

Tuesday - November 10, 1998 - 5:00 p.m.

Regular Meeting

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

Absent: None

INVOCATION

Vice-Mayor gave the invocation and publicly thanked everyone for their kind words of sympathy on the loss of his father.

I. PROCLAMATIONS:

A. PROCLAMATION PROCLAIMING NOVEMBER 11, 1998, AS "VETERANS DAY" IN THE CITY OF ASHEVILLE

Mayor Sitnick read the proclamation proclaiming November 11, 1998, as "Veterans Day" in the City of Asheville and presented it to Ms. Deborah Crowder, representing the 16th District Veterans of Foreign and it's Ladies Auxiliary.

AMENDMENT TO AGENDA

Due to the large group of citizens wishing to address City Council on the issue of the Asheville Motor Speedway, Councilman Tomes moved to amend the agenda to place the future of the Asheville Motor Speedway update at the end of the agenda, at which time the meeting will adjourn and reconvene at the Civic Center in the Banquet Hall. This motion was seconded by Councilwoman Field and carried unanimously.

II. CONSENT:

At the request of Vice-Mayor Hay, Item G. was removed from the Consent Agenda for further discussion.

A. RESOLUTION NO. 98-157 - RESOLUTION AWARDED BID TO VAN LOTT INC. FOR A BULLDOZER FOR THE PUBLIC WORKS DEPARTMENT

Summary: The consideration of a resolution to award the bid for the purchase of a bulldozer to Van Lott Inc. in the amount of \$127,502.

Pursuant to N. C. Gen. Stat. sec. 143-129 and in compliance with the City's Minority Business Plan, sealed bids were invited to furnish a bulldozer for the Public Works Department, Street Division. Three (3) bids were received as shown as follows:

Van Lott Inc., Asheville, NC \$127,502

NC Equipment Co., Asheville, NC \$133,815

Carolina Tractor & Equipment, Asheville, NC \$140,919

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Bids have been reviewed for technical compliance to specifications by the Public Works Department and the Fleet Management Division, and their concurrence received in the following recommendation.

Funds for this purchase are provided for in the budget.

City staff recommends City Council adopt the resolution which awards the bid to the lowest responsible bidder, Van Lott, Inc., Asheville, N. C., in the amount of \$127,502 for the purchase of a 1998 'Deere' model 750C bulldozer.

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B. RESOLUTION NO. 98-158 - RESOLUTION AUTHORIZING AN INSTALLMENT PURCHASE CONTRACT NUMBER ONE BETWEEN WACHOVIA LEASING CORPORATION AND THE CITY OF ASHEVILLE TO FINANCE THE ACQUISITION OF A BULLDOZER

Summary: The consideration of resolutions authorizing: (1) the installment financing of a bulldozer and (2) the reimbursement of the City from proceeds of the financing in the event the bulldozer is delivered prior to execution of the installment financing contract.

The Finance Department sought proposals from 30 firms to finance the purchase of a bulldozer for the Public Works Department. The amount to be financed is \$127,502, equaling the amount of the lowest bid, over a period of five years. Both fixed-rate and variable-rate proposals were solicited. Proposals were received from 11 firms, "no bid" responses were received from 3 and no response was received from the remaining 16 . The best proposal, 3.74% interest plus \$250.00 closing cost, was submitted by Wachovia Leasing Corporation.

The first proposed resolution authorizes the installment purchase contract between the City and Wachovia Leasing Corporation; designates that the obligations will be "qualified tax-exempt obligations" (meaning that the City does not anticipate that we will issue more than \$10,000,000 of tax-exempt debt during calendar year 1998 and are therefore "bank qualified") and authorizes the City Manager to execute any and all documents necessary for the financing.

The second proposed resolution allows reimbursement to the City from proceeds of the financing if it becomes necessary for the City to take delivery and pay for the bulldozer prior to execution of the financing contract. (We presently anticipate that the financing will be in place prior to delivery of the bulldozer.)

Staff recommends City Council adopt both resolutions.

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C. RESOLUTION NO. 98-159 - RESOLUTION AUTHORIZING THE CITY OF ASHEVILLE TO UNDERTAKE CERTAIN EXPENDITURES WITH RESPECT TO MISCELLANEOUS CAPITAL PROJECTS PRIOR TO THE EXECUTION BY THE CITY OF AN INSTALLMENT PURCHASE CONTRACT FOR SUCH PURPOSES IN AN AMOUNT NOT TO EXCEED \$127,502

Summary: See Item B. above.

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D. RESOLUTION NO. 98-160 - RESOLUTION AUTHORIZING THE MAYOR TO CONVEY TO CAROLINA POWER & LIGHT COMPANY A BLANKET EASEMENT FOR THE INSTALLATION AND MAINTENANCE OF ELECTRIC FACILITIES NECESSARY TO PROVIDE SERVICE TO THE TWIN SPRINGS SUBDIVISION

Summary: The consideration of a resolution authorizing the Mayor to convey to Carolina Power and Light Company (CP&L) a blanket easement for the installation and maintenance of electric facilities necessary to provide service to Twin Springs Subdivision.

Twin Springs Subdivision is located on Broadview Drive in Oakley. The City is scheduled to subdivide this property into 34 residential lots. The city will construct the infrastructure improvements and Habitat for Humanity will construct the housing units.

In order to install underground electric service to all 34 homes to be constructed in the subdivision, CP&L has requested a blanket easement. The proposed blanket easement will enable the facilities to be placed in "mutually suitable locations." The actual locations will be determined between the owner and CP&L at the time service facilities are installed.

Approval of the resolution will authorize conveyance of the easement to CP&L for the installation and maintenance of electric service facilities.

Community Development staff recommends adoption of the resolution.

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E. RESOLUTION NO. 98-161 - RESOLUTION AUTHORIZING THE FINANCE DIRECTOR TO APPLY TO THE LOCAL GOVERNMENT COMMISSION FOR APPROVAL OF THE CITY'S PROPOSED BOND FINANCING AND TO SUBMIT SUCH APPLICATION TO THE LOCAL GOVERNMENT COMMISSION

Summary: The consideration of resolutions authorizing: (1) application to the Local Government Commission for authorization to issue General Obligation Refunding Bonds and (2) making certain statements of fact concerning the proposed bond issue.

Due to the decrease in prevailing interest rates, it would be beneficial at this time for the City of Asheville to refinance portions of its currently outstanding debt. Specifically, the Finance Department proposes to refund the callable portions of four issues: \$2,600,000 of General Obligation Street and Sidewalk Bonds Series 1986; \$1,950,000 General Obligation Street and Sidewalk Bonds Series 1990; \$8,800,000 General Obligation Water Bonds Series 1992; and \$2,425,000 General Obligation Water Bonds Series 1994. Refunding of those issues will require the City to issue General Obligation Refunding Bonds in an amount not to exceed \$18,500,000. The sale of the Refunding Bonds is tentatively scheduled by the Local Government Commission (LGC) on January 19, 1999 with closing and funds delivery on February 9, 1999. Based on currently prevailing interest rates, estimated approximate savings from the refunding will be: Gross Savings of \$857,000; Net Present Value Savings of \$773,000; and Annual Savings throughout the life of the issue of \$55,000. Actual savings and specific outstanding bond series to be refunded will be dependent on the rates obtained on the date of sale of the bonds.

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The City will require the services of a financial advisor and bond counsel to assist with the preparation of documentation for the Refunding Bonds. The Finance Department proposes the City retain Wachovia Capital Markets, Inc. as financial advisor (Fee of \$12,500 plus out-of-pocket expenses not to exceed \$750) and Parker, Poe, Adams & Bernstein L.L.P. as bond counsel. Retention of the financial advisor and bond counsel is subject to the approval of the LGC.

The first proposed resolution authorizes and directs the Finance Director to submit an application to the LGC to allow the City of Asheville to issue not to exceed \$18,500,000 General Obligation Refunding Bonds and allow the retention of Wachovia Capital Markets, Inc. as financial advisor and Parker, Poe, Adams & Bernstein L.L.P. as bond counsel for the issue.

The second proposed resolution provides "statements of fact concerning proposed bond issue" in regards to: (A) the necessity of the proposed financing; (B) the amount of the bonds proposed; (C) past debt management policies; (D) past budgetary and fiscal management policies; and (E) retirement of debt. These "statements of fact" are required in order for the LGC to make determinations necessary to approve the City's request to issue Refunding Bonds.

City staff recommends City Council adopt both resolutions.

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F. RESOLUTION NO. 98-162 - RESOLUTION MAKING CERTAIN STATEMENTS OF FACT CONCERNING PROPOSED BOND ISSUE

Summary: See Item E. above.

