

Tuesday - March 23,1999 - 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 Deputy City Clerk Phyllis Corns

Absent: None

INVOCATION

Councilman Cobb gave the invocation.

I. PROCLAMATIONS:

A. RESOLUTION NO. 99-47 - RESOLUTION SUPPORTING THE PARKS, RECREATION AND GREENWAYS BOND REFERENDUM

Councilman Cloninger read the resolution which says that the Asheville Parks, Recreation and Greenways Bond Measure would provide \$18 million to expand and improve recreation opportunities through the preservation and acquisition of land for open spaces, natural areas, and greenways, the provision of new facilities, playfields and playgrounds; and renovation of existing parks and recreation facilities so as to enhance their utility and safety. The City Council of Asheville finds that neighborhood and community parks, natural areas and greenways, sports facilities and playing fields are a vital and necessary part of our community and help to preserve and improve the quality of life in the City of Asheville. The parks, recreation facilities and greenways confer significant health, environmental, and economic benefits to the community. The community parks and recreation facilities are in great need of funds to repair aging facilities and to meet the ever-growing demand for additional parks lands, greenways and facilities, and that this measure would help to address this need. The neighborhoods throughout the city will benefit from park expansion and improvement projects identified with extensive citizen input through the Parks and Recreation and Greenways Master Plans, developed and administered by the City's Department of Parks & Recreation. A broad-based coalition of citizens and community organizations has been formed to seek the approval of the voters for the Asheville Parks, Recreation and Greenways Bond Referendum. The City Council of the City of Asheville enthusiastically supports the Asheville Parks, Recreation and Greenways Bond Measure on the May 11 Special Election Ballot.

Mr. Russ Martin encouraged the City Council to encourage the voters of the City of Asheville to become informed about the measure and to vote in favor of it on May 11, 1999.

Resolution No. 99-47 was adopted by acclamation.

RESOLUTION BOOK NO. 25 - PAGE 176

B. PROCLAMATION PROCLAIMING THE WEEK OF MARCH 29-APRIL 4,1999, AS "COMMUNITY DEVELOPMENT WEEK" IN THE CITY OF ASHEVILLE

Councilwoman Field read the proclamation proclaiming the week of March 29-April 4, 1999, as "Community Development Week " in the City of Asheville. She presented the -2-

proclamation to Community Development Director Charlotte Caplan, who briefed City Council on some

activities taking place during the week.

C. PROCLAMATION PROCLAIMING THE WEEK OF MARCH 29-APRIL 2,1999, AS "ASHEVILLE, MARCH TO WORK WEEK"

Vice-Mayor Hay read the proclamation proclaiming the week of March 29-April 2, 1999, as "Asheville, March to Work Week" in the City of Asheville. He presented the proclamation to Mr. Calvin Underwood Jr. who briefed City Council on some activities taking place during the week.

D. GREAT ASHEVILLE-BUNCOMBE CLEAN-UP CAMPAIGN

Mayor Sitnick announced that on March 25, 1999, the Great Asheville-Buncombe Clean-Up Campaign will be kicked off on Tunnel Road. She encouraged everyone to participate in the various anti-litter events around the City.

E. ASHEVILLE FILM BOARD

Mayor Sitnick said that the Asheville Film Board had an Oscar party to honor people on the Film Board and encourage those living here who are active in the industry to celebrate Asheville's new efforts toward this economic development aspect of our strategic plan. On behalf of the Board, Mayor Sitnick presented Councilman Cloninger, liaison to the Film Board, an Oscar.

II. CONSENT:

Mayor Sitnick stated that Item I. has been pulled from the Consent Agenda.

A. ORDINANCE NO. 2555 - BUDGET AMENDMENT TO APPROPRIATE FUNDS FOR THE 1999 BELE CHERE FESTIVAL

Summary: The Parks and Recreation Advisory Board, Bele Chere Board, and Parks and Recreation Department staff are presenting the 1999 Bele Chere Budget for City Council approval.

This is a budget ordinance amendment appropriating revenue and expenditures for the 1999 Bele Chere Festival. This budget has been approved by the Parks and Recreation Advisory Board, Bele Chere Board, and Parks and Recreation staff. This request represents a balanced budget with appropriate revenue offsetting expenditures.

The Parks and Recreation Advisory Board, Bele Chere Board, and Parks and Recreation staff recommend City Council adopt the budget amendment to appropriate funds for 1999 Bele Chere Festival.

