

Tuesday - July 28, 1992 - 4:00 p.m.

Regular Meeting

Present: Vice-Mayor Eugene W. Ellison, Presiding; Councilwoman Barbara Field; Councilmen William G. Moore, Chris J. Peterson, Joseph Carr Swicegood and Charles R. Worley; City Attorney William F. Slawter; Assistant City Manager Charles W. Penny; and Associate City Manager/City Clerk William F. Wolcott Jr.

Absent: Mayor Kenneth M. Michalove and City Manager Douglas O. Bean

INVOCATION

Councilman Worley gave the invocation.

APPROVAL OF THE MINUTES

Vice-Mayor Ellison announced the approval of the July 14, 1992, City Council minutes as submitted.

I. PROCLAMATIONS:

A. RESOLUTION NO. 92-99 - RESOLUTION OF APPRECIATION TO RETIRING EMPLOYEE ROSE GREENE

Vice-Mayor Ellison read the resolution stating that Rose Greene has been an employee for 23 years and has requested retirement from her position as Customer Service Representative II in the Finance Department. He expressed City Council's appreciation to Rose for meritorious service, loyalty and dedication to the City of Asheville and its citizens.

Councilman Worley moved for the adoption of Resolution No. 92-99. This motion was seconded by Councilman Moore and carried unanimously.

RESOLUTION BOOK NO. 19 AT PAGE 227

B. PROCLAMATION PROCLAIMING AUGUST 15, 1992, AS "RAISE YOUR HANDS" DAY

Vice-Mayor Ellison read the proclamation proclaiming August 15, 1992, as "Raise Your Hands" day and presented it to Mr. Fred Friedman and Ms. Barbara Bell, volunteer co-chairs for the fifth annual Western North Carolina AIDS Project auction.

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Mr. Friedman explained that the auction is to raise funds to address client needs such as food, utilities, housing, transportation, insurance costs, medical bills, and other AIDS-related expenses deemed appropriate by the Project.

Ms. Bell passed out T-shirts relative to the auction to the members of Council.

C. PROCLAMATION RECOGNIZING SHINDIG ON THE GREEN'S 25TH ANNIVERSARY

Vice-Mayor Ellison read a proclamation proclaiming August 1, 1992, as "Shindig on the Green Recognition Day" and presented it to Mr. Zack Allen, Executive Director of the Folk Heritage Committee.

Mr. Allen was pleased that the City Council recognized Shindig's 25th

anniversary of providing a showcase for our mountain music and dance traditions. He then presented City Council with green cups signifying Shindig's 25th anniversary.

D. PROCLAMATION PROCLAIMING THE MONTH OF AUGUST 1992 AS "WATER CONSERVATION MONTH"

Vice-Mayor Ellison read a proclamation proclaiming the month of August 1992 as "Water Conservation Month" and presented the proclamation to Mr. Charles Rector, Assistant Director of Water and Engineering.

E. OATH OF OFFICE FOR ORALENE GRAVES-SIMMONS, NEWLY APPOINTED CO-CHAIR OF THE NORTH CAROLINA MARTIN LUTHER KING JR. COMMISSION

Vice-Mayor Ellison administered the oath of office for Ms. Oralene Graves-Simmons, newly appointed Co-Chair of the North Carolina Martin Luther King Jr. Commission. Ms. Simmons has served as a member of the Martin Luther King Jr. Commission since December of 1988.

II. PUBLIC HEARINGS:

A. PUBLIC HEARING RELATIVE TO REZONING PROPERTIES ON REED STREET FROM R-3 RESIDENTIAL DISTRICT TO CH COMMERCIAL HIGHWAY DISTRICT

ORDINANCE NO. 1980 - ORDINANCE AMENDING ZONING OF FIVE PROPERTIES ON REED STREET

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Vice-Mayor Ellison opened the public hearing at 4:16 p.m.

City Clerk Wolcott presented the notice to the public setting the time and date of the public hearing.

Mr. Gerald Green, Senior Planner, stated that a request from Bill Burgin, representing all property owners, was received to rezone five properties on Reed Street as a result of the widening of Hendersonville Road. Due to the Hendersonville Road Project ("Project"), Quincy's has lost approximately 40 parking spaces and Servco has lost an island of gas pumps. Quincy's would like to expand their parking area to the rear of their building to meet their parking needs and Servco would like to expand their gas station/convenience store.

