

Tuesday – November 25, 2003 - 3:00 p.m.  
Room A109 – Public Works Facility  
161 S. Charlotte Street, Asheville, N.C.

Special Joint Meeting of Asheville City Council and Buncombe County Commissioners

Asheville City Council:

Mayor Charles R. Worley, Presiding; Vice-Mayor Terry M. Bellamy; Councilman Joseph C. Dunn; Councilman James E. Ellis; 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 (Councilwoman Diana Hollis Jones was absent)

Buncombe County Commissioners:

Present: Commissioner Chair Nathan Ramsey; Vice-Chairman David Young; Commissioner David Gantt; Commissioner Patsy Keever; Commissioner Bill Stanley; County Attorney Joe Connolly; County Manager Wanda Greene; and Clerk to the Board Kathy Hughes

**CITY OF ASHEVILLE RESOLUTION NO. 03-189 (BUNCOMBE COUNTY RESOLUTION NO. 03-1113) – RESOLUTION ENDORSING CONTINUED DEVELOPMENT OF THE JOINT PLANNING AREA AND REGULATIONS**

The Asheville City Council and the Buncombe County Board of Commissioners each discussed all the important cooperative efforts they have achieved in the past, for example, the Joint Emergency Center, the City-County Housing Task Force, the exchange of properties for the Buncombe County Detention Center expansion, and the Public Access Channel.

Buncombe County Zoning Administrator Jim Coman explained the Joint Planning Area (JPA) is one mile around the City limits, includes the previous City's extraterritorial jurisdiction (ETJ), and the JPA would expand with annexation. He did note that farming is exempt from regulation.

Mr. Coman said that the Zoning Ordinance of the JPA of Buncombe County is based on the Limestone Township zoning ordinance which was adopted in January of 1982. They have added some provisions from the Unified Development Ordinance and noted that changes to the County's subdivision ordinance would be required.

He said that the cooperative agreement between the City and County will require adoption and amendments or rezonings by action of both governments, will require approval by both Planning Boards, and will be administered by the County with City input on largest projects.

He showed a map of the initial area of the JPA. He explained that the City's ETJ is replaced by the JPA. He said that there will be 8 zoning districts and 2 overlay districts. Other requirements will include landscaping and buffering; conditional use standards; stormwater management; on-premise signs; traffic impact analysis; and mixed use development.

After Mr. Coman explained the notice process for the joint City/County public hearing on adoption of the Zoning Ordinance on the JPA and the map, Mayor Worley felt it was only fair that the City and County split the costs for the first-class notices.

He explained that the next step in this process is for the City and County to adopt an Interlocal Agreement. After discussion by Council and the Commissioners, it was the consensus of both bodies that the City Council would consider adoption on January 27, 2004, and the County Commissioners would consider adoption on February 3, 2004.

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Commissioner Chair Ramsey hoped that the remaining issues on the Zoning Ordinance for the JPA could be resolved by the first of the year.

After a brief discussion on when the proposed ordinance should be submitted to the City and Council planning commissions, it was the consensus of both bodies that submission be done not later than March 31, 2004.

Commissioner Young moved to approve County Resolution No. 03-1113. This motion was seconded by Commissioner Keever and carried unanimously.

Vice-Mayor Bellamy moved to approve City Resolution No. 03-189. This motion was seconded by Councilman Dunn and

carried unanimously.

Councilman Dunn suggested the City and County work together to find a way to hold their meetings on different days or different times. In addition, he hoped that the City and County will work together regarding economic development.

Both bodies expressed their willingness to work together for the betterment of our community.

At 3:45 p.m. Commissioner Stanley moved to adjourn the Buncombe County meeting. This motion was seconded by Commissioner Young and carried unanimously.

At 3:45 p.m. Mayor Worley announced the City Council meeting was adjourned.

## **RESOLUTION BOOK NO. 28 – 54**

Tuesday – November 25, 2003 - 5:00 p.m.

### Regular Meeting

Present: Mayor Charles R. Worley, Presiding; Vice-Mayor Terry M. Bellamy; Councilman Joseph C. Dunn; Councilman James E. Ellis; 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: Councilwoman Diana Hollis Jones

### **PLEDGE OF ALLEGIANCE**

U.S. Navy Veteran Larry Owen led City Council in the Pledge of Allegiance.

### **INVOCATION**

Councilman Ellis gave the invocation.

### **I. PROCLAMATIONS:**

### **II. CONSENT:**

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

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- B. RESOLUTION NO. 03-190 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO AN AGREEMENT WITH THE N.C. DEPT. OF CRIME CONTROL & PUBLIC SAFETY FOR A GRANT TO THE POLICE DEPARTMENT**

Summary: The consideration of a resolution and budget amendment, in the amount of \$9,480, to receive additional grant money from the North Carolina Governor's Highway Safety Program for crash investigation equipment and software and travel/training money for the Asheville Police Department's Regional County Coordinator.

