

Tuesday - June 2, 1998- 3:00 p.m.

Worksession

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

Absent: None

CONSENT:

Approval of a Permanent Maintenance Agreement with Commonwealth Dreamland Partners for Stream Location on the Lowe's Site

Summary: The consideration of adoption of a resolution to allow the City Manager to enter into a permanent maintenance agreement, as required by the Board of Adjustment, for the relocation of a portion of Haw Creek.

On May 19, 1997 the Board of Adjustment approved a No-Rise Certification in order to allow the Developer, Commonwealth Dreamland L.L.C., to relocate a portion of Haw Creek in order to build a new Lowe's building. A contingency of the Board of Adjustment's approval was that the City of Asheville enter into a permanent maintenance agreement to assure that the relocated watercourse is maintained in accordance with the Floodplain Ordinance regulations. This agreement stipulates that the Developer shall be solely and exclusively responsible for all maintenance and upkeep relating to the relocation of Haw Creek and all appurtenances relating thereto for the duration of the Ground Lease Agreement and any extensions to the Lease. It further provides that should it become necessary for the City to provide maintenance to this portion of Haw Creek the Developer shall reimburse the City within sixty (60) days after submittal by the City of an invoice outlining the cost involved. Additionally, the maintenance agreement states that the Developer shall cause a registered North Carolina Engineer to inspect the integrity of the relocation work at least once annually and immediately correct any problems noted.

City staff recommends approval of a resolution allowing the City Manager to execute a permanent maintenance agreement with Commonwealth Dreamland, L.L.C., in order to construct the new Lowe's building.

Agreement with Kiwanis Club to Accept Donation for Lakewood Park Playground Equipment

Summary: The consideration of a resolution authorizing the City Manager to enter into an agreement with the Kiwanis Club of Asheville to provide funds and materials to refurbish and rebuild a playground at City-owned Lakewood Park.

The Kiwanis Club of Asheville has made the generous proposal to raise money and donate to the City, \$15,000 for the purchase of new playground equipment for Lakewood Park in the Kenilworth neighborhood. In addition, the Kiwanis will solicit donations of materials needed to construct the sand and play areas of the playground. The City's involvement will include providing \$10,000 to purchase materials to build the playground, dedicate the services of the Assistant Landscape Architect to design the playground and provide the Parks and Recreation Maintenance Crews to demolish the obsolete structures and build the new playground. Since the current Parks and Recreation budget allows only two playgrounds per year, this represents an opportunity to refurbish a playground that would not otherwise be renovated in the near future.

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It is hoped that this will be first of many such cooperative efforts between Civic groups and the City.

The Parks and Recreation Department staff recommends City Council adopt the resolution.

Awarding Bids for Infrastructure Construction - Rankin Heights Subdivision

Summary: The consideration of a resolution awarding Hobson Construction Company the contract for construction of Rankin Heights Subdivision.

McGill Associates on behalf of the Community Development Division opened bids for the construction of Rankin Heights Subdivision on May 1, 1998. The following is the bid summary:

Precision Contracting \$229,785.00

Hahn Construction \$222,556.50

Hobson Construction \$199,743.00

Thorpe Construction \$238,535.64

The lowest bid received for the project was in the amount of \$199,743.00 from Hobson Construction Company. The amount of funds available for the project is \$203,000.00.

Community Development staff recommends acceptance of the low bid and awarding the contract to Hobson Construction Company.

WNC Regional Air Pollution Control Agreement

Summary: Buncombe County Manager Wanda Greene has withdrawn her request of February 16, 1998, that the City of Asheville consider withdrawing from the interlocal agreement that authorizes Western North Carolina Regional Air Pollution Control Agency.

Budget Amendment to Fund Land Acquisition for the Reid Creek/Broadway Greenway

Summary: This budget amendment transfers \$118,200 from right-of-way funding in the Street & Sidewalk Fund to the Reid Creek/Broadway Greenway project in order to fund land acquisition.

