

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; Councilwoman Diana Hollis Jones; Councilman Brownie W. Newman; City Manager James L. Westbrook Jr.; City Attorney Robert W. Oast Jr.; and City Clerk Magdalen Burleson

Absent: None

**PLEDGE OF ALLEGIANCE**

Councilman Dunn led City Council in the Pledge of Allegiance.

**INVOCATION**

Councilwoman Bellamy gave the invocation.

**I. PROCLAMATIONS:**

**A. PROCLAMATION PROCLAIMING MAY 8-15, 2004, AS "STRIVE NOT TO DRIVE WEEK"**

Mayor Worley read the proclamation proclaiming the week of May 8-15, 2004, as "Strive Not To Drive Week" in the City of Asheville. He presented the proclamation to Ms. Terri Zimmerman March, Buncombe County's Health Promotion Program Coordinator, and Ms. Linda Giltz, with the Land-of-Sky Regional Council, who briefed City Council on some activities taking place during the week.

Ms. Giltz then presented a Golden Wheel Award to Transit Services Director Bruce Black and to former Chairman of the Asheville Transit Commission Ron Lambe who have made a difference over the year regarding transit.

**II. CONSENT AGENDA:**

Councilman Dunn asked that Consent Agenda H be removed from the Consent Agenda due to his conflict of interest.

Councilwoman Bellamy asked that Consent Agenda I be removed from the Consent Agenda for an individual vote.

**A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON APRIL 27, 2004**

**B. RESOLUTION NO. 04-102 - RESOLUTION ACCEPTING SWEET SPIRE RIDGE IN REYNOLDS MOUNTAIN SUBDIVISION AS A CITY MAINTAINED STREET**

Summary: The consideration of a resolution to accept Sweet Spire Ridge in Reynolds Mountain Subdivision as a City maintained street.

Section 7-15-1(f)-4.a requires that streets dedicated for public uses be accepted by resolution of City Council.

-2-

Sweet Spire Ridge is a developer constructed street that has an average paved width of 20 feet and a length of 0.16 miles. Engineering Department staff inspected this street and finds it to be constructed in accordance with the approved standards.

Following City Council's approval of this resolution, Sweet Spire Ridge will be added to the official Powell Bill list. A two-year warranty, from the time of Council acceptance, will be required by the developer to cover major failures in the roadway.

City staff recommends City Council adopt a resolution to accept Sweet Spire Ridge in Reynolds Mountain Subdivision as a City maintained street.

**RESOLUTION BOOK NO. 28 – PAGE 243**

**C. RESOLUTION NO. 04-103 - RESOLUTION ACCEPTING VANDERBILT PARK DRIVE OFF HENDERSONVILLE**

## ROAD AS A CITY MAINTAINED STREET

Summary: The consideration of a resolution to accept Vanderbilt Park Drive off Hendersonville Road as a City maintained street.

Section 7-15-1(f)-4.a requires that streets dedicated for public uses be accepted by resolution of City Council.

Vanderbilt Park Drive is a developer constructed street that has an average paved width of 20 feet and a length of 0.25 miles. Engineering Department staff has reviewed the density tests and inspection reports and finds it to be constructed in accordance with the approved standards.

Following City Council's approval of this resolution, Vanderbilt Park Drive will be added to the official Powell Bill list. A two-year warranty, from the time of Council acceptance, will be required by the developer to cover major failures in the roadway. The first section of the roadway from Hendersonville Road to the entrance to the old Biltmore School is exempt for this warranty because it was constructed prior to this development.

City staff recommends City Council adopt the resolution to accept Vanderbilt Park Drive off Hendersonville Road as a City maintained street.

### RESOLUTION BOOK NO. 28 – PAGE 244

#### D. RESOLUTION NO. 04-104 - RESOLUTION SETTING A PUBLIC HEARING ON JUNE 8, 2004, TO CONSIDER CLOSING A PORTION OF REED STREET

### RESOLUTION BOOK NO. 28 – PAGE 245

#### E. RESOLUTION NO. 04-105 - RESOLUTION AUTHORIZING THE MAYOR TO RENEW THE JOINT COOPERATION AGREEMENT WITH THE ASHEVILLE REGIONAL HOUSING CONSORTIUM

Summary: The consideration of a resolution authorizing the Mayor to renew the Joint Cooperation Agreement with the Asheville Regional Housing Consortium.

The City of Asheville entered into a Joint Cooperation Agreement with twelve governmental units within Region B on March 31, 1992, and formed the Asheville Regional Housing Consortium.

-3-

The U.S. Dept. of Housing & Urban Development (HUD) regulations require execution of a new Cooperation Agreement for the Asheville Regional Housing Consortium to continue receiving entitlement allocations under the HOME grant program.

On March 9, 2004, the City sent a letter to HUD stating its intent to participate again as a consortium in the HOME program, and also stating it will submit to HUD prior to June 30, 2004, all other required documents for participation, including a new Cooperation Agreement and authorizing resolutions from member governmental units.

The Cooperation Agreement states in Section 14: "The Lead Entity and the Cooperating Units agree to remain in the Consortium at least through September 30, 2007. Thereafter, each party shall continue to participate in the Consortium to the extent required by HUD regulations or other applicable law."

Since formation of the Consortium in 1992, the region has received entitlement allocations totaling \$14,787,335. The City of Asheville has received \$5,326,515 for its affordable housing programs and administrative costs as Lead Entity since the beginning of the program.

**Pro:** Allow the City to continue to operate as Lead Entity of the Consortium and to receive an annual entitlement of HOME Program funds from HUD,

**Con:** Rejection of the resolution will jeopardize the Consortium's standing with HUD and may terminate future entitlement funding through the HOME Program.

Community Development staff recommends adoption of the resolution authorizing the Mayor to renew the Joint Cooperation Agreement with the Asheville Regional Housing Consortium.

