

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**

- Cadets from A.C. Reynolds High School led City Council in the Pledge of Allegiance.

**INVOCATION**

Councilman Mumpower gave the invocation.

**I. PROCLAMATIONS:**

**A. RECOGNITION OF RECIPIENTS OF THE DR. MARTIN LUTHER KING JR. YOUTH AWARDS**

Ms. Oralene Simmons explained the significance of the Dr. Martin Luther King Jr. Youth Awards. Mayor Bellamy then recognized Derrick Beasley (Asheville High School), Sharonda Bradley (Asheville High School), Megan Clark (Buncombe Community School) and Rita Williams (A.C. Reynolds High School) for receiving the Martin Luther King Jr. Leadership Award. In addition, she recognized Edith Alas-Ortega (Asheville Middle School), Cameron Bowers (Erwin High School), Nakia Harrell (Asheville Middle School), Katrina Ireland (Asheville Middle School), Zanele Mangena (Asheville Middle School), Shree McMorris (Asheville Middle School), Cynthia Molina (Asheville Middle School), Patricia Moore (Asheville Middle School) and Kyle Weeks (Asheville Middle School) for receiving the Martin Luther King Jr. Emerging Heros Award.

**II. CONSENT AGENDA:**

At the request of Councilwoman Cape, Consent Agenda Item "B" was pulled from the Consent Agenda for discussion.

At the request of Councilman Newman, Consent Agenda Item "G" was pulled from the Consent Agenda for discussion.

**A. APPROVAL OF THE MINUTES OF THE REGULAR MEETINGS HELD ON FEBRUARY 28, 2006, AND MARCH 7, 2006**

**B. RESOLUTION DECLARING PROPERTY AT 8 CEDAR STREET AS SURPLUS AND ESTABLISHING THE MINIMUM PRICE**

This item was pulled from the Consent Agenda for individual discussion.

**C. ORDINANCE NO. 3338 - BUDGET AMENDMENT FOR REIMBURSEMENT BY THE N.C. DEPT. OF TRANSPORTATION FOR MATERIAL COSTS FROM THE HAYWOOD ROAD PROJECT**

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Summary: The consideration of a budget amendment, in the amount of \$16,000, for the reimbursement from the N.C. Dept. of Transportation of funds expended completing Haywood Road ADA ramps.

City Council authorized the Mayor to enter into an agreement with the N.C. Dept. of Transportation (NC DOT) to install Americans with Disabilities Act (ADA) compliant ramps along Haywood Road in conjunction with the NC DOT's resurfacing project. Both the City of Asheville and the NC DOT were in need of ADA compliant ramps along their respective street systems. It was a requirement of NC DOT to install ADA compliant ramps in conjunction with their resurfacing projects. In order to install some additional City amenities, and to expedite completion, the City of Asheville offered to install these ramps using Street Division forces. For completing this work on their behalf, the NC DOT agreed to reimburse the City the full cost of construction, which is estimated at \$16,000 (16 ramps X \$1,000 each). Street Divisions staff has completed this work, and the NC-DOT has submitted the reimbursement. Per the considerations on the original Staff Report, the Street Division would use reimbursements placed back

in its operating budget on additional streets and sidewalk projects throughout the City.

Pros:

- This budget revision is a direct reimbursement of costs incurred completing a needed partnership project with NC-DOT, and will not be any burden to the general fund.
- The funds placed in the Streets Division materials line will allow additional streets and sidewalk projects to be completed.

Cons: None noted.

City staff recommends City Council adopt the budget amendment, in the amount of \$16,000, for material reimbursements for completing the City's requirements of a Municipal Agreement between the City and the NC DOT.

**ORDINANCE BOOK NO. 22 - PAGE**

**D. RESOLUTION NO. 06-53 - RESOLUTION APPROVING A HOUSING TRUST FUND LOAN FOR DEVELOPMENT OF 84 UNITS OF AFFORDABLE HOUSING ON SPRINGSIDE ROAD IN SOUTH ASHEVILLE**

Summary: The consideration of a resolution approving a \$300,000 Housing Trust Fund loan for the development of 84 units of affordable housing on Springside Road in South Asheville.

Shelter Development, LLC has requested a Housing Trust Fund (HTF) loan in the amount of \$300,000 as partial financing for a proposed \$9.3 million Low Income Housing Tax Credit (LIHTC) development for seniors. The project will consist of 84 units with many amenities for the residents.

Shelter Development specializes in housing developments for the elderly and has an excellent track record with LIHTC developments nationwide. The proposed rents are very affordable and the LIHTC rules guarantee 30 years of continued affordability.

The application was evaluated by a panel of outside experts and staff and scored well against the HTF criteria. The Housing and Community Development Committee reviewed the application on January 23, 2006, and has recommended awarding an HTF loan in the amount of \$300,000 at 2% interest amortized over a 30 year term.

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Advantages:

- Creation of 84 units of affordable housing for seniors
- Long-term affordability
- Increased tax base

Disadvantages: None

Staff recommends approval of a \$300,000 HTF loan to Shelter Development, LLC

**RESOLUTION BOOK NO. 29 – PAGE 402**

**E. RESOLUTION NO. 06-54 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO AN AGREEMENT WITH MOUNTAIN AREA JOB LINK CENTER OF THE MOUNTAIN WORK FORCE DEVELOPMENT BOARD TO PROVIDE THE ORGANIZATION AND ADMINISTRATION OF THE SUMMER YOUTH EMPLOYMENT PROGRAM**

Summary: The consideration of a resolution authorizing the City Manager enter into an agreement with Mountain Area Job Link Center of the Mountain Work Force Development Board to provide the organization and administration of the Summer Youth Employment Program.

The Parks and Recreation Department has again contacted the Mountain Area Workforce Development Board (MAWDB) on the campus of A-B Technical College to determine the feasibility of organizing and administering a summer youth employment program for 2006. The MAWDB has actively administered and delivered career development services, remedial education, job skills training and subsidized employment opportunities for Asheville's economically disadvantaged youth for more than 30 years.

The MAWDB successfully administered the program, providing employment and educational opportunities for over 55 youth in 2005.

Highlights of the proposal:

- Employment of 55 disadvantaged youth from the City of Asheville.
- Summer employment period of June 8, 2005 – July 29, 2005 (8 weeks)
- Youth employees between the ages of 14 and 17 years old.
- Specific application process and selection procedures mutually agreed upon by the City and MAWDB.
- Education and training components aimed at assisting youth to move forward in school and toward a successful productive life.
- MAWDB will develop, organize, administer supervise and evaluate the program through an agreement with the city including recruitment of youth, development of worksite agreements, orientation and training of worksite supervisors and employees, monitoring and counseling of youth employees and program accounting and oversight.
- The City of Asheville will provide payroll services and worker's compensation insurance.

Pros:

- History of proven professional administration of youth employment programs in Asheville by MAWDB for over 30 years.
- Cooperative agency approach to providing youth development activities.
- Ability to integrate the City's youth employment program with the efforts of the MAWDB career development programs.

