

Regular Meeting

Present: Mayor Charles R. Worley, Presiding; Vice-Mayor R. Carl Mumpower; Councilwoman Terry M. Bellamy (left meeting at 7:58 p.m.); 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 Newman led City Council in the Pledge of Allegiance.

INVOCATION

Councilman Davis gave the invocation.

I. PROCLAMATIONS:

Councilman Davis, liaison to the WNC Regional Air Quality Agency, said that the Air Quality Agency has just awarded the City of Asheville (through the efforts of Mr. Larry Bopp, the City's Information Services Director) the 2004 Energy Star Million Monitor Drive Contributor Award. It was presented by the United States Environmental Protection Agency in recognition of activating the power management functions on computer, monitors across your entire organization to save energy, money, and the environment.

II. CONSENT AGENDA:

A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON DECEMBER 14, 2004

B. RESOLUTION NO. 05-1 - RESOLUTION AUTHORIZING THE EXCHANGE OF EXCESS RIGHT-OF-WAY ON STRATFORD ROAD FOR A RIGHT-OF-WAY EASEMENT ON STRATFORD ROAD

Summary: The consideration of a resolution authorizing the Mayor to convey excess right of way on Stratford Road in exchange for a right of way easement over a portion of real property located on Stratford Road.

- The City and Verdi Group LLC (Verdi) have negotiated an exchange of excess right-of-way for a right-of-way easement across real property located on Stratford Road.

The excess right-of-way property is along the east side of Stratford Road comprising 0.008 ± acre generally across the road from and between its intersections with Parkside Drive and Pinewood Avenue.

The property owned by Verdi (PIN No. 9730.12-96-3375) is a 0.969 acre parcel zoned RS-4 located on Stratford Road contiguous with the right-of-way. As it is, the parcel will only support three (3) houses. With the additional land from the excess right-of-way, the Verdi property will support development of four (4) houses. The right-of-way easement to be exchanged for the excess right-of-way will cover 0.131 acre and will provide a logical and consistent right-of-way boundary along the east side of Stratford Road extending ten (10) feet into the Verdi property for the full length of the street frontage.

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The positive aspects of the transaction are:

- The exchange will be a fair exchange of value for value.
- It will return property not needed for public use to the tax rolls.
- It will provide a more logical and consistent right-of-way boundary along Stratford Road.
- It will enable maximum infill development consistent with the Strategic Operating Plan.
- The 10-foot easement makes a future sidewalk more constructible.

Pursuant to N. C. G. S. 160A-271 a notice was duly published in the Asheville Citizen-Times on December 17, 2005.

Approval of the resolution will authorize the exchange of the properties as provided in N. C. G. S. 160A-271.

Planning & Development staff and Parks & Recreation staff recommend adoption of the resolution authorizing the Mayor to convey excess right of way on Stratford Road in exchange for a right of way easement over a portion of real property located on Stratford Road.

RESOLUTION BOOK NO. 28 – PAGE 452

C. RESOLUTION NO. 05-2 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO AN AGREEMENT WITH JOHN W. ABBOTT CONSTRUCTION CO. INC. TO CONSTRUCT SUBSTANTIAL SITE IMPROVEMENTS FOR THE SOCCER COMPLEX AT AZALEA PARK

Summary: The consideration of a resolution authorizing the City Manager to sign a contract with John W. Abbott Construction Company, Inc. to construct substantial site improvements for the soccer complex in Azalea Park.

- The City of Asheville Parks and Recreation Department is in the process of implementing the first phase of development of the Azalea Park Master Plan. This phase of significant public park improvements includes the realization of a soccer complex of artificial turf, concession/restroom facility, picnic shelters, a community built playground, parking areas, walkways and trails, a memorial garden and landscape. The construction under consideration by City Council via this staff report will address the concession/restroom facility, portions of the parking areas, extensive retaining walls, signage, plazas and walkways. The project was bid out according to City standards that include the Minority Business Plan.

This action complies with the City of Asheville Strategic Operating Plan greenway/open space goals under the Natural and Built Environment Focus Area, as the project provides the framework for additional greenway benefits.

Pros

- The construction of this portion of the project is an integral supporting aspect of the artificial turf fields that are already under construction.
- The park will provide greatly needed recreation facilities for recreation users, especially the soccer players in the area.
- The soccer complex will be a local and regional attraction that will foster economic development.

Cons

- The work is extensive and costly to implement this high quality park development.

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- The facility will require increased staffing and materials to maintain it via the operating budget.

- The Parks and Recreation Department staff recommends City Council authorize the City Manager to enter into a contract with John W. Abbott in the amount of \$1,074,788 to construct substantial site improvements for the soccer complex in Azalea Park.

RESOLUTION BOOK NO. 28 – PAGE 453

D. ORDINANCE NO. 3194 - BUDGET AMENDMENT FOR THE AZALEA PARK CONSTRUCTION

Summary: The consideration of a budget amendment for Azalea Park, in the amount of \$647,170, from a \$472,170 contribution from the WNC Soccer Foundation, and \$175,000 through an agreement with the Asheville-Buncombe Youth Soccer Association (ABYSA).

The City of Asheville is in partnership with both the WNC Soccer Foundation and ABYSA to raise funds for the construction of the John B. Lewis Soccer Complex at Azalea Park. These funds are the most recent payments to the City of Asheville via the fundraising campaign from the Soccer Foundation and ABYSA.

This complies with the City of Asheville Strategic Operating Plan, Council Focus Area: Natural and Built Environment, Goal 2: Increased greenway benefits equitably throughout Asheville – Continue to implement and develop greenways that enhance quality of life for Asheville. The Swannanoa River Greenway Corridor will pass through Azalea Park plus include an extensive trail system within the park linking to the greenway.

Pros

- Complies with City procedures to expend funds.
- Continues work on project to meet construction timeline.
- Complies with agreements with WNC Soccer Foundation and ABYSA.

Cons: None noted.

The Parks and Recreation Department recommends City Council approve the budget amendment in the amount of \$647,170 to increase the budget for development of Azalea Park.

ORDINANCE BOOK NO. 28 – PAGE

E. ORDINANCE NO. 3195 - BUDGET AMENDMENT FOR THE PURCHASE OF A MINI-BUS FOR THE HARVEST HOUSE AND SENIOR OPPORTUNITY CENTER

Summary: The consideration of a budget amendment, in the amount of \$23,653, for the purchase of a mini-bus for the Harvest House and Senior Opportunity Center.

The City has received an appropriation from the State of North Carolina, Department of Health and Human Services, Division on Aging and the Land of Sky Regional Council/Area Agency on Aging through the Senior Center General Purpose Funding.

Funds will be used to purchase a 25-30-passenger mini-bus for Harvest House and Senior Opportunity Center. The vehicle will be used to support and enhance current and new senior programs at both centers, to expand the senior travel program, and to provide transportation for senior citizen special events.

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This action complies with City of Asheville Strategic Operating Plan, City Council Vision: Livability: Where ideas and energy are devoted to creating a city where citizens and visitors experience essential services that are efficient, affordable and user friendly.

Pros:

- The mini-bus will enhance the Parks and Recreation Department's ability to provide essential services to senior citizens, which is not currently being fulfilled with the existing vans that support recreation services.
- Fulfill funding need to purchase a much-needed mini-bus for senior programs.
- Expand the senior travel program to offer more trips, reach more customers and increase revenues in the travel program.

Cons: None noted.

The Parks and Recreation Department recommends City Council approve the budget amendment in the amount of \$23,653 to establish a budget to purchase the mini-bus.

ORDINANCE BOOK NO. 28 - PAGE

F. RESOLUTION NO. 05-3 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO AN AGREEMENT WITH CAROLINA CORNERSTONE CONSTRUCTION INC. FOR THE MALVERN HILLS POOL PUMP

Summary: The consideration of a resolution authorizing the City Manager to sign a contract with Carolina Cornerstone Construction, Inc. to construct a pool pump house for Malvern Hills Park.

The City of Asheville Parks and Recreation Department has been improving the facilities within Malvern Hills Park incrementally. The most recent improvement required for this facility is the construction of a new pool pump house. This facility will meet the mandatory guidelines established by North Carolina's Department of Environment and Natural Resources. The building will accommodate the new pump and necessary pool chemical storage. This pump house will reflect the character of the existing historic character of the existing Malvern Hills facility that contains changing rooms, concessions and a pavilion. The project was bid out according to city standards that include the Minority Business Plan.

This action coincides with the City of Asheville's Strategic Operating Plan water quality goal under the Natural and Built Environment Focus Area.

