

Tuesday - July 27, 1999 - 5:00 p.m.

Regular Meeting

Present: Mayor Leni Sitnick, Presiding; Vice-Mayor Edward C. Hay Jr.; Councilman M. Charles Cloninger; Councilman Earl Cobb; Councilwoman Barbara Field; and Councilman Thomas G. Sellers; City Attorney Robert W. Oast Jr.; City Manager James L. Westbrook Jr.; and City Clerk Magdalen Burleson

Absent: Councilman O.T. Tomes

INVOCATION

Councilman Cobb gave the invocation.

I. PROCLAMATIONS:

A. CERTIFICATE OF APPRECIATION TO DR. PATSY B. REED, CHANCELLOR OF UNC-ASHEVILLE

Mayor Sitnick read and presented Dr. Patsy B. Reed, Chancellor of UNC-Asheville, with a certificate of appreciation. Dr. Reed will be retiring at the end of July. City Council expressed their deep appreciation to Dr. Reed for her distinguished service, and their best wishes for continued success in all her future endeavors.

B. RECOGNITION OF HUD'S BEST PRACTICE AWARD FOR THE AFFORDABLE HOUSING COALITION'S "INTERLACE PROGRAM" FOR ABUSED WOMEN AND CHILDREN

Mayor Sitnick recognized Mr. Gene Bell, representing the Affordable Housing Coalition, and congratulated him for receipt of HUD's Best Practice Award for their "Interlace Program" for abused women and children.

II. CONSENT:

A. RESOLUTION NO. 99-109 - RESOLUTION AUTHORIZING THE MAYOR TO DISPOSE OF REAL PROPERTY KNOWN AS TWIN SPRINGS SUBDIVISION BY PRIVATE SALE TO HABITAT FOR HUMANITY

Summary: The consideration of a resolution authorizing the Mayor to dispose of 12.353 acres of City-owned real property, identified as Twin Springs Subdivision, by private sale to Asheville Area Habitat for Humanity Inc.

On August 19, 1997, the City of Asheville and the Asheville Area Habitat for Humanity, Inc. entered into a Memorandum of Understanding to develop a 12.353-acre tract of unimproved land on Broadview Drive within the City limits. The City agreed to construct infrastructure improvements, including water, sanitary sewer, storm drainage, streets and sidewalks, curb and gutter, electric, telephone, cable, street lighting, and minor landscaping. Upon completion of the infrastructure improvements, the City committed to transfer title of the property to Habitat at no cost. Habitat will construct 34 affordable housing units to be occupied by income-eligible families, and will transfer title of the individual real property to the qualified family when construction is completed. Habitat will provide construction and permanent mortgage financing for all homes within the subdivision.

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The infrastructure has now been completed and the property subdivided into 34 lots. The property is ready

for conveyance to Habitat.

Community Development staff recommends adoption of the resolution to dispose of the property.

RESOLUTION BOOK NO. 25 - PAGE 257

B. RESOLUTION NO. 99-110 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A CONTRACT WITH W.K. DICKSON FOR THE PLANNING AND DESIGN STAGE OF THE DEVELOPMENT OF THE FRENCH BROAD RIVER PARK - PHASE IV

Summary: The consideration of a resolution authorizing the City Manager to enter into a contract with WK Dickson for the planning and design stage of the development of the French Broad River Park - Phase IV.

This 32 acre tract of land is located along the French Broad River adjacent to Amboy Road. City Council directed staff to develop this donated property for recreational purposes. Consequently, a site plan is the necessary first stage of development. A request for qualifications was sent for this initial stage which entails inventory and analysis, program development, conceptual master plan, public meetings, cost estimates and a final master plan which will include drawings and written documents. The City received responses from eight firms interested in the proposed scope of work.

These products will be comprehensive enough to lead into the second stage, construction drawings and specifications. The review team was comprised of members from the Parks and Recreation Advisory Board, Riverlink, interested citizens and staff. The interview team selected the top firm, WK Dickson, for this stage of the project through the request for qualification procedure. The aforementioned scope of services will be provided by the consultant for \$61,500 (master plan \$36,500, engineering \$10,000, architecture \$15,000). The funding for this project will be the \$75,000 from this years lease of the Asheville Motor Speedway.

The Parks and Recreation Department recommends that City Council authorize the City Manager to enter into a contract with WK Dickson for the planning and design stage of the development of the French Broad River Park - Phase IV.

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C. ORDINANCE NO. 2590 - BUDGET AMENDMENT TO FUND THE REMAINDER OF THE 1998/99 WATER DISTRIBUTION SYSTEM IMPROVEMENTS

Summary: The consideration of a budget amendment, in the amount of \$416,958, to amend Capital Project Ordinance 82-25 (35 Fund - Water Major Capital Improvements Fund) to fund the remainder of the 1998/1999 Water Distribution System Improvements.

By Resolution 82-25 dated October 5, 1982, the Regional Water Authority authorized and budgeted for various capital projects to be funded by Investment Earnings, Contributions From Other Funds, and Appropriated Fund Balance.

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Funds in the amount of \$597,920 were approved in the FY 1998/1999 FY Water Operating Budget (30 Fund) to be transferred to the Water Major Capital Improvements Fund (35 Fund) to fund capital improvement projects. On October 20, 1998, the Authority approved the transfer of \$180,962 from the Operating Budget (30 Fund) to the 35 Fund for the following projects: Relocation of Pesticide Mixing Stations (\$33,000), Lee Street/Prospect Street Water Main Replacement (\$33,000), Monroe Street Water Main Replacement (\$25,000), and the first payment of the NCDOT US 70/74 Tunnel Road/Haw Creek Water Line Relocation Project (\$89,962).

The remainder of the FY 1998/1999 Water Distribution System Improvements needs to be funded at this time. These projects total \$416,958 and include the following:

- An additional \$42,000 for Monroe and Maxwell Streets that was under-budgeted.
- \$50,000 for Water System Improvements to Reconcile Existing Conflicts with MSD.
- \$289,958 for Matching Funds for State \$3 Million Grant
- \$35,000 for Telemetry Upgrades to South Buncombe and East Asheville Pump Stations

Staff recommends approval of a budget ordinance amending Capital Project Ordinance 82-25 (35 Fund) to reflect the addition of a portion of the Contribution From Other Funds - Fiscal Year 1998/99 in the amount of \$416,958.

ORDINANCE BOOK NO. 17 - PAGE 400

D. ORDINANCE NO. 2591 - BUDGET AMENDMENT TO APPROPRIATE GRANT FUNDS FROM THE NORTH CAROLINA PARKS AND RECREATION TRUST FUND FOR HAW CREEK PARK

Summary: The consideration of a budget amendment, in the amount of \$69,000, from the N.C. Department of Environment and Natural Resources, for the construction of the next phase of Haw Creek Park.

The City recently applied for and received approval for a grant from the N.C. Department of Environment and Natural Resources. The grant is in the amount of \$69,000 and is designated for the development of the Haw Creek Park.

The development of Haw Creek Park represents the City of Asheville and the Haw Creek Community Association's long term goal to build a park in the Haw Creek neighborhood. The park is a collaborative effort between the City of Asheville and the Haw Creek Community Association, who has committed to raise \$40,000 to assist with construction of the park. Haw Creek Park will be a passive park located on approximately 6.2 acres at Beverly and Avon Roads, and will serve as a major destination along the proposed Haw Creek Greenway. Park features include a trail, picnic shelter, and paved parking. The grant funds will be used to add a toddler playground, a second picnic shelter, rest rooms, interpretive signage, and landscaping.

The Parks and Recreation Department recommends the City of Asheville accept the grant funds on behalf of the Parks and Recreation Department for construction of the next phase of Haw Creek Park.

ORDINANCE BOOK NO. 17 - PAGE 402

E. ORDINANCE NO. 2592 - BUDGET AMENDMENT TO APPROPRIATE FUNDS FROM THE HAW CREEK COMMUNITY ASSOCIATION FOR HAW CREEK PARK -4-

Summary: The consideration of a budget amendment, in the amount of \$25,000, to appropriate funds donated from the Haw Creek Community Association for the construction of the next phase of Haw Creek Park.

The development of Haw Creek Park represents the City of Asheville and the Haw Creek Community Association's long term goal to build a park in the Haw Creek neighborhood. The park is a collaborative effort between the City of Asheville and the Haw Creek Community Association, who has committed to raise \$40,000 to assist with construction of the park. At this time, the Association is giving a portion of the funds to

the City of Asheville in the amount of \$25,000. Haw Creek Park will be a passive park located on approximately 6.2 acres at Beverly and Avon Roads, and will serve as a major destination along the proposed Haw Creek Greenway. Park features include a trail, picnic shelter, and paved parking. The donation will be used to assist in the addition of a toddler playground, a second picnic shelter, rest rooms, interpretive signage, and landscaping.

The Parks and Recreation Department recommends the City of Asheville accept the donation on behalf of the Parks and Recreation Department for construction of the next phase of Haw Creek Park.

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F. MOTION APPROVING A TRANSFER OF \$10,000 FROM THE GENERAL FUND CONTINGENCY TO PROVIDE FINANCIAL SUPPORT TO THE 2000 BIG SOUTH CONFERENCE BASKETBALL TOURNAMENT

Summary: Tom Hunnicutt, Athletic Director at UNCA, has requested a monetary contribution in support of the 2000 Big South Conference Basketball Tournament. Last year the City donated \$10,000 toward the conference. This year's tournament is expected to be even bigger and will once again receive national television coverage. Supporting the Big South Conference Basketball Tournament is an excellent method for the City to showcase Asheville to visitors, as well as to support our local member university of the Southern Conference.

Staff recommends that Council approve a transfer from the General Fund Contingency to provide financial support to the 2000 Big South Conference Basketball Tournament.

City Manager Westbrook responded to questions from Ms. June Lamb relative to the transfer.

G. MOTION SETTING A PUBLIC HEARING ON AUGUST 10, 1999, TO AMEND THE UNIFIED DEVELOPMENT ORDINANCE TO ESTABLISH THE DEFINITIONS OF COMMUNITY FACILITIES AND COMMUNITY IDENTIFICATIONS SIGNS, TO DETERMINE THE LOCATIONS OF COMMUNITY IDENTIFICATION SIGNS AND TO AMEND REGULATIONS REGARDING SIGNS IN THE RIGHT-OF-WAY

H. RESOLUTION NO. 99-111- RESOLUTION FIXING DATE OF PUBLIC HEARING ON AUGUST 10, 1999, TO ANNEX PROPERTY LOCATED OFF OF LONG SHOALS ROAD, ON SCHENCK PARKWAY, AND KNOWN AS THE VOLVO BUILDING PROPERTY

RESOLUTION BOOK NO. 25 - PAGE 259

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I. ORDINANCE NO. 2593 - ORDINANCE REVISIONS TO THE RIGHT-OF-WAY CUT PERMITS

Summary: The purpose of revising the right-of-way cuts ordinance is threefold (1) the Public Works Department was responsible for administering this program, however, in 1995 this program was moved to the Engineering Department; (2) to clarify the responsibilities and requirements of the permittee in obtaining a permit when they plan to cut into a City or State right-of-way in the City; and (3) to establish an appeal process for permittee's to appeal fees and fines.

