

Tuesday - August 11, 1998 - 5:00 p.m.

Regular Meeting

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

Absent: None

**INVOCATION**

Councilman Cobb gave the invocation.

**I. PROCLAMATIONS:**

**A. PROCLAMATION PROCLAIMING AUGUST 21-23, 1998, AS "GOOMBAY FESTIVAL DAYS" IN THE CITY OF ASHEVILLE**

Mayor Sitnick read the proclamation proclaiming August 21-23, 1998, as "Goombay Festival Days" in the City of Asheville. She presented the proclamation to Mr. Gene Ellison and Ms. Oralene Simmons who thanked Council for their support and briefed them on some activities taking place during those days.

**II. CONSENT:**

At the request of Councilman Cobb, Item C. was pulled from the Consent Agenda for discussion.

**A. ORDINANCE NO. 2503 - BUDGET AMENDMENT TO APPROPRIATE CONTROLLED SUBSTANCE EXCISE TAX RECEIPTS TO ENHANCE LAW ENFORCEMENT ACTIVITIES**

Summary: The consideration of a budget amendment, in the amount of \$30,000, to appropriate Controlled Substance Excise Tax receipts to enhance law enforcement activities in Fiscal Year 1998/99.

The Asheville Police Department receives a share of the proceeds from the State Controlled Substance Excise Tax. To date, approximately \$40,000 has been received. These funds cannot be used to fund Police Department general operations and must be appropriated to enhance law enforcement activities. The Police Department has identified specific uses for approximately \$30,000 of these funds, at this time. One use will be the preparation of an A.P.D. Recruitment Video. This action will establish a special appropriation within the Police Department Administration budget in the amount of \$30,000. Use of the funds will be monitored to ensure compliance with State requirements.

City staff recommends City Council adopt the budget amendment, in the amount of \$30,000, to appropriate Controlled Substance Excise Tax receipts to enhance law enforcement activities in Fiscal year 1998/99.

**ORDINANCE BOOK NO. 17 - PAGE 125**

-2-

**B. ORDINANCE NO. 2504 - BUDGET AMENDMENT TO AMEND MAJOR CAPITAL PROJECT ORDINANCE 82-25 (35 FUND) TO PROVIDE FUNDING FOR THE ROCKY RIDGE PROJECT**

Summary: The consideration of a budget amendment to amend Capital Project Ordinance 82-25 to provide funding for the Rocky Ridge Project.

By Resolution 82-25 dated October 5, 1982, the Authority authorized and budgeted for various capital projects to be funded by Investment Earnings, Contributions From Other Funds, and Appropriated Fund Balance.

The Rocky Ridge Road Project is an upgrade from an 8 inch line to a 24 inch line. This upgrade was recommended in the 1995 Water Distribution Master Plan prepared by Camp, Dresser and McKee. Our contribution toward this upgrade is \$10,000. This project will improve domestic water service and fire protection to multiple facilities in the area including the Holiday Inn Express.

This project has been previously approved by the Water Authority; and this is a request to provide the funding for the project. There are available funds in the Reservoir/Tunnel Repairs. This project is being postponed and will be funded as part of the FY 98/99 Water Distribution System Improvements.

Staff recommends adoption of the budget amendment amending Capital Project Ordinance 82-25 to reprogram funds in the amount of \$10,000 from the Reservoir/Tunnel Repairs to the Rocky Ridge Project.

#### **ORDINANCE BOOK NO. 17 - PAGE 127**

#### **C. RESOLUTION MAKING PROVISIONS FOR THE POSSESSION AND CONSUMPTION OF MALT BEVERAGES AND/OR UNFORTIFIED WINE AT THE 1998 GOOMBAY FESTIVAL**

This item was removed from the Consent Agenda for further discussion.

#### **D. MOTION SETTING A PUBLIC HEARING ON AUGUST 25, 1998, TO CONSIDER A REVISION TO THE APPROVED LANDSCAPE PLAN FOR THE ADDITIONS TO THE BROOKS-HOWELL DEVELOPMENT**

Mayor Sitnick said that members of Council have been previously furnished with copies of the resolution and ordinances on the consent agenda and they will not be read.

