

Tuesday - July 25, 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, Councilman Joseph Carr Swicegood and Councilman Herbert J. Watts; City Attorney William F. Slawter; City Manager James L. Westbrook Jr.; and City Clerk Magdalen Burleson

Absent: None

INVOCATION

Councilwoman Sitnick gave the invocation.

I. PROCLAMATIONS:

A. PRESENTATION OF AWARD TO MAGGIE O'CONNOR, HISTORIC RESOURCES COMMISSION DIRECTOR

Mayor Martin presented an award to Ms. Maggie O'Connor, Historic Resources Commission Director, for her outstanding work on The Richard Sharp Smith Exhibit.

B. PROCLAMATION PROCLAIMING AUGUST 10-13, 1995, AS "THE NORTH CAROLINA SHAKESPEARE FESTIVAL DAYS"

Mayor Martin proclaimed August 10-13, 1995, as "The North Carolina Shakespeare Festival Days" in the City of Asheville. He presented the proclamation to Mr. Derek Evans, Director of the Diana Wortham Theatre, who thanked Council for their support.

II. PUBLIC HEARINGS:

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

Mayor Martin said that this public hearing was opened on December 6, 1994, continued until March 21, 1995, May 23, 1995, and then continued until July 25, 1995, in order to give staff sufficient time to work with the community to address the Head of Montford Redevelopment Plan in general.

Mr. Mike Matteson, Urban Planner, briefed the Council by saying that James and Shirley Dozier have requested that two lots (formerly five lots - they were recently combined into two lots) on the east side of Montford Avenue be rezoned from R-4 high density residential to CG commercial general. The area requested for rezoning totals 1.18 acres.

Following the Planning and Zoning Commission's public hearing on October 5, 1994, the Commission voted to recommend approval of the rezoning request with a 4-3 vote. The Planning staff recommends denial of the rezoning request.

After the City Council opened the public hearing on December 6, 1994, a 13 member steering committee (which included Shirley Dozier) was appointed to work with staff in the reevaluation process. Three community meetings and six steering committee meetings were held. Several votes were taken by the steering committee regarding the zoning of the Dozier's property.

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At the third steering committee meeting on March 28, 1995, the committee voted to recommend that the properties remain zoned R-4.

At the fourth steering committee meeting on April 6, 1995, the committee voted 7-6 to recommend that the properties be zoned CG commercial general. This vote included the affirmative vote of an individual later found to be a non-steering committee member.

At the final steering committee meeting on June 12, 1995, the committee voted 7-6 to recommended that the properties be zoned NC Neighborhood Commercial.

In the near future the Planning Department will provide Council with information relative to closing out the Head of Montford Redevelopment Plan.

Upon inquiry of Vice-Mayor Peterson, Mr. Matteson explained the different type uses allowed in NC Neighborhood Commercial and the R-4 District.

Mr. Albert Sneed, attorney representing the petitioners, presented Council with a letter dated July 24, 1995, regarding the rezoning of the Dozier property. He reviewed the letter by saying that "The Council will recall that the Doziers have consistently and forcibly maintained that the down zoning of their property in 1984 from CBD to R-4 was improperly obtained. Not only were they threatened personally, their house was set on fire. Despite threats, they steadfastly refused to sign a Petition for Rezoning. On or about July 17, 1995, they received an anonymous call telling them what they should ask for from City Hall. Their initial investigation now reveals that the original down zoning from CBD to R-4 was illegal and improper." The following are attachments to the letter (1) Planning & Zoning Commission minutes of March 7, 1984, which "shows that the rezoning request in 1984 was initiated by a Petition from the Montford Community Club"; (2) Section 30-11-1 of the Zoning Ordinance which "shows that the Community Club has no authority to initiate a rezoning request"; (3) "the alleged petition"; and (4) "a map showing that not more than 51% of the affected property owners signed the Petition."

Mr. Sneed read that "the rezoning request was not only wrong in fact, but it was initiated by an elite group of insiders-illegally. Mr. and Mrs. Dozier respectfully request (1) that Council postpone any decision on the request now pending before it; (2) that Council direct the City Attorney to conduct an honest and impartial investigation to determine: (i) whether or not the rezoning in 1984 was illegally instituted; (ii) whether or not tax lot 91 has ever been legally or illegally zoned anything other than CBD; and (3) Council take such action as is fair and just to rectify any wrongs determined to have been done to the Doziers by the investigation."

Upon inquiry of Mayor Martin, City Attorney Slawter said that since this legal issue has been raised, he felt it should be addressed before proceeding.

Councilman Watts moved to continue this public hearing, without further advertisement, until September 12, 1995, in order to give the City Attorney sufficient time within which to investigate the petitioner's allegations that the original down zoning of their property in 1984 was illegal and improper. This motion was seconded by Councilwoman Sitnick and carried unanimously.

