

Regular Meeting

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

Absent: None

PLEDGE OF ALLEGIANCE

Mayor Bellamy led City Council in the Pledge of Allegiance.

INVOCATION

Councilman Freeborn gave the invocation.

I. PROCLAMATIONS:

A. BEST WORKPLACES FOR COMMUTERS AWARD

Ms. Kathy Molin was pleased to announce that Asheville has received the designation of Best Workplace Commuters from the US Environmental Protection Agency and the US Dept. of Transportation.

On behalf of City Council, Mayor Bellamy thanked Ms. Molin for her leadership on this program.

II. CONSENT AGENDA:

At the request of Councilman Mumpower, Consent Agenda Items "G" and "H" were removed from the Consent Agenda for individual votes.

At the request of Mayor Bellamy, Consent Agenda Items "I" and "J" were removed from the Consent Agenda for individual votes.

A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON AUGUST 14, 2007

B. RESOLUTION NO. 07-155 - RESOLUTION AUTHORIZING THE MAYOR TO ENTER INTO A UTILITY AGREEMENT WITH THE N.C. DEPT. OF TRANSPORTATION FOR THE DESIGN-BUILD OF A 12-INCH WATER LINE ON SMOKY PARK HIGHWAY AND KNOWN AS PROJECT I-4401

Summary: The consideration of a resolution authorizing the Mayor to enter into a Utility Agreement with North Carolina Department of Transportation (NCDOT) in the amount of \$498,571.78 for the design-build of a 12 inch water line on Smoky Park Highway and known as Project I-4401.

The NCDOT is widening I-40 at Exit 44 and making improvements along US 19/23 Smoky Park Highway from Old Haywood Road to Monte Vista Road. This road project includes replacing the current 3 inch galvanized water line along Smokey Park Highway with a new 12 inch ductile iron line. This project is part of the design-build construction of I-40 from west of SR 1224 (Monte Vista Road) to I-240 in Asheville.

The current water line on this section of Smoky Park Highway is a three (3) inch galvanized that has numerous emergency breaks during winter months and restricts flow to a 12 inch line on Smokey Park and does not allow for adequate fire protection for commercial businesses at the I-40, Exit 44 corridor. This project will enhance customer service by eliminating costly line breaks which cause water outages to area customers on the current line and will help loop the water system to the west region of the system. NCDOT lump-sum cost is \$498,571.78. Previous estimate two years ago was \$249,999 which was being budgeted over a three year budget cycle at \$83,333 annually. NCDOT changed this project to a design-build project where design and build is by the same contractor. Construction material increases over the past two years have driven this cost up. \$166,666 was previously programmed for this project in FY 2006/07 and FY 2007/08 with \$331,905.78 additional funds required to cover the entire amount. These funds are being reallocated from the Neighborhood Enhancement Projects for this fiscal year. Moving of funds will not impede the neighborhood projects being upgraded. These projects are now part of the revenue bond funding. NCDOT has also

changed their project invoicing policies and will submit invoices once a project is substantially finished where before it was well after total project completion.

PRO: This project will eliminate a problematic 3 inch water line which will enhance customer pressures and flow; and provide fire protection to area businesses at and near Exit 44 of I-40.

CON: There are no cons to this project.

Staff recommends approval for the Mayor to execute the Municipal Utility Agreement with NCDOT for the Project: I-4401.

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C. ORDINANCE NO. 3512 - BUDGET AMENDMENT FOR UTILITY AGREEMENT WITH THE N.C. DEPT. OF TRANSPORTATION FOR THE PROJECT KNOWN AS PROJECT I-4401

Summary: See Consent Agenda "B" above.

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D. ORDINANCE NO. 3513 - BUDGET AMENDMENT TO RECEIVE FUNDS FROM THE FRIENDS OF THE NATURE CENTER THAT WILL BE USED TO PURCHASE NEW TRASH RECEPTACLES TO BE LOCATED THROUGHOUT THE NATURE CENTER

Summary: The consideration of a budget amendment, in the amount of \$5,500, for a contribution from the Friends of the Nature Center.

The Friends of the Nature Center is a 501 (c) 3 non-profit organization whose purpose is to act as an advocate for the Western North Carolina Nature Center, and to raise funds to support the programs and enhancements at the Nature Center.

The Friends recently acquired a \$5,500 donation that will be used to purchase new trash receptacles to be located throughout the Nature Center and will replace the existing receptacles that are old and deteriorated.

Pro:

- Provide funds to purchase new trash receptacles that will replace old receptacles, and improve the overall appearance of the Nature Center that contributes to an overall positive customer experience at the center.

Cons:

- None

The Parks and Recreation Department recommends City Council approve a budget amendment, in the amount of \$5,500, for a contribution from the Friends of the Nature Center.

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E. RESOLUTION NO. 07-156- RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE A MUNICIPAL AGREEMENT WITH THE N.C. DEPT. OF TRANSPORTATION TO RECEIVE \$600,000 IN FEDERAL MONEY TO CONDUCT PRELIMINARY DESIGN AND ENGINEERING FOR A PORTION OF THE WILMA DYKEMAN RIVERWAY PROJECT

Summary: The consideration of a resolution authorizing the Mayor to execute a municipal agreement with the N.C. Dept. of Transportation (NCDOT) to receive \$600,000 in grant money to conduct preliminary design and engineering for a portion of the Wilma Dykeman Riverway transportation project and the associated budget amendment in the amount of \$600,000.

In 2005 the City of Asheville requested and received a federal appropriation from the US Dept. of Transportation (USDOT) in the amount of \$600,000 for preliminary engineering and design for the Wilma Dykeman Riverway. These federal transportation funds are managed by the NCDOT. The funds are now ready to be applied toward this project, and the NCDOT has programmed the funds into the State Transportation Improvement Program.

This project will build on the previously developed conceptual design and economic development plan contained in the Wilma Dykeman Riverway Master Plan. The overall project is a fourteen mile corridor along the French Broad and Swannanoa

Rivers in Asheville. The master plan for the corridor proposes to link together a number of existing roadways to create a unified transportation facility. The roadway will balance the needs of motorists, cyclists, pedestrians as outlined in the Master Plan.

Design of the Riverway requires a significant amount of preliminary engineering work. The project include some road relocation, median treatments, turn lanes, and sidewalks and greenway facilities. The design of the Riverway will pay special attention to plans for economic development and redevelopment, flood protection, historic properties, aesthetic considerations, pedestrian accommodations, and development of the Asheville Greenways Master Plan.

The amount of the grant will not cover engineering and design for the entire Riverway. City staff and NCDOT staff have agreed that the focus for this first phase should be on Riverside Drive and Lyman Street - a project that would extend from Broadway near UNC-Asheville to Amboy Road. There are several reasons for this recommendation:

- 1) Lyman Street is an Asheville City Street, and ultimately it is the City's responsibility to make improvements to this section;
- 2) In this section, the primary purpose for making improvements is economic development. Other sections of the Riverway are more likely to receive highway dollars through normal channels because of the traffic congestion issues in those areas;
- 3) This section of the Riverway contains the intersections that cause the most disruptions to the continuity of the facility.
- 4) The project has logical endpoints.

This approach was presented at a meeting of the City's Sustainable Economic Development Advisory Committee on June 14, 2007. The meeting attendees agreed with this strategy for implementation.

A request for proposals will be issued this fall, with work on the design anticipated to begin in early 2008. City staff will oversee the project, which will be carried out by a consultant.

This project supports the City of Asheville's Sustainable Economic Development Plan, Greenway Master Plan, and the 2025 City Development Plan. It also supports the French Broad River MPO Long Range Transportation Plan. In addition, it implements goals in priority areas identified by City Council:

- Economic Development – Pursue Riverfront Redevelopment.
- Critical Services and Infrastructure – Increase Greenway Development.

PROS:

- Executing this municipal agreement is one of the required steps to follow-through on the commitment to pursue this federal appropriation.
- No local matching money is required in order to receive the funds.
- Implementing the Riverway Master Plan is one of the strategic goals of the City.

CON:

- Administering a study of this size and following through on implementation will require significant staff time.

Staff recommends City Council approve a resolution authorizing the Mayor to execute a municipal agreement with the North Carolina Department of Transportation to receive \$600,000 in federal money to conduct preliminary design and engineering for a portion of the Wilma Dykeman Riverway project and the associated budget amendment in the amount of \$600,000.

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F. ORDINANCE NO. 3514 - BUDGET AMENDMENT TO RECEIVE FEDERAL MONEY TO CONDUCT PRELIMINARY DESIGN AND ENGINEERING FOR A PORTION OF THE WILMA DYKEMAN RIVERWAY PROJECT

Summary: See Consent Agenda "E" above.

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G. RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO AN AGREEMENT WITH REAL ESTATE RESEARCH CONSULTANTS FOR THE REQUEST FOR PROPOSALS PHASE PROJECT MANAGEMENT PROFESSIONAL SERVICES

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

H. BUDGET AMENDMENT FOR FUNDING OF THE ASHEVILLE MURAL PROJECT

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

I. RESOLUTION MAKING PROVISIONS FOR THE POSSESSION AND CONSUMPTION OF MALT BEVERAGES AND/OR UNFORTIFIED WINE AT THE RIVER SCULPTURE FESTIVAL'S OPENING RECEPTION

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

J. RESOLUTION MAKING PROVISIONS FOR THE POSSESSION AND CONSUMPTION OF MALT BEVERAGES AND/OR UNFORTIFIED WINE AT THE PURE FOOD PARTNERS' ORGANICFEST FESTIVAL

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

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

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

ITEMS REMOVED FROM THE CONSENT AGENDA FOR INDIVIDUAL VOTES

G. RESOLUTION NO. 07-157- RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO AN AGREEMENT WITH REAL ESTATE RESEARCH CONSULTANTS FOR THE REQUEST FOR PROPOSALS PHASE PROJECT MANAGEMENT PROFESSIONAL SERVICES

Summary: The consideration of a resolution authorizing the City Manager to enter into an agreement with Real Estate Research Consultants (RERC) for Request for Proposals (RFP) Phase Project Management Professional Services.

At the time of City Council's approval of the Project Management Scope of Services for the City Owned Properties, staff indicated that there would be two future additions to the original Scope of Services. The first addition is for consideration by Council tonight and will allow the project management consultant to assist the City in the RFP phase once the short list of developers is formed. City Council has devoted a work session to help fully define the desired goals of the RFP. A future addition to the scope of services would occur during the detailed negotiations with any firms advancing from the RFP phase into the Development Agreement phase.

The action requested from Council is to approve the Addition to the Project Management Contract Scope of Services approved on March 6, 2007, by City Council. This will allow the City to build upon the identification and qualification of developers conducted in the RFQ Phase by taking the next step of outlining the City's specific expectations and requirements for each of the four sites and inviting the pre-qualified developers to propose in some detail how they would approach, finance, and implement development on those sites consistent with the City's goals.

Funding for this RFP Phase addition to the Scope of Services is available in the City's 2007-08 Budget in the Office of Economic Development budget. Therefore, a budget amendment is not required.

Pros:

- Assistance to staff and City Council in incorporating the appropriate mix or scale of retail, residential, office, lodging, and civic uses within development sites and into the RFP Document.
- Ability to advise staff and council concerning the expectations about the market's ability to support the above or similar uses.
- Knowledge of analytical processes to review financial and technical capabilities of respondents to RFQ and RFP that are not within the scope of staff expertise.
- National project experience in developing similar public offerings of property to developers to achieve specific public goals.

Con:

- City will be required to provide compensation to consultant prior to cost recovery.

City staff recommends City Council approve a resolution authorizing the City Manager to enter into an agreement with Real

Councilman Mumpower felt this was an additional investment of dollars for consultant fees and he would not support the action.

Councilman Freeborn moved for the adoption of Resolution No. 07-157. This motion was seconded by Councilwoman Cape and carried on a 6-1 vote, with Councilman Mumpower voting "no."

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H. ORDINANCE NO. 3515- BUDGET AMENDMENT FOR FUNDING OF THE ASHEVILLE MURAL PROJECT

Summary: The consideration of a budget amendment, in the amount of \$6,000, for funding of Asheville Mural Project.

At the August 14, 2007, regular scheduled meeting of City Council a motion was passed to place the following item for consideration on an upcoming City Council agenda - authorize a budget amendment to provide funding to the Lexington Avenue Gateway Mural implementation by the Asheville Mural Project, a division of Arts2People.

Members of Council requested staff meet with the organizers of the mural and confirm that no funding for project implementation had been dedicated by the City of Asheville to date; and to confirm the amount of the current funding gap for project implementation. Staff has confirmed that to date, there have been no City funds used for implementation, and that the current funding gap for implementation is \$6,000. The Asheville Mural Project/Arts2 People have risen over \$20,000 for project funding from the private sector.

Pros:

- Meet Strategic Goal of supporting the Asheville Mural Project as established by City Council
- Provide gap funding for a Council-supported project that has been largely developed and paid for by the private sector.
- Provide improvement of Downtown Gateway.

Con: This is an unbudgeted request requiring reapportion.

Staff recommends Council adopt resolution authorizing a budget amendment, in the amount of \$6,000, and transfer of this amount from undesignated fund balance.

