

Regular Meeting

Present: Mayor Charles R. Worley, Presiding; Vice-Mayor R. Carl Mumpower; 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: Councilwoman Terry M. Bellamy

PLEDGE OF ALLEGIANCE

-
Mr. Timothy Dutcher, representing the Marine Junior ROTC Program at Asheville High School, led City Council in the Pledge of Allegiance.

INVOCATION

Councilman Newman gave the invocation.

I. PROCLAMATIONS:

Mayor Worley recognized Troop 26 from Camp Stevens in Arden, N.C.

Ms. Rebeccah Falk, reporter with the Asheville Citizen-Times, introduced a journalist from Belarus who is visiting the United States.

II. CONSENT AGENDA:

Vice-Mayor Mumpower asked that Consent Agenda Item "G" be removed from the Consent Agenda for individual discussion.

Councilman Dunn asked that Consent Agenda Item "F" be removed from the Consent Agenda for individual discussion.

A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON FEBRUARY 8, 2005, AND THE WORKSESSION HELD ON FEBRUARY 15, 2005

B. RESOLUTION NO. 05-35 - RESOLUTION APPROVING THE LIST OF CO-SPONSORED EVENTS FOR 2005

Summary: The consideration of approving a list of co-sponsored events for 2005.

Several years ago, the Parks and Recreation Department developed a matrix to assist in determining the minimum requirements for an event to be considered for co-sponsorship. This matrix includes specific points given for such areas as economic development, out of town spending, whether the event is designed for raising funds for local charities, or whether the event increases cultural awareness and understanding. A total of 37 events were approved last year resulting in a cost of approximately \$75,000. This year the number has been reduced to 31 and the cost to the city is approximately \$65,000.

Pros:

- Generates in excess of \$10 million dollars for the local economy
- Provides additional quality cultural programming and diversity
- Allows fundraising opportunities for charities

-2-

- Expands and enhances special events and festivals to the City

Cons:

- The city's financial contribution is \$65,000
- Events contribute to decline on infrastructure and equipment provided to the organizers.

The Department requests City Council's approval of this list that will provide authorization for in-kind support by the City.

City staff recommends City Council approval of the list for co-sponsored events in 2005.

RESOLUTION BOOK NO. 29 – PAGE 14

C. RESOLUTION NO. 05-36 - RESOLUTION ALLOWING FOR THE PROVISIONS FOR POSSESSION AND CONSUMPTION OF MALT BEVERAGES AND/OR UNFORTIFIED WINE AT THE EARTH DAY EVENT

RESOLUTION NO. 05-37 - RESOLUTION ALLOWING FOR THE PROVISIONS FOR POSSESSION AND CONSUMPTION OF MALT BEVERAGES AND/OR UNFORTIFIED WINE AT THE MOUNTAIN SPORTS FESTIVAL

RESOLUTION NO. 05-38 - RESOLUTION ALLOWING FOR THE PROVISIONS FOR POSSESSION AND CONSUMPTION OF MALT BEVERAGES AND/OR UNFORTIFIED WINE AT THE WOXL 96.5 BIRTHDAY BASH

RESOLUTION NO. 05-39 - RESOLUTION ALLOWING FOR THE PROVISIONS FOR POSSESSION AND CONSUMPTION OF MALT BEVERAGES AND/OR UNFORTIFIED WINE AT THE LARKIN WEDDING EVENT

RESOLUTION NO. 05-40 - RESOLUTION ALLOWING FOR THE PROVISIONS FOR POSSESSION AND CONSUMPTION OF MALT BEVERAGES AND/OR UNFORTIFIED WINE AT THE ASHEVILLE INDEPENDENT RESTAURANTS' TASTE OF ASHEVILLE

RESOLUTION NO. 05-41- RESOLUTION ALLOWING FOR THE PROVISIONS FOR POSSESSION AND CONSUMPTION OF MALT BEVERAGES AND/OR UNFORTIFIED WINE AT THE "ATLANTIS PARTY" EVENT

RESOLUTION NO. 05-42 - RESOLUTION ALLOWING FOR THE PROVISIONS FOR POSSESSION AND CONSUMPTION OF MALT BEVERAGES AND/OR UNFORTIFIED WINE AT THE 4TH OF JULY CELEBRATION AND FIREWORKS

RESOLUTION NO. 05-43 - RESOLUTION ALLOWING FOR THE PROVISIONS FOR POSSESSION AND CONSUMPTION OF MALT BEVERAGES AND/OR UNFORTIFIED WINE AT THE BELE CHERE FESTIVAL

RESOLUTION NO. 05-44 - RESOLUTION ALLOWING FOR THE PROVISIONS FOR POSSESSION AND CONSUMPTION OF MALT BEVERAGES AND/OR UNFORTIFIED WINE AT THE ASHEVILLE GOOMBAY FESTIVAL

RESOLUTION NO. 05-45 - RESOLUTION ALLOWING FOR THE PROVISIONS FOR POSSESSION AND CONSUMPTION OF MALT BEVERAGES AND/OR UNFORTIFIED WINE AT THE ASHEVILLE GREEK FESTIVAL

-3-

RESOLUTION NO. 05-46 - RESOLUTION ALLOWING FOR THE PROVISIONS FOR POSSESSION AND CONSUMPTION OF MALT BEVERAGES AND/OR UNFORTIFIED WINE AT THE ASHEVILLE DOWNTOWN ASSOCIATION EVENTS

RESOLUTION NO. 05-47 - RESOLUTION ALLOWING FOR THE PROVISIONS FOR POSSESSION AND CONSUMPTION OF MALT BEVERAGES AND/OR UNFORTIFIED WINE AT THE ASHEVILLE GRIZZLIES HOME GAMES

Summary: The consideration of resolutions making provisions for the possession and consumption of malt beverages and/or unfortified wine at various events.

