

Regular Meeting

Present: Mayor Charles R. Worley, Presiding; 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: Vice-Mayor Terry M. Bellamy (maternity leave)

PLEDGE OF ALLEGIANCE

- Col. Ray Green led City Council in the pledge of allegiance.

INVOCATION

Councilman Peterson gave the invocation.

SPECIAL RECOGNITION

- Councilwoman Jones introduced her new daughter Gabriella Elizabeth Jones.

I. PROCLAMATIONS:

A. RECOGNITION OF THE ASHEVILLE HIGH SCHOOL'S GIRL'S BASKETBALL TEAM WINNING THE STATE 3-A CHAMPIONSHIP

Mayor Worley read a Certificate of Recognition for the Asheville High School's Girl's Basketball Team winning the State 3-A Championship and how proud the City of Asheville is of the Team. He presented the Certificate to Head Coach Sonita Gibbs and team members.

B. PRESENTATION OF \$25,000 GRANT

Asheville Parks and Greenways Foundation Chair Chuck Cloninger and Ms. Nancy Thompson, representing the Progress Energy Foundation, presented the City of Asheville with a check in the amount of \$25,000 from a grant for the construction of the wetland/interpretive area at the French Broad River Park Phase IV.

On behalf of the City Council, Mayor Worley thanked Mr. Cloninger for his dedication to the Asheville parks and recreation program, and Ms. Thompson for Progress Energy Foundation's wonderful community partnership.

II. CONSENT:

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

B. RESOLUTION NO. 03-35 - RESOLUTION AUTHORIZING THE SALE OF PROPERTY ON 125 IRIS DRIVE TO NEIGHBORHOOD HOUSING SERVICES OF ASHEVILLE

Summary: The consideration of a resolution authorizing the Mayor to convey 125 Iris Drive to Neighborhood Housing Services (NHS) for \$17,100.

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On March 11, 2003, the City Council directed the City Clerk to advertise for upset bids on 125 Iris Drive. The advertisement ran in the Asheville Citizen-Times on March 14, 2003, as provided in N. C. Gen. Stat. sec. 160A-269. No response was received. Therefore, the offer to purchase from NHS in the amount of \$17,100 was not upset and the sale to NHS should be approved.

Planning Department staff recommends adoption of the resolution authorizing the sale of 125 Iris Drive to

Neighborhood Housing Services for \$17,100.

RESOLUTION BOOK NO. 27 – PAGE 330

C. ORDINANCE NO. 3005 - BUDGET AMENDMENT AMENDING THE WATER 35 FUND TO PROVIDE FUNDING FOR AN EMERGENCY RESPONSE PLAN

Summary: The consideration of a budget amendment to reprogram funds to provide additional funding for an Emergency Response Plan.

The Regional Water Authority and Brown and Caldwell entered into an agreement for a Vulnerability Assessment in September 2002, and it is being funded with a \$115,000 Environmental Protection Agency (EPA) grant. The Assessment is complete and was presented to the City Council in February, but it is now required that the Authority develop an Emergency Response Plan that incorporates the results of the Vulnerability Assessment. An Emergency Response Plan will include plans, procedures, and identification of equipment that can be implemented or utilized in the event of a terrorist or other intentional attack on the public water system. It shall also include actions, procedures, and identification of equipment, which can eliminate or significantly lessen the impact of terrorist attacks or other intentional actions on the public health and the safety and supply of drinking water.

The cost of the plan is \$45,000 with \$16,000 being provided from the remaining EPA grant funds that were granted to the Authority in September of 2002 to conduct the Vulnerability Assessment and an Emergency Response Plan. An additional \$29,000 is needed to complete funding for the Emergency Response Plan. Staff is recommending reprogramming \$29,000 from the Master Plan Improvements to the Water Security Assessment (Vulnerability Assessment) to complete funding for the Emergency Response Plan.

Staff recommends that City Council approve a budget amendment to reprogram funds to provide additional funding for an Emergency Response Plan.

ORDINANCE BOOK NO. 20 – PAGE

D. RESOLUTION NO. 03-36 - RESOLUTION FINDING THE RIGHT-OF-WAY DESIGNATED AS HENRY STREET IS NOT PART OF AN ADOPTED STREET PLAN

Summary: The consideration of a resolution finding that Henry Street is not part of an adopted street plan.

The Asheville Area Chamber of Commerce submitted to the City a Declaration of Withdrawal for Henry Street. The Chamber of Commerce owns all of the property, which abuts the alley. The property is needed for construction of the new Chamber of Commerce building and parking lot. The alley is not used as an ingress or egress nor has it ever been used as such. The Chamber's request for a resolution from Council finding that Henry Street is not part of the street plan adopted under G. S. 136-66.2, is supported by the legal research performed by the law firm

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of Van Winkle, Buck, Wall, Starnes & Davis, P.A., certifying that the following three criteria have been met.

N. C. Gen. Stat. sec. 136-96 permits the filing of a Declaration of Withdrawal of any street dedicated to public use and not utilized within 15 years from and after dedication.

In order to withdraw a street from public dedication, N. C. Gen. Stat. sec. 136-96 requires:(1) that the street must have been dedicated to public use; (2) the person desiring to withdraw, must be the original dedicator or someone claiming under the original dedicator; and (3) that the street not have been opened and used by the public for 15 years from and after the dedication. The statute goes on to state that upon request, the City shall adopt a resolution stating whether the street is or is not part of the street plan adopted under G. S. 136-66.2.

Public Works Department staff have consulted with all appropriate City departments and determined that the right of way designated as Henry Street as shown in Plat Book 8, Page 72 is not part of an adopted street plan and is not a City maintained right-of-way.

City staff recommends City Council adopt the resolution finding that the right-of-way designated as Henry Street as shown in Plat Book 8, Page 72, is not part of an adopted street plan.

RESOLUTION BOOK NO. 27 – PAGE 331

E. ORDINANCE NO. 3006 - ORDINANCE RENEWING A FRANCHISE ORDINANCE WITH TROLLEY LEASING LLC FOR A NARRATED HISTORIC TOUR TROLLEY ON THE STREETS IN THE CITY OF ASHEVILLE

Summary: The consideration of renewal of an existing franchise ordinance for the operation by Trolley Leasing, LLC, of a narrated historic tour trolley on the streets of the City of Asheville.

For the last year, Asheville Historic Trolley Company (AHTC) has operated a narrated historic tour in Asheville using a 30 foot bus that looks like a trolley car. The venture has been successful to the extent that the AHTC would like to renew the franchise for a period of two years. There have been no complaints and several compliments received by the City over the course of the last year.

The tour will continue to follow an established route, and could occur up to four times per day.

The operator is required to meet with the city Traffic Engineer to review and get approval for the routes that the historic tour will run.

The vehicle is a 30 foot rubber tired trolley with open sides where the windows would normally be. This area can be closed off with clear plastic roll down curtains in inclement weather. The operator has assured the staff that the narration from within the trolley is not audible outside the vehicle.

The vehicle is driven and the tour narrated by one person, but could also include a second person if appropriate.

The franchise ordinance also limits operation of the narrated tour from 7:00 a.m. to 8:00 p.m., Sunday through Thursday, and between 7:00 a.m. and 12:00 Midnight Friday and Saturday. For City-recognized holidays and days on which City-approved festivals occur in the Central

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Business District, the operating hours may be extended to 12:00 Midnight, regardless of the day of the week. For charter operations the hours of operation are not limited to the above providing that Trolley Leasing meets all local state, and federal laws regarding the operation of a chartered vehicle. The franchise fee is one dollar per day of projected operation.

