

Tuesday - July 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

On behalf of City Council, Vice-Mayor Hay expressed sympathy on the passing of Mr. Jim Crum, who was the Print Shop Manager for the City of Asheville and City of Asheville employee for over 20 years.

Councilman Sellers gave the invocation.

I. PROCLAMATIONS:

A. PROCLAMATION PROCLAIMING JULY 1999 AS "NATIONAL RECREATION AND PARKS MONTH"

Mayor Sitnick read the proclamation proclaiming July, 1999, as "National Recreation and Parks Month" in the City of Asheville. She presented the proclamation to Mr. Frank Fishburne, Chairman of the Recreation Board, who briefed City Council on some activities taking place during the month.

II. CONSENT:

A. RESOLUTION NO. 99-104 - RESOLUTION FIXING DATE OF PUBLIC HEARING ON JULY 27, 1999, ON THE QUESTION OF ANNEXATION OF PROPERTY LOCATED OFF OF LONG SHOALS ROAD AND KNOWN AS BILTMORE PARK COMMON AREAS (BILTMORE PARK ANNEXATION SECTION 14), SCHENCK PARKWAY AND 100 TECHNOLOGY DRIVE

RESOLUTION BOOK NO. 25 - PAGE 247

B. RESOLUTION NO. 99-105 - RESOLUTION APPOINTING A MEMBER TO THE EDUCATIONAL ACCESS CHANNEL COMMISSION

Summary: Ordinance No. 2554 adopted on March 9, 1999, established an Educational Access Channel Commission. On May 25, 1999, members to the Commission were appointed.

On June 21, 1999, Dr. Bob Bowers, Superintendent of Buncombe County Schools, requested that Ms. Carolyn Crew, Director of Media Services, be appointed as one of the Buncombe County School appointments instead of Dr. Bobbie Short. Ms. Crew will be filling the unexpired term of Dr. Short, term to expire June 1, 2003, or until her successor is appointed.

RESOLUTION BOOK NO. 25 - PAGE 252

C. MOTION SETTING A PUBLIC HEARING ON JULY 27, 1999, TO CONSIDER A CONDITIONAL USE PERMIT FOR THE ASHEVILLE MALL EXPANSION -2-

D. MOTION SETTING A PUBLIC HEARING ON JULY 27, 1999, TO CONSIDER A CONDITIONAL USE

PERMIT FOR DREAMLAND PHASE II

E. MOTION SETTING A PUBLIC HEARING ON JULY 27, 1999, TO ADD THE MANUFACTURED HOME OVERLAY DISTRICT TO 15 LOTS LOCATED ON MOCKINGBIRD CIRCLE CURRENTLY ZONED RM-6 RESIDENTIAL MULTI-FAMILY LOW DENSITY DISTRICT

F. RESOLUTION NO. 99-106 - RESOLUTION AUTHORIZING APPLICATION AND ADMINISTRATION OF TRANSIT OPERATING GRANTS

Summary: The consideration of a resolution authorizing the City of Asheville to apply for and administer grants for transit operations

A substantial part of the current operating budget for the City's transit operations has traditionally come in the form of grants from the Federal Transit Authority, for which applications and administration contracts are required every year. The City abolished the Asheville Transit Authority effective July 1, 1999, and established transit operations as a line department of the City.

The adoption of the budget, since it assumes the continuation of this grant funding, is sufficient legal authority for the City to apply for and receive the grants. The resolution is a formality that specifically authorizes the City to take actions that the law and the budget ordinances already authorize generally. It also ratifies any actions taken from July 1 until now.

Adoption of the resolution is recommended.

RESOLUTION BOOK NO. 25 - PAGE 253

G. MOTION SETTING A PUBLIC HEARING ON AUGUST 10, 1999, TO REZONE A PORTION OF VIRGINIA AVENUE AND HAYWOOD ROAD FROM RM-8 RESIDENTIAL MULTI-FAMILY MEDIUM DENSITY DISTRICT TO COMMERCIAL BUSINESS II DISTRICT

H. MOTION SETTING A PUBLIC HEARING ON AUGUST 10, 1999, TO REZONE SEVEN LOTS ON SAND HILL SCHOOL ROAD FROM RM-6 RESIDENTIAL MULTI-FAMILY LOW DENSITY DISTRICT TO RM-16 RESIDENTIAL MULTI-FAMILY HIGH DENSITY DISTRICT

