

Tuesday - May 11,1999 - 5:00 p.m.

Regular Meeting

Present: Mayor Leni Sitnick, Presiding; Vice-Mayor Edward C. Hay Jr.; 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: Councilman M. Charles Cloninger (participated by speaker phone)

INVOCATION

Councilman Tomes gave the invocation.

CHANGES TO THE AGENDA

Vice-Mayor Hay asked to add a brief report from the Boards and Commissions Committee under Other Business.

Mayor Sitnick asked to add under Other Business a reaffirmation of Resolution No. 98-176 adopted on November 24, 1998, which supports North Carolina adopting permitting procedures for air quality in the southeast.

I. PROCLAMATIONS:

A. PROCLAMATION PROCLAIMING THE WEEK OF MAY 17-22, 1999, AS "NATIONAL PUBLIC WORKS WEEK"

Councilman Cobb read the proclamation proclaiming May 17-22, 1999, as "National Public Works Week" in the City of Asheville. He presented the proclamation to Ms. Beth Howland, Public Works Department, Mr. Ernie Hewett, Engineering Department, Mr. Ben Gay, Parks & Recreation Department, Mr. Woody Ledford, Water Resources Department, and Mr. Sam Ballew, Metropolitan Sewerage District.

B. PROCLAMATION PROCLAIMING THE WEEK OF MAY 16-22, 1999, AS "PUBLIC TRANSIT APPRECIATION WEEK"

Councilman Sellers read the proclamation proclaiming May 16-22, 1999, as "Public Transit Appreciation Week" in the City of Asheville. He presented the proclamation to Mr. Tom Tomlin, Chair of the Asheville Transit Authority, who briefed City Council on some activities taking place during the week.

C. PROCLAMATION PROCLAIMING MAY 21, 1999, AS "STRIVE-NOT-TO-DRIVE DAY"

Vice-Mayor Hay read the proclamation proclaiming Friday, May 21, 1999, as "Strive-Not-to-Drive-Day" in the City of Asheville. He presented the proclamation to Mr. Gerry Hardesty, who briefed City Council on some activities taking place during the day.

II. CONSENT:

A. RESOLUTION NO. 99-64 - RESOLUTION PROVIDING FOR THE POSSESSION AND CONSUMPTION OF MALT BEVERAGES AND/OR UNFORTIFIED WINE AT THE 1999 BELE CHERE FESTIVAL -2-

Summary: The consideration of approving the resolution to allow alcohol during the Bele Chere Festival

which is based on the recommendations of the Bele Chere Alcohol Task Force.

The Bele Chere Strategic Plan which was presented to City Council at the annual retreat in 1997 established a Bele Chere Alcohol Task Force to address the alcohol issues surrounding the Bele Chere Festival. This Task Force continues to meet and address issues related to alcohol possession and consumption.

In May, 1996, Asheville City Council approved an ordinance prohibiting consumption and/or possession of open containers of malt beverages and unfortified wine on public streets and other property owned or occupied by the City of Asheville. In order to allow for the control of the sale and consumption of alcohol at Bele Chere, it is necessary for City Council to approve the resolution. Over the past several months, the Bele Chere Alcohol Task Force has been meeting to address concerns from downtown merchants, festival participants and Bele Chere Board members concerning alcohol at Bele Chere. The Task Force is made up of representatives from downtown merchants, City Council, Parks and Recreation staff, Legal Division, Asheville Police Department, the Alcohol Law Enforcement Board and Bele Chere Board. The resolution contains recommended actions by the task force, Bele Chere Board and various City Departments. This Task Force feels that the cooperative arrangement between all parties has been successful in trying to address the major issues relating to alcohol possession and consumption based upon past history of the festival.

The Parks and Recreation Advisory Board, Bele Chere Board, Bele Chere Alcohol Task Force, and the Parks and Recreation staff recommend approval of the resolution to allow alcohol during the Bele Chere Festival.

RESOLUTION BOOK NO. 25 - PAGE 194

B. MOTION SETTING A PUBLIC HEARING ON MAY 25, 1999, RELATIVE TO MINIMUM HOUSING CODE AMENDMENTS AND FEES

C. RESOLUTION NO. 99-65 - RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE A CONTRACT WITH CRISP HUGHES EVANS LLP, CERTIFIED PUBLIC ACCOUNTANTS, FOR AUDITING SERVICES FOR FISCAL YEAR 1998-99

Summary: The consideration of a resolution authorizing the Mayor to execute a contract with Crisp Hughes Evans LLP, Certified Public Accountants, for auditing services for Fiscal Year 1998-99.

N.C. Gen. Stat. sec. 159-34 requires that local governments of North Carolina have their accounts audited each fiscal year and submit a copy of the audit to the Local Government Commission.

In 1998 the City solicited proposals from 36 accounting firms to perform the City's annual audit for the Fiscal Years 1997-98, 1998-99 and 1999-2000. City Council selected Crisp Hughes Evans LLP to conduct the Fiscal Year 1997-98 audit with the option to be re-engaged annually for two more years. They completed the Fiscal Year 1997-98 audit and have now submitted an engagement letter for the Fiscal Year 1998-99 audit. The fee has been estimated at \$53,600, which is \$3,700 higher than the amount quoted in their proposal. The increase is due to the new HUD audit program (\$2,700) and implementing changes to the Comprehensive Annual Financial Report suggested by the Local Government Commission in their review of last year's report -3-

(\$1,000). Sufficient funds are appropriated in the budget of the Accounting Division of the Finance Department.

City staff recommends City Council adopt the resolution.

RESOLUTION BOOK NO. 25 - PAGE 198

D. ORDINANCE NO. 2567 - BUDGET AMENDMENT RELATIVE TO A GRANT FOR THE HARVEST HOUSE AND SENIOR OPPORTUNITY CENTER

Summary: The consideration of a budget amendment, in the amount of \$26,490, received from the N.C. General Assembly for improvements and equipment at Harvest House and Senior Opportunity Center.

The 1998 Senior Center Appropriation has been approved by the North Carolina General Assembly.

The Senior Center Appropriation is designed to provide funds to senior centers throughout North Carolina for a variety of services including capital improvement, supplies, equipment, and staff. The funds will be used at Harvest House to renovate the woodwork shop and purchase new weaving equipment and the Senior Opportunity Center will complete Phase Two of the kitchen renovation and remodel the craft room.

The Parks and Recreation Department recommends the City of Asheville to accept the 1998 Senior Center Appropriation on behalf of the Parks and Recreation Department for improvements at Harvest House and Senior Opportunity Center.

ORDINANCE BOOK NO. 17 - PAGE 311

E. MOTION TO ENDORSE BROADWAY CORRIDOR PLAN ADVISORY COMMITTEE MEMBERS

Summary: The Planning and Development staff is requesting City Council endorsement of the proposed membership of the advisory committee for the Broadway Corridor planning process.