Funding in the amount of \$225,000 was set aside in the Street & Sidewalk Fund for acquisition of residual right-of-way from the Broadway Widening Project a number of years ago. Since this funding was not needed for the Project, a decision was made in 1996 to leave this money set aside for Broadway Greenway land acquisition. This amendment transfers funding needed in the amount of \$118,200 from the Street & Sidewalk Fund to the Broadway Greenway Project in the General Capital Projects Fund to cover costs to acquire property for the Reid Creek/Broadway Greenway Project. Current funding in place for the Reid Creek/Broadway Greenway Project is \$58,790 which covers the City's contract with the Trust for Public Land.

Upon inquiry of Councilman Cloninger, City Manager Westbrook updated City Council on the status of the greenway projects.

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Setting Public Hearing for Voluntary Annexation of Section 11 of Biltmore Park

Summary: The consideration of a resolution setting a public hearing on June 23, 1998, to consider the Biltmore Park Section 11 annexation.

Biltmore Farms, Inc. (owner and applicant) has submitted an annexation petition for a 22.07 acre area identified as Biltmore Park annexation 11. This is the eleventh annexation petitioned by Biltmore Farms Inc. for property located west of Overlook Road. This area is contiguous to the existing corporate limits, specifically to Biltmore Park, Annex 8.

Setting Public Hearing for Voluntary Annexation of Section 12 of Biltmore Park

Summary: The consideration of a resolution setting a public hearing on June 23, 1998, to consider the Biltmore Park Section 12 annexation.

Biltmore Farms Inc. (owner and applicant) has submitted an annexation petition for a 11.36 acre area identified as Biltmore Park annexation 12. This is the twelfth annexation petitioned by Biltmore Farms Inc. for property located west of Overlook Road. This area is contiguous to the existing corporate limits, specifically to Biltmore Park, Annex 9 and Annex 7.

Mayor Sitnick asked that the record show that City Council has received this information and instructs the City Manager to place these items on the next formal City Council agenda.

HILLCREST UPDATE

Deputy Chief Ross Robinson said that after the May 5, 1998, City Council community meeting at Hillcrest regarding the opening or continued closure of the pedestrian bridge, City Council requested staff offer solutions to accessibility and social concerns in the Hillcrest area.

On May 5, 1998, City Council met with residents of the Hillcrest Community at the enrichment center regarding the opening or continued closure of the pedestrian bridge. City Council had an opportunity to view the closed pedestrian bridge and consider views of the residents who attended the meeting. Asheville Police, in conjunction with the Housing Authority have collaborated with residents and other municipal services to address both the opening and the continued closing of the pedestrian bridge. The Housing Authority has recounted the social programs and management practices which have made beneficial changes to life in Hillcrest from what they were several years ago.

Concerns of the residents:

- Fatal accidents will continue to occur if pedestrians do not have access to the pedestrian walkover.
- Parents and students are inconvenienced because the most direct route to some schools, stores and facilities is unavailable (pedestrian bridge).
- Many residents must rely on public transportation which becomes unavailable or expensive late in the day.
- Opening the bridge will give drug buyers and sellers a protected route to Hillcrest.
- Safety and health problems associated with drug dealing will return to Hillcrest; whereas these problems greatly diminished when residents asked the bridge be closed.
- Those who use the reopened bridge may become crime victims.

Concerns of residents of Roberts Street:

- A petition has been received by the Mayor's office indicating some businesses and residents on Roberts Street have requested that traffic from the pedestrian bridge be diverted from Roberts Street.
- The United Christian Church located on Roberts Street opposes any reopening of the pedestrian bridge citing previous traffic as undesirable for their congregation.

Survey of the residents:

- Approximately 58% of those surveyed by the residents council favor reopening the bridge.
- A recent survey by the Housing Authority did not identify overwhelming social concerns among Hillcrest residents. In fact, only three residents responded.

Recommendations and contingencies:

1. Reopening the bridge must be accompanied by the following:

- Environmental changes on the Roberts Street side of the walkover to discourage crime and improve sight distances; clearing of brush and additional lighting of the area. *Public Works has estimated clearing of the property to cost approximately \$5,000 and would require one week to complete.*
- A request of the Department of Transportation should be made to install additional *lighting to deter criminal activity* in the area of the steps leading to Roberts Street.
- Repair of the fence which separates the sidewalk from I-240. *Department of Transportation engineers are ready to make these repairs should the bridge be reopened.*
- Placement of a handrail on the existing steps from the sidewalk next to I-240 down to Roberts Street. *There is no current commitment from D.O.T. to install this.*
- Relocation of the Police Office in Hillcrest to an apartment next to the pedestrian bridge to stem as much unwanted traffic as possible from the area. *This relocation will depend on availability of apartments; however, it can take place very soon.*
- Strengthening of crime prevention programs as well as Citizens on Patrol in the community. *The residents council has recently met to elect new officers and become better organized.*
- A future assessment of the impact any reopening has had on the residents of Hillcrest and their neighbors on Roberts St.

