

Regular Meeting

Present: Mayor Terry M. Bellamy, Presiding; Vice-Mayor Diana Hollis Jones; Councilwoman Robin L. Cape; Councilman Jan B. Davis; Councilman Bryan E. Freeborn; Councilman R. Carl Mumpower; Councilman Brownie W. Newman; City Manager Gary W. Jackson; City Attorney Robert W. Oast Jr.; and City Clerk Keisha Lipe

Absent: None

PLEDGE OF ALLEGIANCE

- Ms. April Alexander's 3rd Grade Class from Oakley Elementary School led City Council in the Pledge of Allegiance.

INVOCATION

Councilman Freeborn requested two minutes of silence.

I. PROCLAMATIONS:

A. PROCLAMATION PROCLAIMING SEPTEMBER, 2006, AS "NATIONAL ALCOHOL AND DRUG ADDICTION RECOVERY MONTH"

Mayor Bellamy read the proclamation proclaiming September, 2006, as "National Alcohol and Drug Addiction Recovery Month" in the City of Asheville. She presented the proclamation to Councilman Mumpower, who is actively involved in the Asheville Drug Commission. Councilman Mumpower thanked Council for their support and showed Council the month of September Drug Commission poster.

B. PROCLAMATION PROCLAIMING SEPTEMBER 25-30, 2006, AS "DOLLAR WISE WEEK"

Mayor Bellamy read the proclamation proclaiming September 25-30, 2006, as "Dollar Wise Week" in the City of Asheville. She presented the proclamation to the Executive Director of the Consumer Credit Counseling, who briefed City Council on some activities taking place during the week.

C. PROCLAMATION PROCLAIMING OCTOBER, 2006, AS "SISTER CITIES MONTH"

Councilman Davis read the proclamation proclaiming October, 2006, as "Sister Cities Month" in the City of Asheville. He presented the proclamation to Mr. Richard Hall, President of Asheville Sister Cities Inc, and members of Asheville Sister Cities Inc. who briefed City Council on some activities taking place during the month. Mr. Hall was pleased to show the award they received for the best humanitarian program, a hand-carved pen used to sign an agreement with a new Sister City, and a book given out by the Sister Cities International at the 50th anniversary conference.

D. PROCLAMATION PROCLAIMING OCTOBER 21, 2006, AS "AIDS AWARENESS DAY"

Vice-Mayor Jones read the proclamation proclaiming October, 21, 2006, as "AIDS Awareness Day" in the City of Asheville. She presented the proclamation to representatives from Western North Carolina AIDS Project and the Western North Carolina Community Health Services who briefed City Council on some activities taking place during the day.

II. CONSENT AGENDA:

Councilman Mumpower asked that Consent Agenda "B" be removed from the consent agenda for individual discussion.

At staff's request, Consent Agenda Item "D" was removed from the consent agenda until further notice.

Mayor Bellamy asked that Consent Agenda "E" be removed from the consent agenda due to a conflict of interest.

A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON SEPTEMBER 12, 2006, AND THE WORKSESSION HELD ON SEPTEMBER 19, 2006

B. RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A THIRD PARTY ADMINISTRATOR AGREEMENT WITH PRIMARY PHYSICIANS CARE INC. FOR THE PURPOSE OF PROVIDING ADMINISTRATIVE, DISEASE MANAGEMENT AND WELLNESS AND RELATED SERVICES FOR ELIGIBLE CITY EMPLOYEES, RETIREES AND THEIR DEPENDENTS

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

C. RESOLUTION NO. 06-167- RESOLUTION DIRECTING THE CITY CLERK TO PUBLISH A NOTICE REGARDING THE EXCHANGE OF A PORTION OF REAL PROPERTY LOCATED AT 749 FAIRVIEW ROAD FOR A PORTION OF REAL PROPERTY LOCATED AT 723 FAIRVIEW ROAD

Summary: The consideration of a resolution authorizing the City Clerk to publish a notice regarding the exchange of a portion of real property located at 749 Fairview Road for a portion of real property located at 723 Fairview Road.

The City and Dan Zorn, principal of Famprop LLC (Famprop) have negotiated an exchange of a portion of City owned real property at 749 Fairview Road for a portion of property Famprop is purchasing at 723 Fairview Road.

The proposed exchange is to correct a long standing encroachment and provide a more consistent property line between the City's property and the Famprop property.

The City's property (PIN 9657.97-58-1784) is on the south side of Fairview Road at its intersection with Liberty Street, zoned RS8 and improved with a Fire Station, Public Library and Community Center. The portion to be exchanged is a 0.12 acre± parcel at Fairview Road on the west side of the City's parcel as it adjoins the Famprop property. This part of the property is on the outside of the City's fence and has never been utilized by the City. It is this portion of the property where one of the buildings on the Famprop property has encroached for a number of years.

The property being purchased by Famprop (PINs 9657.07-58-0712; 0682) on Fairview Road is on the south side of the street about 315' west of its intersection with Liberty Street. It is zoned RS8 and is improved with a large residential structure. The portion to be exchanged is a 0.12 acre± parcel located at the rear of the property adjoining the City's property.

A review of the tax assessments for the properties indicate broad variations between per acre values of parcels in the area that would be attributed to the size differential between parcels. Comparable lot values range from 21,500 for 0.16 acre to 27,400 for 0.42 acre. The values of the parcels to be exchanged are estimated to be roughly equal based on shared characteristics including location, size, shape and topography. The value for each exchange parcel is estimated to be about \$20,000± each for 0.12 acre.

Pros:

1. The exchange will be a fair exchange of value for value.
2. It will be revenue neutral returning property to the tax rolls in exchange for property being taken off the tax rolls.
3. It will correct the long standing structural encroachment.
4. It will provide a better more consistent property line.

Cons: There are no negative aspects to this proposal.

Approval of the resolution will initiate the exchange of the properties through the process provided in N. C. G. S. 160A-271.

Economic Development, Fire Department and Parks & Recreation staff recommends adoption of a resolution authorizing the City Clerk to publish a notice regarding the exchange of a portion of real property located at 749 Fairview Road for a portion of real property located at 723 Fairview Road.

RESOLUTION BOOK NO. 30 – PAGE 107

D. RESOLUTION DIRECTING THE CITY CLERK TO PUBLISH A NOTICE REGARDING THE EXCHANGE OF REAL PROPERTY LOCATED ON RESERVOIR ROAD FOR STREET CONSTRUCTION

This item was pulled from the consent agenda to be considered at another date.

E. RESOLUTION AUTHORIZING NEGOTIATIONS WITH MOUNTAIN HOUSING OPPORTUNITIES AS THE QUALIFIED DEVELOPER FOR TWO PARCELS IN EAST RIVERSIDE AND REMARKETING OF TWO PARCELS IN EAST RIVERSIDE

This item was removed from the Consent Agenda due to a conflict of interest.

F. RESOLUTION NO. 06-169 - RESOLUTION DIRECTING THE CITY CLERK TO PUBLISH A NOTICE OF INTENT REGARDING A PROPOSED LEASE OF CITY-OWNED REAL PROPERTY AT 224 LOUISIANA AVENUE

Summary: The consideration of a resolution directing the City Clerk to publish a Notice of Intent regarding execution of a Lease with the United States of America (USA) for the Army Reservoir Center at 224 Louisiana Avenue.