The Planning and Development Department staff is undertaking the preparation of a corridor plan for the Broadway corridor between the I-240 Interchange and the US 19/23 Interchange. As with past corridor planning efforts, we are proposing the creation of an advisory committee to provide input into the process and to serve as liaisons between the staff and business owners, property owners, adjacent neighborhoods, and interested organizations and groups. The proposed advisory committee would be composed of owners of properties and businesses located along Broadway, representatives of the abutting neighborhoods, a representative of UNC-Asheville, and a representative of an organization involved in the beautification of the corridor. It is proposed that a member of the Planning and Zoning Commission, the Asheville-Buncombe Historic Resources Commission, and the City Council serve as liaisons between the committee and their respective board. Mr. Will Williams will be the liaison from the Planning and Zoning Commission and the Asheville-Buncombe Historic Resources Commission will designate their liaison. The committee would meet approximately 6 times during the planning process to provide input and direction to the staff team responsible for the preparation of the plan.

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The Planning and Development Department staff is requesting City Council endorsement of the proposed membership of the Advisory Committee for the Broadway Corridor planning process and designation of a liaison as the City Council liaison.

F. RESOLUTION NO. 99-66 - RESOLUTION FIXING DATE OF PUBLIC HEARING ON MAY 25, 1999, ON THE QUESTION OF ANNEXATION OF PROPERTY LOCATED AT BILTMORE PARK PURSUANT TO N.C. GEN. STAT. SEC. 160A-31 (BILTMORE PARK, ANNEXATION 13)

RESOLUTION BOOK NO. 25 - PAGE 199

G. MOTION SETTING A PUBLIC HEARING ON MARY 25, 1999, TO CONSIDER ADOPTION OF A SMALL AREA PLAN KNOWN AS THE HAYWOOD ROAD CORRIDOR PLAN AS AN ADDENDUM TO

THE COMPREHENSIVE PLAN FOR THE CITY OF ASHEVILLE

H. MOTION SETTING A PUBLIC HEARING ON MARY 25, 1999, TO CONSIDER THE REZONING OF A ONE FOOT STRIP OF PROPERTIES ABUTTING THE NORTH END OF SOUTH GROVE STREET FROM CENTRAL BUSINESS DISTRICT AND REGIONAL BUSINESS DISTRICT TO RS-8 RESIDENTIAL SINGLE-FAMILY HIGH DENSITY DISTRICT

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

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

III. PUBLIC HEARINGS:

A. PUBLIC HEARING RELATIVE TO REZONING 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 FIVE LOTS ON SOUTH GROVE STREET BEING REZONED FROM OFFICE BUSINESS DISTRICT TO RS-8 RESIDENTIAL SINGLE FAMILY HIGH DENSITY DISTRICT

ORDINANCE NO. 2568 - ORDINANCE TO REZONE A ONE FOOT STRIP ALONG FIVE LOTS LOCATED ON SOUTH GROVE STREET BEING REZONED FROM OFFICE BUSINESS DISTRICT TO RS-8 RESIDENTIAL SINGLE FAMILY HIGH DENSITY DISTRICT

ORDINANCE NO. 2569 - ORDINANCE TO REZONE A PORTION OF ONE LOT LOCATED ASHELAND AVENUE FROM REGIONAL BUSINESS DISTRICT TO OFFICE BUSINESS DISTRICT

Mayor Sitnick opened the public hearing at 5:17 p.m.

City Clerk Burleson presented the notice to the public setting the time and date of the public hearing. -5-

Mr. Mike Matteson, Urban Planner, said that this is the consideration of an ordinance to rezone eight properties 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 five lots on South Grove Street being rezoned from Office Business District to RS-8 Residential Single Family High Density District.

The Planning and Development Department staff initiated this rezoning request in an effort to apply a zoning district which is more compatible with the size and character of the area while assuring that the existing buildings continue to be conforming in size.

The rezoning of a portion of one property would remove the "split zoning" which currently exists as a result of property reconfiguration.

The rezoning of a one foot strip along Grove Street from Office Business to RS-8 is designed to prevent additional commercial access from using this relatively narrow residential street and channel that traffic onto Asheland Avenue which has the capacity to handle that traffic. He understands that the traffic issue in the area deals primarily with cut-through traffic and not necessarily traffic related to the properties being discussed today. City Traffic Engineer Michael Moule has developed some potential strategies for dealing with some of the traffic issues in the area and he plans on meeting with representatives of the neighborhood to review those. He presented Council with some information Mr. Moule prepared regarding the traffic

volume and speed data for the area near the intersection of S. Grove Street and Morgan Avenue.

Mr. Matteson said that there is at least one office use existing on Grove Street which does have access onto Grove Street currently. If the one-foot strip of RS-8 is adopted, that existing access point would be considered a grandfathered non-conforming situation and would be allowed to continue indefinitely. The intensity of that use, however, could not be expanded.

Mr. Matteson said that the 2010 Plan considers this area to fall within the urban center; however, the 2010 Plan does recommend that residential uses occur across the street, on the other side of Grove Street.

Planning & Development staff is recommending approval of the rezoning request. At their April 7, 1999, meeting, the Planning and Zoning Commission voted 5-2 to recommend approval of the rezoning.

Mr. Matteson said that on May 6, 1999, a protest petition was submitted by Attorney Craig Justus on behalf of the Asheville Women's Medical Center.

City Attorney Oast said that because the protest petition was not filed two working days prior to the date of the established public hearing date which was April 27, 1999, in his opinion the protest petition was not timely, thus making the protest petition invalid.

Mr. Craig Justus stated that according to the section in the Unified Development Ordinance ("UDO") dealing with the validity of protest petitions, he feels that it is the responsibility of City Council to interpret what that section means, not the City Attorney. He said it is basically a policy decision to decide when the cut-off date is for people to register their protest in the official form of the protest petition. He pointed out to City Council that they had always stood on trying to protect the interests of people who either oppose or support an issue. Whenever Council has erred on due process principles, Council has always erred on giving people time. He said that the ordinance language reads that a protest petition must be filed two days before the date established for the public hearing on the proposed amendment. His -6-

contention was that the date established is the date when the public hearing is conducted - which is today, when the public hearing was opened.

City Attorney Oast said that whether a protest petition is valid or not, is a matter of law, and not up to the discretion of City Council. He also pointed out that even though the provision is in our ordinance, it is a provision that is in the State law as well.

Vice-Mayor Hay felt that the date established for the public hearing was the date City Council established when they made a motion to set the public hearing in the first place.

Upon inquiry of Mr. Justus, Mr. Matteson indicated that the protest petition filed did meet the area requirements of the ordinance.

At the request of Vice-Mayor Hay, Mr. Matteson said that the property owners do object to their property being rezoned from Office Business to Office II District, and the one-foot strip being rezoned RS-8.

Upon inquiry of Vice-Mayor Hay, Mr. Matteson said that the zoning of the subject properties prior to adoption of the UDO was commercial service, which was a pretty wide open commercial district with a lot of variety of some even large scale commercial uses. He also pointed out that much of this neighborhood was zoned commercial service prior to the adoption of the UDO. Mr. Matteson said that when the land was being mapped in conjunction with the UDO, he suspected that staff identified the existing land uses in the area, what classifications those would fit under, size of those uses, etc., and then decided Office Business would be the best classification.

Upon inquiry of Councilwoman Field, Mr. Matteson said the area was zoned commercial service since perhaps the late 1970's.

At the request of Vice-Mayor Hay, Mr. Matteson explained why staff is requesting that the property be rezoned to Office II District. After Council established the Office II District (after adoption of the UDO) staff was given direction to identify areas that the Office II District should be applied to. This area was one of about four areas staff identified to meet the Office II criteria.

