

Tuesday - January 12, 1999 - 5:00 p.m.

Regular Meeting

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

Absent: None

INVOCATION

Councilman Cobb gave the invocation.

I. PROCLAMATIONS:

A. PROCLAMATION PROCLAIMING JANUARY 11-18, 1999, AS "DR. MARTIN LUTHER KING JR. WEEK" IN THE CITY OF ASHEVILLE

Mayor Sitnick read the proclamation proclaiming January 11-18, 1999, as "Dr. Martin Luther King Jr. Week" in the City of Asheville. She presented the proclamation to Ms. Oralene Simmons, who briefed City Council on some activities taking place during the week.

B. RECOGNITION OF BUNCOMBE COUNTY'S PROJECT ACCESS

Mayor Sitnick read the recognition of Buncombe County's Project Access and presented the recognition to Dr. Suzanne Landis, on behalf of the Medical Society, and Dr. George Bond, on behalf of Buncombe County, and Mr. Alan McKenzie, who briefed Council on the project.

II. CONSENT AGENDA:

At the request of Mr. H.K. Edgerton, Item E. was removed from the Consent Agenda to be discussed individually.

A. RESOLUTION NO. 99-1 - RESOLUTION ACCEPTING THE NEW PROPOSED STREET NAME ROSEFIELD DRIVE

Summary: Free-Beaux Associates, owner of lots in the Kenilworth Hills Subdivision, has petitioned the City of Asheville to accept the street name Rosefield Drive. The new street will be a cul-de-sac beginning at Kenilworth Road.

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B. RESOLUTION NO. 99-2 - RESOLUTION ACCEPTING THE NEW PROPOSED STREET NAME DISTANT VIEW DRIVE

Summary: Highland Builders of Asheville, owner of lots in The Views of Asheville, a resubdivision of The Pinnacle at Park Avenue, has petitioned the City of Asheville to accept the street name Distant View Drive. The new street will be a cul-de-sac beginning at Park Avenue.

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C. RESOLUTION NO. 99-3 - RESOLUTION WITH THE NORTH CAROLINA STATE UNIVERSITY TO PROVIDE A PAVEMENT MANAGEMENT INVENTORY FOR CITY MAINTAINED STREETS

Summary: The consideration of a resolution authorizing the City Manager to sign a contract with NC State University to provide a Pavement Management Inventory in the amount of \$41,104.

The City maintains approximately 365 miles of streets. The best method for prioritizing the maintenance of these streets is to develop an inventory of all the streets along with the condition of the street. Many municipalities use this method for developing both short and long term pavement and maintenance schedules.

The Institute for Transportation Research and Education (ITRE), which is affiliated with North Carolina State University, provides these services to many cities in North Carolina. (All contracts must be with NC State University.) Prior to selecting ITRE for this contract, staff invited three other firms to demonstrate their ability to provide these services to the City. Review staff consisted of three staff persons from the Engineering Department, one staff person from the Public Works Department and one staff person from the Information Services Division of the Finance Department. Following the demonstrations, the staff committee selected ITRE to perform the work for the following reasons:

- *ITRE was the least expensive.* In order to maintain this inventory, it should be redone every three to five years due to the fact that some streets deteriorate at varying rates. Staff felt that it would not be feasible to spend \$100,000 every five years to have the inventory redone.
- *ITRE is a non-profit organization established specifically to assist with Transportation Research and Education.*
- *ITRE has provided this service to several cities in North Carolina.*

The services provided by ITRE consist of an inventory and evaluation of all City streets, as well as establishing a database which prioritizes the street maintenance needs. The Public Works Department has \$40,000 budgeted for this project and the Engineering Department has the remaining funds budgeted. Due to the fact that ITRE is a non-profit organization affiliated with NC State University, they do not have the funds to begin the project. Therefore, they have requested half of the money initially and the remaining half at the end of the project.

City staff requests City Council authorize the City Manager to sign a contract with NC State University in the amount of \$41,104 to provide a Pavement Management Inventory for the City.

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D. MOTION APPROVING THE 1999-2000 ANNUAL OPERATING BUDGET SCHEDULE

E. RESOLUTION TO AWARD BIDS FOR FLEET VEHICLES

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

F. RESOLUTION NO. 99-4 - RESOLUTION AUTHORIZING THE CITY MANAGER TO SIGN A LEASE FOR A PORTION OF THE MILLS RIVER PROPERTY WITH R.V. WARREN FARMS FOR CORN PRODUCTION -3-

Summary: The consideration of a resolution to lease presently vacant land on the opposite side of the Mills

River from the new water treatment plant owned by the City of Asheville be leased to R. V .Warren Farms in 1999 for corn production with appropriate restrictions for environmental protection.

The City of Asheville purchased property in Henderson County in 1994 along the west bank of the French Broad River, on both sides of the Mills River, for the construction of a Water Treatment Plant. The Plant is currently being built exclusively on the south side of the Mills River. A residual 51 acres north of the Mills River is presently vacant land but was agricultural before the City's purchase. R. V. Warren Farms has offered to lease this land during 1999 for corn production at a fair market price of \$75 per acre (\$3,825 total).

Staff has evaluated this proposal and finds there is no near-term use of the property north of the Mills River for the water treatment complex. Further review of this 51 acres confirms the property is relatively flat and most of the property drains slightly toward the east where the French Broad River is located. Negotiations for this lease with R. V. Warren include requirements for a 75-foot buffer at the rivers, prohibition of pesticide applications, and limitations on herbicide and fertilizer use. The restrictions will promote an example of agricultural use in harmony with environmental protection.

Staff further recommends the revenue from the lease go to the Water Fund toward the local matching funds for watershed protection in the Mills River valley provided the currently pending application to the Clean Water Management Trust Fund is approved.

The Regional Water Authority of Asheville, Buncombe, and Henderson adopted a resolution on December 15, 1998, recommending that the Asheville City Council grant this lease.

Staff recommends the City Council adopt the resolution, thereby granting the lease to R.V. Warren Farms for 1999 for a total of \$3,825.

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G. RESOLUTION NO. 99-5 - RESOLUTION ACCEPTING THE REGIONAL WATER AUTHORITY'S RECOMMENDATION TO AWARD THE BID FOR THE FAIRVIEW RESERVOIR PROJECT TO T & K UTILITIES

Summary: The consideration of awarding a construction contract to T&K Utilities for the "Fairview Reservoir Project".

Sealed bids were received by the Regional Water Authority on October 28, 1998 for the Fairview Reservoir Project. This project is a Master Plan Phase II project that includes the construction of a 1 million gallon reservoir and the installation of approximately 3,700 linear feet of 12-inch waterline. This is the last project in a series of projects that will greatly enhance the Authority's ability to provide reliable water service to existing customers in the South Buncombe/ Fairview area and will provide for the future growth and development of this area. As a result of this reservoir construction, four existing pumping stations will be abandoned in favor of the regional South Buncombe / Fairview Pumping Station and Reservoir. Construction on this project is scheduled to begin in mid February, 1999 with 180 calendar days allocated for construction. There is a liquidated damages clause in the contract of \$ 500.00 per day if the project is not completed on time.

Five bids were received with T&K Utilities of Asheville, North Carolina submitting the low of \$675,700. These bids were received in accordance with NC General Statute 143-129 and -4-

in accordance with the City of Asheville's Minority Business Plan. The engineer's estimate for the project is in the amount of \$738,000. All the bids received are listed below in the order of their bid:

COMPANY BID AMOUNT

T&K Utilities, Asheville, N.C. \$ 675,700.00

Cooper Construction Company, Hendersonville, N.C. \$ 676,926.00

Buckeye Construction Company, Canton, N.C. \$ 689,588.63

Terry Brothers Construction Company, Leicester, N.C. \$ 801,925.00

Hickory Construction Company, Hickory, N.C. \$ 906,925.00

The Regional Water Authority approved award of this contract to T&K Utilities in the low bid amount of \$ 675,700.00 on November 17, 1998, and staff recommends City Council's concurrence with the Authority's action.

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H. RESOLUTION NO. 99-6 - RESOLUTION ACCEPTING THE REGIONAL WATER AUTHORITY'S RECOMMENDATION TO AWARD THE BID FOR THE SPIVEY MOUNTAIN RESERVOIR PROJECT TO TAYLOR & MURPHY CONSTRUCTION COMPANY

Summary: The consideration of awarding a construction contract to Taylor and Murphy Construction Company for the "Spivey Mountain Reservoir Project".

The Regional Water Authority received bids for the Spivey Mountain Reservoir Project on November 13, 1998. This reservoir and its related pumping station and water transmission lines, already under construction, will alleviate periodic low water pressures in the western sections of our water distribution system and will provide for the continued growth and development of that area. This project was previously bid but not awarded due to failure of the low bidder to comply with the Minority Business provisions of the contract. Construction on this project is scheduled to begin in mid February, 1999 with 150 calendar days allocated for construction. There is a liquidated damages clause in the contract of \$ 500.00 per day if the project is not completed on time.

