

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 Peterson gave the invocation.

**I. PROCLAMATIONS:**

**MOTION ADOPTING THE REVISED MISSION STATEMENT OF THE CITY OF ASHEVILLE**

Ms. Sasha Vrtunski, Interim Director of City Development, said that this is the consideration of requesting City Council approve the revised mission statement "The City of Asheville is committed to delivering an excellent quality of service to enhance your quality of life."

The City's current mission statement was adopted in 1995. The mission statement has served us well, but needs to be updated. After reviewing the mission statement at last year's staff retreat, the Management Team set up a team of City employees to bring forward a recommendation for change in the mission statement. The staff feels strongly that a mission statement should be simple enough that every City employee will be able to recite it when asked, "what is your job?" We believe the mission statement crafted by the team meets that standard, as well as capturing the essence of public service.

In addition to the mission statement, the Management Team also crafted core values. In previous years these were adopted by the Management Team on how we would work with the public and manage our various missions within the City. It is our intent to update the core values for all City employees. The core values represent sound standard practices and ideals that all City employees should follow.

Lastly, a motto was crafted as a simple way of stating our mission and how it affects all citizens.

Staff recommends City Council adopt the mission statement and endorse it to all employees and citizens of Asheville.

Vice-Mayor Bellamy moved to adopt the revised mission statement. This motion was seconded by Councilwoman Jones and carried unanimously.

**II. CONSENT:**

**A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON OCTOBER 8, 2002, AND THE WORKSESSION HELD ON OCTOBER 15, 2002**

**B. RESOLUTION NO. 02-167 - RESOLUTION AMENDING THE ASHEVILLE-BUNCOMBE MINORITY BUSINESS PLAN**

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Summary: The consideration of a resolution to amend the Minority Business Plan in order to enhance and clarify provisions of the Plan.

In May of 1998, City Council adopted the Asheville-Buncombe Minority Business Plan. The Plan has been amended three times: (1) November 1998 to expand participation in the Mentor-Protégé Program; (2) December of 1999 to clarify the provisions of the Plan; and (3) in 2001 to expand certification to two years.

At their meeting on August 8, 2002, the Minority Business Commission recommended that the Plan be further amended to

enhance and clarify provisions of the Plan. The most significant change is the reduction of the Minority Business Commission from 13 to 11 members. The Minority Business Alliance is no longer active and one of the three certified minority business owners has been deleted in order to keep the board balanced to an odd number. In addition, the grievance procedures for hearings has been revised and made more concise for use.

The resolution amends the Plan as recommended by the Minority Business Commission. The recommended revision to the Plan will also be presented to the Buncombe County Commission for their consideration and adoption.

City staff recommends City Council adopt the resolution amending the Minority Business Plan.

#### **RESOLUTION BOOK NO. 27 – PAGE 265**

#### **C. ORDINANCE NO. 2962 - BUDGET AMENDMENT TO ELIMINATE THE USE OF INTERNAL SERVICE FUNDS PURSUANT TO GOVERNMENTAL ACCOUNTING STANDARDS BOARD REGULATIONS AND AMEND THE GENERAL FUND BUDGET ACCORDINGLY**

Summary: The consideration of a budget amendment to eliminate the use of internal service funds pursuant to Governmental Accounting Standards Board (GASB) regulations and amend the General Fund Budget accordingly.

The City of Asheville has several operations that are established to supply goods or services to other city departments or governmental units. These operations include Fleet Management, Graphic & Printing Services, Central Stores, and Group Health/Risk Management. Each of these four operations is currently set up as an *Internal Service Fund*, a separate accounting entity established to budget and account for the activities of a department or division that supplies goods or services to another department or governmental unit.

The accounting and management procedures used by an internal service fund are similar to those of a private business; that is, the internal service fund predominantly charges other departments on a cost-reimbursement basis for the use of its goods and services. For instance, when Fleet Management repairs a police car, it charges the Police Department for the cost of parts and labor involved in the repair. The revenue that Fleet Management receives from charging the Police Department is used to pay the salaries of the mechanics and cover the cost of vehicle parts.

The use of internal service funds results in “double-budgeting” city expenditures, once in the Internal Service Fund and again in the City’s General Fund. The Fleet Management Internal Service Fund, for example, has approximately \$450,000 in its budget to cover the cost of maintaining police vehicles. The General Fund, through the Police Department, also has \$450,000 in its budget to “pay back” Fleet Management for maintaining its vehicles. Thus, when adding the Police Department’s vehicle maintenance budget to Fleet Management’s budget for

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police vehicle maintenance, it appears that the City is spending \$900,000 on maintenance of police vehicles, when in fact the actual cost to the organization is only \$450,000.

To eliminate the appearance of double-budgeting and to respond to recent accounting changes advocated by the GASB, the Budget and Finance Directors recommend that the City discontinue using separate internal service funds to budget and account for the City’s internal “business-like” operations. It is recommended that the internal service budgets for Fleet Management, Graphic/Printing Services, Central Stores, Group Health /Risk Management be reduced to zero and that the expenses for internal service functions be charged directly to department operating accounts in the general fund, where budgets already exist.

In addition to providing services to other City departments, several of the City’s internal service funds provide limited services to external governmental agencies. The Fleet Management Internal Service Fund, for instance, sells gas to Memorial Mission Hospital, allowing Memorial Mission to benefit from the City’s government rate. The budget to cover the cost of providing services to external agencies, however, is currently budgeted solely in the City’s internal service funds. Thus, when the various internal service funds are reduced to zero, as recommended in this report, the cost of providing services to external agencies (i.e. Memorial Mission) will need to be moved to the general fund and the general fund budget increased accordingly. The increase in general fund expenditures will be offset by also moving revenues received from outside agencies (i.e. Memorial Mission) into the general fund, resulting in no net increase in general fund expenditures.

City staff recommends City Council adopt the budget amendment to eliminate the use of internal service funds pursuant to GASB regulations and increase general fund expenditures by \$4,324,717 to reflect expenditures and revenues associated with internal service functions providing goods and services to outside agencies.

City Manager Westbrook responded to an inquiry from Councilman Dunn about why the City sells gas to Mission Hospital and what would happen if other non-profits asked for that service.

**ORDINANCE BOOK NO. 20 – PAGE 97**

**D. RESOLUTION NO. 02-168 - RESOLUTION DIRECTING THE CITY CLERK TO ADVERTISE AN OFFER OF PURCHASE FOR UPSET BIDS FOR LAND OFF OF BLAKE MOUNTAIN CIRCLE**

Summary: The consideration of a resolution authorizing the City Clerk to advertise an offer of purchase for upset bids for 0.40 acres of land off Blake Mountain Circle.

A bid from Rhett A. Grotzinger, in the amount of \$3,700.00, has been received for the purchase of land adjacent to his property at 307 Blakewood Court. The bid is not less than the appraised value of \$3,700.00.

The property is zoned RS-2 and comprises approximately 0.40 acre of land. Thus the lot does not contain the required area for a standard lot in RS-2 zoning. The property has a trapezoid shape and is gently sloping to below street level. The parcel is wooded except for an abandoned circular water tank with a domed cover, which is partially below ground. The water tank is in the middle of the lot and covers about 1/3 of the land area. The appraisal by Richard Smith in the amount of \$3,700.00 takes into consideration the substandard size of the lot as well as the negative impact of the water tank on the land value.

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There is no current or contemplated use for the property by the City. If the sale is approved the property will be sold as is and the City will retain an easement for water lines on the property. Mr. Grotzinger plans to assemble the property with the property he owns and whether the water tank is removed or not will be his decision and responsibility.

Approval of the resolution will initiate the sale of the property through the upset bid process as provided in N. C. Gen. Stat. sec. 160A-269.

Planning staff recommends adoption of the resolution.

