

Regular Meeting

Present: Vice-Mayor Diana Hollis Jones, Presiding; 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: Mayor Terry M. Bellamy

PLEDGE OF ALLEGIANCE

The Asheville Middle School Student Council led City Council in the Pledge of Allegiance.

INVOCATION

Councilwoman Cape gave the invocation.

I. PROCLAMATIONS:

A. PROCLAMATION PROCLAIMING MAY 13-19, 2007, AS “MUSEUM WEEK”

Councilman Newman read the proclamation proclaiming May 13-19, 2007, as "Museum Week" in the City of Asheville. He presented the proclamation to Ms. Pam Myers, who briefed City Council on some activities taking place during the week.

B. PROCLAMATION PROCLAIMING MAY 13-20, 2007, AS “AMERICORPS WEEK”

Councilwoman Cape Jones read the proclamation proclaiming May 13-20, 2007, as "Americorps Week" in the City of Asheville. She presented the proclamation to Ms. Sarah Hancock and Ms. Cicely Rogers.

C. PROCLAMATION PROCLAIMING MAY 15, 2007, AS “JACK INGRAM DAY”

Councilman Davis read the proclamation proclaiming May 15, 2007, as "Jack Ingram Day" in the City of Asheville. He presented the proclamation to Jack and Ilene Ingram.

D. PROCLAMATION PROCLAIMING MAY 20-26, 2007, AS “NATIONAL PUBLIC WORKS WEEK”

Councilman Freeborn read the proclamation proclaiming May 20-26, 2007, as "National Public Works Week" in the City of Asheville. He presented the proclamation to representatives of the Metropolitan Sewerage District, City of Asheville Street Division, City of Asheville Water Department and City of Asheville Engineering Department.

II. CONSENT AGENDA:

At the request of Councilman Mumpower, Consent Agenda Items “C”, “D”, “E” and “G” were removed from the Consent Agenda for further discussion.

A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON MAY 8, 2007

B. RESOLUTION NO. 07-99 - RESOLUTION AUTHORIZING THE MAYOR TO CONVEY AIR SPACE ADJACENT TO 11 BOSTON WAY

Summary: The consideration of a resolution authorizing the Mayor to convey air space adjacent to 11 Boston Way.

On April 10, 2007, the City Council of the City of Asheville directed the City Clerk to advertise for upset bids regarding an offer to purchase air rights to City owned property adjacent to 11 Boston Way; (PIN 9648.19-60-1082, 9647.07-69-2935, 9647.07-69-1953) for the sum of \$11,665.00. The notice ran in the Asheville Citizen-Times on April 27, 2007, as provided in N. C. Gen. Stat. sec. 160A-269. No upset bids were received in response to said advertisement.

Approval of the resolution will authorize the sale of the property to Kessler Asheville, LLC for the amount of \$11,665.00.

Pros:

1. The sale will be at fair market value.
2. It will facilitate an increase in the tax base.
3. It will accommodate characteristics of the building design intended to conform to the historic nature of Biltmore Village.

Con: There is no negative impact.

Economic Development staff recommends City Council approve a resolution authorizing the Mayor to convey air space adjacent to 11 Boston Way.

RESOLUTION BOOK NO. 30 - PAGE

C. RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE THREE AGREEMENTS WITH THE N.C. DEPT. OF ENVIRONMENT AND NATURAL RESOURCES TO RECEIVE GRANTS IN THE AMOUNT OF \$2,500,000, \$2,000,000 AND \$75,000 TO PERFORM FLOOD DAMAGE REDUCTION ASSESSMENTS AND IMPROVEMENTS

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

D. BUDGET AMENDMENT TO RECEIVE N.C. DEPT. OF ENVIRONMENT AND NATURAL RESOURCES GRANTS

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

E. BUDGE AMENDMENT TO APPROPRIATE \$600,000 FROM THE HEALTH CARE PROGRAM'S FUND BALANCE RESERVES TO COVER ONE-TIME COSTS INCURRED DURING THE CURRENT FISCAL YEAR

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

F. RESOLUTION NO. 07-101 - RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE AGREEMENTS ADDRESSING COMPLIANCE ISSUES IN THE PACK SQUARE RENAISSANCE PROJECT

Summary: The consideration of a resolution authorizing the mayor to execute agreements addressing compliance issues in the Pack Square Renaissance Project.

Asheville's downtown – or most of it – is included in the National Register of Historic Places.

As a condition of receiving a grant to assist in road and sidewalk construction in connection with the Pack Square Renaissance Project, work is required to be done in accordance with certain guidelines so as to ensure that there is no effect on historic properties or districts, or that any impact is minimized to the extent possible. Pursuant to the City's agreement with the Pack Square Conservancy (herein "PSC"), PSC is responsible for carrying out all aspects of the work on Pack Square, including compliance with applicable laws and regulations. For administration of government grants, however, the City is the entity that is legally responsible to the granting government.

The City was the recipient of some N.C. Dept. of Transportation (DOT) grants in 2006, and executed a Municipal Agreement with DOT for the carrying out of the work funded by those grants. That agreement contained some provisions requiring assessment of impact on the Downtown Historic District. In order to ensure that PSC performed the work provided in the Municipal Agreement, the City entered into an agreement with PSC specifically addressed to the Agreement with DOT. Recently, the City was contacted by the State, indicating that some of the historic assessment requirements of the Municipal Agreement had not been executed properly. After several meetings, the parties (the City, the State, and PSC) have agreed to resolve these issues by entering into a Memorandum of Agreement, setting forth a few requirements in addition to the 2006 Municipal Agreement, including an update of the City's architectural inventory, performance of the archaeological survey in the project area, and the use of the historic granite and curbstones. The Agreement with PSC will be amended to ensure that PSC carries these requirements out.

The resolution (1) authorizes the Mayor to sign the Memorandum of Agreement with DOT, and (2) authorizes the Mayor to sign the amended agreement with PSC.

Pros:

- Resolves a dispute that could jeopardize existing funding.
- Requires the compilation of some information that will be useful to the City.

Cons:

- Adds expense to the project (but this will be the Conservancy's expense).

If Council approves of the proposed method for resolving the grant administration compliance issues, adoption of the resolution is recommended.

RESOLUTION BOOK NO. 30 - PAGE

G. RESOLUTION APPROVING THE FISCAL YEAR 2007-08 CAPITAL IMPROVEMENT BUDGET FOR THE ASHEVILLE REGIONAL AIRPORT AUTHORITY

This item was pulled off the Consent Agenda for further discussion.

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

Councilman Freeborn moved for the adoption of the Consent Agenda. This motion was seconded by Councilwoman Cape and carried unanimously.

ITEMS PULLED FROM THE CONSENT AGENDA FOR FURTHER DISCUSSION

C. RESOLUTION NO. 07-100- RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE THREE AGREEMENTS WITH THE N.C. DEPT. OF ENVIRONMENT AND NATURAL RESOURCES TO RECEIVE GRANTS IN THE AMOUNT OF \$2,500,000, \$2,000,000 AND \$75,000 TO PERFORM FLOOD DAMAGE REDUCTION ASSESSMENTS AND IMPROVEMENTS

Summary: The consideration of a resolution authorizing the City Manager to execute three agreements with the North Carolina Department of Environment and Natural Resources (NCDENR) to receive grants in the amount of \$2,500,000, \$2,000,000 and \$75,000 for a total of \$4,575,000 to perform flood damage reduction assessments and improvements.

