

Regular Meeting

Present: Mayor Charles R. Worley, Presiding (left meeting at 7:56 p.m.); Vice-Mayor R. Carl Mumpower (left meeting at 7:52 p.m.); 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

- The Owen High School ROTC led City Council in the Pledge of Allegiance.

INVOCATION

Councilwoman Bellamy gave the invocation.

ADDITIONS TO THE AGENDA

- At the request of City Manager Jackson and upon consensus of Council, a matter regarding taxicabs and an update about the stormwater services program was added to the "Other Business" section.

I. PROCLAMATIONS:

A. NATURE CENTER ACCREDITATION

Mayor Worley recognized the Nature Center's accreditation from the American Zoo and Aquarium Association. Manager of the Nature Center Pat Lance was pleased to accept the Accreditation Award.

B. NORTH CAROLINA AMATEUR SOFTBALL ASSOCIATION HALL OF FAME

Mayor Worley recognized Charlie Bullman's recent induction into the North Carolina Amateur Softball Association Hall of Fame. Mayor Worley said that Mr. Bullman is a longtime volunteer and former Recreation Board member.

II. CONSENT AGENDA:

Councilwoman Bellamy asked that Consent Agenda Items "B", "C", "E" and "F" be removed from the Consent Agenda for further discussion.

A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON OCTOBER 25, 2005

B. RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO AN AGREEMENT WITH THE NC STATE RURAL ECONOMIC DEVELOPMENT CENTER FOR A GRANT FOR THE IMPLEMENTATION OF THE REDEVELOPMENT PLAN FOR THE BILTMORE VILLAGE, EAST SWANNANOA RIVER AND FRENCH BROAD RIVER AREAS

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

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C. BUDGET AMENDMENT FOR A GRANT FOR THE IMPLEMENTATION OF THE REDEVELOPMENT PLAN FOR THE BILTMORE VILLAGE, EAST SWANNANOA RIVER AND FRENCH BROAD RIVER AREAS

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

D. RESOLUTION NO. 05-203 - RESOLUTION ACCEPTING A PORTION OF BLACK OAK DRIVE AND WEST BLACK OAK DRIVE FOR PUBLIC MAINTENANCE

Summary: The consideration of a resolution to accept a portion of Black Oak Drive and West Black Oak Drive in North Asheville for public maintenance.

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

Black Oak Drive and West Black Oak Drive are located in an established subdivision called "The Forest." The developer constructed the streets as private streets. The neighborhood has worked with the City to have these streets maintained by the City. The neighborhood association has recently contracted to have the streets repaired. The Forest is an established neighborhood. Engineering Department staff inspected this street and finds it to be constructed in accordance with the approved standards. This portion of Black Oak Drive has an average paved width of 19.3 feet and a length of 0.28 miles. West Black Oak Drive has an average paved width of 18.6 feet and a length of 0.08 miles.

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

Pro:

- The City will receive Powell Bill funds from the NCDOT to maintain the roadway.

Con:

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

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City staff recommends City Council accept this portion of Black Oak Drive and West Black Oak Drive for public maintenance.

RESOLUTION BOOK NO. 29 – PAGE

E. RESOLUTION AUTHORIZING THE ISSUANCE OF NOT TO EXCEED \$42,000,000 WATER SYSTEM REFUNDING REVENUE BONDS OF THE CITY OF ASHEVILLE, N.C.

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

F. RESOLUTION AUTHORIZING THE APPROVAL, EXECUTION AND DELIVERY OF VARIOUS DOCUMENTS IN CONNECTION WITH THE ISSUANCE OF CITY OF ASHEVILLE, N.C., WATER SYSTEM REFUNDING REVENUE BONDS; PROVIDING FOR THE SALE OF THE BONDS AND SETTING THE TERMS AND CONDITIONS UPON WHICH THE BONDS ARE SOLD

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

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G. RESOLUTION NO. 05-206 - RESOLUTION FIXING A DATE OF PUBLIC HEARING FOR THE VOLUNTARY ANNEXATION OF PROPERTY LOCATED OFF OF PATTON MOUNTAIN ROAD

Summary: The consideration of a resolution fixing the date of a public hearing on November 22, 2005, for property located off of Patton Mountain Road.

