

Tuesday - August 25, 1998 - 5:00 p.m.

Regular Meeting

Present: Mayor Leni Sitnick, Presiding; Vice-Mayor Edward C. Hay Jr.; Councilman M. Charles Cloninger; 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: Councilman Earl Cobb

INVOCATION

Vice-Mayor Hay gave the invocation.

I. PROCLAMATIONS:

II. CONSENT AGENDA:

City Manager Westbrook requested Council's consideration of a budget appropriation relating to the agreement with the Hawthorne of Asheville Homeowners Association for street improvements as described in Item I under the Consent Agenda.

A. RESOLUTION NO. 98-112 - RESOLUTION TO AMEND THE SALE CONTRACT WITH NEIGHBORHOOD HOUSING SERVICES OF ASHEVILLE INC. FOR DISPOSAL PARCELS 6B & 6C OF THE HEAD OF MONTFORD REDEVELOPMENT PROJECT

Summary: The consideration of a resolution to amend the sale contract with Neighborhood Housing Services of Asheville, Inc. for Disposal Parcels 6B & 6C of the Head of Montford Redevelopment Project.

On May 7, 1997, the City entered into a sale contract with Neighborhood Housing Services of Asheville, Inc. (NHS) for Disposal Parcels 6B & 6C of the Head of Montford Redevelopment Project for the amount of \$248,900.00. The sale contract called for conveyance of both parcels upon payment of the purchase price in cash. Due to the difficulties encountered in securing financing for the project, NHS has requested an amendment to the sale contract which would allow them to take title in two stages with one parcel being conveyed at each stage. Disposal Parcel 6B would be conveyed no later than October 1, 1998, for the amount of \$179,500.00 and Disposal Parcel 6C would be conveyed no later that October 1, 1999, for the amount of \$69,400.00. In addition NHS has requested financing by the City of part of the purchase price for Disposal Parcel 6B. The amount to be financed would be \$85,000.000 to be repaid over 240 months at 6.5% interest. The first payment would be due one year after closing with no interest due for the first 12 months after closing.

The question arose as to whether financing part of the purchase price would be allowed under N. C. Gen. Stat. sec. 159-30 pertaining to the Investment of Idle Cash. It is the opinion of Community Development staff, subject to confirmation by the City Attorney, that N. C. Gen. Stat. sec.159-30 does not pertain to this circumstance because the transaction does not constitute an investment of idle cash. Although cash and land are both assets they are not the same thing and are not treated the same under state law. The Sale and Disposition of property is covered by several other statutes. The Institute of Government's handbook *Local -2-*

Government Property Transactions by David Lawrence, 1987, states: "The several statutory procedures for disposing of property assume that the local government will establish various terms of sale, but procedures do not specify the kinds of terms contemplated or permitted. As with many matters, the specific terms

associated with any sale will be a matter of discretion. Terms of sale commonly established by North Carolina local governments include: **..Whether payment will be by cash or on some other basis.** Only if terms of sale might be thought to restrict the number of buyers unreasonably or be thought to pursue goals extraneous to the property transactions involved, are they likely to be found an abuse of discretion."

It is the opinion of Community Development Staff that the proposed amendment will enable NHS to complete the purchase and redevelop the property in accordance with the Redevelopment Plan. Approval of the resolution will authorize the Mayor to execute the Amendment to the Sale Contract with Neighborhood Housing Services of Asheville, Inc.

Ms. Tamara Dozier Jones, representing Shirley and Clifton Dozier, asked that Item A. be taken off the Consent Agenda for further discussion. She read a letter dated August 24, 1998, which letter reads in part: "Prior to the bid from Neighborhood Housing Services, we had expressed interest in this lot and were told by Mr. Vess that we could not purchase this lot unless we had plans approved and finances in place to carryout such a plan. Was this required from Neighborhood Housing Services and, if so, why haven't they developed this lot and why are they now wanting to change the sale? ... If the City is to sell only a portion of this lot, it will require that the front portion be subdivided from the one acre. If the acting Planning Director signs his approval of such a plat, will this not be a conflict of interest, since he also serves on the Board of Directors of Neighborhood Housing Services? Also those who recommend such approval via the Montford Advisory Committee's recommendation, such as Dora Dawkins, who also serves as Chairman of the Neighborhood Housing Services shouldn't this be considered a conflict of interest. Also, your Building Safety Division is still harassing us with threats of demolishing our house at 52 Short Street and placing a lean on our property ... We appeal to you to correct all of the illegal wrongs and to end the harassment that we have suffered since the original illegal down zoning in 1984."

Mr. Vess said that there is no subdivision of the property involved because there are two separate parcels. Neighborhood Housing Services ("NHS") is asking to close on one parcel this year and one parcel next year. Regarding the plans for the property and finances, he said they did require that a plan be submitted at the time NHS submitted a bid and NHS showed a financial statement which was reviewed and approved. He said that the process for submitting a bid requires a submittal of a preliminary plan for the property and the submission of financial capability in the form of a financial statement. He said that is required of all developers on redevelopment property. He said that the Doziers were given the same opportunity as was given to NHS to bid on the property, nothing that the property was advertised for upset bids when NHS submitted a bid.

Upon inquiry of Councilwoman Field relative to the conflict of interest question regarding Assistant City Manager Spell, City Attorney Oast said that based on what he has heard today, he did not think that represents a conflict of interest such that Council could not vote on this amendment and he didn't think it represents a conflict for Mr. Spell either.

Ms. Shirley Dozier said that they expressed interest in the property before NHS put their bid in. They were told by Mr. Vess said that they had to have a plan and the money to buy it and -3-

the money to develop it. She felt that NHS is just now coming up with a plan and is asking the City to finance it. Had they known that the City was going to finance NHS, they would have expected the City to finance them as well.

Councilwoman Field pointed out that the Doziers are not registered as a 501 C 3 non-profit corporation.

RESOLUTION BOOK NO. 24 - PAGE 471

B. ORDINANCE NO. 2509 - BUDGET AMENDMENT TO PROVIDE NECESSARY ADDITIONAL FUNDING

TO COMPLETE THE GLENDALE AVENUE BRIDGE PROJECT

Summary: The consideration of a budget amendment to the Bridge Program to provide necessary additional funding to complete the Glendale Avenue Bridge Project.

The Glendale Avenue Bridge Project is nearing completion. An additional appropriation of \$58,500 is necessary to cover actual construction costs. The N. C. Dept. of Transportation will still be covering 80% of the additional costs as per the Municipal Agreement.

The increased cost will be funded with \$49,500 in additional state grant revenue and a \$9,000 contribution from the Water Resources Department to cover their portion of the cost of this project.

The Public Works staff recommends adoption of the budget amendment to provide necessary additional funding to complete the Glendale Avenue Bridge Project.

ORDINANCE BOOK NO. 17 - PAGE 138

C. RESOLUTION NO. 98-113 - RESOLUTION TO ACCEPT THE STREET NAME "MONTY STREET" LOCATED IN WILLOW LAKE MOBILE HOME PARK EXTENDING FROM SAND HILL ROAD

Summary: The consideration of a resolution to accept the new proposed street name "Monty Street".

Happy Hill Inc., agent Jerry Bowers, for all lots in Willow Lake Mobile Home Park, has petitioned the City of Asheville to accept the street name Monty Street. Monty Street is located in Willow Lake Mobile Home Park extending from Sand Hill Road in an easterly direction to a dead end. Staff recommends adoption of the resolution.

RESOLUTION BOOK NO. 24 - PAGE 472

D. RESOLUTION NO. 98-114- RESOLUTION TO ACCEPT THE STREET NAME "ROSEMONT COURT" LOCATED AT LIBERTY STREET TO A DEAD END

Summary: The consideration of a resolution to accept the new proposed street name "Rosemont Court".

Thomas Yurchenco, owner of all lots in Rosemont Subdivision, has petitioned the City of Asheville to accept the street name Rosemont Court. Rosemont Court would extend from Liberty Street to a dead end. Staff recommends adoption of the resolution.

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RESOLUTION BOOK NO. 24 - PAGE 473

E. RESOLUTION NO. 98-115 - RESOLUTION TO ACCEPT THE STREET NAME "MILL STONE DRIVE" LOCATED AT THE CORNER OF ROUND TOP ROAD IN A SOUTHEAST DIRECTION AND ENDS IN A CUL-DE-SAC

Summary: The consideration of a resolution to accept the new proposed street name "Mill Stone Drive".

