

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 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

Mayor Worley gave the invocation.

I. PROCLAMATIONS:

II. CONSENT:

Vice-Mayor Bellamy asked that Consent Agenda Item "D" be removed from the Consent Agenda due to her conflict of interest.

A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON JULY 9, 2002, AND THE WORKSESSION HELD ON JULY 16, 2002

B. ORDINANCE NO. 2938 - BUDGET AMENDMENT FOR AZALEA ROAD PARK

Summary: The consideration of a budget amendment for Azalea Road Park totaling \$319,990.89 received from a grant in the amount of \$249,165 from the N. C. Dept. of Environment and Natural Resources and from private donations in the amount of \$70,825.

The City of Asheville applied for funds in January 2002 for a grant from the N.C. Dept. of Environment and Natural Resources, Department of Environment and Natural Resources, Division of Parks and Recreation in the Parks and Recreation Trust Fund. The grant was recently awarded in the amount of \$249,165. The City has also received the first two installments of a \$350,000 gift from the Lewis Family Foundation at \$70,825.89.

The Parks and Recreation Department recommends City Council approve the budget amendment to increase the budget for development of Azalea Road Park.

ORDINANCE BOOK NO. 20 – PAGE 6

C. RESOLUTION NO. 02-119 - RESOLUTION AUTHORIZING THE CITY MANAGER TO APPLY TO THE N.C. DEPT. OF TRANSPORTATION FOR A GRANT FOR SIDEWALK IMPROVEMENTS ON NEW HAW CREEK ROAD/AVON ROAD

Summary: The consideration of (1) a resolution authorizing the City Manager to apply to the N. C. Dept. of Transportation, through the Transportation Enhancement Program, for a grant for sidewalk improvements on New Haw Creek Road/Avon Road; and (2) a resolution for City sponsorship of grant applications from Pack Square Conservancy and Mountain Housing Opportunities.

Every two years, the N. C. Dept. of Transportation (NCDOT) puts out a call for applications for transportation enhancement funds. These are federal funds for transportation

-2-

projects like sidewalks, greenways, streetscape improvements, beautification, and water quality improvements. The funds are part of the federal legislation that authorizes transportation funding known as TEA-21. If a project is awarded through the state selection process, costs are reimbursed at a rate of eighty percent (80%). The local match is twenty percent (20%).

Any public or private agency may apply for these funds, but each application must have a local government agency as the sponsor. In past years, the City of Asheville has received enhancements funds for projects such as the Urban Trail and the Weaver Boulevard Greenway. This year, the City of Asheville has prepared one application for sidewalk improvements on New

Haw Creek Road and Avon Road. If awarded, the City of Asheville will provide the local match for the sidewalk project on New Haw Creek Road/Avon Road. This project was developed cooperatively with the Haw Creek Pedestrian Task Force over the past year. Staff has already surveyed and designed this project, and we are now waiting for a funding source for construction.

In addition to the application from the City of Asheville, two outside agencies have applied for funding and have asked for sponsorship from the City of Asheville. The Pack Square Conservancy has applied for funds for Pack Square Streetscape Improvements and Mountain Housing Opportunities has applied for funds to construct a greenway and streetscape improvements in the West End/Clingman Avenue neighborhood. The City of Asheville is not responsible for the local match for the applications from outside agencies. The match will be provided by the applying agency. For these applications, the City of Asheville will be responsible for maintenance of any improvements that fall within public right of way, and may provide staff support for project implementation.

Listed below are summaries of the three grant applications presented for consideration.

1. New Haw Creek Road/Avon Road Sidewalk Improvements

City of Asheville Match: \$195,000

Enhancement Funds Requested: 312,044

Total Project Cost: \$507,044

Project Description: The proposed project entails construction of sidewalk, curb, gutter and storm drainage along the east side of Avon Road from the entrance of the East Asheville Library and Community Center to the entrance of Haw Creek Park; along the west side of Avon Road from the entrance of Haw Creek Park to the intersection with Beverly Road; and along the south side of New Haw Creek Road from the intersection with Arco Road to the intersection with Beverly Road. The project will require the acquisition of twenty-one (21) right-of-way easements.

2. Pack Square Streetscape Improvements

City of Asheville Match: None

Match by Pack Square Conservancy: \$125,000

Enhancements Funds Requested: \$250,000 (street improvements)

Total Project Cost: \$2,500,000 (total project)

Project Description: Pack Square Renaissance is a significant civic improvement project in the historic center of downtown Asheville, N.C. The project will "knit" together more than six acres of fragmented public property into a major new public park and revitalized historic square. A primary focus of the project is to provide more balance to the accommodation of both pedestrians and vehicles. The project includes the reorganization of multiple small green spaces into an important new "town green" as well as enhanced pedestrian amenities such as: new plazas, terraces, and sidewalks. Streetscape features such as street trees, benches and lighting will accompany public art, performance stages and water features. This application is to assist in the pedestrian

-3-

enhancement/streetscape portion of the Year One improvements – the reorganization of the existing City-County Plaza into the major portion of the new "green" as well as two "forecourts" directly adjacent to both the Buncombe County Courthouse and the Asheville City Hall. Redesign and enhancement of pedestrian and vehicular circulation will be key components of this portion of the overall project.

3. Clingman Avenue Streetscape and Greenway

City of Asheville Match: None

Match by Mountain Housing Opportunities (and other sources): \$243,150

Enhancement Funds Requested: \$266,550

Total Project Cost: \$509,700 (phase I and II)

Project Description: This project proposes multi-modal transportation enhancements to Clingman Avenue and its adjacent greenway, a gateway corridor that connects downtown Asheville to its riverfront and West Asheville. The project area, approximately 25 acres, encompasses approximately 2000' of frontage on Clingman Avenue and Haywood Road and the adjacent right of way, extending from its intersection with Hilliard Street to the north and down to the West Asheville Bridge. This corridor includes Clingman Forest, an approximately 10 acre urban riparian forest parallel to Clingman Avenue to the east and extending to Aston Park to the north, the YWCA and Asheville Middle School to the East, and river warehouse district immediately to the south. Funding would provide for streetscape enhancements to Clingman Avenue, the historic heart of the racially and economically diverse West End/Clingman Avenue neighborhood that is currently undergoing

dramatic revitalization. It would also support the development of a greenway parallel to Clingman Avenue through Clingman Forest, including innovative watershed-based stormwater management currently being developed. This project would build on existing broad based partnerships and community support to implement recommendations in the *City of Asheville 2010 Plan*, the *Asheville Greenways Master Plan*, and the award-winning *2001 West End/Clingman Avenue Neighborhood Citizens Master Plan*.

The TEA-21 Enhancements Grant Applications will be reviewed and awarded in the Fall of 2002.

City staff recommends City Council (1) approve a resolution authorizing the City Manager to apply to the State of North Carolina for a grant for New Haw Creek Road and Avon Road Sidewalk Improvements; and (2) approve a resolution designating the City of Asheville as the local government sponsor for grant applications for Pack Square Streetscape Improvements and Clingman Avenue Streetscape and Greenway.

RESOLUTION BOOK NO. 27 – PAGE 209

D. RESOLUTION AUTHORIZING THE CITY SPONSORSHIP OF GRANT APPLICATIONS FROM PACK SQUARE CONSERVANCY AND MOUNTAIN HOUSING OPPORTUNITIES THROUGH THE TRANSPORTATION ENHANCEMENT PROGRAMS

This item was removed from the Consent Agenda due to Vice-Mayor Bellamy's conflict of interest.

E. RESOLUTION NO. 02-121 - RESOLUTION ACCEPTING THE STREET NAME OF "APPLEWOOD DRIVE" OFF OF NEW HAW CREEK ROAD

-4-

Summary: The consideration of a resolution accepting the new proposed street name "Applewood Drive."

GPD of NC Inc., owner of lots in Applewood Subdivision, has petitioned the City of Asheville to accept the street name "Applewood Drive." The new street will begin at New Haw Creek Road and end at cul-de-sac on Applewood Drive.

City staff recommends adoption of the resolution accepting the new proposed street name "Applewood Drive."

RESOLUTION BOOK NO. 27 – PAGE 211

F. RESOLUTION NO. 02-122 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO AN INTERLOCAL AGREEMENT WITH THE CITY OF DURHAM, N.C., TO PURCHASE BUSES

Summary: The consideration of a resolution authorizing the City Manager to enter into an Interlocal Agreement with the City of Durham for the procurement of buses and bus equipment.

