

Tuesday - May 9, 1995 - 5:00 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 Deputy City Clerk Phyllis Corns

Absent: Councilman Herbert J. Watts - in hospital regarding knee problems

INVOCATION

Vice-Mayor Peterson gave the invocation.

I. PROCLAMATIONS:

A. RESOLUTION NO. 95-66 - RESOLUTION NAMING THE WEST CHAPEL ROAD PARK AS "RAY L. KISIAH PARK"

Mayor Martin read the resolution stating that the Parks and Recreation Advisory Board recommends that the youth sports facility located on West Chapel Road be named the Ray L. Kisiah Park for his commitment and dedicated service to the parks and recreation profession and the residents of the City of Asheville.

Much progress has been made in parks and recreation during the 23 years that Ray Kisiah has been employed by the City of Asheville, including the construction of parks, recreation centers, and the creation of numerous programs for the youth, senior citizens, and adults of this community. The past year has been particularly productive, with the construction of Valley Springs School Park, the first phase of the French Broad River Park, and the first phase of the West Chapel Road Park area. In addition, the Asheville Parks and Recreation Department, under the direction and influence of Ray Kisiah, was the first City Parks and Recreation Department in the United States to become accredited.

Councilwoman Field moved for the adoption of Resolution No. 95-66. This motion was seconded by Councilman Swicegood and carried unanimously.

RESOLUTION BOOK NO. 22 - PAGE 255

B. PROCLAMATION PROCLAIMING THE WEEK OF MAY 15-19, 1995, AS "NATIONAL POLICE OFFICERS WEEK" AND MAY 17, 1995, AS "PEACE OFFICERS MEMORIAL DAY"

Mayor Martin proclaimed the week of May 15-19, 1995, as "National Police Officers Week" and May 17, 1995, as "Peace Officers Memorial Day" in the City of Asheville and presented Police Chief Will Annarino with the proclamation. Chief Annarino briefed the Council on the activities taking place during the week.

II. PUBLIC HEARINGS:

A. PUBLIC HEARING RELATIVE THE DEMOLITION OF THE STRUCTURE LOCATED AT 1 BUFFALO STREET

ORDINANCE NO. 2210 - AN ORDINANCE DIRECTING THE DIRECTOR OF BUILDING INSPECTIONS TO DEMOLISH 1 BUFFALO STREET

Mayor Martin opened the public hearing at 5:20 p.m.

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

Mr. Wayne Hamilton said that 1 Buffalo Street was inspected on March 26, 1993, and found the following conditions: the dwelling's north, south, east and west walls are structurally unsound; the structure has insufficient sanitary facilities, no water, pest and garbage infestation; the structure is abandoned; being occupied by vagrants; and is unfit for human habitation. Proper notices have been sent to the property taxpayer of record and on March 26, 1993, the owner was given 30 days to repair or demolish. No action has been taken to date.

Mayor Martin closed the public hearing at 5:22 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. 2210. This motion was seconded by Councilman McClure.

On a roll call vote of 6-0, Ordinance No. 2210 passed on its first and final reading.

ORDINANCE BOOK NO. 15 - PAGE 79

B. PUBLIC HEARING RELATIVE TO AMENDING THE ZONING ORDINANCE TO ALLOW BANKS AS A PERMITTED USE IN THE COMMERCIAL SERVICE DISTRICT

ORDINANCE NO. 2211 - ORDINANCE AMENDING APPENDIX A - ZONING OF THE CODE OF ORDINANCES OF THE CITY OF ASHEVILLE TO ALLOW BANKS, BANK BRANCHES AND SIMILAR INSTITUTIONS AS PERMITTED USES IN THE COMMERCIAL SERVICE DISTRICT, TO CLARIFY THE FRONT YARD REQUIREMENT, AND TO MAKE CERTAIN TECHNICAL CHANGES

Mayor Martin opened the public hearing at 5:23 p.m.

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

Ms. Julia Cogburn, Planning Director, explained that this amendment to the zoning ordinance will allow banks, bank branches and similar institutions as permitted uses within the Commercial Service District.

Mayor Martin closed the public hearing at 5:24 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. 2211. This motion was seconded by Councilman Swicegood.

On a roll call vote of 6-0, Ordinance No. 2211 passed on its first and final reading. -3-

ORDINANCE BOOK NO. 15 - PAGE 81

III. UNFINISHED BUSINESS:

A. CONSIDERATION OF GROUP DEVELOPMENT APPROVAL FOR HAW CREEK MEWS PHASE III

Mayor Martin said that this public hearing was held on March 21, 1995, and tabled until this date.

Ms. Patty Joyce, Senior Planner, said that since the Planning and Zoning Commission's public hearing on March 1, 1995, for Haw Creek Mews Apartments, Phase III, City staff have received a revised site plan dated May 8, 1995. She summarized the site plan changes as outlined in a letter dated April 28:

1. Density requirements - The site is zoned for 105 rental apartments. We initially proposed 98 units. We now agree to further reduce our density to 89 units. A total reduction of 15% from the allowable density.
2. Building height - We agree not to construct any 3-story buildings on the property line.
3. Landscape buffer - We agree to increase the required landscape buffer along Beverly Road and Avon Road by increasing the planting one additional row of evergreen trees 3 ft. to 5 ft. in height, 4 foot on center. This will add no less than 178 trees to the landscaping plan.
4. Construction meeting - We agree to participate with the liaison committee that would meet quarterly during construction. The committee would consist of a representative from the developer, one from the City Planning staff and three representatives from the Haw Creek community.
5. We agree to contribute \$15,000 to the City of Asheville to be used for roadway improvements along Beverly Road and Avon Road. The City would determine how best to spend this contribution.

Ms. Joyce said that a meeting was held between the developers and the Haw Creek community.

Upon inquiry of Councilwoman Sitnick, Ms. Joyce stated that the Planning & Zoning Commission approved the site plan subject to four conditions - one of those being that any changes in the site plan will require the approval of the Planning and Zoning Commission.

