

Tuesday - November 14, 2000 - 5:00 p.m.

Stephens-Lee Community Center

30 George Washington Carver Street

Regular Meeting

Present: Mayor Leni Sitnick, Presiding; Vice-Mayor M. Charles Cloninger; Councilwoman Barbara Field; Councilman Edward C. Hay Jr.; Councilman Brian L. Peterson; Councilwoman Terry Bellamy; and Councilman Charles R. Worley; City Attorney Robert W. Oast Jr.; City Manager James L. Westbrook Jr.; and City Clerk Magdalen Burleson

Absent: None

INVOCATION

Councilman Peterson gave the invocation.

I. PROCLAMATIONS:

II. CONSENT:

Vice-Mayor Cloninger asked that Consent Agenda "H" be removed from the Consent Agenda due to a conflict of interest.

A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON OCTOBER 24, 2000, AND THE WORKSESSION HELD ON NOVEMBER 9, 2000

B. RESOLUTION NO. 00-203 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A PROFESSIONAL SERVICES CONTRACT TO PREPARE FINAL PLANS AND BID THE EXPANSION OF THE TRANSIT CENTER TICKET OFFICE FOR THE ADDITION OF A SHELTERED WAITING ROOM FOR TRANSIT CUSTOMERS

Summary: The presentation of alternatives and conceptual plans for the expansion of the Transit Center Ticket Office for the addition of a sheltered waiting room for transit customers.

At the worksession on October 3, 2000, City Council asked that staff review various alternatives for providing shelter at the Transit Center, and asked that the architect who drew the conceptual plans presented at that time be present at the next available Council worksession.

Staff has worked with the architect to address alternatives to the retrofit of the existing building, and also to refining details of the conceptual plans. City Council asked staff about possible alternatives for the provision of shelter at the Transit Center. The architect is in the process of compiling the information, which will be presented to Council by staff and the architect on Thursday, November 9, 2000.

City staff recommends City Council evaluate the proposed alternatives and if desirous of moving forward with an alternative, authorize the City Manager to enter into a professional services contract to prepare final plans and bid the project.

RESOLUTION BOOK NO. 26 – PAGE 209

C. RESOLUTION NO. 00-204 - RESOLUTION SETTING A PUBLIC HEARING TO CONSIDER THE ADOPTION OF AN ORDINANCE DIRECTING THE

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DIRECTOR OF BUILDING SAFETY TO ORDER THE APARTMENT HOUSE LOCATED AT 135 MERRIMON AVENUE VACATED AND CLOSED UNTIL SAME HAS BEEN REPAIRED IN ACCORDANCE WITH THE CITY'S MINIMUM HOUSING CODE

RESOLUTION BOOK NO. 26 – PAGE 210

D. MOTION AUTHORIZING CITY STAFF TO PROCEED WITH AN ASHEVILLE HONORS PROGRAM

ORDINANCE NO. 2768 - BUDGET AMENDMENT FOR ASHEVILLE HONORS PROGRAM

Summary: There have been many individuals and institutions over the years who have assisted in the development and growth of Asheville. Individuals and institutions who have provided leadership in development, the arts, culture, the business world and in other ways have helped establish Asheville as a unique city in which to live, work and recreate. The purpose of the awards would be on an annual basis to select an individual(s) or institution(s) to be honored by the City for their contributions and to hold an appropriate awards ceremony to confer the awards. Staff has met with Mayor Sitnick, Mayor Ochsenreiter, Ms. Sara Bisette and Ms. Harriette Winner to discuss how such a program might work at the conceptual level. The group would recommend that the awards be selected by an independent committee and presented on behalf of the City of Asheville by the Mayor and City Council at the appropriate time.

Staff feels this is a worthwhile endeavor and would provide an additional avenue to recognize individuals and organizations who are so important to the community. If Council would like to pursue an Asheville Honors type of program, the following steps should be taken:

1. Approve a mission statement for the committee.
2. Approve operating principles to guide the committee.
3. Appoint a chair and ask the chair to appoint members to the committee subject to Council approval.
4. Approve a modest budget (\$4,000) for the committee to begin their work and initially promote the program.

ORDINANCE BOOK NO. 19 – PAGE 6

E. RESOLUTION NO. 00-205 - RESOLUTION APPOINTING A MEMBER TO THE EDUCATIONAL ACCESS CHANNEL COMMISSION

Summary: The consideration of appointing a member to the Educational Access Channel Commission.

Ordinance No. 2554 adopted on March 9, 1999, established an Educational Access Channel Commission. On May 25, 1999, members to the Commission were appointed.

On October 11, 2000, Dr. Olin Wood requested that Mr. Rusty Holmes, Coordinator for Distance Learning, be appointed as one of the representatives of Asheville-Buncombe Technical Community College to replace himself. Mr. Holmes will be filling the unexpired term of Dr. Wood, whose term will expire on June 1, 2001, or until his successor is appointed.

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Staff recommends City Council adopt the resolution appointing Mr. Rusty Holmes to the Educational Access

Channel Commission.

RESOLUTION BOOK NO. 26 – PAGE 212

F. RESOLUTION NO. 00-206 - RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE AN EASEMENT IN FAVOR OF THE METROPOLITAN SEWERAGE DISTRICT TO MAKE IMPROVEMENTS ON A SANITARY SEWER LINE WITHIN RIVERSIDE CEMETERY

Summary: The consideration of a resolution authorizing the Mayor to execute an easement in favor of Metropolitan Sewerage District to make improvements on a sanitary sewer line and associated manholes within Riverside Cemetery.

During the past year the Metropolitan Sewerage District (MSD) has been working with the City of Asheville regarding a sanitary sewer project proposed within Riverside Cemetery. The current line is located along the southern portion of the cemetery adjacent to a creek which flows westward toward US 19/23. MSD would like to improve this line which is in disrepair with minimum impact to the property. MSD staff has met with City of Asheville staff representing the Parks and Recreation Department, Asheville-Buncombe Historic Resources Commission and the Tree Commission. The various divisions have worked with MSD to reach consensus regarding an appropriate design and implementation strategy that will enable the project improvements with minimal disturbance to the cemetery site.

The Parks and Recreation staff recommend the approval of the improvements as proposed by the Metropolitan Sewerage District in Riverside Cemetery along with the associated permanent easement for the new line of pipe.

RESOLUTION BOOK NO. 26 – PAGE 213

G. RESOLUTION NO. 00-207 - RESOLUTION ENDORSING THE CONCEPT OF AN ALTERNATIVE FUELED VEHICLES PLAN FOR ASHEVILLE'S VEHICLE FLEET AND LOCAL PARTNERS

Summary: The consideration of a resolution endorsing the concept of an Alternative Fueled Vehicles Plan for Asheville's vehicle fleet and local partners.

Vice-Mayor Cloninger has worked with City staff to develop a draft Alternative Fueled Vehicles Plan for Asheville's vehicle fleet and local partners. Alternative Fuel Vehicles for fleets have the potential to decrease air pollution in the community. Staff researched various alternative fuels, available equipment and potential funding. The State is providing grants for municipal fleets to convert to fuels or vehicles which reduce air pollutants. Also, Mission-St. Joseph and Buncombe County have expressed interest in participating with the City in such a program. Other potential partners are being solicited.

City staff recommends City Council endorsing the concept of an Alternative Fueled Vehicles Plan and authorize City staff to apply for grants.

RESOLUTION BOOK NO. 26 – PAGE 214

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H. RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A CONTRACT WITH PERRY BARTSCH JR. CONSTRUCTION COMPANY FOR THE CONSTRUCTION OF RETAINING WALLS FOR THE SKATEBOARD PARK

This item was removed from the Consent Agenda due to a conflict of interest from Vice-Mayor Cloninger.

I. RESOLUTION NO. 00-208 - RESOLUTION AUTHORIZING THE MAYOR TO ACCEPT A DONATION OF REAL PROPERTY ON BROADWAY FROM MARK CARLSON FOR THE GREENWAY SYSTEM

Mr. Ed Vess, Field Services Coordinator said that this is the consideration of a resolution authorizing the Mayor to accept a donation of real property on Broadway from Mark Carlson for the City of Asheville greenway system.

The City of Asheville is interested in establishing greenways or greenway systems throughout the corporate limits of the City of Asheville. Real property has been acquired along Broadway and Reed Creek for the purpose of constructing a greenway. Mark Carlson has offered to donate property he owns (approximately 0.84 acre) on Broadway at and near the corner with Ocala Street (PIN Nos. 9649.13-13-7959, 8905, 8808, 8973 and 9837) for the greenway system. The Parks and Recreation staff have reviewed the proposed donation and found that the property is appropriate for the greenway system.

All of the donors to Broadway Greenway Project will be recognized at the groundbreaking ceremony.

City staff recommends City Council adopt the resolution authorizing the Mayor to accept a donation of real property on Broadway from Mark Carlson.

RESOLUTION BOOK NO. 26 – PAGE 215

J. RESOLUTION NO. 00-209 - RESOLUTION AMENDING THE SCHEDULED CITY COUNCIL MEETINGS

Summary: The following is the amended City Council meeting schedule: December 5, 2000, meeting cancelled; (2) December 12, 2000, worksession; (3) December 19, 2000, formal meeting; (4) December 26, 2000, meeting cancelled; and (5) January 2, 2001, meeting cancelled.

RESOLUTION BOOK NO. 26 – PAGE 216

K. RESOLUTION NO. 00-210 - RESOLUTION PROVIDING FOR THE ISSUANCE OF \$1,970,000 GENERAL OBLIGATION BONDS, SERIES 2000 OF THE CITY OF ASHEVILLE

Summary: The consideration of a resolution providing for the issuance of \$1,970,000 General Obligation Bonds, Series 2000 of the City of Asheville.

