

Regular Meeting

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

Absent: None

PLEDGE OF ALLEGIANCE

- Councilman Davis led City Council in the Pledge of Allegiance.

INVOCATION

Vice-Mayor Mumpower gave the invocation.

I. PROCLAMATIONS:

Councilwoman Bellamy proudly showed a picture of her new beautiful baby girl "Imani Bellamy".

A. RECOGNITION OF CITY OF ASHEVILLE RESERVISTS JAMES WRIGHT, DAVID SAUER AND PATRICK CRUDUP

On behalf of City Council, Mayor Worley recognized James Wright from the 210th Military Police Unit of the Army National Guard, employee with the Asheville Police Department; David Sauer, part of a Medical Unit of the Naval Reserves, employee with the Asheville Fire Department; and Patrick Crudup from the 854th Heavy Combat Engineers Unit of the Army Reserves, employee with the Asheville Fire Department and Asheville Parks & Recreation Department. He welcomed them home from their lengthy tour of duty.

B. PROCLAMATION PROCLAIMING MARCH 28-APRIL 3, 2005, AS "NATIONAL COMMUNITY DEVELOPMENT WEEK"

Mayor Worley read the proclamation proclaiming March 28-April 3, 2005, as "National Community Development Week" in the City of Asheville. He presented the proclamation to Councilman Dunn, Chair of the Housing and Community Development Committee, and Community Development Director Charlotte Caplan. They briefed Council on some statistics of the Community Development Block Grant Program.

II. CONSENT AGENDA:

Mayor Worley announced that Consent Agenda "H" will be removed from the Consent Agenda and from Council consideration.

Mayor Worley asked that a resolution amending the 2005 scheduled City Council meetings be added to the end of the Consent Agenda.

Councilwoman Jones asked that Consent Agenda Items "F" and "G" be removed from the Consent Agenda for individual discussion.

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Councilwoman Bellamy asked that Consent Agenda Item "A" be removed from the Consent Agenda for an individual vote.

A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON MARCH 8, 2005

This item was removed from the Consent Agenda for an individual vote.

B. RESOLUTION NO. 05-71 - RESOLUTION ADOPTING THE BUNCOMBE COUNTY HAZARD MITIGATION PLAN

Summary: The consideration of a resolution adopting the Buncombe County Hazard Mitigation Plan.

The City of Asheville is required to adopt a Hazard Mitigation Plan by State and Federal law. Local governments in Buncombe County have recognized the importance of working cooperatively during emergency situations. Seven governmental entities in Buncombe County have jointly developed a multi-jurisdictional hazard mitigation plan. Each of the local government units have adopted the plan or are in the process of adopting the unified county-wide plan.

Hazard mitigation is defined as "sustained action that reduces or eliminates long term risk to people and property from natural hazards and their effects". The Federal Mitigation Act of 2000 and North Carolina Senate Bill 300 require local jurisdictions to have prepared and adopted a Hazard Mitigation Plan in order to be eligible for certain types of disaster assistance for both Presidential and

State-declared disasters occurring after November 1, 2004.

In order to fulfill this requirement for our area, Buncombe County Emergency Management formed a multi-jurisdictional hazard mitigation planning committee that included representatives from the County and each municipal jurisdiction. The committee conducted risk and vulnerability assessments for each jurisdiction and, based upon the results of those assessments, developed hazard mitigation strategies to address the hazards that threaten our area.

The Hazard Mitigation Plan was then submitted to the North Carolina Division of Emergency Management and the U.S. Department of Homeland Security – Federal Emergency Management Agency for their approval in August of 2004. That approval was granted in October of 2004, pending the adoption of all seven governmental entities.

Buncombe County properly advertised and held a public informational session on the Hazard Mitigation Plan for all of the jurisdictions. In addition, Buncombe County properly advertised and held a public hearing on the Hazard Mitigation Plan for all jurisdictions.

This action clearly supports the City of Asheville Strategic Plan in Goal #3 – Strong City and County Partnerships – explore ways for the City and County to work together to meet mutual needs, to gain efficiencies or to share in regional infrastructure investment needs.

PROS:

- Adoption of the plan enables all of the jurisdictions in Buncombe County to better work cooperatively in the event of disaster and emergency situations by working from the same plan.
- Adoption of the plan enables the city to potentially receive grant funding in the future as well as enables some types of disaster assistance to city residents in the future if the need arises.

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- Adoption of the plan better enables the City Manager through city staff to develop and coordinate operational procedures in a unified manner.

CONS:

- None have been identified or known at this time.

- City staff recommends City Council adopt the Buncombe County Hazard Mitigation Plan.

RESOLUTION BOOK NO. 29 – PAGE 74

C. RESOLUTION NO. 05-72 - RESOLUTION ACCEPTING TIVERTON LANE, CLOVELLY WAY AND BIDEFORD ROW AS CITY-MAINTAINED STREETS

Summary: The consideration of a resolution to accept Tiverton Lane, Clovelly Way and Bideford Row, in Devonshire Subdivision, as City maintained streets.

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

Tiverton Lane, Clovelly Way and Bideford Row are developer-constructed streets that have an average paved width of 26 feet and a length of 0.35, 0.23 and 0.25 miles respectively for a total length of 0.83 miles. Inspection reports were provided to the City indicating these streets have been constructed in accordance with the approved standards.

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

- City staff recommends City Council accept Tiverton Lane, Clovelly Way and Bideford Row in Devonshire Subdivision as City-maintained streets.

RESOLUTION BOOK NO. 29 – PAGE 75

D. RESOLUTION NO. 05-73 - RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE A SERVICE AGREEMENT WITH THE INTERNATIONAL ALLIANCE OF THEATRICAL STATE EMPLOYEES MOVING PICTURE TECHNICIANS AT THE CIVIC CENTER

Summary: The consideration of a resolution authorizing the City Manager to enter into a service agreement with the International Alliance of Theatrical State Employees Moving Picture Technicians ("IATSE") for the Asheville Civic Center.

IATSE personnel are independent contractors engaged by the Center to install and remove the ice rink as well as do a number of specialized tasks on behalf of the Civic Center. Because of the number of well-trained and available personnel, it is necessary for the Civic Center to continue to employ them in the future. No other staffing procedure would allow the Center the flexibility in staffing as

using IATSE members.

The original amount of the contract was \$49,000. However, with the addition of hockey, the Civic Center needs to increase the contract amount by an additional \$40,000. There is currently money in the Center's budget and no new funds are required.

Pro: This contract allows the Civic Center to use experienced independent contractors to setup, take down and change over different events without having to hire a full time staff.

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Con: None noted.

City staff recommends authorizing the City Manager to enter into a service agreement with the International Alliance of Theatrical State Employees Moving Picture Technicians ("IATSE") for the Asheville Civic Center.

RESOLUTION BOOK NO. 29 – PAGE 77

E. RESOLUTION NO. 05-74 - RESOLUTION AUTHORIZING THE MAYOR TO ENTER INTO AN AGREEMENT WITH THE N.C. DEPT. OF TRANSPORTATION FOR THE LONG SHOALS ROAD PROJECT

Summary: The consideration of a resolution authorizing the Mayor to execute a Municipal Utility Agreement with the North Carolina Department of Transportation (NCDOT) for widening NC 146 (Long Shoals Road) from east of I-26 to US 25 (Hendersonville Road), including replacing the current 16 inch plastic water line along Long Shoals Road with a new 24 inch ductile iron line.

The current water line on Long Shoals Road is a 16-inch plastic line that has numerous emergency breaks during winter months. The NCDOT betterment project will be the first phase of placing a 24-inch ductile iron pipe line along Long Shoals Road, including crossing the French Broad River and replacing the 16-inch plastic line and an old 8-inch cast iron line on the other side of the interstate. The project cost from US 25 to I-26 is \$1,805,799.61 which will be paid in three (3) equal annual installments to the NCDOT.

The annual budget ordinance to be adopted in late May will provide funding for the first installment payment.

Pro:

- This project will enhance customer service by eliminating costly line breaks which cause water outages to area customers on the current line and will help loop the water system to the west and south regions of the system.

Con:

- The final construction cost of this project is \$600,000 above the original engineer estimate due to dramatic increases in material cost in the past 18 months.

City staff recommends approval of the Municipal Utility Agreement with NCDOT for the NC 146 (Long Shoals Road) Project: R2813 C.

