

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

PLEDGE OF ALLEGIANCE

Mr. Grady W. Beard, veteran from US Army, led City Council in the pledge of allegiance.

INVOCATION

Vice-Mayor Bellamy gave the invocation.

I. PROCLAMATIONS:

A. PRESENTATION OF \$400,000 GRANT

Buncombe County Tourism Development Authority Vice-Chair Herman Turk, representing the Buncombe County Tourism Development Authority, and WNC Soccer Foundation President Lloyd Sigman and Chair Becky Lewis, representing the WNC Soccer Foundation, presented the City of Asheville with a check in the amount of \$400,000 from a grant from the Buncombe County Tourism Development Authority and the WNC Soccer Foundation for construction of the John B. Lewis Soccer Complex at Azalea Road Park.

B. PROCLAMATION PROCLAIMING SATURDAY, MARCH 1, 2003, AS "SUPPORT OUR SOLDIERS DAY"

Mayor Worley read the proclamation proclaiming Saturday, March 1, 2003, as "Support our Soldiers Day" in the City of Asheville. He said that he and Buncombe County Chairman Ramsey would be presented the joint City/County proclamation at a rally on Saturday.

II. CONSENT:

A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON FEBRUARY 11, 2003, AND THE WORKSESSION HELD ON FEBRUARY 18, 2003

B. RESOLUTION NO. 03-24 - RESOLUTION AUTHORIZING THE APPLICATION FOR NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM – PHASE II STORMWATER PERMIT

Summary: The consideration of a resolution authorizing the City Manager to sign the National Pollutant Discharge Elimination System (NPDES) Phase II Permit Application and any other paperwork necessary to comply with the Environmental Protection Agency (EPA) Federal Non-Funded Mandate.

In 1998, EPA adopted a rule called the NPDES Stormwater – Phase II rule. This rule applies to all municipalities with a population less than 100,000 that own or operate a Municipal Separate Storm Sewer System. The rule specifies that these units of government must develop

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a program for managing stormwater runoff, particularly pollutants associated with stormwater runoff. The application must be submitted to the State on or before March 2003.

The program must describe how the City will attempt to meet six minimum requirements: (1) Public Education/Outreach; (2) Public Participation/Involvement; (3) Illegal/Illicit Discharge Detection and Elimination; (4) Construction Site Runoff Control; (5) Post-Construction Runoff Control; and (6) Pollution Prevention/Good Housekeeping Measures.

In 2002, the City purchased a software program from the League of Municipalities as a guide to develop the permit. The permit will apply for a five-year period following the issuance of the permit from the State. The first year of the program will consist of developing plans and coordinating activities between various agencies. For example, the City of Asheville hopes to develop a Public Education/Outreach Program in conjunction with the other municipalities in the County.

One official deadline for the five-year program is that an ordinance controlling post-construction runoff must be adopted by City Council by March 10, 2005.

The cost of this program averages approximately \$250,000 per year over the five-year period. At the 2002 City Council Retreat, Council approved City staff exploring the feasibility of developing a Stormwater Utility to fund the stormwater program. Staff is still in the process of evaluating this recommendation.

City staff requests that City Council authorize the City Manager to sign the National Pollutant Discharge Elimination System (NPDES) Phase II Permit Application and any other paperwork necessary to comply with the EPA Federal Non-Funded Mandate.

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C. RESOLUTION NO. 03-25 - RESOLUTION ACCEPTING THE NEW STREET NAME OF "EAST END PLACE" OFF MARTIN LUTHER KING DRIVE

Summary: The consideration of a resolution accepting the new proposed street name "East End Place."

Asheville Area Habitat, owner of lots off of Martin Luther King Drive, has petitioned the City of Asheville to accept the street name "East End Place."

The new street will begin at Martin Luther King Drive and end at cul-de-sac on East End Place.

City staff recommends adoption of the resolution.

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D. ORDINANCE NO. 3001 - BUDGET AMENDMENT TO CONTINUE THE CONSTRUCTION OF PHASE I OF THE AZALEA ROAD PARK PROJECT

Summary: The consideration of a budget amendment, in the amount of \$474,000, to continue the construction of Phase I of the Azalea Road Park project and consideration of a resolution authorizing the City Manager to enter into an agreement with the Western North Carolina Soccer Foundation for administering future funds collected for this project.