The ordinance is drawn to be as narrowly as possible, and does not attempt to franchise any other part of the business operation except that part which will regularly and routinely utilize local public rights-of-way with the potential of repeated constraints to the flow of traffic.

City staff recommends City Council renew the franchise ordinance with Trolley Leasing, LLC, for a two-year period.

ORDINANCE BOOK NO. 20 – PAGE

F. RESOLUTION NO. 03-37 - RESOLUTION AUTHORIZING THE CITY MANAGER TO APPLY FOR AND ENTER INTO AN AGREEMENT WITH THE DEPARTMENT OF HOMELAND SECURITY FOR FUNDS TO ASSIST WITH THE PURCHASE OF EQUIPMENT FOR THE ASHEVILLE FIRE DEPARTMENT

Summary: The consideration of a resolution to apply for and enter into an agreement with the Department of Homeland Security for funds to assist with the purchase of Self-Contained Breathing Apparatus and Portable Radios for Asheville Fire Rescue.

In recent years there has been improved technology in Self-Contained Breathing Apparatus (SCBA) and related equipment. Asheville Fire Rescue decided to switch to the improved technology SCBA manufactured by Scott. Each unit is \$2,800 so it is cost prohibitive for the Department to replace all of the units at one time. At the same time, it is essential that all of the fire vehicles operate with the same SCBAs so that all fire personnel are trained on the same type of equipment. In addition, this grant provides an opportunity to update other types of equipment, such as VHF Portable Radios to enhance interoperability.

Asheville Fire Rescue is requesting \$174,578 in grants from the Department of Homeland Security for 44 SCBAs and spare bottles, 130 SCBA masks and 24 Portable Radios. The grant requires a 30% local match, or \$52,373.40, which will require an appropriation of \$52,373.40 from the Contingency account. Upon notice of the grant award, a budget amendment will be

brought to City Council for the full amount of the grant award, including the City's match.

The Fire Rescue Department recommends the City of Asheville apply for and enter into an agreement for grant funds to assist with the purchase of Self-Contained Breathing Apparatus and Portable Radios.

RESOLUTION BOOK NO. 27 – PAGE 332

G. RESOLUTION NO. 03-38 - RESOLUTION AUTHORIZING THE CITY CLERK TO ADVERTISE AN OFFER TO PURCHASE FOR UPSET BIDS FOR A PORTION OF THE AIR RIGHTS ADJACENT TO 21 BATTERY PARK AVENUE

Summary: The consideration of a resolution authorizing the City Clerk to advertise an offer of purchase for upset bids for a portion of the air rights adjacent to 21 Battery Park Avenue comprising a total of 1,210.80 square feet.

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A bid from 21 Battery Park, LLC, in the amount of \$9,000.00, has been received for the purchase of a portion of the air rights adjacent to its property at 21 Battery Park. The bid is not less than the appraised value of \$9,000.00.

The property is zoned Central Business District and fronts on Battery Park Avenue to the south with an alley at the east and north. The proposed purchase is made up of three air right parcels and the appraisal by Mickey Foster dated December 1, 2002, estimates a value for each parcel.

North side:	507.17 sq. ft.	\$2,789
East side:	290.18 sq. ft.	\$1,596
South side:	413.45 sq. ft.	\$4,548
Total	1,210.80 sq. ft.	\$8,933 rounded to \$9,000

The appraisal takes into consideration that the air right parcels are not 100% of the air rights but limited in size to the space from 36' above ground level to 72' above ground level. Furthermore, the limited potential uses of the underlying land are considered.

There is no current or contemplated use for the air rights by the City. Staff recommends that the use of the air rights space be limited to roof overhang and/or open balconies. The sale of the air rights will enable 21 Battery Park, LLC, to proceed with construction of the proposed improvements at 21 Battery Park Avenue that include a multi-use building with six levels.

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

Planning staff recommends adoption of the resolution.

RESOLUTION BOOK NO. 27 – PAGE 333

H. RESOLUTION NO. 03-39 - RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE AN AGREEMENT WITH THE N.C. DEPT. OF TRANSPORTATION FOR PACK SQUARE RENAISSANCE PROJECT

Summary: The consideration of a resolution authorizing the City Manager to sign a municipal agreement with the N. C. Dept. of Transportation (NCDOT) for transportation planning to include evaluating pedestrian movement to allow maximum use of the park area and to provide for adequate vehicular traffic as part of the Pack Square Renaissance Project.

The Pack Square Conservancy requested funds in the amount of \$25,000 from the NCDOT for transportation planning to include evaluating pedestrian movement to allow maximum use of the park area and to provide for adequate vehicular traffic as part of the Pack Square Renaissance Project.

Since NCDOT can only provide these funds to municipalities, Pack Square Conservancy and NCDOT requested that we accept the money from the state and pass it through to the Conservancy. The City will enter into a contract with the Conservancy for the \$25,000. This grant requires no match and will not cost the City any out-of-pocket costs.

The consideration of a resolution authorizing the City Manager to sign a municipal agreement with the NCDOT for transportation planning to include evaluating pedestrian

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movement to allow maximum use of the park area and to provide for adequate vehicular traffic as part of the Pack Square Renaissance Project.

RESOLUTION BOOK NO. 27 – PAGE 334

I. RESOLUTION NO. 03-40 - RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE AN AGREEMENT WITH THE N.C. DEPT. OF TRANSPORTATION FOR NEW HAW CREEK ROADWAY IMPROVEMENTS

Summary: The consideration of a resolution authorizing the City Manager to sign a municipal agreement with the N. C. Dept. of Transportation (NCDOT) for roadway improvements to New Haw Creek Road from Arco Road north to Beverly Road.

In April 2001, City Council recommended that a task force be established to work on pedestrian safety issues within the Haw Creek Valley. The Task Force consists of City and NCDOT staff in addition to community residents. The group developed the first phase of the plan, which includes installing sidewalk from Arco Road north to Beverly Road on New Haw Creek Road and on Avon Road.

This agreement (which requires no match) will allow the City to accept money from NCDOT in the amount of \$150,000 to go toward roadway improvements to New Haw Creek Road from Arco Road north to Beverly Road.

While these funds cannot be used to install sidewalk on New Haw Creek Road, they will be used to install curb and gutter, resurface the street and install storm drainage pipes and structures needed to complete the sidewalk. This funding is from the NCDOT Small Urban Funds, which was limited at the time of our application to \$150,000. (Currently the maximum amount of the grant is \$250,000.) These funds are limited to improvements on State maintained roadways.

In Fiscal Year 2003-04 staff will request an additional \$250,000 for funds to extend the project from Arco Road south to the main entrance to Haw Creek on New Haw Creek.

In February 2003, City staff was notified that the City was awarded a TEA 21 Enhancement Grant in the amount approximately \$172,000 to install sidewalk on New Haw Creek Road and Avon Road. This \$150,000 was used as a match for the project in addition to \$40,000 from the City and \$5,000 from the Haw Creek Community Association. The City's portion of the project is currently budgeted in the Capital Improvement Program.

City staff recommends City Council authorize the City Manager to sign a municipal agreement with NCDOT for roadway improvements to New Haw Creek Road from Arco Road north to Beverly Road.

RESOLUTION BOOK NO. 27 – PAGE 335

J. RESOLUTION NO. 03-41 - RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE AN AGREEMENT WITH THE N.C. DEPT. OF TRANSPORTATION FOR THE INSTALLATION OF PEDESTRIAN SIGNALS

Summary: The consideration of a resolution authorizing the City Manager to sign a municipal agreement with the N. C. Dept. of Transportation (NCDOT) to install pedestrian signals at three locations.