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

#### **ITEM REMOVED FROM THE CONSENT AGENDA FOR FURTHER DISCUSSION**

#### **RESOLUTION NO. 98-110 - RESOLUTION MAKING PROVISIONS FOR THE POSSESSION AND CONSUMPTION OF MALT BEVERAGES AND/OR UNFORTIFIED WINE AT THE 1998 GOOMBAY FESTIVAL**

Summary: The consideration of a resolution to allow alcoholic beverages at the 1998 Goombay Festival within the area known as City/County Plaza, S. Market Street, Eagle Street, Spruce Street, Wilson Alley, and Beaumont Street. -3-

N.C. Gen. Stat. sec. 18B-300(c) authorizes the City by ordinance to regulate or prohibit the consumption and/or possession of open containers of malt beverages and unfortified wine on public streets and on property owned, occupied or controlled by the City. The City Council of the City of Asheville has adopted an ordinance pursuant to that statutory authority. That ordinance, Section 11-11 in the Code of Ordinances, provides that the City Council may adopt a resolution making other provisions at special event or community festival. The 1998 Goombay Festival Board, YMI Cultural Center and the Parks and Recreation Department recommend that possession and consumption of malt beverages and/or unfortified wine be allowed at the 1998 Goombay Festival.

The Parks and Recreation Department recommends that City Council adopt the resolution allowing the possession and consumption of malt beverages and/or unfortified wine at the 1998 Goombay

When Councilman Cobb expressed concern about selling alcohol on the street, Mr. Butch Kisiah, Superintendent of Recreation, explained how the City is phasing out the sale of alcohol at the Bele Chere festival. He said that there are no plans to phase alcohol at the Goombay Festival but noted that there is only one beer booth that operates during the Goombay Festival.

Mr. H.K. Edgerton felt that the community should direct the money they spend for beer to donations to the YMI Cultural Center so they don't have to sell beer at the Festival.

Vice-Mayor Hay said that the Bele Chere Strategic Plan addresses the sale of alcohol on the street but not the consumption of alcohol on the street. He felt those are matters that might need to be addressed in planning next year's festival.

Mayor Sitnick felt that all festivals should be treated the same and the matter will be discussed in the future.

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

Councilwoman Field moved for the adoption of Resolution No. 98-110. This motion was seconded by Councilman Cloninger and carried unanimously.

## **RESOLUTION BOOK NO. 24 - PAGE 467**

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

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

Senior Planner Gerald Green said that the City's consultant will present a draft telecommunication facilities ordinance at the September 1, 1998, worksession. Therefore, in order to not waste the Council's time now in considering only this proposed amendment, staff recommends City Council continue the discussion on this matter to the September 1, 1998, worksession, with the public hearing being continued until October 27, 1998. After City Council reviews the consultant's recommendations on September 1, the matter will be forwarded to the Planning & Zoning Commission for their recommendation at their October meeting. After the Commission's review, the issue will be re-advertised prior to the October 27, 1998, City Council meeting.

-4-

Councilman Cloninger moved to continue this discussion to September 1, 1998, with the public hearing being continued until October 27, 1998. This motion was seconded by Councilman Sellers and carried unanimously.

#### **B. PUBLIC HEARING RELATIVE TO AMENDING THE UNIFIED DEVELOPMENT ORDINANCE TO CLARIFY THE REQUIREMENTS FOR GRADING ALONG PROPERTY LINES**

#### **ORDINANCE NO. 2505 - ORDINANCE AMENDING THE UNIFIED DEVELOPMENT ORDINANCE TO CLARIFY THE REQUIREMENTS FOR GRADING ALONG PROPERTY LINES**

Mayor Sitnick opened the public hearing at 5:23 p.m.

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

Senior Planner Gerald Green said that this is the consideration of an ordinance amending the Unified Development Ordinance ("UDO") to clarify the requirements for grading along property lines.

