

Tuesday - April 13, 1999 - 5:00 p.m.

Regular Meeting

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

Absent: None

**INVOCATION**

Vice-Mayor Hay gave the invocation.

**PROCLAMATIONS:**

**A. PROCLAMATION PROCLAIMING APRIL 1999 AS "CHILD ABUSE PREVENTION MONTH"**

Vice-Mayor Hay read the proclamation proclaiming April 1999, as "Child Abuse Prevention Month" in the City of Asheville. She presented the proclamation to Ms. Janet Anderson who briefed City Council on some activities taking place during the month.

**B. PROCLAMATION PROCLAIMING APRIL 17-30, 1999, AS "LITTER SWEEP DAYS"**

Mayor Sitnick read the proclamation proclaiming April 17-30, 1999, as "Litter Sweep Days" in the City of Asheville.

**C. RESOLUTION NO. 99-53 - RESOLUTION RENAMING THE PARK MAINTENANCE FACILITY AS THE RICHARD B. MEEHAN PARK MAINTENANCE FACILITY**

Parks & Recreation Director Irby Brinson said that this is the consideration of a resolution renaming the Park Maintenance Facility in honor of the former Superintendent of Parks and Public Facilities Richard B. Meehan.

The staff of the Parks and Recreation Department made a recommendation to the Advisory Board that the Park Maintenance Facility be renamed to honor Richard B. Meehan. Dick worked for the Parks and Recreation Department for 31 years in the position of Superintendent of Parks and Public Facilities. During this tenure, Dick was instrumental in the development of the park facilities as they currently exist today. His dedication to the parks and recreation profession is a direct indication of the quality of the current park system. Dick has always worked diligently to find solutions to difficult problems and then served these solutions as models for future park development. The staff feels that no better recognition could be paid to Dick Meehan than to name the Park Maintenance facility in his honor.

The Parks and Recreation Advisory Board and staff recommend that City Council approve the resolution renaming the Park Maintenance Facility as the Richard B. Meehan Park Maintenance Facility.

Mayor Sitnick said that members of Council have been previously furnished with a copy of the resolution and it would not be read. -2-

Resolution No. 99-53 was adopted by acclamation.

**RESOLUTION BOOK NO. 25 - PAGE 182**

**CONSENT:**

**A. RESOLUTION NO. 99-54 - RESOLUTION OF INTENT TO SET A PUBLIC HEARING ON MAY 11, 1999, TO CLOSE AN UNOPENED PORTION OF POND AVENUE OFF LEE STREET**

Summary: The consideration of a resolution of intent to permanently close a portion of Pond Avenue off Lee Street and setting a public hearing on May 11, 1999.

A petition has been received from Lucie Mae Ratliff requesting that Pond Avenue from Lee Street to the intersection with the Southern Railway Company right-of-way be permanently closed to public use.

The petition received includes the affidavit of Lucie Mae Ratliff, owner of parcels 9654.05-19-4691 and 4882. Ms. Ratliff owns all of the property with frontage on the unopened street between Lee Street and the Southern Railway right-of-way that has been petitioned to be closed.

This portion of Pond Avenue is a paper street and has never been used as a street. The City has no plans to utilize this street. All utility companies will be contacted, the resolution of intent to close a portion of Pond Avenue off Lee Street will be advertised in a local paper, and the location will be posted with the resolution of intent to close.

The Public Works Department staff recommends the resolution of intent to permanently close Pond Avenue from Lee Street in a easterly direction to the intersection with the Southern Railway right-of-way be adopted.

**RESOLUTION BOOK NO. 25 - PAGE 183**

**B. RESOLUTION NO. 99-55 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A CONTRACT WITH CAROLINA MOUNTAIN CONSTRUCTION CO. TO STABILIZE THE ZEALANDIA BRIDGE**

Summary: This is the consideration of the selection of a contractor to stabilize the Zealandia Bridge located on Beaumont Gap.

Due to significant design changes, the City, through the Public Works Department, re-bid the Zealandia Bridge Stabilization project. Two bids proposals were received. The bidders were qualified and listed below:

Company	MB Part	Drug Free	Bond	Bid
Carolina Mountain Construction Co. Inc.	100%	Yes	Yes	\$57,865 <u>Alternate #1</u> \$53,685
Taylor and Murphy	0	Yes	Yes	\$73,000 <u>Alternate #1</u> \$78,000

Please note that Alternate #1 includes "tuck pointing" as opposed to netting the bridge as outlined in the base bid. A budget amendment of \$50,000 was approved by City Council for this project on January 12, 1999. The additional \$3,685 necessary to execute the contract will be covered under the Public Works Departments operational budget.

Staff from the Public Works Department recommends City Council adopt the resolution authorizing the City Manager to enter into contract with Carolina Mountain Construction Co., Inc., in the amount of \$53,685, to stabilize the Zealandia Bridge.

**RESOLUTION BOOK NO. 25 - PAGE 184**

**C. RESOLUTION NO. 99-56 - RESOLUTION AUTHORIZING THE MAYOR TO ENTER INTO AN AGREEMENT WITH LUSTAR DYEING AND FINISHING INC. TO PARTICIPATE IN CAPITAL IMPROVEMENTS**

Summary: The consideration of entering into an agreement and appropriating funds as an economic development incentive for Lustar Dyeing and Finishing, Inc.

Lustar Dyeing and Finishing, Inc. (Lustar) is located on Caribou Road in the corporate limits of the City of Asheville. In 1997 representatives of Lustar contacted the City of Asheville requesting consideration of economic development incentives as a part of a proposal to expand their operations at the current facility. City staff reviewed the request and determined that based upon their projected investment of \$3.6 million the City contribution would be in an amount not to exceed \$76,950. The City's projected contribution was based upon the property tax revenue over a five (5) year period. Additionally, the development was to create approximately 20 new jobs paying an average wage of \$12.50 per hour. Resolution 97-248 is related to this project and was adopted by Council on December 16, 1997.

Lustar has now completed the expansion of their facility. Staff has prepared a revised agreement for consideration by City Council. I would also note that prior to the disbursement of any funds to Lustar, they must provide the City with a Letter of Credit in the full amount of the City's

contribution which will allow the City to recoup any funds paid out during the five (5) year period should Lustar not uphold the terms of the agreement.

Staff is in the process of finalizing and verifying amounts related to the agreement. Additionally, staff has prepared a budget ordinance amendment in the amount of \$76,950 appropriating funds in accordance with prior City Council action.

Staff recommends that the revised agreement and budget ordinance amendment be approved by City Council allowing the disbursement of funds in the amount of \$76,950 to Lustar Dyeing and Finishing, Inc.

**RESOLUTION BOOK NO. 25 - PAGE 185**

**D. ORDINANCE NO. 2561 - BUDGET AMENDMENT FOR LUSTAR ECONOMIC DEVELOPMENT GRANT**

Summary: See Consent Agenda Item "C" above.