In 2001, City Council approved the Master Plan for the development of the Azalea Road Park. The development of the 155 acres will occur in a number of phases. The first phase includes the construction of two soccer fields, restroom/concession stand, picnic shelter,

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playground, parking and other infrastructure needs. The Department, in association with the WNC Soccer Association, has worked extremely hard in the past several months to secure funding for this project. First and foremost, a grant was secured from the Tourism Development Authority for funds totaling \$400,000. This was the first grant awarded by this group for the development of the facilities that will increase the economic vitality of our community. In addition, we have secured \$50,000 (which we will receive in \$10,000 installments over five years) from Pepsi Cola Bottling Company through the generosity of John Teeter to go towards the development of the park. An additional \$24,000 was secured from the sale of a small portion of the property. These funds will be used in conjunction with other funds already received to help meet our overall goal to complete Phase I.

In addition, an agreement with the WNC Soccer Foundation is required to outline the roles and responsibilities for both the WNC Soccer Foundation and the City of Asheville in securing future funds for this project.

The Parks and Recreation Department, in conjunction with the WNC Soccer Foundation, requests City Council approve the budget amendment to go towards the capital improvement budget for the Azalea Road Park construction and to authorize the agreement with the WNC Soccer Foundation for administering funds collected for this project.

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E. RESOLUTION NO. 03-26 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO AN AGREEMENT WITH THE WNC SOCCER FOUNDATION FOR ADMINISTERING FUNDS COLLECTED FOR AZALEA ROAD PARK

Summary: See Consent Agenda Item "D" above.

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F. RESOLUTION NO. 03-27 - RESOLUTION AUTHORIZING THE CITY MANAGER TO SIGN AN AMENDED CONTRACT WITH CARL WALKER FOR THE PARKING GARAGE IN THE BATTERY PARK AREA

Summary: The consideration of a resolution authorizing the City Manager to amend the contract with Carl Walker, Inc. to include an additional \$391,113 for the design/development drawings and the construction documents for the parking garage in the Battery Park area.

In 2000, the City of Asheville went through a formal process to select Carl Walker, Inc. to design the parking garage in the Battery Park area. The original contract was for a parking structure on the existing surface lot of the BellSouth lot. The original cost of the project was \$510,000. Since that time several changes have been made in the scope of the work. These changes include:

- The location of the site has moved, causing the design cost of the project to increase because of the geometry of the site;
- The Engineering fees of the Consultant have gone up annually since 2000;
- The Consultant was requested to complete design/development drawings for the private development component of the project.

All of the additional costs for the contract amendment will be recovered with bond proceeds. This amendment brings the total cost of the project to \$901,113.

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Staff requests that City Council authorize the City Manager to amend the contract with Carl Walker, Inc. to include an additional \$391,113 for the design of the parking garage in the Battery Park area.

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G. MOTION APPROVING THE LIST OF EVENTS FOR CO-SPONSORSHIP WITH THE CITY OF ASHEVILLE

Summary: The consideration of a motion approving the list of events requesting co-sponsorship status with the City of Asheville.

The Parks and Recreation Department has developed criteria to determine the minimum requirements for an event to be considered for co-sponsorship. In 2002, the City co-sponsored 35 events and this year the City is requesting co-sponsorship for 41 events. The cost of City services is estimated at 90,000.

The following are the minimum criteria for co-sponsorships with the City of Asheville:

1. The requesting applicant must represent a non-profit organization as defined by state or federal tax law.
2. The requesting applicant/organization does not discriminate on the basis of race, color, creed, sex, sexual orientation, age, political or religious affiliation, ethnicity, national origin or economic standing.
3. The proposed event is community focused and recreational in nature.
4. The proposed event is open to the general public.
5. The proposed event has been planned to facilitate a positive impact to the community.
6. Eligibility for co-sponsorship status is based on successful completion and submittal of application, agreements, letters of petition and/or contracts within the specified period of time.

The list of groups all meet the minimum requirements for co-sponsorship and have requested through the Asheville Parks and Recreation Department that City Council grant them co-sponsorship status in 2003.

The Asheville Parks and Recreation Department recommends City Council accept the list for co-sponsored events in 2003.

H. RESOLUTION NO. 03-28 - RESOLUTION AUTHORIZING THE SALE OF PROPERTY OFF BLAKE MOUNTAIN CIRCLE TO RHETT GROTZINGER.

Summary: The consideration of a resolution authorizing the sale of property off Blake Mountain Circle to Rhett Grotzinger in the amount of \$10,600.

