

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

Mayor Bellamy led City Council in the Pledge of Allegiance.

INVOCATION

Councilwoman Cape gave the invocation.

I. PROCLAMATIONS:

2006 MAYOR BELLAMY STATEMENT

Mayor Bellamy thanked the community for allowing her to serve as Mayor. She thanked City Council for working with her and help move our community forward. Over the past year, City Council has focused on addressing some core basic services, some being, but are not limited to (1) approval of a \$2.5 Million budget amendment to address critical capital needs including the Civic Center roof, street and sidewalk construction, public safety communication enhancements and fleet replacement; (2) commenced construction of two new fire stations, improving the City's standard of cover for fire and emergency medical services; (3) graduated 26 officers from two police academies produced in partnership with the City of Asheville and Asheville-Buncombe Technical Community College; current class of 24 cadets is set to graduate in 2007; (4) completed 12 sidewalk projects and 56 street paving projects; (5) implemented service enhancements within the Asheville Transit System including extended evening service hours and a 90-day fare free promotional program which produced a 60% increase in ridership; (6) added five new 30-foot low floor buses to Asheville's transit system which will improve access for elderly and handicapped riders; (7) began implementation of a strategic capital improvement plan for the water system and refinanced approximately \$42.0 Million in water revenue bonds for a net present value savings of \$2.2 Million; (8) received positive results from the American Waterworks Association QualServe peer assessment of the City's water system (designed to help water utilities achieve superior performance); (9) awarded an \$820,000 grant from the N.C. Rural Center for initiatives that further the Wilma Dykeman Riverway Plan; (10) initiated a zoning study of the area covered by the Wilma Dykeman Riverway Plan; proposals for rezoning certain areas will be presented to the Planning & Zoning Commission for consideration in early 2007; (11) continue support of the HUB Project with Council representation on the Community & Economic Development Alliance and staff support on the HUB Cabinet; (12) developed a Downtown Parking Action Plan including a schedule and funding strategy for providing public parking in downtown Asheville; (13) developed plans to construct and open public restrooms in downtown Asheville, construction will commence in early 2007; (14) co-sponsored a community event with Roger Brooks to learn more about Wayfinding opportunities in Asheville, working closely with the Tourism Development Authority and other partners to develop a Request for Qualifications for distribution in early 2007; and (15) continued a successful relationship with the new owners of the Asheville Tourists by partnering on renovations to McCormick Field. This work represents a significant investment in the lives of the people who live, work and play in Asheville. She believed that by working to address essential strategic areas, we will have a better tomorrow.

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Mayor Bellamy said that for 2007, she would like to better communication with the community and City Council. After we complete our winter retreat and decide the important issues that we will address as a Council, she will work with staff to schedule the policy discussions for the year - that way as a community and Council we will be better equipped for policy discussions as well as become more involved. Additionally, she looks forward to working with Council in 2007 to (1) develop a Comprehensive Affordable Housing Plan; (2) develop a Comprehensive Plan to address drugs and crime in our community; (3) a Comprehensive Plan to address concerns for our youth in the community; (4) work to make development sustainable; (5) enhancement of our transit system; (6) reduce the number of chronic homeless on our streets; (7) protect our children from internet predators; and (8) many other issues. She committed to the community and Council to focus on people, policies and progress over pride and polarization. She didn't know about tomorrow, but knows who holds tomorrow. It is with that faith that she looks forward to a wonderful and prosperous 2007.

AWARDS

On behalf of the City of Asheville, Mayor Bellamy was honored to present the Gold Award for Municipal Excellence for the Cultural Renaissance Arts Program at the W.C. Reid Center, sponsored by the National League of Cities and CH2M Hill, to Mr. Lavon Griffin and Mr. David Mitchell. Mr. Mitchell thanked the City Council and Parks & Recreation Department staff for their support.

Also on behalf of the City of Asheville, Mayor Bellamy accepted the National League of Cities Award for 50 years of membership and dedicated service in shaping and advocating national municipal policy and helping to strengthen and promote communities of all sizes.

II. CONSENT AGENDA:

At City staff's request, Consent Agenda "F" was removed from the Consent Agenda.

At Council's request, Consent Agenda Items "K", "L," "M" and "Q" were removed from the Consent Agenda for discussion and/or separate vote.

At City staff's request, Consent Agenda "R" was removed from the Consent Agenda for a motion to continue.

A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON NOVEMBER 28, 2006

B. RESOLUTION NO. 06-209- RESOLUTION AUTHORIZING THE MAYOR TO CONVEY LAND ON STATE STREET

Summary: The consideration of a resolution authorizing the Mayor to convey land on State Street.

On November 28, 2006, City Council authorized advertising for upset bids pursuant to a bid from Steven & Suzanne Williams in the amount of \$15,000 for the purchase of land on State Street. The advertisement was published on December 1, 2006, and no upset bids were received.

The land on State Street was acquired by the City by Commissioner's Deed dated June 29, 1932. There are discrepancies in the chain of title and title would have to be conveyed by non-warranty deed. The lot is 0.18 acre± and is parallelogram shaped. It has a moderate slope upward from the street. It is zoned Residential Multi-Family Medium Density District, and it is

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suitable as a home site. The bid from Mr. & Mrs. Williams is in the amount of \$15,000. Although the tax appraisal is \$20,200, staff considers the offer to be realistic considering the impaired title. The Williams bid includes encumbering the property with a sewer easement to service the lot at the rear of the City's lot where the Williams plan to construct 4 to 5 units of infill housing on Pineview Street.

Pros:

1. The sale will be at fair market value as established by the upset bid process.
2. It will return property not needed for public use to the tax rolls.
3. It will transfer responsibility for maintenance to the private sector.
4. It will facilitate the development of 4 to 5 units of infill housing.

Cons: There is no negative impact.

Economic Development staff recommends adoption a resolution authorizing the Mayor to convey land on State Street.

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C. RESOLUTION NO. 06-210 - RESOLUTION AUTHORIZING THE MAYOR TO CONVEY LAND ON MARTIN LUTHER KING JR. DRIVE

Summary: The consideration of a resolution authorizing the Mayor to convey land on Martin Luther King Jr. Drive.

On November 28, 2006, City Council authorized advertising for upset bids pursuant to a bid from Elizabeth White for land on Martin Luther King Jr. Drive in the amount of \$7,350.00. The advertisement was published on December 1, 2006, and no upset bids were received.

The subject parcel is a proposed 0.08 acre cut-out portion of PIN 9648.07-58-1660 which is a 1.6 acre parcel that runs along Martin Luther King Jr. Drive and is part of the property where Water Maintenance is located. The subject parcel is triangular shaped and has a gentle slope upward from the street. It is zoned Regional Business District as is the adjoining property. The proposed parcel encompasses an area that Ms. White, who owns and resides on adjoining property, fenced in several years ago by mistake and has since used and maintained. The proposed purchase is to rectify the error by paying the City due compensation for the property.

The bid from Ms. White is in the amount of \$7,350. The value of the parcel was extrapolated from the tax assessment for adjoining land in the amount of \$28,500 for 0.31 acre which translates to a per acre value of \$91,935. The bid amount represents .08 of that amount rounded to \$7,350. Staff considers the offer to be realistic and the proposal to combine the subject parcel with Ms. White's parcel appropriate.

Pros:

1. The sale will be at fair market value as established by the upset bid process.
2. It will return property not needed for public use to the tax rolls.
3. It will enable the purchaser to rectify an error in a mutually beneficial manner.

Cons: There is no negative impact.

Economic Development staff recommends City Council approve a resolution authorizing the Mayor to convey land on Martin Luther King Jr. Drive.

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D. REPORT ON MILLS RIVER WETLANDS RESTORATION

Summary: Staff was approached by representatives from Henderson County Soil and Water Conservation, Carolina Mountain Land Conservancy, and RiverLink concerning the possibility of establishing a wetlands along part of the City-owned property at the Mills River Water Treatment Plant located in Horseshoe, N.C., along the confluence of the Mills River and French Broad River.

Staff met with representatives who are working through the Wetlands Reserve Program to develop projects with a focus of restoration of wetlands in the Mills River area. A portion of the City-owned property seems to have been a natural wetlands area at some period in the past. The location of the property between both rivers seems to make it a good candidate for wetlands restoration. Staff will be meeting with these representatives to discuss locations of current piping from the river intakes to the treatment plant and any impediments that a restored wetlands area could have on operations at the plant. Soil testing and sampling of the property will need to take place to verify whether the area is suitable for further consideration for wetlands restoration.

PROS:

- The potential benefits to the City are additional protection along the river corridor through environmental efforts and also to reduce the potential of flooding along the intake road area during storm events.
- Grant funds would be pursued for this project with no City or local funds expended.

CONS:

- At this time there does not appear to be any cons for this potential project to proceed.

Staff recommends further analysis of the project through the Wetlands Reserve Program including allowing soil testing and samples to be taken to determine the feasibility of continuing to pursue wetlands restoration for part of the City-owned Mills River property. The City is under no obligation to continue this project after soil testing is completed and any future projects would be contingent on grant funding being obtained. Staff will update Council on the progress of this project in the March 2007 time frame.

It was the consensus of Council to complete further analysis of the project through the Wetlands Reserve Program including allowing soil testing and samples to be taken to determine the feasibility of continuing to pursue wetlands restoration for

part of the City-owned Mills River property.

E. ORDINANCE NO. 3419- BUDGET AMENDMENT TO INCREASE THE HEALTH CARE BUDGET TO REFLECT UPDATED FISCAL YEAR 2006-07 REVENUE AND EXPENDITURE PROJECTIONS

Summary: The consideration of a budget amendment to increase the health care budget by \$194,000 to reflect updated Fiscal Year 2006-07 revenue and expenditure projections.

During the month of November 2006, the City completed its annual open enrollment period during which time employees were allowed to make changes to their benefit selections for the 2007 calendar year. In preparation for open enrollment, staff completed an analysis of recent revenue and expenditure trends in the health care fund. Using the data from this analysis and the benefit selections made by employees during open enrollment, staff computed an updated estimate of the expected revenues and expenses in the health care program for the remainder of Fiscal Year 2006-07. Based on this analysis, staff is recommending that the employee health

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care contribution revenue budget be increased by \$194,000. This additional revenue will be used to cover claims expenses which are also expected to exceed the original budget estimates.

PROS:

- Provides a more accurate estimate of expected Fiscal Year 2006-07 revenues and expenditures in the health care program.

CONS:

- None.

City staff recommends City Council approve a budget amendment to increase the health care budget by \$194,000 to reflect updated Fiscal Year 2006-07 revenue and expenditure projections.

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F. RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE A LEASE AGREEMENT WITH ONTARIO INVESTMENTS FOR REPLACEMENT OF MOWING EQUIPMENT AT THE MUNICIPAL GOLF COURSE

This item was removed from consideration at this meeting.

G. RESOLUTION NO. 06-211 - RESOLUTION REAPPOINTING MEMBERS TO THE BOARD OF DIRECTORS OF VICTORIA OF ASHEVILLE INC.

Summary: The terms of Assistant City Manager Jeff Richardson, Chief Financial Officer Ben Durant and City Attorney Bob Oast as members to the Board of Directors of Victoria of Asheville Inc. expired on November 29, 2006. This resolution will reappoint Mr. Richardson, Mr. Durant and Mr. Oast to each serve a three year term respectively, terms to expire November 29, 2009, or until their successors have been appointed.

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H. STATUS OF ROADWAY IMPROVEMENTS BY TARGET CORPORATION

Summary: In 2003, Target was issued a Certificate of Occupancy. They were required to post a bond in the amount of \$350,000 to complete roadway improvements determined to be necessary by the completed traffic study. City staff has subsequently been involved in ongoing efforts to encourage Target to complete the necessary improvements. While progress has been slow, Target now appears to be making good faith efforts to complete the required

Two specific off-site roadway improvements were required to mitigate Target's traffic impact: (1) Installation of a traffic signal at the intersection of River Hills Road and Circuit City/Pier One; and (2) Addition of a second eastbound left-turn lane on Swannanoa River Road at S. Tunnel Road.

1. Traffic Signal

This project has been completed. The traffic signal was activated on November 22 and is fully operational. Several minor punch list items are still to be completed, but this project is 99.9% complete.

2. Turn Lane

Target has agreed to a completion deadline for this project, including all elements required, barring circumstances outside of their control, by May 31, 2007.

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If Council wishes to impose a deadline for completion of the improvements, staff recommends May 31, 2007.

It was the consensus of City Council to impose a deadline of May 31, 2007, for the completion of the Target improvements.

I. ORDINANCE NO. 3420- BUDGET AMENDMENT FOR STATE OF N.C. DEPT. OF HEALTH & HUMAN SERVICES APPROPRIATION OF FUNDS FOR THE HARVEST HOUSE

Summary: The consideration of a budget amendment, in the amount of \$15,368, for an appropriation from the State of North Carolina, Department of Health and Human Services, Division on Aging and the Land of Sky Regional Council/Area Agency on Aging through the Senior Center General Purpose Funding for the Harvest House.

Funds will be used to make improvements to Harvest House including new HVAC, repair gutters and renovate restroom.

