

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 Color Guard from Charles D. Owen High School led City Council in the Pledge of Allegiance.

**INVOCATION**

Councilman Davis gave the invocation.

**I. PROCLAMATIONS:**

**II. CONSENT AGENDA:**

**A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON FEBRUARY 14, 2006, AND THE WORKSESSION HELD ON FEBRUARY 21, 2006**

**B. RESOLUTION NO. 06-40 - RESOLUTION AUTHORIZING THE METROPOLITAN SEWERAGE DISTRICT TO MAKE IMPROVEMENTS ON A SANITARY SEWER LINE AND ASSOCIATED MANHOLES WITHIN ROGER FARMER PARK IN WEST ASHEVILLE AND GRANTING A PERMANENT ASSOCIATED EASEMENT**

Summary: The consideration of a resolution authorizing the Metropolitan Sewerage District ("MSD") to make improvements on a sanitary sewer line and associated manholes within Roger Farmer Park in West Asheville and granting a permanent associated easement.

- During the past six months the MSD has been working with the City of Asheville regarding a sanitary sewer project within Roger Farmer Park. The current line is located in the left field portion of the middle baseball field within this park. MSD would like to improve this line that is in disrepair with minimum impact to the property and its programmed activities. Staff is in accord with the improvements and the construction timeframe prior to the baseball season.

Pros:

- The development of this project would greatly benefit the health and well being of the community the system serves.

Cons

- A portion of the ballfield will be temporarily unavailable during the winter months.

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The Parks and Recreation Department staff recommends the approval of the improvements as proposed by the Metropolitan Sewerage District in Roger Farmer Park along with the associated permanent easement.

**RESOLUTION BOOK NO. 29 – PAGE 373**

**C. RESOLUTION NO. 06-41 - RESOLUTION AUTHORIZING THE METROPOLITAN SEWERAGE DISTRICT TO MAKE IMPROVEMENTS ON A SANITARY SEWER LINE AND ASSOCIATED MANHOLES WITHIN WEST ASHEVILLE PARK AND GRANTING A PERMANENT ASSOCIATED EASEMENT**

Summary: The consideration of a resolution authorizing the Metropolitan Sewerage District ("MSD") to make improvements on a sanitary sewer line and associated manholes at West Asheville Park and granting a permanent associated easement.

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During the past six months the MSD has been working with the City of Asheville regarding a sanitary sewer project within West Asheville Park. The current line is located in the right field portion of the baseball field within this park and within lawn areas to the south. MSD would like to improve this line that is in disrepair with minimum impact to the property and its programmed activities. Staff is in accord with the improvements and the construction timeframe prior to the baseball season.

Pros:

- The development of this project would greatly benefit the health and well being of the community the system serves.

Cons

- A portion of the ballfield will be temporarily unavailable during the winter months.

The Parks and Recreation Department staff recommends the approval of the improvements as proposed by the Metropolitan Sewerage District in West Asheville Park along with the associated permanent easement.

#### **RESOLUTION BOOK NO. 29 – PAGE 374**

#### **D. ORDINANCE NO. 3333 - BUDGET AMENDMENT TO ACCOMMODATE CONTRIBUTIONS TO THE TOP-A-STOP PROGRAM**

Summary: The consideration of a budget amendment, in the amount of \$3,025, to accommodate contributions to the Top-a-Stop program.

The Asheville Transit System has received contributions from the Committee to Re-Elect Dr. Carl Mumpower for the Top-a-Stop program. The program consists of creating topped stops such as the one below for the benefit of transit riders. Although the labor is voluntary, some materials may need to be purchased and a contribution has been made to the city to help defray any costs that might be incurred in the implementation of this program. These might also include modifications to plans or contracting for footers. A budget amendment is sought in order to receive these funds.

This action complies with the City Council Strategic Operating Plan in Goal 2, Objective A, Task #2: Leverage outside funding to achieve multiple Transportation goals where possible.

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Pros:

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- Increased shelter for citizens and riders
- Increased number of shelters at no significant expense to the city.

Cons:

- None

City staff recommends City Council amend the budget to accept the tendered contribution.

#### **ORDINANCE BOOK NO. 22 – PAGE**

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 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**

Urban Planner Shannon Tuch said that on February 14, 2006, the Asheville City Council voted to continue consideration of the Oak Park residential development project due to some conflicting calculations required for the appropriate application of the Hillside Development Standards. Consideration of this proposal was continued to the February 28, 2006, meeting, allowing the applicant due time to:

- Obtain more detailed and accurate digital survey information
- Allow a licensed civil engineer to re-calculate the average natural slope (using digital information)
- Have staff verify the calculations provided by the civil engineer

In the intervening week, the engineer for the project, Mr. Mike Lovoy, P.E., was able to obtain an electronic version of the most up-to-date survey information for the properties in questions and did re-calculate the average natural slope. The results of this analysis revealed an average natural slope of 30.6%. The chart used to calculate density is very sensitive and even a very small difference in average natural slope can make a significant difference in allowable density. Although this number is very close to the previously considered 30% discussed at the February 14<sup>th</sup> public hearing, it is not sufficient to support the 5 units proposed and results in a total of 4.44 units, rounded down to 4 units maximum. In comparison, an average natural slope of 30% results in a maximum of 4.59 units, rounded up to 5 units maximum. Staff has not had the opportunity to review this new information; however, given the information provided by the civil engineer, the applicant, Mr. Alan Laibson, has submitted a letter requesting to withdraw this application from consideration.

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Lastly, staff was able to confer with Mr. Norman Divers P.E. who had performed the calculations on behalf of the neighbors in opposition of the project and confirmed that he had only the hard copy site plan to use when performing his calculations. Mr. Divers did say that he did not have issue with certifying the work he had done but wanted to emphasize that this certification would be relative to the information that had been provided to him, and would expect that another professional who had access to electronic survey information would result in numbers different from his own. Mr. Divers' lack of digital survey information is likely to be the most significant cause for the difference between the two calculations. There also appears to have been some differences in lot area calculations where in one instance, a road and/or driveway was excluded and in another it was included in the total area calculations, this would result in a smaller deviation but, when combined with the other factors, would have contributed to the overall variation.

She said that staff is working toward a procedure where staff will be responsible for hillside calculations to avoid problems of this sort in the future.

On February 21, 2006, an e-mail was received from Mr. Alan Laibson which read as follows: "At this point I would appreciate it if you could withdraw us from the next City Council meeting on February 28<sup>th</sup>. After the final hillside calculations were completed the density available to us would have been a little shy of what would be needed for 5 units. So, based on that we are going to resubmit to P & Z our application for consideration for a change to RM 8 (which was our original application) which along with the new hillside calculations would insure us of the 5 units we would like to build. We wish to thank both you, the Tech review members, P & Z and City Council for your help and consideration in this interesting journey. My wife and I still believe deeply in the project as one that the city could be proud of and other builders can consider in further green and energy efficient construction."

**B. PUBLIC HEARING TO CONSIDER CONDITIONAL ZONING FOR PROPERTY LOCATED AT 138 SPRINGSIDE ROAD FROM INSTITUTIONAL DISTRICT TO RM-16 RESIDENTIAL MULTI-FAMILY DENSITY DISTRICT/CONDITIONAL ZONING FOR A PROPOSED 84-UNIT RENTAL COMMUNITY WITH DENSITY BONUS FOR AFFORDABLE HOUSING PROVISION**

**ORDINANCE NO. 3334 - ORDINANCE TO CONDITIONALLY ZONE PROPERTY LOCATED AT 138 SPRINGSIDE ROAD FROM INSTITUTIONAL DISTRICT TO RM-16 RESIDENTIAL MULTI-FAMILY DENSITY DISTRICT/CONDITIONAL ZONING FOR A PROPOSED 84-UNIT RENTAL COMMUNITY WITH DENSITY BONUS FOR AFFORDABLE HOUSING PROVISION**

Mayor Bellamy opened the public hearing at 5:02 p.m.

