

Regular Meeting

Present: Mayor Terry M. Bellamy, Presiding; Vice-Mayor Diana Hollis Jones; Councilwoman Robin L. Cape; 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: Councilman Jan B. Davis

PLEDGE OF ALLEGIANCE

The JROTC Cadets from Enka High School led City Council in the Pledge of Allegiance.

INVOCATION

Councilman Freeborn asked for 2 minutes of silence.

I. PROCLAMATIONS:

A. PROCLAMATION PROCLAIMING FEBRUARY 2006 AS “BLACK HISTORY MONTH”

Mayor Bellamy read the proclamation proclaiming February 2006 as “Black History Month” in the City of Asheville.

II. CONSENT AGENDA:

At the request of Councilwoman Cape, Consent Agenda Item “A” was removed from the Consent Agenda for discussion.

Mayor Bellamy asked that Consent Agenda Items “K” and “M” be removed from the Consent Agenda for individual votes.

At the request of Councilman Mumpower, Consent Agenda Items “L,” “N,” and “O” were removed from the Consent Agenda for discussion and/or a separate vote.

A. APPROVAL OF THE MINUTES OF THE RETREAT HELD ON JANUARY 20-21, 2006; THE FORMAL MEETING HELD ON JANUARY 24, 2006; AND THE SPECIAL MEETING HELD ON JANUARY 31, 2006

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

B. RESOLUTION NO. 06-12 - RESOLUTION MODIFYING THE CITY COUNCIL MEETING SCHEDULE TO REFLECT THE CITY COUNCIL WORKSESSIONS, WHICH ARE THE THIRD TUESDAY OF EACH MONTH AT 3:00 P.M., WILL BE HELD IN THE COUNCIL CHAMBER ON THE 2ND FLOOR OF THE CITY HALL BUILDING, ASHEVILLE, N.C.

RESOLUTION BOOK NO. 29 – PAGE 316

C. RESOLUTION NO. 06-13 - RESOLUTION AUTHORIZING THE CITY MANAGER TO AMEND THE EXISTING CONTRACT WITH GREEN LIGHT ELECTRIC INC. FOR TRAFFIC SIGNAL MAINTENANCE

-2-

Summary: The consideration of a resolution authorizing the City Manager to amend the existing agreement with Green Light Electric, Inc., to continue maintenance of traffic control devices through September 20, 2007, in the amount of \$69,000.

In 2001, City staff determined that maintenance activities for traffic signals including preventative maintenance could be more efficiently accomplished through a combination of in-house activities and work contracted to the private sector.

The contract for traffic signal maintenance includes:

- Preventative maintenance consisting of annual inspection of all traffic signals and replacement or repair of deficient components;

- Maintenance activities to ensure compliance with federal and state requirements, and to protect public safety with the provision of a safe, dependable traffic signal infrastructure;
- Periodic replacement of signal components including poles, span wire, and signal heads;
- Upgrades to existing signals such as replacement of signals with LED technology to reduce burned out bulbs and power consumption, or the addition of pedestrian signals;
- Emergency response and timely repairs in cases of equipment damaged by crashes, weather, or other unforeseen occurrence.

Bids were solicited in 2002 for the contract. Green Light Electric, Inc.'s bid was the lowest, with the 2nd lowest bidder approximately 67% higher. Green Light Electric, Inc. was authorized for the work in 2003, and reauthorized in 2004 and 2005, and has performed acceptably during each contract period.

Ongoing maintenance of traffic signals is required to comply with State and federal standards and to maintain a safe and efficient infrastructure. Annual preventative maintenance identifies issues before they become problems and endanger the traveling public.

Pros:

- Maintenance of traffic signals is necessary to ensure public safety.
- Green Light Electric, Inc.'s fees are very competitive.

Cons: None noted.

Staff requests that City Council approve a resolution authorizing the City Manager to enter into an agreement with Green Light Electric, Inc. for preventative maintenance of traffic control devices.

RESOLUTION BOOK NO. 29 – PAGE 317

D. ORDINANCE NO. 3331 - ORDINANCE AMENDING THE TERMS OF SERVICE ON THE PUBLIC ART BOARD FROM 4-YEAR TERMS TO 3-YEAR TERMS

ORDINANCE BOOK NO. 22 - PAGE

E. RESOLUTION NO. 06-14 - RESOLUTION APPOINTING A MEMBER TO THE CITIZENS/POLICE ADVISORY COMMITTEE

Summary: Councilman Joe Dunn is no longer a member of the Asheville City Council and therefore, a vacancy exists for an ex-officio non-voting City Council member. Therefore, Councilwoman Robin Cape is hereby appointed to serve as the non-voting City Council member on the Citizens/Police Advisory Committee.

-3-

RESOLUTION BOOK NO. 29 – PAGE 318

F. RESOLUTION NO. 06-15 - RESOLUTION APPOINTING A MEMBER TO THE ASHEVILLE-BUNCOMBE CRIMESTOPPERS BOARD OF DIRECTORS

Summary: Mayor Terry Bellamy has resigned as a member of the Asheville-Buncombe Crime Stoppers Board, thus leaving an unexpired term until June 30, 2008. Therefore, Councilman Carl Mumpower is hereby appointed as the City Council representative on the Asheville-Buncombe Crimestoppers Board, to serve the unexpired term of Mayor Bellamy, term to expire on June 30, 2008, or until his term on City Council ends, whichever occurs first.

RESOLUTION BOOK NO. 29 – PAGE 319

G. RESOLUTION NO. 06-16 - RESOLUTION APPOINTING A MEMBER TO THE ASHEVILLE FILM COMMISSION

Summary: Councilman Carl Mumpower has resigned as a member of the Asheville Film Commission, thus leaving an unexpired term until November 1, 2007. The vacancy left by Councilman Mumpower must be filled by a member of the Asheville City Council, and Councilwoman Robin Cape is currently a member of the City Council.

Therefore, Councilwoman Robin Cape is hereby appointed, as a member of the Asheville Film Commission, to serve the unexpired term of Councilman Mumpower, term to expire November 1, 2007, or until her term on City Council ends, whichever occurs first.

RESOLUTION BOOK NO. 29 – PAGE 320

H. RESOLUTION NO. 06-17 - RESOLUTION APPOINTMENT A MEMBER TO THE METROPOLITAN SEWERAGE DISTRICT BOARD

Summary: The term of Cathy Ball, as a member of the Metropolitan Sewerage District Board of Directors, expired on January 19, 2006. City Council wishes to appoint a member of the City Council to the Metropolitan Sewerage District Board of Directors to ensure that the City's interests, as expressed through the Council, are represented on the Board. Therefore, Councilman Brownie Newman, 4 Arborvale Road, Asheville, N.C., be and he is hereby appointed, as a member of the Metropolitan Sewerage District Board of Directors, to serve a three year term, term to expire January 19, 2009, or until his term on City Council ends, whichever occurs first.

RESOLUTION BOOK NO. 29 – PAGE 321

I. RESOLUTION NO. 06-18 - RESOLUTION APPOINTING A MEMBER TO THE BUNCOMBE COUNTY TOURISM DEVELOPMENT AUTHORITY

Summary: Mayor Terry Bellamy has resigned from the ex-officio non-voting member on the Buncombe County Tourism Development Authority, thus creating a vacancy for a City Council representative. Therefore, Vice-Mayor Holly Jones is hereby appointed as the ex-officio non-voting City Council representative on the Buncombe County Tourism Development Authority to serve a term according to the length of her Council term of office.

RESOLUTION BOOK NO. 29 – PAGE 322

J. RESOLUTION NO. 06-19 - RESOLUTION APPOINTING A MEMBER TO THE EDUCATIONAL ACCESS CHANNEL COMMISSION

-4-

Summary: Ms. Gerry Kovach, representative of the Buncombe County Schools on the Educational Access Channel Commission, resigned, thus leaving an unexpired term until June 1, 2008. The Superintendent of Buncombe County Schools has requested Mr. Stan Alleyne, Director of Communications, replace Ms. Kovach.

Therefore, Mr. Stan Alleyne, Director of Communications, is hereby appointed as a representative of Buncombe County Schools, to serve the unexpired term of Ms. Kovach, term to expire June 1, 2008, or until his successor has been duly appointed.

RESOLUTION BOOK NO. 29 – PAGE 323

K. RESOLUTIONS MAKING PROVISIONS FOR THE POSSESSION AND CONSUMPTION OF MALT BEVERAGES AND/OR UNFORTIFIED WINE AT THE 3RD ANNUAL EARTH DAY FESTIVAL; THE MOUNTAIN SPORTS FESTIVAL; THE FIRST ANNUAL ASHEVILLE JAZZ FESTIVAL; THE 4TH OF JULY CELEBRATION AND FIREWORKS; THE CITY OF ASHEVILLE TENNIS TOURNAMENT; THE BELE CHERE FESTIVAL; THE ASHEVILLE GOOMBAY FESTIVAL; THE FIESTA LATINA FESTIVAL; THE ASHEVILLE GREEK FESTIVAL; THE ASHEVILLE DOWNTOWN ASSOCIATION EVENTS; THE 10TH ANNUAL BREWGRASS FESTIVAL; AND THE ASHEVILLE GRIZZLIES HOME GAMES

This item was removed from the consent agenda for an individual vote.

