

Regular Meeting

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

Absent: None

PLEDGE OF ALLEGIANCE

Councilman Dunn led City Council in the Pledge of Allegiance.

INVOCATION

Vice-Mayor Mumpower gave the invocation.

I. PROCLAMATIONS:

II. CONSENT AGENDA:

- A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON NOVEMBER 9, 2004, AND THE WORKSESSION HELD ON NOVEMBER 16, 2004**
- B. MOTION AMENDING THE 2004 CITY COUNCIL MEETING SCHEDULE TO CANCEL THE NOVEMBER 30, 2004, COMMUNITY MEETING**
- C. ORDINANCE NO. 3181 - BUDGET AMENDMENT FOR TRAFFIC CALMING IMPROVEMENTS FROM RIVER BEND DEVELOPMENT**

Summary: The consideration of a budget ordinance amendment, in the amount of \$65,000, from Riverbend, LLC, for traffic calming improvements in area adjacent to the Wal-Mart site on Swannanoa River Road.

As part of the conditional use permit for the River Bend Development on Swannanoa River Road, City Council approved a requirement that the developer contribute \$65,000 to traffic calming improvements to the surrounding neighborhoods. Staff has been working with Redwood Forest to develop a traffic-calming plan. If any funds are remaining after the work in the Redwood Forest Community is completed, staff will work with the Beverly Hills and Oakley neighborhoods to see if any traffic calming measures can be installed in these areas.

Pro

- This money allows traffic calming to be installed in a neighborhood without the City taxpayers funding the improvements.

Con

- The money collected from the developer may not be enough to do as much traffic calming as staff and the neighborhoods would like to complete in the neighborhoods that are impacted by the development.

This request meets Goal #2 in the focus area of Planning in the Strategic Operating Plan:

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Goal #2: A multi-modal and congestion management transportation program - In conjunction with major employers and traffic generators, develop and implement a comprehensive multi-modal transportation and congestion management program that works for Asheville. Objective 1 Develop a framework for multimodal transportation planning that is based on system performance, is responsive to decision makers and customers, and provides the basis for allocating resources. Task 2) Leverage outside funding to achieve multiple transportation goals where possible

City staff recommends City Council approve the budget amendment, in the amount of \$65,000, from River Bend, LLC, for traffic calming improvements in area adjacent to the Wal-Mart site on Swannanoa River Road.

ORDINANCE BOOK NO. 21 – PAGE

D. RESOLUTION NO. 04-239 -RESOLUTION RE-DESIGNATING THE ASHEVILLE STATE DEVELOPMENT ZONE

Summary: The consideration of a resolution to re-designate the Asheville State Development Zone as proposed.

The State of North Carolina has designated certain census tracts and census block groups in and around the City of Asheville as qualified for inclusion in a State Development Zone. Development zones were created to provide economic incentives to stimulate new investment and job creation in economically distressed urban areas.

The current State Development Zone for Asheville will expire on December 31, 2004. Application for re-designation is due and, if approved, will take effect January 1, 2005, for a period of one year.

While complete data from all previous years of the State Development Zone program are not available, figures from the years 1999 to 2001 reflect that Asheville saw 19 new jobs created, \$6,789,365 invested in machinery and equipment, and \$300,235 in tax credit generated within the Development Zone.

Pursuant to the state-mandated guidelines, staff has determined the largest possible area for inclusion in the Development Zone. This area is unchanged from the current designation, approved in 2002. The total zone must have a minimum of 20% population below the poverty level.

Re-designating the Development Zone would provide multiple opportunities to further the City of Asheville's goals as described in the Strategic Operating Plan. The program is designed to stimulate new job creation and employment training, giving more citizens a chance to prosper. The economic incentives also encourage small business development, as well as downtown development, as the Central Business District is located within the Development Zone.

Advantages: Continued incentives for investment in economically distressed areas.

Disadvantages: None.

Staff recommends approval of the resolution defining the State Development Zone to be effective January 1, 2005, through January 1, 2006.

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E. RESOLUTION NO. 04-240 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO THE URTV INC. MANAGEMENT AGREEMENT

Summary: The consideration of a resolution adopting a final draft of the Management Agreement.

Asheville City Council passed an ordinance on December 16, 2003, authorizing the City Manager to negotiate with URTV, Inc. on behalf of the City, to manage and operate the public access channel provided for in City Ordinance 2500, subject to the following:

1. Compliance with the interlocal agreement adopted on November 25, 2003, with Buncombe County government.
2. That the by-laws of URTV, Inc. provide that the City Council and Buncombe County Commissioners shall each appoint two members to the board of directors of URTV, Inc., and that said appointment power be perpetual for the life of URTV, Inc., and that the membership shall not exceed eleven.
3. That the agreement as negotiated be subject to final approval by City Council.

City Council provided direction to staff that the following must be included in the final draft of the management agreement:

1. There needs to be a unilateral way to cancel the agreement, with or without cause.
2. All financials must be open for public inspection.
3. Diversity language is included.
4. Council liaison role must be stated in the contract, with a copy of the meeting agenda shared with the City of Asheville.
5. URTV, Inc is not able to switch funding between capital and operating fund accounts without City Council approval, once

yearly funding allocations are made.

Based on this direction, staff worked to insure this language is included in the enclosed draft.

Other key components of the agreement include:

- A performance review clause that enables the City to conduct performance review audits annually by an independent entity chosen by the City.
- Language encouraging a minimum of four hours of programming per month which discusses local issues and meets the needs of an underserved segment of the community
- Quarterly reporting to the City Manager that includes information on budget tracking, program production, uses of resources and services, revenue generation, to include efforts on grant funding, and other related reporting.

Staff has reviewed URTV's proposed budget for the initial year of inception and operation and has determined that the list of capital items as outlined is consistent with necessary initial start-up costs associated with equipment, maintenance, support, and facilities.

Finally, please be advised that Buncombe County Commissioners, in coordination with the Asheville City Council, will need to formally address and consider URTV, Inc. and their operational needs for initial start-up and on-going needs throughout the first year. The County's final allocation will have a direct affect on URTV, Inc.'s ability to provide services as outlined.

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With Council's approval, a budget amendment will be forthcoming after the Buncombe County Commissioners have made a final decision on the level of funding for this fiscal year to ensure that the capital and operating budgets align accordingly.

Staff recommends City Council consider adoption of the proposed management agreement with URTV, Inc., to be used as the primary tool for the City to use regarding PEG fee funding allocation on a year-to-year basis, unless otherwise stipulated by City Council.

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- F. MOTION SETTING A PUBLIC HEARING ON DECEMBER 14, 2004, TO CONSIDER AN ORDINANCE ESTABLISHING AN ENTERPRISE FUND TO PAY FOR A COMPREHENSIVE STORMWATER PROGRAM**
- G. RESOLUTION NO. 04-241 - RESOLUTION AFFIRMING THE REVISIONS TO THE CITY-WIDE REHABILITATION LOAN APPROVAL PROCESS**

Summary: The consideration of a resolution affirming the revisions to the city-wide housing rehabilitation loan approval process.

The Community Development Director and Planning and Development Director were authorized by City Council Resolution # 95-116 on July 25, 1995, to approve housing rehabilitation loans, with the form of the documentation for such loans to be subject to the approval of the City Attorney. No loan limit was established by Resolution # 95-116, rather the underwriting guidelines and budgetary authority are the effective loan limits.

In 1995, the loans did not generally exceed \$40,000. Over the years since then the loans have regularly exceeded that amount and with the authorization of the Section 108 funding of CARROT loans in 1999, some multi-family projects have been approved for several hundred thousand dollars.

Loan applications go through a very stringent underwriting process to assess the credit worthiness of the borrower and the financial strength of the project. Loans to low-income homeowners must be affordable. Multi-family projects must be able to operate independently and produce a positive cash flow.

Although the underwriting process provides the technical information required to make the loan approval decision, staff along with guidance from the Housing and Community Development Committee and City Manager has established the following process, which provides a higher level of review and approval for larger loans:

"Applications for FAIR and CARROT loans not to exceed the maximum allowed for rehabilitation of a single unit under the FAIR program may be approved by the Community Development Director or the Planning and Development Director. All other

rehabilitation loan applications may be approved by the City Manager upon recommendation by the Rehabilitation Loan Committee which shall consist of the Director of Finance or her/his designee, the Director of Audit and Budget or her/his designee, and the Director of Planning and Development or her/his designee."

The advantages of this process are:

- The expertise of senior staff is availed to review the work of Division staff before large loan commitments are issued.

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- Approval authority for large loan is more appropriately placed at the highest administrative level.
- Smaller homeowner loan approval remains at the Department/Division level for efficiency.
- Administrative review and approval of loans helps maintain the financial privacy of applicants.

City staff recommends City Council adopt the resolution affirming the revisions to the housing rehabilitation loan approval process.

RESOLUTION BOOK NO. 28 – PAGE 420

H. RESOLUTION NO. 04-242 - RESOLUTION APPROVING REVISIONS TO THE CITY'S OUTSIDE AGENCY POLICY

Summary: The consideration of a resolution approving revisions to the City's Outside Agency Policy.

Staff has developed proposed revisions to the City's Outside Agency Policy, which was first adopted in 2001, to guide the Outside Agency Committee's process for evaluating outside agency funding requests. The purpose of the proposed changes is to strengthen the current outside agency review process and allow, on a limited basis, for Council to award non-competitive grants. Specific revision and/or additions to the policy are as follows:

- The Committee may conduct formal interviews with specific agencies as needed to resolve questions about specific programs.
- The grant application requires a complete agency budget and an annual outside audit, as well as a certification of complete and accurate financial data.
- Under very limited circumstances, City funding may be given in the form of non-competitive grants. These grants may be made to organizations that function as quasi-divisions of the City, or as payment under existing contracts authorized by City Council.
- The Outside Agency Committee will complete its review of outside agency requests prior to May and will present its recommendations, along with staff's recommendations, to the full City Council as part of the City Manager's presentation of the annual operating budget.

The Outside Agency Committee has reviewed a draft of the revised policy.

The proposed revisions relate to the City's Strategic Operating Plan in the *Community Building* focus area, and more specifically, Council's goal to "re-evaluate Council decision-making and public input processes and develop a strategy that results in both healthy dialogue and effective decision making".

Pros: The policy revisions will strengthen the review process and make the City requires for the outside agency program clear to various non-profit agencies.

Con: The City may see a proliferation of agencies seeking non-competitive grant status.

City staff recommends City Council adopt the City's revised Outside Agency Policy.

RESOLUTION BOOK NO. 28 – PAGE 421

I. RESOLUTION NO. 04-243 - RESOLUTION APPOINTING A MEMBER TO THE RIVER DISTRICT DESIGN REVIEW COMMITTEE

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Summary: The term of Laura Webb, as a member of the River Design Review Committee, expired on September 1, 2004.

On November 16, 2004, it was the consensus of City Council to appoint Mr. Robert E. Shepherd to the River District Design Review Committee to serve as one of the two members of the RiverLink Board of Directors for a three-year term. Mr. Shepherd's term will begin immediately and expire on September 1, 2007, or until his successor has been appointed.

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

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

III. PUBLIC HEARINGS:

- A. PUBLIC HEARING TO CONSIDER THE CONDITIONAL USE ZONING OF PROPERTY IDENTIFIED AS 44 BEN LIPPEN ROAD FROM RM-6 RESIDENTIAL MULTI-FAMILY LOW DENSITY DISTRICT TO COMMUNITY BUSINESS I DISTRICT/CONDITIONAL USE; AND THE ISSUANCE OF A CONDITIONAL USE PERMIT FOR A PROPOSED COTTAGE INDUSTRY (SPECIALTY MACHINE SHOP) AND AN OWNER-OCCUPIED SINGLE-FAMILY DWELLING**

ORDINANCE NO. 3182 - ORDINANCE REZONING 44 BEN LIPPEN ROAD FROM RM-6 RESIDENTIAL MULTI-FAMILY LOW DENSITY DISTRICT TO COMMUNITY BUSINESS I DISTRICT/CONDITIONAL USE

ORDINANCE NO. 3183 - ORDINANCE GRANTING A CONDITIONAL USE PERMIT FOR 44 BEN LIPPEN ROAD FOR A PROPOSED COTTAGE INDUSTRY (SPECIALTY MACHINE SHOP) AND AN OWNER-OCCUPIED SINGLE-FAMILY DWELLING

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

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

After hearing no questions about the procedure, Mayor Worley opened the public hearing at 5:04 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.

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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 request to rezone property located at 44 Ben Lippen Road from RM-6 Residential Multi-Family Low Density District to Community Business I District/Conditional Use, and a request to issue a conditional use permit for a proposed cottage industry (specialty machine shop) and an owner-occupied single-family dwelling.

