

Regular Meeting

Present: Mayor Charles R. Worley, Presiding; Vice-Mayor R. Carl Mumpower; Councilwoman Terry M. Bellamy; Councilman Jan B. Davis; Councilman Joseph C. Dunn; Councilman Brownie W. Newman; City Manager James L. Westbrook Jr.; City Attorney Robert W. Oast Jr.; and City Clerk Magdalen Burleson

Absent: Councilwoman Diana Hollis Jones

PLEDGE OF ALLEGIANCE

Retired Navy Veteran J. Howard Collins led City Council in the Pledge of Allegiance.

INVOCATION

Mayor Worley gave the invocation.

AGENDA CHANGE

Mayor Worley announced that moments ago the City was served with a temporary restraining order filed by Eugene Ellison and Howard McGlohon against the City of Asheville and Eagle/Market Streets Development Corporation. That lawsuit will prevent City Council from hearing the item on today's agenda entitled "Budget amendment to recognize receipt of a Section 108 Guaranteed Loan and an Economic Development Incentive Grant from the U.S. Dept. of Housing and Urban Development and expenditure of the proceeds on the redevelopment of South Pack Square."

I. PROCLAMATIONS:

A. ASHEVILLE SISTER CITIES INC.

Mr. Carroll Hughes and Mr. Kaltsunis updated City Council on the developments with our to-be-Sister City in Karpenisi, Greece. They presented Mayor Worley with a gift from Mayor Bill Karabas as a token of friendship between our municipalities and a shepherd's stick from the Asheville Sister Cities Inc. organization and the local Greek community.

B. ASHEVILLE YOUTH SPORTS PROGRAM RECOGNITION

Mayor Worley recognized Mr. Jim Drummond, Coach Wynn and the Asheville Youth Sports Program for their successful year. Mr. Drummond explained that over 5,000 boys and girls have played football and cheered for the Cougars. This year, for the first time in the history of the 16 youth organizations of WNC Youth Football & Cheerleading Conference, Asheville Youth Sports Program had all three age divisions playing in the football championship, the "Super Bowl," as undefeated teams. Also, all three cheerleader squads placed either First Place or Second Place in their division competition.

II. CONSENT:

At the request of Vice-Mayor Mumpower, Consent Agenda "B" was removed from the agenda for an individual vote.

A. APPROVAL OF THE MINUTES OF THE REGULAR MEETINGS HELD ON NOVEMBER 25, 2003, AND DECEMBER 2, 2003, AND THE WORKSESSION HELD ON DECEMBER 9, 2003

-2-

B. RESOLUTION NO. 03-195 – RESOLUTION OF APPRECIATION TO RETIRING CHIEF OF POLICE WILL ANNARINO

This item was removed from the consent agenda for an individual vote.

**C. RESOLUTION NO. 03-200 - RESOLUTION ADOPTING THE 2004 SCHEDULED CITY COUNCIL MEETINGS
RESOLUTION BOOK NO. 28 – PAGE 66**

D. RESOLUTION NO. 03-201 - RESOLUTION AUTHORIZING THE CITY TO ENTER INTO A SUPPLEMENTAL AGREEMENT WITH THE N.C. DEPT. OF TRANSPORTATION FOR LANDSCAPING ADJACENT TO W.T. WEAVER GREENWAY

Summary: The consideration of a resolution authorizing the City Manager to sign a supplemental agreement with the N. C. Dept. of Transportation (NC DOT) for landscaping adjacent to the W.T. Weaver Greenway.

The City of Asheville received a grant from the NC DOT to install a greenway along W.T. Weaver Boulevard from Barnard Avenue to Broadway Street in Fiscal Year 2000. The amount of the grant was \$300,000. There was no local match for the grant. The actual cost of the construction was approximately \$200,000.

The City of Asheville and UNC-Asheville requested some of the remaining funds be used to provide landscaping to the W.T. Weaver Greenway. The City requested \$34,070, which has been approved by the NC DOT. The grant does not require any local match.

Prior to requesting the money for the landscaping, City staff requested the remaining \$100,000 for another greenway project but was denied because the project did not qualify under this original municipal agreement.

Staff recommends that City Council authorize the City Manager to sign a supplemental agreement with the NC DOT for landscaping adjacent to the W.T. Weaver Greenway in the amount of \$34,070.

RESOLUTION BOOK 28 – PAGE 67

E. RESOLUTION NO. 03-202 - RESOLUTION AUTHORIZING THE MAYOR TO CONVEY AN EASEMENT OVER A PORTION OF CITY-OWNED PROPERTY ON BROTHERTON AVENUE TO DAVID M. BENNERT

Summary: The consideration of a resolution authorizing the Mayor to convey an easement over a portion of City-owned property on Brotherton Avenue for a private residential sewer line.

The City owns property (PIN No. 9638.18-21-9316) located on Brotherton Avenue and Virginia Avenue and the unopened right-of-way on Hubbard Street. The property is in the process of going back on the market after a sale contract failed to close. Infrastructure has been installed on the buildable portion of the property. The portion of the property near Hubbard Street is wooded and steep and is crossed by a sewer main. The intended use for that portion of the property is for green space.

-3-

David M. Bennert owns property on Hudson Street, which backs up to the unopened right-of-way of Hubbard Street where he is building two houses. Due to the topography and the location of the sewer main, the most direct and efficient route to provide sewer to the new houses is across unopened Hubbard Street and a portion of the City's property. The requested easement would be solely for the purpose of installing and maintaining the sewer line and would not restrict the use of the easement area for green space, which is the proposed use of that portion of the property.

Staff recommends adoption of the resolution authorizing the Mayor to convey an easement over a portion of City-owned property on Brotherton Avenue for a private residential sewer line to David M. Bennert.

Upon inquiry of Councilwoman Bellamy, Mr. Ed Vess, Field Services Coordinator, explained what is happening with the Brotherton property. He said the City will receive \$136 for the permanent easement.

Upon inquiry of Councilman Newman, Mr. Vess explained how the easement amount is calculated.

RESOLUTION BOOK NO. 28 – PAGE 68

F. ORDINANCE NO. 3073 - BUDGET AMENDMENT FOR AZALEA PARK AND MEMORIAL STADIUM SYNTHETIC TURF

Summary: The consideration of a resolution authorizing the City Manager to enter into a contract for the construction and installation of synthetic turf at Azalea Park and Memorial Stadium and the associated budget amendment.

The Parks and Recreation Department, along with its partner, WNC Soccer Foundation, has raised almost \$2,250,000 toward the development of the first two phases of Azalea Park. These phases include the development of four synthetic turf soccer fields, construction of restroom/ concession facility, a Leathers playground, parking, and greenway trails. After extensive research, both the Parks and Recreation Department and the WNC Soccer Foundation have concluded that synthetic turf soccer fields will greatly enhance the playability for the John B. Lewis Soccer Complex. This will be accomplished by allowing additional practice times and games for soccer and other events without affecting the playing surface. This will also allow for the complex to be used in inclement weather for regular play as well as tournament competition. In addition, no harmful chemicals will need to be used on the fields.

The Parks and Recreation Department solicited bids from a number of vendors. The specifications in the bid package required the surface to be FIFA (Federation International Football Association) approved. FIFA is the international governing body of soccer. This insured that the quality of the product would be of the highest standards possible for the safety of the participants and durability of the surface. In addition, the bid package included replacing the grass field at Memorial Stadium with synthetic turf. The cost for this project is anticipated to be totally paid for by one of the user groups at Memorial Stadium. In calculating the final breakdown for the bids, staff deducted the amount of in-house labor that will be used in the construction, based upon the vendor's recommendation. In addition, staff had to take into consideration the specifications by the vendors in order to determine the amount of in-house support needed to meet the

warranty for the products.