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This agreement will allow for the installation of pedestrian signals at the following locations: (1) US 25 (Hendersonville Road) and Wal-Mart/Deerfield; (2) US 70 (Tunnel Road) and Riceville Road; and (3) US 25 (Biltmore Avenue) and Victoria Road.

The NCDOT estimates the amount for this installation will be approximately \$43,000, all of which is allocated for this project in the Transit Services Department budget.

City staff recommends City Council authorize the City Manager to sign a municipal agreement with NCDOT for the installation of pedestrian signals at three locations.

RESOLUTION BOOK NO. 27 – PAGE 336

K. ORDINANCE NO. 3007 - ORDINANCE AMENDING CHAPTER 19 OF THE CODE OF ORDINANCE TO ALLOW THE CITY MANAGER TO ESTABLISH AN APPEAL PROCESS FOR PERSONS RECEIVING A CIVIL PENALTY BY A CITY OF ASHEVILLE EMPLOYEE

Summary: The consideration of an ordinance authorizing the City Manager to institute and appeals process for the adjudication of parking citations and late penalties.

The City of Asheville currently handles parking appeals on a case-by -case basis. Citizens who think they have justifiable reasons for a parking citation to be dismissed have either filled out a City of Asheville Parking Services Appeals form or made their request orally or in letterform. In an effort to provide that all citizens can avail themselves of this process and that it be clearly posted in the City Code of Ordinances for their reference, staff recommends City Council adopt an ordinance allowing the City Manager to establish an appeal process for persons receiving a civil penalty.

Staff requests that City Council approves the ordinance.

ORDINANCE BOOK NO. 20 – PAGE

L. RESOLUTION NO. 03-42 - RESOLUTION AUTHORIZING THE CITY MANAGER TO APPLY FOR AND ENTER INTO AN AGREEMENT WITH THE N.C. GOVERNOR'S HIGHWAY SAFETY PROGRAM FOR A GRANT FOR A POLICE DEPARTMENT TRAFFIC UNIT

Summary: The consideration of a resolution to apply for and enter into an agreement with the North Carolina Governor's Highway Safety Program for personnel and equipment funds for an Asheville Police Department traffic unit.

Aggressive driving is one of the top complaints received by Asheville Police Officers. The types of aggressive driving violations that are most problematic in the City of Asheville are speeding, red light/ stop sign, erratic lane changes, following too closely and driving while impaired. A dedicated traffic unit would be able to help reduce the incidences of aggressive driving through targeted enforcement, educational programs and focused traffic studies aimed at reducing the number of accidents on high incidence roads.

The Governor's Highway Safety Program offers a four-year grant with graduated match requirements in the personnel, equipment and additional costs categories. The Asheville Police Department is requesting \$474,438 in grants from the Governor's Highway Safety Program to hire and train four officers and one supervisor, and to purchase five vehicles and computer equipment for the unit in the first year. The first year of the grant there is a 25% match on equipment and training, but there is no match for personnel. The match is \$71,365.82 for the first

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year, which will require an appropriation of \$71,365.82 from the Contingency account. Upon notification of grant award, a budget amendment will be brought to Council for the full amount of the grant award, including the City's local match. The second year request is for \$202,109.72, with a local match of \$51,921.43. The third year request is for \$209,971.07 with a local match of \$106,379.54. In the fourth year the City is required to cover 100% of the grant, which will be \$218,146.87.

City staff recommends the City of Asheville apply for and enter into an agreement for grant funds to hire and train a traffic unit with four officers and one supervisor to reduce the incidence of aggressive driving in the City of Asheville.

RESOLUTION BOOK NO. 27 – PAGE 337

M. MOTION SETTING A PUBLIC HEARING ON APRIL 8, 2003, TO CONSIDER THE ACTION PLAN FOR THE COMMUNITY DEVELOPMENT BLOCK GRANT AND HOME PROGRAMS FOR 2003-04

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

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

III. PUBLIC HEARINGS:

A. PUBLIC HEARING REGARDING AN ECONOMIC DEVELOPMENT INCENTIVE GRANT

RESOLUTION NO. 03-43 - RESOLUTION APPROVING AN ECONOMIC DEVELOPMENT INCENTIVE GRANT TO PLASTICARD LOCKTECH INTERNATIONAL

Mayor Worley opened the public hearing at 5:20 p.m.

Economic Development Director Mac Williams said that this is the consideration of a resolution approving an economic development incentive grant to Plasticard Locktech International for an expansion of operations into the city limits and creation of new jobs. This public hearing was advertised on March 14, 2003.

Plasticard Locktech International (PLI) specializes in printing on plastic and is the largest producer of plastic hotel keycards in the nation. The company was founded in the area in 1988 and has grown steadily ever since. PLI is now located on Pond Road (outside the city limits) in a facility they own. The company is proposing to purchase and relocate operations into a building located in the Sweeten Creek Industrial Park (inside the city). The expansion would involve an investment of \$2.275 million in building improvements and new equipment and creation of 16 new jobs with an average hourly wage of \$12.23 plus benefits.

Comparing this project to the criteria established in the City of Asheville Economic Development Incentive Policy, Council has, preliminarily, determined to award a grant of \$25,000 payable in equal installments of \$5,000 over 5 years commencing after all capital investment and new jobs are placed in service. A performance agreement setting these and other terms and conditions must be mutually accepted and executed by the company and City and approved, along with the grant, at a formal public hearing.

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Staff recommends City Council accept and execute the proposed Performance Agreement and offer the economic development incentive grant to Plasticard Locktech International under the terms and conditions in the Performance Agreement.

Mr. Mark Goldberg, representing PLI, spoke in support of the economic development incentive grant.

Upon inquiry of Councilman Peterson, Mr. Goldberg explained the many fringe benefits offered by PLI, which does include health care benefits.

Mayor Worley closed the public hearing at 5:25 p.m.

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

Councilman Dunn moved for the adoption of Resolution No. 03-43. This motion was seconded by Councilwoman Jones and carried unanimously.

RESOLUTION BOOK NO. 27 – PAGE 338

B. PUBLIC HEARING TO REZONE A PORTION OF PROPERTY, TOTALING 17.58 ACRES, KNOWN AS BILTMORE PARK TOWN CENTER WEST, PHASE I, LOCATED ON THE WEST SIDE OF SCHENCK PARKWAY AND SCHENCK CRESCENT FROM CENTRAL BUSINESS DISTRICT TO URBAN VILLAGE DISTRICT, AND TO CONSIDER THE SITE MASTER PLAN APPROVAL

ORDINANCE NO. 3008 - ORDINANCE TO REZONE A PORTION OF PROPERTY, TOTALING 17.58 ACRES, KNOWN AS BILTMORE PARK TOWN CENTER WEST, PHASE I, LOCATED ON THE WEST SIDE OF SCHENCK PARKWAY AND SCHENCK CRESCENT FROM CENTRAL BUSINESS DISTRICT TO URBAN VILLAGE DISTRICT, AND TO CONSIDER THE SITE MASTER PLAN APPROVAL

Mayor Worley opened the public hearing at 5:26 p.m.

Urban Designer Alan Glines said that this is the consideration of an ordinance to rezone a portion of property, totaling 17.58 acres, known as Biltmore Park Town Center West, Phase I, located on the west side of Schenck Parkway and Schenck Crescent from Central Business District to Urban Village District, and to consider an amendment to the Master Plan for the Biltmore Park Town Center Urban Village. This public hearing was advertised on March 14 and 21, 2003.

On January 31, 2003, Biltmore Farms submitted a request to rezone a portion of property (PIN No. 9645-01-46-4610) from Central Business District to Urban Village District in the extraterritorial jurisdiction area in the southern part of the City. In conjunction with this, an amendment is required for the Biltmore Park Town Square Urban Village Master Plan.