**RESOLUTION BOOK NO. 28 – PAGE 246**

**F. RESOLUTION NO. 04-106 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO AN AGREEMENT WITH THE N.C. DEPT. OF TRANSPORTATION FOR SIDEWALKS ON LONG SHOALS ROAD**

Summary: The consideration of a resolution authorizing the City Manager to sign a municipal agreement with the N.C. Dept. of Transportation (NCDOT) for the installation of concrete sidewalk along NC 146 (Long Shoals Road) from Hendersonville Road to the corporate limits of the City of Asheville, excluding bridges.

NCDOT is currently in the process of widening NC 146 (Long Shoals Road). As part of this project we have requested that sidewalk be installed along the section of roadway adjacent to the construction within the cooperate limits.

The agreement will require NCDOT to pay 60% of the cost and the City of Asheville to pay 40% of the costs. The cost of the sidewalk is estimated at \$288,134. The City's portion of that cost will be \$115,254. This payment is not due to NCDOT until the project is complete which is estimated to be Fiscal Year 2006.

As part of this agreement the City will be responsible for maintaining the sidewalk which is standard operating procedure for all sidewalks on State maintained roadways.

The benefit of having the sidewalk installed by NCDOT is that we are only required to pay 40% of the cost of the sidewalk as opposed to 100%. Additionally, the cost to construct the

-4-

sidewalk is cheaper because it is being constructed at the same time as the road is being widened.

The only negative consequence of the project is that the City has to pay \$115,254 for the sidewalk installation and cost associated with maintaining the sidewalk.

The consideration of a resolution authorizing the City Manager to sign a municipal agreement with NCDOT for the installation of concrete sidewalk along NC 146 from Hendersonville Road to the corporate limits of the City of Asheville, excluding bridges.

**RESOLUTION BOOK NO. 28 – PAGE 247**

**G. RESOLUTION NO. 04-107 - RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE A CONTRACT AMENDMENT WITH GREEN LIGHT ELECTRIC INC. FOR TRAFFIC SIGNAL MAINTENANCE**

Summary: The consideration of a resolution authorizing the City Manager to amend the existing agreement with Green Light Electric, Inc., to continue preventative maintenance of traffic control devices through December 31, 2004, in the amount of \$72,000.

In April 2001, the Public Works and Engineering staff undertook the project of reengineering the Division of Traffic Operations, given the fact that two signals technicians resigned and the impending retirement of the traffic signal supervisor. City staff determined that preventative maintenance activities could, and should be, contracted to the private sector.

It was further determined that a minimum staff level of two signal technicians, whose pay scale and classification would more closely emulate the N. C. Dept. of Transportation technicians with similar responsibilities, would be maintained to insure emergency response and guarantee that timely repairs were enacted. Their primary responsibility, beyond emergency response, is to maintain and update signal system data and functions of coordination and timing.

Bids were solicited to determine actual costs for a comprehensive preventative signal maintenance program by the private sector. Green Light Electric, Inc.'s bid was the lowest, with the 2<sup>nd</sup> lowest bidder approximately 67% higher.

The overall cost savings from the reengineering idea, along with the improved services mentioned above, is approximately \$40,000 per year.

Pros:

- Preventative maintenance of traffic signals is necessary to ensure public safety.

- Green Light Electric, Inc.'s fees are very competitive.

Cons:

- There is some cost associated with traffic signal maintenance.

Staff requests that City Council approve a resolution authorizing the City Manager to enter into an agreement with Green Light Electric, Inc. for preventative maintenance of traffic control devices.

**RESOLUTION BOOK NO. 28 – PAGE 248**

**H. RESOLUTION AUTHORIZING THE CITY OF ASHEVILLE TO CONVEY AN EASEMENT OVER A PORTION OF CITY-OWNED PROPERTY ON KENILWORTH ROAD TO DR. JOSEPH DUNN FOR A PRIVATE RESIDENTIAL SEWER LINE**

-5-

This item was removed from the Consent Agenda due to a conflict of interest.

**I. RESOLUTIONS MAKING PROVISIONS FOR THE POSSESSION AND CONSUMPTION OF MALT BEVERAGES AND/OR UNFORTIFIED WINE AT THE PINK BALL FESTIVAL ON JUNE 19, 2004, AND THE PINK RIBBON CELEBRATION ON SEPTEMBER 16, 2004**

This item was removed from the Consent Agenda due to a conflict of interest.

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

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

**ITEMS PULLED OFF THE CONSENT AGENDA**

**RESOLUTION NO. 04-108 - RESOLUTION AUTHORIZING THE CITY OF ASHEVILLE TO CONVEY AN EASEMENT OVER A PORTION OF CITY-OWNED PROPERTY ON KENILWORTH ROAD TO DR. JOSEPH DUNN FOR A PRIVATE RESIDENTIAL SEWER LINE**

Councilwoman Jones moved to excuse Councilman Dunn from participating in this matter due to a conflict of interest. This motion was seconded by Councilman Newman and carried unanimously.

Summary: The consideration of a resolution authorizing the City to convey an easement over a portion of City-owned property on Kenilworth Road to Dr. Joseph Dunn for a private residential sewer line.

The City owns property (PIN 9648.16-84-1232) located on Kenilworth Road. The property is known as the Harvest House Community Center. A portion of the property near the rear line is wooded and steep and is crossed by a sewer main. The intended use for that portion of the property is for green space.

Dr. Joseph Dunn owns property on Lakewood Drive, which backs up to the City's property on Kenilworth Road. Dr. Dunn is building a house on his property. Due to the topography and the location of the sewer main, the most direct and efficient route to provide sewer to the new house is across 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. The portion of land encumbered by the permanent easement comprises approximately 656 square feet

A Comparative Market Analysis was prepared by Derek S. Weekly, Realtor and his opinion letter dated April 28, 2004, indicated a land value for the easement area of \$446. The easement value is calculated at 50% of the land value rendering an easement value of \$223.

