

Tuesday - January 20, 1998- 3:00 p.m.

Worksession

Present: Mayor Leni Sitnick, Presiding; Vice-Mayor Edward C. Hay Jr.; Councilman M. Charles Cloninger; Councilman Earl Cobb; Councilwoman Barbara Field; Councilman Thomas G. Sellers; and Councilman O.T. Tomes; City Attorney Robert W. Oast Jr.; City Manager James L. Westbrook Jr.; and City Clerk Magdalen Burleson

Absent: None

CONSENT:

Request for The Faith Tabernacle Congregation Sign located at 36 Michigan Avenue be designated as a Landmark Sign

Summary: The consideration of a request from The Faith Tabernacle Congregation that their 40 year old hand crafted metal sign located at 36 Michigan Avenue be designated a landmark sign.

Clerk authorized to Advertise Offer to Purchase Disposal Parcels 1A and 52A at the intersection of Hilliard and Asheland Avenues

Summary: The consideration of a resolution authorizing the City Clerk to advertise an offer of purchase for upset bids regarding Disposal Parcels 1A and 52A at the intersection of Asheland and Hilliard Avenues.

The bid of Price Associates in the amount of \$101,000.00 for the purchase of Disposal Parcels 1A and 52A in the East Riverside Redevelopment Project is not less than the established minimum price of \$101,000.00.

City Attorney Oast said that before the next formal meeting, he would have an opinion relative to the real estate commission.

Releasing of Any Potential Interest in Real Property located on Mount Clare Avenue

Summary: The consideration of adopting a resolution releasing any interest, if any, the City may have against real property located on Mount Clare Avenue.

Mayor Sitnick 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.

REPORT BY THE PRESERVATION SOCIETY

Mr. Harry Weiss presented City Council with a check in the amount of \$5,000 which represented the amount of the City's participation in 1990 to help fund the rehabilitation of the Jenkins Building at 32 Broadway, which was damaged by a fire. He presented City Council with photographs of the building.

Mr. Weiss then reviewed with Council the new historic preservation state tax credits that became effective January 1, 1998, noting that this is an exciting time for rehabilitation and housing incentives for our community.

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RIVER DISTRICT DESIGN GUIDELINES

Mr. Bruce Black, Urban Planner, said that the Unified Development Ordinance requires the River District Design Guidelines be approved by the City Council. The Guidelines have been reviewed by the Planning and Zoning Commission, and they have recommended unanimously that the Guidelines be adopted by the Council.

The River District Guidelines concentrate primarily upon the River Core Area (the area from Lyman Road north to the train trestle across the French Broad River), establishing Character Buildings upon which future design and renovation should be based. It is part of an overall attempt to create a similarity in design such that the area remains recognizable as a district.

Other areas of the River District are also addressed, but not to the same extent as the River Core Area. All facets of building appearance, and site design are dealt with.

It is the intent of the Guidelines to be general, flexible, and constructive in nature, allowing constructive and creative dialogue between the Design Review Committee and the building or site designer.

The Planning staff has held a public meeting at A-B Tech on December 16, 1997. All property owners of record in the River District were notified of the meeting by U.S. Mail. Twenty-eight people attended, including residents, people who work in the area, and business owners.

In addition, a number of business owners in the River Core Area were contacted individually, and the contents of the River District Design Guidelines were reviewed with them.

There were no objections to the contents of the guidelines, and there were several constructive suggestions for improving the River Core District, which will be pursued.

The UDO requires that the review by the Design Review Committee is mandatory, and that compliance is voluntary.

City staff recommends City Council adopt the River District Design Guidelines.

At the request of Councilwoman Field, Mr. Black said that he would be happy to meet with her to help her understand the guidelines and address any concerns she may have.

Mr. Black then responded to questions from Council as they related to flooding in the area.

Mayor Sitnick noted that Council will be discussing at their upcoming retreat working with colleges and universities to produce some art pieces for the public open spaces. She felt the River District might be a good place for those art pieces.

Mayor Sitnick 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.

