

Regular Meeting

Present: Mayor Terry M. Bellamy, Presiding; Vice-Mayor Diana Hollis Jones; Councilwoman Robin L. Cape; Councilman Jan B. Davis; Councilman Bryan E. Freeborn; Councilman R. Carl Mumpower; 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 Erwin High School JROTC led City Council in the Pledge of Allegiance.

**INVOCATION**

Mayor Bellamy gave the invocation.

**I. PROCLAMATIONS:**

**A. RECOGNITION OF PARKS & RECREATION STAFF FROM N.C. RECREATION AND PARK ASSOCIATION**

Mayor Bellamy recognized Mr. Mike Waters, Executive Director of the N.C. Recreation and Park Association who presented Randy Shaw with the Young Professional Award, Ray L. Kisiah Sr., with an award for Hall of Fame Inductee, and Irby Brinson with the Fellow Award.

**II. CONSENT AGENDA:**

Councilman Mumpower asked that Consent Agenda Item "J" be removed from the Consent Agenda for discussion.

Councilman Davis asked that Consent Agenda Item "I" be removed from the Consent Agenda for discussion.

**A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON NOVEMBER 22, 2005, AND THE ORGANIZATIONAL MEETING HELD ON DECEMBER 6, 2005**

**B. RESOLUTION NO. 05-224 - RESOLUTION ADOPTING THE 2006 SCHEDULED CITY COUNCIL MEETINGS  
RESOLUTION BOOK NO. 29 – PAGE 294**

**C. ORDINANCE NO. 3310 - BUDGET AMENDMENT TO ACCOUNT FOR HOME PROGRAM FUNDS REPAID TO THE CITY BY TRANSYLVANIA COUNTY HOUSING DEVELOPMENT CORPORATION**

Summary: The consideration of a budget amendment, in the amount of \$108,610, to account for HOME Program funds repaid to the City by Transylvania County Housing Development Corporation.

In 2000 Transylvania County Housing Development Corporation (TCHDC) expended \$108,610 of HOME Program funds on the acquisition of vacant land in Brevard for the

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development of affordable housing. Due to the high costs of infrastructure construction, the project did not go forward. HOME program regulations mandate that if expenditures occur without the production of affordable housing units all funds must be returned to the U.S. Treasury. TCHDC sold the property and repaid the City. Upon receipt of the funds, the City repaid the Treasury and the funds were then added back into the City's available HOME funding. It is now necessary to amend the Fiscal Year 2006 Budget to recognize the availability of these funds. They have already been committed to HOME projects in the 2005 Annual Action Plan for CDBG & HOME funding.

This action complies with the City's Strategic Operating Plan to address the goals and objectives of the Housing Opportunities Focus Area

Advantage:

- Adoption of the Amendment will allow the City and the Asheville Regional Housing Consortium to expend the funds for eligible activities under the HOME Program.

Disadvantage:

- None

Community Development staff recommends adoption of the budget amendment to account for HOME Program funds repaid to the City by Transylvania County Housing Development Corporation.

**ORDINANCE BOOK NO. 22 – PAGE 327**

**D. ORDINANCE NO. 3311 - BUDGET AMENDMENT FOR NEW SIDEWALK CONSTRUCTION USING FEE-IN-LIEU OF SIDEWALK CONSTRUCTION FUNDS**

Summary: The consideration of a budget amendment, in the amount of \$100,000, for the construction of new sidewalks using fee-in-lieu of sidewalk construction funds.

In 1999, City Council authorized allowing developers to pay a fee in lieu of constructing sidewalks for projects. Since that time, the City has collected over \$322,000 in revenue from this fee. The City has used this money to build new sidewalks, match N.C. Department of Transportation grants, and make pedestrian improvements at intersections. Some of the projects that have been funded include sidewalk on Trinity Chapel, Hiwassee Street, Hilliard Avenue, Tunnel Road and pedestrian landings at the intersection of Wal-Mart and Hendersonville Road.

As mentioned above, to date the City has collected over \$322,000 in fee-in-lieu of revenue, an amount which now exceeds the \$300,000 approved budget authorization by \$22,000. In addition, the City expects to receive another \$78,000 in fee-in-lieu of revenue over the next year. This \$100,000 budget amendment will appropriate the \$22,000 in additional funds that have already been collected and put in place a budget for the \$78,000 in revenue that is expected to be collected over the next year. Staff has earmarked these funds for priority sidewalk projects identified on the approved priority list. The specific locations include Hendersonville Highway, Fairview Road and Patton Avenue.

Consideration:

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- The additional revenue will allow the City to install sidewalk in priority locations throughout the City.

- This action complies with the City Council Strategic Operating Plan in Goal #3 in the focus area of Natural and Built Environment. Goal #2: Increased street and sidewalk connections. Objective #6 Evaluate funding options for increased needs for construction of sidewalks, greenways and street improvements while continuing to pursue additional local and outside funding sources for capital infrastructure improvements.

- City staff recommends City Council approve budget amendment, in the amount of \$100,000, for the construction of new sidewalks using fee-in-lieu of sidewalk construction funds.

