

Tuesday - April 9, 1996 - 5:00 p.m.

Regular Meeting

Present: Mayor Russell Martin, Presiding; Councilman M. Charles Cloninger; Councilman Thomas G. Sellers; Councilman James J. Skalski; and Councilman Charles R. Worley; Assistant City Attorney Patsy Meldrum; City Manager James L. Westbrook Jr.; and Deputy City Clerk Phyllis Corns

Absent: Vice-Mayor Barbara Field; Councilman Edward C. Hay Jr.; City Attorney William F. Slawter; and City Clerk Magdalen Burleson

INVOCATION

Councilman Sellers gave the invocation.

I. PROCLAMATIONS:

A. PROCLAMATION PROCLAIMING THE WEEK OF APRIL 7-13, 1996, AS "BUILDING SAFETY WEEK"

Mayor Martin proclaimed the week of April 7-13, 1996, as "Building Safety Week" in the City of Asheville. He presented the proclamation to Fire Chief John Rukavina and Director of Building Safety Terry Summey.

B. PROCLAMATION PROCLAIMING APRIL 13, 1996, AS "DR. MARTIN LUTHER KING JR. MEMORIAL DAY"

Mayor Martin proclaimed April 13, 1996, as "Dr. Martin Luther King Jr. Memorial Day" in the City of Asheville. He presented the proclamation to Ms. Oralane Simmons, who briefed the Council on some activities taking place that day specifically noting the unveiling ceremony of the bronze statue of Dr. King.

C. PROCLAMATION PROCLAIMING THE WEEK OF APRIL 14-21, 1996, AS "DAYS OF REMEMBRANCE FOR THE VICTIMS OF THE HOLOCAUST"

Mayor Martin proclaimed the week of April 14-21, 1996, as "Days of Remembrance for the Victims of the Holocaust" in the City of Asheville.

D. PROCLAMATION PROCLAIMING THE WEEK OF APRIL 21-27, 1996, AS "NATIONAL VOLUNTEER WEEK"

Mayor Martin proclaimed the week of April 21-27, 1996, as "National Volunteer Week" in the City of Asheville. He presented the proclamation to Ms. Linda Plemmons, with the Alzheimer's Association, who briefed the Council on some activities that would be taking place during the week.

E. PROCLAMATION PROCLAIMING THE WEEK OF APRIL 18-28, 1996, AS "HERITAGE CELEBRATION WEEK"

Mayor Martin proclaimed the week of April 18-28, 1996, as "Heritage Celebration Week" in the City of Asheville. He presented the proclamation to Ms. Susan Bakewell who briefed the Council on some activities that would be taking place during the week.

II. PUBLIC HEARINGS:

A. PUBLIC HEARING TO REZONE 865 HAYWOOD ROAD AND 2 DYSART STREET FROM R-3 MEDIUM DENSITY RESIDENTIAL TO CH COMMERCIAL HIGHWAY

Mayor Martin opened the public hearing at 5:24 p.m.

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

Assistant City Attorney Meldrum said that Mr. Joseph Herrin, attorney for the petitioner, has submitted a letter to the City Clerk dated April 3, 1996, which letter reads in part "It is my understanding that the aforementioned matter is set to be heard before City Council on April 9, 1996. After review of this matter, we have found that it is necessary to close two alleyways located on the property prior to this matter being heard before City Council. The tax maps for this property show only one alleyway. However, the original plat on file shows two separate alleyways. Therefore, we would respectfully request that this matter be rescheduled from April 9, 1996, meeting of City Council. We plan to be filing a Petition to close these alleyways within the next week."

Councilman Worley moved to continue the public hearing until June 11, 1996, without further advertisement. This motion was seconded by Councilman Cloninger and carried unanimously.

B. PUBLIC HEARING TO CONSIDER A PARKING MODIFICATION FOR BLUE RIDGE CENTER

Mayor Martin opened the public hearing at 5:26 p.m.

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

Mr. Mike Matteson, Urban Planner, said that Blue Ridge Center is proposing additions to their existing facility at 356 Biltmore Avenue. In addition to group development approval, the petitioners are requesting a variance from Section 30-3-11 of the zoning ordinance for a reduction in parking.

Three separate additions to the facility are proposed which total roughly 13,000 square feet. The property is split-zoned. The west half of the property is zoned CS Commercial Service and the east half is zoned OI Office Institutional. Access to the facility is provided from Biltmore Avenue. The site plan meets all of the development standards in the CS and OI zoning districts.

A variance of 17 parking spaces is requested to allow a total of 195 parking spaces (Section 30-3-11 of the zoning ordinance requires 212 spaces for this use).

Blue Ridge Center feels that the proposed parking is adequate to serve their needs and that it would be a financial hardship to provide the additional spaces. This information may be considered by the City Council in evaluating the variance from the zoning ordinance.

The Planning Department staff is recommending approval of the group development. At the Planning & Zoning Commission meeting held on April 3, 1996, the Commission unanimously approved the group development and the modification request.

Mayor Martin closed the public hearing at 5:27 p.m.

Councilman Skalski moved to approve the group development site plan and the parking modification for Blue Ridge Center from 212 parking

spaces to 195 parking spaces. This motion was seconded by Councilman Worley and carried unanimously.

III. UNFINISHED BUSINESS:

IV. NEW BUSINESS:

A. RESOLUTION NO. 96-54 - RESOLUTION REQUESTING THE NORTH CAROLINA DEPARTMENT OF TRANSPORTATION TO TEMPORARILY CLOSE THE PEDESTRIAN OVERPASS OVER I-240 AT STEWART STREET

Mr. James Cheeks, Traffic Engineer, reviewed the information presented to Council at their worksession on April 2, 1996, by saying that the City has received a petition from residents of Stewart Street and surrounding areas to close the pedestrian bridge across I-240 at Stewart Street.