Urban Planner Kim Hamel said that this is the consideration of an ordinance to conditionally zone 138 Springside Road from Institutional District to RM-16 Residential Multi-Family High Density District/Conditional Zoning for a proposed 84-unit rental community with density bonus for affordable housing provision. This public hearing was advertised on February 14 and 24, 2006.

She said the project is supported by numerous goals and strategies in the plan relating to infill development, smart growth policies and affordable housing. The project utilizes "new zoning tools" (Conditional Zoning and Density Bonus incentive) to create a sustainable high-density residential development within the City Limits. Although, transit service is not currently available on Springside Drive, the site is located within one mile of transit service along Hendersonville

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Road. The development also proposes a drop-off area that can be utilized for an independent shuttle service.

This project will make a significant contribution to meeting the needs for affordable rental housing outlined in the Consolidated Strategic Housing and Community Development Plan 2005-2010. All units within this development will be affordable for households with less than 60% area median income and some will be affordable to households with as little as 30% area median income. Affordability will be assured for 30 years under the terms of the federal and state Low Income Housing Tax Credit programs

This project utilizes the Conditional Zoning process and the Density Bonus provision as an incentive in providing a higher density infill development as outlined under Housing Opportunities, Goal #3.

In December 2005, the petitioner, Shelter Development, LLC, submitted an application for the review of a Conditional Zoning for a 3.02 acre parcel from INST (Institutional District) to RM-16 CZ (Residential Multi-family High Density/Conditional Zoning) and for a master plan approval subject to a 200% density bonus for the construction of an 84-unit senior housing development and it's related parking and other site features.

The project site is located within the City limits just off of Springside Road. Two single-family residences, one vacant and one occupied, currently exist on the site. Properties surrounding the property include: Buncombe County Schools, specifically TC Roberson, zoned Institutional to the south and west; a high density multi-family apartment complex, zoned Institutional to the east; single family dwellings zoned RS-4 and RM-6, and Cedar Forest Condominiums, zoned RM-6 to the north.

The applicant is requesting a rezoning to RM-16 CZ in order to qualify for a density bonus that would allow 84 units. Under the current Institutional zoning district, at 16 units per acre, a total of 48 units would be permitted. With a rezoning to the RM-16 zoning district and with an added 200% density bonus, a total of 106 units would be permitted. The applicant is proposing 84 units, at a density of approximately 28 units/acre.

The development on the site proposes a 4-story building with a 21, 486 square foot footprint. The project will consist of 49 one-bedroom apartments, and 35 two-bedroom apartments. The building is oriented towards the street with pedestrian connections to the proposed sidewalk along Springside Road and to the walking trail provided as an amenity to the residents. A 70-space parking lot and required bicycle parking is located behind the building towards the rear of the lot. Landscape buffers, parking lot landscaping and open space is being provided to meet the City's standards.

The building elevation illustrates traditional design with exterior features reminiscent of arts and crafts style architecture. Details include: an open porch area, gabled rooflines with moderate to deep overhangs, changes in building materials between floors, and double-hung windows. The exterior building materials and colors shown on the elevation (brick veneer and vinyl siding) may be enhanced to include stonework detailing in place of brick materials.

Based on the proposed plans and elevations provided by the applicant, staff feels that the project qualifies for a 200% density bonus by providing an exceptional development through:

- Affordable housing: all units within the development are proposed at a rate *below* the City's maximum affordable rental rate, meeting the needs of those (specifically seniors) with a household income of less than 60% of median income.

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- Higher quality building design (see elevation details above)
- Enhanced landscaping: additional landscape materials and an increase in the size of plant materials above the City's Standard requirement will be provided.
- Project amenities: walking trails, benches, garden area with gazebo

On Wednesday, January 18, 2006, the Asheville Technical Review Committee (TRC) reviewed the proposed master plan and recommended approval of the project subject to the conditions outlined in the staff report. These conditions will be addressed upon submittal of detailed site plans to the TRC.

On Wednesday, February 1, 2006, the Asheville Planning and Zoning Commission reviewed the project and voted unanimously to recommend approval of the project subject to the TRC conditions and conditions recommended by staff.

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.

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 project site consists of two single-family dwellings that will be demolished in order to construct the proposed development. Although the property in its current state is relatively flat, grading of the site and removal of existing vegetation will be necessary in order to meet the stormwater and erosion control requirements and overall development of the site, as proposed.
3. **That the proposed use or development of the land will not substantially injure the value of adjoining or abutting property.** The proposed development is reasonably compatible with the surrounding uses and is not expected to injure the value of adjoining or abutting property.

The building is to be designed with enhanced architectural features and is likely to have a positive affect on adjoining and abutting properties. In addition, landscape buffers are proposed around the perimeter of the site, which will assist in mitigating any negative impacts the development may have on the surrounding area.

4. **That the proposed use or development or the land will be in harmony with the scale, bulk, coverage, density, and character of the area or neighborhood in which it is located.** Although the proposed development is of greater scale and (to a degree) of greater density than the existing development in the area, the project proposed is no larger than what would be allowed under the current Institutional zoning. The proposed use appears to be reasonably compatible with the uses surrounding the site and with the established zoning in the area. (A rezoning to RM-16 is considered a "down-zoning" from Institutional district.)

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Additionally, the building is to be designed with enhanced architectural features that are likely to contribute to the character of the neighborhood. Landscape buffers are proposed around the perimeter of the site, which will assist in mitigating any negative impacts the development may have on the surrounding area.

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 project is supported by numerous goals and strategies in the plan relating to infill development, smart growth policies and affordable housing. The project utilizes "new zoning tools" (Conditional Zoning and Density Bonus incentive) to create a sustainable high-density residential development within the City Limits. Although, transit service is not currently available on Springside Drive, the site is located within 1 mile of transit service along Hendersonville Road. The development also proposes a drop-off area that can be utilized for an independent shuttle service.

This project will make a significant contribution to meeting the needs for affordable rental housing outlined in the Consolidated Strategic Housing and Community Development Plan 2005-2010. All units within this development will be affordable for households with less than 60% area median income and some will be affordable to households with as little as 30% area median income. Affordability will be assured for 30 years under the terms of the federal and state Low Income Housing Tax Credit programs.

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

service is not currently provided on Springside Road, the site is located within a mile of several bus stops along Hendersonville Road. The development also proposes a drop-off area that can be utilized for an independent shuttle service.

7. **That the proposed use will not cause undue traffic congestion or create a traffic hazard.** The City's Traffic Engineer has reviewed the proposal and has determined that there are no traffic issues created by this project nor is a traffic impact analysis warranted.

#### Pros

- This project utilizes Conditional Zoning and the density bonus provision in order to provide an exceptional development project through affordable housing, enhanced site and building design, and project amenities.
- The project makes a significant contribution to meeting the need for affordable rental housing in the City of Asheville.
- The project supports numerous goals and strategies outlined in the City's 2025 plan as it relates to smart growth, infill and sustainable development.
- Provides an opportunity for infill residential development on underdeveloped property.

#### Cons

- City transit does not currently provide service along Springside Road.
- The proposed new building is of a larger scale than buildings currently found in the immediate area.

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Staff recommends approval of this request with the conditions outlined by the Technical Review Committee and the following added conditions:

1. All site lighting shall be equipped with 90 degree cutoff features and be directed away from adjoining properties and streets; and
2. All existing vegetation to be retained shall be clearly indicated and dimensioned on the site plan.
3. In order to ensure the validity of the density bonus granted for provision of affordable housing and to ensure that the units remain affordable for a reasonable period of time, rents shall be maintained in accordance with federal and state Low Income Housing Tax Credit (LIHTC) regulations for at least 15 years after first occupancy. Documentary evidence of LIHTC participation shall be submitted as part of the file prior to the issuance of the Certificate of Occupancy.
4. At the request of the owner, a condition will be added to the project that should the tax credits or other sources of financing, for the proposed development of the senior citizen residential community not be approved by 10/31/06, the zoning of the property shall, upon request by the property owner, revert to the original Institutional zoning classification. The request by the owner for the reversion of the zoning shall be provided in writing to the Director of the Planning and Development.

