

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; 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**

- Veteran of the U.S. Air Force Ray Green led City Council in the Pledge of Allegiance.

**INVOCATION**

Mayor Worley gave the invocation.

**ANNOUNCEMENT**

Councilman Mumpower announced that Mayor Worley has been appointed as the Second Vice-President of the N. C. League of Municipalities.

**I. PROCLAMATIONS:**

**A. DOMESTIC VIOLENCE TASK TEAM REPORT**

Sergeant Daryl Fisher updated City Council on the Domestic Violence Task Team. Sgt. Fisher introduced the team members. The objective and scope of the Team is (1) to evaluate and redesign the police response to calls of domestic violence, and (2) emphasis on reporting; tracking; proper handling and follow-up; and timely referral to outside agencies. Some domestic violence concerns were (1) nationally, 40% of police calls for service are for domestic violence; (2) from 1992-1996, 21% of violence against women resulted from an intimate partner compared to 2% for men; (3) in 1998, between 3-4 women daily were murdered by a spouse or boyfriend; (4) locally in 2001-02, HelpMate sheltered 223 women and children; and (5) HelpMate further provided 1,664 nights of emergency shelter, made 1,625 crisis contacts, and assisted 1,629 persons through court advocacy.

MPO Dawn Dowdle, Team member, said that during this process, the team met with and gathered information from various external and internal agencies, including HelpMate, Asheville Police Department (APD) Victim Services, District Attorney's Office, Clerk of Court's Office, etc. They found out that that the APD and the other agencies are basically on the "same sheet of music" as it relates to domestic violence issues.

As a result of the Team's research, enhanced reporting and tracking of domestic violence cases has been implemented. Updated training sessions have been implemented for all personnel, including supervisors. Training began September 30, 2003. They will continue with pro-arrest philosophy concentrating on protecting the victim(s) from harm. This includes mandatory arrest for violation of the "trespass" and "harass" provision of a Domestic Violence Protective Order.

Proposed changes to domestic violence policy include: (1) for all calls involving a domestic dispute, an Incident Report must be completed if there is evidence of a physical injury

-2-

and/or an arrest is made; and (2) arrest if mandatory when there is probable cause to believe there is a violation of the "trespass" or "harass" provisions of a domestic violence protective order.

In addition to our enhanced reporting, tracking and handling of these cases, further follow-up is recommended. APD Victim Services will forward reports of domestic violence to HelpMate daily. The APD Victim Services Coordinator and HelpMate have agreed to follow-up with domestic violence victims, which will reduce the possibility of victim's falling through the cracks.

Sgt. Fisher said the Team's proposals include (1) minor changes to report form; (2) minor changes to Domestic Violence Policy; (3) implementation of current training with updates as needed so domestic violence calls are handled properly; (4) making domestic violence training mandatory for all newly hired officers; (5) utilization of crime analysis, mandatory reports and clearance codes for tracking; (6) utilization of information card for timely referrals to outside agencies; and (7) follow-up with victims by the

APD Victim Services Coordinator and HelpMate.

Sgt. Fisher said that by utilizing the Team's recommended enhancements, the APD will continue to improve police services by serving our citizens and improving the City's quality of life through fair and respectful proactive policing.

Councilwoman Jones pointed out that October is Domestic Violence Awareness Month and hoped that we can be part of the solutions. She hoped we can find ways to assist HelpMate, which will end up helping our entire community.

Vice-Mayor Bellamy commended the Task Team for their work and thanked various people for their support and leadership.

On behalf of City Council, Mayor Worley thanked Sgt. Fisher and the Task Team for their efforts in handling domestic violence.

## **II. CONSENT AGENDA:**

Vice-Mayor Bellamy asked that Consent Agenda Items "C" and "K" be removed from the Consent Agenda for individual discussion.

- A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON SEPTEMBER 23, 2003, AND THE WORKSESSION HELD ON OCTOBER 8, 2003**
- B. ORDINANCE NO. 3058 - ORDINANCE TO INCREASE LENGTH OF TERM FOR COUNCIL APPOINTEES TO ASHEVILLE TRANSIT COMMISSION**

Summary: The consideration of an ordinance increasing length of term for members of the Asheville Transit Authority from 2 years to 3 years

In connection with its appointment of new citizen members to the Asheville Transit Commission, Council requested amendment to the transit commission ordinance, increasing the length of the term from two years to three years. This three-year term length is consistent with most other boards and commissions in the City. The ordinance will be effective for the terms of Council's appointments made on and after December 31, 2003.

If Council approves of the ordinance, its adoption is recommended.

### **ORDINANCE BOOK NO. 20 – PAGE 473**

-3-

- C. RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO AN AGREEMENT WITH THE N.C. DEPT. OF TRANSPORTATION FOR TEA 21 ENHANCEMENT GRANTS FOR NEW HAW CREEK ROAD/AVON ROAD SIDEWALKS, PACK SQUARE PEDESTRIAN IMPROVEMENTS AND WEST END/CLINGMAN PEDESTRIAN IMPROVEMENTS**

This item was pulled from the Consent Agenda for individual discussion.

- D. RESOLUTION NO. 03-169 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO AN AGREEMENT WITH THE N.C. DEPT. OF TRANSPORTATION FOR THE REINSPECTION OF BRIDGES ON THE MUNICIPAL STREET SYSTEM**

Summary: The consideration of a resolution authorizing the Mayor to enter into a municipal agreement with the N.C. Dept. of Transportation (NC DOT) on a bi-annual basis for the reinspection of bridges on the Municipal Street System.

In 1983 the Federal Highway Administration developed the Federal Off-System Bridge Replacement Program. Since the establishment of the program, the City has replaced 17 bridges through the program. The program is funded 80% through federal funds and 20% through City funds and administered by the NC DOT. To remain eligible for replacement funds and avoid penalties, it is required that all public bridges be inspected every two years. The NC DOT offers three options for meeting the bi-annual inspection requirements. One is to do the inspection with City forces; two is for the City to hire a consultant to do the inspections; or three is for the City to allow the NC DOT to do the inspections through a qualified private engineering firm.