L. RESOLUTION URGING THE 2006 GENERAL ASSEMBLY TO ENACT LEGISLATION AUTHORIZING A BOND REFERENDUM TO INCREASE CONSERVATION SPENDING IN NORTH CAROLINA BY \$200 MILLION PER YEAR

This item was removed from the consent agenda for discussion and/or a separate vote.

M. RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE CERTAIN GRANT AGREEMENTS WITH

MOUNTAIN HOUSING OPPORTUNITIES INC.

This item was removed from the consent agenda for discussion and/or a separate vote.

N. RESOLUTION AUTHORIZING THE MAYOR TO ENTER INTO WHOLESALE WATER AGREEMENTS WITH THE TOWN OF BILTMORE FOREST, TOWN OF BLACK MOUNTAIN AND THE WOODFIN WATER AND SEWER DISTRICT

This item was removed from the consent agenda for discussion and/or a separate vote.

O. RESOLUTION APPROVING A LIST OF CO-SPONSORED EVENTS FOR 2006

This item was removed from the consent agenda for discussion and/or a separate vote.

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 Councilwoman Cape and carried unanimously.

ITEMS REMOVED FROM THE CONSENT AGENDA FOR INDIVIDUAL VOTES AND/OR DISCUSSION

-5-

APPROVAL OF THE MINUTES OF THE RETREAT HELD ON JANUARY 20-21, 2006; THE FORMAL MEETING HELD ON JANUARY 24, 2006; AND THE SPECIAL MEETING HELD ON JANUARY 31, 2006

Councilwoman Cape noted an error in the January 20, 2006, City Council retreat minutes. The correct Committee make-up for the Land Use and Economic Development Committee is Councilman Davis, Chair, Vice-Mayor Jones and Councilwoman Cape. The correct Committee make-up for the Housing and Neighborhood Development Committee is Vice-Mayor Jones, Councilwoman Cape and Councilman Newman.

Vice-Mayor Jones moved for the adoption of the minutes of the retreat held on January 20-21, 2006, as amended, the formal meeting held on January 24, 2006, and the special meeting held on January 31, 2006. This motion was seconded by Councilwoman Cape and carried unanimously.

RESOLUTION NO. 06-20 - RESOLUTION MAKING PROVISIONS FOR THE POSSESSION AND CONSUMPTION OF MALT BEVERAGES AND/OR UNFORTIFIED WINE AT THE 3RD ANNUAL EARTH DAY FESTIVAL

RESOLUTION NO. 06-21 - RESOLUTION ALLOWING FOR THE PROVISIONS FOR POSSESSION AND CONSUMPTION OF MALT BEVERAGES AND/OR UNFORTIFIED WINE AT THE MOUNTAIN SPORTS FESTIVAL

RESOLUTION NO. 06-22 - RESOLUTION ALLOWING FOR THE PROVISIONS FOR POSSESSION AND CONSUMPTION OF MALT BEVERAGES AND/OR UNFORTIFIED WINE AT THE FIRST ANNUAL ASHEVILLE JAZZ FESTIVAL

RESOLUTION NO. 06-23 - RESOLUTION ALLOWING FOR THE PROVISIONS FOR POSSESSION AND CONSUMPTION OF MALT BEVERAGES AND/OR UNFORTIFIED WINE AT THE 4TH OF JULY CELEBRATION AND FIREWORKS

RESOLUTION NO. 06-24 - RESOLUTION ALLOWING FOR THE PROVISIONS FOR POSSESSION AND CONSUMPTION OF MALT BEVERAGES AND/OR UNFORTIFIED WINE AT THE CITY OF ASHEVILLE TENNIS TOURNAMENT

RESOLUTION NO. 06-25 - RESOLUTION ALLOWING FOR THE PROVISIONS FOR POSSESSION AND CONSUMPTION OF MALT BEVERAGES AND/OR UNFORTIFIED WINE AT THE BELE CHERE FESTIVAL

RESOLUTION NO. 06-26 - RESOLUTION ALLOWING FOR THE PROVISIONS FOR POSSESSION AND CONSUMPTION OF MALT BEVERAGES AND/OR UNFORTIFIED WINE AT THE ASHEVILLE GOOMBAY

FESTIVAL

RESOLUTION NO. 06-27 - RESOLUTION ALLOW FOR THE PROVISIONS FOR POSSESSION AND CONSUMPTION OF MALT BEVERAGE AND/OR UNFORTIFIED WINE AT THE FIESTA LATINA FESTIVAL

RESOLUTION NO. 06-28 - RESOLUTION ALLOWING FOR THE PROVISIONS FOR POSSESSION AND CONSUMPTION OF MALT BEVERAGES AND/OR UNFORTIFIED WINE AT THE ASHEVILLE GREEK FESTIVAL

RESOLUTION NO. 06-29 - RESOLUTION ALLOWING FOR THE PROVISIONS FOR POSSESSION AND CONSUMPTION OF MALT BEVERAGES AND/OR UNFORTIFIED WINE AT THE ASHEVILLE DOWNTOWN ASSOCIATION EVENTS

-6-

RESOLUTION NO. 06-30 - RESOLUTION ALLOW FOR THE PROVISIONS FOR POSSESSION AND CONSUMPTION OF MALT BEVERAGES AND/OR UNFORTIFIED WINE AT THE 10TH ANNUAL BREWGRASS FESTIVAL

RESOLUTION NO. 06-31 - RESOLUTION ALLOWING FOR THE PROVISIONS FOR POSSESSION AND CONSUMPTION OF MALT BEVERAGES AND/OR UNFORTIFIED WINE AT THE ASHEVILLE GRIZZLIES HOME GAMES

Summary: The consideration of resolutions making provisions for the possession and consumption of malt beverages and/or unfortified wine at several 2006 Special Events.

The below listed groups have requested through the Asheville Parks and Recreation Department that City Council permit them to serve beer and/or unfortified wine at their events and allow for consumption at these events:

- 3rd Annual Earth Day Festival, scheduled for April 15, 2006, at Martin Luther King, Jr. Park, is a celebration committed to raising awareness of the environment and what every person can do to help maintain and improve our world.
- The Mountain Sports Festival, scheduled for May 5-7, 2006, at Carrier Park, is an event to draw attention to the vast opportunities in Asheville as a destination for adventure sports.
- The 1st Annual Asheville Jazz Festival will be a live concert, and will showcase several local jazz talents. It is scheduled for June 10, 2006, at Martin Luther King, Jr. Park.
- Asheville Parks and Recreation produces the 4th of July Celebration and Fireworks spectacular as a community celebration and to attract visitors to the downtown area. This event will be held at Martin Luther King, Jr. Park in 2006.
- The City of Asheville Tennis Tournament Picnic, scheduled for July 20 & 21, 2006, at Aston Park, is a hospitality picnic for the spectators and players.
- For many years, the Bele Chere Board, in cooperation with the Asheville Parks and Recreation Department, has produced Bele Chere to bring both citizens and visitors to the Downtown area. This year the request is being made for July 28-29, 2006.
- The Asheville Goombay Festival is a unique celebration of African heritage and traditions. The Festival is co-sponsored by the Asheville Parks and Recreation Department and will be held August 26-28, 2006, in the Eagle/Market Street area of downtown Asheville.
- Fiesta Latina is fundraiser for the Hispanic traditions in Asheville. The Festival is co-sponsored by the Asheville Parks and Recreation Department and will be held on September 16, 2006, at Martin Luther King, Jr. Park.
- The Asheville Greek Festival is a unique celebration of Greek heritage and traditions. The Festival is co-sponsored by the Asheville Parks and Recreation Department and will be held September 22-24, 2006, at Martin Luther King, Jr. Park.
- For many years, the Asheville Downtown Association has co-sponsored with the City of Asheville Parks and Recreation the Downtown After Five series to bring both citizens and visitors to the downtown area. This year Downtown After 5 will be held

on May 19, 2006, June 16, 2006, July 21, 2006, August 18, 2006, and September 15, 2006, with the stage located at Battery Park Ave. and O.Henry Street.

-7-

- The 10th Annual Brewgrass Festival, which is a benefit for the Big Brothers/Big Sisters program, has requested through the Asheville Parks and Recreation Department that City Council permit them to serve beer and/or unfortified wine at their event and allow for consumption on September 30, 2006, at Martin Luther King, Jr. Park.
- The Asheville Grizzlies are a semi-professional sports team that seek to serve alcohol at their home games throughout the summer at Memorial Stadium.

