

Tuesday - November 12, 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. RESOLUTION NO. 96-190 - RESOLUTION OF APPRECIATION TO WILLIAM F. SLAWTER, CITY ATTORNEY

Mayor Martin read the resolution stating that Bill Slawter has been the City Attorney for 13 years and on May 14, 1996, Mr. Slawter asked that City Council accept his resignation. Mayor Martin expressed City Council's appreciation to Bill for his service to the City of Asheville and its citizens. City Manager Westbrook, Fire Chief John Rukavina and Assistant City Attorney Patsy Meldrum, on behalf of all City employees, wished Bill the best of luck in the future.

Mayor Martin presented Mr. Slawter with the resolution, a plaque, and his name plate.

Resolution No. 96-190 was adopted by acclamation.

RESOLUTION BOOK NO. 23 - PAGE 331

B. RESOLUTION NO. 96-191 - RESOLUTION RECOGNIZING CITY OF ASHEVILLE EMPLOYEE SUPPORT OF UNITED WAY OF ASHEVILLE AND BUNCOMBE COUNTY

Mr. George Pfeiffer, President and CEO of the United Way of Asheville and Buncombe County, thanked all City employees for making this year's United Way campaign such a success. He thanked Mr. Robert Griffin, for providing leadership to the team of 20-plus Loaned Executives, Ms. Karen Murphy-Herrin and Mr. Ed Vess, for leading the City of Asheville in this year's campaign and Mr. Joe Leen, for providing leadership in the "Day of Caring". The total amount pledged in 1995 was \$48,023.69. The City of Asheville's goal this year was \$60,000 and the amount pledged to date is \$71,603.78!

Mayor Martin, on behalf of City Council, and City Manager Westbrook thanked these employees as well as all of the City of Asheville employees for their contributions to the community.

Resolution No. 96-191 was adopted by acclamation.

RESOLUTION BOOK NO. 23 - PAGE 332

C. PROCLAMATION PROCLAIMING NOVEMBER 19, 1996, AS "NATIONAL PHILANTHROPY DAY" IN THE CITY OF ASHEVILLE

Mayor Martin proclaimed November 19, 1996, as "National Philanthropy Day" in

the City of Asheville and presented the

-2-

proclamation to Mort Jonas who briefed the Council on some activities that would be taking place during that day.

D. PROCLAMATION PROCLAIMING NOVEMBER 24-30, 1996, AS "NATIONAL FAMILY WEEK" IN THE CITY OF ASHEVILLE

Mayor Martin proclaimed the week of November 24-30, 1996, as "National Family Week" in the City of Asheville.

II. CONSENT:

Councilman Skalski asked that Item C. be removed from the Consent Agenda to be discussed separately.

A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON OCTOBER 22, 1996; THE COMMUNITY MEETING HELD ON OCTOBER 29, 1996; AND THE WORKSESSION HELD ON NOVEMBER 5, 1996

B. RESOLUTION NO. 96-192 - RESOLUTION AUTHORIZING THE SALE OF DISPOSAL PARCEL 3B TO GERTRUDE D. JONES, DRITTA ENTERPRISES AND HILLIARD AVENUE PARTNERSHIPS

Summary: Disposal Parcel 3B is a fragment lot located on the west side of South Grove Street comprising 4,665 square feet. The lot is irregular in shape and mostly flat about three feet above street level. The bid from Gertrude D. Jones includes the proposal to combine the property with property currently owned by Ms. Jones at 99 South Grove Street. No construction is planned.

The bid from Ms. Jones, in the amount of \$2,200 is not less than the established minimum price of \$1,800. The upset bid process was followed and an upset bid was received by Dritta Enterprises in the amount of \$2,450. The upset bid process was again followed and an upset bid was received by Ms. Gertrude Jones in the amount of \$2,800. The upset bid process was again followed and an upset bid was received by Dritta Enterprises in the amount of \$4,000. The upset bid process was again followed and an upset bid was received by Ms. Gertrude Jones in the amount of \$4,300. The upset bid process was again followed and an upset bid was received by Dritta Enterprises in the amount of \$4,600. The upset bid process was again followed and an upset bid was received by Ms. Gertrude Jones and Hilliard Avenue Partnerships in the amount of \$4,880. The upset bid process was again followed and there was not another upset bid received.