The advantages of conveying the easement are:

1. The easement will enable Dr. Dunn to proceed with construction of a new home on his property which will increase the tax base, generate economic activity, further smart growth objectives of urban densification and provide needed housing.

2. The easement will provide the most practical and efficient access to the public sewer.

-6-

The disadvantage is the land within the easement area (656 sq. ft.) cannot be built upon nor planted with large trees; however that is mitigated by the fact that the encumbrance is on a portion of the property that is unsuitable for construction and is covered with natural vegetation.

Approval of the resolution will authorize conveyance of the easement to Dr. Joseph Dunn for the purpose of a private residential sewer line.

Planning & Development staff and Parks & Recreation staff recommend adoption of the resolution authorizing the City to convey an easement over a portion of City-owned property in Kenilworth to Dr. Joseph Dunn.

Councilwoman Jones moved for the adoption of Resolution No. 04-108. This motion was seconded by Councilwoman Bellamy and carried unanimously.

**RESOLUTION BOOK NO. 28 – PAGE 249**

**RESOLUTION NO. 04-109 - RESOLUTION MAKING PROVISIONS FOR THE POSSESSION AND CONSUMPTION OF MALT BEVERAGES AND/OR UNFORTIFIED WINE AT THE PINK BALL FESTIVAL ON JUNE 19, 2004**

**RESOLUTION NO. 04-110 - RESOLUTION MAKING PROVISIONS FOR THE POSSESSION AND CONSUMPTION OF MALT BEVERAGES AND/OR UNFORTIFIED WINE AT THE PINK RIBBON CELEBRATION FESTIVAL ON SEPTEMBER 16, 2004**

Summary: The consideration of resolutions making provisions for the possession and consumption of malt beverages and/or unfortified wine at the following events: The Pink Ball benefiting the Asheville Area Arts Council, and the Pink Ribbon Celebration.

The below listed groups have requested through the Asheville Parks and Recreation Department that City Council permit them to serve beer and/or unfortified wine at their events and allow for consumption at these events.

The Pink Ball, scheduled for Saturday, June 19, 2004, raises funds to benefit the Asheville Area Arts Council, a community arts organization dedicated to developing cultural resources, city and audience development, fund raising, and grant allocations.

The Pink Ribbon Celebration, scheduled for September 16, 2004, is an event to raise funds for the American Cancer Society in conjunction with the Grape Escape wine bar.

The Asheville Parks and Recreation Department recommends approval of the resolutions to authorize the possession of malt beverages and/or unfortified wine for the above-mentioned events at specific locations and times noted in the resolutions.

Vice-Mayor Mumpower moved for the adoption of Resolution Nos. 04-109 and 04-110. This motion was seconded by Councilman Newman and carried on a 6-1 vote, with Councilwoman Bellamy voting "no."

**RESOLUTION NO. 04-109 - RESOLUTION BOOK NO. 28 – PAGE 250**

**RESOLUTION NO. 04-110 - RESOLUTION BOOK NO. 28 – PAGE 252**

**III. PUBLIC HEARINGS:**

-7-

**A. PUBLIC HEARING TO CONSIDER THE ISSUANCE OF A CONDITIONAL USE PERMIT FOR PROPERTY LOCATED AT 673 SAND HILL ROAD FOR THE CONSTRUCTION OF 12 ADDITIONAL APARTMENTS IN AN RM-6 RESIDENTIAL MULTI-FAMILY LOW DENSITY DISTRICT**

This item has been removed from the agenda for consideration.

**B. PUBLIC HEARING TO CONSIDER CLOSING AN UNNAMED ALLEY OFF COMMERCE STREET**

**RESOLUTION NO. 04-111 - RESOLUTION CLOSING AN UNNAMED ALLEY OFF COMMERCE STREET**

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

Assistant Public Works Director David Cole said that this is the consideration of a resolution to close an unnamed alley off Commerce Street. This public hearing was advertised on April 16, 23, 30 and May 7, 2004.

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

Pursuant to this statute, the adjoining property owners have requested the City of Asheville close an unnamed alley off Commerce Street, the entry of which is located approximately 135 southwest of the intersection of Commerce and Church Streets. From Commerce Street, the alley proceeds southeasterly approximately 100 feet, then southwesterly approximately 150 feet to its intersection with Buncombe Street.

Public Works Department staff has researched and determined that this alley is not a City maintained street and is not the sole means of ingress and egress for any of the abutting properties. There are six lots that abut this unnamed alley. They are identified by PIN Nos. 9649.18-30-7001; 9648.06-39-6929; 9648.06-39-5988; 9648.06-39-5927; 9648.06-39-5867; and 9648.06-39-7227.

City staff recommends that City Council adopt the resolution to close an unopened unnamed alley off Commerce Street.

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

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

Councilwoman Jones moved for the adoption of Resolution No. 04-111. This motion was seconded by Councilman Dunn and carried unanimously.

**RESOLUTION BOOK NO. 28 – PAGE 254**

**C. PUBLIC HEARING TO CONSIDER A MODIFICATION OF THE CONDITIONAL USE PERMIT CONDITION REQUIRING A TRAFFIC CALMING/ INTERSECTION IMPROVEMENT MITIGATION FEE OF \$500 PER UNIT FOR APPELDOORN CONDOMINIUMS LOCATED AT 200 BROOKLYN ROAD**

-8-

**ORDINANCE NO. 3116 - ORDINANCE MODIFYING THE CONDITIONAL USE PERMIT CONDITION REQUIRING A TRAFFIC CALMING/ INTERSECTION IMPROVEMENT MITIGATION FEE OF \$500 PER UNIT FOR APPELDOORN CONDOMINIUMS LOCATED AT 200 BROOKLYN ROAD**

Mayor Worley said this public hearing was originally scheduled for April 27, 2004, and continued until this date pursuant to the applicant's request.

City Clerk Burleson administered the oath to anyone who anticipated speaking on this matter.

City Attorney Oast reviewed with Council the conditional use district zoning process. This process is the issuance of an amended conditional use permit, which is a quasi-judicial site specific act. At this public hearing, all the testimony needs to be sworn.