The proposed urban village addition to the Town Center Master Plan totals 17.58 acres. This area will be used to develop 175 residential units (town homes, condominiums and apartments) and 238,000 square feet of commercial and office space. The development will be housed in roughly 12 new buildings arranged on new streets and blocks created in the urban village area. New streets will be built with cross streets and stub streets as needed for future expansion phases. Two parking garages are proposed as well as several surface lots and on street parking. Public spaces will be provided via the pedestrian sidewalk zones and adjacent

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open space areas. The Master Plan will also comply with all other Urban Village District guidelines.

The proposed development will be developed as a part of the previously approved totals for the Town Center project of 320 residential units, 350,000 gross square feet of commercial space, 200,000 square feet of office space and 150,000 other non-defined square feet of space.

Access to the Town Center project is by Schenck Parkway and the signalized intersection at Long Shoals Road. The project is expected to be constructed within a timeframe comparable to the N. C. Dept. of Transportation improvement project on Long Shoals Road.

The Town Center Master Plan area will include several acres of open space made up of park areas, greenway trails and connections to the wider Biltmore Park development.

The Urban Village zoning is established to create mixed-use higher density development that is economically vital and pedestrian oriented. Urban Village guidelines encourage vibrant streetscapes and a full range of retail and office uses as well as a variety of housing types throughout the development area.

The Planning and Zoning Commission met on March 5, 2003, and voted 6-0 to recommend approval of the rezoning request and amendments to the Master Plan. Staff also supports the rezoning request. The Technical Review Committee conditions will be met for this project.

City staff recommends City Council (1) consider the rezoning of a 17.58 parcel of land from Central Business District to Urban Village District and (2) consider amendment to the Biltmore Town Center Master Plan.

Upon inquiry of Councilman Dunn, Mr. Glines said that the N. C. Dept. of Transportation is currently acquiring the right-of-way on Long Shoals Road.

Upon inquiry of Councilman Ellis, Mr. Glines said that once the project is completed it will have an estimated tax value of approximately \$50 Million.

Upon inquiry of Councilman Peterson, Mr. Shuford explained that they have an agreement with Biltmore Farms that as the phases are completed in Biltmore Park they will petition for voluntary annexation.

Mr. Walter Plaue was concerned about losing valuable residentially-zoned property to high priced housing, which is not doing anything to help our shortage of affordable housing in Asheville.

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

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

Councilman Mumpower moved for the adoption of Ordinance No. 3008, to rezone a portion of property, totaling 17.58 acres, known as Biltmore Park Town Center West, Phase I, located on the west side of Schenck Parkway and Schenck Crescent from Central Business District to Urban Village District. This motion was seconded by Councilman Ellis and carried unanimously.

ORDINANCE BOOK NO. 20 – PAGE

Councilwoman Jones moved to approve the amendment to the site master plan for Biltmore Park Town Center West, Phase I. This motion was seconded by Councilman Ellis and carried unanimously.

C. PUBLIC HEARING TO CONSIDER THE REZONING OF PROPERTY LOCATED AT 3695 SWEETEN CREEK ROAD FROM RM-8 RESIDENTIAL MULTI-FAMILY MEDIUM DENSITY DISTRICT TO COMMUNITY BUSINESS I DISTRICT

ORDINANCE NO. 3009 - ORDINANCE TO REZONE PROPERTY LOCATED AT 3695 SWEETEN CREEK ROAD FROM RM-8 RESIDENTIAL MULTI-FAMILY MEDIUM DENSITY DISTRICT TO COMMUNITY BUSINESS I DISTRICT

Mayor Worley opened the public hearing at 5:44 p.m.

Urban Planner Carter Pettibone said that this is the consideration of an ordinance to rezone property located at the northwest corner of the intersection of Sweeten Creek Road and Royal Pines Drive from RM-8 Residential Multi-Family Medium Density District to Commercial Business I District. This public hearing was advertised on March 14 and 21, 2003.

The applicant, Roger Chipman, is requesting a rezoning from RM-8 to CB I for properties totaling 0.4-acre located at the intersection of Sweeten Creek Road and Royal Pines Drive (PIN Nos. 9654.10-36-2520 and 9654.10-36-1485) in order to develop the properties for uses permitted in the CB I District. The purpose of the CB I District is to provide for medium-density business and service uses serving several residential neighborhoods

The properties are located inside the City limits in an area that has a variety of uses and zoning. There is RM-8 zoning to the north and RS-4 to the west, both containing a mix of single and multi-family residences. To the south across Royal Pines Drive, the zoning is CB II and properties contain an office and a gas station/convenience store. Across Sweeten Creek Road the land use is single-family residential that is under Buncombe County's Limestone Township zoning.

There are two existing buildings on the site, both of which are currently residences and the site has frontage on both Sweeten Creek Road and Royal Pines Drive. Sweeten Creek Road is highly traveled north-south thoroughfare that provides direct access to a number of commercial uses as well as access to residential developments and individual residences. Properties located to the south across Royal Pines Drive are commercial in nature and use Royal Pines Drive for access.

The site is located at the intersection of a major north-south thoroughfare and an east-west connector street, Royal Pines Drive, which already provides access to a number of commercial uses across the street. The site can also provide the surrounding neighborhood small-scale commercial uses that the residents can walk to without having to cross busy streets.

CB I zoning also provides for a more appropriate transition from RS-4 and RM-8 to CB II than those residential districts directly abutting CB II. Any development of the property would also be required to meet the standards of the Unified Development Ordinance, including parking and buffering standards.

City staff feels CB I is an appropriate zoning category for the properties and recommends approval of the request to rezone 3695 Sweeten Creek Road from RM-8 to Community Business

I. The Planning and Zoning Commission at its March 5, 2003, meeting voted 6-1 to recommend approval of the rezoning as well.

Mr. Gerald Green, representing the owner, felt the property is more suitable for an office component. The character of the area has been changing over the past few years and he urged Council to vote in favor of the rezoning.

Mayor Worley closed the public hearing at 5:48 p.m.

Upon inquiry of Councilman Peterson, Mr. Pettibone said that the buffer requirements would depend on what the owner will use the property for.

Councilman Peterson was concerned that since the Sweeten Creek Road Widening Project is on the N.C. Dept. of Transportation's (NC DOT) Transportation Improvement Plan, that more commercial property will be developed along that stretch of road and it will cost more for NC DOT to acquire the right-of-way, thus reducing the amount of money that can be used for other

Asheville transportation projects. Planning & Development Director Scott Shuford replied that if we had an actual design for the road and knew what the taking would be, or what setbacks would be required, they would be in a position to measure set-back and development requirements off that design. However, the Sweeten Creek Road Widening Project is probably 7-8 years out and we don't have a projected right-of-way for it at this time. He did understand Councilman Peterson's concern that there might be a potential for a strip commercial pattern along Sweeten Creek Road but assured him that City staff doesn't feel that would be appropriate. However, given the location of this request, the lot is deep enough that if it is widened it probably will be able to continue to be used for small scale office or commercial use.

Councilwoman Jones was concerned that we were rezoning another piece of multi-family residential property and asked for a report on the amount of acreage contained in each of the different zoning classifications. Mr. Shuford said that we have been fortunate to develop and encourage some mixed-use districts, such as the Neighborhood Corridor District and the Urban Village District. He said that he would provide that information to Council as well.

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

Councilman Ellis moved for the adoption of Ordinance No. 3009. This motion was seconded by Councilman Peterson and carried unanimously.

