

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; Assistant City Manager Jeffrey B. Richardson; City Attorney Robert W. Oast Jr.; and City Clerk Magdalen Burleson

Absent: None

PLEDGE OF ALLEGIANCE

Mayor Bellamy led City Council in the Pledge of Allegiance.

INVOCATION

Councilman Mumpower gave the invocation.

ANNOUNCEMENTS

Mayor Bellamy asked that a new item be placed under New Business dealing with the receipt of grant funds from a local foundation.

Mayor Bellamy said that the City of Asheville has received a lot of negative attention as a result of the behavior of Asheville Tourists Manager Joe Mikulik on Sunday, June 25, 2006. In response, on June 27, 2006, Mayor Bellamy received the following letter from Mr. Mikulik: "I am writing to apologize for my behavior on the baseball field on Sunday, July 25, 2006, when the Asheville Tourists visited the Lexington Legends. As a resident of Candler, I take great pride in being able to work and live in the Asheville area and the last thing I want to do is bring embarrassment to my city, my team and my family. I have said that my actions were a result of frustration and I obviously went too far. I apologize to the fans, to the umpires, to the Colorado Rockies' organization and to the residents of Western North Carolina for my actions, and I regret what happened. My job with the Asheville Tourists is to develop players for the major leagues and I realize I must set an positive example for everyone involved. It is my goal to help our team move forward from this unfortunate incident." In addition, Mayor Bellamy also received a letter from the Mr. Marc Gustafson, Director of Player Development of the Colorado Rockies, the parent club of the Asheville Tourists, expressing their regret for any embarrassment that may have been brought upon the City of Asheville for Mr. Mikulik's actions. Mayor Bellamy asked that we put this incident behind us and support the Asheville Tourists.

I. PROCLAMATIONS:

II. CONSENT AGENDA:

- A. APPROVAL OF THE MINUTES OF THE SPECIAL MEETING HELD ON JUNE 12, 2006, THE FORMAL MEETING HELD ON JUNE 13, 2006, AND THE WORKSESSION HELD ON JUNE 20, 2006**
- B. RESOLUTION NO. 06-118 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A CONTRACT WITH THE RENAISSANCE PLANNING GROUP TO DEVELOP A TRANSPORTATION CORRIDOR STUDY OF US 70**

-2-

Summary: The consideration of a resolution authorizing the City Manager to sign a contract with Renaissance Planning Group in the amount of \$124,525 to develop a transportation corridor study for US 70.

As the lead planning agency for the French Broad River Metropolitan Planning Organization (MPO), the City of Asheville staff administers federal transportation planning funds to carry out the MPO's annual Planning Work Program. Transportation planning is funded at 80% by the federal government. The required 20% matching funds are split among local governments in the MPO.

The US 70 Corridor study has been approved and budgeted through the MPO process and the City of Asheville budget process. The corridor study will take a comprehensive look at growth and development patterns, traffic, and bicycle and pedestrian issues. The primary objective of the study is to have a plan that will preserve the existing capacity of the roadway and minimize

congestion and provide informed decision-making for costly road improvements in the future.

The Renaissance Planning Group was selected through a competitive proposal process. Renaissance has teamed with the firm Martin/Alexiou/Bryson located in Raleigh. The study will take place between July 2006 and April 2007.

The costs for the study will be shared according to the following breakdown:

Federal Highway Administration	\$ 99,620
City of Asheville	\$ 18,905
Town of Black Mountain	\$ 6,000
Total	\$124,525

Considerations:

- Although planning studies like these are expensive, the cost is minor compared to the cost of making road improvements, especially the wrong improvements. One traffic signal can cost between \$40,000 and \$200,000
- This study was budgeted through the MPO and City of Asheville process. 80% of the cost is paid with federal funds.
- This process is more regional in nature, which better insures for strengthening key stakeholder relationships.

City staff recommends the City Manager to sign a contract with Renaissance Planning Group in the amount of \$124,525 to develop a transportation corridor study for US 70.

RESOLUTION BOOK NO. 30 – PAGE 43

C. RESOLUTION NO. 06-119 - RESOLUTION AUTHORIZING THE CITY MANGER TO ENTER INTO A TEMPORARY SERVICES AGREEMENT WITH FORSYTH INITIATIVE FOR RESIDENTIAL SELF-HELP TREATMENT FOR TEMPORARY WORKERS

Summary: The consideration of a resolution authorizing the City Manager to enter into a temporary services agreement with Forsyth Initiative For Residential Self-Help Treatment, Inc. (FIRST) for temporary workers.

-3-

The City of Asheville requires temporary workers throughout the budget year for seasonal workloads in the Public Works Department (Sanitation and Street Divisions) and the Civic Center. This agreement is a collective contract for all City departments.

FIRST is a non-profit organization that provides counseling to individuals and provides these individuals with opportunities to learn new skills through job placements with various organizations. The City of Asheville has utilized FIRST staff for the past two years with excellent results.

Benefits to contracting with FIRST include reduced costs in recruiting, hiring, and benefits for full-time workers. There is also a savings realized in management costs. The City is guaranteed all FIRST personnel requested, enabling operations to be fully productive at all times.

City staff recommends the City Manager be authorized to enter into a temporary services agreement with Forsyth Initiative For Residential Self-Help Treatment, Inc. for temporary workers.

RESOLUTION BOOK NO. 30 – PAGE 44

E. RESOLUTION NO. 06-120 - RESOLUTION GRANTING A UTILITY EASEMENT ACROSS CITY-OWNED PROPERTY LOCATED ON ROCKY RIDGE ROAD FOR AN UNDERGROUND ELECTRIC POWER LINE

Summary: The consideration of a resolution granting a utility easement across City-owned property located on Rocky Ridge Road (new fire station) for an underground electric power line

Progress Energy has requested an easement through City-owned property located on Rocky Ridge Road, to install an underground power supply line to a new fire station. The City will receive no consideration for this easement and historically has not received consideration for power line easements. Per State and local law, Progress Energy pays a utility franchise tax. Fire Department staff have reviewed this request, and have no objection to it.

Considerations:

- The easement will not interfere with the City's use of the property.
- The electric power supply line will be installed in such a manner as not to be a hazard;
- The line will be installed underground, as opposed to overhead.

If Council approves of this easement, adoption of the resolution is recommended.

RESOLUTION BOOK NO. 30 – PAGE 45

E. RESOLUTION NO. 06-121 - RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE AN AGREEMENT WITH THE N.C. DEPT. OF TRANSPORTATION FOR WIDENING LONG SHOALS ROAD FROM WEST OF CLAYTON ROAD TO EAST OF I-26, INCLUDING REPLACEMENT OF A WATER LINE

Summary: The consideration of a resolution authorizing the Mayor to execute a Municipal Utility Agreement with the North Carolina Department of Transportation (NCDOT) for widening NC 146 (Long Shoals Road) from west of SR 3501 (Clayton Rd) to east of I-26, including replacing the current existing 12 inch and 8 inch water lines along Long Shoals Road with a new 24 inch ductile iron line.

-4-

The current water lines on Long Shoals Road have numerous breaks. This NCDOT betterment project will be the second phase of placing a 24-inch ductile iron pipe line along Long Shoals Road, including crossing the French Broad River. The cost is \$876,850, which will be paid in 3 equal annual installments to the NCDOT.

Pro:

- This project will enhance customer service by eliminating costly line breaks which cause water outages to area customers on the current line and will help loop the water system to the west and south regions of the system.
- The line size upgrade better prepares Asheville for the anticipated continued commercial and residential development along the Long Shoals and Avery Creek areas of southern Buncombe County.

Con:

- The final construction cost of this project is above the original engineer estimate due to dramatic increases in material cost in the past two years; however, funds will be budgeted in the Fiscal Year 2007/08 Water Fund Budget for this project.

-
City staff recommends approval of the Municipal Utility Agreement with NCDOT for the NC 146 (Long Shoals Road)
Project: R2813 B.

RESOLUTION BOOK NO. 30 – PAGE 47

F. RESOLUTION NO. 06-122 - RESOLUTION APPOINTING AN ALTERNATE TO THE BOARD OF ADJUSTMENT

Summary: Ms. Jessica Erwin Leaven has declined the appointment as an Alternate member on the Board of Adjustment, thus leaving an unexpired term until January 21, 2009.

At City Council's worksession on June 20, 2006, the City Council instructed the City Clerk to prepare the proper paperwork to appoint Janet Whitworth, as an Alternate member to the Board of Adjustment, to serve the unexpired term of Ms. Leaven, term to expire January 21, 2009, or until her successor has been appointed.

RESOLUTION BOOK NO. 30 – PAGE 48

G. RESOLUTION NO. 06-123 - RESOLUTION APPOINTING MEMBERS TO THE BOARD OF ELECTRICAL EXAMINERS

Summary: The terms of Tommy Wilson, Ronnie McAbee, Terry Ponder, Brian Kintner and Harold Garland expired on July 1, 2006.

On June 20, 2006, City Council instructed the City Clerk to prepare the proper paperwork to reappoint Tommy Wilson (electrical contractor), Ronnie McAbee (journeyman electrician), Brian Kintner (licensed engineer) and Harold Garland (layman) to each serve an additional three-year term. All terms will expire on July 1, 2009, or until their successors have been duly appointed.

In addition, City Council instructed the City Clerk to prepare the proper paperwork to appoint Fred Pratt (utility representative) to serve a three year term, term to expire July 1, 2009, or until his successor has been appointed.