Since 1983, the City has elected to execute agreements with NC DOT to accomplish the required inspections. This process

allows a large number of bridges to be inspected under one contract or operation, resulting in a minimum inspection cost per bridge. NC DOT representatives anticipate the inspection costs to be approximately \$2,600 per bridge for the upcoming inspection. The City has 25 bridges in need of inspection this year, which will yield an estimated total cost of \$65,00. The City's share in this cost will be \$13,000 (20% of the total cost). Funds for the City's share are budgeted in the Public Work's Bridge Maintenance line item.

The Public Works Department staff recommends adoption of the resolution authorizing the Mayor to execute a Municipal Agreement with the NC DOT for inspection of bridges on the Municipal Street System.

**RESOLUTION BOOK NO. 28 – PAGE 31**

**E. RESOLUTION NO. 03-170 - RESOLUTION OF INTENT TO CLOSE AN UNNAMED ALLEY OFF COLLIER AVENUE AND SETTING A PUBLIC HEARING ON NOVEMBER 11, 2003**

Summary: The consideration of a resolution of intent to close an unnamed alley off Collier Avenue and setting a public hearing on November 11, 2003.

N. C. Gen. Stat. sec. 160-299 grants cities the authority to permanently close streets and alleys without regard to whether they have actually been opened.

Pursuant to this statute, the adjoining property owners have requested the City of Asheville close an unnamed alley off Collier Avenue, the entry of which is located approximately 200 feet north of the intersection of Collier and Banks Streets.

-4-

Public Works Department staff has researched and determined that this alleyway is not a City maintained street and is not in use as a means of ingress or egress for any of the properties abutting the alley. There are eight lots that abut this alley identified by PIN Nos. 9648.06-38-4514; 9648.06-38-3540; 9648.06-38-3620; 9648.06-38-4526; 9648.06-38-4684; 9648.06-38-5757; 9648.06-38-3750; 9648.06-38-3895; 9648.06-38-4514.

City staff recommends that City Council adopt the resolution setting a public hearing for November 11, 2003, to close an unnamed alley off Collier Avenue.

**RESOLUTION BOOK NO. 28 – PAGE 32**

**F. RESOLUTION NO. 03-171 - RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE A NON-WARRANTY DEED TO BUNCOMBE COUNTY FOR PROPERTY ON GRIFFING CIRCLE**

Summary: The consideration of a resolution authorizing the Mayor to execute a non-warranty deed to Buncombe County for property located on Griffing Circle.

The land on Griffing Circle identified as PIN Nos. 9640.20-81-0970 and 1983 was tendered to the City of Asheville and Buncombe County as the taxing entities by non-warranty deed recorded in Deed Book 1717 at Page 2223. The County offered the property for upset bid and a final offer of \$36,800 was received. The City desires to convey its interest, if any, in the property to the County so that the property may be conveyed to the highest bidder. In return, the City will receive a pro rata share (approximately \$12,267) of the sales price as the City's taxable interest appears.

The entire parcel is zoned residential and has an area of 0.63 acres.

Approval of the resolution will authorize the Mayor to execute the quitclaim deed to Buncombe County.

Planning Department staff recommends adoption of the resolution authorizing the Mayor to execute a non-warranty deed to Buncombe County for property located on Griffing Circle.

**RESOLUTION BOOK NO. 28 – PAGE 33**

**G. RESOLUTION NO. 03-172 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ACCEPT A N.C. COMMUNITY DEVELOPMENT INITIATIVE ENERGY EFFICIENCY GRANT**

Summary: The consideration of a resolution authorizing the City of Asheville to accept an energy efficiency grant from N.C.

Community Development Initiative (NCCDI), and approval of the associated budget amendment, in the amount of \$30,000.

NCCDI has developed the Star Home Program to provide grants to not-for-profit agencies, including local municipalities, to assist with the cost of incorporating energy-efficient construction methods in new housing development. The City has recently been accepted for participation in the Star Home Program in respect of projects in which the City has a financial stake. The City's Community Development Division has submitted a specific application for funding for 18 homes at "Moser's Place" subdivision currently under construction on Maple Avenue, with assistance from the Housing Trust Fund and the Fee Rebate program.

-5-

The City will pass on grant funds estimated at \$1,375 per unit to developer Ron Moser, Inc. A budget amendment in the amount of \$30,000 is recommended to cover the estimated amount plus contingencies.

NCCDI contracts with Advanced Energy, Inc., to monitor projects and ensure adherence to "Energy Star" standards.

If this Star Home Program grant is successful, there will be opportunity to apply for additional grant funds for other projects.

Staff recommends City Council accept an energy efficiency grant from N.C. Community Development Initiative (NCCDI) and approve of the associated budget amendment, in the amount of \$30,000.

**RESOLUTION BOOK NO. 28 – PAGE 34**

**H. ORDINANCE NO. 3059 - BUDGET AMENDMENT TO ACCEPT A N.C. COMMUNITY DEVELOPMENT INITIATIVE ENERGY EFFICIENCY GRANT**

Summary: See Consent Agenda "G" above.

**ORDINANCE BOOK NO. 20 – PAGE 474**

**I. RESOLUTION NO. 03-173 - RESOLUTION AUTHORIZING THE CITY MANAGER TO AWARD BID NO. 574-04 TO 4 FRONT SYSTEMS INC. FOR THE INSTALLATION OF A NEW TELEPHONE SYSTEM AT SEVERAL REMOTE OFFICES OF THE CITY OF ASHEVILLE**

Summary: The consideration of a resolution authorizing the City Manager to award Bid No. 574-04 to 4 Front Systems, Inc. and execute any related contractual documents for the installation of a new telephone system at several remote offices of the City of Asheville.

The telephone systems at several remote offices of the City of Asheville are in need of replacement. Through a combination of technology called Voice over IP and the use of fiber optic cable from those locations to the City Hall building, a new telephone system can be installed that will provide additional capabilities. These locations include the Transit Administration Office, seven Fire stations, three Police substations and five Parks & Recreation offices. The new system has a three-year recovery of funding.

The City of Asheville sent out a request for proposal to acquire the new telephone system and received seven bid responses. These bid responses were reviewed and rated as to the best solution for the City based on the twelve evaluation criteria included in the bid request documentation. The results of the bid evaluation indicate that 4 Front is the lowest responsive bidder.

The total cost of the bid award is \$116,000. The source of this funding comes from technology grant funding of the Transit Department and from the General Fund.