Timothy Swann, owner of all lots in Mill Stone Subdivision, has petitioned the City of Asheville to accept the street name Mill Stone Drive . Mill Stone Drive is located at the corner of Round Top Road in a southeast direction and ends in a cul-de-sac. Staff recommends adoption of the resolution.

RESOLUTION BOOK NO. 24 - PAGE 474

F. RESOLUTION NO. 98-116 - RESOLUTION AUTHORIZING THE PURCHASE OF 30 MOBILE COMPUTERS, SOFTWARE AND RELATED EQUIPMENT FOR THE POLICE DEPARTMENT

Summary: The consideration of a resolution to approve the purchase of 30 each in-car mobile computers, modems and software links from the Public Safety & Justice Mobile Data Network Contracts established by the N. C. Division of Purchase and Contracts, Raleigh, N. C.

The N. C. Dept. of Administration, Division of Purchase and Contracts has established contract No. 701953 with IBM Corporation for computers and contract No. 603569 with Motorola, Incorporated for modems and software links. These contracts were established to provide State Contract pricing to all governmental agencies throughout N. C.

Funds for the purchase of this equipment will come from the U. S. Department of Justice Local Law Enforcement Block Grant Program, Account No. 116-3501-421-7004 Project GP9705 and GP9802. Police Chief Will Annarino and Larry Bopp, Information Services Director, concur with the purchase of this equipment.

Council adopt a resolution which authorizes computer equipment, software and related equipment to be purchased from the N. C. State Contract vendors as follows:

IBM Corporation, Fayetteville, N. C. - Contract No. 701953

30 ea. IBM Ruggedized Laptop Computers, Model XC-6250 with vehicle docking cradle, touch screen/pen adder and (3) external diskette drives

COST \$160,671.00

Motorola Incorporated, Charlotte, N. C. - Contract No. 603569

30 ea. Motorola Modem Packages, Model No. VRM600 and (30) ea.

Wave Soft Link 100 software

COST \$80,970.00

TOTAL COST \$241,641.00

RESOLUTION BOOK NO. 24 - PAGE 475

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G. RESOLUTION NO. 98-117 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A CONTRACT FOR THE APPALACHIAN DANCE SCULPTURE AT THE CIVIC CENTER

Summary: The consideration of an agreement with Gary Alsum and the National Sculptor's Guild to create and install five bronze figures of Appalachian Dancers and Musicians in front of the Asheville Civic Center.

The Asheville Urban Trail was begun in 1991 by the City of Asheville as part of its ongoing program to improve the quality of life within the City through the display of public art. It is a "museum without walls" that illustrates and highlights the city's rich heritage through 30 interpretive "stations." The Trail was designed by volunteers and built entirely with donations from individuals, groups and organizations. By the end of the summer, 25 stations will be underway. The Urban Trail Committee continues to actively raise additional funds for each station.

Last year the Janirve Foundation donated \$5,000 to the City to assist in the selection of an artist to complete five bronze figures of Appalachian Dancers and Musicians. Mr. Gary Alsum, included as a party to this agreement, and the National Sculptor's Guild was selected from over 50 artists who submitted portfolios. Mr. Alsum has considerable experience in completing works of similar complexity and character for public installations. Announcement of the selection and a preview of the models took place at this years Mountain Folk Festival over the July 4th weekend. It is anticipated that installation of the figures will be ready for dedication at next year's Mountain Folk Festival event.

The Urban Trail budget approved by City Council included \$160,000 for this station. The project includes bronze representations of two musicians, a fiddler and banjo player, a dancing young couple and a small child.

The Public Works Department staff recommends adoption of the resolution authorizing the Mayor to execute a contract for \$160,000 with Gary Alsum and the National Sculptor's Guild for the creation and installation of five bronze figures of Appalachian Dancers and Musicians in front of the Asheville Civic Center.

RESOLUTION BOOK NO. 24 - PAGE 476

H. RESOLUTION NO. 98-118 - RESOLUTION DELEGATING AUTHORITY TO THE PURCHASING DIRECTOR TO PURCHASE APPARATUS, SUPPLIES, MATERIALS OR EQUIPMENT WITH TRADE-INS PURSUANT TO CHAPTER 143 OF THE N.C. GENERAL STATUTES

Summary: The consideration of a resolution authorizing the City's Purchasing Director to purchase apparatus, supplies, materials or equipment with trade-ins.

The 1997 General Assembly enacted Sessions Law 1997-174 entitled "An Act to Update and Revise the Laws Affecting Local Government Contracting". Prior to the passage of that Act, North Carolina local governments were required to treat as separate procurement actions the disposal of surplus personal property and the purchase of new property - thus, for instance, precluding the trade-in of "old" police vehicles which are being replaced in a single contract to purchase the "new" vehicles. Among other things, that Act now allows local governments to include in specifications for the purchase of apparatus, supplies, materials or equipment an opportunity for bidders to purchase as trade-in specified personal property owned by the local government. -6-

The resolution expands the authority which is presently delegated to the City's Purchasing Director to develop specifications, advertise, secure bids, award contracts, etc. in order to permit the Purchasing Director to include trade-ins in future procurements of apparatus, supplies, materials or equipment.

City Council adopt a resolution which authorizes the City's Purchasing Director to purchase apparatus, supplies, materials or equipment with trade-ins.

RESOLUTION BOOK NO. 24 - PAGE 477

I. RESOLUTION NO. 98-119 - RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE AN AGREEMENT WITH HAWTHORNE OF ASHEVILLE HOMEOWNERS ASSOCIATION FOR STREET IMPROVEMENTS

Summary: The consideration of an agreement with the Hawthorne of Asheville Homeowners Association for improvements to the streets in Hawthorne Village Subdivision in the City of Asheville and acceptance of the streets for maintenance by the City.

Hawthorne of Asheville Homeowners Association requests that the City of Asheville Public Works

Department make improvements to the infrastructure in Hawthorne Village. The Association agrees to pay the estimated costs for materials and equipment rental of any non-City owned equipment with the City providing the labor and City-owned equipment for the performance of this work. The materials and equipment cost is estimated at \$99,960.00. This process has been used prior to this request, most recently in the Hills of Beaverdam.

The Association requests that the City take responsibility for ownership and maintenance of the roads as a result of this upgrade of the streets as a part of this project in Hawthorne Village. . All of the right-of-way needed for the City to accept the streets is common property belonging to the Association. The Association agrees to provide the right-of-way and to pay for a plat to be prepared and recorded to delineate this right-of-way. The streets included in this project are Elderberry Lane, Morning Glory Drive, Greenbriar Court, Windflower Way, Windflower Court, Foxglove Court, Trillium Court, Lakespur Court and Hedgerose Court.

The construction plans were prepared by the Engineering Department.

Staff recommends the adoption of the resolution authorizing the City Manager to execute and agreement with the Hawthorne of Asheville Homeowners Association for street improvements.

RESOLUTION BOOK NO. 24 - PAGE 479

J. MOTION ENDORSING THE ASHEVILLE URBAN AREA METROPOLITAN PLANNING ORGANIZATION AGREEMENT TO BECOME A TRANSPORTATION PARTNER WITH THE CENTER FOR LIVABLE COMMUNITIES

K. MOTION SETTING A PUBLIC HEARING ON SEPTEMBER 8, 1998, TO REZONE A PORTION OF PROPERTY ON TOLULA LANE FROM RS-8 RESIDENTIAL SINGLE-FAMILY HIGH DENSITY DISTRICT TO OFFICE BUSINESS

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L. ORDINANCE NO. 2510- BUDGET AMENDMENT RELATIVE TO IMPROVEMENTS TO THE STREETS IN HAWTHORNE VILLAGE SUBDIVISION

Summary: See Item "I" above.

ORDINANCE BOOK NO. 17 - PAGE 140

Councilwoman Field moved to adopt the entire Consent Agenda. This motion was seconded by Councilman Sellers.

Mayor Sitnick said that it has been Council's habit that if someone requests an item be withdrawn from the Consent Agenda to be discussed individually that a vote is taken on that item separately.

The motion made by Councilwoman Field and seconded by Councilman Sellers to adopt the entire Consent Agenda passed on a 5-1 vote with Mayor Sitnick voting "no." Mayor Sitnick noted that she would have voted to adopt Item A separately.

