

Tuesday - March 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**

Vice-Mayor Hay gave the invocation.

### **I. PROCLAMATIONS:**

#### **A. RECOGNITION OF EXCHANGE STUDENTS FROM ASHEVILLE HIGH SCHOOL'S SISTER SCHOOL IN KOFU-NISHI HIGH SCHOOL IN KOFU, JAPAN**

On behalf of the City of Asheville, Vice-Mayor Hay welcomed the exchange students from Asheville High School's sister school in Kofu-Nishi High School in Kofu, Japan, and presented each student with a proclamation welcoming them to Asheville.

#### **B. PROCLAMATION PROCLAIMING MARCH 24, 1998, AS "DIABETES ALERT DAY "**

Councilman Tomes read the proclamation proclaiming Tuesday, March 24, 1998, as "Diabetes Alert Day" in the City of Asheville and presented the proclamation to Mr. Clayton Harmon who briefed Council on some planned activities taking place during the day.

#### **C. PROCLAMATION PROCLAIMING APRIL 2, 1998, AS "CANCER FATIGUE AWARENESS DAY "**

Councilman Cobb read the proclamation proclaiming Thursday, April 2, 1998, as "Cancer Fatigue Awareness Day" in the City of Asheville and presented the proclamation to Ms. Dawn Neuhauser, President of the Carolina Blue Ridge Chapter of the Oncology Nursing Society and Ms. Pat Johnston who briefed Council on some planned activities taking place during the day.

#### **D. PROCLAMATION PROCLAIMING APRIL 6-12, 1998, AS "COMMUNITY DEVELOPMENT WEEK"**

Councilman Cloninger read the proclamation proclaiming the week of April 6-12, 1998, as "Community Development Week" in the City of Asheville and presented the proclamation to Mr. Marvin Vierra, Community Development Director, who briefed Council on some planned activities taking place during the week.

#### **E. PROCLAMATION PROCLAIMING SATURDAY, APRIL 11, 1998, AS "PARKINSON DISEASE AWARENESS DAY "**

Mayor Sitnick read the proclamation proclaiming Saturday, April 11, 1998, as "Parkinson Disease Awareness Day" in the City of Asheville and presented the proclamation to Ms. Jane -2-

Bingham, President of the Parkinson Support Group of Asheville, who briefed Council on some planned activities taking place during the day.

## **F. PROCLAMATION PROCLAIMING THE MONTH OF APRIL, 1998, AS "ALCOHOL AWARENESS MONTH"**

Councilman Sellers read the proclamation proclaiming the month of April, 1998, as "Alcohol Awareness Month" in the City of Asheville and presented the proclamation to Ms. Bonnie Rose, Executive Director of the Buncombe County Drug Commission, who briefed Council on some planned activities taking place during the month.

## **II. CONSENT:**

### **A. RESOLUTION NO. 98-30 - RESOLUTION RE-SCHEDULING CITY COUNCIL WORKSESSION ON APRIL 7, 1998, UNTIL APRIL 8, 1998**

Summary: The majority of City Council members will be out of town on Tuesday, April 7, 1998.

#### **RESOLUTION BOOK NO. 24 - PAGE 360**

### **B. RESOLUTION NO. 98-31 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO AN AGREEMENT WITH POTPOURRI GARDEN CLUB FOR A PILOT PROGRAM TO PLACE 70 HANGING BASKETS CONTAINING FLOWERS IN DOWNTOWN ASHEVILLE**

Summary: The Potpourri Garden Club desires to sponsor a pilot program to place 70 baskets containing flowers which will hang from street light poles in the Downtown District.

Last fall, representatives from the Potpourri Garden Club proposed to staff to sponsor a pilot program to place 'hanging' flower baskets on selected downtown streets. This program is modeled after a successful downtown flora beautification program in Roanoke, Virginia, which has maintained 331 baskets during the past decade.

The Streetscape Committee (Downtown Commission) has reviewed the proposal for both aesthetic consistency and location, and has approved this pilot program.

The Parks and Recreation Department proposes to maintain, water and fertilize the plants throughout the growing season. The Public Works Department agrees to construct brackets (using Streetscape funding of approximately \$2,500) and attach them to poles at agreed-upon locations.

An agreement has been drafted by staff and agreed to by the Potpourri Garden Club which clearly outlines each partner's responsibilities.

Additionally, the City only commits to a two-year pilot program for the purpose of gauging public sentiment and aesthetic appeal. Any program continuance or expansion will be contingent on private funding and public participation only as approved by City Council.

The Parks and Recreation and Public Works Departments are poised to participate in this pilot program with the Potpourri Garden Club and recommends that City Council authorize the City Manager, on behalf of the City of Asheville, to enter into an agreement with the Potpourri Garden Club for a 2-year pilot program for 70 hanging baskets in downtown Asheville. -3-

#### **RESOLUTION BOOK NO. 24 - PAGE 361**

### **C. RESOLUTION NO. 98-32 - RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE AN AGREEMENT WITH HAYNES ELECTRIC CONSTRUCTION COMPANY FOR THE INSTALLATION OF 42 DECORATIVE STREET LIGHTS AND FIXTURES IN BILTMORE VILLAGE**

Summary: The consideration of entering into a contract with Haynes Electric Construction Company to install 42 decorative street light poles and fixtures in the Biltmore Village Historic District of Asheville.

The Asheville City Council entered into an agreement with the Biltmore Village Historic Museum Commission, Inc., as representatives of the Biltmore Village property owners concerning the purchase and installation of decorative street lighting for 42 locations within the Biltmore Village Historic District.

The City of Asheville has received \$20,000 from the Biltmore Village Museum toward the purchase and installation of these decorative fixtures. The City's Traffic Engineering Division has budgeted an additional \$36,548 for this project.