The petition received by the City stated that "The bridge has been the source of problems in our neighborhood for many years. We are constantly plagued by noises of motorcycles, loud pedestrians and boom boxes. Since the former Rankin School has been demolished, we see no necessity for this bridge." After researching this request, the City finds:

- The Pedestrian Task Force of the Asheville Area Metropolitan Planning Organization ("AAMPO") is against closing or removing this pedestrian amenity.
- The Transportation Advisory Group of the AAMPO commented that the City should not close a pedestrian bridge, as Asheville is so lacking in other pedestrian amenities.
- The Bikeway Task Force of the AAMPO do not agree with closing any pedestrian facilities. However, they recommended that pedestrian facilities be located where needed.
- Pedestrian facilities maps completed in response to a request by the Pedestrian Awareness Community Evaluation Committee ("PACE") show that the Stewart Street Bridge is a part of the West Asheville pedestrian network.
- NC Dept. of Transportation ("NC DOT") is in the process of formulating a project to widen I-240. NC DOT's policy is to replace pedestrian amenities with any existing major construction project. There is a question as to whether closing an existing facility would jeopardize having it replaced in a more appropriate location should the City desire.
- The Transportation Advisory Committee of the AAMPO ("TAC") has not had an opportunity to address this issue and offer their recommendation due to their March monthly meeting being canceled.
- The pedestrian bridge across I-240 is under the jurisdiction of NC DOT. Historical data indicates that the pedestrian bridge was constructed after overwhelming support from the City of Asheville and residents of this area. This residential neighborhood was separated due to the construction of I-240.
- The Asheville Police Department would not be opposed to the removal or closure of this walk over bridge.

- The Public Works Department has installed a metal barrier with reflective

sheeting at both ends of the Stewart Street bridge to deter motor vehicle access.

- Richard Nantelle, President of the Coalition of Asheville Neighborhoods, states that his group and other neighborhood groups across the City are in support of the proposal to close the pedestrian bridge.

Staff recommends that the Transportation Coordinating Committee of the AAMPO make its recommendation to the TAC. They also request that the TAC host a public hearing to get all interested parties together to discuss the issue. Then, the TAC will be able to make a recommendation to City Council.

Mr. Richard Nantelle, representing the Haywood Road Historical District Committee, noted the following two additional reasons that the pedestrian bridge should be closed: (1) Even though the neighborhood on the west side of the bridge petitioned Council to close the bridge, the closing would also benefit the people on the east side of the bridge (Pisgah View Apartments); and (2) The pedestrian bridge is only a convenience for some and when conveniences are abused, they can be taken away.

Ms. Minnie Jones, President of the Resident Association for the Pisgah View Housing Authority, stated that she has only recently been notified of this matter and the Association has not had an opportunity to review this request.

When Councilman Skalski asked Mr. Nantelle his thoughts about Ms. Jones' concern, Mr. Nantelle said that the pedestrian bridge has been an on-going problem on the west side of the community. He felt that both neighborhoods should be given an opportunity to investigate the matter and then give Council their thoughts.

Mr. Dick Rice stated the closing of the pedestrian bridge does not deprive anyone on either side of the bridge access to either of the two neighborhoods.

Mayor Martin noted that TAC will host a public hearing to get all interested parties together to discuss the issue.

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

Councilman Sellers moved for the adoption of Resolution No. 96-54, with specific language in the letter to NC DOT state that the City's request for the temporary closing of the pedestrian bridge is not an indication that the City believes pedestrian links across I-240 are not needed. Indeed, the City believes there may be other pedestrian links needed in other, more appropriate locations. This motion was seconded by Councilman Worley and carried unanimously.

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B. REQUEST TO ACCEPT SHADY CIRCLE AS A CITY SYSTEM STREET

Mayor Martin said that a Council member has asked that this item will be postponed until the next formal meeting, which is April 23, 1996.

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C. CONSIDERATION OF THE CITY'S PARTICIPATION IN A BID TO HOLD THE BIG SOUTH CONFERENCE MEN'S AND WOMEN'S BASKETBALL TOURNAMENT

Councilman Cloninger that after positive discussion at the worksession held on

April 2, 1996, regarding this item, City Council has been asked by the Asheville Sports Committee for the City of Asheville to bid for the Big South Conference 1997 Men's and Women's Basketball Tournament (February 26 - March 3, 1997). The deadline for submitting the bid is April 10, 1996. He stated that he outlined the proposed budget at the worksession for Council to consider, specifically stating that if Coca Cola decides not to participate with their \$30,000, then the Asheville Sports Committee will withdraw their request to submit a bid.

Mayor Martin noted that the discussion at the worksession on April 2, 1996, was quite positive about the benefits that the Big South Conference might bring to Asheville, even at the risk of having, perhaps, a small loss. There is a great deal of economic benefit that could accrue and also it would be good public relations for the City of Asheville.

When Mr. Ralph Bishop asked why the taxpayers of the City of Asheville should subsidize the motels and restaurants in Asheville, Mayor Martin explained that the City does derive sales tax revenues from visitors.

Mr. Richard Schumacher, Chairman of the Asheville Civic Center Commission and member of the Asheville Sports Committee, opposed the proposal being discussed. He, at this time, has not heard whether Coca Cola has decided to participate or not. He said that last Thursday the

Commission met, at a special meeting, and made the following motion, which was seconded and approved: "The Asheville Civic Center not be held responsible, either directly or indirectly, for any losses arising from the Big South Men's and Women's Basketball Tournament in the event a bid is submitted by the City of Asheville and accepted to host the Tournament in Asheville."

