

Tuesday - February 24, 1998 - 5:00 p.m.

Regular Meeting

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

INVOCATION

Councilman Cobb gave the invocation.

I. PROCLAMATIONS:

A. DEDICATION OF THE BICENTENNIAL TIME CAPSULE AND PLAQUE

Ms. Mitzi Tessier noted that the original dedication date was January 27, 1998, however, due to the weather, it had to be postponed. She explained that in November 1797 the village of Asheville (formerly Morristown) was incorporated as the Town of Asheville by an act of the General Assembly of North Carolina. At that same session of the legislature, five commissioners were appointed to carry into effect the plan of the town and to distribute the 63 acres of land among the population as they thought advisable. On January 27, 1798, the commissioners held their first meeting for the purpose of appointing a treasurer from among their own body. When chosen, he was considered their chairman. There were no records of the proceedings of the City until 1845, but we do know that Isaac Sawyer was the first Mayor of the City of Asheville.

Ms. Tessier recognized the members of the Urban Trail Board and the members of the Bicentennial Committee present in the audience.

She said that Mr. Phillip Palmer, Chair of the Bicentennial Legacy Committee, was instrumental in working on the time capsule while members of the Urban Trail Board were instrumental in having the plaque prepared.

Mr. Phillip Palmer said that their intention of the time capsule was to create a snapshot of the bicentennial year and there were a number of organizations and individuals involved in submitting items that are now inside the time capsule. He reviewed some of the items in the capsule which will be opened in 2047. Items ranged from a 1997 phone book to information from various organizations about programs, reports, and activities.

Mr. Grace Pless, Co-Chair of the Urban Trail Board introduced the donor of the plaque honoring his grandfather Charles A. Webb, Robert S. Webb Jr., Chief Executive Officer of Webb Insurance Company.

Mr. Charles A. Webb praised the Urban Trail Board and read the plaque as follows: "Time Remembered. A time capsule honoring Asheville's people was buried beneath this plaque to commemorate the city's bicentennial, observed in 1997-1998. Our citizens' accomplishments over the first two hundred years form the foundation upon which we continue to build tomorrow. The stored keepsakes will be revealed in 2047. Placed by the Webb family in memory of Charles A. Webb, 1866-1949, teacher, attorney, and newspaper publisher dedicated to the upbuilding of Asheville/WNC. " Mr. Webb proudly briefed Council on his grandfather's biographical sketch.

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Mr. John C. Young Jr., member of the Urban Trail Board, stated that the site for the plaque and time capsule will be on the sidewalk on Spruce Street at the City/County Plaza.

Mayor Sitnick thanked the members of the Bicentennial Committee, the Urban Trail Board, the Webb family and the Parks and Recreation Department for their efforts. On behalf of City Council, Mayor Sitnick approved and accepted the gift.

B. BICENTENNIAL FINAL REPORT

Mr. Richard Nantelle, Co-Chair of the Bicentennial Committee, thanked several people, in particular Mayor Sitnick who was his Co-Chair on the Bicentennial Committee, associated with the Bicentennial and said that the dedication of the bicentennial time capsule will officially close out the bicentennial events.

C. PROCLAMATION PROCLAIMING MARCH 2, 1998, AS "READ ACROSS AMERICA DAY"

Mayor Sitnick proclaimed March 2, 1998, as "Read Across America Day" in the City of Asheville and presented the proclamation to Ms. Lettie Polite who briefed Council on some planned activities taking place on March 2.

D. PROCLAMATION PROCLAIMING THE MONTH OF MARCH AS "BLACK HISTORY MONTH"

Councilman Tomes read the proclamation proclaiming the month of March, 1998, as "Black History Month" in the City of Asheville.

E. STUDENT RECOGNITION

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

II. CONSENT:

At the request of Councilman Sellers, Item J. was removed from the Consent Agenda for discussion.

A. RESOLUTION NO. 98-15 - RESOLUTION AUTHORIZING THE SALE OF DISPOSAL PARCELS 1A AND 52A LOCATED AT THE INTERSECTION OF ASHELAND AND HILLIARD AVENUES TO PRICE ASSOCIATES IN THE AMOUNT OF \$101,000

Summary: 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 -3-

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.

There being no upset bid, the Community Development staff recommends adoption of the resolution.

RESOLUTION BOOK NO. 24 - PAGE 340

B. RESOLUTION NO. 98-16 - RESOLUTION ACCEPTING THE STREET NAME "EAST END PLACE" LOCATED IN THE EAST END PLACE SUBDIVISION LOCATED OFF DR. MARTIN LUTHER KING JR. DRIVE

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.

RESOLUTION BOOK NO. 24 - PAGE 341

C. RESOLUTION NO. 98-17 - RESOLUTION ACCEPTING THE STREET NAME "BUTTONWOOD COURT" LOCATED IN RANKIN HEIGHTS SUBDIVISION LOCATED OFF OF KENTUCKY DRIVE IN WEST ASHEVILLE

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.

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D. RESOLUTION NO. 98-18 - RESOLUTION CHANGING NAMES OF CERTAIN STREETS IN THE DEERFIELD EPISCOPAL RETIREMENT COMMUNITY

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.

RESOLUTION BOOK NO. 24 - PAGE 343

E. RESOLUTION NO. 98-19 - RESOLUTION ESTABLISHING MINIMUM PRICES FOR CERTAIN CITY-OWNED PARCELS OF REAL PROPERTY

Summary: The Planning & Development Department after a review of the inventory of City owned property as instructed by City Council in February, 1995, has recommended that certain parcels of surplus real property be offered for sale. Each of the parcels recommended for sale have undergone extensive interdepartmental review to insure that the property is not currently being utilized by the City and does not have an identifiable potential for future use by the City. The parcels recommended for sale are identified in the list Surplus Real Property Recommended for Sale prepared by the Planning & Development Department and dated February 19, 1998 .

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Each parcel has been assigned a tax value by the Buncombe County Tax Assessor's Office and that value is the recommended minimum price for each parcel.

In 1995, the Planning Department solicited proposals from a number of real estate brokers in the area, and based on the qualifications of Russell G. Wood of Beverly Hanks & Associates, City Council adopted

Resolution No. 95-134 which authorized the City Manager to execute an agreement with Russell G. Wood of Beverly Hanks and Associates to market and sell certain City owned properties. The Planning & Development Department recommends listing the subject parcels for sale as part of said agreement.