Councilwoman Field questioned why this rezoning is being pursued since the property owners and the neighborhoods do not want the change. Mr. Matteson responded that Planning staff was given direction to identify areas that meet the Office II criteria and this is one of those areas.

Councilman Tomes said that Dr. Gray (member of Oak Valley Partners, LLC) could not give any assurances that in the future the property he owns in the area will remain residential. He said the possibility always exists that Dr. Gray may petition to rezone his residential property to a business designation, thus further encroaching into the neighborhood.

When Councilman Cobb asked what would happen if we left the property zoned as it currently is, Mr. Matteson said that the potential impact would be that the lot could be considered as one through lot that has access both on Asheland Avenue and Grove Street. He said that potentially it could be developed in a way that increases the amount of commercial traffic on the narrow section of Grove Street, which has a pavement width of approximately 15 feet.

Upon inquiry of Councilwoman Field, Senior Planner Gerald Green reviewed with Council the one-foot strip of RS-8 zoning classification recommendation. -7-

Mr. Michael Moule, Traffic Engineer, said that on the average weekday, about 750 cars travel on Dailey Drive at the intersection of Dailey Drive and S. Grove Street. He said there is some amount of cut-through traffic, however, without a manual count, he could not say how much of that traffic is generated by the current access off of Grove Street from the office area. He said the neighborhood itself (depending on how many houses you consider in the area) would generate approximately 100-200 trips per day. He said that he will work with the neighborhood to develop some traffic management solutions. He did contact them to work on some solutions, however, they wanted to wait until after Council made their decision on this rezoning request. He did say there are things that they can do to either discourage or actually prevent the cut-through traffic through physical devices.

Upon inquiry of Councilwoman Field, Mr. Moule said that even though South French Broad is the same width as the southern part of S. Grove Street, this is not an issue of capacity but of what is comfortable and acceptable on a residential street.

Mr. Craig Justus, attorney representing the Asheville Women's Medical Center, said that every single property owners that is subject to this rezoning is against the downzoning from Office Business to Office II District and of the one-foot strip of residential, in particular. He said that even though the protest petition is not in effect, the result is the same - the property owners are against the rezoning. He questioned why this piece of property is being treated differently than the property around it. His clients bought their property with the commercial service designation and did not oppose the downzoning during the UDO process to Office Business District because that met with their expectations for now and in the future. He said that the downzoning from Office Business to Office II does affect their expectations of use of this property. He said that while the existing buildings are still within the Office II limitations, this rezoning will not allow them to plan for the future. He stressed that the 2010 Plan states the area is part of the urban center and the Office Business District fits for this property. He said that Office Business is a transition zone. He opposed the Office II designation for the reason that it is singling them out again for downzoning.

Mr. Justus said that it was his understanding that the one-foot strip rezoning to residential, was generated out of the neighbors concern for cut-through traffic. He said this one-foot strip does not deal with the cut-through traffic issue. He felt that his clients are being blamed for a traffic situation that they did not generate and it's their contention that a transitional zone (which is Office Business) will not create the impact that the neighbors are concerned about. He said that they would like to talk with Mr. Moule and the neighborhood to come up with a solution - but the solution is not zoning a one-foot strip to residential. He said that as an alternative to prohibiting their access, they would be willing to offer as a solution for the City to put up a traffic sign that limits them to going just down Dailey Drive to S. French Broad Avenue. He said that just because the lots are zoned all as one piece that they can cut-off access on S. Grove Street and have all their traffic going off and onto Asheland Avenue. However, they cannot do that because of the topography, the way the building is now designed, and the extreme cost it would be to try to send traffic directly onto Asheland Avenue from the back lots. He passed out eight photographs of the area.

Mr. Ben Jones, Asheville architect, said that the Oak Valley Partners' properties were purchased prior to any knowledge of the UDO and while they were zoned commercial service, commercial prices were paid for these lots based on the owner's vision of future health care needs and the potential use in the Asheland/Grove Street access. By use of an existing site plan, he showed Council how Office II zoning would have a definite impact on any future building on the property. After finding out what the building potential was in the Office II designation, the property owner said that it was impossible to work with. He said that under the current Office Business District the owner maintains the flexibility to add to the building one room, should the room be necessary; however, under the Office II District an entirely separate building would have -8-

to be built. Retaining walls, due to the topography, would cost in excess of \$75,000, just by not having access onto S. Grove Street.

Upon inquiry of Councilman Seller, Dr. Craigan Gray, Asheville Women's Medical Center, said that they were approached by residents of that property to purchase that property through a broker that they engaged. He said they paid commercial rates for the property in 1992.

Mr. Bob Grasso, Land Planner for Dr. Gray, said that after studying this project, the Office Business District is the best use for the property and works best with the residential neighborhood. He said the topography and the parking is what is driving the lay-out of what can happen on that site. By use of maps, he explained that if the property remains Office Business allowing an addition to the existing building, it actually improved the relationship to the neighborhood.

Upon inquiry of Councilwoman Field about how many entrances Asheville Women's Medical Center would have onto S. Grove Street, Mr. Grasso said that what they propose, and this is just a scheme that they have worked through that allows the greatest amount of square footage to be built on this property under Office Business, and by adding an addition to the building, which is not allowed under Office II but under Office Business, we could have more square footage on the building, they propose that it would be one way out of the lower parking lot up to the upper parking lot so that when the patients arrive, they cannot go down to the lower S. Grove Street. He said the lower parking lot could be marked and would be for approximately 43 staff (including doctors) which they would enter and exit onto S. Grove Street. He said that the approximate 150 patients they see a day would not be using S. Grove Street but Asheland Avenue.

Upon inquiry of Councilman Sellers, audience members from the neighborhood said that they have not seen the two options of future expansion on the property under the present Office Business and under the proposed Office II District.

City Attorney Oast reminded City Council that their decisions cannot be based on the conceptual designs presented.

The following persons spoke in support of rezoning the property from Office Business to Office II District with the one-foot strip being rezoned RS-8, for various reasons, some being, but are not limited to: the one-foot strip of residential will help maintain the integrity, dignity and the legacy the neighborhood; if Dr. Anderson can make his parking and building access onto Asheland Avenue then why can't the Asheville Women's Medical Center do the same; there should be no more encroachment into this neighborhood; the neighborhood is opposed to any additional traffic in the area; concern for children in the area with the additional traffic; possibility that the neighborhood would prefer the 8-foot retaining wall rather than the introduction of additional traffic into the neighborhood; and the need to protect the affordable housing in the community:

Mr. Joe Craig, resident of 155 S. Grove Street

Ms. Brenda Craig, resident of 155 S. Grove Street

Ms. Mary Warren, resident of 136 S. Grove Street

Mr. Mel Thomason, property owner on Blanton Street

Mr. Clyde Waters, resident of 26 Morgan Street

Mr. Gary Sanford, resident of 139 S. Grove Street

The following persons spoke in support of retaining the current Office Business zoning with no one-foot strip being rezoned residential, for various reasons, some being, but are not -9-

limited to: the area is convenient to their patients; doctors are close to hospitals which enables them to get to the hospital very quickly when needed; patients expect accessibility, availability and growth to meet medical needs and this proposal will restrain the future growth of the Medical Center and to restrict the potential future medical services to women is unthinkable; S. Grove Street is used only for limited, unintrusive parking of employee vehicles; prospect of adverse zoning initiated by the City is worrisome; medical clinics are good neighbors; the area is well-kept with no after-hour noise; minimal traffic and not intrusive; no consideration of downzoning the industrial site located next to 99 S. Grove Street; the downzoning will restrain potential growth of the Medical Center; and businesses should be able to purchase, plan and develop within the City limits and relying faithfully on the integrity of leadership to ensure that it will be possible within the context of stable zoning:

Ms. Doris Warren, Personnel Manager of Asheville Women's Medical Center

Ms. Judith Gray, Owner and Manager of Foxfire Properties, which owns and manages

the homes at 99, 101 and 124 S. Grove Street

Ms. Sheila Jones, Front Office Manager at Asheville Women's Medical Center

Dr. Craigan Gray, member of Oak Valley Partners, LLC

Upon inquiry of Councilman Tomes, Mr. Thomason said that of the neighborhood residents present at this meeting (being confronted with the suggestion that the neighbors might object to an 8-foot high wall which would be necessitated by the one-foot residential strip), they would prefer the one foot restriction and the 8-foot wall to any solution that had the possibility of introducing additional traffic in that area.

Mayor Sitnick closed the public hearing at 7:05 p.m.

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

Upon inquiry of Councilwoman Field, Mr. Green said that a portion of the property on S. Grove Street does have a parking area now which is used primarily by staff.

Mayor Sitnick said that the biggest problem for the neighborhood is the increase of traffic which might occur. She also has sensitivity for the property owners who would like to expand their office complex in the future. She suggested allowing the Office Business District to remain with the one-foot strip being rezoned RS-8.

Councilwoman Field said that this is a traffic problem and not a zoning problem. She said this is congruent with the Central Business District and this is the area that mixed use should happen. She felt these are very gentle uses against a residential neighborhood. She had a real concern that Council is using the wrong methods to deal with a problem that needs to be solved.

Councilman Sellers moved to keep the properties zoned Office Business with no one-foot strip being rezoned RS-8. This motion was seconded by Councilwoman Field.

Councilman Tomes said that he could not support the motion because City Council had referred this issue back to staff to find a solution. Staff has now presented Council with that solution.

Vice-Mayor Hay said that regardless of what Council does with this rezoning, something needs to be done about the traffic management problems on S. Grove Street and they can be dealt with in the appropriate way. He believed that had the new Office II District been in place -10-

when the UDO was adopted, this area would have been zoned that because in every way this area fits the Office II District.

Councilman Cobb expressed concern in rezoning the properties from Office Business to Office II District and the traffic problem will be addressed by our Traffic Engineer.

Councilman Cloninger said that he would not be able to support the motion.

Mayor Sitnick said that if Council doesn't rezone the property to Office II to act as a transition zone, then the one-foot strip is the least we can do to offer a buffer and protection to the neighborhood.

Mr. Justus said that right now there is limited use of the property for employee and doctor parking. He said that they would be willing to meet with the neighborhood and restrict their property so that they could only use this back portion the way it is currently being used, in terms of only allowing the employees and the doctors to park back there and not have a patient through-way. He also said that they would be willing for the City to install a sign that limits their access and egress only on Dailey Drive. Again, they would be willing to restrict their property to be used the way it is currently being used as long as they can keep their Office Business zoning.

City Attorney Oast said that Mr. Justus is proposing to deed restrict the properties that front on S. Grove Street, which is a way of accomplishing outside the zoning context, a way of resolving one of the dilemmas Council has.

When Councilman Sellers asked if a neighborhood representative was present, Mr. Craig said that he could not represent the neighborhood on this issue, however, after prior negotiations on this issue, the one-foot residential strip was what was arrived at.

The motion made by Councilman Sellers and seconded by Councilwoman Field failed on a 2-5 vote, with

Mayor Sitnick, Vice-Mayor Hay, and Councilmen Cloninger, Cobb and Sellers voting "no".

Vice-Mayor Hay moved to rezone the properties to Office II District without the one-foot residential strip. This motion was seconded by Councilman Cloninger and failed on a 2-5 vote, with Mayor Sitnick, Councilwoman Field, and Councilmen Cobb, Sellers and Tomes voting "no".

Mayor Sitnick moved to keep the Office Business zoning with a one-foot strip along five lots located on S. Grove Street being rezoned RS-8. This motion was seconded by Councilman Cobb and carried on a 4-3 vote, with Councilwoman Field and Councilmen Cloninger and Sellers voting "no".

City Attorney Oast said that because the vote on the first motion which passed was 4-3, there is a statutory requirement that it comes back to City Council for a second vote on May 25, 1999.

ORDINANCE BOOK NO. 17 - PAGE 313

For clarification, Vice-Mayor Hay moved to rezone a portion of PIN No. 9648-26-28-5698 abutting on Asheland Avenue from Regional Business District to Office Business District. This motion was seconded by Councilman Sellers and carried on a 6-1 vote, with Councilwoman Field voting "no".

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City Attorney responded to a question from Councilwoman Field about deed restrictions.

At 7:41 p.m., Mayor Sitnick announced a short break.

B. PUBLIC HEARING RELATIVE TO REZONING 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

ORDINANCE NO. 2570 - ORDINANCE 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

Mayor Sitnick opened the public hearing at 8:08 p.m.

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

Mr. Mike Matteson, Urban Planner, said that this is the consideration of an ordinance 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.

The Planning and Development Department staff initiated this rezoning request in an effort to remove the "split zoning" which currently exists as a result of property reconfiguration.

The rezoning of a one foot strip along Grove Street from Office Business to RS-8 is designed to prevent additional commercial access from this relatively narrow residential street.

Planning & Development staff is recommending approval of the rezoning request. At their April 7, 1999, meeting, the Planning and Zoning Commission voted unanimously to recommend approval of the rezoning.

Mr. Mel Thomason spoke in favor of the rezoning request.

Mayor Sitnick closed the public hearing at 8:12 p.m.

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

Councilman Tomes moved for the adoption of Ordinance No. 2570. This motion was seconded by Councilman Cobb and carried on a 5-2 vote, with Councilwoman Field and Councilman Sellers voting "no".

Councilwoman Field stated that she didn't think that placing a one-foot residential strip on a Regional Business piece of property is the way to solve a traffic problem.

ORDINANCE BOOK NO. 17 - PAGE 317 -12-

C. PUBLIC HEARING RELATIVE TO REZONING THREE LOTS ON MONTFORD AVENUE FROM RM-8 RESIDENTIAL MULTI-FAMILY MEDIUM DENSITY DISTRICT TO OFFICE DISTRICT

ORDINANCE NO. 2571 - ORDINANCE TO REZONE THREE LOTS ON MONTFORD AVENUE FROM RM-8 RESIDENTIAL MULTI-FAMILY MEDIUM DENSITY DISTRICT TO OFFICE DISTRICT

Mayor Sitnick opened the public hearing at 8:14 p.m.

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

Mr. Mike Matteson, Urban Planner, said that this is the consideration of an ordinance to rezone 3 properties located on Montford Avenue rezoned from RM-8 Residential Multi-Family Medium Density District to Office District.