Councilman Mumpower saw no problem with the project, however, he questioned spending \$6,000 of taxpayer dollars for a mural.

Councilman Davis spoke in support of this expenditure as the merchants on Lexington Avenue are very supportive of this and they are encouraged to improve the corridor.

Councilwoman Cape moved for the adoption of Ordinance No. 3515. This motion was seconded by Councilman Freeborn and carried on a 6-1 vote, with Councilman Mumpower voting "no."

ORDINANCE BOOK NO. 23 - PAGE

I. RESOLUTION NO. 07-158- RESOLUTION MAKING PROVISIONS FOR THE POSSESSION AND CONSUMPTION OF MALT BEVERAGES AND/OR UNFORTIFIED WINE AT THE RIVER SCULPTURE FESTIVAL'S OPENING RECEPTION

Summary: The consideration of a resolution making provisions for the possession and consumption of malt beverages and/or unfortified wine at the River Sculpture Festival's Opening Reception on August 31, 2007.

The Asheville Area Arts Council has requested through the Asheville Parks and Recreation Department that City Council permit them to serve beer and/or unfortified wine at their event and allow for consumption at this event. The River Sculpture Festival's Opening Reception (the River Sculpture Festival is a collaborative public art event between Asheville Parks & Recreation, Asheville Area Arts Council and private individuals and sponsors) will be held on Friday, August 31, 2007 from 5:30 PM – 8:00 PM at the French Broad River Park.

Pros:

- Allows fundraising opportunities for charity
- Generates economic impact for the community

- Provides additional quality cultural programming and diversity

Con:

- Potential for public safety issues

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The Asheville Parks and Recreation Department recommends City Council approve a resolution making provisions for the possession and consumption of malt beverages and/or unfortified wine at the River Sculpture Festival Opening Reception on August 31, 2007.

Councilwoman Cape moved for the adoption of Resolution No. 07-158. This motion was seconded by Councilman Newman and carried on a 6-1 vote, with Mayor Bellamy voting "no."

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J. RESOLUTION NO. 07-159- RESOLUTION MAKING PROVISIONS FOR THE POSSESSION AND CONSUMPTION OF MALT BEVERAGES AND/OR UNFORTIFIED WINE AT THE PURE FOOD PARTNERS' ORGANICFEST FESTIVAL

Summary: The consideration of a resolution making provisions for the possession and consumption of malt beverages and/or unfortified wine at Pure Food Partners' Organicfest festival (an educational community celebration to support and promote organic farmers on September 8, 2007. Pure Food Partners is a non-profit, all volunteer organization.)

The Pure Food Partners group has requested through the Asheville Parks and Recreation Department that City Council permit them to serve beer and/or unfortified wine at their event and allow for consumption at this event. The Organicfest festival will be held on Saturday, September 8, 2007 from 10:00 AM – 8:00 PM at Battery Park Avenue & Otis Street.

Pros:

- Allows fundraising opportunities for charity
- Generates economic impact for the community
- Provides additional quality cultural programming and diversity

Con:

- Potential for public safety issues

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The Asheville Parks and Recreation Department recommends City Council approve a resolution making provisions for the possession and consumption of malt beverages and/or unfortified wine at the Organicfest festival on September 8, 2007.

Councilwoman Cape moved for the adoption of Resolution No. 07-159. This motion was seconded by Councilman Newman and carried on a 6-1 vote, with Mayor Bellamy voting "no."

ORDINANCE BOOK NO. 23 - PAGE

III. PRESENTATIONS & REPORTS:

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A. FIREMEN'S RELIEF FUND ANNUAL REPORT

Mr. John Parris, Chairman of the Asheville Firemen's Relief Fund and Pension Subsidy Fund Board of Trustees, thanked City Council for allowing him to present the Annual Report, as this is the first time they have been requested to do so since he was appointed Chairman 21 years ago. He said that the N.C. Gen. Statute which regulates members of the Firemen's Board of Trustees are elected or appointed pursuant to N.C. Gen. Stat. sec. 58-84-30. It was ratified in 1949 and became effective January 1, 1950.

The Firemen's Relief Fund was enacted into law by the legislature in 1907 for the benefit of fire fighters injured or disabled in the line of duty. At that time fire fighters were volunteers. The Relief Fund was to help pay bills, etc., until they were able to return to work.

The Pension Subsidy Fund was enacted into law by the General Assembly February 28, 1979, to provide a Supplemental Retirement Fund for Fire Fighters in the City of Asheville. Senator Bob Swain sponsored Senate Bill 336 which was ratified on June 24, 1980, and became law establishing and governing the Firemen's Relief Fund of Asheville.

The Board meets twice a year. In August or September the Board meets to invest money received from the Department of

Insurance. And in January or February to disburse the interest received from the Supplemental account to fire fighters that qualify for benefits. We made that disbursement in June of this year because of a May 2006 investment.

Most of the older retirees do not have Social Security, IRA's, 401(k)'s and other benefits that are available now. Salaries were much lower then and the pension benefits were lower as well. The supplemental benefits mean a lot to these recipients.

Our goal is to manage the money in these funds so we can continue to provide benefits to those that need it most. The Board plans to continue monitoring and updating the investment policy making sure we are investing the money according to the law in N.C. Gen. Stat. secs. 159-30 and 159-31 (FDIC coverage).

We started paying benefits in 1982 and we paid 23 retired Asheville fire fighters a total of \$1,118.43. Those fire fighters represented 731 years of service in the Asheville Fire Department. In June of this year, 83 retired fire fighters received \$71,729.74. These fire fighters represented 2,358 years of service. In the Relief Fund we have \$45,000. The Pension Subsidy Fund has \$858,854.51. In 2007, the shares range from 21 - 40 years of service. Our oldest fire fighter is 91 years old with the youngest being 55 years old.

In response to Mayor Bellamy, Mr. Parris said that all the money comes from the Dept. of Insurance to fund the pensions.

When Councilman Freeborn asked if the Board had any recommendations on how to improve the program, Mr. Parris responded that the program is currently running smooth.

On behalf of Mayor Bellamy, she thanked Mr. Parris and the entire Board for their hard work on behalf of the Asheville fire fighters.

B. BRIDGE MAINTENANCE

Public Works Director Mark Combs explained the bridge ownership/maintenance as (1) N.C. Dept. of Transportation (NCDOT) - maintains all major bridges in City limits; (2) City of Asheville; (3) Norfolk-Southern Railroad; and private.

NCDOT (1) bridges are very expensive to build and maintain - high stakes equal an aggressive maintenance program; (2) maintains 545 'structures' in Buncombe County (43 or 8% are 'structurally deficient').

NCDOT maintains 131 bridges within the Asheville's city limits. He explained the definition of structurally deficient and functionally obsolete.

Asheville maintains 35 secondary bridges. Twenty-four are over 20' long and are eligible for federal/state funds).

There is a bi-annual inspection of NCDOT's and Asheville's bridges. It comprises of (1) a third party structural engineering firm; (2) a comprehensive report - 40 pages for small bridge); and (3) recommends maintenance/repairs.

Asheville's bridge maintenance program follows the inspection report recommendations (1) work completed prior to the next inspection cycle; (2) major repair or night work budgeted for; and (3) replacement (East Oakview): 80%-20% funding.

He reviewed with Council the four Streets Division bridge projects.

In summary (1) all bridges maintained by the City and the NCDOT are inspected bi-annually (by a qualified engineering firm); (2) federal/state funds (80%-20%) available for replacement of sub-standard bridges; and (3) both the City and the NCDOT have proactive maintenance and repair programs.

In response to Councilwoman Cape, Mr. Combs said that (1) the Chunns Cove bridge is structurally deficient, at an estimated repair cost of \$150,000; (2) the small bridge on Pinecroft Road is structurally deficient, at an estimated repair cost of \$10,000; (3) the bridge on School Road West is functionally obsolete but meets it's need; and (4) the bridge on Azalea Road is functionally obsolete, and is only used by staff to access the site - it is not a for public use bridge. He said that any bridge that is dangerous to the public is repaired immediately.

When Mayor Bellamy asked what the plans are to repair the bridges, Mr. Combs said that the bridge on Chunns Cove Road is on our Capital Improvement Plan; the bridge on Pinecroft Road can be upgraded this year; the bridge on School Road West meets it's need; and the Azalea Road bridge is re-decked and doesn't need further repair. He noted that all four bridges are structurally sound.

IV. PUBLIC HEARINGS:

A. PUBLIC HEARING TO CONSIDER REZONING 2 LOTS LOCATED ON BRITT DRIVE FROM RM-16 RESIDENTIAL MULTI-FAMILY HIGH DENSITY DISTRICT, RIVER DISTRICT, AND RS-4 RESIDENTIAL SINGLE-FAMILY MEDIUM DENSITY DISTRICT TO LIGHT INDUSTRIAL DISTRICT

ORDINANCE NO. 3516 - ORDINANCE TO REZONE 2 LOTS LOCATED ON BRITT DRIVE FROM RM-16 RESIDENTIAL MULTI-FAMILY HIGH DENSITY DISTRICT, RIVER DISTRICT, AND RS-4 RESIDENTIAL SINGLE-FAMILY MEDIUM DENSITY DISTRICT TO LIGHT INDUSTRIAL DISTRICT

Mayor Bellamy opened the public hearing at 5:33 p.m.

Urban Planner Blake Esselstyn said that this is the consideration of an ordinance to rezone 2 lots located on Britt Drive from RM-16 Residential Multi-Family High Density District, River District and RS-4 Residential Single-Family Medium Density District to Light Industrial District. This public hearing was advertised on August 10 and 17, 2007.

The subject site is located off of Swannanoa River Road and Britt Drive and consists of approximately 9 acres. The lot is currently vacant and split zoned RM-16, River and RS-4. The smaller parcel (about 1/3 acre) is currently zoned River, while the larger parcel is zoned residential (almost entirely RM-16). The zoning line between the RS-4 and RM-16 districts runs directly behind the 14-foot strip of land that abuts White Pine Drive and the remainder of the site. The zoning for this strip would not be modified under the proposed rezoning.

Surrounding land uses and zoning include: multi-family (2 units) uses to the north and single-family residential uses to the east zoned RS-4; commercial uses to the south zoned River; and a mix of residential and commercial uses zoned RS-8, RM-16 and River to the west of the site.

The subject site has road frontage along Swannanoa River Road and also Britt Drive. Since the piece connecting to White Pine Drive would not be rezoned, in the event of a rezoning of the bulk of the site to Light Industrial, access would not be allowed from that street. (Non-residential uses are not permitted to obtain vehicular access from fully residential streets through residential zoning.) The topography on the lot is fairly steep along the north and east sides of the property. The land begins to gradually level out throughout the center of the property and along the west and south sides of the site. Abutting residential uses along the north and east sides of the property, for the most part, sit at a much higher elevation than the subject site. Abutting commercial uses to the west and south of the property sit at or just slightly below the same elevation as the more level areas of the site.

Some portions of the site are in flood hazard areas, primarily near Ross Creek along the western side of the property.

The applicant is requesting a rezoning of the lot in order to create development potential in allowing the range of uses that would be permitted in the Light Industrial District.

- The purpose and intent of the Light Industrial District is to reserve land for existing and future light industrial, office-warehouse, studio/gallery and related activities and for land uses that support these activities. Development standards are established to ensure that land uses located outside the Light Industrial District are not adversely affected by the negative impacts of the more intense development types permitted in this zoning district. Light Industrial Districts shall be located to capitalize on existing infrastructure where possible, such as transportation facilities and utilities.
- The purpose and intent of the RM-16 district is to permit a full range of high density multi-family housing types along with limited institutional, public and commercial uses to be located near employment centers, shopping facilities, and other urban infrastructure capable of handling the demand generated by high density residential development.

A 2004 effort to develop the property with apartments was denied by City Council due to public safety concerns for residents due to the location of a private dam in the area and the flood hazard areas. A 2005 effort to rezone the property to River district was also denied, apparently due to concerns that the River District still allowed for residential uses. The Light Industrial district, created subsequent to these efforts, does not allow residential uses, except accessory dwellings, defined as a "residence located on premises with a main nonresidential use and occupied only by a caretaker or guard employed on the premises and, as applicable, his or her family."

Under the new landscape ordinance adopted in May 2007, a development in Light Industrial zoning would have to be separated from RS zoning by a 30-foot vegetated buffer, and from RM zoning by a 20-foot vegetated buffer. The Light Industrial district also has design and operation requirements regarding compliance with the noise ordinance, lighting, and directing entrances of buildings away from residential uses. Further, the setback standards specify special 30 foot standards for property lines

adjacent to residential districts.

At their July 12, 2007, meeting, the Planning & Zoning Commission voted unanimously to recommend approval for this rezoning. Approximately 10 neighbors spoke in opposition, citing concerns about noise, lights, safety in event of a flood, and protection of Ross Creek. Commission members thanked the speakers for their civility in presenting their concerns, but agreed that, given the outcomes of the applicant's past efforts to enable development on the lot, and the commission's inability to prohibit *any* use of the lot, the proposed zoning district was the best option.

