

Tuesday - October 7, 1997 - 3:00 p.m.

Worksession

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

CONSENT AGENDA:

Tree Ordinance Amendments

Summary: The consideration of several minor revisions to the Tree Ordinance.

All America City Budget Amendment

Summary: The consideration of appropriating the \$10,000 Community Grant already received by the City to Asheville-Buncombe VISION, HandMade In America and The Minnie Jones Health Center.

At the request of Councilman Skalski, Audit/Budget Director Bob Wurst said that he would obtain the final figures on how much it cost the City of Asheville for the designation of All America City.

When Councilman Skalski asked if the \$10,000 grant could go back into the General Fund, City Manager Westbrook said that the grant was given to the City with the understanding that it would be distributed to the community through the projects that were specified in the All America City application.

Councilman Skalski then suggested that since Asheville-Buncombe VISION has already received money from the City that its portion of the grant be designated for something else. He felt strongly that there is no overall comprehensive criteria on who gets the money and how much.

Amendments to Regional Water Authority Capital Project Ordinances (35 Fund and 29 Fund)

Summary: The consideration of housekeeping amendments to reflect the transfer of completed projects to the City's fixed asset ledger to be capitalized rather than expensed.

By Resolution 82-25 dated October 5, 1982, the Authority authorized and budgeted for various capital projects to be funded by Investment Earnings, Contributions From Other Funds, and Appropriated Fund Balance.

By Resolution 92-17 dated May 19, 1992, the Authority authorized and budgeted for various capital projects to be funded by City Water Bond proceeds in the 29 Fund.

Staff recommends Council approve amending and restating Capital Project Ordinance 82-25 and Capital Project Ordinance 92-17 in order to reflect the transfer of completed projects to the City's fixed asset ledger.

The Regional Water Authority approved a resolution amending and restating Capital Project Ordinance 82-25 and Capital Project Ordinance 92-17 on September 16, 1997.

At the request of Councilman Skalski, Assistant City Manager Doug Spell said that he would provide him with information on how much is in the Water Fund fund balance now.

Increase in Festivals Support Budget Amendment

Summary: The consideration of a budget amendment, in the amount of \$90,000 to increase Festivals support, the cost of which will be offset by increased revenues.

Intent to Enter into Lease Agreement for Reid Annex

Summary: The consideration of resolution directing the City Clerk to advertise an offer to lease the Reid Annex Building to the Opportunity Corporation of Madison-Buncombe County for renovations.

West Area Annexation Sewer Improvements - Phase II

Summary: The consideration of adopting a resolution awarding the contract for the West Area Sanitary Sewer Improvements, Phase II, to Wheeler Construction Company Inc. in the amount of \$367,615.

Bids on Bridge Replacement Materials

Summary: Consideration of a resolution to award Bid Request No. 469-98 for the purchase of pre-fabricated bridge replacement materials for the Public Works Department's Elizabeth Street Project.

Renewal of Regional Hazardous Materials Emergency Response Team Status with State of N.C.

Summary: The N.C. Department of Crime Control/Public Safety's Emergency Management Division has asked the City of Asheville to renew its agreement with the State to provide hazardous materials emergency response in Western North Carolina through September of 1999.

Haw Creek Fire Protection Agreement Extension

Summary: The consideration of a resolution authorizing the City Manager to sign a two-year fire protection agreement with the Haw Creek Fire Department for a term through June 30, 1999.

Subordination of Certain Demolition Liens

Summary: The consideration of a resolution authorizing the City Manager and others to subrogate demolition liens on certain properties.

Mayor Martin asked that the record show that City Council has received this information and instructs the City Manager to place these items on the next formal City Council agenda.

RESOLUTION NO. 97-177 - RESOLUTION DIRECTING THE DIRECTOR OF BUILDING SAFETY TO WAIVE THE PERMIT FEES FOR THE COMMUNITY PLAYGROUND TO BE BUILT BY VOLUNTEERS AT THE EMMANUEL LUTHERAN CHURCH AND SCHOOL

Mr. Terry Summey, Director of Building Safety, asked for consideration of a request to waive permit fees for a major community playground at the Emmanuel Lutheran Church. -3-

A major community playground is to be built by over 700 volunteers during October 22-26, 1997. at the Emmanuel Lutheran Church. Many volunteers have worked for over a year to spearhead building a community playground at the Emmanuel Lutheran Church and School. The playground will be available for community usage after Church activities. The playground has been designed by professional architects that have coordinated similar projects at other cities around the country.

