

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

- The Asheville High School Debate Team led City Council in the Pledge of Allegiance.

INVOCATION

Councilman Davis gave the invocation.

I. PROCLAMATIONS:

A. ASHEVILLE HIGH SCHOOL DEBATE TEAM RECOGNITION

Mayor Bellamy recognized the Debate Coach Keith Pittman, Assistant Debate Coach Larry Burke, and the Asheville High School Debate Team. On behalf of City Council, Mayor Bellamy wished the Team well as they represent North Carolina at the NFL National Championship Debate Championship in June of this year.

II. CONSENT AGENDA:

Councilman Mumpower requested Consent Agenda Items "D" and "E" be removed from the Consent Agenda for individual discussions.

Mayor Bellamy requested Consent Agenda Item "F" be removed from the Consent Agenda for individual an individual vote.

A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON MAY 15, 2007

B. RESOLUTION NO. 07-108- RESOLUTION STATING THE INTENT OF THE CITY TO ANNEX PROPERTY AT 1903 OLD HAYWOOD ROAD (FIRE STATION #10) AND SETTING A PUBLIC HEARING ON JUNE 12, 2007

Summary: The consideration of a resolution stating the intent of the City to annex property at 1903 Old Haywood Road, the site of the new fire station and setting a public hearing on June 12, 2007.

The City of Asheville is completing construction of a new fire station, Fire Station #10, at 1903 Old Haywood Road in West Asheville. The station is scheduled to become operational in July of this year.

This property at 1903 Old Haywood Road (PIN 9618.20-90-5200) is contiguous to the current city limits of the City of Asheville but not located within the corporate boundaries. Part 1 of Article 4A of Chapter 160A of the North Carolina General Statutes authorizes annexation of property owned by a municipality and contiguous to current municipal boundaries.

Under State law, the City must follow a specific process for annexation of such properties that begins with the adoption of a resolution that describes the boundary of the area under consideration, and fixes dates for a public hearing on the question of annexation.

Pros:

- Brings city owned-property into the corporate limits in accordance with state law.

Cons:

- Some property owners in the area may be concerned about annexation of their property.

- City staff recommends that City Council adopt the resolution of intent stating the City's intent to annex the property at 1903

RESOLUTION BOOK NO. 30 - PAGE

C. ORDINANCE NO. 3475- BUDGET AMENDMENT TO INCREASE THE CIVIC CENTER FUND BUDGET TO REFLECT UPDATED FISCAL YEAR 2006-07 REVENUE AND EXPENDITURE PROJECTIONS

Summary: The consideration of a budget amendment to increase the Civic Center Fund budget by \$150,000 to reflect updated Fiscal Year 2006-07 revenue and expenditure projections.

Due to a higher than expected number of events this year, Civic Center Fund revenues & expenditures are expected to exceed budget by the end of Fiscal Year 2006-07. As a result, staff has calculated an updated estimate of the expected revenues and expenses in the Civic Center Fund. In order to fund anticipated expenses over the last two months of the current fiscal year, staff is recommending that the Civic Center Fund expenditure budget be increased by \$150,000. The additional operating revenue generated by the higher event load will cover the cost of the budget amendment; therefore no additional transfer from the General Fund is required. Staff is estimating that the year-end operating deficit for the Civic Center will be slightly less than the budgeted deficit of \$413,340.

PROS:

- Provides sufficient budget authorization for anticipated expenditures in the Civic Center Fund without increasing the General Fund subsidy.

CON:

- None.

- City staff recommends City Council approve a budget amendment to increase the Civic Center Fund budget by \$150,000 to reflect updated Fiscal Year 2006-07 revenue and expenditure projections.

ORDINANCE BOOK NO. 23 - PAGE

D. RESOLUTION AUTHORIZING THE CITY MANGER TO ACCEPT GRANT FUNDS FROM THE DEPT. OF JUSTICE TO ASSIST THE ASHEVILLE POLICE DEPARTMENT WITH THE PURCHASE OF METHAMPHETAMINE LAB INVESTIGATION EQUIPMENT, PROVIDE FOR OFFICER TRAINING AND OFFICER OVERTIME IN METH LAB CLEAN UP

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

E. BUDGET AMENDMENT TO RECEIVE THE DEPT. OF JUSTICE FUNDS FOR METHAMPHETAMINE LAB INVESTIGATIONS

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

F. RESOLUTION PROVIDING FOR THE POSSESSION AND CONSUMPTION OF MALT BEVERAGES AND/OR UNFORTIFIED WINE AT THE 2007 BELE CHERE FESTIVAL

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

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

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

ITEMS PULLED FROM THE CONSENT AGENDA FOR INDIVIDUAL VOTES

D. RESOLUTION NO. 07-109 - RESOLUTION AUTHORIZING THE CITY MANGER TO ACCEPT GRANT FUNDS FROM THE DEPT. OF JUSTICE TO ASSIST THE ASHEVILLE POLICE DEPARTMENT WITH THE PURCHASE OF METHAMPHETAMINE LAB INVESTIGATION EQUIPMENT, PROVIDE FOR OFFICER TRAINING AND OFFICER OVERTIME IN METH LAB CLEAN UP

Summary: The consideration of a resolution authorizing the City Manager to accept grant funds under The Department of Justice, Office of Community Policing Services to assist Asheville Police Department with the purchase of methamphetamine lab investigation equipment, provide for officer training and officer overtime in meth lab clean up and the associated budget amendment in the amount of \$172,765.

The City of Asheville has been awarded a grant from Department of Justice Office of Community Oriented Policing Services for the Methamphetamine Program in the amount of \$172,765 with no local match. The purpose of the grant program is to fund Methamphetamine projects, allowed under the grant program designed to train officers in proper handling and evidence collection, train the public on cues to meth lab operation, to pay for officer overtime for security of methamphetamine lab clean up, and provide needed equipment for proper response to meth labs.

Pros:

- Will provide the public with needed information on how to spot possible meth lab operation which will enhance public safety.
- Proper officer training will aid in reduction of injury to officers responding to possible meth labs.
- The equipment will increase officer safety in response to possible meth labs.

Cons:

- The City Of Asheville and the Asheville Police Department would be required to maintain the upkeep of the equipment purchased.
- Provide overtime pay for officers securing meth lab locations once the grant funds were depleted.

This action complies with Asheville City Council Strategic Plan in the priority area of Community Building - Development strategies for youth and educational programs and Economic Development - Continue commitment to public safety and drug enforcement priorities.

City staff recommends City Council approve a resolution authorizing the City Manager to accept grant funds under The Department of Justice, Office of Community Policing Services to assist Asheville Police Department with the purchase of methamphetamine lab investigation equipment, provide for officer training and officer overtime in meth lab clean up and the associated budget amendment in the amount of \$172,765.

Police Chief Bill Hogan explained that the primary goal of this grant is to aid in the suppression of the sale, distribution, and use of illegal drugs, with emphasis on methamphetamine. In 2006 there were 5 labs in Buncombe County and 1 lab in Asheville. In 2005 there were 15 labs in Buncombe County and Asheville. In 2004 there were 23 labs in Buncombe County and Asheville. Methamphetamine is less than 5% of our drug cases but it is a growing problem that is being marketed more often in our community. The dramatic decline in small local labs is a result of new legislation restricting the access and sale of pseudophedrine. This reduction is being seen throughout our state and local meth represents 5% or less of our meth cases. Mexican ICE is easier to obtain and better quality. Large scale distributors are primary Hispanic/Latino but local dealers mirror our community. We have arrested dealers that are white, black, and Hispanic/Latino.

Police Chief Hogan responded to various questions from Councilman Mumpower, who would support the motion if we are not sidestepping the intent of the grant as we applied for it.

Vice-Mayor Jones moved for the adoption of Resolution No. 07-109. This motion was seconded by Councilman Freeborn and carried unanimously.

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E. ORDINANCE NO. 3476 - BUDGET AMENDMENT TO RECEIVE THE DEPT. OF JUSTICE FUNDS FOR METHAMPHETAMINE LAB INVESTIGATIONS

Summary: See Consent Agenda "D" above.

Councilwoman Cape moved for the adoption of Ordinance No. 3476. This motion was seconded by Vice-Mayor Jones and carried unanimously.

ORDINANCE BOOK NO. 23 - PAGE

F. RESOLUTION NO. 07-110 - RESOLUTION PROVIDING FOR THE POSSESSION AND CONSUMPTION OF MALT BEVERAGES AND/OR UNFORTIFIED WINE AT THE 2007 BELE CHERE FESTIVAL

Summary: The consideration of a resolution providing for the possession and consumption of malt beverages and/or unfortified wine at the 2007 Bele Chere Festival.

- The Bele Chere Board has requested through the Asheville Parks and Recreation Department that City Council permit them to serve beer and/or unfortified wine at their events and allow for consumption at this event.

For many years, the Bele Chere Board, in cooperation with the Asheville Parks and Recreation Department, has produced Bele Chere to bring both citizens and visitors to the Downtown area. This year the request is being made for July 27-28, 2007.

Pros:

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- Allows fundraising opportunities for charities.
 - Generates economic impact for the community.
 - Provides additional quality cultural programming and diversity.

Con:

- Potential for behavioral issues and litter.

The Asheville Parks and Recreation Department is submitting this resolution on behalf of the Bele Chere Board of Directors.

Staff recommends City Council approve a resolution providing for the possession and consumption of malt beverages and/or unfortified wine at the 2007 Bele Chere Festival.

Councilwoman Cape moved for the adoption of Resolution No. 07-110. This motion was seconded by Vice-Mayor Jones and carried on a 6-1 vote, with Mayor Bellamy voting "no."

RESOLUTION BOOK NO. 30 - PAGE

- **REQUEST TO ADD ITEM TO THE AGENDA**

- Councilman Mumpower requested to add a short presentation under "Other Business" regarding the confrontation of the open air drug market. He felt that when this issue comes back up in June, it will not allow staff ample opportunity to respond to the issue to allow Council to provide budgetary support.

Councilman Newman looked forward to further deliberations about this issue; however, Council will have other worksessions related to the budget.

Councilman Davis moved to add the short presentation under "Other Business." This motion was seconded by Councilman Mumpower and failed on a 2-5 vote, with Mayor Bellamy, Vice-Mayor Jones, Councilwoman Cape Councilman Freeborn and Councilman Newman voting "no."

Mayor Bellamy said that anytime during the year, City Council has the opportunity to make budget amendments.

When Councilman Mumpower asked if he would be at liberty of making the presentation under "Informal Discussion and Public Comment," City Attorney Oast said that a Council Member qualifies as a member of the public.

III. PRESENTATIONS & REPORTS:

A. HUB'S COMMUNITY & ECONOMIC DEVELOPMENT REPORT

Mr. Virgil Smith updated City Council on Asheville's HUB Project, which is Asheville and Buncombe County's collaborative, sustainable, intentional community, cultural, and economic development strategy. Without HUB we would not have (1) high speed computing (\$1.5M, RENC); (2) First geek-like collaboration for development; (3) 30 business plans for new ventures (CTC); (4) SEO analysis of Clean Energy Cluster in WNC; (5) downtown farmer's market; (6) proposed federal appropriation for clean energy business incubator at A-B Tech; (7) plan for a climate/weather museum attraction; (8) climate emphasis (designation as NOAH community); (9) developing sustainability metrics; and (1) as much networking and synergistic knowledge sharing.

