

Regular Meeting

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

Absent: None

**PLEDGE OF ALLEGIANCE**

- Mayor Worley led City Council in the Pledge of Allegiance.

**INVOCATION**

Vice-Mayor Mumpower gave the invocation.

**I. PROCLAMATIONS:**

**A. PROCLAMATION PROCLAIMING JULY 11-18, 2005, AS "SWEET ADELINES INTERNATIONAL WEEK"**

Mayor Worley read the proclamation proclaiming July 11-18, 2005, as "Sweet Adelines International Week" in the City of Asheville. He presented the proclamation to Ms. Lee Hines, Chair of the local chapter Song O' Sky. The local chapter also gave City Council a short performance.

**II. CONSENT AGENDA:**

Due to a conflict of interest, Councilwoman Bellamy asked that Consent Agenda items "D" and "E" be removed for individual votes.

**A. RESOLUTION NO. 05-140 - RESOLUTION ADOPTING "TRIPLE H DRIVE" AS A NEW STREET NAME LOCATED OFF SAND HILL ROAD**

Summary: The consideration of a resolution adopting Triple H Drive as the name for the new street located off Sand Hill Road.

- The owners of property located off of Sand Hill Road have requested a new street name of "Triple H Drive." 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 structure from Sand Hill Road without causing emergency response delays.

- Pros:

- The street will be utilized to access twelve (12) new homes.
- Assignment of specific addresses, utility connection, and potential emergency response will be enhanced with specific the street name.

-2-

Cons:

- There are no negative affects of for assignment of Triple H Drive to this new road.

- This action complies with the City's Strategic Operating Plan as it validates levels of emergency services provided for our citizens. This is found in the 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; and Task 3 – Review and validate the levels of critical emergency services provided throughout the city.

- City staff recommends adoption of the resolution establishing Triple H Drive as the name for the new street located off Sand Hill Road.

**RESOLUTION BOOK NO. 29 – PAGE 174**

**B. RESOLUTION NO. 05- 141 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO AN AGREEMENT WITH THE N.C. STATE RURAL ECONOMIC DEVELOPMENT CENTER TO PREPARE REDEVELOPMENT PLANS**

## FOR THREE AREAS ALONG THE SWANNANOA AND FRENCH BROAD RIVERS

Summary: The consideration of a resolution authorizing the City Manager to enter into an agreement with Rural Economic Development Center to prepare redevelopment plans for three areas along the Swannanoa and French Broad Rivers, and approval of the accompanying budget amendment, in the amount of \$40,000.

In response to last fall's flooding, the General Assembly provided grant funding through the Rural Economic Development Center for communities that suffered flood damage. This funding includes planning monies (the subject of this report) as well as future implementation monies of up to \$700,000 per redevelopment area.

The City of Asheville applied for funding for three areas along the Swannanoa and French Broad Rivers. One area, the Biltmore Village area, was specifically earmarked in the legislative allocation. The other two areas – East Swannanoa and French Broad – were pursued by staff and determined eligible for funding by the Rural Center. We have received a total of \$40,000 for planning in the three areas.

Staff has been analyzing these areas in anticipation of market-driven and flood-related redevelopment and these funds will enable us to enhance our research. We will have a draft product for Council consideration by the end of July in accordance with the provisions of the grant agreement.

### Pros:

- Allows us to develop an enhanced redevelopment plan for each of these areas.
- Provides a potential source of plan implementation funding.

### Cons:

- None noted.

- City staff recommends City Council adopt the resolution authorizing the City to enter into the redevelopment planning grant agreement with the Rural Economic Development Center, and approval of the accompanying budget amendment.

## RESOLUTION BOOK NO. 29 – PAGE 175

-3-

### C. ORDINANCE NO. 3258 - BUDGET AMENDMENT TO ACCEPT GRANT FROM THE N.C. STATE RURAL ECONOMIC DEVELOPMENT CENTER TO PREPARE REDEVELOPMENT PLANS FOR THREE AREAS ALONG THE SWANNANOA AND FRENCH BROAD RIVERS

Summary: See Consent Agenda Item "B" above.

## ORDINANCE BOOK NO. 22 – PAGE

### D. RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A MUNICIPAL AGREEMENT WITH THE N.C. DEPT. OF TRANSPORTATION FOR THE CLINGMAN AVENUE/HAYWOOD ROAD CORRIDOR STREETScape AND GREENWAY – PHASE II

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

### E. BUDGET AMENDMENT FOR AN AGREEMENT WITH THE N.C. DEPT. OF TRANSPORTATION FOR THE CLINGMAN AVENUE/HAYWOOD ROAD CORRIDOR STREETScape AND GREENWAY – PHASE II

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

### F. RESOLUTION NO. 05-142 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A TEMPORARY SERVICES AGREEMENT WITH FORSYTH INITIATIVE FOR RESIDENTIAL SELF-HELP TREATMENT INC.

Summary: The consideration of a resolution authorizing the City Manager to enter into a Temporary Services Agreement with Forsyth Initiative For Residential Self-Help Treatment, Inc. (F.I.R.S.T.) for temporary workers.

The City of Asheville requires temporary workers throughout the budget year for seasonal workloads in the Public Works Department (Sanitation and Street Divisions), and the Civic Center. This agreement is a collective contract for all City Departments.

F.I.R.S.T. is a non-profit organization that provides counseling to individuals and provides these individuals with opportunities to learn new skills through job placements with various organizations. The City of Asheville has utilized F.I.R.S.T staff for the past two years with excellent results.

