

Tuesday – April 17, 2007 - 5:00 p.m.

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

**SCHOOL BOARD INTERVIEWS**

City Council interviewed William Todd Weatherly, Jacquelyn Hallum, John Legerton, Brian Sarzynski and Precious Folston for two vacancies on the Asheville School Board.

**PLEDGE OF ALLEGIANCE**

Mayor Bellamy led City Council in the Pledge of Allegiance.

**INVOCATION**

Councilman Newman gave the invocation.

**I. PROCLAMATIONS:**

**A. PROCLAMATION PROCLAIMING MAY 7-12, 2007, AS "ASHEVILLE-BUNCOMBE COUNTY SENIOR GAMES WEEK"**

Councilman Freeborn read the proclamation proclaiming May 7-12, 2007, as "Asheville-Buncombe County Senior Games Week" in the City of Asheville. He presented the proclamation to Mr. David Herbert, Ms. Dee Black and Mr. Don Moritz, who briefed City Council on some activities taking place during the week.

**B. PROCLAMATION PROCLAIMING MAY, 2007, AS "MOTORCYCLE AWARENESS MONTH"**

Councilman Mumpower read the proclamation proclaiming May, 2007, as "Motorcycle Awareness Month" in the City of Asheville. He presented the proclamation to Mr. Roger Williams, who briefed City Council on some activities taking place during the month.

**C. PROCLAMATION PROCLAIMING MAY, 2007, AS "REFLUX SYMPATHETIC DYSTROPHY SYNDROME AWARENESS MONTH"**

Councilwoman Cape read the proclamation proclaiming May, 2007, as "Reflux Sympathetic Dystrophy Syndrome Awareness Month" in the City of Asheville. She presented the proclamation to Dr. Mary Sedgewick, who briefed City Council on some activities taking place during the month.

**II. CONSENT AGENDA:**

**A. RESOLUTION NO. 07-84 - RESOLUTION AUTHORIZING ELAINE EDEN DRIVE AND TREVOR TRAIL IN THE BREVARD ROAD AREA TO BECOME PUBLICLY MAINTAINED STREETS**

Summary: The consideration of a resolution authorizing Elaine Eden Drive & Trevor Trail in the Brevard Road Area of Asheville to become a publicly maintained street.

Section 7-15-1(f)-4.a requires that streets dedicated for public uses be accepted by resolution of City Council.

Elaine Eden Drive & Trevor Trail are developer-constructed streets that have an average width of 22 feet and a length of 0.12 & 0.03 miles. Transportation and Engineering Department Staff inspected this street and finds it to be constructed in accordance with the approved standards.

Following City Council's approval of this resolution, Elaine Eden Drive & Trevor Trail will be added to the official Powell Bill list.

Pros:

- The City will receive Powell Bill funds from the NCDOT to maintain the roadway.
- Homes constructed on this roadway increase the tax base in the City.

Con:

- Powell Bill funds will not cover 100% of the cost to maintain the street.

City staff recommends City Council approve a resolution authorizing Elaine Eden Drive & Trevor Trail in the Brevard Road Area of Asheville to become a publicly maintained street.

**RESOLUTION BOOK NO. 30 – PAGE 305**

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

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

**III. PRESENTATIONS & REPORTS:**

**A. FAIR HOUSING COMMISSION ANNUAL REPORT**

Mr. Isaac Coleman, Chairman of the Asheville-Buncombe Fair Housing Commission, said that former chair Mr. Jim McCulley recently died and he became Chairman. He recognized Jim's dedication and contributions to the Commission. Although he was confined to a wheelchair, he attended meetings and trainings and carried out his duties until his health failed and he was no longer able to carry out his duties.

During the period that he has been on the Commission, they have faced many challenges. Funding cuts from the Community Development Block Grant funds, Buncombe County, the U.S. Department of Housing and Urban Development and resulting staff shortages put a serious strain on our mission to address housing discrimination issues in Asheville and Buncombe County. One of the positions we lost was a person who was bi-lingual. This limited our ability to serve the Latino community.

In spite of these challenges, the Commission was able to investigate 743 complaints. One outstanding result of the Commission's work was to resolve all legitimate complaints without any court action. Court action tends to drag out the process of reaching a resolution causing the delay in housing the complainant and costing dollars for the litigation process.

This year, the Commission's goals are to reach those communities that we haven't been able to serve because of the language barrier through an aggressive outreach program. We

have to let people know that the Commission is here to address the issues that might arise around housing discrimination.

He recognized Bob Smith and the staff of the Asheville-Buncombe Community Relations Council for the tireless efforts of meeting the challenges of this work in spite of a funding and staff shortage and to thank the Council for the opportunity to serve.

In response to Mayor Bellamy, Mr. Coleman said that there are many different reasons for people filing discrimination complaints.

On behalf of City Council, Mayor Bellamy thanked Mr. Coleman for his report. She did say it was unfortunate, however, to have to deal with discrimination at this level.

