

Tuesday - February 3, 1998 - 3:00 p.m.

Worksession

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

Absent: Councilman O.T. Tomes

### **PUBLIC RECORDS**

City Attorney Oast briefed City Council on why the City of Asheville could not release certain records regarding franchise fee payments from the cable television company to the media. N.C. Gen. Stat. sec. 160A-208.1 provides that tax records which contain information about a taxpayer's income or receipts are not public records, and it prohibits officials from releasing that information. Also, N.C. Gen. Stat. sec. 160A-214 characterizes cable TV franchise fee payments as a "franchise tax." Based upon that statute and the statute prohibiting disclosure of tax records, it was his opinion that we not release the records. He noted that he has looked for a way to see if the information could be made available, however, as he reads the statutes, it is prohibited and the penalty for an improper release is severe.

Mayor Sitnick pointed out that it is her intent and the intent of this Council to have an open dialog on all issues. She also stated that besides the documents which by law cannot be released, many other documents have been provided to the media per their request.

### **CONSENT AGENDA:**

Mayor Sitnick announced that because the formal meeting of January 27, 1998, was cancelled due to adverse weather conditions, City Council is anticipated taking action on the items that were scheduled on January 27, 1998.

Councilwoman Field moved to waive the rules and take action on the items originally scheduled for the January 27, 1998, meeting. This motion was seconded by Councilman Sellers and carried unanimously.

### **A. RESOLUTION NO. 98-8 - RESOLUTION DESIGNATING THE FAITH TABERNACLE CONGREGATION SIGN LOCATED AT 36 MICHIGAN AVENUE 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.

Signs may be designated historically significant or landmark signs by the Asheville City Council provided the sign satisfies one or more of the following criteria:

- A. The sign is significant to the history of the City of Asheville, including but not limited to, the character of the city as a tourist attraction or cultural center.
- B. The sign is unique, notably aesthetic or creative so as to make a significant contribution as a work of art.

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- C. The sign merits recognition as an important example of technology, craftsmanship, materials or design of the period in which it was constructed and may no longer be economically feasible to produce or

manufacture the sign today.

The Historic Resources Commission found that the Faith Tabernacle sign meets criteria A, B, & C for landmark designation for the following reasons:

A. The sign is significant to the history and character of the City as a cultural center.

B. It is unique because it is part of the Church structure. The handcrafted metal sign is attached to a wrought iron porch railing.

C. It is an excellent example of self-reliant mountain craftsmanship of the 1950s.

At their regularly scheduled November 1997 meeting, the Historic Resources Commission, by a unanimous vote, recommended to City Council that the Faith Tabernacle handcrafted metal sign located at 36 Michigan Avenue be designated a landmark sign.

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#### **B. RESOLUTION NO. 98-9 - RESOLUTION AUTHORIZING THE CITY CLERK TO ADVERTISE AN OFFER TO PURCHASE DISPOSAL PARCELS 1A AND 52A LOCATED AT THE INTERSECTION OF ASHELAND AND HILLIARD 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.

Disposal Parcels 1A and 52A are zoned RB-Regional Business District and located approximately 100 feet south of the intersection of Asheland and Hilliard Avenues. Comprising 25,246 square feet, the property extends from the east side of Asheland Avenue to the west side of Federal Street. The frontage along Asheland Avenue lies some 10 to 15 feet below street grade with the frontage along Federal Street being near street grade. The overall terrain is level to light sloping. Price Associates is currently leasing the property and has improved the property with a paved parking lot containing 31 parking spaces. The bid from Price Associates for Disposal Parcels 1A and 52A includes the proposal to incorporate the property into the adjoining property currently owned by Price Associates. There are no additional improvements proposed at this time. Price Associates is a partnership owned entirely by Charles R. Price.

Approval of the resolution will initiate the sale of the property through the upset bid process as provided in N. C. Gen. Stat. sec. 160A-269.

Community Development staff recommends adoption of the resolution.

