

Tuesday - July 19, 1994 - 4:00 p.m.

Regular Meeting

Present: Mayor Russell Martin, Presiding; Vice-Mayor Chris Peterson; Councilwoman Barbara Field, Councilman Gary McClure, Councilwoman Leni Sitnick, Councilman Joseph Carr Swicegood and Councilman Herbert J. Watts; City Attorney William F. Slawter; Interim City Manager William B. Farris; and Associate City Manager/City Clerk William F. Wolcott Jr.

Absent: None

INVOCATION

Councilwoman Sitnick gave the invocation.

I. PROCLAMATIONS:

A. RESOLUTION NO. 94-132 - RESOLUTION OF APPRECIATION TO RETIRING EMPLOYEE JAMES HYATT JR.

City Manager Farris read the resolution stating that James Hyatt Jr. has been an employee for 19 years and has requested retirement from his position as Construction Inspector. He expressed City Council's appreciation to James for his service to the City of Asheville and its citizens.

Councilwoman Field moved for the adoption of Resolution No. 94-132. This motion was seconded by Councilman Watts and carried unanimously.

RESOLUTION BOOK NO. 21 - PAGE 393

B. RESOLUTION NO. 94-133- RESOLUTION OF APPRECIATION TO RETIRING EMPLOYEE BETTY HYATT

City Manager Farris read the resolution stating that Betty Hyatt has been an employee for 26 years and has requested retirement from her position as Customer Services Superintendent. He expressed City Council's appreciation to Betty for her service to the City of Asheville and its citizens.

Vice-Mayor Peterson moved for the adoption of Resolution No. 94-133. This motion was seconded by Councilwoman Field and carried unanimously.

RESOLUTION BOOK NO. 21 - PAGE 394

II. PUBLIC HEARINGS:

A. PUBLIC HEARING DIRECTING THE DIRECTOR OF BUILDING SAFETY TO DEMOLISH 35 OAK PARK ROAD, ASHEVILLE, NORTH CAROLINA

ORDINANCE NO. 2124 - AN ORDINANCE DIRECTING THE DIRECTOR OF BUILDING SAFETY TO DEMOLISH 35 OAK PARK ROAD, ASHEVILLE, NORTH CAROLINA

Mayor Martin opened the public hearing at 4:08 p.m.

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

Mr. Jeff Trantham, Assistant Director of Building Safety, said that inspection revealed that the dwelling has a structurally unsound roof, walls and floors that have been damaged by fire, damaged heating, electrical and plumbing systems, and is unfit for human habitation.

A resident at 31 Oak Park Road spoke in support of the demolition and felt that the other two houses on that property needed to be demolished too.

Mr. Ed Wright, 11 Westview Road, requested that the demolition process be started to demolish 9 Westview Road.

Mr. Paul Miller, 27 Oak Park Road, urged Council to demolish the structure.

City Manager Farris said that the demolition process to demolish the other two structures at 31 Oak Park Road would be started.

Mayor Martin closed the public hearing at 4:14 p.m.

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

Councilwoman Field moved for the adoption of Ordinance No. 2124. This motion was seconded by Vice-Mayor Peterson.

On a roll call vote of 7-0, Ordinance No. 2124 passed on its first and final reading.

ORDINANCE BOOK NO. 14 - PAGE 259

B. PUBLIC HEARING TO ANNEX A NONCONTIGUOUS AREA ON GLENN BRIDGE ROAD KNOWN AS THE RANDY WARN PROPERTY

ORDINANCE NO. 2125 - AN ORDINANCE ANNEXING A NONCONTIGUOUS AREA ON GLENN BRIDGE ROAD KNOWN AS THE RANDY WARN PROPERTY

Mayor Martin opened the public hearing at 4:15 p.m.

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

Ms. Patty Joyce, Senior Planner, said that on May 23, 1994, the City received a signed petition from Randy and Cathy Warn requesting annexation of their property. Mr. and Mrs. Warn are building a restaurant on the site (Cafe Glenn Bridge) and wish to obtain an ABC license.

She then briefed the Council on the report of plans for the area.

Mr. Ralph Bishop felt the City should not annex property just to allow them to sell alcohol.

Mayor Martin closed the public hearing at 4:22 p.m.

Mayor Martin said that members of Council have previously received a copy of the ordinance and it would not be read. -3-

Vice-Mayor Peterson moved for the adoption of Ordinance No. 2125. This motion was seconded by Councilman Swicegood.

On a roll call vote of 7-0, Ordinance No. 2125 passed on its first and final reading.

ORDINANCE BOOK NO. 14 - PAGE 261

C. PUBLIC HEARING TO CLOSE HENRY STREET AND AN UNNAMED ALLEY OFF GUDGER STREET  
RESOLUTION NO. 94-134 - RESOLUTION TO CLOSE HENRY STREET AND AN UNNAMED ALLEY  
OFF GUDGER STREET

Mayor Martin opened the public hearing at 4:23 p.m.