City Attorney Oast said that City Council's rules specify that the Consent Agenda shall only be adopted by unanimous vote of those Council members present at the meeting.

When Mayor Sitnick asked the City Attorney if Council had to vote on an item separately if it is pulled from the Consent Agenda by a member of the public, he said that it has been Council's habit to do that; however, Council does not have to. He did state though when a Council member asks for it to be removed from the

Consent Agenda for discussion, then Council has to vote on the matter separately.

Therefore, Councilwoman Field moved to reconsider. This motion was seconded by Councilman Sellers and carried unanimously.

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

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

III. PUBLIC HEARINGS:

A. PUBLIC HEARING RELATIVE TO REZONING 216 SHELBURNE ROAD FROM RM-6 RESIDENTIAL MULTI-FAMILY LOW DENSITY TO INSTITUTIONAL

Mayor Sitnick said that Councilman Cobb was on vacation on the coast of North Carolina, and at his request, intended for him to participate in this public hearing via speaker phone. Unfortunately due to the weather, he was ordered to evacuate and we are now unable to have him participate in this meeting.

Mayor Sitnick said that last week she and Councilman Cobb met with the City Attorney and some members of the Planning Department about possibly coming up with a concept to address the specific needs of Trinity Baptist Church. Interim Planning & Development Director S. Douglas Spell has prepared a memorandum which outlines a concept proposal for a conditional use permit for the Church. She said this proposal would allow for a more consensus -8-

oriented solution to the request by the Church for an Institutional zoning that would allow the Church to use its property, that would protect the neighborhood with some conditions that this Council felt could be placed on the development, and would allow protection in the future should the Church have to move to a different campus. She asked City Council if they were interested in considering this concept.

Councilman Sellers felt that if City Council considered a conditional use permit, it would be more conducive to a win-win situation for the neighborhood and the Church and not leaving any doors open for the future if the Church moved for any reason.

Mayor Sitnick said that the conditional use permit concept (1) would provide City Council an opportunity to review each request, (2) would allow appropriate conditions to be attached to each project, (3) allow the merits of each project to be weighed on a case by case basis, and (4) allow City Council to review the site plans during the consideration of the request.

When Councilman Cloninger asked if this proposal would apply to this Church alone, City Attorney Oast said that it would not apply to only this Church or any particular church or any particular piece of property. He explained that the difference between this and the conditional use zoning concept is that this mechanism already exists within the Code - City Council already has some conditional uses. The expanded ministry that some churches are moving toward would be the subject of the conditional use permit. Right now, churches, in the traditional sense, are a sanctuary and a rectory and they are permitted as uses by right subject to special requirements in any residential zone. This concept is for anything beyond that and it would require a conditional use permit. We have not had much opportunity to develop this, however it is an idea we have discussed.

City Attorney Oast said that Councilman Cobb indicated a strong desire to participate in this particular vote and since he was unable to participate, he requested this matter be continued for at least two weeks, preferably four weeks, as a courtesy to him. City Attorney Oast noted that there is a valid protest petition filed

with respect to this matter which would mean that 3/4 of the City Council, or six out of the seven members, would have to vote in favor of the rezoning in order for it to pass.

Mayor Sitnick also stated that when the public hearing was last scheduled, there was some concern on the part of the petitioner that there was a member missing, and he probably took that into consideration to be sensitive to the discussion.

Councilman Tomes stressed that churches are moving to a holistic concept and ministry that deals with the total person, not just a Sunday and Wednesday process. If Council is going to be fair, they need to look at, from a holistic point of view, the merging role of religious institutions as we move toward the new millennium. He would like to see a partnership between neighborhood and churches where we can have a win-win situation. However, if we look at it in a narrow focus, we will continue to come back and be haunted with our understanding on what church is about in today's world.

Mayor Sitnick opened the public hearing at 5:35 p.m.

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

Councilman Cloninger said that Council is faced with three options: (1) vote to postpone at the request of Councilman Cobb; (2) have a full public hearing and vote on the matter; or (3) Trinity Baptist Church can withdraw their petition, in which case if we amend the ordinance and -9-

come up with a conditional use permit, the Church can then re-file their petition and their petition would be subject to the amended ordinance.

City Attorney Oast pointed out that City Council can take whatever action it decides to today and if that action were to deny the rezoning or continue it - anything but allow it - that would not stop the process for pursuing the conditional use designation. In fact, those two processes could go on at the same time. He did note, however, that the Church would have to apply for a conditional use permit.

City Attorney Oast said that the consideration of the continuance is really (1) to accommodate the wishes of Councilman Cobb and (2) to consider the possibility of allowing staff to develop the conditional use language and coming back to Council with that designation. He said that it would take approximately two months to adopt the ordinance changes necessary to implement the conditional use permit process.

Other than adhering to Councilman Cobb's request, Councilman Cloninger pointed out that there would be no point in continuing the public hearing in order for City Council to consider a conditional use amendment to the ordinance because the rezoning petition cannot be subject to any amended ordinance passed in the future. The only way their petition could be subject to the amended ordinance would be for the Church to withdraw their petition at this point and re-institute it after the ordinance has been amended.

When Mayor Sitnick asked what would happen with the protest petition if the Church were to withdraw their rezoning petition, City Attorney Oast said that the protest petition would have to be re-filed again.

Mayor Sitnick relayed to Council that Councilman Cobb feels strongly that the Church should be allowed to continue functioning as it wishes and that the neighborhood deserved as much protection as possible. She said he was very clear in expressing his support for the conditional use process.

Mr. Carl Ownbey, Urban Planner, said that the conditional use would be a revision to the Unified Development Ordinance ("UDO") which would outline the requirements for a conditional use permit. It would then be reviewed by the Technical Review Committee and then forwarded onto City Council for their consideration. This would be on a case by case basis and for churches as indicated. He was told that the ordinance revision process would take approximately six months, not two, because of the other Unified

Development Ordinance revisions Council has requested. However, the process time could be shortened depending on the priorities of Council.

Councilman Tomes suggested that, during the process of developing this revision, if Council would be amenable to having some people from the faith community to sit down as an ex officio person to give some input. Speaking as a clergyman, unless you understand the language and the intent of the faith community, some inappropriate constraints can be put in place.

As confirmed by Mr. Ownbey, Councilwoman Field said that the project under construction at that site now would continue whether or not the rezoning was approved or withdrawn. If City Council took six months for the conditional use process amendment, it would not mean that the contractor would have to stop. Trinity Baptist Church has met all the requirements for development of their project and they are under construction.

At this time Mayor Sitnick asked for comments from the opposing attorneys relative to the issue of continuing the public hearing.

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Mr. David Payne, attorney representing Trinity Baptist Church, said that his clients have waited a long time and they have a lot of plans to make. He felt the furtherance of this issue does not lend itself to the best interest of his client. Therefore, he would object to continuing the public hearing.

Mr. Frank Goldsmith, attorney representing a group of residents of the Shelburne Road area, said that his clients have also waited a long time for resolution of this matter. He said that all of the parties who are most affected by this issue would like to see it put to rest. Therefore, they would like to see the issue resolved tonight and would object to continuing the public hearing.

Mayor Sitnick said that it is the Council's habit that when we have a request from a Council member, that we consider it seriously and that is why we have had this discussion. We have, however, tried unsuccessfully several different way to involve Councilman Cobb in the discussion.

Vice-Mayor Hay felt this was a unique situation in that we have a Council member who planned to participate in this hearing and because of no fault of his own, he is unable to do that. Vice-Mayor Hay said that, personally, he would be disappointed if Council did not continue the public hearing. He said that he would be interested in seeing the conditional use permit language. He agreed with Councilman Tomes that the UDO does not take into account the kind of church ministries that we are dealing with now and can expect to deal with in the future. Regardless of what City Council does with the Trinity Baptist Church rezoning issue, this is an opportunity for City Council to take a step forward so we can deal directly with issues as they arise, with respect to churches. He would like to apply that thinking to this issue as well. He feels that City Council is not trying to stand in the way of what Trinity Baptist is doing, but they are having trouble reconciling that proposal with the way the UDO is written and this gives us a chance to do amend the UDO. If we postponed it pursuant to Councilman Cobb's request, it would also give City Council a chance to deal with the conditional use permit concept.

Mayor Sitnick said that the conditional use permit concept would give City Council some discretion on a case by case basis.