**ORDINANCE BOOK NO. 17 - PAGE 299**

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**E. RESOLUTION NO. 99-57 - RESOLUTION AUTHORIZING THE CITY MANAGER TO APPLY FOR AND ENTER INTO AN AGREEMENT WITH THE N.C. DEPT. OF HEALTH AND HUMAN RESOURCES TO**

## **FUND THE FOOD SERVICE FOR THE SUMMER DAY CAMP PROGRAM**

Summary: The City of Asheville wishes to apply for funding through the North Carolina Department of Health and Human Resources, Division of Maternal and Child Health, Child and Adult Care Food Program to provide food service in the Summer Day Camp Program.

The Summer Day Camp Program will provide supervised licensed child care, recreation, enrichment activities, and food service for children in kindergarten through 5th grade, June 7 through August 6, 1999, Monday through Friday, 7:30 a.m. 6 p.m. \$75 per week for city residents, \$85 per week for non-city residents. Sites will be located at Claxton, Hall Fletcher, Jones, Dickson, and Vance Elementary Schools; and Reid Community Center. Breakfast, lunch and snacks will be provided daily at no extra cost. The number of meals and amount of reimbursement will vary based on the total meals actually served each month.

The Parks and Recreation Department recommends the City of Asheville apply for the Summer Food Service Program for Children through the North Carolina Department of Health and Human Resources.

### **RESOLUTION BOOK NO. 25 - PAGE 187**

#### **F. RESOLUTION NO. 99-58 - RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE AN EASEMENT IN FAVOR OF THE METROPOLITAN SEWERAGE DISTRICT ACROSS PROPERTY OWNED BY THE CITY OF ASHEVILLE AND KNOWN AS THE ROGER D. FARMER MEMORIAL PARK**

Summary: The staff is recommending that the City grant an easement for an upgrade to an existing sewer line which will be upgraded in Roger D. Farmer Memorial Park.

Staff has been working with Martin-McGill, a consultant for the Metropolitan Sewerage District, in coordinating improvements to be made on an existing sanitary sewer line and its permanent easement. The Parks and Recreation staff concurs with the final easement agreement draft, addendum and other provisions which will return the site to its current condition. The existing sewer line improvement and easement will not interfere with the usage of the park.

Staff recommends that the City grant an easement for an upgrade to an existing sewer line to the Metropolitan Sewerage District which will be upgraded in Roger D. Farmer Memorial Park. The language of the easement agreement is subject to the approval of the City Attorney's office.

### **RESOLUTION BOOK NO. 25 - PAGE 188**

#### **G. MOTION SETTING A PUBLIC HEARING ON APRIL 27, 1999, TO REZONE ALL OF EIGHT LOTS LOCATED ON ASHELAND AVENUE AND SOUTH GROVE STREET FROM OFFICE BUSINESS DISTRICT TO OFFICE II DISTRICT, EXCEPT FOR A PORTION OF ONE LOT BEING REZONED FROM REGIONAL BUSINESS DISTRICT TO OFFICE II DISTRICT AND A ONE FOOT STRIP ALONG FOUR LOTS ON SOUTH GROVE STREET BEING REZONED FROM OFFICE BUSINESS DISTRICT TO RS-8 RESIDENTIAL SINGLE FAMILY HIGH DENSITY DISTRICT**

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#### **H. MOTION SETTING A PUBLIC HEARING ON APRIL 27, 1999, TO REZONE A PORTION OF ONE LOT LOCATED ON ASHELAND AVENUE FROM OFFICE BUSINESS DISTRICT TO REGIONAL BUSINESS DISTRICT, EXCEPT FOR A ONE FOOT STRIP ALONG THE LOT BOUNDARY ON SOUTH GROVE STREET BEING REZONED FROM OFFICE BUSINESS DISTRICT TO RS-8 RESIDENTIAL SINGLE FAMILY HIGH DENSITY DISTRICT**

#### **I. MOTION SETTING A PUBLIC HEARING ON APRIL 27, 19997, TO AMEND CHAPTER 7 OF THE CODE**

**OF ORDINANCES (UNIFIED DEVELOPMENT ORDINANCE) TO CHANGE THE METHOD FOR DETERMINING WHEN SIGNIFICANT CHANGES HAVE BEEN MADE TO PRELIMINARY PLATS SO THAT FURTHER REVIEW BY THE TECHNICAL REVIEW COMMITTEE AND/OR THE PLANNING AND ZONING COMMISSION IS REQUIRED**

**J. MOTION SETTING A PUBLIC HEARING ON APRIL 27, 1999, TO AMEND CHAPTER 7 OF THE CODE OF ORDINANCES (UNIFIED DEVELOPMENT ORDINANCE) TO PROVIDE REGULATIONS FOR SIGNS FOR SECOND TIER DEVELOPMENT**

**K. MOTION TO PRE-APPROVE A LOAN COMMITMENT FOR \$349,894 IN 1999/2000 HOME FUNDS TO MOUNTAIN HOUSING OPPORTUNITIES' WIND RIDGE PROJECT**

Summary: The consideration of a motion to pre-approve a loan commitment for \$349,894 in 1999/2000 HOME funds to Mountain Housing Opportunities (MHO) for its Wind Ridge Project, prior to approving the entire HOME and CDBG Consolidated Plan in May.

The Asheville Regional Housing Consortium has recommended a \$349,894 HOME loan to MHO as part of the City's Consolidated Plan for the 1999/2000 CDBG and HOME programs. The Consolidated Plan is currently in its public comment phase, and is due to be discussed by Council on May 4 and 11 prior to submission to HUD on May 14. However, MHO needs a written commitment of funding before April 23, in order to satisfy state application requirements for the Low Income Housing Tax Credit program.

The Wind Ridge Project will develop 40 high quality rental apartments for low-income families on 8 acres off Compton Drive (currently part of the Eliada Home property). Project financing depends on its receiving \$1,682,869 in Low Income Housing Tax Credits, in addition to an allocation of HOME funds, a bank loan and other public and private support. The project has received an extremely high rating in the first round of Tax Credit reviews, but MHO must provide evidence of the other financial support before April 23 in order to proceed to the final round.

Failure to provide evidence of the HOME commitment will cause MHO to forfeit its chance of competing for 1999 Low Income Housing Tax Credits.

City staff recommends pre-approval of a loan commitment of \$349,894 in 1999/2000 HOME funds for MHO's Wind Ridge Project.

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

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

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**CLOSED SESSION**

At 5:13 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: Trinity Baptist Church Inc., City of Asheville and Carrier Heights Neighborhood Association - statutory authority is G.S. 143-318.11 (a) (3). This motion was seconded by Councilman Sellers and carried unanimously.

At 5:25, p.m., Councilman Sellers moved to come out of closed session. This motion was seconded by Councilwoman Field and carried unanimously.

## **ADJOURNMENT OF MEETING**

At 5:25 p.m., Councilman Sellers moved to adjourn the meeting and reconvene at the Asheville Civic Center Banquet Room to conduct the public hearing on the conditional use permit for Trinity Baptist Church. This motion was seconded by Councilwoman Field and carried unanimously.

At 5:50 p.m. the City Council meeting reconvened at the Banquet Room of the Asheville Civic Center.

