

Wednesday - October 27, 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

Mayor Sitnick gave the invocation.

I. PROCLAMATIONS:

A. RESOLUTION NO. 99-160 - RESOLUTION IN MEMORY OF WILLIAM F. WOLCOTT JR.

On behalf of City Council, Mayor Sitnick read the resolution in memory of Mr. William F. Wolcott Jr. She said that the City of Asheville wishes to express its deep sorrow over the passing of William F. Wolcott, Jr., an honored and respected citizen of our City whose death has ended a career of service to our community on October 9, 1999. Prior to his retirement on December 31, 1994, Billy faithfully and conscientiously served the City of Asheville and its citizens for 45 years in many of our most responsible City positions: City Engineer, Director of Aviation, Assistant City Manager, and Associate City Manager/City Clerk. On November 16, 1993, the new South Charlotte Street Public Works Building was named the William F. Wolcott Jr. Building, in recognition of Billy's love for the City and the good deeds he has done for our residents. Billy was devoted to Mary Ellen, his wife of 57 years, his son William F. Wolcott III, his daughter Anne, and his grandchildren. Billy's life was marked by exemplary dedication to the best interests of the community, as he worked for the its economic, cultural and aesthetic betterment as shown by his active involvement in the construction of the William F. Wolcott Jr. Building; the North Fork Reservoir; the Asheville Regional Airport; the Asheville Civic Center; the Motor Transport Facility; and the Civic Center, Rankin Avenue and Wall street Parking Garages. Throughout a long career of public service, Billy's professional leadership and dedication earned the respect, admiration and friendship of all those with whom he came into contact, and this community has sustained a great loss in his death. She then presented the Resolution to Mr. Wolcott's wife, son and daughter.

Resolution No. 99-160 was adopted by acclamation.

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B. STATEMENT BY MAYOR

Mayor Sitnick said that "The Mayor traditionally issues proclamations at the request of individuals or groups, approximately 100 a year. On October 12, 1999, I, not City Council, and I stress, City Council had no part in this, issued a Proclamation of Awareness of Earth Religions. The proclamation neither endorses or embraces any of the Earth Religions, which include Native American Spirituality, Celtic, Pagan, traditional African celebrations, Shintoism, and Daoism, but rather calls for awareness and tolerance. It is not, nor was it ever intended to be a proclamation for witches.

"As the Mayor of a community of great diversity, I believe it is my responsibility to represent all citizens without bias. As a citizen of the United States, I believe in the fundamental, constitutional right of freedom of religion. Our Nation was founded by people escaping religious persecution and unfortunately, religious

prejudice continues today - all over the world. It is not for anyone to tell another -2-

how to worship their creator. Being "aware" of different religions, of all religions, whether Christian, Jewish, Muslim, Hindu, Native American, or any other, should not be feared. I don't tell anyone how to believe, but I support everyone's right to freedom of religion. I apologize if I have offended anyone, but I support all persons rights to religious freedom and am happy to say that 99% of the communications I have received, whether supportive or not, were from citizens who support the liberties granted by freedom of religion.

"I am deeply saddened that a gesture of good intention to support religious tolerance and freedom has caused division in our community. The proclamations with religious themes that have been issued before, like Rock Hill Baptist Church Week, Calvary Baptist Church Day, Nazareth First Baptist Church Day, Beth Israel Day, Day of Prayer Days, Days of Remembrance, Catholic Schools Week, and Bible Week have never caused a problem or been an issue. I viewed them as part of an ongoing tradition accepted by the good people of our City.

"As an effort toward reconciliation and peace, the Proclamation on Earth Religions Awareness Week has, by mutual agreement, been returned and received by me. I will not issue the Proclamation for Lordship of Jesus Christ Awareness Week. I am suspending the issuance of proclamations and will consider, with the Council, what to do in the future.

"I will issue no further statements and answer no other questions.

"It is my fervent hope that, as we get on with the healing process, we will all have a greater understanding of what our founding fathers meant when they wrote the first amendment to the Constitution."

C. PROCLAMATION PROCLAIMING OCTOBER 31 - NOVEMBER 7, 1999, AS "PORNOGRAPHY AWARENESS WEEK "

Mayor Sitnick read the proclamation proclaiming October 31 - November 7, 1999, as "Pornography Awareness Week and the White Ribbon Against Pornography Campaign " in the City of Asheville. She presented the proclamation to Ms. Gail Harding who briefed City Council on ways to combat the negative impact of pornography in our community.