Mr. Gerald Green, representing the developer, stated that this project will fit well into the community in that it is affordable housing for the elderly. The rents will range from approximately \$400-600 a month. They are not subsidized rents. They are able to keep the rents so low through tax credits and other means of reducing construction costs. A community meeting was held and they addressed their concern of traffic. He urged Council to support this project.

In response to Councilwoman Cape about the preservation of trees, Mr. Green said that the City standards mandate a 5-foot utility strip between the street and the sidewalk. They are trying to have the sidewalk meander among the trees keeping the trees up close to the street, but that depends on the grade and other elements.

Mayor Bellamy closed the public hearing at 5:11 p.m.

Vice-Mayor Jones moved for the adoption of Ordinance No. 3334, to conditional zone 138 Springside Road from Institutional District to RM-16 Residential Multi-Family High Density District/Conditional Zoning for a proposed 84-unit senior housing development with density bonus for affordable housing provision, subject to the conditions outlined by the Technical Review Committee and the following added conditions: (1) All site lighting shall be equipped with 90 degree cutoff features and be directed away from adjoining properties and streets; (2) All existing vegetation to be retained shall be clearly indicated and dimensioned on the site plan; (3) In order to ensure the validity of the density bonus granted for provision of affordable housing and to ensure that the units remain affordable for a reasonable period of time, rents shall be maintained in accordance with federal and state Low Income Housing Tax Credit (LIHTC) regulations for at least 15 years after first occupancy. Documentary evidence of LIHTC participation shall be submitted as part of the file prior to the issuance of the Certificate of Occupancy; and (4) At the request of the owner, a condition will be added to the project that should the tax credits or other sources of financing, for the proposed development of the senior citizen residential community not be approved by 10/31/06, the zoning of the property shall,

upon request by the property owner, revert to the original Institutional zoning classification. The request by the owner for the reversion of the zoning shall be provided in writing to the Director of the Planning and Development. This motion was seconded by Councilwoman Cape and carried unanimously.

**ORDINANCE BOOK NO. 22 – PAGE**

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**C. PUBLIC HEARING TO AMEND THE UNIFIED DEVELOPMENT ORDINANCE RELATING TO REVISIONS TO THE URBAN VILLAGE DISTRICT**

**ORDINANCE NO. 3335 - ORDINANCE AMENDING THE UNIFIED DEVELOPMENT ORDINANCE RELATING TO REVISIONS TO THE URBAN VILLAGE DISTRICT**

Mayor Bellamy opened the public hearing at 5:11 p.m.

Planning & Development Director Scott Shuford said that this is the consideration of an amendment to the Unified Development Ordinance (UDO) to revise several sections of the UDO relating to the Urban Village District. This public hearing was advertised on February 17 and 24, 2006.

This code amendment has been developed to accommodate issues raised in the review of the Biltmore Park Town Square Urban Village zoning request. The amendment:

- Adjusts the height requirement to allow taller structures to be considered
- Clarifies the calculation of the “cornice height” setback requirement for structures taller than four stories
- Provides for exceptions to door and window opening requirements to accommodate LEED or other energy efficiency code compliance requirements
- Clarifies driveway and service alley requirements
- Clarifies off-street parking and loading requirements
- Makes minor stylistic changes

Staff feels these adjustments and clarifications represent improvements to the function and intent of the ordinance and provide the Planning & Zoning Commission and City Council with additional flexibility to review projects for green building compliance.

On February 1, 2006, the Planning and Zoning Commission unanimously recommended approval of the proposed code amendment by a vote of 7-0. City staff recommends approval of the proposed code amendment as well.

Mr. Shuford said that the most substantial change is adjusting the maximum height allowed from 80 feet to 150 feet; however, he stressed that City Council will have the opportunity to set that height in each Urban Village District in the approval of the Master Plan.

Ms. Katheryn McCarten, resident in Biltmore Park, questioned how many stories would be allowed for a height limit of 150 feet. Also she urged Council to keep the definition at 80 feet and that City Council be allowed to adjust the height on an individual basis.

Mayor Bellamy closed the public hearing at 5:20 p.m.

There was Council discussion about the 150 feet height limitation with Mr. Shuford stating that some places in Asheville might be appropriate for 150 feet, whereas, other areas it would be inappropriate. Again, Council will have the ability to set that height in each Urban Village District. He explained that heights of buildings must be on the Master Plans and only City Council can waive those heights. City Attorney Oast also noted that the 150-foot is the maximum allowed but City Council can approve something lower.

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 Mumpower moved for the adoption of Ordinance No. 3335. This motion was seconded by Councilman Davis

and carried unanimously.

**ORDINANCE BOOK NO. 22 - PAGE**

**D. PUBLIC HEARING TO CONSIDER REZONING PROPERTY AT SCHENCK PARKWAY, SCHENCK CRESCENT EAST AND WATERSTONE ROAD FROM CENTRAL BUSINESS DISTRICT AND RS-8 RESIDENTIAL SINGLE-FAMILY HIGH DENSITY DISTRICT TO URBAN VILLAGE DISTRICT AND TO REVISE THE MASTER PLAN TO INCLUDE THE REZONED PROPERTIES**

**ORDINANCE NO. 3336 - ORDINANCE TO REZONE PROPERTY AT SCHENCK PARKWAY, SCHENCK CRESCENT EAST AND WATERSTONE ROAD FROM CENTRAL BUSINESS DISTRICT AND RS-8 RESIDENTIAL SINGLE-FAMILY HIGH DENSITY DISTRICT TO URBAN VILLAGE DISTRICT AND TO REVISE THE MASTER PLAN TO INCLUDE THE REZONED PROPERTIES**

Mayor Bellamy opened the public hearing at 5:35 p.m.

Urban Planner Alan Glines said that this is the consideration of an ordinance to rezone property at Schenck Parkway, Schenck Crescent East and Waterstone Road from Central Business District and RS-8 Residential Single-Family High Density District to Urban Village District and to revise the Master Plan to include the rezoned properties. This public hearing was advertised on February 17 and 24, 2006.

The current request under review is to rezone almost 20 acres to Urban Village District and gain approval for an additional 155 residential units, 50,000 square feet of office space, 200,000 square feet of commercial space and another 50,000 square feet for other uses. The majority of the property under review is currently zoned Central Business District with a small portion zoned RS-8.

During a rezoning request for urban village, the developer generally provides a site master plan and overall build-out numbers. This allows City Council to consider the total impacts of the project at the time of the rezoning. After this initial approval all subsequent reviews for portions of the project and master plan are reviewed as Level II projects that are handled by the Technical Review Committee. The TRC will ensure that all of the development codes will be met during the plan submittal phase.

A traffic impact analysis (TIA) is being completed for this project at this time. A TIA is required at the time the project comes forward for Level II review as defined in the Urban Village District. With the road widening at Long Shoals Road currently taking place, it is expected that the development will not over burden the transportation system. Limited changes may be recommended to the number of turn lanes in specific areas in the Biltmore Park development.