2. Continued Closure of the Pedestrian Bridge must emphasize:

- Public education regarding safe, alternate pedestrian routes . The North Carolina Department of Transportation indicates traffic volumes for the I-240 area will increase as the new corridor opens to the northern part of the county.
- Review and emphasize public transportation schedules and routes. (The Asheville Transit Authority indicates the frequency of bus departures from Hillcrest will increase as the new terminal opens; however, 6:15 PM will be the latest buses will leave from Hillcrest or depart from other locations destined for Hillcrest.)

Review of current social programs currently at work in Hillcrest

- Hillcrest Enrichment Center
- Asheville Police "ARGUS" office
- Mountain Area Prenatal Substance Abuse Program (17-A)
- Dept. of Social Services located at apt. 17-B (satellite office)
- Daycare Center (Headstart program) on-site -5-

Deputy Chief Robinson said that Mr. Bill Smart from the Dept. of Transportation could not attend the meeting but offered to assist with the clearing of brush from the right-of-way so the City wouldn't have to bear the entire cost. He also agreed to get the Bridge Dept. to assist the City in installing the handrail for the steps that lead from the sidewalk to Roberts Street. He said he could not commit to the installation of additional lighting, however, he would submit a request, if recommended by the City Manager, to Dept. of Transportation officials in Raleigh who make those decisions.

Councilman Cobb was concerned if the walkway had to be handicapped accessible

Upon inquiry of Councilman Tomes about the educational component of whatever is decided, Deputy Chief Robinson said that the Police Department will work with the residents council noting that there is a variety of resources available to spread the word. Mr. Mike Godwin, representative of the Housing Authority, said that they also can address this through a notice to the residents and also in their monthly newsletter.

Mr. Godwin responded to a question from Mayor Sitnick relative to residents patrolling, noting that the issue was discussed, but nothing was confirmed.

When Mayor Sitnick asked if the fence on the south side had been repaired, Deputy Chief Robinson replied that it had not been, however, the Dept. of Transportation has informed them that if the City requests the bridge to be re-opened, they will fix it almost immediately.

Mayor Sitnick asked that the record show that City Council has received this information and instructs the City Manager to place this item on the next formal City Council agenda.

RESOLUTION NO. 98-73 - RESOLUTION DIRECTING THE CITY CLERK TO PUBLISH A NOTICE OF THE CITY COUNCIL'S INTENT TO AUTHORIZE EXECUTION OF A LEASE AGREEMENT WITH ASHEVILLE PROFESSIONAL HOCKEY LTD. FOR USE OF THE ASHEVILLE CIVIC CENTER

Civic Center Director David Pisha said that this is consideration of a directing the City Clerk to publish notice of the City Council's intent to authorize execution of a lease agreement for the Asheville Civic Center.

The United Hockey League has approached The Asheville Civic Center about placing a team affiliated with their league at the facility. They have furthermore agreed to pay the facility a per game fee of \$750.00 up to \$1500.00 based on attendance. Additional consideration of up to \$250.00 per game is further agreed if Civic Center cost exceed the prior revenue. The Civic Center retains a minimum of \$150,000.00 in concession revenues before sharing additional revenues with the team. Based on attendance, the Civic Center could retain up to \$250,000.00 before any sharing took place. Any revenue split with the team is after taxes and food costs have been deducted. The Civic Center receives 10% of any merchandise sales after \$500,000.00. The team agrees to supply an ice floor and all related equipment necessary for the presentation of professional hockey. At the end of five (5) years, title to this equipment is transferred to the city without any cost to the city. The city, however, has the option to acquire this equipment sooner if it chooses by assuming the lease of this equipment. The Civic Center further more has the use of the ice floor

for other events to include public skating. The Civic Center has the first option to purchase skates for public use, and in so doing, would retain 80% of any revenues received from this venture. Since the city will ultimately come to own the ice floor and related equipment, the city has agreed to share maintenance cost on a 50/50 basis with the team when such upkeep costs exceed \$5,000.00. The Civic Center has further agreed to -6-

furnish locker room and office space to the team. Any advertising placed in the arena by the team must have prior approval from the Civic Center Director.