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

City Manager Farris said that a petition has been filed by Elizabeth Graham and others requesting Henry Street and an unnamed alley off Gudger Street be permanently closed to public use. These closing will not deny any property owners public access to their property.

Mayor Martin closed the public hearing at 4:24 p.m.

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

Councilwoman Field moved for the adoption of Resolution No. 94-134. This motion was seconded by Councilman Watts and carried unanimously.

RESOLUTION BOOK NO. 21 - PAGE 395

III. UNFINISHED BUSINESS:

A. CONSIDERATION OF RESOLUTION TO CLOSE THE NORTHERNMOST 170 FEET OF SKYVIEW PLACE IN THE CITY OF ASHEVILLE, NORTH CAROLINA

Mayor Martin said that the public hearing on this matter was held on June 21, 1994, and the matter continued until this date in order to look at other options available for the Suttons.

City Manager Farris reported that the entrance to Skyview Place is in a turn on Town Mountain Road which results in a sight distance of approximately 75 feet along Town Mountain Road. This is barely adequate at the posted speed limit of 35 mph. Experience shows the speed limit is exceeded by the majority of drivers coming down the mountain which results in a need to enter Skyview Place rapidly. Skyview Place is a narrow one lane road which curves to the right around an outcrop as the road is entered. In addition, to make the sight distance problem greater, the road drops approximately 4 feet as the area is entered making it very difficult to see an exiting car.

He said the stabilization project proposed by Mr. Sutton could be effected by remaining on the north side of Skyview Place, but not using -4-

wooden railroad ties. The problem stems from storm water drainage off of Town Mountain Road using a natural swale to drain off the mountain. At the present time the house does not appear to be affected by the erosion, however, without some corrective action, the erosion could extend to the house. Some diversion of the drainage from uphill must be accomplished in order for this not to happen.

He said there are two single family units and two apartment complexes which are served by this road. One apartment complex has 6 units and the other has 8 units. Blocking Skyview Place at the Sutton residence would eliminate access to the area from the Cherokee Road area. The road cannot be relocated because of

the terrain problems. The hill is too steep for a new road to be constructed which would allow for safe passage of vehicular traffic.

He said an option would be to re-grade Skyview Place near the intersection with Sunset to see if the City can create a 90 degree intersection at that point. He said that he would check on the feasibility of this option and the costs associated with it and present the report to Council at their next meeting on August 9, 1994.

He stated that even if the portion of the road were closed, they still will have a tremendous water runoff problem down Town Mountain Road and therefore, the City will contact the NC DOT, through our local Board of Transportation, to see if they can make some improvements on Town Mountain Road.

City Attorney Slawter said that as a result of some research conducted, it appears that some of the property owners on Skyview Place have deeded rights-of-way to cross the Sutton's property.

Mr. Steve Sutton pleaded with Council to go ahead and close the road and he would deal with the deeded rights-of-way issue.

City Manager Farris said that he would look into the possibility of the City doing a drainage improvement project in that area.

Mr. Bob Tucker, owner of an apartment building on Skyview Place, spoke in opposition to the closing of the portion of Skyview Place. He did ask, however, that if it were closed, would be City put in a cul-de-sac at that end.

Councilman Watts moved to continue this matter until August 9, 1994. This motion was seconded by Councilwoman Sitnick and carried unanimously.

#### IV. NEW BUSINESS:

A. RESOLUTION NO. 94-135 - RESOLUTION OF INTENT TO CONSIDER AN ORDINANCE AMENDING THE CHARTER AND RELATED OF THE CITY OF ASHEVILLE TO PROVIDE FOR A FOUR-YEAR TERM FOR THE MAYOR AND FOUR-YEAR STAGGERED TERMS FOR THE COUNCIL MEMBERS AND CALLING FOR A PUBLIC HEARING ON AUGUST 23, 1994

Mayor Martin said that N. C. Gen. Stat. sec. 160A-101 provides that any city may change various aspects regarding its form of government, including the terms of office of members of the city council. Section 6 of the Charter and Section 1 of the Related Laws of -5-

the City of Asheville now provide that the term of the Mayor and Members of City Council shall be two years. This resolution states that the City Council intends to consider an ordinance amending the Charter and Related Laws of the City of Asheville to provide for a four-year term for the Mayor and four-year staggered terms for the Council Members, so that all of the terms do not expire in the same year.

In order to begin the staggered terms, the three top vote-getters for Council Members in the 1995 election will serve a term of four years and the other three Council Members elected in the 1995 election will serve a term of two years. As of the 1997 election and thereafter, three Council Members would be elected for four-year terms every two years. The Mayor's term of office would change to four years with the 1995 election.

He felt the City needed continuous representation on Council. Of the state's 510 cities, 258 have staggered four-year terms. Of the 22 cities with populations over 25,000, 11 have staggered four-year staggered terms.

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

Councilwoman Sitnick moved to adopt Resolution No. 94-135 setting a public hearing on this matter for August 23, 1994. This motion was seconded by Councilwoman Field and carried on a 6-1 vote, with Councilman Swicegood voting "no".