RESOLUTION BOOK NO. 25 - PAGE 36

G. MOTION ACCEPTING THE FINDINGS OF HUNTER INTERESTS INC. REGARDING IT'S PHASE II, A DETAILED MARKET ANALYSIS, ALONG WITH THE SUPPLEMENTAL RECOMMENDATIONS BY THE FUTURE OF THE CIVIC CENTER TASK FORCE; RESOLUTION NO. 98-163 - RESOLUTION AUTHORIZING THE CITY MANAGER TO NOTIFY HUNTER INTERESTS INC. TO PROCEED WITH PHASE III, THE DEVELOPMENT OF A BUSINESS AND STRATEGIC PLAN; AND ORDINANCE NO. 2522 - BUDGET AMENDMENT, IN THE AMOUNT OF \$62,800, TO PROCEED WITH PHASE III OF HUNTER INTERESTS INC.'S PROPOSAL

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

H. ORDINANCE NO. 2522 - BUDGET AMENDMENT TO APPROPRIATE FUNDING FROM THE SALE OF PROPERTY INTO AN ACCOUNT FOR FUTURE PARK DEVELOPMENT

Summary: The consideration of a budget amendment, in the amount of \$20,000, to appropriate funding from the sale of property to the Opportunity Corporation of Madison-Buncombe Counties to construct a new office building for their staff.

City Council approved the sale of approximately 1.3 acres of property behind the Reid Community Center to the Opportunity Corporation of Madison-Buncombe Counties. In exchange for this property, the Opportunity Corporation agreed to pay \$20,000 to the City of Asheville for -5-

the City Parks and Recreation to use in funding needed parks in this particular area. The action required by City Council in regard to this staff report is to set up an appropriation to accept the money from this sale into the appropriate account.

The Parks and Recreation Department requests City Council approval of the budget amendment to appropriate \$20,000 into an account for future park development.

ORDINANCE BOOK NO. 17 - PAGE 167

I. ORDINANCE NO. 2523 - BUDGET AMENDMENT TO AMEND THE WATER CAPITAL PROJECT ORDINANCE (29 FUND)

Summary: The consideration of a budget amendment to provide funding for engineering services for the design of the Brevard Road/Sand Hill Bridge Projects and to reprogram funds for a change order to the Camp Dresser & McKee contract for engineering services for the Mills River Water Treatment Facilities.

The Brevard Road/Sand Hill Bridge Projects are high priority Water Distribution Master Plan projects that will greatly improve water service in the West Asheville/West Buncombe service area. Design of the Sand Hill Bridge Project is complete; however, design of the Brevard Road Project is needed and has been estimated not to exceed \$50,000. Adequate funding for these engineering services is available in the Distribution Master Plan Improvements due to the Biltmore Avenue Water Line Project coming in under budget. It is also expected that there will be enough contingency remaining from the Mills River Project to fund the construction of these projects. The Mills River Project is expected to be substantially complete in the Spring of 1999; and if there is adequate contingency remaining, staff will request approval to fund construction of the Brevard/Sand Hill Bridge Projects at that time.

There is currently adequate funding in the Mills River Project Contingency to fund a change order to the Camp Dresser & McKee contract for engineering services related the Mills River Project. This increase in fees is due to an extension of the scheduled completion date of the Mills River Water Treatment Plant. The projected final completion date has been extended by the contractors from January 6, 1999, to approximately July 1, 1999, and could result in increased engineering fees of up to \$199,800. This includes assistance provided by Camp Dresser & McKee in preparing the funding application for the pesticide mixing stations on the Mills River Watershed.

Staff recommends adoption of the budget amendment to reprogram funds in the amount of \$50,000 from the Water Distribution Master Plan Downtown Project (Biltmore Avenue) to the Brevard Road/Sand Hill Road Bridge Project and to reprogram funds in the amount of \$199,800 from Mills River Contingency to Mills River Engineering Services.

ORDINANCE BOOK NO. 17 - PAGE 169

J. ORDINANCE NO. 2524 - BUDGET AMENDMENT TO AMEND THE WATER CAPITAL PROJECT ORDINANCE (35 FUND)

Summary: The consideration of a budget amendment to the Water Major Capital Project Ordinance 82-25 (35 Fund - Water Major Capital Improvements Fund) to reflect the first payment to the N.C. Dept. of Transportation ("NC DOT") for the relocation of water lines on US 70/74 Tunnel Road/Haw Creek, the pesticide mixing stations, and the first project of the Fiscal Year 1998-99 Distribution System Improvements.

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Funds in the amount of \$597,920 were approved to be transferred from the Operating Budget (30 Fund) to the Water Major Capital Improvements Fund (35 Fund) to fund capital improvements projects.

The following are three projects that the Regional Water Authority has previously committed to fund with Fiscal Year 1998-99 Contribution to Capital:

- Payment #1 of the US 70/74 Tunnel Road/Haw Creek NC DOT project in the amount of \$89,962;
- Relocation of the pesticide mixing stations on the Mills River Watershed in the amount of \$33,000; and
- The Affordable Housing 50% fee waiver in the amount of \$87,000.

A Quality Improvement Task Team called the Critical Needs Assessment Team has been formed to identify and prioritize critical water distribution system needs. The team has identified three projects thus far to be prioritized along with other projects. These projects are as follows:

- Lee Street/Prospect Street Water Main Replacement (\$33,000) which is needed in order to provide adequate service to existing and future customers;
- Monroe Street Water Main Replacement (\$25,000) which is needed in order to provide adequate service to existing and future customers; and
- Mine Hole Gap and Young's Cove Reservoir Improvements Project (\$40,000) which includes resurfacing these water distribution system reservoirs in order to protect water quality.

An update of the Critical Needs Assessment Team and a list of other potential projects will be presented in November.

On October 20, 1998, the Regional Water Authority adopted a resolution to fund water line replacements in Prospect Street and Monroe Street. Other priorities will be recommended after completion of the Task Team's work. Since the Authority has committed to funding the pesticide mixing stations and the first payment to the NC DOT for the relocation of water lines on US 70/74 Tunnel Road/Haw Creek, it is recommended that this budget amendment reflect appropriations for these projects as well.

Staff recommends adoption of the budget amendment which will reflect the addition of a portion of Contribution From Other Funds - Fiscal Year 1998-99 in the amount of \$180,962, to fund the following projects in the 35 Fund: Relocation of Pesticide Mixing Stations (\$33,000), Lee Street/Prospect Street Water Main Replacement (\$33,000), Monroe Street Water Main Replacement (\$25,000), and the first payment of the NC DOT US 70/74 Tunnel Road/Haw Creek water line relocation project (\$89,962).

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

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

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ITEM REMOVED FROM THE CONSENT AGENDA FOR FURTHER DISCUSSION

MOTION ACCEPTING THE FINDINGS OF HUNTER INTERESTS INC. REGARDING IT'S PHASE II, A DETAILED MARKET ANALYSIS, ALONG WITH THE SUPPLEMENTAL RECOMMENDATIONS BY THE FUTURE OF THE CIVIC CENTER TASK FORCE; RESOLUTION NO. 98-163 - RESOLUTION AUTHORIZING THE CITY MANAGER TO NOTIFY HUNTER INTERESTS INC. TO PROCEED WITH PHASE III, THE DEVELOPMENT OF A BUSINESS AND STRATEGIC PLAN; AND ORDINANCE NO. 2525 - BUDGET AMENDMENT, IN THE AMOUNT OF \$62,800, TO PROCEED WITH PHASE III OF HUNTER INTERESTS INC.'S PROPOSAL

Vice-Mayor Hay, Chair of the Task Force on the Future of the Civic Center, said that the Task Force would like to review the contract directly with Hunter Interests Inc. in that there are some issues that the Task Force would like to discuss with them, in particular the local architect issue raised by Councilwoman Field on November 4, 1998. The Task Force will be meeting next week to review the proposal and he does not expect

any substantive changes, but wanted to let Council know they have not reviewed the proposal as a group and that they wanted to do that.

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

Vice-Mayor Hay moved to adopt Resolution No. 98-163 and Ordinance No. 2525. This motion was seconded by Councilwoman Field and carried unanimously.

Vice-Mayor Hay said that the Citizen-Times ran an article last week that basically said there was a proposal by the City to fund the Civic Center with an increase in room tax. He said that report was inaccurate. He said that they are at the stage now where they need to start looking at funding options, and that is one funding option that they will be looking at. However, at this time, there has not been any proposals on funding decided.

