

Tuesday - January 24, 1995 - 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; City Manager James L. Westbrook Jr.; and City Clerk Magdalen Burlison

Absent: None

INVOCATION

Councilwoman Sitnick gave the invocation.

I. PROCLAMATIONS:

A. RESOLUTION NO. 95-3 - RESOLUTION TO RETIRING EMPLOYEE LARRY LOW

City Manager Westbrook read the resolution stating that Larry Low has been an employee for 20 years and has requested retirement from his position as Code Enforcement Officer in the Building Inspections Division of the Fire Department. He expressed City Council's appreciation to Larry for his service to the City of Asheville and its citizens.

Resolution No. 95-3 was adopted by acclamation.

RESOLUTION BOOK NO. 22 - PAGE 171

II. PUBLIC HEARINGS:

A. PUBLIC HEARING TO REVIEW A GRANT APPLICATION FOR CAPITAL FUNDS FOR THE TRANSIT AUTHORITY

RESOLUTION NO. 95-4 - RESOLUTION AUTHORIZING THE EXECUTING OR FILING, AS APPROPRIATE, OF N.C. TRANSPORTATION GRANT AGREEMENTS, GRANT APPLICATIONS, ANNUAL OR BIENNIAL APPLICATIONS, ANNUAL BUDGETS, AND OTHER SUCH DOCUMENTS, AS APPROPRIATE, WITH THE N.C. DEPARTMENT OF TRANSPORTATION PURSUANT TO RELEVANT SECTIONS OF THE FEDERAL TRANSIT ACT OF 1991, AS AMENDED

Mayor Martin opened the public hearing at 4:12 p.m.

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

Mr. Carl Ownbey, Transportation Planner, said that the City of Asheville and the Transit Authority are applying for a capital grant from NC DOT and the Federal Transit Administration in the amount of \$110,000 for the purchase of shelters and benches and to recover City funds expended last year to clean up contaminated soil at the transit maintenance facility. The federal share will be \$88,000, the state share will be \$11,000, and the local share will be \$11,000. The local share is programmed in the current Capital Improvement Plan and will be shifted to Fiscal Year 1996.

Mayor Martin closed the public hearing at 4:14 p.m. -2-

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. 95-4. This motion was seconded by Vice-Mayor Peterson and carried unanimously.

RESOLUTION BOOK NO. 22 - PAGE 172

B. PUBLIC HEARING TO REZONE ONE LOT ON OLD COUNTY HOME ROAD AND A PORTION OF A LOT AT 302 NEW LEICESTER HIGHWAY FROM R-5 RESIDENTIAL DISTRICT TO CS COMMERCIAL SERVICE DISTRICT

ORDINANCE NO. 2172 - ORDINANCE TO REZONE ONE LOT ON OLD COUNTY HOME ROAD AND A PORTION OF A LOT AT 302 NEW LEICESTER HIGHWAY FROM R-5 RESIDENTIAL DISTRICT TO CS COMMERCIAL SERVICE DISTRICT

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

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

Mr. Carl Ownbey said that this ordinance seeks to partially rezone a lot at 302 New Leicester Highway (PIN No. 9629-18-31-5958) and to rezone one lot on Old County Home Road (PIN No. 9629-18-31-5705) from R-5 Residential to CS Commercial Service. The subject property is approximately 4.8 acres and fronts on both New Leicester Highway and Old County Home Road. Each lot contains one residential structure. The property is zoned on the north by commercial service, on the east by commercial service and residential, and on the south and west by residential. The 2010 Plan recommends low density residential uses in this area, except for institutional (Eliada Home) to the northeast.

The partial rezoning at 302 New Leicester Highway was denied in September of 1991 and the property owner did not appeal it to the City Council.

The Planning staff reviewed the rezoning request and recommended that the Planning and Zoning Commission deny the request based on the current character of the area being residential and manufactured homes. However, at the January 4, 1995, Commission meeting, the Commission approved the rezoning request by a 5-1 vote.

Ms. Jane Gianvito Mathews, members of the Planning and Zoning Commission, said that the majority of the Commission felt the area was commercial.

Mayor Martin said that his office had received a call from Ms. Virginia Lance who called in her support for the rezoning.

Mr. Don Noakley, commercial broker, spoke in favor of the proposed rezoning.

Mr. Ernest Harris, area resident, said that he had no problems with the rezoning except that area residents did not want any exit or entrance from Old County Home Road due to that road already being heavily traveled. As long as all traffic flowed onto New Leicester Highway, the rezoning was fine with him.

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Ms. Linda Harris, area resident, said that she did receive notice of the Planning and Zoning Commission hearing, but not the City Council public hearing.

Mr. Bruce Moss, petitioner, said that there are no intentions to put any kind of exit or entrance onto Old County Home Road. He said that he would place in his deed a clause restricting access or exit onto Old County Home Road.

Upon inquiry of Councilwoman Sitnick, Ms. Julia Cogburn, Planning Director,

said that the notices sent out for the Planning and Zoning Commission meeting went to the same people for the City Council public hearing. Some type of random phone calls might be a solution to a problem such as this.

In response to another question by Councilwoman Sitnick, Ms. Cogburn stated that if City Council rezoned the property to Commercial Service, the City could not prevent someone from accessing onto Old County Home Road.

Mayor Martin closed the public hearing at 4:34 p.m.

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. 2172. This motion was seconded by Councilman McClure.

On a roll call vote of 7-0, Ordinance No. 2172 passed on its first and final reading.

ORDINANCE BOOK NO. 14 - PAGE 366

C. PUBLIC HEARING TO DEMOLISH 431 STATE STREET

ORDINANCE NO. 2173 - ORDINANCE DIRECTING THE DIRECTOR OF BUILDING INSPECTIONS TO DEMOLISH 431 STATE STREET

Mayor Martin opened the public hearing at 4:35 p.m.

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

Mr. Jeff Trantham, Assistant Director of Building Inspections, said that inspections and notices began on September 16, 1991. The inspection revealed that the dwelling is more than 50% gutted by fire, has no sanitary facilities and the dwelling is abandoned, is accessible to children and has no electricity. The owner has failed to comply with the Order issued on August 5, 1994, giving them 30 days to demolish the property located at 431 State Street.

Mayor Martin closed the public hearing at 4:35 p.m.

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

Councilman McClure moved for the adoption of Ordinance No. 2173. This motion was seconded by Councilwoman Sitnick. -4-

On a roll call vote of 7-0, Ordinance No. 2173 passed on its first and final reading.

ORDINANCE BOOK NO. 14 - PAGE 368

D. PUBLIC HEARING TO DEMOLISH 56 BURTON STREET

ORDINANCE NO. 2174 - ORDINANCE DIRECTING THE DIRECTOR OF BUILDING INSPECTIONS TO DEMOLISH 56 BURTON STREET

Mayor Martin opened the public hearing at 4:36 p.m.

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

Mr. Jeff Trantham, Assistant Director of Building Inspections, said that inspections and notices began on March 26, 1993. The inspection revealed that the dwelling has insufficient sanitary facilities, no water, no electricity, and has pest and garbage infestation. The structure is abandoned and is being occupied by vagrants and is accessible to children, causing the dwelling to be unfit for human habitation. The owner has failed to comply with the Order issued on May 9, 1994, giving them 90 days to demolish the property located at 56 Burton Street.

Mayor Martin closed the public hearing at 4:37 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. 2174. This motion was seconded by Councilwoman Sitnick.

On a roll call vote of 7-0, Ordinance No. 2174 passed on its first and final reading.

ORDINANCE BOOK NO. 14 - PAGE 370

E. PUBLIC HEARING TO AMEND THE ZONING ORDINANCE REGARDING REGULATION OF THE LOCATION OF ADULT BUSINESSES

ORDINANCE NO. 2175 - ORDINANCE AMENDING APPENDIX A OF THE CODE OF ORDINANCES TO ADD ADULT ESTABLISHMENTS AS A CONDITIONAL USE IN CERTAIN ZONING DISTRICTS

Mayor Martin opened the public hearing at 4:38 p.m.

