Cape - My modifications were just where possible, when there are fencing, instead of this little buffer, that where possible for plant protection, that it's facing the abutting properties. So that rather just a finished fence, they have landscaping on the abutting property sides, where possible for healthy plantings. Because if we just put that in there, it leans people in that direction, I think. And then it makes sense that we would want people to screen the outside of the dumpsters rather than the inside of the dumpsters, so we might as well say.

Ms. Tuch - That was part of our recommendation.

Councilwoman Cape - Yes, but you asked us to comment on that. So I'm commenting. You said, if Council likes. So, I'm adding it. And then best practice for public notification.

Mayor Bellamy - All right. Councilman Davis.

Councilman Davis - I can get there with the exception of the buffering on the outside of the fence. Because there is a problem with that in that the neighbor very likely will have problems in the future because it's inaccessible for someone to trim the hedges and maintaining it without going onto property they don't own. I just have difficulty with doing that. The rest of the proposal is good.

Councilwoman Cape - Well it should be on their property?

Councilman Davis - How would you be able to with the fence. How could you access it to trim it properly?

Councilwoman Cape - You walk around on the outside of the fence on your property to get to it?

Ms. Tuch - We're talking about a 5-foot strip. I'm sorry, that was another concern raised by the subcommittee, was that it is on the practical side, it's unlikely that someone is going to go prune a limb off a tree and not trespass across someone else's property.

Mayor Bellamy - Councilman Davis, are you there?

Councilman Davis - I'm there with the exception of that.

Mayor Bellamy - Any compromise?

Councilwoman Cape - I would be willing to compromise. I want people to be happy with the landscaping and it's a little disconcerting to have a fence as your new neighbor.

Mayor Bellamy - All right. The motion dies for lack of a second. Is there another motion?

Vice-Mayor Jones - I might second that if I ask Shannon one more question here. When you said there are a lot of other alternative compliance. I mean we're talking about subsection of other alternatives. So there's a whole list of alternatives we have all identified. Here are the big things people ask, here are the most common ones. In that last thing, other. We would see a lot of requests around that? The paragraph we are talking about is after, alternative this, alternative that, alternative this other.

Ms. Tuch - Right. It is our sincere intent and hope that this will reduce the number of alternative compliance requests. But currently I would say almost 50% of all of our site plans request some sort of alternative compliance. We are talking about.

Vice-Mayor Jones - Of those that are applying, how many are in this last other, other?

Ms. Tuch - I mean I can't predict, but I would say probably, of those, a good 20-30%.

Councilman Freeborn - Could you give us like actual numbers?

Ms. Tuch - This will be a total ballpark, but if our average, I will look to other staff. If our average number of site plans in one month might be, let's see, we probably get 8 large, probably 3 a week in small, so we are looking at another, so maybe between 30 and 40 applications a month. About 20 of those, I guess, would include some sort of alternative compliance. And of that 20, my guess would be anywhere from 5-10 in a month would not fall in one of those categories. It could be less than that, because I do think that some of these standards may create a disincentive for someone to ... alternative compliance. They may choose a different development option. They may choose a different project, a different building type, so that it could comply. So it might be less than that. Our hope is to be between 3 and 5.

Mayor Bellamy - To throw another little monkey wrench into the discussion. One of the issues that I have a concern about is the landscaping between new subdivisions and existing subdivisions. One of the things that we're seeing is more infill development and the changes, like we just did tonight, say it's higher density, is it addressed in here that we're going to do some additional buffering requirements for additional - it may be the same uses, but a higher density, but they are residential in nature.

Ms. Tuch - Not exactly. Well, yes and no I should say. What we are proposing is to buffer in between similar zoning designations. So if you are a low density single-family and you're adjacent to a high density multi-family, and you're high density multi-family going in, you may have to buffer against that low density single-family, even if you are a subdivision. But, traditionally we don't require single family lots to buffer against single family lots. Because single family is one and two family dwellings and they are exempt from the landscape standards. Always have been. Now the one exception to that is the conditional use permit projects and those conditional zoning projects that come before Council, because those are open to conditions.

Mayor Bellamy - Where do I change that requirement? In our subdivision ordinance or our landscaping ordinance or both?

Ms. Tuch - Probably both. And those are both things we can accommodate.

Mayor Bellamy - Okay. Council I would like to see this thing delayed, first of all. But since we can't get support to have that happen, I would like to see us work out a way where we are able to put in additional landscaping requirements for single family developments that don't come before Council. Because that is an issue. Take for instance, Kenilworth. They had presented a subdivision that doesn't have to come before Council. It does not have landscaping requirements to the extent that had it come before Council would have provided additional landscaping for the community.

Ms. Tuch - The Kenilworth project is actually a lower density than the majority of the homes around it.

Mayor Bellamy - Right, but they had cut a lot of trees in order to do that development.

Ms. Tuch - They did. Now one thing to keep in mind, we also do have our steep slope, which would help protect tree preservation on steep slopes. We also are coming before Council at the end of this month is a subdivision amendment which makes single-family subdivisions over 50 lots a Level III, which would be a conditional use permit. So the Kenilworth project coming before you next year would be a conditional use permit and would, in theory, be open to conditions.

Mayor Bellamy - But the one we have now, the one we are faced with now, doesn't have the landscaping requirements and did remove a lot of trees, doesn't have the additional buffering requirements around the subdivision, thus is not a warm and welcome subdivision development in that neighborhood. And so, what I'm trying to say to us as a Council is we really need to address those concerns about what happens when you remove, you do remove a lot of trees, but you don't have to replace a lot of trees back in a subdivision. That is a concern and we do need to address it. And so, Shannon that would be something - I'm not asking you to work out right now, but we need to go ahead and get a recommendation and come back to Council with that.

Ms. Tuch - Sure.

Mayor Bellamy - Councilman Freeborn.

Councilman Freeborn - I'm willing to support a motion to postpone it to May 8 to address those concerns.

Mayor Bellamy - There is no motion on the floor so would you like to make a motion?

Councilman Freeborn - I make a motion to postpone the vote on this amendment to the UDO to May 8.

Mayor Bellamy - Is there a second?

Councilman Newman - Second.

Mayor Bellamy - Any further questions or comments? Councilman Mumpower.

Councilman Mumpower - I believe the deliberations on this ordinance highlight the complexity of what we are trying to do. It's a miracle that Asheville has become as beautiful as it is without the control of this Council and others. And I'm going to come out and say it, I think this represents some of the indulgence by this Council in creating complexities that will add costs and when you add costs you limit how many people can afford to live in Asheville. And that's about creating an elite community. You can call it anything you want to, but to me this is indulgence. And I certainly hope we will make an effort to do what we promised to do, which is to simplify the UDO and not create further controls on how it will suit our personal agendas.

Vice-Mayor Jones - Are you saying the whole ordinance as proposed is an indulgence? Or our deliberations are an indulgence?

Councilman Mumpower - Both, but the ordinance as a collective whole is an indulgence from my perspective.

Mayor Bellamy - Councilman Davis.

Councilman Davis - I know a lot of people worked very hard in getting this ordinance to the point it is and we're running across a small hump here and I don't think it's indulgence, I think it's a good exercise in getting to a better place with something we have a lot of difficulties with. I happen to have a great deal of faith in the Tree Commission that they are going to, in their deliberations, err on the side of the plants. I know those folks very well. And it would be inconceivable to me sitting here to think that they would do something else than should be done. And I have great faith that they can handle this job. I'd like to see us go ahead and move forward with it.

The motion made by Councilman Freeborn and seconded by Councilman Newman to continue this matter until May 8, 2007, carried on a 4-3 vote with Mayor Bellamy, Vice-Mayor Jones, Councilman Freeborn and Councilman Newman voting "yes" and Councilwoman Cape, Councilman Davis and Councilman Mumpower voting "no."

Mayor Bellamy - The meeting on May 8 will only cover the new information provided, which will be limited to the items that deal with subdivision issues, the hump that we were over, and that's about it. Ms. Tuch if you can take a note of that and hit the highlights and move it forward, I would appreciate it.

Councilman Freeborn - Is a notification in that as well?

Mayor Bellamy - Whatever those humps, that was a problem, so yes.

E. PUBLIC HEARING TO RECEIVE COMMENTS ON THE CITY'S DRAFT ACTION PLAN WHICH SETS OUT THE PROPOSED USE OF \$3,854,970 IN FEDERAL COMMUNITY DEVELOPMENT BLOCK GRANT AND HOME INVESTMENTS PARTNERSHIP ACT FUNDS IN THE YEAR BEGINNING JULY 1, 2007

Mayor Bellamy - Mr. Oast will read a statement into the public record for the community to hear about Mayor Bellamy's conflict of interest. Vice-Mayor Jones will carry out the motion.

City Attorney Oast - Will there be a motion to recuse you after I read the statement?

Mayor Bellamy - After you read the statement, I will ask for a recusal.

City Attorney Oast - Thank you Mayor. Under North Carolina law, all members of City Council, including the Mayor, are precluded from voting on matters in which they have a financial interest or that involves their own official conduct. They are also prohibited from entering into contracts with the City or otherwise having a financial interest in such contracts. Further, recent amendments to the zoning enabling laws have expanded and clarified the issue of council member conflicts of interest with respect to land use decisions. Under State law, a Council member may not only not participate in the vote on matters in which they have a financial interest, they may not attempt to influence the vote or the administration of the contract. Where an employee of an agency that receives funds from the U. S. Department of Housing and Urban Development (HUD) becomes a member of the governing board of a unit of local government that makes decisions regarding those funds, federal regulations require the additional step of reporting the situation to HUD, and requesting an opinion as to whether that employee's governmental service is consistent with the intent of the regulations. When such opinions are requested, exceptions are made as appropriate. Mayor Terry Bellamy is an employee of Mountain Housing Opportunities, an organization that receives funds from HUD, through the City of Asheville. Although she is not directly involved in any HUD-funded activities, her election to Council in 1999 and as Mayor in 2005 triggers the application of the regulation requiring us to seek the exception with respect to Council actions involving the City's receipt or

disposition of HUD funds. Our review – including analysis of the regulation, conversations with HUD officials, Ms. Bellamy and other officials at MHO – has indicated that Ms. Bellamy, because of the nature of her job, is not in a position to benefit directly from the receipt of HUD funds by MHO. Even so, as Mayor and a member of Council, State law would preclude her from voting on any matters that directly affected MHO. While State law affects the ability of a member of Council to vote on particular items, the exception required by HUD affects the City's ability to receive and administer HUD funds, and HUD officials have advised that the exception should be requested on a case-by-case basis. In this case, the action for which the exception will be requested is the draft action plan regarding the proposed use of CDBG and HOME funds for the 2007-08 fiscal year (public hearing item E. on the April 10, 2007, agenda). This is brought to your attention now because public disclosure is one of the prerequisites of requesting the exception from HUD. Unless Council has questions or an objection, the City Attorney's office will send out the appropriate correspondence to HUD to inquire about and, if necessary, to secure the exception as soon as possible.

Vice-Mayor Jones - Is there a motion to recuse Mayor Bellamy?

Councilman Mumpower moved to recuse Mayor Bellamy from participating in this matter. This motion was seconded by Councilman Freeborn and carried unanimously.

(At this time Mayor Bellamy turned the gavel over to Vice-Mayor Jones and left the meeting.)

From Staff Report: This is a public hearing to gather citizen input on the Consolidated Action Plan for FY 2007-08, which sets out the proposed use of federal Community Development Block Grant (CDBG) and HOME Investment Partnership Act (HOME) funds.

The City expects to have available \$2,184,696 in CDBG funds and \$1,685,274 in HOME funds to allocate for housing and community development activities in the fiscal year beginning July 1, 2007. The City's Housing and Community Development Committee and the Asheville Regional Housing Consortium have made recommendations for allocating these funds to 39 projects. Allocations are consistent with the Strategic Housing & Community Plan for 2005-2010.

If approved, the HOME funds and some CDBG funds will assist 464 housing units Consortium-wide. CDBG funds will also benefit more than 6000 low-income City residents through homeless services, housing counseling, business assistance, neighborhood facility improvements, and other needed services. Our partner agencies will contribute over \$36,000,000 of other funding to these programs, leveraging \$9.40 for every \$1 of HOME and CDBG funds.

A summary of the draft Action Plan and notice of this public hearing was published on March 25, 2007. A 30-day comment period is required. At the end of this period, staff will ask Council to take action to approve the plan on April 24, 2007. The plan is due to be submitted to HUD by May 12, 2007.

Vice-Mayor Jones - Ms. Caplan, at this time will you come forward and give the staff report regarding this public hearing. I would like to remind Council that all we are doing tonight is receiving public comment and that we will take public action on April 24. Vice-Mayor Jones opened the public hearing at 8:44 p.m.

Community Development Director Charlotte Caplan - That is correct. I'm very pleased to present the draft action plan for the use of CDBG and HOME funding in the coming fiscal year starting July 1, 2007. I'll give you just a very short overview. The whole plan is available on the City's website and you have a summary of all the funding allocations attached to your staff report. Funding recommendations for the CDBG portion were made by the Housing & Community Development Committee and for HOME funding by the Asheville Regional Housing Consortium. Very briefly, we are allocating just over \$2 Million in CDBG funds. I would point out that \$274,000 of that is contingent on a land sale and will not be released until that land sale takes place. But 23 programs will benefit with a wide variety of purposes. All benefiting low income residents of the City of Asheville. HOME allocations total \$1.7 Million. Sixteen programs are recommended for funding. These are for affordable housing only and they cover not only Asheville but the whole of Buncombe, Henderson and Madison Counties. Transylvania County did not put in any applications this year. I would like to point out that contributions from partner agencies that will be carrying out these programs amount of \$36 Million. That is a leverage ratio of over 9 to 1. Projected outcomes over the next year or two years, we expect to see construction or repair or downtown payment assistance or other assistance on 464 affordable housing units. We expect to see 105 small businesses assisted. We expect to see public services that will benefit about 4,800 low income residents. And, two improvement projects to be carried out in the West Riverside Weed & Seed area. Many of the allocations are similar to last years. There is merit in consistency in funding from year to year. But, we're definitely seeing some new trends taking place. In housing, I believe we are seeing a move away from single family housing development. Land and construction costs have risen very rapidly over the last two to three years and it's becoming increasingly difficult to build housing at prices that people in our target population, that is 80% of area medium income, can afford, without really very large amounts of subsidy. So, we are seeing an increased emphasis on multi-family construction, both for rental and home ownership. And on down payment assistance to be able to help buyers buy existing housing. We are also seeing new initiatives for implementing the 10 year plan to end homelessness.

Within the plan, a new grant to Homeward Bound, that is the new name for Hospitality House, for rent assistance and supportive services to help chronically homeless people come off the streets and into permanent housing, with supportive services. And finally, there is an emphasis on revitalizing West Riverside Weed & Seed area. Last year, I saw some funding in the middle of the year for improvements at Pisgah View Apartments and this year we are addressing much needed renovations at the Burton Street Community Center and traffic calming on Burton Street. There are a number of people here from the West Riverside Weed & Seed area who have very patiently waited up to this point. We think all together this is a very exciting and productive year for the Housing & Community Development programs that the City supports. I'll be very happy to answer any questions after the public comment.

Vice-Mayor Jones - Thank you Ms. Caplan. I'd like to open it for public comment. If someone from the public would like to come forward? And if you would, please state your name for the record?

Mr. Ernie Eden - I'm a commercial real estate broker and have been for some years. And also have been involved very much in affordable housing, particularly cooperative housing. And I come here this evening to talk about two specific items. One of them is, I noticed in looking through your plan that there is no mention of cooperative housing and that's understandable because it is a very unusual form of home ownership. It's sort of half way between individual ownership and rental. There are about 1.5 Million families living in cooperatives around the county in all income levels and in the paper I have presented there are a number of details for why they are a good idea. The hour is late and I want to reduce my time here in front of you. I've been involved in management and creation of cooperatives. I am in a trade association of the National Association of Housing Cooperatives for some years in Washington and they are the best way of housing people according to HUD, according to the residents, and according to all the studies that have been done. So I encourage you to take a look at this at your leisure and pay attention to it. The other item is that by expanding the geographic areas that you have designated for areas to pay attention to in terms of your housing programs, you could be getting into the community a whole lot more funds from the outside than is currently available. On the last page of this paper I have outlined two programs - the Federal Home Loan Bank of Atlanta and also the N.C. State Qualified Allocation Plan, which deals with housing. Both of those give the applicants points when they do something in an area that the City or County has designated to be an area of impact. And you don't necessarily have to put any money into it, but you may be able to get money from the outside by expanding your areas. I have spoken with Ms. Caplan about this. If there are any questions, I would be happy to answer them, or if you want to be in touch with me later, that's fine. Thank you.

Vice-Mayor Jones - Thank you.

Councilwoman Cape - Vice-Mayor, may I respond to this briefly? Just to say these were not projects that we were doing ourselves. We would love to see some cooperative projects come forward for us to consider to help support. So these are not our list, these are what projects came to us and we made our choices from.

Mr. Eden - Okay. I understand that. I guess I'm really just doing this more in terms of the future in terms of laying the ground-work. There is a lot of language typically that speak of either single-family or rental condominiums and cooperatives are sort of blend and the rules don't always fit. So that is my point primarily.

Vice-Mayor Jones - Thank you very much. We appreciate that. Anyone else?

Ms. Gloria Johnson - Mayor Bellamy and Asheville City Council, my name is Gloria Johnson, President of the Burton Street community and resident of west Asheville and currently reside at 87 Burton Street. I'm speaking on behalf of the citizens on the Burton Street community we are concerned with the current conditions of the Burton Street Community Center. Taking into consideration those funds for upkeep and repair may be limited it appears that our particular community center has been overlooked at it pertains to disbursement of funds for facility and maintenance. We are aware that other community centers throughout the Asheville area have, are, or are in the process of receiving resources for facility renovation and general maintenance. Consider how important this center is for the youth and the senior citizens. In our neighborhood it is disheartening to see this facility in such a state of disrepair. Even today I went to the community center. There is some yard work going on. This is good, but we need more than just a band-aid fix. Just a look good for awhile. Our center needs more permanent improvement. Some examples of needed improvements are as: floors - repairs or replacement; windows - replace lock or entire window unit; restrooms - both men and women; general activity areas - weight, play rooms need new recruitment and supplies; outdated heating and cooling system; basement area used for city-wide storage; electrical outlet needed for computers for after-school program; kitchen appliances and serving areas needed. We are here to make you aware of these needs. When you consider how the block grant monies will be distributed and used, we have made tremendous strides in cleaning up our community. However, your continued support on these matters are imperative. The citizens of the Burton Street community need to know from you that they are not forgotten. Your serious consideration of these concerns, and your effort and ... there will be a major boost for everyone in our community. As a community sportsman, I would like to compliment Mayor Bellamy, along with our Police Chief Hogan, Officer Mike Godwin, Alan Dunlap, whom I believe has retired, Lt. Rae Ferguson, Officer Wilkie, Sergeant Faye Harper, Officer Connie Roberson, Officer J.T. Riker and Captain Splain for not only helping to clean up our drug problems, but also

become a part of our community. They help pick up trash from the streets and sidewalks. They help to repair some of our elderly citizens' homes on their days off. We would like to invite all City Councilmen to visit our community. We are proud of the Burton Street community and the great turnaround that has taken place in our community. On behalf of our entire community, we thank you for your time.

Vice-Mayor Jones - Thank you Ms. Johnson.

Councilman Newman - Can I make one comment? Ms. Johnson, I agree with everything you've just said. Folks are not aware that the recommendation is for \$155,000 in funding for the renovations to the Burton Street center. That is part of our recommendations at this point. Obviously we are not going to vote on this tonight, but the Committee is recommending supporting that project.

Ms. Johnson - Thank you.

Ms. Teresa McPherson - Good evening City Council. First I would like to thank you for this opportunity you have given us to express the love and compassion we have for our community. I am Teresa McPherson and have been a proud resident of the Burton Street community for two years. Most of the residents in our community have been here for many years and have tirelessly struggled to make it a better place for the generations to come. I have first hand knowledge of what a wonderful community we live in. In July 2006, I became deathly ill and this community rallied together in prayer and support. They raised in excess of \$1,600 to help me with my bills during my illness. It is rare in this day and time that you will find people in a community who will come to the aid of another. I would truly not want to live anywhere else but in this community. Not only have they come to my aid, but many others. There are some things that we cannot do alone. This is why we ask for your help and support in allocating CDBG funds to help revitalize our community center. It is an old facility with a rich history to be shared and cherished. It is a facility where our residents gather for meetings and festivities to keep us as a family. It is a facility for our children to play and grow in the spirit that their parents and grand-parents did so. But we will not be able to hold onto this history if we are not able to get these funds for our center. There are so many needed repairs that we cannot do alone. Because we struggle to keep our own households going, a heating and air conditioning system is needed, the walls and floors are buckling and the bathrooms and the kitchen are in much needed attention. We want a facility where our children can gather in a safe place and be proud of where they come from. Our children deserve better. The residents here pay taxes just like anywhere else. If we don't start repairs on the center now, it will be too late. Please help us to save this part of our history. Thank you.