On October 22, 2002, the City Council directed the City Clerk to advertise for upset bids on property off Blake Mountain Circle. The advertisement ran in the Asheville Citizen-Times on November 1, 2002, as provided in N. C. Gen. Stat. sec. 160A-269. An upset bid was received by Bruce McTaggart in the amount of \$3,935 and the bid was re-advertised on November 15, 2002. An upset bid was received by Rhett Grotzinger in the amount of \$4,300 and the bid was re-advertised on November 29, 2002. An upset bid was received by Bruce McTaggart in the amount of \$4,565 and the bid was re-advertised on December 13, 2002. An upset bid was received by Rhett Grotzinger in the amount of \$8,000 and the bid was re-advertised

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on January 10, 2003. An upset bid was received by Bruce McTaggart in the amount of \$10,000 and the bid was re-advertised on January 24, 2003. An upset bid was received by Rhett Grotzinger in the amount of \$10,600 and the bid was re-advertised on February 7, 2003. No response was received. Therefore, the offer to purchase from Rhett Grotzinger in the amount of \$10,600 was not upset and the sale to Rhett Grotzinger should be approved.

Approval of the resolution will authorize the sale of the property to Rhett Grotzinger for the amount of \$10,600.

Community Development staff recommends adoption of the resolution authorizing the sale of property off Blake Mountain Circle to Rhett Grotzinger.

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

III. PUBLIC HEARINGS:

A. PUBLIC HEARING TO CONSIDER A MODIFICATION FROM THE SUBDIVISION STANDARDS ON PROPERTY LOCATED AT 139 THIRD STREET TO ALLOW THE SUBDIVISION OF EXISTING PROPERTY INTO TWO PARCELS WITHOUT PUBLIC STREET FRONTAGE

Mayor Worley opened the public hearing at 5:27 p.m.

Urban Planner Carter Pettibone said that this is consideration of a request for modification from the subdivision standards to allow the creation of two lots that do not abut a public street on property located at 139 Third Street. This public hearing was advertised on February 14 and 21, 2003.

The City has received a request from Samuel and Maureen Zitin to subdivide a parcel located at 139 Third Street into two lots (PIN No. 9658.17-11-6302). The parcel is 3.06-acres in size and zoned RS-8 Residential Single Family High Density District. It currently has two homes located on it, a mobile home and a single family detached dwelling. Third Street is a paved street maintained by the City up to the petitioner's property line. Public right-of-way for the street appears to end about 165' in front of the property. Since it is not possible to obtain the minimum frontage for the resulting lots as specified in the Subdivision Ordinance, a modification is required.

The petitioners wish to subdivide the lot in order for each home to have its own lot and no additional homes are proposed. Each resulting lot would also be able to meet the Unified Development Ordinance requirements of the RS-8 District for minimum lot size and setbacks.

Since one of the resulting lots would not have a direct connection to Third Street, access to it would need to be maintained through the creation of an access easement across the other lot. The establishment of this easement was a condition placed on the recommendations of staff, the Technical Review Committee (TRC) and the Planning and Zoning Commission.

The TRC and Planning and Zoning Commission each voted unanimously to recommend approval with the condition that an access easement be granted over one lot to serve the other.

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The Planning and Development Staff also recommends approval of the subdivision modification with the condition.

Upon inquiry of Mayor Worley, Mr. Pettibone said that he would ask the Traffic Engineer investigate obtaining a public right-of-way for the remainder of the portion of the street that is currently being maintained.

Vice-Mayor Bellamy asked City staff look at a possible amendment to the Unified Development Ordinance so that a subdivision modifications such as this does not have to come before Council.

Mayor Worley closed the public hearing at 5:31 p.m.

Councilman Ellis moved to allow a modification from the subdivision standards on property located at 139 Third Street to allow the subdivision of existing property into two parcels without public street frontage with the condition that an access easement be granted over one lot to serve the other. This motion was seconded by Councilman Dunn and carried unanimously.

B. PUBLIC HEARING TO AMEND CHAPTER 7 OF THE CODE OF ORDINANCES TO ADD RESEARCH AND TECHNOLOGY PRODUCTION AS A PERMITTED USE IN CERTAIN COMMERCIAL DISTRICTS

ORDINANCE NO. 3002 - ORDINANCE TO AMEND CHAPTER 7 OF THE CODE OF ORDINANCES TO ADD RESEARCH AND TECHNOLOGY PRODUCTION AS A PERMITTED USE IN CERTAIN COMMERCIAL DISTRICTS

Mayor Worley opened the public hearing at 5:33 p.m.

Planning & Development Director Scott Shuford said that this is the consideration of an ordinance to amend the Unified Development Ordinance (UDO) to add research and technology production as a permitted use in certain commercial districts. This public hearing was advertised on February 14 and 21, 2003.