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

Planning Director Julia Cogburn - Mayor Martin and members of Council this ordinance is before you today at your request. You will recall that several months ago you asked that the Planning staff and the Planning and Zoning Commission consider an amendment to the zoning ordinance which would address the location of adult establishments. You will also be dealing a little bit later in your meeting with an ordinance which addresses the licensing of these same types of establishments, so let me preface both of these presentations by saying -5-

I am going to be going through a lot of information with you. It is important that we get this information into the record because we need to establish, or you need to establish, a legitimate governmental interest in this type of regulations. There are a lot of constitutional issues with regard to the regulation of adult establishments and it is very important that this information be presented in the record and I just ask that you indulge me as I take this time to present this to you. We will be, it is important that all of this be made a part of the record and the City Clerk has the task of doing a verbatim transcript of this information. Adult establishments, as you know, are establishments which offer products, media services or entertainment which tend to be sexually oriented. Of course, the common terms for these types of establishments are such things as, topless clubs, adult book stores, X-rated movie theaters and the like. For simplicity the proposed ordinance which is before you defines regulated adult establishments using the same definitions that are provided for in the North Carolina General Statutes and I'm going to be presenting you with a copy of that definition. This is, for the most part, the same definition that you will find in your licensing regulations - there is one difference, and that is that the North Carolina General Statutes, and

therefore the zoning ordinance, deals with massage establishments and you will note that in the ordinance dealing with the zoning issue, we have excluded how it reads, is bona fide therapeutic massage services provided by a licensed or registered medical professional or other persons certified by a State or nationally recognized organization. This section shall also not apply to any private or public fitness center or non-profit community recreational fitness and service organization, either of which provides massage therapy as a service incidental to the operation of a fitness center. So we were trying to exempt, of course, bona fide massage therapist. Asheville's current zoning ordinance makes no distinction between adult establishments and their respective counterparts which don't deal primarily in adult materials. For instance, an adult movie theater currently is dealt with through our zoning ordinance as any other movie theater and would be allowed where any other movie theater would be allowed. An adult bookstore, anywhere any other type of bookstore would be allowed. As I say, before I get actually to the proposed draft, I need to go through with you some important background information. And, first of all I'd like to touch a little bit on legal issues and some other ordinances that we have looked at in the preparation of this draft. Generally communities throughout the country regulate the location of adult establishments in one of two ways. There's basically two theories. One theory is what's called the concentration technique. Basically it requires adult uses to be concentrated in one particular location, the theory being that policing those types of activities and regulating those types of activities, if they are all in one place, become simpler. Most communities, however, use what's called the dispersal technique and that's the technique, that's the draft that's before you today suggests. And what that does is prohibit adult uses from locating close to each other - it actually works in exactly the opposite way. It spreads them out, if you will. The dispersal method is often used in combination with additional requirements that the adult establishments be separated a given distance from what are considered protected uses and those are uses generally where children tend to congregate, such as schools, churches, parks, and the like. Our research indicates and this is filled with reading and ordinances that we have looked at in the preparation of this draft. Our research indicates that 1,000 feet was the most typical distance between adult establishments imposed by local ordinances, so the establishments themselves would have to be spaced 1,000 feet from another establishment of that type. Again, the theory here is that such a distance would tend -6-

to reduce pedestrian travel, reduce congregation around those types of establishments, and it would not allow for the problems associated with the concentration of adult establishments, which we will be reviewing momentarily. Our research also found that, and let me just go ahead and pass out to you, again because this needs to be part of the record - the research bibliography which was utilized in preparation of this draft. Our research found that in most of the communities where we looked at their ordinance that 500 feet was the most common separation requirement between adult uses and the "protected uses", the schools, the residential districts or whatever.

Councilwoman Sitnick - Julia, give me an idea of what 500 feet looks like.

Cogburn - Okay. If you're going from out in front of City Hall 500 feet, give or take some, is basically when you get to the first bay at the Fire Department. One thousand feet is roughly about when you get to front of the BB&T property. So 500 feet would be to the Fire Department's bays for the fire trucks. Both the concentration and the dispersal methods have been upheld by the courts, however, in regulating the location of adult establishments through zoning or licensing, the courts have made it clear that the total exclusion of such uses from the community's jurisdiction is prohibited and is unconstitutional. In other words, our ordinance needs to allow adult establishments a reasonable amount of land within the City in which to locate.

And the courts have upheld 5% of the land area in a community as meeting that reasonableness test. Another requirement that the courts have established for upholding local ordinances is that the factual basis for the ordinance be reviewed at public hearings, and this is why we're going through all this information right now, prior to the adoption of any regulations. And this, of course, is to establish the legitimate governmental interest in this type of regulation. As stated in the purpose section of the draft before you, the interest of the City in establishing these requirements is to try to limit the decrease in property values and increased crime rates which are associated with concentrations of adult establishments. Numerous studies and extensive research in other communities have documented just these types of adverse impacts as a result of adult establishments locating in the community. These studies have dealt with economic impacts, decline on property values, the fiscal impacts of blight, increase in crime rates, overall quality of life issues and the reputation of a community. Then again, you have the bibliography in front of you as to the actual research that we have done. Let me just go through a few examples, and then I'm going to call on the Police Chief to talk about experiences here in our community. Declines in property values have been documented in studies that have been conducted in Los Angeles, in Indianapolis, and in the Twin Cities. These studies showed that areas where adult establishments concentrated experienced lower property sales and rental values and that the marketability of properties increased with a distance from such concentrations. The Indianapolis study in particular surveyed certified real estate appraisers nationwide who overwhelmingly responded that an adult bookstore would have a negative effect on residential properties located in the same block. A study in Los Angeles has shown that physical deterioration and urban blight can and do result from concentration of adult issues. A planning study in Phoenix compared three study areas with adult entertainment businesses and compared those with three areas with similar demographics but no such establishments and found 43% more property crimes, 4% more violent crimes and 500% more sex crimes in the areas with adult establishments. Other cities which have documented higher crime problems, and in -7-

particular it's noted in most of these studies that in particularly there is an issue with sex related crimes. Other cities that have documented this include Minneapolis, St. Paul, Indianapolis, Los Angeles, Fayetteville and Gastonia, North Carolina. Gastonia, North Carolina, got us some information that looked at a particular area where there was a concentration of adult establishments and looked at a period from basically 1989 to mid-1994 and that area received a very high incidents of police calls during that period of time - it was basically a three block area. A high incidence in proportion to the types of percentages that were seen in other parts of Gastonia. There's also a study that's referenced in the research bibliography from New Hanover County and it's stated that even though there were not many adult establishments in their jurisdiction, they chose to regulate such establishments because they felt that it was important to prevent the detrimental effects of the possible locations and specifically reference one bookstore that had to ultimately be closed by the Sheriff's Department in New Hanover County following numerous raids to stop illegal activity at this particular establishment. So basically you can see that a proliferation of adult establishments can have a negative effect on many things in a community. Also one other study that's noted is the negative effect on a community's image to outsiders as well as residents. The City of Fayetteville has recently been wrestling with just this issue. And, recently changed their ordinance regulating adult establishments out of concern for the effect on the City's reputation. They had several industrial folks that were looking at coming to Fayetteville and actually made a decision not to locate to Fayetteville because of the red light district, if you will, in the City of Fayetteville. Let me know call briefly on Chief Annarino. He's going to talk about experiences in our community and then I will address what's actually in the proposed ordinance. Thank you.

Police Chief Will Annarino - Mr. Mayor, the City of Asheville has a brief history of this type of business. The first business operating beginning in late 1992. In reviewing our call for service logs in Asheville, the first business to open was Fox's Nightlife. From January 1993 to the present, there's been 64 calls for service to that location. The second business to open was the Mirage at 40-1/2 New Leicester Highway, which is now closed. Because of its brief history, there was only one call for service there - it operated for about three months. The next place to open, Mr. J.'s on New Leicester Highway has had 14 calls for service since December. That's all for service logs that we have at those three locations, which in effect means the calls we've had to respond to in reference to any type of incident that's occurred at that location. The types of calls that we've had at those locations has ranged from general vandalisms, to fights, to assault on a law enforcement officer, to larceny. We've charged two of the dancers for dancing without a license. We've charged one of the owners for failing to comply with the previous ordinance. On damage to property - that's probably a general outline of the calls for service we've had.

Sitnick - Mr. Mayor? Chief, when you have come upon these non-complying incidents, what action is taken? Is there a fine imposed, or some other kind of punishment - what happens if somebody, for instance, is operating without the proper license?

Annarino - In the past, the only compliance that the business owner was obligated to comply with was having a marquee designating his business with topless dancers. So if he was in compliance with that, he was in compliance with the entire ordinance of the City of Asheville. The dancers were required to obtain, of course, be 21 years of age, -8-

we've charged one dancer with being less than 21 and if they comply with the requirements of having their picture made, filling out an application, inspections, then they're okay to dance.

Sitnick - So in other words, they're charged with something and then the only thing they have to do is to comply with the law after they're charged. There's no fine or additional?

Annarino - There is a civil - a fine involved in that. The dancers. I believe it's \$50, if I'm not mistaken, is it Bill?

City Attorney Bill Slawter - The charge that was made with the owner for failure to give notice when he changed location without giving notice, I think was in District Court, wasn't it?

Annarino - Well she was charged without, dancing without a license.

Slawter - It's within the discretion of the judge.

Annarino - Yes. It's a very weak ordinance, there's no teeth into it and it's been inhibiting our investigations and enforcement of it.

Sitnick - I guess what I'm having a problem is, you know the law is the law and we're a nation of laws. And if somebody breaks the law, I don't think that the punishment ought to be an opportunity to comply with the law alone. I think that there ought to be some kind of penalty for not complying in the first place and a requirement to comply.

Mayor Martin - We are going to address that.

Slawter - And there was in the old ordinance as well. I don't have a copy of

the old ordinance in front of me, but there was - and that's what the people were charged under, under the old ordinance. The dancer for failure to obtain the permit or being under age.

Annarino - Failure to obtain, in one incidence, failure to obtain our license.

Slawter - Penalty under the existing ordinance that's in place as of today before the new ordinance comes before you is punishment as a misdemeanor in district court and it's within the discretion of the judge how much fine to impose. It can be up to \$500 or up to 30 days in jail. It's up to the judge as to how much to impose.