Upon inquiry of Councilman Cloninger, City Attorney Oast said that there are several ways the City will end up owning the ice floor.

City Manager Westbrook said that staff will have to come back to City Council with a proposal for a skating program.

After Mr. Pisha responded to several questions, City Council expressed their excitement in this venture.

Mayor Sitnick said that members of Council have been previously furnished with a copy of the resolution directing the City Clerk to publish a notice of Council's intent to authorize execution of the lease with Asheville Professional Hockey, Ltd. and it would not be read. She noted that the resolution authorizing execution of the lease will be on June 23, 1998.

Councilwoman Field moved to waive the rules and take formal action at this meeting. This motion was seconded by Councilman Sellers and carried unanimously.

Councilman Field moved for the adoption of Resolution No. 98-73. This motion was seconded by Councilman Tomes and carried unanimously.

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REPORT ON CABLE TV FRANCHISE RENEWAL

Ordinance Regulating Cable Service Providers

The following is a summary of an ordinance to adopt regulations for cable service providers located in the City of Asheville.

The City of Asheville does not now have an ordinance regulating cable service providers. Article 8 of Chapter 160A of the North Carolina General Statutes authorizes North Carolina cities to adopt ordinances in the exercise of police power delegated to them. North Carolina law authorizes cities to grant franchises to public enterprises, including, but not limited to, cable television systems. Federal and State law further authorize cities to regulate cable service providers in other ways. This ordinance would include provisions regarding the granting of franchises to cable service providers and regulations regarding their use of the public rights-of-way.

A draft of this ordinance was previously considered by the City Council on November 25, 1997, January 20, 1998, February 3 and 24, 1998, and March 3, 1998. At its work session on March 3, 1998, the City Council instructed City staff and Rice, Williams Associates, consultant to the City on cablevision matters, to renegotiate certain terms and conditions of a franchise renewal with the current cablevision franchise holder, Brenmor Cable Partners, L.P. (d/b/a InterMedia). New terms and conditions have been negotiated which resulted in changes to this ordinance.

The City Manager and the City Attorney's Office recommend consideration of the ordinance.

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Ordinance Granting a Franchise to Brenmor Cable Partners, L.P. (d/b/a InterMedia)

The following is a summary of an ordinance to grant a cable television franchise to InterMedia.

At an election held on July 28, 1967, the citizens of the City of Asheville approved, by referendum, the granting of a franchise to Thoms Broadcasting Companies, Inc., for the construction and operation of a community antenna television system in the City of Asheville. The cable television franchise granted to Thoms Broadcasting Companies, Inc., has been transferred to successive franchisees and InterMedia is the current franchise holder.

The 1967 franchise was granted for thirty five (35) years, which time period would end in the year 2002. Many technological advances have occurred and various regulatory laws have changed since 1967. As part of those technological advances, InterMedia is in the process of completing a rebuild of the cable system within its franchise areas in the City of Asheville and in Buncombe County. As a result of the rebuild of the cable system, InterMedia requested that the City of Asheville enter into renewal negotiations. Based upon technological and regulatory changes since 1967 and upon a desire to include more consumer protection provisions, the City of Asheville was also interested in negotiating a renewal of the franchise terms and conditions.

Proposed terms and conditions for a franchise renewal were incorporated into a draft franchise ordinance which was considered by the City Council on November 25, 1997. The ordinance was subsequently considered by the City Council at work sessions on January 20, 1998, and February 3, 1998. In addition, a community meeting to inform the public about the proposed franchise ordinance was held on February 10, 1998, and a public hearing was held on February 24, 1998. At the conclusion of the public hearing on February 24, 1998, the City Council determined to further consider the matter and a work session was held on March 3, 1998.