ORDINANCE BOOK NO. 17 - PAGE 284

B. RESOLUTION NO. 99-48 - RESOLUTION AUTHORIZING THE CITY MANAGER TO APPLY FOR AND ENTER INTO AN AGREEMENT WITH THE COMMUNITY FOUNDATION OF WESTERN NORTH CAROLINA FOR A GRANT TO DEVELOP AND IMPLEMENT OUTDOOR ADVENTURE ACTIVITIES FOR THE SUMMER TEEN PROGRAM

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Summary: The consideration of a resolution authorizing the City Manager to apply for and enter into an agreement with the Community Foundation of Western North Carolina for a grant to develop and implement outdoor adventure activities in the Summertime Kids 1999 Program.

Funds are available through the Community Foundation of Western North Carolina in the Summertime Kids 1999 program to provide fun and safe summer activities for youth. The Summer Teen Program is designed to provide recreation activities for teens ages 13-16 for eight weeks during the summer. The program is located at six locations throughout the city in community centers. The Teen Program will offer a wide variety of recreation activities and hands-on job training. Grant funds will be used to implement the outdoor enrichment activities including a challenge ropes course, rock climbing, rollerblading, and mountain biking. The amount of the grant request is \$1,950. The Parks and Recreation Department's in-kind match of \$26,708 will be in labor, administration, transportation, supplies, and training for the overall Summer Teen Program. The funds are budgeted in the Recreation Division.

The Parks and Recreation Department recommends City Council authorize the City Manager to apply for and enter into an agreement with the Community Foundation of Western North Carolina for a grant to develop and implement outdoor adventure activities in the Summertime Kids 1999 Program.

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C. RESOLUTION NO. 99-49 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ACCEPT A GRANT RESISTANCE EDUCATION AND TRAINING GRANT FROM THE BUREAU OF ALCOHOL, TOBACCO AND FIREARMS

Summary: The consideration of a resolution authorizing the City Manager to accept grant funds under the Department of the Treasury, Bureau of Alcohol, Tobacco, and Firearms, Gang Resistance Education and Training Program.

The City of Asheville has been awarded a grant under the Fiscal Year 1999 Gang Resistance Education and Training (G.R.E.A.T.) Grant Program in the amount of \$44,100.00. A local match of funds is not required. The purpose of the grant program is to fund the following three phases of G.R.E.A.T. education in the community:

Phase I: School-Based Education

Phase II: Summer Education/Recreation

Phase III: Parent Involvement Program

The specific implementation plan of the three phases has not yet been determined.

City staff recommends that the City Council authorize the City Manager to accept the Grant Resistance Education and Training Grant from the Bureau of Alcohol, Tobacco and Firearms.

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D. ORDINANCE NO. 2556 - BUDGET AMENDMENT TO ACCEPT THE GRANT RESISTANCE EDUCATION AND TRAINING GRANT

Summary: See Item "F" above. -4-

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E. RESOLUTION NO. 99-50 - RESOLUTION ESTABLISHING FAIR REUSE VALUES FOR 135 CHERRY STREET AND PARCEL 59X ON ASHELAND AVENUE

Summary: The consideration of a resolution establishing fair reuse values for 135 Cherry Street and Disposal

Parcel 59X in order to market the properties.

Disposal Parcel 59X is located on the west side of Asheland Avenue about 400 feet north of Phifer Street and comprises 27,835 square feet. Terrain includes an elevated berm along the street, some level to gently sloping land behind the berm, and some moderately sloping land at the south end of the lot. The property is crossed by easements which occupy approximately 18.8% of the property thus severely restricting the utility of the land. The zoning is Office Business. The site is best suited for parking and/or possible small commercial building. Francis Naeger, MAI, appraised the site at \$139,000 and Joseph Moore, Certified General Appraiser, reviewed the appraisal and recommended the appraised value.

Disposal Parcel 6D is located at 135 Cherry Street fronting the Montford Avenue exit ramp from I-240. The lot comprising 6974 square feet is elevated above street grade and level to gently sloping. Improvements consist of a two story, frame, residential structure of 1,984 square feet being used as offices and seven paved and striped parking spaces. The zoning is Office. Richard Jacobs, MAI, appraised the property at \$105,000 and Benjamin Beasley, MAI, reviewed the appraisal and recommended the appraised value.

Community Development staff recommends adoption of the resolution.

RESOLUTION BOOK NO. 25 - PAGE 179

F. RESOLUTION NO. 99-51- RESOLUTION AUTHORIZING THE CITY MANAGER TO AMEND THE TRAFFIC ENGINEERING CONTRACT WITH KUBILINS TRAFFIC CONSULTANTS INC.

Summary: The consideration of increasing the contract price for work to be performed for City of Asheville area by Kubilins Traffic Consultants, Inc. , consultant, to include reviews of Traffic Impact Analysis (TIA's), speed studies, stop sign warrants, etc. as requested by the City Engineer.