This code amendment defines "research and technology production uses" and permits them in the Community Business II District, Institutional District, Highway Business District, Regional Business District, Central Business District, Commercial Industrial District and Industrial Districts. Once defined, the uses would be permitted in the River District as well. These uses are the "high tech" uses that form the backbone of our local economic development strategy.

This item was previously heard by the Planning and Zoning Commission and recommended for approval. At a City Council meeting, staff was asked to research environmental hazards concerns associated with the research and technology production uses and return the amendment for consideration. This research reveals that environmental concerns associated with the intended uses are effectively handled through existing environmental permitting procedures. There are extensive environmental permitting procedures that pertain to medical wastes and by-products from the types of uses proposed in this amendment; for some chemicals, this permitting involves "cradle-to-grave" tracking (i.e., from time of production to time of disposal).

On January 23, 2003, the Planning and Zoning Commission recommended approval of the proposed code amendment by a vote of 5-0. City staff recommends approval of the proposed code amendment as well.

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

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

Councilman Mumpower moved for the adoption of Ordinance No. 3002. This motion was seconded by Vice-Mayor Bellamy and carried unanimously.

IV. UNFINISHED BUSINESS:

V. NEW BUSINESS:

A. RESOLUTION NO. 03-29 - RESOLUTION APPOINTING MEMBERS TO THE ASHEVILLE SCHOOL BOARD

Vice-Mayor Bellamy said that the terms of Brian Weinkle and Roy Harris, as members of the Asheville School Board, expire on April 1, 2003.

On Tuesday, February 18, 2003, City Council interviewed the following candidates for vacancies on the Asheville School Board: Marsha Bate, Tom Knoebber, Ann L. Von Brock, Marianne Reinert and Thomas Hunnicutt. Since Dolly Jenkins-Mullen was unable to attend the interview on February 18, 2003, due to her being out-of-town during inclement weather City Council interviewed Ms. Jenkins-Mullen on February 25, 2003.

After each Council member spoke about the high qualifications of all the candidates, Marsha Bate received 3 votes, Tom Knoebber received 0 votes, Ann L. Von Brock received 6 votes, Marianne Reinert received 0 votes, Thomas Hunnicutt received 0 votes, and Dolly Jenkins-Mullen received 5 votes. Therefore, Ann L. Von Brock and Dolly Jenkins-Mullen were appointed as members to the Asheville School Board to begin serving a four year term respectively on April 1, 2003, until April 1, 2007, or until their successors have been appointed and qualified.

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B. RESOLUTION NO. 03-30 - RESOLUTION APPOINTING A MEMBER TO THE RECREATION BOARD

Vice-Mayor Bellamy said that Tom McMahon has resigned as a member of the Recreation Board, thus leaving an unexpired term until June 30, 2003.

On February 18, 2003, it was the consensus of City Council to instruct the City Clerk to arrange interviews for Mr. Jim Lewis, Mr. Samuel Camp and Dr. Gregory Motley. Dr. Motley was unable to come in for an interview due to his surgery schedule.

After Council spoke about the high qualifications of all candidates, Jim Lewis received 1 vote, Samuel Camp received 6 votes and Gregory Motley received 0 votes. Therefore, Samuel Camp is appointed to serve the unexpired term of Mr. McMahon, term to expire June 30, 2003, and then to serve a full three year term, term to expire June 30, 2006, or until their successor has been appointed

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C. RESOLUTION NO. 03-31 - RESOLUTION REGARDING THE INCORPORATION OF THE TOWN OF MILLS RIVER

Planning & Development Director Scott Shuford said that citizens in the Mills River area of Henderson County have petitioned the State Legislature to incorporate approximately 22 square miles of property containing about 6,890 residents centered on Highways 191 and 280 from south of the Asheville Regional Airport to the Transylvania County line. By contrast, the City of Asheville has an incorporated area of approximately 42 square miles and a population of about 70,000 residents. The approximate respective densities are 320 and 1667 persons per square mile.

The stated reasons for incorporation are quoted below from the Mills River incorporation web page:

- *To protect the historical, cultural and rural identity of the community.*
- *To have a stronger voice in decisions that are made concerning the community.*
- *To control our own destiny.*

The Town proposes a tax rate of 7.5 cents per \$100 valuation, of which 6.5 cents will go toward continuation of rural fire district fire protection services. Four Town services will be provided:

- Fire protection through a contract with the rural fire district

- Police protection through a contract with the county sheriff department
- Garbage collection on a voluntary basis through a private hauler
- A street lighting program

Despite the stated intent to protect the “rural identity” of the community, Town zoning is to be handled by Henderson County under the County’s “open use” zoning. There appears to be no active effort to establish a planning and zoning program to achieve the rural character goals since the County “open use” zoning allows virtually any land use to occur.