The City, through the Engineering Department, solicited formal bids for the above stated project. This bid process engaged in February, 1998; whereas a total of 25 advertisement for bid letters and bid packages were sent out, including five to certified minority businesses registered with the City. Advertisement letters were also sent to the Association of General Contractors, F. W. Dodge and the Buncombe County Minority Affairs' office. We did not receive enough bids at our initial bid opening on February 4, 1998. The project was re-advertised and one bid proposal was received on March 2, 1998, none of which were from certified minority businesses.

The lowest, responsible bid that met the City's and Biltmore Village's requirements was from Haynes Electric Construction Company of Asheville, N.C., for a bid price of \$20,200.

Staff recommends that the City Manager be authorized to enter into a contract with Haynes Electric Construction Company for the bid price of \$20,200, for the project known as Installation of 42 Decorative Street Lights and fixtures in the Biltmore Village Area.

#### **RESOLUTION BOOK NO. 24 - PAGE 362**

#### **D. RESOLUTION NO. 98-33 - RESOLUTION AUTHORIZING THE CITY MANAGER TO APPLY FOR AND ENTER INTO AN AGREEMENT WITH THE COMMUNITY FOUNDATION OF WESTERN NORTH CAROLINA FOR A GRANT TO DEVELOP AND IMPLEMENT THE ENRICHMENT ACTIVITIES IN THE PARKS AND RECREATION SUMMER TEEN PROGRAM**

Summary: The consideration of the City applying for a \$2,000 grant through the Community Foundation of Western North Carolina for enrichment activities for the Summer Teen Program.

Funds are available through the Community Foundation of Western North Carolina in the Summertime Kids 1998 program to provide fun and safe summer activities for youth.

The Summer Teen Program is designed to provide recreation activities for teens ages 12-16 for eight weeks during the summer. The program is located at six locations throughout the -4-

City in community centers. The Teen Program will offer a wide variety of recreation activities and hands-on job training. Grant funds will be used to implement the enrichment activities. The amount of the grant request is \$2,000. The Parks and Recreation Department's match of \$27,000 will be in labor, administration, transportation, supplies, and training for the overall Summer Teen Program. The funds are budgeted in the Recreation Division.

The Parks and Recreation Department recommends the approval of the application for the grant funds through the Community Foundation of Western North Carolina through the Summertime Kids 1998 program.

#### **RESOLUTION BOOK NO. 24 - PAGE 363**

**E. RESOLUTION NO. 98-34 - RESOLUTION AWARDING CONSTRUCTION CONTRACTS TO COOPER CONSTRUCTION COMPANY, GENERAL CONTRACTOR, AND M.B. HAYNES ELECTRIC COMPANY, ELECTRICAL CONTRACTOR, FOR THE NEWFOUND MOUNTAIN RESERVOIR AND WATER SYSTEM IMPROVEMENTS PROJECT**

Summary: The consideration of a resolution awarding construction contracts to Cooper Construction Company, General Contractor, and M.B. Haynes Electric Company, Electrical Contractor, for the Newfound Mountain Reservoir and Water System Improvements project.

Sealed bids were received and opened on Thursday, March 5, 1998. for the Regional Water Authority's Newfound Mountain Reservoir and Water System Improvements Project. Four bids were received for the General Contract which includes the installation of approximately 20,000 linear feet of 12-inch waterline and the construction of a water booster pumping station. Cooper Construction Company submitted the low bid of \$ 825,831 for this contract. Three bids were received for the electrical component of the project, with M.B. Haynes Electric Company submitting the low bid of \$87,945.00. The engineer's estimates for these projects are \$1,190,000 and \$80,000 respectively. Sufficient funds exist in the budget for these construction contracts plus contingencies. Remaining funds are earmarked for the proposed construction of a 1 million gallon reservoir which is also part of this Master Plan Project. This project will improve water service to customers in the Leicester and West Buncombe areas. Construction on this project is scheduled to begin in late April, 1998 with 180 days allocated for construction. There is a liquidated damages clause in the contract of \$ 500.00 per day if the project is not completed on time. These bids were received in accordance with N. C. Gen. Stat. sec. 143-129 and in accordance with the City of Asheville's Minority Business Plan. All the bids that were received are listed below in order of bid amount:

**GENERAL CONTRACT**

**Engineer's Estimate: \$ 1,190,000**

**COMPANY BID**

Cooper Construction Company, Hendersonville, N.C. \$ 825,831

Buckeye Construction Company, Canton, N.C. \$ 922,424

Steppe Construction Company, Mill Spring, N.C. \$ 984,985

Hobson Construction Company, Arden, N.C. \$ 1,009,675

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**ELECTRICAL CONTRACT**

**Engineer's Estimate: \$ 80,000**

M.B. Haynes Electric Company, Asheville, N.C. \$ 87,945

Hayes & Lunsford Electric Company, Asheville, N.C. \$ 98,200

Brevard Electric Company, Brevard, N.C. \$ 99,600

The Regional Water Authority approved award of these contracts to Cooper Construction Company and M.B. Haynes Electric Company on March 17, 1998, and staff recommends City Council's concurrence with the Authority's action.

**RESOLUTION BOOK NO. 24 PAGE 364**

**F. RESOLUTION NO. 98-35 - RESOLUTION APPROVING THE REGIONAL WATER AUTHORITY'S RECOMMENDATION TO PURCHASE APPROXIMATELY TWO ACRES ON CANDLER KNOB ROAD FROM BUNCOMBE COUNTY FOR THE CONSTRUCTION OF A NEW FIVE MILLION GALLON WEST ASHEVILLE RESERVOIR**

Summary: Consideration of recommendation to purchase property from Buncombe County for the construction of a new 5 million gallon West Asheville Reservoir.