City staff recommends City Council adopt the resolutions making provisions for the possession and consumption of malt beverages and/or unfortified wine at the following 2006 Special Events: 3rd Annual Earth Day Festival on April 15, 2006; Mountain Sports Festival on May 5-7, 2006; Downtown After 5 events on May 19, June 16, July 21, August 18, and September 15, 2006; 1st Annual Asheville Urban Jazz Festival on June 10, 2006; Fourth of July Celebration on July 4, 2006; 75th Annual City of Asheville Open Tennis Championships on July 20-21, 2006; 29th Bele Chere Festival on July 28-20, 2006; GoomBay! Festival on August 26-28, 2006; Fiesta Latina Festival on September 16, 2006; Asheville Greek Festival on September 22-24, 2006; 10th Annual Brewgrass Festival on September 30, 2006; and the Asheville Grizzlies home games at various dates throughout the summer.

Councilman Newman moved for the adoption of the resolutions making provisions for the possession and consumption of malt beverages and/or unfortified wine at several 2006 Special Events. This motion was seconded by Vice-Mayor Jones and carried on a 5-1 vote, with Mayor Bellamy voting "no."

Resolution No. 06-20 - **RESOLUTION BOOK NO. 29 – PAGE 324**
Resolution No. 06-21 - **RESOLUTION BOOK NO. 29 – PAGE 327**
Resolution No. 06-22 - **RESOLUTION BOOK NO. 29 – PAGE 330**
Resolution No. 06-23 - **RESOLUTION BOOK NO. 29 – PAGE 333**
Resolution No. 06-24 - **RESOLUTION BOOK NO. 29 – PAGE 336**
Resolution No. 06-25 - **RESOLUTION BOOK NO. 29 – PAGE 339**
Resolution No. 06-26 - **RESOLUTION BOOK NO. 29 – PAGE 343**
Resolution No. 06-27 - **RESOLUTION BOOK NO. 29 – PAGE 345**
Resolution No. 06-28 - **RESOLUTION BOOK NO. 29 – PAGE 348**
Resolution No. 06-29 - **RESOLUTION BOOK NO. 29 – PAGE 351**
Resolution No. 06-30 - **RESOLUTION BOOK NO. 29 – PAGE 354**
Resolution No. 06-31 - **RESOLUTION BOOK NO. 29 – PAGE 357**

RESOLUTION URGING THE 2006 GENERAL ASSEMBLY TO ENACT LEGISLATION AUTHORIZING A BOND REFERENDUM TO INCREASE CONSERVATION SPENDING IN NORTH CAROLINA BY \$200 MILLION PER YEAR

Summary: The Land For Tomorrow Coalition is seeking approval of a resolution of support to place a \$200 Million bond referendum on the ballot for November, 2006, for the purpose of protecting land for the future of North Carolina.

The Land for Tomorrow Coalition was founded by a number of non-profit organizations including American Farmland Trust, Conservation Fund, North Carolina Public Interest Group, North Carolina Recreation and Park Association, and Trust for Public Land. Additional partners continue to sign on for this initiative. The goal of the Coalition is to increase public awareness of the need to protect additional land and historic places that are critical to the quality of life in North Carolina. According to information provided by this Coalition, North Carolina lost 2.8 million acres of open space over the last 20 years and is projected to lose an additional 2.4 million in the next 15 years. A few years ago, the North Carolina General Assembly passed its million-acre initiative to strive to protect as much open space as possible. In order to meet this initiative, this Coalition

-8-

estimates that it will take an additional \$200 million annually over the next five years. This money would be spent in a number of different areas including stream bank and flood plain protection, working farms, urban forests, local and state parks, and historic places.

Currently, the Coalition is working towards developing contacts and committees in each of the hundred counties in North Carolina. Lou Bissette has been appointed as the lead chairperson for the Buncombe County Committee, and his committee is

dedicated to educating our local delegation on the value of this program, getting the Bill introduced and approved to place on the referendum, showcasing local needs, and building support for the bond referendum in November if approved. Staff with the Parks and Recreation Department has been involved in this process for the past several months, and our North Carolina association is taking an active role in the Coalition. The desire of the Coalition is to have each local governing board approve a resolution supporting the introduction of this Bill and to ultimately approve the bond referendum.

PROS:

- Protection of valuable land for future generations
- Improve water and air quality
- Assist in control of property damage due to flooding
- Protection of historic property and scenic vistas

CONS:

- Tremendous amount of funds necessary to make this initiative successful
- Requires approval by State legislators to place on ballot in November

This initiative addresses many issues established by the Natural and Built Environment Focus Area in the Strategic Plan.

Staff recommends City Council approve the resolution in support of the Land For Tomorrow initiative.

Councilman Mumpower was resistant for the City of Asheville getting involved in investing our efforts where we have little control. Since Asheville doesn't have direct responsibility for this, he would not be supporting the resolution.

Councilman Newman said that he is enthusiastic about this initiative, however, this resolution does fall outside the policy scope of agenda items Council considers on national/state/regional issues.

Councilwoman Cape moved for the adoption of this resolution. This motion was seconded by Councilman Freeborn.

There was a brief discussion about Council's policy not to address policy issues if they don't have a unique relevance to Asheville.

Councilwoman Cape was not aware that a policy of that type existed, however, she felt this will affect Asheville directly. There is a lot of land around our community that is very important to our economic and health of our community and trying to find the money in our community alone to do it will be difficult. There is a movement across the state to recognize the importance in the overall health and felt it would be fair to lend a voice of support to that effort.

Mayor Bellamy said that traditionally Council has expressed their individual support to these type efforts through their own council position by writing letters, talking with people, etc.

-9-

After Mayor Bellamy said that the federal legislative agenda item is scheduled for the February 21, 2006, worksession, Councilman Newman suggested a final decision on this matter be deferred until we can look at it within the context of what our legislative agenda will be and what we want our representatives to support for us.

Councilwoman Cape withdrew her motion and Councilman Freeborn withdrew his second, with the understanding that the issue will be discussed in a manner.

Councilman Mumpower moved to postpone the matter indefinitely. This motion was seconded by Vice-Mayor Jones and carried on a 5-1 vote, with Councilwoman Cape voting "no."

RESOLUTION NO. 06-32 - RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE CERTAIN GRANT AGREEMENTS WITH MOUNTAIN HOUSING OPPORTUNITIES INC.

Carl Mumpower moved to excuse Mayor Bellamy from participating in this matter due to a conflict of interest. This motion was seconded by Vice-Mayor Jones and carried unanimously.

At this time, Mayor Bellamy turned the meeting over to Vice-Mayor Jones.

Summary: The consideration of a resolution authorizing the City Manager to execute certain grant agreements with

Mountain Housing Opportunities, on behalf of the Mayor.

The City's Action Plan for using Community Development Block Grant and HOME funds in Fiscal Year 2006 included allocations for several programs operated by Mountain Housing Opportunities, Inc (MHO). Grant agreements for such funding are normally executed by the Mayor. However, Mayor Bellamy is an employee of MHO and, to avoid any appearance of a conflict of interest, it is preferable for such grant agreements with MHO as have not already been executed by the former Mayor, to be executed by the City Manager.

A full disclosure statement for Mayor Bellamy was published at the January 10, 2006, Council meeting.

Advantages:

- Avoids any appearance of conflict of interest due to Mayor Bellamy's employment with MHO.
- Allows MHO to continue to use CDBG and HOME funds for its affordable housing programs.

Disadvantages: None

Staff recommend approval of the resolution authorizing the City Manager to execute certain grant agreements with Mountain Housing Opportunities, on behalf of the Mayor.

Councilman Freeborn moved for the adoption of Resolution No. 06-32. This motion was seconded by Councilwoman Cape and carried unanimously.

At this time, Vice-Mayor Jones turned the meeting back over to Mayor Bellamy.

RESOLUTION BOOK NO. 29 – PAGE 360

RESOLUTION NO. 06-33 - RESOLUTION AUTHORIZING THE MAYOR TO ENTER INTO WHOLESALE WATER AGREEMENTS WITH THE TOWN OF BILTMORE FOREST, TOWN OF BLACK MOUNTAIN AND THE WOODFIN WATER AND SEWER DISTRICT

-10-

Summary: The consideration of a resolution authorizing the Mayor to enter into wholesale water agreements with the Town of Biltmore Forest, Town of Black Mountain and the Woodfin Water and Sewer District.

The Water Resources Department has provided wholesale water to these government agencies through contracts executed by the Towns and District with the former Regional Water Authority of Asheville, Buncombe and Henderson. The new contracts change the name of the water provider from the Regional Water Authority to the City of Asheville. Other aspects of the contracts are the same for each governing board. These contracts were developed and designed to meet the water needs of each local government entity. The current wholesale consumption rate is \$0.81 per CCF (748 gallons of water) and \$184.00 per 10,000 gallons of capacity required by each government.

PROS:

- These wholesale contracts provide revenue to the City water system while providing a human right need of water to area governments that currently do not have adequate water supplies for their customers.
- This is regional cooperation to provide water to adjoining municipalities and water district.

CONS:

- There are no cons, these contracts have been in place for many years and are proof of good intergovernmental relationships and regional cooperation.

Staff recommends City Council approve the request for the Mayor to enter into wholesale water contracts with the Town of Biltmore Forest, Town of Black Mountain, and Woodfin Water and Sewer District.