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

- Earth Day 2005, scheduled for April 16, is a celebration committed to raising awareness of the environment and what every person can do to help maintain and improve our world.

- The Mountain Sports Festival, scheduled for April 29-May 1, is an event to draw attention to the vast opportunity for Asheville as a destination for adventure sports.
- The WOXL 96.5 Birthday Bash, scheduled for May 7 in City-County Plaza, will celebrate the three-year birthday of the radio station with food vendors and bands.
- The Larkin event is a wedding scheduled for May 15 on Wall St.
- The A.I.R. Taste of Asheville, scheduled May 21-22, is an event to promote the many independently-owned restaurants in the Asheville area.
- The “Atlantis Party”, as part of the Green Ball, produced by the Asheville Area Arts Council is annual event that serves as a fundraiser. This event is scheduled for June 25.
- Asheville Parks and Recreation produces the 4th of July Celebration and Fireworks spectacular as a community celebration and to attract visitors to the downtown area.
- For many years, the Bele Chere Board, in cooperation with the Asheville Parks and Recreation Department, has produced Bele Chere to bring both citizens and visitors to the Downtown area. This year the request is being made for July 29-30.
- The Asheville Goombay Festival is a unique celebration of African heritage and traditions. The Festival is co-sponsored by the Asheville Parks and Recreation Department and will be held August 26-28.
- The Asheville Greek Festival is a unique celebration of Greek heritage and traditions at City/County Plaza. The Festival is co-sponsored by the Asheville Parks and Recreation Department and will be held September 23-25.
- For many years, the Asheville Downtown Association has co-sponsored with the City of Asheville Parks and Recreation to bring both citizens and visitors to the downtown area. These events include: Moonlight Over Downtown and four Downtown After Five activities.

-4-

- The Asheville Grizzlies are a semi-professional sports team that seeks to serve alcohol at their home games throughout the summer at Memorial Stadium.

Pros:

- Allows fundraising opportunities for charities
- Generates economic impact for the community
- Provides additional quality cultural programming and diversity

Cons: None noted.

City staff recommends City Council approve the resolutions making provisions for the possession and consumption of malt beverages and/or unfortified wine at various events.

- Resolution No. 05-36 - **RESOLUTION BOOK NO. 29 – PAGE 16**
- Resolution No. 05-37 - **RESOLUTION BOOK NO. 29 – PAGE 18**
- Resolution No. 05-38 - **RESOLUTION BOOK NO. 29 – PAGE 20**
- Resolution No. 05-39 - **RESOLUTION BOOK NO. 29 – PAGE 22**
- Resolution No. 05-40 - **RESOLUTION BOOK NO. 29 – PAGE 24**
- Resolution No. 05-41 - **RESOLUTION BOOK NO. 29 – PAGE 26**
- Resolution No. 05-42 - **RESOLUTION BOOK NO. 29 – PAGE 28**
- Resolution No. 05-43 - **RESOLUTION BOOK NO. 29 – PAGE 30**
- Resolution No. 05-44 - **RESOLUTION BOOK NO. 29 – PAGE 34**
- Resolution No. 05-45 - **RESOLUTION BOOK NO. 29 – PAGE 36**
- Resolution No. 05-46 - **RESOLUTION BOOK NO. 29 – PAGE 38**
- Resolution No. 05-47 - **RESOLUTION BOOK NO. 29 – PAGE 40**

D. RESOLUTION NO. 05-48- RESOLUTION ACCEPTING DISTANT VIEW DRIVE IN SOUTH ASHEVILLE AS A

CITY-MAINTAINED STREET

Summary: The consideration of a resolution to accept Distant View Drive in South Asheville as a publicly maintained street.

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

Distant View Drive is a developer-constructed street that has an average paved width of 20 feet and a length of 0.48 miles. Engineering Department staff inspected this street and finds it to be constructed in accordance with the approved standards.

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

Pros:

- The City will receive Powell Bill funds from the N.C. Dept. of Transportation to maintain the roadway.
- Homes will be constructed on this roadway increasing the tax base in the City of Asheville.

Cons:

- Powell Bill funds will not cover 100% of the cost to maintain the street.

City staff recommends City Council accept Distant View Drive in South Asheville as a City maintained street.

-5-

RESOLUTION BOOK NO. 29 – PAGE 42

E. RESOLUTION NO. 05-49 - RESOLUTION CONFIRMING APPOINTMENTS TO THE MINORITY BUSINESS COMMISSION

Summary: The consideration of a resolution confirming the appointment of members to the Minority Business Commission.

On May 26, 1998, City Council adopted Resolution No. 98-63 adopting a City-County Minority Business Plan.

The composition of the Minority Business Commission consists of 11 members, 9 of whom are nominated by various groups and two of whom are minority business owners nominated by the Minority Business Commission. All nominees are considered and appointed by both the City Council and County Board of Commissioners.

