

Regular Meeting

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

**PLEDGE OF ALLEGIANCE**

The T.C. Roberson High School Air Force ROTC led City Council in the Pledge of Allegiance.

**INVOCATION**

Councilwoman Jones gave the invocation.

**I. PROCLAMATIONS:**

**A. RESOLUTION NO. 05-110 - RESOLUTION OF APPRECIATION TO RETIRING CITY MANAGER JAMES L. WESTBROOK JR.**

Vice-Mayor Mumpower read the resolution of appreciation to retiring City Manager James L. Westbrook Jr. On behalf of the City Council, Vice-Mayor Mumpower thanked Mr. Westbrook for his ten years of service he has devoted to the citizens of Asheville.

Resolution No. 05-110 was adopted by acclamation.

**RESOLUTION BOOK NO. 29 – PAGE 134**

**B. PRESENTATION OF ACCREDITED AGENCY STATUS FOR THE ASHEVILLE FIRE AND RESCUE DEPARTMENT FROM THE COMMISSION ON FIRE ACCREDITATION INTERNATIONAL**

Chief Paul Brooks, Vice-Chairman of the Commission on Fire Accreditation International, presented the City of Asheville Fire Department with the Accredited Agency Award.

**II. CONSENT AGENDA:**

**A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON MAY 10, 2005, AND THE WORKSESSION HELD ON MAY 17, 2005**

**B. MOTION SETTING A PUBLIC HEARING ON JUNE 14, 2005, REGARDING ADOPTION OF THE FISCAL YEAR 2005-06 ANNUAL OPERATING BUDGET**

**C. RESOLUTION NO. 05-112 - RESOLUTION AUTHORIZING THE CITY MANAGER TO SIGN A CONTRACT WITH WHEELER CONSTRUCTION COMPANY INC. FOR THE 2003-04 ANNEXATION AREAS SANITARY SEWER SYSTEM IMPROVEMENTS PROJECT**

Summary: The consideration of a resolution authorizing the City Manager to sign a contract with Wheeler Construction Company, Inc., in the amount of \$ 132,950.25, for the project known as 2003-2004 Annexation Areas Sanitary Sewer System Improvements.

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This project consists of the installation of approximately 1,200 linear feet of eight-inch diameter sanitary sewer line and related appurtenances.

The Engineering Department received and publicly opened three bids on Thursday, April 28, 2005, at 2:00 p.m. Three bids were received from Wheeler Construction, Hobson Construction and Huntley construction in the amounts of \$ 132,950.25, \$ 133,436.00 and \$ 199,872.75, respectively. After a thorough review of the bid documents by the Engineering Department and the

Office of Minority Affairs, Wheeler Construction Company, Inc., was found to be the lowest responsible bidder with a total bid of \$ 132,950.25.

The project will be financed with monies from Capital Improvements Fund.

Wheeler Construction Company, Inc., has performed several projects of this nature in the past in a satisfactory manner.

The construction time for this project is identified as 120 calendar days in the contract documents. The contractor will be required to pay the sum of \$250.00 as liquidated damages for each and every calendar day that he shall be in default after the time stipulated in the contract.

Considerations of adopting a resolution authorizing the City Manager to execute this contract are as follows:

- The execution of this contract will allow the City to meet the requirements for sanitary sewer system service improvements, as established in the 2003 and 2004 Annexation Areas Plan of Services;
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- The bid amount of \$ 132,950.25 for the construction of the 2003-2004 Annexation Areas Sanitary Sewer System Improvements Project is equitable, as compared to the engineer's estimate of \$ 135,528.00 and recent construction cost data on projects of the same nature;
- Extension of the sanitary sewer system enhances the environmental quality of the area to be served and prevents water quality problems.
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- The only foreseeable disadvantage of adopting a resolution authorizing the City Manager to execute this contract is the temporary land disturbance along the proposed sanitary sewer construction corridor.

Construction of this sewer line is in line with goal # 1 under the Natural and Built Environment focus area of the Strategic Operating Plan of the City of Asheville.

Staff recommends that City Council adopt a resolution authorizing the City Manager to execute a contract with Wheeler Construction Company, Inc., in the amount of \$132,950.25, for the 2003-2004 Annexation Areas Sanitary Sewer System Improvements Project.

#### **RESOLUTION BOOK NO. 29 – PAGE 136**

#### **D. RESOLUTION NO. 05-113 - RESOLUTION RATIFYING THE CITY MANAGER'S ACTIONS IN APPLYING FOR A GRANT WITH THE N.C. DEPT. OF CRIME CONTROL AND PUBLIC SAFETY FOR A GRANT TO CONSTRUCT RADIO TOWERS TO IMPLEMENT THE VIPER COMMUNICATION SYSTEM WITHIN THE CITY**

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Summary: The consideration of a resolution ratifying the City Manager's actions in applying for a grant from the N.C. Dept. of Crime Control and Public Safety to construct radio towers to implement the VIPER communication system.

The N. C. Dept. of Crime Control and Public Safety, through the Governor's Crime Commission, has money available to local governments in order to have its radio system VIPER compliant. The City of Asheville entered into an agreement with the State of North Carolina through the N.C. Dept. of Crime Control and Public Safety for the purchase and installation of VIPER compliant radios for the Fire and Police Departments with endorsement of the Asheville City Council in January 2005. This grant is to construct towers to implement the VIPER system enhancing communication ability and improving interoperability.

The towers and VIPER system will allow emergency responders to communicate with each other and other state agencies involved in an incident with Asheville and in many areas across North Carolina. The towers and VIPER system will allow personnel in Asheville to communicate with our personnel or responding personnel to us in other areas of the State.

The City of Asheville will not receive these funds; instead, we are authorizing the State of North Carolina to spend the \$1.5 Million on our behalf. Therefore, no budget amendment is necessary.

Asheville City Council has directed staff to validate levels of emergency services provided for our citizens through the City's Strategic Operating Plan. Within the City of Asheville Strategic Operating Plan section on Critical Services and Infrastructure: Goal 3 – Strong City and County Partnerships; Objective 1 – Review and validate the levels of critical emergency services provided

throughout the city; Task 3 – Review and validate the levels of critical emergency services provided throughout the city.

