

Tuesday - June 9, 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. PRESENTATION OF SONDLEY AWARD TO PAM AND JIM TURNER**

Mayor Sitnick said that the Sondley award is given by the Historic Resources Commission of Asheville & Buncombe County ("HRC") to an individual or individuals in the community who by word or deed has kindled among the citizens of Asheville and Buncombe County an appreciation for the history or historic resources of the area.

Mr. Robert Galloway, HRC Chairman, spoke briefly about the Turner's contributions to historic preservation.

Mayor Sitnick was pleased to present the 1998 Sondley Award to Pam & Jim Turner.

#### **B. RESOLUTION NO. 98-74 - RESOLUTION OF APPRECIATION TO RETIRING EMPLOYEE DAVID R. KING**

City Manager Westbrook said that David R. King has been employed by the City of Asheville for over 24 years and has requested retirement from his position as Line Maintenance Worker I in the Meter Services Division of the Water Resources Department.

Resolution No. 98-74 was adopted by acclamation.

#### **RESOLUTION BOOK NO. 24 - PAGE 410**

#### **C. RECOGNITION OF CITY OF ASHEVILLE WINNERS IN THE EXCELLENCE IN EXCELLENCE IN PUBLIC SERVICE AWARDS PROGRAM**

City Manager Westbrook said that on May 20, 1998, the City joined with Buncombe County and several local, federal and state agencies to recognize public employees at the "Excellence In Public Service Awards Program." The goal of the program is to honor outstanding employees in governmental agencies in the Asheville-Buncombe area who have performed exceptional and meritorious work during 1997 for their agencies and the community. Awards are given in 10 categories. A City employee selection committee reviewed the City nominations and selected finalists in each category to go on and compete with the other agencies. A "Blue Ribbon Committee" (comprised of area business representatives) considered all agency nominations and selected one winner for each category. In addition, one category winner was also selected as the "Public Service Employee of the Year" for the Asheville-Buncombe County area. Those winners were announced at UNC-A on May 20, 1998. Those winners from the City are as follows: -2-

Outstanding Technician, Assistant or Aide - Lee Smith (Police)

Outstanding Heroic Act- Tonna Ramsey and Alyson Pressley (Parks & Recreation)

Outstanding Team and Public Service Employees of the Year - Fire Safety Team:

Joe Meadows, Team Leader; Joe Capel; Carl Denning; Kevin Griffin; Dan Flinn;

Eric Velez; and Karen Murphy, Facilitator

## **CHANGES IN AGENDA**

### **A. RESOLUTION RELATIVE TO THE DISPOSTION OF CERTAIN CITY-OWNED REAL PROPERTY**

Mayor Sitnick said that she has received a request from Habitat for Humanity to continue this matter until July 28, 1998, in order to give them an opportunity to review the proposed resolution. Therefore, Councilwoman Field moved to continue this matter until Tuesday, July 28, 1998. This motion was seconded by Councilman Tomes and carried unanimously.

Vice-Mayor Hay was not opposed to continuing this matter, however, there seems to be a misunderstanding in that City Council is not considering a resolution to immediately raise the rents on Biltmore Avenue.

### **B. MOTION REGARDING THE OPENING OR CONTINUED CLOSURE OF THE PEDESTRIAN WALKOVER BRIDGE AT HILLCREST APARTMENTS**

Mayor Sitnick asked for a motion to advance on the agenda the Hillcrest Apartments Pedestrian walkway bridge matter. Therefore, Councilman Sellers moved to advance the Hillcrest bridge walkway matter prior to the public hearings scheduled. This motion was seconded by Councilwoman Field and carried unanimously.

## **II. CONSENT:**

### **A. MOTION SETTING A PUBLIC HEARING ON JUNE 23, 1998, TO CONSIDER (1) ORDINANCE REGULATING CABLE SERVICE PROVIDERS; (2) ORDINANCE GRANTING A FRANCHISE TO BRENMOR CABLE PARTNERS, L.P. (D/B/A INTERMEDIA) AND (3) RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE A SETTLEMENT AGREEMENT WITH INTERMEDIA AND TCI REGARDING FRANCHISE FEES**

### **B. RESOLUTION NO. 98-75 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO 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 -3-

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.

**RESOLUTION BOOK NO. 24 - PAGE 411**

**C. RESOLUTION NO. 98-78 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO AN AGREEMENT WITH THE KIWANIS CLUB TO PROVIDE FUNDS AND MATERIALS TO REFURBISH AND REBUILD A PLAYGROUND AT CITY-OWNED LAKEWOOD PARK**

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.

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

**RESOLUTION BOOK NO. 24 - PAGE 412**

**D. ORDINANCE NO. 2485 - BUDGET AMENDMENT TO APPROPRIATE FUNDING FOR THE LAKEWOOD PARK PROJECT BASED ON DONATIONS MADE BY THE KIWANIS CLUB AND OTHER INTERESTED PARTIES**

Summary: This budget amendment, in the amount of \$15,000, will appropriate funding for the Lakewood Park project based on donations made by the Kiwanis Club and other interested parties.

The Parks and Recreation Department and the Kiwanis Club of Asheville have been working on a public/private partnership to renovate the Tot Lot at Lakewood Park. The Kiwanis Club is committed to providing \$15,000 towards this project. In addition, it is anticipated that additional sources of revenue may be generated for this project in the near future.

-4-

The Parks and Recreation staff recommends appropriating funds for the renovation of Lakewood Park through City Council's approval of the budget amendment.

**ORDINANCE BOOK NO. 17 - PAGE 1**

**E. RESOLUTION NO. 98-77 - RESOLUTION AWARDING CONTRACT TO HOBSON CONSTRUCTION COMPANY FOR CONSTRUCTION OF 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.

**RESOLUTION BOOK NO. 24 - PAGE 413**

**F. RESOLUTION NO. 98-78 - RESOLUTION CANCELING TUESDAY, JULY 7, 1998, CITY COUNCIL WORKSESSION**

**RESOLUTION BOOK NO. 24 - PAGE 415**

**G. ORDINANCE NO. 2486 - BUDGET AMENDMENT TO TRANSFER RIGHT-OF-WAY FUNDING IN THE STREET AND SIDEWALK FUND TO THE REID CREEK/BROADWAY GREENWAY PROJECT TO FUND LAND ACQUISITION**

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. -5-

**ORDINANCE BOOK NO. 17 - PAGE 3**

**H. RESOLUTION NO. 98-79 - RESOLUTION FIXING DATE OF PUBLIC HEARING ON JUNE 23, 1998, ON 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.

**RESOLUTION BOOK NO. 24 - PAGE 416**

**I. RESOLUTION NO. 98-80 - RESOLUTION FIXING DATE OF PUBLIC HEARING ON JUNE 23, 1998, ON 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.

