

Tuesday - August 12, 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; and Councilman Charles R. Worley; City Attorney Robert W. Oast Jr.; City Manager James L. Westbrook Jr.; and City Clerk Magdalen Burleson

Absent: Councilman James J. Skalski

INVOCATION

Councilman Hay gave the invocation.

I. PROCLAMATIONS:

A. SISTER CITY PRESENTATION

Mr. George Yates, President of the Asheville Sister City Program, introduced guests from our Sister City in Vladikavkav, Russia.

Mr. Dennis Hodgson, Immediate Past President of the Asheville Sister City Program, presented the Mayor and City Council with a gift from the Mayor of our Sister City in Saumur, France. The gift was a watercolor of the City Hall Building in Saumur, France.

On behalf of the entire City Council, Mayor Martin welcomed our Sister City visitors and expressed thanks for the beautiful gift.

B. PROCLAMATION PROCLAIMING AUGUST 23-24, 1997, AS "STUMP TOWN COMMUNITY REUNION DAYS"

Mayor Martin proclaimed August 23-24, 1997, as "Stump Town Community Reunion Days" and presented the proclamation to Ms. Phyllis Sherrill, who briefed the Council on some activities taking place on those days.

II. CONSENT:

Mr. Ralph Bishop asked that Items A. & I. be removed from the Consent Agenda for discussion.

Resolutions & Motions:

A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON JULY 22, 1997; THE COMMUNITY MEETING HELD ON JULY 29, 1997; AND THE WORKSESSION HELD ON AUGUST 5, 1997

This item was removed from the Consent Agenda for further discussion.

B. RESOLUTION NO. 97-125 - RESOLUTION NAMING THE PROPERTY AT THE CORNER OF STARNES & CUMBERLAND AVENUES IN THE MONTFORD COMMUNITY "HUMMINGBIRD PARK"

Summary: The consideration of City property located at the corner of Starnes and Cumberland be named Hummingbird Park as requested by the Parks & Recreation Department Advisory Board.

In July of 1996, property located at the corner of Starnes and Cumberland was transferred to the Parks and Recreation Department to be used as a passive

park. Over the past year, Montford residents have been soliciting names for this park area. The general consensus of the -2-

Montford residents is to name this piece of property Hummingbird Park. The residents have suggested this is an appropriate name since the hummingbird has become the official symbol of the Montford historic neighborhood and is displayed on banners, T-shirts, and the newsletter.

The Parks and Recreation Department Advisory Board recommends City Council name City property located at the corner of Starnes and Cumberland as Hummingbird Park.

RESOLUTION BOOK NO. 24 - PAGE 150

C. RESOLUTION NO. 97-126 - RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE AN AGREEMENT WITH THE HILLS OF BEAVERDAM HOMEOWNERS ASSOCIATION INC. FOR STREET IMPROVEMENTS

Summary: Staff has negotiated the terms of a contract for upgrade and acceptance of the streets as City-maintained streets located in the Hills of Beaverdam.

The property owners of Hills of Beaverdam have requested for the City to make improvements to the streets located in the Hills of Beaverdam. Since the adoption of Resolution No. 96-216, staff has negotiated with the property owners as to the requirements of acceptance, necessary easements, and costs. All property owners on the following streets: Skyview Drive, Skyview Circle, Sunset Trail, and Crescent Lane have signed all necessary easements to proceed with the project.

The estimated cost of the project is \$137,000 for street improvements to Skyview Drive, Skyview Circle, Sunset Trail, Crescent Lane and the addition of several storm drainage improvements within the development. Upon execution of the agreement, all improvements would be in accordance with the contract and plans as prepared by the City of Asheville and William Lapsley G. Lapsley & Associates, P.A.

Staff recommends the adoption of the Resolution Authorizing the City Manager to Execute an Agreement with the Property Owners of Hills of Beaverdam for Street Improvements.

RESOLUTION BOOK NO. 24 - PAGE 151

D. RESOLUTION NO. 97-127 - RESOLUTION AUTHORIZING THE USE OF THE CITY LOGO BY ASHEVILLE TILEWORKS & POTTERY

Summary: Consideration of a request from Asheville Tileworks & Pottery to use the City logo on commemorative tiles.

The City of Asheville has received a request from Asheville Tileworks & Pottery to allow them to use the Asheville City logo for a tile they would create and sell locally for both residents and visitors. The tile would have the Asheville City logo printed on it and "Asheville" printed beneath the logo. In the July 23, 1997 letter, Mrs. Anne Alexander indicated that the tile would be completely handmade and hand decorated. She also indicated that she felt that the "city would benefit in the reinforcement of pride in our city."

As you may recall, in April 1996 a similar request was received from the Lewis Rathbun Wellness Center whereby they would use City Hall as a subject for their collector's series of ornaments. To staff's knowledge, this was the first time

that such a request had been received. Therefore, we indicated that City Council could adopt a resolution authorizing the Lewis Rathbun Wellness Center to use the City logo as a subject matter on ornaments they -3-

would produce and sell. The difference with respect to this request is that the prior request was from a non-profit agency. In discussions with the City Attorney, he does not foresee any problem arising from the City granting permission to Asheville Tileworks & Pottery to use the City logo as requested herein.