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#### **C. RESOLUTION NO. 98-10 - RESOLUTION RELEASING A LIEN, IF ANY, AGAINST REAL PROPERTY LOCATED ON MOUNT CLARE AVENUE RESULTING FROM THE DEMOLITION LIEN AGAINST THE PROPERTY LOCATED ON 65 WOODROW AVENUE**

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

During the early part of 1997, the City of Asheville through its Housing Code Enforcement Division notified the owner of the real property located at 65 Woodrow Avenue of various housing code violations existing at said structure with a requirement that the code violations be remedied. The conditions existing constituted extremely dilapidated conditions. The property owner, Robert B. Lassiter, did not respond in any manner. Proceeding in accordance with the One Step Process set forth under the City's Housing Code, the City entered into a contract with NEO Corporation to demolish the structure located at 65 Woodrow Avenue. NEO Corporation demolished the structure at said address on the 7<sup>th</sup> day of April 1997 for a total sum of \$10,500.00, the lowest responsible bidder to submit a bid for said demolition work. In accordance with the City's Housing Code, other costs were tabulated representing the cost of the title search, publication cost, etc. bringing the total cost of the demolition lien to \$10,860.00. This lien was recorded in the Buncombe County Clerk of Court's Office.

Mr. Lassiter owns real property located on Mount Clare Street that he has under a pending contract of sale for approximately \$6,000.00. However, the potential buyers of the Mount Clare Street property will not purchase the property unless they are assured that the City's lien against Mr. Lassiter's Woodrow Avenue Property is not a lien against his Mount Clare Street Property.

Mr. Lassiter has requested that the City release any lien the City may have against his Mount Clare Street property and in consideration thereof has agreed to pay to the City the sum of \$3,000 to reduce the indebtedness of the \$10,860.00 lien plus the City continues to retain its lien against the Woodrow Avenue property until same is paid in full. The \$3,000 will come out of the purchase price for the property on Mount Clare Street with the remaining portion going towards closing cost and to Mr. Lassiter.

Staff recommends that Mr. Lassiter's offer be accepted.

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Mayor Sitnick said that members of Council have been previously furnished with copies of the resolutions on the Consent Agenda and they would not be read.

Vice-Mayor moved for the adoption of the Consent Agenda. This motion was seconded by Councilwoman Field and carried unanimously.

#### **MOTION AUTHORIZING THE MAYOR TO WRITE A LETTER IN SUPPORT FOR A BROWNFIELDS AGREEMENT APPLICATION BEING MADE FOR PROPERTY LOCATED AT 105 FARVIEW ROAD**

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At the request of Planning & Development Director Julia Cogburn, Councilwoman Field moved to continue this item until the February 10, 1998, City Council meeting. This motion was seconded by Councilman Cobb and carried unanimously.

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#### **MOTION TO (1) SCHEDULE A WORKSESSION ON FEBRUARY 17, 1998, RELATIVE TO THE POSSIBLE SALE OF CITY-OWNED PROPERTY KNOWN AS MEMORIAL STADIUM AND ASSOCIATED PROPERTY; AND (2) CONTINUE THE PUBLIC HEARING UNTIL MARCH 10, 1998**

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Mayor Sitnick noted that the original public hearing was set for January 27, 1998, however, that meeting was cancelled due to adverse weather conditions. Because it was the consensus of City Council that a worksession on this matter might be beneficial prior to the public hearing, Councilman Cobb moved to set a worksession on this matter on February 17, 1998, and continue the public hearing until March 10, 1998. This

motion was seconded by Councilman Sellers and carried unanimously.

At the request of Council, staff was instructed to invite the appraiser and Mr. Camille to the worksession on February 17, 1998. Also, it was the consensus of City Council to tour Memorial Stadium at approximately 1:30 p.m. on Tuesday, February 17, 1998.

**MOTION TABLE PUBLIC HEARING RELATIVE TO REZONING 216 SHELBURNE ROAD FROM RM-6 RESIDENTIAL MULTI-FAMILY LOW DENSITY TO INSTITUTIONAL UNTIL JULY 28, 1998**

Mayor Sitnick said that this public hearing was scheduled for January 27, 1998. City Council has received a letter from Associate Pastor Jerry R. Young from Trinity Baptist Church stating that after a meeting with their neighbors on Sunday, January 27, 1998, they feel that it would be advantageous that they ask this rezoning petition be tabled for a couple of months. This will allow them an opportunity to work with their neighborhood on a conditional type zoning for their property, that it would give the neighborhood assurances that the property would never be anything other than a church, and allow the Church to continue with their planned expansion for the future ministries of the church. He also requested that City Council direct Planning & Zoning to solve the unique problems presented in the UDO for granting conditional type uses of church properties.