At the work session held on March 3, 1998, the City Council instructed City staff and Rice, Williams Associates, consultant to the City of Asheville for cable television matters, to renegotiate certain terms and conditions of the franchise with InterMedia. The issues which were to be renegotiated are as follows:

1. The length of the term of the franchise.
2. The amount of funding for initial equipment and on-going support for public, educational and governmental ("PEG") access channels.
3. The amount passed through to subscribers for funding of the initial equipment and on-going support for PEG channels and the institutional network.
4. The inclusion of other school and library sites on the institutional network.
5. The provision of Internet access to schools and libraries.
6. The terms of the state-of-the-art clause.
7. Consideration of the use of binding arbitration for certain situations.
8. The amount of the civil penalty.
9. Discounts for senior citizens.

10. The mechanism for subscribers to request refunds.
11. The ability for area industries to request increased capacity (550 MHz versus 750 MHz system capacity).
12. The amount of the franchise fee settlement.

Ms. Meldrum said that new terms and conditions have been negotiated and she reviewed the proposal comparison which is attached hereto as Exhibit "A", with the side letter attached hereto as Exhibit "B".

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The City Manager and the City Attorney's Office recommend consideration of the ordinance granting the franchise to InterMedia.

Resolution authorizing the City Manager to execute a settlement agreement with InterMedia and TCI regarding franchise fees

The following is a summary of a resolution to authorize the City Manager to execute a settlement agreement with InterMedia and TCI regarding franchise fees.

The 1967 franchise requires that the franchise holder pay to the City of Asheville 6% of the gross monthly service charges collected annually for providing the radio and television signals over the cable system within the corporate limits of the City of Asheville. Under the 1967 franchise, that payment was deemed to be full compensation for use of the City's property rights, services rendered, supervision and inspection of equipment and facilities.

Concerns had been raised by the City of Asheville regarding whether or not the City had been paid all of the fees due under the terms of the 1967 franchise. The City of Asheville and the current franchise holder, Brenmor Cable Partners, L.P. (d/b/a InterMedia), have reviewed the language of the 1967 franchise and franchise fee payments made to the City of Asheville during the last few years. As a result of discussions by the parties regarding this issue, a settlement was proposed and considered by the City Council at previous meetings. On March 3, 1998, at a work session, the City Council instructed City staff to conduct further negotiations regarding the settlement.

Ms. Meldrum said that those further negotiations have been concluded and she then reviewed the documents attached hereto as Exhibit "C", ending with the proposed settlement of \$175,000.

The City Manager and the City Attorney's Office recommend consideration of the settlement and of the resolution.

Ms. Meldrum reviewed the attached comparison chart of the 1967 franchise to the June 1998 franchise proposal. Said chart is attached hereto as Exhibit "D".

Ms. Meldrum then reviewed the cable franchise comparisons chart which is attached hereto as Exhibit "E".

Vice-Mayor Hay voiced concern that the side letter relative to Internet access was not as strong as he would have liked it. Councilman Cloninger agreed with Vice-Mayor Hay and hoped that there was some way, perhaps posting a bond, to make sure that InterMedia does provide Internet access to the schools in the City. Ms. Meldrum responded that City staff did ask that language be included in the franchise, that the language be stronger and some type of security, however, InterMedia only agreed to the language in the side letter.

Mr. Joe Haight, General Manager of InterMedia, and Mr. Bruce Stewart, General Counsel for InterMedia,

responded to questions from City Council which include, but not limited to, how many minority students are in the Job Training Partnership Act program, why Gainesville, Georgia, and Nashville, Tennessee, who have 750 MHz systems are exempt from the state-of-the-art clause, why would an industry want a 750 MHz system if a 550 MHz system can accomplish the same things; and why InterMedia will not make a firm commitment to provide Internet access to the schools and libraries.

Ms. Meldrum responded to various questions from City Council relating to if there is any argument that the City is entitled to 6% franchise fee; why the City's consultants performed a -9-

three year review regarding the franchise fees; what were some of the problems associated with the Lexington, N.C., court interpretation; is there any provision for late fees in the 1967 franchise; if the City were to litigate, how much would it cost the taxpayers in legal and accounting fees; and why were the cities chosen in the cable franchise comparison chart.

Mayor Sitnick noted that the franchise fee concerns were noted long before 1994 by former City Manager Doug Bean.