On October 10, 2000, City Council adopted Bond Orders authorizing the issuance of \$1,300,000 Sanitary Sewer Bonds and \$670,000 Equipment Bonds. Those Bond Orders became effective on November 13, 2000, 30 days after their publication during which period no valid petition to a vote of the people was filed with the City Clerk.

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The resolution provides the particulars for issuance of the bonds, to include:

- o \$1,970,000 aggregate principal amount; in \$5,000 denominations;

Semiannual interest payment dates of December 1 and June 1, beginning June 1, 2001, and continuing through December 1, 2020;

- o Annual principal payment dates of December 1, 2001 through 2020;
- o Provides for early redemption after December 1, 2010 at a premium;
- o Requires continuing disclosure of financial information;
- o Provides the form of the bonds;
- o Designates the bonds as "qualified tax-exempt obligations";
- o Directs the Finance Director to establish special funds for the proceeds of the bonds;
- o Requests the Local Government Commission sell the bonds through competitive bid;
- o Authorizes preparation, execution and delivery of the bonds;
- o Authorizes and approves the form and content of the Official Statement and Supplement to the Official Statement with changes, modifications, additions and deletions as deemed necessary by the Mayor, City Manager, or Finance Director;
- o Authorizes the Mayor, City Manager, Finance Director and City Clerk to execute and deliver all certificates, documents, opinions or other papers and perform all other acts required in order to implement and carry out the purposes of the resolution.

City staff recommends City Council adopt the resolution.

RESOLUTION BOOK NO. 26 – PAGE 217

L. RESOLUTION NO. 00-211 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO AN AGREEMENT WITH DSATLANTIC CORPORATION TO PROVIDE PROFESSIONAL SERVICES TO THE CITY AND TO THE ASHEVILLE URBAN AREA METROPOLITAN PLANNING ORGANIZATION FOR THE UPDATE OF THE TRAVEL DEMAND MODEL

the consideration of a resolution authorizing the City Manager to execute a contract with DSAtlantic Corporation in the amount of \$145,300 to update the travel demand model for the Asheville Urban Area Metropolitan Planning Organization (MPO), and an associated budget amendment.

As the Lead Planning Agency, the City of Asheville plays an integral part in the function of the MPO. The old Thoroughfare Planning Process that the N. C. Dept. of Transportation (NCDOT) has used is being revamped to reflect a more comprehensive approach to transportation planning. Our current Plan is in the process of becoming a Comprehensive Transportation Plan. One of the most valuable tools in evaluating how traffic is addressed, both in the present and in the future, is a valid travel demand model. Such models are quite complex and data intensive. They require staff that are dedicated and experienced to modeling. With the level of concern we have locally regarding the validity of our Plan and model, the NCDOT and the MPO agree that it would be very beneficial to utilize the professional expertise of consultants who specialize in modeling. City staff issued a Request for Proposals and have selected DSAtlantic. The NCDOT, the City and the MPO staff, all agree that DSAtlantic can complete this update in a timely manner.

The Federal Highway Administration and the NCDOT will reimburse the City of Asheville 80% of the cost of the contract. The total cost of the model update is \$145,300. The maximum City's share would be \$29,060, which is budgeted in the Engineering Department.

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City staff requests that City Council authorize the City Manager to execute a contract with DSAtlantic Corporation, in the amount of \$145,300, to update the travel demand model for the MPO and to adopt an associated budget amendment.

RESOLUTION BOOK NO. 26 – PAGE 218

M. ORDINANCE NO. 2769 - BUDGET AMENDMENT TO PARTIALLY FUND A CONTRACT WITH DSATLANTIC TO UPDATE THE TRAVEL DEMAND MODEL FOR THE ASHEVILLE AREA MPO

Summary: See Consent Agenda Item "L" above.

ORDINANCE BOOK NO. 19 – PAGE 8

N. MOTION SETTING A PUBLIC HEARING ON NOVEMBER 28, 2000, TO CONSIDER AN AMENDMENT TO THE UNIFIED DEVELOPMENT ORDINANCE TO REVISE THE PROCEDURE FOR THE REVIEW OF LEVEL III SITE PLAN REVIEW PROJECTS

O. MOTION SETTING A PUBLIC HEARING ON NOVEMBER 28, 2000, TO CONSIDER AN AMENDMENT TO THE UNIFIED DEVELOPMENT ORDINANCE REGARDING SETBACKS FOR MULTI-FAMILY STRUCTURES

P. MOTION SETTING A PUBLIC HEARING ON NOVEMBER 28, 2000, TO AMEND FISCAL YEAR 2000 AND PRIOR YEARS COMMUNITY DEVELOPMENT BLOCK GRANT AND HOME ALLOCATIONS

Q. MOTION SETTING A PUBLIC HEARING ON NOVEMBER 28, 2000, TO REZONE PROPERTY LOCATED OFF POND ROAD FROM RS-8 RESIDENTIAL SINGLE-FAMILY HIGH DENSITY DISTRICT (MANUFACTURED HOME OVERLAY DISTRICT) TO COMMERCIAL INDUSTRIAL

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 Worley moved for the adoption of the Consent Agenda. This motion was seconded by Councilwoman Field and carried unanimously.

ITEM REMOVED FROM THE CONSENT AGENDA TO BE DISCUSSED SEPARATELY

RESOLUTION NO. 00-212 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A CONTRACT WITH PERRY BARTSCH JR. CONSTRUCTION COMPANY FOR THE CONSTRUCTION OF RETAINING WALLS FOR THE SKATEBOARD PARK

Councilman Worley moved to excuse Vice-Mayor Cloninger from participating in this matter due to a conflict of interest. This motion was seconded by Councilwoman Field and carried unanimously.

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Summary: The consideration of a resolution authorizing the City Manager to enter into a contract with Perry Bartsch Jr. Construction Company for the construction of retaining walls for the Skateboard Park.

In March of 1999, City Council approved the construction of a Skateboard Park to be located at the corner of Flint and Cherry Streets in downtown Asheville. This park will be constructed on property owned by North Carolina Department of Transportation. The development of the Skateboard Park has been on-going since 1997 when the Department began working with a number of individuals and groups interested in addressing the use of skateboards in the downtown area. This initiative led to the development of a temporary park located on top of the Civic Center parking deck which has proven to be successful with between 30 – 50 participants each day. The overall goal of the Task Force was the development of a permanent park. Construction on this park began in August, 2000, with the Department of Public Works installing storm drainage at the site. The next phase of development includes the construction of retaining walls throughout the park area. After completion of the retaining walls, the park will be ready for installation of the park surface which will allow for use by the skateboarders by late summer or early fall. Competitive bids were

solicited for the development of the retaining walls with the low bid going to Perry Bartsch Jr. Construction Company at a cost of \$252,775.

The Parks and Recreation Department has committed to raising funds for the park through a variety of means without the use of tax dollars. This fundraising effort continues and the Department is close to announcing a major corporate sponsor for the park. City Council approved the budget amendment for this park in 1999 with the understanding that funds would be reimbursed to the account by the above means.

The Parks and Recreation Department recommends City Council approve the contract with Perry Bartsch Jr. Construction Company, in the amount of \$252,775, and that the City Manager be authorized to sign all contract documents.

Councilman Worley moved to adopt Resolution No. 00-212. This motion was seconded by Councilwoman Field and carried unanimously.

RESOLUTION BOOK NO. 26 – PAGE 219

III. PUBLIC HEARINGS:

A. PUBLIC HEARING RELATIVE A CONDITIONAL USE PERMIT TO CONSTRUCT A WAL-MART SUPERCENTER AT THE INTERSECTION OF GERBER ROAD AND HENDERSONVILLE ROAD

City Clerk Burleson and Deputy City Clerk Phyllis Corns administered the oath to anyone who anticipated speaking on this matter.

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

All Council members disclosed that they visited the site. All Council members, except for Vice-Mayor Cloninger, met with Ms. Laurel Eide and Mr. Rusty Pulliam prior to knowing this project would come before City Council. All Council members have received numerous letters. Councilman Peterson disclosed that he talked with citizen groups limiting his remarks to only the process for conditional use permits.

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Mayor Sitnick explained the procedures of this meeting. She said that the letters City Council received in the mail cannot be submitted as evidence. After hearing no questions about the procedure, Mayor Sitnick opened the public hearing at 5:28 p.m.

Planning & Development Director Scott Shuford that this is the consideration of an issuance of a Conditional Use Permit for the consideration of a conditional use permit as outlined in the Unified Development Ordinance (UDO) to construct a new 210,000 Wal-Mart Supercenter at the intersection of Gerber Road and Hendersonville Road. He submitted into the record the Affidavit of Publication (City Exhibit 1), the Certification of Mailing of Notice to Property Owners (City Exhibit 2), a Staff Report (City Exhibit 3), and a Revised Staff Report (City Exhibit 4). This public hearing was advertised on November 3 and 10, 2000.

On July 3, 2000, Wal-Mart Stores, Inc, submitted development plans for Level III site plan review for the proposed construction of a new 210,000 square foot Wal-Mart Supercenter on the site of the former Gerber plant. The Technical Review Committee (TRC) reviewed the plans at their meeting on July 17, 2000, and recommended approval with conditions. The applicant resubmitted plans that satisfy most of the TRC's conditions. If the Council approves this Conditional Use Permit, City staff recommends these conditions be part of the motion to approve.

In addition to the conditional use standards, the development must also comply with the supplemental development standards established for retail developments over 100,000 square feet. With the proposed architectural design and the site design, the development complies with the supplemental development standards.