Pros: ÿ Replace old HVAC system in lower level of center that is inadequate in heating and cooling that area of the center.
ÿ Improve gutters to alleviate water leaks into building and to prevent future damage.
ÿ Renovate restroom to improve accessibility and overall use.

Cons: ÿ None

The Parks and Recreation Department recommends City Council to approve the budget amendment, in the amount of \$15,368, to establish a budget for improvement at the Harvest House.

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J. ORDINANCE NO. 3421- BUDGET AMENDMENT FOR THE STATE OF N.C. DEPT. OF HEALTH & HUMAN SERVICES APPROPRIATION FOR FUNDS FOR THE SENIOR OPPORTUNITY CENTER

Summary: The consideration of a budget amendment, in the amount of \$15,367, for an appropriation from the State of North Carolina, Department of Health and Human Services, Division on Aging and the Land of Sky Regional Council/Area Agency on Aging through the Senior Center General Purpose Funding for Senior Opportunity Center.

Funds will be used to make improvements to the Senior Opportunity Center to create a new main front entrance into the center.

Pros: ÿ Renovate the main front entrance of the center making it fully accessible and improve overall use.

Cons: ÿ None

The Parks and Recreation Department recommends City Council to approve the budget amendment, in the amount of \$15,367, to establish a budget for improvement at the Senior Opportunity Center.

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K. RESOLUTION SUPPORTING THE N.C. STATE UNIVERSITY WATER QUALITY GROUP'S EFFORTS TO OBTAIN A RESEARCH AND MONITORING GRANT FOR THE INSTALLATION OF A GREEN ROOF AT THE CIVIC CENTER

This item was removed from the Consent Agenda for discussion and/or a separate vote.

L. RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE AN AGREEMENT WITH MOTOROLA INC.

FOR THE PURCHASE OF RADIOS FOR THE ASHEVILLE TRANSIT SYSTEM

This item was removed from the Consent Agenda for discussion and/or a separate vote.

M. BUDGET AMENDMENT TO PURCHASE UPDATED RADIOS FOR THE ASHEVILLE TRANSIT SYSTEM

This item was removed from the Consent Agenda for discussion and/or a separate vote.

N. RESOLUTION NO. 06-214- RESOLUTION AUTHORIZING THE CITY MANAGER TO ACCEPT GRANT FUNDS UNDER THE N.C. OFFICE OF JUSTICE PROGRAMS OF THE DEPT. OF JUSTICE

Summary: The consideration of a resolution authorizing the City Manager to accept grant funds under the North Carolina Office of Justice Programs of The Department of Justice (JAG); and the associated budget amendment, in the amount of \$99,967, to accept these funds.

The City of Asheville has been awarded a grant from the JAG in the amount of \$99,967 to be shared with Buncombe County Sheriff's Department. Asheville Police Department (APD) and the Buncombe County Sheriff's Department have signed a Memorandum of Understanding and APD will be the grant funds administering agency. There is no local match and the City Of Asheville's portion of the grant is \$59,980. The purpose of the grant program is to improve the police equipment in the area of crowd control and officer safety for the Asheville Police Department. The amount of the Asheville Police Departments of the grant funds will be equal to \$59,980.00

45	Taser X26E units (w/holsters)	Each: \$799.95	Total: \$35,997.75
120	Taser replacement cartridges	Each: \$18.97	Total: \$ 2276.40
1	Package Appliqués for helmets	Each: \$155.00	Total: \$ 155.00
50	Eyeglass prescription inserts	Each: \$70.00	Total: \$ 3,500.00
35	V-Top shin guards	Each: \$85.00	Total: \$ 2,975.00
35	Torso Protectors	Each: \$350.00	Total: \$12,250.00
2	Pepper Ball Projectors	Each: \$400.00	Total: \$ 800.00
2	40 MM Gas Projectile Units	Each: \$250.00	Total: \$ 500.00
4	Training chemical certification	Each: \$250.00	Total: \$ 1,000.00
	Estimated Freight		Total: \$ 1,000.00
	Grand Total:		\$60,454.15

Pros:

- Will contribute to the reduction of crime by improving the effectiveness of police officers while working special events.
- By reducing injures to law enforcement as well as the public, this will aid in quality of life issues.
- Officer safety will be increased through proper training of the officers.

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- By using these grant funds for this needed equipment, APD officers will have the items they need to properly respond to violent group incidents, that budget constraints would not allow otherwise.

Con:

- The City of Asheville and the APD would be required to maintain the upkeep of the equipment, replacing equipment when needed.

This action complies with City Council's Strategic Operating Plan Goal 3: Strong City and County Partnerships. This joint grant allows the City and the County to work together on an improvement initiative.

City staff recommends City Council adopt a resolution authorizing the City Manager to accept grant funds under the North Carolina Office of Justice Programs of The Department of Justice (JAG; and the associated budget amendment, in the amount of \$99,967, to accept these funds.

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O. ORDINANCE NO. 3423- BUDGET AMENDMENT TO ACCEPT GRANT FUNDS FROM THE N.C. OFFICE OF

JUSTICE PROGRAMS OF THE DEPT. OF JUSTICE TO ASSIST THE ASHEVILLE POLICE DEPARTMENT IN THE PURCHASE OF CROWD CONTROL EQUIPMENT

Summary: See Consent Agenda "N" above.

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P. RESOLUTION NO. 06-215- RESOLUTION AMENDING RESOLUTION NO. 06-171 TO AMEND THE MEMBERSHIP STRUCTURE OF THE SUSTAINABLE ADVISORY COMMITTEE ON ENERGY & THE ENVIRONMENT

Summary: The City Council has the authority, pursuant to NCGS 160A-146, to make changes to advisory boards and commissions. City Council has determined it is in the public interest to change the membership of Sustainable Advisory Committee on Energy & the Environment to change the membership from one member with demonstrated expertise in the field of energy management, to one member currently employed with Progress Energy.

Therefore Resolution No. 06-171 be, and is hereby amended to change Sec. I.A. *Membership* to read as follows:

"A. One member currently employed with Progress Energy as the Regional Vice President (or other appropriate official) or his/her designee;"

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Q. SECOND READING OF ORDINANCE NO. 3412, AN ORDINANCE TO AMEND THE UNIFIED DEVELOPMENT ORDINANCE TO PROVIDE FOR "HOMESTAYS" (CURRENTLY KNOWN AS "BED AND BREAKFAST HOMESTAYS") IN SINGLE FAMILY RESIDENTIAL ZONING DISTRICTS

Summary: This item was removed from the Consent Agenda for an individual vote.

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R. SECOND READING OF ORDINANCE NO. 3413, AN ORDINANCE TO CREATE AN HISTORIC PRESERVATION OVERLY DISTRICT FOR THE ST. DUNSTAN'S NEIGHBORHOOD

Summary: This item was removed from the Consent Agenda for a motion to continue.

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

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

ITEMS REMOVED FROM THE CONSENT AGENDA FOR INDIVIDUAL VOTES AND/OR DISCUSSION

- RESOLUTION NO. 06-213- RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE AN AGREEMENT WITH MOTOROLA INC. FOR THE PURCHASE OF RADIOS FOR THE ASHEVILLE TRANSIT SYSTEM

ORDINANCE NO. 3422 - BUDGET AMENDMENT TO PURCHASE UPDATED RADIOS FOR THE ASHEVILLE TRANSIT SYSTEM

Summary: The consideration of a resolution authorizing the City Manager to execute an agreement with Motorola Inc. for the purchase of radios, and the associated budget amendment, in the amount of \$115,000, to purchase updated radios for the Asheville Transit System (ATS).

The Asheville Transit System depends on the City's radio system for its communications. That system has recently been updated to provide better coverage. Further, the current transit system radios are 10 years old and replacement parts are no longer available for these radios. The Asheville Transit System needs to replace 23 radios at a total cost of \$115,000. Federal capital funding of \$92,000 is available to cover 80% of this expense. The remaining 20% or \$23,000 will be funded with motor vehicle license fee revenue that was set aside in prior years as a matching source for capital projects. Motorola has offered a \$7,900

discount on these radios if ordered by December 15, 2006. This discount is occasioned by a year end inventory reduction on the part of Motorola. Federal funds are available to fund this purchase, and matching funds are already accumulated. The opportunity to save \$7,900 has accelerated the purchase schedule.

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

Pros:

- A fully functional communications system between elements of transit operations, police, emergency medical help, and any other city department.
- ATS will be able to communicate between buses with equipment which should be current for next ten years.

Con: None

City staff recommends City Council approve a resolution authorizing the City Manager to execute an agreement with Motorola Inc. for the purchase of radios, and approve the associated budget amendment, in the amount of \$115,000, to purchase updated radios for the Asheville Transit System.

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Manager of Transit and Parking Services Bruce Black responded to various questions/comments from Council, some being, but are not limited to: what is the regular replacement schedule for the radios; what other capital items can we use these federal funds for; will the radios enhance our ability to track buses in real time; and is it counter productive to buy the radios at this time if we go to a GPS tracking system.

Councilman Mumpower moved to approve Resolution No. 06-213. This motion was seconded by Councilman Freeborn and carried unanimously.

Councilman Mumpower moved to approve Ordinance No. 3422. This motion was seconded by Councilman Freeborn and carried unanimously.

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RESOLUTION NO. 06-212- RESOLUTION SUPPORTING THE N.C. STATE UNIVERSITY WATER QUALITY GROUP'S EFFORTS TO OBTAIN A RESEARCH AND MONITORING GRANT FOR THE INSTALLATION OF A GREEN ROOF AT THE CIVIC CENTER

Summary: The consideration of a resolution supporting North Carolina State University Water Quality Group's efforts to obtain a Research and Monitoring Grant for the installation of a green roof at the Civic Center.

The City of Asheville is in the process preparing a Request for Proposals to provide construction documents for replacing the Civic Center Roof. One of the options being explored is replacing the existing roof with an environmentally sensitive "green" roof.

The North Carolina State University Water Quality Group is prepared to request a grant from North Carolina Department of Water Quality for a Research and Monitoring grant for the installation of the green roof.

This resolution supports their efforts to obtain this grant on behalf of the City. This resolution does not commit the City to any financial obligation.

Pros:

- If the grant is awarded it will assist in the cost of the installation of the environmentally friendly roof.
- There is no cost or commitment to the City.
- The grant would assist in education the public on the installation of the green roof system.

Con: There is no negative impact.

City staff recommends City Council approve a resolution supporting North Carolina State University Water Quality Group's efforts to obtain a Research and Monitoring Grant for the installation of a green roof at the Civic Center.

Councilman Mumpower said that the people who originally installed the roof (Carlyle and Company) happen to be people that have the state of the art process for creating a green roof right now and we essentially know what we can do already. He felt we didn't need to spend any money to address something that has already been addressed.

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There was a brief discussion about the timing of this grant opportunity vs. the timing of receiving proposals back to the City.

Councilman Davis questioned if the City would be put in a negative light if the City received the grant and then decided not to do a green roof and turn the grant down. Mr. John Calabria, from the N.C. State University Water Quality Group, did think that if the City received the grant and then turned it down, it would have negative consequences from this grant source. He did state that the grant cycle is at the end of the year and is site specific. City Engineer Cathy Ball also responded that the City could apply for the grant now and then if Council determines not to build a green roof, the City could advise the grant agency of that before any award is granted, and hopefully the City's credibility might not be hurt.

Mayor Bellamy asked if a green roof was installed would the Water Quality Group be able to conduct their research and monitoring. Mr. Calabria said that they would prefer to be involved in the front end because it would be difficult to set up the monitoring strategy after the roof is already placed and there are a lot of things that would be hard to retrofit.

Councilman Freeborn moved for the adoption of Resolution No. 06-212. This motion was seconded by Councilman Newman and carried on a 6-1 vote, with Councilman Mumpower voting "no."

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SECOND READING OF ORDINANCE NO. 3412, AN ORDINANCE TO AMEND THE UNIFIED DEVELOPMENT ORDINANCE TO PROVIDE FOR "HOMESTAYS" (CURRENTLY KNOWN AS "BED AND BREAKFAST HOMESTAYS") IN SINGLE FAMILY RESIDENTIAL ZONING DISTRICTS

Mayor Bellamy said that the public hearing on this matter was held on November 28, 2006, and because the ordinance failed to reach the 2/3 vote of the full Council, the matter needed to be brought back for a second vote.

Councilman Davis could not be supportive of this amendment in that he feels it was crafted as an effort to work around the reasons why a bed & breakfast was denied on Edwin Place about a year ago.

Councilman Mumpower said that we are talking about a regulated activity when there are all kinds of things that can go on in someone's home that we have no way of regulating at all.

After a brief discussion about signage in order to identify the homestay in the neighborhood, the majority of Council instructed Planning staff to (1) research the options of allowing some type of discreet signage that would identify the facility; and (2) devise a way for people who are interested in opening up a homestay to be able to find out if they would qualify regarding the spacing requirements.

Councilwoman Cape moved for the adoption of the second reading of Ordinance No. 3412. This motion was seconded by Councilman Mumpower and carried on a 4-3 vote, with Mayor Bellamy, Councilman Freeborn, and Councilman Davis voting "no."

