

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**

- Retired Command Sergeant Major William A. Cravener led City Council in the pledge of allegiance.

**INVOCATION**

Mayor Worley gave the invocation.

**ADDITIONS TO THE AGENDA**

- At the request of Mayor Worley, it was the consensus of Council to add a resolution regarding the federal liaison services contract to the Agenda under Other Business.

**I. PROCLAMATIONS:**

**A. PROCLAMATION CONGRATULATING THE UNC-A MEN'S BASKETBALL TEAM FOR WINNING THE BIG SOUTH CONFERENCE TOURNAMENT AND WISHING THEM WELL AS THEY PROCEED TO THE NCAA DIVISION ONE MEN'S BASKETBALL TOURNAMENT**

Mayor Worley presented Head Coach Eddie Biedenbach and three team members a proclamation congratulating the UNC-A's Bulldog's Men's Basketball Team for winning the Big South Conference Tournament on Saturday, March 8, 2003, and wishing them well as they proceed to the NCAA Division One Men's Basketball Tournament. Mayor Worley was proud to announced that this is the first time in UNC-A history for the Bulldog's Men's Basketball Team to proceed to the NCAA Tournament.

**II. CONSENT:**

Mayor Worley announced that Consent Agenda Item D would not be considered at this meeting.

**A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON FEBRUARY 25, 2003, AND THE WORKSESSION HELD ON MARCH 4, 2003**

**B. RESOLUTION NO. 03-33 - RESOLUTION AUTHORIZING THE CITY CLERK TO ADVERTISE AN OFFER TO PURCHASE FOR UPSET BIDS A VACANT LOT AT 25 IRIS DRIVE**

Summary: The consideration of a resolution authorizing the City Clerk to advertise an offer of purchase for upset bids for a vacant lot at 125 Iris Drive.

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A bid from Neighborhood Housing Services of Asheville (NHS), in the amount of \$17,100, has been received for the purchase of a vacant lot at 125 Iris Drive. The bid is not less than the appraised value of \$17,100.

The property is a single-family residential RS-8 zoned lot on Iris Drive comprising approximately 0.28 acre of land. The property has a rectangular shape and is fairly level elevated about 3' - 4' above street level. It has approximately 100 front feet on Iris Drive. There is no current or contemplated use for the property by the City. NHS plans to build a single -family residence on the site for sale.

Approval of the resolution will initiate the sale of the property through the upset bid process as provided

Planning staff recommends adoption of the resolution authorizing the City Clerk to advertise an offer of purchase for upset bids.

**RESOLUTION BOOK NO. 27 – PAGE 328**

- C. MOTION SETTING A PUBLIC HEARING ON MARCH 25, 2003, TO CONSIDER AN ECONOMIC DEVELOPMENT INCENTIVE GRANT FOR PLASTICARD LOCKTECH INTERNATIONAL**
- D. MOTION TO ADOPT THE NORTH CAROLINA METROPOLITAN COALITION'S LEGISLATIVE REGULATORY PRIORITIES FOR 2003-04 AND THE 2003 NORTH CAROLINA LEAGUE OF MUNICIPALITIES LEGISLATIVE GOALS AND PRIORITIES** - This item was not considered at this meeting.

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

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

**III. PUBLIC HEARINGS:**

- A. PUBLIC HEARING TO CONSIDER THE CONDITIONAL USE REZONING FOR 3.88 ACRES LOCATED ON THIRD STREET AND BLALOCK STREET FROM RS-8 RESIDENTIAL SINGLE-FAMILY HIGH DENSITY DISTRICT TO RM-16 RESIDENTIAL SINGLE-FAMILY HIGH DENSITY DISTRICT/CONDITIONAL USE, AND THE ISSUANCE OF A CONDITIONAL USE PERMIT FOR THE ASSOCIATED MASTER PLAN**

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.

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After hearing no questions about the procedure, Mayor Worley opened the public hearing at 5:13 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.

Ms. Shannon Tuch, Urban Planner, said that a valid protest petition has been filed, thus requiring a three-fourths vote of City Council to approve the rezoning of the property. If the rezoning passes by the three-fourths vote, then the conditional use permit is subject to a simple majority vote.

Ms. Tuch 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).

Ms. Tuch said that this is the consideration of conditional use rezoning for 3.88 acres located on Third Street and Blalock Street from RS-8 Residential Single-Family High Density District to RM-16 Residential Multi-Family High Density District/Conditional Use, and the issuance of a conditional use permit for the associated Master Plan.

On December 30, 2002, The Flynn Christian Home submitted a request to conditionally rezone an undeveloped parcel from its current RS-8 designation to RM-16, in the neighborhood of Oakley in the southeast area of the City (City Exhibit 3 – Location

Map).

The conditional use rezoning request is for a parcel located between Third Street and Blalock Street (PIN No. 9658.17-20-0736) totaling 3.88 acres. The conditional use component of this application will be a site master plan showing the construction of five residential structures: two group homes, one duplex, one resident manager's home, and one four-unit transitional home, along with their associated drives and parking areas. All five structures will be single family in style and operation.

The project site is located within the City limits and is surrounded by single family homes all zoned RS-8 except along the northern property boundary where the single family homes north of the railroad are zoned RM-16. The primary access for the Flynn homes will be off of Third Street where four of the five homes are to be accessed through a 60' easement off of Third Street while the transitional home is to be accessed off of Blalock Street (City Exhibit 3 – Site Plan). The duplex, group homes, and transitional home will be two-story construction on block foundations with possible basement/storage space. The resident manager's home will be a single story cottage style home. All homes are to be of modular construction. The project will provide 10 parking spaces, bicycle parking, and a 20' wide Type "B" landscape buffer as required by the Unified Development Ordinance (UDO).

The majority of the site is a mixed deciduous forest with dense non-native undergrowth of vines and other invasive plant materials. The proposed site plan calls for the existing native vegetation to be preserved and maintained with additional plant material to be supplied as needed for the required landscape buffer. A small open area and unnamed perennial tributary to Sweeten Creek will also be preserved and maintained.

RM-16 Residential Multi-Family High Density District is established to permit a full range of high density multi-family housing types. It is intended that this district be located near

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employment centers, shopping centers, roads and other urban infrastructure capable of handling the demand generated by high density development.

The existing RS-8 Residential Single-Family High Density District is established to permit a high density per acre for single-family dwellings where public infrastructure is sufficient to support such development and to stabilize and protect the district's residential character.

