

Tuesday - September 12, 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

Mayor Martin gave the invocation.

ASSISTANT CITY MANAGER S. DOUGLAS SPELL

City Manager Westbrook introduced the new Assistant City Manager S. Douglas Spell.

I. PROCLAMATIONS:

A. PROCLAMATION PROCLAIMING SEPTEMBER 17-23, 1995, AS "MINORITY ENTERPRISE DEVELOPMENT WEEK"

Mayor Martin proclaimed the week of September 17-23, 1995 as "Minority Enterprise Development Week" in the City of Asheville. He presented the proclamation to Ms. Sharon Arrington, President of the Black Business and Professional League, who briefed the Council on activities planned for the week.

B. RECOGNITION OF WATER USE EFFICIENCY AWARD

Mayor Martin presented Ms. Robin Westbrook, Water Efficiency Coordinator, with the Water Use Efficiency Award from the Environmental Protection Agency.

II. PUBLIC HEARINGS:

A. PUBLIC HEARING RELATIVE TO REZONING 104 LOTS IN THE AREA WHICH INCLUDES, BUT IS NOT LIMITED TO, VIRGINIA AVENUE, HUBBARD AVENUE, BROTHERTON AVENUE, DURHAM STREET, SPRING STREET, HUDSON STREET AND STEWART STREET FROM R-3 MEDIUM DENSITY RESIDENTIAL DISTRICT TO R-1A (SINGLE-FAMILY) MODERATE DENSITY RESIDENTIAL DISTRICT

ORDINANCE NO. 2234 - ORDINANCE TO REZONE 103 LOTS IN THE AREA WHICH INCLUDES, BUT IS NOT LIMITED TO, VIRGINIA AVENUE, HUBBARD AVENUE, BROTHERTON AVENUE, DURHAM STREET, SPRING STREET, HUDSON STREET AND STEWART STREET FROM R-3 MEDIUM DENSITY RESIDENTIAL DISTRICT TO R-1A (SINGLE-FAMILY) MODERATE DENSITY RESIDENTIAL DISTRICT

Mayor Martin opened the public hearing at 5:13 p.m.

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

Mr. Carl Ownbey, Urban Planner, said that this rezoning request was initiated by the property owners and endorsed by the Planning & Zoning Commission ("Commission"). The request is to rezone 104 lots in -2-

the area which includes, but is not limited to, Virginia Avenue, Hubbard Avenue, Brotherton Avenue, Durham Street, Spring Street, Hudson Street and Stewart Street from R-3 Medium Density Residential to R-1A (Single-Family) Moderate Density Residential.

The subject area encompasses approximately 46 acres. The majority of the area is single family homes with about 26 vacant lots and one lot with a small apartment complex. The subject area and the surrounding properties are zoned R-3 Medium Density Residential.

The Planning staff reviewed the rezoning petition, verified its validity and recommended approval to rezone all 104 lots from R-3 to R-1A. At the August 2, 1995, Commission meeting, the Commission voted unanimously to rezone 103 lots from R-3 to R-1A and leave lot 9638-18-30-1842 zoned R-3 since it contains the small apartment complex.

Mayor Martin closed the public hearing at 5:17 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. 2234 to rezone 103 lots to R-1A (Single-Family) Moderate Density Residential and leave lot 9638-18-30-1842 zoned R-3 Medium Density Residential. This motion was seconded by Councilwoman Sitnick.

On a roll call vote of 7-0, Ordinance No. 2234 passed on its first and final reading.

ORDINANCE BOOK NO. 15 - PAGE 206

B. PUBLIC HEARING RELATIVE TO REZONING 46 BAIRD STREET FROM R-3 MEDIUM DENSITY RESIDENTIAL DISTRICT TO R-4 HIGH DENSITY RESIDENTIAL DISTRICT

Mayor Martin said that on September 11, 1995, a letter was received by Mr. Porter Staples stating that he was withdrawing his petition to rezone 46 Baird Street.

C. 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. The public hearing was then continued until this date in order to give the City Attorney sufficient time to investigate the petitioner's allegations that the original down zoning of their property in 1984 was illegal and improper.

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.

City Attorney Slawter said that "at the July 25 meeting, Mr. Sneed asked, on behalf of Mr. and Mrs. Dozier, two questions. One, whether -3-

the rezoning in 1984 from CBD to R-4 was legally or illegally instituted. Secondly, whether tax lot 91 had ever legally or illegally zoned anything other

than CBD. There was a third question from the audience with regard to whether the Dozier property was ever properly zoned CBD to begin with. Someone said they had checked and they had not been able to find any records when the property was rezoned to CBD to begin with. In your package I have included a history of the zoning in the area that sets forth the rezoning of these properties from the time that we've had zoning within the City and that history answers the second of the Dozier's question, as well as the question from the audience. Tax lot 91 is the northernmost of the Dozier lots and it has always been zoned residential. Our search did not indicate that it had ever been zoned anything other than residential. It also answers the question from the audience with regard to whether that part of the Dozier property that was once zoned CBD was properly zoned CBD. And it was - when we first got zoning in the City that area was originally zoned an earlier form of residential that we no longer have. And then it was later zoned Commercial Regional, which we no longer have. In 1977, I believe, there was an amendment to the zoning ordinance that changed everything that used to be Commercial Regional to Central Business District. And that's when the Dozier property became CBD, it was properly zoned CBD. The remaining question of whether the rezoning in 1984 that changed the Dozier property from CBD back to residential was properly instituted required our looking at everything we could find through the records to see how that process was instituted and in that search we found that there was a petition as Mr. Sneed pointed out in July and in fact it was not signed by 51% of the people who owned property within the larger area that was rezoned. In addition the petition was signed by people who rented property in the area, as well as owned property in the area, which is not an appropriate method for triggering a rezoning under the 51% procedure. And it was also signed by people neither rented nor owned in the area that was being rezoned. So it didn't meet the threshold of the 51% for a rezoning under the provision that allows 51% or more of the people in an area to institute a rezoning. Our research, however, also indicated that the initial stages of that rezoning process were included involvement by City staff and various members of the neighborhood which led to the appointment of a City Council committee at a City Council annual retreat early in the year that the rezoning took place. That City Council committee made a recommendation to the entire Council that the Council pass a motion asking P&Z to look at rezoning of the area and the Council did adopt such a motion asking P&Z to look at the rezoning of the area. The P&Z minutes then reflect that there was a petition being circulated in the neighborhood in support of the rezoning, but it was our conclusion, from the records as we found them, that the rezoning process was really instituted by the Council and was a proper process that caused the rezoning from CBD to R-4 in 1984."