Benefits to contracting with F.I.R.S.T. Inc. include:

- Reduced costs in recruiting, hiring, and benefits for full-time workers.
- There is a savings realized in management costs.
- The City is guaranteed all F.I.R.S.T. personnel requested enabling operations to be fully productive at all times.

A negative aspect of using F.I.R.S.T. Inc. is that the City of Asheville must negotiate an annual contract for this service.

City staff recommends approval of the Temporary Services Agreement with Forsyth Initiative For Residential Self-Help Treatment, Inc. for temporary workers.

**RESOLUTION BOOK NO. 29 – PAGE 176**

-4-

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

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

**ITEMS REMOVED FROM THE CONSENT AGENDA FOR INDIVIDUAL VOTES**

**RESOLUTION NO. 05-143 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A MUNICIPAL AGREEMENT WITH THE N.C. DEPT. OF TRANSPORTATION FOR THE CLINGMAN AVENUE/HAYWOOD ROAD CORRIDOR STREETScape AND GREENWAY – PHASE II**

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

Summary: The consideration of a resolution authorizing the City Manager to sign a municipal agreement with North Carolina Department of Transportation (NCDOT) for an Enhancement Grant for the Clingman Avenue/Haywood Road Corridor Streetscape and Greenway, Phase 2, and the accompanying budget amendment, in the amount of \$235,120.

In June 2004, the City of Asheville partnered with various organizations to make application to NCDOT for a TEA-21 Enhancement Grant for various projects. The grants can only be awarded to a local government. NCDOT awarded the grant in the amount of \$235,120 for the Clingman Avenue/Haywood Road Corridor Streetscape and Greenway, Phase 2. Mountain Housing Opportunities is responsible for the 20% match for the grant. This is the second phase of the project which includes enhancements on Clingman Avenue and the development of a parallel greenway through Clingman Forest as well as major pedestrian improvements to Clingman Avenue and Haywood Road.

Pros:

- Mountain Housing Opportunities will receive \$235,120 with a 20% match to make improvements to the West-End Clingman area.

Cons: There are not negative considerations of this project.

City staff recommends City Council authorize the City Manager to sign a municipal agreement with NCDOT for an Enhancement Grant for the Clingman Avenue/Haywood Road Corridor Streetscape and Greenway, Phase 2, and the accompanying budget amendment for enhancement agreement with NCDOT for the TEA 21 Enhancement Grant.

Councilman Newman moved for the adoption of Resolution No. 05-143. This motion was seconded by Councilman Dunn and carried unanimously.

**RESOLUTION BOOK NO. 29 – PAGE 177**

**ORDINANCE NO. 3259 - BUDGET AMENDMENT FOR AN AGREEMENT WITH THE N.C. DEPT. OF TRANSPORTATION FOR THE CLINGMAN AVENUE/HAYWOOD ROAD CORRIDOR STREETScape AND GREENWAY – PHASE II**

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

-5-

Summary: See Resolution No. 05-143 above.

Councilman Newman moved for the adoption of Ordinance No. 3259. This motion was seconded by Councilman Dunn and carried unanimously.

**III. PUBLIC HEARINGS:**

**A. PUBLIC HEARING TO CONSIDER THE ISSUANCE OF A CONDITIONAL USE PERMIT FOR PROPERTY LOCATED ON TUNNEL ROAD, KNOWN AS THE FOUR SEASONS PLAZA, IN ORDER TO CHANGE ACCESS AND INCREASE THE PARKING AREA**

**ORDINANCE NO. 3260 - ORDINANCE GRANTING A CONDITIONAL USE PERMIT FOR PROPERTY LOCATED ON TUNNEL ROAD, KNOWN AS THE FOUR SEASONS PLAZA, IN ORDER TO CHANGE ACCESS AND INCREASE THE PARKING AREA**

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

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

After hearing no questions about the procedure, Mayor Worley opened the public hearing at 5:28 p.m.

All Council members disclosed that they have visited the site and would consider this issue with an open mind on all the matters before them without pre-judgment and that they will make their decision based solely on what is before Council at the hearing.

City Attorney Oast said that as documentary evidence is submitted, he would be noting the entry of that evidence into the record.

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

Mr. Esselstyn said that this is the consideration of the issuance of a conditional use permit for property located on Tunnel Road, known as the Four Seasons Plaza, in order to change access and increase the parking area.

Regarding the City Council's Strategic Operating Plan, the proposed project would improve sidewalk connectivity and set aside open space. In addition, it has the potential to provide services within a short distance of neighboring residential areas. This revision to the concept plan also would preserve the residence on the southwest parcel, further increasing its compliance with the Strategic Operating Plan.

This review concerns a proposed project, which was approved for a conditional use rezoning earlier this year. The project requires a second review because the master plan has been modified slightly and now involves another parcel on which an easement has been

-6-

obtained. Additional modifications to the plan do not substantially change the character of the proposed development, and are summarized below.

The subject properties (owned by Mediterranean Property Management, LLC) are being considered for a retail and office development with associated parking, located on 1.94 acres on the south side of Tunnel Road (Attachment to City Exhibit 3 – Location Map). The area on which the proposed project would be built consists of five parcels within the City of Asheville's corporate limits. All parcels are zoned HB or HB-CUZ (Attachment to City Exhibit 3 – Aerial Map). The applicants have obtained an easement on the parcel added to the concept plan, and the area in that easement will be used for shared access to parking. The project has a total building area of 22,000 square feet, placing it within the acceptable structure size standards and exempting it from open space requirements. Sidewalks are shown as required by Sec. 7-11-6 of the Unified Development Ordinance (UDO).