## **B. GEOGRAPHIC INFORMATION SERVICES (GIS) PROGRAM PRESENTATION**

Mr. Jonathan Feldman, Director of Information Technologies, said that the context of GIS is (1) geographic information services; (2) community/customer information systems; (3) financial information systems; and (4) human resources information systems.

MapAsheville is essentially GIS for the Web - (1) comprehensive GIS web-application services effort; (2) focus on both internal staff and public users; (3) 37% increase in public GIS web visitors - 9,500 new visitors; (4) 80% increase in usage rates among total GIS web visitors; and (5) approximately 20% decrease in GIS software maintenance costs over 2 years.

Using a graph, he showed the relevance to citizens and how it has dramatically increased.

One part of mapAsheville is the Developer Mapper: (1) visualization tool providing streamlined access to information concerning proposed and in progress large-scale developments; (2) increased service level for community stakeholders; (3) decreased time for staff to service request; and (4) coordinated effort between Planning, Economic Development and IT Services. The citizen response is (1) the basics - folks like to be asked to be involved, and the end product is more thoughtful, usable and used; (2) positive response from both neighborhood groups and business leaders; and (3) community leaders have publicly endorsed mapAsheville in print and on video.

Upcoming GIS public access applications include (1) priority places - (a) decision support and visualization tool for economic development; (b) contracted with vendor for development and implementation; and (c) estimated completion of early fall 2007; (2) steep slope analysis application - (a) collaborative partnership with Buncombe County and UNCA/RENCI; (b) analysis tool to determine applicability of steep slope ordinances to existing or proposed parcel; and (c) estimated completion of late summer 2007; and (3) crime mapper - (a) visualization tool providing generalized statistics in a requested area or neighborhood; and (b) estimated completion of winter 2007-08.

GIS Strategic Plan was authored and adopted by GIS Steering Committee (multi-department team chartered by City Manager's Office); and approved by City Quality Council. It is a unifying document for all City of Asheville GIS program initiatives and has aggressive objectives with defined performance measures for priority items.

The GIS Steering Committee's Strategic Plan include the following five goals (1) develop and sustain a City-wide GIS organizational structure that supports stakeholders; (2) focus on web-based GIS Services to meet organizational and community needs; (3) anticipate and plan for future program needs; (4) continue development of opportunities that foster education, training and partnership; and (5) provide excellent customer services.

Other internal GIS program projects include (1) mapAsheville - Sanitation inquiry application to manage 29,000 garbage cans (\$1.5 Million in assets); (2) Bele Chere 2007 - online GIS mapping and public safety information management; and (3) auto accidents - Mapping and application services for mandated standardization reporting for Traffic Engineer and Asheville Police Department.

Service enhancements through technology in the Plan include: (1) an investment in automated services through information systems (GIS and others) can save dollars and time for citizens and staff; (2) look to other models of success (Stephen Goldsmith, Indianapolis) for guidance; and (3) "Do what we can with what we have" model, with room for additional investments, requested in Fiscal Year 2008 budget.

Regarding resources and backlog: (1) 6 to 8 month GIS project backlog - will continue as we include other information systems; (2) continue to accept long term projects and reprioritize per leadership requirements; (3) utilize partnerships to leverage resources; and (4) restructure department to better handle planned enhancements.

Mr. Feldman responded to Councilman Mumpower when he asked if there will be any budget items coming to Council in the near future.

#### **IV. PUBLIC HEARINGS:**

##### **A. PUBLIC HEARING TO CONSIDER A CONDITIONAL USE PERMIT FOR THE PROJECT IDENTIFIED AS WESTMONT COMMONS PHASE II LOCATED AT 120 CHAMBERLAIN DRIVE FOR 72 APARTMENT UNITS**

##### **ORDINANCE NO. 3461- ORDINANCE GRANTING A CONDITIONAL USE PERMIT FOR THE PROJECT IDENTIFIED AS WESTMONT COMMONS PHASE II AT 120 CHAMBERLAIN DRIVE FOR 72 APARTMENT UNITS**

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

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

After hearing no questions about the procedure, Mayor Bellamy opened the public hearing at 7:46 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 Kim Hamel submitted into the record City Exhibit 1 (Affidavit of Publication), City Exhibit 2 (Certification of Mailing of Notice to Property Owners); and City Exhibit 3 (Staff Report).

Ms. Hamel said that this is the consideration of the issuance of a conditional use permit for property identified as Westmont Commons Phase II located at 120 Chamberlain Drive for 72 apartment units (Attachment to City Exhibit 3 - Aerial Map).

This review concerns a proposed 72 unit expansion of an existing apartment complex (Attachment to City Exhibit 3 - Site Plan). The apartment units are to be housed in three buildings

and clustered along Eliada Home Road. Pursuant to Section 7-5-9(a)(1)(a)(3) of the Unified Development Ordinance (UDO), any manufactured housing community, camper/trailer park or other residential development containing more than 50 individual units is reviewed as a Level III Site Plan Review.