Annarino - And right now the only violation that the owner of a business stands to be charged is failure to publish on a sign that he has topless dancers employed.

Sitnick - So what you're saying is we need an ordinance with teeth and we need judicial backup.

Mayor - Any other comments? Herb?

Councilman Watts - Basically Chief, do you find those clubs that are in operation, basically you don't have any major civil disturbances, coming from them, like a lot of other clubs I have known about?

Annarino - I would say it's average of any, first and foremost they're a bar. They sell alcoholic beverages and you know, I think -9-

their comparable to any bar that's in that business. You're going to have certain types of calls and we generally find that they're in the same pattern as any type of business like that. No more, no less.

Mayor - Any further comments? Thank you Chief.

Cogburn - With that background let me know run through real quickly the ordinance and what it proposes to address, just these issues that we've been talking about. As I indicated at the beginning of the presentation, adult establishments are defined in the ordinance in accordance with the North Carolina General Statutes which I provided you with a copy of, with again the exclusion of licensed bona fide massage therapists. Let me also make clear that this ordinance does not affect businesses which sell or rent sexually oriented materials that are incidental to the sale or rental of other materials. And a good example would be video stores that might have a portion of their business to sell X-rated videos, but that's not the predominance of their business. This ordinance treats adult establishments as a conditional use in the Commercial Highway, the Commercial Service, the Light Industrial, and the Heavy Industrial Districts. And what that means is that there are a certain number of conditions that must be met for this establishment to be located in one of those districts and that the approval for the location must go before the Board of Adjustment. And the Board of Adjustment can place additional conditions - they can't deny it if someone meets those conditions, but they can place additional conditions on the approval of a location. The conditions that are proposed that must be met. First of all, a separation of 1,000 from another adult establishment. Separation from residential zoning districts of 500 feet. And a separation of 500 feet of any adult establishment from any church, school, library, licensed child care center, public community center, or public park or playground. In all instances it's made very clear in this ordinance that it does not affect current operations or operations which would fail the conditions following the original permitting. And let me give you an example of that, for instance, if an adult establishment comes in, meets all the conditions, is located somewhere

in the community and then the City zones a new residential district. The fact that now that adult establishment is not in compliance would not make them have to go out of business. Subsequent changes, or if a library were located close to it, the adult establishment was there before the library and so therefore it could continue. In all instances, except for multi-tenant facilities, you measure the distance from the lot line of the facility and not from the actual building itself. In multi-tenant situations you actually measure from where within that multi-tenant establishment, and that would be like a shopping center where you would have several different businesses, you would measure actually from the facility itself. The ordinance does not permit videos, live presentations, recorded music, etc. or printed material concerning the establishment outside of the establishment and it does require that external lighting be directed away from any residential areas which might be nearby. Let me real quickly move to the map.

Sitnick - Julia, before you do, can I ask another question? If you could back up for just a second, it was, is it true that the Board of Adjustment cannot grant a use variance?

Cogburn - Correct.

Sitnick - But if it's a conditional use, they can, is that what you're saying?

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Cogburn - No. They could not. What would happen, with a conditional use, all the conditions have to be met and basically the Board of Adjustment oversees whether or not all of those conditions are met. The Board of Adjustment may not waive any of those conditions, that's basically granting a use variance. So basically what the Board of Adjustment does is look and see, does it meet all those conditions and then it listens to the public and it can add additional conditions. That's the wonderful thing. It can add some additional conditions if they are needed.

Mayor - The Vice Mayor has a comment.

Vice-Mayor Chris Peterson - Julia, in (b) and (c) I noticed that you say, like, residential 500 feet and then in church, schools, libraries, licensed child care centers 500 feet. Could we not change that to 1,000?

Sitnick - Yes. Definitely.

Cogburn - You could and let me get to the maps first, before you would make that kind of a decision because you need to, if you will recall at the beginning of the presentation, you need to make certain that there is an allocation of some land, a reasonable amount of land, within the community where these establishments can be located.

Sitnick - Is that 5%?

Cogburn - 5% is the upheld. Who knows what the magic number is. 5% has been upheld by

Sitnick - But it doesn't have to be more than 5%.

Cogburn - No, it doesn't have to be more than 5%, I'm just saying that's a benchmark which has been accepted by the courts.

Sitnick - 1,000 feet was my first comment I was waiting until you were done. 1,000 feet from residential and everything in letter (c). I'm looking at from

here to the BB&T Building and to the first bay of the Fire Department, if there was nothing in-between us and them, it would be clearly visible to someone in my age bracket. You know the farther away the better. So I would certainly support that change.

Cogburn - Let me explain to you by reference to the maps why I think most communities including the Planning and Zoning Commission and Planning staff have gone with the 500 feet in order to not basically prohibit these types of establishments within the City limits. (steps to map) Basically what you will see here, the City limit line . . . computer generated fashion is to show basically the first thing that we did was to show the areas that were being recommended distance of 500 feet from residential districts. And then what we did was these circles that you will see, these are the protected uses, the churches, schools, or whatever. And this area . . . shows 500 feet. Actually the very first thing we did was to show all the areas that were Commercial Highway, Commercial Service, Light Industrial and Heavy Industrial and we went back and took away all those that were within 500 feet . . . and we excluded the . . . everything in green is the area basically under this ordinance that would allow adult establishments. Again, let me caution, this is not an exact map. We got it as close as we could possibly do. In some instances when you are dealing with computer generated maps, if a pin for a particular property falls outside of what you have commanded the computer to do, you might lose a little bit of -11-

area, but I think it basically is right. It also does not show newly annexed areas. Because they were not zoned at the time that we prepared this map. But if anything, I think they would only add area, especially Brevard Road because a lot of that was zoned commercially or industrially. So I don't feel like that takes away from the area that would allow these types of establishments. It also does not show day care centers, but we did get with Buncombe County Child Development and get a list of the day care centers and found very few, if any, that would be in these areas and would affect the amount of area that would be shown in green. So we think that this is pretty close. And in doing some rough calculations, out of 25,984 acres in the City, this basically leaves approximately 2,265 acres available, if you will, to adult establishments which is 8.72% of the area in the City and we, as staff and the Planning and Zoning Commission, felt that was a very comfortable and sound legally amount of area. Now we could look at further restrictions if you are interested.

Councilwoman Barbara Field - Could you give me those numbers again?

Cogburn - Total acreage in the City 25,984, this leaves 2,265 acres, that's what's shown in green or 8.72% roughly again.

Sitnick - Can we not get that down to 5%?

Cogburn - Well I think what you would want to do is say we want to go 1,000 feet from these protected uses and then what we would do is just take those dots and just basically expand the area and we could do some calculations and bring it back to you. I would recommend that be done before you take your final vote, so we make sure we're

Mayor - I would think so too. My only reservation, see my gut feeling in listening to this, is like yours. Let's do 1,000 feet and restrict it. But when I think about it, I think if we do not have a defensible position, we could end up in court which would delay the implementation until the court is finished with the whole lawsuit. And then we've somewhat defeated our purpose, haven't we. So, we need to be sure we're treading on firm ground and if we can go 1,000 feet, let's go 1,000 feet. If we can go 750 feet and achieve the purpose, let's do that. But let's not get into a indefensible position where we

are so out of line that we can be successfully sued and get it tied up in court, whereby letting the adult establishments continue as they are until the court suit is finished.

Councilman Swicegood - Julia, what is the big section down on the bottom?

Cogburn - It's the airport which the City controls the use of. But legally it would qualify.

Swicegood - And the next one up is what?

Sitnick - Julia, considering that 500 feet gives us almost 9% and I know you have to do this with real calculations and you know, measure your dots and all of that. But if 500 feet gives us almost 9%, it seems like 1,000 feet would give us about right.

Cogburn - Well, if you look at where some of these dots are, you're going to lose some area, but perhaps not enough significantly to make that - we could run that.

Mayor - You can check that? -12-

Cogburn - Yes.

Sitnick - How long would that take?

Cogburn - We could be back in two weeks.

Peterson - I was just going to finish up by saying that as a Council person I would like to keep the goal of 1,000 feet seeing as you have been creating with that map, I'm sure you can find a percentage like you did the airport.

Mayor - And if you cannot do 1,000 feet, can you do 900, can you do 800?

Cogburn - The computer generates this. Maybe what I'll do is take a look at 1,000 feet and then if I feel that that might not be a legally sound amount then I'll do 750 or 800 or something like that and take another stab at it. In any event, we'll get back with you with a report in two weeks.

Sitnick - I would agree with that unless this scenario is possible. What would happen if we voted on this today with the amended 1,000 feet and then you came back to us in two weeks and said we'll this only gives us 4% of the land so let's up it a little. Could we then amend it, would that be an okay?

Mayor - We would have to go through the entire procedure again.

Sitnick - We would?

Mayor - Yes. So it's better to wait for input from staff before we take final action.

Slawter - Whether it's better to wait, I don't know what I should add because it depends on what's going to happen between now and two weeks from now, I guess.

Sitnick - Well I'm thinking about are there any establishments waiting in the wings to get established? I don't want them grandfathered in because we waited two weeks.

Cogburn - I am not aware of anybody that has come in and applied for a permit

in our office.