In September 2004, Western North Carolina was severely impacted by flood from Hurricane Frances and Ivan. In November 2004, the North Carolina General Assembly approved Senate Bill 7 to provide financial aide to the area in efforts to reduce damage caused by future flood events.

NCDENR held four meetings from January 2006 to June 2006 to get input from local stakeholders to determine to prioritize the needs of the community as they relate to flood damage reduction. This group consisted of property owners, local government, environmental agencies, developers and community leaders. The group developed a prioritized list of action items to implement in order to reduce future flood damage.

NCDENR allocated money based on those priorities to the appropriate local governments to implement. We received three separate grants in the total amount of \$4,575,000 with no required local match. Staff will be dedicating time toward the implementation of these objectives. The following is a breakdown of the contracts.

<u>Amount</u>	<u>Task</u>	<u>Description</u>
\$2,500,000		This three-phase flood damage reduction measure institutes a watershed-wide program for flood damage reduction in the Swannanoa watershed.
	1	This phase includes the watershed modeling, economic analysis and project development.
	2	This phase includes implementation of the measures recommended in phase I
	3	This phase includes modeling of future conditions.
\$2,000,000		Assist in the development of the Wilma Dykeman Riverway Plan specifically by assisting in acquiring property that is prone to flooding.
\$75,000		Development of an Emergency Flood Preparedness and Response Plan for Biltmore Village

Pros:

- These grants will allow us to reduce damage to properties as a result of flooding.
- This money will be paid from State funds as opposed to local money only.
- The City of Asheville will work cooperatively with Black Mountain and Buncombe County to perform the work in the \$2,500,000 contract. This will require a memorandum of agreement between all three agencies. Staff has met with representatives from both groups. The memorandum of understanding will be executed by the City Manager following approval of this contract.

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Con:

- We will need to dedicate staff time to moving these projects forward. The implementation of this work will be a high priority for our office.

Staff recommends City Council approve a resolution authorizing the City Manager to execute three agreements with the North Carolina Department of Environment and Natural Resources (NCDENR) to receive grants in the amount of \$2,500,000, \$2,000,000 and \$75,000 for a total of \$4,575,000 to perform flood damage reduction assessments and improvements.

City Engineer responded to questions raised by Councilman Mumpower.

Councilman Mumpower moved for the adoption of Resolution No. 07-100. This motion was seconded by Councilman Davis and carried unanimously.

RESOLUTION BOOK NO. 30 - PAGE

D. ORDINANCE NO. 3469 - BUDGET AMENDMENT TO RECEIVE N.C. DEPT. OF ENVIRONMENT AND NATURAL RESOURCES GRANTS

Summary: See Consent Agenda Item "C" above.

Councilman Mumpower moved for the adoption of Ordinance No. 3469. This motion was seconded by Councilman Davis and carried unanimously.

ORDINANCE BOOK NO. 23 - PAGE

E. ORDINANCE NO. 3470 BUDGE AMENDMENT TO APPROPRIATE \$600,000 FROM THE HEALTH CARE PROGRAM'S FUND BALANCE RESERVES TO COVER ONE-TIME COSTS INCURRED DURING THE CURRENT FISCAL YEAR

Summary: The consideration of a budget amendment to appropriate \$600,000 from the Health Care Program's fund balance reserves to cover one-time costs incurred during the current fiscal year.

The City's Health Care Program has experienced a number of one-time expenses during the current fiscal year that were not anticipated when the budget was adopted last spring. For example, there has been a spike in expenses due to the occurrence of several high dollar claims amounts. Also, there were several hospital medical bills from prior years that were delayed in reaching the City, and therefore they had to be paid out of the current year's budget. The City also incurred additional expenses during the transition period from the old third party administrator to the new administrator.

To cover these one-time expenses, staff is recommending that Council appropriate \$600,000 from the Health Care Program's reserves. As of June 30, 2006, the fund balance reserve for the Health Care Program was \$5.48 million. Staff believes that this \$600,000 appropriation from the Health Care Program reserves will leave more than enough available in reserves to cover claims incurred but not reported, protect us against the volatility of the health care market, and provide a sufficient "rainy day" cushion. Based on an analysis conducted in conjunction with Ferguson last year, we determined that a fund balance amount of approximately \$3.1 million for health care is sufficient.

It should also be noted that the Health Care Program's fund balance is considered "reserved" by the City's auditors. Therefore, this fund balance appropriation will not affect the year-end unreserved fund balance projection that staff presented in the 3rd Quarter Financial Report.

PRO:

- Provides an adequate budget for the projected FY 2006-07 expenditures in the Health Care program.

CON:

- None.

City staff recommends City Council approve the budget amendment to appropriate \$600,000 from the Health Care Program's fund balance.

Chief Financial Officer Ben Durant responded to questions raised by Councilman Mumpower. As a result, City Manager Jackson said that we will have our consultant evaluate this loss and ask for their advice on whether they suggest changes in the stop loss coverage or other practices.

Councilman Freeborn moved for the adoption of Ordinance No. 3470. This motion was seconded by Councilwoman Cape and carried unanimously.

ORDINANCE BOOK NO. 23 - PAGE

G. RESOLUTION NO. 07-102 - RESOLUTION APPROVING THE FISCAL YEAR 2007-08 CAPITAL IMPROVEMENT BUDGET FOR THE ASHEVILLE REGIONAL AIRPORT AUTHORITY

Summary: The consideration of a resolution approving the Fiscal Year 2007-08 Capital Improvement budget for the Asheville Regional Airport Authority.

Section IV "Capital Improvements" of the current land lease agreement between the City of Asheville and the Asheville Regional Airport Authority grants the Airport the authority make capital improvements for aeronautical purposes and purposes incidental to the airport provided that written approval is first obtained from the City of Asheville. Staff has reviewed the Authority's capital improvements program and recommends approval.

Staff recommends City Council approve the Fiscal Year 2007-08 Capital Improvement budget for the Asheville Regional Airport Authority.

In response to Councilman Mumpower, City Manager Jackson said that a one page document has been provided to Council regarding the budget; and in the future when similar requests are made, similar documentation will be provided to Council in their agenda package.

Councilman Mumpower moved for the adoption of Resolution No. 07-102. This motion was seconded by Councilman Freeborn and carried unanimously.

RESOLUTION BOOK NO. 30 - PAGE

III. PRESENTATIONS & REPORTS:

A. ASHEVILLE TRANSIT COMMISSION ANNUAL REPORT

Transit Commission Chair Karen Austin updated City Council on their annual report.

Ms. Austin said that their mission is to facilitate public mass transit to all customers. The vision of the Commission is to create a first-class innovative model of public transportation that moves people affordably, efficiently, and equitably in an environmentally sustainable manner.

Short range goals (1-5 years) as of January 2005 consist of expand service; improve access and ease of use; increase ridership; and improve financial stability.

Successes consist of expanded hours; expanded service area; redesigned maps and signs; upgraded bus stops and transit center; developed pass programs for employers and students; and increased public visibility.

Using graphs, she showed the steady increase in ridership and the July 2006 through May 2007 evening service customers.

Some challenges include (1) limited evening service; (2) frequency; (3) customer service; (4) schedule accuracy; and (5) expanding service area.

Ideas awaiting implement include (1) increased frequency along high-traffic corridors; (2) expanded passport program; (3)

study of routes and schedules; (4) park and ride lots; (5) neighborhood transit hubs; (6) cohesive marking plan; and (7) upgrading technology.

To reach our goals, we need funding. Improvements to the system and increases in service are being held back by limited funds and a simple lack of necessary manpower.