**RESOLUTION BOOK NO. 24 - PAGE 418**

**J. ORDINANCE NO. 2487 - BUDGET AMENDMENT 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**

Summary: This 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, 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 -6-

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.

**ORDINANCE BOOK NO. 17 - PAGE 5**

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

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

## **MOTION TO CONTINUE TO KEEP THE PEDESTRIAN WALKOVER BRIDGE AT HILLCREST APARTMENTS CLOSED**

Councilman Tomes felt that Council needed to think in terms of the psychological messages the City sends the Hillcrest residents which goes beyond a fence or a passageway. He said he would support the wishes of the residents of the Hillcrest community.

Councilwoman Field asked about the City's liability in complying with the Americans with Disabilities Act ("ADA") compliance in terms of providing ramped access on both sides of the bridge. City Attorney Oast said that it is his understanding that this is a N.C. Dept. of Transportation ("NC DOT") facility and it seems that any responsibility for meeting ADA requirements would fall on the NC DOT. He said the City may have some agreement with NC DOT that would require us to share in some of those costs, however, it is a NC DOT facility and he felt they had primary responsibility for it. He said that there is also the alternate access going the other way, which may be a factor in whether or not ADA compliance is actually required for this particular cross-over.

Mayor Sitnick said that regardless of whether the bridge remains closed or is re-opened, Council supports the recommendations and contingencies as follows, especially those that require requests to the NC DOT:

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 NC DOT 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. NC DOT 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 NC DOT to install this, however, City Council will request 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.
- Strengthening of crime prevention programs as well as Citizens on Patrol in the community.

The residents council has recently elected new officers and become better organized.

-7-

- 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 NC DOT indicate traffic volumes for the I-240 area will continue and better routes need to be found.
- 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 p.m. will be the latest buses will leave from Hillcrest or depart from other locations destined for Hillcrest.)

Mayor Sitnick felt that the City needed to look at the transportation issue which the bridge is part of. She also asked the NC DOT, as soon as possible, to look at a new solution for that area to create a more convenient pedestrian-friendly way to get to and from Hillcrest. Also, she hoped that the City would look into locating a police officer in one of the apartments (not part of the resource center) in the near future.

Councilman Cobb felt that if the bridge were re-opened, we could be creating a lot of problem, however, 58% of the survey asked that the bridge be re-opened and he would vote in support of the majority of the residents.

Pastor Nicks, United Christian Church located at the end of Roberts Street, talked about the drug and theft problems in their community when the bridge was opened. Since its closure, there has been no violence and things has quieted down. He urged City Council not to re-open the bridge which will allow drugs back into their community. He noted that even though 58% of the Hillcrest community wanted the bridge re-opened, 42% want it kept closed and 100% of the Roberts Street community want it to remain closed.

Council man Cloninger moved that the pedestrian walkway bridge remain closed and that City Council adopt the recommendation of staff in connection with closure of the bridge. This motion was seconded by Councilman Sellers.

Councilman Cloninger felt this is a very tough issue and their are strong arguments for opening the bridge and strong arguments for keeping the bridge closed. Ultimately, he was moved by the mothers of the young children who asked Council to put their children first. They asked Council to keep the criminals and drug-pushers from coming into their community which had happened for years prior to the bridge being closed. They also asked that Council help protect the young children who might inadvertently cross the bridge and get into harms way. Therefore, he would will vote to keep the bridge closed.

Vice-Mayor Hay agreed that this is a very difficult situation. Hillcrest is an isolated community and there are very few ideas about how to improve their situation. He listened carefully to the people who have lived at Hillcrest throughout the entire period noting that there has been remarkable progress made in the living conditions there since the bridge closure. He felt that he would trust the judgment of the people because they know what it was like before the closure and they are the ones who know what it's like now. He felt they want what is best for their community and he would support the bridge remaining closed.

Councilwoman Field felt that the Hillcrest community is an isolated island which is totally inappropriate for any neighborhood. I-240 will be widened soon and a new bridge will be built across the river and a lot of things will be happening in that area. She would like to see Council look toward relocating all of the units of affordable housing at Hillcrest into scattered sites all

-8-

over the City and turn that site into a commercial site or some other use that does not isolate people. She doesn't like dead-end streets and likes people to be able to walk. She doesn't think re-opening the bridge will save any lives because someone who is inebriated or in a hurry who wants to get across will run across I-240 if they want to - opening the bridge will not make a lot of difference. She was pleased that after the bridge was closed the community started turning around and we started hearing positive things coming from the community. She didn't want to make this a race issue because we are talking about what is best for everyone.

Mayor Sitnick said that Hillcrest is a ghettoized, surrounded by highway, island. We have cut off access to Hillcrest and the bus schedule makes it almost impossible for anyone who works in the evening to get home safely unless they have a car. She is comfortable with the fact that if the walkway is opened a main component of the recommendation that she will pursue would be a not-to-distant future re-evaluation of the bridge and the activity that either remains the same or changes. It is now the only way people can get across I-240 and as I-240 construction increases it becomes more of a threat with congestion, traffic tie-ups, etc. We are a pedestrian friendly community and the perfect answer is not to re-open the bridge. She would like the NC DOT to assume some responsibility and create a better route to get across I-240 until such a time that we can relocate the residents pursuant to Councilwoman Field's suggestion. She has talked about that same suggestion for years and was told that any kind of high rent office park or commercial use would not be appropriate there because that was originally a landfill and the compaction of the ground couldn't tolerate high rises. In any event, there are people living in Hillcrest that need some kind of safe route. She heard from the residents council at Hillcrest of the need for increased responsibility on the part of the parents and adults in the community for their small children in the area. This situation will require everyone's resources and everyone's commitment until a real solution is found. Opening or closing the walkway is not a solution - only a stop-gap measure to make sure that people have a way to get across I-240 and get back into Hillcrest if they don't have cars.

Councilman Tomes noted that all public housing in Asheville has been made a gated community. With the development of the riverfront property and the volume of traffic being increased in the development of the expressway, he has no other alternative than to support the majority of the Hillcrest residents to re-open the bridge.

Upon inquiry of Councilwoman Field, Police Chief Will Annarino said that the walkway that goes over to Westgate is not closed and the other walkway that goes across 19-23 is not closed either.

Councilman Cobb would support re-opening the bridge and felt that if the Police Department cannot protect the residents, then the City should try to find some other place for them to live.

Councilman Cloninger commented that regardless of the outcome, City Council will continue to review the problems at Hillcrest in a more comprehensive way to see if we can come up with an overall game plan rather than piece-meal remedies.

When Mayor Sitnick called for a vote on the motion made by Councilman Cloninger and seconded by Councilman Sellers, said motion carried on a 4-3 vote, with Vice-Mayor Hay, Councilwoman Field, and Councilmen Cloninger and Sellers voted "yes" and Mayor Sitnick and Councilmen Cobb and Tomes voted "no".