A total of four bids were received for the project as follows with the amount of cost savings deducted from each amount and adding back in-house material costs:

-4-

Vendor	Bid Price	Minus Cost savings in	Plus Add. Items sub-base Construction	Total
Taylor Murphy	\$2,362,950	\$1,717,950	\$0	\$1,717,950
Phillips & Jordan	\$2,352,375	\$1,762,970	\$0	\$1,762,970
Ballard Const. (e-turf)	\$2,432,639	\$1,522,861	\$241,270	\$1,764,131
Ballard Const. (f-turf)	\$3,045,771	\$2,135,993	\$241,270	\$2,377,263

After careful consideration, the Parks and Recreation Department and WNC Soccer Foundation recommend awarding the contract to Taylor Murphy Construction Company at a total price of \$1,717,950. This project will be financed along with other Fiscal Year 2004 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 first year's installment payment is included in the current funds for Azalea Park. The Parks and Recreation Department anticipates a majority of the funds for payment of the installment purchase contract to occur from sponsorships, foundation, and grant funding. Again, the funding for Memorial Stadium is anticipated to be totally paid for by one of the user groups.

The budget amendment includes funds secured from a number of sources including the Janirve Foundation for \$500,000, Wachovia for \$25,000, Arby's for \$10,000, the N. C. Dept. of Transportation for \$400,000 and several other individual donations for a total of \$988,400.

The Parks and Recreation Department anticipates starting construction for this project in the next few months with completion of the John B. Lewis Soccer Complex in the fall of 2004.

The Parks and Recreation Department requests City Council authorize the City Manager to enter into a contract with Taylor Murphy Construction Company for \$1,717,950 for the construction and installation of synthetic turf at Azalea Park and Memorial Stadium and to approve a budget amendment totaling \$988,400.

ORDINANCE BOOK NO. 21 – PAGE 19

G. RESOLUTION NO. 03-203 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A CONTRACT WITH TAYLOR MURPHY CONSTRUCTION COMPANY FOR THE CONSTRUCTION AND INSTALLATION OF SYNTHETIC TURF AT AZALEA PARK AND MEMORIAL STADIUM

Summary: See Consent Agenda Item "E" above.

RESOLUTION BOOK NO. 28 – PAGE 69

H. RESOLUTION NO. 03-204 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A CONTRACT WITH DEE WILLIAMS AND COMPANY TO INSTALL SIDEWALKS LOCATED ALONG CHESTNUT STREET

Summary: The consideration of a resolution authorizing the City Manager to enter into a contract with Dee Williams and Company to install sidewalks located along Chestnut Street in Asheville, North Carolina.

-5-

The City is in need of a contractor to provide sidewalk installation services for sidewalks along the north side of Chestnut Street between Liberty Street and Furman Avenue. In accordance with N.C. Gen. Stat. sec. 143-131, informal bids for sidewalk installation services were solicited and three responses were received. The bidders are listed below:

<u>Company</u>	<u>MB Participation</u>	<u>Drug Free</u>	<u>Bond</u>	<u>Bid</u>
Candler Concrete Works, Inc.	0	Yes	Yes	\$158,287.90
Burleson Construction				\$136,431.00

Dee Williams And Company Inc.	100%	Yes	Yes	\$110,388.00
----------------------------------	------	-----	-----	--------------

Funding for this project has already been allocated in the Public Works Department's Capital Improvement budget.

The Public Works Department staff recommends City Council adopt a resolution authorizing the City Manager to enter into contract with Dee Williams and Company Inc. to install sidewalks along the north side of Chestnut Street between Liberty Street and Furman Avenue.

RESOLUTION BOOK NO. 28 – PAGE 70

I. ORDINANCE NO. 3074 - BUDGET AMENDMENT FOR THE INSTALLATION OF BALLFIELD LIGHTS AT VALLEY SPRINGS MIDDLE SCHOOL

Summary: The consideration of a budget amendment, in the amount of \$33,420, for the installation of ballfield lights at Valley Springs Middle School.

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 additional work is the Valley Springs Middle School ballfield complex. This project will be for lighting an additional ballfield at the complex. The site is the home for the South Buncombe Sports and Recreation Association. On June 25, 1992, the City of Asheville entered into a 30-year agreement with the Buncombe County School Board. This agreement stated that the Buncombe County School Board would provide land at Valley Springs Middle School for the purpose of providing athletic fields (baseball/softball) that the City of Asheville would fund, install, and maintain. This agreement provides for the much-needed athletic field space in South Buncombe and for the students at Valley Springs Middle School. In order to complete this portion of the project, staff prepared bid specifications for the installation of a turn-key field lighting system. Musco Lighting Company agreed to do the project for \$33,420. Through the bid process, Musco Lighting Company has complied with the Minority Business Plan.

This project will be completely funded from a donation by the South Buncombe Sports and Recreation Association.

The Parks and Recreation Department recommend the approval of a budget amendment, in the amount of \$33,420, for the installation of ballfield lighting at Valley Springs Middle School.

ORDINANCE BOOK NO. 21 – PAGE 21

-6-

J. RESOLUTION NO. 03-206 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A CONTRACT WITH STEWART-COOPER-NEWELL ARCHITECTS FOR ARCHITECTURAL SERVICES FOR THE CONSTRUCTION OF FIRE STATION #6 TO BE LOCATED TO OLD HAYWOOD ROAD AT EAST VIEW CIRCLE

Summary: The consideration of a resolution authorizing the City Manager to sign a contract with Stewart-Cooper-Newell Architects for architectural services for the construction of Fire Station #6 to be relocated to Old Haywood Road at East View Circle.

The relocation of Fire Station #6 has been in the planning stages for many years with the appropriation for purchase of the land in 2000 and appropriation for construction of the facility in 2003. The current location of fire station #6 does not maximize the City's equipment and staff resources. Current overall City response standard coverage will increase by approximately 4% with the relocation of this fire station. A fire station in the Exit 44 area is necessary to provide municipal level fire protection and emergency services to the western sections of the City. In addition to the building housing an engine company and a ladder company, the building will also house a police services area for the Asheville Police Department. Additional office and muster space is needed for the Police to provide services to citizens in the West district. This facility will make the best use of the space by combining common areas between fire and police.

A formal request for qualifications (RFQ) was properly advertised and a preliminary meeting was held with interested architects. Written proposals were received by City staff and were evaluated against identified rating criteria distributed in the RFQ. A team of staff from Fire and Rescue, Police, Parks and Recreation as well as the Budget Office reviewed all of the submittals. Three finalists were identified and one firm was clearly selected as the recommended architect to complete the job. References for the recommended firm, especially past performance with other North Carolina cities, were completed with a focus on combination fire and police stations. The committee selected Stewart-Cooper-Newell Architects as the recommended architects for this project.

Stewart-Cooper-Newell Architects, based in Gastonia, North Carolina, has provided architectural services for scores of North Carolina cities for fire stations and police stations. Stewart-Cooper-Newell has designed several combination fire and police stations. The firm continuously has between 25-35 fire stations in progress at any given time. Approximately 15-20 stations are completed each calendar year under their direction. Stewart-Cooper-Newell is the largest architectural firm in the fire station construction arena in the United States at the current time. With over 100 cities as customers, to date, Stewart-Cooper-Newell Architects reports that they have never completed a fire station project in which the owner did not use the firm again on subsequent fire station projects.

Fire Station 6 is planned to be approximately 15,000 square feet with approximately 10,000 square feet for fire and rescue use and approximately 5,000 square feet for police use. Construction cost of the project is anticipated at an average of \$100.00 per square

foot, or \$1,500,000.00. Stewart-Cooper-Newell proposes their fee for full architectural, civil, structural, plumbing, mechanical and electrical design to be at eight (8) percent of the cost of construction, or approximately \$120,000.00. Funding for the entire project including construction, architectural and utility/site/furnishings and other "soft" costs is budgeted at \$2,000,000 in the Fiscal Year 2003-04 budget.

Completion of this station would be in approximately 24 months. Timeliness of this project is important to the City of Asheville due to the upcoming evaluation of the City's fire insurance rating by the Insurance Services Office and North Carolina Office of State Fire Marshal.

-7-

The resolution authorizes the City Manager to execute a contract with Stewart-Cooper-Newell Architects for Fire Station #6. The contract is an AIA Document with appropriate modifications for the City of Asheville.