RESOLUTION BOOK NO. 23 - PAGE 333

C. RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE AN AMENDMENT TO AN AGREEMENT BY AND AMONG THE CITY OF ASHEVILLE, THE COUNTY OF BUNCOMBE AND BILTMORE DAIRY FARMS INC.

This item was removed from the Consent Agenda to be discussed individually.

D. RESOLUTION NO. 96-193 - RESOLUTION AMENDING THE FEES AND CHARGES MANUAL TO INCLUDE A MONTHLY RECYCLING FEE

Summary: In order to implement the curbside residential recycling program, starting January 6, 1997, the Fees and Charges Manual must be amended to allow for the charging of recycling services.

On June 25, 1996, the City Council unanimously approved the awarding of the residential curbside recycling contract to Curbside

-3-

Management, Inc. The cost for the curbside program is \$1.51 per household. Fifty percent of the cost of the collection program are to be charged to the citizens of Asheville as part of the utility bill statement. At present, the rate set forth will be \$0.75 per month. The rate per household per month may be adjusted annually in the amount not to exceed the Consumer Price Index published by the Bureau of Labor Statistics.

The Fees and Charges Manual must be amended in accordance with the Recycling Ordinance which requires the delivery of residential recycling services. This amendment will allow for the billing of services in addition to monthly water and wastewater charges.

The Public Works Department recommends the adoption of the Resolution amending the Fees and Charges Manual of the City of Asheville to establish fees related to residential recycling services.

RESOLUTION BOOK NO. 23 - PAGE 334

E. MOTION ADOPTING THE PARKS AND RECREATION DEPARTMENT'S LONG RANGE PLAN AND RECREATION TODAY AND TOMORROW

F. MOTION SETTING A PUBLIC HEARING ON NOVEMBER 26, 1996, TO CONSIDER THE REZONING OF 223 EAST OAK VIEW ROAD FROM LI LIGHT INDUSTRIAL TO R-3 MEDIUM DENSITY RESIDENTIAL

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.

Vice-Mayor Field moved for the adoption of the Resolutions & Motions Consent Agenda. This motion was seconded by Councilman Worley and carried unanimously.

Ordinances:

Councilman Skalski asked that Item A. be removed from the Consent Agenda to be discussed separately.

A. BUDGET AMENDMENT RELATIVE TO THE DUCKER CREEK SEWER PROJECT

This item was removed from the Consent Agenda to be discussed individually.

B. ORDINANCE NO. 2326 - BUDGET AMENDMENT RELATIVE TO THE FIRST FLOOR SECURITY PARTITIONS

Summary: This budget amendment, in the amount of \$28,036, is for the purchase of security partitions for the customer service area on the First Floor of the City Hall Building.

ORDINANCE BOOK NO. 16 - PAGE 109

C. ORDINANCE NO. 2327 - BUDGET AMENDMENT RELATIVE TO APPROPRIATING TENTH YEAR FAIR HOUSING ASSISTANCE PROGRAM GRANT FUNDS

Summary: This budget amendment, in the amount of \$16,000, is to appropriate the 10th Year Fair Housing Assistance Program grant funds.

ORDINANCE BOOK NO. 16 - PAGE 111

-4-

D. ORDINANCE NO. 2328 - ORDINANCE AMENDING CHAPTER 15 (SOLID WASTE MANAGEMENT) OF THE CODE OF ORDINANCES OF THE CITY OF ASHEVILLE

Summary: In order to authorize the Public Works Department to implement a residential curbside recycling service, Chapter 15 (Solid Waste Management) of the Code of Ordinances of the City of Asheville must be amended.

Due to the waste reduction goals set by the State of North Carolina and great public interest in preserving the environment by reducing the amount of municipal solid waste sent to landfills, the City of Asheville should expand recycling services. The amendment to Chapter 15 of the Code of Ordinances sets forth the administration and regulations pertaining to the expansion of residential recycling services offered by the City of Asheville.

Under the Ordinance, the implementation of recycling services will fall under the jurisdiction of the Office of the Waste Management Coordinator. The Office will be responsible for coordinating a curbside residential recycling program for household customers and providing assistance to businesses, commercial establishments, and multi-family dwellings in setting-up recycling programs.

In order to amend the Fees and Charges Manual of the City of Asheville to set fees for residential recycling services, Chapter 15 of the Code of Ordinances of the City of Asheville must be amended to authorize the City to provide curbside residential recycling services. On June 25th, City Council awarded a contract for curbside recycling services for approximately 24,000 households to Curbside Management, Inc. In conjunction with this action, the Code of Ordinances must be amended.