The subject site is located at 120 Chamberlain Drive in the northwest portion of the city limits. The property consists on one lot zoned INST (Institutional) and HB (Highway Business) and is comprised of 17.5 acres according to the submitted site plan and Buncombe County tax records.

The majority of the development lies within the INST zoning district with only the entrance road (Chamberlain Drive) located in the HB zoning district. All new proposed development will occur within the INST zoning district. The property is bounded to the north and east by a group home, vacant land and Eliada Home Road zoned INST, to the west by fast food restaurants, the Farm Bureau and vacant land zoned HB and to the south by a shopping center and group home zoned HB and INST respectively.

The INST zoning district was created to reserve land for the development of major educational facilities, and other complementary and supporting uses such as health related developments, office developments, and public services. Development standards for uses in this district are established to minimize conflict with adjacent land uses.

Type "A" and "B" buffers have been installed and maintained around the perimeter of the property as part of the original development approval in 2002. Improvements to the existing buffer along Eliada Home Road are being proposed as a part of this development.

At their February 5, 2007, meeting the Technical Review Committee (TRC) approved this project subject to the conditions in the staff report. Subsequently, the Planning and Zoning Commission unanimously approved this project subject to the conditions recommended by staff at their March 7, 2007, meeting.

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

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

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

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

The majority of the subject property has an elevation greater than 2,200 feet above mean sea level and an average slope of 15 percent or greater. The initial development was not subject to hillside area grading standards because it was approved before the UDO hillside definition and standards were amended to include development in all zoning districts opposed to just residential zoning districts, transition overlay districts, and/or Planned Unit Development overlay districts in the city limits and ETJ. Further, the proposed development will occur in a relatively level area historically used for farm purposes. However, pursuant to Section 7-12-4(b)(2) of the UDO, subsequent phases of

a Level I, II, or III site plan projects where the site plan has been changed, or approved subdivisions where the lot design has changed, shall indicate the proposed contours, limit and area of grading, and percentage of site to be graded. 126,000 square feet of the total site is to be retained as required open space including a future playground to be located in the vicinity of Building 400.

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

The proposed development of 72 apartment units would integrate with the existing apartment complex and transition well with the surrounding commercial and institutional elements including the shopping center and fast-food establishments. Staff feels that the proposed project would have no discernible effect on surrounding property values.

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

There are a variety of commercial, institutional and multi-family residential developments in the area that would be consistent with the proposed development. Furthermore, the entire site is surrounded by type "A" and "B" landscape buffers and open space effectively mitigating the mass of the residential structures through buffering and distance separations.

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

The application of high density, infill growth supports several goals and objectives as described in both the *Asheville City Development Plan 2025* and the *Strategic Operating Plan* (See **Compliance with Comprehensive Plan** and **Strategic Operating Plan Considerations** in above staff report).

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

The subject property has two existing points of access on New Leicester Highway via Chamberlain Dr. and Eliada Home Rd. In addition, technical review from other departments has not revealed any problems for providing an urban level of service to the development.

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

A traffic impact analysis was prepared for the initial development of 180 units with the assumption that the property would be developed with 256 units. Based on the fact that the final development will be smaller than the original study, no additional traffic impact analysis is needed pursuant to the City Engineering Department. The proposed project is not expected to cause undue traffic congestion or create a traffic hazard.

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

Pros:

- The proposed development will provide an additional 72 units to the housing rental market.
- Provides another opportunity to further the City's goal of high density infill development.

Cons:

- It is unclear if any of the units will be offered at affordable rents.

Staff recommends approval of the proposed project and Conditional Use Permit subject to the conditions in the TRC staff report and those recommended by City staff.

Mr. Steve Bell, applicant, said that they felt like there were some deficiencies in Phase I of three-bedroom apartments and different floor plans. He is excited about the opportunity to expand the property and assured Council it would be maintained at a high level.

After rebuttal, Mayor Bellamy closed the public hearing at 7:53 p.m.

Upon inquiry of Councilwoman Cape, the engineer of record explained the temporary construction entrance.

When Councilwoman Cape asked about the cost of the units, Mr. Bell said that the unit costs will exceed \$80,000 per unit, but they will offer apartments in a range that will be primarily for working people. In addition, he thought they would have a high percentage of retirees.

Vice-Mayor Jones moved for the adoption of Ordinance No. \_\_\_\_, granting a conditional use permit adopting the proposed master plan for Westmont Commons Apartment Complex, subject to (1) conditions recommended by City staff; (2) Access to Eliada Home Road shall remain permanently open throughout all phases of construction; (3) The project shall comply with all conditions outlined in the TRC staff report; (4) 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; (5) All existing vegetation that is to be preserved must be clearly indicated and dimensioned on the site, landscape and grading plans; (6) 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 (7) 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 Councilman Mumpower and carried unanimously.