-9-

### **III. PUBLIC HEARINGS:**

#### **A. PUBLIC HEARING TO CONSIDER A CONDITIONAL USE APPROVAL AND PERMIT FOR A DUPLEX AT THE CORNER OF LONDON ROAD AND SHADY OAK DRIVE**

Mayor Sitnick said that next on the agenda is the application a conditional use permit for a duplex at the corner of London Road and Shady Oak Drive. This is a public hearing for Council to consider whether the requested permit should be issued. There being no preliminary matters to be considered, she opened the public hearing at 5:56 p.m.

City Clerk Burleson presented the notice to the public setting the time and date of the public hearing. She then administered the oath to anyone who anticipated speaking on this matter.

Mayor Sitnick reviewed the procedures for this hearing by stating that City Council will first hear from staff who will describe the proposal and provide some background information. Then the applicant may make a presentation and then comments from the public will be taken. She said that there will be an opportunity for questions and rebuttal comments, as necessary. Following the hearing, Council will then debate the proposal and will take action on the request. Hearing no questions about the procedure, she asked for staff's presentation.

Mr. Bruce Black, Urban Planner, said that the Technical Review Committee ("TRC") has reviewed an application for a conditional use permit for a duplex on the corner of Shady Oak Drive and London Road (PIN 9647-12-96-1860). The applicant proposes access from Shady Oak Drive. He said that water and sewer is available. The Unified Development Ordinance specifies several conditions which must be met in order to be granted approval. All of these conditions, detailed below, other than number 6, have been met.

- 1) The project is located in an RS-8 District in which duplexes are allowed as a Conditional Use;
- 2) The proposed use is more than 300 feet from any other multifamily use other than an accessory apartment;
- 3) The area of the lot on which the duplex is to be located exceeds 125% of the minimum lot size for the district in which it is located (RS-8);
- 4) Parking is located in the rear of the building, and is screened from the neighbors by landscaping;
- 5) Structure has a single front entrance;
- 6) Structure will meet all applicable NC building codes. Please note that this will be a function of the building permit application and subsequent inspections by the Building Safety Department.

The Planning and Development staff recommends approval subject to the condition that the duplex meet all North Carolina Building Code requirements.

At their meeting of April 20, 1998, the TRC recommended unanimously to approve the proposed duplex subject to the condition that all grading and site plans must be submitted to MSD for review prior to construction or grading of any kind, and that the structure meet all applicable North Carolina Building Codes.

Upon inquiry of Mayor Sitnick, Mr. Black said that this is a unit that was moved from West Terrace Apartments and this duplex has not been cut in half. He said, however, that even -10-

though he has not visited this full-size duplex, that he has visited one of the duplexes presently in the neighborhood which was cut in half and rehabilitated and it is very small but very liable.

After looking at the duplex, Councilman Tomes felt that the old, dilapidated, run-down buildings would require extensive rehabilitation to bring them up to par to mirror the kind of structures in the Shiloh community.

Vice-Mayor Hay said it was his understanding that the primary objection has to do not so much with the placement of the duplex on this lot, but in particular this unit on this lot. He asked if the building permit process will address any concerns about design, dilapidated looks, etc. Mr. Black responded that to the best of his knowledge, there is no aspect of any City regulation that addresses aesthetics, other than the historic areas.

Councilwoman Field said that the Minimum Housing Code has aesthetic implications in that it requires that there not be any holes in the roof, screens on the windows, etc.

Mayor Sitnick noted that in a conditional use permit, there are seven findings that have to be met before City Council can issue the approval. Those conditions are: (1) That the proposed use or development of the land will not materially endanger the public health or safety; (2) That the proposed use is reasonably necessary for the public health or general welfare, such as by enhancing the successful operating of the surrounding area in its basic community functions or by providing an essential service to the community or region; (3) That the proposed use or development of the land will not substantially injure the value of adjoining or abutting property; (4) That the proposed use or development of the land will be in harmony with the scale, bulk, coverage, density, and character of the area or neighborhood in which it is located; (5) That the proposed use or development of the land will generally conform with the comprehensive plan and other official plans adopted by the city; (6) That the proposed use is appropriately located with respect to transportation facilities, water supply, fire and police protection, waste disposal, and similar facilities; and (7) That the proposed use will not cause undue traffic congestion or create a traffic hazard.

Upon inquiry of Councilman Cobb, Mr. Black said that if they put a new duplex, triplex or quadraplex on that lot a conditional use permit will be required.

With regard to finding no. 3, Vice-Mayor Hay asked if Council could take into account the proposed use that is this particular building. In other words, can Council step beyond just the proposal that it be a duplex, but that they take a look at exactly what they propose to do with it? City Attorney Oast felt that Council could.

When Councilwoman Field asked for guidance with finding no. 2, City Attorney Oast said that on this particular item, that finding is probably not germane and not relevant to Council's consideration on this permit request because it is not in the nature of a public necessity.

Councilwoman Field asked how Council could fulfill the requirement that it has to meet all seven of the findings if one of the findings is deleted. City Attorney Oast suggested that finding no. 2 not be considered because it is not relevant. He further clarified the question by saying that finding nos. 1 and 2, in a lot of model ordinances, are usually crafted in the alternative so that if Council were to determine that the proposed use might materially endanger the public health or safety, then Council could still allow it to locate there, if Council were determine that it were also a public necessity.

Councilman Tomes was concerned about finding no. 4 as well.

-11-

The following individuals spoke against City Council issuing the conditional use permit for several reasons , some being, but not limited to, old and use substandard housing being moved in the Shiloh community, particularly on London Road; the duplex is already on Caribou Road in Shiloh and the water has already been dug in; units came from a condemned development; units are substandard housing that will have to be brought up to meet Minimum Code requirements; the unit will diminish property values; property taxes have recently been raised and if the units are allowed to be located there - property values will fall; since cosmetics cannot be considered, if the units in question are not fire hazards or endanger of falling down, the City has no choice but to approve that they meet the Minimum Housing Code; units contain non-friable asbestos; 100 signatures have been obtained from the Shiloh community protesting the units; home ownership contributes to strong and safe neighborhoods; Shiloh is a historic, in-tact black community; the Shiloh residents are in favor of better housing and an income of rental properties, but they want certain standards; Shiloh does not want to be a dumping ground for Asheville; large buildings are being put in their community, surrounding their homes and it impossible for the residents to upgrade their homes and keep them maintained properly; Shiloh is a proud community and they do not want trash brought into their community; the developer who brought in the units onto Brooklyn Road manipulated the elderly people in the community; Shiloh should be protected like every other community in Asheville, the majority of Shiloh is home ownership and not renters; Shiloh is being infiltrated with these substandard units; there are no

provisions for waiver of finding no. 2; this is an issue of power in whether Council feels the Shiloh residents' interest is greater than that of the applicant; there is a lot of traffic on London Road already; no sidewalks for the children on London Road; the average value of one structure is \$9,000 and on some streets, they are placed beside \$175,000 properties; and a small area plan for the Shiloh area might be appropriate so the Shiloh community will not be as land-locked and squeezed by two highway developments as is Hillcrest.