D. PROCLAMATION PROCLAIMING NOVEMBER, 1999, AS "NATIVE AMERICAN MONTH"

Mayor Sitnick read the proclamation proclaiming November, 1999, as "Native American Month" in the City of Asheville. She presented the proclamation to Ms. Oralene Simmons and Mr. Bruce Two Eagle, who briefed City Council on some activities taking place during the month.

II. CONSENT:

A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON OCTOBER 12, 1999, AND THE WORKSESSION HELD ON OCTOBER 19, 1999

B. RESOLUTION NO. 99-161 - RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE AN EASEMENT TO THE METROPOLITAN SEWERAGE DISTRICT IN ORDER TO UPGRADE THE SEWER LINE LOCATED OFF OF OLD COUNTY HOME ROAD

Summary: The consideration of a resolution authorizing the Mayor to execute an easement to the Metropolitan Sewerage District for an existing sewer line which will be upgraded on property owned by the City of Asheville located off of Old County Home Road. -3-

Staff has been working with Martin-McGill, a consultant for the Metropolitan Sewerage District, in

coordinating improvements to be made on an existing sanitary sewer line and a permanent easement. The property, located off of Old County Home Road, was dedicated to the City for park use. It is currently undeveloped. The Parks and Recreation Department staff have agreed that the easement will in no way limit the potential use of the property for a park.

City staff recommends that the Mayor be authorized to execute easement documents for an existing sewer line to the Metropolitan Sewerage District in order to upgrade the sewer line located off of Old County Home Road (PIN No. 9628.08-79-7112).

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C. MOTION GRANTING AN EXTENSION IN THE DEADLINE TO SUBMIT PROPOSALS TO MANAGE THE PUBLIC ACCESS CHANNEL UNTIL JANUARY 28, 2000

Summary: The consideration of a request from the non-profit organizations interested in submitting proposals to manage the public access channel for an extension in the deadline to submit these proposals.

On August 3, 1999, City staff requested permission to issue a Request for Proposal (RFP) soliciting non-profit organizations who were interested in managing the public access channel. The RFP was issued and a mandatory pre-bid conference was held on September 3, 1999, with all interested bidders. WCQS Radio and the League of Women Voters attended the pre-bid conference. Both organizations requested an extension in the deadline for the proposals. The deadline was originally set for October 15, 1999. The organizations have asked that the deadline be extended to January 28, 2000, so that they can explore the feasibility of forming partnerships to manage the public access channel.

Staff recommends that City Council grant an extension in the deadline to submit proposals to manage the public access channel until January 28, 2000.

D. MOTION SETTING A PUBLIC HEARING ON NOVEMBER 9, 1999, TO AMEND THE 1999 CONSOLIDATED ACTION PLAN FOR COMMUNITY DEVELOPMENT BLOCK GRANT AND HOME PROGRAMS

E. MOTION SETTING A PUBLIC HEARING ON NOVEMBER 9, 1999, TO REVISE THE STANDARDS OF WIRELESS TELECOMMUNICATION FACILITIES

F. MOTION SETTING A PUBLIC HEARING ON NOVEMBER 9, 1999, TO AMEND THE UNIFIED DEVELOPMENT ORDINANCE TO ALLOW THE PLANNING AND DEVELOPMENT DIRECTOR TO APPROVE DEVIATIONS FROM CERTAIN DEVELOPMENT STANDARDS

G. MOTION SETTING A PUBLIC HEARING ON NOVEMBER 9, 1999, TO AMEND THE UNIFIED DEVELOPMENT ORDINANCE TO ALLOW THE PLANNING AND DEVELOPMENT DIRECTOR TO REVIEW AND APPROVE REQUESTS FOR ALTERNATIVE COMPLIANCE TO THE LANDSCAPE REQUIREMENTS

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

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

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III. PUBLIC HEARINGS:

A. PUBLIC HEARING RELATIVE TO REPEALING ORDINANCE NO. 2480

ORDINANCE NO. 2626 - ORDINANCE REPEALING ORDINANCE NO. 2480 DIRECTING THE DIRECTOR OF BUILDING INSPECTIONS TO DEMOLISH THE DWELLING KNOWN AS 22 SULPHUR SPRINGS ROAD

Mayor Sitnick opened the public hearing at 5:42 p.m.

Mr. Terry Summer, Director of Building Safety, said that this is the consideration of an ordinance repealing the demolition of the structure located at 22 Sulpher Springs Road as adopted in Ordinance No. 2480. This public hearing was advertised on October 15 and October 22, 1999.