The property at 224 Louisiana Avenue known as the Army Reserve Center is an 8.857 acre tract on the West side of Louisiana Avenue about 200' from its intersection with Patton Avenue. Although most of the property is generally level, there is a steep slope with rock outcroppings covering the Southeast quadrant of the property. This presents a formidable challenge to further grading of the property, so the useable area is about 6+ acres. The property is currently zoned Institutional. Due to its location and size the highest and best use for the property would be an institutional use, such as a nursing home, assisted living facility or high density residential. The single story building and other improvements located on the property were built by the Army Reserve and remain the property of the Reserve with the right of removal for the duration of the lease. The property was leased to the USA in 1950 at a rent of \$1.00 for the entire 50 year term. The most recent lease for six years was signed in 2000 at an annual rent of \$60,000.

The USA lease expired at the end of June and the Army Reserve has offered to enter into a new lease for the property for a term of three (3) years at an annual rent of \$112,000. Although the lease does not contain an annual escalation clause the rent is at the high end of the rent range and the term was reduced to three (3) years. The Reserve Center has been a good caretaker of the property and no complaints have been received regarding any condition or activities at the site.

This item was pulled from the August 22, 2006, agenda in order for staff to assess the proposed lease in connection with the potential redevelopment of the property. It is the opinion of staff that the long term best use for the property would be a use capable of producing economic return consistent with the close proximity to Patton Avenue; however, such conversion of the property would require an appropriate amount of public discussion and sufficient planning of the project and marketing of the property. A short term lease as proposed with the USA maintains a significant revenue stream for the City while allowing considerable flexibility should an opportunity for redevelopment arise.

Pros:

- The rent revenue for this property will be significantly increased.
- The rent is at the high end of the rent range for this property.
- The shorter term will allow re-evaluation of the lease sooner.
- The Army Reserve Center provides a valuable public service.

Cons:

- The property does not generate tax revenue, but this is offset by the rent revenue.
- The current use does not add measurably to the economic activity in the area.

Economic Development staff recommends City Council adopt the resolution directing the City Clerk to publish a Notice of Intent regarding execution of a Lease with the USA for the Army Reserve Center at 224 Louisiana Avenue.

RESOLUTION BOOK NO. 30 – PAGE 109

G. RESOLUTION NO. 06-170- RESOLUTION AUTHORIZING THE CITY MANAGER TO AMEND THE EXISTING AGREEMENT WITH GREEN LIGHT ELECTRIC INC. TO CONTINUE PREVENTIVE MAINTENANCE ON TRAFFIC CONTROL EQUIPMENT OWNED AND OPERATED BY THE CITY OF ASHEVILLE

Summary: The consideration of a resolution authorizing the City Manager to amend the existing agreement with Green Light Electric, Inc. located in Weaverville, North Carolina, to continue preventive maintenance on traffic control equipment owned and operated by the City of Asheville through September 30, 2008, in the amount of \$68,000.

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

The contract for traffic signal maintenance includes:

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

Bids were solicited in 2002 for the contract. Green Light Electric, Inc.'s bid was the lowest, with the 2nd lowest bidder approximately 67% higher. Green Light Electric, Inc. was authorized for the work in 2003, and reauthorized in 2004, 2005, and 2006, and has performed acceptably during each contract period.

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

Pros:

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

Cons:

- There are costs associated with maintenance of traffic signals.

Staff recommends adoption of the resolution authorizing the City Manager to amend the existing agreement with Green Light Electric, Inc., to continue preventive maintenance on traffic control equipment owned and operated by the City of Asheville.

RESOLUTION BOOK NO. 30 – PAGE 110

H. ORDINANCE NO. 3392 - BUDGET AMENDMENT TO ALLOW STAFF TO UTILIZE THE MONEY ALREADY RECEIVED AND TO PROCEED WITH THE GROVE PARK TRAFFIC CALMING AND SIDEWALK PROJECTS

Summary: The consideration of a budget amendment to transfer \$375,000 already received from the Grove Park Inn into an expenditure account.

In 2004, City Council requested that the Grove Park Inn convey \$375,000 for traffic calming and sidewalks to the City before starting any work on their site. A portion of this was dedicated to administrative costs of the work, including hiring of an engineering consultant to develop the projects. The Grove Park Inn has conveyed the required amount to the City which has already been received. The consultant's contract calls for a 6-month timeframe from notice to proceed for public involvement, engineering, and design. Upon completion of this contract, the City will release the project for bidding.

This budget amendment is technical requirement that allows for the inclusion of these funds in the annual budget in accordance the local government fiscal control act.

Staff requests that City Council approve a budget amendment in the amount of \$375,000 to allow staff to utilize the money already received, and to proceed with the Grove Park traffic calming and sidewalk projects.

ORDINANCE BOOK NO. 23 – PAGE 90

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.

ITEMS REMOVED FROM THE CONSENT AGENDA FOR SEPARATE VOTES

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RESOLUTION NO. 06-166- RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A THIRD PARTY ADMINISTRATOR AGREEMENT WITH PRIMARY PHYSICIANS CARE INC. FOR THE PURPOSE OF PROVIDING ADMINISTRATIVE, DISEASE MANAGEMENT AND WELLNESS AND RELATED SERVICES FOR ELIGIBLE CITY EMPLOYEES, RETIREES AND THEIR DEPENDENTS

Summary: The consideration of a resolution authorizing the City Manager to enter into a Third Party Administrator agreement with Primary Physician Care, Inc., for the purpose of providing administrative, disease management and wellness and related services for eligible City Employees, retirees and their dependents.

A Benefits Committee, comprised of Human Resources, Health Services, Finance, Risk and line department representatives, was formed in 2004 to provide a balanced and broad overview of the health plan, wellness programs, and other benefits offered to City employees.

In January, 2006, the Benefits Committee began the process of looking for a third party administrator for the health plan. By March, the Committee had reviewed past performance of the health plan and made some initial determinations about what was needed from an administrator to continue and expand upon the City's nationally-recognized successes in cost control and improved employee health.

Working with Ferguson Employee Benefits Consultants, a detailed Request for Proposal (RFP) was developed and reviewed. By late April, the RFP was sent out to all companies providing these services that were registered in North Carolina and head-quartered in North Carolina or a contiguous state. In addition, the RFP was sent to the five largest TPA services providers. Forty-two companies received the RFP.

Fourteen companies' submitted responses, nineteen companies declined, and the remainder did not respond. Ferguson prepared cost comparison and service comparison matrices from the responses and in early July the Committee reviewed the submissions and narrowed the field to the top four candidates. The Committee considered rates for various services, disease management, large case management, wellness programs, and levels of customer service among other criteria.

The final four candidates were invited in for interviews and presentations during late July and early August, references were checked, and the Committee subsequently narrowed the field to three companies that were asked to shop stop-loss reinsurance for the program. The Committee reviewed all the responses in early September, considering both cost of services and the scope of services that would allow the City to continue and expand upon its nationally recognized disease management programs and its successful cost containment strategies, and by a unanimous vote selected Primary Physician Care to be the new Third Party Administrator.

Considerations:

- Primary Physician Care offers services that should enhance the City's successful health and wellness initiatives, provide data to evaluate the success of these initiatives, integrate the various aspects of the health care plan, reduce administrative burdens on the City, and provide excellent customer service to City employees, retirees and their dependents, including a Customer Service Representative located in Asheville to service those needs.
- The comparative cost for the services needed was lowest among the finalists.

City staff recommends adoption of a resolution authorizing the City Manager to enter into a Third Part Administrator agreement with Primary Physician Care, Inc., for the purpose of providing administrative, disease management and wellness and related services for eligible City Employees, retirees and their dependents.

Upon inquiry of Councilman Mumpower, Chief Financial Officer Ben Durant explained the extensive open process the City used in looking for a third party administrator.

Councilman Mumpower moved for the adoption of Resolution No. 06-166. This motion was seconded by Vice-Mayor Jones and carried unanimously.