HUB is a national buzz attracting tourists, businesses, creative class, professionals, students and retirees, but it will not be sustained without bold, collaborative action. Asheville's opportunities are in reach, but other communities will not wait for us to seize the initiative - the spotlight is forever shifting. HUB is a mechanism for (1) refocusing our development strategy (a) community and cultural in addition to economic; (b) hot themes - technology, rejuvenation, creativity; and (c) matches who we - Asheville - area; (2) combining agendas and collaborating among the City, County, business and non-profit; and (3) mobilizing the entire community to achieve a few specific goals - e.g., climate, riverfront, green - and attracting very big dollars from the outside.

Ms. Janice Brumit said we've proven we can collaborate as seen by the number of leaders on board. We have a great vision to better jobs and higher quality of life.

The next steps consist of (1) implement metrics (by August); (a) economic prosperity - jobs, wages, investments; (b) social responsibility - housing, middle class; and (c) environmental stewardship - sustainability; (2) radically expand the number of people involved with HUB, especially by publicizing HUB and expanding the use of its collaborative website; (3) finish plan and staff alliance for implementation; (4) jointly - City, County and Alliance - pursue work plans to implement the HUB vision and plan; and (5) focus collaborative efforts upon 2 or 3 timely and big potential projects, e.g., climate - while maintaining momentum in all programs.

Mr. Smith said what we are asking from City Council is (1) continuation and support of HUB via meeting space and staff time, collaborative participation; (2) coordination of the City's development efforts with HUB clusters, and especially the climate campaign; and (3) coordination with the County in emphasizing key development initiatives.

Councilwoman Cape encouraged Council to support and partner with the HUB, stressing the importance of the climate initiative.

In response to Councilman Davis' request for additional information on the climate initiative, Ms. Brumit explained that Asheville has the largest environmental data base in the world and we are poised to be the real time environmental weather center of the world. The federal government is poised to invest billions, state legislators are interested in development of an experimental climate attraction for school kids (like a planetarium), and UNC-Asheville and A-B Technical College are already into applied visualization. We already have (1) an applied visualization business sector with established NOAA, NASA and international contacts (e.g., Black Box Studio - immersive environments for education and decision support); and (2) applied visualization lab collaboration between UNC-Asheville/NEMAC, RENCI, MAP, Elumenati and Bent Creek Institute (underway in Asheville). She stressed the need for action as there is potential competition from Boulder, Colorado; Oklahoma City, Oklahoma; and Silver Springs, Maryland.

In response to Councilman Mumpower, Mr. Smith said that the preliminary tentative budget is \$500,000, with the City's portion being 1/3 (\$166,000). Mr. Smith stressed, however, that it's a public/private partnership and we need to work out what the part of the budget will the City take on, what part will the County take on, and what we can raise from local funds, foundations, the state, etc.

Mayor Bellamy thanked Mr. Smith and Ms. Brumit for the update and would look forward to the next report containing specifics on what they would like to accomplish and a budget showing revenues and expenditures.

B. ENVIRONMENTAL PARTNERSHIP WITH WARREN WILSON COLLEGE

Warren Wilson College (WWC) President Sandy Pfeiffer introduced Ms. Margo Flood, Incoming Director of the Environmental Leadership Center, who in turn explained a partnership proposal to the City of Asheville of working together to increase energy efficiencies.

Warren Wilson College and the City of Asheville's respond to the challenge. We must reduce the planet's greenhouse gas emissions 30% to 50% below 1990 levels by 2050. On its current course, North Carolina is projected to have more than a 113% increase in greenhouse gas emissions from 1990 to 2050. We must work locally to increase energy conservation efforts by (1) inventory greenhouse gas emissions; (2) improve efficiencies; (3) plan reductions; and (4) monitor goals.

We are committed to action as seen by the City of Asheville - (1) US Conference of Mayors "Mayors Climate Protection Agreement;" and (2) International Council for Local Environmental Initiatives (ICLEI). And as seen by Warren Wilson College - (1) Talloires Declaration; and (2) American College and University Presidents Climate Control Agreement. Our shared goals include (1) educate of the public; and (2) increase energy conservation efforts - (a) adopt green-building practices; (b) encourage public transportation; and (c) inventory and monitor emissions.

A partnership makes sense. (1) WWC is fast becoming the leading sustainable campus in the nation. Asheville has

national prominence for its quality of life; (2) WWC is a demonstration site for green buildings and energy conservation. Asheville intends to adopt green building practices and an energy conservation plan; and (3) WWC is committed to lead by example. Asheville is in the spotlight and its actions will serve as an example.

Ms. Flood explained how WWC is making progress in the areas of building and energy; transportation; waste; education and milestones.

WWC actions are informed by our greenhouse gas inventory. WWC average annual electricity usage is 4.4 million kWh, costing \$400,000. Data shows that even with a 5.1% increase in enrollment and a 1.2% increase in building square footage between the 2003 and 2006 academic years, total electricity consumption at WWC dropped by 4.2%. Building emissions account for over 75% of the air emitted by the College. We offset 100% of our electricity emissions with renewable energy credits.

A few examples of how we can accomplish more as partners is (1) access state-of-the-art research on best practices (a) consultation from WWC regarding LEED-design and certification process; (b) use of WWC as a demo site for state-of-the-art sustainable practices; and (c) development of WWC student and faculty research projects to inform goals and practices; (2) accelerate our progress on climate commitments; (a) development of similar templates for greenhouse gas emissions inventory; and (b) access to modeling tools in WWC GIS lab; and (3) build upon our visibility and develop a national model; (a) creation of web access to partnership plans and accomplishments; and (b) assessment of the value of higher education/city governmental partnership.

The next step will be to (1) formalize partnership; (2) clarify goals; (3) develop work plan; (4) track results; and (5) celebrate success.

Mayor Bellamy asked that City Council tour the WWC campus to look at what energy saving initiatives they already have underway that we might be able to utilize.

After a short discussion of the possibilities of this partnership, Councilman Mumpower moved to ask the Energy & Environment Committee to review this partnership initiative and subject to their approval, that City Council partner with WWC in this initiative. This motion was seconded by Councilwoman Cape and carried unanimously.

C. RESOLUTION NO. 07-111 RESOLUTION AUTHORIZING CITY COUNCIL TO APPROVE THE ISSUANCE OF THE REQUEST FOR QUALIFICATIONS (RFQ) FOR THE FOLLOWING FOUR CITY-OWNED PROPERTIES: HAYWOOD STREET PROPERTIES AT THE CIVIC CENTER, EAGLE-MARKET STREET PROPERTIES, OFFICE OF ECONOMIC DEVELOPMENT, AND PARK MAINTENANCE PROPERTIES; AND AUTHORIZING CITY STAFF TO PROCEED WITH THE DUE DILIGENCE FOR THE FOUR SELECTED RFQ PROPERTIES

Economic Development Director Sam Powers said that this is the consideration of Phase Two of City-owned properties to be included in a Request for Qualifications (RFQ) for interested developers.

In early 2006, City Council directed staff to review existing city owned properties for possible redevelopment to meet Council strategic goals. Staff made a presentation to Council and identified approximately 18 city owned "sites" in the greater downtown area that staff considered potentially suitable for redevelopment. Council approved moving forward with Phase One and issued a Request for Qualifications from developers for four sites. After a successful RFQ process, Council approved a development agreement with Mountain Housing Opportunities to develop Ralph and Choctaw Streets. Old Asheland Avenue has been since reserved by Council for an innovative workforce housing project under consideration for the site. Asheland Avenue did not receive any Statements of Qualification or proposals.

Staff then reviewed the remaining sites in greater detail and in November 2006, presented the results to Council. Council approved moving forward with seven sites. In January 2007, Council approved retaining project management assistance from the firm Real Estate Research Consultants (RERC). RERC has assisted numerous other municipal clients with successful public-private partnerships to redevelop public property.

RERC has conducted a market overview of the Asheville area to determine the best recommended approach for the seven sites. They met with over 20 stakeholder groups in the area, in addition to city staff, and quantified Council member's goals to help prioritize the sites so they reflect highest and best use, maximize residual land values for public purpose, and reflect City Council policy objectives. A recommended Request for Qualifications has been developed and is ready for release. Public comment has been received by City Council at each meeting in Phase One and Phase Two, a public information meeting was conducted in April 2006 on Phase One, and a public information meeting is scheduled prior to the Request for Proposal (RFP) stage of Phase Two. Additionally, in order to help provide information to the public and interested parties, a web page has been activated on the City web site devoted to the RFQ process.

Assuming City Council approves proceeding as recommended, negotiations with the preferred development team for each site is projected to begin in spring 2008.

Pros:

1. Leverages real estate for community benefit.
2. Guide development that meets public goals established by City Council.
3. Potential for facility consolidation to maximize economies of scale.
4. Market appears ready and interested in the recommended sites.
5. Phasing allows planning for maximizing site potential for remaining sites.

Cons:

1. Cost-benefit of relocation of municipal facilities.
2. Individual sites have unique considerations.

Staff recommends that City Council approve issuance of the RFQ for the four properties: Haywood Street properties at the Civic Center, Eagle-Market Street properties, Office of Economic Development, and Park Maintenance properties; and proceed with due diligence for the four selected RFQ properties.

Mr. Matt Taylor, Vice-President and COO of Real Estate Research Consultants, briefed City Council on their qualifications.

The RFQ-RFP process overview is complex, but not complicated - (1) goals and objectives; (2) market opportunities and constraints; (3) RFQ; (4) developer qualifications; (5) public open house; (6) RFPs; (7) evaluate and select developer(s); and (8) negotiate developer agreement(s).

He explained several successful private-public partnership projects.

The benefits for Asheville are (1) leverage real estate for community benefit; (2) no additional cost to taxpayers; (3) property tax base; (4) new jobs; (5) development that meets community goals; and (6) vibrant and sustainable downtown.

The City's goals and objectives are (1) workforce housing; (2) enhanced tax base; (3) smart growth; (4) realistic market opportunities; (5) attract innovative developers; (6) path to redevelopment next 2 to 4 years; (7) focus City efforts to be results-oriented; (8) transparent process; (9) best use of public assets; (10) economically and environmentally sound; (11) potential public space; (12) involve local businesses; (13) support City's Minority Business Plan; (14) cost-benefit of relocating municipal facilities; (15) limit impact on taxpayers; and (16) promote live-work-play downtown.

The market opportunities and constraints consist of (1) moderate, stable growth market; (2) small to mid-scale projects; and (3) limited land available.

Using a chart, he explained the City of Asheville's supportable and relevant market demand information.

He explained the RFQ process of establishing the baseline ability of developer(s) to implement desired project(s) - relevant experience; track record; financial capability; equity sources and lending history; management approach; and litigation history.

The developer qualifications would be reviewed by an evaluation committee (1) composed of City staff and RERC; (2) evaluates developer submittals; (3) recommends list of pre-qualified development teams for City Council approval; and (4) conducts meetings with developers prior to issuance of RFP.

The public open house would be a forum for the public to obtain information and be an opportunity to share updates.

He explained the RFP process of soliciting "implementation road maps" from pre-qualified developers. RFP responses would consist of detailed, feasible development program; creative planning and design solutions; resources (public and private) pledged to project; detailed project budget, including project "returns;" financial assurances or other performance guarantees; acceptance of development agreement principles; and non-contingent price proposal, if appropriate.