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ORDINANCE BOOK NO. 17 - PAGE 173

III. PUBLIC HEARINGS:

A. PUBLIC HEARING RELATIVE TO REZONING 980 HENDERSONVILLE ROAD FROM HIGHWAY BUSINESS DISTRICT AND RS-4 RESIDENTIAL SINGLE-FAMILY MEDIUM DENSITY DISTRICT AND 45 SEMINOLE ROAD FROM RM-8 RESIDENTIAL MULTI-FAMILY MEDIUM DENSITY DISTRICT TO OFFICE BUSINESS DISTRICT

ORDINANCE NO. 2526 - ORDINANCE TO REZONE 980 HENDERSONVILLE ROAD FROM HIGHWAY BUSINESS DISTRICT AND RS-4 RESIDENTIAL SINGLE-FAMILY MEDIUM DENSITY DISTRICT AND 45 SEMINOLE ROAD FROM RM-8 RESIDENTIAL MULTI-FAMILY MEDIUM DENSITY DISTRICT TO OFFICE BUSINESS DISTRICT

Mayor Sitnick opened the public hearing at 5:15 p.m.

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

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Mr. Bruce Black, Urban Planner, said that this is the consideration of an ordinance to

rezone 980 Hendersonville Road from Highway Business and RS-4 Residential Single-Family Medium Density District to Office Business District and 45 Seminole Road from RM-8 Residential Multi-Family Density District to Office Business District.

The owner and applicant, Biltmore Baptist Church, has requested the rezoning of two lots on Hendersonville Road and one adjoining lot on Seminole Street (PIN Nos. 9646-08-99-8970, 9656-05-09-0747, and 9657-17-00-0113) totaling 5.72 acres from Highway Business District, RS-4 Residential Single-Family Medium Density District and RM-8 Residential Multi-Family Medium Density District to Office Business District.

The Church wishes to sell the property. The current main building, approximately 43,000 square feet, occupies that portion of the property that is currently zoned Highway Business. The parking for this building occupies that area of the property currently zoned RS-4. There is not sufficient room for parking for the existing building on the section currently zoned Highway Business. The use of RS-4 for parking after a change of use would not be allowed. Thus, the Church would like to zone the entire property as one zoning

classification.

The parsonage is currently zoned RM-8. It is 0.51 acre in size and has a house and associated out buildings on it. The property fronts on Seminole Street, and is surrounded by office uses.

The Planning staff reviewed the rezoning request and recommended of the rezoning provided, however, that the new Office Business zoning should terminate twenty feet inside of the eastern property line of the area now zoned RS-4. This will preclude entry to the property from Imperial Court, thus preventing traffic from accessing the property through a Residential district. At their October 7, 1998, Planning & Zoning Commission meeting, the Commissioners voted to to recommend of the rezoning of two lots on Hendersonville Road and one adjoining lot on Seminole Street to Office Business District.

Upon inquiry of Councilwoman Field, Mr. Black said that even though Planning staff generally does not like to split zone a piece of property, in this case, they feel it is warranted in order to restrict traffic from entering the property from Imperial Court.

Mr. Richard Moore, member of Biltmore Baptist Church, spoke in support of the proposed rezoning.

Mayor Sitnick closed the public hearing at 5:23 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. 2526, retaining a 20 foot portion of property on the eastern property line to remain zoned RS-4. This motion was seconded by Councilwoman Field and carried unanimously.

ORDINANCE BOOK NO. 17- PAGE 175

B. PUBLIC HEARING RELATIVE TO A CONDITIONAL USE APPLICATION TO LOCATE A TELECOMMUNICATIONS TOWER AT 754 MERRIMON AVENUE

Mayor Sitnick said that this public hearing was continued from the October 27, 1998, date due to an error in notice of the public hearing (a "Z" sign was not posted at the site). She -9-

said that this is a public hearing for Council to consider whether the requested conditional use application to locate a telecommunications tower at 754 Merrimon Avenue should be issued. There being no preliminary matters to be considered, she opened the public hearing at 5:24 p.m.

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

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

Mr. Mike Matteson, Urban Planner, said that SBA Incorporated is requesting a conditional use permit to construct a telecommunications tower for Bell South Mobility DCS at 754 Merrimon Avenue.

This staff report includes information with respect to the proposed telecommunications tower's ability to meet

both the general and specific conditions as required by Section 7-16-2 of the Unified Development Ordinance.

The property is located at the corner of Merrimon Avenue and Sandon Drive. The proposal is to construct a 175 foot galvanized steel monopole tower outfitted with a triangular work platform at the top of the tower. In addition, a set of three steel equipment cabinets are proposed to be mounted to a concrete pad located adjacent to the base of the monopole.

Bell South Mobility will lease a portion of the property and the existing dentist office will remain on the site.

The property is zoned Community Business II. Telecommunications towers are conditional uses within the Community Business II zoning district. Conditional uses are uses which, because of their unique characteristics or potential impacts on the surrounding neighborhood and/or the city as a whole, require individual consideration of their location, design, configuration, and/or operation at the particular location proposed.

In addition to development standards for the zoning district in which they are located, conditional uses must meet certain general and individualized conditions in order to ensure that the use is appropriate at a particular location and to ensure protection of the public health, safety, and welfare.

The general conditions, which apply to all conditional uses, can be found in Section 7-16-2 (c) of the Unified Development Ordinance and are as follows:

(1) That the proposed use or development of the land will not materially endanger the public health or safety;

City Council may want to consider such things as the structural integrity of the tower, security, etc. but cannot consider radio frequency emissions (provided that FCC regulations have been met and they do have FCC approval).

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(2) That the proposed use is reasonably necessary for the public health or general welfare, such as by enhancing the successful operation of the surrounding area in its basic community functions or by providing an essential service to the community or region;

(3) That the proposed use or development of the land will not substantially injure the value of adjoining or abutting property;

The applicant has provided the City with studies regarding the effect of telecommunications towers on property values, including a recent study in Asheville illustrating the change in values for properties *in the vicinity* of telecommunications towers. One study recently done for the Asheville area focused on two areas: the Richmond Hill area and the Oakley community. It analyzed sales data for properties located within the vicinity of towers in those areas. Most of the properties used in the study were not adjoining or abutting the tower property, but merely in the vicinity of the tower. There is one property in the Richmond Hill area that is adjoining and abutting the tower location - 216 Richmond Hill Drive. That location is 200 feet from the existing tower and there is a mature tall row of evergreen trees between the property and the tower which is a pretty effective visual buffer.

(4) That the proposed use or development of the land will be in harmony with the scale, bulk, coverage, density, and character of the area or neighborhood in which it is located;

Telecommunications towers are listed as conditional uses within the Commercial Business II zoning district.

The Unified Development Ordinance allows towers with a height of up to 200 feet. The Commercial Business II zoning district limits the height of structures (other than telecommunications towers) to 40 feet. A "windshield survey" indicates that the majority of structures along the street do not exceed 40 feet. There is a residence directly adjacent to the proposed tower site. The residential property, however, is not zoned residential.

(5) That the proposed use or development of the land will generally conform with the comprehensive plan and other official plans adopted by the city;

The City's comprehensive plan, the Asheville City Plan 2010, was adopted in 1987. Telecommunications towers were not a major issue facing communities at that time. Therefore, the plan does not specifically address these facilities.

(6) That the proposed use is appropriately located with respect to transportation facilities, water supply, fire and police protection, waste disposal, and similar facilities; and

(7) That the proposed use will not cause undue traffic congestion or create a traffic hazard.

The following individualized conditions, which can be found in Section 7-16-2(d)(3) of the Unified Development Ordinance, apply specifically to telecommunications towers:

a) Use districts: Office/Business, Community Business II, Resort, Institutional, Highway Business, Regional Business, Commercial Industrial, River, Industrial

The property is zoned Community Business II.

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b) No telecommunications tower or antenna shall interfere with usual and customary radio and television reception excepting broadcast facilities as provided for in the regulations of the Federal Communications Commission (FCC).

The applicant has provided the City with a statement indicating that this condition will be met.

c) All telecommunications towers must comply with FCC and Federal Aviation Administration (FAA) guidelines. The telecommunications tower owner shall provide the City each year with a copy of any FCC and FAA licenses required.

The applicant has provided the City with a statement indicating that this condition will be met.

d) Unless otherwise specified herein, telecommunications towers shall be restricted to the minimum standards of lighting required by the FAA. Telecommunications towers that do not require FAA compliant lighting shall be equipped with at least one steady-burning red obstruction lamp meeting FAA specification L-810 in order to alert helicopters that approach and depart at low altitudes to the presence of such towers. All telecommunications towers that require flashing lights by the FAA shall utilize a dual lighting system consisting of a white strobe light for daytime lighting and a red flashing light for nighttime lighting.

The applicant has provided the City with a statement indicating that this condition will be met.

e) Minimum setbacks for telecommunications towers shall be in accordance with the setback requirements set forth in the development standards for the zoning district in which the location of the tower is proposed, provided that the buffering requirements set forth in subsection 7-16-2.D.3.f.,

below, may be met. Additionally, telecommunications towers must set back from any residentially zoned properties a distance equivalent to the height of the tower being erected or 125 feet, whichever is greater.