**ORDINANCE BOOK NO. 22 – PAGE 328**

**E. RESOLUTION NO. 05-225 - RESOLUTION AUTHORIZING THE MAYOR TO CONVEY PROPERTY ON BENT TREE ROAD TO SHERYL H. WILLIAMS**

Summary: The consideration of a resolution authorizing the Mayor to convey land on Bent Tree Road to Sheryl H. Williams in the amount of \$16,000.

On November 22, 2005, City Council authorized advertising for upset bids pursuant to a bid from Sheryl H. Williams for land on Bent Tree Road in the amount of \$16,000. The advertisement was published on December 2, 2005, and no upset bids were received.

The land on Bent Tree Road was acquired by the City from Sunset Mountain Company, Inc. in 1954. It is an irregular

shaped lot comprising 1.2 acre±. It is very steep and wooded and runs in a long and narrow north/south direction between and parallel to Bent Tree Road and Old Toll Road. It is zoned RS2, but the slope and shape render the lot unsuitable as a home site. The deed of conveyance to the City also restricts the property prohibiting any building or structure of any kind. The bid from Sheryl H. Williams, owner of property across the street, is in the amount of \$16,000. Williams has provided an appraisal prepared by Mark Morris SRA dated September 29, 2005, estimating the market value of the property at \$16,000. Williams proposes to acquire the property to maintain the lot consistent with the residential character of the neighborhood. She is aware of the deed restrictions and does not plan any construction.

The positive aspects of the transaction are:

- The sale will be at fair market value as established by the upset bid process.
- It will return property not needed for public use to the tax rolls.
- It will transfer responsibility for maintenance to the private sector.

City staff recommends adoption of the resolution authorizing the Mayor to convey land on Bent Tree Road to Sheryl H. Williams in the amount of \$16,000.

#### **RESOLUTION BOOK NO. 29 – PAGE 295**

#### **F. RESOLUTION NO. 05-226 - RESOLUTION SETTING A PUBLIC HEARING ON JANUARY 10, 2006, TO CONSIDER THE VOLUNTARY ANNEXATION OF A HABITAT FOR HUMANITY SUBDIVISION LOCATED OFF OF SAND HILL ROAD**

Summary: The consideration of a resolution fixing the date of a public hearing on January 10, 2006, to consider the voluntary annexation of a Habitat for Humanity subdivision located off of Sand Hill Road.

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Asheville Area Habitat for Humanity has petitioned the City for the annexation of one lot they own located off of Sand Hill Road containing approximately 18.24 acres. (The property described on the attached legal description is currently showing as three lots on the Buncombe County Tax Listings. It is to be combined into one PIN as it is all part of the same development.) 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 it has been found that the petition meets the standards set forth in N.C. Gen. Stat. sec. 160A-31.

This property has been reviewed and approved by the City's Technical Review Committee for a single-family subdivision of 55 lots and Habitat is requesting annexation prior to the construction of the homes in the development.

The next step in this process is for City Council to fix the date for the public hearing on this matter. Should City Council decide to proceed with this request, the effective date for the annexation would January 31, 2006.

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 inspect the development of homes in the proposed subdivision.

Cons:

- .. 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 of January 10, 2006, to consider the voluntary annexation of a Habitat for Humanity subdivision located off of Sand Hill Road.

#### **RESOLUTION BOOK NO. 29 – PAGE 296**

**G. RESOLUTION NO. 05-227 - RESOLUTION AUTHORIZING THE MAYOR TO ENTER INTO AN AGREEMENT WITH THE N.C. DEPT. OF TRANSPORTATION FOR THE REIMBURSEMENT OF FUNDS TO BE EXPENDED FOR BUS SERVICE TO BLACK MOUNTAIN**

Summary: The consideration of a resolution authorizing the Mayor to enter into an agreement with the N. C. Dept. of Transportation (NC DOT) for the reimbursement of funds to be expended for service to Black Mountain.

The NC DOT has tendered a contract to the Asheville Transit System in which the NC DOT will contribute funds for bus service to Black Mountain. The Asheville Transit System will operate said service.

Asheville Transit System will operate an intercity bus route between the City of Asheville and the Town of Black Mountain along US 70 with stops at the Asheville Mall, Riverbend

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Marketplace, Veteran's Administration Hospital, and multiple residential areas. The service will operate five times a day, six days a week. All financing will be provided by the State (maximum of \$159,619), the Town of Black Mountain (\$13,500), Mountain Mobility (\$5,443), and Fare Box Revenue (\$13,438). The total budgeted cost is \$192,000. The contract has a period of performance of 12 months - from July 1, 2005, through June 30, 2006, as well as to pass through funding to Mountain Mobility for the operation of their route in Black Mountain through the same date. These funds are currently programmed in the City budget.

This action complies with the Strategic Operating Plan in the Planning Focus Area- Goal #2-A Multi-modal Transportation System, leveraging outside funding sources

Pros:

- Increased mobility for the citizens of Asheville both within and outside the city at no additional cost to the City of Asheville

Cons:

- There are no disadvantages to the City of Asheville.

City staff recommends adoption of the resolution authorizing the Mayor to enter into an agreement with the N. C. Dept. of Transportation for the reimbursement of funds to be expended for service to Black Mountain.

