

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 Air Force JROTC from Roberson High School led City Council in the Pledge of Allegiance.

**INVOCATION**

Ms. Sandra Smith from Holy Ground gave the invocation.

Mayor Bellamy asked for a moment of silence for Chief Warrant Officer 3 Mitch Carver who was recently killed in Mosul, Iraq, while serving his country.

**CHANGES TO THE AGENDA**

- At the request of Councilman Davis, a report from the Civic Center Task Force will be added under New Business.

Mayor Bellamy announced that there will be no discussion at this meeting regarding board and commission appointments.

**I. PROCLAMATIONS:**

**II. CONSENT AGENDA:**

- A. **APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON JANUARY 10, 2006, AND THE WORKSESSION HELD ON JANUARY 17, 2006**
- B. **RESOLUTION NO. 06-8- RESOLUTION MODIFYING THE 2006 CITY COUNCIL MEETING SCHEDULE TO INCLUDE A SPECIAL WORKSESSION (FOCUSING ON GUIDING POLICIES AND GOALS FOR THE WATER SYSTEM) ON TUESDAY, JANUARY 31, 2006, AT 5:00 P.M. IN THE COUNCIL CHAMBER, LOCATED ON THE 2<sup>ND</sup> FLOOR OF THE CITY HALL BUILDING, ASHEVILLE, N.C.**

**RESOLUTION BOOK NO. 29 – PAGE 312**

- C. **RESOLUTION NO. 06-9- RESOLUTION AUTHORIZING THE CITY MANAGER TO AMEND THE ORIGINAL AGREEMENT WITH THE N.C. STATE RURAL ECONOMIC DEVELOPMENT CENTER DATED APRIL 26, 2005, FOR A SUPPLEMENTAL GRANT TO UNDERTAKE STORMWATER IMPROVEMENTS IN THE BILTMORE VILLAGE AREA**

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Summary: The consideration of a resolution authorizing the City Manager to amend the original agreement, dated 4/26/05 with the N.C. State Rural Economic Development Center, for a supplemental grant to undertake stormwater improvements in the Biltmore Village Area; and the accompanying budget amendment, in the amount of \$80,000.

The City was successful in obtaining grant funds totaling \$740,000 for planning and implementation of the River Redevelopment Plan. The Rural Center recently approached us with an additional grant opportunity that would enable the replacement of stormwater piping in Biltmore Village to alleviate street flooding during minor storm events (<10-year storm events), a high priority for area merchants. The current amendment is to accept a supplemental Phase III grant of \$80,000 that will be used for these stormwater improvements in the Biltmore Village area.

Staff is continuing the public involvement process for the River Redevelopment Plan, most recently meeting with RiverLink's executive board. Future meetings to be scheduled include another, follow-up meeting with Biltmore Village merchants

and a general meeting with River area stakeholders.

Pros:

- Provides a funding source for plan implementation of much need stormwater improvements that were indicated as a priority by the merchants in Biltmore Village.

Cons: None noted.

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City staff recommends City Council adopt the resolution authorizing the City to amend the redevelopment planning grant agreement with the Rural Economic Development Center, and to also approve the budget amendment, in the amount of \$80,000.

**RESOLUTION BOOK NO. 29 – PAGE 313**

**D. ORDINANCE NO. 3321 - BUDGET AMENDMENT FOR A SUPPLEMENTAL GRANT TO UNDERTAKE STORMWATER IMPROVEMENTS IN THE BILTMORE VILLAGE AREA**

Summary: See Consent Agenda "C" above.

**ORDINANCE BOOK NO. 22 - PAGE**

**E. RESOLUTION NO. 06-10 - RESOLUTION APPOINTING A MEMBER TO THE NOISE ORDINANCE APPEALS BOARD**

Summary: The consideration of appointing a member to the Noise Ordinance Appeals Board.

Ms. Sieglinde Anderson has resigned from the Noise Ordinance Appeals Board, thus leaving an unexpired term until July 1, 2006.

At the City Council worksession on January 17, 2006, City Council instructed the City Clerk to arrange the proper paperwork to appoint Barbara Hodgson to serve the unexpired term of Ms. Anderson, term to expire July 1, 2006, and then to serve a full 3-year term, term to expire July 1, 2009, or until her successor has been appointed.

Staff recommends City Council appoint a member to the Noise Ordinance Appeals Board.

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**RESOLUTION BOOK NO. 29 – PAGE 314**

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.

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

**III. PUBLIC HEARINGS:**

**A. PUBLIC HEARING TO CONSIDER A CONDITIONAL USE PERMIT FOR PROPERTY LOCATED AT NORTH MARKET AND WOODFIN STREETS, KNOWN AS 60 NORTH MARKET STREET, FOR A PROPOSED MIXED-USE RESIDENTIAL-CONDOMINIUM WITH STREET LEVEL COMMERCIAL DEVELOPMENT**

**ORDINANCE NO. 3322 - ORDINANCE TO GRANT A CONDITIONAL USE PERMIT FOR PROPERTY LOCATED AT NORTH MARKET AND WOODFIN STREETS, KNOWN AS 60 NORTH MARKET STREET, FOR A PROPOSED MIXED-USE RESIDENTIAL-CONDOMINIUM WITH STREET LEVEL COMMERCIAL DEVELOPMENT**

City Clerk Burleson 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 Bellamy opened the public hearing at 5:08 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 Alan Glines 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. Glines said that this is the consideration of the issuance of a conditional use permit for property located at North Market and Woodfin Streets, known as 60 North Market Street, for a proposed mixed-use residential-condominium with street level commercial development (Attachment to City Exhibit 3 – Location Map).

The application seeks approval for a mixed-use building containing 75 residential units and 6,000 square feet of commercial space on an 'L-shaped' parking lot adjacent to the Thomas Wolfe House and the Renaissance Hotel (Attachment to City Exhibit 3 – Aerial Map). The project is somewhat complicated in that the proposed building has at least 4 public facades and no rear façade, making each façade unique and important. The project seeks to provide two storefront spaces along the two major street frontages. The façade facing the Thomas Wolfe House

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provides townhomes at the ground level that are accessed directly from the sidewalk provided along the property edge. To reduce the scale next to the Wolfe House historic site, the building is scaled back to two stories at this corner with the Spruce Street sidewalk. The building façade along Market Street is nine stories and the façade along Woodfin Street is seven stories (City Exhibit 4 – Building Elevations). The building edge along the Spruce Street sidewalk (facing the Renaissance Hotel) is also seven stories tall including the on-site parking structure. All parking needs of the building residents and employees of the commercial spaces will be provided in this garage. The elevations provided with the submittal illustrate the facades of the building. The perspective drawings and streetscape photos are also helpful in evaluating the scale of the structure and the relationship to the Thomas Wolfe House. The proposed building would not be the largest building in the vicinity since the Renaissance Hotel is 12 stories tall. The Altamont Hotel Apartments (at eight stories) are adjacent to the Woodfin Street façade. The proposed building would be built up to the sidewalks (0' setback) along the Market Street and Woodfin Street frontages. The building would also be built to the edge of the property line along the Spruce Street sidewalk. Along the property adjacent to the Wolfe House as noted before, the project provides townhome units. The building is setback at least 20 feet from this side property line. In addition, because the Wolfe House provides a setback from its property line, the building edge will be about 40 feet from the front of this side of the proposed building. There are no required side setbacks in the CBD. Having the town homes use along this side could provide activity along this edge and avoid undesirable nighttime activity in the vicinity of the Wolfe house.