-5-

RESOLUTION BOOK NO. 30 – PAGE 49

H. RESOLUTION NO. 06-124 - RESOLUTION APPOINTING MEMBERS TO THE NOISE ORDINANCE APPEALS BOARD

Summary: The terms of James Fink (Regular member) and Scott Fowler (Alternate member) expire on July 1, 2006.

On June 20, 2006, City Council instructed the City Clerk to prepare the proper paperwork to reappoint James Fink as a Regular member to serve an additional three-year term, term to expire July 1, 2009, or until his successor has been appointed.

In addition, on June 20, 2006, City Council instructed the City Clerk to prepare the proper paperwork to appoint John Hayes as an Alternate member to serve an additional three-year term, term to expire July 1, 2009, or until his successor has been appointed.

RESOLUTION BOOK NO. 30 – PAGE 50

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

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

III. PUBLIC HEARINGS:

A. PUBLIC HEARING TO AMEND THE UNIFIED DEVELOPMENT ORDINANCE FOR MODIFICATION TO DIMENSIONAL AND DEVELOPMENT STANDARDS FOR CONDITIONAL USES AND CONDITIONAL DISTRICTS

ORDINANCE NO. 3369 - ORDINANCE AMENDING THE UNIFIED DEVELOPMENT ORDINANCE FOR MODIFICATION TO DIMENSIONAL AND DEVELOPMENT STANDARDS FOR CONDITIONAL USES AND CONDITIONAL DISTRICTS

Mayor Bellamy opened the public hearing at 5:10 p.m.

Planning & Development Director Scott Shuford said that this is the consideration of an ordinance to amend the Unified Development Ordinance to allow City Council to revise certain requirements for establishing conditional districts. This public hearing was advertised on June 16 and 23, 2006.

Currently, the ordinances covering conditional zoning and conditional use permits contain provisions that limit or prohibit variances or modifications to the requirements of the corresponding or underlying general zoning districts, if those modifications are less restrictive. With respect to dimensional standards (height, setback, etc.) and other technical requirements (landscaping, buffering), this has proven to be unnecessarily restrictive, and has occasionally caused an applicant to seek a more intensive zoning classification than necessary for the use, and has limited Council's flexibility on some projects.

The amendment allows Council to modify these requirements in a manner appropriate to the project at the time the approval is granted. The proposed ordinance contains a requirement that such modifications that are less restrictive than allowed by the corresponding zoning be

-6-

described in public notices when possible, and that they be separately set out, along with the reasoning, in the ordinance granting

the request.

At its June 7, 2006, meeting, the Planning and Zoning Commission voted unanimously to recommend adoption of the ordinance. There was no public comment at the meeting.

Considerations:

- Allows more flexibility in processes where flexibility is one of the stated goals;
- Reduce the potential for seeking inappropriate zoning classifications to address dimensional or technical issues

If City Council approves of the proposed amendment, adoption of the ordinance is recommended.

Mayor Bellamy closed the public hearing at 5:19 p.m.

Mr. Shuford responded to questions raised in an e-mail from Mr. James Judd received on June 27, 2006.

Councilman Davis felt that this amendment is a powerful tool in that it gives Council the opportunity to be more flexible with dimensions and that is largely what we deal with on many conditional zonings. To him, though, it seems like conditional zoning almost stands alone without this particular tool. In addition, he questioned if this amendment is before Council now largely to deal with the conditional use permit amendment proposed by the Grove Park Inn, which will be discussed next.

Mr. Shuford said that he has been working with City Attorney Oast on this amendment for at least a couple of months and stated that it was not prepared specifically for the Grove Park Inn conditional use permit amendment. This amendment enables Council to go beyond what the prior conditional zoning would allow. There have been plenty of circumstances where Council has required something more stringent than what the underlying zoning is or the applicant has proposed a greater setback. He felt this amendment gives Council the flexibility to make some adjustments that they may find to be beneficial for a site and it also puts the decisions about some of those issues in Council's hands and not in the hands of staff. From that standpoint, he thinks it is a positive amendment and is in keeping with Council's desire policy-wise to retain a fair amount of control over the development process.

Mr. Shuford responded to Councilwoman Cape's inquiry about specific cases where this flexibility would have been beneficial.

At the request of Councilman Newman, Mr. Shuford said that future staff reports will contain a specific box for requested modifications from underlying zoning development standards. However, sometimes staff may not know about them until the day of the meeting. He said that he does expect, by the end of the year, to have a development review mapping system in place and we will be sure to include a way to highlight the proposed deviations from the underlying zoning standards.

Councilman Mumpower felt that flexibility is a good concept, but predictability is a more important concept, especially with the UDO, so he would not support this amendment.

In response to Councilman Freeborn, Mr. Shuford felt that a con of the amendment would be that there might be some expectation that the underlying zoning standards would be applied and that expectation would not always be met. The counter to it is that when we know about it, we advertise it and make sure the public knows about it.

-7-

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. 3369. This motion was seconded by Councilwoman Cape and carried on a 5-2 vote, with Councilman Davis and Councilman Mumpower voting "no".

ORDINANCE BOOK NO. 23 – PAGE 8

B. PUBLIC HEARING TO CONSIDER AN AMENDMENT TO THE APPROVED CONDITIONAL USE PERMIT FOR THE GROVE PARK INN MASTER PLAN TO ALLOW FOR AN INCREASE IN BUILDING SIZE AND HEIGHT FOR THE NEW BUILDING TO BE CONSTRUCTED ON THE FORMER BATTLE HOUSE SITE

Mayor Bellamy opened the public hearing at 5:35 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 Clerk Burleson administered the oath of office to anyone who anticipated speaking on this matter.

Urban Planner Shannon Tuch 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. Tuch said that this is the consideration of an ordinance to amend the approved conditional use permit for the Grove Park Inn Master Plan to allow for an increase in building size and height for the new building to be constructed on the former Battle House site. This public hearing was advertised on June 16 and 23, 2006.

The Grove Park Inn Resort and Spa originally submitted a Conditional Use Rezoning (CUZ) application and Master Plan documents in the summer of 2004; the rezoning request and Master Plan was approved by the Asheville City Council in November of 2004 and it included five different phase. This approval consisted of a conditional use rezoning of a five acre, RS-4 Residential Single-Family Medium Density District parcel along with the review of an associated Master Plan showing development on this parcel along with four other project areas on the larger resort property (Aerial Map – Attached to City Exhibit 3). Using a blow-up aerial (City Exhibit 4), she showed the scale of the former Battle House, which has been demolished and removed. In addition, road and traffic improvements were required as a condition of approval.

It has been the intention of the owner to initiate development of Phase 1 and follow with subsequent phases of the Master Plan. Phase 1, the Battle House Condominiums (now referred to as "The Fitzgerald"), included the removal of the old Battle House and redevelopment of a new building into a 30 residential condominium units, approximately 1600-1700 s.f. each with basement storage, underground parking (56 spaces) and a 30,000 s.f. open space terrace area. Conceptual/illustrative plans were approved as exhibits to the Conditional Use Rezoning and Master Plan although specifics of building height, size, and materials were not considered they were represented to reflect the existing structure (City Exhibit 5). The Battle House was not salvageable in a practical way so they proposed to demolish and rebuild a new structure. Ms. Tuch showed character sketches of the proposed building approved in 2004 (City Exhibits 6 and 7), to show the west elevation and east elevation views.

-8-

The new structure was always described to architecturally reflect the former structure and the footprint to some degree does reflect that original character, but is larger than what was originally there. The former footprint was approximately 12,000 square feet and this is probably 15-16,000 square feet. The parking has been relocated underground and is not part of the site plan any longer. From a land disturbance prospective, it really didn't result in any more impervious surface. The applicant is now seeking an amendment to this phase of the Master Plan to allow for a building that is clearly larger and taller than what had been approved in concept.

Ms. Tuch reviewed with Council some schematic drawings of the footprint approved in 2004 (City Exhibit 8) and the proposed new footprint (City Exhibit 9). The new building proposal keeps the number of units unchanged at 30 total, but requests approval of a 4-storey structure that is 87,766 square feet (122,323 square feet including underground parking structure) with a maximum height of 48 feet (City Exhibit 10). In this case, height is defined as the distance between the floor of the main point of entry to the ceiling of the highest occupiable level. The Resort zoning restricts building height to a maximum of 80 feet except for where the property lies within a "transition zone" defined as the portion of property that lies within 100 feet of a residentially zoned area. In this transition zone, height is limited to that established in the least restrictive adjacent residential zone. In this case, the properties across Macon Avenue are within 100 feet and zoned RS-4 where the height of structures is limited to 40 feet (City Exhibit 11). Because of the approval of a wording amendment earlier in the meeting, City Council has the ability to establish dimensional requirements for properties in excess of the allowances allowed in the underlying zoning districts; as such, the Asheville City Council may approve the proposed height of 48 feet despite the underlying development standard that would normally restrict the height of a structure to 40 feet.

It is also important to note that the distance between grade and the highest roofline is shown to be 75 feet, 3 inches, where the height of the foundation and height of the roof pitch are included in this overall height measurement. These additional measurements are not included in the technical definition of height and are, therefore, not included when evaluating a structure for technical compliance with height standards. However, this overall height may be considered for compatibility purposes and should be considered as part of the proposed amendment.

Also as part of the amendment to Phase 1 is an underground parking structure that would support 60 resident parking spaces in addition to 11 surface parking spaces along with a comparable amount of open space that had been previously reviewed and approved. As with similar requests for approvals of development standards that exceed or deviate from those of the underlying

zoning districts, the alternative standard must be approved prior to a final site plan review. If approved, this project will be required to return for a more detailed review by the Technical Review Committee (TRC).