The Director of Building Safety recommends that the City Council adopt the resolution waiving the \$90 permit fee for this community project.

Councilman Sellers read a letter from the Mr. Robert C. Foerster, Principal of Emmanuel Lutheran Church and School, asking for the waiver of fees for this community oriented project.

When Councilman Skalski asked if the City has a policy for waiving these fees for any other groups, City Manager Westbrook said that the policy is that everyone pays the permit fee unless it is waived by City Council.

Councilman Skalski suggested a way of letting the community know that a waiver of fees might be possible, especially if it is a community oriented project.

Councilman Worley moved to waive the rules and take formal action at this meeting. This motion was seconded by Vice-Mayor Field and carried unanimously.

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

Councilman Skalski moved for the adoption of Resolution No. 97-177. This motion was seconded by Councilman Sellers and carried unanimously.

RESOLUTION BOOK NO. 24 - PAGE 223

RESOLUTION ENDORSING LEGISLATION FOR LOCAL ZONING AUTHORITY FOR ADULT ESTABLISHMENTS

Councilman Sellers said that "I, along with numerous others, am concerned that the opening of several establishments for the purpose of entertainment by 'topless' bare-breasted women in Asheville and/or Buncombe County is not in agreement with the strong family values this community has been established upon.

"This form of entertainment contributes to an attitude that is conducive to behavior that promotes molestation, rape, sex crimes and sexually transmitted diseases. These establishments discourage the channeling of sexual energies toward the constructive ends of marital fidelity and family commitment. This form of entertainment degrades womankind by exploiting them for selfish sexual ends and negatively affects individuals' attitudes toward sexuality.

"The youth in this community see these establishments as an accepted legitimate business and will receive a distorted impression of right and wrong. The tourists who visit Asheville for wholesome and decent reasons will receive a wrong message about our community.

"These businesses attract and encourage gambling, prostitution and drunk driving and will put an undue burden upon the Police Department Vice Division.

"We, the community strongly object and consider such businesses to be immoral, obscene and a public nuisance and should be closed. As a council we are charged with stewardship to our citizens now and generations to come. I hope each of you will support me on this matter."

City Attorney Oast explained that what is before City Council is a resolution endorsing Senate Bill 452 Strengthening Local Control Over Sexually Oriented Businesses.

Even though zoning and local use controls are recognized to be matters of concern for local governments, North Carolina statutes regulating sexually explicit conduct and adult establishments (sexually oriented business) have been interpreted by the courts in such a way as to establish a de facto doctrine of State pre-emption with respect to such matters. Localities still maintain some control over the location of sexually oriented businesses through zoning ordinances.

In the 1997 Session of the North Carolina General Assembly, a bill was introduced, Senate Bill 452, that would restore a measure of regulatory authority to local governments with respect to sexually oriented businesses, and partially abrogate the State's judicially-established pre-emption in this area. The bill requires that the constitutional protections that apply to such activities continue to be recognized.

The bill passed the Senate hardily, and seemed likely to pass the House as well, but failed to come out of committee before the Legislature adjourned in August. The bill had the support of the N.C. League of Municipalities and many local governments. Senator Roy Cooper of Rocky Mount introduced the bill, and expects it to be considered during the Short Session of the Legislature in 1998.

The resolution, if adopted, will express the Council's support for Senate Bill 452. Copies of the resolution will be sent to Senator Cooper, and to those members of North Carolina House whose districts include the City of Asheville.

City Attorney Oast felt it would be good for Asheville to have that additional regulatory authority; whether and how it is exercised is up to Council.

Vice-Mayor Field felt that Asheville should endorse any bill that strengthens the authority of local governments to regulate sexually-oriented businesses within their jurisdiction.

Mayor Martin asked that the record show that City Council has

received this information and instructs the City Manager to place this item on the next formal City Council agenda.

NEGOTIATION OF INSTALLMENT PURCHASE CONTRACT

Finance Director Bill Schaefer said that this is consideration of a resolution authorizing the negotiation of an installment purchase contract, directing the publication of notice with respect thereto and providing for certain related matters.