Urban Village ordinance requirements will receive specific study and thorough review as each phase is submitted for permitting. In general, though, the master plan portrays a network of streets that are intersected by cross streets at relatively close intervals. As described in the Urban Village District, block length and sidewalk widths appear to meet development standards. Two parking garages are proposed as a part of this rezoning request, which will be added to three other approved parking garages. At least 17 new structures are shown on the plan with a major building being a large movie theater. In addition to the theater, a hotel is proposed for a location with views from and near the interstate. The hotel is proposed to be a twelve-story

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structure and would be by far the tallest building proposed for the urban village development. Most of the other structures proposed will be 4 stories. The scale of the hotel height may be mitigated by the fact that is not at the heart of the urban village but out to the edge. On-street parking and street trees line each street. Several public plaza spaces are shown on the master plan. Even though the exact number and length of each block or number of buildings is not reviewed specifically one can get a sense of the 'grain' of the urban village project by reviewing the master plan. If the current proposal is approved, the Biltmore Park Urban Village will have approval for 475 residential units, 550,000 square feet of commercial space, 250,000 square feet of office space and 200,000 square feet of other non-commercial space. Some smaller amount of this is already built out at this time.

The small section of the urban village expansion is currently zoned RS-8 along Schenck Crescent East. There has been considerable public comment for this section of the proposal. Nearly two acres of land fronting on the street (that is also north of the creek) would be added to the urban village. The creek will become the dividing line from village area and the Heathbrook section of Biltmore Park. The buildings proposed for this area will be between 2 and 4 stories and three of the four buildings will be mostly residential buildings with below grade parking. A portion of the creek edge is protected with a conservation easement. The area of the parcel that is on the south side of the creek is not a part of this proposal. The main concern seems to be the potential loss of the vegetative buffer.

The Urban Village District is established to create mixed-use higher density development that is economically vital and pedestrian oriented. Urban Village guidelines encourage vibrant streets that offer a full range of commercial and office uses as well as a variety of housing types. Project densities are not limited except by master plan approval.

The Central Business District is established to reinforce the downtown as the urban center of Asheville and Western North Carolina, encouraging private and public investment which will preserve the Central Business District as the primary retail, office, hotel, institutional, cultural and entertainment center of our community. The CBD designation was applied to Biltmore Park because it was the best fit for the type of mixed-use project that they were seeking. The Urban Village district was developed after that initial zoning to CBD. In the areas of Biltmore Park that are currently zoned CBD, there is no residential density maximum or building height limits.

This developer is seeking to make some amendments to the wording of the Urban Village District to allow specific items portrayed in this proposal. The items affect height maximums, maximum size of the movie theater use and extending the time frame when the parking garages may be phased in and surface lots phased out. The current master plan will be subject to and require this wording amendment approval.

At the Planning and Zoning meeting, a comment came up that on-street parking was now prohibited along portions of Schenck Crescent East. The person who commented felt that the traffic speeds had increased since then and made the street and intersections unsafe. In the Urban Village area there is generally a requirement to provide on-street parking along streets in the village. However this zoning requirement must be considered with safety in mind. The village should provide on-street parking unless traffic safety is compromised. This can be reviewed on a street-by-street basis. The Planning & Zoning Commission recommended that the parking issue be looked at and perhaps be re-established on the street. He suggested City staff should have the opportunity to review the geometry of the street and make sure it will be safe.

#### **Pros**

- Mixed-use development is a positive trend for south Asheville
- The existing urban village will benefit from additional development and investment in the site

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- The Biltmore Park neighbors will have nearby neighborhood amenities within walking distance.
- The rezoning to UV provides a clearer expectation of project build-out than the existing CBD zoning provides.

#### **Cons**

- Roadway noise may affect more people as the vegetative buffer against the interstate highway is removed.
- The development as proposed may attract regional patronage which may intensify the use (a potential plus)
- The proposed hotel will become an area landmark because of its height (a potential plus)

At their February 1, 2006 meeting the Planning and Zoning Commission recommended approval of the rezoning request and the amendment to Master Plan with the conditions that on-street parking be added back along Schenck Crescent East and that a sidewalk be provided along Columbine Road between Schenck Crescent East to the Heathbrook area and the project approval is contingent on the approval on the urban village wording amendment being approved.

Mr. Paul Szurek, Chief Financial Officer for Biltmore Park, spoke in support of the rezoning and amendment to the Master Plan. He reviewed how the project achieves an outstanding example of smart growth and new urbanism beginning with connectivity of this project with the surrounding neighborhood.

Mr. Larry Zinser, architect, reviewed with Council the project in detail describing the reasoning behind the hotel location and parking deck. He noted they have a very rich streetscape for a pedestrian friendly environment.

Mr. Charlie Hume, President of the Biltmore Park Homeowners Association, felt that south Asheville has had a tremendous amount of development over the last year. The residents of Biltmore Park are concerned about the increase of traffic and along with that comes speeding. To proactively address that, they have worked with the City's Traffic Engineer to install a traffic calming plan, which is presently being voted on by the homeowners. The cost is approximately \$54,000 for a total of 24 speed humps and Biltmore Park has offered to contribute \$10,000 for that project. He said that there is a nothing in the City's budget to address traffic calming issues. In addition to the cost, there is the issue of police enforcement to deal with speeding issues. He felt that with the large increase in the City's tax base from this development, he asked Council to budget money for these large traffic impact types of projects and review how the police will be involved in trying to enforce the existing speed limit.

A man voiced concern over the height of the hotel on the property. He said residents live there because of the mountain

view and a building over 4-5 stories should not be allowed. He felt that people going to the movie theatre will go through the main street artery and it is not designed to accommodate thousands of cars.

Mayor Bellamy closed the public hearing at 6:05 p.m.

Upon inquiry of Councilwoman Cape, Mr. Szurek said that Schenck Parkway, which is a City-maintained street, is designed for four lanes. However, it is not stripped for 4 lanes because current traffic levels do not justify stripping it for 4 lanes. They have had a traffic study performed and with very minor modifications they feel that at full build out all of the significant intersections in this project, on Long Shoals and on I-26 will be operating at acceptable levels. He explained how their site plan is drawn up to disburse traffic as much as possible.

When Councilwoman Cape asked about the hotel height, Mr. Szurek said that the hotel is on the lower slope near the intersection and they are requesting the hotel height be 9 stories.

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At the request of Councilman Mumpower, City Traffic Engineer Anthony Butzek had performed a preliminary review of the Traffic Impact Analysis and it does verify that the streets are adequate to accommodate the traffic with some traffic improvements at the intersection of Long Shoals Road that would be made a condition of the Master Plan approval. He will ask the developer's traffic engineer to look at the numerical impact of traffic in the neighborhood. Traffic is distributed within the development and Schenck Parkway is designed to handle much more traffic than it is carrying today. He said that the traffic calming project he is working on with the neighborhood is a separate project and will go forward with or without this project.

Mr. Butzek responded to questions from Council with regard to speed humps and the speed limits in the area. He did not recommend a lower speed limit than 25 mph on this typical residential street.

Upon inquiry of Councilman Freeborn, Mr. Glines said that all infrastructure improvements will be borne by the developer. In addition, Mayor Bellamy noted that they anticipate a \$130,000 Million increase to the City's tax base within five years.

Councilman Mumpower moved to rezone property located at Schenck Parkway, Schenck Crescent East and Waterstone Road from Central Business District and RS-8 Residential Single-Family High Density District to Urban Village District. This motion was seconded by Councilwoman Cape and carried unanimously.

Regarding the height of the hotel, City Attorney Oast pointed out that City Council is not prescribing a maximum height in terms of feet.

Councilman Newman moved to approve the amended Master Plan for the Biltmore Park Urban Village with the conditions that (1) the sidewalk be extended from the urban village area to Heathbrook Circle; (2) City staff consider the issue of on-street parking along Schenck Crescent East; and (3) the height of the hotel be limited to 9 stories. This motion was seconded by Vice-Mayor Jones and carried unanimously.