City staff recommends City Council adopt the resolution authorizing the City Manager to award Bid No. 574-04 to 4 Front Systems, Inc. and execute any related contractual documents for the installation of a new telephone system at several remote offices of the City of Asheville.

**RESOLUTION BOOK NO. 28 – PAGE 35**

-6-

**J. ORDINANCE NO. 3060 - ORDINANCE REPEALING ORDINANCE REGARDING USE OF STREETS AND SIDEWALKS**

Summary: The consideration of an ordinance repealing City Code Sec. 16-4, Use of Streets, Sidewalks.

Recent references to Chapter 16 of the City Code have brought to our attention the existence of City Code Sec. 16-4. This ordinance requires written permission for the use of City sidewalks for lectures, sermons, and similar activities, and further provides that permission may be revoked if the "good morals and order of the city so demand."

Despite the fact that this ordinance has been part of the City's Code since at least 1922, and has survived several comprehensive revisions, its obsolescence is self-evident and it has not been enforced for a long time. Subsequently adopted ordinances and policies regarding the use of City streets and public places have superseded Sec. 16-4, if not repealed it.

As we continue to notice outdated City Code provisions, we will bring them to Council's attention.

Adoption of the ordinance repealing Sec. 16-4 is recommended.

**ORDINANCE BOOK NO. 20 – PAGE 476**

**K. RESOLUTION AUTHORIZING THE POSSESSION AND CONSUMPTION OF MALT BEVERAGES AND/OR UNFORTIFIED WINE AT THE 2003 HARVEST FESTIVAL PRODUCED BY THE GROVE ARCADE FOUNDATION ON OCTOBER 18, 2003**

This item was pulled from the Consent Agenda for individual discussion.

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.

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

**ITEMS PULLED FROM THE CONSENT AGENDA FOR INDIVIDUAL DISCUSSION**

**RESOLUTION NO. 03-174 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO AN AGREEMENT WITH THE N.C. DEPT. OF TRANSPORTATION FOR TEA 21 ENHANCEMENT GRANTS FOR NEW HAW CREEK ROAD/AVON ROAD SIDEWALKS, PACK SQUARE PEDESTRIAN IMPROVEMENTS AND WEST END/CLINGMAN PEDESTRIAN IMPROVEMENTS**

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

Summary: The consideration of a resolution authorizing the City Manager to sign three municipal agreements with the N. C. Dept. of Transportation (NCDOT) for TEA 21 Enhancement Grants for (1) New Haw Creek Road/Avon Road Sidewalks; (2) Pack Square Pedestrian Improvements; and (3) West End/Clingman Pedestrian Improvements.

-7-

In June 2002, the City of Asheville made application to NCDOT for TEA-21 Enhancement Grant for (1) New Haw Creek Road/Avon Road Sidewalks; (2) Pack Square Pedestrian Improvements; and (3) West End/Clingman Pedestrian Improvements. Each of these projects was awarded a grant from NCDOT in varying amounts. The City of Asheville partnered with various organizations to receive these grants. The grants can only be awarded to a local government. The following is a description of each of the projects:

- (1) New Haw Creek Road/Avon Road Sidewalk – City staff worked with the Haw Creek Community Association to develop a plan to add sidewalk to New Haw Creek Road from Arco Road to Beverly Road and on Avon Road from Beverly Road to Tunnel Road. The project number is E-4814. The total amount of the grant is \$172,132. The match for the project is being made but a Small Urban Fund Grant from the State in the amount of \$150,000, Fee-In –Lieu of sidewalk money from the City in the amount of \$40,000 and \$5,000 from the Haw Creek Community Associates.
- (2) Pack Square Pedestrian Improvements – These improvements include Pack Square Renaissance streetscape on College Street, Patton Avenue and US 25 (Biltmore Avenue) providing a better balance between pedestrians and vehicles. The amount of the grant is \$140,000. Pack Square Conservancy will provide the match for the project.

- (3) West End/Clingman Pedestrian Improvements – These improvements include enhancements on Clingman Avenue and the development of a parallel greenway through Clingman Forest. The amount of the grant is \$172,131. The match for the project will be made by Mountain Housing Opportunities.

Staff recommends that City Council authorize the City Manager to execute three municipal agreements with NCDOT for TEA 21 Enhancement Grants for (1) New Haw Creek Road/Avon Road Sidewalks; (2) Pack Square Pedestrian Improvements; and (3) West End/Clingman Pedestrian Improvements.

Councilman Ellis moved to approve Resolution No. 03-174. This motion was seconded by Councilman Peterson and carried unanimously.

**RESOLUTION BOOK NO. 28 – PAGE 36**

**RESOLUTION NO. 03-175 - RESOLUTION AUTHORIZING THE POSSESSION AND CONSUMPTION OF MALT BEVERAGES AND/OR UNFORTIFIED WINE AT THE 2003 HARVEST FESTIVAL PRODUCED BY THE GROVE ARCADE FOUNDATION ON OCTOBER 18, 2003**

Summary: The consideration of a resolution making provisions for the possession and consumption of malt beverages and/or unfortified wine at the 2003 Harvest Festival produced by the Grove Arcade Foundation on October 18, 2003.

The 2003 Harvest Festival produced by the Grove Arcade Foundation has requested through the Asheville Parks and Recreation Department that City Council permit them to serve and consume beer and/or unfortified wine at their event on Saturday, October 18, 2003. The 2003 Harvest Festival is a celebration of fall in the mountains produced to attract people to the Grove Arcade and downtown.

City staff recommends City Council approve the resolution making provisions for the possession and consumption of malt beverages and/or unfortified wine at the 2003 Harvest Festival produced by the Grove Arcade Foundation on October 18, 2003.

-8-

Councilman Dunn moved for the adoption of Resolution No. 03-175. This motion was seconded by Councilman Ellis and carried on a 6-1 vote, with Vice-Mayor Bellamy voting “no.”