Mr. Charles Williams, voted spokesman for the neighborhood

Ms. Frieda Nash, resident of Shiloh community

Ms. Pauline Seabrook, resident of Shiloh community

Mr. Linwood Crump, property owner on Brooklyn Road

Mr. Jesse Ray Jr.

Ms. Catherine Proctor

Mr. Ted Scales

Ms. June Lamb

Ms. Helene Green

Mr. Frederick Payne, 299 Brooklyn Road

Ms. Shirley Coxe

Mr. Robert C. Morgan

Vice-Mayor Hay asked if this was a proposal to build a duplex that was constructed in the harmony with other buildings in the community would the community have objection to that as well. Mr. Williams said that when renters come into a community, they tend to take down the value of homeowners properties.

Ms. Beth Maczka, Director of the Affordable Housing Coalition, said that an analysis was performed in the Kimberly Avenue area relative to rental housing in single-family neighborhoods and the findings were that that there was no diminishing of property values of homeowners that lived next door to the large apartment complexes. When there is small scale scattered housing is that there is no noticeable impact on a neighborhood. She shares the concern of the neighborhood in terms of the quality of housing and it fitting into the neighborhood. She hoped that City Council will consider design standards for affordable housing. She stressed there is an incredible need for affordable housing.

-12-

Mr. Emory Mitchell, developer, said that even though the houses are not attractive now, several of these units have been moved all over the City. People are rehabilitating the units with new wiring, plumbing, putting in new windows and vinyl siding. He said they will end up being attractive looking units. He felt people needed to give him a change to fix the units. One unit has been moved into the Shiloh area and the owner, Mrs. Gardenight, has put vinyl siding on it, enlarged the front porch, brick veneered the outside and it is now on the market for \$70-80,000. He stressed that they will bring the units up to Code. On this particular unit, he is the owner of the property and he will rehabilitated it and rent it. He anticipated re-doing the wiring and the plumbing, installing new windows, putting vinyl on the three exterior walls and brick veneer on the front, enclosing the porch, planting shrubs around the building and he also noted that there will be only one

door accessible into the building where it will not look like a duplex unit. The duplex is currently located on Caribou Road on steel beams.

Upon inquiry of Councilman Cloninger, Mr. Emory said that he owns one unit which is rented in the Newfound area. The other units moved within the City are on Westwood Place.

When Councilman Cloninger asked if there was any dialog between the developer and the Shiloh community, Mr. Emory said that he didn't think there would be any opposition. He said that he would be willing to meet with the residents and show them what has been done with some of the other duplexes that he has bought and moved and share the proposed plans for this duplex.

When Mayor Sitnick asked Ms. Nash if she thought the neighborhood would be willing to meet with the developer to discuss his plans and see the photographs, Ms. Nash replied that she felt the neighborhood would be receptive to the meeting. Ms. Nash also noted that this needs to be done with all developers who plan to build in the area.

Mayor Sitnick hoped that when City Council reviews the Unified Development Ordinance, that stronger language be inserted that would possibly mandate developers to meet with neighborhoods before the project gets to the public hearing stage.

City Attorney Oast said that to the extent that the neighborhood and Mr. Mitchell can agree on how to address some of the aesthetic problems with the structure, those can be made part of the conditions on the permit.

When Mr. Crump stated that no notices were sent to the people in the Brooklyn Road area when those units were brought in, Mr. Black responded that this was not a zoning matter which requires notices to property owners. They required a building permit.

Councilman Sellers said that he has lived in West Asheville and has been in the apartments. He has seen what Mr. Mitchell has done with his properties and has no doubt that Mr. Mitchell will do the same if the neighborhood will give him a chance to finish the product.

When Councilwoman Field asked if Mr. Mitchell is the same developer who has put in other units in parts of the community, Mr. Mitchell replied that he is not that developer.

Mr. Williams stated that he and Mr. Mitchell have tried to contact each other but they have been emphatic that Shiloh does not want to be a dumping ground.

When Councilman Cloninger asked Mr. Williams if the community would be willing to meet with Mr. Mitchell, Mr. Williams said that meeting with a developer is always an option, however, the issue today is whether or not to issue a conditional use permit and the residents -13-

council request that it be denied. Mr. Williams further stated that they were willing to meet with Mr. Mitchell, however, Mr. Mitchell needs to make the extra effort to arrange that meeting with the residents.

Mayor Sitnick agreed that while it is unfortunate that this dialog didn't occur before now, if Council votes to grant the conditional use permit, the project will happen. Councilman Cloninger's suggestion for a meeting with the community and developer gives an opportunity for the neighbors to feel some level of comfort that the kind of development Mr. Mitchell proposes will be along the lines of the development that has already been rehabilitated and on the market. She had a major concern over the handling of the asbestos siding and if it was disposed of properly, handled properly, wetted down, etc. She also expressed concern over the alleged manipulation of the senior citizens in the area along with the concern that water lines are being installed to accommodate the unit prior to the permit being granted.

Mr. Black said that there is evidence that the concrete has been cut and the dirt has been disturbed, however, this is a single-family area and a single-family lot. If the Regional Water Authority requirements are met, there is no reason why a water line could not be run to the property.

Upon inquiry of Councilwoman Field, Mr. Mitchell said he is not the developer who cut down any trees to move a unit into the neighborhood.

When Councilwoman Field asked if the City could cite Mrs. Gardenhight for problems created by the removal of asbestos siding after the fact, City Attorney Oast said that environmental laws are typically the providence of the State of North Carolina and he would have to research the question. Mayor Sitnick noted that when she checked with the Planning Department several weeks ago on the asbestos question, she was told by Senior Planner Gerald Green that there was compliance with all the laws pertaining to asbestos.

Mayor Sitnick would like staff to look into the asbestos issue and report back to Council.

Councilman Tomes stressed that the neighborhood feels like they have had no input into this matter and he felt Council needed to be sensitive to their concerns. He urged the community to be willing to meet with the developer but acknowledged that it was unfair for Council to ask Mr. Williams if that would be a possibility since he has not had a chance to talk to the residents about it.

Mr. Crump said that Mr. Mitchell has nothing to do with the unit on Brooklyn Road. Carver Realty is the company putting the unit in on Brooklyn Road. He said they are not meeting the development standards on pouring the footings and zoning enforcement should send someone out there to investigate. Mr. Black responded that they are meeting the legal requirements under the N.C. Building Code and the zoning regulations of the City of Asheville.

There being no request from the applicant for rebuttal, Mayor Sitnick closed the public hearing at 7:17 p.m.