It is the plan of the Transit Services Department to replace several of the existing fleet each year with more modern low floor buses, pending state and federal funding. The Transit Services Department has therefore participated in a statewide effort to standardize transit bus purchases over the next two years. This is intended to radically diminish the lead time necessary to purchase buses, and to use the prospect of bulk purchases to intensify competition and obtain a lower bid from the bus manufacturers.

The lead agency, for the purpose of bidding the bus purchase, is the City of Durham. In order for Asheville to participate in this bid, there must be an Interlocal agreement signed between the City of Asheville and the City of Durham. This agreement will not commit the City of Asheville to purchase any buses, but it allows the City to purchase buses off of the Durham bid if so desired. The City may also conduct its own bid process and purchase it's own buses if it wants to.

City staff recommends City Council authorize the City Manager to sign an Interlocal Agreement with the City of Durham, North Carolina.

RESOLUTION BOOK NO. 27 – PAGE 212

G. RESOLUTION NO. 02-123 - RESOLUTION AMENDING THE CITY COUNCIL MEETING SCHEDULE FOR THE FOLLOWING REASONS (1) SPECIAL MEETING ON THURSDAY, AUGUST 29, 2002, TO CONSIDER THE ADOPTION OF THE FINAL FISCAL YEAR 2002-03 ANNUAL OPERATING BUDGET; AND (2) CANCEL

RESOLUTION BOOK NO. 27 – PAGE 213

H. RESOLUTION NO. 02-124 - RESOLUTION CONFIRMING MEMBERS TO THE MINORITY BUSINESS COMMISSION

Summary: The consideration of a resolution confirming the reappointment of three members to the Minority Business Commission.

-5-

On May 26, 1998, City Council adopted Resolution No. 98-63 adopting a City-County Minority Business Plan.

The composition of the Minority Business Commission consists of 13 members, 10 of whom are nominated by various groups and three of who are minority business owners nominated by the Minority Business Commission. All nominees are considered and appointed by both the City Council and County Commission.

The following MB Commission members whose term expires August, 2002, have requested reappointment:

Ms. Clara Jeter	Asheville~Buncombe Community Relations Council
Mr. Marvin Vierra	Asheville Business Development Center
Ms. Claudia Thomas	Minority Business Owner (CAT Network Systems)

City staff recommends City Council adopt the resolution confirming the reappointment of three members of the Minority Business Commission.

RESOLUTION BOOK NO. 27 – PAGE 214

I. RESOLUTION NO. 02-125 - RESOLUTION APPOINTING MEMBERS TO THE POLICE OFFICERS & FIREFIGHTERS DISABILITY REVIEW BOARD

Summary: The consideration of appointing members to the Police Officers' & Firefighters Disability Review Board.

The terms of Stephanie Cooper, Alexander Maitland and James Lewis, as members on the Police Officers' & Firefighters Disability Review Board, expired on July 19, 2002.

On July 16, 2002, it was the consensus of City Council to instruct the City Clerk to prepare the proper paperwork to reappoint Ms. Cooper, Mr. Lewis and Dr. Maitland to each serve an additional two year term respectively, terms to expire July 19, 2004, or until their successors have been appointed.

RESOLUTION BOOK NO. 27 – PAGE 215

J. MOTION SETTING A PUBLIC HEARING ON AUGUST 13, 2002, TO AMEND THE 2002 CONSOLIDATED COMMUNITY DEVELOPMENT BLOCK GRANT & HOME ACTION PLAN

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

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

ITEM REMOVED FROM THE CONSENT AGENDA

RESOLUTION NO. 02-120 - RESOLUTION AUTHORIZING THE CITY SPONSORSHIP OF GRANT APPLICATIONS FROM PACK SQUARE CONSERVANCY AND MOUNTAIN HOUSING OPPORTUNITIES THROUGH THE TRANSPORTATION ENHANCEMENT PROGRAMS

-6-

See Consent Agenda Item "C" above for descriptive information.

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

Councilman Peterson moved to adopt Resolution No. 02-120. This motion was seconded by Councilwoman Jones and carried unanimously.

RESOLUTION BOOK NO. 27 – PAGE 210

III. PUBLIC HEARINGS:

IV. UNFINISHED BUSINESS:

A. ORDINANCE NO. 2939 - ORDINANCE GRANTING A CONDITIONAL USE PERMIT FOR CONSTRUCTION OF 379,000 SQUARE FEET OF RETAIL SPACE FOR PHASE 1 OF THE DEVELOPMENT LOCATED AT 437 SWANNANOA RIVER ROAD, FORMERLY SAYLES BILTMORE BLEACHERIES

ORDINANCE NO. 2940 - ORDINANCE TO REZONE A PORTION OF PROPERTY LOCATED AT 437 SWANNANOA RIVER ROAD, FORMERLY SAYLES BILTMORE BLEACHERIES, FROM COMMERCIAL INDUSTRIAL DISTRICT TO URBAN VILLAGE DISTRICT FOR PHASE 2 OF THE DEVELOPMENT

Planning & Development Director Scott Shuford submitted into the record the following Staff Report Addendum with Exhibits A, B & C (City Exhibit 13). "The report is intended to (1) provide analysis of comments made by both the developer and members of the public at the public hearing; and (2) provide guidance and recommendations for conditions to address concerns raised at the public hearing.

The process concerns raised by Dr. Guttman and others speaking at the public hearing can generally be characterized as resulting from a basic misunderstanding of the UDO submittal requirements. The applicant has submitted for the following reviews: Level III (conditional use permit) for Phase I; rezoning for Phase II; and River District design review for Phase I. At the time of formal review, all necessary application requirements were met. Code sections cited under Dr. Guttman's list include formal site plan review, conditional use rezoning review, formal flood ordinance review, formal erosion control review, etc. These code requirements will be imposed on the applicant IF the concept plan required for the conditional use permit and the rezoning are approved by City Council AND if the applicant submits applications for these reviews. It should be noted that no building permit would be issued until these additional reviews occur. Finally, as to the contention that the code requires that the most stringent review requirements be met for any application and therefore the concept plan has to comply with formal site plan submittal requirements, etc. Dr. Guttman's contentions appear to indicate a misunderstanding of the UDO and the Conditional Use Permit process.

Traffic Capacity Options

At the outset of this discussion, it should be noted that of the four proposed traffic capacity mitigation options, the applicant suggested the first three. The only mitigation option unilaterally proposed by staff was the widening of Swannanoa River Road. Staff received the

-7-

suggestion from the applicant about the transit option just prior to the development of our staff report for the public hearing.

Next, given the direction of Council for staff to work with the applicant to pursue any feasible option for addressing the traffic impact of the development, staff met with the applicant on July 16, 2002 to discuss what measure(s) would be proposed to accommodate the traffic impact mitigation. Since staff had provided extensive information to the applicant's transit consultant, including information about transit ridership, financial information about trolley costs, route and "headway" (time between trolley stops to pickup passengers) data, and similar information, we felt confident that our discussion would center on transit. However, the applicant indicated that the option they would prefer to pursue at the current time is to reduce the scale of the project in order to meet the 10% capacity retention standard proposed at the City Council meeting. Included in this option is the provision of an expanded connection, via a public street to be constructed by the applicant, to the River Ridge Shopping Center. In other words, they propose to delete some land uses from this request and to change others to such an extent that the total projected traffic on Swannanoa River Road falls below 12,600 vehicles per day.

This reduction of land use intensity is described in the following table, which the applicant provided at the July 16 meeting. Preliminary staff analysis indicates that the proposed land use intensity reductions would result in the stated trip reductions on Swannanoa River Road.

DEVELOPMENT PLAN FOR SAYLES SITE

ORIGINAL PLAN		REVISED PLAN	
Land Use	Size	Land Use	Size
Discount Superstore	219,622 sq. ft.	Discount Superstore	219,622 sq. ft.
Shopping Center	148,254 sq. ft.	Shopping Center	148,254 sq. ft.
High-Turnover Sit-Down Restaurant	5,000 sq. ft.	High-Turnover Sit-Down Restaurant	5,000 sq. ft.
High-Turnover Sit-Down Restaurant	5,000 sq. ft.	Removed from plan	
Specialty Retail	50,000 sq. ft.	General Office	54,000 sq. ft.
Hotel	75 rooms	Removed from plan	
Residential Condo/Townhouse	100 dwelling units	Residential Condo/Townhouse	125 dwelling units

In discussing this mitigation method with the applicant, we learned that the other options under consideration were rejected for the time being due to either their speculative nature or cost of implementation. As part of the discussion, the applicant provided considerable information about how a transit option would perform. The applicant did indicate a willingness to continue to pursue the interchange and the extension of Wood Avenue options unilaterally, as well as to work with staff and surrounding property owners to develop a transit option. In the event one or more of these options are implemented, Swannanoa River Road is widened or traffic does not increase as much as projected, the applicant may choose to go back through the review process to modify the plans to restore the lost land use intensity. This would require a new application and new public hearings.