Ms. Karen Ballard, owner of Productive Consulting Resources, has been named by the Minority Business Commission to replace Ms. Claudia Thomas, owner of CAT Network Systems, whose term expired August 2004, as a minority business owner representative. Ms. Ballard's term will run through August 2006.

Ms. Althea Gonzalez has been named by Asheville-Buncombe Community Relations Council (ABCRC) to represent them on the Minority Business Commission. Ms. Gonzalez has been nominated to replace Clara Jeter who resigned. Ms. Gonzalez's term will run through August 2006.

Ms. Althea Goode has been named by Eagle/Market Streets Development Corporation (EMSDC) to represent them on the Minority Business Commission. Ms. Goode has been nominated to replace Thomas Kling who is deceased. Ms. Goode's term will run through August 2007.

Mr. David Price has been named by the Associated General Contractors of America to represent them on the Minority Business Commission. Mr. Price has been nominated to replace Wendell Howard whose term expired August 2004. Mr. Price's term will run through August 2007.

The following MB Commission members whose term expired August 2004 have requested reappointment:

Ms. Connie Mitchell	American Institute of Architects (August 2007)
Ms. Carol Hensley	Asheville Area Chamber of Commerce (August 2007)
Mr. Marvin Vierra	Asheville Business Development Center (August 2006)
Ms. Latrelle Higgins	Council of Independent Business Owners (August 2007)
Ms. Valerie Dennis	Minority Business Owner (Anaya Gallery) - (August 2007)

City staff recommends City Council adopt a resolution confirming the appointments to the Minority Business Commission.

RESOLUTION BOOK NO. 29 – PAGE 43

F. RESOLUTION APPROVING LOANS FROM THE CITY'S HOUSING TRUST FUND

-6-

This item was pulled off the Consent Agenda for individual discussion.

G. RESOLUTION ADOPTING THE ASHEVILLE PEDESTRIAN PLAN UPDATE

This item was pulled off the Consent Agenda for individual discussion.

H. RESOLUTION NO. 05-50 - RESOLUTION SETTING THE DATE FOR A PUBLIC HEARING ON MARCH 8, 2005, TO CONSIDER THE VOLUNTARY ANNEXATION OF THREE LOTS LOCATED AT THE CORNER OF BREVARD AND SARDIS ROADS

Summary: The consideration of a resolution setting the date for a public hearing on March 8, 2005, to consider the voluntary annexation of three lots located at the corner of Brevard and Sardis Road.

John and Vaso Barlas and Simi, LLC (of which Mr. Barlas is the sole member/owner/ manager) have petitioned the City for the annexation of three lots (totaling 1.26 acres) they own located at the corner of Brevard and Sardis roads. This area is contiguous to the existing corporate limits and qualifies for annexation by petition as set forth in N. C. Gen. Stat. sec. 160A-31.

Pursuant to N. C. Gen. Stat. sec. 160A-31 such petitions must be investigated by the City Clerk for sufficiency in accordance with state law. This investigation has been completed and the Certificate of Sufficiency accompanies this petition request.

The next steps in this process are for City Council to fix the date for the public hearing on this matter. The petitioner has requested that the annexation be effective on the date of adoption of the ordinance, if City Council decides to proceed with this request.

City staff recommends City Council adopt the resolution setting the date of March 8, 2005, as the date for public hearing on the annexation petition.

RESOLUTION BOOK NO. 29 – PAGE 45

I. RESOLUTION NO. 05-51 - RESOLUTION IN SUPPORT OF THE COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM (CDBG) PROGRAM

Summary: The consideration of a resolution in support the Community Development Block Grant (CDBG) Program

The President's draft budget for federal fiscal year 2006 proposes the elimination of the CDBG program, along with 17 other smaller programs. The total Fiscal Year 2005 funding of these programs was \$5.6 billion. A new program called "Strengthening America's Communities" is proposed for the Commerce Department, funded at only \$3.71 billion. The program is described as "a source of funding for planning, infrastructure development, and business financing ... [for] communities most in need of assistance". Little is known about how this program might operate.

The City of Asheville has used the CDBG program since its start in 1974 to revitalize four blighted city neighborhoods, renovate many hundreds of units of housing, provide land and infrastructure for several hundred new homes, invest in downtown economic development, and support key social service programs. Aside from downtown economic revitalization, all funds have been used to benefit low income individuals and low-income neighborhoods.

-7-

The loss of CDBG funding would cause serious setbacks in the progress we are making to provide low-income people with decent housing opportunities and to address homelessness. It is unclear how much the City would benefit from the new program, which has only 66% of the funding for the programs it replaces and will apparently be targeted to areas of highest job loss.

Advantages:

- Authorizes the Mayor to express the City's concern to our Congressional representatives
- Adds the City's voice to that of the National League of Cities, US Conference of Mayors, National Community Development Association, and other organizations.

Disadvantages: None

Staff recommends approval of the resolution supporting the continuation of the CDBG program.

RESOLUTION BOOK NO. 29 – PAGE 48

J. RESOLUTION NO. 05-52 - RESOLUTION APPOINTING A MEMBER TO THE PUBLIC ART BOARD

Summary: A vacancy exists on the Public Art Board until December 31, 2007.

At the City Council worksession on February 15, 2005, City Council instructed the City Clerk to prepare the proper paperwork to appoint Barry Pate as a member to the Public Art Board to serve the unexpired term of Mr. Jonathon Flaum, term to expire December 31, 2007, or until his successor has been appointed.