Councilwoman Sitnick asked Ms. Joyce for an interpretation of two things that she found in the Asheville Code that she wasn't sure how, or if, they applied. One was under "development standards" or "group development built in phases". She read, "if a group development is to be built in various phases, each individual phase of development as well as the total development shall be capable of existing as an independent unit, capable of creating an environment of sustained desirability and stability." That's a development standards of the City of Asheville. Does that mean that each section of a group development must be capable of creating an environment of sustained desirability and stability? Is this a group development built in phases? Ms. Joyce replied that it is not.

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Councilwoman Sitnick then read Section 30-5-4 "R-3 Medium Density Residential District is a district in which the general character of the area is similar to the low density residential district except that structural coverage is greater and a greater intensity of activities is permitted. The overall population density is increased, however, these regulations are not to be constructed as intending to be detrimental to the residential environment." She questioned if, given the R-3 medium density standards, there is no concern that this particular density is detrimental to the residential environment? Ms. Joyce said that by placing the standards as they are in the ordinance, we are saying that those are the allowable densities in that district.

Upon inquiry of Vice-Mayor Peterson about the density reduction, Ms. Joyce said that the developer is proposing to reduce the density by nine units. He looked for places to take out nine units. Also, he understands Ms. Harrison's problem with having a 3-story building next to her property line - so he's going beyond the ordinance saying that he will not place a 3-story building on the property line.

Vice-Mayor Peterson stated that after talking with a former Council member who was present when this project first began in 1989 or 1990, it was his understanding that the developer was allowed to building a certain number of units period. He stressed that developer mentioned nothing about future expansion plans. He questioned the number of units approved versus the number of units built in the first phase.

Councilwoman Sitnick said that there have been a number of previous erosion violations at Phases I and II. She asked Ms. Joyce if we had at that time an erosion control ordinance? Ms. Joyce replied that we did. Councilwoman Sitnick then said that if we had an erosion control ordinance then and there were major violations that they were cited for, and most of those violations were violations that negatively impacted neighboring property, then how can we guarantee that, given the fact that we have an erosion control ordinance now and given the fact that the topography is similar or even steeper than Phases I or II, how are we going to be guaranteed that we are not going to have erosion violations now. Ms. Joyce said that we can't be guaranteed that violations won't occur.

Councilwoman Sitnick asked Ms. Joyce to point out on the site plan where the children's play areas are located.

Councilwoman Sitnick then asked Mr. James Cheeks, Traffic Engineer, a number of questions. She started out by saying that she is not a traffic engineer. "During the public hearing that we had, you made a statement that the road classification or category was being changed from a C to a D - can you tell me what C means, what D means, and why the change?" Mr. Cheeks responded that a level of service C describes a stable condition on a roadway which means that motorists have freedom to maneuver but some of their maneuverability is noticeably restricted. He cited the examples of making turns at intersections or having a little delay in getting out of the driveway. Also, driver's attentions tend to increase when they are in a level of service C. He said that it is safe for pedestrians to walk on a roadway that has a level of service C but they also need to be more cautious - looking for vehicles turning into driveways, turning in and out of intersections, etc. On a level of service D, that's on a border of unstable flow. That means that the freedom to maneuver is severely limited. People do have delay at intersections, and delays getting in and out of commercial and residential establishments. Also, driver discomfort level is -5-

drastically reduced when the level of services goes from C to D - people get more upset and they tend to blow their horn more. Pedestrian comfort is very low and caution is high in a level of service D. He said that in particular, we didn't see a reduction in the level of service on Beverly Road, which is a level of service C, with the new Haw Creek Mews being proposed. Councilwoman Sitnick questioned if Beverly Road is a level of service C even after the 89 or 98 unit addition? Mr. Cheeks replied yes.

Further responding, Mr. Cheeks said that Avon Road goes from the level of service B to a level of service C in the p.m. and continues at a level of service B in the a.m. Councilwoman Sitnick thought that Mr. Cheeks' statement at the public hearing was that he was changing the road classification from a D to a C. Mr. Cheeks replied that it would go from a B to a C on the peak p.m.

hour on Avon Road. Nothing was changed to a D.

Councilwoman Sitnick then noted that at the public hearing she asked Mr. Cheeks about the grade, especially on Avon where the driveway access was going to be and he had not considered grade - he had to go somewhere and get that number. Since the grade question was not addressed, did the traffic study performed include all relevant variables, like the degree of assent on Avon Road, the straightness of Avon Road, the amount of pedestrian traffic on Avon Road, and whether there was a way for pedestrians to safely get out of the way should a car force someone off the road? Mr. Cheeks' responded by saying that the question Councilwoman Sitnick asked was what was the grade at the driveway. He explained that in our analysis, the average grade across the entire length of the roadway is what is studied. The actual grade at the driveway was not looked at. When driveway analyses are done, the grade of the driveway is looked at - but at this point we were not doing a driveway analysis mainly because the driveway was situated in a place on a roadway that has substantial amount of volumes that are low enough where it would not be a problem. This is consistent with how we do driveway permits throughout the City.

Councilwoman Sitnick said that in other words, the guidelines that Mr. Cheeks' used to make the analysis are based on a national standard. She said that since those national standards were applied to a local road, did they also take into consideration the local road factors. Mr. Cheeks replied that they did. He said the question Councilwoman Sitnick mentioned was if there was any place for pedestrians. He responded that this consideration is taken into account into the analysis because on our computer model we show that there is no sidewalk, no edge line and no area for anyone to walk except for in the road.

Councilwoman Sitnick asked Mr. Cheeks if he feels there is adequate safety provisions on Avon Road for pedestrians to safely get off the road should they need to. Mr. Cheeks responded that based on the volume of traffic on Avon Road, yes. Councilwoman Sitnick then asked Mr. Cheeks where the pedestrians would go - into the ditches?

Councilwoman Sitnick then asked Mr. Cheeks if he knew of the study by the N. C. Department of Transportation that predicted which state roads would be stressed by over use by the year 2000 and that New Haw Creek Road was one of those. Mr. Cheeks responded that he was not familiar with that study.