RESOLUTION BOOK NO. 30 – PAGE 106

RESOLUTION NO. 06-168 - RESOLUTION AUTHORIZING NEGOTIATIONS WITH MOUNTAIN HOUSING OPPORTUNITIES AS THE QUALIFIED DEVELOPER FOR TWO PARCELS IN EAST RIVERSIDE AND REMARKETING OF TWO PARCELS IN EAST RIVERSIDE

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

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

Summary: The consideration of a resolution authorizing negotiations with qualified developer for two parcels in East Riverside and remarketing of two parcels in East Riverside.

- One Statement of Qualifications (SOQ) was received prior to the deadline for response to the East Riverside Request for Qualifications (RFQ). The SOQ was from Mountain Housing Opportunities and the Green Family. Of the four (4) parcels offered, the submittal pertained to two (2): Ralph Street and Choctaw Street. An additional response was received after the deadline that was determined not to be acceptable due to failure to comply with the deadline. The Request for Qualifications (RFQ) was issued for an exclusive right to negotiate a contract for private sale and redevelopment as provided in NCGS 160A-457.

The SOQ was reviewed by the Developer Selection Team on September 5, 2006, who determined that it was responsive to the RFQ and recommended acceptance to the Planning and Economic Development (PED) Committee of City Council. On September 13, 2006, the PED Committee accepted the recommendation of the Selection Team and referred the SOQ to City Council for acceptance of qualifications and authorization to initiate negotiations.

The SOQ describes the development team consisting of: MHO; the Green Family; Mathews Architecture, PA; Sitework Studios; Carolina Cornerstone Construction, Inc and Roberts & Stevens, Attorneys at Law. The project vision set forth in the SOQ includes, involving and respecting the existing community, providing home ownership opportunities, good design, affordability and environmental stewardship. The SOQ includes evidence of experience, financial capacity and insurance along a number of references.

Consideration: Approval of the resolution will authorize staff to initiate negotiations with MHO as the qualified developer for the parcels on Ralph Street and Choctaw and issue a new RFQ or RFP or advertise for bids with conditions for the parcels on Asheland Avenue and Old Asheland Avenue.

- Economic Development staff recommends adoption of the resolution authorizing negotiations with qualified developer for two parcels in East Riverside and remarketing of two parcels in East Riverside.

Councilman Davis felt that even though we only had two responses and one late response, the MHO response was a good model.

Councilman Newman was excited about the proposal and encouraged people to get involved in the process. He also hoped that the City doesn't make the process so complicated so as to discourage people from getting involved.

In response to Councilman Mumpower, Real Estate Manager Ed Vess explained why he felt more developers did not submit proposals. He said that some developers had a lot of other projects going on and some developers felt this was not the kind of project they were interested in doing. The desired plan included clustered housing and maximizing the density and some developers were generally in the single-family type development. We also found that we just didn't provide them enough information on the front end, even though we thought we had conveyed to them it was available and could be provided to them. We do want to stay very public with this process and will be placing the MHO proposal on the internet for those to see what it takes to be a winning proposal. In addition, we will be noting the lessons learned in this process and how the City plans to do a better job.

In response to Councilman Mumpower about the criteria, Mr. Vess said that after City Council heard the City-owned property report, Council indicated to staff that there was a desire to make this property available for work force housing.

Councilman Freeborn moved for the adoption of Resolution No. 06-168. This motion was seconded by Councilwoman Cape and carried on a 5-1 vote, with Councilman Mumpower voting "no".

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

RESOLUTION BOOK NO. 30 – PAGE 108

III. PUBLIC HEARINGS:

A. PUBLIC HEARING TO CONSIDER CONDITIONAL ZONING OF PROPERTY LOCATED ON 2 IRIS STREET FROM COMMERCIAL INDUSTRIAL DISTRICT TO RM-16 RESIDENTIAL MULTI-FAMILY HIGH DENSITY/CONDITIONAL ZONING FOR 84 RENTAL UNITS

Mayor Bellamy said that the developer has requested that this public hearing be continued until October 24, 2006, because of some last minute financial issues. Therefore, Councilman Davis moved to continue this public hearing until October 24, 2006. This motion was seconded by Councilwoman Cape and carried on a 6-1 vote, with Councilman Freeborn voting "no."

City Attorney Oast said that a valid protest petition has been filed and that the petition will remain valid.

B. PUBLIC HEARING TO CONSIDER CONDITIONAL ZONING OF PROPERTY LOCATED AT 7 GRANDVIEW PLACE FROM RS-8 RESIDENTIAL SINGLE-FAMILY HIGH DENSITY DISTRICT AND COMMUNITY BUSINESS I DISTRICT TO COMMUNITY BUSINESS I DISTRICT/CONDITIONAL ZONING TO CORRECT A NON-CONFIRMING PARKING LOT

Mayor Bellamy said that this public hearing was originally scheduled for September 12, 2006, however, Mr. Steven Aceto, attorney representing the applicant Mr. Nicholas E. Papanastasiou and/or Pegasus Holdings, LLC, asked that the public hearing be continued since they would not be able to complete the required Letter of Credit in the form appropriate for submission to City Council. That public hearing continuance request was granted until September 26, 2006.

Mayor Bellamy opened the public hearing at 5:49 p.m.

Assistant Planning & Development Director Shannon Tuch said that this is the consideration of an ordinance to conditionally zone property located at 7 Grandview Place from RS-8 Residential Single-Family High Density District and Community Business I District to Community Business I District/Conditional Zoning to correct a non-conforming parking lot. This public hearing was advertised on September 1 and 8, 2006.

In late 2000, the parking lot located to the south of the East Village Grill was constructed without permits and found to be in violation of the existing RS-8 residential zoning. To correct the violation, the property owner pursued a Conditional Use Permit for an "ancillary parking lot" in a residential district. This request was approved in March 2001; however, ancillary parking lots were later removed from the Unified Development Ordinance (UDO) as a Conditional Use (2002).

In September of 2004, the same property owner requested a rezoning of 4 lots located at Tunnel Road and Grandview Place. The existing restaurant use (East Village Grill + parking) was rezoned from Highway Business/RS-8 to Community Business I, and the adjacent American Legion building, along with a separate residential lot to the south, was rezoned from RS-8 to Community Business I. This request was approved in November of the same year. This rezoning corrected the non-conforming parking lot approved in 2001 and also provided the opportunity for the renovation of the American Legion building for a new business use.

Subsequent to the rezoning approval issued in November 2004, property owner Nick Papanastasiou submitted application for a level 1 site plan review for a new parking lot to be located at 2 Grandview Place and designed to support the newly established bakery housed in the former American Legion building. Site plans to develop this parking lot were approved in September of 2005.

Once construction of this parking lot was completed, staff was contacted to investigate a zoning violation that revealed the parking lot had been constructed to specifications larger than what had been approved; the new parking lot was found to be encroaching into residentially zoned property to the south of the site (7 Grandview Place), which had recently come under the ownership of the applicant. To bring this site into compliance would require either, (1) the partial demolition and reconstruction of the new parking lot, including a moderately sized retaining wall, or (2) rezoning of the portion of the residential property occupied by the non-residential use. The applicant has chosen to pursue a conditional zoning application to correct the violation. A Notice of Violation was issued on June 28, 2006; the applicant filed application to correct the violation before the expiration of the specified 30 day time period so no fines have been assessed at this time. The applicant is also seeking to secure a permanent Certificate of Occupancy (CO) which is being withheld at this time.

The parcel is located in the Asheville city limits with frontage on both Tunnel Road and on Grandview Place in East Asheville. The subject properties are the result of a lot recombination and total approximately .41 acres, of which approximately 2/3 of this lot is occupied by parking and 1/3 is occupied by the building.