Ms. Sharon Martin - Good evening. My name is Sharon Martin. I'm a resident of the Burton Street community. It's been interesting going through the area and listening to the conversations that had been had tonight. Beginning with the item that you discussed off the Consent Agenda about the bathrooms downtown. And Mr. Newman you brought up that it's \$155,000 that's been asked for for the center and two bathrooms cost \$113,000 downtown. So, in saying that, I'm just asking you to be prepared to spend a lot more money than \$155,000 to bring the center up to where it needs to be. And I understand it wouldn't come out of CDBG funds and I understand how that whole process works. Just want you to know that the center needs a lot more than \$155,000. We really count on the City to allocate the funds to bring it up to par. And it is truly, right now, we have air conditioners hanging out the window about to fall onto the sidewalk. So it does need a lot of attention. And then the other thing that came up was the District Attorney coming and talking about crime. And we have an amazing community and I don't know really how to explain how amazing our community is. But there are members of our community who work tirelessly picking up garbage to keep our community clean, inviting the youth in our community onto their property and paying them to do work so that they have activities to engage in and money to put into their pockets so that they won't feel like they have to turn to nefarious activities to earn wages or to deal with their boredom. And we have members of this very same community who have amazing ideas to implement and the center could be the heart of that. So, we just ask that you know that we are going to come back to you and ask for more and we believe that we deserve more. The community has done a lot of work to turn it around. The police have done a lot of work with the community to turn it around. But I don't want our community to be overlooked so I'm glad the attention is there. I appreciate your time tonight. Thank you.

Mr. Dwayne Barton - My name is Dwayne Barton and I had a list of the kids wrote up this afternoon, but seems like everybody covered it. I'll just say that when the renovations do come for the center that the young boys, that they be involved in that. Maybe we can create some kind of friendships to help train the young people in the community to help rebuild the center. And let this be a starting point to maybe a program we can do throughout the City. And turn Burton Street into like a training facility for those. A place where young people, specifically, can come and find work and be introduced to different programs and activities. And put money in their pocket and keep them busy over the summer and during the school year. As far as education with the schools, for help for some kids there needs to be reinforcement in the communities because a lot of times kids living in homes where the parents might not have the time to be that reinforcement, but we need actual programs in the community that can help push the kids along. A program that ties in with what they learn in school and they come home from school and tie it into an on-hands type training that can follow-up with some educational goals. I think that is what is needed more than anything. That's all I have to say.

Councilwoman Cape - Vice-Mayor, I have to say something about Mr. Barton. Because he didn't just ask us to do something that he doesn't do. He does that in his community. He pays young men, young boys, to come and work in his sculpture garden. And they get to work there if they have good report cards, is that not right Dwayne? This is someone who is walking his walk and someone who I have great respect for when we ask that our children are cared for. This is a man who is doing this work and I think he needed to be pointed out to our community as an example of what it means to be a good community member. So, Mr. Burton, I thank you immensely for your service to your kids. And, I do want to point out that the Parks & Rec Advisory Board the other day - there has been a discussion about an overall parks and recreation master plan process. And so part of that is the recognition that all of our recreational facilities are in some state of needing an overview. We have a new Parks Director, Mr. Roderick Simmons, and part of him getting an opportunity to understand what our systems are, and what the needs are, is in this. It will be an overview of all our Parks and Recreation Department and we will be looking at all the needs. This particular amount of money was allocated because it was outlined as something that was kind of stop it from falling down right now. Like fix the major things that need to be fixed right now.

Vice-Mayor Jones - I thought it was a very generous and unprecedented allocation. So I think a lot can happen for \$155,000. Is there anyone else from the public that would like to say something?

Ms. Sandy Davidson - Member of the Burton Street community from birth. The one thing that we are thankful for the money and hope that you will approve it. But one thing I want to say and this is to Mr. Mumpower as well, is that Burton Street once you knew had a very bad name and I'm sure some people in this audience right now still think of it as a drug community. But we worked very hard to clean that up. We still have some areas there, but we have worked very hard and are very proud of our community. And this is just another lump to make us feel a little more proud of our community.

Vice-Mayor Jones - Thank you for your work in your community. Other members of the public wanting to speak? Seeing none, I will remind you that there is no action to be taken, so I will close the public hearing at 9:06 p.m. Just so you know, we will be taking the vote on April 24.

(At this time, Mayor Bellamy re-entered the meeting and Vice-Mayor Jones returned the gavel to Mayor Bellamy.)

V. UNFINISHED BUSINESS:

A. PUBLIC HEARING TO CONSIDER A CONDITIONAL USE PERMIT FOR THE THOMS ESTATE LOCATED ON BEAVERDAM ROAD, WILD CHERRY ROAD AND ELK MOUNTAIN SCENIC HIGHWAY FOR RESIDENTIAL DEVELOPMENT TO CONSIST OF 132 SINGLE AND MULTI-FAMILY DWELLINGS

ORDINANCE NO. 3459- ORDINANCE GRANTING A CONDITIONAL USE PERMIT FOR THE THOMS ESTATE LOCATED ON BEAVERDAM ROAD, WILD CHERRY ROAD AND ELK MOUNTAIN SCENIC HIGHWAY FOR RESIDENTIAL DEVELOPMENT TO CONSIST OF 132 SINGLE AND MULTI-FAMILY DWELLINGS

City Attorney Oast - This is a continuation of a public hearing which you began last month. If anyone wishes to speak who was not sworn in last time, you need to come up and be sworn in. If you were sworn in last time, you don't need to be sworn in again. Mayor, this is for the presentation of new information and you would be within your rights to advise anyone who is not addressing new information to cut their remarks short. I am advised that the applicant intends to present some information that may require a little bit more time than 10 minutes and I would ask that you give them that time, but also caution them to stay on point and only present new information.

Mayor Bellamy - Anyone else who is here, but was not sworn or affirmed, please come forward to have that process done tonight?

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

City Attorney Oast - Mayor, before Mr. Pennington gets started on his part of the presentation, I'm not going to repeat my usual cautions to you, but just ask that you remember them in making your decision. And finally, we did receive a protest petition with respect to this action, but because this is not a rezoning, a not map amendment, it is my opinion that the protest petition does not apply to this situation.

Mayor Bellamy - All right. There is a ruling that the protest petition does not apply and so we don't need a super majority of approval for this to move forward. Mr. Pennington.

Information in front of Council - Letter from Mr. Ryan Blau dated March 28, 2007 - "Dear Mr. Pennington, following is a

summary of the modifications that have been made to the Thoms Estate Master Plan following the City Council hearing:

1. The multifamily condominiums (22 units) have been eliminated.
2. Duplex units on the upper hillside have been replaced with single family home sites.
3. Single-family attached units have been added in the southwest meadow (previously multifamily and single-family detached). A slightly different road configuration was designed to accommodate this change.
4. Four public pedestrian access points are proposed. Sidewalks and trails through the site will be open to the public.
5. Roads will remain private and vehicular traffic may be controlled after daylight hours.
6. A community park is no longer proposed due to apparent lack of interest for such a park. Instead a greenway easement will be secured along Beaverdam Creek.
7. The developer will be selling small lots with building envelopes rather than constructing every home. Building envelopes will remain in approximately the same locations as shown in the previous plan.
8. Entry off Elk Mountain Scenic Hwy has moves south slightly to align with the existing main entry to the estate."

Information in front of Council - Memo from Nathan Pennington and Scott Shuford dated April 10, 2007 - "This conditional use permit request for a 132 unit single/multi-family residential development with development standard bonuses. The original conditional use permit request for a 162 unit development was heard by City Council on February 13, 2007. A motion to approve the request initially failed, but a subsequent motion to reconsider the conditional use permit carried and the item was tabled for an indefinite period of time due to a number of concerns that were raised by citizens and Council members. The main issues that were discussed at length included:

- The need to adequately quantify stormwater control methods
- Accommodating fire/pedestrian access throughout a gated community
- Tsali Trail access point, traffic generation and infrastructure
- Overall density, multi-family structures, parking and building elevations along Elk Mountain Scenic Highway.
- More clarification and exploration by staff in relation to a possible public Park, preservation of the Killian House and greenway connection along Beaverdam Road.

"Since the public hearing on February 13th, the applicant met with neighborhood members and made a number of revisions to the development plan. Some of the main changes include but are not limited to the following: reducing the overall net density by eliminating the multi-family structures along Elk Mountain Scenic Highway, deleting the Tsali Trail access point and allowing for public pedestrian access throughout the site. The site is proposed to remain gated for public vehicular access except public safety vehicles or in emergency situations. Correspondence from the development team providing a detailed list of the site plan revisions is attached for your consideration.

"City staff including representatives from the Parks and Recreation and Planning departments, and a member of the Historic Resources Commission (HRC) met to discuss the possibilities for a public park and/or greenway connection and the preservation of the "Killian House." Positive feedback ensued from these discussions because of the strategic location of the portion of property along Beaverdam Road in relation to the proposed path of the future greenway connection in the area. The developer has shown a willingness to provide a greenway easement for this purpose. However, there would be costs associated with the city maintaining the area for the purpose of any passive/recreational use. Staff asks that Council consider requesting the developer finance the maintenance fees for the Killian House and associated land for a period not to exceed 5 years until such a time that the Parks and Recreation department is able to assume the maintenance of this area."

Urban Planner Nate Pennington - Thank you Mayor, members of the Council and members of the public. To re-familiarize yourself with this project. This is a conditional use permit for 132 units for single and multi-family residential development standard bonus located off Elk Mountain Scenic Highway, Beaverdam Road, Wild Cherry and Tsali Trail (Attachment to City Exhibit 3 - Location Map). It was originally heard by Council on February 13 of this year and continued until tonight. There were a number of issues raised at the initial meeting. I'll address some of those briefly: quantify stormwater control methods, accommodate pedestrian access, remove the Tsali Trail access point, and overall density was a concern as well as the multi-family structures along Elk Mountain Scenic Highway. City Council also asked staff to do some further exploration into the park area. Revisions to the plan before you tonight are outlined in the summary memo which I have included in your packet (Memo dated 4-10-07). Essentially the developer looked to reduce the net density and eliminate the multi-family structures along Elk Mountain Scenic Highway. The Tsali Trail access point has been deleted and there are 4 access points that are allowed for pedestrians to access the site. I have indicated those with the little stick-figures in green (City Exhibit 4). The property boundary is highlighted in red. The sidewalks that are required by staff and through the TRC process are outlined in blue. Those include a point from Beaverdam Road up to the entrance on Wild Cherry. A sidewalk along all Beaverdam Road along the subject property. Tsali Trail from Tsali Trail from the Creekside development all the way up to Elk Mountain Scenic Highway. And from Elk Mountain Scenic Highway to the subject property. Since the time you've last heard it, City staff also met with the Parks and Recreation Department as well as a

member from the Historic Resources Commission to discuss the park area and it was decided it is located along a strategic area that the City is looking at to complete a greenway connection. The developer is willing to provide for a greenway connection and provide for the construction and the easement that would be required to secure this area. That provides a brief overview of the project and the changes made by the developer. Let me know if you have any questions.

Mayor Bellamy - All right. Thank you very much. I will open up the public hearing at 9:13 p.m. and the first person we will hear from is a representative from the developer.

City Attorney Oast - Mayor, while Mr. Justus is making his way up here, I would ask that Mr. Pennington referred during his presentation to a summary memorandum that Council has been provided with and this map. I'd ask that those matters be included in the record, unless there is any objection.

Mayor Bellamy - All right. Thank you very much. Mr. Justus.

Mr. Craig Justus - Good evening Madam Mayor and members of the City Council. I'm Craig Justus. I'm here to represent the property owner and developer and resident. If you will recall, we were here on February 13, which was my birthday, and hopefully I'm waiting to get my gift tonight. After we received your comments and direction, we went back to the drawing board and considered our options, one of which is you know, was the easier process of going through a typical subdivision process that wouldn't require us to come before City Council. We quickly abandoned that because that is not our vision. We don't want a cookie-cutter development for this piece of property. It is a rare and unique piece of property. Instead we wanted to cluster the homes, preserve 36 acres of open space and present a neighborhood that would be attractive to the new residents. After we met on the 13th as part of our direction, we met with residents. First we met with Nate on February 16 to talk about the changes you had asked for or directed us to look at. We met with residents on March 1. We went back to Nate and Scott Shuford and talked to them about the resident's concerns. We went back to Nate and Scott on April 2 to present changes to the plan and again on April 2 we met with residents. So, we met twice with the residents and a number of times with staff after the February 13 meeting to come up with the design changes that we are prepared to present to you tonight, which we believe are material. And, we have incorporated a lot of comments in these changes and so if I can, at this point turn to Ryan and Drake who are the Design Workshop and Planning team. Thank you.

Mr. Ryan Blau - Good evening Mayor and Council. My name is Ryan Blau and my college Drake Fowler will represent a team of Design Workshop that has been working on the land planning side of the project for a little over a year now. And I wanted to do just a quick overview of some of the changes that we have incorporated (Applicant Exhibit 3). Nate did a pretty good summary, but we did have an overall density reduction of about a little over 18% (30 units) including the removal of the multi-family condominium product. We also reduced some of the density to the higher portion of the site, up in the northern section where it is a little bit higher in elevation. We also have accommodated pedestrian traffic through the site and will allow pedestrian traffic through the site. We have removed vehicular access to Tsali Trail and we still maintain roughly the same amount of green space as we had previously in the entire plan which is about a little over 36 acres. I wanted to step back real quickly and because we didn't get to talk at the last meeting, talk a little about the process and the framework we developed to create the plan that you have before you. We have done an extensive environmental analysis on the site. We start typically with a slope map and we identify those areas that we feel are not suitable for development. Those are the slopes in red representing slopes above 30%. Everything below is less than that, obviously, and we try to keep development to slopes that are under 30%. So you will see that reflected in the plan. We've also done an analysis on the drainage, so we understand where the existing drainages are, where the direction of the flow are, or where the run-off is heading. And so we utilize that in our stormwater management plan. Our engineers will speak a little more to that later. We also, in addition to those, took into account the sensitive and unique features of the site. We've done extensive site reconnaissance and have been on site many hours identifying the areas that we want to be able to protect and preserve. And all of these other considerations kind of overlay and create a development framework that we use to lay out the development. This assures us that we are protecting sensitive places and the places that are unique and special to this site. In addition, it's just the environmental framework. We also look at the historical and community framework. Those are also under consideration. We looked at the site history and would like to use some of those site buildings, re-use them as part of the community so the site history kind of shows through on our plan. Regarding walk-ability, we considered different places where we could have community nodes, where the community can come together and have those chance meetings that happen in between neighbors. And this comes together into an amenity plan that we developed so that we can not only identify where those great green spaces are and open spaces, an amenity opportunity is that we can connect those with trails so that the community has access to those. And I'll turn some time over to my college who would like to talk about some details.

Mr. Drake Fowler - Good evening, my name is Drake Fowler. I appreciate you allowing me to speak on Thoms. As you know, at the last City Council, one of the issues was the community access and so you can see here, pulling those pieces out you can see the access points and how the community can access the site's sidewalks (Applicant Exhibit 3). Next I wanted to share with you, throughout the site we have created cluster hamlets. Even though they are apparently for aesthetic use, they also play an important role in our design in terms of a couple different ways. They are built in traffic calming measures. These are areas

where the vehicle becomes secondary to the pedestrian. Secondly, they allow us to share driveways. Using that technique, we can reduce the pervious surface that driveways create by about 40%. And lastly they encourage interaction between neighbors, which I think we can all agree is a good thing. Next, we wanted to show you some of our conceptual designs for the entry. As you can see here is the greeting house and to the right of that, you can see that we have a pedestrian portal. Really the idea behind this is putting ... measure into the vehicular entry into the site as the pedestrian entry into the site. And the concept of this design is putting the restricted access behind that, so that this design becomes more of the face of the community. And the restricted access would be only closed at night. Finally, you can see through some of our process and our brief description of the modifications that we've made, we feel that this is a complex plan and it has a multiple overlaying of systems on it. But, we feel that we went through a solid planning process in developing this and feel that through the revisions set forth to us from City Council and City staff and the community have come up with a good addition to Asheville's neighborhoods. Next, I'm going to introduce Michael Goforth, which he's going to go over stormwater and technical issues.

Mr. Michael Goforth - Good evening, Mayor and City Council members. My name is Michael Goforth and I work for Envision Associates here in Asheville and I've been hired by the developer to do the stormwater, grading and erosion control and public utility components of this project. As far as public utilities are concerned, the City of Asheville was granted a letter of commitment for the water service. They find that there is enough pressure and supply available in this area. Our basic unit will be connecting Wild Cherry Road to Elk Mountain Scenic Highway. There is a connection there, but this will help further up Beaverdam Valley should any complications arise on Beaverdam Road. It's kind of like you can pull water from two directions there. We are going to put in greater than 12,000 feet of new water line, utilizing a loop system to increase reliability. MSD of Buncombe County has granted a sewer allocation request to this as well. And again, we are going to put in approximately 9,300 feet of new sewer line. The two main areas that we have for concern for stormwater management are stormwater quantity and stormwater quality. And I will go through both of how we will handle those. For stormwater quantity, we are going to use 3 integrated stormwater management ponds across the site. It's important to stress that our post-development flow rates will be less than our pre-development flow rates and with that comes a reduction in the downstream channel velocities for the downstream neighbors along Tsali Trail corridor and along Beaverdam. I have met, along with the developer, many of the local residents in that area to address many of their concerns on site and have talked with them as far as their concern for stormwater on an occasion. For stormwater quality, we are going to approach this by a couple different means. The first aspect is we are going to be using community rain gardens which will help to filter out sediment. Those will be done on a localized basis throughout the development. The second part is a permanent pool of storage in stormwater management ponds. This helps to slow down the water. It allows time for the sediment to deposit out of the water and produce a cleaner stormwater. The third phase is a slow draw down time of the one-year storm event. The one-year storm event is over 90% of the storms we have here in western North Carolina. In doing this, we will slow down the water tremendously through just the process of drawing that storm down on a slower rate. It will help out the downstream neighbors. Now I'm going to turn it over to James Vasso.

Mr. James Vasso - Good evening Mayor and members of City Council. My name is James Vasso with Mattern and Craig, 12 Broad Street. I'm a traffic engineer with Mattern and Craig. And Matter and Craig prepared a traffic study for this project, on behalf of Global Development Resources on December 14, 2006. Very briefly to touch on some of the aspects of that study being some discussion has occurred since then. That study that was originally prepared in December concluded that the development would not cause an undue to the traveling public along the surrounding roadway network and no mitigation improvements were identified. I'd just like to point out that the original study was prepared by a professional in the traffic engineering profession with over 30 years of experience. And that person was Ken Putnam who is now the current City Traffic Engineer. The study was reviewed and approved by the City Traffic Engineer at that time, Anthony Butzek. The study was also reviewed and deemed accurate by an independent traffic consultant, Mr. Don Spence, of Kugle and his transportation group. He was hired by some of the residents who were primarily concerned about the third access point on Tsali Trail. Finally this study had been reviewed and accepted by the traffic consultant that you currently have serving in the capacity of traffic engineer for this project, Ms. Gay Sprague of Sprague and Sprague. So, I just want to iterate that including myself, that's five professionals, five people in the traffic engineering profession, that have been involved in this study and have basically come to the same conclusion that it is an accurate and valid study. That original study indicated at the intersection of Merrimon Avenue and Beaverdam Road, which is one of the critical intersections in this study area, that the Level of Service for that intersection during the morning commute hour would be a Level of Service "C" under background conditions and build-out conditions. And it would be a Level of Service "D" in the afternoon peak hour during background conditions and build-out conditions. In simple terms, background conditions are what the traffic is going to be like in the year 2010 without this project. The build-out conditions are what the traffic is expected to be at this intersection with this project added. And, the project traffic does not degrade that intersection from one level of service to the next. Now, we've all been through school and we're all patterned to think that "C" or "D" is bad. And in the traffic engineering profession, that's not necessarily the case. "A" is the best. "F" is the worst. Just like you learned in school, but it's widely accepted in the traffic engineering profession that you strive to design for a Level of Service "C" or "D", particularly in an urban environment. The reason is the Level of Service "E" describes the maximum flow that is attainable through an intersection before things start to break down. When you cross over from "E" to "F", that's when things no longer work. That's when you try to push too much traffic through the intersection or onto the facility and break down the ...cues start to develop and you have residual delay. Designing for a Level of Service "C" or "D" allows that facility or that intersection to have some additional capacity still left.

