

Tuesday - November 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 Sellers gave the invocation.

I. PROCLAMATIONS:

II. CONSENT:

A. RESOLUTION NO. 97-199 - RESOLUTION AUTHORIZING THE MAYOR TO ENTER INTO AN AGREEMENT WITH THE N.C. DEPT. OF TRANSPORTATION FOR BRIDGE INSPECTIONS

Summary: The consideration of a municipal agreement with the N. C. Dept. of Transportation (NC DOT) on a bi-annual basis for the re-inspection of bridges on the Municipal Street System.

In 1983 the Federal Highway Administration developed the Federal Off-System Bridge Replacement Program. Since the establishment of the program, the City has replaced 16 bridges through the program. The program is funded 80% through federal funds and 20% through City funds and administered by NC DOT. To remain eligible for replacement funds and avoid penalties, it is required that all public bridges are inspected every two years. The NC DOT offers three options for meeting the bi-annual inspection requirements - (1) inspection with City forces; (2) City to hire a consultant to do the inspections; and (3) allow the NC DOT to do the inspections through a qualified private engineering firm.

Since 1983, the City has elected to execute an agreement with NC DOT to accomplish the required inspection through their personnel or engineering consultants. This process allows high numbers of bridges to be inspected under one contract or operation, and therefore, results in minimum inspection cost per bridge. NC DOT representatives anticipate the inspection costs to be \$1800 per bridge for the upcoming inspection. The City has 24 bridges in need of inspection this year which would bring the cost to \$43,200. The City's share of 20% is \$8640. Funds for the City's share are budgeted in the Capital Projects Fund through the Bridge Replacement Program.

The Public Works Department staff recommends adoption of the resolution authorizing the Mayor to execute a municipal agreement with NC DOT for inspection of bridges on the Municipal Street System.

RESOLUTION BOOK NO. 24 - PAGE 262

B. RESOLUTION NO. 97-200 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO AN AGREEMENT WITH NORFOLK SOUTHERN RAILWAY FOR THE INSTALLATION OF AN 8-INCH PIPELINE BENEATH THE RAILROAD IN CONNECTION WITH THE WEST ANNEXATION AREA SANITARY SEWER IMPROVEMENTS PHASE II PROJECT

Summary: The consideration of a contract with Norfolk Southern Railway Corporation for the City of Asheville to install an 8-inch pipeline beneath the railroad in connection with the West Annexation Area Sanitary Sewer System Improvements Phase II Project.

This contract will require the City of Asheville to install, maintain, operate and remove an eight inch sanitary sewer pipeline in an eighteen inch casing pipe, under and across the right of way or property and any tracks of Railway, at Milepost T-5 minus 1,575 feet, for the construction of the West Annexation Area Sanitary Sewer System Improvements Phase II project and to pay the appropriate fees associated with the encroachment.

The Engineering Department developed construction plans for the West Annexation Area Sanitary Sewer System Improvements and this right of way is included to complete the construction of the sewer pipeline. The cost of the encroachment is \$1,600 and the cost for insurance requirements is \$350.00.

Staff recommends that City Council accept a resolution authorizing the City Manager to execute a contract with Norfolk Southern Railway Company for the right of way for the West Annexation Area Sanitary Sewer System Improvements Phase II and pay appropriate fees associated with the encroachment.

RESOLUTION BOOK NO. 24 - PAGE 263

C. RESOLUTION NO. 97-201 - RESOLUTION FINDING THAT THE DEDICATION DESCRIBED IN THE PROPOSED DECLARATION OF WITHDRAWAL FOR OVERLOOK DRIVE IS NOT PART OF THE STREET PLAN

Summary: The consideration of finding the right-of-way known as Overlook Drive off Springdale Avenue not part of an adopted street plan.

According to North Carolina General Statutes sec. 136-96, a right-of-way not utilized within 15 years of dedication can be abandoned through a recording of a Declaration of Withdrawal.

To proceed with this process, Mr. John D. Wilson, owner of PIN 9658-18-21-8701 and 9658-18-22-22-6371 has requested that the City of Asheville verify if the specific right-of-way is or is not part of the City's adopted street plan. The statute requires that the City adopt a resolution stating the right-of-way to be abandoned is or is not part of a proposed street plan. The unused road right-of-way off Springdale Avenue, named Overlook Drive, as shown on Plat Book 2, page 124, is not part of any such plan and is not a City maintained right-of-way; therefore, the City has determined that all necessary requirements of the statute will have been met by adopting the resolution.

The Public Works Department staff finds that the right-of-way known as Overlook Drive, from the intersection with the southwest corner of PIN No. 9658-18-21-6806 and southeast corner of PIN No. 9658-18-22-6371, in its entirety, as shown on Plat Book 2, Page 124 is not part of an adopted street plan and recommends the adoption of this resolution.

RESOLUTION BOOK NO. 24 - PAGE 264

D. RESOLUTION NO. 97-202 - RESOLUTION AUTHORIZING THE PARKS & RECREATION DIRECTOR TO EXECUTE CERTAIN CO-SPONSORSHIP AND CLASS INSTRUCTIONAL AGREEMENTS

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Summary: The consideration of a resolution authorizing the Director of Parks & Recreation to enter into co-sponsorship agreements and class instruction

agreements for providing recreation services.

The Parks and Recreation Department is currently involved with over 100 co-sponsored groups that jointly provide recreation service with the department. In addition, instructor agreements are signed to provide fee-based recreation class instruction in a variety of areas. Currently, the City Manager is the only person authorized to sign these agreements. Through recommendation from the City Manager, the Parks and Recreation Department is asking City Council's approval for this responsibility to be given to the Director of Parks and Recreation.

The Parks and Recreation Department requests City Council approval for the Director of Parks and Recreation to enter into co-sponsorship and class instructor agreements.

RESOLUTION BOOK NO. 24 - PAGE 265

E. RESOLUTION NO. 97-203 - RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE AN AGREEMENT WITH THE N.C. DEPT. OF TRANSPORTATION FOR A RAILROAD CROSSING SIGNAL AT BRUCE ROAD

Summary: The consideration of entering into an agreement with the N.C. Dept. of Transportation for a railroad crossing signal on Bruce Road.

Each year, the State of North Carolina examines all of the public-highway grade crossings in the State and ranks them according to their need for improvement. Based on an engineering investigation, the intersection of Bruce Road and Norfolk Southern Railway tracks qualifies for grade signalization improvements.

Under this program, the Federal Government will pay 90 percent of the eligible project cost. The City will be required to pay all costs not covered by Federal funds. Also, the City will be responsible for one-half of the annual maintenance cost of the signal installation.

The estimated cost for the Bruce Road Project is \$90,000. The City's share of this cost is \$9,000 for design and installation, and \$1,058.50 annually for maintenance.

Based on current funding, this project will be scheduled for construction during the Federal fiscal year which begins October 1, 1997.

The Engineering Department recommends adoption of this resolution.

RESOLUTION BOOK NO. 24 - PAGE 266

F. RESOLUTION NO. 97-204 - RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE AN AGREEMENT WITH THE N.C. DEPT. OF TRANSPORTATION FOR MAINTENANCE OF STREET LIGHTS ALONG WEST ASHEVILLE/RIVERLINK BRIDGE

Summary: The consideration of an agreement with the N.C. Dept. of Transportation ("NC DOT") for the maintenance of nine street lights along Haywood Road at the West Asheville/Riverlink Bridge.

The City Traffic Engineer made a request to NCDOT that the street lights along the West Asheville/Riverlink Bridge (Bridge No. 705) be repaired, pursuant to complaints from residents and motorists who use this facility. The City Traffic Engineer has performed the necessary -4-

analyses associated with the need to provide lighting in this area. NCDOT agreed to make the necessary repairs to the lighting standard at no cost to the

City of Asheville. The City of Asheville currently pays the cost of electricity for these fixtures at a rate of \$70.00 per month.

After completion of the repair by NCDOT, the City of Asheville will be responsible to make and/or pay for all necessary repairs to keep the lighting standards working properly. Staff has monitored these fixtures for the last ten months and are satisfied with their operation.