#### **ORDINANCE BOOK NO. 23 - PAGE**

#### **B. PUBLIC HEARING TO CONSIDER THE CONDITIONAL ZONING FOR THE PROJECT IDENTIFIED AS VISTAS OF WESTFIELD LOCATED ON DOGWOOD WOOD, FROM RS-4 RESIDENTIAL SINGLE-FAMILY MEDIUM DENSITY DISTRICT TO RM-6 RESIDENTIAL MULTI-FAMILY LOW DENSITY DISTRICT/CONDITIONAL USE FOR A 124-UNIT MULTI-FAMILY DEVELOPMENT, IN ADDITION TO A DIMENSIONAL STANDARD (SETBACK) MODIFICATION**

#### **ORDINANCE NO. 3462 - ORDINANCE TO CONDITIONALLY ZONE THE PROJECT IDENTIFIED AS VISTAS OF WESTFIELD LOCATED ON DOGWOOD WOOD, FROM RS-4 RESIDENTIAL SINGLE-FAMILY MEDIUM DENSITY DISTRICT TO RM-6 RESIDENTIAL MULTI-FAMILY LOW DENSITY DISTRICT/CONDITIONAL USE FOR A 124-UNIT MULTI-FAMILY DEVELOPMENT, IN ADDITION TO A DIMENSIONAL STANDARD (SETBACK) MODIFICATION**

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

Urban Planner Blake Esselstyn said that this is the consideration of an ordinance to conditionally zone the project identified as Vistas of Westfield located on Dogwood Road from RS-4 Residential Single-Family Medium Density District to RM-6 Residential Multi-Family Low

Density District/Conditional Use for a 124-unit multi-family development consisting of 2-unit, 4 unit and 8-unit buildings, in addition to a dimensional standard (setback) modification. This public hearing was advertised on April 6 and 13, 2007.

Mr. Esselstyn said that the applicant seeks the conditional zoning of 31.8 acres, currently zoned RS-4, to RM-6 CZ for a multifamily residential project with 124 units. The property is located on the east side of Dogwood Road in the Candler area, at the western extreme of the Asheville extraterritorial jurisdiction area (ETJ).

Multi-family residential with the proposed density would be a permitted use in the RM-6 district. The applicant is also seeking modification of two dimensional standards: the width of the front setback from 15 feet to 10 feet, and the width of the right-of-way from 50 feet to 45 feet. In requesting such modification, the applicant indicates parts of the design suggested to be exceptional development, as well as the reduction of disturbance that the modifications would allow.

The site is currently mostly undeveloped, with a mixture of pasture and wooded areas. In the recent past there has been a single residence on the lot. The property also contains a graveyard, the contents of which would be relocated according to NC statutes, with Buncombe County oversight.

The property contains moderate slopes, but none of the area would be subject to current hillside development regulations, due to altitude. A portion of the property (the southern end) is classified as special flood hazard area, however—both floodway and floodplain. This considerable area would be left as open space in the proposed plan.

The proposed design includes a mix of housing arrangements: five 8-unit structures, twenty 4-unit structures, and two 2-unit structures. All units would be for purchase, either as condominiums or as units in a planned development. The duplex and quadraplex units are designed to resemble large 1 – 1.5 story homes. Garage doors are located on the sides of these buildings and generally would not be easily visible from the street.

The proposed residential density would be four units per acre, no higher than what would be allowed under the current RS-4 zoning, but the RM-6 (conditional) zoning is requested to allow the multi-family dwellings.

The large vacant tract across Dogwood Road from this site's frontage has recently been reviewed and approved by Buncombe County for a large (approximately 260 units) multi-family development.

At its February 19, 2007, meeting, the Technical Review Committee (TRC) approved the project with the conditions listed.

At the March 7, 2007, meeting, the Planning and Zoning Commission voted unanimously to recommend approval for this project.

At both the TRC and the Planning & Zoning Commission meetings mentioned above, the applicant has expressed an interest in having one extra "directional" sign for the project in addition to what would normally be permitted. This is not a dimensional standard that can be modified as part of the conditional zoning (nor does staff feel that the extra sign is necessary).

Staff has received no communications from neighbors regarding this project. At the TRC meeting, one neighbor expressed his preferences about preservation of the extraordinary tree, the creek area, and about the design of the homes that would be visible from his home.