Approval of the resolution will establish a minimum price for each of the parcels and authorize offering the parcels for sale by and through an agreement with Beverly Hanks and Associates.

RESOLUTION BOOK NO. 24 - PAGE 344

F. ORDINANCE NO. 2449 - BUDGET AMENDMENT TO ESTABLISH A BUDGET FOR FUNDS RECEIVED FROM THE N.C. DEPT. OF TRANSPORTATION FOR TRANSIT CENTER TRAFFIC SIGNALIZATION

Summary: In July ,1997 City Council appropriated \$70,000 from General Fund Contingency to fund traffic signalization changes needed as a result of construction of the new Transit Center. At that time, it was indicated that grant funding would be requested and, if approved, could be used in place of a portion of funds from the General Fund. This grant request totaling \$70,000 has been approved. This grant revenue as well as the original General Fund appropriation is needed to fund the traffic signal improvements and complete the project. In addition, water line improvements with a total cost of \$10,000 have been made and the cost of which will be reimbursed by the Water Authority. This amendment incorporates these changes totaling \$150,000 into the existing Project Budget of \$915,000 making the revised project total \$1,065,000.

Staff recommends that the budget for the Transit Center Project be amended to incorporate the additional \$150,000 in funding which will result in a revised Project Budget totaling \$1,065,000.

ORDINANCE BOOK NO. 16 - PAGE 408

G. MOTION SETTING A PUBLIC HEARING FOR MARCH 10, 1998, TO CONSIDER REZONING PROPERTY ON OLD HAYWOOD ROAD FROM RS-4 RESIDENTIAL SINGLE FAMILY MEDIUM DENSITY TO RM-8 RESIDENTIAL MULTI-FAMILY MEDIUM DENSITY

H. RESOLUTION NO. 98-20 - RESOLUTION AWARDDING THE BID TO COOPER CONSTRUCTION COMPANY FOR CONSTRUCTION OF FIRE STATION 4/POLICE RESOURCE SUBSTATION

Summary: 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). - 5-

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, North Carolina 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.

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.

RESOLUTION BOOK NO. 24 - PAGE 345

I. ORDINANCE NO. 2450 - BUDGET AMENDMENT TO CONSTRUCT FIRE STATION 4/POLICE RESOURCE SUBSTATION

Summary: See Item "I" above.

ORDINANCE BOOK NO. 16 - PAGE 410

J. RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE A MASTER MUNICIPAL RENTAL AGREEMENT WITH NEC AMERICA INC. FOR LEASING A TELEPHONE SYSTEM

This item was removed from the Consent Agenda for discussion.

K. RESOLUTION NO. 98-21 - RESOLUTION AUTHORIZING THE PURCHASE OF LEASED LAND ON WHICH THE CIVIC CENTER PARKING DECK IS BUILT

Summary: The consideration of a resolution authorizing the purchase of land currently leased by the City for the Civic Center Parking Deck and a budget amendment reallocating a -6-

portion of the Fiscal Year 97-98 capital contingency appropriation to the Parking Capital Fund to fund the purchase.

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.

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L. ORDINANCE NO. 2451 - BUDGET AMENDMENT TO PURCHASE LEASED LAND ON WHICH THE CIVIC CENTER PARKING DECK IS BUILT

Summary: See Item "M" above.

ORDINANCE BOOK NO. 16 - PAGE 412

M. RESOLUTION NO. 98-22 - RESOLUTION FOR CONSIDERATION OF A TEMPORARY MORATORIUM ON ADULT ESTABLISHMENTS

Summary: 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.

Consideration was given to proposing an interim ordinance, pursuant to the general police power, prohibiting the issuance of licenses under Article IV of Chapter 9 pending Council's consideration of the moratorium ordinance (about a six-week window). While this is a possibility, there are some legal considerations that may affect the validity of such an ordinance. Moreover, the pendency of the moratorium question may be legally sufficient to prevent the establishment of a zoning vested right.

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

Mr. Daniel Breen spoke against the adoption of the resolution in that he felt that the issue is a freedom of speech issue and a right to assemble issue.

Mayor Sitnick noted the resolution is only to direct staff to consider a temporary moratorium pending the outcome of State legislation.

RESOLUTION BOOK NO. 23 - PAGE 349

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

Councilman Tomes moved for the adoption of the Consent Agenda. This motion was seconded by Councilman Sellers and carried unanimously.

ITEM PULLED FROM THE CONSENT AGENDA FOR DISCUSSION

RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE A MASTER MUNICIPAL RENTAL AGREEMENT WITH NEC AMERICA INC. FOR LEASING A TELEPHONE SYSTEM

Mr. Bill Schaefer, Finance Director, said that the City government's present telephone system is made up of

several small switches which have limited capabilities and do not provide the functionality and growth capabilities the City needs to handle essential communications requirements. Additionally, the mix of old and newer technologies has caused considerable interoperability problems in attempting to get the various segments of the current system to function together and many components are nearing the end of their service life expectancy. As a result, in June of this year, the City initiated a Request for Proposal process to select a provider of a single, fully-integrated telephone system for the City government which has the functionality and anticipated expansion capabilities the City requires. Newspaper ads announcing the solicitation resulted in six companies responding that they would like to participate. Of those, four actually submitted proposals. A team made up of representatives from several departments evaluated the responses and selected the Southeastern Telecom proposal as offering the best solution to the City's telephone requirements.

The Southeastern Telecom proposal incorporates state-of-the-art functionality, fully-integrated compatibility throughout the City (including such locations as City Development, the new Mills River Water Plant, and with the addition of a supporting T-1 line in next year's budget for the North Fork Water Plant), expansion capability to accommodate both anticipated growth in communications needs and the addition of future functionality developments. For example, if needed, the system will be able to handle the increased communications requirements of the Civic Center future transition to a convention center/hotel complex with little or no modification of the telephone system.

Under their proposal, Southeastern Telecom will be the local provider of equipment, installation and maintenance of the system. However, as has been the City's policy with other areas in which technology is changing rapidly, such as computer hardware and software, the system will be leased rather than purchased outright. The Master Municipal Rental Agreement, between the City and NEC, requires monthly payments of \$6,457.50 for a term of seven years .