PROS:

- The towers would allow the Asheville Fire and Rescue Department to take advantage of the information and technology that is available to us and allow us to apply it virtually every day.
- The enhanced communication potential would increase effectiveness during emergencies.
- The ability to communicate from Asheville to our personnel or responding mutual aid is and invaluable service.
- If the grant is approved, 100% of the funds, would be supplied by through the N.C. Dept. of Crime Control and Public Safety.

CONS:

- Staff is not aware of a negative consequence to this grant.

City staff recommends City Council approve the resolution ratifying the City Manager's actions in applying for the grant with the N.C. Dept. of Crime Control and Public Safety.

**RESOLUTION BOOK NO. 29 – PAGE 137**

**E. RESOLUTION NO. 05-114 – RESOLUTION ACCEPTING THE NEW STREET NAME OF “REGAN LANE”**

Summary: The consideration of a resolution approving Regan Lane as the name for a new street located off Downing Street.

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Staff has reviewed the proposed name and found no conflicts that would impede emergency service response. The primary purpose of establishing a name for any new street is to facilitate emergency response. Staff researched the street data and has determined that this name is not duplicated. A street name was necessary to facilitate specific street name and numbers for new structures. It would be impractical, and due to the existing street numbers, impossible to address the new structures from Downing Street without causing emergency response delays.

Pro:

- The street will be utilized to access six new homes. Assignment of specific addresses, utility connection, and potential emergency response will be enhanced with specific the street name.

Con:

- There are no negative affects of for assignment of Regan Lane to this new street.

Asheville City Council has directed staff to validate levels of emergency services provided for our citizens through the City's Strategic Operating Plan. Within the City of Asheville Strategic Operating Plan section on Critical Services and Infrastructure: Goal 3 – Strong City and County Partnerships; Objective 1 – Review and validate the levels of critical emergency services provided throughout the city; Task 3 – Review and validate the levels of critical emergency services provided throughout the city.

Staff recommends adoption of the resolution accepting Regan Lane as new street name.

**RESOLUTION BOOK NO. 29 – PAGE 138**

**F. RESOLUTION NO. 05-115 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A PROFESSIONAL SERVICES CONTRACT WITH MCGILL ASSOCIATES, P.A., FOR WATER SYSTEM IMPROVEMENTS**

Summary: The consideration of a resolution authorizing the City Manager to enter into a professional services contract with McGill Associates, P.A.

The Water Resources Department has requested a low interest state loan in the amount of \$1,775,000.00 and has approximately \$700,000.00 in unused state grant funds for infrastructure improvements.

The Water Resources Department requires a professional engineering firm to prepare the necessary documentation required by the state and appropriate professional engineer civil designed water plans for a project on US 1923 (low interest low request) and to complete the Critical Needs Phase III water system improvement projects. McGill Associates, a local engineering firm has previously worked on the preliminary design and scope of these projects. This contract is to formalize the completion of the project and to prepare all documentation required by the State of North Carolina concerning funding and reimbursement for these projects with the cost of these professional services to be \$157,000.00. Funds are available in the current water budget for this expenditure.

PROS:

- These projects will enhance the water system and help create a connection to the Canton, N.C., water system.

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CONS:

- There are no cons to these projects, water pressure will be increased and the US 19/23 corridor area will enhance the development potential of an area in the county that currently does not have a water line.

City staff recommends City Council approval of the City Manager signing contract agreement with McGill Associates in the amount of \$157,000.00.

#### **RESOLUTION BOOK NO. 29 – PAGE 139**

##### **G. RESOLUTION NO. 05-116 - RESOLUTION APPOINTING A MEMBER TO THE CIVIL SERVICE BOARD**

Vice-Mayor Mumpower said that the term of Gene Bell, as a member of the Civil Service Board, expired May 21, 2005.

At the City Council worksession on May 17, 2005, City Council instructed the City Clerk to prepare the proper paperwork to appoint Barbara Marlowe to the Civil Service Board to serve a two-year term, term to expire May 21, 2007, or until her successor has been appointed.

#### **RESOLUTION BOOK NO. 29 – PAGE 140**

##### **H. RESOLUTION NO. 05-117 - RESOLUTION APPOINTING LEESA GIBBS TO THE FIREMEN'S RELIEF FUND**

Summary: Ms. Eva Williams, member of the Firemen's Relief Fund, recently died, thus leaving an unexpired term until January 1, 2007.

At the City Council's worksession on May 17, 2005, City Council instructed the City Clerk to prepare the proper paperwork to appoint Leesa Gibbs as a member of the Firemen's Relief Fund Board of Trustees, to serve the unexpired term of Ms. Williams, term to expire January 1, 2007, or until her successor has been appointed.

#### **RESOLUTION BOOK NO. 29 – PAGE 141**

##### **I. RESOLUTION NO. 05-118 – RESOLUTION MAKING PROVISIONS FOR THE POSSESSION AND CONSUMPTION OF MALT BEVERAGES AND/OR UNFORTIFIED WINE AT THE ROCKIN' THE MOUNTAINS FUNDRAISER AT JAKE RUSHER PARK ON JUNE 11, 2005**

Summary: The consideration of a resolution making provisions for the possession and consumption of malt beverages and/or unfortified wine at Rockin' The Mountains fundraiser at Jake Rusher Park.

The Rotary Clubs of Arden and Biltmore have requested, through the Asheville Parks and Recreation Department, that City Council permit them to serve beer and/or unfortified wine at the Rockin' The Mountains fundraising event to be held on Saturday, June 11, 2005, at Jake Rusher Park, formerly known as Royal Pines Park in Arden. The proceeds of this event will go for additional park amenities and beautification projects. This is the second year that these clubs have held this co-sponsored event.

The Asheville Parks and Recreation Department recommends approval of the resolution allowing possession and consumption of malt beverages and/or unfortified wine at the Rockin' The Mountains fundraiser at Jake Rusher Park.