In addition to the development standards for the zoning district in which they are located, conditional uses must meet certain general conditions in order to ensure that the use is appropriate at a particular location and to ensure protection of the public health, safety, and welfare. The general conditions, which apply to all conditional uses, can be found in Section 7-16-2 (c) of the UDO. City Council must make seven findings based on the evidence and testimony received at the public hearing or otherwise appearing in the record of the case. The applicant has to demonstrate to City Council's satisfaction that the project meets these seven standards. Conditions can be imposed to enable those standards to be met.

Staff has attended a number of meetings and by far the most common concerns involve traffic impact and stormwater management issues. Long Shoals Road is scheduled to be improved under our Transportation Improvement Program in the very near future. Gerber Road will entirely be reconstructed by the applicant and the applicant will, under the conditions suggested by City staff, provide a fair share amount to the N.C. Dept. of Transportation to address impacts on Hendersonville Road and Mills Gap Road. With regard to stormwater impacts, the applicant has agreed, under the conditions suggested by City staff, to reduce the impact of the project to pre-development levels. Staff feels that that will help the current base situation that occurs there in addition to mitigating the impacts of the applicant.

Chief Planner Gerald Green said that Wal-Mart is seeking approval for the construction of a 210,000 square foot Supercenter on a 25.5 acre parcel located at the intersection of Hendersonville Road and Gerber Road (City Exhibit 5) and is also adjacent to the Norfolk Southern railroad line. A 1.65 acre outparcel fronting Hendersonville Road will be reserved for future development. The property is zoned Commercial Industrial and the use is a permitted use in the zoning district (City Exhibit 6). Due to the size of the proposed development, it is defined as a Level 3 project and is reviewed as a conditional use. Conditional uses are uses, which, because of their unique characteristics or potential impacts on the surrounding neighborhood and/or the city as a whole require individual consideration of their location, design, configuration, and/or operation at the particular location proposed. The site plans for the

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proposed development were reviewed by the TRC on July 17, 2000, and recommended for approval with conditions. Revised plans submitted by the applicant meet most of the conditions identified by the TRC. Outstanding conditions recommended by the TRC, as well as additional conditions identified by staff, will be identified. If City Council approves this development and issues a conditional use permit, City staff recommend that the conditions be a part of the motion to approve.

He briefly went over the proposed design. The building will be finished in reddish Quick-Brick and gray smooth faced block with green accents (City Exhibit 7). The façade also incorporates several distinct massing elements and decorative metal fencing around the greenhouse area. There will be a transit stop with an awning from the edge of the sidewalk into the entrance to provide shelter for the bus riders. The 950 parking space area will be heavily landscaped, including a 50 foot wide buffer along the frontage roads and large interior landscape islands.

Access to the proposed development will be from Gerber Road, with three access drives planned. The first entrance will be right in, right out only. The second entrance will be the main entrance, and the third entrance will be primarily for truck traffic. A number of improvements are proposed for Gerber Road, including the addition of lanes and the construction of a roundabout at the main entrance to the proposed development.

Stormwater management will be provided for the development in a manner sufficient to reduce the volume of the stormwater leaving the site to pre-development levels, a much higher standard than required.

Conditional uses must meet certain general conditions to ensure the proposed development is appropriate at a particular location and to ensure protection of the public health, safety and welfare. The general conditions are found in Section 7-16-3 (c) of the UDO. City Council must make seven findings based on the evidence and testimony at this public hearing or otherwise appearing in the record of the case. The standards and findings are as follows:

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

The project received technical approval from the Water Resources Department, the Fire Department, Metropolitan Sewerage District, Engineering Department, and other City departments at the July 17, 2000, TRC meeting. The project must meet the technical standards set forth in the UDO, the Standards and Specifications Manual, the North Carolina Building Code and other applicable laws and standards which protect the public health and safety. The traffic impact analysis, prepared by the developer and reviewed by the City's staff, indicates that sufficient road capacity is available with the improvements proposed by the applicant and those required by staff to serve the project. Stormwater management will be provided for on site to bring the runoff to the level of pre-development runoff. This will result in a basin wide reduction in the stormwater, improving the situation on downstream properties, including Crowfields..

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 project is a large-scale retail facility serving a regional market and is similar in character to several other retail developments in the vicinity.

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

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The size of the tract of land allows room for adequate buffering to alleviate impacts of noise and lighting on adjacent properties. Traffic impacts are an important consideration in Finding No. 7. Stormwater control measures will actually result in an improvement over the current basinwide stormwater conditions if the project is developed as proposed. The development is consistent with the zoning requirements for the property as well as in keeping with the corridor development pattern.

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 property is zoned Commercial Industrial, which has no structure size standards. All of the neighboring property is zoned Industrial, Commercial Industrial or Highway Business and is for the most part already developed with large scale retail and industrial uses. Other developments in the area are of similar scale and density include:

- Wal-Mart Plaza – 160,000 square feet with 1,081 parking spaces;
- K-Mart Shopping Center – 141,000 square feet with 595 parking spaces;
- Ingles Shopping Center – 101,000 square feet with 401 parking spaces;

- Ball Plant – 235,000 square feet; and
- Old Gerber Plant – formerly 700,000 square feet with 450-500 employees; 350,000 square feet was demolished.

There is a 1.65 acre out parcel which is part of the Wal-Mart development; one of the recommended conditions of the conditional use permit is that any development of the outparcel be architecturally compatible with the proposed Wal-Mart building. In this way we can assure that it will be scale and harmony with the existing development.

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 City's Comprehensive Plan, the Asheville City Plan 2010, which is now 14 years old, and has been updated in most areas with the zoning applied as part of the UDO adoption and with subsequent rezonings. The subject property was rezoned approximately one year ago to permit commercial and industrial uses.

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 project received technical approval from the TRC, which includes representatives of the Water Resources Department, Metropolitan Sewerage District, Engineering Department, the Fire Department, and Public Works Department. The adequacy of the transportation facilities is addressed in a Traffic Impact Analysis conducted by the developer and supplemented by staff findings and requirements.

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

A Traffic Impact Analysis (TIA) was submitted for the proposed development as required by the UDO (City Exhibit 8). In addition, the developer submitted an addendum to the TIA (City Exhibit 9) and another memo with additional analyses (City Exhibit 10). Staff review of the TIA concludes that it was completed using appropriate methods and offers a reasonable assessment of the traffic conditions in the site area. Several improvements to Gerber Road and the intersections on each end are recommended by the TIA to mitigate the traffic impact of the development. Staff worked with the developer to identify improvements to Gerber Road that would provide necessary

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capacity and safety benefits but not create an unnecessarily wide roadway. The developer is offering to construct these improvements to Gerber Road, which will remain a public road providing a connection between Sweeten Creek Road and Hendersonville Road.

This development has the potential to exacerbate some existing LOS (Level Of Service) problems on roadways in the vicinity of the development. However, the conditions include requirements that staff feels will fairly mitigate these impacts. The widening of Long Shoals Road by the NCDOT will resolve LOS problems at the intersection of Long Shoals Road and Hendersonville Road. The recommended conditions require a pro rata contribution toward resolving the Mills Gap intersections' (with both Hendersonville Road and Sweeten Creek Road) LOS problems. The developer is proposing to correct the Gerber Road LOS problems by reconstructing Gerber Road. Stormwater retention proposed by the developer will improve area drainage conditions.

Staff recommends approval subject to conditions. If Council agrees and issues the conditional use permit,

staff recommends the following conditions be part of the motion to approve.

1. The developer must pay all costs of signal upgrades necessary to accommodate the lane additions at the two signalized intersections on Gerber Road. In addition, the developer must also pay the costs of adding pedestrian signals to the signalized intersection of Gerber Road and Hendersonville Road.
2. The developer must pay \$150,000 toward the planned signal upgrade for Hendersonville Road in the vicinity of the project. This money will be escrowed prior to receiving a certificate of occupancy for the building.
3. The developer must pay 7% of the cost of improving Mills Gap Road between Hendersonville Road and Sweeten Creek Road, not to exceed \$150,000. A form of financial surety, such as a bond or letter of credit made payable to the City of Asheville, guaranteeing the payment of these funds must be provided prior to receiving a certificate of occupancy for the building. The financial surety must be valid for a period of five (5) years. At the end of the five (5) year period, the financial surety shall be renewed if the improvements to Mills Gap Road have not been initiated. Renewals of the financial surety may occur indefinitely until improvements to Mills Gap Road are undertaken.
4. The developer must submit a traffic control plan (TCP) for the reconstruction of Gerber Road before construction begins. The City Engineering Department must approve this TCP. Full closure of Gerber Road will be allowed only for a limited reasonable period of time as determined by City staff.
5. Before construction, detailed road design, signing, and striping plans must be submitted and approved by the City of Asheville (and NCDOT staff where necessary). These plans must show several items, including but not limited to:
 - o A new roadway profile for Gerber Road.
 - o Typical roadway sections that show widths of the lanes, median, gutter, planting strip, and sidewalk. These typical sections need to show the chosen pavement design and the planned cut and fill slopes.
 - o Detailed layout of the roundabout showing appropriate connections to nearby road features and all the dimensions of the roundabout. If deemed necessary by the City Engineering Department and its consultants, the City may require the developer to retain the services of an experienced roundabout designer at the developer's expense.
 - o Details showing appropriate handicap ramps and island cut-throughs for pedestrians. The handicap ramp shown in the current plans does not meet Americans with Disability Act regulations.
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- o Detailed signing and striping plans, especially as these items relate to the roundabout. Numerous additional signs will be necessary for the roundabout. All signs and markings will be installed at the expense of the developer.
6. To minimize the potential for traffic on the site to back-up into in the roundabout, extend the splitter island as a raised median from the roundabout to the end of the first parking lot island so that left turn movements will not be possible into the first parking bay. City staff has received a revised site plan showing that this condition has been met.
7. Bicycle racks shall be no farther than 50 ft. from a useable entrance to the building; some must be placed

on the sidewalk near the store entrance.