These revisions have been reviewed by the Utility Coordination Committee. They initially had some concerns. The draft ordinance presented to you addresses all of their concerns.

The fee schedule was approved by City Council during the budget process.

City staff requests City Council adopt the revisions to the right-of-way cut permit ordinance.

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

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

III. PUBLIC HEARINGS:

A. PUBLIC HEARING RELATIVE TO THE VOLUNTARY ANNEXATION OF PROPERTY LOCATED OFF OF LONG SHOALS ROAD AND KNOWN AS BILTMORE PARK COMMON AREAS (BILTMORE PARK ANNEXATION SECTION 14), SCHENCK PARKWAY AND 100 TECHNOLOGY DRIVE

At the request of City staff, Councilwoman Field moved to reschedule the public hearing on the voluntary annexation of property located off of Long Shoals Road and known as Biltmore Park Common Areas (Biltmore Park Annexation Section 14), Schenck Parkway and 100 Technology Drive to August 10, 1999. This motion was seconded by Councilman Sellers and carried unanimously.

B. PUBLIC HEARING TO CONSIDER A CONDITIONAL USE PERMIT FOR THE ASHEVILLE MALL EXPANSION

Mayor Sitnick opened the public hearing at 5:22 p.m.

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

Mr. Dan Baechtold, Urban Planner, said that this is the consideration of a Conditional Use Permit as outlined in the Unified Development Ordinance (UDO) for the Asheville Mall Expansion located at 3 South Tunnel Road (City Exhibit 1).

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On June 7, 1999, the Planning & Development Department received a site plan for the expansion of the Asheville Mall. The owner of the Asheville Mall, CBL and Associates of Chattanooga, Tennessee, submitted development plans for Level III site plan review. The project is an expansion of the existing mall and consists of a building addition of 154,500 square feet including retail space, a food court, and a second story addition on Belk Department Store; construction of a parking deck of 456,640 square feet; and demolition of the Mall Twin Cinemas. The proposal also includes an additional entrance lane into the Mall from the existing southernmost Mall entrance. The parking decks and the demolition of the Cinemas result in a net increase of 573 parking spaces. (City Exhibits 2, 3, 4, 5 & 6) The Technical Review Committee ("TRC") reviewed the plans on June 21, 1999, and took action to approve with conditions. The public hearing was legally advertised on July 16, 1999, and July 23, 1999.

Mr. Baechtold then gave a brief overview of the Mall's proposal. He said the plans received by City Council are revised plans submitted on July 12, 1999, after the TRC review (City Exhibit 7). He pointed out the areas where the site plan was modified to address the TRC's conditions. City Council has the authority to place additional conditions on any approval that might be granted.

The Planning and Development Staff and the Technical Review Committee find that that the project will meet all the technical standards for development in the Regional Business zoning district if all of the following conditions are addressed:

1. Submit sanitary sewer extension plans for review.

Mr. Baechtold said that the applicant is working with MSD and that will be handled through the normal permitting process.

2. Coordinate relocation of water line and other water utilities with the Water Resources Department.

Mr. Baechtold said that this will be handled through the normal permitting process.

3. Clarify open space calculation and verify that specified open space meets open space requirements in the UDO.

Mr. Baechtold said that this has been done to the City's satisfaction.

4. Plantings in the required Type "D" buffer between the area of the Mall Twin Cinemas and the residential area of White Pine Drive do not provide an adequate visual buffer. Existing trees along the west property line behind the cinemas are not to be removed. Supplement the buffer with other vegetation or construct additional barrier such as a masonry wall or fence. The design will be reviewed by Planning and Development staff and presented to City Council.

Mr. Baechtold said that the Plan indicates that the existing line of trees behind the cinemas is to remain undisturbed. On the plans, the applicant proposes a 6-foot wooden fence. A question has arose about the distance that this fence would be from the trunks of the existing trees. Whatever type of barrier that is placed there, City staff would like to see a tree survey and a tree protection plan showing the location of the fence in relationship to the tree trunks to demonstrate that the trees will remain undisturbed. If necessary, the edge of the parking should be shifted to achieve the survival of the trees. The cinemas create somewhat of a buffer now because it is a solid concrete structure and that will be lost when the cinemas are demolished. The residents in the neighborhood have concerns about having a visual barrier and some kind of noise -7-

barrier. The developer has verbally agreed to raise the height of the wooden fence in this location to 8-feet. From an ordinance standpoint, the buffer that they have proposed meets or exceeds the requirements of the UDO. The UDO does not address materials of a buffer fence. The only provision in the UDO regarding fences is that they should be made of wood, brick or stone. From a performance standpoint, obviously the thicker and higher the barrier, the more noise levels would be reduced. On the visual aspect, a solid wood fence would, of course, perform as well as some other type of material. The other consideration in the type of barrier is what kind of noise and what the level of noise is that needs to be blocked.

The area further south also includes a fence which is a UDO requirement. The developer does not have the full 30-foot buffer width in this location south of the cinemas, so they have proposed a wooden fence of 6-feet which would allow them to reduce the buffer width.

The other screening issue is the wall at the end of the parking deck. There has been some concern raised about what the height of that wall should be and concern about whether or not there may be a privacy issue from the end of that parking deck to the neighborhood. The distance is approximately 260 feet from the closest point of the parking deck to the closest point on the property line. The development plan indicate that it's to be an opaque screen sufficient to block headlights. The developer has verbally indicated that the plan is to have a 4-foot wall at the end of that parking deck.

5. Address the issue of new and existing lighting in the area of the expansion. Provide detail showing the number, height, and design of all existing and new outdoor light fixtures within the area of the expansion. Design new light fixtures to minimize impact on the adjacent neighborhood. The design will be reviewed by Planning and Development Staff and presented to City Council.

Mr. Baechtold said that there are three light poles in the area of the expansion that are 75 to 100 feet tall and there are other light poles along the back side of the Mall that are adjacent to the Kenilworth Forest neighborhood. In the area of the expansion, two of the large light poles will be removed by necessity of the construction and the third, the developer is proposing to remove and to upgrade the lighting standards for the entire area of the parking lot. The developer indicated that the industry standard is a 3-foot candle lighting level to cover the entire area. The poles now provide a lot of light around it, but as you get further away from the light, the coverage level drops off. Their plan is to install a larger number of lower poles of 31 to 40-feet in height in order to spread out the overall lighting level in the parking lot.

That raises the issue of direct glare vs. the ambient light and glow. Staff's recommendation on this, if the project is approved, is that City Council add a condition that the developer prepare and submit a photometric plan that addresses all of the lighting along the entire back side of the Mall and that the plan should demonstrate the elimination of glare and light spill-over into Kenilworth Forest and that the developer will retro-fit existing lighting or otherwise propose alternatives that will achieve that performance. As a part of that, any further lighting upgrades should be a part of an approved photometric plan, at least in the area along the back side of the Mall.

6. Submit stormwater/erosion control plans that meet UDO requirements. Please reference UDO Appendix 7A and Asheville Standards Specifications and Details Manual Section 10, Appendix J.

Mr. Baechtold said that this will be handled through the normal permitting process. -8-

7. Verify compliance with requirements for slope stability. UDO section 7-12-2 (f) (4) and 7-12-2(e)(2).

Mr. Baechtold said that this will be handled through the normal permitting process.

8. Staff does not recommend adding an additional entrance lane into the mall. The maximum width of an access road is 36 feet. (UDO 7-11-1(f)).

Mr. Baechtold said that the developer and the City Engineering have worked together on this condition and reached a compromise. (City Exhibit 8)

9. Staff would like to work with the developer to reduce the 45 foot radii of the access drive to the minimum needed to allow for truck turning.

Mr. Baechtold said that the developer and the City Engineering staff has worked together on this condition and reached a compromise. (City Exhibit 8)

10. Staff recommends that City Council require a five-foot sidewalk with five-foot setback along South Tunnel Road along the entire frontage of the mall property.

Mr. Baechtold said that the sidewalk is included on the revised site plan.

11. Staff is still in the process of reviewing the Traffic Impact Analysis. The City Traffic Engineer will meet with the Traffic Engineering Consultant to discuss additional traffic issues.

Mr. Baechtold said that the City's Engineering staff indicated that they wanted to review the Traffic Impact Analysis (TIA) further. The developer performed a TIA, as required by the UDO, which considered the impact of the expansion and other projected traffic on the transportation system. The TIA concluded that "with modifications in the timing plans for the coordinated signal system through the corridor, the increase in traffic will not have a detrimental impact on the traffic operations on South Tunnel Road." (City Exhibit 8)

There are remaining concerns from the Kenilworth Forest neighborhood about ingress and egress to the

neighborhood on White Pine Drive and congestion caused by the entrance at Brackettown Road. City staff has looked into the status of Brackettown Road and it is a private road.

12. Submit plans for relocation of fire service, life safety plan, and phasing schedule to City of Asheville Fire Department.

Mr. Baechtold said that this condition has been addressed.

13. Revise site plan to reflect actual conditions at the intersection of White Pine Drive and Brackettown Road.

Mr. Baechtold said that this condition has been addressed.

Mr. Baechtold then summarized the recommendations that staff has on these issues:

(1) In the buffer area, some type of barrier should be constructed, no less than 8-feet in height, with a material to be determined. Whatever type of barrier is placed, staff would like to see a tree survey and tree protection plan showing the location of the barrier in relationship to the tree trunks, to demonstrate that the trees will remain undisturbed. And, if necessary, the edge of the -9-

parking should be shifted to achieve survival of the trees; (2) With regard to lighting, staff recommends a condition that the developer prepare and submit a photometric plan that addresses all of the lighting along the entire back side of the Mall. The plan should demonstrate the elimination of direct glare and reduction of light spill-over into Kenilworth Forest. The developer should retro-fit existing lighting or otherwise propose alternatives that will achieve that performance. Also, any future lighting must be a part of an approved photometric plan; (3) A sidewalk be required along the entire frontage of the Mall property (it is showing on the revised plan); (4) With regard to construction hours, they be restricted to the hours of 7 a.m. to 7 p.m. Monday through Friday and 9 a.m. to 6 p.m. on Saturday and Sunday; and (5) Regarding transit, the Transit Services Director has expressed a desire to go into the Mall parking lot in the front to pick up and drop off patrons and we would like to have a condition that the Mall will cooperate in finding a suitable location for that transit stop within the Mall.

Mr. Baechtold then reviewed the staff's responses to the seven findings that City Council must make in order to grant the conditional use permit (City Exhibit 9):

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

The proposed development is an expansion of an existing retail facility. The impacts of the expansion will not materially endanger the public health or safety. The project received technical approval from the Water Resources Department, the Fire Department, MSD, Engineering, and other City Departments.

2. That the proposed use is reasonably necessary for the public health or general welfare, such as by enhancing the successful operation of the surrounding area in its basic community functions or by providing an essential service to the community or the region.

The Asheville Mall serves as a regional shopping center. The presence of the Mall enhances the successful operation of the surrounding area as a commercial corridor. A healthy and vibrant mall is preferable to the alternative.

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

Adequate buffering and screening are necessary so that negative impacts of the Mall on adjoining property

will not be increased above pre-expansion conditions. The site plan shows a buffer meeting the technical requirements for landscaping and buffering in the UDO.

