

Tuesday, - March 28, 2006 – 4:00 p.m.

Special Meeting

Present: Mayor Terry M. Bellamy, Presiding; Councilwoman Robin L. Cape; Councilman Jan B. Davis; Councilman Bryan E. Freeborn; Councilman Brownie W. Newman; City Manager Gary W. Jackson; and City Attorney Robert W. Oast Jr.

Absent: Vice-Mayor Diana Hollis Jones; Councilman R. Carl Mumpower (hosting Asheville-Buncombe County Drug Commission Program)

At 4:00 p.m., Councilman Freeborn moved to go into closed session in order to continue the closed session discussion on the following item from the March 21, 2006, meeting: To consult with an attorney employed by the City about matters with respect to which the attorney-client privilege between the City and its attorney must be preserved, including litigation involving the following parties: City of Asheville and State of North Carolina. The statutory authorization is contained in G.S. 143-318.11(a)(3). This motion was seconded by Councilman Davis and carried unanimously.

At 4:50 p.m., Councilman Newman moved to come out of closed session. This motion was seconded by Councilman Davis and carried unanimously.

Tuesday – March 28, 2006 - 5:00 p.m.

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 (arrived at 5:26 p.m.); 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 North Buncombe High School Color Guard led City Council in the Pledge of Allegiance.

INVOCATION

Councilman Newman gave the invocation.

I. PROCLAMATIONS:

A. PROCLAMATION PROCLAIMING APRIL, 2006, AS “CHILD ABUSE PREVENTION MONTH”

Mayor Bellamy read the proclamation proclaiming April 2006 as "Child Abuse Prevention Month" in the City of Asheville. She presented the proclamation to Mr. Bill McGuire, Director of Child Abuse Prevention Services Inc., who briefed City Council on some activities taking place during the month.

II. CONSENT AGENDA:

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City Attorney Oast requested that Consent Agenda Items “D” and “F” be removed from the Consent Agenda for further clarifications.

City Manager Jackson requested that Consent Agenda Item “K” be removed from the Consent Agenda.

Mayor Bellamy requested Consent Agenda Item “M” be removed from the Consent Agenda for an individual vote due to a conflict of interest.

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

B. RESOLUTION NO. 06-60 - RESOLUTION OF INTENT TO CLOSE AN UNOPENED RIGHT-OF-WAY OFF

CARROLL AVENUE AND SETTING A PUBLIC HEARING ON APRIL 25, 2006

Summary: The consideration of a resolution of intent to close an unopened right-of-way off of Carroll Avenue and setting a public hearing for April 25, 2006.

N. C. Gen. Stat. sec. 160-299 grants cities the authority to permanently close streets and alleys.

Pursuant to this statute, Mr. Martin Barnes of Brooks & Medlock Engineering, PLLC representing the property owner Farwood Properties, Mike Farmer, President of Farwood Properties, has requested the City of Asheville to permanently close to the public an unopened right of way off of Carroll Avenue as shown on Plat Book 6, Page 6, Block "C" in the Buncombe County Register of Deeds.

Public Works Department staff has researched and determined that this unopened right-of-way is not a City maintained street. Closure of this unopened right-of-way will not deny any of the abutting properties a reasonable means of ingress or egress. There is one parcel that abuts this section of right-of-way, owned by Farwood Properties. It is identified by PIN No. 9648.07-68-1457.

Pros:

- The closure allows the property to be used to its maximum potential.
- There will be no future compromise of ingress/regress to other property

Cons:

- In consideration of the location of the unopened right-of-way, staff can find no potential challenges regarding the closure of the alley.

City staff recommends that City Council adopt the resolution setting a public hearing for April 25, 2006, to close the unopened right-of-way off Carroll Avenue.

RESOLUTION BOOK NO. 29 – PAGE 410

C. RESOLUTION NO. 06-61 - RESOLUTION AUTHORIZING CRAFTSMAN CIRCLE AND A PORTION OF ROLLING TERRACE IN CHUNNS COVE TO BECOME PUBLICLY MAINTAINED STREETS

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Summary: The consideration of a resolution to accept Craftsman Circle and a portion of Rolling Terrace in Chunns Cove as a City maintained streets.

Section 7-15-1(f)-4.a requires that streets dedicated for public uses be accepted by resolution of City Council.

Craftsman Circle and a portion of Rolling Terrace are developer constructed streets that have an average paved width of 22 feet and a length of 0.29 and 0.06 miles respectively for a total length of 0.35 miles. The City of Asheville staff inspected the construction of these roadways and certified they were built in accordance with City standards.

Following City Council's approval of this resolution, these streets will be added to the official Powell Bill list. A two-year warranty, from the time of Council acceptance, will be required by the developer to cover major failures in the roadway.

City staff recommends City Council adopt the resolution accepting Craftsman Circle and a portion of Rolling Terrace as a City maintained streets.

RESOLUTION BOOK NO. 29 – PAGE 411

D. RESOLUTION ACCEPTING BLEACHERY BOULEVARD IN EAST ASHEVILLE AS A CITY MAINTAINED STREET

This item was removed from the Consent Agenda for further clarification.

E. RESOLUTION NO. 06-63 - RESOLUTION AUTHORIZING THE MAYOR TO ACCEPT DONATION OF REAL PROPERTY ON SWANNANOA RIVER ROAD FOR PARK AND GREENWAY AND NAMING SAID PARK

“RIVERBEND PARK – A MEMORIAL TO OFFICER JEFF HEWITT”

Summary: The consideration of a resolution authorizing the Mayor to accept a donation of real property on the Swannanoa River from Horne Development River Bend LLC (Horne), for the City of Asheville parks and greenway system and naming the park: “Riverbend Park ~a memorial to Officer Jeff Hewitt~”.

The City of Asheville is interested in establishing and maintaining parks and greenway systems throughout the corporate limits of the City of Asheville and in particular along the Swannanoa River. Horne has offered to donate an approximately 11± acre parcel on the Swannanoa River Swannanoa River (PIN Nos. 9658.15-54-1298; portion of 9658.14-44-8292; portion of 9658.15-53-8225; and portion of 9658.15-53-9371) to become part of the City’s parks and greenway system.

The subject property lies between Swannanoa River Road and the Wal-Mart parking lot with most of the property between the river and the parking lot. It extends along the river bank from the I-240 right of way in an east then southeast direction to a point about It is level to gently sloping and follows a natural bend in the river making it an attractive location for recreational purposes. It is grassy and the bank of the river in this area for the most part has a steep approach to the water. The property is improved with a paved trail and picnic tables and is easily accessed from the parking lot.

The positive aspects of the donation are:

- The improvements to the park have been installed by the donor.
- The proposed park is consistent with the greenway master plan.

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- It will preserve in perpetuity green space along the river as a buffer to the developed area.
- It is an efficient use of resources both public and private, because the City will own property best suited to the greenway while property appropriate to the development will remain in private ownership.
- The greenway was a requirement of the site development approval by Council.

The negative aspects are:

- The City will incur the cost of maintaining the park at an approximate cost of \$7,500 per year
- Land will be removed from the tax base at an estimated tax value of \$185,600.

We have on file an Environmental Site Assessment and a copy of a “no further action” letter issued by the N. C. Department of Environmental and Natural Resources. A preliminary survey has been completed and final revisions are in progress. The Parks and Recreation staff have reviewed the proposed donation and found that the property is appropriate for the parks and greenways system.

This action ties in with City Council’s Strategic Operating Plan in the Focus Area: Natural and Built Environment, Goal 1, Objective C, Task #1 – Require new development projects to dedicate easements for greenways included in the City’s Greenway Master Plan.

City staff recommends City Council adopt the resolution authorizing the Mayor to accept the donation of real property from Horne and naming the park: “Riverbend Park ~a memorial to Officer Jeff Hewitt~”.