Currently the UDO requires the written approval of the adjacent property owner when any land disturbing activity occurs within ten (10) feet of the property line. Permission of the adjacent property owner is required for the disturbance of 100 square feet for a small storage building and for the grading of a 20 acre parcel. The current requirement is not closely related to the impact of the land disturbing activity, in that small land disturbing activities, even when located next to property line, typically have little impact on adjacent properties. In addition, the current requirement often places a burden on the applicant for small land disturbing activities. The proposed wording amendment revises the standards to require the acknowledgment of the adjacent property owner (proof of notice would be the return receipt from the acknowledgment letter) and the permission of the Planning & Development Director when grading occurs within ten (10) feet of the property line only for those land disturbing activities which require a formal erosion and sedimentation control plan (more than 10,000 square feet disturbed). The revised standard would tie the requirement for written acknowledgment by the adjacent property owner more closely to the impact of the land disturbing activity

The Planning and Zoning Commission recommended approval of this ordinance amendment by a 6-0 vote. The staff of the Planning and Development Department recommends approval of the ordinance amendment.

Upon inquiry of Councilman Tomes, Mr. Green said that the only way the property of the adjacent property owner could be disturbed is with their permission and their property being included in the erosion control plan and the development plan for that property.

When Vice-Mayor Hay asked what would happen if the adjacent property owner objected, Mr. Green said that not only could they voice their objections to staff who would take extra steps to assure them there would be no impact on their property, but the Planning & Development Director must give permission as well. City Attorney Oast also said that the notice might also permit someone to appeal to the Board of Adjustment.

Upon inquiry of Mayor Sitnick, Mr. Green said that the buffer requirements are actually more stringent if the grading occurs within that area. -5-

Mr. Green explained to Councilman Cobb how the land disturbed is calculated.

Mayor Sitnick closed the public hearing at 5:34 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. 2505. This motion was seconded by Councilwoman Field and carried unanimously.

## **ORDINANCE BOOK NO. 17 - PAGE 129**

### **C. PUBLIC HEARING RELATIVE TO AMENDING THE UNIFIED DEVELOPMENT ORDINANCE TO IDENTIFY ACCESSORY STRUCTURES AS A PERMITTED USE, SUBJECT TO SPECIAL REQUIREMENTS IN ALL RESIDENTIAL DISTRICTS, AND TO ESTABLISH STANDARDS FOR ACCESSORY STRUCTURES**

### **ORDINANCE NO. 2506 - ORDINANCE AMENDING THE UNIFIED DEVELOPMENT ORDINANCE TO IDENTIFY ACCESSORY STRUCTURES AS A PERMITTED USE, SUBJECT TO SPECIAL REQUIREMENTS IN ALL RESIDENTIAL DISTRICTS, AND TO ESTABLISH STANDARDS FOR ACCESSORY STRUCTURES**

Mayor Sitnick opened the public hearing at 5:34 p.m.

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

Senior Planner Gerald Green said that this is consideration of an ordinance to amend the Unified Development Ordinance ("UDO") to identify accessory structures as a permitted use, subject to special requirements in all residential districts, and to establish standards for accessory structures.

Accessory structures are an important and often necessary component of residential development. These structures serve as garages, storage space, workshops, and other uses related to residential development. When developed appropriately and sensitively, accessory structures can be an asset to residential development. However, when developed inappropriately, accessory structures can have detrimental impacts upon adjacent residential uses. In an effort to prevent inappropriate development of accessory structures, the proposed wording amendment identifies accessory structures as permitted uses, subject to special requirements. Standards for accessory structures identified in the draft wording amendment are designed to limit the impacts that accessory structures could have on adjacent residential uses. The standards include:

- Limit on the maximum size of accessory structures
  - 600 square feet for single accessory structure
  - 100 square feet for all accessory structures
- Limit on the number of accessory structures;
  - structure on lots of more than 3 acres or bona fide not subject to size limits
  - accessory apartments not included in size limit calculation
- 6-
- Limit on the height of accessory structures;
  - 20' height limit
  - Increase to 40' permitted with increased setback
- Location requirements for structures;
  - side or rear yard for non-corner lots, not in front of principal structure:
  - lots of more than 3 acres may be in front of principal structure but not in front yard
  - for corner lots, setback must be equivalent to front yard setback of adjacent lots
- Buffering requirements for accessory structures exceeding a certain size.
  - accessory structures of more than 600 square feet must be buffered from adjacent residential uses
  - no buffering required for accessory structures on bona fide farm and more than 24 feet from property line
  - accessory structures which provide common facilities for residential developments not subject to size

standards or location standards.