On May 26, 1998, an ordinance was adopted by City Council instructing the Director of Building Safety to cause the demolition or otherwise effectuate the purpose of the Minimum Housing Code in regard to the structure located at 22 Sulpher Springs Road. The Owner's Contractors applied and were granted permits on or about June 18, 1998. Once ordered by City Council to comply with the City of Asheville's Minimum Housing Code, Gabriel Ferrari and wife, Livia were very cooperative. The corrections included but were not limited to:

- 1) Proper venting of the gas hot water heater
- 2) Installation of complete electrical wiring and service
- 3) Stairways to the basement and 2nd floor
- 4) Elimination of the internal accumulation of garbage

All work was completed on 7/9/98 and a "Housing Certificate" was issued. The Certificate is valid until 7/9/05, unless the structure falls back into a state of disrepair.

The Director of Building Safety Department recommends the adoption an ordinance to repeal Ordinance No. 2480 to demolish the structure located at 22 Sulpher Springs Road.

Upon inquiry of Councilman Cobb about the violations of the sign ordinance on the property, Mr. Summey stated that to his knowledge the owners have taken down the signs and is now in compliance with the sign ordinance.

Mayor Sitnick closed the public hearing at 5:45 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. 2626. This motion was seconded by Councilman Tomes and carried unanimously.

ORDINANCE BOOK NO. 18 - PAGE 15

B. PUBLIC HEARING TO CONSIDER A REQUEST TO APPROVE A MODIFICATION FROM THE SUBDIVISION STANDARD REQUIRING THAT EACH LOT ABUT A PUBLIC STREET FOR A SUBDIVISION OF A 0.75 ACRE TRACT OF LAND LOCATED ON THIRD STREET INTO TWO LOTS

Mayor Sitnick opened the public hearing at 5:46 p.m.

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Urban Planner Dan Baechtold said that this is the consideration of a request to approve a modification from the subdivision standard requiring that each lot abut a public street for a subdivision of a 0.75 acre track of land located on Third Street into two lots. This public hearing was advertised on October 15 and October 22, 1999.

The subdivision regulations of the Unified Development Ordinance require that all residential lots must abut a public street. In Section 7-15-1(j), the ordinance states: "The Asheville City Council, upon receiving recommendation from the Planning and Zoning Commission, may approve modifications to the standards found in subsection 7-15-1(k)." Further, the ordinance addresses acceptable grounds for modification:

"Modifications from the standards of this article may be granted in cases of physical hardship. Cases of physical hardship shall be defined as those cases where because of the topography of the tract to be subdivided, the condition or nature of adjoining areas, or the existence of other unusual physical conditions, strict compliance with the provisions of this article would cause unusual and unnecessary hardship on the property owner. Financial hardship shall not be considered grounds for a modification. "

Mr. Mychajlo Ostapovich (owner) presented a plat to the City of Asheville for a two lot subdivision. One of the lots does not have the required 25-foot minimum frontage on a public street. The existing tract of land is located on the corner of Wanoca Avenue and Third Street. The tract fronts on a platted right-of-way for an extension of Third Street. The street was never constructed.

At their September 1999 meeting, the Planning and Zoning Commission recommended that Mr. Ostapovich explore alternative methods to create a lot with frontage on a public street. Mr. Ostapovich investigated several options with City staff. Unable to find an acceptable solution for Mr. Ostapovich, staff determined that sufficient physical hardship exists to justify granting a modification to the subdivision regulations.

At their October 1999 meeting, the Planning and Zoning Commission voted unanimously to recommend approval of this request to City Council.

Upon inquiry of Councilwoman Field, City Attorney Oast said that the issuance of any building permit would depend upon appropriate access being provided.

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

Councilman Tomes moved to approve a modification from the subdivision standard requiring that each lot abut a public street for a subdivision of a 0.75 acre track of land located on Third Street into two lots. This motion was seconded by Councilman Cloninger and carried unanimously.

C. PUBLIC HEARING TO CONSIDER A REQUEST TO APPLY THE PLANNED UNIT DEVELOPMENT OVERLAY DISTRICT TO THAT LOT LOCATED AT 121 MERCHANT STREET WHICH HAS AN UNDERLYING ZONING OF RS-8 RESIDENTIAL SINGLE-FAMILY HIGH DENSITY DISTRICT

ORDINANCE NO. 2627 - ORDINANCE TO APPLY THE PLANNED UNIT DEVELOPMENT OVERLAY DISTRICT TO THAT LOT LOCATED AT 121 MERCHANT STREET WHICH HAS AN UNDERLYING ZONING OF RS-8 RESIDENTIAL SINGLE-FAMILY HIGH DENSITY DISTRICT

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

Senior Planner Gerald Green said that this is the consideration of applying the Planned Unit Development Overlay District to that lot located at 121 Merchant Street (Willow Arbor) which has an -6-

underlying zoning of RS-8 Residential Single-Family High Density District. This public hearing was advertised on October 15 and October 22, 1999.