**RESOLUTION BOOK NO. 29 – PAGE 300**

**H. RESOLUTION NO. 05-228 - RESOLUTION AUTHORIZING PURCHASE OF EASEMENT ALONG THE FRENCH BROAD RIVER FROM ASTON PARK HEALTH CARE CENTER INC. FOR THE HOMINY CREEK/AMBOY ROAD GREENWAY**

Summary: The consideration of a resolution accepting a settlement offer from Aston Park Health Care Center Inc. for an easement along the French Broad River for Hominy Creek/Amboy Road Greenway.

The City of Asheville has received a Settlement Offer from Aston Park Health Care Center, Inc. (Aston Park) for an easement along the French Broad River for the sum of \$20,000 for Hominy Creek/Amboy Road Greenway.

The Aston Park Health Care Center is located at 380 Brevard Road on property formerly owned by the City of Asheville that was known as Rhododendron Park. The property is situated on the west bank of the French Broad River adjacent to Hominy Creek Park. The Health Care Center sits on a high bluff above the river with a steep, rocky, bramble covered slope down to a narrow band of partially wooded bottom land along the river. This part of the property is in the flood plain and small portions of it are boggy. The proposed easement will follow a linear route along the river from Hominy Creek Park across this low lying portion of the Aston Park property to connect with other easements to provide a greenway connection between Hominy Creek Park to Carrier Park on Amboy Road. The easement will generally be about 30' wide by approximately 1,500' long and encumber 3.2 ± acres. The highest and best use for the Health Care Center property per the appraisal is its existing use as permitted by the current Institutional zoning.

The property was appraised by Laurel Jeanne Peart, General Appraiser in collaboration with Benjamin T. Beasley, MAI. The appraisal was reviewed by Joseph F. Moore, General Appraiser who recommended the estimated value of the easement in the amount of \$4,000. In response to the City's offer Aston Park provided a letter of opinion from Elbert L. Taylor, GRI estimating the value of the easement at \$64,000. The City and Aston Park subsequently

engaged in good faith negotiations and as a result of those negotiations Aston Park has proposed a settlement of the compensation at \$20,000.

The City's Real Estate Manager recommends the offer from Aston Park be accepted because it is a fair and reasonable offer considering the appraisal evidence. The general trend of real estate values for similar properties indicates that a settlement at a lower amount is not likely. The time and expense involved in further negotiation, in gathering value evidence and pursuing eminent domain would be substantial with a high risk of getting a less favorable result. Accepting this offer will resolve the issue of compensation and eliminate the need to consider eminent domain.

The positive aspects of the proposed acquisition are:

- The easement will be acquired on terms favorable to the owner as well as to the City.
- The savings realized in time and expense justifies the purchase price.
- It is a voluntary sale at a fairly negotiated price without the use of eminent domain.
- It will give the City control of a substantial portion of the easement area required for the greenway, which is crucial to retaining State funding for the project.
- It will move the process forward toward construction of the greenway.

There are no negative aspects.

Approval of the resolution will establish \$20,000.00 as the just compensation for the property and accept the settlement offer from Aston Park for that amount.

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The Planning & Development and Parks & Recreation staff recommend City Council proceed with the purchase of the easement for \$20,000.00 and recommend accepting a settlement offer from Aston Park Health Care Center Inc. for an easement along the French Broad River for Hominy Creek/Amboy Road Greenway.

**RESOLUTION BOOK NO. 29 – PAGE 301**

**I. RESOLUTION REGARDING FEMA REIMBURSEMENT FOR HOUSING SERVICES EXTENDED TO HURRICANE KATRINA EVACUEES**

This matter was pulled from the Consent Agenda for further discussion.

**J. RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE A LICENSE AGREEMENT WITH MOUNTAIN AREA INFORMATION NETWORK FOR ANTENNAS AT 36 RESERVOIR ROAD**

This matter was pulled from the Consent Agenda for further discussion.

Mayor Bellamy 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 Jones moved for the adoption of the Consent Agenda. This motion was seconded by Councilman Davis and carried unanimously.

**ITEMS PULLED FROM THE CONSENT AGENDA FOR DISCUSSION**

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**RESOLUTION NO. 05-229 - RESOLUTION REGARDING FEMA REIMBURSEMENT FOR HOUSING SERVICES EXTENDED TO HURRICANE KATRINA EVACUEES**

Summary: The City of Asheville requests and expects to receive full reimbursement from FEMA, via the N.C. Division of Emergency Management, of the cost of providing housing in accordance with the approved interim shelter plan and published FEMA guidelines.

Community Development Director Charlotte Caplan responded to questions from Councilman Davis regarding the reimbursement procedure.

Councilman Newman moved to approve Resolution No. 05-229. This motion was seconded by Councilman Davis and carried unanimously.

**RESOLUTION BOOK NO. 29 – PAGE 302**

**RESOLUTION NO. 05-230 - RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE A LICENSE AGREEMENT WITH MOUNTAIN AREA INFORMATION NETWORK FOR ANTENNAS AT 36 RESERVOIR ROAD**

Summary: The consideration of a resolution authorizing the City Manager to execute a License Agreement with Mountain Area Information Network (MAIN) for antennas at 36 Reservoir Road.

The property at 36 Reservoir Road known as White Fawn Reservoir is on a knoll at the western end of the Beaucatcher Mountain ridge. It has exceptional range for telecommunication with approximately 300° coverage from northeast to west to southeast. Two telecommunication towers are located on the property and the City of Asheville leases antenna space on the towers and ground space for related equipment.