**RESOLUTION BOOK NO. 27 – PAGE 266**

**E. RESOLUTION NO. 02-169 - RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE A NON-WARRANTY DEED TO RELINQUISH THE CITY'S EASEMENT IN THE CLOSED PORTION OF THE ALLEY BETWEEN RIVERVIEW DRIVE AND EUCLID BOULEVARD**

Summary: The consideration of a Resolution authorizing the Mayor to execute a non-warranty deed to relinquish the City's easement in the closed portion of the alley between Euclid Boulevard and Riverview Drive.

The City closed a portion of an unopened alley between Euclid Boulevard and Riverview Drive on June 27, 1995, reserving for itself an easement for the possible future installation and maintenance of public utilities. Subsequent to adoption of the Resolution, the petitioning property owner contacted the City and requested that the City, to the extent possible, relinquish its easement as the reservation of the easement defeated the purpose of closing the alley. Key City staff considered the request and did not oppose the request. The petitioning property owner was informed that City staff was prepared to recommend that the City relinquish its easement upon the receipt of certain information, which information was not received until July 22, 2002. Due to the lapse of time, key City staff was once again consulted and no objection was raised to the City relinquishing its easement. The closed portion of the alley whereby the City is relinquishing its easement is more specifically shown in Plat Book 7 at Page 72.

City staff recommends City Council adopt the Resolution authorizing the Mayor to execute a non-warranty deed relinquishing the City's easement in the closed portion of the alley between Euclid Boulevard and Riverview Drive.

**RESOLUTION BOOK NO. 27 – PAGE 267**

**F. RESOLUTION NO. 02-170 - RESOLUTION AUTHORIZING THE CITY MANAGER TO SIGN AN AGREEMENT WITH THE ASHEVILLE HUMANE SOCIETY FOR ANIMAL CONTROL SERVICES WITHIN THE CORPORATE LIMITS OF THE CITY**

Summary: The consideration of a resolution authorizing the City Manager to sign an agreement with the Asheville Humane Society for animal shelter services within the corporate limits of the City.

On July 1, 2002, Buncombe County required the City to pay for animal shelter services with the Asheville Humane Society who has contracted to run the shelter. From July 1, 2002, through August 30, 2002, the City contracted with the Humane Society for shelter services based on funding approved in the City's interim budget. On September 1, 2002, the City approved the final budget for Fiscal Year 2002-2003, and in that budget approved \$100,000 to pay for shelter

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services. The City and Humane Society need to enter into the same agreement for shelter services for the term of September 1, 2002, through June 30, 2003.

City staff recommends approval of the resolution authorizing the City Manager to sign an agreement with the Asheville Humane Society for animal shelter services for the term of September 1, 2002, through June 30, 2003.

#### **RESOLUTION BOOK NO. 27 – PAGE 268**

#### **G. ORDINANCE NO. 2963 - BUDGET AMENDMENT TO RENOVATE THE BUILDING AT MEMORIAL STADIUM**

Summary: The consideration of an amendment to the City's general capital project fund, in the amount of \$72,593, to cover the renovation of the storage building at Memorial Stadium.

In November of 2001, the storage building at Memorial Stadium was destroyed by fire. The estimated cost to renovate the storage building is \$72,593.

After a year of negotiation with the City's insurance carrier, the Risk Management office, with the assistance of the Parks & Recreation Department, received an insurance settlement to help cover the cost of renovating the storage building. Insurance settlement revenue in the amount of \$64,593, as well as funds in the amount of \$8,000 that can be transferred from the City's building maintenance reserve are available to support the cost of the renovation project.

Staff is requesting the establishment of a capital project budget in the amount of \$72,593 for renovation of the storage building at Memorial Storage. The project budget will be balanced with the insurance settlement proceeds and building maintenance reserve funds noted above.

The Parks & Recreation Department recommends City Council approve the amendment to the City's general capital project fund for the renovation of the storage building at Memorial Stadium.

#### **ORDINANCE BOOK NO. 20 – PAGE 105**

#### **H. RESOLUTION NO. 02-171 - RESOLUTION OFFERING HOUSING TRUST FUND LOANS**

Summary: The consideration of a resolution to offer Housing Trust Fund loans for the construction of affordable housing.

In its final Fiscal Year 2003 City Budget, City Council approved a \$500,000 appropriation for the City's Housing Trust Fund (HTF). Adding repayments from prior year loans, staff estimates that at least \$580,000 will be available for lending this year.

The Housing and Community Development Committee has reviewed the process for offering HTF loans and has made some improvements, while keeping the guidelines broadly similar to those used last year.

In summary, the proposed loan guidelines (*and changes*) are as follows:

- Projects must be new construction, or rehabilitation of vacant property.
- Homes for sale must be priced at not more than \$120,000; and sold to a person with household income below area median.

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- Homes for rental must be affordable to households below 80% of are median income, and the first tenants must

meet that income limit.

- Maximum loan amounts per unit are \$40,000 for construction loans and \$25,000 for long-term loans (*increased from \$20,000 for both loan types*); the maximum loan to one applicant is \$250,000 (*increased from \$200,000*).
- Loans must be repaid within 30 years – no grants, forgivable loans, or indefinitely deferred loans are allowed.
- Loans will be fully amortizing with 2% interest, except that for the most affordable projects loan repayments may be either principal-only with 0% interest, or interest-only with deferred principal (*not both 0% and deferred*).
- Applicants have the option to purchase land from a list of City-owned sites; there are ten suitable properties currently on this list.
- Minor changes have been made to the evaluation criteria.

The loan offering can be published immediately after Council's approval, with an application deadline on November 27. Applications will be reviewed and scored by a panel of City staff and outside professionals and their findings will be considered by the Housing and Community Development Committee in December. The Committee's recommendations for loans will be ready for Council's final review and approval in January.

City staff recommends City Council approve the resolution to offer Housing Trust Fund loans for the production of affordable housing in Fiscal Year 2003.

#### **RESOLUTION BOOK NO. 27 – PAGE 269**

##### **I. RESOLUTION NO. 02-172 - RESOLUTION APPOINTING A MEMBER TO THE DOWNTOWN COMMISSION**

Summary: Mr. Alan Levy has resigned as a member of the Downtown Commission, thus leaving an unexpired term until December 31, 2003.

On October 15, 2002, it was the consensus of City Council to instruct the City Clerk to prepare the proper paperwork to appoint Mr. Andy Archie to serve the unexpired term of Mr. Levy, term to expire December 31, 2003, or until his successor has been appointed.

#### **RESOLUTION BOOK NO. 27 – PAGE 270**

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.

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

### **III. PUBLIC HEARINGS:**

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#### **A. PUBLIC HEARING TO CONSIDER THE CONDITIONAL USE ZONING FOR PROPERTY LOCATED AT THE INTERSECTION OF ARDMION PARK ROAD AND ALEXANDER DRIVE FROM RS-8 RESIDENTIAL SINGLE-FAMILY HIGH DENSITY DISTRICT TO RM-16 RESIDENTIAL MULTI-FAMILY HIGH DENSITY DISTRICT/CONDITIONAL USE, AND ISSUANCE OF A CONDITIONAL USE PERMIT TO ALLOW FOR CONSTRUCTION OF 12 DWELLING UNITS**

Due to an error in legal advertisement, Vice-Mayor Bellamy moved to reschedule this public hearing until November 12, 2002. This motion was seconded by Councilman Ellis and carried unanimously.