I. MOTION SETTING A PUBLIC HEARING ON AUGUST 10, 1999, TO AMEND THE UNIFIED DEVELOPMENT ORDINANCE TO REVISE THE STANDARDS OF WIRELESS TELECOMMUNICATION FACILITIES

J. MOTION SETTING A PUBLIC HEARING ON AUGUST 10, 1999, TO AMEND THE UNIFIED DEVELOPMENT ORDINANCE REGARDING THE ENFORCEMENT REMEDIES

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 Tomes moved for the adoption of the Consent Agenda. This motion was seconded by Councilwoman Field and carried unanimously. -3-

III. PUBLIC HEARINGS:

A. PUBLIC HEARING RELATIVE TO CONSIDERING THE INITIAL ZONING OF CITY-OWNED PROPERTY LOCATED OFF FERRY ROAD (BENT CREEK AREA) TO INDUSTRIAL DISTRICT

ORDINANCE NO. 2588 - ORDINANCE TO ZONE CITY-OWNED PROPERTY LOCATED OFF FERRY

ROAD (BENT CREEK AREA) TO INDUSTRIAL DISTRICT

Mayor Sitnick said that the public hearing which was opened on June 22, 1999, was to consider zoning of City-owned property located off of Ferry Road (Bent Creek area) to RS-2 Residential Single Family Low Density District. However, City Council continued this matter until this date and legally advertised zoning the property to Industrial District.

Mr. Carl Ownbey, Urban Planner, said that the City of Asheville annexed 139 acres of vacant, city-owned property earlier this year (PIN Nos. 9635.01-07-6456 and 9636.03-10-3854). Requirements dictate that all property within the City limits of Asheville be zoned. Since this property lies along the French Broad River in a rural residential setting, Planning staff felt the most appropriate zoning classification would be RS-2 Residential Single Family Low Density District.

The Planning staff reviewed the rezoning request to RS-2 and recommended approval. At their June 2, 1999, meeting, the Planning & Zoning Commission voted unanimously to recommend approval of the initial zoning of 139 acres of vacant land located off Ferry Road to RS-2 Residential Single Family Low Density District.

Councilman Cloninger said that the City has a good faith obligation to transfer ownership of this property to Henderson County with a zoning classification that will allow them to do what the Water Agreement restricts them to do and that is to build a wastewater treatment facility only. The Water Agreement provides that Henderson County shall convey the property to MSD for construction of a wastewater treatment facility, or to another water authority of which Henderson County and the City are a part. If Henderson County fails to do either within 10 years, the property is to be reconveyed to Asheville. He felt it would not be appropriate to transfer property to Henderson County telling them they can only use this for a wastewater treatment facility, but at the same time transfer it with a zoning designation that forbids that. He felt the City should zone the property in such a way that will allow them to put a wastewater treatment plant on the property if they decide to do that. He said we can put specific deed restrictions in the deed itself when we transfer the property to Henderson County that will prevent them from doing anything other than building a wastewater treatment plant on it.

Upon inquiry of Vice-Mayor Hay, City Attorney Oast said that he has prepared the deed to reflect the terms of the Water Agreement. The Agreement does not contain restrictive covenants in the classically understood sense. Rather, it provides that the property will revert to the City if it is not used (for a wastewater treatment plant) as provided for in the Agreement within 10 years. He said that restrictive covenants merely limit the potential use of property, and would depend on the City taking some affirmative step to enforce them. Even if the covenants were violated, ownership would remain with Henderson County. Under the reversion arrangement, however, failure of the condition automatically causes the property to come back to the City. So the reversion is actually a stronger mechanism.

Councilman Cloninger said that to be on the safe side, the restrictive covenants should be included in the deed. -4-

When Mayor Sitnick asked if Henderson County could trade or sell that property if they don't build a treatment plant on it, City Attorney Oast said that with the reverter clause in the deed, the possibility of Henderson County finding a willing buyer would be slim. The way the deed will be drafted, if they attempted to do anything with it other than develop it for a wastewater treatment plant, he felt the City of Asheville would have a basis to claim that the reverter clause be triggered.