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Ms. Mary Jo Brezny also suggested that the Council investigate how and when the property was zoned CBD.

It was noted that copies of the documents submitted by Mr. Sneed to Council would be made available from the Planning Department.

B. PUBLIC HEARING RELATIVE TO REZONING TWO LOTS AT 18 PISGAH VIEW ROAD FROM R-3 RESIDENTIAL DISTRICT TO R-5 RESIDENTIAL DISTRICT

Mayor Martin said that this public hearing was opened on July 11, 1995, and continued until this date at the request of the petitioner. .

Mr. Carl Ownbey, Transportation Planner, said that this ordinance would rezone PIN Nos. 9628-09-17-9404 and 9628-09-17-7793 from R-3 Medium Density Residential to R-5 Residential. The subject property is approximately 19.2 acres and is at the southeast corner of the intersection of Pisgah View Road and Cedar Hill Road. The subject property contains two residential structures and two large accessory buildings. The area to the north and west of the property is out of the City's jurisdiction and the area to the south and east of the property is zoned R-3 Medium Density Residential. Directly north and across Cedar Hill Road from the property is a new subdivision for manufactured homes. The 2010 Plan recommends low density residential uses in this area.

The Planning staff reviewed the rezoning request and recommended approval of the rezoning of lot 9628-09-17-9404 and recommended denial of rezoning lot 9628-09-17-7793. At the June 7, 1995, Planning and Zoning Commission meeting, three members voted in favor of rezoning both lots to R-5 and four members voted against the rezoning.

On June 20, 1995, Mr. Craig D. Justus, attorney for the petitioner, appealed the decision of the Planning and Zoning Commission to City Council.

On July 5, 1995, a protest petition was received in the City Clerk's Office which stated "We, the undersigned object to the proposed rezoning of the lots on Pisgah View Road. PIN #9628-09-17-9404; PIN #9628-09-16-7793." Said petition contained 64 signatures. The Planning Department verified the petition and found that the petition was valid, thus requiring a 3/4's affirmative vote of City Council to approve the rezoning request.

Mr. Ownbey said that the week of August 17, 1995, the petitioner modified the rezoning request to no longer request the rezoning of PIN #9628-09-16-7793. The petitioner is now requesting that only PIN #9628-09-17-9404 be rezoned to R-5. The modification also now includes a 101 foot buffer on one half of the north side, all of the east side and a majority of the south side. That buffer reduces the area requested to be rezoned from 19 acres down to approximately 13-1/2 acres.

Upon inquiry of Councilman Swicegood, Mr. Ownbey said that the proposed area to be rezoned is all in the extraterritorial jurisdiction of the City.

When Vice-Mayor Peterson asked if the neighbors were in agreement with the rezoning request as modified, some people in the audience replied that they were not.

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Councilman Watts expressed concern over the traffic problems that already exist on Deaverview Road. Since it's not known at this time how many units will be in the proposed mobile home park, if rezoned, Mr. Ownbey was unable to answer questions about additional traffic problems.

Upon inquiry of Councilman McClure, Mr. Ownbey explained the difference between R-3 (which allows 16 units per acre) and R-5 (which allows 10 units per acre

for residential uses and also allows for manufactured homes at 6 units per acre). Mr. Ownbey further explained about the water and sewer availability in the area.

Councilman McClure asked about what restrictions there are in the County regarding zoning, such as buffering or landscaping requirements. Mr. Ownbey responded that the County has no restrictions. He said that the proposed mobile home park would have to have a 20 foot buffering strip around it.

In response to Councilwoman Sitnick, Mr. Ownbey said that the school in the area was Johnson Elementary School.

Mr. Craig Justus, attorney representing Triple H Inc., passed out a survey of the property showing the modifications. He reviewed the modifications with the City Council stressing that the community is compatible for a mobile home park because that is what is in the community now. He noted that they met with most of the abutting property owners in the area at the beginning to explain the rezoning request and try to iron out some of their concerns, but were unable to reach some of them. He feels that a lot of people would like the area to remain farm land or with little modifications on it, which is unfair to the property owner. Council should not be looking at the specific use of the property, but instead, what do the districts allow to be constructed on the property. He said that the existing R-3 designation allows 16 units an acre, which on the 19 acres would allow a maximum build out of 304 units. The 13.5 acres on an R-5 designation (which allows 6 units per acre) would allow a maximum build out of approximately 80 units. That is more than three times less than what the maximum build out is on R-3. He didn't foresee any problems with water pressure from using the lines on Cedar Hill Road. He said that sewer is available on Deaverview Road.

Mr. Justus said that he was under the impression that the school district in the area was Erwin and he had been prepared to address the issue of overcrowding in that district. However, as a result of information today, he asked Council to delay their vote until he has had an opportunity to get the information on the appropriate school district for Council's review.