The 2025 Center City Plan encourages and anticipates additional residential growth in the Central Business District. Over the past decade, many downtown buildings have been renovated into condominium residential units. The older stock of existing buildings is almost exhausted for renovation and now the construction of new buildings on infill lots will become more common. The use of infill lots for new development fulfills one of the goals of Smart Growth by encouraging this development where the infrastructure is already in place to serve the growth. As noted in the City Development plan, residential development in downtown is the cornerstone of downtown economic health and strengthens the vitality of the City Center. New construction must include high quality design as noted in the Downtown Design Guidelines and the Center City Plan. The proposed building was reviewed and approved by the Downtown Commission. They noted that the design reflected the context of the surrounding area and the design was sensitive to this relationship along each side. The Downtown Commission also noted that the project scale was appropriate for the area because of the surrounding land uses and the challenging context of the Thomas Wolfe House. The Downtown Commission requested that the project come back for review of building materials. This review and approval was completed on 1-13-06 at the regular meeting of the Downtown Commission.

Section 7-7-8(d)(2) of the Unified Development Ordinance (UDO) states that planning staff shall evaluate conditional zoning applications on the basis of the criteria for conditional use permits set out in section 7-16-2. City Council must determine that the project meets the following conditions:

1. **That the proposed use or development of the land will not materially endanger the public health or safety.** The project will meet applicable building codes. The project is not expected to endanger public health or safety.

2. **That the proposed use or development of the land is reasonably compatible with significant natural or topographic features on the site and within the immediate vicinity of the site given the proposed site design and any mitigation techniques or measures proposed by the applicant.** The site is a surface parking lot with some trees located in a previously developed area of downtown. The project may be considered to be compatible with the surrounding area.

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3. **That the proposed use or development of the land will not substantially injure the value of adjoining or abutting property.** The project is expected to add value to this area of downtown and is not expected to injure the value of adjoining properties.
4. **That the proposed use or development of the land will be in harmony with the scale, bulk, coverage, density, and character of the area or neighborhood in which it is located.** This condition is probably the most talked about one regarding this proposal. The developer has worked to make the project fit with the character of the surrounding area by amending the layout of the building, design and materials used. The proposed building is not the largest building in the area or the tallest. The project is also in scale with the context of the Central Business District guidelines. The developer has reduced the height of the building to two stories at the corner it shares with the front of the Thomas Wolfe House. This is expected to improve the scale and compatibility with the Wolfe House. The neighborhood has never been a static place in time and this is witnessed by the large variety and scale of buildings covering a 120-year time period. With these ideas in mind, the project is thought to meet this standard.
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.** Redevelopment proposed for in-fill lots in the city center such as this one, is encouraged by the comprehensive plan and complies with smart growth plans adopted by the City.
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 is appropriately located for infrastructure needs and services. None of these items are expected to be a problem for this proposal.
7. **That the proposed use will not cause undue traffic congestion or create a traffic hazard.** The project is not expected to create a traffic hazard or cause undue traffic congestion.

#### Pros

- Residential development in the CBD reinforces the vitality of the downtown area.
- The proposal supports the Smart Growth goals of the city.
- The project may provide more eyes on the Wolfe House and may protect it from future vandalism.
- The proposed building provides a setback from the property line shared with the Thomas Wolfe House and steps down in size to two stories at the corner closest to the Wolfe House.

#### Cons

- The proposal changes the face of the neighborhood surrounding the Thomas Wolfe House (possibly a pro).
- Some views to and from the Wolfe House may change depending on vantage point.

At their December 7, 2005, meeting, the Planning and Zoning Commission voted 6-0 to recommend approval of the proposal with TRC conditions added as conditions. Staff concur with this recommendation.

Mr. Gerald Green, representing the developer, spoke in support of the project. He said that (1) approximately 12 meetings have been held with Steve Hill, Manager of the Wolfe House Memorial, and Becca Johnson, with the State Historic Preservation Office, to discuss the proposed building and site design; (2) more than 12 meetings have been held with the Asheville

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Downtown Commission members, and Commission Design Committee to review and discuss the building design; (3) the development team met with staff of the City of Asheville and Housing Authority to discuss the proposed development and its impact on the Authority's apartments in the Altamont Hotel. The development has been endorsed by Housing Authority Director Gene Bell; (4) the sidewalk located adjacent to the Wolfe Memorial and providing pedestrian access from Market Street to Spruce Street will be enhanced as part of the project. The sidewalk is located on the property of the developer and there is no requirement to maintain it. However, the developer understands the importance of the sidewalk. It will be enhanced with additional landscaping

and townhomes will front on it, giving it a residential edge and enlivening it; (5) the development will bring more people to this area of downtown, enhancing the existing business and residential uses in the area; (6) the residents of the proposed development will provide security for the Thomas Wolfe House Memorial; and (7) the proposed structure is in sacle with the buildings in the area (Altamont Hotel, Renaissance Hotel, Patla-Straus Legal Building) (Applicant Exhibit 1).

The following individuals spoke in support of the project:

The President of the Asheville Community Theatre  
Mr. Scott Best, attorney for the Asheville Community Theatre  
Mr. Alan Ditmore

After rebuttal, Mayor Bellamy closed the public hearing at 5:32 p.m.

Councilwoman Cape voiced her concern about the safety and pedestrian amenities along the parking areas.

Upon inquiry of Councilman Freeborn, Mr. Green stated that they would be open to rooftop gardens, but a green roof would be cost prohibitive.

Councilman Mumpower moved for the adoption of Ordinance No. 3322, granting a conditional use permit for a new building known as 60 North Market Street subject to the TRC conditions being met. This motion was seconded by Councilman Newman.

Councilman Freeborn suggested an amendment to the motion to iclude a requirement for rooftop gardens. After a brief discussion, Councilman Freeborn felt if there was no support for the amendment, he would withdraw his suggestion.

Upon inquiry of Councilwoman Cape, Mr. Green explained the screening of the air conditioning.

The motion made by Councilman Mumpower and seconded by Councilman Newman carried unanimously.