As a result of Mr. Ralph Bishop wanting to comment on this issue at this time, Councilman McClure said that his voting in favor of setting the public hearing is in no way committing his support of the issue. In fact, he said he has serious concerns regarding the four-year terms.

RESOLUTION BOOK NO. 21 - PAGE 397

B. RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE A LEASE AND RELATED DOCUMENTS BY AND BETWEEN THE CITY OF ASHEVILLE AND ORKAND CORPORATION FOR SPACE IN THE WALL STREET PARKING DECK

At the request of City Attorney Slawter, Vice-Mayor Peterson moved this matter until August 9, 1994. This motion was seconded by Councilwoman Field and carried unanimously.

C. RESOLUTION AUTHORIZING THE EXECUTION OF AN ACCESS AGREEMENT BY AND BETWEEN THE CITY OF ASHEVILLE AND EXXON CORPORATION FOR CITY-OWNED PROPERTY ON AIRPORT ROAD

City Attorney Slawter said that the City of Asheville, as owner of property on Airport Road, leased property to Exxon Corporation for a service station, beginning on July 30, 1964. The lease expires on July 31, 1994.

The service station on that site has been closed for a while. There remain, however, some underground storage tanks which need to be investigated to determine whether or not any remediation efforts will be required of Exxon Corporation by governmental environmental agencies.

As any investigation and/or remediation which may be required would extend beyond the expiration date of the lease, Exxon Corporation -6-

has proposed an access agreement wherein they would pay to the City of Asheville a monthly payment which is to be negotiated between the parties for continued access to the site in order to perform any investigations and/or remediations required by governmental environmental agencies.

Negotiations with Exxon Corporation since May still has not brought about a satisfactory access agreement. Therefore, Councilman Swicegood moved to institute a lawsuit against Exxon Corporation to compel them to clean up the site. This motion was seconded by Councilwoman Sitnick and carried unanimously.

The City Attorney pointed out to the Council that any benefit to be derived from the future rental of the former Exxon site will in all likelihood go to the Airport Authority and he therefore questioned whether the City would want to incur the expense of the lawsuit. The Council instructed Councilman McClure to inquire of the Airport Authority whether it will agree to reimburse the City for any legal expenses incurred. Councilman McClure will do so and report back to the Council.

D. RESOLUTION NO. 94-136 - RESOLUTION AUTHORIZING THE CITY MANAGER TO RESPOND TO A REQUEST BY THE N.C. DEPARTMENT OF TRANSPORTATION REGARDING CITY-OWNED PROPERTY AT BROADWAY AVENUE AND CATAWBA STREET

City Manager Farris said that this resolution fulfills a request from the N.C. Department of Transportation regarding the use of City-owned property and the Broadway Avenue Widening Project.

The property is located at the intersection of Broadway Avenue and Catawba Street. Three tracts were given to the City in 1966 by the S.B. Penick and Company. The deed stated that the land was to be used "for exclusively public purposes." The City accepted the property by resolution on August 11, 1966, "for public purposes, and particularly for park and recreational use."

For a number of years, the property has been used as a community mulch pile on the north side of Catawba. The tracts on the south side of Catawba are not presently being used, however, some of it is maintained by the City and does provide some open space along Glenn's Creek.

A small portion of this property is needed for the widening project. Section 4 (f) of the U.S. Department of Transportation Act of 1966 restricts federally funded projects from taking or using publicly owned land from a public park or recreation area if the public park or recreation area is of local significance as determined by the local official or officials having jurisdiction over the property.

The significance of this property has been reviewed by the Asheville Planning Department, the Asheville Parks and Recreation Department and the Tree and Greenway Commission. All have expressed concern that the property not be lost for potential greenway development but there was agreement that any future plans for park and recreational uses in this area would not be affected by the small portion needed for widening.

The effect of not allowing the use of this property for public right-of-way will mean the redesign of that portion of the project to the other side of Broadway. This will mean additional right-of-way -7-

purchase and/or condemnation procedures as well as the physical redesign. NC DOT has said that this could take up to a year. There has been discussion with a private engineering firm that has worked on many NC DOT projects (without mentioning the specifics of which project) and they confirmed that even a small redesign can be a lengthy process of up to a year.

In summary, after reviewing this request, it has been determined that there is not presently a public park or recreation area on this property, nor is there a city greenway plan on record indicating such. The right-of-way needs by NC DOT takes only a small portion of the property and does not adversely affect future public uses.

Councilwoman Sitnick said that from a historical prospective, it's clear the Penicks donated this property to the City for the express purpose of park-like use and while there is no structured park on the property, she feels that it serves a public purpose from a visual point of view. She felt that NC DOT knew that this property, however small the portion that was initially needed, was going to be part of their widening project and perhaps from the outset could have designed the project to include the right-of-way on the other side of the road. She felt it was unfair for them to say now that it could take redesign and up to a year to have to go to the other side of the road. It holds the City hostage to turning over that small piece of land that they need for their widening project. She said that aside from the fact that she is opposed to the 5 lane widening of Broadway and aside from the fact that she doesn't think it serves the City, she is opposed to her State tax dollars being used for a road that is unnecessary. If one were to ride down Broadway and look at the Penick property, it's really quite beautiful and unique and it doesn't need

any work or additional funding to make it a park-like place. She was vehemently opposed to turning over that portion of property for NC DOT to pave like they pave everything else. She felt it's time for City taxpayers to express their feelings about how they want their taxes used and this is a poor use of our tax dollars.