In August of 2003, City Council accepted an \$8,000 grant from the Governor's Highway Safety Program (GHSP) to fund crash investigation equipment and software and travel/training needs for the City's Regional Coordinator. GHSP recently informed the City that it will receive an additional \$9,480 in grant money. The total amount available to the City will now be \$17,480. There is no match requirement for these funds.

The crash investigation equipment and software will enhance the capabilities of the Asheville Police Department to investigate vehicular accidents and provide greater safety to the officers at the scene of an accident. The travel/training funds will allow the Regional Coordinator to participate in highway safety meetings throughout the southeast offered by the Federal government as well as those in North Carolina offered by the State government to fulfill their duties as the Regional Coordinator.

City staff recommends the adoption of a resolution and budget amendment, in the amount of \$9,480, to accept additional

grant funding from the N.C. Governor's Highway Safety Program for crash investigation equipment and software and travel/training funds for the Regional Coordinator.

**RESOLUTION BOOK NO. 28 – PAGE 55**

**C. ORDINANCE NO. 3068 - BUDGET AMENDMENT FOR ADDITIONAL GRANT MONIES FROM THE N.C. DEPT. OF CRIME CONTROL & PUBLIC SAFETY**

Summary: See Consent Agenda Item "B" above.

**ORDINANCE BOOK NO. 21 – PAGE 5**

**D. RESOLUTION NO. 03-191 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A CONTRACT WITH THE LIGHTING COMPANY TO FURNISH AND INSTALL THE LIGHTING SYSTEM FOR MEMORIAL STADIUM**

Summary: The consideration of a resolution authorizing the City Manager to enter into a contract with The Lighting Company for the installation of field lighting at Memorial Stadium.

The City of Asheville Parks and Recreation Department is continuing to upgrade parks throughout the City of Asheville. One of the parks in need of renovation is the Memorial Stadium Complex, which is situated above McCormick Field. This park is the home of the Asheville Youth Sports Program, the Asheville Splash (women's semi-professional soccer team), the Asheville Grizzlies (men's semi-professional football team), the Asheville Assault (women's semi-professional football team), the Asheville-Buncombe Youth Soccer Association and many other user groups. This particular segment of the renovation has become a necessity within the last year, due to safety issues surrounding the existing system. Existing poles are too deteriorated for repair companies to work on them, light fixtures do not illuminate enough of the playing field, and

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"banks" of lights are going out in the middle of scheduled activity. In order to complete this portion of the project, staff prepared bid specifications for the installation of a turn-key field lighting system. The following is a list of the six qualified bidders that responded:

The Lighting Company	\$107,092
M.B. Haynes Electric Company	\$124,900
Progress Energy	\$129,746
Newco Inc.	\$130,000
Greenlight Electric Company	\$134,111
Wise Electric Control Inc.	\$169,726

The Lighting Company was the lowest responsible bidder, at a cost of \$107,092. The bid process and The Lighting Company have complied with the Minority Business Plan. This project will be financed, along with other Fiscal Year 2004 equipment purchases, through an installment purchase contract over a period of five years. The Finance Department anticipates soliciting proposals for financing in January of 2004. Funding for this year's installment payments for the lighting project is included in the Parks and Recreation Fiscal Year Capital Improvement Plan.

The Parks and Recreation Department recommends that authorization be given to the City Manager to enter into a contract with The Lighting Company to furnish and install the lighting system for Memorial Stadium.

**RESOLUTION BOOK NO. 28 – PAGE 56**

**E. RESOLUTION NO. 03-192 - RESOLUTION APPOINTING MEMBERS TO THE ASHEVILLE FILM COMMISSION**

Summary: The terms of Peter Loewer, Kathi Peterson; Ray Sanow, Bill Norwood, Robbie Williams and Michael Rangel, as members on the Asheville Film Commission, expired on November 1, 2003.

At City Council's worksession on November 18, 2003, City Council instructed the City Clerk to prepare the proper paperwork to reappoint Mr. Sanow, Ms. Williams and Mr. Rangel to each serve a three year term respectively, terms to expire November 1, 2006, or until their successors have been appointed.

In addition, at City Council's worksession on November 18, 2003, City Council instructed the City Clerk to prepare the proper paperwork to appoint Ms. Alison Watson, Ms. Kathleen Kasben and Ms. Heidi Daugherty to each serve a three year term respectively, terms to expire November 1, 2006, or until their successors have been appointed.

**RESOLUTION BOOK NO. 28 – PAGE 57**

**F. RESOLUTION NO. 03-196 - RESOLUTION APPOINTING A MEMBER TO THE PUBLIC ART BOARD**

Summary: Mr. Kenn Kotara has resigned as a member of the Public Art Board leaving a vacancy until December 31, 2005.

On November 18, 2003, it was the consensus of City Council to instruct the City Clerk to prepare the proper paperwork to appoint Ms. Dana Irwin to serve the unexpired term of Mr. Kotara, term to expire December 31, 2005, or until her successor has been appointed.

