

Tuesday - February 11, 1997 - 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 Robert W. Oast Jr.; City Manager James L. Westbrook Jr.; and City Clerk Magdalen Burleson

Absent: None

INVOCATION

Councilman Worley gave the invocation.

I. PROCLAMATIONS:

A. STUDENT RECOGNITION

Mayor Martin recognized students from Western Carolina University in the Masters of Public Administration Program.

B. ASHEVILLE POLICE DEPARTMENT'S COMMUNITY SERVICE AWARD

Police Chief Will Annarino presented Mayor Martin with the Asheville Police Department's Community Service Award for his leadership and dedication to the Mayor's Drug Forum.

Mayor Martin thanked the Police Chief but noted that the Police Department's efforts along with other organizations contributed significantly to the success of the programs which arose out of the forum.

C. PROCLAMATION PROCLAIMING FEBRUARY, 1997, AS "BLACK HISTORY MONTH"

Mayor Martin read a proclamation proclaiming the month of February, 1997, as "Black History Month" in the City of Asheville and presented it to Mr. H.K. Edgerton, local NAACP Chapter President. Mr. Edgerton introduced the Youth in Education members of the NAACP.

II. CONSENT:

At the request of Councilman Skalski, Item E. from the Resolutions & Motions Consent Agenda was pulled off for individual discussion.

City Attorney Oast asked that the bids be recorded in the minutes for Items C. and D.

Resolutions & Motions:

A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON JANUARY 28, 1997; AND THE WORKSESSION AND COMMUNITY MEETING HELD ON FEBRUARY 4, 1997

B. RESOLUTION NO. 97-12 - RESOLUTION ACCEPTING A REPORT ON THE DISPOSAL OF CITY-OWNED PERSONAL PROPERTY

Summary: Resolution 85-99 adopted on June 25, 1985, established procedures for disposing of personal property valued at less than \$500. Pursuant to these procedures, the resolution identifies property disposals for the Parks &

Recreation Department, the Water Resources -2-

Department and the Fleet Management Division during the period of July 1, 1996, through December 31, 1996. Revenue from these disposals totals \$951.53.

RESOLUTION BOOK NO. 24 - PAGE 1

C. RESOLUTION NO. 97-13 - RESOLUTION ADOPTING THE RECOMMENDATIONS OF THE ASHEVILLE-BUNCOMBE WATER AUTHORITY AND AWARDED THE BIDS FOR THE SOUTH BUNCOMBE/FAIRVIEW WATER SYSTEM IMPROVEMENTS - PHASE II

Summary: The consideration of awarding the bid for the South Buncombe/Fairview Water System Improvements - Phase II to Hobson Construction Company, Inc.

Sealed bids were received on January 8, 1997, in accordance with N. C. Gen. Stat. sec. 143-129 and with the City of Asheville's Minority Business Plan. Four bids were received with Hobson Construction Company being the lowest responsible bidder. The Water Authority approved the awarding of the bid to Hobson Construction Company, Inc. in the amount of \$175,419.50. Following is a summary of the bid totals received for this project:

Hobson Construction Company \$ 175,419.50

First South Utilities 186,212.50

Buckeye Construction Company 242,550.00

\*Cooper Construction Company 489,994.00

\* Cooper Construction Company was the apparent low bidder at the time of the opening with a price of \$172,264.00. However, their bid contained a mathematical error when corrected resulted in the total shown above.

Staff recommends approval of the award of this project to Hobson Construction Company in the bid amount of \$175,419.50.

RESOLUTION BOOK NO. 24 - PAGE 3

D. RESOLUTION NO. 97-14 - RESOLUTION ADOPTING THE RECOMMENDATIONS OF THE ASHEVILLE-BUNCOMBE WATER AUTHORITY AND AWARDED THE BIDS FOR THE SOUTH ASHEVILLE/SOUTH BUNCOMBE PIPELINE REPLACEMENT PROJECT - PHASE II

Summary: The consideration of awarding the bid for the South Asheville/South Buncombe Pipeline Replacement Project Phase II to Wheeler Construction Company, Inc.

Sealed bids were received on December 17, 1996, in accordance with N. C. Gen. Stat. sec. 143-129 and with the City of Asheville's Minority Business Plan. Six bids were received with Wheeler Construction Company being the lowest responsible bidder. The Water Authority approved the awarding of the bid to Wheeler Construction Company, Inc. in the amount of \$949,634.00. Following is a summary of the bid totals received for this project:

Wheeler Construction Company \$ 949,634.00

Cooper Construction Company 974,009.32

Hobson Construction Company 1,012,875.00

Buckeye Construction Company 1,034,991.00

Stepp Construction Company 1,107,625.00

First South Utilities 1,130,595.00

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Staff recommends approval of the award of this project to Wheeler Construction Company in the bid amount of \$949,634.00.

RESOLUTION BOOK NO. 23 - PAGE 4

E. MOTION SETTING A PUBLIC HEARING ON FEBRUARY 25, 1997, TO AMEND THE ZONING ORDINANCE TO ESTABLISH A NEW OFFICE BUSINESS DISTRICT

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

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 Sellers and carried unanimously.

