

Tuesday - March 21, 1995 - 2:00 p.m.

Room 623 - City Hall

WORKSESSION

Present: Mayor Russell Martin, Presiding; Vice-Mayor Chris Peterson; Councilwoman Barbara Field, Councilman Gary McClure, Councilwoman Leni Sitnick and Councilman Joseph Carr Swicegood; City Attorney William F. Slawter; City Manager James L. Westbrook Jr.; and City Clerk Magdalen Burleson

Absent: Councilman Herbert J. Watts (in rehabilitation hospital)

Tax Protests Filed by Property Owners of Brevard Road Annexation Area

City Attorney Slawter said that the City and the Tax Collector have received several protests from property owners in the Brevard Road Annexation Area related to recent tax bills.

The amount of tax being protested by those property owners filing protests is based upon their assertion that they should not be taxed for July, August, September, October and November, 1994.

N. C. Gen. Stat. sec. 105-381 provides a method by which taxpayers can challenge a tax that has been done in this instance. The statute provides that, upon receipt of such a challenge, the governing body shall either (a) release that portion of the tax that is determined to be in excess of the correct tax liability; or (b) notify the taxpayer in writing that no release or refund will be made.

If the Council were to determine that the protests should be honored, other taxpayers in the Brevard Road Annexation Area would also be entitled to refunds. The Audit/Budget Director estimates that the total amount involved is \$200,000.00.

Our recommendation is that the Council direct that the protesting taxpayers be notified in writing that no release will be made. If the Council concurs, then the protesting taxpayers are required by statute to pay the tax and may thereafter institute a civil action for a refund.

It was the consensus of Council to proceed with appropriate action at the next formal meeting.

TCI CABLEVISION OF ASHEVILLE

Ms. Patsy Meldrum, Assistant City Attorney, said that TCI is seeking approval of its annual adjustment to update equipment and installation charges for the basic service tier and approval of an inflation adjustment to the basic service tier rates.

City staff only recently received a copy of the new regulations adopted by the Federal Communications Commission and recommends, pursuant to the authority granted by the FCC regulations, that the time period for review of the proposed rate change be extended until April 4, 1995.

Councilwoman Sitnick asked the cable consultants check to see if TCI Cable is basing their franchise fee payments to the City on their basic rates or some other method, to see if we can collect any money retroactively and to find out the details of the City owning their own system. -2-

City Attorney Slawter stated that the City's franchise agreement runs out in the year 2002 and suggested, at that time, the City could look at the details of owning their own system as a negotiating tool.

It was the consensus of Council to proceed with appropriate action at the next formal meeting.

#### SELECTIVE TRAFFIC ENFORCEMENT PROGRAM FUNDING

Police Chief Will Annarino said the Police Department is seeking third and final year federal support for its Selective Traffic Enforcement Program. The grant application seeks \$106,801 in federal funds and requires \$121,201 local match.

It was the consensus of Council to proceed with appropriate action at the next formal meeting.

#### CIVIL SERVICE TASK TEAM PRESENTATION

Ms. Pam McGrayne, Personnel Director, said that City Council has requested employee input be obtained prior to requesting any change in the Civil Service Law. This Task Team was formed to gather information from all employees and the Civil Service Board about the hiring, promotional, and testing processes required by the Civil service Law. The second task of this team will depend on further instructions from the City Council.

Mr. Gary Ramsey, Team Leader, reported that since the team had less than one month to perform its first task, options for obtaining employee input were discussed. The logistics for setting up focus groups for several hundred employees along with the time restraint lead the team to send out a written survey.

He then briefed the Council on the Employee Survey Report. Out of approximately 800 surveys that were distributed, 351 were completed and returned. 71% felt the Civil Service Law should not be changed, 18% felt that the Civil Service Law should be changed; and 11% were undecided. He summarized that 44% of the employees that responded to the survey, 71% did not want to change the Civil Service Law. This means that employees were unanimous about this by a four to one margin. Whether they agreed or disagreed with changing the law, employees often made the same comments pro and/or con.

He said the team could have done a more thorough job if it had more time and stated that many City employees do not understand what the Civil Service Law is and how it works. However, the team feels that the results of this survey accurately represent the way employees feel about this issue.

Councilwoman Sitnick understood that the team was trying to be quick in order to meet the legislative deadline, however, she wanted the report to be a thorough study and let every employee have the opportunity to come forward and ask questions. She didn't see that happening with this survey. She wondered why the other 400+ employees did not respond to the survey - they didn't have time, they were not educated enough about the Civil Service Law or perhaps some couldn't put their thoughts down in writing. She stated that she was concerned with the process.

Mr. Ramsey felt that the team would be willing to go back and be more thorough, given more time. He felt that setting up focus groups, -3-

education and a good basic understanding of the Civil Service Law for all employees might resolve Councilwoman Sitnick's concerns.

Councilman Swicegood felt that the Civil Service Law was somewhat outdated and there needed to be some changes. He, along with all the other Council members, agreed that the City employees needed to be educated concerning this issue.

Dr. John Grant, representing the Black Ministerial Alliance, expressed concern about the need to bring in a more racial makeup in City government. The Alliance not only has concerns about the Rule of 3 and its impact on hiring of minorities, but other concerns that need to be addressed as well. He asked to be placed on a Council agenda to discuss these concerns.

Mayor Martin suggested a worksession with the Council might be more appropriate for a meeting and asked Dr. Grant to submit those comments in writing in order to give staff time to research the concerns.

Mr. Tim Moffitt, representing citizens and business owners, felt there was adequate time spent on the written survey due to the simplicity of the two questions asked on the survey. He questioned the percentage statistics as a result of less than half of the employees responding. He said that all employees are provided protections that already exist and they should be educated along those lines as well, and not solely on the benefits that the Civil Service law has to offer. He stressed that City government needed to be managed effectively.

Mr. Glen Holbert, Asheville Firefighters Association, urged Council to leave this process open.

Ms. Laura Gordon, representing the Asheville/Buncombe United Public Workers, stated that their position is to not change the Civil Service Law and hoped Council will leave the process open.

Vice-Mayor Peterson moved that the City Manager, Personnel Director, the Task Team, and anyone else who is interested in this matter, work together so that a thorough report can be achieved and when that has been accomplished, report back to the City Council with the findings. The specifics regarding a time frame that it should be back to Council will be left at the discretion of the City Manager. This motion was seconded by Councilwoman Sitnick and carried unanimously.

#### ADJOURNMENT

Mayor Martin adjourned the worksession at 3:35 p.m.

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CITY CLERK MAYOR

Tuesday - March 21, 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 and Councilman Joseph Carr Swicegood; City Attorney William F. Slawter; City Manager James L. Westbrook Jr.; and City Clerk Magdalen Burleson

Absent: Councilman Herbert J. Watts (in hospital) - At certain times, Councilman Watts was able to participate in the meeting by use of a speaker phone. At those times, it will be noted.

#### INVOCATION

Councilman McClure gave the invocation.

I. PROCLAMATIONS:

A. PROCLAMATION PROCLAIMING THE WEEK OF MARCH 20-26, 1995, AS "VOLLEYBALL WEEK"

Mayor Martin proclaimed the week of March 20-26, 1995, as "Volleyball Week" in the City of Asheville and presented Mr. Keith Murless, President of the Asheville Volleyball Club, with the proclamation who briefed the Council on the Hi Neighborhood Volleyball Tournament.

II. PUBLIC HEARINGS:

A. CONTINUATION OF PUBLIC HEARING TO REZONE 65, 73, 77, 83 AND ONE VACANT LOT ON MONTFORD AVENUE FROM R-4 RESIDENTIAL TO CG COMMERCIAL GENERAL

Mayor Martin said that this public hearing was opened on December 6, 1994, and was continued until this date in order to give staff sufficient time to work with the community to address the Head of Montford Redevelopment Plan in general.

Ms. Julia Cogburn, Planning Director, briefed the Council by saying that on December 6, 1994, Council heard the rezoning request of James and Shirley Dozier that five lots in Montford be rezoned from R-4 (high density residential) to CG (Commercial General). Council continued the public hearing so that staff could work with the Montford community in examining the entire Head of Montford Redevelopment Plan and how it might need to be amended. It was felt that there were many issues in the plan which needed to be reexamined and that as it had been seven years since the plan was adopted. It was in the community's best interest to look at all these issues and not just the rezoning.

Two community meetings and two steering committee meetings have been held concerning the plan but work is still in progress. It is now proposed that a recommendation on the rezoning and an amendment to the plan will be ready for Council at their May 23rd meeting.

Planning staff recommends that Council continue the public hearing until May 23, 1995, at 5:00 p.m.

City Attorney Slawter reminded the Council that on December 6, 1994, Councilman McClure was excused from voting due to a conflict of interest.

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Councilwoman Field moved to continue this public hearing, without further advertisement, until May 23, 1995, at 5:00 p.m. This motion was seconded by Vice-Mayor Peterson and carried unanimously.

B. PUBLIC HEARING RELATIVE DEMOLITION OF 17 RIDGE STREET

ORDINANCE NO. 2196 - AN ORDINANCE DIRECTING THE DIRECTOR OF BUILDING INSPECTIONS TO DEMOLISH 17 RIDGE STREET

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. Jeff Trantham, Assistant Director of Building Inspections, said that 17 Ridge Street was inspected on September 3, 1993, and found the following conditions: the dwelling is abandoned, being occupied by vagrants, is accessible to children, has no electricity, and is unfit for human habitation. Proper notices have been sent to the property taxpayer of record and on December 2, 1994, the owner was given 30 days to repair or demolish. No action has been taken to date.

Councilman Swicegood said that he had received a call from Mr. White (son-in-law of property owner) stating that the owner was in the hospital and he, Mr. White, wanted to meet with the Inspections Division regarding this demolition.

Ms. Hattie Ingram, granddaughter of the owner of 17 Ridge Street, stated that she has talked her grandmother and her grandmother has no problem with the City tearing down the house and placing a lien on it.

Mayor Martin closed the public hearing at 4:16 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. 2196. This motion was seconded by Councilwoman Field.

On a roll call vote of 6-0, Ordinance No. 2196 passed on its first and final reading.

ORDINANCE BOOK NO. 15 - PAGE 45

#### C. PUBLIC HEARING RELATIVE DEMOLITION OF 106 BURTON STREET

ORDINANCE NO. 2197 - AN ORDINANCE DIRECTING THE DIRECTOR OF BUILDING INSPECTIONS TO DEMOLISH 106 BURTON STREET

Mayor Martin opened the public hearing at 4:17 p.m.

City Clerk Burleson 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 106 Burton Street was inspected on February 20, 1993, and found the following conditions: the dwelling has been severely damaged by fire, has a structurally unsound roof and walls, severely damaged heating, electrical and plumbing systems, has insufficient sanitary -3-

facilities, is abandoned and unfit for human habitation. Proper notices have been sent to the property taxpayer of record and on October 13, 1994, the owner was given 30 days to repair or demolish. No action has been taken to date.

Mayor Martin closed the public hearing at 4:18 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. 2197. This motion was seconded by Councilman McClure.

On a roll call vote of 6-0, Ordinance No. 2197 passed on its first and final reading.

ORDINANCE BOOK NO. 15 - PAGE 47

D. PUBLIC HEARING TO REZONE 19 LOTS IN THE MONTFORD AVENUE AREA (LOCATED ON PANOLA STREET, CUMBERLAND AVENUE AND MONTFORD PARK PLACE) FROM OI OFFICE INSTITUTIONAL TO R-3 RESIDENTIAL

ORDINANCE NO. 2198 - AN ORDINANCE TO REZONE 19 LOTS IN THE MONTFORD AVENUE AREA (LOCATED ON PANOLA STREET, CUMBERLAND AVENUE AND MONTFORD PARK PLACE) FROM OI OFFICE INSTITUTIONAL TO R-3 RESIDENTIAL

Mayor Martin opened the public hearing at 4:18 p.m.

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

Mr. Mike Matteson, Urban Planner, said that the Planning Department received petitions to rezone 15 lots from OI (office institutional) to R-3 (medium density residential). The Planning staff is recommending that four additional lots be considered.

At the Planning & Zoning Commission meeting held on March 1, 1995, 16 area residents and/or property owners spoke. Fifteen of those who spoke were in favor of the rezoning request and one individual asked that the request be tabled.

The Planning staff recommended approval of the rezoning request and inclusion of the four additional property based on the following: (1) this subject properties are residential in use, scale and character; (2) the uses permitted in R-3 are more compatible with these properties than those permitted in the OI district; (3) the City's 2010 Plan proposes residential land uses for this area; and (4) the area abuts an existing R-3 zoning district.

On March 1, 1995, the Planning & Zoning Commission reviewed the request and on a 6-1 vote, recommended to Council that this rezoning request be approved.