City Council must take formal action as set forth in section 7-9-9(c)(4) of the Unified Development Ordinance (UDO), and must find that all seven 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 and will be reviewed in more detail at a final review of the Technical Review Committee.

-9-

2) **That the proposed use or development of the land is reasonably compatible with significant natural and 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 increase in overall square footage is the result of an increase in the proposed height of the building and does not negatively impact the amount of disturbance experienced on the ground plane. However, the revised footprint is somewhat larger than what currently exists and larger than what had originally been approved; nevertheless, when reviewed in context with the overall site plan, it does not appear to result in a significant increase in disturbance.

3) **That the proposed use or development of the land will not substantially injure the value of adjoining or abutting property.** Property values around the Inn property have continued to rise for the surrounding homes despite increases in resort and residential activity over the years. An increase in building height and size is not expected to have a negative impact on adjacent property values, particularly when the character of the structure is kept within that of the historic and other residential structures in the area.

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 new Fitzgerald will architecturally reflect the character of the former structure and be well within scale and density of the adjacent resort property and nearby Longchamps Condominiums (5-6 story's). The proposal is also in relative scale with the adjacent historic Bynum House property and proposed Sunset Mountain condominiums which will be developed as part of the same residential community. The proposed structure is less compatible with the adjacent low density single family homes to the east but is not dramatically different in height from the former Battle House structure whose general height is measured at approximately 62 feet from grade to peak of roof. The new structure is approximately 75 feet tall but sits 4 feet lower than the former Battle House which would result in a net increase of approximately 9 feet.

5) **That the proposed use or development of the land will generally conform to the comprehensive plan, smart growth policies, sustainable economic development strategic plan and other official plans adopted by the City.** The Asheville City Development Plan 2025 (ACDP 2025), through its Smart Growth Land Use Policies (adopted by the Asheville City Council in 2000), clearly supports and encourages compatible infill development. It also encourages City staff to employ zoning tools (Conditional Use Rezoning & Conditional Use Permits) to ensure some level of protection for compatibility and environmental sensitivity. Historic Preservation and its relationship to Smart Growth are also clearly described as being an effective way to revitalize and stabilize neighborhoods.

6) **That the proposed use is appropriately located with respect to transportation facilities, water supply, fire and police protection, waste disposal, and similar facilities.** This proposed development is within close proximity to transportation facilities with the Route 5 bus line running regularly down Charlotte, Macon, and Kimberly including hourly stops at the Grove Park Inn. As a component of the Master Plan approval, a new transit shelter will be coordinated along with new sidewalk installation running the length of Macon Ave. (one side) to Charlotte Street.

7) **That the proposed use will not cause undue traffic congestion or create a traffic hazard.** The proposed amendment does not increase the total number of units proposed and would not be expected to contribute an additional traffic impact beyond that which has previously been considered and approved. As a component of the Conditional Use

-10-

Permit, additional traffic calming measures have been required to be installed along a number of the affected roadways to better carry the load of the cumulative resort and residential traffic.

Based on the above findings and the analysis provided in the report, staff finds this request to be reasonable.

Considerations:

- Allows for infill residential development of 30 luxury condominiums.
- Results in a larger/taller multi-family condominium structure that is approximately 9 feet taller than the former Battle House structure.

For the reasons outlined in this report, staff feels that the proposed development has many positive aspects and does meet the minimum standards required of a conditional use permit.

Concerns over neighborhood compatibility may be best addressed by those most affected by the proposed use. Staff recommends that the City Council utilize public input concerning this and other issues and carefully consider whether the conditional use permit should be conditioned to mitigate these concerns.

Mr. Gerald Green, representing the Grove Park Inn, said that they presented a conceptual plan for a 10-year Master Plan for the property in 2004. When we presented the plans for Phase I on the Battle House site, we did so without marketing studies and without a whole lot of detailed work. We did not feel it was appropriate to spend tens of thousands of dollars on a conceptual plan when a valid protest petition was filed and we didn't know if the conceptual Master Plan would be approved. Under the requirements of the conditional use permit, the new building is to be architecturally compatible with the Battle House. The façade has changed. Using a Macon Avenue elevation drawing (Applicant Exhibit 1), he showed how they tried to pick up more of the architectural details of the Battle House. He showed the elevation view from the golf course (Applicant Exhibit 2). He said they are looking at a larger building. The footprint is larger due to the marketing studies done which show that people who want to live in these units want larger units. He explained the different footprints of the original Battle House, Master Plan schematic and proposed Fitzgerald (Applicant Exhibit 3). The reason that the building has shifted is that a portion of the building is on the historic Bynum property and is also over a stream. The height increase is for 8 feet and the overall height is taller than the original Battle House (Applicant Exhibit 4). He showed the profile of the Battle House and the profile of the proposed building. He noted there was no height associated with the plan that was approved in 2004. He talked with the architect who did the conceptual plan and he pointed out that the width of the building that was approved was 16 feet greater than the Battle House. Maintaining the same roof pitch, he stated that the roof pitch would be 8 to 10 feet taller than the original Battle House (62 feet) , which would be somewhere between 70 and 72 feet with the plan that was approved. Although the height, as measured under the Code, would still be under the 40-feet, the overall height would come close to the 75 feet proposed with the existing plan. With the existing plan, we made the roof pitch less steep to reduce the overall height. We have tried to comply with the conditional use permit standards in that we have hired an ombudsman and provided funds to the City to initiate a traffic calming plan for the streets impacted by the proposed Master Plan. We have hired a consultant to do a stream mitigation and enhancement study to address neighborhood concerns and have hired an arborist who has started a study of the trees on the Battle and Bynum properties to identify those which need immediate attention. There was a self-appointed neighborhood committee established over 3 years ago and we have worked with them continuously. We presented these change to the neighborhood committee in

-11-

March and received no strong opposition until recently. The opposition was not so much as the changes being proposed, but the process to come back after the Master Plan was approved and ask for changes. He explained that when you have a plan for something this large (over 100 acres) over 10 years, we do not have the detail in the initial planning process that we do as we go along. We are asking you to allow us to work through the process. We will try not to have to come back to Council again as we work through the next 6-10 year process, but we can't promise that. We will try to listen to the neighbors and try to meet the demands of the market. We ask for your support.

The following individuals spoke in opposition of the amendment for various reasons, some being, but are not limited to: comparing the Macon Avenue elevations approved in 2004 with the proposal reveals a staggering increase in the building's proposed height and mass; the Fitzgerald's footprint will be twice the size of the Battle House's footprint; the architectural character of the Fitzgerald would be a grim parody of the Battle House; the new proposal represents more than a 75% increase in the building size, but with the same 30 condo units; even without this amendment the Grove Park Inn can profit handsomely from developing the Fitzgerald; appears that the Grove Park Inn has undertaken a strategy of obtaining approvals on a protracted,

piecemeal basis; Grove Park Inn should submit closer to "final" versions of its development plans before seeking approvals; request should be tabled until the Grove Park Inn can bring back a more complete set of information; Grove Park Inn changed from being an Inn in the 1970's to a major commercial hotel in the middle of one of Asheville's oldest neighborhoods; if the City approves the amendment, it will threaten the neighborhood's trust in that City Council would approve a plan with different implications than the original one; hold construction until traffic calming is implemented per the conditional use permit approved in 2004; rezoning residential property to resort is a bad precedent for our neighborhood; size of proposed structure is doubled from that of the Battle House; additional investors who live outside our community have joined the Grove Park Inn on this venture and want a greater return for their investment; the Grove Park Inn will have no problem in selling the units regardless of their size; a larger footprint will result in more delivery trucks, more noise, more interference, more danger for children and pets in the area and more destruction of peace and calm of our neighborhood; if future amendments are requested, the Grove Park Inn should have to comply with any new ordinances and regulations adopted in the interim and not have them grandfathered in; the staff report seems to favor the developer with no objections as to the size, reasons for change, or effect upon the neighborhood; proposal changes the size and bulk so that it no longer represents the former Battle House; the Smart Growth and Sustainable Economic Development Plan has not been reviewed regarding this plan; the Grove Park Inn neighborhood; even though the neighborhood argued against the Master Plan approved, they have been working with the Grove Park Inn and the Grove Park Inn should be required to work with the conditionals already approved; neighborhood will continue to oppose any construction that does not include strict adherence to environmental issues and the safety of their neighborhood; City should protect neighborhoods; and traffic can be alleviated on Macon Avenue and Old Toll Road by using the road off of Charlotte Street that goes to the old tennis courts to reach the condominiums:

Mr. John Quinn, resident at 428 Sunset Drive (Neighborhood Exhibit 1)
Dr. Peter Gentling, resident at 500 Cherokee Road
Ms. Jane Northway, resident at 80 Edgemont Road
Reverend Christopher Chiaromonte
Ms. Sue Hunter, resident at 4 Evergreen Lane
Ms. Hope Hunter, resident at 4 Evergreen Lane
Ms. Grace Curry, resident at 59 Edgemont Road
Ms. Leah Karpen, resident at 400 Charlotte Street (Neighborhood Exhibit 2)
Ms. Glenda Burgin, resident at 599 Old Toll Road (Neighborhood Exhibit 3)
Mr. Tom Smith, resident of 25 Glendale Road
Ms. Mary L. Kirby, resident at 185 Macon Avenue

-12-

Mr. Jeff Slosman

Mr. Jerry Sternberg spoke in support of the amendment noting that no developer has ever done so much for a neighborhood as the Grove Park Inn. The Grove Park Inn is a great asset to our community in that it has contributed millions of dollars to non-profits and charities. The Grove Park Inn is working on the conditions imposed by Council, e.g., hiring an ombudsman and paying \$375,000 to the City for traffic calming. He noted Grove Park Inn is the second largest employer in Asheville and has brought in millions of tourist dollars. We shouldn't try to drive the Grove Park Inn out of our area.