The applicant is seeking the conditional use rezoning since RM-16 is the only residential zoning district that allows for the operation of a group home. The designation is not being sought for density purposes.

As part of the special requirements applied to Uses by Right Subject to Special Requirements, the project must meet several conditions for group homes as found in section 7-16-1(c)(31) of the UDO:

- a. Private yard or garden space required; minimum size 500 square feet (minimum dimension 15 feet).  
***There is well over 500 square feet of open space available to the residents for a variety of gardening opportunities.***
- b. Client drop off at the rear or side of the main building.  
***Frontage for the property is located off of Blalock Street with all drop-off areas and parking to the rear of the buildings.***

The Technical Review Committee (TRC) met on January 22, 2003, and again on February 3, 2003, at which time the TRC made a positive recommendation that the project be forwarded to the Planning and Zoning Commission.

The Planning and Zoning Commission reviewed this project at their February 5, 2003, meeting where the Commission unanimously (7-0) recommended approval of the project with the following conditions:

1. The applicant shall meet all TRC conditions.
2. The applicant shall provide 10 off-street parking spaces (the maximum allowed per the UDO) to reduce the potential for on street parking.
3. The applicant shall work with the Transit Authority on establishing a safe location for a bus stop and bench. The applicant shall provide the bench.
4. In the event that the operator of the facility changes, the conditional use rezoning shall be reconsidered.

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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 (UDO 7-16-2(c)). Staff's review indicates that all seven standards are met as proposed in the site plan.

- 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 and other governmental units. In addition, the proposed development meets the definition of a group home as defined by the Unified Development Ordinance: "Group home means a residential home provided by an agency, organization or individual for persons who need sheltered living conditions for rehabilitation, but not including mentally ill persons who are dangerous to others***

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***as defined in N.C. Gen. Stat. sec.122C-3(11)b (or its successor)." Residents of the home have gone through treatment, are not charged with any crime, and are not considered a threat to the public.***

- 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 3.88 acre site's topography forms a ravine with side slope grades ranging from approximately 15-25%. The site has significant existing natural vegetation along with a small perennial unnamed tributary flowing north out of the site. The buildings have been sited to preserve existing vegetation and minimize grading. A vehicular connection between the Third Street buildings and the Blalock building has not been proposed in order to preserve the integrity of the natural slope and unnamed tributary. Preserving the existing vegetation around the periphery will serve to buffer neighboring properties.***
- 3) That the proposed use or development of the land will not substantially injure the value of adjoining or abutting property.  
***Historically, the Flynn Christian Home has not had an adverse impact on property values in their current location in the neighborhood of Montford where property values have increased dramatically in the last decade. The proposed residential structures are to be single family style structures intended to blend in with the surrounding properties and are not expected to injure property values of adjoining or abutting properties.***
- 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 are made up of single family homes occupying between one quarter acre and larger lots. This development, which places five separate residential structures over 3.88 acres, appears to be in harmony scale, bulk, coverage, and density with the surrounding neighborhood. In addition, the homes are to be single family in style, varying somewhat in size and architectural form from one another, helping them to blend into the character of the existing neighborhood.***
- 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.  
***This proposed development supports the smart growth policy of affordable in-fill housing in a variety of neighborhoods throughout the city. It is also supported by the City of Asheville's Consolidated Housing and Community Development Plan 2000-2005, which calls for the need to develop affordable housing for low income people with special needs, including recovering substance abusers.***
- 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 proposed development is located near transportation facilities and other utilities appear adequate. The project area is located near major road facilities, interstate connections and near the route 12 bus line that serves Oakley. Preliminary review by other utility providers has not revealed any problems for serving the development.***
- 7) That the proposed use will not cause undue traffic congestion or create a traffic hazard.

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***The proposed development will not substantially increase the number of cars operating on Third Street or Blalock Street. Most residents of the Flynn Christian Home will be using alternative modes of transportation and off-street***

**parking will be limited to 10 parking spaces for all five structures, an average of 2 cars per home. Third Street and Blalock Street are both somewhat narrow with limited sight distances, however, the City of Asheville's Traffic Engineer has examined the roads and does not expect the vehicular traffic from the proposed development to significantly impact traffic on either Third Street or Blalock Street and does not consider improvements to the roads to be a priority.**

The Planning and Zoning Commission and City staff recommend approval of the zoning change from RS-8 to RM-16 and approval of the associated conditional use permit as proposed by the applicant subject to the following conditions: (1) The applicant shall meet all TRC conditions; (2) The applicant shall provide 10 off-street parking spaces (the maximum allowed per the UDO) to reduce the potential for on street parking; (3) The applicant shall work with the Transit Authority on establishing a safe location for a bus stop and bench. The applicant shall provide the bench; and (4) In the event that the operator of the facility changes, the conditional use rezoning shall be reconsidered.

Upon inquiry of Councilman Mumpower, City Attorney Oast explained that an appropriate way to look at this is whether the RM-16 zoning classification would be appropriate in this area with conditions, without necessarily determining what those conditions are. Then, the second consideration on the conditional use permit would be to determine what conditions would be appropriate.

Mr. Harry Giezentanner, Chairman of the Board of the Flynn Christian Homes. He said the Flynn Home has been located in the Montford area for over 40 years. They have caused no problems, have been an asset to the community as they take pride in their facility and the service they offer to their residents. The Flynn Home is governed by a board of directors and had a full staff. Due to the cutback from governmental funds, they find that to support themselves they need a larger facility to accommodate more residents. Their present location prohibits them from any expansion. They need to be located in an area that has public transportation, job potential (residents are required to work), where they can get to the AA meetings, and close to churches. They like to be in a residential development and want a home-like atmosphere for their residents.