The Fire Chief and Police Chief recommends City Council authorize the City Manager to sign the contract with Stewart-Cooper-Newell Architects for architectural services in the construction of Fire Station #6.

RESOLUTION BOOK NO. 28 – PAGE 71

K. RESOLUTION NO. 03-206 - RESOLUTION AUTHORIZING THE MAYOR TO SUBMIT A GRANT APPLICATION TO THE U.S. DEPT. OF HOUSING AND URBAN DEVELOPMENT FOR HOUSING CHRONICALLY HOMELESS PEOPLE

Community Development Director Charlotte Caplan said that this is the consideration of a resolution authorizing the City to apply for \$500,000 in HOME funds made available for housing for chronically homeless people.

The U. S. Department of Housing & Urban Development (HUD) has announced a national grant competition for recaptured HOME funds to be used by HOME entitlement communities to develop supportive housing for the homeless. Thirteen grants of \$500,000 will be made to communities who can demonstrate:

- A. High productivity in the use of HOME funds for producing rental housing.
- B. A plan for ending chronic homelessness by 2012.
- C. Commitment to specific policies that support affordable housing.

An unusual feature of the competition is that 75% of the points are pre-awarded on the basis of past performance (item A above). Asheville scored sufficiently high in this pre-scoring to have a chance of winning a grant.

Another unusual feature is that the grant application requires no information on the proposed use of the funds. This can be determined after the funds are awarded.

Since the funds are subject to the HOME program rules, matching funds are required, in principle. However, excess match expended on local HOME projects in previous years can be counted for this purpose, meaning that no additional local funds will need to be identified as match for this grant.

The grant deadline is December 18, 2003. The Housing and Community Development Committee has indicated its support for this grant application.

-
Staff recommends City Council approve the submittal of a grant application
to apply for \$500,000 in HOME funds made available for housing for chronically homeless people.

RESOLUTION BOOK NO. 28 – PAGE 72

L. ORDINANCE NO. 3075 - BUDGET AMENDMENT TO ENABLE THE HOSPITALITY HOUSE TO KEEP THE A HOPE CENTER OPEN ON SATURDAYS FROM JANUARY THROUGH JUNE 2004

-8-

Summary: The consideration of a request by Hospitality House for a grant of \$7,500 from the Contingency Fund.

In November, 2002, City Council appropriated \$20,000 from the Contingency Fund to provide Hospitality House the means to operate the A HOPE Homeless Day Center on Saturdays. This was decided after discussion about the number of homeless individuals in our community and the efforts of the Downtown Association and the Downtown Commission to solve some of the problems they create. These funds, along with Community Development Block Grant (CDBG) funding for Sundays, have enabled Hospitality House to keep the Center open seven days a week through December, 2003.

The current CDBG grant is sufficient to maintain Sunday opening through June 2004, but the General Fund grant will run out at the end of December 2003.

Representatives from Hospitality House attended the Housing and Community Development Committee meeting in October to request an additional \$10,000 in City support to allow them to keep the Center open on Saturdays from January through June, 2004. A representative from the Downtown Merchants' Association stated that weekend opening of A HOPE has eased the problems for downtown merchants and residents. The Housing and Community Development Committee suggested that the City might fund \$7,500 if Hospitality House would commit to raising the remaining \$2,500 from downtown businesses. Mr. Buckner, representative of Hospitality House, agreed to present this recommendation to the Downtown Merchants' Association.

Staff has advised the Hospitality House that any future grant requests should be made at the appropriate time for consideration in the normal budget cycle.

The Housing and Community Development Committee and City staff recommend approval of a budget amendment, appropriating \$7,500 to Hospitality House for the continued operation of A HOPE Day Center on Saturdays.

ORDINANCE BOOK NO. 21 – PAGE 23

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.

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

ITEM PULLED OFF CONSENT AGENDA FOR INDIVIDUAL DISCUSSION

RESOLUTION NO. 03-195 – RESOLUTION OF APPRECIATION TO RETIRING CHIEF OF POLICE WILL ANNARINO

Summary: Resolution of appreciation to Chief of Police Will Annarino who will be retiring after 30 years of service in the Asheville Police Department on January 2, 2004.

Vice-Mayor Mumpower moved for the adoption of Resolution No. 03-195. This motion was seconded by Councilman Dunn and carried unanimously.

RESOLUTION BOOK NO. 28 – PAGE 65

III. PUBLIC HEARINGS:

-9-

A. PUBLIC HEARING RELATIVE TO CLOSING AN UNOPENED SECTION OF EMMA ROAD BETWEEN LEICESTER HIGHWAY AND OLD COUNTY HOME ROAD

RESOLUTION NO. 03-207 - RESOLUTION TO PERMANENTLY CLOSE AN UNOPENED SECTION OF EMMA ROAD BETWEEN LEICESTER HIGHWAY AND OLD COUNTY HOME ROAD

Mayor Worley opened the public hearing at 5:38 p.m.

Assistant Public Works Director David Cole said that this is the consideration of a resolution permanently closing a portion of an unopened section of Emma Road between Leicester Highway and Old County Home Road. This public hearing was advertised on November 22, 28, December 5 and 12, 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 a portion of an unopened section of Emma Road extending northwesterly from Leicester Highway toward Old County Home Road to a line extending from the northeastern corner of the property of Dennis and Dane Dettweiler (PIN No. 9629.14-23-7485) to the northwestern corner of the property of Charles and Doris Haney (PIN No. 9629.14-23-9397). The closing of this right-of-way would allow Mr. David Ledford to purchase, consolidate and develop the abutting parcels.

Public Works Department staff has researched and determined that this portion of right-of-way is not a City maintained street and its closure will not deprive any property owner of a reasonable means of ingress or egress to their property. This portion of right-of-way is abutted by four lots, identified by PIN Nos. 9629.14-23-9397; 9629.14-32-0959; 9629.14-23-8346; and 9629.14-23-7485.

This right-of-way is 30 feet wide. All property owners abutting this right-of-way have joined in the petition to close. The property on both sides of the right-of-way have been posted. Local water, sewer, electric, telephone, gas and cable companies have been notified of the petition and have indicated that the closure of the right-of-way would not affect their utilities.

The City's Engineer and Traffic Engineer have raised concerns that closing this portion of Emma Road will eliminate connectivity between New Leicester Highway and Old County Home Road. Staff believes this future connection is an important and valuable City asset that should be preserved.

Mr. Cole explained that New Leicester Highway and Old County Home Road parallel each other for approximately ½ mile. Using a map, he showed how the section of Emma Road offers a means of connecting New Leicester Highway to Old County Home Road.

In an effort to address the connectivity concerns and the petitioner's need to close, the City Engineer has determined that if an alternate right-of-way, owned by the petitioner, along the northern boundary of the consolidated parcels was provided, connectivity can be preserved and the value of this section of Emma Road proposed for closing loses its importance to the City. The alternate right-of-way was discussed with the petitioner and the petitioner is not receptive to providing such an alternate right-of-way.

-10-

City staff recommends against City Council adopting the resolution permanently closing an unopened section of Emma Road.

Traffic Engineer Anthony Butzek explained that staff's concern is based on the ability to provide a connection at a future date. Although the right-of-way is not currently providing a transportation function, as that area develops further and becomes more dense, having that right-of-way does provide another means of connecting the two streets as opposed to the current nearest connection to the north of that is ¼ mile away. Staff felt the distance between the connections at Eliada Home Road and where Old County Home Road meets New Leicester Highway to the north is too long a distance to be without a connection.

Upon inquiry of Councilwoman Bellamy, Mr. Cole said that the petitioner cannot develop his land for what he is anticipating if the right-of-way is not closed.

Mr. David Ledford, petitioner, asked for the closing so they can join the two parcels for development of a retail center which they feel would beautify the area, enhance incoming revenues from tax bases and be assistance to the locals. He pointed out that all people signing the petition are in joint interest in closing this road. Using a map, he showed where there are several encroachments into the right-of-way and explained that the right-of-way was originally established for a continuation from Eliada Home Road, but a different road was developed instead and they determined the right-of-way wasn't necessary. He felt that the right-of-way would never be able to be utilized because of the people who have already encroached on it.