As of this writing, staff has received two direct communications regarding this item. One neighbor called with a concern about a private sewer line, relevant to development of the property, but not to this specific rezoning request. When the site was posted for the Planning & Zoning Commission meeting, the writer of this report spoke with a neighbor who was seeking additional information.

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

Pros

- 1) Rezoning the lot to Light Industrial District will allow the applicant an opportunity to select from a range of uses when developing the site that may be more compatible with the existing development along Swannanoa River Road, and also with the redevelopment efforts along the riverway.
- 2) The existing topography on the site provides natural separation from abutting residential uses on the north and east sides of the property, making the land more suitable for a wider range of uses. The floodway and floodplain along the western side of the property demand a separation for the neighboring uses on that side as well.
- 3) Any development of the site must comply with all City regulations including UDO requirements, NC State Building Code, and FEMA requirements.
- 4) The only permitted residential uses would be for a caretaker or guard, as explained above – less than what would be permitted under Level I review with the existing zoning.

Con

- 1) Portions of the site are within a flood hazard area. However, any development of the site would be required to comply with all FEMA regulations prior to the issuance of any building permits.

The proposed rezoning to Light Industrial district would be consistent with the zoning of abutting properties to the south of the site along Swannanoa River Road, and also with the established zoning along the north and south sides of the riverway. Staff feels that rezoning the lots will have little effect on the residential uses to the north and east of the site due to the existing topography and differences in elevation. Any development of the site would have to comply with the development and design standards required in the Unified Development Ordinance, including the landscaping and buffering of incompatible uses.

Based on the above, staff recommends approval of the rezoning to Light Industrial District as requested by the applicant.

Mr. Esselstyn said that the developer has stated verbally that if the rezoning is approved he is willing to give over the sliver of land to the adjacent properties in the single-family residential zone, however, City Attorney Oast has advised that that statement cannot be considered grounds for approval of the rezoning.

Mr. Craig Justus, attorney representing the applicant Batt Associates, presented Council with a packet of information. He briefed Council on a history of actions before Council, which led to two denials - one in March of 2004 to rezone the property to RM-16 and one in February of 2005 to River District. He said the creation of the Light Industrial District came shortly after the last denial and he felt that was created with this piece of property in mind. He explained how a light industrial use is the perfect transition in this area. He hoped that Council would not debate the issue of access via Britt Drive, as the property has direct access to Swannanoa River Road. He urged Council to approve the rezoning.

Ms. Patsy Brison, attorney representing Britt & Tilson Glass, owner of property which borders the property being considered for rezoning, presented Council with letters dated August 20, 2007, January 27, 2005, March 22, 2004, and March 2, 2004. Their concern is the reference to the property under consideration for rezoning being located on Britt Drive and that the rezoning recommendation is based upon access via Britt Drive. They object to the designation of this private roadway as Britt Drive and to there being access via Britt Drive to the property which is being considered for rezoning. In addition, the rezoning maps show that there is some access to the properties from White Pine Drive, which is a single-family subdivision and certainly not an appropriate access to an industrial district.

Mr. Justus explained that the applicant can develop the property with the Swannanoa Road access only.

At 5:50 p.m., Mayor Bellamy closed the public hearing.

Throughout discussion, Mr. Esselstyn and City Attorney Oast responded to various questions/comments from Council, some being, but are not limited to: if the property is rezoned, can Britt Drive be used as an access; if the property is rezoned, what are the minimum thresholds for development that would trigger review by City Council; and, if any new roads need to be built, would they have to comply with our new standards.

Mayor Bellamy pointed out that our ordinances prohibit access on that sliver of land adjoining White Pine Drive because it's through a residential development; and, a buffer must be provided between whatever use goes on the property and the adjacent residential areas.

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

Vice-Mayor Jones moved for the adoption of Ordinance No. 3516, 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 on a 5-2 vote with Councilman Freeborn and Councilman Newman voting "no."

ORDINANCE BOOK NO. 23 - PAGE

B. PUBLIC HEARING TO CONSIDER REZONING PROPERTY FOR THE PROJECT KNOWN AS MAIN STREET AT BILTMORE LAKE, LOCATED ON SAND HILL ROAD FROM HIGHWAY BUSINESS DISTRICT TO URBAN VILLAGE DISTRICT AND REVIEW OF THE CONCEPTUAL MASTER PLAN FOR A MIXED-USE DEVELOPMENT

ORDINANCE NO. 3517 - ORDINANCE TO REZONE PROPERTY FOR THE PROJECT KNOWN AS MAIN STREET AT BILTMORE LAKE, LOCATED ON SAND HILL ROAD FROM HIGHWAY BUSINESS DISTRICT TO URBAN VILLAGE DISTRICT AND REVIEW OF THE CONCEPTUAL MASTER PLAN FOR A MIXED-USE DEVELOPMENT

Mayor Bellamy opened the public hearing at 6:00 p.m.

Urban Planner Jessica Bernstein said that this is the consideration of an ordinance to rezone property for the project known as Main Street at Biltmore Lake, located on Sand Hill Road from Highway Business District to Urban Village District and review of the conceptual Master Plan for a mixed use development. This public hearing was advertised on August 10 and 17, 2007.

Ms. Bernstein said that contrary to other review processes where all details are presented up front, the Urban Village rezoning process is initially based upon the conceptual master plan. Many of the final details for the project including landscaping, building design, materials and pedestrian amenities will not be reviewed at this point. Each of the three project phases will be submitted in greater detail and will be carefully reviewed and approved by the Technical Review Committee (TRC) as Level II projects. Once the conceptual master plan (covering general street network, land use configuration, development intensity and structure heights) is reviewed and approved by City Council with recommendation from Planning & Zoning Commission, the project cannot substantially deviate from this guiding plan. Any significant change to the master plan, such as increases to overall development intensity or changing the mix of uses by 25% or more, will require returning to City Council for review and amendment of the master plan.

The current proposal is for a rezoning and approval of a conceptual master plan for over 22 acres at Smoky Park Highway and Sand Hill Road, located in the extraterritorial jurisdiction area. The current zoning of the project area is Highway Business (HB). The property is made up of two parcels, one of which is currently split zoned HB/RM-16, however only the portion of the lot currently zoned HB is included in the proposed rezoning to Urban Village (UV). The project site is currently vacant and was previously graded.

According to the plans submitted, this three-phase project proposes nine buildings containing residential condos, office space and retail uses, including grocery, restaurant and bank uses. There are a total of 424 residential units proposed, creating a density of approximately 19 units per acre. Parking is proposed according to UV district requirements and will be located on-street and in several small surface lots as well as in above and below-ground garages. The structures vary in height from a minimum of three to a maximum of 12-stories, all within the maximum height allowed for the district. The UV requires all structures taller than six stories to be located internally to the site unless the surrounding context supports such height, and on this site the taller buildings are placed along the southern and western edge of the project area where they will be buffered by the cemetery and floodway. However, if these buildings are designed to the maximum height limit (150') the height may be out of context with the

surroundings and may impose a negative impact. Specific design elements are required for these taller buildings and will be reviewed at a later TRC hearing. It should also be noted that a buffer between the site and the adjacent cemetery is not expressly required per the Unified Development Ordinance (UDO); however the applicant is proposing a 30' buffer regardless.

In the UV district, maximum setbacks are defined, but can be modified by City Council. The applicant is seeking modifications to setbacks on 8 of the 9 buildings. The maximum setback in the UV district is 15 feet from the street as measured from the back of curb, however mixed use structures may be setback from the curb up to 25 feet if at least 10 feet in front of the structure incorporates courtyard space offering public amenities. The setback for Building E (max 21') falls within this increased allowance, however the other buildings exceed the 25' allowance as follows:

	Setback from Sand Hill Road	Minimum Plaza Setback (Interior Street)	Max. Plaza Setback (Interior Street)	Exceeds Maximum Setback by:
Bldg A	n/a	32'	51'	Up to 26'
Bldg B	50'	15'	51'	Up to 26' internal 25' Sand Hill Rd.
Bldg C	n/a	15'	65'	Up to 40'
Bldg D	48'	15'	15'	n/a internal 23' Sand Hill Rd.
Bldg E	n/a	15'	21'	n/a
Bldg F	n/a	14'	30'	up to 5'
Bldg MF1	n/a	14'	37'	up to 12'
Bldg MF2	n/a	12'	65'	up to 40'
Bldg MF3	n/a	12'	40'	up to 15'

The larger setbacks from Sand Hill Road for Buildings B & D reflect an existing significant change in grade from the street level to the finished floor elevation for the structures (up to 28' above street level). The Planning & Zoning Commission approved a variance to eliminate pedestrian interaction on the Sand Hill Road façade of these buildings because of the extreme grade change and the modification to increase setback from that street side is aligned with the effort to work with the existing grade changes and focus pedestrians to the internal side of the buildings. Staff is supportive of these setback modifications.

The larger setbacks from internal streets with incorporation of courtyard/pedestrian amenity spaces do seek to encourage interaction and community within the Urban Village. These courtyard spaces may assist in promoting the vitality of the outdoor element of the development, however in some instances the setback modification could be eliminated through building redesign that would break up the mass of the buildings and bring the corners closer to the street edge (ex. Buildings MF1, MF2, MF3, A).

Design and operational standards can also be varied in the UV district, with the Planning & Zoning Commission hearing and granting the variance request. All structures are required to have an operable pedestrian entrance on each primary façade, however buildings B & D are not proposed to include such an entrance. The applicant believes that the significant grade change along this section of Sand Hill Road is prohibitive to the pedestrian and intends for these buildings to focus and front internally only. This variance was approved by the Planning & Zoning Commission.

The Highway Business District (HB) is established to address the needs of commercial development along major thoroughfares, promoting automobile-oriented development and a wide range of commercial uses. The objective is to minimize the number of access points onto the thoroughfare and to promote shared parking opportunities, thereby enhancing the function of the thoroughfare.

The proposed UV rezoning would promote development similar to HB in that the major thoroughfare will be maintained without much interruption since vehicular circulation occurs internally and structures and parking areas are generally internally-oriented. Higher densities are supported by both zoning types; however there is no limit on structure size in UV, allowing for greater development options than HB. Uses allowed in these districts are similar as well and the advantage of rezoning the area is that UV provides better integration of the uses as well as a cohesive master plan, which creates a better sense of community.

At their June 18, 2007, meeting, the TRC approved this project with the conditions listed in the staff report. The Planning & Zoning Commission reviewed this project on June 12, 2007. They approved the request for rezoning (4-0); the conceptual master plan (4-0) and the variance request for elimination of pedestrian entrances on Sand Hill Road for Buildings B and D (4-0).

At the Planning & Zoning Commission hearing, one member of the public expressed concern that approval of structures at the maximum height allowed in the UV district would set a precedent, thus making structures at full height the "norm." Interim Planning & Development Director commented that each project will be reviewed as a distinct and separate proposal, with

surrounding context taking into account in determining appropriate mass and scale for the structures in that project.

Also at this meeting, the applicant expressed that they are amenable to a 10' greenway easement, as requested by the Greenways Commission; that they are interested in voluntary annexation and that they are intending to pursue incorporating sustainable features into the development. Commissioner Weeks asked the applicant to consider including an element of workforce housing, which they agreed to consider.

The conceptual master plan submitted follows the requirements of the UV district by indicating an acceptable street network and land use configuration for this scale of development, as well as suitable open space, building heights, setbacks and amenities.

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

Pros:

- Infill development of a previously disturbed site locates development in an area where infrastructure already exists, resulting in more efficient use of land.
- Presents a walkable community with services that will benefit and/or complement adjacent uses.
- Project is suitable to support transit (over 8-16 units per acre).
- Provides a variety of uses and buildings similar to a more traditional community.

Cons:

- Significant grade change towards southern end of property (along Sand Hill Road) prohibits street-level pedestrian engagement.
- Some of the building heights proposed are at or near UV maximum (up to 12 stories), which is not often seen outside of the CBD.

Staff recommends approval of the rezoning request of the identified parcels from Highway Business to Urban Village and the adoption of the master plan to guide the development. Staff also recommends approval of the modifications for setback but that Council considers requiring the applicant to stagger building facades where possible to reduce some of the increased setbacks.

Mr. David Buchanan, representing Forest Lawn Funeral Home and Cemetery, objects to using the right-of-way to the north as access to the mixed used community as they fear it will interfere with the only entrance to the cemetery. He did note that it is already difficult to get out on Sand Hill Road from that access.

At 6:21 p.m., Mayor Bellamy closed the public hearing.

In response to Councilman Mumpower, City Traffic Engineer Ken Putnam said that most of the interaction in and out of the development will be from the main access point across from A-B Technical College and there is a condition that a traffic light should be installed at that location.

Discussion surrounded approval of the master plan at this time which includes all three phases, along with the approval of 3 buildings that may be up to 12 stories.

At the request of Councilwoman Cape and Councilman Newman, Mayor Bellamy said that on August 28, 2007, City Council will be reviewing an amendment to the Unified Development Ordinance regarding the maximum height standards that are applied to the Urban Village District.

Vice-Mayor Jones suggested that if the project moves forward that the developer seek input from the neighborhood.