City Manager Farris corrected his earlier comments by saying that Council has already authorized the transfer of this property at the end of the Broadway widening discussions and NC DOT paid the City \$7,900, which was the appraised value.

Councilwoman Sitnick said that, regardless of the size of the area, if the City is to honor the wishes of the citizens of this City, especially those who are generous enough to donate their personal property for the betterment of the City for the use of all taxpayers, then she felt it dishonors and violates the wishes of those people who have specifically designated their property as a contribution to be kept in perpetuity as a park or for recreational use to become a roadway. Perhaps this will discourage future donations to the City.

Upon inquiry of Vice-Mayor Peterson about the City's liability in this matter, City Attorney Slawter felt that NC DOT could take this property by suit without any agreement on the part of the City. He said the \$7,900 which NC DOT has paid to the City was the appraised value of the property which is all that the City is entitled to if the City was to go to Court. In addition, the City would have legal expenses in a court action that are saved by the settlement. If there is anything about directives in the deed that Council feels is being violated to the extent of dishonoring what the person donated to the City, the Council could designate the \$7,900 for recreational purposes which would have -  
8-

the same impact as the initial gift that was made by Mr. Penick. He did state, however, that the City cannot stop NC DOT from taking this piece of the property.

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

Councilwoman Field moved for the adoption of Resolution No. 94-136. This motion was seconded by Councilman Watts and carried on a 5-2 vote, with Vice-Mayor Peterson and Councilwoman Sitnick voting "no".

RESOLUTION BOOK NO. 21 - PAGE 398

#### E. FINAL PLAT APPROVAL OF ADAMSWOOD SUBDIVISION

Mr. Gerald Green said that the proposed Adamswood Subdivision is to be located off of Adams Hill Road in the City's extraterritorial jurisdiction. The Planning and Zoning Commission reviewed the preliminary plat at their September 1, 1993, meeting and recommended approval with the condition that availability of services be approved by the Buncombe County Health Department and the extension of the six inch water line to the site be completed prior to the final plat approval, both of which have been met.

The proposed subdivision will consist of 29 lots on approximately 22.5 acres. Access to five lots may be provided from Adams Hill Road. Access to the remaining lots will be provided from two new streets which will be built to state standards and dedicated to NC DOT. Several neighboring property owners requested additional information and one individual expressed opposition to the project.

Upon inquiry of Councilwoman Sitnick about stormwater control, Mr. Green said that there are some culverts, but no controls to retain or detain stormwater. Even though the subdivision is outside the City limits and it doesn't have to comply with the stormwater runoff ordinance, natural measures are being taken.

Councilwoman Field moved to approve the final plat for Adamswood Subdivision. This motion was seconded by Councilman Watts and carried unanimously.

F. ORDINANCE NO. 2126 - AN ORDINANCE AMENDING CHAPTER 10, ARTICLE IV OF THE CODE OF ORDINANCES REGULATING NOISE

City Attorney Slawter said that this ordinance amends Chapter 10, Article IV of the Code of Ordinances which amendment is in response to the Honorable Earl Fowler's recent ruling regarding portions of the City's noise ordinance regarding barking dogs.

Councilwoman Sitnick related a personal experience with barking dogs and asked if this ordinance amendment will be able to create a solution to those people in our community who are on a daily basis affected by barking dogs, etc., without them having to hire attorneys and going to the expense of going to court. And, who will the burden of proof be on, the affected party or the person causing the problem.

City Attorney Slawter felt that this ordinance will help, but is not a cure-all. The burden of proof is never on the person being -9-

charged, but is on the affected party - by either calling the police or taking out a warrant.

Upon inquiry of Councilman McClure, City Attorney Slawter said that the penalty is a misdemeanor, punishable by up to 30 days in jail and a fine.

City Attorney Slawter answered questions from Council as they related to dangerous animals.

Councilman Watts was glad that the City was trying to strengthen it's ordinance, but felt that no matter how much is done, the City will continually have this problem of barking dogs.

Upon inquiry of Councilwoman Sitnick about the City recovering costs to cover the number of times a police officer has to be sent out to one house, City Attorney Slawter explained that any money collected is paid into the Court and not disbursed to the City.

Mr. Steve Becker briefed the Council on his two attempts in Court regarding a barking dog - which both times he lost and now is being sued by the owner of the barking dog. He has since solved the barking dog problem - he moved to the County.

City Attorney Slawter answered various questions as they related to a Greenville, North Carolina, ordinance in which a decibel meter is used by the police. An expense which Greenville had was the hiring of someone who had the expertise in writing an ordinance in which decibel levels are used. Additional expense might also be required to have that person testify in court to defend the decibel levels.