Funding sources (1) lobby for revised federal funding; (2) City Council's continued support for transit improvements and marketing; (3) funding increases to match regional growth; (4) business/community support (passport program); and (5) innovative advertising efforts.

Advertising opportunity - bus wraps (1) estimated potential income - \$8,000 per bus per year revenue; (2) generate buzz about buses; and (3) potential showcase for community asset.

Ms. Austin responded to various questions/comments from Council, some being, but are not limited to: is there any dialogue with the County or regional partners on the park and ride idea; update on the Green Building Council wanting to build larger bus stops; do we have a specific person on staff who looks for granting opportunities that support energy efficiencies and fleet efficiency measures; and do we have much success in obtaining grants for transit.

Councilman Freeborn requested additional information on the costs and the return if we did full bus wraps.

Councilman Newman said that as we set ambitious fuel conservation goals, he asked if prior to replacing our bus fleet with the more conventional buses that we analyze the feasibility of purchasing more fuel efficient vehicles.

At the request of Councilwoman Cape, it was the consensus of Council to (1) request an exploration of the park and ride proposal; and (2) ask the Chairs of the Transit Commission and the Energy & Environmental Committee to meet and talk about how they see the inter-connectiveness of the two boards and respond to questions raised by Councilman Newman and Freeborn.

On behalf of City Council, Vice-Mayor Jones thanked Ms. Austin and the Transit Commission members for their hard work.

IV. PUBLIC HEARINGS:

A. PUBLIC HEARING TO CONSIDER CONDITIONAL ZONING OF PROPERTY LOCATED ON WYNNE STREET, AND IDENTIFIED AS THE GRIMES & TEICH PARKING LOT, FROM RS-8 RESIDENTIAL SINGLE-FAMILY HIGH DENSITY DISTRICT TO CENTRAL BUSINESS DISTRICT/CONDITIONAL ZONING FOR AN ADDITIONAL PARKING AREA FOR THE EXISTING BUSINESS

ORDINANCE NO. 3471 - ORDINANCE TO CONDITIONALLY ZONE PROPERTY LOCATED ON WYNNE STREET, AND IDENTIFIED AS THE GRIMES & TEICH PARKING LOT, FROM RS-8 RESIDENTIAL SINGLE-FAMILY HIGH DENSITY DISTRICT TO CENTRAL BUSINESS DISTRICT/CONDITIONAL ZONING FOR AN ADDITIONAL PARKING AREA FOR THE EXISTING BUSINESS

Vice-Mayor Jones opened the public hearing at 5:58 p.m.

Urban Planner Julia Cogburn said that this is the consideration of an ordinance to conditionally zone property located on Wynne Street, and identified as the Grimes & Teich parking lot, from RS-8 Residential Single-Family High Density District to Central Business District/Conditional Zoning for an additional parking area for the existing business. This public hearing was advertised on May 4 and 11, 2007.

The subject property is located off of College Street immediately east of 535 College Street (on which are located the legal offices of Grimes and Teich, LLP). The property although also abutting Wynne Street (a residential street in the East End community), can currently be accessed off of an existing drive on College Street and relates topographically to College rather than Wynne Street. The parcel to which the petition applies is bounded to the north and west by road rights-of-way for College and Wynne Streets. To the south, there is a single-family home and to the west are the existing law offices and accompanying parking areas. Zoning to the west and north is CBD (Central Business District) and to the south, the zoning is RS8 (Residential Single-Family High Density District). The land to the east is unzoned right-of-way.

The property that is the subject of this conditional zoning request is .15 acres in size. The applicant wishes to rezone this property from RS-8 to Central Business District/Conditional Zoning in order to provide additional parking for the adjacent office building. The existing driveway entrance off of College into the current parking area will provide the ingress and egress for the additional parking area. The creation of twelve (12) parking spaces is shown along with storm drainage provision and landscaping.

An alternative compliance request for the street trees is provided in the event that N.C. Dept. of Transportation (NCDOT) denies the application (submitted by the developer) for street plantings in the right-of-way. Staff is supportive of this request and will work with the developer on alternative landscaping in the unlikely event that NCDOT denies the application for encroachment. The applicant is actually proposing more landscaping than is required in the CBD and providing vegetation which should improve the buffer of the neighborhood from College Street.

The proposed parking area is not required to go through Downtown Design Review (DTDR) as it is not in the DTDR core area and is a minor work. The applicant conducted a meeting to inform the residents in the immediate area but had not one in attendance.

At their meeting on March 19, 2007, the City of Asheville Technical Review Committee (TRC) reviewed the conditional zoning request and made a positive recommendation that the project be forwarded to the Planning and Zoning Commission subject to the conditions in the TRC report and the standard conditions listed below. At the meeting, it was agreed that the City's Traffic Engineer would reevaluate the need for a 24 foot minimum drive aisle width. This review has been completed and due to the size and nature of the parking area, he has accepted and approved the proposed 20 foot width.

On April 4, 2007, the Asheville Planning and Zoning Commission unanimously recommended approval of this conditional zoning amendment. There was no public comment on the application.

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

1. **That the proposed use or development of the land will not materially endanger the public health or safety.**
The project, if approved must meet the technical standards set forth in the City's Unified Development Ordinance and Standards and Specifications Manual. The existing site plan shows compliance with most applicable development standards.
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 adjoining property to the west along College is developed for office use. The topographic difference between this property and the adjoining residential property, coupled with the plantings proposed by the applicant, should minimize the impact on the adjoining residence.
3. **That the proposed use or development of the land will not substantially injure the value of adjoining or abutting property.**
As stated previously, some of the abutting property is already developed for office use, including parking. The topographic difference between the subject property and the adjoining residential property, coupled with the plantings proposed by the applicant, should minimize the impact on the adjoining residence.
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 property relates topographically to the properties along College Street which contain office buildings and accompanying parking. The addition of a parking area containing twelve (12) spaces will be similar to existing development parking.
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.**
This conditional zoning request complies with the comprehensive planning strategies of:
 - a. Identifying appropriate areas for commercial/office uses looking at compatibility with surrounding uses.
 - b. Improving landscaping along gateway corridors into the Central Business District
6. **That the proposed use is appropriately located with respect to transportation facilities, water supply, fire and police protection, waste disposal, and similar facilities.**
This office parking area is located on Asheville Transit system Routes 13 and 18 and along a major street. All other technical aspects of this project have or can be met by the applicants.
7. **That the proposed use will not cause undue traffic congestion or create a traffic hazard.**

The proposed use will not increase traffic in the area. No new driveway will be created for this parking area.

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

Pros:

- Provides needed parking for an existing business.
- Adds landscaping to buffer the adjoining residential area from College Street and the office development along College.
- Proposes to add street trees along College.

Cons:

- Could be considered to be a business intrusion into the adjoining residential area.

Staff recommends approval subject to the conditions placed on the development by the TRC and the following standard conditions: (1) The project shall comply with all conditions outlined in the TRC staff report; (2) 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; (3) All existing vegetation that is to be preserved must be clearly indicated and dimensioned on the site, landscape and grading plans; (4) The building design, construction materials and orientation on site must comply with the conceptual site plan and building elevations presented with this application. Any deviation from these plans may result in reconsideration of the project by the reviewing boards; and (5) This project will undergo final review by the TRC prior to issuance of any required permits.

A representative of the applicant spoke in support of the conditional zoning.

Vice-Mayor Jones closed the public hearing at 6:02 p.m.