To evaluate and select the developer would consist of (1) capacity to meet City's goals; (2) economic and physical issues; (3) practicality of land use plan; (4) designs, budgets and specifications; (5) credit history and financial capacity; (6) ownership and management; (7) overall business deal; (8) respective roles of public and private parties; and (9) respondent interviews.

The negotiated development agreement(s) would consist of (1) specific plan provisions; (2) design standards; (3) City's

obligations; (4) developer's obligations; (5) payment schedule, public/private; (6) takedown schedule, if applicable; (7) inter-local agreements, if applicable; and (8) remedies available to the parties.

Evaluation of City-owned properties included numerous City-owned sites evaluated; narrowed evaluation to 7 sites; and prioritized opportunities for 7 sites as follows.

For the Haywood Street properties at the Civic Center, the acreage is .77 acres; zoning is Central Business District; support uses include an upscale hotel (150 rooms), retail/limited office (10,000 sq. ft.), structured parking; development timeframe is 2-4 years; and priority is 1 - near term.

For the Eagle-Market Street property, the acreage is .31 acres (potential for .41 acres total with adjacent private land - includes the Ellison and McGlohon properties); zoning is Central Business District; supported uses include multi-family residential (potential live-work units) or office condos; development timeframe is 1.5 - 3 years; and priority is 1 - near term.

For the Office of Economic Development (29 Haywood Street), the acreage is .18 acres; zoning is Central Business District; supported uses include multi-family residential with ground floor commercial or office condos; development timeframe is 1.5 - 3 years; and priority is 1 - near term.

For the Park Maintenance properties, the acreage is 3.61 acres; zoning is Community Business I District; supported uses include multi-family residential (115 workforce housing units) with limited commercial; development timeframe is 1.5 - 3 years; and priority is 2 - minor remedy required.

For the Transit Operations Center, the acreage is 3.51 acres; zoning is Institutional; supported uses include multi-family residential (110 workforce housing and market rate units); development timeframe is 3-5 years; and priority is 3 - significant planning required.

For the Parkside property, the acreage is 2.47 acres; zoning is Central Business District; supported uses include office (100,000 - 140,000 sq. ft.), upscale hotel (150 rooms) or residential condos (75-100 premium market units), supporting commercial, structured parking; development timeframe is 5-7 years; and priority is 3 - significant planning required.

For the South Charlotte Street properties, the acreage is 13.79 acres; zoning is Central Business District; supported uses include corporate headquarters (target industry) or educational/training campus and complementing users or multi-family residential (500 market and workforce housing units) and commercial (500,000 sq. ft.); development timeframe is 8-10 years; and priority is 3 - significant planning required.

The recommendations are 1) issue RFQ for these four properties - Haywood Street at Civic Center, Eagle-Market Street, Office of Economic Development, and Park Maintenance properties; and (2) proceed with due diligence for the 4 RFQ properties - (a) property title; (b) boundary survey(s); (c) environmental assessment(s); (d) potential City incentives; (e) draft development agreement principles; and (f) other owner's responsibilities.

In response to Vice-Mayor Jones, Mr. Taylor said that in sending out the RFQ, City Council is not approving any of the supported uses identified that the market would support, but only asking developers to express their interest in the possibility of redeveloping these sites. There are no commitments made on behalf of the City until the RFP stage, and even then, the City has the right to pull out up until the development agreement is actually signed.

Vice-Mayor Jones asked City Manager Jackson how he envisioned this process interfacing with the downtown master planning process. He responded that the four projects we are ready to go to market with conform with the vision. We have had meetings with stakeholders and solicited input. With the subsequent due diligence, that ties right into and will be a component into the downtown master planning, as it specifically relates to these properties. There is one other part to it that will not be a significant part of the due diligence and will not be part of the downtown master planning and that is our responsibility to do the facility master planning for where we will relocate things, like the Transit Operations Center.

Councilwoman Cape was concerned about how we frame the RFQ's until the master planning process is complete. Our properties should be used for things that enhance our community. She questioned how we can articulate the RFQ better other than just say the site will support an upscale hotel. She just doesn't want to sell our property to the highest bidder and was not supportive of hotel. The properties have more strategic value than just a tax base and she wants to make sure that we steward our land in a way that is beneficial to the community.

Councilman Mumpower didn't think it was fair to put out RFQ's unless we can provide reasonable assurances to the developers that will allow them to do what we are proposing the options are. He supported moving forward, but only with the

understanding that we are going to be good partners and try to bring them to life.

Councilman Newman asked for financial information on the cost of building a new Transit Operations Center and the costs associated with the relocation of such a facility. He also asked for more detailed information on what properties the City actually owns around the Civic Center.

In response to Mayor Bellamy, Mr. Taylor explained the timeline for proceeding with Phase Two.

After a brief discussion, Councilman Newman moved to approve the issuance of the RFQ for the Eagle-Market Street properties. This motion was seconded by Councilman Freeborn and carried unanimously.

After a brief discussion, Councilman Mumpower moved to approve the issuance of the RFQ for the Haywood Street properties at the Civic Center, subject to the City functioning as a good partner in this process. This motion was seconded by Councilman Davis and carried unanimously.

Vice-Mayor Jones confirmed that being a good partner doesn't mean that the City has to agree to what a developer proposes. The City is not a bad partner if we don't accept a project.

Councilman Freeborn moved to approve the issuance of the RFQ for the Office of Economic Development. This motion was seconded by Councilman Mumpower and carried unanimously.

Councilman Newman moved to approve the issuance of the RFQ for the Park Maintenance properties. This motion was seconded by Councilwoman Cape and carried unanimously.

In response to Councilman Newman, City Manager Jackson updated Council on the property the City owns behind McCormick Field.

At 7:10 p.m., Mayor Bellamy announced a short recess.

RESOLUTION BOOK NO. 30 - PAGE

D. LIVING WAGE PROPOSALS

Assistant City Manager Jeff Richardson said that City staff has been asked to analyze components of a Living Wage Proposal for the City of Asheville.

The analysis has been broken down into four areas:

- (1) City of Asheville consider passing a living wage ordinance tied to the city's pay plan which establishes a living wage of \$10.86 per hour without health insurance and \$9.50 per hour with health insurance.

Benefited Employees: The City currently pays all employees with health insurance benefits a minimum of \$9.50 per hour.

Non-Benefited Employees: The City currently employs a significant number of temporary and seasonal staff (especially seasonal employment in Parks/Recreation and Civic Center events management). Based on the job responsibilities, some of these employees do not currently earn \$10.86 per hour. In order to increase the hourly rate to \$10.86 per hour for all seasonal staff, the budgetary impact would be approximately \$420,000 annually.

- (2) These wage level increases will be adjusted annually to maintain current Consumer Price Indexing to prevent future erosion of this wage.

The most recent Consumer Price Index data suggests 2.2% inflation for the past twelve month period as of February, 2007. A 2.2% cost-of-living adjustment to the city's pay plan costs approximately \$1.27 million annually.

- (3) Contract Bidding Process: Payment of a living wage to be considered in the City's contract bidding process. Specifically, City vendors who pay living wage thresholds as outlined above may receive additional consideration in bid award process.

City staff estimates that the City has approximately 2,500 active vendor accounts. In an attempt to discuss this proposal and what impact, if any, this might have on these companies, staff contacted 24 or roughly 1% of the City's active vendors. After speaking with representatives from these companies staff found several significant trends.

In terms of full-time employment all but one employer met or exceeded the full time hourly wage and health care requirement.

Responses to the part-time wage proposal were more diverse. Eight of 24 businesses commented that \$10.86 per/hr. is too high of a wage to pay for part-time employees. Four of the 13 respondents that currently hire part-time staff felt that they would not be able to meet the \$10.86 requirement. Each of these 4 respondents specialized in a variation of service or labor intensive employment. Companies that specialized in professional services were less affected by the \$10.86 wage level.

Given these requirements, when asked if the company would continue to partner with the City, 17 vendors responded YES, 2 responded NO, and 5 gave a no response.

- (4) Assessment of how the city would promote vendor understanding and compliance with the Living Wage thresholds if such a program is developed.

City staff has recommended as part of the 2007-08 budget to add a full-time Contract Administrator position, to assist with the process of doing business with the City, to help insure adherence to city ordinances and thresholds, minority business outreach, building construction reporting to the State of N.C., as well as other responsibilities. If this position is approved, marketing and compliance responsibilities associated with verification of vendor compliance to a living wage ordinance, can be incorporated into this position's duties. As part of the vendor certification process, each vendor could be asked to sign an affidavit regarding the living wage ordinance and the city's right to audit payroll records as part of an annual verification process.

City staff is prepared to follow City Council's policy direction on these matters as outlined above.

Mayor Bellamy outlined that public comment would only be heard on the issues of (1) a living wage ordinance for City of Asheville employees; and (2) payment of a living wage to be considered in the City's contract bidding process.

The following individuals spoke in support of a living wage ordinance for City of Asheville employees:

Mr. Tyron Greenlee, representing the Asheville-Buncombe Living Wage Campaign

A representative from the N.C. Council of Churches

Ms. Judy Miller, member of the Beth Ha Tephila Congregation

Ms. Linda Poss, representing the Board of Directors for Children First of
Buncombe County

Mr. David Jones, retiree

Mr. Greg Walker-Wilson, CEO of Mountain BizWorks

Rev. Christopher Chiaromonte

Pastor Spencer Hardaway, representing Rock Hill Missionary Baptist Church, the Baptist
Ministers Union and the Interdenominational Ministerial Alliance

Ms. Garcia

Rev. Amy Cantrell

Mr. David Wright, representing residents of housing

Mr. Rick Lutovsky, President of the Asheville Area Chamber of Commerce, said that the matter has been discussed with his Board and they have a concern about the automatic cost of living increase. They hoped that if Council wants to adjust this that each year it be addressed, rather than having an automatic adjustment. When you adjust the bottom, there is a compression factor that occurs with other categories. Relative to this item being part of the criteria for businesses, our businesses had the following questions: (1) does this apply to full-time employees; (2) does this apply to part-time employees; (3) how does the City plan on weighting this criteria; (4) what is the difference between the number of people employed at a company above or below a designated living wage; (5) what will the process be in proving to the City that a living wage is paid; and (6) will the City have to hire new staff to manage this process. In addition, he noted that the City's research shows that 730 companies are in some state of flux as to their ability to do business with the City.

Mr. Tim Peck felt that wages should be based on the value of a person's labor to the employer and not based on a person's need to buy stuff.

Ms. Leesa Kulba said that the City is pretty much already paying a living wage to its employees and this is more of a symbolic token. She said that when the City uses taxpayer's money to pay City employees a living wage, they are taking the

money from the people who work at McDonalds, etc. She felt City employees are paid enough.

Councilman Newman is supportive of this proposal as he sees this as a starting point for a larger conversation of what we can do to support working families in the City. Are there other ways we can support the businesses in the community who want to pay their employees a living wage? He hoped we move forward and put our heads together about what we can do to support that in the community.

Councilman Mumpower said that Council had a formal presentation by advocates and had specifically requested a formal presentation on the other side of the equation. He had even offered to do it himself. Even though it was his understanding the Chamber was going to do that, he didn't feel we have seen the other side. He did say this is about symbolism vs. substance since we are already doing what people are advocating, except for the seasonal and part-time employees. If we do it for the seasonal and part-time employees, it's \$420,000 and that is an expensive symbolism. He has no arguments against helping people, but a lot of arguments about how you do that. Personally he has very little faith in the government's ability to do that and he offered minimum wage as an example. He believes in personal responsibility. Training, education, maturity, skills, work ethics, and other more reliability foundations are ways to a meaningful hopeful future.

