

Tuesday - August 27, 1996 - 5:00 p.m.

Regular Meeting

Present: Mayor Russell Martin, Presiding; Vice-Mayor Barbara Field; Councilman M. Charles Cloninger; Councilman Edward C. Hay Jr.; Councilman Thomas G. Sellers; Councilman James J. Skalski; and Councilman Charles R. Worley; City Attorney William F. Slawter; City Manager James L. Westbrook Jr.; and City Clerk Magdalen Burleson

Absent: None

INVOCATION

Mayor Martin gave the invocation.

I. PROCLAMATIONS:

A. PROCLAMATION PROCLAIMING SEPTEMBER, 1996, AS "SUBSTANCE ABUSE AWARENESS MONTH" IN THE CITY OF ASHEVILLE

Mayor Martin proclaimed September 1996 as "Substance Abuse Awareness Month" in the City of Asheville.

B. CONVEYANCE TO THE CITY FROM CAROLINA POWER & LIGHT COMPANY OF 6.156 ACRES IN HAW CREEK

Mayor Martin said that for some years the City has been interested in establishing a City park in the Haw Creek area. To that end we have been negotiating with various landowners in the area to acquire some property for a City park. We have recently concluded negotiations with CP&L to purchase property that they own in the area for a park. Once again CP&L has demonstrated what a fine corporate citizen of the City of Asheville they are. Over an extended period of time, many Council members and individuals from the community have worked together to identify appropriate land.

Mr. David Hester, representative of CP&L said that they were happy to help the City to locate a park that will showcase the natural beauty of the local environment. This is an example of the terrific partnership CP&L has with the City of Asheville - a partnership they hope will continue for many years to come.

Councilman Worley thanked Councilman Cloninger for taking a lead in this effort.

Since this is a purchase of real property, Councilman Cloninger moved to set a public hearing on September 10, 1996, relative to the purchase of 6.156 acres of land in Haw Creek from Carolina Power & Light Company. This motion was seconded by Councilman Skalski and carried unanimously.

Mr. Chris Pelly, President of the Haw Creek Community Association, expressed appreciation to City Council and CP&L.

II. PUBLIC HEARINGS:

A. CONTINUATION OF A PUBLIC HEARING RELATIVE TO REZONING TWO LOTS AT 401 OLD COUNTY HOME ROAD FROM R-3 RESIDENTIAL DISTRICT TO CS COMMERCIAL SERVICE DISTRICT

Mayor Martin said that this public hearing was opened on January 9, 1996, and continued January 23, 1996, in order to give the other

-2-

interested persons an opportunity to speak and also to give the Planning staff an opportunity to look at the uniqueness of this area and perhaps bring Council a different solution to the problem. The public hearing was then continued until February 27, 1996, in order to give both parties involved an opportunity to see if a compromise of the problem could be reached. On February 27, 1996, the petitioner asked that the public hearing be continued for 6 months so that they could continue to search other means for compromise and also the UDO area plan hearing for the west part of the City will have been held and that may have an impact on this request.

Mr. Carl Ownbey, Urban Planner, said that this is a request to rezone PIN No. 9629-10-26-5131 and 9629-10-26-7219 from R-3 Medium Density Residential to CS Commercial Service. The subject property is approximately 7.25 acres. The lots are located on Old County Home Road just off its intersection with New Leicester Highway. The two lots have three residential structures. The 2010 Plan recommends that this area be medium density residential. The subject property is surrounded on the north and east by residential, on the south by commercial, and the west is out of our jurisdiction.

The Planning staff reviewed the rezoning request and recommended denial of the rezoning of both lots to CS Commercial Service. At the Planning & Zoning Commission's meeting on November 1, 1995, the Commission voted 4-3 to recommend approval of the rezoning of both lots to CS Commercial Service.

A valid protest petition has been filed.

Mayor Martin said that on August 26, 1996, he received a letter from Mr. Craig D. Justus, attorney representing Petitioner Nettie Briggs, which reads "Our firm represents Nettie Briggs in her application for rezoning of property located off New Leicester Highway and Old County Home Road. Her property is located within the one mile extra territorial jurisdiction of the City of Asheville. This matter came before City Council approximately 6 months ago and was tabled to allow City planning staff time to review the area during their UDO mapping of West Asheville. It is our understanding that city staff is considering a split zoning of the property with commercial in the front and a transitional zone in the back. This type of zoning would be acceptable to my client. The City staff will not be reviewing West Asheville until sometime in September. Accordingly, we respectfully request a continuance of Ms. Briggs rezoning application until such time as the City Planning Staff finishes its recommendations on mapping for the UDO for the New Leicester Highway area. Hopefully, the mapping will be completed within 2 months. We will coordinate with City Staff to reschedule this matter again before City Council. We appreciate your consideration of our continuance request."

Vice-Mayor Field said that, after talking with Mr. Jones Byrd, attorney for the petitioner, one of the reasons they asked for a continuance was in hopes that the UDO mapping would have been completed in that area so Council would have that information to work with. Because the mapping has not been completed yet, she didn't have a problem with continuing the public hearing until staff could complete their mapping in that area.

Ms. Julia Cogburn, Planning & Development Director, said that in terms of the staff recommendation for the potential zoning for that area, it could be ready within two months. However, she cautioned Council that it would be a very, very preliminary staff recommendation and was hesitant to have people relying on

that in making a decision of

-3-

this nature. In addition to it being a preliminary recommendation, the mapping would not have gone to a public meeting. They have found that when staff's preliminary recommendations have gone to public meetings, there have been some changes as a result in working with the community. She suggested Council look at this issue on the face of it in the current situation.