The Engineering Department recommends adoption of this resolution which will allow the City to control the maintenance and construction activities associated with lighting along this area.

RESOLUTION BOOK NO. 24 - PAGE 267

G. RESOLUTION NO. 97-205- RESOLUTION RESCHEDULING THE MEETINGS OF THE ASHEVILLE CITY COUNCIL IN DECEMBER 1997

Summary: Due to a change in City Council, it is necessary to reschedule the City Council meetings in December, 1997.

RESOLUTION BOOK NO. 24 - PAGE 268

H. RESOLUTION NO. 97-206 - RESOLUTION ADOPTING THE RECOMMENDATIONS OF THE REGIONAL WATER AUTHORITY TO AWARD A CONTRACT TO COOPER CONSTRUCTION COMPANY FOR THE WEST ASHEVILLE RESERVOIR AND WATER SYSTEM IMPROVEMENTS CONTRACT

Summary: The consideration of awarding construction contract to Cooper Construction Company for the West Asheville Reservoir and Water System Improvements Contract.

Sealed bids were received for the Authority's West Asheville Reservoir and Water System Improvements Project on September 26, 1997. This project consists of the installation of approximately 9,000 linear feet of 16-inch waterline on Deaverview Road in West Asheville and the construction of a new 5 million gallon reservoir on Candler Knob Road, next to an existing 3 million gallon reservoir. This is a Phase II Master Plan project that will significantly increase water system storage as well as improve the reliability of water service to the Downtown and West Asheville areas.

Construction on this project is scheduled to begin in late November, 1997 with 210 days allocated for construction. There is a liquidated damages clause in the contract of \$ 500.00 per day if the project is not completed on time. These bids were received in accordance with NC General Statute 143-129 and in accordance with the City of Asheville's Minority Business Plan. Funds in the amount of \$1,562,000 are budgeted for the project in the Water Bond Capital Projects Fund. The engineer's estimate for the project was in the amount of \$1,562,000. A total of six (6) bids were received, listed below in order of bid amount:

COMPANY BID

Cooper Construction Company, Hendersonville, N.C. \$ 1,552,064.00

Buckeye Construction Company, Canton, N.C. \$ 1,588,980.00

Hobson Construction Company, Arden, N.C. \$ 1,665,825.00

Goodwater Construction Company, Greenville, S.C. \$ 1,775,250.00

Bryant Electric Company, Archdale, N.C. \$ 1,823,344.00

Ruby-Collins Incorporated, Smyrna, GA \$ 2,086,566.00 -5-

The Regional Water Authority approved award of this contract to Cooper Construction Company on October 21, 1997, and staff recommends City Council's concurrence with the Authority's action.

RESOLUTION BOOK NO. 24 - PAGE 269

I. RESOLUTION NO. 97-207 - RESOLUTION DESIGNATING MOUNTAINEER INN NEON SIGNS LOCATED AT 155 TUNNEL ROAD AS LANDMARK SIGNS

Summary: The consideration of designating the large metal parapet signs atop the Mountaineer Inn at 155 Tunnel Road as landmark signs.

The neon signs atop the Mountaineer Inn located at 155 Tunnel Road were installed forty-five years ago. The sign meets criteria A, B, & C for landmark designation for the following reasons: (A) The Mountaineer Inn neon signs are an icon for the City of Asheville and are a part of our collective memory. "Historic signs give continuity to public spaces, becoming part of the community memory. They sometimes become landmarks in themselves, almost without regard for the building to which they are attached, or property on which they stand. Furthermore, in an age of uniform franchise signs and generic plastic "box" signs, historic signs often attract by their individuality: by a clever detail, a daring use of color and motion, or reference to particular people, shops, or events." (Preservation Brief #25); (B) The Mountaineer Inn neon signs are fine examples of the creative possibilities of neon. "Neon is a great 20th century contribution to the signmaker's art. 'Neon' coined from the Greek word for 'new,' is a 'new gas.' It has the property of glowing when an electric charge passes through it. (Argon, Krypton, xenon and helium share this property....Encased in glass tubes shaped into letters or symbols, neon offered signmaker's an opportunity to mold light into an infinite variety of shapes, colors, and images. Combined with an electric timer, the neon tubing could present images moving in succession. Neon first appeared in the 1920s and reached its height of popularity in the 1940s." (Preservation Brief #25); (C) The Mountaineer Inn and its signs are a good example of post World War II, roadside art and architecture.

At their regularly scheduled August meeting, HRC, by a unanimous vote, recommends to City Council that the neon Mountaineer Inn signs be designated landmark signs.

RESOLUTION BOOK NO. 24 - PAGE 270

J. RESOLUTION NO. 97-208 - RESOLUTION DIRECTING THE CITY CLERK TO PROVIDE PUBLIC NOTICE OF THE INTENT OF THE CITY OF ASHEVILLE TO LEASE A PORTION OF THE OLD WATER MAINTENANCE BUILDING TO THE ASHEVILLE CITY BOARD OF EDUCATION

Summary: The consideration of a resolution directing the City Clerk to provide notice to the public of the intent of the City of Asheville to lease a portion of the Old Water Maintenance Building to the Asheville City Schools.

The Asheville City Schools now use a portion of the basement of the Municipal Building for its Maintenance Division, pursuant to a 1996 agreement with the City of Asheville. With the renovations of the Municipal Building, the maintenance operations for Asheville City Schools will be moved to space in the Old Water Maintenance Building. The Asheville City Schools will be paying for alternates for construction which will provide them adequate space to provide their maintenance services. The terms and conditions of the agreement -6-

regarding the use of a portion of the Old Water Maintenance Building will be

set forth in a lease.

The Parks and Recreation Department recommends City Council approval of the resolution directing the City Clerk to provide notice to the public of the proposed lease between the Asheville City Schools and the City of Asheville.

RESOLUTION BOOK NO. 24 - PAGE 272

K. RESOLUTION NO. 97-209 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A CONTRACT WITH DONALD C. NEAL CONSTRUCTION COMPANY INC. TO RENOVATE THE STEPHENS-LEE RECREATIONAL CENTER

Summary: The consideration of entering into a construction contract to renovate the Stephens-Lee Center.

In October, 1997, City Staff solicited bids from eleven contractors to renovate the Stephens-Lee Center. Sealed bids as both single prime and separate prime contractors were received on September 18, 1997, at 3:00 p.m. based on design plans and specifications by Mathews and Glazer Architects. An estimate for construction cost was prepared by Mathews and Glazer Architects in the amount of \$ 1,300,000.00 excluding site work and landscaping. The bid process resulted in the following three single prime bids:

Buncombe Construction Co., Inc. \$ 1,545,800.00

H&M Constructors, Inc. \$ 1,594,577.00

Donald C. Neal Construction Co., Inc. \$ 1,526,787.00

City staff has researched references given by the lowest bidder and concluded that they are a competent General Contractor. Sufficient funds are appropriated in the budget for this project.

The Parks and Recreation Department requests City Council to direct the City Manager to enter into a contract for \$ 1,526,787.00 dollars with Donald C. Neal Construction Co., Inc.

RESOLUTION BOOK NO. 24 - PAGE 273

L. RESOLUTION NO. 97-210 - RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE AN AGREEMENT WITH THE ASHEVILLE AREA CHAMBER OF COMMERCE

Summary: The consideration of authorizing the City Manager to execute a contract with the Chamber of Commerce to receive the outside agency funding of \$100,000 for Fiscal Year 1997/98.

The City Council Outside Agency Committee met to discuss the funding requests of all outside agencies during the budget process for the 1997/98 fiscal year. The Committee recommended approval and the full City Council did approve funding for the Asheville Area Chamber of Commerce at \$100,000 for the 1997/98 fiscal year. Due to the amount of the approved funding, in order for the outside agency contract with the Chamber to be executed by the City, the City Council must adopt a resolution which authorizes the City Manager to execute the contract. No additional funding is requested.