Vice-Mayor Jones 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. _____, to conditionally zone property located on Wynne Street, and identified as the Grimes & Teich parking lot, from RS-8 Residential Single-Family High Density District to Central Business District/Conditional Zoning, subject to the following conditions: (1) The project shall comply with all conditions outlined in the TRC staff report; (2) 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; (3) All existing vegetation that is to be preserved must be clearly indicated and dimensioned on the site, landscape and grading plans; (4) The building design, construction materials and orientation on site must comply with the conceptual site plan and building elevations presented with this application. Any deviation from these plans may result in reconsideration of the project by the reviewing boards; and (5) This project will undergo final review by the TRC prior to issuance of any required permits, (noting that the request is reasonable based on the information provided in the staff report and as stated in the staff recommendation). This motion was seconded by Councilman Davis and carried unanimously.

ORDINANCE BOOK NO. 23 - PAGE

B. PUBLIC HEARING TO CONSIDER AN AMENDMENT TO THE CONDITIONAL ZONING OF PROPERTY LOCATED AT 103 N. BEAR CREEK ROAD FROM THE APPROVED COMMERCIAL INDUSTRIAL DISTRICT/CONDITIONAL ZONING IN ORDER TO ADD THE PERMITTED USES ON THE SITE FOR A PRIVATE K-12 SCHOOL

ORDINANCE NO. 3472- ORDINANCE TO AMEND THE CONDITIONAL ZONING OF PROPERTY LOCATED AT 103 N. BEAR CREEK ROAD FROM THE APPROVED COMMERCIAL INDUSTRIAL DISTRICT/CONDITIONAL ZONING IN ORDER TO ADD THE PERMITTED USES ON THE SITE FOR A PRIVATE K-12 SCHOOL USE

Vice-Mayor Jones opened the public hearing at 6:02 p.m.

Urban Planner Julia Cogburn said that this is the consideration of an ordinance to amend the conditional zoning of property located at 103 N. Bear Creek Road from the approved Commercial Industrial District/Conditional Zoning in order to add the permitted uses on the site for a private K-12 School. This public hearing was advertised on May 4 and 11, 2007.

The subject property (2.28 acres) is located within the City Limits on North Bear Creek Road, just north of the intersection of N. Bear Creek and Deaverview Road. Access to the property is off of N. Bear Creek Road. Surrounding properties to the north and west are zoned residentially (RS8, RM8, RM16) and the properties to the south and east are zoned Commercial Industrial. The land use pattern in the area follows the zoning. To the north are single-family homes; to the west, both single-family and multi-family housing. A self-service storage facility is located immediately south of the property. MB Haynes

construction/contracting/electronics operation is located to the east.

The applicant received rezoning approval, a modification, and final Technical Review Committee (TRC) approval last year for their plans to rezone the property from RM-8 to Commercial Industrial/Conditional Zoning for the purpose of establishing a preschool. The property currently contains a single-family home. It is proposed that the single-family home be preserved for residential use and for use in conjunction with the operation of the school or preschool. The original development plan showed, in addition to the preservation of the existing home, the construction of two buildings approximately 3,744 square feet in size. The planned use of a temporary educational building on the site (the subject of the modification) has now been omitted from the proposal. A sidewalk along Bear Creek is proposed along with one-way entrance and exit drives to facilitate drop off and pick up of children.

The applicants are seeking an amendment to their original plans in order to add to the uses permitted on the site, a school serving grades K-12. The site plan has been amended to address this use change but remains virtually unchanged from the previous approval.

At their meeting on March 5, 2007, the reviewed the amendment to the conditional zoning and made a positive recommendation (with conditions) that the request be forwarded to the Planning and Zoning Commission. One of the conditions listed on the report (the need for fire lanes within 150 feet of all buildings) was addressed with the addition of a condition that sprinkler systems be installed in new buildings not within 150 feet of a fire lane and that the plans for these systems be submitted to and approved by the Fire Marshal. Other conditions added by TRC (now shown on the report) were:

- That the existing use of the home for a residence be grandfathered.
- That the proposed species be reexamined with the Planning Staff to make certain that the plants have a reasonable chance of survival.
- That the applicants work with the City's Addressing Coordinator to name the drive and address all buildings in accordance with City requirements.

On April 4, 2007, the Asheville Planning and Zoning Commission unanimously recommended approval of this conditional zoning amendment. There was no public comment on the application.

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

1. That the proposed use or development of the land will not materially endanger the public health or safety.

The project, if approved, must meet the technical standards set forth in the City's Unified Development Ordinance. The proposed site plan shows compliance with many of the City's development standards; the applicant is working with City staff on full compliance. The applicants are also working with the appropriate licensing professionals on the development of this site for a school and preschool.

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

The applicant is proposing little grading for the development of the child care and school facilities. The majority of the existing trees on site are proposed to be maintained.

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

The use of the property surrounding this site is varied. There exist commercial, industrial, and residential uses on various sides of the subject property. The applicants propose to save as much of the existing vegetation on the site as is possible. Compliant buffering is proposed in appropriate locations.

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 character of the area in which this development is proposed is not easily defined due to the varied nature of uses found. The scale of the proposed buildings is in keeping with a residential area. The area has a fairly dense residential

population for which the preschool/school would be a convenience.

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

The proposed development (and phasing) supports the 2025 Plan regarding permitting appropriately scaled non-residential uses that serve residents of neighborhoods in appropriate residential locations.

6. That the proposed use is appropriately located with respect to transportation facilities, water supply, fire and police protection, waste disposal, and similar facilities.

Asheville Transit Route 15 services the Deaverview Apartments immediately southwest of the proposed development. All technical aspects of the project have or can be met by the applicants.

7. That the proposed use will not cause undue traffic congestion or create a traffic hazard.

The applicants are working with the City of Asheville Engineering Department to provide appropriately for the automobiles that will enter and exit this property for the drop off and pick up of children attending the facility.

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

Pros:

- Allows for an appropriate nonresidential use in a transition area between residential and commercial/industrial uses.
- Landscape plan indicates the preservation of considerable existing vegetation.

Cons:

- Some might view this as an intrusion into the neighborhood.

Staff recommends approval subject to the conditions placed on the development by the TRC and the following standard conditions: (1) The project shall comply with all conditions outlined in the TRC staff report; (2) 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; (3) All existing vegetation that is to be preserved must be clearly indicated and dimensioned on the site, landscape and grading plans; (4) The building design, construction materials and orientation on site must comply with the conceptual site plan and building elevations presented with this application. Any deviation from these plans may result in reconsideration of the project by the reviewing boards; and (5) This project will undergo final review by the TRC prior to issuance of any required permits.

Mr. Gerald Green, representing the applicant, spoke in support of the amendment to the conditional zoning.

Vice-Mayor Jones closed the public hearing at 6:05 p.m.

Mr. Ken Huck, applicant, responded to Vice-Mayor Jones' question about how many student the school would hold.

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

Councilman Freeborn moved for the adoption of Ordinance No. 3472, to amend the Conditional Industrial/Conditional Use approval for property located at 103 N. Bear Creek Road, subject to the following conditions: (1) The project shall comply with all the conditions outlined in the TRC staff report; (2) 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 (3) All existing vegetation that is to be preserved must be clearly indicated and dimensioned on the site, landscape and grading plans; (4) The building design, construction materials and orientation on site must comply with the conceptual site plan and building elevations presented with this application. Any deviation from these plans may result in reconsideration of the project by the reviewing boards; and (5) This project will undergo final review by the TRC prior to issuance of any required permits, (noting 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 Councilwoman Cape and carried unanimously.

