

Tuesday - February 17, 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; 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

Mayor Sitnick recognized some students from the Western Carolina University Masters of Public Administration Program.

### **CONSENT AGENDA:**

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

Summary: The developers and owners of all lots in the East End Place Subdivision project located off Dr. Martin Luther King Jr. Drive have petitioned the City of Asheville to adopt the new street name of East End Place.

#### **Acceptance of new proposed street name - Buttonwood Court**

Summary: The City of Asheville, Community Development Division, owner of all lots in Rankin Heights Subdivision, located off of Kentucky Drive in West Asheville, have petitioned City Council to adopt the new street name of Buttonwood Court.

#### **Acceptance of new proposed street names and changing duplicate street names in the Deerfield Episcopal Retirement Community**

Summary: Deerfield Episcopal Retirement Community, located off of Hendersonville Road and Lambeth Drive, has petitioned the City of Asheville to: (1) Adopt the following street name changes: (A) Rename South Lambeth Circle to Lambeth Drive; and (B) Rename North Lambeth Circle to Sheffield Circle; and (2) Accept the following street names: (A) Wakefield Drive; (B) Highbridge Crossing; (C) St. Albans Court; and (D) St. Giles Place.

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

Summary: The consideration of a budget amendment to establish a budget for a N.C. Dept. of Transportation grant for traffic signalization improvements for the new transit center.

#### **Lease of Antenna Facilities at White Fawn Reservoir**

Summary: The consideration of a resolution authorizing the execution of lease agreement with BellSouth Mobility for City-owned antenna facilities and space for the siting of related transmission equipment at White Fawn Reservoir.

Finance Director Bill Schaefer responded to many questions from Council as they related to co-locating antennas on an existing city-owned tower.

Councilman Cloninger noted that the City is trying to encourage co-location on existing towers so we can

eliminate the need to have additional towers elsewhere in the City, However, he would be interested in hearing from our consultant, who is working on the City's -2-

telecommunication tower ordinance, on this matter. He also stated that he was concerned that the lease was for nine years.

Councilwoman Field asked that Mr. Schaefer provide the Council with the names of the tenants who have antennas on our towers, the length of the leases and how much money these leases have brought to the City.

### **Lease of City Telephone System**

Summary: The consideration of a resolution authorizing the execution of a Master Municipal Rental Agreement with Southeastern Telecom for the purpose of leasing a telephone system.

Upon inquiry of Vice-Mayor Hay, Finance Director Bill Schaefer explained that this lease has the flexibility for growth and accommodation for new technology as it comes along.

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.

### **DEMONSTRATION OF COMMUNITY IMAGE SURVEY**

Mr. Jerry Brown explained the Community Image Survey ("CIS") Road Show project which is a proactive, field-tested program which has great potential for healing thorny issues like residential density. The CIS is one of the best tools they've seen to give all residents a chance to visualize choices for how to build on the best of what they already have and make their communities even better for land use and transportation options. Some communities that have used the CIS or visual tools like it, are Portland, Oregon; Helena, Montana; Chattanooga, Tennessee; and Fort Collins, Colorado, as well as rural areas like Madison County and Comer, both in Georgia. People in these places have said that their CIS identified latent common ground already in their community on how to encourage development of: (1) more lively, successful retail districts; (2) more and better affordable housing; (3) more neighborly neighborhoods; (4) safer, more convenient transportation options; and (5) more preserved greenspace.

Ms. MacLeod explained how the CIS could be used in Asheville/Buncombe County: (1) make the Unified Development Ordinance ("UDO") updating match the preferences of a statistically reliable, broad-based segment of the community; (2) make the UDO updating process user-friendly and fun while building trust in the land planning; (3) provide key information on community preferences needed for the 2010 Plan update; (4) show how key goals of the Asheville-Buncombe Vision can be realized by better land use and transportation decisions; and (5) provide a visual document for developers on preferred development patterns.

Ms. MacLeod said that they would like City Council to support this process and support the planning staff in hiring a person who has done this process. She said that she will be meeting with the County Planning Department in the near future to discuss this concept with them.

Councilwoman Field felt this would be useful in the 2010 Plan update.