Mr. Gerald Green, resident on Cumberland Avenue who is also working with the Flynn Home, said that they tried to minimize the impact on the property through this development and minimize the development on the adjacent property owners (Applicant Exhibit 1 – Site Plan). The buildings are located on the edges of the property to minimize grading and disturbance of the existing landscaping. There is buffering proposed from the adjacent properties, using, to the extent possible, the existing vegetation supplemented by additional vegetation to meet the requirements of the landscaping ordinance. The buildings will be designed residentially and will blend in with the neighborhood. They will be preserving most of the vegetation on the site. There is an existing open space area. There will be a trail connecting the two portions of the site, however, Building E on the site plan is speculative at this time as funding is not available for that transitional three-quarter home. If all buildings are built, there will be a maximum of 31 persons living on this property – 16 people in one of the group homes, 8 people in the other group home, 1 resident manager, 1 assistant manager, 1 cook and 4 residents in the transitional three-quarter home. That is 31 people on over 3 acres of land, which is far less than the density permitted under the existing zoning. The majority of residents of Flynn Home do not drive and they are dependent upon mass transit, public transit, buses, taxis or friends for transportation. There is a bus stop at the intersection of Third Street and Fairview Road. The Flynn Home has committed to purchase a bench for that bus stop and will work the Transit Services Department to upgrade

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the bus stop. The driveway off Third Street will be the primary access and it will meet City standards. At the end of the parking area will be an area that will be designated no-parking to provide a turn-around for emergency vehicles, noting that there is approximately one delivery truck a week. Although the property in front is under contract by the Flynn Home is not part of this property, the intent of the Flynn Home is to develop that property with single-family homes and market them for sale. There is an easement for the driveway. The Flynn Home provides 24 hour, 7 days a week supervision for their residents. The goal of this development and the placement of the structures is such that it minimizes the grading and land-disturbing activity and basically leaves most of the property undisturbed. This development does provide affordable housing for those who may not otherwise be able to find housing in an environment of supervision and some structure.

Mr. Green then addressed the protest petition filed. Regarding the petition's first statement, he said the structures will be designed in a residential manner and will be in scale of the homes in the neighborhood. The 31 people who live there will not significantly increase the traffic as pointed out by the City's Traffic Engineer. They will be improving the bus stop at Third Street and Fairview Road, which is the primary means of transportation for the residents at Flynn Home. With regard to the petition's second statement, the Flynn Home does need to expand not only to meet their budget but to meet the needs of the people in the area who need this type of service. The Flynn Home currently provides housing for 16 people and they have a list of people that far exceeds that number. The number of units to be developed on this property under the conditional use rezoning is significantly less than could be developed under the current RS-8 zoning. This will actually be more in character with the lower density development than the existing RS-8 zoning would permit. Finally, with regard to the petition's third statement, the Flynn Home residents are not evil people. They are people who have made a wrong choice at one time and are now trying to recover from the impact of alcohol and substance abuse. These people do not harm other people. He has lived five houses down from the Flynn Home for 12 years and he has a 10 year old daughter who has grown up there. His neighbor has three children under the age of 9, there are many elderly women in the neighborhood, and there are single women in the neighborhood and the Flynn Home residents do not bother those people. Twelve years ago, the only reason the Flynn Home stood out was because it was better

maintained than all but three homes in a two-block area. They have been a good neighbor for the 12 years he has lived there. Some Flynn Home residents have participated in the Reed Creek Greenway Clean-Up and they have been a good member of the neighborhood. He felt they would be a good member of the Oakley neighborhood too.

Upon inquiry of Councilman Peterson, Mr. Green said that the 16 bedroom building will be a two-story building with 8 shared bedrooms (Applicant Exhibit 2 – Front Elevations).

Councilman Ellis asked how many vehicles would be on the road if the property were developed with the existing RS-8 District. Mr. Green said that if 18 single-family homes were built with an average of 6 trips per day, that would total approximately 108 trips per day. Again, most of the Flynn Home residents will walk because many have lost their drivers license.

Upon inquiry of Councilman Ellis regarding disturbances, Mr. Green said that his home is five houses down from the Flynn Home but he didn't recall any instances where the Police Department had to be called.

Councilman Dunn was concerned that the RM-16 District might not be suitable for this development because it is not located near employment centers or shopping centers. Using City Exhibit 3 (Site Location Map), Ms. Tuch showed that the site is within walking distance to the Target, the new Wal-Mart, the Dreamland development, Best-Buy, Circuit City, Asheville Mall, etc., and is accessible by bike or other modes of transportation. In addition, Planning &

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Development Director Scott Shuford said that Fairview Road, on the other end, terminates in an employment center with all of the activities east of the Biltmore Village area.

Upon inquiry of Vice-Mayor Bellamy, Mr. Shuford said that in the Unified Development Ordinance (UDO), the RM-16 zoning classification is the only residential district that permits this use. So, instead of amending all of our residential classifications in the UDO to allow this type of use to occur, Planning staff felt that conditional use zoning would be a way to tailor the use at the specific site. He felt the Code amendment might be something staff needs to look at in the future, but this seemed to be the most direct way, which gives City Council a lot of control over how the site is designed and what goes into it. Had they requested a straight rezoning, City Council could not have considered what use might be put on the property.

Councilwoman Jones and Vice-Mayor Bellamy asked City staff to research other ways in order to not limit only one residential district being open to group homes.

Ms. Laurie Tollman, Executive Director of Flynn Home, explained that the mission of Flynn Homes (Applicant Exhibit 3) is to enable the homeless, recovering substance abuser to gain self-respect, become productive, enhance spiritual growth, and maintain recovery by providing a structured and supportive home-like environment. She said that although the Flynn Home is not affiliated with any religious organization, they require attendance of a minimum of four AA/NA meetings per week, including mandatory attendance at one in-house AA meeting. The 12-Step Recovery programs encourage spiritual growth, but do not require religious affiliation. Flynn Homes encourages, but does not require, church attendance and bible study. She explained that the admission requirements are strict and that most residents are referred by the Veterans Administration Medical Center or the Buncombe County Alcohol and Drug Abuse Treatment Center in Black Mountain. Information on criminal histories is complete as part of the admission. Flynn Home does not admit sex offenders, violent criminals, or those with severe mental illness. Some residents are admitted from correctional facilities if they have completed a drug and alcohol treatment program. She also noted that the Flynn Home does random drug and alcohol testing. She said the average length of stay for the year 2002 was four months with 48 unduplicated residents. Residents may stay up to two years. The average age of the residents is between 31-55. The Flynn Home requires residents to be employed within three weeks and pay a weekly client fee for room and board. Staff provides support services in terms of resume assistance and referral services to local employment agencies and educational institutions. Community service is highly encouraged by Flynn Home as part of recovery. Flynn Home supports continuing education as part of growth and development and to enhance employability. The Flynn Home provides 24-hour supervision in a highly structured environment. Curfews are as follows: Sunday-Thursday 10:30 p.m. and Friday-Saturday 11:30 p.m. Residents are required to complete daily chores and abide by the house curfew. Residents are also encouraged to work together toward goals and provide support and fellowship to each other.