William J. Kimpton, President, on behalf of Ranch 19 Corp., has petitioned the City of Asheville for the annexation of portions of two lots owned by the corporation and located at Patton Mountain Road just off of the intersection of Patton Mountain with Griffing Boulevard. The PIN numbers of the lots involved are 9740.16-93-6462 and 9740.16-83-8119. This area is contiguous to the existing corporate limits and qualifies for annexation by petition as set forth in N.C. Gen. Stat. sec. 160A-31.

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

The next steps in this process are for City Council to fix the date for the public hearing on this matter. It is suggested that the annexation be effective one week following the date of adoption of the ordinance if City Council decides to proceed with this request.

Pros:

- .. Provides for the orderly growth of the City and the tax base through the acceptance of contiguous areas into the corporate limits where owners desire annexation.
- .. Allows the City to review and approve future plans for this parcel as it is developed.
- .. Assists the developer of the property in achieving his desired development plan under one jurisdictional review.

Con:

- .. Marginal increase in service costs (too small to measure or respond to).

This action complies with the 2025 Plan in that it supports the strategy of promoting voluntary annexation of developing areas and meeting the goal of continued use of the urban development tool of annexation in providing for the orderly growth of the City.

City staff recommends City Council adopt the resolution setting the date for a public hearing on the annexation petition.

RESOLUTION BOOK NO. 29 – PAGE

H. ORDINANCE NO. 3298 - BUDGET AMENDMENT FOR REIMBURSEMENT FROM A DEMOLITION LIEN PLACED ON 56 BURTON STREET

Summary: The consideration of a budget amendment, in the amount of \$9,565, for reimbursement from a demolition lien placed on 56 Burton Place.

The City of Asheville Building Safety Department, Housing Code Division, followed the City and State process for demolition of the structure located at 56 Burton Place, PIN No. 9638.10-45-4228, due to the unsafe and dilapidated condition. The Demolition Ordinance No. 2174 was adopted on January 24, 1995. The City of Asheville removed asbestos from the structure as required prior to demolition. The demolition was performed from March 6-13, 1995, by the City of Asheville Public Works Department. The Demolition Lien was filed on March 13,

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1995, in Deed Book 1840 at Page 410. The budget amendment will provide some funding for additional demolitions.

Pros:

- Reimburse City for work conducted over ten years prior.
- Establishes some funding for future demolitions.

Con: None noted.

This action complies with the Strategic Operating Plan in that Asheville City Council has directed staff to work diligently to provide sufficient, safe, and affordable housing for Asheville residents. All neighborhoods should provide a safe and nurturing environment within which to raise a family. The section of the Strategic Operating Plan on Partnerships to Improve Critical Services & Infrastructure directs staff to work for providing the quality of life within the mountain region: Goal #3 – Diversified and broadened revenue sources – Develop alternate revenue sources that are available to address local needs; Objective B – Reduce reliance on property tax as a revenue source by incrementally adjusting and/or establishing new fees and charges based on City Council policy;

City staff recommends City Council approve the budget amendment to receive the reimbursement for the demolition lien and provide funding for additional demolitions.

ORDINANCE BOOK NO. 22 – PAGE

I. ORDINANCE NO. 3299 - ORDINANCE AMENDING THE STREET NAME AND ADDRESS REQUIREMENTS

Summary: The consideration of an amendment to the Street Name and Address Requirements to allow the Emergency Address Coordinator to approve street names that meet the requirements within the ordinance.

Council approved the additional position of Emergency Address Coordinator in the Fire and Rescue Department within the

Fiscal Year budget 2004-2005. This position was requested in cooperation with seven other City departments to facilitate address assignments for the Permit Center. The changes proposed for Chapter 16, Streets, Sidewalks and other Public Places, Article VI Street Name and Address Requirements, in the Code of Ordinances for the City of Asheville would reflect this position as responsible for naming and addressing public and private streets within the City of Asheville. The position will coordinate names with Buncombe County to prevent duplication and increase public response effectiveness. The change will allow the Emergency Address Coordinator to approve street names that meet the requirements within the Ordinance. Existing street names that have a proposal to change the name will continue to be placed on Council's agenda. The proposed changes will facilitate faster approval of street names and response times to the applicant.