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**G. RESOLUTION NO. 03-197 - RESOLUTION REAPPOINTING MEMBERS TO THE BOARD OF DIRECTORS OF VICTORIA OF ASHEVILLE INC.**

Summary: The terms of Assistant City Manager Jeff Richardson, Finance Director Bill Schaefer and Budget Director Ben Durant, as members of the Board of Directors of Victoria of Asheville Inc., expire on November 29, 2003.

At City Council's worksession on November 18, 2003, City Council instructed the City Clerk to prepare the proper paperwork to reappoint Mr. Richardson, Mr. Schaefer and Mr. Durant to each serve an additional three year term, terms to expire November 29, 2006, or until their successors have been appointed.

**RESOLUTION BOOK NO. 28 – PAGE 59**

**H. RESOLUTION NO. 03-198 - RESOLUTION AUTHORIZING THE PARKS AND RECREATION DEPARTMENT TO PROCEED WITH A CONCEPTUAL PLAN FOR RENOVATIONS OF THE HISTORIC MEMORIAL STADIUM**

Summary: This is the consideration of a resolution authorizing the Parks and Recreation Department to proceed with a conceptual design for renovations to historic Memorial Stadium.

The Parks and Recreation Department has been working the past several months on a conceptual design for renovations to historic Memorial Stadium. The Stadium was originally constructed in the late 1920's and dedicated in the early 1930's as a memorial for veterans who served and died in WWI. The Stadium was dedicated again to WWI and WWII veterans in the 1940's. However, a true memorial to the men and women who gave the ultimate sacrifice to our country was never properly constructed.

In addition, Memorial Stadium was for years the home of both Lee Edwards/Asheville High Cougars and the Stephens-Lee Bears. Today, a number of youth sports groups including the Asheville Youth Sports, Asheville Grizzlies, WNC Bears, Asheville Assault, Asheville Splash, Asheville-Buncombe Youth Soccer Association, and a number of other groups currently call Memorial Stadium home.

The Stadium is in desperate need of repairs to a number of features including the lights, press box and Stadium seating and, more importantly, a proper recognition to our war dead as originally planned still needs to be constructed at this site. A plan has been developed by the Parks and Recreation staff to incorporate these issues into a conceptual design for the Stadium. This plan will address a number of funding options that include local civic club contributions, veterans groups, grants and foundation funding, and sponsorships. It is anticipated that the cost for the renovations and upgrades will total \$1.5 million. An Action Committee has been formed which will work with the Parks and Recreation Department to aggressively secure funding through grants, foundations and sponsorships, as well as the Capital Improvement Plan for the City of Asheville. The Department has also been working with Asheville Splash on a potential partnership that will assist in funding a portion of the cost. Memorial Stadium has been a high priority for the Department for a number of years due to the degree of use and age of the facility.

City staff is requesting City Council authorize the Parks and Recreation Department to proceed with a conceptual design

for renovations to historic Memorial Stadium.

## RESOLUTION BOOK NO. 28 – PAGE 60

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.

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

### III. PUBLIC HEARINGS:

#### **A. PUBLIC HEARING TO CONSIDER CONDITIONAL USE ZONING FOR PROPERTY LOCATED AT 891 PATTON AVENUE FROM RM-8 RESIDENTIAL MULTI-FAMILY MEDIUM DENSITY DISTRICT TO HIGHWAY BUSINESS DISTRICT/CONDITIONAL USE, AND THE ISSUANCE OF A CONDITIONAL USE PERMIT**

On November 17, 2003, a letter was received by Dennis Ponder, Brooks & Medlock Engineering, PLLC, (representing petitioner) stating "Due to a number of conflicts in schedules and pending matters, I would like to request that the Harry's Cadillac matter be pulled from the November Council agenda. We will ask for a re-scheduling of this matter at a more appropriate time. I hope this postponement is acceptable and I thank you for your help."

#### **B. PUBLIC HEARING TO CONSIDER DESIGNATING THE CARROLL HOUSE, LOCATED AT 19 ZILlicoa STREET, AS A LOCAL HISTORIC LANDMARK**

#### **ORDINANCE NO. 3069 - ORDINANCE DESIGNATING THE CARROLL HOUSE, LOCATED AT 19 ZILlicoa STREET, AS A LOCAL HISTORIC LANDMARK**

Mayor Worley opened the public hearing at 5:17 p.m.

Historic Resources Director Stacy Merten said that this is the consideration of an ordinance to designate the Carroll House, located at 19 Zillicoa Street, as a local historic landmark. This public hearing was advertised on November 14 and 21, 2003.

The Robert S. and Grace P. Carroll house, built in 1922 is located inside the western edge of the Montford Historic District facing east on Zillicoa Street. It is part of an original complex of single family structures that later became part of Highland Hospital. The house is 2 ½ - story plus attic built in the Normanesque/Tudor Revival style and constructed of randomly laid granite stones.

Psychiatrist Robert S. Carroll, founder of Highland Hospital, a nationally recognized mental health facility, lived at the house until 1946 with his second wife Grace P. Carroll, a world renowned concert pianist with a national and international reputation. The house was connected by proximity, function and association to the Highland Hospital complex. Dr. Carroll may have used the house occasionally for patient treatment and Mrs. Carroll used the music room both as her own studio and also for larger community based musical events.