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City staff recommends approval of the resolution to authorize the City Manager to execute the outside agency contract with the Asheville Area Chamber of Commerce in the amount of \$100,000 for the 1997/98 Fiscal Year.

RESOLUTION BOOK NO. 24 - PAGE 274

M. ORDINANCE NO. 2422 - BUDGET AMENDMENT TO REPROGRAM LINE ITEMS IN THE CAPITAL PROJECT ORDINANCE (29 FUND) FROM THE 19&23/WEST BUNCOMBE WATER LINE AND PIPELINE PHASE III TO THE MILLS RIVER PROJECT

Summary: The consideration of a budget amendment to reprogram funds in the 29 Fund from the 19&23/West Buncombe Water Line and Pipeline Phase III to the Mills River Water Resources Project.

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 is recommending reprogramming funds in the amount of \$1,535,056 from the US 19&23/West Buncombe Water Line Project and the Pipeline Phase III Project to the Mills River Regional Water Resources Project. This will more accurately reflect the appropriation required for the original construction contracts, engineering fees and related expenses for the Mills River Water Resources Project. It will also provide adequate funding for change orders one through seven (\$411,391) for Metric Construction as well as provide for a contingency (\$745,524) in the Mills River Water Resources Project.

Staff recommends adoption of the budget amendment which will reprogram funds from the 19&23/West Buncombe Water Line and the Pipeline Phase III to the Mills River Regional Water Resources Project.

ORDINANCE BOOK NO. 16 - PAGE 323

N. ORDINANCE NO. 2423 - BUDGET AMENDMENT TO REFLECT ACTUAL MONETARY COMMITMENTS IN THE WATER MAJOR CAPITAL PROJECTS ORDINANCE (35 FUND)

Summary: The consideration of a budget amendment to the Water Major Capital Project Ordinance 82-25 (35 Fund) to reflect actual monetary commitments in that Fund.

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. Staff is recommending the following changes to Ordinance 82-25 (35 Fund):

- Close out Contingency (\$151,171);
- Clout out the Southern Railway Project (\$1,929) - this project was approved in 1991 and no request for payment has been received from DOT to date
- Reduce the Regional Water Resource Improvements from \$534,105 to \$373,232 - this will more accurately reflect the projected costs for South Buncombe Phase II and the remainder of the North Fork and Bee Tree Chemical Improvements

The deletion of these projects will bring the fund total in line with the current balance. This will result in a new total of \$2,953,464 for the 35 Fund.  
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Staff recommends adoption of the budget amendment which will delete contingency and the Southern Railway Project and reduce Regional Water Resource Improvements to better reflect actual commitments for budgeted projects.

ORDINANCE BOOK NO. 16 - PAGE 325

O. ORDINANCE NO. 2424 - BUDGET AMENDMENT TO TRANSFER THE TRAFFIC ENGINEER FROM THE PUBLIC WORKS DEPARTMENT TO THE ENGINEERING DEPARTMENT

Summary: The consideration of transferring the budget in the amount of \$115,909 for the Traffic Engineer from Public Works to Engineering Department.

Effective September 15, 1997, the Traffic Engineer function is moved from Public Works to Engineering Department. The "Traffic Operations" portion of this budget will remain with Public Works. This transfer between departments requires a formal budget amendment. This action transfers one full time position, fringe benefits and operating cost totaling \$115,909 from the Public Works Department to the Engineering Department.

There is no net budget increase associated with this action.

Staff recommends consideration of the budget amendment.

ORDINANCE BOOK NO. 16 - PAGE 327

P. ORDINANCE NO. 2425 - ORDINANCE ESTABLISHING AND/OR CHANGING SPEED LIMITS ALONG CERTAIN CITY-MAINTAINED STREETS

Summary: The City Traffic Engineer has performed the necessary traffic analyses associated with the following locations as per the Manual on Uniform Traffic Control Devices and the North Carolina Supplement and is seeking authorization from the City Council to establish and /or change these speed limits:

Establish 15 MPH

(1) Lynmar Avenue (entirety)

Establish 20 MPH

(1) Swanger Road (entirety)

(2) Woodvale Avenue (entirety)

(3) Melrose Avenue (entirety)

(4) Manetta Road (entirety)

(5) Harrison Street (entirety)

(6) Starmount Drive (entirety)

(7) Covington Street (entirety)

Change to 20 MPH

(1) King Street (entirety)

Change to 25 MPH

(1) Beaucatcher Road (entirety)

(2) Annadale Avenue (entirety)

These locations have been reviewed over the past twelve months as per the request of residents and motorists who utilize these roadways. Field surveys

and speed studies were conducted and data reviewed based upon the 85 th percentile speed, which is the speed at or below which 85 -9-

percent of the vehicles are moving. This speed is reviewed in relationship to the median speed and the pace speed range. The pace speed range is the range of speeds at which the largest concentration of motorists drive. These speeds were reviewed to address the speeding problems in the areas.

ORDINANCE BOOK NO. 16 - PAGE 330

Q. MOTION SETTING A PUBLIC HEARING ON NOVEMBER 25, 1997, TO CONSIDER REZONING PROPERTY ON AZALEA ROAD FROM RS-2 RESIDENTIAL SINGLE FAMILY LOW DENSITY DISTRICT TO RIVER DISTRICT

R. MOTION SETTING A PUBLIC HEARING ON NOVEMBER 25, 1997, TO CONSIDER REZONING PROPERTY LOCATED OFF BROAD STREET, WASHINGTON ROAD AND MADISON AVENUE FROM OFFICE DISTRICT TO RM-8 RESIDENTIAL MULTI-FAMILY MEDIUM DENSITY DISTRICT

S. MOTION SETTING A PUBLIC HEARING ON NOVEMBER 25, 1997, TO AMEND CHAPTER 7 (UNIFIED DEVELOPMENT ORDINANCE) TO ESTABLISH A DEFINITION FOR GRADING IN THE HILLSIDE AREA DEVELOPMENT STANDARDS

T. MOTION SETTING A PUBLIC HEARING ON NOVEMBER 25, 1997, TO AMEND CHAPTER 7 (UNIFIED DEVELOPMENT ORDINANCE) REGARDING THE DEFINITION OF ASSISTED LIVING FACILITIES

U. MOTION SETTING A PUBLIC HEARING ON NOVEMBER 25, 1997, TO AMEND CHAPTER 7 (UNIFIED DEVELOPMENT ORDINANCE) REGARDING THE RIVERFRONT DISTRICT DESIGN COMMITTEE AND RIVERFRONT DESIGN GUIDELINES

V. MOTION SETTING A PUBLIC HEARING ON NOVEMBER 25, 1997, TO AMEND CHAPTER 7 (UNIFIED DEVELOPMENT ORDINANCE) REGARDING LEVEL I SITE PLAN REVIEW PROCESS

Mayor Martin said that members of Council have been previously furnished with copies of the resolutions and ordinances on the consent agenda and they will not be read.

Councilman Worley moved for the adoption of the consent agenda. This motion was seconded by Councilman Sellers and carried unanimously.

### III. PUBLIC HEARINGS:

A. PUBLIC HEARING TO CONSIDER OFF-PREMISES ADVERTISING SIGNS IN THE CITY OF ASHEVILLE'S ZONING JURISDICTION

ORDINANCE NO. 2426 - ORDINANCE AMENDING CHAPTER 7 OF THE CODE OF ORDINANCES PROHIBITING FUTURE BILLBOARDS AND OTHER LARGE OFF-PREMISES SIGNS

ORDINANCE NO. 2427 - ORDINANCE AMENDING CHAPTER 7 OF THE CODE OF ORDINANCES REQUIRING ALL OFF-PREMISES SIGNS NOT COMPLYING WITH NEW STANDARDS TO COME INTO COMPLIANCE WITHIN SEVEN YEARS

Mayor Martin opened the public hearing at 5:04 p.m.