The following individuals spoke in favor of the proposed rezoning by stating that the neighborhood is strictly residential in usage and is not suited for other use due to the narrow winding streets, lack of parking, completeness of development and local terrain:

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Diane Boswell, 45 Panola Street (who also passed out pictures)

Bill Baber, resident on Montford Avenue

Christie Schreiber, 17 Panola Street

Helen O'Connor, 19 Panola Street

Mary Jo Brezny, resident in Montford community

Mayor Martin closed the public hearing at 4:26 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. 2198. This motion was seconded by Councilwoman Sitnick.

On a roll call vote of 6-0, Ordinance No. 2198 passed on its first and final reading.

ORDINANCE BOOK NO. 15 - PAGE 49

E. PUBLIC HEARING RELATIVE TO GROUP DEVELOPMENT APPROVAL OF HAW CREEK MEWS APARTMENTS - PHASE III

Councilman Watts was able to participate in this portion of the meeting via speaker phone.

Mayor Martin opened the public hearing at 4:27 p.m.

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

City Attorney Slawter said that two weeks ago when this matter was before Council to set a public hearing, a question was raised regarding comments that Vice-Mayor Peterson was quoted in the paper of having made and for the purpose of the record I thought it would be best if we began this public hearing by clarifying Vice-Mayor Peterson's statements with regard to whether he has any bias that would prevent him from legally participating in the proceedings here today. The law does provide that if a member of a board setting in a capacity, such as the Council will be sitting here today, should have any bias in terms of having pre-decided how a matter should go without having heard the evidence presented at the public hearing, then that member should be excused from participating in the deliberations of the body. For the purpose of the record, I discussed with Vice-Mayor Peterson and would ask that he simply state whether he has by his earlier looking into this matter formed any conclusions or opinions about the case that would prevent his participating in the deliberations here today and making a decision and voting on the matter based upon the evidence as presented here today. Or whether he has already made up his mind and would not be able to fairly and independently do that.

Vice-Mayor Peterson said that when the City Attorney approached him with this, he felt like he had done nothing that a Council person who is elected is supposed to do. The neighbors were having a meeting, it was an open meeting, I was invited to the meeting, myself and Councilwoman Sitnick were at the meeting. We listened to the neighbors and what their views were on what was getting ready to happen. I did state very plainly that it takes four votes in an issue to get defeated and that they do need four Council votes. I said I couldn't speak for other Council people but I could speak for myself. I looked at the issue and I did see problems in what I saw and I have a lot of questions -5-

which I'm waiting for the developer, when he gets up here, I will ask the questions. But I feel like I've done anything wrong that under City Council, or City of Asheville, that it's up to the City Council to vote that I step down and not vote. And if they choose that I do that, I will be glad to do that. As I said, Councilwoman Sitnick was there and maybe she would like to say something about it.

Councilwoman Sitnick said that clearly she and Vice-Mayor Peterson were there, it was an open meeting as the Vice-Mayor said - it's our job to listen at every opportunity. There may have been people there who couldn't be here. We took notes, we listened, we were sympathetic to what we heard, but that doesn't mean we made a decision. Vice-Mayor Peterson did not state, in any way, shape or form, no matter how anybody would interpret what he said, that a decision had been made, or that a bias had been established. We were there to listen to the concerns of the people we represent. It was very, very simple.

Mayor Martin asked if any member of Council felt that Vice-Mayor Peterson should be excluded from debate. Hearing none, the public hearing continued.

Ms. Patty Joyce, Senior Planner, said that the Planning and Zoning Commission held a public hearing on March 1, 1995, for Haw Creek Mews Apartments, Phase III, which is proposed for a site at the corner of Beverly Road and Avon Road. The Commission voted 4-3 to approve the group development subject to certain conditions.

New Haw Creek Mews and Associates, Britt Simon, Developer, are proposing to build Phase III of the Haw Creek Mews on Beverly Road across from the Phase I and II of Haw Creek Mews. Phase III will consist of 98 apartment units in nine buildings on 6.156 acres.

The terrain on the project is vacant at this time. It is wooded and surrounded by zoning which is primarily predominantly R-3. To the north of the project there is a small Commercial General zone, but the surrounding area is R-3. The uses are single family to the north and the west and multi-family (which is the first two Mews phases) to the east of the project.

The nine buildings consist of four buildings which will be both two and three stories high with a maximum height of 31 feet, 6 inches. Five buildings in the complex will be two stories, with a maximum height of 24 feet, 6 inches. The density in this project meets the requirements in the ordinance in this way. There's also a development standard in R-3 and this site could yield 105 units. The developers are proposing to be at 98 units, which meets both of the ways the ordinance can be interpreted.

The Planning Department did recommend approval of this project based on the requirements of the ordinance being met. She then reviewed the requirements of the review process:

Parking requirements are 2 spaces per unit or 196 spaces - the proposal is for 205 spaces including seven handicapped.

On the landscaping plan there are a variety of issues. The first being that this is a multi-family complex in a residential zone. Therefore, a 20 foot planted buffer is required along the perimeter of the entire project except on Beverly Road which only requires street trees. However, the developer is proposing some additional requirement on himself for landscaping. On Beverly - 6-

Road, which there is a sidewalk all the way in front of this project leading up to Tunnel Road. After the sidewalk there will be a ten foot buffer strip planted just identical to the 20 foot buffer strip. Therefore, that's a lot more trees and street trees normally being planted on a project that fronts multi-family.

In the community meeting, the owner of the property south of the project, Mrs. Harris, did express some concerns, being the most close property to the project. A method using a six foot visual barrier fence has been agreed upon by the developers as a method of providing for the landscape ordinance. It will be set on the property line and then a five foot buffer behind that. In those ways, the landscape ordinance has been met. On the site plan directly written is this phrase "existing trees within 15 feet of the property line will remain where possible." Fourteen parking lot trees are required inside the project and 20 are proposed.

Letters of water available for this project and sewer allocation have been received and have been approved by those appropriate authorities.



The report addressing water for fire protection and that has been received and is adequate.

The driveway access permits to Beverly Road and to Avon Road have been applied for. Due to some of the comments at the community meeting about the concerns on traffic, we did ask our Public Works Department to provide us with a report on the traffic concerns in the area. In their report, they did recommend the developer provide two accesses from this property - one on Beverly Road and one on Avon Road. Both accesses would be entrances and exists. Their report states that this development will not adversely affect the traffic flow in this area.

There was considerable opposition expressed from the neighborhood. Approximately 20 people expressed their concerns at the February 15th hearing about the proposed project and also on issues related to problems they had experienced since the Mews Phase I and II were built. Anticipated problems with increase traffic, crime, litter, noise and concerns about the high density allowed on the site were expressed at that meeting also and at the continuation of the public hearing held on March 1, 1995.

The Planning and Zoning Commission voted (4-3) to approve New Haw Creek Mews, Phase III subject to the following conditions. 1) approval of the erosion control plan, 2) approval of the storm drainage plan and issuance of a "no-rise" certificate for the area along Haw Creek, 3) approval of driveway access permits, and 4) any changes in the site plan will require the approval of the Planning and Zoning Commission.

Mr. James Cheeks, City Traffic Engineer, said that on the traffic study for the Haw Creek Mews Apartments, we performed the typical traffic impact study of any type of development that occurs in the City of Asheville. We use the same standards that we use in all our different reviews. In this project we were to look at 98 apartment units to be developed at the intersection of Avon and Beverly. We performed the traffic volume studies, we looked at the accidents in the area, we took a field inventory of the street system, we looked at the traffic counts that had been taken by the N.C. Department of Transportation and in that analysis we took into account the residential nature of the roadway, we took into account all the physical attributes -7-

of the roadway. In our analysis we determined that the 98 apartment units would generate an average weekday volume of 598 trips as per the Institute of Transportation Engineers Trip Generation Manual. The arrival and departure patterns of this manual are consistent with home to work, home to school and home to shop trips during peak a.m. and vice versa during the peak p.m. hours.

Using that information we suggested doing the Technical Review Committee review that the developer install, or include an additional driveway for this project. He did include that driveway on Avon Road. With that, an estimated 50% of the traffic generated by this development will use Beverly Road, which is a two lane, 24 foot roadway with an approximate 7% grade. The 1995 traffic counts indicate that Beverly Road has an average daily traffic volume of 3,457 vehicles. Those traffic counts were conducted from 9 a.m. on Friday, January 27, 1995 - 9:45 a.m. on Wednesday, February 1, 1995. There has been some comments that the traffic counters that were seen at the intersection of Beverly and Avon were there during the snow that we had in February. The counters that we put out were put out and taken up before the snow. The counters that were there during the snow at the intersection of Beverly and New Haw Creek were not the counters at the intersection of Beverly and Avon.

Beverly Road currently operates a level of service C during the peak a.m. and p.m. hours. The level of service C is about an average for a roadway in the Asheville area. Also during the peak p.m., Beverly Road operates a a level of

service C. With the additional traffic being generated by the 98 units using the before mentioned arrival and departure distribution, Beverly Road will continue to operate at a level of service C during both the peak a.m. and p.m. hours. Whenever we take traffic counts in the winter months as well as in the summer months, we have adjustment factors that were used to adjust for the day and the weather and the time when we do these counts. We apply those national adjustment factors that we apply to all our raw counts. So the counts that you get are not what you see on the counter, they are the raw counts that we adjusted, based on those factors.

The balance of the site generated traffic will utilize Avon Road. Avon Road is a two lane, 18 foot roadway with the approximate grade of 7%. The 1995 traffic counts indicate that Avon Road has an average daily traffic volume of 1,362 vehicle. Avon Road currently operates at a level of service B during both the peak a.m. and p.m. hours. With the addition of traffic generated by this development using the before-mentioned arrival and departure distribution, Avon Road will operate at a level of service B during the peak a.m. hour and a level of service C during the peak p.m. hour. There will be a reduction in the level of service during the peak p.m. hour on Avon Road.

We have also reviewed the operation of the intersection of Beverly Road, New Haw Creek Road and Miller Road. This is a N.C. Department of Transportation intersection. They have performed a traffic signal analysis at that intersection and they have indicated to us that the intersection does not meet the warrants that are necessary for a traffic signal at that intersection. We have also obtained from the N.C. Department of Transportation accident data concerning that intersection and since 1987 there have been eight reported accidents at this location which include right angle collisions, rear end collisions and loss of control. The intersection does not meet the minimum warrants for the installation of a traffic signal. With the addition of the site generate traffic that would probably use New Haw Creek Road, we see that it would not affect that intersection greatly. Therefore, no -8-

improvements are planned for this intersection. We have conferred with N.C. Department of Transportation and they have no plans for any improvements at that intersection at this time.

Based on this information, looking at the residential nature of the roadway system and based on the analysis that they perform on similar roadways within the City of Asheville, we have found that this 98 unit apartment complex will not adversely impact the traffic flow within this area.

Vice-Mayor Peterson stated his concern about the access on Avon Road which road is narrow, has a big curve has no sidewalks. When he inquired about if sidewalks would be constructed, Ms. Joyce said there are no sidewalks planned.

Councilwoman Field wondered if the same method of calculating cars a day was the same that the Broadway improvement folks said that a two lane facility should be able to carry up to 12,000 cars a day. Mr. Cheeks responded that it is not the same. He further explained that Avon Road, at approximately a level of service D, would be about 8,000 vehicles a day (currently 1,362) and Beverly Road, at a level of service D, would be about 7,500 vehicles a day (currently 3,457).

Councilwoman Sitnick said that Mr. Cheeks said that he had a way of assessing traffic counts at other times of the year. Did he take into account the activity increase on the road during the summer when the ballfields were used, when kids are out of school, etc. Mr. Cheeks responded that using national averages during the months of June and July, traffic variations are about 150 per day, 50% more in what you see in a normal situation. In the City of

Asheville we plan for the average daily traffic on all our projects that we bring before you and the Planning & Zoning Commission. There are some spikes like in July when you have 150%. We wouldn't plan for the 150% because then we would be building very large roads and a lot of signals everywhere. So we plan for the average, which is around the 100% range.

Councilwoman Sitnick asked if the ballfields were used by residents that do not live in the immediate area. Mr. Cheeks said that they probably were.

Upon inquiry of Councilwoman Sitnick if the driveway permits have been issued, Mr. Cheeks responded that the permits have been submitted to him but he has not signed them yet pending on the outcome of this hearing.

At the request of Councilwoman Sitnick, Mr. Cheeks said that based on what we do on a day-to-day basis here in Asheville, he would have no problem with an additional driveway on Avon Road which is 18 feet wide.

At the request of Mayor Martin, Mr. Cheeks said that he considered his study a valid study. He also noted that since his study, a separate independent study has been performed by Sprague and Sprague Engineers out of South Carolina. He said they actually performed two studies in response to his study and they both agree with his findings.