The Robert S. and Grace P. Carroll House is significant for its association with the Carroll's, who built the house, founded Highland Hospital and made a significant contribution to the arts community in Asheville. It is also significant architecturally as an excellent example of the Norman/Tudor Revival/Craftsman style structure. The entire original configuration and architectural detailing of the exterior of the house remains intact except for the addition on the west elevation of an elevator tower, stairs and retaining wall on the south elevation and a fire escape on the north elevation.

Designation of this site as a local historic landmark makes the property owner eligible for a 50% reduction in property taxes, which is approximately \$2,200 annually. Currently the tax

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appraisal for the land is \$194,100 and the structure is valued at \$654,800, for a combined total of \$848,900.

The ordinance designates the Robert S. and Grace P. Carroll House as a local historic landmark. The property included in the designation consists of the Robert S. and Grace P. Carroll House and the .78 acre parcel on which it is located as described

on a plat. The designation includes the exterior of the house, some interior details and landscape features.

When a property is designated historic, restrictions are placed on the property, and any modification to the land or structure must receive a Certificate of Appropriateness from the Historic Resources Commission of Asheville and Buncombe County (HRC). All improvements must follow the Secretary of the Interior's Standards for Rehabilitation and Illustrated Guidelines for Rehabilitating Historic Buildings. It is important that properties of local significance are preserved and protected for cultural, historic, and economic reasons and for the benefit of future generations.

The HRC, by unanimous vote, recommends to the Asheville City Council that the Robert S. and Grace P. Carroll House be designated as a local historic landmark. Staff concurs with the recommendation of the HRC for this designation.

Upon inquiry of Ms. Hazel Fobes, Ms. Merten explained how City Council is involved in the designation.

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

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

Vice-Mayor Bellamy moved for the adoption of Ordinance No. 3069. This motion was seconded by Councilman Peterson and carried unanimously.

#### **ORDINANCE BOOK NO. 21 – PAGE 7**

#### **C. PUBLIC HEARING TO CONSIDER REZONING ONE LOT ON GLENDALE AVENUE FROM RS-8 RESIDENTIAL SINGLE-FAMILY HIGH DENSITY DISTRICT TO RM-8 RESIDENTIAL MULTI-FAMILY MEDIUM DENSITY DISTRICT**

#### **ORDINANCE NO. 3070 - ORDINANCE TO REZONE ONE LOT ON GLENDALE AVENUE FROM RS-8 RESIDENTIAL SINGLE-FAMILY HIGH DENSITY DISTRICT TO RM-8 RESIDENTIAL MULTI-FAMILY MEDIUM DENSITY DISTRICT**

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

Urban Designer Alan Glines said that this is the consideration of an ordinance to rezone one lot on Glendale Avenue from RS-8 Residential Single-Family High Density District to RM-8 Residential Multi-Family Medium Density District. This public hearing was advertised on November 14 and 21, 2003.

Petitioners Tom and Tammy Reilly requested the rezoning request. The properties are located within the City limits in the Oakley community. Glendale Avenue is one of the cross routes between Swannanoa River Road and Fairview Road in Oakley. There is a range of zoning districts in close proximity along this street. The River District is the zoning type along Glendale

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closest to Thompson Street. South from this area, the zoning is Commercial Industrial (CI) which includes the newly completed Target Store. The new Target Store placed the stormwater detention pond on property bordering Glendale Avenue as a part of the CI zoned property. In addition a secondary store access point connects from Glendale. Across from the CI zoned property are several properties zoned RM-16 Residential Multi-Family High Density District. Further south, and including the property included in this rezoning request, the properties are all zoned RS-8. Single family development is most common residential development type along Glendale Avenue. One nearby property to the rear of the Glendale lot, with access from Wood Avenue is the large Oak Knoll multi-family apartment community. In the past, growth pressures from businesses with access from River Hills Drive, the north end of Glendale Avenue and the Target Store have caused concern among residents in the Glendale Avenue area.

RM-8 Residential Multi-Family Medium Density District would allow either single family or multi-family housing at a rate of 8 units per acre or other limited uses that support residential areas. The RM-8 district is intended to provide a transitional area between high density single family areas and multi-family areas and to permit medium density multi-family development in areas where existing conditions make higher density developments inappropriate

The Glendale Avenue area has received development pressure from numerous commercial projects over the last decade. Protecting the remaining residential uses is appropriate for this area. The RM-8 zoning change provides a buffer from the high density residential uses at the rear of the property. In addition RM-8 zoning will provide for a mix of housing types in the neighborhood while at the same time blending with the underlying residential zoning density and character.

Staff recommends approval of the rezoning request. The Planning and Zoning Commission voted 6-0 to recommend approval.

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

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

Vice-Mayor Bellamy asked that the staff be sensitive to the development in this neighborhood, e.g., landscaping and keeping traffic congestion to a minimum.