Councilman Tomes suggested the vote be postponed and encouraged a meeting of the Shiloh residents with Mr. Mitchell. He thought that City staff should suggest to potential developers to meet the neighborhood at the beginning of their project stage.

Mayor Sitnick said that she was prepared to vote against the permit at this time, based on finding nos. 1, 3 and 4. She would, however, support the efforts of Council to encourage some dialog at this time and would be willing to postpone the vote only if the community was convinced that property values would not be diminished. She would like to wait for the report -14-

from staff concerning the asbestos situation. As strongly as she supports the need for in-fill affordable housing or affordable housing of any kind, she also supports the integrity of existing neighborhoods.

Councilman Cobb could not understand how those units would not diminish property values in the area and felt the units were not in harmony with the existing neighborhood.

Vice-Mayor Hay said that Council struggled last year in the Unified Development Ordinance process with duplexes, quadraplexes and triplexes in residential areas and tried to find some middle ground with the conditional use permit process with specific requirements. He said they were urged at the time to consider setting some design standards as part of that because they were told that was a major concern - what things were going to look like when they come in. Unfortunately, Council did not set those design standards. He felt the issue really is that this is a structure that nobody would want in their neighborhood. If there is some way to get to the point where we can put these design issues out of the mix and deal with only the issues of whether this is a valid conditional use, then he would like to see Council do that. Perhaps this needs to be postponed to give people a chance to see that the design will be different from what they are seeing being

brought in all over their neighborhood.

Mayor Sitnick said that these units came from a neighborhood that did provide affordable housing, they were on bus lines, near work, etc., but they are being moved into a neighborhood of a different level of single-family homes. She agreed with Vice-Mayor Hay that design is mostly what everyone is concerned about, whether in affordable housing or increased density.

Upon inquiry of Councilwoman Field of whether City Council is allowed to make decisions based on aesthetics, City Attorney Oast said that on conditional use permits he didn't think Council can deny a conditional use permit because it is not aesthetically pleasing, but you can impose conditions on the granting of the permit that would address such things as harmony with the neighborhood and that kind of thing.

Councilwoman Field was not read to vote because staff has not addressed these seven findings to her satisfaction. There has been no discussion of a point by point analysis. She was concerned that all of the findings must be met and yet the City Attorney says that finding no. 2 is not relevant. She is really disturbed that the City doesn't have some kind of basic guidelines that describes what undue traffic congestion is and what is a traffic hazard. Also, she did not think we should be judging Mr. Mitchell based on what some other person has done wrong.

Councilman Tomes moved postpone action on this matter until July 14, 1998, in order to have staff develop what Council has requested and have an opportunity for the neighborhood and Mr. Mitchell to meet and dialog. This motion was seconded by Councilwoman Field and carried unanimously.

Councilman Cloninger hoped that Mr. Mitchell will be as specific as possible as to what he proposes to do with the property, including photographs.

Mayor Sitnick asked for (1) a report from staff on the asbestos situation and not only on the London Road duplex, but on the other duplexes coming out of the West Asheville property; (2) a report back to Council when and if a meeting occurs with the developer and the neighborhood before July 14, noting that the neighborhood has the opportunity to call any Council member to ask questions or express comments; (3) staff to address the concerns about traffic; (4) an analysis of each point to see if all the findings have been met; (5) a response from -15-

the City Attorney on how we can waive finding no. 2; and (6) a note that when Council reviews the Unified Development Ordinance that staff find an amicable and satisfactory way to encourage developers and neighborhoods in controversial issues to have some kind of dialog.

Mr. Charles Williams agreed to be the contact person of the neighborhood.

At 7:35 p.m. Mayor Sitnick announced a short break.

**B. PUBLIC HEARING TO REZONE TWO PROPERTIES LOCATED ON CHATHAM ROAD AND W.T. WEAVER BOULEVARD FROM RM-8 RESIDENTIAL MULTI-FAMILY MEDIUM DENSITY TO RS-8 RESIDENTIAL SINGLE-FAMILY HIGH DENSITY**

**ORDINANCE NO. 2488 - ORDINANCE TO REZONE TWO PROPERTIES LOCATED ON CHATHAM ROAD AND W.T. WEAVER BOULEVARD FROM RM-8 RESIDENTIAL MULTI-FAMILY MEDIUM DENSITY TO RS-8 RESIDENTIAL SINGLE-FAMILY HIGH DENSITY**

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

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

Mr. Mike Matteson, Urban Planner, said that this is consideration of an ordinance to rezone two properties on Chatham Road and Weaver Boulevard from RM-8 Residential Multi-Family Medium Density District to RS-8 Residential Single-Family High Density District.

This rezoning proposal is the result of a request for a zoning study of a larger area which was presented to City Council in February. After examining the zoning pattern in the area, Planning and Development Department staff recommended that the two properties (PIN Nos. 9649.06.38-1040 and 9649.06-37-1807) be rezoned from RM-8 to RS-8 for the following reasons;

- It is staff's opinion that these properties are very much a part of the larger neighborhood (which is predominantly zoned RS-8) and should therefore be zoned consistently.
- The condition of the streets which serve these properties makes them questionable for medium density development. Chatham Road is very narrow with on-street parking and Weaver Boulevard in this location has only one westbound lane.
- Medium density multi-family development would still be possible with RS-8 zoning but would need to be developed as a planned unit development which would help to assure quality, compatible design.

The property owner of PIN No. 9649.06.38-1040 (the larger of the two tracts) is opposed to the rezoning. Staff is recommending approval of the rezoning. At their May 6, 1998, meeting, the Planning and Zoning Commission voted unanimously to recommend approval of the rezoning.

Upon inquiry of Councilman Tomes about one of the owners being opposed to the rezoning, Mr. Matteson explained that City Council initially instructed staff to look at a larger tract of ten lots which included these two and for the reasons noted above staff felt the two tracts -16-

should be rezoned. Mr. Matteson noted that he did not have anything in writing as to why the owner was opposed to the rezoning and the owner was not at the Planning & Zoning Commission meeting.

Upon inquiry of Councilwoman Field, Mr. Matteson said no traffic study was performed, however, part of staff's recommendation is not necessarily the volume of traffic, but the fact that Chatham is a narrow road with on-street parking.

Mr. John Quigley, President of the Jackson Park/Woolsey Neighborhood Association, spoke in support of Council rezoning these two lots and noted that the neighborhood assumed that the entire area would be rezoned RS-8 when the Unified Development Ordinance was

adopted last year. He also expressed concern about the illegal parking on Chatham Road.

Ms. Beth Maczka, Director of the Affordable Housing Coalition, expressed concern of the properties being zoned single-family. The two provisions to include affordable housing in neighborhoods that were included in the Unified Development Ordinance were the planned unit developments and the conditional use permits - neither has been used in the past year to incorporate affordable housing in any place in the community. She felt this would be a very appropriate place for multi-family housing.