The Public Works Department recommends the adoption of the Ordinance amending Chapter 15 (Solid Waste Management) of the Code of Ordinances of the City of Asheville.

ORDINANCE BOOK NO. 16 - PAGE 113

E. ORDINANCE NO. 2329 - ORDINANCE PROHIBITING TRUCK TRAFFIC ON A PORTION OF BURTON STREET

Summary: The Traffic Engineer has performed the necessary traffic analyses on Burton Street and is seeking authorization from City Council to prohibit truck traffic along Burton Street, beginning at a point 603 feet north of the intersection of Haywood Road and Burton Street, continuing northward for the entirety of Burton Street.

The appropriate vehicle axle classification analyses were conducted and found that Burton Street is a residential roadway in West Asheville. The vehicle axle classification study was performed per the request of residents of this area. Substantial truck traffic was detected, however, there exists alternate non-residential roadways to accommodate truck traffic.

The Public Works Department recommends the approval of this no-truck route and the posting of necessary signing to advise motorists of this prohibition.

ORDINANCE BOOK NO. 16 - PAGE 119

-5-

F. ORDINANCE NO. 2330 - ORDINANCE ALLOWING TRUCKS TO TRAVEL UPON ANY STREET WHICH ABUTS THEIR POINT OF DESTINATION

Summary: The Traffic Engineer has reviewed the City Ordinances concerning trucks on residential streets and has determined that some of the truck prohibition exceptions are redundant. We are requesting permission to remove these exceptions.

The Public Works Department receives many complaints from citizens and motorists who utilize the City and State roadway system. We utilize the City Ordinances to provide information concerning truck traffic prohibition. In order to provide the best information to our customer, we believe that the following exception to trucks being prohibited on residential streets is redundant:

d (1) Trucks are hereby allowed to travel upon any street which abuts their point of destination.

The other exceptions listed within this section of the ordinance provide the necessary guidance for the commercial trucking community, governmental authorities, residents of the City, and enforcement personnel.

We have discussed this matter with the City's legal staff and the Asheville Police Department, which is responsible for the enforcement of this ordinance, and they are in support of this minor clarification change.

The Public Works Department, with support from the Asheville Police Department, recommends the approval of this revision in the Truck Traffic Prohibited Ordinance.

ORDINANCE BOOK NO. 16 - PAGE 120

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

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

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

ITEMS PULLED OFF THE CONSENT AGENDA TO BE DISCUSSED INDIVIDUALLY

RESOLUTION NO. 96-194 - RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE AN AMENDMENT TO AN AGREEMENT BY AND AMONG THE CITY OF ASHEVILLE, THE COUNTY OF BUNCOMBE AND BILTMORE DAIRY FARMS INC.

Summary: This resolution will authorize the Mayor to sign an agreement providing for an additional contribution by the City of \$18,333.34 toward the sewer interceptor running along Ducker Creek.

In 1994 the City Council authorized an agreement between the City, the County and Biltmore Dairy Farms, Inc. providing for construction of a sanitary sewer interceptor running along Ducker Creek at an estimated cost of \$500,000. Each party agreed to contribute one-third of the cost, not to exceed \$166,666.67. The agreement provides that the City and the County will consider making an additional contribution if the total cost should exceed \$500,000, but that neither the City nor the County would be requested to contribute a total of more than \$185,000.

-6-

The total project cost was \$718,404.53, and Biltmore Dairy Farms, Inc. has requested the additional contribution from the City and the County. This resolution will authorize the Mayor to sign an agreement providing for that additional contribution.

Staff recommends approval of the resolution thereby authorizing additional funds for this project up to the maximum approved contribution.

Councilman Skalski moved to deny an additional contribution by the City for the sewer interceptor running along Ducker Creek. He said that he didn't think the City has the money to be involved in development projects and he wants to be in concurrence with the MSD policy of no sewer line extensions at this time. Councilman Skalski's motion died for a lack of a second.

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

Vice-Mayor Field moved for the adoption of Resolution No. 96-194. This motion was seconded by Councilman Worley and carried on a 6-1 vote, with Councilman Skalski voting "no".

Councilman Hay said that it was his understanding that this is an agreement that the City made some time ago and we are only honoring that agreement.