Councilwoman Sitnick, speaking to Mr. Gerald Green, Senior Planner, stated that in reading through the book of development standards and the Asheville Code, under soil erosion, under purpose it says "this Chapter is adopted for the purpose of regulating certain land -9-

disturbing activity to control accelerated erosion and sedimentation in order to prevent the pollution of water and other damage to lakes, water courses and other public and private property by sedimentation." She was sure that Mr. Green has been to and seen the site. On the existing land, which is real similar to the proposed site as far as grade (she didn't see Phase I and II sites prior to the projects, but she has seen them now and has seen the new site), she asked Mr. Green if he would say that they are similar in topography. Mr. Green responded that they are similar in topography. She then asked him if there were any problems with erosion and sedimentation control. Mr. Green said that there were several violations of the erosion control ordinance with the first Haw Creek Phases I and II. The violations were corrected after the developers were cited. There were no penalties levied against the developers. They did correct the violations upon notification. Currently there are no outstanding violations. After speaking with the Erosion Control Officer today, the project is, in his words "95% complete" and they are ready to complete the project with only 5% remaining. Councilwoman Sitnick asked if he knew from the time the violations were cited to when they were corrected? Mr. Green said that in most cases they were corrected within a reasonable amount of time and he believed there was one instance where there was some delay in correcting the violation - one of the developer's principals came to Asheville and met with the Erosion Control Officer and the Erosion Control Officer explained what needed to be done. The problem was corrected immediately after meeting with the principal.

The following individuals spoke against Haw Creek Mews, Phase III, for several reasons, which include, but are not limited to: addition of 98 units will create serious traffic problems; the roadway has a 7% grade; Avon Road is narrow, steep, curvy, and has several blind curves;

concern of substantial pedestrian traffic; necessity to install sidewalks to avoid accidents along that road; the additional traffic on the roadway will require additional upkeep on the road surface; the edges and roadway will

require significant increased maintenance; significant problem in drop of water pressure that occurs periodically,

with the addition of 98 more units drawing on that water supply additional water lines will need to be built and a contribution will need to be made to MSD for sewer lines;

there will be a need for additional infrastructure with an addition of 98 more units; property values will be reduced;

environmental concerns in that area; buffer zone has wildlife refuge; suggestion for an environmental impact statement be done; Avon Road is not safe for pedestrians, bicycle or motorists; there are many near accidents; the development is not in harmony with the character of the district in which it is located; adequate standards have not been maintained pertaining to public health, safety and welfare of Haw Creek; Avon Road is a short cut for speeding cars heading to and from Tunnel Road; crime in the area is shown by police reports dated January 1994 to January 1995 showing a range of calls requiring police services from Haw Creek Mews; anticipated revenue derived by this apartment complex will not offset the costs already incurred by City staff; concern that this complex will end up like LaMancha Apartments that is now bankrupt; there will be more erosion control problems; the creek bottom is not firm foundation for three story buildings; ordinance should not be hid behind to do something detrimental to the City and it's residents; Erosion Control and Inspection Offices indicate that everything in those present Phase I and II is only minimum code; there is fill dirt where the swimming pool is presently located which City ordinances do not cover compaction of fill dirt; as of February 21, 1995, the Water Department had not tested the fire hydrants in the development and it was still yellow coded (meaning not enough water pressure out in that area); -10-

rezoning has been requested on three different occasions due to the fact that the community realized what the R-3 would do - but urged to wait until the UDO was in place because the UDO would be in effect and take care of their concerns; there are no more entrances and exits into the valley; there are no plans to improve the feeder lines for water or sewer at this time; the proposed contours on the north and west edges at Beverly Road and Haw Creek in relation to the existing contours are fairly dramatic and would be approximately 20 feet or greater; the degree of fill would be high and would have to be transitioned over a horizontal run of 20-30 feet which is a fairly dramatic extreme grading change and the erosion effects would be fairly significant; the natural thick stand of mature trees which provide a natural buffer on Beverly Road are also facing some of those grading changes and it would be impossible to keep any of the natural vegetation as is indicated with such dramatic grading involved; the wooded area is home for many animals; there should be as much emphasis on the planning as it as on the zoning; need to reinstate environmental impact studies; if there is a wreck on Avon or Beverly Road it will tie up traffic for a long time; concern of intrusion in the neighborhoods and the planning prospective needs to be further ahead than the blade of a bulldozer; deep rut around curve; leaking sewer lines; need to get NC DOT out to fix roads; there is only one main road in Haw Creek; apartments do not promote the nice family neighborhood image; no improvements to New Haw Creek Road since 1933 except regarding surfacing; there were supposed to be 244 units built but 250 units were built in the prior phases; plans shown in October to homeowners were totally different from what had been submitted to the Planning & Zoning Commission in prior phases; questioned if design and study was the same type that designed the Beaucatcher Theater intersection; community wants representation; current problems with Haw Creek Mews I include vinyl siding missing, poor drainage and shingles missing - shows that the project is barely two years old and is falling apart; developer is only doing

bare minimum efforts; entrance and exit on Avon Road will make pedestrian traffic much more hazardous; left hand turns out of Haw Creek Mews can cause fatal accidents; need to look if prior Haw Creek Mews phases are really economically viable from a revenue point of view; increase in crime; existing units have only a 65% occupancy; owners do not vote or live in this area and could care less about the quality of the area evidenced by the visual effect the existing development has on the area and the social effect is documented by the incidents of crime; traffic study should have encompassed a more expansive area like two access points off Tunnel Road; the schools are already crowded in that area; no current NC DOT plans to improve road so City should not increase traffic at large leaps with high density housing in a community with the road system which is inadequate; no sidewalks or shoulders on narrow, winding and heavily used road through the valley; streets already unsafe; community is against R-3 development which puts the safety and well-being of Haw Creek residents at risk; out of state developer could care less about their safety; record of this developer is not good - look at LaMancha Apartments; problems with water runoff; erosion control problems;

problems with sewer; developer has bought Council advise and consultants to show their case but unfortunately community doesn't have the advantage of hiring lawyers, traffic engineers, consultants to show our case - they depend on our elected representatives to balance the scales; the land is being tortured and not being built in harmony, and not with sensitivity to a hillside mountain site; objection to using traffic engineers from South Carolina where the terrain is vastly different from the terrain we have here; possible slanders on a respectable community; developer wishes to maximize his profits versus the community that seeks to maximize the quality of its neighborhood life; Council should rise -11-

above the mere letter of the law to address the spirit of the law; residents in Haw Creek Mews and LaMancha being driven out because of drug traffic problems; and before Haw Creek Mews were built, sidewalks were installed on Beverly Road and the road was widened to straighten out the curve which residents didn't have a chance to raise questions about but apparently Codes were being met and little did residents know that the then-Mayor was representing the developer:

Mr. Scott Jarvis, speaking on behalf of Mr. Siemens, who represents the Mulvey family and some others in that area

Ms. Sarah Harris, 36 Avon Road

Ms. Michelle Mulvey, resident on Avon Road

Ms. Jaimie Mulvey, resident of 24 Lynnstone Court, and owner of business and residence at 65 Beverly Road

Ms. Martha Capps, resident of Haw Creek

Mr. Bob MacPherson, resident of Haw Creek

Ms. Barber Melton, with the Haw Creek Homeowners Association

Mr. Chris Rogers, resident of Haw Creek and architect

Mr. Mike Mulvey, 17 Avon Road (showed slides)

Mr. Dick Rice, not a resident of Haw Creek

Mr. Mark O'Shields, 22 North Pershing Road

Mr. Mike Lewis, President of the Grace Neighborhood Association

Mr. Gene Melton, resident on New Haw Creek Road

Ms. Gloria Linton, resident on Avon Road

Ms. Maggie Lauterer, 21 Miller Road (submitted prepared statement)

Ms. Heidi Henson, 31 Arco Road

Mr. Mary Ann Noblett, resident in Haw Creek

Mr. John Erwin, 108 Cisco Road

Mr. Chris Pelly, resident on Cisco Road (had photographs mounted on a board)

Mr. Bob Tinkler, resident in Haw Creek

Ms. Pat Skalski, resident of Asheville

Ms. Morgan Pelly, resident in Haw Creek

Mr. Bernard Arghiere, 853 New Haw Creek Road

Ms. Betty Winston, 23 Lynnstone Court (brought in an old shoe, broken glass, litter, chunk of concrete and drug needles)

Ms. Ruth Winston, 23 Lynnstone Court (had letter read by daughter Ms. Betty Winston)

Mr. Lance Satchell, 31 Arco Road

Ms. Geneva Lamb, 24 Avon Road

Mr. Zack Allen, 21 Miller Road

Ms. Jean McClure, 460 Old Haw Creek Road

Ms. Cynthia Miller, resident on Beverly Road

In response to Mr. Jarvis relative to water pressure, Mr. Harold Huff, City Engineer, read a report from the Civil Engineer in the Water Resources Department, who was not able to be at the meeting. He reported that approximately two months ago the Asheville-Buncombe Water Authority invested over \$50,000 in trying to correct the problems north of the intersection of Bell Road and New Haw Creek Road, commonly known as the Sondley Estates area. The water problems that they had before then have now been corrected. That is not to say that every home has good water pressure right now. The report goes on to say that the method that serves this area and the facilities that serve this area have changed. Up until two months ago, that probably is correct - a lot of Sondley Estates was having problems but the Water Authority has corrected most of those. As far as this project goes which is south of Bell Road intersection with New Haw Creek, the statement goes on to say that there will be absolute no effect on water service north of Bell Road. This is an isolated system. They have divided the system. You go about half way up Haw Creek (about one mile) and the system severs and then from there it serves the northern part. -12-

Councilwoman Sitnick asked Ms. Sarah Harris if she had a driveway and if it was a driveway that she had to back out of. Ms. Harris said that she did have a

driveway but did not have to back out. Councilwoman Sitnick then asked if she had difficulty getting out onto Avon Road. Ms. Harris replied that she did have problems because of the speeding cars. Councilwoman Sitnick asked if there had ever been a light there and Ms. Harris responded that there had not.

Councilwoman Sitnick asked Ms. Michelle Mulvey if she felt that her health, safety, welfare and convenience has been jeopardized. Ms. Mulvey responded that she does. She said that eight years ago it was safe when she pulled out of her driveway, but now you have to be very careful because of the speeding.

Councilwoman Field said that Ms. Jaimie Mulvey indicated that the soil is not stable. She asked Ms. Mulvey if she had any soil tests to substantiate that comment. Ms. Mulvey said that she did not, this was only her opinion from living in that community and watching the river rise over the years.

Mayor Martin asked Fire Chief John Rukavina to report about the water pressure and fire hydrants concerns. Fire Chief Rukavina said that the available water flow for firefighting in the Haw Creek area varies from area to area. A hydrant with a red top generally is less than 500 gallons per minute, a hydrant with a yellow or orange top is generally from 500 to 1,000 gallons per minute and a hydrant with a green top is generally over 1,000 gallons per minute. In the immediate area of the proposal there are adequate fire flows for the type of construction that is proposed. In this specific area there is adequate pressure and volume for firefighting for the type of structures that are proposed. In this area, according to the tests we have done most recently, the required fire flow that we believe is necessary for this type of risk is 1,750 gallons per minute. These hydrants flow in excess of 1,750 gallons per minute at 20 pounds residual pressure, which means there is additional capacity for the system to deliver beyond that.

Upon inquiry of Councilman McClure about any kind of a structural fire there, Fire Chief Rukavina said that there would be five pieces of fire apparatus and approximately 15 firefighters. If there was a significant working fire in that area, we would call for additional help and also for mutual aid backup from other fire departments in the area. If they are doing interior firefighting, and that's the assumption behind the fire flow requirement, then generally we are working with hose lines that flow in the 200-250 gallon per minute range. It simply is not possible or feasible to work inside a building with larger hoses. If we are talking about a building that's totally involved in fire, then we would back away and we would probably rely not only on hydrants in the immediate area but one or two hydrants or water mains removed from the area and we would probably be looking at flows to protect the exposures in the 1,500-2,000 gallon per minute range. The assumption we made in identifying fire flow is what do we need to deal with a working fire in that building. And as far as what we need to deal with a building burning out of control, that's not the situation we would expect to encounter so our calculations are not based on that kind of scenario - just is there enough water for firefighters to go in and successfully combat what you might call a typical working fire inside an apartment structure, a single family home, or whatever the type of structure is that is being proposed. -13-

When Councilwoman Sitnick asked Fire Chief Rukavina about how many green, yellow and red tops in the general Haw Creek area, he was not able to respond. He said that there are some areas, and the Water Authority representative may be better able to address this better, but in some areas in Haw Creek the problem is not whether or not there is adequate volume, the problem is the variability of pressure. In some areas pressure relief valves have been installed because the pressure is high. My understanding in this area is that the pressure is what you would expect in a typical municipal water system and the volumes are adequate to meet the fire flow demand to fight the fire

adequately. But elsewhere in the Haw Creek valley there are red top hydrants because the water supply is relatively low, yellow top hydrants and green top hydrants. Again, in the entire valley area, the water supply does vary.