**RESOLUTION BOOK NO. 28 – PAGE 37**

**III. PUBLIC HEARINGS:**

- A. PUBLIC HEARING TO CONSIDER CONDITIONAL USE ZONING FOR PROPERTY LOCATED AT 902 SAND HILL ROAD FROM RM-6 RESIDENTIAL MULTI-FAMILY LOW DENSITY DISTRICT TO COMMUNITY BUSINESS I/CONDITIONAL USE; AND ISSUANCE OF A CONDITIONAL USE PERMIT TO ALLOW FOR THE OPERATION OF AN ANTIQUE BUSINESS IN THE EXISTING DETACHED GARAGE**

**ORDINANCE NO. 3061 - ORDINANCE REZONING PROPERTY LOCATED AT 902 SAND HILL ROAD FROM RM-6 RESIDENTIAL MULTI-FAMILY LOW DENSITY DISTRICT TO COMMUNITY BUSINESS I/CONDITIONAL USE**

**ORDINANCE NO. 3062 - ORDINANCE GRANTING A CONDITIONAL USE PERMIT FOR PROPERTY LOCATED AT 902 SAND HILL ROAD TO ALLOW FOR THE OPERATION OF AN ANTIQUE BUSINESS IN THE EXISTING DETACHED GARAGE**

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

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

After hearing no questions about the procedure, Mayor Worley opened the public hearing at 5:28 p.m.

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

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

Mr. Joe Heard, Director of Development Services, submitted into the record City Exhibit 1 (Affidavit of Publication), City Exhibit 2 (Certification of Mailing of Notice to Property Owners); and City Exhibit 3 (Staff Report).

Mr. Heard said that this is the consideration of a request to rezone property located at 902 Sand Hill Road from RM-6 Residential Multi-Family Low Density District to Community Business I/ Conditional Use and a request to issue a conditional use permit to allow for the operation of an antique business in the existing detached garage.

-9-

On July 22, 2003, Ms. Janet Forbes submitted a request to conditionally rezone her small residential parcel from its current RM-6 designation to Community Business I District, in the southwest area of the City.

The applicant has requested a rezoning of .98 acres of RM-6 property, located off of Sand Hill Road (PIN No. 9627.09-05-3407 split from 9627.09-05-2310), to Community Business 1 District (City Exhibit 3 – Location Map). The site is a single family residence with a detached garage and the request is to allow for the operation of a small independently owned and operated antique business to be located in the home's detached garage. The conditional use component of this project will be a site Master Plan showing the existing structures with existing and proposed parking. Operation of the antique business will not alter the structure or size of the garage in any way and the residence is to remain occupied by the applicant. The proposed site plan calls for the existing vegetation to be preserved and maintained with additional plant material to be supplied as needed for the required landscape buffer.

The project site is located within the City's extra-territorial jurisdiction on the southwest corner of a busy five-way intersection between Sand Hill Road, Sand Hill School Road, W. Oakview Road and Grandview Road. The subject property is surrounded primarily by single family uses zoned RS-4 and RM-6 with the notable exceptions of a convenience store market and gasoline sales (zoned CB-1) and the Oak Forest Presbyterian Church (zoned RS-4) (City Exhibit 4 – Aerial Map). The project will provide four (4) parking spaces (3 existing and 1 proposed) and a 20' wide Type 'B' buffer as required by the Unified Development Ordinance (UDO) (City Exhibit 3 – Site Plan).

The proposed zoning (CB-1) is to provide areas for medium-density business and service uses serving several residential neighborhoods.

The existing zoning (RM-6) establishes a low density multi-family district to permit a limited range of low density multi-family housing types along with single-family detached residences. The strategic placement of this zoning district can also help provide a transitional area between single family and multi-family uses. The CB-1 zoning district is to provide areas for medium-density business and service uses serving several residential neighborhoods.

The Technical Review Committee (TRC) met on August 18, 2003, at which time they 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 September 3, 2003, meeting where the Commission unanimously (6-0) recommended approval of the project with the following conditions carried over from the TRC meeting:

1. Residence is to remain owner occupied.
2. Operation of business is to be limited to the garage only, any expansion of use will require re-application.
3. Operation of the business is restricted to the sale of antiques, any change of use will require re-application.
4. Parking is limited to the four (4) spaces shown (3 existing plus 1 handicap accessible added per Buncombe County Building Inspections request).
5. Existing buffer vegetation is to be supplemented as required by the UDO.
6. Signage will have to conform to CB-1 standards.
7. That a revised plan be submitted showing the addition of the following information:
  - Existing right-of-way for Sand Hill Road and W. Oakview Road.

- Location, species, and size of existing street trees.
- Proposed handicap accessible parking space.

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 proposed project has been reviewed by City staff and appears to meet all public health and safety related requirements. The project must meet the technical standards set forth in the UDO, the Standards and Specifications Manual, the North Carolina Building Code and other applicable laws and standards that protect the public health and safety.

- 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 project will utilize existing structures on the site and will not require any grading or other land disturbing activities.

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

The project site will continue to support the existing single family home with an extremely limited change in appearance and activity. The proposed business use, with limited business hours, has been determined to generate very low traffic counts which will be accommodated by off-street parking where additional plant material may be installed to help buffer the higher use area of the property from adjacent single family homes. In addition, the subject property has, and will continue, to functionally buffer other single family homes from the existing higher use retail market/gasoline sales and Church activities.

- 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 primarily low density residential. The subject property will continue to function as the applicant's primary residence, which is also classified as low density residential. In addition, the subject property has, and will continue, to functionally buffer other single family homes from the existing higher use retail market/gasoline sales and Church activities.

- 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.

Historically, the Asheville area has played a predominant role as the major trade center for Western North Carolina. It is a City goal described in the Asheville 2010 Plan to promote, "A healthy, vibrant, expanding economy capable of sustaining a growing

population and providing a diversity of high-paying jobs." This request does encourage diversity in the job and retail markets while maintaining and preserving a high quality of life for the individual. In addition, this request supports the Asheville City Council adopted Smart Growth Policies through the efficient use of our limited land that allows for the creation of a small scale mixed-use, infill development where individuals are able to live and work in the same area.

- 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 within reasonable distance to transportation facilities and other utilities appear adequate. The project area is located near major road facilities, interstate connections and other service centers. 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.

The proposed business use, with limited business hours and space, has been determined to generate very low traffic counts. It is anticipated that all business activity will be easily accommodated by the existing and proposed off-street parking and will not cause undue traffic congestion or hazards.

The Planning and Zoning Commission and City staff recommend approval of the zoning change from RM-6 to CB-1 and approval of the associated conditional use permit, as proposed by the applicant, subject to all TRC conditions being met.