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- Existing connections to public and private agencies through the MAWFDB "workforce board partners program" which allows for better recruitment of disadvantaged youth and potential worksites.
- Allows for program over site by City staff without the extensive time commitment necessary to actually administer a program of this magnitude.

Cons

- Only enough funds to employ 55 youth for eight weeks which is far less than the demand for this type of employment program.

This action is in keeping with the City Council Strategic Plan's economic development goal #4 of providing vocational training opportunities for teenage youth and the plan's critical services and infrastructure goal #4 of reducing drug related crime activities through holistic approaches targeting at-risk and economically disadvantaged youth. This agreement is for the delivery of a youth development program that combines the opportunities for summer employment with meaningful training and education in the areas of job success skills, career planning, life skills, personal financial management and development of teamwork and interpersonal relations on the job

City staff recommends the City Manager be authorized to enter into a contract with the Mountain Area Job Link Center of the Mountain Work Force Development Board, to provide the organization and administration of the program, in the amount of \$100,000.

**RESOLUTION BOOK NO. 29 – PAGE 403**

**F. RESOLUTION NO. 06-55 - RESOLUTION AMENDING RESOLUTION NO. 95-81 REGARDING THE CITY'S POLICY RELATING TO CLAIMS AND JUDGMENTS SOUGHT OR ENTERED AGAINST THE CITY OFFICERS AND EMPLOYEES**

Summary: The consideration of a resolution amending the policy for claims and judgments against City employees.

Since 1995 and earlier, the City has provided legal defense to its employees who are sued or named as defendants in actions taken in the course and scope of their employment. Beginning in 1995, the defense for most matters was provided through Asheville Claims Corporation, our self-funded risk management facility

Recently we found language in our excess coverage policy (insurance for claims exceeding the amount covered by the City's self-coverage) that could be viewed as inconsistent with our policy, and might require us to provide a defense even when the employee was clearly acting outside the course and scope of their employment. The resolution addresses that issue by amending

the policy to provide that the City may request that the employee indemnify the City for those costs. The only change from Resolution No. 95-81 is the addition of subparagraph C that addresses this particular issue, but the entire resolution is being readopted. This amendment does not otherwise change the City's policy of providing a legal defense to its employees.

Considerations:

1. Addresses inconsistency between City's policy and some insurance coverage;
2. Continues policy of providing employees a defense in appropriate cases.

- City staff recommends adoption of the resolution amending the policy for claims and judgments against City employees.

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#### **RESOLUTION BOOK NO. 29 – PAGE 404**

#### **G. RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE A CONSERVATION EASEMENT WITH RIVERLINK AT AZALEA PARK**

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

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

Vice-Mayor Jones moved for the adoption of the Consent Agenda. This motion was seconded by Councilwoman Cape and carried unanimously.

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

#### **RESOLUTION DECLARING PROPERTY AT 8 CEDAR STREET AS SURPLUS AND ESTABLISHING THE MINIMUM PRICE**

Summary: The consideration of a resolution authorizing the marketing of surplus property at 8 Cedar Street and establishing a minimum price.

- The City owns property at 8 Cedar Street (PIN No. 9657.07-58-4903) which it does not need and proposes to sell using the process provided in N. C. Gen. Stat. sec. 160A-269, negotiated offer and advertisement for upset bids.

The property at 8 Cedar Street is located at the intersection of Fairview Road and Cedar Street in the Oakley community. It was acquired by the City in December, 1999, for the purpose of realigning the Cedar Street/Fairview Road and Liberty Street/Fairview Road intersections in order to eliminate one of two "back to back" traffic signals. Since that time the amount of traffic on Liberty Street and Cedar Street has diminished significantly due to the closing of Crayton Road and the alternative access between Tunnel Road and Sweeten Creek Road via I-240 and I-40 at Exit 51. Realignment of the intersections is no longer needed based on current and anticipated traffic flow.

The property is zoned RS-8 and improved with a single family residential structure. The lot is 0.1745 acre, rectangular in shape and level to street grade with typical residential landscaping, fencing, etc. The structure is a circa 1926 two story Dutch Colonial with white clapboard siding containing 1,674 square feet. It is structurally sound and in fair to good condition, but it does need some repairs in order to obtain a Certificate of Occupancy. Marketability prospects for the property are very good.

The property has been appraised by CDN Appraisals at \$128,000 and by BRB Appraisals at \$165,000. The appraisals were reviewed by the City's Real Estate Manager and based on that review \$158,600 is recommended as a minimum price for the property. The proceeds from the sale of the property will be general fund revenue.

The positive aspects of marketing the property are:

- The property will be marketed at the appraised value using the upset bid method of sale to ensure a competitive process.
- The sale of the property will generate revenue for the City.
- It will place the property back on the tax rolls.
- It is an efficient use of resources, because un-needed property will return to private ownership.

- It will make available moderately priced housing in a fully serviced neighborhood.

The one negative aspect is that if traffic improvements at the Cedar Street/Fairview Road intersection were ever needed the property may have to be reacquired.

Approval of the resolution will authorize marketing of the property through the process provided in N. C. G. S. 160A-269 and establish a minimum price of \$158,600.

City staff recommends City Council adopt the resolution authorizing the marketing of surplus property at 8 Cedar Street and establishing a minimum price of \$158,600.

Upon inquiry of Councilwoman Cape, a short discussion took place regarding how might this property be affordable. City Attorney Oast said that the City can explore putting those types of restrictions on the sale.

Councilman Newman agreed that the City needed affordable housing, but didn't think addressing it on a house-by-house basis was the most constructive way to do it.

Councilwoman Cape moved to refer this matter to the Housing & Community Development Committee. This motion was seconded by Vice-Mayor Jones and carried on a 5-2 vote, with Councilman Mumpower and Councilman Newman voting "no."

### **RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE A CONSERVATION EASEMENT WITH RIVERLINK AT AZALEA PARK**

Summary: The consideration of a resolution authorizing the Mayor to sign a conservation easement at Azalea Park with RiverLink Inc. for stream bank restoration and protection.

The Parks and Recreation Department and RiverLink, Inc., have been working together to develop a conservation easement in conjunction with the Clean Water Management Trust Fund for approximately 27.09 acres located along the Swannanoa River within the Azalea Park. This particular easement will allow for restoration and rehabilitation for the stream bank along the Swannanoa River. The plan will allow a contractor to perform stream restoration and stabilization measures within the riparian buffer easement area which will include removal of a number of trees, laying back the bank of the river, and providing an extensive landscape plan for vegetation in the disturbed area. Funds for this project are being provided through the Clean Water Management Trust Fund through a grant secured by RiverLink. The overall management of this project will be the responsibility of RiverLink working in conjunction with the City of Asheville. This project will occur without disruption to the existing park features and will allow for continued development of the master plan that was approved by City Council for this park. In addition, this project will not in any way affect the beneficial fill area that is currently being used by the City of Asheville.