Councilwoman Field said that someone has brought to her attention that the addition of this many units might over-stress the Buncombe County school system in that area. She wondered if we have any idea of -6-

how many children could be generated from an apartment complex of this number? City staff responded that this particular information is not known at this time.

In response to Councilwoman Field, Ms. Joyce said that, pursuant to Council's suggestion at the public hearing in March, the developer and the community had an informational meeting last night.

Ms. Barber Melton, representative of Haw Creek Homeowners Association, responded to Councilwoman Field's earlier question relative to overcrowding schools. She said that a letter was generated by the principal of Haw Creek School at the beginning of the school year that said no transfers could be taken into Haw Creek School due to overcrowding conditions.

Ms. Melton commented on the meeting that was held with Mr. Simon, and others, last night. The homeowners explained that the density was the problem and so the only compromise the Homeowners Association could come up with was the same

compromise offered in January - which was to build to an R-2 standard (which would be approximately 36 units on that piece of property).

In response to Vice-Mayor Peterson's question on why the meeting didn't take place until the last minute, Ms. Melton said that the Homeowner's Association had offered a compromise at the January meeting and that was to build to an R-2 standard. The homeowners asked if the developer could build patio homes or single family homes (anything to reduce density) and they were told that the developer needed more profit than any of those would generate. She said that Mr. Simon did call her at home and talk at great length and she also received two letters from him. The community was willing to see if there was any other way to compromise but frankly, there was not - due to the road system, the infrastructure and the density problem. The community is stuck with two entrances and the State says there can be no more. Ms. Melton said that basically she didn't want to bring in someone from Virginia Beach, Virginia, for nothing more than the community had already presented to him in January. The community just didn't have anything else to offer.

Upon inquiry of Vice-Mayor Peterson, Ms. Melton said that she was on the Planning & Zoning Commission at the time Haw Creek Mews was originally built and the approved plan dated February 6, 1991, stipulated that 244 units were to be built.

Mr. Jim Siemens, attorney for the Mulvey family, suggested a compromise that might work would be to eliminate the driveway on Avon Road thereby preserving the level of service B on Avon Road. He felt that the City Council does have discretion under Sec. 30-6-1 of the City Code to find that this development is not in harmony with the character of Haw Creek.

Upon inquiry of Mayor Martin, City Attorney Slawter explained that the position of Mr. Siemens is that the language in the preamble that states "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" could override the specific criteria set forth in the zoning ordinance. So that even though the Planning Department reported that the specific criteria were complied with, Council, in its discretion, could deny the group development project based upon a failure of the developer to show that the development would be in harmony with the character of the district and -7-

that it would maintain adequate standards pertaining to public health, safety, welfare and convenience. He said that he has previously provided the Council with an opinion in regard to these provisions in relation to the comparison of the preamble to the specific standards and his opinion has not changed.

When Councilwoman Sitnick asked Ms. Elizabeth Graham, Chairman of the Planning & Zoning Commission, what the vote was on the condition that "any changes in the site plan will require the approval of the ... Commission", Ms. Graham responded that the vote was 4-3 to approve the plan with not only that condition, but three others as well.

Upon inquiry of Councilwoman Sitnick, City Attorney Slawter said that if Council approved the original site plan with the amendments outlined by Ms. Joyce earlier, it would not have to go back to the Planning & Zoning Commission for their approval.

Councilman Swicegood stated that in the past City Council has overruled the Planning & Zoning Commission's recommendations and also has gone against staff recommendations. It was his recommendation that this not be sent back to the Commission.

Mr. Jerry Crow, attorney for the developer, again raised the issue as to whether or not Councilwoman Sitnick and Vice-Mayor Peterson are really able to make a decision that is not biased, arbitrary or capricious. "I would suggest by their continuing questions of the staff members today, particularly as it relates to the prior project history, erosion violations, number of them, severity of them, again, demonstrates a bias consistent with their public comments prior to this Council ever deliberating on whether or not this application should be approved."

Vice-Mayor Peterson asked to respond by stating that "Mr. Crow you have been up here three times, you've made that accusation every time and frankly I'm getting tired of being accused of what you are saying. I feel like it is a councilman's job, what they are elected for - neighbors call council people in and they have a meeting - it's our job to go listen to these people. So personally, I think it's your opinion, you think it was wrong, that we went to this neighborhood meeting. I think you are way out of line by even insinuating that because that's what we're elected for."

Mr. Crow said that "I have raised these objections before and I will continue to do so. It is your opinion and it is my opinion. I bring it forth again and I appreciate your comments and I appreciate the good work you do. On this particular application I raise it, submit it to Council for consideration and I'm otherwise prepared to make my remarks." He said that in this particular case he would submit that the applicant has produced competent material and substantial evidence to establish the existence of facts and conditions that would require approval of this application. It's a permitted use. It's been zoned R-3 for approximately 30 years. The density is less than even the ordinance requires. Concern by Council was expressed at the last meeting and the developer has addressed those concerns by reducing the density even further. The City's traffic engineer and two private engineering consultants say it is well within all guidelines regarding traffic flow and safety of the community and pedestrians using these streets. There is evidence that the intersection below this property is still so under-utilized that it doesn't even qualify for a traffic light. There is nothing to support the suggestion that it is burdensome from a safety point of view as it relates to traffic in the -8-

neighborhood. Regarding water, fire and police - all of those have been presented and they are of sufficient capacity to service this project without interfering with the use of the local residents and therefore will not impact the local residents. He pointed out what surrounds the property currently - apartments across the street, apartments up the street, commercial highway one block away, and commercial below the site. He pointed out the 2010 Plan and that Plan is consistent with the application - the zoning is consistent with what was called for in this area for the next 20 years. In that Plan it is directed that land must be more intensively utilized to accommodate the growth of this community. He said the application can't be denied simply because in Council's view it would adversely affect public interest. Development is in harmony with the character of the district in which the property is located. There are adequate standards that will be maintained. He said there is nothing in the zoning ordinance that discriminates against an out-of-town developer who comes to Asheville, invests his money and applies for an application to use property consistent with it's permitted uses under the zoning ordinance. He asked that these continuing references to out of town developer not be considered as a part of Council's deliberations. He said that any erosion violations in the past have been corrected and urged Council not to use that as a reason to deny the application.