When Mayor Sitnick asked if Council votes against continuing the public hearing and the public hearing proceeds on the Church's rezoning request, can the Council place conditions on the outcome of the vote without this conditional use permit concept being a part of the UDO. City Attorney Oast replied no.

Councilman Cloninger followed up by saying that the only way the Church's rezoning petition could be subject to the conditional use permit, would be if they withdraw their petition and re-file after the UDO is

amended with the conditional use permit language.

City Attorney Oast said that the Church would have to apply for a conditional use permit. He said that if City Council were to conduct the public hearing tonight and the requested rezoning did not pass, there would be nothing to prevent the staff from pursuing the conditional use permit concept or to prevent Trinity Baptist Church from taking advantage of that in the future, if it were made part of the ordinance.

Upon inquiry of Councilman Cloninger, City Attorney Oast said that City Council cannot subject the Church to the conditional use permit process, unless they applied for it.

Vice-Mayor Hay said that the Church now has two options in that they can continue with the rezoning application to Institutional and they also have this new conditional use permit concept. -11-

When Councilman Cloninger asked if Council voted the rezoning petition down, would the Church have to wait a year to re-file or could they file for a conditional use permit within the year. City Attorney Oast said that there would be nothing to prevent them from filing for a conditional use permit immediately after Council adopts the amended language in the UDO. He also said that Council could consider the rezoning upon a 3/4's vote.

Councilwoman Field said that several times City Council has been unsuccessful in trying to get the neighborhood and the developers to meet and come to a compromise. She felt like the conditional use process would put City Council in the position of coming up with some compromises.

Mr. Payne said that in order to properly counsel his client in relation to possible change in position, he needs to know certain things, for instance, is Council going to place a high priority on the conditional use permit concept. He noted that in January of this year, his client wrote to the City Attorney and requested a study be done in relation to conditional use. And now, there is an additional six month possible time limit for adoption of the amended UDO. He also said that in April he sent Council a letter outlining their position in relation to consequential and incidental damages as a result of a pulled permit. He felt Councilman Tomes suggestion for clergy participation in the process was excellent.

When Mayor Sitnick questioned the conditional use issue which came up six months ago, City Attorney Oast said that the request was for staff to study and present to Council the concept of conditional use zoning, which does not currently exist in the UDO. Conditional use permits are entirely a different thing and that mechanism does exist in the UDO.

Mayor Sitnick asked if the church withdrew their rezoning petition and Council amended the UDO within 60 days, could City Council waive the one year limit or any additional permit fees that would be required for the Church to reapply? City Attorney Oast said that the one year limitation would not apply because they are not asking for rezoning and the conditional use permit is a different thing entirely. As far as the waiver of fees, he thought Council could take some action in that respect, but at this time he did not know what action that would be.

Mayor Sitnick said that City Council is committed to finding the best solution for all. Some issues of the conditional use permit concept would be (1) identification of the uses permitted, including both principal and ancillary uses; (2) buffering requirements to protect adjacent residential uses; (3) traffic impact on adjacent streets, particularly residential streets; (4) protection of adjacent and surrounding residential neighborhoods; and (5) restricting uses on the church site to church related uses.

Councilman Tomes said that since there are models in ministry, and if we are creative enough to look at those models, then we can compliment the efforts of staff in coming up with language where we would not have to worry about that issue in the future.

Mayor Sitnick agreed in that City Council wants to find something creative for our community that addresses the concerns and the needs of all parties involved. She felt that creative solutions are the way of government. She noted that City Council, when considering a zoning request, cannot vote on the request according to the use that is proposed. They must vote on the request according to whether it is appropriate and meets the infrastructure requirements that are within Council's purview to consider.

Mr. Goldsmith explained why he felt the issue of the conditional use permit is irrelevant as it pertains to the needs of a continuance.

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Vice-Mayor Hay said that Councilman Cobb might think that if there was a conditional use permit option available, it would make a difference to him in how he would vote on the request to rezone to Institutional.

Vice-Mayor Hay moved to continue the public hearing until September 22, 1998, as requested by Councilman Cobb. This motion was seconded by Councilwoman Field.

Discussion surrounded whether one month would be sufficient time for staff to develop the language; present it to the Planning & Zoning Commission for their review, public hearing and action; and then back to City Council for their public hearing and action. Or, is the one month just for staff to develop the conditional use concept for City Council's review prior to sending it to the Planning & Zoning Commission for their appropriate actions.

Vice-Mayor Hay felt that within one month, the Church will know what the conditional use permit language will be and that might affect what they do with their application. Also at that time they can see what kind of time frame City Council is looking at for adoption and that the amendment basically had Council's stamp of approval. He understood that the on-going projects are underway and what we are talking about are projects that may or may not be on the drawing board at this point.

Councilman Cloninger said that he would vote against the motion to continue the public hearing because the people deserve an answer tonight. However, if the motion passes to continue, City Council should commit to voting on the issue when it comes back before them.

When Mr. Goldsmith asked when the draft of the conditional use permit language would be available, City Attorney Oast said that the proposed draft will be made available to the interested parties as soon as possible.

Mayor Sitnick said that because she wants to create a win-win solution and out of respect for Councilman Cobb, she would support the motion to continue but will be happy to listen to the public comments should the motion fail.

Mayor Sitnick confirmed that the public hearing on September 22, 1998, would only be on the rezoning request, not on the conditional use permit language.

The motion made by Vice-Mayor Hay and seconded by Councilwoman Field to continue the public hearing for one month failed on a 3-3 vote with Mayor Sitnick, Vice-Mayor Hay and Councilwoman Field voting "yes" and Councilmen Cloninger, Sellers and Tomes voting "no".

Mr. Carl Ownbey said that this is consideration of rezoning three lots (20 acres) on Shelburne Road from RM-6 Residential Multi-Family Low Density to Institutional. The property of Trinity Baptist Church (PIN Nos. 9628-20-81-5544, 7717, and 8232) contains structures that support a church, family life center, and Bible College. The property is at the intersection of Shelburne Road and Sand Hill Road and surrounded on all sides by low density residential. The composition of the surrounding area is an established residential

neighborhood with two other neighborhood churches. These three churches exist as a conditional use in a residential neighborhood.

The 2010 Plan indicates the surrounding area to be low density residential which the current zoning permits. The UDO definition of church is "a place where religious worship is conducted and shall not include day care, educational, recreational, and other facilities which are incidental to the place of worship."

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The Institutional District is a district established to reserve land for the development of major facilities, major medical facilities and other complementary and supporting uses such as health related developments, office developments, and public services which would not be compatible with the existing residential character of the surrounding area.

The Technical Review Committee states that this area has major water and sewer transmission lines along the south property line. This property is within the city limits of Asheville.

The Planning staff reviewed the rezoning request and recommended denial from RM-6 Multi-Family Residential to Institutional. However, at their January 7, 1998, Planning & Zoning Commission meeting, the Commissioners voted 4-3 to approve the rezoning request from RM-6 Multi-Family Residential to Institutional.

A protest petition was filed on January 22, 1998, and after investigation, the petition was found to be valid.

Upon inquiry of Councilwoman Field if this would constitute an illegal spot zoning, City Attorney Oast said that only a court can determine whether it is a spot zoning or not. He said the factors that a court would consider is the use to which the property is already devoted, the size of the tract and it's relation to other types of institutional uses that may be in the area.

When Councilwoman Field asked what the zoning was prior to adoption of the UDO, Mr. Ownbey said it was split zoned with R-3 and R-2 residential districts.

In response to Councilwoman Field, Mr. Ownbey said that the proposed plan showed a ballfield; however, that was taken off of any consideration and the Sunday School nursery on the site is not considered day care.

Upon inquiry of Councilman Sellers, Mr. Ownbey said that the Planning Department has gone back at least 15 years and it has always been zoned residential.

Mr. Payne spoke in support of rezoning the property to institutional. He said his client has been at this site for 28 years as an institution. His clients attended the UDO meetings as advertised but they were never informed that their rights in relation to the institutional use of their property would be in question or would be taken away. Even though Mr. Ownbey stated that the Church's location has always been in a residential zoning, having known this Church his whole life, he has no recollection of any enforcement agency coming to the Church and saying they are not in compliance. Now they are being told they are an existing non-conforming use. He said in the early 1990's his clients submitted a development plan, permits were applied for and work was commenced. He said that without the institutional zoning, the Church will be severely limited in growth.