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D. PUBLIC HEARING TO CONSIDER AMENDMENT TO THE UNIFIED DEVELOPMENT ORDINANCE TO PROVIDE FOR MORE FLEXIBLE FRONT SETBACKS IN PEDESTRIAN-ORIENTED AREAS IN A VARIETY OF NON-RESIDENTIAL ZONING DISTRICTS

ORDINANCE NO. 3010 - ORDINANCE TO AMEND THE UNIFIED DEVELOPMENT ORDINANCE TO PROVIDE FOR MORE FLEXIBLE FRONT SETBACKS IN PEDESTRIAN-ORIENTED AREAS IN A VARIETY OF NON-RESIDENTIAL ZONING DISTRICTS

Mayor Worley opened the public hearing at 6:00 p.m.

Planning & Development Director Scott Shuford said that this is the consideration of an ordinance to amend the Unified Development Ordinance to provide for more flexible front

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setbacks in pedestrian-oriented areas in a variety of nonresidential zoning districts. This public hearing was advertised on March 14 and 21, 2003.

This code amendment provides for reduced front setback requirements in a variety of nonresidential zoning districts if pedestrian oriented design features are utilized. A definition of pedestrian oriented design is included as part of this ordinance. In effect, the incentive of a reduced front setback is provided as an option for developers if certain design standards are met and there is no conflict between the reduced setback and any scheduled road widening.

Using an example of the proposed Red Lobster building, Mr. Shuford explained how this code amendment would apply.

Affected districts include: Neighborhood Business District, Office II District, Office/Business District, Community Business I District, Community Business II District, Resort District, Institutional District, Highway Business District, Regional Business District, River District, Commercial Industrial District, and Industrial District.

On March 5, 2003, the Planning and Zoning Commission recommended approval of the proposed code amendment by a vote of 7-0. City staff recommends approval of the proposed code amendment as well.

Mayor Worley closed the public hearing at 6:08 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. 3010. This motion was seconded by Councilman Dunn and carried unanimously.

ORDINANCE BOOK NO. 20 - PAGE

IV. UNFINISHED BUSINESS:

V. NEW BUSINESS:

- A. RESOLUTIONS OF INTENT TO ANNEX THE DEAVERVIEW ROAD AREA, THE CROWELL ROAD AREA, THE SMOKY PARK HIGHWAY AREA, THE SAND HILL ROAD AREA AND THE HENDERSONVILLE ROAD AREA AND SETTING A PUBLIC INFORMATION MEETING ON MAY 15, 2003, IN THE PUBLIC WORKS BUILDING LOCATED AT 161 S. CHARLOTTE STREET, AT 5:30 P.M., AND SETTING CITY COUNCIL PUBLIC HEARINGS ON MAY 27, 2003, IN THE COUNCIL CHAMBER, LOCATED ON THE 2ND FLOOR OF THE CITY HALL BUILDING AT 5:00 P.M.**

Mr. Carter Pettibone, Urban Planner, said that the State of North Carolina enables cities to grow by annexation of areas that meet certain statutory requirements. This state legislation is based on the proposition that strong cities are the basis of a strong state economy and essential to the continued economic development of the state, and that cities are the best units of government to meet the needs of urban areas. The state's intent is often summed up as "what is urban should be municipal."

North Carolina state law recognizes that the cities need to expand their boundaries to include this growth so that we don't end up in a situation where an increasingly relatively smaller number of citizens are financing the urban infrastructure used by a much larger population

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The City of Asheville has initiated annexations for the past three years – six areas in 2001, five areas in 2002 and seven areas in 2003. These recent annexations, like the ones being presented are designed to include: areas that are clearly urban, areas surrounded by the City but not within the City of Asheville and can only be accessed through the City; areas that will create a more logical City boundary; and areas with at least some existing water and sewer service.

It's now time for the City to consider the next phase of annexations for 2004. City staff has identified the following five areas with the potential for being annexed: (1) the Deaverview Road area; (2) the Crowell Road area; (3) the Smoky Park Highway area; (4) the Sand Hill Road Area; and (5) the Hendersonville Road area.

Mr. Pettibone said that under State law the City must follow a specific process for annexation that begins with the adoption of resolutions that describe the boundaries of the areas under consideration, and fix dates for a public informational meeting and a public hearing on the question of annexation. Those dates are as follows:

Adoption of Resolutions of Intent	March 25, 2003
Adoption of Plans of Services	April 8, 2003
Staff-Sponsored Public Informational Meeting	May 15, 2003
Public Hearings	May 27, 2003
Adoption of Annexation Ordinances	June 10, 2003
Effective Date of Annexations	June 30, 2004

Mr. Pettibone stated that the resolutions of intent state that (1) it is the intent of the City Council of the City of Asheville to consider annexation of the territory described in the resolution pursuant to Part 3 of Article 4A of Chapter 160A of the North Carolina General Statutes; (2) a public informational meeting on the question of annexing the above-described territory will be held in the Public Works Building located at 161 S. Charlotte Street, Asheville, N.C., at 5:30 p.m. on the 15th day of May, 2003, at which time a representative of the City of Asheville shall make an explanation of plans for extending services to said territory and all residents and property owners in said territory and all residents of the City of Asheville will be given the opportunity to ask questions and receive answers regarding the proposed annexation; (3) a public hearing on the question of annexing the above-described territory will be held in the Council Chamber located on the 2nd Floor of the City Hall Building, 70 Court Plaza, Asheville, N.C., at 5:00 p.m. on the 27th day of May, 2003, at which time a representative of the City of Asheville will make an explanation of plans for extending Services to said territory and all residents and property owners in said territory and all residents of the City of Asheville will be given an opportunity to be heard; (4) a report of plans for extending services to the above-described territory shall be made available for public inspection at the office of the City Clerk at least thirty (30) days prior to the date of the public informational meeting; (5) the statement of financial impact contained in the report shall be delivered to the Buncombe County Board of Commissioners at least thirty (30) days prior to the date of the public informational meeting; (6) a legible map of the area to be annexed and a list of identified persons holding freehold interests in property in the area to be annexed shall be posted in the office of the City Clerk, Asheville City Building, 70 Court Plaza, Asheville, North Carolina, at least thirty (30) days prior to the date

of the public informational meeting; (7) the effective date of annexation shall be at least one year, but no more than 400 days, from the date of passage of the annexation ordinance; and (8) notice of the public informational meeting and public hearing shall be given as required by law.

He explained that the following five areas were considered with a variety of factors: (1) location; (2) smaller size than we typically annex; (3) commercial/industrial properties; (4) areas that did not have a lot of residential properties; and (5) areas that were well served with water and sewer:

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Deaverview Road – This includes two convenience stores and one single-family at the intersection of Deaverview Road and Pisgah View Road. This contains four lots totaling 1.14 acres. The estimated population is two. If the property is annexed, it would bring in \$1,442.66 in annual property tax revenue.

Crowell Road – This includes a lodging facility and auto repair facility on Crowell Road near the intersection of Smoky Park Highway and I-240 interchange. This contains two lots totaling 1.9 acres. The estimated population is zero. If the property is annexed, it would bring in \$13,010.44 in annual property tax revenue.

Smoky Park Highway – This brings in whole of split-jurisdictional commercial property into the City in the Enka area. This contains one lot totaling 0.3 acres. The estimated population is zero. If the property is annexed, it would bring in \$656.14 in annual property tax revenue.

Sand Hill Road – This is a small shopping center south of the BASF plant in the Enka area. This contains four lots totaling 4.2 acres. The estimated population is zero. If the property is annexed, it would bring in \$4,612.06 in annual property tax revenue.

Hendersonville Road – This is a large area, mainly commercial and industrial, with a few multi-family properties and one single-family in the Arden area. This contains 39 lots totaling 85.5 acres. The estimated population is 38. If the property is annexed, it would bring in \$112,406.64 in annual property tax revenue. This will require a capital expenditure for water and sewer, which will be the addition of two fire hydrants.