Pros

- The construction of this building will enable the pool to operate within state regulations.
- The pool clients will swim in a healthier environment with increased circulation of the pool water.
- The environment of the nearby stream will be improved by draining the pool water into the sanitary sewer.
- The pool will be easier to maintain for staff.

Cons

- The expense of constructing the pool pump house.

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The Parks and Recreation Department staff recommends City Council authorize the City Manager to enter into a contract with Carolina Cornerstone Construction, Inc. in the amount of \$71,500 to construct the pool pump house for Malvern Hills Park.

RESOLUTION BOOK NO. 28 – PAGE 454

G. ORDINANCE NO. 3196 - BUDGET AMENDMENT FOR THE PURCHASE OF A CRAWLER DOZER FOR THE PARKS AND RECREATION DEPARTMENT

Summary; The consideration of a budget amendment, in the amount of \$85,000, to purchase a new Crawler Dozer for the Park Maintenance Division.

- The Parks and Recreation Department has been developing numerous parks including the most recent, Azalea Park. A considerable amount of construction is being done by Park Maintenance staff with outdated equipment. One piece of equipment is a 1979 model Crawler Dozer. Recently, this piece of equipment caught fire and is inoperable. With the current construction of the Azalea Park, Carrier Park, greenway development and future construction at Richmond Hill, it is necessary for the Department to replace this piece of equipment. The Department is currently renting a Crawler Dozer at the cost of approximately \$4,000 per week in order to keep the project on schedule. It is more cost efficient to purchase a replacement for this piece of equipment than it would be to continue renting one. The level of funding of the Park Maintenance Division cannot cover the estimated replacement cost of \$85,000.

Pros

- The purchase of this piece of equipment will allow the Parks and Recreation Department to develop more projects in-house in a more cost efficient manner than having to rent or contract with an outside company.
- This piece of equipment will pay for itself by saving the weekly rental fee over the next few months in the Azalea Park development.
- By not purchasing this piece of equipment, the cost of park and greenway development will increase due to having to contract with an outside company for all project development or rent the necessary equipment on a weekly basis, which is very expensive.

Cons: None noted.

This purchase of equipment will assist in addressing one of the goals of City Council, that of greenway development. Greenway projects could be completed in a timely manner and multiple projects could be worked on simultaneously.

The Parks and Recreation Department recommends that funds in the amount of \$85,000 be appropriated from the Fund Balance to be used to purchase a Crawler Dozer.

Parks & Recreation Director Irby Brinson responded to Vice-Mayor Mumpower's inquiry about the money being appropriated out of Fund Balance.

Councilman Dunn hoped that in the future staff could try to anticipate these big ticket items and they could be included in the regular budgeting process.

ORDINANCE BOOK NO. 21 – PAGE

H. RESOLUTION NO. 05-4 - RESOLUTION APPOINTING MARK COMBS TO THE BUNCOMBE SCHOOL CAPITAL FUND COMMISSION

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Summary: The consideration of a resolution appointing a member to the Buncombe School Capital Fund Commission.

The County Manager asked that the City appoint a member of the Buncombe School Capital Fund Commission. The Commission consists of five members: one appointed by City Council; one appointed by the Asheville City Board of Education; one appointed by the Buncombe County Board of Education; one appointed by the Buncombe County Board of Commissioners; and one appointed by the other four appointees. Under General Statute 105-472, one-half of any State Sales and Use Tax revenue distributed to the County is paid to the Commission whose duty is to provide for the distribution of the revenue to support school capital projects. The County Manager said it would be helpful if the City could appoint someone who is familiar with capital budget programs, revenues and expenditures.

Should Council want to appoint a City staff member (the County felt a City staff member would be appropriate), City Manager Westbrook recommended Public Works Director Mark Combs as a City appointee. Mr. Combs is familiar with capital budgeting, expenditures and finance. He also has an appreciation for large building projects, the infrastructure required to support them, as well as the large lead time for design, construction and completion of such projects.

City Manager Westbrook recommends that City Council appoint Mark Combs as the City's representative to the Buncombe School Capital Fund Commission.

RESOLUTION BOOK NO. 28 – PAGE 455

I. RESOLUTION NO. 05-5 - RESOLUTION SETTING A PUBLIC HEARING ON JANUARY 25, 2005, TO CONSIDER AN ECONOMIC DEVELOPMENT INCENTIVE GRANT TO NAVIGATIONAL SCIENCES INCORPORATED

Summary: The consideration of a resolution setting a public hearing on January 25, 2005, to consider an economic development incentive grant to Navigational Sciences, Incorporated.

City Council has previously considered Navigational Sciences for an economic development incentive grant on March 18, 2003. The initial grant was for \$25,000 payable in equal installments over three years. In December 2004, Navigational Sciences advised that a portion of the prior understanding would need to be changed. Based on new information, the current economic development incentive grant is based on the following: the project will entail a capital investment of \$2 million and the creation of 12 new jobs with an average annual salary of \$50,000. The prior commitment was for a \$4 million investment.

Based on the new information with a capital investment of \$2 million and the addition of 12 new jobs at an average annual salary of \$50,000, staff feels the economic development incentive of \$25,000 paid in three equal installments over a three year period promotes economic development within the City, supports small businesses in the downtown area, and adds additional employment of highway jobs to the local economy.

Strategic Plan:

- Grant supports expansion of local small business. Key Area – Economic Development Goal 1, Objective A.
- Navigational Sciences, Incorporated continues to invest in the downtown area.

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Staff recommends City Council approve the resolution setting a public hearing on January 25, 2005, to consider an economic development incentive grant to Navigational Sciences, Incorporated.

RESOLUTION BOOK NO. 28 – PAGE 456

J. RESOLUTION NO. 05-6 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO AN AGREEMENT WITH JONES & FRANK CORPORATION TO INSTALL A FAST-FILL COMPRESSED NATURAL GAS FUEL STATION AT THE CITY'S FUEL STATION

Summary: The consideration of a resolution awarding the bid to construct a fast-fill compressed natural gas (CNG) fuel station at the City's fueling station and authorizing the City Manager to enter into an agreement with Jones & Frank Corporation, the lowest responsive bidder.

In November 2000, City Council authorized City staff to apply for a grant to construct a CNG station. In June 2003 the City received a second notice to award the City \$400,000 to construct the facility. The City agreed to provide in-kind and matching funds totaling \$55,000.

In March 2004 City Council authorized the City Manager to enter into an agreement with the N.C. Department of Environment and Natural Resources (NCDENR) for a mobile source emissions grant to construct a compressed natural gas (CNG) fueling station. Subsequently, staff sent out bids for the construction of the station and is prepared to award a bid to the lowest responsible bidder to begin construction.

The State of North Carolina is committed to constructing a series of rapid-fire compressed natural gas fueling station along the I-40 corridor. Asheville is the key link between Hickory, North Carolina, and Knoxville, Tennessee.

Staff sent out bids for the construction of the facility. The lowest responsible bidder, Jones & Frank Corporation of Charlotte, NC, has agreed to construct the facility for \$434,491, excluding sales tax. This amount is within the budgeted \$455,000 amount.

Pros:

- Construction of a CNG station will fulfill a contractual agreement with the NCDENR for construction of such a station
- A public-access CNG station will allow vehicles to travel along the I-40 corridor from coast to coast
- High-pressure fuel delivery systems will become ubiquitous as hydrogen and fuel cell technology evolve
- The City and its partners are taking a leadership role in promoting clean air initiatives

Cons:

- CNG vehicles cost approximately 20% more than conventional vehicles
- Staff must be trained to work on high-pressure fuel systems
- Public access (credit/debit card) system must be installed
- CNG as an alternative fuel may be eclipsed by emerging technology

This action meets City Council's Strategic Plan in the Focus Area: Natural and built environment, Goal #1: A high quality of air and water, Task #2, "Explore options to provide incentives to City residents to purchase AFV."

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City staff recommends City Council awarding the bid to construct a fast-fill compressed natural gas (CNG) fuel station at the City's fueling station and authorizing the City Manager to enter into an agreement with Jones & Frank Corporation, the lowest responsive bidder.

Mayor Worley responded to questions raised by Mr. Fred English about the cost effectiveness of this program.

RESOLUTION BOOK NO. 28 – PAGE 457

K. RESOLUTION NO. 05-7 - RESOLUTION AMENDING THE TERMS OF THE MEMBERS OF THE URTV INC. BOARD OF DIRECTORS

RESOLUTION BOOK NO. 28 – PAGE 458

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 Davis and carried unanimously.