The site plan submitted by the applicant shows that this condition has been met. The proposed tower height is 175 feet. Because this is a monopole tower, the setback distance from residentially zoned property is half the height of the tower, or 87.5 feet. The proposed tower location is not within 87.5 feet of any residentially zoned property.

f) Telecommunications towers shall be buffered from adjacent properties with a buffer meeting the requirements of a "B" buffer as described in Sec. 7-11-2.D.15., regardless of adjacent zoning district classifications or uses.

The landscape plan does indicate a "B" buffer between the proposed tower and adjacent properties with the exception of along the west property line which has a severe slope that would pretty much preclude a buffer being constructed. In this location, alternative compliance from the buffering standards was approved by the Technical Review Committee due to limitations related to the topography of the site. The landscape plan indicates that part of the buffer will be located outside of the leased area.

g) No telecommunications towers shall be located on top of buildings.

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The proposed tower will not be located on top of a building.

h) No telecommunications towers or antennas shall be constructed in local historic districts or on the property on which a local historic landmark is located. Telecommunications towers shall not be constructed within 1000 feet of any local historic district.

The proposed location for the telecommunications tower is not within a local historic district or on a property on which a local historic landmark is located. The proposed location is not within 1000 feet of any local historic district.

i) No telecommunications towers shall be located within one-half mile of the Blue Ridge Parkway roadway unless the tower shall not be visible and/or discernible to the Parkway visitor as a telecommunications tower, from the Parkway roadway. The burden of demonstrating that a tower is not visible or discernible from the Parkway roadway shall be on the applicant. "Visible" shall mean capable of being seen by the unaided eye in daylight. "Discernible" shall mean capable of being distinguished with the eye or mind from its surroundings as a telecommunications tower.

The proposed location for the telecommunications tower is not within one-half mile of the Blue Ridge Parkway roadway.

j) No telecommunications towers shall be erected in areas determined by the Asheville City Council to be "viewsheds of superior quality" taking into consideration the definitions by the United States Department of Interior, Blue Ridge Parkway Office. A map indicating the location of the "viewsheds of superior quality" which has been reviewed and adopted by the Asheville City Council shall be kept on file in the Planning and Development Department of the City of Asheville.

The proposed location for the telecommunications tower is not in an area determined by the Asheville City Council to be "viewsheds of superior quality."

k) Telecommunications towers shall not be constructed unless the company erecting the tower has

general liability coverage of at least \$1,000,000. The owner of a telecommunications tower shall provide the City with a certificate of insurance showing evidence of its coverage and the certificate shall contain a requirement that the insurance company notify the City thirty (30) days prior to the cancellation, modification or failure to renew the insurance coverage required.

The applicant has provided the City with a certificate of insurance showing evidence of coverage.

l) Telecommunications towers shall have a flat gray or galvanized finish.

The applicant has provided the City with a statement indicating that this condition will be met.

m) Telecommunications towers over 125 feet in height shall be constructed to provide for at least one additional user. Broadcast AM towers are exempt from this requirement.

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The applicant has provided the City with a statement indicating that this condition will be met.

n) No two telecommunications towers shall be constructed within 1320 feet of each other unless documentation is provided to the Department of Planning and Development to show that co-location on towers within the 1320 feet is not technically feasible. Broadcast AM towers are exempt from this requirement.

There does not appear to be another telecommunications tower within 1320 feet of the proposed tower location. The closest tower appears to be the one at the Grace Plaza Shopping Center.

o) No telecommunications tower shall be constructed without first looking at other possibilities within 1320 feet for location of an antenna on structures other than a tower. Such structures include billboards, church steeples, etc.

The applicant has indicated that there are no existing structures within 1320 feet of the proposed location of sufficient height to satisfy their coverage objectives. It may be possible, however, for them to utilize "stealth" technology by building a new structure in the vicinity on which to locate an antenna.

p) Monopole-type telecommunications towers are encouraged and shall receive a reduction in setback distances of up to 50% of the setback requirement stated in item 4. above.

A monopole-type telecommunications tower is proposed for the site.

q) The base of the telecommunications tower along with any individual guy wires shall be enclosed by a fence a minimum of 8 feet in height.

The proposed facility will be enclosed by an eight foot fence.

r) No telecommunications tower shall be permitted which exceeds 200 feet in height.

The proposed telecommunications tower would be 175 feet in height.

s) The City Council may require any other conditions found necessary to ameliorate the impact of the tower on the adjacent properties and uses. Such conditions shall include, but are not limited to: the height of the tower; the construction or type of tower; and co-location of the antennas and facilities of different parties on a single tower.

The applicant is aware that City Council may require additional conditions. If City Council is inclined to

approve the conditional use permit, they may want to consider establishing the following additional conditions:

- That the proposed work platform not be permitted (please note that the draft of the proposed new Wireless Telecommunication Facilities Ordinance prohibits such platforms). Staff understands that these platforms are used very infrequently and the use of a crane could satisfy their maintenance objectives;

- That the tower not be lighted, except for to meet the minimum requirements of the FAA and the City; and - 14-

- That the height of the tower be limited to 150 feet. Staff feels that based on the maps supplied by the applicant, there is no significant gain in a 175 foot tower that could not be accomplished with a 150 foot tower.

- That the lessor be required to provide the buffering outside of the leased area.

t) Telecommunications towers which have remained inactive for a period of 180 days or longer shall be removed by the owner of the tower. In the event that the City determines that a tower has not been removed pursuant to this requirement, the City may provide the owner of the tower with a written notice sent by certified mail, return receipt requested, or by hand delivery or by any other method allowed under the North Carolina Rules of Civil Procedure for service, that the tower should be removed within 90 days of receipt of that notice.

The applicant is aware of this condition.

u) The above regulations shall not be deemed to prohibit the installation of an antenna on any existing tower, whether conforming or nonconforming, so long as the addition of said antenna adds no more than ten feet to any nonconforming dimension of the existing tower.

Mr. Matteson said that he has received 42 calls from people in the area expressing opposition to this request.

Mayor Sitnick questioned the studies the applicant provided indicating that telecommunications towers have little or no effect on residential property values. Mr. Matteson said that the initial study that they supplied the City with was a study out of the Pacific Northwest and it was a number of years old. Therefore, the City asked them to provide a study of the Asheville area. That study was prepared the Asheville study was prepared by Jay Marlow, Marlow Real Estate Appraisal Services located here in Asheville. Their study does suggest that the existing towers at Richmond Hill and in Oakley did not significantly affect property values for the residential properties that they had sales data for. One ordinance condition is that the proposed use will not injure the value of abutting or adjoining properties. With one exception, the properties for which they had sales data for were not abutting or adjoining the tower, but rather were merely in the vicinity of the tower.

Upon inquiry of Councilman Cobb, Mr. Matteson said the tower in Oakley is 225 feet, the tower in the Richmond Hill area is 150 feet and the tower at Grace Plaza Shopping Center is 100 feet.

Ms. Katherine Wilkerson, attorney representing SBA Inc. and BellSouth Mobility DCS, introduced Mr. Stephen Lewotsky, Zoning Coordinator for SBA Inc.

Mr. Lewotsky briefly reviewed his credentials and talked about the telecommunications in general, noting that

approximately 24,000 people in Asheville use wireless telecommunications. He then went over the specific site details that BellSouth used to find this site which began over two years ago and involved looking at 15 different sites. He said that this Merrimon Avenue site meets their criteria and also satisfied Asheville's Code. He submitted 15 letters (Applicant Exhibit A) into the record which letters note that there is a gap of service in this area. He said that there are no tall structures in the area that would provide them an opportunity to put a concealed site on the ground. According to Asheville's Code, they provided a monopole, asked for the tower to be 175 feet (not 200 feet allowed), and added additional landscaping. He said that their site design meets the health, safety and welfare of the community. He explained that it provides an essential service to the community and the region, it does not adversely affect -15-

property values, it is compatible with the character of the area, and it facilitates the use of the surrounding zones. The site will not interfere with the operation of the basic electronics, i.e., television, radio, microwaves, etc. The site satisfies all the set-back requirements. He said they spent a great deal of effort working with the community and the City to develop this site. They arranged a meeting with three neighborhood organizations at the request of the Planning & Development Department. Actually they postponed the meeting 30 days to allow everyone in those organizations to be notified. At the meeting, they listened to the community's comments and actually incorporated some of their ideas into their design. He submitted 2 photo simulations (Applicant Exhibit B) of the telecommunications tower at 754 Merrimon Avenue. Their real estate study indicates that cellular telecommunications towers do not affect property values in the Asheville area. They feel they have done everything the City has asked to minimize the visual impact of this tower, by placing it in a commercial zone, meeting with the neighbors, using the smallest antenna possible, and studying the effects of wireless on property values. In every instance they have met the requirements of the City in their efforts to provide for the needs of the community. They feel that this is the best site they can find in this area. The site satisfies the regulatory requirements of the Unified Development Ordinance, it presents substantial opportunities for co-location which will reduce the overall number of sites that will be needed by providers coming into the area in the future, and it will affect the smallest number of property owners possible. He then submitted for the record a copy of their original application (Applicant Exhibit C), responses to conditions of approval of the Technical Review Committee (Applicant Exhibit D), letter from the Planning & Development Department stating that the information they provided sufficiently addressed the Technical Review Committee's conditions (Applicant Exhibit E), letter to adjacent property owner offering to provide additional landscaping (Applicant Exhibit F), and a copy of their real estate report (Applicant Exhibit G). By use of a map, he said that given the way the zones are laid out in Asheville and given the zones the towers are allowed in, in order to get a site in this area, they had no choice but to go next to residential zones. He urged City Council to approve their conditional use application to construct a 175 foot telecommunications tower for Bell South Mobility DCS at 754 Merrimon Avenue.