RESOLUTION BOOK NO. 29 – PAGE 415

F. RESOLUTION APPOINTING OFFICERS OF PINE PROPERTIES INC.

This item was removed from the Consent Agenda for further clarification.

G. RESOLUTION NO. 06-65 - RESOLUTION APPOINTING MAGDALEN BURLESON AS CITY CLERK ON AN INTERIM BASIS

Summary: The consideration of a resolution appointing retiring City Clerk Maggie Burleson as City Clerk, and a resolution authorizing the City to enter into a contract with Ms. Burleson for that purpose.

Current City Clerk Maggie Burleson is retiring effective March 31, 2006. Council has not selected her replacement, but is in the process of doing so. However, there will be a continuity gap between Ms. Burleson’s retirement date, and the date when the

new clerk starts.

North Carolina law, N.C.G.S. 160A-171, provides that "there shall be a city clerk" to perform a certain designated functions, so the office should not remain vacant. At Council's request, Ms. Burleson has consented to continue as clerk in an interim capacity until the new clerk is on the job. She has agreed to do this at her current compensation, plus an additional amount to cover costs for the City's health insurance, previously part of the standard benefits package.

The first resolution appoints Ms. Burleson as City Clerk on a contracted basis, effective March 31, 2006, at 5:00 p.m., until the new city clerk is on the job.

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The second resolution authorizes the Mayor to sign a contract with Ms. Burleson setting out the terms and conditions of her employment as City Clerk on an interim basis.

The appointment and the contract are both terminable at the will of Council; however, the contract contains some provisions for notice of any premature termination. The contract also contemplates that Ms. Burleson may be retained in a consulting capacity even after the new clerk is on the job, but any such service would be pursuant to a separate agreement.

If Council approves of the appointment of Ms. Burleson as city clerk on a contracted, interim basis, adoption of the resolutions is recommended.

RESOLUTION BOOK NO. 29 – PAGE 417

H. RESOLUTION NO. 06-66 - RESOLUTION AUTHORIZING THE MAYOR TO SIGN A CONTRACT WITH MAGDALEN BURLESON TO SERVE AS CITY CLERK

Summary: See Consent Agenda Item "G" above.

RESOLUTION BOOK NO. 29 – PAGE 418

I. RESOLUTION NO. 06-67 - RESOLUTION ESTABLISHING THE TERMS OF THE ECONOMIC DEVELOPMENT ADVISORY COMMITTEE

Summary: The consideration of a resolution establishing terms of Economic Development Advisory Committee

In 2002, the City Council adopted the Sustainable Economic Development Strategic Plan, and established a citizen-led task force for providing the expertise of the Plan, and established an initial duration the task force of 3 years. In May of 2003, the task force was reauthorized for an additional two year period. In September of 2003 the task force became a standing committee of City Council, and was directed to make recommendations to the Council as to its structure.

The City Council Boards and Commissions Committee has reviewed the membership of 19 of the EDAC, and recommends staggered terms of 3 years, commencing March 1, 2006.

If Council agrees with the proposed structure of the EDAC, adoption of the resolution is recommended.

RESOLUTION BOOK NO. 29 – PAGE 419

J. RESOLUTION NO. 06-68 - RESOLUTION MODIFYING THE 2006 CITY COUNCIL MEETING SCHEDULE TO (1) ADD TWO BUDGET WORKSESSIONS BEGINNING AT 3:30 P.M. ON MONDAY, MAY 8, 2006, AND MONDAY, MAY 22, 2006, IN THE COUNCIL CHAMBER, LOCATED ON THE 2ND FLOOR OF THE CITY HALL BUILDING, ASHEVILLE, N.C.; AND (2) CANCEL THE COMMUNITY MEETING SCHEDULED FOR TUESDAY, MAY 20, 2006

RESOLUTION BOOK NO. 29 – PAGE 421

K. BUDGET AMENDMENT TO FUND WEB SITE DESIGN AND CONTENT MANAGEMENT SOFTWARE IMPLEMENTATION SERVICES

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

L. RESOLUTION NO. 06-69 - RESOLUTION APPOINTING A MEMBER TO THE DOWNTOWN COMMISSION

Summary: Mr. Andy Archie, member of the Asheville Downtown Commission has resigned, thus leaving an unexpired until December 31, 2006. This resolution will appoint Mr. Guadalupe Chavarria, 84 Walnut Street, Unit A, Asheville, N.C., as a member of the Asheville Downtown Commission to serve the unexpired term of Mr. Archie, term to expire December 31, 2006, or until his successor has been appointed.

RESOLUTION BOOK NO. 29 – PAGE 422

M. RESOLUTION AUTHORIZING OWENS BELL LANE TO BECOME A PUBLICLY MAINTAINED STREET

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

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

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

ITEMS REMOVED FROM THE CONSENT AGENDA

- RESOLUTION NO. 06-62 - RESOLUTION ACCEPTING BLEACHERY BOULEVARD IN EAST ASHEVILLE AS A CITY MAINTAINED STREET

Summary: The consideration of a resolution to accept Bleachery Boulevard in East Asheville as a publicly maintained street.

Section 7-15-1(f)-4.a requires that streets dedicated for public uses be accepted by resolution of City Council.

Bleachery Boulevard was constructed as part of the Riverbend Development. It has an average paved width of 24 feet and a length of 0.94 miles. Engineering Department staff inspected this street and finds it to be constructed in accordance with the approved standards.

Following City Council's approval of this resolution, Bleachery Boulevard will be added to the official Powell Bill list. A two-year warranty, from the time of Council acceptance, will be required by the developer to cover major failures in the roadway.

Pro:

- The City will receive Powell Bill funds from the NCDOT to maintain the roadway.

Con:

- Powell Bill funds will not cover 100% of the cost to maintain the street.

- City staff recommends City Council accept Bleachery Boulevard in East Asheville as a City maintained street.

City Attorney Oast said that the City has encountered a few minor problems with completing the plat that is supposed to be recorded as cited in the resolution. He asked that the

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resolution be amended to reflect the fact that (1) the right-of-way for Bleachery Boulevard does not include any portion of the current right-of-way for Stevens Street, which is anticipated to be closed at a later time; and (2) the resolution shall be effective upon the recordation of the plat for RiverBend Market Place in Buncombe County Registry, which plat shall comply with the above-stated condition as to Stevens Street, as approved by the City Attorney.

Vice-Mayor Jones moved for the adoption of Resolution No. 06-62, as amended by the City Attorney. This motion was seconded by Councilman Freeborn and carried unanimously.

RESOLUTION BOOK NO. 29 – PAGE 413

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RESOLUTION NO. 06-64 - RESOLUTION APPOINTING OFFICERS AND BOARD OF DIRECTORS OF PINE PROPERTIES INC.

Summary: The consideration of a resolution appointing officers to the Pines Properties, Inc. (Jake Rusher Estate).

In 1999, the City reached an agreement with Jake Rusher regarding the acquisition of the Royal Pines property, now Jake Rusher Park. As part of that agreement, the City was also a main beneficiary of Mr. Rusher's estate. Mr. Rusher died in October of 2003, and his estate has been in administration ever since, complicated by some handwritten codicils that required resolution in court.

Now that these issues have been resolved, distribution from the estate has begun. Earlier this month, we received the corporate stock of Pines Properties, Inc., which was Jake Rusher's corporate identity, and the business entity that ran the Pines when it was in operation. The City of Asheville is now the sole stockholder of the Pines Properties, Inc.; the main asset of which is Mr. Rusher's Rutherford County farm, fulfilling his promise to leave the property to the City to make the City whole for purchasing the Jake Rusher Park. Other assets include some personal property at the farm; several items of personal property including some cash distributions, were disbursed following the judicial ruling on the handwritten codicils.