Mr. Ledford presented City Council with a copy of a letter dated December 16, 2003, from Wilson Engineering regarding the City's alternate right-of-way request. The problems with the alternate right-of-way is the decline from New Leicester Highway from a geographically outlook and (2) the speed of the traffic that flows down New Leicester Highway. He said he contacted the N.C. Dept. of Transportation (NC DOT) and asked them if they could get a curb-cut for that section and they said no. Mr. Ledford said that if they give the alternate 50 foot right-of-way with a 25 foot setback, they will have to maintain it for the rest of their lives because it will never be used as a City street. Also, if you develop the alternate right-of-way, the amount of material fill necessary will encroach upon the adjoining parcel. He felt it would be more appropriate to widen the road next to the new CVS Pharmacy (that has a traffic light) and enlarge the radius onto Old County Home Road.

Councilwoman Bellamy noted that the area is rapidly growing and will eventually have the need for additional access from the area.

When Planning & Development Director Scott Shuford said that he believed the zoning district on the other side of Old County Home Road was residential single-family, Councilman Davis was having difficulty in understanding why we would want more connectivity to the residential section through that commercial area. Mr. Shuford felt the rationale behind this is that if you are able to create what are more traditional type of blocks, then you can have a more effective transportation network that allows people to get out from the homes multiple ways and not overburden any particular intersection.

Councilman Davis felt the alternate right-of-way is awfully close to the current entrance. He felt that might create a greater traffic problem in that it does slope and the speed of the traffic on New Leicester Highway. Mr. Shuford responded that it would be over 750 feet, which is a very long block.

Upon inquiry of Councilwoman Bellamy, Mr. Ledford said that it is the opinion of Tom Wilson, Engineer, that due to the topography and alignment, the alternate right-of-way would not be feasible because it drops 22 feet from New Leicester Highway in a distance of less than 150

-11-

feet. His opposition in the alternate right-of-way is that once they give the right-of-way it won't be used because (1) it's not feasibly possible; and (2) NC DOT will not give a curb-cut to New Leicester Highway. He feels a more valid point would be to widening the existing road where it gets narrow and where it ties into Old County Home Road so that would make a better and safe access at the existing traffic light on New Leicester Highway. He said that he is willing to sacrifice some of his property for those improvements.

When Councilwoman Bellamy asked if Mr. Ledford would be willing to make the road improvements, Mr. Ledford said he would

possibly be willing to do some of those improvements. He might want some City participation but it really depends on what they are dealing with. The road improvements are probably not a problem, but he doesn't know about the relocation of the sewer and what MSD's standpoint would be on that.

Upon inquiry of Councilman Newman, Mr. Ledford said that if the road is not closed, they probably won't be interested in doing the development because they don't have the frontage they need or the total acreage to get the buildings in there. Not closing the road would potentially kill the whole site.

Mr. Jack Westall, attorney representing the Mr. Ledford, pointed out that the existing right-of-way is only 30 feet in width. Even if the City accepted the road and tried to open it, due to the limitations for construction and traffic the City would have to tear down the improvements that have already been made by other property owners on the right-of-way. Again, the City would have to condemn additional property to make the road wider than 30 feet.

Upon inquiry of Councilman Newman about theoretically having a connector road, Mr. Butzek said that we have looked at this corridor in a general sense and based on the information available, the elevation difference between New Leicester Highway and Old County Home Road is approximately 20 feet. The separation between the two streets is about 280 feet, which comes out to an average grade of approximately 7%. Based on the standards that we have for designing streets within the City, a street could be constructed with such a grade. We recognize that a significant amount of grading may be required especially as you approach New Leicester Highway. Regarding the issue of the NC DOT connection, he has reviewed that and he is not aware of NC DOT's response. However, he does feel that with the speed of traffic on New Leicester Highway, he doesn't feel this is any greater danger than any other uncontrolled intersection in the corridor.

Councilman Newman asked about the encroachment of buildings in the right-of-way. Mr. Butzek said that in the near-term it would be difficult to construct the existing roadway. However, if the City wanted to construct it, there would be some grounds for doing that.

After Mr. Ledford explained he doesn't own the parcel touching Old County Home Road for the alternate right-of-way from New Leicester Highway to Old County Home Road, Mr. Shuford said that a mobile home is located on that parcel. If that parcel becomes a transportation issue, then the mobile home might be able to be moved. It would put the City in a position of making that connection with a relatively minimal City expense. City Manager Westbrook also said that if a connection is needed in the future, it would be wise to preserve it at this time. In the future as costs increase for highways, the largest increments of costs now is purchasing right-of-way. If the right-of-way has to be purchased in the future to ensure some connection, it might not be financially feasible. The development taking place in that area clearly shows there will be a need for more connectivity.

Mayor Worley noted that there is no current intent to cut that alternate right-of-way through, but to reserve the option.

-12-

Mayor Worley closed the public hearing at 6:10 p.m.

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

Vice-Mayor Mumpower moved to permanently close a portion of an unopened section of Emma Road between Leicester Highway and Old County Home Road. This motion was seconded by Councilman Davis.

Councilwoman Bellamy felt additional time was necessary to discuss feasible ways to address this issue. We haven't determined how we will deal with the additional flow of traffic in the future.

Councilman Dunn spoke in support of connectivity, however, he was concerned that the development would not occur in that area if the portion of Emma Road was not closed. He felt the proposal was a good one and would support the closing.

Vice-Mayor Mumpower felt the red light is a safer access point on New Leicester Highway. The value of improving the road next to CVS Pharmacy now will benefit the neighbors in that community and the fact that Mr. Ledford is willing to help with that further supports the closing.

Councilman Newman felt the alternative right-of-way is a good concept, but wasn't sure if it would really work or not. However, he is reluctant to give up the existing right-of-way if it seems like there is an opportunity to gain an alternative right-of-way that could potentially work well for the community in the future.

Councilman Davis said that the area is becoming more commercial. He said that Mr. Ledford plans a good development and it won't happen unless the portion of Emma Road is closed.

Mayor Worley supported the closing the portion of Emma Road but also supported of the long range desires of the City to protect it's future needs and to do so in a way that tries to make it less expensive to the citizens of Asheville in the future. Since Mr. Ledford said there was room for compromise, he hoped that the compromise will continue with staff, including clarification of who will be doing what to the road next to CVS Pharmacy. Because this matter will require 5 affirmative votes to adopt the resolution and judging by Council's

comments that there may be only 4 affirmative votes, it will require a second reading of the resolution which will occur on January 13, 2004.

City Engineer Cathy Ball said that if the motion passes, there was prior discussion about Mr. Ledford's willingness to widen Old County Home Road and she suggested that be included as part of the request. Secondly, when we were looking at this request we did try to take a look at what was the best for the citizens of Asheville. Currently the City has interest in property and to relinquish that seems like there should be something gained for the residents of the City of Asheville. The bigger picture is that we are faced with congestion management and needing to come up with ways to reduce congestion. While one place may have a traffic signal, sometimes traffic backs up more and causes more air pollution. These closings are coming up more and more frequently and staff will be taking a real close look at what we are relinquishing as a result of what we have to gain for the residents of the City of Asheville. We are looking to the future. In this situation, the ability to be able to keep a right-of-way may not mean that we build the road, it may mean that if a developer comes in adjacent to that it's a requirement that they extend it for a portion of the way. When we don't have options, and unfortunately in this community with the topography that we have, we often don't have a lot of options. The reason we requested the 50

-13-

foot right-of-way is because we knew there was a really good chance that we would have to put in some retaining walls in order to meet those grades as they came up to New Leicester Highway.

Mr. Ledford said that in his research of this particular parcel they were unable to find, nor was the City Attorney able to find, any dedication of this road, nor were we able to find any deeded right-of-way. We can't find its existence other than a plat on a tax map. So there is question about whether it even exists or if it is a right-of-way.