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SECOND READING OF ORDINANCE NO. 3413, AN ORDINANCE TO CREATE AN HISTORIC PRESERVATION OVERLY DISTRICT FOR THE ST. DUNSTAN'S NEIGHBORHOOD

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Mayor Bellamy said that the public hearing on this matter was held on November 28, 2006, and because the ordinance failed to reach the 2/3 vote of the full Council, the matter needed to be brought back for a second vote.

At staff's request, Vice-Mayor Jones moved to continue the second reading of Ordinance No. 3413 to January 9, 2007. This motion was seconded by Councilwoman Cape and carried unanimously.

III. PUBLIC HEARINGS:

A. PUBLIC HEARING TO CONSIDER CONDITIONAL ZONING OF PROPERTY LOCATED AT 138 SPRINGSIDE ROAD FROM INSTITUTION DISTRICT TO RM-16 RESIDENTIAL MULTI-FAMILY HIGH DENSITY DISTRICT/ CONDITIONAL ZONING FOR THE DEVELOPMENT OF A SENIOR HOUSING RENTAL COMMUNITY

ORDINANCE NO. 3424- ORDINANCE TO CONDITIONALLY ZONE PROPERTY LOCATED AT 138 SPRINGSIDE ROAD FROM INSTITUTION DISTRICT TO RM-16 RESIDENTIAL MULTI-FAMILY HIGH DENSITY DISTRICT/ CONDITIONAL ZONING FOR THE DEVELOPMENT OF A SENIOR HOUSING RENTAL COMMUNITY

Mayor Bellamy opened the public hearing at 6:15 p.m.

Urban Planner Kim Hamel said that this is the consideration of an ordinance to conditionally zone property located at 138 Springside Road from Institutional District to RM-16 Residential Multi-Family High Density District/Conditional Zoning for the development of a senior housing rental community. This public hearing was advertised on December 1 and 8, 2006.

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

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

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

In February 2006, the Asheville City Council approved a Conditional Zoning request from Institutional District to RM-16 Residential Multi-Family High Density District/Conditional Zoning with a 200% density bonus for the construction of an 84-unit senior housing development on this

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site. The project was granted approval for local trust fund monies and also applied for federal housing tax credits but was denied. The developer or designated appointee is seeking to reapply for the federal housing tax credits in the coming year proposing essentially the same project only with a decrease in the total number of units.

The proposed changes to the project include the following:

- Previous application was approved for 84 units a density of approximately 28 units/acre. The current application proposes a reduction of 21 units for a total of 63 units, a density of approximately 21 units/acre;
- Reduced number of stories from 4 stories to 3 stories in height;
- A reduction in the number of parking spaces from 70 to 64 spaces;
- An increase in the overall open space provided for the project and the addition of a bio-retention rain garden that will assist with mitigating stormwater run-off, and serve as an amenity to the project.
- A reduction in the amount of density bonus approved from 200% to 125%. The project amenities, affordable housing rates, building design and enhanced landscaping features proposed on the original application are still applicable to this project qualifying it for the density bonus provision.

The building is proposed at 3 stories at a maximum height of 40-feet and will consist of 37 one-bedroom apartments, and 26 two-bedroom apartments. (All units are to be leased at a rate below the City's maximum affordable rental rate.) The building is

oriented towards the street with pedestrian connections to the proposed sidewalk along Springside Road and to the proposed walking trail provided as an amenity to the residents. A 64-space parking lot and required bicycle parking is located behind the building towards the rear of the lot. Landscape buffers, parking lot landscaping and open space is being provided to meet the City's standards.

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

Based on the proposed plans and elevations provided by the applicant, staff feels that the project qualifies for the requested 125% density bonus by providing an exceptional development through:

- Affordable housing: all units within the development are proposed at a rate *below* the City's maximum affordable rental rate, meeting the needs of those (specifically seniors) with a household income of less than 60% of median income.
- Higher quality building design (see elevation details above)
- Enhanced landscaping: additional landscape materials and an increase in the size of plant materials above the City's Standard requirement will be provided.
- Project amenities: walking trails, benches, garden area with gazebo

On Monday, October 2, 2006, the Technical Review Committee (TRC) reviewed the proposed master plan and recommended approval of the project subject to the conditions outlined in the staff report. These conditions will be addressed upon submittal of detailed site plans to TRC.

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

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permits set out in Section 7-16-2. Reviewing boards may consider these criteria; however, they are not bound to act based on whether a request meets all seven standards.

1. **That the proposed use or development of the land will not materially endanger the public health or safety.** The proposed project has been reviewed by City staff and appears to meet all public health and safety related requirements once the conditions enumerated by the Technical Review Committee are met. The project must meet the technical standards set forth in the UDO, the City Standards and Specifications Manual, the North Carolina Building Code and other applicable laws and standards that protect the public health and safety.
2. **That the proposed use or development of the land is reasonably compatible with significant natural or topographic features on the site and within the immediate vicinity of the site given the proposed site design and any mitigation techniques or measures proposed by the applicant.** The project site consists of two single-family dwellings that will be demolished in order to construct the proposed development. The property in its current state is relatively flat, grading of the site and removal of existing vegetation will be necessary in order to meet the stormwater and erosion control requirements and overall development of the site, as proposed.
3. **That the proposed use or development of the land will not substantially injure the value of adjoining or abutting property.** The proposed development is reasonably compatible with the surrounding uses and is not expected to injure the value of adjoining or abutting property.

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

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

Additionally, the building is to be designed with enhanced architectural features that are likely to contribute to the character

of the neighborhood. Landscape buffers are proposed around the perimeter of the site, which will assist in mitigating any negative impacts the development may have on the surrounding area.

5. **That the proposed use or development of the land will generally conform to the comprehensive plan, smart growth policies, sustainable economic development strategic plan and other official plans adopted by the City.** The project is supported by numerous goals and strategies in the plan relating to infill development, smart growth policies and affordable housing. The project utilizes “new zoning tools” (Conditional Zoning and Density Bonus incentive) to create a sustainable high-density residential development within the City Limits. Although, transit service is not currently available on Springside Drive, the site is located within 1 mile of transit service along Hendersonville

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

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

6. **That the proposed use is appropriately located with respect to transportation facilities, water supply, fire and police protection, waste disposal, and similar facilities.** Development on the site will require final technical approval from all applicable departments including representatives of the Water Resources, MSD, Engineering, Fire and Building Safety Departments. The conceptual plans for the development have been reviewed by the City’s Technical Review Committee, which found that adequate services and facilities are available for the proposed development.

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

7. **That the proposed use will not cause undue traffic congestion or create a traffic hazard.** The City’s Traffic Engineer has reviewed the proposal and determined that the project will not create any traffic issues.

Based on the information contained in this report, staff finds that the applicant’s request is reasonable.

On Wednesday, November 1, 2006, the Asheville Planning and Zoning Commission reviewed the request and voted unanimously to approve the project subject to the conditions outlined in the staff report.

Considerations:

- This project utilizes Conditional Zoning and the density bonus provision in order to provide an exceptional development project through affordable housing, enhanced site and building design, and project amenities.
- To date staff has not received any negative comments or opposition to this project.
- The project makes a significant contribution to meeting the need for affordable rental housing in the City of Asheville.
- The project supports numerous goals and strategies outlined in the City’s 2025 plan as it relates to smart growth, infill and sustainable development.
- The project provides an opportunity for infill residential development on property that is currently under-utilized.
- The revised application produces a building that is more in scale with other buildings currently found in the immediate area.
- City transit does not currently provide service along Springside Road.

Mr. Gerald Green, representing Shelter Development, spoke in support of this project in that it will provide senior housing in Asheville. He said that the neighboring Library and High School are also amenities for the senior citizens in that the High School JROTC would like to be involved in providing programs for residents of this housing development. He felt this development will be an asset to the community.

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Mayor Bellamy closed the public hearing at 6:21 p.m.

When Vice-Mayor Jones asked why the NC Financing Agency would want to reduce the number of affordable units, Mr. Darryl Jones, representing Shelter Development, said that it had to do with the scoring by the State.

Councilman Mumpower supported affordable housing for seniors, but if we are going to subsidize something with taxpayer dollars, he felt we have the responsibility to be careful with those dollars and beauty shops and other amenities to him represent excess.

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

Councilwoman Cape moved for the adoption of Ordinance No. 3424, to conditionally zone property located at 138 Springside Road from Institutional District to RM-16 Residential Multi-Family High Density District/Conditional Zoning for the development of a senior housing rental community, subject to the condition that all TRC conditions are met. This motion was seconded by Councilman Freeborn and carried on a 6-1 vote, with Councilman Mumpower voting "no."

ORDINANCE BOOK NO. 23 - PAGE

B. PUBLIC HEARING TO CONSIDER APPLYING THE MANUFACTURED HOUSING OVERLAY ZONING TO 24 LOTS CURRENTLY ZONED RM-8 RESIDENTIAL MULTI-FAMILY MEDIUM DENSITY DISTRICT LOCATED ON CASE ROAD, FAITH ROAD, ALBANY GRAY ROAD AND CHARLIE ARTHUR ROAD

ORDINANCE NO. 3425- ORDINANCE TO APPLY THE MANUFACTURED HOUSING OVERLAY ZONING TO 24 LOTS CURRENTLY ZONED RM-8 RESIDENTIAL MULTI-FAMILY MEDIUM DENSITY DISTRICT LOCATED ON CASE ROAD, FAITH ROAD, ALBANY GRAY ROAD AND CHARLIE ARTHUR ROAD

Mayor Bellamy opened the public hearing at 6:25 p.m.

Planning & Development Director Scott Shuford said that this is the consideration of an ordinance to apply the Manufactured Housing Overlay Zoning to 24 lots currently zoned RM-8 Residential Multi-Family Medium Density District located on Case Road, Faith Road, Albany Gray Road and Charlie Arthur Road. This public hearing was advertised on December 1 and 8, 2006.

Mr. Shuford said that the Asheville City Development Plan 2025 (ACDP) does not directly address the subject of manufactured homes except to note that more than 50% of new homes in Buncombe County outside of Asheville are mobile homes. It goes on to say that on rented land, the owners are effectively tenants with little security while the value of the units depreciate over time. The ACDP also, however, describes in significant detail the pressing problem of providing affordable housing and draws a correlation between affordable housing and economic development. While manufactured (or mobile) homes may not be an appreciating investment or provide the most security for our citizens, they do provide an affordable form of housing. The MH-Overlay allows for this affordable housing with the opportunity for land ownership.

These lots and other areas were brought into the City of Asheville's extra-territorial jurisdiction (ETJ) in 2001; notes from public meetings at that time indicate that residents from

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other affected areas in vicinity of Sardis Road and the east side of Brevard Road (Possum Trot) expressed a desire to retain the ability to establish manufactured housing, however, there appears to have been no such request from the residents of the subject area. The initial zoning in 2001 applied the RM-8 Residential Multi-Family, Medium Density District zoning which best reflects the residential uses and existing density; it can be speculated that the lack of interest from the public is the likely reason for the omission of the Manufactured Housing Overlay at that time.

A recent citizen request prompted staff to perform a field survey of the subject area for the additional application of an overlay that would allow for manufactured homes, not normally permitted in the RM-8 zoning district. Staff discovered that of the 24 lots identified in this report, 21 were occupied. Of the 21 occupied lots, 13 (or approximately 62%) contained one or more manufactured homes. Additionally, manufactured homes were found to be scattered in less developed areas directly around this community and appear to be a relatively common form of housing.

Without the manufactured housing overlay, additional manufactured homes could not be established on the existing lots thereby limiting housing choices to either modular or traditional stick-built homes. The Manufactured Housing Overlay was established to expand the range of housing opportunities available to the residents of Asheville while assuring that the manufactured housing is compatible with the existing homes in the area. The Overlay establishes standards for the individual

manufactured homes while also establishing a procedure for identifying areas where the overlay may be applied. The individual standards for manufactured homes are dictated by those established by the Department of Housing and Urban Development and must also meet all applicable state building codes. Evaluation of a new manufactured home's ability to comply with those standards are evaluated on an individual basis through the review procedure established for single family home permits; responsibility for issuing all site and building permits for properties located within the City's ETJ was assumed beginning in July of this year. This analysis focused on those standards established for identifying areas appropriate for the Manufactured Housing Overlay and are as follows:

1. ***Manufactured homes located on individual lots and meeting the development standards set for in subsection 7-9-5(c) above would be architecturally compatible with the existing site-built homes in the area.***

There appear to be approximately six site-built homes in the area that are compatible with the majority of the manufactured homes in size, height, orientation, and materials.

2. ***Manufactured homes should be located in the area prior to its designation as a manufactured housing district and should comprise at least 20 percent of the homes in the area.***

The existing manufactured homes in the subject area comprise approximately 62% of the residential structures.

3. ***Vacant land should be available upon which to locate manufactured homes.***

Some vacant land is available upon where new manufactured homes could be located. Additionally, under the existing RM-8 zoning, a number of lots in the study area are large enough to support additional units.

4. ***The area should be a minimum of five acres.***

The total acreage included in the study area is 17.53 acres.

In summary, staff research and field investigations supports the application of the Manufactured Housing Overlay zoning to the 24 properties identified in this report.

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On November 16, 2006, the Planning & Zoning Commission reviewed this request and voted (5-0; 2 commissioners absent) to approve the zoning overlay. There were a number of residents in support of the zoning overlay, none opposed.