Peterson - And to add to Councilwoman Sitnick, the one that closed, now you said that they would be grandfathered in, but isn't there a time frame like within 30 days? If it isn't then I think we need a time frame saying that, hey, if you've been closed for 30 days then you can't qualify to reopen.

Cogburn - Basically I think that if an establishment closed, it would have to come back in - this ordinance does not address how long it would have to be closed, but I would think that the minute that it shuts its doors, that the location permit would be lost and they would have to come back in and qualify. That's how I would interpret the ordinance.

Sitnick - Well, I would just like to go on record as saying that I would want some kind of a guarantee that we're not going to have four more businesses apply for licensing between now and the time we computer generate a 1,000 feet. And if I can't get that kind of a guarantee, then I want to vote on it today.

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Cogburn - I can't make that guarantee.

Councilman McClure - Can you say that our ordinance is to achieve 5% of the land and whether it be 750 or 1,000 feet, can we, does it have to be so specific - if we're saying our goal is to achieve 5% of the property and then have the ordinance reflect either 750 or 1,000. Or is that being too vague? Or is that indefensible?

Slawter - I don't think Council can today adopt an ordinance directing staff to insert in the ordinance whatever distance requirements would achieve a specified 5% goal. Because that percentage within itself is somewhat vague, because it has to be as best as we can estimate it, but it's not a fine art figure.

Cogburn - The main thing that you need to do is target your regulation with your purpose. And your purpose is being spaced far from schools. And the only thing that the courts say is that in accomplishing your purpose, you can't prohibit them in your community. And then, so what does that mean and how much is a prohibition and, as I said 5% has been upheld but the purpose is to separate it. And Councilman Peterson feels like 1,000 feet is needed and so what we can do is go back and look and see if the percentage we feel is too low, or that you feel is too low, so that it might, we might run into some constitutional issues.

Sitnick - I'm still uncomfortable with this. I would like to amend it to 1,000 feet today, Council vote on it and if it's not right, even if we have to sit here another hour with your presentation, you do such a good job that I'd be willing to sit and listen to it again. I just don't want to take a chance.

Peterson - I'll agree with Councilwoman Sitnick.

Sitnick - So right off the bat, can I make a motion now?

Mayor - Not yet.

Sitnick - Okay, I'll wait.

Mayor - Any further comment from Council before I open it up to the public?

Sitnick - I would just like to commend the Planning Department. I was present

at the Planning and Zoning Commission meeting, as a matter of fact that's why I ran out of the presentation to our legislative delegation to come back here and hear that presentation. And they reviewed 37 other studies, zoning regulations, ordinances in other cities. Thirty-seven of them, in order to come up with this draft and I want to commend them on their thoroughness in establishing what we have before us today.

Mayor - Okay, and I would also point out that this is the first of the public hearings we're having today, or new business, regarding the adult establishment businesses. The next one will be licensing and the third will be fees and charges. They will come a little bit later on in this meeting. Okay, do we have any comments from the public regarding this? I'll close this public hearing at 5:12 p.m. Members of Council have been furnished a copy of the ordinance, therefore, it will not be read. And I'll ask for a motion relative to adoption of the ordinance.

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Sitnick - Mr. Mayor, I would like to make a motion that we adopt the ordinance establishing regulatory - wait a minute.

Mayor - The amendment of the zoning ordinance?

Sitnick - Zoning ordinances for adult establishments and amend

Mayor - You're not going to amend anything, you are posing the motion, so just put whatever you want in there.

Sitnick - Pardon me?

Mayor - You're not amending it, just say what

Sitnick - I would like to move that we adopt the zoning ordinance on adult establishments and include in letter (b), Section 30-7-1 letter P. b. to change 500 foot radius to 1,000 feet and letter c. change 500 foot radius to 1,000 feet.

Mayor - Is there a second?

Peterson - Second.

Mayor - Is there any other comments? Okay, I'll ask the City Clerk at this time to call the roll.

City Clerk Burleson - Councilwoman Field - aye

Councilman McClure - aye

Vice-Mayor Peterson - aye

Councilwoman Sitnick - aye

Councilman Swicegood - aye

Councilman Watts - aye

Mayor Martin - aye

ORDINANCE BOOK NO. 14 - PAGE 372

III. UNFINISHED BUSINESS:

A. CONSIDERATION OF PARKING STUDIES

Mayor Martin said that on January 17, 1995, City Council, at its worksession, discussed the parking studies and requested that this item be placed on this agenda for possible action.

Councilwoman Field moved to direct staff to look into getting options from other agencies (State, Buncombe County, the private sector, and others who will benefit from the parking studies) to fund either fully or jointly fund the parking studies. After that information has been complied, staff is directed to bring it back to the Council for a final decision. This motion was seconded by Councilman Watts and carried unanimously.

IV. NEW BUSINESS:

A. ORDINANCE NO. 2176 - ORDINANCE ESTABLISHING REGULATORY LICENSING REQUIREMENTS FOR ADULT ESTABLISHMENTS AND ENTERTAINERS AT ADULT ESTABLISHMENTS

Mayor Martin - The next item is new business and it is an ordinance relative to amending licensing of adult establishments. And I'll ask Patsy Meldrum to give the staff report.

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Ms. Patsy Meldrum, Assistant City Attorney - Mr. Mayor and members of Council, you'll have to pardon me today, I have a little bit of a bad cold and if you can't understand what I'm saying, if you would ask me again, I'll try to say it again and if I can a little more loudly. The ordinance before you is the licensing ordinance for adult establishments and if I could suggest that in consideration of this ordinance, you need to incorporate the reports made by Ms. Cogburn as Planning Director and by Chief Annarino as Police Chief because we need to make the same type of findings before adoption of an ordinance licensing adult establishments as well. The current ordinance that you have only licenses topless entertainers, that is individuals who perform topless. It does not license businesses, it does not license also bookstores and adult motion picture theaters and mini-motion picture theaters. Mini-motion picture theaters are the types of establishments that you go into that have video booths, small booths where you go and see a motion picture or a movie, whereas motion picture, would be a larger theater where you see that.

Councilwoman Sitnick - A question Mr. Mayor? Would that also include what I have been told, only told, is occurring now at one of these establishments where they are taking showers in the back room?

Meldrum - That may be called an adult live entertainment business. Let me look at the definition under the proposal.

Sitnick - And are they paying their water bills?

Vice-Mayor Peterson - Let's ask the Chief of Police. Have they really been doing showers? Do you know.

Police Chief Will Annarino - I'm not aware of that. It's been strictly topless dancing.

Mayor - Okay, do we have any other questions of Ms. Meldrum.

Meldrum - I believe that the definition of adult live entertainment would

include that, although I have not seen it either.

Councilwoman Field - Can I ask a question? This is just for curiosity. We require women who dance topless to be licensed, do we require men who dance naked to be licensed?

Meldrum - Not under our present ordinance. Now whether or not any of this type entertainment would be subject to the State's obscenity statutes, that's a matter for the District Attorney's Office to determine.

Field - I'm just thinking about equality, that's all.

Mayor - Men can dance topless right?

City Attorney Slawter - Topless, but Councilwoman Field referred to naked and that wouldn't be allowed.

Field - I have heard that there are some - I suppose they aren't quite naked, but - I don't know because I don't go - but do they have to be licensed to do that?

Meldrum - No, we do not have an ordinance that requires licensing for that type of dance.

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Sitnick - It's my understanding that topless dancing is not considered obscene in North Carolina obscenity laws or by the North Carolina Supreme Court. Is that true?

Meldrum - I'm not sure to tell you the truth. Do you know Bill?

Slawter - That's correct. We've looked into that when we were earlier doing some work on the topless ordinance and there is some case law to that effect, including from the North Carolina Supreme Court.

Mayor - Well, we're going to make it a lot more difficult today.

Meldrum - What we're going to be doing is expanding licensing requirements to go beyond only topless entertainers and that's what this proposal does - is to cover any type of entertainer who would perform based on the definition of adult live entertainment that's set forth in the ordinance. And also as I mentioned, adult bookstores and adult motion picture theaters and mini-motion picture theaters. What this ordinance does leave out is massage parlors and the reason for that is that you do have a separate regulatory ordinance requiring licensing of massage parlors and in the zoning amendment that you just considered, that does cover massage parlors with regard to certain types of massage parlors and only their location. So the reason they're not included in the licensing scheme because they're separately licensed in another part of the Code.

Mayor - Okay. Do we have further questions or comments from Council? Do we have any comments from the public regarding this. I'll ask for a motion relative to the adoption.

Meldrum - Mr. Mayor, if I could - there were two corrections that I wanted to make to the ordinance draft that you have before you. On page 4, which talks about the application for licenses, in subparagraph A. 1. and in subparagraph B. where it talks about it's unlawful for you to have a business if your license has been revoked or suspended, we need to also add the language "or has

expired" because it could be that the license has not been revoked or suspended, but has expired.

Mayor - In each of those areas?

Meldrum - In each of those places.

Mayor - Okay. That's on page 4, A. 1 and B.