Planning & Development Director Julia Cogburn said that it is staff's intent to bring this matter back to City Council at a worksession in two-three months with some information on what other cities are doing with conditional type uses, etc., prior to staff drafting the ordinance as it would be an extensive ordinance amendment. After that direction from Council, Planning staff will draft an ordinance for the Planning & Zoning Commission's review prior to bringing it to City Council.

Vice-Mayor Hay moved to table this matter until July 28, 1998. This motion was seconded by Councilwoman Field and carried unanimously.

**APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON JANUARY 13, 1998, AND THE WORKSESSION HELD ON JANUARY 20, 1998**

Vice-Mayor Hay moved for the adoption of the minutes of the regular meeting held on January 13, 1998, and the worksession held on January 20, 1998. This motion was seconded by Councilman Sellers and carried unanimously.

**RESOLUTION NO. 98-11 - RESOLUTION ADOPTING THE RIVER DISTRICT DESIGN GUIDELINES DATED FEBRUARY 3, 1998**

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 -5-

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.

Mr. Black said that after the worksession on January 20, 1998, Councilwoman Field met him and suggested some revisions to the Guidelines which would allow the document to be flexible, clear and give guidance. He then reviewed the nine suggested amendments.

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

Councilwoman Field moved for the adoption of Resolution No. 98-11 with the nine amendments outlined by Mr. Black. This motion was seconded by Councilman Sellers and carried unanimously.

## **RESOLUTION BOOK NO. 24 - PAGE**

### **THE FOLLOWING ARE ITEMS ON THE REGULAR 2/3/98 WORKSESSION AGENDA**

#### **CONSENT AGENDA:**

##### **Portion of Iron Street and Raleigh Avenue (formerly Carolina Avenue) not part of an Adopted Street Plan**

Summary: William C. Burgin and Biltmore Heights, LLC, a North Carolina Limited Liability company, have requested that City Council adopt a resolution stating the rights-of-way known as Raleigh Avenue (formerly Carolina Avenue) and a portion of Iron Street as shown in -6-

Plat Book 5, page 27, are not part of an adopted street plan in accordance with N. C. Gen. Stat. sec. 136-66.2.

##### **Setting a public hearing for Drhumor Building located at 48 Patton Avenue to be designated as a local historic landmark**

Summary: The consideration of setting a public hearing on February 24, 1998, to designate the Drhumor Building located at 48 Patton Avenue as a local historic landmark.

Councilman Cloninger noted that he is one of the owners of the Drhumor Building and asked that this item not be placed on the Consent Agenda at the next formal meeting due to his conflict of interest.

##### **Budget Amendment re: Transit Center Traffic Signalization Grant**

This item was postponed until the worksession on February 17, 1998.

## **Acceptance of new propose street name - East End Place**

This item was postponed until the worksession on February 17, 1998.

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.

## **PRESENTATION REGARDING VANDERBILT BUILDING**

Mr. Jim Sawyer, Chairman of the Board of Vanderbilt Apartments, along with Mr. Ed Smith and others, presented City Council with a request to help fund the renovation of the Vanderbilt Apartment Building located between the Civic Center and the main Library.

heir presentation included details of the building as affordable low cost housing for senior citizens: 158 units (132 studio and 26 one bedroom); rents \$200-\$270 for studio apartment and \$230-\$310 for one bedroom; rent cannot exceed 30% of income and operated as a private non-profit organization.

The age and income of residents are: 65% are 70 years old or older; 28% are 80 years old or older; 43% have incomes of less than \$6,000 a year; 72% have incomes of less than \$9,600 a year; and 16% have incomes of \$12,000 or higher.