Mr. Frank Goldsmith stated that this is not a case about hostility to religion, not a case about hostility to the Church's right to conduct it's mission as it sees fit, and not a case about this proposed use. He cited several institutional uses that could be placed on the property and imposed in the neighborhood if rezoned. He was concerned that if the Church needed to expand further in the future and they sell the property, City Council

would be powerless to prevent any other institutional use from establishing itself right in the middle of this neighborhood. He said Council would be setting a dangerous precedent if you allow this rezoning on this particular Church property. There are many religious institutions in this City and they may desire to expand their ministry. How could Council deny their requests if this is granted, and allow multiple institutions to spring up in residential districts. He said that there could be no possible prejudice to the Church's interests if their petition to rezone this property as institutional were -14-

denied. As previously discussed, Council is interested in moving forward with some alternate plan that would allow them legitimately to consider the specific proposed use that the Church intends to make of its property. He urged City Council not to rezone the property to institutional in that the down-side to the neighbors is severe, whereas, the down-side to the Church is not as severe as they have an alternate remedy. He felt there is very little question that the Courts would find this property an unlawful spot zoning if rezoned to institutional. He handed out Council a memorandum dated August 25, 1998, in which one point he covers is the potential spot zoning issue. He said that if the problem in the UDO is the definition of "church", then there is a better way to address that problem than to rezone this piece of property to institutional. He said the people believe they have a right to continue to live in, as promised in the 2010 Plan, a low density residential neighborhood. He felt this is an overkill approach to a very sensitive issue to impose in this neighborhood an institutional district.

Mr. John Cort, architect for Trinity Baptist Church, handed out a booklet with contained excerpts from the 2010 Plan and UDO. He spoke about land use. He said that they presented the entire case and linked it to the law and the Planning & Zoning Commission recommended this rezoning to City Council. That is the only way the Church's problem can be addressed under the existing law. He said it was not unusual at all to see an institutional zoning in a residential district, i.e., UNC-Asheville. He said spot zoning is not an issue. Regarding infrastructure, the Church is located on an existing minor thoroughfare, on a public transit route, and the Church is located on the major water and sewerage plan maps. He pointed out that on the existing land use map of the 2010 Plan, the Church's property is recognized as an institutional use. He urged Council to zone the property institutional.

Rev. Jerry Young, Associate Pastor of Trinity Baptist Church, noted that the Church's development process has been on-going for the past five years and work commenced in 1994 and 1995. Now, according to the UDO, all their planned uses are non-conforming. He noted a letter dated August 13, 1998, from the City's Development Code Enforcement Administrator which states that they have "received complaints of the Church's property being used for outside catering, dinners, model train exhibits and other special events not related to church activities as defined" in the UDO. The Church has a long history of holistic ministry and they have been caring for the needs of the Asheville community for 28 years. They can only continue to do that if the rezoning to institutional is allowed. If the rezoning is denied, many of the present ministries of the Church will be shut down. He said the Planning Department will close their Bible College and their family life center because the uses are non-conforming. He urged Council to support rezoning the Church's property to institutional.

Mr. Ownbey said that the Planning Director instructed him, as a result of complaints received, to check all of the activities going on with the Church. He called Rev. Young and asked him to explain those activities to him. He then talked with Ms. Allen, Code Enforcement Administrator, and the City Attorney to discuss the issues in order to determine if there were any violations. The only one they could not make a determination on whether it was in violation of the UDO, was the catering activities. Ms. Allen sent a letter to Mr. Young asking for clarity. He said at no time did they threaten to shut the Church down.

Rev. Ralph Sexton, Pastor of Trinity Baptist Church, felt this was a first amendment issue - the right of a church to be a church. He reiterated that the infrastructure in the area exceeds the requirements. He said that their project cannot continue because they don't know if they have a future. Rev. Sexton stressed that the Church cares about their neighborhood.

Mayor Sitnick again stressed that City Council must consider all of the potential uses permitted under the Institutional district, not what the Church has plans for.

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Upon inquiry of Vice-Mayor Hay, Mr. Ownbey said that the projects that have been approved and are underway now will not be stopped.

Mr. Payne said that the Church had submitted all of their documentation in relation to their full plan and it was their position that they had done so prior to the implementation of the UDO. Subsequently that permit was pulled and they were stopped. He gave his clients two options: (1) file a lawsuit and try to fight for what you already think you have; or (2) attempt to comply under the UDO. He said that since he was losing \$1,000 a day interest on his bonds alone waiting for something to be done, he counseled his clients to attempt to comply with the UDO. He requested that their full plan be grandfathered in. Since the Church does not have an option at this time, he requested Council rezone the property to institutional.

The following people spoke in favor of rezoning the Church's property for various reasons: some needed ministries (like to the young people), will not conform to the UDO; Trinity Teen Church is a vital ministry that reaches out to our community; and a bigger facility is necessary to accommodate the additional people coming into the community:

Rev. Jerry Dykes, Pastor of the North Asheville Baptist Church

Mr. Matthew Templeton, 26 year member of Trinity Baptist Church

Ms. Bonnie Contreras, downtown and West Asheville business owner

Rev. Tim Brady, Youth Pastor at Trinity Baptist Church

Mr. Shawn Manning

Ms. Beverly Parrish

Rev. Wendell Runion, President and Director of International Baptist Outreach

Missions

Ms. Pat Atkinson, 203 Shelburne Road

The following people, who mentioned several times they are not anti-church, spoke against rezoning the Church's property for various reasons: if the property is rezoned to institutional, anything allowed under that zoning can be placed on that land and Council has no authority to regulate it; the Church might outgrow this piece of property and when they move, the property will be left zoned institutional; the neighborhood does not want a Thomas Wolfe Auditorium size building on that property; traffic is already heavy; if Council rezones this property for the Church to expand, the other two Churches on Shelburne Road might also want to expand eating up residential property in the area; barrels and cones are needed so often for traffic control they are not put away; there are no more mature trees in the area; with the exception of the Sextons, these people do not live on Shelburne Road - they only come to visit and they are trying, as visitors, to dictate what zoning can be done on the neighborhood's streets; this has been a residential community for over 40 years and it should remain residential; the noise level would be significant; residents already have trouble getting in and out of their driveways due to the traffic; the new proposed building would block the view Mt. Pisgah; the neighborhood did not oppose the Church when they requested variances; this is a community of over 30

families; lights from the parking lot shine into the homes; and the City will be losing at least 66-70 residential homes due to the I-240 widening:

Ms. Ann Anderson, 147 Shelburne Road

A resident on Sand Hill Road

Ms. Lou McCarthy, 243 Shelburne Road

Mr. Norman Anderson, 147 Shelburne Road

Ms. Jesse Corpening, 152 Shelburne

Ms. Jean Jennings, 251 Shelburne Road

Mr. J.D. Jennings, 251 Shelburne Road

Ms. Norma Price, 26 Zephyr Road (passed out a letter dated August 25, 1998)

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Reverend Young said that the Church's position had been adequately made. He said they would not waste Council's time in bringing their supporters forward to speak on the Church's behalf to rezone it's property institutional.

Mayor Sitnick closed the public hearing at 8:08 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 rezone 216 Shelburne Road from RM-6 Residential Multi-Family Low Density District to Institutional. This motion was seconded by Councilman Tomes.

Councilman Sellers said that he does understand the long term effects if the Church moved for any reason. However, they have existed at that location for 28 years and have been good neighbors. He respected the Planning & Zoning Commission's recommendation and agreed with the information from the 2010 Plan Mr. Cort presented. He did feel that the infrastructure was in place for this rezoning.

Councilman Tomes said that religious institutions, churches, must be viewed and understood in the context of a seven day a week ministry. Given the governmental cutbacks and social programs cut out that have been proposed, traditionally religious and secular charities will not be able to take up the slack. The Christian church traditionally has always played an important role promoting positive values in our communities. He was disturbed when we try to make strategic option appear to be in conflict when in fact they can be made to blend with a reasonable sense of balance. Therefore he suggested that neighborhoods and faith communities partner in community building. He read a clipping from a community that had met this balance.

City Attorney Oast reminded City Council that there is a valid protest petition filed with respect to this matter. This would require all six Council members present to vote in favor of the motion to approve the rezoning.