Councilman Mumpower moved for the adoption of Ordinance No. 3070. This motion was seconded by Vice-Mayor Bellamy and carried unanimously.

**ORDINANCE BOOK NO. 21 – PAGE 13**

**D. PUBLIC HEARING TO CONSIDER THE REZONING OF 5 LOTS ON HAZEL MILL ROAD FROM RM-8 RESIDENTIAL MULTI-FAMILY MEDIUM DENSITY DISTRICT TO COMMUNITY BUSINESS I DISTRICT**

**ORDINANCE NO. 3071 - ORDINANCE TO REZONE 5 LOTS ON HAZEL MILL ROAD FROM RM-8 RESIDENTIAL MULTI-FAMILY MEDIUM DENSITY DISTRICT TO COMMUNITY BUSINESS I DISTRICT**

Mayor Worley opened the public hearing at 5:34 p.m.

Urban Planner Carter Pettibone said that this is the consideration of an ordinance to rezone five lots on Hazel Mill Road from RM-8 Residential Multi-Family Medium Density District to

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Community Business I District. This public hearing was advertised on November 14 and 21, 2003.

Mr. Pettibone said that the properties are located in the City limits on the south side of Hazel Mill Road south of the Patton Avenue/I-240/Smokey Park Bridge interchange (petitioner is Morosani and Associates). Surrounding land uses and zoning include commercial warehouse and storage to the north across Hazel Mill Road zoned Highway Business (HB), vacant property zoned Commercial Industrial (CI) to the east across Toxaway Street, and residential and vacant properties to the south and west.

The applicant wishes to rezone the properties in order to utilize them for uses permitted in the CB I District. The purpose of the CB I District is to provide areas for medium-density business and service uses serving several residential neighborhoods.

Currently, there are two office buildings with associated parking on the largest of the five properties. They are part of a project that was approved prior to the adoption of the Unified Development Ordinance (UDO) and the area's designation as RM-8 Residential Multi-Family Medium Density District. The previous zoning for the site was light industrial, as was the property located to the north across Hazel Mill Road. The other four parcels are vacant. The properties' access would be from Hazel Mill Road, which provides an entrance to and exit from Patton Avenue/I-240 and the Westgate Shopping and other areas north of I-240.

On Thursday, October 23, 2003, the applicant held a neighborhood meeting with members of the surrounding community.

Rezoning the properties would allow the applicant the opportunity to redevelop the parcels for uses permitted in the CB I District. It would provide for one of the UDO's least intensive commercial zoning categories on a street that already is used by significant non-residential vehicular traffic and serves commercial uses on both sides of the street. The small size of the property should also ensure a residential scale and a limited traffic impact, addressing two concerns raised by neighbors in the recent neighborhood/developer meeting.

In addition, a rezoning to CB I would legitimize the commercial use of the existing office buildings on the largest property since that use is currently non-conforming. CB I zoning on these parcels would also act as transition between the HB and CI to the north and east and the RM-8 residential neighborhood to the south and west.

In consideration of the above, the adjoining zoning and land uses in the area surrounding site, and the site's frontage on Hazel Mill Road, the proposed zoning change appears to be consistent with the intent and purpose of the UDO. Staff recommends approval of the rezoning request. The Planning and Zoning Commission voted 6-0 to recommend approval.

Upon inquiry of Vice-Mayor Bellamy, Mr. Pettibone said that a specific plan has not been brought forward so it's hard to address issues raised at the neighborhood/developer meeting. He did say that the scale of the project and traffic impact were the major concerns. With regard to traffic, he said that City staff didn't feel the rezoning itself warranted traffic calming measures. The City's Traffic Engineer did say that this area is on our priority list, but since it's not one of the busiest streets in the City, it's not one of the highest priorities. Again, there appear to be some traffic issues that are more far reaching that the rezoning could address and we will follow normal procedures for traffic calming.

Councilman Peterson expressed concern about the possibility of the owner combining the lots and building a different use allowed under the Community Business I District. He

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suggested that the property be rezoned to Neighborhood Business or Office to prohibit some of the uses, e.g., bars or nightclubs, near the residential area.

Planning & Development Director Scott Shuford said that the Community Business I District scale seemed to be appropriate for this particular situation and it allows a little more flexibility in terms of the likely uses for the applicant. The applicant did hear a lot from the neighborhood about the design of the building and as a result of that meeting an element of trust was built. That is something we are trying to achieve through the neighborhood/developer meeting process. Again, he did say that staff considered the full range of uses under the Community Business I District and felt that a bar would be unlikely to occur in an area that gets this level of traffic volume.

Councilman Mumpower was encouraged by the neighborhood/developer process that was used in this rezoning request.

Mr. George Morosani, developer, spoke in support of the proposed rezoning. He responded to Councilman Peterson's concern stating that one of the existing buildings is used by Memorial Mission Hospital. They have equipment in the building that zaps surgical packs for the hospital and under that zoning, it would not be allowed. He said the main thing that will control what he can and cannot use the property for is the strict limitation of the topography and the size of the buildings.

Mayor Worley closed the public hearing at 6:03 p.m.