The City entered into a contract with Kubilins Traffic Consultants, Inc., to perform various traffic engineering analysis during the time the City was without a Traffic Engineer. The original contract was in the amount of \$20,000. Their services have proven to be extremely beneficial to the City of Asheville, in that they have been able to review TIA's very quickly, perform stop sign warrant analysis, and other traffic engineering tasks.

The City has hired a Traffic Engineer, Michael Moule, that will begin work on March 15, 1999. Staff would like to retain Kubilins Traffic Consultants to assist Mr. Moule in traffic engineering functions during his first six months of employment.

The funds for this amendment are in the Traffic Engineering Division's operating budget for professional services.

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Staff recommends that the City Council accept this amendment to increase the contract with Kubilins Traffic Consultants, Inc. in the amount of \$20,000 and authorize the City Manager to execute all necessary documents for this contract.

RESOLUTION BOOK NO. 25 - PAGE 180

G. ORDINANCE NO. 2557- BUDGET AMENDMENT TO REALLOCATE UNUSED HENDERSON COUNTY HOME FUNDS TO TRANSYLVANIA COUNTY HOUSING CORPORATION

Summary: The consideration of a budget amendment, in the amount of \$36,529, to reallocate unused HOME funds from Henderson County to Transylvania County Housing Development Corporation.

On September 22, 1998 the City received a letter from David E. Nicholson, Henderson County Manager. It stated that Henderson County had no projects on which to use the Fiscal Year 1994 HOME funds and chose to return the funds to the Asheville Regional Housing Consortium for use on other regional projects. On December 9, 1998, the Asheville Regional Housing Consortium Board voted to reallocate the unused funds from Henderson County to Transylvania County Housing Development Corp. Transylvania County Housing Development Corp. has proposed to use these funds for new construction activities in a subdivision it is developing.

City staff recommends City Council adopt a budget ordinance amendment, in the amount of \$36,529, to reallocate unused HOME funds from Henderson County to Transylvania County Housing Development Corporation.

ORDINANCE BOOK NO. 17 - PAGE 291

H. MOTION ENDORSING THE PARKS & RECREATION DEPARTMENT'S CONCEPT OF THE AT-RISK YOUTH INITIATIVE

I. RESOLUTION AUTHORIZING THE SALE OF A VACANT LOT ON PARK AVENUE

This item was pulled from Council's agenda.

J. RESOLUTION NO. 99-52- RESOLUTION ENCOURAGING OUR STATE LEGISLATORS TO SUPPORT HOUSE BILL 222, HOUSE BILL 352 AND SENATE BILL 287 WHICH STRENGTHENS THE LITTERING LAW

Summary: The consideration of a resolution endorsing and urging passage of House Bill 222, strengthening the penalties for littering violations..

On March 3, 1999, a bill was introduced in the North Carolina General Assembly to strengthen the littering laws of North Carolina by increasing the amounts of the minimum and maximum fines for violations, and by requiring community service as part of the penalty for violation. As City Council is aware, the City has identified littering as a problem of community-wide concern, and has undertaken its own efforts to improve enforcement of its anti-littering ordinances. Additionally, "The Great Asheville-Buncombe Cleanup" campaign begins on March 25, 1999, and the introduction of House Bill 222 is a useful coincidence with the announcement of this campaign. Currently, the penalty for littering of up to 15 pounds, which would encompass most of the violations that occur within the City, is a fine of from \$100 to \$500, and community - 6-

service, in the form of picking up litter, may be required. The fines escalate as the amount (measured in pounds) of litter increases, and the type and amount of community service and other remedial actions becomes more onerous on the violator. The proposed changes to the law would have the effect of increasing the minimum and maximum possible fines for each level of violation, and would require the court to impose community service as part of the penalty for the lowest class of violation. Currently, community service is discretionary with the court.

City Attorney Oast explained two additional bills (House Bill 352 and Senate Bill 287) which also improve enforcement of littering. He asked that these two additional bills be included in Council's resolution endorsement.

RESOLUTION BOOK NO. 25 - PAGE 181

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.

Councilwoman Field moved for the adoption of the Consent Agenda, with the addition of the two littering bills described by City Attorney Oast in Resolution No. 99-52. This motion was seconded by Councilman Tomes and carried unanimously.

III. PUBLIC HEARINGS:

A. PUBLIC HEARING RELATIVE TO REZONING PROPERTY LOCATED ON LIVINGSTON STREET, SOUTH FRENCH BROAD AVENUE AND CHOCTAW STREET FROM OFFICE BUSINESS DISTRICT TO OFFICE II DISTRICT

ORDINANCE NO. 2558 - ORDINANCE REZONING PROPERTY LOCATED ON LIVINGSTON STREET, SOUTH FRENCH BROAD AVENUE AND CHOCTAW STREET FROM OFFICE BUSINESS DISTRICT TO OFFICE II DISTRICT

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

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

Due to a conflict of interest, Vice-Mayor Hay moved to excuse Councilman Tomes from voting. This motion was seconded by Councilman Cloninger and carried unanimously.