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

The existing mall is located on property zoned Regional Business. The neighboring uses along Tunnel Road include a number of large-scale retail developments. Adequate buffering and screening are necessary to separate this use from neighboring single-family residential development. The site plan shows a buffer meeting the technical requirements for landscaping and buffering in the UDO.

5. That the proposed use or development of the land will generally conform with the comprehensive plan and other official plans adopted by the city.

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The Asheville City Plan 2010 indicates commercial development for the Tunnel Road corridor. The proposed expansion of the Asheville Mall is consistent with the intent and the standards of the Regional Business zoning district.

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 in an existing developed area. The project received technical approval from the Water Resources Department, the Fire Department, and MSD. The Mall is located on a five-lane major thoroughfare as identified on the Asheville Thoroughfare Map.

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

The developer prepared a Traffic Impact Analysis (TIA) for the proposed mall expansion as required by the UDO. The TIA considered the impact of this expansion and other projected traffic on the transportation system. The TIA concluded that "with modifications in the timing plans for the coordinated signal system through the corridor, the increase in traffic will not have a detrimental impact on the traffic operations on S. Tunnel Road." The City Engineer and Traffic Engineer reviewed the findings of the TIA for accuracy, and concur with the findings.

Upon inquiry of Councilman Cobb about whether the TRC reviewed the noise concerns, Mr. Baechtold said that there is nothing in the UDO that specifically addresses noise. There are requirements for buffers between incompatible uses ranging from 15-30 feet. This development project is required the maximum buffer of 30 feet. That buffer is intended to address visual impacts, and to some degree noise, although noise is not specifically mentioned in the UDO. There have been no field studies with regard to noise and what the level of noise might be or what the level of noise protection might need to be.

When Councilman Cobb asked about the lighting standards, Mr. Baechtold said that based on information from the applicant, directly underneath the large light poles, they are at 5-foot candles, but when you move to the outer edges of the parking lot away from those poles, it's down in the range of .2. Their plan is in this area is to upgrade the lighting standard for the entire parking area to 3-foot candles.

With regard to a question raised by Councilman Cobb if staff had a recommendation about the 4-foot wall on top of the parking deck, Mr. Baechtold said that staff did not reach a conclusive recommendation about that. Personally, he was unable to determine, based on a 260-foot distance between there and the property line, what kind of site line there would be from the parking deck over to the neighborhood.

Councilman Cobb asked questions relative to Brackettown Road. City Attorney Oast responded that they have investigated the public records and as near as they can determine, if it ever was a public road, it was abandoned a long time ago and it's been a private road (at least not a public road) for a long time. He said that just because it enters a public road does not give the City any more jurisdiction that the City would have over a driveway.

Upon inquiry of Councilwoman Field, Mr. Baechtold said that the developer's drawings do show a configuration of the wooden fence and by use of an overhead transparency he reviewed the profile of that configuration. (City Exhibit 10) Councilwoman Field said that the configuration of the fence would have an effect on whether or not it would absorb sound or if sound would bounce off of it. -11-

When Councilwoman Field asked about the three materials for fences (wood, brick or stone), Mr. Baechtold responded that that section in the UDO applies to allowing a reduction in buffer width. For instance, in this location where the fence is required, they are required to have a 30-foot buffer and they allowed to reduce that by as much as half by proposing a fence. In the other location they are not required a fence at all by the UDO, because they have the full 30-foot buffer width.

Councilwoman Field felt that all three materials mentioned in the UDO for a fence are susceptible to graffiti and it is very difficult to get graffiti off those materials. She has seen some fairly nice looking fences that are made of materials that you can easily get graffiti off of. In this particular case since one fence is not required, they could probably make that fence out of anything they wanted to make it out of. The other issue is not to damage the tree roots. She understands that there are some types of posts that are made specifically so that they do the least amount of damage to tree roots - but they are also not made of wood, they are made out of some configuration of metal or steel.

Upon inquiry of Councilman Cloninger, Mr. Baechtold said that staff's recommendation of the 8-foot height fence was based primarily on the visual effect. With regard to noise, some type of more solid material would do a better job of blocking noise than would a wooden fence.

Councilman Cloninger then asked if the parking lot is shifted over by 10-feet to minimize the impacts to the trees and their roots, would the loss of about nine parking spaces still keep the developer in the requirements of the UDO as to the number of parking spaces they need. Mr. Baechtold said that they are within the range for required parking and he believed that have a couple hundred spaces on both ends, minimum and maximum.

Councilman Cloninger questioned if we have a requirement that both new lights and existing lights along the back of the Mall maintain the same level of glare and ambient light or reduce it, how do we make that determination on how much the lights have to be reduced. Mr. Baechtold said that requiring the developers to submit a photometric plan that addresses all the lights along the back side of the Mall will allow someone who is an expert in that area to make those determinations.

Upon inquiry of Vice-Mayor Hay, Mr. Baechtold said that there will be about 30 parking spaces in the section that will replace the cinemas.

Mr. Baechtold briefly explained that a lighting engineer would develop a photometric plan that can actually show the light pattern, how it spreads, and what the foot candles would be in different locations.

Upon inquiry of Mayor Sitnick about whether a 4-foot parking deck wall was standard, Mr. Baechtold said that in most cases the standard would be to prevent someone from falling over.

Mayor Sitnick asked if the number of existing parking spaces and those that will be built with the expansion are consistent with the requirements in the UDO. Mr. Baechtold said that because this is such a large

development, the spaces are based on a multiplication of the number of required spaces times the square footage. He said that what is proposed is somewhere in the middle of that range of several hundred spaces between the minimum and maximum.

With regard to a question from Mayor Sitnick about the real applicability of the materials for the 8-foot wall to diminish the noise, Mr. Baechtold said that after a preliminary investigation, -12-

he found that if a masonry wall is erected, it may require a continuous footing. He said there may be other options that may involve some intermittent footing, but would also support something stronger than a wooden fence.

Mayor Sitnick said that regarding the impact of the expansion and the Tunnel Road lanes, she assumed that when staff looked at that, they were considering the holistic aspect of the additional growth with the Lowe's and other spillage of traffic from the other developments in the area. City Traffic Engineer Michael Moule responded that staff did consider traffic from both the old Lowe's redevelopment and the new Lowe's development along with traffic from other developments.

Mayor Sitnick wondered if there was any opportunity to look into potential of shields on some existing lights, especially the 100 foot light near the cinemas.

Vice-Mayor Hay asked if the City could require, as a condition, that the Mall allow direct passenger delivery to the Mall. City Attorney Oast said that he hadn't specifically investigated that, but at this time, he didn't see a reason why the City could not place that as a condition on the permit, to the extent that it would affect pedestrian safety. Mayor Sitnick said that there has been some preliminary discussion with the developers and they are very agreeable to working something out to allow a transit pick-up and drop-off point at the curb.

Mr. Moule reviewed his memorandum to Planning Director Scott Shuford (City Exhibit 8). He said that two of the conditions listed by the TRC are related to the configuration of the proposed reconstruction of the southernmost Mall Entrance (near the Belk department store). Condition No. 8 refers to an additional entrance lane into the Mall at this location. Condition No. 9 refers to the size of the turning radii at this entrance. Both of these concerns were based on the resulting width of the intersection, especially the length of the crosswalk that is created by the extra lane and wide radii. Maintaining a shorter crosswalk length is important, especially since there are existing public transit stops nearby and staff has recommended that sidewalks be required in front of the Mall with this development. In addition, City staff anticipates working with the NC DOT in the near future to have pedestrian signals added at this intersection. He has worked with the consultants for the Mall and agreed on a compromise that accommodates delivery trucks but maintains as short as possible pedestrian crossing distance. The compromise, which should be shown on the developer's current plans, includes two entrance lanes and a 40 foot radius on one corner along with a 25 foot radius on the other corner.

Mr. Moule said that Condition No. 11 from the TRC stated that the Traffic Engineer would further review the Traffic Impact Analysis and meet with the traffic engineering consultant to discuss additional issues. He has spoken with the consultant several times and reviewed the document in detail. Below are the comments that he has on the Traffic Impact Analysis.

- The methodology for calculating background and site generated traffic and the resulting data are reasonable. Clearly, the consultant used conservative estimating methods in order to overestimate the amount of traffic. He identified several areas in the analysis where steps were taken that overestimated the traffic. The Asheville Mall expansion will add less traffic to the system than either the new Lowe's (Dreamland Phase I) or the old Lowe's redevelopment (Dreamland Phase II).

- In order to accommodate the additional traffic generated by these developments at acceptable levels of service, the consultant suggests that the signal cycle length be reduced. The general results of a shorter cycle length will be less overall delay for drivers, less delay for side streets and signalized driveways, less delay at non-peak times, slightly decreased overall capacity, and slightly increased delay for primary movements. His opinion is that a reduced cycle length will provide an acceptable level of service as these developments are -13-

added. This change will provide better access to side streets and driveways, which is now

the primary purpose of surface highways like South Tunnel Road.

- After reviewing the Analysis, my one concern is with queue lengths, particularly for the intersection of Tunnel Road and South Tunnel Road and for left turns off of South Tunnel Road. The analysis addresses some of the short turn bays and short distances between signals. He will continue to work with their Traffic Consultant to address his concerns.

He said that after reviewing the TIA, he concurs with the consultant in that there will be more traffic, but the whole system in general, for Tunnel Road and South Tunnel Road, should operate at acceptable levels of service if appropriate signal timing change are made.

He recommended that Council remove the conditions concerning changes to the entrance at Belk as staff and the developer have agreed on a configuration. Staff will check any subsequent submittals to ensure that the change was made. He did concur with the consultant that traffic will increase significantly in the vicinity; but signal timing improvements can be implemented that should provide acceptable levels of service throughout the corridor.

Councilman Cloninger asked about how long it would take and how we make sure the signalization changes in the TIA are accomplished, given Tunnel Road is a state road. Mr. Moule said that if these developments are approved by City Council, City staff will make a request to the NC DOT to proceed with making signal timing change including the reduction of the cycle length. A copy of the TIA has been submitted to the NC DOT for them to forward to their Raleigh office.

From a personal standpoint, Councilman Cobb felt that there needed to be an additional turning lane at the southernmost Mall entrance. Mr. Moule explained that based on the levels of service that have been calculated for the build-out year, given all the traffic and given the signal timing changes, an additional lane is not recommended.

Upon inquiry of Vice-Mayor Hay if the TIA addressed traffic on White Pine Drive, Mr. Moule said that the development will increase traffic on White Pine Drive, since there will be a larger volume of cars going into the Mall. The TIA does show that the levels of delay for getting in and out of White Pine Drive will actually be reduced, even at the build-out year, because of the reduced cycle lengths. Again, one of the major benefits of reduced cycle lengths is that side streets and driveways are better served than they are with a longer cycle length. Even with all the traffic added, the TIA is showing better levels of service for the peak hours in the afternoon than the existing levels of service, through the left and right turn outs of White Pine Drive, and left and rights turns into White Pine Drive. He estimated, for example, in the afternoon peak hour, the number of vehicles making a left out of White Pine Drive increased from an estimated existing number of vehicles of 320 to 354 vehicles. Similarly, on the Saturday peak, addressing both left turns and right turns out of White Pine Drive, the TIA shows 54 new trips generated by this new development from the existing 260 trips. This is approximately a 20% increase for Saturday and a less percentage increase for the afternoon. He felt this was, in part, because there is likely more neighborhood traffic for the afternoon peak hour than the Saturday peak hour.