#### **ORDINANCE BOOK NO. 22 – PAGE**

#### **E. PUBLIC HEARING TO AMEND THE UNIFIED DEVELOPMENT ORDINANCE TO PERMIT CREMATORIES AS AN ACCESSORY USE TO FUNERAL ESTABLISHMENTS IN LOWER INTENSITY DISTRICTS AND A PRINCIPAL USE IN MORE INTENSE ZONING DISTRICTS**

#### **ORDINANCE NO. 3337 - ORDINANCE AMENDING THE UNIFIED DEVELOPMENT ORDINANCE TO PERMIT CREMATORIES AS AN ACCESSORY USE TO FUNERAL ESTABLISHMENTS IN LOWER INTENSITY DISTRICTS AND A PRINCIPAL USE IN MORE INTENSE ZONING DISTRICTS**

Mayor Bellamy opened the public hearing at 6:27 p.m.

Mr. Joe Heard, Director of Development Services with the Planning & Development Department said that this is the consideration of an ordinance to amend the Unified Development Ordinance (UDO) to permit crematories as an accessory use to funeral establishments in lower intensity districts and a principal use in more intense zoning districts. This public hearing was advertised on February 17 and 24, 2006.

Presently, the UDO contains limited references to crematories. Staff has relied on an interpretation that, except where allowed as uses of right (River District), crematories are only permitted as accessory uses to funeral establishments. This proposed

amendment is intended to

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set fair and reasonable standards for these uses in the City of Asheville. In drafting this proposal staff has consulted with the NC Board of Funeral Services and a working group of local funeral directors. The proposed ordinance would allow crematories as a principal use in more intense zoning districts (INST, HB, RB, CI, IND) and an accessory use to funeral establishments in other districts where they are allowed (OB, CB-I, CB-II, CBD). In all cases, crematories would be required to comply with current standards set by the WNC Regional Air Quality Agency, NC Board of Funeral Services, and NC Crematory Authority.

The Commission members noted the fact that the State standards only applied to the cremation of human remains, not to pet cremation services, and specified that the ordinance only apply to "crematories for human remains".

Pros –

- The ordinance would set clear standards relating to crematories for human remains.
- The ordinance would ensure that crematories comply with applicable state and regional standards.

Con –

- The amendment would increase the number of areas where crematories are permitted as a use of right.

The Planning and Zoning Commission recommended approval of these code amendments on January 4, 2006, by a unanimous vote of 6-0. City staff recommends approval of the proposed ordinance amendment, as well.

Mayor Bellamy closed the public hearing at 6:30 p.m.

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

Vice-Mayor Jones moved for the adoption of Ordinance No. 3337. This motion was seconded by Councilman Mumpower and carried unanimously.

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

#### **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**

Development Services Director Joe Heard said that on Friday, February 24, 2006, an e-mail was received requesting this matter be removed from Council consideration.

##### **B. RESOLUTION NO. 06-42 - RESOLUTION AWARDED CONTRACT TO BRANTLEY CONSTRUCTION COMPANY INC. FOR CONSTRUCTION OF THE OLD HAYWOOD FIRE STATION AND THE ROCKY RIDGE ROAD FIRE STATION, AND AUTHORIZING CITY MANAGER TO EXECUTE CONTRACT**

Fire Chief Greg Grayson said that this is the consideration of a resolution authorizing the City Manager to execute the award of bid to Brantley Construction Company Inc. for construction of the Old Haywood Road Fire Station and the Rocky Ridge Road Fire Station.

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For more than six years, two fire station facilities have been in the planning phases for City government. In previous budget approvals, City Council has already authorized \$4,825,000.00 for fire station construction. In addition, Council authorized purchase of two specific properties on which to locate the stations. Also, Council awarded an architectural services contract for the stations to the firm of Stewart, Cooper, Newell. Staff has advertised and held public informational community meetings concerning the new station design. Significant input was taken from citizens as well as neighboring property owners to the selected sites.

Bid proposals for construction of the stations were received in January and have been thoroughly evaluated by our architectural firm. The lowest responsible bidder was identified as Brantley Construction Company, Inc. of Canton, NC. Brantley's

bid amount for both stations was \$4,553,296.00. Brantley has demonstrated their ability to build fire stations for other cities. The cost per square foot of construction is approximately \$166.00 per square foot. Bidding the two stations together has resulted in significant savings for the city, as other similar fire station projects in our state are being bid at over \$200.00 per square foot.

With Council approval, construction of the stations will begin in April, with completion expected in the first quarter of 2007. Additional costs associated with full implementation of these two stations will be identified through the Fiscal Year 2006-07 budgetary process.

Both of these stations are fulfilling commitments made through previously approved annexation services plans. The City of Asheville has not built a new fire station since the 1970's. Each of these two fire stations will also provide needed work space for the Asheville Police Department.

Each of these stations will have a number of energy efficient "green building" features. However, the approved budgetary funding from past fiscal years coupled with operational time constraints complicate these projects from being LEED (green building) certified facilities. Council will be presented with the option of funding Fire Station 12 in the Sand Hill Road area as a LEED certified building. At this time, construction of Fire Station 12 is planned to be a part of the Fiscal Year 2007-08 fiscal year budget requests from the Asheville Fire and Rescue Department.

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Pros:

- The city's standard of cover for provision of emergency services will improve with the addition of these two facilities. Emergency response times will be reduced – lives and properties will be saved.
- Council's previous commitments to approved annexation services plans will be honored.
- The two stations will significantly aid the city in being evaluated by the Insurance Services Office (ISO) to help homeowners and business owners keep their property insurance at a minimum cost.

Cons:

- None identified at this time.

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

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City staff recommends City Council authorize the City Manager to execute the award of the fire station construction bid to Brantley Construction Company, Inc. in the amount of \$4,553,296.00.

Fire Chief Grayson and Mr. Ken Newell responded to various questions/comments from Council, some being, but are not limited to: what the actual bid amount includes; information relative to the contractor; staffing and rolling stock for the two new stations; what does the bidding process consist of and are local contractors encouraged to bid; are both of the stations supported through prior annexation plans; is there space in the stations for a community gathering place; what is the shelf life of the buildings; and why are all the costs uniform across the bid sheet.

Chief Financial Officer Ben Durant explained the financial part of the project in that we will not be impacted by \$1 Million next year because we are financing these fire stations. The true impact to the budget will be the annual debt service costs, which will go up by about \$80,000.

Upon inquiry of Councilman Newman about ways to reduce the cost of the project, Fire Chief Grayson said that steel construction and concrete costs are the major expenses. Mr. Newell said the only way to reduce the cost of the facilities would be to change some significant visual appearances, e.g., lose masonry on the outside of the building and get metal liner panels which would not blend in well with either of the neighborhoods and the cost savings for that would be fairly insignificant to the total cost.

Upon inquiry of Mr. Fred English, Fire Chief Grayson said that the property on old Haywood Road was acquired in 2000 and the property on Rocky Ridge Road was acquired in 2006.

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. 06-42. This motion was seconded by Councilman

Freeborn and carried unanimously.

## RESOLUTION BOOK NO. 29 – PAGE 375

At 6:57 p.m., Councilman Mumpower moved to go into closed session for the following reason: To discuss matters relating to the location or expansion of industries or other businesses in the area served by the City Council, including agreement on a tentative list of economic development incentives that may be offered in negotiations, provided that any action authorizing the payment of economic development incentives will occur in open session. The statutory authority is contained in G.S. 143-318.11(a)(4). This motion was seconded by Vice-Mayor Jones and carried unanimously.

At 7:25 p.m., Vice-Mayor Jones moved to come out of closed session. This motion was seconded by Councilman Davis and carried unanimously.

### C. ORDINANCE DECLARING “SNIPE” SIGNS TO BE NUISANCES, AND AUTHORIZING REMOVAL

City Attorney Oast said that this is the consideration of an ordinance establishing a process for the removal of temporary illegal signs.