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

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City Attorney Oast said that on November 6, 1997, a several protest petitions

were received by the City Clerk filed by representatives of Fairway Outdoor Advertising Inc. and Outdoor Communications Inc. After examining the protest petitions and the law relating to protest petitions, it was his opinion that because the proposed amendments are text amendments, they are not appropriate for the filing of a protest petition. But, even if the protest petitions were appropriate, based on the City's review of the percentages necessary and how the language of the statute is to be applied, the property with respect to which the petition has been filed does not come to 20% of the property that would be involved in the ordinance under consideration. Therefore, it was his opinion that the protest petitions are not valid and therefore a 3/4's vote is not required - just a simple majority vote. In order to avoid a second vote, however, the ordinance will require a 5-2 vote. He also pointed out that Mr. Albert Sneed and Mr. Robert Long have submitted letters with the City Clerk indicating their objection to the ruling on the protest petition issue.

Ms. Julia Cogburn, Planning & Development Director, said that at the Council worksession on September 23, 1997, the Asheville City Council directed staff to prepare revisions to the Unified Development Ordinance as it pertains to outdoor advertising signs and take these revisions to the Planning and Zoning Commission for their review. Outdoor advertising signs are currently regulated under the category of "off-premises signs" in our ordinance. They are allowed in the higher impact commercial and industrial districts and are restricted to 150 square feet per face, two faces per sign and 25 feet in height. There are a number of spacing requirements pertinent to off-premises signs as well.

Additionally, under the current regulations, off-premises and on-premises signs in Asheville, erected prior to 1990, are subject to coming into compliance if not complying with either the 1990 ordinance (current ordinance) or the ordinance by which it was preceded (1977).

At the September 23 worksession, Council had indicated an interest in the Planning & Development staff and the Planning & Zoning Commission looking at ordinances which would do two things. The first would be to prohibit any additional outdoor advertising signs from being erected in the City's jurisdiction. And secondly, to consider additional amortization of outdoor advertising signs.

She then summarized the major provisions of the three proposed amendments to be considered by City Council:

1) Ordinance #1 - This ordinance would amend the regulations concerning off-premises signs to allow only off-premises signs that are a maximum of six (6) square feet per side and six (6) feet high. This ordinance would have the effect of prohibiting future billboards and other large off-premises signs. This ordinance does not have any impact on existing signs. This ordinance provides that the Board of Adjustment could not grant a variance to allow a larger off-premise sign. An amendment the Planning & Zoning Commission made deals with the spacing requirement. Basically as the regulations exist now, no off-premises sign can be located within 75 feet of an intersection. That provision was looking at larger off-premises signs. The Commission didn't feel that it was necessary anymore, if Ordinance #1 is adopted. And basically suggested that the wording be changed so that no off-premises sign shall be located within nor cause obstruction to the site visibility triangles of street intersections as described in a different section in the ordinance.

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2) Ordinance #2 - This ordinance would require all off-premises signs not complying with the standards in Ordinance #1, if adopted, to comply with those standards within 7 years.

3) Ordinance #3 - This ordinance would require all off-premises signs not complying with the standards in Ordinance #1, if adopted, to come into compliance within 7 years unless those signs comply with regulations adopted as of August 28, 1990. This ordinance would require those currently grandfathered, due to their compliance with the 1977 ordinance, to come into compliance within 7 years.

Ordinances #2 and #3 delete the provision allowing for off-premises signs which have obtained a variance to remain. If you kept in provisions where signs that had obtained variances were allowed to stay, it defeated the intent of each of those amortization provisions. It was her understanding that there are approximately 10 billboards that since 1977 that have been granted variances and the majority of those were obtained before 1990. She believed only one has been granted since 1990. They have suggested that the provisions allowing signs that have obtained variances to remain be deleted.

Ordinances #2 and #3 also introduced a new provision that would not have subsequent text and map changes trigger new amortization unless specifically called for with the amendment and except in the case of jurisdictional extension. This was suggested for administrative purposes basically thinking that every time a rezoning or text change took place a clock would start ticking on an amortization provision. While staff may still want to address this type of provision in the future, they felt it complicated the issue before Council today and therefore they strongly recommend going back to the original language with a minor change to Sec. 7-13-8 D 3 which basically provides that when map and text amendments take place, the amortization provisions are as previously stated.

Council previously received information on the numbers of billboards that might be affected by the suggested changes. Staff has worked to fine-tune these numbers and Ms. Cogburn used a map to illustrate the sign locations. The total outdoor advertising signs in the 1990 survey data base as of 11/11/97 is 149; signs that the City still has on record to come down or into compliance per the current regulations is 46; signs that are subject to federal law protections and not subject to coming into compliance is 25; signs that comply with the current regulations is 17; and signs that comply with the 1977 ordinance but do not comply with the current regulations is 61. Ordinance #2 would amortize 78 signs and leave in the City's jurisdiction 25 signs. Ordinance #3 would amortize 61 signs and leave in the City's jurisdiction 42 signs.

She said that since the Planning & Zoning Commission meeting, she has received one letter from John Modaff basically in favor of further regulations in terms of billboards; one call from Betty Madsen from Marshall in favor of billboards because they help her when she is traveling; and one call from an unidentified woman who felt if the City was interested in prohibiting billboards they should start with the All America City billboard.

At their meeting on October 1, 1997, the Asheville Planning and Zoning Commission recommended adoption of Ordinances #1 and #3 to the City Council. She clarified the vote from the Commission with respect to Ordinance #3. There were only six members present at that meeting - two of those members were opposed to any additional amortization provisions; two were in favor of Ordinance #2 and two were in favor of -12-

Ordinance #3. Basically the four that were in favor of some additional amortization provision, in essence, compromised on Ordinance #3.

Upon inquiry of Vice-Mayor Field about how the six square feet came about, Ms. Cogburn said that it was suggested by staff after researching other ordinances

throughout the state.

When Councilman Worley asked what kinds of signs are the 25 non-billboard off-premises signs, Ms. Cogburn said that typically they are directional signs.

The following individuals spoke against and commented on the ordinances as outlined above. Some comments are, but are not limited to: 28 are interstate protected and permitted signs; since Council adopted strict laws in 1977, the number of signs have dropped by over 150 and are now confined in the major commercial areas; Council should not take away the signs from the owners without just compensation; signs are a form of commercial speech that is confined to commercial areas; adopting the ordinances will result in litigation; people cannot afford to spend out substantial money for what was regarded as legal at the time and have it taken away from them; no problem with prohibiting future signs but leave the signs that are in existence left alone and left to the natural attrition that laws about spacing, etc., have resulted in; the people that will be hurt by the ordinance if you pass the amortization provision are the people that have to tear their own property down and over 20% of those people have filed a protest petition; it is practically impossible to build any more billboards with the current regulations as seen by only one permit being issued since 1990; objection to the compulsory taking of property without just compensation; the entire cost of eliminating billboards will be borne by the people who own the billboards - they paid the filing fee, obtained building permits and relied on the laws in good faith; disagreement with definition of amortization; Fairway Outdoor is voluntarily taking signs down and working with the City to take more down; it's not right nor fair to amortize these signs; the City should purchase the signs and not amortize them; the ordinance passage will affect approximately 50 employees; the lawsuit Fairway will be bringing before the City of Asheville will cost the citizens of Asheville hundreds of thousands of dollars; do not pass the amortization provisions; the business community has tried to comply with existing sign ordinance; effort to eliminate these businesses from our community without just compensation goes against the fabric of our community; this will run legitimate businesses out of Asheville; this is anti-business regulation; Outdoor Communication has spent millions of dollars and borrowed money to purchase an existing business in Asheville and their loans will not be forgiven in seven years; this will deter businessmen who may purchase existing businesses in Asheville; the Constitution of the United States says that government cannot take private property without just compensation; amortization is not compensation, just a delayed taking; there are no other amortizations in Asheville and they should not start with billboards; people do not carry televisions in their cars so they need a billboard or some other means to find lodging; small restaurants cannot afford to advertise with the larger restaurants on television; not fair for signs on the federal roadways that do not comply are allowed to stay up while others have to be removed; be fair to the small business people and people in the hotel and tourist industry; citizens of Asheville should be allowed to express their opinions on this issue as other polls have showed that the vast majority felt billboards were not a top problem; the definition of off-premise advertising will eliminate the banners on poles and trucks with City logos; according to the proposed ordinances if you annex property that has a billboard on it, the billboard would have to come down immediately with no