## **PROCLAMATION:**

### **A. UNITED WAY CAMPAIGN**

Mayor Sitnick recognized Mr. David Bailey, Chief Executive Officer of United Way of Asheville and Buncombe County, who outlined the support given to the United Way by employees of the City of Asheville. He congratulated the City's United Way Campaign as making the "Top Ten" Employee Campaigns for 1998.

The City of Asheville made significant contributions to United Way's 1998 campaign. City employees were the largest employee group to volunteer for Day of Caring (in fact, one City department, Fire, had more off-duty volunteers than any other single Asheville employer).

On behalf of City Council, Mayor Sitnick thanked City Campaign Co-Chairs Mr. Keith Whittington, Richard Bass and Eric Valez (who coordinated the Day of Caring) for their hard work on the United Campaign.

## **PUBLIC HEARINGS:**

### **A. PUBLIC HEARING TO CONSIDER A CONDITIONAL USE PERMIT FOR TRINITY BAPTIST CHURCH LOCATED AT 216 SHELburnE ROAD**

Mayor Sitnick said that next on the agenda is the application a conditional use permit for Trinity Baptist Church ("Trinity") located at 216 Shelburne Road. This is a public hearing for Council to consider whether the requested permit should be issued. There being no preliminary matters to be considered, she opened the public hearing at 5:55 p.m.

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

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

Mr. Carl Ownbey, Urban Planner II, said that this project is for the expansion of the existing church facility. The project will include a 2400 seat sanctuary, youth classrooms, and a recreational facility. The project has been submitted and reviewed under Level Three - subsection 7-5-9(A) of the Unified Development Ordinance ("UDO") by the Technical Review Committee ("TRC"). They approved this project with several conditions which the developer has addressed and resubmitted revised site plans. This property is within the City limits of Asheville.

City Council must take formal action as set forth in subsection 7-5-5 (E) 2 and shall state if the proposed

conditional use meets or does not meet each of the following standards as set forth in subsection 7-16-2 (C):

Conditional Use Standards:

1. That the proposed use or development of the land will not materially endanger the public health or safety;
2. That the proposed use is reasonably necessary for the health and general welfare, such as by enhancing the successful operation of the surrounding area in its basic community functions or by providing an essential service to the community or region;
3. That the proposed use or development of the land will not substantially injure the value of adjoining or abutting property;
4. That the proposed use or development of the land will be in harmony with the scale, bulk, coverage, density and character of the area or neighborhood in which it is located;
5. That the proposed use or development of the land will generally conform with the Comprehensive Plan and other official plans adopted by the City;
6. That the proposed use is appropriately located with respect to transportation facilities, water supply, fire and police protection, waste disposal, and similar facilities; and
7. That the proposed use will not cause undue traffic congestion or create a traffic hazard.

The Planning staff and the TRC state that this project meets all the technical standards for development in the RM-6 zoning district. (City Exhibit A)

On February 15, 1999, the TRC reviewed and approved this project with the following conditions:

1. Under the RM-6, day cares are not permitted and any reference to this use must be removed from the site plan (check the notes on Z-1);
2. Indicate the "vehicular use area" calculations on the landscaping plan as required by the parking lot landscaping requirements;
3. Indicate the screened dumpster location (approved under Level II site plan);
4. With the widening of Sand Hill Road, the revised site plan indicated a proposed retaining wall. Provide a detail of this retaining wall and secure an encroachment agreement from the N.C. Dept. of Transportation;
5. Provide a detailed plan of the new driveway access onto Sand Hill Road - alignment, stacking ability, and emergency access. Driveway permit is also required; -8-
6. Indicate that parking lot lighting will be compatible with residential neighborhoods by maintaining projected lighting beams on-site by the use of low bollard lights for visibility and security. Also, each parking level have separate controls so only the lights needed can be turned on and timers should not be used;
7. Documentation on the stormwater runoff, including quantity and velocity, in the two additional stormwater lines shown on the site plan is required. Submit of this documentation to Engineering Department and a note to the Planning & Development Department that this documentation has been submitted; and
8. Additional land disturbing activities have taken place; therefore, these grading fees must be paid (provide copy of receipt).

(City Exhibit B)

Mr. Ownbey said that the above conditions had to be satisfied before the project was scheduled before City Council. The plans were revised by Trinity and submitted again for review by Planning staff, Engineering staff and Public Works staff. The plans meet all the requirements.

Mr. Ownbey said that if Council approves the conditional use permit, staff recommends the following conditions be placed on that approval:

1. Parking lot lights must have shields;
2. Parking lot lights must be low bollard lights and must have a maximum height of 12 feet;
3. Regarding parking lot lights, each level on separate circuit that can be switched off (no timers);
4. Additional landscaping along the southern property line and the parking lots (alternative landscaping);
5. Payment of any imposed fines (\$900 currently outstanding) needs to be paid;
6. Correction of storm drainage and erosion control problems resulting from on-site inspections; and
7. Any other conditions that City Council feels appropriate to impose on this project.

(City Exhibit C)

By use of a color coded site plan, Mr. Ownbey explained in detail the approximately 20 acre site at the intersection of Shelburne Road and Sand Hill Road. He explained what is currently on site. He explained what the Level II project consisted of which was approved in April of 1998. He then explained what the Level III project consists of which consists of a 2400 seat sanctuary which will also include a Kindergarten-12 grade school, youth classrooms, some offices behind the Teen Center, approximately 160 additional parking spaces as a third level, and the addition of a softball field on the back of the site. With that, the Traffic Impact Analysis ("TIA") for a Level III made recommendations that Sand Hill Road needed to be widened to three lanes to accommodate left turn movement into the site; the turning lane will begin at the intersection at Shelburne Road and Salola and Sand Hill and continue almost to the end of the Church's property on Sand Hill Road. Also the sidewalk will be moved back and coordinated with the widening of Sand Hill Road. Also, part of the TIA and staff's recommendation was that a sidewalk be placed on the Trinity's side of Shelburne Road (there currently exists a sidewalk on the other side of Shelburne Road). (City Exhibit D)

Upon inquiry of Councilwoman Field, Mr. Ownbey said the 2400 seat sanctuary and K-12 School is 107,000 square feet, and the Youth Classrooms and Office is approximately 9800 square feet.

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When Vice-Mayor Hay inquired about the parking spaces, Mr. Ownbey said that the Level III parking will consist of an additional 160 parking spaces. The entire site will consist of 600 spaces, which would also accommodate the ballpark parking.

Upon inquiry of Vice-Mayor Hay, Mr. Ownbey said that there are 1500 seats in the existing family life center which is currently housed in the Teen Center.

Mr. Ownbey said that there are no improvements planned for Sand Hill Road under the Level II or what is current, however, the Level III requires (under the TIA) a widening of Sand Hill Road to accommodate the additional traffic. The improvements to Sand Hill Road, which is a State-maintained street, will be at the

developer's expense.

Upon inquiry of Councilman Cobb, Mr. Ownbey said that under our present ordinance there has to be one parking space for every four fixed seats. The 600 parking spaces does comply with our ordinance.

When Councilwoman Field asked how far away Shelburne Road is from Brevard Road, Mr. Ownbey said it was probably less than one mile.