A total of two bids were received with Taylor and Murphy submitting the low bid of \$ 663,069. These bids were received in accordance with NC General Statute 143-129 and in accordance with the City of Asheville's Minority Business Plan. All the bids received are listed below in the order of their bid:

Taylor and Murphy Construction Company, Asheville, N.C. \$ 663,069

Hobson Construction Company, Arden, N.C. \$ 697,400

The previous low bid for this project, submitted by Taylor and Murphy, was \$532,340. This bid was rejected for failure to comply with the Minority Business provisions of the contract. Subsequently, a low bid of \$561,000 was negotiated with Cooper Construction Company but this was rejected by the Authority at the recommendation of staff. The engineer's estimate for this project is in the amount of \$600,000.

Since the bid opening, negotiations with Taylor and Murphy has brought their low bid price down to \$560,000. Approximately \$ 60,000 of this reduction is attributable to raising the base of the reservoir approximately 10 feet and the associated reduction in excavation. The -5-

remainder of the reduction was not related to any change in scope but rather to price negotiations. Staff is confident that the quality of the finished project will not be sacrificed by any of these price reductions.

The Regional Water Authority approved award of this negotiated contract to Taylor and Murphy Construction

Company in the amount of \$560,000 on December 15, 1998, and staff recommends City Council's concurrence with the Authority's action.

RESOLUTION BOOK NO. 25 - PAGE 112

I. RESOLUTION NO. 99-7 - RESOLUTION AUTHORIZING THE EXECUTION OF AN AGREEMENT WITH THE N.C. DEPT. OF TRANSPORTATION FOR THE IMPROVEMENTS ON NC 191/BREVARD ROAD TO I-240 INTERCHANGE

Summary: The consideration of a resolution authorizing the City Manager to sign an agreement with the N.C. Dept. of Transportation ("NC DOT") for utility relocation costs as part of improvements along NC 191/Brevard Road to the I-240 Interchange.

The NC DOT is proposing to construct roadway improvements along NC 191 (Brevard Road) from I-40 to I-240. NC DOT proposes to widen and relocate NC 191/Brevard Road as a four-lane road with curb and gutter from just north of the Interstate 40/NC 191 interchange to just north of the Interstate 240/Park Road interchange on the western side of Asheville. The intersection of Fairfax Avenue with the westbound Interstate 240 exit ramp will be eliminated, and Fairfax Avenue will be extended to intersect with NC 191. The westbound Interstate 240 exit ramp will be shifted south to tie into NC 191 across from the Interstate 240 westbound entrance ramp. A new bridge will be constructed to carry proposed NC 191 over Hominy Creek and Hominy Creek Road. Shelburne Road will be extended to tie into NC 191 at the proposed Fairfax Avenue/NC 191 intersection north of Interstate 240. These improvements are anticipated to start in 1999. An agreement was executed in July, 1996, solely for the transfer of ownership of Bridge #216 to the City of Asheville so as to leave it in place to accommodate pedestrian traffic.

The Municipal Agreement provides for the relocation of the waterline. The items in conflict with NC DOT will be designed and relocated during construction of the project. The existing waterline is an 8-inch diameter and the Water Master Plan calls for this waterline to be upgraded to a 24-inch diameter. This will occur as part of the waterline relocation. All 6-inch and 12-inch existing waterlines are being relocated for construction of the highway. The estimate for the relocation of the waterline is \$256,756. The Municipal Agreement contains provisions for reimbursement of these costs after completion of the work and within sixty (60) days after date of invoice. Interest shall be paid at the rate of 8% on any unpaid balance due.

This agreement will effect the necessary adjustment of any utilities under franchise without cost to the NC DOT, and to provide for the adjustment of any municipally-owned utilities, without cost to the NC DOT.

On December 15, 1998, the Regional Water Authority unanimously approved a resolution amending Capital Project Ordinance 82-25 (35 Fund - Water Major Capital Improvements Fund) to provide future funding for the NC 191 NC DOT Project in the amount of \$256,756. This project will be funded with future funds from either the Operating Budget or from bonds or loans.

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Staff recommends that City Council (1) authorize the City Manager to sign the Municipal Agreement for improvements on NC 191/Brevard Road to I-240 Interchange; and (2) authorize the budget amendment to reprogram line items relating to the NC 191 24-inch waterline.

RESOLUTION BOOK NO. 25 - PAGE 113

J. ORDINANCE NO. 2534 - BUDGET AMENDMENT FOR THE PROJECT NC 191 24" WATERLINE ON BREVARD ROAD FROM I-240 TO I-40

Summary: See Item "I" above.

ORDINANCE BOOK NO. 17 - PAGE 201

K. MOTION SETTING A PUBLIC HEARING FOR JANUARY 26, 1999, TO REALLOCATE COMMUNITY DEVELOPMENT BLOCK GRANT FUNDS TO NEW HOPE COMMUNITY HEALTH CENTER

L. MOTION SETTING A PUBLIC HEARING FOR JANUARY 26, 1999, TO ZONE SECTION 11 OF BILTMORE PARK TO RS-4 RESIDENTIAL SINGLE-FAMILY MEDIUM DENSITY DISTRICT

M. MOTION SETTING A PUBLIC HEARING FOR JANUARY 26, 1999, TO ZONE SECTION 12 OF BILTMORE PARK TO RS-4 RESIDENTIAL SINGLE-FAMILY MEDIUM DENSITY DISTRICT

N. MOTION SETTING A PUBLIC HEARING FOR JANUARY 26, 1999, TO AMEND THE UNIFIED DEVELOPMENT ORDINANCE TO CREATE AN OFFICE II ZONING DISTRICT

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

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

NEW TIMING DEVICE FOR SPEAKERS

Mayor Sitnick said that in an effort to be fair to all speakers, we have installed a timing device. For individuals speaking, the time limit is three minutes each. For a group spokesman, the time limit is 10 minutes. We request that if you are speaking for a group, you make that known prior to your comments to allow the appropriate time to be set.

Also, in an effort to allow the speaker to get the full time allotted to address Council, City Council will hold all their questions or comments until the speaker is finished.

She explained that on the podium there are three lights. The green light indicates that you are within your allotted time. The amber light will signal that the speaker has 15 seconds to wrap up. When the red light comes on, your time is up and we ask that you take your seat to allow others to speak.

She felt that this system will allow our meetings to run smoothly and be fair to all speakers.

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ITEM PULLED FROM THE CONSENT AGENDA FOR FURTHER DISCUSSION

RESOLUTION NO. 99-8 - RESOLUTION TO AWARD BIDS FOR FLEET VEHICLES

Summary: The consideration of a resolution to award Bid Request No. 486-99 for the purchase of sixteen (16) assorted fleet vehicles.

Pursuant to N. C. Gen. Stat. sec. 143-129 and in compliance with the City's Minority Business Plan, sealed bids were received to furnish the Police, Building Safety and Engineering Departments with vehicles as described in the bid summary as bid items 1 through 4. Four bids were received as follows:

Full Size Police Vehicles

Earl Tindol Ford, Gastonia, N.C. \$193,130.00

Matthews Ford, Asheville, N.C. \$195,160.00

Frank Polk Ford, Black Mountain, N.C. \$206,640.00

Mid Size 4 WD Pickup Truck

Earl Tindol Ford, Gastonia, N.C. \$15,769.00

Matthews Ford, Asheville, N.C. \$15,666.00

Frank Polk Ford, Black Mountain, N.C. \$15,690.00

Fletcher Motor Company, Fletcher, N.C. \$16,145.27

Mid Size 2 WD Pickup Trucks

Earl Tindol Ford, Gastonia, N.C. \$40,065.00

Matthews Ford, Asheville, N.C. \$39,705.00

Frank Polk Ford, Black Mountain, N.C. \$39,774.00

Fletcher Motor Company, Fletcher, N.C. \$40,156.95

One-Half Ton 2 WD Heavy Duty Pickup

Earl Tindol Ford, Gastonia, N.C. \$28,866.00

Matthews Ford, Asheville, N.C. \$28,744.00

Frank Polk Ford, Black Mountain, N.C. \$28,816.00

Fletcher Motor Company, Fletcher, N.C. \$32,217.14

Bids have been reviewed for technical compliance to specifications by the Fleet Management Division and their concurrence received in the following recommendations.

Funds for the purchase of these vehicles are to be from the requisitioning departments capital equipment appropriations for FY 98/99. All vehicles are budgeted as replacement vehicles.

Subject to Council's approval, it is recommended that awards be made to the low bidder of each item as follows:

Bid item 1 award to Earl Tindol Ford, Gastonia, N. C. in the amount of \$193,130.00 for the purchase of the vehicles described in the bid summary for this item.

Bid items 2, 3, and 4 award to Matthews Ford, Asheville, N. C. in the amount of \$84,115.00 for the purchase of vehicles described in the bid summary for these items.

Grand total of all awards as recommended \$277,245.00.