8. Street lighting shall be provided the full length of Gerber Road with decorative fixtures to be approved by City staff.
9. Any development of the out-parcel must be architecturally compatible with the proposed Wal-Mart building.
10. Provide full details for lighting fixtures. Light poles cannot exceed 30 feet in height.
11. Full cutoff fixtures for parking lot lighting is required.
12. Provide details of trash receptacles.
13. Cart corrals shall be designed in keeping with architecture of the building, with the use of similar materials encouraged.
14. The monument sign shall be as shown on elevation drawing. All other signage shall be permitted in accordance with the City of Asheville sign standards.
15. A maintenance plan must be provided for the storm water management facility and for trash cleanup in the parking lot.
16. The boulevard-type planting median shall be extended along Gerber Road to the Norfolk Southern railroad right-of-way if physically possible. If extension of the planting median to this point is not possible, additional landscaping shall be provided along the edge of the road.
17. If grading is done within 15 feet of the property lines then the trees and shrubs which are replanted must be 25% larger than normally required.
18. Stormwater management shall be provided as if the lot were previously undeveloped.
19. The developer must build concrete driveway aprons per the City's standard (or other detail approved by the City Engineering Department) for the two existing gravel driveways on the South side of Gerber Road.
20. The "YIELD" markings in front of the building shall be painted white so that they will match the YIELD markings that will be required at the roundabout entries. Crosswalk markings are generally white as well and it is recommended that the wide pedestrian crossing areas in front of the store be striped in white paint.

Mr. Green answered various questions from Council, some being, but are not limited to: what problem does the roundabout solve, what are the pedestrian crossing amenities for the out-parcel, why does this proposed 210,000 square foot Wal-Mart have less parking spaces than the existing 160,000 square foot Wal-Mart, how do you access the 2.5 acre out-parcel and does the existing parking take into account the out-parcel, can City Council add additional conditions related to the development of the out-parcel, who determines the cost of improving Mills Gap Road between Hendersonville Road and Sweeten Creek Road, what kind of cash contributions is the developer making, does the City have a plan to use the transit stop at the proposed Wal-Mart and is there any additional expense to build this stop into the existing route, where is the access for the Ball Plant and if there is any development on the Ball Plant site, would they access onto Gerber Road; and, where is their stormwater detention facility.

Upon inquiry of Councilman Worley about how this project fits in with the City's smart growth concept and smart growth policy, Mr. Shuford said that the City has adopted interim smart growth policies that deal with development while we undergo a revision to our comprehensive plan and changes to the 2010 Plan. Before

we can implement many of those

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policies, we have to make changes to our Code requirements. For example, in this particular case, if, through our planning process, we felt this property should be reserved for a mixed use project or for an industrial project, then we would need to make subsequent zoning changes to reflect that. We feel that we have done the very best we could with this project with the design to incorporate a use that is actually going to contain a multiple number of internal uses that will minimize traffic stops and also to incorporate a lot of the density issues that are referred to in the smart growth policies. He said that the City is a regional part of our western North Carolina economy, and, as a result, we have to be in a position to accommodate big box type development in order to play that role. That is why we put in supplemental development standards - to try to make the big box developments that do occur in our City reflect a characteristic that is not a "this is anywhere type of place." In addition, City staff feels the provision of any of these big box developments be evaluated for mass transit alternatives.

City Traffic Engineer Michael Moule said that in reviewing the TIA, he estimates that there will be an additional 4,130 new trips each way.

He said that as directed by City staff, the traffic consultant analyzed three off-site intersections. These intersections include Hendersonville Road (US 25) at Mills Gap Road, Sweeten Creek Road (US 25A) at Mills Gap Road, and Hendersonville Road at Long Shoals Road.

- **Existing conditions:** The TIA found that under existing conditions these three intersections operate at level of service E or F, which is worse than the normally acceptable level of service D. Level of service F is the worst possible level of service, indicating an average delay per vehicle of more than 75 seconds.
- **2002 conditions without site traffic (Background):** As required by the UDO, the TIA also looked at traffic conditions in the build-out year (2002 for this project). As directed by City staff, the traffic in the build-out year was estimated using a 3% per year growth factor and adding traffic generated by nearby approved developments that have not been completed. During the build-out year, these three intersections are estimated to operate at Level of Service F, without the addition of the site traffic.
- **2002 conditions with site traffic (Combined):** Finally, the TIA looked at the traffic conditions during the build-out year with the site traffic included. All three intersections are estimated to operate at Level of Service F but with even greater delay to traffic.
- **Recommended improvements:** The TIA recommended numerous improvements at these three intersections including several approach lane additions that would be necessary to bring conditions to level of service D without the site traffic included. However, neither the City of Asheville nor the North Carolina Department of Transportation (NCDOT) has plans or the necessary resources to construct any of these improvements by the time this development is planned to be completed. In addition, the developer has not offered to construct any improvements. City and NCDOT staff realize that these improvements would be difficult for the developer to construct since acquisition of additional right-of-way is necessary to construct these improvements. However, some contribution of funds to improve the traffic conditions near the site commensurate with the development's impact on the roadway is appropriate. Three specific areas for improvement are discussed below.
 - **Planned Nearby NCDOT road widening project:** The NCDOT has plans to widen Long Shoals Road with a project that is scheduled to be completed relatively soon after the planned completion of this development. Two additional approach lanes are planned on Long Shoals Road at Hendersonville Road. These lane improvements should improve the traffic conditions at this intersection. This project is already fully funded and is some distance from the development site, so no contribution by the developer is suggested at this time.

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- o **Proposed NCDOT signal improvements on Hendersonville Road:** The NCDOT is proposing to add a closed loop signal system from the Blue Ridge Parkway to Mills Gap Road. This project would include upgrading all of the signals to current standards and the installation of pedestrian signals. The estimated cost of this project is \$450,000 to \$500,000. This project is planned in order to accommodate the increasing traffic volumes in this area. According to the numbers in the Traffic Impact Analysis, the Wal-Mart development will increase traffic at various locations on Hendersonville Road by 6% to 8%. The estimated increase in traffic based on other factors from now until the build-out year is approximately 12% to 19%. Therefore, it is proposed that the developer fund approximately one third of the proposed signal upgrade project. A recommended condition on the issuance of a conditional use permit for the development reflects this proposal.
- o **Mills Gap Road widening:** The Metropolitan Planning Organization (MPO) has included a project on its priority needs list to widen Mills Gap Road from Hendersonville Road to Sweeten Creek Road. This project has not been placed on the Transportation Improvement Program (TIP) by the NCDOT at this time. City staff is going to encourage the MPO to encourage the NCDOT to add it to the TIP because it is one of the most congested areas in our City. However, it is possible that this project or a similar one to improve conditions on Mills Gap Road would be completed within a reasonable amount of time. According to traffic volumes in the TIA, the development's traffic impact will be approximately 7% of the total traffic at the intersections of Mills Gap Road with Hendersonville Road and Sweeten Creek Road. City staff calculated a project cost estimate of \$2,000,000 to widen Mills Gap Road to three (3) lanes between Sweeten Creek Road and Hendersonville Road, add a westbound right turn lane at Hendersonville Road, and eastbound and westbound right turn lanes at Sweeten Creek Road. The developer should pay 7% or approximately \$150,000 of the cost of this road improvement project. If these monies are not expended within a five year timeframe, they should be returned to the developer with interest. A recommended condition on the issuance of a conditional use permit for the development reflects this proposal.
- o **Sweeten Creek Road:** Sweeten Creek Road is planned to be widened, however, it looks like it won't be for another 7 or 8 years. Since it is so far in the horizon, City staff is not recommending the developer contribute to this project.

Mr. Moule answered various questions from Council, some being, but are not limited to, does City staff have any idea when the three off-site intersections might be funded and constructed to bring them to a LOS D; what does over-saturated in traffic terminology mean; how far is Mills Gap Road from Gerber Road; where does the traffic come from on Mills Gap Road from Hendersonville Road to Sweeten Creek Road; is there a lot of traffic that uses Gerber Road now that would move to Mills Gap Road; what is the effect of this project on Mills Gap Road;

has an analysis been done on the current traffic at the existing Wal-Mart and will that traffic shift to the proposed Wal-Mart; and is the left turn lane as it exists now on Gerber Road going north on Sweeten Creek Road adequate.

Councilman Hay if there are any other improvements which would make the traffic situation better that are not listed in the conditions. Mr. Moule said that there was some discussion about having Wal-Mart build lane improvements at Mills Gap Road and Sweeten Creek Road, but the developer indicated that they didn't feel they could do that, so City staff looked at other possible ways to mitigate the traffic impact. In this case, it is the contribution to what we hope will be a future project on Mills Gap Road.

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Mr. Scott Stannard, Freeland and Kauffman, said that they feel this building will be a beautiful addition to this

community (Applicant Exhibit 1). With regard to traffic concerns, they did perform a TIA and have come up with improvements that City staff and the NC DOT feel need to be done in order to accommodate the traffic to this site. They are physically rebuilding Gerber Road to three and four lanes as required, working on the two traffic signals at each end of Gerber Road, and donating \$300,000 for two NC DOT projects. They are in agreement with the Condition No. 3. With regard to stormwater, the stressed the site will be built to its pre-development status and the system has been designed to handle the 100 year storm, which is above and beyond the City standards. With briefly pointed out some site plan standards. He said that even though this is a big store, it is a reduction of what was on the site - the existing Gerber Plant was over 300,000 square feet and the proposed Wal-Mart is 210,000 square feet. He does feel that they will fit in with the surrounding community and urged Council to issue a conditional use permit.

Councilwoman Bellamy asked Mr. Stannard why Wal-Mart chose not to expand on their existing site on Hendersonville Road. He responded that the expansion is basically the addition of a grocery box. The existing site was too confining and they couldn't build an expansion that would make economic sense. However, he explained that part of the Wal-Mart program is to expand on existing sites, if at all possible.