When Councilman Freeborn sought conformation (as stated in the Planning & Zoning Commission minutes) that the developer is interested in voluntary annexation and a 10-foot greenway easement, the developer responded that this is part of their project and they have started the process with the Economic Development Director to voluntarily annex, along with providing the 10-foot easement.

Mayor Bellamy noted that we cannot use voluntary annexation as grounds in determining whether to approve a project or not.

Mayor Bellamy urged the developer to use exemplary stormwater and erosion control mitigation measures since Hominy Creek is abutting his property. She also thanked the developer for his willingness to help with the Hominy Creek greenway, as the City has been trying for years to make that happen.

Councilwoman Cape suggested the developer look at energy efficiency measures when designing the buildings.

Regarding the Planning & Zoning Commission granting variances, at the request of Mayor Bellamy, City Attorney Oast said the design and operational standards are covered in Section 11 of the Urban Village ordinance dealing with orientation, entrances, windows and doorways. It permits the Planning & Zoning Commission to sit as a Board of Adjustment in those limited cases and that is specifically allowed by Statute.

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

Councilman Mumpower moved for the adoption of Ordinance No. 3517, rezoning the property from Highway Business District to Urban Village District and to adopt the master plan, finding that the requests are reasonable based on information provided in the staff report and as stated in the staff recommendation, subject to the following conditions: (1) The project shall comply with all conditions outlined in the TRC staff report; (2) All site lighting must comply with the City's Lighting Ordinance and be equipped with 90 degree cut-off fixtures and directed away from adjoining properties and streets; (3) All existing vegetation that is to be preserved must be clearly indicated and dimensioned on the site, landscape and grading plans; (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. This motion was seconded by Councilman Davis and carried unanimously.

ORDINANCE BOOK NO. 23 - PAGE

C. PUBLIC HEARING TO CONSIDER THE ISSUANCE OF A CONDITIONAL USE PERMIT FOR A HOTEL LOCATED ON MONTE VISTA ROAD FOR DEVELOPMENT OF A 105-ROOM HOTEL

ORDINANCE NO. 3518 - ORDINANCE GRANTING A CONDITIONAL USE PERMIT FOR A HOTEL LOCATED ON MONTE VISTA ROAD FOR DEVELOPMENT OF A 105-ROOM HOTEL

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

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

After hearing no questions about the procedure, Mayor Bellamy opened the public hearing at 6:37 p.m.

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

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

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

Mr. Pennington said that this is the consideration of the issuance of a conditional use permit for a hotel located on Monte Vista Road for development of a 105-room hotel.

He said that the applicant is requesting a Conditional Use Permit for a 2.90 acre outparcel located behind the existing Home Depot store to allow for the construction of a 105 unit lodging facility (Attachment to City Exhibit 3 - Aerial Map). The applicant is currently in the process of subdividing the outparcel from the 20.79 acre parent parcel. The request is an amendment to the master plan and associated conditional use permit for the Home Depot store approved by City Council on February 22, 2000.

The subject site is located on Monte Vista Road in West Asheville. The property presently consists of one lot zoned Highway Business. The subject site is bounded to the north by Interstate 40 and associated right-of-way, to the south by Monte Vista Road, single-family residences, a duplex and medical office zoned HB, RM-6 and Office II respectively, to the east by Home Depot, Acton Circle, restaurants and lodging facilities, and to the west by a single-family residence all zoned HB (Attachments to City Exhibit 3 - Site Plan and Value Place Hotel Faces).

The Highway Business District is established to address the needs of commercial development along major thoroughfares. Automobile oriented development is prevalent within this district and a wide range of commercial uses is permitted. Due to the dominance of the automobile, a major objective within this district is to preserve the traffic capacity of the thoroughfare. This is attempted through minimizing the number of access points onto the thoroughfare, encouraging zero-lot line development, and promoting shared parking and access between adjacent businesses. Development which enhances the function of the thoroughfare and is sensitive to the appearance of the corridor is essential within the district. These major corridors are the gateways to Asheville and often define the first image of the city.

A number of conditions were imposed on the development of the potential outparcels surrounding the Home Depot store when it was approved by City Council in 2000. The conditions affecting the Value Place hotel site can be summarized as follows:

1. The outparcel behind The Home Depot store shall be limited to one (1) driveway on Monte Vista Road. **One curb cut along Monte Vista Road is being proposed.**
2. A revised Traffic Impact Analysis and compliance with its recommendations shall be required at the time of development of any of the sites identified as future outparcels. **The revised Traffic Impact Analysis (TIA) has been submitted to and approved by the City Traffic Engineer.**
3. Parking shall be provided at the side or rear of structures and not closer to the street than the edge of the structure. **Parking has been indicated along the sides and rear of the proposed structure.**
4. Buildings shall be oriented to face the street and shall have customer entrance(s) on the wall facing the street. **A customer entrance fronting Monte Vista Road has been provided.**
5. Landscaped areas shown on the landscape plans shall not be altered or removed except the minimum extent necessary to accommodate the driveway along Monte Vista Road. Landscaping altered or removed shall be replaced with landscaping of an equal or greater extent as the landscaping that is removed elsewhere on the individual site or sites as determined by the Planning and Development Director. **The majority of the outparcel proposed for the construction of the hotel is scarified with the exception of some vegetation along the western perimeter. Three small areas of vegetation are proposed to be removed internal to the site in order to accommodate the construction of the hotel parking lot. The landscaped area adjacent to the rear of the Home Depot is to remain intact, street trees will be planted along Monte Vista Road and a 30 foot wide type "B" buffer will be installed to complement the existing vegetation along the western perimeter of the property.**

At their July 2, 2007, meeting the Technical Review Committee (TRC) approved this project subject to conditions.

As of the time of this writing, staff has received no communication from adjacent property owners or other citizens concerning the proposed development. The applicant held an independent neighborhood meeting in the area on May 30, 2007.

City Council must take formal action as set forth in Section 7-5-5(e)(3) of the Unified Development Ordinance (UDO), and must find that all seven standards for approval of conditional uses are met based on the evidence and testimony received at the public hearing or otherwise appearing in the record of the case pursuant to Section 7-16-2(c) of the UDO. Staff's review indicates that all seven standards are met as proposed in the site plan.

1. **That the proposed use or development of the land will not materially endanger the public health or safety.**
This has been reviewed by City staff and appears to meet all public health and safety related requirements. The project must meet the technical standards set forth in the UDO, the Standards and Specifications Manual, the North Carolina Building Code and all other applicable laws and standards that protect the public health and safety.
2. **That the proposed use or development of the land is reasonably compatible with significant natural or topographic features on the site and within the immediate vicinity of the site given the proposed site design and any mitigation techniques or measures proposed by the applicant.**
The hotel and parking lot are proposed to be built on land that was previously used as a waste fill area for the construction of the Home Depot store. The land is relatively flat because of previous disturbance and will require relatively minimal amounts of grading for the construction of the project.
3. **That the proposed use or development of the land will not substantially injure the value of adjoining or abutting property.**
The proposed development of a lodging facility would integrate within the existing commercial node of the Home Depot store, lodging facilities, offices and restaurants in the immediate area. Staff feels that the proposed project would have no discernible effect on surrounding property values.
4. **That the proposed use or development of the land will be in harmony with the scale, bulk, coverage, density, and**

character of the area or neighborhood in which it is located.

There are a variety of commercial developments in the area that would be consistent with the proposed development. Furthermore, the western portion of the property will be buffered by a type "B" landscape buffer, mitigating the impact on the adjacent single-family structure.

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

The application of compatible infill growth supports several goals and objectives as described in both *The Asheville City Development Plan 2025* and the *Strategic Operating Plan* (See **Compliance with Comprehensive Plan and Strategic Operating Plan Considerations** in above staff report).

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

The proposed development is located near transportation facilities and other utilities appear adequate. The initial technical review by other technical agencies and utility providers has not revealed any problems for serving the use.

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

A revised traffic impact analysis (TIA) was submitted, reviewed and approved by the City Traffic Engineer. The proposed project is not expected to cause undue traffic congestion or create a traffic hazard.

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

Pros:

- Provides another opportunity to further the City's goal of compatible infill growth.
- The addition of the hotel will provide additional employment opportunities within the City limits.

Con:

- Some citizens may perceive this as allowing larger scale commercial development closer to residential areas.

Staff recommends approval of the proposed project and Conditional Use Permit subject to the conditions in the TRC staff report and those listed as follows: (1) The project shall comply with all conditions outlined in the TRC staff report; (2) All existing vegetation that is to be preserved must be clearly indicated and dimensioned on the site, landscape and grading plans; (3) 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; (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 signage must comply with the City's standards for on-premise signage set forth in Article XIII of the UDO; and (6) This project will undergo final review by the TRC prior to issuance of any required permits.

After rebuttal, Mayor Bellamy closed the public hearing at 6:43 p.m.

Councilwoman Cape encouraged people who prepare master plans to think about shared parking spaces.

In response to Councilwoman Cape, Mr. Pennington explained the buffers (Attachment to City Exhibit 3 - Image). In addition, Mr. Pennington said that due to the elevation between this site and the Home Depot internal connectivity is difficult.

Councilman Mumpower moved for the adoption of Ordinance No. 3518, granting a conditional use permit for a hotel located on Monte Vista Road for development of a 105-room hotel, subject to the conditions recommended by City staff and find that the request is reasonable based on information provided in the staff report and as stated in the staff recommendation: (1) The project shall comply with all conditions outlined in the TRC staff report; (2) All existing vegetation that is to be preserved must be clearly indicated and dimensioned on the site, landscape and grading plans; (3) 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; (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 signage must comply with the City's standards for on-premise signage set forth in Article XIII of the UDO; and (6) This project will undergo final review by the TRC prior to issuance of any required permits. This motion was seconded by Vice-Mayor Jones and carried unanimously.

D. PUBLIC HEARING TO CONSIDER PERMANENTLY CLOSING STEVENS STREET

RESOLUTION NO. 07-160- RESOLUTION TO PERMANENTLY CLOSE STEVENS STREET

Mayor Bellamy opened the public hearing at 6:47 p.m.

Assistant Public Works Director Richard Grant said that this is the consideration of a resolution to permanently close Stevens Street. This public hearing was advertised on July 27, August 2, 10 and 17, 2007.

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

Pursuant to this statute, Patsy Brison, on behalf of B. Fletcher Carter, has requested the City of Asheville permanently close Stevens Street. This street formerly intersected with Fairview Road and was removed during the construction of the new Bleachery Boulevard. Public Works Department staff has determined that Stevens Street still remains on the City maintained streets listing.

Public Works staff have researched and contacted all agencies and determined easements are required for PSNC Energy and The Metropolitan Sewage District for existing infrastructure.

Pro: The closure will legally remove the street from the Buncombe County tax records and also allow the City to remove the street from the maintenance list.

Con: Staff can find no potential challenges regarding the closure of Stevens Street.

City staff recommends adoption of the resolution to permanently close Stevens Street.

Ms. Patsy Brison, attorney representing the adjacent property owners, urged Council to close Stevens Street. She asked that if the City has any information on the location of the easements that would be helpful.

Mayor Bellamy closed the public hearing at 6:50 p.m.

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

Vice-Mayor Jones moved for the adoption of Resolution No. 07-160. This motion was seconded by Councilwoman Cape and carried unanimously.

RESOLUTION BOOK NO. 30 - PAGE

At 6:50 p.m., Mayor Bellamy announced a 20 minute break.

V. UNFINISHED BUSINESS:

- A. ORDINANCE NO. 3519 - ORDINANCE AMENDING CHAPTER 7 OF THE CODE OF ORDINANCES PERTAINING TO ENVIRONMENTAL PROTECTION STANDARDS (STORMWATER AND EROSION CONTROL)**
- ORDINANCE NO. 3520- ORDINANCE AMENDING CHAPTER 7 OF THE CODE OF ORDINANCES PERTAINING TO ENVIRONMENTAL PROTECTION STANDARDS (DEFINITIONS)**
- ORDINANCE NO. 3521 - ORDINANCE AMENDING CHAPTER 7 OF THE CODE OF ORDINANCES PERTAINING TO ENVIRONMENTAL PROTECTION STANDARDS (ENFORCEMENT)**
- ORDINANCE NO. 3522 - BUDGET AMENDMENT FOR ADDITIONAL STAFF TO INCREASE ENFORCEMENT EFFORTS AND PROVIDE ON CALL SERVICES**

Mayor Bellamy said that this public hearing was held on June 26, 2007, and continued to July 24, 2007, and then to this date.

Director of Transportation and Engineer Cathy Ball recommended that City Council review and approve the revisions to the Stormwater and Erosion Control Ordinance and Penalties and Violations (Section 7-18-2) as recommended by the Watershed Policy Committee, Planning and Zoning Commission and City staff. Additionally, staff requests that the Definitions (Section 7-2-5)

of the Unified Development Ordinance (UDO) be amended to reflect the revised ordinance.

Staff also requests that Council adopt a budget amendment in the amount of \$215,000 for four additional staff to increase enforcement efforts and providing on call services 24/7.