City staff recommends that a resolution be adopted granting permission for Asheville Tileworks & Pottery to use the Asheville City logo as a subject for handmade and hand decorated commemorative tiles which they would create and sell.

RESOLUTION BOOK NO. 24 - PAGE 152

E. RESOLUTION NO. 97-128 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO AN AGREEMENT EXTENDING THE TERMS OF THE 1995 AGREEMENT ESTABLISHING THE ASHEVILLE FIRE DEPARTMENT AS THE "REGIONAL RESPONSE TEAM" FOR HAZARDOUS MATERIALS EMERGENCIES IN WESTERN NORTH CAROLINA

Summary: The consideration of a sixty (60) day extension of an agreement for hazardous materials emergency response in Western North Carolina.

The N. C. Dept. of Crime Control and Public Safety's Emergency Management Division has asked the City to extend its present agreement with the State of North Carolina for hazardous materials emergency response in Western North Carolina pending submittal of a new two-year agreement for City Council consideration.

Two years ago, the Asheville Fire Department was selected by the state's Emergency Management Division to respond on behalf of the state to hazardous materials emergencies in Western North Carolina. After adoption of a two-year agreement by the state and the City Council, the Asheville Fire Department became the "regional response team" for hazardous materials incidents in Emergency Management Region F--Western North Carolina.

The Emergency Management Division has asked the City of Asheville to consider a new "regional response team" agreement for fiscal years 1998 and 1999. Pending delivery of that proposed agreement, the Emergency Management Division has asked that the City extend the present agreement for sixty days. Therefore, the extension would be for the time period of July 1, 1997, to August 29, 1997.

The Fire Chief recommends authorization of the City Manager to enter into an agreement to extend the present City of Asheville/State of North Carolina "regional response team" agreement for a period of sixty (60) days.

RESOLUTION BOOK NO. 24 - PAGE 153

F. RESOLUTION NO. 97-129 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A CONTRACT WITH BUNCOMBE COUNTY FRIENDS FOR ANIMALS INC. TO PROVIDE ANIMAL CONTROL SERVICES WITHIN THE CITY OF ASHEVILLE

Summary: Consideration of entering into a contract with Buncombe County Friends for Animals, Inc., (BCFFA) for the administration, regulation, care and enforcement of animal control services within the City.

The Police Department is seeking authorization to enter into a contract with BCFFA for a twenty one (21) month period beginning on the 1st day of October, 1997, with automatic renewal after the first twenty one (21) months, for twelve (12) month intervals, for the administration, regulation, care and enforcement of animal control within the corporate limits of the City.

Buncombe County Friends for Animals, Inc., is a non-profit organization whose mission is to improve the quality and standards of animal welfare. BCFFA currently operates the pet adoption center (Animal Shelter) as well as providing animal control services to the County of Buncombe.

A contract has been negotiated by BCFFA's and City of Asheville's Staff which describes responsibilities and requirements to be met by BCFFA and an agreed upon budget, for the term of the contract, provided by the City of Asheville.

Major features of the contract include:

1. The terms of the contract will be for twenty one (21) months beginning October, 1997, and renewable on a yearly basis thereafter unless either agency desiring not to renew shall provide the other agency with a one year notice.

2. The City shall compensate BCFFA \$72,127.53 for services rendered from October 1, 1997, to June 30, 1998, and shall compensate BCFFA \$96,170.00 for services rendered by BCFFA from July 1, 1998, to June 30, 1999. The source of all funds will be the City's general fund. The City budget for the Animal Control function for FY 1996/97 was \$80,558. Future funding will be determined through the City's budget development process.

3. BCFFA is authorized to act on behalf of the City of Asheville in the administration and enforcement of animal control services, to include enforcing any and all provisions of the City's Animal Control Ordinance and other responsibilities spelled out in the contract for administration of services. These include:

a. Be available to residents of the City on a 40 hour basis , Monday through Friday, five days per week and subject to on-call response, at all other times, to animal bites, animal injuries, dangerous animal complaints or other cases of emergency.

b. Provide training to all animal control officers prior to their performing their duties.

c. Ensure that all policies, practices and procedures of BCFFA comply with federal, state and local laws, rules and regulations.

In reviewing the contract staff feels that the benefits which the City and our citizenry will realize from this contract include:

- Programs currently administered by BCFFA, such as
- Pet Adoptions;
- Spay and Neuter programs;
- Rabies clinics; and
- Pet care and pet educational programs.
- BCFFA can work with pet owners to vaccinate pets.

- Some administrative duties such as follow up previously performed by Captain, Sergeant, or patrol officers will be eliminated. -5-

- Certified Professional Animal Control Officers certified through National Animal Control Academy.

- Additional personnel created through County wide consolidation of Animal Control responsibilities

Staff recommends authorizing the City Manager to contract with BCFFA for the administration, regulation and enforcement of animal control services within the City of Asheville.

RESOLUTION BOOK NO. 24 - PAGE 154

G. RESOLUTION NO. 97-130 - RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE A FEDERAL AVIATION GRANT AGREEMENT TO CONSTRUCT EXTENDED SAFETY AREA, RUNWAY 16 (PHASE II) AND IMPROVE AIRPORT ACCESS ROAD

Summary: The Airport Authority has asked City Council to approve a grant from the FAA in the amount of \$4,196,897.