Pros:

- Faster approval times for new street names.
- Will reflect actual title of position responsible for street naming and addressing

Con:

- Council will not be involved with the naming of new streets within the City of Asheville.

This action complies with the Strategic Operating Plan in that the Asheville City Council has directed staff to work diligently to promote efficiency in city regulations while offering

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incentives and practical planning to achieve these goals through the City's Strategic Operating Plan section on Economic Development: Goal #2 – An efficient and economical permitting process; Objective A – Improve the plan review process by enhancing effectiveness and customer service; Task 3 – Re-engineer staff for departments collaborating on plan review.

City staff recommends City Council approve the amendment to the Code of Ordinances for the City of Asheville to allow the Emergency Address Coordinator to approve street names that meet the requirements within the ordinance.

ORDINANCE BOOK NO. 22 – PAGE

J. RESOLUTION NO. 05-207 - RESOLUTION AUTHORIZING THE CITY CLERK TO PUBLISH A NOTICE REGARDING THE EXCHANGE OF A PORTION OF REAL PROPERTY LOCATED ON WEST CHESTNUT STREET FOR A PORTION OF REAL PROPERTY LOCATED ON MAGNOLIA AVENUE

Summary: The consideration of a resolution authorizing the City Clerk to publish a notice regarding the exchange of a portion of real property located on West Chestnut Street for a portion of real property located on Magnolia Avenue.

The City and Allen & Susan Roderick (Rodericks) have negotiated an exchange of a portion of City owned real property on West Chestnut Street for a portion of Rodericks property at 8 Magnolia Avenue that will allow an improved course for the Reed Creek Greenway Trail.

The proposed location of the Reed Creek Greenway Trail is just west of Broadway and borders Reed Creek for most of its length. Between West Chestnut Street and Magnolia Avenue there is a "pinch point" that is created by the proximity of the Roderick property to Reed Creek forcing the trail closer to the top of the creek bank where the topography poses a challenge for construction. The proposed exchange of property will allow the trail to follow a less constrictive path.

The City's property (PIN 9649.14-23-5411) is on the north side of West Chestnut Street about 100' west of its intersection with Broadway, zoned Neighborhood Corridor District (NCD) and comprising 0.24 acre±. The portion to be exchanged is a 0.05 acre± parcel at the rear of the City's lot that adjoins Rodericks' property. This part of the property due to its configuration is not particularly useful to the greenway design.

The property owned by Rodericks (PIN 9649.13-23-4418) at 8 Magnolia Avenue is on the south side of the street about 100' west of its intersection with Broadway. It comprises 0.24 acre± and is zoned NCD. The portion to be exchanged is a 0.05 acre± parcel located at the rear of the property adjoining the City's property.

The value of each parcel was determined by reviewing the tax assessment for the whole property and extrapolating a value for the cut out portion based on the per acre value of the whole. Both whole lots are 0.024 acre± and have an assessed tax value for land in the amount of \$64,000. That reflects a per acre value of about \$267,000. Both cut out parcels are 0.05 acre± which calculates to about \$13,350.

The positive aspects of the transaction are:

- The exchange will be a fair exchange of value for value.
- It will be revenue neutral returning property to the tax rolls in exchange for property being taken off the tax rolls.
- It is consistent with the greenway master plan.

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- It will provide a better less constrictive path for the greenway trail.
- It is an efficient use of resources both public and private, because the City will own property more functional to the greenway and un-needed property will return to private ownership.

There are no negative aspects to this proposal.

Approval of the resolution will initiate the exchange of the properties through the process provided in N. C. G. S. 160A-271.

Planning & Development and Parks & Recreation staff recommend adoption of the resolution authorizing the City Clerk to publish a notice regarding the exchange of a portion of real property located on West Chestnut Street for a portion of real property located on Magnolia Avenue.