YMI CULTURAL CENTER

Mr. Gene Ellison, Interim Director and Chairman of the YMI Reorganization Committee, briefed Council on the importance of the YMI Cultural Center to the entire community and brought them up-to-date on the progress being made to date on the reorganization. He -3-

understood why City Council declined to appropriate any funds to the YMI in 1997, however, he now urged Council to reconsider appropriating \$25,000 to the YMI - \$10,000 which would go directly to the Internal Revenue Service and \$15,000 to the YMI for operating expenses.

Mayor Sitnick commended Mr. Ellison's effort and stated that last week she appointed an ad hoc committee of Vice-Mayor Hay, Councilwoman Field and Councilman Tomes to review the documents previously submitted, meet with Mr. Ellison and report back to Council as soon as possible.

Councilman Cobb felt that if the community was made aware of the dollars needed for air conditioning and an elevator, they might be willing to help.

Councilman Tomes also commended Mr. Ellison for his unselfish efforts with the YMI Cultural Center. He stressed that the YMI Cultural Center is a showcase for Asheville.

Mayor Sitnick felt that this City Council is committed to working with groups on The Block to enhance, improve and empower it. They will be very serious in their considerations.

Mr. H.K. Edgerton, tenant in the YMI Cultural Center, spoke in support of Mr. Ellison's efforts.

STATUS REPORT ON THE BILTMORE AVENUE PROPERTIES

Mr. Ed Vess, Field Services Coordinator, said that certain real properties acquired under redevelopment and held for higher marketing potential are currently being rented and should be reviewed for consideration for sale in light of current downtown market conditions.

The properties located at 5, 7 1/2, 9, & 11-13 Biltmore Avenue were acquired as part of the Pack Plaza Redevelopment Project. At the time the properties were acquired they were in a run-down condition as were many of the surrounding properties before the completion of the Pack Plaza Project.

At the time the properties were acquired the market for downtown property was depressed, but there were signs that with the investment in the Pack Plaza Redevelopment Project a resurgence of the downtown was in the offing. A plan was developed to hold and manage the properties until the effects of the Pack Plaza Project and the anticipated private investment had boosted downtown property values. Part of the plan was to lease, at below market rates, to tenants willing to spend money upfront renovating the buildings. In order to make the buildings more rentable, the City through the Housing Authority replaced the old leaky built-up roofs on the buildings with new single ply membrane roofs.

In August of 1988, the Arts Council leased 11-13 Biltmore Avenue and spent in excess of \$100,000 on improvements to the building. Not long thereafter, Be Here Now leased 5 Biltmore Avenue spending over \$50,000 for improvements and WNC Habitat for Humanity leased 9 Biltmore Avenue and spent about \$50,000 for improvements.

The property at 135 Cherry Street was acquired as part of the Head of Montford Redevelopment Project. It was leased to Neighborhood Housing Services of Asheville who spent about \$25,000 for renovations.

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All of the buildings are in generally good maintainable condition at the present time. However, window repairs are needed at 5 Biltmore Avenue and 11-13 Biltmore Avenue at an estimated cost of about \$10,000.

The high demand for downtown property indicates that it would be prudent to consider selling the property at this time and putting this property back on the tax rolls. The revenue would be Community Development program income and could be used for eligible CDBG purposes. On the other hand, due to current market conditions, the property has potential to generate greater lease revenues than is presently being realized. If the property is retained for the lease revenues, consideration should be given to bringing rents up to market rate as soon as feasible under the leases and in a manner that is fair to the tenants.

He reviewed the schedule of leases which showed the tenant, the current lease status, the current rental amount and the estimated market rent for each unit.

The three non-profit tenants are currently paying well below market rates. If the rent is increased to market rate under the lease, Council if inclined to do so, could allow a rent abatement to reduce the rent to a lesser amount on an annual basis. That would allow Council to provide assistance to the non-profits, if desired, while avoiding the negative effect on the market value of the property a below market lease would cause.

City staff recommends the properties located at 5, 7 1/2, 9, & 11-13 Biltmore Avenue be (1) reviewed for consideration for sale in light of current downtown market conditions; or (2) the rents be brought to market rates as soon as feasible.