Since the City is the owner of the stock of Pines Properties, Inc., action needs to be taken to appoint officers of the corporation. This will enable the City to proceed with disposition of the corporation's assets, and the wrapping up of its affairs. A resolution has been prepared appointing the following corporate officers, based on the operational areas that will be concerned with the disposition of the assets:

President – Irby Brinson
Vice President – Jeff Richardson
Secretary/Treasurer – Ben Durant

Regular reports regarding the corporation's activities, including the wrapping up of its business activities and distributions, will be provided to Council.

Considerations:

- Appointment of officers will facilitate the disposition of the Rusher estate, fulfilling Mr. Rusher's promise to the City.

- If Council approves of the proposed officers, adoption of the resolution is recommended.

City Attorney Oast asked that the resolution be amended to reflect that the same individuals are also appointed as the board of directors for the corporation

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Vice-Mayor Jones moved for the adoption of Resolution No. 06-64, as amended by the City Attorney. This motion was seconded by Councilman Freeborn and carried unanimously.

RESOLUTION BOOK NO. 29 – PAGE 416

BUDGET AMENDMENT TO FUND WEB SITE DESIGN AND CONTENT MANAGEMENT SOFTWARE IMPLEMENTATION SERVICES

City Manager Jackson asked that this item be removed from consideration at this meeting in order to give him the opportunity to have further discussions with local firms to make sure that we are aware of their capabilities and they are aware of our needs. He asked that this item be rescheduled.

Councilman Freeborn moved to postpone this matter indefinitely. This motion was seconded by Councilman Newman and carried unanimously.

RESOLUTION NO. 06-70 - RESOLUTION AUTHORIZING OWENS BELL LANE TO BECOME A PUBLICLY MAINTAINED STREET

At the request of Mayor Bellamy, Councilman Freeborn moved to excuse Mayor Bellamy from voting on this matter due to a conflict of interest. This motion was seconded by Councilman Davis and carried unanimously.

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

Summary: The consideration of a resolution to accept Owens Bell Lane in the West End/Clingman Avenue area as a City maintained street.

Section 7-15-1(f)-4.a requires that streets dedicated for public uses be accepted by resolution of City Council.

Owens Bell Lane is a developer-constructed street that has an average paved width of 20 feet and a length of 0.10 miles. The City of Asheville staff inspected the construction of this roadway and certified they are built in accordance with City standards.

Following City Council's approval of this resolution, this street will be added to the official Powell Bill list. A two-year warranty, from the time of Council acceptance, will be required by the developer to cover major failures in the roadway.

City staff recommends City Council adopt the resolution to accept Owens Bell Lane in West End/Clingman Avenue area as a City maintained street.

Councilman Newman moved for the adoption of Resolution No. 06-70. This motion was seconded by Councilwoman Cape and carried unanimously.

RESOLUTION BOOK NO. 29 – PAGE 423

Vice-Mayor Jones continued to conduct the meeting as Mayor Bellamy has a conflict of interest on the following public hearing regarding the conditional use permit for Crowell Park Apartments.

III. PUBLIC HEARINGS:

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A. PUBLIC HEARING TO CONSIDER THE ISSUANCE OF A CONDITIONAL USE PERMIT FOR PROPERTY LOCATED ON CROWELL ROAD, NEAR SMOKY PARK HIGHWAY AND I-40, KNOWN AS CROWELL PARK APARTMENTS

ORDINANCE NO. 3344 - ORDINANCE GRANTING A CONDITIONAL USE PERMIT FOR PROPERTY LOCATED AT LOCATED ON CROWELL ROAD, NEAR SMOKY PARK HIGHWAY AND I-40, KNOWN AS CROWELL PARK APARTMENTS

Councilman Freeborn moved to excuse Mayor Bellamy from participating in this matter due to a conflict of interest. This motion was seconded by Councilman Davis and carried unanimously.

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, Vice-Mayor Jones opened the public hearing at 5:13 p.m.

Council members disclosed that they had either attended the Planning & Zoning Commission public hearing on this matter or had read proposals about this project. However, they 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 Kim Hamel 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).

Ms. Hamel said that this is the consideration of the issuance of a conditional use permit for property located on Crowell Road near Smoky Park Highway and I-40, known as Crowell Park Apartments, for a proposed 73-unit apartment complex (Attachment to City Exhibit 3 – Aerial Map).

The project is supported by a number of goals and strategies in the plan relating to infill development, smart growth policies and affordable housing. The project utilizes the existing zoning on the lot to create a sustainable high-density residential

development within the City's ETJ (Extraterritorial Jurisdiction). It is also located within close vicinity to potential employment centers, restaurants and shopping centers. A disadvantage to this project is the absence of public transportation, which is not available in this area. The closest transit stop is more than 2 miles away near the NCDOT driver's license office off of Smokey Park Highway.

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

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income. Affordability will be assured for 30 years under the terms of the federal and state Low Income Housing Tax Credit programs.

Provides an increased supply of affordable housing by providing up to 73 affordable rental units.

The applicants (the Estate of Harlan L. Barnes & Murphy-Wilson Investments, Inc.), being represented by Mountain Housing Opportunities, has requested a conceptual site plan review for a Level III multi-family project to allow for the construction of a 73 unit affordable housing development. The project site is located off of Crowell Road and consists of 2 parcels totaling 3.59 acres (Attachment to City Exhibit 3 – Site Plan). The site currently zoned Highway Business and is located within City's extraterritorial jurisdiction area (ETJ).

The site, as it currently exists, is mostly undeveloped and wooded with mild to moderate slopes. The property has frontage along two state maintained roads (Crowell Road and Farm Street). Access to the development is proposed off of Crowell Road via two, one-way connecting drives. In addition, a pedestrian connection will be provided from the buildings to Farm Street.

The HB district permits a density of 32 units per acre. Given the acreage of the property, 115 units could be constructed. The project proposes 73 units, a density of approximately 20 units per acre.

The development proposes construction of two, three story, 42,171 square foot multi-family buildings located on the periphery of a 32,968 square foot landscaped courtyard. The project will consist of 73 units with 20 one bedroom apartments, 34 two bedroom apartments and 19 three bedroom apartments. A 1,015 square foot office is also housed within the complex.

The project site is being developed to accommodate a large-open air courtyard that will serve as the primary open space and recreational area for the development. The buildings are located at the periphery of the courtyard in order to provide access to the area from each unit. Additional site development will include the construction of a 95-space parking lot, perimeter landscape buffers (some areas enhanced with the existing vegetation) and parking lot landscaping as required by the Unified Development Ordinance (UDO). A sidewalk, street trees and shrubs will be provided along Crowell Road (Attachment to City Exhibit 3 – Building Elevations).

The Technical Review Committee reviewed this project on February 20, 2006, and voted unanimously to recommend approval of the project subject to the conditions outlined in the staff report. Revised plans' addressing the open space area necessary for approval of the project has been provided through a reduction in the initial number of units and types of units proposed (79 units to 73 units) and the number of parking spaces (from 101 spaces to 95 spaces).

On March 1, 2006, the Asheville Planning and Zoning Commission, voted unanimously to approve the project subject to the conditions outlined in the staff report and with the following addition that Mountain Housing Opportunities (MHO) shall pay for or construct a transit shelter when transit service is available within 2/10's of a mile of the development.

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

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

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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 existing site topography is mildly sloped along the southwestern side of the property. The northern side and southeastern parts of the site have a more moderate slope towards Farm Street. The property will require a fair amount of grading and fill to develop the site as proposed.

