

Tuesday - January 19, 1999 - 3:00 p.m.

Worksession

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

**CONSENT:**

**Bids for Relocation & Refurbishing of Existing Furniture at the Municipal Building**

Summary: The consideration of a resolution authorizing the City Manager to enter into a service contract with Office Environments of Asheville Inc. to relocate and refurbish existing furniture to be used at the Municipal Building, when renovations are complete.

In an effort to reduce costs for new furniture in the Municipal Building, when renovations are complete, City staff will be using refurbished existing furniture as much as possible. City staff solicited sealed bids from 18 furniture contractors, 3 of which were minority contractors, for relocation and refurbishing of 585 pieces of existing furniture currently being used by City staff throughout the City. Only one bid from Office Environments of Asheville, in the amount of \$37,100 was received.

Approved funding is available in the Municipal Building construction account to pay for the relocation and refurbishing of existing furniture, designated for use in the Municipal Building.

The Parks and Recreation Department requests City Council authorize the City Manager to enter into a service contract with Office Environments of Asheville Inc., in the amount of \$37,100, to relocate and refurbish existing furniture to be used at the Municipal Building, when renovations are complete.

**Bids for New Furniture for the Municipal Building**

Summary: The consideration of a resolution to award Bid Request No. 488-99 for the purchase of new office furniture for the Municipal Building.

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 and install miscellaneous office furniture, as described in Section A through G of the bid documents, in the Municipal Building. Seven bids were received. Bids have been reviewed for technical compliance to specifications by Lyle Willis, Project Coordinator and his concurrence was received in the following recommendations.

Funds for these purchases have been budgeted in Account No. 666-4680-461.70-04.

Subject to Council's approval, it is recommended that awards be made for the furniture proposed by the low bidder of each section as follows:

Section A - Metal Bookcases, Shelving - award to the low bidder, Interior Systems, West End, N. C., in the amount of \$14,469.00.

Section B - Metal Casegoods, Desk, Credenza - award to the low bidder, Corporate Express, Greenville, S.

C., in the amount of \$26,627.63. -2-

Section C - Wood Casegoods - award to the low bidder, Corporate Express, Greenville, S. C., in the amount of \$9,672.55.

Section D - Wood Bookcases - award to the low bidder, Mac Thrift Office Furniture, Winston-Salem, N. C., in the amount of \$3,146.86.

Section E - Panels System - award to the low bidder, Corporate Express, Greenville, S. C., in the amount of \$41,553.36.

Section F - Metal Seating - award to the low bidder, Hoyle Office Supply, Arden, N. C., in the amount of \$40,324.96.

Section G - Wood Seating - award to the low bidder, Office Environments, Asheville, N. C., in the amount of \$11,596.00.

Grand total of all awards as recommended \$147,390.36.

### **Request for City to be Fiscal Agent regarding the Community Image Survey**

Summary: Private funding to carryout the Community Image Survey Project

has been identified and a request that the City act as fiscal agent on behalf of the Metropolitan Planning Organization for the project will need City Council approval.

An overview of the Community Image Survey Project was presented to City Council at their February 17, 1998, meeting. Since that time, private funding of \$55,000 has been identified and should be adequate to carry out the project. The Metropolitan Planning Organization can sponsor the project, however, since they are not a fiscal entity, the City will need to act as fiscal agent for the project and provide limited staff support as such. If City Council desires that the City participate in the project by being the fiscal agent, a project budget ordinance will be prepared and presented to City Council for adoption.

Upon City Council concurrence to act as fiscal agent, City staff recommends City Council adopt a budget for the Community Image Project, in the amount of \$55,000, with the funding provided by private sources.

### **Setting of a Public Hearing on February 9, 1999, to Adopt Amendments to the City of Asheville Personnel Policy**

Mayor Sitnick asked that the record show that City Council has received this information and instructs the City Manager to place these items on the next formal City Council agenda.

### **RESOLUTION NO. 99-13 - RESOLUTION AUTHORIZING THE CITY TO ENTER INTO AN AMENDMENT OF A LEASE WITH SKYLAND VOLUNTEER FIRE DEPARTMENT TO PERMIT USE OF THE PREMISES AS A POLICE SUBSTATION**

City Attorney Oast said that this is the consideration of a resolution authorizing execution of an amendment to the lease with Skyland Volunteer Fire Department (Skyland VFD) to permit establishment of a police substation.

In December of 1995, the City entered into a ground lease agreement with the Skyland VFD, allowing the City to build a fire station on the Skyland VFD property. Subsequent developments have resulted in the size of the City's building being reduced, and sharing some of the facilities with Skyland VFD.

In an effort to improve service to the southern part of the City, the Police Department would like to establish a police substation in the Skyland area, and the City's facility can be configured to accommodate the police, and this work is underway. The Lease Agreement with Skyland VFD currently addresses occupancy only by the Fire Department, and an amendment is -3-

necessary to allow occupancy by the Police Department. The term of the Police Department's lease is 10 years, renewable for an additional 10 years. No additional rent is involved, but the City is agreeing to reimburse Skyland VFD for the legal costs incurred in connection with negotiating and finalizing this amendment, and is providing additional paved parking.

City Attorney Oast said that because the Skyland VFD's Board only meets once a month and they will be meeting on January 25, 1999, he requested City Council consider adoption of the resolution at this meeting.

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 to waive the rules and proceed with formal action at this meeting. This motion was seconded by Councilman Tomes and carried unanimously.

Councilman Tomes moved to adopt Resolution No. 99-13. This motion was seconded by Councilwoman Field and carried unanimously.

## **RESOLUTION BOOK NO. 25 - PAGE 122**

### **PRESENTATION BY THE HOMES FOR ASHEVILLE-BUNCOMBE TASK FORCE**

Joyce Harrison and Scott Dedman, co-chairs of the Homes for Asheville Buncombe Task Force, presented a proposal for a Housing Trust Fund for Asheville, to be funded from local sources.