Ms. Maczka said that she would not be able to stay for the budget public hearing, however, she wanted to thank Council for considering fee waivers for non-profit and for-profit developers so that they will have a greater incentive to do this type of development.

Upon inquiry of Councilwoman Field, Mr. Matteson explained how the larger tract (1.9 acres) could be divided up into single-family lots.

When Mayor Sitnick asked why has the City allowed parking on both sides of Chatham Road, Mr. Matteson said that there are some homes that don't have driveways or garages so their only parking is on the street. Mayor Sitnick felt that staff needed to look at the parking situation on Chatham Road.

Mr. Rich Walton spoke in support of the rezoning and felt that the parking problems is due to lack of enforcement.

Mr. David Whitley, 210 Edgewood Road, spoke in support of the rezoning and noted that the neighborhood is concerned about the strain of infrastructure in the area.

Mayor Sitnick closed the public hearing at 8:19 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. 2488. This motion was seconded by Councilman Cobb and carried unanimously.

#### **ORDINANCE BOOK NO. 17 - PAGE 7**

#### **C. PUBLIC HEARING TO REZONE TWO PROPERTIES LOCATED AT 23 BEAR CREEK DRIVE FROM HIGHWAY BUSINESS TO RM-8 RESIDENTIAL MULTI-FAMILY MEDIUM DENSITY**

-17-

#### **ORDINANCE NO. 2489 - ORDINANCE TO REZONE TWO PROPERTIES LOCATED AT 23 BEAR CREEK DRIVE FROM HIGHWAY BUSINESS TO RM-8 RESIDENTIAL MULTI-FAMILY MEDIUM DENSITY**

Mayor Sitnick opened the public hearing at 8:20 p.m.

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

Mr. Carl Ownbey, Urban Planner, said that this is the consideration of an ordinance to rezone two lots at 23 Bear Creek Drive from Highway Business District to RM-8 Residential Multi-Family Medium Density District.

The Planning & Zoning Commission initiated this request as they reviewed and approved the rezoning of 16 Bear Creek Road last month. The 2010 Plan shows this area to be low density residential which the RM-8 zoning permits. Direct access to this property is along an existing residential neighborhood street that terminates into a single family structure on the property. The volume of traffic through the existing single family neighborhood is very low.

Since the rezoning of these two lots was initiated by Planning & Zoning Commission, a letter from the property owner was requested. The owner stated in his letter that he opposed the rezoning but did not attend either of the Planning & Zoning Commission meetings to voice his objections. No objections were received from the neighborhood.

This property is within the city limits of Asheville.

The Planning staff reviewed the rezoning request and recommended approval of the rezoning of PIN Nos. 9628.15-54-5464 and 5527 from HB Highway Business to RM-8 Residential Multi-Family Medium Density District. At the May 6, 1998, the Planning & Zoning Commission meeting, the Commissioners voted unanimously to recommend the rezoning of PIN Nos. 9628.15-54-5464 and 5527 from HB Highway Business to RM-8 Residential Multi-Family Medium Density District.

Mayor Sitnick closed the public hearing at 8:24 p.m.

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

Councilman Cobb moved for the adoption of Ordinance No. 2489. This motion was seconded by Councilman Sellers and carried unanimously.

Mayor Sitnick said that she received a phone call from Sybil Hamilton who was opposed to the rezoning.

#### **ORDINANCE BOOK NO. 17 - PAGE 9**

#### **D. PUBLIC HEARING TO CONSIDER A MODIFICATION OF THE SUBDIVISION STANDARDS TO PERMIT A FLAG POLE WIDTH OF 15 FEET FOR A FLAG LOT AND TO PERMIT A RESIDENTIAL LOT TO HAVE A STREET FRONTAGE OF LESS THAN 25 FEET AT 63 CUMBERLAND AVENUE**

Mayor Sitnick opened the public hearing at 8:25 p.m.

-18-

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

Mr. Mike Matteson, Urban Planner, said that this is the consideration of a motion relative to a modification of the subdivision standards to permit the creation of a flag lot with a flagpole width of 15 feet and a street frontage of 15 feet at 63 Cumberland Avenue.

The subdivision standards require a flag lot to have a minimum flagpole width of 25 feet and a minimum street frontage of 25 feet. Rosalind Whiteley, owner of the lot located at 63 Cumberland Avenue, is requesting a modification of the subdivision standards found in Sec. 7-15-1 of the UDO to permit a flag lot with a flagpole width of 15 feet and a street frontage of 15 feet. There are two houses located on the lot, one at the front of the lot and one at the rear. These homes have been on the property approximately 75 years. The lot is fronted by Cumberland Avenue and at the rear by an undeveloped alley. The alley has been closed to the western edge of this lot, but remains open from Elizabeth Street to this lot and continues to provide access to this lot and to other lots in the area. A flagpole width of 25 feet would create a non-conforming situation in that the side yard setback for the house at the front of the lot would not comply with the requirement for the RM-8 zoning. Emergency access to the house at the rear can be provided with a 15 foot wide flagpole. Standards for granting a modification to the subdivision standards are found in Sec. 7-15-1.J.2. of the UDO.

The Planning and Zoning Commission recommended approval of the modification by a 5-0 vote.

Upon inquiry of Councilman Tomes about accessibility, Mr. Matteson said that these are two existing homes and the subdivision is simply lines on a plat. The actual conditions on the lot would not change as a result of this. The house in the rear would continue to be served by the existing drive and the existing alley.

Vice-Mayor Hay said that City Council received a letter from Mr. Jones who is concerned that the alley will become nothing more than an overflow parking lot, especially for the rear cottage. Mr. Matteson responded that this is an existing cottage and because of the lot size, once it's subdivided, it can only be used as a single-family home. The number of cars would not increase.

When Mayor Sitnick asked if there are any restrictions in the use of the alley, City Attorney Oast said that it would depend on whether the alley is a private or a public alley. Either way, thought, it may be possible to reserve it as being open for fire purposes. Mr. Matteson said that Senior Planner Gerald Green talked to the Fire Marshal and the Fire Marshal indicated that the Fire Department could use the existing driveway.

Mayor Sitnick closed the public hearing at 8:33 p.m.

Councilwoman Field moved to approve the modification of the subdivision standards to permit a flag pole width of 15 feet for a flag lot and to permit a residential lot to have a street frontage of 15 feet at 63 Cumberland Avenue. This motion was seconded by Councilman Sellers and carried unanimously.

## **E. PUBLIC HEARING RELATIVE TO ADOPTION OF THE 1998-99 ANNUAL OPERATING BUDGET**

Mayor Sitnick opened the public hearing at 8:35 p.m.

-19-

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

Budget Director Ben Durant, said that City Council conducts a public hearing each year to receive public input on budget issues before the Annual Operating Budget is adopted.