The site is located at the edge of City zoning. Nearby properties located on the north side of the road are in unzoned unincorporated Buncombe County.

The *Asheville City Development Plan 2025* calls for strengthening and enhancing neighborhood viability through the

encouragement of compatible development that preserves architectural diversity and protects neighborhoods from inappropriate non-residential encroachment. It also suggests that, due to changes in technology, there can be a wider range of uses considered compatible with neighborhoods. Smart Growth Policies encourage staff to utilize existing zoning tools that allow flexibility in site design to promote compatible land use projects and protection of industrial and environmentally-sensitive land.

The applicant, David Ingram, is requesting a conditional use rezoning of a 2.02-acre parcel located at 44 Ben Lippen Road (Attachment to City Exhibit 3 – Aerial Map). The property, consisting of a single-family dwelling, is currently zoned RM-6 and is located in the City's extraterritorial jurisdiction area. Surrounding land uses and zoning include single-family and multiple residential dwellings zoned RM-6 to the east and south of the site, the Eliada Home orphanage zoned Institutional to the west and single-family manufactured housing to the north.

Mr. Ingram is requesting a conditional use rezoning of the entire parcel to Community Business I (CB-1) in order to permit a "cottage industry" (a specialty machine shop) and the construction of a 6,000 square foot building on the lot. The single-family residence located on the east side of the site will remain occupied by Mr. Ingram.

The RM-6 zoning district is intended to permit a limited range of low-density multi-family housing types with single-family detached and attached residences. The district is also intended for areas where low-density multi-family development is appropriate but where environmental constraints and infrastructure limit development potential. RM-6 also allows other non-residential uses appropriate for providing the basic elements of a balanced and attractive area including schools, places of worship, home occupations, recreational and public uses.

The CB-1 district is to provide areas for medium-density business and service uses serving several residential neighborhoods. The Community Business I District is designed to be located primarily along streets that serve multiple residential neighborhoods.

The concept plan illustrates the location of the existing single-family residence and the proposed location of the 6,000 square foot block building that will be used to house the cottage industry (Attachment to City Exhibit 3 – Site Plan). A 4-space parking lot and loading area to the rear of the building will serve the use. A 20-foot vegetative buffer will be required along the east and south sides of the site where adjacent to residential uses (Attachment to City Exhibit 3 – Building Perspective). The applicant is proposing a thick evergreen buffer along Ben Lippen Road in lieu of the standard street tree requirement.

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Mr. Ingram currently has two employees who assist him in the operation of the specialty machine shop. Deliveries to the shop are expected daily via small delivery truck. Approximately 4,000 square feet of the proposed building space will be utilized for storage of large machinery. The remaining 2,000 square feet will provide office space and workshop area.

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 or 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 applicant is utilizing the existing topography on the site by locating the proposed building along the west side of the property. This side of the property sits below Ben Lippen Road and much lower than the single-family dwelling located along the east side of the property. The building will be located at least 250-feet from Ben Lippen Road and adjacent to the property owned by Eliada Home, zoned Institutional. In addition to the gradual slope of the land, the applicant is proposing a thick evergreen buffer along Ben Lippen Road. Vegetative buffers required by the UDO will further mitigate the impact of the development from adjacent residential uses.

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

The applicant is utilizing the existing topography on the lot to minimize land disturbance and locate the building where it is less visible to adjacent residential uses. Vegetative buffers will be provided along the north, east and south sides of the site that will assist in mitigating the impact of the development.

The proposed use, however, has the potential to injure the value of adjoining and abutting properties if not properly constructed to mitigate noise generated from the use of large machinery and other site activities that could be associated with the development. Specific conditions have been added to the project that will assist in mitigating any negative impacts the development may have on abutting and adjoining properties.

4. **That the proposed use or development or 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 site is surrounded by residential uses on the north, east and south sides of the property, zoned RM-6. It is problematic to locate an intense use of this nature in close proximity of residentially zoned and developed areas due to the potential negative

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impacts it may cause to the adjoining properties. The site is, however, being developed in a manner that works with the existing topography of the land. The proposed building is being designed to resemble a barn-like accessory structures typically found on large lots in rural areas. The site will be fully buffered from adjacent residential uses with the installation of a 20-foot vegetative buffer and screened from the street with a dense evergreen buffer.

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 proposed development may not be directly consistent with some goals and strategies outlined in the City Development Plan that call for strengthening and enhancing neighborhood viability through the encouragement of compatible development that preserves architectural diversity and protects neighborhoods from inappropriate non-residential encroachment. It may, however, be consistent with the Plan's direction that compatibility may be dependent on appropriate mitigation of the impacts of uses such as that proposed by the applicant. Utilizing the conditional-use zoning tool, one of the City's smart growth policies, can provide mitigation controls that enhance neighborhood compatibility through design and can also assist in mitigating any negative impacts to neighboring properties.

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

This project is located in an area of the City's ETJ where transit service is currently unavailable. Fire and police protection are handled by Buncombe County. Additionally, the proposed development was reviewed by the City's Technical Review Committee that includes representatives of the Water Resources Department, Engineering Department, MSD, and Public Works Department who suggested that adequate infrastructure was available to support the development.

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

The proposed use is not expected to generate any noticeable amounts of traffic. The site will be developed with an off-street parking and loading area that will adequately serve the proposed use.

Pros:

- The applicant is working with the existing topography of the land by locating the building on the lower areas of the property that will assist in mitigating the visual impacts of the structure.
- The building is being designed to resemble a barn-like structure that may strengthen its compatibility with the neighborhood.
- By using the conditional use rezoning process, conditions can be placed on the design and development of the site that can further limit any negative impacts it may have on adjacent residential properties.
- Approving the application will allow the owner the opportunity to relocate a small specialty business from its current location on Amboy Road that has been subject to repetitive flooding and operate it from his residence.
- The proposal moves a business from an environmentally- sensitive flood-prone location and allows it to remain in operation.

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- Staff has not received any negative comments or concerns from any of the surrounding property owners.

Cons:

- The proposed project may not specifically meet or support goals concerning compatible development.
- The development will result in the loss of multi-family residential property for multifamily uses.
- The development could set a precedent for similar requests for non-residential uses in neighborhoods.
- Noise pollution may be generated from the use of large machinery associated with this type of business. Staff has, however, suggested several conditions that may assist in mitigating any negative impacts the proposed development may have on abutting properties.

During the Planning and Zoning Commission meeting on Wednesday, November 3, 2004, staff was hesitant to fully support the proposal due to compatibility concerns. Staff encouraged the Commission to utilize public input concerning compatibility with the surrounding neighborhood. The project did not receive any negative comments or produce any persons in opposition to the project during the public hearing portion of the review. After carefully considering the steps the applicant is taking to mitigate potential impacts and including the facts that the use is occurring on the home-site of the applicant, the limited number of employees and the site design, the Commission voted unanimously to recommend approval of the project subject to the TRC conditions, conditions recommended by staff, and three additional conditions (listed below) that the Commission felt would further enhance the projects compatibility with surrounding properties.

Based on the seven findings and that the project has not received any negative comments or concerns from those most affected by the development, staff concurs with the Planning and Zoning Commission by recommending approval of the project subject to the following conditions:

1. That all TRC conditions be met;
2. No outdoor activities associated with the business shall occur between the hours of 9:00 p.m. - 8:00 a.m.;
3. That the building be constructed in a manner that reduces noise generated by the use of the machinery;
4. The maximum size of any delivery vehicles serving the site shall be limited to panel truck sized vehicles;
5. No commercial outdoor lighting shall be permitted;
6. Signage shall be limited to 8 feet in height, 32 square feet in size, and not be internally illuminated;
7. The maximum number of employees shall be limited to four; and
8. The business owner/operator shall live on the property.

The following added conditions by the Planning and Zoning Commission:

1. There shall be no outdoor storage.
2. The building shall be constructed with split-faced block as proposed by the applicant.
3. There shall be no testing of engines on-site.

After hearing no further rebuttal, Mayor Worley closed the public hearing at 5:10 p.m.

Responding to Councilman Dunn and Councilman Davis, Mr. David Ingram, property owner, said that he has no problems complying with any of the conditions, specifically the no outdoor activities between the hours of 9:00 p.m. - 8:00 a.m. and the size of any delivery vehicles.

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Vice-Mayor Mumpower moved to adopt Ordinance No. 3182 to approve the conditional use rezoning for property located at 44 Ben Lippen Road from RM-6 Residential Multi-Family Low Density District to Community Business I District/Conditional Use. This motion was seconded by Councilman Dunn and carried unanimously.

ORDINANCE BOOK NO. 21 - PAGE

Vice-Mayor Mumpower moved to adopt Ordinance No. 3183 to issue a conditional use permit for property located at 44 Ben Lippen Road for a proposed cottage industry (specialty machine shop) and an owner-occupied single-family dwelling, subject to the following conditions: (1) That all TRC conditions be met: (2) No outdoor activities associated with the business shall occur between the hours of 9:00 p.m. - 8:00 a.m.; (3) That the building be constructed in a manner that reduces noise generated by the use of the machinery; (4) The maximum size of any delivery vehicles serving the site shall be limited to panel truck sized vehicles; (5) No commercial outdoor lighting shall be permitted: (6) Signage shall be limited to 8 feet in height, 32 square feet in size, and not be internally illuminated; (7) The maximum number of employees shall be limited to four; (8) The business owner/operator shall

live on the property; (9) There shall be no outdoor storage; (10) The building shall be constructed with split-faced block as proposed by the applicant; and (11) there shall be no testing of engines on-site. This motion was seconded by Councilwoman Bellamy and carried unanimously.

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B. PUBLIC HEARING TO CONSIDER THE CONDITIONAL USE ZONING OF 290 MACON AVENUE (GROVE PARK INN) FROM RS-4 RESIDENTIAL SINGLE-FAMILY MEDIUM DENSITY DISTRICT TO RESORT DISTRICT/CONDITIONAL USE; AND THE ISSUANCE OF A CONDITIONAL USE PERMIT TO PERMIT CONSTRUCTION OF CONDOMINIUM UNITS AND FOR A MASTER PLAN APPROVAL

ORDINANCE NO. 3184 - ORDINANCE REZONING 290 MACON AVENUE (GROVE PARK INN) FROM RS-4 RESIDENTIAL SINGLE-FAMILY MEDIUM DENSITY DISTRICT TO RESORT DISTRICT/CONDITIONAL USE

ORDINANCE NO. 3185 - ORDINANCE GRANTING A CONDITIONAL USE PERMIT TO THE GROVE PARK INN TO PERMIT CONSTRUCTION OF CONDOMINIUM UNITS AND FOR A MASTER PLAN APPROVAL

ORDINANCE NO.3186 - ORDINANCE GRANTING CONDITIONAL USE PERMIT FOR THE GROVE PARK INN MASTER PLAN

City Clerk Burleson administered oaths 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.

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City Attorney Oast said that a valid protest petition has been filed regarding the conditional use zoning of 5.8 acres associated with the Bynum House property, 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 part of the conditional use zoning is subject to a simple majority vote. If the conditional use rezoning does not pass and Council does not move on to the conditional use permit part of that conditional use rezoning, Council can still proceed to consider the conditional use permit for the Master plan, which is subject to a simple majority vote.

After hearing no questions about the procedure, Mayor Worley opened the public hearing at 5:25 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 Shannon Tuch 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. Tuch said that this is the consideration of a request to rezone property located at 290 Macon Avenue (Grove Park Inn), from RS-4 Residential Single-Family Medium Density District to Resort District/Conditional Use, and a request to issue a conditional use permit to permit construction of condominium units and for a Master Plan approval.

The Bynum House and Country Club are both designated as local historic landmarks. The Grove Park Inn neighborhood is a nationally registered historic district.

The *Asheville City Development Plan 2025(ACDP 2025)*, through its Smart Growth Land Use Policies (adopted by the Asheville City Council in 2000), clearly supports and encourages adaptive reuse and sustainable and compatible infill development. It also encourages City staff to employ zoning tools (Conditional Use Rezoning) to ensure some level of protection for compatibility

and environmental sensitivity. Historic Preservation and its relationship to Smart Growth are also clearly described as being an effective way to revitalize and stabilize neighborhoods. Lastly, there is significant discussion regarding the need to adapt the economically sustainable tourism industry to meet changing needs and provide a wider variety of recreational and retail options while incorporating a high quality “package experience” including attention to aesthetics and character.

The Grove Park Inn Resort and Spa (GPI) originally submitted an application and master plan documents in June 2003 (Attachment to City Exhibit 3 – Location Map); the application was subsequently withdrawn before moving forward and in the intervening months, representatives from the GPI met with representatives of the neighborhood in an effort to re-examine the proposed expansion plan. The revised application and Master Plan documents are, at least in part, a reflection of these discussions and have been scaled back from the original application.