At 6:38 p.m., Mayor Bellamy closed the public hearing.

Councilman Freeborn moved to deny the amendment to the conditional use permit. This motion was seconded by Councilwoman Cape.

Councilman Newman could not support this particular amendment to the height and width; however, he would be supportive of changes to the Plan as they get into more detailed phases of their development. He felt it was good that the Grove Park Inn brought the 10-year Master Plan in so that Council could look at all the phases at the same time. Since the majority of concerns raised were about the width and height changes, he wondered if this particular amendment request was denied if Grove Park Inn could still move forward with the other parts of their Plan. Mr. Shuford responded that the Grove Park Inn can go forward with other phases of the project had that been approved so long as they are in keeping with the concept plan approved in 2004. They can go back to even this site and make the adjustments necessary to be consistent with what was approved in 2004 and develop this property as well.

Mr. Shuford asked that if Council denies this amendment request, he would appreciate any information that Council could provide about what the specific concerns are in case they get into other similar types of situations with this particular project since it is a 10-year plan.

Councilman Newman said that when Council considered the conceptual Master Plan in 2004, what was approved was what they felt would be appropriate for the scale and character of the neighborhood.

Councilwoman Cape agreed with Councilman Newman in that the increase is too much and the proposed building is not in scale with the neighborhood. She, too, would be supportive of amendments if they did not dramatically change the original Plan.

In response to Vice-Mayor Jones regarding traffic calming, City Traffic Engineer Anthony Butzek updated Council on the progress to date. He summarized by saying that the Request for Proposals are due on July 21, 2006, and we will be looking at an early 2007 to mid-spring construction implementation.

When Councilwoman Cape asked if the access from Charlotte Street was considered, Mr. Butzek said that it was looked at extensively. It was determined that it would have such a large impact to the golf course, it would not be a feasible option.

Vice-Mayor Jones said that she would be open for change, but felt that this amendment is too much.

Councilman Mumpower said that the Grove Park Inn is a good contributor to our City, but felt that the increase in square footage is substantial and the amendment steps away from the Master Plan. He did, however, feel that large developments like this should be phased in and understands things change.

-13-

Councilman Davis felt that the City did not uphold their part of the condition regarding traffic calming, in that we did say that the City would put the planning and the funding in place before construction began. He, too, felt that the Grove Park Inn is a great neighbor and did a good job in working with the neighborhood, but he could not support the substantial change in the Plan.

After a short discussion and upon further inquiry of Councilman Mumpower, Mr. Shuford explained that the reason why this is back before Council is because the changes were substantial enough that the building didn't look like the building that Council approved in 2004. He felt that the proposed development does meet the minimum standards required of a conditional use permit, and while scale and height issues are of a concern, staff didn't see a technical objection for that.

Mayor Bellamy felt that it is important for the City to commit to a specific timeframe on the implementation of the traffic calming. Mr. Shuford said that it is difficult for us to give Council a precise timeframe because part of the traffic calming process is working with the neighborhood to get what they want. He said this is probably the most significant traffic calming project in City's history and he doesn't want to establish an unrealistic deadline for how long it will take to implement. But, it is clearly understood that Council wants to see the implementation of traffic calming in that area as quickly as can be done.

Mayor Bellamy said that if the project is going to take longer than noted by Mr. Butzek, then we need to communicate that information to the neighbors who will be impacted, not just the ones who are at the meeting. She felt we must do a better job of articulating the timeline to make sure that everyone knows the process is moving forward. Mr. Shuford agreed and said that we will use the media we have available to get the word out and will work with the Grove Park Inn because they have a neighborhood newsletter about the project.

Mayor Bellamy felt that the Master Plan is the overall framework plan for what will be developed, not specifics. A course of action will be for the developer to continue to come back to Council if they want to change because the neighborhood residents should know what is happening every step of the way. That is why the conditions were attached to the permit. The developer will have to comply with the ordinances that are in effect when the amendments come forward. She did believe that dialog between neighborhood residents and the developer can create good development. Her concern is that the building change was too big and the fact that the City hasn't implemented the traffic calming didn't help the situation.

The motion to deny the amendment to the conditional use permit made by Councilman Freeborn and seconded by Councilwoman Cape carried on a 6-1 vote, with Councilman Mumpower voting "no."

At 7:11 p.m., Councilman Mumpower moved to go into closed session in order to go into closed session 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 Freeborn and carried unanimously.

At 7:46 p.m. Councilman Freeborn moved to come out of closed session. This motion was seconded by Councilman Davis and carried unanimously.

C. PUBLIC HEARING TO CONSIDER CONDITIONAL ZONING OF 8 LOTS LOCATED ON ALEXANDER DRIVE – THE SKYLOFTS OF ASHEVILLE - FROM RS-8 RESIDENTIAL SINGLE-FAMILY HIGH DENSITY DISTRICT AND RM-8 RESIDENTIAL MULTI-FAMILY MEDIUM DENSITY DISTRICT TO RM-16 RESIDENTIAL MULTI-FAMILY HIGH DENSITY DISTRICT/CONDITIONAL ZONING FOR A PROPOSED MULTI-FAMILY DEVELOPMENT

ORDINANCE NO. 3370 - ORDINANCE TO CONDITIONALLY ZONE 8 LOTS LOCATED ON ALEXANDER DRIVE – THE SKYLOFTS OF ASHEVILLE FR-FROM RS-8 RESIDENTIAL SINGLE-FAMILY HIGH DENSITY DISTRICT AND RM-8 RESIDENTIAL MULTI-FAMILY MEDIUM DENSITY DISTRICT TO RM-16 RESIDENTIAL MULTI-FAMILY HIGH DENSITY DISTRICT/CONDITIONAL ZONING FOR A PROPOSED MULTI-FAMILY DEVELOPMENT

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

Planning & Development Director Scott Shuford said that this is the consideration of an ordinance to conditionally zone 8 lots located on Alexander Drive – the Skylofts of Asheville – from RS-8 Residential Single-Family High Density District and RM-8 Residential Multi-Family Medium Density District to RM-16 Residential Multi-Family High Density District/Conditional Zoning for a proposed multi-family development. This public hearing was advertised on June 16 and 23, 2006.

The subject property is located within the City Limits of the City of Asheville off of Alexander Drive and Carroll Avenue in the East End/Valley Street Neighborhood. The property fronts on both Carroll and Alexander. The project site contains 8 lots proposed for combination if the project is approved. Surrounding properties to the north and east are zoned RM-8 Residential Multi-Family Medium Density District and contain single- and multi-family housing. Properties immediately south (across Carroll Avenue) are zoned RS-8 Residential Single-Family High Density District and are primarily single family in nature, although the McCormick Heights Apartments are located behind the single-family homes that front on Carroll Avenue. To the west, the zoning is RM-8 and Institutional with a single-family home and the Tried Stone Missionary Baptist Church on abutting parcels. The property itself is currently zoned RS-8 to the south between Alexander Drive and Carroll Avenue and RM-8 to the north between Alexander Drive and the abutting properties which front on Curve Street. There is an existing single-family home on Carroll Avenue that would be demolished as part of this project. A small portion of the lot (.404 acres) is subject to the hillside ordinance.

The development proposal calls for the new construction of 8 buildings (constructed using green building techniques) containing 67 one- and two- bedroom condominiums. The buildings will have three floors with a garage level underneath. The footprint of the seven larger buildings is approximately 3500 square feet. Access to all units will be provided off of Alexander Drive. Although not needed to meet minimum parking requirements, there is a proposal to construct 28 on-street parking spaces along Alexander Drive by widening Alexander onto property owned by the developer. The applicant is proposing to do as little surface parking on the site as is possible in order to limit the amount of impervious surface within the development. The percent of impervious area proposed in the development is 38% (1.69 acres). All hillside regulations are complied with in the proposal. A 10-foot platted right-of-way that enters the property off of Carroll Avenue is proposed for closure. A sidewalk is shown for both sides of Alexander and off-site sidewalk connections proposed (through work with the City of Asheville Engineering Department) that would connect with the intersections of Weaver Street and Martin Luther King Jr. Drive. The sidewalk that would typically be required for the portion of the property along Carroll Avenue has been waived by the City of Asheville Engineering Department due to the extensive grading that would be required along the bank that abuts Carroll to create such a

sidewalk, the fact that Carroll already has a sidewalk on the other side of the street, and due to the additional sidewalk proposed to be provided by the developer along Alexander. A bus shelter is proposed for the existing bus stop on the corner of Martin Luther King Jr. Drive and Alexander Drive. The developer proposes to improve the water line along Alexander Drive by replacing the current 4" line with an 8" line.

At the time this report was created, the developers had stated their willingness to price 2, two-bedroom units at the City's defined affordable price (\$120,000). They also stated their willingness to price 2, one-bedroom (expandable) units at the moderate price of \$150,000. They were looking at additional affordable units.

The developers held two meetings with residents of the area (4-10-06; 5-15-06) to discuss the project and to listen to neighborhood concerns. The City of Asheville Public Works Department has completed testing of drainage systems along Carroll Avenue to make certain that the stormwater management proposals for the development would not create problems for the residents along this street.