RESOLUTION BOOK NO. 29 – PAGE 49

K. RESOLUTION NO. 05-53 - RESOLUTION AUTHORIZING THE CITY TO CONVEY AN EASEMENT FOR POWER LINE RELOCATION

Summary: The consideration of a resolution authorizing the City to consider an easement for power line relocation.

Shortly after the beginning of the year, Buncombe County began construction on the addition to the County jail on the property located on the east or rear side of City Hall, formerly a City parking lot. In connection with this construction, it is necessary to re-route the power transmission lines in the block of Marjorie Street that borders the property where construction is occurring. This re-routing will include two new poles along Marjorie Street, and transversing the northeast corner of the City's property at Marjorie and Valley Streets. Two poles and some length of the lines will be removed. The City's property will not be transversed over a buildable portion of the lot, and the easement will not interfere with any City plans for use of the lot. Although some consideration was given to requiring the lines to be buried, it is not being required at this time. There will, however, be a net reduction in the amount of overhead lines.

If Council approves of this conveyance, adoption of the resolution is recommended.

RESOLUTION BOOK NO. 29 – PAGE 50

-8-

L. RESOLUTION NO. 05-54 - RESOLUTION AMENDING THE 2005 CITY COUNCIL MEETING SCHEDULE TO DELETE THE MARCH 15, 2005, WORKSESSION AND RESCHEDULE THAT WORKSESSION UNTIL MARCH 16, 2005

RESOLUTION BOOK NO. 29 – PAGE 52

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.

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

ITEMS PULLED OFF THE CONSENT AGENDA FOR INDIVIDUAL DISCUSSION

-

RESOLUTION NO. 05-55 - RESOLUTION ADOPTING THE ASHEVILLE PEDESTRIAN PLAN UPDATE

Summary: The consideration of a resolution adopting the Asheville Pedestrian Plan Update.

The purpose of this plan is to keep the City Pedestrian Thoroughfare Plan current and useful to the City and the public. This update is written to provide City staff and elected officials with timely, technical information to make decisions on where to invest limited resources and how to improve policies and procedures that improve pedestrian safety and infrastructure.

The Plan was developed in coordination with the Asheville Bicycle and Pedestrian Task Force, City staff from the Engineering, Public Works, Planning, and Parks and Recreation Departments, and public comments and requests on sidewalk and pedestrian safety needs collected over the past year.

This project is Task # 3 of Goal #3 under the Natural and Built Environment areas of the City's Strategic Plan to increase street and sidewalk connections.

The positives of the Pedestrian Plan update are that it:

- Updates the "Needed Linkages Map" that regulate where sidewalk construction is required and the *fee-in-lieu* option may not be used (note: it does not amend the sidewalk regulation itself, but does provide recommendations on how to improve those regulations to include greenways, transit amenities and other pedestrian and ADA related improvements).
- Better positions the City to continue to pursue funding from the NCDOT Division of Bicycle and Pedestrian Transportation and through the Transportation Improvement Plan and Long Range Transportation Plan processes;
- Establishes a working sidewalk and pedestrian safety request list, identified priorities list, and criteria for future prioritization and project selection processes.
- Provides recommendations for changes to policies and procedures that will facilitate implementation of sidewalk and greenway construction, internal procedure and budgeting and grants management.

The negatives of this project are that it will:

- Require time from City staff and the Planning and Zoning Commission to implement the recommendations of the Plan.

-9-

Staff recommends that City Council adopt the Asheville Pedestrian Plan Update.

Vice-Mayor Mumpower felt that City staff has crafted a well-written document and they are pursuing the policies that City Council has asked them to pursue. He does, however, have a hard time with activities that involve illusions of action and this document represents one of those activities. He said we have identified \$30 Million of sidewalk and related needs in the City and we budget \$50,000 a year. Ultimately approximately \$150,000 a year, including monies from developers and grants, goes towards sidewalks. He felt this is an unrealistic budget and didn't think we should invest staff time and energy into activities that represent illusions of action. He felt this document is just that. He felt that adoption of this Plan is a misguided policy approach.

Councilman Newman said this is a long-range Plan that identifies about \$30 Million in pedestrian infrastructure needs in the City. He felt it was good to know what the needs are and this Plan tells us what a really high quality pedestrian infrastructure and sidewalk network would look like in the City if we make a sustained commitment to move in that direction. When the original Plan was adopted about five years ago, we didn't have the resources to make a lot of progress. He felt that rather than scaling back the Plan, he felt we should scale up the resource investment that we are making in our pedestrian environment.

Councilwoman Jones felt this Plan will also facilitate more physical activity for our community.

Vice-Mayor Mumpower said that we have a lot of cow trails in Asheville where it's obvious that people walk and need a sidewalk. He felt that rather than creating an elaborate infrastructure that we hope people use, we should take of the places that we already know people do use.

Councilman Davis felt this is a very good Plan but only dedicating \$200,000 a year to this \$30 Million Plan is not realistic. He understands that we do use the Plan to help obtain grants for parks, greenways, etc. and doesn't want to reject it at all. He would support it, but felt we have many plans that are not funded. He felt that in the future we need to be more realistic about where we are going with the Plan and make a conscious effort to do better with sidewalks and pedestrian efforts.