The Regional Water Authority and City Council have awarded a contract for the construction of a new 5 million gallon reservoir in West Asheville. The property on which the reservoir is proposed, approximately 2 acres on Candler Knob Road adjacent to an existing 3 million gallon reservoir, is owned by Buncombe County. The City of Asheville has had a license agreement with Buncombe County for the use of this property since the early 1980's. However, prior to the construction of the reservoir the land must be owned by the City of Asheville and the County has offered to sell it to the Authority, for the City, at its appraised value. The Authority had the property appraised at a value of \$21,000. The County Commissioners at their meeting on March 10, 1998, agreed to sell the property to the City at this price.

The Regional Water Authority approved the purchase of this property for the City of Asheville at its February 1998 meeting and staff recommends City Council's concurrence with the Authority's action to purchase said property from the County in the amount of \$ 21,000.

**RESOLUTION BOOK NO. 24 - PAGE 365**

**G. RESOLUTION NO. 98-36 - RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE FINAL DOCUMENTS TO EXCHANGE PROPERTY BETWEEN THE CITY OF ASHEVILLE AND THE OPPORTUNITY CORPORATION OF MADISON-BUNCOMBE COUNTIES**

Summary: The consideration of a resolution authorizing the Mayor to execute final documents to exchange property located behind the W.C. Reid Community Center Annex Building with the Opportunity Corporation of Buncombe-Madison County.

The Parks and Recreation Department and the Advisory Board have worked with the Opportunity Corporation of Buncombe and Madison County concerning a piece of property located behind Reid Center which would serve as administrative offices for their operations. The approximate size of this purchase would be approximately 1.3 acres. The survey shows the exact location for this purchase. The Opportunity Corporation of Buncombe and Madison County -6-

would be making a financial contribution of \$20,000 to the Parks and Recreation Department to fund a mini park in the West End section of Asheville. In addition, the Opportunity Corporation would be donating materials and administrative costs up to \$16,000 to construct a bridge across the creek at the base of the property as well as providing an easement across their property for greenway development.

The Parks and Recreation Department recommends adoption of the resolution authorizing the Mayor to execute final documents to exchange property located behind the W.C. Reid Community Center Annex Building with the Opportunity Corporation of Buncombe-Madison County.

**RESOLUTION BOOK NO. 24 - PAGE 366**

**H. ORDINANCE NO. 2457 - BUDGET AMENDMENT TO APPROPRIATE FUNDS FOR THE 1998 BELECHERE PROJECT**

Summary: The consideration of a budget amendment, in the amount of \$506,000 for the 1998 Bele Chere Festival.

Over the past several months, various committees of the Bele Chere Board and staff liaisons have been working to complete a balanced budget for the 1998 Bele Chere Festival. The budget ordinance establishes this budget for anticipated expenditures and revenues for the upcoming festival.

The Parks and Recreation Advisory Board, the Bele Chere Board, and the Parks and Recreation staff request approval by City Council of the budget ordinance for the 1998 Bele Chere budget.

**ORDINANCE BOOK NO. 16 - PAGE 423**

**I. ORDINANCE NO. 2458 - BUDGET AMENDMENT TO HELP SUPPORT THE MOUNTAIN AREA ECOTOURISM SUMMIT**

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**Summary: The consideration of a budget amendment, in the amount of \$2,500, to supplement support for a two-day regional Ecotourism Summit on July 24 and 25 at the North Carolina Arboretum.**

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**ORDINANCE BOOK NO. 16 - PAGE 428**

**J. MOTION SETTING A PUBLIC HEARING ON APRIL 14, 1998, TO CONSIDER AN AMENDMENT TO THE UNIFIED DEVELOPMENT ORDINANCE TO CHANGE ADULT ESTABLISHMENTS FROM USES BY RIGHT SUBJECT TO SPECIAL REQUIREMENTS TO CONDITIONAL USES**

**K. MOTION SETTING A PUBLIC HEARING ON APRIL 14, 1998, TO REZONE TWO LOTS ON 16 BEAR CREEK DRIVE FROM RM-8 RESIDENTIAL MULTI-FAMILY MEDIUM DENSITY TO HB HIGHWAY BUSINESS**

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.

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

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**III. PUBLIC HEARINGS:**

**A. PUBLIC HEARING RELATIVE TO CONSIDERING THE REZONING OF PROPERTY ON OLD HAYWOOD ROAD FROM RS-4 RESIDENTIAL SINGLE FAMILY MEDIUM DENSITY TO RM-8 RESIDENTIAL MULTI-FAMILY MEDIUM DENSITY**