Meldrum - And then on pages 7 and 10, there are references to 18 years of age. And the current ordinance requires that to be 21 years of age. The definition of a minor in North Carolina for certain purposes is 18, that's why the proposal came to you as 18 years of age. However, it's been pointed out to me that in adult establishments that do serve liquor that they would be required to be 21 years of age. So we're going to recommend that we go ahead and make the change to 21 years of age in those places in this proposal.

Peterson - On page 10 you said on B? Or A or C?

Meldrum - On page 10 it would be in A, B and E, under Section 9-17.

Mayor - In other words, in all area that currently indicate 18 should be changed to 21. Correct?

Meldrum - That's right. -17-

Mayor - And that's those you are pointing out on pages 7 and 10. Is there anything else?

Meldrum - No sir. Thank you.

Mayor - Members of Council have been furnished with a copy of the ordinance therefore it will not be read in its entirety. I'll ask for a motion at this time relative to adoption of the ordinance.

Sitnick - Mr. Mayor, I'd like to move that we adopt the ordinance establishing regulatory licensing requirements for adult establishments and entertainers at adult establishments with the mentioned changes by Attorney Meldrum.

Mayor - Do I have a second.

Peterson - Second.

Mayor - Okay we have a second. I'll ask the City Clerk to call the roll.

City Clerk Burleson - Councilwoman Field - aye

Councilman McClure - aye

Vice-Mayor Peterson - aye

Councilwoman Sitnick - aye

Councilman Swicegood - aye

Councilman Watts - aye

Mayor Martin - aye

ORDINANCE BOOK NO. 14 - PAGE 376

B. RESOLUTION NO. 95-5 - RESOLUTION AMENDING THE FEES AND CHARGES MANUAL TO INCLUDE REGULATORY LICENSE FEES FOR ADULT ESTABLISHMENTS AND ENTERTAINERS AT ADULT ESTABLISHMENTS

Mayor Martin - The next item is a resolution amending the fees and charges manual relative to the licensing of adult establishments and I'll ask Patsy Meldrum, once again to give the staff report.

Meldrum - The ordinance which you just adopted said that the license fees would be as established in the fees and charges manual as established by the City Council from time to time. So what you need to consider now is the amount of those fees and you had a resolution before you proposing fees. The fees that you would adopt must be based upon the reasonable cost of administration in enforcing the ordinance and in order to determine the amount, I had asked the Finance Department and the Police Department for estimates as to what the administrative costs of enforcing the licensing ordinance would be. I have received those costs and in the resolution before you it states that the Finance Department estimates that the cost is a little over \$30 for each applicant for an entertainers license and \$46 administrative cost for each business license. The Police Department estimates that it will cost about \$109 administrative cost for entertainers license and \$400 in administrative cost for each business license. So if you add the estimated administrative costs for entertainers licenses, you get a little over \$139 and so the proposal is for that fee to be \$150 for the entertainers. If you add the cost of administrative fees for the businesses from the Finance Department and the Police Department, that amounts to about \$446 and the fee proposed is \$500. And that fee -18-

schedule is attached to your resolution. I should point out that the current ordinance requires a \$500 license for topless entertainers and so the effect of this is that those folks will be paying a lower fee. The ordinance which you adopted previously provides that if you've already gotten one of those licenses before this ordinance is amended, that your license is good for 12 months and then you have to come back in and comply with the new ordinance and then you would pay a smaller fee.

Sitnick - Mr. Mayor. It was our understanding that these fees were different. For instance, the entertainer license and renewal fee of \$150. Didn't we talk about this being about \$2,000 and the adult live entertainment business license and renewal fee being \$1,000? And didn't we also talk about the entertainer license being paid by the club owner, or the owner of the establishment?

Meldrum - If you did, I apologize I did not receive that information but as to the amount of the fees, the case law says, and there are a number of cases with a number of different types of fees that cities and counties have adopted. But they have to be reasonably related to our actual administrative costs and since we've gotten our estimates of administrative costs, it would be hard pressed to go beyond that.

Mayor - In other words, that would leave us in an indefensible position.

Meldrum - It would be difficult to defend extra costs unless there is some other evidence that we can find that the costs would be greater.

Peterson - It was my understanding, since I'm on the Fees and Charges Committee, that we can charge what we want to for the dancers and for making it the club owner's responsibility. And I just wanted to ask Mr. Slawter, is that not true?

Slawter - The Council does not have total discretion in setting charges at whatever amount you want to. There has to be some reasonable basis shown for

any type of fees imposed by governmental bodies. Otherwise, I mean, it just can't be totally in the Council's discretion. In case law in the area we're talking about relates to the fact that these types of activities and business concerns are treated to be constitutionally protected concerns and that's why a relationship must be shown between the cost of what the City is incurring in whatever cost the City has in licensing and regulating these businesses in relation to the fee that's charged. Otherwise, you're imposing a penalty in effect, the court would say, on their exercising their constitutional rights to do these sorts of

Peterson - Then I would like to ask the City Attorney and staff if the cost of having 65 trips from the Police Department be included in on this cost.

Sitnick - Exactly. And property devaluation costs somebody something. And those are costs that are not in the bottom line but really out to be. It's not just administration.

Slawter - I don't know how the Police Department determined the figures that are included in what they're approximate cost estimate is with regard to these activities, but I would assume the number of police calls made to these establishments are a factor that's considered. -19-

Mayor - Is that correct?

Annarino - No, generally it's the administrative costs. It's the processing the applicant, doing background check and monitoring on a ... basis periodically, but not factoring in any active call for service logs.

Mayor - Can we reasonably expect that to be a part of the cost?

Slawter - Well I'm not sure because I heard Chief Annarino say earlier that the primary need for police response to these establishments is simply because they are bars. And if he said, what I thought he said, which was that they had no more or no less problems in these establishments than they have at routine bars then there is not a basis for imposing a higher fee on them. Because it's not costing us anymore.

Sitnick - In other words you said there were 14 trips since December. That's about six weeks - that's almost a trip a week. Is that what Police make to all bars in this City.

Annarino - That particular bar ... is that it had 345 calls before it turned into a topless bar - it was a teen club.

Councilman McClure - What can the City reasonably charge? We're saying \$130 and then we're saying \$150 and then we have \$400 and then we're saying \$500. What's a reasonable charge. I mean, can we say double what your charges are? How do we determine what a reasonable charge and, it seems to me it's a matter of opinion. We say it's tied to it and that's our opinion. And the courts come back and that's their opinion. I know who wins out in that situation, I'm not stupid. But I also know, how do we determine what's reasonable and what's not.

Slawter - Patsy can tell you better than I can what the courts have said on this specific topic, because she's researched it a lot more than I have. But I know there does have to be a reasonable relationship between our costs and what we are charging.

Meldrum - That's about the best explanation I can give you is that they have taken, as Mr. Slawter has explained, due to the constitutional questions about this. The courts have taken a close look, and I believe that some of the cases

have said that they've taken a strict judicial view of the fees that have been requested because of the constitutional issues about the First Amendment. And there are some cities who have come forth with, they've been hot beds of promiscuity, they might have had a lot of adult establishments concentrated in one area, some where there have been years of records of information of the actual administrative cost in enforcing the ordinance and also the police costs. But there's another case that says where one city wanted to charge, I believe, a several thousand dollar fee and that was to be for one police officer investigating only three adult establishments in that jurisdiction. And the court said we just don't think that's reasonable. So that's all you can do is to look at all the different cases and see what your best guess would be and my best guess is that the fee needs to be tied in our case because we have limited experience with policing adult establishments to the cost of administrative enforcement.

Councilwoman Field - Patsy, can you say the cost of administration, plus 20%, I mean does the courts give you any guidance for what's reasonable? -20-

Slawter - That's what I was about to address. It's just like the 5% that Julia was talking about. The courts don't, unfortunately they never give us answers to a total situation, when you go in and have a specific case. A court will rule on the specific facts of that case and on the case that Julia is talking about, okay, 5% of the city was still available for this type of business, therefore, that was okay in that case. That doesn't even necessarily tell you that in all cases 5% is okay, much less set an exact benchmark that in all cases 5% is the definite figure you've got to have. And in the cases that Patsy has researched to this extent that I have reviewed those, have dealt with all kinds of different fees . . . the courts have held too high or otherwise have not. They haven't talked about them in terms of a precise cost plus a percentage, so that we'd have a benchmark.

Sitnick - The reason the courts don't set benchmarks and specific guidelines and definites is that it would take away the need for judgment. You wouldn't have to go to court. There'd be rules and regs and that's would it would be - a real clean deal. I would just like to ask one kind of side question. Just for my own understanding. If I wanted to open up a restaurant or the Beaucatcher Movie Theater, or whatever, are the licensing fees for those establishments that have nothing to do with adult entertainment, commensurate with the licensing fees for an adult entertainment establishment? In other words, are the administrative costs, the licensing fees, privilege license, whatever they get, similar? Proportionately speaking?