Upon inquiry of Councilman Dunn, Ms. Tollman said that they could receive the entire criminal record of residents if they request it from the treatment facility.

Councilman Dunn asked what happens to the residents if they do not conform to the rules of the Flynn Home. Ms. Tollman said that they are asked to leave. She said that approximately two weeks ago a resident was kicked out because he got intoxicated and tried to get back in after curfew. The Flynn Home did call the police. She said that she has been with the Flynn Home over a year and this was the first time the police were called.

Councilman Ellis said that he worked at the Black Mountain Center, which is next door is the Alcohol and Drug Treatment Center, for eight years and never recalled a police incident. He

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pointed out that the Treatment Center is adjacent to Highland Farms Retirement Homes and felt that maybe some the concerns are not as great as people might anticipate based on past history.

Councilman Mumpower asked if there was any information on actual contacts that the police have had with the residents of Flynn Home for the past 3-5 years. Ms. Tollman they did a general search and there have been no contacts, with the except of when the Flynn Home had to call to make sure someone was off their property and out of the neighborhood. There have not been

any calls on any of their residents that have disturbed any of the adjacent neighbors.

Councilman Peterson asked if there are legal limits on what Council could hear regarding concerns about the type of people living at the Flynn Home. City Attorney Oast said that under the Fair Housing Amendments Act of 1988, the law basically prohibits housing discrimination based on a person with a disability, and included within the definition of disability are recovering substance abusers. That would include much of the population in the Flynn Home. That definition did exclude from it persons with mental problems that would be dangerous to themselves or others. He suggested Council focus on the land use, not the type of resident. He also noted that there have been cases that have held it a violation existed when there is an undue amount of testimony about that.

Councilman Mumpower asked if Council could consider the behavior of the Flynn Home residents, e.g. safety. City Attorney Oast said that the reference to police visits to the facility is probably relevant to Council's consideration.

The following individuals spoke in favor of the conditional use zoning/permit for various reasons, some being, but are not limited to: people from all walks of life (doctors, lawyers, etc.) have gone through the Flynn Home and have become productive residents of the community; many properties were looked at and this property was the most suitable because of the space, bus stop, and a lot of jobs in the area; the site plan will have a low impact on the property and environment; if developed at the existing RS-8 zoning, that will be more damaging to the neighborhood; the Flynn Home has a great deal of control over the residents in the home, which is far more than the neighbors knowing who their neighbors might be; the Flynn Home in Montford is a good neighbor and they maintain an attractive, clean and quiet property; there is a bus stop directly in front of the Flynn Home in the Montford community and there has been no problems with the residents of the Flynn Home; children go trick or treating at the Flynn Home and stop there for fund-raisers and there have been no problems; there are a number of elderly residents in the Montford community and they have not been harmed by the Flynn Home residents; property values in the Montford neighborhood have risen; the Flynn Home does not have a criminal element in it; there is more danger walking to your car in the Asheville Mall parking lot; the Flynn Home needs to be in a residential area because the residents rely on public transportation or they walk; the Flynn Home is a good and solid community asset; and disparaging remarks about Flynn Home residents are uncalled for:

Ms. Betty Darr, former Chairman of the Board of the Flynn Christian Homes and former Board Member  
Ms. Nancy McMullen, member of the Board of the Flynn Christian Homes  
Mr. Scott Dedman, resident on Cumberland Avenue  
Mr. John Michael Thompson, former resident of the Flynn Home  
Mr. Steve Greer, former resident of Flynn Home  
Mr. Mickey Mahaffey

The following individuals spoke in opposition of the conditional use zoning/permit for various reasons, some being, but are not limited to: the property was zoned RS-8 and changing it would be a breach of trust to the neighborhood; the intersection of Fairview Road and Third

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Street is already a hazard as seen by accidents and to bring more cars into this area will make it worse; since children cannot pick up the school bus on Third Street because it can't turn around, how will the delivery trucks manage; any delivery vehicle that parks will be a safety hazard because an emergency vehicle won't be able to pass them; there are no sidewalks and no no-parking signs on Third Street; a home should be a safe and secure place, but there will be a lot of transient people moving in and out of the Flynn Home a year; in 2002, a Flynn Home resident said there were two instances where the Police were called; the children are not safe in playing outside if there are 30-40 strangers who the residents don't know but they do know they have a drug problem; the homes in the area are not close together so you can't watch your child; the rezoning will bring unwanted and unwarranted safety concerns to the neighborhood; the Flynn Home is imposing a burden on the neighborhood to provide the community atmosphere; the neighborhood has already bore the cost of the Flynn Home residents by their taxes supporting the programs for recovering alcoholics and substance abusers; at least one Flynn Home resident is not even from North Carolina; property should be developed for single-family homes as all surrounding homes are consistent with that zoning; sales for some homes have fell through because of the threat of the rezoning of this property; real estate in Montford community has risen over 5 times is due to regulations by the Asheville Historical Society and cannot be attributed to the Flynn Home since it has been in the area since 1962; the Flynn Home may decide to sell the property after the rezoning and then more uses could be built on the property which would be totally out of character with the neighborhood; most surrounding homes have at least two areas and the Flynn Home will have five buildings on over three areas which will be out of character with the neighborhood; this is not a smart growth decision for our community; it will be difficult for large vehicles to access the proposed driveway; Third Street is not wide enough for parks to park on the street and children to walk on it; the Flynn Home should be built in a better suitable location; Oakley has enough low-income people; there is a stream on the property which falls under the Isolated Stream laws; since people in AA are encouraged to have sponsors, there will be more people affiliated with the Flynn Home; no on-street parking on Third Street; the improvement to the bus stop by adding a bench does nothing but increase congestion between the chain-link fence and the street; the Flynn Home is not a home, but a facility with a parking area; since residents at the Flynn Home are transients, the neighborhood can't get to know and trust them; grading on the site will not be minimal; the Flynn Home will adversely affect the sale of homes in the area if

prospective buyers know a group home is being built; the community did find another piece of property for the Flynn Home that is much more compatible and already zoned for this facility; according to state law, the Flynn Home must be a certain distance from railroads and this one borders right up to a railroad and it is also not located on a street; the Flynn Home residents would have to walk ¼ mile to cross the railroad track if they wanted to walk to the Asheville Mall area; there are a number of natural springs on the site, thus cutting down the number of houses that can be built on the site; existing businesses, financial community, and new upscale revitalization of Biltmore and Oakley should have been notified of the possible housing of released prisoners in their area; and the name Flynn Christian Homes is misleading:

Mr. Dale Rhew, resident on Third Street (Neighborhood Exhibit 1 – Petition containing approximately 298 signatures)

Mr. Max Wilson, resident on Fairview Road

Ms. Angela Rhew, resident on Third Street (Neighborhood Exhibits 2 and 3 – Two letters from people not present and pictures)

Mr. Charles Townsend Riley

Mr. Nathan Rhew, resident on Third Street

Mr. Jeffrey Black, resident on Third Street

Ms. Miriam Allen, resident on Third Street

Mr. Fred English, Haw Creek resident

Ms. Myra Vinzant, resident on Fairview Road

Mr. John Boll, property owner in the area (Neighborhood Exhibit 4 – Cross-section of the land drawing)

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Ms. Teresa Conner-Howard, resident on Main Street (Neighborhood Exhibit 5 – Location map and drawing of another location for Flynn Home)

Ms. Kay Rollin, resident on Ridge Avenue

There being no request from the applicant for rebuttal, Mayor Worley closed the public hearing at 7:20 p.m.

At 7:20 p.m., Mayor Worley announced a short break.

Upon inquiry of Councilman Dunn about the grade of the driveway, Mr. Shuford said it is a steep site (City Exhibit 4) but what they have reviewed to date has only been the concept plan submitted by the applicant. If the plan cannot meet City standards, they wouldn't be able to build the project.

When Councilman Mumpower asked about the possible violation of the Isolated Stream laws, Mr. Shuford said that the developer would have to abide by those laws as well in developing the property.

Mayor Worley reiterated that if Council were to approve the conditional use rezoning and permit, the developer would have to comply with any other regulatory requirement. If they cannot meet those requirements, even though City Council might approve the project, they could not build it. Mr. Shuford agreed that City Council's approval would not override those underlying development regulations.

When Councilman Mumpower asked if the Planning staff had any information on police concerns or arrest records in the existing neighborhood, Mr. Shuford said that he did not have that information because he didn't think that would be a problem given the comments at the prior public hearing.

Upon Council's request, City Attorney Oast explained what City Council's role in this conditional use rezoning would be. He explained that an appropriate way to look at this is whether the RM-16 zoning classification would be appropriate in this area with conditions, without necessarily determining what those conditions are. Then, the second consideration on the conditional use permit would be to determine what conditions would be appropriate.

Councilman Ellis explained that it is Council's responsibility to make a decision on what they feel is good for the entire City and all the people who live in it. He understood the neighborhood's concerns, however, he personally did not feel that their safety is at risk nor did he feel their property values would be decreased. He explained why this is a very difficult decision for him. He then moved to rezone 3.88 acres located on Third Street and Blalock Street from RS-8 Residential Single-Family High Density District to RM-16 Residential Single-Family High Density District/Conditional Use. This motion was seconded by Councilwoman Jones.

Councilman Dunn felt that to rezone this property RM-16 would not be appropriate since the City does have other areas in the City that can accommodate this development. In addition, he didn't think the RM-16 zoning classification is the right designation for this type of facility and that it doesn't fit with the City's smart growth principles.

Councilman Mumpower said that with the clarifications that the City Attorney has given to Council, he felt the arguments on safety concerns, character issues, injury to value are more persuasive than the arguments against those issues. As a psychologist, he has people who go

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through this program and he knows they do good things, but that is not the basis upon which he should decide.



Councilwoman Jones said that based on her interpretation of the technical land use requirements and the Fair Housing law, she would support the rezoning. She felt as City leaders in the public eye, they should try to dispel the myths regarding alcoholism and substance abuse. Alcoholism and substance abuse are horrendous diseases and most of us don't have to look far in our own family trees to find that struggle and it takes great courage to begin the recovery process and generalizations and stereotypes don't encourage people to take that first step of the 12-Steps. She lives two blocks from the Flynn Home in Montford and as a single woman with a small child, she will be sad to see them leave.

Vice-Mayor Bellamy pointed out that there is no other residential district in the UDO for this project. That is not the applicant's fault, but the City's fault. They could have petitioned Council for a straight rezoning to RM-16 and then Council would not have had the ability to place any conditions on the development. She has seen a map of the RM-16 districts throughout the City and unfortunately they are all built on.

Mayor Worley felt that the lower density on the site and appearance of the property would actually be in harmony with the existing neighborhood. He also felt that there was no expert testimony to support the statements that this development will lower property values. In fact, the reality is that over the years seldom do you see development lower values.

The motion made by Councilman Ellis and seconded by Councilwoman Jones failed on a 5-2 vote, with Mayor Worley, Vice-Mayor Bellamy, Councilman Ellis, Councilwoman Jones and Councilman Peterson voting "yes" and Councilman Dunn and Councilman Mumpower voting "no."

**B. PUBLIC HEARING TO CONSIDER A CONDITIONAL USE PERMIT FOR PROPERTY LOCATED AT 100 MORRIS STREET FOR THE NEW CONSTRUCTION OF A DUPLEX IN AN RS-8 RESIDENTIAL SINGLE-FAMILY HIGH DENSITY DISTRICT**

**ORDINANCE NO. 3003 - ORDINANCE GRANTING A CONDITIONAL USE PERMIT AT 100 MORRIS STREET FOR THE NEW CONSTRUCTION OF A DUPLEX IN AN RS-8 RESIDENTIAL SINGLE-FAMILY HIGH DENSITY DISTRICT**

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

City Attorney Oast reviewed with Council the conditional use process.

After hearing no questions about the procedure, Mayor Worley opened the public hearing at 8:10 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.

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Ms. Shannon Tuch, 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).

Ms. Tuch said that this is the consideration of a conditional use permit for property located at 100 Morris Street for the construction of a duplex in an RS-8 Residential Single-Family High Density District.

On January 27, 2003, Mr. Danny Hayes submitted an application for a conditional use permit to allow the new construction of a duplex in a single family zoning district in west Asheville.