Ordinance:

A. ORDINANCE NO. 2344 - BUDGET AMENDMENT RELATIVE TO THE RESTORATION OF THE DEAGAN TOWER CHIMES ATOP THE ASHEVILLE CITY HALL BUILDING

Summary: This budget amendment, in the amount of \$26,400, is relative to the restoration of the Deagan Tower Chimes atop the Asheville City Hall Building.

Councilman Cloninger was pleased to note that \$21,493 has been raised privately to go toward this \$26,400. He appreciated the efforts of the private individuals who have donated their time and money to this effort. He looked forward to the strong possibility of the rest of the funds be raised privately.

Councilman Skalski thanked HRC Director Maggie O'Connor for her efforts in raising the money for the Chimes Project.

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

On a roll call vote of 7-0, Ordinance No. 2344 was unanimously adopted.

ORDINANCE BOOK NO. 16 - PAGE 144

ITEM PULLED FROM CONSENT AGENDA FOR DISCUSSION

MOTION SETTING A PUBLIC HEARING ON FEBRUARY 25, 1997, TO AMEND THE ZONING ORDINANCE TO ESTABLISH A NEW OFFICE BUSINESS DISTRICT

When Councilman Skalski asked why this was being introduced at this time when the UDO is soon to be adopted, Planning & Development Director Julia Cogburn said that staff has received several requests, however, there is one request in particular, where they think the application of this district would be appropriate or at least worth exploring. That is why the Planning staff is introducing this as a -4-

potential tool in looking at areas for zoning and allowing certain types of uses. She said that this will be part of the UDO ultimately, but there is some urgency in a particular potential application of this district. Since it will ultimately be part of the UDO, staff doesn't think that it's inappropriate to be introduced at this point.

She noted that this will have a relationship ultimately to the Hendersonville Road zoning potentially, but this is only scheduling a public hearing to look at the possibility of introducing into the zoning ordinance a new district that would be Office/Business District.

Councilman Cloninger moved to set a public hearing on February 25, 1997, to consider adding a new Office/Business District to the Zoning Ordinance. This motion was seconded by Councilman Worley and carried on a 6-1 vote, with Councilman Skalski voting "no".

### III. PUBLIC HEARINGS:

A. PUBLIC HEARING RELATIVE AMENDING THE ZONING ORDINANCE TO REZONE THAT PORTION OF THE LOT IDENTIFIED AS PIN NO. 9655.09-15-2013, WHICH IS NOW ZONED OI OFFICE INSTITUTIONAL DISTRICT BE REZONED TO R-2 RESIDENTIAL DISTRICT

ORDINANCE NO. 2345 - AMENDMENT TO ZONING ORDINANCE TO REZONE THAT PORTION OF THE LOT IDENTIFIED AS PIN NO. 9655.09-15-2013, WHICH IS NOW ZONED OI OFFICE INSTITUTIONAL DISTRICT, BE REZONED TO R-2 RESIDENTIAL DISTRICT

Mayor Martin said that this public hearing was rescheduled from January 14, 1997, in order to give staff additional time to work with the property owners.

Mayor Martin opened the public hearing at 5:37 p.m.

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

Ms. Erin McLoughlin, Urban Planner, said that this is a continuation of a zoning study which was postponed on January 14, 1997, meeting. This study was to examine approximately 10 acres west of Hendersonville Road and east of Blake Mountain Estates. The two parcels in the study are PIN Nos. 9655-09-15-0415 and 9655-09-15-2013. Both parcels are currently zoned more than one zoning classification. Staff was directed to study the OI zoning of these two parcels. The City Council referred this study to the Planning & Zoning Commission ("Commission"). At their November 6, 1996, meeting, the Commission voted 4-3 that a portion of PIN No. 9655-09-15-2013 be rezoned from OI to R-2. At that time, Planning staff recommended that the entire portion of the OI zoning change from OI to R-2. The reasons for this recommendation were as follows:

1. This recommendation was consistent with past staff recommendations regarding the zoning of this area.
2. The 2010 plan indicates low density residential for this area.
3. Staff considered current development, topography, and access of this area and felt that low to medium density development would serve as a good transition for this area.

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4. The original zoning of this area was R-2, a low to medium density district.

Staff has had several months to review this area. They considered the 2010 Plan

infrastructure, topography, current development and access. They feel that this area is ideal for a transition between the single family homes to the west and the commercial uses to the east. They will be able to address this transition in the UDO process.

With the use of maps, she reviewed the current zoning of the area, the exact two parcels studied, the current zoning of each of the two parcels studied, the Planning & Zoning Commission's recommendation (an approximate 2 acre portion of the lot identified as PIN No. 9655.09-15-2013 which is now zoned OI, be rezoned to R-2), and the recommended UDO zoning. She explained that the recommended UDO zoning is basically very consistent with the recommendation that the Commission recommended.

She tried to explain the controversy over what the 2010 Plan actually calls for. She said the reason for this controversy is that this area falls right in the middle of four dividing lines. The area in question meets four different zones - the Blake Mountain Estates area falls in the low density residential, immediately north is medium density residential district, to the east is commercial uses, and to the south is institutional. She also noted that the scale on the 2010 Plan is so small that it is difficult to identify a specific tract.