Mr. Richard Harper felt that this mobile home park will help provide low cost housing needed in Asheville. The park will have a full-time manager living there to make sure that the park is neat and taken care of. He gave an example of how they tried to work with the neighbors - a neighbor's sewer system did not work and he agreed that if the project went forward, when the park's sewer system went in, he would give that neighbor an easement to tie into that sewer line. He corrected the statement regarding buffering, noting that the buffer would be 121 feet, not 101 feet. -5-

Mr. Justus clarified the buffering question by saying that 101 feet is what is not being asked to be rezoned. The 20 feet would be within the R-5 district as an additional landscaping buffer as required by the zoning ordinance.

Upon inquiry of Councilman Watts, Mr. Harper said that he owns another mobile home park in Asheville on Overlook Road. Mr. Harper also responded to questions about restrictions of the mobile homes coming into the park and the requirement of skirting - noting that mobile homes are very regulated in the zoning ordinance.

Councilwoman Sitnick read the preamble of Sec. 30-5-6 R-5 Residential District (which includes manufactured homes) which states "These areas should be planned within close proximity to adequate transportation arteries and commercial facilities." She questioned if the site meets that criteria. Mr. Ownbey stated that this property is not on an artery and the closest main artery is Patton

Avenue about two miles away. It was Mr. Ownbey's opinion that Patton Avenue was in close proximity to this area.

The following individuals spoke against the rezoning request for several reasons, which include, but are not limited to: the lots should be owned and not rented, the area is already surrounded by trailer parks, people who live on Cub Road are City residents hemmed in by the County and with the County having no zoning restrictions they have no voice in what goes in around them, existing sewer problems, existing traffic problems with congestion and small roads, existing overcrowded school, mobile home parks are nothing like the double-wide community of Cedar Knoll Meadows on the opposite side of Cedar Hill Road, mobile home parks are shabby in appearance, R-5 zoning is not compatible with the neighborhood, leave zoning as is for something better to be developed in the future, existing crime in area, existing water line problems, and mobile home parks devalue surrounding property.

Ms. Catherine Wiggins, resident on Cub Road  
Mr. Marvin Hensley, homeowner on Cub Road  
Mr. Edsel French, 166 Brookwood and developer of Cedar Knoll Meadows  
Mr. Carl Chesick, 66 Cedar Hill Road  
Ms. Kimberly Suttles, 215 North Bear Creek  
Mr. Webb Morgan, 333 Hi Alta Avenue  
Mr. Jack Hensley, 40 Cedar Hill Road  
Mr. Don Brooks, 35 Pisgah View Road  
Mr. George Haug, 332 Hi Alta Avenue  
Ms. Linda Ratcliff, 28 Cedar Hill Road

Upon inquiry of Mr. H. K. Edgerton, Councilman McClure explained that first time home buyers do not qualify for loans under that program for modular homes.

Ms. Doris Kelly, resident of 280 Overlook Road, stated that she lived in the other mobile home park owned by Mr. Harper several years and since that park has been put in, the community has been built up around it. She enjoyed living in the mobile home park and felt that property values in the area could be brought up, if people would allow the parks to be built. -6-

Upon inquiry of Councilwoman Sitnick, Ms. Jane Gianvito Mathews, Planning and Zoning Commission member, explained that the 4-3 vote taken by the Commission was made, she felt, because of similar comments from the surrounding neighbors.

When Councilwoman Field asked Planning & Development Director Julia Cogburn about the complications surrounding split zoned lots, Ms. Cogburn replied that it requires more interpreting of the zoning ordinance.

Councilwoman Sitnick said that "in reading the State statute that permits zoning regulations for manufactured homes, subpart (d) reads 'the City may adopt and enforce appearance and dimensional criteria for manufactured homes. Such criteria shall be designed to protect property values, to preserve the character and integrity of the community or individual neighborhood within the community, and to promote the health, safety and welfare of area residents. The criteria shall be adopted by ordinance.' Do you feel that our criteria for manufactured homes would protect and promote the health, safety and welfare of the area residents? I'm not asking about appearance or dimensional criteria, just the other."

Ms. Cogburn said that Asheville's standards are probably comparable to what you'll find in other parts of the State. Actually, the density for a manufactured home park is six units per acre, not 10 units per acre. She said something could be done with the property left zoned R-3, in accordance with R-3 standards - so that's not necessarily going to be left as a buffer area.

Councilwoman Sitnick noted that this is a request to only change the zoning designation, not to build a mobile home park.

Upon inquiry of Councilwoman Field, Councilman McClure explained how mobile homes are taxed.

City Attorney Slawter said that Mr. Ownbey referred earlier a protest petition that had been filed and he also referenced the 101 foot buffer that has been put into place partially around the property by the applicant for the rezoning. The issue was whether greater than a majority vote would be required in order to pass the ordinance because if you do have an effective protest petition, you have to have 3/4's vote of all Council members, rather than a simple majority. But putting the buffer in place eliminates the effect of the protest, because only people owning property within 100 feet of the property being rezoned can protest and by having a 101 foot buffer, the effect of the protest petition is thus eliminated. Therefore, simple majority would be required, rather than the 3/4's majority.