RESOLUTION BOOK NO. 29 – PAGE 78

F. RESOLUTION SUPPORTING THE ASHEVILLE MURAL PROJECT

This item was removed from the Consent Agenda for discussion.

G. RESOLUTION SUPPORTING MORE VIGOROUS ENFORCEMENT OF PANHANDLING, PUBLIC DRUNKENNESS AND GRAFFITI VIOLATIONS

This item was removed from the Consent Agenda for discussion.

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H. RESOLUTION AUTHORIZING THE CITY MANAGER TO APPLY FOR AND ENTER INTO AN AGREEMENT INVOLVING THE FEDERAL CLEAN WATER ACT AND THE NORTH CAROLINA CLEAN WATER REVOLVING LOAN AND GRANT ACT OF 1987 FOR WATER LINE IMPROVEMENTS

This matter was pulled from consideration by City Council.

I. RESOLUTION NO. 05-75 – RESOLUTION AMENDING THE 2005 SCHEDULED CITY COUNCIL MEETINGS TO ADD A SPECIAL MEETING ON MARCH 29, 2005

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

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

ITEMS REMOVED FROM THE AGENDA FOR DISCUSSION

APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON MARCH 8, 2005

Councilman Dunn moved to excuse Councilwoman Bellamy from voting on this matter since she was not at the March 8, 2005, Council meeting. This motion was seconded by Councilman Newman and carried unanimously.

Councilman Dunn moved to approve the minutes of the regular meeting held on March 8, 2005. This motion was seconded by Councilman Davis and carried unanimously.

RESOLUTION NO. 05-76- RESOLUTION SUPPORTING THE ASHEVILLE MURAL PROJECT

Summary: The consideration of implementing two recommendations of the Downtown Social Issues Task Force.

On September 28, 2004, the Downtown Social Issues Task Force (DSITF) made recommendations to City Council concerning panhandling, public drunkenness, and graffiti. City Council asked staff to prepare a resolution supporting more vigorous enforcement of panhandling, public drunkenness and graffiti violations and a resolution supporting the Asheville Mural project.

Pursuant to this direction, staff has prepared two resolutions for Council's consideration. Staff will be coming forward with other actions intended to implement other DSITF recommendations throughout the coming year.

City staff recommends City Council adopt (1) a resolution supporting more vigorous enforcement of panhandling, public drunkenness and graffiti violations; and (2) a resolution supporting the Asheville Mural Project.

Councilwoman Jones voiced concern that a "resolution of support" is an easy thing for Council to do but it doesn't have any substance. She felt the Asheville Mural Project is a good project but would like to support it in a more meaningful way.

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Vice-Mayor Mumpower moved for the adoption of Resolution No. 05-76. This motion was seconded by Councilwoman Bellamy and carried unanimously.

RESOLUTION BOOK NO. 29 – PAGE 80

RESOLUTION NO. 05-77- RESOLUTION SUPPORTING MORE VIGOROUS ENFORCEMENT OF PANHANDLING, PUBLIC DRUNKENNESS AND GRAFFITI VIOLATIONS

Summary: See Resolution No. 05-76 above.

Councilwoman Jones would not be able to support this resolution. She explained that she is not interested in supporting enforcement of resolutions already on the books when we could be doing other things simultaneously with our community that could make a bigger difference.

Councilman Davis explained that there is other work and programs being implemented by other groups that don't need any action by City Council.

Vice-Mayor Mumpower moved for the adoption of Resolution No. 05-77. This motion was seconded by Councilwoman Bellamy and carried on a 6-1 vote, with Councilwoman Jones voting "no."

RESOLUTION BOOK NO. 29 – PAGE 81

III. PUBLIC HEARINGS:

A. PUBLIC HEARING RELATIVE TO REZONING 335 DEAVERVIEW ROAD FROM COMMERCIAL INDUSTRIAL DISTRICT TO RM-16 RESIDENTIAL MULTI-FAMILY HIGH DENSITY DISTRICT

ORDINANCE NO. 3220 - ORDINANCE TO REZONE 335 DEAVERVIEW ROAD FROM COMMERCIAL INDUSTRIAL DISTRICT TO RM-16 RESIDENTIAL MULTI-FAMILY HIGH DENSITY DISTRICT

Mayor Worley opened the public hearing at 5:34 p.m.

Ms. Kim Hamel, Urban Planner, said that this is the consideration of an ordinance to rezone 335 Deaverview Road from Commercial Industrial District to RM-16 Residential Multi-Family High Density District. This public hearing was advertised on March 11 and 18, 2005.

Ms. Hamel said that the subject site is located in West Asheville approximately ¼ miles off of Patton Avenue on Deaverview Road. The property is vacant and consists of 6.12 acres and is currently zoned CI Commercial Industrial District. The owners are James and Helen Beck.

Surrounding land uses and zoning include a single-family dwelling and vacant residential property zoned RS-8 and 1-2 mobile home units zoned RM-16 to the north; vacant property zoned CI to the west; multi-family and single-family units, zoned RM-8 to the South; and a large apartment complex, zoned RM-16 to the east of the site.

The subject site is located within a fairly dense residential neighborhood that consists of a mixture of single-family dwelling and multi-family units. The majority of the property surrounding the site is zoned RM-8 and RM-16. Just east of the property a section of Commercial Industrial (CI) zoned properties exists consisting of the Milkco Manufacturing plant, the MB Haynes Corp.,

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and several other medium sized commercial businesses. The site is serviced directly off of Deaverview Road, a 2-lane road, located approximately ¾ mile from Patton Avenue.

The owners of the property, James and Helen Beck, have requested a rezoning of the lot to RM-16 with the intention of developing the property for residential purposes. Although, the Commercial Industrial district permits a density of 16-units per acre, the same density permitted under the RM-16 zoning district, it does not permit single-family development. Accessory apartments and multi-family uses are the only residential uses permitted in the Commercial Industrial zoning district.

Prior to the adoption of the Unified Development Ordinance (UDO) in 1997, the majority of the area, including the subject site, was zoned R-3. This zoning district permitted 16-unit per acre, the same as what is being requested by the applicant. It was at the request of the owner, during the zoning discussions associated with the UDO process, that the subject property along with the two adjoining lots to the west of the subject site (also under the same ownership) be zoned Commercial Industrial. It was his intent to attract some commercial-type development similar in nature to the commercial uses that exist east of the site.

The RM-16 District was intended to permit a full range of high density multi-family housing types in area that would be close to shopping facilities, potential employment centers, road and other urban infrastructure capable of handling the demand generated by high density developments.

The Commercial Industrial District was created to provide areas for a wide range of commercial and industrial uses including: light manufacturing, warehousing, retail sales, offices and residential uses, all to be located in an area where existing urban infrastructure is adequate to support such uses.

Pros:

- The rezoning of the lot to RM-16 would be compatible with the density and character of surrounding and adjoining uses.
- Adequate infrastructure capable of handling a residential development exists in the area.
- The site is located in close proximity of potential employment centers, shopping venues and public transportation.
- The gentle-sloping topography of the land makes is suitable for residential or commercial development of the land.

Cons:

- The rezoning of the property to RM-16 would result in the loss of land suitable for the development of light industrial type uses permitted under the current CI zoning designation.
- Adequate infrastructure capable of handling the uses permitted under CI zoning designation exists in the area.

On Wednesday, March 2, 2005, the Planning and Zoning Commission made a unanimous recommendation to approve the rezoning, as requested by the applicant.

Although staff realizes the importance of maintaining the zoning of property that permits industrial type uses, we feel that the request to rezone the property to RM-16 would be compatible with the character and density of the adjoining properties and the surrounding area. The rezoning of the lot to RM-16 also has the capability of providing a high-density infill development within the City

exists. Based on the above and given that the property was zoned Commercial Industrial District at the request of the owner, staff supports the rezoning of the lot, as requested.

Mayor Worley closed the public hearing at 5:38 p.m.

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

Councilwoman Bellamy moved for the adoption of Ordinance No. 3220. This motion was seconded by Councilman Davis and carried unanimously.