At their meeting on April 17, 2006, the City of Asheville Technical Review Committee (TRC) reviewed the conditional zoning request and made a positive recommendation (with conditions) that the project be forwarded to the Planning and Zoning Commission.

At their meeting on June 7, 2006, the Planning and Zoning Commission reviewed the conditional zoning request and did not recommend the proposal in a vote of 3-3 (Mr. Cathey absent). Members of the Commission who were opposed to the project noted density and scale concerns while those in favor noted benefits associated with infill development and good site/building design.

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

1. **That the proposed use or development of the land will not materially endanger the public health or safety.** The project, if approved, must meet the technical standards set forth in the City's Unified Development Ordinance. The existing site plan shows compliance with most all of the City's development standards and the applicant is working with City staff on full compliance.
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 applicant has met all applicable provisions of the hillside regulations. The applicant has worked to create a design for this project that minimizes grading activity and impervious surface on the site. The applicant is proposing the use of green building techniques in the construction of this development.
3. **That the proposed use or development of the land will not substantially injure the value of adjoining or abutting property.** The use of property that surrounds this site is varied. There are two other multi-family housing developments on abutting streets and another, smaller project, in the area that has recently been approved under conditional use zoning. The applicant is proposing buffering or other landscaping in compliance with City of Asheville standards along all property lines in the development.

-16-

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 East End Valley Street area contains an array of building types and uses with varying gross floor areas, densities and elevations to existing structures. The proposed footprint of the seven largest buildings in this project is 3500 square feet, much less than that of the Woodberry and McCormick Heights developments in the immediate area. The proposed three story elevation is not as reflected in the area although the Woodberry Apartments development has three story buildings and the newly approved Arbors of Beaux Catcher (off Ardmion Park Drive) will have four stories. The proposed density for this project is 14.6 units/acre. The McCormick Heights community has a density of 12.4 units/acre and the Woodberry Apartments 9.1 units/acre.
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 proposed development supports the following Smart Growth Policies of the City of Asheville: (a) Locating development in areas where infrastructure exists and can easily be provided; (b) Finding appropriate opportunities to establish transit supportive densities (8-16 units per acre) and facilities; (c) Promoting infill developments proximate to the Central Business District and in developed areas that can support increased density in development; (d) Promoting green building; and (e) Providing some affordable housing.
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 proposed development is within a block of an existing transit stop and proposes to provide a shelter at this location in addition to pedestrian connections to the intersection where this stop is located. The developer proposes to improve the provision of water in the area by improving the existing water line along Alexander Drive.
7. **That the proposed use will not cause undue traffic congestion or create a traffic hazard.** The City of Asheville Traffic Engineer has indicated that the roads that will be accessed by those living in the proposed development are sufficient to handle any traffic generated. The developer will provide a double yellow line throughout the 90-degree curve on Alexander to improve the traffic conditions on that street. The provision of on-street parking by the developer should assist in calming

traffic along Alexander.

Based on the above findings and the analysis provided in the report, staff finds this request to be reasonable.

Considerations:

- .. Provides for infill development in an area in close proximity to downtown and infrastructure suitable for increased density of development.
- .. Project incorporates green building and environmentally sensitive approaches to development.
- .. The development incorporates higher elevations than much development in the area.
- .. The development is immediately abutting to mostly single-family residential development although considerable multi-family development is in very close proximity.

At their meeting on April 17, 2006, the TRC reviewed the conditional zoning request and made a positive recommendation, with conditions. The Planning and Development staff recommended the rezoning proposal to the Asheville Planning and Zoning Commission. The Commission, at their meeting on June 7th, 2006, did not recommend approval, in a vote of 3-3 (one member absent). Members of the Commission who were opposed to the project noted

-17-

density and scale concerns while those in favor noted benefits associated with infill development and good site/building design.

Mr. Mike Farmer, petitioner, said that they held two meetings with the residents to hear their concerns regarding the project. We worked hard to address those concerns and feels like they have come up with some good compromises. He feels that the project will make a positive impact on the neighborhood and will be good for the entire Asheville community. He feels this is a worthwhile model that other developers will mirror. They initially committed to offer 2 units to be designated as affordable housing and after hearing additional comments, they decided now to designate 7 units (or 10% of the project) to affordable housing. We need to be responsible neighbors. Many benefits incorporated into this project are only possible with the increase in density. If they are required to build under the existing zoning, then their flexibility in providing these benefits will be greatly reduced. He felt that if a private developer is willing to designate 10% of the project's total units as affordable housing and if a green built project is truly a goal for the Asheville community and if the respect we have shown for the use of the land for the neighborhood is good for the community, then Council should vote in support of this project.

Mr. Gerald Green, representing the petitioners, presented City Council with a letter of support from Mission Health & Hospitals, a letter from Tried Stone Missionary Baptist Church stating that "Tried Stone will work in cooperation with Farwood Properties to repair the section of damaged pipe on the church's property"; and a petition containing 7 signatures in support of the project. He reiterated that they have increased the number of affordable units to 7. He said they are also asking for an increase in the total number of units from 67 to 69 to offset some of the affordable units being provided. The project is infill development with a mixture of housing costs and is walkable to downtown; and it is a green built project meeting N.C. Healthy Built Home Standards. In addition, there is over 30% more open space than what is required. Regarding the stormwater problem, they have an agreement with Tried Stone Missionary Baptist Church and they are committed to address that problem which is caused by the crushed stormwater pipe on the church's property. Sidewalks will be constructed along Alexander Drive from Martin Luther King Jr. Drive up to Woodberry Apartments. A bus shelter will be constructed at the existing bus stop on Martin Luther King Jr. Drive. In addition to the waterline upgrade, there will be 3 fire hydrants provided in the area. There will be streetscape along both Alexander Drive and Carroll Avenue with additional plantings along both streets. There will be no access from the development to Carroll Avenue. The scale is compatible to the neighborhood and there are a number of architectural details on the buildings that will reflect the homes in the neighborhood. Alexander Drive will be upgraded with curb and gutter. There will also be on-street parking on Alexander Drive that is not required by the standards. Regarding the neighborhood's concern about traffic, the City's Traffic Engineer said that the streets are capable of accommodating the additional traffic. Regarding an increase in crime, all indications are that the project will not increase crime in the area, noting that all the units will be owner-occupied. Regarding the increase of property taxes for area residents, he talked with the Buncombe County Tax Office who said the project would be evaluated as a separate community and would not impact adjacent properties through increased property values. Regarding trees along Carroll Avenue, they will remove the dead and dying trees, but will preserve the healthy ones to be incorporated into the street buffer. He urged Council for their support of this project.

The following residents spoke not in opposition to housing, but in opposition to this project for various reasons, some being, but are not limited to: real estate prices are sky-rocketing and our tourist industry is always in need of more low wage service workers who cannot pay high prices for housing; long-time working class homeowners now face the prospect of losing their previously affordable homes because of escalating property taxes from this large upscale condominium complex; if this project this approved, the process of gentrification will accelerate and destroy the neighborhood as it now exists; existing residential area should not be changed to a higher density; Planning & Zoning Commission denied the project; buildings are too large;

existing water and sewer problems; Alexander Drive is not wide enough for on-street parking; existing traffic on Martin Luther King Jr. Drive is too much and also people ignore the school buses; if the rezoning passes, how will the affordable housing units be kept affordable; there are too many other apartment complexes in this area already; and existing water run-off onto properties:

Ms. Glenda McDowell, President of the East End/Valley Street Association
Mr. William Young, resident at 18 Martin Luther King Jr. Drive (presented petition containing 78 signatures)
Reverend Christopher Chiaromonte
Ms. Mary Young, resident at 18 Martin Luther King Jr. Drive
Ms. Sharon Burton, resident at 131 Carroll Avenue
Ms. Doris Daniels, resident at 42 Curve Street

The following individuals spoke in support of the proposed development for various reasons, some being, but are not limited to: this project will build 7 affordable units for 7 families; project will cater to more middle income residents who want to be able to work and live in the downtown area; if property taxes go up because of this development, the surrounding property owner's net worth will go up as well; walkable distance to downtown; infill development; underground parking will eliminate the need for asphalt parking; project followed the Healthy Built Homes Program; need for affordable homes that are disability accessible; positive unique model for this community; and allow different people to share in the heritage of the community:

Mr. Philippe Rosse, Executive Director of the Affordable Housing Coalition of Asheville-Buncombe County
Mr. Charlie White, resident at 21 Bearden Avenue
Mr. Carl Gunther, resident on Mountain Street
Mr. Mark Shriner, Chair of the Western North Carolina Green Building Council
Mr. Bart Floyd
Ms. Mary Love, former project manager for the Asheville Healthy Built Home Program
Mr. Jonathan Glover, resident at 84 Bartlett Street

At 8:35 p.m., Mayor Bellamy closed the public hearing.

Upon inquiry of Vice-Mayor Jones, Mr. Norman Divers, Civil Engineer for the petitioner, said that the stormwater problem has been discussed with the neighbors and City staff. He explained that on Carroll Avenue, the property owners are experiencing water in their basements when it rains hard is because their basements are tied into one storm drain line that runs into the storm drainage further down the street. When the gravel lot was constructed for the church across the street, a home was demolished and it caused a blockage in the drain line that was serving all those homes. The developer has reached an agreement with the church to access the property and have the opportunity to fix the storm drain line, which will alleviate the storm drainage issues for the residents on those lots. Regarding Alexander Drive, the storm drainage on Alexander Drive currently has curb-cuts that allows stormwater to run down along the road and eventually into the storm sewer system on Martin Luther King Jr. Drive. As part of the street improvements project for this project, they will be upgrading Alexander Drive to City standards, widening it an additional 8-feet to add the on-street parking, and also incorporating a storm sewer system that solely drains Alexander Drive. Further drainage issues upgrade from the petitioner's site is an off-site matter.