Mayor Sitnick pointed out that two separate votes will be required to grant the franchise to Brenmor Cable Partners, L.P. (d/b/a InterMedia).

It was the consensus of City Council to hold a public hearing on these revised set of documents, said public hearing to be scheduled on June 9, 1998, for public hearing on June 23, 1998.

City Manager Westbrook said that City staff would like City Council to consider voting on the ordinances at the conclusion of the public hearing.

Councilwoman Field wanted to make sure that the public is fully aware that if City Council approves the renegotiated documents, that the subscribers will have a 35-cent increase per month. She was also concerned that InterMedia will not have to build cable system in annexation areas if another cable system is serving that area. She felt that the City should be able to say to Asheville residents that if they are annexed, they can be served by InterMedia if they choose.

Mr. Wally Bowen asked what portion of the proposed PEG funding will be set aside for the citizens or non-profits use and what is the cost for the hardware, software, etc. costs to activate the I-Net for use by City government. He also pointed out that the Citizens for Media Literacy received a grant of \$8,000 to produce a public awareness video and conference on public access, education access and government access which they hope will be completed in August.

Mayor Sitnick asked that the record show that City Council has received this information and instructs the City Manager to place these items on the next formal City Council agenda.

REPORT ON THE BILTMORE AVENUE PROPERTIES

Mr. Ed Vess, Field Services Coordinator, said that this is consideration of disposition of certain City-owned real properties acquired under redevelopment in light of current downtown market conditions.

City Council requested appraisals of the properties located at 5, 7 1/2, 9, & 11-13 Biltmore Avenue, the parking lot on the east side of South Lexington Avenue and the property at 135 Cherry Street following a report on the current status of the properties.

Appraisals have been obtained on the properties which reflect the following values:

Address	Market Value	Leased Fee Value
5 & 7 1/2 Biltmore Avenue	\$340,000	\$300,000
9, 11 & 13 Biltmore Avenue	\$470,000	\$380,000
E/S South Lexington Ave.	\$65,000	No lease
Total Downtown Properties	\$875,000	
135 Cherry Street	\$105,000	No lease
Total All Properties	\$980,000	

The Market Value represents the estimated unencumbered fee simple value. The Leased Fee Value represents the estimated value of the City's interest in the property subject to existing leases.

The highest and best uses of the properties are all commercial with the Biltmore Avenue properties best suited for retail, the South Lexington Avenue property best suited for parking and the Cherry Street property best suited for office.

The purpose of the appraisals was to assist in making the determination whether to sell the properties or to hold them the intent being to achieve the highest return to the City. The question of whether to offer the contiguous properties as one parcel also was put to the appraiser. It is the appraiser's opinion that no advantage would be obtained by combining the contiguous parcels. Each parcel is appraised and considered separately.

The Biltmore Avenue properties are located in a prime commercial area but, they are encumbered by below market leases. The effect of the leases on the value of the properties is reflected in the difference between the market value and the leased fee value. The leased fee value was determined by using the Discounted Cash Flow (DCF) or Present Value method. The DCF method calculates the present value of the cash flow plus the capitalized resale value realized by holding the properties for ten years as an investment less any refurbishment expenses. The DCF method takes into account the existing rents and assumes a discount rate of 13%. It also assumes an expenditure of \$55,350. on 5 Biltmore Avenue and \$21,970. on 9 Biltmore Avenue for refurbishment. The Biltmore Avenue properties are a good investment and therefore very marketable properties. However, since the current leases expire in the year 2000, that invites the question of whether to hold the properties for two years and then sell them. In such case if a value appreciation of 8% annually, a discount rate of 13% and a capitalization rate of 11.5% is assumed the present value of the future sale price plus the discounted cash flow for 5 - 7 1/2 Biltmore Avenue for a holding period of two years would be \$347,616 or a 16% increase over the current lease fee value of \$300,000. For 9 - 13 Biltmore Avenue, the present value of the future sale price plus the discounted cash flow would be \$443,627 or a 17% increase over the current lease fee value of \$380,000. Staff recommends holding the Biltmore Avenue properties until the current leases expire and then offering them for sale at that time. In the interim rental rates for those units not under lease should be increased to market rate incrementally over the two year period.