Mr. Shumacher then gave Council background information leading up to the motion. "As I had done approximately 4-5 years ago, when the Asheville Sports Committee negotiated a new contract for the Southern Conference, I presented this most recent proposal to the Civic Center Commission last Thursday. However, unlike that time, 4-5 years ago, when I recommended that the Civic Center go along with support of that particular proposal, because the Civic Center was asked to promote it, and I presented this to the Civic Center Commission at that time, which was somewhat skeptical and all the members now are new from back then. However, I recommended then that they go along with it, which they did. But, I can't support it at this time for a number of reasons. The first reason has to do with the, I guess, with the benefit of experience or hindsight, whatever, and also the fact that the last two years that the Southern Conference was hosted here, the Civic Center lost directly a little over \$108,000 for the years 1994 and 1995. That loss was absorbed by the City taxpayers in a form of a larger general deficit for those two years exceeding half a million dollars total, for the two years. The second reason has to do with the Civic Center's goal. The latest goal that we've received from Council is that we are supposed to make the Center break-even. We are told to submit a balanced budget. The Civic Center Commission believes that this proposal, for the Big South Tournament, is too risky financially. There are many other events out there that are good for the City, that are not as financially risky

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and that don't require as much time on the part of City staff to put on as a basketball tournament does and I'll get into a little bit of that later on due to my own personal experiences in working with that with the Southern Conference. The next reason is that, under the proposal, all of the surplus, or profit, goes to a group that won't take any financial responsibility in the event of a loss. This doesn't make any sense, to me, no matter what way you

look at it. And then on top of that, the same group cannot even commit, at this point, that they can definitely or want to do it, because they've got to submit it to their general membership and that takes about a month to do. So, my question is that if this group decides that they don't want to do this, then who are we going to get to step in and sell approximately \$62,500 worth of sponsorships and ticket sales, that we're counting on, which I personally think is about \$15,000 too high of an estimate to begin with. My next reason is the lack of participation by the full Asheville Sports Committee. This seriously concerns me. We have 12 members, according to the latest list that I have. Only four members have attended some of the meetings. I'm the only Sports Committee member who has attended all of the meetings. At our second meeting, where I was the only Asheville Sports Committee member present, it was stated by a representative from the Tourism Development Authority that they had conducted a survey, I think she said a survey, or some sort of study, of the economic impact on this area that first weekend of March when the Southern Conference tournament has traditionally been held here, and of course this year it was not held here, and that they barely noticed a glip in the overall economic impact on the area for that particular weekend this year. We were also told that some of the hotels said that they preferred convention guests over basketball tournament guests because some fans don't stick around after their team is eliminated and after the first days worth of games, you have half of the teams being eliminated and the second day you have another half being eliminated of the remaining teams. I truly wish that other members of the Sports Committee had been present at that meeting to hear those statements. I think that has sort of been glossed over. This is basically when I decided that I could not support this proposal that was being talked about. By way of personal information, we had the option for this year - we could have done it but the Asheville Sports Committee decided not to exercise the option for the 1996 Tournament because we saw and looked at the huge losses from the previous years and there was going to be even a bigger loss this year and decided not to exercise the option for this year. I was asked, as a member of the Sports Committee, to poll, call, some restaurants in the area, particularly in the downtown area, to see if there was any possibility that they would be willing to contribute some money to help offset some of the losses and see whether or not we'd be interested in trying to keep it this last year. And, the response that I got, and I called approximately 20, was at best lukewarm - to the extent that 'yea, I think we need to keep it here, but no, I'm not going to give you any money to help', to one restaurant owner telling me in words that I can't use in public, with words to the effect that 'I wish I'd never heard of it or seen it and I can't wait for them to leave because it keeps all of my regular customers away that weekend because of the parking problems'. So that was not a very encouraging sign to me that there was a tremendous ground swell of supporter interest to try to keep it here. The next reason is the bottom line for sports conferences and teams is the direct financial benefits, or money that they receive. We've experienced this locally, of course, and we see it happening regularly at the national level. I firmly believe that the City of Asheville should approach this the same way, by looking at the direct economic benefit as opposed to some, what's good for the City in measurable type benefits that I've heard talked about. On a personal note, my opposition to this proposal has nothing to do with any sort of a political or personal agenda. I personally attended all, except maybe

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three or four, at the most five, I can't remember that may, but I may have missed that many, of the approximate 90 games that the Southern Conference game played here during their 12-13 year run, even before I was a member of the Sports Committee and on the Civic Center Commission. As a Sports Committee member responsible for the players awards and honors banquet, which was held in conjunction with the tournament, I've experienced first-hand how much time and

effort is required, not just by volunteers, but by Civic Center staff as well. I feel that the time required for a tournament like this exceeds just proportionately the amount of time for the potential benefits that we might get from it. Again, from a personal note, to show that I'm not anti-basketball, I love going to games and watching them. But I've felt an obligation to put my duties and responsibilities as a member of the Civic Center Commission and the Sports Committee ahead of my personal preferences. For the reasons above that I've just gone through, that's why I can't and could not recommend to the Civic Center Commission last Thursday that we support and go along with this."

When Mayor Martin questioned Mr. Schumacher why he sent a letter to Mr. James Bailey of Coca Cola saying that the Commission was not interested, Mr. Shumacher said he did that for several reasons. "One was that in the fact, Coke has given money, all in one lump sum. We look at this matter with, Coke has the exclusive use of products in the building. We look at that separately. The money for that is a separate issue from whatever money they want to contribute to sponsoring this tournament. They also have not paid us anything for this year and that's past due - it was due on March 1. For those reasons, I sent the letter. I just wanted to clarify it with them that whatever money they chose, and we hope they would do it, I think I indicated that in the letter, that whatever money those chose to contribute for the sponsorship that they do that, but also, on the other hand, that we, on the Civic Center Commission want to make sure that they understood and it was clear to them that we would be wanting to talk to them about some money for the product exclusivity. It's a yearly thing, we don't have to go with them but it is something, a commodity, that the City through the Civic Center, has, as far as there is a price for that and that's very typical and standard."

Mayor Martin wondered if that letter might have an influence on the decision on the part of Coca Cola to fund or not to fund. Mr. Shumacher said "that I suppose it could. I'm not denying that it could influence their decision. I'm just saying that I felt that that needed to be clarified with them."

Mayor Martin said that his point in bring this up is that the function of the Civic Center Commission is an advisory commission to Council. "I find it a little bit of perhaps you may have overstepped the bounds, trying to contact Coca Cola directly. That would be a management function and we would prefer that, in the future, that the Civic Center Commission would report to Council, as we, in the end, would be making a decision whether to go with the Big South bid or not and be supportive or not. And, you're input, certainly, would be valued and we would want to hear it."