The subject property is located at 100 Morris Street (PIN No. 9638.17-01-2856). This property and the surrounding area is zoned RS-8, single family residential allowing up to 8 units per acre (City Exhibit 3 – Location Map). The applicant is proposing to subdivide an existing .42 acre lot in order to construct a 2100 square foot duplex next to the existing single family home (City Exhibit 3 – Site Plan).

As part of the conditional use permit requirements, the project must meet several conditions for duplexes found in section 7-16-2(d)(5) of the Unified Development Ordinance (UDO):

- a. Duplexes must be located a minimum of 300 feet from all other multifamily uses (excluding dwellings with accessory apartments) on the same street in the single family district.

***The property is located over 300 feet from other duplexes on the same street.***

- b. Minimum lot area shall be 125 percent of that required for a single family residential unit in the respective district.  
***The resulting lot for the duplex is .20 acres and is well above the lot size requirements.***
- c. Parking shall be located in the rear and screened with vegetation from adjacent single family uses.  
***All parking is located in the rear and existing vegetation will be supplemented with additional vegetation as required to screen the parking area from adjacent single family uses.***
- d. The structure shall have a single front entrance and other entrances as required.  
***The proposed duplex has a single front entrance with a secondary entrance at the rear.***
- e. Requirements of the N.C. State Building Code shall be met.  
***The proposed duplex will be new construction and will be built to meet building code requirements.***

The Technical Review Committee (TRC) reviewed this project at their February 17, 2003, meeting and recommended that the project be forwarded to the City Council with a recommendation of approval with conditions. All TRC conditions have been met by the applicant in the revised site plan. Review by the Planning and Zoning Commission is not required for this use.

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

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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 indicates that all seven standards are met as proposed in the site plan.

- 1) That the proposed use or development of the land will not materially endanger the public health or safety.  
***The proposed development is within standards of development practice set forth by the City of Asheville and other governmental agencies.***
- 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 duplex will appear single family and will be compatible with the surrounding neighborhood. In addition, the existing topography of the site will provide favorable conditions for the construction of a lower level unit.***
- 3) That the proposed use or development of the land will not substantially injure the value of adjoining or abutting property.  
***The duplex will have the appearance of a single family home and will blend in with the existing neighborhood fabric. Neighboring property values are not expected to be injured.***
- 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 average home on Morris Street is a modest cottage with a small footprint. The proposed duplex will have two stacked units, each being only 1050 square feet and will appear to be in scale, bulk, coverage, density and character with the surrounding homes.***
- 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.  
***This proposed development supports the smart growth policies of affordable in-fill housing and mix of housing types within a given neighborhood outlined in the Asheville City Plan 2025.***
- 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 duplex is located within an existing neighborhood located off of Brevard Road. The property has adequate infrastructure in place.***
- 7) That the proposed use will not cause undue traffic congestion or create a traffic hazard.  
***The proposed duplex will not generate traffic problems.***

The TRC and City staff recommend approval of the conditional use permit to build a duplex in a single family zoned neighborhood in accordance with the plans submitted by the applicant.

Upon inquiry of Councilman Peterson about parking, Ms. Tuck said that the minimum number of required parking spaces is four and the maximum number is six. When the applicant asked Planning staff what would be better, she told him that because of the nature of the

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conditional use permit that he would be tied to whatever is shown on the plan. Therefore, he showed six parking spaces.

Councilman Peterson felt the people who live on the upper level would park on the street and he would rather see less parking in the back so that the entire back yard is not a parking lot.

Mr. Danny Hayes, applicant, was amenable to reducing the number of parking spaces to four. He spoke in support of allowing him to expand the basement apartment.

Ms. Lynn Jones, adjoining property owner, said that with the parking lot of the West Asheville Park and the proposed parking area in the rear of this duplex, the entire area will all be asphalt. She said that Morris Street is not a wide road and has already enough traffic on it now. Allowing this structure to go to a duplex will make a small street even busier.

Mr. Taylor, resident on Morris Place, said that after the lot was graded out he was told by Planning staff that there would not be any further construction until after the City Council public hearing. He felt he was misled by the Planning staff. He would have liked to receive more information at the TRC meeting similar to the presentation at this meeting. He asked that the structure not be allowed to be built into a duplex; that the parking lot not be in the rear because it adjoins his and will decrease his property value; that a buffer type "B" be installed; and the property be landscaped. He asked Council to review (1) that no permit or construction be allowed prior to the City Council public hearing with no exceptions; (2) make an extra effort to update public records to find out who is actually adjacent land owners; (3) that the City check-list be enforced unselectively per each applicant; (4) that duplex, triplex and quadraplex be removed in the RS-8 zoning district from conditional use, or to at least the Level III special use; (5) RS-8 zoning lot size minimum requirement to be upgraded to 1,000 square feet; and (6) any property split in such a manner to prevent this kind of unharmonious reaction with the neighborhood.

Mr. Chad Anderson, adjoining property owner, said there is no shrubbery to separate the duplex from his house. The six parking spaces in the rear will decrease his property values because it will be in his backyard. With the children in the neighborhood and the narrow road, there is no more room to park on the street in front of the duplex.

There being no request from the applicant for rebuttal, Mayor Worley closed the public hearing at 8:35 p.m.

There was discussion by Council about the buffer vegetation and/or privacy fence and how they could be used to shield the parking lot near Mr. Taylor's home and near Mr. Anderson's home.

Councilman Peterson supported a condition for a privacy fence to be installed below the wall by the driveway. He didn't envision it for the entire length of the property but just enough to block the area adjacent to the Anderson house. He would, however, leave that up to the Planning staff to determine where the fence would be appropriate. He also supported a condition that the parking spaces be limited to four spaces in the rear of the property.

Mr. Tuch responded to Councilman Dunn's question about why he could not move the rear parking lot onto the other adjoining piece of property, which is also owned by the applicant.

When Councilman Mumpower asked about additional vegetation to shield the parking lot, Ms. Tuch said that because two of the parking spaces will be taken out, there would be room for

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additional buffer. Councilman Mumpower suggested that the existing guidelines be used with regard to buffering to this piece of property. Ms. Tuch suggested the condition read that an "A" buffer as described in the UDO be provided between the parking area and adjacent single-family uses and any reductions, such as the combination with the privacy fence.

Vice-Mayor Bellamy moved to adopt Ordinance No. 3003, to issue the conditional use permit for property located at 100 Morris Street for the new construction of a duplex in an RS-8 Residential Single-Family High Density District. This motion was seconded by Councilwoman Jones and carried unanimously.