Councilwoman Field felt that even though this ordinance does strengthen our current ordinance, Council should look into the Greenville ordinance a little further. She said perhaps some standards could be set to allow our Police Department to make some decisions on the spot and even cite someone. She felt

that not all cases should have to go to court.

Councilwoman Sitnick instructed the City to do everything it can to make the public aware of this stronger ordinance. She asked the Council to immediately review the Greenville ordinance and strengthen even more our ordinance to protect our citizens.

Ms. Carrie Farmer, 36 High Court, related an incident about a barking dog and wanted Council to "put some real teeth" into the ordinance.

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

Vice-Mayor Peterson moved for the adoption of Ordinance No. 2126. This motion was seconded by Councilwoman Sitnick.

On a roll call vote of 7-0, Ordinance No. 2126 passed on its first and final reading.

ORDINANCE BOOK NO. 14 - PAGE 264 -10-

G. ORDINANCE NO. 2127 - ORDINANCE AMENDING CHAPTER 3 OF THE CODE OF ORDINANCES REGULATING ANIMALS AND FOWL

City Attorney Slawter said this ordinance amends Chapter 3 of the Code of Ordinances regulating animals and fowl. The amendments are being made as to be consistent with the amendments to the noise ordinance regarding barking dogs.

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

Councilwoman Field moved for the adoption of Ordinance No. 2127. This motion was seconded by Councilwoman Sitnick.

On a roll call vote of 7-0, Ordinance No. 2127 passed on its first and final reading.

ORDINANCE BOOK NO. 14 - PAGE 267

H. ORDINANCE NO. 2128 - ORDINANCE PROVIDING FOR A LISTING OF HISTORIC LANDMARKS IN THE CODE OF ORDINANCES OF THE CITY OF ASHEVILLE

City Attorney Slawter said that City Council has previously designated historic landmarks in the City of Asheville. The Buncombe County Board of Commissioners previously designated as a historic landmark a building and property which is now located within the corporate limits of the City of Asheville. It is desirable to include a listing of those historic landmarks in the Code of Ordinances.

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

Vice-Mayor Peterson moved for the adoption of Ordinance No. 2128. This motion was seconded by Councilwoman Field.

On a roll call vote of 7-0, Ordinance No. 2128 passed on its first and final reading.

ORDINANCE BOOK NO. 14 - PAGE 268

I. ORDINANCE NO. 2129 - AN ORDINANCE AMENDING SECTION 2-61 OF THE CODE OF ORDINANCES OF THE CITY OF ASHEVILLE (ASHEVILLE AREA CIVIC CENTER COMMISSION MEMBERSHIP)

City Manager Farris said that pursuant to City Council's request, this ordinance will expand the membership of the Asheville Area Civic Center Commission from nine to eleven members.

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

Councilwoman Sitnick moved for the adoption of Ordinance No. 2129. This motion was seconded by Vice-Mayor Peterson.

On a roll call vote of 7-0, Ordinance No. 2129 passed on its first and final reading.

ORDINANCE BOOK NO. 14 - PAGE 271 -11-

J. ORDINANCE NO. 2130 - ORDINANCE AMENDING ARTICLE IV OF CHAPTER 18 OF THE CODE OF ORDINANCES OF THE CITY OF ASHEVILLE TO ELIMINATE THE ADVISORY BOARD FOR THE HORSE DRAWN CARRIAGE ORDINANCE

City Manager Farris said that on June 15, 1993, the Asheville City Council adopted Ordinance No. 2032 which set forth regulations for the operation of horse-drawn carriages. Section 18-120 of the Code, which is a codification of a section of Ordinance No. 2032, established an advisory board for implementation of the horse-drawn carriage ordinance. The City Council has determined that appointment of members to the advisory board is not necessary at this time and that the board should be eliminated at this time.

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

Vice-Mayor Peterson moved for the adoption of Ordinance No. 2130. This motion was seconded by Councilman Watts.

On a roll call vote of 7-0, Ordinance No. 2130 passed on its first and final reading.

ORDINANCE BOOK NO. 14 - PAGE 273

K. ORDINANCE NO. 2131 - BUDGET AMENDMENT RELATIVE TO 16 BUSES FOR THE ASHEVILLE TRANSIT AUTHORITY

City Manager Farris said that this budget amendment, in the amount of \$3,119,700, is to appropriate the state and federal share towards the capital acquisition of Asheville Transit Authority's 16 new buses.

Councilwoman Sitnick expressed her disappointment that a couple of months ago she asked if these new 16 buses were state of the art buses and was told they were. It has now come to her attention that these buses do not have the lowest pollution control standards which are available today.

Mr. Carl Owenby, Urban Planner, said that the engines for the new buses have been EPA approved and it was very cost prohibitive to have the compressed fuel engines which Councilwoman Sitnick spoke about.

Councilwoman Sitnick felt that Council should, of course, think about the cost issue but still look toward the future of protecting its citizens and not

continue to contribute to the pollution in our area.