Vice-Mayor Field said that Mr. Byrd felt that there might be something in the UDO mapping that would resolve the issue or they may want to withdraw the petition, so they at least wanted to wait until Planning staff did the mapping. He suggested continuing this matter for 90 days.

Upon inquiry of Councilman Hay, Vice-Mayor Field said that if City Council denies the rezoning request, the petitioner can't come back and ask for the same rezoning as the petition originally filed for one year. However, Ms. Cogburn noted that City Council has the authority to waive that one year stipulation if they felt there was a reason to consider it sooner than one year.

Mr. Craig Justus, attorney for the petitioner, said that Ms. Briggs has spent a lot of time, effort and money to go through the Planning & Zoning process and if Council denies the rezoning request, they would have to start all over again. He urged Council to continue the public hearing in order to give staff the opportunity to finish their preliminary zoning in the area. Their preliminary review would give them a chance to see if they want to withdraw their rezoning request or perhaps the mapping will allow a compromise solution.

Mr. Rick Wynne, area property owner, urged Council to not continue the public hearing again and hoped that Council would deny the rezoning request.

Mr. Steve Branstetter, area property owner, briefed Council on an incident he came up against with the zoning ordinance. He urged Council to be consistent in their judgments and deny this rezoning request.

Councilman Skalski moved to deny the rezoning request. This motion was seconded by Councilman Sellers.

Councilman Skalski felt that because the 2010 Plan was violated it's now causing problems in that area. He felt the people who actually live in that area should have a strong voice regarding the zoning.

Mr. Justus stressed that this is a commercial hub and it's not a typical black and white residential/commercial neighborhood. He urged Council to continue the public hearing 90 days so that staff can map the area.

Vice-Mayor Field said that if the petitioner withdraws the rezoning petition, they will not have to wait a year before it can be considered again.

Councilman Worley said that even if this request is denied, the UDO mapping will still take place and there will be an opportunity for the residents to give their input into what they want the area to be zoned.

Mr. Justus then withdrew the rezoning petition.

Because Mr. Justus withdrew the rezoning petition, Councilman Skalski withdrew his motion to deny the rezoning request.

- 4 -

B. CONTINUATION OF A PUBLIC HEARING DIRECTING THE DIRECTOR OF BUILDING SAFETY DEPARTMENT TO DEMOLISH THE DWELLING LOCATED AT 112 BROOKLYN ROAD

Mayor Martin said that this public hearing was opened on June 25, 1996, and continued until this date in order to give the property owner time within which to begin his repairs.

Ms. Natalie Berry, Housing Inspector, said that Mr. Ranson Rutherford has asked that this matter be continued for an additional six months. Ms. Berry reported that Mr. Rutherford has made considerable progress in repairing 112 Brooklyn Road and recommended to Council the six month continuance.

Vice-Mayor Field moved to continue the public hearing until February 18, 1997. This motion was seconded by Councilman Worley and carried unanimously.

C. PUBLIC HEARING TO REZONE 7 MOUNTAIN VIEW ROAD FROM R-2 LOW DENSITY RESIDENTIAL TO CH COMMERCIAL HIGHWAY

Mayor Martin opened the public hearing at 5:54 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 the subject property is one lot on Mountain View Road. Even though the property is currently being used for commercial purposes, rezoning of this one lot to commercial for expansion would be an intrusion into this small residential neighborhood. The access street is narrow and winding. There are three vacant lots that would have the potential for commercial zoning if this lot is changed. The subject property is surrounded on the north, east and west by residential and only on the south by commercial. This lot was part of the Haw Creek rezoning (from R-3 to R-2) that was approved in March of this year.

The Planning staff reviewed the rezoning request and recommended denial of rezoning PIN No. 9658.11.67.9070 from R-2 to CH. At the Planning & Zoning Commission meeting on July 3, 1996, the Commission voted unanimously to recommend denial of the rezoning request.

On July 25, 1996, the petitioner appealed the Commission's denial to City Council.

Mr. C.W. Morris, owner of 7 Mountain View Road, said that he doesn't plan to make any changes except to upgrade his office building and he can't get a permit to upgrade his building under the R-2 designation. He urged council to rezone his property so he can expand his office and continue to operate in that area.

Upon inquiry of Vice-Mayor Field, Mr. Ownbey said that the time Mr. Morris' lot was being considered to be rezoned from R-3 to R-2, Mr. Morris did come into the Planning Office and inquire about expanding his building which he could have done under the R-3 zoning. However, he did not continue with the project and his lots were rezoned to R-2, which does not allow the expansion of his building.

Vice-Mayor Field felt that commercial highway is totally inappropriate in terms of scale and size of property in that particular location. She wondered if there was any other solution for Mr. Morris' problem.

-5-

Mr. Morris stated that he was not adverse to something less if it will allow him to expand his office.

It was determined that if the lot were rezoned to R-3, it would be an illegal spot zoning.

Upon inquiry of Councilman Skalski about a transitional zone in the UDO, Ms. Cogburn said that there is not a transitional zone, but there is a transitional overlay district that would be applied to different areas. One of the things that Council would consider is a preliminary listing from staff as to areas they would see is appropriate. Basically what would then happen is that staff would look at each of those individual areas and create standards for that area that are applicable to the particulars of that area. She said that this could be a transition overlay district area, but she was not sure if there are other similar situations in this area. That is what the staff would be looking for in a transition district - a sort of pattern along a corridor or going back into an area where there seems to be sort of a pattern of transition. The preliminary mapping for this area does show that this would remain residential.

Mayor Martin closed the public hearing at 6:04 p.m.

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

Vice-Mayor Field moved to deny the rezoning request because commercial highway is completely inappropriate for this area. This motion was seconded by Councilman Worley and carried on 7-0 voice vote.