The Planning and Zoning Commission, at their October 6, 1999, meeting, reviewed and unanimously recommended approval of the application of the Planned Unit Development (PUD) overlay zone to a lot of approximately 0.85 acres located on Merchant Street, currently zoned RS-8 Residential Single-Family High Density District. The developers are proposing the construction of an 8 unit residential development on the site. The preliminary master plan approved by the Planning and Zoning Commission calls for the construction of 4 duplex structures on the site. Parking will be screened from the street by the buildings and the site will be buffered from adjacent residential uses by a landscaped buffer. The site plan complies with all standards set forth in the Unified Development Ordinance (UDO) for a PUD. Council's role is to act upon the recommendation of the Planning and Zoning Commission for approval of the application of the PUD overlay zone to the project site. The purposes of the PUD overlay zone, as identified in Sec. 7-9-1 (a) of the UDO, include:

- Encourage better design and maintenance of open space;
- Facilitate more affordable housing; and
- Encourage pedestrian circulation within and adjacent to the PUD.

Council must determine if these and the other goals and purposes of the PUD overlay zone are achieved by the proposed Willow Arbor PUD.

At the public hearing conducted by the Planning and Zoning Commission, neighboring property owners expressed concern about the traffic which would be generated by this development and the existing traffic on Merchant Street. According to the City's Traffic Engineer, the difference between the traffic generated by the proposed development and that generated by permitted single family development on the site is insignificant.

The Planning and Zoning Commission voted 7-0 to recommend approval of the application of the PUD overlay zone. Staff is also recommending approval.

At the request of Councilman Cloninger, City Manager Westbrook said that he would include the developer's name and property owner's name on future staff reports so Council can determine if there might be a conflict of interest.

Noting that this is the first PUD overlay zone request, Mayor Sitnick and Vice-Mayor Hay spoke in favor of the process.

Mayor Sitnick closed the public hearing at 6:00 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. 2627. This motion was seconded by Councilwoman Field and carried unanimously.

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D. PUBLIC HEARING TO CONSIDER THE INITIAL ZONING OF THE ROYAL PINES POOL AND PARK PROPERTIES LOCATED ON SWEETEN CREEK ROAD AND PEACH TREE STREET TO RS-4 RESIDENTIAL SINGLE FAMILY MEDIUM DENSITY DISTRICT

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Mayor Sitnick opened the public hearing at 6:01 p.m.

Urban Planner Stacy Merten said that this is the consideration of an ordinance to zone Royal Pines Pool and Park Properties, located on Sweeten Creek Road and Peach Tree Street, RS-4 Residential Single Family Medium Density District. This public hearing was advertised on October 15 and October 22, 1999.

The Planning and Zoning Commission, at their October 6, 1999, meeting, reviewed and recommended approval to zone the recently annexed non-contiguous property known as Royal Pines Pool and Park located off of Sweeten Creek Road on Sycamore Drive and Peach Tree Street in South Asheville as RS-4 Residential Single Family Medium Density District. Four properties with a total area of 5.5 acres are included as part of the zoning proposal. This was a private pool and park serving the local community and will now be managed by the Parks and Recreation Department of the City of Asheville. There are currently no definitive plans for the property but it is anticipated that it will continue in some type of passive recreational use. The proposed zoning of RS-4 allows for the recreational use to continue while protecting the character of the surrounding neighborhood.

Several community residents expressed their concern that the residential zoning meant that the parcel would become a housing development. It was explained that it was the owner's intent for the parcel to continue as a park. It was also explained that the property is currently zoned residential by Buncombe County and that because the Unified Development Ordinance (UDO) does not have a special district for parks and open space that parks are typically zoned residential, where compatible recreational uses are also permitted. Other concerns had to do with future plans for the park itself, which will ultimately be decided by the City Council with recommendations by Parks & Recreation Department.

The Planning and Zoning Commission voted unanimously to recommend approval of the initial zoning. The Planning and Development staff recommends approval of the new zoning.

Vice-Mayor Hay said that it was his understanding that the deed to the property contains restrictions that prohibit the use for anything other than a park. Ms. Merten said that the deed doesn't specifically state that, however, there is language in the contract as far as the permitted uses being parks and conservation uses.

Mayor Sitnick said that there was significant discussion during adoption of the UDO to consider a zoning classification for parks. She urged City Council to adopt a park designation in the UDO that is specifically applied to parks and didn't zone them according to the land use around them.