Councilwoman Sitnick asked if the change from five lots to two lots change the process. Mr. Matteson said that the change does not affect the rezoning request.

Mr. Albert Sneed, attorney for the petitioner, said that "thanks to the excellent history that Mr. Slawter prepared, I've talked to Ms. Dozier and we are prepared to withdraw the request to rezone lot 91 because his history shows it's never been zoned commercial. So we would to that at this point. So, it's actually now just one lot, which is the four lots that are combined into one."

Mr. Sneed then said that "Mr. Slawter's report was very helpful and I thought was fair. I do have this question. It appears that the -4-

City Manager and the then City Council in February of 1984 passed a motion directing P&Z to look at this. And then on the 14th of March, 1984, P&Z voted to deny the request. Reading from Ms. Hutchison's history on 2-7-84, 'the minutes go on to say, Councilwoman Price moved that the Planning & Zoning Commission consider the Montford Community Club's recommendation for rezoning in the Montford area during their March meeting.' And I take it that that

motion was seconded by Mr. Boland and carried. So, at that point the question we had about whether or not City Council initiated anything was answered. And then if I understand on the 14th of March, 1984, P&Z voted to decline the request. And then a period of more than 30 days passed without an appeal to City Council. And then it was brought up by another motion by Councilman Price on May 15, 1984, which in her words, and the motion as set out in the minutes, was 'pursuant to the petition'. So it would seem to me, and I wanted to know what Mr. Slawter's approach was, that since the Planning and Zoning Commission action initially started by City Council was not appealed within 30 days, and the matter was restarted by her pursuant to a petition that was invalid, would that in any way change his opinion."

City Attorney Slawter said that "the 30 day provision is something that was thought about and discussed in connection with preparation of this history, because when the Planning and Zoning Commission makes a negative recommendation to the Council, the normal process is for the matter to be appealed to the Council by the petitioner. When the process is initiated by the Council itself, I'm not quite sure how the Council would appeal to itself on a decision. To whom would it present the petition for appeal? I'm not certain. I was satisfied that the process, after the P&Z denial, was sufficient with Council looking at it and having the public hearing on it. In fact, there were two City Council public hearings. The first City Council public hearing considered recommendations from the Montford Community Club and also had advertised to the public that further comments would be taken from the general public. The discussion centered around, apparently, whether to in fact put the matter on the Council agenda for consideration for voting on the rezoning. Following the first public hearing on the matter, Council did decide to put the matter on the Council agenda for another public hearing to consider formally the rezoning and then the second public hearing was held. Truthfully the ordinance probably was not worded as well as it should have been to have the type of process that was followed in that situation with the City Council appeal, or a City Council initiation of the process, but I was satisfied that the process that was followed was sufficient to be a valid rezoning."

Ms. Mary Jo Brezny felt that any type of commercial zoning in the Montford Historic District will be a loss, not only to the residential community but to the entire City.

Vice-Mayor Peterson asked Ms. Brezny what the difference was between bed and breakfast inns that are already in the Montford Historic District and commercial establishments. Ms. Brezny felt that commercial establishments bring people into the neighborhood to purchase things and leave. Bed and breakfast inns bring people into the neighborhood who stay there at least overnight. There are people living in the bed and breakfast inns all the time, whereas in commercial establishments, they are usually vacant at night. She truly felt that in 10-15 years the commercial zoning will creep down Montford Avenue and they will no longer have a residential neighborhood.

Mayor Martin pointed out that it's up to City Councils and neighborhoods in the future as to whether or not the commercial zoning will creep down Montford Avenue. -5-

Mr. Sneed said that "my client has asked me to ask the City Council whether or not City Council supports the opinion that Mr. Slawter has given."

After asking Council members, Mayor Martin responded "yes".

Mr. Sneed then said "my client will save you some time and withdrawn her rezoning petition."

Ms. Dozier, walking out of the meeting, said that "...we asked for the property to be rezoned ... 1989 redevelopment plan which was never adopted by City Council ... take our land by condemnation if necessary to make the plan into effect. So at that time we asked for a zoning so we could get this in front of City Council to keep our property from being down-zoned any further and be taken away from us. And on that request I feel we were down-zoned ... by the petition in 1984 and ..."

By use of the Head of Montford Redevelopment Plan and upon inquiry of Mr. H. K. Edgerton, Ms. Julia Cogburn, Planning & Development Director, outlined the boundaries of the Head of Montford.