Mayor Sitnick opened the public hearing at 5:37 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 David and Connie Evans and Max and Flora Wilson are the owners of 3 lots (PIN Nos. 9628.13-12-1961, 9628.17-02-6431, and 9618.16-93-6038), containing approximately 42 acres, located on Old Haywood Road near its intersection with Patton Avenue. The property is wooded with two homes located on it. The area adjacent to Lakeside Drive is wet and marshy. The property is served by a 6-inch water line and an 8-inch sewer line. There is adequate capacity in the 6-inch water line and the 8-inch sewer line for additional development. One of the sewer lines that has been serving this property has been recently rehabilitated. The property which is requested to be rezoned was R-3 under the old zoning ordinance but with the adoption of the Unified Development Ordinance, the property was designated RS-4. The R-3 designation of the property under the previous zoning ordinance permitted a development density of 16 units per acre, both single family and multi-family development. The owners of this property have petitioned for its rezoning from its current single family designation to a multi-family designation. The original rezoning request, submitted in October, 1997, was for 13 lots, comprising approximately 68 acres, to be rezoned from RS-4 to RM-16. Owners of 10 of the 13 lots subsequently withdrew their property from the rezoning request. Due to the withdrawal of most of the petitioners, this request was tabled by the Planning and Zoning Commission at their October meeting. Prior to the review of this request by the Planning and Zoning Commission, it was received by the City's Technical Review Committee ("TRC"). The initial review was for the original rezoning request of 13 lots to be rezoned from RS-4 to RM-16. At that time, the TRC agreed by consensus that infrastructure was not available in this area to serve 16 units per acre development on approximately 60 acres. They did recognize that density of approximately 8 units per acre could be served by the existing infrastructure. A revised rezoning petition, requesting the rezoning of the 3 lots owned by the Wilsons and Evanses from RS-4 to RM-8, was submitted in December, 1998, and reviewed by the Planning and Zoning Commission at their January 7, 1998, meeting. The Planning staff reviewed the 2010 Plan to determine if this rezoning would be in compliance with the recommendations of that Plan. It appears in looking at the land use maps in the 2010 Plan that most of the property is recommended for low density residential development and a small portion of the property appears to be recommended for medium density residential development. The staff of the Planning and Development Department did recommend approval of the rezoning request. Their basis for recommending approval was that infrastructure is available to serve a density of 8 units per acre, the property is served by a road capable of accommodating additional traffic, the property is less than one mile from a controlled intersection with a major highway, the property is close to retail service and employment centers, clustering of buildings in a multi-family development on the property could protect environmentally sensitive areas and there is a need for appropriately located service to areas for multi-family development within the City in this jurisdiction. A number of residents of the surrounding area attended the Planning and Zoning Commission meeting to voice their opposition to the rezoning request. Following their review of the request and consideration of the public comments, the Planning and Zoning Commission voted 4 - 3 to recommend denial of the rezoning request. Reasons for the denial by the Commission are that the 2010 Plan appears to call for low density residential in that area, the existing neighborhoods are single-family in character, and the adverse impact on the street system in the area. -8-

The petitioners appealed the Planning & Zoning Commission to the City Council.

On March 5, 1998, a valid protest petition was filed so as to invoke the 3/4's affirmative vote requirement.

Mr. Green then responded to various questions from Council concerning the properties, the 2010 Plan and the protest petition.

Mr. William F. Slawter, attorney representing Hazel Evans, her son David and his wife Connie, and also Max and Flora Wilson, petitioners, said that this rezoning request petition is not intended to be for any kind of

housing project. Mrs. Hazel Evans initiated this request, through her son, simply to try to get back to the position she was in before the UDO was adopted. Prior to the UDO, this property was zoned R-3 which would allow 16 units per acre if it were developed. The rezoning of the property to RS-4 reduces that to 4 units per acre and the requested rezoning to RM-8 would get it back half way to where it was before the UDO. This property was listed for sale before the UDO was adopted and remains listed for sale. Even though Mrs. Hazel Evans is in a nursing home in Greensboro, she did live on the property for in excess of 20 years and the property has been in her family since 1947. Mr. David Evans also lives in Greensboro now but had lived on the property for several years. The Evans' do have an attachment and fondness to the neighborhood and it is not their intent or purpose to try to impose anything that would not be best for the neighborhood. However, they do request this rezoning to try to develop the property in accordance with, what would appear to them, to be compatible with the best use of the property. The property to the north and east is RM-8 and RS-4 is to the south and west, which leaves the question of, where is the cut-off line in the 2010 Plan? The access to the property goes onto Old Haywood Road which is at the portion of property that is already zoned RM-8. Traffic Engineer has already determined that there would be no significant traffic impact from development of the site. Regarding preservation of the environment, eventually this property will be developed in some fashion but buffering and other requirements of the UDO will ensure that the neighbors are adequately protected.

Mr. Slawter understood that City Council cannot consider specific uses for the site in that they must base their decision on whether to rezone or not based on all uses available in that district, however, one use that has been given consideration that is not appropriate and not legal with the RS-4 is a bed and breakfast. The Wilsons (who live in the Oakley area) have no immediate plans to sell or develop their property.

Upon inquiry of Councilman Cobb, Mr. Green said that a good portion of the property currently zoned RM-8 is already developed with residential single-family units.

The following persons spoke in opposition to the rezoning request for several reason, some being, but are not limited to: present road congestion; Sand Hill Venable School is currently at its maximum; every home on the west side is a single family unit; increased density would substantially increase traffic on already congested streets with no sidewalks; there will be an increase of noise from the traffic; preservation of the natural environment could not be maintained; the petitioners do not live in the neighborhood and would not be affected by any adverse results of the rezoning; the rezoning would make available other land uses that would not be compatible with higher and better land uses outlined in the current RS-4 district; property values would be adversely affected; petitioners have not demonstrated that the rezoning would promote health, safety or general welfare of the community; the rezoning would only serve the interest of the two petitioners versus overwhelming opposition by the surrounding neighborhood; the 2010 Plan shows the area to be low in density; sewer system needs to be upgraded; increased density in the area will require increased infrastructure costs; the property is posted as commercial; and there are enough multi-family units in their area:

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Mr. David J. Woody, adjoining property owner

Mr. David Livingston, 9 Starnes Cove Place

Mr. Jim Fagan, area property owner

Mr. Herman Hipps, 9 Starnes Cove Drive

Mr. David Peifer, resident on east Starnes Cove Road

Mr. Joseph Kane, 1777 Old Haywood Road

Mr. Jerry Anderson, 9 Homeway Road

Ms. Betty Fagan, area property owner

Ms. Carol Anne Kane, 1777 Old Haywood Road

Mr. Mike Blankenship

Ms. Laurel Eide

Mr. Tim Warren

Mr. Max Wilson, petitioner, spoke in support of rezoning the property, He said that his property is exactly the same as the other two properties which currently adjoin his and they are zoned RM-8. He reiterated that if anything is built on the property, the City will have final authority to review it.

Upon inquiry of Councilwoman Field, some property owners felt that they were misled into signing the original rezoning petition in that they were told if they did not sign the petition, it would bring the value of their property down.

Mr. David Evans, petitioner, spoke in support of the rezoning asking that it be brought back to the use which was available prior to adoption of the UDO. He noted that no one has approached them about building a housing project on the property.