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

#### **B. PUBLIC HEARING TO CONSIDER THE CONDITIONAL ZONING OF PROPERTIES ON HUDSON AND RICH STREETS, IDENTIFIED AS HUDSON STREET COTTAGES, FROM RM-8 RESIDENTIAL MULTI-FAMILY MEDIUM DENSITY DISTRICT AND RM-16 RESIDENTIAL MULTI-FAMILY HIGH DENSITY DISTRICT TO RM-16 RESIDENTIAL MULTI-FAMILY HIGH DENSITY DISTRICT/CONDITIONAL ZONING FOR A PROPOSED COURTYARD COTTAGE COMMUNITY CONSISTING OF SINGLE-FAMILY AND DUPLEX UNITS**

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#### **ORDINANCE NO. 3323 - ORDINANCE TO CONDITIONALLY ZONE PROPERTIES ON HUDSON AND RICH STREETS, IDENTIFIED AS HUDSON STREET COTTAGES, FROM RM-8 RESIDENTIAL MULTI-FAMILY MEDIUM DENSITY DISTRICT AND RM-16 RESIDENTIAL MULTI-FAMILY HIGH DENSITY DISTRICT TO RM-16 RESIDENTIAL MULTI-FAMILY HIGH DENSITY DISTRICT/CONDITIONAL ZONING FOR A PROPOSED COURTYARD COTTAGE COMMUNITY CONSISTING OF SINGLE-FAMILY AND DUPLEX UNITS**

Mayor Bellamy opened the public hearing at 5:42 p.m.

Urban Planner Blake Esselstyn said that this is the consideration of an ordinance to conditionally zone properties on Hudson and Rich Streets, identified as Hudson Street Cottages, from RM-8 Residential Multi-Family Medium Density District and RM-16 Residential Multi-Family High Density District to RM-16 Multi-Family High Density District/Conditional Zoning for a proposed courtyard cottage community consisting of single-family and duplex units. This public hearing was advertised on January 13 and 20, 2006.

Mr. Esselstyn said that this review concerns two lots located near the corner of Hudson Street and Rich Street in West Asheville. The northern lot is currently zoned RM-16, while the southern lot is zoned RM-8. The applicant seeks conditional zoning for the both lots to RM-16 to enable the development of an infill housing project on both lots. If the conditional zoning is approved, the applicant would combine the two parcels into a single lot having a total area of approximately 0.6 acres. The most significant grade change on the property is near the southern edge where the land slopes down from Rich Street toward the central part of the lot.

The petition for a rezoning at the corner of Hudson and Rich streets was originally submitted as a straight rezoning, and

came before the Planning & Zoning Commission as such on October 4, 2005. The Commission, at that meeting, recommended that the petition be resubmitted as a conditional zoning so that a concept plan could be considered. The applicants followed that recommendation, providing the concept plan to be considered today. He noted that the plans he presenting are plans which the applicant provided to him this morning. Council members may notice some small differences between these plans and the plans provided in their packets. He said he would describe each of these modifications in detail.

The proposed development would consist of six cottages and one duplex structure—a total of eight units. The applicant intends for the units to be sold individually as condominiums, with a requirement that at least six of the eight be owner-occupied. Parking would be provided with a combination of surface parking and garages underneath the duplex unit, accessed through three driveways connecting to Hudson Street.

The applicant, after discussion with the Engineering Department, is proposing construction of a sidewalk along the Hudson Street frontage, with a continued sidewalk connection extending north to State Street. This sidewalk extension would substitute for the construction of sidewalk along Rich Street.

Multi-family and single family dwellings are permitted uses in the RM-16 district. The proposed number of units conforms with the density standards for the district. The combined habitable area of the residences would be approximately 8,600 square feet. The cottages would each contain two habitable stories, while the duplex would provide one habitable story over garages.

A combination of vegetation and fence screening meeting type B buffer requirements is shown and appears to satisfy the standards.

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Surrounding zoning is RM-16 (High Density Multi-Family) to the north and northeast, and RM-8 to the northwest, west, southwest, south, and southeast. The zoning to the east is a mix of RM-8 and RM-16. The adjacent residential areas are mostly single-family homes or vacant residential lots. The closest duplex appears to be at the corner of Hudson and State, about 350 feet away. The average lot size in the area is roughly 0.23 acres.

It appears this parcel was originally zoned RM-8 partly to be consistent with the zoning of the other parcels facing Rich Street. On the east (opposite) side of Hudson Street, Yale Avenue is the dividing line between the RM-8 and RM-16; an extension the center-line of Yale Avenue across Hudson Street intersects with the line dividing RM-8 from RM-16 on the west side.

At their November 21, 2005, meeting the Technical Review Committee, after concerns were expressed about the adequacy of the parking layout shown, made a decision to review revised plans at the December 5 informal meeting. At this December 5 meeting, the concept plan was approved with a few conditions added to the original staff report by the Engineering Department.

These revised plans were provided to the Planning and Zoning Commission (“Commission”) for their review prior to their December 7, 2005, meeting. At that meeting, the Commission considered the concept plan including one small change to a driveway and voted unanimously to recommend approval of the conditional zoning. The plans seen by the Commission are the same as the ones Council received in their packets.

Prior to the *first* Commission meeting (considering the *straight* rezoning), Planning staff had received communications from multiple neighbors who were concerned about the rezoning. A number of neighbors spoke in opposition to the straight rezoning at the October Commission meeting. Since the concept plans have been submitted for the *conditional* zoning, he has heard from three neighbors who were mostly interested in more information about the conditional zoning process and the concept plans. Two neighbors spoke in opposition at the Technical Review Committee (“TRC”) meeting, primarily concerned about traffic and compatibility. At the December 7, 2005, Commission meeting, one neighbor spoke in opposition to the project, and one in favor. In advance of that meeting, the applicant sent mailings to neighboring property owners, posted plans on a web site, and held a neighborhood meeting at the site. Since that meeting, he has received one email about the process, but no other communications expressing an opinion on the project.

Section 7-7-8(d)(2) of the Unified Development Ordinance (UDO) states that planning staff shall evaluate conditional zoning applications on the basis of the criteria for conditional use permits set out in section 7-16-2. Reviewing boards may consider these criteria; however, they are not bound to act based on whether a request meets all seven standards. Staff’s review indicates that all seven standards are met as proposed in the conceptual 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

(pending final approval from the TRC which will be decided before the P&Z meeting). The project must meet the technical standards set forth in the UDO, the Standards and Specifications Manual, the North Carolina Building Code and other applicable laws and standards that protect the public health and safety.

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

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surrounding natural features and topography. The garage parking takes advantage of a change in slope.

3. **That the proposed use or development of the land will not substantially injure the value of adjoining or abutting property.** Staff does not expect that the proposed use would have anything more than a minimal impact on property values, and expects that the impact could just as likely be in a positive direction as negative.
4. **That the proposed use or development of the land will be in harmony with the scale, bulk, coverage, density, and character of the area or neighborhood in which it is located.** The proposed project would be in harmony with these characteristics of the area. While the layout differs from any existing residential development in the immediate area, staff feels that the cottages' design would be complementary to the neighborhood.
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.** One of the adopted Smart Growth Land Use Policies in Asheville's [City Development Plan 2025](#) states that compatible, higher density residential infill development should be encouraged. Another policy in this list states that traditional neighborhood development patterns should be recognized and encouraged. A conditional zoning to allow the proposed project would be in keeping with the Strategic Operating Plan's objective of encouraging higher density infill development. With the concept plan, it can be said that the proposed use would generally conform to these plans and policies.
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 near State Street ensures access to transportation facilities and other services. Transit route 9 serves the area. In addition, technical review from other departments has not revealed any problems for serving the development.
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.