Councilwoman Field asked if the City sold the properties would the leases go with them. Mr. Vess responded that they would, however, the new owner could raise the rents when the leases expire.

Upon inquiry of Councilman Tomes, Mr. Vess said that he has contacted all the tenants and advised them he was bringing this report to the Council. He felt that most of the tenants would like to continue to lease their properties for a long term. Mr. Vess said that if they were to sign a new lease, the lease it should be at the new market rates.

When Mayor Sitnick asked if the revitalization efforts at the Head of Montford might increase the value of the property, Mr. Vess felt that it would. He also felt that the property in downtown Asheville would increase as well. He outlined advantages to Council of selling the property and the advantages of holding onto it.

Councilwoman Field felt that the City should not sell the buildings at this time because the property values will increase. She felt Council may want to look at this issue again in a year or so.

Councilman Cloninger agreed with Councilwoman Field in that he wanted to be cautious about selling property that has a good revenue stream. He did feel it would be appropriate to bring the rents up to market value and that it needed to be done in a fair way.

Vice-Mayor Hay felt that as long as the City owns the property, it will stay the way it is. If it's sold, a developer can make improvements which will help Biltmore Avenue flourish. If the City sells the property now, we may have an opportunity to do something for affordable housing in the future - maybe a revolving fund.

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It was then the consensus of Council for Mr. Vess to obtain appraisals on the properties, thus allowing him to provide additional information to Council on the projected revenue streams.

Mr. H.R. Miller, Jr., owner of the business located at 5 Biltmore Avenue - Be Here Now, presented City Council with a letter asking that their lease which will expire on April 30, 2000, be continued for an additional three years to April 30, 2003, with a five year option to renew. He felt Council should take into consideration their substantial improvements to the building, among other things, and let them recoup their investment by the continuance of the lease.

CONVEYANCE OF PROPERTY TO ON BREVARD ROAD TO HENDERSON COUNTY

Assistant City Manager Doug Spell said that on November 11, 1995, the Regional Water Authority, City of Asheville, Buncombe County, and Henderson County entered into the Water Agreement. This agreement was a part of the overall provision of water service via the Mills River Water Treatment Plant.

One condition which is a part of the aforementioned Water Agreement pertains to the City of Asheville transferring by deed 137.21 acres to Henderson County on Brevard Road (NC 191). The stipulation outlined in Section XXII of the Agreement indicates that Henderson County must convey the property to MSD to be used for a wastewater treatment plant site within ten (10) years or convey it to a regional water and sewer authority of which Henderson County, the Authority and Asheville are a part. If neither of these conditions are complied with within the 10 year date of the transfer of the deed to Henderson County the property automatically reverts back to the City of Asheville.

The City Attorney's office has reviewed the deed prepared by the attorney for the Regional Water Authority. The deed has been prepared to take into account the automatic reversion to the City of Asheville in the event the property is not utilized in accordance with the stipulations of the agreement.

Staff recommends that City Council authorize the Mayor to execute the deed transferring the property to Henderson County in accordance with the Water Agreement dated November 11, 1995.

Councilman Tomes asked for the City Manager to provide him with additional information on the Water Agreement.

Councilwoman Field noted that the agreement was signed over two years ago. The ten year stipulation does not come into effect until the transfer is complete and the longer we wait to transfer the property, the chances are they'll meet the stipulations.

Mayor Sitnick was not comfortable in making a decision to transfer 137.21 acres to Henderson County until she fully understands the history and details of the agreement. She suggested Council table this matter until all of Council has had sufficient time to be educated on this item.

Councilman Cloninger agreed with Mayor Sitnick, but noted that we should not send any signals to Henderson County that we do not intend to abide by the contractual legal obligations that we have.

It was the consensus of City Council to postpone action on this matter until the Council understands the details.

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CABLE TV FRANCHISE REVIEW

Assistant City Attorney Patsy Meldrum reviewed the proposed cable television documents with City Council not only for the benefit of the new Council members, but for the benefit of the public in understanding the proposed cable television documents. She also included some responses to recent inquiries sent to the City Council about the proposed documents.