Councilman Worley agreed with Mayor Martin on the timing of the letter to Coca Cola. He asked if Mr. Schumacher coordinated or worked with anyone else within the City organization about whether that such a letter should go out? Mr. Schumacher responded that he did not. Mr. Schumacher did ask Mr. Scott whether or not the Civic Center received the money from Coke and then took it upon himself to write the letter.

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Councilman Worley asked that given the nature of the negotiations at the time, wouldn't it have been a good idea to coordinate the timing and the mailing and perhaps even the wording of such a letter. Mr. Schumacher disagreed with Councilman Worley and stated that he knew the Civic Center Commission was an advisory board, but the Commission has done this in the past when people haven't paid what they have agreed to pay and they have never had to go to the City to ask what they should do. He felt he was just following what has been done in the past.

Mr. Louis Bissette, representing "the Asheville Sports Committee, which is simply a committee of the Chamber of Commerce which was formed back in 1989, when the Southern Conference was considering leaving the City and it was felt then by members of the Chamber and I think members of the City that the Southern Conference had been a good event for us and we would like to keep it, if at all possible. And so, the Sports Committee has acted as a liaison, as a catalyst, contrary to what Mr. Schumacher says, the Sports Committee has never negotiated a contract with the Southern Conference. Tom Honeycutt's back here and can tell you that. Those contracts were negotiated with the City and not the Sports Committee. We're just a bunch of people who want to try to bring some good sporting events to the City. I have been in touch today with Coca Cola and I'd like to make a little bit of a statement here and say that after having talked to Coke today, it's my recommendation that the City of Asheville not submit a bid for the 1997 Big South Men's and Women's Basketball Tournament. Coca Cola's not been able to confirm it's title sponsorship and we simply don't have the time to secure another title sponsor since the bid is due tomorrow. And I wouldn't recommend to anybody that we submit a bid without that money in place. I will say that my contact at Coca Cola was Jim Bailey, coincidentally. Been working with him for 2-3 weeks. He had indicated that he was working with Atlanta and was trying to put this together for us. When I reached him today he said, what's going on down there. He said, I've been talking to you for a couple of weeks and all of a sudden on my desk appears a letter from some guy named Schumacher saying that the City's not interested in the tournament. Whether that had any bearing on their decision, I don't know. He said, you know, I need to find out what's what down there and he said, I would be willing to continue to work on it but I understand that you have to have the bid in tomorrow and if you have to have word from us today, the answer is no. So that's how that worked out. In any event, I'm not sure if we would have been successful in securing the bid for the Big South Conference Tournament in light of the public opposition of the Civic Center management to the tournament. They've opposed it at ever turn. We tried to bring them in from the very first and you simply can't secure a competitive tournament when your arena makes it pretty plain that they're not interested in it. Now if you were the Big South, after hearing Mr. Schumacher and having bids from Lynchburg and Rock Hill and I don't know from where else, would you want to come to Asheville? I don't think so. I do want to thank the Junior League of Asheville who had indicated that they were willing to take this project on. The Tourism Development Authority and the Conventions and Visitors Bureau and Susan Dale is seated back here. She's done a lot of work, in fact, she worked all yesterday and last night to prepare a package to get rates from all the motels and hotels for us to submit with our bid - she delivered it to me today and it was a lot of work for nothing Susan, but I appreciate what you did. And I appreciate what the Tourism Development Authority did in unanimously approving a \$20,000 contribution to this effort. The Chamber of Commerce has backed this and UNC-A, Tom Honeycutt is back here. Tom has worked, has talked to the Commissioner numerous times during this process. He has sent me a fax yesterday indicating all the things that UNC-A would be willing to do if we got the tournament here. And we appreciate that, Tom. So, there were a lot of people working. We

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didn't have all the members of the Sports Committee. I mean, we had a small group that was trying to see if we could put this thing together. You don't have all 12 members, although I've talked to most during the course and the only one that I can think of who is opposed to it is Mr. Schumacher. Maybe he's talked to some others, I don't know. I'd also like to make a few comments about the Southern Conference Tournament, and I do that as a, as Mr. Bishop would say, as a resident and taxpayer of the City of Asheville. I live in the City. My business is in the City. I pay a lot of taxes to the City. The Southern Conference was a great event for our City. It was sponsored by many

businesses and returned much to our area. Both economically and in terms of public relations. ESPN every year, national television coverage with the big Asheville Civic Center logo right in the middle of the floor, does that mean anything to a tourist City? Maybe not. The tournament did lose money in 1995 and I don't want to go into all of the reasons for it, but there are a number of reasons. But I would like to ask Mr. Schumacher to go back and look at the Civic Center records. And when you do this, I want you to look at your concession income, because they never talked about concession income. And I want to see for the 12 years that the Southern Conference was here, how much did we lose over that period of time. I'd be interested. And I think, although he must be talking to a totally different set of hotel and motel people, they seem to be very interested in this bid and he must be talking to a whole new different set of merchants and restaurant owners, because the ones I've talked to are very supportive of the Southern Conference. And having a basketball tournament. The Asheville Sports Committee, once again, has no vested interest here. It's members don't stand to profit from this tournament or any other tournament. We simply tried to ask as a catalyst to bring various groups together to bid what is a very small college basketball tournament. It's not a big deal. We did this together with the Junior League, the Chamber, the TDA and UNC-A in order to try to bring a family oriented sporting event to our community. It didn't work. And as a taxpayer, I have a problem with the system that has been installed at the Civic Center. As I understand it, and the goals are set by the Civic Center and compensation is paid at the Civic Center, based solely on the Civic Center's bottom line. So the importance of an event to the City as a whole doesn't count. It just looks, specifically that event, that brings money to the Civic Center. In my mind, that creates a serious conflict of interest between the Civic Center and the community. City Council has been very helpful in this matter but I think we all need to keep in mind that the Civic Center is not a private entity - it's owned by the people of the City of Asheville and it should be programmed for their benefit. And I hope that the City will, if it has an opportunity, look again next year at perhaps the 1998 Big South Tournament. I think it's good for our City. I think it brings a spirit to our City that a lot of things, other things, don't. That's just one taxpayer's opinion, but it is mine. And I appreciate your support during this thing, and I hope that we'll be able to bring some other great things to our City."