#### Pros

- Proposed project would be compatible with the higher-density zoning to its north.
- Higher density infill development is consistent with both the City's Comprehensive Plan and Strategic Plan.
- Cottages' architecture, as shown in elevations, would be in harmony with older neighborhood structures.

#### Cons

- History of some neighborhood opposition to higher density.

Staff's review indicates that all seven standards for conditional use permits are met as proposed in the conceptual site plan.

Mr. Esselstyn then identified the differences in the plans being shown now and those received earlier by City Council. A number of these changes were prompted by the applicant's decision since early December to pursue the use of solar energy to heat hot water for the units. Solar water heating panels would be installed on the roofs of each of the building. The applicant explains that the following five modifications were made to optimize the capture of the sun's

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energy: (1) The elevation drawings of the units now include depictions of solar hot water panels added to the roofs. These were

not shown on the earlier plans. He noted that the drawings suggest that the panels would be flush with the roof and not visible from the side, but the applicant acknowledges that the exact angle of the panels has not yet been determined, and their surface may extend a small distance away from the roof surface; (2) The style of the roofs shown in the plans is a gable style, rather than the modified pyramid-hip style illustrated in the previous color plan. The gable allows a larger south-facing surface for the solar panels; (3) The orientation of the northwest and southwest units has been rotated to have the long axis pointing east-west, again for solar gain. Five trees (other than those on the patio) are no longer shown on the interior of the site. The applicant states that these are not shown because the optimal locations have not been determined. The applicant states that it is their desire and intent to include trees that would provide shade in the summer, lose their leaves to allow sun in the winter, and not interfere with the panels. They did not want to show them in a location that would turn out to hinder these goals; (4) The applicant also wishes to specify that the arrangement of the street trees may be modified from what is shown. Working within the requirements of the ordinance, they may shift the trees to concentrate the shade away from the solar panels, while still complying with planting requirements; and (5) The next change was prompted by the applicant's desire to protect the root structure of the 30" caliper tree at the north of the site: The northwest cottage unit has been shifted towards the western edge of the property, away from the trunk of the tree.

Mr. Esselstyn said that the remaining four changes are not related to tree preservation or facilitation of solar heating: (1) The plans given to Council included floor plans and elevations for 2-bedroom cottage units. The revised plans show all the cottages as the 3-bedroom variety; (2) One earlier elevation showing the carriage house indicated a split in the height of the ridge line. The revised elevations for this building do not include this split; (3) Similarly, earlier elevations for some buildings showed masonry chimneys on the exterior walls. The amended plans do not include any chimneys. The applicant states that they may still wish to add chimneys if a buyer desires a wood-burning stove, but that the units' default design is without one; and (4) The previous floor plans for the carriage-house included a shared "community space." The applicant has removed the community space from that floor plan, citing complications with access issues and drafting of condo association documents.

Staff feels that these modifications received today do not affect the fundamental character of the proposed project and stands by its recommendation. However, staff does recommend that the inclusion of five trees on the interior of the site (which has been stated as a desire of the applicant) be added as a *required* condition.

Staff recommends approval of the Conditional Zoning based on the submitted concept plan subject to the conditions listed in the TRC staff report.

Mr. Gerald Green, member of the project's development team, spoke in support of the project which he feels will compliment the growth in west Asheville.

Mayor Bellamy closed the public hearing at 6:04 p.m.

Mr. Green responded to Councilwoman Cape's concern about the materials for the parking surface.

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

Councilman Mumpower moved for the adoption of Ordinance No. 3323 to conditionally zone properties located on Hudson and Rich Streets from RM-8 and RM-16 to RM-16/Conditional

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Zoning based on the submitted conceptual plan and subject to (1) the Technical Review Committee's conditions being met and (2) the inclusion of five trees on the interior of the site. This motion was seconded by Vice-Mayor Jones and carried unanimously.

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

### **C. PUBLIC HEARING TO CONSIDER REZONING A PORTION OF 430 MCDOWELL STREET FROM RS-8 RESIDENTIAL SINGLE-FAMILY HIGH DENSITY DISTRICT TO INSTITUTIONAL DISTRICT**

Mayor Bellamy said that today she received a letter from Gerald Green, representing the applicant, which states "On behalf of the Asheville Day Nursery, we would like to request that City Council remand our project back to the Technical Review Committee in order to revise our application from a straight rezoning request to a conditional zoning request. A change in our application will allow us to gain input from the neighborhood and provide them with a project specific development and proposed use of the property." Therefore, Vice-Mayor Jones moved to remand this item back to the Technical Review Committee. This motion was seconded by Councilman Mumpower and carried unanimously.



City Attorney Oast said that a valid protest petition had been filed on this matter, however, since the applicant will be going back to the Technical Review Committee, the protest petition will need to be re-filed.

**D. PUBLIC HEARING TO CONSIDER REZONING PROPERTIES LOCATED ON CHARLOTTE HIGHWAY (5 HEMPHILL STREET) FROM COMMUNITY BUSINESS I DISTRICT TO COMMUNITY BUSINESS II DISTRICT**

**ORDINANCE NO. 3324 - ORDINANCE TO REZONE PROPERTIES LOCATED ON CHARLOTTE HIGHWAY (5 HEMPHILL STREET) FROM COMMUNITY BUSINESS I DISTRICT TO COMMUNITY BUSINESS II DISTRICT**

Mayor Bellamy opened the public hearing at 6:06 p.m.

Urban Planner Julia Cogburn said that this is the consideration of an ordinance to rezone properties located on Charlotte Highway (5 Hemphill Street) from Community Business I District to Community Business II District. This public hearing was advertised on January 13 and 20, 2006.

The subject properties are located on Alt US 74 (Charlotte Highway) east of the Blue Ridge Parkway and the interchange of US 74 with I-40 and I-240. The property at 5 Hemphill Road currently contains a residence (Buncombe County tax listings indicate three dwellings) and has a small pond located on the site. The portion of the other subject property is currently vacant and is moderate to steeply sloping.

The property is bordered on all sides by residentially zoned property, except to the south where the property along Charlotte Highway is unzoned as the City's extraterritorial jurisdiction terminates at this lot.

The land uses in the area are mostly single-family in nature in all directions. However, to the south, following a vacant parcel that is being cleared, there is a commercial use (a monument company) and across the Charlotte Highway is located the Fernwood Mobile Home Park.

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The applicant, Kitz Ruth Miller Bocook, is seeking the rezoning to afford potential developers greater flexibility in design. The major difference between the CBI and CBII zoning classifications is the size of structures that can be placed on site. There are a few differences, as well, in the uses allowed in the zoning districts. Developing the smaller parcel with a large structure would present many challenges without combining this property with additional land. The challenges would come in meeting all parking and landscaping required when developing with a large structure.