Councilwoman Sitnick felt very uncomfortable voting on this matter without the school district information.

Mayor Martin closed the public hearing at 6:36 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 to deny the rezoning request. This motion was seconded by Councilman McClure and carried unanimously. -7-

#### C. PUBLIC HEARING TO CONSIDER THE GRANTING OF A ZONING VESTED RIGHT FOR DEERFIELD EPISCOPAL RETIREMENT COMMUNITY

Mayor Martin opened the public hearing at 6:40 p.m.

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

Mr. Paul Benson, Urban Planner, said that on July 11, 1995, City Council approved the group development of Deerfield Episcopal Retirement Community to expand their existing facility located at 1617 Hendersonville Road, subject to letters indicating adequate water supply and adequate fire protection. A letter has been received relative to adequate water supply. The developer has requested approval of a zoning vested right in accordance with Article 14 of the Zoning Ordinance. The granting of a zoning vested right will extend the effective approval of the project from 1 year to 2 years.

Mr. Ron Brondyke, attorney representing Deerfield Episcopal Retirement Community, explained the need for the zoning vested right.

Mayor Martin closed the public hearing at 6:46 p.m.

Councilman McClure moved to grant the zoning vested right to Deerfield Episcopal Retirement Community, subject to the letter being received regarding adequate fire protection. This motion was seconded by Vice-Mayor Peterson and carried unanimously.

When Councilman Swicegood asked who will be responsible for the road going into the project, Mr. Brondyke replied that their present plan involves using their existing access, however, they do have alternate access potential at Valley Springs and Brackettclub. When asked whose road Valley Springs Road is, Mr.

Brondyke said that it is a road within the Town of Biltmore Forest.

III. UNFINISHED BUSINESS:

IV. NEW BUSINESS:

A. RESOLUTION NO. 95-112 - RESOLUTION ASSESSING 2% TICKET FEE ON ALL ASHEVILLE CIVIC CENTER TICKETED EVENTS

Mr. Jim Scott, Civic Center Director, said that the Civic Center opened over 20 years ago and is in need of capital improvements to meet state and federal laws as well as capital improvements that keep the facility current and in good repair. In an effort to reduce direct city subsidy, the Civic Center is requesting Council to pass a resolution assessing 2% ticket fee on all Asheville Civic Center ticketed events. The purpose is to have those people using the facility assist in paying for the needed capital improvements.

Ms. Bernie Wolf spoke in support of the rate increase, however, urged Council to promote events at the Civic Center that are truly civic activities in the sense that they represent the City of Asheville, its goals and citizenship. For example, seven gun and knife shows in this current calendar year are scheduled and only four craft shows. She felt this does not represent our area well.

Mayor Martin said that members of Council have been previously furnished with a copy of the resolution and it would not be read. -8-

Councilman Swicegood moved for the adoption of Resolution No. 95-112 with said 2% to begin immediately on all new contracts and phased in on all other contracts. This motion was seconded by Vice-Mayor Peterson and carried on a 6-1 vote, with Councilwoman Field voting "no".

RESOLUTION BOOK NO. 22 - PAGE 336

B. AN ORDINANCE AMENDING DIVISION 2, ARTICLE IV (PARADES, PICKET LINES OR GROUP DEMONSTRATIONS) OF CHAPTER 16 OF THE CODE OF ORDINANCES OF THE CITY OF ASHEVILLE

Major Jay Breedlove said that in 1994 certain sections of the parade, picket lines and group development section of our ordinance was struck down by a Buncombe County Superior Court Judge. Upon the request of the City, the Buncombe County District Attorney appealed the Court's decision to the N.C. Court of Appeals. Upon appeal to the Court of Appeals, the City, the District Attorney and the N.C. Attorney General's Office mutually agreed to withdraw the appeal. As a result, this amended ordinance was prepared.

The amended ordinance excludes from permit requirements, picketing by less than ten people. The ordinance requires a permit for any group of ten or more. Additionally, there are specific requirements one must following in order to obtain a permit. The ordinance further allows administrative service fees for the issuance of permits for parades, picket and escort fees. People now don't have to tell the Police Department when they are going to protest or picket. However, if this proposed ordinance is adopted, it will require those people, through the permitting process, to make the Department aware of the protest or picket so that the Department can form a plan and be prepared if something should occur.

Councilwoman Field asked what would happen if, as a result of an article in the paper, more people showed up at a picket line and a permit was not obtained because they did not anticipate that many. Major Breedlove said that generally people will have some type of ballpark figure when requesting a permit. He said

no arrests would be made.