Upon inquiry of City Manager Westbrook, Ms. MacLeod said that the cost could range anywhere from \$5,000 to \$100,000 depending on the size of the community for the survey. Mr. Brown noted, however, that they will be asking the County and others for funding to help offset the cost. Mayor Sitnick felt that we should get an estimate of the cost for doing the survey for Asheville alone and then a cost for doing the survey for all of Buncombe County. -3-

City Manager Westbrook said that City Council will be looking at the funding of the 2010 Plan update during their budget negotiations.

On behalf of City Council, Mayor Sitnick said that the City is interested in exploring how we can work together with the County, the Land-of-Sky Regional Council and/or the Chamber of Commerce on this new technology.

### **CHATHAM ROAD ZONING STUDY**

Mr. Mike Matteson, Urban Planner, said that the Planning and Development Department has received a petition for a zoning study which includes ten properties in the Chatham Road/Weaver Boulevard area.

The ten properties total approximately 5.29 acres. The petition included signatures of individuals who own nine of the ten properties. These nine properties total approximately 3.39 acres or approximately 64% of the total acreage of the requested study area.

Section 7-7-2 of the Unified Development Ordinance states that "a zoning study of a defined area may be requested upon submittal to the planning and development department of a petition signed by 51 percent of the property owners in the defined area for which the zoning study is requested who own at least 51 percent of the property (acreage) in the defined area for which the zoning study is requested". The petition does meet the above referenced criteria.

Council is asked to determine whether a zoning study should be initiated for this defined area or for a portion thereof. The City Council may initiate the zoning study, elect not to initiate the zoning study, or reduce the size of the area to be included in the zoning study and initiate a zoning study of the reduced area.

Mr. Matteson responded to various questions from Council as they related to staff resources, the procedures involved in a zoning study, and how the properties were zoned prior to adoption of the Unified Development Ordinance.

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.

### **FIRE STATION 4/POLICE RESOURCE CENTER**

Fire Chief John Rukavina said that in July, 1997, the City Council authorized commencement of the bidding process for construction of a new fire station—Fire Station 4—for the south Asheville area. The low bid, of nearly \$800,000, exceeded available funds, so City Council authorized a rewrite of the specifications by Barney Woodard, AIA, with the intent of soliciting and receiving new bids within the range of funds available (a total of \$600,000).

Based on City Council's recent authorization of the City Manager to enter into an agreement with the Skyland Fire Department for use of firefighter living quarters in Skyland's station (which will immediately adjoin Fire Station 4), Barney Woodard recommends award of the bid for Fire Station 4 to Cooper Construction Company of Hendersonville, N.C., for Construction Option 2, Alternate 1, in an amount not to exceed \$596,060. The Fire Chief concurs in this recommendation. The resolution provides for award of the bid to Cooper Construction, and authorizes the City Manager to enter into an agreement with Cooper Construction for this work.

-4-

Option 2, Alternate 1 provides for construction of a police substation, a fire station with two fire apparatus

bays, a storage room, and a structural enclosure for the space originally proposed for firefighter living quarters, so those quarters could be built at a later date.

Barney Woodard is working with—and continues to work with—Cooper Construction on identifying opportunities for cost reduction. To date, over \$20,000 in such opportunities have been identified. Barney Woodard advises that actual construction cost is expected to be below the low-bid amount of \$596,060.

In order to provide a sufficient funding package for Fire Station 4, the Finance Director and Budget Director recommend transferring funds from general fund un-appropriated fund balance in the present fiscal year to cover construction costs of Fire 4. Given the priority that Council has placed on this station, use of general fund un-appropriated fund balance is a viable option.

The Budget Director, Finance Director and Fire Chief recommend adoption of the budget amendment ordinance for Fire Station 4 and the Asheville Police Department substation. The Fire Chief recommends City Council adoption of architect Barney Woodard's recommendation of bid award to Cooper Construction Company for Construction Option 2, Alternate 1 of the City of Asheville specifications for construction of Fire Station 4 and an Asheville Police Department substation in south Asheville in an amount not to exceed \$596,060 through adoption of the resolution.

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.

#### **PURCHASE OF LAND LEASED BY THE CITY UPON WHICH THE CIVIC CENTER PARKING GARAGE IS BUILT**

Mr. Bill Schaefer, Finance Director, said that the City of Asheville entered into a lease agreement with George E. and Edith A. Parker Dawson on January 1, 1974, for the parcel of property described as "all of Lots 6,7,8,9 and 10 as shown on a plat recorded in the Office of the Register of Deeds for Buncombe County, North Carolina, in Plat Book 198, at Page 212," and upon which the Civic Center parking garage was constructed. The terms of the lease were such that the lease period would end the earlier of December 31, 1998, or upon the date of death of the lessor. The lessor died on February 4, 1998. Upon termination of the lease, the City may exercise an option to purchase the property for \$65,000 within 90 days of the date of death. Staff believes that it is in the best interest of the City of Asheville to acquire the property.