The major modifications from the previous plan are the following (Attachments to City Exhibit 3 – Rendering and Site Plan):

- The proposed building has been shifted closer to the street, moving it farther from the residential areas to the south, and allowing for the preservation of the single family residence in the southwest lot.
- The parking areas have been rearranged to allow for another ingress/egress (involving the aforementioned easement). Note also that the existing driveway to the northwest will now serve only the house (in the previous submission it had been an exit for the whole project).

-

At their May 16, 2005, meeting, the City of Asheville Technical Review Committee (TRC) reviewed the Conditional Use Rezoning and concept plan proposal and made a positive recommendation that the project be forwarded to the Planning and Zoning Commission, stipulating the following project conditions summarized as follows. Please note that the plans accompanying this report have been revised since the TRC meeting to address a number of the conditions mentioned in the TRC staff report:

-

1. Streams on or near property must be shown and labeled.
2. Calculations for parking spaces must be included.
3. Setbacks and encroachments must be shown and labeled.
4. Detailed information for landscape design (including required street trees and buffers) must be included.
5. The street address listed on the plans for the project should be corrected.
6. Clarification of the use for the existing residence must be provided.
7. Sidewalk and grass strip will be required along Tunnel Road, and Sidewalk or fee-in-lieu-of will be required along Swannanoa River Road.

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

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*

-7-

*Building Code and other applicable laws and standards that protect the public health and safety.*

2. That the proposed use or development of the land is reasonably compatible with significant natural or topographic features on the site and within the immediate vicinity of the site given the proposed site design and any mitigation techniques or measures proposed by the applicant.

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

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

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

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

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

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

*The Asheville City Development Plan 2025 lists the "Smart Growth Land Use Policies" adopted by the Asheville City Council in 2000. The Commercial Area Redevelopment policies encourage projects such as this one that will add street trees and improve pedestrian access. The proposed project will also preserve open space beyond what is required, complying with another of the plan's goals. In addition, the project has the potential to provide services within a short distance of neighboring residential areas. The revisions submitted for this permit preserve a single family residence, increasing its compliance with the plan compared to the previous version.*

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

*The project's location on Tunnel Road and near Swannanoa River Road ensures access to major transportation facilities and other services. Transit routes 13 and 28 serve the area. In addition, technical review from other departments has not revealed any problems for serving the development.*

-8-

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

*The proposed project has been reviewed by the City's traffic engineer and is not expected to cause undue traffic congestion or create a traffic hazard. The proposed entrances and exits are similar to those currently in place.*

#### Pros

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

#### Cons

- Commercial presence will be more visible to adjacent residential areas than is currently the case.

Staff recommends approval of the revised Conditional Use Permit concept plan subject to the conditions mentioned above.

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

Upon inquiry of Councilwoman Bellamy about buffering between the new building and the existing residence on the property, Mr. Esselstyn said that the existing house is owned by the applicant and buffering is used to separate properties.

Ms. Linda Melissotis, owner of the property, said that a family member will be living in the existing house and they will keep as much of the existing vegetation as possible.

Using an earlier site plan (City Exhibit 4), Mr. Esselstyn reviewed the buffering requirements of this property with the adjoining properties.

Vice-Mayor Mumpower moved for the adoption of Ordinance No. 3260, granting a conditional use permit adopting the proposed Master Plan for property located on Tunnel Road, known as the Four Seasons Plaza, subject to the following conditions: (1) Streams on or near property must be shown and labeled; (2) Calculations for parking spaces must be included; (3) Setbacks and encroachments must be shown and labeled; (4) Detailed information for landscape design (including required street trees and buffers) must be included; (5) The street address listed on the plans for the project should be corrected; (6) Clarification of the use for the existing residence must be provided; and (7) Sidewalk and grass strip will be required along Tunnel Road, and Sidewalk or fee-in-lieu-of will be required along Swannanoa River Road. This motion was seconded by Councilman Dunn and carried unanimously.

### **ORDINANCE BOOK NO. 22 - PAGE**

#### **B. PUBLIC HEARING TO CONSIDER THE CONDITIONAL USE ZONING OF PROPERTY LOCATED AT 891 PATTON AVENUE FROM RM-8 RESIDENTIAL MULTI-FAMILY MEDIUM DENSITY DISTRICT TO HIGHWAY BUSINESS DISTRICT/ CONDITIONAL USE; AND THE ISSUANCE OF A CONDITIONAL USE PERMIT FOR A PROPOSED EMPLOYEE PARKING LOT**

Mr. Dennis Ponder, representing Harry's Cadillac, said that yesterday they learned that there was community opposition (a valid protest petition) and requested this public hearing be continued until July 26, 2005, in order to meet with the community to discuss the plans.

-9-

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.

Mr. Nathan Merchant, resident on Hazel Mill Road, spoke against the continuance. He said this issue has been going on since last fall and nothing with the project has changed.

Mr. Clifton Means, resident on Hazel Mill Road, spoke against the continuance as the neighborhood has been in attendance at every meeting and they already understand the project.

Mr. Ponder said that at the earlier meetings he didn't have some of the renderings. He said that he feels that it will be beneficial to the neighborhood to see what the final produce will actually look like.

Upon inquiry of Councilman Newman, Mr. Ponder said that the neighborhood meeting will not only be to review the information, but there may be modifications to the plans to address the neighborhood concerns.

After a brief discussion, Vice-Mayor Mumpower moved to continue the public hearing until July 26, 2005. This motion was seconded by Councilman Dunn and carried on a 6-1 vote, with Councilman Newman voting "no."