After hearing no questions about the procedure, Mayor Worley opened the public hearing at 5:21 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.

Planning & Development Director Scott Shuford submitted into the record City Exhibit 1 (Affidavit of Publication), City

Mr. Shuford said that this is the consideration of a modification of the conditional use permit condition requiring a traffic calming/intersection improvement mitigation fee of \$500 per unit for Appeldoorn Condominiums (formerly Appledorn) located at 200 Brooklyn Road. This public hearing was advertised on April 16 and 23, 2004.

On August 13, 2002, the City Council approved a conditional use permit and rezoning to allow the 168 unit Appeldoorn condominium project to be constructed in the Shiloh neighborhood. Since the project would increase traffic in the neighborhood, staff recommended, and Council approved, a condition that the developer set aside \$500/unit for traffic calming and intersection improvements; this totaled \$84,000 for the entire project. Subsequently, at the developer's request, staff agreed to collect the \$84,000 at the time of occupancy rather than at permit issuance.

The developer has submitted a letter requesting that Council rescind the conditional use permit condition that establishes the \$84,000 exaction. He notes the increased cost of construction materials as the rationale for his request.

Staff agrees that there has certainly been a steep "spike" in the cost of many types of construction materials. Staff also notes that the developer is further limited financially by another condition that mandates his pricing to be within the housing affordability guidelines of the City; as noted in the table below, his pricing is generally well below the maximum that low income households could afford at today's interest rates. However, staff must point out that the project does create a traffic impact on the Shiloh neighborhood. If Council is inclined to rescind this condition, staff feels some alternative funding arrangement needs to be identified to implement

-9-

the necessary traffic mitigation measures. This could be accomplished in a number of ways, including:

- Allowing the developer a higher "cap" for his proposed housing sales, giving him more revenue to pay the fee (this, of course, affects affordability and may not mesh well with either the developer's marketing or with market realities).
- Substituting City Affordable Housing Trust Fund monies for the mitigation exaction. (NOTE: The loss of the Foxwood project has freed up \$125,000 in Trust Fund money, some of which can be allocated to this project if Council wishes to deviate from its current policies regarding the use of these funds for this unique case – please note that this would be a grant not a loan.)

This project is an important component of the City's overall affordable housing effort. The City's Consolidated Strategic Housing and Community Development Plan for 2000-2005 identified a need for 160 new affordable units for homeownership each year within the City of Asheville, where "affordable" means within the purchasing power of households with less than 80% of area median income adjusted for family size. Since 2000, production of such units has been less than 50 units a year. Meanwhile median house prices are increasing at 5-7% a year, while median income has increased about 2.5% a year, putting the existing housing stock increasingly out of range for first-time homebuyers. Undeveloped parcels of land suitable for developments of significant scale (10 units or more) are increasingly hard to find within the City limits.

**Sales Price Information for Low Income (80% Annual Median Income) Persons  
Adjusted for Family Size**

Unit Size	Appeldoorn Initial Sales Price Range*	Upper Limit of Affordable Sale Price**
One Bedroom	\$69,900 – 74,900	\$85,745
Two Bedrooms	\$89,900 – 109,900	\$102,929
Three Bedrooms	\$114,900 – 119,900	\$118,924

\* From price list provided by developer

\*\* Assumes a 7% fixed interest rate and a 30 year mortgage

Cost of housing is one element of our affordable housing effort, but community support for affordable housing is another element. Mitigating the impacts of development is a key method of building community support for affordable housing projects (and for denser development, in general). Staff feels that if the developer is relieved of this requirement, the public should fund the improvements.

Pro:

- Supports a critical large-scale affordable housing project that essentially meets a one year affordable housing production goal by itself.

Cons:

- Creates a situation where mitigation costs are borne by the local taxpayer.

- Would be an exception to Council's stated policy that Trust Fund monies are to be loans, not grants.

Should City Council choose to grant this request, staff recommends the substitution of the following additional conditions, as well as providing the traffic calming/intersection improvement mitigation funding through an allocation from the Housing Trust Fund:

- The units shall have an initial sales price range as stated by the developer:

-10-

- One Bedroom –\$69,900 – 74,900
- Two Bedroom – \$89,900 – 109,900
- Three Bedroom - \$114,900 – 119,900

- The developer shall ensure that at least 20% of the units will be sold to income-qualified buyers under 80% AMI (adjusted for family size).

Mr. Rod Hubbard, developer, said that he has been working two years to create an affordable home ownership development. However, due to substantial increases in material costs, he is over \$1.5 Million over budget. He does realize that some of the increase is his responsibility. He asked that City Council delete the condition on his conditional use permit that requires him to pay for a traffic calming/intersection improvement mitigation fee of \$500 per unit. He is not saying that traffic calming issues do not need to be addressed in the community; however, he is asking City Council to take that financial burden away from him and the City to contribute to the development by addressing those issues. If Council decides to relieve him of the \$84,000 but the City will not contribute, then he would pay because they are necessary for the community. He then showed City Council the exterior of the building (Applicant Exhibit 1). He said they changed the design of the building dramatically to incorporate a stone entranceway, independent balconies, increased ceiling heights, etc. They have spent more money on the aesthetics and the design of the building. They feel the community will be proud of this development. He has been able to maintain their pricing system and five weeks ago they started their pre-sales. With very limited advertising, they have sold over 50% of Phase I, \$3.5 Million worth of real estate and 68% of that is to first homebuyers. In the next five years, he will be generating over \$1 Million in property taxes. He then passed out some information (Applicant Exhibit 2) about the development.