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

**III. PUBLIC HEARINGS:**

**A. PUBLIC HEARING TO CONSIDER AMENDING THE CONDITIONAL USE PERMIT AND MASTER PLAN FOR BROTHERTON COMMONS, LOCATED AT THE CORNER OF VIRGINIA AVENUE AND BROTHERTON AVENUE, FOR A PROPOSED 44-UNIT HOUSING DEVELOPMENT**

On May 12, 2005, a letter was received from Clay Estep, Construction Project Manager for Neighborhood Housing Services of Asheville, N.C., Inc., to Urban Planner Kim Hamel as follows: "Pursuant to our conversation earlier this morning, please withdraw the Brotherton Commons/Greenwood Point Project from Council presentation. As discussed the main reason for the application withdrawal is the separation of principals within the Verdi Group. The designer or record will change from David Hill with the Verdi Group to Mitchel Sorin. Mitchel has been involved with the project extensively and will not move to Charleston with the Verdi Group. We will resubmit our information to TRC for the June meeting."

**B. PUBLIC HEARING TO CONSIDER THE SAWYER MOTOR COMPANY BUILDING AT 100 COXE AVENUE AS A LOCAL HISTORIC LANDMARK**

Vice-Mayor Mumpower said that this public hearing was scheduled for April 12, 2005; however, the applicants requested a continuance until May 10, 2005. On May 10, 2005, the applicants then requested a continuance until May 24, 2005.

Vice-Mayor Mumpower opened the public hearing at 5:24 p.m.

Historic Resources Director Stacy Merten said that this is the consideration of an ordinance designating the Sawyer Motor Company Building at 100 Coxe Avenue as a local historic landmark. This public hearing was advertised on April 1 and 8, 2005.

The 2025 Plan calls for continued efforts involving the preservation and enhancement, of historic properties. The Sawyer Motor Company Building has been recommended by the HRC for landmark designation.

The Sawyer Motor Company Building was found to be historically significant in the areas of commerce and architecture. The Sawyer Motor Company was the first automobile dealer to announce plans to build a new showroom on Coxe Avenue in the newly created automotive business district which was developed by E. W. Grove when he filled the deep ravine that existed between Patton and Southside Avenues with the earth obtained from the leveling of the hill where the old Battery Park hotel had stood. The Sawyer Motor Company was founded by Eugene Sawyer who was the first automobile dealer in Asheville, selling his first automobile in 1903.

The structure was completed in 1926 and was built as a grand four-story concrete and steel framed auto showroom and garage. The structure is faced with dark red brick and ornamented with cast concrete trim. Cast concrete names plaques are located at both the corner and at the center of the front entrance as part of an ornamented parapet. The exterior of the

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building provides a strong example of the streetscape of Asheville, as it would have existed on Coxe Avenue in the late 1920's. One of the most interesting features of the 60,000 sq. ft. building was the use of the roof, accessed by an interior ramp to an additional 15,000 sq. ft. of parking.

The Sawyer Motor Company Buildings is a contributing structure in the Downtown Asheville National Register District and is part of a cluster of three automobile showrooms that remain standing on Coxe Avenue, including the B& B Motor Company Building and the Conabeer Motors Building located at 162-164 Coxe Avenue.

The Sawyer Motor Company Building has been rehabilitated and developed as condominiums and commercial space. The garage level on the second floor remains relatively intact with the original concrete framing, beams, pipes, electrical conduit and ductwork all exposed. The commercial area on the first floor has been designed to allow the concrete structure of the building and

mechanical systems to remain visible overhead and the exterior walls and windows to remain visible.

The ordinance designates the Sawyer Motor Company Building as a local historic landmark. The property included in the designation consists of Sawyer Motor Company Building and the .63 acre parcel on which it is located as identified on the survey. The designation does not include any interior features.

Designation of this site as a local historic landmark makes the property owner eligible for a 50% reduction in local property taxes. Currently the tax appraisal for the property included in the proposed designation is \$6,066,600.00. If the property were designated as a local landmark the potential tax savings for the property owners, including city, county and school taxes would be \$40,039.56. Each individual owner would have to apply for the exemption. There is a question as to the eligibility of this property for tax deferral as the significant features are exterior only and the property is owned in common as a condominium. The Buncombe County Tax Assessor will determine the applicability.

When a property is designated historic, restrictions are placed on the property, and any modification to the land or structure must receive a Certificate of Appropriateness from the Historic Resources Commission of Asheville and Buncombe County (HRC). All improvements must follow the Secretary of the Interior's Standards for Rehabilitation and Illustrated Guidelines for Rehabilitating Historic Buildings. It is important that properties of local significance are preserved and protected for cultural, historic, and economic reasons and for the benefit of future generations.

Pros:

- A significant property will be recognized for its contribution both architecturally and culturally to the economic and industrial history of the area.

Cons:

- This is not a strong candidate for landmark designation.
- If approved, the tax deferral will result in a loss of revenue to the city and county.
- This property has been recognized as part of the downtown National Register district and currently is under no threat of being lost.

Based upon the foregoing, the HRC recommended that the Asheville City Council adopt an ordinance designating the Sawyer Motor Company Building as a local historic landmark.

Staff does not recommend that the City Council adopt the ordinance for landmark designation of the Sawyer Motor Company Building. Staff is concerned that although the HRC found that the property, technically met the minimum requirement for local significance, that the structure is not a strong candidate for landmark designation as the interior of the structure has

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lost much of its integrity, as reflected in the minutes from the HRC hearing. Also, The structure is currently well maintained and under not threat of demolition, having recently been renovated and adaptively reused as a mixed-use development. Additionally, the property has little educational value to the community as a whole.

Ms. Merten further explained that there are two key reasons for designating a structure as a local landmark. The first is to provide a financial incentive to preserve a critically important and potentially threatened structure. Since the renovation of the Sawyer Motor Building has been accomplished, this reason does not apply over at least the short term – it is unlikely that the building is threatened with demolition at this time. The second reason – and the one that applies in this circumstance – is to recognize a critically important structure and protect it from future renovations that could threaten its historic integrity.

She reviewed with Council the following list of existing local landmarks in the downtown area of Asheville.