Upon inquiry of Vice-Mayor Hay, Mr. Lewotsky explained the advantages of digital vs. cellular.

Mr. Lewotsky responded to a question from Councilman Cobb regarding the coverage area and how the topography of the area, trees and buildings made it difficult to find a suitable location. He said that putting a wireless site downtown is not going to bring the signal far enough onto Merrimon Avenue, because not only are they trying to serve the Merrimon Avenue area, they are trying to hand off to sites north of Merrimon Avenue. He said that for this site, their primary provider is BellSouth, however, the tower is being built to allow other providers to go on it as well.

At the request of Ms. Wilkerson, Mr. Lewotsky swore that all the information in the application which he submitted into evidence and the other documents that he has actual knowledge of, with the exception of the letter from the Planning & Development Department, is true.

Mr. Howard Petree, BellSouth Mobility DCS Radio Frequency Engineer, reviewed his credentials with City Council. By use of a map, he explained the objective of the site was to provide coverage to a coverage hole on Merrimon Avenue, north of Asheville and south of the Beaver Lake area. He said they already have a site

located on the BB&T Building in downtown and it does not provide the coverage that they need to connect to the north on Merrimon Avenue. He then explained that they are requesting a 175 foot tower instead of a 150 foot tower in order to minimize the coverage hole on Merrimon Avenue. He then addressed the antenna configuration they chose which would allow them to use one antenna per sector and minimize the aesthetic effect on the community. -16-

When Mayor Sitnick asked if they looked at co-locating on the tower at the Grace Plaza Shopping Center, Mr. Petree said that the maximum height they could go on that tower was approximately 65 feet and that doesn't even reach over the hill.

Councilwoman Field asked if two antennas located lower on possibly a church steeple work better because there is still a pretty big coverage hole? Mr. Petree said that it is financially not feasible to do that. He said that they try to minimize the number of sites they put in an area.

Mr. Jay Marlow, Marlow Real Estate Appraisal Services, reviewed his credentials and briefed City Council on the Property Value Impact Study he prepared on the impact of communication towers on residential home prices. He said he analyzed two neighborhoods where there were existing communication towers: (1) Richmond Hills which has an existing tower that has been there for approximately two years; and (2) Oakley which has a tower which was more recently built. He analyzed sales within each neighborhood which were located in close proximity to the communication towers as compared to homes located in the same neighborhoods which were located further away. His analysis revealed that there was no difference in sales price, marketing time, price per square foot or rate of depreciation between homes which were located in close proximity to the tower and homes in the same development which were located further away. He also analyzed sales from within each of these neighborhoods that have communication towers compared to the larger Asheville market. Once again, he found that in both neighborhoods that have already existing communication towers, there was no difference in sales price, marketing time, price per square foot of residence or depreciation rates in these neighborhoods compared to the greater Asheville real estate market. He said that if Council recognizes the importance of digital communications in the area, then they must accept the need for communication towers in areas which would benefit from these serves. It then becomes a matter of not if, but where, to locate the towers. The proposed site is already in a commercial district located behind an operating commercial business. Behind the site is a high embankment which shields all but two residences from having a direct view of the tower's base. The two residences are also zoned Commercial Business II. This site, due to its already existing commercial zoning and the commercial nature of the surrounding properties will have no effect on residential property values in the greater neighborhood.

When Vice-Mayor Hay asked if Mr. Marlow looked at the impact of property values regarding the tower at Grace Plaza Shopping Center, Mr. Marlow explained that he did try to analyze that site, however, because the tower is too new, there is not adequate sales data within which to make a comparison.

Mr. Marlow explained how close the houses were that he looked at to the tower and why he chose those particular ones.

Ms. Wilkerson requested City Council's approval of the conditional use application to construct a telecommunications tower for Bell South Mobility DCS at 754 Merrimon Avenue. She said they would be happy to consider the conditions suggested by the Planning staff, however, they would request approval at 175 feet.

The following individuals spoke against City Council approving the conditional use application for several reasons, some being, but not limited to, approval of the application would perpetuate a travesty on the Gracelyn Road and surrounding neighborhoods; the best possible site is no site at all; the tower will ruin viewscape and landscape; mistrust between neighborhood groups and developers; the neighborhood is

trying to keep out commercial encroachments that are inappropriate for the area; every time there has been an attempt to encroach into the neighborhoods, the perpetrators have tried to cast residents who suffer from and oppose proposals as anti-business, anti-development, anti-progress, anti-religious, or simply out of touch with the needs of the community; turning a quick profit seems to be the sole objective who want -17-

to infringe upon residential neighborhoods; the people who are going to use this service should pay the true economic cost instead of asking the surrounding neighborhoods to provide an indirect subsidy for the convenience of a few; the proposed tower is 75% taller than the tower at Grace Plaza Shopping Center; the neighborhood will see more than just the base of the tower; at the meeting with Mr. Lewotsky, none of the possible locations were adequately addressed and some residents felt that they were not taken seriously; suggestion to use the tower on top of Reynolds Mountain; digital will not be adequate in the future because we will probably go to satellite communications; when the satellite technology is here, who will pay to take down the cellular towers; City Council should pass a strong telecommunications tower ordinance which will protect the community from further encroachments of this nature; the tower will spoil the terrain, vision and property values; denial of the application should be based on Items 2, 3, 4 and (f) and (j); the tower is not necessary, it will infringe upon the surrounding neighborhood and the people who travel on Merrimon Avenue; tower should be built somewhere less visible; new global telecommunications system will allow subscribers to receive wireless digital telephone service virtually anywhere on the planet; there are unresolved questions about the safety of exposure to microwave radiation emitted by these towers; towers add to the generic urban sprawl spreading over the City; alternate sites should be considered; consider sites on public properties and permitting co-location on those properties; a possible location might be in the vicinity of the North Asheville Community Center; Merrimon Avenue is desperately in need of a comprehensive vision of development that will serve the businesses, residents and traveling public; a pocket park was just purchased by the neighborhoods and presented to the City which gives the indication that neighborhoods do not want commercial encroachment; why is stealth technology not being used; and, some homes in the area will have the light shining into rooms:

Mike Lewis, 48 Gracelyn Road

Dennis Hodgson, 107 Evelyn Place

Sidney Feldman, 1 Sandon Circle

A resident from 19 Melrose Avenue

Doug Saylor, 9 Mt. Vernon Circle

Robert Prentice, 403 Secluded Forest Drive (submitted Audience Exhibit A)

Ben Jones, 400 North Griffing Boulevard

David Thundershell Queen

Keith Thompson, 1 Bridle Path Road

Alan Wagner, 15 Larchmont

David Whitley, 210 Edgewood Road

Kay Coxe Andrews, 8 Sandon Circle

Upon inquiry of Councilman Cloninger regarding submission of documents into the record, City Attorney Oast said that since we are in a quasi-judicial context, unless the authors of the letters submitted are here to

swear to their truth, that they would have to be considered potentially hearsay, although they can be admitted into the record for whatever they're worth. He said that the applicant has submitted a number of documents into the record and the staff report is part of the record as well (City Exhibit A).

When Councilman Cloninger asked if it would be too late to supplement the record with the letters in opposition to this, since he did not have them with him at this meeting, City Attorney Oast that felt that the record could be held open to allow for submission of that information, however, the applicant should be given an opportunity to respond to it.

Given the opinion of the City Attorney, Councilman Cloninger submitted a letter from Paul M. Rosa (City Exhibit B) into the record.

When Mayor Sitnick asked if telephone calls are able to be submitted into the record, City Attorney Oast said that Council needs to base its decision on matters that are in the record -18-

and although the letters are in the record, he stressed that Council should be aware that they are considered hearsay and Council needs to be aware that that potential problem exists. Regarding the telephone calls, there isn't even a document to support it.

At the request of Mayor Sitnick, City Attorney Oast said that he recommended City Council to vote yes or no regarding the issuance of a conditional use permit, and then direct staff to prepare findings and conclusions and bring them back to City Council for a second vote. He said staff will prepare the findings and conclusions based on the comments of City Council and bring them back to Council at their next formal meeting on November 24, 1998.