When Vice-Mayor wondered why people come up Tunnel Road from the west, rather than going on I-240. Mr. Moule felt that was more in the afternoon peak hours and he felt typically it has to do with where people are coming from, like downtown. Unlike on Saturdays, they are coming from their homes to the regional Mall. He said there really is no way to make that determination unless an actual survey was conducted.

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Vice-Mayor Hay wondered if there was anyway to re-direct some of the Tunnel Road traffic coming from the west. Mr. Moule said that there may be some possible way, through signage, to encourage people to use only one exit to the Asheville Mall.

Mayor Sitnick felt that a new exit off of I-240 should have been built at the back end of all of those developments on Tunnel Road which could have avoided so much backup, peak or not peak, at the one intersection that has been re-configured and enlarged and saved of the adjoining neighborhoods along Tunnel Road.

Councilwoman Field asked how the number of trips to the Mall were generated. Mr. Moule said that you take the existing square footage, calculate the amount of trips generated by that (and there are manuals that allow us to do that based on studies from years past) and then you take the number of trips generated by the new size of the Mall, and subtract the two.

Councilwoman Field then asked if an increase in population was used to calculate trips. Mr. Moule said typically no, that it was based upon the development itself. The TIA shows that in the count data that was performed in June, on a Saturday, it shows that the peak levels of traffic to this Mall are lower than what would be calculated using a typical manual. Currently the Mall does generate as much traffic as the manual would estimate.

Thinking about White Pine Drive being the only means in and out of the Kenilworth Forest neighborhood, Councilman Cloninger asked if there was anything else the City can do for the area residents to make that intersection less congested, since the City cannot close Brackettown Road. Mr. Moule said unfortunately there is not a lot that can be done. Some residents have proposed possibly connecting a new road to Kenilworth Road so they can get out that way and then just having White Pine Drive only the entrance for the Mall. He said there are definitely problems associated with that from a land acquisition and topography standpoint. He said the only other thing might be reconfiguring the entrance to allow a new road for the residents and limit White Pine Drive to the Mall, or vice-versa. Or, something that would only allow certain movement, like only left turns or only right turns. However, limiting those movements will, to some degree, negatively impact the other intersection in the corridor.

Councilman Sellers asked if any consideration has been given to making Brackettown Road a one-way road. Mr. Moule said that has not been studied at this point but that it could be analyzed to see what would happen with all the traffic that couldn't go out that way or couldn't come in that way and how that traffic affects the rest of the corridor.

Mr. Ken Putnam, Division Traffic Engineer for the NC DOT, said that they are very interested in working with the City of Asheville in doing whatever they can to improve the signal timing. If this permit is approved, they will forward the TIA to their Raleigh staff for them to review and as soon as they do that, and possibly make some fine tuning, they would begin the process of implementing those changes. It is his understanding that the expansion of the Mall will be complete by the fall of 2000 and that will certainly give them enough time to make some changes, observe it through the 1999 Christmas season, and make further adjustments in 2000. He didn't anticipate a large amount of money to do this - just a matter of manpower. The equipment that is out there now can accommodate this kind of change. He felt this is a great basis to start from. He said that one of the things they have been trying to do over the last several years in the City of Asheville is that

anytime a new signal is installed within the City limits of Asheville, they will put pedestrian signals with it. They are in the process of working with the City in trying to identify some of the major intersections that already have signals that need this treatment. To add that equipment at an existing location is about \$6-8,000 and there are probably 200 signals. They have already identified certain locations and are working closely with the City staff so that they don't pick one signal that the City doesn't feel is a priority, but obviously anywhere on Tunnel Road is a priority. They already have plans to try to add it at the -15-

Sears driveway and the only reason why they don't have a crosswalk in there yet is simply the crosswalk that needs to go across to the theaters doesn't have a sidewalk to join into. So rather than putting a crosswalk in that leads to nowhere, they are holding off on that.

Councilman Cloninger asked Mr. Putnam if he had any suggestions about White Pine Drive. Mr. Putnam felt that unless you take Brackett Road completely away, there is really nothing that can be done to keep people from using it. He said that one of the driving habits most people have is to make the easiest turn possible and usually that's a right turn. Since White Pine Drive is the first right turn you can make coming from the west on Tunnel Road going to the Mall, people will be more likely to turn in there. He said they are trying to work with the Police Department in improving the signing in that entire area. He said they are also trying to see how they can improve the signal timing that is in place right now.

Councilwoman Field suggested signage that directed people to a specific lane to get into the Mall might have a great affect on cutting down the traffic into White Pine Drive.

Upon inquiry of Councilman Cobb, Mr. Putnam agreed with City staff in that we can fine tune the entire traffic signal timing system to bring everything down to as minimal delay as possible. He also agreed with City staff in that he did not feel that an additional lane at the southernmost end of the Mall should be a recommendation at this time.

Mr. Alan Glines, the City's Assistant Landscape Architect, used an overhead (City Exhibit 10) to explain that the proposed location of the fence will interfere with the existing tree buffer and any construction of a fence or wall would likely damage tree roots. He said that if the parking lot is shifted over to the east by ten feet (away from the neighborhood), the impact to the trees and their roots would be minimized. This shifting of ten feet would result in a loss of about nine proposed parking spaces. (City Exhibit 11) He felt that the existing vegetation is valuable to minimize the night time lighting impacts from the parking area year-round. He suggested that before construction begins, a fall feeding of the buffer trees in the root zone area should be given which would strengthen the trees and reduce the stress from the proposed construction. He also felt that some type of fence that did not have a continuous concrete foot might minimize the disturbance of the tree roots.

Mayor Sitnick gave some background on the number of parking spaces by stating that of the proposed parking spaces, there are 171 more than the minimum required and 129 less than the maximum required. Of the total spaces for the entire project, existing and proposed, there are 1,731 more than the minimum required and 534 less than the maximum required.

Mr. Tom Carter, Senior Project Manager with CBL & Associates Properties, said that their General Manager has a meeting with the City's Interim Transit Service Director tomorrow to work out allowing the buses to come on site at the Mall. With regard to lighting, Mr. Carter explained that the standard lighting standards for CBL is an average foot candle level of 3.0 feet. The present 100-foot light pole in the cinema parking area provides a lot of light around it, but as you get further away from the light, the coverage level drops off to .2-feet. Therefore, CBL will remove the 100-foot light pole and replace it with a larger number of lower poles 40-feet in height. He said that the lights can be shielded to prevent intrusion into the neighborhood. He stressed they are concerned about the safety and since that particular parking field area is the least used in the Mall, it should be well lighted. He said they would be happy to do a photometric study and that they do them on all

projects.

Mr. Carter said that with regard to parking spaces, they have a requirement under their department store documents at a higher level than what the City requires to meet. He said they are at a 4.5 per 1,000. He said that their parking is much more greater than what the City requires, but is within the range the Mayor mentioned earlier. -16-

Mr. Carter said that have already agreed to put a sidewalk in along the front of the Mall and the safety reasons that Council mentioned in having the sidewalk installed are the same issues they feel about the lights in the back and having the proper foot candles installed.

Mr. Carter said that with regard to the fences, they are now proposing a 6-foot wood fence which would be attached to the existing chain link fence that is presently there. That will meet the buffer requirements of the City. The 8-foot fence they are proposing will run along the back of the cinemas and connect with the 6-7 foot fence that is now there up there and will attach to the parking deck fence. They feel that the 8-foot fence would adequately provide for screening, noise, etc.

Mr. Terry Dalton, Architect, said that they are proposing an 8-foot wood fence with no continuous footings. He said they are willing to work with the City's landscape architects, especially on whether the fence will touch the ground or not.

Mr. Carter said they are also proposing to install a 4-foot wall on the end of the parking deck to block the lights of any vehicles. He said there will be light standards on the parking deck for proper lighting and safety.

Mr. Carter said that with regard to noise, two dumpsters will be relocated in the expansion area on both sides of the proposed foot court.

Councilwoman Field asked how does losing the nine parking spaces to save the tree roots impact CBL's commitment to the expansion. Mr. Michael Lebovitz, Senior Vice President of CBL & Associates Properties, said that they if they lose those nine spaces, they would probably have to add them to the parking structure which would be a significant cost of approximately \$60,000.

Mr. Dalton said the noise is going to be more controlled by the landscape buffer that is there now and the fence is in addition to that.

Mayor Sitnick voiced concern about the possibility of a car that parks right up to the edge of the steep embankment, might accidentally accelerate and go down the embankment.

Mr. Carter said that all the other issues from the June 23, 1999, letter from the TRC have been or will be complied with when we issue our civil plans, other than the four or five issues discussed.

Mr. Phil Noblett, resident at 297 White Pine Drive and Vice-President of the Kenilworth Forest Community Club, said that the Kenilworth Forest Community Club do not oppose the Mall expansion while many of us feel it is indeed out of scale, that it is large enough now. We also recognize that CBL Associates has some rights to improve their property and it is not their desire to make that property any less than a liable one. At the same time, we as homeowners also have our properties to protect and we are very concerned about impact. There have been incremental impacts to Kenilworth Forest over the years, such as a previous Mall development taking part of our streets and some of our houses, White Pine Drive which was originally only a service road has become a very de facto entrance, traffic has expanded, and we've had lighting intrusion. With regard to the demolition of the Cinemas, he said that particular concerns include security, headlights, privacy, and noise. (Neighborhood Exhibit 1) He passed out photographs supporting their request for City Council to impose the following conditions in connection with this conditional use permit:

1. Require CBL, in conjunction with the City traffic engineer and the NC DOT District Traffic Engineer, to develop a plan to improve traffic flow to and from the -17-

Mall access drive that is opposite Asheville Savings and immediately west of the current Lowe's. There is too little storage on South Tunnel Road traffic to enter the Mall from either East or West, so that the proposed CBL expansion and the expansion of other nearby retail establishments, already in progress, will create major congestion and, as a result, divert traffic to White Pine Drive and Brackettown Road.

2. Close Brackettown Road. This driveway intersects White Pine Drive in rear of the International House of Pancakes. This driveway was not part of the original site plan for the Asheville Mall, but has become a de facto entrance that creates congestion and safety hazards, and impedes the ability of residents to enter and exit the Kenilworth Forest community. A traffic engineering firm has estimated that Mall traffic on White Pine Drive will increase significantly with the expansion now proposed by CBL. The suggestion to make it one-way is very appealing to the neighborhood.

3. Request that CBL reduce by at least 20% light intrusions into the neighborhood, and require that, in no circumstance, will lighting exceed current levels. To document existing light levels, photometric surveys should be conducted at selected points in the neighborhood. These points of measurement would be approved by City staff. Council should stipulate in its conditions that any future lighting changes at the Mall must not result in increased light intrusion at any one or more of the measuring stations.

4. Require CBL to install a noise wall which would run from the embankment that is approximately 100 feet south of the Mall Twin Cinemas to the embankment that adjoins the existing parking deck, a distance of approximately 600 feet. This wall should be approximately 15 feet tall, be designated to achieve a 75% reduction in noise, and meet applicable professional architectural and engineering standards. This would cost approximately \$75-100,000 but this is a \$15 Million project. In addition, Council should require that the installation of the noise wall be done so as to minimize the destruction of existing mature trees, and that destroyed trees will be replaced by saplings of the same species and planted either in front or in rear of the noise wall.

