

Tuesday - April 18, 1995 - 4:00 p.m.

Regular Meeting

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

Absent: Councilman Gary McClure - out of town; and

Councilman Herbert J. Watts - in hospital regarding knee problems; however, Councilman Watts participated in the meeting by use of a speaker phone.

INVOCATION

Councilman Swicegood gave the invocation.

I. PROCLAMATIONS:

A. RESOLUTION NO. 95-58 - RESOLUTION IN MEMORY OF GEORGE M. TISDALE

Mayor Martin read the resolution in memory of former City Councilman George M. Tisdale and presented it to Mrs. Tisdale and their son Rick Tisdale.

Councilwoman Sitnick moved for the adoption of Resolution No. 95-58. This motion was seconded by Councilwoman Field and carried unanimously.

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B. PROCLAMATION PROCLAIMING THE WEEK OF APRIL 23-30, 1995, AS "DAYS OF REMEMBRANCE OF THE HOLOCAUST"

Councilwoman Sitnick read the proclamation proclaiming April 23-30, 1995, as "Days of Remembrance of the Holocaust" in the City of Asheville.

C. PROCLAMATION PROCLAIMING THE WEEK OF APRIL 23-29, 1995, AS "NATIONAL VOLUNTEER WEEK"

Mayor Martin proclaimed the week of April 23-29, 1995, as "National Volunteer Week" in the City of Asheville and presented Ms. Cathie Stout with the proclamation. Ms. Stout briefed the Council on the activities taking place during the week.

D. PROCLAMATION PROCLAIMING MAY 4, 1995, AS "NATIONAL DAY OF PRAYER"

Mayor Martin proclaimed May 4, 1995, as "National Day of Prayer" in the City of Asheville and presented Ms. Carol Collins with the proclamation. Ms. Collins briefed the Council on the activities taking place in connection with this day.

E. RESOLUTION NO. 95-57 - RESOLUTION TO RETIRING EMPLOYEE RAYMOND OWENS

City Manager Westbrook read the resolution stating that Raymond Owens has been an employee for almost 29 years and has requested retirement from his position as Fire Captain in the Asheville Fire -2-

Department. He expressed City Council's appreciation to Raymond for his service to the City of Asheville and its citizens.

Resolution No. 95-57 was adopted by acclamation.

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II. PUBLIC HEARINGS:

A. PUBLIC HEARING RELATIVE AMENDING THE FLOODPLAIN REGULATIONS ORDINANCE

ORDINANCE NO. 2206 - ORDINANCE AMENDING CHAPTER 7 OF THE CODE OF ORDINANCES TO ALLOW NEW CONSTRUCTION OR SUBSTANTIAL IMPROVEMENT OF CERTAIN NON-STRUCTURAL PUBLIC IMPROVEMENTS IN THE FLOODWAY DISTRICT

Mayor Martin opened the public hearing at 4:20 p.m.

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

Ms. Julia Cogburn, Planning Director, briefed Council on N.C. Department of Transportation's design relocation of NC 81 at Haw Creek and the problems that exist in the City's current floodplain ordinance. The current floodplain ordinance does not allow any increase to the flood elevation level in the floodway district area.

The amendment proposes that new construction or substantial improvement of public improvements (such as streets, highways, sidewalks, bridges, water and sewer systems, etc.), but excluding structures or buildings, be allowed provided that they do not cause an increase of more than one foot in the regulatory flood elevation.

Councilwoman Sitnick questioned if one foot is considered a slight increase. Ms. Cogburn said that according to FEMA it is. Actually, in many cities FEMA allows one foot for private development as well as public. She stressed that FEMA does not recommend this, they only allow it. With regard to public improvements, we have an existing situation at NC 81 where this is perhaps the only alternative to be able to make any improvements.

Mayor Martin noted that in this specific instance, however, they are only talking about an increase of four inches maximum.

Councilwoman Sitnick asked Ms. Cogburn if this amendment would create an issue of liability for the City. Ms. Cogburn replied that she checked with the City's Risk Manager and he indicated that he does not feel that there are any liability concerns regarding the amendment. She said that it was her understanding from this particular situation that the flood elevation level is being raised but not to the extent to which flooding occurs.

Councilwoman Sitnick hoped that this was not one of those issues that might create some controversy and questions in the community. She didn't doubt that the public hearing was adequately advertised, but wondered if this is one of those situations that really deserves more public scrutiny, just to avoid the perception that there is something more going on down the line.

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Ms. Cogburn said that this public hearing has been legally advertised and stressed that this amendment is really a very limited revision - it only applies to public improvements and only allows the increase in regulatory flood elevation to be a maximum of one foot.

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

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

Councilman Swicegood moved for the adoption of Ordinance No. 2206. This motion was seconded by Vice-Mayor Peterson.

On a roll call vote of 5-1, Ordinance No. 2206 passed on its first and final reading, with Councilwoman Sitnick voting "no".

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III. UNFINISHED BUSINESS:

IV. NEW BUSINESS:

A. FINAL PLAT APPROVAL FOR BILTMORE COMMONS SUBDIVISION

Mr. Gerald Green, Senior Planner, said that Nappier and Gunnells, developers of the 19 lot Biltmore Commons Subdivision located on West Oakview Road, are requesting approval and acceptance of the final plat for the subdivision. The final plat complies with the standards established by the City's subdivision regulations.

He said the preliminary plat for the subdivision was approved by the Planning & Zoning Commission on March 2, 1994 with three conditions. All conditions have been met by the developer. The lots range in size from approximately 1/3 acre to approximately one acre. The subdivision is located outside the City limits but within the City's planning jurisdiction. Public water and sewer service is available to the development. Access to the lots will be provided by a new cul-de-sac street, approximately 1,200 feet in length. The new street will be constructed to NC Department of Transportation standards and will be dedicated as a public street.