Meldrum - Those types of license fees are based upon Chapter 105 of the General Statutes and that's a revenue type statute that allows you to do things like ad valorem taxes and so forth and so on. And so those privilege license taxes are included in there. And when the General Assembly adopted those portions of 105 which sets forth those license taxes, they said that here's a list of ones that cities can do and here's a list of ones they cannot do and under the ones they can do - here's how much you can do it up to. And so, the General Assembly has set some guidelines there. It's been awhile since I've looked through all those specific guidelines and there's a number of them if you look at our revenue ordinance, our privilege license ordinance. There might be 50 or so categories. I don't do them everyday, so I'm sorry I can't recall. I would hazard a guess that 40 of those are probably based upon the statutory limit. There might be some that allow some discretion but I would believe that it would still be based upon the reasonable administrative costs and in this case because First Amendment issues are involved. Because what this is doing is licensing that particular kind of business based upon secondary adverse affects, not upon the content of the business. And the revenue ordinance is doing something entirely separate.

Sitnick - So in other words, a bar that wanted to operate and didn't have topless entertainment would probably be similar fees for licensing. Similar licensing fees. What I want to know, I guess, is because this deals with First Amendment rights and constitutionally, are folks who are opening bars with adult entertainment paying less than somebody who is opening up a similar kind of business without that additional (TAPE CHANGE AT THIS POINT)

Meldrum - ... For revenue generation purposes and the other would be this fee which is related to the secondary adverse affects of that type of establishment.

Mayor - Okay, we have another comment. -21-

Field - I was just wondering if we could adopt this with this schedule and have you look into what other communities are charging for similar, come back to us with more information. I would like to get something on the books right now, but give the staff a chance to verify whether or not these are reasonable - how, so we can have more comfort with what is reasonable.

Meldrum - That's fine with me.

Swicegood - What is the consequences if we did set it at \$1,000 and somebody came in and challenged you. What's the biggest negative that you have in the City.

Meldrum - There's two possibilities. One is that the entire ordinance would be enjoined, which would mean we could not have the ordinance, due to the invalid fees. The second possibility, well, I guess there's three. The second possibility would be that the court would say only the fees were not permitted and the rest of the ordinance could stand - which they have said in a number of the cases. And the third is that the Court would make a finding that the \$1,000 fees were reasonable. But that needs to be based on evidence here today, not on something that we would come up between now and the court case.

Swicegood - You're saying that you can't make it a \$1,000 because of the evidence. If you did and somebody comes in and challenges it, the worse that can happen is

Meldrum - That the court would throw out our ordinance. That's the worst case.

Sitnick - But we could adopt another one.

Meldrum - Right. You sure could.

Mayor - What Barbara was saying, why don't we go ahead and adopt these fees and build a case for raising the fees if we wish, which we can do at any time.

Meldrum - Yes, you could do that.

Peterson - I just want to question that. You're saying to charge the license for the entertainer license and renewal \$150, we already charge them \$500, so are you saying now that we want to go to \$150 instead of \$500? Why can't we at least leave that still in place?

Meldrum - I'm not aware of how the original \$500 was set, but based upon the law that I have reviewed, I believe that the fee needs to be related to the administrative costs and the evidence provided to me by our departments, who are responsible for administering it, only shows enough to warrant \$150.

Peterson - Then I would say that we've already set the \$500 for license and we

haven't had any problems. I would agree that we go ahead and adopt this, but the only problem I have is to keep the entertainer license and renewal at \$500.

Sitnick - I would agree. -22-

Peterson - We've already passed it, it's been effective and we haven't had a problem and I would like to keep it that way.

McClure - One other question I have too. Is this per location? Does somebody buy one license and then they can dance, or go to five different locations? Is this per location?

Meldrum - For the entertainers, the ordinance provides that they get one license and permit to move from different locations with no additional fee.

McClure- I thought we had discussed per location.

Sitnick - Yea. And any other business person would have to establish a license on Abbey Road to open a restaurant and then if they wanted to operate a restaurant on Baker Road, they'd have another license.

Mayor - This is not the restaurant, this is the entertainers - we're talking about the cooks.

Sitnick - So in other words the business licenses are per location. It's just the entertainers.

Mayor - Okay. Do we want to retain say, \$500 here, plus the other.

Sitnick - Wait a minute. It might be the cooks, but if you talk about doctors, they've got to be licensed and established and pay fees to operate in every hospital they go to.

Mayor - Well, is there any reason why we can't make it per location?

Field - That's interesting. Because as an architect, I can work in any office I want to without having to get another fee. That's interesting. So they make doctors do something different than they do other professionals.

Slawter - If we're tying it into the administrative cost to the City, then the question is whether there is any additional administrative cost by virtue of their moving from one place to another. I don't know if there is or not.

Peterson - We need to keep up with them to make sure that their license is valid and where're they at. We need to keep up with them. To see if they're 21.

McClure - Is there an administrative cost, say per location? How much administrative cost is involved?

Annarino - There really is not. Our concern has always been registering the dancers.

Mayor - So it doesn't matter where they dance?

Annarino - No.

Mayor - Well it's probably best to leave that one alone. -23-

Sitnick - But we were going to raise it to \$500, right?

Mayor - Right. Anything else? Okay, let's go on with this. Members of Council have been previously furnished with a copy of the resolution and it will not be read in its entirety. I will ask for a motion relative to adoption of the resolution at this time.

Peterson - I'll make a motion.

Mayor - Okay. You'll have to state specifically how you want to change that.

Peterson - I will make a motion that we adopt this with the change be the entertainer license and renewal fee be instead of \$150 to stay at \$500.

Sitnick - Second.

Mayor - Any further comments, questions? All in favor say aye. All opposed? (Motion carried unanimously.)

Rev. Wendell Runion thanked the Council and City staff for all work done on this ordinance.

RESOLUTION BOOK NO. 22 - PAGE 174

C. ORDINANCE NO. 2177 - ORDINANCE AMENDING ARTICLE II OF CHAPTER 13 (ALARM SYSTEMS) OF THE CODE OF ORDINANCES OF THE CITY OF ASHEVILLE

Police Chief Will Annarino said that a recent analysis of false alarm responses indicates that 86.5% of reported alarm are false in nature. In fact, only 1.1% of all reported alarms were due to burglary or robbery. Police response to "false alarms" approximates \$38,000 annually in officer salary (assuming a 15 minute response for two officers).

There are currently 1,100 registered alarm users who have voluntarily registered with the Asheville Police Department. There are, at present, an undetermined number not registered.

This revision would include (1) requiring every alarm user, both residential and commercial, who installs or causes to be installed, an alarm system for which police respond is expected to obtain an alarm user permit; and (2) a civil process fee will be set forth in the Fees and Charges Manual shall be instituted to ensure compliance and false alarm reduction.

An ordinance review and implementation meeting will be held with all security and monitoring companies providing alarm services to City residents.

Chief Annarino responded to Council inquiries about how businesses would be monitored and the reasoning behind the fines.

Councilwoman Sitnick thanked Vice-Mayor Peterson for actively pursuing this very important issue. -24-

Upon inquiry of Councilman McClure, Chief Annarino explained why banks and government buildings won't be affected.

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. 2177. This motion was seconded by Councilwoman Field.

On a roll call vote of 7-0, Ordinance No. 2177 passed on its first and final

reading.

ORDINANCE BOOK NO. 14 - PAGE 389

D. RESOLUTION NO. 95-6 - RESOLUTION AMENDING THE FEES AND CHARGES MANUAL
RELATIVE TO POLICE ALARMS

Police Chief Will Annarino said that this resolution will set the registration and penalty fees to ensure compliance with the new alarm system ordinance. Those fees are as follows:

Alarm permit application fee \$25.00

Failure to obtain an alarm permit

A. Failure to obtain permit \$100.00; and

B. Response to a false alarm without

a permit \$35.00 per

violation

Registered Alarm - False alarms in excess

of three in a consecutive one-month period \$10.00 per

violation

Local Audible Alarms - Failure to reset

within 15 minutes \$10.00 per

violation

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

Councilman Watts moved for the adoption of Resolution No. 95-6. This motion was seconded by Councilwoman Field and carried unanimously.

RESOLUTION BOOK NO. 22 - PAGE 176

E. MOTION DIRECTING THE CITY MANAGER TO SUBMIT A LETTER TO NC DOT RELATIVE TO
POSSIBLE PARTICIPATION IN SIDEWALK CONSTRUCTION FOR THE SWEETEN CREEK ROAD
WIDENING PROJECT

Mr. Ron Fuller, Transportation Planner, said that NC DOT has expressed a willingness to participate with the City of Asheville in constructing sidewalks along one side (the east) of the widening project associated with Sweeten Creek Road.

The scope of the project goes from Rock Hill Road to I-40 and is approximately 1.5 miles in length. This will be a five-lane curb and gutter facility that will tie into the new interchange at I-40. The remaining portion of Sweeten Creek Road south to US 25 is also on the Transportation Improvement Plan ("TIP") but remains unfunded. Presently, sidewalks do not exist on this length of roadway. -25-

NC DOT has stated that this would be a shared venture. The State would provide

60% with the City picking up the remaining 40%, or approximately \$25,000. This is the first local example of NC DOT's newly adopted sidewalk and pedestrian policy in action. Historically, they have replaced sidewalks only where they were originally located. Although this portion of sidewalk is relatively short and the appearance may be that it does not go anywhere, the possibility of getting this first leg in is important.