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

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

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

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

*The proposed use is compatible with the surrounding natural features and topography. Grading and the use of retaining walls will be required, but the stream features and the remarkable tree will be protected.*

**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 of the land will be in harmony with the scale, bulk, coverage, density, and character of the area or neighborhood in which it is located.**

*The immediate area currently has a pastoral character, which the proposed development would not preserve, but this statement would be true of many developments that could be pursued even under the current zoning. Further, the proximity to the interstate, the manufactured homes to the east, industrial zoning to the southeast, and the large development planned to the west all indicate conditions with which the proposed development would be in harmony.*

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

*The proposed project would create multifamily residential housing opportunities near an interstate at a location that has been identified by DOT as a site for a future interchange. The Asheville City Development Plan 2025 encourages increasing development near such "nodes."*

*Further, the Comprehensive Plan's Smart Growth Land Use Policies state that "Compatible, higher density commercial and residential infill development should be encouraged." The proposed development presents a suitable option for transition between the lower density residential to the east and the approved multi-family development on the west side of Dogwood Road.*

*The Asheville City Council's Goals and Vision document supports "sustainable, high density, infill growth." While the proposed project is not high-density when the open space is considered in the calculation, the applicant argues that the multi-family design allows the clustering of units in a design that reduces the impact relative to a typical single-family subdivision that would be built under the current RS4 zoning.*

*As proposed, the project does not include a workforce housing or affordable housing element, thus it does not further the affordable housing goal espoused in the above plans.*

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

*The project's location on Dogwood Road near Smokey Park Highway provides access to transportation facilities and other services. In addition, technical review from other departments has not revealed any problems for serving the development.*

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

*The proposed project has been reviewed by the City's traffic engineer and is not expected to cause undue traffic congestion or create a traffic hazard.*

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

Pros:

- Density would be no higher than what would be allowed under (current) RS4 zoning.
- Design of much of the development would resemble a single-family subdivision with large homes.
- Dimensional modifications for front setbacks and right-of-way width have been requested; these would reduce land disturbance and height of retaining walls.

Cons:

- Applicant has not indicated any intention of providing units as workforce housing or affordable housing.

Staff recommends approval of this request, subject to the conditions in the TRC staff report and the standard conditions.

Mr. Chris Eller, engineer with Civil Design Concepts, spoke about the unique design of the property. He said they have not increased the density that would be allowed in the RS-4 underlying zoning; however, this would enable them to cluster the units in a fashion that they can create more common passive and active open space. He would like to have the following two items left open until further information is received. One, we would like one additional small directional sign for the project. And two, staff has recommended curb and gutter along Dogwood Road. We feel this is not a potential place for that and while we are not requesting deviation from the sidewalk requirement, we would request that if the N.C. Dept. of Transportation (NC DOT) will concur, that curb and gutter not be considered for this project. City staff would be open to that if NC DOT is agreeable to that.

Ms. Phyllis Martin, adjoining property owner, spoke in opposition to the project due to its density, and lack of security and safety for senior citizens in the area if the units are rentals.

Mayor Bellamy closed the public hearing at 8:07 p.m.

Mr. Eller and City Stormwater Services Manager Chad Pierce responded to the numerous questions from Council regarding development in the floodplain and the potential of downstream flooding, in addition to the cumulative effect of downstream flooding as projects are built. When Councilman Newman asked Mr. Pierce if he felt confident that this specific proposal meets relevant standards for floodplain, Mr. Pierce replied yes.

In response to Councilman Newman, City Attorney Oast said that if Council adopts this ordinance and incorporates the TRC comments, those standards that will have to be met before the project can be permitted.

Mayor Bellamy said that City Council will have a general report for stormwater, flood control, etc. before July 1 from the Flood Task Force.

In response to Councilwoman Cape, Mr. Pierce said that a re-mapping process will give us the cumulative view of downstream flooding and those preliminary maps are due about mid-July.

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

Councilman Mumpower moved for the adoption of Ordinance No. 3462, to conditionally zone the project identified as Vistas of Westfield located on Dogwood Road from RS-4 Residential Single-Family Medium Density District to RM-6 Residential Multi-Family Low Density District/Conditional Use for a 124-unit multi-family development consisting of 2-unit, 4 unit and 8-unit buildings, in addition to a dimensional standard (setback) modification, subject to the following conditions: (1) conditions recommended by City staff; (2) The project shall comply with all conditions outlined in the TRC staff report; (3) All site lighting must comply with the City's Lighting Ordinance and be equipped with 90 degree cut-off fixtures and directed away from adjoining properties and streets; (4) All existing vegetation that is to be preserved must be clearly indicated and dimensioned on the site, landscape and grading plans; (5) The building design, construction materials and orientation on site must comply with the conceptual site plan and building elevations presented with this application. Any deviation from these plans must gain approval through the Planning and Development Department; (6) At the direction of the Planning Director, this Project will be reviewed by the TRC prior to issuance of any building [or grading, etc....] permits; and (7) two dimensional standard modifications: (a) the width of the front setback from 15 feet to 10 feet, and (b) the width of the right-of-way from 50 feet to 45 feet; noting that find that the request is reasonable based on information provided in the staff report and as stated in the staff recommendation. This motion was seconded by Councilman Davis and carried on a 5-2 vote, with Councilman Freeborn and Councilman Newman voting "no."