5. Require CBL to provide a wall of not less than 12 feet in height to the parking deck that is to adjoin the J.C. Penney Company and will overlook the neighborhood. This will prevent headlights from parking deck traffic from shining into the neighborhood and will promote neighborhood privacy and security.

6. Restrict all demolition and construction work to the hours of 7 a.m. to 7 p.m. Monday through Friday. In addition, City Council should require that this work be undertaken to minimize dust and other intrusions on the neighborhood. Further, CBL should be required to store all construction vehicles, equipment and supplies not close than 100 feet from the property lines of neighborhood property owners.

7. City staff should be directed to document existing conditions of vegetative buffers and to monitor regularly on-going demolition and construction work to assure the protection of neighborhood property and CBL compliance with existing ordinances and with the conditions that are established by Council.

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He said that given the size and scale of this project, what the neighborhood is asking for is entirely reasonable. They realize there will be some additional expense to the Mall owners. However, they believe that if the traffic flow on South Tunnel Road is improved, businesses along that corridor will be served better, traffic migrating so readily to White Pine Drive will be prevented, and citizens of this community will be happier because they can get to and from those areas very quickly. He did not see this as adversarial, but room for common ground that will protect our neighborhood, our investment and yet allow the Mall's expansion to move forward.

When Vice-Mayor Hay asked if the neighborhood was faced with an either/or choice of the 600-foot sound wall or the trees, what would they prefer, Mr. Noblett said the wall would be their first choice, but he sincerely believed that the wall could be constructed and save the trees as well, if properly done.

Mr. Harold Payne, resident in the Kenilworth Forest community, said that when the Mall was originally built, the Council required a 100-foot buffer between the Mall and the neighborhood, however, after the Mall sued the City, the buffer was reduced to 50-feet. This is the only area that the 50-foot buffer on the Mall property exists and the only reason it exists is because of the cinemas. The buffer continually erodes and Brackettown Road's width increases every time the Mall goes through an expansion. He understands the developer wanting to develop his property right to their property line, however, it scarifies the neighborhood. He felt that the wall can be built and the trees can be saved. He felt that City Council has some control over the traffic on Brackettown Road. He said that he was the person who originally suggested Brackettown Road have a "T" intersection, however, he now realizes he should have suggested a "90 degree angle" intersection. He urged City Council to give the neighborhood good buffering and relief from the traffic congestion.

Ms. Janis Willard, 292 White Pine Drive, believed that Brackettown Road should be closed and that the NC DOT should work out the traffic pattern on Tunnel Road. She felt the 3- story parking deck proposed to be erected will be in full view of rear windows of the neighboring homes. There will be constant vehicle movement, automobile pollution and the deterioration of the air quality. Also, lighting is a problem for the neighborhood, especially in the winter with no foliage on the trees. She asked for the relocation of the dumpsters which are close to the adjoining residential properties. Since disturbance of the peace in our neighborhood has never been addressed to any satisfaction, maybe a daily fine would be appropriate. She requested that the City require a 12-foot high noise wall, that cannot be climbed, which will serve multiple purposes: (1) reduce the noise; (2) reduce and/or restrain the criminally-prone mind and cover some degree of security; (3) stop the trash; and (4) stop the possibility of any vehicle out of control crashing into neighborhood yards. Since plans are in place for demolishing the cinemas and additional parking spaces are to take that space, this will make it the area more dangerous than before. She stress that even a wood fence would be destructible and would wear out.

Ms. Claire Payne, 291 White Pine Drive, said that since the TIA was paid for by the Mall, she felt it was strange that the City has accepted their numbers. She felt an independent study should be conducted. With regard to sustainability, she felt we are in a critical growth period in the City and if we don't get a handle on it we're not going to have a place where people want to live. She urged Council to consider all the concerns of the neighborhood, but don't just base it on the Kenilworth Forest neighborhood, base it on all the neighborhoods in the area. We don't want to lose our quality of life.

Mr. Jack Willard, 292 White Pine Drive, said that the wooden wall would require maintenance and would question how effective it is regarding sound. He requested that a masonry wall be constructed with this main concerns being the intrusion of sound.

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Mr. James Geter, 274 White Pine Drive, said that not only is the invasion of privacy an issue with the existing parking garage wall, but noise is an issue as well as the car headlights. He felt that a wall is needed to reduce the noise and give the neighborhood privacy and security. He agreed that Brackettown Road should be closed. He said that even though they want to partner with business and business growth, they must protect their investment.

Mr. Todd Dowell, 225 White Pine Drive, requested that the edge of the parking lot be shifted away from the neighborhood ten feet and a wall (not a wooden fence) be constructed.

Mr. Baechtold responded to a question from Mayor Sitnick about how the buffer is measured.

Vice-Mayor Hay asked if the sidewalk in front of the Mall will connect with the sidewalk in the Dreamland Phase II Project. Mr. Baechtold said that there is existing sidewalk in front of the Dreamland Phase II site and as part of that development, there will be a staff recommendation to extend the sidewalk off-site to the south. He believed that because the requirement is for them to provide sidewalk along the entire frontage of the property lines, and those two property lines do meet, that the sidewalk would also meet. Mr. Baechtold said that on the Lowe's site, having the sidewalk extend from property line to property line is a basic requirement. With regard to the Mall, it is a recommended condition of the approval of the conditional use permit.

Ms. June Lamb, 16 Carrier Street and representative of the Carrier Heights Neighborhood Association, stressed that the UDO and completion of the 2010 Plan was expressly to protect the character and quality of life. She reminded Council that all conditional uses shall, at a minimum, meet the conditions set forth in the UDO. She felt City Council has not been addressing the seven findings required in order to approve the conditional use permit. She explained why she felt Finding Nos. 1, 2, 3, 4, 5 and 7 have not been met by the presentations given thus far. She suggested there be some consideration for a continuance or another forum in which these seven findings could be debated.

Mayor Sitnick closed the public hearing at 8:11 p.m.

Councilwoman Field asked if the parking deck high enough to allow trucks and sport utility vehicles under the deck. Mr. Carter replied that there is enough space because they have service under the deck.

Upon inquiry of Councilwoman Field, Mr. Carter said that the length of the 8-foot fence the Mall is proposing to build is 360 feet.

When Councilwoman Field inquired about perhaps adding some type of wheel stops to the edge of the parking spaces to alleviate the concerns of cars jumping the curb, Mr. Carter said that typically the curb will be the wheel stop but they would consider raising the height of that curb.

When Councilman Cobb asked if there has been any cost comparison done with a sound barrier (panels) vs. fence, Mr. Lebovitz said that the sound barrier wall is approximately four times more expensive.

Upon inquiry of Vice-Mayor Hay about the continuous sidewalk along Tunnel Road, Mr. Dalton said that the requirement is that they run the sidewalk along the front of their property line.

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Upon inquiry of Vice-Mayor Hay, City Manager Westbrook said that City Council should approve or disapprove the conditional use permit and give staff the standards Council wants and leave the technical details to be worked out by City staff and the developer.

Planning & Development Director Scott Shuford said that staff will bring back to Council the photometric study that has been discussed, and give Council an opportunity to look at those numbers, as well as the buffering issue. One of the reasons staff was not specific with regard to the buffering measurements is because they needed the public hearing to help them define what type of noise was a problem for the neighborhood and they have gotten that information. Staff will be back with more information on those issues should Council approve the conditional use permit.

City Attorney Oast said that the way City Council typically has been handling the proposed conditional use permits is that Council votes once to approve the permit. Staff then develops an Order that includes the standards and conditions based on Council's comments and staff's input and then the Order is brought back to Council for a second vote. He said that City Council does not have to proceed in that way, however, that is

the way that it has been done in the past.

Mr. Lebovitz said that developers have different standards. CBL's standard of an average of a 3-foot candle is something that they have gone throughout their system of properties and they felt it is the safest level. Like City Council is concerned about bus service, they are concerned about lighting. They accept preparing a photometric plan, but the photometric plan is more to make sure they don't have light washing into the neighborhood and that is what we would request as a condition, but not that Council say they can't put more than one foot candle here, or two foot candles here, etc.

Mr. Shuford said that he hoped the information the City gets from the photometric study will address the ambient lighting and that lighting going into the neighborhood, but not necessarily the lighting on the Mall property.

Upon inquiry of Councilman Cobb, Mr. Shuford said that it is his intent to have a before and after look at the lighting in the area. That is the only way you can get a clear understanding of whether you are achieving a reduction or not.

Mayor Sitnick hoped that we consider the safety issue in the parking lot and the safety of customers and employees, as well as the intrusion into the neighborhood.

Councilwoman Field said that this is a real good example of why we don't want cul-de-sacs in residential developments. She said that with regard to the TIA, the City made it a requirement in the UDO to make it the responsibility of the developer to pay for it. The only other option would be for the City to pay for it and we felt it was not appropriate for City taxpayers to pay the bill. We felt that if someone was developing property, they should prepare the TIA. The traffic engineer who prepares the study could well be suspect since they are being paid by the developer. However, on the other hand, engineers are professionals and they use guidelines, standards and regulations that are universal. In addition, we have a City Traffic Engineer to review their work to determine if there were any flaws in the study done. Therefore, she has a problem challenging a professional engineer's traffic study that has been approved by our own traffic engineer. She also has a problem with building an interstate wall on a piece of property that is basically separating a shopping center from a residential area. She felt there are all kinds of sound systems, barriers, reflectors, and absorbers that can solve the problem and she recommended that Council leave that to the professionals to come up with the answer.

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Councilman Cloninger said that in order to make as many decisions as we can tonight, and to give as much guidance as we can to staff, the owners of the Mall and to the members of the public, and at the same time reserve our ability to make perhaps some additional decisions once we have more information, it seems to him that there is a consensus that the project should be approved - it's just a question of what conditions we want to imposed in connection with the approval. He also felt that there was consensus in that the recommendations for conditions by staff are good ones and should be included in whatever Council decides. In the same vein, the staff recommendations as to proposed findings on the seven points that Council has to consider in a conditional use permit look reasonable to him and should be included. However, there are some additional conditions that Council needs to look. He feels they boil down into four categories: (1) wall behind the existing cinemas; (2) lighting issue; (3) height of the parking deck wall; and (4) feasibility of whether Brackettown Road can be made one-way. He said he didn't think Council has enough information to impose conditions on any of those four. As to the wall, he felt Council knows they want a wall, but he didn't think they know yet exactly how high they want it or what it should be made of . He's certainly prepared to require a mason wall, but felt that is a very serious issue for the neighborhood. He felt they deserve to have the protection, but in terms of what it should be made out of and how that can be accomplished, Council needs some additional information from staff on that. By the same token, the issue of the set-back. It may

well be that Council will want to do that, but whether we require a set-back will depend on what kind of wall we require. We need some additional information on that. On lighting, we know we want to reduce the glare and the ambient light as much as possible as it affects the neighborhood, but we're not exactly sure how we accomplish that and we don't know whether we want to reduce the existing light that is out there as it affects the neighborhood. He didn't know whether that's feasible or whether we want to just simply require that there be no additional light intruding into the neighborhood. We certainly want to restrict the glare. As to the parking deck wall, we don't know how high that needs to be to take away the car headlight and also keep people from peeping over it. On Brackettown Road, we know yet what our ability may be on that. He felt we should look at that issue. He's got some concerns about the feasibility of it from an enforcement standby in that if we tell someone they have to have a one-way road on their private property, how do we enforce that. He wondered if we can at least give an informal indication tonight, if this is satisfactory to Council, that we are going to approve the application with the staff findings as proposed and the conditions imposed by staff, but that we reserve the right to make decisions on these four issues until we have additional information. That shows the public the direction we are headed in. He didn't think the Mall would have to have final decisions on those four issues to go ahead and proceed with additional planning and breaking ground on the main portion.