Upon inquiry of Councilman Peterson and Councilwoman Field, Mr. Stannard basically explained how the stormwater pond is designed.

Mr. Ramey Kemp, Ramey Kemp & Associates, Inc., Consulting Engineers, showed Council the proximity of Gerber Road to Mills Gap Road (Applicant Exhibit 2 – Copy out of Traffic Impact Analysis Report which is City Exhibit 8). He pointed out that Hendersonville Road is a five-lane roadway that has adequate capacity to handle the traffic that is there now, the adjacent traffic that they've added to it from other developments, plus the Wal-Mart traffic. The question is whether there is additional capacity on the side streets. The key point is that they have done what needed to be done on Gerber Road to improve that capacity. Plus, the developer has offered money to make additional improvements on Mills Gap Road. The reason they didn't offer to make any improvements in the northbound direction at the intersection of Sweeten Creek Road and Gerber Road is that there is already an existing left-turn lane on that roadway.

Ms. Dafney Davis, Community Affairs Manager for Wal-Mart Stores Inc., explained why Wal-Mart wants to pursue this project. Wal-Mart is committed to their customers, their associates and their communities. They want to relocate to this new facility to better serve their customers. They need to expand to continue serving their customers in a manner they expect. They hear requests for additional merchandise, groceries and services, like wider aisles. This facility will also give them the opportunity to expand their work force. Wal-Mart's positions are about 70% full-time and 30% part-time. Wal-Mart employs more people in this country than any other private business – only the federal government employs more people. Wal-Mart offers a comprehensive package for health insurance, profit sharing, 401-K plan, a discount on company stock and a number of other benefits. This project will also give Wal-Mart the opportunity to expand their involvement in the community as the stores are encouraged to participate with local non-profit organizations.

Upon inquiry of Councilwoman Field, Ms. Davis said that if the City does not issue a conditional use permit to Wal-Mart for this store, they will pursue some other relocation area. Most of their energy is focused on this project, however, if this does not work out, they will look at the option of relocating outside the City limits. With regard to two sites Wal-Mart was looking at to relocate in the City of Asheville, Ms. Davis stated that they are still looking at the Sayles Bleacheries site location, however, things are not moving forward right now. She believes both

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Supercenters can be very successful. With regard to economic impact, she said there will be an increase in sales tax but the primary difference will be the addition of grocery.

Councilwoman Bellamy asked how many new employees would be hired. Ms. Davis said that they will hire approximately 500 new employees because they like to promote from within. Ms. Davis explained why they do not provide an average salary, however, all Wal-Mart associates are paid above the minimum wage.

Mr. Craig Justus, attorney representing Wal-Mart and the property owner who owns the site where the Wal-Mart project is proposed, stressed this is a conditional use permit process, not a popularity contest. There are standards in the UDO and those are standards are set out for any developer to follow so City Council can give a fair application of rules to everyone. Wal-Mart has met all the technical standards in the ordinance. What is left is to look at the seven conditions which must be met in order to issue a conditional use permit. Others may say that the property should be used for industrial purposes and that it is not suitable for commercial use, but those comments will not be relevant to City Council's consideration. He explained that those are policy decisions that City Council makes when they rezone property. Approximately a year ago they came before City Council regarding this property, which was all zoned industrial, and there was great discussion at that time on what would be best for this entire piece of property. City Council decided that it would be appropriate to split-zone this property, retaining a tremendous amount of the property for industrial purposes (405,000 square feet immediately to the north). City Council rezoned this acreage to allow more flexibility and to allow a developer to come in and develop it for commercial uses (Applicant Exhibit 3). Those policy choices were made a while back.

Mr. Justus said that he felt the traffic will be the principle issue. He said it was important that the Council focus in what the requirements are in the ordinance. People will say the existing traffic in the area is a problem and therefore Council should not allow a Wal-Mart. The standards in the ordinance ask if Wal-Mart is causing the problem and the answer is no. After numerous meetings with staff, hiring a traffic consultant, and preparing a TIA and various revisions, Wal-Mart and City staff have agreed to certain conditions. Hendersonville Road and Sweeten Creek Road have adequate capacity to serve this property at a Level of Service D which level is typically found in an urban area. In terms of expansion and improvements to Gerber Road, the issues were identified and Wal-Mart has agreed to do all the improvements that were requested by City staff. Wal-Mart has never said no to any of the conditions. He said that Mr. Moule's comment that Wal-Mart refused to do physical improvements to Mills Gap Road is not correct. The statement should have been, it was determined that Wal-Mart would have a 7% impact on traffic on Mills Gap Road. Mills Gap Road is an existing problem – not caused by Wal-Mart. In the Asheville Urban Area Thoroughfare Plan (Applicant Exhibit 4), Mills Gap Road has been identified as a problem at least back to 1989 and that improvements need to be done. He hoped that City Council would not hold Wal-Mart at fault for the existing problem with Mills Gap Road, when (1) it doesn't provide the direct access to the property and (2) Wal-Mart is only contributing 7% of additional traffic on that road. This is unprecedented in the City of Asheville that a developer has stood up and said he would contribute money to what their traffic impact will be on side streets that are 1/4 mile away from the property. The reason Wal-Mart can't do physical improvements to Mills Gap Road is because it is controlled by the NC DOT. If the City of Asheville controlled that right-of-way, then more than likely the City would have been planning for improvements to Mills Gap Road a long time ago. The City's only power is to talk with the NC DOT and try to convince them to do improvements. Again, Wal-Mart has identified how much traffic it will add to Mills Gap Road and has said they will pay their share of those improvements. It's not fair to ask Wal-Mart to acquire right-of-way and build a new Mills Gap Road when only 7% of increased traffic is attributable to this site. They are willing to pay their fair share. He stated that if this Council wants to impose reasonable conditions that tie it to the proportional impact for Wal-Mart, they will agree to pay. In terms of signalization, he said that in

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the Thoroughfare Plan it talks about a "wish list" for the City of Asheville, one of which is signalization along Hendersonville Road. Wal-Mart is contributing money in order for that signalization to take place. Mr. Moule has indicated that growth is happening in south Asheville without Wal-Mart. Mr. Moule identified that during

the period of build-out for Wal-Mart, there be projected a 21% increase in growth in traffic in that area. Wal-Mart is only contributing during the build-out period 1/3 of that 21% and Wal-Mart has been tagged with the money to pay for that 1/3 increase over the build-out period. You are not seeing the other 2/3 that will be causing the growth during this period of time paying their share. The residential growth, building of office parks and a pharmacy going on out there are not paying for what they are causing in terms of impacts. Again, Wal-Mart has identified it's impact it will have on these roads and is paying their fair share. To ask Wal-Mart to build new roads for the City of Asheville is not fair to Wal-Mart. He asked Council to look at the element of fairness and it's own standards and to say Wal-Mart has caused the problems out there is not fair. If Wal-Mart is not issued a conditional use permit, it will potentially build on the outskirts of the City of Asheville and that is where you get urban sprawl. Council needs to place the multi-use center where the people are, not on the outskirts of town.

Mayor Sitnick said it was great that Wal-Mart is going to pay some impact fees. However, in all fairness, it takes years for projects to come to fruition, even when they get on the TIP, and if Wal-Mart is paying 7% which is indeed their impact, the taxpayers pay for the rest of that impact. She noted that the City taxpayers pick up a lot of the costs for use of Asheville as a western North Carolina and regional hub.

Vice-Mayor Cloninger said that the City's Sustainable Economic Development Plan has been referred to and asked that it be included as part of the record (City Exhibit 11).

Throughout the public hearing process, City Attorney Oast cautioned Council about receiving information from people who are not present.

The following individuals spoke in opposition of granting a conditional use permit to Wal-Mart to construct a Supercenter at the intersection of Gerber Road and Hendersonville Road, for several reasons, some being, but are not limited to: there is an existing Wal-Mart; the immense economic power eliminates competition; well-paying jobs will be lost or traded for low-waged benefit positions; property tax revenues will fall because abandoned businesses and property values will decline; Sweeten Creek Road is the artery used for tractor trailers into and out of Wal-Mart for supplies; Wal-Mart should build a connector road to make up for the one they are losing – Gerber Road; there is existing traffic congestion in the area; they generate abandoned shopping areas; anxiety levels caused by crime taking advantage of the all-hours opportunity and crowd anonymity; major losses in economic potential to south Asheville; increased tax revenue is a myth; increase in crime; road maintenance will cost more; Sweeten Creek Road is already dangerously overloaded and will take burden of the increased automobile traffic; taxpayers are asking to pay for expenses caused by arguably the wealthiest corporation in the world; de facto loss of Gerber Road as the only connector between Sweeten Creek Road and Hendersonville Road for two miles; sales tax revenues may actually fall because money spent at Wal-Mart leaves the community; there are approximately 2,400 residents that live along Hendersonville Road and they have no pedestrian accommodations of sidewalks or crosswalks, Hendersonville Road speed limits needs to be reduced; South Asheville does not need a Supercenter because there are already four supermarkets within a very close distance; while south Asheville is waiting for proposed traffic improvements, the south Asheville residents are jeopardized by that delay and by Wal-Mart's increase in traffic; multiple references in the Sustainable Economic Development Plan for the need to preserve industrial spaces; even though the Stormwater Management and Erosion Control Report by Freeland & Kauffman is in conformance with the City guidelines and specifications, however the engineer's study is narrowly confined to the bounds of the site; the holding ponds are too small to adequately handle