When Councilman Skalski asked when the World Servers tract was zoned OI, Ms. McLoughlin said that when the area was annexed in about 1989, the World Servers tract was zoned OI because their building was on that property and to zone it otherwise would make it a non-conforming use. She further stated that the southern five acres (Morosani tract) was rezoned to OI in 1991.

Councilman Skalski noted that the 2010 Plan was adopted in 1987, pointing out that at the time the 2010 Plan was published, the southern five acres were then zoned R-2.

Councilman Cloninger noted that with the Commission's recommendation is essentially adding a buffer of R-2 in an area that is currently OI and that buffer would protect a portion of the Blake Mountain Estates that's contiguous with the current OI property. He felt that Council can today take a stop-gap measure to tide them over until they pass the UDO. The action taken today will in no way tie their hands as to what they do in the future. Alternative zoning arrangements will still be looked at in that area once Council begins looking at the UDO mapping. In the UDO mapping process there will be more tools available and more categories to choose from in how the area is zoned.

Councilman Hay felt that Council needed to do something today to bridge us now until the UDO is adopted in terms of development. He wondered if adoption of the Commission's recommendation would accomplish that. Councilman Cloninger felt that the Commission's recommendation is the best thing for Council to adopt at this time until the area is addressed more comprehensively through the UDO process.

Councilman Hay was pleased that staff was looking ahead and doing something consistent with the UDO. He wondered whether the OI District and the new proposed Office Districts in the UDO are the same. Ms. McLoughlin replied that they not. They are similar, but not the same.

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When Councilman Skalski asked why this is being rezoned at this time if the UDO process will give more tools, Councilman Cloninger said that this is a temporary rezoning. In his opinion Council wants to protect the Blake Mountain Estates neighborhood, but at the same time be fair and try to have a minimal

impact on the surrounding property owners as well. He felt this was the fairest way to provide a temporary protection until the matter can be addressed more comprehensively in the UDO.

Councilman Skalski reminded Council of his original position regarding this matter several months ago. His position was to do an small area plan to resolve the issues, not just temporary measures.

Councilman Cloninger stated that the UDO is the comprehensive plan of the area.

City Attorney Oast reminded Council that they should disregard any mention of specific uses for the properties in question. In this rezoning request, Council need to consider all of the uses allowed in the zoning designation.

Ms. Barbara Darden, representative of Mediation Groups Inc. as their real estate broker and also representative of World Servers, said that they have signed a contract with Arbor Investments from Atlanta for an assistance in living complex to be developed on that property. It's a complex of 60 units for the elderly. This requires that the zoning remain OI or OB, if it comes under that designation. They have stressed their attraction to the property was primarily because of the trees and the environment that exists there and is conducive to their project. They feel it is a good transition purpose between the commercial and the R-2 zone. They have received a phone call from a development company in Roanoka, Virginia, that is interested in purchasing Mr. Shuford's property which is the property south of them and they, too, want to do an assistance in living center which would complement the one being built on the World Servers' property. It is their understanding that Arbor Investments is submitting plans shortly and they will be contacted by the development company from Virginia to coordinate their purposes. They feel that the use of the land for this purpose should be acceptable to the residents to the rear of their property and they support the zoning that has been recommended by the Planning & Zoning Commission at this time.

Ms. Laurel Eide read the following prepared statement:

"My name is Laurel Eide. Do you know the most often asked question I hear daily?? Have you sold your house yet? It will be 3 years in May that my house has been on the market. Three long years that my husband has been commuting back and forth to Greenville every day. And 3 long years that no one wants to buy my house. Why?? Because a previous City Council has backed me into a corner. I am the only Asheville resident that lives in a single family neighborhood that has the misfortune of having OI zoning touching their property. Yes, I have the possibility of having 32 units per acre residential density with no height restriction within 20 feet of my property where I live in a single family residence. Would anyone on City Council want this situation for themselves??

When I do get lucky enough for a Realtor to show my house, they ask one question immediately. What is the zoning of the undeveloped property behind your house?? My response kills any possible sale because no one wants that harsh zoning in their back yard. I have no choice but to tell the truth to any prospective buyer. -7-

I personally feel that the City of Asheville has betrayed their public trust. The previous City Council violated the 2010 Plan in zoning this property OI. They breached their contract with the citizens of Asheville. My personal rights as an Asheville citizen and taxpayer have been violated, as well. My quality of life that the City of Asheville promotes has been destroyed. What quality of life do I now have?? My health and well being has been affected. My family life has taken a back seat because of all the past months of work related to

this present OI situation. My days have been filled with stress, tension and humiliation. The present City Council, who ran on a platform of being pro-neighborhood, have the opportunity to right this travesty of injustice.

The injustice of this OI zoning has made me a stronger individual. There is not a person in this room that I am afraid to stand up to regarding this unconscionable zoning that has been put in my back yard. I have the desire, the knowledge and the financial backing to continue this fight until justice prevails for the neighborhoods of South Asheville.