Councilwoman Cape moved to establish a living wage of \$10.86 per hour without health insurance and \$9.50 per hour with health insurance and a 2.2% inflation index, for full-time and part-time employees. This motion died for lack of a second.

Human Resources Director Lisa Roth responded to various questions/comments from Council, some being, but are not limited to: how many employees are seasonal and temporary; what type of positions are seasonal and temporary; what hours does a part-time employee work; when did we start offering health benefits for part-time employees who work over 20 hours on a consistent basis; was there a cost-of-living adjustment in the 2001 budget shortfall year; what is the merit pay plan for this year; what is the average merit increase; and will compression issues will arise.

Councilman Davis said that he has talked to managers of stores and they have a problem with the overall living wage concept. These are good people who contribute to the community in service and in financial contributions. If they had to pay a living wage to all of their employees, it would impact the number of people they could hire. He felt it was incumbent on employers to pay living wages, but if you start singling out employers who can't, then we could put them out of business.

Mayor Bellamy supporting a living wage for full-time and part-time employees, but not the 2.2% automatic inflation index. It is not fiscally sound if we mandate future automatic across the board inflation raises without taking into consideration the entire City's budget at the appropriate time.

After a short discussion, Councilman Freeborn moved to establish a living wage of \$10.86 per hour without health insurance and \$9.50 per hour with health insurance for full-time and part-time employees. This motion was seconded by Councilman Newman and carried on a 6-1 vote, with Councilman Mumpower voting "no."

When Councilman Mumpower asked what the financial impact would be to establish a living wage of \$10.86 per hour without health insurance and \$9.50 per hour with health insurance for full-time and part-time employees, Assistant City Manager Richardson said there would be no budgetary impact.

Councilman Freeborn moved to request City staff to report back to Council with a proposal on how to weight payment of a living wage to be considered in the City's contract bidding process. This motion was seconded by Councilman Newman and carried on a 4-3 vote, with Vice-Mayor Jones, Councilwoman Cape, Councilman Freeborn and Councilman Newman voting "yes" and Mayor Bellamy, Councilman Davis and Councilman Mumpower voting "no."

Councilwoman Cape said that the Housing & Community Development Committee has a structure in place where we look at weighting projects based on their merits. It sends a message that we do have strategic goals and that if you work towards those strategic goals that it has a merit and it counts. She feels that we could put a line item similar to that into our contracting process.

After a short discussion, Councilman Newman moved to adopt a policy for inflation and ask the City Manager to present that as part of the annual budget. This motion was seconded by Councilwoman Cape and failed on a 3-4 vote, with Vice-Mayor Jones, Councilwoman Cape and Councilman Newman voting "yes" and Mayor Bellamy, Councilman Davis, Councilman Freeborn and Councilman Mumpower voting "no."

Vice-Mayor Jones moved to continue to assess how the City would promote vendor understanding and compliance with the Living Wage thresholds if such a program is developed. This motion was seconded by Councilwoman Cape and carried on a 4-3 vote, with Vice-Mayor Jones, Councilwoman Cape, Councilman Freeborn and Councilman Newman voting "yes" and Mayor Bellamy, Councilman Davis and Councilman Mumpower voting "no."

IV. PUBLIC HEARINGS:

A. PUBLIC HEARING TO CONSIDER AN AMENDMENT TO THE ASHEVILLE CITY CHARTER TO CHANGE THE MANNER OF ELECTION FROM NON-PARTISAN TO PARTISAN

From staff report: This is the consideration of an ordinance to amend the Asheville City Charter to change the manner of election from non-partisan to partisan. This public hearing was advertised on May 11 and 18, 2007.

At the May 8, 2007, meeting, Council adopted a resolution of intent to amend the Charter to provide for partisan elections, and set the date of the public hearing, which is the next step in the process and is required by statute. No action may be taken on this item sooner than Council's next regular meeting, scheduled for June 12.

At Council's direction, the vote on adoption of the ordinance will be scheduled for June 12, which is the last regular meeting when this action could be taken in time to be effective for the 2007 primary and election.

Mayor Bellamy opened the public hearing at 9:04 p.m.

Councilman Newman felt that local governments are very restrictive in how they run their local governments, but the structure of the local elections is one thing the state has delegated to municipalities. The question before Council is whether Council should involve the political parties or exclude the political parties from participating in the Asheville municipal elections.

The following individuals spoke in support of the current non-partisan elections:

Rev. Christopher Chiaromonte

Mr. Lavoy Spooner, Chair of Governmental Affairs Task Force for the Asheville Area
Chamber of Commerce

Mr. Tim Peck

Ms. Leah Karpen, Asheville resident

Mr. Jim Barton, Asheville resident

Mr. Craig Young, Asheville resident

A Buncombe County resident

Mr. Richard Warner, Asheville resident, spoke in support of changing the municipal elections to partisan elections.

Mayor Bellamy closed the public hearing at 9:25 p.m. and stated that action on this item will be considered on June 12, 2007.

B. PUBLIC HEARING TO CONSIDER AN AMENDMENT TO THE UNIFIED DEVELOPMENT ORDINANCE TO ALLOW SIGNS FOR HOMESTAYS IN THE RS-2 RESIDENTIAL SINGLE-FAMILY LOW DENSITY DISTRICT, RS-4 RESIDENTIAL SINGLE-FAMILY MEDIUM DENSITY DISTRICT AND RS-8 RESIDENTIAL SINGLE-FAMILY HIGH DENSITY DISTRICT

Mayor Bellamy opened the public hearing at 9:25 p.m.

Planning & Development Director Scott Shuford said that this is the consideration of an ordinance to amend the Unified Development Ordinance to allow signs for homestays in the RS-2 Residential Single-Family Low Density District, the RS-4 Residential Single-Family Medium Density District and the RS-8 Residential Single-Family High Density District. This public hearing was advertised on May 11 and 18, 2007.

This code amendment provides for signs in "homestays" in single family residential zoning districts. City Council felt it might be a good idea to allow signs in order to alert nearby residents to the existence of a homestay use. Such signs were not recommended originally to allow homestays to "blend into" single family neighborhoods.

Section 7-16-1 provides the conditions under which uses by right subject to special requirements can be established. The proposal is to amend the recently-adopted homestay ordinance to allow signs as follows:

- Signage shall be limited to a single sign, not to exceed four square feet, attached to the home.

The amendment has been routed to CAN, CREIA, and CIBO for review and comment.

On March 7, 2007, the Planning and Zoning Commission recommended denial of the proposed code amendment by a vote of 6-0 due to concerns about encouraging drive-by/walk-up traffic in single family neighborhoods. The draft minutes are as follows: "Scott Shuford presented the wording amendment staff report. Mr. Byers opened the public hearing at 8:04 PM. Barber Melton, representing CAN, indicated prior CAN recommendation for approval included a desire for there to be no signs in order to avoid walk-up/drive-by traffic. Grace Curry requested some form of disclosure about homestay location, arguing for smaller signs, neighbor notice and a City registry of homestays. Mr. Byers closed the public hearing at 8:11 PM. Commission discussion indicated a desire to not allow homestay signs in single family districts and for there to be an official registry of legally-established homestays as a consumer awareness product to combat illegal vacation rentals. Mr. Sizemore moved to recommend denial and requested staff to work on the registry idea. Mr. Jones seconded the motion which carried unanimously (6-0)."

-
Pro and Con:

- There would be an opportunity for persons to identify homestays in single family districts more readily.

Staff recommends City Council approve an ordinance amending the UDO to allow signs for Homestays in the RS-2, RS-4 and RS-8 zoning district.

Ms. Grace Curry, Asheville resident, urged Council to adopt a registry of legally-established homestays as a system for disclosure of homestay locations. She felt it was important to have the registry's list on the website and also available in hard copy in City Hall. She also felt the registry should be made available to real estate agents who in turn would share it (or maybe obligated to share it) with their clients.

Mr. Jay Quinn, Asheville resident, shared concerns that a sign is not enough to alert nearby residents to the existence of a homestay use. He urged Council to consider a registry that real estate agents could use and other means to make sure that when people come into town to buy and they do their diligence that we make it as easy as possible for them to find out all the relevant information about their neighborhood.

Mayor Bellamy closed the public hearing at 9:32 p.m.

At the suggestion of Councilman Freeborn, it was the majority of Council's direction to make the registry a layer on MapAsheville and also to have a section that lists all the homestays.

After a brief discussion, Councilwoman Cape moved to amend the proposed ordinance to allow a single sign, not to exceed 2.5 sq. ft., attached to the home, with verbiage on said sign be limited to name identification only (without the word "homestay.") This motion was seconded by Councilman Newman.

Councilman Mumpower supported staff's recommendation and not the motion made by Councilwoman Cape. He felt that the 4 sq. ft. sign will be unobtrusive from street level and the language on the sign is micro-managing.

Councilman Davis did not support homestays as a use by right in single-family districts.

The motion made by Councilwoman Cape and seconded by Councilman Newman failed on a 2-5 vote, with Councilwoman Cape and Councilman Newman voting "yes" and Mayor Bellamy, Vice-Mayor Jones, Councilman Davis, Councilman Freeborn and Councilman Mumpower voting "no."

Councilman Mumpower moved to amend the Unified Development Ordinance to allow signs for homestays in the RS-2 Residential Single-Family Low Density District, the RS-4 Residential Single-Family Medium Density District and the RS-8 Residential Single-Family High Density District. This motion was seconded by Councilman Freeborn and failed on a 2-5 vote, with Councilman Freeborn and Councilman Mumpower voting "yes" and Mayor Bellamy, Vice-Mayor Jones, Councilwoman Cape, Councilman Davis and Councilman Newman voting "no."

B. PUBLIC HEARING TO CONSIDER AN AMENDMENT TO THE UNIFIED DEVELOPMENT ORDINANCE AMENDING THE STANDARDS FOR TEMPORARY AND ACCESSORY USES AND STRUCTURES

ORDINANCE NO. 3480 - ORDINANCE AMENDING THE UNIFIED DEVELOPMENT ORDINANCE AMENDING THE STANDARDS FOR TEMPORARY AND ACCESSORY USES AND STRUCTURES

Mayor Bellamy opened the public hearing at 9:43 p.m.

Assistant Planning & Development Director Shannon Tuch said that this is the consideration of an ordinance to amend the Unified Development Ordinance (UDO) amending the standards for temporary and accessory uses and structures. This public hearing was advertised on May 11 and 18, 2007.

In a continued effort to modify and update various sections of the *UDO*, staff has identified the subsections related to *Temporary and Accessory Uses and Structures* as some that warranted re-organization and updating. From a land use perspective, temporary and accessory uses tend to be of a relatively low impact; however, as with other development in the City, the number of permits issued for temporary and accessory uses and structures has increased dramatically and, in an effort to control these uses and accommodate new technology and practices, some new standards have been established. These standards seek to for ensure public health, safety, and welfare as well as discourage perpetual occupation of undeveloped (or underdeveloped) properties for temporary uses by establishing time limitations on an individual event, along with restrictions to the number of events per year. Additionally, little used standards have been removed or re-located to other relevant sections of the *Ordinance* while other standards remain unchanged or are only slightly modified. Lastly, it is important to note that these standards do not regulate co-sponsored events or those held on City owned properties which are regulated through a separate review and permitting process.