RESOLUTION BOOK NO. 29 - PAGE

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

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

ITEMS PULLED FROM THE CONSENT AGENDA FOR DISCUSSION

RESOLUTION NO. 05-202 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO AN AGREEMENT WITH THE NC STATE RURAL ECONOMIC DEVELOPMENT CENTER FOR A GRANT FOR THE IMPLEMENTATION OF THE REDEVELOPMENT PLAN FOR THE BILTMORE VILLAGE, EAST SWANNANOA RIVER AND FRENCH BROAD RIVER AREAS

Summary: The consideration of a (1) resolution authorizing the City Manager to enter into an agreement with the N.C. State Rural Economic Development Center, for a grant to implement prioritized components of the Redevelopment Plan for the Biltmore Village area, East Swannanoa River area and the French Broad River area, and the accompanying budget amendment, in the amount of \$700,000.

With City Council approval in July, 2005, the City of Asheville Planning and Development Department requested and received \$40,000 from the North Carolina State Rural Economic Development Center to prepare redevelopment plans for the three areas. In response to last fall's flooding, the General Assembly provided grant funding, through the Center, for preparation of redevelopment plans for communities that suffered flood damage, and also provided funding for the implementation of these plans. The City was successful in obtaining additional grant funds in the amount of \$700,000 for future implementation of redevelopment plans. These implementation measures include: loan program for floodproofing historically significant properties in Biltmore Village; purchase of vacant properties in the floodway; traffic circulation and streetscaping improvements in Biltmore Village; and consulting assistance with project development financing.

Pros:

- Allows us to pursue the redevelopment plan for each of these areas.
- Provides a funding source for plan implementation.

Cons: None noted.

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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 to also approve the budget amendment, in the amount of \$700,000.

RESOLUTION BOOK NO. 29 – PAGE

ORDINANCE NO. 3297 - BUDGET AMENDMENT FOR A GRANT FOR THE IMPLEMENTATION OF THE REDEVELOPMENT PLAN FOR THE BILTMORE VILLAGE, EAST SWANNANOVA RIVER AND FRENCH BROAD RIVER AREAS

Summary: See above item.

ORDINANCE BOOK NO. 22 – PAGE

RESOLUTION NO. 05-204 - RESOLUTION AUTHORIZING THE ISSUANCE OF NOT TO EXCEED \$42,000,000 WATER SYSTEM REFUNDING REVENUE BONDS OF THE CITY OF ASHEVILLE, N.C.

Summary: The consideration of (1) Bond Order authorizing the Issuance of Not to Exceed \$42,000,000 Water System Refunding Revenue Bonds of the City of Asheville, North Carolina; and (2) Resolution authorizing the approval, execution and delivery of various documents in connection with the issuance of City of Asheville, North Carolina Water System Refunding Revenue Bonds; providing for the sale of the bonds and setting the terms and conditions upon which the bonds are sold.

City Council has previously adopted a resolution directing that actions be initiated to enable the issues of Water System Refunding Revenue Bonds:

The Bond Order provides the following:

- In order to raise the money required to refund the Refunded Bonds, the 2005 bonds are authorized by City Council and shall be issued pursuant to North Carolina General Statutes, Section 159-80;
- The principal amount of the 2005 bonds shall not exceed \$42,000,000;
- The 2005 bonds shall be paid solely from the revenues from the operation of the water system; NOT from the general funds, credit or taxing powers of the City;
- The proceeds from the sale of the 2005 Bonds shall be deposited in accordance with the Series Indenture; and
- The Bond order shall be effective upon adoption.

The resolution for the sale of bonds provides the following:

- Approves the issuance of 2005 refunding bonds in a principal amount not to exceed \$42,000,000;
- Approves, confirms and incorporates by reference the provisions of the General Indenture and Series Indenture;

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- Stipulate that the bonds shall be special obligations of the City and shall not be payable from the general funds of the City;
- Authorizes and directs the Mayor, City Manager, City Clerk and Chief Financial Officer to execute and deliver the Series Indenture and do all things necessary to issuance of the bonds and to carry out and comply with the Series Indenture;
- Approves the form and content of the Purchase Contract and stipulates that the bonds will be sold to the underwriters pursuant to the terms of the Purchase Contract; and
- Authorizes and approves the form and content of the Preliminary Official Statement and Official Statement (to be dated on or about November 1, 2005) and their use by the underwriters in the sale of the bonds.