Community Business II zoning does allow for residences, so no nonconforming situation is created with this rezoning.

At a meeting on December 7, 2005 the Planning and Zoning Commission recommended the approval of this rezoning to City Council (5-1).

Pros

- .. The property is located on a major (five lane) thoroughfare very near to the intersection of this thoroughfare with the interstate highway system.
- .. The rezoning would allow greater development flexibility on the subject parcels.

Cons

- .. The property is bordered on all sides by residentially zoned and used properties, except to the south where there is no zoning. This rezoning would allow for a larger commercial development next to these residential properties.
- .. Meeting all development regulations for a larger structure would be challenging on the smaller parcel.

Mayor Bellamy closed the public hearing at 6:09 p.m.

Councilwoman Cape explained how she could not support this rezoning in that she didn't want to perpetuate another sprawl for a large scale development.

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

Councilman Mumpower moved for the adoption of Ordinance No. 3324. This motion was seconded by Councilman Davis.

Upon inquiry of Councilman Mumpower, Ms. Kitzi Bocook, property owner, stated that she is requesting this rezoning to maximize the value of her property.

Upon inquiry of Councilman Newman, Planning & Development Director Scott Shuford explained the Planning Department's vision for this area. He would have preferred a project come through as conditional zoning, but is recommending approval given the development pattern in the area, topography of the property and the size of the parcels.

The motion made by Councilman Mumpower and seconded by Councilman Davis carried on a 5-2 vote, with Councilwoman Cape and Councilman Freeborn voting "no."

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

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### **E. PUBLIC HEARING TO CONSIDER REZONING SEVERAL PROPERTIES ALONG SMOKY PARK HIGHWAY AND RUTHERFORD ROAD FROM RM-16 RESIDENTIAL MULTI-FAMILY HIGH DENSITY DISTRICT AND COMMUNITY BUSINESS II DISTRICT TO HIGHWAY BUSINESS DISTRICT**

Mayor Bellamy opened the public hearing at 6:22 p.m.

Planning & Development Director Scott Shuford said that this is the consideration of an ordinance to rezone several properties along Smoky Park Highway and Rutherford Road from RM-16 Residential Multi-Family High Density District and Community Business II District to Highway Business District. This public hearing was advertised on January 13 and 20, 2006.

The subject properties are located in the City's extraterritorial jurisdiction (ETJ) and were zoned CB-II during the ETJ expansion that occurred in 2001. A property owner of two vacant parcels has requested that the City look into the zoning of this 27.5 acre area. The property would be very difficult to develop because the majority of the property is in the 100-year floodplain area. Any development of the property that is close up to the street, under the current zoning, would be expensive because of the need to elevate the buildings to get out of the 100-year floodplain. It is an area that has largely been previously developed, so the development that would occur there would be a redevelopment type of activity. He used a chart to show what the difference is in the CB-II District and the Highway Business District, noting the big differences are the parking requirements and the structure sizes. Because of the 100-year floodplain issue, the setback of the building is important to the redevelopment of the property. He would be more comfortable if there was an intervening zoning district that allowed parking to be located in the front of the zoning, than Highway Business District, but that is pretty much the one that would make sense for the area. Although the City doesn't have something that would limit the amount of development, but anything greater than 100,000 square feet will have to come to City Council for review and approval.

The Planning and Zoning Commission directed staff to perform an expedited zoning study for this area on September 7, 2005.

The property owner requested a rezoning from CB-II (Community Business II) to HB (Highway Business). Staff analysis indicates that HB is a better fit with the existing land uses in the area and with the existing zoning pattern of the area.

- The Community Business-II zoning district is established to provide areas for medium-to-high density business and service uses serving several neighborhoods. The Community Business II District is designed to be located primarily along minor and major thoroughfare streets that serve multiple residential neighborhoods.
- The Highway Business district is established to address the needs of commercial development along major thoroughfares where automobile use is prevalent and a wide range of commercial uses is permitted. Due to the dominance of the automobile, a primary objective within this district is to preserve the traffic capacity of the thoroughfare.

#### Pros

- Corrects some non-conforming uses.
- Recognizes the properties' orientation to a major thoroughfare – Smoky Park Highway.

#### Cons

- Could increase traffic on Smoky Park Highway.
- HB is less compatible with surrounding residential development.

The Planning and Zoning Commission recommended approval of this request on December 7, 2005, by a vote of 6-0. Staff also recommends approval of this rezoning.

Mr. Alan Ditmore spoke in support of the rezoning.

Mayor Bellamy closed the public hearing at 6:28 p.m.

Upon inquiry of Councilman Freeborn, Mr. Shuford explained that whatever use is allowed in the Highway Business District would be permitted.

Mr. Shuford responded to various questions from Council, some being, but are not limited to: why the developer would not seek a variance from the Board of Adjustment; what would the developer have to do to be able to build in the floodplain; what does a variance do for marketability of the property; is this rezoning short-sighted in terms of flooding;

Mr. Chad Pierce, Stormwater Services Manager, responded to Council's questions/ concerns regarding the floodway and flood fringe areas.

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

Councilman Newman moved to deny the rezoning of several properties along Smoky Park Highway and Rutherford Road from RM-16 Residential Multi-Family High Density District and Community Business II District to Highway Business District given the floodplain issues and design constraints. This motion was seconded by Councilwoman Cape.

Councilman Newman said that if the property owner would like to propose a more intensive level of development, he would be open to consider that.

Councilman Davis said that the reality is that there are multiple properties involved and requesting variances is not the clean way to develop the property. He felt that this stretch of highway is a highway business type area and would support rezoning the property.

Councilman Mumpower felt the City is laying a heavy hand on this property owner and was concerned of the message this sends.

Councilwoman Cape felt Council's responsibility is for the overall planning and to have continued sprawl along that highway concerns her.

In response to Councilman Freeborn, Mr. Shuford said that if the property were developed, the buildings could front on Rutherford Road and parking would be allowed in the rear of the buildings.

Mayor Bellamy felt that since the study was performed at the request of the Planning & Zoning Commission and would support their recommendation.

The motion made by Councilman Newman and seconded by Councilwoman Cape to deny the rezoning request carried on a 4-3 vote, with Vice-Mayor Jones, Councilwoman Cape, Councilman Freeborn and Councilman Newman voting "yes" and Mayor Bellamy, Councilman Davis and Councilman Mumpower voting "yes."

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**F. PUBLIC HEARING TO CONSIDER REZONING PROPERTIES LOCATED AT 16 FORSYTHIA LANE FROM COMMUNITY BUSINESS II DISTRICT AND RM-16 RESIDENTIAL MULTI-FAMILY HIGH DENSITY DISTRICT TO RM-16 RESIDENTIAL MULTI-FAMILY HIGH DENSITY DISTRICT**

**ORDINANCE NO. 3325 - ORDINANCE TO REZONE PROPERTIES LOCATED AT 16 FORSYTHIA LANE FROM COMMUNITY BUSINESS II DISTRICT AND RM-16 RESIDENTIAL MULTI-FAMILY HIGH DENSITY DISTRICT TO RM-16 RESIDENTIAL MULTI-FAMILY HIGH DENSITY DISTRICT**

Mayor Bellamy opened the public hearing at 6:56 p.m.