Pros:

- This project will stabilize the stream bank along a large portion of the Swannanoa River.
- This project will allow for a conservation easement of approximately 27.09 acres for protection for future generations.
- This stream bank restoration will also assist in future flooding events and assist in minimizing damage downstream from this area.
- This project will also allow for increased protection of fish and wildlife along this stretch.

Cons:

- Construction will result in the removal of a number of very large trees near the bank of the Swannanoa River within the park area.

- Construction will be occurring while the soccer complex is in use, and it will be necessary for protection measures to occur for the safety of all participants.

This project relates to City Council's Strategic Plan in regard to protection and improvement of water quality in the region.

City staff recommends City Council authorize the Mayor to sign a conservation easement between the City of Asheville and RiverLink Inc. within Azalea Park.

There was a brief discussion about the need to discuss this easement prior to placing any permanent restrictions on the property.

Using a map, Parks & Recreation Director Irby Brinson said that the Clean Water Management Trust Fund requirement is that approximately 10% of the land in the easement can be developed. City staff have worked on specifics all the way down to trash cans, picnic tables and paved trails that can be in the area. Approximately 50% of the 27 acres is part of the wetland area existing now in that area. The area protected in the easement follows the river and is 50-feet on each side from the top of the bank of the Swannanoa River. They have put a lot of detail into the discussion in making sure that the protection of the park plan was first and foremost.

Councilman Davis moved to continue this matter until the March 21, 2006, worksession. This motion was seconded by Councilman Newman and carried on a 5-2 vote, with Councilwoman Cape and Councilman Freeborn voting "no."

### **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**

##### **ORDINANCE NO. 3340 - ORDINANCE TO EXTEND THE CORPORATE LIMITS OF THE CITY OF ASHEVILLE TO INCLUDE A HABITAT FOR HUMANITY SUBDIVISION LOCATED OFF OF SAND HILL ROAD**

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 February 14, 2006. That request was granted. On February 14, 2006, City staff requested the public hearing be continued again, with the approval of the applicant, until March 14, 2006. That request was granted.

Mayor Bellamy opened the public hearing at 5:23 p.m.

Urban Planner Julia Cogburn said that this is the consideration of an ordinance to extend the corporate limits of the City of Asheville to include a Habitat for Humanity subdivision (2 lots) located off of Sand Hill Road. This public hearing was advertised on December 30, 2005.

Asheville Area Habitat for Humanity has petitioned the City for the annexation of two lots they own located off of Sand Hill Road (PIN Nos. 9617.16-74-9433 and 9617.16-83-8448) containing approximately 17.24 acres. This area is contiguous to the existing corporate limits and qualifies for annexation by petition as set forth in N. C. Gen. Stat. sec. 160A-31.

The lots are currently vacant, however, the property has been reviewed and approved by the City's Technical Review Committee for a single-family subdivision of 55 lots. The current assessed valuation for this property, according to the Buncombe County tax records, is

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\$200,600.00. The City reviewed the subdivision as its location is within our extraterritorial jurisdiction. Habitat is requesting annexation prior to the construction of the homes in the development.

Pursuant to N. C. Gen. Stat. sec. 160A-31 a public hearing must be held prior to adopting any ordinance for voluntary annexation.

The proposed effective date for this annexation is March 31<sup>st</sup> of 2006.

#### **Pros:**

- .. Provides for the orderly growth of the City and the tax base through the acceptance of contiguous areas into the corporate limits where owners desire annexation.
- .. Allows the City to review and inspect the development of homes in the proposed subdivision.

#### **Cons:**

- .. There will be service costs involved, consisting of street lights, street maintenance, and tips fees for approximately \$4,000 a year and a single one-time capital cost of \$2,500 for the sanitation trash cans for the single-family homes.

This action complies with the 2025 Plan in that it supports the strategy of promoting voluntary annexation of developing

areas and meeting the goal of continued use of the urban development tool of annexation in providing for the orderly growth of the City.

City staff recommends City Council adopt the ordinance annexing the property set forth in the petition.

Mr. Lew Krause, representing Habitat for Humanity, encouraged Council to support this petition and said that they are anxious for the 55 houses to become part of the City.

Mr. Steve Arpin encouraged the City to build compactly and preserve as much of the tree cover as possible when considering development.

Upon inquiry of Councilman Mumpower, Ms. Cogburn said that she believed Habitat requested annexation because they were contiguous to the City limits and they preferred to have inspections, etc. be conducted by the City.

Mayor Bellamy closed the public hearing at 5:27 p.m.

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

Councilman Newman moved for the adoption of Ordinance No. 3340. This motion was seconded by Councilwoman Cape and carried unanimously.

#### **ORDINANCE BOOK NO. 22 – PAGE**

#### **B. PUBLIC HEARING TO CONSIDER A CONDITIONAL USE PERMIT FOR PROPERTY LOCATED AT 509 BILTMORE AVENUE, AND IDENTIFIED AS MISSION HOSPITALS DOGWOOD PROJECT, FOR A PROPOSED ADDITIONAL BUILDING ON 29 ACRES**

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#### **ORDINANCE NO. 3339 - ORDINANCE GRANTING A CONDITIONAL USE PERMIT FOR PROPERTY LOCATED AT 509 BILTMORE AVENUE, AND IDENTIFIED AS MISSION HOSPITALS DOGWOOD PROJECT, FOR A PROPOSED ADDITIONAL BUILDING ON 29 ACRES**

City Clerk Burleson administered the oath to anyone who anticipated speaking on this matter.

City Attorney Oast reviewed with Council the conditional use district zoning process. This process is the issuance of a conditional use permit, which is a quasi-judicial site specific act. At this public hearing, all the testimony needs to be sworn.

After hearing no questions about the procedure, Mayor Bellamy opened the public hearing at 5:29 p.m.

All Council members disclosed that they have visited the site and would consider this issue with an open mind on all the matters before them without pre-judgment and that they will make their decision based solely on what is before Council at the hearing.

City Attorney Oast said that as documentary evidence is submitted, he would be noting the entry of that evidence into the record.

Urban Planner Blake Esselstyn 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. Esselstyn said that this is the consideration of the issuance of a conditional use permit for property located at 509 Biltmore Avenue, and identified as Mission Hospitals Dogwood Project, for a proposed additional building on 29 acres.

He said that The *Asheville City Development Plan 2025* recognizes that the future development of major institutions such as the Mission-St. Joseph Health Center must be considered as an element of planning for Asheville's future. One of the plan's land use goals urges that the City pursue compatible adaptive reuse, redevelopment, and infill development. This project's design, re-using a part of the campus that previously was occupied by another building, exemplifies one kind of compact development encouraged in the smart growth principles.

Another goal of the plan is that the City should enhance its role as western North Carolina's regional medical and education

center, with one explicit strategy being "The City should work with Mission-St. Joseph's Health System in the implementation of the Health System's Master Facilities Strategic Plan." Construction of this facility is part of the Health System's master plan.