Mayor Martin said that this has been a good investment for the City.

Councilman Worley said that when the City funds economic development, they do so based on the formula which assures the City a return of their investment within a five year period. The ad valorem taxes that are generated by this investment is paid back to the City over a five year period and it enhances the entire economic development of the community.

RESOLUTION BOOK NO. 23 - PAGE 335

A. ORDINANCE NO. 2331 - BUDGET AMENDMENT RELATIVE TO THE DUCKER CREEK SEWER PROJECT

Summary: This budget amendment, in the amount of \$18,335, is for final payment of the Ducker Creek Sewer Project.

Councilman Skalski moved to deny the budget amendment to appropriate \$18,335, for the Ducker Creek Sewer Project. He said that the City is not, and should not be, in the development business. He also said that the City had a \$300,000,000 infrastructure need that needs to be fulfilled. He said that he is a fix-it-first Councilmember and if anyone thinks that adding all these pieces of property in the City territory has been chipping away at our deficit, why is it that we now still have a \$300,000,000 deficit with some of the highest sewer and water rates in the state. Councilman Skalski's motion died for a lack of a second.

Mayor Martin said that the City is in the infrastructure business and sometimes it's necessary to extend infrastructure to help promote businesses and residences.

-7-

Vice-Mayor Field pointed out that the developer paid 1/3 of the cost of the sewer interceptor, the County paid 1/3 and the City is paying 1/3.

Councilman Worley felt that the City is in the business of economic development but not direct economic development. If we don't promote growth in our economy then we wither and die. We have chosen to do this in a number of ways. We have just recently established the City Business and Development Commission and if that's not promoting economic development, he doesn't know what is. He said our policies are geared toward helping and assisting in economic development and we do have a tremendous return on this particular investment.

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

Councilman Worley moved for the adoption of Ordinance No. 2331. This motion was seconded by Councilman Cloninger.

Councilman Hay said that the City agreed to this in 1994 and he felt it would be irresponsible to say that the City wants to break their contract with the County and Biltmore Dairy Farms to make a point. This may or may not have been a good idea but a deal is a deal and the City should maintain its agreements.

Councilman Skalski pointed out that the City residents are paying double for this since they are county taxpayers too.

On a roll call vote of 6-1 vote, with Councilman Skalski voting "no", Ordinance No. 2331 passed on its first and final reading.

ORDINANCE BOOK NO. 16 - PAGE 121

III. PUBLIC HEARINGS:

A. PUBLIC HEARING RELATIVE TO ANNEXATION OF SECTION VIII OF BRAESIDE (BURNSIDE PHASE 1 AT BILTMORE PARK)

ORDINANCE NO. 2332 - ORDINANCE EXTENDING THE CORPORATE LIMITS OF THE CITY OF ASHEVILLE, N.C., BY ANNEXING A CONTIGUOUS AREA LOCATED ON PINCHOT DRIVE AND KNOWN AS SECTION VIII OF BILTMORE PARK

Mayor Martin opened the public hearing at 5:34 p.m.

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

Mr. Paul Benson said that Biltmore Farms Inc. has submitted an annexation petition for a 10.5 acre area identified as Biltmore Park, Section VIII (Burnside Phase 1). This is the 8th annexation petitioned by Biltmore Farms Inc. for property located west of Overlook Road. This area is contiguous to the Asheville corporate limits, specifically to Biltmore Park, Section VI, which was annexed effective December 27, 1995. The effective date of annexation will be May 12, 1997. Biltmore Farms plans to construct streets to NC Dept. of Transportation ("NC DOT") standards and to construct water and sewer lines to Water Authority and MSD standards. Conservatively estimating a tax value of \$250,000 per lot when developed, this annexation would increase the tax base by \$3,250,000 with a resulting annual revenue to the City of \$18,525 at our current tax rate.

-8-

When Mr. Richard Green, 203 Blake Mountain Circle, asked why this development was allowed to build their streets to less stringent NC DOT standards opposed to City standards, Mr. Benson responded that this subdivision was platted prior to being annexed by the City.

Upon inquiry of Mr. Johnny Lloyd, City Manager Westbrook said that the City has existing personnel to service this area.

Mayor Martin closed the public hearing at 5:39 p.m.

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

Councilman Cloninger moved for the adoption of Ordinance No. 2332. This motion was seconded by Councilman Worley.