As part of the Environmental Protection Agency's Federal Stormwater Regulations, the City of Asheville is required to meet six minimum measures in efforts to improve water quality from stormwater runoff. These measures include public education, public involvement, illicit discharge regulations, construction site and post-construction site measures and good housekeeping measures. In order to be in compliance with the Federal regulations, the City of Asheville must revise the Stormwater and Erosion Control Ordinance in the Unified Development Ordinance (UDO) by July 1, 2007.

In an effort to make the ordinance more consistent and user-friendly, we recommend combining the Stormwater Ordinance and Erosion Control Ordinance into one ordinance.

A stakeholders group was formed called the Watershed Policy Committee to review and evaluate the proposed ordinance. Several members were invited to participate in this process. Due to scheduling conflicts not all members were able to attend. The active group consisted of the following people:

- Barber Melton Coalition of Asheville Neighborhoods
- Starr Silvis NC DENR
- David Herbert Property Owner
- Jeff Van Hartsfeld Crowfields Condominiums
- John Broadbrooks Landscape Architect
- Jeff Slosman Manufactures Association
- Bruce Tompkins Biltmore Village
- Hartwell Carson RiverLink
- Mike Goodson Buncombe County

At the June 6, 2007, Planning and Zoning Commission Meeting, the Commission approved the recommended changes, with a recommended buffer width of 50 feet on all streams mapped on the USGS topographic maps. Staff presented the report at the Planning and Zoning Commission at 10:00 p.m. after a lengthy meeting. Since this meeting, the Planning and Zoning Commission has expressed some concern about their recommendation on the buffers.

Staff has met with various community groups over the past two months. These groups have included the Council of Independent Business Owners, the Coalition of Asheville Neighborhoods and a joint group of the North Carolina Home Builders Association and the Asheville Board of Realtors. Staff held public meetings on July 19, August 9, 13 and 14 to answer questions and obtain input of the revisions to the ordinance.

The stakeholders reviewed thirteen critical elements. Of the thirteen elements, three issues had more concerns and comments from the public. A matrix shows how staff's recommendations to these items correspond to the current ordinances and the state minimum requirements. Please note that the stakeholders' recommendation was the same as the staff on all items except for buffer widths.

Buffers

The majority of concerns from the public are about the additional twenty foot buffer above and beyond the thirty foot buffer the State is requiring. Based on technical research, a minimum of fifty foot buffer is recommended to improve water quality.

By far, the issue of buffers was the most concerning to the people who spoke at the public meetings. Most felt that the City should not require an additional buffer above and beyond the State minimum of 30 feet.

Option - Research shows that as the width of a buffer increases the benefit does not increase linearly. In other words, at a certain point "break point" the increase in removal efficiency significantly decreases for each foot the buffer width is increased. This break point varies greatly for different pollutants, types of ground cover, slope steepness, etc. When determining the minimum widths the break points for the specific pollutant removals we were targeting were considered.

The bottom line is that we will gain a great deal of benefit from implementing the thirty foot buffer required by the state. Council may elect to implement the minimum required by the state and allow staff to study the impact over the next twenty-four months.

Inspection

- Staff is recommending that prior to approving a grading and stormwater permit for sites greater with more than 10,000 square feet of disturbed area; the applicant would be required to show proof that a licensed professional will be providing weekly or biweekly inspections on sites.

Enforcement

- The state erosion control statute allows for a maximum fine of \$5,000 per day. The City's current ordinance limits the fines to \$500 per day. Staff is recommending that the maximum fine be increased to the state's maximum. Staff recommends a schedule be adopted to determine the fines for various violations.

We have not established a budget for the revenue we will generate from the fines and enforcement. Our goal is to encourage compliance, thus minimizing the amount of revenue we collect.

Following the most recent rainfalls, Council requested that we reevaluate our staffing needs in order to address some of the major sediment erosion that occurred. During this evaluation we identified four major causes of sediment erosion from construction sites.

1. Poor design.
2. Inaccurate or failure to install erosion control measures.
3. Failure to maintain erosion control measures.
4. Limited inspection program.

The revised ordinance should address most of these problems with the exception of staffing. We currently have five construction inspectors that cover driveway aprons, street cuts, waterline installations, stormwater and erosion control measures. We have approximately 600 active grading sites in the City and extraterritorial jurisdictional area.

We would recommend adding two additional construction inspectors, one administrative assistant and one plan reviewer. The cost for these positions is approximately \$150,000 plus benefits. We would need a capital outlay for the first year of approximately \$45,000 for vehicles and computers. Additionally, we would request \$20,000 per year for overtime costs associated with providing on-call services 24/7. We are also recommending that the \$215,000 to implement additional enforcement would come from fund balance.

Pros:

- The implementation of these regulations will improve water quality.
- The Stormwater and Erosion Control Ordinances have been consolidated. This should make the ordinance more user-friendly.
- These changes meet the goals and objectives of the 2025 plan.
- The City of Asheville will be in compliance with the Federal Stormwater Mandate and the North Carolina Sediment and Erosion Control Law.

Con:

- In some cases, these changes will increase development costs.

Pros and Cons:

- Ordinance provides for increased fines and penalties.
- Staff is recommending an additional buffer width of 20 feet.

Staff requests that the City Council approve the revisions to the Stormwater and Erosion Control Ordinance and Penalties and Violations (Section 7-18-2) as recommended by the Watershed Policy Committee, Planning and Zoning Commission and City staff. Additionally, staff requests that the Definitions (Section 7-2-5) of the UDO be amended to reflect the revised ordinance.

Staff also requests that Council adopt a budget amendment in the amount of \$215,000 for four additional staff to increase enforcement efforts and providing on call services 24/7.

Ms. Ball reviewed with Council the following via PowerPoint presentation:

"Why are we at the point we are at today? (1) Unfunded mandate - Environmental Protection Agency, Phase II -

Stormwater Regulations - Local government over 50,000 in population or density of over 1,000 per square mile; and (2) improve/sustain water quality.

How did we get here? (1) Watershed Policy Committee began in May of 2006 with 25 community representatives; (2) staff/consultant developed a draft document from July 2006 - January 2007; (3) staffing issues - January 2007 - April 2007; requested extension which was denied by the State; (4) reassembled stakeholders in June of 2007 with community presentations; and (5) public meeting on July and August 2007.

What are we doing? (1) aquatic buffers; (2) constructing slopes; (3) bonding; (4) establishing ground cover; (5) permitting borrow and waste areas; (6) design criteria for erosion control and stormwater; (7) maintenance and inspection requirements; and (8) enforcement and penalties. Ninety-percent of the comments were about (1) aquatic buffers; (2) maintenance and inspection requirements; and (3) enforcement and penalties.

On each discussion element she explained the current city ordinances, the state minimum requirement, along with the staff and stakeholder recommendations, using charts for illustration purposes:

- 1 - A. Aquatic Buffers - Undisturbed Areas - 30 ft minimum undisturbed for all jurisdictional waters with an additional 20 ft with limited or managed disturbance. If state requirement would require a wider buffer, state requirement would be administered.
- 1 - B. Aquatic Buffers - Build Upon Area Setback - 30 ft minimum built upon area setback for all jurisdictional waters with an additional 20 ft with limited built upon area.
2. Constructed Slopes - Requires Slope Stability Certificate for all slopes greater than 2:1. Requires geo-technical reports for slopes constructed to support roadways. Setback of slopes from property lines and rights-of-way to protect adjacent properties.
3. Land Disturbing Allowances - Limit disturbing 5 acres or less at any one time on for all properties with slopes of greater than 15%. Limit 20 acres of at one time disturbance in High Quality Water Zones. Requires bond for re-vegetation if disturbing 1 acre or more.
4. Ground Cover - Ground cover required within 14 calendar days of completion of construction activity.
5. Borrow and Waste Areas - Requires Cut and Fill Calculations. Requires proof of additional permit for all Borrow or Waste sites. Even if same owner.
6. Design Storms for Erosion Control - 10 year - 24 hour storm design. Ability to require 25 year if necessary.
7. Application and Exemptions for Stormwater Management - Combination of the existing requirements for impervious surface coverage and state requirement. Excludes 1 and 2 family home development from the impervious provision.
8. Post-Construction Stormwater Quantity Controls - 2-year and 10-year - 24-hour storm event detained to pre-construction peak rates. The 2-year must be slow release to provide infiltration and volume reduction.
9. Post-Construction Stormwater Quality Controls - Low Impact (less than 24% impervious surface) - Not included in recommendation.
10. Post-Construction Stormwater Quality Controls - High Impact (24% impervious surface or more) - Same as state minimum.
11. Regional Stormwater Management - None.
12. Required Self-Inspections - Required licensed professional under the direction of a licensed professional to provide weekly or bi-weekly inspections.
13. Enforcement - Notice of Violation: Immediate fines given for some violations up to \$5,000. Other Violations - give time for cure. If violation is not cured: Maximum fine of \$500 per day per violation; stop-inspections placed on project; grading and stormwater permit suspended or revoked.

Technical document handouts on buffer facts and width studies are available. There are links to Asheville's FTP site and other useful links.

There are buffer exceptions: (1) taking of property (a) defined by state; and (b) staff decision; (2) no practical alternatives (a) defined by state; and (b) staff decision; and (3) hardship (a) defined in UDO; (b) defined by state; and (c) Board of Adjustment.

There are over 200 miles of streams affected. With a 30-foot buffer, it affects 1,500 acres. With a 50 foot buffer, it affects 2,500 acres.

Regarding inspections, (1) developer must show proof of contract with licensed professional during construction phase; (2) weekly inspection reports - steep slopes; (3) bi-weekly inspection reports - other; and (4) staff perform follow-up inspections.

She then reviewed the enforcement chart. Step One - Notice of violation and/or fine. Step Two - Fine for ongoing violation and suspend permit - Issue "No Inspection Notice" through Building Permit Office. Step Three - Fine for ongoing violation - Revoke permit (applicant must apply for a new permit). Step Four - Immediate fine - Stop Work Order.

Problems and solutions consist of (1) poor design - designers get involved in the construction phase; (2) inaccurate or failure to install measures - fine and/or violation; (3) failure to maintain measures - fine and/or violation; and (4) limited inspection program - increase inspection program.

Inspection Program improvements consist of (1) increase staffing - \$230,000 annually (includes benefits and equipment); (2) provide 24/7 services - \$20,000 annually; and (3) contracts with design professionals - nor applicable."

Mr. Ben Pace was in favor of good development and reasonable regulations; however, he felt that the 50-foot regulation on streams is unreasonable. In fact, even the 30-foot buffer is too much. He felt the buffer regulations will hurt small businesses for several reasons, some being, that they cannot afford the studies that will be required and the ordinance is complicated to understand.

Mr. David Herbert spoke in support of the ordinance as proposed by City staff.

Mr. Pete Hildebrand questioned if the buffer restrictions will result in loss of property market value. He felt that individual land owners with streams running through them should have been notified of this potential restriction. If you overlay the FEMA flood maps with buffers proposed, that may not be a problem. But if you overlay the buffer maps with the FEMA and zoning setbacks, that may be a problem. That question should be answered. If Council adopts the state minimums, then staff could notify the property owners who could be potentially impacted by this to see if there are additional concerns.

Dr. Sandra Brown explained that concerning buffers, one size does not fit all situations. She was concerned that (1) the stormwater and erosion control ordinance title is misleading in that the emphasis on buffers is not automatically evident; (2) inadequate notification to all stakeholders who will be impacted; and (3) haste and poor notification that result in taking away property rights of all surface water land owners. She suggested (1) state clearing in writing that the stormwater and erosion control ordinance pertain only to those who are building/developing and rebuilding/redeveloping their property and such development is to adhere strictly to the existing state buffer mandate of 30-feet; (2) identify and notify all property owners with surface water in and around the Asheville area and inform them about the ramifications of this ordinance that incorporate the intent to extend buffers beyond the state requirements which involves land seizure without consent; and (3) withdraw the 20-foot buffer expansion at this time and find a more constructive approach by working together with the surface water property owners to identify, develop and implement agreeable solutions in keeping our water cleaner.

Ms. Deborah Squier spoke about how the buffer expansion will severely erode the market value of old Asheville neighborhoods. Rather than penalizing property owners, through the buffer requirement, the City should look at the real culprit of runoff from poor drainage.

Ms. Jane Hildebrand felt that the property owners were overlooked or ignored when the stakeholders were selected for the Watershed Policy Committee.

Ms. Michelle Wood explained how a lot of regulation diminishes affordable housing. She suggested Council adopt the 30-foot state minimum standard and then talk about going to 50-feet. She didn't want to see any additional ordinances that restrict the use of land for owners that might lose property value or developers or other persons who can't put as many homes on a parcel due to the other ordinances, in conjunction with this one. Since there are many changes to the ordinance, she suggested Council send the ordinance back to the Planning & Zoning Commission for review.

Mr. James Hildebrand, resident at 38 Spring Cove Road, said that this is a complex issue, but over 15 months they have had a problem with runoff. His home is a perfect example of why we need stronger ordinances and stiffer penalties. He urged Council to adopt the ordinance, specifically as it relates to large developers.

Rev. Christopher Chironmonte felt Council should adopt the state minimum of 30-foot buffers and give property owners an incentive to get the other 20-feet.