The project is designed more sensitively through building design and preservation of existing vegetation. The placement of the buildings is more compatible with the existing topography as they terrace with the natural slope of the land towards Farm Street. This project also proposes to preserve many of the large mature pine trees that exist on the site. The site plan shows preservation of trees within the courtyard area and along the perimeter of the north, south and west sides of the property. These areas will also be enhanced as needed to meet the City's landscape buffer requirements.

3. **That the proposed use or development of the land will not substantially injure the value of adjoining or abutting property.** The project site is zoned (HB) Highway Business, which allows for a wide variety of both residential and large scaled commercial uses. A multi-family project is more in keeping with the residential context of the area than a commercial development would be, as permitted under the HB (Highway Business) zoning designation. In addition, the higher density development could serve as a buffer/transition area to the existing single-family residences north of the project site that could be impacted by more intense uses and development likely to occur along Crowell Road.

Additionally, this project will provide on-site management with a caretaker and office manager. The development is expected to preserve many of the large pine trees on site and enhance the 25-foot landscape buffer areas required around the perimeter of the property. It is not expected that this development would negatively affect the value of surrounding properties.

4. **That the proposed use or development of the land will be in harmony with the scale, bulk, coverage, density, and character of the area or neighborhood in which it is located.** The project site and many of the surrounding single-family properties along Crowell Road are zoned (HB) Highway Business. While it is noted that the proposed development is of greater scale and density than the existing single-family development along the western section of Crowell Road, the buildings are similar in size and scale with development found along the southern section of Crowell Road. Additionally, the project is proposed at a density below that permitted in the (HB) Highway Business zoning district.

The buildings, although 3-stories in height, are designed to appear more like a large two story single-family structure when viewed from Crowell Road. The bulk of the development's visual impact will be along the north, east and south sides of the property. The building elevations presented for the development, however, incorporate architectural design elements that assist in visibly reducing the overall scale and mass of the structures allowing the development to be more in context with the neighborhood.

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Additionally, properties to the north, south and portions of the east side of the site will be separated from the development by a 25-foot landscape buffer. The north and south sides of the site will be greatly enhanced with the preservation of many large mature pine trees that exist on site.

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 a number of goals and strategies in the plan relating to infill development, smart growth policies and affordable housing. The project utilizes the existing zoning on the lot to create a sustainable high-density residential development within the City's ETJ. It is also located within close vicinity to potential employment centers, restaurants and shopping centers. A disadvantage to this project is the absence of public transportation, which is not available in this area. The closest transit stop is more than 2 miles away near the N.C. Dept. of Transportation driver's license office off of Smoky Park Highway.

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 and found that adequate sewage and water utilities are available for the proposed development.

The project site is located in the City's ETJ. Properties located in these areas are provided Fire and Police protection through Buncombe County. The developer will also be responsible for providing waste disposal to the development. Public transportation is not available in this area.

7. **That the proposed use will not cause undue traffic congestion or create a traffic hazard.** The City's Traffic Engineer has determined that the project does not meet the threshold for requiring a Traffic Impact Analysis. However, due to the narrowness of Crowell Road, the applicant is required to increase the width of the road to 20-feet, as a condition by the Technical Review Committee.

Pros

- The project makes a significant contribution to meeting the need for affordable rental housing in the City of Asheville.
- The project site is zoned for the use and proposed density.
- 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.
- A multi-family project is more compatible with the residential character of the area than a commercial development would be, as permitted under the HB (Highway Business) zoning designation.

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- The higher density development could serve as a buffer/transition area to the existing single-family residences north of the project site that could be impacted by more intense uses and development likely to occur along Crowell Road.
- The project proposes preservation of a large quantity of mature pine trees that exist on the site.

Cons

- A primary disadvantage to this affordable housing development is the absence of public transportation.
- The buildings will be larger in scale than those found along the western side of Crowell Road (although consistent with building sizes typically found in the Highway Business zoning district).
- The existing zoning in the area and the proposed project could spur additional development, including commercial uses, along Crowell Road resulting in an overall change in character of the area. (Could also be a pro.)

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.
2. A tree survey shall be provided noting all existing vegetation to be retained. This vegetation shall be clearly indicated and dimensioned on the site plan, landscape plan and grading plan.
3. The zoning permit must be issued prior to initiating clearing and grading of the site.
4. No grading shall commence until tree protection devices are installed and inspected by Planning Staff.
5. Due to the size and scale of the project an urban level of service shall be provided.
6. MHO shall pay for or construct a transit shelter when transit service is available within 2/10's of a mile of the development. The location of the shelter is to be coordinated with the Engineering Department.

Mr. Gerald Green, representing the developer, spoke in support of the project showing Council examples of MHO's work (Applicant Exhibit 1). He also showed Council examples of area architecture (Applicant Exhibit 2). He said they have addressed the major concern of residents (which is the widening of Crowell Road), and they have no problems with meeting the conditions imposed by the Technical Review Committee or the Planning & Zoning Commission. He summarized by saying that (1) the apartments will enhance the residential character of the area; (2) this is a good transition from the more commercial scaled uses to the residential scale uses; (3) the proposed development is permitted within the Highway Business District; (4) the project helps strengthen the business community in that it will provide housing for the working people of Buncombe County; (5) the structures will buffer the other residential uses from the commercial uses further down Crowell Road; (6) they will preserve as many of the existing trees as possible; and (7) the project is good for the neighborhood and the City.

At 5:27 p.m., Councilman Mumpower arrived at the meeting.

Mr. Fred English asked if any public money is used in this project.

At 5:27 p.m., Vice-Mayor Jones closed the public hearing.

Upon inquiry of Councilman Mumpower about voting on the matter when he didn't hear the presentation, City Attorney Oast said that the presentation did not differ from the materials sent to Council last week. It was his opinion that Councilman Mumpower should vote on the matter.

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Ms. Cindy Weeks, Housing and Development Specialist for Mountain Housing Opportunities, responded to questions regarding financing. She noted that they will be paying property taxes on this development in the amount of approximately \$70,000.

Councilman Newman pointed out that no Housing Trust Fund revenues are part of this project. However, the Housing Trust Fund is funded from the City's General Fund.

Upon inquiry of Councilman Mumpower, Ms. Weeks said that the cost per square foot, including administration and other variables is approximately \$85.00 per square foot.

Councilman Freeborn moved for the adoption of Ordinance No. 3344, granting a conditional use permit for property located at Crowell Road near Smoky Park Highway and I-40, subject to the following conditions: (1) all conditions outlined by the Technical Review Committee; (2) All site lighting shall be equipped with 90-degree cutoff features and be directed away from adjoining properties and streets; (3) A tree survey shall be provided noting all existing vegetation to be retained. This vegetation shall be clearly indicated and dimensioned on the site plan, landscape plan and grading plan; (4) The zoning permit must be issued prior to initiating clearing and grading of the site; (5) No grading shall commence until tree protection devices are installed and inspected by Planning Staff; (6) Due to the size and scale of the project an urban level of service shall be provided; and (7) MHO shall pay for or construct a transit shelter when transit service is available within 2/10's of a mile of the development. The location of the shelter is to be coordinated with the Engineering Department. This motion was seconded by Councilman Newman and carried unanimously.

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At this time, Vice-Mayor Jones returned the gavel to Mayor Bellamy who proceeded with conducting the meeting.

B. PUBLIC HEARING TO CONSIDER REZONING PROPERTY ON BEAUCATCHER ROAD FROM OFFICE BUSINESS DISTRICT TO RM-6 RESIDENTIAL MULTI-FAMILY LOW DENSITY DISTRICT

ORDINANCE NO. 3345 - ORDINANCE TO REZONE PROPERTY ON BEAUCATCHER ROAD FROM OFFICE BUSINESS DISTRICT TO RM-6 RESIDENTIAL MULTI-FAMILY LOW DENSITY DISTRICT

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

Urban Planner Alan Glines said that this is the consideration of an ordinance to rezone property on Beaucatcher Road from Office Business District to RM-6 Residential Multi-Family Low Density District. This public hearing was advertised on March 17 and 24, 2006.