Mr. Gerald Green, Senior Planner, said that this is the consideration of an ordinance rezoning property located on Livingston Street, South French Broad Avenue and Choctaw Street from Office Business District to Office II District.

The Asheville Planning and Zoning Commission, at their February 3, 1999, meeting, reviewed and recommended denial of the rezoning of property located on Livingston Street and South French Broad Avenue from Office District to Office II District. Eight parcels are included in the area being considered for rezoning. Current land uses on the parcels include medical offices, a credit union, a clinic, a community center, and some vacant land. The current Office zoning of the property permits structures with a maximum footprint of 4,000 sq. ft. and up to 8,000 sq. ft. total floor area. The proposed zoning would increase the permitted structure size to a footprint of 8,000 sq. ft. and a maximum gross floor area of 16,000 sq. ft. Three of the existing structures (out of seven) in the area are currently non-conforming due to size and a proposed structure exceeds the size currently permitted. The proposed rezoning would make -7-

those buildings conforming in terms of the footprint, except for the recreation center (over 20,000 square feet) which will still slightly exceed the maximum footprint permitted for the proposed Office II zoning. The streets which access the property are adequate to serve the scale of development permitted under the Office II zoning. The scale of existing structures in the area is varied, with the larger institutional uses on Livingston Street transitioning to the residential scale uses of South French Broad Avenue. The vacant property has been purchased by the Opportunity Corporation which wishes to build an office in that area, which original plans call for a building larger than permitted under the current Office zoning.

Comments from the public regarding this request identified a concern that the size of development permitted in the Office II District would be out of scale with the residential uses in the South French Avenue area, even though this proposal will decrease the allowable structure size.

The Planning and Development staff recommend approval of the rezoning. At their meeting on February 3, 1999, the Asheville Planning and Zoning Commission voted 5 to 1 to recommend denial of the rezoning.

The following persons spoke in opposition to the rezoning (not against the Opportunity Corporation and not

against child care) for several reasons, some being, but not limited to: residents do not want to increase the allowable dimensions of office structures in this area; the Opportunity Corporation can building something in the legal requirements of the existing Office zoning or there are other sites in the City that can accommodate them; conflict of established homes in the area (around 1,000 square feet) and the proposal of allowing 16,000 square feet (with an 8,000 square foot footprint); topography of the area may cause buffering concerns between conflicting uses; additional traffic from larger buildings; area is ideal for affordable housing and Office II zoning is too intrusive for the residential area; possibility of using a rezoning proposal to essentially obscure an illegal spot zoning (Opportunity Corporation building); possible decrease in the value of homes by the appearance of a large structure; Gaston Street is a very narrow street and will not accommodate additional traffic; and the proposed entrance on Gaston Street is in a very sharp curve which will be a safety hazard to children:

Mr. Mel Thomason, property owner on Ora Street

Mr. William Coxe, resident of 24 Gaston Street

Ms. Ann Hunting Williams, resident of 48 Gaston Street

Mr. Edward Smith, representative of the Southside Community Organization

Ms. Sandra Davis, resident of 16 Gaston Street

Ms. Mildred Nance Carson, resident of Gaston Street

Upon inquiry of Mayor Sitnick, City Attorney Oast said that only a court can determine if something is spot zoning or not, however, they do look at certain factors, like if a tract of land under single ownership has been singled out for treatment different from the treatment afforded to its neighbors. The size is one factor in that, but so are the number of parcels involved.

City Attorney Oast advised Council to disregard any specific representation about what use the property may be put to because if it is rezoned to Office II, it can be used for any admissible purpose in that designation.

Ms. Vicki Heidinger, representative of the Opportunity Corporation, reviewed with Council the history of the Reid Center Annex Building. In 1997 they made a proposal to City staff to renovate the building in order to re-open it for a Head Start Child Development Center. In the spring of 1997, they submitted a request to their funders to serve 100 children at this site. Their request was approved for 96 children, however, their current plans are to serve 90 children. -8-

When they began their design in early 1998, they discovered an error in Unified Development Ordinance language for permitted uses for child care (they were told that they could only be permitted for 50 children). At that time they did not understand that there would be a limit or a cap set on the number of children that can be served in the Office zoning designation. They believe that the impact on the community of 50 children under the current zoning versus 100 children under the proposed rezoning is limited. They believe the impact of this zoning change for this child care facility will not adversely impact the neighborhood adjacent to the Reid Center, however, the number of children in the building is absolutely critical to the Opportunity Corporation and to the viability of the project. Had they known they would be limited to 50 in the building, they would not have pursued the project. She said that their proposed building (9,000 total square feet as designed at this point), will be a very low impact in the residential-flavor neighborhood area. They will be willing to work more with the neighborhood with concerns around safety or adequacy of entrance. She said that in order to bring the building back into scale of the Office designation (8,000 square feet) would mean a significant loss of things, most notably a community resource room, and it would also create a problem for their long term viability in the area.