In summary, this ordinance is intended to:

- Replace the existing *Accessory Uses and Structures* Section (Sec. 7-14-1) in its entirety, with a corrected and updated version, including new standards for alternative energy devices.
- Replace the existing *Temporary Uses and Structures* Section (Sec. 7-14-2) in its entirety, with a newly revised and updated version, including a table with defined uses and limitations.
- Replace the existing *Temporary Use Permits* Section (Sec. 7-5-3) in its entirety with a slightly amended version.
- Add several new definitions to Sec. 7-2-5
- Remove standards related to temporary telecommunication towers (little used).
- Re-locate standards for temporary classrooms to Sec. 7-16-2 (Use by Right, Subject to Special Requirements).

This draft has been circulated to CIBO, CAN, and CREIA along with other interested parties.

Pros:

- Provides a format that is easier to read and comprehend.
- Better reflects City adopted goals, objectives, and current practices.
- Encourages development/redevelopment of underutilized properties.
- Establishes standards for new alternative energy devices.

Con:

- Reduces the opportunity for temporary uses on an individual piece of property.

Staff recommends City Council approve an ordinance amending the UDO regarding the standards for temporary and accessory uses and structures.

Mayor Bellamy closed the public hearing at 9:44 p.m.

Councilman Mumpower felt this was another layer of control.

Mr. Shuford responded to questions raised by Councilwoman Cape about whether this ordinance would regulate weddings, community block parties, or containers used when people are renovating their homes.

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

Councilman Newman moved for the adoption of Ordinance No. 3480. This motion was seconded by Councilman Freeborn and carried on a 4-3 vote, with Mayor Bellamy, Councilman Davis and Councilman Mumpower voting "no."

City Attorney Oast said that because of the vote, this ordinance will need to come back for a second reading.

D. PUBLIC HEARING TO CONSIDER THE ISSUANCE OF A CONDITIONAL USE PERMIT FOR PROPERTY LOCATED AT 95 SMOKY PARK HIGHWAY, KNOWN AS LOWE'S HOME CENTER, FOR AN ANCILLARY USE IN A RESIDENTIAL DISTRICT FOR THE CONSTRUCTION OF A NEW STORMWATER FACILITY

ORDINANCE NO. 3477 - ORDINANCE GRANTING A CONDITIONAL USE PERMIT FOR PROPERTY LOCATED AT 95 SMOKY PARK HIGHWAY, KNOWN AS LOWE'S HOME CENTER, FOR AN ANCILLARY USE IN A RESIDENTIAL DISTRICT FOR THE CONSTRUCTION OF A NEW STORMWATER FACILITY

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 9:50 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 Blake Esselstyn 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. Esselstyn said that this is the consideration of the issuance of a conditional use permit for property located at 95 Smoky Park Highway, known as Lowe's Home Center, for an ancillary use in a residential district for the construction of a new stormwater facility.

This project seeks a conditional use permit for an ancillary non-residential use in a residential district. Specifically the request is to place stormwater facilities on a parcel zoned RS-4 for the Lowe's Home Improvement store which is located on the adjacent parcel, zoned Highway Business District.

The subject property is between Smoky Park Highway and Old Haywood Road, adjacent to the Lowe's Home Center at 95 Smoky Park Highway. The project site is zoned RS-4, is currently not developed and has no street frontage. The parcel is currently owned by Lowe's and is 0.95 acres.

The system originally installed on the north side of the Lowe's building site is failing and that location can no longer be used to satisfactorily handle excess stormwater. The applicant is proposing to drain the existing underground detention system, disconnect and remove the outlet pipe and fill in the area with "flowable" fill. This is to occur after the new pond has been constructed on the RS-4 site and the new storm drain pipe has been installed to reroute existing runoff to the new pond. The existing slope in this area will be reinforced per geotechnical recommendations so as not to cause any hazard.

The new facility proposed will be a stormwater detention pond enclosed by a 6' high chain link fence that will follow the upper rim of the pond. One 8' wide swing gate for access is to be located on the eastern edge of the detention pond, closest to the Lowe's building site. The pond's top elevation is proposed to be 15 feet above the bottom elevation and the emergency spillway level is indicated at 2 feet below the rim with 15 feet of rip-rap along the spillway. The volume provided at that spillway level is 139,394 cubic feet. A 2:1 slope characterizes the proposed detention pond.

There is an existing vegetated buffer between the Lowe's building site and the neighboring RS-4 zone, a portion of which will be removed. A new type "D" buffer will surround the lot containing the detention pond and will tie into the existing buffer. The applicant is proposing to buffer with the full 30' width along the northern edge of the parcel and to install reduced buffer of 15' wide through the use of a wooden fence, along the south and west boundaries.

The applicant is still deciding between several options for the temporary location of the excavated material until such time as it can be used to stabilize the slope where the existing stormwater facility is located. One option would involve placing the pile on a neighboring property in the HB zoning district. If this alternative is chosen, the material would be stored on the other property for no longer than 90 days.

The project as proposed appears to satisfy the conditions for ancillary non-residential uses in residential districts, as listed

in UDO 7-16-2(d)(11). These conditions relate to use, location, buffering, operation, and occupancy. At their May 2, 2007, meeting, the Planning and Zoning Commission voted unanimously to recommend approval of the Conditional Use Permit request.

Staff is of the opinion that the passive nature of the proposed use is compatible with the surrounding residentially-zoned properties, all of which currently border the large Lowe's parcel with the principal retail use.

City Council must take formal action as set forth in section 7-5-5(e)(3) of the Unified Development Ordinance (UDO), and must find that all seven standards for approval of conditional uses are met based on the evidence and testimony received at the public hearing or otherwise appearing in the record of this case (UDO 7-16-2(c)). Staff's review indicates that all seven standards are met as proposed in the site plan.

- 1. That the proposed use or development of the land will not materially endanger the public health or safety.**
The proposed project has been reviewed by City staff and appears to meet all public health and safety related requirements once the conditions enumerated by the Technical Review Committee (TRC) are met. The project must meet the technical standards set forth in the UDO, the City Standards and Specifications Manual, the North Carolina Building Code and other applicable laws and standards that protect the public health and safety.
- 2. That the proposed use or development of the land is reasonably compatible with significant natural or topographic features on the site and within the immediate vicinity of the site given the proposed site design and any mitigation techniques or measures proposed by the applicant.**
The proposed use is compatible with the surrounding natural features and topography. Grading will be required, but the site would not have not have been selected if the topography was not appropriate.
- 3. That the proposed use or development of the land will not substantially injure the value of adjoining or abutting property.**
Staff does not expect that the proposed use would have anything more than a minimal impact on neighboring property values.
- 4. That the proposed use or development or the land will be in harmony with the scale, bulk, coverage, density, and character of the area or neighborhood in which it is located.**
The proposed project would be in harmony with these characteristics of the area. This type of feature, not protruding above ground and surrounded by fences and vegetation, would be compatible with almost any semi-urban environment.
- 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.**
10 pages of the Asheville City Development Plan 2025 are devoted to water quality. The proposed project is designed to replace a failing stormwater facility and provide improved stormwater management relative to the current situation. Engineering Department staff considers the proposed pond a best management practice for stormwater runoff.

The Asheville City Council Goals and Vision statement mentions "Improved air and water quality" as well as addressing "stormwater pollution." The proposed project is designed to improve the stormwater management approach, and hence is in line with the City Council Plan.
- 6. That the proposed use is appropriately located with respect to transportation facilities, water supply, fire and police protection, waste disposal, and similar facilities.**
Though this ancillary use should not require frequent access to the aforementioned services and facilities, its location next to the high-traffic Lowe's parking lot off of Smokey Park Highway provides such access. In addition, technical review from other departments has not revealed any problems for serving the development.
- 7. That the proposed use will not cause undue traffic congestion or create a traffic hazard.**
The proposed project has been reviewed by the City's traffic engineer and is not expected to cause undue traffic congestion or create a traffic hazard. Indeed, after construction has been completed, there should be minimal vehicular traffic related to this use.

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

Pros

- Will represent an improvement over the current failing stormwater system.
- Complies with adopted City plans.

- Will provide additional buffer area between retail, parking and adjacent residential.

Cons

- Small area of RS-4 zoned land could otherwise be used for a home or homes (though potential for housing at this site under this zoning is limited)

Staff feels that the potential benefits of this project are significant, and recommends approval of the Conditional Use Permit, subject to the conditions recommended by staff.

After rebuttal, Mayor Bellamy closed the public hearing at 9:53 p.m.

Vice-Mayor Jones asked for information on how the City is handling getting other properties, that were in compliance at the time of construction, up to compliance if a problem occurs. Stormwater Services Manager Chad Pierce said that there is a procedure in place to address those properties and at the request of Mayor Bellamy, he check to see if Meadows Apartments are in compliance with our ordinance.

Councilman Newman moved for the adoption of Ordinance No. 3477, granting a conditional use permit for property located at 95 Smoky Park Highway, known as Lowe's Home Center, for an ancillary use in a residential district for the construction of a new stormwater facility, subject to the conditions recommended by City staff and 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 information provided in the staff report and as stated in the staff recommendation. This motion was seconded by Vice-Mayor Jones and carried unanimously.

ORDINANCE BOOK NO. 23 - PAGE

V. UNFINISHED BUSINESS:

A. PUBLIC HEARING TO CONSIDER AN AMENDMENT TO THE UNIFIED DEVELOPMENT ORDINANCE REGARDING NEW REQUIREMENTS FOR USE AND DIMENSIONAL NONCONFORMITIES

ORDINANCE NO. 3478 - ORDINANCE AMENDING THE UNIFIED DEVELOPMENT ORDINANCE REGARDING NEW REQUIREMENTS FOR USE AND DIMENSIONAL NONCONFORMITIES

Mayor Bellamy said that this public hearing was held on February 27, 2007, and remanded back to the Planning & Zoning Commission.

Mayor Bellamy opened the public hearing at 9:58 p.m.

Planning & Development Director Scott Shuford said that this is the consideration of an ordinance amending the Unified Development Ordinance UDO to establish new requirements for use and dimensional nonconformities.

The Planning and Zoning Commission considered this code amendment on February 7, 2007, and recommended approval of this amendment by a vote of 5-0, subject to staff adding a definition of the term "impact" and evaluating whether there was ordinance confusion about the terms "communication tower" and "telecommunication tower." Staff added a definition for "impact" and reviewed ordinance provisions concerning the other two terms, finding that there is indeed sufficient ordinance clarity about the distinctions.

The draft amendment then went on to City Council. The day of the hearing, Council received an email from James Judd, representing CAN, raising five issues below. Council referred the item back to the Commission in order to allow them to take these issues into consideration.

Staff comments on Mr. Judd's italicized comments are highlighted.

1) *There is no defined time for accumulating cost (e.g. no more than 50% of assessed value over a 5 year span). The flood plain ordinance has a 5 year time limit I believe. By the ordinance it appears that a developer could for example do one project a year*

at 35% of assessed value for as long as they want. This is a good suggestion and has been accommodated in the draft.

2) Proposed 7-17-2(b) last sentence should state..."as defined in Section 7-17-1 above" as opposed to "as defined in Section 7-11-1 above". Good catch; change made.