This rezoning request is being brought forward by staff to change the zoning from Office Business (OB) to RM-6 Residential Multi-Family Low Density District found on the majority of this parcel. Recently the subdivision plat for Restaurant Row was completed for the development with access from Tunnel Road. This is the reason for the recently assigned PIN for the parcel. Because of the way the larger parcel was subdivided, a rear section of the parcel that fronts on Beaucatcher included a section of OB zoning. Rezoning this back corner to RM-6 will provide consistent zoning for the entire parcel.

Office Business District is set aside for a wide range of office uses and a more limited range of other commercial uses. The OB district can provide a transition between intensive commercial uses and residential areas.

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Residential Multi-family Low Density District (RM-6) is established to permit a limited range of low-density multi-family and single family housing types. It can provide a transition from single family areas and other more intensive multifamily areas.

Pros

- Provides consistent zoning for a residentially zoned parcel
- Avoids any future problems with a split-zoned parcel

Cons

No concerns noted

At their March 1, 2006, meeting, the Planning and Zoning Commission voted 7-0 to recommend approval of the rezoning request. Staff concurs with that recommendation.

Mayor Bellamy closed the public hearing at 5:38 p.m.

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

Councilman Freeborn moved for the adoption of Ordinance No. 3345. This motion was seconded by Councilwoman Cape and carried unanimously.

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C. 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 this public hearing was continued from March 14, 2006, at which time the owners requested 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. That request was granted.

Mayor Bellamy opened the public hearing at 5:38 p.m.

Assistant City Attorney Martha McGlohon said that this is the consideration of an appeal from an Order of the Building Safety Department ordering the buildings located at 1500 Tunnel Road (former site of Days Inn Motel), vacated, closed and repaired. This public hearing was advertised on February 28, 2006.

The property at 1500 Tunnel Road (herein "Property"), is the site of the former "Days Inn Motel," consisting of three separate buildings. The property had operated as a motel. The buildings were found to have Building and Fire Code violations in July 2004 and despite the efforts of staff to encourage compliance, the condition of the property worsened. The deterioration was coupled with an increase of calls to the Asheville Police Department, with complaints of drug and criminal related activity. In July of 2005, the City's Building Safety Department held a hearing under the Unsafe Buildings Act and ordered the buildings on the Property vacated and closed until repairs were made consistent with the requirements of the State Building Code. Barry Rogers, either as an alleged party in interest or on behalf of the property owner, appealed that Order. The time period to comply with the Order has long since passed and the property owner has not applied for the required building permits. Additionally, recent activity on the property indicates that the buildings continue to be occupied in violation of the Order entered. City Council

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is being asked to hear the appeal of Mr. Rogers despite staff's lack of success in getting Mr. Rogers to perfect his appeal.

Positives:

1. Authorizes City staff to initiate appropriate proceedings to abate a growing nuisance.
2. Allows the City to obtain a court order enforceable by the local police to prevent occupancy of the property.
3. Eliminate a safety and fire hazard
4. Eliminate frequent calls to police, fire, building and housing staff

Cons:

1. Requires ongoing monitoring by police and fire personnel to enforce the Order

This action complies with City Council Strategic Operating Plan on Partnerships to Improve Critical Services & Infrastructure

directs staff to work for providing the quality of life within the mountain region: Goal #4: Develop programs and policies to defeat street level drug problems and crime. Asheville City Council has directed staff to work diligently to provide sufficient, safe, and affordable housing for Asheville residents. All neighborhoods should provide a safe and nurturing environment within which to raise a family.

After hearing the appeal, Council is asked to enter an order to affirm the order from which the appeal has been taken. Further, Council is requested to give the City's Legal Services Division authorization to initiate any appropriate legal proceeding in a court of law to prevent, restrain, correct or abate any violation of the Order affirmed and/or to enforce the requirements thereof.

Ms. McGlohon said that Mr. Cartner, attorney for the owners, is not present and she has not heard from him, however, it is her understanding that they will not contest the motion to dismiss the appeal filed by Mr. Barry Rogers.

Mayor Bellamy closed the public hearing at 5:40 p.m.

Councilman Newman moved to dismiss the appeal filed by Mr. Barry Rogers. This motion was seconded by Vice-Mayor Jones and carried unanimously.

Councilman Newman moved to give the City's Legal Services Division authorization to initiate any appropriate legal proceeding in a court of law to prevent, restrain, correct or abate any violation of the Order affirmed and/or to enforce the requirements thereof. This motion was seconded by Vice-Mayor Jones and carried unanimously.

Upon inquiry of Councilman Davis, Ms. McGlohon said that the City hopes the property owner will (1) put the property on the market for sale; (2) proceed with obtaining a demolition order to demolish the building; or (3) obtain the appropriate permits to commence proceedings to do the necessary repairs. If they should do none of those, then we are prepared to move forward. City Attorney Oast noted that the representative of the property owner has been in contact with the Building Safety Department to pursue option no. 3.

In response to Vice-Mayor Jones, Ms. McGlohon said that in terms of a timeframe, she leaves that up to the Building Safety Department to work with the property owner. As a general rule, they usually give the property owner anywhere from 60-90 days, but in this particular instance (because this is a huge commercial building), they may give them more time. But, it

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depends on what they believe is reasonable under the circumstances in light of what they must do to bring the buildings into compliance.

Ms. McGlohon responded to Councilwoman Cape when she asked if the City could place a lien on the property to recoup the costs the City incurred regarding this property.

IV. UNFINISHED BUSINESS:

V. NEW BUSINESS:

A. ORDINANCE NO. 3346 - BUDGET AMENDMENT TO PROVIDE FOR LEGAL FEES FOR CHALLENGING THE SULLIVAN ACT

City Attorney Oast said that this is the consideration of an ordinance amending the budget, in the amount of \$50,000, to provide for legal fees for challenging the Sullivan Act

When Council undertook the legal challenge to the Sullivan Act, legal fees were estimated to be \$100,000. Some of these costs were paid from the Legal Services line item (not intended for the Sullivan Act matter), and in October, Council amended the budget to provide \$50,000 for this purpose. This amount has been exhausted, and an additional \$50,000 is needed to (1) replenish the budget line item for routine legal services; and (2) take us through disposition of this matter in the trial court.

Considerations:

- The City is committed to following through on this legal challenge;
- The requested amount is still within initial estimates.
- Line item for routine legal services can be replenished.

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Adoption of the ordinance is recommended.

Councilman Mumpower felt that it was disgusting that Asheville has to spend this money because our legislative delegation unanimously facilitated legislation against the City, which is unique to Asheville. He hoped our legislative representatives will make an effort to re-think their position that Asheville is unique, because the only thing that is unique in this process is their willingness to intrude on local government affairs.

Councilwoman Cape felt that this is money well spent.

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

Councilman Mumpower moved for the adoption of Ordinance No. 3346. This motion was seconded by Councilwoman Cape and carried unanimously.

ORDINANCE BOOK NO. 22 – PAGE

B. EXTRATERRITORIAL JURISDICTION AND JOINT PLANNING AREA POLICY DIRECTION

Planning & Development Director Scott Shuford said that the purpose of this report is to advise Council concerning issues and opportunities for managing growth in areas immediately proximate to the City limits and to seek Council direction concerning the extension of City development review services into the extraterritorial jurisdiction (ETJ), the cessation of

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negotiations with Buncombe County regarding the Joint Planning Area (JPA), and whether the ETJ area should be expanded beyond current boundaries.