#### **B. PUBLIC HEARING TO CONSIDER THE CONDITIONAL USE ZONING FOR PROPERTY LOCATED AT 612 MERRIMON AVENUE FROM COMMUNITY BUSINESS I DISTRICT TO COMMUNITY BUSINESS II DISTRICT/CONDITIONAL USE, AND ISSUANCE OF A CONDITIONAL USE PERMIT TO ALLOW FOR A NEW STRUCTURE AND SITE PLAN SUPPORTING A DRUG STORE**

**ORDINANCE NO. 2964 - ORDINANCE TO CONSIDER THE CONDITIONAL USE ZONING OF PROPERTY LOCATED AT 612 MERRIMON AVENUE FROM COMMUNITY BUSINESS I DISTRICT TO COMMUNITY BUSINESS II DISTRICT/CONDITIONAL USE**

**ORDINANCE NO. 2965 - ORDINANCE GRANTING A CONDITIONAL USE PERMIT TO ALLOW FOR A NEW STRUCTURE AND SITE PLAN SUPPORTING A DRUG STORE**

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

City Attorney Oast reviewed with Council the conditional use district zoning process by stating that this is a two-part process. It requires rezoning, which is a legislative act, and the issuance of a conditional use permit, which is a quasi-judicial site-specific act. Even though the public hearing on those two items will be combined, all the testimony needs to be sworn and two votes will need to be taken. The first vote will be to grant the rezoning to the conditional use district category and the second vote will be to issue the conditional use permit. If Council runs into a situation that it votes to rezone, Council doesn't have to issue the conditional use permit on the same night.

After hearing no questions about the procedure, Mayor Worley opened the public hearing at 5:17 p.m.

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

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

Mr. Alan Glines, Urban Designer, 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).

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Mr. Glines said that this is the consideration of a request to rezone property located on 612 Merrimon Avenue from Community Business I District to Community Business II District/Conditional Use and of a motion to issue a Conditional Use Permit for a new structure and site plan supporting a drug store.

On August 30, 2002, the City received a request to rezone a 1.78 acre parcel in the north area of the City of Asheville from Community Business I District to Community Business II/Conditional Use (City Exhibit 3 – Location Map). The parcel is known as PIN No. 9649-06-39-6470 at 612 Merrimon Avenue. Currently the property is the site of an Autozone Auto Parts Store. The existing building is 10,622 s.f. The proposed building will be 10,880 s.f. The conditional use component for this proposal will be the site plan, which is submitted for review along with the rezoning request. This site plan outlines the organization of the lot, size of the building, where driveways will be located, pedestrian amenities, street trees and buffering (City Exhibit 3 – Landscape Plan).

CB I zoning (the current zoning) allows a wide range of medium density neighborhood related services. This district may serve as a workplace for many residents and is also expected to be pedestrian friendly. The building size maximum is 6,000 s.f. for single story buildings or 12,000 if the building is multi-story. Existing single story buildings are allowed to be expanded up to 12,000 s.f. CB I does not allow drive-through facilities and parking must be placed to the side or rear of the structure.

CB II zoning (the proposed zoning) allows medium to high density business and service uses serving several residential neighborhoods. A wide range of neighborhood services is allowed in this district. CB II districts should also be pedestrian friendly while providing safe vehicular access. In this district, buildings may be up to 45,000 s.f. and may be one or several stories tall. Drive-through facilities are allowed in this district. Parking is to be placed at the side or rear of the structure, the same as for CB I.

The Zimmer Development Company is seeking to rezone the property to CB II because they are unable to salvage the old Autozone building. The building size proposed by the applicant is not permitted in the CB I zoning district.

The current zoning in the area is CB I for the parcels along Merrimon Avenue on both sides of the street. The parcel to the west of this site is zoned RM-16 and is the site of the Pinnacle Ridge Apartments.

A Traffic Impact Analysis (TIA) was prepared for this project and was reviewed by the City Engineering Department. No issues of concern were identified by the TIA aside from existing issues with Merrimon Avenue. The plan limits access directly to the site from Merrimon, allowing only a right in – right out turning movement.

The site plan places the building to the front of the lot to enhance the pedestrian experience and increase visibility by drivers. The structure features a brick façade with windows to relate to the street and to passersby (City Exhibit 3 – Building Elevations). Placing the building forward on the lot also increases the sense of place for the area. With the additional site improvements such as street trees and connecting sidewalks, Merrimon Avenue will begin to develop an attractive streetscape. In keeping with the requirements under the existing zoning and the recommendation of the Planning and Zoning Commission, the proposed project will not provide a drive through facility. Drive-through facilities can greatly increase traffic flow, increasing the potential for congestion at this intersection and decreasing the level of pedestrian safety. A drawing of the structure provided by the developer to Council does portray a drive through facility but it is not relevant for the current proposal.

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The proposed project will comply with a signage package that is in keeping with CB I zoning, and not the CB II signage package. This will help the project fit into the neighborhood in which it is located. In addition, the signage will be externally illuminated signage; i.e. gooseneck external lighting or the like instead of internally illuminated plastic signage.

In addition to these considerations, the Planning and Zoning Commission has recommended the conditions for approval.

City Council must take formal action as set forth in section 7-9-9(c)(4) of the Unified Development Ordinance (UDO), and must find that all seven standards for approval of conditional uses are met based on the evidence and testimony received at the public hearing or otherwise appearing in the record of this case (UDO 7-16-2 (c)). Staff's preliminary review, absent the benefit of public input, indicates that all seven standards are met.

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

The development is within standards of development practice set forth by the City of Asheville. In addition, public safety providers have reviewed the site plan as part of the TRC review.

- 2) 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 proposed development is not substantially changing the existing topography of the site. In addition, more permeable areas will be provided by this site plan than are on the existing site. The existing buffer area that is adjacent to the Pinnacle Ridge Apartment complex will be protected and preserved.

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

Most adjacent properties are commercial enterprises; the development will be buffered from the adjacent residential development. The proposed development will not injure neighboring property values.

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

The proposed use is a commercial use and will continue a tradition of single structure buildings in this part of Merrimon Avenue. The proposed structure is only about 200 feet larger than the existing structure.

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

The proposed development will support the City's Smart Growth goals of redevelopment within the City area where services and infrastructure are already in place to adequately serve the development. The building will be placed towards the front on the Merrimon Avenue side of the property making it inviting for drivers and people walking. In addition the development is providing pedestrian connections to the project site and a pedestrian

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waiting space at the corner of Merrimon Avenue and Edgewood Road to facilitate crossing at the corner.

- 6) That the proposed use is appropriately located with respect to transportation facilities, water supply, fire and police

protection, waste disposal, and similar facilities.

The proposed development site is located along a central artery for the City of Asheville and is has adequate infrastructure services.

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

The project engineers produced a TIA for this project that was reviewed by the City Engineering Department. It was noted at the last public hearing during Planning and Zoning review that traffic issues are a concern of some residents along Merrimon. This is a system wide problem and not caused by this project. A project going on this site will increase the traffic on Merrimon to a limited extent. Some additional signage and pavement markings on Edgewood Road may improve the use of the entrance on Edgewood. The Merrimon access will be right in and right out only to limit conflict points onto Merrimon. A transit shelter will be provided at the site by the developer. These actions and improvements will address the traffic impacts identified in the TIA.

The Planning and Zoning Commission voted 6-0 at their October 2, 2002, meeting to recommend approval of the conditional use proposal and site plan with the following conditions. Staff also recommends approval with conditions.

1. The traffic situation shall be evaluated further in an effort to identify additional traffic congestion mitigation strategies.
2. Signage and/or road striping shall be done on Edgewood to limit the blocking of the driveway.
3. Signage for the development shall comply with CB I standards.
4. No drive-through facility shall be provided.
5. Ensure that curb cuts provide ADA accessibility.
6. Buffer and landscape requirements will be finalized when existing tree counts are completed.
7. Consider the use of stormwater improvement practices.
8. Building must have an automatic fire sprinkler system.

Mr. Glines responded to various questions/comments from Council, some being, but are not limited to: will there be additional trees than what is currently located on the site; will there be a left turn arrow on Merrimon Avenue to turn onto Edgewood; is this CVS Pharmacy design different than a traditional CVS Pharmacy design; what is the sign package difference from a Community Business I district vs. a Community Business II district; will there be any problems with site distance from the trees on Edgewood Road; are there any environmental concerns on the site; and is the developer planning to do anything different regarding stormwater control.