Under the proposed Charter of the Town of Mills River, one Town board will be created; this board will be charged with addressing agricultural issues. A five-member Town Council will be created and will operate under the council-manager form of government.

Under the NC Constitution, municipal incorporation requires an act of the legislature. Petitions for incorporation are filed with the Joint Legislative Commission on Municipal Incorporation. Upon receiving the petition, the Commission undertakes a “Phase 1” review, which is simply to determine the sufficiency of the petition, which must contain certain information. There follows a “Phase 2” review, which focuses on whether area meets the criteria for incorporation (density, degree of development; but a lower threshold than for annexation), and whether the services promised can actually be delivered.

During this process, the incorporating municipality must notify all other cities in the county or counties wherein it is located, and must notify any city of 50,000 or more that is within 5 miles (“proximity test”). In the case of Mills River, Asheville is within 5 miles and has been notified. Under the law, if a petition is insufficient (Phase 1), it may not be processed; if the criteria are not met (Phase 2), the Commission must make a “negative recommendation” to the General Assembly. Similarly, if there is a city that meets the proximity test that does not express its approval of the proposed incorporation (part of Phase 2), the Commission may not make a positive recommendation. In the event of a negative recommendation, the Commission may hold a public hearing and may, in certain circumstances, require a referendum (presumably of the

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affected area). Even if the Commission makes a negative recommendation, the legislature may still incorporate. However, if there is a city of 50,000 or more within 5 miles, incorporation requires a three-fifths vote of the General Assembly, whether or not that city approves of the proposed incorporation.

As Council has been advised, the Commission met last week for the Phase 1 review. The Commission is proceeding with Phase 2, but wishes to hear from Asheville on the question, and has given us two weeks to act.

The most obvious comment about this incorporation effort is that it seems counterintuitive to create an urban area (a “town”) in order to maintain a rural land use character, especially when no specific land use controls are proposed to preserve that rural development pattern. The limited number of public services and extremely low tax rate (only 1 cent above the current tax rate) seems to argue that the incorporation is primarily a “defensive” one, initiated to stop possible annexation by Fletcher, Hendersonville, or Asheville rather than to create an urban area of enhanced public services.

However, the key issue of importance for the City of Asheville is that the incorporation and its proposed continued use of “open use” zoning will effectively prohibit the conversion of the prime flatland in the Mills River Valley to industrial uses. This land represents a regional resource that, under “open use” zoning, will most likely be developed with low density residential or small-scale commercial land uses. Strict, industrial-only zoning regulations are required to preserve this land for industrial use. Additionally, an incorporation that is created to maintain a rural character without including the zoning tools necessary to ensure that the desired character will be maintained will not be successful; instead, this area will most likely continue to be developed in a sprawl pattern that is counter to regional economic development goals.

We have had limited discussions with the Town of Fletcher regarding their concerns about this incorporation. Fletcher is amenable to the incorporation only if there is a “boundary agreement” worked out between Fletcher and Mills River. Such an agreement could address the above concerns of the City of Asheville by ensuring that critical land suitable for industrial development is reserved for that use. To our knowledge, no such agreement has been pursued by those seeking the incorporation of the Town of Mills River.

From a land use planning perspective, it would appear to make more sense for the incorporation to be concentrated in a much smaller area, generally centering on the Highway 191 and 280 intersection. This location exhibits a more “urban” development pattern than the remainder of the proposed area of incorporation; it is already known and accepted as the “town center” of Mills River. The incorporation of this area would allow the “town center” of Mills River to be established now and perhaps expanded at a later date, while also allowing a more comprehensive planning program to be developed that would address the

concerns of Asheville and Fletcher about the scale of the proposed annexation and the ultimate land use pattern.

For the reasons noted, staff recommends adoption of the resolution.

Upon inquiry of Vice-Mayor Bellamy, Mayor Worley received a letter today from the Town of Fletcher Mayor William B. Moore that said they do not support the incorporation effort without an equitable boundary agreement with the Town of Fletcher. Mayor Moore said that they would not have representation at the meeting today because they have their pre-budget retreat.