Mayor Sitnick asked what would happen if Henderson County does decide to build a treatment plant on the site but MSD finds that they cannot use the property for a treatment plant. Could MSD do something with that property that would not bind Henderson County to the original agreement? City Attorney Oast said that any

restrictions in the deed will be binding on any subsequent owner of the property. The deed does not currently contain the restrictions that Councilman Cloninger mentioned, however, it does contain the reversion language. He said that he would revise the deed to add restrictions, suggested by Council Cloninger, that affirmatively limit the use of the property and send it to Henderson County.

Mayor Sitnick noted that the ten year period starts at the time of the transfer of the property, not at the time of the agreement.

It was the consensus of City Council to have the City Attorney include an additional restriction in the deed that Henderson County can only use the property for one use in the next ten years and that is the wastewater treatment facility. City Council does not want Henderson County to be able to put up even a short-term industrial use.

City Attorney Oast said that the restrictions will apply to the entire property.

Upon inquiry of Mayor Sitnick, Mr. Ownbey addressed the concern from the Blue Ridge Parkway that a small portion of this property proposed to be zoned industrial is located in the Blue Ridge Parkway Viewshed Area.

Mayor Sitnick said that, while she was on City Council at the time it was agreed to transfer this property to Henderson County, she wished that there was more prominent discussion about the transfer and that she had been more fully informed about what was happening.

Mr. Frank Rosa, owner of property on Brevard Road, felt that this gateway to Asheville should be a park or office complex, but certainly not have a wastewater treatment facility built on the land.

Mayor Sitnick asked if there was anyway that City Council could place conditions, such as regulating height, creating buffers that would require the planting of trees that grow to such heights that don't allow the plant to be seen from I-26, Brevard Road and the Blue Ridge Parkway, etc., in addition to the deed restrictions, on the property prior to the transfer in hopes to encourage Henderson County to keep the plant as visually low impact as possible. City Attorney Oast said that any wastewater treatment facility that is built on that property will require a conditional use permit and site specific questions can be addressed in that process.

City Attorney Oast said that it is his understanding that it's entirely up in the air as to whether a wastewater treatment plant will be built there at all. He felt it may be difficult, and it may be a problem with the agreement, if we try to attach those kinds of conditions because he felt we may be overstepping what we said we would do in the agreement.

-5-

Councilwoman Field noted that even if City Council did place some kind of conditions on the property now, those can be changed by whatever Council is sitting at the time the building process begins.

Councilman Cloninger suggested that, even though it would not be binding, as part of the transfer of the deed to Henderson County, a letter be sent to Henderson County summarizing our concerns that aesthetics be taken into account in any use they attempt to make of the property. He also suggested the letter be filed in some appropriate place with the City that if, and when, Henderson County has to come to the City for the conditional use permit for the plant, the staff will have that letter in the file and it will be consulted as part of that conditional use hearing process. At least that way we will be on record to see that there were these concerns at the time the transfer was made.

City Attorney Oast said that if Henderson County does pursue building the plant, it's possible that only a small portion of the property will be used for the plant and the rest could be zoned to a less intensive classification, but that is something unknown as this time.

Councilman Cobb felt personally that a mistake was made to transfer the property. He wondered if the City could go to Henderson County and ask if we could trade or buy back the property.

Mayor Sitnick was concerned that when the current MSD plant runs out of capacity they might decide to build a large plant to accommodate our region. Councilwoman Field, and member of the MSD Board, said that she recently learned that the MSD plant, as it is now, is only being used at less than 50% of its capacity and she believed they have capacity, based on the rate of growth that this county is in, for another 50-75 years in the present plant. She said she doesn't think there are any intentions of MSD of building a wastewater treatment plant on that piece of property.

Upon inquiry of Mayor Sitnick, City Attorney Oast said that the Water Agreement provides that Henderson County shall convey the property to MSD for construction of a wastewater treatment facility, or to another water authority of which Henderson County and the City are a part.

Mayor Sitnick closed the public hearing at 5:44 p.m.

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

Councilman Cloninger moved for the adoption of Ordinance No. 2588 to zone the property Industrial, with the express provision that the deed transferring title to Henderson County contain the restrictive covenant language as discussed today. This motion was seconded by Councilwoman Field and carried unanimously.