Councilman Mumpower asked about the elimination of the drive through facility. Mr. Glines understood that the developer deleted the drive through because he wanted a project that would be received by the community and in an effort to compromise and reflect the residential goals, they deleted it. He explained that drive throughs tend to have potential conflict points for pedestrians on three sides of the building. Advantages of a drive through include (1) if you're sick, you don't have to get out of the car; (2) if you have small children, you don't have to park and get everyone out; or (3) elderly people don't have to go into the store to get prescriptions.

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Regarding existing traffic, Vice-Mayor Bellamy asked if the incline on Edgewood Road toward Merrimon Avenue was taken into consideration for any roadway improvements. Mr. Glines said that the area out of the proposed development onto Edgewood Road could be stripped on the pavement so people coming down Edgewood Road waiting at the Merrimon Avenue light would not block the driveway. Vice-Mayor Bellamy asked if the driveway on the other side of Edgewood Road leading into Edgewood Square shopping center try to be aligned with the driveway going into the CVS Pharmacy to help eliminate blocking of the driveways and the blind spot coming down Edgewood Road.

Upon inquiry of Councilman Dunn about the location of the building on the property and the windows, Mr. Glines explained that this type of layout is required in the UDO under the Community Business I and II zoning. That layout is buildings forward on the lot and parking to the side or rear. The layout is staff's suggestion, but UDO supported. In addition, Mr. Glines felt that the developer recognized the pedestrian potential for this project since it is so close to UNC-Asheville and neighborhoods. He did note that because of the topography of the site, the building is located in the most likely spot, as is the current building.

Mr. Larry McDevitt, attorney representing Zimmer Development Company and CVS Pharmacy, said that because they want to build a better building (with brick) that would be compatible with the community and meet still their needs, they determined that they could not build on the existing foundation. They talked to numerous people in the community about the project and found they objected to two things – rezoning to Community Business II and the drive through facility. Even though they could make more

money at the store with a drive through, they analyzed it, listened to the community's objections and decided to show they were flexible and cooperative. In an effort to respond to the community, they decided to delete the drive through facility (Applicant Exhibit 1 – Revised Site Plan). This project has been going on for approximately two years (but since August 2002 for the formal submittal process) and they have had a lot of discussions with City staff in a give and take process. They have worked cooperatively with staff and feel they have addressed the major community concerns. He asked that the following exhibits be entered into the record: Applicant Exhibit 2 – Application; Applicant Exhibit 3 - Planning & Zoning Minutes of October 2, 2002; Applicant Exhibit 4 – TRC Conditions of September 16, 2002. Mr. McDevitt said that they feel that Condition No. 1 (The traffic situation shall be evaluated further in an effort to identify additional traffic congestion mitigation strategies) has already been done and he believed that they have an agreement with City staff about traffic mitigation. He said the TIA they submitted find that they comply with traffic requirements. Regarding Conditions 2-7, they agree to abide by and be bound by those conditions if this is approved. He urged Council to rezone the property in order to have a better building, one that is aesthetically more pleasing, one that serves the public interest, one that is more pedestrian friendly and a project that will actually assist in some of the traffic situations. Applicant Exhibit 5 – Aerial Photo of the Site. He noted that their development is compatible with other development in the area – a one level building that is commercial. He said they have added a number of amenities for pedestrians, some being a covered shelter for a bus stop and a rest area at the corner. Applicant Exhibit 6 – Photo of Another CVS Pharmacy. He felt this project was worthy of Council's total support and asked for Council's approval. Applicant Exhibit 7 – Traffic Impact Analysis.

Mr. Keith Thomson, resident on Bridle Path Road, felt that traffic studies by developers should be held to a higher standard. In this particular project, the TIA did not mention Edgewood Road except in the footnotes to mention that the intersection of Edgewood and Merrimon is at 104% of capacity as measured by the State Department of Transportation. He felt that intersection is already a problem and if the pharmacy is built, it will only add to that congestion. We need the developer to join us, as new neighbors, in helping to address the issues and not ignore them. They have been trying to get sidewalks and traffic calming measures in the Jackson Park/Woolsey neighborhood for over 8 years and when the Center for Creative Retirement opens

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up at UNC-Asheville, there will be a potential for more elderly drivers to come through the neighborhood. He said that another serious traffic flow problem is that every time a large semi-truck making a delivery comes off Edgewood onto the property, they get stuck and he hoped they have a plan to address that concern.

Mr. William Sabo, representing the Grace Neighborhood Association, explained why he felt this request is a product of a system that is designed for sound planning, but in reality it's a product of a process that gives the petitioner the upper hand. He said that even though the petitioner has been working with the City for two years, the neighborhood only found out about it a couple of weeks before the Planning & Zoning Commission meeting. He said the petitioner only contacted one individual and at a meeting of three neighborhood people, they were only given a rough overview of some of the conditions the City was imposing on the project. The neighborhood opposed the rezoning of the property because among other reasons, that would permit CVS to install a drive through window. They were told that rezoning was essential because they work with an off-the-shelf floor plan for the store. They were told it was not financially feasible to modify the plan. They encouraged the petitioner seek alternatives which would allow CVS to expand without rezoning. In summary, the next time the petitioner talked to the neighborhood was during the Planning & Zoning Commission meeting in which they said they dropped the drive through but would continue with the rezoning. He felt that CVS only created the illusion of working with the neighborhood. After review of the TIA, there at least four fundamental methodical errors. One was their failure to ignore the impact of traffic on the other side of Edgewood Road and the petitioner just challenged their ability to understand the report. CVS is asking the City to bend it's rules to their interest by rezoning the property, but the City needs to protect the citizens in these neighborhoods by enforcing the City's rules and regulations. Until there is a true consultation by all parties affected, no one can really say if this change is for the better. In order to preserve the rules and integrity of the system, he asked Council to refuse to rezone the property and begin to revisit and revise the process to ensure that true consultation of all interested parties takes place.

Ms. Katherine Fincher, resident on Wildwood, reiterated there was no traffic impact analysis where Kimberly comes down to Merrimon Avenue. Whether or not CVS Pharmacy is built or not, there needs to be left turn arrows heading north and south on Merrimon Avenue.

Ms. Laura Chase, representing the Norwood Park Neighborhood Association, said that they feel that City staff and the petitioner worked together without neighborhood involvement. She felt that zoning is here for a reason and it should be upheld. She felt that rezoning this property might set a precedent and others will request their property be rezoned to Community Business II thus creating more traffic on Merrimon Avenue. She felt that one of the reasons City staff is advocating a larger structure is that it's consistent with the proposed Neighborhood Corridor District and they are not familiar with the standards for that district.

Ms. Melanie Shelor, resident on Merrimon Avenue, spoke against the rezoning in that the intersection will not handle the

capacity of vehicles generated by a CVS Pharmacy.

Mr. Dwayne Conner spoke in support of the rezoning. He felt they are going to develop a project that is pedestrian friendly and feels this is one of the best uses of this property.

Mr. Craig Justus, attorney representing Zimmer Development Company and CVS Pharmacy, stressed that conditional use zoning is a tool City Council has in their rules and that it allows City Council to control what is built on a piece of property. They have offered a lot of pedestrian improvements, e.g. moving the bus stop to a safer location on their property, moving the building closer to the street for an attractive streetscape. City staff directed them on what study in the TIA and after their review, they said the report was fine. The comment that the intersection at Edgewood Road and Merrimon Avenue is at 104% capacity is not accurate. Their

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traffic engineer will address that point. He pointed out that when they knew there was neighborhood opposition, they requested a meeting and there were two things the neighborhood was opposed to – a drive through facility and the rezoning. They needed to request rezoning because without it, they could not develop their project. So, they deleted the drive through, which was not an easy decision. They believe they have met the concerns expressed, feel that they have a good application and a good precedent will be set if Council approves this project.

Ms. Kelly Grady, traffic engineer with Kimley-Horn and Associates Inc., said that they use the highway capacity manual method for TIA's. The highway capacity manual method shows that the intersection of Edgewood Road and Merrimon Avenue would be a Level of Service A in the morning peak hours and a Level of Service B in the afternoon peak hours, based on a scale of A through F. The 104% capacity is related to a different software method and not the standardized highway capacity manual method, which is the accepted standard used. She reiterated that the intersection is not a failing intersection.