There are a number of good reasons to continue to pursue enhanced transit service to the site. First, transit makes better use of existing infrastructure and preserves capacity on Swannanoa River Road. (It should be noted that Swannanoa River Road will play an extremely important role in the future transportation network of the City as it is the only continuous east-west corridor in the City between I-40 and I-240.) Second, if a trolley system proves popular, it will build general public support for transit. Third, the use of a transit system helps resolve a wider

-8-

transportation issue involving getting shoppers to a number of major retail establishments and two multifamily projects. Fourth, transit seems to have the potential for reducing the “noon-time rush hour peak” as people from the surrounding area travel to the many restaurants or choose to spend their lunch hour shopping.

The two biggest potential problems with enhanced transit service are its cost and whether it will attract sufficient ridership. Trolley purchase is a major capital expense and operation costs are extensive. If there is success in obtaining federal assistance in overcoming the bulk of these costs, staff feels the remaining costs might be funded through a special taxing district of the properties served by the system or some other as yet undetermined financing method.

Suggested language for a condition reflecting the above discussion is provided below:

No changes shall be made in the level of development intensity (Exhibit A) that will or may increase traffic on Swannanoa River Road unless further traffic mitigation measures are implemented. In addition, the applicant shall support a general transit service hub at the site and participate in an effort to develop a specialized transit system for the site and surrounding area, including developer provision of a transit stop on the site, designing the interior of the site to accommodate transit vehicles, allowing transit vehicles to traverse the site, developer participation in a plan to create a specialized transit program, and developer commitment to any agreed upon funding mechanism, such as a special taxing district, necessary to maintain this system that may be implemented in the future. Finally, in order to ensure the viability of the River Ridge Shopping Center connection, the applicant shall escrow not less than \$50,000 to be used for improvements on the River Ridge site to upgrade the interior access “road” that will connect to the public street being constructed by the developer as part of the Phase II urban village project; the implementation of this upgrade project will require approval by the River Ridge Shopping Center owner and by the City of Asheville.

In addition, a small adjustment to the condition regarding the urban village is necessary and this change is noted in the list of conditions provided at the conclusion of this report.

Easement Condition

At the public hearing, the applicant contended that this condition might not be legally enforceable. A letter from the owner of the property that this easement crosses was also submitted making the same point. To address this matter, staff recommends this condition be modified as follows:

Unless legally precluded by the wording of the easement, the access easement on the south side of the Swannanoa River running from the developer's property to Fairview Road shall be transferred to the City of Asheville for the purpose(s) of extending the Swannanoa River greenway and/or construction of the Riverside Parkway. The City shall have the ability to transfer this easement to the State of North Carolina or some other entity or entities for one or both of these purposes.

Lease or Ownership Transfer Condition

This condition essentially requires that the Wal-Mart Corporation do everything in its power to ensure that the existing properties on Tunnel Road not remain vacant after it moves to the Sayles location. The Wal-Mart Corporation has some history of keeping vacated stores vacant in an effort to minimize competition. Staff believes the City of Asheville has a clear public interest in discouraging this business practice. First, there is strong commercial demand for properties similarly situated to the existing Wal-Mart store. Additionally, there is no reason why the City tax base should be eroded in such a manner. While the applicant has previously

-9-

contended that he has no control over the actions of a tenant regarding other property owned by the tenant, at the July 16 meeting it was indicated that the applicant would obtain a letter from the Wal-Mart Corporation accepting this condition in principle. Consequently, staff recommends the City Council retain this condition.

Contamination Concerns

At the public hearing, there were a number of concerns expressed regarding environmental contamination of the site. This contamination is under the purview and regulation of the NC Department of Environment and Natural Resources (DENR). Staff has been in contact with DENR regarding environmental concerns about the Sayles site. Based on this contact, in order to ensure that this concern is addressed as part of the conditional use permit for this project, we suggest you add the following condition.

The applicant shall enter into an Administrative Agreement for State Directed Remedial Action with the Department of Environment and Natural Resources (NCDENR). The applicant shall submit and implement, after NCDENR approval, a remedial action plan for addressing on-site contamination consistent with the agreement and NCDENR policies and procedures. In addition development plans shall be designed and/or revised to accommodate future remedial action at the site.

Urban Village Timing Concerns

Several members of the public commented that the urban village (Phase II) might not be constructed. As indicated at the public hearing, the applicant has committed to what effectively amounts to a simultaneous construction schedule for Phase I and Phase II. While this is part of the applicant's submittal package and could be enforced as such, staff suggests that City Council add the following condition to clarify the intent:

The construction schedule for Phase I and Phase II shall be in general compliance with the schedule submitted by the applicant and included herein as Exhibit C.

Natural Features Alteration

A number of public comments were received regarding the extent to which the site would be modified, thereby affecting the natural features on the property. The applicable standard for approval reads as follows: **That 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 chief alterations of the site are: creation of some fairly extensive floodway expansion areas in the front of the site outside the river resource yard, the installation of fill material to raise the elevation of the parking areas and building pads outside the 100 year floodplain, and significant grading of a hill located on the east and south sides of the site. Staff feels the retention of some 13 acres of riverfront area for a park, along with the interior landscaping and other project design features represent "reasonable compatibility" in terms of meeting this condition. However, the appearance of the floodway expansion areas may

require additional mitigation that could be addressed in the following condition:

Fencing of the floodway expansion areas and stormwater retention ponds shall be accomplished by using wrought iron or other similar decorative fencing. The applicant shall install landscaping consistent with a plan to be developed by working with staff in order to address the appearance issues associated with such extensive fencing.

-10-

Final recommended conditions for Council consideration (NOTE: Revised or added conditions are italicized).

1. All conditions identified by the Technical Review Committee shall be met.
2. *No changes shall be made in the level of development intensity (Exhibit A) that will or may increase traffic on Swannanoa River Road unless further traffic mitigation measures are implemented. In addition, the applicant agrees to support a general transit service hub at the site and to participate in an effort to develop a specialized transit system for the site and surrounding area, including developer provision of a transit stop on the site, designing the interior of the site to accommodate transit vehicles, allowing transit vehicles to traverse the site, developer participation in a plan to create a specialized transit program, and developer commitment to any agreed upon funding mechanism, such as a special taxing district, necessary to maintain this system that may be implemented in the future. Finally, in order to ensure the viability of the River Ridge Shopping Center connection, the applicant shall escrow not less than \$50,000 to be used for improvements on the River Ridge site to upgrade the interior access "road" that will connect to the public street being constructed by the developer as part of the Phase II urban village project; the implementation of this upgrade project will require approval by the River Ridge Shopping Center owner and by the City of Asheville.*
3. The applicant shall install or fund the recommended improvements indicated in the TIA, except those specifically not desired by the City Engineering Department. In addition, the applicant shall be responsible for the full cost of linking the new signal at Stevens Street with the other signals in the immediate vicinity in such manner as required by City staff. The applicant shall escrow not less than \$65,000 for a traffic calming study and its implementation, with any unused funds to be returned to the applicant upon completion of the traffic-calming project.
4. The applicant shall work with the Asheville Transit Services Director to locate and construct a transit center on the site to serve as a transit node. The transit center shall be constructed at the developer's expense and shall be architecturally compatible with the development design.
5. The applicant shall work with the City Parks and Recreation Department to convey the park area and greenway to the City of Asheville; such conveyance may require the applicant to create and fund a maintenance plan for this property.
6. A signage package that complies with the City's sign code shall be submitted for review and approval prior to formal approval of this project.
7. *The design of the urban village shall be modified in accordance with the standards for such developments as enumerated in the Urban Village zoning district; the applicant shall be able to construct the proposed number of residential units and the proposed square footage of the office ~~and retail~~ space; additionally, the design of the urban village shall include a public street connection to River Ridge Shopping Center.*
8. Within 90 days of the issuance of a certificate of occupancy for the Wal-Mart building, the Wal-Mart Corporation (or any individual, partnership or corporate entity acting on behalf of the Wal-Mart Corporation) shall terminate any leasehold of the existing Tunnel Road Wal-Mart building and property or, in the event the building and/or property is owned by the Wal-Mart Corporation, said corporation (or any individual, partnership or corporate entity acting on behalf of the Wal-Mart Corporation) shall place the building and/or property for sale or lease for commercial or other purposes allowed under the applicable zoning at fair market prices. The purpose of this condition is to ensure that the Tunnel Road building and/or property is not kept in a vacant state for an extended period of time.
9. *Unless legally precluded by the wording of the easement, the access easement on the south side of the Swannanoa River running from the developer's property to Fairview Road shall be transferred to the City of Asheville for the purpose(s) of extending the Swannanoa River greenway and/or construction of the Riverside Parkway. The City shall have the ability to transfer this easement to the State of North Carolina or some other entity or entities for one or both of these purposes.*