I have spent the last few years of my life opposing this "spot zoning" that many feel was illegal. The Planning Department Staff has repeatedly recommended denial of OI zoning in this area. I have been cheated out of my property rights by the City of Asheville. My property has been devalued by the City of Asheville by its previous actions. The OI property in question was zoned OI on the basis of proposed plans that never materialized. The only things that have materialized are "For Sale" signs on both properties to take advantage of the increase in their property values while my property values have been devastated. And they talk about protecting their property values. What about my property values?? What about my rights??

Here I stand begging for crumbs. Well, I don't want crumbs. I want justice. I want City Council to dispense justice to the neighborhoods of South Asheville and me personally.

I want the OI - all 10 acres - returned back to its originally intended R-2 zoning. The present property owners have never followed through on their promises and the zoning should be brought back in compliance with the 2010 Plan.

Let this be written into the City Council minutes and distributed to the Asheville-Citizen Times, Mountain Express, Mountain Sentinel, the CAN newsletter and the new Community Voice that I, Laurel Eide, request this day, February 11, 1997, a public and written apology from the City of Asheville.

I request a written and public explanation as to the reasons for the placement of this OI zoning which occurred in the past. I want to know who will take responsibility for the hardships that my family and I have endured for the last 3 years. My family and I have been held hostage by the actions of the previous City Council and have been unable to relocate to the city of my husband's employer.

Mr. Mayor, you told me almost one year ago while standing on my property..... "This OI was clearly "spot zoned." This OI clearly should never have happened. This was clearly political, however, I was not in office at that time."

Mr. Mayor, you are in office now. You have the opportunity to right this wrong and give the residents of South Asheville the justice that they seek. -8-

What did Mr. Morosani do to get the favors bestowed upon him while the 2010 Plan was gutted in South Asheville. Mr. Morosani never did anything except put a "For Sale" sign on the property after getting his OI rezoning. According to Mr. Shuford, Mr. Morosani hasn't made a payment on the property in 3 years while he continues to market the property in hopes of a large profit. Where is the justice here??

I expect the OI - all of it to be returned to its originally planned R-2 zoning. Put the property in conformance with the 2010 Plan AND the Planning Department Staff's recommendations. Why can't City Council admit that the City

made a mistake in the past and take this opportunity to right a wrong???

I hope that City Council will no longer listen to the pie in the sky promises of developers who get their rezoning, and never follow through on their promises. Improper zoning results in a cancerous growth of more improper zoning. Owners of adjacent undeveloped properties want their properties rezoned to increase their property values while decreasing the values of the adjacent neighborhoods.

One wrong rezoning can affect the whole neighborhood adversely and cause the whole community to rise up in protest. If a mistake is made by the City, they should correct it.

In conclusion, I think City Council members are honorable and decent people that want to do the right thing. The only honorable, decent and morally right decision is to rezone the whole 01 tract

back to R-2 and give South Asheville and Laurel Eide the justice that we have worked so hard to achieve.

Thank you for your time Mr. Mayor and City Council members."

Councilman Cloninger pointed out that this rezoning to OI was by a previous City Council. When the issue came before this Council, they repeatedly met and tried to work something out that was fair to all concerned. He did feel that what Council is proposing to do today will be fair. He stressed that during the UDO process, Council very much wants to work out a zoning classification through that area that will be fair to all the concerned property owners. He was confident that it can be done.

Councilman Skalski said that several months ago he and Councilman Sellers voted to have a small area plan developed for this area. The majority of the citizens in this area circulated a petition asking City Council to prepare the plan. He noted that the Haw Creek small area plan done last year was done in about six weeks and it has been five months since he first requested a small area plan for this area. He felt this area was small compared to the Haw Creek area and the plan would not have taken as long. In his opinion, Council is making unilateral decisions on peoples lives without allowing them to have due process. He felt that at the very least, Council should rezone this R-2 and wait for the UDO or at least do a small area plan.

Vice-Mayor Field noted that if Council were to rezone the two five acre tracts to R-2, they would be changing the World Servers OI tract that has been zoned that way since it was annexed.

Councilman Hay wondered if Council would be willing to rezone the five acre Morosani tract to R-2 since the ownership of that tract is unsettled at this time and leave the World Servers tract zoned OI.

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Vice-Mayor Field was concerned about having R-2, which is a low density residential area, abut directly to a commercial highway zone. She felt that the transition of OI between the two zones makes a lot more sense than changing the Morosani tract back to R-2. She saw no reason for changing the World Servers property to R-2 since it never was R-2.

Councilman Skalski didn't think it was the prerogative of this City Council to tell the people in South Asheville how they should live. There are options in our legal system to allow the residents to do a small area plan. He reiterated



his position to have a small area plan developed for that area, as requested by the petition presented to City Council from the neighborhood five months ago.

Councilman Cloninger said that even if Council would have done a small area plan, they would still be sitting where they are today trying to decide what to do on a temporary basis because the small area plan would not have been applicable to the UDO. There would be different zoning classifications. Even with a small area plan Council would have looked to provide a buffer for Blake Mountain Estates, which we are doing with the Planning & Zoning Commission recommendation.