ORDINANCE BOOK NO. 22 – PAGE 27

B. PUBLIC HEARING TO CONSIDER THE CONDITIONAL USE ZONING OF THREE LOTS ON BILTMORE AVENUE FROM RM-16 RESIDENTIAL MULTI-FAMILY HIGH DENSITY DISTRICT AND RS-8 RESIDENTIAL SINGLE-FAMILY HIGH DENSITY DISTRICT TO INSTITUTIONAL DISTRICT/CONDITIONAL USE; AND THE ISSUANCE OF A CONDITIONAL USE PERMIT FOR A PROPOSED MIXED-USE DEVELOPMENT WITH EXISTING APARTMENTS TO BE CONVERTED INTO CONDOMINIUMS AND SHORT-TERM RENTAL UNITS WITH A PROPOSED RETAIL OFFICE SPACE AND FOOD SERVICE FACILITY

ORDINANCE NO. 3221 - ORDINANCE REZONING THREE LOTS ON BILTMORE AVENUE FROM RM-16 RESIDENTIAL MULTI-FAMILY HIGH DENSITY DISTRICT AND RS-8 RESIDENTIAL SINGLE-FAMILY HIGH DENSITY DISTRICT TO INSTITUTIONAL DISTRICT/CONDITIONAL USE

ORDINANCE NO. 3222 - ORDINANCE GRANTING A CONDITIONAL USE PERMIT FOR THREE LOTS ON BILTMORE AVENUE FOR A PROPOSED MIXED-USE DEVELOPMENT WITH EXISTING APARTMENTS TO BE CONVERTED INTO CONDOMINIUMS AND SHORT-TERM RENTAL UNITS WITH A PROPOSED RETAIL OFFICE SPACE AND FOOD SERVICE FACILITY

City Clerk Burlison 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 5:39 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 3 lots on Biltmore Avenue from RM-16 Residential Multi-Family High Density District and RS-8 Residential Single-Family High Density District to Institutional District/Conditional Use, and a request to issue a conditional use permit for a proposed mixed-use development with existing apartments to be converted into condominiums and short-term rental units with a proposed retail office space and food service facility.

The applicant, David Payne, is requesting a conditional use rezoning of 6.6 acres from RM-16/RS-8 to Institutional District/Conditional Use to allow for the addition of non-residential uses to the property and to allow for the renovation of 114 existing rental apartments (10 buildings) to condominium units where some of the units may be occupied under short term leases not normally permitted in residential districts (Attachments to City Exhibit 3 – Aerial Map and Location Map).

The proposed Master Plan shows the addition of 4 new buildings that vary in size. Building #1 is the largest at 6,960 s.f. with a mix of office and restaurant use. Building #2 shows 4800 s.f. evenly split between office and retail. Buildings #3 and #4 are considerably smaller, between 1500 and 1800 s.f. dedicated exclusively to office uses. All four buildings totaled together result in 15,060 square feet with 8,460 s.f. of office, 4,200 s.f. of restaurant, and 2,400 s.f. of retail. Also associated with the project are 27 additional surface parking spaces along with 39 underground parking spaces strategically planned to take advantage of the existing change in topography. In addition, courtyards, pedestrian connections, amenity improvements, open space, and additional landscaping are also detailed on the Master Plan (Attachments to City Exhibit 3 – Master Plan; Section View; Village View from Biltmore Avenue; Village Interior View; Residential Condominium View; and Pool and Amenity Area).

The subject properties are located in the Asheville city limits on the corner of Biltmore Avenue and Caledonia Road, with additional frontage on Kenilwood Place and Bowling Park Road, which serve as entrances into the Kenilworth neighborhood. The subject properties are directly across from the Marriot Residence Inn, zoned Institutional, and are bordered to the northwest by more Institutional zoned property supporting a Bed & Breakfast Inn, as well as some small business uses zoned CBII to the southwest. The remaining property boundary is surrounded by single family homes all zoned RS-8 (Attachment to City Exhibit 3 – Location Map).

The largest of the three lots is currently zoned RM-16 with the two smaller lots being zoned RS-8. One of the two single family lots is already developed as an accessory use to the apartments (swimming pool) and the other lot located along Bowling Park Road will remain undeveloped and preserved as open space for the project. Other than minor improvements to the pool amenity area, there will be no site plan changes to the existing residential component of the project and the three existing access points will remain open. Two new entrances will be added to access the new mixed use development area, one off of Kenilwood Place across from Finalee Avenue, and the other off of Caledonia Road.

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The site supports some impressive mature large hemlock trees located along the bank behind the open green lawn, which effectively shields the traffic on Biltmore Avenue from the residential property. As a result of this project, many, or maybe even most, of those hemlock trees will come down. The designers for the project have stated that it is their intention to preserve as many of these trees as they can, recognizing that the trees are an amenity to the project. It is difficult to predict exactly how many of the trees can be saved or which ones will be saved until the detailed plans are completed. The trees highlighted on the Conceptual Master Plan (Attached to City Exhibit 3) are those that the developer and the site designers are confident that they will be able to preserve. There may be more than this that can be saved, but again, we won't know exactly which ones until more information is gained. She felt that what is shown on the Conceptual Master Plan is the worst-case scenario, as far as tree preservation goes. She also pointed out that there is a significant amount of additional existing vegetation that is not shown on the Master Plan located around the existing residential areas. This vegetation is not expected to be impacted in any way. The one exception is that there may be some impact to the existing vegetation located along the southern edge along Kenilwood Place, but only where the proposed entrance is located.

Normally there is a sidewalk required on all road frontages for projects such as this. We would normally require a sidewalk along Kenilwood Place; however, a fee in lieu option has been afforded to the developer, primarily because there is a pretty steep bank along Kenilwood Place. It is possible to install sidewalks, but it would be more than likely at the expense of removing a significant amount of the trees.

At their March 3, 2005, meeting, the Planning & Zoning Commission reviewed the Conditional Use Rezoning and Master Plan proposal and made a positive recommendation that the project be forwarded to the Asheville City Council, stipulating that the applicant meet all outstanding Technical Review Committee (TRC) conditions and other conditions outlined in the staff's report and presentation before final zoning approval. In addition, after public comment and deliberation, the Planning & Zoning Commission added a number of conditions summarized as follows:

1. The southern entrance along Kenilwood Place be eliminated if approved by the Fire Department and other City departments. If elimination of the entrance is not possible, then pursue option of limiting access to emergency vehicles only or other suitable alternative addressing emergency access requirements (excluding any alternative that accessed Biltmore Avenue).
2. Provide a pedestrian sidewalk from the village area to Kenilwood Place.
3. Traffic light study and construction of light (if approved by DOT) to be funded by the developer.
4. Trees identified on the Master Plan as "existing" must be preserved with other mature trees preserved where possible.
5. Height and character of buildings to reflect the conceptual drawings submitted by the applicant.
6. Provide preliminary sign package addressing neighborhood compatibility.
7. The developer is to hold another meeting with the neighborhood prior to the City Council hearing to:
 - explore the possibility of eliminating the parking spaces behind building #2 (drive access to remain open), and
 - further explore and address concerns centered on tree preservation and signage.

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)).

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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 development is designed to capitalize on existing topography in order to place parking underneath the building thereby reducing surface parking and impermeable area. In addition, the applicant will be preserving the open lawn area at the front of the property and will be garnering additional information to better address possible tree preservation throughout the site. No significant site work is proposed for the rear of the property adjacent to the residential neighborhood and is not expected to have a significant impact on those areas.

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

The proposed development will be an attractive mixed-use development that is relatively modest in scale designed to primarily serve the existing neighborhood. The non-residential buildings and uses will be oriented towards the major thoroughfare of Biltmore Avenue and access will be from commercially zoned rights-of-way. In addition to orientation and distance serving to buffer the use against the adjacent residential properties, there is some additional separation and buffering through topography change and proposed landscape buffers. Lastly, renovation and improvement of the ten existing apartment buildings is proposed as a component of this application and, in conjunction with the new development, is not expected to negatively affect 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.

The proposed new development is located on the front portion of the property closest to the existing commercial corridor and in total, is perfectly in scale with the existing commercial uses. Similarly the new buildings will be in character with scale of the large, high density, multi-family uses already existing on site.

Single family homes of the neighborhood are separated somewhat by the existing multi-family development, rights-of-way, and topography and are not expected to be heavily impacted by the proposed development. In addition, the new development will be broken into multiple (4) new buildings that will be in keeping with the bulk and coverage of the neighborhood - particularly the two smallest buildings located in closest proximity to single family homes of the area will be no larger than the average home in the neighborhood. Lastly, the conceptual architectural style proposed is intended to reflect the mixed and eclectic architectural styles of the Kenilworth neighborhood with elements of Craftsman and Mediterranean styles combined in a village layout.