Mayor Martin closed the public hearing at 5:42 p.m.

Councilwoman Sitnick requested that we amend the zoning ordinance under R-4 to eliminate manufactured home parks and under NC Neighborhood Commercial to eliminate department stores and branch banks. She said part of the problems that Council has faced regarding rezoning issues don't necessarily have to do with rezoning, but have to do with uses. The Board of Adjustment cannot grant variances for uses and she feels that the elimination of these uses from these two designations will in the future allow us to have less contention in the community regarding rezoning issues involving R-4 and NC designations. She realized that when the UDO is adopted there will be some changes made, but she would still like Council to consider this the UDO deliberations.

Vice-Mayor Peterson spoke in favor of Councilwoman Sitnick's request.

Upon inquiry of Vice-Mayor Peterson, Ms. Cogburn said that all of the districts and all of the uses within each of those districts are being included in the discussion on the UDO. The proposal that is now on the table would change all of the districts in some respect. This particular provision with regard to NC and R-4 is not being looked at right now. Staff could go ahead and do a wording amendment as the UDO process moves along. Because this is an amendment to the zoning ordinance, the request will have to go to the Planning & Zoning Commission and then back to City Council.

Councilwoman Field said that as long as variety stores are left in NC she could support that amendment. However, since manufactured home parks are only allowed in R-4 and R-5 zoning districts, she wondered how many nonconforming situations we would be creating.

Ms. Cogburn felt that we wouldn't have any problem with NC situation because there aren't very many areas in the City that are zoned NC. She would, however, have to do some research in terms of the manufactured housing.

It was the consensus of Council to have this matter brought up at an upcoming worksession.

-6-

III. UNFINISHED BUSINESS:

A. ORDINANCE TO REZONE A ONE FOOT STRIP ON THE EAST SIDE OF 620 REED STREET AND A PORTION OF A LOT LOCATED AT 526B HENDERSONVILLE ROAD FROM R-3 RESIDENTIAL DISTRICT TO CH COMMERCIAL HIGHWAY

Mayor Martin said that this public hearing was held on August 8, 1995, and the matter was tabled until this date in order to give the City Council an opportunity to visit the site.

Mr. Paul Benson, Urban Planner, said that M. Realty and Phillip Poulos has petitioned to have rezoned a one foot strip on the east side of 620 Reed Street (M. Realty), and a portion of 526B Hendersonville Road (Phillip Poulos) be rezoned from R-3 Medium Density Residential to CH Commercial Highway. The one foot strip at 620 Reed Street was denied by City Council on October of 1993.

On July 5, 1995, the Planning & Zoning Commission ("Commission") held a public hearing on the rezoning request. Two neighboring property owners spoke in opposition to the proposed rezoning.

After the public hearing, the Commission recommended denial of the requested rezoning. Planning staff recommended that the Poulos property be rezoned with the exception of a one foot strip along Reed Street and that the one foot strip on the M. Realty property remain zoned R-3.

On July 12, 1995, the petitioners submitted a written appeal letter to the City Clerk appealing the Commission's decision to the City Council.

Mr. David Matney, attorney representing M. Realty and Mr. Poulos, passed out three pictures, two of which showed that the Hendersonville Road Widening Project reduced the parking spaces in front of the business at 530 Hendersonville Road from 25 to 12 spaces. The lot behind the building, and the only possible use for this area, is for staff parking and they need the access onto Reed Street. He said that the M. Realty lot has no effective use as a separate commercial site since the public would not be able to find it. He said that they are requesting this one foot strip along Reed Street be rezoned to CH because since 1993, two other rezonings have come before Council and their properties were zoned right up to Reed Street, without the one foot strip.

Ms. Lucille Frady, resident at corner of Reed and Center Streets, spoke in opposition of this rezoning request.

Ms. Jones, owner of property on Reed Street which adjoins the back of 530 Hendersonville Road, was concerned that there would be more businesses in the area if the lot was rezoned CH. As far as a parking lot was concerned, she had no objections. She stated that she now shares the driveway in the back of the property, and was concerned that if the lot was zoned CH, would her driveway privileges be taken away.

Mr. Matney said that the rezoning would not affect her right to use the driveway at all. He said that the gravel driveway might be paved which would be for her advantage.

After visiting the site, Councilman Watts felt Reed Street would not be able to handle the additional traffic. -7-

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 Watts and carried unanimously.

IV. NEW BUSINESS:

A. AN ORDINANCE AMENDING THE CHARTER AND RELATED LAWS OF THE CITY OF ASHEVILLE TO PROVIDE FOR FOUR-YEAR STAGGERED TERMS FOR CITY COUNCIL AND SCHEDULING A SPECIAL REFERENDUM

Mayor Martin said that this public hearing was held on August 22, 1995.

City Attorney Slawter said that this ordinance provides for the amendment of the City Charter so as to provide for four-year staggered terms for the six members of the Council and retaining a two-year term for the Mayor. As instructed by the Council, the ordinance has been drafted so as to provide for the ordinance to be subject to a referendum, rather than becoming effective upon adoption. In order to call upon the Board of Elections to schedule the referendum, the adoption of a resolution will also be necessary.

Mr. Slawter reported that during the public hearing on August 22, 1995, related to four-year staggered terms, questions were raised regarding the procedure that would be followed when a Council member who is mid-way through a four-year term decides to run for Mayor. We were instructed to determine what other cities do in that situation.