The following residents spoke about the need for traffic calming measures in the Shiloh Community that will be created by this project, for several reasons, some being, but are not limited to: streets in the Shiloh community are narrow; developer should be required to pay for the traffic calming measures and not ask to be relieved of that condition because most developers anticipate additional construction costs; \$500 per unit is not too much to pay for the safety of our children and the Shiloh neighborhood; the developer should be giving something back to the community; since the developer is a for-profit company, he should pay for the improvements himself; the taxpayers of Asheville are already over-burdened and should not have to pay for the traffic calming improvements; if project generates \$1 Million in property taxes, how much will go directly back into the Shiloh community; Shiloh Community Task Force should have been informed of this request prior to being brought before City Council; Shiloh is the only historic African American neighborhood in Asheville and should be revitalized in the best interest of the entire community; traffic calming is needed in the area for the children; and the intersection of Brooklyn Road and West Chapel Road is a dangerous intersection:

Ms. Norma Baynes, representing the Shiloh Community Association  
Mr. Fred English  
Ms. Michael Tracy, resident in the Shiloh community  
Ms. Johnnie Walker, resident on High Meadow Road  
Ms. Judy Williamson, resident on Wyatt Avenue  
Mr. Clyde Maurice Washington, resident on Brooklyn Road

Upon inquiry of Councilman Davis, Mr. Shuford said that the \$84,000 figure is for intersection improvements and traffic calming in the area, which would be caused by the development. The Shiloh area suffers from a number of intersections with limited site distance, etc., and a good bit of that money will be for those improvements. It certainly is not sufficient to fix all the problems in the neighborhood, but we feel if we work with the neighborhood through our normal traffic calming process and with the Shiloh Task Force we can identify the correct places

-11-

to apply this amount of money. He felt that \$84,000 is a reasonable amount of money, given the extent of the work necessary to



be done.

Using a map (City Exhibit 4), Mr. Anthony Butzek, the City's Traffic Engineer, said that they have looked preliminarily at which streets the \$84,000 would go for traffic calming or intersection improvements. They have identified London Road, West Chapel Road and Brooklyn Road.

When Councilwoman Bellamy asked about the process to identify the improvements, Mr. Butzek said that anytime a traffic calming project is started, we give the community significant input in what kind of project they would like to see. Our job is primarily to offer recommendations and assistance and let the community take that information and determine what they would like to see. The entire process will take approximately 6 months to a year before implementation and he hoped the Shiloh Task Force will be involved in that process. If the Shiloh community feels that other streets should be included for traffic calming, he would explain that the City has criteria (traffic volume and traffic speeds) that they utilize for determining when a street qualifies for traffic calming. The City would suggest that the streets that meet those criteria be included.

Upon inquiry of Councilwoman Bellamy, using a map (City Exhibit 5), Mr. Shuford explained how and why City staff is suggesting the traffic calming/intersection improvement mitigation funding be through an allocation from the Housing Trust Fund.

Councilman Newman asked if there was any flexibility in the use of the \$84,000 to address pedestrian traffic issues if the community would prefer that. Mr. Shuford responded that to leave the door open for the neighborhood to decide, if Council amends the conditional use permit, they should put that flexibility into whatever direction is given.

At the request of Councilman Dunn, Mr. Shuford explained how the Housing Trust Fund works and that it's a Fund that builds each year. This year we had approximately \$730,000 in the Housing Trust Fund - \$600,000 allocated and \$130,000 of funds, which have been returned by the development community - for-profit and non-profit. He felt that if this project had made an application to the Housing Trust Fund, it would have scored very high because of the affordability range and the scale of the project.

Upon inquiry of Vice-Mayor Mumpower, Mr. Butzek explained why he felt the traffic mitigation is more of a quality of life issue and safety in the Shiloh community and not a level of service issue.

When Vice-Mayor Mumpower asked how many neighborhoods in Asheville have similar traffic problems, Mr. Butzek felt that most neighborhoods have at least one street with traffic problems, but that would, of course, depend on how you define the size of neighborhoods. The traffic problems in the Shiloh community have existed a significant period of time. He does expect a noticeable traffic impact in the neighborhood with this project being built out.

Upon inquiry of Vice-Mayor Mumpower, Mr. Butzek said that \$50,000 is dedicated for traffic calming on an annual basis.

Hearing no rebuttal, Mayor Worley closed the public hearing at 6:07 p.m.

Vice-Mayor Mumpower moved to modify the conditional use permit condition located at 200 Brooklyn Road to delete the condition requiring a traffic calming/intersection improvement mitigation fee of \$500 per unit for Appeldoorn Condominiums and substitute conditions in lieu thereof that (1) as well as providing the traffic calming/intersection improvement mitigation funding through an allocation from the Housing Trust Fund in the amount of \$84,000; (2) that the

-12-

units shall have an initial sales price range as stated by the developer: One Bedroom –\$69,900 – 74,900; Two Bedroom – \$89,900 – 109,900; and Three Bedroom - \$114,900 – 119,900; and (3) the developer shall ensure that at least 20% of the units will be sold to income-qualified buyers under 80% AMI (adjusted for family size). This motion was seconded by Councilwoman Bellamy.

After discussion about allowing flexibility of multi-modal transportation, Vice-Mayor Mumpower moved that the conditional use permit issued for Appeldoorn Condominiums on August 13, 2002, be modified as follows: (1) to remove the condition that the developer be responsible for providing for traffic calming improvements, and that the City provide for those traffic calming improvements up to the amount that the developer had originally been required to provide; (2) that the units shall have an initial sales price range as stated by the developer: One Bedroom –\$69,900 – 74,900; Two Bedroom – \$89,900 – 109,900; and Three Bedroom - \$114,900 – 119,900; and (3) the developer shall ensure that at least 20% of the units will be sold to income-qualified buyers under 80% AMI (adjusted for family size). This amended motion was accepted and seconded by Councilwoman Bellamy.

Councilman Newman addressed his question about the flexibility in the \$84,000. He felt if staff and the neighborhood feel like they are sure that the money will be well spent on traffic calming, then he would be happy for it to be for intersection

improvements. He feels that the \$500 per unit amount might have been an arbitrary number, but we need to keep our commitment to the neighborhood. But, considering the scale of this development in this neighborhood we might need to be doing some additional things so that the neighborhood has the infrastructure in place to support this new development and the new people living in that development have a good quality of life. He would appreciate staff working with the Task Force to hear if there is a compelling need for the City to do more on sidewalks or other kinds of infrastructure to make sure that we can support the new density that is going to be going in there.