Funds for this purchase will be provided by transfer of \$65,000 from the Fiscal Year 1997-98 Fund Capital Contingency to the Parking Capital Fund.

Staff recommends the City Council approve the budget amendment and resolution authorizing the City Manager to purchase the property upon which the Civic Center Parking Garage is built.

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.

#### **MOTION SETTING A PUBLIC HEARING ON FEBRUARY 24, 1998, RELATIVE TO REQUEST OF BRENMOR CABLE PARTNERS, L.P. (D/B/A INTERMEDIA) FOR AN ANNUAL INCREASE IN ITS MONTHLY RATES FOR THE BASIC SERVICE TIER**

-5-

Ms. Patsy Meldrum, Assistant City Attorney, said that a request has been received from Brenmor Cable Partners, L.P. (d/b/a/ InterMedia) for an Annual Increase for its Monthly Rates for the Basic Service Tier for the time period from June 1, 1997 to May 31, 1998

Pursuant to federal law and the regulations of the Federal Communications Commission ("FCC"), the City of Asheville ("City") is certified to regulate basic service rates and charges of Brenmor Cable Partners, L.P. ("InterMedia") in the franchise area of InterMedia within the corporate limits of the City.

By 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.

Rice, Williams Associates, the City's cablevision consultant, reviewed the FCC Forms 1205 and 1240 and attachments filed by InterMedia on March 3, 1997. They furnished the City with a report that concluded that InterMedia made certain errors in the Form 1240 filing, but that the Form 1205 filing was correct. The City provided InterMedia with a copy of that report.

InterMedia subsequently filed with the City an amended FCC Form 1240 on November 7, 1997. On November 11, 1997, the City Council of the City of Asheville adopted Resolution No. 97-212, which resolution postponed a decision on the request of InterMedia for an annual increase for its monthly rates for the basic service tier until review of the amended FCC Form 1240 could be completed within the time period and according to the regulations of the FCC.

Rice, Williams Associates reviewed the amended FCC Form 1240 filed with the City by InterMedia on November 7, 1997. They furnished the City with a report regarding their review of the amended FCC Form 1240. That report concluded that InterMedia made certain errors in the amended Form 1240 filing. A copy of that report was furnished to InterMedia.

InterMedia filed a revised Form 1240 with the City on February 12, 1998. A copy of that revised Form 1240 has been provided to Rice, Williams Associates for their review. Their review finds that after all the change in the inflation factor and errors, the rate put into effect last year of \$10.91 per month is within the maximum permitted rates of the FCC.

Subsection 76.933(g) of the Code of Federal Regulations authorizes the City to issue a rate order based upon its review of the FCC Form 1240 filing. Any rate order which the City may enter in this rate filing must be made by March 2, 1998.

When Councilman Tomes expressed his concern about the number of errors made by InterMedia, Ms. Meldrum agreed noting that's why Asheville has chosen to continue to monitor as much as they can of InterMedia's rate filings.

Mayor Sitnick noted that the City had to pay a consultant to review those filings, along with City staff, and wondered how much that cost the City.

It was the consensus of Council to set a public hearing on February 24, 1998, relative to a request of Brenmor Cable Partners, L.P. (d/b/a InterMedia) for an annual increase in its monthly rates for the basic service tier.

Ms. Meldrum responded to questions from Councilman Cobb relative to the rates for basic cable service in prior years. She said it was her understanding that the overall rates of cable television are increasing faster than the cost of living.

-6-

It was the consensus of Council to set a public hearing on February 24, 1998, relative to a request of Brenmor Cable Partners, L.P. (d/b/a InterMedia) for an annual increase in its monthly rates for the basic service tier.

## **SIX-MONTH REPORT RELATIVE TO DOGS IN RIVERSIDE CEMETERY**

Mr. Irby Brinson, Director of Parks & Recreation, updated City Council on the decision to control animals in Riverside Cemetery.