At this point in the meeting, Councilman Watts did not participate any further.

Councilwoman Sitnick stated that she wanted to take advantage of Ms. Barber Melton's history with the City, the fact that she did serve on the Planning & Zoning Commission for several years and the fact that she lives out there and has seen the topography on a daily basis, during and after rain storms. Councilwoman Sitnick asked Ms. Melton for her opinion as to why there have been so many erosion problems in the area. Ms. Melton stated that this goes back to 1992 and one of the committees she served on for the City addressed the floodplain. The statement was made by a State representative that Haw Creek has 75% floodplain development. Anyone knowing that there's been a lot of development in our valley over many, many years and when the development was done along the creek, it was not channeled out so that any runoff going into that creek did not cause a flooding problem. It does not take a whole lot of rain for the bridge down at Miller's Store to be under water. With Mr. Simon's buildings being down on the plans down along the creek there, She didn't see how he's going to be able to put those there. She believed he's going to have to go with three story buildings up near Ms. Harris because that's really going to cause a problem for him in the floodway there. Also, the problems with the development of Haw Creek valley is that the road system can't support it and there was never any sort of purchasing by either the State or the City for any of the road system to be improved for the main roads getting in and out. She is a slow motorist sometimes and she has to leave home 10 minutes early to get at her job at 8:00 because they're backed up almost to the back of the patrol station trying to get out.

Councilwoman Sitnick then asked Ms. Melton, since she was on the stormwater committee, her opinion if the stormwater guidelines had been met or could they be met. Ms. Melton said that Mr. Jensen has never shown her the plans for the stormwater. Last time she checked with the Erosion Control Office they had not received those. Therefore, she had not seen the stormwater plans for this project, but it is a situation that she's very concerned with simply because the developer has had so many erosion control problems already with these first phases and also with the LaMancha he also had quite a bit of problems there and was sued three times and lost three times in court. She does have copies of those cases. So, she does have a real problem, since she is a stormwater person, in being sure that it does not add further problem to what we already have there.

Councilwoman Sitnick said that she knew that Haw Creek School is a County school in the City. And, in the past the City Council has had a policy to have sidewalks installed within a 1/4 mile of all schools. -14-

Since Ms. Melton has lived out there for so long, does she have any recollection historically why sidewalks weren't put there. Was it because it's a County school? Ms. Melton responded that she didn't know but she knew that it has been asked by the parents of the children who go to Haw Creek School many times because, as you know, the back entrance to Trinity Chapel is not a safe way for the children to walk on and certainly New Haw Creek Road is not a safe way. But, to answer your question, I do not know why we never got sidewalks out there. The only place Haw Creek has sidewalks is up Beverly Road.

Councilwoman Field asked Ms. Melton if she could tell, from the site plan submitted by the developer, how much of this property is in the floodplain? Ms. Melton said that she didn't know right off her head, but in the Planning & Zoning meeting with Mr. Simon and Mr. Jensen, they did express the fact that



they had some reservations about the buildings shown on this plan down along the creek because of the problem.

Vice-Mayor Peterson asked Ms. Melton if she was on the Planning & Zoning Commission when the first apartments were built. She replied that she was. He then said that at the neighborhood meeting that there were certain stipulations that were placed on them. She replied that there were stipulations placed on the developer. For one thing, we looked at preliminary plans, obviously, when it first came to the Commission. There was a committee formed to meet with the developer through the neighborhood and that was to be done. There were two other sets of plans brought to the Planning & Zoning Department and they were to be able to only make minor changes. The Commission never saw the finished final plan. That was not brought in until October, the hearing was in March, there was a different architect that did plans in May - so there were changes and as much controversy as there was over this project, what was changed there we felt like due to building heights and so forth, was a little more than minor. In fact, Ms. Joyce had written the gentleman a letter which is included in the packet that she gave Council yesterday that did address some problems they had with the plans that were turned in after the initial Planning & Zoning Commission hearing and Council hearing.

Vice-Mayor Peterson asked Ms. Melton how many units were they approved to build. Ms. Melton said 250. She said that had originally asked for more than that and Mr. Ellison and several other Council members had a problem with the units where Phase II is now because they are in that curve and having the road come out in a blind curve. So, there were fewer units approved by the Council.

Mr. George Jensen, Civil Engineer representing the developers, said that as far as questions about the floodway, the flood fringe area, basically the buildings are outside the floodway of Haw Creek and by the ordinance they have to be constructed at least two feet above the 100 year storm elevation. That is something we will do. The foundations also have to meet very rigorous requirements for compaction or design, it has to be designed and signed off by a structural engineer and the soil testing done by a geotechnical engineer by a regular certified laboratory. They will be constructed in accordance with the ordinance.

Councilwoman Field asked Mr. Jensen if they have done any pre-testing to find out if there are problems with the soil. He said that they had no problems with the soil across the street and he felt the soil over on the other side wouldn't be any different. She then asked if the project across the street was adjacent to the creek. He said -15-

yes, it was immediately adjacent to it - in fact it is on both sides. There are no soil problems there. The subgrades, etc. have all been tested by a geotechnical engineering firm and built to specifications.

Councilwoman Sitnick said that she respected Mr. Jensen especially since she knows that he serves diligently and as a volunteer on the Stormwater Advisory Committee and has a lot of good ideas. She said that from a technological point of view, when she viewed the site, it had been pretty dry and on the embankments, the ledges, that the existing units are built on in the first phases, she noticed that there were polka dots of mud, just circles of mud, that dotted those ledges. She wondered what that was due to. She wondered if that was done to put plants into those holes or just grass that washed away. Mr. Jensen said he couldn't answer without going out and actually looking at the site himself.

Councilwoman Sitnick asked Ms. Julia Cogburn, Planning Director, if she could tell her about the stormwater ordinance compliance for this proposed project.

Ms. Cogburn replied that it was her understanding that they have not, at this time, submitted their storm drainage plan. They will, of course, have to comply. Or, if they have submitted it, we have not received the notification of the approval. In most instances, with projects this size, the developer will often do some preliminary work but will wait until the project is approved to invest the monies involved in doing the engineering work for the complete storm drainage plan. They will have to comply with the City's ordinance that Council adopted within the past year.

Councilwoman Sitnick then asked Ms. Cogburn for her opinion - given the topography and the prior phases, she knows that there was no ordinance when those phases were constructed, does she feel that our stormwater ordinance will be able to be complied with in a physical sense. Ms. Cogburn replied that she did and that the developer would have to because it is required.

Councilwoman Sitnick asked Mr. Cheeks if he knew what the grade of Avon Road is in front of where the driveway would go. Mr. Cheeks said they did a study over the grade over the length of the road from Tunnel Road down to Beverly Road and that grade was average of 7%. Based on the drawings that were presented by William Byrd who is the registered architect, there appears to be no appreciable elevation or contour change in the immediate area of the driveway. The driveway is stated to be 24 feet wide. What this means is that there would be no appreciable grade change in the immediate area of the driveway. By immediate area I mean 55 feet on either side of the driveway. So the overall grade average is 7%. From the driveway down to the intersection of Beverly Road is a 2% grade.

At the request of Mayor Martin, Police Chief Will Annarino reported on the calls for service requests in the Haw Creek area. While the report was being passed out by Police Captain M.W. Berry, Chief Annarino said that an analysis was completed of calls for police service in the Haw Creek Mews area and adjacent vicinity. For 1994 the Arco Road area had 15 calls for service, Avon Road had 10, Beverly Road had 44 and the Beverly-New Haw Creek intersection had 6 calls for service. The Mews Apartments had 35 calls for service, including four motor vehicle wrecks. We did a comparison of Haw Creek Mews call for service loads and two other fairly similar apartment complexes in Asheville, not in the same area but generally the same type of construction and population densities - one had 56 calls for service and the other had -16-

17. He said that in the report handed out there is a breakdown of the different calls that we do have for the various areas including the Haw Creek Mews area. Out of the four motor vehicle wrecks, one was on-premise in Haw Creek Mews and the others were probably on Beverly Road.

Councilwoman Sitnick said that the airlines talk about near misses but she calls them near hits because it is really more appropriate. Is there any way of finding out any numbers to indicate how many near hits? She has never had any car crash, but she had had a couple of near car crashes. She wondered if that was a factor that's figured in as far as impact of traffic and impact of road safety. Police Chief Annarino responded that it is not factored in because they would just have the figures on the actual accidents themselves.

Support Commander Captain M. W. Berry said they tried to identify the individual roads and then the actual calls for service requested for those specific areas. The only thing lacking was the actual date of the request which seemed rather insignificant. He was also asked to pay close attention to the drug traffic in the area and there was no request in any of the vicinity or those apartments during the dates indicated from 1993 through March 15, 1995. He also looked at the area of weapons. There were two situations involving weapons during that period of time. One was a situation where they made an

arrest in the Beverly Apartments and the other situation involved was at Mews Apartments and that was just a discharge - no arrest, no suspects - someone heard a shot fired.

Upon inquiry of Mayor Martin, Police Chief Annarino said that based on his experience, the calls area basically consistent with what you find in high density apartment complexes.

Councilwoman Field asked Interim Public Works Larry Ward why they don't have sidewalks at Haw Creek School. Mr. Ward responded that we did some work to improve Trinity Chapel Road when the new Haw Creek School was built and in those improvements we did look at putting sidewalks in there. We ran into problems with rights-of-way and the additional costs for that would not permit that to be done as part of that project. When we did do Beverly Road improvements, we did include sidewalks as part of that. If you look at East Asheville as a whole, there's probably just a fraction of one percent of all the sidewalks in the City are in East Asheville. You don't really have many out there. In Haw Creek the rights-of-way prohibit them and in a lot of places, places where they could be put in, we would like to do that but we don't really have a program at this time to start that - but we will be looking at it.

Councilwoman Field questioned Mr. Ward when he said right-of-way problems. Did he mean that the owners will not sell the property to the City so that we can put the sidewalks in? Mr. Ward responded that that is correct. The City could condemn the property to get right-of-way, but we choose not to do that. Mr. Ward said there are some property owners on Trinity Chapel that were willing to give right-of-way, but some weren't - so we would have ended up with just spots of sidewalks which probably would have been less safe than no sidewalk at all. Mr. Ward said we also looked at Miller Road and another road in that area that came real close to the school for sidewalks and that ended in right-of-way problems as well. -17-

Councilwoman Field said then it is the City's policy to put sidewalks within 1/2 mile of a school. She confirmed that even though this is a County school in the City limits the City did try to put sidewalks in but they couldn't do it.

At 6:15 p.m. Mayor Martin announced City Council would take a ten minute recess.

The following individuals spoke in support of Haw Creek Mews, Phase III, for several reasons, which include, but are not limited to: the area being a safe neighborhood; it's hard to find affordable living in Asheville; wonderful neighbors; clean, well maintained appearance of the grounds; owners continually invest in improvements to the buildings and grounds each year; and the developer is willing to work with the neighbors:

Mr. Jerry Crow, representing developer

Ms. Lynn Hackett, resident of Haw Creek Mews

Mr. Fritz Brunhoff, resident of Haw Creek Mews

Mr. Jerry Crow appreciated Council bringing out in the open the question about prior comments of Vice-Mayor Peterson and Councilwoman Sitnick, both of whom I admire as far as their work on Council. Any comments I make I ask they not take them personal, but simply I want to protect the interest of my client. In the March 7 Asheville-Citizen paper, Mr. Peterson, you were quoted, whether accurately or not, with the statement that you're looking for four votes to defeat, Peterson said, you've pretty well got two votes here, you've got to

lobby two more. That's preceded by the statement saying Peterson echoed Sitnick's comments. My concern is, and I believe rightfully so, is based on prior North Carolina case law that says a decision denying a special use permit is arbitrary and capricious if it clearly evidences a lack of fair and careful consideration or want of impartial reason decision-making. I guess I'll have to ask you whether or not either one of you were accurately quoted in the newspaper prior to this meeting.

Councilwoman Sitnick responded that when the paper said, and I appreciate your recognizing that the paper does not always quote accurately, when the paper said that Mr. Peterson echoed my remarks, I'm not quite sure what they meant by that, because I said nothing like that. What I did was I went to a public meeting that I was asked to attend, I listened very carefully, I was asked how do we go about expressing our concerns and I responded to that, I talked about getting facts, facts, facts, I talked about making phone calls, writing letters, making sure that people showed up for the meeting, etc. I indicated in no way what my decision was. I hadn't made a decision at that point. That's all I said. I can comment about what Mr. Peterson said but I think you would prefer if he do that.