Pro:

- Expected total debt service savings based on current market conditions is \$3.4 million. Actual savings level will be

determined on the date the bonds are sold which is scheduled for November 15th.

Con: None noted.

- City staff recommends City Council adopt (1) Bond Order authorizing the Issuance of Not to Exceed \$42,000,000 Water System Refunding Revenue Bonds of the City of Asheville, North Carolina; and (2) Resolution authorizing the approval, execution and delivery of various documents in connection with the issuance of City of Asheville, North Carolina Water System Refunding Revenue Bonds; providing for the sale of the bonds and setting the terms and conditions upon which the bonds are sold.

RESOLUTION BOOK NO. 29 - PAGE

RESOLUTION NO. 05-205- RESOLUTION AUTHORIZING THE APPROVAL, EXECUTION AND DELIVERY OF VARIOUS DOCUMENTS IN CONNECTION WITH THE ISSUANCE OF CITY OF ASHEVILLE, N.C., WATER SYSTEM REFUNDING REVENUE BONDS; PROVIDING FOR THE SALE OF THE BONDS AND SETTING THE TERMS AND CONDITIONS UPON WHICH THE BONDS ARE SOLD

Summary: See above item.

RESOLUTION BOOK NO. 29 – PAGE

- After City staff responded to questions from Councilwoman Bellamy, she moved for the adoption of Resolution Nos. 05-202, 05-204, and 05-205 and Ordinance No. 3297. This motion was seconded by Councilwoman Jones and carried unanimously.

III. PUBLIC HEARINGS:

A. PUBLIC HEARING RELATIVE TO ZONE 75 LONG SHOALS ROAD TO COMMUNITY BUSINESS II DISTRICT

ORDINANCE NO. 3300 - ORDINANCE TO ZONE 75 LONG SHOALS ROAD TO COMMUNITY BUSINESS II DISTRICT

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Mayor Worley opened the public hearing at 5:17 p.m.

Urban Planner Julia Cogburn said that this is the consideration of an ordinance to initially zone 75 Long Shoals Road to Community Business II District. This public hearing was advertised on October 28 and November 4, 2005.

Ms. Cogburn said that this initial zoning, as it is taking place in an area that is transitioning due to the widening of Long Shoals Road, supports the land use strategy found in the City's 2025 Plan of identifying appropriate areas for the location of commercial uses. According to the plan, these areas should be adequately served by public services and be easy to access from the interstate highway system.

The City of Asheville recently completed the voluntary annexation of property located at 75 Long Shoals Road. This property is currently in the Limestone Township jurisdiction of Buncombe County and is zoned R-2. The property currently contains one single-family home. The initial zoning process for this property is following the voluntary annexation approved on October 25, 2005, by the Asheville City Council. While this property is in the area of the Long Shoals Road annexation that will become effective on January 1, 2006, the property owner requested the voluntary annexation and zoning so that they may begin development of this property. The owner has requested CBII zoning for this property that is in keeping with the initial zoning studies for the larger annexation area.

Pros

- Supports the 2025 plan goal of identifying appropriate areas for the location of commercial uses.
- Zones properties recently taken into the City of Asheville in consideration of the surrounding zoning and land use.

Cons

- Could be considered by some to be expanding strip commercial development along Long Shoals Road.

At its November 2, 2005, meeting, the Planning & Zoning Commission unanimously recommended zoning the property Community Business II District. Planning staff concurs.

Mayor Worley closed the public hearing at 5:19 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. 3300. This motion was seconded by Councilwoman Bellamy and carried unanimously.

ORDINANCE BOOK NO. 22 - PAGE

B. PUBLIC HEARING TO CONSIDER REZONING AND APPLICATION OF A PLANNED UNIT DEVELOPMENT OVERLAY ZONING TO 72 ACRES LOCATED OFF KENILWORTH ROAD AND RESERVOIR ROAD, IDENTIFIED AS KENILWORTH HEIGHTS, FROM THE UNDERLYING ZONING OF RS-2 RESIDENTIAL SINGLE-FAMILY LOW DENSITY DISTRICT TO RS-4 RESIDENTIAL SINGLE-FAMILY MEDIUM DENSITY DISTRICT; AND MASTER PLAN APPROVAL FOR A 172 UNIT RETIREMENT COMMUNITY WITH RELATED AMENITIES

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Mayor Worley said that this public hearing was originally scheduled for August 23, 2005, however, the applicant had requested the hearing be continued until September 13, 2005, in order to have a full Council present for the hearing. That request was granted.