Mr. Lebovitz said that they feel like they have gone through the process that the City's codes require and they feel like the four items mentioned have major impacts to their department stores. Certainly Brackettown Road is something that is a major impact to the shopping center and lighting is a major impact from department store standards. Those are the Mall's major tenants. The issue of the area behind the cinemas is a major cost item and it is very involved in the design. If Council comes back and requires them to eliminate those parking spaces, they have to find another place to add those parking spaces. It's not just the cost of the wall or the fence or whatever is decided, but it's the cost of adding parking spaces in the structure.

Councilman Cloninger questioned the Mall expansion being cancelled if Council does something that takes away nine parking spaces from that area. He felt that if the developer wants to add the nine parking spaces into the parking deck, that's their decision. However, Mall representatives have said before that that is surplus parking and hardly nobody parks in that area. It seems to him that none of the decisions that Council makes on these four issues would make or break the project.

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Mr. Lebovitz respectfully requested that a decision be made. They feel like they have worked with staff and worked to answer questions. He realized they may not seem as important to Council, but most of those items are pretty important to them.

Councilman Cloninger respected the Mall's position, but City Council is not talking about a long delay in making those decision and in the meantime we can give a general approve in concept.

Mayor Sitnick appreciated the work CBL Associates is willing to do with the buses. She said the photometric study is one we can't define specifically, but the condition for light shields is very important in making sure that you provide safety in the lots and as little intrusion as is possible into the neighborhood. Clearly, there has been the defining of where sidewalk will begin and end and that needs to be part of the condition. The move of the dumpsters has been addressed. We know that there is a great need for tree protection and the acceptance of the staff recommendation that the trees be fed before work begins is a condition that is necessary. We certainly know the recommendations of the TRC that have been presented are ones that we want to include. As far as the type of material used in the wall, she would like to leave that up to experts who known about absorption and reflection, etc. With regard to traffic, we need to remember that this is expansion to an already existing project that years before intruded, impacted and changed a neighborhood. She hoped that we don't look to blame the expansion for the initial difficulties that were had by the neighborhood. What we want to do now is make the expansion the least impact that we can. She felt that the privacy issue is one

that is going to be very complicated and that we still needed to discuss the height of the parking deck wall. With regard to litter, she didn't think the wall would necessarily protect the neighborhood from litter, although probably the technical people can figure out a way to mitigate the litter problem. Moving the wall out 10 feet is another decision we need to consider. The issue of a continuous poured footing vs. poles we should leave up to the technical people and staff. Another issue is the construction hours of 7 a.m. to 7 p.m.

Mr. Lebovitz said that the demolition of the theater will be done within the hours of 7 a.m. and 7 p.m.. However, he said that there are certain parts of the parking deck and expansion which is very removed (260 feet from the property line) which have to take place after hours for public safety. They will shut down the area while the major part of the construction of the deck takes place, but there still will be some things done after hours that can't be done during normal business hours. He said they can commit to the 7 a.m. to 7 p.m. on the demolition of the theater and be very sensitive at other times because that is right abutting the neighborhood.

Mr. Lebovitz clarified that the height of the parking deck wall is 260 feet from the 50-foot buffer to the neighborhood which is down the hill. He said they have offered an 8-foot high wall or a fence. He said it was highly unlikely, and a site line study can bear this out, that there is not going to be a privacy issue with that.

With regard to the parking deck wall height being sufficient, Mr. Noblett said that if you are elevated, you will see a greater distance than you are at ground level, especially since there is nothing in the way to obstruct the vision.

Councilman Cobb felt that the lighting in the parking lot needs to be at safety level, but we still have to protect the neighborhood. With regard to the fence, he was convinced a noise barrier needs to be constructed - as to how high or how long it is, he would leave that up to the experts. Regarding Brackettown Road, he hoped that it could at least be considered a one-way in only. He also had a concern about the height of the proposed 4-foot parking deck wall. He agreed with Councilman Cloninger on the four categories that still need to be addressed.

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Councilman Cloninger said that any conditions that staff imposes, still have to come back to City Council for approval. The other concern about leaving issues to staff is that the residents have redress to City Council, whereas, if they go through this discussion with Council and then Council refers it back to staff, it could leave them feeling dissatisfied in that ultimately City Council didn't make decisions they were elected to do.

Vice-Mayor Hay pointed out that Council can approve the conditional use permit now and with some unresolved issues being spelled out with direction to staff to come back to us.

Using the photometric study as an example only, City Manager Westbrook said staff would like Council to possibly say they would like the new lighting that goes up not to bleed into the neighborhood and that the overall lighting for the entire parking lot not be any greater than it is now. Council would then have set that standard and issued the permit. Then, as we go along, staff would cause the developer to do the photometric study so we could validate that condition.

Councilman Cloninger wondered if it would be feasible that the Mall have the light that they need and want but at the same time reduce the amount of light that is going into the neighborhood. Mr. Shuford responded that Council might indicate that they want to have the glare completely eliminated from the poles, which require some shielding or some other alternative for them to deal with, and that the ambient lighting into the neighborhood, that is not associated with direct glare, be either maintained at it's present level or reduced if possible, based upon the photometric study.

Mr. Shuford said that with regard to the buffer, Council might have a standard that indicates, based upon the type of noise that the residents indicated was a problem, that there be some reasonable reduction of that noise and a study or some information obtained to show how much that would be reduced in order for Council to make a decision. He felt that Council needs to direct staff to look for some reasonable balance between noise reduction and practicality.

Upon inquiry of Mayor Sitnick about whether Council needs to look at the seven conditions separately, City Attorney Oast said that what Council has done in the past is voted the conditional permit up or down and then directed him to draft an Order that comes back to Council with findings. Council can then adjust the Order on the second vote, if they want to. He suggested that be the procedure that Council follow at this time. And in doing so, specify the conditions that Council wants specifically addressed. The four mentioned are Brackettown Road; site lighting; height, length, location, material of the noise wall; and height of the wall on the parking deck - as well as some conditions regarding the sidewalk along the front of the Mall property and establishment of a location for a transit passenger pick-up and discharge.

Councilman Cloninger moved that Council approve the conditional use permit with the conditions recommended by staff and as also discussed at this hearing and that further, Council direct staff to come back with additional recommendations to Council on the following four issues: Brackettown Road; site lighting; height, length, location, material of the noise wall; and height of the wall on the parking deck (as well as some conditions regarding the sidewalk along the front of the Mall property and establishment of a location for a transit passenger pick-up and discharge). This conditional use permit approval being subject to final approval by City Council of the findings and the final conditions. This motion was seconded by Councilman Cobb.

Upon inquiry of Vice-Mayor Hay, City Manager Westbrook said that he understood that Council has a concern about Brackettown Road and wants staff to look at the one-way condition, or any other conditions, that might alleviate that situation. Staff's findings will then be reported to Council so they can make their recommendation.

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Councilwoman Field said that she felt it would be very confusing to have Brackettown Road one-way and this is a much more complex issue that has a lot of other impacts. City Manager Westbrook said that the Traffic Engineer will be looking at all the other impacts.

Vice-Mayor Hay said that he wanted to be specific on some of the conditions. One condition is to make sure that they are required to have a transit stop. With regard to the sidewalk, he wanted the sidewalk be built in coordination with the sidewalk construction at Dreamland Phase II, so the result is a continuous sidewalk. Regarding the sound wall, he was convinced that City Council needs to draw a line on the intrusion into the neighborhood and a serious sound wall be constructed. This is a unique situation in that we have two extremes on the zoning - a major retail development in our City next to a single-family residential area. He did not, however, want to forget that this is a major investment in our community - new jobs, represents vitality of our community, things happening within the City limits, etc.

At the request of Mayor Sitnick, Mr. Shuford said that staff will look at the alternative materials for the sound wall and then let that, in combination of the height of the wall, as well as the existing vegetation determine what the correct solution to the problem should be.

Councilwoman Field said that the trees should be saved and with regard to putting in a concrete wall, perhaps there's a solution that solves the sound problem that isn't a concrete wall. She felt that whether the wall has a solid footing or not, just the construction equipment to construct the wall will probably kill the trees. She felt the bottom line is that it's the foliage and the trees and the mixture of everything together that solves

the sound problem - not just one thing.

Councilman Cobb said that CBL Associates have been very cooperative and he feels they want to be a good neighbor but they watch their expenses just like everybody does. He also thinks that the neighborhood has been very sensitive to that and he doesn't think they have been overly demanding in their requests.

Mayor Sitnick said that of the seven conditions, she was concerned about Finding No. 3 and No. 7. She believed that No. 3 has been taken care of since Council has given staff direction and staff will report back to them. No. 7, however, still poses a problem for her. She did not think that this Mall expansion affects the Tunnel Road traffic, as much as a traffic hazard is concerned, because Tunnel Road is already a traffic hazard. However, she did believe that the congestion and hazard that could occur will occur on White Pine Drive, as it is impacted by Brackettown Road.

Mr. Shuford asked for clarification regarding some additional studies Council has requested. With regard to the photometric study, the developer has indicated an agreement to do the study and that will be at the developer's cost. With regard to some additional traffic analysis with regard to Brackettown Road, City staff feels that depending on the scale they get into, the analysis could be quite expensive, as well as time-consuming for them. It may end up being something that is resolved through other means as we look at the different things, such as the legalities of it and staff can report that back to Council. With regard to the construction hours, the developer indicated that they were willing to live within these hours of construction during the demolition of the cinemas, but that the construction that is far removed from the neighborhood might require different hours. He suggested that one way Council could clarify that might be to indicate that these hours of construction would apply only during the time of demolition and that other hours could be observed once the erection of the noise wall occurred.

Councilwoman Field said that another thing about construction is that it changes during different times of the year. She didn't see how Council could possibly limit those hours from 7 a.m. to 7 p.m. -25-

Mayor Sitnick clarified that construction hours would apply only during the time of demolition of the cinemas and that other hours be observed once the erection of the noise wall has occurred.

Councilman Cloninger suggested staff review the construction hours issue again because once the construction is closed in, it seems that they could work any hours they want.

City Engineer Cathy Ball asked for clarification the issue of whether or not City Council is requiring the developer help City staff with the analysis that will have to be done for the recommendation on Brackettown Road. City staff estimates that will cost approximately \$3-5,000. It was the consensus of Council that that analysis should have been an original part of the TIA.

Upon inquiry of Mayor Sitnick, Mr. Lebovitz said that they would use some kind of heavy equipment to tear down the cinema walls but they will do everything they can to minimize the disruption to the neighborhood.

The motion made by Councilman Cloninger and seconded by Councilman Cobb carried unanimously.