<b>Downtown Local Landmarks</b>	<b>Year Designated</b>
Grove Arcade	1985
Loughran Bldg.	1994
Flat Iron Bldg.	1990
Public Service Bldg.	1990
S & W Cafeteria	1982
Drhumor Bldg.	1998
Kress	1982
Thomas Wolfe House	1998
Market Street & Langren Alley	1985

Old Pack Library	1982
YMI	1981
City Building	1988
Ravenscroft School	1981

A number of these buildings have been renovated and adapted for new uses following their designation as local landmarks. These renovations were reviewed by the HRC in accordance with the Secretary of Interior Standards for Rehabilitation. These reviews have been extremely helpful in protecting the historic integrity of the buildings.

Landmark designation is an honor and it is the highest level of recognition that a property can receive at the local level. It signifies recognition that the property is vitally important to the heritage and character of the community and that its protection significantly enriches the community's residents. In other words, the purpose of local designation is to recognize and protect a structure the community regards as irreplaceable. Ultimately, therefore, the Council must decide if the Sawyer Motor Building belongs in the list of local landmarks and whether its demolition or inappropriate renovation would result in an irreplaceable loss to the character of downtown Asheville and to the citizens of the community as a whole. If the Council agrees with the HRC and feels the Sawyer Motor Building is of comparable character to the buildings on the list, the building should be landmarked. If not, the Council should follow the staff recommendation and not designate the building as a local landmark.

Mr. Fred English felt that this is a tax dodge and urged Council not to designate the building as a local historic landmark.

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Mr. Ray Conaway, Sawyer Motor Building (SMB) Condominium, said that landmark designation is an honor. It signifies recognition that a property is important to the heritage and character of the community and its protection enriches all of the community's residents.

The present renovation and reuse of the Sawyer Motor Building has, in fact, made many concessions to preserve and be respectful of the interior integrity of the structure while allowing the building to remain in service. The Sawyer Motor Building rehabilitation project was approved by both the Restoration Branch of the North Carolina State Office and the National Park Service in accordance with the Secretary of the Interior's standards for rehabilitation.

On the first floor, the exposed concrete post and beam construction, mechanical equipment and low-partition walls were aspects of the renovation that contribute to the open atmosphere of the original first floor showroom. The full-height central office area of the old showroom is clearly evident in the interior of the new space. The second floor garage, for the residents of the building includes factory windows, original paint with customer instructions, concrete posts and beams with evidence of the original ramp to the upper floors and fully conveys the historic character of that level.

The partitioning of the third and fourth floors for the residential units does contain some concessions to modern convenience and code requirements for residential use, but again, the ceilings reveal the original steel beams, girders and the concrete floors above. The mechanical systems have been left exposed in order to retain much original character of the building. Original factory windows are found in every residential unit and hallways.

According to the Designation of Historic Landmarks, the property must meet at least one of the following criteria:

- (1) It is associated with events that have contributed significantly to our history.

The Sawyer Motor Company was the first automobile dealer to build a new showroom and garage facility on Coxe Ave. in the spring of 1925.

- (2) It is associated with the life of a person significant in our past.

Eugene C. Sawyer, President of Sawyer Motor Co., was the first automobile dealer in Asheville, selling his first car in 1903. Two of his early sales of vehicles were to Rutherford P. Hayes, son of the former President, and George W. Vanderbilt, owner of Biltmore House.

- (3) It embodies the distinctive characteristics of a Type, Period, or Method of Construction.

During the 1920's population boom in Asheville, the growth of the automobile business was reflected in an impressive number of new structures designed for the sales, maintenance, and storage of these automobiles. In Asheville, the greatest concentration of these buildings occurred on Coxe Ave, which had been promoted as the City's "Automobile Traffic

Center".

The Sawyer Motor Building meets not just one, but three of the five listed criteria for Historic Significance.

The N. C. Dept, of Cultural Resources' Division of Historic Resources, Preservation Specialist Rebecca Johnson sent a letter dated July 1, 2004, to the Historic Resources Commission of Asheville and Buncombe County after reviewing the Local Designation Report prepared by Edwards - Pitman Environmental stating the following, "The Sawyer Motor Building,

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built from 1925-1926, is presented as an intact example of auto related building construction located on Coxe Ave. The Sawyer Motor Company was the first automobile dealer to announce plans to build a new showroom and garage on Coxe Ave., an area that was advertised as the Automotive Business District of Asheville. The Sawyer Motor Building contributes to the significance of the downtown Asheville Historic District listed in the National Register of Historic places. The designation report, together with the National Register nomination for the district, provides the Historic Resources Commission and Buncombe County sufficient information to determine the Sawyer Motor Building possesses both the special significance and requisite integrity for Landmark Designation."

Landmark designation means the community recognizes this building as an important historical resource worthy of preservation. Any substantial exterior design alterations will be subject to the design review procedures of the local commission. The owners may apply for an annual deferral of fifty percent of the property taxes as long as the property is designated and retains significance and integrity.

Through several meetings, phone conversations and written communications, he felt that the HRC agrees that the building meets three (not just one) of the stated criteria. Staff quotes that the building is not under imminent threat because it is listed on the National Register of Historic Places. According to Rebecca Johnson, Preservation Specialist with State Archives and History, this does not preclude any alterations or changes to the structure such as replacing windows, adding top floors or changing the exterior surfaces. The only control to prevent those changes can be preserved by Local Historic Resources. If the City wants to have control over their historic treasures, they must designate them as Local Historic Resources. That is the import and reason for the Commission.

Although this is a presentation for local historic designation of the Sawyer Motor Building, he would like to point out the new development in this area (the south side of Asheville) that is going on because of the rehab of the Sawyer Motor Building. It has been expressed to me that a pattern of development is now underway because the Sawyer Motor Building has given others the courage to develop in this area. Including the Sawyer Motor Building annex and the Union Transfer Building, that is now underway, a low estimate shows that approximately \$23 million will be added to the tax base of the City of Asheville. The development in this area will continue to add revenue to the City by attracting more visitors, investors and future homeowners to Asheville.