When Councilman Skalski wondered if the small area plan done in Haw Creek was a waste of time, Councilman Cloninger replied that it was not a waste of time in that Council made a temporary rezoning in order to preserve the status quo until the UDO was adopted. That is exactly what Council is hoping to do today.

Councilman Hay remembered that staff said if they undertook a small area plan at that time, it would have postponed the UDO another month.

Councilman Skalski felt that when you are affecting peoples lives, that is not an acceptable answer, especially since the UDO has already been delayed one more month.

Mr. Richard Green read the following prepared statement:

"My name is Richard Green. I live at 203 Blake Mountain Estates, about 100 yards from the property in question. I am here to speak on behalf of the Coalition of South Asheville Neighborhoods.

In 1987, City Council adopted the 2010 Plan as an official public planning document to guide the development of Asheville for the following 25 years. City Council made a contract with the Asheville residents. We're 10 years into that plan, less than half-way. The 2010 Plan's vision was for a small strip of OI south of Ingles along, Hendersonville Road with R-2 zoning behind as a transition to the single family neighborhoods. Over the last 10 years the plan has repeatedly been violated. There is CH (Commercial Highway) zoning at the road now and OI has been jammed against the single family neighborhoods in the rear.

When the World Servers property was annexed into the City they were given OI zoning on the basis of proposed future development of their educational complex. It never happened. Their property is now under contract to a developer who wishes to utilize the existing permitted 32 per acre residential density in an area that the 2010 Plan and the Planning Department have consistently recommended for 6 per acre density.

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When Mr. Morosani bought the Shuford property, it had R-2 zoning in accordance with the 2010 Plan. Subsequently, he asked for an OI rezoning so he could sell the property to the World Servers who wished to expand their educational facility. It never happened. The only thing that happened was a "For Sale" sign and a higher asking price for the property.

The Planning Department Staff has consistently recommended over the years that this property remain R-2 and as recently as several months completed their zoning study on this OI tract. Again, they recommended that the property be R-2 in its entirety.

The citizens of South Asheville request that City Council honor their

commitment to the 2010 Plan as well as follow the recommendations of the zoning study that City Council themselves initiated. City Council members ran for election on a pro-neighborhood slate and now have the opportunity to demonstrate that their election rhetoric were not hollow promises. South Asheville residents request that the entire OI tract be rezoned to R-2. This action is the only honorable and moral decision appropriate in light of the results of the zoning study completed by the Planning Department."

Councilman Worley said that he was disappointed. He said that members of this Council have met numerous times with representatives of South Asheville. They've made a conscientious effort to work out possible solutions and have delayed public hearings to give the representatives of the various parties involved an opportunity to discuss amongst themselves and come up with resolutions. We met, as recently as last Friday, with Mr. Green and Ms. Eide and at that meeting, both Mr. Green and Ms. Eide indicated to Council that they had no problem with Council going forward on a temporary basis with the recommendation proposed by the Planning & Zoning Commission - yet we're hearing something entirely different now. He has heard today that City Council has breached the faith, but wonders if the same thing cannot be said back. Council has tried very hard but they also have a job to balance. Council can't give everybody everything they want. Property rights and values go both ways. He resented being accused of acting improperly and acting not in the best interest. All of Council was elected to do a job, to look at everything, to receive all of the information and to make the best decision they know how to make. And, they are trying to do that.

Councilman Cloninger agreed with Councilman Worley. He, too, attended the meeting last Friday with Ms. Eide and Mr. Green. They specifically said that what Council is proposing today in adopting the recommendation of the Planning & Zoning Commission was acceptable to them. Even though he is disappointed by the comments by Mr. Green and Ms. Eide today, he is convinced that Council will do the best thing by adopting the recommendation of the Planning & Zoning Commission. He felt Council will be creating a buffer that will protect Blake Mountain Estates until the UDO is adopted.

Mr. Ray Hardy, 35 Edgewater Lane, said that he is one of the principles in the Shuford estate which they are in the process of foreclosing. He said it is not the intent of the principles in the Shuford estate to take advantage of the people in South Asheville. He supported the recommendation of the Planning & Zoning Commission. He felt it was a fair compromise. As a side issue, he said that on the property where Council is considering making a buffer, there used to be an old road that goes up to an abandoned water reservoir. There's about a 16' open drain and he assumes the water is coming off of Blake Mountain Estates. The water is causing soil erosion to the back -11-

property. Mayor Martin instructed the City Manager to investigate the concern.

Mr. William Shuford said that he has met with City staff and Ms. Darden concerning the zoning of the area and he was not concerned with the proposed UDO zoning of OB. He was not willing, however, to put the buffer on the Pulliam property, which is under development. He noted that his foreclosure proceedings are still in progress. He, too, asked the City to investigate the water runoff described earlier by Mr. Hardy.

Mr. Bruce Rogers, Treasurer of the Oak Forest Association, asked that Council return the two five acre tracts of OI to R-2, mainly because he was worried that by the time the UDO is adopted, the OI allows some fairly intrusive high density residential activity.

Mr. Eide voiced his disdain over the entire rezoning issue.