In the staff's opinion, there are strong positive reasons for discontinuing JPA negotiations with Buncombe County, for extending the full range of City development review services into the ETJ, and for considering further extension of the City ETJ consistent with state law. The following report was discussed with the Planning and Economic Development Committee and the Committee directed that the report be placed on the Council's March worksession agenda.

Ms. Shuford then summarized the following report:

ETJ

Statutory Authority. NC Statutes allow cities the size of Asheville to extend a wide range of development review services beyond their corporate limits if the county does not provide all of three critical development review services: Building inspections; subdivision regulation; and zoning. Buncombe County is the largest county in NC without countywide zoning, so Asheville has adopted an ETJ.

Cities like Asheville can extend their ETJ areas unilaterally (i.e., without county permission) up to one mile beyond their corporate limits. With Buncombe County's approval, Asheville could extend its ETJ up to three miles beyond its corporate limits. Asheville's current ETJ does not include all areas within one mile of our corporate limits.

Statutory Purpose. The purpose behind an ETJ is to ensure that municipalities are able to effectively manage land uses, establish development standards, and address infrastructure needs on land adjacent to their corporate boundaries. In NC, counties are generally not responsible for providing urban services like roads and water and sewer infrastructure. ETJ therefore enables the local governments responsible for providing those services – cities and towns - to set the standards for those services. ETJ's are not unique to NC; many states confer some form of extraterritorial powers on their cities.

Range of Services. ETJ areas may have a wide range of development review services administered by the municipality. Asheville has elected to only provide two of these services in our ETJ area - zoning and subdivision regulation. We also understand that the mandated stormwater management program will ultimately need to be administered by the City in part or all of our ETJ areas. Services that are not currently being provided but could be are listed below. We cannot provide nuisance abatement services in the ETJ.

- Floodplain Management
- Street Address Assignment

- Erosion Control
- Stormwater Management (mentioned above)
- Building and Life-Safety Code Inspections

Recent ETJ History. Asheville most recently extended its ETJ in 2001. The City was prepared to extend its ETJ earlier but waited until Buncombe County chose to not establish countywide zoning based on the results of a citizen referendum. Once that decision was made, Asheville City Council directed staff to extend the ETJ to cover urbanizing areas near the City. We initially proposed a very large ETJ expansion but the reaction from the County was not positive so we significantly scaled back our proposal, concentrating on areas that:

- Were growing extremely rapidly
- Contain property suitable for industrial development

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- Serve as gateways to the City

Despite the City's concession regarding a reduced ETJ area, Buncombe County chose to attempt to block Asheville by trying to establish a single district zoning for just the area within one mile of the City corporate limits. Essentially, the County proposed to surround the City with a zoned circle for the sole purpose of rebuffing the current and any future ETJ expansions. The County took one vote on this proposal and it failed by a 2-3 vote, but at its next meeting the Commissioners revived the proposal and it passed by a vote of 3-2.

City Council felt the procedures used by the County to resuscitate the zoning vote were improper. Council took two actions: (1) It directed staff to proceed with the ongoing ETJ expansion; and (2) It authorized a lawsuit against the County. The City enacted the ETJ and later prevailed in the lawsuit. The ETJ extension was legal and County zoning was not in place. The City currently maintains zoning and subdivision regulations over the ETJ.

JPA

After the lawsuit, City Council had informal negotiations with County Commissioners about compromises that would offer ETJ property owners less stringent zoning than that found in the City. When charged by Council to provide ideas on this concept, Planning and Legal staff proposed a Joint Planning Area (JPA), an area of shared jurisdiction between Buncombe County and the City of Asheville where both the County and City would agree to the development standards and enforcement procedures.

This proposal was acceptable to Buncombe County and they authorized their staff to work with City staff in developing the JPA regulations and associated zoning map. They also chose not to appeal the court's decision regarding their zoning.

Under the City proposal, the JPA would replace the City ETJ fully to reduce customer confusion. The JPA would automatically expand to include a roughly one-mile area around Asheville as the City annexed. The potential benefits of the JPA are summarized in the following table.

City Benefits	County Benefits
Shared growth management over larger area	Less restrictive than UDO
Automatic JPA expansion	Day-to-day County administration
Cooperation with County on key issue	Cooperation with City on key issue

After months of City and County staff, City Planning and Zoning Commission, and County Planning Board negotiations about the development regulations, JPA discussions were postponed to accommodate County elections and the Water Agreement termination process. There were many "sticking points" remaining, including the following:

- Big box development regulation
- Infrastructure standards, especially streets, stormwater and erosion control
- Board of Adjustment make-up

Our negotiations with Buncombe County have led us to the conclusion that the City and County have fundamentally different

viewpoints on the subject of growth management and infrastructure standards. These differences are related to several factors, including the fact that Buncombe County is not in the infrastructure business and has no vested interest in the long-term durability

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of roads, stormwater ponds and pipes, and similar improvements and the fact that the County has traditionally taken a non-regulatory approach to growth management.

Issues and Recommendations

Staff has identified two key issues related to the ETJ and JPA where City Council policy direction is needed. These issues are described in the following policy questions:

- What standards for development should apply in the ETJ?
- Which organization is best able to implement those standards?

What standards for development should apply in the ETJ?

City staff spent months attempting to create a reasonable, suburban-style zoning for the JPA. After reaching a general consensus with County staff about the standards, we found that the County Planning Board expected a substantially weaker set of regulations and development standards. As noted above, the key issues that were not resolved were standards and processing procedures for "big box" development, infrastructure standards and inspection procedures, and governance structure for the jointly-appointed Board of Adjustment that would administer reviews of larger structures and developments and grant variances to the standards.

As far as infrastructure is concerned, we are starting to see Fire Department and Public Works concerns about annexing urban areas of the County due to inadequate infrastructure that could negatively affect our fire insurance (ISO) rating and our ability to effectively serve these areas. Additionally, our reading of the stormwater management mandate requires the same standards to apply in the ETJ or JPA as in the City proper.

With regard to the Board of Adjustment make-up and procedures, the County's latest proposal to us was for the Board of Adjustment to consist of four County appointees and one City appointee. Not coincidentally, decisions by the Board of Adjustment have to be made on a 4-1 or 5-0 majority, rather than a simple majority. City staff was willing to accept a Board of Adjustment made up of three County appointees and two City appointees for this reason. The Board of Adjustment would represent the one opportunity for public consideration and comment on conditional use permits, as opposed to the two opportunities under City regulations. These two issues create concerns about the extent to which the public would have a voice in development matters in a JPA arrangement.

In summary, while the JPA offers an opportunity to allow development standards to cover a wider area of land than the current ETJ, staff believes that City standards are more appropriate for the future development of periphery areas than anything that could reasonably be negotiated.

Which organization is best able to implement those standards?

The City of Asheville has experience in managing the full range of development review services possible to apply in the ETJ or the JPA.

- Floodplain Management Program - Currently, the City of Asheville does not administer the Floodplain Management Program outside its corporate limits. However, given recent events, this is an area that City staff has a heightened interest in administering as new standards are developed to address flooding issues. The City Engineering Department is set up to manage such a program and the fee

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structure makes it self-supporting.

- Street Address Assignment - The responsibility for assigning street addresses in ETJ areas remains with the County. The City has an Address Coordinator position that can assume these duties in a highly effective fashion.
- Erosion Control Ordinance - The City of Asheville does not review or enforce the Erosion Control Ordinance outside the

corporate limits. Proposed development projects in an ETJ area are required to submit erosion control plans to Buncombe County for review, approval and periodic inspection. There are substantial differences between the City and County requirements and level of enforcement. Silt and sediment are the number one threats to water quality in WNC. The City Engineering Department is set up to manage this program and the existing fee structure would make this service self-supporting.

