

Regular Meeting

Present: Mayor Charles R. Worley, Presiding; Vice-Mayor Terry M. Bellamy; Councilman Joseph C. Dunn; Councilman James E. Ellis; Councilwoman Diana Hollis Jones; Councilman R. Carl Mumpower; and Councilman Brian L. Peterson; City Attorney Robert W. Oast Jr.; City Manager James L. Westbrook Jr.; and City Clerk Magdalen Burleson

Absent: None

INVOCATION

Councilman Dunn gave the invocation.

I. PROCLAMATIONS:

A. RECOGNITION OF UNC-CHAPEL HILL'S DEAN WILLIAM H. CAMPBELL

Mayor Worley recognized UNC-Chapel Hill's Dean William H. Campbell for his many contributions to pharmacy, health care and the City of Asheville's initiatives.

B. RECOGNITION OF THE ASHEVILLE URBAN TRAIL COMMITTEE

Mayor Worley read the proclamation proclaiming the Asheville Urban Trail Committee as the Asheville Parks & Recreation Department's 2002 Volunteer of the Year. He presented Ms. Grace Pless, Chair, with the proclamation. She then briefed City Council on the history of the Committee, which began in 1989 noting that their completed trail celebration will be on May 16, 2002.

C. PROCLAMATION PROCLAIMING MAY, 2002, AS "ORGAN DONATION AWARENESS MONTH"

Councilman Mumpower read the proclamation proclaiming May, 2002, as "Organ Donation Awareness Month" in the City of Asheville. He presented the proclamation to Mr. Alan T. McKenzie, CEO of the Buncombe County Medical Society, and Dr. Jim Montgomery, President of the Buncombe County Medical Society, who briefed Council on some activities taking place during the month.

D. PROCLAMATION PROCLAIMING MAY 18-24, 2002, AS "NATIONAL SAFE BOATING WEEK"

Councilman Dunn read the proclamation proclaiming May 18-24, 2002, as "National Safe Boating Week" in the City of Asheville. He presented the proclamation to Mr. Russ Martin, Local Commander of the Asheville Power Squadron, who briefed Council on some activities taking place during the week.

II. CONSENT:

Vice-Mayor Bellamy requested Consent Agenda Items K-O be removed from the Consent Agenda to be voted on separately.

A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON APRIL 23, 2002; THE COMMUNITY MEETING HELD ON APRIL 30, 2002; AND THE WORKSESSION HELD ON MAY 7, 2002

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B. RESOLUTION NO. 02-83 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO LICENSE AGREEMENTS WITH MORRIS COMMUNICATIONS INC. FOR ANTENNAS AT 36 RESERVOIR ROAD AND PEACH KNOB RESERVOIR

Summary: The consideration of a resolution authorizing the City Manager to execute License Agreements with Morris Communications, Inc. for antennas at 36 Reservoir Road and Peach Knob Reservoir.

The properties at 36 Reservoir Road (White Fawn) and Peach Knob Reservoir are the sites of telecommunication towers owned by the City of Asheville. The City leases antenna space on the towers and

ground space for related equipment.

Morris Communications, Inc., has operated an antenna and related equipment at each of the sites since December, 1996. There are three towers at 36 Reservoir Road and the Morris antenna is located on the tower known as the "U. S. Cellular Tower" which is immediately east of the proposed Sister Cities Park. The proposed License Agreements will enable Morris to continue operating antennas at each site; however, there is a provision, which allows either the Licensor or the Licensee to terminate the agreement upon 180 days notice. The term of the License Agreements will be 3 years with 2 renewal periods of 3 years. Morris will pay a License Fee of \$6,300 for the White Fawn site and \$5,100 for the Peach Knob site, the first term with a 10.5% increase at each renewal thereafter. In addition to the License Fee, Morris will pay a Utility Fee of \$150.00 per annum at each site.

The Notice of Intent to enter into License Agreements with Morris Communications was published on Friday, April 26, 2002, in the Asheville Citizen-Times. Ten days have passed since the publication and authorization to execute the License Agreement is being requested,

Planning Department staff recommends adoption of the resolution authorizing the City Manager to execute License Agreements with Morris Communications, Inc. for antennas at 36 Reservoir Road and Peach Knob Reservoir.

RESOLUTION BOOK NO. 27 – PAGE 153

- C. RESOLUTION NO. 02-84 - RESOLUTION SETTING A PUBLIC HEARING FOR MAY 28, 2002, TO CONSIDER THE VOLUNTARY ANNEXATION OF REYNOLDS MOUNTAIN SUBDIVISION, PHASE I**

RESOLUTION BOOK NO. 27 – PAGE 154

- D. ORDINANCE NO. 2915 - BUDGET AMENDMENT TO RECEIVE GRANT FUNDS FROM THE FEDERAL EMERGENCY MANAGEMENT AGENCY FOR A MOBILE SAFETY HOUSE**

Summary: The consideration of a budget amendment, in the amount of \$52,277, to receive grant money from the Federal Emergency Management Agency (FEMA) for a mobile safety house and associated equipment.

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The City of Asheville Fire and Rescue Department requested \$52,277 from FEMA for the purchase of a mobile safety house and associated equipment. Staff was successful in obtaining those funds and was awarded Federal grant EMW-2001-FG-06774. The grant provides 70% of the total project, with the remainder from Fire Department's operating budget.

The safety house is primarily designed to educate adults about fire safety and home safety. Part of the mobile house is also to educate the public about residential fire sprinkler systems.

City staff recommends City Council approve the budget amendment to receive grant money from FEMA.

ORDINANCE BOOK NO. 19 – PAGE 469

- E. RESOLUTION NO. 02-85 - RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE A CONTRACT WITH CRISP HUGHES EVANS, LLP, CERTIFIED PUBLIC ACCOUNTANTS, FOR AUDITING SERVICES FOR FISCAL YEAR 2001-02**

Summary: The consideration of a resolution authorizing the Mayor to execute a contract with Crisp Hughes Evans LLP, Certified Public Accountants, for auditing services for Fiscal Year 2001-2002.