Mayor Sitnick said that the draft Order will be brought back to City Council for consideration in 30 days and that the 30-day timeframe was dependent upon the timeliness of the submittals from the developer.

At 9:25 p.m., Mayor Sitnick announced a short break.

B. PUBLIC HEARING TO CONSIDER A CONDITIONAL USE PERMIT FOR DREAMLAND PHASE II

Mayor Sitnick opened the public hearing at 9:42 p.m.

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

Mr. Dan Baechtold, Urban Planner, said that this is the consideration of a Conditional Use Permit as outlined in the Unified Development Ordinance (UDO) for the Dreamland Phase II retail development located at 83 South Tunnel Road (City Exhibit 1)

On June 7, 1999, the Planning & Development Department received a site plan for a proposed retail development at the location of the current Lowe's at 83 South Tunnel Road. The owner is Commonwealth Dreamland Partners of Knoxville, Tennessee, and the designer is Design Associates. The project is a redevelopment and expansion of the existing Lowe's site on South Tunnel Road. The total proposed retail space for the project is 126,744 square feet. This represents an addition of approximately 54,000 square feet of retail space. Two existing driveways to the site will remain and one will be eliminated. The Technical Review Committee (TRC) reviewed the plans on June 21, 1999, and took action to approve with conditions. The public hearing was legally advertised on July 16, 1999, and July 23, 1999.

Mr. Baechtold then gave a brief overview of the plan. (City Exhibit 2 - existing site) (City Exhibit 3 - proposed site). The site plan shows redevelopment of the existing Lowe's building and expansion of additional retail space. There will be three major tenants, three smaller tenants and a two-story retail out-building proposed. Other changes to the site include elimination of the right-in driveway to the north, a realignment of the main entrance drive, the southernmost drive -26-

will still be right-in and right-out, but it will be modified slightly to accommodate some lane widening by the N.C. Dept. of Transportation (NC DOT). He said the total parking provided is 493 spaces.

The Planning and Development staff and the Technical Review Committee find that that the project will meet all the technical standards for development in the Regional Business zoning district if all of the following conditions are addressed:

1. Provide handicap access to bus stop from shopping area to meet NC Accessibility Code requirements which take effect July 1, 1999. Also, requested developer to work with Interim Transit Services Director and City Traffic Engineer to see if the bus stop needed to be relocated.

Mr. Baechtold said that after meetings between the Transit Services Department and the NC DOT on the best location for that bus stop, he understood the result of those meeting is that the bus stop will remain where it is. (City Exhibit 3) Staff would still like to see some kind of stripped connection between that public bus stop and the entrance to the building.

2. Install ADA ramps at all drive entrances.

Mr. Baechtold asked that the developer include a standard detail on the plan and indicate that those will be installed.

3. Secure a wastewater allocation for the project from MSD.

Mr. Baechtold said that this will be handled through the normal permitting process.

4. Submit sewer extension plans to MSD for review and approval.

Mr. Baechtold said that this will be handled through the normal permitting process.

5. Submit utility plan addressing water service and fire service to the proposed buildings.

Mr. Baechtold said that this will be handled through the normal permitting process.

6. Obtain additional water meters for proposed new buildings to meet the requirement of one (1) meter per building.

Mr. Baechtold said that this will be handled through the normal permitting process.

7. Make an application to Water Resources for a Letter of Commitment regarding water availability.

Mr. Baechtold said that this will be handled through the normal permitting process.

8. Provide a Type "B" Buffer along the portion of the West property line that abuts property zoned RM-16. (UDO sec. 7-11-2)

Mr. Baechtold (City Exhibit 3) said that this is a matter of a technical revision by the addition of a few more trees to meet our requirements. He said the RM-16 zoned property is currently undeveloped.

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9. Stormwater/erosion control facilities must meet UDO requirements. Please refer to the UDO Appendix 7A and Asheville Standards Specifications and Details Manual Section 10, Appendix J.

Mr. Baechtold said that this will be handled through the normal permitting process.

10. Verify compliance with requirements for slope stability. UDO secs. 7-12-2 (f) (4) and 7-12-2 (e) (2).

Mr. Baechtold said that this will be handled through the normal permitting process.

11. Work with Ken Putnam of the NC DOT to on the design of the right-in/right-out drive entrance to prohibit motorists from making left turns. If indicated by NCDOT, developer will install a raised concrete median on South Tunnel Road in the area of the drive entrance.

Mr. Baechtold said that the developer has met with NC DOT, and it's the preference of NC DOT that there not be a concrete median in the center of Tunnel Road. The NC DOT has reviewed the design of the right-in/right-out driveway so that it meets NC DOT specifications.

12. Staff recommends additional right-turn lane storage length for the main exit.

Mr. Baechtold said that the developer has met with City Traffic Engineer and he understands that the applicant has agreed to revise the drawings to show that additional space.

13. Staff will look at the feasibility of recommending to City Council that they consider requiring this development to construct a road connecting this development with the new Lowe's site on South Tunnel Road.

Mr. Baechtold said that staff has looked into the feasibility of this condition, however, because of a somewhat significant grade change and the relocation of the stream, City staff feels that the cost for constructing a road would probably outweigh the benefits of having that internal connection.

14. Sidewalk is needed on the adjacent Lowe's development. Staff will investigate the possibility of requiring sidewalk construction on the new Lowe's site as part of the Dreamland Phase II development for a possible recommendation to City Council.

Staff recommends that sidewalk be constructed along the remainder of the length of South Tunnel Road down to the corner of Swannanoa River Road and then also along Swannanoa River Road in the location of

the new Lowe's development. Staff has determined that there is sufficient right-of-way on both roads. Staff feels the sidewalk is necessary for public safety. He said there is existing sidewalk along the frontage of some property on Tunnel Road and but staff would like to make sure that that sidewalk connects to whatever sidewalk the Mall is constructing.

15. Resolve issue regarding building code requirement that buildings be sixty (60) feet from the property lines.

Mr. Baechtold said that it is his understanding that this issue has been resolved.

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Mr. Baechtold then summarized the remaining issues on this development, from staff's perspective: (1) provide access to the bus stop; some kind of connection between the bus stop and the entrance to the buildings; and, to move the bus stop, if necessary; (2) make the needed technical revisions to the drawings with respect to the ADA ramps, adding additional trees in the required buffer area, and the right-turn lane storage for the main exit; and (3) to install the sidewalk along South Tunnel Road in front of the adjacent new Lowe's development and along Swannanoa River Road in front of the new Lowe's development.

Mr. Baechtold then reviewed the staff's responses to the seven findings that City Council must make in order to grant the conditional use permit (City Exhibit 4):

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

The proposed development is an reconstruction and expansion of an existing retail facility. The impacts of the development will not materially endanger the public health or safety. The project received technical approval from the Water Resources Department, the Fire Department, MSD, Engineering, and other City Departments.

2. That the proposed use is reasonably necessary for the health and general welfare, such as by enhancing the successful operation of the surrounding area in its basic community functions or by providing an essential service to the community or region.

The Tunnel Road corridor is a regional retail center. The current use of the site is large-scale retail. The existing Lowe's store will be vacating the site. The redevelopment of the site as a large-scale retail center will continue the current community function.

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

The adjoining property consists of a new Lowe's retail center to the south, the Asheville Mall to the north, and undeveloped property zoned RM-16 to the west. A buffer will be provided between this use and the undeveloped RM-16 property.

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

The proposed development is located on property zoned Regional Business. The neighboring uses along Tunnel Road include a number of large-scale retail developments.

5. That the proposed use or development of the land will generally conform with the Comprehensive Plan and other official plans adopted by the City.

The Asheville City Plan 2010 indicates commercial development for the Tunnel Road corridor. The proposed development of Dreamland Phase II is consistent with the intent and the standards of the Regional Business zoning district.

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 in an existing developed area. The project received technical approval from the Water Resources Department, the Fire Department, and MSD. The development is located on a five-lane major thoroughfare -29-

as identified on the Asheville Thoroughfare Map. Sidewalk facilities are needed along the entire length of South Tunnel Road and Swannanoa River Road to ensure pedestrian safety.

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

The developer prepared a Traffic Impact Analysis (TIA) for the proposed development as required by the UDO. The TIA considered the impact of this expansion and other projected traffic on the transportation system. The TIA concluded that no major improvements are needed to accommodate the traffic from this development. The City Engineer and Traffic Engineer reviewed the findings of the TIA for accuracy, and concur with the findings.

Upon inquiry of Vice-Mayor Hay about the connecting sidewalk, City Attorney Oast said that after investigation of that issue, it was his opinion that there was significant identify of ownership between this parcel and the adjacent parcel where the new Lowe's building is being constructed and to the extent that the owner is able to do the work, the City can require it, particularly if it is related to a legitimate safety concern that is created by the development that is going in there and because it appears on the Pedestrian Thoroughfare Plan.

When Councilwoman Field asked why the new Lowe's development is not required to install a sidewalk, City Attorney Oast said that new development was approved prior to adoption of the UDO.

Mr. Clay Mooney, representing Design Associates, reviewed some of the conditions outlined by Mr. Baechtold and responded accordingly: (1) Regarding the handicapped ramps - there are existing handicapped ramps at the entrance to the shopping center and if any of them are damaged, they will be replaced and kept in service; (2) With regard to the bus stop, it was determined after conversations with NC DOT and the City Traffic Engineer, that the location was a proper area for that bus stop. Barring any damage to that bus stop, they foresee no change in that present location; (3) They did talk with Mr. Putnam regarding the right-in/right-out entrance and they will certainly coordinate that revision, which is in response to the widening of Tunnel Road; (4) Regarding the exiting storage lane leaving the property - that has been discussed with Mr. Putnam and the City Traffic Engineer and they will be modifying that to effectively double the storage capacity of that right turn lane exiting the property; (5) The issue regarding the sidewalks is one that concerns them. While they are not against it, there are some specific site issues that make that rather difficult. Specifically, with the new Lowe's, the developer extended a triple 10x10 box culvert to facilitate the road widening by NC DOT. Some of their concern is with the widening of that lane within the NC DOT's existing right-of-way. They are concerned about the amount of room that will be left within that existing right-of-way and as it relates to the culvert and how close that sidewalk may be to the edge of that box culvert from the top of curb down to the stream elevation (roughly in the neighborhood of 12 feet). Further down as their site falls, and again not knowing what the final configuration of the shoulder would be following the widening, how much room or shoulder they will have left to construct a sidewalk to the City standards. He can almost assure Council that there will not be 10 feet of right-of-way remaining. Further to complicate that, their required 10-foot landscape strip extends from the existing right-of-way line to their curb line. So, one or

the other would have to give in those areas. In the relocation of Haw Creek, if Council remembers, this entire Haw Creek was re-routed to facilitate this construction, so they had an enormous amount of flood issues that had to be resolved. They actually had to do a revision of the Federal Emergency Management Act (FEMA) maps. They worked on this issue for over a year trying to resolve these issues, so they have a lot of tricky things regarding flood modeling and they are concerned with how any further construction in and around this area may affect those calculations. They have worked very hard with the State and Federal governments to get this resolved. They feel like they need to have more study with the -30-

NC DOT regarding what will be remaining after they construct the travel lane; and (6) With regard to the 60-foot clear area between the two buildings, he explained that a document is being prepared that will be attached to the deeds, and that addresses this issue.