Upon inquiry of Councilman Ellis, Mr. Shuford said that there are some small subdivisions, some small business and industrial parks, and some agricultural product uses being built off of 280. It is an area in transition, but even on the map, that Mills River representatives participated in the drawing of it, shows the expanded Metropolitan Planning Organization

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boundaries do not include all of the area that is being proposed for incorporation, nor does it show this as an urban area in any stretch of the imagination. This is likely not a very high growth area, at least over the short term, but an area that is seeing some transition and change and that's probably why there is some interest in seeking incorporation – to have control over how that change might affect them. However, what has been proposed in terms of town services for this are not any sort of zoning or planning pattern that would better reflect that community character.

City Attorney Oast summarized state law by saying that if the City of Asheville takes no action on the resolution, the Joint Legislative Commission on Municipal Incorporation may not make a positive recommendation to the General Assembly. In other words, unless City Council adopts a resolution of approval, then the Commission may not make a positive recommendation.

Mr. Shuford said that staff's recommendation is one of approval, but just a smaller boundary.

When Vice-Mayor Bellamy asked if the Commission could work out the boundaries of what they are allowing to be incorporated, City Attorney Oast said the Commission has the authority to modify the petition.

Upon inquiry of Vice-Mayor Bellamy regarding the Town of Fletcher's boundary agreement request, City Attorney Oast said that they don't have any legal standing since they are not a city of 50,000 or more that is within 5 miles of the proposed incorporation.

Councilman Ellis would support a positive recommendation for Mills River to incorporate a smaller area. Then that would give them the opportunity, at some later time, to come back, just as all other cities do now, to expand.

Councilman Dunn said he'd like to let our neighbors make their own decisions. In response, Mr. Shuford said that it's with a lot of reluctance that we find ourselves in a position of having to make a recommendation to Council that is less than what Mills River did request as far as their incorporation. But we think we would be remiss in not pointing out the fact that we've got a regional resource, just as is the water of Mills River and the French Broad River is a regional resource in terms of the land, and that is an issue that Council needs to be aware of as you evaluate this request. City Attorney Oast also noted that at the initial review of the petition on this matter which came up before the Commission a couple of weeks ago, they affirmatively requested Asheville's input on this.

Councilman Peterson asked if staff sees any downside in not passing a resolution if there is not consensus on Council. Mr. Shuford said the downside would be to the people who are attempting to make this incorporation because it would send forth a negative recommendation from the Commission charged with making some recommendation on this. They may forward that as a technically negative recommendation and qualify it by saying that they didn't receive anything from the City of Asheville and that may have some affect on how the legislature votes.

Mr. Shuford explained that staff's concern is fairly limited and it deals with the potential of that land to be developed eventually for industrial purposes and we think that is a regionally economic development issue, not a City of Asheville issue. Again, staff does not have a strong point of view on this, other than to point out to Council that they have a concern about the fact that the proposed zoning plan for the community, their land use development program, doesn't seem to adequately protect certain flatland for potential industrial development. Henderson County does have an industrial zoning district in its toolbox and certainly those are things that could be brought into play at some future point.

Ms. Elana Carland, representing the Mills River Incorporation, said that if they incorporate the smaller area, their density would not meet state requirements and it would place an undue tax

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burden on those businesses in that area. Asheville's staff's main concern with the incorporation is the industrial areas. This committee has never said they would not support industry. We are starting a town and therefore we cannot initiate planning and zoning at the beginning, unless they want to do a poor job of it. We are contracting for two years with Henderson County for them to take care of the planning and zoning issues. In the third year of our budget, we have a town planner budgeted. That way we will have time to establish our town and then we can go on and do our planning. Seventy-five percent of this area is already regulated by government agencies. The only area that is not is that industrial area that we are all talking about. Our tax rate is very low – one cent. We feel that would be very attractive as a regional industrial attractant for industry because they will see the low tax rate. The Mills River residents have said they want minimal government and low taxes and that is why we are incorporating this huge area. We would like to start our town with historic town boundaries and we are encompassing most of our fire district. She read a quote from a former Henderson County Commissioner said that “incorporation of a large area reduces headaches associated with future annexation and it gives us the ability to plan for the whole community from the start.” Most of the residents in this area have wanted in the incorporation area. We have met with the Town of Fletcher several times and have not worked out a boundary agreement with them. We don't see the need to enter into a boundary agreement with them. We did offer them some prime industrial land as a boundary agreement in their Charter and they refused it and said it was not enough. Our state representatives are all in support of this incorporation. She said they met with Asheville on April 22, 2002, and on July 2, 2002, and asked if there were any concerns and they received no answers.

Vice-Mayor Bellamy wanted to make sure that the Committee thought about if the town would be able to meet their budget needs with all the unfunded state mandates on small and large cities. Ms. Carland said they would work with minimum government at the start, again stating that they are capable of providing the services, e.g., by increasing the sheriff's patrol in that area.