City staff recommends City Council adopt the resolutions of intent to begin the annexation process.

Upon inquiry of Councilman Dunn, Mayor Worley said that City Council will make the determination on whether to annex all or some of these areas on June 10, 2003. Adoption of the resolutions of intent will direct City staff to start gathering specific information and start the process to involve the public.

When Councilman Dunn asked how many small businesses were affected by these annexations, Mr. Pettibone said that he would provide Council with that breakdown, and in fact, that information is part of the calculations that City staff does to determine the use of the property for qualification for annexation.

Councilman Mumpower asked if these property owners are aware of possible annexation. Mr. Pettibone said that property owners are notified 30 days prior to the public information meeting. He explained that after the resolutions of intent are adopted, the next step would be a more detailed analysis in the Plans for Services. If Council chooses to proceed, then the property owners are notified.

Upon inquiry of Councilman Peterson, Mr. Pettibone said that the State requires the City to calculate the population based on census data.

Councilman Mumpower suggested that City staff contact the largest manufacturing plant in the Hendersonville Road area (Day International) to see how many people they employ and see what their circumstances are since the City has a prior history of adding to manufacturers' difficulties with a heavier tax burden at inappropriate times.

Councilman Dunn asked for a report identifying every small business that these annexations will affect, the type of business and how many people they employ. If we double their taxes, they can move out of the Asheville area entirely.

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Councilman Peterson said there is a question of fairness. Some of the businesses along Hendersonville Road are in the City, pay City taxes, and receive City services. But the businesses across the street or just up the street are enjoying City services

without paying for them. We have to consider whether the businesses in the City are being put at a competitive disadvantage because the businesses that are right on the edge of the City are benefiting from those services and not paying for them.

Councilman Mumpower agreed that annexation is one of the least pleasant tasks for City Council to consider, but it is a fairness issue. He suggested staff meet with manufacturing plants early on in the process to provide them with information on our impact on them and to find out their current status. City Manager Westbrook responded that the City has done just that in a previous annexation. He said that City staff met with a group of businesses using one of their conference rooms as a central area to meet.

Mayor Worley said that members of Council have been previously furnished with copies of the resolutions and they would not be read.

RESOLUTION NO. 03-44 - RESOLUTION OF INTENT TO ANNEX THE DEAVERVIEW ROAD AREA, SETTING A PUBLIC INFORMATION MEETING ON MAY 15, 2003, IN THE PUBLIC WORKS BUILDING LOCATED AT 161 S. CHARLOTTE STREET, AT 5:30 P.M., AND SETTING A CITY COUNCIL PUBLIC HEARING ON MAY 27, 2003, IN THE COUNCIL CHAMBER, LOCATED ON THE 2ND FLOOR OF THE CITY HALL BUILDING AT 5:00 P.M.

Councilman Peterson moved for the adoption of Resolution No. 03-44. This motion was seconded by Councilman Mumpower and carried unanimously.

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RESOLUTION NO. 03-45 - RESOLUTION OF INTENT TO ANNEX THE CROWELL ROAD AREA, SETTING A PUBLIC INFORMATION MEETING ON MAY 15, 2003, IN THE PUBLIC WORKS BUILDING LOCATED AT 161 S. CHARLOTTE STREET, AT 5:30 P.M., AND SETTING A CITY COUNCIL PUBLIC HEARING ON MAY 27, 2003, IN THE COUNCIL CHAMBER, LOCATED ON THE 2ND FLOOR OF THE CITY HALL BUILDING AT 5:00 P.M.

Councilman Ellis moved for the adoption of Resolution No. 03-45. This motion was seconded by Councilwoman Jones and carried unanimously.

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RESOLUTION NO. 03-46 - RESOLUTION OF INTENT TO ANNEX THE SMOKY PARK HIGHWAY AREA, SETTING A PUBLIC INFORMATION MEETING ON MAY 15, 2003, IN THE PUBLIC WORKS BUILDING LOCATED AT 161 S. CHARLOTTE STREET, AT 5:30 P.M., AND SETTING A CITY COUNCIL PUBLIC HEARING ON MAY 27, 2003, IN THE COUNCIL CHAMBER, LOCATED ON THE 2ND FLOOR OF THE CITY HALL BUILDING AT 5:00 P.M.

Councilman Mumpower moved for the adoption of Resolution No. 0-46. This motion was seconded by Councilwoman Jones and carried unanimously.

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RESOLUTION NO. 03-47 - RESOLUTION OF INTENT TO ANNEX THE SAND HILL ROAD AREA, SETTING A PUBLIC INFORMATION MEETING ON MAY 15, 2003, IN THE PUBLIC WORKS BUILDING LOCATED AT 161 S. CHARLOTTE STREET, AT 5:30 P.M., AND SETTING A CITY COUNCIL PUBLIC HEARING ON MAY 27, 2003, IN THE COUNCIL CHAMBER, LOCATED ON THE 2ND FLOOR OF THE CITY HALL BUILDING AT 5:00 P.M.

Councilman Mumpower moved for the adoption of Resolution No. 03-47. This motion was seconded by Councilman Ellis and carried unanimously.

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RESOLUTION NO. 03-48 - RESOLUTION OF INTENT TO ANNEX THE HENDERSONVILLE ROAD AREA, SETTING A PUBLIC INFORMATION MEETING ON MAY 15, 2003, IN THE PUBLIC WORKS BUILDING LOCATED AT 161 S. CHARLOTTE STREET, AT 5:30 P.M., AND SETTING A CITY COUNCIL PUBLIC HEARING ON MAY 27, 2003, IN THE COUNCIL CHAMBER, LOCATED ON THE 2ND FLOOR OF THE CITY HALL BUILDING AT 5:00 P.M.

Councilman Peterson moved for the adoption of Resolution No. 03-48. This motion was seconded by Councilman Mumpower and carried unanimously.

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At 6:30 p.m., Mayor Worley announced a short break.

B. RESOLUTION NO. 03-49 - RESOLUTION AUTHORIZING THE MAYOR TO ENTER INTO A DOWNTOWN DEVELOPMENT AGREEMENT WITH THE GROVE PARK INN RESORT INC. FOR TWO REDEVELOPMENT SITES

City Attorney Oast said that this is the consideration of a resolution authorizing the Mayor to execute a downtown development agreement with the Grove Park Inn for two redevelopment sites.

The Grove Park Inn (GPI) has proposed developing two sites owned by the City generally as contemplated in the approved Pack Square Renaissance Plan. These sites are:

- Phase I – A mixed use (but primarily residential) project to be located at the corner of Market and College Streets consisting of a single tower development up to the same height as the Jackson Building.
- Phase II – A substantially larger mixed use project incorporating a parking garage, office, retail and residential uses to be generally located on the block bounded by Marjorie Street, Davidson Street, Eagle Street and Spruce Street. This building would not exceed the height of City Hall.

In summary, GPI is requesting an opportunity to perform due diligence on these sites in order to determine the feasibility of developing them as proposed. If development proves feasible, the GPI would then proceed with obtaining all necessary reviews and approvals in order to begin the construction process for each phase of development. The design of these projects will be coordinated with the Pack Square Conservancy and the Downtown Commission, as well as with the City of Asheville. Public hearings would be required prior to any conveyances of property.