Vice-Mayor Peterson said that it's not unusual for Council members to go to neighborhood meetings. That's what our job is. I think what I stated was that I felt sympathetic towards, and I did say that, towards the neighborhood and this group because I went and saw the road, Avon Road, and to me I have a lot of problems with the fact that it's narrow and there is no sidewalks and it really bothers me to have an entrance in and out, which I didn't even know that part. But anyway, I did tell the group, the neighborhood group that as citizens, they have the right to lobby Council people, I mean that is part of our government and I did tell them that they needed four votes. And I did state that I couldn't speak for other Council people but I said that I was sympathetic to what -18-

I had seen so far. But I could not say for other Council members. But I didn't say that I was going to vote any certain way. If that helps clear everything up then I think, whichever way to say it, unless I left something out - I think most of these people were at that neighborhood meeting.

Ms. Gay Sprague, traffic engineering consulting business in Greenville, South Carolina, and registered engineer in both North and South Carolina more than ten years. Mr. Simon called me and asked me to look at a report that Mr. Cheeks had done because they wanted to know, because there had been some concerns expressed about the report, and if there were any problems, they wanted to know about them. I looked at the report and it was valid - the methods that all traffic engineers use, but also I asked if I could come and observe the site for myself, because I had used the information used in Mr. Cheeks' report. One of the concerns, as I understood it, was the days on which the traffic counts were taken, so I chose a Friday which is the highest day of the week. I came March 10, a beautiful warm sunny day. I felt that was the day most people would consider a reasonable day to take a traffic count. One of the problems, however, that I faced in doing my count was that some cars stopped, there were some tubes placed on the pavement to take automatic counts - I was doing an actual manual count (a click for every car) - and there were some tubes placed out on the pavement and cars would stop and back over these and then go back. One vehicle I saw do this twice and then noticed that this vehicle had come around the block a couple or three times. Later in the day I saw another vehicle doing that. So, I have absolutely no way to estimate what the effect of that was on my traffic count because I didn't notice the going around the block until somebody stopped and backed over the counter. What I did was go ahead and use those counts anyway to make sure that the analysis was still the same, even with those artificially high counts and the analysis still

showed that both Avon and Beverly would operate acceptably with the trips from this new apartment. Let me make a very clear statement here about the questions about national averages and all that sort of thing and procedures - you have to have an objective way to analyze the impact of traffic on a road. As you can imagine I grew up in rural Anderson County, I live in Greenville now, what I thought was a lot of traffic while growing up is a different amount of what I think is a lot of traffic now. We, as engineers, have to have an objective way to analyze traffic impact and Mr. Cheeks' analysis and mine are the standard procedures for doing that. Both of them show that these streets would acceptably handle that traffic. I want to go over a few things that I noticed there on site. The afternoon peak hour is the time when both the street traffic and the apartment traffic is highest and that is the hour that I used to do my analysis. The trip generation equations that both Mr. Cheeks and I used are national averages, and once again I counted the traffic that was coming out of the current apartments and as I said, I actually clicked for every car, and that generation was within two cars of what those equations project. So those national averages bear out in this situation. Another thing I'd like to point out is that we keep talking about the number 598, generally 600, trips per day. I would like to just mention to you that that is 50 in the peak hour and 60 in the morning and 60 in the afternoon and from this apartment they have three ways to go. We've heard a lot about that there's only one way out, but that's of course for certain other parts of this neighborhood. But from this apartment there are three ways out - so that's 60 cars more or less, 30 coming in, 30 coming out. And they have three different ways to go. So you can see when you spread those over these three different ways to come out - Avon, Beverly to the west and Beverly to the east - that those numbers -19-

are very small when you start looking it on an hourly basis which is how our analyses are done. I did see some pedestrians in the area. I was there from 7:30 a.m. until 6:00 p.m. and I did take two breaks in the mid-morning and mid-afternoon. I saw four pedestrians. One was an adult runner about mid-morning who was on Avon. One was an adult runner on Beverly in the afternoon. One was an adult pedestrian, I guess you would have to say he was kind of wandering around both those but going past the apartments. And then there was one young pedestrian who went toward the park in the afternoon. The other thing Mr. Simon asked me to look at was the fact that any development of this property would generate trips and I did look at that and the level of service would be the same whether you developed this with single family or as proposed with multi-family, as far as the level of service goes. One thing I didn't see, and this has been talked about today, that there is no speed limit sign on Avon. And I think that would be an appropriate measure to take on Avon to post the speed limit. I may have just missed it, so excuse me if I did, but I looked as carefully as I could and I did not see one.

Councilwoman Sitnick asked if it was customary to do analyses on weekend days, Saturdays, Sundays. Ms. Sprague responded that you can do that but afternoon peak hour on a weekday is going to be the highest. Councilwoman Sitnick asked even it was Sunday morning when people were going to church. Ms. Sprague said yes, especially when you consider the apartments.

Councilwoman Sitnick asked if Ms. Sprague did any analysis of the intersections, the intersection coming across Beverly down at the end of Avon or any of the entry intersections - the one I'm thinking of in particular is on Tunnel Road where there a the little piece of the road. We had a resident of the City let me know several months ago that there had been a real problem on the corner of Tunnel and Crockett, which I believe is right across the intersection from there. Our previous Public Works Director Jim Ewing did an accident analysis on that corner and I was amazed at the numbers, real high. Did you look at, and I don't know whether Mr. Simon asked you to do this, but did you look at any of the activity in that area. Ms. Sprague said that her

emphasis was just at the site, at the intersection of Beverly and Avon, but I did ride all along that area. One of the reasons that I didn't look further at these other intersections was that once you get past the site, as I said, these numbers get to be really little, they get to be like seven new cars in the peak hours at one of these intersections, so it's really difficult to do an analysis that is sensitive enough.

Councilwoman Sitnick asked if there is a driveway access on Avon, do you analyze driveway use safety impacts? Ms. Sprague said that she did look at the site distance there and it was acceptable. As I said there also needs to be a speed limit sign there.

Mr. Crow said to Mr. Cheeks that reference has been made repeatedly that the intersection of New Haw Creek and Beverly Road is the second most dangerous intersection in Asheville. Do you keep statistics as to the most dangerous, or the second, or the third? If you do, could you enlighten us? Mr. Cheeks said that after he heard the comment at the Planning & Zoning Commission meeting, the Traffic Engineering Division was very shocked and they wanted to go out and make sure if that was true, that we addressed the situation. By addressing the situation, since it is a N. C. Department of Transportation intersection, I immediately contacted the State Traffic Engineer. He in turn sent me the traffic signal study for that intersection, as well as -20-

the accident data. The accident data since 1987 has been only eight accidents at that location. The intersection does not meet the warrants for traffic signal installation.

When questioned by Ms. Maggie Lauterer about the time allowed, Mr. Crow said that he is trying to respond to the issues raised by Council relating to issues of floodplain and soil erosion questions. He believed Councilwoman Sitnick asked Ms. Melton to provide her with a written report. He asked that if any of these reports are going to be considered by Council, that the developer be given a copy also so that it may make comment regarding same. But in response to the questions as to the floodplain, drainage and runoff, obviously those are matters that the application will be made and the permit will either be granted or it won't be granted and it will be granted only if the developer meets those specifications. But, I would ask Mr. Jensen to come up in response to the issue raised by the architect on the preliminary drawing as to the change of elevation and the erosion impact that that may cause and also to address how does he design a development of this size and nature to ensure compliance with the floodplain ordinance since several Council members have raised that question.

Mr. George Jensen said that basically on the grading plan, which is just a preliminary grading plan, we're at the preliminary stage on the project. I think they have already made it clear that any changes made to this plan will have to go before the Planning & Zoning Commission before they are finally issued all their permits. Basically in reference to the grading on site, it does show one area of a 20 foot elevation difference which is not unusual. We had an excess of that on the other project and we have it on many projects around town. We will have stable slopes designed to be stable. As far as construction in the floodplain, we will have to comply with the ordinance. The structures will have to be up above the 100 year flood level. I just recently got through doing a storm drainage/erosion control plan for 18 acres over off of Old Haw Creek and we are designing in a retention pond to actually retain that difference between the pre-development rate and the post-development rate on the 10 year, 6 hour storm and that's incorporated in the design.

Mr. Crow then passed out four letters to Council from residents who reside in the apartments or surrounding property owners who are expressing their support

for the project. He said he would like to point out the site itself and the existing neighborhood, I know it's a quiet neighborhood, I know it's a wonderful neighborhood, but realistically, it is a neighborhood that's been zoned R-3 for many, many years and R-3 allows and permits the use which is being proposed by this property owner. Please note that immediately to the south and east of the site please note the existing apartment complex called Beverly Road Apartments, this is the family Cornwall business here, this is the existing Mews site and this is the proposed site and you will notice on all the corners around the site and all corners at the intersection you have commercial usage of those sites and general support from those property owners. I point out also, we've talked a lot about the UDO and where it is and when it's coming. I think when you realistically look at this map, this area is not going to change even after UDO in this particular location. Other areas of Haw Creek may, but I think you have to realistically recognize that not only under the prior ordinance and then in 1977 when it was changed and for now practically 20 years since - this is a permitted use and is consistent within the area. I think also if you should look at your 2010 Plan and whatever significance it has. When the City Attorney is on the other side of him on condemnation -21-

cases he's always flashing that 2010 Plan as if it meant something. If it means something, then it means planning efforts by the City and the planning efforts by the City indicate in that plan that your future growth by the year 2010 is going to be met only by multi-family housing. It's the only way you're going to have it. And 60% of the growth is going to have to be serviced by it. This developer has met every requirement required and there are numerous just to get to this stage. It has met the water requirement, it has met the fire requirement. You will notice from your police report and public safety report the fact that more calls have come from the surrounding neighborhood than from the Mews Apartments.

Councilwoman Sitnick said that she was sorry that the people who wrote letters of support were not able to be at this meeting, but she appreciated Mr. Crow bringing them in.

Councilwoman Sitnick then asked Mr. Crow for a list of the developers which we was to have furnished to her. Mr. Crow responded that he had been on vacation but that the developers are the Simon family.

Councilwoman Sitnick said that there has been indication by some of the speakers about LaMancha Apartments and three lawsuits. She asked if those were erosion lawsuits. Mr. Crow said that he did not represent the developers at that time and but he believed they sold the LaMancha Apartments around 1983 and he presumed these lawsuits may have pre-dated the sale. Certainly the disposition of the lawsuits are on record at the Courthouse. Councilwoman Sitnick said the reason she asks is that someone earlier said that there had been three lawsuits, hundred of thousands of dollars, and the developer lost three times in Court. She said if it was something unrelated to this project, then she didn't need to hear about it. She just wants to know if it's erosion related or any of the issues brought up today.

Mr. Britt Simon, representing developer, said as far as these three lawsuits that were hundred of thousands of dollars, he didn't know of any lawsuits during the period of time that we owned the property. I do know that after we owned the property, or from the period of 1972, 1973 to 1982, 1983, when we owned the property, it had a good name in Asheville. Subsequently when we sold the property for estate purposes, it was a one-time sale within our company. It went through various different owners and they did not keep the management up and I think that's why it has the bad stigma in town.

Councilwoman Sitnick then asked Mr. Simon if he had a North Carolina

Contractor's License. He replied yes.

In response to Councilwoman Sitnick about whether they own the land, Mr. Simon said they have an option on this land. Carolina Power and Light is actively marketing this property for sale.

Councilwoman Sitnick then asked Mr. Simon if he was involved with Phase I and Phase II of the Haw Creek Mews. He said he was there throughout the process. She then asked him about the polka dots on the embankments. He said that Harvey Huntley from Huntley Construction, who is a very respected grading, utility contractor in the area, is the contractor who developed all of the utility and grading. He planted a special grass that is called les pedeza, which is very typical for slopes, to retain slopes, and it grows in clumps. He thinks what she's -22-

seeing is clumps and also a combination of maybe when we had some freeze. When the ground freezes, there are some weird looking circles on the lawns out on the property. We are continually in the process of re-seeding our property. It is a young property, only two years old in some parts of Phase II. And it's an on-going process. You don't instantly have beautiful lawns - it's a process that takes maturity.