By use of a computer powerpoint demonstration, he showed the structural problems of the building which include: (1) exterior brick "skin" is not properly attached to the structural frame; (2) mortar joints have deteriorated, bricks have broken and some are in danger of falling; and (3) unsafe structure which must be repaired if occupancy is to continue. The effect on residents, if problem is not solved, will be 158 very elderly and very low income persons will need to find other housing options and independent living will not be an option for some. Some other possible outcomes, if the building is not repaired, include imminent severe danger to the residents and public that travel near the building, condemnation by the City or bankruptcy.

They outlined the actions taken by the Vanderbilt Apartment Board which include (1) 400 "helifix" anchors installed as a temporary fix; (2) applying for a \$2,141,936 HUD 241 Preservation Loan/Insured Mortgage; (3) requesting permission from HUD to raise rents which will generate \$14,307/month; and (4) after receiving bids for repairs of the building, \$2,300,000 is -7-

needed to repair the building. They noted that HUD requires local participation in order to approve their loan request.

The local help needed to keep the building open and rents stable include: (1) \$200,000 from local sources (applications made to Community Block Grant and Home Investment Partnership Program); and (2) need approximately \$45,000/year to hold rent stable for all residents (HUD will pay the increase for 62% of the residents who are receiving rent support).

They requested a commitment of \$22,500 from each the City of Asheville and Buncombe County for 5 years to hold rents stable for unsubsidized residents. The Vanderbilt Board believes that saving low cost housing will be cost effective for the entire community. They urged City Council to help this affordable housing continue to be available in Asheville.

Representatives from the Board responded to several questions from Council, some being, but not limited to, the amount requested from the HOME Program and the Community Development Block Grant Program, what other foundations have they requested money from, when they will be requesting money from Buncombe County, who actually owns the building, what the volunteer Board make-up is, has the Board looked at ways to cut the cost on the bid amount, who was the lowest bidder,

Councilwoman Field explained how the HOME Consortium has asked HUD to do a reevaluation of the Section 8 rental subsidies.

Councilwoman Field stated that she was concerned about housing in the community and very concerned about the public safety issue. However, she noted that City Council could not guarantee to HUD that every year money would be allocated to Vanderbilt Apartments because of the make-up of the different committees. She noted that the \$150,000 being requested in HOME Program is almost Asheville's entire amount of money because the money is allocated out amongst nine municipalities and four counties. There are other commitments by the City and of the portion that we are allocated, a certain amount has to go to non-profits that provide housing for the community. With regard to CDBG funds, those funds have just been cut and she was unsure if the City could respond with the urgency that this request needs.

Because of the public safety issue, Mr. Sawyer explained that they are inspecting the bricks on a daily basis.

Upon inquiry of Vice-Mayor Hay, Mr. Sawyer said that it would take approximately \$5.3 million to replace the units.

When Vice-Mayor noted that finding \$150,000 in the CDBG funds would be next to impossible, Mr. Sawyer again stated that HUD would not act favorably on their loan application unless there was local participation and they will not proceed with any repairs until the total financing is in place.

Mayor Sitnick was very concerned about the public safety issue with regard to the falling bricks. She hoped that on the south side of the building next to the main Library, which has the most amount of pedestrian traffic, some kind of effort be made to secure that side.

Mr. Sawyer noted that before they fix just part of the building, they would probably choose to close it down because a big part of the cost is the set-up. Mayor Sitnick noted that closing the building won't stop the bricks from falling.

Councilwoman Field suggested and City Council concurred that we refer this request to the Housing and Community Development Committee and have our City staff look for some -8-

creative ways to assist with this request. Mayor Sitnick further suggested and City Council concurred that City staff see if there are any measures that can be taken to at least let people know who are walking on the sidewalk by the building of the potential danger.

### **BUDGET AMENDMENT RE: COUNCIL CHAMBER RENOVATION DESIGN**

Mr. Lyle Willis, Contract Administrator, said that on February 25, 1997, City Council passed Resolution No. 97-19 authorizing the City Manager to enter into a contract with Electronic Interiors, Inc. for professional services to design and upgrade the audio-visual and other electronic capabilities of the Council Chamber in the City Building.

In November, 1997, Electronic Interiors, Inc. completed the Phase I portion of their contract which included meetings with city staff on programming and presentations resulting in the completion of schematic design drawings and preliminary budget estimates. He then presented the design drawing to Council for their review.