III. PUBLIC HEARINGS:

A. PUBLIC HEARING TO CONSIDER THE ISSUANCE OF A CONDITIONAL USE PERMIT FOR THE MOUNTAIN HOUSING OFFICE ADDITION LOCATED AT 64 CLINGMAN AVENUE FOR A PROPOSED EXPANSION OF THEIR OFFICE SPACE

ORDINANCE NO. 3197 - ORDINANCE GRANTING A CONDITIONAL USE PERMIT FOR THE MOUNTAIN HOUSING OFFICE ADDITION LOCATED AT 64 CLINGMAN AVENUE FOR A PROPOSED EXPANSION OF THEIR OFFICE SPACE

Vice-Mayor Mumpower moved to excuse Councilwoman Bellamy from participating in this matter due to a conflict of interest. This motion was seconded by Councilman Dunn and carried unanimously.

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

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

After hearing no questions about the procedure, Mayor Worley opened the public hearing at 5:08 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.

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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 the issuance of a conditional use permit for the Mountain Housing office addition located at 64 Clingman Avenue for a proposed expansion of their office space.

Although the Asheville City Development Plan 2025 does not specifically address the need to provide office opportunities, it does describe a need to apply new zoning tools to increase both the supply of affordable housing and the compatibility of such housing with existing neighborhoods and community development patterns. The MHO office expansion is being sought in order to allow for the non-profit organization to expand their current range of services and programs. MHO has existed in harmony with the existing Merritt Park residents and larger WECAN neighborhood and it is their desire to continue this mutually beneficial co-existence. The ACDP 2025 also discusses the need to promote Smart Growth principles including mixed use developments, higher density residential and commercial infill development, traditional neighborhood development patterns, and downtown neighborhood revitalization through housing rehabilitation, all of which can be found in the Merritt Park project.

This property was conditionally rezoned in September of 2000 from RM-8 to CBD. There was an additional rezoning further down Clingman Avenue from RM-8 to RM-16 for the Prospect Terrace Project.

The applicant, Mountain Housing Opportunities (MHO), is requesting an amendment to the Conditional Use Permit associated with the Conditional Use Rezoning from RM-8 to CBD for the Merritt Park Condominium Project. The rezoning and site plan approval for the 3-story, 16-unit condominium project was approved by City Council in September of 2000. There was a subsequent amendment approved in June of 2001 to allow Mountain Housing Opportunities to occupy approximately 3,100 square feet of community space located on the first floor and turn it into an office condominium.

MHO is now requesting an additional amendment to allow the expansion of their office and operations to occupy one of the 16 existing remaining condominium units located on the second floor (Attachments to City Exhibit 3 – Aerial Map and Location Map). This will add approximately 1,100 s.f. of additional space for a total of 4,200 s.f. Former amendment approval did not allow for more than the 3,100 square feet of non-residential space on the first floor to be occupied as office. Because of the increase in square footage, occupation of the second floor, and change of use from residential to office, a new amendment was required. Similarly, any future changes of this nature would also have to return to City Council for consideration.

The current MHO offices are located on the first level of the Merritt Park Condominiums, just south of the intersection of

Hilliard Avenue and Clingman Avenue. Surrounding land uses and zoning have not changed since the original application and include, single-family residential and vacant properties zoned RM-8 along with CB-I zoned property housing the current City of Asheville Maintenance Facility. Access and parking for the site will remain unchanged.

At their September 20, 2004, meeting, the City of Asheville Technical Review Committee (TRC) reviewed the Conditional Use Permit request and made a positive recommendation that the project be forwarded to City Council stipulating only that a 'Change of Use' application will need to be filed with Building Permits and that architectural plans to convert the residential unit to office space will need to be submitted for review. In addition, Planning staff asked for the remaining Owner Affidavits, not included with the application, be provided. This request was made with the understanding that, as a requirement by the Merritt Park Condominium

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Association, unanimous approval by all the current owners of any change of use or operation was needed. The last remaining three affidavits were provided prior to the completion of this report.

Also subsequent to TRC was an investigation into the details of the Community Development Block Grant (CDBG) and HOME funding for the original project as well as re-examination of the contract terms between MHO and the City of Asheville. Because the office addition would result in the loss of an affordable unit and change the ratio of affordable to market rate units, there was concern that contract terms would prohibit the office expansion. The Community Development Director, Dept. of Housing and Urban Development (HUD), and the City Attorney all reviewed the request and ultimately determined that, although there was concern over the loss of an affordable unit, it was generally felt that the benefits outweighed the concerns. Despite general support, the expansion cannot take place under current contract terms and an amendment to the funding agreement between the City of Asheville and MHO will be required before final approval. The appropriate proportion of the original HOME investment in Merritt Park plus additional funds realized through an equity-sharing arrangement will be re-used for another HOME-eligible activity.

This condition was not included in the TRC report because the contract issues came to light after the technical hearing. Staff felt it was necessary to gain confirmation from HUD and waiting for a response from HUD was the primary reason the project was delayed from moving forward to City Council.

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. A separate 'change of use' review will be required by Building 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 request will not result in any changes to the site design.

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

A change of use will not result in significant changes to the unit and will not generally alter the residential appearance. Operations will be restricted to daytime hours and are expected to be sensitive to the residential nature of the community and is not expected to adversely impact the value of adjacent properties.

4. That the proposed use or development of the land will be in harmony with the scale, bulk, coverage, density, and character of the area or neighborhood in which it is located.

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Scale, bulk, coverage, and density will not be altered as a result of the proposed office expansion. The current MHO

offices have harmoniously existed as a member of the WECAN neighborhood and community and wishes to remain in their current location, maintaining their position within the community. Similarly, there is a desire on the residents' part to retain MHO at Merritt Park, which is exemplified through the Owners' Affidavits that were provided stating that the residents were in favor of the MHO office expansion and change of use.

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.

Although the Asheville City Development Plan 2025, does not specifically address the need to provide office opportunities, it does describe a need to apply new zoning tools to increase both the supply of affordable housing and the compatibility of such housing with existing neighborhoods and community development patterns. The MHO office expansion is being sought in order to allow for the non-profit organization to expand their current range of services and programs. MHO has existed in harmony with the existing Merritt Park residents and larger WECAN neighborhood and it is their desire to continue this mutually beneficial co-existence. The ACDP 2025 also discusses the need to promote Smart Growth principles including mixed use developments, higher density residential and commercial infill development, traditional neighborhood development patterns, and downtown neighborhood revitalization through housing rehabilitation, all of which can be found in the Merritt Park project.

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

The project area is located within walking distance of downtown, near major road facilities, interstate connections and in close proximity to transportation facilities with the Route 9 and Route 1 bus lines running directly by the covered shelter in front of the Merritt Park condominiums every half hour. Preliminary review by other utility providers has not revealed any problems for serving the development.

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

With MHO employees parking off-site, the proposed expansion will not require any changes to the existing off-street parking. In addition, due to the loss of the residential unit, the traffic engineer has found the expansion to result in a very nominal increase in the number of trips generated from the site.

Pros

1. Allows for the expansion of affordable housing offices, staff, and programs.
2. Allows for the maintenance of a co-operative mixed-use development.
3. The original HOME investment plus a share in the increased equity will be recaptured and applied to the creation of additional affordable housing.

Cons

1. Results in the loss of a residential unit. *(The unit was originally an affordable unit, but the increase in its market value would have made it difficult to find another income-qualified buyer, and the seller was under no obligation to do so.)*

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Staff recommends approval of the Conditional Use Permit amendment to allow the expansion of the existing 3200 square feet of MHO offices into an existing, 1100 square feet second story residential condominium.

Mr. Scot Dedman, Executive Director of MHO, briefed Council on the history of MHO stating that as they expand their work, they continue their commitment to the revitalization of the West End/Clingman Avenue neighborhood. He believed that their requested increase of approximately 1,100 square feet of available office space will provide them an additional 5 to 10 years, or more, of operating in the current location. When one of the condominiums came on the market last year, they decided that this was an opportunity to be able to expand their operations in the future without leaving the current office location. Their condominium documents require that they have unanimous approval and support from all 16 condo owners at Merritt Park and they do have this unanimous support. They informed the West End/Clingman Avenue Neighborhood Association of their interest in this change at their meetings several months ago and there has been no opposition. They will not expand the size of the building, nor change the exterior appearance of the building – it will keep its residential appearance. He thanked Council for their support of their growing work in Asheville and Buncombe County and for their affordable housing efforts throughout the community (Applicant Exhibit 1).

After rebuttal, Mayor Worley closed the public hearing at 5:17 p.m.

Upon inquiry of Vice-Mayor Mumpower, Ms. Tuch said that appropriate proportion (approximately \$37,000) of the original HOME investment in Merritt Park will be earmarked for another HOME eligible program, which details are still being worked out.