Ms. Harrison explained why a local housing trust fund is needed for Asheville:

(1) The Asheville Housing Trust Fund is needed to meet the goals set out in the City's Housing Action Plan.

- The City's Housing Action Plan, adopted in October 1998, calls for establishing a local Housing Trust Fund. The Housing Trust Fund was accepted for future action, in conjunction with increasing public awareness of the need and additional strategic planning. This background work should take place by spring 1999, so that a Housing Trust Fund can be formed beginning with the 1999-2000 budget;

- A Housing Trust Fund can double the City's efforts to assist working families and elderly and disabled citizens. A proposed \$2.1 million in local revenues each year will assist an additional 190 families. This number is approximately 17% of the City's annual Housing Production target, and will more than double the number of families currently assisted.

(2) It makes economic sense - A local Housing Trust Fund pays back:

- Asheville will benefit economically from the Asheville Housing Trust Fund, which will

- Generate new tax revenues. Develop attractive new homes on abandoned lots and improve or replace vacant, dilapidated homes. Example: a \$12,000 vacant lot, after it is developed into a \$90,000 property with a new home, will pay \$1,053 per year in new tax revenues for City and County services and schools.

- Help renters become homebuyers - so they can build savings or equity for their future. Low interest second mortgages from the Trust Fund will make modest homes affordable to low income working families. The first

mortgage is provided by local banks. -4-

- Make loans, not grants. This way families who are helped to buy homes can pay their own way. All loans for development housing should be payable to the Trust Fund to create a revolving pool of money.

- Create jobs and help local business. Local homebuilders create jobs and buy materials here at home - unlike mobile homes which are made outside of the Asheville area.

- Bring in private investment. Work with private lenders, corporations, builders, donors. A combination of non-profit, business, charitable, local government, and volunteer effort brings the strongest public support and accountability.

(3) Better homes improve the safety, stability, and quality of life of the entire city.

- Preserve existing homes, improve neighborhoods.

- Convert absentee, neglectful ownership which has abandoned property or failed to care for it, into local ownership which will maintain, improve, and pay taxes.

- Promote attractive design which fits into existing neighborhoods.

- Provide safe, attractive homes and neighborhoods for working families, children, the elderly, and disabled citizens. Families who work in our community should be able to live in our community, in safe, attractive housing. Children need decent homes to get a good education and move up in life. Elderly and disabled citizens need and deserve safe, attractive homes and neighborhoods.

(4) It has been successful in other North Carolina cities.

- Winston-Salem, Raleigh, Durham and Greensboro have successful housing bond programs.

- Durham and Greensboro automatically set aside a portion of their property tax revenues for housing, and both cities have leveraged their trust funds by issuing general obligation housing bonds.

- Durham's \$21 million in housing bonds leveraged two dollars of private investment for every public dollar invested. Over \$675,000 in new property taxes are paid each year on housing built with bond funds. Approximately 1,200 new jobs were created.

(5) There is strong public support for new local revenues for affordable housing

- A recent opinion poll shows that 62% of voters in the City and County will support increasing their property taxes \$15 per year to provide affordable housing. Furthermore, 65% of Asheville's registered voters would vote for a housing tax or bond which would raise their individual property taxes by \$15 per year (December 1999 - January 1999 poll). Higher income voters and retirees show even stronger support.

- The Homes for Asheville-Buncombe County Task Force, a broad coalition of business, neighborhood and civic leaders, has voted to support the creation of a local housing trust fund. Other groups, such as the Home Builders Association and the Mortgage Lenders Association, have also voted to support this concept.

- A recent community forum sponsored by the Asheville Citizen-Times identified housing as a top priority for community attention.

(6) There are options for how to fund the Asheville Housing Trust Fund.

- As a community we have options as to how to secure the resources.

- A two cent set-aside of property taxes. Two cents per \$100 of value would raise property taxes \$15 per year for a property valued at \$75,000. \$20 per year for a property valued at \$100,000. This method alone would raise approximately \$870,000 of revenue each year.
- A housing bond. This method, if used in combination with the two cent set-aside of property taxes, would speed the flow of funds and production, providing approximately \$2 million of improvements each year over a five year period. -5-
- A hotel/motel tax to be used for affordable housing or shared with other services. The recent voter poll also showed support for this option.
- Of course a combination of these may be feasible. The steering committee of the Homes for Asheville-Buncombe Task Force looks forward to a partnership with the City to assess the best methods of securing resources for the Asheville Housing Trust Fund. It is recommended that one or more of the above methods be adopted before July 1999 for the 1999-2000 budget year. However, if a housing bond is one of the methods selected, they recommend that such a bond not be put before the voters before the fall of 1999.

They also reviewed two spreadsheets prepared jointly by Task Force members and City staff. The first spreadsheet illustrates how \$2.1 million a year could be used to create 190 units of housing a year, and the second demonstrates the financial costs and benefits of funding such a program through general obligation bonds. It indicates that increased tax revenues would be very roughly equal to the interest on the bonds.

They recommended that Council consider providing for a local housing trust fund in its 1999-2000 budget. If a housing bond is the method selected, they recommend putting this to the voters in the fall of 1999.

Upon inquiry of Councilman Cloninger, Mr. Dedman explained the concept of leveraging.

After discussion, it was the consensus of Council that the Housing & Community Development Committee begin addressing this issue and that they invite the Buncombe County Commissioners to be a part of those meetings in an effort to coordinate City/County cooperation in the County-wide problem of affordable housing.

## **PRESENTATION OF REPORT OF CHURCH COMMITTEE**

Mr. Gerald Green, Senior Planner, said that City Council directed Planning and Development staff to work with a committee composed of representatives of the religious community and neighborhood representatives to review the definition of church found in the Unified Development Ordinance (UDO) and the development standards for churches in residential districts and provide recommendations for appropriate revisions to these.