Based on information obtained in the Phase I portion of Electronic Interiors, Inc.'s contract, a proposal with related costs for design services for Phases II-III was received by City staff. The proposal for Phases II-III incorporates services for the design development, complete construction documents and construction administration through out the project. This scope of services will cost an additional \$19,000 currently not

appropriated or approved by City Council.

The Parks and Recreation Department requests City Council appropriate an additional \$19,000 and to authorize the City Manager to enter into an agreement with Electronic Interiors, Inc. for Phases II-III of the Electronic Interiors, Inc. contract.

Mayor Sitnick said that she was pleased that this will improve both audio and visual conditions in the Chamber. In the future she hoped that we can create some way that people who cannot be seated in the Council Chamber who have to stand in the hall will be able to at least hear and view the Council proceedings. Mr. Willis said that once the design drawings and specifications are in place, Council can look at audio and visual in the hallway, however, we can't take away from the fabric of the hallway.

Councilman Cloninger hoped that there would be a table reserved for the press at the front of the room.

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.

### **LOCAL PLAN APPROVAL OF WATER LINE EXTENSION CONSTRUCTION PLANS**

Ms. Cathy Ball, City Engineer, asked City Council to consider adopting an ordinance to allow the Engineering Department of the City of Asheville to review and approve water line extension plans and revise the Fees and Charges Manual to include charging \$200 review fee for each project.

The current process for reviewing and approving water line extension plans requires that the City of Asheville review the plans to insure that they conform with our standards specifications and details and forward the plans to the N.C. Dept. of Environment and Natural Resources (NCDENR) for final approval. This process often takes six to eight weeks. By adoption of this ordinance, the amount of plan review time will decrease to approximately two weeks. This will be a significant benefit to the development community by expediting the approval process and facilitating the construction process beginning sooner.

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NCDENR has developed a program by which local governments can be delegated the responsibility of reviewing and approving water line extension plans provided they have an ordinance to enforce compliance with the approved plans and adequate staff and resources to properly review the plans. Staff has met with the local NCDENR and received approval for the latter requirement. A draft copy of the ordinance has been approved by the state office of NCDENR.

Staff is also requesting that the current Fees and Charges Manual be revised in order to allow the City of Asheville to charge \$200 for the review of the water line plans. Currently there is no charge for this plan review. The amount of \$200 per project was determined by looking at the actual staff time and resources that are currently required to review plans. Depending on the size of the project, the actual cost to the City to review plans ranges from \$150 to \$300. In the fiscal year 97-98, staff reviewed 108 projects.

Staff recommends that City Council adopt an ordinance allowing the City of Asheville to review and approve water line extension plans and revise the Fees and Charges Manual to include charging \$200 per project for the review of the water line extension plans.

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.

### **AGREEMENT WITH SKYLAND FIRE DEPARTMENT**

Fire Chief John Rukavina explained that this resolution would allow the City to enter into an agreement with the Skyland Fire Department that would allow use of parts of Skyland's fire station by Asheville firefighters.

In consideration of assuming 50% of the cost of utilities of Skyland's fire station, and up to 50% of repair/maintenance costs, the Skyland Fire Department is willing to let the Asheville Fire Department use Skyland facilities for housing on-duty Asheville firefighters.

Acceptance of this agreement on the part of the City of Asheville would allow avoidance of the cost of constructing living quarters for firefighters in Asheville Fire Station 4, the new Asheville fire station to be built adjoining Skyland's station. Only apparatus bays and facilities for the Asheville Police Department substation would be required at this time.

The proposed agreement provides a five-year notice for the City in the event that Skyland wishes to discontinue the agreement at some time in the future. This notice would provide time necessary to develop a funding plan as part of the City's Capital Improvement Program to add living quarters to the Fire Station 4 "shell."

At the present time, the City is using space in Skyland's fire station, and is reimbursing Skyland an amount equal to 40% of its utility costs.

The City Attorney has reviewed the proposed agreement, and notes, that, while technical changes may be required prior to execution of the agreement, the substance of the agreement is in order.