The proposed project area is surrounded by other Community Business I zoned property to the east across Grandview Place which supports a separate parking lot that serves an adjacent restaurant use, RS-8 zoned property to the south supporting single family homes, and Highway Business zoned property to the west supporting other larger commercial uses. Although the subject property has frontage on Tunnel Road, all vehicular access is from Grandview Place. A type 'B' landscape buffer is required between the low impact bakery use and the low density residential, as well as additional landscaping required for the

parking area and street frontages.

As a result of the changes to the parking lot, the formerly approved plan is no longer valid and the site is now non-conforming for landscaping and stormwater. Landscaping may be made conforming through the application of alternative compliance and/or a lot recombination that could allow more room for the required buffer area. Additionally, the engineer for the project is currently working with the City's engineering staff to improve the stormwater issues.

The Technical Review Committee (TRC) reviewed this project at their July 17, 2006, public meeting and approved the project with conditions. A revised plan has been submitted addressing a number of those technical comments.

The Planning & Zoning Commission also reviewed this project at their August 2, 2006, public hearing where there was a moderate amount of deliberation over the history and circumstances of the violation. Ultimately, the Commission made a positive recommendation (7-0) that the project be approved with the following conditions: (1) Compliance with all technical review conditions; and (2) A performance bond in an amount to cover site landscaping and fencing must be submitted prior to City Council consideration.

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

1. **That the proposed use or development of the land will not materially endanger the public health or safety.**
The proposed project has been reviewed by City staff and appears to meet all public health and safety related requirements. The project must meet the technical standards set forth in the UDO, the Standards and Specifications Manual, the North Carolina Building Code and other applicable laws and standards that protect the public health and safety.
2. **That the proposed use or development of the land is reasonably compatible with significant natural or topographic features on the site and within the immediate vicinity of the site given the proposed site design and any mitigation techniques or measures proposed by the applicant.**
The site does present some topographical challenges that, when combined with the changes in the site plan, have contributed to some stormwater issues on site. The topography has been largely addressed with the construction of a moderately sized retaining wall and the engineer for the project has been working with the City's engineering staff on correcting the stormwater issue.
3. **That the proposed use or development of the land will not substantially injure the value of adjoining or abutting property.**
This development is not expected to create a negative impact on adjacent property values; the proposed parking lot is required a 20' type B landscape buffer (or its equivalent) between it and the adjacent residential use which would mitigate light and noise. Changes in topography also contribute to the physical separation between the different uses, similar to what has occurred on the opposite side of Grandview Place.
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 parking lot use is in character with the majority of surrounding land uses which are non-residential, along with the majority of the uses located along Tunnel Road. The parking lot itself is less compatible with the adjacent single family uses to the south of the site but will be buffered per the requirements of the UDO. Should the Planning & Zoning Commission find it necessary, additional conditions may be considered to further improve the compatibility of this project.
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 encourages the (re)development of vacant or underutilized properties with compatible uses that provide citizens the opportunity to live and work in the same area. This rezoning request is to provide opportunity for the redevelopment of a parking lot that would support the adaptive re-use and renovation of an old American Legion building into a new bakery.

The ACDP 2025 also calls for the protection, preservation, and enhancement of existing neighborhoods. The unapproved parking lot expansion could be viewed as encroachment into a residential neighborhood that is unnecessary for a limited business use, particularly when shared parking opportunities exist.

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 subject property is well positioned in respect to transportation facilities with easy access to major thoroughfares and a regular bus line operating on Tunnel Road. The project has also been reviewed by the TRC which did not indicate any problems with providing service to the property.

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 engineering office who determined that the project would not cause undue traffic congestion or create a traffic hazard due to the relatively modest scale of the project. In addition, the project is proposing the creation of additional off-street parking that is expected to meet the needs of the visitors, thereby reducing the likelihood for on-street parking.

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

Considerations:

- Shared parking opportunities exist that could reduce the need for the additional spaces created by the illegal expansion.
- A portion of the parking lot (including the retaining wall) could be removed and rebuilt to result in a conforming parking lot.
- A minimum of 15 spaces are required, a maximum of 22 spaces are allowed. The former approved plan accommodated 17 spaces, the as-built plan shows 22 spaces.
- Existing illegal parking lot is currently inadequately buffered. Alternative compliance and/or a lot recombination would be required.
- Residential lot and structure would have to remain conforming if request was granted.
- Approval of this request would correct the existing violation.

The parking lot work and resulting violation have already occurred; had the applicant come forward with this proposal initially, staff would have supported the request with conditions. Should the Council consider this request, staff would recommend the conditions below: (1) The project shall comply with all applicable technical standards; (2) All site lighting must comply with the City's Lighting Ordinance and be equipped with full cut-off fixtures and directed away from adjoining properties and streets; (3) The building design, construction materials and orientation on site must comply with the conceptual site plan and building elevations presented with this application. Any deviation from these plans must gain approval through the Planning and Development Department; and (4) A lot recombination shall be completed to allow for a conforming buffer; recommend against alternative compliance.

The bakery is currently operating a Temporary Certificate of Occupancy (TCO) and should this request be denied, the applicant will have to renew the TCO and will have to submit revised plans that would address the zoning violation as well as the stormwater violation, so there is potential for that TCO not being renewed in a timely fashion.

Mr. Steven Aceto, attorney representing the applicant Mr. Nicholas E. Papanastasiou and/or Pegasus Holdings, LLC, spoke in support of the conditional zoning noting that the applicant has posted a bond to make sure that all improvements are complete.

Mayor Bellamy closed the public hearing at 5:56 p.m.

In response to Councilman Newman, Mr. Dennis Ponder, engineer for the applicant, said that the owner was acting as his own contractor and made a field decision, now realizing it was an unfortunate one. He explained why the owner tried to keep the parking lot away from the lower masonry wall. He said that the owner thought that since he owned the property in the area of encroachment, he could move the parking lot over slightly. In the field, it was hard to determine where the corners are located, without an accurate survey, which now had been performed.

Upon inquiry of Councilman Newman, Ms. Tuch explained that the East Village Grill, owned by the same property owner, had a similar incident regarding their parking lot.

Councilman Newman moved to deny the conditional zoning request. He could not support rewarding developers who do not comply with our ordinances. He would, however, support the bakery continuing to operate while the property is brought into compliance. This motion was seconded by Councilman Freeborn.

Councilman Mumpower felt that sometimes people don't understand our ordinances, but for this to happen twice to the same person is unfortunate. The owner should have learned from his first error and proceeded with caution. However, this represents a fairly minimal intrusion on that neighborhood and he does own the property being intruded on. He asked if staff could work with the developer to address the concerns and explore ways to fix this without causing a catastrophic impact.

Ms. Tuch showed the original plan approved in 2005 which accommodated 17 spaces and then the as-built plan which shows 22 parking spaces.

In response to Councilman Mumpower, Mr. Aceto noted that when the plan was approved, it said 15-22 spaces.

Discussion surrounded options to bring the parking lot into compliance and how the stormwater issue is related to this site.

Councilwoman Cape can understand how this happened but we often have a sense that people are ignoring the process. She would like for Council to consider what policy options are available for us, even to the point of a fine per day for being out of compliance. Sometimes consequences are the things that make people think twice about their actions. She wondered if there are factors that could be added in to the benefit of this neighborhood.

Councilman Mumpower felt that fines represent a heavy, authoritative and punitive approach that he would speak against.

Councilman Newman withdrew his motion to explore if there are other ways to get at a solution for this.

Vice-Mayor Jones noted that not only is there a cost for the developer for a solution, there is a cost to our City taxpayers as well which consists of staff hours involved.

Mayor Bellamy felt that we need to adopt good policies so when something is done wrong, there are penalties. However, we need to make sure that our zoning ordinances are clear and understandable.