The draft wording amendment would permit accessory structures while imposing standards to assure that the structures do not adversely impact adjacent residential uses.

The Planning and Zoning Commission recommended approval of this ordinance amendment by a 6-0 vote. The staff of the Planning and Development Department recommends approval of the ordinance amendment.

When Councilwoman Field asked if the height was measured from the eve line or the very highest point on the roof, Mr. Green said that it is from the floor level of the primary access for emergency services to the ceiling of the top floor - basically to the eve line.

Upon inquiry of Councilman Tomes about the infringement of property owner rights, Mr. Green said that staff tried to develop standards that would balance the property rights of the individual with the rights of the community as a whole and establish standards which would allow for reasonable accessory structures in all residential districts.

Mayor Sitnick closed the public hearing at 5:47 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. 2506. This motion was seconded by Councilman Tomes and carried unanimously.

#### **ORDINANCE BOOK NO. 17 - PAGE 130**

#### **D. PUBLIC HEARING RELATIVE TO REZONING 8 LOTS OFF MACE AVENUE FROM RS-8 RESIDENTIAL SINGLE-FAMILY HIGH DENSITY DISTRICT TO OFFICE DISTRICT**

#### **ORDINANCE NO. 2507 - ORDINANCE TO REZONE 8 LOTS OFF MACE AVENUE FROM RS-8 RESIDENTIAL SINGLE-FAMILY HIGH DENSITY DISTRICT TO OFFICE DISTRICT -7-**

Mayor Sitnick opened the public hearing at 5:48 p.m.

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

Urban Planner Carl Ownbey said that this is the consideration of an ordinance to rezone eight lots on Mace Avenue from RS-8 Residential Single Family High Density District to Office District.

The petitioner requested that six lots (PIN Nos. 9628.12-97-6289, 7330, 7364, 8337, 9327, and 9453) on Mace Avenue be rezoned from RS-8 to Office. A review by the Technical Review Committee at their April 20 meeting indicated that the existing street was narrow, dead end, and in need of repair. The Planning staff indicated that there was limited access to the lots to provide adequate off-street parking and there was a noticeable terrain separation between this residential area and the commercial uses along Patton Avenue.

The Planning & Zoning Commission could not come to a consensus on the rezoning request at their May 6, 1998, meeting but recommended that the petitioner review with the Planning staff the possibility of rezoning to RM-8 and come back to their next meeting. After further review by the petitioner, Planning staff, Engineering Department, and Public Works Department, a consensus was reached that the inefficiencies in the street could be corrected and that office uses would have less impact on the street than multi-family development. The petitioner obtained a petition from the property owners along Bellair Avenue (neighborhood directly behind) stating their preference for the Office zoning.

The petitioner decided to stay with his original request of Office and had a zoning petition to add the 2 lots (PIN Nos. 9638.09-07-0414 and 0463) at the end of the street.

Prior to the adoption of the Unified Development Ordinance, this area was zoned commercial. The 2010 plan outlines this area as commercial. This property is within the city limits of Asheville.

The Planning staff reviewed the rezoning request again and based on the same reasons recommended denial of the rezoning of the eight lots from RS-8 Residential Single Family High Density to Office. At the July 1, 1998, Planning & Zoning Commission meeting, the Commissioners still had a tie vote on the rezoning request, therefore, the request was forwarded to Council for their review.

Mayor Sitnick expressed concern regarding the turn-around for emergency vehicles on this narrow road which is a dead-end.

Ms. Mary Joe Butron, owner of one of the lots on Mace Avenue, spoke in support of rezoning the property to Office. They were disappointed that the Unified Development Ordinance ("UDO") rezoned their property to residential and they felt it would be a compromise to rezone their property which was Commercial Highway (prior to the adoption of the UDO) to Office.