Planning & Development Director Scott Shuford said that this is the consideration of an ordinance to rezone properties

located at 16 Forsythia Lane from Community Business II District to RM-16 Residential Multi-Family High Density District. This public hearing was advertised on January 13 and 20, 2006.

16 Forsythia is a split-zoned parcel that was initially included in Smoky Park Highway/ Rutherford Road zoning study. As this property's access is from a residential street (as opposed to Rutherford Road or Smoky Park Highway), staff recommends deleting this parcel from the study area and rezoning it to RM-16, the same as the other residential property in this area. The aerial illustrates this situation; it shows the development of the parcel with a single manufactured home with access off Forsythia Lane.

- The Community Business-II zoning district is established to provide areas for medium-to-high density business and service uses serving several neighborhoods. The Community Business II District is designed to be located primarily along minor and major thoroughfare streets that serve multiple residential neighborhoods.
- The RM-16 zoning district is intended to provide a full range of high density multi-family housing types along with limited institutional, public and commercial uses appropriate within high density residential areas. It is intended that this district be located near employment centers, shopping facilities, roads and other urban infrastructure capable of handling the demand generated by high density residential development.

#### Pros

- Corrects split-zoned situation.
- Recognizes the properties' orientation to a residential street.

#### Cons

- None noted.

The Planning and Zoning Commission recommended approval of this rezoning on December 7, 2005, by a vote of 6-0. Staff also recommends approval of this rezoning proposal.

Mayor Bellamy closed the public hearing at 6:58 p.m.

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

Councilman Cape moved for the adoption of Ordinance No. 3325. This motion was seconded by Councilman Mumpower and carried unanimously.

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

#### **G. PUBLIC HEARING TO CONSIDER AN AMENDMENT TO THE UNIFIED DEVELOPMENT ORDINANCE TO CLARIFY SETBACK REQUIREMENTS FOR THE OUTDOOR STORAGE AND DISPLAY OF PRODUCTS**

#### **ORDINANCE NO. 3326- ORDINANCE AMENDING THE UNIFIED DEVELOPMENT ORDINANCE TO CLARIFY SETBACK REQUIREMENTS FOR THE OUTDOOR STORAGE AND DISPLAY OF PRODUCTS**

Mayor Bellamy opened the public hearing at 6:58 p.m.

Director of Development Services Joe Heard said that this is the consideration of an ordinance to amend the Unified Development Ordinance (UDO) for the purpose of adding setback requirements for outdoor storage and the temporary outdoor display of products. This public hearing was advertised on January 13 and 20, 2006.

This proposed ordinance was drafted in response to numerous requests from local businesses and property owners about having standards that address outdoor storage and displays. In the past, the Planning & Development Department has used an interpretation similar to the proposed amendment to allow these types of activities. While evaluating these issues, staff determined that outdoor storage (materials, containers, outdoor displays) should be classified as a more permanent activity that is usually housed within a building. Therefore, staff felt that it was reasonable to use building setbacks as the most appropriate standard. However, temporary outdoor displays of merchandise were deemed to be more in keeping with promotional activities and could be located wherever parking or vehicular areas are allowed (behind the required landscaped areas).

Pros –

- This amendment creates enforceable allowances for businesses to provide outdoor storage and displays.
- This amendment takes a reasonable approach by allowing more permanent storage and displays to be consistent with building setbacks, but allowing the temporary display of products (which typically require greater visibility) to be located closer to the front of a property.

Cons –

- In the past, several citizens have voiced concerns about the appearance of outdoor displays.
- Certain businesses may not want to have any limitations placed on these activities.

The Planning and Zoning Commission recommended approval of these code amendments on November 2, 2005, by a unanimous vote of 6-0. Planning staff recommends approval of the proposed ordinance amendment as well.

Mayor Bellamy closed the public hearing at 7:00 p.m.

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

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Councilman Cape moved for the adoption of Ordinance No. 3326. This motion was seconded by Vice-Mayor Jones and carried on a 6-1 vote, with Councilman Mumpower voting “no.”

**ORDINANCE BOOK NO. 22 - PAGE**

**H. PUBLIC HEARING TO CONSIDER AN AMENDMENT TO THE UNIFIED DEVELOPMENT ORDINANCE TO DELETE THE NUMBER OF SEATS “CAP” FOR THEATERS IN THE URBAN VILLAGE DISTRICT**

**ORDINANCE NO. 3327- ORDINANCE AMENDING THE UNIFIED DEVELOPMENT ORDINANCE TO DELETE THE NUMBER OF SEATS “CAP” FOR THEATERS IN THE URBAN VILLAGE DISTRICT**

Mayor Bellamy opened the public hearing at 7:01 p.m.

Planning & Zoning Director Scott Shuford said that this is the consideration of an ordinance to amend the Unified Development Ordinance to delete the number of seats “cap” for theaters in the Urban Village zoning district. This public hearing was advertised on January 13 and 20, 2006.

This code amendment would delete the number of seats “cap” for theaters in the Urban Village zoning district. When the Urban Village District was first established, a 200 seat cap for theaters was established consistent with several other zoning districts. The Urban Village District may contain development intensity second only to the Central Business District so having this limitation for projects that receive master plan approval by City Council seems unnecessary.

The proposed ordinance would eliminate this cap and allow City Council to approve theaters of larger size as part of their overall approval of an Urban Village master plan.

On December 7, 2005, the Planning and Zoning Commission unanimously recommended approval of the proposed code amendment by a vote of 6-0. City staff recommends approval of the proposed code amendment as well.

Mayor Bellamy closed the public hearing at 7:02 p.m.

Upon inquiry of Vice-Mayor Jones, Mr. Shuford explained that there is no Urban Village District in the City that has a theatre in it and if the developer wanted to add one, it would have to come back to City Council for review.

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

Councilman Davis moved for the adoption of Ordinance No. 3327. This motion was seconded by Councilman Mumpower and carried unanimously.

**ORDINANCE BOOK NO. 22 - PAGE**

At 7:04 p.m., Mayor Bellamy announced a short recess.

**I. PUBLIC HEARING TO CONSIDER AMENDING THE UNIFIED DEVELOPMENT ORDINANCE TO DELETE THE PLANNED UNIT DEVELOPMENT ZONING OVERLAY DISTRICT**

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**ORDINANCE NO. 3328 - ORDINANCE TO AMEND THE UNIFIED DEVELOPMENT ORDINANCE TO DELETE THE PLANNED UNIT DEVELOPMENT ZONING OVERLAY DISTRICT**

Mayor Bellamy opened the public hearing at 7:33 p.m.

Development Services Director Joe Heard said that this is the consideration of an amendment to the Unified Development Ordinance to delete the Planned Unit Development Zoning Overlay District. This public hearing was advertised on January 13 and 20, 2006.

