

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

Col. Ray Green, Veteran of the US Air Force, led City Council in the Pledge of Allegiance.

INVOCATION

Mayor Worley gave the invocation.

I. PROCLAMATIONS:

A. UPDATE ON MEMORIAL STADIUM AND SPECIAL RECOGNITION

Vice-Mayor Mumpower, Chairman of the Memorial Stadium Task Force, briefly updated City Council on the activities taking place for the historic Memorial Stadium renovation by showing a general overview of what is proposed and the Veteran's Memorial concept. He thanked Asheville Splash for their participation in the turf, which was largely donated by them. He feels this will be a powerful memorial, which will be a nice addition to Asheville and our region, with very little City dollars being spent.

Mr. Jim Drummond, President of the Asheville Youth Sports Program, explained the role the Asheville Youth Sports Program played in this recognition and introduced Ms. Wanda Little. He explained that Ms. Little is Leonard Little's mother. Leonard is a former Asheville High graduate and football player with the St. Louis Rams. Mrs. Little was honored to present the City of Asheville with a check in the amount of \$15,000 from her son for the Memorial Stadium scoreboard. She stated her son was unable to attend the ceremony due to this being his first day of training camp. He asked that she relay to the City that this is the beginning of an effort to try to touch this community in a positive way.

On behalf of City Council, Vice-Mayor Mumpower thanked Mrs. Little and her son Leonard for his generous contribution.

II. CONSENT:

- A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON JULY 13, 2004, AND THE WORKSESSION HELD ON JULY 20, 2004**
- B. RESOLUTION NO. 04-152 - RESOLUTION AMENDING THE 2004 SCHEDULED CITY COUNCIL MEETINGS TO (1) CANCEL THE AUGUST 3, 2004, WORKSESSION; (2) ADD A COMMUNITY MEETING ON AUGUST 31, 2004, AT 7:00 P.M. AT THE EAST ASHEVILLE COMMUNITY CENTER LOCATED AT 906 TUNNEL ROAD, ASHEVILLE, NC.; AND (3) CANCEL THE OCTOBER 26, 2004, FORMAL CITY COUNCIL MEETING**

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RESOLUTION BOOK NO. 28 – PAGE 305

- C. RESOLUTION NO. 04-153 - RESOLUTION APPROVING THE PURCHASE OF PROPERTY OFF PINNER ROAD FOR THE ASHEVILLE REGIONAL AIRPORT AUTHORITY**

Summary: The consideration of a resolution accepting an Offer of Sale of Land from Grace Henninger for land off Pinner Road for \$111,321 for the Asheville Regional Airport Authority.

The property off Pinner Road is located adjacent to and west of the Asheville Regional Airport in a neighborhood with a mix of site built and manufactured homes and somewhat rural character. It is generally rectangular in shape and contains 5.859 acres. It is level to moderately rolling and wooded. Pines are the predominate trees typical of farm land left fallow for a number of years. Its highest and best use per the appraisal is low density residential as permitted by the zoning (Limestone, R-LD). It is

proposed to be acquired for future expansion of the Airport. The property will be paid for by the Airport and will be included in the Airport master lease.

The property was appraised by Richard Smith, SRA, and reviewed by Joseph Moore, appraiser at \$108,500. An offer in that amount was conveyed to the owner, Grace Henninger and Mrs. Henninger responded with an offer to sell the property at \$111,321. Ed Vess, Real Estate Manager, reviewed the appraisals and recommended that the offer be accepted and fair market value be established at \$111,321 based on the offer to sell being within 3% of the appraisal and review and the efficiency of a prompt agreement.

The positive aspects of the proposed acquisition are:

1. Offers the opportunity to acquire land within the projected Airport expansion area while it is undeveloped.
2. The savings realized in not having to pay for potential improvements and relocation of occupants later on will offset the cost of the property.
3. It is a voluntary sale at fair market value.
4. It gives the Airport control of the property to ensure that no incompatible use occurs.
5. Will expedite the process when expansion of the Airport occurs in that one less property will have to be acquired.

The negative aspects are:

1. Removes property from the tax base.
2. Removes residential land from the market.

Approval of the resolution will establish \$111,321 as the just compensation for the property and accept the Offer of Sale of Land from Grace Henninger for that amount.

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City staff and the Airport Authority recommend adoption of the resolution accepting an Offer of Sale of Land from Grace Henninger for land off Pinner Road for \$111,321 for the Asheville Regional Airport Authority.

RESOLUTION BOOK NO. 28 – PAGE 306

D. RESOLUTION NO. 04-154 - RESOLUTION OF INTENT TO CLOSE A PORTION OF AN UNNAMED ALLEY OFF SOUTH FRENCH BROAD AVENUE AND SETTING A PUBLIC HEARING ON AUGUST 24, 2004

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RESOLUTION BOOK NO. 28 – PAGE 307

E. RESOLUTION NO. 04-155 - RESOLUTION AUTHORIZING THE CITY CLERK TO ADVERTISE AN OFFER TO PURCHASE PROPERTY AT THE CORNER OF WYOMING ROAD AND KEEBLER ROAD IN THE KENILWORTH COMMUNITY

Summary: The consideration of a resolution authorizing the City Clerk to advertise an offer to purchase property at the corner of Wyoming Road and Keebler Road in the Kenilworth community.

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A bid has been received from Innova Homes LLC in the amount of \$4,400 for the purchase of land at the corner of Wyoming Road and Keebler Road in the Kenilworth Community.

The land at the corner of Wyoming Road and Keebler Road is an irregular triangle shaped residential zoned lot comprising 0.07 acre±. From street grade it slopes up substantially to the rear property line and is covered with non-significant trees, vines and brush. The size, shape and topography render the lot unsuitable as a home site. The subject parcel is a remnant of property acquired at the time Wyoming Road was improved several years ago and is situated diagonally across from the park. The tax value is \$4,400. The bid from Innova Homes LLC, owner of an adjacent parcel is in the amount of \$4,400. Innova proposes to construct a house on the adjacent property for sale. The proposed construction is consistent with the Strategic Plan policy of encouraging infill development.

The positive aspects of the transaction are:

1. The sale will be at fair market value as established by the upset bid process.
2. It will return property not needed for public use to the tax rolls.

3. It will transfer responsibility for maintenance to the private sector.
4. A non-buildable lot will be assembled with an adjoining parcel to provide a more coherent land use pattern
5. The sale of this lot to Innova, while not essential to the proposed infill development, will enhance the development by improving the access.

Planning & Development staff recommends adoption of the resolution which will initiate the sale of the property through the upset bid process.

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F. RESOLUTION NO. 04-156 - RESOLUTION AUTHORIZING SOLICITATION OF ALL FORMAL BIDS BY ELECTRONIC MEANS

Summary: The consideration of a resolution authorizing City staff to solicit invitations for all formal bids by electronic means.

The City of Asheville has invited the solicitation of bids by advertising same in the Asheville Citizen Times for a number of years. Such legal advertisements are expensive and lately have only generated low interest. A few years ago, the N. C. General Assembly amended N.C.G.S. §143-129, to allow cities to use electronic means to advertise for bids without also having to advertise same in a newspaper of general circulation. A number of cities currently advertise their formal contracts exclusively by electronic means and Asheville desires to join those cities.

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The positive aspect of advertising by electronic means is that it reaches the same intended audience as newspaper advertisement at a substantial reduction in cost.

The negative aspect of advertising by electronic means is that it only reaches those who are electronically connected.

City staff recommends approval of the resolution authorizing City staff to solicit invitations for all formal bids by electronic means.

RESOLUTION BOOK NO. 28 – PAGE 309

G. RESOLUTION NO. 04-157 - RESOLUTION APPROVING THE CLINGMAN FOREST GREENWAY PROJECT AND AUTHORIZING THE CITY MANAGER TO PURCHASE AN EASEMENT FOR SAID PROJECT

Summary: The consideration of a resolution authorizing the City Manager to negotiate an easement agreement with Thomas and Virginia Honea (landowners), and to direct staff to proceed work with North Carolina State University/Cooperative Extension Service Water Quality Group to utilize an EPA 319 grant to construct and maintain a stormwater mitigation facility as part of the Clingman Forest Greenway.

This project supports the Asheville 1998 Greenway Master Plan and 2003 Update, The 2001 West End/Clingman Neighborhood Citizens Master Plan, and the Clingman Forest Greenway Master Plan, as well as Goal #1 of the "Natural and Built Environment" Focus Area of the Council's 2004 Strategic Operations Plan, "to enhance and preserve air and water quality through comprehensive efforts." It supports:

- Objective C – developing greenways in strategic locations that improve water quality, and the task of securing easements for greenway development; and
- Objective D – complying with Federal NPDES Phase II Stormwater Rules, and the task of partnering with other agencies to develop educational and outreach programs to improve stormwater run-off.

This project was developed in partnership with the Clingman Forest Steering Committee, landowner's Thomas and Virginia Honea, water quality and stream restoration specialist Jon Calabria of NCSU, and City Parks and Recreation and Engineering Department staff. It will utilize EPA 319 funds obtained through NCSU's Cooperative Extension Service Water Quality Group to reimburse the City of Asheville for the purchase of an easement of approximately 0.3 acres and to fund NCSU to design and construct a stormwater wetland to detain and filter stormwater run-off from the Clingman Forest area and the proposed greenway. The project will:

1. Develop a "first flush" constructed wetland plan that incorporates engineering design, necessary permits, a reconstruction

process and pre-and post-stream reconstruction monitoring;

2. Improve water quality to an urban stream, enhancing the Clingman Forest environment and beautifying the proposed greenway corridor;
3. Implement and evaluate the stormwater wetlands restoration as a model for other stormwater treatment facilities and BMPs in the City; and
4. Construct signage describing restoration practices employed for education purposes and establish a demonstration area for workshops and tours.

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The positives of this project are that:

- It utilizes EPA 319 funds for easement acquisition and construction costs to the benefit of partners NCSU, community stakeholders, and the City – all easement acquisition and BMP development costs will be covered by the grant funds;
- It will establish a Stormwater BMP demonstration site that will be a resource into the future for Asheville Middle School classes, NPDES Phase II educational programs, and other community stormwater initiatives.
- It will improve an urban stream while managing urban run-off.
- It will enhance the proposed Clingman Forest Greenway, cleaning-up and restoring a polluted area.

The negatives of this project are that:

- It will require time from City staff to manage the easement acquisition process and to coordinate with NCSU on administrative needs for their grant and on BMP construction.
- Once constructed, the facility will need to be monitored and maintained by City staff as a stormwater BMP and as part of the greenway.
- If not properly designed and constructed, the facility could retain standing water for long periods.

Staff recommends that City Council adopt the resolution authorizing the City Manager to move forward with easement acquisition and development of the project.