N.C. General Statute sec. 159-34 requires that local governments of North Carolina have their accounts audited each fiscal year and submit a copy of the audit to the Local Government Commission.

In 1998 the City solicited proposals from 36 accounting firms to perform the City's annual audit. City Council selected Crisp Hughes Evans LLP to conduct the Fiscal Year 1997-98 audit and has re-engaged them annually through Fiscal Year 2000-2001. They completed all of those engagements in a satisfactory manner and have now submitted an engagement letter for the Fiscal Year 2001-2002 audit. The base fee has been proposed at \$54,000 (this is the same fee as last year and \$700 less than two

years ago). Funds are appropriated in the budget of the Accounting Division of the Finance Department.

City staff recommends City Council adopt the resolution, which authorizes the Mayor to execute a contract with Crisp Hughes Evans LLP for auditing services for Fiscal Year 2001-2002.

RESOLUTION BOOK NO. 27 – PAGE 155

F. ORDINANCE NO. 2916 - BUDGET AMENDMENT FOR A GRANT FROM THE N.C. DEPT. OF ENVIRONMENT AND NATURAL RESOURCES TO IMPLEMENT THE MASTER STREET TREE PLAN, PHASE III

Summary: The consideration of a budget amendment, in the amount of \$10,000, from a grant from the North Carolina Department of Environment and Natural Resources for implementation of the Master Street Tree Plan, Phase III.

The City of Asheville applied for funds in August 2001 for a grant from the North Carolina Department of Environment and Natural Resources, Division of Forest Resources in the Urban and Community Forestry Grants Program. The grant was recently awarded in the amount of \$10,000 and designated for implementing the next phase of the Master Street Tree Program (MSTP) in the east area of Asheville.

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The Parks and Recreation Department has completed the first two phases of the MSTP, and the Public Works Department will complete the remaining phases. Once complete, the MSTP will be an inventory of all the street trees on City right-of-ways located within the City limits of Asheville. The existing inventory is almost fifteen years old and does not accurately reflect the trees of the City. The next phase of the process will identify the location, size, condition, and site conditions of trees located in the east area of Asheville. The MSTP will serve as a critical link in developing a long term management plan for Asheville's urban trees, provide information for future tree planting and forestry planning, and provide educational and volunteer opportunities for community organizations.

The Parks and Recreation Department recommends City Council to approve the budget amendment in the amount of \$10,000 to establish a budget for the next phase of the MSTP.

ORDINANCE BOOK NO. 19 – PAGE 471

G. ORDINANCE NO. 2917 - BUDGET AMENDMENT TO ACCEPT GRANT FUNDS FROM THE COMMUNITY SOLUTIONS FOR YOUTH EMPLOYMENT

Summary: The consideration of accepting a proposal by Community Solutions for Youth Employment to fund and manage the Youth Employment Program for the Summer of 2002, and approval of a budget amendment, in the amount of \$37,400, to fund the program.

Community Solutions for Youth Employment (CSYE), part of a multi-agency support system for high risk youth ages 14 – 21 years of age, was informed of the City's inability to continue its youth employment program for 2002 due to budget constraints caused by State revenue shortfalls. CSYE is a program of Eliada Homes, Inc. CSYE, in cooperation with the Parks and Recreation Department, immediately began work to determine the best way to continue funding the youth employment program.

CSYE is proposing to fund summer jobs for 26 youth for eight weeks at 30 hours per week. In addition, CSYE agrees with the department that employment for these youth is only one part of the overall assistance that they need and therefore has agreed to manage the program for the Department at no additional cost. This management will include: recruitment of applicants, application activities, recruitment of employers in addition to the City of Asheville, interviewing activities, hiring, pre-employment training and orientation, job retention activities, mid-summer training, and volunteer placement for any additional youth needing experience but not included in the employment process. CSYE staff will provide weekly onsite contact with each youth employee to monitor their work and to supply support. CSYE will conduct an evaluation of the program. A special event at the end of the eight weeks is planned to celebrate the successful conclusion of the program.

The City of Asheville will accept a grant from the Community Solutions for Youth Employment for \$37,400 to fund the cost of the program. The City of Asheville will use these funds to pay the wages and social security for each youth and provide pre-employment drug screening. Cost to the City will be the staff and time necessary to process payroll and to administer the drug screening program.

Traditionally, youth employed through this program have worked in a number of different City Departments including Parks

and Recreation, Fire, Public Works and Human Resources.

The Parks and Recreation Department recommends that the City accept the proposal and grant funds from CSYE for the 2002 summer youth employment program and approve the budget amendment to fund the program.

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ORDINANCE BOOK NO. 19 – PAGE 473

H. RESOLUTION NO. 02-86 - RESOLUTION AUTHORIZING THE CITY MANAGER TO APPLY FOR A FEDERAL GRANT FROM THE U.S. DEPT. OF JUSTICE TO FUND THREE NEW POLICE OFFICE POSITIONS

Summary: The consideration of a resolution authorizing the City Manager to apply for a federal grant from the U.S. Department of Justice to fund three police officer positions.

The City is eligible to receive a \$225,000 grant from the U. S. Department of Justice, Office of Community Oriented Services, to fund three police officer positions for a period of three years. It is intended to assign three police officers to provide police services to the City's public housing communities. In consideration thereof, the Housing Authority of the City of Asheville has agreed to provide \$107,736 for the required local cash match. No City funds are required for the match.

City staff recommends City Council authorize the City Manager to apply for and enter into an agreement with the U.S. Department of Justice to fund three police officer positions.

RESOLUTION BOOK NO. 27 – PAGE 156

I. RESOLUTION NO. 02-87 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ACCEPT THE BID FROM MICHAEL FRISBEE TO PURCHASE 17 KENDALL STREET

Summary: The consideration of a resolution authorizing the Mayor to convey property at 17 Kendall Street in the West Asheville community to Michael Frisbee in the amount of \$10,780.