As a result of concerns expressed by the religious community that the definition of "church" in the UDO was too restrictive, City Council in September 1998 directed Planning and Development Department staff to work with a small committee to review the definition of "church" and to recommend appropriate changes. The Committee was also instructed to review the development standards for churches in residential neighborhoods and to suggest revisions to these standards. A committee composed of four ministers, four representatives of neighborhoods, and one Council member was formed to carry out this task (Rev. Jerry Young, Rev. Bill Clark, Bob McCarthy, Tom Lewis, Rev. Randy Young, Betty Garofano, Brian Peterson, Rev. John Grant, Council Member Earl Cobb).

Following a number of meetings, the Committee developed a set of recommendations which address the definition of "church" and development standards for churches in residential neighborhoods. The recommended definition of "church," now termed "place of worship," is broadened to include all those

facilities intended for religious services. The Committee recommends that places of worship be categorized according to the number of seats in their sanctuary as follows:

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- Small place of worship - up to 400 seats;
- Medium place of worship - 401 to 800 seats;
- Large place of worship - more than 800 seats.

It is recommended by the Committee that development standards for places of worship in residential districts be related to their size; the larger the place of worship the more restrictive the location requirements. Recommendations of the Committee are that the larger the place of worship, the higher the functional classification of the street on which it must be located. In addition to the location requirements, the Committee also recommended development standards for large places of worship located in residential districts. He then reviewed the detailed recommendations from the Committee as follows:

**Committee Purpose:** The Committee was formed to carry out the following tasks:

- Review the definition of "church" as currently set forth in the UDO (Unified Development Ordinance) and recommend any needed revisions to make the definition more compatible with the expanding role of churches;
- Review current development standards for churches in residential districts and recommend revisions which would permit reasonable growth of churches while protecting residential neighborhoods; and
- present recommendations to the City Council for their consideration and action.

**Committee Recommendations:** The Committee presents the following recommendations for the consideration by the City Council:

- Definition of church - the Committee unanimously (Dr. Grant abstained from voting) recommends that the following definition be adopted in lieu of the current definition of church:
- Place of worship - a building (s) or structure(s) including, but not limited to, accessory classrooms, meeting rooms, offices, and housing quarters for religious leaders, that are primarily intended for religious services and which operate as a private, non-profit, tax exempt institution. The term includes, but is not limited to, churches, synagogues, and temples.
- Development standards for churches (places of worship) in residential districts - the Committee recommends that the following development standards be adopted for churches (places of worship) located in residential districts. All but one of the recommendations are presented with the unanimous approval of the Committee (Dr. Grant abstained from voting in all but one of the recommendations - the location requirement for large places of worship is recommended with a 5 - 4 vote of the committee).
- The Committee unanimously (Dr. Grant abstained from voting) recommends that places of worship be divided into three (3) categories, based on the number of seats in the sanctuary(ies), for determining the appropriate development standards when locating in residential districts. The categories are:
  - Small place of worship - up to 400 seats;

- Medium place of worship - 401 to 800 seats; and
- large place of worship - more than 800 seats.
- The Committee voted unanimously (Dr. Grant abstained from voting) that the following location requirements for small and medium places of worship in residential districts:
  - Small places of worship may locate anywhere in residential districts; and
  - Medium places of worship may locate in residential districts if the facility is located on a major or minor thoroughfare or is located on a residential collector street if the facility (located on a residential collector street) is located: -7-
    - within 300 feet of a major or minor thoroughfare if the collector street passes through an area with residential uses; or
    - within 1000 feet of a major or minor collector if the collector street passes through an area with non-residential uses.
- The Committee voted 5 - 4 (Dr. Grant did vote on this issue) to recommend the following location requirement for large places of worship:
  - Large places of worship may locate in residential districts only if located on a major thoroughfare.

(Rev. Bill Clark called after the report was distributed and said that he thought he was voting opposite of the way he actually voted. Therefore, the majority of the Committee (4-5) voted against large places of worship locating in residential districts only if located on a major thoroughfare. )

- The Committee unanimously (Dr. Grant abstained from voting) recommends that large places of worship be treated as a conditional use in residential districts. The following development standards are recommended for large places of worship located in residential districts:
  - Minimum lot area shall be four (4) acres;
  - Minimum setbacks shall be as follows:
    - Front - 50 feet
    - Side - 50 feet
    - Rear - 50 feet
  - All active recreation areas shall be setback at least 30 ft from property lines
  - If a publicly maintained street is located between the place of worship and adjacent residential uses, the side and rear setbacks may be reduced by  $\frac{1}{2}$ ;
  - Parking shall not be located in front of the building(s) (between the street and the buildings) and shall not be located any closer than 30 feet to any property line. In addition, parking areas shall be buffered with a minimum of a "B" buffer as described in Sec, 7-11-2 of the UDO (20 ft wide buffer with mixture of trees and shrubs). The buffer shall incorporate a wall, landscaped berm, or shrubs with a minimum height of 30 inches. If a landscaped berm is used, the berm shall be completely covered with landscaping within 24 months of the

issuance of the Certificate of Completion. If shrubs are used, the shrubs shall form a dense barrier with a minimum height of 30 inches within 24 months of the issuance of the Certificate of Completion.