In conclusion, Mr. Conaway the City Council has this opportunity to designate the Sawyer Motor Building, a well-qualified historic building of significance to the history and posterity of Asheville. There will probably never be another opportunity to preserve it locally, and after two more years when the federal tax credits expire, changes can and will occur to the building that will forever disqualify it from ever being kept intact as an Asheville historic treasure.

Mr. Alan Ditmore did not support the designation in that the condominiums are too elite.

Vice-Mayor Mumpower closed the public hearing at 5:41 p.m.

Discussion surrounded Ms. Merten's responses to various questions/comments from Council, some being, but are not limited to: how long are the federal tax credits in effect and do the tax credits place restrictions on what can happen to the building; if the building is owned by individuals, how does someone go about changing the exterior; and is it anticipated that there will be changes to the exterior portion of the windows when the federal tax credits expire.

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Ms. Merten said that if Council is concerned about the appearance of the building, she felt that a case could be made for local district designation. She explained how that process would work.

Upon inquiry of Councilman Davis, Ms. Kathy Conaway, resident of the Sawyer Motor Building, explained why the developer did not seek local historic designation before the building was renovated.



Councilman Davis asked if staff's recommendation for local landmark designation would have been in support if the designation had been applied for before renovations to the building occurred. Ms. Merten responded that she still didn't think their recommendation would have been in support for landmark historic designation.

Vice-Mayor Mumpower was impressed that Mr. Pilos, the developer, began renovation of the building on Coxe Avenue with no infrastructure support from the City. Ms. Merten agreed that Mr. Pilos made a great contribution, however, receiving no support from the City is not a criteria for landmark designation.

Councilman Davis moved to deny designating the Sawyer Motor Company Building at 100 Coxe Avenue as a local historic landmark. This motion was seconded by Councilman Dunn.

Councilman Dunn felt this building is a great place to live and the property values will rise. However, he felt we would be subsidizing some high income property and would not be able to support this designation.

Councilwoman Jones was not familiar with historic preservation and felt that she would have to rely on the HRC's expertise, which was a unanimous vote in support of the designation.

The motion made by Councilman Davis and seconded by Councilman Dunn to deny the local historic designation carried on a 4-1 vote, with Councilwoman Jones voting "no."

**C. PUBLIC HEARING TO CONSIDER AN AMENDMENT TO THE UNIFIED DEVELOPMENT ORDINANCE BY ADOPTING CONDITIONAL ZONING AS A LAND USE APPROVAL PROCESS**

**ORDINANCE NO. 3237 - ORDINANCE AMENDING THE UNIFIED DEVELOPMENT ORDINANCE BY ADOPTING CONDITIONAL ZONING AS A LAND USE APPROVAL PROCESS**

Vice-Mayor Mumpower opened the public hearing at 6:06 p.m.

City Attorney Oast said that this is the consideration of an ordinance amending the Unified Development Ordinance (UDO) by adopting conditional zoning (and repealing conditional use district zoning) as a land use approval process. This public hearing was advertised on May 13 and 20, 2005.

Conditional or Special Use District (CUD) zoning has been authorized in North Carolina since the mid 1960's. Asheville adopted CUD zoning as part of the UDO in 2000. Despite the benefits of flexibility that CUD zoning provides, its legal and theoretical underpinnings – bifurcating the legislative rezoning from the quasi-judicial conditional use permit – have always been difficult to apply in practice.

In 2001 and 2002, the North Carolina Court of Appeals in two cases (review denied by the Supreme Court) approved the use of "conditional zoning." Conditional zoning is essentially

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the same practically and conceptually as CUD zoning in that it is a rezoning based on a site specific development plan, and the applicant is bound by the conditions in the ordinance. Legally, however, it collapses what was an awkward two-step process into a single process.

One important difference for the Planning and Zoning Commission and City Council is that the conditional zoning process requires no specific findings. Decisions should still be based on sound land use guidance principles, however, and this is set forth in the proposed ordinances. It may help to think of conditional zoning as adopting a set of development regulations (building height, setback, etc.) and applying them to a single property or group of properties, creating a single use classification. Procedurally, the process is much less complicated than CUD zoning. The process for appealing a conditional zoning ordinance into the courts would be different as well.

Under the proposed ordinance, the application process would be mostly unchanged from the current process for CUD zoning – requiring that the owner be the applicant, that a site-specific plan be submitted, and that the uses be specified. Also under the proposed ordinance, conditional zoning is not available for classifications such as Urban Village, where a site plan is already required.

The current CUD zoning process would be eliminated for future use. Any CUD zoning designations established by this

process, however, would continue to be governed by the CUD ordinance.

History / Prior Actions: After adding the reference to the conditional use standards in Sec. 7-16-2 to Sec. 7-7-8(d)(5), the Planning and Zoning Commission unanimously recommended adoption of the proposed ordinance.

Considerations:

- streamlined process at Planning & Zoning Commission/Council level, and in courts
- increased flexibility in zoning
- less administrative time required to process applications, administer ordinance
- less vulnerability to judicial challenge
- susceptible to over use

City staff recommends City Council amend the Unified Development Ordinance (UDO) by adopting conditional zoning (and repealing conditional use district zoning) as a land use approval process.

City Attorney Oast said that Mr. James Judd, with the Coalition of Asheville Neighborhoods, has made some suggestions, which staff agree with. He then reviewed the following recommended changes with Council:

7-7-8(c) - *General requirements.* The following provision shall apply in the administration of Conditional Use Zoning.

\* \* \*

7-7-8(c)(6)c. - Replace current wording with the following: Any other minor modification in accordance with the limitations and procedures prescribed in this Chapter, unless a conditional zoning ordinance adopted pursuant to this section specifies otherwise

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City Attorney Oast said that staff will come back to Council at some point in the near future with a proposed ordinance that would establish what a minor modification is and the boundaries that would affect minor modifications.

\* \* \*

7-7-8(c)(9) - If no action has been taken to begin development of the property in accordance with the conditional zoning ordinance within 24 months of its approval by city council, or no vested right has been obtained then the property shall revert to its previous zoning classification, or the planning director may initiate appropriate action to rezone the affected property to any other classification.