-11-

10. *The applicant shall enter into an Administrative Agreement for State Directed Remedial Action with the Department of Environment and Natural Resources (NCDENR). The applicant shall submit and implement, after NCDENR approval, a remedial action plan for addressing on-site contamination consistent with the agreement and NCDENR policies and procedures. In addition development plans shall be designed and/or revised to accommodate future remedial action at the site.*
11. *The construction schedule for Phase I and Phase II shall be in general compliance with the schedule submitted by the applicant and included herein as Exhibit C.*
12. *Fencing of the floodway expansion areas and stormwater retention ponds shall be accomplished by using wrought iron or other similar decorative fencing. The applicant shall install landscaping consistent with a plan to be developed by working with staff*

in order to address the appearance issues associated with such extensive fencing.

In addition to the above conditions, should City Council choose to approve this request, staff recommends that Council direct staff to undertake the following tasks:

1. Perform a zoning study for the River District to ascertain the geographical extent of future large-scale retail structures in the district.
2. Work toward making the Riverside Parkway the City's top priority on the Metropolitan Planning Organization Transportation Improvement Program.
3. Work with the applicant and a team of property owners from the surrounding area to determine the feasibility and desirability of developing a specialized transit system for the development site and surrounding area."

Mr. Shuford said that at the last meeting on this matter, there was a direction by Council to have staff meet with the developer and see if there were possible ways of reducing the traffic impact on Swannanoa River Road. A target was set at that meeting of reducing the impact so that not less than 10% of the capacity of that road (a Level D capacity) would still be available for future development. City staff provided extensive information to the developer, primarily in the area of transit. When City staff met with the developer, they were expecting a lot of information and discussion about transit, but they proposed a different tact. What the developer is now proposing is to retain the Wal-Mart Supercenter at its original proposal, as well as the shopping center portion. They will also keep one of the out-parcels as a high turnover sit-down restaurant. Changes include removing one of the out-parcels that was scheduled to be a high turnover sit-down restaurant and removing the hotel (which was included in the Traffic Impact Analysis "TIA"). Specialty retail has now been revised to general office use. In addition they originally proposed 100 dwelling units for the residential condo/townhouse and now they are proposing 125 dwelling units (City Exhibit 14).

Mr. Gaye Sprague, the City's traffic consultant, said that the developer's consultant did go through the calculations necessary to come up with the projected 24-hour volume on Swannanoa River Road that relate to the reductions in use. We have reviewed those calculations and the assumptions made and concur that they can get down to the 10% below Level D that we requested.

Mayor Worley said that the public hearing on this matter was held on June 25, 2002, and continued until June 26, 2002, at which time said public hearing closed. At this time, he re-opened the public hearing for the purpose of receiving new information and having any comments on the new information. Mayor Worley then reviewed the order of the hearing itself and the standard time limitations.

Oaths were administered to anyone who anticipated speaking on this matter.

-12-

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

After hearing no questions about the procedure, Mayor Worley re-opened the public hearing at 5:15 p.m.

Ms. Becky White, Transportation Planner for Sain Resources, said that the development team was charged with producing a traffic mitigation plan that would satisfy the City's requirement that 10% of the capacity on Swannanoa River Road be left for other area development. Three alternatives were suggested for further study – a transit system, widening of Swannanoa River Road, and an interchange at I-240. Since that time, Sain Resources retained an independent consultant to prepare a transit feasibility study. The result of that study indicates that the 10% capacity reservation could not be met with transit, as it does not save enough vehicle trips. The estimate was a savings of approximately 170 vehicle trips and in order to meet the 10% capacity reservation, they needed to save approximately 1,000 trips on the most heavily affected segment on Swannanoa River Road. A concept plan for widening Swannanoa River Road was prepared and it was confirmed from that concept plan that the right-of-way acquisition would not be feasible for the developers as private landowners. An interchange at I-240 was determined to be too uncertain to allow the developers to proceed with construction of the shopping center. The most straightforward method for meeting the capacity reservation requirement was to reduce the intensity of the development. By making the changes outlined by Mr. Shuford, the developer was able to reduce the trip generating characteristics of the shopping center to a level that met the 10% capacity reservation. In addition to the reduction in intensity of the development, a commitment was made to move construction of a connector roadway to the River Ridge Shopping Center to the first Phase of the project and a portion of the development's trips were assigned to this connector road. These modifications to the plan were sufficient to meet the City's capacity requirement and the details of the calculations were documented in a memo dated July 16, 2002 (Exhibit A which is attached to City Exhibit 13).

Ms. Betty Lawrence, attorney representing the Beverly Hills Neighborhood Association, the Oakley Community Association and Community Supported Development, said that her clients are confused over the specifics of this plan at this point. While many changes are noted in City Exhibit 13, no changes have been made in the site plan, the grading plan and the cross sections. They were told that the developers changed the cross sections and grading on this project, but they don't know how much. The only plat in front of Council is the one that was submitted with the application. It is not the same thing that Council is supposed to approve, according to the staff report. It is crucial that what Council is approving is clear. It is not and therefore this calls for either denial of the application based on insufficient information or on the continuance of this proceeding. We make that preliminary request. She said that there are violations of the ordinance and that those violations be considered. One new violation is that there is a requirement that the plans that were submitted to the Technical Review Committee (TRC) need to be revised in a way that the TRC asked for within 60 days or they are deemed denied. Sixty days have passed and they haven't been revised. She also called Council's attention to provisions in the Urban Village District regulations. A master plan is required for an urban village zoning application. She said that urban village district projects are required to submit a master plan with the zoning application for the entire parcel that indicates the general street network, the land use configuration within that network, the ultimate proposed development density and the proposed structure heights for the urban village. In addition, for initiation of this zoning classification, properties may fall under more than one ownership so long as there exists covenants or other legally binding agreements that address cross access, cross parking and other similar issues affecting joint operation of the project. It is true that the land being requested to be rezoned is all under one ownership at this time; however, the access to the land is under different ownership at this time. There are at least three different owners involved. As she understands the new traffic mitigation plan, it would put more of an emphasis on the access road

-13-

coming from the River Ridge Shopping Center that is not owned by the applicant and there is no agreement for that access through that private land. The Stevens Street entrance has the I-240 underpass and the Southern Railway overpass to deal with. None of these have legally binding agreements that address cross access. This emphasizes one of our major points which is that staff is saying that what comes before Council for a conditional use review only has to do with use and that conceptual plans are all that is needed. That is not all that is needed. Conceptual plans are not part of the Unified Development Ordinance (UDO). The UDO has very specific requirements for what the plans for a conditional use permit must contain. One Court case that has dealt with this in detail has said that cities can provide by ordinance for a preliminary conditional use permit and if they do, then you can just get by with a sketch of the project. But if you provide for a conditional use permit that needs final plans and that needs the conditions that have been detailed for Council, then Council cannot go against their own rule to permit them to go forward and approve an application, which does not meet the City's requirements. We believe that is what has happened here. Regarding the urban village, the developer should have the final plans so Council and the public has the right to know what is being proposed. A provision of the UDO says "revisions to the approved urban village district master plans may be approved by the City Council or by the Planning and Development Director depending on the type of revisions being requested. City Council shall review any revisions to a master plan that changes the proposed mix of uses by increasing or reducing any use category by 25% or more." As Council can clearly see, the urban village request has gone from 100 residential units to 125 residential units. This may be read to say this is only after a master plan has been approved that it has to have these changes in order to include new information and trigger new review, but we say that that same logic means that that is a significant change in the urban village request and that today we should be able to comment on those changes in the proposed urban village as well as the changes in the traffic mitigation. In the urban village requirement, it reads, "in reviewing master plan revisions, the City Council shall follow the same public hearing process used to approve the initial master plan." She feels this means that there should be a public hearing today on the urban village changes as well. She asked that Council either deny or delay for further information. (Neighborhood Exhibit 9).