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

Pros:

- Application of the Manufactured Housing Overlay does not prohibit the addition of modular or site-built homes.
- The Manufactured Housing Overlay provides additional housing opportunities not currently available.
- A significant number of lots are large enough to support more than one residential unit.

Cons:

- Road infrastructure is not built to City of Asheville standards.
- The creation of additional lots by subdivision, without extending public infrastructure, is extremely limited.

Staff recommends approval of this request. The Council may choose to reduce the area but may not increase it without additional advertising.

Ms. Lucinda Jordon, property owner on Case Road, spoke in support of the Manufactured Housing Overlay.

Mayor Bellamy closed the public hearing at 6:28 p.m.

Councilwoman Cape said that manufactured homes are affordable housing for many people in our community. In addition, more and more manufactured homes are made energy efficient that will really provide a level of affordability long term and there are a lot of moves in this country to look at mobile home communities.

Councilman Mumpower appreciated the City demonstrating some flexibility because mobile homes do represent affordable housing. He wondered if it might be good to look at other opportunities for us to create additional possibilities for this affordable housing resource at Council's retreat.

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. 3425, to approve the zoning map amendment to include the addition of the Manufactured Housing Overlay zoning as noted in the Exhibit A zoning map attached to the ordinance; 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 Councilman Newman and carried unanimously.

ORDINANCE BOOK NO. 23 - PAGE

C. PUBLIC HEARING TO CONSIDER THE ISSUANCE OF A CONDITIONAL USE PERMIT FOR PROPERTY LOCATED ON DAVENPORT ROAD AND IDENTIFIED AS DAVENPORT SUBDIVISION PROJECT, FOR A PROPOSED 16-LOT SUBDIVISION

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ORDINANCE NO. 3426- ORDINANCE GRANTING A CONDITIONAL USE PERMIT FOR PROPERTY LOCATED ON DAVENPORT ROAD AND IDENTIFIED AS DAVENPORT SUBDIVISION PROJECT, FOR A PROPOSED 16-LOT SUBDIVISION

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

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

After hearing no questions about the procedure, Mayor Bellamy opened the public hearing at 6:31 p.m.

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

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

Urban Planner Nathan Pennington submitted into the record City Exhibit 1 (Affidavit of Publication), City Exhibit 2 (Certification of Mailing of Notice to Property Owners); and City Exhibit 3 (Staff Report).

Mr. Pennington said that this is the consideration of the issuance of a conditional use permit for property located on Davenport Road, and identified as Davenport Subdivision Project, for a proposed 16-lot subdivision.

This review concerns a proposed 16 lot major subdivision with a development standard bonus for a reduction in lot size, width, setbacks and modifications to road and sidewalk design. Pursuant to Section 7-16-2(b)(17) of the Unified Development Ordinance (UDO), development standard bonuses for residential zoning districts are reviewed as a conditional use.

The subject site is located in west Asheville, within the City of Asheville's corporate limits, at 149 Davenport Rd. The subject site consists of two parcels comprising approximately 2.83 acres in area (Attachment to City Exhibit 3 - Aerial Map). Both lots are zoned RS-8 Residential Single-Family High Density District.

The subject site is bounded to the north by single and multi-family residences and Davenport Road zoned RS-8, to the east by a single-family residence and West Asheville Park zoned RS-8, to the south by the park and a single-family residence zoned RS-8, and to the west by a church, vacant land and single-family residences zoned RM-8 and RS-8.

The RS-8 zoning district was created to establish a high density per acre for single-family dwellings where public infrastructure is sufficient to support such development and to stabilize and protect the district's residential character in areas of existing high density single-family development while promoting a suitable environment for single-family living.

At their November 20, 2006, meeting the Technical Review Committee (TRC) approved this project subject to the conditions in the staff report.

Section 7-16-2(d)(17)(c) provides that in order to promote exceptional development projects, the City Council may permit the alteration of development standards for projects that

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exhibit exceptional site and/or structure design that is appropriate to the architectural and/or environmental context of the surrounding neighborhood. The applicant must meet a minimum of three items as listed on the "Exceptional Development" Checklist. The applicant has chosen to meet this requirement by incorporating the following four standards into the project design: Significant use of green building techniques, enhanced stormwater management, environmentally sensitive design to preserve existing vegetation and pedestrian orientation and amenities (Attachment to City Exhibit 3 - Site Plan).

Staff has received 4-5 communications from property owners concerned that the proposed development will create increased traffic, add to Davenport Road being used as a 'cut-through' to other roads in the vicinity and worsen safety concerns for pedestrians.

City Council must take formal action as set forth in Section 7-5-5(e)(3) of the UDO, and must find that all seven standards for approval of conditional uses are met based on the evidence and testimony received at the public hearing or otherwise appearing in the record of the case pursuant to Section 7-16-2(c) of the UDO. 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.

This has been reviewed by City staff and appears to meet all public health and safety related requirements. The project must meet the technical standards set forth in the UDO, the Standards and Specifications Manual, the North Carolina Building Code and other applicable laws and standards that protect the public health and safety.

2. That the proposed use or development of the land is reasonably compatible with significant natural or topographic features on the site and within the immediate vicinity of the site given the proposed site design and any mitigation techniques or measures proposed by the applicant.

The area of the property to be developed has previously been disturbed by past grading and development. No stark topographical changes exist on the property. Rhododendron Creek running through the western portion of the property will remain undisturbed and improved for a future greenway connection. The proposed project is thus compatible with the topography and natural features.

3. That the proposed use or development of the land will not substantially injure the value of adjoining or abutting property.

Staff feels that the proposed project would have no discernible effect on surrounding property values.

4. That the proposed use or development of the land will be in harmony with the scale, bulk, coverage, density, and character of the area or neighborhood in which it is located.

The proposed development would mesh with other single-family residences, and would thus be in harmony with the neighboring area.

5. That the proposed use or development of the land will generally conform to the comprehensive plan, smart growth policies, sustainable economic development strategic plan and other official plans adopted by the City.

The application of exceptional development standards and the incorporation of a greenway easement mesh with the spirit and smart growth policies as described in both the Asheville Development Plan 2025 and the Strategic Operating Plan.

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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 development will gain access from Davenport Road which is a city maintained street. In addition, technical review from other departments has not revealed any problems for providing an urban level of service to 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:

- Project will require modifications to site development standards including reductions in lot size, width, setbacks, road construction and sidewalk design.

- The development will incorporate exceptional development standards into the design.
- A greenway connection is being provided along Rhododendron Creek adjacent to the West Asheville Park.
- High density infill development and stormwater best management practices would further the goals and objectives of the comprehensive and strategic operating plan.

Staff recommends approval of the proposed project and Conditional Use Permit subject to the conditions in the City Council and TRC staff reports. Additionally, staff recommends approval to the development standard modifications listed above.

Mr. David Tuch, Land Planner with Equinox Environmental Consultation & Design Inc., explained how the Davenport site provides infill development; meets City's smart growth goals; creates a healthy housing project; and complies with the City's comprehensive Plan. He said the exceptional development checklist requires 3 items, but the following four items are being provided: (1) green building techniques (Applicant Exhibit 2) - (a) passive solar design; (b) efficient framing techniques; (c) construction waste reduction; (d) compact and tightly sealed construction; and (e) low or non-toxic finishes; (2) stormwater management - (a) narrow roads to reduce impervious surfaces; (b) porous pavers; (c) bio-swale; and (d) bio-retention area; (3) preservation of existing vegetation - (a) preservation of hardwood forest; (b) preservation of riparian buffers; and (c) stream protection; and (4) pedestrian oriented amenities - (a) 30-foot greenway easement; (b) road design to promote pedestrian safety; and (c) the "Woonerf" (Street for Living). He reviewed the preliminary master plan and showed the architecture of the homes. He explained their request for a modification to the sidewalk requirement since (1) the square is oriented for the pedestrian; (2) it is a difficult site location; and (3) they are proposing a stamped concrete crosswalk makes a better connection. Another modification request is for the one-way road to be 14-feet instead of the required 16-feet. He explained that is not a fire code issue; 16-foot width would encourage two-way traffic; a modification would reduce construction impact; and there are numerous examples of one-way streets in Asheville that are 14-feet or less. In addition, he said that there was a staff recommendation that a greenway connection be built from the development to the proposed greenway easement. Regarding that, he said that they are providing a greenway easement and the timeline for greenway construction unknown and will give potential buyers the impression that construction is not finished (Applicant Exhibit 1)

Mr. Jody Goukas, developer, spoke in support of the conditional use permit.

After rebuttal, Mayor Bellamy closed the public hearing at 6:42 p.m.

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There was a brief discussion about the modification requests, with Assistant City Manager Jeff Richardson stating that staff has no concerns with the modification requests.

Councilwoman Cape suggested staff review the adopted Greenway Master Plan to see if property is developed on those lots in the greenway area if it is required that an easement must be granted.

Regarding the "T" turnaround for fire trucks, Councilwoman Cape pointed out a possible secondary "T" turnaround on the site plan.

Councilman Mumpower moved for the adoption of Ordinance No. 3426, approving the Conditional Use Permit adopting the proposed master plan, with the requested modifications to lot size, width, setbacks, road construction and sidewalk design for the Davenport Subdivision subject to (1) the conditions recommended by City staff; (2) The project shall comply with all conditions outlined in the TRC staff report; (3) All site lighting must comply with the City's Lighting Ordinance and be equipped with 90 degree cut-off fixtures and directed away from adjoining properties and streets; (4) All existing vegetation that is to be preserved must be clearly indicated and dimensioned on the site, landscape and grading plans; (5) The building design, construction materials and orientation on site must comply with the conceptual site plan and building elevations presented with this application. Deviation from these plans may require reconsideration; and (6) At the direction of the Planning Director, this Project may be required to be reviewed by the TRC prior to issuance of any building or grading permits. This motion was seconded by Councilwoman Cape and carried unanimously.

ORDINANCE BOOK NO. 23 - PAGE

D. PUBLIC HEARING TO CONSIDER A PROPOSED AMENDMENT TO THE 2006 CONSOLIDATED STRATEGIC PLAN TO DESIGNATE WEST RIVERSIDE WEED AND SEED AREA AS A COMMUNITY DEVELOPMENT BLOCK GRANT NEIGHBORHOOD REVITALIZATION STRATEGY AREA

RESOLUTION NO. 06-216 - RESOLUTION TO AMEND THE 2006 CONSOLIDATED STRATEGIC PLAN TO DESIGNATE WEST RIVERSIDE WEED AND SEED AREA AS A COMMUNITY DEVELOPMENT BLOCK GRANT

NEIGHBORHOOD REVITALIZATION STRATEGY AREA

Mayor Bellamy opened the public hearing at 7:06 p.m.

Community Development Director Charlotte Caplan said that this is the consideration of a resolution to amend the 2006 Consolidated Strategic Plan to designate West Riverside Weed & Seed area as a Community Development Block Grant (CDBG) Neighborhood Revitalization Strategy Area. This public hearing was advertised on December 1 and 8, 2006.

Asheville's West Riverside neighborhood, which includes the Pisgah View and Burton Street neighborhoods has recently been designated and funded by the U.S. Department of Justice as a national Weed and Seed program area. It would be advantageous also to have this area designated by HUD as a CDBG Neighborhood Revitalization Strategy Area (NRSA).

NRSAs are target areas where CDBG funding is used strategically to foster community-based initiatives addressing housing, economic development and human service needs. As incentives, HUD provides certain flexibilities in the use of CDBG funds in NRSAs.

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The groundwork needed for the NRSA designation has been covered in planning the Weed and Seed program. Likewise, reports generated for the Weed and Seed program will cover HUD's reporting requirements as well.

HUD Requirements:

1. The proportion of low-moderate income residents in an NRSA must be in the upper quartile of all city census tracts: for Asheville that is 55%. The West Riverside area has 57.3 % LMI.
2. A neighborhood revitalization strategy must be made part of the City's Strategic Five-year Housing and Community Development Plan. This requires a public hearing and formal amendment to the current strategic plan, adopted in 2005. The necessary public notice for this has been given.
3. After Council action, the proposed NRSA plan (in this case the Weed and Seed Plan) must be submitted to HUD for approval.

Pros:

- Additional flexibility in using CDBG funds within the designated area
- Encouraged by HUD nationally

Cons:

- None

Staff recommends approval of a resolution to amend the City's Consolidated Strategic Housing & Community Development Plan to designate the West Riverside Neighborhood as a Neighborhood Revitalization Strategy Area.

Mayor Bellamy closed the public hearing at 7:08 p.m.

Councilman Mumpower felt that a good effort was made to engage the Weed & Seed Program in this community and looked forward to turning this into something real.

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

Councilman Freeborn moved for the adoption of Resolution No. 06-216. This motion was seconded by Councilwoman Cape and carried unanimously.

RESOLUTION BOOK NO. 30 – PAGE 165

- E. PUBLIC HEARING TO CONSIDER THE CONDITIONAL USE PERMIT FOR BROADWAY MIXED-USE PHASE II LOCATED AT 237 BROADWAY STREET FOR A DEVELOPMENT WHICH WILL INCLUDE RESIDENTIAL, OFFICE, RETAIL USES AND A RESTAURANT**

At staff's request, Vice-Mayor Jones moved to continue this public hearing until January 9, 2007. This motion was seconded by Councilman Newman and carried unanimously.