7-7-8(c)(10) - If the use or uses commenced pursuant to a conditional zoning ordinance adopted pursuant to this section are abandoned or discontinued pursuant to sections 7-17-5 or 7-17-6; or no vested right has been obtained then the property shall revert to its previous zoning classification, or the planning director may initiate appropriate action to rezone the affected property to any other classification.

\* \* \*

7-7-8(d)(2) - The application and supporting materials shall be reviewed by the technical review committee in accordance with its procedures for reviewing applications for conditional use permits prior to the meeting of the planning and zoning commission at which the application is to be considered. The recommendations and comments of the technical review committee shall be reported to the planning and zoning commission. In addition, the planning staff shall evaluate conditional zoning applications on the basis of the criteria for conditional use permits set out in Sec. 7-16-2, and shall submit said report at the public hearings on said applications.

City Attorney Oast said that the effective date of the proposed ordinance is July 1, 2005, however, someone has contacted him and would like to take advantage of this ordinance sooner. Therefore, he asked that the ordinance be made effective upon date of adoption by Council, but still keep the date of July 1, 2005, for the repeal of the conditional use district zoning.

Vice-Mayor Mumpower closed the public hearing at 6:16 p.m.

City Attorney Oast responded to various questions/comments from Council, some being but are not limited to: how does the appeal process differ from the conditional use district zoning; and what happens when a prior conditional use zoning have been

approved but construction has not begun.

Upon inquiry of Councilman Newman, City Attorney Oast explained how Council will have a broader degree of flexibility with adoption of the conditional zoning ordinance.

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

Councilman Newman moved for the adoption of Ordinance No. 3237. This motion was seconded by Councilwoman Jones and carried unanimously.

## **ORDINANCE BOOK NO. 22 – PAGE 88**

### **IV. UNFINISHED BUSINESS:**

### **V. NEW BUSINESS:**

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#### **A. ORDINANCE NO. 3238 - ORDINANCE AMENDING THE EXISTING ANIMAL CONTROL ORDINANCE**

#### **ORDINANCE NO. 3239 - ORDINANCE AMENDING APPENDIX B (SCHEDULE OF CIVIL PENALTIES) THE CODE OF ORDINANCES RELATING TO THE ANIMAL CONTROL ORDINANCE**

Assistant City Attorney Curt Euler said that this is the consideration of an ordinance regarding animal control.

The Asheville Police Department is seeking to improve public safety and the humane treatment of animals by reviewing and updating the animal control ordinance. Many of the amendments are technical in nature.

The following are the major revisions to the ordinance:

- City Council will have to decide between adopting a differential licensing or fertile animal permit scheme: (The proposed ordinance is drafted with the Fertile Animal Permit)

#### **A. Differential licensing fees for fertile and infertile dogs, Sec. 3-5 Annual Registration for Dogs**

1. Annual registration for spayed/neutered dogs will be less than that for fertile dogs.
2. Owner must provide proof of sterilization when initially registering a dog
3. The Fees and Charges Committee will set the annual fertile and infertile license fees.

#### **B. The Fertile Animal Permit**

1. The owner of a fertile animal will have to pay the City a one-time \$100.00 permit fee to keep a fertile animal within the City.
2. The City will only enforce this section if the Animal Control Officer is investigating another violation of the ordinance.
3. If the owner is found to have a fertile animal without a permit, the fine is \$200.00
4. If the owner gets the animal spayed or neutered within 30 days of the issuance of the fine, the City will waive the fine.

- Waiver of Registration Fees for licensed service dogs and working law enforcement dogs

- Fine structure has been amended – Appendix B

A. There is a cap on the amount of fines a person may receive before it is turned over to debt collections

B. The fine will accrue monthly, not weekly

- Specific regulations placed on the tethering of an animal, Sec. 3-12 Animal Care

- A. Restraint must be at least 15 feet in length
  - B. Restraint shall not become tangled or prevent the dog from moving freely or having access to food, water or shelter.
- Changes providing more agreement with state law, such as the requirement to immediately report an animal bite to the Police Department, Sec. 3-13 Animal Bite

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- Adoption of fertile animals in public prohibited, Sec. 3-12 Animal Care
- Prohibits the giving away of animals as a prize. Sec. 3-12 Animal Care
- Selected serious offenses made Criminal, Sec. 3-20 Penalties
  - A. Interference with Animal Control Officer, Concealment of Animal, Sec. 3-8 Inspection, Interference or Concealment
  - B. Animal Fighting, Sec. 3-12 Animal Care
  - C. Failure to report an animal bite, Sec. 3-13 Animal Bite
  - D. Failure to comply with an order of seizure, Sec 3-30 Seizure and Disposition of Animals
- Clarified definition of terms, Sec. 3-4 Definitions
  - A. *Bona fide farm*: use of one's real property for a farming business or enterprise, zoned or grandfathered for agricultural use; must comply with all applicable federal, state and local laws.
  - B. *Exotic pet*: any animal that is not classified as domesticated, livestock or a wild animal; does not include feral animals.
  - C. *Feral animal*: an animal of a species normally domesticated that has reverted back to a wild state.
  - D. *Fowl*: any bird traditionally associated with sport, farming or production; including but not limited to poultry and game birds.
- Added definitions of humane care and treatment, sufficient water, sufficient food and sufficient shelter, Sec. 3-4 Definitions
  - A. *Humane care and treatment*: maintaining an animal in an appropriate, sanitary environment. Humane care and treatment also considers the age, size, health problems, hardiness and other characteristics of the individual animal in daily care to prevent avoidable harm and suffering.
  - B. *Sufficient food*: the provision of food of sufficient quantity and quality to insure property growth or maintenance of body weight appropriate to the age and species of the animal.
  - C. *Sufficient shelter*: a structure which consists of least three sides, a floor and a roof and adequate in size and design to preserve the animal's body heat and protect the animal from the elements.
  - D. *Sufficient water*: access to a constant supply of water that is clean, fresh, and visibly free of debris and organic material, or provided at suitable intervals for the species, and not to exceed 24 hours at any interval.
- Lessened the 150-foot minimum distance that permitted livestock, fowl and exotic pets are allowed to be from adjacent households, Sec. 3-36 Permit for keeping
  - A. No person shall keep livestock and chickens and fowl within 100 feet of any household other than that of the owner of the animal, chicken or fowl.
- Numerous technical changes have been made to the wording of the ordinance for consistency and clarity and in order to make it easier to read.