Vice-Mayor Bellamy felt that since this is a commercial development in a residential neighborhood we need to be consistent with safeguards and limit the hours of operation to 9:00 p.m. Mr. Heard said that there is no limitation on business hours in the conditions because the neighbors have not expressed any concern about that.

Upon inquiry of Councilman Dunn, Mr. Heard explained that the City does try to be flexible with the requirements for landscaping.

Mr. Fred English felt that businesses in residential areas should not be allowed.

There being no request from the applicant for rebuttal, Mayor Worley closed the public hearing at 5:35 p.m.

Regarding limiting the hours of operation, Councilman Mumpower said that his vote on that type of condition would be based on the actual use of the property, and he didn't see how the hours of operation of an antique business would put anyone in jeopardy

Councilman Ellis felt that limiting the hours of operation would place an unnecessary restriction on this business due to it's location.

Councilman Mumpower moved to adopt Ordinance No. 3061 to rezone property located at 902 Sand Hill Road from RM-6 Residential Multi-Family Low Density District to Community Business I/ Conditional Use. This motion was seconded by Councilman Ellis and carried unanimously.

#### **ORDINANCE BOOK NO. 20 – PAGE 477**

-12-

Vice-Mayor Bellamy moved to adopt Ordinance No. 3062, to issue a conditional use permit to allow for the operation of an antique business in the existing detached garage, subject to the following conditions: (1) Residence is to remain owner occupied; (2) Operation of business is to be limited to the garage only, any expansion of use will require re-application; (3) Operation of the business is restricted to the sale of antiques, any change of use will require re-application; (4) Parking is limited to the four (4) spaces shown (3 existing plus 1 handicap accessible added per Buncombe County Building Inspections request); (5) Existing buffer vegetation is to be supplemented as required by the UDO; (6) Signage will have to conform to CB-I standards; (7) That a revised plan be submitted showing the addition of the following information: (a) Existing right-of-way for Sand Hill Road and W. Oakview Road; (b) Location, species, and size of existing street trees; and (c) Proposed handicap accessible parking space; and (8) Hours of operation each day will be from 7:00 a.m. to 9:00 p.m. This was seconded by Councilwoman Jones.

Councilman Mumpower moved to amend the original motion to delete the hours of operation as one of the conditions for issuance of the conditional use permit. This motion was seconded by Councilman Ellis and carried on a 4-3 vote, with Mayor Worley, Councilman Dunn, Councilman Ellis and Councilman Mumpower voting "yes" and Vice-Mayor Bellamy, Councilwoman Jones and Councilman Peterson voting "no."

The amended motion to approve the conditional use permit to allow for the operation of an antique business in the existing detached garage, subject to the following conditions: (1) Residence is to remain owner occupied; (2) Operation of business is to be limited to the garage only, any expansion of use will require re-application; (3) Operation of the business is restricted to the sale of antiques, any change of use will require re-application; (4) Parking is limited to the four (4) spaces shown (3 existing plus 1 handicap accessible added per Buncombe County Building Inspections request); (5) Existing buffer vegetation is to be supplemented as required by the UDO; (6) Signage will have to conform to CB-I standards; and (7) That a revised plan be submitted showing the addition of the following information: (a) Existing right-of-way for Sand Hill Road and W. Oakview Road; (b) Location, species, and size of existing street trees; and (c) Proposed handicap accessible parking space, carried unanimously.

#### **ORDINANCE BOOK NO. 20 – PAGE 479**

### **B. PUBLIC HEARING RELATIVE TO AMENDING THE UNIFIED DEVELOPMENT ORDINANCE TO PROVIDE FOR NEIGHBORHOOD/DEVELOPER MEETINGS AS AN OPTIONAL, ALTERNATIVE STEP IN THE REVIEW PROCESS FOR REZONINGS, CERTAIN CONDITIONAL USE PERMITS, CONDITIONAL USE REZONINGS, AND LEVEL III DEVELOPMENTS**

Mayor Worley opened the public hearing at 5:46 p.m.

Planning & Development Director Scott Shuford said that this is the consideration of an amendment to the Unified Development Ordinance (UDO) to provide for neighborhood/developer meetings as an optional, alternative step in the review process for rezonings, certain conditional use permits, conditional use rezonings, and Level III developments. This public hearing was advertised on October 3 and 10, 2003.

This code amendment would allow a specific type of neighborhood/ developer meeting to substitute for the Planning and Zoning Commission review for certain types of development proposals. Specifically, the amendment provides for the substitution of neighborhood/developer meetings for the required public hearing before the Planning and Zoning Commission (at the option of the applicant) for rezonings, certain conditional use permits, conditional use rezonings, and Level III developments. Planned Unit Developments and those conditional use permits that

-13-

do not require Planning and Zoning Commission review would not be included in this new procedure.

Mr. Shuford said that based on City Council's considerable interest in improving developer and neighborhood communication early in the development review and approval process, City staff undertook a focus group process to identify issues and potential solutions in enhancing the existing "neighborhood meeting" approach. Three separate focus groups were convened. One group represented developer interests; one group represented neighborhood interests; and the third group consisted of the Planning and Zoning Commission. After each group had met and a list of critical issues was determined, selected members from each group then met together on two occasions to identify areas of agreement and to prepare recommendations for action. An independent facilitator was used to direct meeting discussion and provide minutes.

He reported that the focus group process has resulted in a recommended procedure for improved Neighborhood/Developer Meetings. The procedure includes an incentive for developers to choose the Neighborhood/Developer Meeting process over the standard review process. It includes an opportunity for expanded notification of property owners in the vicinity of the proposed development. Finally, it includes an organized approach for the conduct of Neighborhood/Developer Meetings that should result in the meetings to be conducted in an effective fashion. The goal of this procedure change is an early, friendly, helpful official partnership between the neighbors, developers and the City.

In summary, the proposal would apply to all rezoning, conditional use rezoning, and conditional use permit requests that involve Planning and Zoning Commission review. The proposed procedure offers developers the option of selecting an enhanced Neighborhood/Developer Meeting process in exchange for skipping the Planning and Zoning Commission step in our current requirements. This results in no additional time being taken in the development review process but creates significantly improved communication between developers and neighborhoods. City Council would continue to hold a public hearing and take final action on all development proposals, just as is done under the current requirements. Even when developers opt to follow the existing procedures, staff will continue to recommend developer contact with affected neighborhoods.