Upon inquiry of Councilman Mumpower, Water Resources Director David Hanks said that most of these wholesale agreements have been in effect for sometime and through these agreements it was built in that any overall rate increases that the City had, as far as their rate structure, would apply also to these wholesale customers. During the budget, as Council goes

through all the rate structures, is the time that we look at the rates for the wholesale agreements.

When Councilman Newman asked what would happen if Council changes to a uniform rate structure, Mr. Hanks said that when they started looking at the uniform rate structure, they did not include the wholesale customers because basically they started out at a negotiated rate with that class of customer. He personally felt the City should continue to do that.

Mayor Bellamy said that Council will go into detail about this when the Water budget is discussed.

Councilman Mumpower moved for the adoption of Resolution No. 06-33, with the understanding that City Council will be re-visiting this issue sometime during our budget deliberations. This motion was seconded by Councilman Freeborn and carried unanimously.

RESOLUTION BOOK NO. 29 – PAGE 361

RESOLUTION NO. 06-34 - RESOLUTION APPROVING A LIST OF CO-SPONSORED EVENTS FOR 2006

-11-

Summary: The consideration of a resolution approving a list of co-sponsored events, which will provide authorization for in-kind support by the City.

Several years ago, the Parks and Recreation Department developed a matrix to assist in determining the minimum requirements for an event to be considered for co-sponsorship. This matrix includes specific points given for such areas as economic development, out of town spending, whether the event is designed for raising funds for local charities, or whether the event increases cultural awareness and understanding. A total of 34 events were approved last year resulting in a cost of approximately \$100,000. This year the number has been reduced to 27 and the cost to the city is approximately \$80,000.

Pros:

- Generates in excess of \$10 million dollars for the local economy
- Provides additional quality cultural programming and diversity
- Allows fundraising opportunities for charities
- Expands and enhances special events and festivals to the City

Cons:

- The city's financial contribution is \$80,000.
- Events contribute to decline on infrastructure and equipment provided to the organizers.

The Asheville Parks and Recreation Department recommends City Council approval of the list for co-sponsored events in 2006.

Councilman Mumpower complimented staff on making a good faith effort to pare down the number of co-sponsorships, however, he didn't think that the City should be investing tax dollars for these types of activities.

Councilman Newman suggested that going forward the City review the matrix used to evaluate potential co-sponsored events. He felt that the community development criteria is strong and feels appropriate for the City to be involved in. However, he didn't think this was the best place to spend the City's limited funds for economic development.

Mayor Bellamy recommended the Fees & Charges Committee and the Parks & Recreation Department look at developing a policy to define our criteria addressing why Asheville is involved with co-sponsorships. In addition, when that policy is reviewed, she recommended staff have the true costs of providing in-kind services, and then Council can use this year to benchmark to see where we are so that we make good policy going forward.

Councilwoman Cape moved for the adoption of Resolution No. 06-34. This motion was seconded by Councilman Freeborn and carried on a 5-1 vote, with Councilman Mumpower voting "no."

RESOLUTION BOOK NO. 29 – PAGE 362

III. PUBLIC HEARINGS:

A. PUBLIC HEARING TO CONSIDER EXTENDING THE CORPORATE LIMITS OF THE CITY OF ASHEVILLE TO INCLUDE THE A HABITAT FOR HUMANITY SUBDIVISION LOCATED OFF OF SAND HILL ROAD

-12-

Mayor Bellamy said that this public hearing was originally scheduled for January 10, 2006; however, City staff and the property owner asked that the public hearing be continued until this date. That request was granted. However, on February 14, 2006, City staff, along with the concurrence of the applicant, requested the public hearing be continued until March 14, 2006. Therefore, Councilman Freeborn moved to continue this public hearing until March 14, 2006. This motion was seconded by Vice-Mayor Jones and carried unanimously.

B. PUBLIC HEARING TO CONSIDER THE CONDITIONAL ZONING OF PROPERTY LOCATED AT OAK PARK ROAD AND SKYVIEW ROAD FROM RS-2 RESIDENTIAL SINGLE-FAMILY LOW DENSITY DISTRICT AND RS-4 RESIDENTIAL SINGLE-FAMILY MEDIUM DENSITY DISTRICT TO RM-6 RESIDENTIAL MULTI-FAMILY LOW DENSITY DISTRICT/CONDITIONAL ZONING TO PERMIT CONSTRUCTION OF TWO DUPLEX BUILDINGS AND THREE SINGLE-FAMILY HOMES

Mayor Bellamy announced that this public hearing was originally scheduled on January 10, 2006, however, the developer had requested a continuance to this date. Mr. Gerald Green, representing the developer, stated that they had recently been informed that a valid protest petition had been filed and they wish for additional time within which to meet with the neighborhood to understand and possibly address their concerns. That request was granted.

Mayor Bellamy opened the public hearing at 5:44 p.m.

City Attorney Oast said that a valid protest petition has been filed, thus requiring a three-fourths vote of City Council to approve the rezoning of the property and since Councilman Davis is not at the meeting, it will require a unanimous vote.

Ms. Shannon Tuch, Urban Planner, said that this is the consideration of conditionally zoning property located at Oak Park Road and Skyview Road from RS-2 Residential Single-Family Low Density District and RS-4 Residential Single-Family Medium Density District to RM-6 Residential Multi-Family Low Density District/Conditional Zoning to permit construction of two duplex buildings and three single-family homes. This public hearing was advertised on December 30, 2005, and January 6, 2006.

She said this is a request to conditionally rezone 3 lots located off of Oak Park Road and Sky View Place. The subject properties total almost 1 ½ acres, of which approximately 1/3 is zoned RS-2 with 2/3 of the property being zoned RS-4. There is also a small sliver of RS-8 zoned property located here along the frontage of Oak Park Road.

The subject property is surrounded by RS-2, RS-4, and RS-8 zoned property supporting a mix of single and multi-family uses with the majority of multi-family uses located down-slope of the subject property and the majority of the single family uses being located upslope. The one glaring exception is a 3-story apartment building that currently exists just north of the property on the high end of the site.

The site currently supports a non-conforming garage that will be removed to make way for new construction of a mix of housing types. The proposed mix and number of units has gone through a variety of iterations over the course of the last 18 months, in truth, it's gone through a variety of iterations in the last few hours. There have been many changes to the project and there has also been significant discussion over the natural steep nature and the topography of the property and our hillside development standards, and how those standards apply to that property.

-13-

She then reviewed with Council how staff calculates the hillside development standards.

First, the hillside standards apply to Level 1, 2, and 3 projects so for residential projects this generally includes multi-family developments and subdivisions. It does not get applied to single family and two family dwellings. As the property currently exists, they could build two single-family homes or two duplexes and not be subject to the hillside development standards. This property may also be able to be subdivided and the subdivision would examine hillside standards, so, maybe you could subdivide the lower property and get one single-family home, one duplex, and one duplex at the top of the property. This proposal, however, is for a multi-family development so the entirety of the property would be subject to hillside standards. As of late afternoon today, it appears as though the average natural slope information (just about 30%) provided to her by the applicant supports five units. She said the average natural slope information is critical. The neighborhood had hired an independent engineer to review that and came up with an average natural slope of 40%, which comes out at a much lower density of 1.4 units per acre – resulting in two

units. There would be no point in rezoning the property because you can get more than two units under the current zoning. She said that she did sit down with a scale and measured it and it does appear that the property, just measuring it by hand, is somewhere between 30-40%.

She said if the project is approved for five units, it will be reviewed by the Technical Review Committee (TRC) and at that final TRC meeting, City staff will need to see detailed hillside calculations. It is City staff's recommendation that those calculations be done by a certified professional and be stamped and sealed. The figures she received had not been stamped and sealed.

She said the original application showed 2 duplex units on the lower part of the property to be accessed off Oak Park Road and the 3 single-family units to be accessed off of Sky View Park. Understanding that there had been an error made in the hillside calculations did submit a revised plan earlier today. That revised plan showed six units instead of seven units – removed one of the single-family homes at the top. Later today, after calculating, staff realized the hillside standards did not support six units. Again, if five units are approved, the project will have to go back to the TRC to be evaluated in a more detailed form for compliance with all the technical standards.

The duplex unit will be 2 stories and approximately 2000 square feet per unit with a similar footprint. The single-family structures will be 3 stories and also approximately 2000 square feet with a comparatively smaller footprint, between 700-800 square feet. Also associated with the project is additional landscaping required for parking lot, street buffer, street tree, and landscape buffers along with tree preservation shown on the proposed Master Plan.