Building and the City Building Roof; renovation of the first floor of the Grove Arcade as a public market; the construction of a high tech/flex building at Broadlands Technical Park and refunding of the Series 1991 COPs (which funded the acquisition of the Public Works Facilities) will require the issue of Certificates of Participation (COPs). The actual issuer of the COPs is Asheville Public Financing Corporation (APFC), a not for profit corporation which was formed to aid the City of Asheville in complex financing such as this COPs. In order to service the debt, the City will enter into an amendment to the existing 1991 installment purchase contract with APFC whereby the City agrees to provide periodic payments (which equal the debt service). The debt is to be secured by a deed of trust on the Municipal Building, the City Building, the Water Maintenance Building and a continued deed of trust on the Public Works Facilities (which was pledged for the 1991 COPs). In furtherance of the issue of COPs, the resolution provides the following:

1. Authorizes the City Manager and Finance Director to negotiate the APFC contract amendment and convey the deeds of trust to facilitate financing in an amount not to exceed \$27,000,000.
2. Directs the Finance Director to file the required financing application with the Local Government Commission.
3. Directs the City Manager and Finance Director to retain Parker, Poe, Adams & Bernstein as Special Counsel and First Union Capital Markets, Corp.; Wheat First Butcher Singer; and A.G. Edwards & Sons Inc. as Underwriters.
4. Establishes a public hearing by City Council, on October 28, 1997 at 5:00 p.m., concerning the contract amendment, the deeds of trust, proposed projects and associated transactions

Mr. Schaefer responded to several questions from Councilman Skalski as they related to the Stephens-Lee Community Center financing, and the public non-taxable portion of the project which includes the Municipal Building, Water Maintenance Building and the City Building Roof and the private taxable portion which includes the renovation of the first floor of the Grove Arcade as a public market and the construction of a high tech/flex building at Broadlands Technical Park.

Mayor Martin asked that the record show that City Council has received this information and instructs the City Manager to place this item on the next formal City Council agenda.

BREVARD ROAD SANITARY SEWER EASEMENTS

City Engineer Cathy Ball said that the City of Asheville has previously awarded a contract for the installation of a gravity sanitary sewer system to serve the Brevard Road and construction is underway. This project will provide access to public sanitary sewer service within the area.

Over the past several months, easement negotiations have been on-going with property owners in this area. However, there are seven properties in which agreement has not been reached at this time regarding a sanitary sewer easement. Due to the need to complete the project, staff requests Council's consideration of a "Resolution of Condemnation" on seven properties in which easement negotiations have not been finalized. These properties are as follows:

- Pin Number 9627-20-81-3926 - Lelia Page Cornwell (along Dogwood Road)
- Pin Number 9627-20-82-3216 - Western Carolina Forklift (along Dogwood Road) -

6-

- Pin Number 9627-20-80-9493 - Leonard J. Effler and Tammy F. Effler (along Poodle Way)
- Pin Number 9627-20-80-7448 - Leonard J. Effler and Tammy F. Effler (along Poodle Way)
- Pin Number 9627-20-90-3807 - Joseph A. Dennis and Ronda H. Dennis (along Poodle Way)
- Pin Number 9627-20-80-2403 - A. Brigman, Heirs (along Pine Lane)
- Pin Number 9627-20-80-3312 - Fred Mathis and Flaura F. Mathis (along Pine Lane)

The City has just received appraisals if each of the properties to determine the fair market value of the property taking into consideration the provision of sanitary sewer service. From the City's perspective, this is a definite enhancement of the properties.

The City will continue to work with these property owners to attempt to finalize the easement negotiations. The primary purpose of the "Resolution of Condemnation" is to establish a time parameter of 30 days, which is a prerequisite to the filing of the complaint and "Declaration of Taking" so that construction may proceed.

Upon inquiry of Councilman Sellers, Ms. Ball said that most of the property owners want more money for their easement and one person, in particular, would like to build a shed in the easement area which MSD will not allow.

Staff recommends the resolution of condemnation be approved for the seven properties listed herein with direction for staff to continue to negotiate with the property owners to try and reach resolution if possible.

Mayor Martin asked that the record show that City Council has received this information and instructs the City Manager to place this item on the next formal City Council agenda.