ORDINANCE BOOK NO. 23 - PAGE

C. PUBLIC HEARING TO CONSIDER THE ISSUANCE OF A CONDITIONAL USE PERMIT FOR PROPERTY LOCATED ON ENKA LAKE ROAD FOR THE PROJECT IDENTIFIED AS BILTMORE LAKE, BLOCKS D2-E,

FOR DEVELOPMENT OF 103 RESIDENTIAL UNITS

ORDINANCE NO. 3473 - ORDINANCE GRANTING A CONDITIONAL USE PERMIT FOR PROPERTY LOCATED ON ENKA LAKE ROAD FOR THE PROJECT IDENTIFIED AS BILTMORE LAKE, BLOCKS D2-E, FOR DEVELOPMENT OF 103 RESIDENTIAL UNITS

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, Vice-Mayor Jones opened the public hearing at 6:07 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 Nate 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 Enka Lake Road for the project identified as Biltmore Lake, Blocks D2-E, for development of 103 residential units (Attachment to City Exhibit 3 - Aerial Map).

This review concerns a proposed gated 103 unit single-family attached development. The proposed development is classified as a "Planned Community" pursuant to State statutes which allows for a different form of home ownership not commonly considered in Asheville. The community will appear and operate much like a single family neighborhood but without individual lot ownership. Instead, all property beyond the individual structures will be owned and managed by a homeowner's association. This affords the developer more freedom in designing the layout of the community to achieve a comparable number of units while preserving additional open space and reducing infrastructure costs much like the Block D1 development which is currently being constructed. Pursuant to Section 7-5-9(a)(1)(a)(3.) of the Unified Development Ordinance (UDO), any manufactured housing community, camper/trailer park or other residential development containing more than 50 individual units is reviewed as a Level III Site Plan Review.

The subject site is located off of Enka Lake Road and Orvis Stone Circle west of Asheville in the City's Extraterritorial Jurisdiction (ETJ). The property consists of five lots zoned RM-16 (Residential Multi-Family High Density District) and is comprised of 44.68 acres according to Buncombe County tax records. The subject site is bounded to the north and east by Enka Lake zoned RM-16, to the west by Enka Lake Rd., Hominy Valley elementary school and vacant land zoned INST and RM-16 and to the south by Orvis Stone Circle and the Biltmore Lake Block D1 development zoned RM-16.

The RM-16 zoning district was created to permit a full range of high density multi-family housing types along with limited institutional, public and commercial uses appropriate within high density residential areas. It is intended that this district be located near employment centers, shopping facilities, roads and other urban infrastructure capable of handling the demand generated by high density residential development.

Access to the property will be gained from two gated entries (Attachment to City Exhibit 3 - Conceptual Master Plan). The main entrance that will serve Block D2-E is located off of Orvis Stone Circle which was constructed as part of the Block D1 development, and one additional gated access entrance is proposed off of Enka Lake Road. Pursuant to Section 7-5-9(a)(1)(b.) of the UDO, properties within 1,500 feet of each other, under the same ownership and/or developed by the same developer over a period of three years or less shall be considered to be one development and reviewed as such. The entire infrastructure for Block D1 has been installed and the residential units are currently under construction. Block D1 was originally to consist of 50 units, but because two units would not have met their required setbacks and one unit would have encroached into one of the Block D2-E parcels, the developer included the units as part of this approval.

At their March 19, 2007, meeting the Technical Review Committee (TRC) approved this project subject to the conditions in the staff report. Subsequently, the Planning and Zoning Commission unanimously approved this project subject to the conditions recommended by staff at their April 4, 2007, meeting.

As of the time of this writing, staff has received no communication from adjacent property owners or other citizens concerning the proposed development.

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 all 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 development provides a balance between density and the preservation of riparian buffers and open space. The RM-16 zoning district allows for both single-family detached and multi-family dwellings. Because the proposal is for a planned community, the developer is able to cluster the residences around the road infrastructure and preserve the outlining common areas as open space.

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

The proposed development of 103 residential dwelling units would integrate with the existing Block D1 and surrounding Biltmore Lake residential developments. The area has seen significant growth in the single-family residential market, and would transition well with the surrounding commercial, industrial and institutional elements along the Smokey Park Highway, Sand Hill Rd. and Enka Lake Rd. corridors. 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.

There are a variety of commercial, institutional and multi-family residential developments in the area that would be consistent with the proposed development. The density of the project is approximately 2.3 dwelling units per acre. The zoning of the site is RM-16, and the project does not require density bonuses or special incentives to build this project. The proposed use is in harmony with the scale, bulk, coverage, density and character of the underlying area. The clustering of the units and the preservation of over 12 acres of open space on the site will assist the development in blending into the site in a similar fashion as other developments in the area have done.

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 high quality development, pedestrian connectivity between parcels, preservation of open space and riparian buffers supports several goals and objectives as described in both the *Asheville City Development Plan 2025* and the *Strategic Operating Plan* (See **Compliance with Comprehensive Plan** and **Strategic Operating Plan Considerations** in above staff report).

6. That the proposed use is appropriately located with respect to transportation facilities, water supply, fire and police protection, waste disposal, and similar facilities.

Plans are underway for road widening for Sand Hill Road, the closest connecting street, based on growth projections for the community. The developer must provide an urban level of service for the development and provide detailed guidelines on how requirement will be met. Other facilities are in place to support 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 does not meet the threshold for requiring a traffic impact analysis, nor is it 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.

Pros:

- The project would allow for significant preservation of open space and continuous riparian buffers along Enka Lake.
- Extensive trails and sidewalks would be provided connecting residents of the new development to the larger community.

Cons:

- Applicant wishes to gate the community and prevent public access to roads and sidewalks.

Staff feels that the proposed development has many positive aspects and does meet the minimum standards required of a conditional use permit.

It should be noted that this development is being proposed as an extension of an existing privately maintained and gated community. At Council direction, staff has prepared an ordinance that prohibits gated communities which was recently reviewed and approved by the Planning and Zoning Commission; this amendment is tentatively slated to come before Council by the end of May.

Recent concerns over the impact of gated communities on the city may be best addressed by our appointed and elected officials as a separate policy matter. Staff recommends that the City Council utilize public input concerning this matter and carefully consider whether the conditional use permit should be conditioned to mitigate any gated community concerns.

Mr. Will Buie, representing the applicant, spoke in support of the conditional use permit and specifically requested Council to allow them to proceed with the gated community as this is just an extension of an existing privately maintained gated community (Applicant Exhibit 1).

After rebuttal, Vice-Mayor Jones closed the public hearing at 6:15 p.m.

In response to Councilwoman Cape, Mr. Buie explained the stormwater measures that will be taken.

When Councilwoman Cape asked if the greenways along the lake edge would be open to the public, Mr. Buie explained that in the past when the lake was open to the public vandalism and damage to property occurred. The homeowners association then felt they needed to police the area better and as a result closed the area to public access.

There was a brief discussion initiated by Councilman Freeborn, resulting in City Manager Jackson reinforcing up front conversations with developers who especially build in our extraterritorial jurisdiction area about voluntarily annexing prior to lots being sold.

In response to Councilman Newman, City Attorney Oast said that when people purchase property in close proximity to the existing City limits and because of the level of development in the surrounding area, realtors could advise the potential property owners that the property is, or may be, eligible for annexation.

Councilman Mumpower moved for the adoption of Ordinance No. 3473, granting a conditional use permit for property located on Enka Lake Road for the project identified as Biltmore Lake, Blocks D2-E, for development of 103 residential units, subject to the conditions recommended by City staff and subject to the following conditions: (1) The developer shall provide an urban level of public safety service for the development; (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. Any deviation from these plans may result in reconsideration of the project by the reviewing boards; and (6) This project will undergo final review by the TRC prior to issuance of any required permits. This motion was seconded by Councilman Newman and carried unanimously.