Vice-Mayor Mumpower moved for the adoption of Ordinance No. 3197, granting a conditional use permit allowing Mountain Housing Opportunities to expend their existing offices located at 64 Clingman Avenue into an existing, 1100 square foot second story residential condominium subject to the condition that all TRC conditions are met. This motion was seconded by Councilman Davis and carried unanimously.

ORDINANCE BOOK NO. 21 – PAGE

B. PUBLIC HEARING TO CONSIDER THE CONDITIONAL USE ZONING OF PROPERTY LOCATED AT 940 WEST CHAPEL ROAD FROM RS-8 RESIDENTIAL SINGLE-FAMILY HIGH DENSITY DISTRICT TO NEIGHBORHOOD BUSINESS DISTRICT/CONDITIONAL USE; AND THE ISSUANCE OF A CONDITIONAL USE PERMIT FOR A PROPOSED VARIETY OF COMMERCIAL USES

ORDINANCE NO. 3198 - ORDINANCE REZONING PROPERTY LOCATED AT 940 WEST CHAPEL ROAD FROM RS-8 RESIDENTIAL SINGLE-FAMILY HIGH DENSITY DISTRICT TO NEIGHBORHOOD BUSINESS DISTRICT/CONDITIONAL USE

ORDINANCE NO. 3199 - ORDINANCE GRANTING A CONDITIONAL USE PERMIT FOR PROPERTY LOCATED AT 940 WEST CHAPEL ROAD FOR A PROPOSED VARIETY OF COMMERCIAL USES

Oaths were administered to anyone who anticipated speaking on this matter.

City Attorney Oast reviewed with Council the conditional use district zoning process by stating that this is a two-part process. It requires rezoning, which is a legislative act, and the issuance of a conditional use permit, which is a quasi-judicial site-specific act. Even though the

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public hearing on those two items will be combined, all the testimony needs to be sworn and two votes will need to be taken. The first vote will be to grant the rezoning to the conditional use district category and the second vote will be to issue the conditional use permit. If Council runs into a situation that it votes to rezone, Council doesn't have to issue the conditional use permit on the same night.

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

After hearing no questions about the procedure, Mayor Worley opened the public hearing at 5:18 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 940 West Chapel Road from RS-8 Residential Single-Family High Density District to Neighborhood Business District/Conditional Use, and a request to issue a conditional use permit for a proposed variety of commercial uses.

The Asheville City Development Plan 2025 lists the "Smart Growth Land Use Policies" adopted by the Asheville City Council in 2000. These policies encourage compatible and sustainable commercial infill development in addition to promoting traditional neighborhood development patterns. The existing commercial building, originally built in 1948, once housed a small neighborhood grocery that served the residents of Shiloh. The former grocery was well positioned to take advantage of vehicular

and pedestrian traffic and reflects the traditional neighborhood development pattern that new construction often strives to replicate. Rezoning of the vacant property would enable the old grocery to be adaptively re-used for a variety of neighborhood friendly businesses and provide opportunity for compatible infill development.

The subject properties are located in south Asheville on the corner of West Chapel Road and London Road in the Shiloh community (Attachments to City Exhibit 3 – Location Map and Aerial Map). Both parcels total .46 acres and are currently zoned RS-8 and are surrounded by other RS-8 zoned properties supporting single family uses. A 2,200 square foot commercial building once used as a neighborhood grocery store remains on the corner lot but has been vacated for approximately 6 years, requiring the site to be brought into full compliance per Sec. 7-11-2(b)1 for renovation and re-occupation. Access for the proposed neighborhood businesses is to be located off of London Road and W. Chapel Road through the use of existing drives. A minimum of 10 and a maximum of 14 spaces are required as well as a 20' Type 'B' landscape buffer (or equivalent), buffering from the street, street trees, and parking lot landscaping. In addition, sidewalk, where practical, will be required as a condition of the permit (Attachments to City Exhibit 3 – Site Plan, Photos).

At their December 1, 2004, meeting, the Planning and Zoning Commission reviewed the Conditional Use Rezoning and Master Plan proposal and made a positive recommendation that

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the project be forwarded to the Asheville City Council, stipulating that the applicant meet all outstanding Technical Review Committee (TRC) conditions before final zoning approval. In addition, as part of staff's report, a condition that would prohibit the sale of alcohol was recommended and later removed at the request of the City Attorney. Mr. Oast further explained that in the State of North Carolina, zoning cannot be used as a tool to prohibit the sale of alcohol and recommended that a private deed restriction be arranged between private property owners that would restrict the sale of alcohol. Concern over the logistics and effectiveness of such an arrangement, staff arranged a meeting with the Asheville Police Department (APD) in an effort to work out a more enforceable alternative. The APD, together with the applicant and City staff, worked out an option where, in the event that more than 30 calls per year involving violent behavior and/or drug or alcohol related offenses were made in reference to the subject property that the Conditional Use Permit allowing the commercial uses must return to City Council for re-examination. The applicant did not have any objection to the condition and the APD was pleased for the opportunity to work cooperatively to control problems currently existing on adjacent properties. The City Attorney did not have issue with the specifics of the alternative but still expressed concern over the difficulty of removing alcohol sales once (if ever) established.

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 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 proposed project will be adaptively re-using an existing building and former parking area and will require minimal site disturbance in order to update access, off-street parking, sidewalk, and required landscaping.

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

The commercial building predates more than half of the adjacent homes and has historically been occupied concurrent with the older homes without negative impact on their property values. In addition, there is a significant amount of research that supports the position that if buildings are permitted to stand vacant and dilapidated that they will contribute to the decline of the neighborhood, negatively affecting adjacent property values. Lastly, building code and the UDO will both require improvements that will result in a more accessible and valuable neighborhood addition.

4. That the proposed use or development of the land will be in harmony with the scale, bulk, coverage, density, and character of the area or neighborhood in which it is located.

The existing commercial building is not uncharacteristically out of scale for a traditional neighborhood business. Although the adjacent homes are modest in size, the existing building is similarly modest in bulk and coverage as a one-story, 2200 square foot building.

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](#) lists the "Smart Growth Land Use Policies" adopted by the Asheville City Council in 2000. These policies encourage compatible and sustainable commercial infill development in addition to promoting traditional neighborhood development patterns. The existing commercial building, originally built in 1948, once housed a small neighborhood grocery that served the residents of Shiloh. The former grocery was well positioned to take advantage of vehicular and pedestrian traffic and reflects the traditional neighborhood development pattern that new construction often strives to replicate. Rezoning of the vacant property would enable the old grocery to be adaptively re-used for a variety of neighborhood friendly businesses and provide opportunity for compatible infill development.

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

The project area is located near major road facilities and interstate connections and is well located in respect to transportation facilities with the Route 6 bus line operating down Hendersonville Rd. and the Route 8 bus line running through the Shiloh neighborhood (with a stop located adjacent to the project area). In addition, technical review from other departments has not revealed any problems for serving the development.

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

The proposed project has been reviewed by the City's traffic engineer and is not expected to cause undue traffic congestion or create a traffic hazard. The proposed site plan indicates the utilization of existing entrances for access off of London and W. Chapel roads, in addition to showing adequate off-street parking and new sidewalk that will be constructed where pedestrian access is most needed. Lastly, the 4-way intersection and adjacent area is being examined for additional traffic improvements through City programs.

Pros

- Encourages the adaptive reuse of a vacant commercial building
- Provides an opportunity for infill development
- Promotes sustainable economic development
- Removes the negative impact of vacant property
- Provides convenient services to residents

Cons

- Loss of the potential for single family development (primarily on second lot where off-street parking is proposed)
- Cannot control the sale of alcohol through zoning

Staff recommends approval of the rezoning request from RS-8 to NB with approval of the associated Conditional Use Permit and detailed site plan.

Ms. Sherry Perry, owner of 827 Fairview Street, expressed concern over the drug and crack house located at 935 W. Chapel Road. She feels that if the property is rezoned, the commitment they have made to improve the neighborhood and surrounding community will be lost.

Ms. Jane Lyndon, property owner at 826 Fairview Street, also expressed concern over the drug activity at 935 W. Chapel Road. She felt that to rezone this property will allow another place for idle congregation.

Ms. Norma Baynes, member of the Shiloh Community Association, supported the rezoning request. She said the building has been vacant for a long time and this will be a good use in the neighborhood. She also hoped to find a way to eradicate the drug problems associated with 935 W. Chapel Road.