- The primary access for the place of worship shall be from a street with a minimum classification of residential collector. Secondary points of access may be located on local residential streets, but shall not exceed one point of access per local residential street and a total of two (2) secondary points of access on all local residential streets.
- Height of buildings shall not exceed 50 feet, provided that for each one foot in height over 30 feet, the building shall be set back an additional one foot beyond that otherwise required. Steeples, spires, bell towers, etc. shall not be subject to the height limitation.
- Impervious surfaces shall not exceed 70% of the total lot area.
- Outdoor lighting standards shall not exceed 16 feet in height. Lights shall be shielded and directed away from residential areas. Lights on buildings for the purpose of illuminating buildings or signs are exempt from the height limitation. -8-
- Enrollment at day care centers which are operated by the place of worship and/or located on the site of the place of worship shall not exceed 100 children unless otherwise approved by City Council as part of the initial approval of the place of worship.
- Offices associated with the place of worship shall not exceed 20% of the total floor area of all buildings on the site.
- Public address systems shall be permitted for special purposes only and shall not be used for continuous broadcast(s).
- No commercial activities shall be permitted.
- No warehousing activities shall be permitted.
- No facilities for vehicle maintenance shall be permitted.
- Parking for vehicles owned and/or used by the place of worship shall be located at the rear of the property and screened with vegetation from adjacent residential uses.
- No grading shall be permitted within 20 feet of any property line, other than for utilities, landscaping, and access points.
- No grading shall occur until site development plans for the place of worship have been approved..

The Committee presents their recommendations to City Council for consideration and action. Should Council determine that amendments to the UDO are appropriate to deal with these recommendations, the recommendations, with appropriate direction, must be provided to the Planning and Zoning Commission for their review and recommendation.

The Planning and Development Department staff recommends that Council forward the recommendations of the Church Committee to the Planning and Zoning Commission with appropriate direction for the development of amendments to the UDO.

Mr. Green said that he received two letters from Committee members after distribution of the report to the



Committee members. One letter received on January 5, 1999, from Ms. Betty Garofano reads: "The definition of church is too long, inaccurate, and unfair to those religions which do not choose to feed from the public trough (private, non-profit tax exempt institution). My definition which is simple and inclusive is, 'Place of worship: A building or a structure in which a religious group or sect worships its God or Gods to its beliefs and practices, provided those practices do not conflict with the government's lawful authority to promote public health, safety, and welfare.' This would include the Christian church, Jewish Synagogue, Islamic center and mosque, Hindu and Buddhist temple and Sikh gurdwaras, etc. etc. Conditional use is subjective and has the potential for abuse by empowering those in authority to make exceptions for their favorites and to discriminate against those who do not meet their test. Minority religious are most often the casualties. Also the extra time required of the planners to work with the petitioners would be costly and would not include neighbors. While churches and other religious institutions are thought to contribute to public welfare, they can, if broadly defined, injure a residential neighborhood by creating extra traffic, noise, lights, and litter and by shifting the property tax burden to the other landowners. The use of land and not the nature of the using organization must be the controlling factor in zoning. Precisely defining the terms of a zoning is the best way to avoid litigation." Mr. Green responded to the issues Ms. Garofano raised in her letter.

The other letter received today was from Rev. Jerry Young. Mr. Young's letter reads: "While preparing today's presentation and review for City Council I have found several errors in the report which I would like to formally bring to your attention: (1) I realized that we never formally adopted the rules which would govern our voting. That is, my file is devoid of any guidelines in relation to absentee voting, quorum, etc.; (2) On page one: Development -9-

Standards for Churches, you note that the committee 'unanimously recommends that places of worship be divided into three categories ...' This is incorrect, I was not present to vote on that issue as I was out of the United States on October 30th, when the same was presented; (3) On page one: 'The committee unanimously recommends the following location requirements for small and medium places of worship ...' I remember at least one person abstaining from voting on these. It is also important to note that we dealt with this in 'piece meal format.' It would be difficult to say that we could accurately judge the full effect of the votes; and (4) On page two: 'The committee voted 5 to 4 to recommend the following location requirements for large places of worship ...' I believe you were informed by Bill Clark that he was confused and voted incorrectly and would like to correct his vote. Finally, we were never able to have a final vote with a full copy of the 'report.' Instead we were only mailed a copy and asked to comment. I question the fact that this report represents the committee's 'recommendations' given the fact that there was no vote on the total package to codify the same. Did any other members contact you and request revisions? If so did you make them? I wanted to inform you of these concerns prior to your presentation to City Council. Perhaps the Committee should go back to the table and formally vote on the entire report." Mr. Green responded to the issues raised by Rev. Young.

Mr. Green also said Rev. Clark's phone call relative to his vote was the only other comment received after the committee report was distributed.

At the request of Mayor Sitnick, Mr. Green read the following letter from Brian Peterson, President of the Coalition of Asheville Neighborhoods, which he faxed to her today: I was unable to attend this weeks City Council meeting due to a family vacation and therefore ask the Mayor to read this brief statement to Council before any action is taken on the recommendations of the Church Committee. As a member of the Church Committee appointed by Council to examine the City's zoning regulations concerning churches, I am happy to report that the Church Committee was able to reach a significant compromise proposal. I believe that this compromise is fair to both churches and to neighborhoods. The compromise proposal balances the needs of churches to fulfill their ministries and to have reasonable growth with the needs of neighborhoods to have safe and peaceful residential communities. The compromise does not merely look to address the problems of one church or one neighborhood. The compromise seeks to serve all of our city's religious institutions and

residential neighborhoods. Gerald Green and Bob Oast both deserve recognition for their willingness to take a broad view and to offer the Committee helpful information on what other cities have done. Gerald in particular was very patient with the Committee members on this difficult issue. I realize that this proposal is a significant departure from the City's current zoning of churches. Also, I realize that this is a complicated proposal. However, I believe that it is necessary to properly take into account the fundamental changes that have occurred in religious institutions in Asheville and across the country. This proposal will help clarify for church leaders and nearby res-(sic). An integral part of this compromise is the restrictions upon the mega-churches - that is those over 800 seats. These mega-churches are like a Super Wal-Mart. They serve a regional population drawn from all over Buncombe and surrounding counties. They offer a tremendous variety of programs and services to their members and to the larger public. Their multifaceted ministries usually operate seven days a week. Because of their enormous size and impact, these mega-churches should not be located in residential areas. It was my initial position that the mega-churches should not be permitted in residential areas at all. It is a position that I believe most neighborhood leaders share. However, in the spirit of compromise, I agreed to the proposal before you that would allow mega-churches in residential areas but restrict their locations to major thoroughfares. This limitation is a necessary part of the overall compromise that was reached and should be included in any final changes to the UDO."