Mr. Mooney also explained that he under the impression that the sidewalk was only going to be on the South Tunnel Road side. They have an addition problem in that the convenience store at the corner is not part of this project and they don't feel they can go in front of the convenience store and go around it onto Swannanoa River Road. Also, on Swannanoa River Road, there is no existing curb section - the road drains on the east side down into Swannanoa River and then on the west side it drains across a shoulder into a ditch. If they have to put in a sidewalk there, it would have to be flush or an entire storm drainage system would have to be installed which they feel is totally inappropriate.

Councilwoman Field said that since there is no option other than an full fledged sidewalk, she wondered if it was possible if the developer could put in some stepping stones or some other kind of pedestrian way that wouldn't affect the flood plain issues on the sidewalk on Tunnel Road.

Councilman Cloninger asked if staff had any alternative suggestions about the sidewalks. Assistant Public Works Director Suzanne Molloy said that she spoke to the NC DOT and on Tunnel Road there should probably not be any problems. The right-of-way that exists there is limited. She talked to the person who is over the construction project now with the widening and they said that right now, they are actually extending the shoulder of the roadway. The standard will have to be varied, but the City Engineer can do that within her purview of reviewing the application of saying that it does not have to be a 5-foot planted median. Regarding the Swannanoa River Road sidewalk, that is identified on the Greenway Plan, which is on the Pedestrian Thoroughfare Plan, and it may be that Council decides a different way to handle that. The bottom line is that the City doesn't have a plan for that whole corridor now and those comments were put on because we know that those linkages are intended to be there. Therefore, the Tunnel Road sidewalk should be able to be addressed with a condition that they be required there, working with the Engineering Department on design. On the Swannanoa River Road sidewalk, it is a little bit different because there is no plan for where the long-term greenway would be. These comments were put forth by staff because it was one property owner and staff knew the need was there and if it could be a conditional use, they wanted to recommend it to Council.

Mayor Sitnick questioned how could the City require a sidewalk on Swannanoa River Road if the sidewalk ends before the convenience store property. City Attorney Oast responded that the City could not require the sidewalk to go across the convenience store property.

City Engineer Cathy Ball said that her recommendation is that the City not require the sidewalk on Swannanoa River Road unless we require them to also put in curb and gutter along that Road. The State has said that they don't want sidewalk in unless there is curb and gutter there because it does create a serious drainage problem. She suggested that if the City requires the developer to put in the sidewalk along Tunnel Road to the extent on their property, that we see if they can give an additional right-of-way that will allow us to have a 5-foot strip, if possible. She said that if we have to narrow the 5-foot strip over the culvert section we could then try to widen it back out, if that's possible.

Mr. Tim Scoggins, developer of the project, said that the section of the sidewalk that connects the

Dreamland Phase II and going down to the convenience store is not an issue with them as long as it does not involve changing any of the myriads of permits that are involved. There are Federal, State and local permits on this piece of property. If it involves changing the grading plans along Tunnel Road, you are messing with the flood plain and that would be a -31-

violation of their Federal permits that we have in place. That parking lot is actually a flood storage area for Swannanoa River Road. If we start filling in that right-of-way any more than we have already currently given the State for adding that lane, we will be flooding people down stream. We know it is very desirable to have it and we will participate in any way that we can, but it is not physically possible, without getting into flooding or serious environmental concerns. They are the proud owners of the first wet detention pond in Western North Carolina and that model took them about 1-1/2 years to build. The ditch lines on Tunnel Road and on Swannanoa River Road are a very integral part of that. He said that sidewalks are important and they will participate and be happy to install it from one piece of property to the other, as long as they don't have to change the grading plans. However, if Council is talking about changing grading plans and going into additional right-of-ways, he doesn't think it's physically possible.

Ms. Ball said that she is familiar about what is allowed in the floodplain area and floodway and what the applicant said is correct. However, if you are taking out the exact same area you are putting back in (like what would be done for a sidewalk) there is no issue that is a problem there. You don't even have to go to FEMA - the City review and approve that itself. That should not be an issue as long as the culvert does not have to be extended.

Councilman Cloninger suggested that the City require a sidewalk on Tunnel Road, conditioned upon it being consistent with Federal laws and permits already obtained to date.

Mr. Scoggins said that as long as the existing grading plan that is in place when the State finishes, they will be glad to build the sidewalk within the constraints of how the State leaves that property. Ms. Ball responded that that would be agreeable with her.

City Manager said that Council could advise staff that they wanted a 5-foot sidewalk. He said that staff does the ability to vary that where it would meet those conditions.

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

Vice-Mayor Hay said that with regard to the sidewalk on Swannanoa River Road, he didn't think that would be feasible in a lot of ways..

Councilman Cloninger moved to approve the conditional use permit for Dreamland Phase II retail development located at 83 South Tunnel Road subject to the conditions recommended by the TRC, except that with respect to sidewalks, that condition be amended to reflect that sidewalks be required along the portion of Tunnel Road between the Dreamland property line and the Dreamland Convenience Store property line subject to it being able to be done without requiring another flood permit and conditioned upon where the sidewalk goes across the culvert, that the applicant be required to put in handrails that meet the Code. This motion was seconded by Vice-Mayor Hay and carried unanimously.

City Attorney Oast said that he felt that he had enough specificity with respect to this conditional use permit to go ahead and draft the order for the Mayor's signature. City Council instructed the City Attorney to draft the order for the Mayor's signature.

C. PUBLIC HEARING TO ADD THE MANUFACTURED HOME OVERLAY DISTRICT TO 15 LOTS LOCATED ON MOCKINGBIRD CIRCLE CURRENTLY ZONED RM-6 RESIDENTIAL MULTI-FAMILY LOW DENSITY DISTRICT

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ORDINANCE NO. 2594 - ORDINANCE TO ADD THE MANUFACTURED HOME OVERLAY DISTRICT TO 15 LOTS LOCATED ON MOCKINGBIRD CIRCLE CURRENTLY ZONED RM-6 RESIDENTIAL MULTI-FAMILY LOW DENSITY DISTRICT

Mayor Sitnick opened the public hearing at 10:30 p.m.

Mr. Carl Ownbey, Urban Planner, said that this is the consideration of an ordinance to apply the Manufactured Home Overlay District to 15 lots located on Mockingbird Lane currently zoned RM-6 Residential Multi-Family Low Density District.

The Applicants/Owners are James and Sharon Brown, Jack Jenkins, Mark Burton, Paul and Debra Meadows, Theodore LaPier, David and Sue Scarborough, and Nancy Tryon.

The request to apply the Manufactured Home Overlay District to 15 lots on Mockingbird Circle was submitted by owners of 10 of the lots (PIN # 9639.07-59-7193, 8089, 8307, 9333; 9639.07-68-0985, 2842; and 9639.07-69-0021, 0331, 1218, 1285). Since this request outlined a non-contiguous zoning pattern, staff made efforts to contact the other 5 property owners (receiving written opposition from only one property owner), the remaining 5 lots (9639.07-59-7108 and 9056; 9639.07-68-3899; and 9639.07-69-2241 and 3008) were included by the Planning staff as part of the request. This public hearing was legally advertised on July 16, 1999, and July 23, 1999.

The 2010 Plan indicates this area to be low density residential. The current land use indicates a mixture of residential homes, manufactured homes, and some vacant lots. The adjacent neighborhood along Robin Lane was approved for the application of the Manufactured Home Overlay District in 1998.

At the Planning & Zoning Commission public hearing, opposition was expressed by several property owners including some petitioners that were unclear as to what they had signed.

The Planning staff reviewed the request and recommended approval. At their July 7, 1999, the Planning & Zoning Commission meeting, after hearing comments from the area residents and having one property owner request that their property be withdrawn from the request, the Commissioners voted 6 to 1 to recommend approval of the Manufactured Home Overlay District for the 15 lots.

Upon inquiry of Councilwoman Field, Mr. Ownbey read some of the additional restrictions that the overlay requires.

Upon inquiry of Councilman Cobb, Mr. Ownbey said only one single manufactured home can be placed on an individual lot in the Manufactured Home Overlay District.

Mr. Ownbey said that Planning staff is requesting City Council consider the Overlay District on all 15 lots so as not to interrupt the zoning pattern.

Councilman Cloninger noted that the Overlay District does not restrict, but actually gives them an additional use, of their property.

Mayor Sitnick closed the public hearing at 10:40 p.m.

Mayor Sitnick said that members of Council have previously received a copy of the ordinance and it would not be read. -33-

Councilman Cloninger moved for the adoption of Ordinance No. 2594. This motion was seconded by

Councilwoman Field and carried unanimously.

ORDINANCE BOOK NO. 17 - PAGE 409

D. PUBLIC HEARING RELATIVE TO CLOSING AN UNNAMED ALLEYWAY OFF HENRIETTA STREET

RESOLUTION NO. 99-112 - RESOLUTION PERMANENTLY CLOSING AN UNNAMED ALLEYWAY OFF HENRIETTA STREET

Mayor Sitnick opened the public hearing at 10:40 p.m.

Ms. Suzanne Molloy, Assistant Director of Public Works, said that this is the consideration of a resolution to permanently close an unnamed alley off Henrietta Street.

A petition has been received from Merrimon Avenue Baptist Church requesting that an unnamed alley off Henrietta Street be permanently closed to public use. The petition received includes the affidavit of Bill Bigham, President of Merrimon Avenue Baptist Church, owner of PIN No. 9649.10-35-9416. Merrimon Avenue Baptist Church owns all of the adjoining land on both sides of this unnamed alleyway.

This unnamed ally is a paper street and has never been opened and used as a street. The City has no plans to utilize this street. All utility companies have been contacted. The resolution of intent to close the unnamed alley off Henrietta Street was advertised in a local paper and the location was posted with the resolution of intent to close.

The Public Works Department staff recommends the resolution to permanently close the an unnamed alley off of Henrietta Street be adopted.

Mayor Sitnick closed the public hearing at 10:41 p.m.

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

Vice-Mayor Hay moved for the adoption of Resolution No. 99-112. This motion was seconded by Councilman Sellers and carried unanimously.

RESOLUTION BOOK NO. 25 - PAGE 262

IV. UNFINISHED BUSINESS:

V. NEW BUSINESS:

VI. OTHER BUSINESS:

A. APPROVAL OF THE MINUTES OF THE FORMAL MEETING HELD ON JULY 13, 1999, AND THE WORKSESSION HELD ON JULY 20, 1999

Councilman Sellers moved for the adoption of the minutes of the formal meeting held on July 13, 1999, and the worksession held on July 20, 1999. This motion was seconded by Councilwoman Field and carried unanimously.

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B. RESCHEDULING OF PUBLIC HEARING

Councilman Cloninger moved to reschedule the public hearing originally set for August 10, 1999, relative to amending the Unified Development Ordinance regarding standards for the wireless telecommunication facilities to August 24, 1999. This motion was seconded by Councilman Cobb and carried unanimously.

C. BELE CHERE 1999

Mayor Sitnick thanked the staff and volunteers who worked hard to pull off a smooth Bele Chere 1999 Festival.

VII. INFORMAL DISCUSSION AND PUBLIC COMMENT:

VIII. ADJOURNMENT:

Mayor Sitnick adjourned the meeting at 10:45 p.m.

CITY CLERK MAYOR