RESOLUTION BOOK NO. 28 – PAGE 310

H. RESOLUTION NO. 04-158 - RESOLUTION AUTHORIZING THE SALE OF TWO LOTS ON MCDOWELL STREET TO LIVINGSTON STREET LLC

Summary: The consideration of a resolution authorizing the Mayor to convey Disposal Parcels 75A and 75B on McDowell Street to Livingston Street LLC in the amount of \$33,000.

On July 13, 2004, the City Council directed the City Clerk to advertise for upset bids on Disposal Parcels 75A & B. The advertisement ran in the Asheville Citizen-Times on July 16, 2004, as provided in N. C. Gen. Stat. sec. 160A-269. No response was received. Therefore, the offer to purchase from Livingston Street LLC in the amount of \$33,000 was not upset and the sale to Livingston Street LLC should be approved.

The positive aspects of the transaction are:

- The sale will be at fair market value as established by the upset bid process.
- It will return property not needed for public use to the tax rolls.
- It will transfer responsibility for maintenance to the private sector.
- A non-buildable lot will be assembled with an adjoining parcel to provide a more coherent land use pattern.

Approval of the resolution will authorize the sale of the property to Livingston Street LLC for the amount of \$33,000.

Community Development staff recommends adoption of the resolution authorizing the Mayor to convey Disposal Parcels 75A and 75B on McDowell Street to Livingston Street LLC in the amount of \$33,000.

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RESOLUTION BOOK NO. 28 – PAGE 311

I. ORDINANCE NO. 3139 - ORDINANCE REDUCING THE MEMBERSHIP OF THE CIVIC CENTER COMMISSION FROM 11 TO 7 MEMBERS

Summary: The consideration of an ordinance reducing the size of the Civic Center Commission from 11 to 7.

At its July 20, 2004, worksession, Council indicated that it wished to reduce the size of the Civic Center Commission from 11 to 7 members. There are currently 4 vacancies on the Commission, so no action to appoint or remove members is necessary. The schedule of appointments to the Commission is such that the terms (3 years in length) of 3 current members will expire within a year, 3 the next year, and one after that. While this staggering is not as evenly distributed as it could be, it appears that little would be gained by changing the term of any current member.

Considerations:

- With eleven members, it was sometimes difficult to muster a quorum.
- A seven member board will allow for more efficient operation, while still permitting a diversity of skills and interests to be represented.

If Council desires to reduce the membership of the Commission from 11 to 7, adoption of the ordinance is recommended.

ORDINANCE BOOK NO. 21 – PAGE

J. RESOLUTION NO. 04-159 - RESOLUTION APPOINTING A MEMBER TO THE CIVIC CENTER COMMISSION

Summary: The consideration of a resolution reappointing John Broadbooks to the Commission.

The terms of John Broadbooks, John Hutchby, Larry Smith and Paul Hornyak, as members of the Civic Center Commission, expired on June 30, 2004. In addition, there is also an unexpired term until June 30, 2006, left by Lisa Michie.

On July 9, 2004, a request was received from Mr. Peter Crosa, Chairman of the Civic Center Commission, to reduce the membership of the Civic Center Commission from 11 to 7 members, ensuring the certainty of a quorum with at least 4 members. It has been difficult to reach a quorum at the monthly meetings. They feel the reduction will improve functionality of the Commission and that a reduced number will still assure a talented and diverse group of members. If Council did not feel it's in their best interest to reduce the membership to 7, he suggested an alternative to reduce the membership from 11 to 9 members. After discussion at Council's worksession on July 20, 2004, it was the consensus of City Council to instruct the City Attorney to prepare the proper paperwork to reduce the Commission from 11 to 7 members and to revisit the issue in six months.

Also at City Council's worksession on July 20, 2004, City Council instructed the City Clerk to prepare the proper paperwork to reappoint John Broadbooks to serve a three year term, term to expire on June 30, 2007, or until his successor has been appointed.

- Staff recommends City Council adopt a resolution reappointing John Broadbooks to the Civic Center Commission.

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RESOLUTION BOOK NO. 28 – PAGE 312

K. RESOLUTION NO. 04-160 - RESOLUTION APPOINTING MEMBERS TO THE POLICE OFFICERS AND FIREFIGHTERS DISABILITY REVIEW BOARD

Summary: The terms of Stephanie Cooper, Alexander Maitland and James Lewis, as members on the Police Officers' & Firefighters Disability Review Board, expired on July 19, 2004.

On July 20, 2004, it was the consensus of City Council to instruct the City Clerk to prepare the proper paperwork to reappoint Ms. Cooper, Mr. Lewis and Dr. Maitland to each serve an additional two year term respectively, terms to expire July 19, 2006, or until their successors have been appointed.

RESOLUTION BOOK NO. 28 – PAGE 313

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

III. PUBLIC HEARINGS:

A. PUBLIC HEARING TO CONSIDER THE ISSUANCE OF A CONDITIONAL USE PERMIT FOR PROPERTY LOCATED ON SPRINGSIDE PARK DRIVE OFF WHITE PINE DRIVE FOR THE CONSTRUCTION OF A 60 UNIT APARTMENT COMPLEX (KENILWORTH FOREST VILLAGE APARTMENTS) IN AN RM-8 RESIDENTIAL MULTI-FAMILY MEDIUM DENSITY DISTRICT

Mayor Worley said that this public hearing was originally scheduled for May 25, 2004, but continued at the applicant's request until this date.

Mayor Worley then said that a letter was received on July 16, 2004, from Land Planning Collaborative, P.A., stating that "On behalf of the developer, Virginia May, I am withdrawing our application for the July 27th hearing before City Council." Therefore the public hearing will not be held.

B. PUBLIC HEARING TO CONSIDER PERMANENTLY CLOSING BLANKENSHIP AVENUE

Mayor Worley announced that a letter was received on July 27, 2004, from Ms. Patsy Meldrum, stating that "Our client, Teresa Cathey, has decided to withdraw her request to close Blankenship Avenue. We withdraw the request on behalf of Teresa Cathey and Cheryl S. Warren, owners of the property identified on the Buncombe County tax maps as PIN 9617-14-44-5768. Please note that there are two other property owners whose names appeared on the petition to close Blankenship Avenue and we do not represent those parties. You will need to inquire of them whether or not they wish to proceed."

Since the petition is still active, Mayor Worley opened the public hearing at 5:22 p.m.

Assistant Public Works Director David Cole said that this is the consideration of a resolution to permanently close Blankenship Avenue between Smoky Park Highway and Brookside Circle. This public hearing was advertised on July 2, 9, 16 and 23, 2004.

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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 accepted as city maintained streets.

Pursuant to this statute, the adjoining property owners have requested the City close Blankenship Avenue, extending north from its intersection with Smoky Park Highway to its intersection with Brookside Circle.

Public Works Department staff has researched and established 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 three lots, identified by PIN Nos. 9617.14-44-5768; 9617.14-44-3873; and 9617.14-44-3740.

However, the City's Traffic Engineer has determined that Blankenship Avenue provides an important connection between Brookside Circle and Smoky Park Highway. Though not a City maintained right-of-way, Blankenship Avenue is signed, has a gravel surface and is used by pedestrian and vehicular traffic. Consequently, City staff advises that closing Blankenship Avenue without any alternate provisions for a transportation connection would be contrary to the public interest.

On Thursday, May 27, 2004, the Traffic Engineer and Assistant Director of Public Works met with Patsy Meldrum, counsel for petitioner Teresa Cathey, to discuss staff concerns about closing Blankenship Avenue. Ms. Meldrum was vague about the needs underlying her client's request to close the street. Consequently, it was difficult to generate alternatives that might satisfy both Ms. Cathey's interests and the City's interests in preserving connectivity.

Assuming that setbacks from Blankenship Avenue's right-of-way could be a concern, staff offered two potential alternative solutions: 1) to relax setback requirements from Blankenship Avenue or 2) to support closure of the right-of-way under an agreement that the petitioners provide a 20-foot public access easement in its place. Either alternative would have the same effect

on setback requirements as closing the street, but would preserve the public's right to use the right-of-way for travel. However, Ms. Meldrum has indicated that her client is not amenable to either of these alternatives and wishes to pursue the petition to close Blankenship Avenue over staff objections.

Though intent to close Blankenship Avenue has not yet been advertised or posted, the Public Works office has received three telephone calls from local residents objecting to the closure. The primary concern voiced was that the street is used as a pedestrian access for people walking to and from Brookside Circle and The Lunch Box, a restaurant on Smoky Park Highway. Closing this right-of-way would require that these people walk along Brookside Circle and Smoky Park Highway, neither of which have sidewalks.

Progress Energy, BellSouth Telephone, and Charter Communications (cable television) all have aerial lines on Blankenship Avenue. Additionally, BellSouth has underground conduit (approximately 4-feet wide) along the eastern margin of right-of-way. Easements must be provided or arrangements made by the petitioners to relocate these utilities in order to close Blankenship Avenue.

Based on its importance as a connection between Brookside Circle and Smoky Park Highway, it is the opinion of City staff that closing Blankenship Avenue is contrary to the public interest. Therefore staff recommends against adoption of a resolution to permanently close Blankenship Avenue.

Mr. Alan Ditmore said any decision made by Council will have an effect on the rich and poor.

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Mayor Worley closed the public hearing at 5:30 p.m.

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

Councilman Newman moved to not close Blankenship Avenue. This motion was seconded by Councilwoman Bellamy and carried unanimously.

C. PUBLIC HEARING TO CONSIDER THE ISSUANCE OF A CONDITIONAL USE PERMIT FOR PROPERTIES LOCATED AT 40 ROBERTS STREET FOR THE CONSTRUCTION OF SINGLE-FAMILY CONDOMINIUM UNITS, USING THE DEVELOPMENT STANDARD BONUS

ORDINANCE NO. 3140 - ORDINANCE GRANTING A CONDITIONAL USE PERMIT FOR PROPERTIES LOCATED AT 40 ROBERTS STREET FOR THE CONSTRUCTION OF SINGLE-FAMILY CONDOMINIUM UNITS, USING THE DEVELOPMENT STANDARD BONUS

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 a 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 5:31 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.

Urban Planner Alan Glines submitted into the record City Exhibit 1 (Affidavit of Publication), City Exhibit 2 (Certification of Mailing of Notice to Property Owners); and City Exhibit 3 (Staff Report).

Mr. Glines said that this is the consideration of the issuance of a conditional use permit for properties located at 40 Roberts Street for the construction of single-family condominium units, using the development standard bonus.

The 2025 Asheville City Development Plan encourages a variety of housing types and products to meet the growing needs of the community. Affordable housing even for small projects is important to encourage throughout the community.

A mixed-use project is currently under review along Roberts Street for two parcels at the corner of Trade Street. Adjacent to the Roberts-Trade project the property was zoned to RM-16 in 2001 (City Exhibit 3 – Aerial Photo).

The property is located within the City limits in the central area of the City (City Exhibit 3 – Site Plan). The site overlooks the River area and is located within the recently completed

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WECAN Citizens Master Plan. The plan recommends a variety of in-fill housing types using architectural styles sympathetic to the neighborhood.