Councilwoman Sitnick said that it had been indicated earlier that there had been several, that Phase I and Phase II had been cited for erosion control and sedimentation violations. I understand that those were all corrected. Do you know why those problems existing in the first place? Mr. Simon responded that he wanted to clear up a lot of these misconceptions and a lot of these character assassinations that have been forthcoming. We graded 18 acres, which is a fairly large size of land. We moved 80,000 cubic yards of material. Again, Huntley Construction. It's very typical in the construction industry that when you move soil of that nature, you're going to have some runoff. You're going to have some days when it's going to rain for two or three days and silt fences and all of the protection that you put in, according to the City's standards in the erosion control ordinance, can overflow and we have problems. That's why we have erosion control inspectors. They come out typically after the rains to check your site. They come out, instruct the superintendent, you've got some runoff, you've got three days to get it cleaned up. We cleaned it up. It's their job to come out and take a look at the site. Again, it's very typical, we were never fined by the City of Asheville ever during the course of Phase I and Phase II for any erosion control violations. She questioned the silt fences still up. He said typically you can leave the silt screens up and the grass will grow over it. Again, we are still not finished. We intend to bush-hog and clean up the whole area around the creek, take our silt fences down, make it look like a park area down along the creek area. It's still not finished. You'll be pleasantly surprised when you see it in the finished stage.

Councilwoman Sitnick said that as a member of the Tree/Greenway Commission, when you leave trees their roots prevent erosion and we heard an incredible presentation by Habitat for Humanity and saw photographs of a project that they did where they built the houses within the trees. They removed hardly any trees. They removed the trees for the footprint and that was it. And they had no erosion problems. As a Tree Commission member I would just encourage you that when you build these projects, or subdivisions, or group developments that you leave as many trees as possible - it'll save you money on erosion control. Mr. Simon responded that the Miller property was 3/4 grazing pasture with maybe a couple of apple trees. It was all cleared. The other quarter of it that faces the northeast was wooded and I can't tell you how many acres it was, but there was wooded area there and we cleared that area because it was in a fill area. We saved as many trees as possible. We love trees too.



Councilwoman Field asked Mr. Simon about the comments of him being an out of town developer. What are your connections to Asheville and why are they here in Asheville? Mr. Simon said that back in 1925 - his father was born in Asheville, his father moved from Charleston, South Carolina, he had TB and he moved up here and lived here for 15 years. My father lived here until he was six or seven years old. My father, throughout the course of his life, has built a reputation, and a very good reputation, as a very well, very prominent apartment developer throughout the southeast. In the 1970's he came back to Asheville and he built LaMancha, amongst other good cities in North Carolina that he -23-

saw were good growth cities. That's why we came back to Asheville, North Carolina. In 1990-91, we decided to re-visit Asheville, North Carolina. there's a second generate involved. We are a family run operation. We are not a syndication, we are not "the out of town developer". We have regional offices in Knoxville, Tennessee, just 70 miles away. Our regional property manager there has Huntsville, Knoxville and Asheville in her region. We don't consider ourselves out of town. The owners of the property, there is seven family members - all brothers and sisters, there's a brother-in-law and my father. Marvin Simon, Ben and Britt Simon, my sister Kim Simon, Amy Goldberg, Jeff Markman and Andrew Fink.

Councilwoman Field said there was a comment earlier about the Mews being 65% occupied. Could you comment on that? Mr. Simon said that Phase I is at 92% today and Phase II is 74% today. When Councilwoman Field asked if he knew where someone would get the figure 65%, Mr. Simon said it was misinformation.

Councilwoman Field said that Mr. Simon is pretty much correct about erosion control in that if you meet the standards and there's a major rainfall, you may well have some runoff into the streets. She has a project that just got graded right before the big rain about a month ago and we got cited. She was just saying that if, indeed, you have fixed it every time you have been cited, she has sympathy for him. Mr. Simon said that the City of Asheville's erosion control ordinance requires that when you fill, you have to have soil analyses and they have to meet a certain percentage rate. That has to be given into the City. And we had those soil analyses taken in our Phase I and II. He said he wished we didn't have to talk about Phase I and II so much and defend ourselves because he feels they've complied in every regard there. And they will do the same thing here on this project. Another thing is that the group development process in the City of Asheville allows you to take your project up to a point and through City Council approval contingent upon "fully engineering drawings" depicting the design layout of your water line, which gets reviewed by the State of North Carolina, your sewer line, which gets reviewed by MSD, your stormwater - all of this has to be reviewed and designed by professional engineers. That should not be a big concern here because we have a letter that says there's plenty of sewer allocation, we've been allocated the sewer capacity by MSD. There is a ton of pressure, right there where we are, for water. It's unfortunate that way back at the mountain Sondley there isn't much pressure, but where we are, we have to spend extra money to have pressure reducing valves - because the pressure is so strong. Mr. Jensen, who is former Chairman of the Stormwater Committee, will be designing our stormwater retention/detention. I can't think of a better person to have design that so that the water that's running off the site today will runoff at the same speed as when it's fully developed. That's what the stormwater ordinance is supposed to do.

Councilman McClure said that he knew there was a community meeting held on January 26 and wondered how many people attended the meeting from the neighborhood. Mr. Simon responded that he contacted Barber Melton, the President of the Haw Creek Civic League, to have this meeting. There were eight

people at the meeting. We had it at the Haw Creek Mews Clubhouse. He felt that the meeting was somewhat productive in the fact that Sarah Harris, who lives on the southern property line, vented her concerns - she was very concerned about what was going to happen to that piece of property - crime, safety. She wanted to know what was going to be between her house and the apartment project. I - 24-

explained to her the several options that are available for buffering and what we had intended was going to be a landscape buffer of evergreens. She voiced some concerns about that. I told her there was also a combination of berming, trees, or you can go with a fence. She said she liked that idea. I told Sarah Harris that we would offer to put up this fence - 423 or 433 linear feet - along the entire line. That was pretty beneficial to keep with the neighbors, because I felt like we have done some other things above and beyond with staff. But to keep it with the neighbors I feel like this project should be a win/win situation. It shouldn't be a win/lose situation and I've wanted to compromise, I've wanted to work with the neighbors and they just have come back with a lack of compromise. I called Barber Melton last week and asked her is there anyway we can get back together and try and work some things out. Good things come out of discussion. Nobody wants to talk - they just want to be confrontational and they want to be - they just don't want to see anything being done to this piece of land, is my opinion. I feel like they'd rather see it wooded forever. We just don't live in a perfect world - progress and growth is inevitable. It's good for the City. Again, on January 26 we met and again on March 15, I tried to organize a meeting.

Upon inquiry of Mayor Martin about if Mr. Simon is willing to go to additional meetings in an effort to talk with the community, Mr. Simon said that he also said in the meeting on January 26 that he would be involved as intimately as he was involved in Phase I and II. We created a liaison committee which represented three members from the neighborhood, one member from the developer (myself), and Gerald Green from the Planning staff. We met on a scheduled basis to let the neighbors know what was going on and kept them abreast. I told them I would do that.

Councilwoman Sitnick said that she had the record of the Planning & Zoning Commission meeting in front of her and he did explain it as he just did at the Planning & Zoning meeting. Mr. Mayhew, one of the members of the Commission, asked you if after you talked to Mrs. Harris about the fence, and how you accommodated her, whether or not you had told Mrs. Harris that did she realize that there was going to be a three story building next to her house. And you replied no, you had not told her that. Now if you're going to talk about talking with the neighbors and keeping them abreast, then you have to tell the whole story. Mrs. Harris has indicated to her that she didn't know that there would be a three story structure next to the fence you were willing to accommodate her. We have to be very clear that all the information is given, not just some of it. Mr. Simon responded that he showed them this plan and (by pointing out on the plan that was on the bulletin board) he pointed out the name Sarah Harris which was on the plan, actually it says Carl Harris. It says clearly on the plan, three story building. What he said at the last Planning & Zoning meeting was when that question was asked of him, I said I was getting bashed by the neighbors and "didn't get a whole lot of time to get into a lot of the specifics." Councilwoman Sitnick said that was a very important specific. Mr. Simon said that the ordinance allows us to build three story, they allow you to build 31-1/2 feet in Asheville. He said he was not trying to hide anything - the staff knows about everything on this plan and they've had ample opportunity to go down to staff and I know they have, but for other purposes, to just dig up bad stuff about us. But if they went down and talked with Patty Joyce, who's very informative and is very resourceful, she could have sat down with them and explained. Or if they would have called me on the

telephone - we've been going through this since early December. We submitted our plan back in December and -25-

were reviewed January 6 by the Technical Review Committee which allowed all of the folks down at the City to look at our plan, make their comments and sit down with the developer and work out those comments.

Councilman McClure said a lot of concerns have been expressed regarding safety. He asked Mr. Simon, in his development plan, did he take into consideration any safety concerns, such as sidewalks, the 18-foot Avon Road, or pedestrian traffic. Mr. Simon responded that he did. We originally showed one entrance on Beverly Road. We showed an optional entrance onto Avon Road, which we were maybe going to have an exit only. But it was written on the plan optional. When we met with Public Works at the Technical Review Committee it was their recommendation that they felt, in the interest of safety, that the entrance be made a permanent ingress/egress. We accommodated them. We said that would be fine. We have gone to an additional expense of hiring an independent traffic engineer to alleviate the concerns of the community about the City Traffic Engineer, who I feel like has done his job. These are professional engineers. Regarding sidewalks, the Public Works Department reviews our plan and they are responsible for streets and sidewalks. Larry Ward and James Cheeks reviewed our plan. Sidewalks are not a mandatory item in Haw Creek. Mr. Ward stated that it's a very, very small percentage of the total sidewalks in the area. The roads are narrow - there just aren't any sidewalks and Beverly Road is probably the only sidewalk in Haw Creek. It was not a requirement of us to carry that sidewalk around the property. I would like to say though, I want to make amends with the community and I want to work with the community. I feel like they really haven't wanted to work with us, i.e., being confrontational, lack of compromise. But we would be willing, and I talked with Larry Ward earlier about this, we would be willing to contribute a sum of money towards a sidewalk up to the community center. The City would have to take the rest of it up there. We cannot afford to build a sidewalk from Beverly Road to the community center. These are things that should be coming out of communications from the neighbors, instead of all this character assassination and all this blowing up.

Councilwoman Sitnick asked James Cheeks, in his opinion, when the Technical Review Committee recommended an additional driveway access, was that because the driveway access off of Beverly would not be sufficient to accommodate 98 units? Mr. Cheeks responded that they felt that the impact of 598 vehicles a day at that one driveway, at that proximity to the intersection of Avon Road, would not be appropriate for this type of development.

Mr. Crow said that we want to answer any of Council's questions and if we have not, please ask them. You've had the pleasure of sitting through two of these meetings, but your questions are good and we want to answer them and be forthright to any of you with respect to these answers. In summary, we feel the project qualifies. In summary, the roads are 18 and 24 feet considered to other projects you have approved and I don't think you'll find the roads any wider. I know on Overlook Road, an 18 foot road in South Buncombe, you approved major, major development around my home on a road that is hardly qualified for that amount of traffic. But that's Asheville, North Carolina. Unless you amend your zoning ordinances and put in there a requirement that roads be such and such a width, you're either going to have to put a moratorium of any type of growth or otherwise deal with the topography in existing conditions. I think sidewalks were tried to be put on Trinity Chapel Road going up to the school but you couldn't get the -26-

right-of-way. That's the nature of our people. We won't give the right-of-way for the roads to be widened, we won't give the right-of-way for sidewalks - we want somebody to pay for them.

Ms. Jane Gianvito Mathews, co-liaison from the Planning & Zoning Commission to the City Council, said that she did speak with Ms. Graham (Chairman of Planning & Zoning Commission) and she will try to briefly give Council a synopsis on the two opposing views. It was, as you are facing, a difficult decision and it was a divided vote of 4-3. Those in favor of approval of this group development application felt that the applicant's plans met the development standards as outlined in Article 6, Section 30-6-1, section (c) of group development criteria. These criteria include density, street access, roadways, parking, drainage, and landscaping. They interpreted these standards to be quantifiable, non-subjective criteria against which to judge the approval of this project and based on that criteria they felt the project should be approved. Those in opposition based their votes to deny this project on several factors. They also justified their vote against the same article, same section, not the same item. They took into consideration not only the development standards, but the ordinance's description of intent. She would not reiterate that because it's been mentioned here before. For those holding the opposition opinion, this was seen as a broader guideline from which a more subjective review could be undertaken and justified. They felt that the Commission was responsible, not only with the zoning, but with the planning of our community. Among the concerns of the opposition was that the underlying density of the zoning is, and has been for some time, inappropriate to the overall character of Haw Creek and that further development of this type will be detrimental to the overall welfare of that particular community. It was their opinion that this position was further reinforced by our City's comprehensive plan, which clearly called for this area to be developed as low density residential. They also stated their request by the Haw Creek community to bring their zoning into compliance with the 2010 comprehensive plan was repeatedly put on hold in anticipation of the UDO and the opposition felt that failure to act on the UDO should not penalize residential communities or put them in jeopardy of losing their community character. And finally, the opposition asked a question of criteria on which evaluation of everybody's safety is based and also how that criteria is measured regarding its impact. The current standards look at the capacity of the road to physically handle the traffic but establishes no criteria for quantifying the increased traffic's impact on the quality of life on the uses along vehicular corridors and in this case, residences. They were concerned that the impact of traffic on a commercial strip versus a residential strip are weighed the same way on width, grade, number of vehicles, but not on quality of life and they felt the impact of additional traffic on the quality of living and quality of life of surrounding neighbors was enough justification for denial. Again, the staff has pointed out to you, it was a 4-3 vote with three conditions of staffs and one additional recommendation of a condition by the Commission which was if any changes were made to the submitted plan that it would come back to Planning & Zoning Commission for review and approval. There were issues that came up during both hearings, as you know we did meet twice on this issue, that various commissioners questioned and got responses. Some of those things have been brought up here today. The issue of buffering versus the fence was one issue. The issue of children who would be crossing the road to a pool area at the area development was taken care of because the developer added a pool on this particular site. Grading, which was brought up previously, and the preservation of trees was an issue that was discussed. Some -27-

commissioners felt that maybe the intent to save trees was being negated by the grading, that it would not be very feasible to maintain trees given the amount of grading. The other was retention basin, and Mr. Jensen spoke about a retention basin in the area that's designated as near the flood fringe area.