On June 3, 1992, the Planning and Zoning Commission ultimately tabled the request on a 4-2 vote to wait until staff completed the Hendersonville Road Corridor Study which would look comprehensively at land use and future zoning issues in that area.

On July 1, 1992, the Planning and Zoning Commission voted to grant the rezoning request, on 5-2 vote. The Commission felt the need of Quincy's and Servco to expand and continue the operation of their businesses in a profitable manner necessitated the rezoning of those areas prior to the completion of the corridor study.

The staff recommended denial of the rezoning for several reasons, some of those being - the request was not in accordance with the 2010 Plan (which shows no expansion of commercial strip development in this area); the loss of the buffer between commercial and residential neighborhoods; and the need to look at the area comprehensively.

The current ordinances do not require buffering when the commercial property abuts a public right-of-way and there is residential property on the other side. The only requirement is street trees.

Mr. Green said there were 30 notices sent out, 8 of which were in opposition to the rezoning and 4 in support of the rezoning (those 4 do not include representatives of Quincy's or Servco).

Upon inquiry of Councilwoman Field, Ms. Patty Tallerday, Senior Planner, stated that the corridor study -4-

would not be initially completed for approximately another month. Then, approval is needed by the community, the Planning and Zoning Commission and the City Council, which will take approximately another 3 months.

When Vice-Mayor Ellison questioned the fact that this rezoning was not in accordance with the 2010 Plan, Mr. Green explained that at the time the 2010 Plan was adopted, the Biltmore Forest side of Hendersonville Road was not historic property.

Upon inquiry of Vice-Mayor Ellison, it was determined that Quincy's originally had 123 parking spaces and will lose approximately 40 of those spaces with the widening of the road. The proposed plan will increase Quincy's parking up to 160 spaces.

Ms. Barbara Melton, member of the Planning and Zoning Commission, stated her reasons for voting against the rezoning was that the corridor study was needed, that the area would not be buffered properly and that the residential neighborhood needed protection against commercial development.

Upon inquiry of Vice-Mayor Ellison on whether the City Council could attach stipulations to the approval of the rezoning request, City Attorney Slawter stated that the Council could not.

Mr. Winston Pulliam, member of the Planning and Zoning Commission, stated that some of his reasons for voting for the rezoning were that Quincy's would be losing 44 parking spaces; that two of the houses on Reed Street are in very bad shape and they have an opportunity to sell their houses to Quincy's; and that the buffering that Quincy's and Servco will provide is a lot better than what they have now.

Mr. Bill Burgin, representative for the property owners requesting the rezoning, said that he has made contact with all the property owners involved and that all of them would prefer to look at a nice parking lot instead of some of the houses that are there now. He said that Quincy's is willing to put a tree buffer a few feet off the property line and have a hedge row the complete length of Reed Street with no curb cuts. He stated that it would be hard for Quincy's to continue in operation if they had to wait another 3 to 4 months until the corridor study was completed.

Upon inquiry of Councilman Peterson, Mr. Burgin stated that they have not contacted the Tree/Greenway Commission -5-

about the planting of the tree buffer, but would be happy to do so. Councilman Peterson asked to be notified with they do meet with the Tree/Greenway Commission because he would be interested in attending the meeting.

Councilman Worley asked what the effect would be had if the rezoning were granted except for the last 10 feet along Reed Street, which would be left residential. He explained that since Council cannot put conditions on a

rezoning and that buffering could not be required, he felt that some enforcement should be required. Council could then enforce no curb cuts along Reed Street and have a little bit of control over the buffering.

Mr. Burgin stated that leaving that last 10 feet along Reed Street residential would result in Quincy's losing approximately 25 parking spaces.

City Attorney Slawter, when questioned by Councilman Worley, said that the City Council did have the authority to rezone all or a part of the rezoning request, but could not rezone beyond the area for which public notice was given.

Upon inquiry of Councilman Peterson, City Attorney Slawter explained that an agreement could be drawn up between the City and Quincy's, but under the law it would be an invalid agreement, termed contract zoning. He explained that North Carolina law does not allow the concept of contract zoning. He said if the property is rezoned, it has to be allowed in accordance with the zoning ordinance as it stands. He said specific conditions cannot be imposed upon one individual property owner under the zoning ordinance that are not imposed upon other property owners.