The three properties are located at 372, 382, and 406 Montford Avenue and total approximately 2.7 acres. The lots were rezoned from Office Institutional to RM-8 with the adoption of the Unified Development Ordinance in May of 1997. Prior to the zoning change, two of the three properties were permitted for office uses. These uses are considered "grandfathered" non-conforming uses and may continue indefinitely but cannot be expanded. The third property is used as a group home. Each of these lots abuts Montford Avenue in the front and Watauga Place (a very narrow residential street) in the rear.

City staff is recommending denial of the rezoning request for the following reasons:

- 1) an expansion of the office uses which exist in this area may be detrimental to the surrounding residential neighborhood;
- 2) the existing office uses are "grandfathered" non-conforming uses and may continue indefinitely;
- 3) the properties abut Watauga Place which has an average pavement width of just 14 feet; and
- 4) the rezoning would potentially be considered illegal spot zoning.

At their April 7, 1999, meeting, the Planning and Zoning Commission voted 4-3 to recommend denial of the rezoning request.

Mr. Matteson said that on May 6, 1999, a valid protest petition was filed, thus invoking the 3/4's vote

requirement.

Upon inquiry of Councilwoman Field about the potential illegal spot zoning, City Attorney Oast said that only a judge can determine whether something is an illegal spot zoning or not. Some aspects that might indicate a spot zoning would be if it is a relatively small piece of property, under single ownership and the potential that it might be viewed as being singled out for special treatment.

Ms. Cissy Majebe, speaking on behalf of all three petitioners, passed out a folder containing pictures of the properties, a map and a petition of support containing 130 signatures for the rezoning. She said that when she purchased her property it was zoned Office Institutional, and when the Unified Development Ordinance ("UDO") was adopted they rezoned it to RM-8 Residential Multi-Family Medium Density District. With the use of pictures, she pointed out that her property is surrounded by office and institutional uses. With regard to access onto -13-

Watauga Place, she said that two of the three properties have access onto Montford Avenue and one property has access onto Watauga Place. She said that they will compromise by putting a restrictive covenant on the group home property and on 382 Montford Avenue stating that they will not access onto Watauga Place. She urged City Council to rezone her property back to its original use of Office District.

Ms. Sharon Fahrer, property owner of 333 Montford Avenue, said that Montford is becoming a residential traditional neighborhood and urged City Council would not rezone the property to Office because anything allowed in the Office District would be allowed to be built on the property.

Mr. Allen Roderick, resident of 265 Pearson Drive, said that Ms. Majebe asked if he would join in their rezoning petition, however, he did not want to because he wanted to keep their property zoned RM-8 so at some point in time they could build some multi-family housing on their property. He said that he and Ms. Majebe had worked out an agreement saying that he would withdraw his protest petition, if lot 5607 withdrew from the rezoning petition and deed restrictions were put on the other two properties not to access onto Watauga Place. The problem he has with rezoning lot 5607 is that it's only access is onto Watauga Place and it has no access onto Montford Avenue because of the steep incline. He is concerned about future traffic on Watauga Place. At the community club meeting in Montford last night, he found out that the property owner of lot 5607 did not want to withdraw from the rezoning petition. He said that he has not had much time to talk with his neighbors about this rezoning request but realizes they don't really know what is going on. He passed the Mayor a letter dated May 11, 1999, from Mr. Wayne Yordy, 276 Montford Avenue, which the Mayor read. In summary the letter states that Mr. Yordy did sign the petition in support of the rezoning, however, he "now has received additional information that she is going to expand the building and if rezoned to Office, once she sold the property it could be changed into several undesirable business for the area."

Ms. Susan Roderick said that if this property is rezoned to Office, it might start a change to the residential character of the neighborhood.

Mr. Jay Fine, petitioner and owner of 372 Montford Avenue, spoke in support of the rezoning noting that even though his office use is grandfathered in, he has no desire to expand his practice.

A Montford resident said that the clinic has been well maintained and looks like a residence. She felt that low impact businesses should be allowed for the health of the neighborhood.

Ms. Allison Burnette, former Montford property owner, spoke in support of the rezoning noting that Ms. Majebe will keep the flavor of the neighborhood.

Mayor Sitnick reminded the audience that City Council cannot base their decision on what is currently on the property, but has to consider all the potential uses in the Office Business District.

Ms. Jacquelyn Donnelly spoke in support of the rezoning in that low impact offices in the area serve an important role for the neighborhood.

Ms. Jacquelyn Grant, attorney representing Ms. Majebe, urged City Council to rezone the property back to office as it was prior to adoption of the UDO.

Mayor Sitnick closed the public hearing at 9:01 p.m. -14-

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

Upon inquiry of Councilman Cobb, Ms. Majebe said that the group home, which is a petitioner in the rezoning request, signed the petition in order to help Ms. Majebe get her property rezoned.

Councilwoman Field moved for the adoption of Ordinance No. 2571. This motion was seconded by Councilman Sellers and carried on a 6-1 vote, with Councilman Cloninger voting "no".

ORDINANCE BOOK NO. 17 - PAGE 319

FAILURE OF THE PARKS, RECREATION AND GREENWAYS BOND REFERENDUM

Mayor Sitnick announced the results of the Parks, Recreation and Greenways Bond Referendum. Information from the Buncombe County Board of Elections showed that 2,643 voted in favor of the bond referendum and 3,020 voted against it, thus making the bond referendum fail. She said that the City will not be able to upgrade our parks, repair our community centers for our children and teenagers or acquire any of the limited and quickly being developed open spaces and green spaces in the City. She said we probably won't have another chance to capture any of that for future park use, even though Asheville state-wide is considered to have some of the lowest numbers of acreage set aside for parks, for recreation, for greenspace - all things that help create Asheville's uniqueness. That opportunity is not gone from a City that has not raised taxes in ten years.

D. PUBLIC HEARING RELATIVE TO CLOSING AN UNOPENED PORTION OF POND AVENUE OFF LEE STREET

RESOLUTION NO. 99-67 - RESOLUTION TO CLOSE AN UNOPENED PORTION OF POND AVENUE OFF LEE STREET

Mayor Sitnick opened the public hearing at 9:06 p.m.

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

Ms. Suzanne Molloy, Assistant Director of Public Works, said that this is the consideration of a resolution to permanently close a portion of Pond Avenue off Lee Street.

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 was advertised in a local paper, and the location was posted with the resolution of intent to close. -15-

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

Mayor Sitnick closed the public hearing at 9:09 p.m.

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

Councilman Cobb moved for the adoption of Resolution No. 99-67. This motion was seconded by Councilman Tomes and carried unanimously.

RESOLUTION BOOK NO. 25 - PAGE 201

E. PUBLIC HEARING RELATIVE TO THE SUBMISSION OF THE CONSOLIDATED PLAN TO THE U.S. DEPT. OF HOUSING AND URBAN DEVELOPMENT FOR COMMUNITY DEVELOPMENT BLOCK GRANT ENTITLEMENT AND HOME INVESTMENT PARTNERSHIP PROGRAM FUNDS FOR 1999-2000

RESOLUTION NO. 99-68 - RESOLUTION TO SUBMIT THE CONSOLIDATED PLAN TO THE U.S. DEPT. OF HOUSING AND URBAN DEVELOPMENT FOR COMMUNITY DEVELOPMENT BLOCK GRANT ENTITLEMENT AND HOME INVESTMENT PARTNERSHIP PROGRAM FUNDS FOR 1999-2000

Mayor Sitnick opened the public hearing at 9:11 p.m.