Because the details surrounding the project are not very typical of the average application, Ms. Tuch explained the process associated with the application. The GPI is requesting both a conditional use rezoning and Master Plan approval. The Unified Development Ordinance (UDO) requires that all projects done by the same developer within 1500 feet and/or three years of each other be reviewed as a single project. Because of this, the separate phases

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of the project are all being reviewed in conjunction with one another as one large level 3 project. All level 3 projects in the City, because of their scale and impact, also require a conditional use permit. In this particular case, we also have a conditional use permit associated with the conditional use rezoning. For the purposes of this discussion, the conditional use permits for both aspects of the project are rolled together since the rezoning is part of the multi-phase development plan but they will require separate votes, as described by City Attorney Oast.

Because of the conditional use aspect of the project, we do allow the applicant to proceed with concept plans only. If council were to approve this project, then the different phases of the Master Plan would have to return to the Technical Review Committee (TRC) for a much more detailed technical review; and then, even once the technical review is complete, before any final approval would be given, the applicant would have to secure any other applicable permits that may be issued outside of the Planning Department or the City.

The revised application requests a conditional use rezoning of a five acre RS-4 Residential Single Family Medium Density District parcel to Resort/Conditional Use to allow for the construction of 20 single family detached condominium units along with preservation of the locally designated historic Bynum House. Along with the rezoning request, review of an associated Master Plan showing four additional project areas on the larger resort property along with road and traffic improvements is being requested (Attachment to City Exhibit 3 – Aerial Map). It is the intention of the owner to initiate development of subsequent phases of the master plan as earlier phases are completed. Other phases of the larger project include (Attachment to City Exhibit 3 – Resort Master Plan):

Phase 1. Battle House Condominiums – Removal of the old Battle House and redevelopment of a new building into 30 residential condominium units, approximately 1600-1700 s.f. each with basement storage, underground parking (56 spaces) and a 30,000 s.f. open space terrace area. The new building will be larger in size but is intended to architecturally reflect the original structure (Attachment to City Exhibit 3 – Phase I Master Plan Details).

Phase 2. Parking Terraces, Old Toll Road Suites, & Traffic Roundabout – 3-½ level parking terrace to occupy an existing low area internal to the Inn property. Terrace will provide a total of 350 parking spaces displacing 87 existing spaces for a net gain of 263 spaces. The Old Toll Road Suites will consist of four separate 2-story buildings housing 20 units total with a reconfigured 43 space surface parking lot. Also part of this phase is the construction of the new traffic roundabout and entry feature located on Macon Avenue at the main entrance to the Inn (Attachment to City Exhibit 3 – Phase 2 Master Plan Details).

Phase 3. Sunset Mountain Condominiums (Conditional Use Rezoning) – Renovation of the Bynum House, a locally designated historic landmark, into a single family residence or clubhouse amenity along with the new construction of 20 single family detached condominium cottage homes and their associated drives, sidewalks, and open space areas (Attachment to City Exhibit 3 – Phase 3 Master Plan Details).

Phase 4. Country Club Improvements & Vanderbilt Pools – Renovation of the existing Country Club to include the addition of 11 new resort “golf” suites. In addition, renovation of the existing Cabana along with construction of a new covered “All Season” Pavilion and 10,000 s.f. pool and terrace. Also part of this phase is the addition of the new Vanderbilt Pools along with 45 surface parking spaces located adjacent to the Vanderbilt wing of the Inn (Attachment to City Exhibit 3 – Phase 4 Master Plan Details).

Phase 5. Old Toll Cottages – 13 new buildings for a total of 26 new resort units. Each building is to house two 1,000 s.f. suites

and one outdoor parking space per building. In association with

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this project is the reconfiguration of a 72 space surface parking area and walking trails (Attachment to City Exhibit 3 – Phase 5 Master Plan Details).

In total, all five phases of development will include:

- 48-51 privately owned residential units (with parking and amenity areas)
- 57 new resort suites (for a total of 48,800 s.f.)
- 432 new parking spaces (263 in parking terrace, 56 underground parking spaces, 45 new surface parking spaces, plus 68 individual parking spaces associated with resort suite and residential development)
- Construction of a covered pavilion, parking terrace, amenity areas, 2 pools, traffic roundabout & entry feature, and new sidewalk
- Preservation of open space and existing vegetation (where possible)
- Renovation of the designated local historic landmarks of the Bynum House and Country Club/Cabana.
- Reconstruction of the old Battle House

The project site is located within City limits in North Asheville on, or adjacent to, the larger resort property. The majority of the development plan is located on the already developed larger resort property currently zoned Resort District. The subject property is surrounded almost entirely by single family residential uses with a small corner (northwest) occupied by the Biltmore Industries property which houses artist studios, galleries, museum and restaurant.

Skipping the first two phases of the project for a moment, she discussed the conditional use zoning. The rezoning request is for the 5.8 acre parcel that currently houses the Bynum house, which is a designated local historic landmark. This 5.8 acre parcel is a moderate to steep sloping site with significant natural vegetation and access off of Macon Avenue (no new vehicular access points are proposed as a result of the development plan). In addition to the restoration of the home as a private residence or clubhouse amenity, the GPI is proposing the addition of 20 new condominium homes. Originally, it was believed that the rezoning was not being sought for density purposes since the 5.8 acre lot could support up to 23 units under RS-4. However, now that we know that the property would be subject to hillside development standards, which for this particular piece of property would cut the density in half. This means that a rezoning would be required for anything over 12 units. In addition to the extra density, the rezoning is being sought for use. Normally, the RS-4 zoning district does not permit more than one principle structure on a lot at a time and would not allow any kind of residential development that was anything other than single family detached homes. Although the proposed residential units have the appearance of single family detached homes and will be privately owned, they are, technically, condominium homes and as such, would require the rezoning (Attachment to City Exhibit 3 – Mountain Cottages Sketch). It is the developer's intention to avoid a major subdivision and place the proposed cottage homes relatively close together off of a common drive that follows topography in order to minimize grading and other land disturbances, and maximize preservation of the existing natural vegetation.

The Resort zoning designation is being requested for consistency's sake since the rest of the GPI property is zoned Resort and the grounds will be maintained and kept in character with the rest of the resort property. Now although it is true that a rezoning is required for the proposed 20 units, the 16 units an acre normally allowed in Resort isn't being maximized. If you apply the hillside standards to Resort density, then you get about 8 units an acre and the proposed project only needs about 4 units an acre. Nevertheless, when City staff realized that the hillside standards ordinance was going to come into play, it caused us to examine the density and hillside issue a little more closely before making a recommendation. (City Exhibit 5 – Density Comparison of Bynum Property to Adjacent Properties) (City Exhibit 6 – Sunset Mountain Cottages Overlay).

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She then reviewed the other phases of the development again:

Phase 1 – The development of the Battle House will involve, essentially, the tear down of the existing structure that would be replaced with new construction that is a little larger than the original, but architecturally reminiscent of the previous building. This new structure will house up to 30 units and include underground parking, storage and a 30,000 square foot terrace.

Phase 2 – This phase is for the parking terrace and Old Toll Suites. The terrace is positioned to take advantage of the existing low spot on the property and will displace a number of existing surface spaces to result in a net gain of 263 spaces. The

Suites are additional resort suites that will include 4 separate 2-story buildings for a total of 20 units. This phase would also include the addition of the traffic roundabout.

Phase 3 – This phase is for the conditional use rezoning and condominium homes previously discussed.

Phase 4 – This phase includes improvements to Country Club (another locally designated landmark), which would include the addition of another 11 resort suites, renovation of the Cabana, and construction of a new Pavilion and pool area. In addition, there will be the creation of 45 new surface parking spaces.

Phase 5 – This final phase is the Old Toll Cottages consisting of 13 new buildings with 2 (1000 square feet) units per building. In addition, there will be one outdoor parking space per building along with walking trails.

She reviewed with Council the proposed elevation drawings (Attachments to City Exhibit 3 –Building Elevations).

At their October 6, 2004, meeting, the Planning and Zoning Commission reviewed the conditional use rezoning and Master Plan proposal and made a positive recommendation that the project be forwarded to the Asheville City Council, stipulating the following conditions summarized as follows:

1. All TRC recommendations must be met;
2. GPI shall coordinate with staff, and in consultation with the neighbors, in the development of a comprehensive construction plan and construction traffic plan, to include:
 - a. designation of and funding by GPI of an ombudsman for dealing with construction issues from the residents during the construction project;
 - b. implementation of traffic calming measures on all roads identified in the Staff Report as "affected roads" and on Edwin and Kimberly (South of Country Club) prior to any construction beginning on the project;
 - c. such traffic calming measures shall be fully funded by GPI;
 - d. construction hours shall be limited to avoid any school transportation issues, compliance with noise ordinances, and no staging of construction shall occur on public roads or on private property owned by persons/entities other than the GPI;
 - e. violation of the comprehensive construction plan shall result in structured, graduated monetary penalties (established in the construction plan) with such monetary penalties being paid to the City's sidewalk repair and construction fund;
3. GPI shall pay all construction costs for sidewalks from Bynum House to Latrobe, and the planning and construction of such sidewalks shall be done in consultation with the residents whose property is affected; and
4. GPI shall pay for bicycle stripping on those roads listed as "affected roads" in the Staff Report and on Edwin and Kimberly where feasible, or erection signage warning of bicycle

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and pedestrian, or where striping is not feasible create shared use lanes and erect signs warning of bicycles.

In addition, the City Engineering Department would like to reiterate, as a condition, the need for sidewalk from the edge of the Bynum property south along Macon to where it can connect with the existing sidewalk as well as sidewalk along the frontage of Club View Road. In exchange, the City is willing to exempt the GPI from sidewalk requirements along the other frontages surrounding the property including: Woodlink, Kimberly Avenue, Country Club, Club Knoll, Grovewood, Innsbruck, Old Toll and Charlotte Street. That is with the understanding that easements will be provided for future sidewalk construction.

City Council must take formal action as set forth in section 7-9-9(c)(4) of the Unified Development Ordinance (UDO), and must find that all seven standards for approval of conditional uses are met based on the evidence and testimony received at the public hearing or otherwise appearing in the record of this case (UDO 7-16-2(c)). Staff's review indicates that all seven standards are met as proposed in the site plan.

- 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.

Several phases of the project involve the redevelopment of existing structures and features and it is expected that these activities will not significantly contribute to land disturbance. Other phases attempt to either take advantage of existing topography (parking terrace) or place structures appropriately in respect to topography so as to minimize grading and other land disturbances. In addition, retaining walls are shown around the proposed resort suites (Old Toll Suites and Old Toll Cottages) along with the new residential units (Sunset Mountain Condominiums) and proposed roundabout, which will effectively reduce hillside disturbance and allow for the preservation of existing vegetation. Lastly, the developer has contacted storm water consultant(s) specializing in Low Impact Development (LID) techniques that improve water quality as well as quantity and velocity in an effort to better control existing and future run-off.

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

Property values around the Inn property have continued to rise for the surrounding homes despite increases in resort activity over the years. Professional Literature has well documented that homes located near open space areas (including golf courses) and historic structures experience an appreciation in value due to the proximity of these amenities. In addition, the applicant has been in communication with residents of the adjacent neighborhood(s) in an effort to better understand their concerns and priorities.

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As a result, GPI has revised their Master Plan and established new policies in an attempt to be a "better neighbor" both during construction and regular operation. More sensitive design and operation is expected to maintain or improve current conditions through improved storm water management, preservation and supplementation of existing landscape buffers, and installation of new traffic control measures, sidewalk, and walking trails.

- 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.

Several of the proposed phases of development involve the renovation of existing features with modest expansion/improvements and/or are internal to the resort property. The renovations are not only in harmony but also help preserve the existing character while those uses that are internal are very appropriately in perfect harmony, scale, and character with the rest of the resort property. Other phases such as the Sunset Mountain Condominiums appear to be in scale, density, and character with other homes in the area, most notably, the cottages located on Sunset Terrace. Similarly, the rebuilt Battle House condominiums, the most visible phase of development, will architecturally reflect the character of the former structure and be well within scale, density of the adjacent resort property and Long Champs Condominiums.

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

The Asheville City Development Plan 2025(ACDP 2025), through its Smart Growth Land Use Policies (adopted by the Asheville City Council in 2000), clearly supports and encourages adaptive reuse and sustainable and compatible infill development. It also encourages City staff to employ zoning tools (Conditional Use Rezoning) to ensure some level of protection for compatibility and environmental sensitivity. Historic Preservation and its relationship to Smart Growth is also clearly described as being an effective way to revitalize and stabilize neighborhoods. Lastly, there is significant discussion regarding the need to adapt the economically sustainable tourism industry to meet changing needs and provide a wider variety of recreational and retail options while incorporating a high quality "package experience" including attention to aesthetics and character.