She reviewed the history of the renewal process: (A) TCI requested renewal discussions and City agreed; (B) City did Request for Request for Proposals ("RFP") for consultant; (1) list of consultants (a) N.C. League of Municipalities; (b) National Association of Telecommunications Officers and Advisors (NATOA); (c) seminars; (d) certified minority business list; (2) contacted three consultants and requested proposals; (3) comparison chart done; references checked; (4) presentation to City Council; (6) Rice, Williams Associates selected; agreement for services; (C)

renewal process outlined by the consultant (not in formal renewal window/process): (1) initial consultation; (2) community needs assessment; (3) compliance evaluation; (4) technical analysis; (5) prepare request for proposals; (6) response to RFP from cable company; (7) evaluate RFP; (8) negotiate documents; (9) prepare documents; and (10) present documents for consideration by city council; (D) collateral issues which affected process/negotiations: (1) transfer of TCI to InterMedia (Nov. 1995 to Sept. 1996); (2) franchise fee issue; (3)

City's authority limited by federal laws and regulations.

Throughout Ms. Meldrum's presentation, she and the City's consultant Jean Rice, responded to various questions from Council. Some questions were, but are not limited to, who was contacted in the community needs assessment, if the community needs assessment was outdated, the definition of "gross annual revenues", why it's in the City's best interest to require a franchise agreement, why there is a slim chance of another cable company operating in Asheville, could Asheville negotiate an exclusive franchise, how is it in the City's benefit to go with a long-term franchise, why is the City limited in its ability to regulate cable rates, clarification of the state-of-the-art clause, the reasons why the City could deny a franchise to InterMedia, what it means to a city to own their own cable system, approximately how much would it cost the City to purchase a cable system, what would be the monetary advantage to the City today if the franchise were granted, and exactly what an analog channel is.

Additional information requested by Council included a summary of the events leading up to the 1967 franchise, how the current proposal differs from the RFP, and a list of the four tests the cable company has to meet in order that a franchise renewal be granted under the formal renewal process.

She then outlined one element of the proposal which is the regulatory ordinance (ordinance regulating cable service providers): (1) establishes definitions - most importantly = "gross annual revenues" and "transfer"; (2) registration and franchise required; (3) application and approval standards for franchise; (4) franchise fees required; right to audit; (5) right to inspect records and cable system; (6) access channels, access equipment and institutional network required; (7) customer service standards (subject to federal laws and regulations): (a) standard installation = not less than 150 feet; (b) no fee for disconnection unless agreed to by subscriber; (c) credit for outages; (d) business office; (e) telephone answering; (f) complaint handling; (g) subscriber information; (h) response to service complaints and outages; (i) subscriber privacy) and (j) rate regulation; (8) performance evaluation/annually/public; (9) construction and technical standards; (10) technical performance testing; (11) removal or abandonment of cable plant; (12) transfer of franchise, ownership or control (a) transfer of ownership of 10% or more requires City approval; (b) transfer of franchise or control requires City approval; (c) reimbursement of City's expenses; (13) construction and performance bonds -7-

required; (14) insurance requirements; (15) indemnification requirements; (16) termination of revocation process (a) defaults listed; (b) hearing process described; (c) remedies for City; (17) penalty provisions.

One inquiry related to the annual performance evaluation and whether or not the public could be provided with the same 30 day notice as the cable company prior to the annual performance evaluation. Ms. Meldrum stated that at the time the notice is given to the cable company, we could let the public know by a notice in the newspaper.

She then reviewed another element of the proposal, which is the franchise ordinance (ordinance granting franchise to Brenmor d/b/a InterMedia): (1) non-exclusive franchise; (2) subject to regulatory ordinance; (3) term (a) 1967 franchise would expire in July of 2002 (four years and six months left); (b) twelve years and six months added; (4) franchise fee of 5%; (5) franchise area includes current and future city limits; (6) extension standards included (includes cost-sharing formula); (7) system rebuild requirements (a) 550 MHz; (b) 80 analog channels and/or capacity for digital transmission; (c) completion by December 31, 1998; (d) design standards; (e) emergency alert system requirements; (f) maintenance requirements; (g) parental control devices; (h) performance testing (subject to federal laws and regulations); and (8) construction standards.