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He then went into more detail by saying that GPI is talking about acquiring City-owned property and the Phase II site is the major and most defining public area in the City. One factor in this issue is that in 2001 the City entered into an agreement with the Pack Square Conservancy who undertook to devise a redevelopment plan for the Pack Square area, which plan has been approved by City Council. Another factor was that the City needs to have continued high quality development in the downtown in order to continue the revitalization process which began in the late 1980's and early 1990's. We also saw this as an opportunity to make improvements in infrastructure in this area, like road alignment, road construction, and provisions for other public amenities consistent with the Pack Square Conservancy plans. There was also the issue of an interface with the South Pack Square area, which we think is the next area that will be developed in the downtown. In January of 2003, City staff met with the Pack Square Conservancy Board and representatives of the GPI presented the project. The Conservancy Board was generally supportive of it and we are continuing to move forward with that concept.

Using a map, he roughly outlined the Phase I and Phase II areas. He explained the proposal is to develop two sites near City-County Plaza with mixed use office/commercial/residential buildings of significant size. They are not far along enough in the process to determine what kind of mix of office/commercial/residential uses will be there. These properties are owned by the City and as far as he knows, there are no legal restrictions that would limit the City's ability to convey them to a private developer. The legal authority for doing a project of this nature is called the Downtown Development Agreement Act (N. C. Gen. Stat. sec. 160A-458.7).

GPI is seeking some indication of the City's interest in moving forward with the proposal. In a project this size, they are not far enough along to produce a lot of specific information, so City staff is seeking an approval of project in concept. GPI would like to have an expression of Council's willingness to consider selling property for development. City staff is requesting Council's direction in participating with public amenity/parking/infrastructure improvements in the area. We are not in a position to tell Council what those improvements are at this point, but there are some opportunities for staff to investigate further.

In summary, he said they are looking to Council for the direction to move forward to see if we can make this, or come up with a framework, to make this project work.

City Attorney Oast said the proposed agreement covers these basic points:

- (1) Statement of intent to cooperate;
- (2) Outline responsibilities in due diligence process by both the City in exploring opportunities for the public part of this project and the GPI. GPI will need to investigate things like financial feasibility, do some work on the site to determine whether the property can actually be built on, etc.;
- (3) Recognize that there are other interests in the Pack Square/City-County Plaza area. Most obviously that includes the Pack Square Conservancy. We have met and discussed this with them and we think their input is important and any agreement should include a structure for involving that input. Other interests which will have a structure for input involve: the Public Art Board, the Downtown Commission, and the general public (which includes the development corporations in the South Pack Square area that are very interested in what happens in their area and how this project will interface with that);
- (4) Identify key issues. Those key issues include things like building size and building design. The Pack Square Conservancy has design review responsibilities for Phase I and depending on the exact location for Phase II as

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well. Even if Phase II is not within the Pack Square area, we think it would be appropriate to include the Conservancy in some of the design considerations for that site as well. Another key issue is the kinds of infrastructure improvements that might be needed to support a project of this nature, some realignment of City streets, some rerouting of electrical and water lines, etc. Another key issue is the inclusion of public amenities. Since we are doing a lot of work in the Pack Square area and since the Conservancy has already produced a design for this, this will provide a vehicle to perhaps construct some of those public amenities. Another key issue includes parking. There may be other issues we can identify, but we need the opportunity that this agreement will present, in order to do that;

- (5) Outline tentative "critical path". Those are the things that need to happen in the sequence they need to happen in. The first step in a project of this nature is to enter into a Downtown Development Agreement and then enter into options to convey the property. We can't do that without a public hearing. Another critical path item is to structure the public participation process and the timing of when that would occur, including the public hearings required for the conveyance of the property. We need to outline a list for getting the design work on this project completed and coordinating whatever is done on the private side with what needs to be done on the public side. Another critical path would also include some sequence of construction. We are interested in making sure the construction interferes as little as possible with traditional public uses of the area, like the Bele Chere Festival, First Night, and other traditional public festivals;
- (6) Outline responsibilities in development process. Primarily the GPI would be responsible for design, building and construction of its projects. The City would be responsible for promptly processing approval and promptly performing inspections, etc.; and
- (7) Establish conditions precedent to performance on both sides. We think it's important to have design approval so we know what the building will look like before we decide to do the project. Secondly, that we have satisfactory information that the financing to do the project is in place before we move ahead with it. And, thirdly, we want to make sure appropriate indemnities and insurance are in place.

City Attorney Oast said the reason we are asking for Council's go-ahead at this point is that the GPI needs time/opportunity to explore the financial feasibility, do title work, site investigations. The City needs time to obtain appraisals, explore opportunities for public improvements/amenities and we need to develop structure for involving public in a meaningful way, including the Pack Square Conservancy, Downtown Commission, Public Art Board and the general public.

He emphasized to Council that Council's approval at this meeting is a limited commitment. It does not obligate the City to sell property or approve the project. The proposed agreement does not obligate the GPI to buy property or build the project. What it does is authorizes the City to work together with the GPI to see if we can come up with a feasible project that will be in the best interest of the citizens of Asheville, including all of the people with interests in this very public area, to make this a better place and to continue the revitalization of downtown.

When City Attorney Oast said that the agreement is not in final form and is still being worked on to include in more detail the provisions outlined above, Councilman Peterson was concerned that Council is being asked to authorize the agreement when he just received the draft copy of the 15-page document via email today. He felt it was premature in requesting approval

because (1) there wasn't adequate time for Council to review the agreement; and (2) the agreement will change. City Attorney Oast responded that the Pack Square Conservancy has a very important interest in this area and we have always understood that. The primary change to the draft before Council will be to recognize that in an explicit way. The terms are pretty much what has been outlined earlier.

Mr. W. Louis Bissette, Jr., attorney representing the GPI, felt this proposed project is an incredible opportunity for the City, its taxpayers and the Pack Square Conservancy to help them achieve its goals. The two projects have to work together. If the GPI project goes forward, we certainly want the Pack Square Conservancy project to succeed and will assist them in every way that we can. This step is the first step in a process that could greatly enhance our downtown and particularly this end of downtown. The GPI, like the City, is not committing to do anything. We need an indication from the City that, along certain general guidelines, the City is interested in pursuing this project with us. We have to go now and spend a substantial amount of money in doing our due diligence, not only on the property itself, but also the feasibility of the projects that the GPI is looking at. The GPI is very optimistic that they will be feasible and that they can proceed. That is what we are asking for in this agreement. The agreement before Council is the culmination of what he and the City Attorney have been working on for some time and we think it generally outlines the process. It does not commit either party to move forward. But, it does give the GPI and its investors the knowledge that the City and the Pack Square Conservancy are in this with us. He felt the agreement is pretty much as the two parties have negotiated and there are some changes, which they have talked to the Pack Square Conservancy's attorney Jones Byrd about that we are willing to go along with. If the development agreement is approved, all three attorneys will get together and iron out the final version. There will not be any substantive changes. The changes will merely formally add the Pack Square Conservancy's rights and obligations into this contract. He hoped Council would approve the development agreement because they are looking forward to working with the City, the Pack Square Conservancy and other interested groups, to make this project a reality.

Councilman Mumpower felt these are exciting changes for downtown Asheville; however, he was concerned about the size of the Phase II footprint compared to the City Hall Building. Some buildings that have been built around the City Hall have had a less than positive impact on the site, vision, etc. He questioned that if we allow them that large a parameter, are we creating a potential problem for ourselves. Planning & Development Director Scott Shuford responded. He said he didn't think we would be creating a problem because City Council will have final approval of the design. All that the scale aspects included in this agreement are intended to do is to set some general parameters and understanding so that we don't get into a situation where they may come back with something that would certainly be far out-of-scale or for that matter perhaps too small for feasibility. There is a desire on the Phase II site to have a fairly substantial structure because that is a large piece of property for a downtown to have opportunity for development. In addition, certainly in Phase I and almost certainly in Phase II, there is going to be design review and approval by the Pack Square Conservancy, in accordance with their guidelines. There will be a substantial amount of public input and technical and other review before a final building design would be approved. If some reason there is a need to make some adjustments, he was sure the agreement could be modified, but the idea is to create a basic parameter.