- Stormwater Management - The UDO stipulates that the City's regulations apply only to "proposed developments within the city limits of the City of Asheville" but our reading of the stormwater management mandate from the state requires the same standards to apply in the ETJ or JPA as in the City proper. The City Engineering Department is set up to manage this program, with the fee structure making this service self-supporting.
- Minimum Housing Code - The City has a Minimum Housing Code program with a proven track record for effectiveness. However, the City of Asheville does not review or enforce its Minimum Housing Code outside its corporate limits. The City Building Safety Department is set up to manage this program; the fee structure would make this service self-supporting.
- State Building Code - A city may assume responsibility for administering the State Building Code in an ETJ area. However, the responsibility has remained with Buncombe County in City of Asheville ETJ areas. Problems have occurred in the past when permits have been issued by the County for projects located in the City's ETJ area without required zoning permits from the City. Other problems have resulted from County staff not notifying City staff members prior to a Certificate of Compliance being issued so that required buffers, parking areas, and planting areas can be inspected for conformance with City regulations. There have been situations in which new development has received a Certificate of Compliance from the County but the project did not comply with the approved plans. Additionally, the City of Asheville Building Safety and Fire Departments are nationally recognized for the knowledge and diligence of their programs. Consequently, the City Building Safety and Fire Departments are set up to manage this program. The fee structure would make this service self-supporting.

City Council and staff are concerned about addressing Council priorities and making up the revenue shortfall caused by the effect of Sullivan Acts II and III. There is a fee option used by many NC cities that could help make up the revenue difference and improve development review service quality at the same time – extension of State Building Code enforcement by the City into the ETJ.

The ETJ is about 12,500 acres compared with our corporate limits (CL) of 42,500 acres, so it is roughly 30% the area of the City. Generally speaking, more growth is happening in the ETJ than in the CL since there is more vacant land in the ETJ, but, to be conservative, we can assume at least a 20% increase in Building Safety fees alone if we started performing building inspections in

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the ETJ. This would generate about \$350,000 in fee revenue (based on the projected \$1,748,100 fee revenue in the current budget).

Building Safety Director Robert Griffin has estimated that he could undertake building inspections in the ETJ with the addition of three new inspectors and a paraprofessional to handle application intake. The cost of these new positions for the first year, including vehicles and equipment is about \$215,000. The difference in fee revenue over costs could pay for at least two positions in Planning and Development that are currently solely involved in development review. (This is not a new idea: Increased fee revenues due to the increase in development activity were used to fund the most recent position added to the Planning and Development Department, for example.) This would free up approximately \$135,000 that could be used for other General Fund priorities or to address the revenue shortfall created by Sullivan Acts II and III.

In summary, the greater experience level of City staff in handling the above areas of development review make it logical to extend these services into the ETJ at the beginning of the coming Fiscal Year. Our fee structure and existing staff not only make such extension possible but offer the opportunity for reducing some of the impact of Sullivan Acts II and III on the City budget.

Staff makes the following recommendations for Council direction:

- (1) Advise Buncombe County that, while we are no longer interested in discussing the JPA as an alternative to the existing ETJ, we do remain open to discussing shared goals and objectives concerning land use. For example, perhaps there is a supporting role for the City to play in the development of the County Land Use Plan. Additionally, we may have opportunities for joint facility siting or public land redevelopment. We will certainly want County cooperation with any of our project development financing initiatives.

(2) Extend the following development review services into the existing ETJ in Fiscal Year 2006/07:

- Floodplain management
- Stormwater management
- Erosion control
- Street address services
- State Building Code
- Minimum housing code

(3) Evaluate the need for further ETJ extensions into other areas within one mile of the corporate limits.

Pros and cons for these actions are listed below.

CONS: For ETJ development service expansion, there may be the following concerns:

- New or higher service fees for property owners and developers in the ETJ
- New or more extensive requirements may increase building costs
- County may object to losing inspection fees or jurisdiction
- County may claim City is not complying with a prior commitment to the JPA

PROS: Staff feels the above potential public concerns are outweighed by:

- Enhanced service to community residents
- Quality of public infrastructure considerations
- General development quality considerations

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- Public safety and Fire ISO considerations
- Effectiveness of future annexations
- Improved quality and consistency in review and inspection
- Management of ETJ development pattern
- Compliance with mandated stormwater regulations
- Budgetary considerations

Mr. Shuford asked for Council direction on the three issues and if Council is interested in the second recommendation of extending the above-mentioned development review services into the existing ETJ in Fiscal Year 2006/07, then the City Attorney will come back with a recommended procedure by which we would handle that at an upcoming meeting.

Mr. Fred English questioned if the City has to maintain the streets in the ETJ. He also felt that the ETJ is just a fast-track for annexation. He felt the City need to take care of what they have in the City before annexing any more residents.

Councilman Davis felt it was commendable that the County's Planning Board and our Planning & Zoning Commission spent so much time and effort to try to get to the point where if areas were annexed there would not be long periods of time before the area was built to the same standards. Again, it was a good effort on a lot of people's part.

Upon inquiry of Councilwoman Cape, Mr. Shuford said that the ETJ does address street standards, but the City does not take over the maintenance of those streets – they would either be private streets or state maintained roads.

In response to Councilwoman Cape of why the city is not extending the ETJ to the complete one mile area, Mr. Shuford said that originally in 2001 the City considered about 14,000 acres out of the 6,000 acres we did proceed with. At that time there was a great deal of resistance on the part of Buncombe County and some County residents to that concept, so we unilaterally scaled back our effort to just cover areas that we felt were gateway areas, areas experiencing a lot of rapid development and also areas that might be suitable for industrial uses. We dropped off roughly 8,000 acres from our original proposal. City Attorney Oast also responded that under the law, although one mile is the extent to which you can go without approval from the County Commissioners, within that one mile you have to define areas of critical concern. Therefore, we identified the areas of critical concern and extended the ETJ to those areas.

In response to Councilwoman Cape, Mr. Shuford said that all of the areas in the ETJ (and some areas outside that) are included in the resolution of consideration identifying areas with potential for future annexation.

Councilman Davis moved to (1) advise Buncombe County that, while we are no longer interested in discussing the JPA as an alternative to the existing ETJ, we do remain open to discussing shared goals and objectives concerning land use; (2) extend the following development review services into the existing ETJ in Fiscal Year 2006/07: floodplain management, stormwater management, erosion control, street address services, State Building Code, and Minimum Housing Code; and (3) evaluate the need for further ETJ extensions into other areas within one mile of the corporate limits. This motion was seconded by Vice-Mayor Jones.

Councilman Davis pointed out that in the latest draft the County came to the City with, they were willing to adjustment the Board of Adjustment make-up of 3 County appointments and 2 City appointments, and there was also a willingness to compromise what their desire was for the thresholds of big box-type development. We just never really heard because of the Water

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Agreement termination and there was not a particular willingness to move forward. He regretted that it has come to this, but he did think we should leave it as an opportunity in the future. Again, he felt there was a great effort made by both parties and he wished it would have gotten to a better place. However, he thinks by this move we can control some of Asheville's future.

Councilman Mumpower was concerned that our timing with this action is off. As discussed earlier, our state representatives have put the City in a very difficult decision budget-wise, and the County Commissioners are requesting a moratorium on annexation. We have a keen sense of our responsibilities as a city but no willingness to support us by our state legislators or by our County Commissioners. He felt that since we spent 3 years working on the JPA we certainly shouldn't close any doors. Though the JPA effort we were trying to grow in cooperation with the County, but now we have an adversarial process. He struggled to see any grand benefits from extending our services into the ETJ and was concerned that we risk creating an elite city that the wealthy can afford to live in but others can't.

Councilman Freeborn was not an advocate for annexation, but if we do take on new property, then it should be closer to city standards. He felt this is a way to start bridging that gap.