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Mr. H.K. Edgerton asked if the Request for Proposals went to any minority-owned businesses. Finance Director Bill Schaefer responded that the City extended an invitation to 24 entities, however, none were

minority-owned firms. He said that the City presently has no minority businesses certified in the City or County that supply vehicles. He said that Councilman Tomes will make him aware of a firm that may be an opportunity in the future. He said that any time we can find a minority in a commodity of a product or serve that is not listed, we would welcome the opportunity to extend to them an opportunity to be listed as one of our vendors and to extend an opportunity for participation in any procurement action by the City.

Councilman Tomes suggested that the Director of Minority Affairs subscribe to Black Enterprise which lists major companies throughout the United States.

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

Councilman Tomes moved for the adoption of Resolution No. 99-8. This motion was seconded by Councilwoman Field and carried unanimously.

RESOLUTION BOOK NO. 25 - PAGE 114

III. PUBLIC HEARINGS:

A. PUBLIC HEARING RELATIVE TO CLOSING AN ALLEY BETWEEN RICHMOND AND MICHIGAN AVENUES

RESOLUTION NO. 99-9 - RESOLUTION TO PERMANENTLY CLOSE

AN ALLEY BETWEEN RICHMOND AND MICHIGAN AVENUES

Mayor Sitnick opened the public hearing at 5:20 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 James H. and Mona G. Justice, Richard A. and Shirley J. Page and Jose and Guiller Nina T. Valazquez, owners of parcels 9638-15-54-5274, 5196, and 6293 requesting that a portion of an unnamed and unopened alleyway between Richmond Avenue and Michigan Avenue be permanently closed to public use. These individuals own all of the property with frontage on the portion of the unopened alleyway between Richmond Avenue and Michigan Avenue that has been petitioned to be closed.

The Public Works Department staff recommends City Council adopt the resolution to permanently close the unnamed and unopened alleyway between Richmond Avenue and Michigan Avenue.

Mayor Sitnick closed the public hearing at 5:24 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. 99-9. This motion was seconded by Councilman Sellers and carried unanimously. -9-

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B. PUBLIC HEARING RELATIVE ADOPTION OF BOND ORDER AUTHORIZING THE ISSUANCE OF \$18,000,000 GENERAL OBLIGATION PARKS, RECREATION AND GREENWAY BONDS OF THE CITY OF ASHEVILLE, N.C.

RESOLUTION NO. 98-10 - RESOLUTION SETTING A SPECIAL BOND REFERENDUM AND DIRECTING THE PUBLICATION OF NOTICE OF A SPECIAL BOND REFERENDUM AND NOTIFICATION OF THE BUNCOMBE COUNTY BOARD OF ELECTIONS

Mayor Sitnick opened the public hearing at 5:26 p.m.

City Clerk Burleson reported that the bond order entitled "Bond Order Authorizing the Issuance of \$18,000,000 General Obligation Parks, Recreation and Greenway Bonds of the City of Asheville, N.C.," which was introduced at the regular meeting of the City Council on December 8, 1998, was published on January 1, 1999. She then presented the notice to the public setting the time and date of the public hearing. She also reported that she had filed in her office a statement of debt complying with provisions of the Local Government Bond Act, and such statement as filed showed the net indebtedness of the City to be 1.675% of the assessed valuation of property in the City subject to taxation.

Finance Director Bill Schaefer said that this is the consideration of (1) adoption of the Bond Order Authorizing the Issuance of \$18,000,000 General Obligation Parks, Recreation and Greenway Bonds; and (2) resolution setting a Special Bond Referendum on May 11, 1999.

Having previously given required public notice and a Sworn Statement of Debt (which shows the net indebtedness of the City to be 1.675% of the assessed valuation of property in the City subject to taxation) having been filed with the City Clerk, as required by the Local Government Bond Act, a public hearing regarding the validity of the Bond Order and the advisability of issuing the General Obligation Parks, Recreation and Greenway Bonds should now be conducted.

The Bond Order provides the purpose and amount of the bonds; states that the projects to be funded by the proceeds of the bonds are necessary; states that taxes shall be levied annually to pay the principal and interest on the bonds; indicates that a sworn statement of debt has been filed with the City Clerk and is open to public inspection; and states that the bond order shall take effect when approved by the voters of the City at a referendum scheduled for May 11, 1999.

The proposed resolution sets a Special Bond Referendum to be held on May 11, 1999, to approve or disapprove the indebtedness to be incurred by the issuance of the General Obligation Parks, Recreation and Greenway Bonds and the levy of a tax for the payment thereof.

Following the closing of the public hearing, City staff recommends City Council (1) adopt the Bond Order; and (2) adopt the proposed resolution setting a Special Bond Referendum on May 11, 1999.

Mr. H.K. Edgerton said that no one can argue against the City needing parks. However, he said the \$18 Million referendum translates into a 3 cent tax increase and approximately a 6% overall increase in the tax rate. He also said there is rumored there is a \$5.4 million budget deficit. He said the City already has infrastructure problems and we are losing 25% of our water -10-

in leaks. He asked what the money would be used for, what will happen for our reserves, and is it our goal to have Asheville as the highest City to live in. He wondered why so much land will be used for parks, etc., when there is a scarcity in land for housing for the poor.

Parks & Recreation Director Irby Brinson responded to Mr. Edgerton by saying that the \$18 Million is broken down into four different areas - \$6 Million for new facility construction; \$6 Million for renovating existing facilities; \$3 Million for greenway development; and \$2 Million for land acquisition. He then gave examples of several projects in each category.

Mayor Sitnick responded that it is well recognized across the nation that parks, recreation and greenways are all parts of quality of life that drive the economic development engine of communities. She felt it was

important to recognize that it's not just about parks and greenways, but about providing things for people in this community to enhance and improve lives. She said there is no question that housing is an important factor for this Council. She said they are looking at housing and all kinds of issues, i.e., the Housing Action Plan and looking at the potential of revenues to support that Plan as well.

City Manager Westbrook responded that the City's budget is balanced as required by State law. With regard to the 25% loss of water due to leaks, he said that the average water loss for a relatively new infrastructure is 15-20%, however, the City is trying to reduce that water loss.

Mayor Sitnick closed the public hearing at 5:37 p.m.

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

Councilman Cloninger moved that the City Council adopt without change or amendment and direct the City Clerk to publish a notice of adoption, as prescribed by The Local Government Bond Act, of the General Obligation Parks, Recreation and Greenway Bond Order entitled "Bond Order Authorizing the Issuance of \$18,000,000 General Obligation Parks, Recreation and Greenway Bonds of the City of Asheville, N.C.," which was introduced at the regular meeting of the City Council held on December 8, 1998. This motion was seconded by Councilman Sellers and carried unanimously.

Councilwoman Field moved for the adoption of Resolution No. 99-10, Resolution setting a special bond referendum and directing the publication of notice of a special bond referendum and notification of the Buncombe County Board of Elections. This motion was seconded by Councilman Tomes and carried unanimously.

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C. PUBLIC HEARING RELATIVE TO AMENDING THE UNIFIED DEVELOPMENT ORDINANCE REGARDING A WIRELESS TELECOMMUNICATION FACILITIES ORDINANCE

ORDINANCE NO. 2535 - ORDINANCE AMENDING THE UNIFIED DEVELOPMENT ORDINANCE REGARDING A WIRELESS TELECOMMUNICATION FACILITIES ORDINANCE

Mayor Sitnick opened the public hearing at 5:39 p.m.

City Clerk Burleson presented the notice to the public setting the time and date of the public hearing. -11-

Senior Planner Gerald Green said that the Planning and Zoning Commission has reviewed and is recommending approval of a revised telecommunications facilities ordinance, which establishes new standards for telecommunication towers and related facilities.

Provided for Council's consideration is a draft Telecommunication Facilities Ordinance. Revised standards for the location and erection of telecommunication towers and related telecommunication facilities are set forth in the proposed ordinance. The ordinance amendment was prepared at the request of City Council by a consultant hired following a request for proposals and review of submitted proposals. Council identified specific goals which were to be accomplished by the proposed ordinance amendment. These goals included:

- Provision of wireless service to all areas of the community;
- Minimize the aesthetic impacts of wireless infrastructure;
- Promote co-location of existing structures;

- Encourage concealment, camouflage, and stealth technologies;
- Protect mountain ridges from tower proliferation; and
- Anticipate technological advances and obsolescence.

As part of their review of the proposed ordinance amendment, the Planning and Zoning Commission directed that two opportunities, other than regular meetings of the Commission, be provided for input by representatives of the telecommunications industry. As a result, representatives of the telecommunications industry met with staff on one occasion and with members of the Commission (with Council members invited) on another occasion to discuss their concerns regarding the proposed ordinance.

At the Planning & Zoning Commission meeting on December 2, 1998, the Commission voted 4-3 to recommend approval of the amendment with the following revisions:

- Provide a range of dates for balloon and crane tests and allow the applicant to provide photographs of the tests, as recommended by the industry representatives; and
- Provide tower owners with notice that the required annual renewal of their license is due.