The motion made by Vice-Mayor Mumpower and seconded by Councilman Davis carried on a 4-2 vote with Mayor Worley, Vice-Mayor Mumpower, Councilman Davis and Councilman Dunn voting "yes" and Councilwoman Bellamy and Councilman Newman voting "no." This matter will be considered on its second and final reading on January 13, 2004.

RESOLUTION BOOK NO. 28 – PAGE 73

B. PUBLIC HEARING TO CONSIDER CONDITIONAL USE ZONING FOR PROPERTY LOCATED AT 60 CALEDONIA ROAD FROM RS-8 RESIDENTIAL SINGLE-FAMILY HIGH DENSITY DISTRICT TO INSTITUTIONAL DISTRICT/CONDITIONAL USE, AND THE ISSUANCE OF A CONDITIONAL USE PERMIT

ORDINANCE NO. 3076 - ORDINANCE REZONING PROPERTY LOCATED AT 60 CALEDONIA ROAD FROM RS-8 RESIDENTIAL SINGLE-FAMILY HIGH DENSITY DISTRICT TO INSTITUTIONAL DISTRICT/CONDITIONAL USE

ORDINANCE NO. 3077 - ORDINANCE GRANTING A CONDITIONAL USE PERMIT FOR PROPERTY LOCATED AT 60 CALEDONIA ROAD TO ALLOW THE CONSTRUCTION OF 35 INDIVIDUAL GARAGE UNITS AND 10 ADDITIONAL PARKING SPACES

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 6:24 p.m.

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

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

Ms. Shannon Tuch, Urban Planner, 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).

-14-

Ms. Tuch said that this is the consideration of a request to conditionally rezone property located at 60 Caledonia Road from RS-8 Residential Single-Family High Density District to Institutional District/Conditional Use and a request to issue a conditional use permit to allow the construction of 35 individual garage units and 10 additional parking spaces.

Ms. Tuch said that the Asheville 2010 plans outlines the increasing need for high density housing in the urban center with access to retail/businesses, pedestrian amenities, public transportation, cultural activities and parks, and employment centers. This project's prime

location, less than a half mile from Biltmore Ave, and Mission St. Joseph's Hospital, satisfies these standards with the added benefit of providing the residents the solitude and comfort of a single family neighborhood with significant historic and architectural character (City Exhibit 3 – Building Elevations). Although it is not the lot containing the residential units in need of the rezoning, it is important to consider improvement and rehabilitation to our existing residential neighborhoods as described in our City adopted Smart Growth Goals. In addition, the need to promote sustainable land development patterns is also listed as a goal and, as such, it becomes necessary to examine the long-term needs of the associated multi-family structure to keep it attractive and viable.

The applicant, E. Frank Howington, representing the owner Kenilworth Apt. LLC., has requested a rezoning of .86 acres of RS-8 property to Institutional to allow for the new construction of 35 individual garage units on an existing 58 space surface parking lot. (City Exhibit 3 – Location Map). The Conditional Use component of this project will be a site master plan showing the proposed garage structures with some reconfigured parking. The project site is located within City limits on the northwest corner of Caledonia Road and Springdale Road, directly across from the rear of the newly renovated Kenilworth Inn. Apart from the Inn property currently zoned Institutional, the subject property is surrounded entirely by single family uses zoned RS-8. In addition to the proposed 35 garage units, an additional 10 surface parking spaces will be retained for a total of 45 spaces (City Exhibit 3 – Garage Units). This will result in a net loss of 13 spaces which, when totaled with the Inn's additional off-street parking, is still above the minimum parking requirement (City Exhibit 3 – Site Plan). The project will also retain the existing buffer vegetation which was required for the Inn's earlier renovations in 2001 and will need to be maintained for the proposed development.

The site is a mildly sloping asphalt parking lot that will not be altered through the construction process. The individual garage units are intended to be constructed on top of the existing asphalt parking lot and will not result in any ground disturbing activity or increase in impervious surfaces. In addition, the existing entrances on Caledonia Road and Springdale Road will remain in use and will be unaltered.

The purpose of the RS-8 zoning district is to establish a high density single family district in areas where public infrastructure is sufficient to support such densities. The Institutional zoning district is to reserve land for the development of major educational facilities, medical facilities, and other complementary and supporting uses such as health related developments, office developments and public services. Development standards for uses in this district are established to minimize conflict with adjacent land uses and as such allows for the development of high density multi-family, to serve as a potential buffer between other institutional uses and single family areas.

City Council must take formal action as set forth in section 7-9-9(c)(4) of the Unified Development Ordinance (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.

-15-

- 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 project area is relatively flat and the proposed project will not require any grading or other ground disturbing activity

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

The proposed garages will be constructed as an amenity for the residents of the Kenilworth Inn and will be built, both in materials and architecture, to reflect the style and character of the historic landmark. As a condition of this project, the applicant has agreed to incorporate design recommendations from the Historic Resources Director to ensure that the garages enhance the historic property and neighboring homes. In addition, the garage units will be individual units and will not exceed, in height or depth, the scale of the smaller homes in the area. Lastly lighting on the site will be improved from existing conditions to minimize intrusion and the loss of spaces will result in a slightly lower traffic count.

- 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 high density single family homes that are small to modest in scale. The proposed garages will not exceed the average home's height and depth proportions or exceed potential square foot coverage for a homes on a subdivided .86 acre lot. In addition, the garages will be designed to reflect the historic character of the Kenilworth Inn and

adjacent homes in the neighborhood.

- 5) That the proposed use or development of the land will generally conform to the comprehensive plan, smart growth policies, sustainable economic development strategic plan and other official plans adopted by the City.

The Asheville 2010 plans outlines the increasing need for high density housing in the urban center with access to retail/businesses, pedestrian amenities, public transportation, cultural activities and parks, and employment centers. This project's prime location, less than a half mile from Biltmore Avenue and Mission St. Joseph's Hospital, satisfies these standards with the added benefit of providing the residents the solitude and comfort of a single family neighborhood with significant historic and architectural character. Although it is not the lot containing the residential units in need of the rezoning, it is important to consider improvement and rehabilitation to our existing residential neighborhoods as described in our City adopted Smart Growth Goals. In addition, the need to

-16-

promote sustainable land development patterns is also listed as a goal and, as such, it becomes necessary to examine the long-term needs of the associated multi-family structure to keep it attractive and viable.

- 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 close proximity to transportation facilities and other utilities appear adequate. The project area is located near major road facilities, interstate connections and other service centers. The proposed project will not require water or sewer service and preliminary review by other service providers has not revealed any problems for future service to the development.

- 7) That the proposed use will not cause undue traffic congestion or create a traffic hazard.

The proposed project will utilize the existing parking area and entrances, resulting in no real change to traffic flow and a slightly reduced traffic count due to the loss of parking spaces. In addition, the applicant is considering installing additional sidewalk along Caledonia Road (in place of 'fee in lieu of') which will provide additional pedestrian paths and refuge, reducing the potential for vehicle/pedestrian conflict.

Approval of this project will allow for the construction of small, individual garage units that will be residential in scale and character and should blend in with the surrounding architecture and homes. It is intended that the proposed development serve to help enhance and promote the living conditions of a notable local landmark that has invested significantly in Asheville and the Kenilworth neighborhood through the renovation and rehabilitation of the Kenilworth Inn into small, moderately affordable units.

At their November 5, 2003, meeting, the Planning and Zoning Commission reviewed the Conditional Use rezoning request and voted unanimously that the project be forwarded to City Council stipulating the following condition that the applicant shall meet all outstanding TRC conditions.

City staff recommends approval of the zoning change from RS-8 to Institutional and approval of the associated conditional use permit, as proposed by the applicant, subject to (1) all outstanding TRC conditions being met and (2) the applicant continues to work with the Historic Resources Commission Director on undecided architectural issues.

Upon inquiry of Vice-Mayor Mumpower, Ms. Tuch said that two comments have been directed to her. One being in strong support of the project and the other had concerns primarily over the mass of the buildings.