By use of a chart, Mr. Ownbey described the project review process for Level I, Level II and Level III reviews. Following the chart down, he explained that more than 100,000 square feet or more than 50 housing units is a Level III review which is staff review, TRC review and recommendation and City Council approval. (City Exhibit E)

Mr. Ownbey said that during the review process, staff did review the definition of church in the UDO. It reads " Church means a place where religious worship is conducted. The term church shall not include day care, educational, recreational, and other facilities which are incidental to the place of worship." Currently there is a committee working on revising the definition of church and also the standards for worship. This committee is composed of neighborhood representatives and some clergymen. Their last meeting was in November of 1998. They have agreed on a definition of church and have submitted that to the Planning & Zoning Commission. The Commission has reviewed it but are not making any recommendations until standards for worship have been developed by the committee and presented to the Commission.

Mr. Ownbey said that during the TRC process for the Level III project, the City did receive 14 letters in opposition to the project and a letter from the Carrier Heights Neighborhood Association (City Exhibit C). In that letter, the Association requested (1) that the shields be placed on the existing parking lot lights; (2) that we indicate in some way that there has been some grading in the buffer area and what the City plans to do to rectify that situation (the City has issued the Church with a notice of violation and will work with them to add some additional landscaping), and that a conditional of approval include payment of the \$900 fine assessed.

Upon inquiry of Councilwoman Field, Mr. Ownbey said that at the time of this project review, the City of Asheville did not have a traffic engineer on staff and the City contracted out that review. Both the developer's and the City's traffic consultants are located out of town.

Upon inquiry of Vice-Mayor Hay, Mr. Ownbey said that the combination of all the square footage for the whole Level III project is 173,263 and that is why the project is being reviewed under the Level III review process.

When Councilwoman Field asked what is the average size of a home in the area, Mr. Ownbey responded that by an aerial photo, there are a lot of small homes between 800-1200 square feet and there are also some larger single family homes between 1200-1500 square feet. -10-

Mr. Scott Conklin, Project Architect for Trinity Baptist Church with Cort Architectural Group, said that they have been before the TRC four times and have gotten a 1500 auditorium/sanctuary approved with its required parking and now they are coming back before Council for a 2400 sanctuary and school.

Mr. John Cort, Principle in Charge of Cort Architectural Group, said that the site is 1/2 mile from Brevard Road. He said that he has given Council a copy of the last TIA and also not included in the last TIA is the reconfiguration of Brevard Road, which will make a much safer intersection as Shelburne goes into Brevard Road. The technical aspect is over with in that they had done a very thoroughfare job. With regard to Finding No. 5, he said that looking back in time, the 2002 Plan of this area was historically recognized as an institutional use in this area. Regarding Finding No. 6, exhibits show that this project is on an existing minor

thoroughfare, that there is adequate water and adequate sewer, all from the 2010 Plan. With regard to Finding No. 7, Wilbur Smith (for the owner) and Kubilins Traffic Consultants (for the City) are both in concurrence that the three-lane highway for N.C. Dept. of Transportation and sidewalks around the facility will create a safe traffic situation. They have eliminated an entrance and gained a much more safe entrance. Regarding Finding No. 1, he said that was the purpose of the TRC review noting that there are 16 public health and safety officers who have reviewed this and said that it is adequate. Regarding Finding No. 2, all Council has to decide is whether a church is an essential service to the region or the community. With regard to Finding No. 3, there are six adjoining or abutting property owners: (1) the Church owns approximately two acres of adjoining property; (2) on the Dr. Waller property where grading was done too close to his property line, is where the MSD main sewer line is coming and there is no use of the Dr. Waller property; (3) there is a residence that they are keeping in tact to preserve the adjoining property owners; and (4) there are six adjoining property owners and a bank which areas are heavily landscaped. With regard to Finding No. 4, he said Trinity is trying to build a church and a school. In the 1980's they tore down Newton School because it was not an appropriate scale. This is an appropriate scale in that it will be a 600 student school. A 600 student public elementary school would take 20 acres minimum and up to 100,000 square feet. If it were a high school for 600 students it would be about 140,000 square foot. If it were a typical Buncombe County school, you would park 600 cars and would have 200,000 square feet of area. This is not an appropriate high school but, but we know it is an appropriate church site in that the scale is appropriate.

Rev. Jerry Young, Associate Pastor of Trinity, reminded Council that the size and the scale is appropriate. Three City Council's before the present City Council said it was appropriate in 1993, when the site was approved, in 1994 when it was re-affirmed and in 1995 when it was re-affirmed again - the same plan in front of Council now. He said that Dr. Ralph Sexton Sr., the founding Pastor of Trinity, had a vision when he moved to congregation to Shelburne Road nearly 30 years ago. His vision was to see a site in which they could minister to the people of Asheville. The reason for the softball field is that they have a ministry to young people, Cub Scouts, Boy Scouts, and bussed kids from a lot of the projects. The reason they want to expand their educational facility is because they have a Sunday School every Sunday with over 700 in attendance. He stressed that Trinity ministers to people and their concern is that they be able to continue the ministries that are continuing to grow. The ministries have not grown because of a person or because of a problem, but simply because God has been pleased to bless the work and ministry of Trinity. He encouraged Council to vote in favor of the conditional use permit.

Upon inquiry of Councilman Cobb, Rev. Young said that there are now 30 students in their Bible College and they envision the College growing to maybe 100 students

Vice-Mayor Hay asked what the building will look like. Rev. Young said that to the highest point on the roof in the front is 50 feet (one story) . On the back side, it will be four stories.

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Mr. Frank Goldsmith, attorney representing the Carrier Heights Neighborhood Association, said that as you see from the history of this process, this is just the latest step in an effort by Trinity to impose its will on this neighborhood, regardless of what the law says and regardless of whether the proposed development would be in keeping with the characteristics of that neighborhood. This process began at the end of the chart (City Exhibit E), i.e., it began with a proposed rezoning application submitted over a year ago. That process was postponed at the request of the Church for close to six months so that, according to the City Council meetings, the Church could work with the neighbors and try to develop a conditional use type of permission to use their property for its purposes. Apparently the Church was satisfied that the conditional use they are now seeking would not work because they came back then, after the lengthy hearing on August 25, 1998, and again applied for a rezoning of the property which was denied. At that meeting and thereafter, there was talk about amending the ordinances so that conditional use zoning would be permitted. It was the thinking of everyone then that under the current ordinance, conditional use zoning would not work for this particular

zoning. Those ordinances have not yet been amended and yet we're here with a conditional use application by the Church. Much energy has been spent by the City and the groups of people trying to come up with a definition of Church and that process is still on-going. However, it seems to have been overlooked in this presentation, both on the part of the City staff and on the part of Trinity. There is a Level II process that is on-going and that is still pending. And now there is a lawsuit pending, not only against the City but also against the Carrier Heights Neighborhood Association. He finds it troubling that the timing of this lawsuit comes immediately before Council is meeting to decide on their conditional use permit. It seems to him the motive can be one of two things - either to suggest that this process now is clearly not going to work so they are resorting to the courts, or, it's a bullying tactic to try to coerce Council into approving a conditional use permit that should not be granted because of the treat of litigation that is now pending. Trinity is seeking not only relief against the City but against the Carrier Heights Neighborhood Association. Trinity is asking the people who own these homes in the area pay the Church's legal fees and that they be restrained from enforcing the ordinance. The neighborhood is only exercising their right to appeal a decision in the process providing for by law. That is the tactic we are seeing from this ministry.