Mr. Russell Wood, employee of Beverly-Hanks & Associates, presented City Council with a copy of a letter sent to the ten property owners (8 of which withdrew their names) which included the zoning change petition request form, the pre-UDO R-3 classification, the R-S-4 classification, and the RM-16 classification. He currently has the Evans' property listed. He stated that he told the property owners that their property had been adversely affected. He said that the Evans and the Wilsons have already made concessions in that their original petition was for RM-16 and now their request is RM-8. Staff hosted a neighborhood meeting in October. He felt that the UDO is a very comprehensive document that provides for buffering and landscaping and it will preserve and protect the integrity of the neighborhood.

There was discussion about the property being posted as commercial. Councilwoman Field noted that the ad in September is under "Lots and Acreage" and it doesn't say anything about commercial, it just says multi-family site. The other ad says land development under "Commercial and Investments" and it says clearly "rezoning petition in process." Mr. Wood noted that the property was posted in error in October. City Council noted that even though there is a commercial sign on the property, the property cannot be used for commercial development, only what is allowed in the actual zoning designation.

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

Councilman Tomes felt that the neighborhood was asking for a collaborative partnership effort to make their neighborhood a very viable one.

Councilwoman Field felt that there has not been a lot of communication between the neighborhood and the petitioners and there has been a lot of misinformation on both sides. She felt that the City does need affordable housing in our community and the neighborhood does look like a single family neighborhood. She sees this as a single family neighborhood but certainly at -10-

a higher density. She also agrees with Councilman Tomes in that the neighborhood should meet with the

petitioners and come back to City Council with something that everyone can agreed on.

When Councilman Sellers asked if the community would be willing to meet with the petitioners and Realtor, Ms. Fagan said that the community has already tried.

Mayor Sitnick said that the 2010 Plan does give guidance and she holds it in high regard because it was created through the work of a major community-wide collaborative effort. The current zoning designations and the 2010 Plan recommend low density and/or medium density - low density is actually RS-2 and medium density is RS-4. So if the 2010 Plan recommends medium density, then RS-4 complies with the 2010 Plan. She felt that the development of that property can have beneficial effects on the neighborhood and she hasn't heard that anyone was opposed to development of that property. But, when 8 of 10 people withdraw their names from a petition, there was something that made them uncomfortable enough to withdraw their names.

Mr. Green explained that there are two directions Council can proceed. One is a zoning route, which would increase the density immediately and a planned unit development route which allows for input and review of the development plan by the neighboring property owners and provides some density bonuses for the property owner.

Upon inquiry of Councilwoman Field if the rezoning petition was denied, City Attorney Oast said that could not come back for one year on their rezoning application, however, Council has the authority, by a 3/4's vote if conditions have changed, to allow them to come back at anytime. To the extent that a planned unit development would involve an overlay zone, he felt it would probably be a rezoning which means they would have to wait a year. However, he said he would be happy to investigate that and report back to Planning staff.

City Attorney Slawter said that the petitioners would be happy to cooperate in anyway that might work toward a total resolution of this with the neighborhood. He did not that they first asked for RM-16 and they reduced it voluntarily to RM-8 for the purpose of making Planning staff and hopefully the neighborhood feel better about the request they were making. If agreeable and permittable, the petitioners would like to modify their request for an RM-6 designation which would allow a bed and breakfast. If that is not in the purview of what Council might do, the other alternatives would be to either remand the matter back to the Planning & Zoning Commission for further consideration of some other alternative zoning in between the RM-8 and RS-4 or if the petitioner were withdrawn, they could come back and file a new petition for RM-6 or other zoning in the middle.

Councilman Sellers moved to continue consideration of this matter until April 28, 1998 and directed the City Clerk to re-advertise. This motion was seconded by Councilman Cloninger and carried on a 5-2 vote, with Mayor Sitnick and Councilman Cobb voting "no".

**B. PUBLIC HEARING RELATIVE TO REZONING A PORTION OF A LOT LOCATED ON 488 HENDERSONVILLE ROAD FROM RS-8 RESIDENTIAL SINGLE FAMILY HIGH DENSITY TO HB HIGHWAY BUSINESS**

**ORDINANCE NO. 2459 - AN ORDINANCE TO REZONE A PORTION OF A LOT LOCATED ON 488 HENDERSONVILLE ROAD FROM RS-8 RESIDENTIAL SINGLE FAMILY HIGH DENSITY TO HB HIGHWAY BUSINESS**

Mayor Sitnick opened the public hearing at 7:53 p.m.

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

Mr. Bruce Black, Urban Planner, said that this is the consideration of an ordinance to rezone a portion of a lot located on 488 Hendersonville Road from RS-8 Residential Single Family High Density to HB Highway Business and an amendment to the Comprehensive Plan to reflect this rezoning.

If rezoned to HB, the current use would be a conforming use under the category of Repair and Service Business. The latter is subject to special requirements, which are met by the current use.

The property backs on Reed Street, and is located directly behind several properties fronting on Hendersonville Road. The property is accessed from Hendersonville Road. It would not be accessible from Reed Street. The proposed zoning involves about one half the lot, (approximately ½ acre would be rezoned). The area involved is on the same level as is the property in the immediate vicinity fronting on Hendersonville. The back half of the property, not proposed to be rezoned, is well treed, and is of steep slope down to Reed Street. Any future modification of the land would require additional buffer between the neighboring residential and the proposed use. The proposed rezoning does not conform to the Comprehensive Plan.

The City Planning and Development staff recommends approval of the rezoning request to rezone a portion of PIN No. 9647-12-75-9049 from RS-8 to HB.

At their meeting of March 4, 1998, the Planning and Zoning Commission recommended 4-2 to approve the proposed rezoning. They also voted 5-1 to amend the Comprehensive Plan to reflect this rezoning.