CLOSED SESSION

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At 7:10 p.m., Councilman Mumpower moved to go into closed session for the following reasons: (1) to discuss matters relating to the location or expansion of industries or other businesses in the area served by the City Council, including agreement on a tentative list of economic development incentives that may be offered in negotiations, providing that any actions authorizing the payment of economic development incentives will occur in open session. The statutory authorization is contained in G.S. 143-318.11 (a) (4); and (2) to consult with an attorney employed by the City about matters which the attorney-client privilege between the City and its attorney must be preserved, including litigation involving the following parties: City of Asheville, State of North Carolina and County of Buncombe. The statutory authorization is contained in G.S. 143-318.11 (a) (3). This motion was seconded by Councilman Freeborn and carried unanimously.

At 7:45 p.m., Vice-Mayor Jones moved to come out of closed session. This motion was seconded by Councilman Freeborn and carried unanimously.

F. PUBLIC HEARING TO CONSIDER AN AMENDMENT TO THE UNIFIED DEVELOPMENT ORDINANCE REGARDING CHANGES TO THE SIGN CODE TO ALLOW FOR CITY COUNCIL APPROVAL OF SIGNAGE PLANS FOR LARGER-SCALE DEVELOPMENTS

ORDINANCE NO. 3427 - ORDINANCE TO AMEND THE UNIFIED DEVELOPMENT ORDINANCE REGARDING CHANGES TO THE SIGN CODE TO ALLOW FOR CITY COUNCIL APPROVAL OF SIGNAGE PLANS FOR LARGER-SCALE DEVELOPMENTS

Mayor Bellamy opened the public hearing at 7:46 p.m.

Planning & Development Director Scott Shuford said that this is the consideration of an amendment to the Unified Development Ordinance (UDO) regarding changes to the Sign Code to allow City Council approval of signage plans for larger-scale developments. This public hearing was advertised on December 1 and 8, 2006.

Staff has been approached by Biltmore Farms/Crosland developers about a creative signage plan for the Biltmore Park development. As the development's signage plan was being prepared, it was noted that many of the way-finding signs desired for the development were not allowed. Staff suggests that there be an adjustment to the UDO for larger developments to allow for City Council approval of signage plans that deviate from "basic" sign requirements providing key city goals were met and there were topographical or site design constraints or needs which warranted the deviations.

The amendment was prepared to create a new Section 7-13-10 to allow for the creation and processing of signage plans for the following development types:

- Urban Village projects
- Level III projects
- Commercial, industrial, or mixed use developments containing five or more acres in area.

Pros:

- Provides an alternative to the variance process for addressing the unique signage requirements for large scale developments.
- Promotes City goals for way-finding, pedestrian-orientation, and business identification.
- Allows for creative signage solutions.

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Con:

- Adds additional staff and Council responsibilities.

The Planning and Development staff recommends City Council approve an ordinance amending Chapter 7 of the Code of Ordinances of the City of Asheville to establish a new section 7-13-10 for Signage Plans.

Mayor Bellamy closed the public hearing at 7:49 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. 3427. This motion was seconded by Vice-Mayor Jones and carried unanimously.

ORDINANCE BOOK NO. 23 - PAGE

IV. UNFINISHED BUSINESS:

V. NEW BUSINESS:

A. PRESENTATION OF THE FISCAL YEAR 2006 COMPREHENSIVE ANNUAL FINANCIAL REPORT

Chief Financial Officer Ben Durant said that at the conclusion of each fiscal year, an annual audit of the city's financial statements is conducted. The purpose of the audit is to obtain reasonable assurance that basic financial statements are free of material misstatement; to examine evidence supporting the amounts and disclosures in the financial statements; and to assess accounting principles used and the overall presentation of the financial statement.

Mr. Brian Broom, Director of Dixon Hughes, said that the City has been issued a "clean" audit. Specific findings and results of the Fiscal Year 2005-06 audit are as follows: (1) An unqualified opinion of the financial statements of the City has been issued; (2) No matters involving the internal control over financial reporting and its operation were considered to be material weaknesses; and (3) No instances of non-compliance or other matters that are required to be reported under governmental auditing standards were identified.

City Manager Jackson said that enhancing the automation for preparation of our financial statements is not our highest investment opportunity at this point in time, but it is something they noted. He said that we will come up with a plan to invest and upgrade our financial management systems to make sure that we are working effectively and also using state of the art technology for all manners of financial reporting.

At the suggestion of Councilman Mumpower, Councilman Newman, Chair of the Revenue and Finance Committee, said that they would review the City's AA bond rating and what we might do to get a higher bond rating.

It was the consensus of Council to accept the Fiscal Year 2006 Annual Audit and Comprehensive Annual Financial Report.

B. RESOLUTION NO. 06-217- RESOLUTION ADOPTING THE CIVIC CENTER ACTION PLAN INCLUDING THE SCHEDULE FOR CAPITAL IMPROVEMENT AND MAJOR MAINTENANCE

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When Councilman Mumpower asked and was informed that this agenda item was not officially reviewed by the Civic Center Commission, he said that Council has been fussing for years for a role for that Commission and we made a commitment that when there is a Civic Center matter that we run it by the Civic Center Commission to at least give them the opportunity to offer an opinion.

Councilman Davis, liaison to the Civic Center Commission, explained how even though this item, in the format it is being presented, has not been taken to the Civic Center Commission they have seen it in essence. They in fact provided the first list in the form of their White Paper, which itemized a lot of the deferred maintenance items.

After a short discussion on whether to refer this matter to the Civic Center Commission for review prior to any Council action, Councilman Mumpower moved to defer action on this matter until the Civic Center Commission has had an opportunity to review it and at such time as the Mayor chooses, to place the matter back on Council's agenda. This motion died for a lack of a second.

Councilman Davis said that it's important that the community know that we are not just letting the Civic Center sit there. This Council has shouldered the responsibility to start giving attention to the many items that need attention. We have also looked very closely at the options we have. It is very clear that there is not the money, or the ability of City taxpayers, to fund a new arena at another place. The realistic part is that the Civic Center we have is in a good location, it sits well with the City of Asheville and is good for the downtown. With that in mind, we had four items that were identified: (1) repair and improve the

existing Civic Center - which City Council has indicated they wished to do; (2) repair and improve the Civic Center and study the feasibility of a new performing arts center as part of the mixed-use redevelopment; (3) abandon the existing Civic Center and build a new arena outside the City; and (4) abandon the existing Civic Center and build a new arena outside the City and study the feasibility of a new performing arts center. We would also like to proceed with Option No. 2 of with studying the feasibility of the Parkside site for a performing center. There is always that possibility that we as a region could come together and there would be something built outside the City. The Tourism Development Authority (TDA) was interested in helping when we were looking to build a new facility, and it is incumbent upon us to seek revenues from that source to repair what we have. In fact, the Warren Haynes concert has people coming from 42 states and that is definitely a tourism development piece. He hoped Council would consider putting this on our legislative request instead of a pay-as-you go situation. We could save on construction costs and make the building better at the same time if we have the funding mechanism to do it.

City Manager Jackson said that there are a variety of ways to approach the capital funding needs for the Civic Center. Earlier this year the Civic Center Task Force completed an extensive review of the alternative improvement options.

Regardless of the alternative eventually implemented, further consideration should be given to maintaining the existing physical structure. This includes addressing deferred maintenance items, potential safety issues, and replacing outmoded equipment essential for continued event production and patron attendance.

With this in mind, staff developed a capital improvements plan for the venue. As part of this planning, deferred maintenance and repair items were identified and segregated from facility upgrades. The capital improvements for deferred maintenance starts on a systematic methodical year fixed allocation which for the Civic Center arena amounts to \$7.8 Million. There are also facility upgrades amounting to \$7.3 Million, but we are not suggesting to Council a capital improvement program that gets to this type of upgrade since they might be ripped up if Council did a whole scale renovation. The Task Force has also recommended the following business

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investments: upgrade all concession stands, install separate HVAC system in Banquet Hall, completely renovate Banquet Hall, install freight elevator, rebuild the east end of the arena, and rebuild the stage area of the auditorium, which amount to \$25 Million. The total full project list (deferred maintenance projects - \$7.8 Million; the facility upgrades - \$7.3 Million; and the business investments - \$25 Mil) totals \$40.1 Million. The first cut for the Capital Projects request list for the next five-plus years, beginning in 2006-07, is replacing the arena roof (\$1.5 Million) and the replacement of a standby transformer (\$45,000). If we had a recurring source, we would systematically, over the next years address at least the \$7.8 Million deferred maintenance projects, and then move into the other ones at such time in the schedule that Council is ready to make upgrades to the existing facility - but we would not get to those facility upgrades for the five years, or until Council has consensus on a major investment. With existing revenue streams, we feel like \$400,000 a year for the next five years is doable. For 2007-08 we would replace smoke hatches, repair damage to concourse and replace floor seating in the arena for a total of \$360,000. For 2008-09, we would replace motor generator system and replace all spot lights for a total of \$400,000. For 2009-10, we would add more power/production space in arena, replace portable stage and convert locker rooms into dressing rooms for a total of \$345,000. For 2010-11, we would replace light 1000 watt fixtures in the arena, replace T12 lamps with T8 and replace exterior doors for a total of \$350,000. And, for 2011-12, we would replace emergency generator and install dimmers on arena lights for a total of \$440,000. We are making an attempt to address the most important investments from the overall deferred maintenance list. All of this is subject to the Civic Center Commissions review and recommendation and this Council's actual approval of the budget on an annual basis. The draft resolution of Council's general direction is that Council adopt the Civic Center Capital Improvement Plan and to continue to evaluate the feasibility of locating a new performing arts hall within a mixed-use development at Parkside and continue to pursue a regional partnership for replacement or renovation of the Thomas Wolfe Auditorium, depending upon a sustaining source of revenue for future operation and maintenance coming about as a result of regional partnerships.

City staff recommends approval of a resolution adopting the Civic Center Action Plan including the schedule for capital improvement and major maintenance.

Mr. Dwight Buckner, President of the Asheville Downtown Association, said that the Asheville Downtown Commission has adopted the following resolution "The Asheville Downtown Commission supports the Civic Center as a necessary asset to promote civic entertainment, tourism, and economic development. The Downtown Commission supports protection and maintenance of the current Civic Center complex, while any discussions are held to determine future options for the Civic Center/Thomas Wolfe. The Downtown Commission urges legislative support for the City and County to assist with funding options for the required deferred maintenance and repairs of the Civic Center in downtown Asheville." He said that a similar resolution will be considered by the Asheville Downtown Association.

Mr. Dennis Justice said that if Council decides that sports should not be in the building that should be reflected in the

policy. He thinks one of the reasons the sport teams failed is because of the condition of the building. He did think the action plan should be brought forth before the Commission. He supported a two building solution.

Mr. John Martin, with the Asheville Area Center for Performing Arts, spoke in support of this Action Plan preserving the existing Civic Center and also supported evaluating the feasibility of a new performing arts center location.

Councilman Freeborn moved to approve Resolution No. 06-___, adopting the Civic Center Action Plan of the limited deferred maintenance list of \$1.5 Million in 2006-07 and approximately \$400,000 in the next five years (totaling approximately \$3.4 Million), and to include studying the

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feasibility of a new performing arts center as part of the mixed-use redevelopment. This motion was seconded by Councilman Davis.

Councilman Newman didn't want to declare that sports are inappropriate in the Civic Center because there are a lot of different kinds of sports that people are excited about bringing to the Civic Center. He liked the fact that if we have to stand on our own, we have a plan to fix the facility. He wondered if we could fix the facility faster than just \$400,000 a year out of our General Fund. If a performing arts center turns out to be a viable project, he didn't want to make investments in the facility that we would end up having to tear out after just putting them in. He asked if any of the items listed in the deferred maintenance list or in the facility upgrades list would be resources not well spent if a performing arts center goes forward.

City Manager Jackson said that the \$400,000 a year is a realistic minimum figure (we could manage \$1 Million a year). However, if we only spend \$400,000 a year, we will never go beyond the deferred maintenance list. We would not be able to make upgrades. We do not anticipate getting into the facility upgrades list in the five-year period unless there is a significant change in policy direction. He said that none of the limited deferred maintenance list would be wasted dollars if a performing arts center turns out to be a viable project.

Councilman Newman felt that if we really want to fix the facility up and did the entire deferred maintenance list and the facility upgrade list, that would total approximately \$15 Million. Ideally, if none of those investments would be unwise with the scenario of potentially having a performing arts center, then we should reach out to the community and say here is what we think would be great to happen at the Civic Center. If this is a plan that Council wants, then we should make a commitment of how we are going to do it on our own and then we should also ask for our County and State to be partners with us and give us additional tools to do all the deferred maintenance and facility upgrades now. The way most other communities across the state have funded their civic center is the hotel occupancy fee. If this is the plan we want, if we had a 1-cent hotel occupancy fee (which is approximately \$1.3 Million a year), then basically it would fund basically the entire deferred maintenance and the facility upgrades.