Mayor Worley said that one essential function of a City Council is to gather information and the other is to make decisions based on that information. If we didn't have this Plan we wouldn't be able to know what our needs are or the magnitude of our

needs. This Plan sets some priorities and better positions us to pursue funding for grants. He would support adoption of the Plan and then during our budget process we can set the priorities among other competing needs.

Councilman Newman moved that we adopt the Asheville Pedestrian Plan Update and direct staff to begin exploration of dedicated funding source options to more meaningfully implement this Plan, especially the high priority aspects of the Plan. This motion was seconded by Councilwoman Jones.

Councilman Newman felt we should look at dedicated funding because, as with other transportation plans, the price tag is so large that if we implement a Plan like this on a year to year basis, we will never get some of the important priorities met. He felt we needed to ask staff to begin working with Council to identify different funding options.

After a discussion, Mayor Worley moved to amend the motion to only adopt the Asheville Pedestrian Plan Update. This motion was seconded by Councilman Davis. After further

-10-

discussion, said motion carried on a 4-2 vote, with Councilwoman Jones and Councilman Newman voting "no."

The original amended motion was then voted on and carried on a 4-2 vote, with Vice-Mayor Mumpower and Councilman Dunn voting "no."

RESOLUTION BOOK NO. 29 – PAGE 52

RESOLUTION NO. 05-56 - RESOLUTION APPROVING LOANS FROM THE CITY'S HOUSING TRUST FUND

Summary: The consideration of a resolution allocating \$370,000 in Housing Trust Fund loans for affordable housing development.

This is the fifth annual allocation of funds from the City's Housing Trust Fund (HTF). The 2005 budget included an appropriation of \$600,000 for the HTF and \$340,000 has accrued in loan repayments, making a total of \$940,000 available for lending. The application process was opened on November 1, 2004, and four applications were received by the January 7th deadline, three of which were viable applications.

The applications were evaluated by a panel of outside experts and then reviewed by the Housing and Community Development Committee. The HCD Committee has recommended funding the following three projects:

Neighborhood Housing Services – 12 units, scattered sites	\$240,000 (2 years at 2%)
Neighborhood Housing Services – 18 units, Brotherton Ave.	\$ 50,000 (2 years at 2%)
Paul Saylor – 2 units, 7 Oakview Road	<u>\$ 80,000</u> (3 years at 2%)
Total (32 units)	\$370,000

It is recommended that the unallocated funds in the amount of \$570,000 be made available on a first come first served basis to qualified projects until exhausted, subject to all HTF criteria, staff review, and Housing and Community Development Committee recommendation.

Advantages:

- Assists the development of 32 units of affordable housing
- 90% of units are for homeownership (last year's projects were 100% rental)
- Remaining funds will be available to developers who were not ready to apply during the short initial application period.

Disadvantages: None

Staff recommends adoption of the Housing Trust Fund loans listed above and the first come first served availability of the remaining unallocated HTF funds.

Mr. Walter Plaue felt that the Housing Trust Fund program needs to be revisited. He felt that something must be wrong when we have a shortage of low income housing and we have a surplus of funds in the Housing Trust Fund Program.

Councilman Dunn was concerned about the unallocated funds being made available on a first come first served basis. He

felt the Housing Trust Fund needed to be revisited to see why the private sector is not coming forward.

-11-

Councilman Newman supported approving the three loans and would support bringing the unallocated funds up at the next Housing & Community Development Committee meeting. He felt there may be ideas to make the process more effective and appeal more to the community. Councilwoman Jones concurred.

Mayor Worley suggested the resolution be amended to delete the following wording: "The unallocated HTF funds be made available on a first come first served basis subject to all HTF criteria, staff review, and recommendation by the Housing and Community Development Committee."

Field Services Coordinator Ed Vess said that the intent of City staff was not to run projects through on a first come first served basis without any consideration of criteria and certainly not without bringing it back to the Housing & Community Development Committee. They would all be subject to all Housing Trust Fund criteria, staff review and recommendation by the Housing & Community Development Committee. He said they are trying to make sure that we get the best projects and the first come first served was merely to say that the loans would no longer be funded on an annual basis but they would be available as far as the money would go. Again, this was not staff's intent to try to circumvent the Housing & Community Development Committee or any of the criteria established for a quality project.

Councilman Dunn moved to amend Resolution No. 05-56 to only approve the three loans outlined above; and that the Housing & Community Development Committee be authorized to look at our means by which we will continue to address the funding issue for applicants for the Housing Trust Fund and report back to the City Council. This motion was seconded by Councilwoman Jones.

Vice-Mayor Mumpower felt this would be an appropriate time to have a policy discussion on the Housing Trust Fund since it has been in existence for approximately five years. He felt it would be good for the Housing & Community Development to discuss the inequities of affordable housing and look for ways that we might more creatively and enthusiastically respond.

Councilwoman Jones said that the Housing & Community Development Committee works really hard, and she wasn't sure that they should make a lot of policy decisions based on one year of data. She felt they needed to look at the trends and gather more information.

The motion made by Councilman Dunn and seconded by Councilwoman Jones carried unanimously.