When Vice-Mayor Bellamy questioned if it is going to be equitable to Henderson County residents (who are not being incorporated), Ms. Carland responded that there was unanimous support from the Henderson County Commissioners.

Upon inquiry of Councilman Dunn, Ms. Carland said she would like Asheville to pass a resolution in support of the incorporation of the current boundaries. They are not prepared to shrink their boundaries and see no reason to do that since Asheville has not made a strong enough argument to convince them to shrink the boundaries. She felt that industrially, they would be the most attractive for regionalism industry because they will have the lowest tax rate and they will be able to provide everything they need.

Mr. Daniel Breen spoke in support of the City supporting the Mills River community incorporation especially since industrial growth and farm land is so important.

Councilman Peterson asked if there would be a potential conflict with Asheville's agreement with Henderson County that if there are regional water lines, the Regional Water Authority would build and own those, but they would be in some other town. He said it's one proposition for water customers in Asheville to be paying for water lines in Henderson County and another proposition for water customers in Asheville to be paying for water lines in some other town. Mayor Worley responded that it was his understanding of the agreement that the incorporation would not affect the agreement. It would still be Henderson County making a request under the terms of the current agreement, even if the property were within an incorporated area. There is nothing in the agreement that restricts the ability to put in a regional water line to an unincorporated area, so he didn't think it would have any effect on that particular agreement. He noted that Asheville owns the water lines in the Town of Black Mountain. In

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addition, City Manager Westbrook said that most of the area of the proposed incorporation would be served by the City of Hendersonville, opposed to the Regional Water Authority.

Councilman Ellis said that he understands that the whole concept of towns and cities under state law is that incorporation is supposed to serve an urban area. From that standpoint, he felt that the 22 square miles is a rural area. They would not be creating a town to serve an urban area. Even though the Asheville doesn't want to be involved in this decision-making process with regard to the Mills River incorporation in another County, he would rather vote not to do anything and let the process proceed without Asheville's input, or he would support the incorporation of a smaller boundary because that would be creating a town to serve an urban area.

Councilman Dunn felt Asheville should give Mills River a chance to incorporate and felt Asheville's concerns were more about control. He supported the incorporation of the original boundaries.

Upon inquiry of Councilman Mumpower, Ms. Carland said that it would be very difficult for them to meet the density for

incorporation if their boundaries were condensed and that they are unique in terms of a town because they are so spread out. She said that there are 7,000 people in the entire boundary area and most are not directly on the road. They do not want to stress the few businesses in the condensed area by making them support the whole town.

Councilman Mumpower said that prior to the meeting, what staff said made sense about supporting the incorporation of the condensed boundaries, but the Mills River community says that if they don't have the entire 22 square miles, they can't realistically develop a tax base to incorporate. If Asheville is going to try to help them, we need to help them in a way that gives them a realistic chance for success. Therefore, he would support a vote and let Asheville get out of the way and let the state wrestle with some of the more complex issues, such as boundaries and density.

Councilman Peterson said that this Council has seen that when certain undesirable development happens here in Asheville, the people who have a vote tend to turn out and be very opposed to it. He felt that the plan right now that the Mills River community is presenting doesn't include restrictive zoning but he thinks it will happen and it won't be good for the region. This is currently a mostly residential area and we know what happens when something tries to go into a residential area when the residents don't like it. He couldn't support any resolution. He doesn't want to draw their town's boundaries and we should let them settle that with the legislature.

Vice-Mayor Bellamy said that she would support the incorporation. She felt there will be some issues that they will have to deal with, whether it's providing city services for their residents, trying to balance their budget, or trying to meet all the state mandates, but if they feel they have researched all the information, she didn't think it's our position to interfere. Since they have committed to working towards regionalism for economic development reasons, she would support them.

Mayor Worley said that City Council is unanimous in wishing they didn't have to voice an opinion in this incorporation. He responded to Ms. Carland's statement about the prior meetings with Asheville staff, noting that at the time the meetings were held, they felt they were meeting to obtain information only. It was only within the last 30 days that Asheville realized they would have to make an opinion on the incorporation. He did have some concerns about the size of the original proposed area. We need to express our opinion with an honest, up-front answer and to him that's based on good urban planning principles. When you look at 22 square miles, and just for comparison Asheville is 34 square miles, and a population of 7,000, versus the population in Asheville of \$70,000, it sets that contrast. So, we have to question the size of the area being

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consistent with good urban planning. That having been said, he would be willing to support a resolution that expresses Asheville's concerns, but supports the incorporation and then at least our concerns have been noted and the rest would be up to the Commission.