Councilwoman Sitnick hoped that any officer assigned to a parade or picket would be fully aware of the law. She, too, was concerned as Councilwoman Field was about if there would be a problem if more than ten people showed up. She expressed concern about the size of placards and signs not exceeding 2 feet by 2 feet. Regular store-bought posterboard is 28" x 22". That seems to be a problem right there. Most people buy commercially made posterboard unless they are using banners. Also, if a local group is picketing and the local group is part of a national group, what if the national group signs are of a different size than this ordinance allows? Would they not be able to use a sign which comes from their national organization? Also, what about campaign signs. Every campaign buys those posterboards by the box. Will they have to cut off 4" from the 28" side in order to comply? She was sure that there was a reason for 2 feet by 2 feet, but she didn't see that the regular posterboard size of 28" by 24" was that much of difference.

Major Breedlove explained that the sign size is factored in with the space allowed between picketers. In picketing at a specific location, people have to have access and egress from the premises. When people are in a continuous motion, if they are spaced properly, there's 7-1/2 feet between two individuals. Then the signage is factored in. If someone is walking into or out of the area and the sign is too big, -9-

it's probably true to say that someone will get hit by a sign. If any group has a concern about the signage requirement, that is something that would be addressed with the permit was requested. If circumstances warrant that signage of a different size could be allowed, then that would be negotiated. The Police Department's concerns with the size of

the signs would be to give people access on public rights-of-way, and that the signs not be able to be used as weapons (sharp pointed ends on them and big enough pieces of wood to actually use as a club if an altercation took place).

Upon inquiry of Councilwoman Sitnick about the spacing requirement, Major Breedlove said that if people were properly spaced when picketing, it would be very likely that those picketers would be in front of the other peoples stores too.

Councilwoman Sitnick questioned the 48 hours advance notice, particularly as it relates to campaigns. Sometimes a candidate might come in on 24 hours or less notice. Would there be some leeway in allowing people to get a permit? Major Breedlove responded that exceptions can be made, however, they need to be made prior to the permit being issued. The Police Department's intent is not to be over burdensome to the public, only to enable them to control situations when negotiable between groups and the public.

At the request of Councilman McClure, Major Breedlove defined a parade is a grouping of people going from one point to another. A picket is defined as to concentrate on a particular activity in a general particular location.

When Councilwoman Sitnick asked how nighttime is determined, Major Breedlove said that it is determined by how dark it is outside. She said that campaigns seem to be the least planned kind of activities that usually have a picketing or a demonstration attached to it. If there is a speech being given at night and people want to go out in either support or opposition of a candidate, would the Police Department be able to grant a permit under certain conditions, keeping the same regulations of this ordinance but with additional safety conditions? Major Breedlove said that this ordinance is only applicable to public thoroughfare of public properties - not to a meeting on private

property. He would have to evaluate the circumstances and then determine safety factors and what could be done to accommodate the needs. However, in dealing with these activities for over 10 years, he has found that with political events, they are generally pretty well organized. It's usually those people that have opposing views of whatever that candidate represents who have a tendency to be spontaneous and want things done immediately.

Mr. Tom Roberts, attorney, said that he has some familiarity with the demise of Asheville's last picketing ordinance. He felt the last ordinance was to control what people did in Asheville. The Police Department should be concerned about regulating what's happening on the streets of Asheville, not what's happening on the sidewalks. In the last couple of years, he has not read anything in the paper about problems of people being out of control. The police always have it within their rights to answer complaints of nuisance, disturbance, drunken or disorderly. Parades take place on the street and disrupt traffic and he has no problem with this ordinance as it applies to parades. However, our Police Department should not try and set these parameters on how we can express ourselves and our right to have spontaneous, peaceful expressions on the sidewalk. People should not have to go through the Police Department to get permission to have a -10-

peaceful demonstration, or to be five feet from each other instead of 15, or tell you what size of sign to carry. He felt we are entering an era where less government is better. The government does not have to set all the perimeters for how we can exercise our free speech rights. He feels this is a terrible ordinance as it applies to the sidewalks. We need to be supporting free speech rights.

Mayor Martin asked City Attorney Slawter if this is an unusual ordinance in the State of North Carolina, or does it infringe upon a person's right that he can't act in a spontaneous manner. City Attorney Slawter said that he takes the word spontaneous to mean without some preparation or planning, and no individual would be deprived of that right. When you get ten or more people together, it would require some planning and lack of spontaneity because the 48 hours notice period comes into play. Mr. Roberts is very familiar with the demise of Asheville's ordinance since he defended the person in Superior Court that caused that ordinance to be overturned. That dismissal was subsequently appealed to the Court of Appeals, but in concert with the District Attorney's Office and the Attorney General's Office, it was decided that that appeal would be withdrawn and that the better thing to do was to re-write a new ordinance. The ordinance that has been re-written has been reviewed by those offices and the Attorney General's Office was comfortable with this ordinance. It has provisions which are very similar to provisions that have been upheld by appellate courts throughout the country, including the United States Supreme Court. If there is a specific provision that Mr. Roberts has a particular problem with, he'd be happy to hear from him about that. He doubted that there was a City in North Carolina the size of Asheville or larger that does not have an ordinance.