D. PUBLIC HEARING TO REZONE ONE LOT ON MARTIN LUTHER KING JR. DRIVE FROM CG COMMERCIAL GENERAL TO R-3 MEDIUM DENSITY RESIDENTIAL

ORDINANCE NO. 2310 - ORDINANCE REZONING ONE LOT ON MARTIN LUTHER KING JR. DRIVE FROM CG COMMERCIAL GENERAL TO R-3 MEDIUM DENSITY RESIDENTIAL

Mayor Martin opened the public hearing at 6:06 p.m.

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

Mr. Mike Matteson, Urban Planner, said that the property in question is a vacant lot totaling 2.13 acres. The property is owned by the City of Asheville. The lot is zoned CG in the early 1980's to conform to a redevelopment plan for the area which called for neighborhood business uses for the area. The redevelopment plan has since been closed and is no longer active. Area residents have expressed a strong desire that the property be rezoned back to R-3.

At the Planning & Zoning Commission meeting on August 7, 1996, the Commission unanimously voted to recommend approval of the rezoning request. The Planning staff also recommended approval of the rezoning.

Mayor Martin closed the public hearing at 6:08 p.m.

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

-6-

Councilman Worley moved for the adoption of Ordinance No. 2310. This motion was seconded by Vice-Mayor Field.

On a roll call vote of 7-0, Ordinance No. 2310 passed on its first and final reading.

ORDINANCE BOOK NO. 16 - PAGE

E. PUBLIC HEARING TO CONFIRM THAT THE BOARD OF ADJUSTMENT DOES NOT HAVE THE POWER TO GRANT A VARIANCE TO GUIDELINES ADOPTED OR USED BY THE HISTORIC RESOURCES COMMISSION OF ASHEVILLE AND BUNCOMBE COUNTY IN REVIEWING APPLICATIONS FOR CERTIFICATES OF APPROPRIATENESS

ORDINANCE NO. 2311 - ORDINANCE AMENDING THE CODE OF ORDINANCES TO CONFIRM THAT THE BOARD OF ADJUSTMENT DOES NOT HAVE THE POWER TO GRANT A VARIANCE TO GUIDELINES ADOPTED OR USED BY THE HISTORIC RESOURCES COMMISSION OF ASHEVILLE AND BUNCOMBE COUNTY IN REVIEWING APPLICATIONS FOR CERTIFICATES OF APPROPRIATENESS

Councilman Cloninger inquired about a potential conflict of interest since the law firm of which he is a partner in represents the Historic Resources Commission in a lawsuit involving the Board of Adjustment. He understands that this matter today would have no impact on the outcome of that lawsuit. City Attorney Slawter said that in his opinion, there was no conflict of interest.

Mayor Martin opened the public hearing at 6:09 p.m.

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

Ms. Julia Cogburn, Planning Director, said that this ordinance was drafted at City Council's request to clarify the powers of the Board of Adjustment with respect to the granting of a variance to guidelines adopted or used by the Historic Resources Commission in reviewing applications for certificates of appropriateness. This amendment provides that while appeals may be taken to the Board of Adjustment from an Historic Resources Commission action in granting or denying a certificate of appropriateness, such an appeal shall be in the nature of certiorari. The Board shall not have the authority to vary any guidelines.

At the Planning & Zoning Commission meeting held on August 7, 1996, the Commission voted 6-1 to recommend approval of the amendment.

Mayor Martin closed the public hearing at 6:12 p.m.

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

Vice-Mayor Field moved for the adoption of Ordinance No. 2311. This motion was seconded by Councilman Skalski.

On a roll call vote of 7-0, Ordinance No. 2311 passed on its first and final reading.

ORDINANCE BOOK NO. 16 - PAGE

-7-

F. PUBLIC HEARING TO CONSIDER A ZONING VESTED RIGHTS ISSUE FOR OLIVER BUSINESS FORMS TO BE LOCATED ON BROADWAY AVENUE

Mayor Martin opened the public hearing at 6:12 p.m.

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

City Attorney Slawter explained what a statutory zoning vested rights issue enables a prospective developer to do. At any time during two years following the creation of the vested rights by Council, the developer can develop their property in accordance with what is referred to a site specific development plan.

Mr. Mike Matteson, Urban Planner, said that Oliver Business Forms is requesting zoning vested rights pursuant to Section 30-14-1 of the Zoning Ordinance for an office/retail building to be located on Broadway Avenue. The granting of a zoning vested right will extend the effective approval of the project from one year to two years.

The property is a vacant lot totaling 0.71 acres and located on the east side of Broadway between Hillside Street and North Street. The property is currently zoned CH Commercial Highway. The proposal is for an approximately 6,700 square foot building to be used by Oliver Business Forms (the company sells business forms to local companies). This use is permitted under the current zoning. The site plan meets all development standards within the district and a zoning permit has been issued for the project.

The applicant is hoping that the signage can be vested along with the plans. There is a little bit of signage on the building face itself and then there are two awnings on the first floor level with some small lettering.

The Planning & Development staff recommend approval of the zoning vested rights for the following reasons: (1) the applicant has acted in good faith towards obtaining approval for the project. Staff has been working with the project architect regarding this proposal since October 1995; (2) the proposed use is not contrary to the City's comprehensive plan which calls for office and institutional uses for the area; and (3) a great deal of effort has gone into designing the project to be as attractive and compatible as possible. This is evidenced by the building design, the landscape plan (on which the City's landscape architect was consulted) and the signage for the building.