The Fiscal Year 1998/99 Annual Operating Budget was presented to City Council on May 19, 1998, and a budget worksession was held on May 21, 1998. In accordance with the North Carolina Local Government Budget and Fiscal Control Act, a summary of the Budget along with a notice of this Public Hearing was published on May 29 and June 5, 1998. The adoption of the Budget ordinance is scheduled on June 23, 1998, at the City Council meeting.

At the time the budget was presented, the Fiscal Year 1998/99 Annual Operating Budget was balanced with an ad valorem tax rate of \$.52 per \$100 of assessed value. Information recently received from the County regarding the appeals that the County estimated that the City would see due to reevaluation have been revised and basically the new net revenue neutral tax rate can be adjusted to \$.51. However, several important priorities, including federal mandates for enhanced fire protection, are not included in this budget.

A copy of the Budget is available for public inspection in the City Clerk's office. In accordance with the North Carolina Local Government Budget and Fiscal Control Act, the Budget may be changed by City Council in any way before adoption. It may also be changed by budget amendment after adoption with the only exception being the ad valorem tax rate, which cannot be changed once adopted.

Councilman Tomes asked if the \$.51 tax rate would allow the City to cover the federal mandate regarding fire protection. Mr. Durant said that it would not and that one cent will cover most of that cost.

Mr. Albert Sneed, representing the Council of Independent Business Owners, said that based on information they received from the County, it appears to them that \$.52 or \$.51 tax rate is not revenue neutral. He explained his calculations and urged Council to have no real tax increase, which would be a \$.48 tax. He said that the City of Asheville cannot afford all of the things that City Council and the citizens would like to have. One reason is that personal incomes in this community have continued to decline since 1979 when they are measured against the State. The other issue is the City doesn't have the property tax base in this community

and we are running property values out of town. He urged Council to create an environment where we get incomes up and tax base in the community.

Upon inquiry of Councilman Tomes, Mr. Sneed felt it was critical that City Council gets out of micro-managing development and that there be rules that are predictable and quick. He also felt that staff does not have a pro-tax base attitude.

Fire Chief John Rukavina responded to Mr. Sneed's comment that the federal mandate regarding fire protection was only a matter of interpretation.

City Manager Westbrook responded to Mr. Sneed's calculations and noted that City staff has worked the numbers from several different formulas and continue to arrive at the same number.

Mayor Sitnick said that Council doesn't have a lot to say about declining personal incomes in the respect that there are a lot of industries, corporations and businesses that are participating in down-sizing, mergers, etc. - the kinds of things that put people out of work. The minimum wage in this Country should be considered a national shame. Maybe there are things -20-

that Council can do to be more encouraging to create a better outreach to the business community. We have made some improvements in the permitting process so that developers are made aware from day one what is expected of them. The Unified Development Ordinance is an improvement and it still needs to be tweaked but it certainly set the guidelines for developers to understand. It is important to remember that the rules and regulations protect the quality of life and we have to find ways to balance all that out so we can do good development. She hoped our economic development strategy for this community creates a mission statement that uses the word "sustainable" in it that allows people to have enough for what they need today and that leaves enough for those that follow. We have a community that is in deep fiscal distress. We have not raised taxes in eight years and when services and the level of services and the demands on municipal government by the citizens goes up. We have snow storms, unfunded mandates, and a 3% room tax that is devoted completely to tourist development which doesn't come back in and help the Asheville taxpayer pay for any of the crumbling, old infrastructure that is used by everyone. We have a City that is the infrastructure hub, not only for Western North Carolina, but for the whole State. The burden is on the double-dipped Asheville taxpayer who pays Asheville taxes and Buncombe County taxes. We have a community, because of our age and topography, limited in what it can do. We don't even have enough money in the budget this year for some new sidewalks. We have a fund balance that is below what it should be. We need to look out for the Asheville taxpayer, and personally she doesn't think that the Buncombe County leaders consider Asheville part of their venue and she doesn't think that the State delegation considers Asheville part of their District.

Councilman Cloninger said that the statements made by Mayor Sitnick are not his feelings. The City is not in severe economic distress. Asheville has for years followed a sound fiscal policy, our economic condition is good, our fiscal condition is good, our bond rating has improved, and we have otherwise received high marks for the way that the City has conducted itself fiscally. It is certainly true that we have a lot more things that we'd like to do in this community than we have the money for, but to say that we are suffering severe economic or fiscal hardship is absolutely not true.

Ms. June Lamb felt the idea of growth for the City is out-doing the intentions for quality of life. She hoped, among other things, that Council begin saving by eliminating \$1.8 million in consultants which are used for master plans, eliminate \$100,000 for the Chamber of Commerce, and to pay attention to the failures reported in the Vision project.

Upon inquiry of Mr. Jerry Rice, City Manager Westbrook explained the definition of revenue neutral.

Mr. Rice said that the County Manager's definition is different and felt that once the City and County come to agreement in what revenue neutral is, then they need to start cooperating with each other.

Councilwoman Field noted that the City represents 38% of the County's budget, which is fairly a large amount. So, our residents do indeed provide to the County's well-being.

City Manager Westbrook responded to questions from Councilwoman Field regarding the formula for sales tax division and whether the school tax is still included in that calculation.

Mr. Clarence Benton requested that the Asheville Advocate be included in the City's advertising budget for public notices and/or information pages. City Manager Westbrook said that this may be a policy decision opposed to a budget decision. Several years ago Council decided it would publish CityWorks in two newspapers of general circulation. He explained that Council can reallocate the same amount of funds in three newspapers, and if so, that is a policy -21-

decision. If, on the other hand, Council wants to increase the amount of funding for CityWorks by 1/3, then that is a budget issue.

Mayor Sitnick instructed staff to find out how much it would cost to advertise CityWorks in the Asheville Advocate. Councilwoman Field also asked for staff to find out of the cost per subscriber. They asked this information be furnished on the date the budget is adopted, June 23.

Upon inquiry of Councilwoman Field relative to multi-cultural activities, City Manager Westbrook said that the budget contains \$64,000 for the City's contribution to the YMI Cultural Center which includes the full-time person and the program aspects of running the YMI. That \$64,000 amount does not include the utility costs of approximately \$2,000 a month. After discussion, Parks & Recreation Director Irby Brinson said that he would be working with the YMI Cultural Center on negotiating an agreement.

Mayor Sitnick closed the public hearing at 9:30 p.m.

Mayor Sitnick announced that adoption of the 1998-99 Annual Operating Budget will be at the June 23, 1998, City Council meeting.

## **F. PUBLIC HEARING TO AMEND THE UNIFIED DEVELOPMENT ORDINANCE TO IDENTIFY CHILD DAY CARE CENTERS AS A PERMITTED USE, SUBJECT TO SPECIAL REQUIREMENTS IN THE OFFICE DISTRICT**

### **ORDINANCE NO. 2490 - ORDINANCE TO AMEND THE UNIFIED DEVELOPMENT ORDINANCE TO IDENTIFY CHILD DAY CARE CENTERS AS A PERMITTED USE, SUBJECT TO SPECIAL REQUIREMENTS IN THE OFFICE DISTRICT**

Mayor Sitnick opened the public hearing at 9:31 p.m.