Funds for this lease are provided in the Fiscal Year 97-98 budget.

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Discussion surrounded Request for Proposal and selection processes. Mr. Schaefer stressed that our focus was clearly on the capabilities, flexibility, present potential and future growth.

Mr. Bill Arledge, President of Telephone Systems of Asheville ("TSA"), outlined his reasons why he felt City Council would be spending significantly more if they contracted with Southeastern Telecom than with TSA. He felt the process was flawed and urged Council to postpone this action until further evaluation of the differences can be evaluated.

Mr. Dale Gilstrap, Operations Manager for Southeastern Telecom in Asheville, spoke in support of the recommendation by staff .

After further discussion on several issues, Councilman Sellers moved to table this matter until March 10, 1998, in order to give TSA the opportunity to see if they have had a fair chance to bid for the lease. Staff was instructed to meet with both companies and see if their recommendation will change or remain the same. This motion was seconded by Councilman Tomes.

Mr. Schaefer reminded Council of the financing behind the NEC America Inc. lease.

Upon inquiry of Councilwoman Field about the companies bidding on the lease, Mr. Schaefer explained that City staff does not have the capabilities of writing technical specifications and that is why this process was used. He stated the City would probably have to hire an engineer to write the specifications.

The motion made by Councilman Sellers and seconded by Councilman Tomes to table this issue until March

10, 1998, carried unanimously.

Upon concurrence of City Council, the new business items were moved ahead of the public hearings.

III. NEW BUSINESS:

A. RESOLUTION NO. 98-23- RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE A LEASE AGREEMENT WITH BELL SOUTH MOBILITY FOR ANTENNA FACILITIES AND SPACE AT WHITE FAWN RESERVOIR

Mr. Bill Schaefer, Finance Director, said that in 1997, BellSouth Mobility put in a request to lease space from the City of Asheville and co-locate antennas and DCS transmission equipment on an existing, city-owned tower. The location of this tower is on Reservoir Road, behind St. Joseph's hospital at the White Fawn Reservoir site.

In anticipation of this lease, BellSouth Mobility has conducted an extensive structural analysis of the tower and provided City staff with copies of the results of their findings. BellSouth Mobility conducted this analysis with the complete understanding that negotiations would proceed pending any decision by City Council to the contrary and at no charge to the City.

The lease itself is for a period of nine years, with quarterly payments of \$3000 to the City of Asheville. This lease would allow BellSouth Mobility to install their equipment near the base of the existing tower, erect a fence for the protection of the equipment and co-locate their antennas on the city-owned tower.

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Staff recommends City Council adopt the resolution authorizing the City Manager to sign the lease agreement with BellSouth Mobility.

Mr. Schaefer said that during the worksession on February 17, 1998, Council requested that staff provide additional information related to the proposal to lease antenna tower space at White Fawn to BellSouth Mobility. He reviewed a listing of all the present tenants on the two active towers at White Fawn, the length and termination date of their present lease along with their monthly rent.

Council also requested that staff contact the City's communications consultant to obtain their comments/recommendations regarding the terms of the proposed lease (to include duration and monthly rent). Staff has discussed the specific terms of the lease with Mr. Al Jenkins of Jenkins Reed & Madison. Mr. Jenkins is of the opinion that the lease is appropriate in all respects. The proposed initial quarterly rent of \$3,000 is more than twice what the next highest tenant is currently paying and is more in line with what the Asheville market should be. The lease also includes a rent increase to \$3,450 per quarter for the sixth through ninth years. The nine-year duration of the lease is justified to permit BellSouth to recoup its up-front expenditures to conduct the structural and frequency analysis of the tower and the approximately \$20,000 of enhancements to the tower's structure that they will make. The enhancements to the structure will not only accommodate BellSouth's needs but will also be to the benefit of the City and other current and future tenants.

Upon inquiry of Councilman Cloninger, Larry Friedhoff, BellSouth Mobility representative, explained why Tower No. 1 was chosen instead of Tower No. 2, pointing out that Tower No. 1 sets closer to their objective which is coverage to the medical community.

Councilman Cloninger noted that this lease accomplishes three objectives - (1) co-locating the antenna which means that we will have one less tower in the City; (2) there will be no antennas taller than what we currently have at that site; and (3) we will get revenue for the City.

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

After some brief discussion about the lease term, Councilman Cloninger moved to adopt Resolution No. 98-23. This motion was seconded by Councilman Tomes and carried unanimously.

RESOLUTION BOOK NO. 24 - PAGE 350

B. MOTION RELATIVE TO A ZONING STUDY IN THE CHATHAM ROAD/WEAVER BOULEVARD AREA

Ms. Julia Cogburn, Director of Planning & Development, said that their 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 -10-

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.

Ms. Cogburn said her staff doesn't feels that this zoning study would take a considerable amount of staff time because of the size of the area - probably no more than 30 days. She did clarify a misstatement at the worksession on February 17, 1998, noting that the neighborhood had requested RS-8 during the UDO process, however, Council did not act on that request.

Vice-Mayor Hay moved to instruct the Planning & Development Department to initiate

a zoning study which includes ten properties in the Chatham Road/Weaver Boulevard area. This motion was seconded by Councilman Cobb and carried unanimously.

IV. PUBLIC HEARINGS:

A. PUBLIC HEARING TO CONSIDER THE DRHUMOR BUILDING LOCATED AT 48 PATTON AVENUE AS A LOCAL HISTORIC LANDMARK

ORDINANCE NO. 2452 - ORDINANCE TO DESIGNATE THE DRHUMOR BUILDING LOCATED AT 48 PATTON AVENUE AS A LOCAL HISTORIC LANDMARK

Mayor Sitnick opened the public hearing at 6:46 p.m.

Councilman Cloninger asked to be excused from voting because he is one of the owners of the building. Councilman Sellers moved to execute Councilman Cloninger from voting due to a conflict of interest. This motion was seconded by Councilwoman Field and carried unanimously.

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

Ms. Maggie O'Connor, HRC Director, said that the owners of the Drhumor Building are seeking local historic landmark designation.