Following the review of the revised telecommunications ordinance by the Planning & Zoning Commission, and their recommendation for adoption of the revised ordinance, staff met with the consultant and Councilmember Cloninger to discuss possible revisions to the draft ordinance amendment which would address the concerns expressed by the telecommunications providers. The proposed revisions are:

- On Page 18, No. 47 (c) read "Wireless telecommunication facilities may be co-located on any structure which hosts one or more existing permitted and approved wireless telecommunication facilities"
- On Page 19 (d) read "Where co-location is proposed by use of a combiner ... an equipment enclosure which houses only the combiner and amplifiers may exceed the maximum permitted dimensions for other types of equipment closures up to a maximum of 70 cubic feet."
- On Page 20 No. 6 read "The Planning and Development Department Director may require as a condition of approval"
- On Page 23, delete No. 5.

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- On Page 29, delete No. 3.
- On Page 40 (s), read "In addition, concealed structures must be set back from any residentially zoned or used properties a distance"
- On Page 28 (o), read "In addition, telecommunication towers must (be) set back from any residentially zoned or used properties a distance"
- On Page 40, delete No. 2.

The revisions address many, but not all of the concerns expressed by the telecommunications providers. The major concern of the providers is the height limitation of 100 feet for support structures (towers). Providers

have argued that restricting the height of support structures to 100 feet will result in the need for more support structures (possibly 12-15 more). The consultant has pointed out that a height limit of 100 feet will not result in significantly more support structures and that a goal of the draft ordinance is to protect the aesthetic quality of the City of Asheville by restricting the height of support structures. Other concerns of the providers include (1) the providers would like input into the final selection of consultants to be involved in the review of the applications for towers; (2) they would like the electric transmission towers to be considered for the location of antenna to be limited to those towers located within the search area rather than any tower located within one-quarter mile; and (3) they would like for the ordinance to provide Council with greater flexibility in the establishment of setbacks rather than having a certain defined setback for all telecommunication facilities.

The Planning & Zoning Commission voted 4-3 to recommend approval of the draft ordinance amendment with the two revisions noted above. The Commission has not seen the revisions recommended by the consultant. Staff recommends that City Council consider adoption of the revised telecommunications facilities ordinance, which establishes new standards for telecommunications towers and related facilities, with all revisions.

Mr. Paul Rosa, consultant retained by the City to develop the wireless telecommunication facilities ordinance, reviewed the substantive revisions to the ordinance since the original draft was presented to City Council on September 1, 1998. We had five types of facilities in the 9-1-98 draft, the microcell, concealed facilities, co-location, conventional telecommunication towers and a concealed telecommunications support structure. The changes are as follows:

- Definition for "Microcell" and "Wireless Telecommunication Facility, Microcell." The original definition restricted equipment enclosures to 25 cubic feet, and antennas to 3 feet in height and a combined surface area of 10 square feet. These restrictions were based on microcell specifications provided by a number of microcell manufacturers. The revised definition has expanded these parameters to allow equipment closures of up to 40 cubic feet, and antennas of up to 8 feet in height and 30 square feet total surface area. This allows use of full-sized antennas, yet restricts equipment enclosures to a smaller size than is typically found with full size base stations.
- Concealed Wireless Telecommunications Facilities - Increased Antenna Heights. The earlier draft limited antennas concealed behind an RF-transparent facade to 6 feet in height. Revisions allow panel antennas up to 8 feet in height, and allow omnidirectional (whip-type) antennas concealed behind an RF-transparent facade that is at least 8 feet in height to extend above the facade a distance equal to the facade height.

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- Height Extensions of Electric Distribution Poles in Residential Areas. Revisions allow wooden electric transmission poles to be extended in height to the lesser of 20 feet above the vegetative canopy (as determined by the City Arborist) or 80 feet. This allows wireless facilities to service virtually all areas of the City of Asheville, particularly on ridges where they may be few parcels with a public use character where Concealed Telecommunication Support Structures would be allowed as a conditional use. No more than one such pole may be extended in height within 1230 (1/4 mile) of a similar extended-height pole. Height extensions would be allowed in all residential areas for Microcells, and in Residential Multiple zoning districts for Concealed facilities.
- Co-location Treated as a Use by Right, Subject to Special Requirements. The earlier draft treated co-location as a Conditional Use in order to give the City Council the opportunity to determine whether specific nonconforming towers could be decommissioned, reduced in height, or relocated. This was seen as cumbersome by industry. Since the majority of nonconforming towers targeted by the original provision were

government-owned, it was felt that the City and its instrumentalities could exercise their role as property owners to limit undesired co-location. By making co-location a Use by Right, Subject to Special Requirements, an incentive is provided to encourage industry to co-locate.

- Primary Public Safety Provider Exception Eliminated. The earlier draft included an exception for Primary Public Safety Providers allowing them to exceed the 100 foot height limitation (up to 199 feet) and permitting them to place towers on Restricted Mountain Ridges. Even though legally permissible under the Telecommunications Act of 1996, it was felt that the City should hold itself to the same standards imposed on industry. Since only one additional tower is in issue, it was felt that this was a reasonable accommodation.
- Notice of Intent to Remove Abandoned Wireless Facilities. Industry has asked for written notice to be given by the City of Asheville prior to removing abandoned or unused wireless facilities to preclude administrative oversights of permit renewal requirements at their corporate headquarters. The revised draft requires the City to give 30 days written notice to affected wireless providers prior to removing such facilities.
- Flexible dates for Crane/Balloon Tests. Industry has asked for flexibility in notifying affected property owners of scheduled dates for crane/balloon test simulations of proposed Telecommunication Towers and Concealed Telecommunication Support Structures to accommodate inclement weather conditions. The revision provides that applicants shall notify affected property owners at least 10 days in advance of the primary test date, and shall specify primary and alternate dates, as well as a range of test dates.
- Natural Disaster Performance Standards. Based on advice that Asheville was located on a known earthquake fault line, the earlier draft contained specifications regarding survivability of wireless facilities. In order to accommodate industry concerns that these provisions were overly restrictive, and in light of the fact that the likelihood of earthquakes was fairly remote, these provisions have been eliminated.

Mr. Rosa said that he has given Council a specifications sheet for a Personal Communication Services (PCS) Antenna Combiner. He felt this is a way to co-locate now with this combiner for the PCS carriers.

He said that the one thing they did not concede was the height limit. He felt it was vitally important for communities today to establish a height baseline and he would recommend not going above that height. He explained his reasons for his recommendation.

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Mr. Rosa noted that they create an additional new zone, which is the Controlled Access Facilities Zone (essentially the State highway rights-of-way). Staff has not completed the full text of that, so any adoption of the ordinance should include a reference that that supplemental text will be provided by staff.

He presented Council with an article on a 130 foot BellSouth Clock Tower which provides for three wireless carriers in Charlotte, N.C. Companies are building nice things elsewhere, they should build them here in Asheville as well. When you look at costs, you just can't look at the City of Asheville. These companies have between 2-5 million customers or more and the costs are spread across networks.

Mr. Rosa felt that this ordinance reflects what they have heard from the community - low profile wireless infrastructure and access everywhere. He felt they accomplished that with the proposed ordinance while trying to be fair to industry.

Upon inquiry of Councilman Cobb, Mr. Rosa explained that it will be a few years before satellite communications will be competitive.

Mr. Larry McDevitt, attorney representing Bell Atlantic Mobile, said that he would not be speaking for the

industry, however, they would like to address areas of common concern to the companies. He felt there are some items in the proposed ordinance that are not fair from an industry perspective. He explained briefly how a cellular telephone works and the necessity of the towers. He handed out to Council a document entitled "Requested Changes to the Proposed Text Amendments to the City of Asheville Unified Development Ordinance relating to Wireless Telecommunications Facilities." He then started to review the six main concern points addressed in the document as follows:

He strongly urged Council to consider an amendment to the 100 foot limitation height. He said their experts have told them that the minimum height they need in this area for optimum service to this community is 114.6 feet - that is without any co-location. If another company is on the same tower, you have to have about 20 feet, not from the tips of the antennas, but from the core of the tower. If you are at 115 feet and you want two other companies, you will need 145-150 feet for a triple location tower. Their concern is that with the 100 foot limitation, there will be times when the area will be such that they can provide very good service with a 100 foot tower, however, other times it will simply be too low and not suitable. Most of the time a 100 foot tower will destroy the ability of co-location, limiting only one company per tower. That will result in increases in the number of communication towers that will be needed. He proposed that if the limit remains at 100 feet, the ordinance be amended so that City Council can approve a tower of up to 150 feet if the applicant can demonstrate five specific standards. If Council does not accept this proposed amendment, at a bare minimum, the height limitation needs to be at 115 feet. A study revealed that people from all segments of society are applying for these services demonstrating that the people of Asheville want cellular telephone services.

He next issue is the five year conditional use renewal requirement. He said he has already expressed concern about the legality of this requirement. He felt it was not fair for the industry to make an investment in land and property and then have it taken away for no reason after five years. He requested some objective standards by which the City will judge whether to remove the tower or not. It was his understanding from discussions with Mr. Green, City Attorney Oast and Mr. Rosa that this was a good idea and that proposals would be included in the ordinance to address that issue. However, it is also his understanding that it was not done and there was not enough time to do it. He asked that City Council not consider this section today, but ask that staff come back in perhaps 30 days with another section that incorporates ascertainable, identifiable standards. He felt it was only fair for the industry to know what they had to do before someone tells them they can't use their tower. -15-

Their next topic of concern is the annual wireless telecommunication facility permit. He said that Mr. Rosa amended the ordinance to add 30 day written notice requirement prior to removing the telecommunication facility. He said because there are a lot of people working in this area, that the opportunity to miss a renewal date can easily happen. His proposal asks that the industry be given 30 days notice that they have not filed for their renewal permit, so that they will have an opportunity to renew it.