Upon inquiry of Councilwoman Cape, City Manager Jackson said that if there is not a significant new revenue source available to us, we would be prepared to do the limited deferred maintenance list of \$1.5 Million in 2006-07 and approximately \$400,000 in the next five years. There is also the preferred plan of deferred maintenance which is approximately \$1 Million for the next five years. When staff was asked what they can realistically manage if the City had the resources to responsibly address the deferred maintenance list, the \$1 Million a year was the response. If regional partners came to the table to help address the facility, the \$1 Million a year deferred maintenance list is what we would recommend.

Upon inquiry of Councilwoman Cape, Mayor Bellamy said that at Council's retreat a discussion is scheduled for a planning calendar for City Council and the community to know what is coming to Council in advance.

Upon inquiry of Councilman Mumpower, City Manager Jackson said that he has not talked with Buncombe County or our State representatives about this plan.

Councilman Mumpower felt we are moving in the right direction, in terms of the feasibility and realism in trying to fix what we have. He wondered if there are other ways to create opportunities to enhance attractiveness as well as efficiencies, e.g., a design competition. That said, he would not support the motion because we are voting on a \$40 Million full project list plan without official review by our appointed Civic Center Commission.

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Vice-Mayor Jones supported the limited deferred maintenance list of \$1.5 Million in 2006-07 and approximately \$400,000 in the next five years.

City Manager Jackson suggested we title the limited deferred maintenance list "City-Funded Capital Improvement Plan" and the \$1 Million a year deferred maintenance list "Project Requests with Regional Partnerships." In addition, the resolution should be amended to include that City Council will pursue regional funding partnerships to accomplish the "Project Requests with Regional Partnerships." He said the \$40 Million full project list is presented to Council only to qualify how the numbers were arrived at, noting that the Civic Center Commission did see this list.

Mayor Bellamy preferred to approve the limited deferred maintenance list of \$1.5 Million in 2006-07 and approximately \$400,000 in the next five years, totaling approximately \$3.4 Million over 2006-07 - 2011-12.

Councilman Davis hoped that we can maintain the entire \$40 Million full project list as objectives we want as a goal and hoped that we would be willing to be flexible with the plan, if necessary.

The motion made by Councilman Freeborn and seconded by Councilman Davis to approve Resolution No. 06-217, adopting the Civic Center Action Plan of the limited deferred maintenance list of \$1.5 Million in 2006-07 and approximately \$400,000 in the next five years (totaling approximately \$3.4 Million), and to include studying the feasibility of a new performing arts center as part of the mixed-use redevelopment carried on a 6-1 vote, with Councilman Mumpower voting "no."

Councilman Newman suggested a motion to (1) request participation with Buncombe County and the State legislators to implement both the entire deferred maintenance plan and the facility upgrades, totaling approximately \$15 Million (which are identified on the full project list), noting that we are open to talking about different ways to do that, however, a hotel occupancy fee has been used for civic centers across the state and we would request that Asheville have a 1-cent hotel occupancy revenue for the deferred maintenance and facility upgrades; and (2) request feedback from the Civic Center Commission about the details of the plan.

Councilman Mumpower felt that until we have some kind of full plan (other than maintaining what we already have) that we can sell to the community, Buncombe County and State legislators, spending \$14 Million seems short-sighted and he could not support the motion. He did note that he would have voted in favor of the first motion, but voted against it because we did not allow the Civic Center Commission to review it first.

Councilman Newman moved that that it is the sense of Council that (1) we would like to move forward with implementing both the entire deferred maintenance plan and the facility upgrades, totaling approximately \$15 Million (which are identified on the full project list); (2) we are going to need partners with Buncombe County and the State legislators to move forward with implementing both the entire deferred maintenance plan and the facility upgrades; (3) we believe the 1-cent hotel occupancy fee would be sufficient for that plan; and (4) we would like to get feedback from the Civic Center Commission on that direction as well as studying the feasibility of a new performing arts center at Parkside or elsewhere in the downtown area, before we take a final vote. This motion was seconded by Councilman Davis.

Mayor Bellamy could not support the motion of the 1-cent hotel occupancy fee being used only for the deferred maintenance and facility upgrades, because if the Parkside project comes alive, that would be an opportunity to use that dedicated fund.

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Councilman Newman was open to amend his motion to clarify that the 1-cent hotel occupancy fee could be used for other things, but the 1-cent hotel occupancy fee would basically cover the deferred maintenance fee and facility upgrades. If the performing arts center goes forward, it will require a lot of private money and the mixed-use development portion will help bring the costs down.

Councilman Mumpower questioned if a motion was necessary since we are making a lot of assumptions about the 1-cent hotel occupancy fee.

It was the majority of Council's consensus to charge Councilman Davis, as liaison to the Civic Center Commission, to advise the Civic Center Commission that this is the direction Council wants to move forward in and ask them for their input as soon as possible, after which City Council will take a final vote.

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C. RESOLUTION NO. 06-218 - RESOLUTION APPROVING THE ACQUISITION OF MCCORMICK HEIGHTS APARTMENT COMPLEX FROM ASHEVILLE MOUNTAINSIDE, LLC, AND ESTABLISHING A PUBLIC HEARING WITH REGARD TO AN INSTALLMENT PURCHASE IN COMPLIANCE WITH N.C. GENERAL STATUTES

City Manager Jackson said that this is the consideration of a resolution approving the acquisition of McCormick Heights Apartment Complex from Asheville Mountainside, LLC, and establishing a public hearing on January 9, 2007, with regard to an installment purchase in compliance with North Carolina General Statutes.

The McCormick Heights apartment complex is located at 56 Ardmore Road and 54 Hunt Hill Place adjacent to property owned by the City of Asheville. The property is situated north and northeast of Memorial Stadium, McCormick Field and the City's Purchasing Office and Warehouse. The complex sits on an 8.45 acre site and consists of 100 residential units spread over 17 buildings. Although all of the rents would be considered affordable in the market, 60 of the units are required to be affordable to households with income less than 60% of area median. The complex is in need of substantial repairs and currently only 41 of the units are occupied. The complex has failed to reach market potential and is not economically viable in its current configuration.

Asheville Mountainside, LLC, is a limited partnership consisting of CaroHome LLC, a subsidiary of Progress Energy, controlling partner and Mountainside Assisted Housing, Inc. an affiliate of the Housing Authority of the City of Asheville, managing partner. Asheville Mountainside, LLC was formed to purchase and renovate the property in the mid and late 1990s. A variety of financing was utilized including low income housing tax credits, a first mortgage from Mechanics and Farmers Bank of Durham and Community Development Block Grant (CDBG) and HOME program rehabilitation loans.

The proposed purchase agreement is in the amount of \$2,250,000. That amount would be sufficient to clear the following debts on the property: the first mortgage of \$1,765,000 and the balances due to the City on the CDBG and HOME rehabilitation loans. It is recommended that the purchase be funded by refinancing the existing first mortgage for a term of 4 years and 11 months and paying the remainder in cash from the fund balance.

The property was appraised by Thomas Steitler, MAI, in January 2005 at an "as is" value of \$1,650,000. A supplemental letter to the appraisal dated September, 2005 indicated that if the property were able to achieve 90% occupancy and maintain the same expense profile the

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property would be worth \$2,500,000. Although this latter assumption is not achievable given the current condition and design of the complex it reflects a marketability of the property for redevelopment. The agreed upon price of \$2,250,000 compares favorably to nearby land sales for residential development in the Central Business District even when the cost of demolition is considered which is estimated at between \$250,000 and \$400,000.

The property is located in a desirable residential area due to its proximity to employment, shopping, dining, educational, entertainment, cultural and recreational amenities of downtown. Redevelopment of the property in a market competitive design with a mix of affordable and market rate as well as rental and owner-occupied units spread across a broad range of market prices would have the best chance for success. This potential for redevelopment would be enhanced by the combination of the property with adjacent City owned property to create a parcel of about 20 acres.

The fact that McCormick Heights is no longer economically viable places at risk a significant number of affordable housing units. It is reasonably certain that if the City does not purchase the property, it will be purchased by a private developer for redevelopment as high end residential units and the affordable units will be lost. By acquiring McCormick Heights the City has the opportunity to direct redevelopment so as to ensure replacement of the affordable housing that would otherwise be lost and do so within a more desirable and market competitive community.

In anticipation of the redevelopment the City can assist with the relocation of the existing tenants to mitigate hardship. It is expected that the relocation would take place over a 6 month period after closing during which time the Housing Authority would continue to manage the property under an agreement with the City. CDBG funds could be made available to cover moving expenses and the City could contract with the Affordable Housing Coalition to implement the relocation assistance.

Pros:

1. The price for the land is justified by comparison to recent nearby sales for residential development.
2. The acquisition will give the City the opportunity to direct redevelopment so as to replace needed affordable housing.
3. It is a voluntary sale at a fairly negotiated price.
4. It will ensure relocation of the tenants in a manner that mitigates hardship.

5. It will provide the opportunity of combining City owned land for a net gain of housing of various market levels close to downtown.

Cons:

1. The acquisition will require a substantial appropriation of funds.
2. The City will be responsible for relocation of tenants.
3. The City will be responsible for demolition of the existing structures.

Approval of the resolution will establish \$2,250,000 as the acquisition price for the property and authorize the Mayor to execute all documents necessary to complete the transaction.

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Staff recommends adoption of a resolution approving the acquisition of McCormick Heights Apartment Complex from Asheville Mountainside, LLC, and establishing a public hearing on January 9, 2007, with regard to an installment purchase in compliance with North Carolina General Statute.

Supplemental information provided by Planning & Development Director Scott Shuford shows that the steady loss of affordable rental units in and near downtown has been of concern for several years. With the exception of the Griffin and Woodfin Apartments, almost all new and renovated housing in this area has been unaffordable to people at or below median income. Yet maintaining an appropriate mix of housing options in the downtown area is one of the pillars of the Asheville's Comprehensive Plan.

Retaining affordable housing, and preferably affordable rental housing, on the McCormick Heights site should therefore be a consideration in any redevelopment plan. The existing 8 acre site has been developed for 100 units in one and two story buildings, at a density of 12 units per acre. When it was purchased and renovated in 1998, it was intended to provide a mix of 60 affordable units and 40 market rate units. However, the layout and design are not attractive and offer few resident amenities. The "market rate" units have in practice rented for little more than the rent-controlled units: it has never operated as a truly mixed income development.

A more attractive development of similar density could be designed, but the land and construction costs would make it hard to achieve a mixed-income development with a similar number of affordable rental units. However, acquisition of the property by the City provides an opportunity to combine the site with two City-owned adjoining parcels to the south and east, as follows:

Site A: approximately 4.5 acres of flat land currently used in part as the City's central purchasing stores and in part as an under-utilized recreation area.

Site B: approximately 6 acres of undeveloped land above Memorial Stadium, potentially accessible from the McCormick Heights site.

The combined site would provide almost 20 acres, which could be developed with a mix of housing types and densities suitable to the terrain to provide between 250 and 350 units of housing with good amenities, while simultaneously allowing the preservation of much of the steeper area as passive recreation. With appropriate incentives, it should be possible to combine both affordable rental and homeownership opportunities with market rate homes. The location and views will ensure premium prices for the market rate units that could be used to cross-subsidize the affordable homes. An increase in the tax base of at least \$40 million can be expected.

Supplement information provided by Community Development Director Charlotte Caplan shows that under the McCormick Heights Redevelopment Plan, 41 families currently living at McCormick Heights will be required to relocate to another permanent residence. The City of Asheville recognizes that moving can be a disruption to these families and is dedicated to making the transition as smooth and easy as possible.

Should the purchase of the McCormick Heights property be approved by City Council, City staff recommends implementing a Housing Counseling Program to guide residents through the moving process by providing residents with the resources and coaching to make the right housing choices for their families. Under this proposed plan, the City give residents six months in which to make their individual plans. Counseling and financial assistance will be provided to each household to: (1) Identify available

housing; (2) Find a suitable residence for their move; (3) Pay for moving costs; and (4) Pay for initial costs such a rent and utility deposits.

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Staff is developing a detailed Housing Counseling Program that outlines the roles and responsibilities of both the City and McCormick Heights residents. With City Council's approval of the land purchase, residents will receive detailed information about the program at an on site meeting scheduled for Thursday, December 14, 2006.

In order to successfully implement this program during the next six months, staff proposes contracting with the Affordable Housing Coalition of Asheville and Buncombe County (AHC). The AHC has more than 15 years of experience in providing housing counseling, educational and supportive services to those in search of a home.

The Housing Authority of the City of Asheville will also continue to partner with the City by continuing to operate McCormick Heights during the six month Housing Counseling Program. HACA will also take applications from residents who wish to relocate to public housing developments, giving them priority as displaced tenants.

Preliminary budget estimates indicate that the Housing Counseling Program will require up to \$85,000 in funding, which can be allocated from CDBG funds.

Pros:

- Provision of adequate time and resources to ensure a smooth housing transition for current McCormick heights residents,
- The ability to contract with the Affordable Housing Coalition to provide residents with housing counseling services.

Cons:

- Loss of the opportunity to use the recommended CDBG funds for other purposes.
- Requires staff oversight of the ongoing housing counseling program through June 30, 2007.

Staff recommends City Council approval to continue developing the Housing Counseling Program. With City Council's approval, City staff will bring a CDBG budget amendment forward for consideration in January.