The following individuals spoke against the issuance of the conditional use permit based on the new information presented at this meeting. If concerns were expressed by prior speakers or if the comments are not relevant to the decision before Council, they will not be repeated or included. Other comments/concerns include, but are not limited to: developer is not adhering to Urban Village District regulations in that a Wal-Mart Supercenter was not the intent of safe and convenient access to shopping and other essential services; it is not possible to build a road under the existing I-240 bridges to meet the City's minimum design guidelines; traffic counts were averaged and do not represent true traffic patterns; how can the City enforce traffic laws and regulations on the private road that is to be built; the developer has met the 10% below Level of Service D by only 25 vehicular trips per day; the TRC imposed numerous conditions and those conditions along with environmental issues associated with groundwater contamination must be publicly addressed but this information has not been shared with the public; there will still be a lot of cut-through traffic even with the access road being built; traffic will be 24 hours since the Wal-Mart store stays open for 24 hours; area is too concentrated for another large development; need sustainable development; can't ride a bike on Swannanoa River Road due to traffic; there is no margin for safety since 10% below Level of Service D is only an assumption; and due process as well as state and local ordinances require notice of the public hearing and none was given:

Mr. Jeff Kelley (Audience Exhibit 23)

Mr. Ned Guttman, Asheville resident (Audience Exhibit 24)

Mr. Mike Moody, East Asheville resident
Mr. Andrew Brown
Ms. Corinne Kurzmann, Sayles Road resident
Ms. Hazel Fobes, North Asheville resident

-14-

Mr. William Butcher
Ms. Jane Blodgett, Fairview Road resident
Mr. Grant Millin, East Asheville resident
Ms. Sharon Martin, Asheville resident
Ms. Lola LaFey
Professor David Clark
Mr. Joe Adams, Asheville resident
Ms. Beth Jezek, East Asheville resident

The following individuals spoke in favor of the issuance of the conditional use permit based on the new information presented at this meeting. If concerns were expressed by prior speakers or if the comments are not relevant to the decision before Council, they will not be repeated or included. Other comments/concerns include, but are not limited to: development of the area will bring income to the City, and the developers will clean up the environment and City taxpayers will not have that burden:

Ms. Helen Morrison
Mr. Fred English, Haw Creek resident

Mayor Worley noted that the project must be built in accordance with City standards, and that includes construction of the roads.

Ms. Lawrence said Council has heard how tiny the margin of error is and that we don't really have good counts on Swannanoa River Road. One aspect is the average daily counts. If you look at what would be more than average in Asheville, at least 1/3 of the year traffic would be too high to meet the 90% of that standard. City staff has previously said that the road through River Ridge Shopping Center would be 2% of the traffic and now it's 5% of the traffic. We don't know what caused that change. She pointed out that the way the proposal is to issue the permit leaves too much to the delegation of City staff. Five of the 12 staff conditions have changed and they were permitted to comment on only one of those five. She said if Council doesn't either turn this down or continue it, that they add the following three conditions. (1) "All federal, state, utility and private permits, easements and approvals be obtained or guaranteed to be obtained prior to the issuance of any City permit." Not simply a building permit, but any of the permits that would involve moving the ground around. (2) "That remediation of the toxic plume shall be completed to the satisfaction of the Dept. of Environment and Natural Resources prior to disturbing any soil within 400 feet of the predicted dispersion of any toxic substance that does not meet DENR Hazardous Substance Concentration Standards." And, since we see this project being scaled back and we have reason to believe that it will be scaled back up in stages and that may happen in ways that don't require public notice, they ask that (3) "Public notice be given for any permit application and requests for modifying the conditional use permit."

Mr. David Matney, attorney representing the developer, said that when the meeting ended in June, Council said there was too much traffic and they needed to do something about it. There was no way to do anything around it, so we did something to the project. We removed one building (restaurant) and will grade it flat. That means no cars. No new buildings are proposed in the Urban Village. We have taken the existing buildings – converting the ones that were retail on the first floor to office and the ones that were retail on the second floor of the building to residential. The access road through River Ridge Shopping Center has been there since the beginning. Regarding that access road and its traffic count, we showed zero to start with because we weren't going to build it until the end. Now we will build it at the beginning. The hotel has been removed since before the first public hearing, but the numbers for the hotel were included in the TIA. We have now deleted those numbers. We have a 10% capacity reduction on a Level of Service D road. A road is not full until it is a Level of Service F and therefore we

-15-

have a margin of safety. He respectfully asked that City Council approve the conditional use permit.

Prior to Mayor Worley closing the public hearing, Ms. Lawrence cautioned Council that there is a case that states that once the public hearing is closed, anything that happens after that in terms of questions that are asked of either staff, the applicant or the traffic engineers are not competent evidence.

City Attorney Oast was familiar with the case cited by Ms. Lawrence and felt it may be appropriate to close the public comment period and proceed with Council deliberations.

Mr. Matney felt that Council would be within its rights to ask any questions for clarification, particularly since there have been volumes of paper submitted.

Mayor Worley closed the public comment period at 6:18 p.m.

With regard to Condition No. 5, Councilman Dunn asked how the City could require the developer to buy land, convey it to the City and then fund maintenance of it. Mr. Shuford explained that the applicant offered to give the property along the river to the City for a park. Initially the City did not feel they wanted it because of some concerns about a variety of issues. The Director of Parks and Recreation then decided it would work and the conveyance and maintenance issues are there to cover issues. Some issues include precisely what land is given and whether it involves some feature that is necessary for the developer to have this site function, such as a stormwater pond or the floodway expansion area. We certainly would not want to take those on unless the applicant was willing to maintain it.

Mr. Shuford said the additional approvals required for the Sayles Project (City Exhibit 15) include formal site plan review and approval, zoning permit approval, erosion control permit, grading permit, stormwater management permit, Federal Emergency Management Agency (FEMA) review and approval, NC Dept. of Environment and Natural Resources (DENR) review and approval, Army Corps of Engineers permit, building permits, driveway permits, life/safety code review and approval, encroachment permits, permits and approvals associated with the new roads, and certificates of compliance. He said that many steps are still appealable if the public or the developer wants to appeal them. This is basically the first step to move forward into this range of other reviews. He said that basically the developer is committed to meet the TRC conditions and will have to go back with a formal site plan that shows that he does that. If there is a desire on the part of the applicant to come back with some additional development intensity, it will have to come back to City Council. This is a project that has been reviewed in its entirety with a TIA and if there are changes that are going to affect that in terms of development intensity, we are required to go through this process again. That includes notice and public hearing. This is certainly not the end of public input nor the end of the review of the technical aspects of this project.

Councilman Mumpower asked if the City is procedurally violating any of our floodplain ordinances through this process. City Engineer Cathy Ball responded that there are some things, such as the Asheville Standard Specifications and Details Manual, that the City Engineer has the right to waive certain requirements. The floodplain ordinance is different. It is a part of the UDO and we are delegated by FEMA to carry out the requirements and permit projects within the floodplain area. We do not have the ability to waive those requirements. Therefore, the project must comply with those requirements in order for it to move forward. There is a no-rise certificate and that says the water level will not rise. That has to be provided by and stamped by a Professional Engineer in North Carolina in order for us to issue a permit for them to be able to do the work. We are not violating any requirement of the floodplain ordinance.

-16-

Upon inquiry of Councilman Mumpower, Mr. Matney said that when the plant closed, this became a Superfund site to remove the drums of chemicals that were left. When the drums were removed, it was no longer a Superfund site. There is a groundwater plume (under the restaurant that has now been removed) that will be dealt with by a remedial plan to meet state requirements. If the groundwater plume is not taken care of, the property can't be developed.

Upon inquiry of Vice-Mayor Bellamy, Mr. Shuford said that as a result of public comment at the TRC Committee, the River District Design Review Committee and the Planning & Zoning Commission, changes have been made to the architectural design, site layout, etc.