Because bids have been opened for the construction of Fire Station 4, and because execution of this agreement would significantly reduce construction costs, time is of the essence in regard to City Council action authorizing the City Manager to enter into an agreement with the Skyland Fire Department.

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Upon inquiry of Councilman Cobb, Fire Chief Rukavina said that a conservative estimate of \$100,000, even possibly \$200,000 will be saved if the living quarters are not constructed.

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.

### **COOPERATION OF CITY DEPARTMENTS DURING WINTER STORM**

Mayor Sitnick thanked the Public Works Department, Water Resources Department, Police Department, Fire Department, Parks & Recreation Department, Engineering Department, Building Safety Department and Personnel Department on how well they responded to the recent winter storm in January 27, 1998. There will be an after action review meeting to discuss how well the City did in preparing for the event, how well we did once it was underway, what we didn't do as well as we should have, and what we can improve for the future. She felt that some public education ads in the newsprint, on the television and on the radio might be beneficial to the public. She also stressed that as a community we need to find ways to address the problem of when kids are out of school, some don't eat the first two meals of the day.

On behalf of Jim McCulley, Councilwoman Field thanked the departments that assisted him during the storm.

Fire Chief John Rukavina said that they have information which they will distribute to the public of a checklist on how to be self-sufficient for 72 hours.

### **CABLE TV FRANCHISE REVIEW**

Mayor Sitnick announced that this cable TV franchise review began at Council's worksession on January 20, 1998, and was continued until this date.

Ms. Patsy Meldrum, Assistant City Attorney, said that at the worksession on January 20, City Council asked for information regarding a brief summary of the history of the 1967 cablevision franchise, a brief summary of the renewal processes for cablevision franchises and a comparison chart of what was requested of the cablevision company in the Request for Renewal Proposal and what is included in the proposed franchise. She then reviewed the requested information with City Council.

Ms. Jean Rice, the City's consultant, then explained the comparison chart of what was requested in the Request for Renewal Proposal and why InterMedia did not agree to them.

Assistant City Attorney Patsy Meldrum continued with her review of 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 reviewed the franchise ordinance (ordinance granting franchise to Brenmor d/b/a InterMedia): (1) system services (a) subscribers; (b) leased access channels; (c) free cable drops and monthly service to sites passed by activated cable plant and within city limits: (I) all city and county schools; (ii) city police and fire stations/facilities; (iii) all "city and county libraries"); (iv) all city buildings; (d) scrambled institutional programming - for governmental and educational access channels to all local governmental and educational locations receiving free drops and monthly service; and (2) state-of-the-art clause (a) cable systems owned by Brenmor/InterMedia in North Carolina, South Carolina, Georgia and/or Tennessee; (b) similar system (size, population, etc.); and (c) public hearing may be held by City Council.

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Throughout Ms. Meldrum's presentation, she and Ms. Rice, responded to various questions from Council. Some questions were, but are not limited to, how many cities in North Carolina own their own cable system and do those cities hire employees with expertise or hire an outside company to run the system, was the information from the community needs assessment included in our Request for Renewal Proposal, what is the benefit for the City and InterMedia with regard to the state-of-the-art clause, how can the City trigger the state-of-the-art clause, what is involved in monitoring other communities regarding state-of-the-art systems, do other cities have stronger language in their state-of-the-art clauses, what the difference is between a 550 MHz rebuild and a 750 MHz rebuild, and how does the proposed franchise agreement define cities of similar size in the state-of-the-art clause.

Upon inquiry of Councilman Cloninger, Mr. Joe Haight, General Manager of InterMedia, said that InterMedia will provide Internet connections for all school sites, however, they do not want it incorporated into the agreement because it is a matter of policy. He noted that InterMedia would provide one modem per school for the Internet.

Mr. Haight responded to questions from City Council about how the state-of-the-art clause in the franchise agreement is an opportunity for dialog. He said that it is their intent to keep the costs to their customers reasonable and they expect revenue increases will come from additional services that they offer, not from the basic services they have. He then answered various other questions, some being, but not limited to, why the basic service rate payers will have to pay for a rebuild even if they don't want those extra services, and what the cost difference was between the 550 MHz rebuild and the 750 MHz rebuild.