Mr. Green responded and explained several issues raised by Council, some being, but not limited to: fundraising, recreational facilities, and day care facilities. -10-

Upon inquiry of Vice-Mayor Hay on why Dr. Grant abstained from voting on all matters but one, Mr. Green said that Dr. Grant said that he had not attended enough of the meetings to be fully knowledge about all the issues.

Councilwoman Field felt that perhaps the Committee should reconvene and clarify the one issue relative to the location requirement for large places of worship.

Vice-Mayor Hay agreed with Councilwoman Field in that it seems like there is unanimity on all issues except for that one issue.

Discussion then surrounded a letter received by Mayor Sitnick dated January 18, 1999, from the Carrier Heights Neighborhood Association. Said letter requested that City Council postpone the Technical Review Committee (TRC) meeting scheduled for January 20, 1999, to consider further expansion of the Trinity Baptist Church project until the process of citations/injunctions/revocation of permits on current violations of ordinances by the Church are resolved, and until the proposed amendments to the UDO related to churches are adopted.

City Attorney Oast said that City Council has the right to ask TRC to postpone action on the plan, but he didn't think they would have to do it, because there is some right on behalf of the applicant to insist that they go ahead. He said that if the applicant has requested approval of their building plans pursuant to one set of ordinances and regulations that, without their consent, the City cannot make an after-adopted ordinance or regulation applicable to them. Mr. Green also responded in that the Church's plans have been submitted as required by our ordinance.

Upon inquiry of Mayor Sitnick about if there any citations/injunctions/revocation of permits on current violations of ordinances, City Attorney Oast said that he has just recently received the letter and he would like an opportunity to meet with the Planning & Development Department staff to see where those issues stand.

Mayor Sitnick said that the TRC, when deliberating this particular project, should be informed of the discussion that has taken place today and should be made aware that there are UDO amendment proposals that have not been adopted. Mr. Green assured the Mayor that he would make the TRC members aware of the proposed ordinance and the discussions taken place at this meeting.

Mayor Sitnick noted that there were some postponements already granted in this process. She said that considering the timing of this and it's all happening fairly concurrently, that some consideration be made to the issues pointed out by the neighborhood association. She said a postponement was granted to Trinity Baptist Church representatives when they wanted it and needed it, and she felt that at the very least beyond postponing, that the TRC should be made aware of the fact that these are happening right now.

Mr. David Payne, attorney for Trinity Baptist Church, was concerned that City Council was talking about TRC issues in a Church Committee report presentation.

Mr. Bob McCarthy felt there was a conflict of interest for Councilman Cobb being a voting member on the Church Committee.

Ms. June Lamb reiterated the request for TRC to postpone the Church's project, noting that they have already proceeded to install street lights and paved sidewalks.

Mr. Green responded to several points of clarification raised by Rev. Jimmy Dykes , Pastor of the North Asheville Baptist Church.

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Vice-Mayor Hay moved to (1) refer the Church Committee's report to the Planning & Zoning Commission for their review and recommendation to the City Council, and (2) request that the Church Committee reconvene to clarify the issue relative to the location requirement for large places of worship, with said clarification given to the Planning & Zoning Commission when the matter is discussed by the Commission. This motion was seconded by Councilman Cloninger and carried unanimously.

Mayor Sitnick requested that the TRC, when deliberating this particular project, be informed of the discussion that has taken place today and should be made aware that there are UDO amendment proposals that have not been adopted.

At 4:50 p.m., Mayor Sitnick announced a short break.

### **DISCUSSION OF ALCOHOL SALES AT BELE CHERE**

Mr. Irby Brinson, Director of Parks & Recreation, said that the Bele Chere Alcohol Task Force has been meeting for several months to make a recommendation to City Council regarding the sale of alcohol at the Festival.

In January, 1997, a five-year strategic plan for the Bele Chere Festival was approved by City Council. One goal of that plan was to empower the Alcohol Task Force to resolve the issues surrounding the selling and consumption of alcohol throughout the Festival. The Task Force has met consistently since 1997 to resolve the Festival's alcohol concerns. The Task Force is made up of members from downtown merchants, a representative from both the Asheville Police Department and Alcohol Law Enforcement, Councilman Sellers, City Attorney, Festival staff and Bele Chere Board Members. Since 1997, significant improvements have been made in regard to alcohol sales and consumption which have resulted in major improvements to the festival. These include reduction of arrests by 60%, merchants selling responsibly and self-policing their operations, a stricter accountability system with mandatory alcohol training, use of wristbands to curtail under age drinking in the Festival, and exceeding the requirements of State law in regard to rules and regulations.

The Task Force has developed three options in regard to alcohol sales and consumption at future Bele Chere Festivals. These options are included in the staff report and will be discussed in length during the work session.

Mr. Tim Richards, Chair of the 1999 Bele Chere Festival, said that on January 11, 1997, a five-year strategic plan for Bele Chere was approved by City Council. One goal of this plan was to empower an Alcohol Task Force to "resolve the issues surrounding the selling and consumption of alcohol at the festival." The objectives of the Task Force were to minimize liability and maximize control and accountability for the city, to improve the public's perception, and to facilitate a phased transition of beer sales from the City to sales by a more appropriate organization. This Task Force has met consistently since 1997 to resolve the festival's alcohol concerns.