MAIN has offered to enter into a license agreement for antenna space and related equipment on the tower known as the "U S Cellular Tower" which is the tower to the east with several large dish antennas attached. U S Cellular is the primary tenant on that tower and any antenna installations by others are subject to their approval. U S Cellular is agreeable to the installation by MAIN subject to a favorable tower analysis. A tower analysis is required by the license agreement to assure that the new installation does not interfere with existing installations and that the tower is structurally able to support the additional installation. MAIN will pay for and provide a tower analysis. The proposed License Agreement will enable MAIN to operate three (3) antennas at that site; however, there is a provision, which allows either the Licensor or the Licensee to terminate the agreement upon 180 days notice. The term of the License Agreement will be 3 years with 2 renewal periods of 3 years. MAIN will pay a License Fee of \$7,200 (\$200 per antenna per month) the first year with a 4% increase annually thereafter.

The request by MAIN has been reviewed by staff and the proposed equipment compared to existing installations to determine comparability. Currently we have three somewhat similar installations that are producing as follows:

|                        |   |
|------------------------|---|
| Arch Communications    | 1 antenna @ \$350 per month                 |
| Cingular Communication | 4 antennas @ \$287.50 per antenna per month |
| Morris Communications  | 3 antennas @ \$276.25 per antenna per month |

The license fee proposed for MAIN is somewhat below market rate consistent with the rate approved for the Housing Authority of the City of Asheville by Resolution No. 05-92. Both MAIN and the Housing Authority provide public benefit services to lower income persons that are compatible with governmental function and/or sponsorship. A discounted rate for a non-profit providing such services as well as public safety and emergency response agencies seems reasonable and appropriate

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Staff recommends that Council review discounted antenna license fees annually during consideration of appropriations to outside agencies.

Relationship to Broadband Initiative: Antenna rental requests are relatively simple transactions and will not materially affect any potential municipal broadband strategy. Specifically cellular and 900Mhz antenna rentals will not create interference with likely technologies to be used for broadband.

The following benefits will be realized from approval of this item:

- The City will receive revenue that it does not currently receive.
- Antenna space that is currently vacant will be utilized.
- MAIN will have improved capacity to provide low cost high speed wireless internet service to City residents.

The Notice of Intent to enter into a License Agreement with MAIN was published on December 2, 2005, in the Asheville Citizen-Times. Ten days have passed since the publication and authorization to execute the License Agreement is being requested.

City staff recommends City Council authorize the City Manager to execute a License Agreement with Mountain Area Information Network for antennas at 36 Reservoir Road.

Councilman Mumpower felt the City of Asheville should not be subsidizing, regardless of the quality of the service, an organization that has political agendas.

Vice-Mayor Jones moved for the adoption of Resolution No. 05-230. This motion was seconded by Councilman Freeborn and carried on a 6-1 vote, with Councilman Mumpower voting "no."

**RESOLUTION BOOK NO. 29 – PAGE 303**

**III. PUBLIC HEARINGS:**

**A. PUBLIC HEARING TO CONSIDER CONDITIONAL ZONING OF 966 TUNNEL ROAD FROM RM-6 RESIDENTIAL MULTI-FAMILY LOW DENSITY DISTRICT TO OFFICE DISTRICT/CONDITIONAL ZONING FOR A PROPOSED OFFICE BUILDING**

**ORDINANCE NO. 3312 - ORDINANCE TO CONDITIONALLY ZONE 966 TUNNEL ROAD FROM RM-6 RESIDENTIAL MULTI-FAMILY LOW DENSITY DISTRICT TO OFFICE DISTRICT/CONDITIONAL ZONING FOR A PROPOSED OFFICE BUILDING**

Mayor Bellamy opened the public hearing at 5:14 p.m.

Urban Planner Julia Cogburn said that this is the consideration of an ordinance to conditionally zone 966 Tunnel Road from RM-6 Residential Multi-Family Low Density District to Office District/Conditional Zoning for a proposed office building. This public hearing was advertised on December 2 and 9, 2005.

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The subject property is located within the City limits on Tunnel Road just past the intersection of Tunnel with Governor's View Road. Surrounding properties are all zoned residentially (either RS-4 or RM-6) and contain single-family homes except for property to the west that contains a large church.

The applicants, Haydn and Terry Hasty, wish to rezone the property in order to convert the existing single-family home into an office. The conversion would include an addition of 910 square feet to a structure currently containing approximately 1,010 square feet. The building is designed to be residential in character. The applicant proposes the required number of parking spaces for the development – 7 with one handicapped space. The applicant meets or exceeds all of the City's landscaping standards. Access was initially proposed off of both Tunnel Road and Governor's View Road. However, the City's Traffic Engineer was not recommending a variance for this purpose of the dual access off onto Governor's View Road, because Governor's View Road is classified as a residential street. The applicant has agreed to revise their site plan to have a singular access from Tunnel Road. She felt this should be a condition if Council chooses to approve the conditional zoning.