Councilwoman Field inquired if there were a landscaping plan. Mr. Green said that there is a landscaping plan for the multi-family portion of the development but our current landscaping ordinance does not require any landscaping in subdivisions. He said the landscape architect on the project was sensitive to the number of trees on this site and, in routing their road, they tried to save some of the larger trees. However, there is significant grading and land clearing as part of the development.

In responding to Councilwoman Field about the cul-de-sac, Mr. Green said that there is open space around the area of the cul-de-sac that will be available for pedestrian and possibly bike use. He said that during its review of the project, staff did recommend walking and bike trails within the development, however, the developer and the Planning & Zoning Commission did not accept those recommendations.

Mr. Daniel Breen, resident of the City, expressed concern over no bike paths or pedestrian trails and especially no sidewalks.

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Mayor Martin replied that this subdivision is within the City's extraterritorial jurisdiction area and not within the City limits, therefore, we cannot require them to install sidewalks, but can only encourage construction of sidewalks.

Councilman Swicegood moved to approve the final plat for Biltmore Commons Subdivision. This motion was seconded by Vice-Mayor Peterson and carried

unanimously.

B. RESOLUTION NO. 95-59 - RESOLUTION ADOPTING A GRIEVANCE PROCEDURE REGARDING THE AMERICAN WITH DISABILITIES ACT FOR THE CITY OF ASHEVILLE

Mr. Lyle Willis, the City's coordinator regarding compliance with the Americans with Disabilities Act ("ADA"), explained that the purpose and intent of the ADA is to mainstream individuals with certain covered disabilities into society. While ADA compliance deadlines have expired, the City, in its continued good faith efforts to comply fully with the ADA, has finalized a required written ADA grievance procedure. The basic elements of the written grievance procedure are as follows:

A. City Council is required to establish an ADA Compliance Committee, which shall serve as a quasi-judicial body to hear ADA appeals from the ADA Coordinator.

B. Since the ADA Compliance Committee, as structured, constitutes a public body, the procedure would require the charging of a small administrative fee to cover publication costs for public notice of the Compliance Committee meetings.

C. The final decision-maker regarding the City's compliance or non-compliance with the ADA is the City Manager. The Committee, however, serves an advisory role to the City Manager in certain cases.

In response to Councilwoman Sitnick, Mr. Willis said that there is no mandate for the City of Asheville to have an ADA mediator.

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

Councilwoman Field moved for the adoption of Resolution No. 95-59. This motion was seconded by Councilman Watts and carried unanimously.

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V. CONSENT AGENDA:

Councilman Swicegood moved to remove from the Consent Agenda the resolution authorizing the City Manager to submit a formal request in writing to Southern Bell requesting selective routing as a primary public safety answering point for all E-911 calls originating in the City so that the matter could be discussed separately. This motion was seconded by Vice-Mayor Peterson and carried unanimously.

Resolutions & Motions:

A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON APRIL 4, 1995, AND THE WORKSESSION HELD ON APRIL 11, 1995.

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B. RESOLUTION NO. 95-60 - RESOLUTION AUTHORIZING THE HOUSING AUTHORITY TO ACCEPT A BID TO PURCHASE DISPOSAL PARCEL 160 IN THE EAST END/VALLEY STREET COMMUNITY IMPROVEMENT PROGRAM

Summary: The Housing Authority, acting as Redevelopment Commission, is seeking approval to sell property in East End/Valley Street area to Eugene Ellington in the amount of \$4,400.

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C. RESOLUTION NO. 95-61 - RESOLUTION REQUESTING CITY COUNCIL TO CALL ON MEMBERS OF THE GENERAL ASSEMBLY TO DEDICATE REVENUES GENERATED BY THE INCREASE OF THE LAND TRANSFER TAX TO THE PARK AND RECREATION TRUST FUND AND THE NATURAL HERITAGE TRUST FUND

Summary: City Council is requested to call on members of the General Assembly to request that revenues generated by the increased Land Transfer Tax be dedicated to the Park and Recreation Trust Fund and the Natural Heritage Trust Fund for use by local and state park systems.

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D. RESOLUTION NO. 95-62 - RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE AN AMENDMENT TO AN AGREEMENT AND CONTRACT OF LEASE BY AND BETWEEN THE HOUSING AUTHORITY AND THE CITY OF ASHEVILLE FOR SPACE AT REID CENTER

Summary: The Parks and Recreation Department wishes to amend the lease agreement with the Housing Authority so that the portion of the agreement concerning the area used for the Youthful H.A.N.D. Program is renewed annually. The Housing Authority pays 10% of the utility costs.

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E. RESOLUTION NO. 95-63 - RESOLUTION AUTHORIZING THE WAIVER OF BUILDING INSPECTION FEES FOR SMALL BUSINESSES FORCED TO RELOCATE BY THE CHESTERFIELD MILL-ASHEVILLE COTTON MILL FIRE

Summary: Small businesses displaced by the Chesterfield Mill-Asheville Cotton Mill fire of April 2, 1995, have been forced to find new buildings quickly for their operations. While the City of Asheville cannot support the costs of these relocations, the City Council can, by resolution, waive building permit-related fees incurred by these small businesses. These fees are estimated at less than \$1,000.