The construction date for this project is 1998. If the City is willing to participate, then that should give ample time to program needed funds (in phases if necessary) into the Capital Improvement Program. NC DOT said that it would not be comfortable in holding the City to a dollar amount. However, they had no problem in the City's contributing 40% and they were pretty confident that their estimates are reasonable because it doesn't include any additional right-of-way.

Although it is unclear where the actual funding would come from, the Planning Department's recommendation is to submit a letter to NC DOT expressing a willingness to participate. As TIP funding becomes available for the remaining portion of the project, sidewalks can also be considered at that time with the hopes of creating pedestrian facilities along a major roadway.

Councilwoman Field said that the Transportation Advisory Committee recently looked at this request and unanimously recommended that the City pursue sidewalks. Even though this stretch may not be as widely traveled with pedestrians, she felt that as we put sidewalks in, we will find them used. She urged Council to vote in favor of this stating that we are not committing anything right now, only telling NC DOT that we have a willingness to do this.

Councilwoman Sitnick supported Councilwoman Field's statement about the need for pedestrian access with more and more businesses coming in. I think that some kind of pedestrian provision would be wonderful. However, I don't know that we absolutely have to look at sidewalks. The City of Chapel Hill has done a really good job making the City more pedestrian friendly using different kinds of materials for pedestrian ways and I would like to ask that you look into the possibility of a different kind of pedestrian way that would not cost as much money. It's my understanding that the State will share in sidewalk costs if the City can demonstrate a need for them. I would like to add to the request that we look towards not necessarily spending it on expensive curbs and gutters and sidewalks, but rather some kind of material that is ADA approved and maybe pervious, road bond or something like that. I don't know what Chapel Hill is using, but I do recall reading an article about a real creative and less expensive way of providing pedestrian access.

City Manager Westbrook said that the letter would be an intent to spend 40% but we probably would have to use DOT standards and he wasn't sure how much latitude we would have. He reiterated that we are not committing any money at this time, only stating an intent to participate. In 1998, when the project is scheduled to begin, and we have some higher priorities, we don't have to put our 40% into it and the State could spend their money elsewhere.

Councilwoman Field moved to instruct the City Manager to write a letter to NC DOT expressing a willingness to participate in constructing -26-

sidewalks along one side (the east) of the widening project associated with Sweeten Creek Road, with the City's participation being 40%. This motion was seconded by Councilman Watts and carried unanimously.

F. ORDINANCE NO. 2178 - ORDINANCE REDUCING THE SPEED ON UNAKA AVENUE, LAUREL LOOP, ROSEWOOD AVENUE, DORCHESTER AVENUE, BARNARD AVENUE AND LEE AVENUE TO 20 MILES PER HOUR; AND REDUCING THE SPEED LIMIT ON JOYNER AVENUE, CLINTON AVENUE,

WILMINGTON ROAD AND EDGEWOOD ROAD FROM KIMBERLY AVENUE TO UNIVERSITY BOULEVARD TO 25 MILES PER HOUR

Mr. Jim Ewing, Director of Public Works, said that the Traffic Engineer has performed the necessary traffic analyses associated with the following locations and recommends the following speed limits be changed: Unaka Avenue, Laurel Loop, Rosewood Avenue, Dorchester Avenue, Barnard Avenue and Lee Avenue to 20 miles per hour; and Joyner Avenue, Clinton Avenue, Wilmington Avenue and Edgewood Road from Kimberly Avenue to University Boulevard to 25 miles per hour.

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

Councilman McClure moved for the adoption of Ordinance No. 2178. This motion was seconded by Councilman Watts.

On a roll call vote of 7-0, Ordinance No. 2178 passed on its first and final reading.

ORDINANCE BOOK NO. 14 - PAGE 393

G. ORDINANCE NO. 2179 - BUDGET AMENDMENT TO CLOSE OUT STREET AND SIDEWALK PROJECT NO. 5

Audit/Budget Director Bob Wurst said that the City of Asheville agreed to provide the Housing Authority with \$126,000 from the Street and Sidewalk fund for additional infrastructure improvements in the Montford community. This budget amendment, in the amount of \$126,000, follows that agreement and allows us to close out that payment.

At the January 10, 1995, City Council meeting, Mr. H. K. Edgerton had concern over closing out the project when he had a lien in the amount of \$126,000 on that project. After investigation, the lien was against Street and Sidewalk Project No. 6, not No. 5.

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

Councilman Watts moved for the adoption of Ordinance No. 2179. This motion was seconded by Vice-Mayor Peterson.

On a roll call vote of 7-0, Ordinance No. 2179 passed on its first and final reading.

ORDINANCE BOOK NO. 14 - PAGE 394

H. ORDINANCE NO. 2180 - BUDGET AMENDMENT RELATIVE TO CONSULTANT'S REVIEW OF THE UNIFIED DEVELOPMENT ORDINANCE

Mr. Bob Wurst, Audit/Budget Director, said that City Council has requested consulting assistance with the Unified Development Ordinance -27-

process. No funding was provided in the budget for such service. This action appropriates \$15,000 to the Planning Department for said services. Funding for the appropriation is from the City's undesignated General Fund - Fund Balance.

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

Councilman McClure moved for the adoption of Ordinance No. 2180. This motion was seconded by Councilman Watts.

On a roll call vote of 7-0, Ordinance No. 2180 passed on its first and final reading.

ORDINANCE BOOK NO. 14 - PAGE 396

I. RESOLUTION NO. 95-7 - RESOLUTION ESTABLISHING THE UNIFIED DEVELOPMENT ORDINANCE STEERING COMMITTEE

Ms. Julia Cogburn, Planning Director, said that staff is requesting, based on a suggestion from Bill Farris, consultant on the Unified Development Ordinance ("UDO") process, that a steering committee be named by Council to work with Mr. Farris on his review of the draft UDO.

In his proposal to City Council for review of the draft UDO, Mr. Farris recommended the appointment of a UDO Steering Committee to work with him on this review. The appointment of a Steering Committee is proposed in the language found in the consulting contract.

Mr. Farris has suggested a committee comprised of one City Council member to serve as Committee chair, one Planning and Zoning Commission member, and seven citizen members representing a broad cross section of community interests. As a review of the UDO Subcommittee work is to be a central product of the study, former subcommittee members should be included. It is proposed that this Steering Committee meet with the consultant approximately four times.

Since Mr. Farris would like to meet with the Steering Committee as soon as possible, it is his request that the appoints be made as quickly as possible by the Council.

It was the consensus of Council to appoint Councilman McClure to serve as Committee chair.

When Councilwoman Sitnick stated that she would like to be appointed to the committee as well, it was the consensus of Council that she, as well as other interested Council members, attend the meetings, but not actually be appointed to the Committee.

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. 95-7. This motion was seconded by Councilman Watts and carried unanimously.

RESOLUTION BOOK NO. 22 - PAGE 177

V. CONSENT:

-28-

A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON JANUARY 10, 1995

B. RESOLUTION NO. 95-8 - RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE AMENDMENT NO. 1 TO FAA GRANT AGREEMENT NO. 3-37-0005-15

Summary: The City and County are required to be cosponsors of FAA grant agreements received by the Airport Authority. The FAA has requested an amendment to a 1992 grant agreement providing for the deletion of a portion of

the project identified as "rehabilitate MITL". There are no City funds involved in this amendment.

RESOLUTION BOOK NO. 22 - PAGE 178

C. RESOLUTION NO. 95-9 - RESOLUTION AUTHORIZING THE SUBMISSION OF A GRANT TO THE JUNIOR LEAGUE OF ASHEVILLE FOR ASHEVILLE'S URBAN TRAIL - STATION 26

Summary: The Urban Trail Committee is seeing approval to submit a grant proposal to the Junior League of Asheville in the amount of \$1,000. The grant would engage an African-American artist who will prepare a master plan for artist interpretation of the history of "The Block" near the corner of Eagle and Market Streets. The grant will also provide a small stipend for the YMI Cultural Center to co-sponsor with the Urban Trail an oral history event in order to gather research data about the history of "The Block."

RESOLUTION BOOK NO. 22 - PAGE 179

D. RESOLUTION NO. 95-10 - RESOLUTION ACCEPTING A REPORT ON THE DISPOSAL OF CITY-OWNED PERSONAL PROPERTY

Summary: The report identifies City-owned property disposal for the Risk Management, Water Resources and Police Departments during the period July 1, 1994, through December 31, 1994.

RESOLUTION BOOK NO. 22 - PAGE 180

E. RESOLUTION NO. 95-11 - RESOLUTION ACCEPTING THE DONATION OF A 1976 WINNEBAGO FROM THE HOUSING AUTHORITY FOR CRIME AND DRUG PREVENTION ACTIVITIES IN THE PUBLIC HOUSING DEVELOPMENTS

Summary: The Housing Authority has purchased, for the Asheville Police Department, a Winnebago van for use as a Mobile Resource Center to be utilized by the Asheville Police Department ARGUS unit in public housing community policing endeavors. The van has been evaluated by Fleet Management and has been declared operational and in good condition. The van is valued at approximately \$10,000.