#### **C. PUBLIC HEARING TO CONSIDER AN AMENDMENT TO THE UNIFIED DEVELOPMENT ORDINANCE FOR**

## PROCEDURES AND STANDARDS FOR SUBDIVISIONS

### ORDINANCE NO. 3261 - ORDINANCE CONSIDER AN AMENDMENT TO THE UNIFIED DEVELOPMENT ORDINANCE FOR PROCEDURES AND STANDARDS FOR SUBDIVISIONS

Mayor Worley opened the public hearing at 5:41 p.m.

Urban Planner Julia Coburn said that this is the consideration of an amendment to the Unified Development Ordinance for the purpose of amending the procedures and standards for subdivisions. This public hearing was advertised on July 1 and 8, 2005.

City staff is proposing this wording amendment concerning the procedures and standards for subdivisions to accomplish three things:

- To clarify the procedures and standards to which “exempt subdivisions” must adhere.
- To codify a staff interpretation concerning access to small (four or fewer lot) subdivisions.
- To place access standards in both the subdivision (by reference) and general development standards of the UDO so that there is no question that all subdivided properties (exempt or nonexempt) must comply with these standards in order to obtain development permits.

The UDO sets forth regulations in Article XV for the division of land within its jurisdiction. In accordance with the N. C. Gen. Stat. sec. 160A-376, certain divisions of land are set forth in Article XV as “exempt subdivisions” and therefore, are not subject to the regulations authorized by the State and contained in Article XV of the UDO.

While the City has long had established procedures for handling these “exempt subdivisions” it was determined that these practices needed to be codified for the benefit of all reading this section of the ordinance. The proposed amendment sets out the statutorily

-10-

determined situations that constitute an exemption (7-15-1(b)(1)) and also specifies (7-15-1(b)(2) that consecutive “exempt land divisions” of the same tract or parcel, created as a means of circumventing the subdivision standards, will not be permitted if occurring within five (5) years of each other. These two sections are substantively unchanged from the current UDO, except for the clarifying addition of the five (5) year time limitation. The proposed amendment goes on to require that a certification of exemption be received prior to the recordation of an exempt subdivision in order for staff to confirm the exempt status of the proposed division of land. The most important clarification found in this amendment is contained in proposed Section (7-15-1(b)(4)) that outlines the effect of a certification of exemption. This proposed provision clarifies that while an “exempt subdivision” may be recorded without review and without compliance with the City’s subdivision regulations, a building or zoning permit will only be issued for subdivided property if that property meets the standards for development set forth in the UDO. In practice, although it will not be required, staff plans to encourage those proposing an exempt subdivision to bring in a plat which can be reviewed both for the certification of exemption and for compliance with all City regulations.

This amendment also adds wording to Article XV (Subdivisions), by reference, and Article XI (Development and Design Standards) to codify a staff interpretation concerning small (four lots or fewer) subdivisions. This interpretation/proposed amendment states that where there is a division of land into not more than four (4) lots for development for single-family purposes, such subdivisions need not comply with the requirement that all residential lots abut a public street or private street developed to City standards. As an alternative, such subdivisions must provide for a recorded minimum twenty (20) foot right-of-way off of a city- or state-maintained road. Such rights-of-way shall contain a private drive meeting construction specifications concerning materials, the need for a turnaround, and the slope of the road. The ability to create these small subdivisions is limited, in the amendment, to those not coming from a parcel in the same ownership. Additionally, the amendment sets forth a spacing requirement to reduce the proliferation (in a single area) of these exceptions to the subdivision regulations.

The final element of this proposed amendment involves moving the access requirements (both commercial and noncommercial) currently found in the subdivision regulations (Article XV) to the City’s general development standards (Article XI) with reference in the subdivision regulations. This amendment serves to clear up any confusion as to whether or not exempt subdivisions must comply with the access requirements of the UDO.

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

#### Pros-

- The amendment clarifies and codifies the City’s practices with respect to exempt subdivisions and adds a requirement for certification of exemption.
- The amendment sets forth an allowance for small single-family subdivisions to have access off a private drive meeting certain standards. Adding such a provision can facilitate infill development.
- The amendment clarifies that all lots, whether in exempt or nonexempt subdivisions, must meet the City’s access standards.

#### Cons-

- Certifying exemption may be viewed as an unnecessary exercise for those subdividing properties.
- Private drives may be seen as insufficient access to developed properties.

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

-11-

Mayor Worley closed the public hearing at 5:49 p.m.

Mayor Worley 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. 3261. This motion was seconded by Councilwoman Jones and carried unanimously.

**ORDINANCE BOOK NO. 22 – PAGE**

**D. PUBLIC HEARING TO CONSIDER AN AMENDMENT TO THE UNIFIED DEVELOPMENT ORDINANCE CREATING A NEW LIGHT INDUSTRIAL DISTRICT**

**ORDINANCE NO. 3262 - ORDINANCE AMENDING THE UNIFIED DEVELOPMENT ORDINANCE CREATING A NEW LIGHT INDUSTRIAL DISTRICT**

Mayor Worley opened the public hearing at 5:51 p.m.

Planning & Development Director Scott Shuford said that this is the consideration of an ordinance to amend the Unified Development Ordinance to create a Light Industrial District. This public hearing was advertised on July 1 and 8, 2005.

- This code amendment is intended to implement several infill development, community compatibility, and economic development goals and strategies of the Asheville City Development Plan 2025 through the creation of a new zoning district that allows for limited industrial development.

The amendment fills a gap between higher intensity industrial zoning districts and heavy commercial districts.

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

Pros –

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

Con – None noted.

- The Planning and Zoning Commission recommended approval of this amendment on April 6, 2005, by a vote of 6-0. City staff also recommends approval of the proposed code amendment as well.

Mayor Worley closed the public hearing at 5:53 p.m.