The animal control ordinance was last revised on September 10, 2002. In an effort to meet public expectations and insure the most up to date ordinance possible, the Asheville Police

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Department began a review of the ordinance in late 2003. Consistent with City Policy, the Asheville Police Department sought input from organizations such as the Asheville Humane Society, the American Kennel Club, and other local animal welfare groups. In addition, the City held a public forum on May 4, 2005, for citizens to give input.

Pros:

- The fertile animal permit and the restrictions on adopting fertile animals in public locations are steps towards reducing the number of unwanted animals in the City.
- The new fine structure will be more equitable to citizens.

Cons:

- There will be a significant increase in time spent on each Animal Control call for service to enforce the fertile animal permit. This will reduce time spent on handling other Animal Control matters.
- The City will need to create new fields in the Animal Control database to keep track of the fertile animal permits. In addition, there will be significant additional staff time needed to deal with the citations and possible waiver of fines (this includes both Customer Service staff as well as Animal Control staff).

City staff recommends approval of the ordinance amending the existing Animal Control ordinance and the ordinance amending Appendix B (Schedule of Civil Penalties) relating to the animal control ordinance.

Mr. Euler said that pursuant to Council's directions at the May 17, 2005, Council worksession, staff has made the following amendments to the Revised Ordinance:

1. In Sec. 3-5(e) service dogs and service dogs in training will be exempted from paying the animal registration fee provided that the handler gives the City the service dog's and/or training dog's service registration number.
2. Staff did make some cosmetic changes to Sec. 3-12(k) in that the N.C. Department of Agriculture only regulates dogs or cats when they are sold, traded or put up for auction. Hence the City will prohibit the buying, selling or trading of dogs or cats without a permit from the Department of Agriculture. However, the City will keep the broader definition of "animal" (i.e. any nonhuman vertebrate creature) for pet adoptions taking place in a public area.
3. As to the issue of restricting pet adoptions in public places, the City's proposed ordinance is consistent with Buncombe County and no revisions to the proposed ordinance have been made. However, he did note that he has been working on this issue with other groups involved and feels that they have reached a compromise. He suggested dropping the 501 (c) (3) designation and just require that the group be a valid active non-profit North Carolina corporation. This would still not allow the individual citizen to take their box of kittens to Wal-Mart to do the adoption, but on the other hand, it would allow a lot of well-meaning animal groups to conduct public auctions without having to go through the burden of getting their 501 (c) (3) designation.

At the request of Vice-Mayor Mumpower, Mr. Euler explained why we are amending the ordinance at this time. He said that (1) the existing ordinance has been in effect for 2-3 years and it is time for an update, (2) the City needs to be consistent with the County animal control

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ordinance; and (3) the community expressed concern about pet over-population as a problem and this ordinance addresses that concern.

Mr. John Van Wezel, volunteer puppy raiser with Southeastern Guide Dogs Inc., urged City Council to exempt both the guide dog puppies in training as well as guide dog breeders from the provisions of the ordinance – both licensing and the spay/neutering provision. He explained that it can take up to two years for the Southeastern Guide Dogs Inc. to decide whether a

guide dog puppy in training can become a breeder or not. It depends on the lineage of that puppy and how it is performing.

Mr. Mary Parker, representing Forever Friends and Merry Paws, hoped that discussions on this ordinance will continue to help the City manage the problem of killing healthy, adoptable animals in the City. She hoped there is an ongoing process to evaluate whether particular provisions help or hurt the overall goal. She felt we need more information on where the animals that are breeding are really coming from. She supported the ordinance amendment that allows a state non-profit corporation conduct adoptions. She said there is a big problem with pet stores selling animals and would like to work with Council to get the State to enforce stricter standards. She explained that there are a number of people that will not take animals to the shelter and unless there are organizations like Forever Friends and Merry Paws, they will dump them somewhere. She asked Council to work with her organizations on this issue.

Ms. Leslie Armstrong urged City Council to not change the existing ordinance regarding exotic animals in the City. Our existing ordinance prohibits the private possession of exotic wild animals. The draft ordinance will make a distinction between wild and exotic animals and allow exotic animals to be kept if a permit is obtained. Exotic animals require special care and special maintenance and private individuals cannot do that. Exotic animals pose health and safety risks. She urged City Council to not change the existing ordinance but to keep the strong law that we already have regarding exotic wild animals.

Mr. Alan Burger echoed Ms. Armstrong's comments regarding prohibiting the private possession of exotic wild animals in the City.

Ms. Ann Johnston, private owner of show dogs, said it would be a tragedy if she had to pay \$100 for each of her four dogs and she doesn't want them spayed/neutered because the American Kennel Club does not permit people to show dogs that have been spayed or neutered. She suggested Council set up a separate group of dog owners and let them try to work out the problem and then they will submit their recommendation Council.

Ms. Marta Stoneman, Legislative Chair of the Asheville Kennel Club (AKC), presented City Council with materials regarding their response to the proposed ordinance. In summary of one concern, they felt that the proposed mandatory spay/neuter requirement is an attempt to address a problem that has not been adequately defined. While this change will certainly have a negative impact on many responsible pet owners, there is little evidence that it will have a positive impact on reducing the shelter population on the number of adoptable animals euthanized by the shelter. Numerous more positive and more effective alternatives exist. They recommended that the licensing fee for intact animals be removed from the proposed ordinance changes and tabled pending a one year analysis of the shelter population. The AKC offers its services, along with the resources of the AKC, to assist in constructing and conducting this analysis. The resulting report will be presented to City Council detailing the results of the analysis, suggested solutions, and the anticipated cost and effectiveness of each solution. Another concern is that the following sentence should be reinserted in the proposed ordinance to protect the rights of our citizens: "The animal control officer removing the animal shall then impound the animal and leave in a prominent place on the motor vehicle a written notice of the animal's impoundment, a brief description of the animal, and where and when the animal may be reclaimed." The final concern

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is that the appeals process has been redirected from the Chief of Police to the Director of Animal Control. The AKC is concerned that this does not provide appropriate checks and balances and requests that the language not be changed from the existing ordinance of "Chief of Police."