## **ORDINANCE BOOK NO. 22 - PAGE**

### **V. UNFINISHED BUSINESS:**

#### **A. PUBLIC HEARING TO CONSIDER CONDITIONAL ZONING FOR PROPERTY LOCATED AT 47 RUTHERFORD ROAD FROM COMMUNITY BUSINESS II DISTRICT TO LIGHT INDUSTRIAL DISTRICT/CONDITIONAL ZONING IN ORDER TO ESTABLISH A CONFORMING OFFICE/WAREHOUSE USE WITH OUTDOOR STORAGE**

Mayor Bellamy said that this public hearing was originally scheduled for March 13, 2007, but continued to this date at the petitioner's request. In addition, at that time, Councilwoman Cape requested additional information on when the property was zoned as part of the extension of the extraterritorial jurisdiction area.

Urban Planner Blake Esselstyn said that the applicant has requested a six-month continuance to ascertain whether the existing use would be out of compliance with future zoning anticipated to be complete within that timeframe. As Council is aware, the proposed zoning is being sought as a result of enforcement action; consequently, it is clear that the applicant is attempting in good faith to bring his property into code compliance. As a result, staff is recommending to Council that the continuance be granted as the future zoning for this property

may well result it coming into compliance as we broaden the uses to which such suburban property may be put.

Vice-Mayor Jones moved to continue this public hearing until October 16, 2007. This motion was seconded by Councilman Newman.

Ms. Lydia Scott, resident on Rutherford Road, urged Council to proceed with this public hearing as this is the second time community members have had to come to the Council meeting.

Upon inquiry of Councilman Newman, Mr. Esselstyn said that the principle additional use that made the property receive a notice of violation was the addition of outdoor storage (essentially a stack of telephone poles). In a situation like this, as long as the applicant is making good faith efforts to comply, we don't require that the use be removed. It is with that understanding that they were pursuing the conditional zoning that that use was allowed to continue. Rezoning to Light Industrial would essentially put the property in a district that would be a permitted use.

In response to Vice-Mayor Jones, Mr. Esselstyn said that Mr. Gerald Green (representative of the applicant) was at the Council meeting earlier, however, he had another obligation and apologized he was not able to stay for this action.

Councilman Newman withdrew his second.

Councilman Mumpower seconded the motion to continue to October 16, 2007, made by Vice-Mayor Jones.

In response to Councilman Newman, Mr. Esselstyn said that if the conditional zoning were approved now, there would be substantial improvements to the property, e.g., landscaping, total overhaul of the parking lot, additions to the building, etc. If the corridor were to be rezoned in six-months to a zoning district in which this would be a permitted use, all of that would have been unnecessary on the part of the applicant.

In response to Councilwoman Cape, Planning & Development Director Scott Shuford said that they are looking at all of our different corridors to determine whether they should be in an urban or suburban designation. This is one that, no doubt, will be in a suburban designation because of its location and surrounding uses.

After considerable discussion, Mr. Shuford said that Council's options are (1) continue the public hearing for six-months; (2) approve it for a 6-month period in which the applicant would have to upgrade the site to meet landscaping standards, etc.; (3) approve it in its entirety; (4) continue the public hearing for one week and give the applicant an opportunity to attend or nor; or (5) deny the rezoning.

The motion to continue the public hearing until October 16, 2007, made by Vice-Mayor Jones and seconded by Councilman Mumpower carried on a 4-3 vote, with Mayor Bellamy, Councilwoman Cape, Councilman Davis and Councilman Mumpower voting "yes" and Vice-Mayor Jones, Councilman Freeborn and Councilman Newman voting "no."

## **VI. NEW BUSINESS:**

### **A. RESOLUTION NO. 07-87- RESOLUTION APPOINTING MEMBERS TO THE ASHEVILLE SCHOOL BOARD**

Vice-Mayor Jones, Chair of the Boards & Commissions Committee, said that this is the consideration of appointing two members to the Asheville School Board.

The terms of Ann Von Brock and Dolly Jenkins-Mullen, as members of the Asheville School Board expired on April 1, 2007.

On April 10, 2007, City Council instructed the City Clerk to arrange interviews for William Todd Weatherly, Jacquelyn Hallum, John Legerton, Brian Sarzynski and Precious Folston.

Councilman Mumpower supported an elected School Board and suggested we put on a future agenda a discussion of an elected vs. appointed School Board. Vice-Mayor Jones felt that City Council needed to have a community dialogue on this prior to Council discussion.

Councilman Davis suggested inviting Asheville City School Superintendent Robert Logan to a Council meeting in order that Council may ask him some questions. Mayor Bellamy said that the scheduling of that meeting is already in progress.

After Council spoke highly of the candidates, William Todd Weatherly received 0 votes, Jacquelyn Hallum received 5 votes, John Legerton received 3 votes, Brian Sarzynski received 2 votes and Precious Folston received 3 votes. Another vote was taken because two members received 3 votes - John Legerton received 3 votes and Precious Folston received 4 votes. Therefore, Jacquelyn Hallum and Precious Folston were appointed as members of the Asheville School Board to each serve a four-year term respectively, terms to expire April 1, 2011, or until their successors have been appointed.