Upon inquiry of Councilman Ellis, City Engineer Cathy Ball said it appears the numbers are accurate based upon our review of the developer's TIA.

Vice-Mayor Bellamy strongly advocated a traffic calming mechanism on Edgewood Road that has nothing to do with intersections. She said that driving from UNC-Asheville to Merrimon Avenue on Edgewood Road is not safe. She said there is a blind spot and an incline coming down to Merrimon Avenue.

Upon inquiry of Mayor Worley, Ms. Grady explained how the data of 126 additional trips per day was arrived at in the TIA. She noted that there is a negligible difference in trip generation between with and without a drive through facility.

Upon inquiry of Councilman Mumpower about a problem with trucks accessing the property, Mr. Justus said that they propose to improve the parking lot grades so there is a better transition with adjoining streets. Mr. Jim Bell, with Kimley-Horn and Associates, Inc., said that when they redesign the site they would work with the grades to make sure that the problem will not exist. He said they could even limit the size of trucks that will deliver to the store.

Councilman Mumpower questioned why the drive through facility was deleted, especially when it shows there will only be a negligible difference in traffic. City Engineer Ball said that in reference to the information that is provided by Ms. Grady, there is a standardization and that is accepted practice. She is assuming if the numbers are negligible then there must be the assumption that people are going to come to the pharmacy regardless of whether or not it has a drive through. The thought behind putting in a drive through would be that it would be more convenient and therefore people would have a desire to go there. She said that it's hard from an engineering standpoint to say that a drive through facility generates more traffic, but that there is the perception is that there is more traffic as well as a potential for more pedestrian conflicts if there is a drive through.

Councilwoman Jones asked about traffic calming measures on Edgewood Road. City Engineer Ball said that the City is in the process of, due to another project, looking at some traffic calming measures on Edgewood Road, but it is not funded. In the early 1990's there were some traffic calming measures installed on Edgewood Road. Those consisted of rumble strips but they created a problem because of the noise and the neighborhood requested they be removed. They were removed and then traffic calming measures of stop signs were installed, which are not recommended traffic calming measures. The reason why City staff did not recommend traffic calming on Edgewood Road is that the study seemed sound and the study indicated that there is only an additional 50 vehicles a day added to Edgewood Road as a result of this development. A

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recommendation to require the developer to do traffic calming would have been excessive considering there would only be 50

additional vehicles per day on Edgewood Road.

Upon inquiry of Councilman Mumpower, Ms. Ball used Figure 4 from Applicant's Exhibit 7 to show there would be an additional 25 vehicles traveling on Edgewood Road from Merrimon Avenue to Kimberly Avenue.

Vice-Mayor Bellamy asked about sidewalks on Edgewood Road. City Engineer Ball said that there are only sidewalks to the apartments on the left on Edgewood Road from Merrimon Avenue. The City has also looked at the opportunity in working with UNC-Asheville and the neighborhood to put sidewalks in. It appears that without taking right-of-way, we would need to decrease the width of the pavement. That is an option, however, there are a lot of people who use on-street parking and you have to give up the option of using on-street parking if you put in the sidewalks without right-of-way.

When Councilwoman Jones asked how citizens could participate in discussions of the proposed Neighborhood Corridor District, Planning & Development Director Scott Shuford suggested they contact Chief Planner Gerald Green. Mr. Shuford did say that if that district is applied to another street in the City (other than the proposed Broadway Avenue), meetings would be held.

When Councilwoman Jones suggested the UDO be amended to make it mandatory that developers meet with neighborhoods, Councilman Mumpower felt there might be creative ways to meet this objective other than making it mandatory.

Upon inquiry of Councilman Mumpower, Mr. McDevitt said that even though a drive through would be a convenience to certain groups and doesn't have a significant impact on traffic, they will not ask City Council to approve the project with a drive through.

Councilman Dunn asked how many CVS pharmacies have drive throughs. Ms. Leigh Polzella, Construction Project Manager with CVS Realty Co., said that most freestanding locations have drive throughs and explained the convenience associated with them. Through the last two years on this project there has been a lot of give and take and they are trying to be community friendly and more accessible to their customers.

When Councilman Mumpower asked if City Council can modify what is before City Council, City Attorney Oast said that if he is talking about adding the drive through facility, it is a significant enough of a change to the site plan to require a new notice and public hearing process.

Councilman Ellis said that he would not be in favor of adding the drive through facility because the developers are not asking for it now and the neighborhood does not want it.

There being no request from the applicant for rebuttal, Mayor Worley closed the public hearing at 7:38 p.m.

Councilman Peterson said that he felt CVS has made a number of changes and he felt this rezoning would be better for the property and the City as a whole. He felt that considering what could be done on the property with the existing zoning, this proposal with conditions would be better for the neighbors. He was somewhat concerned that the developer negotiated with the City for 1-1/2 years without having direct input from the neighbors. We also need to be looking at what is happening on Merrimon Avenue as a whole because we are reaching a breaking point regarding traffic.

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Mayor Worley felt that most comments were about the process, not the seven conditional use standards City Council must determine that the project meets. He felt the project would be better for the community.

Vice-Mayor Bellamy moved to adopt Ordinance No. 2964 to rezone property located on 612 Merrimon Avenue from Community Business I District to Community Business II District/Conditional Use. This motion was seconded by Councilman Dunn and carried unanimously.

#### **ORDINANCE BOOK NO. 20 – PAGE 107**

Mr. Shuford said that Condition No. 1 could be eliminated if Council chooses. Council could direct staff to look at Edgewood Road at every opportunity to calm traffic and cut down on cut-through on that roadway. He suggested Council delete that condition and give staff direction as a separate action. He felt that Condition No. 1 would place a burden on the developer that staff doesn't feel is necessary. We have a formal process for handling traffic calming and staff will look at Edgewood Road.

Councilman Peterson doesn't think we are looking at requiring the developer to put any off-site traffic calming measures, but asking staff to keep in mind this site plan if there are minor changes that need to be made to Edgewood Road, e.g., widening

the driveway a little or stripping immediately adjacent to this property.

Vice-Mayor Bellamy does want off-site traffic calming measures on Edgewood Road. She felt that this development is a key player regarding traffic in the area.

City Engineer Ball explained how Condition No. 1 was placed on staff's recommendations. She said it came directly out of comments made at the Planning & Zoning Commission meeting in which there were some comments made by the neighborhoods about different issues and we were talking about some possible solutions. The intent was just not to close the door and to leave some options on the table to say if something comes out that seems like a good idea to do, then we should pursue that. She felt staff evaluated everything and she doesn't think there is anything else on site that we can do – it wasn't with the intent of doing major off-site mitigation. The City has been in discussions with the State about Merrimon Avenue for the past 5-6 years and evaluated three different possibilities of treating Merrimon Avenue – all of which weren't feasible. A tool that Council can use is obtaining special legislation to impose a traffic impact fee. In that case, different stores may not contribute to the whole problem, but you can collect money that will go toward fixing the whole problem. City Council may wish to pursue that option in the future to be fair about the impact that development pays on making improvements.

Councilman Ellis moved to adopt Ordinance No. 2965 to issue the conditional use permit for a new structure and site plan supporting a drug store, subject to the following conditions (which is staff's conditions deleting Condition No. 1): (1) Signage and/or road striping shall be done on Edgewood to limit the blocking of the driveway; (2) Signage for the development shall comply with CB I standards; (3) No drive-through facility shall be provided; (4) Ensure that curb cuts provide ADA accessibility; (5) Buffer and landscape requirements will be finalized when existing tree counts are completed; (6) Consider the use of stormwater improvement practices; and (7) Building must have an automatic fire sprinkler system. This motion was seconded by Councilman Mumpower.