The City originally received an offer to purchase 17 Kendall Street from Neighborhood Housing Services in the amount of \$10,000. On April 9, 2002, the City Council directed the City Clerk to advertise for upset bids. The advertisement ran in the Asheville Citizen-Times on April 12, 2002, as provided in N. C. Gen. Stat. sec. 160A-269, and an upset bid was received by Michael Frisbee in the amount of \$10,780. Another advertisement ran on April 26, 2002, and no upset bid was received. Therefore, the offer to purchase from Michael Frisbee in the amount of \$10,780 was not upset and the sale to Michael Frisbee should be approved.

Community Development staff recommends adoption of the resolution authorizing the Mayor to convey the property at 17 Kendall Street to Michael Frisbee.

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J. RESOLUTION NO. 02-88 - RESOLUTION CONFERRING MAYOR'S POWERS AND DUTIES UPON VICE-MAYOR

RESOLUTION BOOK NO. 27 – PAGE 158

K. RESOLUTION MAKING PROVISIONS FOR THE POSSESSION AND CONSUMPTION OF MALT BEVERAGES AND/OR UNFORTIFIED WINE AT THE 2002 GOOMBAY! FESTIVAL

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L. RESOLUTION MAKING PROVISIONS FOR THE POSSESSION AND CONSUMPTION OF MALT BEVERAGES AND/OR UNFORTIFIED WINE AT THE 2002 GREEK FESTIVAL

M. RESOLUTION MAKING PROVISIONS FOR THE POSSESSION AND CONSUMPTION OF MALT BEVERAGES AND/OR UNFORTIFIED WINE AT THE MOUNTAIN SPORTS FESTIVAL

N. RESOLUTION MAKING PROVISIONS FOR THE POSSESSION AND CONSUMPTION OF MALT BEVERAGES

AND/OR UNFORTIFIED WINE AT THE ASHEVILLE DOWNTOWN ASSOCIATION'S 2002 EVENTS

O. RESOLUTION MAKING PROVISIONS FOR THE POSSESSION AND CONSUMPTION OF MALT BEVERAGES AND/OR UNFORTIFIED WINE AT THE BELE CHERE FESTIVAL

Consent Agenda Items K-O were removed from the Consent Agenda to be voted on separately.

Mayor Worley 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.

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

ITEMS REMOVED FROM THE CONSENT AGENDA TO BE VOTED ON SEPARATELY

K. RESOLUTION NO. 02-89 - RESOLUTION MAKING PROVISIONS FOR THE POSSESSION AND CONSUMPTION OF MALT BEVERAGES AND/OR UNFORTIFIED WINE AT THE 2002 GOOMBAY! FESTIVAL

L. RESOLUTION NO. 02-90 - RESOLUTION MAKING PROVISIONS FOR THE POSSESSION AND CONSUMPTION OF MALT BEVERAGES AND/OR UNFORTIFIED WINE AT THE 2002 GREEK FESTIVAL

M. RESOLUTION NO. 02-91 - RESOLUTION MAKING PROVISIONS FOR THE POSSESSION AND CONSUMPTION OF MALT BEVERAGES AND/OR UNFORTIFIED WINE AT THE MOUNTAIN SPORTS FESTIVAL

N. RESOLUTION NO. 02-92 - RESOLUTION MAKING PROVISIONS FOR THE POSSESSION AND CONSUMPTION OF MALT BEVERAGES AND/OR UNFORTIFIED WINE AT THE ASHEVILLE DOWNTOWN ASSOCIATION'S 2002 EVENTS

O. RESOLUTION NO. 02-93 - RESOLUTION MAKING PROVISIONS FOR THE POSSESSION AND CONSUMPTION OF MALT BEVERAGES AND/OR UNFORTIFIED WINE AT THE BELE CHERE FESTIVAL

Summary: The consideration of resolutions making provisions for the possession and consumption of malt beverages and/or unfortified wine at the following events: 2002 Goombay Festival, 2002 Mountain Sports Festival, 2002 Greek Festival, Asheville Downtown Association's 2002 events and Bele Chere 2002.

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The Asheville Goombay Festival is a unique celebration of African heritage and traditions. The Festival is co-sponsored by the Asheville Parks and Recreation Department and will be held August 23-25, 2002. The 2002 Goombay Festival has requested permission to allow possession and consumption of beer and wine during these events as they have been allowed in the past.

The Asheville Greek Festival is a unique celebration of Greek heritage and traditions at City/County Plaza. The Festival is co-sponsored by the Asheville Parks and Recreation Department and will be held September 27-29, 2002. The 2002 Greek Festival has requested permission to allow possession and consumption of beer and wine during these events as they have been allowed in the past.

The Asheville Mountain Sports Festival is a unique combination of competitions and demonstrations throughout Asheville. The Festival is co-sponsored by the Asheville Parks and Recreation Department and will be held September 27-29, 2002. The 2002 Mountain Sports Festival has requested permission to allow possession and consumption of beer and wine during these events.

For many years, the Asheville Downtown Association has co-sponsored with the City of Asheville events to bring both the public and visitors to the downtown area. These events include: *Moonlight Over Downtown* and four *Downtown After Five* activities. The Asheville Downtown Association has requested permission to allow possession and consumption of beer and wine during these events as they have been allowed in the past.

For many years, the Bele Chere Board in cooperation with the Asheville Parks and Recreation Department has produced Bele Chere to bring both the public and visitors to the Downtown area. This year the request is being made for July 26-27, 2002. The Bele Chere Board and Asheville Parks and Recreation has requested permission to allow possession and consumption of beer

and wine during this event as they have been allowed in the past.

The Asheville Parks and Recreation Department recommends approval of the resolutions to authorize the possession of malt beverages and/or unfortified wine for the above-mentioned events at specific locations and times noted in the resolutions.

Councilman Mumpower moved for the adoption of Resolution Nos. 02-89, 02-90, 02-91, 02-92, and 02-93. This motion was seconded by Councilman Dunn and carried on a 6-1 vote, with Vice-Mayor Bellamy voting "no."