Mr. Gene Bell, Executive Director of the Housing Authority of the City of Asheville, gave a brief history of the property after they renovated it. He said that the criminal element was a major deterrent to get market-rate people in and the initial pro forma that they had was not as realistic as it should have been. It assumed a 93% occupancy rate and at the time we thought that because of the proximity and newness of the renovated property we would be able to rent it, but we were not able to do that. Therefore, we incurred a significant amount of debt on the property and tried to sell it. When properties get that stigma over a long period of time, it is very difficult to do anything to the property and have it viable. So the suggestion to demolish the property is the only viable alternative to make that site work.

Upon inquiry of Councilwoman Cape, Chief Financial Officer said that City Council will hold a public hearing on this matter on January 9, 2007, and that the City will need approval by the Local Government Commission as well.

Councilman Mumpower felt that we have essentially surrendered a public housing development to drug dealers, criminals, and others who destroyed the safety of that development. He felt that crime has destroyed this facility and we have not done the kind of job we should have been doing in terms of protecting people. We should not be satisfied with this failure. He felt that to create more density at the same location before we fix the real problem is disaster. Every

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public housing project that we have is not safe and we need to fix that problem first. He felt the City of Asheville does not have a good history with development and believes we are wasting our money to try to do it again.

Vice-Mayor Jones said that there is a giant demand for affordable housing and many of the housing developments are not crime-ridden. Developers, with a vision similar to what we will be asking for, have built developments that have a high quality of life. She said this Council is very concerned about crime and remains committed to the public housing safety commitments.

Mayor Bellamy said that there are two large notebooks full of police response calls to McCormick Heights, showing that we have not ignored them. We are trying to address these issues, but the Court system is what has failed. She said the police

cannot solve all the ills in our society. She said that we need to partner with existing residents to develop a comprehensive plan to address drugs and crime in all neighborhoods, especially in public housing.

Councilwoman Cape noted that Asheville's failures with public housing has happened all across the county when you isolate people in single level incomes together - it doesn't offer a neighborhood. Other redevelopment plans have shown that you go back in and re-create neighborhoods. We have learned with the HOPE 6 Program that you can take these areas, make distinct changes, make areas where people can live together and have new neighborhoods without replicating the same problems.

It was the majority of Council's consensus to charge the Public Safety Committee bring back to Council a comprehensive plan to address drugs and crime in all neighborhoods, especially in public housing.

Vice-Mayor Jones said that she would be looking for the Police Chief's leadership in addressing the comprehensive plan in addressing these issues.

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

Councilman Freeborn moved for the adoption of Resolution No. 06-218. This motion was seconded by Vice-Mayor Jones and carried on a 6-1 vote, with Councilman Mumpower voting "no."

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At 9:37 p.m., Mayor Bellamy called for a short recess.

D. RESOLUTION NO. 06-219- RESOLUTION APPROVING A \$160,000 HOUSING TRUST FUND LOAN TO SKYLOFT ASHEVILLE, LLC, FOR CONSTRUCTION OF FOUR UNITS OF AFFORDABLE HOUSING ON ALEXANDER DRIVE

Community Development Director Charlotte Caplan said that this is the consideration of a resolution approving a \$160,000 Housing Trust Fund (HTF) loan to Skyloft Asheville, LLC.

On June 27, 2006, Skyloft Asheville, LLC received conditional zoning approval of its condominium development on Alexander Drive with the stipulation that 7 of the 69 units be sold affordably. Phase I of construction will include the first 4 of these affordable units as well as 20 market-rate units.

The two-bedroom affordable units will range in size from 780 – 850 square feet. They will be offered at the HTF sales price limit of \$120,000, well below the estimated construction cost of

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\$162,000 per unit. The discounted sales price is being subsidized mainly by the market-rate units in Phase I, not by Housing Trust Funds. Soft second HTF loans will be available as a further subsidy to families with income below 80% Area Median Income.

This is an infill project in close proximity to public transit and downtown jobs and services. The developer has responded to community needs by incorporating affordable units, a bus shelter, and extra sidewalks. The design includes green building features, underground parking, and more green space than required. The developer has used a density bonus to make efficient use of land. Financing has been committed, with a significant equity contribution, a conditional use permit has been approved, and grading is underway.

The managing partners of Skyloft Asheville, LLC, lack development experience on this scale. However, they have assembled an experienced development team and have already tackled many of the difficult issues that new developers face.

The Housing and Community Development Committee reviewed the application on November 20, 2006, and has recommended awarding a HTF loan in the amount of \$160,000 on the following terms: two year construction loan at 2% interest, with up to \$25,000 per unit available as soft second mortgages for eligible families (i.e. those with income less than 80% of area median). Currently over \$750,000 is available in the Housing Trust Fund.

Pros:

- Creates four units of affordable housing;
- Supports smart-growth policies;

- Exemplifies voluntary inclusion of affordable units within a market-rate project.

Cons: None

Staff recommends approval of a resolution to approve \$160,000 loan from the City's Housing Trust Fund to Skyloft Asheville, LLC.

Upon inquiry of Councilman Mumpower, Ms. Caplan explained the soft second mortgage loan.

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

Councilman Freeborn moved for the adoption of Resolution No. 06-219. This motion was seconded by Vice-Mayor Jones and carried unanimously.

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E. RESOLUTION NO. 06-220- RESOLUTION AMENDING THE HOUSING TRUST FUND GUIDELINES

Planning & Development Director Scott Shuford said that this is the consideration of a resolution to amend the Housing Trust Fund Guidelines.

The Housing and Community Development Committee has reviewed the guidelines for the City's Housing Trust Fund (HTF), which were established in September 2000 and last significantly updated in October 2004. At its November 2006 meeting, the Committee noted the following issues:

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- Construction costs across the nation have increased by about 25% over the past 3 years. In Charlotte (the closest city for which cost data is available) the increase has been closer to 40%.
- Existing house prices in Asheville have risen by 36% in the same period. It is likely that the price of developable land has risen by a similar amount.
- The use of our Housing Trust Fund and Fee Rebate programs by developers of homes for sale has declined sharply since 2004:

Year	Units with HTF Loans	Fee Rebate Units
2004	42	43
2005	7 (4 on hold)	35
2006 to Nov 30	0	11

The rapid increases in land and construction costs have made the current HTF and Fee Rebate program price limits unachievable except for the lowest quality factory-built homes. The current price limits were set in October 2004, with a 3-bedroom house capped at \$135,000, which was then just affordable to a household at 80% AMI. Based on purchasing power alone no increase would be called for – the small rise in median incomes since then has been more than offset by interest rate increases. However, keeping up with construction cost inflation would call for a new 3-bedroom limit of at least \$150,000.

Pros:

- Increased price limits will restore the fund's availability to developers;
- Increased loan amounts per unit will help to offset construction cost increases;
- Increased loan subsidy will assist low-income homebuyers;
- Equity sharing helps buyers maximize first mortgage while preserving value of HTF loan portfolio in real terms.

Cons:

- Homes priced close to the new limits will be less affordable.

The following changes are recommended by the committee with immediate effect:

1. Increasing the FY 2007 price limits for both the HTF and Fee Rebate programs as follows:

Size	Existing Limit	Proposed Limit
0-bedroom (efficiency)	95,000	110,000
1-bedroom	110,000	120,000
2-bedroom	120,000	135,000
3-bedroom	135,000	150,000
4-bedroom	150,000	150,000*

* The HCD Committee recommends the same price limit for 3- and 4-bedroom homes.

2. Increasing the maximum HTF construction loan amount from \$40,000 per unit to \$50,000 (repayable within 2 years unless assumed by buyer)
3. Increasing the maximum amount of HTF construction loan assumable by a low-income buyer from \$25,000 to \$30,000.

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4. Deferring all payments on homebuyer loans until resale of the home, but making the interest rate equal to the rate of price appreciation of the home so that loans retain their real value relative to housing prices. Also called "equity sharing", this keeps the HTF "whole" and allows us to provide the same level of help to future families. Having no monthly payments on the HTF loan allows the buyer to maximize conventional mortgage financing.
5. Increasing the maximum HTF loan for rental development from \$25,000 per unit to \$30,000

No change is recommended in the \$500,000 maximum loan amount per development (set in April 2006)

Mr. Rod Hubbard, developer who has provided 168 affordable housing units over the last year in Asheville, requested the fee rebate structure as follows: increasing the limit of one bedroom from \$100,000 to \$105,000, the two-bedrooms from \$120,000 to \$130,000 and the three-bedrooms from \$135,000 to \$140,000. These increases are less than what staff is recommending, not that he doesn't support staff's recommendation because he does, but the reason why he is able to sell his units for less than the staff's recommendations is because of density. However, if he was a single-family home builder and was building one, two or three units at a time, then there would be no way he could sell his units at an affordable housing rate.

Mr. Mike Vance, Home Ownership Manager for Mountain Housing Opportunities, supported staff's recommended increase in the Housing Trust Fund price caps.

Councilman Mumpower understands the rationale of the resolution but could not support the resolution as he felt that \$150,000 doesn't define affordable for most people. We are essentially reaching into the pocket of people who are struggling to make it on their own merits and putting that into the pockets of people who are asking for a subsidy. In other countries where land values are very expensive, people think on a smaller scale and he wondered if we haven't reached a point in Asheville about how big a bedroom really needs to be or how much space we need to be subsidizing with tax dollars for people who can't afford to pay for it themselves.

Mayor Bellamy felt that this is a way to enhance the tools in our toolbox for affordable housing. Because we don't have a comprehensive affordable housing plan, this does need support. She agreed that we do need to look at smaller and more density, but we need to do it in a comprehensive manner. In 2007 she will establish a Mayor's Task Force on Affordable Housing with the only charge being to create an affordable housing plan. She felt this plan can be complimentary to what staff is already working on. She invited Council to give her names for the Task Force, noting that final membership would be determined by only her.

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

Vice-Mayor Jones moved for the adoption of Resolution No. 06-220, as outlined by City staff. This motion was seconded by Councilwoman Cape and carried on a 6-1 vote, with Councilman Mumpower voting "no."

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F. FUTURE LEED CERTIFICATION AND GOAL FOR ENERGY AND FUEL CONSERVATION

Councilman Newman said that in anticipation of the formation of our Sustainable Advisory Committee on Energy and the Environment (Committee), Councilwoman Cape and he

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had the following two basic policy questions they would like Council to consider (1) whether or not Council would like to make a decision that we would commit to incorporating green building practices in future municipal facilities that we construct, as well as during significant rehabilitation of public facilities; and (2) setting a goal for energy and fuel conservation for the City in the future. The basic idea that we want Council to consider is if we are interested in the idea of potentially doing green building in the future through the Leadership in Energy and Environmental Design (LEED) certification process, and setting some energy and fuel conservation goals for the future, that we would advise our City Manager that we are interested in those two questions and ask him to work with our newly formed Committee to look at those two questions and bring back specific recommendations for Council to consider sometime in the first quarter of 2007. As we have seen, there is a lot of interest in green building in the community. We think it makes sense for Asheville to exercise that leadership commitment as well and the LEED certification process is a nationally recognized, most objective recognized process for doing that. The idea of setting an energy and fuel conservation role is that if we set a goal, as we make all future decisions around facilities and vehicle purchases, it will challenge and encourage us to think about ways to do that to make it safe, save us costs while at the same time improving air quality.

When Mayor Bellamy felt that the questions being asked are actually defining the work of the Committee, Councilwoman Cape responded that it was up to the Council to set the policy for the City to make the LEED commitment and let the Committee look at the parameters of what is the best LEED standard to use. The reason for going with the LEED certification instead of saying "green building" is that it is much more specific, more attainable and there are real benefits to it, opposed to "green building" which is very vague.

Mayor Bellamy felt this is good background information; however, she was concerned that we are asking for policy direction without being given all the information. She would prefer to have the comprehensive data the Council agreed upon on July 18, 2006, in that one of the things that the Committee would be charged to do is "Those issues regarding green building, environmentally and energy sustainability in Asheville are (1) should the City adopt a LEED policy that all new municipal buildings of 5,000 square feet are certified under the LEED certification process." She would prefer to have the research from the Committee first, e.g., why did we choose 5,000 square feet, what types of LEED standards have other cities adopted, and what are the benefits.

Councilwoman Cape said that buildings account for 48% of our energy use and buildings create the most CO2 emissions. She explained what that LEED is the Leadership in Energy and Environmental Design (LEED) Green Building Rating System which is the nationally accepted benchmark for the design, construction, and operation of high performance green buildings. LEED gives building owners and operators the tools they need to have an immediate and measurable impact on their buildings' performance.

LEED promotes a whole-building approach to sustainability by recognizing performance in five key areas of human and environmental health: (1) sustainable site development; (2) water savings; (3) energy efficiency; (4) materials selection; and (5) indoor environmental quality.

LEED provides a roadmap for measuring and documenting success for every building type and phase of a building lifecycle. The GSA says that LEED is the most credible building rating system and cites at least five reasons for its conclusions about the LEED system (1) LEED applies to all GSA project types, including new and existing buildings, interiors, and other areas covered by USGBC standards; (2) it "tracks the quantifiable aspects of sustainable design and building performance," a major focus of federal programs under the impetus of the Government Performance and Results Act and a general demand for performance measurement; (3) training professionals verify LEED; (4) it has a "well-defined system for incorporating updates, "which

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LEED is now undergoing through a far-reaching LEED 3.0 update; and (5) LEED is "the most widely used rating system in the U.S. Market."