Since the August 22, 1995 public hearing, we have determined that the general election laws of North Carolina would require a Council member in that situation to resign from his or her Council seat in order to seek the position of Mayor (N. C. Gen. Stat. sec. 163-125). Section 7 of the City Charter provides that "any vacancy in the office of mayor or council shall be filled by the council for the remainder of the unexpired term from the qualified electors of the City of Asheville." That Charter provision is different from the general state law for the filling of vacancies on municipal governing boards. N. C. Gen. Stat. sec. 160A-63 also provides for vacancies to be filled by appointment of the remainder of the Council, but not necessarily for the remainder of the term. Under that general statute, the person appointed by the Council to fill such a vacancy serves the remainder of the term if the next regular City election will be within ninety (90) days after the vacancy occurs. If the next regularly scheduled City election is more than ninety (90) days after the vacancy occurs, the person appointed to fill the vacancy serves only until the vacancy can be filled in that ensuing election. In the case of a Council member resigning his or her position from the Council in order to run for Mayor, the filing requirements would ensure that the vacancy would occur more than ninety (90) days before the next City election, and thus the person appointed by the Council to fill the vacancy would only serve until the seat could be filled at the election. Since Charter provisions establishing specific standards generally control over the general statutes, Section 7 of the City Charter would appear to control, so that the filling of any vacancy in Asheville under the current law would be for the full remainder of the term.

In order for Asheville to come under the general rules established by N. C. Gen. Stat. sec. 160A-163, the Council would need to request -8-

that the state legislature adopt legislation repealing Section 7 of the City Charter. If the Council should decide that it would like to proceed under some different procedure, special legislation would also need to be requested

Vice-Mayor Peterson said that he was totally against four year terms. He felt the seats should be for temporary inhabitants and not permanently. Too many promises have been made that have not been kept. They say anything and do anything to get elected. He felt people should be elected every two years in order to keep them accountable. He felt the four year term is a weakness in the County Commissioners.

Mayor Martin disagreed with Vice-Mayor Peterson and felt that the this matter should be on the November ballot and let the people decide.

Councilwoman Sitnick said that she "started out thinking that four year terms would be great. Primarily to save the taxpayers money with general elections

every two years and also because by the time you get used to all of the intricacies and details of being a good Council person your term is up and your projects are not finished - you've initiated things that have not been completed and there is something about 'election time' that changes our behavior, changes the way we say things, changes our schedules and where we chose to go during election times. It creates a bit of hypocrisy. On the other hand I have a real problem with the intricacies of what Mr. Slawter just detailed to us having to do with someone on Council who decides to run for Mayor vacates that seat and the seat is filled by appointment of the members of Council. As I said in the minutes last week, of course this wonderful Council would pick the very best, most wonderful Council replacement we could. But, there might be other Councils who chose to pick their buddy to fill that seat. I also feel there would be a real unfairness to the members of Council who retained their seats who have to raise money and campaign and run for office and win. As opposed to somebody who gets appointed because there happens to be a seat vacated. So, I would have a real problem with the lack of democracy in that person being added to Council by appointment rather than election. And so, I have, as some people in elected office do, changed my mind and I think that the two year term, while it might be a little more difficult on the candidates, I think would benefit the public to make us more accountable, to hold us up to a higher standard of living up to the things we say during a campaign and the solutions we pose during a campaign. So I'm going to support two year terms until I'm convinced at another point that four year might be better. If they can do it in the Congress, we can do it here."

Councilman Watts said that when the process began, he strongly supported four years because it was too expensive to run every two years. However, since that time he has had a chance to consider all the pros and cons and he now personally feels that four consecutive years is too long to serve. At this time he supports two year terms.

Councilman Swicegood said that after the last election there was an attempted recall and a lot of money was spent because people weren't happy with what decisions were made by City Council. At that time, he felt the public should have the opportunity to vote for two or four year terms. However, he now felt that a four year term might take a lot of good business people out who don't want to make a four year commitment. At this time, he could only support a two year term.

Upon inquiry of Councilwoman Sitnick, Mr. Slawter said that Council can either make the four-year change itself, or make the change -9-

subject to a vote of the people. The way the ordinance is prepared before the Council is subject to a vote of the people.

Councilman McClure said that he too started out thinking that it was a good idea to go with four year terms. However, after talking with our local delegation and some of our congressional people they felt they were more accountable if they had to run every two years. Also, how to replace a Councilmember is a big issue and to explain the process to the public will be very difficult. He felt at this time he would not support four year staggered terms.

Councilwoman Sitnick also said she was glad Councilman Swicegood brought up "the available of office to business people. And I assumed you also meant working people. I've talked about this before and I think at some point this Council should continue the work that was started by a community committee that was set up four years ago to look into the issue of salaries paid to members of Council. When you pay a member of Council \$6,000 a year, before taxes, what you're doing is you're saying to the people who consider running to be public

servants that only the rich need apply. Or only those who don't have to work need apply. Or only those who have others working in their businesses need apply. I think what you do is hold at arm's length many qualified citizens who would like to serve but can't afford to under these circumstances. While I would strongly oppose any kind of salary that created professional politicians I would certainly support creating a salary that shadowed the per capital income of the average Asheville citizen, which is approximately \$15,000. That is not going to create a professional politician, but what it might do is allow the teacher, or the student, or the butcher, the baker and the candlestick maker the opportunity of serving the City as an elected person and being able to amend their salaries and their income so that they can do this an appropriate amount of time - work half time in their job and still make enough money to support their families. What you create when you pay the heads of your public corporation such a low salary is an elites government and I think that serves the public properly. So, I don't know whether this Council would be willing to consider it, the Council prior to the last one was paid \$2,100 a year. Barbara, Councilman Watts and myself attended a National League of Cities Leadership Summit last week at the Grove Park Inn and had an opportunity to speak to Council people across this country. None of them are getting rich by being on Council, but many of them are able to afford to serve because their salaries are appropriate. So I would ask this Council to consider that and to consider possibly raising the salaries of Council so that everybody can serve, not just the wealthy."