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III. PUBLIC HEARINGS:

A. PUBLIC HEARING TO CONSIDER REZONING OF 5 LOTS AT CLAYTON ROAD FROM RS-2 RESIDENTIAL SINGLE-FAMILY LOW DENSITY DISTRICT TO INSTITUTIONAL DISTRICT

ORDINANCE NO. 2918 - ORDINANCE TO REZONE 5 LOTS AT CLAYTON ROAD FROM RS-2 RESIDENTIAL SINGLE-FAMILY LOW DENSITY DISTRICT TO INSTITUTIONAL DISTRICT

Mayor Worley opened the public hearing at 5:30 p.m.

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Urban Planner Carter Pettibone said that this is consideration of an ordinance to rezone 5 lots at Clayton Road from RS-2 Residential Single-Family Low Density District to Institutional District. This public hearing was advertised on May 3 and 10, 2002.

The project applicant, Biltmore Baptist Church, is requested the rezoning of approximately 61.97 acres (PIN Nos. 9634.08-89-1762, 9635.04-80-2415, 9635.04-81-4120, 9635.04-81-2207 and 9635.04-82-3111) to allow for future expansions and uses accessory to an existing place of worship. The RS-2 district does allow for Places of Worship as a use by right subject to special requirements. The Institutional District allows for a place of worship as a permitted use.

The properties are located in the City's extraterritorial jurisdiction (ETJ) near the intersection of Interstate-26 and Longs Shoals Road. Development in the area is sparse with the Coke-a-Cola distribution center located across the street to the southwest, a residential subdivision adjacent to the west side of the properties, and the French Broad River and vacant land surrounding the remainder of the site. The place of worship has been in existence for a number years and a master plan for the properties had been developed prior to its incorporation into the ETJ. The design of the master plan, which clearly defines future expansions for the place of worship and its accessory uses, is not consistent with the development standards of the RS-2 zoning district and/or the special requirements of Article 16 of the UDO (uses by right subject to special conditions). However, the master plan is consistent with the Institutional District requirements. It is the opinion of the Planning and Development Department that at the time the properties were incorporated into the ETJ, they should have rightfully been zoned Institutional to allow for the continued development of the master plan. In addition, it would cause a considerable hardship to require future development on the properties to meet the RS-2 district standards and special requirements of Article 16.

The Planning and Zoning Commission voted unanimously to recommend approval of the rezoning of the properties located at 35 Clayton Road from RS-2 to Institutional. The Planning and Development staff also recommends approval of the requested rezoning.

Mr. James Jones, representing Lampley and Associates, spoke in support of the rezoning so the Church can continue with their Master Plan.

Mayor Worley closed the public hearing at 5:35 p.m.

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

Vice-Mayor Bellamy moved for the adoption of Ordinance No. 2918. This motion was seconded by Councilman Peterson and carried unanimously.

B. PUBLIC HEARING TO CONSIDER REZONING 775 HAYWOOD ROAD FROM RM-8 RESIDENTIAL MULTI-FAMILY MEDIUM DENSITY DISTRICT TO CENTRAL BUSINESS DISTRICT

ORDINANCE NO. 2919 - ORDINANCE TO REZONE 775 HAYWOOD ROAD FROM RM-8 RESIDENTIAL MULTI-FAMILY MEDIUM DENSITY DISTRICT TO CENTRAL BUSINESS DISTRICT

Mayor Worley opened the public hearing at 5:36 p.m.

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Urban Planner Carter Pettibone said that this is consideration of an ordinance to rezone 775 Haywood Road from RM-8 Residential Multi-Family Medium Density District to Central Business District. This public hearing was advertised on May 3 and 10, 2002.

The applicant, West Asheville Development LLC, has requested the rezoning of approximately 0.21 acres (PIN No. 9638.13-14-5875) to allow for further development of the area at the corner of Haywood Road and Herron Avenue. The purpose of the Central Business District is to encourage a strong supportive retail center along with high-density residential development, which will complement surrounding neighborhoods.

The existing land uses in the area include single and multi-family residences to the north and east and retail and planned mixed-use development to the south and west that are part of the Bledsoe Building renovation project. The site's frontage is on Herron Avenue, but since the parcel will be part of the mixed-use development to the south it will be able to take advantage of the driveway accesses to Haywood and Herron that currently exist and are used by the Bledsoe Building.

In consideration of the adjoining zoning and land uses in the area to the south and west of the site and the project site's proximity to the Haywood Road thoroughfare, the proposed zoning change appears to be consistent with the intent and purpose of the Unified Development Ordinance (UDO). The proposed rezoning is also in keeping with the intent of the Haywood Road Corridor Plan, which was approved in 1999 to serve as a guide for future development along Haywood Road in the West Asheville neighborhood. Two of the goals as specified in Plan are to enhance the existing balanced mix of uses on Haywood Road through commercial, institutional, open space, and small parks and to encourage new development that serves adjacent neighborhoods and helps create an economically vibrant pedestrian environment. The plan identifies this parcel as one of the properties included in the Haywood Road Corridor Study Area and rezoning it to CBD would help fulfill these goals.

In addition, the properties to the south that are zoned CBD contain mixed use buildings with associated parking areas with no buffering to the residentially-zoned properties to the north and east since they existed prior to the current UDO's planting and buffering requirements. Any uses developed on this property subsequent to a rezoning would necessitate appropriate buffering, street trees and/or parking screening to the adjacent residential properties.

The Planning and Zoning Commission voted unanimously to recommend approval of the rezoning of the property located at the northwest corner of Haywood Road and Herron Avenue from RS-8 to CBD. The Planning and Development staff also recommends approval of the requested rezoning.

Mr. David Ramsey, resident on Mildred Avenue and Project Manager of the Bledsoe Building, spoke in support of the rezoning for future development.

Vice-Mayor Bellamy said she attended an affordable housing forum recently and it was noted that the City has been rezoning multi-family residential land. She hoped the City would do a better job of keeping multi-family sites in the City and perhaps even rezone more for multi-family development.