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F. RESOLUTION NO. 95-64 - RESOLUTION CALLING FOR A PUBLIC HEARING ON MAY 9, 1995, RELATIVE TO DEMOLITION OF THE STRUCTURE LOCATED AT 1 BUFFALO STREET, ASHEVILLE, NORTH CAROLINA

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G. MOTION SETTING A PUBLIC HEARING ON MAY 9, 1995, TO AMEND THE ZONING ORDINANCE TO ALLOW BANKS AS A PERMITTED USE IN THE COMMERCIAL SERVICE DISTRICT

H. MOTION AUTHORIZING THE CITY MANAGER TO SEND A LETTER TO CONGRESSMAN TAYLOR RELATIVE TO A COMPREHENSIVE FLOOD CONTROL RECONNAISSANCE STUDY FOR ASHEVILLE AND BUNCOMBE COUNTY

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Summary: The City Manager is authorized to send a letter to Congressman Taylor stating that the City will only participate in Step 1 and that it be made clear that future funding/participation decisions will be made only upon careful review and examination of the study, funding availability, and benefits to the City of Asheville.

I. MOTION DIRECTING THE PLANNING DEPARTMENT TO DRAFT AN AMENDMENT TO THE SIGN

ORDINANCE TO ALLOW SIGNS ON BUS SHELTERS, THAT THE AMENDMENT BE SUBMITTED TO THE PLANNING & ZONING COMMISSION FOR THEIR REVIEW AND THEN TO THE CITY COUNCIL FOR CONSIDERATION

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

RESOLUTION NO. 95-65 - RESOLUTION AUTHORIZING THE CITY MANAGER TO SUBMIT A FORMAL REQUEST IN WRITING TO SOUTHERN BELL REQUESTING SELECTIVE ROUTING AS A PRIMARY PUBLIC SAFETY ANSWERING POINT ("PSAP") FOR ALL CITY ORIGINATING E-911 CALLS

Summary: The current E-911 agreement for 911 service to the City of Asheville and Buncombe County is between Bell South and Buncombe County. The Buncombe County Office of Emergency Management currently receives, screens and dispatches all City and County E-911 calls.

A recent three month analysis of police, fire and ambulances (EMS) E-911 calls originating within the corporate limits of Asheville revealed:

- 7,136 E-911 calls originating within the corporate limits of Asheville
- 5,402 police and/or fire related
- 1,734 ambulance (EMS) related.

Assuming this three month analysis is representative of a 12 month period, it can be inferred that roughly (28,544) E-911 calls originated within the corporate limits of Asheville for the year 1994; 21,608 relating to Police and Fire, and 6,900 relating to medical emergency services (EMS).

The Asheville Police Department requests selective routing as a PSAP for all City originating E-911 calls.

Councilman Swicegood asked if this would cost the City any more money by taking this over. Chief Annarino responded that the Asheville Police Department communications center has all the required equipment (which has been installed since 1987) for selective routing and designation as a PSAP. No additional costs are anticipated. Additional increases in communication call loads have been reviewed with no increase in personnel expected. The City will be rebated some money from the County on a pro rata basis according to a formula based on the surcharge for phones.

Mr. Jerry VeHaun, Buncombe County Director of the Emergency Management Service, stated that it appeared to him that one of the reasons this request has come about is the problem with delay. The problem which arises when switching the PSAP is that you can't pick and choose which calls are fire, law enforcement or EMS. If it were strictly City fire or police services, that would be one thing, but when you switch, then you take EMS calls. He stated these have been problems -7-

in the past with delays and the Police Department certainly is aware of them. He stated he has made numerous suggestions since 911 has been in place and he has not been able to get anywhere with looking at what the problems are. He gave an example that it takes Buncombe County an average of seven seconds to answer a 911 call and, looking at the same reports on the same days, once the County transferred that call it took the City an average of 18 seconds to answer the phone. He did have a problem with that. He asked the Council, before they take any action, to go back and look at the 911 situation and the way the system is configured and see if we really can do anything to improve it.

He said one year ago he sent a letter to Interim City Manager Bill Farris asking that the part of the operation dealing with fire-related calls be brought over to the County since the County dispatches all of the County fire departments. In September Mr. Farris responded that he would pass it on to the new city manager and Mr. VeHaun said he hasn't heard anything at this point.

He said when 911 was originally set up, a joint City/County Committee looked into the PSAP. The primary criteria that was used was the location of the majority of EMS calls, fire calls and law enforcement calls. He then explained the rationale that was used to put the PSAP with the County. It costs the County approximately \$15,400 each month to provide that service.

He said that when 911 was installed they looked at combining all of the dispatching and decided there would not be a cost saving to have everybody together. With some of the delays encountered and some of the meetings that he has attended, he feels like he has run up against a brick wall.

He said the Police Chief told him that one of the reasons he wanted a PSAP was because of the accreditation of the Asheville Police Department. One of the recommendations from the accreditation group is that the law enforcement agency that is accredited receives their 911 calls direct.

Councilman Swicegood felt the proper way to handle this issue would be for the City and the County to consolidate in this area. He felt it would be beneficial for the entire operation to be in one location, regardless of who is running the system. He also found it hard to believe that there would be no cost savings in consolidation.

Mr. VeHaun said that he would be happy to look at the consolidation issue again.

Councilman Swicegood said that if the City becomes the PSAP, we will be able to improve on the delays plus we will have some accountability if a mistake is made.

City Manager Westbrook said that the City has discussed consolidation with the County and the County turned it down. He also -8-

felt very strongly about the accountability to the public. He felt the City has a good communications center, trained employees and this switch will be done at no additional cost to the City.

In response to Vice-Mayor Peterson, Police Chief Annarino said that he spoke to Sheriff Long, Sheriff Medford and Mr. VeHaun and expressed the City's real desire to be involved in a consolidated communications center in the 800 system. He felt it was the most efficient and effective thing we could do for the taxpayers of all of Buncombe County. He noted that there are some bad communication gaps currently used by the various agencies due to the different radio systems currently used. He stressed that he wanted to be held accountable so if a mistake occurs within the City, we have a way to track those mistakes so we can make sure they don't happen again. When you involve two agencies it becomes complicated in trying to reach the bottom of a mistake.