Vice-Mayor Peterson expressed his concerns with this ordinance regarding free speech issues. He had no problem in permitting parades, but could not support the ordinance as it related to people protesting on the sidewalks in a legal fashion.

Councilwoman Sitnick asked Mr. Roberts' opinion on how he felt about handbills that are, without attribution, hurtful, slanderous or libel. She asked if it's somebody's right of free speech to hurt somebody else, either emotionally or physically. Mr. Roberts responded that he has not researched that case and would not be able to respond.

Councilwoman Sitnick again expressed concern over the 15 feet spacing requirement and also the size requirements.

Upon inquiry of Mayor Martin, City Attorney Slawter said that changing the size of signs to 28" by 24" would not significantly affect the ordinance.

Mayor Martin noted that this ordinance is not unusual throughout the State of North Carolina. It is to regulate people's behavior in certain instances and not intended as an infringement of people's rights. It is a tool to control unusually large crowds, in some cases, and to assist in the safety of the crowd.

When Councilwoman Field asked the City Attorney who was going to define the words "defamatory" and "violence provoking", City Attorney Slawter replied that he was not aware of any legal definitions for those words and that it would require a judgment call to determine whether that was the case.

Councilwoman Field felt that this ordinance does affect people's freedom of speech and we have not published this ordinance anywhere for -11-

anyone to review. Since this was written in-house by the Police Department and the City Attorney's office, there has been no concentrated effort to notify the general public.

Mr. Greg Armento briefed the Council on an incident that had happened to him regarding the Police Department telling him that one person was a parade. He noted the ordinance did not address sandwich boards. He suggested that the City sponsor some kind of electronic bulletin board for items like this.

Mr. Stewart David, coordinator of the Asheville Chapter of the North Carolina Network for Animals, noted that an ordinance should not be written where people are going to be asking for variances because then you're selectively enforcing the ordinance. He read a prepared statement addressing several issues including, but not limited to: no incidents in Asheville since the old ordinance was declared invalid to justify another ordinance, many cities around the state and country do not have similar ordinances including Buncombe County, police have enough laws on the books to enforce order and keep the peace, and the ACLU feels strongly that the ordinance contains unconstitutional provisions and will challenge it if it is enacted. He asked Council not to pass the ordinance at this time. He then gave some examples of legal objections the ACLU has raised.

Mr. Meredith Hunt, representing Life Advocates, said that Life Advocates try to help women in a crisis pregnancy situation and they do this through HelpLine and also by sidewalk counseling. He shared background information with Council on incidents leading up to the old ordinance being declared invalid. He felt that since it was the City Attorney's Office, the Police Department, and the Attorney General's Office of N.C., that said the previous ordinance was constitutional, so he doesn't necessarily trust their opinion on this new one. With over 1-1/2 years of no ordinance in effect there has been no problems with picketing, that could have been corrected by an ordinance. He felt we did not need an ordinance, but did recognize the interest of the City in protecting it's citizens and maintaining order, so he would like to see an ordinance that is as minimal as possible. He had a list of 28 objections to the proposed ordinance, some of which he briefly outlined, which he would provide to City Council. He asked that City Council postpone action on this ordinance and that it be sent back to the City Attorney's Office to meet with his group and some of the civil rights organizations to see whether an ordinance can be drafted in the spirit of cooperation.

Ms. Debbie Wildey said that there are plenty of ways a group could peacefully picket without impeding the public. She felt that this ordinance would definitely impede a group's right to freedom of speech in an effective manner.

Councilman Swicegood moved to table this ordinance until a worksession. After public notice, groups will be invited to meet in order to provide input into the ordinance. After the worksession, a revised draft can then be brought back to City Council. This motion was seconded by Councilwoman Sitnick and carried unanimously.

V. CONSENT:

Resolutions and Motions:

A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON JULY 11, 1995, AND THE WORKSESSION HELD ON JULY 18, 1995

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B. RESOLUTION NO. 95-113 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO AN AGREEMENT WITH THE BEAVERDAM FIRE DEPARTMENT TO DELIVER FIRE SERVICES IN THE BEAVERDAM ANNEXATION AREA IN CONNECTION WITH THE ANNEXATION OF BEAVERDAM RUN

Summary: In mid-1994 and mid-1995, parts of the Beaverdam Run Subdivision in the Beaverdam community were annexed by the City of Asheville. Subsequent to the effective date of annexation, negotiations were initiated for a fire protection contract between Asheville and the Beaverdam Fire Department for fire protection for Beaverdam Run, and for consolidation of the present contract with Beaverdam Fire Department for the balance of the Beaverdam community annexed in 1991. The total annual cost of this agreement will be \$97,078.20 through mid-1999. Funds for implementation of this contract have been budgeted.