On September 13, 2005, Mr. Albert Sneed requested that this public hearing be continued until September 27, 2005, in order to have a full Council present for the hearing. That request was granted.

On September 27, 2005, Mr. Craig Justus, attorney representing the developers, requested that this public hearing be continued until November 9, 2005, in order to have an opportunity to meet with the attorney who has just been retained by the Kenilworth Neighborhood Association, Planning staff and representatives of the neighborhood to work toward a compromise. That request was granted.

Mayor Worley opened the public hearing at 5:21 p.m.

Ms. Patsy Brison, attorney representing Kenilworth Residents Association, presented City Council with letters dated September 27, 2005, and November 4, 2005, regarding procedural and legal issues; and copies of deeds. In summary, Ms. Brison explained how it is her opinion that the original protest petition is still valid and urged City Council to make that determination as well. Ms. Brison also explained why the provisions of the Mountain Ridge Protection Act should apply to this particular project because there is a protected mountain ridge located within this project. An argument has been made that this protected mountain ridge is not shown on an old, outdated map in the City of Asheville's records. However, it is her opinion that any exclusions from that map of those portions of the ridges which are protected are in error. The text of the City's Code controls. She urged Council to make a determination that this is included within a Protected Mountain Ridge, so the project is prohibited. If Council does not make that determination, she urged Council to instruct City staff to correct all maps to make sure that all the protected mountain ridges within our jurisdiction are clearly shown on every document. Regarding height variances, Ms. Brison said that City Council has established the Board of Adjustment to consider and act upon variances to the City Code, and therefore, variances cannot be considered by City Council. Finally, she explained that the application is invalid because the names on the application are not the owners as shown on the deed.

City Attorney Oast explained his opinion that as to the plan, as revised, the protest petition is not valid.

In response to Councilwoman Bellamy, City Attorney Oast said that if Council remanded this matter back to the Technical Review Committee (TRC), or the Planning & Zoning Commission then a new City Council public hearing date would be established, thus triggering another opportunity for a new protest petition.

City Attorney Oast then responded to the Mountain Ridge Protection Act issue. It was his opinion that the written provisions of the Code shall control over maps and illustrations contained in the Unified Development Ordinance (UDO). He didn't think that means that it controls over maps that are not contained in the UDO. The Mountain Ridge Protection ordinance refers specifically to a map that is not contained in the UDO, but it is referenced in the UDO. That map has been in the Planning Department unchanged since the early 1980's and it does not show this ridge as a protected mountain ridge. Council can direct staff to review the map, but he felt this developer is entitled to rely on the map that is of record.

Councilman Davis recalled that this particular mountain was mentioned in connection with a separate mountain project

being considered in 2001-02. He recalled that the Planning Department made a determination that the mapping was correct.

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There was considerable discussion about the map of the Mountain Ridge Protection Act and the definition of the adjacent valley floor.

Mr. Craig Justus, attorney representing the developer, said that the law says there are maps available for developers to come in and do due diligence and those maps indicate that this ridge is not part of the protected ridges. He then explained why he felt the protest petition was invalid. Regarding the height variance issue, he said that it was the staff's interpretation that they could look to City Council for a variance. Finally, as to the application being invalid because the ownership changed, he said that this process has gone on for a long time and there was a need to lock in on the property. He urged Council to move ahead with the merits of this project.

Because Councilwoman Bellamy felt that the project has changed significantly, she moved to remand this matter back to the Planning & Zoning Commission for review. This motion was seconded by Councilwoman Jones and failed on a 2-5 vote, with Councilwoman Bellamy and Councilwoman Jones voting "yes," and Mayor Worley, Vice-Mayor Mumpower, Councilman Davis, Councilman Dunn and Councilman Newman voting "no."