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

Ms. Charlotte Caplan, Community Development Director, said that this is the consideration of a resolution authorizing the Mayor to submit a Consolidated Action Plan to the U.S. Dept. of Housing & Urban Development (HUD) for CDBG and HOME programs for FY 1999-2000.

The City will be applying to HUD for \$1,547,000 in CDBG and \$1,140,000 in HOME funds for the coming year. Anticipated program income and re-programming of prior years funds will increase available revenue for CDBG activities by \$514,000, for a total of \$3,201,000 in programmable funds.

The Consolidated Plan serves as the City's annual planning document for the CDBG and HOME grant programs as well as the application for funding. Council action will authorize submittal of the Consolidated Plan to HUD and implementation of the activities listed in the plan. The Consolidated Plan must be submitted to HUD on or before May 14, 1999.

In preparing the plan, the City's Housing and Community Development Committee reviewed 23 CDBG grant applications from 15 agencies and has recommended funding for 20 of these projects in addition to five City-operated projects (not including program administration). The Asheville Regional Housing Consortium reviewed 15 applications from agencies and local governments for HOME funds and has recommended HOME funding for 10 affordable housing projects.

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A summary of the proposed Consolidated Plan was published in the Asheville Citizen-Times on April 2, 1999 requesting public comment by May 3, 1999. Three community public hearings have been conducted by staff, in Asheville and Hendersonville. One written comment on the Plan has been received to date.

Community Development staff recommends adoption of the Plan and Resolution.

Ms. Caplan then briefly reviewed the funding for the projects.

Mayor Sitnick closed the public hearing at 9:17 p.m.

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

Councilwoman Field moved for the adoption of Resolution No. 99-68. This motion was seconded by Vice-Mayor Hay and carried unanimously.

RESOLUTION BOOK NO. 25 - PAGE 202

IV. UNFINISHED BUSINESS:

A. SECOND READING OF CONDITIONAL USE PERMIT FOR TRINITY BAPTIST CHURCH LOCATED AT 216 SHELBURNE ROAD IN WEST ASHEVILLE

ORDINANCE NO. 2572 - ORDINANCE GRANTING A CONDITIONAL USE PERMIT TO TRINITY BAPTIST CHURCH LOCATED AT 216 SHELBURNE ROAD IN WEST ASHEVILLE

City Attorney Oast said that following a public hearing at its meeting on April 13, 1999, the City Council voted to grant a conditional use permit ("CUP") to permit Trinity Baptist Church ("TBC") to expand its existing facilities at 216 Shelburne Road in West Asheville. The vote was made subject to a second vote on the findings to be contained in the ordinance granting the CUP. Since the vote was less than a two-thirds majority, a second vote is statutorily required.

The ordinance adopts findings and conclusions, and directs the issuance of a CUP. The findings, conclusions and conditions are proposals only and City Council should feel free to make other findings, and to impose additional or alternative conditions.

Council should consider the findings, and conditions set forth in the proposed ordinance, making changes as necessary. Provided no one who voted to issue the CUP last month now wishes to change their vote, the process of adoption can occur in two ways:

1. Single motion: To adopt findings and conclusions as contained in the proposed ordinance and issue the CUP.
2. Bifurcated process:
 - a. to adopt findings and conclusions as contained in the proposed order (individual findings or conditions may be voted on separately); and
 - b. to issue the CUP. -17-

Unless there is some substantial disagreement about the findings or conditions, the "single motion" method is recommended.

Conditional use permits may be issued by resolution or ordinance. He suggested using the ordinance format, since the action will have the same legal effect as a zoning ordinance.

Included in the Order is a conclusion to address Carrier Heights Neighborhood Association's assertion that Level III churches are not permitted in the RM-6 zoning classification.

Mayor Sitnick announced that the public hearing on this issue was closed and City Council will not take additional comments.

City Attorney Oast said that City Council needs to come to some consensus on the findings and the conditions that they want to put on the property. Once that is done and the Order is how City Council wishes it to read, then Council can vote on the order. He said that would constitute the second vote which is necessary.

City Attorney Oast presented City Council with a revised Order which contains some revisions. He discussed what he felt were the substantive changes: (1) he defined what a minor thoroughfare in Finding No. 5; (2) in Finding No. 11 he tried to elaborate and clarify some of the testimony about the proposed height of the sanctuary; and (3) he added a new Condition No. 9, which reads "The exterior roof height of the proposed new sanctuary shall not exceed 50 feet, measured at grade on the front or Shelburne Road elevation. The applicable building height limitation, measured as prescribed by the UDO, shall be observed throughout the structure. The sanctuary building may have one roof-mounted steeple, not exceeding 35 feet in height." He said that the findings basically cover the properties of the area that surround the subject property, e.g., size of the homes, and the institutional and residential uses that surround the property. He said the Conclusions track what the ordinance specifies, however, because of the procedural point that Mr. Goldsmith raised at the hearing, the first Conclusion addresses that point. He said that the second part of the Conclusions are the conditional use standards as they are outlined in the ordinance.

Councilwoman Field suggested a revised additional Condition No. 9 to what City Attorney Oast read: "That the design of the proposed structure shall be subject to review by a design review team, consisting of City staff and design professionals from the community. The design review team shall work with the architect for the church to ensure that the design of the structure is compatible with the surrounding neighborhood. The design review team shall present the design of the proposed structure and its recommendations to the City Council for approval. The design team shall review the plans, particularly the elevation, paying close attention to the following design elements: height, bulk, scale, massing, articulation, materials, color, location of entrance, relation of the structure to the site, and compatibility with the site and the surrounding neighborhood. The design review team shall ensure that the building elevation fronting on Shelburne Road is designed in a manner which is sensitive to the residential character of the surrounding neighborhood. Review of the landscaping plan shall be included in this review process to ensure that landscaping is appropriately designed and located to soften the impact of the building and parking on surrounding residential uses."

City Attorney Oast said that it was important for City Council to retain final approval authority on this so any consideration by this design review team would have to come back to City Council in the form of a recommendation which Council would then adopt as conditions. He said Councilwoman Field's condition is establishing a set of design guidelines to ensure that the project is compatible with the surrounding neighborhood as much as possible because the design -18-

is not complete yet. He did talk with Senior Planner Gerald Green and they feel that this can be brought back to City Council within a short timeframe.

Upon inquiry of Vice-Mayor Hay, City Attorney Oast said the design guidelines would come from the design team. Essentially what Councilwoman Field's suggestion is, is to hold one condition of this conditional use permit open for further consideration by City Council.

Councilwoman Field said that in trying to write a condition it became more and more complicated as she tried to come up with some design guides. She said her guides are fairly standard and she felt these would give a little more control for the neighborhood on this particular project.

Upon inquiry of Vice-Mayor Hay, City Attorney Oast said that to a large extent, as with all conditional use permits, the conditions are self-policing and the City will respond to and investigate complaints.