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realistic runoff from the site; neither the developer nor City staff has shown that the existing downstream flood danger from cumulative development has been adequately modeled or is mitigated by the proposed project; increased traffic on Hendersonville Road, Sweeten Creek Road, Mills Gap Road, Rock Hill Road, Overlook Road, Rosscraggon Road, etc. with addition of Wal-Mart Supercenter; increase in traffic will

compound congestion and already hazardous driving conditions; leaky radiators and oil pans will also be in the water runoff; this proposed development does not conform with the Sustainable Economic Development Plan; the three intersections at gridlock are not likely to be any better with anything that can be done with them, including the roundabout; Wal-Mart only pays only slightly above minimum wage and out of that is taken the benefits and most people who work there are held to 3/4 of a 40 hour week; concerns about notice given when the rezoning of the property took place over a year ago; Wal-Mart Supercenter by-laws note that Supercenters not be built with a 30-mile radius of one another; upscale stores rarely want to locate near Wal-Marts but would provide a stronger economic base and better working conditions for citizens in our area; other large department stores have multiple entrances into their store to deflect traffic; Gerber Road is going to be a privatized road; traffic increase deteriorates the already failing level of service with greater delays and delays in obtaining fire, police, and ambulance service; added pollution generated harms citizens and plant life; services proposed by Wal-Mart are already established and in sufficient quality and in equally or more accessible areas; within 3 miles of the site there are five grocery stores, two department stores, five pharmacies, numerous service stations, restaurants, retail shops, beauty shops, banks, travel agent, ten beauty shops, and many more businesses; the sudden increase of commercial space will lead to vacancies in existing buildings and failures of existing shops; the existing Wal-Mart on Hendersonville Road has the potential to be more of a visual blight when left empty; the site is best used for industrial purposes; Gerber Road looks like a service entrance for Wal-Mart; the people who live north of Gerber Road on Sweeten Creek Road are being denied the access they deserve to the existing businesses on Hendersonville Road; the number of jobs created by the new Wal-Mart will perhaps equal the number that will be lost so there will have been no enhancement to this community; since the proposed Wal-Mart will be open 24 hours and is significantly larger than any other businesses in the area, it will not be in harmony with the neighborhood; increased air pollution; grid-lock traffic; more accidents; inability to get out of neighborhoods because of traffic; 24 hour noise from a 24-hour large operation with a minimum of 100 additional trucks a day and 4,000 additional cars or small trucks; bright lights; rats from usual mess behind Wal-Mart stores; future zoning changes of this type of complex will bring to further degrade the neighborhood until it becomes another Tunnel Road; there has been no environmental assessment performed; the retirement community contains aging people and their reflexes are slower and they have anxiety when it comes to large traffic and they already have difficulty into merging into what is already in the area; there is no traffic light for the residents of Racquet Club Road, however, there are 6 traffic lights within 350 yards from each other on Hendersonville Road; box stores do not fit into Asheville's vision; the Wal-Mart Superstore will not improve the quality of life for Asheville residents; people from Fletcher, southwest Buncombe, etc. will take I-26, then to Long Shoals Road to Overlook Road to Hendersonville Road and Overlook Road is a small, dangerous road; NC 25 and 25A, Patton Avenue and Tunnel Road are examples of roadways that experience the greatest traffic congestion and greatest frequency of motor vehicle accidents; this project is too big for Gerber Road; this large of project should be built next to an interstate; there will be a lot of truck traffic coming off of the new Interstate Exit on I-40 on Sweeten Creek Road; a serious existing traffic problem already exists in the area now; traffic needs to be fixed before additional incremental development is approved; a small increment in volume can cause dramatic increase in delay; there is a serious need to look at the accident history at these intersections; study needs to be further made to address the rail traffic and the interconnection of the railroad signals with the highway signals at Sweeten Creek Road and Mills Gap Road to see if queues are going to be so severe that there may need to be some relief; municipal governments can deny conditional use permits based on very similar circumstances; there should be a moratorium on big box development in the City until the people together decide what they want to do on this

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issue; research on big box development reveals negative impacts on the community with regard to wages, benefits, taxes and land market impacts; there will be an increase of traffic on Sweeten Creek Road which has greatly accelerated since the opening of the new I-40 ramp located at Sweeten Creek Road; women do not benefit from the type of jobs generated by large retailers such as Wal-Mart; Wal-Mart is indifferent toward

the safety of employees and customers; when resources are utilized to construct a large shopping store, more minerals are mined, more plastics are created, more trees are cut down, more fossil fuels are burned – all of which are destructive to the environment in general; statistics show that for every two jobs Wal-Mart supplies, three are lost in the surrounding community; Wal-Mart is an anti-union employer; safety of the children who ride school buses on these roads should be considered; the size of the project is not compatible with other businesses in the area; Mills Gap Road will have to absorb the displaced traffic from Gerber Road; Sweeten Creek Road traffic must be addressed before considering a project of this size; you cannot count on the mitigation improvements by the NC DOT happening in a timely way to keep traffic from getting much worse; the City has a lack of suitable sites for desired industries and businesses within the City; left turn lane going north on Sweeten Creek Road and Gerber Road is not adequate; the existing Wal-Mart's parking lot is never more than half full thereby showing them they don't really need to expand; residents in the area already pay their fair share through their taxes; there will be construction traffic in the area while the project is being constructed; there has not been an analysis performed for the increased traffic on Sweeten Creek Road due to the new I-40 interchange; there will be no allocation of funds to any of the roads until the year 2008, which means that the residents will be impacted for several years after this development is open and doing business; 10-20 smaller businesses will close because of their inability to compete fairly with this discount Supercenter; and of 390 abandoned stores left by Wal-Marts to move into Supercenters, 13 are in North Carolina, and not including the businesses that closed within the strip malls:

Mr. George Clark, 95 Ballantree, representing Upper Ballantree Citizens for
Better Planning

Ms. Anne D. Campbell, 102 Crowfields Drive (Neighborhood Exhibit 1)

Ms. Lillian Hamilton, 83 Hollybrook Drive

Mr. A. James Siemens, Attorney for Crowfields Condominium Association

Mr. Nathaniel B. Guttman, Consultant to Siemens Law Office P.A. (Neighborhood
Exhibit 2)

Mr. Kenneth M. Partin, Executive Director of Givens Estates (Neighborhood
Exhibit 3)

Representation of the Southern Appalachian Biodiversity Project

Mr. Andrew Houston, representing Smart Growth Partners (Neighborhood Exhibit 4)

Mr. Jim Christian, resident of Ballantree Subdivision

Ms. Cynthia Thornton, President of the Ballantree Homeowners Association
(Neighborhood Exhibit 5)

Ms. Donna W. Kelly, member of the Black Mountain Swannanoa Valley Land
Use Task Force (Two Neighborhood Exhibits 6)

Mr. George Rebow, resident of 7 Elmwood Lane

Ms. Carita A. Bird, resident of 18 Clubhouse Court (Neighborhood Exhibit 7)

Ms. Elizabeth Cohen (Neighborhood Exhibit 8)

Ms. Carol Heid, resident at 56 Park Avenue (Neighborhood Exhibit 9)

Mr. Jim Heid, resident at 56 Park Avenue (Neighborhood Exhibit 10)

Ms. Maureen Christian, resident at 3 Elmwood Lane

Ms. Margaret Shook, resident at 709 Crowfields Lane (Neighborhood Exhibit 11)

Ms. Julie Brandt, resident at 71 Pine Forest Drive in Weaverville (Neighborhood Exhibit 12)

Ms. Maria Young, resident at 16 Oakwilde Drive (Neighborhood Exhibit 13)

Ms. Laurel Eide, resident at Blake Mountain Estates (Neighborhood Exhibit 14)

Mr. Jim Torpey, resident at 7 Gardenwood Drive

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Mr. Richard Green, representing the Southside Village Homeowners Association

Dr. David B. Clarke, Professor at Clemson University in the Civil Engineering Department (Neighborhood Exhibit 15)

Mr. Lyman Gregory, attorney representing Citizens for Health, Safety and Welfare (Two Neighborhood Exhibits 16)

Ms. Rebecca Campbell, representing Southeast Network for Intentional Communities (Neighborhood Exhibit 17)

Mr. Adam Balus, representing Earth First (Neighborhood Exhibit 18)

Mr. Bill Fesperman, representing New Hope Presbyterian Church (Neighborhood Exhibit 19)

Ms. Lisa Schiess, representing Community Supported Development (Neighborhood Exhibit 20)

Ms. Sharon K. Martin, representing Asheville Direct Action Network (Neighborhood Exhibit 21)

Ms. Shirley Fetter, representing Spruce Chase, LLC, (Neighborhood Exhibit 22)

Mr. Cicada LaFey, resident at 362 London Road (Neighborhood Exhibit 23)

Ms. Lola LaFey, resident at 362 London Road (Neighborhood Exhibit 24)

Ms. Janet Price-Ferrell, resident at 3 Ballantree (Neighborhood Exhibit 25)

Ms. Laura Whitley, worker in south Asheville

Ms. Betty Lawrence, resident on Hillside Street (Neighborhood Exhibit 26)

Mr. John Traw, resident in Park Avenue (Neighborhood Exhibit 27)

Ms. Gail Moody (Neighborhood Exhibit 28)

Mr. Roger Smith, resident at 9 Stockwood Road

Ms. Lynn Johnson, resident at 291 East Chestnut Street

Ms. Darcel Eddins, representing the Western North Carolina Green Party (Three Neighborhood Exhibits 29)

Mr. Fred English, resident at 17 Pressley in Haw Creek, spoke in support of the Wal-Mart Supercenter stating that the area needs a Wal-Mart.

Mr. Justus said that Mr. Jackson Ward has an ownership interest in the property that Wal-Mart is proposing for the site and he also has an ownership interest in a considerable portion of Mills Gap Road. Since the a major issue of concern is the traffic on Mills Gap Road, he asked City Council to consider a one month continuance so that they can explore with City staff and the NC DOT the possibility of improving the situation on Mills Gap Road, even though they contend they are contributing what their impact will be to that Road.