On January 14, 1998, the Historic Resources Commission of Asheville and Buncombe County ("HRC") held a public hearing regarding the designation of the Drhumor Building as a local historic landmark. Notice of the public hearing for this local landmark designation was published in the Asheville Citizen-Times on January 4, 1998, and that all owners of real property situated within 400 feet were notified of this hearing by mail on December 31, 1997. At the public hearing, comments from the public were received in writing and orally and all comments supported landmark designation.

When a property is designated historic, restrictions are placed on the property and to any exterior improvements. Any modification to the structures or land must receive a Certificate of Appropriateness from the HRC and all improvements must follow the Secretary of the Interior's Standards for Rehabilitation Illustrated Guidelines for Rehabilitating Historic Buildings.

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Designation of this building as a local historic landmark makes the property owner eligible for a 50% reduction in property taxes. Currently the assessed value of the property is \$1,082,400 and the total taxes paid for this year were \$16,344.24. If the Drhumor building is designated historic, the taxes would be reduced by half to \$8,172.12.

At their January 14, 1998, regular meeting the HRC found the Drhumor Building to have integrity of design, setting, workmanship, materials, feeling, and to have architectural significance. Therefore, by a unanimous vote, the HRC recommends to City Council that they adopt an ordinance designating the Drhumor Building a local historic landmark.

Since Asheville is a Certified Local Government, the N.C. Dept. of Cultural Resources, State Historic Preservation Office ("SHPO"), has the right to comment on any nomination for Local Landmark designation. The SHPO concurs with HRC's recommendation.

Mayor Sitnick closed the public hearing at 6:50 p.m.

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

Councilwoman Field moved for the adoption of Ordinance No. 2452. This motion was seconded by Councilman Tomes and carried unanimously.

ORDINANCE BOOK NO. 16 - PAGE 414

B. PUBLIC HEARING TO CONSIDER AN AMENDMENT TO THE UNIFIED DEVELOPMENT ORDINANCE TO PROVIDE THE BOARD OF ADJUSTMENT AUTHORITY TO VARY THE REQUIREMENTS FOR LOT SIZE AND DIMENSION

ORDINANCE NO. 2453 - ORDINANCE TO AMEND THE UNIFIED DEVELOPMENT ORDINANCE TO PROVIDE THE BOARD OF ADJUSTMENT AUTHORITY TO VARY THE REQUIREMENTS FOR LOT SIZE AND DIMENSION

Mayor Sitnick opened the public hearing at 6:55 p.m.

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

Mr. Gerald Green, Senior Planner, said that this is consideration of a request from the Planning and Zoning Commission for approval of an amendment to the Unified Development Ordinance ("UDO") providing the Board of Adjustment with the authority to vary the required lot area and dimensional standards for lots located in residential districts.

Section 7-6-1.B. of Chapter 7 of the Code of Ordinances of the City of Asheville (UDO) places limits on the provisions which can be varied by the Board of Adjustment. Among these limits is the restriction on the granting of any variance which would permit the creation of a non-conforming lot. This restriction has created hardship in cases where a property owner lacks only a few square feet in being able to create an additional lot. The proposed amendment would provide the Board of Adjustment with the authority to grant variances to lot area and dimensional standards, for an individual lot in residential districts, with the following limitations:

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The variance shall not permit a reduction of greater than 10% in the required lot area and dimensional standards;

An application for such variance may be made for only one lot at a time; and

Application for such variance for an additional lot under common ownership or in the same development shall not be submitted within three years of submittal of the previous application.

If the proposed amendment is adopted, the Board of Adjustment would hear such requests and would base their decision upon the unique circumstances of each case. Adoption of the proposed amendment would permit the creation of new lots in cases where such lots are not currently permitted, possibly reducing the cost of housing.

The proposed ordinance amendment has been recommended for approval by the Asheville Planning and Zoning Commission by a 6-0 vote. The staff of the Planning and Development Department recommends approval of the amendment.

Mayor Sitnick asked what would be the difference in making the UDO standard more flexible rather than giving the Board of Adjustment this authority? Mr. Green responded that within the standard zoning ordinance within residential districts you set a certain size for lots within that residential district and we can probably do it with some type of performance standards. That would require re-writing the entire UDO, whereas this provides some flexibility on a case by case basis.

City Attorney Oast said that having the Board of Adjustment being the body that grants this variance is a good idea, because it allows the board the ability to impose some conditions on this variance that will protect the neighboring property owner.

City Manager Westbrook said that staff still feels that's an appropriate standard and that what they seek to do is to have a way to vary that within a very narrow range.

Ms. Janet Hart, 60 Baird Street, President of Charlotte Street Neighbors, said that given the Board of Adjustment's history in granting the great majority of requests they hear, she opposed this proposal. She said one problem is with small lots in a residential neighborhoods - 10% variation in a lot dimension or a size can make a difference. The other problem is where commercial office, office business, highway business or any other non-residential lot abuts a residential lot - a lot size requirement is meant to prevent encroachment on residential buffer areas. Variances could mean that a buffer becomes less effective. She offered a compromise: Lot size and dimension should not be allowed variances in a residential area, nor should variances be allowed where office or commercial areas abut residential property. Her position is to protect

the residential areas from any detrimental effects of such a variance.

Mr. Brian Peterson, 42 Vance Crescent in West Asheville, also spoke against the proposed ordinance.

Upon inquiry of Councilman Cloninger, Mr. Green said that this applies only to residential lots and therefore would not have an impact on buffering for any type of development, setback requirements, lighting requirements or parking requirements.

Mayor Sitnick closed the public hearing at 7:06 p.m.

Mayor Sitnick said that members of Council have previously received a copy of the ordinance and it would not be read. -13-

Councilwoman Field moved for the adoption of Ordinance No. 2453. This motion was seconded by Councilman Sellers.

Vice-Mayor Hay shared concerns about our experience with the Board of Adjustment but felt that there is a point at which we need to trust that they will do their job correctly. He suggested that their authority be monitored and if we are getting complaints back that the authority is being abused or if the Board of Adjustment is not fulfilling the will of Council as far as the implementation of the UDO goes, that Council review it again.

Councilman Tomes agreed with Vice-Mayor Hay in that this authority be monitored.

Upon inquiry of Councilman Cobb, City Attorney Oast said that the Board of Adjustment is required to schedule and hold a public hearing every time one of these items comes up. They have the same notices that apply to public hearings before the City Council, so the public does have an opportunity to appear and make their points of view known. Also, it would require a 4/5's vote of the Board of Adjustment to grant any one of these variances.