Councilwoman Field asked if there was a consensus to add a condition for some kind of design review which would include the City staff and design professionals, rather than ad hoc members of the community. The intent of her condition was that whoever designed the church would have to comply with this condition and there would be no guidelines written, but merely it would be reviewed at the time it was presented and if the review team didn't recommend that it be accepted, it would go back to the drawing-board. However, after hearing the discussion, she felt it might be better to have some design guidelines ahead of time and for City Council to approve those guidelines.

When City Attorney Oast asked if any member of Council would change their vote if Councilwoman Field's new Condition No. 9 replaced the additional Condition No. 9 he read earlier, all of Council indicated the replacement would not change their vote.

City Attorney Oast said that it was his understanding that City Council will not be reviewing the final design, but they will approve certain conditions that the final design must meet, and whether it meets it or not will be a staff determination.

Councilwoman Field moved to grant the conditional use permit to Trinity Baptist Church with the additional condition for some type of design guidelines as she read earlier. This motion was seconded by Councilman Sellers.

Mayor Sitnick asked if this order passes with all the conditions, will there be any other opportunities to impose additional conditions. City Attorney Oast said no, not unless the church comes back to City Council for modification of the conditional use permit. When she asked about modifications to the site plan, he said it might be possible to impose conditions at the site plan review level.

Mayor Sitnick was concerned with Condition No. 2 in that the neighbors deserve as much as a screen as possible. City Attorney Oast said that what is intended, if not clear, is that at the end of two years, whatever is planted will be sufficient to screen the parking lot. Mayor Sitnick asked that the condition be clarified so that the plants form a solid hedge that is evergreen. Her concern is that it says it has to form a screen that is five feet high, but she thinks that can be interpreted as street trees and not necessarily a screen. City Attorney Oast suggested the condition be amended to read " Shrubs and trees shall be installed ... which will grow to a height of at least five feet within two years, and be sufficient then and at maturity to provide an opaque evergreen screen sufficient to screen the parking lots from the view of the surrounding residential properties."

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From the audience, Senior Planner Gerald Green responded to Councilwoman Field's question if about if there was some definition within the landscape ordinance that can be referred to.

After discussion, City Manager Westbrook suggested that Council state what their intent is and let the professionals work it out because they may even come up with some better alternatives given a little time. Councilwoman Field said that she would be amenable to that because the intent is to screen the parking lot. City Attorney Oast said that Councilwoman's change to condition no. 9 encompasses landscaping, that that gives some latitude to the design review team to make appropriate suggestions.

Councilman Sellers called the question.

Mayor Sitnick said that she has seen a lot of professionals completely deforest property. She said that she wants to screen the parking lots from the view of the surrounding residential properties. She said that if

somebody can find a better way to do that, than using conifers, in whatever natural configuration, that is fine. However, if it's not screened year-round then it's not providing the condition of No. 2.

Councilman Cobb said that this is a difficult decision for him. He said businesses, churches and neighborhoods all have rights in the community. As a public official, they have to look at the rights for all the people. He is a strong supporter of neighborhoods, businesses and churches. We are in a no-win situation. The Planning staff and the Technical Review Committee ("TRC") have stated that this project meets all the technical standards for development in the RM-6 zoning designation. The TRC has placed certain conditions on the project, and the church has met or has agreed to meet all of the conditions. He said that one argument on this issue was the traffic, however, the traffic studies show that the roads are designed to carry 10,000 cars a day and even with the 2400 seat auditorium, traffic still would not reach the 10,000 capacity. Regarding property values being reduced, he had a survey done in the area and the results show that from the 1994 valuation, property values in West Asheville have gone up, not declined.

Councilman Tomes stated that a proposed layout of this facility was shared some time ago and they ready to proceed with their long range plan. He felt it was unfair to have prior stages approved and now tell them they can't proceed with their long range plans. He said that this has been a difficult decision for him, however, he is looking at the stewardship and accountability of a faith community that has met all of the criteria that has been established by staff.

Councilwoman Field said that the Grove Park Inn expansion in a residential neighborhood was the only project she could think of that might be comparable in this community where there was an institutional use expanding greatly to do a conferencing kind of facility. She said she didn't find any substantiation for the property value reason for excluding voting for this permit.

Councilman Cloninger stated that he is opposed to granting the conditional use permit in that he didn't think the use proposed is appropriate in this case.

Mayor Sitnick said that looking at the several conditional use standards, which by law Council is supposed to base their granting the permit for this conditional use of this property, knowing that if even one of them fails, City Council must not grant the permit. Conditional Use Standard (d) in the Order which reads "the use of the Subject Property by TBC, if developed as proposed and built in accordance with the approved site plan, and subject to the conditions set -20-

forth herein, will be in harmony with the scale, bulk, coverage, density and character of the area or neighborhood in which it is located" clearly reflects that the permit should not be granted.

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

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

ORDINANCE BOOK NO. 17- PAGE 321

B. RESOLUTION NO. 99-69 - RESOLUTION AUTHORIZING THE CITY CLERK TO ADVERTISE AN OFFER TO PURCHASE DISPOSAL PARCEL 59X LOCATED NEAR THE CORNER OF ASHELAND AVENUE AND PHIFER STREET

Mr. Ed Vess, Field Services Coordinator, said that this is the consideration of a resolution directing the City Clerk to advertise an offer to purchase for upset bids regarding Disposal Parcel 59X near the corner of Asheland Avenue and Phifer Street. At the April 27, 1999, City Council meeting, this matter was continued

until this date in order to give City Council time to visit the property in question.

The bid of Rex Ballard in the amount of \$139,000 for the purchase of Disposal Parcel 59X in the East Riverside Redevelopment Project is not less than the established minimum price of \$139,000.

Disposal Parcel 59X is an Office zoned lot near the corner of Asheland Avenue and Phifer Street comprising 0.639 acres. The bid from Rex Ballard for Disposal Parcel 59X includes the proposal to incorporate the lot into the adjacent property currently owned by Rex Ballard. The development proposal consists of landscaping and parking consistent with the Unified Development Ordinance. The proceeds from the sale of this property would be available for the City to purchase another parcel of land that is currently available that is about eight acres in size and would allow us to develop approximately 20-25 units of affordable housing.

Approval of the resolution will initiate the sale of the property through the upset bid process as provided in N. C. Gen. Stat. sec. 160A-269.

Community Development staff recommends adoption of the resolution.

Mr. Mel Thomason urged City Council to retain this parcel of land for open space and also to decrease the potential impact of additional development on Blanton Street.

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

Councilwoman Field moved for the adoption of Resolution No. 99-69. This motion was seconded by Councilman Sellers and carried on a 6-1 vote, with Councilman Tomes voting "no".

RESOLUTION BOOK NO. 25 - PAGE 203

V. NEW BUSINESS:

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A. RESOLUTION NO. 99-70 - RESOLUTION AUTHORIZING THE EXECUTION OF DOCUMENTS TO INCLUDE ADDITIONAL EQUIPMENT UNDER THE EXISTING MASTER MUNICIPAL RENTAL AGREEMENT FOR THE CITY'S TELEPHONE SYSTEM

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

Finance Director Bill Schaefer said that this is the consideration of a resolution authorizing the execution of documents to include additional equipment under the existing Master Municipal Rental Agreement for the City's telephone system.