Councilwoman Jones clarified some justice issues, which were raised.

The amended motion made by Vice-Mayor Mumpower and seconded by Councilwoman Bellamy carried unanimously.

City Attorney Oast said that he would prepare an ordinance amending the conditional use permit and bring it back to City Council for wording approval at their May 25, 2004, formal meeting on the Consent Agenda.

#### **ORDINANCE BOOK NO. 21 – PAGE**

#### **D. PUBLIC HEARING TO CONSIDER AN AMENDMENT TO THE UNIFIED DEVELOPMENT ORDINANCE TO CLARIFY THE INTENT OF HILLSIDE REGULATIONS CONCERNING NON-RESIDENTIAL USES**

#### **ORDINANCE NO. 3117 - ORDINANCE AMENDING CHAPTER 7 OF THE CODE OF ORDINANCES TO CLARIFY THE INTENT OF HILLSIDE REGULATIONS CONCERNING NON-RESIDENTIAL USES**

Mayor Worley opened the public hearing at 6:17 p.m.

Planning & Development Director Scott Shuford said that this is the consideration of an ordinance amending the Unified Development Ordinance (UDO) to clarify the intent of hillside regulations concerning non-residential uses. This public hearing was advertised on April 30 and May 7, 2004.

-13-

This code amendment is a general “housekeeping” type amendment intended to clarify the intent of the hillside regulations concerning nonresidential uses. Hillside regulations address density and grading requirements for steep slope areas above a certain elevation. The current wording of the hillside regulations implies that these requirements only apply to residential uses. Since other uses, including commercial, institutional, and office uses, can occur in hillside situations, this change allows the grading requirements to apply to those types of uses.

The amendment has been routed to the Coalition of Asheville Neighborhoods, CREIA, and the Council of Independent Business Owners for review and comment.

Pro – Hillside regulations will be able to be applied to nonresidential situations in a manner consistent with how they are applied to residential situations, allowing the ordinance purposes to be met in a more effective fashion. This appears to be consistent with Council’s direction at the recent goal-setting meeting.

Con – Applying hillside regulations to nonresidential situations may make it more difficult for nonresidential uses to be established in hillside situations.

The Planning and Zoning Commission recommended approval of this code amendment on April 7, 2004, by a vote of 5-0. City staff recommends approval of the proposed code amendment as well.

Mayor Worley closed the public hearing at 6:22 p.m.

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

Councilman Newman moved for the adoption of Ordinance No. 3117. This motion was seconded by Councilwoman Jones and carried unanimously.

#### **ORDINANCE BOOK NO. 21 - PAGE**

#### **E. PUBLIC HEARING TO CONSIDER AN AMENDMENT TO THE UNIFIED DEVELOPMENT ORDINANCE TO CLARIFY THE REQUIREMENTS FOR FLEXIBLE DEVELOPMENT STANDARDS**

**ORDINANCE NO. 3118 - ORDINANCE AMENDING CHAPTER 7 OF THE CODE OF ORDINANCES TO CLARIFY THE REQUIREMENTS FOR FLEXIBLE DEVELOPMENT STANDARDS**

Mayor Worley opened the public hearing at 6:23 p.m.

Planning & Development Director Scott Shuford said that this is the consideration of an ordinance amending the Unified Development Ordinance to clarify the requirements for flexible development standards. This public hearing was advertised on April 30 and May 7, 2004.

- This code amendment is a general "housekeeping" type amendment intended to clarify the requirements for flexible development standards. This code section has been very useful in streamlining the development review process and we are interested in making sure the requirements are as clear as possible, including the addition of corner side setbacks to the standards.

The amendment has been routed to the Coalition of Asheville Neighborhoods, CREIA, and the Council of Independent Business Owners for review and comment.

-14-

Pro – The amendment will be easier to use and the staff interpretation allowing corner side setbacks will be added.  
Con – None noted.

The Planning and Zoning Commission recommended approval of this code amendment on April 7, 2004, by a vote of 5-0. City staff recommends approval of the proposed code amendment as well.

Mayor Worley closed the public hearing at 6:25 p.m.

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

Councilman Newman moved for the adoption of Ordinance No. 3118. This motion was seconded by Councilwoman Jones and carried unanimously.

**ORDINANCE BOOK NO. 21 - PAGE**

**IV. UNFINISHED BUSINESS:**

**A. RESOLUTION NO. 04-112 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A MUNICIPAL AGREEMENT WITH THE N.C. DEPT. OF TRANSPORTATION FOR A PASSENGER RAIL FACILITY**

Economic Development Director Mac Williams said that this is the consideration of a resolution authorizing the City Manager to enter into a municipal agreement with the N. C. Dept. of Transportation (NC DOT) for 10% of funding for acquisition of the site for the proposed passenger rail station.

As preparation for eventual passenger rail service to Asheville, the NC DOT Rail Division is in the process of securing the site for the proposed Asheville station in Biltmore Village. Property appraisals and estimates of related costs have been completed and a project budget for this site acquisition phase has been developed. Before the State can go forward with the actual purchase, by requirement, the NC DOT and the City of Asheville must first enter into a municipal agreement outlining the roles, responsibilities, and costs each agency will incur for this phase of the project. The municipal agreement requires the City provide 10% of the project cost.

The project cost for this phase was initially estimated at \$1,418,830 but had recently been updated and revised downward to \$1,083,830. Thus, the required City match, initially (not to exceed) \$141,883, may be revised downward to \$108,383. However, in later discussion with DOT officials, they have asked that the original project estimate and 10% match continue to be the working numbers. DOT is still in negotiations and the project cost may be adjusted again up or down. While City funds are not needed immediately, the City commitment for the funding, via the municipal agreement, is requested immediately for the project to move forward. Actual funding would be contingent upon a future appropriation from City Council. An appropriation of \$141, 883 is currently included in the proposed Fiscal Year 2004-05 budget.