Mr. Shuford responded to Councilman Newman’s question about properties that would desire this zoning designation.

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

Vice-Mayor Mumpower moved for the adoption of Ordinance No. 3262. This motion was seconded by Councilman Davis and carried unanimously.

-12-

**ORDINANCE BOOK NO. 22 - PAGE**

**E. PUBLIC HEARING TO CONSIDER AN AMENDMENT TO THE UNIFIED DEVELOPMENT ORDINANCE REGARDING OPEN SPACE STANDARDS REVISIONS**

Mayor Worley opened the public hearing at 5:57 p.m.

Planning and Development Director Scott Shuford said that this is the consideration of an amendment to the Unified Development Ordinance to revise the open space standards to ensure a more uniform application of the standards and to provide for a fee-in-lieu

option. This public hearing was advertised on July 1 and 8, 2005.

This code amendment is intended to implement goals, objectives and tasks of the City Council's Strategic Operating Plan related to the Natural and Built Environment. The Strategic Operating Plan proposes enhanced recreational facilities, especially greenways, as well as a fee-in-lieu program.

The UDO currently contains requirements for open space provision for property being developed or redeveloped for residential and for tourist accommodation purposes. These requirements note the connection between development and loss of open space, and include measures to compensate for this loss. In practice, however, the current requirements are not especially effective in providing meaningful compensatory open space and may, in some cases, actually be at odds with City smart growth policies that promote a more urban development pattern.

The proposed ordinance provides a more balanced approach to open space provision by better relating it to the use proposed for the property, the associated zoning district or districts, and any related park, greenway and open space plans and policies. Additionally, there is greater flexibility created by providing for fee-in-lieu of open space.

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

Pros –

- Several goals and strategies of the Strategic Operating Plan will be implemented.
- The amendment will provide for a more effective provision of meaningful open space.
- There is greater developer flexibility.

Con –

- The amendment applies to a wider range of land uses and therefore may be considered more restrictive than current requirements (possibly a pro).

Planning and Zoning members opposed to the amendment noted concerns that included a failure to see the benefit of requiring open space as a regulation in general, concern about the effect on smaller developments, and opposition to the fee-in-lieu concept.

The Planning and Zoning Commission recommended approval of this code amendment on June 1, 2005, by a vote of 4-3. City staff recommends approval of the proposed code amendment, as well.

Mr. Shuford said that City Council's Strategic Operating Plan calls for enhanced recreational facilities, especially greenways, as well as an open space fee-in-lieu program. City

-13-

staff has development an ordinance intended to help implement these Strategic Operating Plan objectives, as well as some of the goals and strategies of the 2025 Plan.

The ordinance applies open space requirements to a broader range of land uses, including smaller non-residential projects, and smaller residential developments. In most circumstances, it allows a developer to opt to pay a fee in-lieu of open space instead of providing the open space. It caps the amount of open space required at 10% for residential and 5% for non-residential and mixed use development; this eliminates the "penalty" that affects denser or more intensive developments in the current ordinance. It requires the City to expend open space fee dollars in areas reasonably proximate to where they are collected. It broadens the types of areas that can be used for open space. In the event that "excess" land area is required to implement the Greenway Master Plan, density or intensity bonuses are available. He then reviewed a table, which provided a very abbreviated comparison between current and proposed requirements in residential, non-residential and mixed use zoning districts.

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

After discussion and responses from Mr. Shuford, it was the consensus of City Council to instruct Mr. Shuford to bring this matter back to a future worksession at which time he will respond to the issues raised, some being, but are not limited to: (1) additional information concerning the threshold concept, including the relative extent of the impact based on past development trends; (2) density/intensity incentive for cases where extra area for greenways was needed; and (3) the creation of some incentives for development that exceed the required open space other than the incentives proposed for excess greenway space; and (4) additional information on the fee-in-lieu of option.

Councilman Dunn moved to lay this matter on the table until such time as City staff brings it back to Council. This motion was seconded by Vice-Mayor Mumpower and carried unanimously.

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

- A. SECOND READING OF ORDINANCE NO. 3245 - ORDINANCE TO REZONE 1451 SWEETEN CREEK ROAD FROM RM-16 RESIDENTIAL MULTI-FAMILY HIGH DENSITY DISTRICT TO COMMERCIAL INDUSTRIAL DISTRICT**

Mayor Worley announced that the public hearing on this matter was held on June 28, 2005. Because of the number of votes received, a second reading was required.

Councilman Dunn moved for the final adoption Ordinance No. 3245. This motion was seconded by Councilman Davis and carried on a 4-3 vote, with Mayor Worley, Vice-Mayor Mumpower, Councilman Davis and Councilman Dunn voting "yes" and Councilwoman Bellamy, Councilwoman Jones and Councilman Newman voting "no."

**ORDINANCE BOOK NO. 22 – PAGE 133**

**V. NEW BUSINESS:**

**A. REQUEST FROM MOUNTAIN AREA INFORMATION NETWORK FOR WAIVER OF LICENSE FEE FOR ANTENNA SPACE**

Grant Specialist Laurie Saxton said that this is the consideration of a request from Mountain Area Information Network (MAIN) for a grant to offset the license fee for the installation

-14-

of two antennas on one of the City's towers at White Fawn Reservoir, along with space in the equipment building at no cost.

MAIN's mission is to help bridge the "digital divide" by providing affordable Internet access to underserved citizens and communities. MAIN currently provides high-speed Internet access in Madison, Yancey and Mitchell Counties, in addition to Buncombe County. Their goal is to build a "managed" community wireless network to compete with broadband access. MAIN has two existing wireless antennas covering parts of west and north Asheville, and the proposed White Fawn antennas would cover northeast to southwest Asheville. MAIN has requested a grant to offset the license fee (\$9,600) for the installation of the two White Fawn antennas.