The developers are seeking approval for a Conditional Use Permit using the Developers Standard Bonus to allow 5 single family homes on 2 parcels with a combined acreage of .34 acre. Conditional Use Review through this process determines such things as property line setbacks and lot size. Heights of any structures in this project are limited to 50' and the project is reviewed to assure that it will fit in with the environmental and architectural character of the neighborhood. To qualify for the Developers Standard Bonus the project must exhibit exceptional site and or environmental context within the surrounding neighborhood. The project must also provide a minimum of one unit at an affordable price (20% of the units offered). The developer standard ordinance allows up to 200% density bonus of the underlying density in residential multi-family districts.

The areas to the east north and south of the surrounding the subject properties are zoned RM-8, residential multi-family medium density. The properties on the west side of Roberts Street are zoned Commercial-Industrial. The surrounding area includes some vacant properties and single-family uses. The area adjacent to the project on the south side is Park Place, an older neighborhood with densities similar to the current proposal.

The developer has submitted a site plan which portrays the locations and layout for the 5 residential units. Although the setbacks are somewhat reduced for typical RM-8 zoned areas, the project will not be out of keeping with community norms. The proposed facades of the 5 residential units are complimentary to the neighborhood fabric. The house drawings are similar to that described in the WECAN Citizen Master Plan under types of in-fill housing recommended for the neighborhood. The homes will be sold condominium style with the property in common ownership (City Exhibit 3 – Façade Drawings).

The Technical Review Committee (TRC) reviewed the project at their June 21, 2004, meeting. In addition the developer asked that alternative compliance for the limited landscaping requirements be considered. The Public Works Department suggested that the City Arborist be consulted for alternative compliance and encouraged tree preservation for existing trees. Other outstanding issues identified during the TRC review are also proposed to be conditions of the approval. No other environmental or safety concerns were noted for the project.

Because this is a conditional use permit, if approved, the uses on the site are limited to those applied for during this permit review process. The site plan and building façade elevations are submitted for approval. Deviating from the plan would require a modification of the conditional use permit following an approval process similar to what we are undertaking now.

City Council must take formal action as set forth in section 7-9-9(c) 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)).

- 1) That the proposed use or development of the land will not materially endanger the public health or safety. **The project has been reviewed by the Technical Review Committee. The project will have to meet State Building Code requirements for new construction. No other safety concerns were noted.**
- 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

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proposed by the applicant. **The site naturally has a steep grade from the street up to the rear of the property. The houses will step up the hillside along with the grade.**

- 3) **That the proposed use or development of the land will not substantially injure the value of adjoining or abutting property.** The project is not expected to injure the value of adjoining or abutting properties. There is a substantial amount

of un-developed property in the area. The investment in this project will encourage redevelopment of other vacant lots too.

- 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 project as proposed is developed after other nearby existing residential areas. The proposed building styles are reminiscent with a modern twist of the traditional housing forms found in the neighborhood. The project is in harmony with the scale, bulk, coverage, density and character of 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 project will provide housing that is needed in the community and matches goals from the City Plan 2025 to provide a variety of housing types at a variety of prices in neighborhoods throughout the City. In-fill projects are important to the continuing strength of the City center. Affordable residential units are needed all over the City.
- 6) **That the proposed use is appropriately located with respect to transportation facilities, water supply, fire and police protection, waste disposal, and similar facilities.** Requirements of utility providers will be met for this project. An Asheville Transit route travels within a few blocks of this site along Clingman Avenue and Haywood Road.
- 7) **That the proposed use will not cause undue traffic congestion or create a traffic hazard.** This project was considered at the TRC it was felt that traffic would not be negatively impacted by this small project.

Pros:

- Provides an in-fill housing project in the community.
- The neighborhood will have an affordable residential unit nearby.
- Positive re-development will begin on Roberts Street.

Cons:

- Adds a multifamily project to a single-family neighborhood (a potential plus).
- Project includes on-street parking on Roberts Street, which may act to slow traffic through the area (a potential plus).

The project provides a site-specific plan to develop housing in a way that fits the neighborhood produced master plan. Affordable housing is needed in all area of the City. The plan will provide a new housing product in a predominately single-family neighborhood. Neighborhood impact is minimal when considering traffic issues or the project's visual character and harmony. In addition the 7 standards that must be considered for Conditional Use Permits all appear to be met as noted previously.

The Planning and Zoning Commission at their July 7, 2004, meeting voted to recommend approval of the Conditional Use Permit with conditions that the outstanding TRC issues are satisfied. Staff also recommends approval of the rezoning request.

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Mr. Whit Rylee, property owner, used photos (Applicant Exhibits 1-9) to support the permit and described how they tried to match the neighborhood fabric with this plan.

Upon inquiry of Councilwoman Bellamy, Mr. Rylee said the styles are widely spread throughout the neighborhood.

Upon inquiry of Councilman Newman, Mr. Rylee said that at least one of the homes will be affordable at \$130,000 and the other homes will be in the range of \$150,000-\$225,000.

When Councilwoman Bellamy asked how much time the builder has to complete the development, City Attorney Oast said that unless Council puts a limit on the time, there is not set time for completion. He said the key component is how long the builder has to start the development. If Council wishes to add a time restriction as part of the permit, Council may wish to hear from the developer if that is realistic before the condition is imposed.

Councilwoman Bellamy was concerned that the developer will take 3-5 years to complete the project. Using a photo (Applicant Exhibit 10), Mr. Rylee showed his progress to date on one home and that he hopes to be in that house by Christmas. He already has the funding in place to build the next four homes next year, but it really depends on the economy on when the homes sell.

After rebuttal, Mayor Worley closed the public hearing at 5:52 p.m.

Vice-Mayor Mumpower was surprised that the designs fit into that neighborhood since they are magnified dramatically what exists there now. Mr. Glines responded that it's a creative blend of materials and between historic and new modern, especially fitting in with the artsy River District so close.

Councilwoman Bellamy wondered if Council could request, via the conditional use permit, that the fixtures be moved off the front of the house with the different type of gingerbread ornaments. Mr. Glines felt that City Council can make that a condition.

Councilwoman Bellamy asked Mr. Rylee if he saw a need for that many type of ornaments. Mr. Rylee responded that he doesn't want to hurt the neighborhood and will try to keep to what their desire is.

Councilwoman Bellamy explained that she has spent a lot of time in this neighborhood helping to put the WECAN Citizen Master Plan together. She agreed the neighborhood is changing. But, when they tried to obtain a historic designation, it was denied because a lot of development that occurred did not blend in. The neighborhood has worked very hard to seek that designation and she doesn't want that possible designation jeopardized. Mr. Rylee responded that he felt the historic designation was denied, not because things have been built there because there hasn't been a home built on that side of the hill since 1949, but because there has been such a loss of historic structures that they don't find it a cohesive neighborhood. Whether or not homes are built there or not is not going to solve that problem for the neighborhood. In the Master Plan adopted by the community, there are a lot of different historic details, which may or may not be existing there today nor may not have ever existed in that neighborhood. What they have tried to do is to say this is a historic neighborhood that has different styles and the plan seems to encourage people to try to interpret the styles into structures. That is what he tried to do in these homes. These will be newer buildings that will also have the scale and character of the historic neighborhood. It meets the Department of Interior Standards to get the neighborhood declared historic.

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Councilman Newman moved for the adoption of Ordinance No. 3140, granting a conditional use permit for properties located at 40 Roberts Street for the construction of single-family condominium units, using the development standards, subject to the outstanding TRC issues being satisfied. This motion was seconded by Councilwoman Jones and carried unanimously.

ORDINANCE BOOK NO. 21 - PAGE

D. PUBLIC HEARING TO CONSIDER THE CONDITIONAL USE ZONING OF TWO LOTS ON ROBERTS STREET FROM RM-8 RESIDENTIAL SINGLE-FAMILY MEDIUM DENSITY DISTRICT TO NEIGHBORHOOD CORRIDOR DISTRICT/CONDITIONAL USE; AND THE ISSUANCE OF A CONDITIONAL USE PERMIT TO ALLOW FOR A MIXED-USE DEVELOPMENT

ORDINANCE NO. 3141 - ORDINANCE REZONING TWO LOTS ON ROBERTS STREET FROM RM-8 RESIDENTIAL SINGLE-FAMILY MEDIUM DENSITY DISTRICT TO NEIGHBORHOOD CORRIDOR DISTRICT/CONDITIONAL USE

ORDINANCE NO. 3142 - ORDINANCE GRANTING A CONDITIONAL USE PERMIT FOR TWO LOTS ON ROBERTS STREET TO ALLOW FOR A MIXED-USE DEVELOPMENT

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 6:04 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.

Urban Planner Kim Hamel 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).

Ms. Hamel said that this is the consideration of a conditional use zoning request of two lots on Roberts Street from RM-8 Residential Multi-Family Medium Density District to Neighborhood Corridor District/Conditional Use, and a request to issue a conditional use permit to allow for a mixed-use development.

The West End Clingman Plan, developed as part of the 2010 Comprehensive Plan, identifies this area for residential development.

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Although not yet adopted, this project supports the WECAN Citizens Master Plan initiative that identifies this area for small-scale, mixed-use development.

The project is supported by numerous goals and strategies in the plan relating to infill development, smart growth and transportation policies and affordable housing. The project proposes a medium-density, mixed-use development that is designed to serve and blend in with the surrounding neighborhood (City Exhibit 3 – Location Map). The site is within walking distance to transit service and is located within 1 mile of the City's Central Business District and park services (Aston Park). Additionally, the proposed zoning of NCD, is in accordance with the future land use and transportation plans which has this area targeted for redevelopment as a neighborhood corridor.

A conditional use rezoning to CB-1 for a similar mixed-use development was approved by City Council in July 2000, for the larger of the two tracts (PIN# 1762). This approval, however, expired and the property reverted back to the RM-8 zoning district.

The parcel to the south of the site was rezoned to RM-16 in July 2002.

The applicant, Binna Green, is seeking a conditional use rezoning of two vacant parcels of approximately .2 acres, located on the corner of Roberts Street and Trade Street. The site is located less than a mile west of downtown in the "Chicken-Hill" area of the West End/Clingman neighborhood. Both properties are currently zoned RM-8.

Properties across Roberts Street west of the site are zoned Commercial Industrial and have the potential of being developed to a high intensity use. A transition is needed between the high intensity use and the adjacent residential area. The mixed-use development proposed is considered to be low impact and would provide an effective transition between the two areas.

The West End/Clingman Avenue Neighborhood Plan was developed as part of the 2010 Comprehensive Plan. In recent months, a cooperative effort by residents, designers, community leaders, and city staff has been underway to develop and update the long-range development plan for this area. It is hoped that the plan will be ready for consideration by the end of 2004 making it relevant to the evaluation of this project.

Although not yet officially adopted by the City, in context of the subject property, the plan calls for the promotion of Residential and Arts District infill development along Roberts St. The subject property is located on the fringe of the Arts District, Single Family District, and the Commercial Industrial District making it an ideal candidate for a conditional use rezoning to allow for a combination of art production and retail along with loft residences, serving as an appropriate transition use between the three districts.