Mr. William F. Slawter, attorney for the petitioner, passed out photographs of the property and spoke in support of the rezoning.

Mr. Loyd Kirk, area property owner, spoke in support of the rezoning request.

Mayor Sitnick closed the public hearing at 8:12 p.m.

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

Councilman Cloninger moved for the adoption of Ordinance No. 2459 and to amend the Comprehensive Plan to reflect this rezoning change. This motion was seconded by Councilman Sellers and carried unanimously.

#### **ORDINANCE BOOK NO. 16 - PAGE 430**

#### **C. PUBLIC HEARING RELATIVE TO AMENDING THE UNIFIED DEVELOPMENT ORDINANCE AS IT RELATES TO THE DEFINITION OF ANTENNAS AND TELECOMMUNICATION TOWERS**

At the request of City staff, Councilwoman Field moved to continue this public hearing, without further advertisement, until May 26, 1998. This motion was seconded by Councilman Sellers and carried unanimously.

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#### **IV. UNFINISHED BUSINESS:**

#### **V. NEW BUSINESS:**

#### **VI. OTHER BUSINESS:**

#### **A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON MARCH 10, 1998, AND THE**

## **WORKSESSION HELD ON MARCH 17, 1998**

Councilman Cloninger moved for the adoption of the minutes of the regular meeting held on March 10, 1998, and the worksession held on March 17, 1998. This motion was seconded by Councilman Sellers and carried unanimously.

### **B. RESPORT ON USE OF NORTH FORK FACILITY BY ROD AND GUN CLUB**

City Attorney Oast said that in August the issue of the North Fork Facility by the Rod and Gun Club ("Club") was raised and he was asked to look into it. There were many records, most of which were not well organized and scattered at different places in the City and at the Buncombe County Courthouse, which go back over 100 years. He noted his report will cover the history of the North Fork property, a history of the Club, a description of the relationship of the Club and the City, and a description of the property. He also touched on the legal conclusions based on these issues. The report is not is a commentary judgment on the propriety of membership in the Club or a recommendation as to a City policy regarding membership in any particular club or organization.

The Club has existed formally since 1894, meeting at North Fork regularly since that time and it was incorporated in 1907. The purposes, paraphrasing from its Charter, is promote hunting, fishing and other outdoor sports that were popular at the time. It also specifies in their Charter that they may take no action contrary to North Carolina and United States law. The Charter was suspended in about 1930. As of 1907, there was a lease with the owners of the property and then there was another lease in 1921. In 1925 the City began the process of acquiring the North Fork property and in 1927 the City finally did acquire the property by condemnation. The resolution of condemnation notes that the Club was losing the property at the time and he didn't find anything that indicating that the Club received any kind of consideration for their lease hold interest. In 1928, the Club appeared before the Asheville City Council and sought permission from the Council to continue using the property. Then in 1934, the City Council again, upon request of the Club, approved a lease for a period of six months. After that, there was a long gap in the records and then in 1951 the City began the construction of the Burnette Dam. Filling in of the reservoir involved the relocation of several structures and the Club actually had the use of two cottages in that area. One of the buildings that was moved was the old Club meeting cottage. In 1952, there was a letter from then City Manager Weldon Weir to then President of the Club Holmes Brison indicated that the Club would be allowed to continue using the shed at the North Fork facility and indicated that a lease would be prepared and sent to him. We never found a lease, however, that doesn't mean that one didn't exist. Nevertheless, even though no lease was found, the use of the North Fork facility by the Club continued regularly with the City's knowledge and with the City's apparent acquiesce. Historically, the Water Resources Director and the City Manager have been members of the Club in a more or less ex official capacity. Despite reports to the contrary, the Club has had female members, beginning with the first lease in 1907. The owners of the property were women (they were one of the lessors) and one of the terms of the lease was that they secured themselves two full memberships to the Club and that conditioned until the next lessor in 1921. The Club does not have any current female members, but that has not always been the case. This chronological set of facts gives rise to several legal assumptions. The bottom line is, based -13-

on incomplete information, that the use of the North Fork facility by the Club has been permissive, in that it has occurred with the City's knowledge and with the City's acquiesce. Legally, they have a tenancy at-will. The use of the property by the Club for their meetings is not illegal or trespassary, however, it may be irregular in that it does not appear to follow any procedures that City Council would ordinarily follow to lease property.

City Attorney Oast said that one of the other issues Council asked him to look into was the consumption of alcoholic beverages on the property. As far as he knows, they are talking about personal consumption and not about all night drunks or binges. Many of the members, he's told, that go there don't consume any

alcohol and some don't drink even when they're not there. As far as whether that's illegal or improper, you have to mesh City ordinances and the ABC laws. The ABC laws provide that no permit is required for personal consumption provided that the owner of the premises said that it's okay and provided the consumption is otherwise legal, like no moonshine and you are 21 years or older. In order to consume alcoholic beverages on City property, the City ordinance provides that you have to have the City's permission, and that permission comes from the City Manager, the Civic Center Director or the Parks and Recreation Director. Since City officials have been members, he felt it was reasonable to infer that that permission existed, and in fact it may have been an understood term of whatever lease followed the 1952 letter. He was not prepared to say, at this time, that consumption of alcoholic beverages at the North Fork facility was a violation of any City ordinance or state law. The bottom line is that the activity the Rod and Gun Club engages at the North Fork facility is not illegal and they don't illegally discriminate against members. Again, those activities are irregular in that to the extent they were approved, they were approved a long time ago and the processes then may be different that those now. He did note that the Club is no longer meeting there and has not met there since September of 1997.

Upon inquiry of Councilman Tomes, City Attorney Oast said that City Council has used the facility for their mid-year retreat and he assumed the Regional Water Authority has used it for the same kind of function. He said that it has been occasionally used as a gathering place for departing department heads.