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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 is very clear in its support of quality infill development as another method of implementing the City's Smart Growth vision. It goes on to describe one of the reasons for the underdevelopment of property being due to "suburban zoning requirements that do not maximize use of the property for urban purposes" and asks that opportunities for infill development be considered on a case-by-case basis where special regulatory tools, such as conditional use zoning, may be used to encourage compatible development of these properties. This position is further supported by the Smart Growth Land Use Policies adopted by the Asheville City Council in 2000.

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 proposed mixed-use project is extremely well positioned to take advantage of existing transportation facilities including alternative transportation options with multiple bus routes running down Biltmore Avenue and through the Kenilworth neighborhood, in addition to an extensive network of pedestrian paths linking the neighborhood to a number of services and employment centers. In addition, the proposed development has been reviewed by the TRC, which did not reveal any problems with providing service to the development.

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

The proposed development is not designed to be a destination center and is intended to primarily serve the residents of Kenilworth and others in relative proximity to the site. The proposed mix of use is not expected to generate a large amount of

traffic and this traffic is expected to utilize the main thoroughfare of Biltmore Avenue. The three existing access points to the residential component of the project will remain open while two new access points on either side of the proposed development will help disburse new traffic back to Biltmore Avenue. Lastly, although not a part of this application, the property owner is investigating with N.C. Dept. of Transportation ("NCDOT") the possibility of placing a new traffic light at the corner of Biltmore Avenue and Caledonia Road to help safely control turning movements onto Biltmore Avenue.

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Pros

- Promotes quality infill development while retaining open space for the neighborhood
- Provides neighborhood services to the immediate community
- Promotes the renovation and improvement of well positioned residential units

Cons

- Will result in the loss of existing vegetation (extent of loss is undetermined)
- Will result in a modest increase in traffic at intersections with Biltmore Avenue

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In the weeks since the Planning & Zoning Commission meeting, discussions between the Planning, Engineering, and Fire Departments resulted in the preference to keep the southern drive entrance along Kenilwood Place open to all traffic. The Fire Department did clarify that a drive that was more residential in character could be substituted or a turn-around alternative could be explored if topographically feasible. The Traffic Engineer also supported moving the entrance closer to Biltmore Avenue, if possible as it related to the parking layout. In addition, the applicant has coordinated with the NCDOT regarding the proposed traffic light and has initiated

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the process for formally requesting a traffic light at the intersection of Caledonia and Biltmore, which includes contracting professionals to complete a traffic study. The applicant has also ordered a detailed tree and topographical survey to better assess impacts to the existing vegetation and possible changes to the southern entrance, and it is hoped that this work will be completed prior to the City Council hearing. Lastly, the applicant held a second neighborhood meeting to discuss the primary issues and concerns voiced during public comment by the Kenilworth neighborhood.

The applicant has attended three meetings – one with the representatives of the Coalition of Asheville Neighborhoods, one with representatives of the Kenilworth neighborhood, and another one with the neighborhood as requested by the Planning & Zoning Commission. In preparation for the last meeting, the designers for the project worked out some alternatives that would better address the neighborhoods concerns and presented Alternative Concept A (City Exhibit 4). Some of the main differences include: (1) Building No. 3 has been relocated to front on Caledonia Road and will utilize an existing parking area; (2) The parking formerly located in the front of Building No. 2 has been eliminated with the proposed parking being redistributed and reduced by 9 spaces. This will drop the number of parking spaces below the minimum for the project for the development. However, given that the existing parking area for the residential component exceeds their minimum, there is enough parking to satisfy all the requirements when looked together in total; and (3) The designers are showing the entrance on Kenilwood Place as an emergency access only. She pointed out that this Alternative Concept A has not been thoroughly reviewed by all technical departments since they only received it late yesterday. However, some City staff have had the opportunity to quickly look over this alternative and do not have any heavy concerns with the proposed changes, with the exception of the emergency access only. In the intervening weeks since the Planning & Zoning Commission meeting, discussions between Planning, Engineering and Fire Departments have resulted in a strong preference to keep the southern drive entrance along Kenilwood Place open and to keep it open to all traffic. The reasons for the preference are numerous, but most notably the preference to keep it open was desired to (1) decrease response time and better serve emergency situations; and (2) help mitigate the flow and disbursement of traffic through better access and connectivity.

In summary, City staff has reviewed the project, and it's Alternative Concept A, and has determined that it does meet technical standards and the seven conditional standards outlined in the UDO.

Mr. Chuck Tessier, consultant representing Power Development, LLC, said they have been working on a plan to fully integrate the new development in an existing lovely property. They are asking that the property be rezoned for two reasons: One reason is to allow the creation of a Village in the front for a public gathering space - for not only our property, but also the residents of Kenilworth. (City Exhibit 3 – Master Plan). Their studies have shown that people are looking for walkability. There will be a restaurant, club area, and private dining room area with some outside seating. The retail component consists of two small shops and there are some office components. The second reason for the rezoning request is to allow for short-term rentals or rentals under one-month. One of the primary motivations of the developer was to provide some housing opportunities for the medical and hospital communities. This could be for families, physicians who are in and out on a short-term basis, or other short-term kinds of needs, both locally with the medical community and seasonal people.

Mr. Tessier said that their meetings with the community were an attempt to listen and respond. They think they have done that. The community was concerned with traffic. We are familiar with the traffic problem at the corner of Caledonia and Biltmore and know others have tried to get the NCDOT to put a traffic light at that location. The developers are have already contracted with a traffic engineer to prepare a traffic study in this area to justify the light. We will pay for the cost of that, which is in excess of \$100,000. They will need the City's and the

community's support and help to encourage NCDOT to do this. Another concern of the residents primarily on Kenilwood Place was that they did not want an entry from the project onto Kenilwood Place. The original entry was there for two reasons: (1) to allow the people from the Kenilwood area to have an entry into the restaurant without going out onto Biltmore Avenue and then coming back; and (2) for emergency access. However, the community did not want that exit. Therefore, they have spent a lot of time developing 3 different options, which were presented to the community at their meeting last night. He felt there was a consensus around the Alternative Concept A (City Exhibit 4). He urged City Council approve the Alternative Concept A. Tree protection was another big concern for the neighborhood. Part of their program is to not only protect, but enhance the landscaping of the community. To put the Village in on the only piece of property that we had requires the cutting of some trees and we have done everything possible to minimize that. We have relocated the Village back off of the existing hemlocks to preserve them and made changes to protect as much of the tree cover as possible. We have a complete tree survey of all the trees on the property and will, prior to any construction, mark those trees which are to stay and have that clearly delineated so there would be no misconception of that in the future. The neighborhood had concerns about the parking lot on the south side and concerns about retaining walls. The original design has a series of terraces, but we have changed our plan and reduced the number of parking spaces and made modifications to that in an effort to respond to the community's concern. Regarding the sidewalk all the way up Kenilwood Place, the community said they would rather have trees than sidewalks. The neighborhood was concerned about short-term rentals. Some fears were competition with existing business, deterioration of property values in the area, and how the short-term rentals would be managed. It is real important to understand the economic viability of this project and where the target market is. He explained they had two options for the property when they began – fix up or completely renovate the property. The developers have made the decision to completely rehab the project. The cost of this project, with the acquisition of the existing property and the development of just the existing residential units, without the Village itself, is over \$18 Million. Their first priority in terms of target markets was the protection of existing residents. There were about 20 vacant units. Before it was offered at all on the open market it was offered to the existing residents at a price of over \$40 a square foot under our initial offering price to the public. We also agreed to pay moving costs, provide financing, and provide free rent while they were dislocated from their units. It was a very advantageous package offered to provide affordable units to the existing residents. In fact, over 15 have bought into the program. The second priority has been to the medical community. All our marketing is designed for walk to work and to provide long and short-term housing needs to the medical community. The third market will be to permanent residents or seasonal investment markets. Those are some of the reasons why we feel the short-term rental program is important. The costs that are going into these and the nature of the rehab will increase the values of these units and the property around it significantly. As to proper management, there were some concerns about how the short-term rentals would be used. We will put in our covenants that any short-term rentals under a month will be done only through a management agency. There are very stiff restrictions in terms of how the units must be maintained.