Police Chief Annarino addressed the accreditation requirement. He agreed that it is a requirement for accreditation. However, it is because it is the professional way and accreditation holds you accountable to the taxpayers and that's what we're wanting to do in the 911 system. He said this will make us more effective and accountable to taxpayers in the City.

Police Chief Annarino said that if the City goes to this system he has invited

Mr. VeHaun to be on the Communications Board with him and the Fire Chief. Since the City will be transferring calls to his agency, he felt Mr. VeHaun has the right to have input and to provide critical assessment of the operation. The Board will be meeting together on a monthly basis and, if there are problems transferring calls, it will be able to be addressed quickly.

Councilman Swicegood felt that we should adopt the resolution but continue to work with the County for a consolidated system, regardless of who is running the system.

City Manager Westbrook said that there might be a technology problem with a consolidated system at this time. He felt there is a willingness to consolidate but it is our opinion that the City has a little more advanced communications system than the County does at this time. For an effective consolidated system, all the agencies would need to be on the same communication system. He said it would be very expensive for those other agencies at this time; however, it will be something that we can look at in the future.

Upon inquiry of Councilman Watts if there are many other cities whose systems were consolidated, Police Chief Annarino responded that there have been no surveys taken; however, there are some consolidated systems around.

Mr. VeHaun invited the City Council to come visit the 911 system before any decisions are made.

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

Councilman Swicegood moved for the adoption of Resolution No. 95-65. This motion was seconded by Councilman Watts and carried unanimously.

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V. CONSENT AGENDA:

Ordinances:

A. ORDINANCE NO. 2207 - BUDGET AMENDMENT RELATIVE TO ERSKINE STREET PLAYGROUND

Summary: This budget amendment, in the amount of \$25,000, appropriates additional funds to cover costs of ADA accessibility at the Erskine Street Playground.

Councilwoman Sitnick congratulated Councilman Watts for his persistence in getting this playground built.

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B. ORDINANCE NO. 2208 - BUDGET AMENDMENT RELATIVE TO REIMBURSING CITY SCHOOLS FOR ASHEVILLE MIDDLE SCHOOL GYM REFURBISHING

Summary: This budget amendment, in the amount of \$8,000 is for funds to reimburse the City School System for a percentage of the refinishing of the gym floors at Asheville Middle School. The Parks and Recreation Department currently uses the Asheville Middle School gym for the adult volleyball league, which runs for approximately 30 weeks per year. The total bill for refinishing the gym was \$16,760.

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C. ORDINANCE NO. 2209 - BUDGET AMENDMENT RELATIVE TO FUNDING FOR THE 1995 BELE CHERE FESTIVAL

Summary: This budget amendment, in the amount of \$353,950, appropriates funds for the 1995 Bele Chere Project.

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Councilman Swicegood moved for the adoption of the Ordinance Consent Agenda. This motion was seconded by Councilwoman Sitnick.

On a roll call vote of 6-0, the Ordinance Consent Agenda passed on its first and final reading.

VI. OTHER BUSINESS:

A. GROUP DEVELOPMENTS

Mr. Gerald Green, Urban Planner, said the City Council adopted a procedure whereby the Planning Director reports final recommendations of the Planning and Zoning Commission relative to group developments at the next scheduled regular meeting of the City Council. He said, in accordance with this procedure, the action of the Commission shall be final unless the City Council determines at their meeting to schedule a public hearing on the matter. He said the following actions were taken by the Planning and Zoning Commission on April 5, 1995:

HIGHLAND PARK FORESTRY BUILDING

Mr. Green said that the 40,290 square foot office building is proposed to be located near the Broadway entrance to the Highland Park property and is currently under construction. -10-

On March 20, 1995, a notice was sent to 56 property owners making them aware of the April 5, 1995, Planning & Zoning Commission's public hearing. At the public hearing only the petitioner spoke regarding this project and there was no opposition.

The Planning staff recommended approval of the project with no conditions.

The Planning & Zoning Commission reviewed the request and voted unanimously to recommend that City Council approve this group development.

Upon inquiry of Councilwoman Sitnick about how many trees were cut down to grade that property, Mr. Green responded that he did not know how many trees were cut down in order to prepare the site for development. He said they are, however, complying with the City's landscape ordinance with regard to replacement trees in the parking area, street trees and the trees around the project site. He said that they did adjust a portion of the building location to move it into what had been a ballfield to reduce the number of trees which had to be cut.

Councilwoman Sitnick that this project inspired her to look into the possibility of increasing the caliper size of replacement trees in our landscape ordinance. Mr. Green said that this is something that is recommended in the landscaping requirements of the proposed Unified Development Ordinance.

Council accepted the report of the Planning and Zoning Commission, thereby approving the project by taking no action.

IRA B. JONES SCHOOL EXPANSION - PLAN 1 AND PLAN 2

Mr. Green said that the 21,500 square foot addition is proposed to be located on the north side of the existing building. A 50-space parking lot is proposed as an alternate bid and may or may not be built. The petitioner is requesting approval of two plans; one with the parking lot and one without the parking lot.

On March 20, 1995, notice was sent to 105 property owners making them aware of the public hearing on April 5, 1995, before the Planning & Zoning Commission. At the public hearing two people spoke in opposition to this project. Those persons expressed concerns regarding the number of trees to be cut and the amount of fill material which will be required to prepare the site for construction.

The Planning staff recommended approval of the project with three conditions: (1) a letter of sewer allocation be obtained from the Metropolitan Sewerage District; (2) a conditional use permit be obtained from the Board of Adjustment; and (3) access be provided to the addition and that this access be approved by the Fire Department.