Mr. Hartwell Carson spoke in support of the ordinance. This is an issue of property rights - no one should have the right to pollute our waterways to harm fish and wild life and affect downstream property owners with runoff and the increased amount of velocity of water that results from most area developments in our mountain region. Sedimentation is the number one polluter in Asheville and the French Broad Watershed. After every rain, our rivers and aquatic life are choked with sediment and runoff from inaccurate erosion control measures on developments. One of the most effective, but contentious, tools to reduce the amount of sediment that reaches our streams and rivers are buffers. There is significant research that supports that. There is a comprehensive body of research that states the need for 100-600 foot buffers on either sides of a stream to fully realize the benefit of buffers. Fifty-feet is the absolutely bare minimum that is needed to protect waterways and private and public property. Over 35 cities in North Carolina have adopted the 50-foot buffer. The 50-foot buffer is the minimum standard that is needed and because our steep topography it is crucial that City Council adopt at least a 50-foot buffer to protect all of our streams and all of our properties.

Mr. Paul Zurick, speaking on behalf of the Asheville Area Chamber of Commerce, felt the Chamber should have been involved in a stakeholders group. We are in favor of good regulations, but regulation that doesn't achieve the purposes it seeks at a reasonable costs doesn't result in responsible development. There are a number of additional costs imposed by the city over the state. He summarized the additional costs imposed by proposed City regulations that exceed state requirements: (1) loss of land in Zone B (20 additional feet lost on each side of a blue line stream); (2) periodic inspections of constructed severe slopes within existing or future public rights-of-way; (3) additional setbacks of constructed slopes from adjacent property and ROW boundaries; (4) re-vegetation bond prior to land disturbance; (5) inefficiency cost of 5-acre grading limit; (6) requiring "stamped" as-built drawings of disturbed areas prior to final inspection approval; (7) require borrow/waste calculations and proof of approved borrow/waste sites prior to land disturbance permit issuance; (8) imposing the same requirements on low density developments as on high density developments (state has lower standards for low density development); (9) periodic inspection by licensed engineer of erosion control measures during construction; and (10) immediate fines exceed minimum state standards.

Mr. Joe Bassett urged Council to adopt the 50-foot buffer as a minimum, along with stricter penalties.

Ms. Esther Manheimer, attorney representing the Council of Independent Business Owners, requested Council remand the ordinance back to the Planning & Zoning Commission for additional time to analyze and study the ordinance. She presented Council with a letter dated August 21, 2007, detailing the following concerns (1) time is not of the essence - the N.C. Dept. of Environment and Natural Resources (DENR) is not interested in beginning the fining process especially for those cities that are earnestly undertaking the ordinance revision process; (2) Unwise combination of stormwater and erosion regulations - the coupling of these two extremely complicated areas of regulation is confusing and unnecessary and the exemptions from both clearly listed in the separate ordinances; (3) changes to the proposed ordinance must be reviewed by the Planning & Zoning Commission - since being reviewed by the Planning & Zoning Commission, the ordinance has been further edited; (4) variations from state law - (a) there is no state or federal requirement that the ordinance contain a 50-foot buffer restriction - the state law refers to a 30-foot buffer and to arbitrarily enlarge this buffer is hasty and without bias; (b) state law excludes "redevelopment" from stormwater regulations and defines "redevelopment as any land-disturbing activity that does not result in a net increase in built-upon area and that provides greater or equal stormwater control than the previous development." On the other hand, this proposed ordinance only excludes redevelopment from the water quantity control provisions as long as it has a net reduction in impervious surface area. The proposed ordinance will require redevelopment of commercial structures on land of more than one acre to abide by the buffering requirements; (c) state law excludes all projects, whether commercial or residential, from stormwater regulations that do not disturb one acre or more (projects disturbing less than one acre that are part of a larger common plan of development are regulated). The proposed ordinance only excludes projects under one acre if they have an impervious surface area of 50% or less of the total acreage. However, single one or two family dwellings are exempt; regardless of the impervious surface area, if less than one acre is disturbed. This exemption is confusing; (d) When referring to the buffer restrictions, the state law restricts development 30 feet "landward" of surface waters while the proposed ordinance restricts development from the "top of the bank." This is confusing and unnecessary; (e) state law states that an exemption to the stormwater regulations shall be granted under certain circumstances including situations where there is a lack of practical alternatives for road crossing. No such exemption exists under the proposed ordinance; and (f) the UDO and the state define land disturbing activity differently - the difference being the City's inclusion of tree cutting in the definition of land disturbing.

Ms. Patsy Brison, representing Mike and Kathy Verble, presented Council with a letter dated August 21, 2007, and a letter from the Verble's to Stormwater Services Manager Chad Pierce dated February 1, 2007. She explained how their property is

greatly affected by Dingle Creek and the feeder creeks into Dingle Creek and is flooded during heavy rain storms. She urged Council (1) to adopt the new stormwater and erosion control ordinance with the 50-foot buffer requirement; (2) no grading be allowed without an approved development plan in all zoning districts which would require a revision to the proposed subsection 7-12-2 (f) (5); and (3) that stormwater designs be required to meet a 25-year storm in the Dingle Creek and feeder creek areas, along with other areas likely to flood during heavy rain events.

Ms. Heather Rayburn, representing Mountain Voices Alliance, urged Council to adopt the proposed ordinance with the 50-foot buffer, and consider at a later time to raise the requirement to 100-feet.

Mr. Karl Koon said that this is a very difficult and confusing ordinance to read and try to understand. His concerns are (1) the proposed buffering requirements become applicable when a parcel containing land within 50 feet of a jurisdictional stream or waterway undergoes a "substantial improvement" as defined by the UDO. Substantial improvement is defined as "repair, renovation, addition or improvement that equals or exceeds 50% of the fair market value of the structure before the start of construction." He has been advised by staff that the destruction or damage to a structure by a flood or fire would not be considered a substantial improvement regardless of the cost and the buffering requirements would not then become applicable to the reconstruction on the original footprint. He can find no reference in the ordinance that spells out this exemption to the buffering requirements and would request that it be specifically allowed in the ordinance; (2) There are two areas where the buffering requirements are covered - Section 7-12-2 (f) (2) (a) dealing with land disturbing activities within aquatic buffers and Section 7-12-2 (g) (2) (d) dealing with built upon areas within aquatic buffers. He requested the same language that appears in Section 7-12-2 (f) (2) (a) (1) (the Undisturbed Buffer Zone regarding the granting of exceptions as allowed in Section 7-12-2 (g) (2) (d) (4)) be included in the Managed Buffer Zone of Section 7-12-2 (f) (2) (a) (2). This will provide the assurance that the same exceptions allowed in the Undisturbed Buffer Zone is extended to the Managed Buffer Zone; and (3) as to the buffering requirements and more specifically the Undisturbed Buffer Zone as they may relate to the future construction or major renovation of parks, recreational facilities or golf courses. Will water features or water hazards become a thing of the past as the public is forced off of the banks of streams, lakes and rivers to provide for the buffers as required by this ordinance. He asked the ordinance be remanded back to the Planning & Zoning Commission for further study, public involvement and recommendation. He felt that the extent of the streams and waterways that this ordinance will govern has not been fully explained. Staff has calculated that there exists approximately 200 miles of jurisdictional streams to which the ordinance would be applied. With a 50-foot buffer on each side of the stream, the potential acreage to be impacted is in excess of 2,400 acres. Some have advocated a 300-foot buffer on both sides, which calculates to over 14,500 acres or 23 square miles. The City of Asheville occupies just over 41 square miles.

Mr. Eric Gorny felt the buffers are an injustice and the ordinance will punish everyone who lives along the 200 miles of river. He encouraged Council to remand the ordinance back to the Planning & Zoning Commission. This will be a seizure of property without just compensation. There needs to be adequate public notification and involvement.

Mr. Danny Lack urged Council to remand the matter back to the Planning & Zoning Commission for more public input. He felt the ordinance does not offer protection for the people who only have a stream in their yard. He supported strengthening the penalties for people who actually cause the problem and leave the people who don't cause the problem alone.

Ms. Cindy Weeks, representative of Mountain Housing Opportunities, explained a concern with the 50-foot buffer area on one of their proposed developments. She urged Council to adopt the 30-foot state minimum buffer.

Mr. Alan Shepherd felt that to adopt the 50-foot buffer would further decrease the amount of buildable land in the City. He urged Council to adopt the 30-foot state minimum buffer.

Ms. Barber Melton, Vice-President of the Coalition of Asheville Neighborhoods, said that a 300-foot buffer is what it will take to clean up our waterways. She would settle for a 50-foot buffer with hopes of raising that in the future. We desperately need this in our community and urged Council to take action now.

Mr. John Carroll urged Council to look at the impact of the ordinance would have on homeowners' property rights and housing in Asheville. A 50-foot buffer will ultimately force more people into substandard housing and farther out of Asheville. He recommended Council remand the matter back to the Planning & Zoning Commission for further consideration and notify all the people that would be materially affected by the ordinance.

Mr. Jerry Sternberg was outraged by the process and the final ordinance. The City did not adequately notify affected property owners that their properties were in jeopardy. He explained how the public process was rushed through. He felt the ordinance should be sent back to the Planning & Zoning Commission for thorough and fair observation.

Mr. Mike Fryar spoke in support of the state minimum of a 30-foot buffer.

Mr. Harmon Ingle spoke about how the proposed 50-foot buffer requirement will affect the average people. He spoke in support of the 30-foot state buffer minimum.

Ms. Maureen Flag-Weber felt that what we need is enforcement of existing laws. She supported the 30-foot state buffer minimum.

Ms. Debbie Rhodarmer felt this takes people's property away without just compensation.

Ms. Kitzy Bocook felt that adoption of the ordinance is a taking of property value without compensation.

Councilman Freeborn moved to (1) adopt the Stormwater and Erosion Control Ordinance, as recommended by the Watershed Policy Committee, Planning and Zoning Commission and City staff (with the 50-foot buffer); (2) adopt the Penalties and Violations (Section 7-18-2) as recommended by the Watershed Policy Committee, Planning and Zoning Commission and City staff; and (3) adopt the ordinance amending the Definitions (Section 7-2-5) of the Unified Development Ordinance (UDO) to reflect the revised ordinance. Said motion died for lack of a second.

Councilman Mumpower felt it's easier for us to make rules than enforce the ones that we have. We need to fix our neglected stormwater system. We should be making a stronger effort to take some of the tax money created through development and re-invest in our stormwater system. He felt we are regulating ourselves to death and adding expense to housing and at risk for creating an elite or gated community. The urgency should be around this body making a more substantial effort to fund and support enforcement of our existing laws and not urgency to adopt an ordinance that has demonstrated flaws. He moved to refer this back to City staff and the Planning & Zoning Commission for further consideration and that we establish an agenda item for a near council meeting whereby we ask staff to come to us with a proposal to strengthen our enforcement capacity with our existing ordinances. This motion was seconded by Councilman Davis.

Councilwoman Cape felt we need to have a conversation about developing a better process by which we can vent these things in a way that everyone feels included and do that up front. She would be supportive of more work on the stormwater and erosion control ordinance but felt we needed to move forward today with the ordinance dealing with enforcement and put the fines and penalties in place. She asked Councilman Mumpower if he would accept that as a friendly amendment.

Councilman Mumpower did not accept Councilwoman Cape's friendly amendment in that we don't have the staff or the will to enforce the existing ordinance structure.

Councilwoman Cape said that there are a lot of pieces that still need to be explored with a full stakeholder engagement in this process. She believes in water quality, but also believes in overall environmental balance and protection. She hoped that we will evaluate our development in terms of transecting out what works well where and knowing how we are going to do that in the right places to get the overall benefits.

Councilman Davis very much enjoys the river and appreciates the resource. He thinks it is too extreme to move from the state's 30-foot buffer to a 50-foot buffer with so many unanswered questions that still exist. He withdrew his second to Councilman Mumpower's motion because he too felt enforcement is very important and would support moving forward with the enforcement ordinance. Regarding the stormwater and erosion control ordinance, he would support remanding that back to the Planning & Zoning Commission. After seeing the pictures of stormwater runoff, he is concerned that we are charging people a stormwater fee and we don't do a good job of providing the infrastructure to fix our system. He felt that if we implement the 30-foot buffer, we can monitor it, enforce our laws and if we have to revisit the issue, we will.

Councilman Newman moved to adopt the Penalties and Violations (Section 7-18-2) Ordinance as recommended by the Watershed Policy Committee, Planning and Zoning Commission and City staff. This motion was seconded by Vice-Mayor Jones.

Assistant City Attorney Martha McGlohon explained that because we have combined the stormwater ordinance and erosion control ordinance (which combined ordinance includes the enforcement provisions), if we don't adopt the combined stormwater and erosion control ordinance, then we have no authority to impose the maximum civil penalty of \$25,000. The enforcement ordinance is dependent upon the regulation ordinance.

If legally permissible, Councilman Newman re-stated his motion to (1) adopt the Penalties and Violations Ordinance (Section 7-18-2) as recommended by the Watershed Policy Committee, Planning and Zoning Commission and City staff; and (2) adopt the budget amendment in the amount of \$215,000 for four additional staff to increase enforcement efforts and providing on call services 24/7.