And in an urban environment, obtaining a "C" or a "D" is widely accepted in the traffic engineering profession as what you try to attain. Since our last meeting, this development has been reduced in size from 162 units down to 132 units, which is over an 18% reduction. What that means as far as the projected traffic, over a 24-hour period that relates to a 13% reduction in traffic from what was originally presented. For the morning commute, the a.m. peak hour is also a 13% reduction in the expected amount of traffic generated. For the afternoon commute, it's an 11% reduction. So the result in traffic impact under this new plan of 132 units will be less of an impact than what was originally reported in the study that was prepared in December. Also there has been support for a single entrance on Beaverdam Road by several residents versus the two that are currently proposed on Elk Mountain Scenic Highway and Wild Cherry. The developer asked that I re-evaluate this scenario and provide an opinion. And I have. I have visited the site and have basically come to the same conclusion that several of the other professionals have come to before me and that is I would recommend against a single access point. And the reason being, having the one access point on Beaverdam Road would concentrate all of the site traffic to one point versus dispersing it over the two points that we currently have at established intersections on Beaverdam Road. Also having a second access point is beneficial for emergency vehicles. Keep in mind that the previous City Traffic Engineer wanted a third access point for these very reasons and that has been taken off of the table. With that, I will wrap it up and be glad to answer any questions that you may have. Thank you.

Mr. Justus - That is all the professionals and the engineers that we would like to present tonight. Obviously all of the information that they have presented we would like to be considered evidence. Just to summarize, we came away from the meeting on the 13th with concerns that were expressed, one being the multi-family condo development and what it did in terms of compatibility. We eliminated that. I have photographs of the single attached structures that we are proposing which are similar to the areas in Walnut Cove (Applicant Exhibit 4). So we eliminated the multi-family concern. The other thing was the pedestrian access. And Councilwoman Cape said what options can we look at and I was looking at the minutes from the meeting that we attended and the staff recommendation in terms of options and it was in your staff report was "keep sidewalks open for public access." We have done that. Although you might not have been able to see it on the pedestrian access plan, there are four points of access into the property for the community to utilize our sidewalks period. You asked, actually staff asked for consideration to allow the gates to be open from sun-up to sun-down and at any time requested by emergency management officials. We have agreed to do that. Speaking of gates, by the way, if you noticed with the entryway design, the gates you will not see. They are internal to the project. So we are not putting them out there to say don't come into this community. Internal to the project. They are open during the daytime and we have this gate house, this nice attractive feature where you don't see the gates. We're also putting in sidewalks, as you know, along the exterior of the property as indicated. So, we have come up with a pedestrian and access management plan that we understand is a fair compromise from staff. In terms of the stormwater. That was a concern. Mayor Bellamy indicated last time that we had not covered that. We are doing better than what is out there today. That is what we are holding ourselves to, which I will hazard to say better than what your ordinances require us to do. Much better than what your ordinances would require us to do. But that is what we are willing to do. Finally, traffic was a concern. And I will just say, what else can we do? This project is zoned RS-4. We are well under the density that RS-4 would allow as a right. You have five professionals, three of which are either working for the City now or have worked for the City, all of which have said this project will not be a problem for traffic. I don't know what else we can do. What we did was we reduced our density. And I understand there were fairly strong comments about the property and traffic. I don't know what else we can do, but to have five professionals say that we are not a problem as it relates to traffic. At the end of the day, we did not want to present a traditional subdivision plan for the people that would live in the community. We felt that was not a good thing. That was not the vision we were trying to get. We were trying to cluster homes to preserve 36 acres of open space and green space and do the right thing. That required us to come before you and ask for permission to cluster homes. We are willing to do this and we think the dialogue has worked to an even better plan than we had before, even though we thought the other plan was just fine. This is a better plan taking into account the considerations and the directions that this Council gave to us. We believe we have met all 7 standards for the issuance of a conditional use permit. We are asking you to do that tonight and go ahead and give me by birthday present. Thank you.

Mayor Bellamy - All right. Any other members of the community wishing to speak tonight? Yes sir.

Mr. Brad Brock - Good evening Madam Mayor, Council members, staff. Thank you for the opportunity to share my opinion on this matter once again. My name is Brad Brock. I am a local residential real estate broker and resident of Wild Cherry Road. On Tuesday, February 13 we all sat in these chambers and we went through a marathon session of very articulate discussion over this development. Mr. Smith and his associates left that Council meeting having heard the following things. The condos were a stumbling block to approval, however, it was not their existence, but the placement that was the main issue it seemed. There was an idea to flip-flop the parking lot and the condo building. The Tsali Trail entrance was considered redundant and should be removed. Council was unsure if a donated park and transit stop would be a benefit or a liability to the City. And gates were a problem with the majority of Council and have caused you to consider the gated community on a larger scope. The developer has come back with the following plan. The removal of 22 attached condos and a few more homes, reducing the number of units and the removal of the Tsali Trail entrance. Increasing the square footage of the remaining homes affectedly increasing the impervious surface footprint. Pedestrian access on Wild Cherry and Elk Mountain Scenic Highway and gates. Along with a request that the neighborhood support them in exchange for the aforementioned concessions. I would stand in support of an ordinance allowing gated communities as a conditional use. There could be valid reasons - the prevention of high volume traffic cut-through being

one. But I do not see a good reason for approving a gated community could be so that the developer could make more money and sell his product for a higher price point. And to hear developers using the crime deterrent as a talking point is a reason for inclusion of gates in a plan makes me wonder. If we have such a virulent crime problem in this city that we have to wall off our residents, we need to stop all other City business, other than law enforcement, eliminate all this rampant crime and then get back to the business of guiding the growth of our community. Yes, Asheville will continue to grow and develop. Yes, more and more people will continue to discover us. Realize that we are still from a national prospective an under valued real estate market. And yes, there will be more density and more traffic on our streets and highways. But we control this process though you, our elected officials, we, the residents of Asheville make the rules. Our City's growth should be citizen-directed, not developer-directed. Unfortunately many of the developments in our area are created by out of city and out of state developers. They have no long term interest in our community other than from a portfolio perspective. They are here to make money, plain and simple. There is no need for us to follow the cookie-cutter plan of any city which happens to go to a popularity and development frenzy. Gated communities are symptomatic of that lack of foresight.

Mr. Skip Pearlman - Mayor Bellamy and member of the City Council, my name is Skip Pearlman. I live at 28 Elk Mountain Scenic Highway. This is going to be my vice-president in charge of technology this evening and I might pull a chair up for her to handle the slides for me (Neighborhood Exhibits 3 and 4). And before we get started, I have one little housekeeping that I will give to Ms. Lipe. This is Pearlman Exhibit 1 and Pearlman Exhibit 2.

Mayor Bellamy - Mr. Pearlman, are you speaking as an individual or a representative of a group?

Mr. Pearlman - Mayor Bellamy, thank you for reminding me of my oversight. I'm looking for 10 minutes.

Mayor Bellamy - I just want to be sure that the individuals whose hands are promptly raised that you are giving up your time. I just want to make sure, okay. Thank you.

Mr. Pearlman - To begin with I would like to address Exhibit 1 which is a letter Robert Dungan, a local attorney, had addressed to the City Attorney Mr. Oast. And I believe, if I'm not mistaken faxed you a copy Mayor Bellamy. Just refer to the last paragraph, I think that's pertinent enough without going through a huge song and dance about this. "I ask that you take these arguments into consideration and advise the Asheville City Council that the Thoms Estate Property conditional use permit cannot legally be granted within a general use district. In the alternative, I ask that you advise the City Council that the requested conditional use permit has been challenged by a qualified protest petition and therefore can only pass if approved by a super-majority vote." Well, we obviously have a difference of opinion and where that leads us in the future, I have no idea, so I will proceed with the balance of my presentation. We believe that a protest petition is in order and that it is a valid proposal before you. But that is for you to decide. So we'll start with my exhibit page 1, and I'm not going to have you endure a word for word resuscitation of this presentation, so away we go. The following is the purpose of the conditional use process as called for in Section 7-16-2 (a). The bottom line is that all conditional use at minimum meet the conditions set forth in this chapter. In order for Council to approve this project, the project must meet all of the seven conditions as set forth in Section 7-16-2 (c). Condition 1 will pass that, that seems to be in order. Condition 2. That the proposed use of development of the land is reasonably compatible with what surrounds it. I don't think it's reasonable to accept that the proposed rank of duplexes on Elk Mountain Scenic Highway is consistent with the massing and pattern of single-family SF4 development that is shown across the street across the side of Elk Mountain Scenic Highway. And basically what I'm referring to are these duplexes (using a map in Neighborhood Exhibit 4). Twenty of them on Elk Mountain Scenic Highway and they have as shown a 5,000 sq. ft. footprint. And I don't think that's consistent at all with what is across the street. Now the next slide will show these 20 buildings and I'm sorry it doesn't show up but there is a red outline projected all over these buildings which show the size that can be put in there. And the reason that is there is the developer has called for in his plan - he reserves the right for a 6-foot minimum distance between houses. So I put this in to show you that with a 6-foot minimum distance between houses, this guy can even expand the proposed footprint that he has put down there. Let's go onto Condition 3. That the proposed use of development of the land will not substantially injure the value of adjoining or abutting property. Now we've all heard that the project will be of high quality. And if so, then a guarantee of high quality needs to be a part of the conditions of approval. At a minimum, a package of design guidelines should be submitted to prove this finding. Without submission of architectural standards, the proposal fails to meet this condition. Condition 4. That the proposed use of development of the land will be in harmony with the scale, bulk, coverage, density, and character of the area of the neighborhood in which it is located. I contend that the proposed site is inconsistent with the pattern of development on Elk Mountain Scenic Highway. If you can read that in the yellow. But you can see on that plan that the plan drawings have buildings that represent development, however, the plan actually allows for buildings to be six-feet apart from each other. The setback standards for the side setback in SF4, that's across the street, is 10-feet from the property line or 20 feet from building to building. Because of the lack of consistency within the context of what is across the street, the proposed development fails to meet this condition for approval. Condition 5. That the proposed use or development of the land will generally conform with the comprehensive plan, smart growth policies, sustainable economic development strategic plan and other official plans adopted by the City. One thing I note here, there is no mention of housing affordability in the developer's plan. Going down to Land Use Goal 111, the City should permit and encourage transit supportive density along and adjacent to major corridors and at logical transit

nodes. The majority of the density is on Elk Mountain Scenic Highway or deep up into the site. Close to half of the density is about a 1/2 mile from the nearest transit facility which is located down at the old Killian House on Beaverdam Road. In my opinion, it will probably be the most under utilized bus stop in the City of Asheville. (Land Use Goal IV) The City's open space standards should require the connection of open space areas where feasible and logical. Global Development has done the right thing to preserve the steepest and highest elevations and have submitted the plan in the form of clustered development consistent with smart growth objectives, however, I want to point out to you what they have submitted. The open spaces should be connected as a system of open spaces and should flow as an unobstructed floor plan for wildlife. GDR has presented a wildlife corridor, yet there are six houses within Phases III and IV where they meet, obstructing the path of wildlife and diverting them to adjoining property. What I'm speaking of is right here (Neighborhood Exhibit 4). See this little triangle right here. That property does not belong to GDR. It's an adjoining property under other ownership. So here go the critters marching up this open space and bam, they hit these six houses - sure they can go through the adjoining property and the backyards of these other houses and then go onto Reynolds Mountain. However, there is no guarantee there is an open corridor for these critters to move back and forth, north and south. This illustrates it even more vividly. I don't think that is a contiguous open green space plan in my opinion. (Land Use Goal X) The City should revise its subdivision regulations to require pedestrian and where feasible, vehicular connections within the subdivision and between the subdivision and adjacent property. We're talking about gates and streets here. That is a hot potato. It's a lightning rod issue and I'm not here to comment on that one way or the other. Fortunately I have your collective wisdom to adjudicate that issue. Now, objectives of sustainability. The footprints for many of these houses range in size from 3,017 sq. ft. to 3,500 sq. ft. with the duplex units along Elk Mountain Scenic Highway having a footprint of 5,000 sq. ft. Now by my rough calculations and I'm not a great mathematician or an engineer, I figure the old plan had approximately 317,000 sq. ft. under roof. The new plan has approximately 383,000 sq. ft. under roof. That's an increase of 21% and with the 6-foot dividing line between houses, it could even be larger. Had the applicant proposed smaller structures, they could have come closer to meeting this objective and consumed less land.

Mayor Bellamy - We have the rest submitted in writing and we will look it over while we are here.

Mr. Pearlman - Yes you do. And thank you very much for your consideration. I appreciate your hard work and everything that you do for the City of Asheville, regardless of the outcome. Thank you so much.

Mayor Bellamy - Any other members of the community wishing to speak tonight?

Ms. Susie Berl - Madam Mayor and members of City Council, good evening. My name is Susie Berl. I live in the Creekside community immediately adjacent to the Thoms Estate. I'll speak for 3 minutes. This evening I wish to speak on three items - open space protection, sidewalks, and stormwater runoff. Open space protection. I commend the developer for setting aside over 36 acres as open space. These areas will certainly help provide some nice views for future residents. I also further appreciate the developer's having retained this open area even while he is dramatically increased the density of the built area. Nonetheless, to retain open space as open space requires legal restrictions. These areas need to have conservation easements assigned to them with the City retaining the development rights. Only then can we be assured that the property's density won't change in the future. Second, sidewalks. Council members should have received from the Clerk a packet of information with the neighbor's desires and signatures for sidewalks on the east side of Elk Mountain Scenic Highway. Please note Selene Thom's attorney's interest in the use of brick or porous material and his interest in using monies paid in lieu of sidewalks on Wild Cherry to be used. To allow for a continuous sidewalk from Beaverdam all the way up to Robinhood Road. Staff is checking into this possibility. Please direct them to do so for the safety of the neighbors and the livability of the neighborhood. Third area, stormwater runoff. As citizens have noted in earlier public meetings, we are concerned about stormwater runoff from the site. This matter has been addressed this evening by the developer who has pledged care during construction. And I believe that they will try to hold to that pledge. I am concerned, however, about what will happen after the developer has completed the project and has left the site. I would ask City Council to require that GDR place restrictions in the deed when he turns the property over to the homeowner association. The association will need to maintain the rain gardens and catch basins so that they do not fill with sediment and cause downstream flooding. Thank you very much.

Mr. Sam Wheeler - Mayor, Councilmen. Thank you again for this opportunity to be here again tonight. Once again I'm here to support this project. I supported it in the past and I've supported it from the very beginning. My name is Sam Wheeler and I'll speak for 3 minutes. I live at 38 Tsali Trail and my property has for many years bordered Selene Thoms property and we have for some time now looked forward to this project. We think it is going to be a tremendous enhancement to the community and to that area in north Asheville. This is a pristine piece of property that many have spoken about. I hope most of you, if not all of you have been out to see this property. It is a rare opportunity in north Asheville and I commend the developer for the work they have put into this to make it the least dense yet an economically doable project that can be done up there. It could be done a lot more, a lot more housing, a lot bigger footprints, and the only reason why they are here before you is, as expressed, is because they chose to do something less and different and it requires a special condition, as you are all aware. So, I am and my family is very excited about this project. We all know, and if we are honest and the community is honest, at the end of the day, if there is even one new house put on those 100-plus acres of property, there would be several people here to object to that. So it's never going to

meet, no matter how hard the developer tries and how much the community and the developer talk, it's never going to meet all of their demands. Any new development is a bad new development in a lot of people's eyes. In fact that it spills out in front of somebody's front yard or on somebody's road that they use every day, it's going to be a bad thing if there is one car or ten cars. So the developer is never going to appease everybody and get it all right. There is a happy medium and I think this developer has gone to great lengths to meet the community's demands and do what is in the best interest of that piece of property as well as what is in the best interest of Asheville. And as probably one of the closest neighbors and one of the people who will most greatly impacted, whose children are going to grow up next to that piece of property, I trust that you will do the right thing. Support this because it's not going to get much better than this. Thank you.

Mr. Sean O'Connell - Mayor and Council, thank you for letting us speak on this again. As you know I've been a part of this process for quite a few months. I'm Sean O'Connell. I live at 17 Edgedale. I think there has been a lot of positive improvement. I will tell you that as you look at these plans and as you educate yourself, lower density is great, but one of the things that a lot of us did like about it was the open space. And so it just looked really crowded for a lot less homes and the size of the buildings on this new plan are exponentially bigger than the original buildings. So there is a 20% increase in total footprint square footage. The idea that we are preserving this great green space is a big concern. I would like to recommend a few conditions that I don't think were part of the new plan. One is that it would be a huge asset to all the downstream neighbors to mandate the homeowners association does maintenance on the rainwater ponds. Once they fill up with sediment, which they always do, they are no longer effective. And literally our backyards will have a small little stream goes through. I don't think it will be a big cost to the homeowners association. It's not something that has to happen every year, but it can be and should be mandated. I don't know all the details of the steep slope ordinance that will probably be in front of you soon. But I do know that is a huge concern for everybody and if it would be possible to have a condition to make sure that the steepest slopes in Phase 4 that they meet the conditions of the steep slope ordinance if and when it passes. It would be fantastic. There has always been conversation about Tsali Trail. And one of the things that I've heard from many folks is also the construction vehicles. If you deem it to be important to eliminate construction vehicles on that small little Tsali Trail, it would be great. Because right now there is the ability for trucks to come and go on Tsali so just having that in writing would offer a lot of protection. And then finally, mandating that the green space that is on this plan stays that way. I don't know a lot about this process, but I would like to make sure that we all protect the part of the plan that we all like. Thank you for your time.

Ms. Susan Seeler - My name is Susan Seeler. I live at 17 Wisteria Drive, which is a street that parallels Elk Mountain Scenic Highway. And although we've heard many assurances here about our traffic being reasonable, it appears to me and others in the neighborhood that there are some areas of concern that have not been looked at and that I would like to point out here this evening. In looking at the revised plan that has been presented for the Thoms Estate property, it appears now that a very high percentage - 80-90% of the development may use the Elk Mountain Scenic Highway for access and egress to the development. The concerns that were expressed back at the February 13 meeting were primarily about the Beaverdam Road traffic. We are not concerned about the relocation of the highest density of development on the Elk Mountain side of the property which according to - if you take the engineering estimates of traffic, will put in the vicinity of 1,200 additional vehicles per day onto Elk Mountain Scenic Highway. This traffic in turn will need to turn onto Beaverdam Road, an intersection which is already dangerous, especially if turning left. We request that a left-hand turn lane be installed at this intersection. Areas of additional concern to us that were not addressed in the previous traffic study are the following. The impact of traffic flow from Beaverdam Road onto Kimberly Avenue. The impact on access to and from Beaverdam Road from Dover Drive, St. Eugene's Catholic Church's school as well as the YMCA. The impact of the traffic on the Beaverdam/Merrimon intersection has already been addressed and we continue to have concern about that. And am especially concerned now with the proposed high increase of traffic on Elk Mountain Scenic Highway is the intersection of Inglewood Road and Elk Mountain Scenic Highway. This intersection is very narrow and dangerous. Inglewood Road is one of two roads for access of 800 members to the Asheville Country Club. This is a heavily traveled road for access by club members. So the neighbors would like an additional traffic study to be done, including impact at the above mentioned sites and we would like to be assured of corrective traffic measures prior to approval of any more development in the Beaverdam Valley. Thank you very much.