Councilwoman Sitnick asked Mr. Crow to provide the Council with the comments that Vice-Mayor Peterson and she made that compelled him to come up, for the

third time, and make that statement. She also agreed with Vice-Mayor Peterson that it's their job to look into as much information and do their homework on every issue that comes before the Council. "If I discovered in the record at City Hall that there were violations, I feel I had a right to ask about them - I don't think that it indicated a bias at all. If anything, it indicated a desire to want to know. We can discuss whether or not fixing erosion violations after the fact is just as good as preventing them at another time. So, if you can provide us with the statements that you consider created a bias on our parts, I would be very grateful for that."

Mr. Crow responded by saying that "first of all, your question about an erosion violation and its impact upon the adjoining neighbors, that's certainly not a condition - it's not in the preamble, it's not in any of the factors that you consider for a group development permit. I think it demonstrates a bias, in my opinion, of an example of where you're reaching out for facts totally unrelated to this application pending before you. You asked for a response and I'm trying to give it to you and I'm certainly not trying to aggravate you in doing it."

Councilwoman Sitnick responded by saying "you said that you don't think that I ought to be reaching out to situations and facts that don't pertain to this issue. I might remind you, sir, that you attempted to point out to me that there were many roads and intersections that had major traffic problems in Asheville. So, this was not such a big deal to create another one. You pointed out to me that in your area you had a major road problem and yet they increased the density. So you tried to convince me about something reaching out for facts that didn't pertain to this issue either."

Mayor Martin said that "in the case of the Haw Creek Mews developments we have seen considerable community input about the expansion of this apartment complex. The Planning & Zoning Commission has approved the Mews expansion by a 4-3 vote. We have seen that each requirement demanded of the developer has been met. The staff has recommended approval based on the developer meeting the City's -9-

requirements. In addition, we have asked for, and received, an opinion from our attorney. Let me read that opinion - 'North Carolina case law provides that where a developer shows compliance with the specific standards set forth in a development ordinance, anyone opposing the project has the burden of proving that the development would, nevertheless, be to the detriment of the public health, safety and welfare of the community. To make such a showing, there must be competent material and substantial evidence in that regard. Of all the staff persons who spoke, I believe their evidence unanimously reflected compliance with the group development standards and reflected no detriment to the public health, safety or welfare. There were, of course, numerous statements by residents of the area to the fact that their health, safety or welfare would be jeopardized. For the most part, those statements appeared to me to be conclusions reached by those persons, rather than statements of fact upon which a legal conclusion could be drawn. In other words, it is not enough for a person to feel that their health, safety or welfare might be jeopardized. They must state specifically why that is the case, and show that to be factual. Additional objections raised by the residents related to going beyond the letter of the law and denying the project based upon the spirit of the law. Unfortunately, the law does not allow Council to do so. This Council, as well as previous Councils, have established a set of guidelines for developers to follow for such projects. The fact that some would like to have different zoning in this area, some would like to eliminate the flood plain from consideration of the acreage for which project density can be calculated, some would like to return to the requirements that an environmental impact statement be required, and some would like to impose additional requirements that are not currently in the law, are all well-intended proposals, but are not requirements

that could be imposed on a developer coming in under our current ordinance.' We, on Council, who have a neighborhood background are really on the horns of a dilemma in a situation like this. Do we listen to the neighborhood and ignore the rules, procedures, zoning requirements and place the City at risk? We are a nation of people governed by laws. No one, nor any organization is above the law. How can we, who create the rules and laws, arbitrarily ignore them. We have a set of circumstances, I for one, do not want to repeat. I would ask the neighborhood to work toward solutions and work with our Planning Department to make realistic changes. We must deal with the facts as they are and the facts are not always the way we want them to be. I noted with interest a Letter to the Editor in this morning's paper written by Chris Pelly. In his last paragraph he says 'If the council sides with the developer, I think it sends a clear message to neighborhoods all over town. Out-of-town developers are more important to council than the people who voted council members into office.' That's not true and I think that Mr. Pelly and the rest of you know it's not true. We are very sensitive to people in this area. Regardless of what you think, you must realize that we are very sensitive, very caring people and we feel very strongly about this. But where the laws are clear and where people meet the standards - the standards are for everyone. It's unfortunate that this has come up. Some of you have stated that your neighborhoods have gone to the Planning Department three times in the past several years and I'm sure that Planning has given you the information that you thought was correct at that time with no intent to harm or injure the neighborhood in any case. We are here and this is now. We would like to ask you to work with us to assist your City government to be sensitive to the needs of its citizens in every area. In this case, I don't feel that we can retroactively pass laws to benefit some while taking existing rights from others. I'm sorry that this has caused such a deep rift in our community. I really -10-

regret that. I think that Council, and this is my own opinion and I'm sure it's not shared by all of Council, but we must uphold the laws fairly and apply them equally to law who come before us."

Councilwoman Sitnick said that "I couldn't agree with Mayor Martin more that this is a nation of laws, let me point out that it used to be the law that women couldn't vote, that women couldn't own property and one of the laws of the land was the rule of thumb which said that you couldn't beat your wife with a stick bigger than your thumb. So we've come a long way and laws are meant to be changed and amended. We have new building and housing laws all the time, so while I agree with you that this is a nation of laws, I also think that they are in constant evolution. We have been advised that we are to consider the opinions of the experts who have come before us and I certainly value their opinions. I guess I don't understand the logic of why we must only consider the testimony of the experts who have been only brief observers of this situation in Haw Creek and why we aren't suppose to weigh the concerns raised by one individual after another. Property owners, who like Mr. Simon, have also put much time and money into their investments in Haw Creek - their homes, their land, their families. And, in most cases they have put 100% of their life savings into those investments. The citizens have raised legitimate concerns and I'd like to read some of them into the record. Concerns about sewage flow and sewage back-up and sewage odor. Concerns about traffic and safety, pedestrians and safety, children and safety. High density. There will be 300 more people and 500 more cars. Concerns about accidents. winding, narrow, steep roads. The violations referred to earlier, especially those that impacted other peoples property. There have been concerns raised about the increased units lowering property values which will lead to decreases in property tax revenues to the City. Concerns about high density units leading to less property tax for the City than perhaps single family units. These units will certainly diminish the desire of other developers to build single family developments in the other areas in Haw Creek. There's certainly an increased burden on municipal