Mayor Martin thanked all those who worked on this bid. It is something that perhaps can be revisited in the future.

Councilman Worley said that the matter was brought to Council at their worksession a week ago and any objective reading of the mood of Council at the worksession showed that the Council was leaning fairly strongly towards supporting the bid for the Big South Tournament. City Council is the policy-making body for the City of Asheville and he couldn't help but feel today that their ability to make policy and set policy with respect to the Big South Tournament has been effectively side-stepped and taken over by another commission. He believed the cost of the Big South Tournament was relatively low, certainly compared to

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the Southern Conference, and the risk was even lower. Talk today surrounded losses and covering losses, but the projections were to actually make a profit and the loss aspect comes from what is wisely viewed as a worse case scenario. Even if it had suffered a loss, it would have been a small loss.

Councilman Skalski felt there was a couple of issues that the City needed to address with respect to putting on either regional or national sporting events. He felt we needed to have a policy, if the government is going to be involved

in a partnership with public and private money, on how the City participates in those events. He felt that more lead time was needed for discussion before bid deadlines so that problems can be addressed. He also said that there is a 2% room tax that's put in a fund for advertising tourism. Perhaps some of that money could be set aside in order to deal with issues like this.

Addressing Mr. Schumacher, Councilman Cloninger said that he felt it was "entirely appropriate for you, as head of the Civic Center Commission to come before us today and render your opinion as to whether we should submit a bid for the Big South Tournament. And also convey what the feeling of the Commission is as to what the City should do regarding the Big South Tournament. However, I believe it is entirely inappropriate for you to have intentionally undermined this City Council's ability to make the ultimate decision as to whether this City would submit a bid. And I will tell you, sir, that I think that you're letter to Mr. Bailey of Coca Cola was completely out of line. You had no authority to send it and you misstate what the situation is with regard to this. And I would just like to go through a couple of points in this letter. First of all, in the first paragraph, you say that the Asheville Civic Center Commission recently decided that it is not interested in acting as the promoter for this event, which is different from when the Southern Conference Basketball Tournament was here. First of all, Mr. Schumacher, the City of Asheville was the sponsor and promoter of the Southern Conference Tournament, not the Civic Center. And by your statement that the Civic Center had decided that it was not interested in acting as promoter, you clearly implied to this Coca Cola official that the City was not interested. In the second paragraph, you raised the fact that Coca Cola has an exclusive contract at the Civic Center. That, again, was completely inappropriate. And I'm going to read this sentence folks, but it's clear that Mr. Schumacher is trying to intimidate Coca Cola into thinking that somehow their exclusivity contract for the Civic Center could be jeopardized if they express interest in supporting the Big South Tournament. Let me just read this sentence. 'Due to this decision, the money for the sponsorship and the money for your continued produce exclusivity will be treated separately. We do need to get together soon to discuss the product exclusivity contract.' Now, Mr. Schumacher, I would ask you, who has given you the authority to negotiate Civic Center contracts without outside concessionaires? It is certainly not anyone on the Civic Center Commission's duty or authority to so negotiate. And I'd ask you when you consulted with the City Manager? When you consulted with City Council? When you consulted with the Mayor regarding your right to enter into negotiations on behalf of the City of Asheville? And finally, in your last paragraph, it starts out 'Although we will not be acting as the promoter for this event', let me read that again, 'Although we will not be acting as the promoter for this event, ...' well, Mr. Schumacher, how is it your decision, or how is it the Civic Center Commission's decision as to whether as to act as the promoter? It is this City Council's decision as to what the Civic Center will do. You clearly abrogated that. You clearly wanted to undermine the effort to bringing this tournament to this City. Now again, there are arguments pro and con as to whether this City should have submitted a

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bid. There are legitimate points to be made, that you can make for not submitting the bid. But that does not justify your going behind this City Council's back and effectively putting us in a situation where we were not even given the opportunity to make that decision. You were not elected by the people of Asheville, Mr. Schumacher. We were. That final decision should have rested with us."

Mr. Schumacher responded by saying "first of all, it's obvious that you and I disagree about what this letter says. I'll address some of the points that

you've raised. You kept saying implied implications and so forth. I think you're reading, without getting into a big argument, I think you're reading."

Councilman Cloninger then said "you sent it yesterday, right when you know when people on the Sports Committee are talking with the Coca Cola folks about getting a sponsorship. What possible good could this have done, and what possible relevance does Coca Cola's exclusivity contract have to the decision that should be made as to whether a bid is submitted?"

Mr. Schumacher continued that "as I tried to point out in the letter that those were two separate matters. And that in response to your issue about who decides whether we have, your question whether the Civic Center Commission has the authority to decide what events they're going to promote, in the past almost six years I've been on the Commission, the Civic Center, to my knowledge, has never gone to City Council and said 'we want the authority from you to promote this event.' We have promoted different types of events in the past. The Halloween Fun Fair, Travelogue Series, that sort of thing, along with the Southern Conference Basketball Tournament. We were the promoter for that. The money, the losses for that, were taken out of our budget."

Councilman Cloninger said "and you did that promotion after the decision was made by the City of Asheville to submit a bid."

Mr. Shumacher agreed. "But, I guess it's a matter of ... what you mean by promoter. I look at a promoter as being the one who is responsible for the event. Who stands to gain financially, which hopefully they will, or if there is a loss, the promoter takes the loss, after paying all the bills. So I'd look, with the Civic Center having taken the losses for those years, that we were acting as a promoter for it."

Councilman Cloninger said "you say the Civic Center's not going to act as promoter. Who gave you the authority to make that decision?"

Mr. Schumacher said that they always have in the past on the other events. "The Civic Center Commission has done that in the past on the other events and this Civic Center Commission decided, regarding this proposal, that we didn't want to promote it."