Mayor Sitnick said that this public hearing is only about whether or not to issue a conditional use permit for the Level III project.

Mr. Goldsmith explained that the City of Asheville's zoning ordinance is different from some. Some leave conditional use permits up to a Board of Adjustment, however, the City's scheme has permitted uses within each district, uses by right within each district (which are uses that must meet certain standards that are specifically set forth in the ordinance) and then the conditional use permit that can be granted in very unusual circumstances. He explained that in the conditional use zoning, the permitted uses are very few. With respect to most of the districts, you have a conditional use that is listed that may be permitted. Generally, in all of them, they say Level III has to be compatible with other permitted uses in that district. His point is that in all of the residential classifications, including the RM-6 in which this mega-church is proposed to be located, the sole conditional use permitted is Level III (residential). It is there to ensure that the only kind of Level III project is a residential project. He felt is Council is bound by how the UDO reads. No one has said that this proposed project is a residential plan under Level III. It does not fit the definition of residential, which means houses and places to live. It does not mean a ballfield, sanctuary, college, television ministries, or a school. If they reach that magnitude in size, then under the terms in the UDO, they must be residential to be permitted as a conditional use. He felt that Council need not even reach the issue of the seven criteria that must be met. He felt that this whole proposed use is completely out of order because it is not a Level III permit application. In August, there was discussion about the need for compatibility. The whole UDO talks about a comprehensive plan for the City development and compatibility within neighborhoods and within districts. To permit the expansion of this institution, the imposition of -12-

this enormous campus of institutions that are far removed from a simple church sanctuary as defined in the ordinance, and to impose that on this neighborhood is far from creating a walkable neighborhood. He felt that Council can't skip the definition of what a church is in the process of getting to this public hearing tonight. A church is defined in a certain way under the UDO and that can't be ignored. He urged Council to look carefully at that language and to deny this application.

Councilman Tomes asked if certain conditions (light the brightness of the lights) placed on the Church by the neighborhood have been met. Mr. Goldsmith replied that they had not been met. However, the TRC has established to its satisfaction that certain technical standards have been met and part of their conditions they suggested be imposed had to do with lighting, but that does not satisfy the neighbors' objections.

Councilman Tomes said that in listening to the presentations he hears an effort being put forth on the part of Trinity to be a good neighbor.

Upon inquiry of Councilwoman Field, City Attorney Oast said that this is a Level III review because of the

size of the project. Mr. Goldsmith is correct in that conditional uses under the RM-6 do say Level III (residential) and it's also true that the conditional uses in another part of the Code indicate that Level III site plan review projects are permitted in all zoning districts as conditional uses. City staff has made a determination that this is appropriate for consideration as a conditional use project in this neighborhood.

Mayor Sitnick asked the City Attorney to distinguish the difference between adjoin and abut. City Attorney Oast said that he was not sure that there really is a difference in how it affects this property. Adjoining and abutting both suggest that there is some point at which the property lines touch each other. He said that there is case law to the effect that if properties that are in the area, but not necessarily are abutting or adjoining, can show some special damage with respect to how their property values might be affected that they do have some interest in the proceeding.

Mayor Sitnick said that as an example, you don't have to abut a ballfield in order to be impacted by it.

City Attorney Oast said that in this situation, as far as the property values go, what the courts have held is that it has to touch the property line of the property that the conditional use permit is being proposed for. That is the definition of adjoining or abutting in this sense. That doesn't mean that the property owners in the area can't establish some other effect that the conditional use may have on their property.

The following individuals spoke against City Council issuing the conditional use permit for several reasons, some being, but not limited to: the average home in the neighborhood is less than 2,000 square feet and that 50 similar homes could be placed in the footprint of the proposed 107,000 square foot facility (not taking into account the existing 600 seat auditorium and yet to be constructed 1500 seat auditorium); the 2010 Plan indicates this area as low density residential; the campus oriented Trinity plan is incompatible with both the City's 2010 Plan and the UDO's definition of compatibility; the surrounding neighborhood homes will become unbalanced if a large multi-use non-residential facility is allowed to locate within the residential area; the neighborhood's uniqueness is already destroyed by earlier plans which permitted the grading and destruction of approximately 10 acres of vegetated buffer zone area; an institutional facility of the scale and density proposed will also destroy the character of the neighborhood by a massive parking facilities, institutional lighting fixtures and buildings so large in scale and bulk as to thwart the residential homes surrounding it; the proposed baseball field will generate undue noise pollution and will not benefit the children and families of the neighborhood in any way -13-

unless they are members of Trinity; the entire scope of the project will overburden an infrastructure of roads that are ill equipped to handle the amount of traffic that this facility will generate; rezoning of the property from RM-6 to Institutional has already been denied and nothing has been changed from the original site plan for the same facilities, other than attempts to have this project approved under different classifications which the UDO does not specifically list; if the project is allowed to be completed it will only serve as an ugly reminder of commercial over-development in an established residential neighborhood; there is already a traffic hazard on Shelburne Road in that the sidewalk is right next to the already busy Shelburne Road; greenspace will be eliminated; nothing commercial is allowed in a RM-6 zone; destruction of trees and land were done without a site plan; lights already burn all night long without no regard for neighbors; where is the legal zoning justification to allow one church out of 200 in Asheville to become a mega-church on a 2-lane road; no other church has objection to the UDO definition of church - they simply do the right and legal thing - they find an appropriate location and move; if we let one church do this, then Council has to let the other 199 churches have their way also; the neighborhood doesn't object to Trinity, just mega-business churches in RM-6 zoning on a 2-lane road; the 2400 seat sanctuary (convention center) will destroy the neighbors quality of life which will be detrimental to their health and welfare; this "convention center" does not belong in the City in a residential neighborhood; the project, if built, will be an emotional health problem for all of its neighbors; the UDO was supposed to protect neighborhoods from just destruction as this; the third lane on Sand Hill Road is next to nothing in terms of the traffic hazard which already exists on Shelburne Road; Trinity advertises extensively for members outside of the neighborhood and the majority of Trinity's members

do not belong anywhere in the City of Asheville, particularly in West Asheville; no place to walk on either side of Shelburne Road; a traffic count should be performed; is water pressure adequate on the old water lines to accommodate this project; the City should work in collaboration with Trinity in making a historic park for West Asheville adjacent to the present buildings; with all the trees gone, the new building site could be a community pavilion; the only effort the Church made to work out the rezoning issue with the neighbors was a construction person asking one of them to "call off" the valid protest petition; because of Trinity expansion in the last four years, the homes on Shelburne Road have decreased in value; a Realtor has stated that because of the increased traffic, a home on Shelburne Road would be valued at 5% less; when the Pastor of Trinity publicly states that they are not going to live under the UDO, it is a sad day for his profession and others who obey the law; Trinity does not obey the current noise ordinance; commercial buses are parking in front of Trinity and left for hours with black smoke billowing from the buses polluting the neighborhood; Trinity has violated the sign ordinance in that they have placed a mobile sign on their residential street; 200 churches in Asheville abide by the law except for Trinity which they have clearly said they are not going to abide by the City Council's regulations and the UDO; Biltmore Baptist Church lost some of their property due to highway expansion, however, they found suitable property to continue their ministry; Trinity should not have been allowed to get to the point they are at now; Council has all the power they need to regulate churches like every other resident and business in Asheville; no problem with Church growing, but not to the detriment of the neighborhood; infrastructure is not adequate; and 600 parking spaces will not be adequate for the over 5,000 total seats of the project:

Mr. Tom Lewis, Chairperson of the Carrier Heights Neighborhood Association

Ms. Judy Davis

Ms. Leah Karpen, resident on Shelburne Road

Ms. Jessie Copeland

Ms. Ann Anderson

Ms. June Lamb, resident of 16 Carrier Street (testified she submitted her statement earlier to City Council)

Mr. J.D. Jennings, resident of 251 Shelburne Road

Ms. Jean Jennings, resident of 251 Shelburne Road -14-

Mr. Robert C. McCarthy, resident of 243 Shelburne Road (submitted comments as Audience Exhibit B)

Ms. Barber Melton, Vice-President of Haw Creek Community Association Ha

Mr. Norman Anderson, resident of 147 Shelburne Road

Dr. Dwayne Davis, resident on Zephyr Drive read a letter dated April 13, 1999, from Mike Miller, Realtor) (Audience Exhibit A) which reads in part that in his "professional opinion is that the proposed major expansion of the church will have a negative impact on local property values and on the overall quality of life in the Shelbourne Road area." City Attorney Oast said that it is generally preferably to have sworn testimony and he pointed out to Council that although the letter was read, there is a potential hearsay objection about that.

At 7:30 p.m., Mayor Sitnick announced a short break.

Rev. Jimmy Dykes, Pastor of North Asheville Baptist Church and Chairman of the Community Council for Biblical Values, said that this all relates to the problems with the definition of church in the UDO. In August of 1998 after the denial to rezone the property to Institutional, he was encouraged to hear Council say that the church definition in the UDO was "bad law" and that it should be amended. Since that time, the definition issue has still not be resolved. It was his contention that Trinity should not be penalized while the City fixes bad law and Trinity should be allowed to continue their ministries and expand as much as the property and the infrastructure will allow them to.

Ms. Carol Collins, speaking on behalf of the Community Council for Biblical Values, said that Trinity has a heart for children's programs, disadvantaged children, teenagers, families and the common man. She relayed to Council some success stories resulting from Trinity's ministries. Much of the criticism that churches in the area receive are from people who just don't understand what good neighbors churches are. The Charter School was allowed on Brevard Road with no impact studies, thus setting a precedent. The health issue raised about the tractor trailers, has long ago been resolved in that they have rented a warehouse at \$36,000 a year to continue to conduct that ministry. Plans for Trinity been under approval since 1993 and were approved and reaffirmed in 1994 and 1995, which exempts Trinity from the UDO because they are already vested. Families who attend Trinity and live on Shelburne Road have no problems regarding the project. Trinity is improving the neighborhood by putting a sidewalk on their side of the street. Trinity lowered the height of the original building to specifically accommodate the neighbors view of Mt. Pisgah. Trinity has been a good neighbor and she urged Council to approve the conditional use permit.

Ms. Brenda Crisp spoke in support of Trinity's conditional use permit in that they minister to the needs of our children.

Rev. Ralph Sexton Jr. said that on behalf of Trinity Baptist Church they would not in any way want to inflict any discomfort on the neighborhood. They want to and have tried to be a good neighborhood for 30 years. He said that with regard to the green spaces, no one was more outspoken about not cutting trees than he was at various meetings. He said that he believes in preserving trees and the heritage that we have in that area. They have plans to put in a park all along Hominy Creek, a bird walk and a meditation walk that would be a green-link all the way across to the new green areas on the other side of the French Broad River. He admitted that they have created problems in the past with regard to their growth and sometimes mistakes are made along the journey. They are now spending \$3,000 a month to rent a warehouse so the large trucks will not be a problem for the neighborhood. He also said that they have made arrangements for no more compressors running all the time. He felt like Planning & Zoning Commission let down City Council by allowing this issue to get this far. He said most mega-churches are defined as 5-10,000 seats and that is not what they are proposing. He said that a -15-

lot of what is shown on the site plan is just for the future and that's part of good planning. He didn't want the impression of being a bully to anyone because that is not what they are after.

Ms. Melanie McCoy and Mr. Wesley McCoy both spoke in support of the conditional use permit so that children can learn about God. They wished there would be more Christian schools.

Mr. Lawrence Henson, member of Trinity Baptist Church, spoke in support of Trinity Baptist Church and it's ministry to the children.

Mr. John Cort responded to Mr. Goldsmith's comments. He said that they are not imposing the will of the church, but complying with the very thorough process. He said that Council is not charged with determining the appropriateness of this development, in that the only place that appropriateness appears is in the TIA and that deals with an appropriate location with respect to traffic. The TIA has been re-done four times and everyone has conceded that the safety of Shelburne Road has been improved by putting sidewalks back, triple lanes on Sand Hill Road and a better distribution of traffic. He said that no amendments are necessary

to the UDO. He noted that they comply with it as it is. He said there is nothing wrong with the church definition and it is fine for their proposal. The lawsuit is not addressed in our plans or in the ordinance. He said that anything you do of value is a long process and it takes a long time because the conditional use process is a process of care. The use they are asking for is a use by right and it is the right of the property owner to put a school or a church there. He said that with regard to the limitation to residential, that is not the way to interpret the ordinance. With regard to the comments about bussing into the site, if the site is appropriate for a school, it is the practice of the public school system to bus across town in order to achieve balances and that has been invoked by courts. He said that the whole issue is a matter of scale and urged City Council to vote in support of approving the conditional use permit.

Mr. Ownbey said that the school is a use by right and can go on this property if it meets certain development standards. The Bible College that currently exists on the property is not a permitted use, is not a use by right and cannot expand, but can exist as a grandfathered use.

There being no request from the applicant for rebuttal, Mayor Sitnick closed the public hearing at 8:25 p.m.

Upon inquiry of Vice-Mayor Hay about the voting procedure, City Attorney Oast said that there is not process specified by statute, however, in the past, Council has made a motion to approve or deny the conditional use permit. In the course of voting on that, Council should state his or her basis for the decision and then direct the City Attorney to draft an Order which he will bring back to Council for them to vote on again, which contains findings and conclusions. The other way to vote on this issue would be for Council to vote on each finding individually and if any one of those findings does not pass by a majority vote, then the conditional use permit would fail. He said that Council can vote either way.

City Attorney Oast also made the procedural point that prior to the start of this hearing, he met with both attorneys and advised them that they would have the right to cross-examine anyone or ask questions of anyone who speaks. Since they have not taken advantage of that opportunity, he assumes that is their choice.