Mr. Matt Sprouse, landscape architect for Power Development, LLC, said the spirit of the development is one of a walkable, pedestrian oriented design. They have strived to create a plan that meets the needs of our clients, but also has the least amount of impact on the site and its surrounding properties. They have reduced the impervious surface of the new construction of the Village, trying to fit within the natural contours of the land using the existing infrastructure. They are saving greenspace, preserving trees, and they want to keep within the architectural character of the neighborhood. They have acquired a full tree survey of the property of any tree over 10-inches in diameter. Mr. Sprouse then reviewed the original Master Plan (Attachment to City Exhibit 3). There are 4 buildings. The total parking on the original scheme is 66 spaces, 39 of which are underground. The main entrance would be from Caledonia Road. He showed the Village Interior View (Attached to City Exhibit 3), noting the intent is more of a pedestrian oriented plaza. An elevator accesses the parking deck underground. On the Biltmore Avenue side

there is a series of terrace gardens what will cascade themselves down into the green lawn. He also reiterated the concerns of the neighborhood as stated by Mr. Tessier. He showed the tree survey of trees 10-inches and larger (Applicant Exhibit 1), noting the line of hemlocks. When we overlaid the original concept of the Village onto the tree survey, you can see where the line of hemlocks are and that was their first indication to start the Alternate Concept A (City Exhibit 4) (Applicant Exhibit 2 – Original Survey). They have rotated the entire Village around to get Building No. 1 off the line of hemlocks entirely. That shift removed parking spaces and reduced them from 66 spaces to 53 spaces (with approximately 39 spaces being underground).

The following individuals spoke not so much in opposition of the conditional use permit, but wanted the following concerns/thoughts considered and addressed: zoning signs did not specify the complexity of the project; no Kenilwood Road entrance; need for traffic signal at Caledonia Road and Biltmore Avenue, with or without this development; request for postponement to enable the neighbors and developers time to work more on the concerns; tree preservation; severely limit short-term rentals and stipulate the management, number of units and strong covenants; need to keep Kenilworth residential; process is moving too fast; be sure the 11% occupancy tax is collected from the short-term rentals; and request for pedestrian walkway at corner of Biltmore Avenue and Caledonia Road:

Ms. Mary Evers, resident on Finalee Avenue,
Mr. David Herbert, Kenilworth community resident
Ms. Jan Howard, Kenilworth community resident
Ms. Rita Whiteman, owner of Cedar Crest Victorian Inn at corner of Caledonia and
Biltmore Avenue
Ms. Miller Graves, resident on Caledonia Road
Mr. Tayo Shapel, resident on Castle Street

The following individuals spoke in support of the conditional use rezoning and permit for various reasons, some being, but are not limited to: the Village will be an asset to the condominium owners and the entire community; renovation of the area will eliminate the trash in the park, junked cars in the lower parking area and disorderly conduct; developers will be investing a lot of money on the project; underground parking costs more and will eliminate a lot of asphalt for above-ground parking; good urban infill project; and revitalization of older buildings:

Ms. Elizabeth Brunsman, resident at Biltmore Gardens,
Mr. Kevin Gentry, Kenilworth community resident
Mr. Joshua Vandergrift, area resident and property owner

In response to Councilwoman Bellamy, Mr. Tessier said that there are two houses immediately behind the pool and four lots adjacent to that which have been purchased by the developer. He has no plans at this time, in terms of what he intends to do with those. It is not part of this rezoning request and basically purchased as a buffer to the project from the community and from other uses.

Upon inquiry of Councilwoman Bellamy, Mr. Tessier said that they have hired Mr. Ken Putnam as their traffic engineer to do a study on the intersection of Caledonia Road and Biltmore Avenue to see if the intersection warrants a traffic signal. At a cursory review, Mr. Putnam felt the traffic counts will be reduced with the condominium project, however, it is their hope that through the combined support forces of the community, City Council and the developer (and the developer's willingness to pay the costs), the NC DOT will install a traffic light.

In response to Councilwoman Bellamy regarding the preservation of trees, Mr. Tessier said that the developer is committed to preserving the trees along Kenilwood Place. He said they have done a complete tree survey of all of the large trees and said that when they do the detailed

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design of the project, they will clearly mark those trees that are to remain. Without detailed designs, they can't 100% mark every tree, but before construction, we certainly will have those clearly identified. He assured Council that they will do everything possible to maintain as many trees as they can. He also said we may lose some trees, but we will also gain a great deal in terms of additional landscaping on this property.

When Councilwoman Bellamy asked about the short-term rentals, Mr. Tessier said that the number of units that would be available for short-term rentals will be market driven. In their initial marketing of this property, probably 4 or 5 to one of people are interested in living there as a permanent residence vs. buying it as an investment to rent, either on the regular rental market or for a short-term rental. If the units all sell out to permanent residents, that would be great. We know there is a demand for short-term rentals with services in Asheville and we want the ability for that to happen under strict guidelines. We want this to be a very high grade property and any rentals that happen under a month would be only done through the management company.

Upon inquiry of Councilwoman Bellamy, Mr. Tessier said that there is a bus stop on Biltmore Avenue. He also said there is a school bus stop at the corner of Caledonia and Bowling Park. If they have a significant number of residential, they might offer transportation as part of property's services. The covenants have not yet been written. He explained that until they got through the City Council process and knew that they could even offer rental under a month, or offer a Village, they haven't been able to move forward on the design details. He did say, however, that they would be willing to look at a covered bus stop.

In response to Councilwoman Bellamy, Mr. Sprouse responded to the stormwater mitigation measures.

Councilman Davis asked if our UDO has a definition for short-term rentals. Planning & Development Director Scott Shuford said that the only provision in the UDO is for vacation rentals, and that it would not apply to this parcel because of the zoning being changed from a residential classification. Even if would remain residential, it would not be large enough to have it apply.

In response to Vice-Mayor Mumpower, Ms. Tuch said that the neighborhood was first notified of this project 10 days prior to the TRC meeting, which notices would have been sent out on February 11, 2005.

In response to Vice-Mayor Mumpower regarding a traffic signal at Caledonia and Biltmore, Traffic Engineer Anthony Butzek said that it would be beneficial to the neighborhood in terms of provide access to get out onto Biltmore Avenue safety. It would also provide more of a safe pedestrian crossings at that location. He explained that traffic engineering professionals are bound by a fairly strict set of codes on when traffic signals can be installed. We have, and the NC DOT has, done reviews at this location in the past and based on the number of left turns coming out of Caledonia Road it was no where close to meeting the warrants. He didn't think a traffic signal will be a particularly likely outcome. That is one of the reasons that they recommend keeping the south access point on Kenilwood Road open for all traffic, so traffic can distribute between both intersections on Biltmore Avenue. Another reason is from an emergency response standpoint. If the single point of entrance were closed or blocked, then the emergency vehicles would have no way of reaching the site. Also, for emergency vehicles needing to turn around on the site, having two access points allows them to enter and exit the site without having to find a spot on the site to back up and make that turn. If Council does choose to go with the emergency access route only, he would recommend two conditions: (1) That it would be a paved surface so that pedestrians could utilize it; and (2) that an easement be provided to the City so that if problems did arise in the future the City could reopen that access.

Upon inquiry of Vice-Mayor Mumpower about perhaps restricting no left turns from Caledonia onto Biltmore Avenue, Mr. Butzek said that left turns are fairly typical throughout the corridor to have left turns, although it does create some delay and annoyance to drivers. But in terms of a capacity standpoint, the signal down at Meadow Road will control the capacity, so anything we do for left-turns would be for safety purposes. From a safety standpoint, if a review determined that there was a particularly high crash rate, we may look at some turn prohibitions in the future, but he doesn't recommend that in the current situation.

In response to Vice-Mayor Mumpower, Mr. Butzek said that he does not see any significant traffic increases from this project. The project will generate about 50 new trips (from the commercial aspect) in the pm peak hour (basically the one hour during rush hour), which is half of what it takes to trigger a traffic study. During that time he would expect about 8-10 of those trips to actually be going into the neighborhoods, via Caledonia or Kenilwood Place.

Responding to Councilman Newman, Mr. Butzek said that the basic formula of NC DOT on a traffic signal is that there needs to be enough of a benefit to the side street to justify the additional delay drivers on Biltmore Avenue would see with the light there.

After hearing no rebuttal, Mayor Worley closed the public hearing at 7:15 p.m.

Councilman Dunn moved to approve the conditional use rezoning of 3 lots on Biltmore Avenue from RM-16 Residential Multi-Family High Density District and RS-8 Residential Single-Family High Density District to Institutional District/Conditional Use. This motion was seconded by Vice-Mayor Mumpower and carried unanimously.