On a roll call vote of 6-1 (with Councilman Skalski voting "no"), Ordinance No. 2332 passed on its first and final reading.

ORDINANCE BOOK NO. 16 - PAGE 123

IV. UNFINISHED BUSINESS:

V. NEW BUSINESS:

A. ORDINANCE NO. 2333 - ORDINANCE DIRECTING THE DIRECTOR OF BUILDING SAFETY DEPARTMENT TO DEMOLISH THE DWELLING KNOWN AS 70 SAND HILL ROAD

Mr. Terry Summey, Director of Building Safety, said that 70 Sand Hill Road is a dilapidated structure. The owner Fred Thomas Luther and spouse have signed a "Consent to demolish" and a "Waiver of Notice" for its demolition. 70 Sand Hill Road was inspected by Building Safety Department staff on April 7, 1994. Inspector David J. Souther found the following conditions, which have been documented by still photographs and videotape:

- The dwelling has been severely damaged by water to the footings which make it structurally unsound.
- The dwelling is abandoned.
- The dwelling is unfit for human habitation, and is a threat to the surrounding neighbors.

Inspector David J. Souther sent a correction order to the property taxpayer of record on August 24, 1994. There was no response. A formal hearing was then scheduled and held on March 20, 1996. The owner and the City Inspector were in attendance. Based on the evidence presented at that hearing the Building Safety Department hearing officer worked with the owner to come up with a solution. The owner stated he was financially unable to demolish the structure but was in agreement that it was in fact in need of demolition. Mr. Luther and his spouse have signed a "Waiver of Notice" and "Consent to Demolish" this past Monday, October 28, 1996.

Building Safety Department requests the City Council to direct by ordinance the demolition of 70 Sand Hill Road. N.C.G.S. 160A-443(6) authorizes placement of a lien on the property to recover the cost of a demolition so ordered by City Council. The City will be responsible for

-9-

the initial cost of the demolition until said lien is paid. Funds for this purpose were included in the FY 1997 Operating Budget.

The Building Safety Director recommends adoption of an ordinance directing the demolition of 70 Sand Hill Road.

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

Councilman Skalski moved for the adoption of Ordinance No. 2333. This motion was seconded by Councilman Worley.

On a roll call vote of 7-0, Ordinance No. 2333 passed on its first and final reading.

ORDINANCE BOOK NO. 16 - PAGE 125

B. REPORT OF RECOMMENDATION OF THE PLANNING & ZONING COMMISSION REGARDING ZONING STUDY OF THE OI PORTIONS OF PIN NOS. 9655.09-15-2013 AND 9655.09-15-0415 LOCATED WEST OF HENDERSONVILLE ROAD

Mr. Gerald Green, Senior Planner, said that this is a report of the recommendation from the Planning & Zoning Commission ("Commission") regarding a zoning study of approximately 10 acres currently zoned OI (office-institutional) west of Hendersonville Road.

City Council initiated this zoning study. The original request was to study approximately 155 acres west of Hendersonville road, east of Overlook Road, and north of Springside Road. City Council studied the request and directed staff to pursue the zoning study of only the OI portion of this area. This study was for the portions of two tax parcels, PIN 9655-09-15-0415 and 9655-09-15-2013, which are currently zoned OI.

The City Council referred this zoning study to the Commission and the Commission reviewed this request at their regular November meeting.

At that meeting, the City Planning and Development staff recommended that the OI portions of these two parcels be rezoned to R-2 (low density residential) for the following reasons:

1. The 2010 plan indicates low density residential for this area.
2. Staff considered current development, topography, and access of this area and feels that low to medium residential development would be most compatible for this area.
3. This recommendation is consistent with past staff recommendations regarding the zoning in this area.
4. MSD has indicated that the current sewer lines will only support low to medium density residential development.
5. The original zoning of this area was R-2 (low density residential).

The Commission considered that recommendation, conducted a public hearing and voted 4 to 3 to recommend that only a portion (approximately one acre) of the lot described on the Buncombe County tax maps and records as 9655.09-15-2013 which is currently zoned OI be rezoned to R-2. The three members who voted against this recommendation preferred to

-10-

report that all of the portions of both lots which are currently zoned OI be rezoned to R-2.