Ms. Kathy Rosenberg, 34 Westridge Drive, asked that the ten acres of OI property returned to the R-2 zoning. She felt that Blake Mountain and Oak Forest needs a civilized boundary to protect families that are already there.

Mr. Tim Davey, 211 Blake Mountain Estates, felt that every time he goes to a meeting, the mapping changes. He asked Council consider the Planning staff's recommendations to change the property to R-2. He, too, urged Council to rezone the OI portions back to R-2. He noted that since this originally came to Council about 4-5 months ago, Mr. Pulliam has now cleared his property (currently zoned R-2) of all trees in speculation of what was going to happen. He was concerned that the OI property will be cleared too.

Councilman Cloninger stated that City Council postponed the hearing on this matter at the request of the property owners at Blake Mountain Estate. Council was prepared to take action in November.

Ms. Kathryn Bolick, 36 Westridge Drive in the Oak Forest Subdivision, requested that the 10 acres of land zoned OI be returned to their original R-2 zoning. They want zoning that is in harmony with the neighborhood, not temporary fixes. They don't want to live in neighborhoods that are uncertain of their futures.

Mayor Martin closed the public hearing at 6:45 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 to adopt Ordinance No. 2345 (which is the Planning & Zoning Commission's recommendation to rezone that portion of PIN No. 9655.09-15-2013 from OI to R-2 with the portion being described as the portion west of the line that runs from the southwestern corner of that portion of the property identified as PIN No. 9655.09-15-0415 which is now zoned OI and running thence from [and that beginning point is located on the northern boundary between those two tax lots] and running thence from said southwestern corner in a southerly direction to its intersection with the southern boundary of that tax lot identified as PIN No. 9655.09-15-2013). This motion was seconded by Councilman Sellers.

City Attorney Oast said that the legal notice contains a metes and bounds description of the parcel being rezoned, as recommended by the Planning & Zoning Commission. -12-

Councilman Skalski said that after this motion is made, he would make a motion to rezone all of PIN Nos. 9655.09-15-0415 and 9655.09-15-2013 back to their original R-2. In order to get at least part of PIN No. 9655.09-15-2013 back to R-2, he will vote in favor of Councilman Cloninger's motion.

Councilman Hay suggested leaving World Servers property zoned OI (as it has been zoned since it has been annexed) and basically rezone the Morosani OI tract to R-2. He was concerned about the ownership of the Morosani tract and the uses that are allowed with the OI zoning.

On a roll call vote of 7-0, Ordinance No. 2345 was adopted on its first and final reading.

Councilman Skalski moved to rezone the two tracts currently zoned OI in PIN Nos. 9655.09-15-0415 and 9655.09-15-2013 be rezoned back to their original R-2 designation. This motion died for a lack of a second.

Councilman Hay moved to rezone the remaining portion of PIN No. 9555.09-15-2013 from OI to R-2. This motion was seconded by Councilman Skalski.

Councilman Hay explained his motion by saying that it would reverse the OI zoning on the Morosani tract back to it's original R-2 but still leave the World Servers tract zoned OI since the World Servers building is an OI use. He felt this is a logical approach to solve the problem.

Mayor Martin asked the City Attorney if Councilman Hay's motion was out of order. City Attorney Oast felt that the motion was out of order because the petition before Council was initiated on the request to rezone the entire 10 acres zoned OI but the Planning & Zoning Commission recommended a partial rezoning. At today's meeting, Council adopted the partial rezoning as recommended by the Planning & Zoning Commission and denied the remaining OI zoning. He felt any further action on those particular parcels regarding that particular petition would be out of order unless reconsidered by the Planning & Zoning Commission.

Upon inquiry of Councilman Skalski, City Attorney Oast said that Council could make a motion to remand the remaining 8 acres zoned OI back to the Planning & Zoning Commission to reconsider.

Councilman Hay said that remanding this back to the Planning & Zoning Commission would not accomplish what he wants - which is to build a bridge from this point until the adoption of the UDO.

Councilman Cloninger felt that everyone has dealt in good faith and the only way Council is going to resolve situations like this is to be able to rely on each others words. Council met with representatives of South Asheville last Friday and it was made clear to Council by those representatives that the Planning & Zoning Commission's recommendation was acceptable to the people in that area.

City Attorney Oast then asked to respond to Councilman Hay's motion which he declared out of order earlier. He said that even though the motion stated was out of order, it is possible for Councilman Hay (since he voted in favor of the rezoning of the westernmost part of that lower parcel) to move for reconsideration. Council then has to vote on -13-

whether to reconsider Councilman Cloninger's motion. If Council does vote in favor of reconsideration of Councilman Cloninger's motion, then Councilman Hay can make his motion for the rezoning of the entire lower parcel.

Councilman Hay then moved to reconsider the previous vote on rezoning a portion of the OI tract of PIN No. 9555.09-15-2013. This motion was seconded by Councilman Skalski and failed on a 2-5 vote, with Mayor Martin, Vice-Mayor Field and Councilmen Cloninger, Sellers and Worley voting "no".

Councilman Skalski made a motion for the Planning staff to develop a small area plan for the 155 acres in the Blake Mountain Estates area. He felt that is the only real fair way to deal with the zoning issues when there are so many parties involved. This motion died for a lack of a second.