Mr. George Love, petitioner, also spoke in support of rezoning the property to Office. He said that he would like to expand his accounting business and cannot do that unless the property is rezoned. -8-

In response to Mayor Sitnick's concern about the turn-around for emergency vehicles, Ms. Butron said that she has owned her property for 12 years and has experienced no problem with the emergency vehicles turning around. She also noted that if the property is rezoned to office with parking lots, there would be plenty of places for the vehicles to turn around.

Mayor Sitnick closed the public hearing at 6:26 p.m.

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

Councilman Sellers moved to adopt Ordinance No. 2507 which would rezone eight lots off Mace Avenue from RS-8 Residential Single Family High Density District to Office District. This motion was seconded by Councilman Tomes.

Councilman Cloninger spoke in support of the rezoning to Office because the Office designation would be a good transition district.

Councilman Tomes expressed concern over the residents not knowing that their property was being rezoned under the Unified Development Ordinance.

Vice-Mayor Hay agreed with Mayor Sitnick about the emergency vehicle issue, however, even if the property were not rezoned, that issue will still not be resolved.

Councilwoman Field felt that if the property were rezoned to Office, there will be parking areas for the vehicles to turn around and that should solve the problem with emergency vehicles. She suggested the City look into making improvements to upgrade that street.

Councilman Cobb felt that the street is undersized and is not suitable for office development. He felt that the area should remain residential.

The motion made by Councilman Seller and seconded by Councilman Tomes carried on a 5-2 vote, with

Mayor Sitnick and Councilman Cobb voting no.

**ORDINANCE BOOK NO. 17 - PAGE 134**

**E. PUBLIC HEARING RELATIVE TO AN ORDINANCE ESTABLISHING A TEMPORARY MORATORIUM ON SEXUALLY-ORIENTED BUSINESSES IN THE CITY OF ASHEVILLE**

**ORDINANCE NO. 2508 - ORDINANCE ESTABLISHING A TEMPORARY MORATORIUM ON SEXUALLY-ORIENTED BUSINESSES IN THE CITY OF ASHEVILLE**

Mayor Sitnick opened the public hearing at 6:37 p.m.

6:37 public hearing opened

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

City Attorney Oast said that this is consideration of an ordinance adopting a temporary moratorium on the establishment or enlargement of sexually oriented businesses in the City of Asheville. -9-

The Asheville City Council has for some time been interested in additional regulation of sexually-oriented businesses. The N.C. General Assembly recently enacted legislation that allows for cities to consider and undertake several specific types of controls, such as clothing restrictions, hours of operation, etc.

The new law also authorizes the adoption by ordinance of a moratorium on the establishment or expansion of these businesses, while the City considers the type of regulations that may be appropriate.

In land use situations, moratoriums of six or so months have been upheld; although a moratorium may be longer or shorter, the only limitation in the law is that it be "of reasonable duration."

Conversations with the Planning & Development Department have indicated that six months should be an adequate time to study the issue, with an additional one to three months to move any proposed regulation through the consideration process.

Adoption of the ordinance establishing a moratorium is recommended. Council should decide on a reasonable duration for the moratorium, a minimum of six months is recommended.

Vice-Mayor Hay said that he would be in favor of a nine month moratorium so that it would not have to be brought back to Council for an extension.

Ms. Sylvia Hitchcock, speaking on behalf of a large group of concerned citizens, appealed to Council to seriously consider choosing not to allow topless establishments to operate in Asheville. She encouraged City Council to set a standard for Asheville to reflect family values.

Mr. Morrison felt that the citizens of Asheville should be allowed to have the option of attending a topless establishment or not.

Mr. David Ericson said that human sexuality has been around since the beginning if time and if we allow sexuality to be open instead of hiding, perhaps we would have less rape and molestation.

Mayor Sitnick closed the public hearing at 6:51 p.m.

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



Councilman Sellers moved for the adoption of Ordinance No. 2508 with the duration of the moratorium being nine months. This motion was seconded by Vice-Mayor and carried unanimously.