The Planning & Development Department recommends that the City Council schedule

a public hearing on this matter. As the Commission recommended that only a part of the studied area be rezoned, it is recommended that the City Council consider whether or not to direct the Mayor to send a letter to the City Clerk to request that the public hearing be scheduled to include consideration of the zoning study of the entire portions of the two lots which are currently zoned OI.

City Attorney Slawter answered questions from Council as they related to the appeal procedure and options available to Council.

Vice-Mayor Field said that this has been difficult for everyone involved and she felt that it might be better to not delay the issue any longer than necessary. If Council waits until after December to hold the public hearing, then perhaps they should wait until the UDO is finished, since the UDO schedule is very ambitious. City Council made a commitment to do this as quickly as possible and the Council is very clear as to what the community wants.

Ms. Laurel Eide said that since April she has been involved with this issue and about a month ago City Council recommended that all the affected parties meet and see if some solution could be found to accommodate both the neighbors and the property owners of the OI portions. Because of the large number of neighbors involved, Ms. Eide urged Council to give her the time she needs to accomplish this task. She suggested a date of January be set.

Councilman Cloninger said that he was encouraged that the neighborhood is agreeable to meet with the property owners involved and he felt Council should do everything they can to encourage and facilitate that. He proposed that City Council appeal the Planning & Zoning Commission's decision and confirmed that if a date is set for the public hearing at this time, it is with the understanding that it can be postponed until negotiations are settled.

Vice-Mayor Field wanted to point out that as long as this issue remains unresolved, Mr. Morosani can move forward and sell his property.

Councilman Hay felt that if the affected parties would have begun their meetings earlier there would be a lot less stress and unhappiness in this matter. He felt that there are compromises that people can meet. He hoped that people in the future will start talking early on instead of at the end of the process. The people in South Asheville made it clear to City Council that they wanted to move ahead with this quickly and City Council said that they would. He said by putting this off for two months, Council is not keeping the promise they made to the South Asheville residents. He said that he would be counting on Ms. Eide to be representing the wishes of those people to postpone this for two more months but noted that City Council is ready to move ahead. However, he would be willing to postpone this at the request of Ms. Eide in the interest of compromise.

Mr. Daniel Breen felt that City Council should be fair to the developers too and act on this issue as quickly as possible.

Councilman Cloninger moved to authorize the Mayor to file written notice with the City Clerk's Office appealing the decision of the Planning & Zoning Commission and scheduling a public hearing before the City Council regarding the zoning of the OI portions of PIN Nos.

-11-

9655.09-15-2013 and 9655.09-15-0415 located west of Hendersonville Road on January 14, 1997 (with the understanding that if negotiations are still taking place, additional time will be given for those negotiations). This motion was

seconded by Councilman Skalski 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 Commission on November 6, 1996:

Care Free Windows Expansion located at 150 Westside Drive

Mr. Carl Ownbey, Urban Planner, said that this is the review of the revised site plan for the Care Free Windows project located in the Westside Industrial Park off of Emma Road.

On December 4, 1995, the Planning Department received the site plan for the expansion of the Care Free Windows light industrial facility located at 150 Westside Drive in the Westside Industrial Park. The site plan was presented to the Technical Review Committee on December 11, 1995, for their comments.

On January 3, 1996, the Commission reviewed the site plan and after public comment voted unanimously to approve the project. On January 9, 1996, City Council reviewed and approved the project. During construction of the additional building and parking area, one adjoining property owner continually voiced his concern over the need for more buffering, the cutting of all the trees, the outside lighting being directed toward his home and the dust from the grading. He requested that some additional trees be planted and added inspections of the site be conducted.

During one of the inspections, staff noticed that a large number of trees had been cut to provide for a stormwater retention area. Since this project was within the ETJ at the beginning, the County had jurisdiction over the stormwater requirements. Staff then requested that a revised site plan be provided for the City's review. During this review staff determined that significant changes had been made to the approved site plan and therefore required the developer to submit revised site plans for review and approval by the City.

On November 6, 1996, the Commission voted unanimously to approve the revised site plan noting that the area surrounding the stormwater retention met the City's buffering requirements and then required the property owner to provide the required buffering outlined on the original site plan.

The Planning staff and the Commission recommend approval of the revised site plan for Care Free Windows industrial facility located at 150 Westside Drive.