Mr. Bruce Stewart, attorney for InterMedia, also responded to questions from Council noting that they are acutely aware of the costs and are being respectful of providing the services.

Upon inquiry of Mayor Sitnick, Ms. Rice said that they are comfortable with InterMedia providing the 550 MHz rebuild.

Ms. Meldrum reviewed the franchise ordinance (ordinance granting franchise to Brenmor d/b/a InterMedia): (1) public, educational and governmental (PEG) access channels (a) three channels required within 90 days of City's request (after rebuild completed); (b) one additional channel required when threshold met; (c) administration and management may be coordinated by city and cable company or city may assign to third party or cable company; city has sole authority to designate channels and use of channel capacity; (d) initial access equipment and facilities -- \$200,000 (paid over first two years; first \$50,000 may be paid by cable company "in-kind" with equipment; cable company may elect to pass through all or portion to subscribers); (e) replacement equipment, maintenance, support and facilities -- minimum of \$36,000/year or 15-cent/subscriber/month, whichever is greater, during years 8-17 (cable company may elect to pass through all or portion to subscribers); (2) subscriber services and standards (subject to federal laws and regulations) (a) subscriber information; (b) customer service standards; (c) subscriber complaints; (d) downgrades and disconnects; (e) outages; (f) repair calls (four hour windows); (3) construction bond (\$300,000); performance bond (\$350,000); (4) insurance requirements (general liability; workers' compensation; employers liability; automobile liability); (5) indemnification requirements; (6) most favored nations (a) other cable franchises granted by City must have similar requirements, subject to exclusion of small cable systems; (b) indemnification of City by cable company; and (7) transfers, renewals and termination/revocation governed by regulatory ordinance and federal laws and regulations.

She then continued with the final element of the proposal which is the franchise fee settlement: (1) franchise fee audit for four years (January 1, 1992 - December 31, 1995); (2) payments made by basic and expanded basic service revenues; no payments made from premium channels (HBO, Cinemax, etc.), pay-per-view, home shopping channels or other -12-

revenues; (3) settlement from InterMedia and TCI (a) \$150,000 - payable in three installments of \$50,000 over three years; (b) additional franchise fees from new definition of "gross annual revenues" if franchise renewal completed - estimated by cable company to be \$260,000 from 1997 - 2002 (rest of 1967 franchise term).

Again, throughout the presentation, Ms. Meldrum and Ms. Rice responded to questions from Council, some being, but not limited to, how may public access channels do other cities of Asheville's size have, how does the number of PEG channels relate to the needs assessment survey, will the PEG channels be in the basic service tier, do other cable companies fund the access studios, what the pros and cons are for having the access studio located in the cable company location, does InterMedia have complete discretion in what is included in the basic tier service, how the \$200,000 for initial access equipment and facilities was arrived at, how was the construction bond figure obtained, what happens to the equipment, etc., if the cable company fails, and how the \$260,000 figure was arrived at regarding additional franchise fees until the end of the franchise term in 2002.

Councilwoman Field suggested a regional access studio for several communities to band together at one center to do programming. Ms. Rice addressed questions about that suggestion.

Mr. Haight also responded to various comments, some being, but not limited to, a negotiated shared channel with Charter and Marcus Cable, and why the cable company paid the City 6% in franchise fees when the law only said they needed to pay 3%.

Councilwoman Field noted that the Forum in Pack Place was designed to be used for production.

Ms. Meldrum explained thoroughly why the City asked for a franchise fee audit of three years and received an audit for a four year time period and the issues regarding going back further in time.

Councilman Cloninger asked if there were any binding arbitration clauses in the agreement. Ms. Meldrum responded that we do have arbitration for one issue, however, it is not binding arbitration. Councilman Cloninger suggested we might consider it on other issues. Mr. Stewart responded that they would prefer to have full rights of appeal, even if arbitration is included.

Ms. Meldrum answered several questions from Vice-Mayor Hay about why the settlement from InterMedia and TCI should be agreed upon at the same time the franchise agreement is agreed upon.