One of the goals of the Strategic Operating Plan is increased street and sidewalk connections. This project would enable a future sidewalk extension along McDowell Street.

Regarding recent zoning actions, on March 22, 2005, a conditional use zoning from RM-16 and RS-8 to INST-CUZ was approved for the "Biltmore Gardens" project at Biltmore Avenue and Caledonia road. This project, with a combination of retail, office, and residential uses, is about ¼ mile south of the hospital property being considered.

There is another rezoning application currently under review, which is about the same distance south of the hospital property on McDowell. The 430 McDowell Street rezoning, seeking

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a change from RS-8 to INST, was remanded to the Technical Review Committee (TRC) by City Council on January 24, 2006, and is on their agenda for March 20, 2006, as a conditional zoning request.

This review concerns a proposed project in the interior of the Mission Hospitals campus. The project would involve 219,390 square feet of new construction plus 4,160 square feet of renovation. The facility would provide: a new entrance and waiting area for surgery patients, new operating rooms and support spaces, and 48 intensive care patient rooms. The building would have 5 stories above grade, as well as two stories below grade.

The site is located in an Institutional zoning districts within the corporate limits of the City of Asheville, between Biltmore Avenue and McDowell Street (Attachments to City Exhibit 3 – Location Map & Aerial Map). The primary vehicular access to the building's main entrance would be via the McDowell Street and Victoria Road entrances to the campus. The project would also include a proposed service area on the north side of the building (City Exhibit 4 – Site Plan; City Exhibit 5 – Building Footprint; and City Exhibit 6 – Building Elevations).

Medical centers are a permitted use in the Institutional zoning district. Review for compliance with the development and design standards from Article 11 of the Unified Development Ordinance (UDO) is applied to the area of the property affected by the project.

The applicant has provided analysis of present and projected parking facilities, which indicate that an appropriate number of spaces will be available to meet the needs of the proposed facility.

Concept plans for this project were reviewed and discussed at an informal TRC meeting on June 13, 2005. Comments from that review were addressed and written responses were supplied by the applicant as part of the packet submitted for review.

At their January 18, 2006, formal meeting, the TRC approved the project with the conditions stated in the TRC staff report.

At their February 1, 2006, the Planning and Zoning Commission (P&Z Commission) unanimously recommended approval for the project. The only element of the project discussed at the meeting was the sidewalk requirement along the east side of McDowell Street. The sidewalk is shown in the submitted plans, but the applicant had expressed a desire to not construct the sidewalk until a safe connection is provided through and beyond the tunnel. The P&Z Commission noted the applicant's concern about the safety of a sidewalk that would terminate in an exceptionally tricky location for pedestrians, and added the condition that the sidewalk requirement be waived in the event a suitable and safe alternative cannot be found (Fee-in-lieu would be required if the sidewalk is waived.)

On February 23, 2006, staff from the Engineering and Planning departments met with the applicants about this sidewalk situation. It was agreed that the applicant would prepare the site for the sidewalk shown on the plan, performing the necessary grading and retaining wall work to create a strip of appropriate width and slope. Rather than paving that strip, however, the applicant will leave it covered with topsoil and plantings to discourage (temporarily) its use as a path. The applicant will also pay the fee-in-lieu amount, and, when the sidewalk through the tunnel and north of the tunnel is due to be constructed, the City will complete the paving of that section.

Staff has received no communications from citizens regarding this project.

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City Council must take formal action as set forth in section 7-9-9(c)(4) of the UDO, and must find that all seven standards for approval of conditional uses 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)). Staff's review indicates that all seven standards are met as proposed in the site plan.

1. **That the proposed use or development of the land will not materially endanger the public health or safety.** The proposed project has been reviewed by City staff and appears to meet all public health and safety related requirements. 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 area of the property on which the building would occur is mostly flat and has previously been paved, graded, or built upon. Thus, no undeveloped land or open space would be affected other than the sidewalk area along McDowell Street. The proposed project is thus compatible with the topography and natural features.
3. **That the proposed use or development of the land will not substantially injure the value of adjoining or abutting property.** Staff feels that the proposed project would have no discernible effect on surrounding 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.** The proposed project would be adjacent to other large medical facilities, and would be very much in harmony with the neighboring 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 **Asheville City Development Plan 2025** recognizes that the future development of major institutions such as the Mission-St. Joseph Health Center must be considered as an element of planning for Asheville's future. One of the plan's land use goals urges that the City pursue compatible adaptive reuse, redevelopment, and infill development. This project's design, re-using a part of the campus that previously was occupied by another building, exemplifies one kind of compact development encouraged in the smart growth principles. Another goal of the comprehensive plan is that the City should enhance its role as western North Carolina's regional medical and education center, with one explicit strategy being "The City should work with Mission-St. Joseph's Health System in the implementation of the Health System's Master Facilities Strategic Plan." Construction of this facility is part of the Health System's master plan. One of the goals of the Strategic Operating Plan is increased street and sidewalk connections. This project will facilitate a future sidewalk extension along McDowell Street.
6. **That the proposed use is appropriately located with respect to transportation facilities, water supply, fire and police protection, waste disposal, and similar facilities.** The project's location off Biltmore Avenue and McDowell Street ensures access to major transportation facilities and other services. Transit routes 4, 6, 8, and 12 serve the area, with one route passing immediately in front of the proposed building. In

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addition, technical review from other departments has not revealed any problems for serving the development.

7. **That the proposed use will not cause undue traffic congestion or create a traffic hazard.** The proposed project has been reviewed by the City's traffic engineer and is not expected to cause undue traffic congestion or create a traffic hazard. Only minor changes to the property's entrance and exit from McDowell would occur, primarily to improve pedestrian safety.

#### **Pros**

- Would further goals of City of Asheville comprehensive plan, smart growth policies, and strategic operating plan.
- Could accommodate necessary growth for important regional health system, in keeping with their master plan.
- No apparent opposition.

#### **Cons**

- Likely construction noise and disturbance to neighboring hospital facilities during building process.

Staff recommends approval of the proposed project and Conditional Use Permit subject to the conditions in the TRC staff report, and subject to the February 23, 2006, sidewalk agreement mentioned above.

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

Upon inquiry of Mayor Bellamy, Mr. Esselstyn explained that City departments did not have any concerns regarding traffic. In addition, he said that the project would be complete in the summer of 2008.

Vice-Mayor Jones moved for the adoption of Ordinance No. 3339, granting a conditional use permit for property located at 509 Biltmore Avenue, and identified as Mission Hospitals Dogwood Project, for a proposed additional building on 29 acres, subject to the conditions in the Technical Review Committee staff report and subject to the February 23, 2006, sidewalk agreement. This motion was seconded by Councilman Mumpower and carried unanimously.