Councilman Worley confirmed that Mr. Schumacher was aware that this matter was up for discussion at Council's worksession on April 2 and also on Council's formal meeting today. He also was aware that the City Council decision was whether or not the City would take the risk. And if the City Council decides to take the risk and says to the Civic Center that the City of Asheville is doing this, then we are promoting this.

Mr. Schumacher understands that "the City Council wants to promote this, but my point is that the Civic Center Commission has said that the Commission doesn't feel like it's a good idea to promote it."

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Councilman Cloninger noted that "you didn't say you didn't think it was a good idea, you said we're not going to promote it. And you had absolutely no authority to take that position. And this business about you trying to separate the sponsorship of Coke with the exclusivity provision. Why in the world would you feel the need to make that right at a delicate time when Coca Cola's trying to make their decision as to whether to submit a sponsorship? There was no indication that Coca Cola has any confusion that the \$30,000 in sponsorship would be in addition to whatever they might have paid for their exclusivity contract. There wasn't a hint that Coke was confused about that. Why, in the

world, unless you were attempting to undermine and disway Coke from sponsorship, why else would you have sent it yesterday? The day before we're meeting to vote on this thing, and right before we would have to submit a bid."

Mr. Schumacher said "as a member of the Civic Center Commission, it was my duty to make sure that there was no misunderstanding that whatever money they decided to come up with for the sponsorship, that that would not automatically buy them the rights for their produce exclusivity throughout the building for the rest of the year. They have not paid for it and it's past due. I would also like to point out, and I think something has gotten lost here in all this discussion is that we are not opposed to having the event there. We would welcome any other group that comes in, that wants to be financially responsible for any losses that might be incurred, to come and say yes, we would like to promote this event. It could be the Asheville Sports Committee who wants to incorporate it. It could be a private group out there, whatever. But, in the past, what's happened is that because we have been hit with the losses incurred, we don't have any problem, like I've said, with working with anyone who wants to promote and sponsor this event."

Councilman Cloninger said that "we wanted to promote it, we wanted to submit a bid - why didn't you work with us? Why did you work against us?"

Mr. Schumacher said that he's "not worked against you in order to keep Coke from doing this."

Councilman Cloninger said that "I defy anybody to read this letter and will certainly make it available to the public, and I defy anybody to read this letter and conclude that you were not attempting to undermine this City Council."

Mr. Schumacher said that "as I stated before, I do disagree with the proposal for the reasons I gave."

Mayor Martin said that the City will not submit a bid for the event this year, but asked that in the future, Mr. Schumacher and the Civic Center Commission consult with City Council before making decisions that might affect the future of the City or the Civic Center.

Mr. Edgerton asked that when a response is made by City Council to Coca Cola, that clarification be made to the Civic Center Commission as to what their responsibilities and duties are.

V. CONSENT:

ORDINANCES:

A. ORDINANCE NO. 2274 - BUDGET AMENDMENT REGARDING BELE CHERE 1996

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Summary: This budget amendment, in the amount of \$399,525, is to appropriate funding for the 1996 Bele Chere.

Each year, prior to the annual Bele Chere Festival, the Parks and Recreation Department develops an anticipated budget for expenditures and revenues. Committees have been formed to operate the festival and this appropriation is divided among each committee. It is anticipated that revenues will be generated at a level to support the expenditures of the festival.

City Manager Westbrook explained to Mr. Ralph Bishop the reason why this budget amendment is before City Council for approval.

ORDINANCE BOOK NO. 15 - PAGE 354

B. ORDINANCE NO. 2275 - BUDGET AMENDMENT REGARDING YMI EMERGENCY FUNDING

Summary: The YMI has requested funding from the City and County to cover operating cost for a six month period, while the organization seeks additional ongoing funding to continue operations and programs. City Staff and members of City Council have met with representatives of YMI, and subject to certain conditions, staff recommends that funding not to exceed the amount of \$16,000 be provided to cover operating costs (excluding salaries, fringe benefits and travel) for the period March - June, 1996.

Conditions of the funding are as follows: (1) YMI provide the City with current monthly financial statements; (2) The City will pay on a reimbursement basis. YMI will present invoices for operating costs to the City before City funds are disbursed; and (3) YMI will provide the City with documentation and assurances, that no City funds are used to pay prior liabilities and that all such liabilities are being satisfied on a current basis.

ORDINANCE BOOK NO. 15 - PAGE 356

Mayor Martin said that members of Council have been previously furnished with copies of the ordinances on the Ordinance Consent Agenda and they would not be read.

Councilman Worley moved for the adoption of the Ordinance Consent Agenda. This motion was seconded by Councilman Skalski.

On a roll call vote of 5-0, the Ordinance Consent Agenda passed on its first and final reading.

Resolutions & Motions:

A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON MARCH 26, 1996, AND THE WORKSESSION HELD ON APRIL 2, 1996

B. RESOLUTION NO. 96-55 - RESOLUTION APPROVING THE N. C. DEPT. OF TRANSPORTATION PROJECT U-2901 CONSISTING OF RELOCATION OF N.C. 191, BREVARD ROAD, TO THE I-240 INTERCHANGE AND TRANSFERRING BRIDGE NUMBER 216 OVER HOMINY CREEK TO THE CITY OF ASHEVILLE

Summary: The N.C. Dept. of Transportation ("NC DOT") has developed plans to relocate N.C. 191, Brevard Road, between I-40 and I-240. Upon completion of the relocation of this section of N.C. 191, the

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current N.C. 191 and the Hominy Creek Bridge will be left and ownership given to the City.

NC DOT, upon completion of the N.C. 191 relocation will, at no cost to the City of Asheville, transfer ownership of the Hominy Creek Bridge #216 to the City of Asheville. Upon acceptance of ownership of the bridge, the City will become responsible for all liability and maintenance of the bridge and shall hold NC DOT harmless from any and all claims for damages and liabilities associated with the bridge. NC DOT will require the bridge be limited to pedestrian and/or bicycle usage only. NC DOT reserves the right to inspect the

bridge for structural integrity and proper maintenance and should the bridge not be properly maintained in accordance with OSHA standards or is being used for other than pedestrian or bicycle traffic, NC DOT will have the right to remove the bridge at the expense of the City.