Ms. McGlohon said that since the enforcement (penalties and violations ordinance) ordinance is dependent upon the

regulation (stormwater and erosion control ordinance) ordinance, in order to adopt the enforcement ordinance, without adopting the combined stormwater and erosion control ordinance, staff would have to revise the enforcement ordinance and bring it back to Council at another meeting.

Ms. Ball suggested Council approve the stormwater and erosion control ordinance with the exception of not increasing the additional buffer width - of just doing the state 30-foot buffer. That would take care of us from the matter of having the compliance issue with the state.

Councilman Newman said there have been a lot of fairly detail oriented comments about the overall ordinance and he would appreciate the chance for the Planning & Zoning Commission to review those comments. That would be his only concern of proceeding in the manner suggested by Ms. Ball. If we just need to wait one week for the enforcement ordinance to be revised, that would not be a concern, but he doesn't want to have to wait several weeks while some of the questions are resolved.

In response to Councilman Mumpower on how much time staff will need to come back to Council with a recommendation package on creating enforcement of existing ordinances, Ms. Ball said that we would take our current existing ordinance and amend it to allow for the enforcement. She felt that would take staff at least 3-4 weeks.

Mayor Bellamy said that the main thing she has heard is that infrastructure is a problem and enforcement. Per the staff's report, the major causes of failures in what we currently have on the ground are (1) poor design; (2) inaccurate or failure to install erosion control measures; (3) failure to maintain erosion control measures; and (4) limited inspection program. That tells her that Engineering needs more staff in that we currently have 5 construction inspectors to deal with approximately 600 grading sites in the City and in the extraterritorial jurisdiction area. It stands to reason that we should begin the process of hiring the people via adoption of the budget amendment today.

Mayor Bellamy said that members of Council have been previously furnished with copies of the ordinances and they will not be read.

Councilman Newman moved rescind his prior motion and in its place he moved to (1) adopt Ordinance No. 3519, the Stormwater and Erosion Control Ordinance, with the 30-foot buffer (not the recommended 50-foot buffer); (2) ask the Planning & Zoning Commission to specifically advise us on the buffer question as well as recommend any other technical changes they would like for Council to consider; (3) adopt Ordinance No. 3520, the Penalties and Violations (Section 7-18-2) as recommended by the Watershed Policy Committee, Planning and Zoning Commission and City staff; and (4) adopt Ordinance No.3521, amending the Definitions (Section 7-2-5) of the Unified Development Ordinance (UDO) to reflect the revised ordinance. This motion was seconded by Councilwoman Cape and carried on a 5-2 vote, with Vice-Mayor Jones and Councilman Mumpower voting "no."

**STORMWATER & EROSION CONTROL ORDINANCE -
ORDINANCE BOOK NO. 23 - PAGE**

**PENALTIES AND VIOLATIONS ORDINANCE -
ORDINANCE BOOK NO. 23 - PAGE**

**DEFINITIONS ORDINANCE -
ORDINANCE BOOK NO. 23 - PAGE**

Councilman Newman moved to adopt Ordinance No. 3522, a budget amendment in the amount of \$215,000 for four additional staff to increase enforcement efforts and providing on call services 24/7. This motion was seconded by Vice-Mayor Jones.

Mayor Bellamy said that after talking with City Manager Jackson, she asked for a friendly amendment to add one more plan reviewer and one more construction inspector (for a total of six new staff) in light of the number of building permit requests we are about to receive.

In response to Councilman Newman, Ms. Ball said that the two additional staff would result in an additional on-going cost of \$85,000 and an additional \$25,000 for a one-time vehicle cost for an additional \$110,000. The total budget amendment would be for \$325,000, which would come from the fund balance of the stormwater utility.

Councilman Newman accepted the friendly amendment for the addition of six additional staff, with a total budget amendment of \$325,000.

Councilman Mumpower felt we are moving too quickly with these actions.

Vice-Mayor Jones understands the need for additional staff for enforcement, but would like to revisit that issue in the budget cycle in approximately 6-12 months.

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

ORDINANCE BOOK NO. 23 - PAGE

In response to Vice-Mayor Jones, City Manager Jackson said that the Planning & Zoning Commission will get the complete set of minutes and any staff analysis of those points so they can review each comment made. Their recommendations will come back to City Council for action, if Council deems appropriate.

Mayor Bellamy said that her comments are centered more around what is going back to the Planning & Zoning Commission. This weekend Patton Avenue was flooded and no development was happening on Patton Avenue, except for a sewer line, but that had nothing to do with the flooding. It is the stormwater system. She would like more emphasis on maintaining and upgrading our stormwater system. Some of the pictures Council saw tonight showed that there were stormwater measures in place, but they failed. Enforcement is key. We need to start advertising for staff as soon as possible to fill the vacancies. Communication is paramount. We need to make sure our ordinance is clear and the developer and inspectors know exactly what has been approved by City Council. She does want to see a separation of the ordinances - one for stormwater and one for erosion control, and even the exemptions separated clearly so people can understand how they are exempted. She has a concern that staff has a lot of authority to approve certain measures and she would like to see that mitigated because it puts staff in a precarious position whereas as elected officials we should have a little more say so in that process, or even the Planning & Zoning Commission. Regarding the buffer requirements, hardship is going to be important to her and she asked for a separate memo to Council on why this doesn't constitute a taking when we go beyond the state minimums.

Councilwoman Cape suggested using charts to make the ordinance easier to understand.

Mayor Bellamy said that this past Sunday, she and Councilman Freeborn, along with others, participated in a raft race on the French Broad River. They had a Nantahala guide with them and she thanked the elected officials for dealing with the water quality issue, as she has seen an improvement on the river in her 20 years as a guide. Mayor Bellamy acknowledged the work Quality Forward and RiverLink who have worked to improve the water quality in our area. The water quality has improved and she thanked the community who has given their time to clean up the river as well as donate money to make sure the river is taken care of. And, in order to take it to the next level, she understands that we have to have these regulations. What she heard tonight was that we care about where we live and now we need to figure out the best way to get to where we need to go to make sure that we improve the quality of life for everyone. Hopefully we can make Asheville a better place to work, live and play.

At 9:34 p.m., Mayor Bellamy announced a 10-minute recess.

Councilman Newman said that one of the components of the ordinance was the issue that people would have to hire a certified engineer to do the weekly or bi-weekly inspections. A question was raised if it had to be a certified engineer or could it be another person with professional credentials related to the development who does the inspections. He asked staff to provide additional information to that question and report back to Council.

VI. NEW BUSINESS:

A. DIRECTION FOR SIGN CODE REGULATION OF AMERICAN FLAGS

Ms. Lauren Bradley, Assistant to the City Manager, said that at its July 10, 2007, meeting, the Asheville City Council directed staff to seek input and a recommendation from the Mayor's Committee for Veteran Affairs on the consideration of an amendment to the Unified Development Ordinance to remove or amend existing standards set forth in Article XIII that regulate the use of flags in conjunction with commercial sales or advertising.

The Mayor's Committee for Veteran Affairs will consider this item at its regularly scheduled meeting on August 28, 2007. The committee's recommendation will be ready for presentation at City Council's September 11, 2007 meeting.

Based on the schedule described above, it is staff's recommendation that this item be continued until the September 11, 2007.

Councilman Mumpower moved to continue this item until September 11, 2007. This motion was seconded by Vice-Mayor

Jones and carried unanimously.

B. RESOLUTION NO. 07-161- RESOLUTION AMENDING THE ANNEXATION SERVICES PLAN FOR THE YEAR 2007 ANNEXATION AREAS

Urban Planner Julia Cogburn said that this is the consideration of a resolution amending the Annexation Services Plan for the Year 2007 annexation areas. This item was originally scheduled for August 14, 2007, however, it was continued until this date in order to give the public an opportunity to review all changes.

In adopting an annexation ordinance, the City has the authority to annex all or some of an area proposed for annexation, as long as that area qualifies for annexation. The City may also amend the services plan for the proposed annexation area or areas, as long as the requirements for providing service to the annexation areas continue to be met.

City staff presented the Annexation Services Plan for the Biltmore Lake, Sardis Road and Schenck Gateway areas to City Council on May 22, 2007. The City Council adopted the plan on this date.

The staff is now proposing that four pages of this plan be amended as follows.

- The first amendment is to Page 13 – the Statutory Standards Statement for the Schenck Gateway Area. The revisions are to the measurements of the aggregate external boundary line of the area, to the contiguous portion of this boundary, and to the percent of external boundary that coincides with the City boundary. These revisions were necessitated due to confusion regarding recent tax record/map changes at Biltmore Town Center.
- The second amendments are to Page 36 – Estimated Expenditures. The specific expenditure changes are minor and only to the figures for Solid Waste related services. These figures update final service counts and relevant multipliers (e.g., tipping fee; cost of recycling). The net change in annually recurring expenditures is (+) \$2,626.00. The net change in capital expenditures is (-) \$63.00.
- The final amendments are to the Present and Proposed Boundaries Map and the Generalized Land Use Map for the Schenck Gateway Area. These maps are being changed for the same reasons indicated for the first amendment. They reflect the area as described in the Resolution of Intent for this Schenck Gateway approved by the Asheville City Council on May 15, 2007.

As long as the Annexation Services Plan does not show the annexation area as qualifying under any additional statutory tests, no additional public hearing is required for this amendment to the Plan.

Pro:

- Clarifies details and provides more accurate information in the Annexation Services Plan for 2007.

Con:

- None seen.

City staff recommends City Council adopt a resolution amending the Annexation Services Plan to reflect revisions/corrections as presented.

When Councilwoman Cape asked what will happen to the small piece of land that is not included in this annexation, Ms. Cogburn said that they will probably talk with Biltmore Farms to see if they will voluntarily annex that little portion.

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

Councilman Newman moved for the adoption of Resolution No. 07-161. This motion was seconded by Vice-Mayor Jones and carried on a 5-2 vote, with Councilman Freeborn and Councilman Mumpower voting “no.”

RESOLUTION BOOK NO. 30 - PAGE

C. ORDINANCE NO. 3523- ORDINANCE EXTENDING THE CORPORATE LIMITS OF THE CITY OF ASHEVILLE TO INCLUDE THE BILTMORE LAKE AREA

Urban Planner Julia Cogburn said that this is the consideration of an ordinance extending the corporate limits of the City of Asheville to include the Biltmore Lake area. Mayor Bellamy said that this public hearing was held on July 24, 2007. This item was originally scheduled for August 14, 2007, however, it was continued until this date in order to give the public an opportunity to

review all changes to the Annexation Services Plan.

On May 15, 2007, the City Council adopted Resolutions of Intent beginning the annexation process for the following three areas: Biltmore Lake; Sardis Road; and Schenck Gateway. The Annexation Services Plan for these areas was approved on May 22, 2007, and a public information meeting was held on July 2, 2007. Public hearings on each of the annexation ordinances were held on July 24, 2007. Adoption of the annexation ordinances is the final step in the annexation process. The effective date for these annexations is proposed in these ordinances to be December 31, 2007.

The ordinances set forth this effective date and also reference a metes and bounds description attached to the ordinance. The staff has made some minor revisions in these metes and bounds descriptions (from the information contained in the descriptions for the resolutions of intent) to make them easier to follow. The boundaries identified by the descriptions have not changed.

City staff recommends City Council adopt the ordinance to extend the corporate limits of the City of Asheville to include the Biltmore Lake area with the effective date as established by ordinance.

In response to concerns raised at the public hearing, Urban Planner Blake Esselstyn used slides to explain why the lines were drawn where they were in Biltmore Lake.

Councilman Newman said that these comments are pertinent to all three annexations before Council today. Not until he was on Council did he understand how profoundly Asheville is different from other cities across the state in terms of how cities grow. Involuntary annexation is a controversial topic all across the state, but that is the only tool that Asheville has to grow. In all other North Carolina cities when new developments along the edge of the city are proposed to connect to the city's water infrastructure, the developer is required to voluntarily annex the development into the city at that time. Cities grow naturally as the area becomes urbanized. Other cities do involuntary annexations to fill in the gaps from time to time. No other city in North Carolina is prevented from requiring developers who wish to secure city services from being required to voluntarily annex into the city as part of the bargain for receiving city services. We have been working hard as a Council to try to persuade our state legislators about how important this issue is - about how important it is that Asheville be allowed to work and to grow in the same way that other cities do. Involuntary annexation is a very unhealthy process for everyone involved and it's one of the least pleasant tasks that a City Council ever has to consider doing - it is unpleasant and seems very unfair for the people who have to go through it. There is a better way to do it and that is to allow Asheville to require developers to incorporate their projects into cities at the time they seek city services. If we are not allowed to grow our City in the future and as all new developments spring up around Asheville and those residents use our services and our infrastructure and the City taxpayers have to pay that full burden, we will be in a situation where we will continue to raise taxes on the families and businesses who are in Asheville even while services and infrastructure deteriorate. And that is not an acceptable situation.