The City typically charges other organizations, including nonprofit organizations, for this service. As in other cases where a nonprofit has asked for the waiver of a fee, City staff analyzed MAIN's request as if it were an Outside Agency Grant request. The analysis was made by staff from both the Information Technology (IT) and Budget departments.

New or revised information:

- The request is for a minimum of \$9,600 initially for four spaces on the tower, based on MAIN's list of equipment. (The initial estimate was \$12,000 for five spaces.) There is a 4% annual increase in the fee.
- If Council approves MAIN's request, staff estimates that 1 to 7 open spots will remain at the White Fawn tower site. Tower capacity depends upon the height, weight and direction of antennas.
- The City's IT Director has made an assessment of MAIN's technology maturity and concluded that MAIN uses appropriate technology and software for their services.
- MAIN has now submitted the requested financial information; their current ratio and unrestricted net assets ratio are in line with other organizations receiving outside agency funding, although MAIN was projecting a small deficit at the end of Fiscal Year 2004/05.

MAIN's mission and community network appear to support the City of Asheville's mission in the area of economic and community development. There is potential for MAIN to provide the City with no-cost Internet access in some community centers. If Council wishes to pursue this, it would have to be tested; computer procurement and maintenance would have to be addressed as well. If successfully implemented, this program could save the City \$5,160 per year.

Pros

- MAIN's service provides economic value especially to low income citizens, nonprofits, and micro-enterprises.
- MAIN has broad support from the community.
- Allowing MAIN access to the tower could be helpful in keeping broadband prices competitive in our area.
- Potential savings of approximately \$5,000 per year if wireless Internet access can be provided to five community centers.

Cons

- The opportunity cost of the grant (\$9,600 minimum per year), foregoing the potential revenue from renting the space to another customer.
- Other nonprofits currently pay for space on the tower and might request the same treatment.
- MAIN has not demonstrated the extent to which it serves people with low incomes; however, the possibility of providing Internet access to community centers would increase this service.

City staff recommends the City of Asheville make the grant award to MAIN to offset the license fee for space on the City's tower.

-15-

Mr. Bill Fishburne, Ms. Leslee Kulba and Mr. Fred English spoke in opposition of the City waving the license fee.

Mr. Wally Bowen, Executive Director of MAIN, spoke in support of and responded to various questions/comments from Council regarding his request for Council to waive the \$9,600 license fee. He spoke about the customers that MAIN serves and the grant they are seeking with City schools for some laptops for low income and at-risk students. He shared some thoughts on why the community should support his proposal.

Considerable discussion surrounded many issues, some being, but are not limited to: how the application was reviewed and if granted, how would it be reviewed in the future; does the community benefit, and if so, how; is Council setting a precedence by waving fees for a non-profit to use public infrastructure; how much does the Housing Authority pay a month to rent space on the tower; and are requests for antenna space frequent.

Councilwoman Jones moved to waive the \$9,600 for the first year license fee for MAIN to install two antennas on White Fawn Reservoir. This motion was seconded by Councilman Newman.

Council members expressed their reasoning for supporting or not supporting the waiver of the license fee.

The motion made by Councilwoman Jones and seconded by Councilman Newman failed on a 3-4 vote, with Mayor Worley, Councilwoman Jones and Councilman Newman voting "yes" and Vice-Mayor Mumpower, Councilwoman Bellamy, Councilman Davis, and Councilman Dunn voting "no."

At 7:47 p.m., Mayor Worley announced a short recess.

**B. ORDINANCE NO. 3263 - BUDGET AMENDMENT TO REFLECT NECESSARY REVISIONS TO FISCAL YEAR 2005-06 BUDGETED REVENUES AND EXPENDITURE RESULTING FROM THE TERMINATION OF THE WATER AGREEMENT**

Budget Director Ben Durant said that this is the consideration of a budget amendment to reflect necessary revisions to Fiscal Year 2005-06 budgeted revenues and expenditure resulting from the termination the Water Agreement between the City of Asheville and Buncombe County.

On July 1, 2005, the Water Agreement between the City and County terminated. As a result of this termination, the City's General Fund lost \$1,761,896 in tax equity reimbursement revenue (i.e. law enforcement reimbursement; recreation reimbursement; civic center subsidy) formerly received from the County.

Additionally, the operations of McCormick Field, Recreation Park, Nature Center and the Municipal Golf Course were transferred back to the City of Asheville. The Golf Course will operate as an Enterprise Fund. Total expenditures for the operation of these facilities are \$2,129,379. Total revenue estimated to be generated from these facilities is \$1,425,218, for a total net cost to the City's General Fund of \$704,161. The specific net cost for each facility is as follows:

-16-

Golf Course	\$ 73,714
McCormick	\$ 44,469
Nature Center	\$ 481,323
Recreation Park	\$ 79,655
Administrative	<u>\$ 25,000</u>
Total	\$704,161

Based on lost general fund revenue of \$1,761,896 and additional net general fund expenditures of \$704,161, the total general fund impact to the City is \$2,466,057. The City proposes to cover this impact by appropriating additional revenue and reallocating expenditures in the following manner:

Land Sale Revenue	\$1,200,000
Fund Balance	\$ 507,132
Reduce Parking Subsidy	\$ 500,000
Reduce Contingency	\$ 258,925

Staff would like to stress that this amendment is an immediate fix to the budget gap that was created as a result of terminating the Water Agreement. Approximately \$1.7 million worth of new revenue appropriated with this amendment (i.e. land sale proceeds and fund balance) reflects the use of one-time revenue that will not necessarily be available in subsequent years. As such, longer-term solutions will need to be developed over the course of the current fiscal year that can be adopted as part of the Fiscal Year 2006-07 budget development process.