At their meeting on October 17, 2005, the Technical Review Committee (TRC) reviewed the conditional zoning request and made a positive recommendation (with conditions) that the project be forwarded to the Planning and Zoning Commission. Prior to the Planning and Zoning meeting, the applicant submitted revised drawings addressing most of the comments made at TRC. One outstanding issue that was resolved between these meetings was whether or not access would be permitted onto Governor's View Road. The Traffic Engineer recommends only the access onto Tunnel Road, but full access for the following reasons: (1) There is no alternate full access; (2) We cannot realistically enforce such a driveway at this property; (3) Traffic volumes to the use are expected to be low, so left turns are not a major concern; and (4) This section of Tunnel Road is not over congested so left turns are not a major safety concern. The applicants have expressed their intent to comply with this condition (and all others) should the conditional zoning be approved.

At their meeting on November 2, 2005, the Planning and Zoning Commission considered this matter. The Commission recommended 5-1 to deny this project.

Condition Zoning Analysis:

1. That the proposed use or development of the land will not materially endanger the public health or safety.

The project, if approved, must meet the technical standards set forth in the City's Unified Development Ordinance (UDO).

The revised site plan submitted for the Planning and Zoning Commission shows compliance or the intent to comply with all regulations.

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

The applicant has limited the parking provided on the site to that allowed under the UDO and has limited impervious surface to less than 50% of the site. All required landscaping is to be provided and stormwater provisions will be made.

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

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The applicant is proposing considerable landscaping and other improvements to the subject property and has presented an office design that retains the residential character of the structure. Approval of this rezoning would involve the increase in activity associated with an office use that could be perceived as a nuisance and the value of adjacent properties could be negatively affected. This impact may be reduced due to the orientation of this property to the abutting roadways as opposed to many of the other residential properties in the area. The applicants have tried to address the major concerns of the residents in their design. They are willing to limit the signage on the property and to limit the use to offices and residences only.

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 single-family home will not be removed but will be expanded making the structure larger than some, but not all, of the homes in the vicinity. It is designed to retain a residential appearance. The parking area is not typical of most of the neighborhood (with the exception of the church).

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 proposed development supports the goals of the 2025 Plan regarding compatible adaptive reuse but could be considered by some to not protect neighborhood viability in this reuse.

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

The proposed development is within close proximity to transportation facilities and other utilities appear adequate. The project area is located near major road facilities and other service centers.

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

The traffic to be generated by a small office facility is not expected to cause traffic congestion or traffic hazard. Additionally, traffic generated by this development will most likely only impact one residential lot in the area.

#### Pros

- Provides for the adaptive reuse of a vacant structure.
- Provides for office use in an easily accessible area.
- The scale and design of the proposed building is in keeping with the residential character of the area.
- The applicant is willing to address many of the neighborhood's concerns in the design of their project.
- Improves pedestrian amenities through the installation of sidewalks along Tunnel Road and payment of a fee-in-lieu for sidewalks on Governor's View Road.

#### Cons

- Allows for nonresidential development along a stretch of Tunnel Road that is predominately single-family and institutional in nature.
- Reduced potential for residential use (Office zoning does not preclude residential use but a residential component is not part of this application) on this lot.



- The parking lot will not be in keeping with the character of the area, except the parking found at the neighboring church.

For staff, making a recommendation for this proposal was a challenging one. While the immediate surrounding properties are primarily single-family in nature, there is a large institutional use on abutting property and commercial and office ventures immediately adjacent to the institutional use. It is for this reason and due to the size, design and use limitations of the proposed development that staff feels the benefits and detriment tests and issues to be evaluated in the spot zoning review can be balanced to find no spot zoning in this conditional zoning case. This analysis has been concurred by the City Attorney. Staff does, however, recommend the following additional conditions be placed on this development

- That all conditions of the TRC be met.
- That access be limited to Tunnel Road only
- That principal uses be limited to residential and office uses.
- That signage for the office be restricted to Tunnel Road and be limited to one sign, four square feet in size, non-illuminated.

At their meeting on November 2, 2005, the Planning and Zoning Commission recommended denial of this conditional zoning request (5-1).

Ms. Cogburn 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.

Mr. Ron Sneed, attorney representing the applicants, spoke in support of the conditional zoning, in that the property is losing it's appeal and its usefulness as a home since it is on a busy highway, the uses under the present zoning are less attractive, marketability of the property since it is on Tunnel Road, and the property is about 20 seconds from one commercial strip to another commercial strip. He said that this development will not hurt property values in the neighborhood. He explained why there are no private restrictions on this property imposed by the Beverly Hills Company. He explained how the business will look like a home and will have low traffic. He urged Council to support this conditional zoning.

Ms. Terry Hasty, one of the owners of 966 Tunnel Road, spoke in support of the conditional zoning in that they will improve the safety of the property, which has been vacant for 3-4 years. They will be decreasing the noise from Tunnel Road to the Governor's View Road properties with their added buffering. Also, they will be constructing a sidewalk on Tunnel Road for safe passage. She reviewed with Council their traffic analysis for 2004-05, showing that a daily average (20-day working month), of only 3.22 cars in their parking lot.

Mr. Carleton Collins, architect for the project, spoke in support of the conditional zoning. He said they have tried to be sensitive in their design and reviewed with Council the building elevation pictures. He felt this would be a good fit into the community.