Vice-Mayor Bellamy moved to amend the original motion to include an additional condition to direct City staff to consider the need for additional traffic calming measures on

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Edgewood Road from Merrimon Avenue to Darcy and, if recommended, implement those at the developer's expense. This motion was seconded by Councilman Peterson.

Councilman Dunn wondered if Vice-Mayor Bellamy would amend her motion to read: "The traffic situation shall be evaluated further in an effort to identify additional traffic congestion mitigation strategies, at the City's expense." Vice-Mayor Bellamy did not agree to amend her motion.

Upon inquiry of Councilman Mumpower, City Engineer Ball said that there is a traffic problem on Edgewood Road. The past history over the past ten years indicates that people have been trying to work on issues there with traffic calming that has already occurred. However, in the review of the project, our request of the developer was in line with the additional impact that they were creating, based on the engineering data they provided.

Mayor Worley felt all of Council agreed that there needed to be traffic calming measures on Edgewood Road, but the question of who should pay for it – the developer or City taxpayers. Since the traffic study shows the development will bring negligible additional traffic to the area, he couldn't agree with making the developer pay for those measures.

The amendment to the motion made by Vice-Mayor Bellamy and seconded by Councilman Peterson failed on a 3-4 vote, with Vice-Mayor Bellamy, Councilwoman Jones and Councilman Peterson voting "yes" and Mayor Worley, Councilman Dunn, Councilman Ellis and Councilman Mumpower voting "no".

The original motion made by Councilman Ellis and seconded by Councilman Mumpower carried unanimously.

It was the consensus of City Council to make it a priority to have City staff to look at Edgewood Road from a safety standpoint and also from a traffic calming standpoint.

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At 8:10 p.m., Mayor Worley announced a short break.

#### **C. PUBLIC HEARING RELATIVE TO A CONDITIONAL USE PERMIT REQUEST FOR PROPERTY LOCATED AT BILTMORE LAKE – ENKA IDENTIFIED AS THE GABLES AT BILTMORE LAKE**

**ORDINANCE NO. 2966 - ORDINANCE GRANTING A CONDITIONAL USE PERMIT FOR PROPERTY LOCATED AT BILTMORE LAKE – ENKA IDENTIFIED AS THE GABLES AT BILTMORE LAKE**

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

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

After hearing no questions about the procedure, Mayor Worley opened the public hearing at 8:35 p.m.

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

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

Mr. Alan Glines, Urban Designer, 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. Glines said that this is a request to consider a conditional use permit for property located at Biltmore Lake – Enka identified as The Gables at Biltmore Lake for a proposed 258 unit residential development in the City's western extraterritorial jurisdiction.

On August 30, 2002, Biltmore Farms submitted an application for Level III site plan review for an age restricted residential community consisting of both single housing units and multifamily units (City Exhibit 3 – Location Map). The parcels include PIN Nos. 9616.01-18-6804 and a portion of 9616.01-07-9761 and total approximately 59 acres bordering Biltmore (Enka) Lake. The housing total is made up of 168 condominium units, 38 multiplex units, 24 villa units (duplex format) and 28 single family units for a total of 258 units (City Exhibit 3 – Site Plan). The development is accessed from Enka Lake Road by a central street with the residential streets coming from this central spine. Streets in the development will be private but will be built to City of Asheville standards. As proposed, the entrance at Enka Lake Road will be gated.

The surrounding area is zoned RM-16 Residential Multi-Family High Density District including this parcel. The adjacent Buncombe County school parcel is zoned Institutional. The RM-16 multi-family residential district allows up to 16 units an acre. Under the current zoning, up to 940 residential units could be constructed on the site given the acreage. With the current rezoning request the applicant is seeking approval of 258 units with a density yield of 4.4 units per acre.

In addition to the different housing types that will be a part of this proposal, the Gables project will also include a 19,000 square foot recreation center. For open space and recreation uses, the Unified Development Ordinance (UDO) requires nearly 3 acres of open space for the project. The proposed site plan far exceeds this minimum amount of open space.

The engineers for the project have submitted a letter describing the traffic impacts of the project. The original Traffic Impact Analysis (TIA) for the Biltmore Lake project included a projected 88 single family houses for this area of the development. Because this is a special population of active retirees in an age restricted community, it is felt that the traffic generated will be less than if the uses were being developed for the same number of typical single family units. The 88 single family units accounted for in this area of the development in the original TIA would actually have a greater impact than this number of 'retiree' units. The traffic impact analysis completed for this project noted the need for improvements on Sand Hill Road and connecting streets in the area. This includes the need for additional turning lanes in the roadway system and perhaps additional signalization. Widening for Sand Hill Road is in the N. C. Dept. of Transportation (DOT) schedule already but is still some time off. Biltmore Farms has been discussing the roadway issue with DOT staff to speed up the construction time frame. The final traffic plan is also being worked on at this time.

City Council must take formal action as set forth in section 7-9-9(c)(4) of the UDO, and must find that all seven standards for approval of conditional uses are met based on the evidence and testimony received at the public hearing or otherwise appearing in the record of this case

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(UDO 7-16-2 (c)). Staff's preliminary review, absent the benefit of public input, indicates that all seven standards are met.

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

The development is within standards of development practice set forth by the City of Asheville. Public safety providers reviewed the project as part of the TRC review.

- 2) 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 nearly 59-acre site is mostly wooded and slopes towards the lake. The developer is proposing to maintain a minimum 80' vegetated buffer between the proposed structures and the lake. This area will be undisturbed save for minimum impacts from the construction of walking paths and other park style amenities.

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

The proposed development will not injure neighboring property values. Overall the Biltmore Lake project is expected to increase values of property in the area.

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

The surrounding properties include a school property and other wooded property. This residential project will be well buffered to retain the wooded nature from both inside and outside of the project. The entire Biltmore Lake project will be a part of what defines the character of the surrounding area.

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

The development will provide housing options for current and new residents.

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

This area is being considered by the DOT for roadway improvements for Sand Hill Road. Other utilities will be adequately served in the area. Currently Buncombe County will provide protective services in this community. If the area is annexed by the City of Asheville, then the City will extend services here.

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

The roadway network in the Enka area has received increased traffic from Sardis Road, along Sand Hill Road to the area of Highway 19-23. The Biltmore Lake development will add to this traffic situation. Biltmore Farms has been in discussions with DOT to determine what improvements are required and to complete them in a timeframe consistent with the construction of the development phases.

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The Planning and Zoning Commission voted 6-0 at their October 2, 2002, meeting to recommend approval of the conditional use proposal and site plan with the following conditions. Planning and Development staff concurs with this recommendation.

1. If the Gable project's main drive from Enka Lake Road is connected through to Case Cove Road at some time in the future, then the issue of making the street a public street be reviewed again.
2. All streets within the project shall be built to City of Asheville standards.
3. Final landscape plans will be fully reviewed for shrub and tree counts (buffer plantings, street trees and parking lot plantings included) which should include existing plant material that will be credited towards the planting requirements.
4. The developer shall work with City staff to insure that the urban type of development proposed for this project receives an urban level of public safety services.
5. Sidewalks are required for all new streets and along Enka Lake Road.

6. Cul-de-sac streets should be avoided and loop streets should be created where feasible.
7. Parking space needs will be reviewed with requirements from the UDO.
8. Water line extension plans will be reviewed by the City Engineering Department
9. Sewer extension plans will be reviewed by MSD.
10. Maintain a minimum 80' of undisturbed lakeside buffer area.

One additional condition that was not mentioned during prior reviews may be:

11. Biltmore Farms will continue to work with DOT to complete roadway improvements identified in the TIA in a manner timely to the completion of Biltmore Lake project phases.

Upon inquiry of Councilwoman Jones, Mr. Glines explained the pros and cons of a cul-de-sac. The advantage is that some people like to live at the very end of a street and a disadvantage is that a cul-de-sac destroys the connectivity to other streets.