Councilman Cloninger agreed with Mayor Sitnick in that a zoning designation for park space should be included in the UDO. He said that because zoning designations can be changed, there might be a lot of situations where Council would want to put a conservation easement on the property so that future Councils cannot change their mind.

City Attorney Oast said that there are some special statutory provisions that deal with land acquired for park purposes and if we acquire land for park purposes, there are certain restrictions on our ability to dispose of it for any other use.

Planning & Development Director Scott Shuford said that his staff is in the process of creating an open space zoning district and will have it before City Council in January of 2000.

Mr. John Ward, property owner in the area, urged City Council not to zone the property until there is a permanent zoning classification for parks. He wanted the property to be left as a park, as it was intended to be. -8-

City Attorney Oast said that if the property is not zoned, it is potentially available for anything. It was his recommendation that if Council is going to zone it, that it be zoned to some restrictive residential classification.

Ms. Doris McQuiggan, property owner in the area, also urged Council to postpone zoning the property until a park designation can be adopted.

When Ms. McQuiggan questioned why the zoning classification was recommended to an RS-4 and not an RS-2, Ms. Merten responded that the RS-4 classification is in keeping with the character of the neighborhood to the north. She also said that if the rest of the property around it were annexed into the City and there is no zoning classification for parks, it would also be like a spot zone to have an RS-2 in the center which would not be contiguous with the rest of the neighborhood.

Upon inquiry of Councilwoman Field, City Attorney Oast explained the specifics of a conservation easement.

Upon inquiry of Vice-Mayor Hay, City Attorney Oast said that the City of Asheville owns the property. City Manager Westbrook said that The Trust for Public Land provided the financial mechanism for the City to purchase the property.

Mayor Sitnick closed the public hearing at 6:20 p.m.

Councilman Cloninger moved to continue this matter until February 22, 2000, which will allow time for the open space zoning classification to be adopted into the UDO. This motion was seconded by Councilman Sellers.

E. PUBLIC HEARING TO CONSIDER THE INITIAL ZONING OF PROPERTY KNOWN AS DEERFIELD EPISCOPAL COMMUNITY LOCATED OFF OF HENDERSONVILLE ROAD TO RM-16 RESIDENTIAL MULTI-FAMILY HIGH DENSITY DISTRICT

ORDINANCE NO. 2628 - ORDINANCE TO ZONE PROPERTY KNOWN AS DEERFIELD EPISCOPAL COMMUNITY LOCATED OFF OF HENDERSONVILLE ROAD TO RM-16 RESIDENTIAL MULTI-FAMILY HIGH DENSITY DISTRICT

Mayor Sitnick opened the public hearing at 6:27 p.m.

Urban Planner Stacy Merten said that this is the consideration of an ordinance to zone Deerfield Episcopal Retirement Community, Inc., located off of Hendersonville Road, RM-16 Residential Multi-Family High Density District. This public hearing was advertised on October 15 and October 22, 1999.

The Planning and Zoning Commission, at their October 6, 1999, meeting, reviewed and recommended approval to zone the recently annexed property known as Deerfield Episcopal Retirement Community, Inc., located off of Hendersonville Road as RM-16 Residential Multi-Family High Density District. This is a 24-acre tract of property that is part of and contiguous with the existing Deerfield Retirement Community, also zoned RM-16. The newly annexed property is currently under development with two 5-story apartment buildings, a 2-story community center and 13 single family residences. The proposed zoning will allow the proposed development to go forward as planned with adequate infrastructure in place to support the higher density. There was no comment at the public hearing.

The Planning and Zoning Commission voted unanimously to recommend approval of the initial zoning as RM-16 Residential Multi-Family High Density District. The Planning and Development staff recommends approval of the new zoning. -9-

Upon inquiry of Vice-Mayor Hay, Fire Chief John Rukavina said that Asheville is already providing fire

protection services to that area already. He explained that the way fire protection works in Buncombe County is that they try to ignore boundaries to the extent that they can. Asheville is the nearest fire department to that populated area, so the expectation would be that if a fire were to occur, they would respond.

Mayor Sitnick closed the public hearing at 6:32 p.m.

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

Councilwoman Field moved for the adoption of Ordinance No. 2628. This motion was seconded by Councilman Sellers and carried unanimously.