Councilwoman Cape felt that this is about the quality of how development and infrastructure proceeds and how people are brought into the community, even though they are outside the city limits. Asheville is annexing at a much slower rate than the rest of North Carolina cities and development is happening very rapidly all around us. To not try to create good standards at our city limits, we end up making the citizens of Asheville bear the burden of growth in the whole area.

Councilman Newman said that Asheville is the economic hub of the multi-county area of Western North Carolina. All the people who come to Asheville use our infrastructure every day and it is the City residents who live here who have to pay for the infrastructure being used by many, many other people. The people who use it the most are those people who live immediately outside our city limits in the areas that are growing very fast and becoming urban in nature.

Councilman Davis felt the JPA would have been a great opportunity to work with the County. He hoped that we will continue to keep this plan on the shelf because a lot of time and work have been invested in this and at some time we will get past the adversarial relationship with Buncombe County.

Councilman Newman didn't want to say that the City was no longer interested in discussing the JPA, because we should always be open to the possibilities of coming together around ideas.

Councilman Davis moved to amend his motion to read as follows: (1) Advise Buncombe County that in recognizing the work that has taken place on this issue for 3 years and we haven't been successful in finding a common approach, the City feels, in light of that, the need to move on, but will remain open to joint community planning efforts and new ideas; (2) extend the following development review services into the existing ETJ in Fiscal Year 2006/07: floodplain management, stormwater management, erosion control, street address services, State Building Code, and Minimum Housing Code; and (3) evaluate the need for further ETJ extensions into other areas within one mile of the corporate limits. Vice-Mayor Jones accepted the amendment with said amended motion carrying on a 6-1 vote, with Councilman Mumpower voting "no."

C. RESOLUTION NO. 06-71 - RESOLUTION APPOINTING CITY OF ASHEVILLE REPRESENTATIVES TO THE COMPREHENSIVE TRANSPORTATION PLAN TASK FORCE

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Councilman Freeborn said that City Council is requested to make appointments to a task force advising the N.C. Dept. of Transportation (NCDOT) and Metropolitan Planning Organization (MPO) on the area's Comprehensive Transportation Plan.

Mayor Bellamy has requested that City Council appoint City members to a task force to provide input into the Comprehensive Transportation Plan (CTP) under development by the NCDOT for the MPO. The best way to proceed in making these appointments was determined to be the use of the City board structure as the basis for selecting City members to the task force (Buncombe County and other municipalities will also appoint members to the task force). The following persons have been identified from the listed boards to serve on this task force, as they would best represent our community in creating long-range maps for Buncombe County and the MPO:

- Greenway Commission – Linda Giltz
- Bike and Pedestrian Task Force – Claudia Nix
- Transit Commission - Karen Austin
- I-26 Aesthetics Advisory Committee – Leslie Fay
- Sustainable Economic Development Advisory Committee – Chuck Tessier (or delegate)

By using existing boards, information about the CTP can be more effectively shared across the community and with the affected boards. The long-range maps would then go back to the community for their input. The maps need to be ready by late summer of 2006.

City staff recommends City Council adopt the resolution appointing the above persons to the CTP Task Force as City representatives.

Upon inquiry of Councilwoman Cape, Planning & Development Director Scott Shuford said that the meetings will not be a major time commitment. He felt there would be approximately 4 meets ranging from 1-2 hours in length to gain the level of public input. He reiterated that this Task Force will also include representatives from Buncombe County and other areas.

In response to Mayor Bellamy, Mr. Shuford said that he will find out at what opportunity City Council will have to review the maps.

There was considerable discussion, initiated by Councilmen Davis and Mumpower, regarding the balance of the Task Force and the need to move forward and continue dialogue on this time-sensitive matter.

At 6:43 p.m., Mayor Bellamy called a short recess.

Councilwoman Cape moved to adopt Resolution No. 06-71 to appoint the members identified above, along with a representative from the Asheville Downtown Commission, a representative from the Planning & Zoning Commission, and a representative from the Buncombe County Tourism Development Authority to the Comprehensive Transportation Plan Task Force. This motion was seconded by Councilman Mumpower and carried unanimously.

Vice-Mayor Jones, Chair of the City Council Boards & Commissions Committee, said that her Committee will take on the task of developing guidelines for task force process and appointments and bring it back to City Council for review.

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VI. OTHER BUSINESS:

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Announcements

Councilman Mumpower spoke about the successful seminars of “Reaching for a 21st Century Criminal Justice System” (sponsored by the N.C. District Attorney’s Council and the Asheville-Buncombe Drug Commission) and “Best Practices’ for Hard Drug Interdiction” (sponsored by the Asheville-Buncombe Drug Commission, the Asheville Police Department, and the Buncombe County Sheriff’s Department) that occurred earlier in the day.

Councilman Mumpower thanked the many community volunteers and the cadets from the Police Academy for helping with the For Our Kids Program by painting at Aston Park Towers.

Councilman Davis urged the public to get involved in the Quality Forward Clean-Up Program.

Councilman Freeborn reminded the public about the Arbor Day Celebration that will be taking place on April 1, 2006, at

Vance Elementary School in West Asheville with various activities throughout the day.

Claims

The following claims were received by the City of Asheville during the period of March 3-16, 2006: Beverly-Grant Inc. (Water), Hilda K. DeBruhl (Transit Services), Opal Mann (Sanitation) and Amy Lovinger (Sanitation). These claims have been referred to Asheville Claims Corporation for investigation.

VII. INFORMAL DISCUSSION AND PUBLIC COMMENT:

Mr. Avram Friedman, Director of The Canary Coalition, urged Council to support the Energy Futures Resolution that calls for a comprehensive state-wide study to determine the least-cost mix of electrical generation and demand reduction, including an evaluation of impact on public health, the environment and agriculture and the costs of the full fuel cycle, waste handling and decommissioning of power plants. He said that 20 prominent community organizations have supported this resolution and urged the City of Asheville express their support as well. When Mayor Bellamy explained Council's policy to not address policy issues if they don't have a unique relevance to Asheville, Councilman Newman asked (and the majority of Council concurred) that time be set aside at the April worksession to address matters such as this, long with the Land for Tomorrow resolution.

Mr. Bruce Deile urged Council to rescind the ordinance that prohibits begging in the City of Asheville. Mayor Bellamy responded by stating the several programs City Council has supported for the homeless and encouraged him to contact some of the local non-profit organizations who provide services to the homeless and the phone service of 211.

Mr. Chris Pelly, President of the Coalition of Asheville Neighborhoods (CAN), requested input into the outside review process of the recent Planning Department's decisions relating to Greenlife, Staples and Prudential Realty. After Mr. Pelly explained how he felt CAN has uncovered Planning decisions that do not adhere to the Unified Development Ordinance and how the system for citizen appeals is flawed, he requested (1) for City Council to heard CAN's 3 appeals which the Board of Adjustment dismissed two and said one appeal was moot; (2) the return of \$1,500 for CAN's filing of the appeals; and (3) a commitment from City Council to fix the citizen appeals process. It was the consensus of Council to have the City Council Planning & Economic Development Committee review the process.

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Ms. Leslie Fay urged City Council to dedicate a staff person (10-20 hours a week) to work specifically on growth on the Haywood Road Corridor.

Mr. Fred English spoke about the short duration of the indoor football at the Asheville Civic Center.

Mr. Walter Plaue was concerned that the City of Asheville is not being viewed as a regional partner.

Mr. Reid Thompson spoke to Council about the Unified Development Ordinance not being adhered to regarding screening by Greenlife Grocery on Maxwell Street.

VIII. ADJOURNMENT:

Mayor Bellamy adjourned the meeting at 7:28 p.m.

CITY CLERK

MAYOR