Asheville City Council, in July of 1997, adopted an ordinance revision dealing with animals in Riverside Cemetery. This revision requires dogs to be leashed, remain on paved roads, be cleaned up after by their owners, and be prohibited from the facility during funeral services. Per City Council's direction, a six-month evaluation of the ordinance changes were required in order to evaluate the effectiveness of these revisions. Over this period of time, the Cemetery Manager and the Park Warden have been documenting occurrences of violations of the ordinance. He summarized the problems that have occurred. In addition to addressing these particular issues, the Department has initiated a Dog Park Task Force which has been meeting since January of 1998. The purpose of this task force is to determine an appropriate location for development of a dog park within the City. This group is very active and is planning to present their report to City Council in the near future. The Parks and Recreation Department has been assisting this group in trying to address the provision of a dog park within the City.

The Parks and Recreation Department is providing this information to City Council per their original request for a six-month review. The Parks and Recreation Department recommends continuing the work with the Dog Park Task Force to address these concerns for a designated area for animals within the Park system.

When Mayor Sitnick asked why the violators were not fined, Mr. Brinson explained that during this six-month period, staff was trying to educate the owners of the ordinance and the next step will be the fining of violators. The major problem encountered is enforcement of the ordinance. In August of 1997, Buncombe County Friends for Animals took over animal control enforcement in the City of Asheville and calls from the cemetery about dogs take a low priority with response time being anywhere from 20 minutes to 4 hours.

Councilman Sellers felt that dogs should be banned from the cemetery.

Mayor Sitnick instructed staff to immediately begin working with the Buncombe County Friends for Animals regarding fines to violators. She suggested some kind of citizens on patrol program that actually gives authority to members of the public to make observations and report them to the appropriate person.

It was the consensus of Council to discuss an ordinance amendment prohibiting dogs in Riverside Cemetery at their next regular worksession.

## **DISCUSSION OF POSSIBLE SALE OF MEMORIAL STADIUM AND ASSOCIATED PROPERTY**

Mr. Irby Brinson, Director of Parks & Recreation, said that the Parks and Recreation Department has been working for several months on the possibility of selling Memorial Stadium to Robert Camille in the amount of \$1.4 million and using the revenue to further develop and enhance recreation facilities in the community.

-7-

Recognizing that approximately \$20 million is necessary over the next 15 years in order to enhance recreation facilities in the community, the Parks and Recreation Department has been exploring alternative financing to meet these needs without a tax increase. The revenue generated from the sale of Memorial Stadium will be used to develop and renovate other recreation facilities within Asheville. These include development of a multi-field youth baseball complex at Richmond Hill for use by the North Asheville Little League - a need which has been recognized since 1967 . In addition, a youth football field would be constructed to be used by the West Asheville Youth Football and the Asheville Rugby Club. The sale of Memorial Stadium also includes \$75,000 the purchase of approximately 100 feet of right-of-way at the end of

Richmond Hill Drive into the Richmond Hill property. Over \$3,000 will also be used to renovate the existing Mountainside Park to include new playground equipment and play area.

On November 25, 1997, and pursuant to N. C. Gen. Stat. sec. 160A-269, City Council authorized the City Clerk to advertise an offer to purchase City-owned property known as Memorial Stadium. No upset bids have been received.

With the use of an overhead projector, Mr. Brinson showed the different slope grades on the 21 acres of property, which only seven acres are relatively flat. He explained the rock and soil testing that was done on the Richmond Hill site and showed a comparison which showed that central Asheville has 45 parks encompassing 267 acres while north Asheville has 13 parks totaling 76 acres. The consultants who are working on a new master parks and recreation plan are not recommending any new parks in the central area for the next 15 years. He then showed a map outlining the 181 acres of Richmond Hill and a conceptual design of what is planned there. He showed a conceptual plan overlay of what the renovation of Mountainside Park will look like.

Mr. Brinson responded to various questions and comments from Council, some being, but are not limited to: why the City has not done a rock and soil test at Memorial Stadium, similar to the one done at Richmond Hill; is there a possibility of forming a central district league; how did the offer to purchase come to Parks & Recreation's attention; what were the plans for Memorial Stadium if the offer to purchase had not been received; why is the stadium gated; why are the boundaries of Memorial Stadium unclear; and various questions regarding different provisions in the draft contract.