This grant, in the amount of \$4,196,894, consisting of \$3,082,947 for Fiscal Year 1997 and \$1,113,947 for Fiscal Year 1998, consists of a project to construct extended safety area, Runway 16 (Phase II) and improve airport access road.

Staff recommends adoption of the resolution.

RESOLUTION BOOK NO. 24 - PAGE 155

H. RESOLUTION NO. 97-131 - RESOLUTION AUTHORIZING THE DREAMLAND CONVENIENCE STORE AT 91 SOUTH TUNNEL ROAD TO DISPENSE MOTOR FUEL AT AN UNATTENDED SERVICE STATION FACILITY

Summary: The consideration of a request for a permit to dispense motor fuel from unattended fuel pumps as required by Volume V of the NC State Building Code/Asheville Fire Prevention Code.

The North Carolina State Fire Code (adopted in Asheville as the Asheville Fire Prevention Code) authorizes public service stations to dispense vehicle fuel via credit card (with no attendants present) with approval of the Fire Chief and the City Council.

In 1996, the Asheville Fire Department established minimum safety requirements for such unattended fuel delivery. Those requirements include on-site absorbent that firefighters can use in event of a fuel spill, a telephone within 75 feet of the fuel delivery area for "911" notification of a fuel spill and a limit (either by dollar value or gallons) on how much fuel can be dispensed via credit card.

Paul J. Pless of the Dreamland Convenience Store at the Dreamland Drive-in site has requested a permit for unattended fuel dispensing at the Dreamland Convenience Store. He is familiar with the Asheville Fire Department's safety requirements, and has agreed in writing to meet those requirements.

Based on this agreement, the Fire Chief recommends City Council approval of this permit.

Staff recommends adoption of resolution authorizing Dreamland Convenience Store

to dispense motor fuel at unattended fuel pumps, subject to Asheville Fire Department safety requirements.

RESOLUTION BOOK NO. 24 - PAGE 156 -6-

I. MOTION AUTHORIZING THE PLANNING & DEVELOPMENT DEPARTMENT TO PREPARE A REQUEST FOR PROPOSALS FOR A TOWER ORDINANCE CONSULTANT

This item was removed from the Consent Agenda for further discussion.

J. MOTION SETTING A PUBLIC HEARING ON AUGUST 26, 1997, TO REZONE A LOT ON LOGAN AVENUE FROM RM-8 RESIDENTIAL MULTI-FAMILY MEDIUM DENSITY TO CB II COMMERCIAL BUSINESS II

K. MOTION SETTING A PUBLIC HEARING ON AUGUST 26, 1997, TO PARTIALLY REZONE 1899 HENDERSONVILLE ROAD FROM HB HIGHWAY BUSINESS TO OB OFFICE BUSINESS

L. MOTION SETTING A PUBLIC HEARING ON AUGUST 26, 1997, TO REZONE 88 LOTS ON BREVARD ROAD FROM RM-8 RESIDENTIAL MULTI-FAMILY MEDIUM DENSITY TO RS-8 RESIDENTIAL SINGLE FAMILY

M. MOTION SETTING A PUBLIC HEARING ON AUGUST 26, 1997, TO REZONE FOUR PROPERTIES ON OR BEHIND EAST CHESTNUT STREET FROM RM-16 RESIDENTIAL MULTI-FAMILY HIGH DENSITY TO OFFICE

N. MOTION SETTING A PUBLIC HEARING ON AUGUST 26, 1997, TO APPLY THE MANUFACTURED HOUSING OVERLAY TO 31 PROPERTIES ZONED RS-8 RESIDENTIAL SINGLE-FAMILY HIGH DENSITY IN THE EAST PORTER ROAD AREA

O. MOTION SETTING A PUBLIC HEARING ON AUGUST 26, 1997, TO REZONE PROPERTY ON BOONE STREET FROM RM-8 RESIDENTIAL MULTI-FAMILY MEDIUM DENSITY TO INDUSTRIAL DISTRICT

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 Vice-Mayor Field and carried unanimously.

#### ORDINANCES:

A. ORDINANCE NO. 2399 - BUDGET AMENDMENT FOR DELINQUENT STATE ALCOHOL SALES TAX AT THE CIVIC CENTER

Summary: The Asheville Civic Center owes sales tax on alcohol sales to the State of North Carolina in the amount of \$17,111.54 for which funding is not currently available.

Many events at the Asheville Civic Center offer the sale of alcoholic beverages. Sales tax is due to the State of North Carolina on the sale of such beverages. It has been the practice at the Civic Center to collect such sales tax from the alcohol patrons. It is, therefore, the responsibility of the Asheville Civic Center to remit such sales tax to the State of North Carolina on a timely basis. For the period April, 1990 through June, 1997, the sales tax from alcohol sales was collected from the patrons but not remitted to the State. The amount of such taxes due for the period is \$17,111.54 and is currently due and payable. Sales tax due beginning July, 1997 will be remitted in a timely manner. The Civic Center is seeking additional funding in order to make the payment to the State of North Carolina for the back sales tax due as

such funds are not appropriated in the current year. -7-

An appropriation of General Fund fund balance is required to meet the funding request.