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F. PUBLIC HEARING TO CONSIDER THE REZONING OF A PORTION OF THAT LOT LOCATED ALONG GASTON STREET FROM RS-8 RESIDENTIAL SINGLE-FAMILY HIGH DENSITY DISTRICT TO OFFICE II DISTRICT

ORDINANCE NO. 2629 - ORDINANCE TO REZONE A PORTION OF THAT LOT LOCATED ALONG GASTON STREET FROM RS-8 RESIDENTIAL SINGLE-FAMILY HIGH DENSITY DISTRICT TO OFFICE II DISTRICT

At the request of Councilman Tomes, Councilwoman Field moved to excuse Councilman Tomes from participating in this matter due to a conflict of interest. This motion was seconded by Councilman Sellers and carried unanimously.

Mayor Sitnick opened the public hearing at 6:34 p.m.

Senior Planner Gerald Green said that this is the consideration of an ordinance to rezone a portion of a lot located along Gaston Street from RS-8 Residential Single Family High Density District to Office II District. This public hearing was advertised on October 15 and October 22, 1999.

The Planning and Zoning Commission, at their October 6, 1999, meeting, reviewed and unanimously recommended approval of the rezoning of a portion of a lot located on Herman and Gaston Streets from Residential Single-Family High Density District to Office II District. The property for which the rezoning is requested is approximately 6,000 square feet. Current land uses on adjacent parcels include medical offices, a credit union, a clinic, a community center, single family homes, and some vacant land. The property for which the rezoning is requested is vacant. Most of this parcel was rezoned from Office District to Office District II by City Council in March, 1999. Although the ownership of this portion of the parcel had been transferred to Opportunity Corporation at that time, neither the County's tax maps nor the City's zoning maps reflected this transfer. As a result, this area was not included in the rezoning of properties to Office District II in March 1999. Currently the lot is split zoned, with the majority zoned Office II and a small portion zoned Residential Single-Family High Density District. Rezoning of this small portion to Office II would eliminate the split zoning, making it easier for the Opportunity Corporation to proceed with their planned development of the property. The Planning and Development Department has received no public comments regarding the requested rezoning..

The Asheville Planning and Zoning Commission voted 7-0 to recommend approval of the rezoning. The Planning and Development staff recommends approval of the rezoning.

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Ms. Vicki Heidinger, Executive Director of the Opportunity Corporation, supported the rezoning request.

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

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

Councilwoman Field moved for the adoption of Ordinance No. 2629. This motion was seconded by Councilman Sellers and carried unanimously.

ORDINANCE BOOK NO. 18 - PAGE 20

IV. UNFINISHED BUSINESS:

A. RESOLUTION NO. 99-162 - RESOLUTION ENDORSING THE CONCEPT OF ZONING THROUGHOUT BUNCOMBE COUNTY IN AREAS NOT ALREADY SUBJECT TO ZONING LAWS

Councilman Cloninger said that City Council has heard from representatives of Buncombe County, people in the community who are opposed to zoning in the County, and people in the community who are proponents of zoning in the County. He felt that all groups provided good information. He suggested that City Council consider adopting a resolution that endorses the concept of zoning throughout Buncombe County in areas not already subject to zoning laws.

Councilman Tomes, Councilwoman Field, Vice-Mayor Hay and Councilman Cobb all felt that they could support the suggested resolution endorsing the concept.

City Attorney Oast suggested the following resolution language: Whereas, zoning and land use regulations are an effective tool in guiding land use; and Whereas, the City of Asheville is the largest City in North Carolina whose surrounding county is unzoned; and Whereas, the City of Asheville will benefit from zoning in Buncombe County. Now therefore, the City Council of the City of Asheville does hereby endorse the concept of zoning in Buncombe County.

Councilman Cloninger moved to adopt the resolution as read by City Attorney Oast. This motion was seconded by Councilwoman Field and carried unanimously.

RESOLUTION BOOK NO. 25 - PAGE 328

B. REPORT ON ST. DUNSTAN'S ROAD TRAFFIC

At the City Council worksession on October 19, 1999, City staff updated City Council on the traffic on St. Dunstan's Road and recommended leaving this road open to allow better access to the neighborhood.

Mayor Sitnick said that just prior to the meeting she received a call from Ms. May, one of the original spokespersons for the neighborhood, who stated that she was unable to attend this meeting and requested City Council postpone this matter.

City Manager Westbrook recommended that since City Council is not taking any action on this and since it was only a report back from staff, rather than rescheduling this for public comment, residents can come to the next formal meeting, or any formal meeting, under "Informal Discussion and Public Comment" and discuss with the Council this issue, since there is no change in the condition on the road. -11-

Mayor Sitnick invited the neighborhood to come to any formal meeting and under the "Informal Discussion and Public Comment" section they can give Council their comments.