Mr. Calvin Underwood, Director of the Buncombe County Department of Social Services, said that this will be an asset to the low income families in the area that need quality child day care.

Upon inquiry of Mayor Sitnick about the lack of the Opportunity Corporation's notice of the Planning & Zoning Commission meeting, City Manager Westbrook said that the City uses the Buncombe County's database for notifying property owners in the area.

Ms. Willie Mae Brown, member of the Board of Directors for the Opportunity Corporation, stressed that this facility will benefit the children.

Mr. Daniel Breen suggested a one story building be built with the top being 4,000 square feet and the basement being 5,000 square feet.

Ms. D. Blake, former resident of Erskine Street, spoke about her positive experience with the child day care in the area.

Upon inquiry of Mayor Sitnick about a possible variance, Ms. Heidinger said that they did consider applying to the Board of Adjustment for a variance for the child care center, however, they were told that it was not a good idea for the City to give a variance on their own building (the Opportunity Corporation leases the building from the City of Asheville).

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

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

Councilman Sellers moved for the adoption of Ordinance No. 2558. This motion was seconded by Councilman Cloninger.

Vice-Mayor Hay felt that had the Office II District been available when the Unified Development Ordinance was adopted the area probably would have been designated the Office II designation. He also felt that there wasn't any room for expansion of the existing buildings.

Mayor Sitnick said that she is basically opposed to intruding deep into neighborhoods, however, (1) we are not expanding the Office District and there is no chance that it will be expanded; and (2) the area is already developed out and won't have any more opportunity for -9-

large construction. She noted also that the Opportunity Corporation will only be adding 500 square feet to the footprint.

Councilwoman Field noted that three out of the six existing buildings in the area are out of compliance.

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

ORDINANCE BOOK NO. 17 - PAGE 293

B. PUBLIC HEARING RELATIVE TO ZONING SECTION 12 OF BILTMORE PARK TO RS-8 RESIDENTIAL SINGLE-FAMILY HIGH DENSITY DISTRICT

ORDINANCE NO. 2559 - ORDINANCE ZONING SECTION 12 OF BILTMORE PARK TO RS-8 RESIDENTIAL SINGLE-FAMILY HIGH DENSITY DISTRICT

Mayor Sitnick opened the public hearing at 6:47 p.m.

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

Mr. Bruce Black, Urban Planner, said that this is the consideration of an ordinance to zone Section 12 of Biltmore Park RS-8 Residential High Density District.

The owner and applicant, Biltmore Farms Inc., has requested the zoning of Section 12 of Biltmore Park Subdivision to RS-8 Residential Single-Family High Density District. This section was annexed into the City of Asheville effective December 23, 1998.

The Planning staff reviewed the rezoning request and recommended **Error! Reference source not found.** to the Planning and Zoning Commission. At their March 3, 1999, meeting, the Planning & Zoning Commission voted five to **Error! Reference source not found.** to recommend **Error! Reference source not found.** of the initial zoning of Section 12 of Biltmore Park Subdivision as RS-8 Residential Single-Family High Density District.

Mayor Sitnick closed the public hearing at 6:58 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 moved for the adoption of Ordinance No. 2559. This motion was seconded by Councilman Tomes and carried unanimously.

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C. PUBLIC HEARING RELATIVE TO REZONING 49 ACRES OFF GERBER ROAD FROM INDUSTRIAL DISTRICT TO COMMERCIAL INDUSTRIAL DISTRICT

ORDINANCE NO. 2560 - ORDINANCE REZONING APPROXIMATELY 21.57 ACRES OFF GERBER ROAD FROM INDUSTRIAL DISTRICT TO COMMERCIAL INDUSTRIAL DISTRICT

Mayor Sitnick opened the public hearing at 6:59 p.m. -10-

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

Mr. Bruce Black, Urban Planner, said that this is the consideration of a request to rezone a portion of the Gerber industrial property on Gerber Road from Industrial District to Commercial Industrial District.

The owners and applicants, Gerber Products Company and Asheville Hendersonville Investors LLC., represented by Van Winkle Law Firm, have requested the rezoning of a portion of the Gerber property (approximately 40 acres) on Gerber Road (PIN No. 9655-9-26-4955) from Industrial District to Commercial Industrial District.

This property, located north of Gerber Road and east of Hendersonville Road, is currently occupied by an industrial structure of about 600,000 square feet. The land is flat and developed, with direct rail access. All of the land is usable for industrial purposes.