Mayor Worley closed the public hearing at 5:42 p.m.

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

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Councilman Peterson moved for the adoption of Ordinance No. 2919. This motion was seconded by Vice-Mayor Bellamy and carried unanimously.

C. PUBLIC HEARING RELATIVE TO CONSIDER A LEVEL III CONDITIONAL USE PERMIT FOR PROPERTY LOCATED ON RIVER HILLS ROAD OFF OF SOUTH TUNNEL ROAD KNOW AS DREAMLAND DEVELOPMENT (TARGET RETAIL STORE)

ORDINANCE NO. 2920 - ORDINANCE GRANTING A CONDITIONAL USE PERMIT FOR PROPERTY LOCATED ON RIVER HILLS ROAD OFF OF SOUTH TUNNEL ROAD KNOW AS DREAMLAND DEVELOPMENT (TARGET RETAIL STORE)

City Attorney Oast reviewed with Council the conditional use permit process by stating that City Council will first hear from staff that will describe the proposal and provide some background information. Then the applicant may make a presentation and then comments from the public will be taken. He said that there would be an opportunity for questions and rebuttal comments, as necessary. Following the hearing, Council will then debate the proposal and will take action on the request.

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

Mayor Worley said that at this public hearing Council will be discussing the issuance of a conditional use permit for a large national chain. Our review of this request is limited to issues that directly affect the City of Asheville and its public services and infrastructure. Many citizens may have strong feelings about corporate hiring and purchasing practices, wage structure for employees, compensation of executives, corporate public involvement in the community, effect on other businesses, and similar issues. Those views may be favorable to the applicant or unfavorable. While this Council respects these views and concerns, they are not relevant to our decision about the issuance of the conditional use permit, and we may not legally consider them in our deliberations. Because they are not relevant, their discussion will serve no purpose other than to distract our attention away from the many complex issues we are charged with addressing, as well as needlessly prolonging the meeting. Consequently, he asked that members of the audience not include these statements in comments. In addition, he asked that members of the audience not repeat comments already made as unnecessary redundancy can needlessly prolong a hearing and likewise distract Council from the issues that they must consider.

After hearing no questions about the procedure, Mayor Worley opened the public hearing at 5:43 p.m.

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

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

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Mr. Gerald Green, Chief Planner, submitted into the record City Exhibit 1 (Affidavit of Publication), City Exhibit 2 (Certification of Mailing of Notice to Property Owners); and City Exhibit 3 (Staff Report).

Mr. Green said that this is the consideration of a conditional use permit for to construct a 125,400 square foot Target store in the River Hills Shopping Center, located at the intersection of Tunnel Road/Wood Avenue and Swannanoa River Road.

On March 29, 2002, Collett and Associates submitted development plans for Level III site plan review. The project is a new 125,400 square foot Target store with 627 parking spaces to be located in the River Hills Shopping Center. The 19.2 acre project site is zoned Commercial Industrial (Location Map – Attached to City Exhibit 3). There will be three points of access to the site; two primary points of access will be from River Hills Road and a secondary access will be from McArthur Lane. An outparcel of 0.8 acres will not be developed at this time. The Technical Review Committee (TRC) reviewed the plans at their April 15, 2002, meeting and recommended approval with conditions. Most of the TRC's comments were addressed in revised plans submitted April 25, 2002. The Planning and Zoning Commission at their May 1, 2002, meeting reviewed the revised plans. The Commission recommended approval of the plans with conditions.

Level III projects are conditional uses within the Commercial Industrial District. Conditional uses are uses, which because of their unique characteristics or potential impacts on the surrounding neighborhood and/or city as a whole require individual consideration of their location, design, configuration, and/or operation at the location proposed. In addition the project must meet the supplemental development standards for large retail structures due to its size. The applicant has met the necessary development standards as outlined in the supplemental development standards for large retail buildings. The building will be

finished with split face concrete block with accent bands of smooth face block. The façade also incorporates arcades, display windows, and several distinct massing elements as well as articulation of the façade and of the roof. The parking area will be heavily landscaped with a buffer and interior planting islands.

The project site is located in an area dominated with commercial land uses and mixed with single-family residential, multi-family residential, and industrial type land uses. The project site sits at a higher elevation than most of the surrounding properties. The project site is highly visible from almost every direction, especially in the area of the Asheville Mall, Swannanoa River Road and Interstate-240.

The project plan proposes two accesses on River Hills Road and a third access on McArthur Lane (Site Plan – Attached to City Exhibit 3). River Hills Drive connects to Wood Avenue, which connects to South Tunnel Road and Swannanoa River Road. The closest interstate interchange is approximately one (1) mile away on Tunnel Road. McArthur Lane connects to Glendale Avenue, which connects to Swannanoa River Road. The building is situated towards the rear of the site with the majority of the parking in front. The project proposes 627 parking spaces at a ratio of five (5) spaces per 1,000 square feet of gross floor area. The UDO allows for a minimum of one (1) space per 350 square feet and a maximum of one (1) space per 200 square feet or five (5) per 1,000 square feet.

The building will be single story at a height of 28 feet not including the decorative parapet (Building Design – Attached to City Exhibit 3). At the highest point, the building will be 36 feet in height. The Commercial Industrial district allows for a maximum height of eighty (80) feet. The face and rear of the building is approximately 393 feet in length and the sides are approximately 269 feet in length. The building will have a single entrance located to the left side of the building face and the site plan depicts a sidewalk along the length of the face of the building. The rear of the building has an area for loading, deliveries, and a compactor. The building will be constructed

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of split-face concrete masonry units (CMU) with five cream-colored smooth face CMU accent bands. The developer has submitted revised drawings (City Exhibit 4).