By use of drawings, Mr. Con Dameron, architect representing Oliver Business Forms, explained in detail the traffic flow pattern, the facade of the building, the parking, and the landscaping for the project. He stressed that they have kept in scale much more restrictive than the zoning ordinance allows and tried to do a quality project. He pointed out on the drawing where the signage would be and asked that the signage be vested along with the plans.

When Vice-Mayor Field inquired about the number of parking spaces, Mr. Cameron said that they don't need that many initially, but the zoning ordinance requires that amount. It was noted that City Council could issue a variance for less parking. He showed where they could potentially make a landscape island and divide up the parking area with a little bit more plantings. They would be amenable to that.

Upon inquiry of Councilman Cloninger as to assurances that this is exactly what would be built on the site, City Attorney Slawter said that the statute and the ordinance authorizing the establishment of vested

-8-

rights provides that Council can make the approval on such terms and conditions

as are reasonably necessary and also provide that the site plan, as approved, is to have stamped on it a statement that "this is the site specific development plan that has been approved." This plan presented today would have stamped on it that statement and that is what they have to build. If Council incorporates the elevations as well, the motion will need to refer to both of those plans. He suggested incorporating the letter dated August 27, 1996, to Mr. Mike Matteson from Con Dameron regarding signage be attached to the minutes. A copy of said letter is attached hereto as Exhibit "A".

Upon inquiry of Councilman Hay if Mr. Oliver decides not to build the project, City Attorney Slawter said that the statute and ordinance specifically provides that this vested right runs with the land. It terminates after two years if it is not developed within that two year period. He did state that this is the building that would have to be built by whoever the property owner is.

Ms. Margaret Muller said that if there has to be any office or commercial in that area, Mr. Oliver did the very best he could in terms of design and landscape. However, this area has two historic residential neighborhoods. She asked that Broadway be limited in its vehicular traffic and voiced concern if it became a thoroughfare for semi-tractor trailers.

Vice-Mayor Field wondered if Mr. Oliver would accept an change to the plan so as not to require as many parking spaces as the commercial highway requires so that there could be more landscaping on the property and make it more compatible with the greenway. Mr. Cameron then showed where more landscaping could occur if they were not required to have as many parking spaces.

Ms. Mary Jo Brezny hoped that this approval will not start a chain reaction of more development in a residential neighborhood along a highway.

Mr. Richard Oliver, petitioner, felt that they have put their plans together in good faith based on the present zoning and in accordance with the 2010 Plan and urged Council to grant his vested right. He explained how his business was neighborhood friendly and hoped Council would look favorably on his request.

Mr. Craig Justus, attorney representing Mr. Oliver, said that Oliver Business Forms is the operator of the facility. The owners of the property and the vested rights would go Richard and Timmie Oliver as provided for on the plans. He said that considerable effort has been made to try to fit into the area and felt that this attractive business can provide a nice entranceway into Asheville.

Ms. Valeria Larrea expressed her concern of any kind of intrusion into two residential neighborhoods that abut this thoroughfare in terms of bringing large commercial vehicles and larger numbers of small commercial vehicles and the noise and pollution they create.

Ms. Louise Schaefer, resident on Hillside, asked that if Council grants this vested right to Mr. Oliver that Council put the same restrictions on any other requests that come in.

Ms. Jane Mathews said that the 2010 Plan has significantly changed since it was adopted and some long range planning should happen along this thoroughfare as we move forward.

-9-

Mayor Martin closed the public hearing at 6:53 p.m.

Councilman Cloninger moved to grant the zoning vested right on this property

contingent upon all construction work being performed pursuant to the plans, specifications and letter submitted today by the owner. This motion was seconded by Councilman Worley and carried on a 5-2 vote with Councilmen Hay and Skalski voting "no".

Councilman Hay appreciated the work done on the building, in particular the scale and the tie-in to downtown. However, he felt that when the R-3 district process was stated, it was to put a delay on new construction on Broadway while we did some long term planning. The long term planning may well include the kind of new construction along Broadway on the east side that this represents. However, he would still like to see that delay in place until we take a look at what's going to happen down the road.

G. PUBLIC HEARING TO REZONE 25 LOTS IN THE BROADWAY AVENUE AREA AND A PORTION OF THREE LOTS IN THE BROADWAY AVENUE AREA FROM CH COMMERCIAL HIGHWAY TO R-3 MEDIUM DENSITY RESIDENTIAL

ORDINANCE NO. 2312 - ORDINANCE REZONING 15 LOTS ON BROADWAY AVENUE, EAST CHESTNUT STREET AND MAGNOLIA STREET FROM CH COMMERCIAL HIGHWAY TO R-3 MEDIUM DENSITY RESIDENTIAL

ORDINANCE NO. 2313 - ORDINANCE REZONING ALL OR A PORTION OF 13 LOTS ON BROADWAY AVENUE, HILLSIDE STREET, NORTH STREET AND WEST STREET FROM CH COMMERCIAL HIGHWAY TO R-3 MEDIUM DENSITY RESIDENTIAL

Mayor Martin opened the public hearing at 6:55 p.m.

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

Mr. Mike Matteson, Urban Director, said that City Council requested the Planning & Zoning Commission review the rezoning of 25 lots and a portion of 3 lots in the Broadway Avenue area to be rezoned from CH Commercial Highway to R-3 Medium Density Residential.

At the Planning & Zoning Commission meeting on August 7, 1996, the Commission voted 4-3 to recommend to City Council that the rezoning request be denied.

On August 13, 1996, City Council authorized the Mayor to send a letter to the City Clerk for it to be filed as their written notice of the intent of the City Council to "appeal" the decision of the Planning & Zoning Commission by scheduling a public hearing before the City Council on this rezoning. On that same date, the City Council scheduled a public hearing on this matter for August 27, 1996.