In response to Councilwoman Cape, the developer proposes to improve the water line along Alexander Drive by replacing the current 4" line with an 8" line at Martin Luther King Jr. Drive up to the high end of the petitioner's property and will add 3 new fire hydrants.

When Councilman Davis asked how long the line on Carroll Avenue had been crushed and if that repaired pipe would alleviate the problems, Mr. Divers felt it has probably been in that condition about 3-5 years. He said they only got to the first blockage, which was in the gravel parking lot. Once they start uncovering the line and work their way further upgrade, if other blockages are found (there is actually an inlet where they can actually see the pipe and see that it's flowing), they will actually extend their improvements all the way to that point since a commitment has been made to repair the line all the way up until there are no blockages.

Councilwoman Cape was glad that the developer will work with the Affordable Housing Coalition in keeping the units affordable. In addition, she suggested there be more of a variation of the buildings.

Councilwoman Cape moved for the adoption of Ordinance No. 3370, to conditionally zone 8 lots located on Alexander Drive – the Skylofts of Asheville – from RS-8 Residential Single-Family High Density District and RM-8 Residential Multi-Family Medium Density District to RM-16 Residential Multi-Family High Density District/Conditional Zoning for a multi-unit development, subject to the conditions recommended by the TRC and City staff, noting that this request is reasonable based on the information provided in the staff report and in the staff recommendation. This motion was seconded by Councilman Newman.

Councilman Brownie spoke in support of the development noting that these kinds of infill developments are difficult.

Mr. Shuford suggested City Council add the following condition: That the number of units shall be increased to 69 with seven units meeting the affordability standards of the City of Asheville. In addition, he also suggested that he and City Attorney Oast work on a condition regarding the storm drainage issue, noting that it would be something similar to the drainage improvements described by the applicant shall be completed prior to the issuance of any Certificate of Occupancy.

Councilwoman Cape and Councilman Newman accepted the two additional conditions outlined by Mr. Shuford, noting that the storm drainage condition will be refined by the City Attorney.

Councilman Mumpower was uncomfortable with the developer having to “bribe” City Council with affordable housing units in order to have a decent chance to get his project approved. We do not have any standards in place where we provide incentives through our ordinances to give the developer the opportunity to bring this project alive. The affordable units will be subsidized by other people and we should go there cautiously.

Ms. Patsy Brison, attorney representing the developer, asked for clarification on the condition about no Certificate of Occupancy being issued until the drainage is addressed. Mr. Shuford said that it is his intent to refine the specific drainage improvements prior to the condition being signed by the Mayor. The improvements will specify the areas discussed tonight, not to include the up the hill situation which the developer has no control over.

In response to Councilwoman Cape, Mr. Farmer said that they have an agreement the Church that we will assist them in fixing the line. If the Church says we can't come on their property to fix the line, that would be an issue. But again, we do have an agreement already with the Church that they will cooperate with us to fix the line and it will be done. This will be done in conjunction with the side works we are doing on the property.

-20-

City Attorney Oast said that we will structure a condition that if the developer does everything they legally can effectuate the condition they promised to meet, that will be satisfactory compliance.

Mayor Bellamy said that growth, development and change in communities are difficult. The developer is representing that they are proposing a project of things Council has said was important, e.g. green building, inclusionary zoning, infill housing, etc. When there is a neighborhood that has vacant property, that owner can sell it to a developer who in their eyes will see the neighborhood improved. Even though a lot of her family members signed the petition against the project, she must make her decisions based upon the data presented to her. To her, this is a great project and she believes the developer has listened and worked with the community to address their concerns. Not everyone is pleased, but it is a step in the right direction for change in our community.

The motion made by Councilwoman Cape and seconded by Councilman Newman, including the following two additional conditions (1) That the number of units shall be increased to 69 with seven units meeting the affordability standards of the City of Asheville; and (2) the Planning & Development Director and City Attorney work on a condition regarding the storm drainage issue, noting that it would be something similar to the drainage improvements described by the applicant shall be completed prior to the issuance of any Certificate of Occupancy carried unanimously.

ORDINANCE BOOK NO. 23 – PAGE 10

D. PUBLIC HEARING TO CONSIDER THE PERMANENT CLOSING OF AN UNOPENED RIGHT-OF-WAY OFF CARROLL AVENUE

RESOLUTION NO. 06-125 - RESOLUTION TO PERMANENTLY CLOSE AN UNOPENED RIGHT-OF-WAY OFF CARROLL AVENUE

Mayor Bellamy said that this public hearing was held on April 25, 2006. She said that it was continued until this date in order to make sure that all property owners are advised of the proper procedures concerning closing the right-of-way, and also in

order for the closing to be discussed in conjunction with the conditional zoning public hearing on Alexander Drive – The Skylofts of Asheville.

Assistant Director of Public Works Richard Grant said that this is the consideration of a resolution to permanently close an unopened right-of-way off of Carroll Avenue. This public hearing was advertised on March 31, April 7, April 14 and April 21, 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.

-21-

Pros:

- The closure allows the property to be used to its maximum potential.
- There will be no future compromise of ingress/egress 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 permanently closing the unopened right-of-way off Carroll Avenue.

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

Councilman Mumpower moved for the adoption of Resolution No. 06-125. This motion was seconded by Councilman Freeborn and carried unanimously.

RESOLUTION BOOK NO. 30 – PAGE 51

E. PUBLIC HEARING TO CONSIDER CONDITIONAL ZONING OF 56 WALTON STREET FROM RS-8 RESIDENTIAL SINGLE-FAMILY HIGH DENSITY DISTRICT TO INSTITUTIONAL DISTRICT/CONDITIONAL ZONING FOR A PROPOSED SCHOOL TO BE HOUSED WITHIN THE EXISTING CHURCH

ORDINANCE NO. 3371 - ORDINANCE TO CONDITIONALLY ZONE 56 WALTON STREET FROM RS-8 RESIDENTIAL SINGLE-FAMILY HIGH DENSITY DISTRICT TO INSTITUTIONAL DISTRICT/CONDITIONAL ZONING FOR A PROPOSED SCHOOL TO BE HOUSED WITHIN THE EXISTING CHURCH

Mayor Bellamy opened the public hearing at 9:05 p.m.

Urban Planner Blake Esselstyn said that this is the consideration of an ordinance to conditionally zone 56 Walton Street from RS-8 Residential Single-Family High Density District to Industrial District/Conditional Zoning for a proposed school to be housed within the existing church. This public hearing was advertised on June 16 and 23, 2006.

This review concerns a proposed school on the property of Tabernacle Missionary Baptist Church on Walton Street. The applicant is seeking for the property to be rezoned from RS-8 to Institutional (CZ) to accommodate the school use. As noted above, schools are a Use By Right, Subject to Special Requirements in the RS-8 district, but the proposed site meets neither the lot size nor the primary access requirements for this district. In the Institutional district, schools are a permitted use, and do not have to meet these requirements.

The proposed school would be entirely housed within existing church buildings. (It is noteworthy that the main church building on the property was formerly the St. Anthony of Padua School.) The church is considering a possible future expansion at the rear of the main building as well as a possible future expansion of the parking area (both shown on the plans). The proposed school would not be involved in any such expansions other than possible relocation/rearrangement of vehicular use areas.

-22-

The site is located near the southern end of South French Broad Avenue (within the City Limits of the City of Asheville). The plans include 2 lots, with a combined area of approximately 1.23 acres. Vehicular access to the facility would be from the Walton Street side of the property. The amount of parking shown on the plan meets City requirements.

In its initial phase, the school aims to enroll 15 kindergarten students. If the program is successful, the school hopes to fill four classrooms, with a total of approximately 60 students in grades K-4.

The building, which the school aims to use, was built as a school in 1936. It ceased to operate as a school in the 1960s. The Tabernacle Missionary Baptist Church subsequently purchased the property. After review of the site plan, staff is of the opinion that the conditional zoning to allow the (re)establishment of a school use is reasonable.

At the May 15, 2006, meeting, the Technical Review Committee (TRC) approved the proposed concept plan, based on the conditions outlined in the staff report.

At the June 7, 2006, meeting, the Planning and Zoning Commission unanimously recommended approval of the rezoning request, with the added condition that enrollment be limited to a maximum of 75 students.

Staff has received no indications of opposition to the project. One neighborhood resident called to express support for the proposed school, but did express a desire that the project result in improved maintenance of the vegetation on the Scott Street side of the site, which, in the estimation of the neighbor, often causes a nuisance due to neglect. Staff is of the opinion that the additional landscaping required to meet buffer standards will improve the condition of this area.

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

1. **That the proposed use or development of the land will not materially endanger the public health or safety.** The proposed project has been reviewed by City staff and appears to meet all public health and safety related requirements once the conditions enumerated by the TRC 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 proposed use is compatible with the surrounding natural features and topography.
3. **That the proposed use or development of the land will not substantially injure the value of adjoining or abutting property.**
Staff does not expect that the proposed use would have anything more than a minimal impact on property values, and expects that the impact could just as likely be in a positive direction as negative.