The front portion of the existing industrial structure was constructed purely for the purposes of Gerber Products Company, and is not generally usable by other industrial firms (per the Chamber of Commerce). The assumption is that any industrial or other user of the property would likely have to raise at least the southerly half of the existing structure to make use of the property. The northerly one half of the structure is more generally usable for industrial purposes. There is a water treatment facility designed for use by Gerber Products Company in treatment of process water which is located south of Gerber Road, and is currently

zoned Commercial Industrial, and is not a part of the rezoning request.

The property is bounded on the east side by over 1200 feet of rail footage. There is a rail spur onto the property. On the south side the property is traversed or bounded by Gerber Road, which has a signalized intersection with Hendersonville Road. On the west side, a small portion of the property fronts on Hendersonville Road and has an office building located on it. This did not serve as a main access for the plant traffic. The remainder of the property on the west side and all of the property on the north side is adjacent to a Highway Business District.

Gerber Road is a two lane road 22 feet in width, shown in City records to be a City maintained street. The Gerber Products plant was accessed by this road during its operation, and served general public traffic as well as plant employee traffic and semi-tractor truck traffic serving the plant.

The application for Commercial Industrial zoning would allow the property to be developed or used for either industrial or commercial uses. This could include uses similar to the Gerber plant or large scale retail commercial uses. According to the City Engineering Department, a large scale retail use on the property could increase the traffic on Gerber Road, compared to the Gerber plant with it was in operation.

At their meeting of February 23, 1999, City Council approved the selection of Lockwood Greene Consulting to perform the Strategic Plan for Economic Development for the City of Asheville. One of the tasks contained in the Scope of Work for this project includes the following:

Perform a location and site analysis of the City of Asheville and future

growth areas for the City including an examination of select locations/sites, environmental/engineering review and financial calculations for each

location/site.

The time frame provided to complete the Strategic Plan by Lockwood Greene Consulting is four months. In discussions with Mr. Dave Kolzow subsequent to the Planning and Zoning -11-

Commission meeting, he agreed to do the site assessment of the Gerber property and formulate a recommendation to the City regarding potential future use of the property within 30 days.

Staff feels that it is in the best interest of the City to receive input from the Strategic Plan prior to action which could result in loss of this site from the industrial zoned property inventory. The two dissenting votes by the Planning Commission members included similar concerns.

The Planning staff remains concerned about removing this property from the inventory of available industrial land in the City of Asheville, and recommends that consideration of this zoning request be delayed until the completion of that portion of the Strategic Plan for Economic Development which will focus on the Gerber Property.

The Planning and Zoning Commission, at its meeting of March 3, 1999, recommended approval by a vote of three to two. The two dissenting votes shared staff's concern regarding loss of this property from the inventory of available industrial land and the likelihood it would be developed as a commercial development.

After the Planning & Zoning Commission meeting, the attorney for the applicant met with City staff on March 22, 1999, and after discussions, the applicant indicated that they would be receptive to reducing the acreage of the rezoning request such that only the southern portion adjacent to Gerber Road, comprising approximately 22 acres, would be requested to be rezoned to Commercial Industrial.

This is based on the applicant's intention to continue the use of the northern or back part of the property, the part containing the relatively new buildings, for industrial uses consistent with the current zoning classification.

By requesting the Community Industrial zoning, it is also the applicant's intent to gain flexibility on the remaining section of the parcel which currently contains the older more specialized buildings.

The applicant has been unable to sell the Gerber Plant primarily because of the specialized construction on the southern part of the property. Due to the building construction, users would more likely either have to demolish this portion or be a "wet" type industrial user (e.g., food processor or textile manufacturer) which are not prevalent users in today's market.

The applicant also desires to maintain access to the northern portion of the property regardless of the eventual use of the southern portion of the property north of Gerber Road. To do this, the applicant must maintain an Industrial or Commercial Industrial zoning on the southern portion of the property.

Staff has continuously expressed a concern about the transference of industrial property to categories which could allow the industrial use of the property to be lost. Therefore, the applicant seems amenable to modifying the request to ask for rezoning to Commercial Industrial on only the southern portion of the property, with the northern portion of the property remaining as it currently is zoned, Industrial District. Such an action by Council is provided for in the Unified Development Ordinance under Section 7-7-5 (3) d., Pg. CD7:123.

This request would preserve about half of the property as Industrial, allow access through the Commercial Industrial section of the property to the Industrial section of the property, and create a more flexible situation for the applicant on the southern portion of the property, while satisfying the applicant's stated intent to continue to use the northern portion of the property for industrial uses.

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In the event that the applicant revises the rezoning request such that only the southern portion (approximately 22 acres of the 49 acre site) is requested to be rezoned to Commercial Industrial, staff supports this request. This is based upon the necessity to demolish the southern portion of the building to facilitate new development.