Staff recommends the City Council approve the \$ 17,112 funding request from the Asheville Civic Center for fiscal year 1997/98. Funding shall be provided from an appropriation of General Fund fund balance.

ORDINANCE BOOK NO. 16 - PAGE 278

B. ORDINANCE NO. 2400 - ORDINANCE AMENDING CHAPTER 3 OF THE ANIMAL CONTROL ORDINANCE TO PROVIDE FOR A DIRECTOR OF ANIMAL CONTROL

Summary: Consideration of an ordinance amending Chapter 3 (Animals) of the Code of Ordinance of the City of Asheville.

The Asheville Police Department is seeking authorization to enter into a contract with Buncombe County Friends for Animals, Inc., for the administration, regulation, care and enforcement of animal control services within the City of Asheville. In order to do so, Chapter 3, Section 3-6 (Administration), of the current Animal Control Ordinance must be revised to allow the City Manager to designate a local agency to administer the City's Animal Control Services.

Staff recommends revising Chapter 3, Section 3-6 (Animals) of the Code of Ordinances of the City of Asheville so as to authorize the City Manager to designate a local agency to administer the City's Animal Control Services.

ORDINANCE BOOK NO. 16 - PAGE 280

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 6-0, the Ordinance Consent Agenda was adopted on its first reading.

ITEMS REMOVED FROM THE CONSENT AGENDA FOR FURTHER DISCUSSION

APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON JULY 22, 1997; THE COMMUNITY MEETING HELD ON JULY 29, 1997; AND THE

WORKSESSION HELD ON AUGUST 5, 1997

Mr. Ralph Bishop, resident of the City of Asheville, said that 160A-72 of the State law says that the City should keep a full and accurate record of the Council proceedings. He said that 132.6 of the State law says that any citizen is entitled to get a copy of those records upon payment of a fee. He asked why the City Clerk refuses to transcribe the full and accurate record of each Council meeting.

Mayor Martin said that Mr. Bishop's question has been answered a number of times but asked the City Attorney to once again answer Mr. Bishop's concern.

City Attorney Oast said that the General Statute that Mr. Bishop is referring to does require full and accurate minutes to be kept of City Council meetings

and the other Statute to which he referred to does -8-

require the City Clerk or other appropriate official to furnish records to people if they are willing to pay the appropriate fee. He explained that full and accurate minutes does not mean verbatim minutes. He recently attended a N. C. Association of Municipal Attorney's Conference and he asked his fellow colleagues throughout the state and they all agreed with his interpretation of it stating that was what the Supreme Court affirmed in Maready v. City of Winston-Salem, in Forsyth County. Mr. Bishop can obtain a verbatim transcript of the City Council meeting upon payment of a fee, however, it was his understanding that Mr. Bishop has not paid the fee. He said the tapes are available and they can be transcribed and we will do that for the public if they will pay the appropriate fee.

Mayor Martin said that pursuant to City Council's Rules of Procedures, a written request must be made with the City Clerk with the appropriate fees being paid.

At the request of Mr. Bishop, City Attorney Oast read G.S. 160A-72.

Mr. Bishop then said that what City Attorney Oast is saying is that the Supreme Court re-wrote G.S. 160A-72 to say that full and accurate minutes of the Council meetings shall not be kept.

Mayor Martin said that the Asheville City Council does keep full and accurate Council minutes. He said that the problem is that Mr. Bishop does not agree with the interpretation of the Supreme Court in this instance.

Vice-Mayor Field moved to approve the minutes of the formal meeting held on July 22, 1997; the community meeting held on July 29, 1997; and the worksession held on August 5, 1997. This motion was seconded by Councilman Sellers and carried unanimously.

#### MOTION AUTHORIZING THE PLANNING & DEVELOPMENT DEPARTMENT TO PREPARE A REQUEST FOR PROPOSALS FOR A TELECOMMUNICATION TOWER ORDINANCE CONSULTANT

Mr. Ralph Bishop asked how much the consultant will cost the taxpayers of Asheville. Councilman Cloninger responded by saying that one of the things we will be asking in our Request for Proposals from the consultants is for them to include in their proposals ideas of how their charges can be paid for from private grants and foundations and also from fees that will be charged to the telecommunication companies. He stated that our goal is that it will not cost the taxpayers any money.

Councilman Cloninger moved to authorize the Planning & Development Department to prepare a Request for Proposals for a telecommunication tower ordinance consultant. This motion was seconded by Councilman Sellers and carried unanimously.

#### REQUEST REGARDING BROADCASTING OF CITY COUNCIL MEETINGS

Vice-Mayor Field said that since this is the first regular meeting of the City Council which will be televised, she brought up the concern that the viewers do not know what the issues are on the Consent Agenda and wondered if it would be appropriate to read those out prior to the voting.

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City Attorney Oast said that it is not required, but it is certainly appropriate to read them if that is the desire of City Council.

Mayor Martin instructed the City Manager to work with the video recorders to see how this could be accomplished without reading all the items on the Consent Agenda.