-23-

4. **That the proposed use or development of the land will be in harmony with the scale, bulk, coverage, density, and character of the area or neighborhood in which it is located.** The proposed project would be in harmony with these characteristics of the area. The proposed school use will entail few changes to the exterior of the site other than improving one parking area and adding landscaping.
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

adopted Smart Growth Land Use Policies listed in Asheville's City Development Plan 2025 state that existing neighborhoods near Downtown Asheville should be strengthened through infill development, and that traditional neighborhood development patterns should be recognized and encouraged. Further, the Vision – Smart Growth Initiative section encourages projects that employ adaptive reuse to “preserve the architectural character of the community.” Thus, staff finds this project, which would increase the level of use of an existing structure, preserve a noteworthy building, and in fact restore a historic use, to be in compliance with the Comprehensive Plan.

Aside from the possibility that the rezoning could facilitate development of a small business, this rezoning can be said to neither hinder nor promote the goals identified in the Strategic Operating Plan.

6. **That the proposed use is appropriately located with respect to transportation facilities, water supply, fire and police protection, waste disposal, and similar facilities.** The project's location near Depot Street ensures access to transportation facilities and other services. Transit route 18 serves the area. In addition, technical review from other departments has not revealed any problems for serving the development.
7. **That the proposed use will not cause undue traffic congestion or create a traffic hazard.** The proposed project has been reviewed by the City's traffic engineer and is not expected to cause undue traffic congestion or create a traffic hazard.

Based on the above findings and the analysis provided in the report, staff finds this request to be reasonable.

Considerations:

- Proposed project would establish a school use on a property that was historically used as a school.
- Project's proposed adaptive re-use would preserve a noteworthy building.
- As of this writing, staff has received no indication of opposition to the project.
- Overall mission of project, a school “designed specifically designed for the needs of low-income minority children” could be described as a helpful one for the community.
- Project conforms to multiple policies in the Comprehensive Plan.

Staff is of the opinion that the proposed conditional zoning and concept plan would represent a net benefit to the community and therefore recommends approval of the request.

I move to approve the zoning map amendment from RS-8 to INST (Conditional Zoning)- subject to the conditions recommended by staff and find that the request is reasonable based on information provided in the staff report and as stated in the staff recommendation.

The designer on the project and the Board Chair for the New City Christian School both spoke in support of the project.

-24-

Mayor Bellamy closed the public hearing at 9:12 p.m.

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. 3371, to conditionally zone 56 Walton Street from RS-8 Residential Single-Family High Density District to Industrial District/Conditional Zoning for a proposed school to be housed within the existing church, subject to the conditions recommended by staff and find that the request is reasonable based on information provided in the staff report and as stated in the staff recommendation. This motion was seconded by Vice-Mayor Jones and carried unanimously.

ORDINANCE BOOK NO. 23 – PAGE 14

F. PUBLIC HEARING TO CONSIDER CONDITIONAL ZONING OF 103 N. BEAR CREEK ROAD FROM RM-8 RESIDENTIAL MULTI-FAMILY MEDIUM DENSITY DISTRICT TO COMMERCIAL INDUSTRIAL DISTRICT/CONDITIONAL ZONING FOR A PROPOSED PRE-SCHOOL

ORDINANCE NO. 3372 - ORDINANCE TO CONDITIONALLY ZONE 103 N. BEAR CREEK ROAD FROM RM-8 RESIDENTIAL MULTI-FAMILY MEDIUM DENSITY DISTRICT TO COMMERCIAL INDUSTRIAL DISTRICT/CONDITIONAL ZONING FOR A PROPOSED PRE-SCHOOL

Mayor Bellamy opened the public hearing at 9:15 p.m.

Planning & Development Director Scott Shuford said that this is the consideration of an ordinance to conditionally zone 103 N. Bear Creek Road from RM-8 Residential Multi-Family Medium Density District to Commercial Industrial District/Conditional Zoning for a proposed pre-school. This public hearing was advertised on June 16 and 23, 2006.

The subject property is located within the City Limits on N. Bear Creek Road, just north of the intersection of N. Bear Creek and Deaverview Road. Two parcels totaling 2.28 acres are included in this conditional zoning request. Access to the property is off of N. Bear Creek. Surrounding properties to the north and west are zoned residentially (RS-8, RM-8, RM-16) and the properties to the south and east are zoned Commercial Industrial. The land use pattern in the area follows the zoning. To the north are single-family homes; to the west, both single-family and multi-family housing. A self-service storage facility is located immediately south of the property. MB Haynes construction/contracting/electronics operation is located to the east.

The applicants, Amica Venturi and Ken Huck, wish to rezone their property from RM-8 Residential Multi-Family Medium Density District to Commercial Industrial/Conditional Zoning for the purpose of establishing a preschool. The property currently contains a single-family home and dilapidated manufactured home. (The current property owners have been cited for a number of violations by the Building Safety Department, primarily concerning illegal dumping and the condition of the manufactured home. At the time of the drafting of this report, the applicant had assisted the property owner in demolishing most all of this manufactured home and clearing the property of debris). It is proposed that the single-family home be preserved. The applicants have not specified the exact use of this building. The development plan shows, in addition to the preservation of the existing home, the construction of two buildings approximately 3,744 square feet in size. A sidewalk along Bear Creek is proposed along with one-way entrance and exit drives to facilitate drop off and pick up of children.

-25-

At their meeting on May 15, 2006, the City of Asheville Technical Review Committee (TRC) reviewed the conditional zoning request and made a positive recommendation (with conditions) that the project be forwarded to the Planning and Zoning Commission.

At their meeting on June 7, 2006, the Asheville Planning and Zoning Commission unanimously (6-0) recommended approval of this application to the City Council.

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

1. **That the proposed use or development of the land will not materially endanger the public health or safety.** The project, if approved, must meet the technical standards set forth in the City's Unified Development Ordinance. The existing site plan shows compliance with many of the City's development standards; the applicant is working with City staff on full compliance. The applicants are also working with the appropriate childcare-licensing professionals on the development of this site.
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 applicant is working with appropriate City departments to ensure that proper buffers are established between any construction/site work and the stream and utility lines which lie to the north of the property.
3. **That the proposed use or development of the land will not substantially injure the value of adjoining or abutting property.** The use of the property surrounding this site is varied. There exist commercial, industrial, and residential uses on various sides of the subject property. The applicants propose to save as much of the existing vegetation on the site as is possible. Compliant buffering is proposed in appropriate locations. The dilapidated manufactured home will be removed as part of the development of this property.
4. **That the proposed use or development or the land will be in harmony with the scale, bulk, coverage, density, and character of the area or neighborhood in which it is located.** The character of the area in which this development is proposed is not easily defined due to the varied nature of uses found. The scale of the proposed buildings to be utilized for the preschool is in keeping with a residential area. The area has a fairly dense residential population for which the preschool would be a convenience.
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 proposed development supports the 2025 Plan regarding permitting appropriately scaled non-residential uses that serve residents of neighborhoods in appropriate residential locations.

6. **That the proposed use is appropriately located with respect to transportation facilities, water supply, fire and police protection, waste disposal, and similar facilities.** Asheville Transit Route 15 services the Deaverview Apartments immediately southwest of the proposed development. All technical aspects of the project have or can be met by the applicants.

-26-

7. **That the proposed use will not cause undue traffic congestion or create a traffic hazard.** The applicants are working with the City of Asheville Engineering Department to provide appropriately for the automobiles that will enter and exit this property for the drop off and pick up of children attending the facility.

Based on the above findings and the analysis provided in the report, staff finds this request to be reasonable.

Considerations:

- .. Proposes appropriate nonresidential use in a transition area between residential and commercial/industrial uses.
- .. Landscape plan indicates the preservation of considerable existing vegetation.
- .. Some may consider this application a commercial intrusion into a residential area due to the size of the proposed preschool operation.

Staff recommends approval subject to the conditions placed on the development by the TRC with the added condition that the site be cleaned up prior to obtaining final TRC approval on the project.

At their meeting on June 7, 2006, the Asheville Planning and Zoning Commission voted unanimously (6-0) to recommend this rezoning to the Asheville City Council.

Mr. Gerald Green, representing the petitioner, spoke in support of the conditional zoning and presented City Council with a petition containing 24 signatures of area residents supporting the establishment of a preschool in their neighborhood and to conditionally zone the property.

Mayor Bellamy closed the public hearing at 9:20 p.m.

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. 3372, to conditionally zone 103 N. Bear Creek Road from RM-8 Residential Multi-Family Medium Density District to Commercial Industrial District/Conditional Zoning for a proposed pre-school, subject to the following conditions: (1) the TRC conditions being met; (2) that the site be cleaned up prior to obtaining final TRC approval of the project; and (3) that, if deemed necessary by the Planning Director, this project be reviewed by the TRC prior to issuance of any building [or grading, etc....] permits. Noting that the request is reasonable based on information provided in the staff report and as stated in the stated in the staff recommendation. This motion was seconded by Councilwoman Cape and carried unanimously

ORDINANCE BOOK NO. 23 – PAGE 18

At 9:25 p.m., Mayor Bellamy announced a short recess.

IV. UNFINISHED BUSINESS:

A. ORDINANCE NO. 3373 - ORDINANCE ADOPTING THE FISCAL YEAR 2006-07 ANNUAL OPERATING BUDGET

Chief Financial Office Ben Durant said that this is the consideration of an ordinance adopting the Fiscal Year 2006-07 annual operating budget. The City Council public hearing was held on June 13, 2006.

-27-

The Fiscal Year 2006/2007 Annual Operating Budget was formally presented to City Council on May 23, 2006. In

accordance with the North Carolina Local Government Budget and Fiscal Control Act, a summary of the Budget along with a notice of the Public Hearing was published on June 2 and June 9, 2006. The City Council conducted a public hearing on the budget on June 13, 2006.