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

This proposed development is within close proximity to transportation facilities with the Route 5 bus line running regularly down Charlotte, Macon, and Kimberly

including hourly stops at the Grove Park Inn. Any adjustment of the existing bus circulation pattern and shelter location shall be coordinated with the Transit Services Department and shall include installation of a bus shelter. In addition, tests to try to determine the extent of impact to the surrounding neighborhood utilities will be conducted and may result in improved infrastructure. Lastly, technical review has not identified any problems for future emergency service.

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

The applicant is proposing significant road improvements with the addition of a traffic circle (roundabout) at the main entrance along with pedestrian paths and sidewalks. The

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applicant has also submitted a detailed Traffic Impact Analysis that acknowledges an increase in traffic loads to surrounding roads that although are within capacity, could benefit from traffic calming measures. Based on current and extrapolated conditions, adjacent roads have been prioritized to receive additional traffic calming measures. These measures have not been specifically described since it is the desire of all affected parties to involve the surrounding community in the design and application. In addition, the applicant wishes to have some delineation of responsibility and financial contribution before proceeding.

Pros:

1. Allows for infill residential development.
2. Promotes the renovation of several local historic landmarks.
3. Will result in public road improvements including traffic calming.
4. Will result in a more interconnected pedestrian network of sidewalk and walking trails.
5. Contributes to the economic sustainability of one of the City's largest employers.
6. Promotes the adaptation of the growing tourism industry.
7. If determined to be needed, project will result in infrastructure improvements.

Cons:

1. Adds traffic to already heavily trafficked residential roads.
2. Will result in the disturbance of natural areas with steep topography.
3. Construction activity will have to utilize residential roads.
4. Removal of the old Battle House.

For the reasons outlined in this report, City staff concurs with the Planning and Zoning Commission and recommends approval of the zoning change from RS-4 to Resort/Conditional Use and approval of the associated conditional use permit with detailed Master Plan.

Mr. Gerald Green, representing the GPI, gave a brief history of the GPI, in that it is the fifth largest employer in Buncombe County and one of the oldest on-going businesses in Asheville and Buncombe County. The GPI is also the largest provider of open space in North Asheville with the historic golf course, which has recently received an award. The improvements to the property epitomize the City's smart growth principles. We are preserving historic structures and historic landscapes and providing a variety of housing types. Unfortunately there are no affordable housing units due to the cost of the land in the area and the existing property values. The Inn is not within the Grove Park Historic District, however, they are trying to preserve the integrity of the neighborhood. Although the plan is a 10-year plan, he didn't anticipate 10 years of construction. It may possibly be 5 years of construction – depending on how they phase the projects and the gaps in between the different phases. Regarding the rezoning of the Bynum property (Attachment to City Exhibit 3 – Resort Master Plan), it is in Phase 3 and has 5.8 acres and the historic Bynum House, which will be renovated. We will be able to cluster development in order to take advantage of the existing topography. We will work with the existing topography in designing the road. We have a design concept to assure that the homes that are built on this property are compatible with the existing historic homes in the neighborhood. We will limit the tree cutting and clearing. One provision is that they maintain a minimum 25-foot undisturbed buffer along the adjacent residential property lines and along Macon Avenue to limit the visibility of these homes. We will maintain the property to a certain standard. The closest home to the property line under this plan is over 100 feet away. Under the standard subdivision regulations under the current zoning, the setback would

be either 6 or 15 feet. There will also be increased

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property tax revenues because of more homes being built. He explained what could happen with the standard subdivision of that property as an option (Applicant Exhibit 2 – Resort Master Plan). Because, the decision before Council is not whether this property will be developed, but how it will be developed. Regarding traffic, the GPI did have a Traffic Impact Analysis (TIA) prepared. In looking at the traffic generated by this proposed improvement, we saw approximately 90 trips per hour, which is below the threshold required by the City for a TIA, which is 100 trips per hour. The GPI proposes to take reasonable steps and incur reasonable costs to mitigate those impacts. The mitigation measures they have identified include traffic calming, construction of new sidewalks and consideration of a provision for bicyclists. The traffic generated by the residential uses on the Bynum and Battle properties will not be greater than that what was generated by the previous user of the Battle House, WLOS-TV. We have heard from the neighborhood their environmental concerns for streams and forested areas. We have contacted an arborist/forester to review the area and identify how they can protect existing trees, improve their health and overall manage the wooded area, while doing some development in the area. We are also working with a stream mitigation specialist to address water quality and other issues related to the stream that flows through the Bynum property and onto the golf course. In terms of working with the neighborhood, our plan was originally brought forth in June of 2003 and we went back and worked with the neighborhood to identify and address those concerns. We met with the neighborhood committee 12 times over the past year. In addition to those meetings, we have undertaken a number of other steps to improve relations with the neighborhood. We created a quarterly newsletter (Applicant Exhibit 2) that goes out to all neighbors. We have changed the plans significantly over what was presented last June. We have reduced the scale; reduced the density of development; changed guest units to owner-occupied units; reduced the number of residences; relocated buildings, especially on the south end and the north end, to move them away from existing neighborhoods; preserved the buffer; included parking because parking on Macon Avenue was a major concern to the neighbors and to the City; and we are redesigning the entrance so that guests and visitors can better identify the Inn and not go wandering through the neighborhood. Overall, these improvements to the property will permit the Inn to use underutilized and vacant properties. They will address the concerns and add value to the Inn, the neighbors and the City.

Upon inquiry of Councilman Newman, Mr. Green said that there will be about 4-5 different basic architectural design plans.

Mr. Michael Moule, Traffic Engineer for the GPI, said he and the City's Traffic Engineer identified that the major traffic issues aren't congestion at intersections or traffic operations intersections. The major issue is the impact of traffic on residential streets. The GPI is within a residential area and the concern there is how much of the increased traffic on the streets would impact the neighborhood residents. The trip generation of 85-90 trips per hour doesn't even meet the threshold for requiring a TIA. We did this TIA in order to identify the impact on the residential streets because the GPI wants to be a good neighbor and mitigate that impact. This analysis was intended to look at the need for traffic calming on streets. It looked at the environmental capacity, which is a volume threshold for a given type of street. Some streets (e.g., Macon Avenue) already exceed the environmental capacity and in the projected future years others will exceed it as well. The major streets (Macon Avenue, Edgemont, Country Club, Club View, Grovewood Road) have very significant GPI traffic. The recommendation from City staff for traffic calming on most of those streets is something that the study will support. He noted that speeds can be reduced through traffic calming as well. The streets that were added most recently to the list of streets where traffic calming should be required is a concern for the GPI. Two of those streets are Evelyn Place and Grovewood Road. The main reason those are in question is because he didn't have good traffic data from the City to evaluate the full impact of the existing speeds and existing volumes. The streets that the Planning & Zoning Commission added – Edwin Place and Kimberly Avenue – while they are heavily traveled streets, the TIA (Applicant Exhibit 3) shows that in the build-out year 2010, the new traffic from the GPI on those streets would represent

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about 2-3% of the total traffic on those streets. The total traffic estimated on those streets currently is 10,000 vehicles per day and in the build-out year of 2010 it is estimated to be higher, in part from the natural growth of 2% per year, and in part from the 2-3% GPI traffic to where they are closer to 11-12,000 vehicles per day. The existing traffic on Kimberly Avenue is about 10% of GPI traffic. Most of the traffic on those streets is traffic going to the Beaverdam area, people using Kimberly and Edwin as an alternative to Merrimon Avenue, and other places north of town. The point is it doesn't seem reasonable to require the GPI to pay for traffic calming on those streets since the existing problem and the future build-out isn't created by the GPI traffic.

In response to Councilman Newman, Mr. Moule said that the only place he would have a potential concern is the intersection of Edwin Place and Charlotte Street, which has been studied in the past. The projected increase in traffic at this intersection from this project is about 4-5%. Although he didn't do that sort of analysis, he didn't feel it would make a significance difference based on that small percentage growth.

Upon inquiry of Councilwoman Jones, Mr. Moule said that the current traffic on Macon Avenue is estimated to be 80-90% of GPI traffic. In 2003, 2,600 vehicles per day was counted on Macon Avenue. It was his opinion that the lowest capacity of Macon Avenue would be around 14,000 vehicles per day.

Councilman Newman asked if resort traffic generates different peak hours. Mr. Moule said that sometimes people are leaving for work when the hotel employees are going to work going in opposite directions. Right now, a lot of the traffic to the GPI is employees.

Councilman Newman asked if there was any discussion about shift changes as a possible way to manage traffic congestion. Mr. Moule said that the issue of shift changes has been done in areas where the real capacity of the street is an issue - where you would want to shift something away from the peak hour. He doesn't see that as a major issue because of the fact that they are not near the actual capacity thresholds on these streets and intersections.

Councilwoman Jones asked about if any of the traffic improvements would alleviate the bottle-neck of traffic on Macon Avenue when the GPI holds special events. Mr. Moule said that the GPI is proposing parking terraces and that may eliminate the back-ups on Macon Avenue. In addition, the roundabout may move traffic a little smoother around the entrance as well with improved signage.

Upon inquiry of Councilman Newman about parking on Macon Avenue, Mr. Moule said that the GPI can only control where their employees park and that better enforcement of the no parking will have to be enforced by the Police Department. Mr. Green also said that starting at the entrance to the Battle and Bynum House, we will be working with the City's Traffic Engineer to narrow Macon Avenue in that area. That will be either through a median in the street or by bringing in sidewalks on either side and plantings to narrow down the street - to make it less attractive for parking. We are taking a pro-active approach to providing the parking, making the street less attractive and also working with the Police Department to minimize the parking on the street.

The following residences spoke in opposition to the conditional use rezoning for various reasons, some being, but are not limited to: improvements are too large, too long in duration and too burdensome for the neighborhood; neighborhood integrity is being compromised by this massive 10-year construction project in the heart of a mature, historic community; TRC and Planning & Zoning Commission did not consider the affect of the hillside ordinance; hillside ordinance should be fairly, consistently and equitably applied to all; GPI bought Bynum property knowing it was RS-4; proposal encroaches on existing neighborhood; Sunset Terrace is much less dense than proposal on Bynum House property; historic fabric of neighborhood will be

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destroyed with the addition of 20 modern houses; GPI intends to clear entire communities of mature forest from steeply-sloped land; loss of irreplaceable greenspace; slopes will be destabilized and runoff and surface erosion will increase dramatically; additional sediments will be deposited in stream, increasing the likelihood of extension flooding; blasting will jeopardize the structural integrity of the historic homes and further destabilize the steeply-forested areas; natural environment will be irreparably harmed; there will be 10-years of construction traffic, noise and pollution; complaining of issues of prior GPI expansions to the City and to the GPI did very little to solve the problems; there needs to be a comprehensive traffic calming plan in place and a network of sidewalks completed on all approach roads before the project begins; streets are already over-burdened and area has inadequate sidewalks; safety problem for children taking the school bus when construction traffic begins; sidewalk improvements should be totally paid by the GPI and the City; project needs to be scaled back; if approved, keep all Planning & Zoning Commission's recommendations; if approved, firm rules regarding construction must be adhered to; need for ombudsman paid for by the GPI with authority to intervene when the GPI breaks the construction rules; need strong control on the areas that have daily and weekly rental units with appropriate fencing; request to include Evelyn Place in traffic calming because it carries a lot of the GPI traffic; two solutions to traffic problems would be to (1) tunnel under Charlotte Street and the golf course, and (2) construct a transfer station where 18-wheelers can download and shift employees can meet to carpool; additional pollution will be created by cars, trucks and tour buses; concern of maintenance of buffer areas; the GPI cannot be trusted since during the transfer of the property to the GPI, the GPI said the property would not be rezoned; if approved, it will open the doors for the GPI to do anything they want; the Resort District in the middle of the City is inappropriate; Macon Avenue is a narrow, two-lane road with many curves and no sidewalks and any increase in traffic will be too much; the use will only benefit the GPI and will not provide an essential service to the community; property near the GPI will become less desirable; development is out of character with the neighborhood; GPI has ignored City plans; low water pressure in the neighborhood currently exists; include Kimberly Avenue for traffic calming; alternative connection along a cart path should be made to eliminate GPI traffic on residential streets; on-street parking on Macon Avenue should remain because it protects pedestrians; to construct the roundabout on two public streets (Macon Avenue and Old Toll Road) will require extensive grading on the side of Sunset Mountain and is not an appropriate use of a public thoroughfare; allowing the GPI to expand will encourage urban sprawl; homes in the GPI area are being viewed as less desirably due to its proximity to the GPI because of the loud noise of City buses, mammoth tourist coaches and delivery trucks; existing incessant 24/7 noise from the Sammons' wing, including repetitive beeping, crashing and banging of industrial dumpsters being

emptied; speeding hotel traffic; expansion will eliminate buffers between existing neighborhood and the Inn; GPI should build in downtown Asheville, but not on the publicly-owned park on which they proposed to build on earlier; project does not comply with the 2025 City Plan; if approved, request a TIA for the segment of Charlotte Street to I-240 because Charlotte Street Corridor Plan notes area on Charlotte Street to I-240 operates at a Level of Service "D" and "E"; if approved, establish an oversight panel to review architectural designs, building materials and construction to ensure that the cottages and condominiums be in character with the existing homes; Edgemont Road residents have requested help in traffic calming and now the GPI will be placing additional traffic on their road; impact on the City as a whole will result in over-expansion, poor development and unmanaged growth; GPI is not salvaging history of the area; City residents will have to bear the costs of upgrading infrastructure; guests of GPI stay on the GPI property and money does not circulate to Asheville businesses; job generated by GPI will be low paying jobs; and Council should recall their obligation promises to protect neighborhoods:

Mr. Joe Franklin, resident at 26 Sunset Terrace
Mr. Gordon Pirie, resident at 48 Sunset Terrace (Neighborhood Exhibit 1)
Mr. Clay Ballentine, resident at 63 Macon Avenue
Mr. Bob Burgin, resident on Old Toll Road
Ms. Barbara Hodgson, resident at 107 Evelyn Place

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Ms. Judy Williams, resident at 98 Kimberly Avenue
Ms. Gloria Dastoli, resident at 31 Innsbruck Road
Mr. Sherman Fearing, resident at 163 Macon Avenue
Mr. Tom Smith, resident who lives off Macon Avenue (Neighborhood Exhibit 2)
Ms. Leah Karpen, resident at 400 Charlotte Street (Neighborhood Exhibit 3)
Mr. Max Haner, resident at 5 Kimberly Avenue
Mr. Fred English, Haw Creek resident
Ms. Kathryn Scott, resident at 54 Macon Avenue (Neighborhood Exhibit 4)
Mr. Tom Hartmann, resident at 180 Patton Mountain Road
Ms. Sue Hunter, resident at 4 Evergreen Lane (Neighborhood Exhibit 5)
Mr. Chris Lambrecht, resident at 81 Edgemont Road (Neighborhood Exhibit 6)
Ms. Mary Lois Kirby, resident at 185 Macon Avenue
Ms. Grace Curry, resident at 59 Edgemont Road (Neighborhood Exhibit 7)
Mr. Tommy Hayes, resident on Edgemont Road
Mr. Joe Scott, resident at 54 Macon Avenue (Neighborhood Exhibit 8)
Mr. Mike Lewis, resident at 48 Gracelyn Road
Ms. Jane Northway, resident at 80 Edgemont Road
Ms. Kim Wood, resident at 23 Sunset Terrace

Ms. Leesa Kulba, resident at 354 Kimberly Avenue, spoke in support of the GPI expansion and felt it big of the GPI to pay for traffic calming to develop their own property.

Mr. Don Martin, resident at 107 Norwood Avenue, spoke in support of the development and would be honored to live in the Battle House Condominium.

At 7:47 p.m., Mayor Worley announced a short break, at which time there will be no deliberations of this issue.

Upon inquiry of Vice-Mayor Mumpower, Mr. Butzek did not expect the level of service to change. The amount of traffic generated is large enough to have a significant on the neighborhoods, but it is small enough that it does not present any particular capacity concerns or level of service concerns for the street network. He explained the different ways to analyze level of service. He said that level of service "E" is fairly common for an urban area and he did not have a strong concern in the segment of Charlotte Street and I-240. He said the signal coordination effort City-wide will provide some benefit.

Upon inquiry of Vice-Mayor Mumpower, Mr. Butzek was not aware of any old studies regarding the traffic generated by WLOS-TV when they were housed in the Battle House.

In response to Vice-Mayor Mumpower about the traffic calming measures be implemented before construction begins, Mr. Butzek said that phasing the project is something for Council to consider. Typically, the City requires the traffic calming to be in place either prior to the Certificate of Occupancy (CO) or for the money to be transferred to the City, if the City was to do the work prior to the CO. We certainly would prefer measures to be in place prior to any CO. To have the traffic calming completed prior to any construction work beginning would be a little different that what happened in other projects, which is not to say that it would be

wrong. He thinks it could be doable, but he hasn't talked with the GPI on that matter. But he felt it is physically possible. They may have to delay constructing their site to do all the traffic calming first, but he would consider it feasible.

In response to Vice-Mayor Mumpower about costs, Mr. Butzek said that some rough preliminary cost estimates on what we felt would be appropriate were developed. For the streets that were initially recommended by staff, which included Macon Avenue, Edgemont Road, Country Club Road, Grovewood Road, a short section of Charlotte Street and Evelyn Place, we

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estimated the cost of that at about \$125,000 in construction costs. The Planning & Zoning Commission recommended Edwin Place and a section of Kimberly Avenue be considered as well. We estimate that at about an additional \$50,000.

When Vice-Mayor Mumpower asked for clarification on a study that illustrated 85% of the traffic on Macon Avenue was traveling an average speed of 35 mph, which is 10 miles above the posted limited of 25 mph. Mr. Butzek understood that the top 15% are going 35 mph or above.

Councilman Davis wondered if we could limit the streets for construction traffic. Mr. Butzek said that every street goes through a neighborhood and so there is no good route to limit construction traffic. He has heard discussions from neighbors that the people on Macon Avenue don't want to bear all the brunt and neighbors on the other side don't want to bear the brunt either. What may be a fair resolution is that the traffic be distributed along several different ways and no one neighborhood bears the complete brunt of the construction.

Upon inquiry of Councilman Davis about the connectivity from the end of Charlotte Street to the GPI, Mr. Butzek said that it is his understanding that the GPI has explored that option. His understanding from them is that it is not a feasible route in terms of existing property and existing topography. Mr. Green also responded that the connectivity alternative was so extreme, including the acquisition of additional right-of-way, it would make the project financial unfeasible and it would also destroy the historic integrity of the neighborhood.

When Vice-Mayor Mumpower asked about the 10-year construction schedule, Mr. Green said that they have heard concerns about the scale of the construction schedule and also the time period over which it would be. We might be able to compress the phases and do parts of phases together to create maybe 3 phases in possibly 5 years. We have made a commitment to continue working with the neighborhood through the construction process. Ideally, instead of the ombudsman, they would like to continue to work with the neighborhood committee and have a representative of the City too.

In response to Vice-Mayor Mumpower, Mr. Craig Madison, Chief Executive Officer of the GPI, said that they did not make a commitment to not rezone the Bynum House when they purchased it.

In response to Vice-Mayor Mumpower about the concerns the GPI has with the recommendations, Mr. Green said that there will be a precedent set by requiring the GPI to do traffic calming on Kimberly Avenue, which only 1.5% of the traffic on Kimberly will be generated by the proposed improvements. The GPI does not mind, and they fully intend to address, those impacts on the streets in other places that are caused by their construction. The ombudsman recommendation is loose and they would rather work on that.

In response to Vice-Mayor Mumpower, Mr. Green said that \$125,000 for a total cost for traffic calming seems appropriate. We also talked with Mr. Butzek about the sidewalk improvements which is about \$150,000 for the off-site sidewalk improvements and about \$10,000 for the bicycle lanes and signage. That would be a total cost of \$285,000 the GPI will be providing to the City to address traffic calming, sidewalks and bicycle lanes – all off-site.

Mr. Butzek said that one of the things he is recommending with those improvements is that one of two things happen. One is that the GPI administer the process, including administration of the design. The other is that an amount be added to that figure to pay those engineering administrative design costs. We estimate for the sidewalk would be 50% which would include easement acquisition and 25% for the traffic calming to hire a consultant and to absorb administrative costs.

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Mr. Green felt that 50% for administration and engineering is a bit high for sidewalks. He said that a 25% add on to that \$285,000 for administration and engineering fees appears to be adequate. Also, the GPI would rather have the City manage that process.

City Engineer Cathy Ball responded to Mr. Green about the 50% figure being too high. She said a lot of that is in right-of-

way acquisition. There is a whole process aside from the design and construction of the sidewalk that includes doing easements and obtaining property from adjacent property owners on this project. That is the reason why the sidewalk figure is higher than the one for traffic calming.

Ms. Tuch clarified the costs would be approximately \$360-400,000.

Upon inquiry of Mayor Worley, Mr. Green explained the neighborhood process they have gone through over the past 1.5 years, noting that they have met 12 times. Those meetings resulted in many changes to their original plan, some being, but are not limited to: the southern portion of the site is residential to blend in with the residential component; addressed the scale; moved units further away from residential property lines on both the north and south end; reduced the number of homes in Sunset Mountain condominium units; increased the undisturbed buffer area adjacent to residential properties; addressed concerns resulting in a roundabout; and addressed concerns resulting in a parking garage. We have tried to address the many concerns over the past 1.5 years. They had made a commitment to have someone work with the neighborhood and interface with the construction contractors to distribute the traffic on different roads.

In response to Mayor Worley, Mr. Green said that a comment was made that they might be building too much parking, so the 45-space parking lot proposed near the southwest portion of the Vanderbilt Wing may not be constructed, if it proves that we have adequate parking.

In response to Councilwoman Jones, Mr. Green said that initially there was no residential component in the original Master Plan. In addition, the parking deck was thought of, but it evolved totally different after hearing neighborhood concerns.

Councilman Newman hoped that the GPI will continue to look at the alternative connectivity for the long-term future if there is going to be other development in order to avoid the overloading of traffic on existing residential streets.

In response to Councilman Newman, Mr. Green said that the shift change schedule to manage traffic during the peak hours is something the GPI can look at. They have looked at an off-site location for a parking garage for employees to park and shuttle to the GPI. The owner of that property on Charlotte Street was not amenable to releasing it so we could not do that. He felt the GPI will continue to look at those types of options to address the traffic problems.

Upon inquiry of Mayor Worley, Mr. Green felt that if the property is not conditionally rezoned, then the property will be developed, whether the GPI does it or sells it to another entity. He stated that they do have an arborist/forester who will be working with the GPI to assure that they preserve as many trees as possible.

In response to Councilwoman Bellamy about including Edwin Place for traffic calming, Mr. Green said that less than 1-2% additional traffic on Edwin Place would be generated by the proposed improvements. He did not think that was fair for the GPI to pay for the traffic calming on that street.

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In response to Mayor Worley regarding the roundabout width, Mr. Green said that they will have to do a bit of grading on the right side, but they will try to minimize it as much as possible.

In response to Vice-Mayor Mumpower, Ms. Tuch said that City staff tries to be very balanced in terms of development and the neighborhood needs. In terms of the residential development, Mr. Green showed the 11-12 lot subdivision and that is a very high likelihood and that is something that City staff would consider, given the desirability of this real estate. If this doesn't get rezoned, there is the likelihood that a single-family lot subdivision could be built, and if that were to be the case, it would result in a higher impact. As far as grading or clearing, we are talking about the difference of 8 units.

Responding to Vice-Mayor Mumpower about the hillside ordinance, Ms. Tuch said that the hillside ordinance reduces the amount of density that could happen in an area. And, in this particular case, we evaluate that based on a mathematical formula to determine the average natural slope. When you determine the average natural slope, anything over 15% and above the elevation 22/20, kicks in the hillside development standards. In this particular case, that average natural slope cut the density in half and that would be the underlying density of any zoning district. Our original review of the application we originally thought under RS-4 they could develop up to 23 units, so they are not seeking the rezoning for density purposes. Later when we determined that it would be subject to hillside standards, we realized they do need the rezoning for density purposes. It reduces the underlying density in half – the Resort District allows 16 units an acre and that would reduce it to 8 units an acre. The applicant is proposing a density of less than 4 units an acre (City Exhibits 5 and 6). She further explained that if Council rezones the Bynum House property to Resort, they are in full compliance with the hillside standards. Currently, if the rezoning does not occur, the GPI cannot build that many units.

Ms. Tuch also clarified about the hillside standards is in addition to reducing the density, it restricts the total amount of area that can be graded. That amount, in this particular case, is somewhere between 45-50%. That 45-50% is based on the slope (not the density). So whether we are looking at 5 units vs. 20 units, the total amount of area that can be cleared would be exactly the same.

In response to Councilman Davis, Ms. Tuch said that the GPI is showing a clustered development along the road, in order to try to minimize grading and clearing. She said that we cannot control the footprint of single-family homes. Even after that home is built, there is no mechanism in place to stop that homeowner from doing additional work. It is common to see additional areas being cleared and graded for patios, additional parking spaces, improvements to a driveway, or the removal of some trees for a better view. She said that given the contours in that area, this is the only way we can ensure that there is a buffer left in place, that the homes are placed sensitively, and that the homes are in character with the neighborhood.