Councilman Mumpower moved to continue this matter until October 10, 2006. This motion was seconded by Councilwoman Cape and carried on a 6-1 vote, with Councilman Freeborn voting "no."

C. PUBLIC HEARING TO CONSIDER AN AMENDMENT TO THE CONDITIONAL USE PERMIT MASTER PLAN FOR INGLES ON HENDERSONVILLE ROAD FOR ALLOWANCE OF A THIRD DRIVEWAY TO ACCESS AN OUT-PARCEL TYPE USE OF A GAS STATION

Mayor Bellamy said that City staff has requested this public hearing be continued to October 10, 2006, as the petitioner was unable to make adjustments to the site plan in enough time to have City staff review them. Therefore, Councilman Mumpower moved to continue the public hearing until October 10, 2006. This motion was seconded by Vice-Mayor Jones and carried on a 6-1 vote, with Councilman Freeborn voting "no."

D. PUBLIC HEARING TO CONSIDER THE CONDITIONAL ZONING OF 430 MCDOWELL STREET IN ORDER TO MAINTAIN THE EXISTING INSTITUTIONAL/CONDITIONAL ZONING ON APPROXIMATELY .81 ACRE IN ORDER TO UTILIZE THE EXISTING BUILDING FOR A DAYCARE FACILITY

ORDINANCE NO. 3393 - ORDINANCE CONDITIONAL ZONING PROPERTY LOCATED AT 430 MCDOWELL STREET IN ORDER TO MAINTAIN THE EXISTING INSTITUTIONAL/CONDITIONAL ZONING ON APPROXIMATELY .81 ACRE IN ORDER TO UTILIZE THE EXISTING BUILDING FOR A DAYCARE FACILITY

Mayor Bellamy opened the public hearing at 6:39 p.m.

Urban Planner Kim Hamel said that this is the consideration of an ordinance to conditionally zone property located at 430 McDowell Street in order to maintain the existing Institutional/Conditional Zoning on approximately .81 acre in order to utilize the existing building for a daycare facility. This public hearing was advertised on September 15 and 22, 2006.

Ms. Hamel said that the subject property is located off of McDowell Street across from Asheville High School. The parcel, in its current configuration, is considered both a through lot and a corner lot with street frontages on McDowell Street, Grindstaff Road and St. Dunstons Road. The topography is steeply sloped from the top of the property towards the west (McDowell Street). The property currently houses a vacant building that was historically used as a daycare Center. Access to the site and parking area is located off of Grindstaff Road.

In April 2006, the Asheville City Council approved a Conditional Zoning request to rezone a portion of this property from RS-8 to Institutional/Conditional Zoning with approval to establish an office use. The residual portion of the lot fronting St. Dunstons Road remained RS-8 and is to be subdivided into two or three residential parcels. The applicant, Mr. Dan Waldman, is now requesting approval to maintain the Institutional District/Conditional Zoning and to also receive approval to change the

proposed use of the building from an office use to a child daycare center.

Surrounding land uses and zoning include the Asheville High School zoned Institutional to the west across McDowell Street; retail business zoned Institutional and a single-family dwelling zoned RS-8 to the north across Grindstaff Road; single family dwellings zoned RS-8 to the east; and vacant property owned by NCDOT zoned RS-8 to the south fronting McDowell Street.

The new conceptual site plan proposes an up-fit of the existing 3, 700 square foot building for the proposed child daycare facility that will provide service for up to 50 children and 4 employees. The site plan illustrates use of the existing parking area off of Grindstaff Road that consists of 7 spaces. Modifications to the existing drive entrance and parking area will be necessary in order to comply with several conditions required by the Technical Review Committee including required driveway widths, parking lot maneuvering and pedestrian connections from the building to the street.

The ordinance requires a 20-foot, Type B landscape buffer around the east and south sides of the property where adjacent to residential uses. The plan is meeting this requirement, except along the eastern side and portions of the south side of the property where the buffer width has been reduced to install a privacy fence and other plantings; the ordinance permits a fence to be installed to reduce buffer width and that is what is proposed in this case. The mature vegetation shown along the west and north sides of the property will be maintained and credited towards the street tree requirements.

On Monday, August 21, 2006, the Technical Review Committee (TRC) approved the project subject to the conditions outlined in the staff report. The majority of these conditions will be addressed in a more detailed review of the project by the TRC pending approval from City Council.

- The applicant is requesting a modification of Section 7-8-15(f)(9) of the Unified Development Ordinance (UDO) that prohibits parking to be located within the setbacks. The conceptual site plan shows a 2-3-foot encroachment of two parking spaces into the side setback (10-feet) along the eastern side of the project. This project proposes use of the existing parking area in order to avoid additional grading on the western slope and to avoid land disturbance that could affect the mature vegetation along the property line. Although staff agrees with this reasoning, the applicant does have an option that would eliminate the need for the variance. This option involves increasing the width of the proposed modification area along the west side of the parking lot (that was required by the TRC for additional maneuvering room) by an additional 3-feet. This, however, could result in the need for construction of a larger and more visible retaining wall in order to stabilize the slope from the disturbance around the parking area.

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

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

1. **That the proposed use or development of the land will not materially endanger the public health or safety.** The proposed project has been reviewed by the Technical Review Committee and appears to meet all public health and safety related requirements. The project must meet the technical standards set forth in the UDO, the Standards and Specifications Manual, the North Carolina Building Code and other applicable laws and standards that protect the public health and safety.
2. **That the proposed use or development of the land is reasonably compatible with significant natural or topographic features on the site and within the immediate vicinity of the site given the proposed site design and any mitigation techniques or measures proposed by the applicant.** The overall development and disturbance on the property will be minimal, as the applicant is only proposing modifications to the existing parking area. The amount of disturbance in this area is necessary in order to provide for additional maneuvering area within the parking lot and to also provide a pedestrian connection from the building to the street. Since there is a rather steep slope from the parking area towards McDowell Street, the disturbance will necessitate a retaining wall to stabilize the parking lot. The only other land disturbing activity associated with the project will be the construction of the sidewalk along McDowell Street, and the installation of the privacy fence and other landscape buffer materials. Any renovation needed to bring the current structure up to code will be confined to the interior of the structure.
3. **That the proposed use or development of the land will not substantially injure the value of adjoining or abutting property.** This property was historically used as child daycare facility but was considered a non-conforming use under the prior RS-8 zoning classification. A child daycare facility is a permitted "low impact" use in the proposed Institutional District. The project is not expected to injure the value of adjoining or abutting properties as the site will be enhanced through the installation of privacy fencing and landscape buffers where adjacent to residential uses. This will

assist in mitigating any potential negative impacts.

4. **That the proposed use or development of the land will be in harmony with the scale, bulk, coverage, density, and character of the area or neighborhood in which it is located.** This project proposes a rezoning only on the portion of the lot that is currently developed. The daycare facility will utilize the existing building, parking lot and play area on the site. The remaining portion of the property will remain RS-8 and be subdivided from the main tract in order to create two to three residential infill lots that will be located and have access off of St. Dunstons Road.
5. **That the proposed use or development of the land will generally conform to the comprehensive plan, smart growth policies, sustainable economic development strategic plan and other official plans adopted by the City.** The project is supported by several goals and strategies in the plan relating to adaptive reuse, infill development, and smart growth policies. The project supports pursuit of compatible redevelopment and adaptive reuse of an existing structure with a low impact use. Traditional neighborhood development patterns are also recognized through the creation of several residential infill lots located within the core of the neighborhood.
6. **That the proposed use is appropriately located with respect to transportation facilities, water supply, fire and police protection, waste disposal, and similar facilities.** This project site is located within the City Limits and has access to all City services including water, fire and police protection and waste disposal. The project site is located on McDowell Street that is serviced by public transportation, including a transit stop located on the corner of McDowell Street and Grindstaff Road.
7. **That the proposed use will not cause undue traffic congestion or create a traffic hazard.** This project has been reviewed by the City's Traffic Engineer who indicated that the proposed use would not cause undue traffic congestion or create a traffic hazard.