When Mr. Stannard asked if Mr. Guttman was a professional engineer, Mr. Guttman replied that he is not, but he is a scientist. Mr. Stannard said that he is registered professional engineer in the State of North Carolina along with ten other states and they have been building Wal-Mart stores for about 12 years. They have built over 150 of them so they have very vast experience in stormwater design. He said that they would be willing to provide further studies downstream, since they are designing this pond system for the 100 year storm, which is higher than to the City's standards of a 10 year storm. He corrected a technical error regarding information based on North Carolina Sedimentation and Erosion Control Handbook. He explained the rational method vs. the SCS method. In addition, Mr. Guttman's report states that downstream flooding potential should be considered. That is not disputed, however, all of the comments made in his report are based on the assumption that there is flooding downstream caused by the Gerber site and he would refute that.

Mr. Justus confirmed with Mr. Shuford that, in terms of a condition within the control of Wal-Mart, there is no condition that is more stringent than developing a stormwater management system at pre-development conditions, which Wal-Mart is required to do.

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Mr. Ken Putman, Division Operations Engineer with the NC DOT, said that with regard to the railroad issue, the existing signal at Gerber Road and Sweeten Creek Road has been there for about nine years. It is state policy, based on the national manual, that NC DOT only considers railroad preemption when the railroad crossing is 200 feet or less to the intersection. In this case it is greater than 200 feet and that is why the railroad preemption was not put in in 1991. As far as he knows, they have never had any type of problem there from the initial installation to the present time.

Mr. Putman said that the NC DOT has been watching the intersection at Mills Gap Road and Sweeten Creek Road and they do recognize there are problems there. This spring they did revise that signal. Previous to that, they have tried to do some widening on Mills Gap Road for the heavy right turn that comes to get on northbound Sweeten Creek Road. They have widened just about as much as they can without moving some major utilities, including a gas line. At their November board meeting, \$100,000 was approved for them to do additional lane improvements along that section. What they plan to do with that money, assuming they can get the right-of-way established, is to finish the widening between Gerber Road and Mills Gap Road and have a full three lane section. That can probably be built in the spring.

Mr. Kemp responded to a concern about the left turn lane on the Gerber Road/Sweeten Creek intersection may be too short. He said if that is the case, they will look at it. He said that Norfolk Southern said they would furnish more detailed information regarding the number of trains that cross the railroad track, however, until NC DOT says otherwise, the best solution is to do what they are proposing, which is to try to put enough storage in the right turn lane off of Sweeten Creek Road into the site. And, enough storage in the left turn lane coming into Gerber and going into the site to provide for storage of vehicles when there is a train crossing there. With regard to Overlook Road (Applicant Exhibit 5), he felt that the Wal-Mart traffic would not have a big impact on that road. With regard to driveways into the site, he said there are actually three, which is normal for a retail center of this size. In addition, they have a truck access in the rear near the railroad tracks. The TIA analyzed five intersections and two were on Sweeten Creek Road.

Mr. Justus entered into the record a photograph of the Gerber Plant site prior to its demolition which reflects the bulk of the building that existing on the site (Applicant Exhibit 6). He also entered copies of the Purchase Agreement (Applicant Exhibit 7) and First Amendment to Purchase Agreement (Applicant Exhibit 8) to show the relationship between Wal-Mart and Asheville Hendersonville Investors, LLC. Asheville Hendersonville Investors LLC is the seller of this property and Wal-Mart is the purchaser of the property. This is a purchase agreement arrangement, not an option arrangement. Once all the conditions have been met, Wal-Mart has an obligation to buy this property. All the conditions of this agreement have been satisfied, except for the application of this site plan and the issuance of the conditional use permit.

Mr. Moule responded to questions from Ms. Young on why Overlook Road and Hendersonville Road was not included in the TIA. He also responded that the UDO requires developers to perform a TIA. That analysis was performed by the traffic consultant hired by Wal-Mart, as per the standards outlined in the ordinance and under the guidance of City Engineering and Planning & Development staff, in conjunction with the site plan. That is why there were subsequent submittals because the City did not get the answers they wanted the first time.

With regard to a question from Ms. Eide, Mr. Stannard said that there is an access Gate 30 which comes by the warehouse. He talked to the property owner last week. The gate sits adjacent to where the stormwater ponds are going to be. It will remain open as a temporary access during construction so that the property owner can access his warehouse. They will eventually take that access road out when the development is complete.

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Mr. Moule then responded to questions from Ms. Thornton regarding the TIA and what areas were and were not included in the study (Neighborhood Exhibit 30).

Mr. Guttman said that he is a scientist, not a registered engineer. He said he was an expert in the creation and use of the curves that was used in the model. He said the curves, whether they came from the state or the City, are out of date, in terms of the data that they used to generate them and the methods as well. The plan, while he agrees in concept, has some very bad input data. What was not considered with regard to the downstream flooding was the holistic approach in that prior to the widening of US25 there were certain

drainage features in that whole basin. After the widening of Hendersonville Road and the rapid expansion of development from the top of the mountain on down to the road, the characteristics of the whole Busbee drainage system have changed and those were not considered at all. It's that area holistic approach which is creating a flooding, not the site itself.

Dr. Clarke said he was glad at least some consideration was given to the railroad crossing issue. He said it is 224 feet from the stop bar at the intersection of Gerber Road from Sweeten Creek Road back to the railroad crossing, which is just outside the 200 foot distance mentioned by Mr. Putnam. We are right at the threshold of something that needs to be looked at.

City Attorney Oast outlined the options available to Council. One is that after hearing closing statements, the Mayor can close the public hearing and Council can vote on what it has heard at the public hearing tonight and direct staff to come back with findings and conditions as appropriate. The ordinance needs to pass at least with a 2/3 vote to avoid a second reading. Council usually directs staff to develop findings and to come back to City Council and that could constitute a second vote. Another option for Council is to continue the public hearing for the limited purpose of receiving new information on Mills Gap Road issue. If Council chooses that option, Council should allow arguments to be made after they receive that information and the public hearing should remain open until then.

Councilman Worley said that he would be inclined to continue the public hearing and that it be limited in terms of receiving additional input as a result of the new information. He would like the opportunity to see what the additional information will be presented and also to review the Sustainable Economic Development Strategic Plan.

Mr. Shuford said if Council chooses to continue the public hearing with the idea of getting more information about the Mills Gap Road improvement proposal, he said there were other issues he noted that Council may want additional information on. Those issues being (1) the railroad safety issue which may merit some additional comment by the applicant; (2) whether or not the store, which will be vacated by Wal-Mart if this project is approved, will stay vacant as a result of a continuation of a lease; (3) since there is a willingness to do further stormwater assessment on the part of the applicant, some of the issues Mr. Guttman raised could be addressed; (4) the Sweeten Creek Road issue with regard to the fact that there could be a three lane configuration of the roadway segment between Mills Gap Road and Gerber Road; and (5) the issue with regard to Gate 30 and how that would get resolved. Council may wish to get these additional issues addressed if the public hearing is continued.

Councilman Hay said that if the public hearing is going to be continued, he would be interested in knowing whether the Sweeten Creek Road interchange will make a difference in this project. He would also like to know more about exactly what the NC DOT schedules are or are not on the widening of Sweeten Creek Road. In addition, he would be interested in hearing more about the stormwater issue and City staff's evaluation of the engineering report and whether or not it will do what it proposes, which is to bring the site back to pre-development stage.

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Mayor Sitnick said that if a continuance is approved, she would like more information regarding emergency vehicles being able to reach their destination quickly.

Councilman Worley moved to continue the public hearing until December 19, 2000, in order to hear responses to the issues outlined above by Mr. Shuford, Councilman Hay and Mayor Sitnick. This motion was seconded by Councilwoman Field. Said motion failed on a 3-4 vote, with Councilwoman Field, Councilman Hay and Councilman Worley voting "yes" and Mayor Sitnick, Vice-Mayor Cloninger, Councilwoman Bellamy and Councilman Peterson voting "no."

Mr. Justus reiterated that there are certain standards in the ordinance that everyone is required to follow and City staff has indicated that Wal-Mart has met all those conditions. There has been no information presented other than general objections to Wal-Mart. Fortunately the ordinance is not set up on a popularity contest. Whether or not Wal-Mart is competitive or not is not one of the standards, what wages Wal-Mart has is not one of the standards, and what Wal-Mart plans to do with it's store when it moves is not one of its standards. The key issue raised that deal with the standards is traffic. Wal-Mart is not causing a public health and safety problem nor is Wal-Mart causing traffic congestion or a traffic hazard. These things may already exist, but they exist not necessarily along Gerber Road – Gerber Road will be better. It's not along Hendersonville Road – we will make Hendersonville Road better. It's not Sweeten Creek Road in terms of the intersection of Sweeten Creek Road and Gerber Road – we are making that better as well. All discussion about traffic hazard has dealt with Mills Gap Road which is 1/4 of a mile away. The only reason Wal-Mart looked at Mills Gap Road was because the City's Traffic Engineer asked that it be looked at. City staff identified what increase in traffic Wal-Mart would have on Mills Gap Road and they quantified their impact. Wal-Mart was then assessed a condition to deal with that impact and that condition was to contribute money. The key part is Mills Gap Road has been a problem since at least 1989. Just because Wal-Mart will add 7% additional traffic on Mills Gap Road doesn't mean they have to re-build Mills Gap Road. City Council can say what impact Wal-Mart will have and hold them responsible for that impact, but not for the existing conditions. It would be critical if there was no other access to this property and all the roads around it were inadequate, but that is not the testimony. Hendersonville Road and Sweeten Creek Road are adequate, with the conditions imposed upon Wal-Mart. The only road that may not be adequate, when Wal-Mart is built out, is Mills Gap Road. And what Council has required of Wal-Mart is not to go in there and re-build Mills Gap Road for the City, but to contribute to the improvement of Mills Gap Road.