The plan depicts three attached signs; two of which are the “Target with bulls-eye” signs measuring approximately 181 square feet; one located on the front face of the building and one on the right side of the building. The remaining sign, approximately 72 square feet, is located on the front of the building (right side) and reads “PHARMACY.” The total square footage of all attached is approximately 434 square feet. This attached signage is not out of scale with the building and seems appropriate in meeting the needs of building identification given its size and location. The plan does not depict a freestanding sign anywhere on the site; however, the applicant has requested an 80 square foot sign to be located off the site along River Hills Drive to orient customers to the site. The size of this sign appears excessive since its purpose is primarily to orient persons already on River Hills Drive to the Target store; it is essentially a directional sign. Variances or other adjustments permitted in our code will be required to address these signage issues.

The UDO requires 100 square feet of open space for every 1,000 square feet of gross floor area. The plan depicts the required 12,540 square feet of open space.

Per the Supplemental Design Standards for Large Retail Structures, the project must provide a 50-foot buffer, which incorporates 150% of the plantings called for in a “D” buffer. The buffer shall apply to the entire frontage along River Hills Road, Springvale Avenue, and the south corner of the site.

The UDO requires that new commercial developments provide one large maturing tree (over 35 feet in height at maturity) for every 40 linear feet of property abutting a street, or one small-maturing tree (less than 35 feet in height at maturity) for every 30 linear feet of property abutting a street.

UDO requires sidewalk installation along the frontage of all adjacent public streets. The applicant may pay a fee in lieu of sidewalk installation, provided that the applicant makes a written request to the City Engineer.

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 (7) findings based on the evidence and testimony received at the public hearing or otherwise appearing in the record of the case. The findings are listed below. Following each finding is technical information from staff to assist Council in making these findings. The City Council shall not approve the conditional use application and site plan unless and until it makes the following findings, based on the evidence and testimony received at the public hearing or otherwise

appearing in the record of this case:

1. **The proposed use or development of the land will not materially endanger the public health or safety.** The proposed use will not materially endanger public health and safety since it has multiple access points, is served by a public street and is located in an area of similar uses.
2. **The proposed use or development of the land is reasonably compatible with significant natural and topographic features on the site and within the immediate vicinity of the site given the proposed site design and any mitigation techniques or measures proposed by the applicant.** The proposed use constitutes the redevelopment of previously developed land and its development will not result in excessive grading or other

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alteration of the natural landscape. If developed according to the plan, it will increase the extent of trees and shrubs on the site above current conditions.

3. **The proposed use or development of the land will not substantially injure the value of adjoining or abutting property.** The proposed use is located in an area of similar uses and will be buffered from adjoining residential uses in accordance with the supplemental landscaping standards for large retail uses. Site lighting and building design will be in accordance with the supplemental standards as well.
4. **The proposed use or development of the land will be in harmony with the scale, bulk, coverage, density, and character of the area or neighborhood in which it is located.** The proposed use is located in an area of similar uses and will be appropriately buffered from adjoining uses of lesser intensity.
5. **The proposed use or development of the land will generally conform with the comprehensive plan, smart growth policies, sustainable economic development strategic plan, and other official plans adopted by the city.** The proposed use is consistent with both the current zoning of the property and the designation of the property in the comprehensive plan.
6. **The proposed use is appropriately located with respect to transportation facilities, water supply, fire and police protection, waste disposal, and similar facilities.** If developed in accordance with the conditions proposed by staff, there will be no undue public service impacts. The project has been reviewed by TRC, which found that services and facilities are available to meet the needs of the proposed development.
7. **The proposed use will not cause undue traffic congestion or create a traffic hazard.** The applicant has submitted a traffic impact analysis for the site that has been found to be generally acceptable by staff. If developed in accordance with the conditions proposed by staff, there will be no undue impact on the traffic circumstances in the surrounding area. Offsite improvements to the access from McArthur Lane and the intersection of River Hills Drive and the access point to the Dick's, Office Max and Circuit City development, in addition to the provision of a transit stop/shelter, will address the traffic impacts of the project.

The Planning and Zoning Commission reviewed the plans for the Dreamland Development (Target) at their May 1, 2002, meeting and recommended approval of the project subject to conditions (please note that the developer is working to address the conditions identified by the Planning and Zoning Commission; some of these issues may be addressed prior to City Council review). The staff of the Planning and Development Department concurs with this recommendation. The proposed conditions are:

The project applicant shall:

1. Provide lighting plan detail for parking and sidewalk areas. The light fixtures must be cut-off type and the height of the lighting standards shall not exceed 30 feet.
2. Provide signage package for the proposed development that meets the store's need for signage while minimizing the need for variances from the signage requirements set forth in Article 13 of the UDO.
3. The applicant shall install a type "B" buffer along the southwest side of Springvale Avenue, the northwest side of Dogwood Lane, and the northeast side of Glendale Avenue in the area of the stormwater facility.
4. The calculations for the parking lot landscaping require adjustment. The landscaping must meet the requirements set forth in the supplemental standards

for large retail structures, resulting in a need for additional parking lot landscaping.

5. No parking will be permitted in front of the building to be constructed on the outparcel at the time of Outparcel 1 development.
6. No curb-cuts on River Hills Road will be approved for Outparcel 1.
7. Work with Planning and Development staff to investigate the feasibility of providing pedestrian access to the Carmike Theater site and the Michael's/Goody's site.
8. Provide pedestrian connection from primary site to Springvale Avenue.
9. Provide a buffered sidewalk in the western portion of the parking lot to provide a safe pedestrian passage through the parking area.
10. Work with staff to investigate the feasibility of a pedestrian connection with the Glendale neighborhood.
11. Install street trees along River Hills Road.
12. Work with the Transit Director to locate a transit stop and shelter on the site or, alternately, at the Transit Director's discretion, in the immediate vicinity of the site in order to provide convenient transit access to the proposed development. The transit stop/shelter shall be located within easy walking distance of the store entrance and not on the periphery of the site.
13. Implement traffic improvements recommended by the traffic impact analysis (TIA).
14. Address concerns raised by the Engineering Department about the intersection of River Hills Drive and the Dick's/Office Max/Circuit City driveway resulting from traffic generation by the proposed development. This condition may require a reconfiguration of the intersection as a roundabout or signalization of the intersection.
15. Address concerns raised by residents and the Engineering Department concerning access from McArthur Lane by installing a right-turn out only traffic directional island and appropriate signage.
16. In addition to the display windows added to the front façade, add additional display windows that are either internally accessed or externally accessed (such as those provided for movie theaters) in order to improve the extent of the "window" areas along the façade frontage so as to provide pedestrian interest and to create the appearance of a continuous line of windows. Displays provided in these "windows" shall not be considered signage.
17. Address all stormwater requirements of the Engineering Department.