By use of a map, Councilman Moore asked Mr. Burgin to show the houses which were rented on the west side of Reed Street. Mr. Burgin stated that he contacted all the owners and one renter in the duplex.

Mr. Robert Gresham, Vice-President of Servco, stated that they are asking for this rezoning because when Hendersonville Road widened, it took 40 feet of their property. He said with all the changes required by the State, large expenditures will have to be made to meet requirements and they cannot afford these expenditures with the property as it is today.

Upon inquiry of Councilman Moore, Vice-Mayor Ellison stated that any property owner who was involved with the widening of Hendersonville Road was compensated in some form by the State.

Mr. Shawn Keenan, representative of Quincy's, spoke about Quincy's integrity and stated that if they agreed to put up a buffer, they would indeed put the buffering in.

Ms. Marge Turcot, owner of Reed House Bed and Breakfast at 119 Dodge Street, spoke against the rezoning stating that the City will be losing several units of affordable housing, there will be additional heat from the paving, there will be a loss of trees and greenery, there will be additional fumes from traffic on Hendersonville Road and feels that anyone can build anything in an area zoned Commercial Highway.

Ms. Leni Sitnick, asked the Council to consider this rezoning request because there will be others who ask to be rezoned that will not have vacant property behind them.

Vice-Mayor Ellison closed the public hearing at 5:32 p.m.

Councilman Worley moved to approve the rezoning request, except for a 10 foot strip along Reed Street. He hoped that a variance could be granted in the event that setback requirements are deemed to run from the zoning line rather than the property line. Councilman Moore seconded this motion.

On a roll call vote of 3-3, with Councilman Worley, Councilman Moore and Councilwoman Field voting "aye" and Councilman Peterson, Councilman Swicegood and Vice-Mayor Ellison voting "no", the motion failed.

Councilman Swicegood moved to approve the rezoning of all five properties on Reed Street as requested by the property owners. This motion was seconded by Councilman Peterson.

On a roll call vote of 4-2, with Councilman Moore and Councilwoman Field voting "no", the motion carried.

Councilman Peterson moved to suspend the rules and proceed to the second reading of Ordinance No. 1980. This motion was seconded by Councilman Swicegood. On a vote of 3-3, with Vice-Mayor Ellison, Councilman Peterson and Councilman Swicegood voting "aye" and Councilwoman Field, Councilman Moore and Councilman Worley voting "no", the motion was defeated.

Councilman Moore asked that since he will not be at the next City Council meeting (August 11, 1992) when the second reading of this ordinance would be had, he requested that the second reading be postponed until August 18, 1992, at the City Council retreat. The City Council agreed to this postponement.

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III. OLD BUSINESS: NONE

IV. NEW BUSINESS:

A. PLAT APPROVAL FOR MANN ROAD SUBDIVISION

Mr. Tony Nicholson, Urban Planner, stated that the Planning and Zoning Commission, at their July 1, 1992, meeting reviewed and recommended approval of the preliminary plat. The Mann Road subdivision is located north of the Haw Creek area at 27 Mann Road. The request is to subdivide a 2.55 acre tract into two (2) lots (1 lot at 2 acres and 1 lot at .55 acres). The site and all adjacent properties lie within the R-2 Residential zoning district. The site, which contains an existing house on the proposed 2 acre lot, is moderately sloping downward to the south. Both lots will be accessed by an existing driveway which passes through the smaller lot into the larger lot. Upon your approval, this existing driveway will become a deeded right-of-way to the larger lot.

He said the proposed subdivision meets the requirements of the Asheville Zoning Ordinance and the Subdivision Regulations. In addition, all utilities and the Fire Department have approved availability of services to the site.

Councilman Moore moved to approve the plat for Mann Road Subdivision. This motion was seconded by Councilwoman Field and carried unanimously.