services. There have been concerns raised about the minimum standard of the housing. There have been concerns raised about diminution of the quality of life in Haw Creek. Concerns raised about the density being very hard on infrastructure that eventually everybody will have to pay to improve, repair or replace. There have been concerns raised about the over-crowding at Haw Creek Elementary School and the fact that there are six trailers there now to accommodate that over-crowding. There are concerns about getting out of driveways, litter, noise, crime, water pressure for fire and convenience has been referred to as being variable. There are concerns about flooding, stormwater run-off and erosion. There are only two entrances and exits to the valley and that's been raised a number of times. There are folks in Haw Creek who feel because they approached the Planning Department on a number of occasions going back to 1985 that they were denied the opportunity to request a rezoning. Quite frankly, they were told to wait for the UDO. My personal opinion - I don't think the burden of proof should be on the citizens. Most people in the public are politically naive and that's not a negative comment but most people don't understand the process. And, if they're told by the government to wait, most people will go back and wait. And that's what this community did. There were concerns raised in a petition signed by 151 people. There have been letters and phone calls. There have been concerns raised that the Planning and Zoning vote of 4-3 did not really constitute a major mandate. There were concerns raised about the lack of children's play areas in the first phases. As has been mentioned earlier, Haw Creek Elementary has reached student capacity according to the school, not the residents. There have been concerns raised about the fact that just because a -11-

traffic study is acceptable under national guidelines doesn't make it tolerable, convenient or safe for the folks who use that road. There have been concerns about no sidewalk at the School. It is a County school in the City. There are folks who have raised concerns about the fact that they have been annexed and dumped on. There have been concerns raised about the fact that the original proposal on the first phases were changed after City Council at that time approved them. There are concerns about the topography of this land and that an environmental impact statement should have been done, even though it was removed from one part of the law it was referred to as a must in another part. There have been concerns raised about why there are so many unfilled units at Haw Creek I and II and why the need to build more. There have been concerns raised about density, density, density. There are concerns about the fact that our zoning laws are 20 years old and don't necessarily apply to the current day needs and conditions. There are concerns that have been raised about children not being able to walk safely to the ballfield in the summertime and the traffic count was done in February. There are concerns about the traffic study being flawed because it didn't include all relevant variables like where do the people go to get out of the way of a car coming around the corner, or a truck over-turning. There were concerns raised that because there were other problems in Asheville regarding traffic and pedestrian issues that this would be just another one added to that long list of traffic and pedestrian problems. As elected officials, it is our job to be responsible care-takers of this community and it's residents. We must govern as though people matter and progress must occur as though people matter. People have lost hope in representative government. You know, of, by and for. Why do we have public hearings if not to hear the public. Why do we have discretionary power, if we're not going to use discretion? Are we just a rubber stamp City Council. Isn't our allegiance supposed to be for the citizens? Aren't we just as bound by the intent of the law as by the law itself? Aren't we using our best judgment? Aren't we ever allowed to say enough is enough? And should our judgment be based on what is legally defensible or socially just? I am always, I repeat, always, motivated by my conscience. And if I can't vote my conscience as a member of this Council, then perhaps I don't belong on this Council. My conscience propels me to move to deny approval of the proposed development

based on the following findings of fact:

1. That the development proposed would create an apartment complex with population density exceeding any other in Buncombe County.
2. That the neighborhood surrounding this proposed development is composed entirely of single family homes.
3. That the population density of the proposed development is not in harmony with the single family character of Haw Creek.
- 4 That the population density of the proposed development poses a threat to the public health, safety, welfare and convenience.
5. That Section 30-6-1 of the Asheville Planning and Zoning Ordinance reads in pertinent part as follows: 'It is the intent of this 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 -12-

which they are located and that adequate standards will be maintained pertaining to the public health, safety, welfare and convenience.'

6. That the petitioner has failed to show that the proposed development is in harmony with the character of the district in which it is proposed and that the petitioner has failed to show that adequate standards will be maintained pertaining to the public health, safety, welfare and convenience.
7. That under Humble Oil v. Alderman (this is from the South Eastern 2nd Reporter, 20 N.C. App. 675, and other cases), the City Council of Asheville is afforded discretion and authority by the North Carolina state legislature to find the existence or non-existence of fact, on which the operation of Section 30-6-1 of the Asheville Planning and Zoning Ordinance, is made to depend.
8. That this motion to deny approval of the proposed development is based on the language of Section 30-6-1 of the Asheville Planning and Zoning Ordinance and not general public policy concerns.

And therefore that approval of the proposed development be denied. This motion was seconded by Vice-Mayor Peterson. By a show of hands, the motion failed on a 2-4 vote, with Councilwoman Field, Councilmen McClure and Swicegood and Mayor Martin voting "no".

Councilman Swicegood commented on some of Councilwoman Sitnick's statements by saying that this Council does listen and take into consideration to all citizen comments. Relative to the rubber stamp City Council, about 3-1/2 years ago it was our decision, as Council, to hold a public hearing to hear the neighbors concerns.

Councilman Swicegood then moved to approve the amended New Haw Creek Mews, Phase III, site plan which allows 89 units (without this amended site plan going back to the Planning & Zoning Commission), in addition to the other provisions outlined above by Ms. Joyce and also 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. He explained that this amended site plan does not need to be sent back to the Planning and Zoning Commission for their approval, however, if, after Council's approval of this 89 unit site plan, something were to vary (for instance

buffering), that any change in the site plan be brought back to the Planning & Zoning Commission for their approval. This motion was seconded by Councilman McClure.