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

Councilman Peterson felt that since any uses permitted under the Community Business I District would be allowed to be built on the property, he did not think they were compatible to the neighborhood and would not support the rezoning. He felt that Neighborhood Business District or Office would be more compatible.

Vice-Mayor Bellamy explained how the topography affected her decision to support the rezoning. Since the existing businesses opened, there has been a decrease in litter and graffiti on that part of the street and more eyes on the street can help with crime.

Councilman Ellis moved for the adoption of Ordinance No. 3071. This motion was seconded by Councilman Mumpower and carried on a 5-1 vote with Councilman Peterson voting "no."

#### **ORDINANCE BOOK NO. 21 – PAGE 15**

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At 6:07 p.m., Mayor Worley announced a short recess.

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**E. PUBLIC HEARING TO CONSIDER THE REZONING OF TWO LOTS LOCATED ON POLE CREASMAN ROAD AND BREVARD ROAD FROM RS-4 RESIDENTIAL SINGLE-FAMILY MEDIUM DENSITY DISTRICT AND RM-8 RESIDENTIAL MULTI-FAMILY MEDIUM DENSITY DISTRICT TO COMMUNITY BUSINESS II DISTRICT**

City Attorney Oast said that following the Planning & Zoning Commission meeting the City receive a protest petition on this rezoning. There were two property owners involved in signing the protest petition. The applicant has since advised him that the protestors have withdrawn their petitions and has been handed a copy of the signed withdrawal. Our code allows

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the withdrawal of protest petitions in writing submitted anytime prior to Council's vote. He has no reason to doubt the validity of the signatures, however, they are only copies. The applicant advised him that he mistakenly brought the copies instead of the originals and he could have the originals brought to use tomorrow. He said City Council could (1) continue the matter; or (2) adopt the ordinance, subject to a second reading at a later time. Ordinarily "in writing" he believes means bearing the original signature. That is not a statutory requirement but a requirement of our ordinance. The fact is that if Council does act on this tonight it would be subject to challenge, but the only people who would challenge it would be the people who signed the protest petition and subsequently withdrew it.

Upon inquiry of Councilman Peterson, City Attorney Oast explained why this protest petition issue is different from the one which came up for the Broadway Corridor rezoning.

Mr. Carr Swicegood, applicant, said that after receiving a copy of the protest petition he contacted the people who signed it and asked why they were against the rezoning. He noted that those people were given false information and now they are willing to support the rezoning. He did not realize that he only had copies of the withdrawals until he arrived at this meeting. He would be happy to drive to his office and look for the originals, however, he did not think he could be back in time before the meeting adjourned.

City Attorney Oast said that the language in the copies of the withdrawals is sufficient and the withdrawals do not have to be notarized, but he does need to have the originals.

Mayor Worley said that in order to protect the validity of action Council takes, City Council can (1) go forward with public hearing, close the public hearing and continue the vote until December 16, 2003; (2) continue the entire matter until December 16, 2003; or (3) take the risk of our action being challenged. He felt Council has a duty to try to assure what they do is done properly and is done in a way that will most likely successful in the event of a challenge.

Mr. Swicegood said that the City wants developers to work friendly with the neighborhood. He felt that the neighborhood should be willing to work with developers too. He then requested City Council continue the matter until December 16, 2003.

Councilman Dunn moved to continue the consideration of the Pole Creasman Road rezoning until December 16, 2003. This motion was seconded by Vice-Mayor Bellamy and carried unanimously.

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

##### **A. ORDINANCE NO. 3072 - ORDINANCE 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 said that this public hearing was held on October 14, 2003. This matter was then continued in order to give the Planning & Development Director time to meet with the focus group regarding the timing issue.

Planning & Development Director Scott Shuford said that at the Council meeting on October 14, 2003, City Council members expressed an interest in receiving training on these meetings. They are in the process of developing a training program that they think will be both

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informative and entertaining, and will schedule the training after the new Council is seated, likely in January, 2004. He has also provided several publications for Council's review. He felt they may be helpful in understanding the philosophy behind this type of dispute resolution process.

Mr. Shuford said the following are revised procedures for Neighborhood/Developer Meetings that address concerns raised by some focus group members about the timing issue. The revised time frame includes a 60 days notice period with the initial meeting occurring a minimum of 20 days prior to the City Council meeting for which the project is scheduled. Additionally, the procedures provide for posting of properties for Neighborhood/Developer Meetings.

Please note that he did not include a suggestion by Council members to list Neighborhood/Developer Meetings in *City Works*. This was done to respect the intent of the Neighborhood/Developer Meeting process – to keep the meeting focused primarily on the most-directly-affected persons.

He reviewed the following Neighborhood/Development Meeting Procedures:

- Developer registers project application a minimum of 60 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 be mailed notice of the Neighborhood/Developer Meeting by 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 at least 60 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 20 days prior to the City Council meeting at which the public hearing is scheduled to occur.
  - The City of Asheville will also 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.
  - The City of Asheville will post the property, providing the date, time and place of the Neighborhood/Developer Meeting and the City Council public hearing.
- Meeting location: Neutral site of sufficient size for meeting.