Councilman Peterson said that our ordinance requires that a master plan be submitted for the urban village rezoning. Mr. Shuford explained the master plan and said that there are some conditions regarding technical adjustments that need to be made in terms of how that urban village design occurs, in order to comply with our Urban Village District. If those result in some sort of substantial change, we will bring that back to Council. There is a fair likelihood that Council will see the Urban Village back with regard to its master plan because of its need to emphasize that connection through to the River Ridge Shopping Center. The fact that this is a project that is considered in unity and its traffic impacts are cumulative, that any change to the development intensity, whether it be in the urban village part or the Phase I part, is going to trigger a need for it to come back to City Council.

Councilman Peterson asked if the property where the hotel was going to be built can be developed since our ordinance requires that any plan that is going to be developed in phases that something be shown of what is going to go in each phase. Mr. Shuford said that in order for them to develop that property, they would have to come back to City Council because that would be

outside of the two phases they have submitted.

Regarding the access road through River Ridge Shopping Center, Councilman Peterson said that it looks like our ordinance requires that before an urban village district is approved, there has to be a binding agreement for development of that access road. Mr. Shuford said that they don't have anything formal in terms of that commitment, but their TIA and plans show that they will have that connection. City Attorney Oast said that the requirement for the legally binding agreement addresses issues of cross access, cross parking and other issues for the joint operation of the projects within the boundary of the rezoning. Under the conditions suggested by staff, Phase I has to be developed in conjunction with Phase II. Phase I can't be built at all if the access through the River Ridge Shopping Center doesn't exist. Even though the owner's permission for the access through River Ridge is not part of the urban village rezoning, it is part of the conditional use permit. The project cannot be built unless the access exists.

Councilman Peterson was concerned that the developer would start grading and building and then determine that they can't build the Stevens Street extension. He questioned at what time in the process would they actually have to have an agreement. Mr. Shuford reviewed the general timing schedule submitted by the applicant prior to the public hearing in June for Phase 2 (City Exhibit 16) and said that road assurances have to be in place before anything starts to happen.

Mayor Worley said that before a spade of dirt is turned, the engineering has to be done to show that the streets can be built to City standards and that any agreements that are required in order to eventually construct the streets have to be obtained and finalized. Any approvals by NC DOT for signalization, design, etc. have to be in place. In other words, everything that they would have to construct would have to be permitted or an agreement signed so that there are no legal impediments to their eventual construction before we would allow them to turn a single spade of dirt for any aspect of the project. Mr. Shuford qualified the Mayor's statement in that there is going to be some pollution remediation that clearly can be permitted in advance of the other

-17-

aspects. They will have to have a fully engineered and have an approved plan before they get any building permits.

Upon inquiry of Councilman Peterson, Ms. Sprague said that the developer took a current count of the traffic and she feels confident that the count that was done on the average day in average conditions is a good count to base the study on.

Vice-Mayor Bellamy said that the residents of Beechwood Road asked that their road be closed at its intersection with Swannanoa River Road and one of staff's recommendations was to widen Beechwood Road as you approach Swannanoa River Road to provide a separate right-turn lane onto Swannanoa River Road. Ms. Sprague said that the recommendation by staff at the TRC was deleted because they did not want to do anything that would have the perception of increasing the traffic. She said that Beechwood Road would be a part of the traffic calming study in the neighborhood, working with the neighborhood.

Regarding timing of the traffic calming study, City Engineer Ball said that once the plan has received approval for the conditional use permit, staff would begin working with the neighborhood to develop a plan in order to make the project successful. Before they would be able to get a Certificate of Occupancy, City staff would have had to either spend the money on the traffic calming or get a bond so that the City could spend it whenever we got ready. If for some reason the process was delayed because of working with the neighborhood in trying to get consensus on what kinds of traffic calming measures to put in, it is possible we would require the developer to put up a bond in the amount of 150% of the cost so that it can be done. Ms. Ball said that the City would not require the 40% initial signatures, however, before there was a plan that was ready to be put on the ground, we would want to get 60% of the signatures. If the neighborhood doesn't agree that is the right thing to do, then it probably won't be successful. If we didn't get the 60%, we would continue to refine the plan until we could get buy-in from the group as a whole.

Councilman Peterson asked if City staff has looked at how feasible the Stevens Street extension is, especially with regard the I-240 road span. Ms. Ball said that the plans the City received were conceptual in nature. It has come to her attention that the concern is over the span being enough to accommodate the City's requirements. She stated that the road must meet the City's requirements, or the project stops. The developer has to show City staff plans that it will meet those requirements before they issue a grading permit for any part of the project. (City Exhibit 17)

Upon inquiry of Councilman Mumpower, City Attorney Oast said that the master plan is not required to be as detailed as the site plan and it's within the contemplation of the ordinance that it will change. It would be unusual for it not to change.

At 7:07 p.m., Mayor Worley announced a short break.

Upon inquiry of Vice-Mayor Bellamy, Mr. Matney explained that the plume is under about $\frac{3}{4}$ of an acre (area where the restaurant was planned but now removed). If you look at the parts per billion they sampled, it is equivalent to about 8 teaspoons.

This has a concentration of 25 parts per billion, and the OSHA permitted amount of this substance in the air in a dry cleaner is 25 parts per million. It is a very small amount. Since it is in an area where the restaurant will not be built, remediation will be on-going. Our engineers say that we may move it slightly (due to the bridge construction), but the amount of movement will stay in that general area. We will be monitoring and working out a plan that DENR has to approve. The plume is in an area that they will not be building on at the present time, and maybe never.

-18-

Vice-Mayor Bellamy asked what type of fencing would there be around the floodway expansion area and the stormwater retention ponds. Mr. Matney said that they can only put fencing where FEMA allows them to put fencing. Fencing in a lot of these areas will be a flood barrier. We would hope the condition would require the developer to put fencing in where it is permitted or required by FEMA and that if it's visible from the surrounding roads or shopping center, that it would be decorative fencing. Mr. Shuford also responded that whenever you have a stormwater area that is 4 feet or deeper, it is required to be fenced.

Vice-Mayor Bellamy asked if some of the parking spaces could be eliminated to leave more green space. Ms. Shuford said that the developers are not at the minimum number of parking spaces, so from the standpoint of reducing the amount of parking spaces, that is certainly something staff would support. However he didn't know whether the developers would be able to do that because of their contractual requirements with different tenants.

Upon inquiry of Vice-Mayor Bellamy, City Engineer Ball said that how the bridge will come down is one of the details that has not been provided to City staff. She did say the City is delegated by the State to provide a permit to them. In order for us to issue that permit, they have to show that they are not going to cause erosion problems to the stream. That ordinance is pretty strict. They have to mitigate any sediment or run-off that goes into the stream. At this time, the actual details of how that is going to happen are not known.

Upon inquiry of Vice-Mayor Bellamy, Ms. Sprague explained three items City staff asked the developer to eliminate from their recommendations in their TIA to mitigate traffic: the widening of Beechwood Road, a modification to South Tunnel Road signal, and the dual left coming out of the property.

When Vice-Mayor Bellamy asked why there was no recommendation for a bike lane on the new road, Ms. Sprague said that bike lanes have not been addressed and she was not prepared to make a recommendation at this time.

Councilwoman Jones expressed her concern over the remedial action plan for addressing on-site contamination. She questioned whether the implementation of that plan should be complete or if it was enough to just have a plan in place.

Mayor Worley said that this is new information and therefore, re-opened the public hearing at 7:45 p.m.

Mr. John Childress, Vice-President of Horne Environmental, said that "implement" in this case means to start the process of remediation. They are evaluating several remediation strategies and they will have to be approved by the DENR. To implement the plan with an aggressive strategy would require approximately 6-18 months to clean up the groundwater plume to DENR standards. Following that, they are required to monitor for approximately two years to make sure that the standards are met and continue to be met. From start to finish would take approximately 2 to 3-1/2 years.

Upon inquiry of Councilman Ellis, Mr. Childress said that he has been involved in this type of remediation several times and at this level, it would be considered minor dry-cleaning contamination cleanup. In fact, it probably wouldn't even require clean-up under the standards. It would require monitoring only in most cases with concentrations at this level. Federal drinking water standards are 5 parts per billion and this site has an average range of 15-20 parts per billion, with the highest concentration at 31 parts per billion. The state standards are .7 parts per billion, which is about 10 times less than drinking water standards. This site would more than qualify as drinking water once it is cleaned up.