Ms. Elaine Light - Good evening Mayor and Council members. Thank you for letting me speak about this issue. There is no question that we live in very uncertain times. We all of politics - things are crazy. My name is Elaine Light. Developers of gated communities exploit the generalized fear and anxiety by marketing their projects as safer and friendlier than traditional urban or even suburban neighborhoods. Their ads and brochures are sprinkled with words like village, community, nestled, cozy to suggest the friendliness and security and manageable scale there are supposedly missing from the outside world. No matter who builds them, gated and walled communities are intended as private havens. It is this separateness that draws the criticism. Planning consultant Daniel ... states "gating is an outgrowth of not wanting anything in our backyard that is different from us." Setha Low, author of the book "Behind the Gates, Life, Security and the Pursuit of Happiness in Fortress America" argues that the primary things people move to gated communities for is enhanced security and community (the oxymoron gated communities) never materialize and crime rates within gated communities tend to be similar to the areas around them." Ironically Ms. Low has shown gated neighborhoods are in fact no safer than other suburbs and many who move there are disheartened by this solidarity and restrictive rules of the community. While the desire to protect home and family is understandable, walls and gates inevitably

lead to more segregation, more fragmentation and more isolation and the outcome is not a desirable one. Many experts say that the fear of crime only partially accounts for the proliferation of walled and gated communities. Equally important is the desire to protect and enhance housing values, which is certainly the self-serving motivation for the gated aspect of many proposed developments we have seen recently in the Asheville and Buncombe County community. And this one is no exception. I question the wisdom of imposing a gated community within a long established and very safe neighborhood. Please consider the overall impact of gated communities when you are deciding on this project. Thank you.

Ms. Nancy Ackerman Cole - Mayor and Council members and all you wonderful public servants, I wasn't planning on speaking tonight, but I'm glad I got the nudge to come and get sworn in in case. I'm Nancy Ackerman Cole and I live in the neighborhood, but not on Elk Mountain - I'm on Robinhood Road at 221 Robinhood Road. I was nudged to speak by something that Craig Justus said in his opening remarks and his presentation was certainly stellar and stunning. I'm a fortunate member of the Asheville Rotary Club. I've been a Rotarian for 20 years. We have in Rotary a four-way test and two of the tests are is it the truth and is it fair for all concerned. I just want you to know that some of the neighbors did meet with Global Development in March, but there was no second meeting as was stated by Craig Justus. And communicating and negotiating with that group has not been an easy or a fun thing to do. I want to live in a neighborhood like Burton Street. Where you not as impressed as I was with the character of that neighborhood description? I don't think our neighborhood wants hamlets and we don't want gates. We want a community and we have relatively come together and gotten to know each other through this process for which I am grateful. So, I heard Pat Whalen's report tonight and if we are going to have 80,000 people come by 2020, you all have some huge responsibility in planning. And to eliminate or reduce crime, we don't want to be whimsical in how we address development. We don't want to be whimsical in buying 80,000 dogs to go with these 80,000 people that are coming to reduce crime. I mean you want to be really thoughtful about how you approach crime issues and development issues. And so I would ask you to consider some of the things said by the neighbors tonight and even the presentation by the developer said that we have a better product than we did a month ago. I would suggest that we could have yet a better product. There are a lot of ways to make money and a better plan would be nice. Thanks.

Mr. Justus - Madam Mayor, just in rebuttal. I'm a good Baptist so I have my cheat-sheet here from the meetings we had. I didn't catch the nice lady's name, but she was not at the two meetings with the residents that we had one on March 1 and April 2. Just to rebut some of the comments made. This whole gate issue to some degree is a red herring. They see it as something we want and they see it as potentially something that will kill the project and so they are against it. Suddenly gates become the issue. I recall from the last meeting, Councilwoman Cape, and I actually have the minutes said it wasn't a question about neighbors wanting to drive through the new community, only that they wanted to walk in this new community and be neighbors. And so, further on down the staff said that here are some options and I have listed those options and we have agreed to all of those options, in terms of opening up the sidewalks for pedestrian access 24 hours a day. Internal to the project, there are no gates at the entrance. Internal to the project there is controlled access. And it's at night time. So during the day time people can drive on the streets all they want. It's only at night. And I just ask the question, what would be the purpose of there anyway at night. They can still walk there at night, but what would be the purpose of driving there at night, unless there is an emergency and that condition we've already agreed with Wayne Hamilton and staff to keep the roads open. So I would just ask that question. Why? What's the big deal, especially in light of the fact that when we started the process there was no policy on gates. We spent the money in reliance on that and we made a tremendous effort to compromise based on staff direction and what we understood from Council, what your direction was. Multi-family, the condo was too big so we got rid of that and now we're at single-family. And suddenly the footprints are too big. They are asking to micromanage the size of single-family dwellings. That is a slippery slope I would think to micromanage the size of single-family structures. I think Mr. Pearlman called them duplexes. They are not duplexes. They are single-family attached structures. There is not a shared party wall. They are actually attached at the roof for utility purposes, but they are not duplexes. They are single-family structures. These meetings we had, Mr. Pearlman was there, bus transit did not come up as an issue. We are certainly willing to talk more about bus transit, but we put it at a logical place next to the greenway that we are donating to the community. As it relates to protecting critters. That's never come up in any discussion I will say about the protection of critters. We did the best we could by preserving 36 acres of open space and showing you a critter design access plan for those critters, but apparently it's not good enough. Finally, the two last things. The neighbors want protection. It's through this process and the permit you would grant that creates the protection. So the plan we presented to you tonight is the plan. So that means we could not substantially alter the plan, or materially alter the plan, without coming back before you. They talked about deed restrictions and homeowners associations and conservation easements. The permit that you would issue, hopefully tonight, with the plan in mind is the protection that they would need to have. Not anything more than that. And finally, let's get back to traffic again. Once again, I didn't mention the fact that total we have met with staff and residents about 22 times. And not included in that are e-mails with staff talking about traffic issues. And it's your staff that directed us what to look at as it relates to traffic. And ultimately, as I said before, five professionals said that our development would not cause any problem and we do not need to mitigate the traffic from our development. And I would just submit to you that the neighbors had plenty of time for all these months to hire an engineer, a traffic engineer, and they don't present a professional talking about traffic. Five professionals agree with us. At the end of the day we meet your standards and we hope you will grant this project so we can move forward and be a positive asset to the community. Thank you very much.

Ms. Julie Niwinski - I'm Julie Niwinski. I live at 52 Wild Cherry Road. I just want to say quickly that the second meeting was for 15 minutes with 2 members of the community. It was not a meeting with the whole group of community members that we had met with originally. So we don't consider that a second meeting, just as a factual thing. I'd also like to point out that maybe five traffic engineers say that the traffic is okay on Beaverdam Road, but there are thousands of residents who drive it every day, several times, who disagree with that strongly. I don't know how you quantify that. I just wanted to say that quickly. And, we were commended last time for not being personal, but we believe that the man who spoke so eloquently about raising his children in our community has his house on the market and I disagree with that. Thank you.

Mayor Bellamy - Any other members of the community wishing to address Council on this matter? All right. I will close the public hearing at 10:12 p.m. Council, any questions, comments or a motion? Councilman Newman.

Councilman Newman - I have a question of something someone brought up about the requirement that the future homeowners association maintain the rain garden and other stormwater facilities. That's clearly that responsibility. How do we make sure that does happen?

Mr. Pennington - Let me backtrack just a little bit and perhaps Bob Oast might comment on this too. I need to clarify something. This falls under the State Statute for the Planning Community Act, so everything that was brought up with the red lines that are on the site plan. Again, we are looking at someone actually owning a structure and the dirt underneath it. I believe the red lines represent the maintenance area that would be maintained by the homeowners association. There have been a couple similar planned communities - one was done out on Biltmore Lake off ... Stone Circle and all the infrastructure is in now and currently the homes are under construction there. Very similar to that design. That could certainly be a condition that we could attach to this. Similar to the Weirbridge project where we added on that condition that they maintain the stormwater controls.

Councilman Newman - Is the technology around that and practices around that understood well enough that we can put in there - we will require you to maintain these stormwater facilities. But is there enough detail in the description that we can really go in there and make sure that we do hold them to a real effective level of management of those facilities.

Mr. Pennington - I believe so. We can let the City Stormwater Engineer who is here as well as their professional to speak to the best management practice of using rain gardens.

Councilman Newman - I don't need all the details of that, but I am certainly supportive of that of making sure we add the best language we can into that to make sure that that happens. What about the question of maybe having more sidewalks on Elk Mountain Scenic Highway. The current scenario as I understand it correctly, is that the developer is going to do some payment in lieu?

Mr. Pennington - Correct.

Councilman Newman - And the folks are saying we would really like to have more sidewalks on Elk Mountain Scenic Highway. Is there a way we can get more invested there rather than just having the payment in lieu fund?

Mr. Pennington - Let me say this and then I'll defer to the Engineering Department again. Our normal practice is to require sidewalks along frontages of the proposed subject property. In this case you've got Wild Cherry for instance, where it sort of jagged (City Exhibit 4). So that is where we would have accepted the fee in lieu of. The agreement with Selena Thoms, I don't see her attorney here to speak about what was decided amongst them. We can certainly discuss that but Engineering's generally the department who reviews sidewalks.

Councilman Newman - If anyone else here has thoughts on that, I would appreciate hearing. The only other question I have is, I guess this may be a Bob Oast question. One other question that maybe you can weigh in. Is it feasible or would you recommend supporting the idea of saying that they can't have construction traffic on Tsali Road?

Mr. Pennington - I don't know why they would have construction equipment on Tsali Road. It seems that the logical access points would be off Elk Mountain and Wild Cherry. There really wouldn't be any logical access on Tsali Trail since the ingress and egress has been eliminated now from the plan.

Councilman Newman - Would that be a concern for you if that was a condition?

Mr. Justus - No, that would not be.

Councilman Newman - Great. I guess my last question is a Bob question. And that is the question of, obviously the question about the gated access and things like that. The question has been looked at and we had a subsequent discussion with

Council about the issue as a stand-alone policy matter separate from this project and made some decisions around that. But this project was proposed prior to those discussions, so my question is. Obviously this is a conditional use project so we can put conditions on it, so I guess my question is, but in light of the fact that our staff is telling us that we did not have an ordinance previously saying that you cannot - prohibiting gated communities, would denying the project based on it having a gate be a permissible reason to not support it? Does that question make sense? I guess maybe a more straight forward way of asking the question is, could you remind me whether we can decide whether or not this project has gates or not and to what degree in terms of pedestrian, vehicle, etc. Is that a decision we're empowered to make?

City Attorney Oast - I think that you can make that decision. As to whether it is ultimately be defensible in court is a question I can't answer right now. We would certainly be in a stronger position if we had a policy that clearly articulated what you could and could not do with gates. If you can somehow articulate a connection between gates or some limited use of gates in any one of the seven conditions listed for a conditional use permit, that would certainly put us in a stronger position. And while I'm thinking about this, let me go ahead and say something about the stormwater situation. And Mr. Pierce can add to this if I miss anything. But I think this is a facility which would result in the recordation of a maintenance and inspection agreement. It's kind of like what we had with the project out on Hendersonville Road where it would become the responsibility of the people who own property in this area to maintain the stormwater facilities. If they did not, the City would be empowered to go on the property and maintain them and do any necessary repairs at their expense.

Councilman Newman - Craig, do you have any thoughts about this question if it would be possible to get more sidewalks on Elk Mountain Scenic Highway?

Mr. Justus - I'm sorry, I didn't recall anyone bringing that up tonight?

Councilman Newman - Some people have contacted Council and said if you are going to do a payment in lieu, would it just be possible to spend that money adding. You are going to have to do the sidewalk along your frontage on Elk Mountain, would it be possible to go on down to Beaverdam Road or more up to Robinhood Road, rather than simply spending that money into the payment in lieu fund - actually spending it on building some sidewalks above and beyond what you would have to normally do on Elk Mountain Scenic Highway.

Mr. Justus - The problem Councilman Newman about that is we don't have right-of-way. GDR is the project. The project outline, or our boundaries are, we are providing sidewalk except along Wild Cherry where they said it basically is impractical to do it. Therefore, we're paying for that difference. If you are talking about obtaining the right-of-way up Elk Mountain Scenic Highway and then down Elk Mountain Scenic Highway. I'm not aware of that ever being imposed upon a private developer to go out there and acquire right-of-way. If you're talking about paying money into a fund so that the City could eventually go out and maybe condemn or acquire right-of-way, I guess we could talk about that. But if you're saying condition the project for us to put in sidewalks on property we don't own, that's.

Councilman Newman - I don't think that is the suggestion. I think that the idea is not that you would have to spend any more money. No one would be asking you to spend any more money than you are legally required to do. But if you were going to just put money into the fund, whether those funds. It sounds like there may be some neighbors who would be interested in donating their easements along Elk Mountain Scenic Highway and just going ahead and having the sidewalks built at the same time. Sounds like that is kind of a new conversation to you then.

Mr. Justus - We have been aware of the request that we contribute in some way to the sidewalks for considerable distance along Elk Mountain Scenic Highway. And what we have said all along is we don't have right-of-way in order to participate in that discussion. If there was something concrete in terms of numbers, we can look at fine. So it comes down to right-of-way and what numbers, Councilman Newman, are we talking about? Clearly we are abiding by what the City ordinance requires of us with sidewalks and in terms of what your standards are. We comply with that. If you are asking us to do something more, I guess we would need to have more detail. But we don't own that property that you are talking about and that is the problem. But we are willing, certainly, to talk about it. We don't want you to get hung up on it, but we don't have any detail about it.

Mayor Bellamy - Council, any other questions? Councilwoman Cape.

Councilwoman Cape - Can I ask staff a few questions please? Just because I need to understand what our options are. What is the process that the applicant would go through if we refuse this conditional use process tonight? To develop this land, what is the process they would go to? Do we have an application in place for the other subdivision already?

Mr. Pennington - No.

Councilwoman Cape - We are in the process of reviewing our subdivision laws but those won't be done for a couple of

weeks. I'm just understanding the process the applicant would go through to address the steep slope issues that are coming up, the subdivision issues that are coming up, the stormwater regulations. I like many aspects of this in terms of clustering and open space, but I don't like the threat that it's a better project without understanding what the other project is. It's hard to really make a positive choice when you don't know what your choices are. And the difficulty I'm having is the vagueness of what our choices are. In other words, our steep slopes say we can't develop. There is a lot of land above 2,200 sq. ft. here that we can't develop on anyway. The slope issue. How many properties could they actually do anyway? Those are questions we are being told they reduced it by 30 houses, but it's difficult to understand what our options are. So explain the process.

Mr. Pennington - Okay, I can explain that for you. The application before you is the only application they have submitted for. There is no dual application nor do we really ever recommend any dual application. We try to really review the application at hand. Secondly, part of their design was to stay out of the areas that are above the 2,220 and 15% grade threshold. So they stay out of the steep slope areas as is written now, not as written or is proposed.

Councilwoman Cape - So they've stayed out of the above 15%?

Mr. Pennington - For the most part. They still have to meet their grading and they have to meet their density. But let me give you a couple numbers so I can help you understand more. The total subject parcel with the park area, and just so you know that park area is 4.26 acres, is 82.7 acres. That results in a net density of 1.6 ... units per acre. Without this park area, 4.26 acres, gives them 78.4 acres. That results in a net density of 168 dwelling units per acre. Ninety-two single-family residential and 40 single-family attached, which have the look and the feel of essentially a single-family residence. If you think of RS-2 and you think of RS-4, RS-2 zoning, which this property has both, it has a little bit of RS-4 and mostly RS-4. But if you think of it in terms of density, that's well below what is traditionally allowed in the traditional subdivision.

Councilwoman Cape - Okay. And just a clarification. You have said that they, for the most part, except for maybe Phase 4, is all below 15% grade?

Mr. Pennington - Yes. I'm hoping that the developer will catch me if I'm wrong (City Exhibit 4). There is a phasing But essentially Phase I towards the bottom here. Phases 2 and 3. Phase 4. Phase 4 is when you really start getting into the areas that are above 2,220 feet. That is when we really start restricting them in regards to grading and residential density.

Councilwoman Cape - Has that already been applied to that plan? That restriction?

Mr. Pennington - Yes. We've done those calculations separately so you have your calculation for those areas that areas that are above and those areas that are below this thresh line.

Councilwoman Cape - You know it's been stated loud and clear from this Council that they are against gates of any kind. The options before us are to turn this down and hope we get our gated subdivision in, or work with this one piece now before they put an application in. If that's the main thing we are contending with. I do have some concerns about the increase in size. You're selling building envelopes. I guess this becomes a question for the developer. So you're selling building envelopes that say that you've having high quality product, but there is no definition of what this high quality product is. It's just a building envelope space. That's kind of an interesting concept that I have not seen on a conditional use before with Council. You know, to me what we are seeing here is not that much better than what we saw two weeks ago. So that is just where I'm at.

Mayor Bellamy - Councilman Mumpower.

Councilman Mumpower - Mr. Oast, are there any modifications that you wish to offer us on your observations on the protest petition validity?

City Attorney Oast - No, I did review Mr. Dungan's letter. It's the shortest way to put that. I just disagree with him. This is not a map amendment, it is a conditional use permit.

Councilman Mumpower - We rely on our guidance. I would make a number of pointed comments because I certainly feel that way right now. It is a persistent disappointment to note how many Asheville neighbors feel comfortable in trying to insert arbitrary control over property that they do not own. I am extremely disappointed with that I see tonight. And I see it at other Council meetings. There is a ... difference in what is offensive and what is harmful. There is a big difference in what we want and what we earn from our own labors. This is not our property. And I tell you, I think we ensure our liberties and freedoms at no greater level than we ensure our neighbors. And that's just the opposite occurring here. We talk all the time about how developers come to this community and try to loot the City. I just see just the opposite occurring tonight. I think the neighbors are trying to loot the developer to their own special interests. And I find that abhorrent. This is about development by committee. Development approval by committee rather than the application of fair practice and consistently applied ordinances. And you

cannot develop the City on these bases. In terms of the fence, I think that if you have a fence in your yard, then you believe in gated communities. You just believe it on a smaller scale to suit your own personal needs. I think a lot of like that security and we like it for obvious reasons. I don't particularly want to live in a gated community, I don't think I ever will, but this is not about what I want. I don't think it should be about what anybody wants, it should be about our governing ordinances. That said, we had no governing ordinances in place when these folks began this process that said we do not accept gated communities. We are applying a policy decision after the fact on these folks and that is not fair. I don't care who we're doing it to. It would be fair to a single neighborhood and it's not fair to a big developer. I think they've made a real strong effort, frankly stronger than I think they should have, to accommodate the indulgences of a lot of folks. They're taking that gate and putting it out of the way and they are talking about at night. Again, whether one likes it or not, it's an effort to try to accommodate folks. I think that accommodation has to work both ways. We live in a busy growing City and everybody has to make an effort to try to help one another. I hear none of that attitude tonight. I hear a whole lot of people having their own special interest about what they want. I believe that these folks have met the seven conditions at a more than satisfactory method and am prepared to make a motion to that affect, at the appropriate time. Thank you.

Mayor Bellamy - If you would like, you can go ahead and carry it right now.

Councilman Mumpower - I move, with the caveat, Mr. Pennington maybe you can help me. Any special conditions that have come up in discussions that I might want to add that are not on our current staff report?

Mr. Pennington - Sure. One is that we talked about the maintenance of the stormwater rain gardens and other best management practices. That they be maintained in perpetuity by the association.

Councilman Mumpower - Is that the appropriate language to use to ensure that? Is that the standard that we've applied to other folks? Is there a better way to do that? Or is that adequate?

City Attorney Oast - I think that is something the ordinance takes care of and that there is no need to say that. Mr. Pierce is a lot more familiar with this than I am.

Councilman Mumpower - Okay. So is there another one?

Mr. Pennington - If you wanted to talk about to make sure that the gates would allow unimpeded access to emergency vehicles and pedestrians, you might say something like, all gated entrances must be operated in such a manner as to allow for the unobstructed ingress and egress of pedestrians and emergency vehicles throughout the subject property.

Councilman Mumpower - Do you see any problems with that language Mr. Oast?

City Attorney Oast - (shook his head no.)

Councilman Mumpower - I want my motion to include that language also. Any other caveats that you would encourage us to.

Mr. Pennington - No, sir.

Councilman Mumpower - Okay. Thank you very much for your help. I make the motion (which motion is: to approve the conditional use permit adopting the proposed master plan, with the requested modifications to number of dwelling units per building, setbacks, sidewalk and road design, for the Thoms Estate subject to the following conditions: (1) The main "spine" road must maintain a 50 foot right-of-way; (2) A cross access agreement must be executed between the Thoms property and the property to be retained by Selene Thoms for fire access purposes; (3) The project shall comply with all conditions outlined in the TRC staff report; (4) 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; (5) All existing vegetation that is to be preserved must be clearly indicated and dimensioned on the site, landscape and grading plans; (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 must gain approval through the Planning and Development Department; (7) This Project will be reviewed by the TRC prior to issuance of any building [or grading, etc....] permits; (8) All roads shall be public roads or private roads built to City standards; all applicable State Building and Fire Code standards must be addressed in the final road design and layout; and (9) all gated entrances must be operated in such a manner as to allow for the unobstructed ingress and egress of pedestrians and emergency vehicles throughout the subject property.