RESOLUTION BOOK NO. 29 – PAGE 53

III. PUBLIC HEARINGS:

A. PUBLIC HEARING TO CONSIDER THE ISSUANCE OF A CONDITIONAL USE PERMIT FOR THE BUNCOMBE COUNTY EMERGENCY MANAGEMENT FACILITY LOCATED ON 129 S. LEXINGTON AVENUE FOR A PROPOSED 911 CALL AND COMMUNICATION CENTER, AND EMERGENCY DISPATCH FACILITY

On October 7, 2004, a letter was received from Buncombe County Manager Wanda Greene requesting "that the hearing on the Conditional Use Permit application for the Union Transfer Building (tax lots PIN 9648.06-48-0774 and 0445), located on Hilliard Avenue, be delayed until the fourth Tuesday in February, 2005." On October 12, 2004, Vice-Mayor Mumpower moved to continue this public hearing until February 22, 2005. This motion was seconded by Councilwoman Bellamy and carried unanimously.

-12-

On February 8, 2005, Buncombe County Manager Wanda Greene notified the City that "after receiving your email that City Planning staff would not support putting the ambulances at Union Transfer, we put the building up for upset bid. We have accepted an offer on the building." Therefore, this conditional use permit is withdrawn and no public hearing is necessary.

B. PUBLIC HEARING TO CONSIDER THE CONDITIONAL USE ZONING OF FOUR LOTS ON TUNNEL ROAD FROM RS-8 RESIDENTIAL SINGLE-FAMILY HIGH DENSITY DISTRICT TO HIGHWAY BUSINESS DISTRICT / CONDITIONAL USE; AND THE ISSUANCE OF A CONDITIONAL USE PERMIT FOR A PROPOSED MULTI-USE BUILDING

ORDINANCE NO. 3214 - ORDINANCE REZONING FOR FOUR LOTS ON TUNNEL ROAD FROM RS-8 RESIDENTIAL SINGLE-FAMILY HIGH DENSITY DISTRICT TO HIGHWAY BUSINESS DISTRICT / CONDITIONAL USE

ORDINANCE NO. 3215 - ORDINANCE GRANTING A CONDITIONAL USE PERMIT FOR FOUR LOTS ON TUNNEL ROAD FOR A PROPOSED MULTI-USE BUILDING

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.

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 5:56 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 Blake Esselstyn submitted into the record City Exhibit 1 (Affidavit of Publication), City Exhibit 2 (Certification of Mailing of Notice to Property Owners); and City Exhibit 3 (Staff Report).

Mr. Esselstyn said that this is the consideration of a request to rezone four lots on Tunnel Road from RS-8 Residential Single-Family High Density District to Highway Business District/Conditional Use, and a request to issue a conditional use permit for a proposed multi-use building.

-13-

The Asheville City Development Plan 2025 lists the "Smart Growth Land Use Policies" adopted by the Asheville City Council in 2000. The Commercial Area Redevelopment policies encourage projects such as this one that will add street trees and improve pedestrian access. The proposed project will also preserve open space beyond what is required, complying with another of the plan's goals.

As mentioned above, the proposed project would improve sidewalk connectivity and set aside open space. While it would take away a small area of land currently used for housing, it has the potential to provide services within a short distance of neighboring residential areas.

Recent zoning actions include: (1) Three parcels at the intersection of Tunnel Rd and Grandview PI (1/3 mile east of this project) were rezoned from HB/RS8 to CBI (Approved December 2004); and (2) In May 2004, requests to have three parcels at 968 Tunnel Road, 966 Tunnel Road, and 441 Governor's View Road (1/3 mile west of this project) rezoned from RM-6 to CBI were denied by the Planning and Zoning Commission.

The subject properties are being considered for a retail and office development with associated parking, located on 1.75 acres on the south side of Tunnel Road (Attachment to City Exhibit 3 – Aerial Photo). The area on which the proposed project would be built consists of four parcels within the City of Asheville's corporate limits (Attachment to City Exhibit 3 – Location Map). Currently two of the four parcels are zoned HB, and two zoned partially HB, partially RS-8. The applicant seeks to rezone the split-zoned parcels to entirely HB. Office and retail use are permitted uses in the HB district. The project has a total building area of 22,549 square feet, placing it within the acceptable structure size standards and exempting it from open space requirements. Sidewalks are shown as required by Sec. 7-11-6 of the Unified Development Ordinance (UDO). The plan includes a Type "C" buffer where the property adjoins residential lots, which is the appropriate buffer between that use and the proposed use

(Attachments to City Exhibit 3 – Concept Plan with Elevation Drawings).

At their January 19, 2005, meeting, the City of Asheville Technical Review Committee (TRC) reviewed the conditional use rezoning and concept plan proposal and made a positive recommendation that the project be forwarded to the Planning and Zoning Commission, stipulating the following project conditions summarized as follows. Please note that the plans accompanying this report have been revised since the TRC meeting to address a number of the conditions mentioned in the TRC staff report:

-
- 1. Nearby streams must be added to plans.
- 2. Alternative compliance (including extra plantings and open space) must be specified to address parking lot planting strip and other buffer compliance.
- 3. Topography needs to be included on or with plans.
- 4. The southern portion of the lot adjacent to Swannanoa River Road must be added to the project as open space.
- 5. The widths of driveway radii need to be redefined.

-

At their February 2, 2005, the Planning and Zoning Commission approved the application unanimously.

-

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

-14-

- 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.

Though some grading and site disturbance will be required, the proposed project's design will mostly preserve the existing topographic relationships. Provided the applicant employs proper erosion control measures and the proposed landscaping and mitigation, the nearby streams should not be adversely affected.