Additionally, the General Assembly, through adoption of Sullivan Acts I & II, prohibited the City from transferring funds from the Water Fund to the General Fund to support general city operations. This will cost the City's general fund an additional \$1.15 million, which is currently

not covered as part of this amendment. In the next 60-90 days, however, staff will work together as a team to develop structural changes to the budget to cover this \$1.15 million gap and will present them to Council for review and deliberation. In the meantime, we have implemented various administrative cost savings measures that should keep the budget in balance.

City staff requests City Council approve the budget amendment to cover the \$1.76 million revenue loss and net costs of 704,161 for the operation McCormick Field, Recreation Park, Nature Center and Municipal Golf Course.

Council members spoke about the annual operating budget passed and touched upon the negotiations regarding the water agreement.

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

Councilman Dunn moved for the adoption of Ordinance No. 3263. This motion was seconded by Councilwoman Bellamy and carried unanimously.

**ORDINANCE BOOK NO. 22 – PAGE**

**C. ORDINANCE NO. 3264 - ORDINANCE CONTINUING AND READOPTING POLICIES AND ORDINANCES APPLICABLE TO OPERATION OF THE WATER SYSTEM**

City Attorney Oast said that this is the consideration of adoption of an ordinance continuing and readopting policies and ordinances applicable to operation of the water system

-17-

Since the Water Agreement terminated with no re-negotiated agreement in place, it is necessary to adopt by ordinance regulations and policies for the operation of the system by the City.

The ordinance simply continues in effect the policies and ordinances already in place, while conforming them to reflect the fact that the Water Agreement has terminated, and that certain facilities have reverted to the County and the Districts (as provided for in the Agreement). As the City proceeds with operation and administration of the water system, further amendments to the policies may be brought forward. The ordinance also ratifies any action taken by City employees in operating the system in the interim between June 30 and adoption of the ordinance.

The water rates adopted in connection with the annual budget are also continued in effect. They may likewise be modified during the course of the year.

Considerations: The water system is operated as a public enterprise; rules and regulations must be adopted by ordinance.

- The water policies are those that were previously in place, so the transition should be seamless.
- This also conforms with the requirements of the local acts that were adopted on June 29.
- Amendments or changes to the policies may be made by ordinance any time during the course of the year.

City staff recommends City Council adopt the ordinance continuing and readopting policies and ordinances applicable to operation of the water system

Councilwoman Bellamy said this is a good opportunity to show the citizens how well we can manage our water system.

Councilwoman Jones felt it was important that the citizens of Asheville realize they are subsidizing the excellent work that will be happening outside the City limits.

City Manager Jackson said that he will be bringing back to Council where the additional resources will be going into the capital plan. In addition, Council will see shortly a very detailed analysis of the cost of providing the water services. He said that in the near future Council will be seeing very sound business practices and a real upgrade in the management of the operation.

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

Councilman Newman moved for the adoption of Ordinance No. 3264. This motion was seconded by Councilwoman Bellamy and carried unanimously.

**ORDINANCE BOOK NO. 22 – PAGE**

**D. RESOLUTION NO. 05-144 - RESOLUTION APPOINTING MEMBERS TO THE CITIZENS-POLICE ADVISORY COMMITTEE**

Vice-Mayor Mumpower said that this is the consideration of appointing members to the Citizens/Police Advisory Committee.

-18-

The terms of Tim Flora (North area), John Burchfield (Central area), Jimmy Hungerford (West area) and Betty Budd (South area), as members of the Citizens/Police Advisory Committee, will expire on June 30, 2005.

In addition, John Robinson has resigned, thus leaving a vacancy in the East area until June 30, 2005.

At City Council's worksession on June 21, 2005, the City Council instructed the City Clerk to prepare the proper paperwork to reappoint Tim Flora (North area) and John Burchfield (Central area), as members of the Citizens/Police Advisory Committee, to each serve an additional three-year term respectively, terms to expire June 30, 2008, or until their successors have been appointed.

Also at Council's June 21, 2005, worksession, the City Clerk was instructed to arrange interviews for Davidson Jones, Donald Swaby and Mary Ann LaMantia.

Also at Council's June 21, 2005, worksession, the City Clerk was instructed to re-advertise for the West Asheville area position.

After each Council member spoke in support of the candidates interviewed, it was the consensus of City Council to appoint Davidson Jones (East area) and Mary Ann LaMantia (South area) as members to the Citizens/Police Advisory Committee to each serve a three year term respectively, terms to expire June 30, 2008, or until their successors have been appointed.

**RESOLUTION BOOK NO. 29 – PAGE 178**

**E. RESOLUTION NO. 05-145 - RESOLUTION APPOINTING MEMBERS TO THE CRIMESTOPPERS BOARD OF DIRECTORS**

Vice-Mayor Mumpower said that this is the consideration of appointing members to the Asheville-Buncombe Crime Stoppers Board of Directors.

The terms of Councilman Dunn, Bill McGuire and Leslie Hennessee, as members to the Asheville-Buncombe Crime Stoppers Board of Directors, will expire on June 30, 2005.

At the City Council worksession on June 21, 2005, the City Council instructed the City Clerk to prepare the proper paperwork to (1) appoint Councilwoman Bellamy to serve a three year term, term to expire June 30, 2008, or until her term on City Council ends; and (2) reappoint Bill McGuire to serve an additional three-year term, term to expire June 30, 2008, or until his successor has been appointed.