The purpose of the RM-8 zoning district is to establish a diverse medium density multi-family and single-family district in areas where public infrastructure is sufficient to support such densities. The purpose of the Neighborhood Corridor District is intended to foster medium density, mixed-use development opportunities that are economically viable, pedestrian oriented, and that contributes character to the built environment.

The conceptual master plan provided with the report was revised to address several Technical Review Committee (TRC) comments that were made at their June 21, 2004, meeting (City Exhibit 3 – Conceptual Master Plan). Subsequently, the Planning and Zoning Commission reviewed the proposal at their July 7, 2004, meeting and made a 5-0 vote in favor of the project subject to the conditions outlined by TRC and staff.

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Revisions to the plan include: impervious surface calculations, Alternative Compliance for Landscaping, and elevations addressing the Design and Operation Standards. The plans also reflect changes in size and square footage of each building and also address a building setback variance and parking location variance that was approved by the Board of Adjustment on Monday, June 28, 2004 (City Exhibit 3 – Building Elevations).

- Building A located closest to Roberts Street proposes approximately 2,341 square feet of artist studio retail space on the lower floor and 2 residential units on the second floor.
- Building B located towards the rear of the lot will house 4 residential units, two units per level.

As part of the project, the applicant is proposing to develop an unopened alleyway along the eastern side of the property in order to provide access to the parking spaces proposed. The plan also illustrates the applicant's request for alternative compliance in regards to the landscaping required for the project. Staff feels that the alternative landscape plan submitted meets the intent of the ordinance by providing an effective buffer where required.

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)).

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 site is relatively flat. Grading will be necessary to accommodate storm water and erosion control requirements, and other proposed site improvements. More extensive grading may be necessary to develop the alleyway located east of the site where the land begins a gradual increase in slope.

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

The proposed use is as small-scaled, low-impact mixed-use development that will be compatible with surrounding residential development. The building located to the rear of the property where adjacent lots are zoned RM-8, will house 4 residential units. The commercial aspect of the project will front Roberts Street where adjacent properties are zoned Commercial Industrial. This project would provide an effective transition and buffer between the commercial industrial property and the residential neighborhood.

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 proposed use of the property as artist studio retail space and residential apartments serves as an effective transition between commercial and residential land. The proposed building design demonstrates small-scale pedestrian-oriented development that will contribute to the character of 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 project is supported by numerous goals and strategies in the plan relating to infill development, smart growth and transportation policies and affordable housing. The project proposes a medium-density, mixed-use development that is designed to serve and blend in with the surrounding neighborhood. The site is within walking distance to transit service and is located within 1 mile of the City's core downtown area. Additionally, the proposed zoning of NCD is in accordance with the future land use and transportation plans which has this area targeted for redevelopment as a neighborhood corridor.

6. That the proposed use is appropriately located with respect to transportation facilities, water supply, fire and police protection, waste disposal, and similar facilities.

The subject site is located near a current bus route. Additionally, the proposed development was reviewed by the City's Technical Review Committee that includes representatives of the Water Resources Department, Fire Department, Engineering Department, Public Works Department, and Public Works Department.

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

Roberts Street serves as a connection between the residential and commercial areas of the neighborhood. Trade Street is a narrow, one-way street that empties onto Club Road. An increase in traffic is not expected to occur from the proposed low impact development.

Pros:

1. The project is supported by numerous goals and strategies in the plan relating to infill development, smart growth and transportation policies and affordable housing.
2. The proposed use and development is supported by the future land use and transportation plans in this area.
3. Although not yet officially adopted, the proposed project is supported by the WECAN Citizens Master Plan in the type of use and building design proposed for this area.
4. The project site is centrally located and within walking distance of the City's core downtown area and the River District.

Cons:

1. Power lines and utility easements render part of the property unusable and relatively small for the number of buildings and off-street parking spaces that are proposed.
2. Due to the size of the lot and hardships created by the location of power lines and utility easements, Alternative Landscape Compliance will need to be considered in order meet the buffer requirements for the project.
3. An unopened alleyway will need to be developed in order to utilize the majority of off-street parking spaces proposed for this project. This will increase the overall amount of grading necessary for the project.

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The site plan and building elevations provided for this project supports the intent and goals of the proposed rezoning to Neighborhood Corridor District by it's design and scale, orientation and relation to the street and services offered to the neighborhood and the surrounding area. The proposed project meets many goals of smart growth and infill development and will also provide several affordable rental units to the neighborhood. Additionally, the proposed development will provide a needed transition between the Commercial Industrial properties located across from the subject site on Roberts Street and the residentially zoned properties located east of the site. With conditional use zoning, the site plan and building design are regulated to ensure that this use remains low-impact to provide the desired transition.

Based on the proposed development and the seven findings staff recommends approval of the project subject to the conditions outlined by the Technical Review Committee. The Planning and Zoning Commission reviewed the proposal at their July 7, 2004, meeting and made a 5-0 vote in favor of the project subject to the conditions outlined by TRC and staff.

Mr. Gerald Green, representing the developer, spoke in support of the project and its contribution to the ongoing renovation of the West End/Clingman Avenue neighborhood.

After hearing no rebuttal, Mayor Worley closed the public hearing at 6:12 p.m.

Upon inquiry of Councilman Davis, Planning & Development Director Scott Shuford said that to accommodate the proposal, staff has recommended the use of the NCD zoning. NCD would typically be applied to a larger area of property such as a section of a road corridor and we understand there may be concerns about its application on this scale. In this case, both the WECAN Citizens Master Plan and the Riverfront Urban Master Plan (which will be considered for adoption by Council later in this meeting) call for this type of development in this immediate area. Consequently, staff was comfortable using NCD but only on a conditional use zoning basis. Since Council has adopted neither plan to date, staff used the NCD/Conditional Use to minimize any precedent for Council consideration and adoption of these plans and any future zoning pattern that implements them while still accommodating the developer's proposal.

Councilman Davis was concerned that City Council is using the conditional use zoning tool is being applied a lot and wondered if we are losing the effect of straight rezonings. He thought that when we first started using that tool, it was to be used

sparingly, but we seem to be using it more and more. With infill development we will probably find that a more useful too, but it seems like we are making zonings fit wherever we want it to fit and losing the intention of straight zoning efforts. He suggested meeting informally with the Planning & Zoning Commission or perhaps a task force to look at some of the planning we do in the future. Mr. Shuford said that he would be happy to give Council a report on its application and how we've used it. He did say that staff has tried to use it appropriately as a tool to balance a person's desire to make effective use of their property and the neighborhood's interest in seeing what that use would be. He also felt it would be appropriate to schedule a Planning & Zoning Commission worksession to talk about this issue.

Councilwoman Bellamy did not support the Neighborhood Corridor District being applied in this instance.

Vice-Mayor Mumpower moved to adopt Ordinance No. 3141 to approve the conditional use rezoning for two lots on Roberts Street from RM-8 Residential Multi-Family Medium Density District to Neighborhood Corridor District/Conditional Use. This motion was seconded by Councilwoman Jones and carried on a 6-1 vote, with Councilwoman Bellamy voting "no."

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Vice-Mayor Mumpower moved to adopt Ordinance No. 3142 to issue a conditional use permit for two lots on Roberts Street to allow for a mixed-use development, subject to the conditions outlined by the Technical Review Committee. This motion was seconded by Councilman Davis and carried on a 6-1 vote with Councilwoman Bellamy voting "no."

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- E. PUBLIC HEARING TO CONSIDER THE CONDITIONAL USE ZONING OF 200 CHARLOTTE STREET FROM RM-16 RESIDENTIAL MULTI-FAMILY HIGH DENSITY DISTRICT AND COMMUNITY BUSINESS I DISTRICT TO COMMUNITY BUSINESS I DISTRICT/CONDITIONAL USE; AND THE ISSUANCE OF A CONDITIONAL USE PERMIT TO EXPAND A PARKING AREA AND PROVIDE PARKING LOT LANDSCAPING TO MEET THE REQUIREMENTS OF THE UNIFIED DEVELOPMENT ORDINANCE**

ORDINANCE NO. 3143 - ORDINANCE REZONING 200 CHARLOTTE STREET FROM RM-16 RESIDENTIAL MULTI-FAMILY HIGH DENSITY DISTRICT AND COMMUNITY BUSINESS I DISTRICT TO COMMUNITY BUSINESS I DISTRICT/CONDITIONAL USE

ORDINANCE NO. 3144 - ORDINANCE GRANTING A CONDITIONAL USE PERMIT FOR 200 CHARLOTTE STREET TO EXPAND A PARKING AREA AND PROVIDE PARKING LOT LANDSCAPING TO MEET THE REQUIREMENTS OF THE UNIFIED DEVELOPMENT ORDINANCE

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.

City Attorney Oast said that a valid protest petition has been filed, thus requiring a three-fourths vote of City Council to approve the rezoning of the property. If the rezoning passes by the three-fourths vote, then the conditional use permit is subject to a simple majority vote.

After hearing no questions about the procedure, Mayor Worley opened the public hearing at 6:25 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.

Urban Planner Alan Glines 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).

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Mr. Glines said that this is the consideration of a request to rezone property located at 200 Charlotte Street from RM-16 Residential Multi-Family High Density District and Community Business I District to Community Business I District/Condition Use, and a request to issue a conditional use permit to expand a parking area and provide parking lot landscaping to meet the requirements of the Unified Development Ordinance (UDO).

The Future Land Use and Transportation Plan of the 2025 Asheville City Development Plan recommends a mixed-use corridor along Charlotte Street.

No recent zoning actions have taken place in this area.

The property is located within the City limits in the north area of the City. This proposal is a Conditional Use Rezoning to provide adequate facilities for a parking lot expansion. The parcel is located at 200 Charlotte Street and is used as a medical office. The parcel which is .71 acre is split zoned between CB-1 towards Charlotte Street and RM-16 in the rear area of the lot. The portion of the parcel along Charlotte is zoned CB-1 and the rear of the parcel is zoned RM-16 (City Exhibit 3 – Location Map and Aerial Photo).

The project came to the attention of the Planning and Development Department because of a complaint regarding grading, clearing and parking lot expansion on the site without a permit. This current submittal is provided to remedy the situation. The project seeks approval to expand the parking area to the north side of the parcel and provide a landscape buffer on the west side of the parcel. Commercial parking is not allowed on residentially zoned land so the rezoning is a requirement for this (City Exhibit 3 – Site Plan).

Outstanding issues identified during the Technical Review Committee (TRC) review are also proposed to be conditions of the approval. Since the TRC meeting the agent for the project, Mr. Hewitt has provided a plant species list which is only lacking evergreen trees for the buffer planting. He has also noted the intention to provide 14 parking spaces for the parking area (a reduction from what is illustrated on the plan). This may change the exact layout for the parking lot to provide for additional area for landscaping. Finally staff recommends closing the east driveway but will accept closing the west driveway instead if elevation changes are an issue. No other environmental or safety concerns were noted for the project.