The Fiscal Year 2006/2007 Annual Operating Budget is balanced with an Ad Valorem Tax rate of \$0.4238 per \$100 of assessed valuation, which is a revenue-neutral reduction from the current tax rate of \$0.53 per \$100 of assessed of valuation. All essential City programs and services are maintained.

The net operating budget as currently presented to City Council is set at **\$117,011,971**, which includes a General Fund appropriation of **\$77,858,556**. The final budget includes several changes that were made after the proposed budget was published on May 23. Those changes are summarized below:

- After the proposed budget was presented to Council, the Fire Department received notification that it had been awarded a federal SAFER grant which will partially fund the cost of three of the eighteen additional firefighters that were already included in the proposed budget. The FY 2006/2007 revenue from this grant totals **\$94,616**. This additional revenue was used to 1) add funding to the budget to purchase a **\$75,000** quick response vehicle (QRV) for the Fire Department; and 2) reduce the fund balance appropriation in the General Fund by **\$16,616**.
- In addition, Council directed staff to include funding in the Transit Services Fund budget to expand the hours of operation for city buses and to initiate a limited-time fare free program. These new transit initiatives are funded with a **\$248,116** transfer from the Parking Services Fund. Revenue from various parking fee increases was added to the budget to offset the cost of these new transit programs.
- Outside Agency funding is presented in accordance with City Council's recommendations. The full Council made several changes to the Revenue & Finance Committee's initial recommendations. Final Outside Agency appropriations for FY 2006-2007 total **\$224,000**, which represents a net reduction of **\$59,500** over the FY 2005-2006 budget of **\$283,500**. Staff had included the full \$283,500 in the initial FY 2006-2007 proposed budget as a place holder until Council made its final Outside Agency recommendations. Therefore, Council freed up **\$59,500** when it set the Outside Agency funding level at \$224,000.
- The Revenue & Finance Committee recommended various changes to the business privilege license fee schedule, including the elimination of maximum fee caps in the retail, wholesale, and service business categories. The full Council directed staff to look at various alternatives to the Committee's initial recommendation to eliminate the maximum caps. Staff completed its analysis and is now proposing a maximum fee of **\$10,000** for retail, wholesale, and service establishments. This alternative proposal will produce approximately **\$225,000** in additional revenue in FY 2006/2007, which is **\$325,000** less than the **\$550,000** in additional revenue that was initially included in the proposed budget.

After the proposed budget was presented to Council, the City received two additional months of sales tax revenue from the State; and based on this information, staff was able to increase its sales tax projections for next year by **\$300,000**. Staff proposes that this additional revenue, along with a portion (**\$25,000**) of the savings from reducing Outside Agency funding be used to bridge the **\$325,000** revenue gap between the latest business license fee

-28-

proposal and the Revenue & Finance Committee's initial recommendation. The remaining \$34,500 in Outside Agency savings will be added to the Manager's Contingency.

- Various changes or increases to fees & charges are presented in accordance with Council's recommendations. Specific fees & charges recommendations are provided as a part of the annual budget ordinance.
- Based on better than expected revenue and operating performance in FY 2005/2006, staff projects that the year-end deficit in the Civic Center Fund will be \$375,000, which is approximately \$400,000 less than the FY 2005/2006 budgeted operating transfer from the General Fund to the Civic Center Fund. Based on Council's direction, staff is proposing that this \$400,000 be redirected from the Civic Center Operating Fund to the Civic Center Capital Fund to address high priority capital projects at the Center. The Budget Ordinance provides authorization for staff to execute this transfer.

Staff requests that Council review the FY 2006/2007 Annual Operating Budget, including the changes noted above, and make necessary recommendations or adjustments followed by adoption of the Budget Ordinance.

Mr. Durant explained the one remaining outstanding issue of the business privilege license fee. He summarized the current fee structure and the updated proposal in that staff was asked to look at setting a maximum fee as opposed to having an

unlimited fee. They are now recommending the maximum fee of \$10,000 for business privilege licenses. In summary, the effects of the proposed City changes is that (1) approximately 1,600 business establishments (60% of establishments under the City rate structure) will see their fees decrease due to the reduction in the gross receipts per volume change; (2) approximately 1,000 business establishments (37% of the establishments under the City rate structure) currently pay the minimum and will therefore see no change in their fee; and (3) 84 business establishments (3% of the establishments under the City rate structure) will see their fees increase due to increasing the maximum to \$10,000 in the retail, service, and wholesale categories (and out of the 84 businesses, 12 establishments will pay the maximum \$10,000 fee.

Councilman Newman moved to adopt the budget as presented by Mr. Durant except to include the recommended Revenue and Finance Committee business privilege license fees, being the minimum fee of \$25, \$0.50 per thousand over \$15,000 + \$25, and no maximum fee (not the \$10,000 cap). This motion was seconded by Vice-Mayor Jones.

Upon inquiry of Councilman Newman about the neighborhood coordinator position in the Planning & Development Department, Assistant City Manager Richardson said that the City Manager will work with the Chief Financial Officer in trying to identify funds to have an existing intern be hired on a one-year contract basis for this position.

Considerable discussion was held at Councilman Newman's possible amendment to create a budget policy for implementing a uniform water rate which will be phased in over a 5-year period with the first of those 5-years beginning in Fiscal Year 2007-08, with a caveat that we have a policy of maintaining our current differential rate structure for manufacturing customers who are on the Asheville water system at their current lower rate structure. In summary, it was the majority of Council's decision to wait for updated information (since this is a policy decision that can happen anytime and has no impact on the budget being discussed now). Mr. Durant said that he can have the updated information to Council in approximately one month, with updated information to include statement of the impacts, what is the impact with the loss of Anvil, what it will look like phasing in, etc.

-29-

Councilman Mumpower moved to amend the main motion to ask staff to create some procedure to assure compliance regarding privilege license fees. Councilwoman Cape responded that conversations have begun with City staff to look at the process of the privilege license fee.

The motion to amend the main motion to instruct staff to create a procedure to assure compliance with the privilege license fees carried unanimously.

Mayor Bellamy moved to amend the amended main motion by adding the maximum fee cap of \$10,000 on all businesses, except for manufactures which will have a \$1,000 cap (including the \$25 minimum fee; and \$0.50 per thousand over \$15,000 + \$25) for at least one year and in next year's budget the Council's policy will be to ask staff to include a uniform business privilege license fee in the next year's budget. After discussion, the motion to amend the amended main motion carried on a 6-1 vote, with Councilman Mumpower voting "no."

Councilman Mumpower didn't support the motion because these are people that don't get to vote and it's always easy to go after businesses. Businesses are faced with parade of taxes and expenses and this is just one of many.

The amended main motion then carried on a 6-1 vote, with Councilman Mumpower voting "no."

ORDINANCE BOOK NO. 23 – PAGE 22

V. NEW BUSINESS:

A. ACCEPTANCE OF GRANT FUNDS

Councilman Mumpower was pleased to present Transit Director Bruce Black a check from the Chaddick Foundation in the amount of \$25,000 for the Top A Stop Program.

Councilman Mumpower was also pleased to present Irby Brinson, Director of Parks & Recreation, a check from the Chaddick Foundation in the amount of \$25,000 for Memorial Stadium.

B. RESOLUTION APPOINTING MEMBERS TO THE ASHEVILLE REGIONAL AIRPORT AUTHORITY

At the request of Vice-Mayor Jones, Chair of the Boards & Commissions Committee, it was the consensus of Council to fill the Airport Authority vacancies on July 11, 2006.

C. RESOLUTION NO. 06-126 - RESOLUTION APPOINTING A MEMBER TO THE BUNCOMBE COUNTY TOURISM DEVELOPMENT AUTHORITY

Vice-Mayor Jones, Chair of the Boards & Commissions Committee, said that Mr. Victor Trantham has resigned, as a member of the Buncombe County Tourism Development Authority, thus leaving an unexpired term until August 30, 2007.

At the City Council worksession on June 20, 2006, City Council instructed the City Clerk to arrange interviews for Frank Salvo and Ronald Storto to fill the vacancy for the owner/operator of hotel, motel or other taxable tourist accommodation with 100 or fewer rental units.

After Council spoke highly of the candidates, Frank Salvo received 3 votes and Ronald Storto received 4 votes. Therefore, Ronald Storto was appointed to serve the unexpired term of

-30-

Mr. Trantham (representing the owner/operator of hotel, motel or other taxable tourist accommodation with 100 or fewer rental units), term to expire August 30, 2007, or until his successor has been appointed.

RESOLUTION BOOK NO. 30 – PAGE 53

VI. OTHER BUSINESS:

A. CLAIMS

The following claims were received by the City of Asheville during the period of June 2-15, 2006: Tana R. Oliver (Parks & Recreation), Doris Firkatoune (Civic Center), Johnny L. Bailey (Transit Services), Teresa Raines (Sanitation) and Robin Cline (Police).

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

VII. INFORMAL DISCUSSION AND PUBLIC COMMENT:

Mr. Robert Zieber noted this has been his third time to Council requesting the status of the Biltmore Park Traffic Calming Plan for speed humps. He said that he recently talked with City Engineer Cathy Ball who would be copying Mr. Zieber with the correspondence associated with this matter.

Reverend Christopher Chiaromonte commented on how the City was oppressing the poor.

Mr. Dwight Buckner, representing the members of the Downtown Association, voiced concerns over the budget process and parking deck increases.

VIII. ADJOURNMENT:

Mayor Bellamy adjourned the meeting at 10:35 p.m.

CITY CLERK

MAYOR