Mr. Justus said that in terms of stormwater, the point of the stormwater is there is a condition imposed on Wal-Mart that they will develop their stormwater management to pre-development conditions. Wal-Mart is doing ten times more than what the City's ordinance requires. Wal-Mart has done much more in many different areas, e.g. buffers, bicycle racks, decorative street lighting, etc. Again, City staff has said Wal-Mart has met the conditions of the ordinance and there is not one expert that says they are causing a problem out there and to the extent that there is a traffic impact, they are going to mitigate that. If a continuance had been granted, they were willing to even go beyond their impact on Mills Gap Road and try to address other ways to alleviate Mills Gap Road even though they did not cause the problem. Wal-Mart is willing to abide by all reasonable conditions that this City Council would impose upon them. Wal-Mart has not turned down one thing City staff has asked of them and they have worked with them long and hard and have agreed with everything City staff has said. To deny this project because of Mills Gap Road, an existing condition 1/4 mile away, is not fair and not the rule of law in the State of North Carolina.

Mr. Siemens said that the first priority in the Sustainable Economic Development Strategic Plan is the real estate priority - addressing the shortage of industrial sites and buildings, developing a more efficient and sustainable urban land use pattern within the City. One quarter of the Plan is devoted to that priority. That is a criteria under the conditional use analysis. Does

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this proposed development fit the plans that this City Council has adopted. The answer is no. The development also does not fall under the Smart Growth policies. He conceded that policies are not the same things as plans, but the Smart Growth policies dovetails very neatly with the Economic Development Plan. In addition, no one has done a study on how stormwater affects Crowfields.

Mr. Gregory said that regarding the traffic issue, Mr. Justus is making a point that we should make Wal-Mart accountable for what Wal-Mart's contribution is and the evidence from the applicant is a 7% volume increase. Evidence has been presented that the traffic impact is not narrowly confined to the site – it spreads

out to a farther area, such as to Mills Gap Road. There was even a measurable impact from Wal-Mart that could be measured in terms of delay at the Long Shoals Road intersection. The impact is not just from the increase in traffic, but the extra delay. The impact is greater than the 7% and the conditions they are being asked do not address the actual impact. Also those conditions are completely speculative if they are ever going to be met – the closed loop system is at the application phase and it's for a higher amount of money than is typically granted for those kind of things; and Mills Gap Road is not going to be on the TIP. The N.C. Court of Appeals, dealing with these traffic issues, has said city councils can deny these permits when this type of evidence is before them. It is substantial, competent evidence and in spite of the fact there may be improvements down the road, it's just too much to ask to hope for all these conditions to be met.

There being no request from the applicant for rebuttal, Mayor Sitnick closed the public hearing at 12:20 a.m.

Vice-Mayor Cloninger moved to deny the conditional use permit for the construction of a Wal-Mart Supercenter at the intersection of Gerber Road and Hendersonville Road. This motion was seconded by Councilman Peterson.

Vice-Mayor Cloninger said he could not find that the proposed use is reasonably necessary to the public health, safety and welfare. There is nothing necessary about this proposed Wal-Mart. There are already two Wal-Marts, two Lowes, two Home Depots, two K-Marts, and a multiple other businesses that provide the same products and services this proposed Wal-Mart offers. He does not feel that the project fits in with the harmony of the neighborhood. It does not conform with the Sustainable Economic Development Strategic Plan adopted by the City in that this is one of the last sites within the City appropriate for industrial uses. He cannot find that the proposed use will not cause undue traffic congestion or cause a traffic hazard. He does not take much comfort in the fact that the NC DOT will improve Sweeten Creek Road seven or eight years in the future. He felt Council should consider issuance of the permit on the current conditions.

Councilman Peterson agreed pretty much with Vice-Mayor Cloninger. He reviewed the expert evidence that was offered in that delays increase rapidly at high volumes. Since we are already at high volumes, adding over 4,000 new trips with the additional changes that are coming to Sweeten Creek and the vicinity of the railroad tracks, he felt there was a potential to endanger public safety. He also felt this project would cause undue traffic congestion and create a traffic hazard.

Councilwoman Bellamy said that there have been many things stated that are not pertinent to the decision before Council. Regardless of how we feel personally about Wal-Mart's business practices or how they run their management, we must focus on the seven conditional use standards outlined in the UDO. Based on the information tonight that focus solely on those standards, she felt a holistic look at the traffic impact was not taken into account. According to the staff report submitted by staff (City Exhibit 4), the TIA submitted by Wal-Mart limited their study to traffic around the project. Additionally, the percentage used to estimate the growth

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factor of added traffic may be too insignificant in this high growth area. Therefore, she will vote against the project based on these facts. She is comfortable with the fact that Wal-Mart does not fully meet the standards numbers one and seven.

Councilman Worley agreed that there were a number of things City Council cannot consider, i.e., wages, and the effect a Wal-Mart will have on other businesses. City Council must base their decision on the seven conditions for conditional use standards. When he looks at those conditions, the primary standard that has been the subject of most consideration is traffic. There is no question that the traffic on Hendersonville Road, Mills Gap Road and Sweeten Creek Road is difficult at times. Condition No. 7 is, will the proposed use cause undue traffic congestion or create a traffic hazard. When you listen to the expert testimony provided, particularly the testimony of the traffic engineer representing the residents in opposition to the Wal-Mart, and

the TIA, he explained why he felt Wal-Mart will not increase undue traffic congestion or create a traffic hazard. With regard to stormwater, the stormwater management actually improves stormwater runoff to the pre-development stage and is based upon a 100 year storm, rather than our ordinance mandated 10 year storm. He felt this project did fit with the City's Smart Growth policies. He said if we don't follow our Smart Growth policies, we will gradually increase the burden on our City taxpayers.

Councilwoman Field said that she is a retailer and employs all women, part-time at their request. She felt defeated in that the community was trying to make it look like Wal-Mart would put all small businesses out of business, and she is a small business owner. In the last nine years she has been on City Council she has done her best to respect the zoning process. If the area is properly zoned and the project meets our standards, City Council should give them the opportunity to build what they want to build. As an architect, she believes that anything can be made beautiful and any kind of activity can be located adjacent to any other kind of activity. She felt sorry for parts of our community that need a job or would like to move up in the world because this community did not want a Wal-Mart Supercenter.

Councilman Hay said that in the last six months City Council has had an opportunity to put requirements/conditions on developers making them do things the City could never make them do before. The projects moved forward and were much better than they started. He felt the conditional use process is a terrific tool for implementing our Smart Growth policies and our economic development goals. He was in favor of a continuance because he was curious about what Wal-Mart would come up with regarding improvements on Mills Gap Road. After he listened to all the comments, he could not find the proposed use will not cause undue traffic congestion.

Mayor Sitnick said that Condition Nos. 1, 2 and 7 have not been met. She cited health and safety concerns, especially regarding emergency vehicles. There are a number of issues relating to traffic. She felt it was important to understand what Councilwoman Field said about following and respecting the zoning rules. However, she felt it is Council's charge to protect the people of the community and she doesn't think that was done. She didn't think the fixing of Mills Gap Road was sufficient. The existing conditions are terrible. When you review the TIA and when you hear Mr. Justus' justification for the fact that they didn't cause the problem, well, that's true. But we should do everything we can to protect people from exposure to unhealthy conditions, even if it's dangerous traffic conditions. The fact that City staff recommended certain traffic improvements that were contingent upon the NC DOT having the resources to improve conditions was totally and completely inconsistent with the recommendation to approve this project. She questioned how a project can be approved, but in order for it to be safe, things have to happen, when you know things may not happen anytime soon. With 21% growth projected, this one project was going to be responsible for 1/3 of it. That shuts out smart growth, economic development and any plans for knowledge based industries, and in her opinion, small business – which accounts for 85% of the employment in this country.

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The motion made by Vice-Mayor Cloninger and seconded by Councilman Peterson to deny the conditional use permit to construct a Wal-Mart Supercenter at the intersection of Gerber Road and Hendersonville Road carried on a 6-1 vote, with Councilman Worley voting "no".

City Attorney Oast said that he would bring back the order denying the conditional use permit at Council's next formal meeting on November 28, 2000.

IV. UNFINISHED BUSINESS:

V. NEW BUSINESS:

VI. OTHER BUSINESS:

A. CLAIMS

The following claims were received by the City of Asheville during the period of October 20-27, 2000: Carla Clayton (Water), Kathleen Lasher (Police) and Michael Lurey (Water).

The following claims were received by the City during the period of October 28-November 2, 2000: Terry Fisher (Water), Leslie Patton (Water), Penne P. Rosenthal (Parks and Recreation), Stuart Mills (Water) and Nancy Rice (Sanitation).

These claims have been referred to Asheville Claims Corporation for investigation.

B. LAWSUITS

The City has filed a complaint on October 9, 2000, which is generally described as follows: City v. Jordan Nicole Mathis, a minor, by and through her Guardian Ad Litem, Virginia W. Cartner; and Paul Blankenship. The purpose of the lawsuit is to condemn an easement for a water line project. This will be handled by an outside attorney.

The City has received a complaint on November 3, 2000, which is generally described as follows: Johnnie E. Harper v. City of Asheville. The nature of the proceeding is a petition for de novo trial to reinstate his position of employment with the City of Asheville. This matter will be handled in-house.

VII. INFORMAL DISCUSSION AND PUBLIC COMMENT:

VIII. ADJOURNMENT:

Mayor Sitnick adjourned the meeting at 12:50 a.m.

CITY CLERK MAYOR