Mr. Gary Pennington, attorney representing Bell Atlantic Mobile, said that the flexibility of setback requirements should be amended. He said that as the ordinance reads, at a minimum, if the tower is adjacent to a residentially zoned property or a property on which is located a residence, the tower has to be set back at least one-half the height of the tower (50 feet if the tower height is limited to 100 feet). He asked City Council insert some flexibility into that standard to give the City Council the discretion to examine, on a case by case basis, each application. Since each piece of real property in Asheville is unique and if the overall goal is to lessen the aesthetic or visual impact of the tower, he felt that City Council should have some flexibility to meet or achieve that goal by having some discretion on what that setback should be.

Mr. Pennington said their next issue of concern is the use of an outside consultant for application review by the City of Asheville. The industry feels that this item should be deleted. There is a \$2,500 application fee and in addition to the application fee, they would be required, if the City deemed it necessary, to submit a \$5,000 bond to reimburse the City for the cost of using a consultant to review the application and to advise

the City Council on the application. As a compromise, they request that the City prepare a list (perhaps five) of qualified individuals who could serve as consultants if necessary. The industry should then have the opportunity to exclude some, but not all, of the consultants. They are concerned with the qualifications of the consultant and his impartiality as to the City or the applicant. The City would have final say in the selection from the remaining names.

He then said that their final concern is the required use of electric transmission towers. The ordinance, as written now in two instances, requires that before a tower is approved or before a concealed telecommunications support structure is approved, that the applicant utilize an existing electric transmission tower to place its antenna. Primarily, they've asked that the language "... within one-quarter mile (1320 feet)" be deleted from the text and insert "... within the search area." He explained that what they are asking is that if there is a transmission tower within their search area, they will attempt to use it, with some exceptions (items which they have no control over that would make that transmission tower unsuitable). He then explained what is meant by a search area.

Vice-Mayor Hay was concerned that if we do not act on the portion of the text relative to the five year conditional use renewal requirement at this point, there will be a hole in the ordinance. He was uncomfortable in leaving a portion of the ordinance out. He wondered if it would be possible to act on the ordinance with this requirement in it and then take action to schedule a review of changes to that portion of the ordinance.

Councilman Cloninger reminded Council that it will be five years before that requirement will take effect. He felt Council should adopt the ordinance as is and then amend it at some later date, if appropriate, to add some additional language.

City Attorney Oast said that if Council wanted to try to address some of the concerns raised by the industry representatives, it may be appropriate to give staff direction to re-examine those issues. He said that staff is willing to work with industry representatives and reconsider any issue upon direction by Council. Regarding Council's not acting on the language about the -16-

five year conditional use renewal requirement, he would feel more comfortable if Council either acted on it or deleted it with the intention of not doing anything about it, rather than leave it undetermined for some period of time.

Councilman Tomes was concerned that no RF Engineer was involved in this ordinance drafting, given the kind of scientific data involved. Mr. Green said that to his knowledge, the only RF engineers that have been involved in the review of this were those who work for or who were under contract for the providers of telecommunication facilities. Mr. Green said that based on his knowledge of the ordinance and in working with Mr. Rosa in the drafting of this ordinance, it is his opinion that Mr. Rosa has the necessary credentials to prepare the draft ordinance submitted to Council. He felt that with his limited knowledge, the RF engineering would come into play until the detailed siting of the telecommunication facilities and the actual construction of those facilities.

Upon inquiry of Councilwoman Field regarding the five years conditional use permit renewal, City Attorney Oast explained that if the requirement remains in, then the five year limitation doesn't affect anyone for five years. However, he thinks that the industry raises the point that it does affect them now because that's a decision they have to make going into the situation. Mr. McDevitt is asking that Council delete that requirement from the stated requirements of the ordinance which, if an operator makes application for a conditional use permit and that provision is not in the ordinance, then if the permit is granted, they may be able to have the tower up in perpetuity.

When Councilwoman Field asked Mr. Rosa if it would be possible to come up with some objective standards

that a company would have to meet after five years to continue their conditional use, Mr. Rosa said that he did think that would be possible and that it would take some time in that he didn't know what criteria the industry or City Council would want included.

Upon inquiry of Mayor Sitnick about a statement which said that City staff and Mr. Rosa promised to include in the proposed ordinance certain objective standards for the five year review, Mr. Green responded that he did remember stating that they would work on the standards, however, he did not recall having promised that it would be included in this draft ordinance.

Councilman Cobb said that on page 33 of the draft ordinance, the sentence reads "Before a permit shall be issued or renewed, an applicant or permittee must certify that: ..." It then lists six different conditions to be met. He felt those standards should suffice as the objective standards for the five year review. Mr. McDevitt responded that those standards just apply for the annual permit, not for the five year conditional use renewal.

Mr. George Saenger, attorney representing Triton and America Tower, do support the six major concerns that Mr. McDevitt and Mr. Pennington outlined above. However, as the draft ordinance now reads, Triton and America Tower are opposed to it. He felt that the effect of the ordinance is limiting the providers to provide new technology. Triton would provide better service at a lower cost, however, this ordinance precludes that from being offered across the board to the citizens of Asheville. This ordinance provides for limited service and limited access. He felt that the City needed to do a better balancing act than just meeting the legal requirements. You need to find a system that will allow you to have the best wireless communications system in the town and still meet the other aesthetic goals. He explained that even if Council amended the ordinance with the six amendments outlined by Mr. McDevitt and Mr. Pennington, they are not saying that they have no other objections to the ordinance. However, they would be willing to participate in any further review and then make known their specific objections over and above what the six concerns.

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Mr. Jack Tate, attorney representing U.S. Cellular, supported Mr. McDevitt and Mr. Pennington's comments. He said they hired an expert, Mr. Hodnett, who is the Chief Radio Engineer for the FBI and also a consultant for the Dept. of Defense, who made the determination of the height minimum of 114.6 feet in this area because of our topography. On that basis alone combined with this Council's goal of providing service that the community wants, we would submit there needs to be flexibility to go above the 100 feet height limit. They would prefer the 200 foot limit, but are willing to work and demonstrate that in any particular case, they need a different height above the 100 feet. Since he was told there has only been one application in two years, he could not see the rush in adopting this ordinance without even considering the six major concerns previously mentioned.

Upon inquiry of Councilman Cobb, Mr. Tate said that there are maybe 8-12 U.S. Cellular towers in this area now, but did not have the information with him on their height.

Mr. Steve Lewotsky, representing SBA, agents for BellSouth, agreed with the prior comments made earlier by industry representatives. He felt that there has been a lot of information presented to City Council in ways that this ordinance can be made more effective and better for the community and providers. He would appreciate it if Council would look at the information again to come up with a better ordinance.

Mr. Mike Lewis felt that the towers represent the degeneration of Asheville and our quality of life. Cellular towers have become blight on the landscape. The over-riding consideration is not how badly do we need cell service in this community, but one of aesthetics because Asheville has two things going for it - quality of life and our people. He urged Council to consider very hard about making any changes to the proposed ordinance. He felt some consideration should be given to the type of notice the City gives before termination of a license and taking down a tower. If Council does want to consider the six amendments, then Council

should put a moratorium for the duration on any new towers until the sections of the ordinance can be worked out. The proposed ordinance seems to suit Asheville's needs and he urged Council to consider adoption of the proposed ordinance and work on the glitches as time goes on and we learn more about it.

Mr. Leonard Smith agreed with the comments made by Mr. Lewis. He felt no one should tell the City of Asheville who they can use as a consultant, especially someone who is trying to do business with the City. He said that any group who gets a license to have a tower and then forgets to renew it shouldn't be given the license in the first place, due to inefficiency. He recommended City Council adopt the proposed ordinance and then come back and review the five year conditional use renewal requirement. He felt there was good arguments on why it should not be a perpetual license.

Mr. U. Morrison encouraged City Council to consider carefully all the information that has been presented. He said the industry does have some major fine points, however, he does not appreciate the massive towers. He felt that a specialist on the City's behalf seemed like a good idea.

Mr. Rosa said that the only change that he would make that the industry has suggested is on the notice provision. He felt that it would not be unreasonable to add in a requirement that they be notified 30 days before their renewal date, in addition to the 30 days before a facility is removed.

Mr. Rosa said that respect to the height, he gave an example of an actual installation on a wood pole that is flush with the tree line in the immediate area. To say that it will not work below 100 feet, is not a fair characterization. In fact, he has seen a U.S. Cellular installation with their name on it that is on a wood pole in Roanoke, Virginia, that is 10 feet in height. -18-

Mr. Rosa responded to the RF engineer concern. He said that he is aware that engineers could be brought in if necessary. He said BellSouth Mobility offered to make their engineers available to the City. The City did provide them some data on alternative locations and after we received no response, we were told they preferred to withhold the data.