Mr. Don Yelton questioned what measures are being taken to handle roof stormwater runoff. Ms. Tuch responded that this application will be reviewed for erosion control and stormwater measures under a separate cover through the City's Engineering Department.

There being no request from the applicant for rebuttal, Mayor Worley closed the public hearing at 6:36 p.m.

Councilwoman Bellamy thanked the developer for taking a blighted piece of property and turning it into a livable space taking extra care in developing garages for the tenants.

-17-

Councilwoman Bellamy moved to adopt Ordinance No. 3076 to rezone property located at 60 Caledonia Road from RS-8 Residential Single-Family High Density District to Institutional District/Conditional Use. This motion was seconded by Vice-Mayor Mumpower and carried unanimously.

ORDINANCE BOOK NO. 21 – PAGE 25

Councilwoman Bellamy moved to adopt Ordinance No. 3077 to issue a conditional use permit to allow the construction of 35 individual garage units and 10 additional parking spaces, subject to the following conditions: (1) all outstanding TRC conditions being met and (2) the applicant continues to work with the Historic Resources Commission Director on undecided architectural issues. This motion was seconded by Councilman Dunn and carried unanimously.

ORDINANCE BOOK NO. 21 – PAGE 27

C. 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

ORDINANCE NO. 3078- ORDINANCE TO REZONE 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

Mayor Worley opened the public hearing at 6:38 p.m.

Ms. Shannon Tuch, Urban Planner, said that this is the consideration of an ordinance to rezone 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. This public hearing was advertised on November 14 and 21, 2003.

Ms. Tuch advised that a valid protest petition had been filed, however, at the meeting on November 25, 2003, the petitioner presented City Council with copies of a withdrawal of protest of proposed zoning amendment. It was determined by City Council that originals would be necessary to invalidate the protest petition and thus the meeting was continued until this date. On December 1, 2003, the petitioner presented the City Attorney with the original withdrawals.

The applicant has requested a rezoning of two parcels from RS-4 Residential Single-Family Medium Density District and RM-8 Residential Multi-Family Medium Density District respectively to Community Business II (CB-II) to allow for further commercial development of the Brevard Road corridor. The subject property currently includes multiple single-family residences and is bordered by vacant land to the north, non-conforming commercial uses to the east, single family residences to the south, and single family residences and some vacant residentially zoned property to the west. There are some additional CB-II zoned properties further north along Brevard Rd. However, these uses, along with those to the east and southeast of the subject property, are predominantly non-conforming. The Community Business II district is established to provide business and service uses to medium/high density residential areas, serving several residential neighborhoods.

-18-

The purpose of the RS-4 zoning district is to establish a medium density for single family dwellings and to stabilize and protect the residential character of the district while promoting a suitable environment for single-family living. The purpose of the RM-8 district is to provide medium density multi-family housing types along with single family detached and attached residences. This district is also intended to provide a transitional area between medium density single family dwellings and other higher density residential uses and/or uses of a heavier impact. The existing 2 acre RM-8 lot along with the vacant RM-8 property to the North serves to buffer the existing single family residences from encroaching commercial development and is some of the only multi-family zoned property in the area with direct access onto Brevard Rd.

At their August 6, 2003, meeting the Planning and Zoning Commission recommended a compromise zoning action where the two subject parcels would be split zoned with the front half of both parcels (fronting on Brevard Road) being rezoned to CB-II while the back halves would remain under the RS-4 zoning designation. At the time, the owner's representative, Mr. Gerald Green, supported the compromise and the Commission voted 5-1 in favor of the new alternative. Later, once the project had been advertised and the public hearing scheduled, the owner of the property changed his support and the project was remanded back to the Planning and Zoning Commission. At their November 5, 2003, meeting the Commission again heard the case and ultimately recommended denial of the request in a 3-3 vote, primarily citing concerns over loss of well positioned multi-family zoned property and adverse impacts to the adjacent single family neighbors.

The southwest area is currently one of the City's fastest growing residential areas where rents and housing prices remain modest. The subject property is felt to be well positioned for a multi-family development that would be in close proximity to employment centers and necessary services. In addition, the existing CB-II properties located near or adjacent to the subject properties are almost all non-conforming and underutilized. It would be preferable to preserve the opportunity for multi-family and single family development while encouraging turnover or renovation of existing non-conforming CB-II properties. Of particular concern are the existing site conditions for the RS-4 parcel where maximizing commercial development on this site would result in significant earth moving and vegetation removal,

effectively eliminating the existing buffer between the single family neighborhood and the encroaching commercial uses. In addition, concern over the almost certain commercial access onto the exclusively residential road could result in a substantial adverse impact to the residents living along Pole Creasman Rd. Lastly, whenever a road is being widened it is the preference of the N. C. Dept. of Transportation (NC DOT) and other groups that the intensity of uses along the corridor not be altered significantly because the purpose of the widening is to facilitate the movement of the existing traffic. As soon as you start increasing that intensity of the use then you begin to undo the benefit of the widening and the investment of the public money.

Staff does clearly understand the interest in rezoning the property and tried to approach the applicant with a variety of compromises, none of which he supported.

At their November 5, 2003 meeting the Commission again heard the case and ultimately recommended denial of the request in a 3-3 vote, primarily citing concerns over loss of well positioned multi-family zoned property and adverse impacts to the adjacent single family neighbors.

Planning staff recommends denial of the rezoning request as submitted.

There was a brief discussion about the huge power lines in the back of the property that almost serve as a buffer from the rest of the neighborhood.

-19-

Upon inquiry of Councilman Newman about all the uses allowed in the CB-11 District, Ms. Tuch explained that the type of use is not the greatest concern, but the scale of use and the impact of the site.

Mr. Gerald Green, representing the petitioner, spoke in support of the rezoning and agreed that there is a number of underutilized commercial properties along Brevard Road. However, he anticipated that what the widening of Brevard Road the pace of redevelopment and new development along Brevard Road will increase significantly. The rezoning and development of this property under the CB-II District will provide a model for that redevelopment. The CB-II standards are much stricter than the standards under which the existing development could occur. He then addressed each reason of staff's concern. Basically, the City's zoning and landscaping ordinance provides for significant buffering based on the type of use and the change in intensity of uses so the buffers would remain. He felt the power lines do serve as a good buffer between this property and the adjacent residential properties. Another issue was grading and removal of vegetation if the property were rezoned. Regardless of the type of development on that property, grading will occur and the landscaping will be removed. He explained that if the property remained RM-8 it would probably result in as much, if not more, grading and landscape removal than any commercial zoning. He explained that the traffic that would be generated by the commercial development on this property would have access at a traffic signal either coming off Pole Creasman Road or near that traffic signal coming onto Brevard Road. There are still some questions on whether the NC DOT will permit access onto Brevard Road that close to a traffic signal and the City has some access standards as well. Regarding the compromises, the owner doesn't know what type of uses will go on the property and because of the topography and access limitation the petitioner did not accept any of the compromises.

Mr. Carr Swicegood, property owner, spoke in support of the rezoning. He felt that the CB-II zoning fits better because of the power lines. He explained that the property is pretty much surrounded by commercial property.

Mr. Fred English felt the City should not rezone any more residential property for business.

Mr. Alan Ditmore felt the property should be developed as mixed-use with commercial and residential.

Mr. Herman Langford, resident on Pole Creasman Road, spoke in opposition of the rezoning request. Any commercial development on that property will increase traffic on Pole Creasman Road and create less buffer than there is now.

Mr. Andy Reed spoke in opposition to the rezoning noting that Pole Creasman Road is a dangerous road already and doesn't need any more increased traffic on it.

Mr. Mike Fryar supported the rezoning stating that most of the area is commercial already.

Mayor Worley closed the public hearing at 7:12 p.m.

When Councilman Davis asked if he would have a conflict of interest since he served as Planning & Zoning Commission Chair at their August meeting when this matter was heard, City Attorney Oast said that this is a different proposal and there would be no conflict.