RM-16 Zoning District (residential multi-family high density) is developed to set aside areas for high density multi-family uses with a broad range of housing types. RM-16 also allows other non-residential uses including limited institutional, public and commercial uses appropriate within high density residential areas.

Community Business I District (CB-1) is established to provide areas for medium-density business and service uses serving several residential neighborhoods. The CB-1 district is designed to be located along streets which serve multiple residential neighborhoods and provide pedestrian connections and safe vehicular access.

Because this is a conditional use rezoning, if approved, the only use of the site that would be allowed would be the office use and parking lot as proposed in this plan. Deviating from the plan would require a modification of the conditional use permit following an approval process similar to what we are undertaking now.

City Council must take formal action as set forth in section 7-9-9(c) of the UDO, and must find that all seven standards for approval of conditional uses are met based on the evidence and testimony received at the public hearing or otherwise appearing in the record of this case (UDO 7-16-2 (c)).

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1. That the proposed use or development of the land will not materially endanger the public health or safety. **The project has been reviewed by the TRC with a few safety comments noted.**
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 property is very urban in nature. New construction is happening on adjacent properties. Landscaping proposed and existing will make the site attractive and will provide the necessary buffering.**

3. **That the proposed use or development of the land will not substantially injure the value of adjoining or abutting property.** The project is not expected to injure the value of adjoining or abutting properties.
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 project is closely associated with Charlotte Street. The project is compatible with uses in place on Charlotte Street.
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 project is providing investment in an existing parcel and business. Development and re-investment in existing businesses matches goals from the City Plan 2025 to strengthen the business climate for the City.
6. **That the proposed use is appropriately located with respect to transportation facilities, water supply, fire and police protection, waste disposal, and similar facilities.** Requirements of utility providers will be met for this project. All utility needs can be met at this site.
7. **That the proposed use will not cause undue traffic congestion or create a traffic hazard.** This project was considered at the Technical Review Committee it was felt that traffic would not be negatively impacted by this small project.

Pros:

- Provides an adequate buffer space to nearby residentially zoned land.
- Maintains the existing visual character for this section of Charlotte Street.

Cons:

- The rezoning reduces RM-16 zoned property (although CB-1 allows a similar residential density).
- The site has the potential to change to other CB-1 uses if approved through the conditional use approval process (a potential plus).

The project provides a site specific plan to expand a parking area for the medical office use. The project will be adequately landscaped from adjacent residential uses following requirements for such in the UDO. The existing uses on the site meet the requirements for CB-1 zoning.

The Planning and Zoning Commission, at its July 7, 2004, meeting, voted 5-0 to recommend approval with conditions that the outstanding TRC issues be satisfied. Staff also recommends approval of the rezoning request.

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After hearing no rebuttal, Mayor Worley closed the public hearing at 6:30 p.m.

Upon inquiry of Mayor Worley, Mr. Glines said that if the property was entirely zoned Community Business I there would not have been a problem regarding the parking lot expansion.

Mr. Glines responded to some questions from Councilman Newman about the number of parking spaces.

Councilman Davis moved to adopt Ordinance No. 3143 to approve the conditional use rezoning for property located at 200 Charlotte Street from RM-16 Residential Multi-Family High Density District and Community Business I District to Community Business I District/Condition Use. This motion was seconded by Councilman Dunn and carried unanimously.

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Councilman Davis moved to adopt Ordinance No. 3144 to issue a conditional use permit for property located at 200 Charlotte Street to expand a parking area and provide parking lot landscaping to meet the requirements of the UDO, subject to the outstanding TRC conditions being satisfied. This motion was seconded by Vice-Mayor Mumpower and carried unanimously.

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F. PUBLIC HEARING TO CONSIDER ORDINANCE TO CLOSE AND VACATE THE DWELLING LOCATED AT 1086 HENDERSONVILLE ROAD

City Attorney Oast said that just prior to this meeting, the attorney for the owner of the property said that they would like to

work with the City Attorney's Office to negotiate a potential resolution and asked that the matter be continued until the next formal meeting.

Councilwoman Bellamy moved to continue the public hearing until August 10, 2004. This motion was seconded by Vice-Mayor Mumpower and carried unanimously.

Councilman Dunn felt that Council might be setting a precedent in allowing property owners to come in at the last minute and try to negotiate a settlement, when they have in fact had ample opportunity to meet our Housing Code.

At 6:39 p.m., Mayor Worley announced a short recess.

IV. UNFINISHED BUSINESS:

V. NEW BUSINESS:

A. RESOLUTION NO. 04-161 – RESOLUTION ADOPTING THE WATERSHED MANAGEMENT PLAN

Mr. David Hanks, Interim Director of Water Resources Director, said that this is the consideration of a resolution adopting a Forest Management Plan for North Fork and Bee Tree Watersheds.

The forestry management consultant firm of Wildwood Consulting, LLC was retained by the City to provide a forest management plan at the North Fork and Bee Tree watersheds, including the current state of the trees, shrubs, underbrush, grassy areas, roads, streams, wildlife, and maintenance to ensure high quality water flow in to the two reservoirs. Secondly to make recommendations on areas requiring improvement. The plan is the first step in a five to ten year

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planning process, which will establish best forestry management practices for proper management of the watersheds.

Mr. Hanks said that the forestry management study was the result of an airplane crash in the watershed area in 2002. Due to the overgrowth within the watershed and inaccessibility of roads it was extremely difficult for fire and rescue workers to reach the downed airplane. This prompted the fire chiefs of the City of Asheville and Town of Black Mountain to request accessibility and maintenance of the watersheds. This included analyzing the potential for fire and fire fighting capabilities in the watershed based upon its current status. It also included analyzing large areas of the watershed where trees were down and overgrowth did not allow for emergency and maintenance vehicles and/or equipment to be brought in. The forester's primary direction is the proper management of the forest through Best Management Practices in order to maintain the functions of the forest contributing to water quality and to reduce the risk of catastrophic loss by fire, insects or disease. Any watershed maintenance, including tree removals, grass removal and road improvements will be accomplished in compliance with the Asheville Watershed Conservation Easement.

Staff will bring an annual plan to City Council outlining specific details of what will be done within the watershed for approval.

City staff recommends City Council adopt a Forest Management Plan for North Fork and Bee Tree Watersheds.

Mayor Worley made perfectly clear is that this is not a logging plan. There are one or two references to logging, or clear-cutting between 5-10 acres, in the plan itself. One thing that came out of Council's worksession discussion on July 20, 2004, is that those references are inconsistent with our conservation easement which prohibits any logging of even-aged trees. That effectively prohibits any logging, and, again, the plan itself was never intended to be a logging plan.

Mayor Worley said that the public hearing comment period will be limited to one hour. Comments will be taken first from individuals whose names appear on the sign-up sheet.

Ms. Leslee Kulba spoke in support of the management plan. She was disturbed with a lot of the materials and exaggerated, out of context information being circulated in the community that this is a clear-cutting document. She urged the community to become informed before circulating misinformation.

Mr. Eric Gorny, property owner adjoining Bee Tree Reservoir, spoke in support of the plan. He is concerned about the lack of access for the fire departments to control fires. Being a hunter, he explained how thinning and clear-cutting is necessary for new growth to feed the wildlife.

The following individuals, who were basically in support of a good management plan, spoke against adoption of this management plan for several reasons, some being, but are not limited to: there is nothing in the plan about the role of the watershed and the larger Black Mountain conservation area; there is no mention in the plan that there is a conservation easement; there are a number of provisions in the plan that would violate the conservation easement, e.g., clear-cutting; the plan poses an unnecessary risk to our water supply; the plan is vague and inadequate with regard to protecting water quality; the plan suggests engaging in practices which have the potential to reduce water quality and reduce the ability of the forest to filter and capture water; the number, location and method of logging practices suggested in the plan are not clearly defined; permissive loosely defined documents, such as this plan, can be used by polluters and economic-interests to profit without consequences while degrading a public

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resource; the plan provides neither a baseline inventory of the watersheds natural resources or documentation for the lands ability to capture and clean incoming water; plans falls short of serving as a guiding document which outlines the future of management in the watershed; plan only provides a brief introduction of the management possibilities and far-fetched worse case scenarios; the plan should include clear goals that have been agreed upon by a variety of stakeholders and outline objectives; objective should be matched with significant scientific recommendations for action and contingency; the public should be allowed to be part of the planning process; prior to developing a plan, there should be a baseline forest inventory and assessment, complete inventory and survey of current conditions of local flora and fauna, an analysis of the cumulative and environmental impacts to determine how proposed activities will alter the watershed landscape, a visual quality analysis from the Blue Ridge Parkway to ensure the areas highly visible from the Parkway are not negatively impacted, and a cost benefit analysis of the economics of managing the property, a road analysis to identify the critical roads that must be maintained and those roads that should be decommissioned, and public input; the Blue Ridge Parkway, Conservation Trust for North Carolina and other key partners and interest groups were not contacted to ask for their thoughts on the plan; timber harvesting methods in the plan appear to violate the intent and letter of the conservation easement; potential visual impacts to the Parkway view areas have not been evaluated as part of the planning process; need water management plan, not a forest management plan; rare and endangered species are not addressed; control of exotic invasive species is extremely important but cutting 50-foot strips at roads and small clear-cuts will open up new areas for the invasive species to thrive; we cannot create 50-foot roads in all parts of our mountainous region in the off chance of a fire or a plane crash; maintenance of the current roads should be adequate and all emergency vehicles should carry chainsaw equipment when entering the watershed; question of the City's consultant competence regarding birds; logging is part of every habitat recommendation; 50-foot road maintenance recommendation is overkill; study found that "timber harvest through its effects on forest structure, local micro-climate and fuel accumulation has increased fire severity more than any other recent human activity"; an organization that specialize in the management and protection of drinking watershed water should be consulted; conservation easement needs to be updated by placing the entire property in a protective easement that prevents commercial logging; we should not damage our drinking watershed because we have the technology to make polluted surface water drinkable; an expert committee needs to be formed to advise the development of a management plan for the watershed using experts in soils, plant and animal life, hydrology, etc.; there are other options to management the watershed; the plan exaggerates the risk of catastrophic fire beyond reason; disagreement with *Miscanthus Sinensis* being "shade tolerant" and with the proposed fire scenario laid out in the plan regarding the plant; City's consultant has no knowledge about what measures are currently in place to monitor and prevent forest fires; detrimental effects of herbicides on the water quality; who will implement the plan; if you don't removal all the invasive species, they will grow back; and concerns for lack of enforcement of the management plan:

Mr. Hugh Irwin, Conservation Planner with the Southern Appalachian Forest Coalition
(two pages of information from the Southern Appalachian Forest Coalition and a map)

Ms. Gracia O'Neill, Outreach Coordinator for Clean Water for North Carolina

Mr. Ben Prater, Staff Ecologist for the Southern Appalachian Bio-Diversity Project
(bibliography of watershed research; photo petition; and petition requesting Council
"reject any and all proposals to allow commercial logging in the Asheville
watershed.")