When Councilman Cobb asked what advantages would an additional 15 feet be to the height, Mr. Rosa said that the 100 foot height restriction is a baseline that is reasonable and which was arrived at after a lot of factors were discussed and analyzed.

Mayor Sitnick closed the public hearing at 7:16 p.m.

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

Councilwoman Field said that she was fairly uncomfortable with the issue of the 100 vs. 115 feet height restriction. Since she has not heard any good, substantial reasons for why the height restriction is 100 feet, she would like to have an engineer advise her what the difference is between 100 feet and 115 feet. She had a real problem with the staff not having some engineering backup on the choice of 100 feet. She said that she would be willing to adopt the proposed ordinance today if there could be some direction to staff to look at the industry comments within some sort of timeframe. She felt there are some points the industry has raised that makes sense and she would support.

Councilman Tomes echoed the same comments as Councilwoman Field relative to the engineer issue. He said that he would be willing to vote for the ordinance with the condition that we be in a position to come back and amend it later, if necessary.

Mayor Sitnick didn't think there was any problem with City Council adopting the ordinance today and then working on amendments. She said that Council can instruct staff to look at any one of the proposals brought forth by industry, as well as other revisions.

Councilman Cloninger strongly encouraged City Council adopt the proposed ordinance as is at this time and would be supportive of reviewing amendments in the future. He felt we are on the threshold of having many applications filed for towers and he would much rather have those be applications filed under this revised ordinance than the one that is currently in effect. He did feel that the revised ordinance is an excellent ordinance and it does meet the goals set out by City Council.

Councilman Cloninger moved to adopt Ordinance No. 2535, with the provision that the text for the new Controlled Access Facilities Zone will be inserted by staff. This motion was seconded by Councilman Tomes.

Vice-Mayor Hay supported voting for the revised ordinance as is and then directing staff to review the industry comments. He did think that Council needs to be open to some amendments because he would like to have an ordinance which is flexible. He said he was more interested in the flexibility to 150 feet than he was to setting the restriction at 115 feet. What the industry proposes does put the burden on them to come to City Council to either approve or deny the request. Regarding the five year conditional use renewal requirement, he felt that Councilman Cobb was correct in that there are some standards in the ordinance and the industry would like to know that it will be renewed in five years. However, he was not sure that's what a conditional use permit is meant to be under these circumstances. Regarding the notice requirement, he felt that was the easiest thing for Council to amend because that will not come -19-

up for a year. He felt that the setback issue and the list of consultants can be considered in due course to see if that's the kind of flexibility we want to bring in.

Mayor Sitnick would like to see some fair exchange regarding the 100 foot height restriction. If Council considers more flexibility in the height, she would like to see if the industry would perhaps go to their 200 foot towers and apply some stealth technology or lower them if 200 feet is not a necessity. She echoed Vice-Mayor Hay's concerns on the five year conditional use and wanted to be very cautious on how the City proceeds with that. With regard to notification, she's not sure the City should be burdened with notifying industry that there is a permit renewal requirement coming up. She would like to adopt the revised ordinance as is and direct staff to work with Mr. Rosa and with the industry on some of the points outlined today.

The motion made by Councilman Cloninger and seconded by Councilman Tomes carried unanimously.

City Manager Westbrook said that since the Planning & Development staff has a current list of priorities from City Council that they are currently working on, he suggested that at an upcoming worksession the matter relative to possible amendments as a result of industry comments be brought back along with all the other priorities so that they can be prioritized in the overall scope.

Councilwoman Field felt that the industry deserved to have the staff come back with their comments on these recommendations within 60 days.

Vice-Mayor Hay noted that if the ordinance is amended, it will have to go back to the Planning & Zoning Commission for their recommendation and then back to City Council.

At the suggestion of Councilman Cloninger, it was the consensus of Council that at Council's annual retreat in approximately two weeks, that a timeline be discussed for possible amendments to this ordinance.

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At this time 7:33, Mayor Sitnick announced a short break.

D. PUBLIC HEARING TO CONSIDER THE REALLOCATION OF COMMUNITY DEVELOPMENT BLOCK GRANT FUNDS FROM HILL STREET/CHERRY STREET TO CITY-WIDE REHABILITATION

ORDINANCE NO. 2536 - BUDGET AMENDMENT TO REALLOCATE \$160,000 IN COMMUNITY DEVELOPMENT BLOCK GRANT FUNDS FROM HILL STREET/CHERRY STREET TO CITY-WIDE REHABILITATION

Mayor Sitnick opened the public hearing at 7:58 p.m.

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

Mr. Ed Vess, Field Services Coordinator, said that this public hearing will be to consider the reallocation of \$160,000 of Community Development Block Grant (CDBG) funds from the Hill Street/Cherry Street Project to the City Wide Rehabilitation Program in order to utilize current funds according to immediate needs.

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The Hill Street/Cherry Street Project is the CDBG budget title for the Head of Montford Redevelopment Project activities. The need for Redevelopment Project activities has diminished with the increase in private investment in the Montford area. Indeed the increase in property values in Montford has outdone the average for Asheville by two times. To a large extent all of the goals of the redevelopment plan have been realized. Although some work remains to be done, funding for such activities should be routed through the CDBG funding process as specific projects are developed. The project budget has a current balance of \$172,600 which has been carried over from prior years and represents funds that were not needed to carry out the activities for which they were originally scheduled. The projected need to fund currently planned activities amounts to approximately \$12,600 leaving a balance of \$160,000. The City Wide Rehabilitation Program has an immediate need for funds for homeowner rehabilitation loans. In assessing the need for funds in Montford compared to the shortfall of funds for homeowner rehabs Community Development staff have determined that a greater need exists in the City Wide Rehab Program.

The reallocation of \$160,000 for which no activities are currently planned from the Hill Street/Cherry Street Project to the City Wide Rehabilitation Program will enable the rehabilitation of an additional five to seven homes.

Councilwoman Field said that this did come before the Housing & Community Development Committee and some people from the Head of Montford wanted to reserve this money. She said that in the future if there is a project to fund, we can certainly consider that. However, the Committee felt that the opportunity to do something with the money now was an appropriate reallocation. She again noted that this will not close the door on future projects.

Upon inquiry of Mayor Sitnick, Mr. Vess said that there would be no assurance that the funds would be available in the future for a Head of Montford Project other than the fact that the City of Asheville does receive annually CDBG entitlement funds. Each year the City goes through a funding process where they invite applications from non-profit groups for projects that are eligible. The Head of Montford's application would be just like any other non-profit group completing an application. Their application would be evaluated, along with any other applications, as to its merits.

Mayor Sitnick said that the City of Asheville has invested quite a bit of money over the years into the Montford community to preserve a wonderful historic district. She hoped that for future projects there would be some ease of that area getting the necessary funds for future projects.

Discussion surrounded the Hill Street/Cherry Street original project and how many factors came together to make the Head of Montford a success. He noted that all to a large extent, all of the goals originally set for the Head of Montford Project have been realized since 1987.

Upon inquiry of Councilwoman Field, Mr. Vess said that in excess of \$5.5 million of CDBG money in the Montford community since 1987. He said that did not even include the private dollars that were leveraged as a result of much of this public investment. He also noted that Montford, like any other community within the City limits where there are low income people living, would still be eligible for the City-Wide Rehab Program. There would not be any withdrawal from Montford, it's just a matter of there is not currently a project designated for those funds.

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When Mr. H.K. Edgerton asked if the money can be used for projects on the river, Mr. Vess recommended that if they are interested for a project which is not in place yet, that they apply for the CDBG funding cycle.

Ms. Elizabeth Graham, property owner in the Hill Street/Cherry Street area, said that Mr. Vess is saying that if the money is reallocated from this project area, that all the goals that can be met, have been met. She asked Council that if they are going to reallocate the money from the Montford area that Council adopt a resolution which states that the Montford Redevelopment Plan is now terminated. She said that Asheville has a history of starting plans and not always ending them in a nice, clean package. She said that if Council is not going to terminate the Plan and put it in writing so that all the property owners are aware of that, then she suggested Council leave the money where it is.

Ms. Lake encouraged the City Council to reallocate the funds to the City-Wide Rehab Program. She represents an 81 year old lady who has been on a waiting list for seven years for rehab.

Upon inquiry of Mayor Sitnick if it is customary to close out a plan when money is reallocated, Mr. Vess said that it is not, under the Community Development Program, necessary to go through any type of official close-out. It's just a matter of Council acknowledging that the project has been completed and you no longer fund it as a project. Again, that does not mean that the community cannot receive CDBG funds for various projects in the City-Wide Rehab Program.

Councilwoman Field said that the Housing & Community Development Committee would be happy to review the request for a closing out the Montford Redevelopment Plan and report back to City Council their recommendation. She said that she would be interested in knowing the pros and cons of closing out the Plan.