City Attorney Oast said the City Council needs to consider whether the City wants to allow continued use of the North Fork property by the Club or by anyone else. If not, Council should, at some point in time, vote to terminate the current tenancy at-will. If the Club wanted to petition to use the property they would need to go through normal channels to do it. If Council does discontinue the use, then Council needs to decide what level of use is appropriate, how that use is determined, how it is regulated and what, if anything, to charge, if Council wants to do that. These things might require input from other departments from the City like the Water Resources Department and possibly the Planning & Development Department. Due to the transition in the Water Resources directorship, it may be appropriate to suspend whatever activity is occurring there to allow the new Director to be briefed on the matter and bring his report back to Council.

Mr. Keith Thompson encouraged City Council to do the right thing and make a stand for putting everyone on a more equal footing on civic affairs in Asheville and putting them on a more normal basis. He felt there was legitimate reasons to restrict access to the watershed.

Mr. Monroe Gilmour, Coordinator of Western North Carolina Citizens for an End to Institutional Bigotry, and he has a great renewed admiration for City Council carrying out the process of democracy. "We didn't drum up people to come tonight because we really do feel you will do the right thing. I didn't quite hear what you were saying, Mr. Oast, but I do think that probably giving the Water Resources person an opportunity to come up with some comprehensive policies and rules for more than just this Rod and Gun Club, but for access to the watershed. Certainly one thing that we would like to see is that there be a public log of who goes -14-

in and out of there. We hear stories, even since all of this broke, of a club member driving right through, not stopping even at the thing, driving up with a friend, up behind the lake, to show them around. I'd like to do that too. So, I think if we had policies and we had a public log, and I would volunteer to be on a committee, if you have a citizens committee, with the Water Resources person, to work on those policies. I know that many of you did not even know this club existed and in some respects if it kept going for another 50 years, probably nobody would notice either. In another respect, I think what you decide to do is very important because I think it tells what we are and who we are and what kind of City we want to have. It's important to the citizens of this community. I have worked on a lot of issues, frankly a lot more important than this issue, but I have never ever gotten as many calls from people that didn't know me from Adam to say how disgusted they were and to thank our organization for bringing it to the public notice. And so it is important to the citizens what you do tonight and in the future on this issue. It's important, I think to the employees. I don't

mean to focus on you, Mr. Westbrook, but I think that the memo that you sent out on what City employee ethics should be is a very good one. And, I think that something needs to be done to show that what happened out there was a real sort of unconscious lapse of judgment. I know that when you come into a new situation and something has been going on for a hundred years, it's hard to question. But, I went to management graduate school just like you did, and I really do feel that a professional manager should see that such activities are inappropriate, certainly in the modern day. And I also think you need to take into account the fact that despite the legal things that you said in the tenancy at-will and all of that, it was the people in power making the rules to suit themselves. From the beginning, it was Asheville power brokers that were out there. And these people didn't even own the land that was taken. That house that was used is to build the other one, that wasn't even their house. They were leasing it. We have people that I could have brought tonight who had a rooming house out there and they feel really upset that they were never asked to continue some form of usage of the watershed. There are a lot of people in North Fork who were run out of there and to see this being done, it really sends a very bad message to the people. We, since last August, we have sent several letters as we learned more information with additional questions and to some degree you've answered them, but to some degree I think they've been glossed over a little bit. And nothing was said about the fact that if they do have this lease at will, how much was the lease for. If we take the 1934 rates of \$60 for six months, maybe \$120 a year, let's ask them for 50 times \$120 for a year. That would be a pretty good rate given that was 1934 dollars. I'm not really asking them to do that, but I think that if we're going to look and deal with it legally, then we ought to be firm about that and they should pay retroactively because you can also claim, and I'm not a lawyer, but I think you could also point that it was a conspiracy of public officials to misuse public policy. And I think you could make a good case for that. I'm not saying that we want to go that route - I think we want to look to the future on it. But, I do think that if we don't look at this thoroughly, looking at the connections - nothing was in the report about who were the members and whether they did any business with the City of Asheville - that was another question that we asked in our letters. To gloss over it and not address it leaves the question, well, you know if an employee does something, we're going to rake him over the coals. But if the upper reaches of management do something, let's just forget it and move on. That is not a message that any of you-all want to send. So I hope you will take what I've said into consideration when you decide what to do and that the investigation and that the communication with the workers - you know I've worked with the public workers here and I think that we really owe the public workers in Asheville a great deal of appreciation for the many times that they have at times risked something by bringing something to people's attention or as they did in the Water Department several years ago that resulted in a much better Water Department. And yet, when they see this happen, this is the kind of thing that was pervasive back then and it lowers morale and it says there's different rules for me and there's different rules for the different people at the top. I think we need to find a way to send that message that the people at the top really are going to be examples of how we want the City run, just as that memo said. Where it said it depends, however, on us understanding and respecting each other so that we can set an example for others to follow. And I think that is all that we are really asking tonight." -15-

Ms. Sylvia Montgomery echoed Mr. Gilmour's thoughts. She said that based on this issue, she knew of one person, and wondered how many others, who changed their vote in the election after finding out that Charles Worley was a member in the Rod and Gun Club.

Mr. Gilmour said that "a lot of people had said that this was just a political thing. I just want to make it clear for the public that when we filed that complaint on August 21, we did not know that Charles Worley was a member of the Rod and Gun Club. But I think that you should know that on that same day, the Director of the Water Department at that time, and it makes me really upset to have to say this, but gave some friendly advice to a worker to keep his distance from me. And that really hurts. And that's not right of free association and that worker's right of free association. And he also said that there were powerful political people involved in this and there would be political repercussions when this was over. Well I have gotten assurances from Club members that they're not going to do anything and I take confidence from the City that they're not going to do anything - so I hope we don't have to worry about that. But the other thing was that this was a smear

campaign. The other thing that the Director said, Mike Holcombe said, was that this was probably a smear campaign to hurt Charles Worley's candidacy. Well, that worker called me and recounted this and I have a sworn affidavit about this conversation. And he said I have another name of a Club member. We didn't know until that threat that Charles Worley was a member. So, this was not politically motivated. It was motivated - well, you're smirking Barbara. Do you think that, are you saying that I'm not saying the truth that we knew before we did it? Is that what that meant? I wasn't going to even bring that up, but since that was pointed out, I think you-all need to know that."