-19-

Councilman Mumpower stressed that they have to meet state and federal guidelines with regard to the groundwater plume and that the City is not equipped to make those decisions at the local level.

Councilwoman Jones wanted more assurance that the plan is moving forward and that the remediation would be complete, given the unknowns in state government.

Mayor Worley asked what assurances are given by either the developer or the state that the process would in fact be completed. Mr. Childress said that once they enter into an agreement with the State, they are required to complete the process

and meet those standards.

Vice-Mayor Bellamy suggested adding the words "and completed" to Condition No. 10 in terms of the remedial action plan being implemented.

Councilman Ellis asked what would be the damage to public health if the groundwater plume could not be remediated. Mr. Childress said there is no danger to the public health at this time. To have exposure you have to be in contact with that material and since it is underground, there is no reasonable expectation that anyone is going to be exposed. Even if it were left alone to naturally drop off in concentration until it was undetectable, which would happen, there would be no real public threat that he could see.

Councilman Peterson questioned Mr. Childress' comment that with this level of concentration, an approved remedial action plan could just require containment and monitoring and not that the contaminates be removed. Mr. Childress explained that that was an option and DENR may approve that, but that is not what the developer is proposing. It was his understanding that the developer is proposing an active treatment system to remove the contaminates and monitor the site until it is determined that to be true.

Councilman Peterson felt that if it's the developer's intent to have a remedial action plan to remove the contaminates and monitor the site, then the Condition No. 10 should be amended to state that and not just to approve a remedial action plan.

When Councilwoman Jones asked for vehicle trip comparisons, Ms. White presented her with the addendum to the TIA (Applicant's Exhibit 12).

The following individuals spoke in favor of the issuance of the conditional use permit based on the new information presented at this meeting. Other comments/concerns include, but are not limited to: there is a need to clean up this area; and technology to detect parts per million, billion, and trillion is moving ahead much faster than the ability to deal with and remove these products from our environment:

Mr. Fred English, resident in Haw Creek
Mr. Jim Jenkins, former Gerber Products Plant Manager

The following individuals spoke against the issuance of the conditional use permit based on the new information presented at this meeting. Other comments/concerns include, but are not limited to: we need to set ourselves about state standards, would like to see the environmental status of the entire area, there is contact between the water that contains the chemicals, the water surrounding the stream and the stream; if the Sayles building is removed, the area will be exposed to the rain and the chemicals will be flushed into the stream; Clean Water Fund of NC's experience in dealing with state and federal contaminated sites is that only implementation of a DENR approved remediation plan will not be sufficient to meet with City's goals of a safe and exemplary development project; it is necessary to have the groundwater remediation well underway before construction begins anywhere in the vicinity of the contaminated area and

-20-

demonstrated to be completely capturing the plume of contamination; the site plans for any development in this area should include a clear overlay of the characterized plume before consideration of any final approval; oversight of construction and post-construction stormwater management will put a significant new burden on the City's local sedimentation program; fee structure for permitting should be adequate to fully recover the additional costs to the City and there must be a clear stipulation that local program's should be fully accountable for enforcing the City's stormwater and sediment and erosion regulations rather than providing compliance assistance or working with a developer who is in violation; increased risk is willing to be taken by discounting the amount of pollution we already have; standards need to be set that go beyond the state and federal requirements; we need to look at the pollutants from the parking lots; and two Planning & Zoning Commission members voted against the project regarding the traffic and the groundwater plume:

Ms. Corinne Kurzmann, resident on Sayles Road
Mr. Grant Millin, resident in Oteen
Mr. John Sticpewich
Mr. David Herbert, speaking on behalf of representing the Clean Water Fund of North Carolina
Ms. Elizabeth Allen (Note by City Clerk: This witness was not sworn in.)
Mr. Jeff Kelley
Ms. Hazel Fobes, resident in North Asheville

Ms. Lawrence suggested the following condition: "Complete diagrams overlaying the characterized plume showing depth of monitoring wells with planned construction of all buildings, parking lots, ditches and any other features that could interfere with the hydrology of the site or prevent an exposure risk to the public." Regarding the remediation plan, she said a letter received on June 24, 2002, from the Dept. of Environment and Natural Resources said that they are going to require a remediation plan "to be received by their office within 30 days of receipt of this letter." She asked if Council would allow testimony over what is going to be submitted since June 24 is one day away.

Mr. Matney responded to Ms. Lawrence by saying that DENR has revised the date for the remediation plan until August 30 and not June 25. Mr. Matney said that if this project is not developed, all the pollution will be moving slowly toward the river. If you have a commitment and agreement by the developer that they are going to what the state approves then we will be better off than we are now. He stressed that the developer is committed to doing a plan that the state approves and as soon as it gets started every step beyond that is a help to the environment and to the public. He felt Condition No. 10 as proposed by staff was sufficient.

Councilman Peterson wanted to make sure that the developer's plan that they submit to DENR is to remove the contaminants and not just contain them, cover them up and monitor the site. Mr. Matney said that he understands the word "remediation" is that you are doing something about it to make it less of an impact on the environment. He explained that Mr. Childress said that the state would approve a containment plan due to the level of what is there, but that is not what the developer is proposing. The developer is not asking for a containment plan, but asking for a remediation plan. It is the developer's intent to remediate the site by lessening the concentration to state standards. It is their desire to start the remediation before construction on the building but considering that monitoring may take two years they don't want to have to wait until the monitoring is over to be able to start. Councilman Peterson asked that that language be incorporated into Condition No. 10 so that the public is assured that there is going to be a clean-up and not just containment and a cap.

At 8:33 p.m., Mayor Worley closed the public comment period.

-21-

Upon inquiry of Councilman Dunn regarding Condition No. 8, Mr. Shuford presented Council with City Exhibit 18 which was a copy of an e-mail from Chris Gregory, Real Estate Manager from Wal-Mart Stores Inc., to Michael Patterson which stated "This email is to inform you that Wal-Mart has every intention to market our store on Tunnel Road and to either sell or lease it as quickly as possible. We have had considerable interest and look forward to marketing it. Please let me know if you have any other questions."

With regard to Condition No. 9, City Attorney Oast said that representatives of the developer suggested a slight change in wording to delete the words in the first sentence "by the wording of the easement".

Upon inquiry of Councilman Dunn regarding Condition No. 12, Mr. Matney said that they have to do fences in certain places but they cannot in other places due to impeding the river. If the fences are visible in places that they are required, they will be decorative.

Upon inquiry of Councilwoman Jones regarding Condition No. 10, Mr. Matney suggested Condition No. 10 be amended to include the following at the end of the first sentence "which requires reduction of the pollutant concentration to state groundwater remediation standards." He said that he had a problem with the word "completion" because it's really not completed until after the two year monitor period. He didn't think it was fair for the rest of the property to sit still for the 18 month period to remediate while they work on $\frac{3}{4}$ of an acre. He said they would like to be building at the same time on the other areas (like building the road) at the same time the remediation is occurring. Again, they are committing to a remediation plan, not just cap it and let it sit.

Councilman Peterson was concerned that once the current building is removed, water could leak into the groundwater and then further spread that site.

Mayor Worley asked if the developers would be willing to commit to a bond to assure completion of the remedial action. Mr. Matney said the problem would be establishing the amount of the bond but that his clients would want an agreement and not a bond.

Councilman Mumpower asked what the City's recourse would be if the developer said they would remediate the site (not just contain it) and then didn't do it. City Attorney Oast said that they would be in violation of the conditional use permit and the City would initiate revocation proceedings to revoke the permit, which could close the whole project down. Also, any one of the remedies under our Code are things we could implement – fines, seek an injunction, etc.