The Planning & Zoning Commission reviewed the request and voted unanimously to recommend that City Council approve this group development subject to the conditions recommended by the Planning Department staff. The Commission approved the proposal with the parking lot and, in a separate motion, they approved the proposal without it.

Councilwoman Sitnick read the following letter into the minutes, which letter was dated March 28, 1995, from the Asheville Tree/Greenway Commission regarding Ira B. Jones Site Plan:

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"There will be a meeting at the Ira B. Jones School media center at 6:00 p.m. on Wednesday, March 29, for a presentation of final site and building plans. The plans will reveal a major impact on the wooded portion of that property.

"The woods and the steep slopes of that site have been a controversial subject to the Asheville public in the past. Because of the past history of this property and the public's continuing interest in its fate, potential public outcry might have been tempered if the architect had been required to make a public presentation of the various alternatives considered and the reasoning behind them before developing final construction drawings. While this might not have totally mollified the public, at least they might better understand why certain decisions and trade-offs have to be made during the design process. It would also have forced the architects to be more open minded and flexible.

"As it stands now the public will only see the final plans and those plans require major earth grading and tree removal. At this time, when the public is questioning the "take it or leave it" attitude of some public agencies, the Broadway situation comes to mind.

"Some months ago, the Tree/Greenway Commission requested that the architects share their preliminary site plan sketches. Our thought was that by getting in at the start of the process some options might be explored that would save as many trees as possible while still meeting the requirements of the project. Also, it might head off some future controversy at the same time.

"The architect did not extend this Commission that courtesy. Instead, the project architect gave a verbal presentation saying that no preliminary

drawings existed. Further, he said that the requirements of the program dictated how the addition would be built. We were left to assume that no forest saving alternative solutions were ever sketched or considered.

"The Tree/Greenway Commission considers the Jones School property an important part of the rapidly diminishing urban forest. It is an irreplaceable resource that should be used in such a manner that it is preserved for future generations of Asheville children.

"However, our mandate extends only to those trees adjacent to Kimberly Avenue which may fall within the public right-of-way. It appears that a good number of these trees will be removed as part of the parking lot grading.

"One point that we should bring to Council's attention is the notion of sidewalks on the right-of-way. In light of Asheville's recent past, it seems inconceivable that a plan for an elementary school does not include a sidewalk as part of the new construction along Kimberly Avenue. Unfortunately, the public will not blame an insensitive -12-

consulting architect for this oversight. Rather, they will see it as a failure of a City government unwilling to respond to a desperate need.

"We encourage members of Council to attend the above noted presentation."

Councilwoman Sitnick went on further to read a portion of the minutes of the Asheville/Tree Greenway Commission minutes dated March 27, 1995:

"The Tree/Greenway Commission, realizing the Commission's authority is only in the area of trees and greenways, and since we are losing 1% of our urban forests every year, recommends that City Council encourage the School Board to look for an alternative plan so that this natural wooded area will not be disturbed. Orbison also suggested that City Council ask to see alternative plans for this site. Dennis Wilson made a motion that a letter be drafted and sent to City Council conveying the Commission's thoughts and concerns about the Ira B. Jones Site plan and also stressing the fact that architects/developers should make public presentations of site plans and construction plans in the early stages to avoid as much controversy as possible and to allow for alternative recommendations."

Mr. John Cort, architect, responded that architects do respond when they are instructed to do so by their client. In this instance, his client is the Board of Education of the City of Asheville. He said the Tree/Greenway Commission never sent a request to their client that the presentation be made.

Ms. Jane Van Laurel, a resident which lives close to the area, spoke about other alternatives available other than to cut the trees. She strongly objected to the loss of the trees. She hoped Council would support the Tree/Greenway Commission's recommendations.

Councilwoman Sitnick said that even on the plan without the parking lot there will be some disturbance of trees and land in order to create the fill that's necessary to fill in the ravine.

Mr. Daniel Breen felt that sidewalks should be included as part of the plan.

Councilwoman Field said that there are sidewalks on one side, however, it is much too steep on the other side to create a sidewalk without taking down a considerable number of trees which would have a major impact on that particular stand of urban forest. She suggested to City staff that perhaps there would be a possibility of looking into an impervious surface trail, instead of a

sidewalk, which would meander through the trees starting down low where you can get onto that site in a way that doesn't require going down a very steep bank and work its way through. She felt that would be an appropriate way to deal with the traffic on Kimberly Avenue by getting the kids away from the street.

Councilwoman Field wanted to point out that architects do not do schools for the money; they actually lose money doing schools. She wondered if the Tree/Greenway Commission, in its recommendation that the architect make presentations of preliminary schematic designs, have a way of paying the architect for that work and time. Architects only have their services to sell - just like lawyers, doctors and accountants. When they are asked to make a presentation, the client needs to pay the architect for that time and that energy and to put on a -13-

presentation in front of an entire group of people is quite significant. She said it's certainly something that the City can require, but the City really needs to be looking into what the impact is on the cost of a project when we ask for additional presentations that are not normally required within the scope of the work that is approved in the documents that are signed between the owner and the architect. The presentations are the responsibility of the owner, not the architect. The architect only does what the owner asks them to do.

Mayor Martin stressed that the sole purpose of this consideration today is to decide whether or not Council will set a public hearing on this matter.

Ms. Jean Troutman pointed out that a replacement nursery tree cannot replace an 80-year old tree. She challenged the architects to come with a creative idea that will not remove one tree.

Mr. Keith Campbell, a resident who lives across the street from Jones School and who is President of the Community Association of North Asheville, stated that the neighborhood is not arguing about the Jones School expansion or the logic of using the adjacent wooded area for that expansion. However, he pointed out his concerns about the plan that includes the parking lot: (1) destruction of one of Asheville's few remaining greenways; (2) water runoff caused by the construction of the parking lot; (3) any surprises that might be encountered after construction has begun, i.e. is there sufficient fill on site for the project; requested additional study of the building site before construction begins; and (4) possible lack of consideration of providing additional parking in a less destructive manner.