Vice-Mayor Hay felt it was time to terminate the tenancy at-will of the Club at the North Fork Facility and also direct staff to report back on possible uses by the public of the facilities out there. He said it is a really nice place and if there is some way to share that with the citizens of Asheville, he felt we should be doing that.

City Attorney Oast said that in a memorandum dated January 30, 1998, Mr. Doug Spell, the Assistant City Manager, recommended to Mr. Westbrook that any access to the watershed property be strictly controlled.

Mayor Sitnick felt it should not be used for anything by anyone from this point forward. It is a pristine watershed and it's very fragile and delicate environmentally. If we set a precedent and start a process that allows even limited use she felt it will send a wrong message that it is for some and not all. She didn't even think City Council should hold their retreats there. She also felt that the comment made by Mr. Gilmour is a very serious one. If there was a threat made, she asked that it be investigated and a report be prepared for City Council.

Councilwoman Field agreed that the Club's tenancy at-will should be terminated. She felt that Council should form a committee of the appropriate people to take a look at the uses. It would be a real shame to not take advantage of that for whatever is appropriate and for whatever the community feels is appropriate. It has been used for the last 50 years and it has not damaged the watershed, for the limited use it has been used for. She told Mr. Gilmour what she was smiling about was that she knows that he has been working on this project for a very long time - back when Doug Bean was City Manager, and he raised it with him. She finds it interesting that this Council, which is basically a new Council, is getting blamed for and charged with things that happened 100 years ago.

Councilman Cloninger shared the Mayor's desire to keep the watershed protected and as pristine as possible, noting that he co-wrote the conservation easement that will protect that watershed in perpetuity and that was unanimously passed by the former City Council. Having said that, he would like to see Council appoint a committee that would explore the possibility of whether the North Fork facility could be used in some fashion without hurting the water quality, -16-

etc. He also felt that if it is opened up for use, it needs to be pretty much an all or nothing proposition in the sense of either opened to everyone or no one.

Mayor Sitnick questioned the condition of the flush toilet at the North Fork facility. She also felt that the question brought up about Mr. Westbrook needs to be addressed. Mr. Westbrook came to Asheville and was asked to join the Club because all City Manager's joined it and I think it was one of those things when you're new in town, "you want to play with all the kids on the block" and that's why he joined it. He attended it one or two evenings up there and that was the beginning and end of it. She doesn't read anything else into Jim Westbrook's membership in that Club. She did feel that there is a question about the whole issue that the City Attorney brought up about alcoholic beverages on City property. Again, whatever the truth is, we may never know, but the fact is that perception is reality in politics and when you are a political, elected official, when you are a high appointed official in a city government, you should not be doing things that even smack of impropriety. If there was alcoholic consumption up there on public property, knowing what other groups go through to get permits to do the same, it's more than bothersome that that activity was going on. She didn't know whether Council needed to conduct deep, intensive investigations but she did feel we needed to close

the door on this issue. She felt Council should terminate the tenancy at-will for the Club to use the North Fork Facility and that that the property should not be used by anyone for any reason. If there is a need by this Council to discuss this further with committees, then that is the majority of the Council's right.

Councilman Cobb agreed that this issue should be closed. He felt the Council should terminate the tenancy at-will for the Club to use the facility. He would also like to see the new Water Resources Director come back to Council with a report on what options are available to use the property and then Council can decide how to proceed.

Councilman Tomes agreed that this issue should be closed.

Vice-Mayor moved to terminate the tenancy at-will for the Rod and Gun Club at the North Fork facility. This motion was seconded by Councilwoman Field and carried unanimously.

Vice-Mayor Hay moved to ask staff to investigate the possibility of use by the public of the facility and report back to Council with the current policy of not allowing public use remaining in effect. This motion was seconded by Councilman Sellers, and carried on a 6-1 vote, with Mayor Sitnick voting "no".

Upon inquiry of City Manager Westbrook, it was the consensus of Council that no time limit be set for the report back to Council.

Mayor Sitnick said that the threat made, as Mr. Gilmour stated, should be investigated. Councilwoman Field said that since Mr. Holcombe is no longer the Water Resources Director, perhaps Mr. Gilmour could give the information to the new Water Resources Director for him to investigate. Mr. Gilmour said that he would ask the employee if it would be okay for him to give his name to the City Manager.

### **C. BOARD OF ADJUSTMENT**

Mr. Keith Thompson brought to Council's attention what he felt was a very inappropriate granting of a variance by the Board of Adjustment at the corner of Merrimon Avenue and Edgewood Road.

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### **VII. ADJOURNMENT:**

Mayor Sitnick adjourned the meeting at 9:08 p.m.

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CITY CLERK MAYOR

Tuesday - March 24, 1998 - 9:30 .m.

Public Works Facility

Worksession

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

Because the 5:00 p.m. City Council meeting ran late, City Council arrived at the scheduled 7:00 p.m. education worksession on annexation at 9:30 p.m.

It was agreeable to the City Council and the audience members (approximately 15) to reschedule the worksession.

Councilwoman Field moved to continue the education worksession on annexation until Tuesday, March 31, 1998, at 2:00 p.m. in the William F. Wolcott Jr. Building at 161 South Charlotte Street, and to schedule the tour of the urban areas on May 12, 1998, at 1:30 p.m. This motion was seconded by Councilman Sellers and carried unanimously.

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CITY CLERK MAYOR

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