Mr. Derrick Martin, agent for 940 W. Chapel Road, assured Council that they have no association with the drug community or the house located at 935 W. Chapel Road. The building is currently an eyesore and the land is not maintained. He feels that their revitalizing of the area will be a benefit to the community because no one is there now. He felt that with the businesses there, there will be no loitering. He said he intends to have a carry-out only restaurant, a gift shop and a beauty parlor located in the building. He stressed that they have no plans in serving liquor out of any of the businesses in the building. Also, he has no problem in any of the conditions which staff has suggested.

After hearing no rebuttal, Mayor Worley closed the public hearing at 5:34 p.m.

Discussion occurred, initiated by Councilman Dunn, regarding the condition that in the event that more than 30 calls per year involving violent behavior and/or drug or alcohol related offenses were made in reference to the subject property that the Conditional Use Permit allowing the commercial uses must return to City Council for re-examination.

Councilman Dunn felt the City was imposing an unfair requirement on this owner. He felt that it is discriminatory to have this business meet that condition when the real problem is the lack of policing in the area.

Mr. Martin did not have a problem with the condition as long as the City can decipher that all 30 calls are not made by the same one or two people. He said that if it makes the neighborhood comfortable, he would have no problem with it.

Councilwoman Bellamy agreed that this was a discriminatory condition. The City seems to be associated this owner with the owners at 935 W. Chapel Road and that is not fair.

In response to Councilman Newman, City Attorney Oast explained what a re-examination of the conditional use permit would be.

Vice-Mayor Mumpower felt that our enforcement is so weak that we are punishing the owner when we should be rewarding them.

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Councilman Newman moved to adopt Ordinance No. 3198 to approve the conditional use rezoning for property located at 940 West Chapel Road from RS-8 Residential Single-Family High Density District to Neighborhood Business District/Conditional Use. This motion was seconded by Councilman Dunn and carried unanimously.

ORDINANCE BOOK NO. 21 - PAGE

Councilman Dunn moved to adopt Ordinance No. 3199 to issue a conditional use permit for property located at 940 West Chapel Road for a proposed variety of commercial uses, subject to the following condition that all outstanding TRC conditions are met. This motion was seconded by Councilwoman Bellamy.

Upon inquiry of Councilwoman Jones, Ms. Baynes said that the Shiloh Neighborhood Association was concerned with the sale of alcohol, but the owner has assured them that there would be no alcohol sales in those businesses. They would have no problem in deleting the condition regarding 30 calls per year.

Discussion occurred, initiated by Councilman Davis, regarding the owner's ability to change uses in the building (City Exhibit 4).

Out of the discussion surfaced an amendment to the motion, which was agreed to by Councilman Dunn and Councilwoman Bellamy, to add a condition "that the uses permitted on this property be limited to those listed permitted uses under the Neighborhood Business zoning classification and that changes in uses may be approved provided they do not significantly increase the impact of any of the uses on the property."

The amended motion carried unanimously.

ORDINANCE BOOK NO. 21 – PAGE

C. PUBLIC HEARING TO CONSIDER REZONING 9 CURRY COURT FROM COMMUNITY BUSINESS II DISTRICT TO RM-16 RESIDENTIAL MULTI-FAMILY HIGH DENSITY DISTRICT

ORDINANCE NO. 3200 - ORDINANCE TO REZONE 9 CURRY COURT FROM COMMUNITY BUSINESS II DISTRICT TO COMMUNITY BUSINESS I DISTRICT

Mayor Worley opened the public hearing at 6:00 p.m.

Urban Planner Julia Cogburn said that this is the consideration of an ordinance to rezone 9 Curry Court from Community Business II District to RM-16 Residential Multi-Family High Density District. This public hearing was advertised on December 31, 2004, and January 7, 2005.

There has been a recent rezoning action in 2004 of a conditional use rezoning at 407 Liberty Road (NW corner of Liberty and Ridge Street intersection) from RM-8 to Office/Conditional Use Zoning for the purpose of locating an attorney's office on the property.

The subject property is located in the City of Asheville's extraterritorial jurisdiction, at the corner of Liberty Road and Ridge Street, just north of the intersection of Liberty Road with Smoky Park Highway. This rezoning was initiated by the Planning and Zoning Commission following the Commission's examination of a conditional use rezoning in the area in the summer of 2004. The property is owned by Larue W. Bolick and Mary A. Greene. The Commission felt, in its initial

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review of the area, that Community Business II zoning extending so deeply up Liberty Road appeared to be an inappropriate incursion of such zoning into the neighborhood. The Commission's original rezoning proposal was more extensive but was scaled back by the Commission in December of 2004.

The zoning surrounding the site is varied. Zoning to the west is RM-8; to the south CBII; to the east RM-16; and to the north RM-8 and Office/Conditional Use Zoning. The Manufactured Home Overlay is found on most properties located to the north and west of the subject parcel.

Land use to the south, along Liberty Road and the Smoky Park Highway, is commercial. Except for the attorney's office immediately to the north, the remainder of the surrounding property is a mix of manufactured and stick-built single-family homes.

9 Curry Court presently contains a manufactured home community with four (4) units on site. The property is metered and numbered for five (5) homes.

The CBII District and RM-16 District both allow a residential density of sixteen (16) units per acre. Neither allow for manufactured home parks.

Sanitary sewer and water are not currently extended to these properties.

The property owners affected by this rezoning were sent personal letters regarding this matter in advance of the Planning and Zoning Commission.

Pros

1. The current CBII zoning intruding so deeply into the residential community off Liberty Road would allow a potentially incompatible commercial development to occur at an intersection that is residential in nature.
2. RM-16 zoning, which is also found to the east across Liberty Road from the subject properties, provides a nice transition between the commercial uses on the corner of Smoky Park and Liberty and the remainder of the area that is residential in character.
3. The orientation of this lot, both topographically and access-wise is toward the residential neighborhood and not to the commercial developments along Smoky Park Highway.

Cons

1. Surrounding area (except to the south) is predominantly single-family in nature.
2. Manufactured home park on the property will remain nonconforming with this rezoning.

Staff recommended approval of this rezoning request to the Planning and Zoning Commission. The Commission considered the matter in the context of a larger rezoning proposal at its meeting on December 1, 2004, and unanimously (6-0)

recommended approval of the rezoning of this parcel.

Mr. Billy Woody, area property owner on Liberty Road, said that Liberty Road is already a highly travelled road and didn't want any more development on that property that would increase traffic.

Mayor Worley closed the public hearing at 6:06 p.m.

When Vice-Mayor Mumpower expressed concern of a City-initiated zoning with no input from the property owners, Ms. Cogburn said that she has sent one personal letter and two notifications to the property owners in Sylvia by first class mail and has received no response from them.

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

Vice-Mayor Mumpower moved to rezone 9 Curry Court from CBII to RM-16. This motion was seconded by Councilwoman Bellamy.

Discussion surrounded whether the property owners actually received notice and whether certified mail should be used to notify property owners when there is a City-initiated zoning. Mayor Worley researched the address and noted that the property owners have paid their 2004 property taxes and he felt sure that they received the letters.

Councilman Davis felt this action to downzone was arbitrary and would not support the motion.

After further discussion, Vice-Mayor Mumpower withdrew his motion to rezone from Community Business II District to RM-16 Residential Multi-Family High Density District

Councilman Dunn felt that the City is overstepping their authority when they rezone someone's property and would not support the rezoning request.

Planning & Development Director Scott Shuford said that this was the initial zoning when the area was taken into the extraterritorial jurisdiction area. He explained that the Planning & Zoning Commission reviewed a zoning change by a nearby property owner in that general area and after visiting the site they saw that the zoning of this property was out of character. That was their basis for requesting Planning staff to pursue this particular rezoning.

Upon inquiry of Councilwoman Bellamy, Mr. Shuford said that we can accomplish a better notification procedure through written procedures when the Planning & Zoning Commission initiates a rezoning request.

Mr. Jerome Jones, Planning & Zoning Commission member, said that the Commission felt the property needed to be rezoned because it is oriented toward residential and it would be an ideal location for some infill multi-family housing.

Councilwoman Jones moved to rezone 9 Curry Court from Community Business II to RM-16 Residential Multi-Family High Density District.

Discussion then occurred whether RM-16 was the appropriate use of the property.

Councilman Newman felt that perhaps we have not exhausted the list of possible zoning districts that would be appropriate in this particular location.

Mr. Shuford suggested City Council might wish to continue this matter in order to give Planning staff the opportunity to try to reach the owners by a more forceful type of postal notice. Also, if Council is interested in a more intense zoning, then it would have to be reconsidered by the Planning & Zoning Commission again.