Ms. Meldrum asked that InterMedia address the reason that a 550 MHz system is being constructed rather than a 750 MHz system.

Mr. Joe Haight, General Manager of InterMedia, explained why the franchise is for a 550 MHz rebuild and

not a 750 MHz rebuild.

Ms. Meldrum then reviewed with Council the Institutional Network: (a) four fibers; (b) City of Asheville and City School sites; (c) no maintenance or use costs to City; (d) video, voice, data transmission and other telecommunications applications; and (e) completed with rebuild of cable system (cable company may elect to pass through all or portion of cost to subscribers).

Mr. Haight then addressed questions of the City Council about the Institutional Network (I-NET) and the Public, Educational and Governmental (PEG) Access Channels. He then responded to various questions from Council, some being, but are not limited to, what the benefits of the I-NET would be to the City and who bears what costs related to the I-NET, and if the I-NET is cost effective. He stated that InterMedia will absorb 40% of the cost of the Institutional Network and will only pass along to the subscriber 60% of the cost, with no interest on that 60% being passed along to the subscribers. He also discussed how future negotiations can occur, any possibility of negotiating on the length of the franchise agreement, are three PEG channels sufficient and is there an ability to negotiate for more PEG channels, the projected monthly fees in ten years and if an educational component could be built in for the public to realize the difference in rates for basic cable vs. expanded cable, are there discounts for senior citizens, and will there be an increase in the number of channels for basic cable.

Upon inquiry of Councilman Cloninger about Internet service to the elementary schools, Ms. Meldrum said that it is her understanding that as a matter of policy, InterMedia would provide Internet connections for all school sites. When she asked Mr. Haight to confirm this, he did, noting that InterMedia would provide one modum per school for the Internet.

Mr. Haight invited City Council on a tour of his facility. At the request of City Council, City Manager Westbrook said that he would be happy to work with Mr. Haight on those arrangements.

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Councilman Cloninger suggested that this worksession be continued until the next worksession, February 3, 1998, in order for Council to continue their questioning of not only these issues, but the many issues yet to be reviewed by Ms. Meldrum. It was confirmed that Ms. Rice would be available to come back to Asheville on February 3.

At the request of Mayor Sitnick, City Manager Westbrook briefed Council on the structure of the community meeting, noting that staff and the consultant would be available to answer questions. He felt it would be a dialog for the public to get the same kind of information as City Council received today. Mayor Sitnick wanted to make sure that since several groups are interested in this topic, that they be allowed to either make a presentation or be allowed to ask questions to staff and the consultant. City Manager Westbrook said that there will be some upfront discussion about the rules of the meeting and the City will have a facilitator along with visual aids and hand-outs.

It was the consensus of Council that after this worksession, the community meeting and the public hearing that each member of Council list their concerns, if any, or request additional information so that their concerns may be addressed, either by discussion in closed session, if legally appropriate, or in open session. After the February 24 public hearing, Council agreed to "digest" the information and then at the worksession on March 3, 1998, determine whether Council should proceed by voting at the March 10, 1998, meeting or determine what action to take.

City Council asked what specific issues about the franchise agreement could be discussed in closed session. City Council stressed that they want the public to know as much as possible about the negotiations. Mayor Sitnick suggested the City Attorney explain at the public hearing on February 24 what the City Council is

allowed to discuss in closed session.

It was the consensus of Council to note that the City is not interested in owning it's own cable system.

It was the consensus of City Council to continue this worksession until the next worksession on February 3, 1998, in order for Council to continue their questioning of not only these issues, but the many issues yet to be reviewed by Ms. Meldrum.

ADJOURNMENT:

Mayor Sitnick adjourned the meeting at 7:54 p.m.

CITY CLERK MAYOR