compensation; it is everyone's goal to maximize scenic beauty in our city but destroying billboards is only a small step if indeed a step at all toward our goal; even if you take out the six billboards on Tunnel Road which are peacefully coexisting with a multitude of business identification signs, it is still ugly area with power poles, telephone poles, power lines, and telephone lines; City should concentrate on comprehensive program of fixing streets, repairing potholes, picking up trash, sweeping streets, and eliminating weeds

in streets; billboards are some businesses only means of advertising because of their market, i.e. young kids driving on the roads; billboard companies give back to the community through donated space; billboard companies are a permanent part of this community; removal of signs will result in smaller signs more congested and closer together; a few billboards will not drive anyone away from Asheville; inconsistency toward businesses; business community needs the service of billboards; amortization will not increase tourism; the billboard industry would be willing to formulate a committee to find what they can do to work with the City Council to make the ordinance fair; there has not been a problem with tourism decreasing because of the billboards; regarding the issue of personal property there is the issue of relocation costs - if you deprive a person of all reasonable use of his property, the property owner is entitled to compensation; and 39 structures have already been lost due to attrition, loss of lease or development of properties which will continue:

Mr. Robert B. Long Jr., Attorney representing Outdoor Communications Inc.  
(presented a binder with pictures of off-premises permitted billboards)

Mr. Albert L. Sneed Jr., Attorney representing Fairway Outdoor Advertising Inc.

Mr. Darryl Merchant, General Manager of Fairway Outdoor Advertising Inc.

Mr. Bob Selby, President of Council of Independent Business Owners

Mr. Richard Drummond, Division Manager for Outdoor Communications for Tennessee and North Carolina

Mr. Carl Ricker, business owner with several companies in Asheville that employ over 3,000 employees

Mr. Tim Avery, employee of Outdoor Communications, and resident of Johnson City, Tennessee

Mr. Loyd Kirk, 866 Hendersonville Road, and owner and operator of the Forest Manor Inn on Hendersonville Road

Mr. Bill Lack, owner of small business

Mr. John Baggett, employee of Outdoor Communications

An employee of Outdoor Communications

Ms. Carol Collins, owner of small consulting business

Mr. Kerry Coxe, employee of Fairway Outdoor Advertising

Mr. Matt Mattan, Asheville resident

Mr. Kip Martin, majority owner of the Fuddruckers Restaurant

Mr. Roberts

Mr. Doug Thrash, property owner

Mr. Jeff Nolan

Mr. Kelly Mason, Asheville resident and employee of Fairway Outdoor Advertising

The following individuals spoke in support of the ordinances outlined above for several reasons, some of which are: never met anyone who visited or moved to

Asheville because of a billboard; no knowledge of a business going out of business because they didn't advertise on a billboard; if Asheville allows a few businesses to use this form of advertising, what kind of message are we giving to other businesses who are prohibited from having this privilege - it is setting up an unfair obstacle for new businesses; billboard companies don't care about the beauty of our area; everyone benefits from keeping our area beautiful -14-

and only a few benefit from the huge billboards; billboard companies should be offered reasonable compensation based on depreciated value of their signs; billboards force advertising on individuals and communities; billboards violate citizens' rights to privacy and make citizens a captive audience to advertising; there are alternative ways of advertising other than billboards that provide the same information at less cost without degrading our landscape; billboards are a pollution; signage is a legitimate form of business but they should be limited in size, height, placement and number; billboards are oversized, badly located and too numerous; some billboards interfere with recognizing on-premise signs on Hendersonville Road; billboards are inappropriate in Asheville and neighborhoods; we don't need billboards on the highways advertising franchise properties that are in their own town; billboards deteriorate the scenic beauty; 60 competitive towns in North Carolina which do not allow billboards are successful resort beautiful communities; quality of our visitors is in no way enhanced by billboards; our focus on vision is for a scenic, beautiful and historic city; a national study made finds that historic, scenic cities in the United States are visited more often and have more dollar spending visitors than other cities in the United States; seven years should be sufficient for billboard companies to earn back their investment on the signs; regulation of billboards is not a taking of property; public doesn't want billboards; billboard companies are selling something they do not own; billboard companies are not interested in improving Asheville; and billboards are personal property and can be removed by the owners and put back up somewhere else:

Mr. Walter Plowe, small business owner in Asheville

Ms. Shirley Birdie, 706 River Ridge Drive

Ms. Betty Anthony, South Asheville resident

Mr. Jack McCuen, Innkeeper of Cedar Crest Victorian Inn

Mr. Hiram S. Cody, representative of the Western Coalition for Scenic Beauty (passed out a list of communities in North Carolina that do not allow new billboards and well-known facts concerning billboards)

Ms. Jane Bingham

Ms. Anne Campbell

Ms. Sunny Early, Asheville resident

Mr. Robert Fletcher

Ms. Hazel Fobes, Asheville resident

Mr. Dick Dawster

Mr. Frank Martin, Coordinator for the Coalition for Scenic Beauty

Councilman Cloninger said that the United States Supreme Court Justices have

ruled that amortization is a valid means of removing billboards.

Mayor Martin closed the public hearing at 7:06 p.m. and announced a 10 minute break.

Mayor Martin said that members of Council have been previously furnished with copies of the ordinances and they would not be read.

Councilman Cloninger moved to adopt Ordinance No. 2426 prohibiting future billboards and other large off-premises sign. This motion was seconded by Councilman Skalski.

When Vice-Mayor Field asked what is reasonable compensation for the 78 billboards, Councilman Cloninger pointed out that the courts have ruled that amortization constitutes just compensation. City Attorney Oast said that until we have all the information, there is really no way of predicting how much it would cost, if anything.

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Upon inquiry of Vice-Mayor Field regarding depriving someone all reasonable use of the property the billboards are on, City Attorney Oast said that he could not say conclusively that it is not an issue. The prospective ban is certainly less of an imposition than amortization would be because it just prohibits future use, it doesn't require the removal or amortization of anything.

Mayor Martin called for a vote on Ordinance No. 2426 and said motion carried unanimously.

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Councilman Cloninger moved to adopt Ordinance No. 2427 incorporating the two amendments outlined above by the Planning Department. This motion was seconded by Councilman Sellers.

Councilman Hay felt that basically there is a general agreement in the community that we want to eliminate billboards in the future. In addition, it represents an expression by our community of who we are. We set standards for ourselves and we express that, just like we do in our own lives. He was concerned about the fairness issue and the property rights issue and take some comfort in the fact that the courts have dealt with this. The constitutional issues seem to be well resolved and he felt there is some question as to how you go forward with the amortization and trust the courts to sort that out, if that what it comes to. The real question is do we compensate by paying up front or is amortization a fair and legal way to do that compensation.

Councilman Worley said that when the City passed the existing ordinance in 1990 and there was a tremendous amount of divisiveness at that time. Since then staff has been working closely with the sign companies and have made a lot of progress in that area. A number of signs have been removed with a schedule for removal of the rest of non-conforming signs. This Council can be pro-active in working to educate property owners and working with land owners as leases expire. I felt there is an issue of compensation for property and the possibility of lawsuits. He offered a substitute motion to instruct our staff to continue working pro-actively with the sign companies over then next two years to continue removing signs that are non-conforming under the current ordinance, and work with them to voluntarily remove other signs that have complied with our current ordinance and to report back to City Council by December 31, 1999, on the progress made. At that time Council can review that progress and make a decision whether to go forward with something as drastic as

amortization. This motion was seconded by Vice-Mayor Field.

Councilman Cloninger felt that our staff has already been instructed to enforce the current sign ordinance.