Councilwoman Jones withdrew her motion to rezone from Community Business II to RM-16 Residential Multi-Family High Density District. She pointed out that this seems like an appropriate way to rebuild the stock for multi-family since we do rezone residential multi-family to different classifications. She felt this would have been a good move for potential development of

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affordable housing. A different zoning classification, however, may give the property owner a little more flexibility.

Councilman Newman would like for there to be more of a potential for mixed use activities on this site as a use by right, other than RM-16 allows. He also didn't wish to downzone the property to less than 16 units per acre. If there is a zoning classification that would allow 16 units per acre, but provide some protection for the area of incompatible development, then he would be supportive of that. Mr. Shuford responded that the Community Business I District would accommodate Councilman Newman's request,

Councilman Davis would support the Community Business I District because it is more compatible with what is already on that street and it allows the residential component to remain. Therefore, he moved to rezone 9 Curry Court from Community Business II District to Community Business I District. This motion was seconded by Councilman Newman.

Upon inquiry of Councilwoman Jones, Ms. Cogburn said that the difference between Community Business II District and Community Business I District is primarily the size of the structures allowed.

The motion made by Councilman Davis and seconded by Councilman Newman to rezone 9 Curry Court from Community Business II District to Community Business I District carried on a 4-3 vote, with Mayor Worley, Councilman Davis, Councilwoman Jones and Councilman Newman voting "yes" and Vice-Mayor Mumpower, Councilwoman Bellamy and Councilman Dunn voting "no."

City Attorney Oast said that due to the vote, this ordinance will be brought back at Council's next formal meeting for a second and final reading. Mayor Worley noted that there will be no additional public comment taken at that time.

ORDINANCE BOOK NO. 21 – PAGE

D. PUBLIC HEARING TO VACATE AND CLOSE THE ENTIRE DWELLING LOCATED AT 1086 HENDERSONVILLE ROAD

ORDINANCE NO. 3201 - ORDINANCE DIRECTING THE DIRECTOR OF BUILDING SAFETY TO VACATE AND CLOSE THE ENTIRE DWELLING LOCATED AT 1086 HENDERSONVILLE ROAD

Code Enforcement Officer Jeff Baker said that this is the consideration of an ordinance directing the Director of Building Safety to vacate and close the entire dwelling located at 1086 Hendersonville Road. This public hearing was advertised on December 31, 2004, and January 7, 2005.

Mayor Worley opened the public hearing at 6:42 p.m.

Mr. Baker said that the dwelling at 1086 Hendersonville Road is a wooden structure containing nine separate dwelling units. After unsuccessfully attempting to work with the property owners to bring the dwelling into compliance with the Housing Code since December of 1998, City staff's efforts to bring about compliance intensified during the summer of 2004. In August of 2004, the property owners entered into a Memorandum of Understanding but failed to honor their commitment to bring the dwelling units into compliance with the Housing Code. As a final effort to obtain compliance, City staff asked City Council to adopt an ordinance ordering certain of the

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dwelling units to be vacated and closed, which Council adopted. Despite the ordinance directing the property owners to vacate and close certain of the dwelling units, the property owners continue to offer said dwelling units as well as the remaining dwelling units for rent.

A second hearing was held on October 15, 2004, whereby Elizabeth Tate, one of the property owners, made it clear that she had no intentions of voluntarily vacating and closing the dwelling. A Findings of Fact and Order was entered ordering the property owners to vacate and close the entire dwelling or otherwise bring the dwelling into compliance with the Housing Code by November 15, 2004. To date, the dwelling has not been brought into compliance with the Housing Code and neither has a housing certificate been issued.

After trying every possible approach to obtain the property owners' compliance with the Housing Code, such has failed. Meantime, the property owners continue to rent and receive rent for each of the unfit dwelling units, which is a violation of the City's Housing Code.

Staff recommends City Council adopt an ordinance ordering the entire dwelling located at 1086 Hendersonville Road vacated and closed until brought into compliance with the City's Housing Code.

In response to Mayor Worley, Mr. Baker said that the current owner has told him that she has sold the property many times over the past 1.5 years. He said that when a new owner comes into the office and shows him that they now own the property, the City will work with that person. The City would enter into a Memorandum of Understanding and give the new owner a certain amount of time to bring the units into compliance.

Upon inquiry of Vice-Mayor Mumpower, Mr. Baker said that the fines are the responsibility of the present owner.

In response to Councilman Dunn, Mr. Baker said that no City taxpayer money has been used to relocate the current tenants.

Mr. Fred English felt this property should have been vacated long ago.

Ms. Robin Merrell, on behalf of Pisgah Legal Services, said they have a strong interest in seeing the Minimum Housing Code enforced and support this action. In addition, they support the use of Community Development Block Grant funds to help relocate the current tenants.

Mr. Walter Plaue felt that City Council needs to proceed quickly to get these people out of living in these unhealthy and unsanitary conditions.

Mayor Worley closed the public hearing at 6:53 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. 3201. This motion was seconded by Councilman Dunn and carried unanimously.

ORDINANCE BOOK NO. 21 – PAGE

E. PUBLIC HEARING TO AMEND AND ADOPT THE RULES OF PROCEDURE FOR THE CIVIL SERVICE BOARD

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RESOLUTION NO. 05-8 - RESOLUTION AMENDING AND ADOPTING RULES OF PROCEDURE FOR THE CIVIL SERVICE BOARD

Mayor Worley opened the public hearing at 6:52 p.m.

Human Resources Director Belinda Odom said that this is the consideration of a resolution amending and adopting the Rules of Procedure for the Civil Service Board to promote efficiency in the classified services. This public hearing was advertised on December 31, 2004, and January 7, 2005.

The Civil Service law has undergone various changes since its inception in the early 1930's, the most recent of which occurred in 1999. Despite the many changes in the law, the Board's rules and regulations have not kept pace.

The proposed recommended Rules of Procedure provide current procedures to guide the Board in conducting meetings and hearings. This is a summary of former documents used to guide the Board.

The Conflict of Interest section specifically was a technical change to the document.

The Rules are intended to repeal all other previously adopted rules and regulations of the Board, which have not kept pace with the changes in the law.

The proposed rules were adopted by the Civil Service Board members after numerous meetings with City staff and the Board's attorney. Following distribution of the proposed rules to employees, no objection was raised to moving forward with the adoption of the rules by City Council.

Advantages:

- Assist the Board during meetings
- Specifies the duties and responsibilities of the Board
- Provides clear guidance to complainants and attorneys

Disadvantages: None known

The Human Resources Department's staff recommends that City Council adopt the amended Rules of Procedure.

Mayor Worley closed the public hearing at 6:53 p.m.

Upon inquiry of Vice-Mayor Mumpower, Ms. Odom explained the major changes in the conflict of interest section and also the section dealing with witnesses.

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

Vice-Mayor Mumpower moved for the adoption of Resolution No. 05-8. This motion was seconded by Councilwoman Bellamy and carried unanimously.

RESOLUTION BOOK NO. 28 – PAGE 459

At 6:59 p.m., Mayor Worley announced a short recess.

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IV. UNFINISHED BUSINESS:

A. COLLEGE STREET ROADWAY IMPROVEMENTS

Traffic Engineer Anthony Butzek said that the original presentation on the College Street Gateway Boulevard Project was given to Council on April 20, 2004. Since that time they have had a public meeting in August of 2004. He said that construction is currently planned to begin almost immediately on this project.

He said that College Street, which once served as US 70, is a main east-west artery. When I-240 was constructed, it absorbed much of the traffic that was on College Street. Traffic counts taken in year 2004 were just over half of the traffic counts taken in 1954. There has been a significant decrease of traffic. The daily traffic on College Street is about 13,000 vehicles per day. It is our widest city-maintained street at about 76' wide. There is a resurfacing plan for the street.

He showed Council a proposed design outlining the specifics, which included: design speed is 20 miles per hour; two-lane median-divided; parallel parking on north, angle parking on south; striped bicycle lanes; safe pedestrian crossings; roundabout at Valley/Oak Streets; and all lanes maintained at College and Charlotte.

Mr. Butzek then explained a traffic comparison, which analyzed traffic, travel times and speed for the existing conditions in 2004, a 2-lane road with a roundabout in 2014 and a 2-lane road with no roundabout in 2014.

He explained the design allows for future expansion as follows: extends eastbound left-turn lane at Charlotte Street from 160 feet to 210 feet; allows future addition of 2nd eastbound left-turn lane at Charlotte Street; and effectively increases capacity of the corridor by 25% by easing constraint (College Street and Charlotte Street).

Some project amenities include: better traffic flow; increase street network capacity; speed limit compliance through design; improved pedestrian safety; and relief for Buncombe County Sheriff's Department acting as crossing guards. He then showed Council a traffic simulation of the area.