For the purpose of this meeting, the two pockets of rezoning will be discussed separately because on August 22, 1996, a valid protest petition was filed on the rezoning of all or a portion of 13 lots in the Broadway Avenue area.

Mr. Matteson said that regarding the rezoning of 13 lots on Broadway Avenue, Hillside Street, North Street and West Street, City Council City Council initiated this rezoning study as a result of potential development pressures associated with the widening of Broadway. The area in question totals approximately 4.5 acres. Three of the lots are used residentially, one is used commercially and the

-10-

remaining lots are vacant. The zoning of the surrounding properties is R-3. The 2010 Plan calls for parks/open space on the west side of Broadway and Office

and Institutional uses on the east side.

Staff has received several comments in support of the rezoning as well as several comments expressing opposition.

The Planning & Development staff recommend approval of the proposed rezoning for the following reasons: (1) some of the uses permitted in the CH Commercial Highway District may be incompatible with the surrounding area and may not be in the best interest of the City as a whole; (2) the rezoning will likely be temporary in nature thus giving staff an opportunity to look at the area comprehensively in terms of land use and zoning; and (3) the land uses in and adjacent to the area are predominantly residential.

Once again Mr. Matteson noted that a valid protest petition has been filed regarding the rezoning of all or a portion of the 13 lots in the Broadway Avenue area.

Mr. Matteson said that regarding the rezoning of 15 lots on Broadway Avenue, East Chestnut Street and Magnolia Street, City Council initiated this rezoning study as a result of potential development pressures associated with the widening of Broadway. The 15 lots total approximately 2.28 acres. Three of the lots are used residentially, one is used commercially and the remaining lots are vacant. The surrounding zoning is R-3 to the north and west, R-4 to the south and CS to the southeast.

Staff has received several comments in support of the rezoning as well as several comments expressing opposition.

The Planning & Development staff recommend approval of the proposed rezoning for the following reasons: (1) some of the uses permitted in the CH Commercial Highway District may be incompatible with the surrounding area and may not be in the best interest of the City as a whole; (2) the 2010 Plan calls for parks/open space on the west side of Broadway and low density residential land uses west of the corridor. R-3 zoning would better allow the recommended land uses to occur; and (3) the land uses in and adjacent to the area are predominantly residential.

Upon inquiry of Ms. Margaret Muller, area resident, Mr. Matteson showed which lots, and who the owners are, that made up the valid protest petition. He then stated that since a valid protest petition has been filed, it would invoke the 3/4's vote requirement of City Council.

Mayor Martin stated that City Council wanted to maintain control of building in that area. He said Council does not want things built that won't ultimately fit in the long term planning effort. The way to do that is to rezone it to R-3 and when the Unified Development Ordinance is adopted, the uses will be delineated on a long term basis.

Councilman Worley agreed with Mayor Martin and said that under our current zoning ordinance, the zoning classifications do not give Council enough tools to properly deal with this area and that's the reason why Council wants to rezone this to R-3 as a temporary measure. He felt that under the UDO, Council will have better tools to work with in terms of dealing with this area.

-11-

Ms. Barbara Hodgson, 107 Evelyn Place, thanked Council for their vision.

Mr. Dennis Hodgson, 107 Evelyn Place, thanked Council for their farsightedness.

Mr. Jim Bailey, attorney representing Mr. D.A. Lackey who has a business in this area that he and his family has operated for over 50 years, said he really didn't think that rezoning the lots temporarily residential were necessary. If it is temporarily rezoned, Mr. Lackey would be at risk if his business is destroyed because he can't rebuilt it - he would be a nonconforming use. The rezoning will devalue his property temporarily because he won't be able to make any changes or improvements to it. He didn't see any need to rush into rezoning since most of the property is owned by the N.C. Dept. of Transportation. He suggested waiting until the UDO mapping is completed. He suggested Council temporarily rezone the lots to Commercial General, instead of R-3 residential.

Upon inquiry of Councilman Skalski, Mr. Bailey said that Mr. Lackey's land totals less than one acre. He explained that the property is owned by two people and a substantial portion of it is under lease to Mr. Lackey, but owned by Mr. Dewey Beauchamp.

Mr. Katheryn Morris, Falconhurst Residents Association, said that since they have seen significant development and erosion of neighborhoods they supported greenway development in the Broadway area.

Mr. Dennis Campbell, President of the Falconhurst Residents Association, stated that they have a strong interest in the preservation of greenspace and the improvement of the quality of life in Asheville. He supported the rezoning and the establishment of a greenway along Broadway along with long-term planning for this corridor.

Ms. Margaret Muller, area resident, asked for a more restrictive zoning than R-3. She felt that everything should be put on hold until there is a real concerted effort to look at the two historic neighborhoods that border that area and to look at the wider picture in terms of comprehensive planning. She also suggested the City buy or ask the N.C. Dept. of Transportation to donate all the other possible green space that they own. She also supported the idea of revisiting the 2010 Plan.

Ms. Betty Lawrence, 142 Hillside Street, supported the rezoning and stressed that we must preserve the neighborhoods that we have.

There was some discussion about the money budgeted and needed for a greenway, noting that the Broadway greenway project is an active project.

A man from the audience thanked Council for their support to rezone in this area and also suggested the City ask the N.C. Dept. of Transportation for any lands left over from the widening project.

Mayor Martin closed the public hearing at 7:25 p.m.

Mayor Martin said that members of Council have previously received a copy of the ordinance to rezone 15 lots in the Broadway Avenue Area and it would not be read.

-12-

Councilman Hay moved for the adoption of Ordinance No. 2312. This motion was seconded by Vice-Mayor Field.