Mr. Payne objected to the voting requirements, in that they do require a unanimous vote of the Council. He said that unduly burdens his client. He made a formal objection to the requirement in the UDO which requires a simple majority and in this sense a majority vote.

City Attorney Oast pointed out that what is in the UDO is an almost word for word reproduction of what State

law provides.

Councilman Cloninger very much respected the good work the Church is seeking to accomplish. He would also like to find a way to have a blended approach to this matter. He could not, however, vote in favor of changing the zoning to institution because, as was brought out earlier, in reviewing this rezoning proposal, Council has to consider all the potential uses of the property and not just the use that the Church wants to make of it. The institutional zoning would allow a variety of commercial uses that, in the future if the Church were to decide to relocate, would not be suitable for that neighborhood. However, he does look forward to working on a revision to the UDO that allows for a conditional use process with respect to churches. He was hopeful that Council would pass a conditional use amendment that will allow Council to arrive at a blended approach so that we can allow the Church to go forward with its work in a manner that is acceptable to them as well as to the neighborhood in that area. He did note that all of the current projects of the Church will be able to go forward while we are looking at revising the UDO.

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Upon inquiry of Rev. Sexton, Councilman Cloninger said on behalf of City Council, that it is not the intention of the City to shut down any of the Church's ministries. Mayor Sitnick said that City Council will look into their concern of being shut down and will make sure that communications in the future are clear, precise and understood.

Councilwoman Field said that she believes strongly in the separation of church and state. She asked the City Attorney, with a slip of paper at the meeting, to help her understand what separation of church and state means in relationship to zoning. Because it was too long and complicated, he could not give her a brief answer. Therefore, she would have to put that issue aside. She supports mixed-use and not isolating neighborhoods into little ghettos. If the City is going to have walkable communities and our churches are going to provide day care and recreational facilities for our children, then there are serious problems with the UDO. She felt the community needed neighborhood churches, neighborhood commercial, walkable communities, and multi-family mixed with single-family. Therefore, she would vote for the institutional zoning even though it is probably not the most appropriate zoning for the area. She voted to delay this so we could get a better definition of churches and possibly come up with some kind of win-win situation. She said she would vote on what she felt was best for land use.

Vice-Mayor Hay said that if the law is not right, it's up to City Council to change that law. He hoped that Council would move forward purposely and quickly on the whole issue of a conditional use amendment. He believes in the mission of Trinity Baptist Church and it is the kind of thing we want going on in this City. However, he feels bound to follow the law which says that he can't take into account the proposed use of this property. He explained that he comes from a family of church builders and he understands about mission and about calling. Good things are going on in your church when a church grows. He said he would have to vote against the rezoning but wanted to say how sincere he was in wanting to change the law so that Trinity's mission can take place in the way we believe that it should.

Mayor Sitnick was very committed to being creative in this matter in trying to find a way to accommodate the needs of all of the constituents she cares about. She has not received one letter, in the stacks of mail received on this issue, from anybody who opposes what Trinity Baptist Church does and what it does for this community. The concerns revolved around traffic and buffering. Their main concern was as Trinity grew and outgrew it's current campus and had to move, that one of the other uses permitted in the industrial zone could invade that neighborhood and cause worse traffic. Her concern was making sure that the projects the Church is undergoing now are able to continue, and we have been assured that that is the case. She is committed to coming up with a creative approach for all churches to be able to grow sensitively and appropriately within the communities they are located in. With great pain in her heart, she would vote against the institutional. She requested staff immediately draft language to address the minimal conditions that she

would like to see placed on the church as it continues its projects that are already underway, that will allow it to continue building the buildings it has for the future, and that will protect the neighborhood a little bit more. She requested updates from staff as that language is being drafted to make sure that the entire Council agrees and to make sure that we don't impede what the Church is already doing. She hoped that the Church will come back to Council for a conditional use permit for the Church to grow and outreach and serve the community.

The motion made by Councilman Sellers and seconded by Councilman Tomes died on a 3-3 vote, with Councilwoman Field and Councilmen Sellers and Tomes voting "yes" and Mayor Sitnick, Vice-Mayor Hay and Councilman Cloninger voting "no".

At 8:32 p.m., Mayor Sitnick announced a short break.

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B. PUBLIC HEARING RELATIVE TO CLOSING AN UNNAMED ALLEY BETWEEN MILLER AND POND AVENUES

RESOLUTION NO. 98-120 - RESOLUTION TO PERMANENTLY CLOSE AN UNNAMED ALLEY BETWEEN MILLER AND POND AVENUES

Mayor Sitnick opened the public hearing at 8:55 p.m.

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

Ms. Suzanne Molloy, Assistant Public Works Director, said that a petition has been received from First Citizens Bank & Trust Company requesting that an unnamed alleyway between Miller Avenue and Pond Avenue be permanently closed to public use.

The petition received includes the affidavit of First Citizens Bank and Trust Company, owner of parcels 9654.05-09-7679,7851,8772, and 8970. First Citizens Bank and Trust Company owns all of the property with frontage on the unopened alleyway between Miller Avenue and Pond Avenue that has been petitioned to be closed.

The Public Works Department staff recommends adoption of the resolution to permanently close the unnamed alleyway between Miller Avenue and Pond Avenue be adopted.

Mayor Sitnick closed the public hearing at 9:00 p.m.

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

Councilman Tomes moved for the adoption of Resolution No. 98-120. This motion was seconded by Councilman Sellers and carried unanimously.

RESOLUTION BOOK NO. 24 - PAGE 480

C. PUBLIC HEARING RELATIVE TO AN APPROVED LANDSCAPE PLAN FOR THE ADDITIONS TO THE BROOKS-HOWELL DEVELOPMENT

Mayor Sitnick opened the public hearing at 9:01 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 a motion to revise the approved landscape plan for the additions to the Brooks-Howell development.

In August of 1997, City Council approved a group development consisting of 11 residential units at the Brooks-Howell Home on Hillside Street. Additionally, a variance to allow an alternate landscape buffer plan was approved by City Council in September, 1997. This alternate buffer plan was designed to meet the intent of the buffering requirement while being more sensitive to the adjoining property.

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The original buffer plan was approved by City Council as part of a group development plan. Two large existing trees, which were part of the proposed buffer plan, were later removed by Brooks-Howell Home following the recommendation of a tree pathologist. Because the removal of these trees was contrary to the approved plan, a revised buffer plan is required.

The new proposal is to add a number of evergreens and two large hardwood trees in the location of the removed trees. He understood that the architect and the Brooks-Howell representatives have worked out this amended plan with the affected property owner, not only to the amended plan itself, but also with regard to the selection of tree species.

At their August 5, 1998, meeting, the Planning and Zoning Commission voted unanimously to recommend approval of the amended landscape buffer plan with the condition that the final selection of tree species be selected prior to the City Council meeting at which this item will be presented.

Mayor Sitnick closed the public hearing at 9:02 p.m.

Councilman Sellers moved to adopt the approved landscape plan for the additions to the Brooks-Howell development. This motion was seconded by Councilman Tomes and carried unanimously.

IV. UNFINISHED BUSINESS:

V. NEW BUSINESS:

A. RESOLUTION NO. 98-121 - RESOLUTION TO ACCEPT THE STREET NAME "HICKMAN DRIVE" AND CHANGE A DUPLICATE STREET NAME FROM GLENDALE DRIVE TO HICKMAN DRIVE

Councilman Cloninger said that his firm represents Mr. Hickman, therefore, Vice-Mayor Hay moved to excuse Councilman Cloninger from voting due to a conflict of interest. This motion was seconded by Councilman Tomes and carried unanimously.

Summary: This is the consideration of a resolution to accept the new street name "Hickman Drive" and changing a duplicate street name from Glendale Drive to Hickman Drive.

John B. Hickman, owner of all lots located off of Sweeten Creek Drive, has petitioned the City of Asheville to adopt the street name change from Glendale Drive to Hickman Drive. Hickman Drive is located at Sweeten Creek Road and ends at the property line of W.P. Hickman Co. Staff recommends adoption of the resolution.

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. 98-121. This motion was seconded by Councilwoman Field and carried unanimously.