Councilwoman Field questioned Mr. Siemens' suggestion to close the driveway entrance on Avon Road. Mr. Cheeks explained that why he recommended that the driveway entrance on Avon Road remain.

Councilwoman Sitnick moved to amend the motion to state that no variances be granted to the developer for this project after today. City Attorney Slawter explained that Councilman Swicegood's motion, although it doesn't require this approval to go back to the Planning & Zoning Commission, requires if there are any changes after today, they would have to go back to the Planning & Zoning Commission. Therefore, -13-

any change whatsoever, even something less than the requirement for a variance, would have to go through the process again. He further went on to clarify that no variances could be considered after today without having to go back to the Planning & Zoning Commission. If there was something that required a variance the Planning & Zoning Commission could only make a recommendation to the Council and the City Council is the proper authority to act on that change for the developer.

Councilman Swicegood said that if something positive for the neighborhood comes up in the future and the developer wanted to change something that the neighborhood might want, then they wouldn't be able to it with Councilwoman Sitnick's amendment. Therefore, he would not support the motion amendment.

Councilwoman Sitnick withdrew her motion to amend the original motion made by Councilman Swicegood.

By a show of hands, Councilman Swicegood's motion passed on a 4-2 vote, with Vice-Mayor Peterson and Councilwoman Sitnick voting "no".

IV. NEW BUSINESS:

A. RESOLUTION NO. 95-67 - RESOLUTION AUTHORIZING SUBMISSION OF THE CONSOLIDATED PLAN TO N.C. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT FOR COMMUNITY DEVELOPMENT BLOCK GRANT ENTITLEMENT AND HOME INVESTMENT PARTNERSHIPS PROGRAM FUNDS FOR 1995-96

Mr. Marvin Vierra, Community Development Director, said that this Consolidated Plan serves as a planning document as well as the application for funding under the CDBG and HOME grant programs. The Consolidated Plan will need to be submitted to HUD by May 15, 1995.

The City will be applying for \$1,694,000 in CDBG and \$1,172,000 through the HOME program for the coming year. Anticipated program income will increase available revenue for CDBG activities by \$130,000. Matching funds for HOME grant for the City of Asheville will increase revenue for HOME activities by \$36,000.

He said the City's Housing and Community Development Committee has reviewed applications from Agencies for CDBG funds and recommends CDBG funding allocation. He then described the recommended funding. The Asheville Regional Housing Consortium has reviewed applications from agencies and local governments for HOME funds and recommended HOME funding allocations. He then described their recommended funding.

Mr. H. K. Edgerton asked that the City Council consider some solutions to

improve the conditions of housing in this City.

Mr. Matthew Bacoate, Chairman of the YMI Cultural Center Community Development Corporation and also representative of Dr. Grant, urged Council to fund their project in the South Pack Square Redevelopment Area in the amount of \$292,000.

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. 95-67. This motion was seconded by Vice-Mayor Peterson and carried unanimously.

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B. RESOLUTION AMENDING RESOLUTION NO. 95-15 AND RESOLUTION NO. 95-48 PROVIDING FOR THE ESTABLISHMENT OF AND MEMBERSHIP ON THE STEERING COMMITTEE ON THE REEVALUATION PROCESS FOR THE HEAD OF MONTFORD REDEVELOPMENT PLAN

City Attorney Slawter said that at the May 2, 1995, City Council worksession, the Council concurred in the amendment of Resolution Nos. 95-15 and 95-48 so as to expand the Head of Montford Steering Committee from 13 persons to 14 and add Albert L. Sneed Jr. as a member.

Councilwoman Sitnick said that after the meeting on March 2, she gave it further thought and she was concerned about having 14 members. She asked if that was a practice of the City's advisory and ad hoc committees to have even numbered boards?

City Attorney Slawter said that the Asheville-Buncombe Water Authority has had an even number of members for some time. He said there was no set rule.

Councilwoman Field said that at the May 2 worksession, it was Council's consensus to move forward with this resolution. Since that time she has received many telephone calls and many letters from the community. She said that she will vote against the resolution because she is convinced that Mr. Sneed does have a conflict of interest and should not be on that particular committee. It is a stake-holders committee and the people who have a stake in that community should be involved. Mr. Sneed is paid by one of the stake-holders as their attorney. She was surprised that he even agreed to do it. In this particular case she has been convinced that it is not the appropriate thing for Mr. Sneed to serve on this committee even though it is an advisory committee.

Vice-Mayor Peterson said that Mr. Sneed was placed on this ad hoc committee because we wanted a balance and he was to be the CIBO representative and as he stated, if we replaced him with another member, he would expect the other member to be from CIBO. We had members on that committee from the Chamber and from business. What we wanted was a committee that was representative of all the different areas in Montford. It was his opinion that Mr. Sneed was the CIBO representative and that's why he will support the resolution.

Councilwoman Sitnick said that she was under the impression that Mr. Sneed was appointed to represent Shirley Dozier's interest, which certainly deserved to be represented. She thought there was another member appointed to represent CIBO. She will also vote against the resolution even though she was the person who initially appointed Mr. Sneed. She was not aware that Ms. Dozier was going to be on the committee as well from the beginning. Having given it further thought, she realized that appointing Mr. Sneed to represent her and her being

appointed as well, was not creating balance but rather creating off balance on the committee.

Ms. Valerie Larrea, 46 Cumberland Circle, spoke in opposition of the resolution stating that this process has become tainted and as voted April 6 does not represent the neighborhood's wishes nor does this committee as proposed to be amended today present a reasonable tool to constructively represent community opinions.

Mr. H. K. Edgerton, 94 Cumberland, spoke in support of the resolution appointing Mr. Sneed for several reasons.

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Mr. Herb Cott, 133 West Chestnut, spoke in opposition to the resolution and felt that Mr. Sneed had a conflict of interest on the committee.

Mayor Martin said that Council sent this back to the community because they wanted to have the community come to some agreement. Personalities and conflicts of interest are now detrimental to the whole process. He would still like to see the community come to some agreement. However, he too feels that there is a possibility of a conflict of interest for Mr. Sneed on this committee.