ORDINANCE BOOK NO. 16 - PAGE 146

#### IV. UNFINISHED BUSINESS:

#### V. NEW BUSINESS:

##### A. RECOMMENDATIONS OF THE ASHEVILLE-BUNCOMBE WATER AUTHORITY FOR ENGINEERING SERVICES CONTRACTS FOR PHASE I MASTER PLAN IMPROVEMENT PROJECTS

At the request of Councilman Cloninger, Councilman Worley moved to excuse

Councilman Cloninger from voting on the contract with ENG/6A and the contracts with McGill Associates, P.A., due to a conflict of interest (his firm represents both engineering firms). This motion was seconded by Vice-Mayor Field and carried unanimously.

Mr. Mike Brookshire, Civil Engineer, said that in December 1996, the Authority authorized the Director and the Authority's attorney to negotiate Engineering Services Contracts for the approved Phase I Master Plan Improvement Projects. The solicitation for engineering services was through a request for proposals process. Negotiations have been completed with the following companies:

Project Company

West Asheville Reservoir McGill Associates

ISO Pipeline Improvements McGill Associates

US 19&23 Connector ENG/6 Associates

Fairview Reservoir & Pipeline W.G. Lapsley & Assoc.

Newfound Mtn. Reservoir & Pipeline McGill Associates

The Water Authority approved awarding contracts to ENG/6A in the amount not to exceed \$58,835.00; W.G. Lapsley & Associates in the amount not to exceed \$90,000.00; and McGill Associates in the amount not to exceed \$62,750.00 for the Leicester Proposal, not to exceed \$47,900.00 for the West Asheville Proposal, and not to exceed \$51,600.00 for the Central Business District.

Staff recommends approval of the award for engineering services contracts to the aforementioned companies for the Phase I Master Plan Improvements Projects.

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RESOLUTION NO. 97-15 - RESOLUTION ADOPTING THE RECOMMENDATIONS OF THE ASHEVILLE-BUNCOMBE WATER AUTHORITY AND APPROVING THE EXECUTION OF AN ENGINEERING CONTRACT WITH WILLIAM G. LAPSLEY & ASSOCIATES, P.A., FOR A PORTION OF THE PHASE I MASTER PLAN IMPROVEMENT PROJECTS OF THE ASHEVILLE-BUNCOMBE WATER AUTHORITY

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 to adopt Resolution No. 97-15. This motion was seconded by Vice-Mayor Field and carried unanimously.

RESOLUTION BOOK NO. 24 - PAGE 5

RESOLUTION NO. 97-16 - RESOLUTION ADOPTING THE RECOMMENDATIONS OF THE ASHEVILLE-BUNCOMBE WATER AUTHORITY AND APPROVING THE EXECUTION OF AN ENGINEERING CONTRACT WITH ENG/6A FOR A PORTION OF THE PHASE I MASTER PLAN IMPROVEMENT PROJECTS OF THE ASHEVILLE-BUNCOMBE WATER AUTHORITY

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 to approve Resolution No. 97-16. This motion was seconded by Councilman Worley and carried unanimously.

RESOLUTION BOOK NO. 24 - PAGE 6

RESOLUTION NO. 97-17 - RESOLUTION ADOPTING THE RECOMMENDATIONS OF THE ASHEVILLE-BUNCOMBE WATER AUTHORITY AND APPROVING THE EXECUTION OF AN ENGINEERING CONTRACT WITH MCGILL ASSOCIATES, P.A., FOR PORTIONS OF THE PHASE I MASTER PLAN IMPROVEMENT PROJECTS OF THE ASHEVILLE-BUNCOMBE WATER AUTHORITY

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 to approve Resolution No. 97-17. This motion was seconded by Councilman Worley and carried unanimously.

RESOLUTION BOOK NO. 24 - PAGE 7

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 February 5, 1997:

Southridge II Residential Hall at UNC-A

Mr. Carl Ownbey, Urban Planner, said that this is a consideration of a proposal to construct a 76 room dormitory on the UNC-A campus.

The four story dormitory will house 150 students and will be located adjacent to the existing residence hall near the Southwestern corner of the campus. -15-

The site plan meets all Group Development and zoning requirements and staff has received no public comment on this proposal.

At their February 5, 1997, meeting, the Commission voted unanimously to recommend approval of the group development with one condition: (1) The receipt of letters of approval for availability of water and services and adequate water pressure for fire protection.

The Planning and Development Department staff recommended approval with the same condition.

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

View Pointe Residential Community located on Azalea Drive

Mr. Ownbey said that this is consideration of approval of a 45 unit residential retirement community on 10.7 acres located off Swannanoa River Road in East Asheville.

On January 6, 1997, the Planning Department received the site plan for a proposed residential community. The proposed project will be a 45 unit residential community developed as a retirement community. The site plan was presented to the Technical Review Committee on January 13, 1997, for their comments.

On February 5, 1997, the Commission reviewed the site plan and opened the meeting for public comment. There were no comments from the public.