Councilman Worley felt that his motion added an additional component of asking staff to work pro-actively on existing signs that do comply with the existing ordinance, to remove those. He felt we all have the same goal to protect our scenic beauty. It's a question of how we get to that goal. When each sign was constructed, they were permitted by our ordinances and legally built. Construction is not cheap and there is a significant legal investment in this type of property. He knows business well enough to suspect very strongly that the price the sign companies paid was not based upon the value of the sign as constructed, but rather the long term income stream that the sign will produce. Since financing is frequently tied in with that, he suspected that it is a sizable investment that seven years of income from amortization will not replace. If you put the issue into prospective, -16-

Council needs to consider similar regulation of other types of property. In no other instance has Council considered forcing the owner of property that has become non-compliant as a result of a change in our zoning ordinances to remove that property without compensation. The removal of the billboards is an emotional issue and if we really want to require elimination within seven years, then let's do it. But, let's do it with compensation and start a fund-raising drive among our citizens to raise the money to provide that compensation. He felt that amortization was not right and not fair with no compensation, considering the investment involved.

Vice-Mayor Field felt this was a very difficult issue. She has talked with the Planning Department staff and they were very enthusiastic about how cooperative the sign companies are being in taking down about 44 signs and the possibility of doing even more than that. She would like to see the opportunity to give the Planning staff a chance to resolve this problem. She felt we need to have the chance to work with people and she supports the process they went through developing the sign ordinance. Her concerns is that with seven years amortization, a new Council can be elected and bring the issue up again. She did not want to rip this community apart over this issue again if a consensus can be reached.

Mayor Martin also spoke with Planning Department staff and found that Fairway has been voluntarily removing some of the signs. He asked if Councilman Worley's substitutive motion passed, would Fairway be willing to continue that process. A representative from Fairway replied that they would be happy to.

Councilman Cloninger agreed that the sign issue has been divisive in the past, however, it's important to point out that we are only dealing with billboards. He is convinced that the overwhelming majority of the public wants the elimination of billboards. He also pointed out that the billboard companies are not voluntarily coming to the City and working with the City to remove billboards. The fact is that they only came to the table because this City Council made it clear to the billboard companies that they were going to start enforcing the sign ordinance. Notices of violations were sent to those companies and they were told that they would be fined.

Mayor Martin asked for a show of hands in favor of Councilman Worley's substitute motion. Said motion failed on a 3-4 vote, with Mayor Martin, Vice-Mayor Field and Councilman Worley voting "yes" and Councilmen Cloninger, Hay, Sellers and Skalski voting "no".

Mayor Martin then asked for a show of hands for Councilman Cloninger's motion

to adopt Ordinance No. 2427. This motion carried on a 4-3 vote with Councilmen Cloninger, Hay, Sellers and Skalski voting "yes" and Mayor Martin, Vice-Mayor Field and Councilman Worley voting "no".

City Attorney Oast stated that since the ordinance passed by a simple majority, it will require a second vote which he recommended occur at the next formal meeting on November 25, 1997.

ORDINANCE BOOK NO. 16 - PAGE 334

B. PUBLIC HEARING TO CONSIDER MINOR REVISIONS TO THE UNIFIED DEVELOPMENT ORDINANCE -17-

ORDINANCE NO. 2428 - ORDINANCE AMENDING CHAPTER 7 OF THE CODE OF ORDINANCES TO INCORPORATE VARIOUS MINOR REVISIONS

Mayor Martin opened the public hearing at 7:47 p.m.

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

Mr. Gerald Green, Senior Planner, said that this ordinance will consider revisions to the Unified Development Ordinance (UDO) addressing minor wording changes which do not alter the intent or purpose of the standards.

As part of the on-going review of the UDO to assure that the standards and regulations in the ordinance meet the needs of the city, staff has identified a number of minor revisions. These revisions include new and revised definitions, permitting the TRC to "table" or "continue" consideration of development site plans, clarifying conditions for the issuance of permits, etc. The proposed revisions will not alter the intent of the standards established in the UDO. Existing standards and regulations will be clarified through the proposed revisions. The Planning and Zoning Commission reviewed the proposed revisions, made comments resulting in minor changes, and recommended adoption of the proposed revisions. He summarized the proposed revisions to the following sections:

Sec. 7-2-5 Definitions;

Sec. 7-5-1 Permits & Approvals;

Sec. 7-5-5 Conditional Use Approvals;

Sec. 7-5-9 Site Plan Review;

Sec. 7-5-19 Certificate of Occupancy;

Sec. 7-7-4 Review by the Asheville Planning & Zoning Commission;

Sec. 7-9-5 Manufactured Housing Rental Community Overlay District;

Sec. 7-10-2 Required Setbacks; Allowable Encroachments Into Required Set;

Sec. 7-10-3 Fences and Setbacks;

Sec. 7-11-1 Parking, Loading, and Access Standards;

Sec. 7-11-5 Traffic Impact Analysis;

Sec. 7-12-2 Soil Erosion & Sedimentation Control;

Sec. 7-15-1 Subdivisions;

Sec. 7-15-2 Figure 15-2;

Sec. 7-16-1 Uses by Rights, Subject to Special Requirements;

Sec. 7-17-5 Nonconforming Open Uses of Land; and

Sec. 7-17-8 Maintenance and Repair of Nonconforming or Conforming Structures on Nonconforming Lots.

The Asheville Planning and Zoning Commission, by a 6-0 vote, recommended adoption of the minor revisions to the UDO. The staff of the Planning and Development Department had recommended approval of the minor revisions.

Mr. Green responded to a concern of Councilman Hay relative the time frame involved if the applicant cannot both resubmit the revised site plan and appeal the Technical Review Commission decision.

Ms. Cathy Ball, City Engineer, responded to questions from Vice-Mayor Field relative to requirements for a traffic impact analysis and who can perform those analyses.

When Councilman Worley inquired about the standard: "The home occupation shall not increase the traffic which is found in its vicinity -18-

when the use is not in operation." Mr. Green responded that it is up to the interpretation of the enforcement staff after visiting the site. City Attorney Oast agreed the standard is not real clear but it is a similar criteria that is included in a lot of other zoning ordinances across the state. He would advise the Board of Adjustment, if they had to consider this, that it would be a "reasonable" increase.

Mayor Martin closed the public hearing at 8:04 p.m.

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

Councilman Worley moved for the adoption of Ordinance No. 2428. This motion was seconded by Vice-Mayor Field and carried unanimously.

ORDINANCE BOOK NO. 16 - PAGE 339

C. PUBLIC HEARING TO CONSIDER ANNEXATION OF PROPERTY LOCATED ON COLUMBINE ROAD (SECTION 9 OF BILTMORE PARK)

ORDINANCE NO. 2429 - ORDINANCE TO EXTEND THE CORPORATE LIMITS OF THE CITY OF ASHEVILLE, NORTH CAROLINA, BY ANNEXING A CONTIGUOUS AREA LOCATED ON COLUMBINE ROAD AND KNOWN AS SECTION 9 OF BILTMORE PARK

Mayor Martin opened the public hearing at 8:05 p.m.

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

Mr. Paul Benson, Urban Planner, said that Biltmore Farms, Inc. has submitted an annexation petition for an 18.7 acre area (platted for 56 single family lots) identified as Biltmore Park, Section 9. This is the ninth annexation petitioned by Biltmore Farms, Inc. for property located on Columbine Road. This area is contiguous to corporate limits, specifically to Biltmore Park, Sections 6 and

7, which have been previously annexed. Biltmore Farms Inc. has requested that the effective date of the ordinance be effective in six months on May 11, 1998. The estimated tax base that this would represent upon development is approximately \$13 million with an annual revenue of \$75,000.

Mayor Martin closed the public hearing at 8:06 p.m.

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

Vice-Mayor Field moved for the adoption of Ordinance No. 2429. This motion was seconded by Councilman Cloninger and carried on a 6-1 vote, with Councilman Skalski voting "no".