It was the consensus of City Council to vote to either approve or deny the conditional use permit and direct the City Attorney to draft an Order which will be brought back to Council for them to vote on again.

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Mr. Frank Goldsmith raised a point of order being that in addition to the seven criteria in Sec. 7-16-2, he felt it was appropriate for Council to vote on whether this permit application meets the Level III residential standards. He felt that Council has to interpret that question first and that would be a valid reason, independent of the seven criteria, for turning down the application.

City Attorney Oast said that the City has to take the position that staff's interpretation of that issue and the interpretation that allowed this to go forward to the conditional use permit hearing process, is a matter that should be appealed to the Board of Adjustment, if there is an appeal. Those are interpretation issues that he did not think City Council could resolve.

Councilwoman Field asked if the City agreed with the traffic study performed by Wilbur Smith Associates for the petitioners. Director of Engineering Cathy Ball said that at the time the City received this study, they did not have a Traffic Engineer on staff so they sent it to their consultant in Charlotte for their review. There were four different revisions of it. By the time it was finally drafted, the information in the report was accepted by our consultant. There were approximately three additional requirements that our consultant imposed upon that was not part of the recommendation. Those were widening Sand Hill Road to three lanes, adding sidewalks along Sand Hill Road and improving an intersection on Shelburne Road.

Upon inquiry of Councilwoman Field about the level of service, Ms. Ball said that there are two levels of service described in the TIA, one for the road itself and the capacity of the road; and the other is for intersections. The conclusion of the report is that both roads can carry 10,000 vehicle trips per day and anything less than that it will still be a Level A, which is the best. So even with the increased amount of traffic, it still doesn't meet 10,000 vehicles per day.

Councilwoman Field asked when the 2400 seat sanctuary is completed, which may be 5-10 years in the future, was general increase in traffic in the community considered? Ms. Ball said that future increase was considered.

Councilwoman Field said that because we only have hearsay in a letter from Mr. Miller regarding the increase or reduction of abutting or adjacent property values, has the staff done any work on that to verify property value changes? Mr. Ownbey said that staff has not done any research in that area.

Councilwoman Field felt she could not make a decision if the information is not available. City Attorney Oast said that in these situations, because Trinity is applying for the permit, it is their burden to come forward with evidence to satisfy Council on that point.

Rev. Sexton said that with regard to a house and property located immediately adjacent to the Church property, they found that property was for sale through a Realtor and it was purchased for over \$250,000. He said that was very much up in value because it was adjacent to the Church.

Councilwoman Field said that it's just that this size could have an impact on the value of property in the whole neighborhood and everybody knows that property in Asheville is appreciating because every time we turn around, the cost of an average house goes up. We've just done a valuation, and it doesn't seem to me that it would be too difficult to look at what the tax value was in 1994 and then look at the tax value in 1998 an aggregate.

Rev. Sexton said that he thought the biggest player you are going to have in the property values of West Asheville has nothing to do with Trinity Baptist Church. It's going to have to do with the deterioration of West Asheville in general and that we are seeing the commercial zone dissolve, we're seeing the service area, our road area go down, our sidewalk areas are down and -17-

it is now becoming a mixed ethnic community where it was an all white community in the past. And that's had more to do with the property values than anything else.

Vice-Mayor Hay felt that the present day valuations may not answer the question.

Councilwoman Field wondered why, if there is no way to substantially answer this question, are we considering it at all.

City Attorney Oast said that if the evidence is not here, it is up to Council to determine whether the evidence you have gotten is sufficient to support your findings on this and the Courts have held that generalized concerns may be considered. But, it depends on the weight that Council wants to put on them.

Mayor Sitnick felt that if Council is to make a determination on land value that they should have a real estate appraiser or someone who is considered an expert in that field give us the information we need.

Councilwoman Field said that she wouldn't feel comfortable in accepting comments from a real estate appraiser that was for one side or the other. She would want an independent real estate appraiser. As an architect, she would hope that any new construction that was done by a reputable architect would increase the value of the property. Certainly the landscaping and other things that are shown on this plan would make for higher property values in her opinion. She felt she could not make a decision on that particular issue

because staff has not given her any information.

Councilman Cloninger felt that it's not necessary that Council necessarily receive evidence on all of the seven issues. The people here tonight presented Council with the evidence that they wanted us to consider in making a determination. He felt Council should make their decisions based on that and move forward. He didn't think it's essential that Council have evidence on every single point.

Mayor Sitnick said that she actually heard evidence from one gentleman who talked about property values being diminished. We heard it on both sides and apropos of Councilwoman Field's comments, you have to take the evidence presented by each side as being a bit biased. That's why she felt it would have been nice to have somebody who was an expert in property values, maybe specifically in West Asheville, present us with some information.

Councilman Cloninger agreed that it would have been nice, but he felt that Council can give whatever weight they want to on the testimony that was given.

Mayor Sitnick stated that Council has to state if the proposed conditional use meets or does not meet each of the seven standards.

Councilwoman Field noted that Finding No. 3 reads "the proposed use or development of land will not be substantially injure the value of adjoining or abutting property." The Church has addressed the adjoining or abutting property. The finding, however, doesn't say anything about the neighborhood.

Mr. Cort stated that in his presentation, he stated that the six property owners that are adjacent to the recreational use are the ones most affected and a recreational use is a permitted use without the process.

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Mayor Sitnick asked if the conditions mentioned earlier by Mr. Ownbey (like shields on the lighting, shorter lights, lights on a timer, increased landscaping, payment of fines for violations and erosion and storm drain improvements) are staff imposed conditions should the conditional use permit be granted. Mr. Ownbey said that those are staff and the TRC's recommendations for conditional use approval and they must be met and be a part of the conditional use approval.

Mr. Ownbey responded to Mayor Sitnick's questions concerning the existing and proposed sidewalks on Sand Hill Road and Shelburne Road.

Upon inquiry of Councilwoman Field if there is room on the property to get a three or five foot tree lawn between the sidewalk and the street, Mr. Ownbey said that there will have to be some moving of some existing trees that were planted when the parking lot area was developed but there is room to move it back. He noted that there is a requirement for a five foot buffer strip between Shelburne Road and the sidewalk and also between Sand Hill Road and the sidewalk.

Councilman Sellers said that this is a difficult decision for him. He used to live at 195 Carrier Street for eleven years, but he can also appreciate the work the Church has done and continues to do. He feels like it is a win or lose situation and it should not be that way. He moved to approve the conditional use permit for Trinity Baptist Church located at 216 Shelburne Road, with the following conditions: (1) Parking lot lights must have shields; (2) Parking lot lights must be low bollard lights and must have a maximum height of 12 feet; (3) Regarding parking lot lights, each level on separate circuit that can be switched off (no timers); (4) Additional landscaping along the southern property line and the parking lots (alternative landscaping); (5) Payment of any imposed fines (\$900 currently outstanding) needs to be paid; (6) and Correction of storm drainage and erosion control problems resulting from on-site inspections.