ORDINANCE BOOK NO. 23 - PAGE

D. PUBLIC HEARING TO CONSIDER REZONING AN AREA INCLUDING PROPERTIES LOCATED AROUND 1200 BLEACHERY BOULEVARD FROM RS-8 RESIDENTIAL SINGLE-FAMILY HIGH DENSITY DISTRICT TO COMMERCIAL BUSINESS I DISTRICT

ORDINANCE NO. 3474- ORDINANCE TO REZONE AN AREA INCLUDING PROPERTIES LOCATED AROUND

1200 BLEACHERY BOULEVARD FROM RS-8 RESIDENTIAL SINGLE-FAMILY HIGH DENSITY DISTRICT TO COMMERCIAL BUSINESS I DISTRICT

Vice-Mayor Jones opened the public hearing at 6:24 p.m.

Urban Planner Blake Esselstyn said that this is the consideration of an ordinance to rezone an area including properties located around 1200 Bleachery Boulevard from RS-8 Residential Single-Family High Density District to Commercial Business I District. This public hearing was advertised on May 4 and 11, 2007.

The area proposed for rezoning has undergone significant changes in the last five years. The most noteworthy change during this time period is the construction of Bleachery Boulevard, the road which now bisects the area and connects Fairview Road to the Riverbend developments and Swannanoa River Road. Three of the four residences that were in the area have been removed. Fairview Avenue, which used to connect through to Fairview Road via a road called Stevens Street, now dead-ends at a row of bollards, preventing automobile traffic flow between Bleachery Boulevard and the neighborhood to its west.

The overall acreage of the area proposed to be rezoned is approximately four acres, but just under one and a half acres of that is privately owned property. This area is currently zoned RS-8, a district which was intended 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."

In the period since this zoning district was assigned, the aforementioned characteristics of this particular area which have been modified have trended away from the previous single-family small-street nature. The new street (Bleachery Boulevard) represents more of a thoroughfare for commercial traffic. There is no direct street connection to the adjacent residentially zoned area. Redevelopment with detached homes has not been pursued.

While this area would not have been well-suited for commercial development five years ago, the additional infrastructure provides new options. The new road is built to accommodate commercial traffic. The area is served by transit route 12, which runs both along Fairview Road and Cedar Street. The applicant is seeking rezoning to Community Business I district, whose intent is "to provide areas for medium-density business and service uses serving several residential neighborhoods. (A) community business center may serve as a workplace for many residents in the surrounding neighborhoods and should be sensitive to a significant pedestrian population, but also provide for adequate and safe vehicular access."

The changes that have arrived in this stretch of land suggest that the previous residential zoning may no longer be appropriate, and that a commercial designation like that of Community Business I would encourage a more fitting type of development. It should be noted that the constraints of the lots would prevent large-scale developments, and would require careful design to meet parking and buffering requirements should the rezoning be approved.

At their April 4, 2007, meeting the Planning and Zoning Commission voted unanimously to recommend approval of this request.

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

Pros

- Recent changes in the subject area have altered its character away from single-family residential.
- Infrastructure is in place to support commercial use.
- Complies with Comprehensive Plan policies and City Council goals.

Cons

- Designing compliant development for the narrow parcels in this area will be challenging.

Staff is of the opinion that the extensive changes to this area since it was assigned the RS8 zoning district have created conditions that lend themselves to an upzoning to allow mixed use, and therefore recommend approval of the petitioners' request.

Vice-Mayor Jones closed the public hearing at 6:27 p.m.

Mr. Harley Dunn, property owner, and Mr. Esselstyn responded to various questions/comments from Council, some being, but are not limited to: what kinds of activities might go on the properties due to the unique shape of the lots; does staff feel that Bleachery Boulevard is a commercial corridor; does staff have any concern of the proximity to the residences behind the property

on the west side; what is the height limit in the Commercial Business I District; why did staff recommend the Commercial Business I District; what type of buffering and landscaping would be required between these properties and the existing residences; and how wide are the lots being proposed to be rezoned.

Councilwoman Cape was concerned about putting a commercial corridor through a residential area and the amount of traffic that would be generated on Bleachery Boulevard, especially without knowing the actual uses on the lots.

Vice-Mayor Jones 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. 3474, noting that City Council finds 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 Davis and carried on a 5-1 vote, with Councilwoman Cape voting "no."

ORDINANCE BOOK NO. 23 - PAGE

E. PUBLIC HEARING TO APPROVE THE LEASE/PURCHASE AGREEMENT AND PAYMENT FOR OVERLOOK PARK

RESOLUTION NO. 07-104 - RESOLUTION APPROVING THE LEASE/PURCHASE AGREEMENT AND PAYMENT FOR OVERLOOK PARK

Vice-Mayor Jones opened the public hearing at 6:41 p.m.

City Attorney Oast said that this is the consideration of a resolution authorizing the City to enter into a lease-purchase agreement with The Trust for Public Land for the acquisition of 29.62 acres of land on Beaucatcher Mountain. This public hearing was advertised on May 4, 2007.

On March 20, 2007, Council approved in concept the acquisition of 29.5 acres of land on the west slope of Beaucatcher Mountain. The acquisition is to be facilitated by The Trust For Public Land (TPL), a non-profit land conservancy organization with which the City has worked in the past (Broadway Greenway, Jake Rusher Park). Funds for the purchase are to come from several sources, including grants, private donors, and contributions from the City and Buncombe County at \$575,000 apiece. The total purchase price is \$2.6 million.

Because only part of the purchase money (\$1.4 million) will be available at closing, it is necessary for the remainder of the purchase to be financed. TPL proposes to do this over the course of three years, and therefore proposes a lease-purchase agreement with the City. In this arrangement, TPL would acquire the property, and obligate itself financially to the seller. TPL would then lease the property to the City for a three-year term. The annual lease payments would be approximately equal to the amounts that TPL anticipates receiving – in grants and pledges – for each year, and rather than being paid by the City, would be applied to the annual lease payment, which would then be applied to the balance of the purchase price. The lease payments reflect the "carrying costs" (9.25% interest on unpaid balance) of TPL's purchase contract. He reviewed a table showing the estimated lease payments over this term. At the end of the lease term, the property would be transferred in fee to the City, at the City's option. One of the grants anticipated in year 2 of is a \$500,000 grant from the Parks and Recreation Trust Fund (PARTF); this grant is still in the application phase, and there is no assurance that it will be awarded, although the application will be strong.

The conveyance to TPL, and accordingly, the lease and anticipated conveyance to the City will be subject to appropriate conditions regarding the use of the land as a park, along with some matters of an operational nature, such as the naming of some facilities. Although Buncombe County had previously indicated an interest in participating in the development and operation of the park, discussions have been that the City would operate it.

Although TPL has every expectation that the amounts that it expects to receive in donations and grants will be paid as promised, including the payments by Buncombe County, the possibility exists that shortfalls in anticipated contributions would occur, or that anticipated grants might be less than fully funded. In this event, the City would be legally responsible for any shortfall in the amounts credited to the annual lease payments. TPL has indicated, however, that it has assurances from private donors that these amounts will be covered, and that the City will be covered to the extent of any exposure. In the event of a shortfall that is not covered, the City has the option of not making up the difference, but risks losing the opportunity to acquire the property, and the lease would terminate with no refund of funds paid to that point. In this event, TPL indicates that it will work with the City ensure that the contract is fulfilled.