Mayor Sitnick closed the public hearing at 7:24 p.m.

Councilman Cloninger moved to deny the conditional use application to locate a telecommunications tower at 754 Merrimon Avenue and to instruct staff to prepare findings of fact and conclusions consistent with that decision and bring them back to Council at their next formal meeting on November 24, 1998. This motion was seconded by Councilman Sellers.

Vice-Mayor Hay said that Item 4 is sufficient for him to vote against the application and it should appear in the findings. He was not convinced that providing digital service to north Asheville rises to the level of Item 2. He felt that if you talked to the people in north Asheville who are really going to be the ones affected by this on both sides, they will say that they want digital service, but when you tell them there is going to be a 175 foot tower to give them that digital service, they would say they don't want that service that bad.

Councilwoman Field said that she does understand the need for people to be able to have the opportunity to use cell phones. She understands that our cable franchisee will be providing digital service at a low cost as well. She said that she is Chair of the Governor's Regional Civic Connectivity Commission and there is an ordinance being supported by the N.C. League of Municipalities to provide for the public location of cell towers in the community. The bottom line for her was when the engineer showed Council his maps that indicated the proposed location did not solve the problem of filling the hole in the service on Merrimon Avenue. Therefore, Item 2 does not completely provide an essential service to the community or to the region. She still believes that the hole can be filled in a way that does not affect the neighborhood in this kind of way. She stressed that City Council needs to be fair to treat one segment of the community the same as other segments of the community. She would vote against the application because she didn't believe that the proposed tower solves the problem of the hole and does not meet Item 2. She did not believe that any cell tower can be in harmony with the scale, bulk, coverage, density and character of any neighborhood in Asheville and that is something that Council needs to look at very carefully.

Councilman Cobb felt that the application should be denied based on Items 2, 3 and 4. He felt that the service is needed out there but they should find a way to provide it, without the construction of a 175 foot tower. He felt that two smaller towers might accomplish that need and they would not be as obtrusive to the neighborhoods.

Councilman Tomes felt that even though the applicant has met the requirements of the Unified Development Ordinance, the 175 foot tower will not adequately bridge the large service gap, so he would have to vote to deny the application.

Councilman Cloninger said that among the concerns he has is that the 175 foot tower will create visual blight, when you look at the height of the proposed tower relative to the surrounding buildings that are no higher than 40 feet. He was concerned about the blight that would be created as a result of the height of the proposed tower relative to the surrounding landscape. He was not convinced that Bell South has adequately looked at other less -19-

conspicuous locations in that area, nor have they looked at potential stealth technologies. He also was not convinced that the value of the adjoining or abutting property would not be adversely impacted by the tower.

Councilman Sellers felt that the application should be denied based on Item 4, along with Items 2 and 3. He agreed with most of the statements already stated by Council.

Mayor Sitnick said that Items 2, 3 and 4 have not been satisfied. She believed that Item 3 has been misleading because she considers the studies that have been done to be non-studies, in that a couple of instances cited can in no way be construed as study. She said the most hopeful comment was that satellites will eventually make cell towers obsolete. She questioned the difference between the terms "adjoin" and "abut." She also felt that the comment made about the adjoining or abutting property having a rental house on it was an elitist comment. She said that this Council looks at the total community and doesn't make their decisions based on neighborhoods.

City Attorney Oast reminded Council to base their vote on the testimony and evidence that has been presented at this hearing. He said that one man provided some information about potential danger from radio emissions. City Attorney Oast suggested to Council that without more evidence on that, that issue should not be the basis for their decision because the evidence that Council does has suggests that they do meet the FCC standards and the law specifically prohibits denial based on that reason.

The motion made by Councilman Cloninger and seconded by Councilman Sellers to deny the conditional use permit carried unanimously.

At 7:40 p.m., Mayor Sitnick announced a short break.

C. PUBLIC HEARING RELATIVE TO REZONING 910 SWANNANOA RIVER ROAD FROM RM-16 RESIDENTIAL MULTI-FAMILY HIGH DENSITY DISTRICT TO NEIGHBORHOOD BUSINESS DISTRICT

Mayor Sitnick opened the public hearing at 8:03 p.m.

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

Mr. Carl Ownbey, Urban Planner, said that this is the consideration of an ordinance to rezone 910 Swannanoa River Road from RM-16 Residential Multi-Family High Density District to Neighborhood Business District.

The owners, Wade and Sandra Hall, have requested the rezoning of 910 Swannanoa River Road (PIN No. 9668.09-15-0297) from RM-16 Residential Multi-Family High Density District to Neighborhood Business

District.

The Neighborhood Business District was established to indicate areas for low density commercial uses that are compatible with and accessible to pedestrians from the surrounding neighborhood. This area of Swannanoa River Road is adjacent to a relatively large residential complex that is isolated from the area. This development potential will allow pedestrian access from the residential community and comply with the definition of the NB zoning district. However, due to the small size of the lot (.80 acre), the City Attorney's office has pointed out that this request could be determined to be "illegal spot zoning" which can only be determined in court.

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The Planning staff reviewed the rezoning request and recommended approval. At their October 7, 1998, Planning & Zoning Commission meeting, the Commissioners voted unanimously to recommend approval of the rezoning of 910 Swannanoa River Road from RM-16 Residential Multi-Family High Density District to Neighborhood Business District. Mr. Ownbey noted that the neighborhood did attend the Planning & Zoning Commission meeting, however, an item prior to this matter lasted over 2-1/2 hours and the neighborhood left prior to the hearing.

Mr. Ownbey said that on November 5, 1998, a valid protest petition was filed.

Upon inquiry of Councilman Cobb about proper notification to surrounding property owners, Mr. Ownbey said that everyone within 400 feet that was on their database was notified. He said that the residents at View Pointe were not notified because they were new residents and they were not on the database which information is furnished by Buncombe County. However, the overall developer of View Point was notified.

In response to Councilwoman Field, Mr. Ownbey said that the closest commercial area, excluding Recreation Park, would be the intersection at Tunnel Road and Swannanoa River Road or the intersection of Fairview Road and Swannanoa River Road. Mr. Ownbey said that neither commercial area is able to be walked at safely because of no sidewalks and because of the traffic on Sweeten Creek Road.

Mr. Steve Barden, attorney representing the developer of View Pointe, noted that his client did not get notice of the Planning & Zoning Commission meeting because of some apparent misaddress. He explained that the property is surrounded by residential property and to rezone it would, in his opinion, constitute an illegal spot zoning. He said there is no benefit to rezone this property to commercial. Since Swannanoa River Road is not a pedestrian access and to rezone will only bring additional traffic brought in from other areas. He urged Council to deny the rezoning due to the illegal spot zoning.

The following individuals spoke against rezone 910 Swannanoa River Road for several reasons, some being, but not limited to, no prior notification of meetings, already existing safety and traffic problems on Swannanoa River Road, especially at intersection of Azalea Road and Swannanoa River Road; the area was recently zoned residential under the Unified Development Ordinance and should not be changed; the rezoning would constitute illegal spot zoning; there are adequate shopping facilities nearby and more businesses are not needed in the community; no sidewalks to walk on Swannanoa River Road; Swannanoa River Road is narrow and is dangerous for cars; best interest for entire community for area to remain residential; Swannanoa River Road has a 45 miles per hour speed limit at that location and it would be hard for residents of the Beverly Hills community to cross the street to shop at any proposed stores at that location; greenway path would desirable instead of zoning to commercial; since View Pointe is on the top of the hill from the proposed site, the exhaust and pollution from the commercial strip will affect the quality of lives in the development and pollute the homes; this rezoning will start commercial development into residential areas; view will be destroyed; the residents of View Pointe already have to deal with flea markets, parked large trucks, washing machines and mattresses on the property and the owner has not taken any

pride in the property to date; and noise:

Tom O'Keefe, resident of View Pointe (presented petition with 27 signatures and photograph of area)

Mr. Herb Gallinger, resident of View Pointe

Mr. Brian McKenna, President of the Beverly Hills Homeowners Association

Ms. Marilyn Born, resident of View Pointe

Mr. Peter Fisher, resident on Little Cedar Court in View Pointe

Mr. Robert Born, resident of View Pointe -21-

Ms. Anita Wolfe, 25 Little Cedar Court in View Pointe

Ms. Esther Fisher, resident of View Pointe

Ms. Trish Lancaster, 3 Waverly Court (presented petition with 53 signatures which opposes the rezoning to Neighborhood Business)

Mr. Wade Hall, owner of 910 Swannanoa River Road for over 20 years, spoke in support of the rezoning. He said this area was zoned commercial prior to adoption of the Unified Development Ordinance and he assured the neighborhood that he would not put anything on that property that they would be ashamed of. He planned to build small businesses that would be appropriate for the neighborhood, e.g., drug store, medicine shop, pizza place, etc. He said the site is not appropriate for residential and should be zoned back to commercial. He urged City Council to rezone this property.