#### **ORDINANCE BOOK NO. 22 – PAGE**

#### **C. PUBLIC HEARING TO CONSIDER THE INITIAL ZONING OF VARIOUS PROPERTIES RECENTLY ANNEXED ALONG LONG SHOALS ROAD**

#### **ORDINANCE NO. 3342 - ORDINANCE ZONING VARIOUS PROPERTIES RECENTLY ANNEXED ALONG LONG SHOALS ROAD**

Mayor Bellamy opened the public hearing at 5:36 p.m.

Urban Planner Julia Cogburn said that this is the consideration of an ordinance initially zoning various properties recently annexed along Long Shoals Road. This public hearing was advertised on March 3 and 10, 2006.

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She said that the *Asheville City Development Plan 2025* identifies Long Shoals Road as a connecting corridor and shows the intersection of Long Shoals and I-26 as a Regional Node. According to the plan, the purposes of the connecting corridor is to "...preserve the flow of traffic along major thoroughfares that connect compact centers of urban development. Connecting corridors are characterized by land uses such as offices and apartments, and should not include regional shopping destinations." The plan further calls for the encouragement of transit supportive residential density (8-16 units per acre minimum) along and adjacent to major corridors. The HB zoning proposed at the intersection of Long Shoals and I-26 supports the regional node concept.

A number of recent zonings related to annexation in Biltmore Park (2004) and a voluntary annexation on Long Shoals Road (2005) have taken place. A conditional use zoning application was approved in early 2005 (to CI) for a property just east of this area.

The property presented to Council for initial zoning is property annexed by the City of Asheville effective December 31, 2005. The properties (a total of 55 parcels) are located along Long Shoals Road and Overlook Roads. The land uses on these property are varied from commercial and institutional to multi- and single-family residential. Surrounding land uses are also similarly varied. The zoning in the area (both City of Asheville and Buncombe County – Limestone Zoning) is a mix of commercial (near the intersection with I-26), institutional (properties surrounding and including the schools in the Overlook area) and residential (the properties between the I-26 and Overlook nodes).

The initial staff recommendation for the entire annexation area was presented to the Planning and Zoning Commission at a meeting on January 4, 2006. At this meeting the Commission accepted staff recommendation on all but thirty-five (35) of the properties south of Long Shoals Road that staff had recommended for RM16 zoning. The purpose of the continuation was to allow the property owners in this area a greater chance to review their options under the City's ordinances.

The City's Planning and Development staff held an informal meeting with the property owners in the area on January 19, 2006, to discuss the zoning of these thirty-five (35) properties. At that time, staff presented options and explained the process and relevant ordinance information as follows:

#### **OPTIONS - WITH PROS AND CONS FOR EACH**

#### **HB (HIGHWAY BUSINESS)**

#### **Pros**

- .. Consistent with the zoning pattern and development of properties closer to the interstate and at intersection of Long Shoals with Hendersonville Road.
- .. Provides property owners with greatest flexibility of use.
- .. Provides land for services needed by the growing residential population in the area.

**Cons**

- .. Promotes commercial strip development of Long Shoals Road.
- .. Not as compatible with abutting residential properties as RM16 or lower intensity commercial/office districts.
- .. May allow consolidation of properties for big box development.
- .. May create capacity problems for newly widened road.

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**CBII (COMMUNITY BUSINESS II)**

**Pros**

- .. More consistent in use and scale with commercially zoned properties to the east than HB development would be.
- .. Provides a “cap” on building size.
- .. More appropriate scale with surrounding development than Highway Business.
- .. Provides property owners with large degree of flexibility in use.

**Cons**

- .. Promotes commercial strip development of Long Shoals Road.
- .. Not as compatible with abutting residential properties as RM16 or lower intensity commercial/office districts.
- .. 45,000 square foot building size maximum allows for a fairly large building.

**CBI (COMMUNITY BUSINESS I)**

**Pros**

- .. More consistent in use and scale with commercially developed properties to the east than HB development would be.
- .. Provides a “cap” on building size.
- .. More appropriate scale with surrounding development than Highway Business or CBII.

**Cons**

- .. Promotes commercial strip development of Long Shoals Road.
- .. Not as compatible with abutting residential properties as RM16.
- .. 12,000 square foot building size limit might promote the development of convenience stores and small, fast food (non-drive thru) restaurants.

**OB (OFFICE BUSINESS)**

**Pros**

- .. More consistent in use and scale with commercially developed properties to the east than HB development would be.
- .. Provides a more reasonable “cap” on building size than HB, CBII, or CBI.
- .. More appropriate scale and uses with surrounding development than HB or CBII.
- .. May not result in commercial strip development of Long Shoals Road.
- .. Supports the *Asheville City Plan 2025* purposes for connecting corridor development.

**Con**

- .. Not as compatible with abutting properties as RM16.
- .. Residential density is lower than allowed in RM16.
- .. Flexibility (in development) for current property owners is more limited than HB or CBII.

**RM16**

**Pros**

- .. Supports the *Asheville City Plan 2025* purposes for connecting corridor development.
- .. Is compatible with the zoning patterns (both City of Asheville and Buncombe County) in the area.
- .. Prevents the development of strip commercial along another Asheville corridor.

**Cons**

- Flexibility (in development) for current property owners is limited to residential.

At their meeting on February 1, 2006, the Planning and Zoning Commission considered the aforementioned options for the

thirty-five (35) parcels to the south of Long Shoals Road.

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They recommended (6-1; Byers opposed) that these parcels be zoned CB II. Mr. Byers supported an OB designation for these properties.

The Planning and Zoning Commission recommends approval of the proposed initial zoning of the properties shown on the proposed map and known as the Long Shoals Road Annexation Area. Staff initially recommended RM16 zoning for the thirty-five (35) properties that were the subject of the continued Planning and Zoning Commission discussion. However, it is clear that the Commission supports a wider range of uses than just multi-family (the Commission unanimously supported either CBII or OB zoning for these properties) based on public input received at two public hearings on this matter.

Senior Pastor James V. King of the Family of Faith Fellowship, formerly Asheville Pentecostal Holiness Church, requested CB II zoning of the 3 parcels at 213 Long Shoals Road, for the following reasons: (1) the purchase of road right-of-way reduced the size of their property to approximately 3.5 acres which hinders their ability to expand their facilities for future growth; (2) some expenses have accrued on their present property and they have spent a considerable amount on new property for relocation; (3) the value of this property on Long Shoals was set at commercial by two appraisals – one 5 years ago and one 2 years ago. The State also negotiated a settlement with us on the right-of-way at commercial rates. Based on this information we planned to move forward, but if those funds are not available from a commercial sale we would probably not be able to afford the move; (4) this decision is a common consensus among the entire church body, not just a few; and (5) qualified individuals have deemed the present 10,300 sq. ft. building on this property suitable for a variety of commercial applications with very little renovation necessary. He presented Council with a petition, containing 80 signatures, requesting 213 Long Shoals Road be zoned commercial, preferably Highway Business. However, the signers of the petition are now in support of the Planning & Zoning Commission's recommendation of CB II.