The City of Asheville's Unified Development Ordinance, when drafted in the 1990's, established a Planned Unit Development (PUD) Overlay District in order to "promote innovative design in development by providing for flexibility in site design that permits a mixture of housing types and the combination of housing with other uses such as neighborhood shopping centers and offices." This overlay district as a mechanism for promoting flexible development has only been applied for five (5) times in approximately eight (8) years. Largely, the lack of use of this planning tool, can be attributed to more recent additions to the UDO that also give flexibility to an applicant in the design and density of their project. These include conditional zoning (and conditional use zoning before it) and the conditional use of density bonuses for residential districts.

Due to the lack of use of this tool and the availability of less complicated mechanisms for flexible development in Asheville's jurisdiction, it is proposed in this ordinance that the PUD Overlay District be dropped from the UDO.

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

Pros-

- The amendment deletes from the UDO a little used and complicated planning tool.
- Deleting this provision will clear up some conflicts between the PUD standards and those of other sections of the UDO, such as the hillside regulations.

Cons-

- The Planned Unit Development Overlay District has had application, although limited, in the past seven years. Deleting this takes away an available development option.

The Planning and Zoning Commission recommended approval of this code amendment on July 6, 2005, by a unanimous vote of 7-0. Staff recommends approval as well.

Mayor Bellamy closed the public hearing at 7:35 p.m.

Mayor Bellamy 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. 3328. This motion was seconded by Councilman Davis and carried unanimously.

**ORDINANCE BOOK NO. 22 – PAGE**

**IV. UNFINISHED BUSINESS:**

**A. RESOLUTION NO. 06-11 - RESOLUTION AUTHORIZING THE CITY TO ENTER INTO AN AGREEMENT WITH THE NATIONAL WEATHER SERVICES TO ACCEPT A GRANT FOR AN AUTOMATED FLOOD WARNING SYSTEM**

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**ORDINANCE NO. 3329 - BUDGET AMENDMENT FROM THE NATIONAL WEATHER SERVICE FOR A GRANT FOR AN AUTOMATED FLOOD WARNING SYSTEM**

Mr. Chad Pierce, Stormwater Services Manager, said that this item was reviewed by Council on January 10, 2006, however, it was continued until the February 21, 2006, worksession in order to give Council an opportunity to better understand the system. That education has taken place and therefore the matter is being brought back to Council at this meeting.

He said that following the January 10, 2006, Council discussion, City staff was able to determine that the consultant for the reservoir study felt that the data collected from the rain gages would improve the accuracy of the inundation model. The sooner the gages are installed the more potential we have for collecting more data. Additionally, the Fire Chief has expressed strong support for having the gages installed prior to the hurricane season. Fire Chief Grayson said that similar gages on the French Broad River and at the Biltmore Avenue Bridge were extremely helpful during the September 2004 floods.

The grant includes 4 rain gages, 4 combination and stream gages and all the necessary software to support the real time monitoring process. The consultant for the reservoir study will make a recommendation for the location of these gages in March 2006. These gages will be on the Swannanoa River with the possibility of one being located on Hominy Creek. The cost to the City will be \$46,335 for the installation of the gages and base station. This money will come from the Stormwater Enterprise. The total cost of the project is \$103,955. The North Carolina Flood Mapping Program has agreed to maintain these gages.

City staff recommends City Council authorize the City to enter into an agreement with the National Weather Service for an automated flood warning system consisting of 4 rain gages and 4 combination rain and stream gages, and adopt the associated budget amendment.

Mayor Bellamy said that members of Council have been furnished with copies of the resolution and ordinance and they would not be read.

Councilman Mumpower felt this was in excess and the return doesn't justify this level of money. He felt this is more of a procedural problem than a technical problem.

Upon inquiry of Councilwoman Cape, Mr. Pierce said that the base station will be in the City's Emergency Response Center and staff will have immediate access to the information.

In response to Councilman Freeborn, Mr. Pierce said that if we don't proceed with this action, we will not be able to have the same level of accuracy in the inundation model. Additionally, our emergency planning during a flood event or dam breach will not be as accurate.

Mr. Pierce responded to Councilman Mumpower's question about how will this be different from what we have now, other than the automation.

Councilman Newman felt a simpler, less expensive option, might be better for the City.

Mayor Bellamy said that members of Council have been previously furnished with copies of the resolution and ordinance and they would not be read.

Vice-Mayor Jones moved for the adoption of Resolution No. 06-11. This motion was seconded by Councilwoman Cape and carried on a 5-2 vote, with Councilman Newman and Councilman Mumpower voting "no".

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#### **RESOLUTION BOOK NO. 29 – PAGE 315**

Vice-Mayor Jones moved for the adoption of Ordinance No. 3329. This motion was seconded by Councilwoman Cape and carried on a 5-2 vote, with Councilman Newman and Councilman Mumpower voting "no".

#### **ORDINANCE BOOK NO. 22 – PAGE**

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

#### **A. MERRIMON AVENUE ZONING STUDY PROCESS AND SCHEDULE**

Planning & Development Director Scott Shuford said that due to concerns about development patterns and developer interest, the Planning and Zoning Commission and City Council have directed staff to perform a zoning study of Merrimon Avenue.

A citizens' group, the Merrimon Avenue Study Group, has formed and held a meeting on January 17 to get community ideas. Staff feels the work of this group is very important in generating public input and ideas and applauded their efforts.

Staff has been requested to expedite the zoning study, making the work of the Study Group even more critical. We are proposing to disseminate a survey to Merrimon property owners and to property owners in the immediate (walking distance) vicinity of Merrimon Avenue. The information we receive from the survey and from the Study Group will enable staff to rapidly develop a zoning proposal for community consideration. We are interested in Council's ideas about the survey questions and whether you feel we need to add anything. Our suggested timeline is provided below.

Survey Mail-Out:	February 1, 2006
Survey Responses:	By February 15, 2006
Survey Results:	February 22, 2006
Draft Zoning Proposal:	February 28, 2006
Review Draft Proposal:	March 1 – Planning and Zoning Commission Meeting – Informal discussion By March 15 – Merrimon Avenue Study Group By March 31 – Merrimon community meeting
Public Hearings:	April 6 – Planning and Zoning Commission (tentative) April 25 – City Council (tentative)

Mr. Shuford said that Ms. Hedy Fischer, from the Merrimon Avenue Study Group, used a somewhat different survey than the one he sent to Council. The main differences include an added question about walking and more examples for types of development. He said that he was entirely comfortable in modifying the survey his Department produced to include the information in Ms. Fischer's survey. An advantage to using the same survey as used at the community meeting is that the basis for comparison between the Study Group's survey and ours will be the same.

Mr. Shuford asked for Council's direction on the following: (1) Does the survey appear to provide Council with the relevant information they need to identify public concerns and issues regarding Merrimon Avenue zoning?; and (2) With the understanding that the above timeline dates for public hearings are tentative depending on community response to the zoning proposal, is Council comfortable with the timeline and process proposed by staff?