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Mr. Shuford said that if Council is considering not allowing the driveway access onto Kenilwood Road to be open for all traffic and that it be limited to the emergency access only, the Fire Department has requested that the buildings near that exit be sprinkled to allow them to be better protected from a fire standpoint. The developer is acceptable to that.

Mr. Butzek clarified one point on the sidewalks vs. the fee in lieu of option. Staff's recommendation on Kenilwood Place is to require a sidewalk between Biltmore Avenue and the project access on Kenilwood Place and the fee in lieu of option above that on Kenilwood Place. The reason is that is a pedestrian route and it also does not have any large trees along that section.

Councilwoman Bellamy asked a condition be added that as many mature trees as possible along Kenilwood Place from the access point on Kenilwood Road up the hill would be saved. Mr. Shuford said we all want to make sure there is some form of fairly quantifiable way to identify the trees that can be preserved under Alternate Concept A. He suggested Council give staff direction to go back and take the reasonably produced tree survey (Applicant Exhibit 1) and have the developer better identify the trees that they would be able to save. Then staff will bring the conditional use permit back to Council at their next meeting for you to have an opportunity to actually see what trees are being talked about, in what areas and with greater specificity. That will give staff a chance to tailor the condition so that there will be no vagueness with regard to what is meant by the condition.

Mr. Tessier said they have a specific site plan that shows where the buildings are going to go, in terms of the distance from Kenilwood Place, and they we have a tree survey. They have talked to two members of the Tree Commission and they are perfectly willing to work with them in terms of a determination of exactly which trees can be saved to accommodate the development.

We do ask that this, however, be done at the time of detailed design and that is a pretty detailed process and will take longer than a couple of weeks.

Mayor Worley asked what would happen if there was a disagreement with the Tree Commission. Mr. Tessier said that if the Tree Commission says a tree can be saved, within the confines of the design that we have done, then they will accept their decision. Again, he would much rather do that with a detailed design, as opposed to making guesses just to expedite a process. When we submit our building permit, we will mark the trees and protect them during the construction process.

Mr. Tessier said that if a question arose whether a tree can or cannot be saved, he would have no problem with the City adding into a condition that the Tree Commission is the arbitrator.

Using the Alternate Concept A (City Exhibit 4), which is the developer's preferred alternative, Ms. Tuch said the trees identified on that plan are trees that were identified on that tree survey. After consultation with the site designers, she said these are the trees that they are confident and committed to preserving. She also noted that the tree survey and the Alternate Concept A only reflects the trees 10-inches and greater. There are more trees on that site that will more than likely be preserved.

City Attorney Oast suggested a condition be that existing trees greater than 2-inches in diameter uphill from the project east access on Kenilwood Place (shown on Alternate Concept A – City Exhibit 4) be preserved and that no sidewalk be required in that area. In addition, the project must be developed within the dimensions as shown on Alternate Concept A and that any removal of the existing

trees must be approved by the Tree Commission prior to the issuance of any permits.

Ms. Shannon noted one concern that more than likely, as a result of the creation the Kenilwood Road access, there will be some trees removed. However we won't know the extent of that removal until the site designers do the grading for it.

Councilman Newman asked what would happen if when they are grading the site and some of the existing trees on Alternate Concept A have to be cut. City Attorney Oast said that if that happens, the developer will need to come back to City Council for a modification of the conditional use permit and he can write that in this conditional use permit, if Council chooses.

Ms. Tuch suggested the option that once the designer prepares the detailed drawings that we get detailed plans showing the existing trees to be preserved. Council might word a condition that the plan needs to be reviewed and approved by City Council prior to final zoning approval.

Mr. Shuford said that we have some complicated wording on this condition and staff doesn't want to make a mistake and have an element of vagueness that precludes enforcement of Council's intent. While Council may approve the conditional use permit tonight, he asked that the wording on the conditions come back for a final vote.

Vice-Mayor Mumpower asked for staff to have specific language regarding tree preservation in conditional use permits.

Councilwoman Bellamy also felt that when the neighborhood and developers agree on items, Council should have those agreements as a condition in the conditional use permit as well.

Councilwoman Bellamy asked for a condition that the developer be required to cover the bus stop adjacent to the development.

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Councilwoman Bellamy felt a condition regarding short-term rentals would be appropriate. Based on Mr. Tessier's statement, she suggested a condition that the short-term rentals be limited to 25%.

Upon inquiry of Councilwoman Bellamy, Mr. Shuford explained the rental vs. homeownership issue surrounding this project vs. the Appeldoorn Condominium Project.

Councilwoman Bellamy used that example to show that it is not unprecedented for Council to put a percentage requirement on how much can be short-term rental or homeownership.

Councilwoman Jones suggested a condition to limit the short-term rentals from 7-30 days opposed to daily rental. After a brief discussion about no enforcement mechanism in the UDO, City Attorney Oast felt that Council can define short-term rentals in this conditional use permit.

Councilman Newman stressed that this development is currently all rental and now it's being rehabbed to condominiums, which will probably be mostly owner-occupied. The close location to the hospitals might bring in medical staff from other parts in the county to stay in Asheville, which is important to our quality of health care and important to the economy. He doesn't think a big percentage of the property will be used for short-rental, but he hoped if Council does put some cap on it, it will have flexibility. He felt this is a legitimate need in our community.

In response to Mayor Worley, Mr. Tessier said that the developer wants the flexibility in the management and occupancy of this property. When you spend \$18 Million, that is a lot of money at risk in the market, and they want to be able to allow the market forces to have flexibility in that, because that increases the probability of success of the project.

Mayor Worley said that there will be condominium documents which set forth restrictions and covenants. This is a similar type of concept of a vacation rental where you have high-end condos that are rented on a regular basis through a management company with a lot of restrictions on the type of usage, the upkeep, and the services that are provided. He felt it sounds like what Council is really talking about is less a percentage restriction but more a restriction on the type of rental. He felt that would be a reasonable restriction to impose on the developer.

Councilman Dunn felt that when a developer invests that much money, they would want to rent longer than 30-60 days. He didn't think it was appropriate for Council to put percentage restrictions on the developer. Condominium covenants are very strict.

When Vice-Mayor Mumpower asked Mr. Shuford if he had enough guidance to draft a condition, Mr. Shuford said that he is hearing there is a desire to allow the management company approach to serve as the arbitrator and let that determine basically the standard for the short-term rental process.

Regarding the short-term rental percentage, Councilwoman Bellamy just wants to make sure that we protect the quality of life for the residents surrounding this development. If that can be addressed in a covenant and we can be assured of that, she will be satisfied. She would, however, prefer a percentage. She just wants to make sure that the development is not all rental and if that occurs, what kind of accountability in the covenant documents does the condominium owner have.

Mayor Worley suggested a condition that the condominium declarations require a management company for short-term rentals.

Upon inquiry of Councilwoman Jones, Mr. Tessier said the prices of the units will range from \$139,000 for an efficiency up to a 3-bedroom unit for \$399,000.

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Councilman Dunn moved to adopt Ordinance No. 3222 to issue a conditional use permit by adopting the proposed master plan for the Biltmore Gardens project, subject to the following conditions recommended by City staff and the Planning and Zoning Commission: (1) The applicant to address all outstanding TRC conditions before final zoning approval; (2) That all outdoor lighting be equipped with 90 degree cutoff features and directed away from residences; (3) Where significant hardship does not exist, sidewalk shall be provided for all road frontages with no fee in lieu option provided; (4) The applicant to work with address coordinating to provide new street addressing to most effectively meet emergency access needs; (5) The southern entrance along Kenilwood Place remain open with location and design to be adjusted, if possible, to better address neighborhood compatibility; (6) Provide a pedestrian sidewalk from the village area to Kenilwood Place; (7) Traffic light study and construction of light to be funded by the developer (if approved by NCDOT); (8) Trees identified on the Master Plan as "existing" must be preserved with other mature trees preserved where possible. More detailed tree preservation plans shall be required before final approval, including tree protection plans during construction; these plans shall be shared with the neighborhood prior to construction and protected trees shall be field verified and clearly identified for construction crews and City inspectors; (9) Height and character of buildings to reflect the conceptual drawings submitted by the applicant; (10) Sign package addressing neighborhood compatibility shall be provided by the applicant; (11) The developer be required to cover the bus stop adjacent to the development; (12) That the southern drive entrance along Kenilwood Place be open for full access to all traffic; (13) That Village Alternate Concept A be used in the Master Plan; (14) The condominium declarations require a management company for short-term rentals; (15) That existing trees greater than 2-inches in diameter uphill from the project east access on Kenilwood Place (shown on Alternate Concept A – City Exhibit 4) be preserved and that no sidewalk be required in that area. In addition, the project must be developed within the dimensions as shown on Alternate Concept A and that any removal of the existing trees must be approved by the Tree Commission prior to the issuance of any permits; and (16) The developer is required to install a sidewalk between Biltmore Avenue and the process access on Kenilwood Place; and the fee in lieu of option above that on Kenilwood Place. This motion was seconded by Vice-Mayor Mumpower and carried unanimously.