Councilman Peterson asked if Vice-Mayor Bellamy and Councilwoman Jones would be willing to amend their motion to add the following conditions: (1) parking shall be reduced to the minimum required by the UDO to four spaces and screened by the equivalent of a Type "A" buffer in the rear of the property; and (2) that a privacy fence be erected at an appropriate location on the east side of the property in order to screen the driveway. Vice-Mayor Bellamy and Councilwoman Jones both accepted that their motion be amended to all the two conditions.

Upon inquiry of Councilman Mumpower, Mr. Anderson explained that his home is higher than the driveway in the back of the duplex and a fence would not help his situation.

Mayor Worley, Councilman Dunn and Councilman Ellis all agreed that the condition to require a privacy fence may be unnecessary since Mr. Anderson feels it won't solve the problem of screening the vehicles who park in the rear of the duplex.

At the request of Councilman Mumpower, Mayor Worley re-opened the public hearing at 8:55 p.m. only for the purpose of discussing a privacy fence on the east side of the property.

Upon inquiry of Councilman Mumpower, Mr. Hayes said that he would be amenable to installing a privacy fence on the east side of his property.

Mr. Anderson responded that he doesn't care about the installation of a privacy fence; he just does not want the property developed into a duplex.

Mayor Worley closed the public hearing at 8:57 p.m.

The amended motion made by Vice-Mayor Bellamy and seconded by Councilwoman Jones carried on a 6-1 vote, with Councilman Mumpower voting "no."

**ORDINANCE BOOK NO. 20 – PAGE**

**C. PUBLIC HEARING TO REZONE PROPERTIES LOCATED ON CLINGMAN AVENUE FROM RM-8 RESIDENTIAL MULTI-FAMILY MEDIUM DENSITY DISTRICT TO RM-16 RESIDENTIAL MULTI-FAMILY HIGH DENSITY DISTRICT**

**ORDINANCE NO. 3004 - ORDINANCE TO REZONE PROPERTIES LOCATED ON CLINGMAN AVENUE FROM RM-8 RESIDENTIAL MULTI-FAMILY MEDIUM DENSITY DISTRICT TO RM-16 RESIDENTIAL MULTI-FAMILY HIGH DENSITY DISTRICT**

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At the request of Vice-Mayor Bellamy, Councilwoman Jones moved to excuse Vice-Mayor Bellamy from the remainder of the meeting. This motion was seconded by Councilman Ellis and carried unanimously.

Mayor Worley opened the public hearing at 9:00 p.m.

Planning & Development Director Scott Shuford said that this is the consideration of an ordinance to rezone 12 lots located at the southwest corner of Clingman Avenue and Rector Street from RM-8 Residential Multi-Family Medium Density District to RM-16 Residential Multi-Family High Density District. This public hearing was advertised on February 28 and March 7, 2003.

On December 27, 2002, Mountain Housing Opportunities (MHO) submitted a request to rezone several parcels from RM-8 to RM-16 at the southwest corner of Clingman Avenue and Rector Street, including property with frontage on Jefferson Street.

The rezoning request is intended to help MHO implement the West End Clingman (WECAN) plan prepared for MHO by Correa-Valle-Valle. The plan calls for higher density infill development in this area. MHO has indicated an intention to bring the WECAN plan forward for official City adoption in the near future.

The zoning change is from one density of multifamily residential to another and thus does not constitute spot zoning. The density allowable under the proposed zoning will not overtax the existing street network as Clingman Avenue serves both as an arterial street and as a gateway link between downtown Asheville and "downtown" West Asheville. Other public services will be analyzed once plans for development are received.

The RM-8 Residential Multi-Family Medium Density District is intended to permit a full range of medium density multi-family housing types including single-family detached and attached to residences.

The RM-16 Residential Multi-Family Medium Density District is intended to permit a full range of high density multi-family high housing types along with limited institutional, public and commercial uses appropriate to high density residential areas. This district should be located near employment centers and along roads capable of handling the demand generated by such high density residential development.

The parcel site is currently a mixture of vacant and developed lots. The parcel has direct access to three roads (Clingman Avenue, Rector Street and Jefferson Street). With higher density development anticipated in the WECAN plan and being implemented north of the site by MHO's Merritt Park project, the parcel is in a likely location for higher density residential development. Plans for development on this parcel will follow development requirements of the Unified Development Ordinance.

On February 5, 2003, the Planning and Zoning Commission considered this rezoning request and unanimously recommended its approval. The Planning and Development staff also recommends approval of the request.

Mr. Mike Vance, Home Ownership Manager of MHO, spoke in support of the rezoning request and said that WECAN unanimously supports the rezoning.

Mayor Worley closed the public hearing at 9:05 p.m.

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Mayor Worley said that members of Council have been previously furnished with a copy of the ordinance and it would not

be read.

Councilman Peterson moved for the adoption of Ordinance No. 3004. This motion was seconded by Councilman Mumpower and carried unanimously.

#### **ORDINANCE BOOK NO. 20 – PAGE**

Councilwoman Jones applauded the WECAN community for being a part of the solution.

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

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

##### **A. UPDATE ON CORPORATION FOR HEALTH PLAN ADMINISTRATION**

Finance Director Bill Schaefer updated City Council on the corporation for health care administration. He reviewed the progress to date since December 2002 and where we are today. He then explained the formation of the Western Carolina Well Care, Inc. (WCWC), the first payer owned third party healthcare administrator/network in the region. WCWC is a public non-profit corporation formed effective January 1, 2003 whose mission is to serve as a third party administrator for self-funded group health claims and / or to provide access to regional providers for health care services. Formation of WCWC began by the City in December, 2002 in anticipation of the demise of Mountain Health Care in an effort to protect the City's employees and retirees and preserve access to the region's providers at discounted fees. Working in collaboration with Crescent Preferred Provider Organization (PPO) Inc., located in Canton, NC, WCWC is offering interested employers in the region the opportunity to access care through the WCWC network of providers. Using Crescent PPO as the core of its network WCWC has expanded the available panel of providers to include numerous physicians in the region who have not in the past, or may not now participate in other available networks. As of this date, WCWC has signed agreements through Crescent and direct with WCWC for fee schedules with 924 regional physicians, hospitals and healthcare providers. An additional 582 are currently under negotiation having already expressed an interest in participating in the network. Ownership of WCWC will reflect employer participation in the network. As new employers become members each will become voting members of WCWC. To date, PPO networks in the region have been largely commercially owned for-profit enterprises, or provider owned entities. WCWC is the first payer owned third party administrator / network in the region. Owner / participants in WCWC will have the option of keeping their own third party administration (TPA) and accessing only the WCWC panel of providers and fee schedule, or they may opt for the network availability and TPA services together.