Ms. Hedy Fisher explained who the Merrimon Avenue Corridor Study Group consists of and why they formed. She reviewed with Council survey results from 63 people that showed why

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people use Merrimon Avenue, with 56% surveyed showing they used it as access to their residence and 4% using the transit stops. The Study Group met and there was considerable discussion about transportation issues, including roadway cross-section (possible widening, possible 3-lane configuration), sidewalks, multimodal issues like bike lanes, potential for park and ride, signal coordination, and congestion management. They requested Council to consider a temporary (6-month) conditional use overlay on Merrimon Avenue until the zoning study could be completed.

Mr. Shuford responded to various questions/comments from Council, some being, but are not limited to: might this type of survey be a potential model for other areas to use;

With regard to a temporary conditional overlay use, City Attorney Oast said that the law on conditional zoning, and conditional use permits and districts say that those may only be applied to property upon petition of the property owner. City Council using that tool unilaterally is not an option.

Councilman Davis felt the survey needed to include property and business owners along the whole length of the corridor.

Councilwoman Cape questioned if there are other tools City Council can use to achieve the same goals requested by the Study Group. City Attorney Oast responded that the law does contain a process for a moratorium, but that in itself would take close to 3 months because of the fairly lengthy process. It also may be possible to put the property under some sort of transition overlay that would provide that only projects of a certain size can only be built with a conditional use permit and that size could be something less than the Level III sizes that we have now. He's not sure that either of these tools would be satisfactory for Council on this. He would investigate other tools available.

Councilman Mumpower voiced concerns about stopping people from developing their property.

Mayor Bellamy felt the survey area should be expanded because Merrimon Avenue is a major corridor and many people



use it. Therefore, Mr. Shuford said that the survey will be put online, but people will have to download the survey and mail it back.

In response to Mayor Bellamy's concern and suggestion about adding a statement regarding the possible road configuration, Mr. Shuford suggested a cover letter be included with the survey explaining the scope of the survey, with a disclaimer that Merrimon Avenue is a N.C. Dept. of Transportation road.

Vice-Mayor Jones moved to approve the timeline and process of the Merrimon Avenue Zoning Study as proposed by City staff. This motion was seconded by Councilwoman Cape.

Upon inquiry of Councilman Mumpower, Mr. Shuford felt it would take approximately \$1,500 for a study of this sort.

Mr. Shuford responded to Councilman Mumpower by saying that even though Merrimon Avenue has not changed significantly in the past ten years, he feels that there will be an increased interest for redevelopment of that corridor in the future.

In response to Councilman Newman, Mr. Shuford explained Planning staff will utilize the information compiled.

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

It was the consensus of City Council to allow the City Attorney an opportunity to look for available tools to achieve the goal requested by the Study Group.

**B. ORDINANCE NO. 3330 - BUDGET AMENDMENT TO COVER EXPENSES IN THE FESTIVALS FUND FOR THE REMAINDER OF FISCAL YEAR 2005-06**

Parks & Recreation Director Irby Brinson said that this is the consideration of a budget amendment, in the amount of \$120,000 from the fund balance of the General Fund to cover expenses in the Festivals Fund for the remainder of Fiscal Year 2005-06.

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During production of the 2005 Bele Chere, staff encountered dramatic cost increases in entertainment expenses that were not anticipated when the Fiscal Year 2005-06 budget was developed for the Festivals Fund. Entertainment expenses were approximately \$100,000 higher than they were for the 2004 Bele Chere. Staff also anticipates that entertainment expenses for the 2006 Bele Chere will be higher than in earlier years.

In order to offset the \$100,000 in higher cost from the 2005 Bele Chere and provide funding for 2006 Bele Chere expenses that will be incurred prior to the end of the 2005-06 Fiscal Year, the Festivals Fund budget needs to be increased by \$120,000. Based on prior year revenue collections in the Festivals Fund, staff does not anticipate that Festivals revenue in the current year will be sufficient to fund this budget increase. Therefore, staff is recommending that \$120,000 in fund balance be appropriated from the General Fund and transferred to the Festival Fund to cover these expenses. As a result of this amendment, projected year-end Fund Balance will drop a nominal amount, from 22.8% of general fund expenditures to 22.6%.

This funding would directly correlate to City Council's goals of livability and vibrancy as related to the strategic plan.

Pros:

- Information was shared with Council at the 1/17/06 worksession in the quarterly report and the Bele Chere report regarding issues surrounding this request.
- Amendment will prevent an over-expenditure of the festivals fund (which is a violation of state statute), as well as provide sufficient funding to secure entertainment for future gated events.

Cons:

- The city must contribute \$120,000 from its fund balance to support a non-emergency use.

City staff requests City Council adopt a budget amendment appropriating \$120,000 to the Bele Chere expense line items.

Throughout discussion and noted concern, Mr. Brinson answered various questions/comments from Council, some being, but are not limited to: the City needs to be more cost effective in what they pay for entertainment; what was the entertainment costs last year; is this the first year Council had to appropriate additional funds mid-year; and are there better ways for the City to

book events.

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

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Councilman Newman moved for the adoption of Ordinance No. 3330, appropriating \$100,000 to the Bele Chere expense line items. This motion was seconded by Vice-Mayor Jones and carried on a 6-1 vote, with Councilman Mumpower voting "no."

## **ORDINANCE BOOK NO. 22 – PAGE**

### **CIVIC CENTER TASK FORCE REPORT**

Councilman Davis, Chair of the Civic Center Task Force, updated City Council on the Task Force's progress and some obstacles facing them. In summary, he explained to Council the need for an economic impact study, which will be a useful tool in moving forward. If Council supports the study, the Task Force would contact with Western Carolina University for \$12,000.

Councilman Davis moved to appropriate \$12,000 from the Civic Center funds for an economic impact study on the Civic Center. This motion was seconded by Mayor Bellamy.

Considerable discussion surrounded the scope of the study, the need for another study on the Civic Center, other studies performed regarding the Civic Center, the mechanism to continue to access that data, and the results showing the regional aspect of the Civic Center.

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

In response to Councilman Newman, Councilman Davis said the Task Force will bring forward to Council a series of options for City Council to consider.

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

Councilman Mumpower announced a For Our Kids event on Saturday, January 28, 2006, at Deaverview Apartments.

The following claims were received by the City of Asheville during the period of December 16, 2005 – January 12, 2006: Stacey Ferguson (Police), Bill Sprouse (Water), Adam Wells (Water), Henry Loewer (Sanitation), Bob Rhea (Police), Judy Johnson (Water) and Allstate Insurance Company (Water). These claims have been referred to Asheville Claims Corporation for investigation.

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

Ms. Leslee Kulba briefly commented about Council's board appointment process.

Mr. James Judd showed Council an analysis of Maxwell Street with regard to Greenlife Grocery's use of that residential Maxwell Street.

### **VIII. ADJOURNMENT:**

Mayor Bellamy adjourned the meeting at 9:09 p.m.

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CITY CLERK

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MAYOR