Rev. Nancy Clark, President of the Asheville Humane Society, explained that this ordinance works as seen during the past year with the County's adoption of their animal control ordinance. She said they have seen an incredible decrease in the number of animals euthanized and the number of animals adopted has held almost the same. Regarding show dogs, she explained that the ordinance targets animals and their owners that are the problem. They will only enforce the spay/neuter clause if the animal is in violation of another clause in the ordinance. Therefore, it's the dogs that are running loose that will be targeted. She encouraged Council to keep strong language denying any permits for exotic animals.

Mr. Stewart David, representing Carolina Animal Action, explained how he felt this ordinance is a big step in the right direction.

Vice-Mayor Mumpower closed the public hearing at 7:12 p.m.

Discussion surrounded Mr. Euler's and Ms. Brenda Sears', Animal Control Officer, responses to various questions/comments from Council, some being, but are not limited to: is the ordinance enforceable; is the success of the County ordinance based on education enforcement or enforcement efforts; how much does it cost to get your animal spayed/neutered and are there agencies that can assist low income people; how many employees does the County have to enforce their ordinance; how

many exotic animals are permitted and what are they; should permits be higher for exotic animals; what is the appeal procedure; and what is the procedure for impounding animals from cars.

Upon inquiry of Councilman Dunn, Ms. Shelly Moore, Executive Director of the Asheville Humane Society, said that the County's Animal Services Department supplied her with the following statistics: Since adoption of the County's ordinance, there have been a total of 187 citations issued, in conjunction with another violation of the ordinance. Of those, 41 people paid or complied (bought a permit or paid the fine), 83 were dismissed (people got their animal spay/neutered), and 63 are pending (they have an appointment to get the animal spayed/neutered or they have not complied and they are following up on compliance).

Upon inquiry of Councilwoman Jones, discussion took place as Ms. Sears explained the reasoning behind permitting exotic animals and how the City will enforce the permit.

At the request of Vice-Mayor Mumpower, Mr. Euler explained a scenario of the animal control officer being called to a home.

Vice-Mayor Mumpower said that members of Council have been previously furnished with a copy of the ordinances and they would not be read.

Councilman Dunn moved for the adoption of Ordinance No. 3238. This motion was seconded by Councilwoman Jones.

Councilwoman Jones asked to amend the motion to include the following language in Section 3-12- (k): "In addition, it shall be unlawful to adopt any animal in a public place within the city unless the entity placing the animal is an active North Carolina non-profit corporation, and prior to adoption of the animal, the animal is spayed/neutered and has all of the necessary vaccinations set forth by state law."

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Councilman Dunn accepted the amending. Therefore, the amended motion carried unanimously.

#### **ORDINANCE BOOK NO. 22 – PAGE 94**

Councilman Dunn moved for the adoption of Ordinance No. 3239. This motion was seconded by Councilwoman Jones and carried unanimously.

#### **ORDINANCE BOOK NO. 22 – PAGE 117**

### **VI. OTHER BUSINESS:**

Councilman Davis announced various board and commission vacancies.

City Attorney Oast handed to Council a letter just received from County Attorney Joe Connolly, dated May 24, 2005, regarding the "Consolidated Water and Sewer Authority." As each Council member spoke about the need for the City's review of the content prior to response, Councilman Newman briefly stated that he has reviewed the proposal and personally feels there are serious problems in it from the City's perspective. There were several very important issues that City Council was interested in when we started the process of creating a new water agreement for the future of our water system. One of the main reasons was that we wanted to provide relief for families in Asheville who pay the highest water rates in North Carolina. As far as he can tell, the County's proposal does nothing to address that concern. City Council also wanted to create a plan to fix our water system and to stop diverting water revenues towards other governmental purposes. The County's plan would actually increase the level of diversion of water revenues to non-water purposes in local government. The current plan diverts 7.5% of water revenues to other governmental purposes and the County's plan would actually divert approximately 12% of water revenues to non-revenue purposes. Those revenues would come to City government, but 60% of the water customers already live in Asheville so asking those water customers to give City government more money for non-water purposes is not attractive. City Council also was interested in a more reasonable process for annexing large new developments that are being built around Asheville city limits. The County's proposal does not address that in any meaningful way beyond what existing State law already allows. In addition, City Council wanted to assure that Asheville's perspective is fairly represented in the future governance of the water system - the majority of customers live in Asheville and Asheville owns almost all of the water assets. The County's proposal actually places Asheville in a permanent minority position in the future of governance of our water system, which is unacceptable. City Council is working hard to reach out and find an agreement that addresses these concerns, as well as addressing concerns we have heard from our County Commissioners. However, it is his sense that the County plan presented today does not do a very effective job of finding that common ground.

Vice-Mayor Mumpower thanked the County Commissioners for taking the lead this year on the Memorial Day celebration and urged citizens to attend this event.

Vice-Mayor Mumpower also reported on the For Our Kids Day event which took place at Klondyke Apartments. He also praised the work of the Hillcrest community who undertook a major clean-up effort in their community.

The following claims were received by the City of Asheville during the period of April 15-May 12, 2005: Valerie Y. Harper (Fire), Emily Tiffany-Davis (Sanitation), Wally King (Parks & Recreation), John Reed (Water) and Walter Robertson (Water). These claims have been referred to Asheville Claims Corporation for investigation.

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**VII. INFORMAL DISCUSSION AND PUBLIC COMMENT:**

Ms. Kyle Ross urged City Council to investigate police behavior. During her comments, a motion was made by Councilman Newman and seconded by Councilwoman Jones (which carried on a 4-1 vote, with Vice-Mayor Mumpower voting "no") to allow Ms. Ross to have an additional three minutes to complete her comments.

**VIII. ADJOURNMENT:**

Vice-Mayor Mumpower adjourned the meeting at 8:20 p.m.

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CITY CLERK

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MAYOR