Mayor Martin pointed out that there are 23 citizens who are vying for six seats on Council - some are working people, some are college educated, some are professionals and some are retired. So in spite of the \$6,000 salary, the number shows that the salary doesn't preclude anyone from applying for the job.

Ms. Betty Lawrence also felt that a two year term would hold the Council accountable. She thanked Council for the work they have accomplished in the last two years. She agreed that Council's salary should be increased because there are a a lot of good people who can't run because of the time and money commitment.

Councilwoman Field felt that the accountability issue is critical and supported two year terms.

Ms. Mary Jo Brezny spoke in favor of increasing Council's salary and remaining with two year terms. -10-

Mr. Roy Harris felt that two year terms makes Council members more accountable.

Ms. Hazel Fobes spoke in favor of two year terms and raising Council's salary.

Vice-Mayor Peterson moved to deny the ordinance amending the Charter and Related Laws of the City of Asheville to provide for four-year staggered terms for City Council and scheduling a special referendum. This motion was seconded by Councilman Swicegood and carried on a 6-1 vote, with Mayor Martin voting "no".

B. RESOLUTION CALLING FOR A REFERENDUM TO PROVIDE FOR FOUR-YEAR STAGGERED TERMS FOR CITY COUNCIL

Mayor Martin said that this resolution is not necessary as a result of the discussion on the prior matter.

C. RESOLUTION NO. 95-133 - RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE LEASE AMENDMENT NUMBER TWO TO THE LEASE WITH THE ASHEVILLE REGIONAL AIRPORT AUTHORITY

City Attorney Slawter said that at the September 5, 1995, City Council meeting, the Airport Authority requested that the City Council authorize the addition of three parcels of City property to the Airport Lease. The City Council directed staff prepare a resolution authorizing the addition of two of those parcels. This resolution will authorize an amendment to the Airport Authority lease so as to add to the lease those two parcels.

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

Councilman McClure moved for the adoption of Resolution No. 95-133. This motion was seconded by Councilman Swicegood and carried unanimously.

RESOLUTION BOOK NO. 22 - PAGE 362

D. RESOLUTION NO. 95-134 - RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE AN AGREEMENT WITH RUSSELL WOOD, BEVERLY-HANKS & ASSOCIATES, AS THE REAL ESTATE FIRM TO MARKET AND SELL SELECTED CITY-OWNED PROPERTIES

Ms. Patty Joyce, Senior Planner, said that at the direction of the City Council, staff evaluated the four firms that submitted proposals for the sale of City owned properties and selected "tax foreclosure lots". Staff presented the results of the evaluation to City Council, which revealed that Beverly-Hanks and Associates received the highest evaluation.

The forthcoming contract will be approved by the City Attorney's Office before execution. Appraisal reports requested for the City's three larger parcels will be reported to City Council for discussion prior to being listed.

Councilwoman Field thought Council was to have received additional information about how staff went about evaluating the different firms. Ms. Joyce responded that the only other information she has are the staff notes from each interview.

-11-

Councilman Swicegood spoke in support of Beverly-Hanks & Associates.

Councilman McClure asked that priority be given to any of the proceeds from the sale of these properties be used to develop parks in the City of Asheville. We need soccer fields, baseball fields and he would like for these funds to be dedicated, priority-wise, for the development of parks in the City. He understands that there are streets and sidewalks that need repair, but we also need parks. He's not asking that all the funds be committed to parks, but that a priority be placed on parks. He asked this item be placed on an upcoming worksession agenda. Councilwoman Sitnick suggested that the possibility of a City-wide park bond be included in the discussion.

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

Councilman Swicegood moved for the adoption of Resolution No. 95-134. This motion was seconded by Councilman Watts and carried unanimously.

RESOLUTION BOOK NO. 22 - PAGE 366

E. RESOLUTION NO. 95-135 - RESOLUTION OF INTENT TO ENTER INTO AN AGREEMENT WITH BILTMORE VILLAGE MERCHANTS ASSOCIATION FOR PHASE I OF THE BILTMORE VILLAGE STREET LIGHTS

Ms. Julia Cogburn, Director of Planning & Development, said that City Council agreed at their September 5th worksession to share in the costs of the historic Biltmore Village street lights in lieu of CP & L's monthly facilities use charge. The City's share per fixture will be \$1400 and the Biltmore Village Merchants Association's will be \$2400 per fixture. Approximately 50 lights will be installed in the first phase with upwards of 150 lights when phase two and three of the public improvements are completed.

Councilman Swicegood and Mayor Martin spoke about how much they appreciated the Biltmore Village Merchants Association working with the City on this project.

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. 95-135. This motion was seconded by Councilwoman Sitnick and carried unanimously.

RESOLUTION BOOK NO. 22 - PAGE 367

V. CONSENT:

At the request of Councilman McClure, the resolution authorizing an administrative settlement for acquisition of a vacant lot on Morrow Street in the Head of the Montford Redevelopment Project was pulled from the consent agenda to be discussed individually.