NC DOT will continue to own the right-of-way and property upon which the bridge is located, but will provide the City with an access easement for maintenance and emergency purposes. The City will agree to maintain the access easement and hold NC DOT harmless from any claims for damage and/or injury which may result from the public use of said access. If said access is to be utilized as part of a bicycle facility or pedestrian park in conjunction with the bicycle and pedestrian bridge, the City will be required to obtain an encroachment agreement from NC DOT prior to such usage.

The City will be responsible for placement of proper signage for the bicycle and pedestrian use of the bridge and such signing plan must be approved by NC DOT prior to placement.

The agreement requires the City to be responsible for removal and proper disposal of any lead paint residues on the bridge, but there are at present no paints or any type on the bridge. The City must also comply with any Federal or State environmental and safety regulations, specifications, procedures, and policies.

Prior to relinquishing ownership of the bridge, NC DOT will repair spalls in the concrete and add pipe rail on top of the existing bridge railings to meet AASHTO requirements for bicycle railings.

Since the Hominy Creek bridge is very close to the French Broad River, the Farmers Market, the Blue Ridge Parkway, Pisgah National Forest, Biltmore Square Mall and Biltmore Estates, the opinions of Parks and Recreation, Planning and Public Works is that the City should execute the municipal agreement between NC DOT and the City for transferring ownership of the Hominy Creek Bridge #216 from NC DOT to the City of Asheville for future use as a pedestrian and bicycle facility.

RESOLUTION BOOK NO. 23 - PAGE 152

C. RESOLUTION NO. 96-56 - RESOLUTION ESTABLISHING FAIR REUSE VALUE FOR DISPOSAL PARCEL 5 OF THE HEAD OF MONTFORD REDEVELOPMENT PROJECT

Summary: Disposal Parcel 5 is located at the northwest corner of Montford Avenue and Courtland Avenue. It is generally rectangular in shape containing 8,712 square feet. Two buildings, a former service station and a small cottage are located on the property with each comprising about 700 square feet. It is zoned R-4 High Density Residential and its highest and best use per the appraisal is commercial to the extent permitted by the zoning. The R-4 district is primarily

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for residential land use. Certain professional, service, executive, governmental and administrative offices are permitted. Businesses which commercially create, display, store, exchange or sell goods, wares or merchandise on the premises are excluded.

Disposal Parcel 5 was appraised by David Moore, MAI, and the appraisal was reviewed by Francis Naeger, MAI, who concurred and recommended the appraised value of \$39,000 as fair reuse value.

D. RESOLUTION NO. 96-57 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A CONTRACT WITH MIRACLE RECREATION EQUIPMENT COMPANY, AND THEIR APPROVED DISTRIBUTOR LARRY HASLEY & ASSOCIATES INC., TO PURCHASE AND INSTALL PLAYGROUND EQUIPMENT FOR WEAVER PARK AND MURPHY-OAKLEY PARK

Summary: In an effort to make the City's playgrounds accessible under the ADA Act, the Parks & Recreation Department undertook an extensive review and selection process to obtain the best qualified supplier of handicapped-accessible playground equipment and accessories.

In June 1995, bids were solicited from ten manufacturers of playground equipment information. Also manufacturers were asked to give addresses of any nearby locations where their equipment had been installed. During the review and selection process, visits and inspections were made of the playground sites. Findings were documented on the condition of the existing equipment based on age, use and exposure to weather.

Staff also advertised and conducted community meetings to obtain additional input as to the types and styles of playground equipment most requested by the community.

The Parks & Recreation Department has an existing program of replacing worn and outdated playground equipment, and has used several processes to determine which parks are most in need of retrofit with new playground equipment. Based on these processes, the Department has selected Weaver Park and Murphy-Oakley Park for retrofit through this program.

The Parks & Recreation Department has gone through the required Request for Proposal process and has determined that lowest qualified bidder to be Miracle Recreation Equipment Company. Based on identical design specifications for a single-unit play structure to be installed in our

parks, the three lowest qualified bidders are as follows (the change orders listed below are to replace all open handrails on the equipment to handrails with spokes, for safety reasons):

Weaver Park

Miracle BCI Burke Game Time

Single Play Unit 17,732 23,674 26,448

Accessory Play pieces 10,680 8,431 8,680

Change Order: Addition

of safety railings 3,100 3,532 3,864

Total Contract 31,512 35,637 38,992

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Murphy-Oakley Park

Miracle BCI Burke Game Time

Single Play Unit 17,732 23,674 26,448

Accessory Play pieces 8,344 6,820 6,287

Change Order: Addition

of safety railings 3,100 3,532 3,864

Total Contract 29,175 34,026 36,599

The Parks and Recreation Department recommends approval of these two contracts, and the corresponding change orders, to the same contractor, Miracle Recreation Equipment Company, through their approved distributor, Larry Hasley & Associates, Inc.

RESOLUTION BOOK NO. 23 - PAGE 154

E. RESOLUTION NO. 96-58 - RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE AN AGREEMENT BY AND AMONG THE CITY OF ASHEVILLE, THE COUNTY OF BUNCOMBE AND THE YMI CULTURAL CENTER

Summary: This agreement is to authorize the City Manager to execute an agreement by and among the City of Asheville, the County of Buncombe and the YMI Cultural Center for funding not to exceed the amount of \$16,000 (cap of \$4,000 per month) to the YMI to cover operating costs (excluding salaries, fringe benefits and travel) for the period March - June, 1996.

Conditions of the funding are as follows: (1) YMI provide the City with current monthly financial statements; (2) The City will pay on a reimbursement basis. YMI will present invoices for operating costs to the City before City funds are disbursed; and (3) YMI will provide the City with documentation and assurances, that no City funds are used to pay prior liabilities and that all such liabilities are being satisfied on a current basis.