Considerations:

- The former use of the building as a daycare center was considered a non-conforming use under the previous RS-8 zoning and has been used commercially since 1956. Previous commercial up-fits to the building make it an unlikely candidate for the use to convert back to residential. A rezoning to Institutional district will allow a conforming use to occupy the lot.
- The proposed split zoning on the lot and creation of several residential parcels off of St. Dunstons Road assists in protecting the integrity of the neighborhood by preventing access to the commercial portion of the existing parcel; and adds to the character of the neighborhood by creating additional single-family infill lots.
- Adaptive reuse of an existing structure.
- The conditional zoning process allows neighbors an opportunity to have a clear idea of how the property will be used.
- Additional traffic may occur along St. Dunstons Road in order to utilize the traffic signal at the corner of St. Dunstons Road and McDowell Street.
- The rezoning could be viewed by some as an encroachment of nonresidential uses into a residential area.

On Wednesday, September 6, 2006, the Planning and Zoning Commission reviewed the conditional zoning request and the request for modification to the setback encroachment and voted unanimously to approve the conditional zoning request subject to the TRC staff report, staff's recommended conditions and the following condition: A sidewalk shall be provided in accordance with the requirements of the City of Asheville Engineering Department with consideration given to a physical barrier affording reasonable protection to pedestrians on the McDowell Street side.

Subsequent to the meeting, the applicant contacted the Engineering Department in an effort to determine if a safety railing would satisfy the P&Z condition noted above. Engineering staff determined that in order to install a safety railing the applicant would need a total of 6-feet in width; the plan currently calls for a 4-foot wide sidewalk in this area in an effort to avoid blasting. The only means of gaining the additional 2-feet in width would be to blast through the rock outcropping that is being avoided. Staff feels that the applicant has made a good faith attempt in trying to provide a physical barrier for pedestrian safety. It, however, does not appear that without significant blasting of rock that this condition can reasonably be achieved.

Staff recommends approval of the project subject to the conditions outlined in the staff report and with the following conditions: (1) That all site lighting be equipped with 90 degree cut-off fixtures and directed away from adjoining properties and that a lighting plan be submitted to the City for approval; (2) All existing vegetation to be preserved and credited towards the landscape requirements be clearly dimensioned and delineated on the plans; (3) Foundation plantings shall be installed along the proposed retaining wall in order to soften the visual appearance of the structure from the street; (4) Applicant shall complete the subdivision of the land within 60 days of City Council approval; and (5) The applicant shall return to the Technical Review Committee with detailed site plans for review of compliance with all conditions.

Mr. Gerald Green, representing the developers, spoke in support of the conditional zoning.

Mayor Bellamy closed the public hearing at 6:48 p.m.

Vice-Mayor Jones encouraged the developer to consult with the N.C. Child Care Division to make sure that Council doesn't have to revisit the Master Plan. She also encouraged them to be open to children who are supported by the voucher system. Mr. Ricky Graham, co-owner of the Academy of Asheville, responded that they do understand the process as they have opened multiple daycare centers and have a lot of experience in this area.

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. 3393, to conditionally zone property located on located at 430 McDowell Street to maintain the existing Institutional/Conditional Zoning on approximately .81 acre in order to utilize the existing building for a daycare facility, noting that the request is reasonable based on information provided in the staff report and as stated in the staff recommendation, subject to the following conditions: (1) all conditions being met in the TRC staff report; (2) That all site lighting be equipped with 90 degree cut-off fixtures and directed away from adjoining properties and that a lighting plan be submitted to the City for approval; (3) All existing vegetation to be preserved and credited towards the landscape requirements be clearly dimensioned and delineated on the plans; (4) Foundation plantings shall be installed along the proposed retaining wall in order to soften the visual appearance of the structure from the street; (5) Applicant shall complete the subdivision of the land within 60 days of City Council approval; and (6) 5. The applicant shall return to the Technical Review Committee with detailed site plans for review of compliance with all conditions. This motion was seconded by Councilwoman Cape and carried unanimously.

ORDINANCE BOOK NO. 23 – PAGE 92

At 6:59 p.m., Mayor Bellamy announced a short recess.

E. PUBLIC HEARING TO CONSIDER AN AMENDMENT TO THE UNIFIED DEVELOPMENT ORDINANCE TO ALLOW CELL TOWERS IN RM-16 RESIDENTIAL MULTI-FAMILY HIGH DENSITY DISTRICT AS A CONDITIONAL USE AND TO AMEND THE CONDITIONAL USE STANDARDS

Mayor Bellamy opened the public hearing at 7:22 p.m.

Assistant Planning & Development Director Shannon Tuch said that this is the consideration of an amendment to the Unified Development Ordinance (UDO) to allow cell towers in RM-16 Residential Multi-Family High Density District as a conditional use and to amend the conditional use standards. This public hearing was advertised on September 15 and 22, 2006.

The UDO currently allows telecommunication towers as a Conditional Use in a number of non-residential districts including: Office/Business; Community Business II; Resort; Institutional; Highway Business; Regional Business; Commercial Industrial; River; Industrial; and Light Industrial.

Additionally, telecommunication towers can be considered as a conditional use in residentially zoned property that is occupied by non-residential uses such as libraries, fire/police stations, community centers, schools, and public housing developments. The "conditions" of the Conditional Use Permit are extensive and deal largely with the unique technical features of a telecommunication tower and the support documentation needed to limit their unnecessary proliferation.

As the demand for cellular service increases in the Asheville area, so does the need for more complete coverage. Providing an additional district in which a tower may be located enhances the ability for a service provider to appropriately locate in the most optimal area for complete coverage, while limiting unnecessary overlap.

This amendment would add an additional condition for towers located in residential districts to blend in with the natural environment through placement and disguise; although towers could be located within a residential area, this condition does specify a minimum separation from residential uses and adjacent properties in order to maintain a separation of uses. In addition, the Conditional Use process allows for the site specific review of the ability for an application to address compatibility concerns.

The Planning & Zoning Commission reviewed the proposed amendment at their meeting on September 6, 2006. During the meeting, staff recommended adding a condition that a minimum lot size of 5 acres be required for all proposed sites in the RM-16 zoning district. The Commission voted to approve the amendment (6-1) with the added condition.

Considerations:

This amendment increases the amount of real estate that could be considered for the development of a telecommunication tower.

- This amendment improves the ability for towers to be more evenly distributed throughout a service area.
- This amendment could be considered to reduce the injustice of permitting towers in areas of low income housing while prohibiting them in other residential developments.
- Compatibility of a telecommunication tower in a residential area could prove challenging.

City staff recommends approval of an ordinance amending Chapter 7 of the Code of Ordinances of the City of Asheville to add telecommunications towers as a conditional use in the RM-16 Residential Multi-Family High Density District and to amend the conditional use standards.

Mr. Bill Ammon, employee with Chase Real Estate Services, spoke in support of the text amendment and said that by the time you get to the conditional use permit, the carrier has really exhausted in most cases every opportunity for an alternative to a new structure, that would include church steeples, water towers, etc. The conditional use process has built within it a list of safeguards and the specific text amendment goes beyond that and has additional criteria that will ensure that if a tower is constructed, it would be appropriate for the site.

Mayor Bellamy closed the public hearing at 7:30 p.m.