There has been some discussion on the on-street parking proposed for the 3 single-family homes. The on-street parking is shown to be on private property. The applicant had expressed an interest in creating these on-street parking spaces because it is what results in a lower impact to the property. However, all on-street parking spaces are deemed public spaces. The Planning & Zoning Commission recommended that the on-street parking be built to City standards but that 2 spaces per unit be dedicated for private use for the proposed single-family homes. Staff remains concerned over the dedication of on-street parking for private use, both from a precedent standpoint but also from a maintenance and enforceability standpoint. Being concerned that this would set a difficult precedent and create maintenance and enforceability problems, she spoke with the City's Traffic Engineer and the Director of Engineering over the possibility of creating a new standard for hillside properties that would allow the creation of private on-street spaces under certain circumstances and under certain standards. Although willing to consider an alternative, both the Traffic Engineer and Director of Engineering felt that the creation of an alternative would be extremely problematic and they were very concerned over what this kind of standard would result in. As such, staff must respectfully disagree with the Planning &

-14-

Zoning Commission's recommendation and asks that the Council consider the on-street parking to remain and recommend that a condition be added that all 11 on-street parking spaces be dedicated for public use.

The Technical Review Committee (TRC) reviewed this project at their November 7, 2005, public meeting and approved the project with conditions. A revised plan has been submitted addressing a number of those technical comments.

The Planning & Zoning Commission also reviewed this project at their December 7, 2005. It was approved for seven units, but it was approved under RM-6 – because at that time it was staff's understanding was that RM-6 would support the seven units. At that public hearing where there was substantial public comment in opposition of the proposed project. Public concern focused primarily on existing problems with stormwater runoff and traffic congestion due to narrow streets and a proliferation of on-street parking. Additional concerns over an increase in density and the size and character of the duplexes were also raised. After all public comment was heard and deliberation ended, the Commission made a positive recommendation (6-1) that the project be approved with the following conditions:

- All outstanding TRC conditions must be addressed.
- Development on the site will achieve zero stormwater runoff.
- All trees with a caliper size of 8" and larger must be preserved.
- The on-street parking shown on Sky View Place shall be designed to City of Asheville standards; however, 6 of the proposed 11 spaces will be dedicated for private use by the residents of the proposed single-family homes.

Section 7-7-8(d)(2) of the 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.

1. **That the proposed use or development of the land will not materially endanger the public health or safety.** The proposed project has been reviewed by City staff and appears to meet all public health and safety related requirements. The

project must meet the technical standards set forth in the *UDO*, the *Standards and Specifications Manual*, the *North Carolina 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 site area is an unusual combination of very mild and easily developed property with an equivalent amount of very steep terrain that is significantly more challenging to develop. The applicant has responded appropriately with the larger buildings and parking lot being located in the mildly sloped areas where less grading would be required. The steeper portions of the property are being developed with single-family structures that have a comparatively small footprint that will accommodate the existing terrain more sensitively and require less disturbance than the average single family home. The use of retaining walls is also shown to help minimize the total disturbed area.
3. **That the proposed use or development of the land will not substantially injure the value of adjoining or abutting property.** The proposed development will be in character with the development patterns already existing on the hillside and will also be

-15-

architecturally attractive and consistent with the older Craftsman style homes of the area.

The applicant has also stated that they intend to utilize 'green building' techniques for appropriateness and energy efficiency. This development is not expected to negatively affect adjacent property values.

4. **That the proposed use or development of the land will be in harmony with the scale, bulk, coverage, density, and character of the area or neighborhood in which it is located.** It is a relatively typical scenario to find the size of single-family home sites increase with the rise in terrain and an increase in grade; as slopes become steeper, lots become larger. The larger lots perched higher on the hillside are typically developed at a low density due to physical challenges and development costs. Understandably, lower lying properties are commonly developed at a higher density where development costs are not as restrictive. Oftentimes, between the relatively flat low lying properties and the relatively steep hillside properties are pockets of "transition" properties. The subject area appears to be located in just such a transition zone with a proposed density classified as Medium Density. The existing development on the hillside currently supports several similar pockets of medium density development as well as individual lots that would be classified as high density and low density. The scale of the larger duplexes is not out of scale with many of the larger single-family homes in the area as well as the existing multi-family structures. The proposed single family homes are taller (3 stories) than many of the single family homes in the more traditional lower lying neighborhood but are not out of place with many of the homes perched on the hillside designed to be sensitive to the terrain while still providing ample living space. Lastly, the character of all the proposed structures would be compatible with the architecture and materials of the more historic Craftsman style homes in the area and throughout Asheville.
5. **That the proposed use or development of the land will generally conform to the comprehensive plan, smart growth policies, sustainable economic development strategic plan and other official plans adopted by the City.** The *Asheville City Development Plan 2025 (ACDP 2025)* describes a number of reasons why properties within the City limits remain underdeveloped or vacant, including topographical or other physical problems with the property resulting in prohibitive development costs under existing zoning (by limiting density and a sufficient return given the market for the property's development). The *ACDP 2025* proposes a Smart Growth development pattern that accommodates realistic, market based alternatives to promote infill development of vacant or underdeveloped property. One way to accomplish this goal is to apply existing zoning tools to encourage higher density residential infill development. A Conditional Use Rezoning is one such tool that would allow this property to be developed at a higher density than the current zoning would allow. In addition, the same section of the comprehensive plan that discusses the need for residential infill development also outlines the need for this new construction to be of a quality that preserves, protects, and enhances existing neighborhoods. The proposed development utilizes a sensitive building approach, design, and materials that will blend in with the existing hillside neighborhood.
6. **That the proposed use is appropriately located with respect to transportation facilities, water supply, fire and police protection, waste disposal, and similar facilities.** This proposed development is within close proximity to alternative transportation and is located near major road facilities, interstate connections and other service centers with Charlotte Street & I-240 only ¼ mile away and within walking distance. In addition, basic infrastructure appears adequate and preliminary review by other service providers has not revealed any problems for future service to the development.

-16-

7. **That the proposed use will not cause undue traffic congestion or create a traffic hazard.** The proposed use splits access to the project area on two road frontages and will safely distribute traffic to roads with a higher capacity. The heaviest use to the site, 4 multi-family units, will be able to utilize an existing driveway (that will be improved) that empties onto Oak Park Road, a very short distance from the intersection of Baird Street which is part of the City's gridded road system. The 3 single family home lots located on Sky View Road are easily accessed from Town Mountain Road. In addition, all units will have the maximum number of off-street parking spaces allowed to prevent the need for any on-street parking. Lastly, the proposed use has been reviewed by the City's traffic engineer who has determined that the number of units and their access does not pose an undue or dangerous traffic hazard.

In summary, staff has determined that, with revision to the site plan – reducing the project to five units - that the project does meet those minimal standards and recommends approval with the following conditions: (1) all outstanding TRC conditions being met; (2) development on the site will achieve zero stormwater runoff (for the 2 and 10 year rain events); (3) all trees with a caliper size of 8" and larger must be preserved; (4) Changes to the proposed site plan be reviewed at final TRC to comply with all applicable City technical standards; and (5) a complete and comprehensive set of detailed hillside calculations be submitted for review at TRC and that these calculations be prepared by a licensed professional and be stamped and sealed.

Mr. Alan Laibson, property owner, said that the current information shows that the property will support five units. His preference for those units would be one duplex and the three single-family units (one single-family unit he will actually be living in). Or, he would propose two duplexes and one single-family home (which he would live in). But, he would proceed with whatever Council feels the best. Since the last meeting, he retained an engineer who developed a plan for zero water run-off. All surfaces will be pervious and they will proceed with green construction. One thing that might be problematic with building 5 units, instead of 6 units, is the photo-voltaic roofs because it may not be cost effective. He does understand that final approval it is subject an independent evaluation as far as the actual slope. If that is greater than they anticipated, then they will have to go back to the drawing board.

Mr. Daryl Rantis, architect, spoke in support of the conditional zoning and explained why he felt the hillside ordinance should be reviewed for change.

The following residents spoke in opposition to the conditional zoning for various reasons, some being, but are not limited to: green-building should not overshadow other aspects of responsible development; if rezoned, it will set a precedent for development of properties to which the hillside ordinance is applicable and will condone increased density on steep slopes and in areas above 2200 feet; providing City services is disproportionately expensive and increased density will exacerbate the financial strain on the City; Brooks & Medlock Engineering has concluded that the parcels are extremely steep with a natural slope of approximately 40.8%; narrow steep winding roads do not lend themselves to increased density nor can they be efficiently and effectively navigated by service vehicles or emergency vehicles; entrance to Sky View Place is dangerous due to site distance and speed; a portion of PIN No. ...2232 is owned by a different property owner and as a result of that, the calculations may change; lots are zoned appropriately due to their steepness and adjacency to single-family dwellings; traffic will be increased on narrow existing roads that contain a lot of pedestrian traffic; density should be decreased due to the topography of the site; run-off will be increased by impermeable surfaces of paving and buildings; excessive trees will be removed if developed as currently proposed; duplexes are almost double of most of the houses in the area; building more is not an argument for smart growth; cars and garbage trucks will have difficulty navigating around the site; and area is very unstable:

-17-

Ms. Elizabeth Ann Wyndelts, resident on Oak Park Road
Mr. Mark Ellison, resident on Furman Avenue
Mr. Bill Chase, resident on Oak Park Road
A resident on Furman Avenue
Ms. Barbara Hiller read a letter from Mary Parker
A resident on Oak Park Road
Mr. Shannon Fields resident on Oak Park Road (submitted petition containing 58 signatures)

Ms. Patsy Brison, attorney representing some members of the Oak Park/Charlotte Street neighbors, submitted to Council an e-mail from the neighborhood's engineer, Norman Divers from Brooks & Medlock Engineering, showing that 40.8% is the slope calculation. She has still not seen a report from the engineer for the applicant. The other calculation not mentioned to Council is that the acreage shown is improper. Part of the application acreage is owned by Ms. Wyndelts. In addition, there is the right-of-way for Sky View that is part of this upper track shown on a recorded plat that should not be included in the density calculations.