Mr. Green said that City staff has been working with the developer and reviewed with Council the following set of revised conditions (City Exhibit 5):

1. Provide lighting plan detail for parking and sidewalk areas. The light fixtures must be cut-off type and the height of the lighting standards shall not exceed 30 feet. – The applicant has provided City staff with an elevation of the lighting fixtures that meets this standard and they have assured the City that there will be cut-off fixtures.
2. Provide signage package for the proposed development that meets the store's need for signage while minimizing the need for variances from the signage requirements set forth in Article 13 of the UDO. – The applicant has provided City staff with a signage package that is acceptable and seems reasonable in light of the size of the development. City staff will be working with the developer to obtain the necessary variances and adjustments to permit that signage package.

3. The applicant shall install a type "B" buffer along the southwest side of Springvale Avenue, the northwest side of Dogwood Lane, and the northeast side of Glendale Avenue in the area of the stormwater facility.
4. The calculations for the parking lot landscaping require adjustment. The landscaping must meet the requirements set forth in the supplemental standards for large retail structures, resulting in a need for additional parking lot landscaping.
5. No parking will be permitted in front of the building to be constructed on the outparcel at the time of Outparcel 1 development.
6. No curb-cuts on River Hills Road will be approved for Outparcel 1.

7. Work with Planning and Development staff to investigate the feasibility of providing pedestrian access to the Carmike Theater site and the Michael's/Goody's site. – The developer does not have any interest in either of these projects and City staff has agreed to make contact with the owners and developers of those two sites to try to work out some type of pedestrian access.
8. Provide pedestrian connection from primary site to Springvale Avenue.
9. Provide a buffered sidewalk in the western portion of the parking lot to provide a safe pedestrian passage through the parking area.
10. Work with staff to investigate the feasibility of a pedestrian connection with the Glendale neighborhood.
11. Install street trees along River Hills Road.
12. Prior to the issuance of a building permit, the developer shall identify a design and location for a transit shelter and bus loading area acceptable to the City of Asheville Transit Director. The transit shelter and bus loading area shall be constructed by the developer at this location according to the approved design prior to the issuance of a certificate of compliance for the building, except as follows: In the event that transit service is not ready to be provided to the development at this time of the issuance of the certificate of compliance, the developer shall construct the bus loading area and escrow sufficient funds for the construction of the transit shelter at a later date, the amount of such escrow to be determined by the Transit Director. – This revised condition has been provided to the developer and they are in agreement with it.
13. Implement traffic improvements recommended by the traffic impact analysis (TIA).
14. Address concerns raised by the Engineering Department about the intersection of River Hills Drive and the Dick's/Office Max/Circuit City driveway resulting from traffic generation by the proposed development. This condition may require a reconfiguration of the intersection as a roundabout or signalization of the intersection.
15. Address concerns raised by residents and the Engineering Department concerning access from McArthur Lane by installing a right-turn out only traffic directional island and appropriate signage.
16. Address all stormwater requirements of the Engineering Department.

Upon inquiry of Councilman Ellis, Mr. Green said that the responsibility of development and implementation of any reconfiguration of the intersection of River Hills Drive and the Dick's/Office Max/Circuit City driveway will have to be borne by the developer and approved by City staff.

Mr. Green and Target development staff responded to various questions from Council, some being, but are not limited to: where will sidewalks be installed, where are the residential homes in the area, what will the signage package include, what are the requirements about lights not trespassing onto residential properties, what are some of the details of a Traffic Impact Analysis, potential to use pervious pavement on the project, what was on the property prior to the

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flea market, and what are the elevation differences of the development compared to those buildings around it.

Upon inquiry of Councilwoman Jones, Mr. Green said that after a Traffic Impact Analysis (TIA) is completed, it is then submitted to the City for review by the City's Traffic Engineer and, in this case, by a consultant retained by the City. The City and the consultant review every aspect of the TIA to make sure the data is correct, the traffic counts are done at the correct time, etc. In this project, there was an initial review of the TIA and City staff gave comments back to the engineer who prepared the TIA. They then provided revised information.

Mr. Dan Baechtold, representing the City's Engineering Department, noted that TIA's have to follow national engineering standards and professional engineers prepare them. He felt that we generally see TIA's predict the impacts pretty accurately.

Mr. Bob Stultz, Partner in Collett and Associates, spoke in support of the development, which will be a Target retail store to be located on a 19-acre site, which is primarily industrial and commercial in nature. They have received a wastewater allocation from the Metropolitan Sewerage District, a conditional approval for a water allocation from Water Resources Department and Carolina Power & Light Company has advised them that there is sufficient power at that location to support the proposed development. The TIA has been completed and reviewed by the City and the N. C. Dept. of Transportation. They have agreed to implement the recommendations in the TIA, which will keep all roadways affected by the project at acceptable levels of service. According to the current project schedule they anticipate commencement of construction in the fourth quarter of 2002, with a fall 2003 store opening. They look forward to being a part of the Asheville community.

Councilman Peterson was concerned about the access onto McArthur Lane and felt it may open the door for increase traffic in the residential area. Mr. Stultz responded in that in their initial design, they did not have a rear access. However, it was included, as a recommendation by City staff, for safety reasons, e.g. it will allow emergency vehicles access if River Hills Road is blocked. They will work with City staff to restrict left-turn access back onto Glendale off of McArthur Lane to prohibit traffic leaving the Target store going through the Oakley neighborhood. He said they would not put any signage on Glendale to encourage people to go into Target from the rear, noting that they even intend to have deliveries through the front entrance.