Mr. Craig Justus, attorney representing the developer and applicant, said that their original request was for the rezoning of the entire 49 acre tract. He passed out an aerial photograph of the modified rezoning request. Since the Planning & Zoning Commission meeting, he has met with staff to talk about staff's concerns. After that meeting, they have decided to modify the rezoning request such that only the southern portion (approximately 21.57 acres) be requested to be rezoned Commercial Industrial and that the northern portion (approximately 25 acres) remain zoned Industrial. The original reason they asked for the entire 49 acres to be Commercial Industrial was because they were concerned about the question of whether they could drive through a Commercial Industrial zone to get back to the property zoned Industrial. Initial discussions with staff was that they could not do that, however, after the Interim Planning & Development Director's interpretation is that they can actually drive through the Commercial Industrial District to industrially zoned property.

Councilwoman Field said that the City has been accused many times about running Gerber out, by over-regulating, but was delighted to hear that we will be doing something to add to the tax base in an area that is certainly appropriate for this kind of development.

Mayor Sitnick closed the public hearing at 7:15 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 moved for the adoption of Ordinance No. 2560 to rezone approximately 21.57 acres of property adjacent to Gerber Road from Industrial to Commercial Industrial. This motion was seconded by Councilman Sellers and carried unanimously.

ORDINANCE BOOK NO. 17 - PAGE 297

IV. UNFINISHED BUSINESS:

V. NEW BUSINESS:

A. CONSIDERATION OF WAIVING THE ASHEVILLE STANDARD SPECIFICATIONS AND DETAILS MANUAL SIDEWALK REQUIREMENT FOR SWEETEN CREEK MINI-STORAGE AT 2600 SWEETEN CREEK ROAD

Ms. Cathy Ball, Director of Engineering, said that this is the consideration of waiving the Unified Development Ordinance (UDO) and the Asheville Standard Specifications and Details Manual (Standards Manual) requirement for a sidewalk along Sweeten Creek Road for Sweeten Creek Mini-Storage.

Section 7-8-16 (f) (10) of the Unified Development Ordinance requires that new construction on property zoned Regional Business District place sidewalks as specified in the Asheville Standard Specifications and Details Manual (Standards Manual) along street rights-of-way. M.W.I. Properties, LLC, the developer for Sweeten Creek Mini-Storage, proposes to build a self-storage facility at 2600 Sweeten Creek Road. Sweeten Creek Road is a state maintained road.

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The Standards Manual requires a five foot sidewalk along the rights-of-way for all newly developed non-residential projects. The Standards Manual requires any waiver be granted by the City Council with a recommendation presented by staff.

Staff does not recommend that City Council waive the requirement that a sidewalk be placed on Sweeten Creek Road due to the fact that Sweeten Creek Road is a major thoroughfare and according to our Standards Manual sidewalks should be placed on both sides of the road. The widening of this section of Sweeten Creek Road is currently scheduled for 2008. If the sidewalk exists at the time the N.C. Dept. of Transportation widens the road, the State pays 100% of the costs to construct a new sidewalk. Currently the City does not have a procedure whereby the developer can pay for the costs of the sidewalk in lieu of constructing it.

City staff requests that City Council not waive the requirement that a sidewalk be placed along Sweeten Creek Road as required by the UDO Section 7-8-16 (f) (10) for the Sweeten Creek Mini-Storage Facility.

Upon inquiry of Councilwoman Field about when the Pedestrian Thoroughfare Plan (which contains the provision whereby the developer can pay for the costs of the sidewalk in lieu of constructing it) will be adopted, Ms. Ball said that the Plan will be before City Council by the end of May, 1999. Ms. Ball stated that the applicant would not be able to obtain their Certificate of Occupancy until this issue is resolved.

When Councilman Sellers asked about the cost for installing the sidewalk, Ms. Ball said that since this is a very large linear footage (430 feet) so there is a substantial cost (about \$6-7/foot) in putting in a five-foot concrete sidewalk.

Mr. Mike Robinson, President of M.W.I. Properties, said that in October of 1998 he filed an appeal with the Board of Adjustment and the Board was supposed to meet December 21. On the morning of December 21 he was told that he was not to appear and has yet to get his \$100 filing fee returned. Since that time he has been working on getting to this point. His appeal to the Board was that there are no sidewalks (approximately 6-8 miles) from Biltmore to the Airport on Sweeten Creek Road at this time. There has been new development established within the last year down from his property and they have not had to put in new sidewalks. He felt it was not fair for the developers to install this sidewalk. He said they do plan to do more than what the landscape ordinance requires them to do. He wondered if the properties that are already built will be grand-fathered in and will the City have to build the sidewalks in the future. He also questioned who will maintain the sidewalks. He felt that since there is such a great demand for sidewalks on major thoroughfares, why isn't there a bond referendum to see if the public actually supports it, instead of just the UDO.