Upon inquiry of Councilwoman Bellamy of what can be built on the property without Council's approval, Ms. Tuch said that the bulk of the property is currently zoned Resort. We have the clause in the ordinance that catches developments that are within 1500 feet in 3 years of each other to be reviewed as one project. The GPI could break this down into smaller pieces and only go to the TRC. There would be no conditional use permit involved. They could even take two phases of the site plan that are further than 1500 feet apart and develop those, then wait 3 years and do another phase, and then wait 3 years and do another phase. That would not have any of the Planning & Zoning Commission's recommendations – only the TRC recommendations.

Councilman Newman asked if Council approves the Master Plan, does that mean that the GPI could not do other development during that 10-year period. Mr. Shuford said that Council can condition the Master Plan to require any further substantial development to the areas covered

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by the Master Plan to come back before City Council within a 10-year period. City Attorney Oast said that as to the other development on the property, not covered in the Master Plan, he didn't think Council can require them to bring that back. Mr. Shuford also noted that most of the developable areas are in the Master Plan, so it would be fairly unlikely for the GPI to do additional developments that would be outside the 1500 feet unless they modified the golf course.

Upon inquiry of Vice-Mayor Mumpower about low water pressure, Ms. Tuch said that issue has been brought to the attention of the Water Resources Department. The TRC asked that some of those property owners who were experiencing problems with water pressure to get in touch with the Water Resources Department so they could test it in a more specific location. The TRC did indicate that any infrastructure improvements would have to be undertaken by the GPI to maintain or improve that water pressure.

In response to Vice-Mayor Mumpower regarding erosion control, blasting and construction violations, Ms. Tuch said that staff would have to sit down with the neighborhood and the GPI to determine exactly what a violation would be and then what kind of fine would be assigned to the gravity of that violation. We have standards currently in place, irregardless of that condition, that would exact violation fines. The typical zoning violation fine is \$100 a day. If there were a perceived violation that maybe wouldn't technically be a violation by City standards, but could be perceived a violation by the neighborhood standards, that would not be caught. City Attorney Oast said that he will work on ways to strengthen the oversight in those areas.

Councilman Newman clarified that the Planning & Zoning Commission recommended that Council approve a provision to direct staff to develop a graduated set of penalties if there are violations of our conditional use permit. If staff is directed to sit down and evaluate a variety of violations and what their allotted penalty should be, she would like to involve a number of people from our Zoning Enforcement Office, City Attorney's Office, etc. City Attorney Oast noted that we do have a graduated penalty provision in our noise ordinance and that would be the kind of thing we would try to work on for this.

Ms. Tuch said that in addition to the \$100/day penalty for zoning violations, we do have other measures that we have instituted, e.g., if a tree gets cut down in the buffer, we do require it to be replaced at a one-to-one ratio. We do have a number of measures in place, but whether that is adequate for the neighborhood, she wasn't sure.

City Attorney Oast noted that when Council adopts conditional use permits, they do it by ordinance and if Council imposes those kinds of conditions, that will be an ordinance and enforced like one.

In response to Councilwoman Jones about design oversight, Ms. Tuch said that typically when staff looks at architecture, we allow an application to proceed with concept plans or character sketches. In a case like this, she would consult with the Director of the Historic Resources Commission and determine what are the key elements that are important for that character, e.g.,

roof pitch, materials, etc. Those type of elements is what they would be looking for in that final product. That is part of staff's evaluation as to whether or not this application would be in harmony and character with the rest of the neighborhood.

Councilwoman Jones said there was a concern about the buffer on Old Toll Road when the leaves are off the trees. Mr. Tuch said that when the leaves are down it is difficult to screen against many things. There is a pretty substantial buffer left in place with this application. That is one of the reasons that staff encourages this kind of application because we can hold them to the buffer requirements.

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When Councilman Newman asked why the City was asking the GPI to administer the sidewalk administration, Mr. Butzek said that it is not a lack of desire for the City to administer it, but a lack of having staff resources since it gets fairly complex when you get into the design, administration, right-of-way acquisition, etc. So, if Council felt that is something City staff should do, we would likely have to hire an engineer to actually do those design plans and work through that process.

Councilman Newman asked if we are counting administration to include acquisition of sidewalk right-of-way. Mr. Butzek replied yes and that is why it was a markedly different percentage than for the traffic calming because there is that added element and that was the major difference. He also added that any monies that are not spent, because these are rough estimates at this point, would be returned to the property owner.

Mr. Tuch said that she believes some of the GPI's hesitation about administering the sidewalk is that there are some property owners that would be affected by that new sidewalk who are not happy with the sidewalk being in their front yard. She feels the GPI would like some help in right-of-way acquisition so it doesn't look like the GPI is seizing their property. Councilman Newman confirmed that the City's only reservation about administering it ourselves is that we don't have the staffing and we would need to contract with someone to help administer it, if we were to administer it.

Councilman Davis felt that instead of an ombudsman, it might be a better for a committee to be formed with a neighborhood representative, a GPI representative and City staff. Ms. Tuch said that the Planning Department does not normally get involved in these type committees and it may be difficult to coordinate. If there was an ombudsman, he would be hired by the developer who would monitor the development and construction activity. If there was a concern or violation then he would contact the appropriate individual and take the necessary measures.

Vice-Mayor Mumpower would speak against a committee formation. He felt we should require the GPI to identify a contact person for the neighborhood and then hold the GPI responsible for any violations. And then for the City to do its job and enforce our ordinances, rather than creating another level of bureaucracy.

Councilwoman Bellamy also felt the GPI should be responsible for communicating with the neighborhoods on a regular basis. Mr. Shuford said the City can put some type of meeting process in place that when the GPI nears the start of another phase that they would hold a community meeting or send out notices. There are things you can do on the ground to indicate where grading and clearing will occur and that information can be shared as well.

Mr. Green said that the GPI has promised to continue it's quarterly newsletter to let the neighborhood know what is going on in the neighborhood. In addition, the GPI has committed to continue working with the neighborhood committee and develop special committees that would be composed primarily of people within the different areas affected. He said they will comply with existing ordinances.

Upon inquiry of Councilwoman Jones, City Attorney Oast was familiar with the court case presented in Neighborhood Exhibit 5 and it doesn't raise any concerns to him with respect to this conditional use permit. In fact, it reinforces a lot of the advice he gives Council every time a conditional use permit is being considered by City Council.

Upon inquiry of Councilwoman Jones about blasting, Mr. Green said that there have not been any slope borings on any of the properties so we don't know what lies under the top soil. Therefore, he could not answer if there would be any blasting.

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Mr. Moule clarified the issue about the WLOS-TV use of the Battle House generating more traffic than the proposed development for the Battle and Bynum House combined. He said that in December of 2000, when WLOS was still in the Battle House, Macon Avenue showed 3,800 vehicles a day. Based on the 2002 count from the City, his TIA included a number of 2,600 vehicles a day.

Councilwoman Jones asked whether the GPI's vacancy rate has increased, decreased or stayed the same from 2000 to 2002 (spa opened in 2001). Mr. Madison said that the GPI's occupancy has stayed steady at about 71-72% throughout that period.

Hearing no further rebuttal, Mayor Worley closed the public hearing at 9:40 p.m.

Vice-Mayor Mumpower moved to adopt Ordinance No. 3184 to approve the conditional use rezoning for property located at 290 Macon Avenue (Grove Park Inn – Bynum Property), from RS-4 Residential Single-Family Medium Density District to Resort District/Conditional Use. This motion was seconded by Councilman Dunn and carried unanimously.

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City Attorney Oast reminded Council to not base your decision on anything you have heard except at this hearing and that includes letters from the applicant, conversations with the applicant or letters or conversations with people in the neighborhood.

Councilman Newman moved to adopt Ordinance No. 3185 to issue a conditional use permit for property located at 290 Macon Avenue to permit to permit construction of condominium units, subject to the following conditions, plus any other stipulations that City staff and the Planning & Zoning Commission have recommended that are relevant to the Bynum House property:

1. All TRC recommendations must be met;
2. GPI shall coordinate with staff, and in consultation with the neighbors, in the development of a comprehensive construction plan and construction traffic plan, to include:
 - a. designation of and funding by GPI of an ombudsman for dealing with construction issues from the residents during the construction project;
 - b. implementation of traffic calming measures on all roads identified in the Staff Report as "affected roads" and on Edwin and Kimberly (South of Country Club) prior to any construction beginning on the project;
 - c. such traffic calming measures shall be fully funded by GPI;
 - d. construction hours shall be limited to avoid any school transportation issues, compliance with noise ordinances, and no staging of construction shall occur on public roads or on private property owned by persons/entities other than the GPI;
 - e. violation of the comprehensive construction plan shall result in structured, graduated monetary penalties (established in the construction plan) with such monetary penalties being paid to the City's sidewalk repair and construction fund;
3. GPI shall pay all construction costs for sidewalks from Bynum House to Latrobe, and the planning and construction of such sidewalks shall be done in consultation with the residents whose property is affected; and
4. GPI shall pay for bicycle stripping on those roads listed as "affected roads" in the Staff Report and on Edwin and Kimberly where feasible, or erection signage warning of bicycle and pedestrian, or where striping is not feasible create shared use lanes and erect signs warning of bicycles.
5. GPI shall pay for all construction costs for a sidewalk from the edge of the Bynum property south along Macon to where it can connect with the existing sidewalk as well as sidewalk along the frontage of Club View Road. In exchange, the City is willing to

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exempt the GPI from sidewalk requirements along the other frontages surrounding the property including: Woodlink, Kimberly Avenue, Country Club, Club Knoll, Grovewood, Innsbruck, Old Toll and Charlotte Street. That is with the understanding that easements will be provided for future sidewalk construction.

This motion was seconded by Councilman Davis.

Councilwoman Jones asked for a friendly amendment that the traffic calming and sidewalks be completed prior to construction.

Councilman Dunn felt that if we build the sidewalk first, there will be construction traffic next to the sidewalks. It might not be appropriate to have pedestrians around certain construction sites until the development is built, for their own safety.

Mr. Shuford said that doing a traffic calming process is a neighborhood involvement process and that will take some time to accomplish. In addition with regard to the sidewalks, it's clear that at least portions of the sidewalks are going to be built outside of the City's rights-of-way and we can easily have a property owner be reluctant to have the sidewalk cross his/her property. A lawsuit might be filed and then a considerable amount of time for that process. Taking those two things into account, a motion

might be phrased to tie the traffic calming improvements being completed to some specific phase of the development process of perhaps no Certificates of Occupancy or something along those lines. With regard to the issue of safety, we certainly wouldn't want to do anything to attract people to the areas that are under construction, but we will still have pedestrian traffic in the area and they'll be safer off the road.

City Attorney Oast said that this is dealing specifically with the Bynum House property. His concern is that from an implementation standpoint. If Council approves the conditional use permit for the entire Master Plan, this is a process that could take 10 years and there may be phases of the project that are not built for another 6-7 years. He wasn't sure whether Council intends to require all the sidewalks be constructed prior to all those phases being built out.

Mr. Shuford suggested asking the GPI transfer the money to the City prior to any land disturbing activities occurring and then the City take the leadership on the traffic calming improvements sooner rather than over a 10-year period. Councilman Newman and Councilman Davis agreed to add this as a condition.

Upon inquiry of Vice-Mayor Mumpower, Mr. Green said that the developer will pay the City, prior to any land disturbing activities, \$325,000. That figured was arrived at based on \$100,000 for traffic calming, \$150,000 for sidewalk construction, \$10,000 for bicycle facilities and 25% administration costs. He asked for clarification from the City of graduated violation penalties. He felt that compliance with the existing City ordinances and compliance with a construction management plan would be more appropriate.

Councilwoman Jones asked for another friendly amendment that there be no blasting. She was concerned that we have rezoned to Resort in a residential neighborhood with historic homes around.

City Attorney Oast said that since the GPI doesn't know whether there will be blasting or not, he suggested that if the GPI determines that blasting will occur with respect to the Bynum House property or any of the other phases, that that part of the conditional use permit come back to City Council.

City Engineer Ball said that blasting has moved a lot so that you can actually do it safer than you can do some other types of construction. She suggested a condition that in the event

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that blasting is required that City staff have the opportunity to review their requirements for blasting and to make sure that was the best option for them to go with and that they comply with all state and federal regulations when doing so. They have come a long way with the ability to blast to the point where you don't see some of the damage that you could with other ways of breaking up rock. Mr. Shuford also requested Council add to that condition, since the Fire Department and other agencies need to be notified for blasting purposes, that the developer also notify the neighborhood in advance. Councilman Newman and Councilman Davis agreed to add this as a condition.