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

Vice-Mayor Peterson moved for the adoption of Ordinance No. 2131. This motion was seconded by Councilwoman Field.

On a roll call vote of 7-0, Ordinance No. 2131 passed on its first and final reading.

ORDINANCE BOOK NO. 14 - PAGE 274 -12-

L. ORDINANCE NO. 2132 - BUDGET AMENDMENT TO APPROPRIATE TWENTIETH YEAR COMMUNITY DEVELOPMENT BLOCK GRANT FUNDS

City Manager Farris said that this budget amendment, in the amount of \$1,675,000 is to appropriate twentieth year CDBG funds. The City has received approval from HUD for the twentieth year CDBG program in the amount of \$1,630,000. Program income is estimated to be \$45,000. The total budget is therefore \$1,675,000. This funding represents an increase of 10% from the previous year which was \$1,481,000. Allocation of the twentieth year funding was approved by City Council on May 3, 1994. HUD declared the Minority Business Program not eligible for CDBG funding. This budget therefore reflects an increase of \$11,500 for the Hillcrest Enrichment Program and \$62,854 additional funds for the City-wide Rehab Program. The Minority Business Program is not included in this budget.

The following is a breakdown of the funding allocation:

Affordable Housing Coalition \$ 45,500

HOPE-1 Implementation 142,000

Hill/Cherry (Head of Montford) area 144,000

City Wide Housing Rehab 446,000

Neighborhood Housing Services 110,378

Mountain Housing Opportunities-Homeownership 120,000

Home Site Acquisition 20,000

Habitat for Humanity - Land Acquisition 175,000

South Pack Square Redevelopment 110,000

Trinity Place Shelter 4,000

Hillcrest Enrichment Program 64,239

Vanderbilt Apartments 38,258

Asheville-Buncombe Community Relations Council 18,380

Erskine Avenue Playground 25,000

C.D. Planning 30,000

C.D. Administration 181,391

Total Budget \$1,675,000

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

Councilwoman Field moved for the adoption of Ordinance No. 2132. This motion was seconded by Councilman Watts.

On a roll call vote of 7-0, Ordinance No. 2132 passed on its first and final reading.

ORDINANCE BOOK NO. 14 - PAGE 276

V. CONSENT:

City Attorney Slawter asked that the resolution directing the City Clerk to investigate a petition to annex an area known as the Veterans Administration Medical Center be deleted from the Consent Agenda as a result of earlier discussions in Pre-Council.

City Manager Farris answered Councilman McClure's questions as they related to using volunteers instead of security guards for school crossing guards.

-13-

Mr. Ralph Bishop commented on his inability to obtain a certified copy of minutes.

A. APPROVAL OF THE MINUTES OF THE REGULAR MEETINGS HELD ON JUNE 21, JUNE 28 AND JUNE 30, 1994

B. RESOLUTION NO. 94-137 - RESOLUTION APPOINTING MEMBERS TO THE ASHEVILLE-BUNCOMBE HISTORIC RESOURCES COMMISSION

Summary: The terms of Randee Goodstadt and Pam Nickless expired on July 1, 1994. This resolution will reappoint Pam Nickless and appoint Shirley Early, to three year terms respectfully, terms to expire July 1, 1997. All terms are until their successors have been duly appointed and qualified.

RESOLUTION BOOK NO. 21 - PAGE 399

C. RESOLUTION NO 94-138 - RESOLUTION APPOINTING AN ALTERNATE MEMBER TO THE BOARD OF ADJUSTMENT

Summary: Pat Ochsenreiter has resigned as an alternate member to the Board of Adjustment. This resolution will appoint Judy Long to fill the unexpired term of Pat Ochsenreiter, term to expire January 21, 1997, or until her successor has been duly appointed and qualified.

RESOLUTION BOOK NO. 21 - PAGE 400

E. RESOLUTION NO. 94-139 - RESOLUTION APPOINTING MEMBERS TO THE ASHEVILLE REGIONAL AIRPORT AUTHORITY

Summary: The terms of Nelson Ferg and Otis Michael expired on June 30, 1994. This resolution will reappoint Otis Michael and appoint Charles D. Parker, to four year terms respectfully, terms to expire June 30, 1998. All terms are until their successors have been duly appointed and qualified.

RESOLUTION BOOK NO. 21 - PAGE 401

F. RESOLUTION NO. 94-140 - RESOLUTION APPOINTING MEMBERS TO THE POLICE OFFICERS AND FIREFIGHTERS DISABILITY REVIEW BOARD

Summary: The terms of Douglas Franklin, John Henderson and Phyllis Martin expire on July 19, 1994. This resolution will reappoint Douglas Franklin and appoint James Lewis to two year terms respectfully, terms to expire July 19, 1996. Both terms are until their successors have been duly appointed and qualified.