The proliferation of small, temporary advertising signs adjacent to or within the right-of-way of streets and roads – “snipe” signs – in addition to being an eyesore, affect the safety of persons using the roads, either by blocking line of sight or by distracting motorists.

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The City’s sign regulations are contained in the zoning ordinances. The enforcement provisions of the zoning ordinance are not effective to deal with transitory violations of the nature presented by snipe signs: by the time the notice of violation process is complete, the signs and the reasons for them are frequently gone. Sec. 7-18-5 of the UDO already provides for the summary removal of some nuisance signs. This ordinance more clearly defines what a nuisance sign is, more clearly sets out the public health and safety concerns, and more clearly defines the particular areas where such signs are of primary concern.

What the proposed ordinance does is make a legislative finding that a certain type of sign tends to distract or obstruct the vision of motorists and create visual clutter and road hazards, affecting the public health and safety in a negative way, and is therefore a nuisance. The ordinance authorizes the City’s code enforcement officers to remove those signs, and provides a “post-removal” process for the responsible parties to challenge the removal and retrieve their signs. The ordinance also allows the code enforcement officer to dispose of signs that are not retrieved.

This ordinance is somewhat consistent with Buncombe County’s recently adopted ordinance providing for the removal of signs in the right-of-way. Since the width of a street or road right-of-way can vary unpredictably, the proposed ordinance for the City applies within 30 feet of the traveled portion of a road. This ordinance was initially presented on January 17. Based on comments received, it has been revised to modify the notice and hearing requirement, and to better define the characteristics that make such signs objectionable as nuisances.

#### Considerations:

- Defines what a snipe sign is
- Declares such signs to be nuisances
- Establishes expedient process for removal
- Provides a process for challenging violation

If Council approves of the ordinance, adoption of it is recommended.

There was considerable discussion by Council of what types of signs would be covered by the ordinance, specifically yard sale signs and lost dog signs. City Attorney Oast said those signs can be placed on store-fronts or kiosks, but not on telephone poles.

At the request of Council, City Attorney Oast said that he would look at some provisions to possibly creating a yard sale permit that will permit someone to put up some signs. That provision could include that the sign has to be taken down within 12 hours.

Ms. June Patterson, founder of Stop the Signs, said that she has worked on this ordinance for over 2 years and yet has

anyone to say that this issue is not important. These signs contribute to litter and traffic problems. Regarding the yard sale signs, she feels the point is moot because Asheville doesn't have adequate enforcement. What the new ordinance does is give City employees the ability to pick up a sign instead of going through a 30-day process to remove a sign.

Mr. Ashton Walton stressed that snipe signs are clearly a nuisance. Regarding yard sale signs, after they are removed, the nails and staples stay in the pole and Progress Energy crews can be injured when they climb the poles. People who place and leave up these signs have no regard for scenic beauty or safety.

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When Councilman Newman asked if the City can permit someone to tack a sign on a Progress Energy pole, City Attorney Oast said no, but he can look into authorizing yard sale signs if they are not in the right-of-way.

Councilman Mumpower voiced concern about the abuse of political signs and asked the City Attorney for clear direction. City Attorney Oast said that political signs are not considered snipe signs but are addressed in the sign ordinance, which permits them for a limited period of time.

Councilman Mumpower asked what the realistic manpower ability is to pull up the signs. City Attorney Oast responded that the staff is out of the Planning & Development Department and the Director has proposed some additional manpower to handle this.

Councilman Mumpower asked the City Attorney to report back to Council giving them a specific enforcement plan and some realistic sense of what we can do to have a meaningful impact on snipe signs.

City Attorney Oast responded to questions from Vice-Mayor Jones regarding different signs in the community. City Attorney Oast said that this ordinance is trying to address the proliferation of advertising signs out on commercial highways. The problem that we have is that it is difficult to make content-based distinctions, so we have tried to define snipe signs in such a way that it is pretty clear what is intended to be covered by it.

Councilman Newman is supportive of getting rid of the advertising signs, but wondered if we are getting rid of some other signs along the way that we weren't thinking about.

Councilwoman Cape wondered what type of commitment the City is willing to make for public areas and kiosks for advertising. In addition, she wondered if we can enlist some volunteers from Quality Forward to help with sign removal.

Councilman Newman moved to continue this matter in order to give the City Attorney an opportunity to address some of Council's concerns. This motion was seconded by Councilman Mumpower and carried unanimously.

Ms. Christine Logan, Code Enforcement Officer, explained that the biggest offenders are commercial message signs that are posted in the right-of-way and that do not have a permit.

It was the recommendation of Mayor Bellamy, and the consensus of Council, to have the City Council Public Safety Committee review this ordinance prior to it being brought back for Council consideration.

**D. RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE A CONTRACT WITH WOOLPERT INC. FOR REVISIONS TO THE STORMWATER, EROSION CONTROL AND FLOODPLAIN ORDINANCES**

City Engineer Cathy Ball said that this is the consideration of a resolution authorizing the City Manager to execute a contract with Woolpert Inc. in the amount of \$89,161.50 to assist the City of Asheville in updating the Stormwater, Floodplain and Erosion Control Ordinances.

Due to the flooding events of September 2004, changes in State laws and requirements of Federal regulations, the City of Asheville is in the process of revising the Stormwater, Floodplain and Erosion Control Ordinances.

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The process for making these updates includes reviewing the latest trends in the field, examining growth and land use patterns in the City and gathering input from the community. The reason staff is requesting hiring a consultant to perform these services include the following:

- The Consultant offers professional expertise in the stormwater, floodplain and erosion control fields;
- The Consultant has experience in working with similar municipalities in North Carolina;
- Staff resources are limited. It would be difficult to allot enough staff time to make these updates in a timely manner. We have a deadline of July 1, 2006 to have the Stormwater Ordinance updated;

Staff developed a request for professional services for this project. We received three proposals. Staff reviewed these proposals and determined that Woolpert Inc. was the most qualified for this project.

Revisions to these ordinances will address City Council's strategic goals by improving the quality of our water. This goal is stated in the focus area of Natural and Built Environment.

#### Considerations

- Cost is within acceptable limits for the scope of the work.
- The money for this project is currently budgeted.
- The consultant will be working with the stakeholders group to make recommendations to Council.

City staff requests that City Council authorize the City Manager to sign a contract with Woolpert Inc. in the amount of \$89,161.50 to assist the City of Asheville in updating the Stormwater, Floodplain and Erosion Control Ordinances.

Upon inquiry of Councilman Davis, Ms. Ball said that the City is working diligently with the other agencies involved to not duplicate services. In fact, we have found that we have opportunities to share a lot of information.

In response to Councilman Mumpower, Ms. Ball said that the outcome of this contract will result in a revised stormwater ordinance, which has to be revised to meet the federal mandate; a revised floodplain ordinance that will revisit what development the City allows in the floodplain; and a revised erosion control ordinance to address changes at the state level. She feels the ordinances interact with each other so much, it is very hard to make changes to one of the ordinances that doesn't impact the other one.

When Councilman Mumpower asked if there are existing models throughout the state, Ms. Ball said that there are other ordinances that are available, but because our topography is very different from the rest of the state, she didn't think we could readily take one of the off-the-shelf ordinances and make it work in Asheville.

Councilman Mumpower agreed that stakeholder input is important, but felt he has the capability of obtaining that input. He wondered if the City could hire the consultant on a smaller scale to tailor an existing off-the-shelf ordinance.

Upon inquiry of Councilman Freeborn, City Manager Jackson explained why the Engineering Department staff cannot handle this project in-house.

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Ms. Ball said that she will meet with the consultant and talk to them about ways that to revise the scope and what capabilities we have in-house to do some of the work.

Councilwoman Cape suggested talking with Warren Wilson College to arrange a partnership.