This recommendation would not have been possible without the dedication of time, creative ideas, and enthusiasm on the part of a large number of volunteers. I would like to thank the following persons for their assistance in creating this recommendation:

#### FOCUS GROUP PARTICIPANTS

##### Neighborhood Participants

\*Barber Melton  
\*Headlee Howard  
\*Greg Gregory  
\*Mike Lewis  
John Quigley  
Norma Baynes  
Stephen Hudzik

##### Developer Participants

\*George Morosani  
\*Tom Gallaher/David Hill  
\*John Spake  
Chris Eller  
Harry Weiss  
Jerry Grant  
Ron Butler  
Ron Moser

##### Planning & Zoning Commission

\*Billie Buie  
\*Tom Cathey  
\*Selina Sullivan  
Jan Davis  
Hedy Fischer  
Nate Cannady  
Rod Hudgins

-14-

\* Indicates that the participant served on the final joint focus group.

Additionally, Paul Godfrey provided invaluable assistance by serving as the facilitator for these focus group meetings.

The following headings provide a summary of the work of these focus groups, including the clarification of key issues, identification of expected results (i.e., what the process should look like), and the specific meeting procedures themselves. These headings illustrate the organized way the groups conducted their business and the level of detail that went into their discussions.

### Clarifying Issues and Interests

The following items were listed as major issues relating to Neighborhood/Developer Meetings:

- o Misinformation
- o Full plan details made available to all parties early in the process
- o Lack of trust
- o Early and accurate complete information sharing
- o Clearly definition of neighborhood stakeholders
- o Marketing of development process – common understanding of issues and procedures
- o Lack of an on-going dialogue as the development process continues (even after development approval has been given and construction is underway)
- o Neighbors don't understand technical aspects of the development process
- o Need for a better Neighborhood/Developer Meeting process – ground rules; expectations; facilitation
- o Need for citizens to be better educated about the development process
- o Lack of understanding about the big picture – how does the project help the City meet its broader goals?
- o Need for staff participation in Neighborhood/Developer Meetings
- o No existing way to alert and document all impacted stakeholders
- o Lack of willingness to compromise on each “side”

The following were identified as the key interests of the stakeholder groups:

- o Neighbor concerns: Safety; property values; traffic; change in neighborhood character
- o Developer concerns: Profit; property rights; desire to impact community in a positive way; need for clearly defined neighborhood meeting process that is reasonable in terms of time and money; staff involvement in neighborhood meetings for informational purposes and to indicate that the process is officially “condoned” by the City
- o Staff concerns: Time involved in meetings; need to be perceived as neutral in the process.

### Criteria for Guiding Process Decisions

Participants were asked to develop a set of criteria for use in evaluating any potential process ideas. The following criteria were developed:

-15-

- o The process must have teeth.
- o The process should be viewed as legitimate in eyes of all participants.
- o The process should not be burdensome on any one party or on all parties.
- o The process should clarify upfront what is and what is not negotiable.
- o The process should be reasonable in terms of time and costs.

### Improved Neighborhood/Developer Meeting Procedures

Participants identified the following procedures for improved Neighborhood/ Developer Meetings:

- o Developer registers project application a minimum of 45 days before the City Council meeting at which the public hearing is scheduled to occur.
  - Plans are placed on record and made available to the public at a central location (City Planning and Development Department).
  - Plans will provide as much information as available at time of posting.

Plans will be made available on City website if possible.

- Staff contact person is clearly identified.
- Notification procedures:
  - Property owners within 400 feet of the property proposed for development would receive notice of the Neighborhood/Developer Meeting from the City of Asheville. This is a minimum notification area and developers are advised to determine if additional property owners should be notified (e.g., if the project is located on a dead-end road 600 feet long, perhaps it would be good practice for the developer to notify all property owners fronting the road); developers would be responsible for any additional mailing costs associated with a larger notice area.
  - Any affected neighborhood association registered with the City and located within 400 feet of the property proposed for development would also receive notice of the Neighborhood/Developer Meeting. It is expected that the designated person(s) receiving this notice will identify key participants outside the general notice area and arrange for them to attend the Neighborhood/Developer Meeting. However, this should not be construed as an open invitation for all neighborhood association members outside the notice area to attend. The intent is to have representation from affected neighborhood associations while ensuring that most neighborhood participants are from the notice area.
  - Timing: The City shall mail Neighborhood/Developer Meeting notices 45 days before the City Council meeting at which the public hearing is scheduled to occur. The initial Neighborhood/Developer Meeting shall occur no less than 10 days prior to the City Council meeting at which the public hearing is scheduled to occur.
  - The City of Asheville will provide notice of the public hearing to adjacent and nearby property owners as provided for under state law or City Code requirements, whichever is more restrictive.
  - Meeting location: Neutral site of sufficient size for meeting.
- Meeting Facilitation - The meeting must be managed by someone who knows the rules (mediator/facilitator) and is able to effectively run a meeting. The developer will pay for the cost of the mediator/facilitator. City staff will attend the meeting as technical advisor(s) only and will not facilitate the meeting.
- Meeting Ground Rules - The following set of ground rules were adopted to promote effective communication during Neighborhood/Developer Meetings. These ground rules would be reviewed by the meeting facilitator at the outset of each meeting and “enforced” during the meeting by the facilitator.
  - Listen to one another (really listen before responding)

-16-

- Ask for feedback from one another
- Accept the need for compromise by each of us
- No stereotyping (let's keep a level of objectivity in our discussions)
- Be open minded
- Let's clearly define our statements to insure that all parties clearly understand their meaning
- Conduct of Meeting – Meetings will have a structured agenda to include: Ground rules for the meeting; Areas of allowable discussion clarified; Clarification of any zoning rule(s) that applies to the situation; Plan presentation (including how plan addresses the big picture); Identification of areas of agreement and disagreement; Negotiation of issues of concern; and Identification of next steps, if any.
  - City staff must attend the meeting to provide technical advice and information and to indicate official “condoning” of the process.
  - Meeting is intended to result in a signed document of supported and non-supported issues that will be generated by the facilitator (who will also identify the necessary signees).