Mr. Curtis Ensley, representing 31 out of 34 parcels property owners, requested Community Business II zoning for their parcels, which the Planning & Zoning Commission recommended. Some reasons are (1) CB II is in keeping with the surrounding area and zoning on the south side of Long Shoals Road; (2) property owners are in favor of CB II zoning; (3) property owners are trying to be proactive and plan ahead to control our community and continue the tradition of being good stewards of this land for over 50 years; (4) CB II will give flexibility to have mixed use and consistent zoning throughout the 34 parcels without forcing individual property owners to come to Council on a parcel by parcel basis; (5) CB II allows commercial, offices, and residential in a planned manner to provide for pedestrian friendly areas and greenways; (6) the heavy concentration of surrounding residential have needs for goods, services and jobs in this area without having to make a two-way drive across Long Shoals Road to an already busy Hendersonville Highway; and (7) minimal impact on surrounding properties since it is bordered by the south by Progress Energy and on both ends by existing Highway Business and CB II. He presented Council with a petition, containing 26 signatures, requesting Highway Business, which he said was prepared for the February 1, 2006, Planning and Zoning Commission meeting. However, at the February 1, 2006, meeting, the signers of the petition are now in support of the Planning & Zoning Commission's recommendation of CB II.

Mr. Charles Worley spoke in support of the Planning & Zoning Commission recommendation of CB II.

Mayor Bellamy closed the public hearing at 5:48 p.m.

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Upon inquiry of Councilman Newman, Planning & Development Director Scott Shuford explained how staff looks at the zoning pattern and how it might work with the relationship of the road.

In response to Councilwoman Cape about looking for secondary access roads to take traffic off the main corridor, Mr. Shuford felt that was closer related to a thoroughfare plan that a local government might adopt to look for ways to encourage, as development occurs, connecting streets to be built. That is in our 2025 Plan and staff could focus on that if that becomes a priority for Council. He felt we should do that City-wide. He did say it would be difficult to get significant traffic distribution along Long Shoals Road off of the roadway because of the depth of the properties with regard to the lake to the south and the established development pattern to the north.

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

Councilman Mumpower moved for the adoption of Ordinance No. 3341, adopting the Planning & Zoning recommendation. This motion was seconded by Vice-Mayor Jones.

There was discussion initiated by Councilman Freeborn about possibly changing the Highway Business zoning district to Commercial Business II. Mr. Shuford explained that those areas already have a development pattern that has Highway Business type development on it. Even though the existing development would conform to the Community Business II development, it would make some of the uses non-conforming and since there was no objection to the Highway Business designation by the owners at the Planning & Zoning Commission meeting, he felt Council may want to let those owners know of the potential zoning change prior to taking action on it.

Councilman Freeborn felt that by designating property Highway Business in that area, that we are contributing to congestion along that road more so than if it was a more limited usage of that property. Therefore, he moved to amend the original motion to change the rezoning of the Highway Business zoning district to Community Business II District. This motion failed due to lack of a second.

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

#### **ORDINANCE BOOK NO. 22 – PAGE**

#### **D. PUBLIC HEARING TO CONSIDER AN APPEAL FROM AN ORDER OF THE BUILDING SAFETY DEPARTMENT ORDERING THE BUILDING LOCATED AT 1500 TUNNEL ROAD (FORMER SITE OF DAYS INN MOTEL), VACATED, CLOSED AND REPAIRED**

Mayor Bellamy said that on March 13, 2006, a First Motion to Continue was received from Mr. David W. Cartner, attorney for the owners. Said motion requests an extension of time within which to investigate the facts, prepare an answer or otherwise respond to the City's Findings of Fact/Order and Appeal thereto. Therefore, Vice-Mayor Jones moved to continue this public hearing until March 28, 2006. This motion was seconded by Councilman Davis and carried on a 6-1 vote, with Councilman Freeborn voting "no."

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

#### **A. RESOLUTION NO. 06-56 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A CONTRACT WITH WOOLPERT INC. TO ASSIST THE CITY OF ASHEVILLE IN UPDATING THE STORMWATER, FLOODPLAIN AND EROSION CONTROL ORDINANCES**

City Engineer Cathy Ball said that this is the consideration of a resolution authorizing the City Manager to sign a contract with Woolpert Inc. for an hourly rate not to exceed the amount of \$74,000 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.

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.

Staff has reviewed the original scope of work and reduced the amount of time the consultant will dedicate to working with the stakeholders group. Additionally staff has removed the task of developing design standards from the contract. These changes have resulted in a reduction in the contract from approximately \$90,000 to \$74,000.

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.

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.

City staff requests that City Council authorize the City Manager to sign a contract with Woolpert Inc. for an hourly rate not to exceed an amount of \$74,000 to assist the City of Asheville in updating the Stormwater, Floodplain and Erosion Control Ordinances.

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

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Vice-Mayor Jones moved for the adoption of Resolution No. 06-58. This motion was seconded by Councilman Davis.

In response from Councilman Newman, Ms. Ball said that City staff needs the consultants for their technical expertise.

Ms. Ball responded to Councilman Mumpower's concern about spending \$74,000 when he felt that City staff should be able to take a strong look at the existing federal and state models.

In response to Councilwoman Cape, Ms. Ball said that these ordinance revisions will not only cover the City of Asheville, but possibly the extraterritorial jurisdiction area as well.

City Manager Jackson said that what this offers Asheville residents is that we are not looking at an off-the-shelf answer for Asheville. We are asking specialists in the field, who are familiar with the best practices, to look at our specific terrain, our unique grades and slopes, and our unique development patterns to make sure Council has the best advice possible.

Vice-Mayor Jones said that we want the best for the community and that we have a fund set aside to do this very work.

In response to Councilman Freeborn, Ms. Ball said that she does have confidence in her staff, but there is no one that has the specialty in this field, without doing a lot of research and dedicating a lot of time. However, that would indirectly cost the City as much as hiring the consultant.

At 6:26 p.m., Vice-Mayor Jones called the question.

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

**RESOLUTION BOOK NO. 29 – PAGE 406**

**B. ORDINANCE NO. 3342 - ORDINANCE DECLARING "SNIPE" SIGNS TO BE NUISANCES, AND AUTHORIZING REMOVAL**

City Attorney Oast said that said that this is the consideration of a revised ordinance regulating snipe signs.

During Council's consideration of this ordinance on February 28, several questions were raised, and the matter was referred to the Public Safety Committee. In response to the questions raised, as follows:

Regarding will the ordinance apply to non-commercial signs, yes. It is legally difficult to distinguish between signs based on content. A sign in the right-of-way / safety zone is no less a visual distraction / nuisance because it advertises for a lost dog or a yard sale than a closing out sale at a discount store.

Regarding whether the new ordinance will apply to activities such as neighborhood protests expressed on bed sheets hung from trees or houses, yes, if they are located in the right-of-way / safety zone. However, our Code allows for non-commercial

messages to be displayed in all zoning classifications, if they comply with the ordinance requirements for that district. This allows signs, but bed sheets may not comply with applicable size limitations.