City Attorney Oast reminded Council that if the property is rezoned, it can be used for any use allowed in the CB-II district.

-20-

Councilman Davis asked if there was anyway of mitigating traffic on Pole Creasman Road. City Attorney Oast said that the development will have to go through the site plan review process and issues like traffic will come up then. City Manager Westbrook also noted that Pole Creasman Road and Brevard Road are both state maintained roads.

Upon inquiry of Councilwoman Bellamy, City Attorney Oast said that staff's control is limited in the development review process and not all concerns discussed today can be addressed through that process.

When Councilman Newman asked if there were any other rezoning issues in the area, Planning & Development Director Scott Shuford said that Council has directed him to look at a zoning plan for the Brevard Road corridor, however, it would not affect this project since the application was already submitted. That plan should be before Council in February or March. He said that should Council chose to accept this rezoning, they will assume Council's vision for this area is this is a node of commercial and they will accommodate that in their planning process.

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 to adopt Ordinance No. 3078. This motion was seconded by Councilman Davis.

Vice-Mayor Mumpower personally felt the weakest argument is the nature of the residential area surrounding the property. He felt it is more of a transitional area. Weighing all the information, he felt the petitioner has satisfied his immediate neighbors to the point they withdrew their protest petition, and he would support the motion to rezone.

Councilwoman Bellamy said that she would support the motion to rezone but asked City staff to address anyway they could the access on Pole Creasman Road as well as the buffering concerns.

The motion made by Councilman Dunn and seconded by Councilman Davis carried on a 5-1 vote, with Councilman Newman voting "no."

At 7:25 p.m., Mayor Worley announced a short break.

ORDINANCE BOOK NO. 21 – PAGE

IV. UNFINISHED BUSINESS:

A. RESOLUTION NO. 03-208 - RESOLUTION AUTHORIZING THE CITY MANAGER TO NEGOTIATE AN AGREEMENT FOR MANAGEMENT OF PUBLIC ACCESS CHANNEL

RESOLUTION NO. 03-209 - RESOLUTION RECEIVING REPORT OF PUBLIC ACCESS CHANNEL COMMISSION

ORDINANCE NO. 3079 - ORDINANCE DISSOLVING THE PUBLIC ACCESS CHANNEL COMMISSION

Public Access Channel Commission Chair Beth Lazer said that this is the consideration of an ordinance to dissolve the Public Access Channel Commission (PACC) and provide direction as to the City's support of URTV, Inc., as the non-profit corporation responsible for policy and

-21-

operational oversight of a public access cable channel pursuant to the terms of a Management Agreement with URTV, Inc. and the City of Asheville.

On October 28, 2003, City Council voted unanimously to allow the Mayor to enter into an Interlocal Agreement with Buncombe County government for the purpose of funding a Countywide public access television operation and facility. At that time, the PACC Chair Beth Lazer outlined future steps necessary toward the formation of URTV, Inc. as the oversight corporation of public access television for Asheville and all non-incorporated areas of Buncombe County. Those steps include: 1) adoption of an ordinance dissolving PACC, 2) direction as to Board of Director selection process of URTV, Inc.; and 3) Once the URTV, Inc. Board of Directors is formed, the City of Asheville negotiate and enter into a Management Agreement with URTV, Inc.

The PACC has recommended that both Asheville City Council and Buncombe County Commissioners each receive one initial URTV Board of Director appointment. In addition, all five current PACC members have agreed to serve an initial term during this upcoming transition. Then, those seven inaugural board members would appoint the remaining four board members, for a total of eleven board members. The recommendation of one appointment each from the City and County is based on the following factors: (1) consultant's recommendation based on other Public Access Channel non-profit boards; (2) the desire of Council to distance itself from any liability issues pertaining to the operation of the Channel; (3) also the more appointments Council has, the more the organization will appear less like an independent member organization and more like a City commission; (4) the fewer appointments by Council, they feel they have a better chance of getting a 501 (c) (3) designation from the IRS; and (5) the more distance we have from the governing bodies, the easier it will be for them to raise funds from other sources, such as foundations.

Several City Council members requested data from other North Carolina cities that would outline the non-profit Board appointment process. The following cities were contacted and subsequent information collected:

Town of Chapel Hill/The People's Channel: Private-non-profit public access channel since 1996. The Board of Directors consists of ten members, all of which are appointed by the Board itself. Current budget: \$133,392. Of that amount, \$110,341 is provided by the City through cable fees.

City of Greensboro/Greensboro Community Television: Private non-profit public access channel since 1995. The Board of Directors consists of eighteen members. Three members are appointed by the City of Greensboro and the remaining fifteen are appointed by the Board. Current budget: \$225,000. Of that amount, \$120,000 is provided by the City through cable fees.

City of Winston-Salem/Community Access Television (CATTV): Private non-profit public access channel since 1994. The Board of Directors consists of fourteen members, seven of which are currently vacant. Several board seats are held by member representatives; several seats are held by community organizations, such as the N.C. School of the Arts. No seats are appointed by the City of Winston-Salem.

City of Raleigh/Community Television: The City of Raleigh does not have a private non-profit organization to oversee its public access channel. The Public Affairs Department oversees the division responsible for government access, public access, and religion access television. These divisions are staffed with City employees. The Raleigh City Council appoints the Raleigh Telecommunications Commission, who has responsibility for policy oversight of Community Television.

-22-

City of Wilmington: The City of Wilmington does not have a public access television station. Time-Warner Cable Company does provide a channel for community access, accepting locally produced tapes for consideration. There is no City involvement, to include money and Board oversight at this time. The City does have the ability through its Cable Franchise Agreement to set up a public access channel in the future if it determines it necessary.

As you can see, there is a wide continuum of how other cities in our region have addressed public access channel programming oversight responsibility.

Staff recommends Council adopt the ordinance dissolving the Public Access Channel Commission and determine a method to appoint URTV, Inc. Board of Directors. Once the board is named, the City Manager shall negotiate, on behalf of the City, a management agreement subject to the City Council final approval.

In addition, at Council's worksession on December 9, 2003, discussion of this matter, the following issues were raised as follows:

1. Composition as non-profit board. The composition of the board of URTV, Inc. or any independent agency that will operate the public access channel, was an issue for several Council members. One way that this can be influenced appears to be by Council authorizing the negotiation of a management agreement with an independent non-profit corporation (if that is Council's desire), but to limit that authorization to non-profits whose bylaws provide for a certain number of City/County appointments.
2. Management Agreement. The draft management agreement is only an example of what such an agreement might contain. The Manager may be instructed to insist on certain terms to ensure as much as possible that the public access channel is operated in an appropriate and responsible manner, subject of course to legal considerations regarding public forums and censorship.
3. Recommendation of PACC. City Council should receive the report of the PACC, without necessarily adopting or endorsing its recommendations. This will signify that PACC has completed its work (with the thanks of Council), and that Council is free to act on the recommendations of the report.
4. Ordinance dissolving PACC. If Council wishes to retain PACC or a similar organization to act in an on-going advisory capacity, appropriate action can be taken for that as well.

The City staff will proceed with negotiations on the management of the public access channel in accordance with Council's wishes. The resolution containing that authorization may be revised accordingly, but it is recommended that it be adopted in some form.

Mr. Chad Nesbitt, owner of High Impact Productions Inc., asked if any taxpayer money being used for this channel, will religious and political programming be allowed on the channel, and will the non-profit board open their books for audits.

Mr. Fred English was not satisfied with the board's make-up and felt the channel should not be paid with taxpayer's money.

Mr. Mark Goldstein, member of the PACC, spoke in support of the board's suggested make-up and how it would be fully inclusive process for board appointments.

-23-

Mr. Peter Dawes felt that the current PACC has not been inclusive with the entire community to date noting that the existing talent has not been used, even after being offered. He felt the City and County should have more than one representative on the non-profit board.