Also at Council's June 21, 2005, worksession, the City Clerk was instructed to arrange interviews for Bill Kelley and Nancy Ray Durham.

After each Council member spoke in support of the candidates interviewed, it was the consensus of City Council to appoint Nancy Ray Durham, as a member of the Crimestoppers Board of Directors to serve a three-year term, term to expire June 30, 2008, or until her successor has been appointed.

**RESOLUTION BOOK NO. 29 – PAGE 179**

**F. RESOLUTION NO. 05-146 - RESOLUTION APPOINTING MEMBERS TO THE RECREATION BOARD**

-19-

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

The terms of Eleanor Campbell, Chuck Cloninger, Charles Bullman and Jim Drummond, as members on the Recreation Board, expire on June 30, 2005.

At City Council's worksession on June 21, 2005, the City Council instructed the City Clerk to prepare the proper paperwork to reappoint Eleanor Campbell and Jim Drummond to each serve an additional three-year term respectively, terms to expire June 30, 2008, or until their successors have been appointed.

Also at Council's June 21, 2005, worksession, the City Clerk was instructed to arrange interviews for Matthew Davis, Susan Birkholz, Geoffrey Ferland and Andrew Gall. Mr. Davis was unable to attend the interview and Mr. Gall was not interested at this time.

After each Council member spoke in support of the candidates interviewed, it was the consensus of City Council to appoint

Geoffrey Ferland and Matthew Davis, as members to the Recreation Board to each serve a three-year term respectively, terms to expire June 30, 2008, or until their successors have been appointed.

**RESOLUTION BOOK NO. 29 – PAGE 180**

**VI. OTHER BUSINESS:**

**A. CLAIMS**

The following claims were received by the City of Asheville during the period of June 24-July 7, 2005: Mildred Burns (Sanitation), Jennifer Williams (Streets), Johnathan Ramsey (Streets) and John Randolph (Streets).

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

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

Mr. Fred English announced he was happy to be well enough to continue attending City Council meetings.

Mr. Gene Hamilton, representing Asheville Citizens for Quality Government, reiterated the important matters City Council has had to deal with over the past three months and felt they dealt with them successfully. He urged City Council to consider the adopting a comprehensive quality plan to assure quality government and improve the quality of life for all.

Mr. Ron Harris, representing the Mountainbrook Homeowners Association, spoke about the new Wildes development and solutions to the new traffic hazards. He feels that it is essential that there be a roadway from this new development directly onto Chunn's Cove Road. When the development is finished, there will be approximately 80 more cars as well as service vehicles using Mountainbrook Road, with only one way in and one way out. He asked Council to require the developer, Bruce Alexander, to build a second road access to facilitate the flow of traffic and enhance safety in the neighborhood. He presented City Council with a petition containing approximately 45 signatures and a map showing alternative roads from the new development. He said that according to the Planning Department and the City Traffic Engineer, it is normally a requirement for new developments to have two road accesses. City Engineer Cathy Ball met with him and said that in order to meet the Fire Department requirements the developer reduced the number of homes from 40 to 30, and now the second road access is not required. They feel that

-20-

one way in and one way out is a serious safety issue. He read a letter from Denise Hickman, Facility Director of a 65-bed assisted living facility located at 67 Mountainbrook Road, which spoke about the need for safety of their residents who walk on that road. The City's Traffic Engineer admitted that the City may choose to make the second road access, currently planned to be a walking path, a permanent road if needed in the future. He stressed that when construction is finished, it will be too late. He urged Council to make this road a reality now to prevent problems in the future. He presented two possible solutions. One, they suggested an access avenue through the business park immediately south of the Wildes development. This would require the City to use the power of eminent domain. They suggest the City contact the owner of the business park (Mr. Coleman) and asking him to allow the Wildes development access through this business park. Secondly, they suggested that the proposed walking path be converted into the main entry road to the Wildes directly onto Chunn's Cove Road. The Association requests that the City make this road a condition of approval of the final plat. They would also request that Council place this matter on a future agenda as soon as possible. In addition, he requested a copy of the meeting minutes where the single-access road was approved.

Mr. Cogburn, attorney representing Mr. Alexander, said that an engineering study was performed in September which indicated that building a permanent road on the rock slope was not a good idea to do. Mr. Alexander also originally thought there was going to be ingress and egress through the Coleman property that had been reserved, but it had not been reserved. Therefore, Mr. Alexander complied with the single-access roadway by reducing his development from 40 to 30 units. He urged City Council to allow Mr. Alexander to continue with his project.

Upon inquiry of Mayor Worley, City Attorney Oast said that pursuant to the ordinance, the appeal for preliminary plat stops at the Planning & Zoning Commission. He said that under the law, the developer meets the technical requirements. It was his opinion that City Council does not have the ability to get involved in subdivision questions.

City Manager Jackson said that he would provide Council and the residents in the area with the Fire Chief's response to these concerns about safety and the assurance of service capability. In addition, he said that the Fire Chief will communicate with Council of how they have evaluated this project, including what their response times are and whether or not this development meets the adequacy test.

Mr. Alexander explained that there is no right-of-way through Mr. Coleman's property and he isn't interested in granting any right-of-way.

City Council explained that there doesn't appear there is anything more City Council can do about this. Council's rules set up specific standards for what development decisions get brought to this Council where we are the deciding body on it. Development decisions below those standards are not within Council's purview to review.

**VIII. ADJOURNMENT:**

Mayor Worley adjourned the meeting at 9:03 p.m.

---

CITY CLERK

---

MAYOR