Mr. Dennis Weaver, representing the Ballantree Homeowners Association which is directly across this development, said that they have met with the developers and they have been very responsive to their requests in terms of lighting, signage, security concerns and a buffer zone. They are opposed to the enforcement of the requirement for a sidewalk along Sweeten Creek Road for Sweeten Creek Mini-Storage. He said this sidewalk would create a safety hazard to our children because it would be the only strip of sidewalk on a very busy road. There is no development there to cater to foot traffic. The sidewalk would go nowhere and serve no purpose.

Upon inquiry of Councilwoman Field, Ms. Ball said that in the Transportation Improvement Plan, sidewalks will be required on one side of Sweeten Creek Road.

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Ms. Ball said that the three projects on Sweeten Creek Road that Mr. Robinson said did not put sidewalks in was that two of them were both approved prior to adoption of the UDO and the other project had a bond posted.

Councilwoman Field said that ultimately there will be a complete sidewalk, however, right now it makes sense for there to be a buffer.

Ms. Ball suggested that the City issue the developer a temporary Certificate of Occupancy until the Pedestrian Thoroughfare Plan is before City Council for adoption. If, in the Pedestrian Thoroughfare Plan, the provision whereby the developer can pay for the costs of the sidewalk in lieu of constructing it, is not specifically spelled out, Engineering Department staff will work with the Public Works staff to make sure make that provision is part of the Plan.

City Manager Westbrook said that there will be standards in the Pedestrian Thoroughfare Plan.

Vice-Mayor Hay said that Council is trying to find a way to avoid building a sidewalk now and still acknowledge that there will be sidewalks built all along Sweeten Creek Road.

Upon inquiry of Councilman Cloninger, City Attorney Oast said that Council can refer this back to staff to see if there are alternatives available.

Vice-Mayor Hay suggested Council authorize staff to issue a temporary Certificate of Occupancy, so the developer can proceed with his project, until staff reports back with the available alternatives.

Upon inquiry of Councilman Sellers, Mr. Robinson said that they are under construction now and the project will probably not be completed for another three to four months.

City Attorney Oast said that any Certificate of Occupancy or any approvals could be subject to compliance with whatever Council ultimately decides.

Ms. Ball said that the Pedestrian Thoroughfare Plan reads that "it is recommended that an impact fee for financing pedestrian projects be established."

City Attorney Oast said that the City may not have statutory authority to require fees in lieu of and he would like to have the opportunity to research this issue. He did think that the City can work out an arrangement whereby the developer can proceed with construction and the Certificate of Occupancy can be issued possibly subject to later compliance with whatever ordinance Council does adopt and perhaps a bond taken to secure performance.

It was the consensus of Council to defer this matter back to staff to find out what alternatives are available and then report back to Council as quickly as possible.

Councilwoman Field asked Mr. Michael Moule, the City's Traffic Engineer, to report back to Council with some information regarding street widths and the capacity of those streets. Mr. Moule said that he would give Council that information, however, it is really dependent on if there is a traffic signal, parking on the street, or other features in the area. He felt that most streets need to be reviewed on a case by case basis.

VI. OTHER BUSINESS:

A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON MARCH 9, 1999, AND THE WORKSESSION HELD ON MARCH 16, 1999 -15-

Councilman Tomes moved for the adoption of the minutes of the regular meeting held on March 9, 1999, and the worksession held on March 16, 1999. This motion was seconded by Councilman Sellers and carried unanimously.

B. CLAIMS

The following claims were received by the City of Asheville during the week of February 26 - March 18, 1999: Terry Owen (Water), George Loftis (Water), George Morosani (Water) and Richard Gorglione (Water).

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

VII. INFORMAL DISCUSSION AND PUBLIC COMMENT:

Anti-Litter Campaign

Councilman Cloninger thanked Mayor Sitnick for her leadership on the anti-litter campaign.

Closed Session

At 7:49 p.m., Councilwoman Field moved to go into closed session to consult with an attorney employed by the City in order to preserve the attorney-client privilege between the City and its attorney. The parties to the lawsuit about which the Council expects to receive advice are: CC&J Enterprise, the City of Asheville, and the Jackson Park/Woolsey Neighborhood Association - G.S. 143-318.11 (a) (3). This motion was seconded by Councilman Sellers and carried unanimously.

At 8:07 p.m., Councilman Sellers moved to come out of closed session. This motion was seconded by Councilman Cobb and carried unanimously.

VIII. ADJOURNMENT:

Mayor Sitnick adjourned the meeting at 8:07 p.m.

CITY CLERK MAYOR