#### **RESOLUTION BOOK NO. 30 – PAGE**

#### **B. SUSTAINABLE ECONOMIC DEVELOPMENT ADVISORY COMMITTEE**

Vice-Mayor Jones, Chair of the Boards & Commissions Committee, said that this is the consideration of appointing members to the Sustainable Economic Development Advisory Committee (SEDAC).

The terms of Bruce Tompkins, Carol King, Frank Taylor, Patti Glazer, Marvin Slosman, as members on the SEDAC expired March 1, 2007. In addition, Pat Whalen and Jack Cecil have resigned, thus leaving unexpired terms until March 1, 2008. In addition, Kimberly Hodges has resigned, thus leaving an unexpired term until March 1, 2009.

Councilwoman Cape, liaison to SEDAC, said that within the climate of the HUB and the creation of this new regional economic development organization, she felt the role of the SEDAC needs to be looked at and addressed. She asked Council to consider what the role is of the City's SEDAC in the climate of the HUB project. Secondly, if we define a role for such a committee ourselves, how do we see that committee functioning. Do we see it as an advisory policy-setting body or is it a body much like we did with the Environmental Committee, where we said these are some ideas we would like to have and we need you to be our research team to dig into these and bring them back to us. If you look at the list of people who have been on SEDAC, many of them now are moved over to the HUB and the energy and the vibrancy they used to put into SEDAC is now in a larger area. Should Council decide that SEDAC should move forward, and she's not thinking that it shouldn't, she thinks 18 members of SEDAC is too large. In summary, she would like to know the process by which we look at what the role of the committee is, how many people are on it, and what we can do as a guiding body to encourage the best performance and usefulness of our committees.

Councilman Davis moved to postpone the interview stage until the Boards & Commissions Committee has had an opportunity to review the questions posed by Councilwoman Cape. This motion was seconded by Mayor Bellamy.

Vice-Mayor Jones said that she felt that the questions posed are important enough that it be a City Council discussion and not the Boards & Commissions Committee discussion only.

Councilman Davis and Mayor Bellamy agreed that the discussion be a City Council discussion.

Mayor Bellamy said that when City Council created SEDAC there was no other tool out there, other than the Chamber's Economic Development Committee, looking at manufacturing. That has since changed since the formation of HUB. Unless we have specific assignments for SEDAC, she felt that it has outlived its life. She said that Council will be receiving a presentation from HUB leadership in May. After we hear the HUB presentation and look at the bigger picture of what is trying to be accomplished, we will see that some of the same players are already engaged in the larger HUB process.

It was the consensus of Council to delay the interview process until after we hear the presentation by HUB leadership and after Council discussion about the role of SEDAC.

At the suggestion of Councilman Newman, Mayor Bellamy felt it would be a good idea to invite SEDAC to the same meeting in May that the HUB leadership will attend in order to ask questions to both bodies. If we, or they, identify some compelling activities we need SEDAC to work on, we move forward with the interview process. If not, then Council would make a decision acknowledging that.

Councilwoman Cape wanted to make sure that the SEDAC members know this is not a dispersion on any of them, but it's more of a sense of how HUB is taking off and how we are no longer just focused on just a City economic development plan - we are looking at partnering.

**C. RESOLUTION NO. 07-88- RESOLUTION APPOINTING MEMBERS TO THE ASHEVILLE FILM COMMISSION**

Vice-Mayor Jones, Chair of the Boards & Commissions Committee, said that this is the consideration of appointing members to the Asheville Film Commission.

The terms of Alison Watson, Kathleen Kasben, Jim Lawrence, Donna Daniels, Robbie Williams and Michael Rangel expired on November 1, 2006. Ms. Watson is interested in being reappointed.

Vice-Mayor Jones said that after talking with the Chair of the Film Commission about the viability of the Film Commission, the Boards & Commissions Committee recommended moving forward with appointments. They suggested that after Council seats these individuals, we ask them to talk about the size of the Commission.

Based on Council knowledge, either personal, professional or by their credentials, it was the consensus of City Council to (1) reappoint Ms. Alison Watson; (2) appoint Mr. Alan Berger, Ms. Brenda Lunsford Lilly and Mr. Ty Hallock as members to the Film Commission to each serve a three-year term respectively, terms to expire November 1, 2009, or until their successors have been appointed; and (3) charge the Film Commission with assessing the size of their board. If they determine they need the two additional members, then Council will discuss it at that time. If not, then the Committee membership can be formally reduced.

**RESOLUTION BOOK NO. 30 – PAGE**

**D. RESOLUTION NO. 07-85 - RESOLUTION AUTHORIZING CONVEYANCE OF PROPERTY AT CATAWBA AND BROADWAY TO HEALTH ADVENTURE FOR PUBLIC PURPOSES**

City Attorney Oast said that this is the consideration of a resolution authorizing the conveyance of real property at Catawba Street and Broadway to the Health Adventure

Back in 2004, the City entered into an Agreement with the Health Adventure, Inc., for the exchange of property on the site of the Health Adventure's new proposed location at the corner of Broadway and Catawba Streets. Pursuant to the agreement, the purpose of this exchange is to allow the Health Adventure to use the old leaf dump site in connection with its outdoor programs, while the City will use Parcel B for the continuation of the Reed's Creek Greenway.