City Attorney Oast said that he would prepare the Order and bring it back for wording approval at Council's next formal meeting on April 12, 2005.

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At 8:20 p.m., Mayor Worley announced a short recess.

C. PUBLIC HEARING TO CONSIDER AN AMENDMENT TO THE UNIFIED DEVELOPMENT ORDINANCE TO ALLOW FOR ON-STREET PARKING TO BE USED TO MEET THE PARKING REQUIREMENTS FOR A DEVELOPMENT

ORDINANCE NO. 3223 - ORDINANCE AMENDING THE UNIFIED DEVELOPMENT ORDINANCE TO ALLOW FOR ON-STREET PARKING TO BE USED TO MEET THE PARKING REQUIREMENTS FOR A DEVELOPMENT

Mayor Worley opened the public hearing at 8:45 p.m.

Urban Planner Julia Cogburn said that this is the consideration of an amendment to the Unified Development Ordinance ("UDO") to allow for on-street parking to be used to meet the parking requirements for a development. This public hearing was advertised on March 11 and 18, 2005.

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This ordinance amendment is proposed to provide a development option for meeting UDO parking requirements with the use of on-street parking. The City of Asheville's Unified Development Ordinance does not currently provide for the use of on-street parking to meet the stipulated minimum parking requirements for a development, except in a few use districts where on-street parking is allowed. Staff has been presented with some development options where on-street parking provides an appropriate parking solution with additional beneficial development aspects such as buffering the sidewalk from traffic.

This ordinance amendment sets forth that on-street parking may be counted toward the fulfillment of parking requirements if meeting certain standards. Those standards include: that the on-street parking must be newly constructed; that there shall be a minimum of four (4) contiguous on-street parking spaces constructed; that these spaces must typically be parallel parking spaces; that these spaces be located within five hundred (500) feet of the development and be appropriately zoned if located farther than one hundred and fifty feet (150) from the development; that these spaces must connect with adjoining sidewalks that lead to the entrances of the buildings within the development; that these spaces will be public spaces with any easements or rights-of-way conveyed to the City; and that the City Traffic Engineer approve the overall design of the spaces being provided. Any approved parking space meeting these standards shall count as 0.75 of a required off-street parking space.

The amendment has been routed to CAN, CREIA, and CIBO for review and comment.

Pros-

- The amendment provides for a parking design option not currently provided for in the UDO.
- Allowance for on-street parking might open up additional possibilities for adaptive reuse of existing properties where providing on-site parking is difficult.

Cons-

- On- street parking may be seen as disruptive to the flow of traffic on the streets where it is located.

The Planning and Zoning Commission recommended approval of this code amendment on March 2, 2005, by a unanimous vote of 6-0. Staff recommends approval as well.

Mayor Worley closed the public hearing at 8:47 p.m.

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

Councilman Davis moved for the adoption of Ordinance No. 3223. This motion was seconded by Councilman Dunn and carried unanimously.

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IV. UNFINISHED BUSINESS:

V. NEW BUSINESS:

A. HAYWOOD STREET PARKING DECK

Councilman Newman said that when Council discussed proceeding with the development of the new parking facility, there were discussions about the design and scale of the project and whether or not it was possible to include more residential development on other parts of the

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project. He understood the vote by Council was to go ahead and approve the budget amendment and allow City staff to proceed, without any particular conditions on them to modify the project, nor did we preclude them from looking at different ideas. Staff heard interest in these ideas and were left to consider those ideas and if they thought any were worthwhile, to continue exploring them. A couple of weeks ago City staff contacted him about a couple of design modifications to make the project look better and have other types of uses Council discussed at their meeting. He was invited to review the ideas and basically the feedback he received from staff was that the only potential modifications to the project that were really in the realm of worth considering was to consider doing a design change to include a residential or mixed-use development on the west side of the deck. The other ideas were not feasible. City staff prepared a list of pros and cons of whether or not doing a design modification that way would be a good idea. That is what led us to the interest in having a little more discussion on this matter.

Vice-Mayor Mumpower and Councilman Dunn felt that the parking deck matter was already discussed (with a certain number of parking spaces being set) and voted on and disagreed with the action coming again before City Council.

After a short discussion, Mayor Worley ruled the matter was properly before the Council,

Councilman Dunn moved to overturn the Mayor's ruling that the matter is properly before the Council (thus removing the item from the agenda). This motion was seconded by Vice-Mayor Mumpower and said motion failed on a 2-5 vote, with Vice-Mayor Mumpower and Councilman Dunn voting "yes," and Mayor Worley, Councilwoman Bellamy, Councilman Davis, Councilwoman Jones and Councilman Newman voting "no."

City Engineer Cathy Ball said that staff, along with the consultants for the project, have evaluated the option of incorporating some residential housing units into the proposed footprint of the Haywood Street Parking Garage and found that the only way to add residential units would be to add units on the O.Henry Street side of the parking garage. The impact of this change would be as follows: (1) Nineteen units could be added at a size of about 600 square feet per unit; (2) The number of parking spaces would be reduced by 109 spaces; (3) A minimum of 19 remaining spaces would need to be earmarked for the added residential component of the plan; (4) A need for parking would increase by a minimum of 19 parking spaces to accommodate the residential units; (5) The total impact on the number of parking spaces would be 128, which is approximately 20% of the total number of proposed spaces in the parking garage; (6) The cost to redesign the parking garage would be an estimated additional \$250,000; (7) The City would experience an additional four to six month delay in the construction of the parking garage; (8) The cost of constructing the parking garage would remain about the same because the efficiency of the garage would decrease. The cost per parking space would increase approximately \$5,000 to \$6,000 per space in present day dollars; (9) The marketing of the private development portion of the project may be adversely impacted due to the reduced number of parking spaces available in the parking garage; (10) The cost of financing the garage would increase because a higher percentage of the parking spaces would have to be funded at a non-tax exempt rates; (11) The annual revenue generated from the

parking garage would decrease by approximately \$150,000; (12) The overall operation of the parking garage would be adversely effected due to the loss of one access point on the O.Henry side of the garage; and (13) Regarding the efficiency of the deck under the current scenario system-wide, in the year 2019, approximately 20 days during that year the deck would be full. The same model suggests that by reducing the number of parking spaces by 128 spaces, (1) in the year 2019, approximately 77 days during that year the deck would be full, and; and (2) in the year 2014, 19 days during the year the deck would be full.

After careful consideration, it is staff's recommendation that we move forward with the construction of the parking garage as it is designed. Staff looks forward to exploring the options of developing a request for proposals for the private development portion of the project that may provide opportunity for the addition of some residential housing. Staff will be working closely with

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Council and the community to develop this request for proposals. She also suggested a market study to make sure we use the land as appropriately as possible.

Councilman Newman felt there were two basic reasons to consider a design modification. One is that there is a need for more moderately priced residential development downtown and the other is the potential benefits of how the project will look in downtown. Using a picture of a similar deck in Greenville, S.C., he illustrated how the project can look in downtown Asheville.

Upon inquiry of Councilman Newman about some financial positives of considering doing the private sector development on the west side of the property as well as the east side, Ms. Ball said if you were to bring in the residential component on the west side, you wouldn't have to put on the façade. You would still have to build a concrete firewall, which would be cheaper, however, that is a very short distance, so the cost didn't decrease tremendously as a result of that. The other is whether or not you could sell this land or the possible air rights. That cost could potentially be there, but we didn't have market data to show what we could sell them for. However, based on our appraisals we have done in 2000, it was about \$34.00 a square foot for land and it's now about \$40.00 a square foot. It was approximately \$120,000 for the land.

Councilman Newman said that some of the positives would be that we could sell that property for private sector development and there would be some façade reduction costs. Ms. Ball pointed out that those figures have already been included in the total change in cost (\$250,000). She said the parking garage costs would remain about the same, but the cost per space would go up. It will not necessarily decrease the cost of the garage because you have to build more in the turn-around area and have to move the elevator. It wasn't enough to offset the per space cost.