Mr. Gary Johnson, representing the Blue Ridge Parkway (letter dated July 27, 2004, from
Daniel W. Brown, Superintendent, Blue Ridge Parkway)

Ms. Alyx Perry, WildLaw sustainable forestry program

Mr. Carl Nyberg, Asheville resident

Ms. Charlotte Goedsche, Secretary of the Elisha Mitchell Audubon Society

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Mr. Monroe Gilmore, Coordinator of the Swannanoa Valley Alliance for Beauty and
Prosperity (Comments of Monroe Gilmore, SVABP Coordinator)

Mr. Bud Howell

Ms. Susan Andrew, forest ecologist with special interest in watershed ecology and function (pictures of her daughters)

Ms. Robin Cape, Board Member of the Woodfin Water District

Mr. Bob Gale, Ecologist with Western North Carolina Alliance (information on ecological aspects within the Asheville watershed proposal)

Ms. Julie Brandt, representing Asheville Park People Advocating Real Conservancy

Mr. Alan Ditmore

Ms. Carol Wilson

Mr. Rusty Painter, Director of Land Protection for the Conservation Trust of North Carolina, read a prepared statement stating that they "are the holder of a conservation easement on 17,356 acres of the Asheville Municipal Watershed. The primary purpose of the easement is to protect the property's ability to provide a clean, safe and plentiful source of drinking water. The easement also protects the nationally significant natural areas within the watershed and the scenic vistas from the Blue Ridge Parkway. The Asheville City Council now begins a public process to consider possible forest management activities on this property and we encourage Asheville citizens to participate in this process. The Conservation Trust will continue to work with the Asheville City Council to ensure that the intent and terms of the conservation easement are honored and that any management plan respects the restrictions in the conservation easement." He said the City's consultant Mr. Hicks has done the job he was hired to do. He looks forward to working with Council to continue to resolve this issue and find a compromise and a way we can manage the property in a way that suits everyone and still respects the constraints of the easement.

Councilman Dunn initiated a brief discussion about the need for cooperative partnership with the Blue Ridge Parkway especially regarding a permit for the Swannanoa River bridge at Azalea Road Park.

Mr. Edward B. Hicks, Forester with Wildwood Consulting, LLC, said he has listened to all the comments. He agreed that this is not a complete plan and it is not intended to be complete. This plan stops at the general recommendations. At this point they are trying to get Council and public input before they give specific recommendations. On an area this large, if you present specifics and then you get input, someone may say they didn't want to go that direction at all, there is a lot of wasted time. He is not asking for blank authority. He will be happy to work with the Conservation Trust of North Carolina, the Park Service and other interested parties who would like to participate as we refine the process and get more details in the plan. He said the conservation easement clearly says no even-aged management, so the small 10-15 acre clear-cut ideas, which were not for actually oak regeneration but for early successional habitat for grouse, will be removed from the plan as one of the recommendations.

Mr. Hicks said that they are asking for a 50-foot area to improve road maintenance basically to reduce the area where there will be probable tree fall across the roads. There is only one person to maintain 65 miles of roads in the watershed and it would be fine for them to carry chainsaws but he doesn't have the time to keep all the roads clear. The idea is to take parts of those roads where we see a particular hazard and clear back about 50 feet. There will be places where we may not clear all the trees because we are trying to promote white oak and northern red oak. Also, we will not be clearing the roads that go across the stream-heads. It's not even-aged management from the standpoint we are not regenerating the trees. We would come back with a chainsaw to cut down the tree form vegetation. Regarding expense to maintain this, he said that every year you would do several stretches of road on maybe a 10-year rotation. The

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idea is that every year you harvest a little from the small group selections and individual tree selections to generate revenue to pursue the maintenance that is recommended in other areas.

Mr. Hicks said that the final plan will be very intentional about our water quality not being negatively impacted. He hoped to enhance the water quality not by logging, but taking some of the revenue from the logging and improving the roads so that conditions that exist now can be improved and reduce the sedimentation into the watershed.

Considerable discussion followed. Mr. Hicks and Mr. Hanks responded to various questions and comments from Council, some being, but are not limited to: why shelterwood cuts are not removed from the plan; discussion of aged stands; has there been discussion with the Conservation Trust about whether or not the clearing along the roads is an even-aged technique; is it true that Chinese silvergrass tends to spread more quickly in areas that have full sunlight; how have you researched the conclusion that daylighting the roads by 50-feet may not have an aesthetic impact on the Parkway views, especially in the winter; what steps are being taken to avoid the impact on water quality; what type of problems can occur if there isn't a 50-foot road maintenance; should we be concerned about a fire in our watershed and what is the real likelihood of a catastrophic fire; even if we do get rid of the Miscanthus, it is still quite a common species in our community; if we do more activities to open up the watershed, are we at a higher risk having an on-going maintenance problem of Miscanthus; how is Miscanthus spread; what is the best way to get rid of

Miscanthus; how many miles of roadway is proposed for the 50-foot daylighting; has the City looked at the other area municipalities management plans to see what kind of direction they are moving forward with; and, have we explored the options of commercial logging or total preservation of the watershed property.

Upon inquiry of Vice-Mayor Mumpower, Mr. Hicks said they are seeking direction on this general plan in order to present Council with specific details. Again, this is not a complete plan. After direction is received by Council and the public, Mr. Hicks said that he will meet with the Conservation Trust of North Carolina, the Park Service and other interested individuals to write specific recommendations over a 10-year period. These recommendations will be brought back to Council on an annual basis, after having a session with the stakeholders, with a plan for the next year. He said it will all be in stages and this is the stage where they receive Council and public comment.

Councilman Davis agreed that the plan is very open-ended and he personally doesn't want any logging in the watershed. If we are going to daylight that large of area, he feels that would make itself more available to a heavier scale of logging and that is a concern. He was, however, certain that we did need a plan for watershed management and the Tree Commission agreed. He felt it was important to know how many miles of primary roadway we are talking about in order to access the secondary areas before we proceed. He wondered if it would be better off to hire a few extra crew people to do road maintenance rather than to go in and do a 50-foot daylighting and logging operation. He felt that we should call the document a watershed management plan, which better fits what we are doing. We have to come to terms with the fact that the wildlife habitat management is probably not the most important thing in the plan and he personally did not want to get into that type of management. He suggested that once the plan is formulated each year, after public input, with specific recommendations on what they would like to accomplish in the coming year, that it be taken to the Tree Commission for review prior to being presented to Council. There are mechanisms already in place to get the public input. And, he felt there may be the potential in the future for recreation in the watershed, more specifically in the Bee Tree watershed.

Councilman Dunn felt we are just wanting to lower the odds of having a catastrophic fire. Mr. Hicks said that he didn't think we can lower the risk of having the fire, but what they are trying to do is have some security that if we have their fire, we can get to it in a timely fashion. The

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slopes on the watershed are very steep and any roads that are running straight up, we will try to close those. We are looking to daylight the roads that are going around the topography climbing at a fairly slow angle.

Councilman Newman said that the plan is very open-ended. Council has to think about the policies we make now, which we might have a certain understanding of, but in ten years from now, a future Council or a future forester who is responsible for implementing the plan, could read this plan and interpret it to do much more extensive forestry than you are describing, because it is pretty broad. You could theoretically not violate that plan and cut a lot of timber off that watershed. City Manager Westbrook responded that it would be the staff's responsibility to proceed with the policy Council set. Mayor Worley also responded that future Council's could hire another forester and go in a total different direction.

Councilwoman Jones said that there is a lot of knowledge in the community and she has learned a lot from the public's input. She didn't feel that there was an urgency to adopt the plan right now and suggested we bring in the public to utilize the amount of knowledge they have to take us to the next place.

Councilman Newman's main goal is to protect the water quality. He asked Mr. Hanks, who responded, questions regarding whether it would be worthwhile to look at recreation activity at Bee Tree and if it would be consistent with protecting our water quality.

Upon inquiry of Mayor Worley, Mr. Hanks said that if Council approves this plan, no activity would start this year but that staff will develop the next step of the plan and bring it back to Council as part of the next year's budget. He said we don't have funding this year to start the process. He anticipated that in approximately six months, we would meet with the stakeholders, e.g., the Conservation Trust of North Carolina, Blue Ridge Parkway, Forest Service, Tree Commission, et al., and show them what the staff will be recommending with the possible cost estimate to see if the next stage can be implemented.

City Manager Westbrook said we are requesting approval of a broad, general public policy that staff can move forward on. Then we will come back and hone it down each year. There are several questions, but he feels those will be answered on an annual basis on a much smaller scale than the basic plan.

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

Vice-Mayor Mumpower moved to approve the adoption of the amended Forest Management Plan (as just presented by Mr. Hicks), which includes the removal of the small 10-15 acre clear-cuts, keeping the shelterwood cuts as a potential possibility and the 50-foot clearing along the primary roads as a option. This motion was seconded by Councilman Dunn.

Councilman Dunn asked Vice-Mayor Mumpower for a friendly amendment to change the name of the Plan to "Watershed Management Plan." Vice-Mayor Mumpower accepted the amendment.

Councilman Newman moved to amend the motion that we accept the information presented to Council and approve all parts of the proposed plan as presented, (1) including all the activities of removing exotic species (including Miscanthus) from the watershed; actions to maintain and rehabilitate roads and bridges on the property; close roads that are impacting water quality; improve signage on the watershed property; the activities that are proposed to restore American chestnuts on the property and manage the hemlock woolly adelgid infestation; and other specific recommendations that are in the plan, but defer a decision to implement any

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logging activities on the property until we develop a more comprehensive watershed plan; and (2) that we create an advisory task force of citizens to gather more public input on the development of a more comprehensive watershed plan that takes a look at some of the recreational issues that have been raised as a possibility, but doesn't necessarily preclude silviculture as a tool that can be used on the watershed, and hopes to gather a more thorough biological inventory of the property that we have so that whatever decisions we make is based on good science. This motion was seconded by Councilwoman Jones.

Councilwoman Bellamy suggested that the task force also consist of experts in soil, plant and animal life, and hydrology.

Vice-Mayor Mumpower understands Councilman Newman's intent to post limits before anything is done, but he felt the limits already exist. We are voting to ask our staff to press forward with developing a more specific sequential plan extended over time and to artificially impair their ability to do that by removing too many options is not something he personally would be comfortable in doing and he doesn't think it is necessary.

Councilman Davis said that if we accept the plan, it won't move forward until we get the specifics we have asked for in a more narrowed form. He would be comfortable in leaving the logging portion in the plan since it will not move forward until staff comes back with a more narrow plan after having received public input. In an effort to move the process along and get to the next level, he will support the original motion.

Councilwoman Jones noted that Council has a wonderful resource in Councilman Newman who has worked in the environmental area for ten years.