ORDINANCE BOOK NO. 17 - PAGE 394

B. PUBLIC HEARING RELATIVE TO CONSIDERING AN AMENDMENT TO THE UNIFIED DEVELOPMENT ORDINANCE TO REQUIRE A CONDITIONAL USE PERMIT FOR ADULT ESTABLISHMENTS

ORDINANCE NO. 2589 - ORDINANCE AMENDMENT TO THE UNIFIED DEVELOPMENT ORDINANCE TO REQUIRE A CONDITIONAL USE PERMIT FOR ADULT ESTABLISHMENTS -6-

Mayor Sitnick opened the public hearing at 5:45 p.m.

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

City Attorney Oast said that this is the consideration of an ordinance amending the Unified Development Ordinance which would identify adult establishments as conditional uses and establish standards for the adult uses.

The Asheville Planning and Zoning Commission, at their June 24, 1999, meeting, reviewed and recommended approval of an amendment to the Unified Development Ordinance which would identify adult establishments as a conditional use in the Highway Business, Regional Business, and Commercial Industrial districts. Adult uses are not permitted in any of the other zoning districts. The proposed ordinance amendment also sets standards for adult establishments. Among the development standards for adult establishments are:

- No lot containing an adult establishment shall be located within a 1,000 foot radius of any other lot containing an adult establishment;
- No lot containing an adult establishment shall be located within a 1,000 foot radius of any residential zoning district;

- No lot containing an adult establishment shall be located within a 1,000 foot radius of any church, school, library, child care center, or public recreation center, or public park or playground; and
- Standards for signage.

As a conditional use, all requests for adult establishments would be decided by City Council following a public hearing on the request. The proposed ordinance amendment makes permanent an earlier temporary ordinance making adult establishments a conditional use.

The public notice advertising the hearing on this ordinance amendment was legally advertised in the Asheville Citizen-Times July 2, 1999 and July 9, 1999.

The Asheville Planning and Zoning Commission voted unanimously to recommend approval of the wording amendment. The Planning and Development staff recommends approval of the amendment.

Mayor Sitnick closed the public hearing at 5:50 p.m.

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

Councilman Sellers moved for the adoption of Ordinance No. 2589. This motion was seconded by Councilman Cobb and carried unanimously.

ORDINANCE BOOK NO. 17 - PAGE 396

IV. UNFINISHED BUSINESS:

V. NEW BUSINESS:

A. RESOLUTION NO. 99-107 - RESOLUTION APPOINTING MEMBERS TO THE SUSTAINABLE ECONOMIC DEVELOPMENT TASK FORCE

-7-

Vice-Mayor Hay said on June 8, 1999, City Council authorized staff to develop a list of candidates to work with Dr. David Kolzow, Consultant with Lockwood Greene Consulting, on the Comprehensive Sustainable Economic Development Strategic Plan.

Economic Development Director Mac Williams prepared a list of candidates who have been contacted and who have confirmed their willingness to serve, if asked. Mr. Williams explained the task of the group. He said that the term of the Task Force will begin with appointment of the members by City Council and would end when the Sustainable Economic Development Strategic Plan, that they will draft, is adopted by City Council. He felt the draft Plan should be ready for City Council review in October or November of this year.

The City Council Boards and Commissions Committee met to review the list and the following are their recommendations: Jack Cecil, Bill Habermeyer, Benson Slosman, Bruce Tompkins, Carol King, Sonny Enloe, Dale Groce, Chuck Tessier, James Geter, Pat Whalen, Bob Turner, Charles Pine, Doug Wilson, Ted Prosser, Harry Pilos, Joyce Harrison, Pam Turner, Jim Mullen, Ed Anderson, Russ Martin, Bob Burgin, Ray Bailey and B.J. Harris.

City Council expressed their appreciation to this talented group of people who have agreed to work on behalf of the City on this very important task.

Councilwoman Field asked if she would have a conflict of interest since one of the candidates is a client of hers. City Attorney Oast said he did not feel she would have a conflict.

Vice-Mayor Hay moved to adopt Resolution No. 99-107 to appoint the 23 candidates recommended by the Boards and Commissions Committee to serve as members on the Sustainable Economic Development Task Force. This motion was seconded by Mayor Sitnick and carried unanimously.

Mr. Williams then explained why he felt Mr. Jack Cecil would make an excellent Chair of the Task Force.