That further reduces any acreage subject to any type of development. We think you should deny this request and let whatever is allowed under the current zoning to prevail. We also believe that it would be inappropriate to delegate to TRC the decision on the number of units allowed under conditional zoning. In addition, with so many changes and so many questions about what can be allowed under the conditional zoning request, she didn't think Council can approve this. The applicant has had months to make this decision and to submit proper calculations. This matter should be decided tonight and be denied.

At 6:25 p.m., Mayor Bellamy closed the public hearing.

Upon inquiry of Councilwoman Cape about what the property owner can do on the property under the hillside standards, Ms. Tuch said that there are essentially two major lots – one zoned RS-4 and one zoned RS-2, both appear questionably to be subject to the hillside development standards. As each lot exists now, they can be developed for single-family and possibly two-family dwellings. In theory, the bottom lot could be subdivided in half. Based on the information provided to her late today, the bottom lot would support 2 units. For a single-family and if a two-family dwelling were allowed, they would not have to comply with the hillside standards and we don't have very strict stormwater standards.

Ms. Tuch responded to various questions/comments from Council, some being, but are not limited to: explanation of the hillside calculation formula; is the hillside formula used in other projects; how much would it cost for the licensed engineer to stamp and seal their document; and what will happen if the two engineering documents come back different.

There was discussion concerning the time necessary to obtain the pivotal information on the natural slope calculations.

Councilwoman Cape questioned what the vision is for our community and what the best choice is for this piece of property.

Mr. Laibson responded to a comment about a portion of PIN No. ... 2232 being owned by a different person. He stated that the portion of property was actually surveyed and is part of his property.

-18-

Regarding the question about the right-of-way, Ms. Tuch said that it is unusual to have a property line, which encompasses the road; however, it has been our department's interpretation that that is private property and it considered part of the lot if it is not a dedicated right-of-way.

Councilman Mumpower moved to continue this matter until February 28, 2006, to allow City staff the opportunity to review the signed and sealed engineering reports on the natural slope calculations so a definite decision could be made on the number of units allowed for this project. This motion was seconded by Vice-Mayor Jones.

Ms. Brison said that UDO states that there are requirements for every application that fits within the hillside regulations. This applicant has known since last year that this did fall within hillside regulations and that when the application is made, not months later, that the average natural slope calculations be included. The neighborhood has made many trips to City Council and the Planning & Zoning Commission on this issue and felt that a decision should be made tonight.

Mr. Chase urged City Council to not continue this matter again and to leave the zoning as it currently stands.

Mr. John Ingle, resident on Weaverville Highway, questioned whether City Council would invalidate the Brooks & Medlock Engineering report, after it was sealed and stamped, just because of the method he used to calculate them.

Ms. Wyndelts urged City Council to proceed with taking action at this meeting. She didn't think it was wise for a City staff member to validate the engineering reports.

Mr. Laibson said that up to now, it was his understanding that the engineering report was not required to be certified. He said that they have had the report for the last 18 months, but it is being challenged now and they are willing to get an independent source in to get it resolved.

The motion to continue made by Councilman Mumpower and seconded by Vice-Mayor Jones carried on a 5-1 vote, with Councilman Freeborn voting "no."

At 6:58 p.m., Mayor Bellamy announced a short recess.

C. PUBLIC HEARING TO CONSIDER AN AMENDMENT TO THE CONDITIONAL USE PERMIT AND MASTER PLAN FOR B.B. BARNES, LOCATED AT 3377 SWEETEN CREEK ROAD

ORDINANCE NO. 3332 - ORDINANCE TO AMEND THE CONDITIONAL USE PERMIT AND MASTER PLAN FOR B.B. BARNES, LOCATED AT 3377 SWEETEN CREEK ROAD

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 7:07 p.m.

-19-

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.

Director of Development Services Joe Heard 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. Heard said that this is the consideration of an amendment to a conditional use permit and Master Plan for B.B. Barnes, located at 3377 Sweeten Creek Road (Attachments to City Exhibit 1 – Location Map and Aerial Map).

The applicant is requesting an amendment to the Conditional Use Permit associated with the Conditional Use Rezoning from RM-16 to CB-II for the B.B. Barnes Retail Center located on Sweeten Creek Road. The rezoning and site plan approval for a mixed-use type development was approved by City Council in October of 2000.

This request involves changes to the design and layout of buildings proposed for Phase II and Phase III of the master plan. The site plan presented to Council in October 2000 portrayed a mixed use development with one large building designated for the garden center with several smaller scale buildings that would consist of complimentary type uses (offices, artist studios, retail sales, café, deli's) and possibly multi-family uses. (Attachment to City Exhibit 3 – Conceptual Master Plan). The site plan was approved by City Council with the direction that detailed building elevations and site design be reviewed and approved by the Technical Review Committee (TRC).

On February 17, 2003, the TRC approved a detailed master plan, building elevations for the site and issued a permit to begin Phase One. (Attachment to City Exhibit 3 – Site Plan Approved by TRC and Elevations Approved by TRC) Staff felt that the plans presented, although slightly different than what Council had approved, clearly met the intent of the approval of a "neighborhood friendly" mixed-use development. The master plan includes a total of four buildings; the largest building is located in the center of the site and is reserved for the predominant use of the development including the B. B. Barnes greenhouse and retail center. Three smaller-scale buildings similar in size with the B.B. Barnes center are located along Rosscraggon Road with parking internal to the site. A greenway path, in lieu of the standard sidewalks, was constructed along both Rathfarnham Road and Rosscraggon Road, along with enhanced landscape buffers and display gardens.

The building elevations that TRC approved for the development illustrate unique architectural design elements that visibly reduce the overall scale and mass of the structures allowing the development to be more in context with the neighborhood. Such features include varied rooflines with decorative gable treatments, the prominent use of windows and doors, and a stair tower element centered around an attractive courtyard.

The revised master plan proposes the following changes to the building(s) layout and design. (Attachments to City Exhibit 3 – Proposal Amendment to Site Plan; Phase II – Ace Hardware; Phase III elevations) (City Exhibit 4 – Colored Photo of Phase I).

- Phase II includes construction of a 13,500 square foot Ace Hardware store that will connect to the existing B.B. Barnes retail center. This building will replace the mixed use building of approximately 10,500 square feet that was approved for retail sales, a cafe and office space; and the 3,912 square foot, 3 tenant retail building.

- The elevation of the Ace Hardware building (Attachment to City Exhibit 3 – Phase II – Ace Hardware) illustrates a box-type structure with a single entrance point and covered storage area. This area is shown on the site plan to be enclosed with chain link fencing.
- Site work will include the paving of the existing gravel parking area, parking lot landscaping, and placement of a dumpster along side of the Ace Hardware building adjacent to Rosscraggon Road. Additional landscaping is proposed alongside the Ace Hardware store and dumpster area.
- Phase III includes construction of a two-story building with a footprint of approximately 7,800 square feet with parking located on the corner of Sweeten Creek Road and Rosscraggon Road. This building replaces a one –story retail center with a footprint of 7,820 square feet that was to be located at the corner of Sweeten Creek Road and Rosscraggon Road with parking to the side of the building. The change in the location of the building and parking results from the discovery of underground utilities.
- The elevation presented for the construction of the Phase III building (Attachment to City Exhibit 3 – Phase III elevations) illustrates a two-story multi-tenant building with varied rooflines and gable treatments, multiple window and door openings on each level of the facade, and use of higher quality building materials.

On January 18, 2006, the TRC approved the revised master site plan with conditions.

City Council must take formal action as set forth in section 7-9-9(c)(4) of the Unified Development Ordinance (UDO) and must find that all seven (7) standards for approval of the conditional use are met based on the evidence and testimony received at the public hearing or otherwise appearing in the record of this case (UDO 7-16-2 (c)).

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 once the conditions enumerated by the Technical Review Committee are met. The project must meet the technical standards set forth in the UDO, the City 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 site is currently developed. Some minor grading may be necessary for the placement of the building foundation(s) and construction of the parking area necessary for this phase of the development. This however, should not disturb the existing perimeter landscaping or other site related features that were required during the permitting of Phase I. In addition, a separate grading, drainage, and erosion control plan will be required before additional site work can begin.
3. **That the proposed use or development of the land will not substantially injure the value of adjoining or abutting property.** This site is already being used for commercial purposes and was approved as a mixed-use development that would integrate with the surrounding area. It is not expected that further development of the site would substantially injure the value of adjoining or abutting 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 project was approved as a small-scale, mixed-use development. The

uses proposed under this application are limited to lower impact uses that would be complimentary to the primary use (garden center).