When Councilman Tomes noted that he knew a couple of people in that area whose homes were in need of rehab, Mr. Vess said that there are three houses in the Montford area now that will be rehabilitated with the reallocation of these funds. He also said that if there are homes in the Hill Street area that people know about, he encouraged them to contact the Community Development Division and submit an application, or give him their names and addresses and he would contact them.

Mr. Vess responded to questions from Mr. H.K. Edgerton of what other types of programs are available for rehabilitation

Mayor Sitnick closed the public hearing at 8:30 p.m.

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

Councilwoman Field moved to adopt Ordinance No. 2536, to reallocate \$160,000 of Community Development Block Grant funds from the Hill Street/Cherry Street Project to the City Wide Rehabilitation Program. This motion was seconded by Councilman Cobb and carried unanimously.

Councilman Cloninger moved to refer to the Housing & Community Development Committee the question of

whether or not to recommend appropriate -22-

action to terminate the Head of Montford Project. This motion was seconded by Councilman Tomes and carried unanimously.

ORDINANCE BOOK NO. 17 - PAGE 240

E. PUBLIC HEARING TO CONSIDER THE ADOPTION OF A SMALL AREA PLAN KNOWN AS THE CHARLOTTE STREET CORRIDOR PLAN AS AN ADDENDUM TO THE COMPREHENSIVE PLAN FOR THE CITY OF ASHEVILLE (ASHEVILLE CITY 2010 PLAN)

RESOLUTION NO. 99-11 - RESOLUTION TO CONSIDER THE ADOPTION OF A SMALL AREA PLAN KNOWN AS THE CHARLOTTE STREET CORRIDOR PLAN AS AN ADDENDUM TO THE COMPREHENSIVE PLAN FOR THE CITY OF ASHEVILLE (ASHEVILLE CITY 2010 PLAN)

Mayor Sitnick opened the public hearing at 8:32 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 adoption of the Charlotte Street Corridor Plan, a small area plan developed by the Planning and Development Department for Charlotte Street from I-240 north to the end of the street.

In January of 1996, the Asheville City Council directed the City Planning and Development Department to develop a small area plan for the Charlotte Street Corridor. Staff has completed a draft plan for the corridor which is largely based upon input and participation from various stakeholders of the community. This input and participation included numerous advisory committee meetings, a half-dozen community meetings, a two-day Charette, as well as recent meetings with various groups and individuals representing both the business and residential communities.

The Charlotte Street Corridor Plan addresses three primary issues which were identified by the community as being the most important issues facing the street. These three issues are;

- 1) vehicular and pedestrian circulation
- 2) land use, and
- 3) streetscape and appearance.

For each of the three major issues, the plan establishes a set of goals and recommendations. The goals are broad statements of purpose and describe the desired end result of the plan - what is to be accomplished. The vehicular and pedestrian circulation goals are (1) to improve the safety and efficiency of all modes of transportation within the Charlotte Street corridor; and (2) promote increased pedestrian activity as well as alternate means of transportation within the Charlotte Street corridor. The land use goals are (1) continue the existing balanced mix of uses on Charlotte Street between commercial, residential, institutional and open space; and (2) encourage compatible new development that serves adjacent neighborhoods and helps to create an economically vibrant pedestrian environment. The streetscape and appearance goal is to improve the appearance of Charlotte Street and create a unique and unifying image for the corridor. He then reviewed the recommendations which outline ways in which the goals can be accomplished. The plan emphasizes cooperation and incentives as the keys to successful implementation of the plan.

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Upon adoption by the City Council, the Charlotte Street Corridor Plan will become part of the Asheville City Plan: 2010 and will serve as a guide for future development and improvements along the street.

With regard to goal no. 2 under vehicular and pedestrian circulation, the Planning & Zoning Commission recommended that within a year from adoption of the plan, this issue should be examined at a workshop by experts from such fields as traffic engineering, transit, planning and pedestrian planning in order to develop alternate methods of achieving this goal. This workshop was a recommendation of the Planning & Zoning Commission who also asked City Council to set aside some funding in the budgeting process this spring to provide for that workshop.

Recently, the Charlotte Street business community has offered comments and expressed concerns regarding an earlier version of the draft plan. Following review of these comments/concerns, the Planning and Development staff met with various groups and individuals representing both the business community and the surrounding neighborhoods. Staff then proposed a number of modifications to the plan which were based upon the meetings with these various groups and individuals.

At their December 2, 1998, meeting, the Planning and Zoning Commission voted unanimously to recommend approval of the small area plan with some minor revisions to the Plan which have been included in this draft. The Planning and Development Department also recommends approval of the small area plan.

Mr. Matteson said that this small area plan is intended to be a guide for future development and improvements on the street. It is not intended to be a regulatory document nor is it intended to lead to new regulations. The Planning staff feels very strongly that the best way to implement this plan is through cooperation between the various groups that will benefit from the plan - the business and property owners, the residential neighborhoods, and the City. The staff also feels that incentives can and should be a key in implementing this plan as well.

Upon inquiry of Councilman Sellers of the estimate of the cost of the workshop requested by the Planning & Zoning Commission, Mr. Matteson said that he did not have an estimate at this point but would have an estimate in plenty of time for the budgeting process.

Ms. Jane Mathews, speaking as liaison from the Planning & Zoning Commission, said that at the Commission's December 2, 1998, and January 6, 1999, meetings, the Commission did make specific changes to the plan and requested that those changes be included as worded by the Commission. She felt the workshop is very important to help resolve some outstanding issues. The Commission felt that a neutral third party to facilitate the dialog and with some technical expertise in terms of creative solutions that would look at not only the vehicular traffic issues, but all of the other issues in a way that would be acceptable to everyone involved. Regarding the Capital Improvement Program allocation, she hoped that members of the business and neighborhood community might contribute through grants or through gifts to the community to help fund that process. Regarding the issue of transition overlay, she said the Commission changed the wording to "explore applications of an overlay zoning district" to not necessarily nail it down to transition or other planning strategy or tool.

Mr. Mike Ward, resident of 15 Terrace Road in Albemarle Park, said that the essential theme which has evolved from all the meetings centers around traffic. He, too, suggested the workshop described by Ms. Mathews. He also suggested that the link to downtown from North Asheville should be Central Avenue and that this too be included in the collaboration of the workshop. During the advisory board meetings, he has struggled with the 1997 traffic study as done by the City Traffic Division in that there is an underlying assumption that whatever benefits -24-

or facilitates traffic also is a positive for the pedestrian. He said that it has been a rough 2-3 years, however, he does think we have a good plan with still some details to work out.

Mayor Sitnick closed the public hearing at 8:57 p.m.

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

Councilman Tomes moved for the adoption of Resolution No. 99-11, with the specific wording amendments adopted by the Planning & Zoning Commission at their December 2, 1998, and January 6, 1999, meetings as reflected in their minutes. This motion was seconded by Councilman Sellers and carried unanimously.

RESOLUTION BOOK NO. 25 - PAGE 120

IV. UNFINISHED BUSINESS:

V. NEW BUSINESS:

A. RESOLUTION NO. 99-12 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A CONTRACT WITH PRECISION CONTRACTING INC. FOR THE SHORT-TERM STABILIZATION OF ZEALANDIA BRIDGE

ORDINANCE NO. 2537 - BUDGET AMENDMENT, IN THE AMOUNT OF \$50,000, FOR THE SHORT-TERM STABILIZATION OF ZEALANDIA BRIDGE

Ms. Suzanne Molloy, Assistant Public Works Director, said that as directed by Council, staff developed a public/private partnership to both stabilize the Zealandia Bridge and establish guidelines for the long-term funding of full bridge restoration.

At City Council's December 15th meeting staff was directed to (1) seek and evaluate short and long-term private funding sources; and (2) obtain access easements from adjacent property owners.

On December 22nd, staff held a community meeting to discuss the above issues. Attendees included Windswept Drive property owners, members from the Historic Resources Commission, and interested citizens. The group unanimously endorsed the short-term stabilization of the bridge (with a private pledge of \$40,000), fencing off the bridge from curious citizens in order to prevent loitering, and the formation of a committee to work with the Parks and Recreation Department to fund and develop a park on City property adjacent to the bridge.

A combined effort of Quality Forward, the Historic Preservation Society, and private individuals has resulted in the raising of \$40,000 for the initial stabilization project. A committee with these individuals and organizations will immediately be established and responsible for raising the remaining funds for the permanent rehabilitation effort of the Zealandia Bridge and park development. Estimated costs for the entire project may range up to \$800,000.

Quality Forward will coordinate the transfer of \$40,000 to the City for Phase I of the project. In conjunction with the committee, Quality Forward will oversee additional fundraising efforts for the remainder of the project. The City will develop a Memorandum of Understanding with the committee outlining requirements for fundraising to be completed no later than January -25-

1, 2002. Upon raising 80% of the funds, the Parks and Recreation Department will update Council on the project.

The Parks and Recreation Department will be responsible for designing and programming the park development at the Beaucatcher reservoir. The Water Resources Department is amenable to park development subject to easement restrictions (for water lines).

Staff is still seeking two access easements to the bridge.