Resolutions & Motions:

A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON AUGUST 22, 1995, AND THE WORKSESSION HELD ON SEPTEMBER 5, 1995

-12-

B. RESOLUTION NO. 95-136 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A CONTRACT WITH THE OTEEN VA MEDICAL CENTER FOR FIRE PROTECTION SERVICES

Summary: Oteen VA Medical Center has requested renegotiation of a new fire protection agreement with the City of Asheville earlier this summer.

Oteen VA staff presented City staff representatives with information on U.S. Department of Veterans Affairs ("DVA") standards on fire protection and fire response for DVA facilities. Based on these standards, on a review of fire experience at the Oteen VA Medical Center, and on Oteen VA Medical Center's internal/on-site fire protection capabilities, a fire protection agreement has been developed that provides for a reduced Asheville Fire Department response consistent with DVA fire protection standards (one engine, one aerial ladder and one District Chief.) The proposed agreement also continues Asheville Fire Department support of fire protection and fire safety education programs at Oteen VA Medical Center.

Annual payment under this revised-service-level agreement would be \$30,000. This payment amount would be consistent with the level of services provided.

If a fire were to occur at the VA Medical Center that required additional firefighting resources, the Asheville Fire Department would respond with those resources.

RESOLUTION BOOK NO. 22 - PAGE 368

C. RESOLUTION AUTHORIZING AN ADMINISTRATIVE SETTLEMENT FOR ACQUISITION OF A

VACANT LOT ON MORROW STREET (PARCEL 3/9/156) IN THE HEAD OF MONTFORD REDEVELOPMENT PROJECT

Pulled from Consent Agenda for discussion.

D. MOTION SETTING A PUBLIC HEARING FOR SEPTEMBER 26, 1995, TO AMEND THE ZONING REGULATIONS REGARDING FEES AND CHARGES

E. MOTION SETTING A PUBLIC HEARING FOR SEPTEMBER 26, 1995, TO REZONE 29 JOHNSON DRIVE FROM R-3 MEDIUM DENSITY RESIDENTIAL TO CH COMMERCIAL HIGHWAY

F. MOTION SETTING A PUBLIC HEARING ON SEPTEMBER 26, 1995, RELATIVE TO FILING OF AN APPLICATION WITH THE FEDERAL TRANSIT ADMINISTRATION FOR THE CITY OF ASHEVILLE'S ANNUAL TRANSIT OPERATING ASSISTANCE GRANT

G. MOTION SETTING A PUBLIC HEARING FOR SEPTEMBER 26, 1995, TO REZONE TWO LOTS AT 9 EAST STARNES COVE ROAD FROM CS COMMERCIAL SERVICE TO R-3 MEDIUM DENSITY RESIDENTIAL

Councilwoman Field moved for the adoption of the Resolutions & Motions Consent Agenda. This motion was seconded by Councilman McClure and carried unanimously.

Ordinances:

A. ORDINANCE NO. 2235 - ORDINANCE DESIGNATING VICTORIA ROAD, BETWEEN A POINT APPROXIMATELY 400 FEET BEFORE AND APPROXIMATELY 300 FEET AFTER THE ASHEVILLE HIGH SCHOOL DRIVEWAY, AS A SCHOOL ZONE -13-

Summary: The City's Traffic Engineer has performed the necessary traffic analyses associated with this location and seeks authorization from City Council to designate that portion of Victoria Road as a school zone.

ORDINANCE BOOK NO. 15 - PAGE 209

B. ORDINANCE NO. 2236 - ORDINANCE REDUCING SPEED LIMITS ON HOMEWOOD DRIVE, HAMILTON STREET AND BROOKLET STREET TO 15 MILES PER HOUR; ON WEST CHAPEL ROAD, WYOMING ROAD, AMBLER ROAD, ARCO ROAD, BENT OAK LANE, DEER HAVEN LANE, BRAESIDE CIRCLE, CROCUS LANE, CONIFER COURT, RED FOX CIRCLE AND AVON ROAD TO 20 MILES PER HOUR; ON PEARSON BRIDGE ROAD AND STRATFORD ROAD TO 25 MILES PER HOUR; AND ON ALEXANDER DRIVE, WESTRIDGE DRIVE, SPRINGSIDE ROAD AND OAKLEY ROAD TO 30 MILES PER HOUR

Summary: The City's Traffic Engineer has performed the necessary traffic analyses associated with these locations and seeks authorization from City Council to change the speed limits.

ORDINANCE BOOK NO. 15 - PAGE 210

C. ORDINANCE NO. 2237 - ORDINANCE PROHIBITING TRUCK TRAFFIC ON THE ENTIRE LENGTH OF MONTFORD AVENUE, DUNWELL AVENUE, STONER ROAD, EAST STREET, GLENDALE AVENUE AND RIDGELAWN AVENUE

Summary: The City's Traffic Engineer has performed the necessary traffic analyses associated with these locations and seeks authorization from City Council to prohibit truck traffic.

ORDINANCE BOOK NO. 15 - PAGE 212

D. ORDINANCE NO. 2238 - ORDINANCE AMENDING CHAPTER 10 (NUISANCES - ABANDONED, NUISANCE OR JUNKED MOTOR VEHICLES) OF THE CODE OF ORDINANCES OF THE CITY OF

ASHEVILLE

Summary: The present nuisance/abandoned/junked auto ordinance requires a complaining citizen to agree to indemnify the City against any claim when the citizen files a complaint calling for removal of a nuisance/abandoned/ junked auto from private property. This is a major impediment to effective enforcement of the City's junked auto ordinance. Planning and Development staff recommend removal of this indemnification provision from the junked auto ordinance.