Staff is mainly concerned with the proposed building elevations presented for Phase II- Ace Hardware Store. The original application provided aesthetically pleasing buildings that, although similar in size (square footage) to what is proposed, incorporated distinct architectural elements that visibly reduced the overall appearance of the development making it more compatible and in context with the size of structures found within the neighborhood.

The elevation presented for Phase II, does not appear to meet the intent of Council's original approval of an aesthetically pleasing small-scale, retail development. The proposed elevation displays a box type structure characteristic of the type of development found primarily along commercial corridors.

The new building (Ace Hardware store) when attached to the existing B. B. Barns retail center and greenhouse will have a total footprint of more than 28,000 square feet. Once constructed, this building will block the view of the distinct architectural characteristics of the B. B. Barns façade when viewed from Rosscraggon Road.

Although the application proposes the use of additional landscaping to soften the scale of the building, staff feels that the exterior building façade should be architecturally enhanced to be more compatible and sensitive to the surrounding neighborhood and to also preserve the “neighborhood-friendly” quality of the development.

Simple architectural elements such as the inclusion of window and door openings, varied rooflines or treatments, or a mix of building materials could assist in visibly reducing the overall mass of the structure.

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.** This project was initially reviewed under the City’s 2010 plan which called for low density residential development, mainly in the areas outside of the City Limit. Existing development patterns, however, included high density residential development in the area.

The *Asheville City Development Plan 2025* plan projects Sweeten Creek Road as a Gateway Boulevard where a mix of residential and commercial uses would be suitable for development. The plan emphasizes the need for “compatible” infill development that enhances, protects and preserves the character of existing neighborhoods.

The elevation presented for Phase II, does not appear to meet the intent of Council’s original approval of an aesthetically pleasing small-scale retail development. The proposed elevation displays a box type structure characteristic of the type of development found primarily along commercial corridors. Staff feels that the elevation could be architecturally enhanced to be more compatible with and sensitive to the surrounding neighborhood.

6. **That the proposed use is appropriately located with respect to transportation facilities, water supply, fire and police protection, waste disposal, and similar facilities.** Development on the site will require final technical approval from all applicable departments including representatives of the Water Resources, MSD, Engineering, Fire and Building Safety Departments. The conceptual plans for the development have been

-22-

reviewed by the City’s Technical Review Committee, which found that adequate services and facilities are available for the proposed development.

7. **That the proposed use will not cause undue traffic congestion or create a traffic hazard.** As required by City Council, a Traffic Impact Analysis (TIA) is being reviewed for this Phase of the development. It is not expected that the TIA will call for major improvements to the site.

Pros

- Further development on the site will provide additional shopping venues that will contribute to the area.

Cons

- Proposed elevation is not in character with the neighborhood.
- Proposed building does not relate to the street.
- Additional landscaping proposed to soften the view of the building from adjoining residential uses could be viewed as isolating the development from the neighborhood.

Staff continues to be in support of the concept of this project and feels that the development can be a positive contribution to the neighborhood and surrounding area. We, however, feel that the building elevation proposed for Phase II (Ace Hardware store) of the project is likely to detract from the character of the neighborhood.

Staff would recommend that the master site plan be approved with the condition that the building elevation be revised to include enhancements such as window and door openings, landscaping applied to the walls of the structure, a deck surrounding

the exterior of the building, etc. The intent is to disguise the plain appearance of the proposed metal building, making it more in keeping with the original approval and more compatible with surrounding development.

Mr. John Fisher, architect, spoke in support of the amendment to the conditional use permit and Master Plan outlining in detail the project timeline from October 2000 – January 2006 (Applicant Exhibit 1).

Mr. Ned Gibson, property owner, spoke in support noting how B.B. Barnes has tried to be sensitive to the neighborhood, in addition to building a public greenway on their property. He urged Council to approve the request with limited conditions.

Mr. Barney Bryant, property owner, spoke in support of the project in that they are a small business that will employ up to 30 people.

After rebuttal, Mayor Bellamy closed the public hearing at 7:36 p.m.

Mr. Heard responded to various questions/comments from Council, some being, but are not limited to: where is the buffering on the north side of the property; should Sweeten Creek Road be described as a commercial corridor and what does Planning staff foresee for that Road in the future.

Councilwoman Cape felt this is a very residential area and felt the City needs to be sensitive when we insert commercial into a residential area. She encouraged B.B. Barnes to be residentially-friendly.

-23-

Councilman Freeborn felt this was the type of commercial project needed in our neighborhoods.

Councilman Newman moved for the adoption of Ordinance No. 3332, amending the conditional use permit and Master Plan for property located at 3377 Sweeten Creek Road. This motion was seconded by Councilman Mumpower and carried unanimously.

ORDINANCE BOOK NO. 22 - PAGE

D. PUBLIC HEARING RELATIVE TO AMEND THE CITY'S 2005 CONSOLIDATED ACTION PLAN

RESOLUTION NO. 06-35 - RESOLUTION AMENDING THE CITY'S 2005 CONSOLIDATED ACTION PLAN

Mayor Bellamy opened the public hearing at 7:45 p.m.

Community Development Director Charlotte Caplan said that this is the consideration of a grant request from the Affordable Housing Coalition of Asheville-Buncombe County (AHC) for \$15,000 in Community Development Block Grant (CDBG) funds to coordinate implementation to the 10-year Plan to End Homelessness. This public hearing was advertised on February 3 and 10, 2006.

The 10-year Plan to End Homelessness in Asheville and Buncombe County was adopted by both City Council and the County Commission in January 2005. It sets out guiding principles and implementing steps to end chronic homelessness by 2015 and greatly reduce the numbers of other homeless people. The Plan is at www.ashevillenc.gov/planning/homelessness.pdf

The Plan's first recommendation is to designate a lead entity which "will coordinate implementation of the plan and be accountable to the community, homeless service providers, and local government." It identifies AHC as the most suitable agency to take on this role.

Progress under the 10-year plan is being made on several fronts by different agencies, e.g. implementation of the HMIS, construction of new units for the homeless, and grant applications for supportive services. However, other implementing steps have lagged, particularly in the area of linking people to housing and supportive services when they leave institutions, a key to preventing homelessness.

AHC is requesting \$15,000 from the City to hire, train, and supervise an appropriately qualified project coordinator to work with service providers on the implementation of the Plan. The County has already committed \$15,000 to this project.

AHC's projected outcomes for the first six months would include:

- Local implementation of the HMIS system (currently being rolled out statewide);
- Creation of an Advisory Committee representing key stakeholders;
 - Constructing the shared protocols necessary to ensure integration of services;
 - Creating relationships with foundations, churches and businesses to help with continued funding;
 - Planning future implementation steps, identifying barriers to progress and solutions;
 - Reporting progress to the City, County and community.

-24-

These steps appear to provide a realistic program of work and AHC has submitted an appropriate budget for the program.

Funds are available to meet this request from unanticipated CDBG loan pay-offs.

A public hearing is required before Council approves a new CDBG program and has been duly advertised to take place at this Council Meeting.

Pro's

- Provides resources and impetus for continuing implementation of the 10-year Plan
- Will lead to creation of new coordinating mechanisms
- Emphasizes City's continued commitment to ending homelessness
- Leverages matching County funds

Con's

- Continued funding in 2006-07 will be more difficult, due to federal CDBG cuts

The Housing and Community Development Committee reviewed the application at its meeting on January 23, 2006, and recommended approval of the grant. Staff concurs in this recommendation.

Mr. Fred English spoke against the action in that foreclosures are happening more frequently.

Mayor Bellamy closed the public hearing at 7:47 p.m.,

Councilman Mumpower agreed that Council needs to do something with our homelessness issue, but we are behaving in a less than responsible manner in reacting to that situation, instead of trying to make meaningful change. He acknowledges that we need a plan, but doesn't think this is the plan. There are better plans out there and we definitely need an intervention facility in this community. He thinks this plan will distract us for some meaningful opportunities to make a difference for the homeless. It will provide housing, but you cannot provide housing for chronic substance abusers without being in great danger of creating an entitlement initiative unless there is some substantial structure to help them address those addictions, and the structure does not realistically exist in this plan.

Councilman Newman said that this concept is taking some of the cutting edge ideas that are effective around the county to meaningfully reduce chronic homelessness. He felt this is a good business model and has the potential to make a real positive reduction in chronic homelessness in Asheville.

Councilman Freeborn asked if we use this money for this particular project, will it impair us for providing other areas that could be significantly more of an investment for us. Ms. Caplan said that the allocation of CDBG funds for the following year will come before Council and you will have the opportunity to approve or amend that plan. At this point we do have money in contingency and it is available for this mid-year request.

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 Resolution No. 06-35. This motion was seconded by Councilwoman Cape and carried on a 5-1 vote, with Councilman Mumpower voting "no".