On a roll call vote of 7-0, Ordinance No. 2312 passed on its first and final reading.

ORDINANCE BOOK NO. 16 - PAGE

Mayor Martin said that members of Council have previously received a copy of the ordinance to rezone all or a portion of 13 lots in the Broadway Avenue Area and it would not be read.

Vice-Mayor Field moved for the adoption of Ordinance No. 2313. This motion was seconded by Councilman Worley.

On a roll call vote of 7-0, Ordinance No. 2313 passed on its first and final reading.

ORDINANCE BOOK NO. 16 - PAGE

At this time, 7:30 p.m., Mayor Martin announced a ten minute break.

III. UNFINISHED BUSINESS:

IV. NEW BUSINESS:

A. RESOLUTION NO. 96-155 - RESOLUTION APPROVING THE FILING OF THE APPLICATION FOR THE ISSUANCE OF WATER REVENUE BONDS

Finance Director Bill Schaefer said that approval of the Local Government Commission ("LGC") is required in order for the City of Asheville to issue Water System Revenue Bonds to finance additions and improvements to the water system; including the Mills River Water Treatment Plan, associated raw water storage facilities, pump stations, transmission mains and additional pipelines.

Financing of the project will require the issue of \$33,000,000 Water System Revenue Bonds, and equity contribution from existing Water Department funds of \$4,200,000 and \$3,000,000 from a previously-approved state loan.

This resolution, drafted by the City's bond counsel, provides the following: (1) states the purpose of the proceeds from the bonds (finance cost of the project, pay interest during construction, fund a debt service reserve fund and pay cost of issuance) and that the project is "necessary" to meet current and future needs of the water system; (2) sets aside \$4,200,000 existing Water Resources Department funds in the Water Major Capital Improvements Fund for use in the project; (3) confirms retention of Parker, Poe, Adams & Bernstein as bond counsel; Robinson-Humphrey Co., Alex Brown & Sons, and NationsBanc Capital Markets as underwriters (Robinson-Humphrey will serve as senior manager); Raftelis Environmental Consulting Group as feasibility consultant; and approves Hunton & Williams as underwriters' counsel; (4) authorizes the Finance Director to file the application with LGC; (5) requests favorable consideration of the application by the LGC; (6) authorizes the Mayor, City Manager and Finance Director to do any and all things necessary to issue the bonds; and (7) requests the LGC sell the bonds through negotiation with the underwriters at a true interest cost not exceeding 7.00%.

-13-

The Finance Department recommends approval of the resolution.

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

Councilman Worley moved for the adoption of Resolution No. 96-155. This motion was seconded by Councilman Sellers and carried unanimously.

RESOLUTION BOOK NO. 23 - PAGE 281

V. CONSENT:

Resolutions & Motions:

A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON AUGUST 13, 1996, AND THE WORKSESSION HELD ON AUGUST 20, 1996

B. RESOLUTION NO. 96-156 - RESOLUTION APPOINTING A MEMBER TO THE ASHEVILLE DOWNTOWN COMMISSION

Summary: Bonnie Hobbs has resigned as a member of the Asheville Downtown Commission leaving an unexpired term. This resolution will appoint Carol King to fill the unexpired term of Ms. Hobbs, term to expire December 31, 1997, or until her successor has been appointed.

RESOLUTION BOOK NO. 23 - PAGE 284

C. RESOLUTION NO. 96-157 - RESOLUTION APPOINTING MEMBERS TO THE PLANNING & ZONING COMMISSION

Summary: The terms of Jim Torpey, Jane Gianvito Mathews and Harriette Winner expired on August 14, 1996. This resolution will reappoint Jim Torpey and Jane Gianvito Mathews to each serve an additional three year term. This action will also appoint Max Haner to serve a three year term. All terms will expire on August 14, 1999, or until their successors have been appointed and qualified.

RESOLUTION BOOK NO. 23 - PAGE 285

D. MOTION SETTING A PUBLIC HEARING FOR SEPTEMBER 10, 1996, RELATIVE TO THE CITY OF ASHEVILLE'S ANNUAL TRANSIT OPERATING ASSISTANCE GRANT

E. RESOLUTION NO. 96-158 - RESOLUTION AWARDING THE BID TO BUCKEYE CONSTRUCTION COMPANY INC. FOR THE PROJECT KNOWN AS BREVARD ROAD AREA ANNEXATION SEWER IMPROVEMENTS - PHASE I PROJECT

Summary: The City Council previously approved a total of 3.2 million dollars for sewer improvements within the annexation area. This project is known as Brevard Road Area Annexation Sewer Improvements - Phase I. These funds were to be used for priority sewer improvements.

The Engineering Department has developed construction plans for the Brevard Road Area Annexation Sewer Improvements - Phase I. The engineer's estimate for this project is in the amount of \$435,020.

The project was advertised for one month. On Tuesday, July 30, 1996, at 9:30 A.M., the Engineering Department received only two bids for the project. This required that the project be re-advertised to

-14-

receive bids again on August 13, 1996. The construction time for this project is identified as 120 calendar days in the contract documents.

The low bid was received from Buckeye Construction Co. Inc., from Canton, N.C., in the amount of \$477,752.50. The City has previously contracted with this company and feels they are a responsible contractor.

Staff recommends that City Council adopt a resolution awarding the bid for the Brevard Road Area Annexation Sewer Improvements - Phase I to Buckeye Construction Company Inc. of Canton, N.C., in the amount of \$477,752.50.