The design is consistent with the Pack Square Renaissance Plan, the Greenway Master Plan and the Asheville City 2025 Plan.

Ms. Carol King, Chair of the Pack Square Conservancy Board of Trustees, said that they support the project as it relates to the section of the improvements that are adjacent to their Park Renaissance Project. She stressed that timing is real important in that the diagonal parking spaces along the Park need to be in place before they start tearing up the ground, which is scheduled to

be in July of 2005. She also explained that this project has been part of their design presentations, so it is an expectation of our donors that we are moving forward with the entire design, which includes College Street.

Ms. King responded to various questions from Council, some being, but are not limited to: how many parking spaces will be removed in the first phase; is the Pack Square Conservancy confident that their construction will begin in July of 2005; and how much money have they raised in their fundraising efforts.

Upon inquiry of Vice-Mayor Mumpower, Mr. Butzek said that the total cost of the project is \$185,000. Of that, \$75,000 is for the resurfacing that would have occurred anyway, and approximately \$10,000 is for markings that would have had to be spent anyway. The incremental

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cost is about \$100,000. He said that the timeline for construction is to begin in January and is expected to be completed in mid-summer.

Mr. Butzek then responded to various questions/comments from Council, some being, but are not limited to: has Buncombe County been a part of the discussions; has anyone living in close proximity to this project raised concerns and what measures will be taken to get people to drive 20 mph.

Upon inquiry of Vice-Mayor Mumpower, Mr. Butzek said that roundabouts are generally considered very safe for pedestrians. One of the things a roundabout doesn't do well as far as pedestrians are concerned is that cars are yielding to pedestrians, as opposed to stopping as they would at a red light. Pedestrians are forced to look at traffic and observe that the cars are stopping before proceeding. Whereas, at a signal they naturally assume that cars are stopping because they have a red light. The positive of that is that it forces the pedestrian to be more involved in abiding their own safety. At a signalized intersection and a car runs the red light and hits the pedestrian, the pedestrian would be seriously injured and possibly killed because of the speed. At a roundabout, to his knowledge, there has never been a pedestrian fatality. The reason is that operating speeds in the roundabout are very low. He is confident that this roundabout will be a very safe and very efficient roundabout.

Vice-Mayor Mumpower considered this a bold experiment for the City that has the potential for a nice thing, but also has the potential to be something else. We are constricting lanes. He said that we have restricted traffic in other neighborhoods and personally he thinks we are doing a poor job of enforcing our traffic laws and deferring to passive traffic calming efforts that are marginally effective. Research tends to show that over time they don't work as effectively as we might hope they would. He is inclined to support this bold experiment because this offers an opportunity to make things better, however, he has apprehensions about the pattern of constraining and creating obstacles.

Mr. Butzek said that apprehension is natural anytime you have a significant change to the street network. There was certain apprehension on a number of other projects that were successful. While each project may not be perfect, each one is a large improvement. For example, the W.T. Weaver Boulevard is similar in that there was a roundabout involved. Roundabouts tend to generate a lot of controversy anytime they are proposed. The W.T. Weaver Boulevard roundabout has worked extremely well and to his knowledge there has been no reported crashes. It has improved the safety of that intersection. There are fairly standard measures here on College Street, in that we are keeping straight lines, other than the roundabout.

Councilman Newman said that College Street is an important street in the core of our City. He felt it is appropriate to invest money to make this happen because it is such an important part of the downtown community.

Mayor Worley felt the roundabout will allow traffic to flow smoothly and much more efficiently.

Councilman Dunn was concerned about the way staff presented this to Council and the way it was being pushed through. He felt \$185,000 is a lot of money and we just got through approving a \$20 Million parking deck, and maybe infrastructure costs with the Pack Square Conservancy Project. Regarding the one lane traffic in each direction, he expressed concern about traffic congestion when they are trying to parallel park or to back out of the angled parking spaces.

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City Manager Westbrook responded to Councilman Dunn about why this money is not in the traffic calming budget,

Mr. Butzek explained there are costs of doing nothing: (1) continued use of Buncombe County Sheriff's Department as crossing guards; (2) \$10,000 traffic signal upgrades; (3) \$4-5,000 annual signal maintenance; and (4) the opportunity cost is tremendous.

Mr. Butzek then showed City Council a traffic signal simulation of the flow of traffic on College Street.

Councilman Dunn asked if we really needed parallel parking on College Street with the new parking decks. Mr. Butzek responded that we always have requests for new parking and this area is a high demand parking area, especially given the lack of parking decks near it now. Whether we can reduce some of that parking in the future once the parking decks are in place will certainly be an option. They will be adding approximately 12 new parking spaces on College Street.

Upon inquiry of Vice-Mayor Mumpower, Mr. Butzek said that there will be about 25-30 angled parking spaces that will have to back out to enter the traffic pattern and there is some additional hazard associated with that.

Vice-Mayor Mumpower said it was hard to imagine backing out of an angled parking space into the current traffic on College Street. Mr. Butzek responded that there will also be a 6-foot wide bicycle lane and one benefit that provides is that the cars backing out will have that 6-foot buffer before they get into traffic.

Councilwoman Jones liked the plan in that it seems to really include a lot of different needs – a little more parking, helps with pedestrian safety, good looking project, and it will overall slow down traffic.

Mayor Worley said that no further action is required by City Council in that Council had given staff consensus to move forward in April of 2004.

At 7:58, Councilwoman Bellamy left the meeting.

V. NEW BUSINESS:

A. RESOLUTION NO. 05-9 - RESOLUTION APPROVING THE PLAN “LOOKING HOMEWARD: THE 10-YEAR PLAN TO END HOMELESSNESS IN ASHEVILLE AND BUNCOMBE COUNTY”

Mr. Jerome Jones, Chair of the Joint City/County Steering Committee, said that this is the consideration of a resolution approving the Plan “Looking Homeward: The 10-Year Plan to End Homelessness in Asheville and Buncombe County.”

In May 2004 City Council and the Buncombe County Board of Commissioners appointed a joint advisory Task Force to prepare a 10-Year Plan to End Homelessness, with initial priority on the chronic homeless population.

The Task Force, made up of business, non-profit, and government leaders, met six times and, with assistance from City and County staff and from Pisgah Legal Services, has produced the a report: “Looking Homeward”.

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He reviewed the goals of the plan: (1) reduce the number of people who become homeless; (2) increase the number of homeless people placed into permanent housing; (3) decrease the length and disruption of homeless episodes; and (4) provide community based service and supports that prevent homelessness before it happens and diminish opportunities for homelessness to recur.

He said there are 2,000 a year homeless - 700 in a given night (300 of those are chronic homeless). He defined chronic homeless as “an unaccompanied adult with a disabling condition who is homeless a year or longer or has 4 episodes of homelessness in 3 years.”

He reviewed the success of Housing First: (1) Pathways to Housing: New York – After 5 years, 88% of those who entered the program remained in permanent housing; (2) Beyond Shelter: Los Angeles – After 5 years, 80% working, only 2.3% had relapsed into substance abuse; (3) Minneapolis Chemical Dependency Program – After one year (a) 56.6% living independently remained sober; (b) 56.6% living in a halfway house remained sober; and (c) 90.0% living in supportive housing (Housing First) remained sober; (4) Philadelphia – Reduced number of chronic homeless from 850 in 1998 to 130 in 2004; and (5) Asheville Shelter Plus Care – 80% remained housed after 5 years.

The report’s primary recommendations fall under the following headings:

1. **Leading the Way: Designation of a lead entity** – The Affordable Housing Coalition is recommended as the organization that will oversee implementation of the plan. However, the Task Force suggested City Council do a Request for Proposals (RFP) because there are any number of non-profit agencies in Asheville.

2. **Developing the Infrastructure: HMIS** – A Homeless Management Information System, or HMIS, will link all services, screen for program eligibility, and gather data needed to monitor progress of implementation.
3. **Closing the Front Door: Prevention** – Better coordination of financial assistance and discharge planning for people leaving public institutions.
4. **Opening the Back Door: Housing First** – Development and implementation of a community-wide Housing First program that will include permanent housing for all homeless.
5. **Keeping it Going: Housing Plus** – A new approach to providing services to ensure that homeless individuals and families placed in permanent housing can remain housed in the long-term.

Regarding current costs, Mr. Jones said the City of Asheville currently spends approximately \$500,000 on services to prevent homeless and build supportive housing. Buncombe County spends approximately \$425,000 per year in supporting the maintenance and development of affordable housing. Buncombe County Department of Social Services spends \$935,500 per year in emergency cash assistance to prevent homelessness.