V. NEW BUSINESS:

A. ORDINANCE NO. 2630 - ORDINANCE AMENDING THE ASHEVILLE DOWNTOWN COMMISSION

Chair of the Downtown Commission Carol King said that this is the consideration of approving revised changes to the ordinance regarding the Downtown Commission.

Last winter, the Downtown Commission reported to you several recommendations that were the result of a technical visit conducted by National Main Street Center. One of the recommendations was to make changes to the ordinance regarding the Downtown Commission. It was felt the ordinance needed to be updated to reflect the changing dynamics in downtown. The recommendation was to shift the focus from revitalization to instead a focus on sustainable and continued development of downtown.

Since then, the Downtown Commission has spent considerable time recently discussing its future efforts as an organization chartered by the City Council. This discussion, along with the ongoing issue identification process involving the Mayor's Roundtable, various focus groups and the Center City Plan meetings, has resulted in a number of suggested revisions to the Downtown Commission's charter which is part of the City Code of Ordinances.

These suggested changes involve updating obsolete language, reprioritizing the purposes and powers, restructuring the membership of the Commission, as well as clarifying its role in areas such as promotion, design review and communication.

The Downtown Commission's current initiatives and successes include: Pack Square Task Force; Center City Plan; Downtown Design Review, Streetscape Committee College Street Design Charette, Support for Chamber location downtown; Parking Task Force; Building Code Chapter Nine extension and the National Main Street Technical Visit Recommendations.

At the October 19, 1999, worksession, City Council asked that the ordinance be amended to include language to "promote and facilitate downtown living." That language has been included in ordinance.

The City Development staff of the Planning and Development Department recommend approving the revisions to the ordinance.

Vice-Mayor Hay was very pleased with the work the Downtown Commission did on this amendment and said that he is going to request that the Civic Center Commission undertake the same kind of review following the model of the Downtown Commission.

On behalf of City Council, Mayor Sitnick thanked Ms. King for her work on this amendment and the work of the Downtown Commission and all the downtown groups involved in the review.

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

Councilwoman Field moved for the adoption of Ordinance No 2630. This motion was seconded by Councilman Cloninger and carried unanimously.

ORDINANCE BOOK NO. 18 - PAGE 23 -12-

B. MOTION ENDORSING THE TRANSPORTATION IMPROVEMENT PLAN PRIORITIES NEEDS LIST

Mr. Ron Fuller, Transportation Planner, explained the Transportation Improvement Program and the Priority Needs process. He said that nothing has changed from the September 21, 1999, worksession, except they have had the opportunity to meet with the MPO meeting with the Technical Coordinating Committee, which is

the staff level technical group that makes recommendations to the Transportation Advisory Committee. At that time they had the list of priorities that the City staff had proposed as well as the last year's priority needs list that was a little different. The Technical Coordinating Committee all agreed that the list that the staff had presented, which Council reviewed in the City Council worksession on September 21, 1999, was the one they would like to see submitted out for the 30-day public review period.

Mr. Fuller explained that the Transportation Improvement Plan which is the Capital Improvement Program for the State of North Carolina as it relates to all aspects of transportation improvements. It is a seven year plan that identifies specific projects such as new facilities, widened facilities, as well as pedestrian, bicycle, aviation, and rail improvements. Meetings begin in the fall to look at transportation needs of the area. A "wish list" referred to as the Priority Needs List (PNL) of new project requests, deletions of current projects and/or changes in existing projects is developed. The PNL is then sent out for at least a 30-day public review and comment period and is available at all branch libraries, all town halls and the County Planning Department. After the 30 day public review and comment, a public hearing is conducted by the Transportation Advisory Committee (TAC). Upon approval by the TAC, the PNL is submitted to the Board of Transportation for their consideration in development of the subsequent State Transportation Improvement Program (STIP). All projects that fall within the planning area are referred to as the Local Transportation Improvement Program (LTIP). The LTIP is then distributed, and after an additional period of public review and comment, a public hearing is conducted to approve as consistent with the STIP. Projects included in the STIP and LTIP are then considered to be in the "Project Selection Document" for the purpose of project funding and development. Upon being selected from the document, planning, design, right-of-way acquisition (if needed) and construction are scheduled. The TIP process has now moved to a two-year cycle. One year is dedicated to establishing priority needs and the second to development of the actual STIP and LTIP.

Mr. Fuller then discussed the "Gateway Corridor" concept which he noted the NC DOT was "cautiously supportive" of.

Mayor Sitnick asked Mr. Fuller to follow-up with NC DOT on her request to slow truck speed on I-240 and to also encourage the NC DOT to do a better job of maintaining the roads.