Councilman Mumpower moved to adopt Ordinance No. 2939 to issue the conditional use permit to allow for construction of 379,000 square feet of retail space for Phase 1 of the development, subject to the following conditions (which had input from all of Council):

1. All conditions identified by the Technical Review Committee shall be met.
2. No changes shall be made in the level of development intensity (Exhibit A) that will or may increase traffic on Swannanoa River Road unless further traffic mitigation measures are implemented. In addition, the applicant agrees to support a general transit service hub at the site and to participate in an effort to develop a specialized transit system for the site and surrounding area, including developer provision of a transit stop on the site, designing the interior of the site to accommodate transit vehicles, allowing transit vehicles to traverse the site, developer participation in a plan to create a specialized transit program, and developer commitment to any agreed upon funding mechanism, such as a special taxing district, necessary to maintain this system that may be implemented in the future. Finally, in order to ensure the viability of the River Ridge Shopping Center connection, the applicant shall escrow not less than \$50,000 to be used for

-22-

- improvements on the River Ridge site to upgrade the interior access "road" that will connect to the public street being constructed by the developer as part of the Phase II urban village project; the implementation of this upgrade project will require approval by the River Ridge Shopping Center owner and by the City of Asheville.
3. The applicant shall install or fund the recommended improvements indicated in the TIA, except those specifically not desired by the City Engineering Department. In addition, the applicant shall be responsible for the full cost of linking the new signal at Stevens Street with the other signals in the immediate vicinity in such manner as required by City staff. The applicant shall escrow not less than \$65,000 for a traffic calming study and its implementation, with any unused funds to be returned to the applicant upon completion of the traffic-calming project.
 4. The applicant shall work with the Asheville Transit Services Director to locate and construct a transit center on the site to serve as a transit node. The transit center shall be constructed at the developer's expense and shall be architecturally compatible with the development design.
 5. The applicant shall work with the City Parks and Recreation Department to develop a plan acceptable to the City to convey the park area and greenway to the City of Asheville.
 6. A signage package that complies with the City's sign code shall be submitted for review and approval prior to formal approval of this project.
 7. The design of the urban village shall be modified in accordance with the standards for such developments as enumerated in the Urban Village zoning district; the applicant shall be able to construct the proposed number of residential units and the proposed square footage of the office space; additionally, the design of the urban village shall include a public street connection to River Ridge Shopping Center.
 8. Within 90 days of the issuance of a certificate of occupancy for the Wal-Mart building, the Wal-Mart Corporation (or any individual, partnership or corporate entity acting on behalf of the Wal-Mart Corporation) shall terminate any leasehold of the existing Tunnel Road Wal-Mart building and property or, in the event the building and/or property is owned by the Wal-Mart Corporation, said corporation (or any individual, partnership or corporate entity acting on behalf of the Wal-Mart Corporation) shall place the building and/or property for sale or lease for commercial or other purposes allowed under the applicable zoning at fair market prices. The purpose of this condition is to ensure that the Tunnel Road building and/or property is not kept in a vacant state for an extended period of time.
 9. Unless legally precluded, the access easement on the south side of the Swannanoa River running from the developer's property to Fairview Road shall be transferred to the City of Asheville for the purpose(s) of extending the Swannanoa River greenway and/or construction of the Riverside Parkway. The City shall have the ability to transfer this easement to the State of North Carolina or some other entity or entities for one or both of these purposes.
 10. The applicant shall enter into an Administrative Agreement for State Directed Remedial Action with the Department of Environment and Natural Resources (NCDENR) which requires that the contaminant concentration will be reduced to State Groundwater Remediation Standards, and which shall require that there be no disturbance of the area over or near the plume as shall be required by NCDENR in the Administrative Agreement. The applicant shall submit and implement, after NCDENR approval, a remedial action plan for addressing on-site contamination consistent with the agreement and NCDENR policies and procedures. In addition development plans shall be designed and/or revised to accommodate future remedial action at the site.
 11. The construction schedule for Phase I and Phase II shall be in general compliance with the schedule submitted by the applicant and included herein as Exhibit C.
 12. All fencing visible from off the site or from parking or other public areas on the site shall be accomplished by using wrought iron or other similar decorative fencing. The applicant shall install landscaping consistent with a plan to be developed by working with staff in order to address the appearance issues associated with any extensive areas of fencing.

13. The public roads constructed as part of this project shall be designed and constructed to meet the applicable City of Asheville standards for such roads. At a minimum, each road cross sections shall contain two travel lanes and sidewalk. Road rights-of-way shall be appropriate for the road type based upon anticipated traffic volumes and shall be subject to approval by the City Engineer. Road designs shall be approved by the City Engineer prior to the issuance of any grading or building permits for any phase of the project, except as may be necessary for pollution remediation, and road construction shall be completed pursuant to those plans prior to the issuance of a Certificate of Occupancy for any building.

City Attorney Oast said that he understood Council's desire to have all necessary agreements, easements and permits in place for the road construction and he would incorporate that wording of Condition No. 13.

Vice-Mayor Bellamy asked City staff and the developer to look at the possibility of minimizing the 1839 parking spaces. Mr. Shuford explained that the developer is close to the maximum number of spaces, but he didn't know how many spaces would be reduced from removing the restaurant. Vice-Mayor Bellamy felt the developer might save money by not having to pour so much asphalt if they added more open and green space, which will also help with stormwater run-off. Councilwoman Jones agreed not only for helping with stormwater run-off but also with issues of air quality as a result of the number of cars.

Mr. Matney said that the parking spaces would be reduced because the restaurant is removed. However, he said that they have to have that number of parking spaces for their tenants. Currently, there is 21 acres of impervious acreage. When the project is complete, there will be approximately 29 acres of impervious acreage. Even though they are adding approximately eight more acres of impervious acreage, they are spreading it out over a much larger area.

Upon inquiry of Mayor Worley, Mr. Shuford said the developer is exceeding our stormwater requirements. He also pointed out that the developer is doing water quality treatment that is not required to be done at the current time.

With regard to reducing the number of parking spaces, Mr. Shuford said we are trying to get a transit component at this site and if you are going to be a participant in the shoppers loop you will probably park at the Wal-Mart site because that is where the grocery store is. It may make more sense to save the parking spaces at that location and look for ways to reduce in other areas.

As a result of the discussion to try to reduce parking spaces, it was the consensus of City Council to direct staff to undertake the following tasks: (1) Perform a zoning study for the River District to ascertain the geographical extent of future large-scale retail structures in the district; (2) Work toward making the Riverside Parkway the City's top priority on the Metropolitan Planning Organization Transportation Improvement Program; (3) Work with the applicant and a team of property owners from the surrounding area to determine the feasibility and desirability of developing a specialized transit system for the development site and surrounding area; and (4) Explore the option of reducing the amount of parking.

The motion made by Councilman Mumpower to adopt Ordinance No. 2939 to issue the conditional use permit to allow for construction of 379,000 square feet of retail space for Phase 1 of the development, subject to the above 13 conditions, was seconded by Vice-Mayor Bellamy and carried on a 6-1 vote, with Councilman Peterson voting "no."

City Attorney Oast said that he would bring the language of the Order back to Council on August 13, 2002, noting that no permits will be issued until Council adopts the Order.

ORDINANCE BOOK NO. 20 – PAGE 8

Councilman Mumpower moved to adopt Ordinance No. 2939 to rezone a portion of property located at 437 Swannanoa River Road, formerly Sayles Biltmore Bleacheries, from Commercial Industrial District to Urban Village District for Phase 2 of the development. This motion was seconded by Vice-Mayor Bellamy and carried on a 6-1 vote, with Councilman Peterson voting "no."

ORDINANCE BOOK NO. 20 – PAGE

V. NEW BUSINESS:

VI. OTHER BUSINESS:

A. CLAIMS

The following claims were received by the City of Asheville during the period of July 4-11, 2002: Annette Hammond (Police), BellSouth (Water), BellSouth (Water) and Martha Rice (Sanitation).

The following claims were received during July 12-18, 2002: Lance Mulvihill (Water), Susan Russell (Sanitation) and BellSouth (Water).

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

B. LAWSUIT

The City filed a lawsuit on July 12, 2002, against David N. Wright. The nature of the procedure is a complaint, injunction, order of abatement and collection of debt for removal of storage trailers located on Waynesville Avenue in the City of Asheville. This matter will be handled in-house.

VII. INFORMAL DISCUSSION AND PUBLIC COMMENT:

COMMENTS REGARDING THE CONDITIONAL USE PERMIT FOR A WAL-MART SUPERCENTER

Ms. Corinne Kurzmann, Mr. Roger Gold and Ms. Hazel Fobes were dissatisfied with Council's decision regarding the Super Wal-Mart.

Mr. Fred English and Mr. Scott Osborne were pleased with Council's decision regarding the Super Wal-Mart.

VIII. ADJOURNMENT:

Mayor Worley adjourned the meeting at 10:03 p.m.

CITY CLERK

MAYOR