RESOLUTION BOOK NO. 24 - PAGE 481

B. RESOLUTION NO. 98-122 - RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE AGREEMENTS FOR EXCESS LIABILITY COVERAGE FOR THE CITY'S SELF-FUNDED PROGRAM FOR LIABILITY

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Mr. John Miall, Risk Manager, said that this is the consideration of a resolution to authorize the City Manager to execute agreements for excess liability coverage for the City's self-funded program for liability, which program covers general, auto, law enforcement, public officials, and dams liability.

Upon self-funding its liability program in 1993, the City stopped purchasing insurance, and began a program for partial self-funding protected by excess only coverage. This type of program is structured to limit the City's exposure to catastrophic losses.

The last year the City was fully insured in 1992 its lowest bid premium costs were approximately \$1,300,000 annually. Since that time through negotiated renewals the costs for the excess only program were \$380,000 for the current year.

By allowing the two incumbent agents who qualified through an agency/brokerage process in 1993 to seek renewal proposals from interested markets, the City has received renewal proposals this year of approximately \$255,000. These rates are guaranteed for three years, and will not increase annually more than \$3,000 per year.

He said that they have just renewed the worker's compensation excess program for the coming year at a \$30,000 reduction in premium. They are looking in the neighborhood of \$210,000 less in premiums in the coming year.

Staff recommends the City Manager be authorized to execute the required agreements to secure the excess coverage's for the City's self-funded excess liability program.

Upon inquiry of Councilwoman Field, Mr. Miall explained that under the agreement between the Asheville Claims Corporation, the City's commitment is to keep its dollars at 1993 levels. Any savings that accrue to that will build up in the Risk Management Fund. The agreement was for a 10 year program and we are now half-way through. At the end of that time, he expected that the City will purchase little or no insurance of any kind.

Upon inquiry of Vice-Mayor Hay, Mr. Miall said that the City Hall building is insured at a replacement cost plus artistic value.

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. 98-122. This motion was seconded by Councilman Tomes and carried unanimously.

RESOLUTION BOOK NO. 24 - PAGE 482

C. RESOLUTION NO. 98-123 - RESOLUTION REAPPOINTING MEMBERS TO THE AMERICANS WITH DISABILITIES ACT COMPLIANCE COMMITTEE

Vice-Mayor Hay said that the terms of Margie Liverman and Francis Black expired on August 22, 1998. This

resolution will reappoint Mr. Black to serve an additional three year term. His term will expire on August 22, 2001, or until his successor has been appointed.

Vice-Mayor Hay said that Ms. Liverman was not interested in being reappointed and the vacancy left by her will be advertised at the next quarterly appointment process.

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

Councilman Cloninger moved for the adoption of Resolution No. 98-123. This motion was seconded by Councilwoman Field and carried unanimously.

RESOLUTION BOOK NO. 24 - PAGE 483

D. RESOLUTION NO. 98-124 - RESOLUTION APPOINTING MEMBERS TO THE ASHEVILLE DOWNTOWN COMMISSION

Vice-Mayor Hay said that Beth Lazer and Victor Trantham have resigned their positions on the Asheville Downtown Commission, leaving two unexpired terms. One expired term is until December 31, 1999, and the other unexpired term is until December 31, 2000.

On August 11, 1998, City Council interviewed Monroe Moore, Steve Harrington, Brenda Sconyers. Alan Levy was interested in the position, however, he was unavailable to interview at the times available.

Councilwoman Sitnick nominated Brenda Sconyers and Alan Levy.

Vice-Mayor Hay nominated Steve Harrington.

After Vice-Mayor Hay asked if anyone in the audience would like to comment on this matter and hearing none, each Council member voted two candidates: Brenda Sconyers received four votes; Alan Levy received six votes and Steve Harrington received two votes. Therefore, the resolution will (1) appoint Alan Levy to fill the unexpired term of Beth Lazer, term to expire December 31, 2000, or until his successor has been appointed; and (2) appoint Brenda Sconyers to fill the unexpired term of Victor Trantham, term to expire December 31, 1999, or until her successor has been appointed.

RESOLUTION BOOK NO. 24 - PAGE 484

E. RESOLUTION NO. 98-125 - RESOLUTION APPOINTING A MEMBER TO THE ASHEVILLE-BUNCOMBE HISTORIC RESOURCES COMMISSION

Vice-Mayor Hay said that the term of Brian Peterson expired on July 1, 1998, and Mr. Peterson was not interested in serving another term. The term of office is three years, with term expiring on July 1, 2001.

On August 11, 1998, City Council interviewed John Best, Allen Roderick and Chris Slusher.

Councilwoman Field nominated Chris Slusher and John Best.

Mayor Sitnick nominated Allen Roderick.

Vice-Mayor Hay said that he talked to Mr. Slusher about resigning from his current appointment on the Civic Center Commission if appointed to the Historic Resources Commission. Mr. Slusher stated that he would like to remain on the Civic Center Commission.

After Vice-Mayor Hay asked if anyone in the audience would like to comment on this matter and hearing none, each Council member voted. John Best received no votes, Allen -22-

Roderick received five votes and Chris Slusher received one vote. Therefore, the resolution will appoint Allen Roderick to serve a three year term, term to expire July 1, 2001, or until their successor has been appointed.

RESOLUTION BOOK NO. 24 - PAGE 485

F. RESOLUTION NO. 98-126 - RESOLUTION APPOINTING A MEMBER TO THE METROPOLITAN SEWERAGE DISTRICT BOARD OF DIRECTORS

Vice-Mayor Hay said that Mr. Larry Casper has resigned as a member of the Metropolitan Sewerage District Board of Directors, leaving an unexpired term until January 19, 1999.

On August 11, 1998, City Council interviewed Ben Slosman, Luke Carpenter, Dee Williams and Brady Blackburn.

Councilman Sellers nominated Brady Blackburn.

Mayor Sitnick nominated Ben Slosman.

Councilman Tomes nominated Dee Williams.

Vice-Mayor Hay reminded Council that Mr. Slosman recommended City Council appoint Mr. Blackburn and that he serve in an advisory capacity.

After Vice-Mayor Hay asked if anyone in the audience would like to comment on this matter and hearing none, each Council member voted. Brady Blackburn received five vote, Ben Slosman received no votes and Dee Williams received one vote. Therefore, the resolution will appoint Brady Blackburn to serve Mr. Casper's unexpired term until January 19, 1999, and then a full three year term, term to expire January 19, 2002, or until his successor has been appointed.

RESOLUTION BOOK NO. 24 - PAGE 486

G. RESOLUTION NO. 98-127 - RESOLUTION APPOINTING A MEMBER TO THE TOURISM DEVELOPMENT AUTHORITY

Vice-Mayor Hay said that the term of Loyd Kirk expires on August 30, 1998, and Mr. Kirk was not eligible to serve another term. This position must be filled by an owner or operator of a hotel, motel or other taxable tourist accommodation with 100 or fewer rental units. The term of office is three years, with term expiring on August 30, 2001.

On August 11, 1998, City Council interviewed Barbara McEwan and Chris Moutos.

Mayor Sitnick nominated Barbara McEwan.

After Vice-Mayor Hay asked if anyone in the audience would like to comment on this matter and hearing none, Barbara McEwan was unanimously appointed to serve a three year term, term to expire August 30, 2001, or until her successor has been appointed.

RESOLUTION BOOK NO. 24 - PAGE 487

H. RESOLUTION NO. 98-128 - RESOLUTION APPOINTING A MEMBER TO THE ASHEVILLE TREE/GREENWAY COMMISSION

Vice-Mayor Hay said that the term of Dennis Wilson expired on August 1, 1998, and Mr. Wilson was not eligible to serve another term. This position is for a three year term, with term expiring on July 1, 2001.

On August 11, 1998, City Council interviewed G. Leigh Wilkerson and Gerry Hardesty.

Councilwoman Field nominated Gerry Hardesty.

Vice-Mayor Hay nominated G. Leigh Wilkerson.

Vice-Mayor Hay noted that Mr. Hardesty said that he was more interested in serving specifically on a Greenway Commission.

After Vice-Mayor Hay asked if anyone in the audience would like to comment on this matter and hearing none, Gerry Hardesty received no votes and G. Leigh Wilkerson received six votes. Therefore, the resolution will appoint G. Wilkerson to serve a three year term, term to expire July 1, 2001, or until her successor has been appointed.