3) Concerned that the cost side of the "50% renovation" equation is not better defined / controlled in the ordinance. Cost is defined in the city rate structure as the greater of the actual or estimated hard (ex. material) and soft (ex. architects) costs combined. When the co-owner of Greenlife publicly states that they have spent over \$1 million dollars on architects for their renovation but then state that their renovation cost is \$250,000...there is a need for better communication. The Building Safety Department evaluates construction costs using generally accepted construction cost estimating practices; no adjustment is needed.

4) Concerned with accountability, traceability, and definition drift regarding MIA Appraisal. More than one appraisal is a common requirement in other situations. If cost is a concern, the tax value is always a free option. Staff does not recommend multiple appraisals. We do not use multiple appraisals for buying or selling properties, for example. MAI appraisers are professionals and adhere to industry standards. No change is recommended.

5) Discontinuation of nonconforming uses. A nonconforming use is allowed to continue unless the use is discontinued for a period of 180 or more consecutive days, and there are no substantial good faith efforts to re-establish the use during this period. Obtaining permits to maintain the existing use or continuous efforts to market the property for sale or lease for the existing use shall be regarded as substantial good faith efforts.

Would a cardboard posted sign on the property or a free ad in IWANNA meet the criteria?
Is there a time beyond which good faith efforts expire?

Some additional language has been added to address Mr. Judd's concerns.

There has been recent community confusion about how the nonconformities section of the UDO addresses dimensional nonconformities. The community perception is that any renovation amounting to more than 50% of the appraised value of the structure causes full compliance with ALL sections of the UDO. This is incorrect. In Asheville, the "50% rule" applies only to certain site improvements, not to all of them. The code section in question is Section 7-11-2(b)(1) that states, in part, that "{t}he following developments must bring the entire site into full compliance with the requirements of Article XI of this chapter" (emphasis added) with one of the listed developments being "{r}enovations with a total cost exceeding 50 percent of the assessed value of the building, according to Buncombe County tax records." The reference to Article XI limits site compliance to only the standards that are covered in that Article which are:

- Parking, loading and access standards
- Landscape and buffering standards
- Open space standards
- Sidewalk requirements

As a consequence, building location, setback, height and other requirements are not required to be complied with in renovations exceeding 50% of appraised value. While it is common for zoning codes to exempt certain features from compliance in cases of significant site improvement, Asheville's UDO is one of the more generous. We have seen situations where virtually the entire structure has been demolished without triggering compliance with anything more than site design requirements.

In response to Council direction, staff has developed the draft ordinance which significantly increases the extent to which "virtual teardowns" must comply with all dimensional requirements but which exempts renovations (see definition below) from compliance with anything other than site design (Article XI) requirements.

Renovation means the repairing or remodeling of a structure in which the exterior walls, foundation and roof are maintained structurally intact.

There are two other significant changes in this ordinance from the current situation regarding nonconformities. First, the current provisions require adjoining lots in common ownership on the day that the UDO became effective to be combined to create a conforming or less-nonconforming lot(s). In other words, if there are two adjoining lots that were lawfully created sometime in the past and which have become nonconforming due to code changes and if the lots were owned by the same entity in 1997, they cannot be separately developed. The same two lots owned by different entities in 1997 can be separately developed. The proposed amendment corrects this inequity.

Second, the proposed ordinance creates a new role for the Planning and Zoning Commission. Under current code, a

nonconforming use can be replaced by another nonconforming use of equal or lesser intensity using the table provided in Section 7-11-2(d)(10). If the proposed existing or replacement use is not specifically listed, City staff makes the determination of whether replacement can occur. Under the revised ordinance, the Planning and Zoning Commission makes the determination as to whether the unlisted uses are of equal or lesser intensity.

Pros:

- Provides a simpler, cleaner approach to nonconforming uses and dimensional nonconformities.
- Meets the expectations of many in the community about site compliance during renovation.

Cons:

- Will likely result in increased cost of site development.
- Some projects may not be pursued due to expense of compliance.

The Planning and Zoning Commission considered this code amendment on April 4, 2007 and recommended approval of the revised amendment by a vote of 7-0. City staff recommends City Council approve an ordinance amending the UDO to establish new requirements for use and dimensional nonconformities.

Mayor Bellamy closed the public hearing at 9:59 p.m.

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

Councilman Newman moved for the adoption of Ordinance No. 3478. This motion was seconded by Councilman Davis and carried on a 6-1 vote, with Councilman Mumpower voting "no."

ORDINANCE BOOK NO. 23 - PAGE

B. PUBLIC HEARING TO CONSIDER AN AMENDMENT TO THE UNIFIED DEVELOPMENT ORDINANCE REGARDING REVISIONS TO THE LANDSCAPE STANDARDS

ORDINANCE NO. 3479 - ORDINANCE AMENDING THE UNIFIED DEVELOPMENT ORDINANCE REGARDING REVISIONS TO THE LANDSCAPE STANDARDS

Mayor Bellamy said that this public hearing was held on April 10, 2007, and continued on May 8, 2007, to this date.

Mayor Bellamy opened the public hearing at 9:59 p.m.

Assistant Planning & Development Director Shannon Tuch said that City staff presented an amendment draft to the city's current Landscape and Buffering standards (Sec. 7-11-2) at the April 10th hearing. As part of the discussion, it was requested that staff (1) make some minor adjustments to the proposed draft; (2) examine the proposed Alternative Compliance standards for improved clarity and efficacy; and (3) provide some recommendations for requiring landscaping and/or tree preservation as it related to single family subdivision development. Changes identified in the staff memo dated April 10, 2007, have been incorporated and new changes as a result of the discussion on April 10, 2007, are also included in the proposed ordinance before Council.

The minor changes were easily addressed through the latest revised draft and include:

- **Screening of Outdoor Areas** – Current standards and staff's recommendation is that the vegetation is to be placed on the exterior of the fence used to screen outdoor areas such as dumpsters, loading docks, outdoor storage, etc.; this standard remains unchanged from the former draft.
- **Reduced Buffers with Application of a Privacy Fence** – Council concern was taken into consideration and the draft has been amended to require all buffer vegetation to be planted in a minimum 7-foot wide planting strip on the exterior of the fence, facing the abutting property. If the applicant wishes to place this material on the inside of the fence, then a request for alternative compliance would need to be sought.
- **Earthen Berm as an Alternative to Street Buffers** – the former draft required that the berm be covered in "vegetation"; it is staff's recommendation that this receive a very minor amendment to read, "to be completely covered with trees, shrubs, perennials, and/or groundcovers". An earthen berm covered in turf grass would be a more effective buffer than the basic requirement of one shrub for every five linear feet. At a minimum, the street buffer would also contain street trees so requiring more significant plantings may discourage the use of a berm.

Alternative Compliance

The standards for Alternative Compliance were re-examined and were, with minor adjustments, generally felt to be more than adequate. The proposed standards are significantly more bounded and non-discretionary than the current process and are felt to be a great improvement. To add more standards may detract from the goal of providing an appropriate level of flexibility, particularly to those constrained infill situations; to add more process requirements would take more time and resources and should be balanced against the desire to provide an acceptable level of customer service. Staff is proposing that the standards remain as proposed with two minor adjustments which include:

- The 30 day appeal time (as described in Article VI) is identified in more detail.
- A requirement for additional notification be provided should the Planning Director choose to reject the Tree Commission's recommendation.

Staff would like to recommend that the proposed standards be adopted and tested for six months, after which staff will provide a report detailing total cases, nature of requests, efficacy of standards and notification, and other pertinent information including possible recommendations for revision/amendment.

Tree Preservation/Re-planting

Addressing the concern over the lack of landscape requirements and/or required tree preservation as it related to single family subdivision proved challenging. An examination of other North Carolina municipalities' standards identified a very notable lack of requirements for single family homes and lots (unless located on lands with important aesthetic or environmental values that warrant special protection). In summary, North Carolina lacks the necessary enabling legislation for us to comfortably recommend such requirements on single family lots. A requirement in association with the creation of a multi-family project or a major subdivision may be considered where a proposed development must be reviewed and approved to comply with all applicable standards. In these cases, a specified amount of tree preservation and/or tree replanting may be considered. The proposed Open Space amendment, if adopted, would require open space to be provided for any residential project of eight units or more. In the interest of consistency, tree preservation/re-planting requirements could be considered for those residential projects over eight units or eight lots.

When examining other standards from other states, the most common approach was to require a preservation/replanting area equivalent to 30% of the total site. Staff would like to propose a variation of this standard that would require a preservation/replanting area of 30% where some or all of that 30% may fall on the required open space area(s) and/or property line buffers. When the 30% "tree-save area" exceeds the open space requirement then the balance must be located elsewhere on individual lots. Although enforcement of tree-save areas on private lots may not be possible once the development of the subdivision is completed, staff feels as though this would still provide value and warrants consideration since it provides the opportunity for wooded lots to those homeowners. Understanding the positive effect that mature trees have on property values (for a variety of aesthetic, energy, and environmental reasons), it would be expected that a large majority of those tree-save areas would remain in place.

Lastly, it is important to note that inflexible standards, coupled with a lack of administrative relief, provides opportunity for judicial intervention. Alternative compliance provisions or mitigation options should provide realistic opportunities for development. Staff has proposed a somewhat conservative standard with flexibility offered through the alternative compliance process. Council may also wish to consider a "tree-in-lieu" fee similar to that described in the current Open Space amendment or some other off-site mitigation option (these options are not reflected in the revised draft).

The Chairman of the Asheville Tree Commission spoke in support of the proposed standards.

Mayor Bellamy closed the public hearing at 10:04 p.m.

Councilman Mumpower couldn't support this ordinance in that he felt this is a step towards an elite community.

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

Councilman Davis moved for the adoption of Ordinance No. 3479. This motion was seconded by Councilwoman Cape and carried on a 6-1 vote, with Councilman Mumpower voting "no."

ORDINANCE BOOK NO. 23 - PAGE

VI. NEW BUSINESS:

A. ENDORSEMENT TO ESTABLISH CITY OF ASHEVILLE OUTDOOR RECREATION FACILITIES AS TOBACCO FREE ZONES

Parks & Recreation Director Roderick Simmons said that this is the consideration of an endorsement to establish City of Asheville outdoor recreation facilities as tobacco free zones thus discouraging the use of tobacco products in public outdoor recreation areas in an effort to eliminate park user's exposure to secondhand smoke.

The Recreation Board recommends Asheville City Council's endorsement to discourage the use of all tobacco products in all City of Asheville outdoor recreation facilities thus establishing tobacco free facilities in conjunction with Project ASSIST Tobacco Prevention Coalition. These facilities include all public park properties such as ball fields, greenways, play areas, picnic shelters, swimming pools, tennis courts, Nature Center, Asheville Municipal Golf Course, Food Lion Skate Park, Aston Tennis Center and Riverside Cemetery.

It is the goal of the Recreation Board and the Parks and Recreation Department to create a healthy environment in all city recreation facilities. By discouraging tobacco use in outdoor recreation areas dramatically reduces the exposure of youth to secondhand smoke thus greatly enhancing a healthy environment at these public outdoor recreation areas.

Project ASSIST along with Teens Against Tobacco Use Asheville High and Question Why Youth Empowerment Center is working locally via the Buncombe County Health Center to reduce tobacco use among youth and adults and to promote public health policies that reduce the public's exposure to second-hand tobacco smoke.

Signs depicting public outdoor recreation facilities as tobacco free zones by discouraging tobacco use will be posted in all City of Asheville public outdoor recreation areas. Project ASSIST will participate in the cost of producing and placing signs in the parks.