Not only has the Task Force implemented many changes suggested in the Strategic Plan, they have also created new policies and procedures to improve the alcohol environment at the festival.

The Task Force has followed the objectives outlined in the Strategic Plan of a phased transition of the city from the sale of alcohol:

- In 1997, the number of city-operated booths was reduced from thirteen to nine.
- In 1998, the number of booths was further reduced to six.

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Accomplishments since the Task Force's inception:

- In the first year of the Task Force, arrests decreased by 60%.
- On the whole, merchants are now selling responsibly; self-policing has resulted in better sales procedures.
- The accountability system and mandatory training for alcohol servers for the Bele Chere booths have dramatically improved.
- The merchant/City relationship has strengthened.
- Wristbands helped curtail underage drinking.
- The festival has exceeded the requirements of state law in certain aspects in order to be as vigilant as possible. The festival adopted the position to check the ID of every person, every time, and requires that all servers be 21.

It should also be noted that throughout the twenty year history of Bele Chere only three claims have been made against the City, and none of those was alcohol-related. The City was found not to be negligent in all three cases.

The Alcohol Task Force is invested in continuing with the plans they have implemented in order to fine-tune alcohol policies and procedures that benefit downtown, the festival, and especially the community at large. The Task Force is cognizant of the survey done at the 1998 festival by ProGen Research that found that 76% of festival attendees support the sale of alcohol. Their goal is to keep the festival financially viable, while allowing the downtown merchants a greater share of alcohol sales. Festival staff, with the help of the Task Force, has researched alternate sources of revenue to replace alcohol sales and sponsorships. In two years, no feasible alternatives have been found to replace the 30% of gross festival revenue generated.

The following are three different alternatives for City Council to consider.

### **OPTION 1 - Continuation of the Alcohol Task Force's Plan as set forth in the Strategic Plan**

The Alcohol Task Force proposes that a non-profit organization take responsibility for beer and wine sales at Bele Chere. The Merchants Action Coalition (MAC), a registered non-profit organization, has been approached to be this group and is considering it with acceptance pending a full membership vote. The selected non-profit group would hold all alcohol permits and staff the six booths at the festival with well trained volunteers, thus removing the city from the sale of alcohol. (Please note: it may be necessary to contact other experienced non-profit groups for the first year in the event that a single group cannot provide adequate staffing.) The organization would pay the city a percentage of the profits (to be determined later), defined as gross sales less all costs minus any shortages. The exact details of this arrangement will be mutually agreed upon by the City and the approved non-profit organization.

The advantages to Option 1 include: Effectively allows the City to be out of the alcohol business; Retains most of the control over procedures and consumption; Minimizes the loss in the \$23 million economic impact to the Asheville community; Minimizes lost revenue and keeps the festival financially stable since alcohol sales and sponsorship represent 30% of gross revenue; Reduces risk of lost attendance; The financial stability of this plan maintains a quality festival; Allows MAC and staff to work together, fostering a cooperative spirit; Retain alcoholic beverage sponsors currently committed to \$38,000 in 1999; Eliminates the risk of alienating festival sponsors; and trained and experienced supervisors in each booth.

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Disadvantages to Option 1 include: City may retain some level of liability for alcohol; The City loses some control at point of sale compared to 1998; City could potentially be seen as still selling alcohol; and continued overtime costs for Police Department.

### **OPTION 2 - Alcohol-free Sunday**

The Alcohol Task Force has developed additional measures to further limit the consumption of alcohol. The basic recommendation of a non-profit organization staffing the beer booths is still in place, but is further enhanced. This plan establishes Sunday as an alcohol-free day of the festival and allows any persons not wanting to be exposed to alcohol sales on the street to be able to enjoy all aspects of the festival.

The advantages to Option 2 include: User-friendly to all constituents of the community; Those preferring an alcohol-free event can attend on Sunday; Increased "family" appeal; Further reduces the level of alcohol consumption; Possible lower level of police presence required on Sunday in future years, reducing costs; Possible increase in attendance by those who avoid it due to alcohol; and Sunday attendees who wish to consume alcohol can do so inside a licensed downtown establishment further enhancing merchant sales.

Disadvantages to Option 2 include: Challenge of effectively communicating this change to the public; Possible reduction in alcohol-related sponsorships; Loss of some sales revenue; and arrests will increase on Sunday.

It was noted that all advantages and disadvantages from Option 1 continue to apply to Option 2.

### **OPTION 3 - Alcohol-free Bele Chere**

The third possibility is to completely prohibit all alcohol on the streets during Bele Chere.

The advantages to Option 3 include: City out of the alcohol business; Festival seen as more "family" oriented; Possible increase in non-alcoholic drink sales; Substantially reduce the City's level of liability; and possible reduced police presence required in future years.

Disadvantages to Option 3 include: Loss of all control over alcohol consumption; Likely increase in hard liquor consumption (easier to conceal), glass bottles, off-site consumption, and binge drinking; Overcrowding

likely at downtown establishments serving alcohol with possible fire marshal concerns and public safety problems resulting; Increased arrests; Risk of decreasing the \$23 million economic impact to the Asheville community; An immediate loss of \$149,000 in revenue necessitating the downsizing of the event and reduction in the quality of entertainment and other programming offered; Possible decreased attendance. According to 1998 survey, 76% of current attendees support alcohol sales; Jeopardizes ability to meet festival Mission Statement; Jeopardizes the ability to meet Goal One of the Strategic Plan: to develop financial stability and to become self-sustaining; Jeopardizes ability to meet twenty objectives specified in the strategic plan; Likely loss or reduction in many other sponsors concerned about the consequences of this change; Loss of all alcohol-based sponsors; Loss of revenue by downtown merchants from loss of "to go" sales; Challenge of effectively communicating this change to the public; Inability to accomplish many needed festival improvements; Possible reduced police presence may increase perception of unsafe environment; Increased overtime for fire department; and full ramifications of changes not felt until Bele Chere 2000.