RESOLUTION BOOK NO. 21 - PAGE 402

G. RESOLUTION NO. 94-141 - RESOLUTION APPOINTING MEMBERS TO THE ASHEVILLE AREA CIVIC CENTER COMMISSION

Summary: The terms of B. Allan Culberson Jr., Joe Eblen, Rankin Hipp and Hayes Martin expired on June 30, 1994. This resolution will reappoint Hayes Martin and appoint Nancy Williams, Carolyn Ketchum and Joyce Dorr to three year terms respectfully, terms to expire June 30, 1997. It will also appoint Tom Muncy and Keith Green to two year terms respectfully, terms to expire on June 30, 1996. All terms are until their successors have been duly appointed and qualified.

RESOLUTION BOOK NO. 21 - PAGE 403

-14-

H. RESOLUTION NO. 94-142 - RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE, ON BEHALF OF THE CITY OF ASHEVILLE, A FEDERAL AVIATION GRANT AGREEMENT, 3-37-0005-17

Summary: This resolution will authorize acceptance of a grant agreement, in the amount of \$188,946, from the FAA to rehabilitate medium intensity taxiway lights and update the Master Plan (airfield pavement evaluation).

RESOLUTION BOOK NO. 21 - PAGE 404

I. RESOLUTION NO. 94-143 - RESOLUTION AUTHORIZING THE CITY MANAGER TO RENEW THE CONTRACT THE DAP SECURITY INC. FOR SCHOOL CROSSING GUARDS

Summary: For the past several years, DAP Security has contracted for this service and has a history of being very effective with minimal complaints.

For the school year 1993-94, this contract was submitted to every security service in the Asheville area for proposals. This was done through advertisement in the local media as well as by sending each provider a written request for proposal. DAP Security was the only company that submitted a proposal. Other providers refrained due to the complexity of providing 21 guards for an hour during the morning and an hour in the afternoon, as the proposal required.

Based upon the probability of having a competitive bid for this service and due to the satisfactory level of service experienced with DAP Security in the past, City staff recommends that the City refrain from advertising for competitive proposal and accept the contract as proposed by DAP Security.

RESOLUTION BOOK NO. 21 - PAGE 405

J. RESOLUTION NO. 94-144 - RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE AN AGREEMENT BY AND BETWEEN THE CITY OF ASHEVILLE AND THE SKYLAND VOLUNTEER

FIRE DEPARTMENT TO PROVIDE FIRE PROTECTION SERVICE TO THE NEWLY ANNEXED NON-CONTIGUOUS AREA LOCATED AT 3 GLENN BRIDGE ROAD (RANDY WARN PROPERTY)

Summary: This resolution will authorize the City Manager to execute a contract for fire protection services to the proposed non-contiguous property to be annexed at 3 Glenn Bridge Road (Randy Warn property). The City has a policy of contracting with a volunteer fire department to provide fire protection services to those non-contiguous annexation areas where the Asheville Fire Department feels that the volunteer fire department can provide more efficient fire protection.

RESOLUTION BOOK NO. 21 - PAGE 406

K. MOTION SETTING A PUBLIC HEARING ON AUGUST 9, 1994, RELATIVE TO FILING AN APPLICATION WITH THE FEDERAL TRANSIT ADMINISTRATION

Vice-Mayor Peterson moved the adoption of the consent agenda. This motion was seconded by Councilman McClure and carried unanimously.

-15-

VI. OTHER BUSINESS:

A. GROUP DEVELOPMENTS

Mr. Gerald Green, Senior Planner, said the City Council adopted a procedure whereby the Planning Director reports final recommendations of

the Planning and Zoning Commission relative to group developments at the next scheduled regular meeting of the City Council. He said in accordance with this procedure, the action of the Commission shall be final unless the City Council determines at their meeting to schedule a public hearing on the matter. He said the following actions were taken by the Planning and Zoning Commission on July 6, 1994:

PUBLIC HOUSING PROJECT ON VIRGINIA AVENUE

Mr. Green stated that at the Planning and Zoning Commission's meeting on July 6, 1994, the Commission voted 4-3 to recommend approval of the proposed 28 unit public housing project to be located on Virginia Avenue at Brotherton Avenue. The following four conditions were attached to the approval:

1. The un-opened rights-of-way must be closed prior to the issuance of building permit(s);
2. Driveway permits must be obtained for the connections of the drives;
3. Sidewalks or pedestrian paths shall be provided within the development to connect each building with other buildings in the development and to provide a connection to the street; and
4. Incorporate recommendations of the traffic impact analysis as they apply to the development.

The Commission also recommended denial of the request for a reduction in the number of required parking spaces, recommending that the development provide two parking spaces per unit.

This project generated a great deal of interest, with approximately 100 people attending the meeting to voice opposition to the proposed development.

The Commission recommends the City Council schedule a public hearing on this matter.

Councilwoman Sitnick moved to set a public hearing on this matter for August 23, 1994, at 7:00 p.m. in the Civic Center Banquet Room. This motion was seconded by Vice-Mayor Peterson and carried unanimously.

Councilwoman Sitnick urged all of Council to personally look at the area prior to the public hearing and asked staff to make extra efforts in advertising and contacting the public on this particular topic.