Mayor Sitnick reminded Council that they must consider all uses allowable under the Neighborhood Business District and not the use the petitioner proposes.

Mayor Sitnick closed the public hearing at 8:46 p.m.

Upon inquiry of Councilwoman Field if the petitioner and the property owners might reach a compromise, audience members did not feel that any consensus could be reached.

Upon inquiry of Councilman Cobb about a possible illegal spot zoning, City Attorney Oast emphasized that the rezoning could be determined to be an illegal spot zoning. He said that there are a number of factors that a court would look at and only a court can determine whether something is spot zoning or not.

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

Vice-Mayor Hay moved to deny the rezoning of 910 Swannanoa River Road from RM-16 Residential Multi-Family High Density District to Neighborhood Business District. This motion was seconded by Councilwoman Field.

Vice-Mayor Hay said that he was sympathetic with the situation of Mr. Hall, however, he did not think the appropriate zoning for the lot is Neighborhood Business in that it is not designed for pedestrian access.

Councilwoman Field felt that the City needs to retain their multi-family residential land.

Mayor Sitnick felt that there are a lot of uses under the current zoning designation of RM-16 and the traffic situation at that area greatly concerns her.

The motion made by Vice-Mayor Hay to deny the rezoning and seconded by Councilwoman Field carried unanimously.

D. PUBLIC HEARING RELATIVE TO REZONING 1451 SWEETEN CREEK ROAD FROM RM-16 RESIDENTIAL MULTI-FAMILY HIGH DENSITY DISTRICT TO COMMERCIAL INDUSTRIAL DISTRICT

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

City Clerk Burleson presented the notice to the public setting the time and date of the public hearing. -22-

Mr. Bruce Black, Urban Planner, said that this is the consideration of an ordinance to rezone 1451 Sweeten Creek from District to Commercial Industrial District.

The owners and applicants, Narrell and Billie Owenby, have requested the rezoning of 1.57 acres at 1451 Sweeten Creek (PIN No. 9656-10-37-1408) from RM-16 Residential Multi-Family High Density District to District.

By use of a map, Mr. Black reviewed the location of the property, noting that it runs from Edgewood Road over to Sweeten Creek Road. The area in question is close to the entrance to a stable single family neighborhood. The potential commercial industrial uses that would be allowed in this area are of greater functional impact (primarily noise and traffic) to these areas than the current zoning, which fits in with the existing development. He said there is commercial industrial development (electrical shop) just above the property. The 2010 Plan calls for low density residential in this area.

The Planning staff reviewed the rezoning request and recommended . At the October 7, 1998, Planning & Zoning Commission meeting, the Commissioners voted to to recommend of the rezoning of 1.57 acres at 1451 Sweeten Creek from District to District.

On October 21, 1998, the petitioners appealed the Planning & Zoning Commission's denial to City Council.

Mr. Narrell Owenby, petitioner, explained that the original rezoning request was for two lots to be rezoned, however, the owner of the other lot withdrew his request. Unfortunately he was out of the country when the Planning & Zoning Commission held their hearing and did not know that the other petitioner had withdrawn his request. He said that since they are widening Sweeten Creek Road and taking a portion of his property for right-of-way, the property will not be desirable for a residence. He urged City Council to rezone his property to commercial industrial.

Ms. Lois Hodgson, President of Cimarron Homeowners Association, urged City Council not to rezone the property to commercial. She hoped Council would not allow commercial development to encroach into the residential properties in the area. She felt the proposed rezoning is close enough to affect their property values. She felt that Edgewood Road is in a constant state of disrepair because of so much traffic now and urged Council to deny the rezoning request.

Mr. Roger Smith, President of the Stockwood Road Association, urge City Council to deny the rezoning request. To rezone this property would be an incompatible extension into the residential neighborhood.

Mayor Sitnick closed the public hearing at 9:19 p.m.

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

Councilman Cloninger moved to deny rezoning 1451 Sweeten Creek Road from RM-16 Residential Multi-

Family High Density District to Commercial Industrial District. This motion was seconded by Councilman Cobb and carried unanimously.

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E. PUBLIC HEARING RELATIVE TO AMENDING THE UNIFIED DEVELOPMENT ORDINANCE REGARDING SHORT TERM RENTAL IN RESIDENTIAL DISTRICTS (VACATION RENTALS)

ORDINANCE NO. 2527 - ORDINANCE TO AMEND THE UNIFIED DEVELOPMENT ORDINANCE TO ALLOW VACATION RENTALS AS A PERMITTED USE, SUBJECT TO SPECIAL REQUIREMENTS, IN ALL RESIDENTIAL DISTRICTS

Mayor Sitnick opened the public hearing at 9:21 p.m.

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

At the request of Councilman Cloninger, Councilman Sellers moved to excuse Councilman Cloninger from voting due to a conflict of interest. This motion was seconded by Councilwoman Field and carried unanimously.

Senior Planner Gerald Green said that this is the consideration of two wording amendments to the Unified Development Ordinance which would permit vacation rentals as a conditional use in single family residential districts and as a permitted use, subject to special requirements, in multi-family residential districts.

The Asheville Planning & Zoning Commission, at their October 7, 1998, meeting, reviewed and recommended approval of two amendments to the Unified Development Ordinance which identify vacation rentals as conditional uses in the single-family residential districts and as permitted uses, subject to special requirements, in the multi-family residential districts. As proposed, the approval of vacation rentals in single-family residential districts would require a public hearing before City Council. Approval of vacation rentals in multi-family residential districts would be granted by staff upon a finding that all requirements were met. The Planning & Zoning Commission felt that the introduction of this type of use into single family residential districts would be a change substantial enough to warrant a public hearing. The proposed amendments identify standards which must be met by vacation rentals in residential districts; these standards are the same for single-family and multi-family residential districts. The standards address issues such as minimum acreage for the use, maximum number of rental units, open space requirements, buffering requirements, services provided to guests, and other measures designed to minimize the impact of this use in residential areas. The Commission felt that vacation rentals would provide an alternative lodging choice for visitors to the Asheville area while preserving open areas.

The Asheville Planning & Zoning Commission voted 6 -1 to recommend approval of the wording amendments. The Planning & Development staff recommend approval of the amendments.

He said letters of support have been received from the Chamber of Commerce and the Friends of the Blue Ridge Parkway, and the National Park Service/Blue Ridge Parkway which he would give to the City Clerk for submission into the record.

Mr. Mike McLeod urged City Council to adopt the ordinances in that it clarifies the existing ordinance and imposes several stringent new requirements. It will encourage the preservation of large tracts of unspoiled acreage, because vacation rentals would only be permitted in tracts of 30 acres or more, and at least 1/2 of the acreage would have to be devoted to open space. The ordinance amendment would permit him to build six additional homes off -24-

Sweeten Creek Road at Willow Winds and without approval of this amendment, he would be forced to sell

the land for more intensive development. He felt that the ordinance serves a strong public interest in that his tract of land is the only tract that is zoned multi-family that is adjacent to the Blue Ridge Parkway. Therefore, he believes the public is served by making vacation rentals in multi-family district a use by right subject to special conditions. Urban encroachment has been widely recognized as one of the greatest threats to the beauty of our great national resource, the Blue Ridge Parkway. This amendment will enable him to maintain his acreage in a relatively natural state and not detract in any way from the Parkway, with whom they share a common boundary of over 1700 feet. In addition, it serves the economic purpose of providing badly needed accommodations for families who wish to come to Asheville and rent a vacation home.

Mr. Mel Thomason, 304 Cisco Road, asked City Council to consider an amendment to permit vacation rentals as a permitted use, subject to special requirements, in all residential districts.

Mr. Roger Smith, President of the Stockwood Road Association, said their only concern would be the additional traffic coming in and out of Stockwood Road neighborhood. He said the amendment will probably be good for preservation of his neighborhood, however, they do want their neighborhood protected.

Mayor Sitnick closed the public hearing at 9:47 p.m.

Upon inquiry of Vice-Mayor Hay, Mr. Green explained that the staff's recommendation was to treat vacation rentals as a permitted use, subject to special requirements, in all neighborhoods, regardless of whether they were single-family or multi-family. He then explained why he thought the Planning & Zoning Commission made their recommendation different from staff's recommendation.

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

Councilwoman moved for the adoption of Ordinance No. 2527, to permit vacation rentals as a permitted use, subject to special requirements, in all residential districts. This motion was seconded by Councilman Tomes and carried unanimously.