After careful consideration of all information and possible advantages and disadvantages, the Alcohol Task Force recommends Option 1 as the best course of action -14-

available. This recommendation allows an approved non-profit organization to be responsible for the alcoholic beverage sales, therefore alleviating the City from direct alcohol sales.

City Council discussed the three options, noting that we would lose 15% of our beer sales revenues if Council proceeds with Option 2. However, other ways to recoup that loss were also discussed.

A representative from Max's Deli briefed Council on their history with Bele Chere and supported the Task Force's recommendation.

Councilman Sellers said that he is totally in support of Option 3, but in the spirit of compromise, he would support Option 2. He said that he would like to revisit this issue in one year.

After discussion, City Council felt that Option 2, which includes all the advantages and disadvantages from Option 1 would be best for the City of Asheville at this time.

Councilwoman Field suggested that Sunday be set aside as the day for all local performers.

Mayor Sitnick asked that the record show that City Council has received this information and instructs the City Manager to place this item on the next formal City Council agenda.

### **RESOLUTION NO. 99-14 - RESOLUTION AUTHORIZING THE CITY MANAGER TO NEGOTIATE A LEASE FOR CITY PROPERTY ON AMBOY ROAD**

Councilman Cloninger said that his firm represents Mr. Young on an on-going basis, but they have not done any legal work in connection with this work. Therefore, Councilwoman Field moved to excuse Councilman Cloninger from voting due to a conflict of interest. This motion was seconded by Councilman Sellers and carried unanimously.

City Attorney Oast said that this is the consideration of a resolution to authorize the City Manager to negotiate a lease for a portion of the Amboy Road property for use as a speedway ("Subject property").

Pursuant to the direction from City Council at your November 24, 1998, meeting, a Lease Agreement was drafted incorporating the basic terms that Council reviewed and approved at that meeting. The City received three inquires about leasing the Subject Property for 1999, and furnished a copy of the draft lease to each person who requested one. Some changes were made to the draft, and those changes were also supplied to the interested parties. Meetings were arranged with each of the three parties, but one party pulled out prior to the meeting, and only two meetings were held. One group that was interviewed included John Huffman,

the South Carolina businessman who owns the Hickory Motor Speedway (HMS) ; the other group (Carolina Motorsports) included Danny Jones, who is seeking to develop a speedway in Henderson County.

On January 12, 1999, Carolina Motor Sports withdrew from further negotiations, and Council authorized negotiations to be reopened with John Huffman. We have reached a tentative agreement for \$75,000 for the season, and some details remain to be worked out between the City and HMS. The remaining major terms and conditions of the Lease are essentially unchanged from previous versions. The parties who hold the restrictions and the easement still need to agree to the proposed use, but we are working with them. Their approval is a stated contingency in the Lease and the resolution. -15-

Accordingly, the City's staff recommends that the City accept the proposal made by HMS, LLC, represented by John Huffman for leasing the Subject Property for 1999, and that it authorize the City Manager to negotiate and sign the lease in substantial conformity with the draft lease, and for a rent of \$75,000. This approval is subject to appropriate permissions being obtained, and some other details being addressed.

If City Council agrees with staff's recommendations, Council should adopt the resolution.

Councilman Sellers moved to waive the rules and proceed with taking formal action on this matter. This motion was seconded by Councilwoman Field and carried unanimously.

Councilman Sellers moved for the adoption of Resolution No. 99-14. This motion was seconded by Councilman Tomes and carried unanimously.

## **RESOLUTION BOOK NO. 25 - PAGE 123**

### **OVERVIEW OF IMPACT FEES**

Mr. S. Douglas Spell, Assistant City Manager, said that as requested by City Council, staff is providing an overview on the topic of impact fees.

Impact fees provide a method of shifting all or a portion of the financial burden for new or expanded facilities away from the community at large to the direct user. The aim of impact fees is to require new development to account for its fiscal impact on the community by contributing its proportionate share of the cost of new or expanded facilities.

Impact fees are single payments required to be made by builders or developers at the time of development. The fee is calculated based upon a proportionate share of the capital cost of providing major facilities. This one-time payment based upon "impact" differentiates the fee from a tax.

Types of Impact Fees: Impact fees have been assessed for a variety of public purposes. The most common use of impact fees is for water and sanitary sewer facilities. The next most common purpose is for street and highways. The list of other purposes also include parks, libraries, police and fire facilities, hospitals, schools, solid waste facilities, and cemeteries.

In most cases, the impact fee is paid directly up front as a part of the development cost. For example a new subdivision may be charged the fee based upon the number of dwelling units for such purposes as utilities or streets. In some cases, the developer may be allowed to dedicate right of way for thoroughfare improvements or real estate for park land development to offset the actual fee imposed for the development.

Legal Requirements: Impact fees have been explicitly authorized by only a few states since the 1980's. Based on my research, the states that have authorized such impact fees consist of Arizona, California, Georgia, Illinois, Maine, Maryland, North Carolina, Tennessee, Texas, Vermont, West Virginia, and Washington.

North Carolina, as well as several of the other aforementioned states, have only authorized impact fees for some local governments. Therefore, cities in North Carolina must obtain enabling legislation in order to assess an impact fee for a specific purpose.

The legal rationale for impact fees is referred to as *rational nexus*. In order to be legally and constitutionally valid, there must be a rational nexus between the fee charged and the -16-

purpose for which it is assessed. The rational nexus test involves several issues. First, there must be clear legal authority to impose the fee. In North Carolina, as noted above, this authority takes the form of local legislation. Next, the relationship between the fee and its stated purpose must be established. That is, the fee must be reasonable in amount and it must be intended for use in a way that advances or promotes its stated objective. Third, the fee must actually be used for expenditure in a manner and time that specifically promotes the stated objective. The objectives or purpose for which impact fees are collected should be identified on the comprehensive plan or the capital improvements plans and should generally be expended within three to five years of collection.