Vice-Mayor Mumpower felt that we have existing ordinances to hold the developer accountable and legally liability for their blasting and for us to create another level of oversight seems too much.

Mr. Butzek reminded Council that one item staff is recommending is to exempt GPI from approximately 6,000 linear feet of sidewalk requirements around their frontage exchange for doing the off-site portion of Macon Avenue, which we feel is much more in the public interest. That portion of Macon Avenue we've estimated accounts for more than half of the total cost of approximately \$450,000, if we include the sidewalk, traffic calming, including Kimberly and Edwin that was recommended by the Planning & Zoning Commission, and all the administrative costs. They have to construct the sidewalk along the frontage and we are recommending that they also pay for the construction of the portion down to where the sidewalk ends, near Latrobe. And that is an off-site improvement that we are recommending, in lieu of doing all the other frontages, which provide less public value. He noted that the amount we are exempting the GPI from doing is approximately \$240,000.

Councilwoman Bellamy felt it would be appropriate to ask the GPI to pay the \$450,000 amount as recommended by City staff.

Mr. Shuford said that City Council has another opportunity to consider a condition in the following conditional use permit request, however, we are going to expect to do adequate traffic calming and make the sidewalk connect. That will cost some figure and whether it will be the number that staff has generated or the number that came from the developer. If the number you choose is low, then the City will have to make up the difference. And, if there is any money left over, it will be returned to the developer. He also suggested Council specify the percent of whatever figure that will go to sidewalk and traffic calming.

Mr. Green said that the major reason for the difference in the figures is that Mr. Butzek recommendation of \$450,000 includes traffic calming on Kimberly, Evelyn, Edwin and Grovewood. He said that two of those streets (Kimberly and Evelyn) we feel are completely inappropriate for the GPI to pay for traffic calming. These improvements will result in less than 3% increase in traffic on those streets. We are prepared to do the traffic calming on the streets that are impacted by the improvements. Based on Mr. Moule's calculations and the TIA, Edwin and Grovewood would not need traffic calming based on the improvements proposed under this conditional use permit.

Councilman Davis agreed with Mr. Green in that the developer should not have to pay for traffic calming on streets that are not impacted by the GPI improvements.

Councilman Newman felt that the amount required for traffic calming, sidewalks, bicycle facilities and administration should be in the conditional use permit for the overall Master Plan.

Councilwoman Bellamy called for the question.

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Mayor Worley restated Councilman Newman's motion, and Councilman Davis' second as follows: To adopt Ordinance No. 3185 to issue a conditional use permit for property located at 290 Macon Avenue to permit to permit construction of condominium units, subject to the following conditions, plus any other stipulations that City staff and the Planning & Zoning Commission have recommended that are relevant to the Bynum House property:

1. All TRC recommendations must be met;
2. GPI shall coordinate with staff, and in consultation with the neighbors, in the development of a comprehensive construction plan and construction traffic plan, to include:
 - a. designation of and funding by GPI of an ombudsman for dealing with construction issues from the residents during the construction project;
prior to any construction beginning on the project;
 - b. such traffic calming measures shall be fully funded by GPI;
 - c. construction hours shall be limited to avoid any school transportation issues, compliance with noise ordinances, and no staging of construction shall occur on public roads or on private property owned by persons/entities other than the GPI;
 - d. violation of the comprehensive construction plan shall result in structured, graduated monetary penalties (established in the construction plan) with such monetary penalties being paid to the City's sidewalk repair and construction fund;
3. GPI shall pay all construction costs for sidewalks from Bynum House to Latrobe, and the planning and construction of such sidewalks shall be done in consultation with the residents whose property is affected; and
4. GPI shall pay for bicycle stripping on those roads listed as "affected roads" in the Staff Report and on Edwin and Kimberly where feasible, or erection signage warning of bicycle and pedestrian, or where striping is not feasible create shared use lanes and erect signs warning of bicycles.
5. GPI shall pay for all construction costs for a sidewalk from the edge of the Bynum property south along Macon to where it can connect with the existing sidewalk as well as sidewalk along the frontage of Club View Road. In exchange, the City is willing to exempt the GPI from sidewalk requirements along the other frontages surrounding the property including: Woodlink, Kimberly Avenue, Country Club, Club Knoll, Grovewood, Innsbruck, Old Toll and Charlotte Street. That is with the understanding that easements will be provided for future sidewalk construction.
6. The GPI transfer an amount to be determined under the conditions of the Master Plan conditional use permit to the City prior to any land disturbing activities occurring and then the City take the leadership on the traffic calming improvements sooner rather than over a 10-year period.
7. In the event that blasting is required that City staff have the opportunity to review their requirements for blasting and to make sure that was the best option for them to go with and that they comply with all state and federal regulations when doing so. In addition, the developer is required to notify the neighborhood in advance of any blasting.

The motion re-stated by Mayor Worley which was made by Councilman Newman and seconded by Councilman Davis carried unanimously.

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Vice-Mayor Mumpower moved to adopt Ordinance No. 3186 to issue a conditional use permit for the Master Plan, including the Bynum House Property, for property located at 290 Macon Avenue, subject to the following conditions:

1. All TRC recommendations must be met;
2. GPI shall coordinate with staff, and in consultation with the neighbors, in the development of a comprehensive construction plan and construction traffic plan, to include:

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- a. designation of and funding by GPI of an ombudsman for dealing with construction issues from the residents during the construction project;
prior to any construction beginning on the project;
 - b. such traffic calming measures shall be fully funded by GPI;
 - c. construction hours shall be limited to avoid any school transportation issues, compliance with noise ordinances, and no staging of construction shall occur on public roads or on private property owned by persons/entities other than the GPI;
 - d. violation of the comprehensive construction plan shall result in structured, graduated monetary penalties (established in the construction plan) with such monetary penalties being paid to the City's sidewalk repair and construction fund;
3. GPI shall pay all construction costs for sidewalks from Bynum House to Latrobe, and the planning and construction of such sidewalks shall be done in consultation with the residents whose property is affected; and
 4. GPI shall pay for bicycle stripping on those roads listed as "affected roads" in the Staff Report and on Edwin and Kimberly where feasible, or erection signage warning of bicycle and pedestrian, or where striping is not feasible create shared use lanes and erect signs warning of bicycles.
 5. GPI shall pay for all construction costs for a sidewalk from the edge of the Bynum property south along Macon to where it can connect with the existing sidewalk as well as sidewalk along the frontage of Club View Road. In exchange, the City is willing to exempt the GPI from sidewalk requirements along the other frontages surrounding the property including: Woodlink, Kimberly Avenue, Country Club, Club Knoll, Grovewood, Innsbruck, Old Toll and Charlotte Street. That is with the understanding that easements will be provided for future sidewalk construction.
 6. The GPI transfer \$325,000 to the City prior to any land disturbing activities occurring and then the City take the leadership on the traffic calming improvements sooner rather than over a 10-year period.
 7. In the event that blasting is required that City staff have the opportunity to review their requirements for blasting and to make sure that was the best option for them to go with and that they comply with all state and federal regulations when doing so. In addition, the developer is required to notify the neighborhood in advance of any blasting.

This motion was seconded by Councilman Davis and carried unanimously.

Councilwoman Jones felt that exempting the GPI from \$200,000 to serve the neighborhood better is good. And, that if any amount exceeds what is necessary, the remaining funds would be returned to the developer. She felt the \$50,000 for traffic calming on Kimberly and Edwin is appropriate. Mr. Green said that the GPI would be willing to pay the City \$375,000.

Vice-Mayor Mumpower and Councilman Davis agreed to amend their motion to include the following sub-condition under 2 above: "implementation of traffic calming measures on all roads identified in the Staff Report as "affected roads" and on Edwin and Kimberly (South of Country Club) prior to any construction beginning on the project." In addition, they agreed to amend their motion of No. 6 as follows: "6. The GPI transfer \$375,000 to the City prior to any land disturbing activities occurring and then the City take the leadership on the traffic calming improvements sooner rather than over a 10-year period."

Councilman Dunn was sympathetic with the neighborhood, but stated that traffic is everywhere and no one in the City is not impacted by traffic. He explained how any plan (the 2025 Plan in particular) can change and it fills people with expectations and then they are disappointed when the plan changes.

The amended motion made by Vice-Mayor Mumpower and seconded by Councilman Davis carried unanimously.

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ORDINANCE BOOK NO. 21 – PAGE

At 10:25 p.m., Mayor Worley announced a short recess.

C. PUBLIC HEARING TO CONSIDER AN AMENDMENT TO THE UNIFIED DEVELOPMENT ORDINANCE TO CLARIFY TWO STANDARDS FOR BED AND BREAKFAST INNS

ORDINANCE NO. 3187 - ORDINANCE AMENDING THE UNIFIED DEVELOPMENT ORDINANCE TO CLARIFY

TWO STANDARDS FOR BED AND BREAKFAST INNS

Mayor Worley opened the public hearing at 10:34 p.m.

Mr. Scott Shuford, Director of Planning & Development Department, said that this is the consideration of an ordinance to amend the Unified Development Ordinance to provide clarification of two standards for bed and breakfast homestays and inns. This public hearing was advertised on November 12 and 19, 2004.

In working with the Unified Development Ordinance (UDO) requirements for bed and breakfasts, the Planning & Development staff has found two statements requiring clarification for the intent to be more clearly understood by developers and property owners. Specifically, the question of how to measure square footage is further defined as "gross floor area" (as defined in Section 7-2-5). The other amendment is intended to clarify that existing bed and breakfast homestays and inns that are legal, nonconforming only due to the separation requirements of 500 feet can be further expanded as long as they comply with other applicable development standards.

Pros –

- Requirements for bed and breakfast uses will be more easily understood and interpreted by staff and the public.
- The intent of the ordinance will be made clearer and less subject to legal challenge.

Con –

- It is possible that certain property owners will disagree with the intent to allow existing bed and breakfasts to expand if only nonconforming due to the separation requirements.

The Planning and Zoning Commission unanimously recommended approval of these code amendments on October 6, 2004, by a vote of 6-0. City staff also recommends approval of the proposed code amendment as well.

Mayor Worley closed the public hearing at 10:35 p.m.

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

Councilwoman Jones moved for the adoption of Ordinance No. 3187. This motion was seconded by Councilwoman Bellamy and carried unanimously.

ORDINANCE BOOK NO. 21 – PAGE

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IV. UNFINISHED BUSINESS:

A. SECOND READING OF ORDINANCE NO. 3176, AN ORDINANCE GRANTING A CONDITIONAL USE PERMIT FOR PROPERTY LOCATED ON SPRINGSIDE PARK DRIVE, LOCATED OFF WHITE PINE DRIVE, FOR THE CONSTRUCTION OF A 60 UNIT MULTI-FAMILY DEVELOPMENT (KENILWORTH FOREST VILLAGE APARTMENTS)

City Attorney Oast said that this is the second reading of an ordinance adopted on first reading at the November 9, 2004, meeting, granting a conditional use permit for Kenilworth Forest Village Apartments. Because this ordinance failed to pass by a 2/3 vote of Council, law requires a second reading of it.

On November 9, following a public hearing, Council voted 4-3 in favor of adopting an ordinance granting a conditional use permit for the Kenilworth Forest Village Apartments, a 60 unit apartment complex proposed for construction on Springside Park Drive, which is near the Tunnel Road end of White Pine Drive.

City staff has reviewed the testimony and material presented at the public hearing, and has attempted to draft the permit to reflect Council's deliberations.

A copy of the proposed ordinance has been shared it with the applicant and the attorney for the neighborhood for their review. He explained one change to No. 1 in the conditions in the findings and conclusions section as follows: "Obtaining an opinion from an attorney, satisfactory to a North Carolina title insurance company and evidenced by a commitment to insure or

other document, that there is legal and adequate access from the Subject Property to Springside Park Drive, and the road must be made public prior to the issuance of a Certificate of Occupancy.”

If Council approves of the proposed ordinance, adoption of it on second reading is recommended.

Councilman Newman moved to approve on the second and final reading Ordinance No. 3176, as amended by City Attorney Oast. This motion was seconded by Councilwoman Jones and carried on a 4-3 vote, with Vice-Mayor Mumpower, Councilman Davis and Councilman Dunn voting “no.”

ORDINANCE BOOK NO. 21 – PAGE

V. NEW BUSINESS:

A. RESOLUTION NO. 04-244 - RESOLUTION APPOINTING MEMBERS TO THE ALCOHOLIC BEVERAGE CONTROL BOARD

Vice-Mayor Mumpower said that this is the consideration of appointing members to the Alcoholic Beverage Control Board.

The term of Debora Holmes Young expired on November 13, 2003, and the term of Barbara Field expired on November 13, 2004. Both are eligible for reappointment.