UPDATE ON FINANCING OF WOODRIDGE APARTMENTS

Mr. Larry Holt, Deputy Executive Director of the Housing Authority, explained that the Housing Authority has agreed in principle to issue up to \$4,900,000 of its housing revenue bonds to finance a loan to Asheville - Woodridge LLC. Asheville-Woodridge LLC will use the loan proceeds for the renovation of the Woodridge Apartments development in Asheville, and to pay related expenses. The U.S. Internal Revenue Code ("Code") requires that for such bonds to be issued on a tax-exempt basis, the Asheville City Council must first approve their issuance. The Housing Authority will be holding a hearing on October 21, 1997, on the issuance of the bonds as required by the Code. The Housing Authority will report the proceedings of such hearing to the Council.

Mayor Martin asked that the record show that City Council has received this information and instructs the City Manager to place this item on the formal City Council agenda on October 28, 1997.

CHEROKEE ROAD WALL CONTRACT

Ms. Suzanne Molloy, Assistant Director of Public Works, said that this is consideration of the selection of a contractor to reconstruct a retaining wall along a portion of Cherokee Road.

The City, through the Public Works Department, solicited bids for this project. Four bid proposals were received. The bidders were qualified and listed below:

-7-

| <u>Company</u> | <u>MB Part</u> | <u>Drug Free</u> | <u>Bond</u> | <u>Bid</u> |
|---------------------------|----------------|------------------|-------------|------------|
| Thorpe Construction Co. | 8.02% | Yes | Yes | \$231,685 |
| Buncombe Construction | 2.1% | No | Yes | \$247,100 |
| Taylor and Murphy | 0% | No | Yes | \$280,000 |
| R.E. Burns and Sons, Inc. | 9.4% | No | Yes | \$320,000 |

The Engineer's estimate for this project was \$138,000. After review of these proposals and qualifications of the bidders, it was determined that the bids were too high and the engineer's estimate was too low. Staff has initiated negotiations with the lowest bidder, Thorpe Construction Company.

Staff is currently working with Day Engineering Services, P.A., Director of Historic Resources Commission, and Thorpe Construction Company to negotiate a cost for the project taking into consideration all available options. The cost to restore the historical nature of the wall is approximately \$45-50,000. At this time, negotiations are still on-going.

If negotiations are successful and contingent upon Historic Resources Commission approval, the Public Works Department staff recommends City Council adopt a resolution authorizing the City Manager to enter into contract with Thorpe Construction Company to reconstruct the Cherokee Road retaining wall. Additionally, a budget amendment, in the amount of \$240,000, will be required in order to appropriate funds for reconstruction of the retaining wall.

Upon inquiry of Councilman Worley, Ms. Molloy said the road has been closed since March of 1997. The community likes the road closed, however, for safety reasons, the road should be opened as soon as possible.

Councilman Cloninger asked about the difference in appearance of a regular retaining wall vs. the historical look of the wall. Ms. Maggie O'Connor, HRC Director, said that even though the HRC Commission has not reviewed the project yet, she felt sure the Commission would feel very strong, as well as the community, to reconstruct the wall back to its historical nature.

Upon inquiry of Councilman Sellers, Ms. Molloy said that the \$240,000 would include the repaving and reconstruction of road.

Mayor Martin asked that the record show that City Council has

received this information and instructs the City Manager to place this item on the next formal City Council agenda.

RETREAT

City Manager Westbrook asked for guidance from City Council as to the location of their City Council retreat in January 1998. If City Council chooses an out of town retreat, staff will need to begin to look for a suitable spot early enough to ensure the reservation.

After each Council member expressed their views on an out of town vs. in town retreat, Mayor Martin instructed the City Manager to bring the topic up again at a future date.

-8-

CHARLOTTE STREET ADVISORY COMMITTEE

Mr. Jerry Bailey, member of the Charlotte Street Advisory Committee, briefed Council on the progress, or lack thereof, of the Committee. He said that they will be meeting with City staff this week and will report back to Council their concerns.

Vice-Mayor Field said that if the Committee cannot come to consensus, and that is what City Council would prefer, then City Council will make the decisions.

RESCHEDULING OF NOVEMBER 4, 1997, CITY COUNCIL WORKSESSION

Mayor Martin noted that City Council has a scheduled worksession on Tuesday, November 4, 1997, which is election day for the Mayor and Asheville City Council. It was the consensus of City Council that if a worksession is needed that week, that the Tuesday, November 4, 1997, worksession be rescheduled until 3:00 p.m. on Wednesday, November 5, 1997, in the First Floor North Conference Room.

ADJOURNMENT:

Mayor Martin adjourned the meeting at 4:27 p.m.

CITY CLERK MAYOR