RESOLUTION BOOK NO. 23 - PAGE 286

F. RESOLUTION NO. 96-159 - RESOLUTION AWARDDING THE BID TO BUCKEYE CONSTRUCTION COMPANY INC. FOR THE PROJECT KNOWN AS WEST AREA ANNEXATION SEWER IMPROVEMENTS - PHASE I/WOODSIDE HILLS SECTION

Summary: The City Council previously approved a total of 3.2 million dollars for sewer improvements within the annexation area. This project is known as West Area Annexation Sewer Improvements - Phase I Woodside Hills Section. These funds were to be used for priority sewer improvements.

The Engineering Department has developed construction plans for the West Area Annexation Sewer Improvements. The engineer's estimate for this project is in the amount of \$632,306.75.

The project was advertised for one month. On Tuesday, July 30, 1996, at 9:00 A.M., the Engineering Department received two bids for the project. This required that the project be re-advertised and bids were received again on August 13, 1996. The construction time for this project is identified as 120 calendar days in the contract documents.

The lowest responsible bid was received from Buckeye Construction Co. Inc., from Canton, N.C., in the amount of \$646,254. The City has previously contracted with this company and feels they are a responsible contractor.

Staff recommends that City Council adopt a resolution awarding the bid for the West Area Annexation Sewer Improvements - Phase I Woodside Hills Section to Buckeye Construction Company Inc. of Canton, N.C., in the amount of \$646,254.

RESOLUTION BOOK NO. 23 - PAGE 287

G. RESOLUTION NO. 96-160 - RESOLUTION AWARDDING THE BID TO BUCKEYE CONSTRUCTION COMPANY INC. FOR THE PROJECT KNOWN AS NORTH LOUISIANA AVENUE SEWER IMPROVEMENTS PROJECT

Summary: The City Council previously approved a total of 3.2 million dollars for sewer improvements within the annexation area. This project is known as North Louisiana Avenue Sewer Improvements. These funds were to be used for priority sewer improvements.

The Engineering Department has developed construction plans for the North Louisiana Sewer Improvements. The engineer's estimate for this project is in the amount of \$89,230.00. The North Carolina Department of Transportation has required that this work be done at night since construction is occurring within the roadway. Therefore, the project

-15-

cost has significantly increased. Due to existing utilities outside the roadway, and limited right-of-way, the designed location in the roadway is necessary.

The project was advertised for one month. On Tuesday, July 2, 1996, at 10:00 A.M., the Engineering Department received only one bid for the project. This required that the project be re-advertised bids were received again on July 16, 1996. The construction time for this project is identified as 120 calendar days in the contract documents.

Buckeye Construction Company Inc. of Canton, N.C., is the lowest responsible bidder, with a bid in the amount of \$190,200. The City has previously

contracted with this company and feels they are a responsible contractor.

Staff recommends that City Council adopt a resolution awarding the bid for North Louisiana Avenue Sewer Improvements to Buckeye Construction Company Inc. of Canton, N.C., in the amount of \$190,200.

RESOLUTION BOOK NO. 23 - PAGE 288

H. RESOLUTION NO. 96-161 - RESOLUTION MAKING PROVISIONS FOR THE POSSESSION AND CONSUMPTION OF MALT BEVERAGES AND/OR UNFORTIFIED WINE AT THE 1996 GOOMBAY FESTIVAL

Summary: G.S. 18B-300 (c) authorizes the City, by ordinance, to regulate or prohibit the consumption and/or possession of open containers of malt beverages and unfortified wine on public streets, and on property owned, occupied or controlled by the City. The City Council has adopted an ordinance pursuant to that statutory authority. Section 11-11 of the Code provides that City Council may adopt a resolution making other provisions at special events or community festivals. This 1996 Goombay Festival Board, YMI Cultural Center and the Parks & Recreation Department recommend that possession and consumption of malt beverages and/or unfortified wine be allowed at the 1996 Goombay Festival within the designated festival area and during the times specified.

RESOLUTION BOOK NO. 23 - PAGE 289

I. RESOLUTION NO. 96-162 - RESOLUTION OF INTENT TO PERMANENTLY CLOSE ELLIOT STREET AND A PORTION OF GARFIELD STREET AND SETTING A PUBLIC HEARING FOR SEPTEMBER 24, 1996

RESOLUTION BOOK NO. 23 - PAGE 291

J. MOTION DIRECTING THE PLANNING & ZONING COMMISSION TO CONSIDER AN AMENDMENT TO THE ZONING ORDINANCE RELATIVE TO TELECOMMUNICATIONS TOWERS

Summary: City Council has expressed an interest in having staff and the Planning & Zoning Commission look at amendments to the Zoning Ordinance relative to the location of telecommunications towers within one mile of the Blue Ridge Parkway.

At the City Council worksession on August 20, 1996, City Council requested that staff draft amendments to the Zoning Ordinance relative to the location of telecommunications towers within one mile of the Blue Ridge Parkway. Council's action was in response to a request from the Parkway Superintendent that the City notify Parkway officials when a telecommunications tower is proposed within one mile of the Parkway. The City Council has asked staff to draft an amendment which would allow

-16-

for denial of a permit application for any telecommunications tower proposed which would have a negative impact on the Blue Ridge Parkway viewshed. Additionally, Council has asked staff, if possible, to draft the amendment so that all telecommunications tower permits must be reviewed and approved by Council rather than the Board of Adjustment.

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 for the adoption of the Resolutions & Motions Consent

Agenda. This motion was seconded by Councilman Cloninger and carried unanimously.

Ordinances:

A. ORDINANCE NO. 2314 - ORDINANCE AMENDING ARTICLE III OF CHAPTER 9 (MASSAGE THERAPY REGULATIONS) OF THE CODE OF ORDINANCES

Summary: A request was received by the City to amend the massage therapy ordinance so as to allow an additional provision to satisfy the educational requirements and to reduce the age restrictions under the ordinance.