Mayor Bellamy - All right. Is there a second?

Councilman Newman - I'll second it.

Mayor Bellamy - The motion has been made and properly seconded. Any further questions or comments?

Councilman Newman - I have one other question about the public access to the City streets. So there is going to be full pedestrian access allowed on the streets. And there is also going to be vehicular access allowed during the daytime, right? Are there details around exactly what daytime is, or hours, or what that means?

Mayor Bellamy - Councilman Newman, is that a question for the developer to answer?

Councilman Newman - Whoever has given thought to the subject. I think if it is not detail enough, then we should define that in some way or at least establish a process of defining what that is.

Mr. Justus - I would just ask you to include that in the condition. Staff recommendation on the compromise was sun-up to sun-down. If you want to defer that to staff in working out the hours of that operation, that would be fine too. But that was the compromise staff laid out February 13.

City Attorney Oast - If we said at least sun-up to sun-down, I think that would take care of it.

Councilman Mumpower - I would be supportive of that amendment to the motion tonight.

Councilman Newman - I guess the only other - going back to this question about the sidewalks. Is the staff aware of some of the ideas of potentially doing, of using some of the payment in lieu of the money, or otherwise trying to get more - I think there is support for the idea of getting more sidewalks on Elk Mountain Highway. Either using the payment in lieu money or does staff have any thoughts on that? Or, are you aware of contemplating doing that potentially. Do we have to use our payment in lieu of money in this area? Is that something that we can potentially accomplish as part of what happens here?

City Attorney Oast - For payment in lieu of sidewalks, we do have to use the money that we gather that in the area of town where the project is. It may be possible to structure the order such that the money paid in this case is used on Elk Mountain Scenic Highway, if the property can be acquired.

City Stormwater Services Manager Chad Pierce - I would like to make a small clarification. The section that they are paying the fee in lieu of on is for the juts, where the red boundary kind of juts and makes contact with Wild Cherry. So it's very fragmented and that is kind of why that decision was made. It doesn't make a lot of sense to build 50 foot here and 50 foot here. So, those are the only spaces they are paying the fee in lieu of, that they would be required to build sidewalk. All the other sections where they have property frontage on public streets, they are building the sidewalk.

Councilman Newman - So it's a pretty small payment in lieu?

Mr. Pierce - (shook his head yes.)

Councilman Newman - Okay. One other question while I have you here, if you're the person to comment. There was a suggestion made about the left-hand turn lane on Elk Mountain onto Beaverdam. Has that been looked at? Do you think that the traffic volumes warrant that, or consideration of that?

Mr. Pierce - I will have to defer to the traffic consultant Gay Sprague for that.

Ms. Gay Sprague - Would you repeat that question for me please?

Councilman Newman - A question was raised about if there is going to be additional traffic on Elk Mountain Scenic Highway, is it to the level that warrants a left hand turn lane, I believe I have that right, onto Beaverdam Road.

Ms. Sprague - I haven't done that exact. I'm Gay Sprague with Sprague and Sprague and have been hired by the City to review the traffic impact study. That analysis was not included in the traffic impact study and I have not done a separate analysis. What they did do was look at the delay of that left-turn and it was at an acceptable level of service. The idea, I did a quick little calculation, and forgive me it was by hand, but the kinds of shifts in traffic that were discussed a few minutes ago would increase the project traffic by about 16% on Elk Mountain. Because these are all small numbers even if you shifted some of the percentage, they are still pretty small numbers.

Councilman Newman - Okay. The one **other condition I would like to suggest would be the no construction vehicles**

on Tsali Road. Would that be an acceptable amendment?

Councilman Mumpower - Do I see nodding heads back there? Is that doable and reasonable? Yes, sir. I will accept that friendly amendment.

Councilman Newman - I don't have any other questions. I would just say that these are tough judgment calls about this. It is a lot of new traffic on Beaverdam Road. The problem with, you know, it's not so much this project is putting a lot of new traffic on Beaverdam Road by itself, you know, in the big scheme of things. But, when we have these mountain valleys and every new development has to funnel down one road, that is the concern, the cumulative impact of projects like this going in. But I think that with the zoning we have here, I think this is a pretty good project in terms of meeting the objectives of the zoning that is there, preserving a lot of open space - a meaningful amount of open space is part of the project. I personally voted to support the policy of not having gated communities last week. But I think that there is a degree of fairness that these people brought this project forward before that policy was in place. So I don't know that it's fair for us to retroactively impose that on projects that are already in the pipe-line. I think that having pedestrian access to all of the streets, as well as vehicular access during all the day-time hours is a pretty good compromise on that point. So, in the future if this project came forward, if it started next week, I would say, no for public access. But in terms of requiring that now, I don't think that is the right thing for us to do. So, those are my thoughts on it.

Mayor Bellamy - Okay Council, we have a motion and have gone on at least 17 minutes. Can we go ahead and wrap up what we have to say quickly?

Councilwoman Cape - I would ask for one friendly amendment to this, if I may. And that would be that the Phase 4 of the steepest slope development would meet our new steep slope ordinances. Since this will be the final phase of the development process.

Councilman Mumpower - I'm not willing to again back-track on a policy issue. I don't think it is fair to the developer or anybody coming forward who is going to fear the same kind of behavior from us.

Mayor Bellamy - All right? Any further questions or comments?

(Final Amended Motion: Councilman Mumpower moved to approve the conditional use permit adopting the proposed master plan, with the requested modifications to number of dwelling units per building, setbacks, sidewalk and road design, for the Thoms Estate subject to the following conditions: (1) The main "spine" road must maintain a 50 foot right-of-way; (2) A cross access agreement must be executed between the Thoms property and the property to be retained by Selene Thoms for fire access purposes; (3) The project shall comply with all conditions outlined in the TRC staff report; (4) 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; (5) All existing vegetation that is to be preserved must be clearly indicated and dimensioned on the site, landscape and grading plans; (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 must gain approval through the Planning and Development Department; (7) This Project will be reviewed by the TRC prior to issuance of any building [or grading, etc....] permits; (8) All roads shall be public roads or private roads built to City standards; all applicable State Building and Fire Code standards must be addressed in the final road design and layout; (9) all gated entrances must be operated in such a manner as to allow for the unobstructed ingress and egress by pedestrians and emergency vehicles at all times, and must remain open to all other vehicular traffic during daylight hours (sunrise to sunset); and (10) no construction vehicles on Tsali Trail. This motion was seconded by Councilman Newman.)

The motion carried on a 4-3 vote, with Councilwoman Cape, Councilman Davis, Councilman Newman and Councilman Mumpower voting "yes" and Mayor Bellamy, Vice-Mayor Jones and Councilman Freeborn voting "no."

Mayor Bellamy - Bob, do we have to vote on this again?

City Attorney Oast - Because this was voted on back in February and remember you voted on it and reconsidered it. That means the ... motion has been voted on so there is no need to go through it again.

Mayor Bellamy - It's done. It passes.

B. RESOLUTION NO. 07-82 - RESOLUTION AUTHORIZING THE CITY CLERK TO ADVERTISE AN OFFER TO PURCHASE AIR SPACE AT 11 BOSTON WAY

Mayor Bellamy - Sam Power, if you could do items "B" and "C" together and only go over the new information.

From Staff Report: This is the consideration of a resolution authorizing the City Clerk to advertise an offer to purchase air space at 11 Boston Way.

A bid has been received from Kessler Asheville LLC in the amount of \$11,665 for the purchase of air space at 11 Boston Way.

The property at 11 Boston Way is the former Exxon Station across from the Biltmore Estate entrance. The project which is called Bohemian Hotel at Biltmore Village proposes to construct a four (4) story, 89 key boutique hotel. The project received approval from the Historic Resources Commission on October 11, 2006, approval from the Technical Review Committee on November 6, 2006, and approval of the building plans by the Building Safety Department for a Building Permit subject to acquisition of the air space for the balconies.

The air space for the balconies over the sidewalk totals 890± S.F. beginning at approximately 18 feet above the sidewalk and projecting over the sidewalk 5.25 feet. Past appraisals indicate that the value of air space for balconies projecting over rights of way is 20% of the per square foot land value of the property from which the balcony projects applied to the horizontal area of the airspace. This method was used to extrapolate a value for the air space using an appraisal of the property at 11 Boston Way dated February 13, 2006, adjusted for time. The estimated value of the air space is \$11,665.

The bid from Kessler Asheville LLC is to acquire the air space for the balconies for the sum of \$11,665.

On March 27, 2007, Council asked staff to research the practices of other cities with regard to balconies projecting into rights of way. The following is the results of the inquiries to other cities along with staff's recommendation with regard thereto:

In the past several years as the downtown has become more and more popular as a destination for tourists, a place for off hours recreation, and location for both living and working, balconies have become a subject of interest to developers seeking to provide the amenities people desire. Although balconies are not a new invention the opportunity to expand the useable space in a structure through balconies projecting into the right of way has generated requests to purchase air space for the balconies. The response of staff thus far has been to facilitate such requests both from the plans review process as well as conveying requests to City Council for approval. In general staff believes that balconies are a positive addition to the urban environment. Not only do they add vitality to the streetscape, they provide a desirable amenity for marketing downtown as a place to live, work and visit. This may be an incentive to investors to invest in new construction as well as renovation of existing buildings to meet the market demand.

Past experience has shown that the placement and appearance of balconies is important to the general public. For instance large low hanging balconies may be undesirable to some, whereas such a balcony may be appreciated by others as shelter from the rain and shade from the sun. There are of course public safety concerns as well. It is important therefore that such issues be addressed in the plan review process. Staff believes that balconies should not only be safe and functional, but an attractive interface between the public and private spaces.

On March 27, 2007, City Council considered requests from two developers to purchase air space for balconies to project into right of way as follows:

Kessler Asheville LLC	11 Boston Way	890 square feet	\$11,665
Urban Capital LLC	82 Patton Avenue	216.6 square feet	\$3,350

Staff utilized a method of calculating the value of the air space based on previous appraisal experience intended to make the process more efficient while ensuring that the City would receive fair market value for the air space. Council expressed concerns about the value rendered by the method as well as the desire for information as to how other cities handle requests for balcony encroachments over right of way. It is the understanding of staff that the matter should be brought back for consideration after gathering data from other cities.

In summary, none of the responding cities actually sell air space for balconies. Two cities, Gatlinburg and Aspen do not allow balcony encroachments into the right of way. Aspen does allow an encroachment license for old improvements for a flat fee. Wilmington grants revocable encroachment agreements for a flat fee of \$250, while Greenville, SC allows a 40 year encroachment agreement with 3 ten year renewals for a total of 70 years. Charleston's real estate manager indicates she is not aware of any balcony policy because she has not had the issue come up. Roanoke, Chattanooga, Spartanburg and Columbia had not responded as of the date of this memorandum.

Although we have not uncovered much data with regard to balconies over rights of way, staff believes that selling the air space for balconies is preferable to encroachment agreements for several reasons:

1. A balcony is a permanent improvement and the sale of the air space is a permanent solution. It does not leave an issue to be resolved by someone else at a later date.
2. A sale generates revenue at fair market value in exchange for the air space; the data we received indicates that encroachment agreements do not.
3. A sale of the air space enlarges the taxable area of the improvements.
4. Along with the sale, the purchaser assumes responsibility and liability for the air space.

The subject projects have been through technical review and approved for building permits subject to acquisition of the balcony air space. Staff believes the subject requests meet the need for safety, functionality and esthetics. The information gathered from other Cities provided no comparable data for the purpose of estimating value. Having reviewed the information, staff believes that the sale of air space for the proposed balconies is appropriate and that the methodology used is reflective of fair market value. Staff recommends reconsideration of the resolution on April 10, 2007, however, staff is committed to providing documentation acceptable to Council for evaluating these requests and would invite further guidance as the need may be.

Pros:

1. The sale will be at fair market value.
2. It will facilitate an increase in the tax base.
3. It will accommodate characteristics of the building design intended to conform to the historic nature of Biltmore Village.

Cons: There is no negative impact.

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

Economic Development Director Sam Powers - Thank you Mayor and members of Council. The Real Estate Manager is out of town tonight so I will be providing this update to City Council. On the 27th of March, City Council considered a request from two developers to purchase air space for balconies to project into right-of-ways as follows: 11 Boston Way - 890 sq. ft.; and 82 Patton Avenue - 216 sq. ft. Staff had utilized a method of calculating the value of the air space based on previous appraisal experience that was intended to make the process more efficient while still ensuring that the City would receive fair market value compensation for the air space. Council expressed a desire for more information as to how other cities handle the request for balcony encroachments over right-of-way. Staff contacted several cities and our responses indicate no consistent method. I think as you can see after looking at this chart, the cities that responded to us gave a number of different methods. Some communities that responded used encroachment agreements. Some communities did not allow encroachments. But our method, although it didn't uncover a lot of data in regard to balconies over right-of-way, we believe that the methodology that our staff came up with for selling air space is preferable to any encroachment agreements for several reasons. A balcony, since it is a permanent structure, the sell of the air space is a permanent solution. The sale generates revenue at a fair market value in exchange for the air space. The data that we collected indicates that encroachment agreements do not do that. The sale of air space enlarges the taxable area of the improvements and along with the sale the purchaser assumes the responsibility and liability for the air space. The subject projects have been through the technical review and approved for building permits, subject to the acquisition of the balcony air space. Staff believes that the subject requests meet the need for safety, for functionality and aesthetics and that these amenities are desirable to creating more vibrant, urban places. The information gathered from other cities provided no comparable data for the purpose of estimating value. Having reviewed the information, staff believes that the methodology used is reflective of fair market value and the recommendation from staff is for approval of the resolutions.

Mayor Bellamy - Thank you Mr. Powers. Any members of the community wishing to address Council on the new items that have been presented tonight? Hearing none, Council is there a question, comment or a motion?

Councilman Mumpower - Mayor, I originally asked to have this pulled from the Consent Agenda because I had concerns. I think staff has been patient with us in trying to follow through on those concerns. I'm not sure we got all the answers that we hoped for, but on the basis of the staff report, can this be a joint motion Mr. Oast, or do they need to be separate?

City Attorney Oast - It's two resolutions and not on the Consent Agenda. I think you need to do them separately.

Councilman Mumpower - I make a motion to (approve the resolution authorizing the City Clerk to advertise an offer to purchase air space at 11 Boston Way).

Mayor Bellamy - Is there a second?

Councilman Freeborn - Second.

Mayor Bellamy - Any further questions or comments?

Councilwoman Cape - Just one quickly, if I may Mayor. I am very supportive of this motion but I would like to hope that we are not creating a precedent that everybody that comes before us with a balcony request - that it will continue to be a per project. Because there are situations where we do not want to create a tunnel on City streets. I don't believe these two particular projects create that tunneling aspect. But I just want to let it be known that we will need to consider balconies and their affect on the public space every time they come forward.

City Attorney Oast - And I think under the law it would have to be that way.

Councilwoman Cape - I just wanted to send the message that depends where they are and whether they work or not.

The motion made by Councilman Mumpower and seconded by Councilman Newman carried on a 6-1 vote, with Mayor Bellamy voting "no."

RESOLUTION BOOK NO. 30 – PAGE 303

C. RESOLUTION NO. 07-83 - RESOLUTION AUTHORIZING THE CITY CLERK TO ADVERTISE AN OFFER TO PURCHASE AIR SPACE AT 82 PATTON AVENUE

From Staff Report: This is the consideration of a resolution authorizing the City Clerk to advertise an offer to purchase air space at 82 Patton Avenue.

A bid has been received from Urban Capital LLC in the amount of \$3,350 for the purchase of air space at 82 Patton Avenue.

The property at 82 Patton Avenue is the former First Union Bank building. The project which is called Capital Center proposes to renovate the building into office condominiums. Along with interior redesign the building will receive a new facade which will include balconies extending out over the sidewalk in a bowed pattern to a maximum distance of 4' with a view of Pritchard Park. The project has received Level 1 approval from Planning & Development, unanimous approval from Downtown Design Review and the plans have been approved by the Building Safety Department for a Building Permit subject to acquisition of the air space for the balconies. The air space for the balconies over the sidewalk totals 216.6 ± S.F. and begins at approximately 16 feet above the sidewalk. Past appraisals indicate that the value of air space for balconies projecting over rights of way is 20% of the per square foot land value of the property from which the balcony projects applied to the horizontal area of the airspace. This method was used to extrapolate a value for the air space using the tax assessment for the property at 82 Patton Avenue. The estimated value of the air space is \$3,350.

The bid from Urban Capital LLC is to acquire the air space for the balconies for the sum of \$3,350.

On March 27, 2007, Council asked staff to research the practices of other cities with regard to balconies projecting into rights of way. The following is the results of the inquiries to other cities along with staff's recommendation with regard thereto:

In the past several years as the downtown has become more and more popular as a destination for tourists, a place for off hours recreation, and location for both living and working, balconies have become a subject of interest to developers seeking to provide the amenities people desire. Although balconies are not a new invention the opportunity to expand the useable space in a structure through balconies projecting into the right of way has generated requests to purchase air space for the balconies. The response of staff thus far has been to facilitate such requests both from the plans review process as well as conveying requests to City Council for approval. In general staff believes that balconies are a positive addition to the urban environment. Not only do they add vitality to the streetscape, they provide a desirable amenity for marketing downtown as a place to live, work and visit. This may be an incentive to investors to invest in new construction as well as renovation of existing buildings to meet the market demand.

Past experience has shown that the placement and appearance of balconies is important to the general public. For instance large low hanging balconies may be undesirable to some, whereas such a balcony may be appreciated by others as shelter from the rain and shade from the sun. There are of course public safety concerns as well. It is important therefore that

such issues be addressed in the plan review process. Staff believes that balconies should not only be safe and functional, but an attractive interface between the public and private spaces.

On March 27, 2007, City Council considered requests from two developers to purchase air space for balconies to project into right of way as follows:

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In summary, none of the responding cities actually sell air space for balconies. Two cities, Gatlinburg and Aspen do not allow balcony encroachments into the right of way. Aspen does allow an encroachment license for old improvements for a flat fee. Wilmington grants revocable encroachment agreements for a flat fee of \$250, while Greenville, SC allows a 40 year encroachment agreement with 3 ten year renewals for a total of 70 years. Charleston's real estate manager indicates she is not aware of any balcony policy because she has not had the issue come up. Roanoke, Chattanooga, Spartanburg and Columbia had not responded as of the date of this memorandum.

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4. Along with the sale, the purchaser assumes responsibility and liability for the air space.

The subject projects have been through technical review and approved for building permits subject to acquisition of the balcony air space. Staff believes the subject requests meet the need for safety, functionality and esthetics. The information gathered from other Cities provided no comparable data for the purpose of estimating value. Having reviewed the information, staff believes that the sale of air space for the proposed balconies is appropriate and that the methodology used is reflective of fair market value. Staff recommends reconsideration of the resolution on April 10, 2007, however, staff is committed to providing documentation acceptable to Council for evaluating these requests and would invite further guidance as the need may be.

Pros:

1. The sale will be at fair market value.
2. It will facilitate an increase in the tax base.
3. It will accommodate the connectivity of public and private space for a more robust downtown environment.

Con: There is no negative impact.

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

Councilman Mumpower - Again, based on the persuasiveness of the staff report, I make a motion to (approve the resolution authorizing the City Clerk to advertise an offer to purchase air space at 82 Patton Avenue).

Councilman Freeborn - Second.

Mayor Bellamy - Any further questions or comments?

The motion made by Councilman Mumpower and seconded by Councilman Newman carried on a 6-1 vote, with Mayor Bellamy voting "no."

RESOLUTION BOOK NO. 30 – PAGE 304

D. ASHEVILLE POLICE DEPARTMENT DRUG ENFORCEMENT PLAN

From Staff Report: This is a comprehensive and detailed plan for increased drug enforcement, improved neighborhood safety, and a discussion of the possible elimination of all open air drug markets in Asheville includes both immediate and long term components.