Last year, City Council approved the execution of a Master Municipal Rental Agreement, dated February 25, 1998, between the City of Asheville and NEC America, Inc. (The lease was subsequently assigned by NEC to Sutro & Co., which in turn assigned its right to receive rental payments to Fifth Third Bank, NA) The lease provided a fully-integrated telephone system that met the City's then-current needs and provided expansion capabilities to incorporate future expansion. The lease was for a term of 84 months at a cost of \$6,457.50 per month. During the past year it has been necessary to add additional equipment to the system to meet the City's evolving telephone requirements (6 additional digital display phones, 17 headsets, analog card for voice response system, etc.) The proposed resolution authorizes the City Manager, Finance Director and City Clerk to execute all necessary documents to include the above mentioned equipment as Delivery Order Number Two to the Master Municipal Rental Agreement. The terms of the added leased equipment is

\$378.68 per month for a period of 36 months beginning in May 1999.

Staff recommends the City Council adopt the resolution.

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

Councilwoman Field moved for the adoption of Resolution No. 99-70. This motion was seconded by Vice-Mayor Hay and carried unanimously.

RESOLUTION BOOK NO. 25 - PAGE 204

B. ORDINANCE REQUIRING THE POSTING OF PRIVATE PARKING LOTS IN DOWNTOWN ASHEVILLE

City Attorney Oast said that this is the consideration of an ordinance requiring that private parking lots in the downtown area be designated as private.

Council and staff have received complaints about enforcement of parking restrictions on private parking lots, primarily related to the towing of vehicles from those lots. Research indicates that local regulation of "motor private carriers with respect to the transportation of property" is pre-empted by federal law. This preemption has been held to apply to non-consensual towing of vehicles from private lots. The effect of the federal law is that cities may not adopt regulations affecting the manner in which privately initiated towing is carried out. To the extent that the federal government does not prohibit local regulation of towing, it appears that, in order for the City to do so, specific authorization would have to be found in State law.

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Some North Carolina counties are subject to a law that requires posting of lots as a pre-condition for towing from those lots. Buncombe is not one of those counties. However, there appears to be general authority by which the City can require that private lots be so designated, and to provide that failure to comply subjects the offender (the owner or operator of the lot) to a civil fine. This does not mean that unauthorized vehicles parking in private lots may not be towed or that vehicles must be towed from lots that have signs. However, it may reduce the level of inadvertent unauthorized parking, and thus reduce the number of non-consensual tows.

This application of this ordinance is limited to the Central Business District ("CBD") zone east of the French Broad River; we have had very few complaints from other areas of town. At your meeting in March, some concern was expressed over the "all or nothing" approach that the original proposed ordinance appeared to take. Accordingly, revisions have been made to require the designation of all private parking lots in the CBD, and the hours during which towing is or may be enforced.

At a meeting of the Downtown Commission, it was suggested that uniform signs might aid in further reducing unauthorized use of private lots. Language has been included to permit the City to produce and provide such uniform signs, and to require their use, if available. The ordinance does not require the use of those signs unless the City makes them available. The ordinance just requires the lots be signed and if the signs are available we can require that our signs be used.

The ordinance will become effective sixty days after adoption.

To the extent that this ordinance may help reduce the number of situations where non-consensual tows can occur, its adoption is recommended.

Councilman Cloninger felt that property owners use their signs to not only to warn about towing, but also to

advise the public that this is their parking lot. Therefore he suggested that rather than require the property owner to use the City's sign designed by the City, require the property owners to incorporate the City's specified language into their sign. He suggested deleting the language "The City may undertake to produce and provide uniform signs with appropriate designations. If such uniform signs are available, the City may require the use of such signs in implementing this section."

City Attorney Oast said that this suggestion came out of a meeting with the Asheville Downtown Commission and that the City doesn't have to require that their signs be used. He said they can still obtain the signs and make them available to property owners if they want one.

Vice-Mayor Hay was concerned that this ordinance will require every private parking lot owner in the Central Business District to put up a sign stating that it is a private parking lot, even if they don't tow and they don't want to tow. He suggested that if the private parking lot owner is going to use towing to enforce their private rights, then they need to put a sign up, or something to that effect, but not to require all private parking lot owners to put up a sign.

City Attorney Oast said the difficulty we have before us is that the only thing we can do is to require the posting of signs. We can't require the posting of signs as a condition to towing.

Vice-Mayor Hay suggested the ordinance be revised to only read: "If the lot is one from which unauthorized vehicles may be removed without the consent of the vehicle owner, the sign shall specify the days and hours during which such non-consensual removal is enforced."

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Mayor Sitnick suggested the ordinance read "If the lot is one from which unauthorized vehicles may be removed without the consent of the vehicle owner, then those lots that are privately owned, privately leased, or privately operated parking lots located east of the French Broad River and located on property zoned to a CBD ... shall display a sign ..." So, in other words, we are really stating only the lots from which unauthorized vehicles may be removed without consent.

Vice-Mayor Hay also suggested the City Attorney look at the words "may be removed" because unauthorized vehicles may be removed without consent in any lot anywhere.

Mayor Sitnick's only desire is to make sure people can see and understand the signs so that if they park in that lot, they will get towed.

It was the consensus of City Council to have the City Attorney review the suggestions made at this meeting and bring a revised ordinance back to Council at their next formal meeting.

VI. OTHER BUSINESS:

A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON APRIL 27, 1999, AND THE WORKSESSION HELD ON MAY 4, 1999

Councilman Tomes moved for the adoption of the minutes of the regular meeting held on April 27, 1999, and the worksession held on May 4, 1999. This motion was seconded by Councilman Sellers and carried unanimously.

B. MOTION REAFFIRMING CITY COUNCIL'S SUPPORT OF NORTH CAROLINA ADOPTING PERMITTING PROCEDURES FOR AIR QUALITY IN THE SOUTHEAST

Mayor Sitnick moved to reaffirm Resolution No. 98-176 adopted on November 24, 1998, which supports

North Carolina adopting permitting procedures for air quality in the southeast. This motion was seconded by Councilman Cobb and carried unanimously.

C. REPORT FROM BOARDS/COMMISSIONS COMMITTEE

It was the consensus of City Council to interview candidates for the Educational Access Channel Commission at 4:00 p.m. on Tuesday, May 25, 1999, in Room 209 of the City Hall Building. Vice-Mayor Hay suggested that City Council then vote on those appointments at that formal meeting held later that evening.

D. LAWSUITS

The following lawsuit was received by the City of Asheville on May 5, 1999: Wade Lee Messer v. City of Asheville and Cooper Construction Company Inc. The complaint alleges bodily injury and expenses incurred as a result of a 6" water line improvement project for the West Asheville annexation. This matter will be handled by an outside attorney.

The following lawsuit was received by the City of Asheville on January 25, 1999: Jim A. Robbins v. City of Asheville. The complaint seeks a declaratory judgment that the citation issued against the Plaintiff for an on-premise sign is illegal and invalid. This matter will be handled in-house.

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VII. INFORMAL DISCUSSION AND PUBLIC COMMENT:

VIII. ADJOURNMENT:

Mayor Sitnick adjourned the meeting at 10:35 p.m.

CITY CLERK MAYOR