In addition, it is envisioned that an inter-modal City transit hub could be co-located with the passenger rail station. In order

to access federal funding for that portion of the facility, it is necessary to conduct a Transit Study for the Biltmore location. The study is intended to assess the suitability of the proposed location for the transit system. It will quantify transit needs. Additionally, the study will explore facility size, number of bays, etc. and explore how transit would tie in with rail as well as assess the suitability of the location for transit, in light of the needs and plans in the southern part of the city. The estimated cost for the Transit Study was \$12,000 of

-15-

which the City's share was \$9,600. The NC DOT Rail and Transit Divisions felt the study was a priority and needed immediate funding. At its 2/24/04 formal meeting, Council approved funding for the transit study.

Mr. Williams reported on Council's visit on April 30, 2004, to Raleigh in which they visited the NC DOT Rail Division Chief and the Assistant Secretary for Transportation for Transit.

The positive impact(s) to the implementation of the recommendation include:

- Purchase of an economic development site for 10% of cost
- Demolition of existing site in preparation for construction at 10% of cost
- Potential to develop rail station at fraction of cost
- Potential to place something else prepped on site if rail does not materialize
- Small area plan for area with high potential for continued and future development
- Information concerning cost and feasibility of locating a transit sub-station at Rail Station

The negative impact(s) to the implementation of the recommendations include:

- Expenditure of city funds needed to create asset
- Possibility that this location is not optimal for transit sub-station

City staff recommends approval of the resolution authorizing the City Manager to enter into the municipal agreement.

Mr. Fred English felt that the City of Asheville does not need rail transportation.

Ms. Judith Calvert Ray, Chair of the WNC Rail Corridor Committee Chair, recognized five individuals representing the towns of Marion, Black Mountain, Old Fort, Morganton and Valdese, which are the stops from the route from Salisbury to Asheville. The Committee has submitted to Council a resolution in support of the City funding to develop a multi-modal transportation center to serve Asheville and western North Carolina. She spoke about the importance of rail service to our area.

The Honorable Everett Clark, Mayor of the Town of Marion and also Vice-Chair of the WNC Local Government Caucus, spoke in support of the passenger rail service to WNC.

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

Councilman Newman moved for the adoption of Resolution No. 04-112. This motion was seconded by Councilwoman Bellamy.

Councilman Newman explained his reasons for his support for the rail service. He felt it has potential to be a significant regional economic development opportunity for Asheville and WNC. It's not so much about people from Asheville taking the train to Raleigh, but it offers people from all across North Carolina and all across the Country to come to Asheville. This will be a beautiful route through the mountains. He said that all forms of transportation receive public funding and none of the forms of our transportation infrastructure pay for themselves. It seems like even if the rail service never does get restored, which he hoped it will, the development of the transit center in Biltmore Village will be good for the Asheville taxpayers.

Councilman Dunn felt that the density and ridership projections are in error, but he does agree that the plan for the future to gain access to the right-of-way is important. However, his

-16-

future support for additional funding will not be there for passenger rail service. He felt rail service would not help air quality unless

you remove a significant number of people from the highways. For heavy rail service to work, you need a density of 5-7 million people per square mile and we are talking about 2.2 million in 26 counties. He agreed that stations along the route will have an economic benefit, but that will happen anyway, even without the subsidy. He would support the resolution because in the future the right-of-way will be needed, but he felt the State of North Carolina will be making a major mistake just for people to be able to ride a train to Raleigh.

Councilman Dunn said he was not optimistic about passenger rail coming to Asheville in the near future, but he does see a need to secure the right-of-way. We may need the land for our multi-modal transit center, depending on the outcome of the study. He, too, will be hesitant to speak in favor of future efforts in this matter.

Vice-Mayor Mumpower said that his concern is that there is a lot of misinformation about heavy rail, one of which is the subsidies for heavy rail across the country. From information received, the impact on I-240 of this recreational rail effort will be minimal. There are significant concerns about how reliable the federal dollars will be and for us to dedicate too far into the process without a little more reliability is a concern. Our density in North Carolina does not match density that is typically required for even reasonable success with a heavy rail system. From different sources of information, he has found that Europe, which is cited as a model of rail excellence, has increasingly gotten away from rail and is considering America the model with privately owned vehicles. We need to proceed with caution. According to DOT, this rail services is about 10 years out and that is a long time. The 90% is still tax money. We don't have a recreational rail service crisis in North Carolina, but we have other crises that "shout louder" than rail service. He does like trains, but he has a hard time in going forward with tremendous enthusiasm. The two pros he sees however, is (1) we need to keep our options open and buy the property and not build anything on it; and (2) supporting our neighbors is also a positive thing.

Councilwoman Jones supported the motion with enthusiasm. She received encouraging data from her visit to Raleigh about the passenger rail service breaking even by covering its operating costs. She was also encouraged to see how well NC DOT was using its small slice of money and still producing. She is convinced that there will be more economic development and it will have a regional impact.

Mayor Worley pointed out that it is Council's decision is whether or not to invest 10% of the cost of acquiring property that will be available for our use for future rail service, if it comes. The decision to bring rail service to Asheville is the State's decision. He would support rail service coming to Asheville because he felt it would be very beneficial to Asheville and its citizens and also to the region.

The motion made by Councilman Newman and seconded by Councilwoman Bellamy carried unanimously.

## **RESOLUTION BOOK NO. 28 – PAGE 256**

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

#### **A. ZONING STUDY OF THE ST. DUNSTAN'S AREA**

Planning & Development Director Scott Shuford said that this is the consideration of a request from property owners for a zoning study for a portion of the St. Dunstan's neighborhood located off Biltmore Avenue south of the hospital.