B. DOWNTOWN PARKING REGULATIONS

Councilman Swicegood said that he and Councilman Peterson met with others and toured the downtown area in order to review the downtown parking situation. It is their recommendation to:

1. Install new parking meters in three parking lots which currently have the old meters or are unmetered;
2. Install parking meters around the Grove Arcade where there is currently free parking;
3. Increase the fine for overtime parking to \$5.00 for the first offense and \$8.00 for additional offenses; and

4. Review the penalty for late payment sometime in the future after the new parking collections system has had an opportunity to operate.

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Councilwoman Field supported the installation of approximately 135 parking meters around the Grove Arcade, but suggested that in 2-3 years (when the Grove Arcade may be changing hands), that the City take another look at the parking meters in this area.

Councilman Peterson felt that the parking meters should remain there regardless of who might be purchasing the building.

Vice-Mayor Ellison asked that the parking lot at the Employment Security Commission not be metered and remain as is because he felt that some consideration should be given to the unemployed.

It was the consensus of Council that these recommendations be officially received and they instructed the City Attorney to prepare an ordinance taking into account the recommendations.

THE FOLLOWING ITEM WAS ON THE CONSENT AGENDA, BUT AT THE REQUEST OF ASSISTANT CITY MANAGER PENNY, IT WAS PLACED ON THE REGULAR AGENDA.

C. PRESENTATION OF THE TRANSITION PLAN FOR AMERICANS WITH DISABILITIES ACT FOR THE CITY OF ASHEVILLE

Mr. Ray Kisiah, Director of Parks, Recreation and Public Facilities, said the Americans with Disabilities Act of 1990 (ADA) protects individuals with disabilities. The ADA requires equal opportunity for individuals with disabilities in employment, public accommodations, transportation, state and local government services, and telecommunications.

He said under Subtitle A, Title II of the ADA, no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of City services, programs or activities, or be subjected to discrimination by the City. City services, programs and activities, when viewed as a whole, are required to be accessible to qualified persons with disabilities, and communications with persons with disabilities are to be as effective as communications with others.

He said the City has appointed him as the ADA Coordinator and an ADA Advisory Board of persons with disabilities and/or agencies that represent those with disabilities. This Advisory Board has now met on three -9-

occasions and public hearings have been held on a draft Transition Plan which would remove architectural barriers from all City buildings and facilities. An ADA Committee has been appointed of Al Kopf, Landscape Architect; Martha McGlohon, Staff Attorney; Pam McGrayne, Personnel Director; Lyle Willis, Construction Manager; Carl Owenby, Transit Planner; and me, ADA Coordinator. This committee has prepared a Transition Plan by which architectural barriers would be removed, using the draft plan and comments received from members of the Advisory Board and the general public. This plan is being presented to City Council with the understanding that there will be further amendments necessary based on comments and recommendations from the ADA Advisory Board and actual experience. A copy of this Transition Plan will be kept on file in the Office of the City Clerk as well as in the Parks, Recreation and Public Facilities Department as part of the official documents satisfying the requirements of the Americans With Disabilities Act.

He said this project (approximately \$600,000) will be phased in over a three-year period with those improvements requiring the least expenditures to be implemented during the first year. Funding will be provided through the Capital Improvement Program and the annual budget process.

Councilman Peterson requested a breakdown of the \$600,000 for each of the 62 buildings which the City owns. Mr. Kisiah stated that when the budget amendment comes through to start appropriately this money for these improvements, a breakdown would be included.

When a question arose concerning the Pack Plaza and Pack Place buildings, City Attorney Slawter said that any building in which the City provides public services and programs has to be accessible under ADA.

Vice-Mayor Ellison hoped that the City Manager would send a letter to Pack Plaza to be sure that they are aware of ADA requirements and that they plan to make the improvements, if any are required.

V. CONSENT AGENDA:

A. CERTIFICATION OF THE PETITION RECEIVED UNDER N. C. GEN. STAT. SEC. 160A-58.1 TO ANNEX A NONCONTIGUOUS AREA ON U.S. 19-23 KNOWN AS THE WESTRIDGE MARKET PLACE PROPERTY

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RESOLUTION NO. 92-100 - RESOLUTION FIXING DATE OF PUBLIC HEARING ON QUESTION OF ANNEXATION OF PROPERTY LOCATED AT U.S. HIGHWAY 19-23 PURSUANT TO N. C. GEN. STAT. SEC. 160A-58.2 (PORTION OF WESTRIDGE MARKET PLACE) FOR AUGUST 11, 1992

Summary: N. C. Gen. Stat. sec. 160A-58.2 requires that upon the certification of the sufficiency of a petition for noncontiguous annexation, the City Council shall fix a date for a public hearing on the annexation. Certification by the City Clerk as to the sufficiency of said petition has been made. The property to be considered for annexation is located on U.S. Highway 19-23 and is a portion of the Westridge Market Place.