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 the resolution. This motion was seconded by Councilman Swicegood and failed on a 3-3 vote, with Vice-Mayor Peterson and Councilmen McClure and Swicegood voting "yea" and Mayor Martin and Councilwomen Field and Sitnick voting "no".

Regarding the Head of Montford Steering Committee, Councilwoman Sitnick said that it has been indicated to the City Clerk and the Planning Director that a member of the committee, Nora Valentine, is ill and will not be able to attend the May 22 meeting. Ms. Valentine has asked to be able to send a neighbor as a proxy vote for her at the May 22 meeting. She was not aware if the Council had a policy on proxy voting for ad hoc citizen advisory committees or not. Councilwoman Sitnick asked that Council consider whether or not Ms. Valentine can send a proxy voter for her to that meeting or whether or not the Council would rather go back to the original resource list and appoint a replacement from that list. Councilwoman Sitnick said there has been some concern raised about the fact that Ms. Valentine is an African American woman and lives on the west side of Montford. Perhaps, if the Council does not want to allow her to send a proxy voter, they may want to choose somebody from the list who most closely resembles Ms. Valentine's area of residence.

H.K. EDGERTON - COMMENTS REGARDING THE ABSENCE OF COUNCILMAN WATTS AND THE REPRESENTATION OF THE AFRICAN AMERICAN COMMUNITY

Mayor Martin commented that since we have no rules adopted by the Council regarding committees, we don't have to go back to the resource list. He feels it's up to the chairman of the committee if they wish to accept that proxy. He didn't feel Council needed to go back and make re appointments because there are a sufficient people on that committee and we should move forward.

Mr. H. K. Edgerton was concerned about protocol in the Council meetings. He said that Councilman Watts has been absent for a long time and he brings a great deal of expertise and addresses the concerns of the African American community. He asked if it would be appropriate to have an alternate councilman.

He feels there is too much going on affecting the African Americans in Asheville in which they have no input on. He feels that the African American vote is gone.

Councilwoman Sitnick explained that Councilman Watts has been participating in the Council meetings frequently via speaker phone. Today there was a circumstance where he was not able to participate. However, he has been as responsible as he can be under the circumstances. He has read his packets, he has been delivered the same material the Council has received and he has represented his point of view and points of interest. -16-

Mayor Martin said that we, on Council, represent all the citizens of Asheville.

V. CONSENT AGENDA:

Resolutions and Motions:

A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON APRIL 18, 1995, THE BUDGET WORKSESSION HELD ON APRIL 25, 1995, AND THE WORKSESSION HELD ON MAY 2, 1995

B. RESOLUTION NO. 95-68 - RESOLUTION ACCEPTING STUART CIRCLE AS A CITY SYSTEM STREET

Summary: The Aberdeen Homeowners Association has agreed that they would like to dedicate Stuart Circle to the City of Asheville as a public street.

RESOLUTION BOOK NO. 22 - PAGE 257

C. RESOLUTION NO. 95-69 - RESOLUTION AUTHORIZING THE CITY MANAGER TO APPLY FOR AND ENTER INTO AN AGREEMENT WITH THE N.C. DEPARTMENT OF ENVIRONMENTAL, HEALTH AND NATURAL RESOURCES FOR A GRANT TO DEVELOP A TRAILS SYSTEM AT THE FRENCH BROAD RIVER PARK

Summary: Funds are available through the State of N.C. Dept. of Environment, Health and Natural Resources, Water Resources Division, for improvements to various water resources within the State. The City wishes to apply for funding for extending our trail system at the French Broad River Park.

RESOLUTION BOOK NO. 22 - PAGE 258

D. RESOLUTION NO. 95-70 - RESOLUTION TO AWARD BID FOR A TRUCK MOUNTED ASPHALT PATCHING MACHINE

Summary: Recommend award of bid to purchase a truck mounted asphalt patching machine for use in the Public Works Department to the low bidder of H.D. Industries Inc., Jacksonville, Texas, in the amount of \$79,500. A complete copy of the bid summary is attached hereto as Exhibit "A".

RESOLUTION BOOK NO. 22 - PAGE 259

E. RESOLUTION NO. 95-71 - RESOLUTION TO AWARD ANNUAL CONTRACT FOR ASPHALT MATERIALS

Summary: Recommend award of bid for 10,000 tons Type 1-2 for street surface program to bidder with lowest cost with consideration of transportation, APAC Carolina Inc., Asheville, NC, in the amount of \$25.00 per ton (\$24.00 after discount). Also recommend award of bid for 1,550 tons of assorted mixes for pavement patching to APAC Carolina Inc., Asheville, NC, at a price of \$25.00 per ton (\$24.00 after discount) and Banks Brothers Construction Company,

Hendersonville, NC, at a per ton price of \$24.00. Mileage from job site to the nearest plant determines where to make purchase. Net prices are equal. A complete copy of the bid summary is attached hereto as Exhibit "B".

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F. RESOLUTION NO. 95-72 - RESOLUTION PROVIDING FOR THE ISSUANCE OF \$3,000,000 GENERAL OBLIGATION WATER BONDS, SERIES 1995

Summary: This report transmits the resolution with provides for the issuance of \$3,000,000 General Obligation Water Bonds, Series 1995. In order to accomplish the bond sale on its targeted sale date of June 6,1995, this resolution needs to be adopted by the City Council on May 9, 1995.

On November 5, 1992, voters of the City of Asheville authorized the sale of \$26,000,000 of general Obligation Bonds for water purposes. Two sales have been made against that authorization. On March 31, 1992, \$19,000,000 was sold and on August 4, 1994, \$4,000,000 was sold. This \$3,000,000 sale will provide funds for additional water system improvements and will utilize the balance of this authorization. This resolution provides for the issuance of the bonds. The maturity schedule in the resolution has been approved by the Water Resources Department. All costs related to this sale, including debt service on the bonds, will be paid from Water Resource Department funds.