The Police Department's continuing efforts directed at overall improvement in the quality of life for residents constantly seeks information regarding new trends, gathers information based on factual information and statistical analysis to determine best practices for a high functioning organization. Any and all relative information is used to develop strategic plans for programs and practices to provide the highest level of service which involves many community partners. All residents rightfully expect the same level of service for their tax dollars. Balancing the need to maintain equal service to all and to redirect efforts to areas where more significant problems exist is a fine balancing act. Incremental steps are designed for thoroughness and operation within the parameters of what is reasonable based on allocated resources.

Pros:

- Increased police presence in high crime areas, particularly where known illegal drug business is conducted
- Increased cooperative programs between community partners involved in an overall holistic approach to a better quality of life for those negatively affected
- Easier facilitation of programs involving health care, home security, child care , youth skills building, positive mentoring by appropriate role models leading to community ownership for safer communities
- More open and trusting relationships between police and residents
- Decrease in illegal drug business in Asheville neighborhoods
- Decrease in crime in general when residents take ownership, partnering with police

Cons:

- Budget Ramifications
- Redirection of attention from some neighborhoods to targeted areas

Staff recommends that City Council make selections from options presented based on conclusions that will provide the best outcome for Asheville neighborhoods with available resources.

Police Chief Bill Hogan - Good evening. Because of the late hour I will be as quick and brief as I possibly can with this. I was asked to expand the presentation I gave you on the 7-point plan. This is kind of what this will do, but it will be very quick and I won't bore you with the details. The things that the Manager asked me to do was to go back, because he wasn't here, and re-visit the wording on the discussion that occurred during the budget allocation for the two years where the money was set aside to what eventually came the Drug Suppression Unit, but it was just a general statement to direct me to assess the problem and project solutions. August 1, 2004, we created the Drug Suppression Unit by using 12 emergency response team officers, 1 vice officer and 1 lieutenant. And the following year, an additional 5 officers were allocated for that project.

Vice-Mayor Jones - How much did that add up to dollar-wise? The allocation of 5?

Chief Hogan - I would have to go back and research. I think the first year was \$600,000. And then the second year would have been something like \$250,000 or thereabouts. That was additional cars which would have added to that. As far as looking to the future, I'm going to skip over this and come back to this because it speaks to the budget and you'll see it again. Let me talk about historically what we have here in terms of what we've done. We took the prior 29 months before we established the Drug Suppression Unit and between the 9 months that the Drug Suppression Unit has been in effect and what you see is felony arrests have increased by 36%, misdemeanor drug arrests have increased by 44%. What's missing from this because our data 29 months prior to what it did not capture that we can today, are criminal citations. So in reality, what I can't tell you is a comparison between criminal citations, simple possession oftentimes is written on a criminal citation, so that is not there. So that 44% increase in reality is probably higher. I just want to point out as well that this does not represent the arrests simply of the Drug Suppression Unit. The Drug Suppression Unit establishment has stimulated a lot of activity with patrol officers and others that have really stepped up to the plate and engaged themselves in making those kinds of arrests and really working on the drug problem. The other thing I want to mention to you is that during this analysis, on average we had 18 vacancies per year. We had a lot of turnover, baby-boomers moving on and things of that nature. The 7-point plan, I'm not going to spend a lot of time on. I went through this with

you a month, month and a half ago. (From power point being used: The Seven Point Plan is (1) increase criminal interdiction traffic enforcement; (2) increase drug investigative special operations; (3) increase current DSU staffing by 25%; (4) increase partnership with U.S. Attorney's Office in federal drug case prosecution; (5) invest additional resources in crime prevention/neighborhood enhancement in public housing and high crime areas; (6) increase community policing and outreach initiatives; and (7) explore additional policy considerations.) So really I want to jump to explore additional policy considerations and build upon what the 7-point plan was talking about. I will tell you that all the things we talked about doing, we are in motion trying to enhance and work on all those activities. Let's look at the current service enhancement recommendations. (From power point being used: The current service enhancement recommendations include (1) crime prevention officer dedicated to public housing; (2) City Hall security officer; (3) two additional beats; (4) five detectives, two forensics techs; (5) 10% sworn personnel over hire; and (6) two telecommunicators, three telecommunications supervisors.) What you are looking at, quite frankly, is what the Police Department has recommended as potential budget enhancements to the police operation. You have already approved the Crime Prevention Officer dedicated to public housing. There was a lot of discussion about City Hall security - there have been conversations I've had with the City Manager to add that and enhance that. I know we've had a lot of meetings within City Hall, Public Works, and other City facilities to enhance our security. We propose two additional beats which I'm going to spend some more time on. The five detectives, I'm going to talk about that in greater detail. The 10% over hire and then the 2 telecommunicators. I'll go over each one of those with a little more detail so you understand why we are proposing what we are proposing. We are proposing an increased beat. We have currently 4 beats in our 3 districts and we are recommending additional beats in the south/central district and the west district. And there is a reason for that. One, you can see that C-1 beat is downtown has 19% of the workload of the entire City. A-4 beat, which represents 13% of the total calls and that encompasses Pisgah View and also the Haywood Road area, so that they have a lot of attention. But one of the reasons we are doing this is we started analyzing our response time for calls for service - priority 1 calls. And that is really got us looking at this. Currently in the central district we have an average response time of 8.5 minutes to go to a priority 1 call. In the west district it's 8.6 minutes. That's the average. There are some actual beats now that are averaging 9.5 to 10 minutes response time. We're talking about priority 1 calls, where someone says I need the police now. So we started analyzing this and incrementally looking at improving our response time as with the Fire Department or any other entity. We are challenged in this community, as you've probably heard, by the geography and the topography of this area. It does slow down our response time. This is not a gridded-off city with streets and avenues that give you a lot of flexibility. Sometimes we have to follow those roads as they wind around the mountains. And obviously this increase will allow us to continue to work on that 2-1 ratio and ensure that we concentrate our activities in high crime areas. I will also tell you that we have been looking at other departments and how they are analyzing this. And through our planning and research function, contacting other law enforcement agencies, we are finding we are right on the money in trying to target about a 5% response time on emergency calls for service. That's why it is being recommended in the budget. The increase in the Criminal Investigation Division, I think I mentioned to you that we had one more detective in 1989 than we do today. Our workload obviously has increased dramatically. As we've had some discussions previously, there was some talk about participating in the FBI Task Force. One of those detectives would be geared for that. And one of those individual detectives would, we are training a detective now for that forensics - I mean the computer forensics detective that would do the job porn and those things. We are training one now, but that is a whole new area of responsibility. As you can see our case load is 286 calls per detective. That's an average of 5.4 hours per case. And we are also carrying 25 cold case homicides, missing persons, that are missing under suspicious circumstances. We compared ourselves to 11 agencies on the east coast - Del Ray Beach, Florida, up through Cary. Anyway, 11 different agencies. And what we found is that their detectives carry 149 cases and they spend on average about 10.4 hours per case. The bottom line is, the more time you have to work on a case - a simple case you will spend less time on. But if you have a homicide, you will spend a lot of time on - multiple detectives. The long and short of it is, the more time that you have to work on a case, the better quality case you can do, the more detailed investigation you can do. That is why it's being recommended as well. We're obviously, with the increase in calls for service, criminal activity and our drug activity, our forensics technicians who process crime scenes and handle evidence as far as collecting that and submitting it, are having greater demands placed on them. As you can see, we talked about the NarDrug Test. This is a new technology. We have sent two of our forensic technicians to that training and we are supposed to get the unit in later this month and we will start using that and see how it works. But we believe from what we all saw with this system, we are waiting for a court challenge on it, it's very effective and people are pleading guilty on these cases. And if someone does challenge it, they stand ready with the scientists, chemists and attorneys to represent the department that gets challenged on it.

Councilman Mumpower - Chief, that's very important.

Mayor Bellamy - Councilman Mumpower, let him go through the whole presentation and then we will come back.

Councilman Mumpower - Certainly Mayor.

Chief Hogan - The 10% over hire. This is another thing we talked about. Based on the fact that because of the turnover, that continuous turnover, it became very clear that we've had vacancies in patrol, we weren't really able to fill the 5 additional vacancies in the Drug Suppression Unit that were awarded in the budget of 2005-2006. We have done so as of today by the fact that we are using that over-time strategy that I talked about in the 7-points of getting there. But that's the only way we have been

able to do that. What that would do for us and what you can see, some of the challenges we face, we are going to have resignations and we're going to have retirements, and we're going to have folks that fail to complete training, or get into the training process and don't realize police work wasn't what they thought they wanted. So that is going to generate some turnover. What's not even reflected in the permanent turnover is injuries and family medical leave. As we've hired younger and younger officers, we'll probably have more family medical leave as they take off for the birth of children and stuff, both male and female employees will do that. So this basically gives us the opportunity to maintain all the districts at full strength, if we over hire, also maintain the Drug Suppression Unit and our Detective Division. We have, right now, vacancies in the Detective Division, Patrol and would have had in the Drug Suppression Unit had we not taken this latest strategy. So that is another recommendation that is in the budget for your consideration. It's not cheap obviously. Here's another area that is often overlooked but we feel it's important to point out that we are recommending two additional telecommunicators and 3 telecommunication supervisors. We have a tremendous amount of traffic volume, radio traffic and phone calls coming into our facility and by looking at the workload that we are understaffed and we traditionally, have been understaffed as far as supervision. We have two supervisors and that's not nearly enough to supervise a 24-hour operation. We need maturity there to make sure there is a supervisor on site at all times - that is where the 3 comes from. You can see the statistics that we have there. But the one thing I really do want to point out to you as we have done this research, at our peak activity time, we can have as many as 40 officers on the street transmitting on one radio frequency or one talk route. That is not safe. That means the officers can't get on the radio. We are at the point in time that the size of this City and the complexity and the calls for service, we need to have two talk groups. We have done national research again, we are seeing an 18 to 1 ratio. That means 18 units in the field to one telecommunicator or dispatcher monitoring those calls for service. And that is why we are making this recommendation as well as part of our budget. But here's the shocker for you. If you go down through those and look at the list, you see that those enhancements to the Police Department to enhance our response time to critical calls, by adding the two beats, enhancing the tech, 10% over hire is obviously very expensive, but you are looking at \$2,346,393. (From power point being used: The cost summary is as follows: (1) crime prevention officer - \$46,735; (2) City Hall security officer - \$46,735; (3) two additional beats - \$619,350; (4) five detectives, two forensics techs - \$538,199; (5) 10% over hire - \$887,965; and (6) two telecommunicators/3 supervisors - \$207,409. For a total of \$2,346,393.) These are things we have talked about as a staff about where do we go from here. You can see what we have recommended in this budget, but these are things that we looked at and toyed with numbers for the future and what we could incrementally do in the coming years, quite frankly. (From power point being used: The incremental steps of ongoing workload analysis indicates: (1) incremental enhanced enforcement in public housing; (2) incrementally and enhanced police presence in downtown; (3) incrementally and enhanced and improved traffic enforcement throughout the city (traffic issues are 30% of our workload); and (4) always maintain 10% sworn personnel over hire so no service gaps exist.) That is to focus our emphasis on public housing by creating a housing unit by putting additional personnel dedicated to that one service. As I indicated downtown, I know you receive complaints from time to time and we as a police department receive complaints from downtown - not enough police presence. That is another area we see that as time goes on we are going to look at it. And then obviously looking at traffic enforcement throughout the City. It does represent 30% of our entire workload. It is probably the greatest complaint we receive for calls for service from citizens complaining about speeding, stop signs, and wanting police officers out there to take enforcement. The obviously whatever we do about increasing our staff in the Police Department we would look at maintaining 10% over hire to manage that. The next slide is basically saying the same thing. It would be in a following, multiple years and looking at what we add to trying to address this issue and then adding a little more and incrementally adjusting and seeing what impact it has on the various neighborhoods or the downtown. (From power point being used: The long term performance improvement of ongoing workload analysis projects: (1) continued personnel enhancements for enforcement in public housing moving toward safety and improving quality of life; (2) continued personnel enhancements for downtown moving toward greater safety; and (3) always maintain 10% over hire so no service gaps exist.) Finally, this is talking about how we are going to talk about measuring some of our successes in what we are looking at. (From power point being used: The ongoing analysis for high performance of measures of marked improvement: (1) results long term will be less arrests; (2) success might be displacing drug dealing outside the city; (3) displacement is starting to occur; (4) peer review; and (5) comparison with high performing police agencies.) And again, we are looking that as we make improvements, we should see less arrests. If we have greater police presence out there, arrests should subside. If we are actually deterring the criminal activity. Success would also be described and displacing the drug dealers outside the City. We know that we are displacing some of them now. We know that they have moved in, quite frankly, some trailers in the County and it's a safer operation for them at this point in time. I'm not sure it will continue to be with Sheriff Duncan, but that's where some of them have gone and we know that for a fact. The peer review, I just had a conversation with John Emerson, the special supervising agent for North Carolina DEA, and he is working with me to bring some individuals in to look at what we do and how effective we are at that and try to bring some other additional best practices or ideas in comparison to what we are doing today. So we are open for any input. Then we are also comparing ourselves with high performing police agencies. We are looking at standards of comparison to include tangible and non-tangible variables. It's important for us to maintain what you see there is Commission on Accreditation for Law Enforcement Agencies (CALEA) to make sure we live those standards. We are working on the customer satisfaction survey that will be going out. It is a CALEA requirement that we will be working on and obviously continue data analysis to see what kind of impact we have. And then finally, these are issues, in the course of what we've been working on have more of the social aspects and things you have expressed in interest in. I just want to tell you that the City departments are collaborating and are going to reach out to other entities in this community to work with us to come up with some solutions and ideas on how we can enhance child care, jobs and job enrichment programs, and looking at how we can improve and increase

coordination of social service programs in high crime areas. You see The Healing Place and the Wet Shelters. That is how we take drug addicted or folks that are under the influence of alcohol off the street. We just don't turn them away at the door because they are under the influence. And there has been a lot of conversation with that. CIT training is well underway - we're going to sign an agreement with that. That is for law enforcement officers to be better trained, at least 25% of the field units to be trained, in engaging persons with mental health problems so that it came about of trying to prevent excessive force situations with law enforcement and people who are mentally disturbed or mentally upset at that point in time. Drug Court. That has the potential to increase. More activity. I know they are getting ready to have a graduation. I sit on the board with that. I think they can take more individuals than they currently have, so we are going to work to help that. And, as has been discussed numerous times, the need for state level addressing the judicial system as far as funding and additional initiatives. And that is my report. Thank you.

Mayor Bellamy - Councilman Mumpower.

Councilman Mumpower - Thank you Mayor. Chief, thank you for treating our policy mandates seriously. We appreciate you're following up on this fact, sincerely. Can we do all that? We'll see. There is probably some fudge in there. We are talking about 10% over hire to the tune of \$875,000. We may have to negotiate on that.

Chief Hogan - I understand completely. These were recommendations to you to try to tell you how we thought we could best improve our operation and ensure consistent personnel in the field. But I understand that is a lot of money to be talking about.

Councilman Mumpower - You gave us just what we asked for and now the accountability is ours to help you do what you are going to try to do. A couple side notes. I'd be interested in our ability to track and provide feedback on drug tips. A lot of folks feel like they have voiced concerns and they might not go into a dark hole, but they don't know.

Chief Hogan - Yes, sir, I know you've asked that question before and I checked with my personnel and they are getting back with complainants and letting them know. Sometimes when we get drug tips they don't happen, the feedback doesn't happen as quickly as most people would like. But generally if you don't get quick feedback that means we're working on it and there are some good results coming down the pike hopefully.

Councilman Mumpower - The other issue, you mentioned NarTest. Most folks don't know. What is the delay on SBI drug analysis now?

Chief Hogan - Well, I think you heard Ron Moore indicate that, we were backed up approximately 12-14 months in drug analysis and that meant the case couldn't move forward in court until we got a conformation that it was cocaine, or whatever the drug might be. They added more chemists and started catching up - getting it down to I think a 4-6 month range, with the promise, I think last August, and then in December they said we'd get down to 1-2 months. And, I think District Attorney Moore indicated that he heard that 1,500 additional cases have been transferred from other parts of the state up here to be analyzed in the western part of North Carolina. Which means that the one who takes the time to analyze those drug cases, but also travel to testify as necessary when those cases are heard.

Councilman Mumpower - NarTest is a short-cut around some of those?

Chief Hogan - NarTest will allow us, it is almost like an intoxilizer in measuring the blood alcohol in a system. It has been accepted by the courts. This, through a light and the size between the light and the prisms, you get a different light reading and an image based on the type of chemical make-up of the drug. It works very effectively on cocaine, crack cocaine, they are working on methamphetamine, that is the one that is up in the air right now, works on heroine, works on marijuana very effectively. And like I said, they are ready. We be a beta test site, they've already got some out there. The science from everything I have seen is solid and they are ready for their attorneys and chemists to testify to that. And anytime we have a case that is going to go to trial, free of charge, we can send that sample to them and they will analyze it again in the traditional way with the spectrograph that they do at the SBI and give us the same results and come and testify.

Councilman Mumpower - Fantastic. Great resource. You mentioned some performance measures, quality assurance measures. I would like to toss out an interest, as one member of Council, in exploring the possibilities for subjective measurements. For example, feedback from the Manager of each of our public housing developments and develop a forum of some sort. I've talked with Mr. Bell at the Housing Authority about this. Some objective forum for subjective evaluation of what their sense of drug activity is in their development. I think this is for you, not for me, but if there were some subjective ways to do that, I'd think sometimes those produce information that somebody more objectively has And one final question, on the DSU we initially started with 12, added 5 which have been tough to sustain that, getting ready to add how many more?

Chief Hogan - We're adding the 5. We were budgeted the 5, but we never got the vacancies down to fill those. So we

are filling the 5. I believe the initial funding was intended for 6, but we went ahead and put the whole emergency response team in there which was 12. We put a vice officer in there and we put the lieutenant in there.

Councilman Mumpower - So that gives us 17. Is that enough to do the job?

Chief Hogan - I think that when we put these 5 in here we will see an incremental impact on what we are having. We've had the funding, we've just not had the bodies to put them in place. Quite frankly I'm pretty excited that as we work on the schedule on the coverage, we see a dramatic increase in coverage when we have the Drug Suppression Unit officers out here. I think we will see some real benefit from that.

Councilman Mumpower - Thank you for your enthusiasm. Thank you for your creativity. You can feel it. We appreciate it very much.

Mayor Bellamy - Chief, we have some other questions. Vice-Mayor.

Vice-Mayor Jones - Particularly in lieu of the presentation that we had earlier, it's pretty - this is not about you, this is about me pondering - discouraging thinking about the only way to deter crime is through more police officers. And just recently I had the opportunity to see a 360 view of our City and how spread out is it and how many neighborhoods there are. I mean it was beautiful, but it just made you understand that we can try to find \$2.5 Million, but unless we are doing some pretty significant other things, investing in other ways, I just wonder about the return on our dollars. I'm not just about the deterrents being more police officers out there. Obviously for operations and closing cases and for things like that, you've made some great cases and we've got to figure out. But, my question to you is, could - and maybe in another presentation - do you have the knowledge or the resources to also perhaps suggest some investments in our community around environmental deterrents. And I'm not even sure what that is, but maybe it's this crime prevention officer and running something on our City channel. Like what people can do to keep the crime from happening and also - you're also keeping people from deterring crimes. If you make it hard for them besides a policeman walking up and down the streets all the time. So, I think that has got to be a piece of this. Is the whole deterrents part. And if there are policies that would help for us to advocate in addition to some of the judicial reforms, that we could be taking to our legislators, let's talk about those too. Because I just don't think this will even get us where we want to go if we could write the check tomorrow.

Chief Hogan - I think that when, again when District Attorney Moore was before you this evening and started talking about issues, he talked about education and school drop out. You've probably heard me say that 70% of all the folks that are in prison did not graduate from high school. So it's education. We are looking at social issues that I guess have been with us throughout I guess my career and I think throughout life. But I know that kids run a greater risk of running and talking that wrong path when they come from a home where the home is broken or dysfunctional, particularly dysfunctional. Because I've seen a lot of single parents raise good kids in tough circumstances. But if those kids don't stay in school and they get out of school, they don't have a lot of options. A lot of these job and child care things we are talking about, not that we as a City can solve all these, but I think hopefully collectively that we can work with other entities in this community. We can work with other social service agencies to focus on additional things. Because I think you are absolutely right. Police alone won't do it. There is a segment, in my years of experience in law enforcement in 4 different cities, there is always a segment that will become involved in criminal activity. But the vast majority of citizens are law-abiding citizens. They obey the law. They do the right thing. And we're here to deal with the ones that don't.