ORDINANCE BOOK NO. 16 - PAGE 349

D. PUBLIC HEARING TO CONSIDER A SECTION 108 LOAN GUARANTEE APPLICATION IN CONNECTION WITH THE CITY-WIDE RESIDENTIAL REHABILITATION PROGRAM -19-

RESOLUTION NO. 97-211 - RESOLUTION AUTHORIZING SUBMITTAL OF A FUNDING APPLICATION TO THE U.S. DEPT. OF HOUSING AND URBAN DEVELOPMENT THROUGH THE SECTION 108 LOAN GUARANTEE PROGRAM FOR THE CITY OF ASHEVILLE RENTAL REHABILITATION FOR OWNERS AND TENANTS (CARROT) LOANS

Mayor Martin opened the public hearing at 8:07 p.m.

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

Mr. Ed Vess, Field Services Coordinator, said that, this is consideration of a resolution to approve submittal of an application to the U. S. Department of Housing and Urban Development (HUD) for a Section 108 Loan Guarantee to generate 1.5 million dollars for rental rehabilitation loans.

The Section 108 loan guarantee program enables CDBG entitlement grantees to borrow money from the federal government at low interest rates for Community Development Block Grant ("CDBG") eligible activities. The proposed application is for a \$1.5 million loan. If approved the money will be loaned to investor owners through the City of Asheville Rental Rehabilitation for Owners and Tenants (CARROT) loan program. The Section 108 loan funds will be used to provide decent housing opportunities for low and moderate income households at affordable rents. The Section 108 loan will be repaid using program income from the CARROT loans, program income from the existing rehabilitation loan portfolio and for the first three years a portion of the CDBG entitlement funds. It is anticipated that over the long term the program income from the CARROT loans will exceed the total repayments of the Section 108 loan by over \$1 million. The goal of the Section 108 project is to rehabilitate 150 rental units over a three year period of time.

A public hearing on the draft application was conducted by Community Development staff on October 27, 1997, at 6:00 p.m. in the Wolcott Building.

Approval of the resolution will authorize submittal of the application for a Section 108 loan guarantee.

Mr. Vess then responded to various questions from Council.

Vice-Mayor Field was pleased that Asheville is in a place where we are leveraging our money as best we can to do more for the housing community.

Councilman Hay noted that the Housing & Community Development Committee recommends the approval of this as well.

Mayor Martin closed the public hearing at 8:18 p.m. -20-

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. 97-211. This motion was seconded by Councilman Worley and carried unanimously.

RESOLUTION BOOK NO. 24 - PAGE 275

IV. UNFINISHED BUSINESS:

V. NEW BUSINESS:

A. RESOLUTION NO. 97-212 - RESOLUTION POSTPONING A DECISION ON THE REQUEST OF BRENMOR CABLE PARTNERS, L.P., (D/B/A INTERMEDIA) FOR AN ANNUAL INCREASE FOR ITS MONTHLY RATES FOR THE BASIC CABLE SERVICE TIER

B. RESOLUTION NO. 97-213 - RESOLUTION DIRECTING BRENMOR CABLE PARTNERS, L.P., (D/B/A INTERMEDIA) TO KEEP AN ACCURATE ACCOUNT PURSUANT TO SECTION 76.933 OF THE CODE OF FEDERAL REGULATIONS REGARDING ITS PROPOSED RATE INCREASE FOR COST-OF-SERVICE DUE TO REBUILD OF ITS SYSTEM

Ms. Patsy Meldrum, Assistant City Attorney, said that this resolution would deny the rate increases requested by InterMedia for the basic cable service tier.

By letter dated March 1, 1997, InterMedia filed with the City of Asheville two FCC Forms, 1205 and 1240, both dated March 1, 1997, for the purpose of requesting an annual increase in its monthly rates and hourly service charges for its basic cable service tier. With the March 1, 1997, filing InterMedia proposed to increase the monthly rate for its basic cable service tier from \$10.46 to \$10.91, its expanded basic service tier from \$13.55 to \$14.09 and its hourly service charge from \$19.58 to \$36.72. By letter dated May 16, 1997, InterMedia filed FCC Form 1235 entitled "Abbreviated Cost of Service Filing for Cable Network". In its filing dated May 16, 1997, InterMedia proposed to increase its basic service rate by \$1.00 per month and its expanded basic service rate by \$3.00 per month, based on the cost of the rebuild of the cable system.

On June 10, 1997, the City Council adopted Resolution No. 97-90 which invoked additional time to review the requests of InterMedia, thereby giving the City until November 15, 1997, to review the requests based on the rebuild of the system. That resolution directed the City Manager to provide notice to InterMedia of that order extending the time for review of the requests. After receipt of that notice by InterMedia, InterMedia sent to the City Manager a letter dated July 30, 1997, stating that they were changing the monthly rate for the basic service back so that the \$1.00 per month rate increase would not be implemented at that time.

The City of Asheville contracted with Rice, Williams Associates to provide certain consulting services for the cable television franchise of InterMedia. Rice, Williams Associates reviewed the proposed rate increases and furnished the City of Asheville with a report analyzing those proposals.

In the consultant's report of their review of the rate increase for the hourly service charges, they found that appeared to be correct. With regard to their

review of the annual rate increase, they did find -21-

some errors in that filing which had to do with the time period for the fees and the use of an incorrect inflation factor in their filing. On that basis, their recommendation was for denial of that rate increase.

The City provided Intermedia a copy of that report and Intermedia asked the City to review additional information. On November 7, 1997, Intermedia provided the City with an amended form for that annual rate increase. Therefore, staff is requesting that the decision on the request of Intermedia for an annual increase in its monthly rates for the basic service tier be postponed until review by the City can be completed within the time period and according to the regulations of the FCC.

With regard to their hourly service charge, since the consultant deemed that to be complete, the City would not be doing any further review at this time.

When the question came up on whether the City could require a rebuild of the system and whether or not once a company decides to rebuild the system could we ask them to stop the rebuild of the system because subscribers would rather keep the old system and pay the old rates. Under federal law whenever there is a renewal of a franchise we can require them to rebuild the system. In this case because we are not yet at the formal renewal process under federal law, it's their election to determine whether or not to rebuilt the system and they have made that election. Since they have made that election, we can't stop them from doing the rebuilt. All we can do is review the rates that they are proposing as a result of the rebuilt to see that they comply with the federal regulations.

In the consultant's report, they did find some errors in the filing among which were inadequate information about the phasing in of the rebuild of the system. In addition, there was some discrepancy in information about the number of channels and that plays into the formula to determine the monthly rate that is allowed under the cost-of-service filing. Also there was no information regarding how they comply with the technical specifications under the federal law and finally they were doing it before completion of the entire rebuild of the system so there will be some numbers submitted to us once the rebuild is complete. Our choices are (1) do nothing and the rates go into effect; (2) issue an order regarding what the rates should be; (3) issue an accounting order directing them to keep track of all the actual costs of the rebuild of the system and at a later time after that accounting has been done, the City reviews that data and determines whether or not to issue a rate order and determines whether or not the increase requested is allowed by federal regulations or whether refunds would be appropriate to subscribers; and (4) deny the increase.

Based upon other information provided to the City by Intermedia, City staff recommends directing Intermedia to keep an accurate account of all amounts received by reason of the rate increase requested pursuant to federal regulations in order that the City may, at its option, subsequently issue a written decision regarding the rate increase and determine whether or not refunds should be provided to subscribers.

Mayor Martin said that members of Council have been previously furnished with copies of the resolutions and they will not be read.

Councilman Hay moved for the adoption of Resolution No. 97-212. This motion was seconded by Councilman Worley and carried unanimously.

RESOLUTION BOOK NO. 24 - PAGE 276

Councilman Hay moved for the adoption of Resolution No. 97-213. This motion was seconded by Councilman Sellers and carried unanimously.