RESOLUTION BOOK NO. 22 - PAGE 263

G. MOTION SETTING A PUBLIC HEARING ON MAY 23, 1995, TO AMEND THE ZONING ORDINANCE TO ALLOW TAXI STANDS IN THE CENTRAL BUSINESS DISTRICT AND THE COMMERCIAL HIGHWAY DISTRICT

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

V. CONSENT AGENDA:

Ordinances:

A. ORDINANCE NO. 2212 - BUDGET AMENDMENT RELATIVE TO STREET AND SIDEWALK CONTRACTS

Summary: This budget amendment, in the amount of \$193,441, provides for the additional construction and engineering costs related to unanticipated water line work completed under Contract No. 13 in the Biltmore area. The additional budget amendments are for small cost over-runs on projects that are complete and ready to close.

ORDINANCE BOOK NO. 15 - PAGE 84

B. ORDINANCE NO. 2213 - BUDGET AMENDMENT RELATIVE TO UNDERGROUND STORAGE TANK REMOVAL AT STEPHENS-LEE RECREATION CENTER

Summary: This budget amendment, in the amount of \$50,000, is to begin removal and clean up of the old heating oil tank at Stephens-Lee Recreation Center.

ORDINANCE BOOK NO. 15 - PAGE 87

C. ORDINANCE NO. 2214 - BUDGET AMENDMENT RELATIVE TO RAY L. KISIAH PARK

Summary: This budget amendment, in the amount of \$27,600, will transfer funds from the Reid Center gym floor project to the West Chapel Road Park to construct a concession/restroom facility.

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ORDINANCE BOOK NO. 15 - PAGE 89

Councilwoman Field moved for the adoption of the Ordinance Consent Agenda. This motion was seconded by Vice-Mayor Peterson.

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

VI. OTHER BUSINESS:

A. GROUP DEVELOPMENT

Mr. Carl Ownbey, Transportation 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. She 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 May 3, 1995:

GEORGE'S STOR-MOR ADDITION

Mr. Ownbey said that this project is for the proposed additions to George's Stor-Mor mini-warehouses at 600 Patton Avenue. This expansion will include six one-story structures to be added to the existing complex.

On April 3, 1995, the Planning Department received a site plan for the proposed expansion of George's Stor-Mor. The proposal is for the construction of six one-story structures (26,100 square feet) for mini-warehouses. The site plan was submitted to the City's Technical Review Committee for their comments.

On May 3, 1995, the Planning & Zoning Commission reviewed the site plan. The adjoining property owner to the west addressed his concern with stormwater runoff. He requested that a closer review during construction be done because problems did arise during construction of the initial project. The Commission unanimously approved the project with five conditions.

The City Planning staff and the Commission recommended approval with the following conditions:

1. Letter from Council closing the 150 feet of Westwood Place;
2. Location of street trees at the intersection of Hazel Mill Road and Westwood Place be approved for site distance by Traffic Engineer;
3. Receipt of the letter outlining adequate water flow for fire protection;
4. Provide detail drawing of rear gate to Traffic Engineer; and
5. Comply with the Stormwater Ordinance and Erosion Control Plan.

Upon inquiry of Councilwoman Sitnick, Mr. Ownbey said that there was no stormwater ordinance during the first construction phase. Councilwoman Sitnick

said that after hearing at the Planning & Zoning Commission meeting what was endured by this adjoining property owner, made a great case that this Council passed the stormwater ordinance.

Council accepted the report of the Planning and Zoning Commission, thereby approving the project by taking no action. -19-

B. PACK PLAZA PARKING GARAGE

Mayor Martin said that the City Council wishes to announce that it has recently received a proposal from the Bank of Scotland for the purchase of Pack Plaza parking garage for a purchase price slightly over \$3,000,000. In addition, the Bank of Scotland proposal would provide for restructuring of indebtedness to the Bank and the City so as to provide for possible repayment of \$1.4 Million of debt to the City ahead of the last \$1.4 Million of debt to the Bank if the project should ever sell for enough to create that much cash flow. Currently, the debt structure provides for the Bank to be paid in full before the City receives anything. The restructuring would provide the City with some potential for a better chance of return of a portion of the current indebtedness to the City, but would require an additional investment by the City in the project in the amount paid by the City to the Bank for the garage. The Council has had closed session discussions regarding this proposal and has decided that it is not in the best interest of the City to accept the offer. The decision to reject the Bank's offer is not unanimous, but it is the desire of the majority of Council, and the offer will be rejected.

At 7:25 p.m. Councilman McClure left the meeting unexcused.

C. H.K. EDGERTON

Mr. H.K. Edgerton stated that he is the First Vice-President of the NAACP, is the representative of the Black Leadership Caucus for District 50 and also sits on the Carolina Association of Minority Contractors Board of Directors. He believes that this Council has the intent to do the right thing for all citizens; however, he feels the Council is missing a pulse in the community. He speaks for a great deal of disenfranchised persons in this City when he says that they feel they have been left out of the economic process, the political process and a great deal of social processes. He says his people feel that they will never be included fairly in this process and feels very disheartened by the whole process.

D. CLAIMS

City Manager Westbrook said that the following claims were received by the City of Asheville during the week of April 6-19, 1995: BellSouth (Water), Shirley Neal (Streets), BellSouth (Water), Lisa Coleman (Engineering), Helen Werhan (Streets), Susan Roderick (Streets), Ethel Austin (Streets), and George Krendell (Water).

He said that the following claims were received during the week of April 20-26, 1995: Tom Carter, Uptown Cafe (Water) and Bear Creek Apartments (Water).

He said that the following claims were received during the week of April 27 - May 3, 1995: Taylor Stoneman (Sanitation), Mary J. Wilson (Streets), Gary Hart (Water), Don Walters (Streets), Renee Hudson (Water), Cheryl Collins (Streets), Wind-in-the-Oaks Condos (Water) and Alan O'Donnell (Streets).

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

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VII. ADJOURNMENT:

Mayor Martin adjourned the meeting at 7:28 p.m.

CITY CLERK MAYOR