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- 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. City staff will also maintain a list of facilitators and may add to or remove names from this list depending on interest and demonstrated competence.
- Meeting Ground Rules - The following set of ground rules are adopted to promote effective communication during Neighborhood/Developer Meetings. These ground rules must 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)
  - 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
  - Clearly define our statements to insure that all parties understand their meaning
- Conduct of the Meeting – Meetings will have a structured agenda to include: Ground rules for the meeting; Areas of allowable discussion clarified; Clarification of any zoning rules that apply to the situation; Project presentation (including how the project 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.
- Results of the Meeting - The 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). Alternately, the facilitator may submit a summary of key issues and concerns, particularly if no consensus is reached between the neighborhood participants themselves. City staff will provide any written materials from the facilitator in the staff report to the City Council, as well as providing a summary of the meeting in the staff report.

Mr. Shuford noted that a suggestion was made to notify Planning & Zoning Commission members about the neighborhood/developer meetings and to get their input on whether the requested action was a good idea. He explained why he

did not think this was a good idea.

Mr. Shuford then thanked the Focus Group participants along with Mr. Paul Godfrey who served as the facilitator.

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. 3072. This motion was seconded by Councilman Dunn and carried on a 5-1 vote, with Councilman Peterson voting "no."

## **ORDINANCE BOOK NO. 21 – PAGE 17**

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

#### **A. RESOLUTION NO. 03-199 - RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE A CONTRACT FOR A MINOR LEAGUE HOCKEY TEAM AFFILIATED WITH THE WORLD HOCKEY ASSOCIATION 2**

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Mr. Peter Crosa, Chair of the Civic Center Director, said that over the past several months the Civic Center Commission has conducted due diligence into the viability of two hockey leagues that concluded with our meeting of October 27, 2003. Based on our evaluation we recommended that Civic Center staff immediately begin negotiations with the World Hockey Association 2 (WHA2) for the placement of a hockey team in the Asheville Civic Center for the 2004/2005 hockey season. In addition we believe that the following guidelines should be followed during these negotiations:

1. Any upgrades or repairs required specifically for hockey should be the responsibility of the hockey team or league. The league or team's due diligence on the facility should be finalized before negotiations are complete.
2. Under no circumstances should City funds be used for the financial sustenance or viability of the hockey team.
3. Cognizant of the potential additional liability to the city as a result of having ice in the Civic Center, the contract should insure that this liability is mitigated through standard risk avoidance/diminution language.
4. The contract should seek to limit the city's liability from systems failures at the Civic Center through legal and other risk mitigation strategies. The center should be leased "as is" and not with a service level that is unattainable.

The Commission recognizes and proclaims that, in addition to the money collected from ticket and concession sales, a positive economic impact will be engendered to the City as a whole by the addition of 30 events at the Civic Center. This could mean 30-90,000 additional patrons of our restaurants, hotels, retailers and city parking facilities.

Civic Center Director David Pisha said that this is the consideration of a resolution authorizing the City Manager to sign and execute a contract and any related documents for a minor league hockey team affiliated with the World Hockey Association 2 (WHA2) to play it's home games at the Asheville Civic Center starting in the 2004-2005 season.

The following items are the major points of the contract:

- The term is for three years beginning July 1, 2004 and ending June 30, 2007.
- The team is responsible for any upgrades to the Ice Plant or ancillary equipment to meet their standards.
- The team has agreed to hold the City harmless for any losses resulting from any equipment, system or premises failure.
- The team agrees to pay for any repairs to the Ice Plant in excess of \$2,500.00.
- The rent to be paid the Civic Center is based on ticket sales and actual attendance at games.
- The team is required to put down a \$60,000.00 non-refundable deposit at the beginning of each season. It will be credited back to them on a pro-rata basis, but if for any reason the team stops play at any time, the remainder of any deposit is forfeited.
- The team is allowed to practice only at the discretion of the Civic Center Director when it does not interfere with the financial interests of the venue.
- Any promotions by the team that cost the City money are to be made up by the team.
- The City can terminate the contract should the lease interfere with the City's plans to perform major renovations or construct a new facility. It can also terminate the agreement if the cooling tower fails and the City decides not to purchase a new unit.

City staff recommends City Council adopt a resolution authorizing the City Manager to execute any related contractual documents regarding booking a hockey team affiliated with the WHA2 into the Asheville Civic Center.

Mr. Pisha answered various questions/comments from Councilman Peterson, some being, but are not limited to: will there be any difficulty with ice change-over; what was factored into the calculation of rent; how will the non-hockey uses impact hockey; how much time will be available for public skating or youth leagues; have improvements been made to minimize problems encountered the last time hockey was in the Civic Center; and are there any significant capital improvements the City will need to make before hockey starts in 2004.