City Attorney Oast suggested the following amendment to the resolution Council has received: (1) The City of Asheville approves the effort of the Community of Mills River to obtain a greater degree of governance and control over its future through incorporation but expresses the following concerns: (a) That the size of the area proposed for incorporation will present practical difficulties in delivering urban services; and (b) That the proposed incorporation may limit the land available in the area for business development; and (2) The City Attorney is directed to transmit a certified copy of this resolution to the Commission.

Councilwoman Jones asked if the Joint Legislative Committee will see what the vote was by Council on the resolution. City Attorney Oast said that a 4-3 vote has the same weight as a unanimous vote. There is no requirement for any other kind of vote other than a majority on this resolution.

Vice-Mayor Bellamy moved to adopt Resolution No. 03-31, as suggested by the City Attorney. This motion was seconded by Councilman Dunn and carried on a 6-1 vote, with Councilman Peterson voting "no".

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VI. OTHER BUSINESS:

Clean Smokestacks Act

Upon inquiry of Councilwoman Jones about the upcoming March 3, 2003, deadline of joining other states in a lawsuit against the Environmental Protection Agency (EPA), City Attorney Oast updated City Council on his research of Asheville joining in a lawsuit with other states against the EPA's decision to review the New Source Review provision of the Clean Air Act. He said that he spoke with members of the State Attorney General's staff and they had advised him that they don't think the proposed change will have an affect on the Clean Smokestacks Act. This is a very complex matter that requires extensive expertise in

environmental law and we do not have that expertise in the City Attorney's Office. Based on his limited research, he recommended Asheville not get involved as a party in this matter because that would involve a considerable amount of time and he would have to ask Council to budget funds in order to hire an attorney because we do not have the expertise in-house. He did point out other ways that Asheville could get involved without that level of commitment and to add our voice to those others who are involved.

Claims

The following claims were received by the City of Asheville during the period of February 7-13, 2003: Glenda R. Sargent (Police), Lynnwood Jackson (Water), BellSouth (Water), Reid Thompson (Water) and BellSouth (Water).

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

VII. INFORMAL DISCUSSION AND PUBLIC COMMENT:

Mr. Will Harlan, representing The Canary Coalition, encouraged City Council to adopt a resolution supporting and encouraging Attorney General Roy Cooper to join the lawsuit against the Environmental Protection Agency with the other ten states.

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Mr. Daniel Breen, Asheville resident, urged City Council to appoint a committee to look at the pollution that will go into the French Broad River as a result of the Ecusta plant in Transylvania County shutting down their pollution controls. He said we need to make our voice heard to our state representatives.

Mr. Grant Millin, representing the WNC 911 Coalition for America, presented City Council with information and asked Council to educate and make policy on critical homeland security issues.

Mr. Fred English spoke about the many freedoms we now enjoy because of our veterans He urged City Council to not allow two rallies to occur on Saturday, March 1, 2003, since he felt one rally will only disrupt the other rally.

Mr. Bill Fishburne, retired Green Beret, asked that City Council relocate the second rally (Support Our Soldiers – Bring Them Home) on March 1, 2003, to Montford Park so as not to disrupt the Support Our Soldiers rally. He understood that the Parks & Recreation Department had to issue a permit, however, there is a possibility of confrontation and conflict and they wish to avoid that disruption. City Manager Westbrook said that the Police Department is aware of those concerns, will continue to monitor it, and they have the situation well under control. City Attorney Oast also pointed out that the City is limited in our ability to deny permits for simultaneous events.

Ms. Rebecca Campbell presented City Council with a set of materials regarding the requested repeal of Resolution No. 01-144 which gave "unconditional support to the Bush administration's so-called War on Terror." She asked Council to repeal or rewrite Resolution No. 01-144 to "not only preclude possible civil liberties litigation, but to reflect a more cautious support for a national administration that history will show to have been far more inimical to the welfare of the American people than any foreign terrorists."

Mr. Calvin Loyd Hensley, former employee of the City of Asheville, briefed Council on his termination from the City and requested information on the number of Masons the City of Asheville employs.

After discussion initiated by Councilwoman Jones, it was the consensus of City Council to have the City Attorney write a letter for the Mayor's signature to the Attorney General's Office to encouraging him to do whatever he can to protect the air in Western North Carolina.

VIII. ADJOURNMENT:

Mayor Worley adjourned the meeting at 7:17 p.m.

CITY CLERK

MAYOR