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He suggested the following solutions: Limit applicability of snipe sign ordinance (and summary removal) to non-residentially zoned areas only. This is where the majority of snipe signs are posted, and where the traffic safety issue is most critical. Other non-nuisance sign code provisions would continue to apply to snipe signs in residential areas.

The question regarding if political signs are covered, he responded yes, if they are in the right-of-way / safety zone. He misspoke at Council's February 28 meeting when he said that political signs were permitted in the right-of-way (he confused them with governmental signs). However, political signs are subject to certain time limitations.

With regard to whether this will increase our budget/resource burden, he responded no. Snipe signs are already illegal and subject to removal, but the process for dealing with them is cumbersome. The proposed ordinance does not create a new regulation, or give us something else to enforce. Rather, it gives us an additional less cumbersome tool to enforce the ordinance. Rather than increasing the enforcement burden, it should make things easier for our code enforcement staff to effectively address a temporary, but nettlesome problem.

The Committee indicated that the issues were addressed satisfactorily, and Planning Director Scott Shuford provided some additional clarification with respect to the logistics of implementing the ordinance.

The Committee recommended that the ordinance be revised to limit its application to non-residential areas only, and be sent back to Council. Accordingly, he have revised the ordinance to reflect that the snipe sign problem is particularly acute in commercial areas, and revised the definition of snipe sign so that it does not apply to signs in residentially zoned areas. Such signs would still be subject to the sign regulations in the Unified Development Ordinance, but would not be classified as nuisance under the proposed ordinance.

In the coming months, staff will do some further work to identify the corridors where the problem is most acute, and may request some additional revisions based on that work.

Considerations:

- Revision restricting ordinance application to non-residential areas.

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

He suggested the definition be amended so that it does not include signs affixed to kiosks, bulletin boards or other structures permitted or constructed by the City and intended for community use.

City Attorney Oast said that some further narrowing of the ordinance may be called for because our code enforcement staff has identified not just the commercial areas but specific corridors where the signs are a particular problem. He would like to ask Council to adopt this ordinance, with the definition amended, and direct staff to come back to Council at some point to report on the progress of how they are doing with the snipe sign ordinance and perhaps ask that it be narrowed so that it only applies to certain corridors.

Ms. June Patterson, representing Stop the Signs, spoke in support of the ordinance showing letters of support from the N.C. Dept. of Transportation, Progress Energy, Coalition of Asheville Neighborhoods, Quality Forward, etc.

Councilman Mumpower was concerned that political signs were not specifically mentioned in this ordinance as being prohibited in the right-of-ways. City Attorney Oast said that there is a specific provision in the sign ordinance (Section 7-13-2 (d) (6)) that deals with the

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placement of political signs. Political signs are not allowed in the right-of-way, and if they are, they would be subject to the same snipe sign provisions as any other sign. He reiterated that any sign that is not specifically permitted to be displayed in the right-of-way is prohibited.

When Councilman Mumpower felt the snipe ordinance should specifically reference political signs, City Attorney Oast felt that if we start referring to political signs, we start distinguishing on the basis of content, which is a legal problem. He said we can

be more specific in the sign ordinance that political signs are not permitted in the right-of-way.

Mayor Bellamy felt it was important to educate political candidates about these changes, which will be enforced. In addition, she asked that the snipe ordinance be well publicized to advise the public about the changes and strict enforcement as well.

In response to Vice-Mayor Jones about the public taking down signs, City Attorney Oast said that this does not deputize anyone to go out and remove a sign they think is illegal. The issues the City would run into is that they might be construed as agents of the City with attendant liability concerns or they might be trespassing on someone's property. We are hoping that this enables our Code Enforcement Officers to be more efficient in how they do their jobs. We are continuing to explore ways to allow community groups to help us out on this and we will advise Council when we have gotten there.

Councilwoman Cape asked the City for a commitment to place more kiosks and more information areas for the community to communicate with each other.

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

Councilman Mumpower moved for the adoption of Ordinance No. 3342, with the definition being amended so that it does not include signs affixed to kiosks, bulletin boards or other structures permitted or constructed by the City and intended for community use. This motion was seconded by Vice-Mayor Jones and carried unanimously.

#### **ORDINANCE BOOK NO. 22 – PAGE**

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

##### **A. RESOLUTION NO. 06-57 - RESOLUTION AMENDING THE MINORITY BUSINESS PLAN IN ORDER TO UPDATE THE RECENT CHANGES TO THE MINORITY BUSINESS PROGRAM**

Minority Business Director Brenda Mills said that this is the consideration of a resolution amending the Minority Business Plan in order to update the recent changes of the Minority Business Program.

In May of 1998, City Council adopted the Asheville-Buncombe Minority Business Plan. The Plan has been amended five times: (1) November 1998 to expand participation in the Mentor-Protégé Program; (2) December 1999 to add the 72-hour delay requirements for "good faith efforts; (3) December 2001 to expand certification to two years; (4) October 2002 to reduce the Minority Business Commission from 13 to 11 members and provide for clarification of the grievance process in the Plan; and (5) September 2004 to make administrative changes and updates to the Plan.

At their meeting on December 1, 2005, the Minority Business Commission recommended that the Plan be amended to reflect the recent changes of the Minority Business Program, which

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is no longer a joint agreement between the City of Asheville and Buncombe County but solely managed by the City of Asheville as of October 2005. Ms. Mills reviewed the substantial changes with Council.

City staff recommends City Council adopt the resolution amending the Minority Business Plan.

Ms. Mills responded to various questions from Council, some being, but are not limited to: why did Buncombe County withdraw from the joint program; did Buncombe County equally contribute monetarily to the program; is Buncombe County still working with minority businesses; what did the City accomplish this last year regarding reaching our goals; what is the Minority Business Program's budget; how is the City doing with their stated goals vs. the actual performance; what percentage of our overall business in the City is invested in construction vs. procurement and professional services; when was the last disparity study performed;

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

Vice-Mayor Jones moved for the adoption of Resolution No. 06-57. This motion was seconded by Councilman Freeborn.

Councilman Mumpower felt that the City is consistently missing our goals by dramatic proportions. He hoped that over the next year, Council will be shown some progress in our goals or advise Council on how those goals can be achieved.

Ms. Mills explained that when the goals were set for the City, it was through the disparity study, so you can't do a market study just for the City and Buncombe County. You have to use the market at wherever you buy goods and services – you may be comparing goods and services from Chicago, etc. A lot of those goals are outgrown for Western North Carolina. She felt the City is doing an excellent job of opening access to this community of how to do business with the City and County.

Ms. Mills said that she provide Council with the cost of a new disparity study and a report on exactly what the City is buying so Council has a good benchmark as they make policy.

After a brief discussion initiated by Councilwoman Cape in the declaration of policy, City Attorney Oast said that he would review the law with respect to the policy statement and will change if possible.