-25-

RESOLUTION BOOK NO. 29 – PAGE 364

IV. UNFINISHED BUSINESS:

V. NEW BUSINESS:

A. CONSIDERATION OF WAIVER OF ONE-YEAR WAITING PERIOD FOR ZONING ACTION ON PROPERTY AT 109 N. LIBERTY STREET

An e-mail has been received by the City Clerk from the property owner on February 14, 2006, requesting continuance of this matter until the February 28, 2006, formal meeting.

Mr. Joe Heard, Development Services Director, said that the owner is attempting to provide documentation to City staff that there were seven units on the property since 1970. If that is the case, then there would be no need to pursue the rezoning because they would be grandfathered in, and there would be no need for Council to consider waiving the one-year waiting period.

Upon inquiry of Councilwoman Cape, Mr. Heard said that the owner was aware of the restriction on the property when it was purchased.

Councilman Mumpower moved to continue this matter until February 28, 2006. This motion was seconded by Councilman Newman and carried on a 4-2, with Vice-Mayor Jones and Councilman Freeborn voting "no".

B. RESOLUTION NO. 06-36 - RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE JOINDER TO DEED OF TRUST FOR PACK PLACE REFINANCING

City Attorney Bob Oast said that this is the consideration of a resolution authorizing execution of a Ground Lessor's Estoppel Certificate and Amendment to Ground Lease related to refinancing of Pack Place.

The complex of buildings known as Pack Place is the result of redevelopment efforts undertaken by the City in the early 1980's. Part of the complex is occupied by various public or quasi-public uses (Diana Wortham Theatre; Art Museum); some of it is occupied by private interests, including the parking deck garage and the retail uses along Eagle Street. The City owns the land underlying the parking deck and retail uses, and leases it to a developer who, pursuant to a Master Agreement and Master Lease entered into in 1988 (herein "Lease"), is to construct the improvements on the property. Under the Lease, the permanent improvements become the property of the City at the end of the Lease term, which is 99 years. The Lease is non-renewable. During this term, the lessee operates the project and receives the income from it. The City is the "Ground Lessor" or "Lessor," and the developer is the "Tenant" or "Lessee."

It was contemplated from the beginning of this project that the Tenant would require substantial financing for the improvements, and would pledge the improvements (and its interest in the Lease) as security for the financing. Accordingly, the Master Lease contains provisions that require the City, as Lessor, to execute certain documents and provide certain assurances to enable the Tenant to secure financing or refinancing. This is applicable to the garage / retail part of the project.

As noted above, the underlying property belongs to the City, and at the end of the Lease, so will the improvements. With this in mind, the Lease provides that any refinancing will not subject the City to "personal liability" in case of the Tenant's default on the loan (i.e., the City's

-26-

assets are not at risk). Since the "security" for the financing in such situations is the leasehold interest (including the right to operate the project), the documents the Landlord typically executes in such situations give the Lender certain substantive rights in the leased premises, such as the right to step in and operate the project, make or complete improvements, market and re-lease the premises, and dispose of insurance proceeds in case of property damage (or compensation in case of condemnation). These documents amount to a third-party agreement, bringing the Lender into the transaction. Such documents also typically include an estoppel certificate, which is essentially a statement that the Tenant is not in default under the lease. In 1988, in order to facilitate the initial financing for the project, the City entered into a "Ground Lessor's Consent and Lease Modification," similar to the documents now under consideration, that implemented many of the third-party rights and considerations described above. These were expressly made as amendments to the Master Lease. The financing at that time was through the Bank of Scotland.

In connection with a proposed refinancing of the project, with Delaware-based Column Financial, Inc. as the Lender, the Tenant, Pack Square Investors II, LLC, has requested the City to enter into a "Ground Lessor's Estoppel Certificate and Amendment to Ground Lease" (herein "Proposed Amendment"). This Proposed Amendment is not substantially different from the document that the Council agreed to in 1988, and is normal in commercial real estate financing transactions of this nature. Essentially, the Lease has already been amended to incorporate most, if not all, of the terms contained in the Proposed

Amendment, and Council's agreement to the Proposed Amendment will amount to little, if any, more than allowing a new lender to step into the transaction. Some Council members may remember that this project was refinanced in December of 2004 in connection with its sale to the current owner, and the City joined in the deed of trust in order to facilitate that transaction. Because that financing was not anticipated to be long-term, no documentation other than the deed of trust and estoppel certificate was required. The proposed refinancing with Column Financial is anticipated to be more permanent, and a more comprehensive form of the estoppel from the City is now being requested.

The Proposed Amendment that the City is being asked to enter into will, among other things: (1) require the City to provide notice to the Lender in case of a default by the Tenant, or some other failure to perform obligations under the Lease; (2) allow the Lender to step into the shoes of the Tenant in case of a default; (3) allow the Lender to enter into a new lease with the City in case of a pre-term termination of the Lease; (4) permit the lender to apply the proceeds of any insurance (resulting from damage to the premises) to paying off the loan (this does not relieve the tenant of its responsibility to repair and maintain the premises). The City has the option under the Lease, whenever there is a refinancing, to purchase the premises (buy out the remainder of the Lease by purchasing the improvements). The Proposed Amendment expresses the City's waiver of that option, and I am aware of no interest in exercising it. The Proposed Amendment also contains an estoppel certificate, which is straightforward and similar to the ones that have been issued in the past; by themselves, estoppel certificates do not usually require approval by the Council.

It is important to note again that the revisions to the Lease contained in the Proposed Amendment were already made, in very similar form, in connection with the initial financing in 1988, and do not represent a material change in the City's position with respect to the transaction or the project. In essence, the Proposed Amendment allows a new lender to enter the transaction on the same terms as the previous lender.

Considerations.

- Proposed Amendment does not materially change the City's position from previous financing.
- Proposed amendment is not unusual in transactions of this nature.
- Lease requires City to execute documents as reasonably required to facilitate financing.
- City's assets are not at risk.

-27-

- Proposed Amendment gives lender some substantive rights in the transaction.
- Proposed amendment creates some affirmative responsibilities to City to provide notices to Lender.

If Council consents to the estoppel certificate and amendment, adoption of the resolution is recommended.

At the request of Mayor Bellamy, City Attorney Oast said that he would provide Council information on how much is the City paying on debt service on Pack Place and when will it be complete.

When Councilwoman Cape asked if Pack Place pays property tax, City Attorney Oast said that he believed they do pay taxes for the non-public parts.

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

Councilman Mumpower moved for the adoption of Resolution No. 06-36. This motion was seconded by Vice-Mayor Jones and carried unanimously.

RESOLUTION BOOK NO. 29 – PAGE 365

C. RESOLUTION APPOINTING MEMBERS TO THE BOARD OF ADJUSTMENT

RESOLUTION APPOINTING MEMBERS TO THE ASHEVILLE-BUNCOMBE COMMUNITY RELATIONS COUNCIL

RESOLUTION APPOINTING MEMBERS TO THE ASHEVILLE DOWNTOWN COMMISSION

RESOLUTION APPOINTING MEMBERS TO THE ECONOMIC DEVELOPMENT ADVISORY COMMITTEE

RESOLUTION APPOINTING MEMBERS TO THE ASHEVILLE-BUNCOMBE FAIR HOUSING COMMISSION

RESOLUTION APPOINTING MEMBERS TO THE ASHEVILLE GREENWAY COMMISSION

RESOLUTION APPOINTMENT MEMBERS TO THE PUBLIC ART BOARD

RESOLUTION APPOINTMENT MEMBERS TO THE ASHEVILLE TREE COMMISSION

Due to the absence of Councilman Davis, and at the request of Vice-Mayor Jones, Councilman Mumpower moved to continue all "New Business" appointments until Tuesday, February 28, 2006. This motion was seconded by Vice-Mayor Jones and carried unanimously.

VI. OTHER BUSINESS:

A. CLAIMS

-28-

The following claims were received by the City of Asheville during the period of January 13-26, 2006: Neil Dubois (Transit Services), BellSouth (Water), Shirley Fox (Sanitation), Timothy Cheek (Streets), Kathy Kelley (Streets), Norfolk Southern (Water) and Judy Martin (Water).

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

VII. INFORMAL DISCUSSION AND PUBLIC COMMENT:

Mr. Fred English briefly commented about benefits for domestic partners.

Closed Session

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At 8:07 p.m., Councilman Mumpower moved to go into closed session for the following reasons:: (1) To establish or to instruct the City's staff or negotiating agents concerning the position to be taken by or on behalf of the City in negotiating the terms of a contract for the acquisition of real property by purchase, option, exchange or lease. The location of the property is Amboy Road. The statutory authorization is contained in G.S. 143-318.11(a)(5); and (2) To consult with an attorney employed by the City about matters with respect to which the attorney-client privilege between the City and its attorney must be preserved, and to consider and give instructions to the attorney concerning the handling or settlement of a claim. 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 8:34 p.m., Councilman Mumpower moved to come out of closed session. This motion was seconded by Vice-Mayor Jones and carried unanimously.

VIII. ADJOURNMENT:

Mayor Bellamy adjourned the meeting at 8:34 p.m.

CITY CLERK

MAYOR