RESOLUTION BOOK NO. 24 - PAGE 488

I. RESOLUTION NO. 98-129 - RESOLUTION REAPPOINTING A MEMBER TO THE REGIONAL WATER AUTHORITY OF ASHEVILLE, BUNCOMBE AND HENDERSON

Vice-Mayor Hay said that the term of Kevin Green expires on September 30, 1998. This position is for a three year term, with term expiring on September 30, 2001.

Vice-Mayor Hay noted that at the beginning of the quarterly appointment process Mr. Green was not interested in being reappointed; however, he has since changed his mind and would now like to be reappointed to the Regional Water Authority.

Mayor Sitnick nominated Kevin Green.

After Vice-Mayor Hay asked if anyone in the audience would like to comment on this matter and hearing none, Kevin Green was unanimously reappointed to serve a three year term, term to expire September 30, 2001, or until his successor has been appointed.

RESOLUTION BOOK NO. 24 - PAGE 489

J. RESOLUTION NO. 98-130 - RESOLUTION APPOINTING A MEMBER TO THE CITIZENS/POLICE ADVISORY COMMITTEE

Vice-Mayor Hay said that Dick Rice has resigned his position on the Citizens/Police Advisory Committee, leaving an unexpired term until June 30, 1999. The position must be filled by a west Asheville representative.

On August 11, 1998, City Council interviewed Jimmy Hungerford and Josefina Matty.

Councilman Cloninger nominated Jimmy Hungerford.

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Councilman Sellers nominated Josefina Matty.

After Vice-Mayor Hay asked if anyone in the audience would like to comment on this matter and hearing none, each Council member voted. Jimmy Hungerford received five votes and Josefine Matty received one vote. Therefore, the resolution will appoint Jimmy Hungerford to fill the unexpired term of Mr. Rice, term to expire June 30, 1999, or until his successor has been appointed.

RESOLUTION BOOK NO. 24 - PAGE 490

K. RESOLUTION NO. 98-131 - RESOLUTION APPOINTING MEMBERS TO THE RIVER DISTRICT DESIGN REVIEW COMMITTEE

Vice-Mayor Hay said that City Council adopted Ordinance No. 2437 amending the Unified Development Ordinance regarding river district design review. In said ordinance, a River District Design Review Committee was established. The City Council Boards and Commissions Committee recommend the following:

Gail McCarthy and Laura Webb - Two members of the RiverLink Board of Directors;

E. Benson Slosman and Hunt Mallett - Two owners of property located within the River District;

Kimberly Hodges - One of two design professionals including, but not limited to, architects, engineers, or qualified artists; and

Edward Metz - One member selected at the Council's discretion.

All members shall serve a three year term, said terms to begin September 1, 1998.

Vice-Mayor Hay said that the vacant position of a design professional will be included in the next quarterly appointment process.

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

Mayor Sitnick moved for the adoption of Resolution No. 98-131. This motion was seconded by Councilman Tomes and carried unanimously.

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VI. OTHER BUSINESS:

A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON AUGUST 11, 1998, AND THE WORKSESSION HELD ON AUGUST 18, 1998

Councilman Tomes moved for the adoption of the minutes of the regular meeting held on August 11, 1998, and the worksession held on August 18, 1998. This motion was seconded by Councilman Sellers and carried unanimously.

B. RIVER MASTER PLAN

Councilman Cloninger said that during the budget process, one of the items which had to be deleted was \$50,000 for the River Master Plan. He asked if Council would consider looking to bring that back into the budget as a result of some insurance savings, and also with some funds from the cable agreement. He said that there is some other money potentially available for the -25-

development of a master plan that will be contingent upon the City's \$50,000. He asked this matter be placed

on a worksession agenda in the near future and inviting the relevant parties to the meeting.

After a short discussion on the five unfunded requests, it was the consensus of City Council to bring these matters back to Council at their September 15, 1998, worksession for further consideration.

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

City Attorney clarified the motion made on August 14, 1998, relative to the public hearing on the amendment to the Unified Development Ordinance. The City Council continued their discussion on this matter to the September 1, 1998, worksession, with the public hearing being continued until October 27, 1998.

D. AMENDMENT TO THE UDO RE: CONDITIONAL USE PERMIT; CITY COUNCIL PROCEDURAL CHANGE

Mayor Sitnick reiterated that City Council needs to act hastily on the conditional use permit for churches.

Mayor Sitnick asked that the two draft procedural changes be placed on the September 1, 1998, worksession agenda. One draft change is from Councilman Cloninger and one is from Mayor Sitnick.

E. REQUEST FOR NON-ENFORCEMENT OF LAWS CRIMINALIZING CANNABIS USERS

Mayor Sitnick explained the reason why she will ask for a motion to suspend the rules and limit the debate on this issue for one speaker for 10 minutes or two speakers for 5 minutes is because City Council has no authority to rule on this matter.

Councilman Sellers moved to suspend the rules and limit the debate for this issue only to one speaker for 10 minutes or two speakers for 5 minutes. This motion was seconded by Councilman Tomes and carried on a 4-2 vote, with Mayor Sitnick and Councilwoman Field voting "no".

Mr. Steve Rasmussen, spokesman for the people labeled 'People for Cannabis', said that there is in fact no such organization or formal group, Instead, they are a wide cross-section of individual citizens and voters and members of various organizations. He said that earlier there were scores and scores of people who wanted to address Council. But, because they were understandably moved outside and some were harassed by the police, not many chose to remain. They asked to direct the police force, which in America is to remain under the control of the citizenry and it's elected representatives, to stand back in whatever way possible, minimize Asheville's involvement in the persecution of this herb called hemp, Cannabis, marijuana. Many other cities have passed legal ordinances, i.e., Breckenridge, Colorado, San Francisco, California. Although they are committed to the intent of the ordinance, they are flexible about the means and it's particular wording is not carved in stone. They want to work with Council on this and are willing to meet them half-way. Doctors have unofficially prescribed marijuana to them when they found that this natural herb was the only effective medicinal treatment for their -26-

life-threatening illnesses. Their patients are routinely arrested and harassed and their property and medicine seized. There are huge potential economic and environmental benefits of a re-legalized hemp industry.

Mayor Sitnick said that it is her discretion to limit speakers tonight to three minutes each.

When Mr. Rasmussen asked if the Mayor would add this item to an upcoming agenda, Mayor Sitnick replied that she would not. She again stated that City Council has no authority to rule on this request.

Mr. Rasmussen said that there are many ways which City Council does have authority to action on their request. They could simply issue a declaration of support.

Mayor Sitnick said that it is the consensus of this City Council to not ask our police force to not uphold the law or to discriminate in their drug enforcement procedures.

Mr. Dan Waterman was distressed to see the actions being taken at a particular group of citizens. He said they are not looking for easy agreement but assurance that Council would be willing to work with them, even if the resolution is rejected.

Mayor Sitnick asked why they are not going to the body of government that can address their request. Mr. Waterman said that something can be done at this level of government if just Council would just want to. He noted that every city has obsolete laws they don't enforce.

Mr. Waterman said that he paid his State marijuana tax and to enact a tax and then enact a criminal penalty is double jeopardy.

Mr. Dave Mittler questioned why their group was being filmed outside the City Hall Building. He said that City Council has a chance to set precedence and they are closing their minds to it. They deserve to be worked with and not rejected. He said they are patient and they are willing to wait until they are heard and Council is willing to work with them.

Ms. Dixie Dearman was expressed at what she considered to be excessively punitive reaction to our resolution.

F. CLAIMS

The following claims were received by the City of Asheville during the week of August 7-13, 1998: Tilden White (Police), BellSouth (Water), Frederick L. Harper (Water) and Suzanna Biro (Water).

The following claims were received during the week of August 14-20, 1998: Dulcie McKenzie (Civic Center) and Lisa Ramsey (Water).

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

G. LAWSUITS

The City of Asheville received an Amended Complaint on August 12, 1998, which is generally described as follows: Tera A. Taylor, et al., v. Tim Ray Goodridge, et al. The nature of the proceeding is for the purpose of adding parties as co-defendants. The complaint seeks compensatory and punitive damages for the death of David Thomas Lushbaugh.

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The City received an Amended Complaint on August 25, 1998, which is generally described as follows: Betty Underwood v. City of Asheville. The nature of the proceedings is negligence due to a dislocated water meter lid.

Both of these matters will be handled by an outside attorney.

VII. ADJOURNMENT:

Mayor Sitnick adjourned the meeting at 9:52 p.m.

CITY CLERK MAYOR