The City's massage therapy ordinance requires that an applicant satisfy certain educational requirements which include graduation from a massage therapy school which is licensed by the North Carolina State Board of Community Colleges with a minimum curriculum of 500 hours of classroom instruction; or graduation from a school or institute of massage therapy which offers a minimum curriculum of 500 hours of classroom instruction which is licensed by another state or equivalent licensing authority; or graduation from a school or institute of massage therapy which has been certified as a program approved by the American Massage Therapy Association on Massage Training Accreditation/Approval or National Testing Service. The amendment to the ordinance would allow staff to approve the educational requirements of the ordinance as long as the applicant can in the alternative show that they are certified by the National Certification Examination for Therapeutic Massage and Body Work. Such a certification may be obtained by an applicant sitting for a national certification examination with the applicant not necessarily having satisfied the minimum curriculum of 500 hours. However, the National Certification Examination is a very rigorous examination requiring certain minimum standards before an applicant is allowed to sit for the examination as well as certain minimum qualifications in terms of practical experience. Therefore, whenever an applicant is able to show a certificate of certification from the National Certification Examination for Therapeutic Massage and Body Work, there is an assumption that the applicant possess the requisite skill, knowledge and capability to perform the profession of massage therapy.

The items requested for consideration of reducing the age restrictions pertained to: (1) revise the age for individuals able to practice the massage therapy profession from 21 years to 18 years; and (2) revise the age for individual patrols from 21 years to 18 years without requiring adult supervision. Staff is unaware of any major complaints from those impacted by the age restrictions set forth in the current ordinance. Therefore, staff does not support any change to the age restrictions.

-17-

The Asheville Police Department and the Finance Department recommends adoption of the amended ordinance without changes to the age restriction.

ORDINANCE BOOK NO. 16 - PAGE

Mayor Martin said that members of Council have been previously furnished with a copy of the ordinance on the Ordinance Consent Agenda and it will not be read.

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

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

VI. OTHER BUSINESS:

A. RESOLUTION NO. 96-163 - RESOLUTION PRESCRIBING POLICY REGARDING SETTLEMENT OF WORKERS' COMPENSATION CLAIMS

City Attorney Slawter said that the Rules of Procedure for the Asheville City Council formerly included a provision regarding authorization for settlement of claims against the City. The current Rules of Procedure do not include such a provision. The settlement of claims against the City is governed by Resolution No. 93-145.

The policy reads that (1) the Risk Manager shall have the authority, upon the written approval from the City Manager and the City Attorney, to authorize settlement of claims against the City pertaining to workers' compensation; (2) the Risk Manager shall have the authority, upon the written approval from the City Manager and the City Attorney, to authorize settlements of subrogation claims on behalf of the City of Asheville arising against third parties responsible for liability incurred by the City under the Workers' Compensation Act; and (3) all such settlements shall be reported to the City Council in a timely fashion.

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

Councilman Worley moved for the adoption of Resolution No. 96-163. This motion was seconded by Councilman Sellers and carried unanimously.

RESOLUTION BOOK NO. 23 - PAGE 292

B. COMMENTS FROM H.K. EDGERTON REGARDING PLANNING & ZONING COMMISSION APPOINTMENT

Mr. H.K. Edgerton, President of the Asheville Branch of the NAACP, voiced concern that Max Haner, not Marcell Proctor, was appointed to the Planning & Zoning Commission. He said, among other things, that he has "sat through much dialog that contends that African Americans don't participate, but when we do; we are confronted by the same kind of bigoted, unsensitive thought process that was put into this appointment." Mr. Edgerton thought that Mr. Proctor should have been Council's appointment because of his involvement in the community - he is a member of CIBO, a member of the Chamber of Commerce, sits on the Board of Directors of the Executive Committee of the NAACP, and he is the owner and operator of the Mountain Smokehouse.

-18-

Mayor Martin objected to the allegations made by Mr. Edgerton. He stated that City Council does want African Americans to be involved in the process because we need a lot of participation by a lot of people. He said that there was nothing insensitive about that appointment process. Council fairly interviewed all applicants and each applicant was asked essentially the same questions. Because Council appointed someone other than who Mr. Edgerton wanted, does not mean they were insensitive.

Vice-Mayor Field explained that any questions she asked were purely for informational purposes and stated that City Council specifically said that a vote for someone did not mean a vote against someone else.

Mr. Edgerton presented a copy of the CIBO news letter in which he felt justified his comments.

Mr. Mike Plemmons, Executive Director of CIBO, said that CIBO did not intend to imply racism remarks.

#### C. CLAIMS

The following claims were received by the City of Asheville during the week of August 9-15, 1996: Jill Campbell (Parks & Recreation), Susan VanDerVorst (Traffic Engineering), Linda Crowe (Parks & Recreation), Buddy Patton (Water), Judy Riddle (Water) and Brad Plemmons (Water).

The following claims were received during the week of August 16-22, 1996: Judy Carver (Water), BellSouth (Water), Mrs. Charles Smith (Streets), Molly Sandridge (Water) and Cimmeron (Water).

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

#### D. LAWSUIT

The following lawsuit was received on August 20, 1996, which is generally described as follows: Brian Breedlove v. City of Asheville, et al. The nature of the proceeding is negligence, inadequate warning (Bele Chere).

This action has been referred to Fred Barbour to handle through the Asheville Claims Corporation.

#### VII. ADJOURNMENT:

Mayor Martin adjourned the meeting at 8:05 p.m.

---

CITY CLERK MAYOR

---