Councilman Cloninger asked what specific issues about the franchise agreement could be discussed in closed session, noting that the City has an obligation to negotiate the best possible agreement. He stressed that they want the public to know as much as possible about the negotiations. City Attorney Oast said that there is clear authority in the Open Meetings Law to receive legal advice from an attorney and to discuss matters in litigation or headed for litigation, however, he would prefer to have an opportunity to review all facets of the question before issuing an opinion.

Mayor Sitnick noted that on Tuesday, February 10, 1998, at 7:00 p.m. in the William F. Wolcott Jr. building at 161 South Charlotte Street there will be a community meeting. On February 24, 1998, at 5:00 p.m. in the Council Chamber, 2nd Floor, City Hall Building, there will be a public hearing on the cable TV franchise renewal issue. She noted that City Council is not required to vote at the public hearing and suggested that after the hearing all the input from the -13-

public and recommendations from the City Manager and City Attorney, City Council will be in a better position to know how they wish to proceed.

At the request of Councilwoman Field, Ms. Rice responded briefly to a letter dated February 3, 1998, from Mr. Bill Fishburne, Vice-President and General Manager of Internet of Asheville, in which he felt that the Institutional Network as proposed by InterMedia was not a good deal.

Mr. Bill Fishburne reviewed his letter and suggestions to Council.

Ms. Meldrum noted that the City Council has received comments from the following individuals: Mark Rosenstein on January 15, 1998; Nelda Holder on January 19, 1998; and Wally Bowen, representing Citizens for Media Literacy, on January 16, 1998. She said that she has reviewed all of their comments and tried to address those comments during her presentation.

In addition to the cable franchise matters, Ms. Meldrum noted that the City Council had received information regarding review of the 1997 annual rate increase request of InterMedia. She said that by a letter dated March 1, 1997, InterMedia filed FCC Forms 1205 and 1240, both dated March 1, 1997, for the purpose of requesting and justifying an annual increase in its monthly rates and hourly service charges for cable services on the basic service tier. Those documents were received by the City on March 3, 1997.

The City has reviewed the FCC Forms 1205 and 1240 and attachments filed by InterMedia on March 3, 1997. The City's review concluded that InterMedia made certain errors in the Form 1240 filing, but that the Form 1205 filing was correct. The City informed InterMedia of those errors in the Form 1240 filing and attachments. InterMedia subsequently filed with the City an amended FCC Form 1240 on November 7, 1997.

Rice, Williams Associates, the City's cablevision consultant, has completed a review of the amended FCC Form 1240 filed with the City by InterMedia on November 7, 1997. Rice, Williams Associates has furnished the City with a report regarding their review of the amended FCC Form 1240. That report concludes that there were errors in the calculations of the maximum permitted rate, related to inflation factors used. A copy of that report was furnished to InterMedia.

InterMedia has asked that they have additional time to show that its rate filing was accurate, therefore, Ms. Meldrum recommended, and City Council concurred, that this issue be discussed at the worksession held on February 17, 1998, and a public hearing be scheduled for February 24, 1998. She noted that Council will need to take action on the request on February 24, 1998.

Mayor Sitnick stated that the community meeting on February 10, 1998, will be as open as possible with cross dialog.

### **MORATORIUM ON ADULT ESTABLISHMENTS**

Councilman Sellers asked for Council's support on a resolution imposing a moratorium on adult establishments until House Bill 588 is considered and acted on by the General Assembly.

City Attorney Oast noted that this will involve a public hearing on the issue and that he would be happy to prepare a resolution to be considered at Council's worksession on February 17, 1998. -14-

### **CITY COUNCIL RETREAT**

Mayor Sitnick invited the public to the City Council annual retreat beginning at 1:00 p.m. on Friday, February 6, 1998, through 12:00 Noon on Sunday February 8, 1998, at Highland Lake Inn in Flat Rock, N.C.

### **ERSKINE STREET PLAYGROUND NAME REQUEST**

Mayor Sitnick received a request from the Parks and Recreation Advisory Board asking for City Council to recommend to the Housing Authority that the Erskine Street playground be named in honor of Herb Watts.

It was the consensus of City Council to write a letter to the Housing Authority supporting the Advisory Board's recommendation.

### **ADJOURNMENT:**

Mayor Sitnick adjourned the meeting at 735 p.m.

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CITY CLERK MAYOR

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