Councilman Peterson was concerned that, even though Sand Hill Road and Enka Lake Road are state maintained roads, with only one road in and out of the development, in the future there may be a problem with traffic, especially with the schools in the area. Mr. Mark Teague, N. C. Dept. of Transportation (DOT) Division Traffic Engineering, responded that as far as access, there can be problems and technically DOT is just now beginning to work with the developer on this as well as the entire development. He didn't recall if any improvements were recommended but if you have that much traffic coming out, there's a chance that a turn lane may be recommended. He didn't think a traffic signal would be warranted, however, he has not seen the numbers.

Upon inquiry of Councilman Peterson, City Manager Westbrook said that it was his understanding that the developer will voluntarily annex in the future in phases, as they did with the Biltmore Park developments. City Attorney Oast cautioned Council to not let that influence City Council's action in this matter.

Upon inquiry of Councilwoman Jones, Mr. Dan Baechtold, the City's Transportation Planner, said that there are a number of improvements recommended in Transportation Improvement Analysis (TIA) for this development. The developer and DOT are working together to come up with a schedule on how those would be phased and how the cost-sharing would work. There are other projects under consideration in the area that are more on the scale of projects that the State would do as part of the Transportation Improvement Program (TIP). Those would include any major road widenings of Sand Hill Road and Sardis Road, which there is a feasibility study in the TIP now to look at widening that whole section. There are some specific improvements that the developer would do as part of concurrency with the phases of the

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development and then some other longer term major improvements that DOT will consider. There is a smaller TIP project to replace the bridge over Hominy Creek and to widen a short segment of Sand Hill Road in the vicinity of this development and that is already scheduled and funded in the TIP.

Mr. Will Buie, engineer with William Lapsley and Associates, said that if the project is approved, Vantage Senior Care will purchase the property, which is owned by Biltmore Farms, and develop an age-restricted community. The reason why they are asking that the project be a gated community is because the people that the owners are marketing to are not necessarily from this area and living in a senior community, being gated and secured, is very important to them. We have had discussions with City staff about the main artery road and possibly making that a public street if it's ever extended in the future and we have no problem with leaving that in as a condition to project approval. At this time we have taken the staff's directive to look at looping the roads in the development and we do believe there are some opportunities to provide some loops and eliminate some cul-de-sacs. If the project is approved, we will go back to City staff for their final approval. Regarding traffic at a single entrance, they have looked at that. This is an age-restricted community and the traffic generation out of this development is very different. Even though there are 258 units, the actual traffic corresponds to approximately 88 single-family homes. We believe the traffic generated by this project will be significantly less than 258 typical single-family homes. We do intend to work with DOT for the entrance to the development and we already anticipate that we will be building turning lanes or making some improvements to that entrance.

Upon inquiry of Councilwoman Jones of what is a gated community, Mr. Buie explained that specifically there is supposed to be an entrance feature at the main entrance off of Enka Lake Road. That will be made up of landscaping and other improvements and it will also probably include a gatehouse. At this time they are not proposing to have closed gates. At some point in future the property owners association will take over all of the facilities. They may find that they would like to have someone man a gatehouse and to admit people as necessary. The developers feel that is an important aspect of this project.

Upon inquiry of Councilwoman Jones, Mr. Buie said that the range of units would be approximately \$250,000 - \$400,000.

City Attorney Oast reminded Council that there has been information about the group that has this property under contract and what their particular intentions are with respect to it. If Council approves this, the owners could turn around and sell it and it would not necessarily be for an age-restricted community. It would be for the development that is on the site plan. Again, they have made representations about their target residents but City Council is approving the use, not the population.

Upon inquiry of Councilman Mumpower, Mr. Glines said that a concern raised at the Planning & Zoning Commission meeting was primarily for the main artery to be a through street for connectivity.

Councilwoman Jones asked how many gated communities does Asheville currently have. Planning & Development Director Scott Shuford said that we have a limited under and that we discourage gated communities because of the connectivity issue and the exclusivity.

Councilwoman Jones understood that our community is growing and that the City is trying to accommodate the range of buyers who might live or come to our community, but she didn't quite feel like it was the right spirit of how we are operating in a community to support a gated community. She did understand, however, that this gives us more options for our current and future residents and give us more housing options for them to choose from and that is part of

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our comprehensive plan. Mr. Glines responded that there are portions of the Biltmore Lake project that will appeal to different housing needs and types in the community.

Ms. Sylvia Farrington, resident of Biltmore Commons, spoke in support of the development.

There being no request from the applicant for rebuttal, Mayor Worley closed the public hearing at 9:26 p.m.

Councilman Mumpower moved to adopt Ordinance No. 2966 to issue the conditional use permit for property located at Biltmore Lake – Enka identified as The Gables at Biltmore Lake for a proposed 258 unit residential development, subject to the following conditions (which is staff's conditions deleting Condition No. 6, not including Condition No. 11 and adding an entirely new condition): (1) If the Gable project's main drive from Enka Lake Road is connected through to Case Cove Road at some time in the future, then the issue of making the street a public street be reviewed again; (2) All streets within the project shall be built to City of Asheville standards; (3) Final landscape plans will be fully reviewed for shrub and tree counts (buffer plantings, street trees and parking lot plantings included) which should include existing plant material that will be credited towards the planting requirements; (4) The developer shall work with City staff to insure that the urban type of development proposed for this project receives an urban level of public safety services; (5) Sidewalks are required for all new streets and along Enka Lake Road; (6) Parking space needs will be reviewed with requirements from the UDO; (7) Water line extension plans will be reviewed by the City Engineering Department; (8) Sewer extension plans will be reviewed by MSD; (9) Maintain a minimum 80' of undisturbed lakeside buffer area; and (10) Any change in the permitted population which would have a substantial traffic impact increase greater than 10% shall require an amendment to the conditional use permit. This motion was seconded by Councilman Peterson.

After a brief discussion about the developer's willingness to do loop streets in the development, Councilman Ellis moved to amend the original motion to include two conditions (which are staff's Conditions 6 and 11): (1) Cul-de-sac streets should be avoided and loop streets should be created where feasible; and (2) Biltmore Farms will continue to work with DOT to complete roadway improvements identified in the TIA in a manner timely to the completion of Biltmore Lake project phases. This motion was seconded by Councilman Peterson and carried on a 6-1 vote, with Vice-Mayor Bellamy voting "no".

Vice-Mayor Bellamy explained that since the developer has already noted on the site plan where cul-de-sacs would become loops and the condition is too vague.

The original motion, as amended, made by Councilman Mumpower and seconded by Councilman Peterson carried unanimously.

Councilwoman Jones hoped that the developer makes the gate as friendly as possible and that it remains more open than closed. In terms of her hopes for future gated communities, she hoped that they are more the exception than the rule.

## **ORDINANCE BOOK NO. 20 – PAGE**

### **D. PUBLIC HEARING TO CONSIDER A REQUEST FOR A MODIFICATION FROM THE SUBDIVISION**

**STANDARDS TO ALLOW THE CREATION OF A LOT THAT DOES NOT ABUT A PUBLIC STREET ON PROPERTY LOCATED AT 5 BELL HAVEN ROAD**

Mayor Worley opened the public hearing at 9:37 p.m.

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Urban Planner Carter Pettibone said that this is the consideration of a request for a modification from the subdivision standards to allow the creation of a lot that does not abut a public street on property located at 5 Bell Haven Road. This public hearing was advertised on October 11 and 18, 2002.

The City has received a request from Tim and Jan Haynes to subdivide a parcel located at 5 Bell Haven Road (PIN No. 9668.05-19-0612) into two lots. The parcel is 2.47-acres in size and zoned RS-4 Residential Single Family Medium Density District. The property has very narrow frontage onto Bull Mountain Road, which is a public street. The lot also has a narrow strip of land running from Bull Mountain to the bulk of the lot that is located behind four other lots. There is a private street, Bell Haven Road, located within this narrow strip that provides access to the lot in question as well as seven other properties. Since it is not possible to obtain the minimum frontage for the new lot as specified in the Subdivision Ordinance, a modification is required in order to subdivide the property with one lot not having public street frontage.