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

Mr. Mike Matteson, Urban Planner, said that this is the consideration of an ordinance to amend the Unified Development Ordinance to identify child day care centers as a permitted use, subject to special requirements in the Office District.

The Office District is designed to accommodate small offices (4,000 sq. ft footprint, 8,000 sq. ft gross floor area) in areas which abut residential uses or are transitioning from residential uses to office uses. These areas are typically served by narrow streets which cannot carry significant traffic. Child day care centers in this district can provide a valuable service for office employees in the district and for residents of adjacent

residential areas. Given the scale of existing uses in those Office Districts currently mapped, the proximity of residential uses, and the limits of the street systems serving these districts, a need exists for standards which would limit the impacts of the child day care centers and assure that the centers are compatible with existing uses in the Office District. After discussing this matter for some time, the Planning and Zoning Commission identified the following requirements for child day care centers in the Office District:

- Maximum number of children - 50;
- Outdoor play areas must be fenced or otherwise enclosed and shall not include driveways, parking areas, etc.;

-22-

- Drop-off and pick-up areas must be located on the site so as not to obstruct traffic flow on adjacent public streets; and
- Parking shall not be located in the front yard.

These requirements are designed to assure that child day care centers in the Office District are compatible with adjacent uses in this district and surrounding districts.

The Planning and Zoning Commission recommended approval of this ordinance amendment by a 5-0 vote. The staff of the Planning and Development Department recommends approval of the ordinance amendment.

Mayor Sitnick closed the public hearing at 9:32 p.m.

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

Councilman Tomes moved for the adoption of Ordinance No. 2490. This motion was seconded by Councilman Cobb and carried unanimously.

## **ORDINANCE BOOK NO. 17 - PAGE 11**

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

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

##### **A. RESOLUTION NO. 98-81 - RESOLUTION AMENDING THE CITY COUNCIL RULES ON BOARDS AND COMMISSIONS RELATIVE TO RESIDENCY REQUIREMENTS OF CITY APPOINTEES**

Vice-Mayor Hay said the City Council Boards & Commissions Committee has requested that the policy governing City Council appointments to boards and commissions, be amended relative to residency requirements of City appointees. The rules will now read that "appointees to boards and commissions shall be residents of the City of Asheville, unless otherwise specified or provided for by law, ordinance, or Council action establishing said board or commission, or in the rules or by-laws of said board or commission, if approved by Council."

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

Vice-Mayor Hay moved for the adoption of Resolution No. 98-81. This motion was seconded by

Councilwoman Field and carried unanimously.

## **RESOLUTION BOOK NO. 24 - PAGE 420**

### **B. RESOLUTION NO. 98-82 - RESOLUTION APPOINTING A CHAIR TO THE CIVIL SERVICE BOARD**

Vice-Mayor Hay said it is City Council's responsibility to appoint a Chair to the Civil Service Board.

-23-

The following are the existing Board members: Bill Fulp - City appointee; Nancy Kauffman - City appointee; Jane Mervine-Knisely - Employee appointee; Jesse Warren - Employee appointee; and Garry Moffitt - Member appointed by the other four members).

Because our City appointees recommended Mr. Moffitt, Councilwoman Field moved to appoint Garry Moffitt as Chair to the Civil Service Board to serve a two year term, term to expire May 21, 2000, or when his term on the Civil Service Board expires, whichever occurs earlier. This motion was seconded by Councilman Cobb and carried unanimously.

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

Councilwoman moved for the adoption of Resolution No. 98-82. This motion was seconded by Councilman Cobb and carried unanimously.

## **RESOLUTION BOOK NO. 24 - PAGE 423**

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

#### **A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON MAY 26, 1998, AND THE WORKSESSION HELD ON JUNE 2, 1998**

Councilman Tomes moved for the adoption of the minutes of the regular meeting held on May 26, 1998, and the worksession held on June 2, 1998. This motion was seconded by Councilwoman Field and carried unanimously.

#### **B. EXOTIC CAR WASH**

Councilman Sellers requested a status report at the next worksession on the exotic car wash which was recently opened.

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

Mr. Keith Thompson discussed a concern relative to a Board of Adjustment variance on Merrimon Avenue.

Councilman Cloninger said that he was increasingly concerned about the Board of Adjustment and their continued disregard of the advice of the Planning staff and the City Attorney's Office as to what the parameters of their authority are and to what constitutes a hardship. He felt Council should take a close look at the decision they reach on Merrimon Avenue. If City Council feels the Board has not acted appropriately, City Council should consider appealing immediately and also Council should take a real hard look at whether the Board of Adjustment should continue to exist under its current makeup.

Mayor Sitnick instructed staff to place on the July 21 worksession agenda a discussion concerning the Board of Adjustment.

## **D. CLAIMS**

The following claims were received by the City of Asheville during the week of May 15-28, 1998: John Kitchen (Police), Randy Glasgow (Streets), Linda Hipps (Traffic Engineering), Arthur Pappas (Parks & Recreation), Michelle St. Arnold (Water), Frank Comito (Sanitation) and Roy Heath (Streets). -24-

The following claims were received by the City of Asheville during the week of May 29-June 4, 1998: Christy Rutledge (Traffic Engineering), Francine Thomas (Streets), Bruce and Susan Councill (Sanitation), Teresa Wells (Streets), J. Clifton Dozier (Police), Robyn Robison (Water), Ronald Bennett (Water), Ricky C. Briggs, Donna Fitzpatrick (Traffic Engineering), Joel Murray (Sanitation) and Denise Goodson (Water).

These claims have been referred to Asheville Claims Corporation for investigation.

## **E. LAWSUIT**

The City received a Complaint on June 2, 1998, which is generally described as follows: Walton Lurey v. City of Asheville and Asheville Transit Authority - negligence due to motor vehicle accident involving Asheville Transit Authority.

This matter will be referred to Mr. Fred Barbour, an attorney outside of the City Attorney's Office. City Attorney Oast will be the primary person responsible in the City Attorney's Office for this file.

## **F. CLOSED SESSION**

At 9:42 p.m., Councilwoman Field moved to go into closed session to establish or to instruct the City's staff or negotiating agents concerning the position to be taken by or on behalf of the City in negotiating the price and other material terms of a contract 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 10:20 p.m., Councilman Sellers moved to come out of closed session. This motion was seconded by Vice-Mayor Hay and carried unanimously.

## **VII. ADJOURNMENT:**

Mayor Sitnick adjourned the meeting at 10:20 p.m.

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CITY CLERK MAYOR

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