Upon inquiry of Councilman Peterson, Mr. Bissette explained to Council the exact locations of Phase I and Phase II.

When Councilman Dunn asked whose decision it was to limit the height of the Phase II building, Mr. Bissette said the Planning staff felt that a too tall building would be detrimental to the overall aesthetic look of the City and we agreed with those height restrictions.

Mr. Jones Byrd, attorney representing Pack Square Conservancy, said that he has seen the agreement in rough draft form. The Conservancy has certain rights and certain obligations that they want to fulfill. They have been in the process of raising money, putting together design guidelines and making the project in the Pack Square Renaissance area a reality. Some of the design issues raised are part of a design review process that is contained in the Conservancy Agreement that the City and the County have with the Conservancy. When you look at this agreement, we believe there are several things that need to be changed just to make sure that the procedure going forward is compatible with the obligations and the rights of the Conservancy. He said that he has talked to Mr. Bissette and City Attorney Oast and they are going to make sure that changes occur to make sure that everything is subject to the Conservancy agreement. This is a wonderful opportunity for the City and the Conservancy wants to make sure that it's done right.

Councilman Ellis asked Mr. Byrd if he felt comfortable at this point that if Council authorizes this to go forward that the Conservancy and the goals of the Conservancy can be protected. Mr. Byrd said he didn't have a concern about that. From the conversations he has had with Mr. Bissette and City Attorney Oast, these are probably some changes that with a little more time would have been made anyway, or there may be some simple ways to make everything in this proposed draft agreement subject to

the terms of the one the City is already a party to with the Conservancy and Buncombe County. He felt everyone would work very hard to make that work.

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

Councilman Ellis moved to authorize the Mayor to execute a downtown development agreement with the Grove Park Inn for two redevelopment sites, with the understanding that the City Attorney, Mr. Bissette and Mr. Byrd will meet to iron out any details of the agreement and that the major considerations as embellished by the City Attorney above, be included in the agreement. This motion was seconded by Councilman Dunn.

Mr. Christopher Fielden said that the areas are the heart of our City and public land. He felt this is taking the public's land and selling it to a corporation, with the corporation benefiting. He felt the recently enacted solicitation ordinance in the downtown area has done nothing to benefit the low income people, only the tourists and wealthy. He said we have a lack of affordable housing, lack of shelters, and lack of youth centers, so he suggested Council take this land and use it for the people's benefit, since it's the people's land. He questioned if there would be affordable housing in this project. He heard that they will be developing a structure for meaningful public input, but questioned who is the public that is referring to and what does meaningful mean. He felt City Council should enrich the life of Asheville and not tourist industry.

Mr. Water Plauie agreed with Councilman Peterson in that City Council should take time to read and understand the agreement prior to giving the Mayor authority to sign it.

Ms. Hazel Fobes was concerned that the GPI didn't bring anything to the meeting to show the design of the buildings. She stressed that Council needs to understand what they are voting on first. She pointed out that there isn't always a need to put a building on a piece of land that has grass on it.

City Attorney Oast responded to several questions/comments from Councilman Peterson, some being, but are not limited to: explain the options and what that does and does not commit the City to; does the City receive money to sell options and if so, how is that money applied and what happens if the agreement is terminated by either party; is the City making a commitment to pay for a public parking facility for a private commercial development; what does "unreasonably

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withheld" mean with regard to building design approval; if Council felt the building was not compatible or aesthetically not compatible with downtown, would that be reasonable; does the GPI agree to pay for those improvements that reflect reasonable project impacts on public infrastructure; and what happens if either side terminates the agreement.

The motion made by Councilman Ellis and seconded by Councilman Dunn carried unanimously.

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- C. RESOLUTION NO. 03-50 - RESOLUTION MODIFYING THE CITY COUNCIL MEETING SCHEDULE TO (1) CANCEL THE APRIL 1, 2003, WORKSESSION; AND (2) ADD A COMMUNITY MEETING ON APRIL 29, 2003, AT 7:00 P.M., AT THE WEST ASHEVILLE COMMUNITY CENTER LOCATED AT 970 HAYWOOD ROAD, ASHEVILLE N.C.**

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

Councilman Ellis moved for the adoption of Resolution No. 03-50. This motion was seconded by Councilwoman Jones and carried unanimously.

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VI. OTHER BUSINESS:

A. CLAIMS

The following claims were received by the City of Asheville during the period of February 28 – March 13, 2003: Mario Garcia Sr. (Police), Mary Ellen Eley (Streets) and Steve Bosma (Police).

The following claims were received by the City during the period of March 14-20, 2003: Jose Molina Lopez (Water), Charter Communication (Water), Susan Turner (Water), Barbara Field (Water) and Don Martell (Water).

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

VII. INFORMAL DISCUSSION AND PUBLIC COMMENT:

Comments by Gary Semlak

Mr. Gary Semlak, Vice-Chair of the Water Efficiency Task Force, understands the reason for stopping the tours at the water treatment facilities is for national security and thanked City Council for directing staff to find another suitable location for this very important water education program. He hoped that when this matter is revisited in October that a determination is made that the North Fork Reservoir is a feasible tour site again and hoped that that new site will not preclude tours ever happening again at North Fork. He rebutted some of the comments made at the March 18, 2003, worksession which cast a negative tone over the tours.

Comments by Hazel Fobes

Ms. Hazel Fobes spoke about the procedure used at the March 18, 2003, worksession in which City Council gave direction to City staff to temporarily cease tours at the North Fork

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Reservoir and the Mills River Water Treatment Plant. She felt the process was not proper in that no public comment was solicited. The Water Efficiency Task Force supports the Water Education Programs. She said that when the matter comes back up before Council in October, they would be given a fair and concise report about the effects of discontinuing these important water quality education tools.

Councilman Mumpower said that it was City Council's consensus to err on the side of safety with temporarily ceasing the tours, not against educating students.

Councilwoman Jones said that City Council does need to follow our democratic process. She did think City Council should have taken a vote on temporarily ceasing the tours at a formal session. She felt it's up to City Council to work harder to hear voices that we may disagree with and we must be open to our citizens for having a safe place to say that.

Comments by Christopher Fielden

Mr. Christopher Fielden explained how he witnessed several incidents of police brutality within the past week. He felt that it was important that the City acknowledge that police brutality happens. He said that in his opinion, the crowd was not violent.

Councilman Mumpower suggested Mr. Fielden email some of the Council members with his concerns and maybe they can pursue them together. He said that he met with some officers and the City Manager in a follow-up on some of the concerns that have been voiced similar to Mr. Fielden. He was encouraged by what he heard from the officers and he encouraged people to take a measured look at some of the things that happened that day. He didn't believe anyone in a leadership position on our police force or on City Council would support police brutality but there were laws broken that day that placed our officers in a difficult position.

Closed Session

At 8:25 p.m., Councilwoman Jones moved to go into closed session to discuss matters relating to the location or expansion of industries or other businesses in the area served by the City Council, including agreement on a tentative list of economic development incentives that may be offered in negotiations, provided that any action authorizing the payment of economic development incentives will occur in open session. The statutory authority is contained in N. C. Gen. Stat. sec. 143-318.11 (a) (4). This motion was seconded by Councilman Ellis and carried unanimously.

At 8:57 p.m., Councilman Dunn moved to come out of closed session. This motion was seconded by Councilman Mumpower and carried unanimously.

VIII. ADJOURNMENT:

Mayor Worley adjourned the meeting at 8:57 p.m.

CITY CLERK

MAYOR