Councilman Mumpower believes that Asheville is harmed by the bitter aftertaste of forced annexation. It violates most people's standards of fairness and while there are some constructive arguments for annexation and certainly there are arguments for the fact that Asheville is treated differently than other cities, even neighboring cities, he still thinks the consequences do more harm than good.

Councilwoman Cape explained that she lives in a situation of where she lives in Asheville and across the street her best friend lives in Woodfin. She said that a dividing line does not break up a neighborhood.

Mayor Bellamy said that this is not an easy issue on either side of the table. Based on the comments raised about the dividing lines and responses from the public information meeting, there are larger issues at play for the City of Asheville. As a new Mayor, her focus is on basic city services and our current City boundaries. It is not her desire to go annexing but there is a reality that we have to face how we grow and we have to grapple with that. Annexation is not our number one tool of choice. She has worked for the past year with our legislators in trying to help us get some better tools to ask developers come into the city. One comment at the July 24 public hearing was that their developer came before Council for annexation and Council didn't accept it. To be honest, that developer wanted it all and wasn't willing to give and take. It was their parcel of land but our staff did try to negotiate. It was an issue of if you don't do what we want, you won't get a voluntary annexation - even though we have worked together on a development years before. In fact, we recently gave them tax incentives to try to work with them even more. It was disheartening as Mayor to have a developer say you will just have to use involuntary annexation. That was unfortunate because that was the only tool we had to try to work with them upfront. So to say that the City of Asheville didn't try to work with the developer is not true. This is a plea to ask our legislators to help us out. We are improving our water system, our streets and our sidewalks. At relocate.com, Asheville is the number one place to relocate in America. She's not saying that the City of Asheville is perfect, but we're far from where we were but we're not as good as where we're going. She will support this annexation and believes that we will get some assistance from our legislators to get the bigger picture fixed. She hoped that there will be developers who work with us to have voluntary annexations into the best City in this country.

Councilman Newman moved for the adoption of Ordinance No. 3523. This motion was seconded by Councilwoman Cape and carried on a 5-2 vote, with Councilman Freeborn and Councilman Mumpower voting "no."

ORDINANCE BOOK NO. 23 - PAGE

D. ORDINANCE NO. 3524 - ORDINANCE EXTENDING THE CORPORATE LIMITS OF THE CITY OF ASHEVILLE TO INCLUDE THE SARDIS ROAD AREA

Urban Planner Julia Cogburn said that this is the consideration of an ordinance extending the corporate limits of the City of Asheville to include the Sardis Road area. Mayor Bellamy said that this public hearing was held on July 24, 2007. This item was originally scheduled for August 14, 2007, however, it was continued until this date in order to give the public an opportunity to review all changes to the Annexation Services Plan.

On May 15, 2007, the City Council adopted Resolutions of Intent beginning the annexation process for the following three areas: Biltmore Lake; Sardis Road; and Schenck Gateway. The Annexation Services Plan for these areas was approved on May 22, 2007, and a public information meeting was held on July 2, 2007. Public hearings on each of the annexation ordinances were held on July 24, 2007. Adoption of the annexation ordinances is the final step in the annexation process. The effective date for these annexations is proposed in these ordinances to be December 31, 2007.

The ordinances set forth this effective date and also reference a metes and bounds description attached to the ordinance. The staff has made some minor revisions in these metes and bounds descriptions (from the information contained in the descriptions for the resolutions of intent) to make them easier to follow. The boundaries identified by the descriptions have not changed.

City staff recommends City Council adopt the ordinance to extend the corporate limits of the City of Asheville to include the Sardis Road area with the effective date as established by ordinance.

Vice-Mayor Jones moved for the adoption of Ordinance No. 3524. This motion was seconded by Councilwoman Cape and carried on a 5-2 vote, with Councilman Freeborn and Councilman Mumpower voting "no."

ORDINANCE BOOK NO. 23 - PAGE

F. ORDINANCE NO. 3525 - ORDINANCE EXTENDING THE CORPORATE LIMITS OF THE CITY OF ASHEVILLE TO INCLUDE THE SCHENCK GATEWAY AREA

Urban Planner Julia Cogburn said that this is the consideration of an ordinance extending the corporate limits of the City of Asheville to include the Schenck Gateway area. Mayor Bellamy said that this public hearing was held on July 24, 2007. This item was originally scheduled for August 14, 2007, however, it was continued until this date in order to give the public an opportunity to review all changes to the Annexation Services Plan.

On May 15, 2007, the City Council adopted Resolutions of Intent beginning the annexation process for the following three areas: Biltmore Lake; Sardis Road; and Schenck Gateway. The Annexation Services Plan for these areas was approved on May 22, 2007, and a public information meeting was held on July 2, 2007. Public hearings on each of the annexation ordinances were held on July 24, 2007. Adoption of the annexation ordinances is the final step in the annexation process. The effective date for these annexations is proposed in these ordinances to be December 31, 2007.

The ordinances set forth this effective date and also reference a metes and bounds description attached to the ordinance. The staff has made some minor revisions in these metes and bounds descriptions (from the information contained in the descriptions for the resolutions of intent) to make them easier to follow. The boundaries identified by the descriptions have not changed.

City staff recommends City Council adopt the ordinance to extend the corporate limits of the City of Asheville to include the Schenck Gateway area with the effective date as established by ordinance.

Councilwoman Cape moved for the adoption of Ordinance No. 3525. This motion was seconded by Councilman Newman and carried on a 5-2 vote, with Councilman Freeborn and Councilman Mumpower voting "no."

ORDINANCE BOOK NO. 23 - PAGE

G. REQUEST FROM ADVANTAGEWEST AND THE ASHEVILLE-BUNCOMBE COUNTY ECONOMIC DEVELOPMENT COUNCIL FOR THE CITY TO PARTICIPATE IN THE CERTIFIED ENTREPRENEURIAL COMMUNITY PROGRAM

Economic Development Director Sam Powers said that this is the consideration of a proposal to participate with the Asheville Buncombe County Economic Development Council (EDC) in the implementation of the Certified Entrepreneurial Community Program (CEC).

The CEC is a new initiative developed by AdvantageWest, the regional economic development partnership for the western 23 counties. The CEC seeks to create communities of entrepreneurial interests by promoting public and governmental awareness of the need for entrepreneurship. The CEC program requires certification of participating or governmental bodies and local units of governments regarding their approach, strategy, and state of readiness with respect to entrepreneurship.

In our correspondence and discussions in regards to this program, staff believes that this program can be best served on a county level, as with the other 11 participating counties. We see this as compatible with the HUB Project strategy for job creation, and the EDC would be a logical choice for program management because of past experience.

AdvantageWest provided an overview of this program to the Sustainable Economic Development Advisory Committee at their regular meeting of June 14, 2007. SEDAC members present at the meeting discussed that a county approach to leadership in this program would be the way to proceed with the EDC taking that lead.

Pros:

- Potential to enhance the network and services for small business development.
- New framework for assisting entrepreneurial growth and retention in Buncombe County.
- Meet Strategic Goal established by City Council for collaboration with Buncombe County and neighboring municipalities.

Cons:

- County wide financial participation has not been organized and performance measures for growth increases in job creations have not been established.
- Relationships with other major stakeholders such as HUB Alliance, Mountain BizWorks, Buncombe County, and others are unclear.

City staff recommends City Council consider the EDC request for a \$25,000 payment to administer the program in Fiscal Year 2007-08. Authorization of the agreement would require a budget amendment to reallocate the \$25,000 from fund balance to the Economic Development office.

After a brief discussion of the program, it was the consensus of Council that even though this is a good program, it seems fairly duplicative with the HUB project and there was no motion made to contribute \$25,000 to the program.

H. ORDINANCE NO. 3526 - ORDINANCE AMENDING THE PARADE ORDINANCE

City Attorney Oast said that this is the consideration of an ordinance amending the City's Parade Ordinance

The City's parade ordinance was last amended in June of 1996, that amendment was comprehensive, and included picketing as well. The 1996 amendment coincided with developments in the law at about that time that caused many municipalities to undertake amendments to their ordinances.

The City's parade ordinance has worked well since 1996, but developments in the law over the intervening years have shown the need to consider further revisions. The proposed revisions are set out in the revised ordinance, and are summarized below:

1. Subsections (a), (b) and (c) are essentially unchanged.
2. Subsection (d), containing exceptions, is new. These exceptions are traditional exceptions, and the City has a practice of recognizing them. This paragraph codifies those exceptions.
3. Subsection (e) regarding permit and escort fees, has been substantially revised in response to recent case law. This paragraph makes clear the fees that the City charges are for services that are requested by the organizers or that are necessary to protect public safety. Significantly, from a constitutional standpoint, this subsection provides for a waiver or reduction in those fees if the organizers are demonstrably indigent, or as necessary to ensure that constitutional rights are

not infringed. If it is determined that there has been a material misrepresentation of indigency, the proposed revision provides that the organizers may be assessed an appropriate fee after the event has occurred.

4. Subsection (f) sets out the permit application process. This requires an application to be submitted five days in advance (increased from the current 48 hours), but allows for a shorter time in the event of an "emergent public issue."
5. Subsection (h) prescribes the permit issuance standards, and allows the chief of police (the city official who processes permit applications) to make an appropriate public safety assessment, including whether adequate public safety resources are available. This subsection clarifies that this determination may not be based on the subject matter of the event, or the number of anticipated non-participant observers.
6. Subsection (i) sets out the process and timing for action on the application.
7. Subsections (k) and (l) set out the rights of applicants to appeal the police chief's determination, including a process for a "post event" appeal.

The timing and substance of these revisions are in part a response to the litigation that arose out of the May 1 We Are One America march that occurred in May of 2006. While the march went on as planned, the lawsuit claims that the City improperly assessed certain fees. The revisions proposed here address the issues identified in that litigation as well as bringing our ordinance current with the law in this area, and have been discussed during the course of settlement negotiations.

Pros:

- Codifies practice into ordinance
- Clarifies the factors that may be considered in parade permit decisions (and those that may not)
- Brings City's ordinance current with evolving law
- Prescribes a more predictable process

Con:

- May require more time and resources to process a permit application

If Council approves of the revisions, adoption of the ordinance is recommended.

Councilman Mumpower suggested that items such as this be routed through the City Council Public Safety Committee first.

City Attorney Oast responded to questions raised by Councilwoman Cape.

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

Councilman Freeborn moved for the adoption of Ordinance No. 3526. This motion was seconded by Councilman Newman and carried unanimously.

ORDINANCE BOOK NO. 23 - PAGE

I. CONSIDERATION OF BOARD AND COMMISSION INTERVIEWS

It was the consensus of City Council to instruct the City Clerk to prepare the following interviews for vacancies on the Americans with Disabilities Act Compliance Committee: Walter Randolph and William Madison. Mayor Bellamy took a moment to extend sympathy to the family of Mary Robertson and to acknowledge her outstanding work on this committee, as well as her work with the veterans, her work at the polls, and her work at the Housing Authority.

It was the consensus of City Council to instruct the City Clerk to prepare the following interviews for vacancies on the Civic Center Commission: Elizabeth A. Jones, J. Michael Burke and John West.

It was the consensus of City Council to instruct the City Clerk to prepare the following interviews for a vacancy on the Tourism Development Authority: current member Ron Storto and Rupa Russell. After a brief discussion of reappointment criteria, Vice-Mayor Jones said that she doesn't see reappointments as automatic, and if a member of Council wishes to interview for a vacancy, then it has been Council's practice to interview.

VII. OTHER BUSINESS:

Councilman Davis was pleased with the turnout at the kick-off event for the Speedway Memorial Fundraiser. They have nearly achieved their goal and welcomed contributions, made payable to Eblen Charities - marked for the Speedway Memorial.

At the request of the Public Art Board, Councilman Mumpower encouraged artists to participate in the Postcards from the Ledge program (to raise funds for public art) where people from the community and people of celebrity submit 5x7 postcard art.

Councilman Mumpower thanked the people who came out on August 18, 2007, to paint a resident's home in Lee Walker Heights as part of the For Our Kids program.

Councilman Mumpower encouraged people to participate in the Mountain Council on Alcohol & Drug Dependence's Recovery Rocks the Mountains program on September 8, 2007, from 11:00 a.m. - 3:00 p.m. at Martin Luther King Jr. Park.

Councilman Freeborn was pleased to report that this year the City of Asheville came in 2nd place in the Land-of-Sky Mayor's Raft Race. He thanked his fellow rafters - Mayor Bellamy, Jason Mann and two Asheville fire fighters.

Councilman Freeborn was pleased to see Mr. Robert White, from Pisgah View Apartments, develop a community garden at Pisgah View Apartments. Mr. White is putting children to work in growing food and he is coordinating with other community gardens in the City, including one at Vance Elementary School.

VIII. INFORMAL DISCUSSION AND PUBLIC COMMENT:

Rev. Christopher Chiaromonte alleged that 80% of police officers on the force have less than 2 years experience and 80% of the fire fighters have less than 5 years experience. He felt City Council should investigate why police officers and fire fighters leave employment with the City of Asheville. Mayor Bellamy stated that information is inaccurate.

IX. ADJOURNMENT:

Mayor Bellamy adjourned the meeting at 10:50 p.m.

CITY CLERK

MAYOR