When Councilwoman Sitnick recommended that Council set a public hearing, the dates of May 9, May 23 and June 13 were discussed.

Mayor Martin asked Mr. Cort if there were any time constraints on this as far as building is concerned. Mr. Cort responded that they were instructed to complete the drawings by the end of May and issue the project for bids. Mr. Cort said the purpose of that is to have the school under construction while the students are on summer vacation.

Councilman Swicegood felt it was appropriate, before City Council holds a public hearing, for folks to go to the School Board and talk to the School Board about their concerns.

Upon inquiry of Councilman Swicegood if the School Board was addressed by the Tree/Greenway Commission on any of these matters, Mr. Cort said not to his knowledge.

Mr. Cort said that his office had two notifications from the Tree/Greenway Commission - one was by telephone when they were requested to appear at a

Commission meeting, with just a few days notice. The second was a written one that was received on a Friday for a Monday meeting. Due to the shortness of time between their receipt of the notification and the meeting, they could not attend due to other prior commitments. He said he felt the architects were never properly notified by the Tree/Greenway Commission with any lead time at all to do business in a business-like manner nor do they believe that the Tree/Greenway Commission notified the Board of Education in a business-like manner to make these presentations. He stated that it's very difficult to respond to any group, particularly in this instance, that is not the authority having jurisdiction. He said they accommodated the Commission and spoke in general about the plans. He stated that they had no authority from the Board of Education to attend the meetings. -14-

Councilwoman Sitnick said "not by way of debate, only by way of discussion, I must say to you that while I realize we, as a Council and as a Tree Commission, don't have any authority to tell the School Board what to do with their property, it's also true that the City Council, in its wisdom, established an advisory body known as the Asheville Tree/Greenway Commission to fulfill the role of advising Council on matters that involve trees, greenways, their use, and their misuse. So, if the Tree Commission did not notify you properly I apologize to you for them and I will further investigate the time line of all of that. However, I will say that anybody, and I'm speaking now of the School Board, not of you and not of your architectural firm - but anybody doing development in Asheville knows that there is a Tree/Greenway Commission and know that they act in an advisory capacity to this Council. There perhaps needs to be some kind of firming up in the process that the Tree Commission is brought into all development issues, maybe during the Technical Review Committee process or as close to the start of a development project as possible, so that these kinds of things can be avoided in the future. I would request of the Planning Department that we look into a way to make sure that the Asheville Tree/Greenway Commission, which really is membered by some incredible experts, be utilized to its maximum potential in order to be as advisory as possible to this Council and to work with developers and builders in order to determine, before the project gets to this point, ways and alternatives that can be sensitive to our beautiful city."

Mr. Cort said that they did have a neighborhood meeting in which 105 notices were mailed out in advance and the architects did give the Tree/Greenway Commission written notice that there would be a meeting. He said they invited the Commission to that meeting for the presentation which was made at Jones School.

In consideration of the deadline for bids, Councilwoman Sitnick moved to set a public hearing on May 9, 1995. There being no second, the motion failed.

Council accepted the report of the Planning and Zoning Commission, thereby approving the project by taking no action.

Mr. David Goughnour suggested Council refer this matter back to the School Board. The Mayor referred further inquiry to the School Board.

B. HEAD OF MONTFORD STEERING COMMITTEE

Councilwoman Sitnick asked for the following to be verbatim:

Councilwoman Sitnick - This is about the Head of Montford Steering Committee, recognizing that there might have been some confusion, and confident that nothing improper was intended, I must ask the Council to send the Head of Montford Steering Committee report process back to the Committee for consensus and reaffirmation. Since the record clearly indicates, both in the City Clerk's

minutes and in the City Council minutes, that during the Steering Committee meeting on April 6 the vote was cast, there was a vote cast by a citizen who is not a member of the Steering Committee.

Mayor Martin - Do you want to explain that?

Sitnick - I can.

Mayor - We don't need names.

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Sitnick - This is not about the vote that was taken. This is about the process through which the Committee operated. There was some discussion last week at the end of the Council's meeting closed session that was discussed in open session having to do with the Head of Montford Steering Committee report process. At that time when I brought it up to Council there was discussion that the membership of the committee was established by Council, there had been no formal change in that committee and that as far as Council was concerned, the process was valid and complete. I apologize to my fellow councilmen and woman because at that time during that discussion I completely forgot a very important fact that would have perhaps convinced Council differently. And that was that when Council passed Resolution No. 95-15 establishing the steering committee, it established the steering committee with 13 members. That was adopted on February 7 and that was in our packet. On February 28 I brought to Council, and this is what I forgot last week, I brought to Council the fact that a member of the committee had asked to step aside because of a conflict. I did talk to Council about that in Pre-Council and it was duly noted by the City Clerk. The Council then passed Resolution No. 95-48 on March 21 which appointed the specific members to the steering committee. The invalid voter was not on that list and was an official member because that member had already stepped aside. So, I bring this to Council's attention in order to make right the process and in order to make sure that what we did in establishing Resolutions 95-15 establishing a 13 member steering committee and what we did in adopting Resolution 95-48 appointing 13 specific members to that committee be held in conformance with our legal responsibilities.

Mayor - Let me ask a question of legal counsel here. In view of the facts presented, I believe you are aware of them, would we be out of step if we did, in fact, accept a decision made by a committee where all the voters were not members of the committee that we ourselves appointed. Give us your opinion on that, if you will.