The Planning and Zoning Commission unanimously (6-0) recommended approval of this code amendment on September 3, 2003. Staff also recommends approval.

Upon inquiry of Vice-Mayor Bellamy, Mr. Shuford reviewed how the process would work.

Discussion surrounded the timing of the neighborhood/developer meeting in that it did not give enough time for neighborhood review if changes to be made were agreed upon and/or not enough time for the initiation of the protest petition process. Mr. Shuford suggested that if Council would like to establish a longer period of time, he recommended this matter be postponed until he has an opportunity to review changes with the entire focus group.

In response to Vice-Mayor Bellamy, Mr. Shuford said that if this amendment is adopted, City staff will put the process into a form that will be followed with notice of meetings in CityWorks.

Mr. Shuford responded to various questions and comments from Council, some being, but are not limited to: will the protest petition process be affected; what will be the procedure for multi-sites with multiple property owners; who selects the facilitator and

what if there are objections by the neighborhood association; can the City Council remand the matter to the Planning & Zoning Commission; who selects the time and place of the meetings; who will be invited to the meetings and will the media and general public be invited; is there a way we can notify renters in addition to property owners within the notice area; will the property be posted for the meeting; and how will City Council know a good faith presentation has been made.

When City Attorney Oast said that posting the site for the neighborhood/developer meeting is not a state law requirement, Councilman Peterson felt it would be appropriate to have that provision included in the ordinance.

Councilman Mumpower felt that this amendment seems to be fair and even-handed and expressed appreciation to the focus group for their efforts. He felt this was a good effort to try something different, noting that the ordinance can be amended if concerns arise.

Mr. James Judd, resident in Chunns Cove, explained his reasons why he felt this amendment would be disastrous. He felt the ordinance was vague and was concerned that the Planning & Zoning Commission is cut out of the process. He was concerned about the community notification, the facilitator and timing.

-17-

Ms. Barber Melton, President of the Coalition of Asheville Neighborhoods, felt this was a good first step, but had a problem with the timing of the neighborhood/developer meeting, especially in terms of initiating a protest petition. She explained how the Raleigh, N.C., ordinance is mandatory and how their process works.

Ms. Norma Baynes, Shiloh Neighborhood Association Member, agreed with Ms. Melton and did not support the ordinance.

Mr. Mike Lewis, Grace Neighborhood Association member, felt this ordinance was a good step too, but was concerned about the timing as well.

Mr. Alan Ditmore, Leicester resident, felt that this change will drive up housing costs.

At 6:40 p.m., Mayor Worley closed the public hearings.

Councilman Ellis moved to continue this matter to the November 25, 2003, City Council meeting in order to give Mr. Shuford time to meet with the focus group regarding the timing issue. This motion was seconded by Councilman Mumpower and carried unanimously.

**C. PUBLIC HEARING TO CONSIDER AN AMENDMENT TO THE UNIFIED DEVELOPMENT ORDINANCE TO REDUCE OR ELIMINATE SETBACK REQUIREMENTS IN SITUATIONS WHERE HANDICAPPED ACCESSIBILITY AND LIFE SAFETY FEATURES ARE REQUIRED ON RESIDENTIAL LOTS**

**ORDINANCE NO. 3063 - ORDINANCE TO AMEND THE UNIFIED DEVELOPMENT ORDINANCE TO REDUCE OR ELIMINATE SETBACK REQUIREMENTS IN SITUATIONS WHERE HANDICAPPED ACCESSIBILITY AND LIFE SAFETY FEATURES ARE REQUIRED ON RESIDENTIAL LOTS**

Mayor Worley opened the public hearing at 6:48 p.m.

Mr. Joe Heard, Director of Development Services, said that this is the consideration of an amendment to the Unified Development Ordinance to provide greater flexibility in applying setback requirements in situations where handicapped accessibility and life safety features are required on residential lots. This public hearing was advertised on October 3 and 10, 2003.

Presently, the City of Asheville Unified Development Ordinance allows handicapped accessible ramps and fire escapes to encroach as close as three feet (3') to side and rear property lines. This proposed ordinance amendment is intended to offer even greater flexibility in situations where these safety and accessibility features are required on residential lots by the North Carolina State Building Code. Presently, these structures in such situations have to be constructed in an awkward configuration or obtain a variance from the Board of Adjustment. The City of Asheville Building Safety and Fire Departments have been consulted and support this proposed amendment. If approved, this amendment will allow the Planning Director to deal with these issues in a fair and timely manner.

On September 3, 2003, the Planning & Zoning Commission recommended approval of the proposed code amendment by a vote of 6-0, including an amendment to limit the application of this change to residential properties. City staff recommends approval of the proposed code amendment as amended.

Mayor Worley closed the public hearing at 6:51 p.m.

-18-

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

Councilman Dunn moved for the adoption of Ordinance No. 3063. This motion was seconded by Councilman Mumpower and carried unanimously.

**ORDINANCE BOOK NO. 20 – PAGE**

**IV. UNFINISHED BUSINESS:**

**A. ORDINANCE NO. 3055 – SECOND READING OF THE REVISED MINIMUM HOUSING CODE**

Mayor Worley said that the first reading of this ordinance was held on September 23, 2003.

Councilman Dunn moved for the second and final reading of Ordinance No. 3055. This motion was seconded by Councilman Mumpower and carried on a 4-3 vote, with Mayor Worley, Councilman Dunn, Councilman Ellis and Councilman Mumpower voting “yes” and Vice-Mayor Bellamy, Councilwoman Jones and Councilman Peterson voting “no.”

**ORDINANCE BOOK NO. 20 – PAGE**

**B. ORDINANCE NO. 3064 - ORDINANCE AMENDING THE UNIFIED DEVELOPMENT ORDINANCE TO PROVIDE DEVELOPMENT STANDARD BONUSES IN RESIDENTIAL DISTRICTS**

Mayor Worley said that this public hearing was held on August 19, 2003. City Council then continued this matter due to concerns that the developments approved using the development standards bonus conditional use permit process would not be properly maintained if the Minimum Housing Code was modified.

Planning & Development Director Scott Shuford said that this is the consideration of an amendment to the Unified Development Ordinance to provide for more flexible application of development standards, including density requirements, in all residential zoning districts.