Pros:

- Secondhand smoke is a proven cause of cancer, heart disease, stroke, emphysema and asthma in both smokers and non-smokers.
- Secondhand smoke levels in outdoor public places can reach levels as high as those found in indoor facilities.
- Tobacco free parents, coaches and recreational leaders are powerful role models that tobacco use is not part of a healthy lifestyle.
- Studies show that children who are exposed to secondhand smoke are more likely to start smoking as adolescents.

Cons:

- The signs do not prohibit tobacco use but discourage the use of tobacco, thereby making compliance a voluntary act of the park user.
- Cost of sign installation \$1500 to \$2500. Project ASSIST will contribute to the sign cost.

The Recreation Board recommends City Council to pass a motion to endorse City of Asheville public outdoor recreation facilities as tobacco free zones by discouraging the use of tobacco products in public outdoor recreation areas.

Ms. Colleen Daly, Asheville High School student, spoke in support of the resolution.

Mr. Lee Storrow, Asheville High School student, spoke in support of the resolution, noting that they have obtained over 750 signatures on a petition endorsing this request.

Councilman Freeborn was disgusted with the number of cigarette butts and other smoking items that are picked up by children in our parks.

In response to Vice-Mayor Jones, City Attorney Oast said that at this time we can't legally prohibit smoking in outdoor areas, but only discourage it; however, there are some state laws pending that would allow the City to legally prohibit the use of tobacco products in public outdoor recreation areas and he would advise Council when, and if, that passes.

Councilman Mumpower moved to endorse the City of Asheville public outdoor recreation facilities as tobacco free zones by discouraging the use of tobacco products in public outdoor recreation areas. This motion was seconded by Councilman Freeborn and carried unanimously.

B. RESOLUTION NO. 07-112 - RESOLUTION TO ESTABLISH BOUNDARIES BETWEEN ASHEVILLE AND WOODFIN

City Attorney Oast said that this is the consideration of a boundary adjustment between City of Asheville and Town of Woodfin.

In discussing annexation issues with the Town of Woodfin, the staffs of each municipality identified opportunities to improve service provision and community identification through municipal boundary adjustments. For example, a portion of the University of North Carolina at Asheville is located in Woodfin and a portion of a 19-23 off-ramp is in Asheville but is more logically served by Woodfin. This has been previously discussed with Council as part of our legislative package. Legislation was introduced to address this issue, subject to the two municipalities identifying the location of the boundary.

These adjustments will create a more logical and identifiable boundary between the City of Asheville and the Town of Woodfin. Because of the somewhat unusual fact situation here, legislative action is the most expedient way to accomplish what needs to be done. This resolution will be provided to the legislative for incorporation into the pending bill, and will enable the delegation to move forward with the requested boundary adjustment. A similar method was employed in 1997 to adjust the boundary between Asheville and Biltmore Forest along Hendersonville Road.

Our discussions with Woodfin on this particular issue have led to discussions on the broader topic of other areas that are near our common boundaries. We anticipate coming to Council in the near future with a proposal for an annexation agreement between Asheville and Woodfin. This does not mean that areas covered by the agreement will be annexed, but is a statutorily authorized method for determining which areas—when developed to urban standards--should more logically be considered for inclusion in the corporate limits of one city or the other, and in some cases can slow down the rate of “competitive” annexation.

City staff recommends City Council authorize the Mayor, Attorney and Clerk to execute and transmit a resolution establishing the boundary between City of Asheville and the Town of Woodfin, for inclusion in the pending legislation.

Using a map, City Attorney Oast responded to questions raised by Councilman Mumpower, noting that the boundary adjustment line is a logical service line.

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. 07-112. This motion was seconded by Councilwoman Cape and carried unanimously.

RESOLUTION BOOK NO. 30 - PAGE

C. RESOLUTION NO. 07-113 - RESOLUTION APPROVING THE REPORT SETTING FORTH PLANS TO PROVIDE SERVICES TO THE AREA PROPOSED FOR ANNEXATION KNOWN AS THE BILTMORE LAKE AREA

RESOLUTION NO. 07-114 - RESOLUTION APPROVING THE REPORT SETTING FORTH PLANS TO PROVIDE SERVICES TO THE AREA PROPOSED FOR ANNEXATION KNOWN AS THE SARDIS ROAD AREA

RESOLUTION NO. 07-115 - RESOLUTION APPROVING THE REPORT SETTING FORTH PLANS TO PROVIDE SERVICES TO THE AREA PROPOSED FOR ANNEXATION KNOWN AS THE SCHENCK GATEWAY AREA

Urban Planner Julia Cogburn said that this is the consideration of resolutions approving the Annexation Services Plan for the Biltmore Lake Area, Sardis Road Area, and Schenck Gateway Area.

Staff has identified three areas with potential for being annexed: Biltmore Lake Area, Sardis Road Area, and Schenck Gateway Area. 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.

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

- Council Adoption of Resolution of Intent – 5/15/07
- Council Adoption of Services Plan – 5/22/07
- Public Information Meeting – 7/02/07
- City Council Public Hearing – 7/24/07
- Annexation Ordinance Adopted – 8/14/07

- Effective Date – 12/31/07

The second step in the annexation process is for the City Council to consider and approve an Annexation Services Plan for the areas to be annexed.

She reviewed the Plan demonstrating how each area proposed for annexation meets the statutory qualifications for annexation and further demonstrates the capability of the City to provide urban services to these areas.

City staff recommends that City Council adopt the resolutions approving the Annexation Services Plan for the Biltmore Lake, Sardis Road and Schenck Gateway Areas.

Ms. Cogburn, along with Urban Planner Blake Esselstyn summarized the Plan for Services as follows:

Biltmore Lake Area - The Biltmore Lake Area is located southwest of the current City limits. The area is predominately developed with single-family residences. The area contains 440 acres and has an estimated population of 768 persons. The revenue summary is as follows for the Biltmore Lake area: Ad valorem taxes - \$772,581; state utility taxes - \$80,319; sales tax - \$263,611; Powell Bill funds - \$28,943; fees, charges & permits - \$32,302 for a total of \$1,177,756. The estimated expenditures total \$179,420. The estimated capital expenditures total \$974,905.

Sardis Road Area - The Sardis Road Area is located southwest of the current City limits. The area contains a mixture of commercial, residential, institutional and industrial uses. The area contains 415.8 acres and has an estimated population of 1073. The revenue summary is as follows for the Sardis Road area: Ad valorem taxes - \$377,068; state utility taxes - \$75,988; sales tax - \$128,954; Powell Bill funds - \$27,788; fees, charges & permits - \$45,130 for a total of \$654,928. The estimated expenditures total \$115,136. The estimated capital expenditures total \$2,334,406.

Schenck Gateway Area - The Schenck Gateway Area is located adjacent to the current City limits (to the south) at the entrance to the Biltmore Park community. The parcel contains a gas station, fast food restaurant, and a convenience store. The area contains 11.0 acres and has an estimated population of 0. The revenue summary is as follows for the Schenck Gateway area: Ad valorem taxes - \$21,650; state utility taxes - \$2,004; sales tax - \$7,420; Powell Bill funds - zero; fees, charges & permits - zero for a total of \$31,074. The estimated expenditures total \$4,025. The estimated capital expenditures total \$4,717.

With regard to the specific departments, Ms. Cogburn and Mr. Esselstyn summarized the following:

Regarding police protection: The additional land area, street mileage, dwelling units, businesses and improvements will require expansion of the Police Department as further described below.

Extending service into the proposed annexation areas will require operational adjustment in two primary areas:

1. Configuration of patrol districts covering the proposed annexation areas so as to provide for effective manpower deployment and a balanced response time to calls for service.
2. Adding one (1) additional patrol unit to accommodate the anticipated increase in demand for police services (see information below).

The Biltmore Lake Area will be served by an expansion of the Adam Patrol District.

The Sardis Road Area will be served by an expansion of the Adam Patrol District.

The Schenck Gateway Area will be served by an expansion of the Charlie Patrol District.

Based on the estimated calls for service in the annexation regions, and in an effort to improve response time to critical calls for service, a new patrol beat will be added to the City's Police Department on or before January 1, 2008. This beat will be serviced by one officer 24/7. This addition requires the hiring of five (5) officers and two (2) police vehicles. The cost of hiring a new police officer (total initial cost - \$46,735.00) is as follows:

- Salary and benefits	\$40,235.00
- Radio	\$ 4,000.00
- Weapon	\$ 1,000.00
- Uniforms, Equipment, Vest	\$ 1,500.00

The cost of a new vehicle with all necessary equipment is \$38,000.00.

Regarding fire protection: The Biltmore Lake Area will be primarily served by Stations 10 and 11 with estimated annual calls for service of one hundred and seventy-five (175) to two hundred (200) calls. The Sardis Road Area will also be primarily served by Stations 10 and 11 with estimated calls for service of one hundred (100) to one hundred and twenty-five (125) calls. Schenck Gateway will be primarily served by Stations 4 and 11 with estimated calls for service of twenty-five (25) to fifty (50) calls. When Station 12 is placed into operation the Biltmore Lake and Sardis Road Areas will be primarily served by this station.

The extension of fire protection services is not simply an extension of existing department resources. The City is required by G.S. 160A-49.1 to offer existing fire service entities contract opportunities which allow for the continued service of annexed areas by existing rural fire departments. The City maintains the responsibility of assuring a level of service comparable to the service level within the existing incorporated areas. The involvement of the rural fire department may require the City to supplement service where contract service is not comparable to the municipal service. The City recognizes these circumstances may affect its plan for extending fire protection; therefore, the City has developed a plan that incorporates alternative solutions to extending fire protection to annexed areas.

Regarding solid waste collection: The extension of solid waste collection services is not simply an extension of existing department resources. The City is required by G.S. 160A-49.3 to offer existing private service entities contract opportunities which allow for the continued service of annexed areas by existing companies. The City maintains the responsibility of assuring a level of service comparable to the service level within the existing incorporated area. The involvement of the existing private companies may require the municipal department to supplement service where contract service is not comparable to the municipal service. The City recognizes these circumstances may affect its plan for extending solid waste collection services; therefore, this plan incorporates alternative solutions to extending solid waste collection services to annexed areas.

Alternative No. 1 – Extension of Existing City of Asheville Public Works Department – Sanitation Division Services by City Personnel and Equipment with the Payment to Private Companies for Economic Loss

To extend services to the annexation areas, an additional automated truck and a new MEO III position are required by the City of Asheville Public Works Department – Sanitation Division. With this additional truck and associated personnel to operate the truck, all solid waste collection services described as being provided by the City, will be provided on substantially the same basis and in the same manner as described in this plan. Costs associated with the annexation include: the purchase of new rollout containers, increased tipping fees, recycling costs, and potential “economic loss” payments to affected contractors.

Alternative No. 2 – Contract with Existing Private Companies for Curbside Roll-Out Container Service Supplemented by Municipal Specialized Services for Collection of Trash, Yard Waste, Leaves, Dumpster Containers and Recycling

Private companies having an average of fifty (50) or more residential customers, or receiving average monthly revenue from residential customers of \$500 or more, within the annexation areas described in this plan, could be offered opportunities to contract for continued service.