Interested employers may contact John Miall at 259-5684 for information about the network. In addition, a community meeting will be held at 6:30 p.m. on Monday, March 17, 2003, at the Wolcott Public Works Building at 161 S. Charlotte Street, in Room A109 to allow community employers, agents, and providers to ask representatives of WCWC's board of directors, partners and advisors any questions they may have.

#### **VI. OTHER BUSINESS:**

##### **UNIFIED DEVELOPMENT ORDINANCE**

At the request of Councilwoman Jones, and by consensus of Council, the Planning staff was asked to identify real solutions to our homelessness problem, which two are housing and substance abuse rehabilitation, then to report back to Council with recommendations for specific

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Unified Development Ordinance amendments in order to implement solutions that will be long-lasting and fundamental.

##### **RESOLUTION NO. 03-34 - RESOLUTION AUTHORIZING THE CITY MANGER AND MAYOR TO NEGOTATE A CONTRACT FOR FEDERAL LIAISON SERVICES**

Mayor Worley said that this is the consideration of a resolution authorizing the City Manager and Mayor to negotiate and execute a contract to provide federal liaison services on behalf of the City of Asheville.

On January 28, 2003, City Council adopted Resolution No. 03-21 authorizing the issuance of a Request for Proposals (RFP) to qualified firms for the provision of federal lobbying services on behalf of the City of Asheville. Subsequently, the RFP was

issued resulting in four qualified responses. A sub-committee of Council, Mayor Worley, Councilman Ellis and Councilman Mumpower, selected two candidate firms for personal interview, and then, ultimately, Ball-Janik, LLC. Going forward, a contract must be in place, a City agenda determined, and various procedures undertaken by the contractor in order for the City agenda to be effectively positioned for the 2004 federal budget cycle. Therefore, the timeframe to complete these next steps must be compressed.

This resolution allows the City Manager and Mayor, in consultation with the City Attorney, to negotiate and execute the contract without further Council action.

Staff recommends Council approve the resolution to allow the City Manager and Mayor to negotiate and execute the contract with Ball-Janik, LLC.

Councilman Mumpower said that after interviewing the firm of Ball-Janik, LLC., he felt that they would have the potential to really do some good work for the City of Asheville.

When Councilman Dunn asked for an opportunity to review the contract, Mayor Worley said that once the contract is negotiated, it would be circulated to Council.

Councilman Peterson said that he wasn't aware that there was a Council subcommittee appointed to review the responses and make a recommendation. He would have liked more information on Ball-Janik, LLC, like who they are and why did we choose them, their price and what their scope of services will be. Mayor Worley responded that once we get the contract negotiated, then it will be circulated to Council with the details of the contract. Then, once the agreement is entered into, Ball-Janik will meet with the City fairly extensively to go over what our needs are, what our opportunities are, what our agenda is, what our preferences are, and then we as an entire Council would make those decisions for the firm to proceed.

City Manager Westbrook said that Mayor Worley is bringing this up now because we are facing a deadline at the federal level with their assistance in getting in some requests.

Councilman Peterson didn't want there to be a pattern of Council subcommittees doing the business that should be left up to the entire City Council.

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

Councilman Ellis moved for the adoption of Resolution No. 03-34. This motion was seconded by Councilman Mumpower and carried unanimously.

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## **RESOLUTION BOOK NO. 27 – PAGE 329**

### **CLAIMS**

The following claims were received by the City of Asheville during the period of February 14-27, 2003: Doug McKee (Streets), Andrea O'Gorman (Water), Cheryl Anderson (Sanitation), Maxine Jones (Parks & Recreation), Alfred Gilmore Jr. (Water) and Beaverdam Condos (Water).

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

### **LAWSUIT**

The City was served with the following Petition for Certiorari on March 3, 2003, which is generally described as follows: Rom Youen, Elva L. Ponder and husband Bobby L. Ponder, and Ruth D. Adams and husband Roy L. Adams vs. Board of Adjustment. The nature of the proceeding is a Petition for Writ of Certiorari to review the decision of the Board of Adjustment. This matter will be handled in-house.

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

Mr. Grant Millin, representing the Bill of Rights Defenders, presented City Council with information regarding his request that (1) City Council to amend Resolution No. 01-144, which condemned the terrorist attack and supported the President, because it doesn't represent him; and (2) that Asheville be designated a Bill of Rights Defense City.

Mr. Fred English, Haw Creek resident, felt City Council should not increase the filing fee to run for City Council from the existing \$5.00, and to not raise the water rates. He presented City Council with a "Support Our Soldiers" hat.

Mr. Eric Lynch, Director of Education and Action, said that he supports young peoples right to participate in democracy and self-determination. Therefore, he asked City Council to commit to include discussion about the resolution the high school students will be presenting to Council later in the meeting in Council's next meeting.

Ms. Grace Williams, student at Asheville High School, said that many cities are passing anti-war resolutions and she asked that Asheville become one of them. She presented City Council with an anti-war resolution petition, which reads, "We, the citizens of Asheville, ask you to adopt a strong anti-war resolution. It has been shown by dozens of rallies that thousands in the community are against a preemptive war with Iraq. We want Senators Dole and Edwards and Congressman Taylor to know that Asheville disagrees with any action taken against Iraq." She asked that Council consider adoption of a resolution to be considered at a later date.

Ms. Susan Bloom spoke in support of the petition presented by Ms. Grace Williams and presented City Council with pictures of people from Iraq.

Mayor Worley said that regardless of what City Council decides to discuss or not to discuss, he commended Ms. Grace Williams and supports the students in their efforts to make their voices heard. He welcomed them to come to the Council meetings on this issue or any other issue that they would like to bring before the Council and Council certainly supports their right to express themselves in that way.

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**VIII. ADJOURNMENT:**

Mayor Worley adjourned the meeting at 9:47 p.m.

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CITY CLERK

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MAYOR