Ms. Laura I. Hale, Realtor with Keller Williams Professionals Realty, reviewed with Council a sales comparison chart of the property on 966 Tunnel Road, along with a market value analysis. She explained how the property values have increased consistently in the area.

Mr. Haydn Hasty, one of the owners of 966 Tunnel Road, spoke in support of the conditional rezoning and reviewed with Council the list of businesses that already surround Beverly Hills that operate in harmony with the residential neighborhoods. He noted that there are more cars and people that move out of the area businesses in one day, than move in and out of his business in one week. No harm from the current businesses.

The following individuals spoke in support of the conditional zoning for various reasons, some being, but are not limited to: other businesses are allowed along Tunnel Road and this should be no different; this type-business will be less intrusive than other allowable uses; the property seems less desirable for a residential component; the development will not cause traffic, noise or litter in the area; the development will do no harm to the residential community; the owners have made every effort to cooperate with the needs of the neighborhood; a consulting firm will fit in well into a residential area; and office uses are allowed throughout Asheville and they do not lower real estate values:

Owner of Pomodoros on Tunnel Road in East Asheville  
Mr. Charlie Campbell, property owner at 960 Tunnel Road

Resident from Haw Creek  
Ms. Dorothy Olson, resident at 968 Tunnel Road  
Resident of Asheville

The following individuals spoke in opposition of the conditional zoning for various reasons, some being, but are not limited to: this will create an intrusion in the back-side of the property which abuts a residential neighborhood; the area is not a transitional area; homes on Governor's View Road are very small and affordable; when someone buys a home, they should be able to rely on the current zoning; to allow the conditional zoning will start to destroy the integrity of the residential neighborhood; City Council should listen to their appointees on the Planning & Zoning Commission who denied the project; since the developer originally proposed 20 parking spaces and scaled back to 8, where will the overflow parking be located; the property is located on a hill and blind curve and will be a dangerous place to exit; the conditional zoning of the property will result in an illegal spot zoning; approval will send a message that the will of the majority is ignored for the benefit of one entity, even though commercial and office space is plentiful outside of a residential subdivision; and the current property owners bought the property knowing it was zoned residential and it should remain residential:

Ms. Barber Melton, Vice-President of the Coalition of Asheville Neighborhoods  
Ms. Diane Hankins, resident at 421 Governor's View Road  
Ms. Debbie Applewhite, resident at 56 Fairway Way (presented Council with a definition of "Spot Zoning" from the Modern Real Estate Practice in North Carolina 2003 Edition)  
A resident at 178 Beverly Road  
Ms. Janet McPherson, adjacent property owner on Governor's View Road  
Mr. William Lutz, resident in Beverly Hills  
Mr. Moody, resident at 32 Fairway Drive  
Ms. Judy Sexton, resident in Beverly Hills  
Mr. Mike Cate, resident at 28 Fairway Drive  
Mr. Tim Wagner, resident of Beverly Hills  
Mr. Fred English, resident in Haw Creek  
Mr. Richard Gartz, resident on Governor's View Road  
Mr. Chris Pelly, President of the Coalition of Asheville Neighborhoods  
Ms. Marilyn Storey, resident at 439 Governor's View Road

Mr. Lee Towery, resident in Haw Creek, spoke in support of the conditional zoning, but noted that the Board of Trustees at Grove Methodist Church opposed the conditional zoning.

Mayor Bellamy closed the public hearing at 6:23 p.m.

Councilman Brownie moved to approve the conditional rezoning of 966 Tunnel Road from RM-6 Residential Multi-Family Low Density District to Office District/Conditional Zoning for a proposed office building, subject to the following conditions: (1) That all conditions of the TRC be

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met; (2) That full access be limited to Tunnel Road only; (3) That principal uses be limited to residential and office uses; and (4) That signage for the office be restricted to Tunnel Road and be limited to one sign, four square feet in size, non-illuminated. This motion was seconded by Councilwoman Cape.

Upon inquiry of Councilman Newman regarding regulating overflow parking on Governor's View Road, City Attorney Oast suggested a condition that says no use or event at the subject property will be allowed if that use or event generates more traffic than the parking lot on site can accommodate.

Councilwoman Cape suggested additional buffering in the rear of the property since the Governor's View Road access is being eliminated. Ms. Cogburn suggested a Type-A buffer just along the previous Governor's View Road access, with accommodations for a hidden path for pedestrian traffic.

In response to Councilman Mumpower, Ms. Cogburn tried to relay to Council the reasoning behind the Planning & Zoning Commission denial of the project.

At the request of Councilman Mumpower, City Attorney Oast explained that the ordinance requires each application for conditional zoning be evaluated in reference to the seven conditional use permit standards, but Council is not required to make

findings in favor of all of the criteria in order to grant a conditional use request.

In response to Councilman Mumpower, Ms. Cogburn explained why City staff did not feel this conditional zoning was spot zoning.

When Councilman Mumpower asked for data regarding accidents on that portion of Tunnel Road, Ms. Cogburn said that the City's Traffic Engineer was not present and she did not have the traffic counts. However, she read from an e-mail from the Traffic Engineer that said "traffic volumes to the use are expected to be low, so left turns are not a major concern and that section of Tunnel Road is not overly congested."

In response to Councilman Davis regarding the limited number of parking spaces, Mr. Hasty said that when they do host a seminar their clients typically come in groups and car-pool.