Vice-Mayor Mumpower felt that all parties have the law on their side in that the neighbors had the right to file a protest petition and the developer also has the right to revise the boundaries of the project to invalidate the protest petition.

There was considerable discussion regarding the access road and whether or not it needed to be included as part of the project in order to calculate the validity of the protest petition. Ms. Tuch said that staff feels that if that access is removed the plan would not meet the technical standards. City Attorney Oast said that if Council feels the access road is required for the project, then Council would have to turn down the project as presented (because the developer has revised their application to have the PUD overlay only apply to the area with what used to be the Kenilworth Road access being a stub-out).

Mr. Justus urged Council to hear the merits of the project and, if appropriate, condition approval of the project subject to improvements being made off-site.

At 6:29 p.m., Mayor Worley announced a short recess.

City Attorney Oast explained his interpretation of the PUD ordinance and why it was his opinion that Council is supposed to be considering a Master Plan that has been reviewed by the TRC and this one hasn't been. He felt it was up to Council on whether they want to remand this back to the TRC for review or proceed with the hearing. However, he feels that without going through the TRC, there may be a potential legal problem having Council's action invalidated.

Vice-Mayor Mumpower moved to remand this issue back to the Technical Review Committee. This motion was seconded by Councilwoman Bellamy.

Mr. Joe Heard, Director of Development Services, said that, from his understanding of the changes proposed in the Master Plan recently received, it does contain not only the truncating the entrance road discussed, but also within this Plan are a reduction in the improvements to Reservoir Road, as well as changes to the location of the buildings on the site. Certainly together or any one of those by itself could be classified as a substantial change to the Plan. In our discussions with the City's Traffic Engineer, those changes would involve different comments from him had these changes been proposed before the TRC. Staff does feel that these are substantial changes and felt it would be appropriate for the TRC to review.

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The motion made by Vice-Mayor Mumpower and seconded by Councilwoman Bellamy to remand this issue back to the Technical Review Committee carried on a 5-2 vote, with Mayor Worley and Councilman Davis voting "no."

IV. UNFINISHED BUSINESS:

V. NEW BUSINESS:

VI. OTHER BUSINESS:

Update on Stormwater Services Program

City Engineer Cathy Ball briefly reviewed with Council the stormwater services program which beginning in December all property owners with developed land in Asheville's city limits will receive a stormwater utility bill. It was the consensus of Council to have a more detailed update at their November 15, 2005, worksession.

Taxicabs

At the request of City Manager Jackson, Vice-Mayor Mumpower moved to continue the taxicab increase discussion from the November 22, 2005, meeting until the January 10, 2006, to give staff the opportunity to research this issue further. This motion was seconded by Councilwoman Bellamy and carried unanimously.

Claims

The following claims were received by the City of Asheville during the period of October 21-November 3, 2005: Thomas R. Penland (Water), Janet Goode (Parks & Recreation), Enterprise Rent-A-Car (Planning), Ida Myres (Water), Jennifer Sims (Transit Services), Sharon Smith (Water), Gail Hipshire (Streets) and James M. Pressley (Streets). These claims have been referred to Asheville Claims Corporation for investigation.

VII. INFORMAL DISCUSSION AND PUBLIC COMMENT:

Vice-Mayor Mumpower thanked the Seabees for completing the fence at the basketball court at Klondyke Apartments. He also expressed appreciation to those involved in building a bench at Altamont Apartments.

Councilman Davis briefed Council on the Civic Center Task Force's first meeting.

At this time (7:52 p.m.), Vice-Mayor Mumpower left the meeting.

Mr. Gene Hampton spoke about the impossibility of operating successfully without a quality management program.

At this time (7:56 p.m.), Mayor Worley turned the meeting over to Councilwoman Bellamy and left the meeting

Mr. James Judd, Coalition of Asheville Neighborhoods board member, urged Council's continuance attention to the Greenlife Grocery issue and the alleged injustice done to the residents of Maxwell Street. In addition, he voiced several enforcement problems related to this matter.

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VIII. ADJOURNMENT:

Councilwoman Bellamy adjourned the meeting at 8:06 p.m.

CITY CLERK

MAYOR