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

The proposed use would provide an upgrade from the existing commercial development along the southern side of Tunnel Road, providing a likely improvement in value for neighboring commercial property. The orientation of the project towards Tunnel Road, as well as its position at a different vertical level than the adjacent residential lots would minimize any effect it would have on those properties' values.

- 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 Sonic restaurant to the west and retail complex to the northeast are uses of a similar scale, bulk, and coverage to the proposed development. The residential areas to the south and west are of a different character, but the topography mentioned above arguably puts the two uses in somewhat different plane. Required landscaped buffering will further separate the differing uses. The proposed project would mostly represent a modernization of commercial terrain with a perceptible, though less significant, expansion into the portion of parcel currently zoned residential.

- 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. The Commercial Area Redevelopment policies encourage projects such as this one that will add street trees and improve pedestrian access. The proposed project will also preserve open space beyond what is required,

complying with another of the plan's goals. While it would take away a small area of land currently used for housing, it has the potential to provide services within a short distance of neighboring residential areas.

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

-15-

The project's location on Tunnel Road and near Swannanoa River Road ensures access to major transportation facilities and other services. Transit routes 13 and 28 serve the 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 entrances and exits are similar to those currently in place.

Pros

- Upgrade of existing commercial area
- Furthering of Plan 2025 goals as mentioned above
- Potential to provide services convenient to neighboring residents

Cons

- Loss of one single family residential house lot.
- Commercial presence will be more visible to adjacent residential areas than is currently the case.

Staff concurs with the Planning and Zoning Commission's recommendation of approval of the rezoning request from RS-8 to HB with approval of the associated conditional use permit and conceptual site plan.

Mr. Carroll Hughes, architect and planner representing the owners. Mediterranean Property Management LLC, spoke in support of the project in that he feels it will be a visual and economic improvement to the area.

Mr. Fred English spoke in opposition to this project in that east Asheville has enough traffic and shops and they don't need anymore.

After hearing no rebuttal, Mayor Worley closed the public hearing at 6:09 p.m.

In response to Vice-Mayor Mumpower, Mr. Esselstyn said that one person who rents in the area was concerned about construction noise. He has received no other negative feedback.

Upon inquiry of Vice-Mayor Mumpower, using City Exhibit 4 (topographical map) Mr. Esselstyn explained how the topography of the area provides a buffer to the residential area on the south side.

In response to Councilman Newman, using City Exhibit 5 (earlier Concept Plan), Mr. Esselstyn reviewed with Council the parking spaces.

Upon inquiry of Councilman Davis, Planning & Development Director Scott Shuford reviewed with Council what is included in a Type "C" buffer (City Exhibit 6).

Vice-Mayor Mumpower moved to adopt Ordinance No. 3214 to approve the conditional use rezoning of four lots on Tunnel Road from RS-8 Residential Single-Family High Density District to Highway Business District/Conditional Use. This motion was seconded by Councilman Davis and carried unanimously.

ORDINANCE BOOK NO. 22 – PAGE 7

-16-

Vice-Mayor Mumpower moved to adopt Ordinance No. 3215 to issue a conditional use permit for four lots on Tunnel Road by adopting the proposed conceptual site plan and uses for the Nova Retail and Office Development, subject to the conditions that

all outstanding TRC conditions are met. This motion was seconded by Councilwoman Jones and carried unanimously.

ORDINANCE BOOK NO. 22 – PAGE 9

C. PUBLIC HEARING TO CONSIDER AN AMENDMENT TO THE UNIFIED DEVELOPMENT ORDINANCE FOR THE ADDITION OF THE URBAN PLACE DISTRICT

ORDINANCE NO. 3216 - ORDINANCE CONSIDER AN AMENDMENT TO THE UNIFIED DEVELOPMENT ORDINANCE FOR THE ADDITION OF THE URBAN PLACE DISTRICT

Mayor Worley opened the public hearing at 6:20 p.m.

Planning & Development Director Scott Shuford said that this is the consideration of an amendment to the Unified Development Ordinance for the addition of the Urban Place District. This public hearing was advertised on February 11 and 18, 2005.

This code amendment is intended to implement several infill development, community compatibility, and economic development goals and strategies of the Asheville City Development Plan 2025 through the creation of a new zoning district that allows for and provides incentives for mixed use development. Asheville has a number of areas where mixed use development has been proposed as part of neighborhood plans or other planning initiatives. Additionally, this is one of several actions being proposed by staff to simultaneously implement portions of the Urban Riverfront Master Plan and address redevelopment of flooded areas.

The new zoning district would be somewhat similar to the Neighborhood Corridor District (NCD), although it would differ in being oriented more toward node development than to linear development along a corridor. It allows a wider range of uses and has less stringent design standards than those in the NCD.

Mr. Shuford explained changes from the worksession, which include: a 5% cap on open space and how sidewalks can be counted, a revised purpose statement, and minimum width of 10 feet for sidewalks.

The amendment has been routed to CAN, CREIA, and CIBO for review and comment. There was no public comment at the Planning and Zoning Commission meeting.

Pros –

- Several goals and strategies of the 2025 Plan and Urban Riverfront Master Plan will be implemented.
- A wider range of land uses would be available to property owners.

Con – None noted.

The Planning and Zoning Commission recommended approval of this code amendment on February 2, 2005, by a vote of 7-0. City staff recommends approval of the proposed code amendment as well.