Mayor Sitnick felt that even though we have good members sitting on the Board of Adjustment now, she is not sure how future Board members will rule on variances and there could be the opportunity for abuse of this authority. Also, the UDO came up with standards that were pretty clear and stringent.

The motion made by Councilwoman Field and seconded by Councilman Sellers carried on a 5-2 vote, with Mayor Sitnick and Councilman Cobb voting "no".

ORDINANCE BOOK NO. 16 - PAGE 416

At 7:10 p.m., Mayor Sitnick announced a ten minute break.

C. PUBLIC HEARING TO CONSIDER AN AMENDMENT TO THE UNIFIED DEVELOPMENT ORDINANCE TO AMEND THE DEFINITION OF "FAMILY CARE HOMES" TO INCLUDE CHILDREN

ORDINANCE NO. 2454 - ORDINANCE TO AMEND THE UNIFIED DEVELOPMENT ORDINANCE TO AMEND THE DEFINITION OF "FAMILY CARE HOMES" TO INCLUDE CHILDREN

Mayor Sitnick opened the public hearing at 7:17 p.m.

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

Mr. Gerald Green, Senior Planner, said that this is consideration of a request from the Planning and Zoning Commission for approval of an amendment to the Unified Development Ordinance which deals with the

definition of Family Care Homes.

The following is the current definition of Family Care Homes: "FAMILY CARE HOMES: an adult care home with support and supervisory personnel that provides room and board, personal care and habitation services in a family environment for resident handicapped persons, as handicapped persons are defined in N. C. Gen. Stat. sec. 168-21 (or its successor)."

The current definition limits the use "Family Care Homes" to adults only. It is recommended that the definition be expanded to include children as well. -14-

In order to clarify this to the user of the Unified Development Ordinance, it is proposed that the definition be edited as follows (new language in *italic* print): "FAMILY CARE HOMES: *a facility for adults or children* with support and supervisory personnel that provides room and board, personal care and habitation services in a family environment for resident handicapped persons, as handicapped persons are defined in N. C. Gen. Stat. sec. 168-21 (or its successor)."

The Planning staff has reviewed this request and recommends approval of the amendment. At the Planning & Zoning Commission meeting held on February 4, 1998, the Commission voted unanimously to recommend this amendment to City Council.

Councilwoman Field suggested an amendment to the wording as follows: "a facility for adults and/or children"

Mr. Green responded to general questions from Council relative to family care homes.

Mayor Sitnick closed the public hearing at 7:26 p.m.

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

Councilman Tomes moved for the adoption of Ordinance No. 2454, with the wording amendment suggested by Councilwoman Field. This motion was seconded by Councilwoman Field and carried unanimously.

ORDINANCE BOOK NO. 16 - PAGE 418

D. PUBLIC HEARING TO CONSIDER THE MANUFACTURED HOUSING OVERLY ZONING DISTRICT TO 15 LOTS ON ROBIN LANE ZONED RM-6 RESIDENTIAL MULTI-FAMILY LOW DENSITY DISTRICT

ORDINANCE NO. 2455 - PUBLIC HEARING TO APPLY THE MANUFACTURED HOUSING OVERLY ZONING DISTRICT TO 15 LOTS ON ROBIN LANE ZONED RM-6 RESIDENTIAL MULTI-FAMILY LOW DENSITY DISTRICT

Mayor Sitnick opened the public hearing at 7:27 p.m.

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

Mr. Carl Ownbey, Urban Planner, said that this is consideration of applying the Manufactured Home Overlay District to 15 lots on Robin Lane zoned RM-6.

The composition of this residential neighborhood has several manufactured homes scattered throughout the surrounding area. The 2010 Plan indicates the surrounding area

to be low density residential which the current zoning (RM-6) permits.

The UDO requirements for establishing a "Manufactured Home Overlay" district:

- the homes should be architecturally compatible with the existing residential structures;
- manufactured homes should comprise at least 20% of the homes in this area (there are 8 existing residents of which 2 or more are manufactured homes); -15-
- vacant land should be available for location of manufactured homes (of the 15 lots, 7 are currently vacant with the applicant's lot being one); and
- the area must be a minimum of 5 acres.

This property is outside the city limits of Asheville.

The Planning staff reviewed this request and recommended approval of the application of the overlay district. At their February 4, 1998, meeting, the Planning & Zoning Commission voted unanimously to approve the application of the overlay district to this RM-6 Multi-Family Residential area (PIN Nos. 9639.07-59-3579, 3697, 3767, 3867, 3969, 4420, 4438, 5883, 5699, 5945, 6357, 6447, 6546 and 9730.19-50-3183 and 4192).

Ms. Lisa Benbow spoke in support of the ordinance.

Mayor Sitnick closed the public hearing at 7:32 p.m.

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

Councilman Cobb moved for the adoption of Ordinance No. 2455. This motion was seconded by Councilman Sellers and carried unanimously.

ORDINANCE BOOK NO. 16 - PAGE 419

E. PUBLIC HEARING RELATIVE TO THE REQUEST OF BRENMOR CABLE PARTNERS, L.P. (D/B/A INTERMEDIA) FOR AN ANNUAL INCREASE FOR ITS MONTHLY RATES FOR THE BASIC SERVICE TIER

RESOLUTION NO. 98-24 - RESOLUTION ISSUING A WRITTEN DECISION REGARDING THE REQUEST OF 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 OF JUNE 1, 1997, TO MAY 31, 1998

Mayor Sitnick opened the public hearing at 7:35 p.m.

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

Ms. Patsy Meldrum, Assistant City Attorney, said that the City has received a request of 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.

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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 regarding the monthly rate, 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. Rice, Williams Associates has reviewed the revised Form 1240 and noted that InterMedia acknowledged errors pointed out by Rice, Williams Associates and made appropriate corrections in the revised Form 1240. They further noted that InterMedia made additional adjustments which resulted in a slightly incorrect result. InterMedia has conceded that correction to this result should be made.