Ms. Tuch responded to various questions/comments from Council, some being, but are not limited to: was this text amendment in the process prior to an application being filed; was there anything in particular that brought forth this text amendment; are there any maps showing where the gaps are located in the City; why did we choose RM-16 as the zoning district; explanation of the conditional use process for cell towers; can you build something else on the property with a cell tower; do cell phone companies buy land or lease it; have there been any amendment to the cell tower provisions since adoption of the UDO; why can't we have cell towers in all districts as a conditional use permit process; what is the rationale for the 100-foot buffer if they are allowed on church steeples, etc.; and is it inappropriate to put a structure on a residential building opposed to a commercial, office or institutional building.

Vice-Mayor Jones was concerned of losing potential developable land for multi-family housing and urged City staff to work with the companies to make it possible for housing to also be developed on that property.

Councilman Mumpower felt that the technology has improved so vastly and many more people rely on cell phones.

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

Councilman Mumpower moved to adopt the ordinance amending the UDO to allow cell towers in RM-16 Residential Multi-Family High Density District as a conditional use and to amend the conditional use standards. This motion was seconded by Councilman Davis.

Councilman Davis said that with the new technology, including the stealth technology, there is not so much opposition to cell towers and there is still the opportunity of building on the property. In addition, this is a conditional use permit process and Council will have the opportunity to craft any other conditions.

Councilman Newman wondered if there was a way to be more proactive about this approach to this changing technology, like looking at the places in the community where we know there are gaps in coverage. The goal is we want good quality and as few cell towers built in our community as possible. Ms. Tuch responded that is a good idea and a very big project. We have been trying to put that responsibility on the applicant to do that research and demonstrate to us that they are filling in one of those gaps.

City Attorney Oast said that the providers are frequently in contact through our Real Estate Manager to try to identify appropriate sites for these facilities and we have a number of cell phone antennas co-located on towers that we operate and maintain.

Mayor Bellamy was not convinced that this is the best use for our RM-16 zoning. She was concerned that public housing is not considered a residentially zoned place and asked for staff to review our ordinances to make sure that change is made.

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

F. PUBLIC HEARING TO CONSIDER AN AMENDMENT TO THE UNIFIED DEVELOPMENT ORDINANCE TO ADD

TOWNHOUSES AS A USE BY RIGHT, SUBJECT TO SPECIAL REQUIREMENTS IN THE URBAN RESIDENTIAL ZONING DISTRICT AND TO AMEND THE TOWNHOUSE STANDARDS

ORDINANCE NO. 3394- ORDINANCE TO AMEND THE UNIFIED DEVELOPMENT ORDINANCE TO ADD TOWNHOUSES AS A USE BY RIGHT, SUBJECT TO SPECIAL REQUIREMENTS IN THE URBAN RESIDENTIAL ZONING DISTRICT AND TO AMEND THE TOWNHOUSE STANDARDS

Mayor Bellamy opened the public hearing at 7:57 p.m.

Assistant Planning & Development Director Shannon Tuch said that this is the consideration of an amendment to the Unified Development Ordinance to add townhouses as a use by right, subject to special requirements (USSR), in the Urban Residential Zoning District and to amend the townhouse standards. This public hearing was advertised on September 15 and 22, 2006.

The City of Asheville's Unified Development Ordinance (UDO) currently defines "townhouses" as: "*Dwellings, townhouse* means two or more single-family dwelling units having a common wall or zero setback separating units where land underneath each dwelling unit is sold with that unit."

Townhouses are permitted as a USSR in several residential districts including: RM-6, RM-8, RM-16, Office, Office II, Office/Business, Community Business II, Resort, Highway Business, Central Business, Regional Business, Commercial Industrial and provide opportunity for home and real estate ownership in areas appropriately located to existing infrastructure, transportation, employment, and goods and services. Townhouses can also be used to provide a more affordable housing product where building materials and other resources are shared in order to keep costs down. This amendment increases the variety of housing options that would be available in the Urban Residential zoning district, while allowing for the efficient use of real estate to increase the total number of units allowed under the current density requirements.

Unlike condominiums, townhouses exist on individual lots and require a subdivision review to ensure that the lots comply with the City's subdivision and USSR standards. Currently, the special requirements of townhouses allows for flexibility in setbacks and waives minimum lot sizes provided that some amount of undeveloped (green) space is kept in common ownership to keep the overall density compliant.

This amendment would still require that density be met in the same manner but allows townhouse developments in the higher density districts to use commonly owned property for purposes other than undeveloped green space. Particularly in urban areas where high density is desired and space is limited, the ability to use commonly owned property for other features such as swimming pools, clubhouses, and parking areas would afford developers more flexibility and opportunity to optimally develop the site. It also allows for distinction between individually owned lots and property that may be maintained by a homeowner's association. Providing undeveloped green space would still remain an option to meet density requirements in an Urban Residential townhouse development.

The Planning & Zoning Commission reviewed this amendment at their September 6, 2006, public hearing where the amendment was approved unanimously.

Considerations:

- This amendment increases the variety of housing types allowed in the Urban Residential zoning district.
- This amendment provides opportunity for the construction of a more affordable housing option in urban areas appropriately located for access to infrastructure, transportation, employment, and a variety of goods and services.
- This amendment encourages maximizing the development options of a site while providing flexibility for more sensitive design.
- This amendment requires the preservation of undeveloped open space in the lower density residential district (RM-6).
- An amendment to the City of Asheville's Open Space requirements (not yet adopted) would allow for open space requirements to be met through other means.

City staff recommends approval of an ordinance amending Chapter 7 of the Code of Ordinances of the City of Asheville to amend the townhouse standards and to add townhouses as a use by right, subject to special requirements in the Urban Residential Zoning District.

Mayor Bellamy closed the public hearing at 7:58 p.m.

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

Councilman Freeborn moved for the adoption of Ordinance No. 3394. This motion was seconded by Vice-Mayor Jones and carried unanimously.

ORDINANCE BOOK NO. 23 – PAGE 94

IV. UNFINISHED BUSINESS:

V. NEW BUSINESS:

A. RESOLUTION NO. 06-171 - RESOLUTION ESTABLISHING THE SUSTAINABLE ADVISORY COMMITTEE ON ENERGY AND THE ENVIRONMENT

Councilwoman Cape explained that she reviewed this proposed resolution at the September 19, 2006, worksession and recommended adoption of the resolution establishing a committee to be known as the Sustainable Advisory Committee on Energy & the Environment.

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

Councilman Mumpower felt we didn't need another layer of bureaucracy to serve as a filtering agent when it comes to energy and the environment and it should be a component of all of our decisions. He felt we have adequate representation by City staff and others to cover these areas. He was also concerned about abuse. He was pleased to see Councilwoman Cape take the leadership on this issue and creating new initiatives, but this is not one he could support.

Councilman Davis agreed with Councilman Mumpower in that we are creating another layer of bureaucracy that we really don't need.

Vice-Mayor Jones felt that this is an act of leadership to take our community to a place we need to go. We are a long way off from reaching our goals, but are excited that our community has this type of vision.

Councilwoman Cape felt that our community has been going in this direction for a long time and part of being a good leader is being receptive and attentive to that.

Mayor Bellamy believed we are moving in the right direction, but stressed that this is an advisory committee and their recommendations will not be automatic. She said that City Council sets policy direction for the community, not committees.

Councilman Newman moved for the adoption of Resolution No. 06-171. This motion was seconded by Vice-Mayor Jones and carried on a 5-2 vote, with Councilman Davis and Councilman Mumpower voting "no."

RESOLUTION BOOK NO. 30 – PAGE 111

B. RESOLUTION NO. 06-172 - RESOLUTION REQUESTING SUPPORT OF LOCAL MENTAL HEALTH AND SUBSTANCE ABUSE ISSUES

City Attorney Oast said that this is the consideration of a resolution requesting support of local mental health and substance abuse services.