Mayor Worley said that if we adopt the plan tonight, nothing takes place until next year and until we have an opportunity to develop the specific plans for whatever will take place. That will be brought back to Council for approval as part of next year's budget. He would be supportive of adopting the plan with that in mind. He suggested adopting the plan but put a restriction that specifically says no logging activities until we have consulted with the Conservation Trust of North Carolina, Blue Ridge Parkway, and whoever else might be necessary for that consulting. Then, whatever comes out of that as a proposed plan will come back to Council for approval.

Councilman Newman explained the intent of his motion. He felt that it is different to say we are going to move forward with the consensus items, but we are going to put together a team of people with areas of expertise and different fields to come up with a comprehensive watershed plan. This is a plan that includes logging, more or less. He is not, in his motion, wanting to necessarily close the door on that question, but if we approve this plan we have approved a plan that includes more or less logging. That is the distinction in his mind and why he would prefer the way his amended motion is phrased.

Councilman Dunn said that a few trees are going to have to be cut down and if we have to cut them down, why don't we sell them. We are not talking about funding the City budget. The City has many plans already in place and felt we now needed a watershed management plan to make sure we are being good stewards of our resource.

Councilman Davis felt he could support the suggestion made by Mayor Worley.

Upon inquiry of Councilwoman Bellamy, Mayor Worley supported a task force but he felt that Council may have to work on how that is formulated and what the qualifications might be to serve on it. He wasn't sure if he was prepared to put that in his suggestion at this time, but it is something we need to seriously consider.

Councilwoman Bellamy said that we haven't brought out the financial ramifications of this plan. We can't even get a Water Authority budget approved by the three bodies necessary and wondered if this will be a major part of that budget. If Council is in agreement on formulating a task force, she felt it was important for Council to agree on how the task force's recommendations will be received.

Councilman Newman moved to call the question on his amendment to the original motion. This motion was seconded by Councilwoman Jones and carried unanimously.

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

Councilwoman Bellamy requested the original motion be rescinded so Council can vote on each part of the plan separately. Mayor Worley explained the motion was to adopt the plan as presented.

Mayor Worley then moved to amend the original motion to adopt the plan as presented tonight by Mr. Hicks with the additional provision that there be no logging activities until after a consultation with the Conservation Trust of North Carolina, the Blue Ridge Parkway, and whoever else might be necessary for that consulting, and a clear plan for any such activities be prepared in consultation with them and then brought back to City Council for final approval. This motion was seconded by Councilman Davis.

Mayor Worley supported an advisory group to review and offer additional input, but he would rather not deal with that in a motion now, but to give Council time to develop that motion in terms of qualifications of who might be on that task force and deal with that at a subsequent meeting.

The amendment to the original motion made by Mayor Worley and seconded by Councilman Davis carried on a 5-2 vote, with Councilwoman Jones and Councilman Newman voting "no."

The amended original motion as follows carried on a 4-3 vote, with Mayor Worley, Vice-Mayor Mumpower, Councilman Davis and Councilman Dunn voting "yes" and Councilwoman Bellamy, Councilwoman Jones and Councilman Newman voting "no": To adopt the Watershed Management Plan as presented tonight by Mr. Hicks with the additional provision that there be no logging activities until after a consultation with the Conservation Trust of North Carolina, the Blue Ridge Parkway, and whoever else might be necessary for that consulting, and a clear plan for any such activities be prepared in consultation with them and then brought back to City Council for final approval.

At 9:50 p.m., Mayor Worley announced a short break.

RESOLUTION BOOK NO. 28 – PAGE 314

B. MOTION RECEIVING THE FINAL REPORT OF THE DOWNTOWN SOCIAL ISSUES TASK FORCE ON GRAFFITI

Ms. Sasha Vrtunski, Director of City Development, explained that the Downtown Social Issues Task Force broke their work up by topics: Graffiti, Panhandling, Public Drunkenness and Homelessness. City Council has already heard the report regarding the 10-year Plan to End Homelessness and taken action. Because each of these issues is so complicated, the Task

Force is coming to Council in July with their graffiti recommendations and in August with the panhandling and public drunkenness recommendations.

The Task Force took the approach of recommending stiffer penalties for vandals while reducing the incentive for doing graffiti by asking property owners to remove graffiti within forty-eight (48) hours. This has been a proven approach in other cities; when graffiti is removed within the first 48 hours, the incentive for future vandalism is greatly reduced. In other cities building owners are required to remove the graffiti within the 48-hour period, or be faced with large fines. The Task Force recognized that this could be a large burden on property owners and worked to make the program as easy as possible. In conjunction with recommending such an ordinance, a companion volunteer clean-up group would be set up through Quality Forward to be able to

respond to instances of graffiti, where the property owner has signed up to allow them to clean his or her property. This approach has the potential to get graffiti off of downtown buildings quickly with no penalties to building owners.

The Task Force is also recommending that the City install additional kiosks around downtown to provide spaces for flyers; create a website about the graffiti abatement program; support the Asheville mural project; and provide additional street police officers as a deterrent. Finally, the Task Force is also asking that City Council ask the District Attorney's office prosecute offenders to the greatest extent possible and seek full restitution for property owners.

Advantages

- Removal of graffiti within 48 hours has been proven to be a deterrent to graffiti artists and vandals.
- These recommendations provide both "carrots and sticks" to combat the problem of graffiti in downtown.

Disadvantages

- The Volunteer program is quite ambitious and may have to be adjusted over time.
- There are some property owners that feel that 48 hours is too short of a time for them to remove graffiti, while at the same time supporting the concept in general.

City staff recommends City Council adopt the Downtown Social Issues Task Force's Graffiti recommendations. City Council may want to consider the 48-hour period to be business hours. City staff will evaluate each of the recommendations for legal sufficiency, and if any recommendation is unable to be carried out for legal reasons, staff will notify Council. Upon Council direction, staff will work on a draft ordinance for graffiti removal.

Mr. Patrick Whalen, Chair of the Downtown Social Issues Task Force and the Graffiti Sub-Committee, and Graffiti Sub-Committee members Ms. Leslie Huntley, Ms. Kitty Brown, and Ms. Kim MacQueen each addressed the concerns expressed by Council at their July 20, 2004, worksession on the recommendations presented. They explained that hundreds of hours by volunteers were spent in developing and understanding the problem of graffiti and then researching solutions and approaches tried by other cities. They highlighted the findings which are provided in detail with supporting research, reasoning and examples of model program in the 125 pages of the report and supporting appendix.

Sub-Committee members responded to Council's prior concerns/comments, some being, but are not limited to: how important it is for the quick removal of graffiti; who is responsible for the quick removal of graffiti – City government, property owners, volunteers or graffiti offenders; why the Committee is recommending a program of large community volunteers to remove graffiti cost-effectively and in order to heighten community-wide awareness of the problem; the research of over 50 cities that have various problems with graffiti; in cities where they take responsibility for

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the clean-up, they end up back-charging the property owner anyway at much higher rates than the fines the Committee is suggesting; property owners who do not remove the graffiti quickly are actually hurting the entire neighborhood by encouraging graffiti on adjacent buildings and near-by areas; as opposed to punishing the building owner with a fine or a City with clean-up charge, they felt it was important that we as a community aid the victim because the City might not be able to afford to, therefore they recommend the fine only if the building owner would neither clean the building themselves nor allow volunteers to clean it; volunteer clean-up crew is a challenge but it is working in other cities; and building owner liability.

The following are the recommendations, along with action steps for each one:

1. We recommend that the City of Asheville, in cooperation with Quality Forward, the Asheville Downtown Association, organizations like Project STEAM and Buncombe Alternatives, private property owners, business owners, and community volunteers, commits to removing *graffiti* within 48 hours after its appearance has been reported.
 - We propose a pilot removal program on a smaller section of downtown to be followed by its implementation throughout the central business district.
 - The program would involve the implementation of a graffiti reporting hotline at Quality Forward which would dispatch a volunteer force of "graffiti busters" to remove reported graffiti within 48 hours.
2. We recommend that the City pass a local ordinance which requires building owners to either remove all graffiti themselves within 48 hours of its being reported or to grant permission for their property to be cleaned by graffiti volunteers.
 - Violations of this ordinance would be enforced with a penalty of \$25 a day for each day the graffiti remains after notice to the building owner.
 - In the case of acid etching, the release will allow the volunteers to cover the graffiti etching with a larger geometric

- etching or allow the owner to opt out of volunteer repair and agree to replace the window glass within 2 weeks.
- It is also recommended that the City create a low interest loan fund to aid building owners victimized by acid etching who choose to replace their glass.

3. We recommend that the City create a web page describing Asheville's graffiti abatement program with a hot link to Quality Forward's website which would describe their role in the graffiti abatement program.
4. We recommend support of the Asheville Mural Project, a program of public art murals, as a viable deterrent to graffiti vandalism creating opportunities to develop neighborhood ownership and pride.
5. We recommend that the City add five additional round legal posting sites (similar to the library poster kiosk but much smaller) appropriately spaced around downtown in an effort to reduce and concentrate sticker/flyer graffiti
6. We recommend that the City Council issue a resolution to the District Attorney's office requesting:
 - The DA prosecute graffiti offenders, and in particular repeat offenders and acid etchers, to the fullest extent of the law;
 - The DA seek awards of full restitution to property owners for damage;
 - First-time offenders be sentenced to 100 hours of participation in graffiti cleanup and repair under the auspices of an organization like Buncombe Alternatives; and

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- Repeat offenders and acid etchers be required to perform 500 hours of service in cleanup efforts.

7. We support a greater police presence on the street as a deterrent to graffiti and similar forms of vandalism.
8. Upon hearing the interest for a legal graffiti wall during public input sessions, the Task Force suggests the following:
 - The graffiti subcommittee will entertain proposals from individuals who are interested in coordinating such a legal wall. Proposals should include location, monitoring the site (loitering, letter, profanity), maintenance, etc. It is our intention that a legal wall be on private property and be privately monitored and maintained.

After reviewing proposals, the subcommittee will make further recommendations to City Council regarding legal graffiti walls.

Task Force members then explained what a thorough 18-month investigative job they did in compiling this exhaustive report. Because of the discussion by Council at the July 20, 2004, worksession when the recommendations were submitted, the Task Force members were disappointed when City Council asked them to go back and research more. They suggested that in the future if Council creates a task force, they should be treated with more respect or the process needs to be altered. They only ask that Council accept their recommendations and that the Council put the same amount of time into any changes to their recommendations, as the Task Force put into making the recommendations. It will be up to Council to implement some, all or none of them.

Mr. Alan Ditmore, Leicester resident, felt the recommendations should be rejected because any rise in downtown rents will cause more homelessness.

Ms. Patricia Wald, employee on Broadway Avenue, appreciated the efforts of the Task Force, however, was appalled of penalizing the property owners for the actions of criminals. She felt the Police Department should make more of an effort to catch the graffiti criminals, send them to jail and fine them as well.

Ms. Rosanna Coates also spoke against fining property owners for the actions of graffiti criminals.