After all of these corrections and adjustments have been made, the maximum permitted rate for the basic service tier is \$10.9786 per month per subscriber for the time period of June 1, 1997, to May 31, 1998. As allowed by federal laws and regulations, InterMedia began charging a rate of \$10.91 per month per subscriber for the time period of June 1, 1997, to May 31, 1998. That rate does not exceed the maximum permitted rate. No approval of the rate of \$10.91 is required, but it is advisable to establish the maximum permitted rate for the basic service tier for the time period of June 1, 1997, to May 31, 1998.

Mayor Sitnick noted that this is the City's only ability to protect the subscriber by establishing the maximum permitted rate for this annual rate increase for the basic service tier.

Ms. Meldrum noted that the City can look at other types of rate increases for the basic service tier, one of which we are continuing to do and that is for the rebuild of the system. They are recovering some of their capital expenditures and that's a separate rate increase. We are continuing to review that request and our time period for that review has not yet expired.

Councilman Cloninger asked what would the effect be if we did not pass this resolution. Ms. Meldrum said that their rate would still be in effect but it would be advisable to set the maximum permitted rate, because that does set the ceiling - without that, there is no ceiling set.

Councilman Tomes stated that we must communicate to the public that the City Council has very limited authority to regulate certain cable rates. Ms. Meldrum said that we communicate that to the public by these public hearings where we review rates and we go over what our authority is. In addition, when she receives calls in her office about rate increases, she discusses with those individuals what limited authority the City has.

Mayor Sitnick noted the number of calls and letters she receives and agreed with Councilman Tomes that

something needs to be done to inform the public about why the cable rates increase and what limited authority the City has to protect our subscriber. A better job needs to be made clear to the public what they have, what things cost, what they are going to get, how packages are offered, what it obligates them to, and what they're paying for. -17-

Upon inquiry of Councilman Cobb, Ms. Meldrum said that the basic rate can be adjusted only once a year, but they can also adjust it for other reasons other than an annual inflationary request.

Mr. Joe Haight, General Manager of InterMedia, said that there are many, many parts to the packaging and a lot of times we have difficulty in explaining that to the customer. He said that he would be happy to talk with customers who have complaints and that they may reach him at 274-7500 or 274-7801. He said that the would be happy to work with the City on how to better inform the public.

Mayor Sitnick closed the public hearing at 7:57 p.m.

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 to adopt Resolution No. 98-24 setting 10.91 as the maximum permitted rate. This motion was seconded by Councilman Sellers and carried unanimously.

RESOLUTION BOOK NO. 24 - PAGE 351

F. CABLE TV FRANCHISE RENEWAL

Mayor Sitnick opened the public hearing at 8:00 p.m.

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

Mayor Sitnick said that because of the complexity of this issue, she explained that Council is considering a three part package. The package involves a regulatory ordinance, a franchise agreement and a fee settlement. The franchise agreement only will require two votes, each one at a separate formal Council meeting, no matter what the vote is (unless the vote is for denial, in which case the first vote would be final). The regulatory ordinance can pass with one vote, unless it receives less than a 5-2 vote by Council - then it would require a second reading at a separate formal Council meeting. She said several courses of action can be taken at this time: (a) approve the three part package as presented; (b) approved part of the three part package; (c) deny the package; (d) ask staff to negotiate parts of the package (specifically parts of the franchise renewal agreement); or (e) continue the public hearing and have further discussion on any or all parts of the package. If Council decides to ask staff to further negotiate any portions of the franchise renewal agreement, Council would have to be specific on what exactly they want re-negotiated and would have to establish a deadline for staff to report back to Council. The renewal of the franchise agreement depends on the regulatory ordinance being in place so unless we adopt the ordinance we would probably not want to act on the renewal.

City Attorney Oast said that if Council wants time to digest some of the information, they can continue this item to the worksession and that might be at the point in time in which they would want to give further negotiating instructions to staff.

Councilwoman Field asked if the fee settlement could be considered separately. City Attorney Oast responded that it is somewhat tied up in the renewal and settling the franchise fee issue may affect our negotiating position on the renewal question. If Council is inclined to consider pursuing further negotiation on the franchise renewal, he recommended that the vote on all three items be continued. Assistant City Attorney Patsy Meldrum further stated that in looking at the franchise renewal and also at the regulatory ordinance,

part of that was making clear that -18-

we had a definition of "gross annual revenues" which is the basis on which the franchise fees would be paid. And as part of that, we would be getting additional revenues for the remainder of the term, so that's part of the consideration in the settlement amount. If that's not in place, then it would be recommended that another look be taken at the settlement agreement.

City Attorney Oast said that even though Council will be voting on all three documents separately, he recommended that public comment be taken on all three documents at the same time.

Ms. Meldrum reviewed the proposed cable television documents for the benefit of the public in understanding the proposed cable television 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; and (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.

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 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.

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); (8) construction standards; (9) system services (a) subscribers; (b) leased access channels; (c) free -19-

cable drops and monthly service to sites passed by activated cable plant and within city limits: (l) 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; (10) 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; (11) 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); (12) 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); (13) 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); (14) construction bond (\$300,000); performance bond (\$350,000); (15) insurance requirements (general liability; workers' compensation; employers liability; automobile liability); (16) indemnification requirements; (17) 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 (18) 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 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).

Throughout Ms. Meldrum's presentation, she and the City's consultant Jean Rice, responded to various questions from Council. Some questions and comments were, but are not limited to, if the regulatory ordinance had previously been in place, would the City be struggling with figures now; how can the public be informed that they have to call the cable company in order to receive an outage refund; are the penalty provisions high enough; how the franchise area will include current and future City limits; does this allow the City and the County cable companies to be linked for emergency services; what are the types of equipment for the PEG channels; who controls and regulates PEG channels for pornography, no commercials, no libelous, no obscenity; what does "most favored nations" mean; state-of-the-art clause; is the Morganton franchise competing with a private franchise; and the definition of "obscene".

Upon inquiry of Mayor Sitnick about the Institutional Network, Ms. Meldrum said that the statement that reads "no maintenance or use costs to the City" refers to the fiber that runs in the network and that runs up to the building. The internal wiring of the building and the equipment in the building would be paid for by the City or the City school system. She explained the request was made to include all of the elementary schools, the administrative office, the Accelerated -20-

Learning Center, Asheville High School, Asheville Middle School, and a number of other City sites that are

not included in the list in this proposal. However, in looking at the cost which can be passed along to subscribers, the instructions staff received were to try to consider the impact on those subscribers. Therefore, certain sites were picked which were based upon discussions with the former City Council and also with the City's Information Services Division which would be the key sites. That's why not all of the schools were included in the list that is proposed. She did note, however, that there is an opportunity to add other sites in the proposal.