This resolution grows out of the report received at Council's worksession of September 19, 2006, from Buncombe County, regarding the Crisis Stabilization Facility, and is also in response to the closing of a local facility providing substance abuse and mental health services to economically marginalized individuals.

The City of Asheville and Buncombe County are experiencing an increase in the need for services and facilities to assist persons, especially low income persons, who suffer from mental health and substance abuse problems. Existing facilities and services are being affected by closings and reductions in funding. The Governmental Affairs Task Force of the Asheville Chamber of Commerce identified support of mental health reform as a State legislative priority for the area for 2006. The need for such support has recently grown more acute, especially within the City of Asheville, which is the center for mental health and substance abuse services in Buncombe County and the region. The City Council hereby supports local mental health and substance abuse facilities and services in Asheville and Buncombe County, through funding and other means, is urgently needed, and action to provide such support is strongly encouraged. The City Clerk is directed to transmit a copy of the resolution to each member of the North Carolina General Assembly whose district includes the City of Asheville.

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

At the request of Vice-Mayor Jones and the consensus of City Council, City Attorney Oast said that he would amend the resolution to include that the City Clerk be directed to also transmit a copy of the resolution to our United States Congressional representatives, including our two Senators and Congressman Taylor.

Councilwoman Cape moved for the adoption of Resolution No. 06-172, as amended pursuant to the City Attorney. This motion was seconded by Councilman Mumpower and carried unanimously.

RESOLUTION BOOK NO. 30 – PAGE 113

C. RESOLUTION NO. 06-173 - RESOLUTION AUTHORIZING THE CHANGE IN SCHEDULE I OF THE FEES AND CHARGES OF THE WATER FUND TO REFLECT CHANGES IN THE CAPITAL IMPROVEMENT PROGRAM FEE FOR SINGLE-FAMILY RESIDENTIAL WATER CUSTOMERS

Water Resources Director David Hanks said that this is the consideration of a resolution authorizing the change in Schedule I Fees and charges of the Water Fund to reflect changes in the capital Improvement program fee for single family residential water rate customers (SFR).

City Council at its September 19, 2006, worksession directed staff to change the CIP fee structure for single family residential customers from its current meter size base rate a more equitable cost structure for this customer class.

The CIP fee rate structure was established using a meter size basis for the monthly charges. Most single family residential customers have a 5/8 inch meter. Approximately 150 single family residential (SFR) customers have larger domestic meters from one (1) inch to two (2) inch with significantly higher monthly fees. The monthly fee structure for one (1) inch meter is \$48.00; one and one-half (1.5) inch meter is \$80.00; two (2) inch meter is \$140.00. The fee structure was established to help reduce the water utility cost on SFR customers and this small group of customers is paying much more than the average SFR customer. Staff presented Council with options to reduce the fee to either \$5.00 per month (1 inch meter SFR customer); \$6.00 per month (1.5 inch meter SFR customer); and \$7.00 per month (2 inch meter SFR customer); or all residential customers paying the same monthly fee of \$3.50.

PRO:

- A reduced meter fee for SFR customers is fair and equitable based upon the current tiered rate structure where SFR customers pay more than other classes of customers for consumed water.

CON:

- Each meter reduction scenario decreases water fund revenue. A flat fee of \$3.50 per month has an \$80,000 annual revenue impact. The reduced fee structure has a \$77,000 annual revenue impact on the water fund.

City staff recommends adoption of the resolution authorizing the change in Schedule I Fees and Charges of the Water Fund to reflect changes in the capital improvement program fee for single family residential water rate customers.

City Manager Jackson said that in addition to this adjustment to the residential rate structure, City staff will be providing City Council with a response back from the Chief Financial Officer at the October worksession wherein he will provide more specific recommendations on how to use debt financing to apply toward alternative rate structures and establishing a capital reserve and provide for potential off-setting future rate increases as well.

In response to Councilwoman Cape's inquiry about the condo association issues, Mr. Hanks said that we have been working with the various condo associations in the area. Some are going to a combination meter, where they will be paying the fee scheduled based on the smaller size not only for water but for sewer. This actually a tremendous reduction in fees they will be paying, based on the number of units in those condos. Those that didn't want to go that route were offered a contract where they are actually treated as single-family residential customers paying the \$3.50 per unit.

City Manager Jackson said that this is an adjustment for residential accounts only. A condominium is not a residence with one customer, but it is a grouping under one billing structure.

Mr. Hanks said that we have condo associations from as few as 32 units to close to 200 units. Basically we offered up the same thing to all of them. Some have some really old meters that do not meet the current state requirement for back flow and

cross connection so they were going to have to look at replacing their meters anyway. This was just an opportune time for them to do it and save money on their return on investment. Most of them will have a savings of approximately \$1,200-\$1,400 a year based on the reduced sewer charges and the CIP for water.

At the request of Mayor Bellamy, City Manager Jackson said that he would provide Council with information on how many residences are not served directly by the City because we sell water to condo associations, apartment complexes, mobile home parks, etc. He felt it would also be helpful for Council to receive background information about the complexities and difficulties in establishing that relationship with condo associations, apartment complexes and mobile home parks. The action today is making adjustments to where we have a direct contractual account with the residents.

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

Councilman Mumpower moved for the adoption of Resolution No. 06-173. This motion was seconded by Councilwoman Cape and carried unanimously.

RESOLUTION BOOK NO. 30 – PAGE 114

VI. OTHER BUSINESS:

Councilwoman Cape encouraged the community to participate in the Energy Star Change a Light bulb, Change the World Campaign.

Mayor Bellamy encouraged citizens to attend the N.C. Dept. of Transportation public hearings on October 9 and 10, 2006, to learn about the I-26 Connector.

Councilwoman Cape announced the first meeting of the Community & Economic Development Alliance and was excited about seeing plans begin to move forward with the inclusion of the public.

The following claims were received by the City of Asheville during the period of September 1-14, 2006: LaRhonda Moss (Parks & Recreation), William E. Smith (Transit Services), Joyce Swann (Water), Frances B. Taylor (Water), Mary Frances Miller (Water), Arribelle Bolden (Streets), Michael Caldwell (Water), William Anixter (Water) and BellSouth (Water). These claims have been referred to Asheville Claims Corporation for investigation.

VII. INFORMAL DISCUSSION AND PUBLIC COMMENT:

Mr. Gene Hampton was of the opinion that we must stop supporting a culture which encourages our children to deny the truth that we are one and teach spiritual education.

Mr. Jeff Sheppard spoke to Council about his concern over the crime and violence he has experienced.

Ms. Liz Oldre asked for Council's consideration of allowing BMX bikes on the Food Lion Skate Park. She cited many cities/counties skate parks that allow BMX bikes, many of which are concrete. She asked that they be allowed to use the Skate Park at designated times and dates.

Mayor Bellamy referred this request to City Manager Jackson and the Recreation Board and asked for the recommendations to be brought back to Council.

Mr. Chris Johnson, owner of a small mobile home park, spoke about the 140% increase in his water bill from the water CIP fee. After a brief discussion, City Manager Jackson said that he will be reporting back to Council at the October worksession with some details outlining what Mr. Yalson is experiencing and relate that to how other multi-family and multi-residential locations are affected by the CIP fee. He will share with Council an analysis on how the City is working with various different accounts and lay out for them what, if any, other practices there are in the State of North Carolina for treating those types of customers. He said we will present Council with alternatives and seek direction.

VIII. ADJOURNMENT:

Mayor Bellamy adjourned the meeting at 8:37 p.m.

CITY CLERK

MAYOR