Since the authorization of this exchange, representatives of the Health Adventure and the City have worked out the details of the Agreement, and have been working on the details of the transaction. Personnel transitions in the administration of both organizations have extended this process. Also, there was a need to obtain a conditional rezoning of Parcel A to allow the Health Adventure to use it as contemplated, and this was completed in October of 2005.

The parties are now ready to proceed with the agreed-upon exchange. Pursuant to the Agreement, the previous resolution, and the statute referenced therein, the exchange was to be finally approved by Council following an advertised 10-day notice. If this process is followed, the earliest that Council could authorize the conveyance is May 8. Due to some unanticipated exigencies, however, the Health Adventure would like to complete the transactions by May 2.

Because this conveyance is to an entity carrying out a public purpose, there is a statute that authorizes the City to convey it in another way that will permit the closing to occur on or before May 2. This method requires Council to adopt a resolution and then publish a notice (as opposed to publishing a notice and then adopting the resolution). The sale cannot be consummated until 10 days after the date of publication. In view of the facts that: (1) the Agreement was approved by Council following a public presentation; (2) the property was conditionally rezoned following an advertised public hearing; and (3) the Health Adventure has been public about its plans with the Montford neighbors and with the community at large, authorizing the conveyance using this method appears to be an appropriate alternate way of meeting the objectives of the Agreement, and will allow the conveyance to occur in time for the Health Adventure to satisfy its exigencies. Had the "notice followed by resolution" process been followed, this likely would have been a consent agenda item in view of the previous Council actions and the wide public exposure. The deed to the Health Adventure will contain appropriate restrictions limiting the use of the property to public purposes, and the conditional zoning restricts the use as well.

Pros:

- Follows through on previous agreement
- Allows City to proceed with completion of greenway
- Allows Health Adventure to proceed with its plans
- Allows closing to occur by May 2
- Project has been the subject of several public processes already

Cons:

- Changes process from notice followed by action to action followed by notice

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

City Attorney Oast responded to Councilman Mumpower's concern about the urgency of this action at this meeting.

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

Councilwoman Cape moved for the adoption of Resolution No. 07-85. This motion was seconded by Councilman Davis and carried on a 6-1 vote, with Councilman Mumpower voting "no."

**RESOLUTION BOOK NO. 30 – PAGE 307**

**E. RESOLUTION NO. 07-86 - RESOLUTION REQUESTING INCLUSION IN LOCAL BILLS PENDING IN THE 2007 SESSION OF THE NORTH CAROLINA GENERAL ASSEMBLY**

Councilwoman Cape said that there were several bills which have been introduced in the 2007 Session that enables localities to adopt certain measures to help them achieve efficient and environmentally sensitive building practices. She asked for Council's support for the City of Asheville to be included in the coverage of House Bill 666 - "An act allowing Mecklenburg County to provide building permit fee rebates for buildings that are built to leadership in energy and environmental design standards" and House Bill 1097 - "An act to amend the Charter of the Town of Chapel Hill to permit the town to provide development incentives in exchange for reduction in energy consumption." We are not signing onto the particulars of what those programs would look like (that would be another conversation by City Council), it just gives us a larger range of incentives to offer towards our strategic goals.

Councilman Mumpower understood the timing issues, but felt that we are stepping out of normal procedure and would not be able to support this resolution.

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

Councilman Newman moved for the adoption of Resolution No. 07-86 This motion was seconded by Councilman Freeborn and carried on a 6-1 vote, with Councilman Mumpower voting "no."

**RESOLUTION BOOK NO. 30 – PAGE 309**

**VII. OTHER BUSINESS:**

Councilman Mumpower (1) presented the new Drug Commission poster and asked for the community's help is coming up with effective posters; (2) announced the For Our Kids event at Bartlett Arms on Saturday, April 21, 2007; and (3) invited drug dealers who are tired of being on the streets to come to a program in Shiloh which meets every week and they will get them a coach, try to get them some education, and help them find a meaningful job.

Councilwoman Cape suggested contact information be placed on the drug posters. She also encouraged the community to participate in Earth Day activities this week.

**VIII. INFORMAL DISCUSSION AND PUBLIC COMMENT:**

Ms. Mary Steiner, resident near Pisgah View Apartments, presented Council with a drawing of illegal activities around Pisgah View Apartments. She urged Council to get rid of all drug dealers out of the projects. She felt that drug addicts target senior citizens. Mayor Bellamy said that she would refer Ms. Steiner's information to the Police Chief.

**IX. ADJOURNMENT:**

Mayor Bellamy adjourned the meeting at 9:25 p.m.

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CITY CLERK

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MAYOR