Upon inquiry of Councilman Cloninger about why changes were made, Mr. Ownbey said that there were some minor changes on the footprint layout and some on the parking. Planning staff did review internally

-12-

those changes and found them to be in compliance. However, the major change was the retention area. The original plan called for the area to remain wooded and

because of the County's stormwater requirements, the County required the retention area to be built and the developer did not bring it back to the City for review. He said on April 23, 1996, the City annexed this property and the County approved the retention area on April 24, 1996.

Upon inquiry of Vice-Mayor Field, Mr. Ownbey said that not only does the retention pond meet the County's stormwater requirements, but it meets the City's requirements as well.

When Councilman Sellers asked if the buffering above Mr. Watts'

home have been complied with, Mr. Ownbey responded that they have not been complied with at this point. Mr. Ownbey said that the lighting, however, has been corrected.

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

University Place to be located on Barnard Avenue

Mr. Gerald Green, Senior Planner, said that the proposal is to construct twenty-four four bedroom apartments on Barnard Avenue.

The property totals approximately 2.75 acres and is zoned R-3 medium density residential. Surrounding properties are also zoned R-3. The apartments would be housed in two separate buildings on the site. Additionally, a 400 square foot freestanding laundry facility is proposed.

The Planning and Development staff recommended approval of the group development with the following conditions: (1) Receipt of letters confirming water and sewer availability; (2) That a parking agreement be worked out with an adjoining property owner; and (3) That the group development requirement related to recreational areas be met.

At their November 6, 1996, meeting the Commission voted unanimously to recommend denial of the group development. The recommendation was based primarily on safety issues, such as pedestrian and vehicular, and fire protection. Additionally, the Commission was not satisfied that one of the group development requirements (that they provide at least 200 square feet of recreational area per unit) had been met by the plans.

On November 12, 1996, a letter was received from Mr. James O. Efland, P.E., to Mike Matteson which reads: "Due to the short time interval and long holiday weekend we are unable to adequately prepare for forwarding of the University Place Apartments proposal to City Council. We therefore request that this project be withdrawn at this time pending further investigation as to our options and so as to allow us to obtain official findings of the Planning and Zoning Commission. These official findings have been requested but remain unavailable to us."

Upon inquiry by City Council, City Attorney Slawter said that Section 30-6-2 (f) of the Code of Ordinances reads that "the planning director shall promptly report the final recommendation of the planning and zoning commission to the Asheville City Council. The action of the planning and zoning commission shall then be final unless the city council determines at the time the report is made to schedule a public

-13-

hearing on the matter at one of its next regularly scheduled meetings, as soon

as is practicably possible, unless the parties consent to a specific date for the public hearing."

City Attorney Slawter further read that in subsection (g) it reads "no plan shall be reconsidered within one year unless and until the planning director determines the reasons for denial have been adequately addressed after consideration of additional information provided with a revised application and group development plan."

Councilman Hay moved to not set a public hearing on this matter, thereby accepting the report of the Planning and Zoning Commission for denial of the group development. This motion was seconded by Councilman Worley and carried unanimously.

Mr. David Gould said that when he was first made aware of this project his neighborhood formed a neighborhood association. The Association is unanimous against this project. He said that the entire area is highly dense. In the past, traffic concerns have tried to be addressed. He said that the roads and infrastructure in this area cannot handle anymore apartments. He suggested the entire area be studied for rezoning. He was concerned that will be an attempt to circumvent the plan and build these apartments within a year and the area just cannot handle it. The area is over-built. Another concern is the need for Council to again attempt to get legislative authority to restrict the kind of clearing and site preparation that can be done prior to a permit being approved. He then passed around pictures of the 2-1/2 acre lot that lost a couple of hundred trees and now looks like a dust bowl.

Chatham Garden Apartments located on Chatham Road

Mr. Gerald Green, Senior Planner, said that the proposal is to construct a twelve unit apartment building on Chatham Road.

The property totals approximately 1.9 acres and is zoned R-3 medium density residential. Surrounding properties are also zoned R-3. The twelve apartments would consist of a total of twenty-three bedrooms.

The Planning and Development staff recommended approval of the group development with the following conditions: (1) Must receive approval from the Fire Department; (2) Receipt of a letter confirming water availability; (3) That a revised landscape buffering plan be approved by staff; and (4) That the group development requirement related to recreational areas be met.

At their November 6, 1996 meeting the Commission voted (4-3) to recommend denial of the group development. The recommendation was based primarily on safety issues such as fire protection and pedestrian/ vehicular safety. Additionally, the commission was not satisfied that one of the group development requirements (that they provide at least 200 square feet of recreational area per unit) had been met by the plans.