Impact Fees in Asheville: Development in the City of Asheville is currently imposed an impact fee for water and sanitary sewer service. North Carolina General Statutes provide specific legal authority for an "Authority" or "District" to adopt and assess impact fees.

The Regional Water Authority began charging an impact fee effective January 1, 1989 and the fee is referred to as a "Development Fee". The fee amount is based upon the type of user (e.g. residential, commercial, industrial, etc.) and the size of the facility for non-residential uses. The Development Fee is based on meter size and therefore for a typical single family residence the fee amount would be \$200.00.

He reviewed Attachment #1 which was a copy of the fee schedule for the Regional Water Authority outlining the development fee for all uses. I would also note that this fee amount was increased effective July 1, 1998, by doubling the prior amount. The revenue collected as a result of this fee is used as a funding source in the Water Fund.

The Metropolitan Sewerage District of Buncombe County (MSD) charges new development a "Facility Fee". As with the Development Fee charged by the Regional Water Authority, the MSD Facility Fee is based upon the type of use of the proposed development. The Facility Fee for an average residence with 1400 to 3000 square feet is \$750.00.

He then described Attachment #2 which is the "Facility Fee Computation" provided to customers by MSD. The revenue collected by MSD from Facility Fees is earmarked for providing or upgrading sanitary sewer services. The last revision to the fee schedule was effective July 1, 1997.

He noted that both the Regional Water Authority and MSD allow a fee reduction for "affordable housing". In such instances, a governmental agency must provide certification that the residential unit is part of a program of affordable housing. The Regional Water Authority reduces the Development Fee and other water connection charges by 50% and MSD reduces their facility fee to \$300.00.

Fees Charged by Other Cities: In North Carolina, 22 cities and three counties have received legislative authority to assess impact fees. This authority was granted to those local governments by the General Assembly between the years of 1985 and 1991. He reviewed Attachment # 3 which provides an overview of these cities, the type of fees charged, and the fee amount. Based on the information on this attachment, the total impact fees for cities in North Carolina range from \$805 to \$4,739 for residential development.

He also reviewed Attachment #4 which is a listing of "National Averages of Impact Fees By Type" from the "Growth Management Studies Newsletter" comparing fees in 1988 and 1991. The averages are listed by fee



type and provide a range of "low," "average," and "high".

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Process to Adopt an Impact Fee: Previously in this report, reference is made to the *rational nexus test*. In consideration of this, the following steps should be taken by a local government prior to assessing an impact fee:

- 1) Identify the specific purpose for which impact fee revenues are intended to be used, and the type, or basis, of the fee;
- 2) Request and obtain legal authority (local legislation) from the General Assembly enabling the governmental unit to charge the specific impact fee;
- 3) Utilize the Master Plan to determine the proportionate share of each element (water, sewer, parks, etc.) intended to be paid for from impact fees;
- 4) Establish the timing for expenditure of impact fee revenue, and identify the specific purpose or facilities for which the funds will be expended;
- 5) Adopt ordinances or policies, as appropriate, establishing the impact fee amount, and the procedure for collection, accounting, reporting and expenditure of revenue collected from the impact fee.

Other Issues: As a part of the consideration of impact fees, a jurisdiction should be aware of various issues surrounding the assessment of impact fees. The primary argument presented pertains to the increased costs to the home buyer and the effect on affordable housing. He then reviewed Attachment #5 which is information provided by the N.C. Home Builders Association which consists of items of consideration regarding impact fees.

This report is being provided to City Council as an overview on the topic of impact fees.

Mayor Sitnick said that she preferred to call these fees "participation fees." She felt that there are some things that the City should consider as the price of doing business in the City when a development is going to levy a cost to the members of the community. She said that she asked for this information in order for City Council to evaluate it and consider it as something they might want to look into as time goes by.

## **REPORTS ON BOARDS/COMMISSIONS**

Vice-Mayor Hay announced the Annual Board/Commission luncheon will be held on March 2, 1999, at Noon at the Asheville Civic Center.

## **SUPPORT OF THE STUDY OF THE BASF SITE FOR FUTURE ECONOMIC DEVELOPMENT**

City Manager Westbrook said that Carolina Power and Light (CP&L) and BASF have entered into an agreement which gives CP&L the exclusive right to evaluate and assess the BASF property for possible future economic development. One of the critical elements in economic development for the City of Asheville is identifying potential sites for quality economic development. The study by CP&L could possibly identify the BASF site as a strong economic development candidate and, thus, enhance Asheville's ability to attract quality economic development. The City, therefore, should endorse and cooperate with CP&L in its endeavor to perform this study.

After the City Council adopts the resolution, City staff will work with CP&L and others to provide any information we have concerning the BASF site. The City and CP&L feel this is a team effort which also

includes the County and the Chamber of Commerce.

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Staff recommends that City Council adopt the resolution supporting the study of the BASF site for future economic development potential.

Mayor Sitnick asked that the record show that City Council has received this information and instructs the City Manager to place this item on the next formal City Council agenda.

**CLOSED SESSION**

At 6:12 p.m., Councilman Cloninger moved to go into closed session to consider the qualifications, competence, performance, character, fitness, conditions of appointment, or conditions of initial employment of an individual public officer or employee or prospective public officer or employee - statutory authorization is G.S. 143-318.11 (a) (6). This motion was seconded by Councilman Sellers and carried unanimously.

At 8:00 p.m., Councilman Sellers moved to come out of closed session. This motion was seconded by Vice-Mayor Hay and carried unanimously.

**ADJOURNMENT:**

Mayor Sitnick adjourned the meeting at 8:00 p.m.

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CITY CLERK MAYOR

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