Assistant City Attorney Meldrum - This committee is an ad hoc advisory committee and their recommendations would go into two different directions. It is my understanding that the written report, since it involves a rezoning request that's part of a public hearing that was continued until May 23 that the report, will be presented to Council at that time in written form. In addition the other recommended changes would have to go through numerous steps before it would come back to City Council because they would involve going to the Redevelopment Commission as an amendment to the Redevelopment Plan, the Planning & Zoning Commission both as an amendment to the Redevelopment Plan and as rezonings, and then finally to the City Council for both those processes. Whenever it would get back to the City Council, the City Council could take into consideration the recorded votes of that

advisory committee. It's my understanding that the votes of the various individuals who voted were recorded so the Council could know how this person voted that was not a part of the resolution where the members of the committee were appointed. And take that into consideration in determining whether or not

to follow the recommendations of the committee or follow whatever subsequent recommendations might be made by either the Redevelopment Commission or the Planning & Zoning Commission.

Mayor - Since we have time though, it wouldn't hurt if we did send it back to committee to reconfirm.

Meldrum - You could also do it that way. Either way would be appropriate. Either to accept the report with the information about the confusion about the votes taken at their April 6 meeting or to send it back and ask that new votes be taken.

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Councilman Swicegood - I'd like to ask a question. We keep talking about this person. Who are we talking about that's not a member.

Mayor - Leni, do you want to go into that.

Swicegood - I'm just curious who it is.

Sitnick - I'd be happy to say that, but as I said in my statement - I'm confident that nothing improper was intended here and I don't know that it's necessary to bring that name forward. It might appear to be an accusation and I don't want to do that. I'd be happy to do it if.

Swicegood - If we're going to sit here and talk about sending this back to a committee and talking about board members that are or aren't on the board, then I think we need to get everything on the table up front. Also, I don't think it's fair to Council or to the board members, just because maybe the vote did not go to some people's liking in the Montford area, to send it back. We'll have that option when it comes before us at the end of City Council, when a public hearing, or whatever, is set and make that decision. But this is ridiculous. If we are going to put people on boards and we can't talk about who we did or didn't put on boards, let's move on and get on with business and we'll have the final say-so. But I mean, if we can't sit up here and talk about what's going on, I'm not even willing to discuss it.

Sitnick - I'd be happy to do that Mr. Swicegood. I have no problem. I was merely protecting that person. The person is Albert Sneed. And, quite frankly if you read the packet minutes, the members appointed to the committee do not include the name of Albert Sneed. My concern is many-fold. If we wait for the final report, it's my personal opinion that we will not only be wasting staff time, Planning & Zoning time, City Council time and paper, but we will be wasting the time of the duly appointed citizens who served on that board and voted. And this is not about the vote. This is not about how the vote came down. This is not about who liked it and who didn't. This is merely about process. My second concern, if we don't act properly right now on this, is that every neighborhood committee, every group, every ad hoc, every advisory group that this Council appoints to look at redevelopment plans or any other thing in this community, will be threatened if we don't act properly now because it will mean any citizen who may or not be a member of that board and that committee, can go forth to the meeting and make motions and vote and create another invalid process. I think we will be setting a dangerous precedent if we do not act properly now.

Mayor - I don't quite agree with you there. I think you're making some over statements here. I'm sorry about that, but it is in fact our

decision to accept the committee report or not. It's not a requirement, as our

attorney said, to send it back, but it would be a good idea to recognize the fact that someone did make some remarks who was not a member of the committee who held himself or herself out to be part of that committee.

Sitnick - It's not the remarks, he is welcome to make remarks. I welcome - I appointed him to this committee. I appointed him to this committee - this is not about remarks. This is about votes and if you would like me to read the time line.

Vice-Mayor Peterson - That's where I'm confused. I don't remember taking anybody off of any committee and I would like to see who we actually put on there. And I don't remember taking anybody off.

Sitnick - Here. He took himself off. -17-

Peterson - I don't think we need to sit here for two hours discussing this. I would like to look at this in a package or something and get all the information. I don't want to sit here and make accusations. I don't remember taking Albert Sneed off.

Sitnick - Ms. Burleson, do you have the - he requested.

Mayor - I would refer not taking action on this today but assemble the information for everyone's perusal and then we can proceed at a reasonable time. We're not hearing this until May 23 and even at that, it's a presentation of the report.

Sitnick - It's a presentation of a report that was established invalidity.

Swicegood - Also I'd like to make a comment that staff made about this same person. When we appoint board members, I feel like it's inappropriate for our staff to come back and make comments about the board people that we put on. I guess, we had a 13 board member that wasn't just a one board member. My question is where were all these other people when the votes were coming down if everything was so wrong. And it comes back that Leni says staff made comments about this person too. So, I guess my concerns are more than just this and just because, and I feel like it is the reason the vote, the vote didn't go the way some of the people in the neighborhood wanted it to, so I mean - I'm like Chris. If there is some action, we've heard what the attorney said, that we'll have the final say-so. I think this is ridiculous.

Sitnick - Mr. Mayor I have - we appointed 13 people to the board.

Mayor - Ms. Sitnick, just a moment. Mr. Westbrook, can we assemble the information needed for all of Council to talk about next week at our worksession please.

City Manager Westbrook - Yes sir. Is that the budget worksession or the one after that?

Mayor - It would be the one after that.

Westbrook - Right before the next Council meeting. Yes sir.

Mayor - Ms. Sitnick, you had something else?

Sitnick - Well I have a lot to say, Mr. Mayor but I'll hold it. Clearly it's falling on deaf ears.

Mayor - I don't think it's falling on deaf ears. I do think that we have a

process as well that needs to be adhered to.

Sitnick - Our process has been violated.