At the request of Council members, Mr. Ben Beasley, appraiser who did the appraisal report on this property, summarized his assignment, described the area and the subject property and explained the techniques and reasoning leading to the final estimate of value. He said the sales comparison approach to value was determined to be the most applicable approach for estimation of the market value of the subject property. He reviewed the sites which were analyzed in the valuation process. Mr. Beasley then answered various questions from Council regarding his appraisal. He also agreed that if the tract was divided up into lots, it might be tougher to market the property, but the City could receive more money.

Mayor Sitnick asked that a copy of a topographical map of Town Mountain and Sunset Mountain be furnished to Council prior to the March 10, 1998, public hearing on this matter.

Upon inquiry of Councilman Cloninger, Planning & Development Director Julia Cogburn explained that the tract is zoned Institutional and is not subject to the hillside regulations. However, City Attorney Oast noted that there may be other ways to accomplish the intent of the hillside regulations on that tract.

Mr. Brinson stated that he is not in the business of selling park property. In fact, he wants to acquire park property. However, he finds that this is an opportunity to address the needs necessary to enhance recreation facilities in the community. -8-

Councilman Cloninger was concerned that the 10 day advertisement period for the sale of property was not enough time to put together a proposal if someone was interested in buying the property. He also expressed concern about the appraisal price stressing that the City needed to try to get maximum dollar for the property.

Upon inquiry of Vice-Mayor Hay, Mr. Brinson said that the consultant who has been preparing the Parks and Recreation Department's Master Plan has been involved and aware of this process. They have agreed that selling the property was the right thing to do and the Master Plan which will be coming before City Council in April, has taken into account that the City has sold the property.

Mr. Brinson then responded to questions from the following individuals: Mr. Alan Kirkpatrick, Ms. Susan Andrew, and Mr. Briggs Sherwood.

Mayor Sitnick encouraged the public to attend the public hearing concerning this matter on March 10, 1998.

### **RESOLUTION FOR CONSIDERATION OF A TEMPORARY MORATORIUM ON ADULT ESTABLISHMENTS**

Councilman Sellers explained that he has heard rumors to the effect that three different "adult" businesses are interested in located in Asheville. He asked for Council's support of a resolution that would begin the process of establishing a moratorium on the businesses. The moratorium should stay in effect until the General Assembly has had a chance to consider legislation that would increase the City's ability to regulate the businesses. He asked for Council's support of this resolution.

City Attorney Oast further explained that in October, the Council adopted a resolution endorsing Senate Bill 452 that, as currently drafted, would return a measure of regulatory control over adult establishments to municipalities. Currently, such regulation is largely preempted by State law.

It is unclear at this time exactly what the new law, if adopted, would provide, but the fact that the law is pending is sufficient justification for the City taking action to preserve the status quo by imposing a limited-duration moratorium on the issuance of zoning approvals for such uses.

Because the proposed moratorium is technically a zoning ordinance, it must be considered pursuant to the same procedures that apply to zoning ordinances, generally; that is, it must go through the Planning and Zoning Commission, and a public hearing must be advertised and held in accordance with the law.

If Council desires to initiate the process for getting the moratorium question considered, adoption of the resolution is recommended.

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.

### **IMPLIED CONFLICT OF INTEREST - CABLEVISION FRANCHISE FEES**

City Attorney Oast said that on February 10, 1998, an issue was raised about a possible conflict of interest regarding Assistant City Attorney Patsy Meldrum with respect to the City's position on disclosure of cable television franchise fee payments. He stated that there is no conflict of interest.

-9-

### **CLOSED SESSION**

At 6:25 p.m., Councilwoman Field moved to go into closed session (1) to consult with an attorney employed by the City in order to preserve the attorney-client privilege between the City and its attorney - G.S. 143-318.11 (a) (3); and (2) to prevent the disclosure of information that is privileged or confidential pursuant to the laws of North Carolina, or not considered a public record within the meaning of Chapter 132 of the General Statutes. The law that renders the information to be discussed privileged or confidential is G.S. 160A-168, the Personnel Privacy Act - G.S. 143-318.11 (a) (1). This motion was seconded by Councilman Sellers and carried unanimously.

At 7:20 p.m., Vice-Mayor Hay moved to come out of closed session. This motion was seconded by Councilman Sellers and carried unanimously.



**ADJOURNMENT:**

Mayor Sitnick adjourned the meeting at 7:20 p.m.

---

CITY CLERK MAYOR

---