Beaumont Street is currently closed to vehicular traffic pending stabilization efforts.

Staff recommends approval of (1) a budget amendment for \$50,000 for the short-term stabilization of the bridge (80% private funding and 20% public contribution); (2) authorizing the City Manager to enter into a contract with Precision Contracting, Inc. for the short-term stabilization of the bridge; and (3) direction to staff to draft a Memorandum of Understanding with the fundraising committee and Quality Forward specific to funding, deadlines, park development, and full bridge restoration.

Upon inquiry of Councilman Cobb, Ms. Molloy said that the City will have temporary construction easement agreements.

Mr. Robert Griffin recognized that if people were going to invest private funds into restoring the bridge, then it would be nice to have some opportunity for the bridge to be enjoyed by the public. Using that property to the north of the bridge would not only create that opportunity but could in fact create the opportunity for something larger than just this bridge project that would make even more fundraising possible. He said that since mid-December they have raised approximately \$1,000 a day toward this project and he felt comfortable that they could raise more to take it beyond what the initial Phase I stabilization was, so that all of that work could be used toward Phase II. Their objective is to assist the City in coming up with the funds necessary to spend the money in a reasonable way so that we don't have to un-do anything for the final restoration of the bridge. They have presently raised \$37,000 toward their goal of \$40,000 and he feels comfortable that they can raise the remaining. He would also like to work with staff to look at the possibilities of enhancing that even further. He passed out to Council a list of donors.

Mr. Dan Foy, resident at 10 Windswept Drive and representative of the residents that live from 10 to 400 Windswept Drive, said that they were concerned about the bridge being restored because they have so many problems up there now, i.e., people shooting guns, vandalism, spray painting on the rock cliffs, etc. They feel that if the bridge is restored, all we are doing is giving them a nice place to trash. The park is a good idea and should be built without the bridge. There are really no views from the bridge now because of the trees grown up on both sides of it.

Mr. Harry Weiss, Director of the Preservation Society, thanked Mr. Griffin for his leadership in spearheading the fundraising efforts. He pointed out that a substantial amount of the funds pledged to this project from the private sector, including the Preservation Society, expresses a contingency that this is tied into the concept of a bridge with a park. He said the funds that are forthcoming for this are essentially in a package deal in terms of their participation. He said there is a lot of activity that goes on around the reservoir and that by creating some active uses in terms of a park, that will hopefully increase the level of participation, stewardship, and policing of the activity that occurs there.

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Councilwoman Field said that there is certainly a commitment from City Council to do a park if we can, but there is not money in the budget and the City cannot guarantee to any of the donors that we would end up with a park. The intent is there and it sounds like a good idea, but the money isn't.

Ms. Susan Roderick, representative of Quality Forward, felt that this is one of the greatest public/private projects she has ever seen. She feels that we can make a park up there and we do need to think of what our priorities are. She felt that one way to fix some of the problems the residents are having is by having a caretaker/maintenance person who lives in the area.

Mayor Sitnick said that members of Council have been previously furnished with a copy of the ordinance and

it would not be read.

Councilman Tomes moved for the adoption of Ordinance No. 2537. This motion was seconded by Vice-Mayor Hay and carried unanimously.

ORDINANCE BOOK NO. 17 - PAGE 242

Mayor Sitnick 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. 99-12. This motion was seconded by Councilman Tomes and carried unanimously.

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Councilman Sellers moved to direct staff to draft a Memorandum of Understanding with the fundraising committee and Quality Forward specific to funding, deadlines, park development, and full bridge restoration. This motion was seconded by Councilman Cobb and carried unanimously.

B. FURTHER DISCUSSION OF APPOINTMENTS TO THE ASHEVILLE SCHOOL BOARD

Vice-Mayor Edward Hay said that the terms of Brian Weinkle and Roy Harris, as members on the Asheville School Board, expire on April 1, 1999. He explained that both are eligible for reappointment. He then reviewed the board appointment process and how the School Board appointment process is a long and involved process.

He personally felt that Mr. Weinkle and Mr. Harris are both doing particularly good jobs and we currently have a balanced School Board, both racially and geographically. While we have a long way to go in the City schools, we have made progress in the last two years and the City schools are taking steps in the right direction. He thinks that is because there is a team-work approach with the School Board and the Superintendent that may well doing what City Council would like to see done with the City schools in the long run.

He said that according to Council's appointment process, we can wait one month and then start talking about reappointment, or we can start talking about reappointment now. If we have an expectation that way, then we need to be talking openly about what we might do in a month. It also gives people an opportunity to comment to Council on what they feel about reappointment.

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Mr. Joe Bly passed out data received from the state report card from 1996-97 school year and the 1997-98 school year. He did not propose to stop reappointment of Mr. Weinkle or Mr. Harris because he felt they are doing the best they can, but they are not doing good enough. He represented the 1,000 children in the City school system who cannot read and write in grades 3-8. He hoped his data demonstrates that saying that we need a certain number of African Americans on the School Board, a certain number of women, and a certain number of people living in Asheville geographically is not working.

Mr. H.K. Edgerton felt that Mr. Weinkle and Mr. Harris should be reappointed. He hoped that this Council will have a better influence on our School Board to see that there is some aggressive behavior to ensure that our children have a better chance in succeeding in this community.

Councilman Tomes said that until this community registers it's displeasure over the staggering kind of dilemma that many of our children, African Americans and poor Whites, find themselves in, we will never

correct it. The School Board is accountable, but they can only respond to the voice of the community. He didn't think there has been a collaborative, collective effort on the part of community. He felt that if White children were falling through the cracks they would have shut down the school, privatized them or turn it over to someone else. Until the community rallies and make it a community effort, we will be continued to be plagued with this beyond the 21st Century. With the proliferation of technology and the kind of skills and expertise that the labor force is looking for, he felt the community needs to think in terms of the vibrancy and health of the total community, not segments of the community.

As a result of a comment by Mr. Bly about the School Board not being accountable because it is an appointed school board, Mayor Sitnick suggested Mr. Bly contact her to discuss an elected school board vs. an appointed school board.

VI. OTHER BUSINESS:

A. UPDATE ON THE WATER CRISIS

Mr. Tom Frederick, Director of Water Resources, updated City Council on the water crisis stating that as of today, we have 96 days of water left. Recent rains is not a reason to stop conserving. He explained all the efforts being made to educate the public in water conservation and the steps being taken by the City to conserve water as well.

Mr. Frederick responded to a question relative to a commercial bottler buying Asheville water and selling it.

Mayor Sitnick asked for an update from the Water Resources Director and the City Attorney relative to a portion of the City Code dealing with droughts.

B. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON DECEMBER 15, 1998, AND THE WORKSESSION HELD ON JANUARY 5, 1999

Councilman Cobb moved for the adoption of the minutes of the regular meeting held on December 15, 1998, and the worksession held on January 5, 1999. This motion was seconded by Councilman Sellers and carried unanimously.

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C. CLAIMS

The following claims were received by the City of Asheville during the week of December 11, 1998 - January 7, 1999: John Senechal (Water), Eric Fronrath (Civic Center), Joe Treadway (Water), Kelly McKibben (Traffic Engineering), Dina Herig (Civic Center), James D. Allen (Water), Natalie Grant (Streets), Ryan Dickson (Streets), Benjamin Rogers (Streets), Bill Devlin (Streets), Riveria Mallory (Streets), Margie Gaddy (Streets), Kemper Brown (Water) and David Pilcher (Streets).

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

D. LAWSUIT

The following lawsuit was received on December 16, 1998, regarding Patrick L. Johnson v. City of Asheville and Metropolitan Sewerage District of Buncombe County, North Carolina. The nature of the proceeding is negligence alleged due to MSD "raising" a manhole structure above the street pavement level to facilitate the resurfacing of the street by the City.

The City Attorney recommends this be handled by an outside attorney.

VII. INFORMAL DISCUSSION AND PUBLIC COMMENT:

A. ASHEVILLE MOTOR SPEEDWAY

City Attorney Oast said that just prior to this meeting, he received word from Carolina Motorsports, headed by Danny Jones, that they were withdrawing from negotiations to lease the Asheville Motor Speedway for 1999. He said that this was disappointing because they had high hopes for Carolina Motorsports and Mr. Jones and the City had gone far towards getting the necessary approvals from the necessary parties. He did say that this may have happened soon enough that we can perhaps begin negotiations with the other interested party. We still have a lot of things to work out in that respect, however time is of the essence.

Councilman Sellers said that there are a lot of things that are actually behind schedule with the Asheville Motor Speedway if it's going to operate this year. Sponsors, advertisers, car builders, mechanics, etc. need to know whether they should move forward with operating at the Asheville Motor Speedway or start gearing towards another racetrack, such as Hickory or Spartanburg.

Councilman Sellers moved to instruct the City Manager and City Attorney to pursue negotiations with John Huffman and James Young and that they report back to Council with their recommendations as soon as possible. This motion was seconded by Councilwoman Field and carried unanimously.

VIII. ADJOURNMENT:

Mayor Sitnick adjourned the meeting at 9:55 p.m.

CITY CLERK MAYOR