III. PUBLIC HEARINGS:

A. PUBLIC HEARING RELATIVE TO AUTHORIZE THE MAYOR TO SIGN AN AGREEMENT WITH J.L. de BALL - GIRMES OF AMERICA INC. CONCERNING THE CITY'S PARTICIPATION IN SITE DEVELOPMENT IMPROVEMENTS

RESOLUTION NO. 97-132 - RESOLUTION AUTHORIZING THE MAYOR TO ENTER INTO AN AGREEMENT WITH J.L. de BALL - GIRMES OF AMERICA INC. TO PARTICIPATE IN SITE DEVELOPMENT IMPROVEMENTS

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

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

Mr. John Scaralia, City Development Director, said that J.L. de Ball-Girmes of America, Inc. is looking to locate a supplementary production unit at its existing site on Old Charlotte Highway. Plans call for renovation of 45,000 sq. ft. of the existing 178,000 sq. ft. building in order to begin manufacturing. The company is looking to significantly expand within two years, and plans to accommodate 12-16 employees by July 1, 1998; up to 50 by January 1, 2000. Wages will average \$9-12.00 per hour.

The firm plans to invest a total of \$7 million within two years in the renovation and equipment upgrades for this operation; \$2 million by July 1, 1998. Included will be repairs and upgrades to the roof, HVAC capacity, and plumbing and electrical improvements, as well as major machinery and equipment purchases. Staff has prepared an agreement outlining the terms and conditions of the City's participation.

The agreement consists of the City entering into a contract whereby the City would contribute \$51,300 provided the terms of the contract are complied with by J.L. de Ball-Girmes of America Inc. The conditions include: the requirement of the corporation creating a minimum of 12 new jobs by July 1, 1998, with wages at \$9-12 per hour; investment of \$2,000,000 by July 1, 1998; and expansion to accommodate 50 employees. The guarantee for the City is through a Letter of Credit. The payback period for the City based on this financial assistance will be 4.5 years.

Staff recommends authorizing the Mayor to sign an agreement with J.L. de Ball-Girmes of America, Inc., concerning the City's participation in site development improvements.

Mayor Martin welcomed J.L. de Ball-Girmes of America Inc. back into the community.

Mayor Martin closed the public hearing at 5:29 p.m. -10-

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

Vice-Mayor Field moved for the adoption of Resolution No. 97-132. This motion was seconded by Councilman Worley and carried unanimously.

RESOLUTION BOOK NO. 24 - PAGE 160

IV. UNFINISHED BUSINESS:

A. RESOLUTION NO. 97-133 - RESOLUTION AUTHORIZING THE SALE OF DISPOSAL PARCEL 5 AT THE CORNER OF COURTLAND AND MONTFORD AVENUE IN THE HEAD OF MONTFORD REDEVELOPMENT PROJECT TO ROBERT EIDUS AND JEANETTE SYPRZAK

Mr. Ed Vess, Field Services Coordinator, said that on April 22, 1997, the City Council directed the City Clerk to advertise for upset bids on Disposal Parcel 5. The advertisement ran in the Asheville Citizen-Times on April 25, 1997, as provided in G.S. 160A-269. An upset bid was received and the sale was readvertised on May 9, 1997, and May 23, 1997, each time in response to an upset bid. No upset bid was received in response to the advertisement on May 23, 1997. Therefore, the offer to purchase from Robert Eidus and Jeanette Syprzak in the amount of \$53,000 was not upset.

On June 10, 1997, City Council tabled until July 8, 1997, consideration of approval of the sale to Mr. Eidus and Ms. Syprzak after hearing a complaint from Jacqueline Larsen that Mr. Eidus had reneged on an agreement with her regarding the purchase and development of the property. Ms. Larsen requested a meeting with City staff to discuss her complaint. On June 19, 1997, Bob Oast and Ed Vess met with Ms. Larsen and then with Mr. Eidus, Ms. Syprzak and Mr. Randolph Horner, a business associate of Mr. Eidus.

Ms. Larsen alleged that Mr. Eidus agreed to sell her his interest in the subject property upon completion of the proposed improvements, and then refused to honor this agreement after it was too late for Ms. Larsen to submit an upset bid. She indicated that she would have submitted an upset bid if she had known that Mr. Eidus would not honor the alleged agreement. Mr. Eidus acknowledged with Ms. Larsen discussing a possible agreement, but indicated that Ms. Larsen was to prepare a written proposal, and that any agreement would be subject to the approval of Mr. Eidus' attorney and business associates. Mr. Eidus said that the written proposal was never submitted.

The bidding process as conducted by the City staff is in compliance with state law. Based on the information available, the City Attorney's opinion is that there does not appear to be an agreement between Ms. Larsen and Mr. Eidus that would constitute a legal impediment to proceeding with the proposed transaction. Mr. Eidus and Ms. Syprzak have submitted a bid which complies with the bid requirements and is \$14,000 over the established fair reuse value along with a statement of qualifications and financial responsibility. The upset bid period allowed ample time for Ms. Larsen or any other informed bidder to submit an upset bid. The failed negotiations between Mr. Eidus and Ms. Larsen have no bearing on the validity of the upset bid process nor the acceptability of the bid from Mr. Eidus and Ms. Syprzak. Rejecting the current bid and starting over would not guarantee a higher bid and could result in a lower bid.