The parking lot on South Lexington Avenue is a metered lot and is currently being managed by Parking Services. Since the appraisal indicates that parking is the highest and best use for the property, staff recommends the lot be retained for parking. -11-

The Cherry Street property is being used by Neighborhood Housing Services. It has been a part of the Head of Montford Redevelopment Project strategy to cooperate with NHS in the improvement of the Montford community. Provision of office space to NHS at affordable rates has been in the furtherance of a public purpose. With close-out of the Head of Montford Redevelopment Project in sight, staff recommends offering 135 Cherry Street for sale. The sale will be pursuant to provisions of the General Statutes.

Approval of the resolution will authorize that: (1) 5 - 7 1/2 Biltmore Avenue (PIN 9649.18-40-2028) and 9 - 13 Biltmore Avenue (PIN 9649.18-40-1091) be held for 2 years before being offered for sale; (2) the parking lot on the east side of South Lexington Avenue (PIN 9649.18-40-1018) be retained for public use; and (3) 135 Cherry Street (PIN 9649.17-21-0243) be offered for sale.

Community Development Staff recommends adoption of the resolution.

Upon inquiry of Councilman Sellers, Mr. Vess said that any money realized would go back into the Community Development Block Grant Program.

Vice-Mayor Hay said that he would like, when this money does become available to earmark it for an affordable housing trust fund .

Upon inquiry of Councilman Cloninger, Mr. Vess said that at this point in time, he would recommend that the Biltmore Avenue properties be held for two years before being offered for sale. After that two year period of time, City Council will have another opportunity to review whether they want to sell the properties or continue to hold them.

Mr. Richard Jacobs, appraiser, explained to Council how the leased fee value was determined.

Mayor Sitnick asked that the record show that City Council has received this information and instructs the City Manager to place this item on the next formal City Council agenda.

NEXT COMMUNITY MEETING

It was the consensus of City Council to hold their next community meeting on June 30, 1998, at 7:00 p.m. at the Burton Street Recreation Center in West Asheville. City staff will be available to answer questions at 6:00 p.m. prior to the actual City Council community meeting.

It was Vice-Mayor Hay's hope that the next community meeting be held in the South area, maybe in the Skyland area.

BUDGET AMENDMENT RELATIVE TO LEGAL FEES FOR BILLBOARD DEFENSE

City Attorney Oast said that the budget ordinance amendment appropriates \$75,000 for legal fees associated with defense of the lawsuit filed by two outdoor advertising companies challenging the City's ordinance requiring the amortization and removal of off-premise signs.

As Council has been advised, the City has retained the law firm of Horack, Talley, Pharr & Lowndes of Charlotte to provide a defense for the City in the lawsuit brought by Fairway Outdoor Advertising Co. and Outdoor Communications, Inc., challenging the City's ordinance, -12-

adopted in November of 1997, requiring the removal of off-premise signs, following a 7-year amortization period.

The City Attorney's Office solicited proposals from several firms around the State. The Horack, Talley firm is defending the City of Charlotte in its billboard litigation, and is well-qualified to defend the City of Asheville.

The defense of the billboard lawsuit is an extraordinary matter, and was not anticipated in the City's FY 1997-98 budget. Moreover, the timing of the engagement was such that the information necessary for a budget request was not available at the time budget submissions for fiscal year 1998-99 were due. We now have information that enables us to project costs, and we are requesting sufficient funding to cover those costs for the remainder of FY 1997-98 and into FY 1998-99. Accordingly, the appropriation made this year

will be carried over into next year's budget.

Mayor Sitnick asked that the record show that City Council has received this information and instructs the City Manager to place this item on the next formal City Council agenda.

CLOSED SESSION

At 5:47 p.m., Councilwoman Field moved to go into close session to establish or to instruct the City's staff concerning the position to be taken by or on behalf of the City in negotiating the price and other material terms of a controversial or proposed contract for the acquisition of real property - G.S. 143-318.11 (a) (5). This motion was seconded by Councilman Sellers and carried unanimously.

At 6:12 p.m., Vice-Mayor Hay moved to come out of closed session. This motion was seconded by Mayor Sitnick and carried unanimously.

ADJOURNMENT:

Mayor Sitnick adjourned the meeting at 6:12 p.m.

CITY CLERK MAYOR