RESOLUTION BOOK NO. 24 - PAGE 278

B. RESOLUTION NO. 97-214- RESOLUTION AUTHORIZING THE CIYT MANAGER TO ENTER INTO A CONTRACT WITH JENKINS, REED, MADISON & ASSOCIATES INC. FOR WIRELESS TELECOMMUNICATIONS CONSULTING SERVICES

RESOLUTION NO. 97-215 - RESOLUTION AUTHORIZING THE CIYT MANAGER TO ENTER INTO A CONTRACT WITH JENKINS, REED, MADISON & ASSOCIATES INC. FOR PROPERTY MANAGEMENT SERVICES FOR COMMUNICATION FACILITIES

ORDINANCE NO. 2430 - BUDGET AMENDMENT TO PROVIDE FUNDING FOR CONSULTING SERVICES TO ASSIST IN ESTABLISHING STANDARDS FOR WIRELESS TELECOMMUNICATIONS FACILITIES

Mr. Gerald Green, Urban Planner, said that in September, the City distributed two Requests for Proposals (RFP) soliciting assistance in the development of a comprehensive ordinance establishing standards for the placement of wireless telecommunications facilities in the City's jurisdiction and for the management of the city's property for the location of communications facilities. In response to the RFP's, proposals were received from only one firm for the two (2) identified tasks.

Regarding the wireless telecommunications consulting services, he outlined that the City's existing ordinance which regulates telecommunication towers does not address (1) stealth technology; (2) areas that may not be able to be served due to restrictions imposed; (3) review fees; and (4) anticipate new technology. There is a need for a new ordinance incorporating standards to address those issues. After the City solicited proposals for revising the current telecommunications ordinance, the RFP identified minimum qualifications for a consultant, those being (1) knowledgeable about telecommunications technology and (2) knowledge of local zoning issues. An evaluation committee composed of City staff reviewed the proposals and identified the proposals best meeting the criteria set forth in the RFP's. The evaluation committee is recommending that the City enter into contracts with Jenkins, Reed, Madison and Associates ("JRM") for the ordinance development.

The proposal submitted by JRM identifies the following tasks: (1) orientation meetings; (2) review and critique existing ordinance; (3) wireless training session (4) meet with wireless providers; (5) consultations with Planning staff and drafting proposed ordinance; (6) public participation workshop; and (7) present ordinance to City Council. The cost of the 148 hours of consulting services, travel expenses and related costs for telephone, copying and miscellaneous services is \$21,790.

Development of a comprehensive wireless telecommunications ordinance which anticipates changes and new technology would put the City ahead of issues. The City would be better able to deal with issues related to telecommunications facilities, assuring that adequate service is provided while protecting those unique resources which make Asheville great.

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A budget amendment will be necessary, in the amount of \$22,000, to provide for the consulting services in connection with establishing standards for wireless telecommunications facilities.

Mr. Green said that some other cities have expressed interest in participating with the City and that would lower the cost. Also, the staff person with the N.C. Division of Community Assistance has expressed an interest in their agency participating with the City in this study and they would underwrite some of the costs to further reduce the City's cost.

Councilman Skalski was encouraged about other cities participating in this study and asked staff to continue to look for ways to reduce the cost, possibly regarding the travel expenses.

Upon inquiry of Councilman Skalski about the \$150 per hour rate, Mr. Green responded that the hourly rate ranges depending on their expertise and their locality. He speculated that this is probably a Washington, D.C., per hour rate but not a Western North Carolina per hour rate by any means.

Vice-Mayor Field was pleased that this firm is a 100% African American owned business.

Mayor Martin said that members of Council have been previously furnished with copies of the resolutions and ordinance and they will not be read.

Councilman Cloninger moved for the adoption of Resolution No. 97-214 with staff continuing to look for way to reduce the cost. This motion was seconded by Councilman Worley and carried unanimously.

RESOLUTION BOOK NO. 24 - PAGE 280

Councilman Cloninger moved for the adoption of Resolution No. 97-215. This motion was seconded by Councilman Worley and carried unanimously.

RESOLUTION BOOK NO. 24 - PAGE 281

Councilman Hay moved for the adoption of Ordinance No. 2430. This motion was seconded by Councilman Cloninger and carried unanimously.

ORDINANCE BOOK NO. 16 - PAGE 352

#### VI. OTHER BUSINESS:

##### A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON OCTOBER 28, 1997, AND THE WORKSESSION HELD ON NOVEMBER 5, 1997

Councilman Hay moved for the adoption of the minutes of the regular meeting held on October 28, 1997, and the worksession held on November 5, 1997. This motion was seconded by Councilman Sellers and carried unanimously.

##### B. RESCHEDULING OF NOVEMBER 18, 1997 WORKSESSION

Because a number of City Council members will be out of town on November 18, Councilman Worley moved to (1) reschedule the Tuesday, November 18, 1997, worksession to Wednesday, November 19, 1997, to begin at 3:00 p.m. in the First Floor North Conference Room in the City Hall -24-

Building; and (2) hold the Broad Street rezoning worksession at 7:00 p.m. on Wednesday, November 19, 1997, in Room 623 of City Hall Building. This motion was seconded by Councilman Sellers and carried unanimously.

##### C. BURTON STREET UPDATE

Upon inquiry of Councilman Cloninger, Planning & Development Director Julia

Cogburn updated City Council on the efforts staff is taking with regard to some violations on Burton Street.

#### D. REQUEST OF DR. ALBERT ANDERSON

Dr. Albert Anderson explained that he is in the process of constructing a building on Asheland Avenue and his permit has been temporarily held up by the permitting process because of the requirement for the installation of a fire hydrant on the property. The Code requires that fire hydrants be located not less than 1,000 feet from each other and that is not the case on Asheland Avenue. He felt that, among other things, that the cost of the hydrant should be treated as a public benefit, like a street, especially since the City is supposed to be providing fire protection.

Fire Chief John Rukavina said that the State Fire Code requires that the "maximum distance from the nearest hydrant to the most remote exterior point of any building shall be 500 feet. The distance shall be measured on a roadway surface meeting the Fire Department access requirements of Section 602.6 of the Fire Prevention Code." He said the building meets the Code in all respects and from a fire protection standpoint the hydrant is something that would be very desirable. Dr. Anderson's building is in excess of 600 feet from the nearest hydrant and the cost for the hydrant would be approximately \$2,000.

Councilman Cloninger suggested that if the new hydrant will benefit adjacent owners as well, perhaps they might share in the cost of the new hydrant.

City Manager Westbrook said that normally it is the developer's responsibility, not the taxpayers, who would pay for improvements for a piece of property being developed. If someone was building at the edge of the City where there were no hydrants, it would be the developer's responsibility to put those in as well as the roads and other infrastructure that would go into a development.

Vice-Mayor Field felt the City had some responsibility in this case since the fire hydrants are not less than 1,000 feet apart and it's in the center of our urban area.

City Manager Westbrook felt that City Council should be prepared to face this situation every time the City redevelops in the urban area and the area gets more dense.

City Attorney Oast agreed with the City Manager in that this may have a potential impact in the future.

Vice-Mayor Field moved to direct staff to take the appropriate steps to install the fire hydrant since this is in the Central Business District. This motion was seconded by Councilman Skalski and carried unanimously.

City Manager Westbrook felt that Council might be interested in staff bringing back what other cities do in this area.

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Vice-Mayor Field said that the City should have fire hydrants within 1,000 feet from each other within the Central Business District and we might benefit from a survey of where the hydrants are and where there might be potential problems.

#### E. CLAIMS

The following claims were received by the City of Asheville during the week of October 24-30, 1997: Marilyn Muccio (Finance), Cecil Holt (Water) and Anna Day

(Sanitation).

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

F. CLOSED SESSION

At 9:07 p.m., Councilman Worley moved to go into closed session (1) to discuss matters relating to the location on expansion of industries or other businesses into the area served by the City - statutory authority is G.S. 143-318.11 (a) (4); and (2) to consult with an attorney employed or retained by the City Council in order to preserve the attorney-client privilege between the City and its attorney - statutory authority is G.S. 143-318.11 (a) (3). This motion was seconded by Councilman Sellers and carried unanimously.

At 9:37 p.m, Councilman Worley moved to come out of closed session. This motion was seconded by Vice-Mayor Field and carried unanimously.

VII. ADJOURNMENT:

Mayor Martin adjourned the meeting at 9:37 p.m.

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CITY CLERK MAYOR

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