RESOLUTION BOOK NO. 22 - PAGE 182

F. RESOLUTION NO. 95-12 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO AN AGREEMENT WITH THE LAND-OF-SKY REGIONAL COUNCIL RELATIVE TO TRANSPORTATION PLANNING

Summary: The Land of Sky Regional Council has submitted their proposed contract for fiscal year 1994-95. The Council has been assisting the City of Asheville with MPO Planning for a number of years. The contract period runs from July 1, 1994, to June 30, 1995. The -29-

contract amount is \$20,000, however, the State reimburses the City 80% of all costs. Therefore, the cost to the City will be \$4,000. The services provided are necessary to complete the Planning Work Program. Problems unrelated to the contract have prevented us from completing the process prior to this date.

RESOLUTION BOOK NO. 22 - PAGE 183

G. RESOLUTION NO. 95-13 - RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE AN AGREEMENT WITH WILLIAM B. FARRIS FOR CONSULTANT WORK ON THE UNIFIED DEVELOPMENT ORDINANCE

Summary: At Council's request, staff has drafted a contract for consulting services with William B. Farris. This contract is for review of the Unified Development Ordinance. The specifics in the contract were arrived at during consultations between staff and the consultant. The contract is for a total of \$15,000 which includes travel expenses.

RESOLUTION BOOK NO. 22 - PAGE 184

H. MOTION SETTING A PUBLIC HEARING ON FEBRUARY 7, 1995, AT 7:00 P.M., IN THE THOMAS WOLFE AUDITORIUM AT THE ASHEVILLE CIVIC CENTER TO AMEND THE SIGN ORDINANCE REGARDING NON-CONFORMING SIGNS

I. MOTION SETTING A PUBLIC HEARING ON FEBRUARY 7, 1995, AT 4:00 P.M. IN THE THOMAS WOLFE AUDITORIUM AT THE ASHEVILLE CIVIC CENTER AMENDING THE ZONING ORDINANCE TO REZONE A PORTION OF A LOT NEAR THE CORNER OF MARTIN LUTHER KING JR. DRIVE AND HAZZARD STREET FROM R-3 RESIDENTIAL TO CG COMMERCIAL GENERAL

J. MOTION SETTING A PUBLIC HEARING ON FEBRUARY 21, 1995, TO AMEND THE ZONING ORDINANCE RELATIVE TO THE DEFINITION OF "SIGN"

K. MOTION SETTING A PUBLIC HEARING ON FEBRUARY 21, 1995, TO AMEND THE ZONING ORDINANCE TO ESTABLISH STANDARDS FOR THE REPLACEMENT OF EXISTING MANUFACTURED HOMES IN ALL ZONING DISTRICTS

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

VI. OTHER BUSINESS:

A. CITY-OWNED PROPERTY

Mayor Martin moved to direct the City Manager to survey all City-owned marketable property and recommend to the Council the highest and best use of the property. This motion was seconded by Councilman McClure and carried unanimously.

Councilman Swicegood felt that perhaps the building which houses the City Development Department might be sold or leased. Perhaps that Department could be moved back to City Hall or located in West Asheville.

Vice-Mayor Peterson felt we needed to be looking at locations for possible ballfields.

Councilwoman Sitnick suggested that if any space was found not suitable for marketability and/or development (like vacant tax lots) -30-

that the Council consider possible community garden spaces or community green spaces.

Councilman McClure questioned how much space is actually available in City Hall.

B. STORMWATER USER FEE COMMITTEE

Upon inquiry of Councilwoman Sitnick, Mayor Martin said that he has not yet made his decision about the vacancy on the Stormwater User Fee Committee.

C. CLAIMS

City Manager Westbrook said that the following claims were received by the City

of Asheville during the week of December 6, 1994 - January 11, 1995: John C. Cain; Genevieve Williams (Streets) and Rhonda Robinson (Streets).

He also stated that the following claims were received during the week of December 12, 1994 - January 18, 1995: BellSouth Telephone (Water), Shirley Owenby (Streets), Deloris Reid (Sanitation), CP&L (Water), James Williams (Water), Loretta Terry (Fire), Mary Gudger; Carol Davis (Water), BellSouth (Water), and BellSouth (Water).

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

At 6:30 p.m., Mayor Martin announced a 30-minute recess.

F. PUBLIC HEARING RELATIVE TO AN ELECTED SCHOOL BOARD

Mayor Martin said that on October 11, 1994, City Council held a public hearing on an elected school board versus an appointed school board. On November 8, 1994, City Council requested an additional hearing.

Mayor Martin opened the public hearing at 7:00 p.m.

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

Mr. George Watt, resident of West Asheville, spoke in support of keeping an elected School Board since the system works well. He felt Council can balance the School Board racially and geographically.

Mr. Joe Bly, representing 2,000 school children who will not graduate from Asheville High, felt that fair representation needed to be on the School Board. He said that three current members have a 28804 zip code and they possibly might not represent the children that live in a 28801 area. He ultimately recommended an elected School Board.

Mr. David Hiller, Chairman of the Asheville School Board, spoke in favor of an appointed School Board. City Council can balance the Board by race, gender and by geographical location. He stated that the Board represents all students in all areas and felt an appointed system can allow the Board to focus on education and not politics. He felt the process works well and Council should continue with an appointed Board. -31-

Ms. Dottie Stickney spoke in favor of an elected School Board stating that an overwhelming majority of School Boards in this country are elected.

Ms. Marsha Bate had no problem with an appointed School Board but would like to see it more accountable.

Ms. Althea Gough felt an appointed School Board would be better for balanced representation. She felt the Board needed to listen and talk to the people.

Mr. Bob Brown spoke in favor of an elected School Board for the accountability aspect. He also questioned a rumor about the School Board buying the building it is currently leasing.

Ms. Susan Fisher, Asheville native and member of the Asheville School Board since March 1993, presented a statement to Council stating that she has strong ties with the League of Women Voters and realizes the League actively supports a position that encourages the appointment of women and minorities to boards and commissions. With that in mind, she presented three instances where

election of school board members could prove detrimental to progressive board representation: (1) in any election, money is involved and elected people might be influenced by large money contributors by conforming to that particular family's value; (2) in a school system Asheville's size, an elected board runs the risk of eliminating promising African American candidates; and, (3) appointed boards has an autonomy that attracts better qualified superintendent, teaching and administrative candidates to their school systems. She also spoke favorably at the open process for the appointments of school board members.

Mr. Bob Smith said that since there is no perfect system, Council should look to see if this system is working. Asheville's works and we should continue with the appointed Board. His main issues, however, are accountability and representation.

Dr. Erby Oglesby, Vice-Chairman of the Asheville School Board, spoke in favor of an appointed Board. He responded to comments made earlier from Mr. Brown about the School Board purchasing the building they were housed. He said the current School Board members represent all the children - not only in the areas where the Board member lives!

Ms. Hazel Turner, member of the Asheville School Board, spoke in support of an appointed Board. She stressed that the Board members are available for all students, no matter what area they live in.

Councilman Swicegood stated that if the Council decided to go to an elected School Board, Council could still choose to have two appointed members, thus eliminating the problem of black representation.

Ms. Carol Matthews, member of the Asheville School Board, 15 Lynwood Road, strongly supported an appointed school board. It gives the City Council the opportunity to appointed a balanced, diversified group. She felt that any citizen could request to be on the school board with no financial cost involved, unlike the election process.

Dr. Wayne Trogdon, Superintendent of the Asheville City Schools, also addressed the rumor surrounding the School Board wishing to purchase the building it is now leasing - which rumor is not correct. -32-

He spoke in favor of an appointed Board stating that the Board is responsible to the community and makes it's decisions based on what is the best for the children.

A teacher from the Asheville City Schools spoke in favor of an appointed Board and was very impressed with the Board members and their interest for all children.

Mr. Tony Ponder preferred a partisan elected School Board.

Ms. Carol Collins spoke in favor of an elected School Board which would, among other things, ensure accountability.

Mr. Stan Morgan, in central administration in the Asheville City School system, felt that appointed boards are much more effective and are usually more capable of putting the best interest of the community and the children first.

Ms. Wanda Boyd, resident on River Ridge Drive, spoke in support of an appointed School Board. She said that she has worked with an elected School Board in the past and felt an appointed Board was the way Council should continue.

Ms. Rosaline Fetty, representing the League of Women Voters, stated that the League continues to support an elected School Board.

Councilwoman Sitnick said that there were 15 people at the last School Board public hearing and 30 here today. She wondered what the Council could do to stir up interest for education in general.

At the request of Mayor Martin, City Clerk Burleson said that notices were sent to the present School Board members, the City Clerk's office of media/interested persons list (approximately 30 names), principals at all schools to be posted, all PTA/PTO presents and newsletter editors, Administrative Director of the Asheville City Schools Foundation, Superintendent Dr. Wayne Trogdon's Office, advertised on January 13 and January 20 in the legal ad section of the Asheville Citizen-Times, advertised Sunday, January 15, 1995, in the retail section of the Asheville Citizen-Times, and mentioned twice on ARNIE automated telephone system.

Councilman Watts felt sure that this Council would consider all qualified black candidates for this very important Board.

Mayor Martin thanked all who participated in this public hearing.

VII. ADJOURNMENT:

Mayor Martin adjourned the meeting at 8:17 p.m.

CITY CLERK MAYOR