-17-

Mr. George Keller, resident of downtown, suggested that the ordinance contain a list of non-permitted uses in the district, not permitted uses.

Mr. Shuford responded to Mr. Keller. He said that the Planning & Zoning Commission reviewed in detail the permitted uses. He said that we have a mixed of form-based ordinances and a standard zoning ordinance and in this case they followed the standard ordinance for the permitted uses.

Mayor Worley closed the public hearing at 6:34 p.m.

Upon inquiry of Vice-Mayor Mumpower, Mr. Shuford said that in order to ensure that different groups receive the ordinances, which City staff e-mail out to them for review and comment, they could include some kind of confirmation that they did receive it.

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. 3216 to include the amendments. This motion was

seconded by Councilman Dunn and carried unanimously.

ORDINANCE BOOK NO. 22 – PAGE

IV. UNFINISHED BUSINESS:

V. NEW BUSINESS:

A. RESOLUTION NO. 05-57 - RESOLUTION APPOINTING MEMBERS TO THE COMMUNITY RELATIONS COUNCIL

Vice-Mayor Mumpower said that the terms of Leslie Hennessee and Dan Comer, as members on the Asheville-Buncombe Community Relations Council, expired on December 31, 2004.

At the City Council worksession on January 18, 2005, City Council instructed the City Clerk to prepare the proper paperwork to reappoint Ms. Hennessee to serve an additional three year term, term to expire December 31, 2007, or until her successor has been appointed.

Also at the City Council worksession on February 15, 2005, City Council instructed the City Clerk to arrange interviews for Barbara Marlowe and Jose Ruiz.

After Council members spoke in support of the candidates interviewed, Barbara Marlowe received no votes and Jose Ruiz received 7 votes. Therefore, Jose Ruiz was appointed as a member to the Community Relations Council to serve a three year term, term to expire December 31, 2007, or until his successor has been appointed.

RESOLUTION BOOK NO. 29 – PAGE 54

B. RESOLUTION NO. 05-58 - RESOLUTION APPOINTING A MEMBER TO THE EDUCATIONAL ACCESS CHANNEL COMMISSION

Vice-Mayor Mumpower said that a vacancy exists on the Educational Access Channel Commission until June 1, 2006.

-18-

At the City Council worksession on February 15, 2005, City Council instructed the City Clerk to arrange interviews for James Hood, Lewis Isaac and David Bonyun.

After Council members spoke in support of the candidates interviewed, James Hood received no votes, Lewis Isaac received no votes, and David Bonyun received 7 votes. Therefore, David Bonyun was appointed as a member to the Educational Access Channel Commission to serve the unexpired term of Mr. Nat Myers, term to expire June 1, 2006, or until his successor has been appointed.

RESOLUTION BOOK NO. 29 – PAGE 55

VI. OTHER BUSINESS:

A. CLAIMS

The following claims were received by the City of Asheville during the period of February 11-17, 2005: Laura Oliver (Civic Center), O'Reilly Auto Parts (Sanitation), Carolyn Ware (Transit Services), Sherwin Pevaroff (Water), Michael Outar (Water), Jonathan Schrier (Water), Patsy Riddle (Police) and Martha Burgess (Water).

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, said that there are some very serious deficiencies in education in American in general and in Asheville in particular. He urged City Council to improve the quality of public education.

Ms. Patsy Brison, attorney representing Mr. Fletcher Carter, presented City Council with a letter and pictures outlining their concern that a City-owned street (Stevens Street) was improperly closed. She explained that Mr. Carter previously had access to the rear of his property from Stevens Street. However, the pavement for Stevens Street has been ripped up by River Bend Business Properties and/or Horne Properties and there is no longer adequate access to the rear of Mr. Carter's property from Stevens Street. She asked that the City require Stevens Street to be reopened. In the alternative, they request that Horne Properties and River Bend Business Properties be required to follow the appropriate statutory procedure regarding the closing of Stevens Street and that, before City Council approves the closing of Stevens Street, adequate access to the rear of Mr. Fletcher's property be provided by Horne Properties Inc. and River Bend Business Properties. In addition, she requested that Council investigate whether or not Horne Properties has violated their conditional use permit. City Attorney Oast said that he is currently investigating this concern and will report back to Council as soon as possible.

Mr. Walter Plaue felt it was time the City reviewed the Housing Trust Fund policy to see why the private sector is not responding.

Mr. Fred English felt that east Asheville is being saturated with commercial developments and traffic.

Mr. Mike Fryer spoke about hiring outside attorneys to defend the City in annexation lawsuits.

Closed Session

At 7:02 p.m., Councilman Newman moved to go into closed session for the following reasons: (1) To consult with an attorney employed by the City about matters with respect to

-19-

which the attorney-client privilege between the City and its attorney must be preserved. The statutory authorization is contained in G.S. 143-318.11(a)(3); and (2) To establish or to instruct the City's staff or negotiating agents concerning the position to be taken by or on behalf of the City in negotiating the terms of a contract for the acquisition of real property by purchase, option, exchange or lease. The statutory authorization is contained in G.S. 143-318.11(a)(5). This motion was seconded by Councilman Dunn and carried unanimously.

At 8:45 p.m., Councilman Dunn moved to come out of closed session. This motion was seconded by Councilman Davis and carried unanimously.

VIII. ADJOURNMENT:

Mayor Worley adjourned the meeting at 8:45 p.m.

CITY CLERK

MAYOR