On November 12, 1996, a letter was received from Mr. James O. Efland, P.E., to Mike Matteson which reads: "We request that this project not be forwarded to City Council for review at this time. We plan to review the entire scope of the project after we receive the findings of the Commission".

Ms. Leni Sitnick asked if there any place in the UDO or any other City ordinance that can prevent deforestation prior to approval by

-14-

either Planning staff, the Planning & Zoning Commission or City Council. She

was concerned that before approval by the appropriate parties is given, the developer is allowed to cut a lot of trees down and then finds that he cannot meet the conditions required for approval. The land is already destroyed.

Councilman Cloninger and Vice-Mayor Field said that City Council will again be contacting their legislative delegation to ask for enabling legislation giving the City authority to regulate the cutting of trees on private property.

Councilman Hay moved to not set a public hearing on this matter, thereby accepting the report of the Planning and Zoning Commission for denial of the group development. This motion was seconded by Councilman Sellers and carried unanimously.

B. ORDINANCE NO. 2334 - ORDINANCE AMENDING ORDINANCE NO. 2309 WHICH ESTABLISHED THE CITY BUSINESS AND DEVELOPMENT COMMISSION

Vice-Mayor Field said that the Council Boards & Commissions Committee have met and they are considering the recommendation from Mr. H.K. Edgerton about adding some members to the City Business & Development Commission. She said that the Committee is still researching this recommendation.

The Commission also reviewed and is recommending the ordinance be amended to allow City Council to select, among the members of the City Business and Development Commission, a Chairman who shall serve at the pleasure of City Council. The City Business and Development Commission will still select annually, from among it's members, a vice-chairman and a secretary. Since City Council does not actually make the appointments, this will give the Council a little more control on the direction it wishes the Commission to take.

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

Vice-Mayor Field moved for the adoption of Ordinance No. 2334. This motion was seconded by Councilman Sellers.

Upon inquiry of Councilman Skalski about not letting the Commission appoint their own Chairman, Councilman Worley said that since this particular Commission is made up of representatives not appointed directly by City Council, but appointed by various organizations, City Council appointing the Chairman will give the Council a little more control in the direction the Council wants that Commission to go.

On a roll call vote of 7-0, Ordinance No. 2334 passed on its first and final reading.

ORDINANCE BOOK NO. 16 - PAGE 127

C. COMMENTS FROM MR. DANIEL BREEN ON DRUG PREVENTION

Mr. Daniel Breen urged City Council to combat the serious drug problems in Asheville.

Mayor Martin and Vice-Mayor Field spoke about the efforts taking place on the prevention of drug use and commended the Police Department for the enforcement efforts.

-15-

D. COMMENTS FROM MS. JANE MATHEWS

Ms. Jane Mathews suggested that Council address, perhaps in the Unified Development Ordinance, dormitories.

Vice-Mayor Field said that she has talked some people at the University and they are looking at the privatization of dormitories. She can see that this will be an issue in the future that needs to be addressed. She suggested the Planning Department look at dormitories in terms of residential and in what zones. She also noted that at least 50-60% of the housing that is needed in this community needs to be rental housing - whether that is single family residential or apartments.

E. CLAIMS

The following claims were received by the City of Asheville during the week of October 18-31, 1996: Lillie May Waters (Civic Center) and Becky Gudger (Fire).

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

F. LAWSUIT

The City was served with an Appeal of Street Closings on October 25, 1996, from Piedmont Paper Company, regarding the closing of portions of Elliott Street and Garfield Street.

This lawsuit will be handled in-house.

CLOSED SESSION

At 6:55 p.m., Councilman Sellers moved to go into closed session: (1) as authorized by G.S. 143-318.11 (a) (3) to consult with the City Attorney in order to preserve the attorney-client privilege; and (2) as authorized by G.S. 143-318.11 (a) (5) to instruct City staff regarding the position to be taken by the City concerning the purchase of real property at the Shiloh Community Center. This motion was seconded by Councilman Worley and carried unanimously.

At 7:35 p.m., Councilman Sellers moved to come out of closed session. This motion was seconded by Councilman Worley and carried unanimously.

VII. ADJOURNMENT:

Mayor Martin adjourned the meeting at 7:35 p.m.

CITY CLERK MAYOR