Councilwoman Field - Leni, it's not falling on deaf ears. I've been to at least to two of the four Head of Montford meetings and I think that I agree with you but what we need to do is to get more consensus from the community and in order to that we need to send it back and get them to look at the issues a little bit longer. That might be very helpful to us.

Sitnick - Thank you.

Field - It is a very strong neighborhood. A lot of people with a lot of -18-

good ideas and they were - when I went to meetings two and three, I believe, and at the end of meeting three, I thought they had come to consensus with everybody including, both sides shaking their heads and looking like they were getting close. And then the next meeting, which was meeting four, everything seemed to fall apart again. I think it is possible for this community to come together and I'd sure like to see it happen.

Sitnick - One of the interesting indicators here is that when Albert stepped off the committee he never attended another meeting. Because he knew he was off the committee. He asked me. He asked me to take him off the committee. I went to staff, I told them of the request, I brought it up to Council in a Pre-Council session, it is clearly in the City Clerk's records. And we voted on the resolution appointing the membership.

Mayor - These are the kinds of things that we need to talk about.

Sitnick - And his name was not on the committee and he didn't attend any of the meetings until the very last one. And at the April 11 meeting where the report was submitted to the general community, not the steering committee, but the Montford community, he said that he stepped back in onto the committee because we didn't appoint a replacement. We didn't need to appoint a replacement because this Council established a committee of 13 and there were 13, without him.

Mayor - Okay. Mr. Westbrook would you assemble that information and Ms. Sitnick would you assist Mr. Westbrook giving us the information as you know it as well.

C. ASHEVILLE TRANSIT AUTHORITY BUDGET

A lady who rides City buses said that a lot of people depend on the bus system and felt the City should put more money into the system. She felt the riders would be willing to pay more if they had a reliable bus system.

As a result of a question about when the new buses are due, City Manager Westbrook said that the buses are on order and should arrive sometime this fall or early January. He explained that the manufacturer had some delays.

City Manager Westbrook told the audience that the City Council has not taken any action yet on the Transit Authority budget and there is ample time for public comment.

Vice-Mayor Peterson invited the public to the Transit Authority meetings which are held on the second Wednesday of every month at 4:00 p.m. in the Transit Authority offices.

Mr. John McBride read a prepared statement in support of increasing and improving the bus system.

Ms. Jean Troutman spoke in support of the bus system and hoped Council would allocate more funds to the system.

An unidentified lady stated that for many people buses are their only transportation. She suggested buses run on Sundays to allow people to attend church.

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Mr. John Redmond said he hoped Council would increase funds for the buses. He also stated concerns regarding health care and housing. Councilwoman Field explained to Mr. Redmond the proper agencies he should seek to alleviate his concerns.

D. GREG ARMENTO LAWSUIT

When Mr. Greg Armento asked if the City was insured against torts, Assistant City Attorney Meldrum advised City Council not to comment on the pending litigation between Mr. Armento and the City of Asheville. She said that the City of Asheville is represented by attorneys in this matter and all inquiries about this matter should be directed to those attorneys. She said that Mr. Armento is familiar with how to contact them.

Mr. Armento then handed to Council a document entitled "Plaintiff's Motion to Compel, Motion for Sanctions, Motion to Stay Calendar, and Memorandum, Affidavit of Plaintiff, Exhibits, in Support".

At 6:07 p.m., Vice-Mayor Peterson moved to excuse Mayor Martin from the meeting. This motion was seconded by Councilwoman Field and carried unanimously.

E. HOMELESS GRANT FUNDS

Mr. Daniel Breen thanked Vice-Mayor Peterson and Councilwomen Field and Sitnick for their support on the homeless grant application, even though the City did not apply for it, but should have.

F. RALPH BISHOP

Mr. Ralph Bishop, resident of the City of Asheville, spoke to Council about the problems he has had when trying to get a certified copy of the public records for the Council meeting on March 7, 1995.

Vice-Mayor Peterson said that he would be happy to furnish Mr. Bishop with a certified copy of a tape of the March 7, 1995, meeting.

G. BROADWAY

Mr. Wayne Caldwell presented City Council with a letter dated February 20, 1995, to Ms. Mary Ann Nabor, The Advisory Council on Historic Preservation, which contained 84 signatures. He said they are concerned about the negative impacts the area residents foresee from the proposed Broadway widening project regarding historic resources in Asheville.

Ms. Renee' Lantzius spoke in opposition to the existing proposed Broadway project. She stated that even though we don't have the solutions, alternatives need to be looked at before it is too late.

Ms. Betty Lawrence, attorney for Broadway Improvement Project, urged Council to take another look at the new issue as it relates to historic resources in Asheville. She stated that there is still a good chance to get a better design. She handed to Council four documents: (1) a copy of an opinion dated March 22, 1995, entitled "Time remains to rethink Broadway widening" by Jim Samsel; (2) a copy of a newspaper article from the Winston-Salem Journal dated May 3, 1995, entitled "Judge Temporarily Stops Plan to Widen Old Road"; (3) a "May Day on Broadway" flyer; and (4) a newspaper entitled "Broadway ... The Show's Not Over". She urged Council to once again look at a petition -20-

presented earlier that contains over 1,000 signatures, 800 of which are City residents, and the over 100 letters presented to Council in October of 1993.

Upon inquiry of Councilwoman Sitnick about the legal status, Ms. Lawrence said that the Court issued a stay on February 17, 1995. On May 1, 1995, arguments will be heard and hopefully the judge will continue the stay thus delaying the project another few months while the court case gets to its conclusion.

H. CLAIMS

City Manager Westbrook said that the following claims were received by the City of Asheville during the week of March 30 - April 5, 1995: Sumio Seo (Water), Roberta Britt (Water) and Charles Hunter (Parks and Recreation).

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

VII. ADJOURNMENT:

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

CITY CLERK MAYOR