#### **E. RESOLUTION NO. 06-43 - RESOLUTION ESTABLISHING THE FEDERAL LEGISLATIVE AGENDA FOR FISCAL YEAR 2007**

Economic Development Director Sam Powers said that this report follows up on the City Council worksession of February 21, 2006.

Over the past three years Congressman Taylor, Senator Burr, and Senator Dole have been successful in helping the City receive over \$5 million in appropriations to fund City transit bus acquisition, drug interdiction, parks improvements, river redevelopment, and pedestrian improvements. Fiscal Year 2007 appropriations/legislative requests are currently being developed and the City needs to determine if it wishes to submit any requests for potential federal assistance, with a deadline for submittal to the congressional staff and the WNC Caucus by March 1, 2006.

City staff has identified the legislative remedy for the transit system as well as seven projects as potential submissions for

assistance: Bus Acquisition Pilot Project, Green Building Fire Station, Driving & Firearms Simulator and Driving Range Upgrade, Thomas Wolfe Project, Reid Center, Public Service Radio Improvements, and Signal Preemption for Emergency Response.

Staff is seeking policy recommendations on setting a federal legislative agenda for Fiscal Year 2007 to be in position to submit to the congressional delegation and staff and the WNC Caucus by March 1, 2006, if Council so desires.

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

Councilman Newman moved to approve the Fiscal Year 2007 legislative agenda to include the Bus Acquisition Pilot Project; Green Building Fire Station; Driving & Firearms Simulator and Driving Range Upgrade; Reid Center; Public Service Radio Improvements; and Signal Preemption for Emergency Response, specifically making the census definition of our metropolitan area and the implications that will have on our local federal transportation funding our No. 1 priority. This motion was seconded by Vice-Mayor Jones.

Councilman Davis felt Council should include the Thomas Wolfe Cabin in our federal agenda for \$350,000 to see if there is money earmarked for that type of project. He said the cabin is the City's responsibility and we should take the responsibility for preserving this significant piece of property.

Councilman Mumpower felt the legislative agenda is an exercise in political excess that talks more about what is nice than what is necessary. He was strongly against participating in that type of excess.

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

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Councilman Davis moved to include \$350,000 to the federal agenda for the Thomas Wolfe Cabin and that if no funds are available that City staff look for an alternate plan to realistically fix the cabin. This motion was seconded by Councilwoman Cape.

Upon inquiry of Councilman Newman, Councilman Davis explained the significance of the Thomas Wolfe Cabin.

Councilwoman Cape felt the City has made a huge investment in Azalea Park and the Cabin is equally important to the Park area.

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

## **RESOLUTION BOOK NO. 29 – PAGE 378**

### **F. RESOLUTION AUTHORIZING THE CITY MANAGER TO RETAIN THE SERVICES OF BALL JANIK**

Economic Development Director Sam Powers aid that this report follows up on City Council worksession of February 21, 2006. City staff was directed to contact Ball Janik to determine the firm's interest, ability, and fee structure to assist the City in working with the congressional delegation and congressional staff members in revising legislation dealing with federal appropriations to the City's transit system and/or for submitting any potential federal funding requests for Fiscal Year 2007. City Council is requested to provide policy direction to City staff in this matter.

For the past three years the City has utilized a Washington, DC firm, Ball Janik LLP, to assist the City in providing the necessary project information to congressional staffers to include in the various federal appropriations bills. Ball Janik also provided advice and counsel in matters of federal legislation affecting the City. The City did not renew its contract with Ball Janik when it expired in 2005. The City's transit system's service area has been reclassified as an urbanized area of over 200,000 in population due to changes in census boundaries. This reclassification has significant adverse affects on future operations of the system, and the City has considered seeking legislative remedy to the situation. Fiscal Year 2007 appropriations/legislative requests are currently being developed and the City needs to determine if it wishes to utilize Ball Janik to work with the congressional delegation and congressional staff in support of the City's federal legislative agenda.

Ball Janik has indicated that it can represent the City in pursuing the legislative remedy to the transit system reclassification and/or funding requests and a proposal for services for these elements. Ball Janik proposes a monthly retainer of \$2,500 (compared to the previous retainer of \$5,000 per month) which will enable them to aggressively pursue an Asheville-specific legislation fix on the transit flexibility issue, and will also them to monitor, on an ongoing basis, legislative issues of interest

to the City.

Councilman Newman moved contract with Ball Janik on a monthly retainer of \$2,500 to focus on the highly technical issue regarding transit. This motion was seconded by Councilwoman Cape.

Councilman Mumpower felt Asheville has a committee structure that can potentially address this and make the kind of things happen that we want to without the cushion between Council and our representatives. He committed working with Councilman Newman to meet with Congressman Taylor and his staff to passionately pursue the transportation issue.

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Upon inquiry of Councilwoman Cape, Transit Services Director Bruce Black explained the decrease of funding each year regarding the transit system.

Councilman Newman explained the highly technical aspect of the transit system.

Mr. Powers responded to various questions from Council regarding Ball Janik and the timeframe for action.

Mayor Bellamy said that a meeting is being set up with Congressman Taylor, Senator Burr and Senator Dole in order to build a personal relationship.

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

#### **G. RESOLUTION NO. 06-44 - RESOLUTION APPOINTING MEMBERS TO THE BOARD OF ADJUSTMENT**

Vice-Mayor Jones said that the terms of Richard Fort (Regular member), Robert Middlemas (Regular member), Jonathan Glover (Alternate Member) and Scott Shealy (Alternate member who has resigned) on the Board of Adjustment expired on January 21, 2006.

At the City Council's worksession on January 17, 2006, City Council instructed the City Clerk to arrange interviews for Jonathan Glover, James Sheeler and Cheryl Johnson for the Alternate seats. Mr. Glover was unable to be reached for an interview time.

Also at the City Council's worksession on January 17, 2006, City Council instructed the City Clerk to prepare the proper paperwork to reappoint Richard Fort (Regular member) and Robert Middlemas (Regular member) to each serve an additional three-year term respectively, terms to expire January 21, 2009, or until their successors have been appointed.

It was the consensus of Council to appoint James Sheeler and Cheryl Johnson as Alternates to the Board of Adjustment to each serve a three year term respectively, terms to expire January 21, 2009, or until their successors have been appointed.

#### **RESOLUTION BOOK NO. 29 – PAGE 392**

#### **H. RESOLUTION NO. 06-45 - RESOLUTION APPOINTING MEMBERS TO THE ASHEVILLE-BUNCOMBE COMMUNITY RELATIONS COUNCIL**

Vice-Mayor Jones said that the terms of Michael Burkhead and Jim Mullen (who has resigned), as members on the Asheville-Buncombe Community Relations Council, expired on December 31, 2005.

At the City Council worksession on January 17, 2006, City Council instructed the City Clerk to prepare the proper paperwork to reappoint Mr. Burkhead to serve an additional three year term, term to expire December 31, 2008, or until his successor has been appointed.

In addition, at the worksession held on January 17, 2006, City Council instructed the City Clerk to arrange interviews for Rev. Keith Ogden, Veronica Sotolongo and Martha Brown. Ms. Sotolongo was unable to attend the interview.

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After Council spoke highly about the candidates, Council voted until one candidate received the majority vote. As a result,

Veronica Sotolongo was appointed to serve a three year term, term to expire December 31, 2008, or until her successor has been appointed.

**RESOLUTION BOOK NO. 29 – PAGE 393**

**I. RESOLUTION NO. 06-46 - RESOLUTION APPOINTING MEMBERS TO THE ASHEVILLE DOWNTOWN COMMISSION**

Vice-Mayor Jones said that the terms of Chuck Pickering, Pat Whalen and Leslie Yancey (who has resigned) on the Downtown Commission expired on December 31, 2005.