Pros:

- The City obtains use and ownership of a substantial and significant property
- The City's costs for this acquisition are substantially less than they would be if the City attempted to acquire the property directly on its own.
- Opportunity for cooperation with Buncombe County.

Cons:

- Possibility that the City could be legally responsible for lease payments if funds are not collected as anticipated.
- Incremental administrative costs.
- Additional capital expenditures in out years for development and maintenance of park.

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

Vice-Mayor Jones closed the public hearing at 6:45 p.m.

Councilwoman Cape said that it is her understanding that we have commitments from private citizens for the initial \$675,000 and should the Parks & Recreation Trust Fund grant not come to us, we have already been guaranteed by two private funders to support that. We have not even gone out to the public to fund raise yet. The private funds you see at this point, have been raised from less than 10 individuals and we are waiting to get this piece finalized before starting the private fund-raising piece to cover the interest for the City, set up a foundation for the development of the park, etc. In a worse case scenario, the TPL is the purchasers of this property and at the end of the three years if all can't work, the City does not have to follow through on this.

Councilman Mumpower explained how he felt this concept has changed since approval on March 20, 2007, and would not be supportive of this action.

Vice-Mayor Jones 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. 07-104. This motion was seconded by Councilman Newman and carried on a 5-1 vote, with Councilman Mumpower voting "no".

RESOLUTION BOOK NO. 30 - PAGE

At 6:56 p.m., Councilman Mumpower moved to go into closed session in order to consult with an attorney employed by the City about matters with respect to which the attorney-client privilege between the City and its attorney must be preserved, including litigation involving the following parties: City of Asheville, Errol Alexis Green, and Asheville Police Department Officers Daryl Fenton, Tim Brake and Anthony Waters. The statutory authorization is N. C. Gen. Stat. sec. 143-318.11 (a) (3). This motion was seconded by Councilman Freeborn and carried unanimously.

At 7:15 p.m., Councilman Newman moved to come out of closed session and return to the regular meeting. This motion was seconded by Councilman Freeborn and carried unanimously.

V. UNFINISHED BUSINESS:

A. RESOLUTION NO. 07-103 - RESOLUTION AUTHORIZING THE CITY MANAGER TO DISPOSE OF AN INTEREST THE CITY HAS IN REAL PROPERTY LOCATED AT 24 GRAIL STREET

Community Development Director Charlotte Caplan said that this is the consideration of a resolution to dispose of the City's interest in real property at 24 Grail Street and the adjoining parcel.

In 1990 the Housing Authority (the City's redevelopment agency) sold a house at 24 Grail Street and an adjoining parcel to Hospitality House of Asheville, subsequently renamed Homeward Bound of Asheville, as a transitional shelter for the homeless. The City also made a \$100,000 CDBG grant to Homeward Bound to acquire and renovate the house.

The deed for each property includes a restriction whereby the ownership of the property reverts to the City of Asheville if it ceases to be used as a homeless shelter.

Homeward Bound has operated the properties as a shelter continuously for 17 years. Recently, Homeward Bound decided to focus on assisting the homeless to obtain permanent supportive housing rather than providing temporary shelter. Homeward Bound plans to sell this transitional shelter and use the sales proceeds to expand or replace its "A HOPE" day center, which is no longer large enough for its purpose.

Homeward Bound has found a buyer for the property, but is unable to convey it because of the existence of the deed restrictions. It has requested that the City remove the deed restrictions, in exchange for a commitment by Homeward Bound to use the proceeds of sale to expand or replace its "A HOPE Center." According to the City Attorney's Office, the conveyance of the City's reversionary interest to a non-profit to promote a public purpose is authorized by law.

Pros:

- Directly supports implementation of the City and County's 10-year Plan to End Homelessness.
- Supports expansion of the A HOPE Center, which helps reduce the impact of homelessness on our downtown.
- Continues to support the broad objectives of the original CDBG grant.

Cons:

- The only negative impact is the City surrenders its right to eventually re-possess property worth approximately \$225,000 to the CDBG fund.
- The transfer may continue to concentrate homeless population in one area of downtown.

City staff supports the request from Homeward Bound.

On May 8, 2007, City Council referred this matter to the Planning & Economic Development (PED) Committee. On May 9, 2007, the PED Committee reviewed the request from Homeward Bound and made the following recommendation:

That the request from Homeward Bound to remove the reversion requirement with regard to the property at 24 Grail Street be approved to allow Homeward Bound to utilize the proceeds of the sale to expand or replace its A HOPE Center subject to the condition that Homeward Bound work with City staff with regard to expansion of services and/or relocation of the A HOPE Center in order to minimize any negative impact resulting from the concentration of homeless services in one area.

The Housing & Community Development Committee reviewed the request and agreed with the PED Committee's recommendation.

Councilman Freeborn and Davis commented on the continued concentration of homeless individuals in downtown.

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

Councilman Mumpower moved for the adoption of Resolution No. 07-103, subject to the condition that Homeward Bound work with City staff with regard to expansion of services and/or relocation of the A HOPE Center in order to minimize any negative impact resulting from the concentration of homeless services in one area. This motion was seconded by Councilman Newman and carried unanimously.

RESOLUTION BOOK NO. 30 - PAGE

VI. NEW BUSINESS:

A. UPDATE ON THE CIVIC CENTER EVENT MANAGEMENT PLAN

Civic Center Director David Pisha said that the purpose of this briefing is to provide an overview of the Asheville Civic Center's event management practices as requested by City Council's Public Safety Committee.

The Asheville Civic Center is dedicated operating the facility according to four key guiding principles:

1. The Asheville Civic Center will provide an enjoyable and safe venue for patrons.
2. The facility will maximize the City of Asheville's financial solvency by operating as efficiently as possible.
3. The venue will serve as a public gathering space with a diverse mix of events and activities.
4. The staff will provide an exceptional level of customer service to both facility patrons and those who rent the venue.

These principles are intended to guide the professional management of every event at the Civic Center and to inform the public and our stakeholders about the standards they can expect regardless of the type or size of event they attend.

Having said that, each event at the Civic Center is unique and has its own operational requirements; therefore, certain aspects of event management, including security, are determined on an event-by-event basis within the framework of industry best practices. When working with a promoter to book an event, we will consider several factors when determining the level of security required including the event's expected ticket sales, the type of seating in the venue, past experience with similar events, industry benchmarks, etc.

During the last few years, the Asheville Civic Center has experienced a steady increase in the number of large, arena events. These events typically require more security due to larger crowds and open seating arrangements. Because of this shift in our event mix, the Asheville Civic Center has looked at other venues for best security practices and implemented a Concert Action Plan to assure our facility exceeds industry standards when it comes to the safety of our patrons.

Based on the results of the Concert Action Plan, the facility has adopted standard practices like prohibiting large bags from all events to enhance the venue's security. The Civic Center has also improved coordination with other city departments and divisions including the Asheville Police Department, the sanitation division and the traffic engineering division to ensure patrons have a safe, enjoyable experience inside and outside of the building.

The report on the Civic Center's event management plan was presented to the Public Safety Committee on April 3, 2007.

Councilman Mumpower requested that when Council is reviewing an item, that the actual report be included in Council's agenda package.

Mr. Pisha responded to Councilman Mumpower's question about what the Civic Center is doing differently now than what it did three months ago.