At City Council's worksession on October 19, 2004, City Council instructed the City Clerk to arrange interviews for Jim Ellis, Kenneth Kaplan, Fred Slosman, Duane Jarnecke and Lisa-Gaye Hall.

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Councilman Dunn said that City Council is always looking for the most qualified people to serve on our boards. He felt that the current board members have been more reactive to issues than proactive to issues. He felt that the current board members have not done a good job. There have been three studies performed – all wanting to restructure the board. He felt that the Chairman does not have the educational background in accounting or business. He was disturbed that City Council had to approach the ABC Board and tell them that a management study was needed for their organization. He expressed concern with their financial statements. He felt that if Council reappoints Ms. Young and Ms. Field, we are saying that incompetence is okay. He would vote against reappointment of Ms. Holmes-Young.

Councilwoman Jones said that in terms of a board, there are particular things you look to that are proactive. The firing and hiring of the person in charge are two of those things. It's a rare volunteer has to do both of those things and they are both very difficult. They both require pro-action. During the time they were looking for the best leader, they were in limbo for 18 months and subject to a lot of criticism. Another thing she looks for from a management point of view is when you receive the audit and you read the material weaknesses. You should not see those same weaknesses the next year and you do not seem them here. Those are proactive actions. In a volunteer position, the board also had to deal with a very sensitive personnel issue. That is a hardest job a volunteer has to do, whatever their qualifications. In terms of the documents alluded to, they all point to management issues of the supervisor, which goes back to finding the best possible candidate and that is what they have done. She said that she would be supporting both reappointment of Ms. Holmes-Young and Ms. Field.

Mayor Worley will be supporting the reappointment of Ms. Holmes-Young. He had extensive conversations with her during the course of the problems that the ABC Board encountered. He found her to be extremely competent and doing an outstanding job in dealing with a very difficult situation. As the City Council liaison, she kept him very well informed throughout the course of the situation. She made one mistake in judgment, but that one mistake does not rise to the level to not reappoint her to the Board. She has served as Chair of the board during a very difficult time taking on far more responsibilities than a chair normally would take on, due to the absence of a supervisor.

Vice-Mayor Mumpower said this is not a personal decision and he also pointed out that it's difficult to determine the timing issues of when they came on board, what happened when and how accountable they should be. However, he does believe there is overlap and questions the thoroughness of some of the investigative efforts. He has a specific concern about the former director and the existing Board made the decision to retain him. He would not support the reappointment of Ms. Holmes-Young.

Councilwoman Bellamy believes in fiscal responsibility, accountability and trust are critical when serving as a board member. Over the past 4 years, Council has heard extensively about the ABC Board's operations and board activities – increased revenue, dwindling profits, embezzlement charges and convictions, lack of leadership issues, employee morale problems, inappropriate or questionable hiring practices, people leaving employment seeking re-employment, increase support for local non-

profits, hiring leadership, and a host of other items. However, when we heard all that, we need to think about the time period in which it was emphasized. One thing was clear was all the information was not given to Board members during the former director's tenure. If all information wasn't presented to the Board members, it is hard for board members who are new to the job to find out as much information as possible. It's quite possible that some board members might have received some information that might have been helpful, but others were not given that information. It causes problems. That type of undermining has been the culture of that organization. What the current Board members had to deal with is a lot of undermining – not being given all the information. She believes they sought answers and listened to complaints, but when it wasn't to the complainant's satisfaction, it

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increased more problems. As volunteer board members, who receive a stipend, they worked hard to try to find the best solutions. They worked to enhance and improve the organization. Since the management report and since the new director has been hired, there have been constant improvements. Now that they have a true team in place and we should give them at least six months to see if the team really works. The Board needs full support of staff and to get the information they need to make responsible decisions. She requested a quarterly report from the ABC Board. She would also support reappointment of Ms. Holmes-Young.

City Attorney Oast said that the terms of the ABC Board members are set by statute and he didn't think Council has the ability to appoint for a partial term.

Councilman Davis was concerned of Ms. Holmes-Young's effectiveness as the Chair of the ABC Board. He felt her effectiveness has been compromised by all the allegations – right or wrong. At this point in time, he would support reappointment and see the accountability with the new team.

Councilman Newman felt Council has struggled with all the issues around the ABC Board. Some issues are difficult to determine whether they are true or not. The management audit identified areas for improvement, but the overall message of the audit was that there were no glaring problems with the agency. The ABC Board did a good job of hiring a new director who has already gone a long way in restoring the confidence in the future of the Board. He would be supporting reappoint of Ms. Holmes-Young.

Vice-Mayor Mumpower noted that Debora Holmes-Young received a 5-2 vote, with Vice-Mayor Mumpower and Councilman Dun voting "no". Therefore, Ms. Holmes-Young was reappointed to serve her remaining three-year term, term to expire November 13, 2006, or until her successor has been appointed.

Ms. Barbara Field received a 5-2 vote, with Vice-Mayor Mumpower and Councilman Dunn voting "no." Therefore, Ms. Field was reappointed to serve an additional three year term, term to expire November 13, 2007, or until her successor has been appointed.

In addition, the N.C. General Assembly adopted legislation to add two additional members to the Alcoholic Beverage Control Board. By Council individual votes, Jim Ellis received 3 votes, Kenneth Kaplan received 7 votes, Fred Slosman received no votes, Duane Jarnecke received 4 votes and Lisa Gaye-Hall received no votes.

Therefore, Duane Jarnecke was appointed to serve an initial one-year term, term to expire November 13, 2005; and Kenneth Kaplan was appointed to serve an initial two-year term, term to expire November 13, 2006. Both terms are until their successors have been appointed.

RESOLUTION BOOK NO. 28 – PAGE 426

B. RESOLUTION NO. 04-245 - RESOLUTION APPOINTING AN ALTERNATE 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 member of the Board of Adjustment, thus leaving an unexpired term until January 21, 2006.

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At the City Council worksession on July 20, 2004, City Council instructed the City Clerk to arrange interviews for John Kiser and Ross Dryer. Mr. Dryer was interviewed on July 27, 2004; however, Mr. Kiser was unable to attend.

On October 19, 2004, City Council instructed the City Clerk to arrange interviews for Robert Middlemas, Starr Silvis and Penny Rush. Ms. Rush cancelled due to her pending move out of the area.

Ross Dryer received no votes, Robert Middlemas received 5 votes and Starr Silvis received 2 votes. Therefore, Robert Middlemas was appointed as an Alternate Member to the Board of Adjustment, to serve the unexpired term of Mr. Taylor, term to expire January 21, 2006, or until his successor has been appointed.

RESOLUTION BOOK NO. 28 – PAGE 427

C. RESOLUTION NO. 04-246 - RESOLUTION APPOINTING A MEMBER TO THE CIVIC CENTER COMMISSION

Vice-Mayor Mumpower said that this is the consideration of appointing members to the Civic Center Commission.

Peter Crosa has resigned as a member of the Civic Center Commission, thus leaving an unexpired term until June 30, 2006. In addition, Denise Goodson has resigned from the Civic Center Commission, thus leaving an unexpired term until June 30, 2005.

At the City Council worksession on October 19, 2004, City Council instructed the City Clerk to arrange an interview for Brian Turner. Mr. Turner was unable to attend the interview, however, was very interested in the position.

In addition, at the City Council's worksession on October 19, 2004, City Council instructed the City Clerk to prepare the proper paperwork to appoint George Keller, as a member to the Civic Center Commission, to serve the unexpired term of Mr. Crosa, term to expire June 30, 2006, or until his successor has been appointed.

City Council instructed the City Clerk to re-advertise for the unexpired term of Ms. Goodson.

RESOLUTION BOOK NO. 28 – PAGE 428

D. RESOLUTION NO. 04-247 - RESOLUTION APPOINTING MEMBERS TO THE FILM COMMISSION

Vice-Mayor Mumpower said that this is the consideration of appointing members to the Film Commission.

The terms of Councilwoman Terry Bellamy, David Schulman, Lee Nesbitt, Andrea Dray, Steven Lutz, Diedra Smith and Leni Sitnick, as members of the Film Commission, expired on November 1, 2004.

At the City Council worksession on October 19, 2004, it was the consensus of City Council to instruct the City Clerk to prepare the proper paperwork to (1) appoint Vice-Mayor Mumpower to serve a three year term, or until his term on City Council ends, whichever occurs first; (2) reappoint David Shulman to serve a three year term, or until his successor has been appointed; (3) reappoint Lee Nesbitt to serve an additional three year term or until her successor

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has been appointed; (4) reappoint Steven Lutz to serve a three year term or until his successor has been appointed; (5) reappoint Diedra Smith to serve a three year term or until her successor has been appointed; and (6) reappoint Leni Sitnick to serve a three year term or until her successor has been appointed.

Also at the City Council worksession on October 19, 2004, City Council instructed the City Clerk to arrange interviews for Diane Vander Linden, Rudy Rodriquez, Lisa Sarasohn and Melinda Rains. Mr. Rodriquez did not attend the interview.

On October 21, 2004, Leni Sitnick asked not to be reappointed due to personal responsibilities. Ms. Sitnick, as Chair of the Film Commission, recommended City Council interview David Craft. After consultation with City Council, Mr. Craft was added to the interview list.

By individual Council votes, Diane Vander Linden received 5 votes, Rudy Rodriquez received no votes, Lisa Sarasohn received no votes, Melinda Raines received 6 votes, and David Craft received 1 vote. Therefore, Dane Vander Linden and Melinda Raines were appointed to serve three-year terms respectively, terms to expire November 1, 2007, or until their successors have been appointed.

RESOLUTION BOOK NO. 28 – PAGE 429

E. RESOLUTION NO. 04-248 - RESOLUTION APPOINTING A MEMBER TO THE PLANNING & ZONING COMMISSION

Vice-Mayor Mumpower said that this is the consideration of appointing a member to the Planning & Zoning Commission.

Nathaniel Cannady has resigned as a City appointment on the Planning & Zoning Commission, thus leaving an unexpired term until August 14, 2005.

On October 19, 2004, City Council instructed the City Clerk to arrange interviews for Joe Minicozzi and Jerome Jones.

By individual Council votes, Joe Minicozzi received 1 vote and Jerome Jones received 6 votes. Therefore, Jerome Jones was appointed as a member to the Planning & Zoning Commission, to serve the unexpired term of Mr. Cannady, term to expire August 14, 2005, or until his successor has been appointed.

RESOLUTION BOOK NO. 28 – PAGE 430

F. RESOLUTION NO. 04-249 - RESOLUTION APPOINTING A MEMBER TO THE RECREATION BOARD

Vice-Mayor Mumpower said that this is the consideration of appointing a member to the Recreation Board.

Ann Babcock has resigned from the Recreation Board, thus leaving an unexpired term until June 30, 2005.

On November 16, 2004, City Council instructed the City Clerk to arrange interviews for Eleanor Campbell and Andrew Gall. Mr. Gall was unable to attend the interview due to an illness.

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Eleanor Campbell received 7 votes and Andrew Gall received no votes. Therefore, Eleanor Campbell was appointed as a member to the Recreation Board, to serve the unexpired term of Ms. Babcock, term to expire June 30, 2005, or until her successor has been appointed.

RESOLUTION BOOK NO. 28 – PAGE 431

VI. OTHER BUSINESS:

A. CLAIMS

The following claims were received by the City of Asheville during the period of October 29 – November 11, 2004: Betty Salter (Sanitation), Michael L. Spell (Water), Linda Hoover (Water), Evelyn Ashby (Streets) and Kris Spillars (Streets).

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

VII. INFORMAL DISCUSSION AND PUBLIC COMMENT:

Mr. Fisher Caudle, resident in the Pisgah View neighborhood, explained the lack of police enforcement in their area. He felt the area is discriminated against as the neighborhood has to deal with drug thugs, street trash and litter around the Pisgah View Apartments. He urged Council to clean up this public housing project because their individual property rights are being encroached upon.

Ms. Mary Stiger, resident near the Pisgah View Apartment, briefed Council on the terror residents live in around the apartment complex from illegal drug dealers. She urged City Council to find solutions to this devastating problem.

Mr. Joe Smith, Ms. Tiffany Kyle, Mr. Terry Bradley, Mr. D. Jones, and Mr. Peter Dawes all spoke about the need for accountability by the ABC Board and the many unanswered questions, including embezzlement and store proceeds, presented to the Board but no response. They urged City Council to have a full outside investigation of the Board by the State Bureau of Investigation or an accountant.

Mr. Mike Fryar commented about the alleged false statements provided to City Council by City staff in his recent annexation.

VIII. ADJOURNMENT:

Mayor Worley adjourned the meeting at 11:49 p.m.

CITY CLERK

MAYOR