ORDINANCE BOOK NO. 17- PAGE 177

IV. NEW BUSINESS:

A. RESOLUTION NO. 98-164 - RESOLUTION AUTHORIZING THE CITY MANAGER TO AWARD THE BID TO COOPER CONSTRUCTION COMPANY FOR THE BEAVERDAM ANNEXATION AREA CARTER COVE SANITARY SEWER AND WATER IMPROVEMENTS

Ms. Cathy Ball, City Engineer, said that staff is recommending City Council award the contract for the Beaverdam Annexation Area Carter Cove Sanitary Sewer and Water Improvements to the lowest responsible bidder, Cooper Construction Company Incorporated, in the amount of \$442,278.00.

On Tuesday, September 23, 1998, at 2:00 p.m., the Engineering Department received the following three bids for the project:

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Precision Contracting, Asheville, NC \$435,806.00

Cooper Construction Co., Hendersonville, NC \$442,278.00

Buckeye Construction Co., Canton, NC \$478,031.25

The lowest apparent bidder for this project was Precision Contracting, which is a minority owned business, with a bid of \$435,806; however, after checking references for similar types of jobs, they have been determined not to be responsible for performing this job. Staff has met with the Minority Business Commission and notified them of staff's recommendation.

The biggest reason for designating them as not responsible for this project is that they have found on two sewer projects that they had completed, one of which was for \$114,000 for the Town of Spruce Pine and the other was for approximately \$250,000 for Metropolitan Sewerage District ("MSD").

She clarified some of the concerns raised about how that bid was awarded and some complications with what was considered to be a sub-contractor. It is her understanding that when the bid was awarded to Precision for the Holiday Inn Sunspree sanitary improvements, MSD had not planned to sod the fairways of the golf course, they had only planned to sod the tee-boxes and they had bid that out to Precision to do. When the golf course found out about this, they were very upset because they wanted to have the fairway sodded as well. That's when the negotiations went between MSD and the Holiday Inn Sunspree. They had told her that does not figure in at all to the recommendation they gave them regarding Precision Contracting. That was not looked at in a negative way. The problem arose because the sod that was installed did not live, according to what she was told, because the sprinkler system had been damaged and not repaired by Precision Contracting. That was the result of the damages and from that the insurance company paying to take care of the sod. She said that the City would like to work with Precision Contracting in the future, in the event that they are low bidder for a project of a lesser amount. They would like to work with them to establish a good reputation.

Upon inquiry of Councilman Sellers, Ms. Ball said that there approximately 15-16 homes that will be affected by this project.

Ms. Susan Lewis, attorney representing Precision Contracting, passed out to City Council a booklet and stated that the bid must be awarded to the lowest responsible bidder and obviously Precision Contracting is the lowest bidder, therefore, she would argue the definition of what is "responsible." Precision Contracting has the bidding limit of \$500,000, is licensed by the state to bid \$500,000, and is bonded up to \$500,000. The project in question consists of three separate lines. The job is basically running the sewer lines, with completing one line 100% and then proceeding with the next line. This is basically not a complicated project but a high dollar project based on so many lines to be run. Relative to the letter Jim Orr signed, she said Mr. Orr was not the Superintendent of the Golf Course, but was Director of the Golf Course at Holiday Inn Sunspree. He made several allegations and one basically was that he didn't have any communications with the contractor. Precision Contracting had dealings with MSD who contracted the job out to them. They had no authority to deal with Sunspree. At any point in time that they had any conversations with Sunspree, they would have them in the presence of MSD and the Superintendent, who again is not Jim Orr. Also, Mr. Orr has no contracting license and does not have any way to supervise Precision Contracting, nor was he in any position to supervise Precision Contracting. Therefore, the letter from Mr. Orr is irrelevant.

Ms. Lewis then proceeded to review the information in the booklet which addressed the items Ms. Ball voiced concerns about at the November 4, 1998, worksession. She summarized by stating that Precision Contracting is the responsible bidder and should be awarded the contract.

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

Councilman Sellers moved for the adoption of Resolution No. 98-164 which awarded the contract to Cooper Construction Company. This motion was seconded by Councilman Cloninger and carried unanimously.

Councilman Cloninger said that Ms. Lewis had made some very persuasive arguments, however, he felt that we needed to have confidence in our City Engineer and should rely on her judgment. He agreed with Ms. Ball in that the City should look for other opportunities to work with Precision Contracting in the future.

RESOLUTION BOOK NO. 25 - PAGE 39

V. OTHER BUSINESS:

A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON OCTOBER 27, 1998, AND THE WORKSESSION HELD ON NOVEMBER 4, 1998

Vice-Mayor Hay moved for the adoption of the minutes of the regular meeting held on October 27, 1998, and the worksession held on November 4, 1998. This motion was seconded by Councilman Tomes and carried unanimously.

B. CLAIMS

The following claims were received by the City of Asheville from October 9-29, 1998: Allison Frank (Streets), Herbert Rector (Water) and Mary Pettijohn (Inspections).

The following claims were received by the City of Asheville from October 30 - November 5, 1998: Annie R. Fowler (Police), Suzanne R. Wilder (Sanitation) and William Flanagan (Finance).

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

VI. INFORMAL DISCUSSION AND PUBLIC COMMENT:

A. COMMENTS BY DAVID THUNDERSHELL QUEEN RELATIVE TO ASHEVILLE POLICE DEPARTMENT

Mr. David Thundershell Queen, resident of 37 Wall Street and freelance journalist and reporter. He addressed City Council about the police misconduct and even brutality of some officers at Bele Chere 1998. He felt that to not discipline a violent police over-reaction, he urged City Council to seriously look into the voices of many who witnessed the incident. A citizens/police review board with real power to discipline or dismiss is in order, not just the present Citizens/Police Advisory Committee. Criminal charges should be charged against officers who violently abuse the rights of a fellow citizen while hiding behind a badge. He presented City Council with Volume 5, No. 13, of the Mountain Xpress and Council to read the details.

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B. MICKIE MaHAFFEY

Mr. Mickie MaHaffey briefed City Council on an impromptu survey he conducted concerning the accessibility of City officials.

At 10:15 p.m., Mayor Sitnick adjourned this meeting to proceed to the Asheville Civic Center.

VII. UNFINISHED BUSINESS:

At 10:30 p.m., Mayor Sitnick reconvened the meeting.

A. FUTURE OF THE ASHEVILLE SPEEDWAY

Representative Martin Nesbitt, attorney representing the racing community, introduced the program and speakers before City Council.

Mr. Keith Cochran briefed Council on the 38 year history of racing at the Asheville Motor Speedway, starting with when the Speedway was first built in 1960 on the site of a former airstrip, known as Carrier Field, on the banks of the French Broad River.

Mr. Dean Jones reviewed with Council the economic impact study consisting of facts gathered from the 1998 season. He reviewed each area involving track employees, track concession vendors, race community vendors, advertising dollars, race purse, race admission and other event and revenues, totaling a revenue loss of approximately \$2,386,490.

Mr. Kermit Trolley reported to Council on the driver/team owner point of view with closing the Asheville Motor Speedway, stressing that the citizens of Western North Carolina will lose an exciting education opportunity. Most areas of racing, from track owner to advertising to track crew, require a college degree with today's era of racing. If the Speedway is taken away from the community, many youth will not be exposed to a career opportunity with salaries large enough to make any local doctor, lawyer or accountant envious. Many charities will lose a tremendous amount of donations directly from the racing families, some charities being, but not limited to, Memorial Mission Hospital Ducky Derby, Eblen Foundation Boosters, Victims of Fire Burn-Out, Cancer Foundation (Amy Hamerick), Family of Gary Neice, Billy Joe Pressley Memorial, Children's Miracle Network, and Make-A-Wish Foundation. He then explained the sponsorship aspect of the racing community.

Ms. Sharon Tolley presented City Council with a petition containing 20,390 signatures that support racing in the Asheville area and that are in favor of the continuation of racing at the Asheville Motor Speedway for one more season. She also presented City Council with a letter from Kathy Cook who wrote in support of the racing community in Asheville.

Representative Nesbitt said that the NASCAR license expires on December 31, 1998, and they hoped to work toward closure of this issue near the first of December. He again urged City Council to work to allow racing at the Asheville Motor Speedway until another track could be built.

City Attorney Oast briefed City Council on the progress to date noting that staff has been given direction from City Council that they desire to see the racetrack utilized for a period of time in order to give Speedway '99 a chance to pursue establishment of another racetrack in the area. He said that he is working to develop plans for its operation and a method for soliciting who will operate with it with appropriate members of the community and as well as City staff. RiverLink is working to gather concurrence from all of the parties who contributed to the purchase of the -28-

racetrack to allow its continued use as a racetrack for a period of time. Although he is encouraged by the meetings to date, he stressed that a lot of pieces need to fall into place. He said that he is preparing documents, proceeding on the assumption that the racetrack can be used another season.

VIII. ADJOURNMENT:

Mayor Sitnick adjourned the meeting at 11:30 p.m.

CITY CLERK MAYOR