Councilwoman Sitnick, addressing Ms. Mathews, had a concern about the driveway access on Avon and Mr. Crow just confirmed the difficulty on a road like Overlook and this is a similar road. I wanted to ask you about something that was discussed that day. Two things came up. Number one - the issue of the

environmental impact statement which is not stated in the body of the ordinance but is a must in the group development checklist - it's number 15. It was indicated, and correct me if I'm wrong because I didn't hear everything that was said by Patsy Meldrum, that the environmental impact statement was originally part of the ordinance and then because it was difficult to get compliance, it was removed from the ordinance and instead certain development standards were inserted in the ordinance that would require compliance with certain environmental impact questions. However, the EIS was never removed from the checklist. So, I had a concern about that and while it may not be relevant to this issue anymore, I think we need to look back at either putting the EIS in there and if it wasn't complied with because nobody bothered with it, then maybe we need to require it with some teeth so that it is complied with. The other issue that I want to ask you about, and I'm going to read it, because it's been brought up several times, and for me it's the cross-over point and it's been referred to as the preamble and it says it is the intent of this section (meaning the group development section) to encourage the flexibility and innovation in the design and location of structures and land development. It is further intended that these developments will be in harmony with the character of the district in which they are located and that adequate standards will be maintained pertaining to the public health, safety, welfare and convenience. Now it's my understanding that there's a judgment factor having to do with that preamble. And the other thing is the word harmony is subject to interpretation.

Ms. Mathews said that Ms. Meldrum did a good job at trying to explain that to the Commission and even in her attempt to explain it, I think it left it vague to some of the commissioners. I think at one point I would need to refer to the minutes, but we were asked if this could be interpreted more broadly and I believe her answer was yes, it could be interpreted to have a more broad discretion on the part of the commission. The question was raised in light of the denial motion, not in terms of an approval motion. She did go into some detail about that. She said that she has not personally seen an environmental impact statement for at least seven years. I remember staff mentioning that there were problems with that and I remember, as a citizen, the problem was that it was being done by the developer so it's independence, in terms of an evaluation, had some problems. Council may want to look at that if it needs to add back that factor - but we, on the Commission, haven't seen one for the 1-1/2 years I've been on the Commission.

Councilwoman Sitnick also asked City Attorney Slawter to respond. Mr. Slawter said there is some case law in that area and in particular there's a case from Chapel Hill that deals with an application for a special use permit, in which the court discusses language similar to language included in our ordinance. It talks about how you mesh together the specific standards in an ordinance such as those specific standards we have in our ordinance, along with language related to general health, safety and welfare. That language read, from the case -28-

of Woodhouse vs. Board of Commissioners, once an applicant shows that the proposed use is permitted under the ordinance and presents testimony and evidence which shows that the application meets the requirements for a special exception (which would be similar to the requirements for a group development permit) the burden of establishing that such use would violate the health, safety and welfare of the community falls upon those who oppose the issuance of the special exception. So, under our circumstances I think the developer has the initial burden of showing that they meet the specific criteria set forth in our ordinance and the general consensus seems to have been that they have done that. The community has raised additional issues which they find objectionable and in their opinion, I suppose, detrimental to the health, safety and welfare which would kick in that preamble and constitute cause to deny the group

development permit. Whether the evidence that is presented by those opposing the permit rises to the level of being sufficient to counter the presentation by the developer that they have met the standards does, to some extent, include some subjectivity. However, the evidence that's presented, needs to clearly show detriment to the public health, safety and welfare, if a permit isn't issued because the objective standards set forth in the ordinance have been met.

Mr. George Jensen said that as a professional engineering he is charged with protecting the health, safety and welfare of the general public. That's his charge and that's how he got licensed. I take the public's consideration into my work. I would like to say that basically we don't have a problem with water, we don't have a problem with sewer - I called up MSD today and talked to them, they have no problems with their mainlines, they have a lot of private collector systems out there that are having problems, but this project will tie into their main line, not into the private collection systems out there that they are having problems with. You've heard the traffic studies - there are streets in Asheville that have an excess of 22% grades, Osborne Street right off Merrimon Avenue, there are streets in Asheville that are 14 feet wide, 16 feet wide, no sidewalks. You have Lakeshore Drive that there's no sidewalks on. They've shown you that the level of service is fine for the road that is there. Erosion control, storm drainage, retention/detention, floodplain ordinance - all those things will have to be met and approved by the City staff before we can move the first shovel full of dirt on the project. When you talk about harmony, basically there's a development right across the street from this. It's zoned properly, it's zoned R-3 and they're not even putting in as many units as they possibly could under that zoning. I think we've clearly shown you that we're going to meet all the requirements of the ordinances.

Mr. Simon spoke to the harmony of the neighborhood. He wanted to point out on this plan that on the part of Haw Creek closest to Tunnel Road is mixed use - it is not all single family residential neighborhood. There are existing 38 apartments called Beverly Apartments, a business and three commercial general areas. On Arco Drive there are duplex apartments. When you go down Old Haw Creek Road there are duplex units along there. We are 1/10th of a mile from Tunnel Road where you have a multitude of commercial uses. This upper end of Haw Creek is in harmony of the neighborhood. It is mixed use. In the R-3 definition of Section 30-6-1 you will see that it talks about allowing 16 units per acre, allowing the intensity to be increased - and that's what we're zoned. We are legally zoned for 16 units per acre. We're not building 16 units to the acre. We're not asking for a variance and we're not asking for a rezoning. We're just asking our due process for the land that we are legally under contract right now. We -29-

are asking to be allowed to do what the City ordinances say are in place today. Again, we meet all of the requirements - we're not asking for any special treatment. One last point is that we have a lot of people coming up, and I sympathize with the neighbors, and they are speaking on behalf of their lives and what affects them. I would like to read real quick a mix of employment - people that live at the existing apartments here - they come from all walks of life - there are a lot of professionals, there are doctors, there are nurses that are employed at our hospitals here, the list goes on and on. They're voting citizens. I think you have to look at the people that live there - not everyone is fortunate to own a home, they have to go up the employment ladder of life and they have to rent an apartment - I'm sure everyone in this room probably has rented an apartment sometime in their life or maybe some of you have.

Mr. Crow responded to a question raised by Councilwoman Sitnick as it related

to Ms. Mathews. He asked that Councilwoman Sitnick read the minutes of that meeting. Only one person gave a reason for their negative vote and that was Ms. Mathews. Please read that carefully and I think if you ask Mr. Slawter, that would be without legal foundation.

Mayor Martin closed the public hearing at 8:12 p.m.

Councilwoman Sitnick said that she wanted to make a motion but she wanted to confer with the City Attorney to make sure that she does it properly. My motion is going to be based on several things. First of all it's going to be based on the intent of the law and the statement in the preamble especially as it refers to safety and welfare. I'd like to base it on the fact that a provision for judgment is part of this. I would like to include the appropriateness for the use of the land. There's a real problem for me in the fact that on two different occasions members of this community, residents of this community, came forth to request a zoning change. And they weren't denied the request, anybody can come forth and make a zoning change request, but they were encouraged to wait because of the UDO process that was on-going at the time. In effect, it seems to me that the community is not only paying for 20 year old laws that may soon be changed, but in part are paying for the fact that they could not move forward with their rezoning request. So, my motion will, given the evidence, put in the record today, in spite of the report from our traffic engineer, there has to be some judgment on my part to rely on the accidents, the near accidents, the discomfort in driving, the safety issues on the streets, and the driveway access onto Avon. I spent, other than the time that I toured the actual sites, I've spent three other occasions, multiple hours each, observing the roads and they are a mess. The ordinance and our charge is to provide for public hearings. The purpose of a public hearing is to have input from the public. We've had 35 speakers, two of whom have spoken in favor of the project and 33 of whom spoke against it. Not that I am saying that I think that the public or mass opinion should create approval or denial, but it's our job as members of Council, to listen to our advisory commission, 4-3 is not a mandate, we've listened to the public and I'm very concerned about the multiple safety and welfare issues that have been brought into the record today. This is very hard, it's a hard motion. We have a developer who has complied with our laws. And we have a situation that exists now that has created a conflict and a question regarding public safety and welfare.

Councilman McClure sympathized with everything Councilwoman Sitnick has said and asked her if she would entertain a substitute motion.

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Councilwoman Sitnick said that in spite of what you might have felt from the newspaper article that reported on the meeting, I had not made up my mind at all, but the safety issue - you know we denied another project because of a safety concern and everything was complied with - safety is probably one of the primary charges this Council has. We are employed by the citizens of this City to look out for their safety, for their comfort, for their welfare, for their basic services, and I'm having a real hard. I would like to move to deny the application for the site plan, for the Haw Creek Mews Phase III apartments based on concerns for the safety and welfare of the surrounding neighborhood. Vice-Mayor Peterson seconded the motion.

City Attorney Slawter commented that this goes toward what Councilwoman Sitnick was asking him about in the beginning and that is the specifics of what you're basing the motion upon. Given the fact that statements have been made by staff and others that the objective criteria of the group development ordinance have been met, I think it's incumbent upon those challenging that ordinance to show by clear and convincing evidence some ways that approval of the permit would be

detrimental to the public health, safety and welfare. Some compelling evidence to that effect, in some specific ways, rather than merely a general statement that it's not consistent in keeping with health, safety and welfare because the objective criteria of the ordinance are elements of what this Council has previously determined to be consistent with health, safety and welfare in that this Council or an earlier Council has established those criteria to be followed and they are being followed. Yet in some circumstances perhaps there can be unusual concerns that can go beyond that and raise an issue of real concern about health, safety and welfare going beyond those objective criteria. But I've heard discussions of water pressure and fire hydrants and crime and other matters have been raised and I've also heard statements from the Police Chief and the City Engineer and the Traffic Engineer countering those points. I think that to the extent that Council could zero in on specific points that this project would be detrimental to the public health, safety and welfare beyond those objective criteria, the motion would be much better stated.

Councilwoman Sitnick then restated her motion to move to deny application for the site plan for the Phase III of Haw Creek Mews Apartments based upon the fact that there are no sidewalks and that the school children would be impacted by increased. I base my motion on the traffic concerns on Avon Road and the driveway access ingress and egress on Avon Road and on the erosion problems that will be created. This motion is based on safety. Safety of the automobile traffic, pedestrian traffic, on the increase of traffic and the welfare of pedestrian use of Avon Road. Welfare and convenience can be based on other things.

Upon inquiry of Mayor Martin if Councilwoman Sitnick's motion meets the requirements, City Attorney Slawter said that was a difficult question to answer. The concerns that the neighbors have and the concerns that are being expressed by Councilwoman Sitnick are matters that go beyond the specific criteria set forth in the zoning ordinance related to group development approval. If Council chose to pass a motion denying the group development approval, then the more specific criteria that can be included in the motion with concerns for which evidence has been presented here today, that would display detriment to the public health, safety and welfare, the more of those components could be included. There have been an awful lot of things said about a lot of different topics and to the extent any of those that for which there is evidence that could show detriment to the health, safety and welfare would be helpful.

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Councilwoman Sitnick said that she could add in her motion that we were informed that there was enough water for fire flow but were also informed that water pressure varies and with the addition of 98 more units that the water pressure will be affected. Vice-Mayor Peterson agreed to Councilwoman Sitnick's restated motion.