-17-

Section 7-7-2 of the Unified Development Ordinance (UDO) provides property owners with a method to petition Council to authorize a zoning study for property not entirely owned by them. The code requires that a certain percentage (51%) of property owners join the request and, in this case, the percentage has been reached. The petition process does not require Council to ask staff to undertake the zoning study; it only requires that Council consider the request.

The area is described on a map labeled Map #1. In the staff's opinion, the request area does not contain all relevant property that should be examined in a zoning study, so if Council directs that we analyze the zoning of this neighborhood, we recommend that the area be expanded to that illustrated on a map labeled Map #2.

The request is prompted by the underlying zoning of the neighborhood, RS-8, that corresponds well with the existing setbacks for most lots and with the lot sizes of the smaller properties in the neighborhood. However, there is concern that existing larger lots could be further subdivided to create additional smaller lots under the existing zoning; this has in fact happened on a couple of occasions. The petitioners would prefer a zoning designation of RS-4, even though that zoning district would create some nonconformities with setbacks and lot sizes. Map #1 indicates the properties whose owners are in support and those opposed to the zoning change.

Pro – The zoning study would enable the issue about the appropriate zoning of this neighborhood to be decided by City Council.

Con – The study will consume limited staff resources that could be devoted to other projects.

City staff recommends that if City Council determines that a zoning study of the St. Dunstan's area is to be conducted, that the area be expanded to that illustrated on Map #2.

Upon inquiry of Vice-Mayor Mumpower, it will not be a major staff effort to study the larger area but it will consume time on the Planning & Zoning Commission's agenda along with time on the City Council's agenda.

Upon inquiry of Councilwoman Bellamy, Mr. Shuford suggested that if Council directs a zoning study be performed that it be with the understanding that if are any properties that will be split zoned in the area that the entire parcel be include the study area.

Upon inquiry of Vice-Mayor Mumpower, Mr. Shuford said that one of the issues that staff has identified has been the fact that there will be setback problems created going from an RS-8 to and RS-4 district. Our preliminary analysis of the study is that about half of the people who want the study will find that their setbacks will be made non-conforming by what they have asked for. But, by the same token, this may be an opportunity for some education of the neighborhood regarding the consequences of their proposal. There may be a way for staff to come up with a creative idea that might address the needs of those opposed to it in order for them to get appropriate use of their property and at the same time address some of the concerns being raised by the neighborhood.

Vice-Mayor Mumpower asked how consistent would this be with the trends in our 2025 Plan. Mr. Shuford said the Plan includes policies and strategies that address further densification in many cases in corridor areas of the City and in appropriate neighborhoods. But it also contains language that addresses the need to make sure existing neighborhoods remain stable. He felt you can make an argument using the 2025 Plan both for and against of what is being proposed.

-18-

Mr. Shuford responded to Vice-Mayor Mumpower by saying that given the Planning & Development Department's workload, their enthusiasm on conducting the study would be margin.

Councilman Davis said that historically, there have been zoning problems in that neighborhood and if we deal with those issues in a piecemeal fashion, it will probably take more time and resources. Mr. Shuford said that he has had several requests for staff to initiate a study and now the neighborhood has gotten sufficient support to at least study a portion of the area. He said it may well be good to address this issue head-on and have Council make a decision, which may be timesaving in the long run.

Upon inquiry of Vice-Mayor Mumpower, Mr. Shuford said that not counting the time spent in public meetings or going to a neighborhood meeting, he felt it would be about 20-40 hours worth of staff time to complete the study. Roughly it would be a weeks worth of work for one person.

Councilwoman Bellamy moved to direct staff to conduct an expanded zoning study of the St. Dunstan's area with the understanding that if staff has left off a part of the property through the designation of the boundaries that staff would expand that to include the entire property. This motion was seconded by Councilman Davis.

Councilman Newman felt there will be some very significant development issues in our City that will take a lot of staff time. When he looks at all the growth and development challenges facing Asheville right now that are on the front burner, it will take a lot of leadership from our Planning Department staff. With no lack of sympathy for the concerns of the neighborhood, he would prefer to have the Planning Department focus their resources on those priorities issues for Council right now.

Councilwoman Bellamy said that the study would take only one week and it will point out what is happening in that community and with community input, what could happen in that community.

Vice-Mayor Mumpower felt we may be getting in the middle of a neighborhood issue in terms of who wants to do what with their neighborhood and he has hesitancies in funding that kind of effort.

Mayor Worley expressed concerns of the study as well, most importantly the creation of substantial nonconformities within the neighborhood.

The motion made by Councilwoman Bellamy and seconded by Councilman Davis failed on a 3-4 vote, with Councilwoman Bellamy, Councilman Davis and Councilwoman Jones voting "yes" and Mayor Worley, Vice-Mayor Mumpower, Councilman Dunn and Councilman Newman voting "no."

**VI. OTHER BUSINESS:**

**Claims**

The following claims were received by the City of Asheville during the period of April 23-May 6, 2004: Sharon Stevens (Water), Chris Johnson (Streets), Gwendolyn Walker (Streets), Michele Souma (Police) and Asheville High School (Streets).

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

-19-

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

Mr. Fred English comments on why the City of Asheville should not allow public access television.

At 7:12 p.m., Mayor Worley left the meeting.

Ms. Jan Howard questioned the item on the consent agenda regarding the City's ability to convey an easement to Councilman Dunn over a portion of City-owned property on Kenilworth Road.

Mr. Joseph Smith presented City Council with information about his employment records at the ABC Agency. Basically Mr. Smith felt that since City Council appointed the ABC Board that they would hear his side of the story and help him get his job back.

Mr. Mike Fryar expressed concern about the recent annexation of his property on Smoky Park Highway, about the zoning laws in the extra-territorial jurisdiction area, and about the need for more police officers in the City.

**VIII. ADJOURNMENT:**

Mayor Worley adjourned the meeting at 7:20 p.m.

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CITY CLERK

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MAYOR