Mr. Bill Stamey urged Council not to penalize the people who own the property. He would be willing to pay more in his tax dollars to get the City to remove the graffiti.

Councilman Newman explained that part of the proposal is that the property owners can call Quality Forward and be placed on a list where the Quality Forward volunteers would remove the graffiti. If they are placed on the list, they would not be fined under any scenario. That option is out there for property owners to escape the burden of removing the graffiti themselves.

Ms. MacQueen clarified the recommendation in that they are mostly calling for a volunteer graffiti removal force, which is going to be operated out of Quality Forward, where we have a cadre of volunteers who are going to go onto property owners property with their permission and remove that graffiti for free. Should we find a property owner (absentee or one who just doesn't care), we would like to be able to ensure that there is a method to get that graffiti

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removed as well. The fine is Part B of the recommendation, with Part A being the volunteer graffiti removal force.

Councilwoman Bellamy felt that Council needs to decide how to deal with the recommendations they receive (prior to them being received) from the various task forces and committees they appoint. She thanked the Task Force for their 18-months of hard work on this difficult topic.

Councilwoman Jones was sorry that the Task Force felt they were not treated with respect. Council is well-intended and Council needs to figure out a better way of relaying that. She felt the report was impressive.

Councilman Dunn also was sorry the Task Force didn't think they were treated with respect. Sometimes Council has to give constructive criticism where they feel it is appropriate. He has a problem with this being limited to just the downtown because there is graffiti all over the City. He supported the recommendations, except he would not support fining property owners.

Vice-Mayor Mumpower said he did not mean to be disrespectful or inconsiderate at the July 20 worksession when he raised questions. Council is faced with a parade of issues and they have to be dealt with in a fairly brief time. When Council sees something they have a philosophical disagreement, they are compelled to raise a flag. He did not want to encourage a momentum of penalizing the victim. He thought his comments were on the basis of inquiry with the rest of Council and the Task Force vs. a criticism of the Task Force and if it came across that way, it was not intended. He felt there is a lot we can do before we go this far. Our Police Chief has some ideas and he thinks there are some models that show stronger law enforcement can make a difference. The volunteer effort sounds great, but his personal concern is that if we start out with that volunteer effort, he doesn't believe we will be successful in sustaining it, and if you don't, it comes back to the property owners and City taxpayers. He supported getting the volunteer effort started and seeing how it works. He would support Council creating a budget item for some rewards for catching the graffiti vandals. If graffiti is on your property, it's a form of community terrorism, not art. Council has concerns about the recommendations, but that doesn't mean we don't appreciate the work of the Task Force. He apologized for the pressures of the parades that Council has to deal with, but he doesn't apologize for trying to get to the best place for the most people.

Councilman Davis apologized that the Task Force felt disrespected. Being a former member of the Planning & Zoning Commission and a member on various other committees, he can understand the frustration the Task Force felt. He appreciated the hard work that has gone into the research. He has read the report and he assumed the worksession was the place where questions were asked. He is a small business owner in the downtown and has painted graffiti off his walls so he understands the problem. He does have several questions, e.g. how do we collect the fines, how to do impose the fines, and how do we enforce it.

Mayor Worley said that Council created the Task Force and charged them with a number of things to study and research, including graffiti, public drunkenness, panhandling and the issue already being implemented regarding homelessness. The two reports submitted have indicated they have done an outstanding job in that charge. Council does appreciate the efforts of the Task Force. Regardless of what actions the City takes or doesn't take, the effort is greatly appreciated. The bottom line is that the City could not function without the services provided by volunteers and this is one example of those services.

Councilman Davis moved to receive the report of the Downtown Social Issues Task Force on Graffiti, and that City staff be instructed to evaluate the recommendations for legal sufficiency and report back to Council on how to proceed further. The motion implies no decision

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on whether Council will implement any or all of the recommendation contained in the report. This motion was seconded by Councilwoman Bellamy and carried unanimously.

Upon inquiry of Councilman Newman of a timeline, City Manager Westbrook said that staff will look at this issue and all the other issues we are working on for Council and come back as soon as possible with what we think the timeline will be. If the timeline is not quick enough, then Council can re-prioritize our issues and we will move forward. Councilwoman Bellamy wanted to make sure the Police Chief is implementing ideas he thinks is appropriate.

C. RESOLUTION NO. 04-162 - RESOLUTION ADOPTING THE WILMA DYKEMAN RIVERWAY MASTER PLAN AS PART OF THE COMPREHENSIVE PLAN FOR THE CITY OF ASHEVILLE

Planning & Development Scott Shuford said this is the culmination of a fairly long process that has involved extensive public input and considerable consultant expertise. This is a private sector plan in which economic development is a clear focus. The plan takes the approach that if you provide the vision and the enthusiasm, the private sector will take over and move it forward. The City's role under this plan is basically a fairly small role. The City would help support the riverway project and since that will be a state highway project, that is not a monetary support. That's a support from the standpoint of lobbying and trying to get it to occur. There will be some future zoning changes and regulatory changes that will be necessary to implement the plan and make it move forward. There will continue to be the same sort of incremental enhancement of recreational opportunities along the riverfront. In addition, there needs to be support from Council for private sector redevelopment so that when people come forward with redevelopment that is in keeping with the general direction of this plan and others in the City along the riverfront, that receives appropriate Council support.

Ms. Karen Cragnolin, Executive Director of RiverLink, introduced her Board members present, and said that several years ago, the City contracted with RiverLink for the preparation of a master plan for the urban areas of the French Broad and Swannanoa rivers. Later, the scope for this plan was broadened to include what is now called the Wilma Dykeman Riverway concept.

Working with a large, broad-based group of citizens and with City staff, RiverLink and its consultants have completed an Urban Riverfront Master Plan that envisions nodes of relatively dense urban development in a scenic riverfront setting. The plan capably marries land use, transportation, water quality, and economic development goals in a manner that implements City Sustainable Economic Development Task Force and Smart Growth objectives. Under the plan, the main road linking the two rivers will become a unified transportation corridor; economic development opportunities and strategies are identified and mapped out; and a land use pattern consistent with traditional development design throughout the City is encouraged. Additionally, environmentally sensitive restoration of the rivers to promote public access, recreation, and commerce is to be accomplished through plan implementation.

There has been considerable public involvement in the development of this plan and the extent of this involvement will be detailed to Council in the presentation of the plan. Additionally, RiverLink received preliminary feedback from City Council concerning the direction of the plan in January of this year.

Key future actions for the City called for in the plan include:

- Continued support for moving the Riverway project forward.
- Continued involvement in the recreational improvements called for in the plan.
- Consideration of changes to zoning requirements to implement key plan components.

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- General support for private sector redevelopment of properties as proposed in the plan.

Pro's

- Major new transportation initiative has the potential to relieve traffic congestion and spur new economic development.
- Potential to dramatically increase tax base through private sector redevelopment.
- Strong public support for proposal due to its comprehensive treatment of urban riverfront issues, including economic development, transportation, recreation and beautification.

Con's

- May result in displacement of some existing uses along the river area through market forces or road widening.

The plan supports the following Goals and Objectives of the Strategic Operating Plan:

Economic Development Goal # 3, Objective A - Mobilize collective resources and goals by implementing a unified regional economic development plan. Riverfront redevelopment has been a regional goal since the Sustainable Economic Development Task Force made it a priority area in its strategic plan report. Consequently, the Urban Riverfront Master Plan can be considered regional in scope as a critical economic development tool.

Natural and Built Environment Goal # 2 - Increased greenway benefits equitably throughout Asheville. The Urban

Riverfront Master Plan contains a greenway network that links the north, central and east parts of the City in a continuous fashion.

Mr. Shuford said that City staff recommends City Council adopt the Wilma Dykeman Riverway Master Plan as part of the Comprehensive Plan for the City of Asheville.

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

Vice-Mayor Mumpower supported the Plan, but with some qualifications. He felt we are downplaying the importance of the plan. He feels it is the project of the century. When you look at the scope and impact of what is being proposed, it will lay a touch on this City that will change us profoundly forever. He personally felt that it will, eventually, involved significant City dollars. He knows RiverLink has great success in reaching into other generous pockets and have helped get things happen and he doesn't doubt they will do that from this point forward.

Councilwoman Jones moved for the adoption of Resolution No. 04-162. This motion was seconded by Councilman Davis and carried unanimously.

Ms. Cragolin presented City Council with a check in the amount of \$50,000 for the bridge at the French Broad River Park Phase 4.

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D. RESOLUTION APPOINTING A MEMBER TO THE BOARD OF ADJUSTMENT

Vice-Mayor Mumpower said that this is the consideration of appointing an alternate member to the Board of Adjustment.

Bradley Taylor has resigned as an alternate from the Board of Adjustment, thus leaving an unexpired term until January 21, 2006.

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On July 20, 2004, it was the consensus of City Council to instruct the City Clerk to arrange interviews for Ross Dryer and John Kiser.

Councilwoman Bellamy moved to delay the appointment of this alternate position and re-advertise the vacancy. This motion was seconded by Councilman Davis and carried unanimously.

E. RESOLUTION NO. 04-163 - RESOLUTION APPOINTING MEMBERS TO THE HISTORIC RESOURCES COMMISSION

Vice-Mayor Mumpower said that this is the consideration of appointing members to the Asheville-Buncombe Historic Resources Commission.

The terms of Keith Hargrove and Kevan Frazier, as members on the Asheville-Buncombe Historic Resources Commission, expired on July 1, 2004.

At City Council's worksession on June 15, 2004, City Council instructed the City Clerk to prepare the proper paperwork to reappoint Keith Hargrove to serve a three year term, term to expire on July 1, 2007, or until his successor has been appointed.

At City Council's worksession on July 20, 2004, City Council instructed the City Clerk to arrange interviews for Suzanne Jones, Jaan Ferree and Matthew Marquis. Mr. Marquis was unable to attend the interview.

After Council members spoke in support of both candidates interviewed, Suzanne Jones was unanimously appointed to serve a three year term, term to expire July 1, 2007, or until her successor has been appointed.

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VI. OTHER BUSINESS:

Claims

The following claims were received during the period of July 9-15, 2004: Vincent Ross (Sanitation), Elizabeth Bryson (Fire), Ledgewood Village (Fire), Ledgewood Village (Water), Edith McCants (Sanitation), Daniel Sherlin (Sanitation) and Charles Williams (Police).

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

VII. INFORMAL DISCUSSION AND PUBLIC COMMENT:

Ms. Rosanna Coates, adjoining property owner to 27 Catawba Street, explained that she recently purchased her property but was not notified of Council's public hearing to issue a conditional use permit for 27 Catawba Street on July 13, 2004. City Manager Westbrook said that he would have City staff investigate any options for Ms. Coates, but that the City of Asheville obtains the addresses for mailings from Buncombe County.

VIII. ADJOURNMENT:

Mayor Worley adjourned the meeting at 11:22 p.m.

CITY CLERK

MAYOR