RESOLUTION BOOK NO. 19 AT PAGE 228

B. RESOLUTION NO. 92-101 - RESOLUTION DIRECTING THE CITY CLERK TO INVESTIGATE A PETITION RECEIVED UNDER N. C. GEN. STAT. SEC. 160A-58.1 TO ANNEX A NONCONTIGUOUS AREA ON U.S. HIGHWAY 25 KNOWN AS THE ROBERT LEWIS PROPERTY

Summary: The City of Asheville has received a petition from Mr. Robert Lewis requesting annexation of a noncontiguous area known as the Sports Page Restaurant and Bar on U.S. Highway 25.

RESOLUTION BOOK NO. 19 AT PAGE 230

C. RESOLUTION NO. 92-102 - RESOLUTION AUTHORIZING THE CITY MANAGER TO SIGN A CONTRACT WITH WHEELER CONSTRUCTION COMPANY, INC., FOR THE PROJECT KNOWN AS BEAVERDAM AREA ANNEXATION - CONTRACT ONE (EIGHT INCH SEWER LINE PROJECT)

Summary: This project involves the installation of approximately 8,400 linear feet of 8" sanitary sewer pipe, 1,500 linear feet of 4" sanitary sewer pipe, 58 manholes and related sewer appurtenances. Sealed bids were opened on July 9, 1992, with Wheeler Construction Company, Inc., being the low bidder at \$362,470. Although the Engineering's

estimate was \$382,302, it is felt that this is a fair bid and it is recommended

that a contract be awarded. A complete copy of the bid summary is attached hereto as Exhibit "A" and made a part hereof.

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D. RESOLUTION NO. 92-103 - RESOLUTION AUTHOR

IZING THE MAYOR TO EXECUTE AN EASEMENT WITH CAROLINA POWER & LIGHT COMPANY RELATIVE TO THE FEDERAL AVIATION ADMINISTRATION INSTALLING A NEW AIR SURVEILLANCE RADAR AT THE ASHEVILLE REGIONAL AIRPORT

Summary: The FAA will be installing a new surveillance radar at the Asheville Airport and the site will require a new three phase primary line and transformer bank extension across the access road to the radar site. The new facility will be served underground from the proposed transformer bank.

RESOLUTION BOOK NO. 19 AT PAGE 232

E. RESOLUTION NO. 92-104 - RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE CERTAIN ASSURANCES AND CERTIFICATIONS REQUIRED BY THE FEDERAL TRANSIT ADMINISTRATION FOR GRANT SUBMISSION

Summary: The Federal Transit Administration ("FTA") requires annual submission of certain assurances and certifications with respect to grants and grant amendments. Since the City of Asheville has not filed its annual operating assistance grant and has a capital request for shelters and benches with the NC DOT grant project (Section 3), certain assurances and certifications must be submitted to be in compliance with the FTA Act.

RESOLUTION BOOK NO. 19 AT PAGE 233

Councilman Worley moved for the approval of the Consent Agenda. This motion was seconded by Councilman Moore and carried unanimously.

VI. OTHER BUSINESS:

A. RESOLUTION NO. 92-105 - RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE AN EASEMENT WITH CAROLINA POWER & LIGHT COMPANY FOR PROPERTY AT THE ASHEVILLE AIRPORT

Assistant City Manager Penny said that an easement is needed by Carolina Power & Light Company to serve the J & S Cafeteria at the Asheville Airport. He said the electric line for said easement will be placed underground.

Vice-Mayor Ellison said that members of Council have been furnished with copies of the resolution and it would not be read.

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Councilman Moore moved for the adoption of Resolution No. 92-105. This motion was seconded by Councilman Worley and carried unanimously.