Councilman Mumpower suggested the Civic Center staff review policies from other cities with the emphasis on if people misbehave by smoking, doing drugs, etc. that they are arrested, told to stop or escorted out. He suggested that in a 4-6 month timeframe that this issue be brought back up again and Council be advised on how we are enforcing the rules in the Civic Center.

Mr. Pisha responded to Councilwoman Cape's question of the action plan for the guiding principles, such as Concessions trying to find ways to expand their menu; Civic Center management staff attending conferences to interact with their peers to find best practices; etc.

Councilwoman Cape suggested a recycling effort at the Civic Center, which could be as simple as placing some recycling containers in the different venues.

After a short discussion of the lack of review of this item by the Civic Center Commission due to a lack of quorum at the Civic Center Commission meeting, City Manager Jackson said that this item will be on the next Commission meeting's agenda.

B. RESOLUTION NO. 07-105 - RESOLUTION STATING THE INTENT OF THE CITY TO ANNEX THE BILTMORE LAKE AREA AND SETTING THE PUBLIC INFORMATION MEETING ON JULY 2, 2007, AND THE CITY COUNCIL PUBLIC HEARING ON JULY 24, 2007

RESOLUTION NO. 07-106- RESOLUTION STATING THE INTENT OF THE CITY TO ANNEX THE SARDIS ROAD AREA AND SETTING THE PUBLIC INFORMATION MEETING ON JULY 2, 2007, AND THE CITY COUNCIL PUBLIC HEARING ON JULY 24, 2007

RESOLUTION NO. 07-107 - RESOLUTION STATING THE INTENT OF THE CITY TO ANNEX THE SCHENCK GATEWAY AREA AND SETTING THE PUBLIC INFORMATION MEETING ON JULY 2, 2007, AND THE CITY COUNCIL PUBLIC HEARING ON JULY 24, 2007

Urban Planner Julia Cogburn said that this is the consideration of resolutions stating the intent of the City to annex the Biltmore Lake, Sardis Road and Schenck Gateway areas.

The City's policy is to include within its corporate boundaries areas that are urban in nature and meet State of North Carolina qualification requirements. Staff has identified three areas: Biltmore Lake, Sardis Road, and Schenck Gateway with potential for being annexed. Under State law, the City must follow a specific process for annexation that begins with the adoption of resolutions that describe the boundaries of the areas under consideration, and fix dates for a public informational meeting and a public hearing on the question of annexation. State law does allow simultaneous annexation of multiple non-adjacent areas.

Staff has provided two schedules for review by City Council members. Both have the same effective dates. The main

differences in the schedule are the date of the Public Information Meeting and the date of the adoption of the Services Plan. Staff provided two schedules due to concern over having the Public Information Meeting during the week of the 4th of July (Schedule #1). If Council wants to proceed under schedule #2, passage of the Resolution of Intent will need to be continued until the 22nd of May. Two resolutions are presented; one resolution for each of the suggested schedules.

The following steps and dates meet the process required by State law:

Suggested Schedule #1

- Council Adoption of Resolution of Intent – 5/15/07
- Council Adoption of Services Plan – 5/22/07
- Public Information Meeting – 7/2/07
- City Council Public Hearing – 7/24/07
- Annexation Ordinance Adopted – 8/14/07
- Effective Date – 12/31/07

Suggested Schedule #2

- Council Considers Resolution of Intent and Schedule – 5/15/07 (Continues Until 5/22/07)
- Council Adoption of Resolution of Intent – 5/22/07
- Council Adoption of Services Plan – 6/12/07
- Public Information Meeting – 7/16/07
- City Council Public Hearing – 7/24/07
- Annexation Ordinance Adopted – 8/14/07
- Effective Date – 12/31/07

Pros:

- Supports City of Asheville's Smart Growth Annexation program (regular program of annexations) as set forth in the City's 2025 Plan.
- Provides for an urban level of service for developed and developing areas adjacent to the existing city limits and includes those benefiting from existing City services in participation in the costs of such services.

Cons:

- Residents of proposed annexation areas may object to such annexation.

City staff recommends that City Council adopt the resolutions of intent stating the City's intent to annex the Biltmore Park, Sardis Road, and Schenck Gateway areas.

In response to Councilman Freeborn about area residents interested in annexation but not included in this proposal, Ms. Cogburn explained that there are tightly prescribed requirements per the N.C. Gen. Statutes and those properties would not qualify. In addition, we also try to make our boundaries follow lot lines or actual roadways. She did, however, offer those residents the voluntary annexation option.

Ms. Cogburn said that the video that is used at the public information meeting which (1) describes the area, (2) shows how the area meets the qualifications, (3) describes the services that would be provided, and (4) explains the basic financing element, can be placed on the City's Government Channel. In addition, she feels that information can be placed on the City's website as well.

Councilman Newman hoped that in the near future the City will have some tools that other cities have to make the annexation process a lot healthier process, such as working with developers at the beginning so that when people move into the development, they know they will become part of the City. The annexation process is an issue of fairness of how we pay for services and infrastructures that are critical to the future health of the whole Asheville metro area.

Councilman Mumpower felt that there are legitimate arguments in support and against annexation, however, in his opinion, the negative aspects outweigh the positive arguments.

Councilwoman Cape said that in the annexation conversations, one of the things that helps her understand is the distinction between city and county roles. It's interesting to look at the mandate for what makes a city and what makes a county, and a lot has to do with public safety and the closeness of people living together. It has been determined by the N. C. government that public safety is better enhanced with a municipal structure when people live close together, both through building codes and

public safety issues.

Vice-Mayor Jones said that members of Council have been previously furnished with copies of the resolutions and they would not be read.

Councilman Cape moved for the adoption of Resolution No. 07-105, (Schedule 1) with the public information meeting being held on July 2, 2007, and the City Council public hearing being held on July 24, 2007. This motion was seconded by Councilman Newman and carried on a 5-1 vote, with Councilman Mumpower voting "no."

RESOLUTION BOOK NO. 30 - PAGE

Councilman Cape moved for the adoption of Resolution No. 07-106, (Schedule 1) with the public information meeting being held on July 2, 2007, and the City Council public hearing being held on July 24, 2007. This motion was seconded by Councilman Newman and carried on a 5-1 vote, with Councilman Mumpower voting "no."

RESOLUTION BOOK NO. 30 - PAGE

Councilman Cape moved for the adoption of Resolution No. 07-107, (Schedule 1) with the public information meeting being held on July 2, 2007, and the City Council public hearing being held on July 24, 2007. This motion was seconded by Councilman Newman and carried on a 5-1 vote, with Councilman Mumpower voting "no."

RESOLUTION BOOK NO. 30 - PAGE

C. CONSIDERATION OF AN APPOINTMENT TO THE CIVIL SERVICE BOARD

At the request of Vice-Mayor Jones, Councilman Mumpower moved to continue the consideration of interviews for an appointment to the Civil Service Board until May 22, 2007. This motion was seconded by Councilwoman Cape and carried unanimously.

VII. OTHER BUSINESS:

Councilman Mumpower expressed appreciation to the For Our Kids Program volunteers and to the volunteers and sponsors for the Top-A-Stop Program.

Councilman Davis invited the public to a presentation by the N.C. Symphony which will honor all the music in North Carolina on May 25, 2007, at the Thomas Wolfe Auditorium.

Councilwoman Cape noted that May 17, 2007, is Arbor Day and urged the citizens to participate in this event.

VIII. INFORMAL DISCUSSION AND PUBLIC COMMENT:

IX. ADJOURNMENT:

Vice-Mayor Jones adjourned the meeting at 8:15 p.m.

CITY CLERK

MAYOR