RESOLUTION BOOK NO. 23 - PAGE 155

Mayor Martin said that members of Council have been previously furnished with copies of the resolutions on the Resolutions & Motions Consent Agenda and they will not be read.

Councilman Worley moved to approve the Resolutions & Motions Consent Agenda. This motion was seconded by Councilman Sellers and carried unanimously.

VI. OTHER BUSINESS:

A. GROUP DEVELOPMENTS

City Council adopted a procedure whereby the Planning Director reports final recommendations of the Planning and Zoning Commission ("Commission") relative to group developments at the next scheduled regular meeting of the City Council. In accordance with this procedure, the action of the Commission shall be final unless the City Council determines at their meeting to schedule a public hearing on the matter. The following actions were taken by the Planning and Zoning Commission on April 3, 1996:

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41 Atkins Avenue Apartments

Mr. Gerald Green, Senior Planner, said that at the Commission meeting held on April 3, 1996, the Commission voted 5-1 to recommend approval of the group development. This approval was recommended with two contingencies: (1) receipt

of a letter for approval for adequate water pressure for fire protection, and (2) receipt of a driveway permit. A density variance was requested but not recommended. A petition with 26 signatures was presented from concerned neighbors asking to deny the density variance. Several people from Atkins Avenue spoke in opposition to the group development. Frank Muir, spokesman for Volvo Construction (property owner adjacent to the site) also spoke in opposition.

The Commission has recommended approval of the group development and denial of the variance. The Planning & Development staff recommend approval of the group development but a denial of the density variance.

The petitioner stated that they do not want to go forward with the variance request.

Upon inquiry from Councilman Skalski about the reasons for opposition, Mr. Green said that since the zoning of that site permits the development, there were no strong arguments against the development as a whole. However, the opposing comments regarding the density variance came from neighboring property owners on the traffic that would be generated by the development on fairly small residential streets in the neighborhood.

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

Generic Hotel to be located at I-240 and Buckstone Drive

Mr. Gerald Green, Senior Planner, said that a four story hotel will be constructed on two lots totaling 1.64 acres and zoned Commercial Highway. Adjacent property are also zoned CH.. Access to the property is provided from Buckstone Place (off of Tunnel Road) and the site plan meets all of the development standards in the CH zoning district.

At the Planning & Zoning Commission on April 3, 1996, the Commission voted unanimously to recommend approval of the group development with two conditions: (1) the two lots must be combined; and (2) receipt of letters of approval for sewer availability and adequate water pressure for fire protection. The Planning Department staff also recommends approval with the same conditions.

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

B. COMMENTS BY RALPH BISHOP

Mr. Ralph Bishop said that it's an obstruction of justice to not tell him who put sugar in his gas tank a long time ago.

C. COMMENTS BY HARLEY DUNN

Mr. Harley Dunn, one of the partners in River Bend Business Park which are purchasers of the old Sayles Biltmore Bleachery on Swannanoa River Road, described the improvements which have been taking place over

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the last year to the building and site. As work has been progressing, they have recently found that since the building is over 25,000 square feet, they fall into the group development review process. Because some of the requirements in the group development process are geared more toward new development, he feels that they should not have to spend up to \$30,000 to comply with some of the

requirements in the process since they are only renovating an existing building. He feels the development is "the round peg trying to fit into the square hole". He asked Council to consider allowing his project to be reviewed at the Planning & Development staff level, which typically happens to smaller buildings. He also asked that this process be reviewed so that other developers can have this type of relief. He urged Council and the citizens to work together to make this process more user friendly. If we are going to try to attract the kinds of industries and jobs that we need in our community, we need to work on improving the process.

Councilman Worley said that this is an existing building that has been here for a considerable period of time and it's being subjected to the exact same requirements as a new building - some of which requirements may not be necessary. He confirmed with Mr. Dunn that they don't intend to do any new construction other than simply renovating and improving the existing building. On the surface, he didn't see the necessity for some of the requirements when renovations are only being made. Clearly there are building safety requirements that cannot be waived. He felt Mr. Dunn was asking that the relevance of the work being done and the requirements match.

Upon inquiry of Councilman Skalski about existing site plan, Mr. Dunn said that they created some site plans for renovation purposes.

Councilman Cloninger was interested in hearing any recommendations on how we might facilitate their being able to put this building into effect. Asheville is fortunate that these folks were able to make the investment in such a large piece of property that doesn't have a lot of uses. Where we have an opportunity to put it into use and make the property more valuable, we should try to encourage that, at the same time we, at least, meet the spirit of our ordinance requires.

Mayor Martin instructed the City Manager to review Mr. Dunn's request and report back to the City Council. Mr. Westbrook stated that he would have staff detail the list on why those requirement are on the checklist, if there is a good reason for them and then Council can make a judgment about whether they want to require those kinds of things.

D. COMMENTS BY H.K. EDGERTON

Mr. H.K. Edgerton requested Council to encourage, at every opportunity, community participation in the bicentennial plannings.

E. LAWSUIT

On March 26, 1996, the City was served with the following lawsuit: Viola Hooker v. City of Asheville, County of Buncombe and Asheville Regional Airport Authority (negligence).

City Attorney Slawter said that he had reviewed the lease between the City and the Airport Authority and it contains an indemnification provision for liability arising from negligent use of the Airport property. Therefore, he has contacted the attorney for the Airport regarding representation and indemnification.

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F. CLAIMS

The following claims were received by the City of Asheville during the week of March 22-28, 1996: Amanda Wallen (Water), James Woody (Water), Chris Bumpus

(Water) and Frances R. Lindsey (Water).

The following claims were received from March 29 - April 3, 1996: Allen Rogers (Water), Metromont Materials (Water), Nina Bartolomie-Kirk (Water), Jan Alexander (Police), Amber Phillips (Water), Asheville Moose Lodge (Water) and Sondra Honeycutt (Water).

These claims will be referred to Asheville Claims Corporation for investigation.

VII. ADJOURNMENT:

Mayor Martin adjourned the meeting at 6:53 p.m.

CITY CLERK MAYOR