City Council expressed how pleased they would be to appoint Mr. Cecil as Chair due to his effective leadership and his excellent expertise.

Vice-Mayor Hay moved to appoint Jack Cecil as Chair of the Sustainable Economic Development Task Force. This motion was seconded by Mayor Sitnick and carried unanimously.

RESOLUTION BOOK NO. 25 - PAGE 254

B. RESOLUTION NO. 99-108- RESOLUTION APPOINT A CHAIR TO THE CIVIL SERVICE BOARD

Vice-Mayor Hay said that Gary Moffitt has resigned as a member and Chair of the Civil Service Board. The members currently on the Board include: William Fulp, Gene Bell, George Bancroft, Jesse Warren and Al Thomas.

Vice-Mayor Hay said that the Boards & Commissions Committee recommends appointing Gene Bell as Chair of the Civil Service Board.

Councilman Cloninger moved for the adoption of Resolution No. 99-108, appoint Gene Bell as Chair to the Civil Service Board. This motion was seconded by Councilman Tomes and carried unanimously.

-8-

RESOLUTION BOOK NO. 25 - PAGE 256

VI. OTHER BUSINESS:

A. APPROVAL OF THE MINUTES OF THE WORKSESSION HELD ON JUNE 15, 1999, THE REGULAR MEETING HELD ON JUNE 22, 1999, AND THE COMMUNITY MEETING HELD ON JUNE 29, 1999

Councilman Tomes moved for the adoption of the minutes of the worksession held on June 15, 199, the regular meeting held on June 22, 1999, and the community meeting held on June 29, 1999. This motion was seconded by Councilman Sellers and carried unanimously.

B. REPORT ON FATHERHOOD CONFERENCE

Councilman Tomes gave City Council a brief report on his trip to Washington, D.C., when he attended a conference on fatherhood.

C. PACK PLACE SIGN

As a result of numerous complaints being received about the design of the sign located in front of Pack Place, it was the consensus of City Council to review the ordinance that allowed the sign to be placed there at an upcoming worksession.

Vice-Mayor Hay noted that the sign was paid for by a grant, designed by an Atlanta, Georgia, architect sign

designer and was selected by a committee, not the Pack Place Board.

D. CLAIMS

The following claims were received by the City of Asheville during the period of June 11-24, 1999: Jerry Payne Construction Co. (Water), Helen Sanders (Water), Bob Beard (Water), David Waldroup (Parks & Recreation) and Mark Brown (Streets).

The following claims were received by the City during the period of June 25 - July 1, 1999: Ben Woolf (Fire), Dee Tobe (Parks & Recreation), Herbert Miller (Water) and Beryl Thompson (Streets).

The following claims were received by the City during the period of July 2-8, 1999: Claudia Garren (Fire) and BellSouth (Water).

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

E. LAWSUITS

The following Complaint was received by the City on June 18, 1999: Leanna F. Young, Janet Rebecca Crisp, Paul Evington, Scott Alan Gaddy, and Rock S. Edwards v. William R. Annarino, Leroy Lunsford and the City of Asheville. The nature of the complaint alleges wrongful discharge, deprivation of civil and constitutional rights, breach of contract, negligent supervision, libel and slander, and RICO violations. This matter will be handled by an outside attorney.

The following Complaint was received by the City on June 21, 1999: Carrier Heights Neighborhood Association v. City of Asheville. The nature of the proceeding is a petition seeking reversal of decision to issue a conditional use permit for a Level III church, and an injunction restraining issuance of permits. This matter will be handled in-house.

-9-

VII. INFORMAL DISCUSSION AND PUBLIC COMMENT:

Closed Session

At 6:30 p.m., Councilman Cloninger moved to go into closed session to consider the qualifications, competence, performance, character, fitness, conditions of appointment, or conditions of initial employment of an individual public officer or employee or prospective public officer or employee - statutory authority is G.S. 143-318.11 (a) (6). This motion was seconded by Councilman Sellers and carried unanimously.

At 6:45 p.m., Vice-Mayor Hay moved to go out of closed session. This motion was seconded by Councilman Sellers and carried unanimously.

VIII. ADJOURNMENT:

Mayor Sitnick adjourned the meeting at 6:45 p.m.

CITY CLERK MAYOR