In response to Councilman Mumpower, Ms. Cogburn said that if the property is sold and another office use came in, they would have to keep the same site plan, with no alterations to the building, the landscaping, or the ingress/egress onto Tunnel Road.

In response to Mayor Bellamy, Mr. Hasty said that as soon as they can get workable locks on the doors, he has every intention in removing the fence on the property.

When Mayor Bellamy questioned the lighting in the parking space area, Ms. Cogburn said that Council could add a condition that the lighting be kept on the property, so as not to bleed over into the residential component of the neighborhood.

Planning & Development Director Scott Shuford responded to a question from Councilwoman Cape, stating that this conditional zoning doesn't create a precedent situation of opening the door to more commercial zoning.

Councilman Newman and Councilwoman Cape accepted the following amendments to their main motion: (1) a Type-A buffer just along the previous Governor's View Road access, with accommodations for a hidden path for pedestrian traffic; (2) that the lighting be kept on the property, so as not to bleed over into the residential component of the neighborhood; and (3) no

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use or event at the subject property will be allowed if that use or event generates more traffic than the parking lot on site can accommodate.

The amended motion by Councilman Newman and seconded by Councilwoman Cape to approve the conditional rezoning of 966 Tunnel Road from RM-6 Residential Multi-Family Low Density District to Office District/Conditional Zoning for a proposed office building, subject to the following conditions: (1) That all conditions of the TRC be met; (2) That full access be limited to Tunnel Road only; (3) That principal uses be limited to residential and office uses; (4) That signage for the office be restricted to Tunnel Road and be limited to one sign, four square feet in size, non-illuminated; (5) a Type-A buffer just along the previous Governor's View Road access, with accommodations for a hidden path for pedestrian traffic; (6) that the lighting be kept on the property, so as not to bleed over into the residential component of the neighborhood; and (7) no use or event at the subject property will be allowed if that use or event generates more traffic than the parking lot on site can accommodate, carried unanimously.

#### **ORDINANCE BOOK NO. 22 – PAGE 331**

At 7:00 p.m., Mayor Bellamy announced a short recess.

#### **B. PUBLIC HEARING TO CONSIDER REZONING A PORTION OF 440 MONTFORD AVENUE FROM OFFICE DISTRICT TO RS-8 RESIDENTIAL SINGLE-FAMILY HIGH DENSITY DISTRICT**

#### **ORDINANCE NO. 3313 - ORDINANCE TO REZONE A PORTION OF 440 MONTFORD AVENUE FROM OFFICE DISTRICT TO RS-8 RESIDENTIAL SINGLE-FAMILY HIGH DENSITY DISTRICT**

Mayor Bellamy opened the public hearing at 7:18 p.m.

Urban Planner Shannon Tuch said that this is the consideration of an ordinance to rezone a portion of 440 Montford Avenue from Office District to RS-8 Residential Single-Family High Density District. This public hearing was advertised on December 2 and 9, 2005.

The property owners, Tim Schaller & Suzanne Kirby, are interested in subdividing the existing .92 acre parcel located in the Montford neighborhood to allow for single family residential infill development. Office zoning does allow single family detached homes as a permitted use and the lot could be subdivided to create two additional lots under the current zoning; however subdividing the existing lot under those standards would result in relocating the existing office use parking and would result in a heavier impact to the site. A recent amendment to the subdivision standards allows greater flexibility in subdividing residentially zoned property for single-family lots and would allow for a more sensitive design.

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The rezoning proposal as presented would allow for up to two single family home lots while retaining the existing office use and zoning on the balance of the property. The residential portion of the property would be located at the rear of the site adjacent to other single-family uses, while the existing office use would remain fronting on Montford Avenue. Any new construction on these lots would require HRC review.

- The RS-8 zoning district is designed to establish and promote a suitable and high density single-family district where public infrastructure is sufficient to support such development.
- The purpose of the Office zoning district is to provide small scale office uses (or a mixture of office and residential use) adjacent to residential uses and to serve as a transition between residential and commercial areas.

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At their November 2, 2005, meeting, the Planning & Zoning Commission voted unanimously to approve the rezoning request and forward the application to the Asheville City Council.

#### Pros

- Provides opportunity for compatible residential infill development

#### Cons

- Reduces opportunity for expanding the existing office use

Staff concurs with the Planning & Zoning Commission and recommends approval of the rezoning request for a portion of the property located at 440 Montford Avenue to be rezoned from Office to RS-8.

Mr. Tim Schaller, property owner, spoke in support of this rezoning that will have minimum impact on the neighborhood.

Mayor Bellamy closed the public hearing at 7:22 p.m.

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

Vice-Mayor Jones moved for the adoption of Ordinance No. 3313. This motion was seconded by Councilman Mumpower and carried unanimously.

### **ORDINANCE BOOK NO. 22 – PAGE 335**

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

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

##### **A. RESOLUTION NO. 05-231 - RESOLUTION AUTHORIZING THE CITY MANAGER TO EXTEND AN EXISTING CONTRACT WITH BUNCOMBE COUNTY TO CONTINUE FIRE AND RESCUE DISPATCH SERVICES**

Fire Chief Greg Grayson said that this is the consideration of a resolution authorizing the City Manager to extend an existing contract with Buncombe County Government in order to continue providing 911 emergency dispatch services for the Asheville Fire and Rescue Department.