Councilman McClure said that the understood where the City Attorney was coming from on this, and he has some serious questions about the water pressure and the number of hydrants out there. We heard Chief Rukavina say that we really haven't heard from Mike Holcombe in the Water Department. Traffic - I sat out there and watched the traffic myself so I know. I know what traffic counts show and I have a planning background and I know a little bit about that but I know that there is a tremendous traffic problem out there. One thing that I am concerned about is the specifics of this. Right now I'm not sure that we have all the specifics. I know that I have a lot of doubts in my mind and what I would like to throw on the table is a substitute motion that we table this for 30 days with the understanding that we are not giving up any options whatsoever, we still have the option of either approval or disapproval, but



this gives us some additional time to maybe get more specific in what we're looking at. Also, I heard the statement of misinformation and mistrust and the neighbors feel like they've been lied to, I don't know if there is a compromise position or not. I don't know. But it might be in everybody's best interest to sit down and see if there is a compromise. If we don't change opinions, then we're 30 days down the road and it's 30 days more that that property exists as it is now without additional traffic, or whatever. So I would like to throw out a substitute motion that we table this for 30 days and then bring it back to Council at that time.

Councilwoman Field seconded Councilman McClure's motion. She said that everything she has heard brought up today has been countered in some way or another and I think that what we need to do is to get the facts. I need, before I vote, to be absolutely sure that I am voting appropriately and fairly for both the developer and the neighborhood. I know that there are a whole lot of my friends out in the audience which are members of the neighborhood, but I don't feel comfortable right now with the number of counters and questions that are out there. I agree with Councilman McClure that I would like to at least have a chance to sit down with Mr. Slawter and with the staff and get some answers.

Councilman Swicegood said if the substitute motion passes which I will be voting for and letting the neighborhood know that I'm pretty much in favor of the development today. I'm not going to carry you through the next 30 days wondering where one vote is. If nothing else changes, that's where my vote will be - for the development to go in. The one thing I would like to say though to the Simon family is that during this 30 day period, I would expect for you to truly work with the neighborhood, be honest, totally open and get everything on the able. And also I'd like to see what kind of money that you are talking about on the sidewalks even though it is not a criteria for this development. I would like to see what kind of money you are willing to give the City. I want the neighborhood out there to know where I stand if it was voted on tonight - I would be voting for the developer. However, I would like to see a 30 day extension so you can try to work out maybe a little less density of the apartments, but that's where I stand.

Vice-Mayor Peterson said that he could vote today for himself. He has decided pretty much which way he will be voting. He doesn't need 30 days. If it's the pleasure of Council to wait 30 days, it's fine. I seconded Councilwoman Sitnick's motion that we deny.

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Councilwoman Sitnick said that she didn't need 30 days either. I've spent a lot of time out there. There's a safety problem. Pure and simple. I don't care what the studies say. I don't care what the numbers say. There's a major safety problem there and my allegiance is to the residents of this City in respect to a developer who is an investor and you have that right, and all of that. I'm willing to wait 30 days. I am a great proponent of developers getting together with neighborhoods to see if things can be worked out, if fears can be allayed, but I go on record today as feeling that there is a factor in our ordinance that gives us the right to exercise our judgment and if anybody has spent the three days out there, other than looking at the sites themselves, watching the road, watching the traffic, watching the cars dart and dash, forget the throwing of trash at dogs, forget all of that. I can't say that all these people came in here and made these stories up. I've been pretty convinced by the evidence that there is a problem out there as it exists today. For me to compound that problem by approving a site that is going to add 98 more units and 600 more cars, I will be very, very surprised if I am impressed differently at the end of 30 days. In deference to my desire to have developers work with

neighbors, and you can smile at this sir, but I have read the minutes from P&Z, I was there, and when Ms. Winner asked you why you're building this, your answer was very simple - it's an investment and you do it. Other investments for the City is the property values and domestic tranquillity of all the residents who already live there. They also have made investments. Not as much as yours. I am making a speech because this has been a gut-wrenching, heart-wrenching difficult decision for all of us. I'm willing to wait the 30 days in respect to my fellow Council person and respect to a developer who has complied with our ordinance, although be it, not a very good ordinance. And I would like to see that changed, I'd like to see an EIS put in, I would like to see a speed limit on Avon Road and I would like to see sidewalks at Haw Creek School.

City Attorney Slawter asked Council to be more specific in the motion to table this matter. Councilman McClure then moved to amend his motion to table the matter until May 9, 1995, at 5:00 p.m. Councilwoman Sitnick agreed with the amended motion. On a voice vote, the motion carried unanimously.

### III. UNFINISHED BUSINESS:

#### IV. NEW BUSINESS:

##### A. RESOLUTION NO. 95-44 - RESOLUTION DENYING TAX PROTESTS FILED BY PROPERTY OWNERS IN THE BREVARD ROAD ANNEXATION AREA

City Attorney Slawter said that the City and the Tax Collector have received several protests from property owners in the Brevard Road Annexation Area related to recent tax bills.

He explained to the Council that the final ruling of the North Carolina Supreme Court regarding the Brevard Road annexation was on May 5, 1994. The statute which prescribes the effective date for an annexation prescribes that "if part or all of the area annexed under the terms of an annexation ordinance is the subject of an appeal to the superior court, the Court of Appeals or Supreme Court on the effective date of the ordinance, then the ordinance shall be deemed amended to make the effective date with respect to such area the last day of the next full calendar month following the date of the final judgment of the superior court or appellate division,..." Based upon this provision, we determined the effective date of the Brevard Road annexation to be June -33-

30, 1994. That is the date on which the City began providing municipal services to the area. The property owners which have filed tax protests contend that the effective date of the annexation was not until November 30, 1994. This is based upon the fact that, after the ruling of the North Carolina Supreme Court, the petitioners challenging the annexation requested the United States Supreme Court to hear the matter and the determination from the United States Supreme Court that they would not hear the matter was made on October 6, 1994.

The amount of tax being protested by those property owners filing protests is based upon their assertion that they should not be taxed for July, August, September, October and November., 1994.

N. C. Gen. Stat. sec. 105-381 provides a method by which taxpayers can challenge a tax that has been done in this instance. The statute provides that, upon receipt of such a challenge, the governing body shall either (a) release that portion of the tax that is determined to be in excess of the correct tax liability; or (b) notify the taxpayer in writing that no release or refund will be made.

If the Council were to determine that the protests should be honored, other

taxpayers in the Brevard Road Annexation Area would also be entitled to refunds. The Audit/Budget Director estimates that the total amount involved is \$200,000.00.

Our recommendation is that the Council direct that the protesting taxpayers be notified in writing that no release will be made. If the Council concurs, then the protesting taxpayers are required by statute to pay the tax and may thereafter institute a civil action for a refund.

Mr. Jerry Crow, attorney representing the protesting taxpayers, felt that the effective date of the Brevard Road annexation should be November 30, 1994.

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

Vice-Mayor Peterson moved for the adoption of Resolution No. 95-44. This motion was seconded by Councilman McClure and carried unanimously.

RESOLUTION BOOK NO. 22 - PAGE 229

B. RESOLUTION NO. 95-45 - RESOLUTION EXTENDING TIME FOR A DECISION REGARDING THE RATE SCHEDULE OF TCI CABLEVISION OF ASHEVILLE FOR THE BASIC SERVICE TIER AND ALL EQUIPMENT, INSTALLATION AND OTHER SERVICES USED FOR THE BASIC SERVICE TIER

Assistant City Attorney Patsy Meldrum said that TCI is seeking approval of its annual adjustment to update equipment and installation charges for the basic service tier and approval of an inflation adjustment to the basic service tier rates.

City staff only recently received a copy of the new regulations adopted by the Federal Communications Commission and recommends, pursuant to the authority granted by the FCC regulations, that the time period for review of the proposed rate change be extended.

Ms. Meldrum stated that the Mayor had asked a question about if the City Council could stop reviewing these rate requests and to no -34-

longer regulate the basic service tier, what would happen. She has looked at the FCC information on this and in a publication dated May 7, 1993, the FCC states that if a city's certification to regulate rates is either denied or revoked, there is a procedure whereby our certification can be revoked, then the FCC will step in and regulate the rates. If we demonstrate that we are unable to do so largely due to not having sufficient resources to regulate the rates, then we can request FCC to stand in, but there's a burden on us to show that we can't use the resources from the franchise fees to do so. I think that would be a difficult burden for us to overcome. In the event that we decide that we no longer want to do this, I haven't found yet a procedure for de-certifying us, but if we would do that and the FCC did not take it over, then the rates for basic service tier would be unregulated. The rates for cable programming service would still be regulated by the FCC but they only do that on a complaint by complaint basis.

Councilwoman Sitnick said to make sure that we look at whether or not they are basing our franchise fee on the basic rates or other, whether or not we can collect monies retroactively if there is a question that arises and what the benefits or negatives to the City are if we own the system.

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

Vice-Mayor Peterson moved for the adoption of Resolution No. 95-45, extending the time period for review of the rates by scheduling a public hearing on this matter on April 4, 1995. This motion was seconded by Councilwoman Field and carried unanimously.

RESOLUTION BOOK NO. 22 - PAGE 230

V. CONSENT:

A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON MARCH 21, 1995

B. RESOLUTION NO. 95-46 - RESOLUTION AUTHORIZING THE CITY MANAGER TO MAKE APPLICATION FOR A TRAFFIC ENFORCEMENT UNIT GRANT WITH THE N.C. GOVERNOR'S HIGHWAY SAFETY PROGRAM

Summary: The Police Department is seeking third and final year federal support for its Selective Traffic Enforcement Program. The grant application seeks \$106,801 in federal funds and requires \$121,201 local match.

RESOLUTION BOOK NO. 22 - PAGE 232

C. RESOLUTION NO. 95-47 - RESOLUTION APPOINTING MEMBERS TO THE ASHEVILLE SCHOOL BOARD

Summary: The terms of David Hillier and Erby Oglesby expire on April 1, 1995. This resolution will appoint Roy Harris and Brian Weinkle to serve four year terms respectively, terms to expire April 1, 1999, or until their successors have been appointed and qualified.

RESOLUTION BOOK NO. 22 - PAGE 233

D. RESOLUTION NO. 95-48 - RESOLUTION APPOINTING MEMBERS TO THE STEERING COMMITTEE ON THE REEVALUATION PROCESS FOR THE HEAD OF MONTFORD REDEVELOPMENT PLAN

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Summary: By Resolution No. 95-15, City Council established the Steering Committee on the reevaluation process for the Head of Montford Redevelopment Plan. This resolution will appoint Elizabeth Graham and Jane Gianvito Mathews (Planning & Zoning Commission members); Ray Spells (A-B Historic Resources Commission member); and the following citizen members: E. Benson Slosman, Frank Smith (or Bill Eubanks if Frank Smith cannot serve), Eugene Ellison, Michael McDonough, Jane Knox, Mary Jo Brezny, Dora Dawkins, Myra Fuller, Nora Valentine and Shirley Dozier.

RESOLUTION BOOK NO. 22 - PAGE 234

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

VI. OTHER BUSINESS:

A. ASSISTANT CITY MANAGER

City Manager Westbrook said that he has talked with each member of Council about the need to go ahead and recruit for an assistant city manager. He would like to begin the process so that we can recruit and hire after the first of the fiscal year, July 1.

Councilwomen Sitnick and Field asked that when the process opens they would certainly hope that equal consideration be given to women and minorities.

Councilman Swicegood asked that consideration be given to any capable people that are local, being in City government, or whatever.

City Manager Westbrook said that it was his intent to hire the best person.

It was the consensus of Council for the City Manager to proceed with the recruitment process of Assistant City Manager.

#### B. U.S. CELLULAR - LANDLORD'S WAIVER AND CONSENT

At the request of City Attorney Slawter, Councilwoman Field authorized the City Manager to sign with U.S. Cellular a landlord's waiver and consent. This motion was seconded by Councilman McClure and carried unanimously.

#### C. CLAIMS

City Manager Westbrook said that the following claims were received by the City of Asheville during the week of March 2-9, 1995: Morris Buckner (Water), Betty L. Gehre (Civic Center), Gary Kramer (Civic Center), Rose Arrington (Streets) and Randall Stimson (Water).

He also said the following claims were received during the week of March 9-15, 1995: Mark Williams (Inspections), Tamela Bradley (Traffic Engineering), Debra L. Hensley (Streets), Barry G. Meade (Inspections), Druid Drive (Public Works) and Catherine Moss (Police).

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

#### D. LAWSUIT

City Attorney Slawter said the following lawsuit was received by the City on March 7, 1995, in which the parties are Lamont Baird v. City -36-

of Asheville, et al., and the nature of the suit is false arrest/false imprisonment.

He said that this lawsuit has been referred to the appropriate legal counsel for action.

#### VII. ADJOURNMENT:

Mayor Martin adjourned the meeting at 8:49 p.m.

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CITY CLERK MAYOR

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