The petitioners wish to subdivide the lot in order to build another home on its own lot with access to the private Bell Haven Road. Only one additional home is proposed and each of the resulting lots from the subdivision would be able to meet the UDO requirements of the RS-4 District for minimum lot size and setbacks.

The proposed subdivision modification was reviewed by the Technical Review Committee (TRC) at its September 16, 2002, meeting and they recommended approval with the following conditions:

1. The right-of-way for Bell Haven Road must be widened to a minimum of 25 feet and be able to accommodate any future work done by the Water Department in regards to maintenance of the existing water line.
2. Applicant will need to obtain an easement across another property to gain access to public sewer system.
3. The existing lot will need to retain some frontage onto Bull Mountain Road.
4. Any construction work within the water line right-of-way must be coordinated with the Water Resources Department

The TRC voted unanimously and Planning and Zoning Commission voted 6-0 to recommend approval with the above-mentioned conditions. The Planning and Development staff also recommends approval of the subdivision modification with the conditions.

When Councilman Peterson asked how the people will get garbage collection if they are on a private road, Mr. Pettibone said that there are garbage bins along the private street and the City does provide garbage pickup on a private street if it is maintained.

Mayor Worley closed the public hearing at 9:44 p.m.

Councilman Mumpower moved to allow a modification from the subdivision standards to allow the creation of a lot that does not abut a public street on property located at 5 Bell Haven Road subject to the following four conditions: (1) The right-of-way for Bell Haven Road must be widened to a minimum of 25 feet and be able to accommodate any future work done by the Water Department in regards to maintenance of the existing water line; (2) Applicant will need to obtain an easement across another property to gain access to public sewer system; (3) The existing lot will need to retain some frontage onto Bull Mountain Road; and (4) Any construction work within the water line right-of-way must be coordinated with the Water Resources Department. This motion was seconded by Vice-Mayor Bellamy and carried unanimously.

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**E. PUBLIC HEARING TO REZONE PROPERTY LOCATED ON EMMA ROAD FROM RM-8 RESIDENTIAL MULTI-FAMILY MEDIUM DENSITY DISTRICT TO COMMUNITY BUSINESS I DISTRICT**

**ORDINANCE NO. 2967 - ORDINANCE TO REZONE PROPERTY LOCATED ON EMMA ROAD FROM RM-8 RESIDENTIAL MULTI-FAMILY MEDIUM DENSITY DISTRICT TO COMMUNITY BUSINESS I DISTRICT**

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

Urban Planner Carter Pettibone said that this is consideration of an ordinance to rezone property located on Emma Road from RM-8 Residential Multi-Family Medium Density District to Community Business I District. This public hearing was advertised on October 11 and 18, 2002.

The applicant, Salvador's Bohemian Market, is requesting rezoning of the 1.06-acre parcel (PIN No. 9639.18-30-1917) in order to redevelop the property for uses permitted in the CB I District. The purpose of the CB I District is to provide for medium-density business and service uses serving several residential neighborhoods

The property is a very shallow one as it is wedged in between Emma Road to the north and the railroad right-of-way to the south. There are three existing buildings on the site, all of which are vacant and one of which will need to be torn down due to its dilapidated condition. The larger of the two that can be salvaged is around 6,000 square feet in area. The applicant has expressed her desire to use these remaining buildings as part of a small commercial development.

This property is located just outside the City Limits in the extraterritorial jurisdiction in an area that has a variety of uses and zoning. The properties immediately across Emma Road to the north and to the east of the property are zoned RM-8 and contain a mix of single-family and manufactured homes. Properties to the west at the intersection of Emma Road and North Louisiana Avenue are commercial and function as the center of the Emma community. Immediately south across the railroad is the Holiday Inn Sunspree Resort.

The site's frontage is on Emma Road, which would likely function as the site main access. The road is a fairly well traveled one, both for cars and pedestrians, and should be able to accommodate any traffic increase that would result from development on the site.

Staff feels CB I is an appropriate zoning category for the parcel for a number of reasons. The shallow shape and wide street frontage of the property due to the street and railroad and its location adjacent to the railroad do not lend the property to being suitable for residential uses. The proposed zoning also helps to provide a transition from the CB II and Resort zoning to the west and south to the residential uses of the RM-8 to the east and north. There is a CB I district between Emma Road and the railroad directly west of the CB II zoning at Emma and Louisiana and this property would fill in the intersection's other "flank" with similar zoning. CB I zoning would also provide the opportunity to preserve and improve the remaining buildings on the site for economically viable uses and help further strengthen the Emma community area.

The Planning and Zoning Commission voted 6-0 to recommend approval of the rezoning of the property located on Emma Road from RM-8 to CB I. City staff feels CB I zoning is appropriate for the parcel as well.

Ms. Leslie Stevens, owner of the Salvador's Bohemian Market, briefed City Council on the background of the property and urged City Council to rezone it. In addition, she requested

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Council's assistance in slowing down the traffic on Emma Road and seeing what they can do to get sidewalks on Emma Road.

City Attorney Oast responded to her questions regarding sidewalks for new developments.

Mayor Worley closed the public hearing at 9:58 p.m.

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

Councilwoman Jones moved for the adoption of Ordinance No. 2967. This motion was seconded by Vice-Mayor Bellamy and carried unanimously.

#### **ORDINANCE BOOK NO. 20 - PAGE**

#### **IV. UNFINISHED BUSINESS:**

#### **V. NEW BUSINESS:**

##### **A. RESOLUTION NO. 02-173 - RESOLUTION APPOINTING MEMBERS TO THE CIVIC CENTER COMMISSION**

Vice-Mayor Bellamy said that there currently exists two vacancies on the Civic Center Commission.

On October 22, 2002, City Council interviewed Ms. Sylvia Farrington. In addition, on October 22, 2002, City Council asked that the City Clerk verify that Mr. Dan Breneman was still interested in serving on the Commission. Mr. Breneman is interested.

Vice-Mayor Bellamy moved (1) to appoint Ms. Sylvia Farrington as a member of the Civic Center Commission to serve an unexpired term until June 30, 2005; and (2) to appoint Mr. Dan Breneman as a member of the Civic Center Commission to serve an unexpired term until June 30, 2004. Both terms are until their successors have been appointed. This motion was seconded by Mayor Worley and carried unanimously.

**RESOLUTION BOOK NO. 27 – PAGE 271**

**B. RESOLUTION NO. 02-174 - RESOLUTION APPOINTING A MEMBER TO THE RECREATION BOARD**

Vice-Mayor Bellamy said that Mr. Thomas House has resigned as a member of the Recreation Board, thus leaving an unexpired term until December 31, 2003.

On October 15, 2002, City Council instructed the City Clerk to arrange for Carol Ann Pothier and Leonard Jones to be interviewed for a vacancy on the Recreation Board. Mr. Jones was unable to attend the interview, however, he was interested in serving.

Vice-Mayor Bellamy moved to appoint Carol Ann Pothier to serve the unexpired term of Mr. House, term to expire December 31, 2003, or until her successor has been appointed. This motion was seconded by Councilman Ellis and carried unanimously.

**RESOLUTION BOOK NO. 27 – PAGE 272**

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**VI. OTHER BUSINESS:**

**A. CLAIMS**

The following claims were received by the City of Asheville during the period of September 27-October 10, 2002: William Proffitt (Water), Sylvia Burke (Streets), Ken Cryderman (Water) and Travelodge (Water).

The following claims were received during the period of October 11-17, 2002: CP&L (Water), Katherine Lipe (Water), Carol Bryan (Water), Dawn Hirshom (Water), Tom Karl (Streets), All Aluminum Co. (Engineering) and Mrs. Nash (Sanitation).

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

**VII. INFORMAL DISCUSSION AND PUBLIC COMMENT:**

**VIII. ADJOURNMENT:**

Mayor Worley adjourned the meeting at 10:00 p.m.

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CITY CLERK

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MAYOR