On June 3, 2003, City Council gave staff direction to participate with Buncombe County in a joint 911 emergency communications center in approximately 2.5 years. On September 2, 2003, by resolution, City Council authorized the City Manager to execute a performance based contract with Buncombe County Government for dispatch of fire and rescue calls and continue

dispatching police emergency calls as we were currently doing. This interim arrangement was to be in effect until a joint, consolidated 911 emergency communications center was constructed and operational – which was anticipated by January 1, 2006.

Due to a number of unexpected factors, Buncombe County has not yet been able to construct and make operational a joint consolidated 911 emergency communications center. The facility was originally planned for the new County Detention Facility Annex. However, conditions

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were such that the County decided not to place the center in that building and seek another location. A number of alternative locations have been considered included several sites in the downtown Asheville area. A suitable alternative site was not found by Buncombe County in the downtown area. However, the County is now planning renovation and construction of a facility near Erwin High School.

In order to ensure continuity of emergency fire and rescue operations, Buncombe County has offered to continue all of the terms and conditions in the performance based contract from 2003 for interim 911 emergency dispatch services for the Asheville Fire and Rescue Department until such time that a proper facility can be constructed and made operational.

The current contract is set to expire on December 31, 2005. City staff recommends that the current contract with Buncombe County be extended for a one (1) year period until December 31, 2006.

The method of operation with Buncombe County providing fire and rescue dispatches directly at the public safety answering point (PSAP) has improved the city's fire and rescue response time standard of cover by approximately 5%. This current method of operation also earns approximately 25% higher credit under the communications component of the insurance rating services (ISO) versus a dispatch method involving a 911 call transfer.

Staff recognizes that more work needs to be done between the City of Asheville and Buncombe County once a communications center site is agreed upon and the design of the facility is complete. There are a number of operational issues that have not been able to be addressed because the center location has not yet been confirmed. Management of police emergency calls is the primary point of consideration.

Pros:

- The current contract is a “no financial cost” contract for the City of Asheville;
- The current method of operation has been working well operationally for Asheville Fire and Rescue;
- Improved standard of cover and improved insurance rating points versus the call transfer method for fire and rescue emergencies.

Cons:

- The extended contract would continue the agreement that the City of Asheville agrees not to establish its own Public Safety Answering Point (PSAP) as long as the county meets their contractual agreements.
- Because the city does not operate a PSAP, Police 911 emergency calls will continue to be transferred to Asheville Police Department for dispatch.

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

City staff recommends that the City Manager be given authority to extend the current performance based contract with Buncombe County for fire and rescue 911 emergency communications dispatch services from the previous expiration date of December 31, 2005, until December 31, 2006.

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EMS Director Jerry VeHaun explained the reason for the delay and hoped to begin construction in January, 2006.

Fire Chief Grayson responded to a question raised by Councilman Mumpower regarding the Police 911 emergency calls continuing to be transferred to the Asheville Police Department for dispatch.

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

Councilwoman Cape moved for the adoption of Resolution No. 05-231. This motion was seconded by Councilman Davis and carried unanimously.

## **RESOLUTION BOOK NO. 29 – PAGE 304**

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

Mayor Bellamy announced that starting at this meeting, citizens interested in speaking during the public comment period (not during scheduled public hearings), will be required to sign a "Sign Up" Sheet which is available outside the Council Chamber on the table and also next to the City Clerk. Speakers must complete the form and give it to the City Clerk prior to the public comment period. Speakers will be called on in order to which the forms were received. This will ensure that all comments heard will be followed up by appropriate City staff. She thanked the citizens for their cooperation in this change.

Councilman Mumpower thanked (1) the Seabees and others for their help in the first Top-A-Stop built at Pisgah View; and (2) the volunteers who participated in the clean-up day in and around Aston Park Towers.

On behalf of City Council, Councilman Davis expressed deep sympathy on the passing of Rick Maas.

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

Mr. Fred English, resident of Haw Creek, felt that public comment should have been allowed on the nomination of the seventh member of City Council at City Council's December 6, 2005, organizational meeting.

Ms. Leslee Kulba, speaking on Freedom Works, Fishburne Communications, and The Libertarian Party of Buncombe County, presented City Council with "The Law – The Classic Blueprint for a Just Society" by Frederic Bastiat, as a reminder that America was founded on the principles of liberty and justice for all.

#### **Closed Session**

At 7:37 p.m., Councilman Mumpower moved to go into closed session for the following reason: To consult with attorneys employed by the City about matters with respect to which the attorney-client privilege between the City and its attorney must be preserved, including litigation involving the following parties: City of Asheville, Reid Thompson, Board of Adjustment, and State of North Carolina. The statutory authorization is contained in G.S. 143-318.11(a)(3). This motion was seconded by Vice-Mayor Jones and carried unanimously.

At 9:20 p.m., Councilman Freeborn moved to come out of closed session. This motion was seconded by Councilwoman Cape and carried unanimously.

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### **VIII. ADJOURNMENT:**

Mayor Bellamy adjourned the meeting at 9:20 p.m.

CITY CLERK

MAYOR