## **ORDINANCE BOOK NO. 17 - PAGE 136**

### **F. PUBLIC HEARING RELATIVE TO REZONING 15 LOTS ON BURTON STREET FROM COMMUNITY BUSINESS II TO HIGHWAY BUSINESS**

Mayor Sitnick said that the City Clerk received the following letter from Mr. Spiro Aliferis on August 11, 1998 (earlier in the day): "I would like to request that the hearing for the rezoning of Burton St. be postponed to the next meeting available because I am also scheduled to meet on the Charlotte Street Corridor meeting today. Thank you very much for your consideration." -10-

Councilman Cloninger was opposed to postponing this hearing since there is a large crowd here for this issue and Mr. Aliferis is also present.

Mayor Sitnick announced a short break at 6:50 p.m.

Mayor Sitnick opened the public hearing at 7:10 p.m.

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

Urban Planner Carl Ownbey said that this is the consideration of a an ordinance rezoning 15 lots on Burton Street from Community Business II to Highway Business.

The subject properties are approximately 5 acres. Staff recommends that lot 9638.10-45-7038 also be considered with this request to maintain consistent zoning pattern among the lots. The fifteen lots (PIN Nos. 9638.10-45-6187, 6027, 6285, 6365, 6477, 7033, 7356, 7038 and PIN Nos. 9638.14-44-5676, 6599, 6669, 6803, 6808, 7709, and 7928 are located on Burton Street just north of Haywood Road. The fifteen lots contain residential structures, commercial structures, and vacant lots. The 2010 Plan recommends this area be low density residential with some commercial on the southern fringe. The subject properties are surrounded on the north and west by residential, on the east by I-240, and on the south by commercial. Some of the existing commercial structures on the east side of Burton Street have been constructed after the area was rezoned in 1996 from R3 Residential to Commercial Service. The Unified Development Ordinance reclassified this area from Commercial Service to Community Business II and made most of the existing uses non-conforming. The petitioners have requested a rezoning that will allow them the opportunity to expand their commercial development.

The Technical Review Committee ("TRC") reviewed this request and commented that this was a narrow residential street with a sidewalk on one side. The street is not adequate to handle the large trucks associated with the permitted uses in the Highway Business District. The intersection of Burton Street and Haywood Road does not meet the minimum standards associated with turning movements of large vehicles. The on-street parking would need to be eliminated. Additional fire hydrants would be required. The need to contain any further commercial development into this neighborhood is important. The N.C. Dept. of Transportation has indicated that with the widening of I-240, most of these lots will be lost to right-of-way and construction.

The Planning staff reviewed the rezoning request and recommended denial based on the comments from the TRC. At the July 1, 1998, Planning & Zoning Commission meeting, the Commissioners voted unanimously to recommend denial of the rezoning of the fifteen lots.

The petitioners have appealed the Planning & Zoning Commission's denial to City Council.

The following residents spoke against rezoning the property to Highway Business for several reasons, some being, but not limited to: the present traffic on Burton Street is already dangerous; streets in the Burton Street area are small; that particular area on Burton Street is already an eye-sore; Mr. Aliferis has not complied with the requirements in other rezonings; there may be significant changes as a result of the Haywood Road Corridor small area plan; and the community has worked hard to make improvements and this rezoning would not be in keeping with those improvements:

-11-

Ms. Gloria Johnson, President of the Burton Street Community

Mr. H.K. Edgerton, President of the Asheville Branch of the NAACP

Ms. Martha Ligon, resident of Burton Street

Ms. Pauline Young, speaking on behalf of the Burton Street community

Mr. Brian Peterson, West Asheville resident

Ms. Zannie Davidson, life-long resident of Burton Street area

Mayor Sitnick closed the public hearing at 7:20 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 to deny the rezoning of 15 lots on Burton Street from Community Business II to Highway Business. This motion was seconded by Councilman Cobb and carried on a 6-1 vote, with Councilman Sellers voting "no".

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

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

##### **A. RESOLUTION NO. 98-111 - RESOLUTION CONFIRMING APPOINTMENTS TO THE MINORITY BUSINESS COMMISSION**

Vice-Mayor Edward Hay said that on May 26, 1998, City Council adopted Resolution No. 98-63 adopting a City-County Minority Business Plan.