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Approval of the resolution will authorize the sale of the property to Robert Eidus and Jeanette Syprzak for the amount of \$53,000.

Community Development staff recommends adoption of the resolution authorizing the sale of the subject property to Robert Eidus and Jeanette Syprzak in the amount of \$53,000.

On July 8, 1997, Ms. Jacqueline Larsen said that she would be presenting Council with a narrative in response to the City's staff report. She said that she would be requesting City Council to reopen the bidding process. On July 22, 1997, Ms. Larsen did present City Council with a letter asking that the bidding process be re-opened.

Upon inquiry of Mayor Martin, City Attorney Oast said that the statute pursuant to which the City is proposed to dispose of this property indicates that the City may accept or reject all offers. If the offer were rejected, the City would not be subject to any legal action as a result of that. However, the City may not receive the same price again if it re-bids, which is \$14,000 over the appraised value.

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

Councilman Hay moved for the adoption of Resolution No. 97-133. This motion was seconded by Councilman Worley and carried unanimously.

RESOLUTION BOOK NO. 24 - PAGE 161

V. NEW BUSINESS:

A. RESOLUTION NO. 97-137 - RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE AN AGREEMENT LEASING THE GROVE ARCADE BUILDING FROM THE CITY OF ASHEVILLE TO THE GROVE ARCADE PUBLIC MARKET FOUNDATION

Councilman Cloninger said that the law firm of which he is a partner acts as legal counsel for the Grove Arcade Public Market Foundation and asked to be excused from voting. Therefore, Councilman Worley moved to execute Councilman Cloninger from voting on this matter due to a conflict of interest. This motion was seconded by Councilman Sellers and carried unanimously.

City Attorney Bob Oast said that this is the second step in the two-part process to authorize the City to lease the Grove Arcade Building to the GAPMF. That process was described in detail in the Staff Report submitted to you at your July 15 and 22, 1997, meetings.

If authorized, it is anticipated that the lease and other agreements will be executed at the Special Meeting scheduled for Friday, August 15, 1997.

If Council wishes to authorize the transaction with GAPMF, adoption of the attached resolution is recommended.

Upon inquiry of Vice-Mayor Field, City Attorney Oast explained what would happen to the Grove Arcade Building if the Grove Arcade Public Market Foundation would cease to be. The building would remain the City's, as would any improvements made by the Foundation or its sub-tenants. The City would either step into the shoes of the Foundation, or find another entity to take the Foundation's place.

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Mayor Martin praised the work that has gone into this transaction. He said that it is expected that the City may ultimately receive as much as \$1,500,000 million in sales tax revenues and we will have some return as a City from taxes or payment in lieu of taxes because of the renovation of this building. This project will hopefully employ as many as 400-600 new people in our downtown area. He hoped as this evolves and as it is restored that it will anchor that part of the downtown area and help to create a more vital downtown.

Mayor Martin invited the members of the public to attend the official ceremonies which will take place on Friday, August 15, 1997, at 12:00 Noon at the Grove Arcade Building.

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. 97-137. This motion was seconded by Councilman Sellers and carried unanimously.

RESOLUTION BOOK NO. 24 - PAGE 164

B. RESOLUTION NO. 97-134 - RESOLUTION REJECTING BIDS FOR CONSTRUCTION OF FIRE STATION 4/POLICE RESOURCE CENTER IN SKYLAND AND AUTHORIZING THE CITY MANAGER TO NEGOTIATE AND EXECUTE A NEW AGREEMENT FOR REDESIGN OF FIRE STATION 4/POLICE RESOURCE CENTER

Fire Chief John Rukavina said that at the City Council July 15, 1997 worksession, staff and City Council reviewed the status of bids for the new Fire Station 4/Police Resource Center facility in Skyland, in light of the fact that the lowest bid received exceeded the architect's estimate, as well as budgeted and available funds. During that review, City Council members raised questions and offered suggestions on how to respond to the variance between low bid and available funds.

On July 16, 1997, staff met with Barney Woodard to share the questions raised and suggestions made at the previous day's worksession. Mr. Woodard, in turn, agreed to review his design in light of those questions and suggestions, and to meet with the low bidder, H & M Constructors, to negotiate a reduction, if possible. On July 26, 1997, Mr. Woodard delivered a report and recommendations to staff.

Based on his conversations with a representative of H & M Constructors and his reassessment of the building design, Barney Woodard recommends the following:

- (1) The Fire Station 4/Police Resource Center bids currently in hand be rejected, and the building be redesigned and rebid; and
- (2) The redesign include a combination of reduction in size of living quarters, deletion of one of two apparatus bays, deletion of a second-floor storage area and/or deletion of certain contract allowances, for total savings that would result in a bid of not more than \$600,000.

Staff recommends that the redesign incorporate the following recommendations by Mr. Woodard:

- (1) Reduction of living/office quarters by 2006 sq. ft., at an estimated savings of \$150,000;

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- (2) Deletion of certain contract allowances for miscellaneous equipment and identification signs for a cost savings of \$34,000; and

- (3) As a bid alternate, deletion of one fire apparatus bay.