Mayor Bellamy - Chief, I have some solutions I want to bring up. One is when we are looking at the cost analysis that you put forward. Is it possible to get a breakdown of how that money will be spent, looking at the two additional beats and how that will be played out so that we can see the disbursing of the workload.

Chief Hogan - Sure.

Mayor Bellamy - One of the things that I'm hearing from some of the officers who are working really hard on the Drug Suppression Unit or who are trying to help with drugs is the amount of overtime and how that conversation plays out. And consistent schedules. Recently I spoke with one and the concern was while we're doing a good job of adding additional coverage, their living expenses are going up in that they have to have more baby-sitters to watch their children, their cost of living. So how do we balance their needs with our needs in making sure we are compensating them properly for them to be able to do or respond to the issues that they are dealing with successfully. I also want to get a breakdown specifically of the Drug Suppression Unit's arrest vs. the overall department. So we can kind of track the numbers. For me I want to start 12-1-05, but start tracking the true numbers of how we are doing, so we can monitor the progress that we see within the Unit as well as within the Department.

Chief Hogan - The Drug Suppression Unit monthly breaks down, they break down their arrests by patrol and by Drug Suppression Unit. They also break down arrests in the Housing Authority. So we can look at it three ways right now.

Mayor Bellamy - I'd appreciate that. Also, I want to look at, when you look at the dispatchment of the calls for services, that you talked about. Could we have more of a breakdown on what we currently have in place and for how long we've had this issue? And, what your solution would be for the dispatching of calls as well as the national average? If we could have that in a graph so we can kind of look at where we've been, where we are and where we need to go.

Chief Hogan - When you say the calls for service, are you talking about what is coming into the communications center?

Mayor Bellamy - What is coming into the communications center, the number of people that we have on staff during that time and that ratio.

Chief Hogan - I will tell you one of the things that has happened. For the first time since I've been here we have been able to staff the command staff fully. And quite frankly we have been able to give attention to the communications center that we have not been able to give it before. In terms of analyzing the workload and looking at our records management functions and some of those support functions. And that is where some of this information, as we started working on the budget, came forward. With direction, it was time to look at the Detective Division, look at that workload. It was time to look at the communications center. Those are critical functions that we need to make sure they are staffed properly. That is how that came about.

Mayor Bellamy - One thing that wasn't mentioned. How many sworn officers do we have serving our APD today?

Chief Hogan - We are authorized 190 sworn personnel, with this new crime prevention officer. And we probably, I know we've just had a retirement today and one person who came to see me who will be on disability retirement very soon, so I'm thinking about 5 or 6 vacancies right now.

Mayor Bellamy - Five or 6 and that is with the new class we just graduated?

Chief Hogan - Yes, mam.

Mayor Bellamy - And that's sworn. How many non-sworn support staff?

Chief Hogan - I believe we have 52 non-sworn.

Mayor Bellamy - In looking at what you gave us as far as the numbers for the traffic load - 40% of the case load was traffic, do we have a breakdown of increases or decreases in what we are receiving, as far as are we seeing more red light violations, or speeding? What is the analysis for that. If we can get that additional information.

Chief Hogan - Sometimes we do a crash analysis. Where we're taking like the top 10 crash locations and we'll analyze the cause. And that is kind of what directs the districts to work traffic enforcement in certain areas. Is it speed problem? Is it a red light problem? So if we have intersection crashes, we look at the angle at the crash and determine what is causing that. Is it folks running stop signs? We do have some of that if that is what you are talking about. As far as the number, I can give you a breakdown of the number of citations we issued for what different types violations. Is that what you are looking for?

Mayor Bellamy - Right. Also, I want to look at, with the fines that are collected, does all that go to the state or the school system? Where does that money go?

Chief Hogan - Different states do it different ways. In this state, court costs go to the court and the fines - all fines, go to the schools. And other communities I've been in, I know when was in Delaware, we had a municipal court - it's called Alderman's Court - we got the court costs, we hired a judge, we got the court costs and we got the fines.

Mayor Bellamy - Is there anyway we can look at something like that here?

Chief Hogan - That would have to be state approved and probably a tough sell, but it is something that we can look at. Absolutely. I works in other states, I know that.

Mayor Bellamy - Okay. Best practices. The bottom line for me is making sure we are measuring as much stuff as we can measure to look at where we are not doing as well to see what we need to beef up as a Council to make sure you have the tools that you need. And one of the things we have been beat up about is the lack of coordination between the Housing Authority and the City of Asheville. So what I did was I got the Housing Authority to give me all the tools they are currently using to address drugs and crime and I would like for our staff to go over this and adopt as a Council these policies that they have in place. And I can give you some time to look at it, but so that we are coordinated in our efforts succinctly. And that when we talk about

accountability, this Council will have approved the same things that the Housing Authority has in place. There are a couple that I'm not supportive of, but maybe we can work through some of those issues. I'm definitely looking at their ban list and making sure that we have an updated list for our officers to have access to on our computer some kind of way with the integrated system so that when people are arrested or detained on property and they've been banned by the Housing Authority, we have the right to get them for trespassing. So I want to make sure that we have a good agreement between the Housing Authority and the City in writing so that we can act as their agent when they are not around to say these people are trespassing. Another example would be the SPTED principle that the Housing Authority is using. I would like to know. I know we have a person on staff, I would like to see if we can beef up his training to ensure that we have the latest techniques and that we are utilizing that in the neighborhoods.

Chief Hogan - The crime prevention officer that you approved just recently, we are going to fill that position just as quickly as we can and that individual will be focused on the Asheville Housing neighborhoods and any other neighborhood that has a high drug issue. But the SPTED will be a big issue for that individual. Right now, Lt. Chris Young who is head of the Drug Suppression Unit, is spending a lot of time regularly with all the managers of the housing. We are having a lot of communication that I don't think we had before and I think it's taken us to another level. Obviously we will continue to work on that.

Mayor Bellamy - One of the bigger issues that the Housing Authority has in place and I think we support, they do have a curfew for all residents. For children they have to be in at one hour and for adults they have to be in at another hour of the night. And if we as a Council adopt that policy, you are saying that you are willing to enforce it. I think we can see a lot of the crime issues between Midnight and 7:00 a.m. drastically reduced. So I think it would be incumbent upon Council to support the initiatives of the Housing Authority through a vote to make sure that we are doing all that we can to support that agency.

Chief Hogan - And that is something that we work with legal on in terms of making sure that what the Housing does we can constitutionally do. And that might be ordinances, a curfew ordinance, that applies to us and I'll have the ability to enforce that.

Mayor Bellamy - That's right. I talked to Bob and I'll give him a little time to look at these issues, or Mr. Euler, to be able to come back to Council with some recommendations. A couple of other things. It's been talked about tonight about the tip hot line. Have we considered an idea of maybe having just a voice recorder where people can call in - there's no ID - where people can call in and they know that this is a safe line. That there's nobody to be able to trace who's calling. Just to give information. And on that line you won't get follow-up on but you can tell more honestly and forthrightly what is happening in your neighborhood without having to talk to a police officer and tell your name or disclose any information.

Chief Hogan - Our tip line is recorded. I don't believe we have anyway of doing phone number access or tracing or tracking that. I can check on that. Or, we could put it off site if that would give folks more comfort.

Mayor Bellamy - I just want to make sure that people feel as comfortable as possible to get as much information as possible about what is happening in their communities. Not just public housing, but in their communities where there are drug and crime activity.

Chief Hogan - I can say we are getting a lot of tips. More outside from public housing if I think I can recall. Sgt. Lawford, who is here on the detail tonight, handles that and they have a board now. They log them all in, the tracking and the reporting back to what has been done and the communicating with the original caller if they leave their name and number. If not, we still follow-up on the tip.

Mayor Bellamy - With the information you just presented tonight and we looked at the analysis or where you want to do more information data, can we coordinate the efforts between the analysis that we get to see if there is a spike in burglaries in a certain part of the neighborhood to make sure that the community policing efforts - that individual police officers are meeting with neighborhood residents to inform them of what is happening in their neighborhoods. So they could be doing community walks, community watches, so they can be aware of - maybe we saw 3 in the last month and this is what you should watch out for - make sure your cars are locked or your windows. So that it makes sense that we get the analysis, and that the residents are getting it so that they can be proactive for future endeavors. So making sure that our community policing efforts are lined up with the analysis of crime so people understand what is going on.

Chief Hogan - One of the things we have talked about and I'll throw it out for consideration is using our reverse 911 where we can notify, identify certain streets in neighborhoods, with a message of that kind of information and get it out more quickly and it's timely. Clearly in terms of crime prevention and clearly in terms of our community resource officers, we do crime analysis. We do alert the officers to trends and patterns and it would be my hope and expectation that they will carry that to a particular neighborhood if they see a pattern in that neighborhood. But all of that is good and we will wretch it up and I'll go back and look at that.

Mayor Bellamy - I would appreciate that. I've sent you copies of e-news letters ... that provide information to residents about what is happening. I went to Statesville recently to look at one of the programs for drug addicted sex offenders and how they are transitioning back into the community. And one of the things we saw there was the church was really strong in helping. What are our efforts in reaching out to the faith based community?

Chief Hogan - I've had a number of conversations and more should be coming, and more will be coming, particularly with the black ministerial association. And we have talked just about some of those issues on a host of things of how we can work together, quite frankly, and partner. Not only just in recruiting and hiring minorities, but talking about being the strength and help rally church members around the issues in a neighborhood.

Mayor Bellamy - I appreciate that. Council, thank you for allowing me to ask these questions, ... making sure I put my two-cents in on this issue particularly because I don't like to be called out. Any other issues? Councilwoman Cape.

Councilwoman Cape - Just real quickly. Chief, when you come back with some cost analysis, would one of them that you could give us be how your 10% hire would off-set overtime costs? Because we see this \$887,000 but how much are we paying on overtime that that would off-set so we know what the real figure is.

Chief Hogan - Well, the over-time will definitely go up and taking the 5 out of patrols and putting them in DSU. We traditionally have certain overtime for special events. That will continue. What the over-hire will do will eliminate vacancies in the field that have to be filled through overtime.

Councilwoman Cape - That is what I'm talking about. How much are we going to save from that to make this number not look so bad.

Chief Hogan - I'll go back and analyze that. Part of it is, are you saving money or are you working short? It's probably a combination of both.

Councilwoman Cape - That's where I'm trying to see where that number really is. And second, may I question, are you talking about a city-wide curfew, Mayor?

Mayor Bellamy - No. The Housing Authority already has it in place, but we want to support it. It's not ours. It's the Housing Authority's and it's already on its books and it would be nice if the City of Asheville Police Department were empowered by the policy makers to be able to help them enforce their policies.

Councilwoman Cape - Right, because at this point we can't. I see. Just clarification. Thank you.

Mayor Bellamy - Everything that I gave you on the hand-out was Housing Authority's. What they already have in place or would like to see, as they also support an additional unit, specifically for Housing Authority. Councilman Freeborn.

Councilman Freeborn - Chief, I really appreciate this. Every time you come before us it's a great opportunity to learn. If you could, would you prioritize this list of budget requests and tell us which ones, you can do that tonight or at a later time, but give us a good idea as we are going into the budget season to understand what is your top priority on this list. And also, I can understand the need and desire to want to try and do a surge, but would we also do this in an incremental approach as well and what would be the positive or negative impacts to that.

Chief Hogan - I'll be glad to do that. I could probably do it off the top of my head right now, but I prefer to sit down and ponder it and share it with my command staff and talk about how we would prioritize this, because all these, depending on who you talk to are great needs. And they are all legitimate needs, but I would like to ponder it and I'll come back.

Mayor Bellamy - Councilman Mumpower.

Councilman Mumpower - Councilman Newman was.

Mayor Bellamy - Councilman Mumpower, did you have something else?

Councilman Mumpower - Patience please, Mayor. There is not two rulebooks up here. There is one for all of us.

Mayor Bellamy - Excuse me? I'm not understanding. I have the ability to recognize the people who want to speak and I called on Councilman Mumpower.

Councilman Mumpower - With some degree of courtesy. Chief, would it be inappropriate to ask that you come back to us as we go forward, would it be a helpful thing to ask if you were to come forward on a bi-monthly basis and give the Council a brief report on your efforts? Would that be a helpful, constructive thing?

Chief Hogan - I would just want to have sufficient time to pass to know that we've had some time to put some things in place and be able to show you positive results. But from time to time, surely, if you want me to come back and share with you what we are doing on a quarterly basis or something like that.

Councilman Mumpower - Council, I would speak to bi-monthly to keep us real current. We're about to hopefully invest significant dollars and I think that is something we really want to pay attention to. And finally, Chief, I think you're speaking to us about an effort to hold people who break the law accountable, with an understanding that if we don't create greater accountabilities, we don't create deterrents, and if we don't create deterrents we are training ... criminals into too many of our neighborhoods. And we waste a lot of our time chasing the same people over and over again and we lose a lot of good people. So I'm grateful for your effort to highlight that to create that accountability - we can do all of these other things, but it does take police manpower and I hope we can get behind you - not incrementally. I think that good word used earlier - let's create a surge and then hold you accountable for doing the good work that you are intending to do for us. So thank you and thank you Mayor.

Mayor Bellamy - Councilman Newman.

Councilman Newman - Chief, one question that I would have about your presentation would be one of the points that I think kind of is most hopeful about is the scenario that one of the performance measures of marked improvement over time would be that the results of long term - in the long term, less arrests. And because while we want to hold people accountable, first the people who are really committing dangerous situations in neighborhoods, I think that we also sort of share the sense of okay so we are going to spend a lot more of taxpayers money and the result is that a lot more people are going to jail. If we could spend a lot more of our resources and make neighborhoods safer and drive down the number of - and deter crime - obviously that is the win/win that we are looking for. I would be much more enthusiastic about writing larger investments here, if we can be effective in deterring crime and have less arrests because while we would be investing more dollars in officers on the street, if it means that we are driving down crime and having less - having to build fewer jails in the future that is a trade-off that is easy to make. So, just going forward, not tonight, I'd like to hear more analysis about how that dynamic really works. It seems like in the short-run if we invest in more officers we have all these results about we've arrested 40% more people than we did two years ago. And maybe that is a good short-term indicator. But when do we get that? Where is the point of making the neighborhoods safe and drive crime down?

Chief Hogan - I think the hope is that as you create more police presence in the neighborhoods and through crime analysis you target the presence when the presence needs to be there, that it becomes a deterrent to commit that crime in that neighborhood. I will tell you that folks who are intent on committing crimes are going to commit crime. What you do in a community, unfortunately, is make it difficult to do that and sometimes it's displaced for that or it just can't be done as frequently as it was done in the past. So, it is by incrementally trying to create a greater police presence where we need to be to be a deterrent. And that is a big challenge.

Councilman Newman - One follow-up question on this for tonight. Is there research around, there will always be some percentage of people who make these bad choices and get involved in this activity, but part of what intuitively seems like we are trying to do is provide enough presence in neighborhoods where maybe some people do that, but they don't do it in these neighborhoods, and they don't. Is there research that shows over time we can help prevent other people from so easily making those bad mistakes because there is just so much criminal activity in the neighborhood they live in that they end up getting. Is that how you drive down crime over time?

Chief Hogan - That's part of it. I will tell you, you saw a great example this evening with Burton Street. Burton Street some years bad had a tremendous crime problem. What that was a wonderful partnership between citizens who took an interest in their neighborhood, took ownership in their neighborhood, partnered with the City and the Police Department and others to really take back the neighborhood. And working in collaboratively, we have success there. We've got to try to replicate ownership in other neighborhoods. And that will be our challenge and having sufficient police presence to back up what they are trying to do. But that is a motivated neighborhood full of enthusiasm and they are a pleasure to work with because of that. They really are.

Mayor Bellamy - You know the success of that neighborhood had come because Sgt. Wilkie, for one, helped organize them with the community walks. But the residents, like you said, were empowered to go and talk to drug dealers and tell them to move on. As well as they continue to call the police, whether they came quickly or not, and they were consistent in their efforts. Another example is the West End/Clingman Avenue neighborhood, where you had a significant increase in prostitution. The more homes that were built and the more community residents who were involved in clean-ups and getting to know their neighbors and the more buy-in they got from each other, that made a huge difference. So it wasn't just police only, it was a comprehensive

approach in looking at this issue. Chief, I just want to say thank you for being here tonight and being able to stand up to our questions and helping us get to a better place on this issue, because I know each member of Council wants to make sure that we get to a better place on this issue.

Chief Hogan - I think we all do. Thank you very much.

E. CONSIDERATION OF SCHOOL BOARD INTERVIEWS

Vice-Mayor Jones - I think we need to determine who we want to interview next week. I would just remind Council that we've got two vacancies so let's kind of be realistic in the number of folks that we want to interview. The Mayor has requested that we appoint the night of the interviews if everyone is amenable to that. That I think would help the School Board. Is that okay in terms of the timeline? And the final thing before I get suggestions for interviews, Mayor, is that Councilman Mumpower and I met, the Boards & Commissions Committee, and we suggest that we start the interviews at 5:00 p.m. and then have the Council meeting afterwards. So that way the applicants will know when to be here and we have a firm starting time. That is our suggestion.

Mayor Bellamy - That's fine. We have the budget part from 3:00 - 5:00 p.m., so we can start promptly at that time.

Vice-Mayor Jones - Good, super. Councilman Mumpower, I'll start with you for, who would you like to interview for School Board.

Councilman Mumpower - I don't have any recommendations, Vice-Mayor.

Vice-Mayor Jones - Councilwoman Cape.

Councilwoman Cape - I would like to suggest Jackie Hallum, Todd Weatherly and John Legerton.

Vice-Mayor Jones - Councilman Davis.

Councilman Davis - I would like to add to that Brian Sarzynski.

Mayor Bellamy - Add Precious Folston.

Councilman Freeborn - Mine have already been named.

Councilman Newman - I'm fine.

Vice-Mayor Jones - Okay, so that is 5 interviews that will start next Tuesday the 17th.

Mayor Bellamy - And we will make sure they start at 5:00 p.m. Thirty minutes each or we've got quite a bit of answers so would you call change that and is it 30 minutes each?

Vice-Mayor Jones - Thirty minutes each.

Mayor Bellamy - Okay, thank you very much.

Vice-Mayor Jones - Just in case we weren't clear for new Council people who haven't been through this. This is our chance to ask other questions and so what we have done in the past is we come with the prepared ones and we kind of keep going till we run out of time. So just know to come with some questions you are interested in.

Councilman Freeborn - Is it possible to have shorter interviews than 30 minutes? Do we ever finish early?

Vice-Mayor Jones - I think in fairness we need to decide that up-front. So do we want to do 20 minutes that's fine, but.

Mayor Bellamy - I think 20 minutes.

Vice-Mayor Jones - Okay, 20 minutes.

Mayor Bellamy - Twenty minutes each. And as you schedule those, will you put a break of 5 minutes in between each one. The reality is we need time to get people shifted around and the next person to come up.

VI. NEW BUSINESS:

A. ORDINANCE NO. 3460 - ORDINANCE AMENDING THE ANIMAL CONTROL ORDINANCE TO PERMIT THE CEREMONIAL RELEASE OF BIRDS

From Staff Report: This is the consideration of an amendment to the animal control ordinance to permit the ceremonial release of birds.

Over the last several years, there has been increased interest in the coordinated release of birds as part of certain outdoor events. The birds released are doves, pigeons, or some other species trained to return to its nesting place. The proposed ordinance would permit those releases only at an otherwise permitted outdoor event, where it can be demonstrated that the birds are kept in accordance with certain standards promulgated by recognized organizations, and where it will not imperil the public health.

The City's Animal Control Ordinance requires that pets or other domesticated animals be kept restrained or under the owner's control, except in certain specified circumstances. The proposed amendment would add to the list of exceptions.

Pros:

- Recognition of symbolic display that is used with increasing frequency.
- Requires that birds be kept in accordance with recognized standards.

Cons:

- Some birds may be injured or lost in connection with releases.
- Incremental administrative burden in permitting and approval.

If Council approves of this ordinance amendment, adoption of it is recommended.

City Attorney Oast - This is a proposed amendment to our animal control ordinance to permit, or at least to clarify Council's position with respect to something that is beginning to occur more and more frequently and in public events. And that is the ceremonial release of doves or trained pigeons or birds of that nature that are trained to return to their nesting place.

Mayor Bellamy - Okay. Any members of the community wishing to speak on this item? Hearing none, Council is there a motion?

Vice-Mayor Jones - I move approval.