The composition of the Minority Business Commission consists of 13 members from various groups. The Buncombe County Commissioners approved the following list of members along with their terms on August 4, 1998:

Laura Thompson American Institute of Architects (3 years) 8/1/2001

Wendell Howard Associated General Contractors of America (3 years) 8/1/2001

Eugene Presley Council of Independent Business Owners (3 years) 8/1/2001

Carol Hensley Asheville Area Chamber of Commerce (3 years) 8/1/2001

Jill Arrington Eagle/Market Streets Development Corp. (3 years) 8/1/2001

Lynn Staton National Assn. of Women in Construction (3 years) 8/1/2001

Katherine DeBrow DeBrow Construction Company (3 years) 8/1/2001

Vacant Minority Business Alliance (3 years) 8/1/2001

Claudia Thomas CAT Network Systems (2 years) 8/1/2000

Bonnie Habel A-B Community Relations Council (2 years) 8/1/2000

Christy Credle NAACP (2 years) 8/1/2000

Ronnie Blythe Asheville Business Development Center (2 years) 8/1/2000

Vickie Gaddy Tarheel Helping Hand (2 years) 8/1/2000

City staff recommends City Council adopt a resolution confirming the appointments to the Minority Business Commission.

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

Vice-Mayor Hay moved for the adoption of Resolution No. 98-111. This motion was seconded by Councilwoman Field and carried unanimously. -12

## **RESOLUTION BOOK NO. 24 - PAGE 470**

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

#### **A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON JULY 28, 1998, AND THE WORKSESSION HELD ON AUGUST 4, 1998**

Councilman Tomes moved for the adoption of the minutes of the regular meeting held on July 28, 1998, and the worksession held on August 4, 1998. This motion was seconded by Councilman Cobb and carried unanimously.

#### **B. MAYOR'S ROUNDTABLE; I-26 CORRIDOR BRIEFING**

Mayor Sitnick invited everyone to the Mayor's roundtable on litter to be held on Thursday, August 20, 1998, at 7:00 p.m. in the William F. Wolcott Jr. Building (Public Works Facility) at 161 South Charlotte Street.

Mayor Sitnick said that the N.C. Dept. of Transportation will brief City Council on the I-26 Corridor on Tuesday, September 1, 1998, at 3:00 p.m. in the First Floor North Conference Room during City Council's worksession.

#### **C. COPY FEE POLICY**

Mr. Brian Peterson, Chairman of the Coalition of Asheville Neighborhoods, passed out to City Council information relative to public records and the provisions for copies of public records. He asked that City Council review their copy fee policy that allows the first ten copies free and then 10 cents per page. After researching the per cost per page allowed by the state statutes, he said that the City should be charging 2.6 cents per page and asked City Council amend their policy to reflect that charge.

City Attorney Oast said the City's copy fee policy is set up in such a way that the overwhelming majority of

requests are fulfilled free. He said there is a provision in the policy that provides for the City to negotiate a fair fee for the kind of service (City Council agenda material weekly) Mr. Peterson is requesting and he would be happy to talk with him about that.

City Manager Westbrook said that City staff is looking for the budget work papers on this item just to find out the basis of the 10 cent per page charge was. However, since they have not found the information and based on the assumption that those papers cannot be located, he will have this matter researched and come up with a cost per page. He did state that the City Attorney feels the policy gives him sufficient flexibility to make some administrative changes and after a figure is arrived at, he would revisit the policy in total (not only the amount per page) and contact Mr. Peterson.

#### **D. REQUEST FOR NON-ENFORCEMENT OF LAWS CRIMINALIZING CANNABIS USERS**

Mr. Dan Waterman, representing a group of individuals, passed out some information to City Council and said they were concerned and distressed over the policies and laws of our government has adopted toward the cannabis hemp plant and its users. They are compelled to act at this time, because of laws prohibiting cannabis regularly deny them of their medicines of choice, their religious sacraments and their right to pursue private activities which cause no inherent harm to others. They have witnessed friends and family being arrested and subjected to prosecution and imprisonment solely because they chose to use one of nature's most -13-