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C. RESOLUTION NO. 95-114 - RESOLUTION AUTHORIZING THE MAYOR TO ENTER INTO AN AGREEMENT WITH THE STATE OF NORTH CAROLINA FOR DESIGNATION OF THE ASHEVILLE FIRE DEPARTMENT'S HAZARDOUS MATERIALS RESPONSE TEAM AS THE REGIONAL RESPONSE TEAM FOR WESTERN NORTH CAROLINA AND FOR REIMBURSEMENT OF THE CITY OF ASHEVILLE BY THE DIVISION OF EMERGENCY MANAGEMENT FOR NEW COSTS ASSOCIATED WITH REGIONAL RESPONSE TEAM STATUS

Summary: In 1993 the legislature adopted a law that provided for the creation of six "regional response teams" for hazardous materials emergency in North Carolina's six Emergency Management Regions. The N.C. Department of Crime Control and Public Safety's Emergency Management Division has determined that the Asheville Fire Department meets the criteria for assuming the role of "Regional Response Team" for Emergency Management Region F.

This two year agreement would establish the Asheville Fire Department's hazardous materials response team as the regional response team for Western North Carolina. In exchange for response to major hazardous materials incidents in Western North Carolina, the Division of Emergency Management would reimburse the City of Asheville as follows: Training expenses, \$10,000 in FY 1996 and \$14,000 in FY 1997; team member physical exams, \$5,000 in each of FY's 1996 and 1997; administration costs, \$12,000 in each of FY's 1996 and 1997; contribution to liability/workers compensation insurance, \$10,000 in each of FY's 1996 and 1997; replacement of team equipment and materials when used or consumed at an emergency; use of a response vehicle and equipment for which the state paid

\$398,000; and reimbursement of repair and maintenance costs for that vehicle. The additional costs that the City will assume for this service are more than offset by the State's reimbursement plan.

RESOLUTION BOOK NO. 22 - PAGE 338

D. MOTION SETTING A PUBLIC HEARING FOR AUGUST 8, 1995, TO REZONE 35, 37, 43 AND 51 ARLINGTON STREET, 295 CHESTNUT STREET, 289 AND 291 EAST CHESTNUT STREET AND A VACANT LOT ON EAST CHESTNUT STREET FROM R-4 RESIDENTIAL TO CH COMMERCIAL HIGHWAY AND 81 CHARLOTTE STREET FROM CG COMMERCIAL GENERAL TO CH COMMERCIAL HIGHWAY

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E. MOTION SETTING A PUBLIC HEARING FOR AUGUST 8, 1995, TO REZONE 620 REED STREET AND A PORTION OF A LOT LOCATED AT 526B HENDERSONVILLE ROAD FROM R-3 RESIDENTIAL DISTRICT TO CH COMMERCIAL HIGHWAY

F. RESOLUTION NO. 95-115 - RESOLUTION APPOINTING A MEMBER TO THE ASHEVILLE-BUNCOMBE HISTORIC RESOURCES COMMISSION

Summary: This resolution will appoint Chris Knorr to the Asheville-Buncombe Historic Resources Commission to serve a three year term. His term will expire July 1, 1998, or until his successor has been appointed and qualified.

RESOLUTION BOOK NO. 22 - PAGE 339

G. RESOLUTION NO. 95-116 - RESOLUTION AUTHORIZING THE PLANNING DIRECTOR AND THE COMMUNITY DEVELOPMENT DIRECTOR TO APPROVE HOUSING REHABILITATION LOANS

Summary: prior to July 1, 1995, the Housing Authority administered the City's housing rehab program. Authority to approve rehab loans had been delegated to the Executive and Deputy Executive Director of the Housing Authority. In order to expedite the loan approval process and to avoid undue hardship to the loan applicants, an expedient loan approval process is needed. These rehab loans normally do not exceed \$40,000. Underwriting procedures such as verification of income and credit report review, loan to income ratio, debt to income ratio are conducted by City staff prior to loan approval. The current workload involves 17 homes under construction, 12 loans approved but not under contract, 199 loans are outstanding. The current year goal is to provide loans for 65 housing units. Staff loan approval authority would greatly expedite the loan approval process. Staff recommends authority to approve loans should be delegated to the Planning and Community Development Directors.

RESOLUTION BOOK NO. 22 - PAGE 340

Councilman McClure moved to approve the Resolution and Motions Consent Agenda. This motion was seconded by Vice-Mayor Peterson and carried unanimously.

Ordinances:

The ordinance amending the horse drawn carriage regulations was requested to be pulled from the Consent Agenda for discussion by Ms. Virginia Schmidt.

Upon inquiry of Mr. Ralph Bishop about ordinances being placed on the Consent Agenda, City Attorney Slawter said that there was no law saying that they cannot be placed on the Consent Agenda.