The Commission voted unanimously to approve the project with the following 5 conditions: (1) submittal of stormwater and erosion control plans; (2) approved NCDOT driveway permit; (3) approved street names; (4) letter of adequate water flow for fire protection; and (5) detailed driveway stormwater drainage plan.

The Planning Staff and the Commission recommend approval of the View Pointe Residential Community with the five conditions.

Upon inquiry of Councilman Hay, Mr. Ownbey showed Council where the gate is to be located on this gated community.

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

Gashes Creek Office Park located on Gashes Creek Road

Mr. Ownbey said that this is consideration of approval of a 32,750 square foot office building on 1.65 acres located off Gashes Creek Road in East Asheville.

On January 6, 1997, the Planning Department received the site plan for a proposed office building. The proposed project will be a three story, 32,750 square foot office building. The site plan was presented to the Technical Review Committee on January 13, 1997, for their comments.

On February 5, 1997, the Planning & Zoning Commission reviewed the site plan and opened the meeting for public comment. There was one -16-

comment from an adjoining property owner who expressed their support for the project.

The petitioner has requested four variances for this project and requests zoning vested rights.

City Council will need to set a public hearing to consider the following items for the proposed project known as the "Gashes Creek Office Building", located off Gashes Creek Road in East Asheville: (1) the approval of a site plan; (2) The granting of a zoning vested right for Gashes Creek Office Building. The granting of a zoning vested right will extend the approval time period for the project from 1 year to 2 years; (3) The following variances: (a) variance to the parking space requirements for office buildings; (b) variance to the street tree requirements regarding location and width of the street tree planting strip; (c) variance to the landscaping in the off-street parking area; and (d) variance to the rear setback requirement for an office building.

The Planning & Zoning Commission voted unanimously to approve of the project with the four variances and one condition which is the submittal of an erosion control plan.

The Planning Staff recommends that the City Council schedule a public hearing to review the requested four variances and the request for zoning vested rights of the Gashes Creek Office Building.

Councilman Skalski moved to set a public hearing on February 25, 1997. This motion was seconded by Councilman Worley and carried unanimously.

Willoughby Run Townhouses located at the corner of Sweeten Creek Road and

## Rathfarnham Road

Ms. Erin McLoughlin, Urban Planner, said that this is consideration for approval of a twenty seven unit townhouse development at the intersection of Sweeten Creek and Rathfarnham Roads.

The 2.93 acre parcel is zoned CG (commercial general) which refers to R-3 standards. R-3 allows 16 units per acre. Twenty-seven units is within the allowed density. This development borders CG (commercial general) zoning to the south and R-3 (medium density residential) zoning to the west. The proposal meets all zoning and group development requirements.

At the February 5, 1997, the Commission meeting, a member of the public voiced concern about erosion problems already existing on the proposed site.

The City Planning and Development staff recommends approval of the group development with two conditions: (1) Letter from the Water Authority confirming availability; and (2) Council to set date for a public hearing regarding a variance for set back requirements for accessory structure, Sec. 30-5-4-C.

At their February 5, 1997, meeting, the Commission voted 6-0 to approve the development with two previously mentioned conditions.

Ms. McLoughlin said that a letter has been received from the Water Authority confirming availability.

Councilman Skalski moved to set a public hearing on February 25, 1997, to consider the approval of a site plan for Willoughby Run -17-

Townhouses, located at the intersection of Sweeten Creek and Rathfarnham Roads, and a variance to the setback requirements for accessory structures for the project. This motion was seconded by Vice-Mayor Field and carried unanimously.

Vice-Mayor Field asked that the City's Traffic Engineer be at the hearing on February 25, 1997, to address any traffic concerns.

## B. TRANSIT FUNDING

Councilman Skalski said that he would be meeting with legislators to discuss helping transit cities like Asheville obtain more money for transit. City Council fully supported asking for an increase in the transit share fund and asked Councilman Skalski to relay their support to the legislators.

## C. UDO SCHEDULED

Mr. Karl Koon, Buncombe County appointee to the Planning & Zoning Commission ("Commission"), assured City Council that members on the Commission have been diligently working on their review of the UDO. He takes his job on that Commission very seriously and even though the UDO has been worked on for over seven years, he has only been on the Commission since September, 1996. He felt that the Commission is doing the best job they can before it moves on to the City Council for their review.

Councilman Worley commented that the Commission has been working hard on the UDO and he was impressed with Mr. Koon's thoroughness and conscientiousness with which he has dived into the UDO review.

Mayor Martin also felt that if the Commission needed additional time to adequately prepare the document to proceed to City Council, then they should have it. He did note, however, they a time schedule is necessary due to the



significant amount of money that will be expended for advertising.

D. CLAIMS

The following claims were received by the City of Asheville during the week of January 24-30, 1997: Walter Toth (Streets), John B. Young (Water) and Mountain Spring Apartments (Fire).

The following claims have been received by the City during the week of January 31-February 6, 1997: Kathy Miller (Civic Center), Reader's Corner (Water), Dave Marcus (Finance), Bob May (Water), David Hill (Streets), Rhonda Simmons (Civic Center), Ed Hardin (Streets) and Davenport Properties (Police).

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

VII. ADJOURNMENT:

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

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CITY CLERK MAYOR

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