Ms. Meldrum explained 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.

The following individual's read statements, or portions thereof, and submitted them for the record. Those comments are attached hereto as Exhibit "A".

- (1) Letter from Tim Amos read by Ms. Meldrum dated February 11, 1998.
- (2) Letter dated February 18, 1998, along with addendum dated February 24, 1998, from Ms. June Lamb
- (3) Letter dated February 24, 1998, from Mark Rosenstein, concerned citizen
- (4) Letter from Mary Ellen Brown, Ph.D., dated February 24, 1998
- (5) Statement from Wally Bowen, representing Citizens for Media Literacy
- (6) Statement from Geoffrey Willett, representing Mountain Area Information Network
- (7) Letter from Hazel and John Fobes dated February 24, 1998
- (8) Statement from Steve Burlison dated February 24, 1998
- (9) Information from Margaret Shook, resident on Crowfields Lane, dated February 24, 1998
- (10) Letter from Bonnie Pickartz dated February 24, 1998

Mr. Bill Wald urged Council to delay action on these items.

Mr. Charlie Patton, resident of Ballentree, spoke in support of Council moving forward and adopting the documents.

Mr. George Bengé, Executive Editor of the Asheville Citizen Times, said that two weeks ago he asked for "your support in obtaining the release to the public of records of franchise fee payments made to the City of Asheville by the City's cable TV provider in exchange for use of the public right of way for broadcast purposes. Unfortunately the response to our request was a resounding and unequivocal 'no' from the City Attorney. Because our request was refused, we have filed suit today to obtain the franchise fee records in order to fully inform the public about all aspects of the Asheville cable TV agreement and records. As I told you two weeks ago, we were desirous of an outcome that did not include litigation. We have attempted to approach this matter in a reasonable and public spirited manner and were hopeful that the City would consider this issue in the same manner. There is no animosity on our part. We simply believe that the public deserves to have this information. We were hopeful that the City would have been willing to work with us and the public to find a way to make the information we requested available to all, not just a select few. However,

our attempts to resolve this issue in a spirit of openness and broad access to public records were rebuffed, forcing us to ask the courts to make this decision. I have copies of that lawsuit for members of the Council and for the City's own counsel. If I may give that to the (Mr. Benge gave copies to the City Attorney). Finally, on behalf of all members of the public who have a deep interest in seeing complete public records to guide their thinking in this matter, I request Council to postpone any vote on any aspect of the cable TV agreement or agreements until after the court has rendered its decision in our lawsuit."

Ms. Rebecca Campbell urged the City Council to delay until they understand all the ramifications of this and get with some people that are doing public access, like Austin, Texas. -21-

Mr. Jerry Rice, County resident, felt that the Citizen-Times newspaper is "not doing their job" in covering several serious issues in Asheville and hoped that something could be done to improve communication. He felt that the cable company should take it upon themselves to give credits when major outages occur, not wait for the subscriber to call.

Ms. Sonya Burleson encouraged City Council to take the advise of City staff and the consultant the City hired that what they have come up with is right for the City of Asheville.

Mr. Jeremy Gibson, Asheville resident, urged Council to think about the amount of profit this one company will make over 17 years and the amount they can pass through to the citizens.

Mr. Hunt Brown, Associate General Counsel in the Corporate Office of InterMedia, spoke about the investment InterMedia is making in the City of Asheville. He talked about the objective survey conducted by an outside group which results were used to try to get a document which was sensitive to the needs and interest of the community.

Upon inquiry of Vice-Mayor Hay on why InterMedia won't make part of the franchise agreement its commitment to put modems into schools, Mr. Brown said that part of the commitment to provide modems to the schools depends upon the kind of deals that InterMedia can get with a manufacturer. That equipment does cost money and to provide it to schools InterMedia has to look at and analyze the needs of this community, because some of that cost could be passed onto subscribers if it is franchise imposed. But in terms of putting that cable modem access in the schools, that is something we want to do in the future and InterMedia is committed to getting accomplished. The basis for not putting it in as part of a franchise agreement is because we want to allow the market to drive us to that. At that point in time, then we can provide that service because it becomes financially possible and is not an over-burden on our subscribers. During the negotiation process, that wasn't what InterMedia understood to be the express needs of the community.

When Vice-Mayor Hay asked if InterMedia was backing away from their firm commitment to put modems in the schools, Mr. Hunt said that he did not wish to detract from any commitments made in the past whatsoever.

Mayor Sitnick asked for a report from Ms. Meldrum in the near future on how the needs assessment study performed by the City compares to the survey that was done by InterMedia.

At the request of Councilman Cloninger, Mr. Brown said that he would be happy to furnish Council with the survey they had performed.

Ms. Cary Bows urged Council to proceed with adoption of these agreements.

Ms. Stephanie Brigman, resident of the Asheville area, hoped that Council would approve the agreements as they stand now.

Mr. Scott Barber, representative of the North Carolina Alliance for Democracy and representative of the Local Coalition for Campaign Finance Reform, West Asheville resident and owner of an independent video production business, lobbied for good, quality, well staffed, video production facilities at little or no cost to the citizens. He questioned how objective the survey was which was performed for InterMedia. He asked Council to establish a citizen task force that is representative of the community. He felt the charge of the task force should be to evaluate the current agreement, conduct a supplemental needs assessment to address the flaws in the previous study, conduct a thorough and open review of other recent franchises signed both by InterMedia and also by other cable companies, should explore options for mobilizing local financial and other resources that would support and ideally increase the City's bargaining -22-

leverage, should explore models for public access around the country, should examine options for the establishment of a representative community based organization to oversee these operations, examine issues related to the I-Net, and should be given at least six months to do this evaluation and come back and make a recommendation.

Ms. Nelda Holder, West Asheville resident, said that from her experience in running a public access station, you are not allowed to show obscenity, libelous material or commercial material.