beneficial plants. He read the following resolution "As citizens of Asheville, we declare our belief and understanding that the current prohibitive sanctions against our relationship with certain flora in our region and the United States defy the principles of freedom, liberty, and natural order. Furthermore, many of these plants provide various and substantial benefits in the form of medicines, agricultural and industrial products, and personal sacraments. The archetype of these plants is Cannabis hemp. We beseech the City Council of Asheville, North Carolina, to use their fiscal and administrative authority and their positions as civic leaders to create of Asheville a 'Community of Compassion.' We request that the City Council direct the Asheville Police Department and all law enforcement officers under their fiscal and administrative authority to cease expending valuable resources, time and money on the citing, arrest and imprisonment of citizens for the personal cultivation, possession, and use of Cannabis in all its various forms. We request that the enforcement of laws hindering the above stated personal uses of Cannabis be placed on a non-priority status. Abraham Lincoln said 'A prohibition law strikes a blow at the very principles upon which our government was founded.' Thomas Jefferson said, 'I have sworn upon the alter of God eternal hostility against every form of tyranny over the mind of man.' We, citizens of Asheville, concur."

Upon inquiry of Councilman Cobb, Mr. Waterman said that he would consider an adult anyone of voting age.

Councilman Cloninger felt that City Council did not have the authority to take the action to adopt the resolution and felt this was not the proper forum to make this request. However, if City Council did have that authority, he would be against this resolution because he felt we should enforce our drug laws.

City Attorney Oast said that it is a state law that our police are required to enforce and they don't have the discretion to not enforce the law. He would not advise this Council to take the step of directing our police to not enforce the drug laws or to give it a lower priority.

When Mayor Sitnick responded that City Council has an obligation to listen to our citizens, Councilman Cloninger felt Council should discuss their "other business" policy because City Council could spend hours and hours listening to people when City Council has no authority to do anything about their requests.

Approximately a dozen residents spoke in support of and gave reasons for adoption of the resolution proposal for non-enforcement of laws criminalizing cannabis users. Some felt government targets marijuana

users unnecessarily and fills our jails with non-violent offenders, making it necessary to release others.

Mr. Steve Rasmussen presented Council with a copy of an article from the San Francisco Chronicle noting that State Attorney General Dan Lungren would leave it up to Oakland police to handle the city's new policy that allows medical marijuana users to store 1-1/2 pounds of the drug at home.

A citizen of Asheville presented each Council members with a video entitled "The Hemp Solution" and hoped City Council would view it with an open mind.

Mayor Sitnick said that Council appreciated all the comments and they have been taken seriously. The comments by the City Attorney are as valid as is the comments received by those who spoke. She asked that the residents understand the position City Council is in at this point. Mayor Sitnick said City Council would read this material and thanked them for their comments.

-14-

## **E. CLAIMS**

The following claims were received by the City of Asheville during the week of: July 24-30, 1998: John Foster (Police), Wanda Huntsman (Streets), Judy Hyer (Sanitation) and Susan Blackmon (Water).

The following claims were received during the week of July 31 - August 6, 1998: Margaret Wythe (Police), Rebecca Petree (Water), Gabriel Holquin (Streets), Tammy Waddell (Water), Julie Ann McDowell (Sanitation), Carol Hartness (Traffic Engineering), Nancy Kern (Traffic Engineering), Richard Kingston (Water), Laura J. Murray (Streets) and David Neilsen (Water).

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

## **F. CLOSED SESSION**

At 8:20 p.m., Vice-Mayor Hay moved to go into closed session for the following reasons: (1) 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 - statutory authority is G.S. 143-318.11 (a) (5); and (2) to consult with an attorney employed or retained by the City Council in order to preserve the attorney-client privilege between the attorney and the Council. The parties in the lawsuit about which Council expects to receive advice are the State of North Carolina, City of Asheville, and Elijah U. Jones, d/b/a Jones Convenience Store - statutory authority is G.S. 143.318.11 (a) (3). This motion was seconded by Councilwoman Field and carried unanimously.

At 8:55 p.m., Councilman Tomes moved to come out of closed session. This motion was seconded by Councilman Sellers and carried unanimously.

## **VII. ADJOURNMENT:**

Mayor Sitnick adjourned the meeting at 8:55 p.m.

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CITY CLERK MAYOR

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