Regarding costs of the plan, Mr. Jones said, (1) Lead Entity: approximately \$45,000 per year if lead entity is a non-profit; (2) HMIS: \$20-25 in the first year; less in subsequent years; and (3) majority of service costs will be covered by Medicaid and other health sources; housing will need to be subsidized for the chronic homeless population at a rate of approximately \$4,200 per year per person.

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The next steps in this process would be for City Council and the Board of County Commissioners to adopt a joint resolution. In addition, the City and County staff need to work together to issue an RFP for the lead entity and prioritize steps to implementation of the Plan.

Ms. Leslee Kulba felt that the plan has a lot of good, however, she pointed out several concerns and felt that the cost was too much.

Mr. Tom Burkhart, Buncombe County resident, presented and familiarized City Council with information on an organization called The Healing Place. The Healing Place is a 501 (c) (3) non-profit organization, which is supported by gifts from individuals, corporations and foundations. The Wake County program is a rescue, recovery, and rehabilitation facility for homeless men with alcohol and drug addiction. He then responded to questions from Council about The Healing Place, some being, but are not limited to: what percentage of people who come to The Healing Place are either chronically or temporarily homeless; can the model of The Healing Place work in tandem with Asheville's 10-Year Plan; what is the operating budget in Wake County and in Louisville, Kentucky; and what amount is spent for medication.

Ms. Beth Maczka encouraged City Council to support and invest in this plan.

Ms. Christy Carter, representing the Hospitality House of Asheville, spoke that the plan is encouraging and the prevention piece is often overlooked. She encouraged Council to support the plan and, as a service provider she is willing to change the way they do things in order to see the plan come to fruition.

Upon inquiry of Councilman Davis, Mr. Jones said that there is no conflict with The Healing Place and this plan. He said that the Police Department sent two officers to review that plan in Wake County. He said that it is a separate issue whether City Council wants to spend the funds to set up that type of program, but certainly anything that helps the homeless population rid themselves of their addiction is a positive thing.

Ms. Robin Merrell, representing Pisgah Legal Services, said that this plan is a long-term solution and it could be 2-3 years before we really begin to see the effects of it. A social setting detox, or something akin to The Healing Place, could help us see results sooner but also help alleviate the problems that the Police Department is having with the homeless people inebriated downtown.

Councilman Newman noted that if we endorse the Housing First model, we are not in any way precluding specific concepts out there, like The Healing Place concept.

Mr. Jones said that there is an expectation that some service providers who deal with temporary care of the homeless may

disappear. One of the things that impressed him about the Task Force was that there were people on the Task Force whose organizations are going to be out of business if this works and yet they were supportive of that.

Councilman Newman thanked the people who worked on the Task Force. He felt this plan holds a real promise for change. This will affect the lives of the people who are in homeless situations and better their lives.

Mr. Jones said that this action is scheduled to go before the Buncombe County Commissioners on Tuesday, January 18, 2005, for their consideration of adoption.

Councilman Dunn would not be able to support this plan because it has no funding source. He would prefer to move forward after more information is received. He was also supportive of a smaller plan.

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Mayor Worley supported the plan because it adopts methods that have been proven across the nation that will best treat and support the homeless population and stands the best chance to get that population off of our streets. He thinks it is the fiscally responsible thing to do. This plan demonstrates what the hidden costs are of treating homeless. It's a paradigm shift for the agencies that are currently providing services to the homeless. The agencies will shift the way they use the funding they receive and use them in conjunction with the plan. Also, the resolution supports the plan and it does not contain a commitment for funding of any specific nature. He feels adoption of the plan opens the door to go out and start seeking revenue sources and to start talking with the current providers to shift the way that their revenues are utilized in conjunction with treating the homeless.

Councilwoman Jones said that we have a strong non-profit and private sector coming together and endorsing a plan. We have the base plan and when you go to funders, a little bit of government money goes a long way in that federal competition. If we are serious about helping the deserving poor, this makes a lot of sense.

Vice-Mayor Mumpower felt this is a good effort to address a real problem that affects us all. However, he does have concerns about the plan. He felt the plan is too complex and is reaching much further than prudent or realistic. With his background in social work, he understands there is a real tendency for good people who want to make a difference to reach for hope over realism. He felt you can't throw money and hope at this – it takes something more substantial. He's heard that this plan is different in that we are not going to require people be sober to get into our program. But the fact is that most of the people that deal with chronic substance abuse do it that way not because they want to but because they know that is the only way it works. The chronic abusers are controlled by their addiction. He felt that the research and statistics cited is somehow or another being idealized. It runs too contradictory to too large a body of information on chronic substance abusers. We have a long standing history in this country of coming up with statistics that justify a program and later determine that there was something missing. He has apprehensions that we might be doing that now. The argument is that we will be using current money to do this. But, when you look at the numbers of people that you will be able to realistically intervene with, we are not going to be able to do away with the money that we are spending right now. Realistically we will have to create new dollars on top of our old dollars. It is not realistic to say that we will achieve great savings from this. There is no way that housing is the key to the chronic homeless as they are so immersed in their addiction. He doesn't think it is realistic that the City of Asheville should intervene at a social services level. We have a tremendous hard drug problem, which is a dramatic City charge, and we don't have the money to hire the officers to fight the hard drug problems. We have budgetary limitations. We have too many people in this City who struggle to make a living and he doesn't think we should degrade those people by stepping into programs that we cannot realistically achieve. He doesn't believe we are realistically addressing human nature with this program. He feels we are being hopeful and have good intentions, but he doesn't see the realism.

Councilman Davis said that he has worked in close proximity with the homeless and sees it firsthand. He feels that we have to do something because what we have done is not really working. He said this is a good plan, but he's not so certain that we can make it function for that chronic group. He felt the five-prong approach is good and he can see programs like The Healing Place dovetailing in. He has some problems with the ambiguity of funding. If we adopt the plan we will be expected to put some funds into the plan and he doesn't know where we will get the funds to make this happen. He doesn't want this plan to be used as a tool for people to say "you said you would do it and we expect funding for it". It makes sense to take one step at a time to go forward starting with an RFP. But he doesn't feel good about representing the people who are barely making ends meet to pledge millions of dollars of their tax money for a very small increment of people. We could maybe work with The Healing Place at a set amount and it might be overall successful than what we are doing here. He thinks the plan is too open-ended right

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now. He respects what has been done and he would like to endorse this as a way to accomplish it, but by no means to open the pocketbook and say this is the way to go. There is a lot to be known about the plan, but it is a step.

Councilman Newman felt that the City has adopted other plans in the past and have not implemented them, so he felt that adoption of this plan would not be used to brow-beat us for funding. He felt the plan has concepts that are important. The Task Force has identified some things that are working and he felt the concepts are important enough that we want to say yes to the concepts. It is a vision. We are not at the point yet for the Task Force to bring us a first-year budget. Even if we agree to the concepts and the plan, that is not an indication of how it competes with all of the other important priorities that our community faces in terms of funding.

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

Councilman Newman moved for the adoption of Resolution No. 05-9. This motion was seconded by Councilwoman and carried on a 5-2 vote, with Vice-Mayor Mumpower and Councilman Dunn voting "no".

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VI. OTHER BUSINESS:

A. CLAIMS

The following claims were received by the City of Asheville during the period of December 3-16, 2004: Andy Piatek (Water), Regan Sheeley (Water), Phil Nesbitt (Streets), Robert Kuntz (Police), David L. Brown (Water) and Russell T. McCrary (Police).

The following claims were received by the City during the period of December 17-30, 2004: Robert E. Jones (Streets), Abdoulaye Tounkara (Streets), Teresa O'Connor (Police), Rita Dale Early (Streets), Dewanna Tucker (Sanitation), Linda M. Bryant (Sanitation), Lauren O'Leary (Sanitation) and George Whiteside (Sanitation).

The following claims were received by the City during the period of December 31, 2004 – January 7, 2005: Rebecca Ann Joyce (Water), Moses Simuel (Transit Services), Marika Von Viczay (Water), Rosemary Franklin (Water) and Robert Troy (Police).

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

VII. INFORMAL DISCUSSION AND PUBLIC COMMENT:

Mr. Gene Hamilton, representing Asheville Citizens for Quality Government, presented City Council with a statement which asked Council to consider the following priority objectives for 2005: (1) improving the quality of education received by every student in Asheville; (2) increasing the minimum wage through a just and living wage ordinance to \$8.50 per hour, with annual incremental increases each year to \$10.00 per hour in 2008; (3) improving the quality of public transportation for all citizens of Asheville.

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VIII. ADJOURNMENT:

Mayor Worley adjourned the meeting at 9:17 p.m.

CITY CLERK

MAYOR