Mayor Sitnick asked that Kenilworth Road and Beaucatcher Road be placed high on the list of roads to have speed bumps installed for safety reasons.

Councilman Cobb felt that the current I-26 corridor planned by the NC DOT is a mistake and hoped that a different corridor would be developed.

Councilman Tomes moved to support the Transportation Improvement Plan priorities as presented by staff. This motion was seconded by Councilwoman Field and carried unanimously.

C. ORDINANCE NO. 2631 - ORDINANCE AMENDING CHAPTER 3 OF THE CITY CODE TO REQUIRE CLEANING UP AFTER ANIMALS

At Mayor Sitnick's request, City Attorney Bob Oast said that this is consideration of an ordinance to require pet owners to clean up after their pets.

The ordinance is fairly straightforward and self-explanatory. It requires pet owners to clean up after their pets, if the pets defecate on any public property or upon any street, sidewalk, public way, play -13-

area or common grounds owned jointly by the members of a homeowners or condominium association, or upon private property without permission of the occupant of said property, unless such keeper immediately removes and disposes of all feces deposited by such animal by the following methods: (1) collection of the feces by appropriate implement and placement in a paper or plastic bag or other container; and (2) removal

of such bag or container to the property of the animal keeper and disposition thereafter in a manner as otherwise permitted by law.

There is already an ordinance provision, Section 3-9(6) in the Asheville City Code, that provides that animal defecation on the property of another may be a nuisance, but this requires a qualitative judgment as to what constitutes a nuisance, and only applies to private property.

This ordinance, like other City animal control ordinances, may be enforced civilly by animal control officers or by a designated agency. Appendix B of the Code prescribes an escalating civil fine for violations of the Animal Control Ordinance, beginning with a \$10.00 fine. Section 3-20 provides that no criminal penalty is available for violations that are specifically made subject to a civil penalty. By specifically providing for a civil penalty, criminal penalties are foreclosed by operation of the ordinance.

If City Council wishes to require owners to clean up after their pets, adoption of the ordinance is recommended.

Discussion surrounded how the ordinance would be enforced and who could enforce the ordinance.

Mayor Sitnick noted that adoption of this ordinance will heighten awareness of the problem and might inspire the city to move more quickly to develop some dog parks in downtown.

Mr. Fred English urged City Council to allow only seeing-eye dogs downtown. He also hoped that City Council to prohibit dogs from shopping centers.

When Councilwoman Field expressed concern about the animal being impounded, City Attorney Oast said that he would amend the ordinance to provide that the only penalty available for violations of this ordinance would be the escalating fines set forth in Appendix B of the Code of Ordinances. It was the consensus of City Council to make that amendment.

When Councilwoman Field questioned the removal method, City Attorney Oast said that he would amend the ordinance to state that removal of such bag or container and disposition thereof in a manner as otherwise permitted by law. It was the consensus of City Council to make that amendment.

At the request of Mayor Sitnick and upon consensus of City Council, the ordinance would be amended to be effective January 1, 2000.

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

Councilman Cloninger moved for the adoption of Ordinance No 2631, with the amendments noted above. This motion was seconded by Councilman Sellers and carried on a 6-1 vote, with Councilwoman Field voting "no".

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VI. OTHER BUSINESS:

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A. CLAIMS

The following claims were received by the City of Asheville during the period of October 8-21, 1999: Donnie Holbrook (Streets), Thomas Bryant (Water) and Loretta Burke (Civic Center).

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

VII. INFORMAL DISCUSSION AND PUBLIC COMMENT:

With regard to the I-26 corridor to be built through Asheville, Mr. Fred English, professional truck driver, stated that he has hauled hazardous materials through Asheville for several years on I-40 and I-26. Mr. English then expressed his disappointment in (1) the Asheville Motor Speedway closing, and (2) no Council representation at the VA Hospital Ceremony with regard to the Moving Wall Memorial.

Councilwoman Field briefed City Council on her recent trip to the N.C. League of Municipalities meeting in Greensboro, N.C.

At 7:52 p.m., Vice-Mayor Hay moved to go into closed session to establish or to instruct the City's staff or negotiating agents concerning the position to be taken by or on behalf of the City in negotiating the terms of a contract for the acquisition of real property by purchase, option, exchange or lease - statutory authority is G.S. 143-318.11 (a) (5). This motion was seconded by Councilwoman Field and carried unanimously.

At 8:05 p.m., Councilman Cloninger moved to come out of closed session. This motion was seconded by Councilman Sellers and carried unanimously.

VIII. ADJOURNMENT:

Mayor Sitnick adjourned the meeting at 8:05 p.m.

CITY CLERK MAYOR