Councilwoman Field said that whether or not this project is developed, the City should look at removing parking on one side of Virginia Avenue due to the area being very congested.

Vice-Mayor Peterson favored individual homes instead of housing projects.

-16-

#### WNC AGRICULTURAL CENTER EXPANSION

Mr. Green stated that at the Planning and Zoning Commission's meeting on July 6, 1994, the Commission unanimously recommended approval of the WNC Agricultural Center expansion with four conditions as follows:

1. Confirmation of the water availability;
2. City Council approval of the variance request in order to construct grass/gravel parking areas;
3. Compliance with the landscape ordinance in regard to parking lot trees; and
4. Compliance with the watershed protection requirements.

The Commission unanimously recommended approval of the variance request in order to construct grass/gravel parking areas. They unanimously recommended denial of the variance request to waive the required parking lot trees.

Councilwoman Field moved to set a public hearing on this matter for August 9, 1994, to consider the variance request. This motion was seconded by Councilwoman Sitnick and carried unanimously.

#### B. RESOLUTION NO. 94-145 - RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE LEASE AGREEMENT NO. DTFA06-93-L-12872 WITH THE FEDERAL AVIATION ADMINISTRATION FOR THE SECTOR FIELD OFFICE AT THE ASHEVILLE REGIONAL AIRPORT

City Manager Farris said that this lease will be at the rate of \$747.00 a month and it would be to the City's advantage to accept this lease agreement.

Councilman McClure moved for the adoption of Resolution No. 94-145. This motion was seconded by Councilman Swicegood and carried unanimously.

#### RESOLUTION BOOK NO. 21 - PAGE 407

#### C. RESOLUTION NO. 94-146 - RESOLUTION OF INTENT TO CONSIDER AN ORDINANCE AMENDING ORDINANCE NO. 1501 WHICH AMENDS THE CHARTER OF THE CITY OF ASHEVILLE TO PROVIDE FOR DIRECT ELECTION OF THE MAYOR BY ALL THE QUALIFIED VOTERS OF THE CITY OF ASHEVILLE

City Attorney Slawter said that this resolution will set a public hearing on

August 23, 1994, at 4:00 p.m. in the Council Chamber of the City Hall Building to consider a proposed amendment to Ordinance No. 1501 which amendment will clarify that the procedure established in N. C. Gen. Stat. sec. 163-111 is determinative of whether a runoff election shall be required in the elections for the Mayor and City Council.

Councilwoman Field moved for the adoption of Resolution No. 94-146. This motion was seconded by Councilman Watts and carried unanimously.

RESOLUTION BOOK NO. 21 - PAGE 408

D. REQUEST REGARDING BRIDGE ON GRAHAM ROAD

Mr. Jim Simmons asked if the City could widen the bridge on Graham Road and explained his request.

-17-

City Manager Farris said that he was aware of the situation and he would investigate the request.

E. COMMENTS BY RALPH BISHOP

Mr. Ralph Bishop reminded the Council that they took an oath of office to support the Constitution of the United States.

City Attorney Slawter said that newly adopted provisions set forth in N. C. Gen. Stat. sec. 143-318.10 (e) provides that "full and accurate minutes of all official meetings" must be kept, and further provides that "such minutes may be in written form or, at the option of the public body, may be in the form of sound or video and sound recordings."

Mr. Bishop stated that he did not want a copy of a tape.

F. CLAIMS

City Manager Farris said that the following claims were received by the City of Asheville during the week of June 11-20, 1994: Steve Sutton (Water), Chris Morgan (Property), James Jay Foreman (Water), Johsepine Flemming (Water), Cindy Hoepcraft (Inspections), Jean Moss (Water), Charles Thomason (Parking), Joyce Harrison (Parking), Kerri Adler (Traffic Engineering), Matthew Abbott (Streets), Andre Logan (Sanitation) and Tina Angel (Parking).

He said the following claims were received by the City during the week of June 21-July 8, 1994: Bell South (Water), David Day (Property), Kim Bailey (Water), Lucille Plemmons (Property), John Hilgert (Streets), Malcolm Ingle (Sanitation), Jim Anderson (Streets), Tony Ward (Police), Ben House (Water), Joe Brearley (Streets), Rhonda Weston (Streets) and Jesse Warren (Water).

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

G. LAWSUITS

City Manager Farris said that the City was served with a lawsuit on July 18, 1994, as follows: Smith and Moss Auto Sales, Inc., and Bruce E. Moss, Inc. v. City of Asheville (Petition for Writ of Certiorari of Board of Adjustment decision).

He said that this lawsuit has been referred to the appropriate legal council

for action.

#### H. CIVIL SERVICE APPEAL

Councilman McClure moved that the City Attorney be directed to file a lawsuit in Superior Court appealing from the determination by the Civil Service Board in the Clinton Shelton case. This motion was seconded by Councilwoman Field and carried unanimously.

#### VII. ADJOURNMENT:

Mayor Martin adjourned the meeting at 6:39 p.m.

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CITY CLERK MAYOR

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