ORDINANCE BOOK NO. 15 - PAGE 213

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

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

ITEM PULLED FROM CONSENT AGENDA

A. RESOLUTION AUTHORIZING AN ADMINISTRATIVE SETTLEMENT FOR ACQUISITION OF A VACANT LOT ON MORROW STREET (PARCEL 3/9/156) IN THE HEAD OF MONTFORD REDEVELOPMENT PROJECT

Ms. Julia Cogburn, Director of Planning & Development, said that owners of parcel 3/9/135 (a vacant lot on Morrow Street) have agreed to -14-

sell that parcel to the City of Asheville. Said amount is \$1,600 which is \$125 more than the established "just compensation" amount.

Nineteen unutilized vacant lots are being acquired in the Head of Montford Redevelopment Project area to be resubdivided into ten standard residential building lots. The lots will be offered for sale under the \$1.00 Lot program for low and moderate income homeowners.

The offer for the subject parcel, in the amount of \$1,475, was made to P. Greer Johnson by the Housing Authority. Subsequently Mr. Johnson and his wife died. The P. Greer Johnson Heirs, who now own the property, have agreed to accept \$1,600, which is the amount of the tax value. Administrative settlements are permitted under HUD regulations whenever approved by the acquiring agency as being reasonable, prudent and in the public interest. Approval of this administrative settlement will expedite the acquisition process and avoid the cost of condemnation.

Councilman McClure thought it was recommended by the Head of Montford Steering Committee that they did not want the City to purchase any more property in the Head of Montford. Ms. Cogburn said that Councilman McClure is correct, however, there is an area in the Morrow Street area where a number of properties had already been purchased. This is one that has been attempted to be purchased for sometime. It makes an entire area complete. There may actually be one more parcel still to be purchased. This is completing basically an entire block of purchase which will be reconfigured and the Committee was in support of continuing forward with that effort. Ms. Cogburn said she didn't feel that this would be contrary to the request of the Committee concerning the purchase of additional property. Ms. Cogburn said that what the Committee was opposed to was initiating any new areas in terms of purchase and acquisition.

In order to give Ms. Cogburn an opportunity to research Councilman McClure's concern, Councilwoman Field moved to table this action until Thursday, September 14, 1995, at which time this formal meeting will be continued. This motion was seconded by Councilman McClure and carried unanimously.

VI. OTHER BUSINESS:

A. JONES SCHOOL PROPERTY

Councilwoman Sitnick said that she was going to send Mr. John Cort and all the members of the School Board a copy of what she submitted into the Council's record regarding Jones School, and also a copy of the portion of the minutes when she submitted those documents into the record.

B. SKATEBOARDERS

Vice-Mayor Peterson asked the City Manager into a concern expressed by a resident that the Police Department has been confiscating skateboards for 60 days.

Discussion surrounded getting input from the skateboarders and looking into the possibility of building a place for the kids to skateboard at Martin Luther King Jr. Park.

-15-

C. CLAIMS

The following claims were received during the week of August 17-23, 1995: Cindy Shook (Streets), Nancy Gregory (Finance), Dean Roberts (Water), and Liberty Bicycles (Fire).

The following claims were received during the week of August 24-30, 1995: Jerry Griffith (Streets), Stella Longshore (Water), Barbara James (Sanitation), Rachel Hutchison (Police), and Ronnie Lambert (Waters).

The following claims were received during the week of August 31 - September 6, 1995: Walter Buckner (Sanitation) and Jack Rosenstein (Police).

These claims have been referred to Asheville Claims Corporation for investigation.

CONTINUANCE

At 7:10 p.m., Councilwoman Field moved to continue the meeting until 11:00 a.m. on Thursday, September 14, 1995, in the Council Chamber of the City Hall Building. This motion was seconded by Vice-Mayor Peterson and carried unanimously.

Thursday - September 14, 1995 - 11:00 a.m.

Continuation of Regular Meeting of Tuesday, September 12, 1995

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

Absent: Councilman Joseph Carr Swicegood

RESOLUTION NO. 95-137 - RESOLUTION AUTHORIZING AN ADMINISTRATIVE SETTLEMENT FOR ACQUISITION OF A VACANT LOT ON MORROW STREET (PARCEL 3/9/156) IN THE HEAD OF MONTFORD REDEVELOPMENT PROJECT

Ms. Julia Cogburn, Planning & Development Director, said that at the April 6, 1995, meeting of the Head of Montford Steering Committee, the Committee did vote 12-1 to recommend that no additional acquisition by eminent domain be conducted in the Head of Montford area. The Committee further recommended that the remaining CD funds for the area be utilized for housing rehabilitation (with a focus on the western portion of the redevelopment area). One staff member recalls that the Committee did okay going ahead with acquisitions currently underway, however, notes from the meeting did not capture that fact. Those acquisitions would involve "friendly" condemnation. The purpose is to clear title on these properties. No forced acquisition would occur.

Staff has reached eight of the Committee members with the results as follows: four in favor of proceeding with the acquisition, three opposed (one in particular opposing the use of CD monies for acquisition), and one with no comment.

-16-

Upon inquiry of Mr. H.K. Edgerton, Mayor Martin said that the issue before the Council is only for the acquisition of property and not about zoning.

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

Councilwoman Sitnick moved for the adoption of Resolution No. 95-137. This motion was seconded by Councilwoman Field and carried unanimously.

RESOLUTION BOOK NO. 22 - PAGE 369

RESOLUTION NO. 95-138 - RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE A PRESERVATION AGREEMENT WITH THE GROVE ARCADE PUBLIC MARKET FOUNDATION INC.