RESOLUTION BOOK NO. 19 AT PAGE 234

B. MOTION AUTHORIZING THE MAYOR TO SIGN AMENDMENT NO. 5 TO THE COOPERATION AGREEMENT BY AND BETWEEN THE CITY OF ASHEVILLE AND THE HOUSING AUTHORITY OF THE CITY OF ASHEVILLE

Assistant City Manager Penny said that the Executive Director of the Housing Authority of the City of Asheville, Mr. David Jones, has requested that the City sign Amendment No. 5 to the Cooperation Agreement. This amendment will modify the Agreement to cover an additional 210 low-income housing units. The figure in the agreement will be changed from "1,421" to "1,631".

Councilwoman Field moved to authorize the Mayor to sign Amendment No. 5 to the Cooperation Agreement by and between the City of Asheville and the Housing Authority of the City of Asheville. This motion was seconded by Councilman Moore and carried unanimously.

C. REPORT ON TAX FORECLOSURE SALE OF 10 SUNSET SUMMIT

City Attorney Slawter reported that the tax foreclosure of 10 Sunset Summit took place today at the Buncombe County Courthouse steps. He said that the property was sold to the highest bidder, Mr. Harvey Heywood (neighbor) for \$8,100. Mr. Slawter said that if the County does not receive an upset bid within the next ten days, Mr. Heywood will be the owner of the house.

D. FRANK WORLEY - DIRECTOR OF THE ALCOHOLIC BEVERAGE CONTROL BOARD

Vice-Mayor Ellison recognized Mr. Frank Worley, new Director of the Alcoholic Beverage Control Board.

At this time, approximately 6:20 p.m., it was the consensus of the City Council to take a five minute break.

E. PETITION AND LETTERS PRESENTED IN OPPOSITION OF SATELLITE ANNEXATION OF WESTRIDGE MARKET PLACE PROPERTY

Mr. Frank Griffin, who resides in the Enka-Candler community, presented the City Council with 408 letters opposed to the satellite annexation of Westridge Market -13-

Place for the purpose of building an ABC store. He also presented the Council with another petition containing 91 more signatures (to be placed with prior petition presented which contained 1,501 signatures) opposing this satellite annexation. He said that he is in possession of an additional 200 more letters opposed to the annexation and will copy them and present them to the Council.

F. STATEMENTS BY MITTY OWENS AND JOE WEBSTER RELATIVE TO DISCRIMINATION

Mr. Mitty Owens read the following statement dated July 27, 1992:

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Mr. Joe Webster, Co-Chair of PRIDE, read the following statement dated July 28, 1992:

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On behalf of the City Council, Vice-Mayor expressed his sympathy for the experience Mr. Owens encountered. He stated the City Council would be talking about ways to help curb this type violence at the Council's mid-year retreat on August 18, 1992. He urged Mr. Webster to attend the next Citizens/Police Advisory Committee meeting and make a presentation relative to this issue. He suggested Mr. Webster talk to the Chief of Police and find out when the next meeting will be held.

Police Chief Gerald Beavers assured the City Council that programs are on-going

in the Police Department relative to police sensitivity.

Upon inquiry of Councilman Peterson, Chief Beavers stated that an arrest in this particular incident was made.

G. COMMENTS BY LENI SITNICK

Ms. Leni Sitnick spoke about several issues, those being: acoustics in Council Chamber was bad; asked the City Council not hold their meetings on the same day and time as the Buncombe County Board of Commissioners; commended the City, County and Water Authority for their water conservation efforts; and commended City for their recycling efforts.

H. CLAIMS

Assistant City Manager Penny stated that the following claims were received by the City during the week of July 6-10, 1992: Edith J. Hapke (Water), Bernhard Gordon (Water), Cooper Travel (Water), Asheville Learning (Water), Southern Bell (Water) and Joyce Woody (Parks).

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He also said the following claims were received by the City during the week of July 20-24, 1992: Kyoto's (Water), Debbie Rice (Water), Josette Mills (Streets), Jean Rice (Water), Addie Jones (Streets), Daniel Loudy (Streets) and Paul Maddox (Streets).

He stated that these claims would be referred to the appropriate insurers for investigation.

VII. ADJOURNMENT.

Vice-Mayor Ellison adjourned the meeting at 6:45 p.m.

CITY CLERK MAYOR