Regarding street maintenance services, the City has evaluated the streets in the annexation areas for inclusion in the maintenance program described above. The results of that evaluation are listed below with the names and mileages of streets expected to be included by annexation area. General street conditions for the listed roads are satisfactory, unless otherwise indicated in this plan, and any maintenance issues will be handled as part of the City’s routine maintenance funding.

BILTMORE LAKE AREA

Street	Length (feet)	Length (miles)	Average Width (feet)
Orvis Stone Circle	2640	0.5	17
Orvis Stone Circle	544	0.1	17
Water Walker Drive	1584	0.3	22
Minky Court	257	0.05	18
Lake Drive	4224	0.8	19
Perch Fly Court	344	0.07	18
Coves Pheasant Court	330	0.06	18
Greenwells Glory Drive	907	0.17	24
Caddis Court	1322	0.25	24
Gosling Court	230	0.04	18
Wickams Fancy Drive	4224	0.8	24
Kells Blue Court	296	0.06	18
Quill Gordon Court	411	0.08	18

May Fly Court	264	0.05	18
Mountain Drive	3696	0.7	31
Blue Damsel Court	446	0.08	18
Sawyers Pheasant Lane	456	0.09	18
Sawyers Pheasant Lane	553	0.1	18
Fennel Dunn Circle	883	0.17	24
Fennel Dunn Circle	1580	0.3	18
Harrop Dunn Court	838	0.16	18
Sparkle Dunn Court	355	0.07	18
Welsh Partridge Circle	4063	0.77	24
French Partridge Lane	708	0.13	18
Grey Goose Court	194	0.04	18
Hoolet Court	335	0.06	18
Damp Crane Lane	377	0.07	18
Olive Dunn Drive	557	0.11	24
Hillcrest Street	756	0.14	19
Mountain Wasp Drive	969	0.18	24
Ginger Quill Circle	540	0.1	18
Ginger Quill Circle	1278	0.24	18
Kingsmill Court	1042	0.2	18
TOTAL	37,203	7.04	

It is proposed that existing street lights in the Biltmore Lake Area will be taken over by the City. There are thirty-six (36) existing street lights that are scheduled to become the responsibility of the City at an annual cost of \$480 per light. The annual cost (\$480 per light) for maintaining the existing lights in the Biltmore Lake area is \$17,280.

The City has also evaluated the existing sidewalks in the Biltmore Lake Area and has determined that 18,489 linear feet of chip seal sidewalks (non-ADA compliant) at a cost of \$739,500.00 would need to be replaced prior to the City taking over the maintenance of these sidewalks. The City has also determined that street repairs are needed in the area (4924 linear feet of streets needing shoulder repair; 245 drains need inverts poured) at a cost of \$31,520.00. The cost of these improvements is included in the financing plan found in Section 3 of this Plan for Services with sidewalk replacement costs phased over a ten (10) year period.

SARDIS ROAD AREA

Street	Length (feet)	Length (miles)	Average Width (feet)
West Oakview Road	3696	.7	19
Morse Drive	1248	.23	20
Crowell Farms Drive	2266	.42	22
West Point	1396	.26	19
Slosman Drive	948	.18	22
Silo Drive	314	.05	22
Pole Barn Drive	764	.14	22
East Farm Creek	422	.08	22
West Farm Creek	125	.02	22
Eagles Nest	1219	0.23	22
Country Meadows Road	1721	0.32	22
Brandi Drive	389	0.07	21
Nicolas Drive	428	0.08	21
Baity	481	0.09	21
TOTAL	15,417	2.87	

It is proposed that existing street lights in the Sardis Road Area will be taken over by the City. There are thirty-three (33) existing street lights that are scheduled to become the responsibility of the City at an annual cost of \$480 per light. The annual cost (\$480.00 per light) for maintaining the existing and proposed lights in the Sardis Road Area is \$ 15,840.00.

The City has evaluated the street infrastructure in the Sardis Road Area and has determined that a number of repairs will be needed. The repairs will include: two hundred and seventy (270) square yards of street patching; replacement of one hundred and forty-one (141) improperly constructed storm drains; and the construction of a turnaround on Morse Drive. The cost of these improvements (\$57,560.00) is included in the financing plan found in Section 3 of this Plan for Services and phased for replacement to City standards over a ten (10) year period.

SCHENCK GATEWAY AREA

There is no street maintenance that is required in the proposed Schenck Gateway Area and no street lights that will become the responsibility of the City.

Regarding water services: The City of Asheville has evaluated each area being considered for annexation and has determined the following regarding the extension of water service to each of the annexation areas:

1. Biltmore Lake Area: Potable water and fire protection service are available to all parcels in this annexation area on substantially the same level as other parts of the City, as shown on Sheet 2 of 7 of the Plan for Services Drawings. Therefore, no water system improvements are proposed for this area.
2. Sardis Road Area: Potable water and fire protection service are available to most of the parcels in this area on substantially the same level of service as other parts of the City. However, fire protection service needs to be upgraded for all parcels in the vicinity of Morse Drive. As such, approximately, 1,770 linear feet of 6-inch diameter water pipe are proposed to be constructed to bring the service to substantially the same level as other parts of the City. Existing and proposed water system infrastructure is shown on Sheet 4 of 7 of the Plan for Services Drawings.
3. Schenck Gateway Area: Potable water and fire protection service are available to this area on substantially the same level of service as other parts of the City, as shown on Sheet 6 of 7 of the Plan for Services Drawings. Therefore, no water system improvements are proposed for this area.

The City of Asheville will complete construction of the proposed water system improvements within two (2) years of the effective date of annexation.

Regarding sewer collection services: The City of Asheville has evaluated each area being considered for annexation and has determined the following regarding the extension of sewer service to each of the annexation areas:

1. Biltmore Lake Area: Major sanitary sewer trunk lines and interceptors are currently in place. Sanitary sewer service is available to this annexation area at substantially the same level as other parts of the City, as shown on Sheet 3 of 7 of the Plan for Services Drawings. Therefore, no sanitary sewer system improvements are proposed for this area.
2. Sardis Road Area: Major sanitary sewer trunk lines and interceptors are currently in place for most of the area. However, sanitary sewer service is not available for the upper northwest portion of this area and for all existing parcels in the vicinity of Morse Drive. As such, approximately 6,455 linear feet of 8-inch sanitary sewer is proposed to be constructed to bring the service to substantially the same level as other parts of the City. Existing and proposed sanitary sewer system infrastructure is shown on Sheet 5 of 7 of the Plan for Services Drawings.
3. Schenck Gateway Area: Major sanitary sewer trunk lines and interceptors are currently in place. Sanitary sewer service is available to this annexation area on substantially the same level as other parts of the City, as shown on Sheet 7 of 7 of the Plan for Services Drawings. Therefore, no sanitary sewer system improvements are proposed for this area.

The City of Asheville will complete construction of the proposed sanitary sewer system within two (2) years of the effective date of annexation.

Regarding general government, the City of Asheville is governed by a City Council consisting of a Mayor, Vice-Mayor, and five Councilpersons with general administration responsibilities delegated to a City Manager. Supporting the City Manager are key professionals and department heads specializing in public works, police protection, fire protection, urban land use planning and zoning, building code enforcement, legal matters, parks and recreation and various other municipal activities and functions. The City of Asheville has active minimum housing code and State building code administration, zoning and subdivision ordinance administration, recreational programs and parks administration, community revitalization and affordable housing grants administration, economic development efforts and many other planning and related activities in an effort to make Asheville a better community for present and future residents, businesses and property owners. Employees and employee relations are managed by

the City Manager. The City of Asheville is an Equal Opportunity Employer. Three well-qualified practicing attorneys provide legal counsel to the City.

In response to Councilman Freeborn, Planning & Development Director Scott Shuford said that he would get a breakdown of what the net increase will be to the taxpayers who are proposed to be annexed.

Councilman Mumpower said that there are arguments in support of forced annexation but the personal barrier for him is that it is forced and he would not support the resolutions.

Regarding public comment, City Attorney Oast said that statutory process set up for public comments is at the public information meeting on July 2, 2007, and the City Council public hearing on July 24, 2007.

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

Councilwoman Cape moved for the adoption of Resolution Nos. 07-113, 07-114, and 07-115. This motion was seconded by Vice-Mayor Jones and carried on a 6-1 vote, with Councilman Mumpower voting "no."

RESOLUTION NO. 07-113 - RESOLUTION BOOK NO. 30 - PAGE
RESOLUTION NO. 07-114 - RESOLUTION BOOK NO. 30 - PAGE
RESOLUTION NO. 07-115 - RESOLUTION BOOK NO. 30 - PAGE

D. CONSIDERATION OF AN APPOINTMENT TO THE CIVIL SERVICE BOARD

It was the consensus of City Council to instruct the City Clerk to prepare the proper paperwork to reappoint Barbara Marlow to serve another two-year term on the Civil Service Board, term to expire May 21, 2009, or until her successor has been appointed.

VII. OTHER BUSINESS:

VIII. INFORMAL DISCUSSION AND PUBLIC COMMENT:

Councilman Mumpower commented on confronting Asheville's open air drug market. He said that on January 16 following intense Council/staff interplay, Councilman Mumpower made a motion to (1) charge our city and police administration to develop in collaboration with community partners a comprehensive, strategic and operational plan to eliminate our open air drug market in all Asheville neighborhoods. Other members of Council amended that motion to (1) affirm our support for Police Chief Hogan and the men and women of the Asheville Police Department, expressing our full confidence in their dedication to protect the public safety of the citizens and have confidence in their professionalism to achieve that goal; and (2) instruct our City Manager to explore opportunities to create job opportunities and affordable health care and ways to reduce poverty in Asheville's neighborhoods. Councilman Davis and Councilman Mumpower voting against that motion because they felt it watered down the core issue. Since January we have had a couple of presentations by the Police Chief and two or more discussions by Council on this issue. This past week, during our first formal discussions on budgeting our police on our commitment to eliminate the open air drug market in Asheville, discussion was suppressed. That was important because it precluded deliberations on whether staff and Council are upholding or abandoning our earlier mandate on addressing our open air drug market. His concern is that we do not have anything from the City Manager and Police Chief that remotely represents what we have requested - a comprehensive, strategic and operational plan to eliminate our open air drug market in all Asheville neighborhoods. Without a plan, we cannot have a valid budget. Without a valid budget, we cannot assign accountability. Without accountability, we have little assurance of success. Without success, we continue to fail in our responsibilities for public safety in all Asheville neighborhoods. His request is that we formally request (1) the City Manager and Police Chief to fulfill their mandate by developing a comprehensive plan to eliminate our open air drug market and a reasonable budget devoted to that end; and (2) we re-open deliberations on funding for public safety including the resources required to implement our open air drug market interdiction effort. He ended by saying that in January we dedicated ourselves to eliminating our open air drug market in all Asheville neighborhoods. Council has the power to sidestep this responsibility. We do not have the power to do so without public accountability. We should charge our City and police administration to develop in collaboration with community partners a comprehensive, strategic, and operational plan to eliminate our open air drug market in all Asheville neighborhoods.

A resident of the Biltmore Lake area spoke in opposition of forced annexation of the Biltmore Lake area and urged City Council and/or staff to talk with residents who have requested meetings and who can offer assistance.

Mayor Bellamy invited the public to attend the City's Memorial Day celebration on Monday, May 28, 2007, at 3:00 p.m. at

the City-County Plaza.

IX. ADJOURNMENT:

Mayor Bellamy adjourned the meeting at 11:12 p.m.

CITY CLERK

MAYOR