Mayor Martin said that "recently the federal government opened its new building in Asheville, and the federal employees of the old Grove Arcade Building moved to the new office. For some time we have all known that was going to happen and, as a matter of fact, the City has been feverishly working with a number of people to acquire the Grove Arcade, and to make sure that it continues to maintain an active role in Asheville's history. I am pleased to announce to you today that the City and the Grove Arcade Public Market Foundation, Incorporated have agreed to restore the Grove Arcade so that it once again will be a functional part of downtown Asheville. The Grove Arcade building, designed by architect Charles Parker, was conceived by manufacturer and developer Edwin Wiley Grove, the "father of twentieth century Asheville," as an ambitious commercial mall with covered pedestrian thoroughfares in the heart of Asheville. This is one of the few uses of the arcade scheme in North Carolina. Begun in 1926, the massive structure featuring a skylight arcade, roof gardens and assembly rooms, was opened in 1929. It is a grand building occupying a full city block. The building was acquired by the federal government and has been used continuously by them since that time. We now have a chance to acquire that building for the continued use by the citizens of Asheville, and in the manner for which it was originally designed. I informally appointed a Grove Arcade Committee, made up of Council Members Rock McClure and Carr Swicegood, in addition to myself, and have been working with City staff and other individuals for a number of months to bring this project to fruition. I want to thank those Committee Members for their hard work.

"Let me briefly summarize the transaction. The City will acquire the Grove Arcade, and in turn transfer it to the Grove Arcade Public Market Foundation, Incorporated. The Foundation will secure a developer to renovate the building under the conditions specified in our contract with them. On behalf of the City

Council, let me say thanks to a group of people who have been working on this project with us all along prior to asking the City Attorney to brief Council on the contract.

"First of all I want to again thank the Grove Arcade Committee made up of myself, Council Members McClure and Swicegood. I want to, on -17-

behalf of the City Council, say a special thank you to Congressman Charles Taylor for his help and assistance with this project over the past year. The Council appreciates his guidance and understanding in this matter. I would also like to thank City Manager Jim Westbrook and City Attorney Bill Slawter for continuously working with the Committee throughout this project. Also, I would like to thank staff members Julia Cogburn and Maggie O'Connor for their help. On behalf of the Council I would also like to thank the Grove Arcade Public Market Foundation for their help in the reconstruction and future development of the Grove Arcade.

"Last of all and most importantly, the City Council and I would like to thank a great benefactor of the City of Asheville. We are fortunate to have someone like Julian Price, whose visionary leadership has helped us so many times."

City Attorney Slawter then highlighted the agreement as follows:

A. Requirements imposed upon the Foundation and any developer with whom the Foundation might contract to undertake the development project:

1. Complete rehabilitation of the entire Grove Arcade building within five years.
2. The conveyance to the Foundation by the City will be subject to a preservation agreement providing for the preservation of the building.
3. Establishment of a \$1 million trust fund to be held by the Preservation Society to ensure performance under the agreement. Pending performance, the income from the trust funds to be used for site improvement and historic preservation within the City as directed by the Preservation Society. Upon default, the entire trust fund would be so used.
4. Reversion clause providing for reversion of property to City if work is not commenced within twelve (12) months and substantial progress made within four (4) years.
5. Foundation to fund a part-time project coordinator to work at the direction of the City to coordinate the project.
6. Contribution by the Foundation of \$100,000.00 to the City as a contribution for public improvements.

B. In the event that the Foundation contracts with a developer to complete the project, the following additional obligations are imposed upon the developer:

1. Lease back to the Foundation the public market portion of the project for ninety-nine (99) years at a rate of \$1.00. In the event, however, that the developer is required to complete the rehabilitation of the public market portion of the project, additional rent will be required to be paid by -18- the Foundation sufficient to amortize the cost of the rehabilitation over a period of thirty (30) years with an interest rate at less than prime.
2. The developer shall make a \$250,000.00 matching grant to the Foundation.

3. The developer shall be required to pay to the City any profit realized from the sale of the building for a period of ten (10) years. In addition, any profit made by the developer for thirty (30) years from the operation of the project above a return of prime minus one percent must be donated to local non-profit organizations for the purposes of facade improvement, creating or maintaining public parks and green spaces, pedestrian improvements, services for children and/or urban or economic development within the City.

4. The developer must establish a \$1 million investment fund for the purpose of making risk and investment capital available to local businesses. Any return to the developer from that investment in excess of prime minus one percent shall be donated to local non-profit organizations for the same uses set forth in the preceding paragraph.

5. The developer shall guarantee the performance obligations of the Foundation and the City shall be a third party beneficiary to any agreement between the Foundation and a developer.

C. In addition to the commitment made by the City in Resolution No. 94-114, the following obligations are imposed upon the City:

1. To pay the cost of paving the public streets contiguous to the Arcade.
2. To pay up to \$200,000.00 for public improvements for pedestrian access, sidewalks, landscaping, street lighting and street furniture, subject to reimbursement of \$100,000.00 of said sum from the Foundation (net cost to City of \$100,000.00).

Each Councilmember spoke of how appreciative they were for all the efforts and interest taken in this project and each personally thanked all the parties involved.

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

Councilwoman Sitnick moved for the adoption of Resolution No. 95-138. This motion was seconded by Councilman Watts and carried unanimously.

RESOLUTION BOOK NO. 22 - PAGE 370

VII. ADJOURNMENT:

Mayor Martin adjourned the meeting at 11:33 a.m.

CITY CLERK MAYOR