Mr. Steve Curtis, representative of TCI Media Services, advised Council of some facts about the local origination channel program they running here in Asheville for a couple of the cable operators. He noted that the delay from the November time period to now has cost the City \$30,000 in additional franchise fees and if Council delays for another six months it will be up to \$100,000 in lost revenue. He said the City could use that revenue for I-net and toward getting the service to more schools. He urged Council to proceed with execution of the documents.

Mayor Sitnick said that while it's true the City is losing money, there was a transition in administration and Council did not feel confident to vote on this kind of complex issue until they were fully informed. Any kind of contract that spans a 17-year timeline deserves as much time to understand it as possible.

Mr. Joe Haight, General Manager of InterMedia Cable, said that "on the Internet access, if in fact we're going to be in the business, then the policy of this company is to provide a modem that would connect to the drop which is already covered in the franchise. We are already wiring the schools, the libraries, and all the other things with a cable outlet. As part of that cable outlet, if we provide Internet service, which puts me in directly competition with that man back there, and other providers of Internet access, then we will provide as a company policy a modem to the schools, and libraries which would allow them to have free access to the Internet. That is the policy of this company. I hope that clears the issue on the Internet access."

Upon inquiry of Vice-Mayor Hay on why they will not put that in the franchise agreement, Mr. Haight said that "because it's not a cable TV thing. It's an Internet access, it's a data thing, that is over and beyond this franchise. This franchise is for cable TV. If we're going to get into telecommunications, are we going to go back and re-do all this? What if I do phone service tomorrow? Am I going to be required also to provide phone service for all the City? Again, this is not a cable TV issue. If the company is going to be involved in data, in Internet access, then as a policy of this company we will provide a modem, which will all the schools access to the Internet. Again, I don't want to be redundant here, but does that explain it? Is there any question about it? It doesn't have anything to do with the I-Net - it has only to do with cable TV and what we would be providing over that single wire, that is already in the schools and the libraries and the fire stations and City Hall."

Mr. Haight said that "the second issue is overbuild of the annexed areas. There is approximately 10 miles of area that was annexed by the City over a long period of time. It didn't happen yesterday, it's over several years. It has to do with Marcus Cable on the east side, it has to do with Charter Cable on the west side. Again, approximately 10 miles of area that already was providing, or already had a cable TV provider when it

was annexed. This company, as well as the company prior to this, as well as the company prior to this, chose not to overbuild those existing cable companies. This franchise addresses that. This franchise says that I will provide service to all the citizens of Asheville, whether it be annexed or not. So, in the very near future, fact is had to already completed this I probably would have already had it done, we will be providing cable TV service to those annexed areas that we have previously not served. I hope that clarifies it. Again, there's approximately 10 miles of that."

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Mr. Haight then went on to note the awards they have received for customer service. He said that they do not owe the City, by law, anything, including delinquent fees. He noted InterMedia (in a year and a half) has invested more in this community than any other company he is aware of. They have over \$14 Million invested in this community in providing what their customers ask them for. They have made a concerted effort to settle the franchise fee issue and urged Council to proceed with adoption of the documents.

Councilman Cloninger moved to close the public hearing and continue Council's consideration of the three part package until their next worksession on March 3, 1998, at which time each Council member would have an opportunity to raise issues they feel need to be negotiated further with InterMedia or perhaps vote up or down on the agreement. This motion was seconded by Councilman Tomes.

When Councilwoman Field asked if the public hearing could be re-opened, City Attorney Oast said that it's not a public hearing City Council is required by law to have, so if what Council wants to do at their next meeting is take additional public comment, he felt Council was free to do that.

The motion made by Councilman Cloninger and seconded by Councilman Tomes carried unanimously.

Mayor Sitnick then closed the public hearing at 11:05 p.m.

V. UNFINISHED BUSINESS:

VI. OTHER BUSINESS:

A. APPROVAL OF THE MINUTES OF THE CITY COUNCIL RETREAT HELD ON FEBRUARY 6, 1998, THE FORMAL MEETING HELD ON FEBRUARY 10, 1998, AND THE WORKSESSION HELD ON FEBRUARY 17, 1998

Councilman Cloninger moved for the adoption of the minutes of the City Council retreat held on February 6, 1998, the formal meeting held on February 10, 1998, and the worksession held on February 17, 1998. This motion was seconded by Councilwoman Field and carried unanimously.

B. COLLECTIVE DIRECTIONAL SIGNS

Councilman Sellers read a letter from Mr. Chris Pelly, President of the Haw Creek Community Association, as follows: "At the entrance to Haw Creek at the intersection of Tunnel and New Haw Creek Roads is a sign listing six churches in the Haw Creek community. This sign, which sits on private property but is in a road right-of-way, is badly in need of painting and renovation. The Haw Creek Community Association (HCCA) has undertaken the task of repairing this sign. HCCA has solicited and received donations from most of the churches listed to help pay for these repairs. In the course of planning these repairs we've learned this sign no longer complies with the sign ordinance. It is the hope of th HCCA that City Council consider and support the enclosed request.

"Haw Creek Community Association respectfully requests City Council direct city Planning staff to draft an ordinance revision for their review addressing church signs in the right-of-way. Specifically, the provision

would allow larger church signs in right-of-ways when such signs contain more than one church listing or directional. We believe this type sign, rather than several individual signs, will be more attractive to our community." -24-

Councilwoman Field said that the issue of flag lots needs to be revisited by Council as well.

Councilman Tomes urged Council to be sensitive when dealing with individual kinds of personalities or congregations. He felt there did not need to be a hasty resolve stressing again that Council needs to be sensitive as it relates to the various faith community.

It was the consensus of City Council to put these items on the next worksession agenda for discussion when Planning staff is present.

C. LAWSUITS

The City was served with the following lawsuit on January 9, 1998: Helen Waneski v. City of Asheville - negligence concerning unpainted seven-inch high curb. This matter will be handled by an attorney outside of the City Attorney's Office and recommends that it be handled through Asheville Claims Corporation.

The City was served with the following lawsuit on January 9, 1998: Alma Jean Bowman v. City of Asheville - negligence arising from uncovered water meter box and broken curb. This matter will be handled by an attorney outside of the City Attorney's Office and recommends that it be handled through Asheville Claims Corporation.

VII. ADJOURNMENT:

Mayor Sitnick adjourned the meeting at 11:12 p.m.

CITY CLERK MAYOR