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

**RESOLUTION BOOK NO. 29 – PAGE 407**

**B. RESOLUTION NO. 06-58 - RESOLUTION AUTHORIZING THE CITY MANAGER TO CONTRACT WITH HUNTLEY CONSTRUCTION COMPANY INC. FOR CONSTRUCTION OF THE FAIRVIEW ROAD WATER LINE**  
**ORDINANCE NO. 3343 - BUDGET AMENDMENT FOR CONSTRUCTION OF FAIRVIEW ROAD WATER LINE**

Assistant City Engineer John Echeverri said that this is the consideration of a resolution authorizing the City Manager to sign a contract with Huntley Construction Company, Inc., in the

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amount of \$1,054,499, for the project known as Fairview Road Water Line Replacement and approval of a budget amendment, in the amount of \$1,083,963, to provide funding for this project.

This project consists of the installation of approximately 8,640 linear feet of eight-inch diameter water line and related appurtenances.

The Engineering Department received and publicly opened bids on Thursday, February 2, 2006, at 2:00 p.m. Four (4) bids were received from Steppe Construction Co., Buckeye Construction, Buncombe Construction and Huntley Construction in the amounts of \$1,315,906.80, \$1,103,476.00, \$1,056,800.39 and \$1,054,499.00, respectively. After a thorough review of the bid documents by the Engineering Department and the Office of Minority Affairs, Huntley Construction Company, Inc., was found to be the lowest responsible bidder with a total bid of \$1,054,499.

This project totaling \$1,083,963 for construction and inspections will be funded in the Water Capital Projects Fund. \$759,567 which is currently budgeted in In-Lieu of City Taxes in the FY 05/06 Water Fund Budgeted will be transferred to the Water Capital Projects Fund. The remaining \$324,396 will be reprogrammed from the following deleted or obsolete projects in the Water Major Capital Projects Fund. NCDOT Hwy 151 and NCDOT 70/74 were completed below NCDOT's estimate. The EPA Grant (for an Emergency Response Plan) and Pesticide Mixing Stations Project were completed below our engineer's estimate. The Master Plan Project (for Water Line Oversizing) is being deleted.

Huntley Construction Company, Inc., has performed several projects of this nature in the past in a satisfactory manner.

The construction time for this project is identified as 120 calendar days in the contract documents. The contractor will be required to pay the sum of \$250.00 as liquidated damages for each and every calendar day that he shall be in default after the time stipulated in the contract.

Considerations of adopting a resolution authorizing the City Manager to execute this contract are as follows:

- The execution of this contract will allow the City of Asheville Water Resources Department to continue upgrading old and small diameter water mains in the water system;
- 
- The bid amount of \$ 1,054,499.00 for the construction of the Fairview Road Water Line Replacement is equitable and

reflects the increase in market prices experienced by the piping industry.

- Replacement of this water line will enhance domestic and fire protection service for a service area extending from Sweeten Creek Road to Bleachery Boulevard, along Fairview Road. Construction of this sewer line is in line with Goal # 1 under the Natural and Built Environment focus area of the Strategic Operating Plan of the City of Asheville.
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- The only foreseeable disadvantage of adopting a resolution authorizing the City Manager to execute this contract is the temporary land and traffic pattern disturbances along the proposed construction corridor.

City staff recommends that City Council adopt a resolution authorizing the City Manager to execute a contract with Huntley Construction Company, Inc., in the amount of \$ 1,054,499.00,

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for the project known as Fairview Road Water Line Replacement as well approve a budget amendment to provide funding for this important project.

City Manager Jackson said that he has asked the Chief Financial Officer to go through all of the water capital accounts and rather than bring Council these reallocations piece-meal, he would like a comprehensive review of all the projects. Where we have projects that are completed, the available funds should move into a capital reserve for Council to reallocate or to remain in that reserve for these types of purposes.

Mayor Bellamy said that a lot of residents will be impacted as a result of this project and she instructed City staff to do a special outreach to the citizens, including the phone system, newspaper and television. In addition, she instructed staff to make sure that the contractor is well aware of the need to complete the work within the 120 days.

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

Councilman Mumpower moved for the adoption of Resolution No. 06-58. This motion was seconded by Councilwoman Cape and carried unanimously.

#### **RESOLUTION BOOK NO. 29 – PAGE 408**

Councilman Mumpower moved for the adoption of Ordinance No. 3343. This motion was seconded by Councilwoman Cape and carried unanimously.

#### **ORDINANCE BOOK NO. 22 – PAGE**

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

Councilman Mumpower thanked groups and individuals for their work and contributions on the Top-A-Stops

Mayor Bellamy urged people in our community to keep Asheville clean. She invited the community to join with the City in a community clean-up event in cooperation with the N.C. Dept. of Transportation and the Chamber of Commerce. She would advise the public when the dates and times are set,

Upon inquiry of Councilman Davis regarding the number of people who are damaging their cars due to traffic islands, City Manager Jackson said that the Chief of Police and Traffic Engineer are putting together a report to bring back to Council on traffic calming, their observations on what it has and has not accomplished, and practices with other jurisdictions. It was the consensus of Council that the City Council Public Safety Committee review this report.

Councilwoman Cape felt the City should be involved in a community slow-down effort.

Upon inquiry of Councilman Newman, Vice-Mayor Jones, Chair of the Boards & Commissions Committee, said that her Committee will be discussing possible consolidation or dissolution of existing committees.

The following claims were received by the City of Asheville during the period of February 24 – March 2, 2006: John Madden (Streets), Larry Ray/Mission Hospital (Police) and Ashley St. Martin (Fire). These claims have been referred to Asheville Claims Corporation for investigation.

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

Mr. Gene Hampton felt City Council should establish a committee to assure the achievement of quality public education in Asheville.

Ms. Karen Snow, resident at 346 Reed Street, said that over the past 20 years, permitted development of commercial properties all around the affordable housing neighborhood, combined with the lack of upgrades to the City storm water drainage system in the area, has resulted in a serious damaging impact to the homes on Reed Street. She requested Council (1) to instruct City staff to re-attach and stabilize the section of pipe that has become disconnected behind her house at 346 Reed Street; and (2) review the situation concerning the current project recently permitted above this block of Reed Street. Mayor Bellamy asked that the City Manager and City Attorney report back to Council in an open session.

Mr. Zev Friedman talked about the need for improved bicycle infrastructure planning. It was the consensus of Council to refer this matter to the City Council Public Safety Committee and instructed the City Manager to provide Mr. Friedman with some existing information.

Mr. Steve Arpin talked about sustainable development, especially land use planning, compact building with walkable distances and green spaces in the city as a pattern of development that is a wise alternative to urban sprawl. Mayor Bellamy said that a task force is being formed and as the City moves forward that applications for that Task Force will be sought.

Mr. David Herbert talked about the need for aggressive enforcement of the stormwater ordinance.

**VIII. ADJOURNMENT:**

Mayor Bellamy adjourned the meeting at 7:56 p.m.

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CITY CLERK

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MAYOR