Upon inquiry of Councilman Mumpower, Mr. Stultz said that the cost to implement the recommendations of the TIA will be approximately \$129,000 and is similar to what they experience in other locations. He said that they have been working with City staff for approximately 4 months; however, he was pleased to note that the formal process has taken only 6 weeks.

Ms. Debra Houser, President of the Oakley Community Association, said they are deeply concerned about the traffic impact. Even though this is not the largest development proposed to be built in this area, the City need to look at the cumulative effect of traffic. Her main area of concern is Fairview Road. The N.C. Dept. of Transportation website shows that currently there 19,000 vehicles a day that go through the intersection of Cedar Avenue and Wood Avenue onto Fairview Road. Also, there are 19,000 vehicles a day that drive on Fairview Road going to the intersection of Swannanoa River Road. The Oakley community has initiated traffic calming efforts on Fairview Road and Fairview Avenue because the traffic now is unacceptable. Out of 462 children in Oakley School, only five families allow their children to walk home because of traffic concerns. She said that the Fire Department and Police Department vehicles are unable to get through the area in emergencies because of traffic gridlock. She noted that all these streets are two lanes and no one has mentioned about widening them to accommodate the traffic. They

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requested the City to use more forethought. She stressed the cumulative effect of the traffic will lead to a dangerous situation.

Ms. Rebecca Campbell, west Asheville resident, felt the City needed to do holistic planning. She presented City Council with information from the N.C. Dept. of Transportation for the year 2000 of average traffic counts in the East Asheville/Oakley community (Neighborhood Exhibit 1).

There being no request from the applicant for rebuttal, Mayor Worley closed the public hearing at 6:48 p.m.

Upon inquiry of Councilman Peterson about traffic calming measures in the Oakley community, City Engineer Cathy Ball said that there have been some efforts for traffic calming. In 2000, Wood Avenue was selected as a traffic calming project but the City could not get the community support to move forward on that project. Our policy requires that we receive 40% of people affected to sign stating that they are willing to support some type of traffic calming, before the City spends time in doing the design. We were unable to get the 40% of signatures in the project area. In 2001, Fairview Avenue was selected as a traffic calming project and once again they were unable to get enough signatures to move forward on the project. City staff has looked at Fairview Road, particularly in the school area. And, about two years ago. the City had an opportunity to purchase the house at the intersection of Cedar and Fairview in hopes of realigning the intersection at Liberty/Cedar/Fairview. About four years ago some plans were done to improve that intersection but we weren't able to implement them because of needing some property. That is an unfunded capital project we have on this year's Transportation Program. We have tried to comprehensively look at the Fairview Road as a whole.

Councilman Peterson said that if the City approves this project we are providing some benefits to the businesses and people who live in the larger community in and outside of Asheville, but the people in Oakley are bearing part of the brunt of that. He felt the City has a responsibility to direct staff to go back and try to look at the Fairview/Cedar/Liberty intersection for some traffic calming measures and to make improvements.

Councilman Mumpower moved to adopted Ordinance No. 2920 granting a conditional use permit for a proposed development known as Dreamland Development (Target Retail Store), located at the intersection of Tunnel Road/Wood Avenue and Swannanoa River Road, subject to the revised 16 conditions outlined above. This motion was seconded by Vice-Mayor Bellamy and carried unanimously.

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Vice-Mayor Bellamy said that the people at the affordable housing forum said that our development process is not working, however, Target representatives have said that their experience with the City has been very positive and streamlined. As a result of those comments, she hoped that the City could repeat the positive process more often.

IV. UNFINISHED BUSINESS:

V. NEW BUSINESS:

VI. OTHER BUSINESS:

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Transit System

Councilwoman Jones invited the Council and public to a meeting co-sponsored by the City on Friday, May 17, 2002, at the Civic Center from 10:30 a.m. – 4:00 p.m. The meeting is to talk about improving our transit system. A person from Boulder, Colorado, will be in attendance to talk about some innovative things their City has been doing and how it can be applied in Asheville.

Claims

The following claims were received by the City of Asheville during the period of April 12-25, 2002: Cynthia Burris (Streets), Kelly Fielden (Police), Brian Delmas (Streets), Ronald Sebil-Tibbets (Fire), Donna Fender (Streets), Sherwin Pevaroff (Water) and Kim MacQueen (Fire).

The following claims were received during the period of April 26-May 2, 2002: BellSouth (Water), Michael Keating (Water), Timothy J. Rabb (Water), Denise Vanselow (Streets) and Charlene Lamb (Streets).

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

Lawsuits

The City filed a Complaint, motion for preliminary injunction and motion for temporary restraining order on April 23, 2002, against Jemini Inc., d/b/a Patton Avenue Pub, Mitch Fouts and James Medford. The nature of the proceeding was a complaint for a permanent injunction prohibiting defendants from holding a concert in the parking lot of the Patton Avenue Pub; directing defendants to hold the event inside the Pub; and for a temporary restraining order. This matter was handled in-house.

The City was served with a Complaint on April 22, 2002, as follows: Connie Jones v. City of Asheville. The nature of the proceeding is an EEOC charge of racial discrimination. This matter will be handled in-house.

The City was served with a Complaint on April 19, 2002, as follows: Monique and Mike Usher v. Transit Authority, et al. The nature of the proceeding is a complaint for personal injury as a result of traffic accident involving a bus. An attorney outside the City Attorney's Office will handle this matter.

The City was served with a Petition for a Contested Case Hearing on May 6, 2002, as follows: Christopher L. Baker v. City of Asheville. The nature of the proceeding is money owed for water bills, pursuant to the Setoff Debt Collection Act. This matter will be handled in-house.

VII. INFORMAL DISCUSSION AND PUBLIC COMMENT:

Comments by Fred English

Mr. Fred English spoke about several items, in particular he was opposed to the City raising property taxes and felt the City should not annex more people until they take care of the current City residents.

VIII. ADJOURNMENT:

Mayor Worley adjourned the meeting at 7:07 p.m.

CITY CLERK

MAYOR