A. ORDINANCE NO. 2227 - BUDGET AMENDMENT TO APPROPRIATE FISCAL YEAR 1995-96 COMMUNITY DEVELOPMENT BLOCK GRANT ENTITLEMENT AND HOME INVESTMENT PARTNERSHIP

PROGRAM FUNDS

Summary: The City has received approval from HUD for the 21st Year CDBG Program in the amount of \$1,694,000. Program income is estimated to be \$130,000. HOME Investment Partnerships Program funds are \$1,172,000 and \$36,000 of matching funds. The allocation of these funds were approved by City Council on May 9, 1995, by Resolution No. 96-67.

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ORDINANCE BOOK NO. 15 - PAGE 142

B. ORDINANCE NO. 2228 - AN ORDINANCE AMENDING CHAPTER 6 OF THE CODE OF ORDINANCES OF THE CITY OF ASHEVILLE ENTITLED "FIRE PREVENTION AND PROTECTION"

Summary: Years ago the City of Asheville adopted a "fire code" to prevent destruction, injurious and fatal fires. Asheville's Fire Code was last overhauled in 1965 when City Council adopted the 12-volume National Fire Code by reference for use in Asheville.

The State of North Carolina has since adopted a statewide fire code. The State's Code is based on a model fire prevention code developed by the Southern Building Code Conference International (SBCCI). The SBCCI model code incorporates a number of National Fire Code standards, the National Fire Code itself is not adopted.

In order to provide for a more "user-friendly" fire code, and in order to make certain that Asheville's Fire Code and the State Fire Code are complementary, the Building and Life Safety Division staff of the Asheville Fire Department recommend adoption of the new Asheville Fire Code that would (1) incorporate the State Fire Code; (2) delete adoption by reference of the National Fire Code; and (3) reconcile provisions of Chapter 6 of the Asheville's Code of Ordinances ("Fire Prevention and Protection"). The revision of Chapter 6 proposed in this ordinance maintains fundamental fire and life safety requirements while reducing the volume of the present Codes and eliminating some of the complexity of the present Codes.

ORDINANCE BOOK NO. 15 - PAGE 149

Councilwoman Field moved to adopt the Ordinance Consent Agenda. This motion was seconded by Councilwoman Sitnick.

On a roll call vote of 7-0, the Ordinance Consent Agenda was passed on its first and final vote.

VI. OTHER BUSINESS:

A. ORDINANCE NO. 2229 - ORDINANCE AMENDING HORSE-DRAWN CARRIAGE REGULATIONS

Article IV of Chapter 18 of the Asheville Code sets forth regulations for the operation of horse drawn carriages. Section 18-155 sets forth the areas of operation for horse-drawn carriages carrying passengers for hire. A request has been made by a business which desires to provide this service within the Montford Historic District. The Montford Historic District is not now included in the listing of areas of operation set forth in Section 18-155. In addition to that change, the Police Chief is being authorized to review routes for the carriages. The amendment also reinstates the Carriage Permit Advisory Board.

Ms. Virginia Schmidt, Chairman of the Carriage Permit Advisory Board before it was abolished due to no permits being requested, stated that she felt the Board

should have been kept in operation just in case someone in the City applied for a permit. She questioned if a Carriage Inspector has been assigned by the City Manager at this time. She said that the Board only met socially because nothing was going on in the City regarding horse drawn carriages.

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Ms. Fairfax Arnold, resident in Montford, said that she will be the one requesting a permit for operation in Montford because she feels this would be a great benefit for the area. She has been in the horse business since the early 1970's.

Upon inquiry of Ms. Debbie Wildey about the City's liability, Mayor Martin responded that this is not a City project it's strictly a private enterprise.

Ms. Elizabeth Simpson, resident in Montford, spoke highly of Ms. Arnold and her ability to care for the horses.

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

Vice-Mayor Peterson moved for the adoption of Ordinance No. 2229. This motion was seconded by Councilwoman Field.

On a roll call vote of 7-0, Ordinance No. 2229 passed on its first and final reading.

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#### B. CLAIMS

City Manager Westbrook said that the following claims were received by the City of Asheville during the week of June 29-July 12, 1995: Shirley McClain (Parks), Rhonda Evans (Fire), Kathryn Gragg (Parks), Harriett C. Fleming (Public Works) and Joseph Norton (Police).

He said that these claims would be referred to the Asheville Claims Corporation for investigation.

#### C. CLOSED SESSION

At 8:06 p.m., Councilman McClure moved to go into closed session to discuss the potential purchase of real estate. This motion was seconded by Vice-Mayor Peterson and carried unanimously.

At 8:22 p.m., Councilman McClure moved to come out of closed session. This motion was seconded by Vice-Mayor Peterson and carried unanimously.

#### VII. ADJOURNMENT:

Mayor Martin adjourned the meeting at 8:22 p.m.

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CITY CLERK MAYOR

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