This code amendment provides for more flexible application of development requirements in all residential zoning districts. Affected districts include: RS-2, RS-4, RS-8, RM-6, RM-8 and RM-16. Under certain circumstances, a conditional use permit process can be used to modify development standards, including increasing density above the maximum permitted in each of these zoning districts, if the applicant successfully demonstrates that the project would exhibit exceptional site and/or structure design that is appropriate to the architectural and/or environmental context of the surrounding neighborhood, and would also achieve one or more of the following goals:

- Promote the City of Asheville's affordable housing programs by providing housing that is affordable for purchase by people with household income below the area median or for rental by people with household income less than 80% of the area median, and particularly housing that meets the needs of people who have special needs or household income less than 60% of median income.
- Implement an officially adopted development plan for the area.
- Exhibit exceptional site design that preserves critical environmental features on the site.

-19-

- Assist the City of Asheville in meeting critical infrastructure needs, including but not limited to the preservation of open space, the creation of regional stormwater retention facilities, and achieving greater interconnectivity of the street network.
- Effectively incorporate public transit as a primary mode of transportation to and from the development.

On June 19, 2003, the Planning and Zoning Commission unanimously recommended approval of the proposed code amendment by a vote of 4-0. City staff recommends approval of the proposed code amendment as well.

At the public hearing on August 19, 2003, two amendments were suggested to the proposed ordinance by deleting the

word "city" when referring to goals and the ordinance before Council reflects those changes.

Upon inquiry of Councilman Mumpower, Mr. Shuford named the organizations that have received copies of the proposed ordinance and their comments.

Councilman Peterson expressed concern that the proposed amendment would not provide for the use of protest petitions by residents opposed to developments.

Councilwoman Jones said that her concern is that the developments approved using the development standards bonus conditional use permit process would not be properly maintained in the long run due to the recently adopted changes to the Minimum Housing Code.

Vice-Mayor Bellamy felt this should be an item that is brought back for review by Council to see how it is working.

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

Councilman Ellis moved for the adoption of Ordinance No. 3064. This motion was seconded by Vice-Mayor Bellamy and carried on a 6-1 vote with Councilman Peterson voting "no."

## **ORDINANCE BOOK NO. 20 – PAGE**

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

#### **A. ASHEVILLE CITY PLAN 2025**

City Attorney Oast said that on August 26, 2003, following the public hearing, Council voted to postpone consideration of adoption of the 2025 Plan to January of 2004. Recently, Council has indicated an interest in acting on the Plan before the end of the year.

Council's rules and Roberts' Rules of Order provide that reconsideration of an action (vote) previously taken can only occur at the same meeting where the previous action was taken. While the motion postponing consideration of the 2025 Plan could be considered more procedural than substantive, and not necessarily subject to processes governing substantive issues, Roberts suggests that a motion to postpone can have substantive effects. Moreover, the rules do not differentiate between procedural and substantive motions for purposes of reconsideration. Accordingly, he recommended the following procedure for changing the date for Council's consideration of the 2025 Plan.

-20-

1. Motion to suspend the rules to permit consideration of a motion to reconsider a previous action (must pass by 2/3 vote).
2. Motion to reconsider August 26 action postponing consideration of 2025 Plan (must be made by someone who voted for the motion to postpone; must pass by 2/3 vote). This motion may be combined with the motion to suspend the rules.
3. Motion to amend motion to postpone consideration of 2025 Plan so that date for consideration is the new date (to be determined) instead of January 2004 (majority vote).
4. Vote on amended motion (majority vote).

While Council may receive some comments about this action being unusual, it may be noted in response that the public hearing has already occurred and there was not much comment. Moreover, the public will have been notified, through the published agenda, of this action, and will be notified through our usual processes, of the new date.

If Council wishes to reschedule its consideration of the 2025 Plan, follow the procedure set out above.

Councilman Dunn explained that it was his original request that the matter be postponed, which was approved unanimously by Council. Since that time he has had an opportunity to discuss his concerns with the Planning & Development Director and feels that it would be appropriate to consider adoption sooner than January, 2004. Therefore, Councilman Dunn moved to suspend the rules to permit reconsideration of previous action and to reconsider the August 26, 2003, action postponing consideration of the adoption of the Asheville City Plan 2025 until the first of January 2004. This motion was seconded by Councilman Ellis and carried unanimously.

Councilman Dunn moved to amend the motion to postpone consideration of the adoption of the Asheville City Plan 2025 until October 28, 2003. This motion was seconded by Councilman Mumpower and carried unanimously.

The original motion, as amended, carried unanimously.

**VI. OTHER BUSINESS:**

**Claims**

The following claims were received by the City of Asheville during the period of September 19-October 2, 2003: Katie Lewis (Sanitation), Gordon Pirie (Sanitation) and Harriette G. Winner (Water).

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

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

Mr. Fred English asked companies to buy minutes for a satellite phone so that our troops overseas can call home. He also questioned how much money our lobbyist has been able to secure for Asheville.

Mr. Dennis Justice, Fletcher resident, urged Council to update the Civic Center's scoreboards. He spoke about the renovations that could benefit from the project development bonds on the November ballot.

-21-

Ms. Beth Maczka apologized to Councilman Dunn for some incorrect information she received regarding his rental property and suggested all City properties be maintained at 65 degrees over the winter months.

Mr. Mike Fryar explained to Council, using maps, why he felt the recent annexation of his property on Smoky Park Highway contained an illegal description. City Attorney Oast responded that the written description is accurate and there is no question of what is being annexed. He felt that if this were to be legally challenged in court, the City would be successful.

**CLOSED SESSION**

At 7:42 p.m., Councilwoman Jones moved to go into closed session in order to consult with an attorney employed by the City about matters with respect to which the attorney-client privilege between the City and its attorney must be preserved, including lawsuits involving the following parties: City of Asheville for the Regional Water Authority of Asheville Buncombe and Henderson; and J. C. Clark - G.S. 143-318.11(a)(3). This motion was seconded by Councilman Dunn and carried unanimously.

At 7:58 p.m., Councilman Dunn moved to come out of closed session. This motion was seconded by Councilman Ellis and carried unanimously.

**VIII. ADJOURNMENT:**

Mayor Worley adjourned the meeting at 7:58 p.m.

---

CITY CLERK

---

MAYOR