The following federal agencies who require LEED certifications on their new buildings include NASA, US Air Force, US Navy, US Army, GSA (United State's largest landlord), Environmental Protection Agency, Department of Interior, Department of Energy, Department of Agriculture and US Forest Service.

The following states require LEED standards on State supported building projects: Arizona, California, Colorado, Connecticut, Hawaii, Maryland, Michigan, New Jersey, New Mexico, Nevada, Oregon, Rhode Island, Wisconsin and Washington. She also said that a partial listing of the many cities that have adopted LEED standards for their own buildings include: Albuquerque, New Mexico; Chicago, Illinois; Arlington, Virginia; New York, New York; Chapel Hill, North Carolina; Dallas, Texas; Gainesville, Florida; Clayton, Missouri; Pleasanton, California; Madison, Wisconsin; Fort Collins, Colorado; Pasadena, California; Phoenix, Arizona; Grand Rapids, Michigan; Omaha, Nebraska; Houston, Texas; Kansas City, Missouri; Cranford, New Jersey; Issaquah, Washington; Long Beach, California; Portland, Oregon; Denver, Colorado; San Diego, California; Calabasas, California;

Boston, Massachusetts; Boulder, Colorado; Normal, Illinois; Atlanta, Georgia; Eugene, Oregon; San Jose, California; and Cincinnati, Ohio.

She explained that every building built today will have a direct impact on our energy use now and in the future. Best practices in a growing number of cities, states and agencies point to the use of LEED to ensure that the choices made today will have a net positive effect on energy security, fiscal responsibility and community stewardship.

Councilwoman Cape asked Council to make a commitment to make all municipal buildings LEED certified and that we task the new Committee with researching and presenting to Council the alternatives for the perimeters of this policy direction.

Councilman Newman moved that we give direction to the City Manager to work with the new Committee on the following two public policies and to develop recommendations on each of these two policies for Council to consider sometime by the end of the first quarter of 2007: (1) the establishment of an energy and fuel conservation goal (that is ambitious and achievable) for the City over a defined period of time with benchmarks to achieve that goal; and (2) that the City of Asheville make a commitment to have future municipal facilities to be LEED certified, with recommendations on what level they think would be appropriate, the costs and benefits of the different level of certifications. This motion was seconded by Councilwoman Cape.

Councilman Mumpower felt that the following language the staff prepared in the draft resolution was fair and even-handed and was proper process to provide public input on this major decision: "The City of Asheville has a strong commitment to protecting the environment. The City of Asheville has a long-standing commitment to promoting economic development of the City and region through quality of life enhancements. The City of Asheville recognizes the direct connection between environmental protection, economic development, and local and regional quality of life. The City of Asheville supports regional, state and federal programs to reduce pollution, improve energy efficiency, and reduce dependence on fossil fuels. The City of Asheville currently supports green building through permit fee rebates and preferential regulatory processing. The City of Asheville has adopted a comprehensive plan for the City's future growth and development, the Asheville City Development Plan – 2025 ("ACDP"), and this plan strongly supports a program of green building in the City. The City of Asheville has adopted a strategic operating plan ("SOP") for the City's immediate future and this plan strongly supports a program of green building in the City. The City of Asheville has contributed significant staff and financial resources to developing and implementing the ACDP and SO. Therefore, that the City of Asheville adopts the following Green Building Policy and reaffirms the green building goals and

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strategies of the ACDP and SOP, both of which have been officially adopted by the City of Asheville.

GREEN BUILDING POLICY

The City of Asheville is committed to a comprehensive green building program and will support that program in the following ways:

- Public and private development projects that significantly incorporate green building techniques will be supported through permit fee rebates, expedited development review, economic development incentives, opportunities for density and/or intensity bonuses, and other appropriate means.
- City of Asheville development projects will include an evaluation of applicable green building techniques to determine the feasibility for inclusion based on an analysis of cost of construction, environmental and energy benefit, lifecycle and maintenance costs, among other considerations.

The City Manager for the City of Asheville is directed to use the staff and fiscal resources necessary to implement this policy through the City capital improvement program, regulatory processes, permitting and development review procedures, budget process, economic development incentives, and other means appropriate." However, he felt that the two public policy directions being requested lay a heavy hand of government on people without proper input and procedure and also turns it over to a board that he feels will be "stacked." He felt that all of Council is in favor of green construction, but was concerned about the policy process.

Councilwoman Cape responded to the comment of the "stacked" Committee. She said that Council spent four weeks interviewing candidates and they had amazing applicants apply for this new Committee. She couldn't understand why Councilman Mumpower felt the Committee was "stacked" when he didn't participate in the interviews.

Councilman Davis liked the idea of developing a strategy for reducing fuel consumption, but was concerned that we are putting policy in place before the Committee is formed. He didn't feel qualified to make a decision about LEED certification on all municipal buildings until he knows the specifics about it.

Councilwoman Cape explained that the new Committee is not going to take the place of the policy decisions of this Council.

Mayor Bellamy stated that the project that came before Council in West Asheville said nothing about LEED certification, but we held it as a good project. She wondered if the City could afford its buildings to be LEED certified. We are asking our community to embrace green incentives and that is good, but she felt we need to do it step by step and not force-feed a certain level. She wanted to make sure that as Council makes a policy that the community can embrace and feel comfortable with it, because when we come back with a higher cost, we must explain why to the community. She felt that benchmarking is good, but just to say the building has to be LEED certified is taking too giant of a step.

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

G. ORDINANCE NO. 3428- ORDINANCE PROHIBITING REGISTERED SEX OFFENDERS FROM ENTERING PUBLIC PARKS

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City Attorney Oast said that this is the consideration of an ordinance prohibiting registered sex offenders from entering public parks.

In recent years, public concern about sexual offenses against vulnerable segments of the population – especially children – has intensified. In response, many states, including North Carolina, have adopted laws requiring that persons convicted of certain sex-related offenses register with local authorities, and that registry is available to the public. Additionally, some states have enacted laws prohibiting registered sex offenders from living within a specified distance of certain facilities. Effective December 1, North Carolina prohibits registered sex offenders from living within 1000 feet of a school or child day care center.

Some communities, including communities in North Carolina, have gone further, and prohibited sex offenders from entering their public parks. Woodfin and Fletcher are two communities near Asheville that have adopted such ordinances. These ordinances were adopted in 2005 and are too new to have much of an enforcement history. However, staff has learned that Woodfin and Fletcher have taken the affirmative step of notifying any registered sex offender within their corporate limits of the requirements of this ordinance.

Such ordinances, being relatively new, have been the subject of legal and constitutional debate nationally. The Woodfin ordinance was recently challenged on several constitutional bases, and was upheld in Buncombe County Superior Court. This decision has been appealed to the North Carolina Court of Appeals, but there has been no decision yet.

The ordinance is based on ordinances obtained from Woodfin and Fletcher, and from Kernersville in Forsyth County. It has not been reviewed by the Police Department or the Public Safety Committee.

Given the public interest in these laws, the State may take action in the coming legislative session to strengthen its law and to provide for uniformity in local ordinances. Staff is currently investigating whether any further amendments will be introduced.

Pros

- Helps address public concern about sex offenders having access to places where children or other vulnerable populations congregate.
- Complements newly effective State law.
- Consistent with ordinances in surrounding communities.

Cons

- May discourage sex offenders from registering
- May be difficult to enforce effectively (depends on knowing who offenders are)

If Council is satisfied with the ordinance as drafted, it may be adopted. As an alternative, Council may refer the Ordinance to the Public Safety Committee for further review and refinement.

Rev. Christopher Chiaromonte spoke against the ordinance because he felt the Supreme Court will determine that this is an unconstitutional law and it will cost the both the City and the alleged offender money.

Vice-Mayor Jones felt that this sends a strong message about our City. When she questioned if we would expand this in terms of residents who actually live in proximity of public parks, City Attorney Oast said that the State of North Carolina is looking into enacting something similar to this on a state-wide level and that he would look into that particular issue.

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City Attorney Oast responded to Councilman Freeborn about what constitutional issues were challenged in the Woodfin ordinance. He feels that this is a defensible ordinance and if the Woodfin ordinance gets invalidated, he would advise our Police Department to not enforce the ordinance until further direction.

Police Chief Bill Hogan responded to Councilman Freeborn regarding how he envisioned the Police Department enforcing this ordinance.

Councilman Freeborn felt it would be good to have a link on our website to the N.C. Registry of Sex Offenders. He would even be willing to expand the ordinance to prohibit known sex offenders from passing out Halloween candy and decorating the outside of their homes at Christmas as parents take their children around to see the lights.

Councilman Mumpower suggested that this type ordinance could have gone through the Public Safety Committee. Therefore, it was the consensus of Council to direct the Committee review the other issues discussed surrounding this ordinance.

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

Councilman Mumpower moved for the adoption of Ordinance No. 3428. This motion was seconded by Vice-Mayor Jones and carried unanimously.

ORDINANCE BOOK NO. 23 - PAGE

H. RESOLUTION NO. 06 - 221 - RESOLUTION APPOINTING MEMBERS TO THE SUSTAINABLE ADVISORY COMMITTEE ON ENERGY AND THE ENVIRONMENT

Vice-Mayor Jones, Chair of the Boards & Commissions Committee, said that this is the consideration of appointing members to the Sustainable Advisory Committee on Energy and the Environment.

City Council instructed the City Clerk to arrange the interviews: At Large Category: Lack Zemp, Sylvia Farrington, Jonathan Barnes, Cathy Holt, Sasha Vrtunski, Kathryn Gubista, Bruce Mulkey, Catherine Shane, Vic Fahrer, John Wilson, Keith Bamberger, Marjorie Vestal and Leah Karpen. Mr. Chad Leatherwood was unable to attend the interview. In addition, Margie Meares was a candidate but an interview was not necessary. Real Estate Development Industry: David Spector, Robert Sweetser and Mark Matthews. Construction Industry: Tabetha Reyes and Peter Waskiewicz. Energy Management: Yuri Koslen. Operation of a Business: Christopher Gilbert, Michael Murphy and Jane Mathews.

Vice-Mayor Jones reminded Council that the membership on the Committee was changed to replace one member with demonstrated expertise in the field of energy management, to one member currently employed with Progress Energy.

Councilman Mumpower said that since he did not participate in the interview process, he would not be casting a vote on any of the candidates.

After Council spoke highly of the candidates, the following votes were taken: (1) In the At Large Category Lack Zemp received 4 votes, Sylvia Farrington received 6 votes, Jonathan Barnes received 3 votes, Cathy Holt received 1 vote, Sasha Vrtunski received 6 votes, Kathryn Gubista received 1 vote, Bruce Mulkey received no votes, Catherine Shane received no votes, Vic Fahrer received no votes, John Wilson received 1 vote, Keith Bamberger received no votes,

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Marjorie Vestal received 1 vote, Leah Karpen received 1 vote, Chad Leatherwood received no votes, and Margie Meares received 4 votes. (2) In the Real Estate Development Industry David Spector received 3 votes, Robert Sweetser received 1 vote and Mark Matthews received 2 votes. (3) In the Construction Industry category, Tabetha Reyes received 4 votes and Peter Waskiewicz received 2 votes. (4) In the Energy Management category Yuri Koslen received 1 vote. (5) In the Operation of a Business Category Christopher Gilbert received no votes, Michael Murphy received no votes and Jane Mathews received 6 votes.

Therefore, Lack Zemp, Sylvia Farrington, Jonathan Barnes, Sasha Vrtunski and Margie Meares were appointed as at-large members. David Spector was appointed as the representative in the real estate development industry. Tabettha Reyes was appointed as the representative of the Construction Industry. And Jane Mathews was appointed as the representative in the Operation of a Business category. All were appointed to each serve a three year term respectively, terms to begin in January 2007 and expire in January of 2010, or until their successors have been appointed.

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VI. OTHER BUSINESS:

Councilman Mumpower thanked the volunteers in the current project from the For Our Kids Program.

Councilman Freeborn noted that since we no longer have a municipal mulch pit for City residents to contact the Public Works Department and they will deliver a free load of mulch.

The following claims were received by the City of Asheville during the period of November 17-30, 2006: Crystal Fender (Water), Christine Boggan (Streets), Stan Poole Fire), Tony McCoy (Transit Services), Robin Barnett (Sanitation) and Barbara Parker (Fire). These claims have been referred to Asheville Claims Corporation for investigation.

VII. INFORMAL DISCUSSION AND PUBLIC COMMENT:

Rev. Christopher Chiaromonte felt the City ordinance banning panhandling in City parks is not defensible.

Ms. Grace Curry asked Council to consider that any time there is to be a change in city ordinances that impact all neighborhoods, that there be a broad public notice given for the purpose of informing the residents and for soliciting their input. Mayor Bellamy asked that the City Manager instruct the Neighborhood Coordinator and the Planning & Development Director of this request and how we might address the issue.

VIII. ADJOURNMENT:

Mayor Bellamy adjourned the meeting at 11:09 p.m.

CITY CLERK

MAYOR