The Police Chief and Fire Chief concur in this recommendation.

Staff recommends that City Council reject all bids received on June 5, 1997, and adopt a resolution authorizing the City Manager to enter into an agreement with Barney Woodard, AIA, to redesign Fire Station 4/Police Resource Center in a manner consistent with staff's recommendation.

Vice-Mayor Field thanked the Fire Chief for his efforts because she felt it was important to try and save the project as designed because she knew that south

Asheville is growing and it would be to the City's advantage to provide a building long-term that will fulfill the needs and today's dollars will be cheaper than tomorrow's dollars.

Upon inquiry of Councilman Hay, Fire Chief Rukavina said there was a minor change in the Police Resource Center side in that there was some space set aside for a break area and essentially now they will share that in the form of the Fire Department's kitchen facilities and dining area. Regarding the Fire Department side, it was in essence going from quarters from eight people down to four people, which is the typical company strength that is assigned to that station right now.

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

Councilman Cloninger moved for the adoption of Resolution No. 97-134. This motion was seconded by Vice-Mayor and carried unanimously.

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C. RESOLUTION NO. 97-135 - RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE A MEMORANDUM OF UNDERSTANDING WITH ASHEVILLE AREA HABITAT FOR HUMANITY FOR DEVELOPMENT OF PROPERTY OFF BROADVIEW DRIVE

Community Development Director Marvin Vierra said that the Memorandum of Understanding identifies responsibilities of the City of Asheville and Habitat for Humanity in the joint development of a Single Family Owner-Occupied subdivision off Broadview Drive.

The Memorandum of Understanding provides for a cooperation agreement between the Asheville Area Habitat for Humanity and the City of Asheville in the joint development of 12.23 acres of land off Broadview Drive into an affordable owner-occupied single family housing subdivision. Under cooperation with Habitat, the City will design the subdivision, construct the infrastructure and landscaping, and build five single-family homes within the subdivision. The City will also transfer the ownership of the land to Habitat who will construct the remaining homes and sell them to low and moderate income families for homeownership. They hope to be able to build 30 homes on that property noting that the area is zoned RS-8 which would allow as many as 97 homes to be built. This is the first time the City has been involved in the construction of single-family homes. The homes the City constructs will be in the price range of \$75-85,000 and the homes Habitat constructs usually sell for \$50-60,000. The Memorandum of Understanding with Habitat requires extensive neighborhood involvement throughout the design and construction of the subdivision. There has already been one -14-

neighborhood meeting and hopefully at the next one they will have the engineer present. He said there is enough property for open space, parks and trail development as part of the subdivision.

The Community Development staff recommends adoption of the Resolution.

Councilman Hay, Chairman of the Housing & Community Development Committee, noted that this is really an interesting and exciting project. The City will be using this as a model project for experimenting with building affordable housing in conjunction with the neighborhood. The residents will be participating even to the level of designing the homes.

Vice-Mayor Field, Chairman of the HOME Consortium, said that they have been involved in this project as well and they are very pleased with this project.

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

Councilman Hay moved for the adoption of Resolution No. 97-135. This motion was seconded by Vice-Mayor Field and carried unanimously.

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VI. OTHER BUSINESS:

A. GROUP DEVELOPMENTS

On May 7, 1991, 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 August 6, 1997:

Willow Lake Mobile Home Park (formerly Sand Hill Mobile Home Park)

Mr. Carl Ownbey, Urban Planner, said that this proposed development is for an expansion of 25 more lots to the approved 41 lot mobile home park on 12 acres located off Sand Hill Road in West Asheville.

On December 2, 1996, the Planning Department received the site plan for the proposed mobile home park. The proposed project included 41 individual lots to be developed for mobile homes. The site plan was presented to the Technical Review Committee on December 9, 1996, for their comments.

On January 8, 1997, the Commission reviewed the site plan and voted unanimously to approve the project with no conditions. On January 14, 1997, City Council reviewed the site plan and accepted the recommendation of Commission. On June 26, 1997, the revised site plan, now Willow Lake Mobile Home Park, was presented to the Planning staff within the 30 day period and certified that the revised project design was ongoing prior to the adoption of the Unified Development Ordinance.

On July 21, 1997, the Technical Review Committee reviewed the revised site plan and made their comments.

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On August 6, 1997, the Commission reviewed the revised site plan and voted unanimously to approve the project with the following four conditions: (1) submittal of letters on the availability of water and sewer for the additional home sites; (2) submittal of letter on availability of adequate water flow for fire protection for the additional home sites; (3) submittal of letter on approval of driveway permit; and (4) interior streets and cul-de-sacs be built to City standards.

The Planning staff and the Commission recommend approval of the Willow Lake Mobile Home Park with the four conditions.

Vice-Mayor Field stated that cul-de-sacs don't generate neighborhoods. She asked if there was any possibility for walking or bike paths or some way the people in that community can communicate to each other and to the rest of the neighborhoods around them. Mr. Ownbey said that at the northern side there is an existing mobile home park and on the south areas there is basically I-40.

He said there is some open space that may be designed for some paths and trails.