The motion made by Councilman Sellers was seconded by Councilman Tomes. Councilman Tomes said that this has been one of the most difficult decisions he has had to deal with since he has been on City Council. He said in the times in which we live, there is a challenge as community leaders to help bring a sense of wholeness of the social fabric of our society. Government is cutting back and there are increasing demands placed upon faith communities to deal with the total person. It's out of this kind of conviction that many of the ills in our society must be dealt with in a holistic manner. If we are going to experience the kind of vitality with the change in demographics of our society, we have to make the hard decisions. And the hard decisions must deal with the total person. It's out of that kind of conviction that he will support the motion.

Councilman Cobb agreed that this is a difficult situation, especially in light of the fact that he is a strong supporter of neighborhoods. He said Council needs to make a decision based on what they feel is the right thing to do. He said we are not here to define ministry - that is not our job. We are here to take care of the zoning restrictions and try with those to protect the neighborhood with buffers, greenspaces, safety, lighting, etc. Technically all these items have been done. His biggest problem out of the seven findings is No. 4 and that we must assure that these are complied with before we approve the permit. He said that if this is RM-6 zoning area and Trinity decided to move for whatever reason, they could sell their land to a developer and they could build six units per acre on the entire 20-23 acres that it would cover the same space that all the buildings of the Church will cover. There would be no difference in square footage. He has been here since 1954 and Trinity has been in West Asheville since 1973 and he has never heard any complaints about this Church. However, is he concerned about the neighborhood concerns. Both have been good neighbors. However, since Trinity has meet all the requirements that the City has said they need to meet, he doesn't see how the City can do otherwise but approve the conditional use permit, with the TRC's conditions.

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Vice-Mayor Hay said that he would vote against the motion. He said that they are directed to not approve the conditional use permit unless each one of the seven findings are addressed in a positive way. He cannot find that No. 4, the proposed use or development of the land will be in harmony with the scale, bulk, coverage, density, and character of the area or neighborhood in which it is located. For that reason, he cannot vote to approve the conditional use permit. He said a 107,000 square foot building is, in his opinion, too big for the neighborhood.

Councilman Cloninger said that he will vote against the motion. He very much respect the good work of Trinity Baptist Church and respect all that they hope to accomplish with this project, however, he felt that this project is too big for a residential neighborhood. If this were a proposal for a commercial area, I would wholeheartedly support it. But given the project is basically surrounded by residential homes, he does not think that the motion should pass. He did not feel that Finding Nos. 1, 4 or 7 have been met.

Councilwoman Field said that she would vote in favor of the motion. She was concerned about Finding No. 3, but since she could not find any reason why the proposed use would substantially injure the value of adjoining or abutting property, she would have to say that that finding has been met. She said that the traffic study shows that there will not be undue traffic congestion caused given the additional requirements that we put on this conditional use. But most of all, she believes in mixed use and in the whole process of zoning, which is to provide buffering between inconsistent uses so that we can have a community that isn't little isolated pockets and ghettos that is all residential, or all commercial, or all institutional. We should all be able to live together. For her, it's a matter of the principles of design, zoning and planning that make for good communities. She felt we have done a lot of damage over the last 30 years putting ourselves in isolated little neighborhoods that are made with lots of dead-end streets.

Mayor Sitnick said that she has great respect for the Church, what they are doing and what they intend to do. She has great respect for the neighbors and what they have had to deal with regarding this issue. She agreed that this is a very tough decision. She will vote against the motion. She said the RM-6 zoning to

Institutional was denied primarily because the Institutional zoning would have allowed all of the things that are being sought in the conditional use permit. In addition to that, she believes that Finding No. 3 has not been adequately addressed. Since she is not a Realtor, she cannot say whether ballfields and large structures are going to increase value, injure value or diminish value of adjoining or abutting properties. My personal opinion is that she would not want to buy a house across from a ballfield simply because of the noise, the lights, etc. In addition to that, Finding No. 4 is a concern of hers. It may be true that that property zoned RM-6 could accommodate so many houses that it would equal the 173,000 square feet proposed by the Church, but that would be in more character with the neighborhood. That would be single- or multi-family homes that had good design and a neighborhood kind of feel to it, rather than an institutional feel. Therefore, Finding No. 4 is not met in anyway. She also feels that Finding No. 5 is also not met because the 2010 Plan, which is a guide to City Council, calls for low density residential in that neighborhood and certainly this is not low density residential. She appreciated staff's conditions and support them fully. She would also like to say that it would be her hope that since this looks like this is going to pass, that (1) daytime, as well as nighttime noise, is ameliorated as best as possible; (2) whatever lights exist either for the ballfield or for the parking areas (which she feels strongly should provide security) be taken into account, not necessarily adjoining and abutting houses, but all of the houses within their view; (3) that whatever buffers that are put in are put in as heavy as possible; (4) that the park and/or ballfield that was described could possibly be used by the community, maybe the ballfields could be used by the community. The City is always looking for ballfields, and I certainly wouldn't want to take them away from Church members but maybe something could be worked out. Because of Findings No. 3, 4 and 5, she was not comfortable in voting in favor of the motion. Our Constitution requires that we not discriminate for or against churches or religion in any way, no -20-

matter how we might personally support what the churches do for our community. She had to wrestle with the fact that any other use of this size, remembering that we cannot take use into consideration, Level III conditional use permits contain to size only, any other structure or development of 173,000 she could not vote for.

The motion made by Councilman Sellers and seconded by Councilman Tomes passed on a 4-3 vote, with Mayor Sitnick, Vice-Mayor Hay and Councilman Cloninger voting "no".

City Attorney Oast said that he would draft an Order that includes the conditions that Council suggested. He said that because this motion passed by a 4-3 vote, there is a statutory requirement that it come back before City Council for a second vote.

Because Vice-Mayor Hay will be out of the country on April 27, 1999, (the next formal meeting date), it was the consensus of City Council to schedule the required second vote on the approval of the conditional use permit for Trinity Baptist Church on May 11, 1999.

Rev. Sexton said that the second reading date of May 11, 1999, is not a problem at all for the Church.

### **UNFINISHED BUSINESS:**

### **NEW BUSINESS:**

### **OTHER BUSINESS:**

### **A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON MARCH 23, 1999; THE COMMUNITY MEETING HELD ON MARCH 30, 1999; AND THE WORKSESSION HELD ON APRIL 6, 1999**

Councilman Cloninger moved for the adoption of the minutes of the regular meeting held on March 23, 1999; the community meeting held on March 30, 1999; and the worksession held on April 6, 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 March 19-April 8, 1999: Terry Morris (Sanitation), Bill Cogburn (Water), NC Dept. of Transportation (Water), Bell South (Water), Kerri Autry (Fire) and Janice Plemmons (Fleet Management).

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

### **INFORMAL DISCUSSION AND PUBLIC COMMENT:**

Mr. Claude Smith, C-4 Crowfields Condominiums, requested information from the City with regard to a fire at Crowfields, noting that he is not represented by the homeowners association. City Manager Westbrook said that he would talk with Mr. Smith to find out what documents were requested and furnish those to him, if appropriate.

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### **ADJOURNMENT:**

Mayor Sitnick adjourned the meeting at 9:19 p.m.

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CITY CLERK MAYOR

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