At the City Council worksession on January 17, 2006, City Council instructed the City Clerk to prepare the proper paperwork to reappoint Mr. Whalen to serve an additional three year term, term to expire December 31, 2008, or until his successor has been appointed.

In addition, at the worksession held on January 17, 2006, City Council instructed the City Clerk to arrange interviews for Guadalupe Chavarria, Michael McDonough, Kitty Brown, Sherry Luft, Larry Johnson and Daniel Sanders.

After Council spoke highly about the candidates, Council voted until two candidates received the majority vote. As a result, Kitty Brown and Larry J. Turner were appointed to each serve a three year term respectively, terms to expire December 31, 2008, or until their successors have been appointed.

**RESOLUTION BOOK NO. 29 – PAGE 394**

**J. RESOLUTION NO. 06-47 - RESOLUTION APPOINTING MEMBERS TO THE ECONOMIC DEVELOPMENT ADVISORY COMMITTEE**

Vice-Mayor Jones said that there currently exists four vacancies on the Economic Development Advisory Committee (Jim Mullen, James Geter, David Phillips and Valerie Dennis). Since the Advisory Committee is being reformed from a Task Force, terms have yet to be determined.

At City Council's worksession on January 17, 2006, City Council instructed the City Clerk to arrange interviews for Becky Anderson, John Payne, Phillip Ray Gibson, Kenneth Brown, Matthew Raker, Neil Newberry, Smithson Mills, LaVoy Spooner, Lewis Lankford and Kimberly Hodges. Mr. Payne was not able to attend the interview.

After Council spoke highly about the candidates, Council voted until four candidates received the majority vote. As a result, Becky Anderson, Matthew Raker, Lewis Lankford and Kimberly Hodges were appointed to the Economic Development Advisory Committee. Terms for each member will be determined by City Council at an upcoming Council meeting.

**RESOLUTION BOOK NO. 29 – PAGE 395**

**K. RESOLUTION NO. 06-48 - RESOLUTION APPOINTING MEMBERS TO THE ASHEVILLE-BUNCOMBE FAIR HOUSING COMMISSION**

Vice-Mayor Jones said that there currently exists two vacancies on the Asheville-Buncombe Fair Housing Commission until December 31, 2007, (Mr. Jim McCulley, who has passed away, and Ms. Christiana Tugman (who has resigned).

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At the City Council worksession on January 17, 2006, City Council instructed the City Clerk to arrange interviews for Paul Ford, Jeff McMickens, Mary Robertson, C. Joy Thigpen and Jessica Erwin Leaven.

After Council spoke highly about the candidates, Council voted until two candidates received a majority vote. As a result, Paul Ford was appointed to serve the unexpired term of Mr. McCulley, term to expire December 31, 2007, or until his successor has been appointed; and Jeff McMickens was appointed to serve the unexpired term of Ms. Tugman, term to expire December 31, 2007, or until his successor has been appointed.

**RESOLUTION BOOK NO. 29 – PAGE 396**

**L. RESOLUTION NO. 06-49 - RESOLUTION APPOINTING MEMBERS TO THE ASHEVILLE GREENWAY**

## COMMISSION

The terms of Gerry Hardesty, Linda Giltz and David Tuch, as members on the Greenway Commission, expired on December 31, 2005.

At the City Council worksession on January 17, 2006, City Council instructed the City Clerk to prepare the proper paperwork to reappoint Ms. Giltz and Mr. Tuch to each serve an additional three year term respectively, terms to expire December 31, 2008, or until their successors have been appointed.

In addition, at the worksession held on January 17, 2006, City Council instructed the City Clerk to arrange interviews for Glen Locascio, Starr Silvis, Sarai Rightmyer, Dawa Clark and Marc Hunt.

After Council spoke highly of the candidates, Council voted until one candidate received a majority vote. As a result, Marc Hunt was appointed to serve a three-year term, term to expire December 31, 2008, or until his successor has been appointed.

### RESOLUTION BOOK NO. 29 – PAGE 397

#### M. RESOLUTION NO. 06-50 - RESOLUTION APPOINTMENT MEMBERS TO THE PUBLIC ART BOARD

Vice-Mayor Jones said that the terms of Bill Fishburne, Pam Myers and Dana Irwin, as members of the Public Art Board, expired on December 31, 2005. In addition, Kathleen Peters has resigned, thus leaving an expired term until December 31, 2007.

At the City Council worksession on January 17, 2006, City Council instructed the City Clerk to prepare the proper paperwork to reappoint Mr. Fishburne and Ms. Irwin to each serve an additional four year term respectively, terms to expire December 31, 2009, or until their successors have been appointed.

In addition, at the worksession held on January 17, 2006, City Council instructed the City Clerk to arrange interviews for Terry Taylor, Kenn Kotara, Kristin MacLeod, Janiece Meek and Bill Branyon.

After Council spoke highly of the candidates, City Council voted until two candidates received a majority vote. As a result, Kristin MacLeod was appointed to serve a three-year term, term to expire December 31, 2008, or until her successor has been appointed; and Kenn Kotara was appointed to serve the unexpired term of Ms. Peters, term to expire December 31, 2007, or until his successor has been appointed.

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### RESOLUTION BOOK NO. 29 – PAGE 398

#### N. RESOLUTION NO. 06-51 - RESOLUTION APPOINTMENT MEMBERS TO THE ASHEVILLE TREE COMMISSION

Vice-Mayor Jones said that the terms of Bill Jones, Peter Gentling and Joseph Carney, as members on the Asheville Tree Commission, expired on December 31, 2005.

At the City Council worksession on January 17, 2006, City Council instructed the City Clerk to prepare the proper paperwork to reappoint Mr. Jones to serve an additional three year term, term to expire December 31, 2008, or until his successor has been appointed.

In addition, at the worksession held on January 17, 2006, City Council instructed the City Clerk to arrange interviews for Richard Koerber, Hartwell Carson, Starr Silvis, Donna Clark, Bob Gale and Bill Branyon. Mr. Koerber was not interested in the Tree Commission at this time.

After Council spoke highly of the candidates, City Council voted until two candidates received a majority vote. As a result, Starr Silvis and Bob Gale were each appointed to serve a three-year term respectively, terms to expire December 31, 2008, or until their successors have been appointed.

### RESOLUTION BOOK NO. 29 – PAGE 399

#### VI. OTHER BUSINESS:

## **For Our Kids**

Vice-Mayor Mumpower thanked people, through the For Our Kids Program, who helped out with painting the community center of Klondyke public housing development. He also updated Council on the next Top-A-Stops that will be built.

## **Claims**

The following claims were received by the City of Asheville during the period of January 27 – February 16, 2006: Nichole Compton (Police), Sarah Richardson (Streets), BellSouth (Water), Cyndy Howze (Water), Maxine C. DeBruhl (Parks & Recreation) and Lonnie Bryant (Transit Services).

The following claims were received by the City during the period of February 17-February 23, 2006: Jeanette O'Connor (Fire), Wind-in-the-Oaks (Water), Robert E. Harris (Water) and Wendy E. Fletcher (Traffic Engineering).

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

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

Ms. Karen Snow addressed Council regarding the inadequacy of storm water structures and storm water damages on Reed Street off Hendersonville Road. Mayor Bellamy said that City Manager Jackson will be in contact with her to discuss this matter.

Mr. Tim Peck spoke to Council about the Merrimon Avenue zoning study. He explained the concerns that the survey is anonymous, the survey contains bias and the survey is open to the risks of fraud, misinterpretation and manipulation. The Greater Asheville Advisory Group

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recommends that the results of the survey be given no weight in deliberations on zoning plans for the Merrimon Avenue corridor.

Mr. Fred English urged Council to contact the N.C. Dept. of Transportation to address the graffiti in the Beaucatcher Tunnel as well as the burnt out lights.

## **VIII. ADJOURNMENT:**

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

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CITY CLERK

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MAYOR