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

#### Brooks-Howell Village

Mr. Carl Ownbey, Urban Planner, said that the proposed project consists of 11 new residential units (four duplexes and a triplex) and an activities center located on a 1.8 acre portion of the Brooks-Howell property.

Plans for this project were submitted within the 30 day window after the adoption of the Unified Development Ordinance. Therefore, the project is being reviewed as a group development under the previous zoning ordinance (pre-UDO zoning was R-3).

Because the development will provide housing for the elderly, Brooks-Howell is asking that Council allow a reduction in the parking requirements from 24 spaces to 14 spaces.

Council will also be asked to approve an alternative to the buffering requirements along the West property line. The ordinance allowed the buffer to consist of a five foot strip with a six foot fence. Brooks-Howell is working with the adjacent property owner to design a buffer, using primarily vegetation, which meets the intent of the ordinance and is more sensitive to the adjoining property.

At their August 6, 1997, meeting, the Commission voted unanimously to recommend approval of this group development. Additionally, the Commission recommended that Council allow the reduction in parking and approve the alternate buffering plan being developed.

This recommended approval was with three conditions: (1) Receipt of letters of approval for water, sewer and adequate water pressure for fire protection; (2) That the variance for alternate compliance with the City's buffering requirements either be granted by Council or a revised landscape plan must be submitted to staff; and (3) That the required handicap parking space be labeled more clearly on the plans.

Staff recommends City Council set a public hearing to consider the reduction in parking and approval of the alternate buffering plan.

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Councilman Worley moved to set a public hearing on August 26, 1997, to consider reduction in parking and approval of the alternate buffering plan for Brooks-Howell Village. This motion was seconded by Councilman Cloninger and carried unanimously.

#### B. CITY COUNCIL MEETING DATES CHANGED

Councilman Worley moved to cancel the October 21, 1997, City Council worksession due to the N.C. League of Municipalities meeting in Raleigh, N.C. This motion was seconded by Vice-Mayor Field and carried unanimously.

Vice-Mayor Field moved to cancel the September 2, 1997, City Council worksession due to Labor Day holiday. This motion was seconded by Councilman Sellers and carried unanimously. City Attorney Oast said that he would prepare a resolution clarifying the City Council meeting dates in September for action

at the next City Council worksession.

#### C. BICENTENNIAL

Vice-Mayor Field said there seems to be a concern among some Bicentennial Committee volunteers about the financial status of the Bicentennial celebration. She wondered how the City could help, noting, however, that the Committee has not asked the City for monetary help because they have chosen to raise that money in the community and they have done an outstanding effort. She did point out that the City is providing all of the support of the staff and it's facilities for the events.

Mayor Martin said that the City did appropriate \$5,000 and the Committee had thought they could raise sufficient money on their own. As of last week they had commitments of \$29,500. He understood another \$6,000 has been added and potentially another \$12,500. He noted, however, that this money is not specifically and only for the Bicentennial celebration but also for beautification efforts in the City. The City wants to make the celebration successful.

Councilman Cloninger was interested in knowing what the Bicentennial Committee has done in the way of trying to raise money.

Councilman Worley said that he would be happy to look at the funding options with the City Manager to see if there are any grants that might be available, what our budget situation is, etc., and report back at the next worksession.

#### D. BOARD/COMMISSION APPOINTMENTS

At the request of Councilman Hay who will be out of town during the scheduled meeting for the quarterly board/commission appointments, it was the consensus of City Council to postpone action on those appointments until the first formal meeting in September.

#### E. COMMENTS BY MR. RALPH BISHOP REGARDING CITY COUNCIL MINUTES

Mr. Ralph Bishop, resident of the City of Asheville, stated that G.S. 132.6 states that he can examine the minutes at anytime under the supervision of the Clerk. He asked how he could examine those minutes if they were not transcribed.

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Mayor Martin said that Mr. Bishop could pay the appropriate fee to the Clerk and have a portion of the minutes transcribed verbatim. Mr.

Bishop said that he paid the City Clerk two or three times upfront and he did not get the transcript verbatim.

City Clerk Burlson said that approximately three years ago Mr. Bishop did pay a fee upfront and she did transcript the portion of the minutes for him. When he read those verbatim minutes, he accused her of deleting words. Mr. Bishop then accompanied her into the Council Chamber to listen to the tape together and he accused her of tampering with the tape.

#### F. CLAIMS

The following claims were received by the City of Asheville during the week of July 18-24, 1997: Howell Brown (Water), Suzy Liabson (Water), Will Leverette (Water), Burdene Byerly (Water) and Shirley Wells (Streets).

The following claims were received during the week of July 25-31, 1997: Laura Rhymes (Streets), Steve Sarant (Streets), Tyson's Furniture (Streets), April Pendl (Parks & Recreation), Jean Williams (Water) and Ronnie Gentry (Sanitation).

The following claims were received during the week of August 1-7, 1997: James W. Moody (Sanitation), Sheba Bradley (Parks & Recreation), Nappier & Gunnells (Water), Carolyn Klepper (Water), and Gary Meadows (Water).

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

VII. ADJOURNMENT:

Mayor Martin adjourned the meeting at 6:20 p.m.

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CITY CLERK MAYOR

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