Councilman Newman said that the financial benefits of reducing construction costs, compared to the financial costs of having to do redesigns, is basically a wash. Therefore, considering a design modification to the project would lose approximately 115 parking spaces, but what you get is 20 residential units downtown, which will be smaller and hopefully fairly moderately priced. And, the project might look better if the deck is wrapped with residential development.

Upon inquiry of Councilwoman Jones, Ms. Ball said that they did not look at, nor did they consider, the increase associated with putting the property back on the tax rolls. Mayor Worley calculated that the additional tax base to be approximately \$1,300 a year.

Councilman Newman explained how in the short run the decks would generate more money. Ms. Ball responded that in some cases where a council wants a certain type of development, they may even give away the land. It would depend on the kind of deal you come up on the spaces, whether or not you lease them at market rate or you are able to throw them in as an affordable housing project. There are a lot of questions Council would have to consider in giving these spaces out. If they paid full costs, there would be a demand for an additional 19 spaces earlier than later. Councilman Newman felt that in the short run the decks would generate more money (because there would be more demand for the parking spaces in the front end.

Councilman Newman also pointed out that since the cost of every parking space is about \$50 a month to maintain, there would be reduced future maintenance costs if there were fewer parking spaces.

Ms. Ball said that the finance positives discussed but not listed in her report were the property tax realized (approximately \$1,300); the amount of the sale of the property at \$40 a square foot (approximately \$110-120,000); and maintenance costs (approximately \$40-50 a

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space). She felt that in the short run, the amount of money that would be generated would be negligible.

Councilman Newman moved to consider design modifications on the west side of the deck for private sector development of approximately 20 moderately priced residential units. This motion was seconded by Councilwoman Jones.

Councilman Newman said that regardless of his first motion, he would put forward a motion to give direction to City staff that when we develop the Request for Proposals (RFP) for the private sector development on the Civic Center side of the deck, that we encourage them to structure the RFP in a way that can hopefully maximize the number of affordably or moderately priced residential units.

Mr. W. Louis Bissette Jr., representing the Grove Arcade, was concerned with the reduction in the number spaces and the delay

in the construction of the deck. He urged Council to move forward with the current design plan and hoped that the affordable housing aspect would be addressed by the private sector development near the Civic Center.

Mr. Bill Griffin, merchant at the Grove Arcade, urged Council to proceed with construction of the original design as soon as possible.

Ms. Ruth Summers, with the Grove Arcade, also spoke in support of the original design of the parking deck.

Mr. Eric Gorny, County resident, spoke in support of additional parking in the City.

Ms. Selina Sullivan spoke in support of affordable housing and less parking.

There was further discussion on the design modification and each Council member voiced their opinion.

City Manager Westbrook suggested a limited market study be performed by someone other than City, as to what may be the best use. Once we have that market study, then we can create the RFP.

Ms. Ball also recommended a market study and then the development of an RFP based on the market study. The market study will give Council better direction on what would be the best options and it will also tell Council what trade-off's the City will have to make if they want affordable or mid-range housing to occur. She suggested, so that Council can get the best and most information they can, is that Council look at both options – what is the highest and best use, and what kind of subsidy would have to be done for putting in affordable housing units in that area.

Upon inquiry of Councilwoman Bellamy, Ms. Ball said that, based on other units in the area, the market rate for a developer to come in and build the 19 units would be approximately \$180,000 a unit, unless there was some subsidy.

Councilwoman Jones said that she would support the motion for a design modification subject to keeping the existing parking commitments and cutting from the vague private sector portion. She did, however, recognize that there would be a time delay.

The motion made by Councilman Newman for a design modification and seconded by Councilwoman Jones failed on a 2-5 vote, with Councilwoman Jones and Councilman Newman

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voting "yes" and Mayor Worley, Vice-Mayor Mumpower, Councilwoman Bellamy, Councilman Davis and Councilman Dunn voting "no."

Councilman Newman moved that someone other than City staff prepare a market analysis for the private sector development on the Civic Center side of the desk, and that we look at the feasibility of including affordable and moderately priced housing as part of the overall project. This motion was seconded by Councilwoman Bellamy.

When Councilwoman Jones asked that the market study include the downtown merchants to see what they really want, Mr. Shuford suggested a little broader market study in general, and then have a specific component for this area so we are able to have a nice economy of scale and get a useful tool for other areas in downtown as well.

City Manager Westbrook said that staff will bring back an appropriation request of approximately \$25,000 to fund the market study prior to the study being actually performed.

Vice-Mayor Mumpower would not support the City spending \$25,000 when we have been given many ideas about how the property needs to be developed.

The motion made by Councilman Newman and seconded by Councilwoman Bellamy carried on a 6-1 vote, with Vice-Mayor Mumpower voting "no."

B. RESOLUTION NO. 05-78 - RESOLUTION APPOINTING MEMBERS TO THE ASHEVILLE SCHOOL BOARD

Vice-Mayor Mumpower said that the terms of John Legerton, Lewis Isaac and Allison Jordan, as members on the Asheville School Board, expire April 1, 2005.

At the City Council worksession on February 15, 2005, City Council instructed the City Clerk to arrange interviews for Elizabeth Hubbell, Leslee Kulba, Keith Thomson, Alfred Whitesides Jr., Jim Taylor and Gene Bell. On March 9, 2005, Ms. Kulba withdrew her name from consideration.

It was the majority of Council's decisions to not bring in Ms. Jordan for an interview, however, she would remain an active candidate for a vacancy.

After each Council member spoke in support of all the candidates, Allison Jordan received 7 votes, Elizabeth Hubbell received no votes, Gene Bell received 7 votes, Keith Thomson received no votes, Alfred Whitesides Jr. received six votes and Jim Taylor received 1

vote. Therefore (1) Allison Jordan was reappointed to serve a four-year term, term to expire April 1, 2009, or until her successor has been appointed; and (2) Alfred Whitesides Jr. and Gene Bell were each appointed as members to the Asheville School Board to serve a four-year term respectively, terms to begin on April 1, 2005, and expire on April 1, 2009, or until their successors have been appointed.

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B. RESOLUTION NO. 05-79 - RESOLUTION APPOINTING A MEMBER TO THE BOARD OF ADJUSTMENT

Vice-Mayor Mumpower said that Jerry Bailey has resigned as a Regular member of the Board of Adjustment, thus leaving an expired term until January 21, 2006.

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At the City Council's worksession on March 15, 2005, City Council instructed the City Clerk to arrange interviews for Starr Silvis, W.E. Lack, Scott Shealy and Robert Middlemas. Ms. Silvis was unable to come in for the interview.

After each Council member spoke in support of all the candidates, it was the consensus of City Council to appoint Robert Middlemas (current Alternate member) as a Regular member to the Board of Adjustment to serve the unexpired term of Mr. Bailey, term to expire January 21, 2006, or until his successor has been appointed.

Because Mr. Middlemas was an Alternate member, it was the consensus of City Council to appoint Mr. Scott Shealy to fill the unexpired Alternate term of Mr. Middlemas, term to expire January 21, 2006, or until his successor has been appointed.

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VI. OTHER BUSINESS:

For Our Kids

Vice-Mayor Mumpower thanked those who participated in developing The Leadership Circle, which is a project associated with the overall For Our Kids Program, which he and Councilwoman Bellamy share responsibilities in.

Claims

The following claims were received by the City of Asheville during the period of February 25-March 10, 2005: PSNC Energy (Water), Eric Stewart (Water), Kevin Kelley (Water) and James T. Wintle Jr. (Fire.) These claims have been referred to Asheville Claims Corporation for investigation.

VII. INFORMAL DISCUSSION AND PUBLIC COMMENT:

Mr. Gene Hamilton stressed that it is virtually impossible for any organization to operate successfully without a Comprehensive Quality Plan. The International Standards Organization (ISO 9001) provides ample guidance for the development of such a Plan. On behalf of Asheville Citizens for Quality Government, he urged City Council to improve the quality of City government by instituting such a plan.

Mr. Eric Gorny, County resident, urged City Council to take the initiative to contact the Buncombe County Commissioners and schedule a Joint City-County Meeting to work on the Water Agreement.

VIII. ADJOURNMENT:

Mayor Worley adjourned the meeting at 10:28 p.m.

CITY CLERK

MAYOR