Mr. Dennis Justice, Fletcher resident, thanked the Civic Center Commission for their efforts to bring hockey back to Asheville. He did point out that the WHA2 has not done their due diligence in contacting the NBDL. He stressed that hockey and basketball must work together. He also felt the City review the language regarding WHA2 providing six months written notice if they wish to terminate the lease. He felt that if a new arena is built somewhere else, they would leave. He felt that a hefty penalty should be imposed if they do terminate the lease.

Mr. Scott Osborne felt that the way the City has planned the renovation Memorial Stadium can be used to address the Civic Center because there are public, private and entrepreneurial interests. He said that Council will see a new ice facility in the south end of town within the next six months to a year which will be available for the hockey team to practice on if they would like.

Vice-Mayor Bellamy said that the Council heard from the community that they wanted hockey and instructed staff to move in that direction.

Councilman Mumpower and Councilman Peterson both commended the Civic Center Commission, Civic Center Director, and Assistant City Attorney Euler for their hard work and efforts on negotiating a contract that goes a long way to protect the City's interests.

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

Vice-Mayor Bellamy moved for the adoption of Resolution No. 03-198. This motion was seconded by Councilman Dunn and carried unanimously.

## **RESOLUTION BOOK NO. 28 – PAGE 62**

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

#### **A. CLAIMS**

The following claims were received by the City of Asheville during the period of October 31-November 13, 2003: Buncombe County (Transit Services), Reed Street (Streets), Bobby Sloan (Parks & Recreation), Karen Major (Police), Nancy Flack (Fire) and Carolyn Hembree (Police).

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

#### **B. PRIMARY ELECTION RESULTS - CITY OF ASHEVILLE - OCTOBER 7, 2003 GENERAL ELECTION RESULTS - CITY OF ASHEVILLE, NOVEMBER 4, 2003**

Attached hereto as Exhibit "A" is the abstract containing the number of legal votes cast in the Primary Election, City of Asheville, held on October 7, 2003. Also attached as Exhibit "B" is the abstract containing the number of legal votes cast in the General Election, City of Asheville, held on November 4, 2003.

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

#### **Comments by Ms. Hazel Fobes**

Ms. Hazel Fobes, Chair of the Citizens for Safe Drinking Water and Air (CSDWA), read a letter of appreciation to Councilman Peterson from members of CSDWA expressing their deep respect and gratitude for his steady presence, exploratory questioning and insightful judgment to the programs and issues before the City Council. Members of CSDWA hope that

Councilman Peterson will retain his seat on the Regional Water Authority until the expiration of his term in September of 2005.

**Comments by Ms. Julie Brandt**

Ms. Julie Brant, member of the Asheville People Advocating Real Conservancy, said that her organization is a citizens group opposed to the selling of public park land for the proposed Grove Park Inn building for their luxury high-rise condominiums. She asked that if any negotiations were taking place regarding the Grove Park Inn, the Downtown Development Agreement or amendment to the Option she wanted to be made aware of them so she could keep her organization accurately informed.

Mayor Worley responded that he was not aware of any negotiations or conversations that any member of City Council has had with the Grove Park Inn regarding any changes or any alterations to the agreement that we entered into with them. He did state that he would be happy to sit down with her and review their website for any inaccuracies that might exist.

City Manager Westbrook suggested Ms. Brandt call him when they get information from the media, just to confirm the accuracy.

**Air Quality Resolution Request**

Mr. Will Harlan, Editor of Blue Ridge Outdoors Magazine, explained why it was important for Asheville to join the resolution urging the N.C. Attorney General Roy Cooper to file a petition for review against the Environmental Protection Agency's "Routine Maintenance" Rule Change in the New Source Review Provision of the Clean Air Act and to urge the entire North Carolina congressional delegation to co-sponsor legislation in Congress to repeal the Environmental Protection Agency's "Routine Maintenance" ruling. He explained that the rule change re-defines the term "routine maintenance" to include an annual investment valued at up to 20% of the total value of older power plants, factories and refineries. He said this policy will create a perpetual exempt status of tens of thousands of heavily polluting industries and will result in smokestack emission levels that will adversely affect the health North Carolinians and people throughout the county. He said that Jackson County, Sylva and Chapel Hill have joined the resolution with several more pending. He asked that the resolution be placed on Council's December 16, 2003, formal agenda for possible action because there is a late December deadline within which to join said resolution.

Mr. Michael Morgan also spoke in support of the City joining the resolution.

Ms. Nancy Thompson, Manager of Community Relations for Progress Energy, pointed out that the City of Raleigh, City of Winston-Salem, and Town of Black Mountain have all opposed joining the resolution and the City of Durham has tabled the resolution. She explained some inaccurate conclusions from the ruling that the Canary Coalition's draft resolution contains. She felt that the resolution places an unnecessary financial burden on our manufacturers in already weakened economy. She felt that maintaining a balance between the environment and the economy growth is important and urged City Council to not join in the resolution.

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**Comments by Mr. Mike Fryar**

Mr. Mike Fryar spoke about the inaccuracies of the recent annexation of his property on Smoky Park Highway.

**VIII. ADJOURNMENT:**

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

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CITY CLERK

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MAYOR