Mayor Bellamy - Is there a second?

Councilman Freeborn - Second.

Mayor Bellamy - Any further questions or comments?

Councilman Mumpower - Yes, I'll make a comment. I don't think we should be in the business of bird control. I'm embarrassed by the Council's consideration of an ordinance on the ceremonial release of birds. Thank you Mayor.

Vice-Mayor Jones - I don't want to belabor this, but do you understand what this is? ... raises doves and likes to release them and currently she is not allowed to do this right now. She's not allowed to run her business.

Councilman Mumpower - Because we have an ordinance that prohibits.

Councilwoman Cape - Because your animals can't be more than 8 feet from your body?

Councilman Freeborn - We're making it so she can operate business.

Mayor Bellamy - All right Council, one at a time. Councilwoman Cape.

Councilwoman Cape - These birds will be able to, they're homing birds, and they are released in a ceremony, they circle around and then they go home.

Councilman Mumpower - So why aren't we doing away with the ordinance that creates that control, rather than creating another level of.

Councilwoman Cape - Because we don't want people to let their dogs run around the street more than 8 feet away from them. We just had a flat pet thing - animal. But these are pigeons.

Councilman Mumpower - If I may Mr. Oast, ask staff a question. Would it not be possible to put a sentence into our existing ordinance accepting birds?

City Attorney Oast - That is essentially what we are doing.

City Attorney Oast - What the ordinance in general does is it requires animals to be under the control of the owner at all times when they are out in public. So, this would, and the way our staff has interpreted that means if you've got animals in a parade or some kind of public event, they have to be in your control. That has been interpreted to apply to homing pigeons, doves, and birds that are trained to return to their nesting place. This would, in effect, would accept those kinds of releases from the general prohibition of our ordinance.

Vice-Mayor Jones - And it's two sentences.

Councilman Mumpower - It's a paragraph. And again, I would suggest, you folks can go ahead and laugh all you want, but I think the embarrassment is of this Council to be investing our energies in this level of bureaucratic control.

Mayor Bellamy - That's why we're dealing with it. It was another council who did it and we are trying to clarify it so it can be addressed. With that, there is a motion on the floor. Any new information that needs to be discussed tonight on this issue?

The motion made by Vice-Mayor Jones and seconded by Councilman Freeborn carried on a 6-1 vote, with Councilman Mumpower voting "no."

ORDINANCE BOOK NO. 23 - PAGE

VII. OTHER BUSINESS:

A. MCCORMICK HEIGHTS PROPERTY UPDATE

Information in front of Council - Letter dated March 29, 2007, from City Manager Jackson to Mr. Ken Maxwell, Community Relations Manager with Progress Energy. "The purpose of this letter is to confirm earlier oral communications to you about the status of our offer to purchase McCormick Heights. After due diligence, we concluded in January that there were notable restrictions and encumbrances on the property. Extensive research and discussions with knowledgeable parties also led us to conclude the restrictions would impair our ability to successfully redevelop the property upon purchase. Under the circumstances of such restrictions, we expect you to proceed with other options for the property's disposition. While we respect your need to pursue what is in your best interests, our objectives remain to assist with relocation of tenants, the provision of affordable housing options, and private redevelopment and transformation of this neighborhood. Please feel free to contact us if you have any questions or wish to discuss this matter further."

Information in front of Council - Memo to Mayor Bellamy and City Council Members dated March 29, 2007, from Charlotte Caplan, Community Development Director. "This memo provides an update on the program approved to assist the 41 tenants at McCormick Heights find alternative housing. On January 23, 2007, the Affordable Housing Coalition (AHC) was awarded \$120,000 in Community Development Block Grant funds to administer the program. The assistance being offered includes rental counseling and payment of eligible relocation expenses (moving costs, security deposits, first month's rent, utility deposits, etc.). The progress to date has been (1) 4 residents' meetings have been held; (2) notices explaining assistance have been distributed door to door; (3) 10 households have completed their moves to safe and affordable housing; (4) 7 households have found new housing and are scheduled to move soon (from a few days to a few weeks); (5) 8 households are working with AHC to find a new unit; (6) 3 households have made initial contract with AHC; and (7) 13 households have yet to make contact; efforts continue to get in touch with them. As managing agent for the property owner, the Housing Authority has issued seven eviction notices for non-payment of rent or other lease violations. Tenants have been made aware from the start of the program that anyone evicted from the property because of lease violations would not be eligible for relocation assistance through this program."

Mayor Bellamy - Council we had talked in closed session about not being able to purchase this piece of property due to the encumbrances that are currently on the property that would not go away for the City of Asheville until it was in foreclosure and there were substantial encumbrances that we didn't feel like we could overcome. Enclosed in our packet is a letter that the City

Manager sent to Ken Maxwell, who is part of the managing entity. Progress Energy purchased tax credits for McCormick Heights so they own, I think 99% of the development.

City Attorney Oast - Usually it's a substantial percentage. I'm not exactly sure.

Mayor Bellamy - I think that is the case. And so I think that now we just need to publicly go ahead and vote to not purchase McCormick Heights for the record so that it will be clear to the community of our endeavors. And, as part of the motion I hope that Council will express an interest to work with the future owner of the development so that we can have affordable housing some kind of way mixed into that, considering the fact that we are the largest property owner adjacent to McCormick Heights. And that it's under the leadership of Councilwoman Cape that has just increased with the potential buying of 30 acres. So we definitely are one of the larger property owners adjacent to McCormick Heights. So is there a motion to not purchase McCormick Heights tonight?

Councilwoman Cape - I want to do it in a positive way. I move that we release our obligation to the contract for the purchase of McCormick Heights based on the encumbrances and the due diligence that we did and that we encourage future property purchasers to consider the opportunities that exist because of the adjacent City-owned property.

Mayor Bellamy - All right. And before I call for additional questions or comments I'll open it up for public comments, if there is anyone who would like to speak on this matter?

Councilman Freeborn - I'll second that motion.

Mayor Bellamy - Hearing none, any further questions or comments on this issue? Councilman Newman.

Councilman Newman - Maybe as a friendly amendment for clarification. I think it goes without saying, but just express our sense that we are also going to be directing our City Manager and our staff to monitor the situation and seek dialogue with whoever does acquire the property to seek opportunities to potentially partner around redevelopment opportunities in that area that preserves affordable housing and those which are redevelopment goals in our plan.

Mayor Bellamy - And I think that having that announcement formally stated several times tonight, I think that's important.

Councilwoman Cape - I accept that friendly amendment.

Mayor Bellamy - Councilman Mumpower.

Councilman Mumpower - I would be amiss if I didn't say that it is an embarrassment we are having to back-track on this issue. From my view we got involved without doing proper preliminary research and in doing so we clouded this reality more than was necessary. We studied it for a period of time and we've also committed ourselves to moving folks from a development that it turns out we have no direct involvement in at all, to the tune of up to \$120,000 and invested significant Council time and staff time and I hope moving forward that in our efforts to pursue development opportunities we will show greater caution and try not to offer complications to things that are already complicated enough.

Mayor Bellamy - With that said, I would like to say that I'm not sad that we got involved and the reality is that had the City not been involved, tenants would have been evicted at Christmas time, first of all, because they were going to be given a notice on December 1st to be out in 30 days. So obviously we had a due diligence period and during that period we were able to find out some of the technical issues that we did not know in advance, so that was why we had a due diligence period. And I also want to say to Council, thank you for your willingness to assist the individuals who were behind on their rent to finding a better, safer place to live in our community. And I look forward to us continuing to address some of the concerns that we have identified in McCormick Heights, and haven't identified in other communities, but we slowing addressing. And to say that the City shouldn't have been involved, the City still have \$400,000 in the development in the way of HOME funds and so that is something we are going to have to look at to see how we can recoup those funds. So I don't see us not being a party to the development. So, Council, I thank you all for being willing to step in the fray, take the criticism, whether it's warranted or unwarranted, to be able to address concerns in our community. It was a learning process and I definitely learned a lot of out of it. How people operate and how we can do things better. So I look forward to the potential redevelopment. Any other things that want to be said for the record?

Councilman Freeborn - Mayor, I'd like to just show gratification to your leadership on this particular issue. I think anytime we are offered a chance to do something good in terms of - I'll even say - bail somebody out, and if it fits within our strategic goals, we need to follow through with it and do due diligence and that is exactly what we did. I want to thank you.

Mayor Bellamy - I don't want to say you're welcome yet, because the story is not finished. Believe me, there is more to be told to the story. It will come out later, but it's not finished. Anyone else?

Councilman Davis - The story isn't finished. I think we have had this going on back and forth about who shot John on this issue and the truth of the matter was it was not a good place for people to live. There is an opportunity here to create some of the things we are talking about - mixed income living, market rate, affordable housing. An opportunity for people to go to a better situation and I'm quite pleased we were able to bail those folks out. That's what those funds are for and I feel good sitting here having been a part of that.

The amended motion made by Councilwoman Cape and seconded by Councilman Freeborn (that we release our obligation to the contract for the purchase of McCormick Heights based on the encumbrances and the due diligence that we did and that we encourage future property purchasers to consider the opportunities that exist because of the adjacent City-owned property; and direct our City Manager and our staff to monitor the situation and seek dialogue with whoever does acquire the property to seek opportunities to potentially partner around redevelopment opportunities in that area that preserves affordable housing and those which are redevelopment goals in our plan) carried on a 6-1 vote, with Councilman Mumpower voting "no."

B. CLAIMS

Council information - The following claims were received by the City of Asheville during the period of March 16-March 29, 2007: Diana Sanders (Water), Enterprise (Information Services), Marcus Banks (Planning), Sandra Burton (Water), James Carr (Water), Avid Rent-A-Car (Police), Irene Wright (Water) and Pamela Simpson (Water). These claims have been referred to Asheville Claims Corporation for investigation.

VIII. INFORMAL DISCUSSION AND PUBLIC COMMENT:

Mr. Joe Minicozzi - Madam Mayor and Council, thank you for allowing me this time to speak. I just wanted to bring forward a couple of things. These are all the code amendments that are going forward and we are trying to work this half-printed too, so it's about double the size of this in thickness. And we're trying our best to work with the staff to put our input in. We didn't want to see the situation that happened tonight, that there is a delay. We don't want to try to cause that. We are trying to get involved in these things and move them along as quickly as possible. A couple of things that I wanted to ask about tonight is getting clarification on the on-going issue of Greenlife and Staples issue. Just so that we can know what has happened with this letter with Chief Hogan. Is it policy, is it not policy? Has this been retracted? We've asked about 4 times now, whether or not this policy has been retracted?

Mayor Bellamy - And Council, that was not adopted by City Council, so we haven't retracted it because we have never adopted it. So it would be something that Mr. Jackson as the City Manager has oversight over. Because it wasn't adopted by this body. Bob, am I correct in stating that?

Mr. Minicozzi - It is a question of.

Mayor Bellamy - I just want to make sure that we hit your issues so that we can go ahead and.

Mr. Minicozzi - Obviously some of you may have gotten a telephone call today, but a lot of you didn't receive e-mails today. I received a call from Mr. Thompson and this is a ticket that he received for careless and reckless driving. He had 6 police officers issue him this ticket and when the police officer was issuing him the ticket the police officer said, well Mr. Thompson don't you want us to follow all the laws? And the pulled out the book and they went through the book and cited him with that citation. Which is fine. But 6 police officers. Mr. Thompson asked the police officers that if you are that interested in enforcing all the laws, why don't you go over and talk a look at all of the trucks on Maxwell Street. When I visited Mr. Thompson about 10 minutes after that, there were still trucks on Maxwell Street and in the 20 minutes that I was at Reid's house, there were 6 deliveries up Maxwell Street. And we're sitting in this kind of ...-world right now waiting for Greenlife to bring something back and there doesn't seem to be any fire lit underneath them to encourage them to move forward. That is what I wonder. Could we just maybe do a quick blitz of enforcing the no-trucks on Maxwell Street to ensure that he is motivated to move forward. And that is all I ask for tonight - is it possible to start moving this. Is it possible to make direction to our City Manager to tell the police officers to enforce. Because when Reid asked about the trucks on Maxwell Street, the police officer said to him, and I quote "that's not my jurisdiction" even though Reid was given the ticket a block away. And you talk about customer service, you talk about how to deal with humans and you wonder why this guy blows a gasket. And it's just, this is, how do we interface with the reaction of our government that we pay for as citizens versus the quality of service that we get. And that's all that I ask for. Just some fairness in this and the business owners get treated the same way as the citizens do.

Vice-Mayor Jones - Can I ask one clarifying question? So the time that you were at Mr. Thompson's house, you said you

saw 6 delivery trucks. Were they the big rigs and they came down?

Mr. Minicozzi - They were not the big rigs, they were the smaller box trucks and some vans. But, as you saw on the testimony that that is the lion share of the deliveries and they are going up and down that street all day. And the big trucks come in and they have a larger impact. And I was only there for 20 minutes.

Vice-Mayor Jones - So there were none of the big rigs. They were all the little trucks.

Mr. Minicozzi - Yes, just the smaller trucks.

Vice-Mayor Jones - Right now is that going to be solved with the compromise?

Councilman Newman - Well the big trucks and, I think there are 3 sizes of trucks, and the medium sized trucks would only be like ... delivery cars and not ... straight trucks will not be allowed once - that is if his design idea is approved by Planning & Zoning. It's sort of just an idea at this point. I mean it hasn't been formally approved or voted on by anybody. So that's contingent upon that process happening.

Mr. Minicozzi - In the meantime if there could be some communication that happens to the Police Department that if they get dialed in that they should enforce something. Because to have that kind of answer to a citizen that this isn't my jurisdiction that they just shrug it off when 6 police officers can give somebody a ticket for squealing their tires. Where is the fairness in that.

Mayor Bellamy - All right. I think there's probably another side to that story as far as why the police were there and that number. I know we've had some training officers - 2 in a car, and two cars, and maybe the third came by to see what was going on and that person didn't get out. I wasn't there so I can't speak to that. But your first issue you talked about, this Council did not set that policy that the Chief if choosing to enforce. So your question was, when will we rescind it. We didn't create that policy. Now Mr. Oast, legally, do we rescind something that we didn't do. Let's go ahead and deal with this so I can put this to bed.

City Attorney Oast - Council adopts the ordinances and I think you would be stepping into Charter problems if you began to direct the Police Chief how to enforce the ordinances that you enact.

Mayor Bellamy - So the Chief is in his legal rights to send this out?

City Attorney Oast - I'm sure I've seen that letter before, but I'd need a chance to read it first.

Mayor Bellamy - All right. Let's give you some time to read it and make sure that we issue a press release to how to deal with this letter because it deals with enforcement. So we can have that done. So we don't have to deal with that. Let's just deal with it. I think that's important.

Assistant City Manager Richardson - Mayor Bellamy, I'll be happy to work with Chief Hogan as well as other relevant staff, and I will be prepared to provide the City Council with a summary report of our enforcement efforts over on Maxwell Street. And we will be happy to go back for a 60-90 day period, if you would like for us to - we have the capability to show you the number of calls that have come in and the response to those calls and any citations that have been given out. And we provided that information, but it has been some time ago. It has been a number of months ago.

Mayor Bellamy - That would be great and I think Council.

Assistant City Manager Richardson - In addition to that, I think there is quite a bit of information that I have collected from the Police Department regarding Mr. Minicozzi's statements. I'd be happy to talk with Council one on one after this meeting, or I will be happy to provide that information at this time regarding Mr. Thompson and the interactions he has had with the Asheville Police Department today.

Mayor Bellamy - All right. Councilman Mumpower.

Councilman Mumpower - Mayor question. Mr. Richardson, so it would not be fair to say that we have stopped enforcement efforts on Maxwell Street.

Assistant City Manager Richardson - No, sir. That would not be a fair statement at all. I'll be happy to go back with Chief Hogan and to provide the data on the number of calls, the volume of calls, and the times that our officers have been able to respond and the citations that were made.

Councilman Mumpower - We are continuing to pay attention?

Assistant City Manager Richardson - Yes, sir. That is my understanding and Chief Hogan and I have had a discussion about that as late as this afternoon.

Councilman Mumpower - Thank you.

Mayor Bellamy - Councilwoman Cape.

Councilwoman Cape - Mr. Minicozzi, when you were there today, were the trucks parked on the sidewalk?

Mr. Minicozzi - One was. It was a UPS truck, but I think that in that situation, the UPS truck usually gets a little more discretion because it is an immediate delivery. It was still parked on the sidewalk. It was less. It was the volume and the fact that they use Maxwell Street. It wasn't that they came. You know you've made comments several times to please use your parking lot and access the docks from your parking lot. But in none of those 6 trucks, did I see that. And that was just a snapshot of my day at that little window. Now whether or not I just happened to hit a mother-load I don't know.

Councilwoman Cape - You saw them coming off of Broadway onto Maxwell? Was that the direction?

Mr. Minicozzi - Broadway onto Maxwell and Marcellus onto Maxwell.

Councilwoman Cape - Okay. So, can we get a sense of timing for this project. Is there a time. I mean, we have asked Greenlife to engage with us on this, so it seems like time is of the essence that we like move this process along. Has there been any conversation to that effect?

Assistant City Manager Richardson - I'm not aware of any request, site plan review or anything of that nature that our Planning Department has been involved in. I know that our Planning Department has followed up with the Greenlife store officials and I believe that Mr. Swann understands that City Council would like to see this site redevelopment move forward.

Councilwoman Cape - Mayor Bellamy, we've had this issue kind of before with Target or other places that kind of lagged, and it seemed like it was quite effective when you put a time stamp on it at one point. I would ask that maybe we consider that. I think the issue of the letter that has always been confusing for me is whether or not that letter exhibits a change in the policies that are on our books. And if they do, whether or not the Chief has the ability to do that. And that is what is confusing for me about this letter.

Mayor Bellamy - Bob is going to get back with us.

Councilwoman Cape - You were going to give us that information.

City Attorney Oast - I have been reading the letter. I don't think that that letter suggests that the police are not going to be enforcing the law as it's written.

Mr. Minicozzi - It says that the only - the trucks parked as far as possible but still block a sidewalk, if you read this right here - the only exception. So he's making an exception to the law. I will not cite a ticket on a large truck.

City Attorney Oast - I don't think that's an exception to the law. I've read the law and the law allows a reasonable use of the sidewalks by adjacent businesses. That's a reasonable use of the sidewalk by an adjacent business. I don't think it is a violation.

Mayor Bellamy - Okay. Let's put it in writing. And as a Council we will get that back and we can either adopt it or take that interpretation or give it further interpretation, but you give us the law and you can examine it so we can forever and amen - this is what it is and this is how it is and this is our process till it's done.

Councilwoman Cape - I think we will be hard-pressed to ask people to walk around a truck into the street as a reasonable use of our sidewalks. But, that's just a comment.

Mayor Bellamy - What we do for one, we do for the others. So that's the issue on Maxwell Street and that's the reasonable use of the sidewalks. Make sure we do it on Wall Street when it comes to the Laughing Seed. We have to make sure if that is what we are saying, we're not just saying it there, so make sure we're saying the right thing. I'm ready to up or down it and do whatever we're going to do. It's done. Councilman Newman.

Councilman Newman - Could we also, I mean Jeff has been great in working with Bryan and I when trying to figure out the different options. Could we check in with Greenlife and ask them if they have a date when they plan to submit their plans to Planning & Zoning? Because part of the idea when we were looking at this was if they can't implement some design solutions that will go a large way for making that better - because the big trucks will no longer be on Maxwell ever. Then we were prepared to implement a traffic calming plan on Maxwell that would physically prohibit the trucks from being there. It's not what we want to do. We think there are better ways to solve this problem. But we need a timeframe for when they are going to submit their plans or we need to go back to Plan B. So if you could check up on that, then that would be great.

Assistant City Manager Richardson - Yes, sir. I'd be happy to.

Councilwoman Cape - Do we set the timeframe?

Councilman Freeborn - Well we are going to be making budget allocations here soon.

Mayor Bellamy - Okay, let's just start with the communication process first. Let's finish up a couple of things and we will adjourn from our closed session. We should be through fairly quickly.

Closed Session

At 12:03 a.m., Councilman Freeborn moved to go back into closed session. This motion was seconded by Councilwoman Cape and carried unanimously.

At 12:30 a.m., Councilwoman Cape moved to come out of closed session. This motion was seconded by Councilman Newman and carried unanimously.

IX. ADJOURNMENT:

Mayor Bellamy adjourned the meeting at 12:30 a.m.

CITY CLERK

MAYOR