Mr. Don Yelton said that the City cannot give up their legal liability to any Board that Council forms. He felt any Public, Educational and Government (PEG) money should go to the UNC-Asheville studio rather than build a new studio. He wanted the PEG money to go to coordinate an effort with A-B Technical Community College (A-B Tech) to train people how to fix videos. He questioned if UNC-Asheville even wanted to participate in this program. He felt we needed to maximize our money. He fully supported public access television, but not if it creates another layer of bureaucracy.

Mr. Bill Fishburne said that there are standards of what can and cannot be shown on the public access channel. He felt there should be a termination clause in the agreement after a period of time. He also felt the subscribers should have a chance to opt out and not be forced to have this on their basic cable service. Lastly, he felt there should be an independent survey done to see if anyone is watching the channel.

Mr. J.R. Yarnell, Asheville resident, spoke in support of the public access channel.

Mayor Worley and Ms. Lazer responded to comments and questions raised by the public.

Upon inquiry of Councilman Newman, Ms. Lazer outlined how they envision the future non-profit board and it's membership.

Vice-Mayor Mumpower was comfortable with the existing PACC being the core of the non-profit board, but felt that the City needed a stronger external representation because it does involve citizens' money and it's not voluntary participation. He explained how he felt some balanced oversight is appropriate and advocated the City appoint two members (instead of one) to the non-profit board.

Councilman Newman felt that if the City and Council each had two representatives on the board, that would 1/3 of the board made up of people primarily watch-dogging the non-profit board, rather than going out and working hard to raise the private sector funding necessary to make this project work and to get the community involved. We do have every opportunity to build mechanisms in the agreement that will provide the accountability and regular oversight. Regarding accountability, he didn't feel that City Council gains that much more control based on the number of people we appoint to the board. He pointed out that City Council could appoint the entire board, but once we appoint citizens to serve, they do what they think is the right thing to do at the time, which may or may not coincide with what City Council thinks at any given time. He supported the suggestion by Councilwoman Bellamy to appoint a liaison which will be a good way to keep the lines of communication open.

Ms. Lazer agreed that a City Council liaison would be a good idea.

Councilman Dunn felt that this board is different from other boards because they will be dealing with taxpayer money. He explained why he felt we needed more than one member on the Board.

Upon inquiry of Councilman Newman, Ms. Lazer said that UNC-Asheville and A-B Tech are partners with the Education Access Channel and that is where their programming has been focused and sent. On the other hand, we have been working with the multi-media department at UNC-Asheville in our partnership with the Multi-Media Arts Project. They are looking for a venue where students who are studying multi-media can come and produce programming and then

-24-

have a venue for that work. We would be more than happy to work with UNC-Asheville and A-B Tech in that endeavor.

When Councilman Newman asked if there was a way to evaluate the number of people watching the channel, City Attorney Oast said that he will ask Charter Communications.

Upon inquiry of Councilman Davis of the PEG funds, Ms. Lazer said that the County Commissioners are receiving money from Charter based on their own franchise agreement. Their collected money is waiting for distribution until we go to them and work on a management agreement. Then they will figure out how they are going to be dividing the money they are collecting. Their money can be used for operating, capital or equipment and the City's money can only be used for capital and equipment.

Upon inquiry of Councilman Davis, Ms. Lazer said that Asheville City Schools, UNC-Asheville and A-B Tech are providing their own funding for the Education Channel.

Councilwoman Bellamy said that with our PEG fees we should do it on a percentage basis and give some to the Educational Access Channel, thinking about the fact that City and County schools, A-B Tech and UNC-Asheville have been paying the bill for the last few years. Previously the Educational Access Channel Commission has come to Council asking for a portion of PEG fees because basically Asheville City Schools does a lot of the programming and ensuring that the channel stays on the air. Since it serves the majority of the City of Asheville, she felt it was important to give a portion of the PEG fees to them. Ms. Lazer said another alternative might be to share equipment and facilities as best we can to avoid duplication.

Vice-Mayor Mumpower said that it has been suggested that once we get beyond this that we might look at all of our public channels and see if there are ways to do all of that better.

Councilman Davis felt that we are looking at a fairly costly, ambitious project. We have money set aside for the initial start-up, but we really need to be looking at the management agreement once we get past the dissolution of the current board.

Vice-Mayor Mumpower said that the Educational Access Channel Commission is tentatively interested in coming to a Council worksession and making a presentation of their structure and interest. He also noted that the Government Channel has funding weaknesses as well.

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

Vice-Mayor Mumpower moved to adopt Resolution No. 03-208. This motion was seconded by Councilwoman Bellamy. City Attorney Oast noted that the number of members to be appointed by the City and County needed to be inserted in the resolution prior to adoption.

After discussion initiated by Councilwoman Bellamy on whether there should be prior consultation with the County Commissioners about the number of members, Vice-Mayor Mumpower moved to adopt Resolution No. 03-208 providing that the by-laws of the URTV, Inc. provide that the City Council and Buncombe County Commissioners shall each appoint two members to the board of directors of URTV, Inc. and that said appointment power be perpetual for the life of URTV, Inc. and that the total membership of said board not exceed eleven. Said motion was made with the understanding that some discussion and negotiation with Buncombe County is going to have to occur and that number of members can be modified at a later point. This motion was seconded by Councilman Dunn.

-25-

Councilman Newman moved to amend the motion that the City and County appoint only 1 member each to said URTV, Inc. This motion was seconded by Mayor Worley.

Upon inquiry of Councilwoman Bellamy, City Attorney Oast said that he would include a provision in the management contract that City Council appoint a liaison to the URTV, Inc.

The motion to amend failed on a 3-3 vote, with Mayor Worley, Councilman Davis and Councilman Newman voting "yes" and Vice-Mayor Mumpower, Councilwoman Bellamy and Councilman Dunn voting "no."

The original motion appointing 2 members to URTV, Inc., carried unanimously.

RESOLUTION BOOK NO. 28 – PAGE 75

Councilman Newman moved to adopt Resolution No. 03-209 receiving the report of the PACC and thanking them for their service. This motion was seconded by Vice-Mayor Mumpower and carried unanimously.

RESOLUTION BOOK NO. 28 – PAGE 76

Vice-Mayor Mumpower moved to adopt Ordinance No. 3079 dissolving the PACC. This motion was seconded by Councilman Dunn and carried unanimously.

ORDINANCE BOOK NO. 21 - PAGE

V. NEW BUSINESS:

VI. OTHER BUSINESS:

Claims

The following claims were received by the City of Asheville during the period of November 14-December 4, 2003: JoAnn Watley (Streets), Jesse Turner (Streets), Mary Juanita Theobald (Streets), Diane Douglas (Fire), BellSouth (Water), Arthur Graham (Sanitation) and Denise Hollifield (Water).

The following claims were received during December 5-11, 2003: Jerry Queen (Water), Toni Pisani (Water), Joanne Allison (Water), Richard Pierce (Streets) and Max L. Morgan (Police).

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

VII. INFORMAL DISCUSSION AND PUBLIC COMMENT:

Mr. Fred English felt that City Council should not bother the pushcart owner located at the County Courthouse for driving over the curb to put the pushcart on the sidewalk when other vehicles drive over the curbs for various reasons.

Mr. Roy Harris praised City Council for the professional way they handle themselves during Council meetings.

Mr. Don Yelton encouraged City Council to address the PACC questions put before them today.

-26-

Mr. Mike Fryar presented City Council with Ordinance No. 3035 annexing his property on Smoky Park Highway and a map of the property alleging that the description in the ordinance does not accurately correspond with the map. He asked City Council to either rescind the ordinance or waive the 60-day time period within which to appeal the ordinance.

Upon inquiry of Councilwoman Bellamy, City Attorney Oast said that he was not aware of a process in the statute by which we can rescind an annexation. He believed that requires legislative action.

Based on information Mr. Fryar has brought before Council, Vice-Mayor Mumpower asked if Council has the authority to extend the period of appeal. City Attorney Oast replied no and that he felt it was a jurisdictional issue. Regarding the accuracy, City Attorney Oast said the City operated within reasonable parameters of accuracy.

VIII. ADJOURNMENT:

Mayor Worley adjourned the meeting at 9:25 p.m.

CITY CLERK

MAYOR